IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 168

Criminal Case No 47 of 2019

Between

Public Prosecutor

… *Plaintiff*

And

(1) Azlin binte Arujunah
(2) Ridzuan bin Mega Abdul Rahman

… *Defendants*

GROUNDS OF DECISION

[Criminal Law] — [Complicity] — [Common intention]
[Criminal Law] — [Offences] — [Murder]
[Criminal Law] — [Offences] — [Hurt]
[Criminal Law] — [Special exceptions] — [Diminished responsibility]
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13 August 2020

Valerie Thean J:

Introduction

1 Azlin binte Arujunah ("Azlin") and Ridzuan bin Mega Abdul Rahman ("Ridzuan") were jointly tried on multiple charges for various acts of abuse from July 2016 to October 2016 against their five-year-old son ("the Child"). In respect of a series of four scalding incidents which resulted in the Child's death on 23 October 2016, they were charged with murder under s 300(*c*) read with s 34 of the Penal Code (Cap 224, 2008 Rev Ed) ("Penal Code"). After trial, I amended these murder charges and convicted Azlin and Ridzuan on newly framed charges based on the scalding incidents. I also convicted Azlin and Ridzuan on the charges for the acts of abuse, save for one on which they were acquitted. Azlin was sentenced to 27 years' imprisonment and 12 months' imprisonment in lieu of caning, while Ridzuan was sentenced to 27 years'

imprisonment and 24 strokes of the cane. I now furnish the grounds for my decision.

Background

2 At the time of the offences, the accused persons, then 24 years of age, were the parents of six children. Azlin and Ridzuan lived together with four of their children at the material time: their oldest son, who was turning seven years old at the time, the Child, who was their second son, and two younger daughters, who were three and two years old respectively.[1]

3 The Child had lived with a friend of Azlin's, [Z], since March 2011, when he was a few months old. In time, [Z] sought to make childcare and schooling arrangements for the Child near her home, but was unable to secure the parents' consent.[2] As a result, the Child was returned to Azlin and Ridzuan in May 2015.[3] [Z] and her family also sought to see the Child from time to time, but were denied access after January 2016.[4]

4 The offences in this case came to light when the Child was admitted to the Emergency Department at KK Women's and Children's Hospital ("KK Hospital") on 22 October 2016 at around 7.57pm.[5] He received emergency intensive care, but was pronounced dead on 23 October 2016 at 9.13am.[6]

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1 Agreed Statement of Facts ("ASOF") at paras 3–4.

2 Agreed Bundle ("AB"), p 361 at [31]

3 PS40 at paras 29–33: AB at p 362 at [33].

4 PS40 at paras 34–36: AB, p362 at [34] – [36]

5 ASOF at para 10.

6 P168 at p 3: AB at p 113. See also ASOF at para 16.

Subsequent investigation revealed a series of offences from July to 22 October 2016. At trial, the Prosecution proceeded on six charges against Azlin, and nine charges against Ridzuan. The charges against Azlin were as follows:

(a) one charge under s 300(*c*) read with s 34 and punishable under s 302(2) of the Penal Code, for incidents spanning 15 to 22 October 2016 (as amended on the second day of trial and marked "C1A");

(b) two charges under s 5(1) punishable under s 5(5)(*b*) of the Children and Young Persons Act (Cap 38, 2010 Rev Ed) ("CYPA") for incidents in August 2016 (marked "C2" and "C3");

(c) one charge under s 324 read with s 109 of the Penal Code for an incident in end August to early September 2016 (marked "C4") corresponding to Ridzuan's charge for the same act below marked D4; and

(d) two charges under s 5(1) punishable under s 5(5)(*b*) of the CYPA read with s 34 of the Penal Code for incidents in October 2016 (marked "C5" and "C6") and corresponding to Ridzuan's charges marked D7 and D9 respectively.

5 Ridzuan was tried on the following charges:

(a) one charge under s 300(*c*) read with s 34 of the Penal Code for incidents spanning 15–22 October 2016 (as amended on the second day of trial and marked "D1A");

(b) three charges under s 5(1) punishable under s 5(5)(*b*) of the CYPA for incidents in July 2016 and October 2016 (marked "D2", "D3", and "D6");

(c) three charges under s 324 of the Penal Code for incidents in end-August to early September, early October, and 18–19 October 2016 (marked "D4", "D5", and "D8"); and

(d) two charges under s 5(1) punishable under s 5(5)(*b*) of the CYPA read with s 34 of the Penal Code for incidents in October 2016 (marked "D7" and "D9").

6 In these grounds of decision, I refer to charges C1A and D1A as "the Murder Charges". The other charges are referred to as "the Abuse Charges".

Joint trial of Abuse and Murder Charges

7 Prosecution initially informed parties that they would stand down the Abuse Charges until after the trial of the Murder Charges. On 19 September 2019, however, they notified defence counsel of their decision to try all the charges together. Counsel for Ridzuan did not object. Counsel for Azlin objected, on the basis that the joinder would be prejudicial to Azlin's defence; alternatively, counsel requested for a vacation of the first tranche of trial dates fixed for 15–17 and 22–25 October 2019.[7] At the subsequent pre-trial conference on 7 October 2019, I vacated the October trial dates but allowed the joinder of the charges at a single trial. The trial then convened on the allocated dates in November 2019, with subsequent dates added in 2020.

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7 See Letter to Court dated 26 September 2019.

8 The objection to the joining of the charges was renewed by counsel for Azlin in closing submissions and I deal with the objections here. It was not disputed that the grounds for joining of those offences under s 133 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC") were satisfied. Azlin objected to the trial of these offences together on the basis that the she would be prejudiced or embarrassed in her defence as the evidence amounted to similar fact evidence and argued for the need for separate trials by virtue of s 146 of the CPC.

9 In *Lee Kwang Peng v Public Prosecutor and another appeal* [1997] 2 SLR(R) 569 ("*Lee Kwang Peng*") at [57], Yong Pung How CJ noted that whether a judge should order a joinder is governed by wholly different considerations from the question whether similar fact evidence should be admitted. A judge, as the trier of fact and in contrast to a jury, is endowed with the judicial ability to preserve and apply the rule against similar facts and may treat the evidence of different incidents separately. Whether a joinder is appropriate in such a case as the present is governed by what is now s 133 of the CPC (previously, s 169: see *Lee Kwang Peng* at [58]). There is no dispute that s 133 of the CPC was satisfied in this case. On this point, the Abuse Charges were relevant in setting the context for the Murder Charges, and the offences "form or are a part of a series of offences of the same or a similar character".

10 The question then, was whether the joint trial of the offences would prejudice the accused or embarrass her in her defence such that the court should exercise its powers under s 146 of the CPC to order a separate trial: see *Lee Kwang Peng* at [59]. The concept of "similar fact evidence" was not relevant in the present case as it protects against the potential prejudice caused by proof of acts of past misconduct in relation to the proof of other offences. In the present

case, however, the *actus* of each of these offences arose from her own admissions in her undisputed statements. The facts of these past offences were independently relevant and therefore distinguished from similar fact evidence: see *Lee Kwang Peng* at [36]. As is made clear by Illustrations *(i)*, (*o*) and (*p*) in s 14 of the Evidence Act (Cap 97, 1997 Rev Ed) ("Evidence Act"), evidence of habit or general disposition are not relevant but facts illuminating intent are. The state of mind of Azlin over the time period in question and the context in which the offence was committed were relevant under s 14 of the Evidence Act. Because the incidents of the Abuse Charges formed part of a series in the lead up to the Murder Charges, they cast light on the intention and knowledge of Azlin and Ridzuan which, as these grounds explain, were crucial to the determination of their case and sentencing. The evidence was admissible in law; joint trial was appropriate, and did not cause any prejudice.

11 Counsel for Azlin raised a further argument in closing submissions that was not raised prior to trial. This is that Azlin would have testified in her defence for the Abuse Charges, but chose not to because of the Murder Charge. To the contrary, Azlin did not dispute three of the Abuse Charges, and the source for the evidence for the remaining charges was her own statements, which she had conceded were voluntary. In my view, the facts well show that Azlin was not prejudiced by her election not to give evidence on any of the charges.

12 I start, then, with the Abuse Charges, which inform the context for the Murder Charges.

The Abuse Charges

July and August CYPA charges

13 The series of offences commenced in July, with CYPA offences committed by Ridzuan against the Child.

14 Section 5(1) of the CYPA reads:

> A person shall be guilty of an offence if, being a person who has the custody, charge or care of a child or young person, he ill-treats the child or young person or causes, procures or knowingly permits the child or young person to be ill-treated by any other person.

15 Section 5(2) of the CYPA provides a list that defines the scope of "ill-treats" under the CYPA. For the present case, the relevant provisions are s 5(2)(*a*) and s 5(2)(*b*) of the CYPA, which provide:

> For the purposes of this Act, a person ill-treats a child or young person if that person, being a person who has the custody, charge or care of the child or young person —
>
> (*a*) subjects the child or young person to physical or sexual abuse;
>
> (*b*) wilfully or unreasonably does, or causes the child or young person to do, any act which endangers or is likely to endanger the safety of the child or young person or which causes or is likely to cause the child or young person —
>
> (i) any unnecessary physical pain, suffering or injury;
>
> (ii) any emotional injury; or
>
> (iii) any injury to his health or development …

16 It was not disputed that the Child was a child in the "custody, charge or care" of the Azlin and Ridzuan.

Ridzuan's offences in July 2016

17 In July 2016, the Prosecution alleged that Ridzuan had used pliers to pinch the Child twice. These charges, D2 and D3, were similar. D2 read as follows:

> That you, **RIDZUAN BIN MEGA ABDUL RAHMAN**, … sometime in July 2016, at [xxx], Singapore, being a person who has care of a child, namely, [the Child] (male, 5 years old), did ill-treat the said child, *to wit*, by using a pair of pliers to pinch his buttocks [D3 reads, "the back of his thighs"], and you have thereby committed an offence under s 5(1) and punishable under s 5(5)(b) of the Children and Young Persons Act (Cap 38, 2001 Rev Ed).

18 The Prosecution's case was based on Ridzuan's statements which were admitted by consent. In his statement recorded on 27 October 2016 (marked P201), Ridzuan admitted to this first incident in July 2016, as follows:[8]

> In addition to that, I had used a palm sized, red coloured handle pliers with sharp point tips to pinch [the Child]. The first time I did that was in July 2016, on an afternoon. I cannot remember why I had used the pliers on [the Child] but *I remembered pinching [the Child's] buttocks a few times with the pliers until the skin turned blue-black and had bruises.* [The Child] was wearing his shorts when I did that. After pinching him, I pulled down his shorts and saw that there were many bruises. As such, I stopped and continued to use the pliers to threaten him. After that, I helped [the Child] to apply 'Gamat' medicated oil so that his wound would heal faster.
>
> [emphasis added]

19 Ridzuan also gave an account of the second incident in July 2016 in the same statement:[9]

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8 P201 at para 61: AB at p 321.

9 P201 at para 62: AB at p 321.

> A few days after I first used the pliers to pinch [the Child's] buttocks, also on an afternoon, [the Child] made me angry again. This time, I also used the pliers to pinch on [the Child's] back of his thighs (*sic*) until it bruised. I chose that area as the buttock was bruised a few days ago and I did not want to pinch the same area again. [The Child] was wearing bermudas at that point in time. After pinching him, I saw that his back of thigh area had multiple bruising and again, I applied 'Gamat' medicated oil to treat that bruise.

20 Ridzuan did not dispute that these incidents occurred, nor did he deny that these were incidents of ill-treatment. I found that these charges, as admitted in his statement, amounted to ill-treatment under s 5(2)(*a*) of the CYPA and I convicted Ridzuan of charges D2 and D3.

Azlin's offences in August 2016

21 Azlin followed up Ridzuan's abuse with two offences in August. Charge C2 read:

> That you, **AZLIN BINTE ARUJUNAH**, … sometime in August 2016, at [xxx], Singapore, being a person who has care of a child, namely, [the Child] (male, 5 years old), did ill-treat the said child, *to wit*, by hitting him on his body, back and legs with a broom, and you have thereby committed an offence under s 5(1) and punishable under s 5(5)(b) of the Children and Young Persons Act (Cap 38, 2001 Rev Ed).

22 Azlin's account was that sometime in August 2016, Azlin and Ridzuan returned to their residence with the other children. The Child had been left in the house. Azlin saw that there were biscuits on the kitchen floor, and she asked the Child how they were scattered. Azlin believed that it was the Child who had toppled the container which held the biscuits, so when the Child denied doing it

and blamed the cat instead, Azlin took a broom from inside the kitchen and, in her words:[10]

> started hitting [the Child] on his body, his back and both his legs. I hit his back with the broom as he tried to avoid getting hit. There were marks on his stomach. I hit him quite hard on his legs and he started limping after that. After hitting him, I remembered putting medicated oil on his legs as he was limping. I realised that his knee cap was a little bit misaligned and he felt pain when I tried to massage his left knee cap.

23 On Azlin's admission, I found the offence under s 5(1) of the CYPA proven beyond reasonable doubt and convicted Azlin on C2.

24 Charge C3 read as follows:

> That you, **AZLIN BINTE ARUJUNAH**, … sometime in August 2016, at [xxx], Singapore, being a person who has care of a child, namely, [the Child[(male, 5 years old), did ill-treat the said child, *to wit*, by pushing him on the left shoulder, causing him to fall sideways, and you have thereby committed an offence under s 5(1) and punishable under s 5(5)(b) of the Children and Young Persons Act (Cap 38, 2001 Rev Ed).

25 The charge was preferred on the basis of Azlin's admission that she had pushed the Child after he had made her angry. She stated:[11]

> [I]n the month of August 2016 sometime in the evening, I was so angry at [the Child]. I cannot remember why I was so angry at him. We were inside the room and like I said, I was angry at [the Child] for something that I pushed [the Child] on his left shoulder using my right hand. [The Child] fell sideways due to the impact and [the Child's] left side of the head hit the edge of the pillar inside the room. After the push, I saw [the Child's] head bleeding.

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10 P207 at para 1.38: AB at p 499.

11 P207 at para 1.39: AB at p 500.

26 I was satisfied that Azlin had pushed the Child in the manner described. This push was sufficiently forceful to cause the Child to fall sideways and to hit his head, which, beyond doubt, constituted physical abuse. Therefore, I convicted Azlin of C3.

Alleged incident in end August to early September 2016

27 Charges C4 and D4 alleged that Ridzuan burned the Child's right palm with a heated metal spoon sometime between end August and early September 2016, and that Azlin abetted this offence by instigation. I acquitted Azlin and Ridzuan of these charges.

28 I deal first with Ridzuan's charge under s 324 of the Penal Code:

> That you, **RIDZUAN BIN MEGA ABDUL RAHMAN**, … sometime between end August 2016 and early September 2016, at [xxx], Singapore, did voluntarily cause hurt by means of heated substance to [the Child] (male, 5 years old), *to wit*, by using a heated metal spoon to burn the right palm of [the Child], causing a blister on his palm, and you have thereby committed an offence punishable under s 324 of the Penal Code (Cap 224, 2008 Rev Ed).

29 Ridzuan's defence was that there was no such incident at the end of August or early September. His cautioned statements (P179[12] and P180[13]) specify two incidents where he used a heated spoon on the Child. These were in October 2016, and the subject of D5 and D8. The medical evidence was also inconclusive as to the timing of the burns found on the Child's right palm given the scalding from the later incidents.[14]

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12 AB at p 254.

13 AB at p 259.

14 NE 13 November 2019 at p 40, ln 20–25.

30 The case against Ridzuan (in relation to D4) rested solely on Azlin's statement. In my view, Azlin's statement did not amount to a "confession" for the purposes of s 285(5) of the CPC and therefore could not be used: see [32] below. Even putting that aside, I was of the view that it would not, in any event, be safe to convict Ridzuan on this charge purely on the basis of Azlin's statement. There were multiple incidents, and she could easily have been confused about the timing of each occurrence. More fundamentally, I considered Ridzuan's omission to mention an end-August incident to be exculpatory. This was because his statements had been largely truthful, and his convictions on the Abuse Charges rested on the inculpatory parts of his statements. An accused's statements have to considered in their whole context: see *Chan Kin Choi v Public Prosecutor* [1991] 1 SLR(R) 111 at [34]. There was therefore a reasonable doubt as to whether there had indeed been a heated metal spoon incident at the end of August and it was unsafe to convict Ridzuan of this charge.

31 Azlin's charge ("C4") was for instigation of the above offence, and read as follows:

> That you, **AZLIN BINTE ARUJUNAH**, … sometime between end August 2016 and early September 2016, at [xxx], Singapore, did abet by instigating one Ridzuan Bin Mega Abdul Rahman to commit an offence of voluntarily causing hurt by means of heated substance against [the Child] (male, 5 years old), *to wit*, by using a heated metal spoon to burn the right palm of [the Child], causing a blister on his palm, and you have thereby committed an offence punishable under s 324 read with s 109 of the Penal code (Cap 224, 2008 Rev Ed).

32 I acquitted Azlin on this charge for the following reasons. First, what was alleged to be her instigation was framed in P207 as a request to Ridzuan to discipline the Child: "… I just could not control [the Child]. I just told Ridzuan

and told Ridzuan to deal with [the Child]".[15] There was no "'active suggestion, support, stimulation or encouragement' of the primary offence": *Chan Heng Kong and another v Public Prosecutor* [2012] SGCA 18 at [34]. In this context, Ridzuan's understanding of what Azlin intended by her request to "deal with" the Child did not involve the specifics of a heated spoon. In his statement, he stated: "She knew that I would shout and hit [the Child] and that was the reason why my wife had asked me to deal with [the Child]. She thinks that [the Child] would be scared".[16] Second, an abettor must intend the person abetted to perform the act abetted, with knowledge of the circumstances constituting the offence: *Balakrishnan S and another v Public Prosecutor* [2005] 4 SLR(R) 249 at [64]. There was no evidence that she asked Ridzuan to use a heated spoon or even envisaged that he would do so. This would have been the first time a heated spoon had been used as a form of abuse. Her statement was ambivalent. At highest, it only suggested indifference ("When Ridzuan was doing all this, I did not care as I just wanted him to deal with [the Child]"[17]). The statement, looked at as a whole, could not be said to lead to an inference that she committed the offence and therefore could not amount to a confession: see also *Anandagoda v R* [1962] MLJ 298 at 291, quoted in *Public Prosecutor v Tan Aik Heng* [1995] 1 SLR(R) 710 at [26]. Neither could the cautioned statement in P197, where Azlin "admit[ted] to the mistake [she] made" in relation to C4.[18] This admission was consistent with her prior evidence that incidents with a heated spoon had

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15 P207 at para 1.40: AB at p 500.

16 P202 at para 25.1: AB at p 473.

17 P207 at para 1.40: AB at p 500.

18 P197: AB at p 459.

taken place, but it was not an admission of legal sufficiency with respect to all the elements of the offence with which she was charged.

First half of October 2016

33 In October, there was an escalation of violence. Ridzuan was charged for causing hurt to the Child using a heated metal spoon. D5 read:

> That you, **RIDZUAN BIN MEGA ABDUL RAHMAN**, … sometime in early October 2016, at [xxx], Singapore, did voluntarily cause hurt by means of heated substance to [the Child] (male, 5 years old), *to wit*, by using a heated metal spoon to burn the right palm of [the Child], causing a blister on his palm, and you have thereby committed an offence punishable under s 324 of the Penal Code (Cap 224, 2008 Rev Ed).

34 Ridzuan admitted to this incident in his statements:[19]

> Yes, I had used a heated spoon to discipline [the Child]. The first occasion was early October, where [the Child] had stolen some milk powder, and I had gotten angry. I then went to the kitchen, took a metal spoon, heated the spoon over the fire on the stove, and using that heated spoon to burn [the Child's] right inner palm once. After I removed the spoon, I saw that there was a blister the shape of the metal spoon.

The hurt was inflicted voluntarily, using the heated spoon as a heated substance. No defence was raised. The charge under s 324 of the Penal Code was made out, and I convicted Ridzuan of D5 accordingly.

35 Ridzuan also admitted that he flicked ashes from a lit cigarette onto the Child's arm as a threat,[20] and that he had used the hanger to hit the Child on his

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19 P201 at para 58: AB at p 320.

20 P201 at para 60: AB, at p 321; P183: AB at p 274.

palms.[21] The two acts, taken together, were sufficient to constitute ill-treatment under s 5(1) of the CYPA. I convicted Ridzuan of D6, which read:

> That you, **RIDZUAN BIN MEGA ABDUL RAHMAN**, … sometime in October 2016, at [xxx], Singapore, being a person who has care of a child, namely, the Child (male, 5 years old), did ill-treat the said child, *to wit*, by flicking ashes from a lighted cigarette on [the Child's] arm and using a hanger to hit him on the palm, and you have thereby committed an offence under s 5(1) and punishable under s 5(5)(b) of the Children and Young Persons Act (Cap 38, 2001 Rev Ed).

After 15 October 2016

36 Three of the Abuse Charges took place at around the time when the scalding incidents, which grounded the Murder Charges, started. The first, involving injury with a heated spoon, was in the same period as the second scaling incident, which was between 17 and 19 October 2016.

37 Charge D8 read as follows:

> That you, **RIDZUAN BIN MEGA ABDUL RAHMAN**, … – sometime between 18 October 2016 to 19 October 2016, at [xxx], Singapore, did voluntarily cause hurt by means of heated substance to [the Child] (male, 5 years old), *to wit*, by using a heated metal spoon to burn the palm of [the Child], causing a blister on his palm, and you have thereby committed an offence punishable under s 324 of the Penal Code (Cap 224, 2008 Rev Ed).

38 Ridzuan admitted to this incident in his statements:[22]

> On 18 or 19 October 2016, [the Child] was watching a children's show where the characters ate milk powder and [the Child] also had the urge to do so. As such, he stole milk powder to eat. When I found out, I took another metal spoon, heated the spoon

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21 P200 at paras 33–34: AB at p 313

22 P201 at para 59: AB at p 320.

> over the fire on the stove, and used that heated spoon to burn [the Child's] right inner palm once, at the same spot where I had used a heated spoon to burn him earlier in October 2016.

Ridzuan clearly had voluntarily caused hurt to the Child using the heated substance. I therefore convicted Ridzuan of D8.

39 Next followed injuries to the Child's head. This was also identified by Ridzuan to have occurred around the time of the second scalding incident, sometime around 18–19 October 2016. The Prosecution alleged that Azlin pushed the Child's head against a wall, and thereafter Ridzuan punched the Child on the face, causing a laceration and comminuted fractures of his nasal bone, and that these acts were done in furtherance of the common intention of them both. As C5 and D7 mirrored each other, I set out D7 for reference:

> That you, **RIDZUAN BIN MEGA ABDUL RAHMAN**, … sometime in October 2016, at [xxx], Singapore, together with Azlin Binte Arujunah, being persons who have care of a child, namely, [the Child] (male, 5 years old), did ill-treat the said child, in the furtherance of the common intention of you both, *to wit*, by pushing his head against the wall and punching him on his face, causing a laceration on his head and comminuted fractures of his nasal bone, and you have thereby committed an offence under s 5(1) and punishable under s 5(5)(b) of the Children and Young Persons Act (Cap 38, 2001 Rev Ed) read with s 34 of the Penal Code (Cap 224, 2008 Rev Ed).

40 The Prosecution's primary source of evidence for this incident is Ridzuan's account, as follows:[23]

> I remembered it was about 4 to 5 plus p.m., when both of us got angry at [the Child] as he refused to answer my wife when he was asked something. My wife had also used some hot water to threaten [the Child] and told him to speak. However, [the Child] refused to. My wife did not splash the hot water at him

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23 P200 at paras 41–42: AB at p 315.

> as he was near the internet cable. After that, my wife put the hot water aside and pushed [the Child]. As a result of the push, [the Child's] head hit the wall and some blood flowed from his head. My wife will usually push [the Child] around when she gets angry. I was also angry at that time as [the Child] refuses [*sic*] to answer a simple question. I then clenched my fist and punched [the Child] on his nose area. I remembered that it was a very hard punch. After I punched him using my right fist, [the Child's] nose started to bleed profusely.

41 Azlin contended in her statement P208 recorded on 29 October 2016 that this incident did not occur in October 2016, and that the only time she had pushed the Child and caused him to hit his head was in August 2016 (see [24]–[26] above).[24] She also elaborated, implying she was not present at the time of the offence:

> 6.1 I cannot remember when but I saw that [the Child] was having two missing front teeth [*sic*] and that his nose was flat. I asked Ridzuan what happened and he told me that he punched [the Child] on his nose.

42 Azlin did however admit to pushing the Child against the wall in October in her cautioned statement P196 recorded on 27 April 2018:[25]

> I regret what I have done. I promise I won't do it again.

43 I had to consider which version of events to accept, and whether Azlin could be convicted on the basis of Ridzuan's statement. Section 258(5) of the CPC permitted such use of Ridzuan's statement as Azlin and Ridzuan were charged for the same incident under s 34 of the Penal Code and were tried jointly for the same offence, and Ridzuan's statement amounted to a confession.

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24 P208 at para 5.1: AB at p 508.

25 P196: AB at p 454.

44 I preferred Ridzuan's version of events over Azlin's. Azlin's answers in P208 appeared to indicate that she was not aware of when the October head injury incident happened. However, it was clear that the injuries arising from that incident were serious ones. Dr Chan had observed lacerations on the upper lip, comminuted fractures of the nasal bone, and fractures of the alveolar process of the maxilla.[26] Azlin herself noted that the Child's nose was flat and he was missing two front teeth. In the light of such obvious injury, her assertion, "I cannot remember when", could not be believed, especially given her ability to remember when the other incidents occurred, and appeared to be an attempt to distance herself from a serious incident. This would be consistent with her change of mind in April 2018 when she admitted to pushing the Child's head against the wall in October. Coming to Ridzuan's statement in this context, as mentioned at [30] above, Ridzuan's account in his statements appeared to be largely truthful. He was clear, from the outset, that he was responsible for the various acts of abuse that he was charged with, and cooperated with investigations from the first approach of the police. His account of the incident in his statement was consistent with Dr Chan's medical evidence. Ridzuan also had no motive to falsely implicate Azlin; no such motives were alleged or proved (see *Norasharee bin Gous v Public Prosecutor and another appeal and another matter* [2017] 1 SLR 820 at [59], citing *Khoo Kwoon Hain v Public Prosecutor* [1995] 2 SLR(R) 591). I therefore accepted as proven beyond reasonable doubt that Azlin had pushed the Child, causing him to hit his head against the wall, and that Ridzuan had punched the Child on the face. The physical injuries thus caused amounted to ill-treatment under s 5(1) of the CYPA. I noted, however, as counsel for Azlin pointed out, the words "pushing

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[26] P169: AB at p 54.

his head against the wall" in the charge suggested that Azlin had pushed the Child's head against the wall, rather than simply having pushed the Child causing him to hit his head. I agreed that the charges conveyed a false impression and amended the charges C5 and D7 accordingly to read "by pushing him, causing his head to hit the wall" instead of "pushing his head against the wall". The amended charges (marked C5A and D7A respectively) were read to the accused persons on 19 June 2020. Defence counsel confirmed that no further evidence was required. Azlin claimed trial to the charge while Ridzuan pleaded guilty.

45 I turn to the issue of common intention. Azlin and Ridzuan were present at the same time and disciplined the Child together. The common intention could be inferred from the following:

(a) This act occurred in the context of an escalation in acts of violence against the Child. Both had used physical force against the Child by 15 October 2016. They were both present at the scene at this incident, and clearly acting in concert towards a common objective.

(b) Regarding Azlin's push which started the incident, Ridzuan's statement revealed that he knew Azlin was likely to push the Child. He was angry as well and wanted an answer to the question. He not only acquiesced in Azlin's act while participating in disciplining the Child, but then escalated it further by punching the Child.

(c) Ridzuan's punch was in furtherance of their common intention. Azlin acquiescence supported this inference. There is no evidence that she tried to distance herself or to stop Ridzuan while the discipline was on-going. The inference is buttressed by the fact that Ridzuan's act was

directed at the same goal that Azlin had, namely to get the Child to answer the question.

46 Therefore, I found the elements of s 5(1) of the CYPA read with s 34 of the Penal Code satisfied. I convicted Azlin and Ridzuan of C5A and D7A (as amended), respectively.

47 The final Abuse Charge took place between 21 and 22 October 2016, the period in which the third and fourth scalding incidents took place. Azlin and Ridzuan put the Child in a cat cage. Charges C6 and D9 mirrored each other. I set out D9 here for reference:

> That you, **RIDZUAN BIN MEGA ABDUL RAHMAN**, … sometime between 21 October 2016 and 22 October 2016, at [xxx], Singapore, together with Azlin Binte Arujunah, being persons who have the care of a child, namely, [the Child] (male, 5 years old), did ill-treat the said child, in the furtherance of the common intention of you both, *to wit*, by confining the said child in a cage, and you have thereby committed an offence under s 5(1) and punishable under s 5(5)(b) of the Children and Young Persons Act (Cap 38, 2001 Rev Ed) read with s 34 of the Penal Code (Cap 224, 2008 Rev Ed).

48 Azlin and Ridzuan explained in their statements that they kept the Child locked in the cage so that he would not get into any more trouble and so they would not have to cause any more hurt to the Child.[27] Azlin admitted that "at the rate [they had been] hitting him, [they] were scared something bad was going to happen".[28] The Child readily complied with their request.[29] He was

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27 P201 at para 74: AB at p 325.

28 P208 at para 16.1: AB at p 512.

29 P207 at para 1.48: AB at p 502.

locked in the cat cage, which was secured with a leash or twine,[30] and he was let out to be fed.[31] The Child was in the cage from around 7pm to around 10pm on 21 October 2016, and from around 4am to 12pm on 22 October 2016.[32] By this time, the Child was in a sickly state. Azlin knew that the Child was having a fever. While he was inside the cage, the Child complained that he was cold.[33] Azlin noted in her statements that she saw the skin peeling off the Child's face, hands, back, thighs, and the back of his legs. The colour of his skin was red and white, and she could see "whitish flesh".[34] Ridzuan admitted that he saw blood stains in the cat cage.[35]

49 The cat cage measured 0.91m (L) x 0.58m (W) x 0.70m (H).[36] The Child was 1.05m in height at the material time.[37] The cat cage was not large enough for the Child to stand or lie stretched out, except maybe diagonally. Dr Chan was given the opportunity to inspect the cage and she commented that it was possible that the lacerations on the Child's face and scalp "might have been a result of being confined in a cage." She had observed that the cage had a few areas where the ends of the metal bars were sharper, running along the cage and not protruding out. Injury could result if someone confined inside moved

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30 P200 at para 43: AB at p 315; P207 at para 1.48: AB at p 502.

31 P207 at para 1.48: AB at p 502.

32 P201 at para 74: AB at p 325.

33 P207 at para 1.49: AB at p 502.

34 P207 at para 1.46: AB at p 502.

35 P201 at para 63: AB at p 322.

36 P53: AB at p 140.

37 P169: AB at p 51.

around.[38] Given Ridzuan's admission that there were blood stains in the cat cage, the size of the cage, and Dr Chan's observations, I found that it was beyond reasonable doubt that the Child would have suffered emotional injury, unnecessary physical suffering, and injury to his health, all relevant forms of injury under s 5(2)(*b*) of the CYPA. Their joint and agreed action constituted ill treatment under s 5(1) of the CYPA. I convicted Azlin and Ridzuan of C6 and D9 respectively.

Conclusion on the Abuse Charges

50 The various convictions on the Abuse Charges shed light on the suffering of the Child in the lead up and during the time of the Murder Charges. In summary, Ridzuan first applied pliers to the Child twice in July. This was followed in August by Azlin hitting the Child with a broomstick so hard that he was limping thereafter. Later in August, she pushed him so hard that he fell, hitting his head on the edge of a pillar; this injury resulted in his bleeding from the head. In October, there was an escalation of abuse, with Ridzuan using a heated spoon on the Child's palm, flicking ash from a lit cigarette, and hitting him with a hanger. After 15 October, Ridzuan again injured him with a heated spoon. In the same period of time that the scalding events were taking place, Azlin and Ridzuan acted in concert to cause the Child further injury. In one incident, the Child was punched so hard his nasal bone was fractured. Towards the end of the period, he was put into a cat cage, where he suffered further injury. These offences set important context for the Murder Charges, to which I now turn.

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[38] NE 13 November 2019 at p 42, ln 1–7.

The Murder Charges

51 Azlin's Murder Charge read as follows (Ridzuan's was substantially similar):

> That you, **AZLIN BINTE ARUJUNAH**, between 15 October 2016 to 22 October 2016 (both dates inclusive), at [xxx], Singapore, together with Ridzuan Bin Mega Abdul Rahman and in furtherance of the common intention of you both, did commit murder by causing the death of [the Child] (male, 5 years old), *to wit*, by intentionally inflicting severe scald injuries on him, which injuries are sufficient in the ordinary course of nature to cause death, and you have thereby committed an offence under s 300(*c*) read with s 34, and punishable under s 302(2) of the Penal Code (Cap 224, 2008 Rev Ed).

52 The Murder Charges were framed under s 300(*c*) of the Penal Code, which provides:

> **300.** Except in the cases hereinafter excepted culpable homicide is murder —
>
> …
>
> (*c*) if it is done with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death; …

53 Culpable homicide is defined under s 299 of the Penal Code:

> **299.** Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

54 The Murder Charges also rely on s 34 of the Penal Code, which provides:

> When a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if the act were done by him alone.

Summary of issues and decision for the Murder Charges

55 In order to prove the Murder Charges under s 300(*c*) of the Penal Code, the Prosecution had to prove the following elements: (a) that death has been caused by the acts of the accused; (b) that the bodily injury inflicted is in the ordinary nature sufficient to cause death; and (c) that the act resulting in bodily injury was done with the intention of causing that bodily injury to the accused: *Wang Wenfeng v Public Prosecutor* [2012] 4 SLR 590 ("*Wang Wenfeng*") at [32]. Where an accused is charged under s 300(*c*) of the Penal Code, element (b) is objectively determined, while element (c) is subjective: see *Kho Jabing v Public Prosecutor* [2011] 3 SLR 634 ("*Kho Jabing*") at [22], quoting from *Virsa Singh v State of Punjab* AIR 1958 SC 465 ("*Virsa Singh*").

56 Where two accused persons are both charged under s 34 of the Penal Code, as in the present case, the Prosecution must establish the following three elements for each of them: first, the criminal act element, second, the common intention element, and third, the participation element: *Daniel Vijay s/o Katherasan and others v Public Prosecutor* [2010] 4 SLR 1119 ("*Daniel Vijay*") at [91].

57 A key dispute was the manner in which the three elements of *Wang Wenfeng* apply where the mechanism of s 34 of the Penal Code is used. In my view, *Daniel Vijay* requires that where an accused is charged under s 300(c) read with s 34 of the Penal Code, the following three elements would be required for each accused: (a) death has been caused by the criminal act in which both accused participated; (b) the bodily injury so caused is in the ordinary nature sufficient to cause death; and (c) both have the common intention to cause "s 300(*c*) injury" as defined in Daniel Vijay at [49].

58 Regarding these elements, neither accused person challenged the participation element. Their participation was detailed in their statements, which were admitted. The criminal act element was also not disputed, save for its legal effect. The Prosecution particularised the "criminal act" as "the collective acts of scalding by both accused persons over four incidents within the week that resulted in the [Child]'s Severe Scald Injury [referred to in these grounds as "the Cumulative Scald Injury"] and eventual death."[39] The use of several incidents forming the *actus reus* of the offence was also not disputed. What the sufficient common intention for these s 300(*c*) charges was and whether such common intention could be inferred from the facts were the primary issues in dispute. It was argued that neither Azlin nor Ridzuan intended the Cumulative Scald Injury nor did they share the common intention to cause the Cumulative Scald Injury. The defence also countered that the Cumulative Scald Injury was not, as required under s 300(*c*) of the Penal Code, the cause of death nor, in the ordinary cause of nature, sufficient to cause death. Lastly, Azlin and Ridzuan argued Exception 7 was applicable, and they were therefore in any event only to be held liable under s 299 of the Penal Code.

59 The issues in dispute, therefore, may be analysed in the following order:

(a) whether the Cumulative Scald Injury was the cause of death, and whether it was sufficient in the ordinary course of nature to cause death;

(b) whether Azlin and Ridzuan possessed the common intention necessary for the Murder Charges;

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[39] Prosecution's Written Submissions at para 64.

(c) if (b) was satisfied, whether either Azlin or Ridzuan could rely on Exception 7of the Penal Code; and

(d) if (b) was not satisfied, whether the charges should be amended.

60 I answered (a) in the positive, but held (b) was not satisfied. I considered the issues raised for (c) nevertheless. In the light of (d), the Murder Charges were amended to charges under s 326 of the Penal Code premised on four incidents.

Cause of death

Factual basis

61 I explain, first, the four incidents which form the factual basis for the Murder Charges. The roles played by Azlin and Ridzuan were largely not disputed and were detailed by both in their statements.

(1) Incident 1

62 Incident 1 occurred sometime between 15 and 17 October 2016. Azlin suspected that the Child had taken milk powder and grabbed the Child by his right ankle. While still holding onto him, Azlin then filled a glass mug to around one-quarter full with hot water from the water dispenser and poured that water onto his right leg. Azlin then re-filled the glass to one-quarter full and poured the water again. She did this two or three times, before letting the Child go. When Azlin questioned the Child again about the milk powder, the Child denied his involvement and Azlin refilled the mug with hot water and poured hot water on the Child's hand four to five times. When the Child got free of her grip, she refilled the mug and splashed it over his left arm, and some also splashed onto

his chest. She stopped when Ridzuan woke up and shouted for them to keep quiet. After the incident, Azlin saw that the Child was limping and that skin was peeling from his hands, arms and chest. She then went to a provision shop to buy some cream for the Child's skin.[40] She thought the Child was already walking normally the next day.[41] Ridzuan, on the other hand, did not appear to observe any peeling skin, commenting that the Child's skin was "reddish", and that the Child was able to "walk normally and run and play with his brother."[42]

(2) Incident 2

63 Sometime between 17 and 19 October 2016, Azlin splashed the Child's body with hot water. In response, the Child shouted, "*Kau gila ke apa*" (translated, "Are you crazy or what?"). Azlin became angry and re-filled the glass mug with hot water and splashed the Child on his face. She then re-filled the glass mug and splashed the Child again, doing this for five to seven times, on his face, body, arms, and legs.[43] Ridzuan also participated in this incident. When he heard the Child call Azlin "crazy", Ridzuan picked up a green mug and splashed hot water at the Child. The hot water landed on the Child's face and body.[44] On Ridzuan's account, splashing was repeated after the Child bathed,[45] but Azlin's account did not include this. According to Azlin, at some point, Ridzuan apparently told Azlin "to stop and cool down".[46]

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40 P207 at para 1.43: AB at p 501.

41 P209 at para 25.1: AB at p 517.

42 P202 at paras 32.1–32.2: AB at p 477.

43 P207 at para 1.46: AB at p 502.

44 P202 at paras 26.1 – 26.2: AB at p 473.

45 P200 at para 38: AB at p 314.

64 After Incident 2, both Azlin and Ridzuan noticed significant injuries. Ridzuan described the Child's condition as follows:[47]

> I remembered that after the incident, it was quite bad. [The Child's] natural skin colour is dark but after this incident, a part of [the Child's] face was white in colour. It was as if he was suffering from skin disease. There were white patches on his face and chin. There was also white patches on his stomach and body. I do not remember whether there was [*sic*] any patches on his leg but I remember that there was white patches of skin on his left shoulder. This was the first time that the skin colour of [the Child] changed. It was due to this incident.
>
> I remembered that there was pus oozing out of his forehead due to the splashing of hot water from this incident. There was also pus oozing out from his back and left shoulder. This was what I observed the next day after this incident.

65 Azlin shared similar observations:[48]

> I knew that [the Child] was weak from this incident. After what happened, he was asking his brother for help to take things and also eat. He was not able to move like usual but was able to sit down. I could see he was weak. I could see skin peeling off from his back, face, hands and thighs all the way down to his legs. The skin colour was already red and white. I could already see the whitish flesh.

(3) Incident 3

66 On 21 October 2016 at around 9pm, Azlin became angry at the Child again when he kept asking her for drinks and other things. Azlin reacted by chasing the Child with a glass mug filled with hot water, splashing the Child.

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46 P207 at para 1.46: AB at p 502.

47 P202 at paras 26.3–26.4: AB at p 473.

48 P207 at para 1.46: AB at p 502.

She splashed water at the Child around nine to ten times, but not all of it hit the Child. Azlin then went to sleep.[49] Ridzuan was not involved.

(4) Incident 4

67 Incident 4 occurred on 22 October 2016. Azlin "told [the Child] to bath […] but when he came to the kitchen, he did not remove his shorts." Azlin then woke Ridzuan up and informed him about the issue. She then started bathing her two daughters.[50] Ridzuan asked the Child to remove his shorts again. When the Child refused, he took a broom and used the handle to beat the Child two or three times on his legs. Both Azlin and Ridzuan continued to ask the Child to remove his shorts.[51] Frustrated, Ridzuan then went to fill half a glass mug of hot water from the dispenser and threw the hot water on the floor beside the Child as a warning. Some of the water reached the Child's leg. The scolding escalated and Ridzuan went to refill the mug with hot water and splashed the Child on the left side of his body.[52] When the Child refused to remove his shorts, Ridzuan went to refill half the mug with hot water and poured the hot water on the Child's back.[53] Ridzuan went to refill the mug a fourth time and splashed the hot water on one or both of the Child's calves.[54] The Prosecution took the view that Azlin was present throughout the incident. Azlin on the other hand took the stance that she was busy with her daughters. While I accepted that Azlin was not beside

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49 P207 at para 1.50: AB at p 503.

50 P207 at para 1.51: AB at p 503.

51 P200 at para 8: AB at p 307.

52 P200 at para 9: AB at p 307.

53 P200 at para 10: AB at p 307.

54 P200 at para 11: AB at pp 307–308.

Ridzuan at every moment, her statement made clear, nonetheless, that she saw and acquiesced with Ridzuan's actions, including his splashing the Child with hot water.[55] The Child finally fell and lay on his side, at which point Ridzuan called for Azlin. Ridzuan then rinsed the Child with cold water.[56]

Scalding resulting from the splashing incidents

68 Analysis of water from the hot water dispenser used in the commission of the offence, conducted by the Health Sciences Authority, demonstrated the temperature of the water used. The temperature of water from the same hot water dispenser, when connected to a constant source of power, showed an average temperature of the water was 92.6℃, with a high of 98.7℃ and a low of 86.5℃.[57] Further, experiments were conducted in order to ascertain the temperature of water after some time in a glass mug and a green plastic mug, the receptacles used in the splashing. When hot water was dispensed from the hot water dispenser into the glass mug (either to the brim or half-full) which was similar to the one used in some of the incidents above, the temperature of the water dispensed ranged from 90.2℃ at highest and 72.1℃ at lowest;[58] and when hot water was dispensed into the green mug (either to the brim or half-full) which was used in the incidents above, the temperature of the water dispensed ranged from 90.5℃ at highest, and 72.5℃ at lowest.[59]

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55 P207 at para 1.52: AB at p 503.

56 P207 at para 1.52: AB at p 503; P200 at paras 12–13: AB at p 308.

57 P206 at para 6: AB at p 333C; P163 at para 14: AB at p 84.

58 P163 at para 16: AB at p 85.

59 P163 at para 17: AB at p 86.

69 The temperature of the water that came into contact with the Child would therefore have been at least 70°C, since the span of time from filling the glass or green mug to the time of splashing was not significant in any of the incidents. The temperature of 70°C is significant because the undisputed medical evidence was that substances with temperatures above 70°C would cause mid to deep dermal burns,[60] even where the duration of contact is minimal, as in splashing. It was not disputed that the temperature of the water was sufficient to, and did, cause the burns found on the Child.

Medical evidence on cause of death

70 The medical evidence on the cause of the Child's death was adduced through three experts: Dr Chan Shijia ("Dr Chan"), who performed the autopsy on 24 October 2016; Associate Professor Loh Tsee Foong ("Assoc Prof Loh"), a senior consultant who was a member of the team who first gave the Child emergency treatment on 22 October 2016; and Dr Gavin Kang Chun-Wui ("Dr Kang"), the burn specialist who performed debridement to clean the Child's wounds later that evening.

71 Dr Chan's autopsy report concluded that the substantive cause of death was the "severe scald injury",[61] referring to "all the scald injuries on the body in totality".[62] Dr Loh's and Dr Kang's testimonies corroborated each other and Dr Chan's evidence. In particular, the following was agreed among the experts:

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60 NE 15 November 2019 at p 16 ln 28 – p 17 ln 1.

61 AB at p 59.

62 NE 13 November 2019 at p 37, ln 21.

(a) the Cumulative Scald Injury was the cause of death and it was this totality of injury that was sufficient in the ordinary course of nature to cause death;[63]

(b) arising from the nature of burn injuries, it was not possible to tell whether all the burn injuries were sustained on one occasion or over various occasions;[64]

(c) it was not possible to correlate the burn injuries with specific incidents;[65] and

(d) it was not possible to tell which injuries caused by individual incidents were sufficient in the ordinary course of nature to cause death.[66]

72 How the burns led to the Child's death may be explained as follows. The extent of the Child's total body surface area ("TBSA") covered by burns was estimated by Dr Kang at 67% and by Dr Chan at 75% after debridement, which consisted of mid and deep dermal burns.[67] Because skin is crucial to maintain hydration and body temperature, and to protect the body from infection, the burns were "very extensive and life-threatening".[68] The Child was hypothermic

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63 NE 13 November 2019 at p 38, ln 9–32.

64 NE 13 November 2019 at p 21, ln 4–9.

65 NE 13 November 2019 at p 61, ln 22–28 (Dr Chan); NE 12 November 2019 at p 154, ln 22–27 (Prof Loh); NE 15 November 2019 at pp 16, 36–37 (Dr Kang).

66 NE 13 November 2019 at p 72, ln 3–8.

67 P166: AB at p 117 (Dr Kang); P169: AB at p 61 para 13 (Dr Chan).

68 P166 at para (d): AB at p 119.

on admission, leading to a low haemoglobin level as the lower temperature prevented clotting. The fluid loss due to the burns led to a lower volume of circulating blood, which induced a "shock state" in which the circulating blood was insufficient to bring oxygen and nutrients to parts of the body and to remove waste.[69] This led to compensation with an increased heart rate, but when this response was inadequate, the blood pressure began to fall in decompensation.[70] The burns also resulted in an intense inflammatory response, resulting in water leaking from the blood vessels into the soft tissue (referred to by Dr Chan as "third spacing"), resulting in fluid in the chest cavity, shown in scans taken at KK Hospital and later during the autopsy.[71] Acute lung injury, as the lungs became flooded with fluids and secretions, resulted in "Acute Respiratory Distress Syndrome" ("ARDS").[72] With insufficient circulation of blood, "a shock state", followed, and thereafter acute kidney injury.[73] These complications led to multi-organ failure and the Child's death.

The Defence's arguments on the cause of death

73 Defence counsel argued that the court should take into account the "multi-factorial causes for the Child's demise,"[74] including the loss of blood from the "blunt force craniofacial trauma,"[75] the Child's underlying condition

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69 NE 12 November 2019 at p 44, ln 16–24.

70 NE 12 November 2019 at p 45, ln 2 – 3

71 NE 13 November 2019 at p 24, ln 9.

72 NE 12 November 2019 at p 62, ln 4–10.

73 NE 12 November 2019 at p 61, ln 19–32.

74 Azlin's Written Submissions at para 173.

75 See P169 at p 10, "Cause of Death": AB at p 59.

of iron deficiency and anaemia, his subsisting condition of pneumonia, and the "extensive medical intervention" conducted.

74 Dr Chan's evidence was clear that the operative and proximate cause of death was the Cumulative Scald Injury. First, "blunt force craniofacial trauma" was listed by Dr Chan as a secondary cause of death, but her firm conclusion, both in her report and at trial, was that the cause of death was the Cumulative Scald Injury. The uncontroverted expert evidence was that in the absence of that trauma, the Child would have died from the Cumulative Scald Injury.[76] Second, in relation to the argument about "extensive medical intervention", this medical intervention was required because of the Cumulative Scald Injury itself and did not break the chain of causation.

75 Third, in relation to the Child's pre-existing condition of anaemia, Assoc Prof Loh testified that this had little relevance to the Child's eventual death,[77] and Dr Chan testified that there was nothing to suggest that the Child's prior anaemic condition would have been severe.[78]

76 This position, in my view, was not shaken in cross-examination of the Prosecution's various expert witnesses. In particular, the Defence sought to argue evidence that the Child was suffering from pneumonia and that contributed to his death. It was pointed out that a week before the Child's admission to hospital, sometime between 19 to 20 October 2016, the Child was

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76 In relation to the blunt force trauma: NE 13 November 2019 at p 49, ln 28–29.

77 NE 12 November 2019 at p 160, ln 22–27.

78 NE 13 November 2019 at p 51, ln 11–13 and p 52, ln 10–16.

observed by Ridzuan to have a "chesty and phlegmy cough"[79] and that blood cultures taken after the Child's death were reported "to be positive for streptococcus pneumonia, pseudomonas aeruginosa and staphylococcus aureus"[80]. Dr Chan was asked, based on "these symptoms, X-ray, [her] histological report, chesty cough", whether it was probable that the Child suffered from pneumonia.[81] In response, Dr Chan agreed that it was probable.[82] This response, however, was to an abstract question about whether those identified factors would point towards pneumonia. Taking these factors out of their context, given the burns suffered, was not appropriate. As Dr Chan herself stated subsequently in re-examination that any pneumonia was "more likely than not part of the multi-organ failure and the infection that followed the burns".[83]

77 Reliance was also placed by defence counsel on Assoc Prof Loh's concession that the Child "might" have had pneumonia based on the "X-ray alone"[84] and that the Child's symptoms reported by Ridzuan were consistent with pneumonia.[85] This submission used Assoc Prof Loh's testimony out of context. Assoc Prof Loh maintained that there was insufficient evidence of

79 P201 at para 71: AB at p 324.

80 AB at p 113.

81 NE 13 November 2019 at p 69, ln 5–6.

82 NE 13 November 2019 at p 69, ln 7–9.

83 NE 13 November 2019 at p 75, ln 3–11.

84 NE 12 November 2019 at p 140, ln 22–23.

85 NE 12 November 2019 at p 145, ln 17–19.

pneumonia at the time of the Child's admission.[86] Further, he noted that the presence of three types of bacteria in the Child's blood culture meant that it was more likely that the bacteria had entered through the wounds in the skin.[87] It was unlikely for there to have been "three concomitant organism[s]" in "community-acquired pneumonia".[88] Other conditions were important in diagnosis, such as the Child's state of shock, the metabolic acidosis, the kidney injury and the subsequent ARDS.[89] The chesty cough could have been due to these other conditions.[90] Based on an assessment of all these factors, Assoc Prof Loh concluded that it was "unlikely for the pneumonia to be pre-existing" but "more likely that the pneumonia [was] a consequence of the existing pathology", in that the burns resulted in blood poisoning, which carried the bacteria into the lungs.[91] The bacteria present in the lungs, and its effect, was a result of the successive burn injuries.

78 Therefore, there was no evidence to support the Defence's hypothesis that the Child's death was due to the pre-existing condition of pneumonia, and that the Cumulative Scald Injury would not have resulted in death when objectively assessed in relation to a five-year-old boy without the pre-existing condition. The infection and pneumonia were a result of the burns associated

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86 NE 12 November 2019 at p 94, ln 1–2. See also NE 12 November 2019 at p 103, ln 4–5.

87 NE 12 November 2019 at p 104, ln 5–17.

88 NE 12 November 2019 at p 156, ln 13–22.

89 NE 12 November 2019 at p 157, ln 13–22.

90 NE 12 November 2019 at p 158, ln 4–7.

91 NE 12 November 2019 at p 105, ln 23–30.

with the scald injuries. There was no doubt that the Child died from the Cumulative Scald Injury.

Sufficient in ordinary course of nature to cause death

79 Ridzuan also disputed that the Cumulative Scald Injury was sufficient in the ordinary course of nature to cause death. The following principles govern the inquiry:

(a) The assessment is an objective one, in that it does not matter if the accused does not know or intend that the injury be sufficient in the ordinary course of nature to cause death: *Wan Wenfeng* ([55] *supra*) at [33].

(b) "Sufficient" means that there must be a "high probability of death in the ordinary course of nature": *Wan Wenfeng* at [33] citing *Rajwant Singh v State of Kerala* AIR 1966 SC 1874 at 1879).

(c) The assessment is to be conducted with regard to "the victim's apparent age and build": *Ike Mohamed Yasin bin Hussin v Public Prosecutor* [1974-1976] SLR(R) 596 at [9].

80 Mr Thuraisingham made two broad submissions. First, he argued that the expert witnesses misunderstood the threshold and only concluded that there was a possibility of death.[92]

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92 Ridzuan's Written Submissions at para 47.

81 This argument was misplaced. The submission that Dr Chan was speaking merely in terms of possibility was premised on her use of the "can" in re-examination: "I think this was explained at the start when I explained how scald burn injuries *can* result in death" [emphasis added].[93] This was a misrepresentation of the totality of Dr Chan's evidence, which was, in response to cross-examination, that "there's a certain percentage whereby there's a high mortality rate". She was clear that the requisite percentage was met in the circumstances of the case.[94]

82 Dr Kang's evidence also supported the conclusion that the Cumulative Scald Injury was sufficient in the ordinary course of nature to cause death. He found that the injuries were "very extensive", being more than 40–50% of the TBSA of the Child.[95] For a five-year-old boy, this would have resulted in a "proportionally worse outcome", being a higher risk of death,[96] than for an older person, as a child's skin is thinner and reserves are smaller.[97] The deterioration of the Child's condition showed that in the absence of medical care, the Cumulative Scald Injury had led him to become "critically ill", since such burns would usually have required "immediate resuscitation with intravascular fluids".[98] Dr Kang was able to conclude: "Without adequate and immediate fluid resuscitation, the child would decompensate and go into systemic inflammation

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93 NE 13 November 2019 at p 75, ln 29–30.

94 NE 13 November 2019 at p 66, ln 20–21.

95 NE 15 November 2019 at p 14, ln 10–14.

96 NE 15 November 2019 at p 14, ln 20–21.

97 NE 15 November 2019 at p 14, ln 16–21.

98 NE 15 November 2019 at p 15, ln 25–26.

and even multi-organ dysfunction".[99] The legal test requires that the court consider whether death was "highly probable" in the absence of medical intervention. It is worth noting that the legal test does not prescribe a particular percentage risk, but requires the court to make an assessment based on the expert evidence available. In my view, this was satisfied on the evidence presented.

83 Second, Mr Thuraisingam argued that the evidence was not sufficient to show a high probability of death, submitting that there was a chance that the Child could have lived.[100] Dr Chan's report (P173) stated: "While the scald injuries on the [D]eceased may not definitely cause death, they were sufficient in the ordinary course of nature to cause death."[101] Dr Chan clarified in court that she meant that *some patients* might survive the burns, but that the Cumulative Scald Injury alone would have been sufficient to cause death.[102] During re-examination, she emphasised that, regardless of whether the burns appeared on an average person or a five-year-old boy, they would have been sufficient in the ordinary course of nature to cause death.[103] In this case, the Cumulative Scald Injury was so severe as to have resulted in multi-organ failure, low blood pressure, and third spacing (see [72] above). The means by which the Cumulative Scald Injury led to death was confirmed by Assoc Prof Loh's evidence.

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99 NE 15 November 2019 at p 15, ln 30–31 to p 16, ln 1–2.

100 Ridzuan's Written Submissions at para 46.

101 AB at p 66.

102 NE 13 November 2019 at p 39, ln 15–21.

103 NE 13 November 2019 at p 75, ln 25–27.

84 The doctors were cross-examined extensively on the risk of death associated with scalding. Assoc Prof Loh was of the view that the risk of death would be high, around 50–60%, for any burns above 50% of the TBSA, whether partial or full thickness or a combination thereof, but this did not preclude a lower surface area being fatal or life-threatening.[104] Dr Chan's evidence was that there was literature that suggested that burns covering anything more than 20% to 40% of the TBSA would be severe regardless of thickness of the burns.[105]

85 Mr Thuraisingam pointed to Assoc Prof Loh's testimony that there have been survivors of "80% burns".[106] The parts of Assoc Prof Loh's testimony that Mr Thuraisingam quoted must be viewed in context. The exchange was as follows:[107]

> A Well, I mean the---let---let me qualify by saying---I mean there isn't a direct co-relationship to say that or as far as I know if you have like 50% burns, you would definitely die.
>
> Q Yes.
>
> A You are talking about percentages.
>
> Q Yes.
>
> A So if you have major burns, anything above 50%, whether partial or full thickness or combination thereof, your risk of death becomes very high. So then we---we will say like maybe you have 50, 60% chance of dying. Yah.
>
> Q So, okay.

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104 NE 12 November 2019 at p 137 at ln 16-18.

105 NE 13 November 2019 at p 65, ln 13 to 24.

106 NE 12 November 2019 at p 137, ln 20–21.

107 NE 12 November 2019 at p 137, ln 16–26.

> A So---so we---I wouldn't want to use and I---I also want to say we also have survivors of 80% burns.
>
> Q Yes.
>
> A Yah. *So we are not going to tell the family like "Your child has 80% burns, there's no point carrying on. We just let the child die."*
>
> [emphasis added]

86 In this exchange, Assoc Prof Loh's comment on the possibility of surviving 80% burns was concerned with how the extent of the burns informed the issue of what the patient's family was to be advised concerning how medical treatment should proceed. It is the role of doctors to attempt life-saving medical treatment after all, and surely, life and death could not, in that context, be a matter to be resolved by statistics. His comments do not detract from the weight of the evidence on the likely outcome of such severe burn injuries. The legal test is not injury that leads inevitably to death, but rather, injury that was sufficient in the ordinary course of nature to cause death. In my judgment, the evidence established, beyond doubt, that the Cumulative Scald Injury was sufficient in the ordinary course of nature to cause death.

Conclusion on medical evidence

87 It is useful, at this juncture, to sum up the medical evidence. Three points were accepted by all three doctors. First, the extent of the injuries suffered as a result of each of the four incidents could not be established. Only the resulting Cumulative Scald Injury could be analysed. Second, the contributory effect of each of these incidents to the Child's death was also not ascertainable. Third, it was the Cumulative Scald Injury, caused over the four incidents, which was sufficient in the ordinary cause of nature to cause death. This was the reason that the "act" which was asserted to be culpable homicide in legal terms was a

series of acts over the four incidents. Section 33 of the Penal Code as it stood at the time of the offences provided that an "act" included "a series of acts". While the current s 33(2) of the Penal Code, which provides specifically for causation when it is not known which particular act caused the effect, was not yet in force at the time of the offences, there was no dispute that the acts in this case comprised these four incidents and that the Cumulative Scald Injury was the result of this series of acts.

Did Ridzuan and Azlin possess the requisite intention?

88 Ridzuan and Azlin contended that they did not possess the common intention to inflict the Cumulative Scald Injury. Both Murder Charges relied upon s 34 of the Penal Code, which required such common intention.

When must the common intention be formed?

89 It was common ground that although there does not need to be "a prior plan" to commit the offence, and a plan could arise "on the spot", the common intention must *precede* the commission of the criminal act: *Shaiful Edham bin Adam and another v Public Prosecutor* [1999] 1 SLR(R) 442 at [60], citing *Asogan Ramesh s/o Ramachandren v Public Prosecutor* [1997] 3 SLR(R) 201 at [34]; see also *Samlee Prathumtree and another v Public Prosecutor* [1996] 2 SLR(R) 841 at [36]. In the present case, because the Cumulative Scald Injury was caused by a series of four incidents, it was not disputed that the requisite common intention must have existed prior to Incident 1, although it was open to the court to infer from subsequent acts, as a matter of drawing inferences from the evidence, that the common intention existed from the outset. The content of the necessary common intention and whether it could be inferred from the facts were the subject of dispute.

Why was common intention necessary?

90 In the present case, common intention was a necessary ingredient for the Murder Charges because the Cumulative Scald Injury was the result of four separate incidents over the course of about a week. Ridzuan was not present for Incidents 1 and 3, and he appeared to have no knowledge, even after Incident 4, of Incident 3. In Incident 2, where both contributed to acts of scalding, their actions would need to be attributed to each other. In Incident 4, while Azlin called Ridzuan's attention to the scene, it was Ridzuan who was responsible for the acts of scalding. Because of the nature of scalding, the medical evidence was not able to show the extent of burns caused by each particular incident, or how each incident contributed to the Child's death. As such, it was the Cumulative Scald Injury, resulting from all four incidents, which caused the Child's death. In that context, both Azlin and Ridzuan were responsible for different physical components of Incidents 1 to 4 that resulted in the Cumulative Scald Injury. The mechanism of s 34 of the Penal Code was required to hold both Azlin and Ridzuan accountable for the entirety of the criminal act that formed the subject matter of the Murder Charges.

Content of the common intention required

91 In *Daniel Vijay* ([56] *supra*), the Court of Appeal expressly differentiated between the intention required of an offender individually charged with an offence, and that required in a case where common intention was used to impose liability, holding at [76]:

> [W]e are of the view that he [the secondary offender] should not be made constructively liable for the offence of s 300(*c*) murder arising from the actual doer's criminal act *unless there is a common intention to cause, specifically, a s 300(c) injury, and not any other type of injury.* [emphasis added]

92 This distinction was made after Chan Sek Keong CJ defined "s 300(*c*) injury" to refer to the entire concept of "bodily injury that is sufficient in the ordinary course of nature to cause death" at [49]. At [146] the Court of Appeal then defined the common intention necessary for s 300(*c*) as follows:

> In the context of s 300(*c*) injury, a common intention to cause such injury is *substantially the same* as *a common intention to cause death by the infliction of the specific injury* which was in fact caused to the victim since s 300(*c*) injury is, by definition, injury that is sufficient in the ordinary course of nature to cause death. [emphasis added]

93 These points were reiterated in *Daniel Vijay* ([56] *supra*) at [167]:

> It must be remembered that a charge of murder founded on s 300(*c*) of the Penal Code *read with s 34* (*ie*, a charge against a *secondary* offender) is not the same as a charge against the actual doer (*ie*, the *primary* offender), which would be *based on s 300(c) alone*. In the latter case, it is not necessary to consider whether the actual doer intended to cause the victim s 300(*c*) injury; instead, it is only necessary to consider whether the actual doer subjectively intended to inflict the injury which was in fact inflicted on the victim and, if so, whether the injury was, on an objective assessment, sufficiently serious to amount to s 300(*c*) injury. **In contrast, in the former case (*ie*, where a secondary offender is charged with murder under s 300(*c*) read with s 34), because of the express words "in furtherance of the common intention of all" in s 34, it is necessary to consider whether there was a common intention among all the offenders to inflict s 300(*c*) injury on the victim** (the inflicting of such injury being the criminal act which gives rise to the offence of s 300(*c*) murder). [emphasis in original in italics; emphasis added in bold]

94 The Prosecution contended that the common intention only needed to be the common intention "to inflict the particular injury which caused death", and the question of whether the particular injury was sufficient in the ordinary

course of nature to cause death was an objective one.[108] In their reply submissions, the Prosecution stated:[109]

> **[W]e submit that there is no requirement for the secondary offender to *also* intend that the injury inflicted be sufficient in the ordinary course of nature to cause death.** The only relevant question is whether all the offenders shared a common intention to inflict the particular injury which caused death. It is then an objective test whether the particular injury was in the ordinary course sufficient to cause death. This is so regardless of whether it is a "single crime" or a "twin crime" scenario. [emphasis in original]

95 If this statement of the law were correct, this would mean that the intention applied to individuals charged with s 300(c) would be applied to participants who, individually, would not be liable under s 300(*c*) of the Penal Code. But this was exactly the approach that was rejected by the Court of Appeal in *Daniel Vijay* ([56] *supra*), and the rationale for this rejection applies equally in the present case. Such an interpretation would render the Court of Appeal's comments distinguishing the requirement under s 300(*c*) *simpliciter* and s 300(*c*) read with s 34 of the Penal Code superfluous.

96 In oral reply, the Prosecution submitted further that the criminal act that needed to be commonly intended was only the acts of scalding, and if the acts of scalding were intended, there was no need to have an intention as to the specific injuries caused. A distinction was drawn between the criminal act itself and the injury. This distinction was incorrect insofar as it suggested that the common intention required did not require reference to the injury caused. The Court of Appeal throughout *Daniel Vijay* understood the "very criminal act"

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108 Prosecution's Reply Submissions at para 19.

109 Prosecution's Reply Submissions at para 19.

that had to be intended under s 300(*c*) read with s 34 of the Penal Code to be the infliction of s 300(*c*) injury. This could be seen by the scenarios (b) and (c) used in *Daniel Vijay* at [168] where, in respect of the "criminal act" to which s 34 of the Penal Code applied, the Court of Appeal again referred to the infliction of "s 300(*c*) injury".

97 In summary, in order for constructive liability to be imposed under s 300(*c*) read with s 34 of the Penal Code, the offenders must share a common intention to cause s 300(*c*) injury, and not any other type of injury, meaning that the fact that the injury is sufficient in the ordinary course of nature to cause death must be intended. In my view, cases subsequent to *Daniel Vijay* ([56] *supra*) have applied the test similarly, and I turn to explain why I disagreed with the Prosecution on their characterisations to the contrary.

98 *Michael Anak Garing v Public Prosecutor and another appeal* ("*Michael Anak Garing*") [2017] 1 SLR 748 was cited by the Prosecution. The Court of Appeal's comment that TAI, the secondary offender, knew that the primary offender ("MAG") "would in all likelihood wield the *parang* indiscriminately when attacking the deceased" (see *Michael Anak Garing* at [56]) was said to be the basis for the Court of Appeal's inference that TAI had the requisite common intention. I note that the Court of Appeal's comment was not directed to the issue of common intention, but was made in the context of determining TAI's mental state *for the purposes of sentencing*, since his awareness of *how* MAG would attack the deceased was a relevant factor in determining his culpability and whether he showed a blatant disregard for human life: *Michael Anak Garing* at [56], [61]. This was an additional fact that went beyond the issue of the requisite *mens rea*. The Court of Appeal's decision in respect of TAI, the secondary offender, was only in respect of sentencing, as

TAI had withdrawn his appeal against conviction: *Michael Anak Garing* at [4]. In commenting on TAI's state of mind, the Court of Appeal was not, in fact, reviewing whether TAI had the necessary intention under s 300(*c*) read with s 34 of the Penal Code. When discussing the requisite *mens rea* for s 300(*c*) read with s 34 of the Penal Code at [55], the Court of Appeal simply explained that the requisite intention was "the intention to inflict on the deceased injury of the type specified in s 300(*c*) of the Penal Code", by reference to *Daniel Vijay* ([56] *supra*) at [167] and *Kho Jabing* ([55] *supra*) at [32]–[33]. It should be noted that the trial judge in that case had admitted evidence of three prior *parang* attacks earlier that same night, in order to show MAG's and TAI's state of mind.

99 In *Kho Jabing*, V K Rajah JA re-stated the applicable test for the co-accused, Galing, who had been charged with s 300(*c*) read with s 34 of the Penal Code as follows:

> 32 It is clear from *Daniel Vijay* ([2] *supra* at [93], [107], [119], [143], [176] and [178]) that, in order for Galing to be convicted of murder under s 302 read with s 34 of the Penal Code, the common intention that Galing must have shared with Jabing is *a common intention to do the criminal act done by the actual doer which results in the offence charged* (what was termed the "*Barendra* test" (after *Barendra Kumar Ghosh v Emperor* AIR 1925 PC 1) in [107] of *Daniel Vijay*), *ie*, **a common intention to commit *murder***. … [emphasis in original in italics; emphasis added in bold]

100 In *Public Prosecutor v Chia Kee Chen and another appeal* [2018] 2 SLR 249 ("*Chia Kee Chen*"), the Court of Appeal summarised the applicable legal test at [46]:

> [I]t had to be shown that there was a common intention to cause, specifically, *a type of injury sufficient in the ordinary course of nature to cause death and not any other type of injury* (at [145] – [147] and [167]) see [88] below). [emphasis added]

101 The reference to [88] is an important one, where, in the course of explaining that there was no need to identify the person who struck the mortal blow in such cases, Sundaresh Menon CJ held:

> 88 Further, even if it were possible to identify and attribute the mortal blow to a particular offender (namely, the "primary offender" or the "actual doer"), one does not necessarily escape liability for murder under s 300(*c*) read with s 34 of the PC simply by disclaiming the mortal blow. By definition, this means that a person (namely, the secondary offender) may be held liable for an offence that arises from an act that he did not *personally* carry out as long as it can be established that it was done in furtherance of the offenders' common intention to commit the very criminal act done by the actual doer (see *Daniel Vijay* at [97] and [166]). ***In the context of murder under s 300(c), the key question is whether the primary and secondary offenders shared a common intention to inflict the particular s 300(c) injury or injuries on the victim, the actual infliction of such injury being the criminal act which gives rise to the offence of s 300(c) murder (see Daniel Vijay at [167]).*** [emphasis in original in italics; emphasis added in bold italics]

102 The Prosecution attempted to rely on the last sentence in *Chia Kee Chen* at [87]: "But, as long as we were satisfied that the assailants shared a common intention *to inflict the injuries in question*, the impossibility of identifying of the mortal blow or of attributing it to a particular assailant would be irrelevant" [emphasis added]. The reference, however, to "injuries in question" is expanded and clarified in [88] as extracted above. After thus framing the "particular s 300(c) injury" in [88], Menon CJ concludes with the same reference to s 300(*c*) injury at [89]:

> It was thus clear that questions such as whether it was Chia or Febri who struck the mortal blow, or whether Febri had struck more blows than Chia, were ultimately irrelevant, *if* we were satisfied that Chia and Febri shared a common intention to inflict **the particular s 300(*c*) injuries** on the Deceased (these being the craniofacial injuries **which were sufficient in the ordinary course of nature to cause death**). [emphasis in original in italics; emphasis added in bold]

Did the facts at hand allow such a common intention to be inferred?

103 I come then to the inference to be drawn in the instant case. In dealing with this question, it is useful to consider how the requisite inference has been drawn in previous cases.

104 In *Daniel Vijay* ([56] *supra*), the victim had been assaulted on the head by the primary offender with a baseball bat in the course of a robbery and died. The Court of Appeal, in respect of the two secondary offenders, held that even if there was a finding on the evidence that the appellants had a common intention to beat the deceased on the head to render him unconscious, it would not necessarily follow that this common intention was a common intention to inflict s 300(*c*) injury on Wan, the deceased (see *Daniel Vijay* at [147]). The Court of Appeal pointed out that there was no scientific evidence that any knock on the head with a baseball bat would be sufficient in the ordinary course of nature to cause death.

105 In *Kho Jabing* ([55] *supra*), in the course of a robbery, Jabing (the primary offender) killed the victim with blows to the head with a piece of wood. Galing had also assaulted the victim with a belt buckle. The fatal injuries were inflicted by Jabing: *Kho Jabing* at [27], [28] and [31]. The Court of Appeal held that it was impossible to infer that Galing had the common intention to cause the s 300(*c*) injury. The Court of Appeal at [35] went on to discuss the factors that militated against drawing the inference of the common intention to cause s 300(*c*) injury on the victim, which were as follows:

> (a) While Galing and Jabing had a common intention to commit robbery at Geylang, there was no evidence of any prior discussions or planning between the two of them as to how the robbery would be

carried out, whether any weapons would be used, what force should be used if the victims resisted, *etc*.

(b) Galing and Jabing were unarmed when they decided to rob the two victims. Jabing's picking up and using the piece of wood was opportunistic and improvisational and Galing's use of his belt was equally so (*ie*, hardly part of a "pre-arranged plan").

(c) There was insufficient evidence as to what kind of injury was caused by Galing using his belt buckle and, unless Galing had used it to strike the deceased very hard on the head (and there was no evidence that this had occurred) it could not have been a s 300(*c*) kind of injury.

(d) Although Galing was in a position, and afforded the opportunity, to inflict more severe wounds on the deceased, the fact that he did not do so suggested that his intention all along was to rob, as well as cause hurt while doing so, and not to inflict a s 300(*c*) injury.

(e) Galing did not assault the deceased in a manner which would have made it easier for Jabing to cause the s 300(*c*) injury, *eg*, by distracting the deceased, or restraining or incapacitating him so that Jabing would have been presented with a more vulnerable victim.

106 In *Chia Kee Chen* ([100] *supra*), a case where the fatal blow could not be identified, the Court of Appeal held that the requisite common intention could be inferred from the following:

(a) First, the Court of Appeal noted that Chia was the "mastermind of the plan to abduct the Deceased from the car park and to beat him up severely": *Chia Kee Chen* at [90];

(b) Second, during the assault, "Chia actively assisted in Febri's assault by restraining the Deceased's legs while Febri went 'crazy' and repeatedly struck the Deceased's head with the hammer. At no point did Chia attempt to stop Febri from continuing the assault, even though Chia was in a position to do so, since he had recruited Febri solely to assist him and Febri had no interest in the assault other than to act at Chia's behest": *Chia Kee Chen* at [92]. The reason why Chia did not stop Febri was because he was angry.

(c) Third, Chia also asked Febri to hand him the hammer, and he then struck the deceased on the forehead. He then returned the hammer to Febri, allowing him to continue striking the deceased.

(d) Fourth, the Court of Appeal also noted various parts of the statements that made clear that Chia had wanted the deceased dead: *Chia Kee Chen* at [94].

107 The facts of *Chia Kee Chen* deal squarely with counsel for Ridzuan's submission that there could be no agreement if Ridzuan was unaware of the third incident. I disagreed with that approach. Ridzuan's ignorance of the third incident would be irrelevant *if* the common intention could be proved. This is clear from *Chia Kee Chen* at [89] (extracted above at [102]). It is the common intention that is important.

108 The Prosecution's argument on the facts upon which to found common intention in this case was summarised at para 69 of their written submissions:

> Both accused were in agreement that the Deceased was "misbehaving" and that more severe measures had to be inflicted on him to ensure his obedience. While the act of scalding the Deceased by splashing hot water on him

> indiscriminately was initiated by Azlin, Ridzuan plainly endorsed and participated in that method in the second and fourth incidents. They took turns to brutally assault him by scalding, knowing full well that the other was also assaulting him in the same way, and that the cumulative effect of their assault was to cause severe burn injury. That injury was subsequently ascertained to be sufficient in the ordinary course of nature to cause death.

109 In considering whether such common intention existed, it was important to bear in mind the kind of injury at hand, which was the Cumulative Scald Injury, accumulated across four incidents, that was sufficient in the ordinary course of nature to cause death. In ascertaining intention, it was also important to consider the knowledge that Azlin and Ridzuan would have had, as the awareness of what kind of injury and the seriousness of the injury that would be caused is very relevant for inferring the necessary common intention. In this case, however, the scald injuries were not as obvious as other kinds of injury. It can be contrasted with a blunt force blow to the head with a hammer, which *Chia Kee Chen* ([100] *supra*) involved, which injuries would have been obvious. Similar reasoning was employed by the Court of Appeal in *Daniel Vijay* ([56] *supra*) when it suggested at [167], regarding the decision of the High Court in *Public Prosecutor v Mimi Wong* Criminal Case No 17 of 1970, that the combination of the facts that the common intention was to inflict bodily injury with a knife and that the knife injuries were sufficient in the ordinary course of nature to cause death, *likely justified the inference* that there was a common intention to inflict s 300(*c*) injury. By contrast, in other cases, the nature of the weapons or injuries militated against an inference of common intention. In *Kho Jabing* ([55] *supra*), for example, the weapons used by the robbers Jabing and Galing were improvisational, and it could not be inferred from Galing's use of a belt that there was a pre-arranged plan for the victim to suffer head trauma from Jabing's use of a piece of wood.

110 In my judgment, the Murder Charges were not made out, because there was insufficient evidence upon which I could infer that Azlin and Ridzuan intended to inflict s 300(*c*) injury (defining such injury in the same way as the Court of Appeal did in *Daniel Vijay* ([56] *supra*) at [49]). My reasons were as follows:

(a) There was no evidence of any pre-arranged plan on the part of Azlin and Ridzuan regarding the extent of injury to be caused to the Child. Rather than showing that the acts from the outset were directed at a goal of inflicting s 300(*c*) injury (*ie*, fatal injury), the evidence indicates instead that each incident was a reaction to a particular trigger.

(b) If there was such a pre-arranged plan, it should have existed prior to or have been formed on the spot just before Incident 1. Ridzuan, however, did not participate in Incident 1. The evidence indicates that he was aware of it thereafter and did not remonstrate Azlin in respect of it, but, without more, his acquiescence after the fact could not ground an inference that a common intention was formed prior to or just before the fact.

(c) After the second incident, Azlin and Ridzuan rinsed off the Child. Ridzuan also told Azlin to "cool down". There was no agreement to scald the Child again. Further, after Incidents 1 and 2, Azlin and/or Ridzuan applied medication to the Child, suggesting that each incident was a separate reactive response and that there was no intention to cause any aggregate injury that would be s 300(*c*) injury.

(d) After the second incident, Ridzuan was aware that Azlin might scald the Child again. Azlin, too, was aware that Ridzuan might do the

same. But foreseeability of another scalding incident alone was insufficient to ground the necessary inference that they had come to a common intention to continue scalding the Child to cause injury that was sufficient in the ordinary course of nature to cause death. This was made clear by the departure from *Lee Chez Kee v Public Prosecutor* [2008] 3 SLR(R) 447 ("*Lee Chez Kee*") in *Daniel Vijay* and the result in *Kho Jabing*.

(e) The intention to inflict s 300(*c*) injury could not be inferred from Azlin's or Ridzuan's participation in the individual acts of scalding, because a single act of scalding would not be sufficient in the ordinary course of nature to cause death. Further, given the gap in time between each incident and the facts that suggested that each incident was independent, it was not possible to infer an overarching intention to inflict s 300(*c*) injury.

(f) Azlin's and Ridzuan's common intention to discipline the Child with scalding water was, contrary to the Prosecution's submission, insufficient, because this would not amount to a specific intention to inflict s 300(*c*) injury. While the Prosecution derived support for their submission that "[the accused persons] were acting in concert at all times in 'disciplining' the child"[110] from the accused persons' accounts to the police and to the psychiatrists, this is not enough. At best, it may elucidate Azlin and Ridzuan's motives for scalding the Child. But the *content* of the common intention was still an open question.

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110 Prosecution's Reply Submissions at paras 30–36.

(g) Their act of bringing the Child to hospital despite knowing that Ridzuan may be arrested, while not determinative of the issue, pointed away from a common intention to inflict s 300(*c*) injury. They still held a hope as to his recovery.

Use of an adverse inference to fill the gap?

111 In its reply submissions, the Prosecution argued that at the close of its case, the Prosecution had proven a *prima facie* case that the common intention was formed from the time of the first scalding incident. The court had called for the Defence at the close of the Prosecution's case, but both accused had chosen to remain silent. The Prosecution then argued that an adverse inference should be drawn against the accused persons, as their own testimony would be the best evidence as to their state of mind, and yet they failed to take the stand.

112 Proof of a *prima facie* case under the threshold required for calling the Defence does not equate to proof beyond reasonable doubt for the purposes of conviction. My duty to assess the evidence at the close of trial and determine whether the burden of proving the charge beyond reasonable doubt has been met remains: *Re Nalpon Zero Geraldo Mario* [2012] 3 SLR 440 at [26], where Chan Sek Keong CJ reminded that the prosecution's burden of proof "never shifts to the accused". In that light, I did not find it appropriate to draw an adverse inference against the accused in the present case. The presumption of innocence meant that the Prosecution must satisfy the burden of proof on common intention, which was an element of the offence charged. Here, my findings above meant that it had failed to do so. The guidance of the Court of Appeal in *Took Leng How v Public Prosecutor* [2006] 2 SLR(R) 70 at [43] is

that in such circumstances, the failure to testify cannot be used in order to fill what is effectively a gap in the evidence.

Use of second, third and fourth incidents only

113 The Prosecution in reply submissions also put forward an alternative case that the common intention was formed at the time of Incident 2. They argued that the injuries from Incident 1 were relatively minor and would have been "subsumed under the subsequent burns obtained".[111]

114 In my judgment, this approach was not feasible. This alternative case was advanced for the first time in reply. The Defence would not have reasonably expected this to be an alternative case and allowing this line of argument in reply would not be aligned with the guidance of the Court of Appeal in *Mui Jia Jun v Public Prosecutor* [2018] 2 SLR 1087 at [89]. Furthermore, the medical evidence did not support it. The evidence of Dr Chan, Dr Loh and Dr Kang was that it was not possible to identify with any degree of precision which injuries eventually contributed to the Child's death. Infection, too, could have started from the first incident.[112]

115 Despite the medical evidence, the Prosecution relied on areas circled out by Azlin and Ridzuan in photos showing injuries after the second incident, and Dr Kang's view that these would show 12% or 20% of TBSA respectively. They thus drew a distinction between the injuries after Incident 2 and those after

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111 Prosecution's Reply Submissions at para 36.

112 NE 12 November 2019 at p 155, ln 1–4.

Incident 1, concluding from the comparative seriousness of the injuries after Incident 2 that the injuries from Incident 1 had been subsumed.

116 I rejected this submission for two reasons. First, the rough drawings by accused persons would not have been an accurate reflection of the extent of the burns. The drawings do not appear to have been intended to be precise but seemed to have been made in broad strokes. This was not a reliable basis upon which to premise any criminal conviction. Second, there was no reliable evidence that the injuries from Incident 1 were minor or were "subsumed". Furthermore, as Dr Kang testified, where a patient had already suffered a burn over an area and was burned again on that same area, the burn would become a "deeper burn", *ie* a more serious one.[113] Hence, wherever a burn from Incident 2 overlapped with an earlier one, it would be more severe, because of the pre-existing burn from Incident 1. The Prosecution could not rule out that the injuries from Incident 1 continued to contribute to the cause of death. In arguing to the contrary, the learned deputy public prosecutor relied upon Azlin's and Ridzuan's observations in their statements to argue that Incident 1 was minor. But, as summarised at [62] above, Azlin's and Ridzuan's accounts differ (with Azlin's account suggesting more serious injuries), and when asked about Azlin's observations as to the Child's injuries after this incident, Dr Kang and Dr Loh were of the view that there were "at least partial thickness burns".[114] There was no evidence to show that Incident 1 was not a contributory factor to the Cumulative Scald Injury or had been "subsumed".

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113 NE 15 November 2019 at p 12, ln 24–29.

114 NE 15 November 2019 at p 40, ln 10–11 (Dr Kang); NE 12 November 2019 at p 150, ln 21 (Assoc Prof Loh).

Amendment of charges

117 For the reasons mentioned, I found that the Murder Charges could not be sustained and on 3 April 2020 invited views on the alternate charges that could be framed under s 128 of the CPC.

Murder

118 The Prosecution made two alternative proposals in respect of Azlin. The first was a charge under s 300(*c*) of the Penal Code, read with s 34 for two of the four incidents. Their rationale for advancing a s 300(*c*) charge was that Azlin should assume legal liability as a primary offender for all the four incidents, because she was solely responsible for Incidents 1 and 3, and she acted in common intention with Ridzuan for Incidents 2 and 4.

119 In terms of the *actus reus*, s 299 of the Penal Code (defining "culpable homicide", a precondition for s 300(*c*) of the Penal Code) requires that the accused "causes death by doing an act", or, in the appropriate context, multiple acts. In the present case, given the state of the medical evidence, the Prosecution had to somehow attribute all of the acts of scalding to Azlin, as the Cumulative Scald Injury was the only provable cause of death. In proposing the alternative charge under s 300(*c*) of the Penal Code, the Prosecution submitted that Azlin was *legally liable* for Ridzuan's acts in Incidents 2 and 4 since those acts were done in furtherance of their common intention to cause those specific scald injuries.

120 In my view, s 34 of the Penal Code could not operate in such a way, because in the present case, both Azlin and Ridzuan were responsible for the physical components of Incidents 1 to 4, and in order for Ridzuan's acts to be

attributed to Azlin, Ridzuan and Azlin needed to share the common intention for the entire criminal act, rather than a common intention just to inflict hurt in two incidents. The language of s 34 of the Penal Code is key:

> When a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if the act were done by him alone.

121 Section 34 is not a free-standing principle of attribution, but a specific rule that enables constructive liability for the offence that arises out of the "criminal act", or "unity of criminal behaviour". The scope of liability under s 34 of the Penal Code is restricted to the offence that arises out of the "criminal act" specified and which is commonly intended. Section 34 of the Penal Code does not enable the proof of common intention only of component offences of a "criminal act". Hence, in this case, even if Azlin is held liable for Ridzuan's acts under s 34 of the Penal Code for Incidents 2 and 4 because these were done in furtherance of the common intention to cause grievous hurt, this does not mean that Ridzuan's acts can then also be attributed to Azlin for the purposes of s 300(*c*) of the Penal Code. Instead, in order for Ridzuan's acts to be attributed to Azlin for the purposes of liability under s 300(*c*) of the Penal Code, the common intention they needed to share would be the common intention to inflict s 300(*c*) injury. Since this common intention could not be proved beyond reasonable doubt, this proposed charge was not made out.

122 This may also be explained by looking at *Daniel Vijay* ([56] *supra*)in its context. *Daniel Vijay* dealt with a line of authorities on "twin crime" scenarios, where a collateral criminal act was committed in the course of the commission of the primary criminal act. Those decisions held that where the accused persons had a common intention to commit the criminal act which was the *primary*

criminal act, then there was no need to prove a common intention as to the collateral criminal act which was done in the course of the primary criminal act: *Lee Chez Kee* ([110] *supra*) at [253(d)]. In *Lee Chez Kee*, the Court of Appeal upheld this position, but then added a further *mens rea* requirement, which was that "the secondary offender must subjectively know in one in his party *may likely* commit the criminal act constituting the collateral offence in furtherance of the common intention of carrying out the primary offence" [emphasis in original]: *Lee Chez Kee* at [253(d)].

123 The Court of Appeal in *Daniel Vijay* departed from that stated approach in two ways. First, it reasserted the test set out in *Barendra Kumar Ghosh v Emperor* AIR 1925 PC 1 ("*Barendra*"), that the necessary common intention is the "intention *to commit the very criminal act done by the actual doer*" [emphasis in original]: *Daniel Vijay* at [107] and [166]. Hence, in a "twin crime" scenario, for constructive liability to arise for the collateral offence, the common intention had to be directed to that *very collateral offence*. Secondly, it clarified that the requirement in *Lee Chez Kee*, being that of subjective awareness of the likelihood of the collateral offence being committed, was "only a *factor* in determining whether that principle of liability [under s 34 of the Penal Code] applies" [emphasis in original]: *Daniel Vijay* at [75].

124 *Daniel Vijay*'s twin crime scenario carried a clear primary and secondary offender matrix where the primary offender was responsible for all the physical components of the primary crime. In the present case, the physical components that led to the Cumulative Scald Injury were the collective result of the actions of both Azlin and Ridzuan. By attributing the common intention for Incidents 2 and 4 to Azlin and then importing that common intention specific to those two incidents into the frame of the four incidents, the Prosecution was, in

effect, re-introducing the *Lee Chez Kee* twin crime approach in a different factual iteration. What *Daniel Vijay* ([56] *supra*) makes clear is that the unity of common intention must exist in relation to the "very criminal act" for which the offender is charged. In the case at hand, "the very criminal act" comprised four incidents, and its component parts were the actions resulting from two "doers", acting at different points in time. There was no *single* actual doer for the whole criminal act: common intention was necessary before constructive liability could be imposed on each for the acts of the other. The logic of *Daniel Vijay* applied to require common intention in order to bind both these principals to the very criminal act of the offence which the four acts comprise.

Grievous hurt

125 In the alternative, the Prosecution proposed that Azlin should face four charges under s 326 of the Penal Code for each of the four incidents, with two of them read with s 34 of the Penal Code to reflect a common intention shared with Ridzuan for Incidents 2 and 4. Ridzuan would be charged with s 326 read with s 34 of the Penal Code for Incidents 2 and 4.

126 This was the approach taken. Azlin indicated that she would plead guilty to s 326 of the Penal Code for Incidents 1 and 3. The *actus reus* was not in dispute. From Incident 1, Dr Kang opined that there were "at least partial thickness burns", [115] an opinion shared by Assoc Prof Loh.[116] Given the Child's young age and the subsequent deterioration of his health, it was clear the injuries from Incident 1 endangered his life. Regarding Azlin's *mens rea*, the intention

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115 NE 15 November 2019 at p 40, ln 10–11.

116 NE 12 November 2019 at p 150, ln 21.

to inflict hurt which endangered life was inferred from her multiple and continuous splashing of the Child with hot water. In respect of Incident 3, the facts underpinning the charge under s 326 of the Penal Code, were clear for similar reasons.

127 Incidents 2 and 4 were the subject of joint action by Azlin and Ridzuan. For Incident 2, joint participation and injuries caused were not disputed. I find that their respective acts were done in furtherance of a common intention to cause grievous hurt to the Child using the hot water, given the temperature of the water and the nature of their acts in this incident, and as they were both jointly involved in this incident and were clearly acting in agreement that this was how they wanted to discipline the Child.

128 In respect of Incident 4, Ridzuan was the person who inflicted the injuries but Azlin's participation was clear as she was the one who had asked Ridzuan to deal with the situation, well knowing how he would proceed. She saw and acquiesced, in any event, in his actions. In the light of the previous incidents, Azlin's and Ridzuan's conduct justified the inference that they shared the requisite common intention for the s 326 charge.

129 The charges for the four incidents were therefore as follows. For Incident 1, a new charge was framed and marked C1B2:

> You, **AZLIN BINTE ARUJUNAH** …, are charged that you, sometime between 15 and 17 October 2016, at [xxx], Singapore, did voluntarily cause grievous hurt by means of a heated substance, *to wit*, by splashing hot water at [the Child] (male, 5 years old) multiple times, which caused hurt which endangered life, and you have thereby committed an offence punishable under s 326 of the Penal Code (Cap 224, 2008 Rev Ed).

130 In respect of Incident 2, the following charges were framed (C1B3 and D1B2 respectively):

> You, **AZLIN BINTE ARUJUNAH** … , are charged that you, sometime between 17 and 19 October 2016, at [xxx], Singapore, together with Ridzuan bin Mega Abdul Rahman and in furtherance of the common intention of you both, did voluntarily cause grievous hurt by means of a heated substance, *to wit*, by splashing several cups of hot water at [the Child] (male, 5 years old) which caused hurt which endangered life, and you have thereby committed an offence punishable under s 326 read with s 34 of the Penal Code (Cap 224, 2008 Rev Ed).
>
> You, **RIDZUAN BIN MEGA ABDUL RAHMAN** … , are charged that you, sometime between 17 and 19 October 2016, at [xxx], Singapore, together with Azlin binte Arujunah and in furtherance of the common intention of you both, did voluntarily cause grievous hurt by means of a heated substance, *to wit*, by splashing several cups of hot water at [the Child] (male, 5 years old) which caused hurt which endangered life, and you have thereby committed an offence punishable under s 326 read with s 34 of the Penal Code (Cap 224, 2008 Rev Ed).

131 In respect of Incident 3, the following charge against Azlin was framed (marked C1B4):

> You, **AZLIN BINTE ARUJUNAH** … , are charged that you, on 21 October 2016 at around 9pm, at [xxx], Singapore, did voluntarily cause grievous hurt by means of a heated substance, *to wit*, by throwing 9 to 10 cups of hot water at [the Child] (male, 5 years old), which caused hurt which endangered life, and you have thereby committed an offence punishable under s 326 of the Penal Code (Cap 224, 2008 Rev Ed).

132 In respect of Incident 4, the Murder Charges were altered to the following (marked C1B1 and D1B1 respectively):

> You, **AZLIN BINTE ARUJUNAH** … , are charged that you, on 22 October 2016, at [xxx], Singapore, together with Ridzuan bin Mega Abdul Rahman and in furtherance of the common intention of you both, did voluntarily cause grievous hurt by means of a heated substance, *to wit*, by pouring/splashing hot

> water at [the Child] (male, 5 years old), which caused hurt which endangered life, and you have thereby committed an offence punishable under s 326 read with s 34 of the Penal Code (Cap 224, 2008 Rev Ed).
>
> You, **RIDZUAN BIN MEGA ABDUL RAHMAN** … , are charged that you, on 22 October 2016, at [xxx], Singapore, together with Azlin binte Arujunah and in furtherance of the common intention of you both, did voluntarily cause grievous hurt by means of a heated substance, *to wit*, by pouring/splashing hot water at [the Child] (male, 5 years old), which caused hurt which endangered life, and you have thereby committed an offence punishable under s 326 read with s 34 of the Penal Code (Cap 224, 2008 Rev Ed).

133 At the hearing on 19 June 2020, the above charges were read and explained to both Azlin and Ridzuan: s 128(2) of the CPC. Azlin pleaded guilty to the charges for Incidents 1, 2, and 3 (C1B2, C1B3 and C1B4), and claimed trial for the charge for Incident 4 (C1B1), while Ridzuan pleaded guilty to both charges D1B1 and D1B2. Counsel for both accused confirmed that there was no need to call further witnesses. As I did not consider that proceeding would prejudice either accused, I proceeded to find Azlin and Ridzuan guilty and convicted them of their respective charges.

Exception 7 defences

134 The issue of diminished responsibility under Exception 7 to s 300 of the Penal Code was no longer live in the light of my conclusion on the Murder Charges. Any mental condition asserted was nevertheless relevant as context for sentencing and I set out my findings here.

Legal context

135 Exception 7 to s 300 of the Penal Code reads:

> *Exception* 7.—Culpable homicide is not murder if the offender was suffering from such abnormality of mind (whether arising

> from a condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury) as substantially impaired his mental responsibility for his acts and omissions in causing the death or being a party to causing the death.

136 In order to rely on Exception 7, the accused must prove the following (per *Nagaenthran a/l K Dharmalingam v Public Prosecutor and another appeal* [2019] 2 SLR 216 ("*Nagaenthran*") at [21]):

(a) first, that he was suffering from an abnormality of mind ("the first limb");

(b) second, that the abnormality of mind: (i) arose from a condition of arrested or retarded development of mind; (ii) arose from any inherent causes; or (iii) was induced by disease or injury ("the second limb"); and

(c) the abnormality of mind substantially impaired his mental responsibility for his acts and omissions in relation to his offence ("the third limb").

The onus is on the accused to prove on a balance of probabilities that all three limbs are satisfied in order to rely on Exception 7: *Iskandar bin Rahmat v Public Prosecutor and other matters* [2017] 1 SLR 505 ("*Iskandar*") at [66].

137 Regarding the first limb, "abnormality of mind" was defined in *R v Byrne* [1960] 2 QB 396 ("*Byrne*") at 403 as follows:

> [A] state of mind so different from that of ordinary human beings that the reasonable man would term it abnormal. It appears to us to be wide enough to cover the mind's activities in all its aspects, not only the perception of physical acts and matters, and the ability to form a rational judgment as to whether an act is right or wrong, but also the ability to exercise

> the will power to control physical acts in accordance with that rational judgment.

138 While the focus may tend to be on three aspects, "the capacity to understand events, judge the rightness of wrongness of one's actions, and exercise self-control": *Nagaenthran* at [24], see also *Iskandar* at [82], these are not exhaustive, although they are likely to be "the most relevant and oft-used tools" because they go to the heart of the issue of whether the abnormality of mind has substantially impaired an accused's mental responsibility: *Nagaenthran* at [25]. Further, while medical evidence is helpful, the opinion of an expert "is not necessarily dispositive of the *legal* inquiry into whether an abnormality of mind has been established under the first limb": *Nagaenthran* at [28]. The Court of Appeal stated in *Nagaenthran* at [29] that the medical evidence may be rejected where the factual basis upon which the medical opinion is premised is rejected at trial, and also may be rejected when viewed against the surrounding circumstances of the case.

139 Turning to the second limb, which was a matter largely to be determined based on expert evidence" (*Nagaenthran* at [22]), the Court of Appeal has emphasised that the purpose of the second limb is to restrict the scope of Exception 7: *Nagaenthran* ([136] *supra*) at [30]; *Iskandar* at [85]. In *Iskandar* ([136] *supra*), the Court of Appeal also rejected the contention by the appellant that the second limb would be satisfied by simply showing that the abnormality of mind arose out of "any recognised medical condition", including the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders ("DSM"). Instead, "*the onus is still on the accused person to identify which of the prescribed causes is applicable in his case*. Expert witnesses were thus well-advised to, on top of diagnosing whether the accused person was suffering from a recognised mental condition, *identify which*

prescribed cause, if any, in their opinion, gave rise to the accused's abnormality of mind" [emphasis added]: *Iskandar* at [89]; *Nagaenthran* at [32]. Neither of the defence experts for Azlin and Ridzuan did so, in this case.

140 "Substantial impairment", the third limb, was specified in *Nagaenthran* at [33] to be "real and material", but short of unsoundness of mind, and must have influenced the offender's actions. This question is "largely a question of commonsense to be decided by the trial judge as a finder of fact": *Nagaenthran* at [33].

The effect of the decision not to give evidence

141 In the present case, both Azlin and Ridzuan sought to rely on Exception 7, but at the same time elected not to give evidence in their defence. The Prosecution gave notice that it would rely on *Anita Damu v Public Prosecutor* [2019] SGHC 233 ("*Anita Damu*") to dispute any defences without adequate factual premise. In *Anita Damu*, the accused who had pleaded guilty to various charges, asserted in mitigation that she suffered from Major Depressive Disorder ("MDD") that caused her to suffer auditory hallucinations, leading her to commit the offences. The Prosecution in that case disputed the fact that she had heard voices at the time of the offences. At the ensuing Newton hearing, the Defence's psychiatrists gave evidence, but the accused did not. The central factual dispute in that case was not whether the accused suffered from MDD (which the Prosecution did not contest), but whether the accused suffered from the auditory hallucinations.

142 In his judgment, Menon CJ drew a key distinction between the fact of the auditory hallucination and the medical interpretation of that fact (*Anita Damu* at [25]). Reliance on psychiatric evidence alone in that case would be

inappropriate because, first, the accused's claim to have suffered auditory hallucinations would be something "uniquely within her personal knowledge", and so a failure to testify may warrant an adverse inference being drawn against the accused: *Anita Damu* at [26]–[27]. Second, the accused's failure to give evidence undermined the relevance of the psychiatric evidence, which was based on facts not before the court. Menon CJ noted that the "basis rule" entailed that the "factual basis for the expert's opinion must itself be established on admissible evidence and not on hearsay": *Anita Damu* at [30]. In the present case, the basis rule required that the facts that form the basis of the psychiatric evidence relied upon by Azlin and Ridzuan to be before the court through admissible evidence. Psychiatric evidence is admissible under s 47 of the Evidence Act as interpretations of the facts, but the facts grounding such opinion evidence must be adduced. In considering the defences, it was therefore important to assess how their decision not to give evidence in court impacted their ability to advance their defences, and I did so, as I explain below at the relevant junctures.

Azlin

(1) Azlin's Adjustment Disorder

143 It was not disputed that Azlin suffered from Adjustment Disorder. In this context, the various stressors in her life were not disputed facts. These stressors, and her response, were also adequately documented in her statements admitted under s 258 of the CPC. However, her specific claim to Dr Jacob Rajesh and Dr Kenneth Koh that she had consumed methamphetamine (or "ice") at or around the time of the offences was disputed and I should make clear that I did not take

it into account.[117] I agreed with the Prosecution that there was no factual basis to hold that she consumed "ice" at the material time. None of her statements indicated that she was consuming "ice". The psychiatric reports to that effect lack factual premise (see *Anita Damu* [142] *supra*).

(2) The first limb: abnormality of mind

144 In the present case, the Prosecution's and Defence's psychiatrists agreed that Azlin was suffering from an Adjustment Disorder at the material time. Dr Jaydip Sarkar ("Dr Sarkar"), who was called by the Prosecution, had concluded at para 54(a) of his report that Azlin was suffering from an Adjustment Disorder due to the loss of her grandmother and mother, Ridzuan's alleged extra-marital affair, domestic violence, financial worries, and the need to look after small children.[118] Dr Rajesh, who was called by the Defence, had concluded at para 37 of his first report (dated 27 January 2019) that Azlin was suffering from Adjustment Disorder with depressed mood, citing the same stressors.[119] Dr Koh, who was called by the Prosecution, had also concluded at para 19(a) of his report that Azlin was suffering from Adjustment Disorder with depressed mood.[120]

145 The question was the nature and severity of that Adjustment Disorder. An Adjustment Disorder, by its nature, is not an especially serious mental disorder. Dr Sarkar gave evidence that an Adjustment Disorder can be characterised as "an over-reaction to normal stressor[s] that all of us

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117 Prosecution's Written Submissions at para 89(a).

118 Bundle of Psychiatric Reports ("BPR") at p 9.

119 BPR at p 21.

120 BPR at p 28.

experienc[e] in different times of our lives".[121] It "[s]its between the two ends, between normal reactions and pathological clinical major sort of clinical disorders in psychiatry."[122] When asked about the severity of Adjustment Disorder, Dr Rajesh responded that, first, it was a mental disorder recognised in the DSM-V and in the International Classification of Diseases ("ICD-10"), and second, it is not "as severe as psychosis, like schizophrenia or bipolar or severe depression", although it is a disorder "in its own right".[123] Further, by its nature, Adjustment Disorder is "a passing phase" and it is expected that persons suffering from Adjustment Disorder would recover within six months, and if they do not, a more serious diagnosis would be appropriate.[124]

146 According to Dr Rajesh, the severity of an Adjustment Disorder would be assessed according to the degree of impairment, the extent of the symptoms suffered, and how long it had lasted.[125] I concluded that the extent of impairment to Azlin's functioning was not severe. Azlin was still able to manage her household and take care of her children. In April 2016, after her grandmother's death and while Ridzuan was absent, Azlin managed to "borrow people money to buy sardine, Maggie and eggs. All the necessary items to survive."[126] Subsequently, after her mother's death and at around the time of the offences, Azlin still maintained a routine, waking up at 5.40am to help her first son

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121 NE 26 November 2019 at p 14, ln 10–11.

122 NE 26 November 2019 at p 13, ln 24–26.

123 NE 27 November 2019 at p 29, ln 29–32, to p 30, ln 1–9.

124 NE 26 November 2019 at p 14, ln 18–20.

125 NE 27 November 2019 at p 31, ln 19–21.

126 P207 at para 1.34: AB at p 498.

prepare for school and preparing milk for her other children.[127] Her routine showed that she functioned adequately as a housewife and mother.[128]

147 In terms of her capacity to understand events, both Dr Sarkar[129] and Dr Koh[130] concluded that there was no impairment of her ability to understand events. Indeed, Azlin appeared to be lucid in all of her statements and her accounts of the offences and the surrounding circumstances are detailed. Dr Rajesh claimed that Azlin's Adjustment Disorder would have affected her capacity to understand the seriousness of her actions, in that, she underestimated the significance of the scald injuries.[131] However, this was a purely conclusory statement that did not show *how* Azlin's Adjustment Disorder would have affected her ability to understand the seriousness of her actions, even if she did (for the sake of argument) underestimate the injuries that would be caused.

148 In terms of her capacity to understand whether her actions were right or wrong, Dr Sarkar[132] and Dr Koh[133] found that there was no impairment either. Dr Rajesh claimed that the Adjustment Disorder did impact her ability to judge right or wrong in that it affected her capacity to properly estimate the severity of the injuries caused.[134] However, for the same reasons as above, I could not

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127 P207 at para 1.42: AB at p 500.

128 P208 at paras 43.1–43.4: AB at p 522.

129 NE 26 November 2019 at p 15, ln 10–11.

130 NE 19 November 2019 at p 8, ln 19–21.

131 NE 27 November 2019 at p 44, ln 18–23.

132 NE 26 November 2019 at p 15, ln 12–14.

133 NE 19 November 2019 at p 8, ln 22–25.

134 NE27 November 2019 at p 45, ln 14–17.

accept his finding. Azlin knew that her actions were wrong and admitted as much throughout her statements.[135] Her statements made plain that she understood the content of "normal discipline"[136] and had adopted an unduly severe approach to the Child.[137] After scalding the Child, she sought to mitigate the injuries by applying cream.[138] Her avowed intention to keep the Child in the cat cage was to make sure the Child could not misbehave so that they would not have to continue hurting the Child.[139] There was no evidence to suggest that she could not tell what she was doing was wrong at the time of the offences.

149 Finally, in terms of impulse control, I was of the view that whatever effect that the Adjustment Disorder had on Azlin's self-control was limited.

(a) First, Azlin did not suffer from a general reduction in her ability to control her impulses, since her actions were entirely targeted at the Child and none of her other children suffered any abuse. I accepted Dr Sarkar's view that impulse control caused by mental disorders would not be "selective".[140] Even if the Child's behaviour was perceived by Azlin as worse than his siblings' behaviour, as she reported,[141] it is striking that Azlin never acted out against any of the other children. In fact, there appeared to be other reasons why Azlin chose to focus on the Child. Dr

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135 See e.g. P190: AB at p 424; P192: AB at p 434.

136 P207 at para 1.33: AB at p 498.

137 P207 at para 1.40: AB at p 500.

138 P207 at para 1.43: AB at p 501.

139 P208 at para 16.1: AB at p 512.

140 NE 26 November 2019 at p 17, ln 8–10.

141 P159 at paras 20, 21 and 33: BPR at pp 5–6.

Sarkar testified that there was a lack of maternal bond between the Child and Azlin,[142] and Dr Rajesh agreed.[143] Further, she took out her anger towards her husband on the Child.[144] These indicated that her actions were due not so much to the absence of self-control, but a decision not to exercise that self-control.

(b) Second, on a related note, Azlin's increasingly violent responses were in fact responses to the Child's perceived misbehaviour. Dr Rajesh accepted that Azlin's choice of using hot water was an escalation from her previous attempts at disciplining the Child.[145] This escalation suggested that she was able to control her impulses, but *decided* to inflict more severe injuries when the Child did not respond to lesser punishments.

(c) Third, Azlin's acts of scalding the Child did not appear to be impulsive actions but were directed to achieving a particular goal.[146] In particular, where Azlin was involved in the pouring of hot water, she had to re-fill the glass that she used each time. In Incident 1, Azlin re-filled and poured the hot water two or three times, after which she questioned the Child again, and resumed pouring hot water on the Child when he denied taking milk powder. In Incident 2, likewise, she re-filled and poured the hot water five to seven times. In Incident 3, she did so

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142 NE 26 November 2019 at p 22, ln 21 to p 23, ln 6. See also P159 at para 22: BPR at p 5.

143 NE 28 November 2019 at p 59, ln 17–27.

144 NE 28 November 2019 at p 60, ln 4–16.

145 NE 28 November 2019 at p 63, ln 29 to p 64, ln 2.

146 NE 19 November 2019 at p 7, ln 18–32, to p 8, ln 1–3.

nine to ten times. Each incident involved a series of acts involving re-filling and pouring hot water again and again.

150 Therefore, I could not find on a balance of probabilities that the Adjustment Disorder had caused such deviation in functioning such that Azlin's state of mind could be said to be so different from ordinary human beings that a reasonable man would consider it abnormal.

(3) The second and third limbs

151 The second limb required an accused who wishes to rely on Exception 7 to lead evidence to show that the abnormality of mind arose "from a condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury", and the Court of Appeal has stated that expert witnesses are expected to be able to identify the prescribed cause: *Iskandar* ([136] *supra*) at [89]. In this case, there was no such evidence, nor did counsel for Azlin specify which prescribed cause was being relied upon.[147]

152 For the third limb, it followed from the factual conclusions drawn from [145] – [149] that there was no substantial impairment.

Ridzuan

153 Dr Cheow Enquan, the Prosecution's expert, did not find any abnormality of mind. Ms Leung Hoi Ting, the clinical psychologist who conducted an intellectual assessment test at Dr Cheow's request, found that Ridzuan's cognitive functioning was at the borderline to low average, and his

147 Azlin's Written Submissions at paras 231–234.

adaptive functioning was extremely low to low average. He had, however, the ability to communicate, socialise, hold down various jobs and perform daily living skills, he did not therefore meet the criteria for intellectual disability. Dr Ung, Ridzuan's expert, contended that Ridzuan suffered from Intermittent Explosive Disorder ("IED"), Attention-Deficit Hyperactive Disorder ("ADHD") and Hypnotic Use Disorder, and Anti-Social Personality Disorder ("ASPD").

(1) The first limb: abnormality of mind

(A) ASPD

154 The only diagnosis accepted by both the Prosecution and Defence was ASPD. This diagnosis was not made by Dr Ung, but emerged when Dr Cheow was cross-examined,[148] and was accepted by the Prosecution in its written submissions.[149]

155 ASPD is not, in itself, an impulse control disorder. As Dr Cheow described, ASPD essentially describes "having a certain personality construct that predisposes [Ridzuan] to behave … in those ways described."[150] Under cross-examination, Dr Cheow explained that "individuals with antisocial personality disorder are prone to commit the acts … described in the criteria … of the disorder. *By very definition … by virtue of having this disorder*, you do have a tendency to commit all the acts described under the various criterion"[151]

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148 NE 18 November 2019 at p 45, ln 24–25.

149 Prosecution's Written Submissions at para 192.

150 NE 18 November 2019 at p 48, ln 20–22.

151 NE 18 November 2019 at p 53, ln 16–22.

[emphasis added]. This undermined rather than bolstered Ridzuan's case. Dr Cheow was explaining that ASPD was a diagnosis that was *based on such conduct* but was not a disorder that could be said to *cause* such conduct.[152] ASPD is a characterisation of a patient's personality, not an identification of the cause of such conduct.

156 Bearing that in mind, I did not find any abnormality of mind, for the following reasons:

(a) First, I did not find any evidence that his ability to understand events was affected. The Defence did not contend as much and Dr Ung recognised that Ridzuan did understand events.[153]

(b) Second, I did not find sufficient evidence that Ridzuan was not able to judge between right and wrong. When the Child's condition got worse, he did not want to call for the ambulance as he was afraid that the police would get involved.[154] The Defence has not proven on a balance of probabilities that Ridzuan suffered from a lack of judgment.

(c) Third, I did not find that Ridzuan's ability to control his impulses was so different from a normal human being's as to be considered abnormal. First, Ridzuan did not act out against any of his other children. Second, the scalding incidents were the most serious attempts at discipline in a series of escalating interventions, which were deliberate and considered, even if ultimately excessive and criminal.

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152 NE 18 November 2019 at p 61, ln 1–3.

153 NE 29 November 2019 at p 88, ln 1–3.

154 P200 at para 18: AB at p 309.

(B) IED

(I) CRITERIA

157 The criteria for IED in the DSM-V was not in dispute (see P233):

(a) First, there must be recurrent behavioural outbursts representing a failure to control aggressive impulses as manifested by either of the following ("Criterion A"):

(i) Verbal aggression (*eg*, temper tantrums, tirades, verbal arguments or fights) or physical aggression toward property, animals, or other individuals, occurring twice weekly, on average, for a period of 3 months. The physical aggression does not result in damage or destruction of property and does not result in physical injury to animals or other individuals ("Criterion A1"); or

(ii) Three behavioural outbursts involving damage or destruction of property and/or physical assault involving physical injury against animals or other individuals occurring within a 12-month period ("Criterion A2").

(b) Second, the magnitude of aggressiveness expressed during the recurrent outbursts is grossly out of proportion to the provocation or to any precipitating psychosocial stressors ("Criterion B").

(c) Third, the recurrent aggressive outbursts are not premeditated (*ie*, they are impulsive and/or anger-based) and are not committed to achieve some tangible objective (*eg*, money, power, intimidation) ("Criterion C").

(d) Fourth, the recurrent aggressive outbursts cause either marked distress in the individual or impairment in occupational or interpersonal functioning, or are associated with financial or legal consequences ("Criterion D").

(e) Fifth, the chronological age is at least six years (or equivalent developmental level) ("Criterion E").

(f) Sixth, the recurrent aggressive outbursts are not better explained by another mental disorder and are not attributable to another medical condition or to the physiological effects of a substance ("Criterion F").

In this case, the only criterion not in dispute was Criterion E.

(II) CRITERION A

158 Dr Ung set out the factual basis of his diagnosis at para 16 of his report:[155]

> [Ridzuan] acknowledged having "a bad temper" from his childhood manifest by both verbal and physical aggression. He gave examples of punching the wall, throwing household items and breaking objects such as furniture like chairs and cups on average 1-3 times a week. He said that he would also hit his wife up to a few times in frustration when she tried to stop him going out … He also admitted hitting his cat … He said that after [the Child] came back to their care, there was greater stress and his temper worsened (more frequent episodes of aggression towards wife and children).

159 Criterion A(i) concerned a 3-month time frame, while A(ii) concerned a 12-month time frame. Dr Ung's report did not specify a time period of time reference. When asked, Dr Ung explained at trial that this paragraph was

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155 BPR at p 48.

intended to refer to events at around the time Ridzuan was abusing the Child, which would be 2016.[156] Because Ridzuan did not testify, the Prosecution took the view that there was no factual basis for Dr Ung's diagnosis, putting the Defence to proof of the incidents of "bad temper" relied upon for the diagnosis. In an attempt to rectify the factual gap, the Defence called a witness, Ms Norhafizah binte Mega Abdul Rahman ("Ms Norhafizah") (2DW2), Ridzuan's sister, and also sought to have two Prosecution witnesses recalled under s 283(1) of the CPC[157] for that purpose. I agreed to recall these two witnesses, Mdm Kamsah binte Latiff ("Mdm Kamsah") (PW14), Ridzuan's aunt, and Mr Nasir bin Latiff ("Mr Nasir") (PW15), Ridzuan's uncle.

160 However, these witnesses did not give testimony on any specific incidents of violence that occurred in 2016 which Dr Ung relied upon. Ms Norhafizah categorically stated that she had no knowledge about the incidents stated at para 16 of Dr Ung's report. Mdm Kamsah appeared to agree that those things happened, but her testimony was directed to incidents that occurred when Ridzuan was at *her* home, not when Ridzuan was at his own home in 2016. Mr Nasir's evidence on the specific incidents of violence were in 2014 or 2015. Whereas he testified that he saw Azlin crying outside the flat, he did not witness the violence itself.

161 The Prosecution therefore took the view that Dr Ung's report and diagnosis of IED were not grounded on a sufficient factual basis. Moreover, they pointed out that the additional evidence Ms Norhafizah, Mdm Kamsah and Mr Nasir were technically irrelevant since Dr Ung had not considered these

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156 NE 29 November 2019 at p 53.

157 NE 20 January 2020 at p 36, ln 5–15.

facts in making his diagnosis.[158] I agreed with the Prosecution. The court was dealing with the issue of whether the expert evidence could be accepted as part of the Defence's case that Exception 7 applied. There was, on the Defence case, a significant misalignment between the opinion evidence they sought to rely on and the factual evidence that they realised (belatedly) that they had to adduce. As seen from above, Dr Ung's diagnosis was based on Ridzuan's account of what had happened in 2016 (as summarised in para 16 of his report), but this evidence was unreliable hearsay as they were not found in Ridzuan's own statements nor were they testified to by other witnesses. The other witnesses testified to various acts of violence, but Dr Ung had not considered them in his diagnosis and it is not the court's place to now diagnose Ridzuan on the basis of new facts.

162 At trial, Dr Ung attempted to rationalise that there were three occasions physical assault causing physical injury within a 12-month period by relying on Ridzuan's reports that he had "used a belt, used his hands, also he had used pliers to pinch [the Child's backside], he had punched him in the face and he had scaled him".[159] These were the acts of abuse for which Ridzuan was charged.[160] For these incidents, it was clear that the criteria B, C and D were, nevertheless, not made out.

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158 Prosecution's Written Submissions at para 174.

159 NE 29 November 2019 at p 52, ln 27–28.

160 NE 29 November 2019 at p 55, ln 29–32.

(III) CRITERION B

163 I also found that Dr Ung had not properly considered Criterion B in his assessment. Since it was more likely than not that Dr Ung had not seen all of Azlin's and Ridzuan's statements,[161] and he did not record Ridzuan's account of his offences anyway in his case notes or report,[162] he would not have been able to assess the events that precipitated the violence. In the absence of such an assessment, it would have been logically impossible for Dr Ung to arrive at a conclusion as to whether the violence was grossly *disproportionate* to the provocations. When pressed, Dr Ung appeared to claim that if any such incidents happened in a domestic context, he would consider it to be grossly disproportionate.[163] I could not accept this reasoning. Apart from being an over-generalisation and suggesting that Dr Ung had not considered this issue in his diagnosis, it also did not distinguish between *gross* disproportion and disproportion. I therefore did not accept Dr Ung's opinion that Criterion B was made out.

(IV) CRITERION C

164 In my view, Dr Ung's reasoning on Criterion C was also suspect. In cross-examination, Dr Ung conceded that disciplining a child would be a "tangible objective" within the meaning of Criterion C.[164] However, Dr Ung then argued that Ridzuan's acts were acts of reactive violence, in that they were "[a]nger-based and not pre-planned, premeditated with the illegal goal in

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161 NE 29 November 2019 at p 43, ln 7–9.

162 NE 29 November 2019 at p 46, ln 10–12.

163 NE 29 November 2019 at p 60, ln 14–18.

164 NE 29 November 2019 at p 64, ln 12–16.

mind".[165] With respect, Dr Ung appeared to conflate the issue of premeditation and the issue of the act being committed to achieve some tangible objective, which Criterion C treats as two separate elements. If it is accepted that disciplining a child or even instilling fear is a tangible objective, on the available evidence, Ridzuan's acts were clearly aimed at achieving a tangible objective. As Dr Cheow testified, Criterion C means that "the aggressive outburst should not be goal directed in nature".[166] I preferred Dr Cheow's evidence as it appeared to be more coherent and in keeping with the language of Criterion C.

(V) CRITERION D

165 Based on the acts forming the basis of the charges, I accepted that these were associated with legal consequences, and so I did not depart from Dr Ung's opinion that Criterion D was satisfied.[167]

(VI) CRITERION F; CONCLUSION ON IED

166 In the circumstances, I agreed with Dr Cheow that the outbursts were "better explained by another mental disorder", namely ASPD. While Dr Ung was able to refer to literature that showed that IED could co-exist with other disorders,[168] this had to be considered in the light of the conclusions above, since Criterion F acted as an exclusionary criterion.[169] Hence, it was clear that Ridzuan did not meet the criteria for IED and did not suffer from IED.

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165 NE 29 November 2019 at p 66, ln 28–31.

166 NE 18 November 2019 at p 13, ln 27–28.

167 NE 29 November 2019 at p 71, ln 1–15.

168 BPR at p 85.

169 NE 29 November 2019 at p 71, ln 18–21.

(C) ADHD

167 Turning to Dr Ung's diagnosis of ADHD, I was of the view that there was insufficient evidence. Dr Cheow and Ms Leung Hoi Teng conducted interviews with Ridzuan and did not observe any symptoms of ADHD. In particular, Ms Leung stated that if she had observed such symptoms, she would have suggested to Dr Cheow to conduct further neuropsychological assessment for ADHD.[170]

168 Dr Ung relied on the result of an Adult ADHD Self-Report Scale assessment, which he conceded was only a screening tool.[171] He had recommended following up with the Conners Continuous Performance Test, identified in his report as the requisite standard for assessment, but this was not done.[172] Dr Cheow also explained that it was extremely important for Dr Ung to ascertain and document a corroborative history of childhood symptoms, interviewing a relative or close family member, or by obtaining school reports.[173] This was not done. Only Ridzuan's self-report was relied upon, for which no factual basis was detailed in court either. I rejected this diagnosis.

(D) HYPNOTIC USE DISORDER

169 Dr Ung's diagnosis of Hypnotic Use Disorder was based on Ridzuan's self-reporting analysed against the criteria of DSM-V.[174] In his opinion, the use

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170 NE 15 November 2019 at p 49, ln 13–16.

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172 NE 29 November 2019 at p 80, ln 13–18; 2D6 para 30: BPR at p. 54.

173 NE 18 November 2019 at p 11, ln 2–10.

174 BPR at p 56.

of benzodiazepines ("epam") was linked with aggression.[175] In my view, there was no factual basis for a diagnosis of hypnotic use disorder. While Ridzuan claimed in his statement recorded on 2 May 2017 that he "was frustrated because [he] was not on drugs", there was no other evidence that showed what he consumed, the rate of his consumption, and the effect that it had on him.[176] The only other mention of substance abuse in Ridzuan's statements was his history of glue-sniffing, which did not coincide with the time of the offences.[177]

(2) The second and third limbs

170 In respect of each of the defences advanced by Ridzuan, there was no evidence that the aetiology of any of them fell within the prescribed list under Exception 7 to s 300 of the Penal Code. Defence counsel was of the view that because IED, ADHD and ASPD were "impulse control disorders which impai[r] one's ability to restrain [oneself] result in aggressive outbursts", that these would fall "squarely under the second prescribed cause, namely, an inherent cause."[178] There was no principled basis for this assumption, and I rejected the contention. As for the third limb, arising from my analysis of the first limb, there was no evidence of any impairment to consider.

(3) Conclusion on Ridzuan's reliance on Exception 7

171 Therefore, I concluded that Ridzuan was unable to rely on Exception 7 to s 300 of the Penal Code in this case.

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175 BPR at p 63, para 38.

176 AB at p 491A.

177 P201 at para 57: AB at p 320.

178 Ridzuan's Reply Submissions at para 37.

Summation on the charges

172 Before turning to sentencing, I summarise the offences for which Azlin and Ridzuan have been convicted (and indicate each accused's response to the charges). In respect of Azlin, I found her guilty and convicted her of the following offences:

(a) C1B1, C1B2, C1B3, and C1B4, being offences under s 326 of the Penal Code (read with s 34 for C1B1 and C1B3). She pleaded guilty to C1B2, C1B3 and C1B4 and claimed trial to C1B1.

(b) C2, C3, C5A and C6, being offences under s 5(1) and punishable under s 5(5)(*b*) of the CYPA. Of these charges, the only one that Azlin disputed was C5A. Further, at the outset of trial, Azlin indicated that she would plead guilty to C2 and C3.

173 In respect of Ridzuan, I found him guilty and convicted him of the following offences:

(a) D1B1 and D1B2, being offences under s 326 read with s 34 of the Penal Code. Ridzuan pleaded guilty to these charges after they were altered and framed respectively.

(b) D2, D3, D5, D6, D7A, D8 and D9, being offences under s 5(1) and punishable under s 5(5)(*b*) of the CYPA, as well as under s 324 of the Penal Code. Ridzuan claimed trial to each of these charges except for D7A (to which he pleaded guilty upon amendment). However, at trial, he did not dispute liability for any of these charges and the convictions were largely based on his own admissions together with

supporting evidence. His only dispute was with the issue of whether the Child suffered injuries in the cat cage in respect of the charge D9.[179]

174 Both Azlin and Ridzuan were acquitted of C4 and D4 respectively.

Sentences for Azlin and Ridzuan

Prosecution and defence positions

175 The positions taken on the multiple offences are summarised in table format for ease of reference. For Azlin:

Charge	Prosecution	Defence
C1B1	13 years' imprisonment and 6 months' imprisonment in lieu of caning	8 years' imprisonment
C1B2	8 years' imprisonment and 3 months' imprisonment in lieu of caning	8 years' imprisonment
C1B3	Life imprisonment; alternatively, 13 years' imprisonment and 6 months' imprisonment in lieu of caning	8 years' imprisonment
C1B4	10 years' imprisonment and 6 months' imprisonment in lieu of caning	8 years' imprisonment

[179] Ridzuan's Reply Submissions at para 38.

Charge	Prosecution	Defence
C2	9 months' imprisonment	6-8 months' imprisonment
C3	9 months' imprisonment	1 month's imprisonment
C5A	1 year's imprisonment	6 months' imprisonment
C6	1 year's imprisonment	8 – 12 months' imprisonment
Global Sentence	Life imprisonment; alternatively, 27 years' imprisonment and 12 months' imprisonment in lieu of caning	16 years' imprisonment & additional charges left to the court's discretion

176 For Ridzuan:

Charge	Prosecution's Position	Defence's Position
D1B1	Life imprisonment; alternatively, 12 years' imprisonment and 12 strokes of the cane	7 years' imprisonment and 6 strokes of the cane
D1B2	12 years' imprisonment and 12 strokes of the cane	7 years' imprisonment and 6 strokes of the cane
D2	6 months' imprisonment	6 months' imprisonment
D3	6 months' imprisonment	6 months' imprisonment
D5	9 months' imprisonment	4 weeks' imprisonment
D6	9 months' imprisonment	2 weeks' imprisonment
D7A	1 year's imprisonment	10 months' imprisonment

Charge	Prosecution's Position	Defence's Position
D8	9 months' imprisonment	4 weeks' imprisonment
D9	1 year's imprisonment	2 weeks' imprisonment
Global sentence	Life imprisonment; alternatively, 24 years' imprisonment and 24 strokes of the cane	15 years' and 5 months' imprisonment and 12 strokes of the cane

Necessity for deterrence and retribution

177 I start with the necessity for deterrence and retribution. The offences here were grave. Sentencing serves the purpose of enforcing and maintaining the values of our community as expressed in the criminal law. It was necessary therefore that the sentences reflected the abhorrence which right-minded members of the public would have for Azlin and Ridzuan's conduct. As the Court of Appeal stated in *Public Prosecutor v Kwong Kok Hing* [2008] 2 SLR(R) 684 ("*Kwong Kok Hing*") at [17]:

> Our criminal law is, in the final analysis, the public's expression of communitarian values to be promoted, defended and preserved … A sentence must therefore appropriately encapsulate, in any given context, the proper degree of public aversion arising from the particular harmful behaviour as well as incorporate the impact of the relevant circumstances engendering each offence.

178 The specific community interest at hand is the vulnerable child, whose future is secured by protection in the present. A child is dependent upon his parents for nourishment. Yet parental authority and the parent-child relationship hold potential for abuse and severe breach of trust. A child's home functions as a refuge where he would seek security from the dangers of the world. But if he is set upon there, its privacy precludes the intervention of the state or the

kindness of strangers. The protection of the child, the lawful conduct of parents and the safety of the home are fundamental to the well-being of society and the wellspring of its aspirations.

179 In *Public Prosecutor v AFR* [2011] 3 SLR 833 ("*AFR*") the Court of Appeal observed at [20]:

> Society has a special interest in protecting the young from physical abuse, particularly by those whose duty it is to care for the young under their charge. In every case of physical abuse of a young child by a parent or caregiver, there is gross abuse of physical disparity by the offender, which manifests itself in the form of inhumane treatment of a vulnerable young victim. Public interest demands the imposition of a severe sentence in this situation: the court has to send a clear signal that offences involving physical violence against helpless children are regarded with deep abhorrence and will not be tolerated.

Issues of mitigation and mental condition

180 Some, albeit limited, mitigating weight was given to Azlin and Ridzuan's co-operation with the police. This proved to be helpful, especially for the Abuse Charges where the medical evidence was not conclusive.

181 Moreover, I did not give any weight to the contentions of psychiatric conditions made by both offenders. The Court of Appeal recognised in *Lim Ghim Peow v Public Prosecutor* [2014] 4 SLR 1287 ("*Lim Ghim Peow*") at [25] that, while the existence of a mental disorder is always a relevant factor for sentencing, its impact "depends on the circumstances of each case, in particular, the nature and severity of the mental disorder". While the need for general and specific deterrence may be given less weight if the mental disorder is serious or has a causal connection with the offence, those sentencing principles can be given *full weight* if the mental disorder is not serious, or there is no causal

relation to the offence: *Lim Ghim Peow* at [35] and [36]. The issue is whether the "mental condition is such that the offender retains substantially the mental ability or capacity to control or restrain himself": *Public Prosecutor v BDB* [2018] 1 SLR 127 ("*BDB*") at [72].

182 For Azlin, I found that her adjustment disorder was not such as to cause substantial impairment or substantial diminishment of her mental responsibility for the offences. For Ridzuan, I found no evidence of IED, ADHD and Hypnotic Use Disorder. While the psychiatrists accepted that he was suffering from ASPD, Dr Cheow was clear that it does not affect impulse control and did not diminish his mental responsibility for the offences. Therefore, for neither accused did I find that there was any mental disorder which would diminish culpability or would prevent the need for deterrence and retribution from being given full effect.

183 Defence counsel highlighted the difficulties that Azlin and Ridzuan faced. Counsel for Ridzuan appeared to suggest that his relationship troubles with his wife and the lack of finances put him under stress.[180] Counsel for Azlin pointed to a list of stressors, including Ridzuan's abuse and infidelity, the death of her grandmother and mother in quick succession, financial difficulty, the difficulty of raising her children, and her childhood experience of having been scalded by her parents before.[181] In my view, these excuses were answered by the guidance of the Court of Appeal in *BDB* ([181] *supra*) at [75]: "the frustrations faced by a parent or caregiver due to his or her difficult personal circumstances can *never* justify or excuse the abuse of such victims." The duty

of a parent subsists regardless of economic and social circumstances. In any event, in this particular case, and even more inexcusably, help was available. In particular, in the present case, [Z], and through her husband and parents, another extended family, were able and willing to look after the Child. Minimally, [Z] had asked for consent to a change of the Child's school, because of the needs of her own children; she also offered to assume guardianship. Despite their parental duty to look to the best interests of their child, neither parent would even sign the consent form for a change of school. Therefore, their difficulties could not be used to excuse their conduct. There was a viable option for assistance and by July when the incidents of violence started, it would have become plain to both of them that they were ill-placed to care for the Child themselves. Therefore to attempt to rely on what would in any case not be an excuse, in this particular case, makes a mockery of the facts.

Suitability of life imprisonment

184 The Prosecution asked for life imprisonment terms: for Azlin, in respect of Incident 2; for Ridzuan, in respect of Incident 4. The justification was that "the particular crime belongs to the most serious category of cases under that offence": *Public Prosecutor v Firdaus bin Abdullah* [2010] 3 SLR 225 ("*Firdaus*") at [17]. The Prosecution emphasized that where accused persons were parents of the victims, the maximum sentence was provided under the law for betraying the ultimate relationship of trust and authority reposed in them. Its view was that this case must be "objectively characterised as belonging to the worst end of the scale when comparing instances of that offence", having regard to factors such as the "manner in which the death was caused, the relationship between the offender and the victim, the offender's state of mind or the offender's motives": *Firdaus* at [17]–[18].

185 In my view, life imprisonment is different from a maximum term of years imposed at "the worst end of the scale". Its statutory context within the Penal Code for offences gives it special significance. For murder, life imprisonment is the mandatory minimum, the lesser of two sentencing options. For cases of culpable homicide not amounting to murder, s 304(*a*) allows for a sentence of life imprisonment or a term of up to 20 years where there is an intention to cause death or bodily injury that is likely to cause death. In that context, life imprisonment is the more serious of the two options. In contrast, s 304(*b*) provides that where there is no such intention to cause injury likely to cause death, but only knowledge that it is likely to cause death, the maximum term is ten years (this is now 15 years' imprisonment, as of 1 January 2020). The fact that death is caused, is not, therefore determinative. This distinction between 304(*a*) and 304(*b*) informs that the mental element is of fundamental importance in the statutory provision of a life term on a discretionary basis.

186 Even in the context of s 304(a) of the Penal Code where culpability is high, the discretion is viewed with significance. Chan Seng Onn J in *Public Prosecutor v Aniza bte Essa* [2008] 3 SLR(R) 832 ("*Aniza*") expressed the view, at [45], that "the DPP must establish that this case is one that extends beyond the mere fact that the accused has committed a very serious and grave offence under s 304(a) of the Penal Code, which calls for a deterrent sentence." Thus, for example, Chan J identified a category where "the manner in which the defendant commits the offence is so cruel and inhumane that the defendant does not deserve any leniency whatsoever": *Aniza bte Essa* at [47], quoted in *Public Prosecutor v Barokah* [2009] SGHC 46 ("*Barokah*") at [68]. I mention this category because it could be said that the facts, and my reasons below for the sentences imposed, reveal elements of the "cruel and inhumane". But even *Aniza*, where it was not imposed, and *Barokah*, where it was, must be viewed

in their context of s 304(a), where intent, as I mention, is minimally to cause bodily injury that is likely to cause death. A critical distinction is that s 326 of the Penal Code operates within a less culpable range of intention. *Mens rea* is satisfied so long as the offender knows himself to be likely to cause grievous hurt: see s 322, Penal Code. The *actus reus* of grievous hurt is similarly wide: see s 320, Penal Code.

187 The same breadth of *mens rea* and *actus reus* for grievous hurt is covered in s 325 of the Penal Code and therefore the punishments available for ss 326 and 325 of the Penal Code should be contrasted. Section 325 has a maximum of ten years' imprisonment. Despite death being a form of grievous hurt under s 320(*aa*) applicable also to s 325, a life term is permitted in only two particular iterations of grievous hurt where additional factors are present. Section 326 allows for it where dangerous weapons or means are used. Section 329 permits a life term where the object was to extort property or to facilitate the commission of another offence. Sections 325, 326 and 329 should be considered together to discern statutory purpose. Grievous hurt, by its definition, allows for a breadth of factual scenarios and different shades of requisite mental element. The width of the sentencing discretion follows from that range of factual and mental circumstances. Hence, the statutory framework informs the court that in considering a life term under s 326 of the Penal Code, two additional factors are important: the dangerous weapon or means used, and the level of intention or knowledge that the offender has in using the particular dangerous means in inflicting the particular grievous hurt.

188 Coming then to the instant case, I start with the charge. A life term should be appropriate to the specific charge for which sentence is imposed. As compared to a case of culpable homicide where the offence is encapsulated in a

single charge, the present case concerns multiple individual charges. Where multiple offences are to be considered, the fundamental duty of the court is to first ensure that *each* offence is addressed with an appropriate sentence: *Mohamed Shouffee bin Adam v Public Prosecutor* [2014] 2 SLR 998 at [26]. It is thereafter, and only thereafter, that the overall criminality of any accused is considered in the context of the offences to arrive at a global sentence. This approach, in my view, serves to protect an offender from too broad a sentence.

189 In this context, a relevant consideration was that the life term was requested for individual episodes of Incident 2 for Azlin and Incident 4 for Ridzuan. These specific charges were framed to address "hurt which endangers life" under s 320(*h*) and not "death" under s 320(*aa*) of the Penal Code. I would not, however, thereby conclude that the absence of the use of s 320(*aa*) in the harm specified in the charge should be determinative. Section 326 itself has no such limitation, and the court ought to look to the whole of the circumstances. In this case, the charge was specified as such because the medical evidence could not pinpoint which incident caused death: it was the four incidents cumulatively that caused death. While the collective criminality of each accused's action deserves grave sanction, to address the consequence of all four incidents in the sentence on one offence could be an excessive sentence for the particular charge.

190 That said, I deal specifically with Incident 4 because it was asserted that the Child was likely in a dire state by that juncture. Life imprisonment was sought for Ridzuan's actions in Incident 4 and it could have been argued therefrom that Azlin was equally culpable for Incident 4 in view of their common intention. If it had been proven that either or both had known how ill the Child was, however, s 300(*d*) of the Penal Code would have been considered

in the context of the amendment of the charge/s, in view of Explanation 1 to s 299 and Illustration (b) of s 300. My amending their charges to proceed under s 326 was a reflection of my findings on Azlin and Ridzuan's states of mind. In my view, their *mens rea*, which accounted for the amendment of the charges, remained relevant here.

191 In the present case, while death eventually ensued, the accused persons appeared at particular points not to entirely comprehend the likelihood of death resulting from their actions. Azlin expressed surprise in her statement that a child could die from scalding ("I did not think it would end up like this. I was thinking it might scald him but I did not think he would die"[182]). Ridzuan was shocked when the Child collapsed after Incident 4 ("My wife then told me that [the Child] was very weak and both of us got very scared"[183]). While these statements could be disbelieved, there were good reasons to give them the benefit of the doubt in respect of their mental state. First, their statements should be read as a whole, in the context in which they were cooperating with the police, and as the premise upon which their convictions rested. Second, Azlin had Adjustment Disorder, and Ridzuan was of low intelligence. His adaptive functioning and range of functioning were both poor.[184] Scalding, the particular dangerous means employed here, is not obvious evidence of an intent to cause such injury as would lead to death. Consistent with not entirely understanding the full effect of scalding, their motive for scalding the Child (to discipline and secure compliance from the Child) and their responses after each incident

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182 P209 at AB 523

183 P200 at para 12: AB at p 308

184 BPR at p 40

(applying medicated oil,[185] bringing the Child "cold 'McDonalds' milo [*sic*]"[186] and applying baby powder[187]), were wholly inappropriate. Their final choice was to send the Child to the hospital although they knew that serious criminal consequences would follow for them ("I knew that if we did not send [the Child], he would die and if we sent [the Child] to the hospital, we would die"[188]).

192 I should explain, for reasons of clarity, why Azlin's Adjustment Disorder and Ridzuan's low functioning mattered here where elsewhere it did not. On this specific issue, what was relevant was the mental element as proven by the Prosecution on the criminal standard of proof for the purposes of s 326 of the Penal Code. In the context of Exception 7, neither accused had proved any mental abnormality. As a matter of general mitigation, neither accused was able to show a diminution of mental responsibility for their offences of grievous hurt. Azlin's Adjustment Disorder did not impede her ability to make choices, and Ridzuan had no intellectual disability. The points I mention form no excuse for the offences upon which they were convicted. Azlin and Ridzuan were aware of the means they employed and the dangers this posed. That was the reason they took the Child to the hospital. However, in looking at whether this is a worst case and deserving of a life term, the dangerous means and their knowledge and intent in employing that means was relevant in the statutory context. While their mental state did not impair their ability to choose the actions that they took on each of the specific charges, there was some distance

185 P200 at [15]: AB at 309

186 P200 at [16]: AB at 309

187 P200 at [22]: AB at 310

188 P208 at [3.3], AB 507

in the connection between that and their knowledge as to the overall consequence of death. I did not think a life term was appropriate.

Joint culpability of Azlin and Ridzuan

193 I turn to their comparative culpability, relevant in dealing with their specific sentences. The Prosecution drew a distinction between Azlin and Ridzuan in their recommendations in terms of the global sentence. For Azlin, three consecutive sentences with a global sentence of 27 years' imprisonment and an additional 12 months' imprisonment in lieu of caning were suggested. For Ridzuan, the global term recommended was 24 years and 24 strokes of the cane.

194 In the present case, there was no clear indication that one parent was more responsible, or that more mitigating factors applied in respect of one parent. I was of the view that there should be parity between the two offenders. Both parents had joint and equal responsibility for the wellbeing of their child; both condoned each other's appalling actions. The Prosecution recommended an overall lighter sentence for Ridzuan because Azlin initiated the second and fourth scalding incidents. I also note that she was convicted on two additional s 326 charges. Nevertheless, it was Ridzuan who introduced a culture of violence into the family and home, through his initial abuse of Azlin. It was also Ridzuan who first started the violence against the child in July, with pliers. Being the stronger partner, his use of force in each joint offence added greater injury, for example in the incident where the Child's head hit the wall, his punch thereafter caused fractures of the nasal bone. The second and fourth scalding incidents were very serious incidents and his participation led directly to the outcome. Participation aside, the injuries sustained called for immediate medical

attention, and their repeated omission to do so was the result of a joint parental decision. This neglect, which both acquiesced in, was particularly cruel as the Child would have been in great pain even from the first scalding incident. I consider that there should be parity for the offences for which they were jointly charged, and for their overall sentences.

195 Turning then to the sentences, I first separate them into the Scalding Charges and the Abuse Charges for ease of analysis.

The Scalding Charges

Section 326 of the Penal Code

196 Menon CJ's decision in *Ng Soon Kim v Public Prosecutor* [2019] SGHC 247 ("*Ng Soon Kim*") provides a helpful guide to sentencing under s 326 of the Penal Code by way of analogy. In that case, Menon CJ considered how to sentence an offender under s 324 of the Penal Code, holding that the approach was first to consider the appropriate sentence if the charge had been one under s 323 of the Penal Code, then to apply a suitable uplift having regard to the nature of the dangerous means used, and finally, to adjust based on the aggravating and mitigating circumstances at play (*Ng Soon Kim* at [12]). Section 324 of the Penal Code stands in relation to s 323 of the Penal Code in the same way that s 326 stands in relation to s 325. In this case, therefore, I first considered the appropriate sentence under s 325 of the Penal Code, then applied a suitable uplift to account for the dangerous means used, and then adjusted the sentence on the basis of the aggravating and mitigating factors.

The appropriate sentences under s 325 of the Penal Code

197 By analogy with *Ng Soon Kim*, the first step is to consider the appropriate sentence under s 325 of the Penal Code as an indicative starting point. For this step, I considered the Court of Appeal's approach to that provision in *BDB* ([181] *supra*) at [55]. The Court of Appeal held that the court should first consider the seriousness of the injury and to arrive at an indicative starting sentence and then apply adjustments for culpability and aggravating and/or mitigating factors. Since the aggravating and mitigating factors will be considered in the third step by analogy with *Ng Soon Kim*, I deal only with the issue of the seriousness of the injury in the first step. The Court of Appeal in *BDB* did not set out a range of indicative starting points, but noted that where the grievous hurt is death (under s 320(*aa*) of the Penal Code), the starting point would be around eight years' imprisonment, and where there are multiple fractures of the nature found in *BDB* (*viz*, multiple fractures to the left elbow, left calf and left 8th to 11th ribs), the starting point would be around three years' and six months' imprisonment: *BDB* at [56]. As for caning, where death is the grievous hurt in question, 12 or more strokes may be warranted, while six to 12 strokes may be appropriate for non-fatal serious injuries: *BDB* at [76].

198 The starting point under *BDB* is to consider the seriousness of the injury. Death calls for a starting sentence of around eight years' imprisonment, and in my view, this sets a ceiling on the appropriate starting sentence when considering "hurt which endangers life" under s 320(*h*) of the Penal Code which is less serious than death (although perhaps in certain cases, only by a small margin). The starting point of around three years' and six months' imprisonment for the fractures found in *BDB* would set the floor. The injuries in this case, given their severity and the pain caused to the Child, would lie between those

two starting points. After considering the indicative sentence, I also considered the culpability of the accused persons in relation to each incident and adjusted the sentences accordingly.

199 The Prosecution submitted that the starting sentences for Incident 1 ought to be three and half years' imprisonment, for Incident 2, between eight and ten years' imprisonment, for Incident 3, five years' imprisonment, and for Incident 4, eight to ten years' imprisonment. Counsel for Azlin did not provide submissions on this step of the framework. Counsel for Ridzuan argued that the starting point for the sentences should be only slightly higher than three years' and six months' imprisonment and six to 12 strokes of the cane.[189] This position would, however, fail to account for the higher severity of the injuries in this case arising out of the various incidents, compared to the fractures in *BDB*.

200 I turn then to each incident of scalding. Incident 1 was the first scalding incident. It was life-threatening but appeared less serious than the later incidents. In the light of the injuries, a starting sentence of around four years' imprisonment was appropriate. As for caning, a sentence of eight strokes of the cane was warranted: see *BDB* ([181] *supra*) *at* [76].

201 Incident 2 involved an escalation of violence. In Incident 2, hot water was splashed on a larger surface area, affecting the Child's face, chest, arms and leg.[190] The effects of Incident 2 were also severe. The Child would have been in intense pain as the resultant partial thickness burns would have left the nerves

189 Ridzuan's Written Submissions on Sentence at para 44.

190 P207 at para 1.46: AB at p 501

intact, allowing him to fully experience pain and suffering.[191] These injuries would also have made the Child more susceptible to a variety of ailments, including hypothermia, dehydration, and infection, and all three of these were present on the Child's arrival at hospital. Both Azlin and Ridzuan participated and both contributed to the injuries. A starting sentence of around eight years' imprisonment was appropriate for both Azlin and Ridzuan. 12 strokes of the cane would be appropriate for this incident, given the severity of the violence involved.

202 In Incident 3 Azlin acted alone. The injuries could not be specified with certainty, but it was sufficiently clear that the scalding would have caused further injuries and aggravated existing injuries. While the incident was shorter than the second incident and extent of injuries not as discernible, the Child was already unwell. The repetition of violence in this context is important. The same starting sentence of eight years' imprisonment and 12 strokes of the cane would be applicable.

203 Incident 4 led directly to the Child's collapse. Ridzuan attacked him with a broom and then hot water. Although it was Ridzuan who physically abused the Child in this instance, their common intention was plain. Azlin was the one who called his attention to the task. She was aware of what he would do and did do. The attack was vicious and brutal when the Child was so ill that he was unresponsive. A starting sentence of nine years' imprisonment and 12 strokes of the cane was appropriate.

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191 NE 12 November 2019 at p 68, ln 20–23.

Adjustment for the use of dangerous means

204 Regarding the uplift to be applied to account for the dangerous means used, Menon CJ expressly considered that the potential harm that could result from the means used should be accounted for in the uplift: *Ng Soon Kim* ([196] *supra*) at [12]. In that case, Menon CJ had occasion to consider the appropriate uplift for the use of a "lighter, coupled with a flammable aerosol" (*Ng Soon Kim* at [15]), and noted that (1) this was not on the "high end of serious culpability", (2) it would have caused alarm to others, (3) it had the potential for greater harm if the surroundings had caught on fire, and (4) the offence took place at a busy road intersection and could have given rise to public alarm: *Ng Soon Kim* at [16]. An uplift of six months' imprisonment was imposed. It can be seen, therefore, that the analysis of the appropriate uplift is fact-centric and pays close attention to the nature of the means used *in the context* of the specific offence, with due regard to the potential harm as well.

205 I begin by noting that in applying *Ng Soon Kim* by analogy, the potential uplift between s 323 and s 324, on the one hand, and between s 325 and s 326, on the other hand, is generally the same, subject to one key difference. In terms of imprisonment, the difference between the maximum punishments for s 324 and s 323 is five years' imprisonment (the difference between seven and two), which is the same difference between the maximum punishments for s 325 and s 326 (the difference between 15 and ten). However, s 326 differs in that there is the possibility of imposing a life sentence for the most serious range of cases. In this case, as I have declined to impose the sentence of life imprisonment, the maximum difference between s 325 and s 326 would be five years' imprisonment.

206 In my judgment, an appropriate uplift was two years' imprisonment in this case. First, the water used in this case was all above 70°C in temperature (see [69] above), and it was not disputed that substances with temperatures above 70°C would cause mid to deep dermal burns,[192] even for minimal contact, as when water is splashed. Second, water is difficult to control and would be more dangerous given that it could lead to greater surface areas being affected, which would, in turn, result in more serious injuries and consequences. Third, it was relevant to consider that this water was used against the Child, who was five years old at the material time. A child, with thinner skin,[193] would be disproportionately affected by the use of such means. The same substance would cause deeper burns on a child than it would to an adult.[194] Fourth, I also considered *how* the heated substance was used in this case. While this overlaps with the same facts that went to culpability, my focus here is on the fact that this was indiscriminate throwing of water onto the child which affected vulnerable parts of the body (including the face and genitals[195]) and which involved a not insignificant *volume* of water. This exceptionally cruel and painful use of a dangerous means is readily available in many households. This, in my view, made it all the more important to send a deterrent message and a clear condemnation of the use of these means in the context of discipline and against children. An uplift of two years' imprisonment was appropriate, recognising both the maximum uplift of five years' imprisonment (for more serious and harmful means) and the need for the court to consider the full range of sentences:

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192 NE 15 November 2019 at p 16, ln 28–30.

193 NE 13 November 2019 at p 22, ln 10–12.

194 NE 16 November 2019 at p 16, ln 26–27.

195 Medical Report dated 1 November 2016 (P166): AB at p 117.

Poh Boon Kiat v Public Prosecutor [2014] 4 SLR 892 at [60]. In view of the significant number of strokes of the cane indicated under s 325 of the Penal Code and there being more than one charge under s 326 of the Penal Code in this case, I did not consider it necessary to include a further uplift to the number of strokes of the cane at this stage.

Aggravating and mitigating factors

207 The primary aggravating factors in this case were dealt with at [177]–[179].

208 In the specific context of these charges, the joint action would also have been terrifying for the young Child. This follows from the Court of Appeal's observation in *BDB* ([181] *supra*) at [68]: "In cases where two or more offenders assault a defenceless child together, the sentence imposed on the offenders should be adjusted upwards to reflect their higher culpability." This joint violence made it easier to inflict deeper injury, but, taking a common sense approach, would have multiplied the trauma experienced.

209 Finally, an aggravating factor for Incident 4 was the mutual prevarication in seeking medical attention, and the jointly fabricated narrative of the kettle accident used at the hospital. Prior to going to a relative's house with the Child to seek help, Ridzuan told Azlin to lie about the injuries and to say that the Child had accidentally pulled on the kettle's electrical cord and had water splashed on him.[196] When they brought the Child to the emergency room, Ridzuan told the nursing staff that he was disciplining the Child when the Child

196 P206 at para 10: AB at p 333E.

accidentally pulled on the kettle, splashing hot water on himself.[197] Ridzuan repeated this story to the police officers who first spoke with him.[198] In my view, this was aggravating for two reasons. First, this was an attempt to deceive the authorities and to hide the commission of the offence: *Vasentha d/o Joseph v Public Prosecutor* [2015] 5 SLR 122 at [69]. Second, in the context of reporting to the hospital, this deception would have added to the confusion surrounding the Child's true condition. I do not mean to say that there is concrete evidence that the treatment may have gone differently if the lie had not been told, but I found it aggravating that even in trying to get help for their Child, the accused persons preferred their own interests rather than trying to assist the medical staff to get a full understanding of the Child's condition. The fact that he had been suffering from burns for a few days (up to a week) would surely have been relevant and ought to have been disclosed. The failure to do so, in my view, should be met with an uplift in the sentences.

210 As for mitigating factors, I have already identified them above at [180]–[183]. On these charges, I gave some credit for the fact that for Incidents 1, 2, and 3, Azlin chose to indicate that she would plead guilty after the charges were amended, and Ridzuan did the same for Incidents 2 and 4. But my having amended the charges would have indicated that convictions would have followed, in any event.

211 Considering all of these factors, I imposed a further uplift of two years' imprisonment for Incidents 1, 2 and 3. An uplift of three years was used for Incident 4 because of the delay in seeking medical assistance and the

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197 P200 at para 25: AB at p 311.

198 P200 at para 30: AB at p 312.

obfuscation practiced on arrival at the hospital. In arriving at these uplifts, I took reference from the fact that the Court of Appeal in *BDB* ([181] *supra*) had imposed an uplift of *one* years' imprisonment for the s 325 charge relating to the victim's death, to account for "(a) the [accused's] position as the mother of [the victim]; (b) the extreme youth of [the victim]; (c) the viciousness of the violence inflicted; and (d) the extended period of time over which the events on 1 August 2014 unfolded": *BDB* at [124]. With the greater maximum sentence for s 326 of the Penal Code, it was principled to provide for a more substantial uplift in this case. Such an approach would reflect the full spectrum of sentencing.

212 Azlin, as a female, cannot be caned: s 325(1)(*a*) of the CPC. In *Amin bin Abdullah v Public Prosecutor* [2017] 5 SLR 904 ("*Amin*") at [59], it was recognised that the need to compensate for the deterrent and retributive effect of caning, as well as to maintain parity among co-offenders would be factors which warrant enhancement of the sentence. With regards to deterrence, this is especially so where the potential offenders in the same situation would know that they would be exempt from caning, and this is likely to be so for those exempt because of gender: *Amin* at [66]–[67]. This was so in the present case. Given the importance of retribution as a sentencing principle in such cases, I considered an enhancement to be appropriate: see also *BDB* at [127]. There was also the need to maintain parity with Ridzuan: *Amin* at [74]. I did not see any countervailing reason why enhancement should not be imposed.

213 According to the guidance given in *Amin* at [90], where between seven to 12 strokes are avoided, an enhancement of three to six months' imprisonment would be appropriate. For the offences where Azlin avoided eight strokes, I imposed an enhancement of three months' imprisonment. For the offences

where she would otherwise have faced 12 strokes, I imposed an enhancement of six months' imprisonment. I noted that in the round, she would have been caned a total of 24 times, and that it would be preferable if the enhanced sentences did not then exceed the total of 24 strokes. Given my conclusions on the appropriate consecutive sentences (see [237] below), however, this did not become an issue.

214 Accordingly, the sentences ordered for Azlin and Ridzuan were as follows:

(a) Incident 1 (C1B2): For Azlin, eight years' imprisonment and three months' imprisonment in lieu of caning;

(b) Incident 2 (D1B2 and C1B3): For Ridzuan, 12 years' imprisonment and 12 strokes of the cane. For Azlin 12 years' imprisonment and six months' imprisonment in lieu of caning;

(c) Incident 3 (C1B4): For Azlin 12 years' imprisonment and six months' imprisonment in lieu of caning; and

(d) Incident 4 (D1B1 and C1B1): For Ridzuan, 14 years' imprisonment and 12 strokes of the cane. For Azlin, 14 years' imprisonment and six months' imprisonment in lieu of caning.

Abuse Charges

215 I turn now to the remaining Abuse Charges. I address these offences in roughly chronological order.

D2 and D3

216 The first two offences were D2 and D3, committed by Ridzuan in July 2016. In these offences, Ridzuan had used a pair of pliers to pinch the Deceased's buttocks and the back of his thighs respectively, causing bruises where the Deceased had been pinched. Ridzuan used these pliers to punish and to threaten the Child. These offences were under s 5(1) of the CYPA punishable under s 5(5)(*b*), which carries a maximum punishment of a $4,000 fine or imprisonment not exceeding four years, or to both.

217 Having reviewed the authorities relating to s 5(1) of the CYPA and the legislative history behind the increased punishments introduced in 2001 for s 5(5)(*b*) of the CYPA, the Court of Appeal noted in *BDB* ([181] *supra*) at [86]:

> We observe that in the relevant precedents cited by the parties that involved physical violence to children or young persons, **the courts invariably imposed a term of imprisonment of *at least* six months for offences prosecuted under s 5 of the CYPA**. We also note that in general, offenders who *wilfully* inflict injury on a child or young person may be regarded as being more culpable than offenders who act *unreasonably* in doing so, and should therefore receive harsher sentences than the latter category of offenders: see *PP v Kusrini bte Caslan Arja* [2017] SGHC 94 at [7] … [emphasis in original in italics; emphasis added in bold]

218 This accords with the sentencing principles that apply when the court sentences for child abuse. An uncompromising stance against such offences can be represented by an approach to sentencing that takes as a benchmark a sentence of around six months' imprisonment, even before considering the variations in the specific characteristics of the abuse in question. Regardless of *how* the abuse is carried out, it should be met swiftly with an uncompromising response to reflect society's condemnation of such conduct. Given the nature of

s 5(1) of the CYPA, the sentencing principles articulated above at [178] for child abuse offences are always in play when this provision is involved.

219 The Prosecution sought sentences of six months' imprisonment for each of these charges.[199] Counsel for Ridzuan agreed with that position.[200] I saw no reason to depart from the starting point of six months' imprisonment, and imposed that sentence for each of the two charges, D2 and D3, accordingly.

C2 and C3

220 I turn to Azlin's offences in August 2016. Charge C2 was under s 5(1) punishable under s 5(5)(*b*) of the CYPA for hitting the Child with a broom on his body, back, and legs. Azlin admitted that she had "hit him quite hard on his legs"[201] and that the Child began limping as a result, and his knee cap was misaligned. For this offence, the Prosecution sought a sentence of at least nine months' imprisonment, while the Defence sought a sentence of between six and eight months' imprisonment.[202] This was the first offence and mitigatory value could be given to her admissions. I ordered a term of six months' imprisonment.

221 Charge C3 involved Azlin pushing the Child, causing him to fall and hit his head on the edge of a pillar, resulting in bleeding.[203] I note that in *BDB* itself, the Court of Appeal left undisturbed a sentence of six months' imprisonment where the accused had pushed the victim and the victim had fallen and hit his

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199 Prosecution's Written Submissions on Sentence at para 69.

200 Ridzuan's Written Submissions on Sentence at para 54.

201 P 207 at para 1.38: AB at p 499

202 Azlin's Written Submissions on Sentence at p 6.

203 P207 at para 1.39: AB at p 500.

head. This fact scenario was virtually indistinguishable from the that charge in *BDB*. The Prosecution sought a sentence of nine months' imprisonment on the basis that the Court of Appeal had left the sentence undisturbed in the absence of evidence, while in this case, there was evidence of the extent of injury in the form of the T-shaped laceration on the vertex of the Child's head.[204] However, in my view, it was not appropriate to attribute that injury directly to this offence, since Dr Chan's evidence at trial was that the injury "might or could have been" from this incident, "[b]ut it could also be something that has healed and not [*sic*] be seen".[205] Counsel for Azlin argued, on the other hand, that *no* injury could be attributed to the push and the fall.[206] This was also incorrect, as it was clear that a wound resulting in bleeding was caused.[207] I saw no reason to depart from the starting point and from the sentence in *BDB*. Therefore, I imposed a sentence of six months' imprisonment for C3.

D5, D6 and D8

222 Charges D5 and D8 related to the use of a heated spoon on the Child's palm. These were charges under s 324 of the Penal Code. As described by Menon CJ in *Ng Soon Kim* ([196] *supra*) at [12], the approach was first to consider the appropriate sentence if the charge had been one under s 323 of the Penal Code, then to apply a suitable uplift having regard to the nature of the dangerous means used, and finally, to adjust based on the aggravating and mitigating circumstances at play. The Prosecution urged the court to sentence

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204 Prosecution's Written Submissions on Sentence at para 61.

205 NE 13 November 2019 at p 40, ln 3–14.

206 Azlin's Written Submissions on Sentence at para 77.

207 P207 at para 1.39: AB at p 500.

Ridzuan to nine months' imprisonment per charge, while counsel for Ridzuan argued that sentences of four weeks' imprisonment per charge were sufficient.

223 In the first step, I considered the sentencing framework for s 323 of the Penal Code for a first-time offender who pleads guilty: *Low Song Chye v Public Prosecutor and another appeal* [2019] 5 SLR 526 at [77], reproduced as follows:

Band	**Hurt caused**	**Indicative sentencing range**
1	Low harm: no visible injury or minor hurt such as bruises, scratches, minor lacerations or abrasions	Fines or short custodial term up to four weeks
2	Moderate harm: hurt resulting in short hospitalization or a substantial period of medical leave, simple fractures, or temporary or mild loss of a sensory function	Between four weeks' to six months' imprisonment
3	Serious harm: serious injuries which are permanent in nature and/or which necessitate significant surgical procedures	Between six to 24 months' imprisonment

224 I begin with the hurt caused. The Prosecution asserted that the injury was serious. I recognised that Dr Kang testified that if a heated spoon had been placed on the palm causing a blister, this would have been a partial thickness burn.[208] However, Dr Chan also testified that it was not possible to identify which burns were due to the later scalding incidents and which would have been

[208] NE 15 November 2019 at p 10, ln 7–9.

caused by the spoon.[209] Given this equivocation in the Prosecution's evidence, I concluded that there would have been a blister and a partial thickness burn, but the extent of the injury was not known. I placed this at the lower end of Band 2, giving an indicative sentence of around four weeks' imprisonment simply based on the hurt caused. In the second step, I noted that the use of a heated spoon was serious for the pain that it would cause, and also had the potential for greater harm if it had been pressed against the Child's hand for any longer period of time, given its nature as a heated substance. An uplift of around three months' imprisonment would have been warranted, less than that given in *Ng Soon Kim* because the risk to third parties and potential harm overall was lower. Third, I considered the aggravating factors in this case. Here, I noted that the Child was only five years old, that this offence was an abuse of the trust given to Ridzuan as the Child's father, and that this was part of a continuing abusive relationship. A further uplift of around five months' imprisonment would have been warranted. In my judgment, a sentence of nine months' imprisonment each was therefore justified for D5 and D8.

225 Charge D6 was under s 5(1) of the CYPA. Ridzuan had flicked ashes from a lit cigarette onto the Child's arm and used a hanger to hit him on the palm. Counsel for Ridzuan sought a sentence of two weeks' imprisonment, while the Prosecution sought a sentence of 9 months' imprisonment. I agreed with the Prosecution. This offence should be seen in its context of the preceding offences of bullying and intimidation. The heat from the ash, similar to a heated spoon, would have been painful and terrifying. The indiscriminate and arbitrary

[209] NE 13 November 2019 at p 40, ln 15–25.

use of ordinary household items would increase the psychological trauma for the Child.

C5A and D7A

226 I turn to perhaps the most egregious of the offences in this category. Azlin and Ridzuan were angry at the Child and scolding him. Azlin pushed him, and falling, he hit his head on the wall, resulting in bleeding from his head. Ridzuan then gave a "very hard punch" on the Child's nose.[210] Azlin noted that the Child was missing two front teeth and that his nose was flat as a result. I further noted that Dr Chan had observed lacerations on the upper lip, comminuted fractures of the nasal bone, and fractures of the alveolar process of the maxilla.[211] These could only be attributed to this instance since the other acts of abuse were not directed at the Child's face. These acts were charged under s 5(1) punishable under s 5(5)(*b*) of the CYPA.

227 The Prosecution submitted for sentences of at least one year's imprisonment for both Azlin and Ridzuan.[212] Counsel for Ridzuan sought a sentence of ten months' imprisonment,[213] while counsel for Azlin sought a sentence of six months' imprisonment.[214]

228 In the case of *Mohd Iskandar bin Abdullah v Public Prosecutor* MA 187/1998 (cited in *Firdaus* ([184] *supra*) at [23] and *Public Prosecutor v BDB*

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210 P200 at para 42: AB at p 315.

211 P169: AB at p 54.

212 Prosecution's Written Submissions on Sentence at para 64.

213 Ridzuan's Written Submissions on Sentence at para 55.

214 Azlin's Written Submissions on Sentence at p 6.

[2016] 5 SLR 1232 at [12]), the accused had punched one of his children on the cheeks and beat the other child with a belt buckle until it broke off. He also kicked the latter in the head, causing a temporary loss of consciousness. The accused pleaded guilty and was sentenced to 18 months' imprisonment per charge. In *Firdaus*, Chan CJ upheld a sentence of one years' imprisonment where the accused had punched the child with "great force": at [3], on the basis that it was a "one-off instance of abuse": *Firdaus* at [24]. In my judgment, a sentence of a year's imprisonment would be appropriate. In this instance, fractures were caused to the Child. Further, this was a group assault, where both *father and mother* assaulted the Child, who was utterly defenceless: *BDB* ([181] *supra*) at [68] (in the context of s 325 of the Penal Code, but the principle remains the same here). As both Azlin and Ridzuan were involved at the same time and these acts were done in furtherance of their common intention, and given my observations on their joint responsibility as parents, I did not find it appropriate to distinguish between them in terms of sentence. A sentence of one years' imprisonment each was therefore appropriate for C5A and D7A.

C6 and D9

229 I turn finally to charges C6 and D9, in which Azlin and Ridzuan put the Child into a cat cage. The Prosecution submitted that sentences of one year's imprisonment were appropriate,[215] while Azlin's counsel sought a sentence of between eight to twelve months,[216] and Ridzuan's counsel argued that two weeks' imprisonment was sufficient.[217]

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215 Prosecution's Written Submissions on Sentence at para 67.

216 Azlin's Written Submissions on Sentence at p 7.

217 Ridzuan's Written Submissions on Sentence at para 56.

230 Counsel for Ridzuan argued that "[the Child] had a fan in front of him and could watch the television".[218] I mention this here only as an example of how submissions which demean the suffering of victims are inappropriate.

231 For these charges, there were multiple factors at play. Physical injury was caused to the Child (see [49] above). These followed upon earlier injuries, which increased his suffering: because of the earlier scalding which denuded his skin, when he was inside the cat cage, he complained of being cold. The cat cage itself was not large enough for him to stand upright or lie stretched out, except diagonally. He was locked into the cage and let out to be fed. This would have been a terrible experience for the Child, both physically uncomfortable and injurious as well as degrading. He was in the cage for approximately 11 hours in total. In my judgment, this act of abuse called for significant sentence. While the hurt was not as significant as in C5A/D7A, s 5(1) of the CYPA was broader than a hurt offence like s 323 of the Penal Code and, in my view, the nature of the ill-treatment could encompass the various factors above beyond physical injury. I sentenced Azlin and Ridzuan to one year's imprisonment for their respective charges.

The aggregate sentence

232 Having determined the appropriate sentence for each offence, the next consideration is how the individual sentences should run together. As Menon CJ summarised in *Public Prosecutor v Raveen Balakrishnan* [2018] 5 SLR 799 ("*Raveen*") at [98(b)]:

> In this regard, the starting point of the analysis is whether the offences are unrelated and this is determined by considering whether they involve a single invasion of the same legally protected interest … *As a general rule, sentences for unrelated offences should run consecutively*, while sentences for offences that form part of a single transaction should run concurrently, subject to the requirement in s 307(1) of the CPC. If there is a mix of related and unrelated offences, the sentences for those offences that are unrelated should generally run consecutively with one of the sentences for the related offences … This general rule may be departed from so long as the sentencing court applies its mind to consider whether this is appropriate and explains its reasons for doing so. Statutory provisions may also abridge the operation of the general rule … [citations omitted; emphasis added]

233 In the present case, each of the charges is for a distinct act of abuse. As noted by Menon CJ in *Seng Foo Building Construction Pte Ltd v Public Prosecutor* [2017] 3 SLR 201 at [66], the court may consider such factors as "proximity in time, proximity of purpose, proximity of location of the offences, continuity of design and unity (or diversity of the protected interests)", but ultimately, the determination is "one of common sense". The distinct and episodic nature of the separate acts, in the context of their proximity, should be adequately reflected in how the offences are characterised.

Unrelated precedents relating to death from abuse

234 Before I come to the overall sentence imposed in this case, I first distinguish various precedents cited where lower sentences were imposed for death to children. A few concerned s 304(*b*) of the Penal Code where the prevailing statutory maximum was at the time ten years' imprisonment (although it has been increased to 15 years' imprisonment since 1 January 2020): *AFR* ([179] *supra*); *Public Prosecutor v Mohd Ismail bin Abdullah @ Nai Henry* HC/CC 37/1994; *Public Prosecutor v Devadass s/o Suppaiyah* HC/CC 41/1997. Counsel for Ridzuan cited the global sentences in *BDB*

([181181] *supra*) and *Firdaus* ([184] *supra*), which were 14 years' and six months' imprisonment and 12 years' imprisonment and 12 strokes of the cane respectively, to argue that the sentence should not be significantly greater than either of these global sentences. *Firdaus* may be distinguished on the basis that s 325 of the Penal Code (Cap 224, 1985 Rev Ed) had a maximum imprisonment term of seven years. It was therefore not a helpful authority. *BDB* also concerned a s 325 of the Penal Code involving death, for which charge a sentence of nine years' and six months' imprisonment was imposed: *BDB* at [128], while the present case concerned multiple offences under s 326 of the Penal Code.

235 In my view, a direct comparison with these cases was not helpful. First, different provisions were used, with different statutory maximum sentences. The number and severity of charges were also wholly different. These were far more severe for the case at hand. Secondly, sentencing is highly fact-specific, and the factual context in those cases were wholly different from the one at hand. While each may have resulted in death eventually, that fact alone was part of a wider factual matrix. Thus, for culpable homicide, for example, the Court of Appeal cautioned in *Lim Ghim Peow* ([181] *supra*) at [55] that "comparisons with the sentences imposed in individual cases are of limited utility, given the wide variety of circumstances in which offences of culpable homicide are committed" and referred to the observation of the Court of Appeal in *Public Prosecutor v Tan Kei Loon Allan* [1998] 2 SLR(R) 679 at [33] that sentencing for culpable homicide should, for the same reason, remain a matter within the trial judge's discretion and be left to be determined on the facts of each particular case. This rationale applies with greater force to s 326 of the Penal Code which has a even wider range of circumstances.

The consecutive sentences

236 In *Shouffee* ([188] *supra*), Menon CJ stated at [81(j)] that in exceptional cases, a particular public interest may make it appropriate to impose more than two sentences consecutively. The particular public interest relevant in the present case has been detailed at [178]. The Prosecution submitted that this was appropriate for Azlin. I was of the view that it was also additionally appropriate for Ridzuan. The abuse lasted some four months, was repeated and escalated with each incident. In particular, after the second scalding incident, it was wholly inexcusable that the parents did not secure urgent and immediate medical attention.

237 In my view, justice was best served by running consecutively the following three sentences for these offences committed jointly by Azlin and Ridzuan, which I set out here in their chronological order:

(a) For the second scalding incident (charges C1B3 and D1B2 respectively): 12 years imprisonment for each accused. For Ridzuan, 12 strokes of the cane. For Azlin, six months' imprisonment in lieu of caning.

(b) For the cat cage incident (charges C6 and D9 respectively), which I consider extremely cruel, given the size of the cage, the exposed wiring and the size of the child: one year's imprisonment for each accused.

(c) For the fourth scalding incident (charges C1B1 and D1B1 respectively): 14 years' imprisonment for each accused. For Ridzuan, 12 strokes of the cane. For Azlin, six months' imprisonment in lieu of caning.

238 The total sentence for Azlin was therefore 27 years' imprisonment and an additional 12 months' imprisonment in lieu of caning. This was the total sentence that the Prosecution advanced for Azlin in the event that I disagreed with a life term. For Ridzuan, the total term of imprisonment was 27 years, and 24 strokes of the cane were ordered. In terms of parity, this was the equivalent sentence for Ridzuan.

239 In so deciding, I was of the view that the total sentence was not disproportionate to the culpability of Azlin or Ridzuan, as cautioned in *Angliss Singapore Pte Ltd v Public Prosecutor* [2006] 4 SLR(R) 653 at [25]. I was also mindful of the totality principle enunciated in *Shouffee*, that the aggregate sentence must not be crushing or out of step with the offender's past record and future prospects (see *Shouffee* at [54] and [57]). Both offenders were 28 years of age at time of sentencing. I was of the view that the aggregate sentence was proportionate to the offenders' overall criminality, and not crushing.

The concurrent sentences

240 The terms of imprisonment for the remaining sentences were ordered to run concurrently.

Conclusion

241 In the result, I sentenced Ridzuan to a total term of 27 years' imprisonment, and 24 strokes of the cane. Azlin was sentenced to a term of 27 years' imprisonment, and an additional 12 months' imprisonment in lieu of caning.

242 For Azlin, the specific sentences for which terms of imprisonment were to run consecutively were therefore as follows:

(a) C1B3 (Incident 2): 12 years' imprisonment and six months' imprisonment in lieu of caning;

(b) C6: one year's imprisonment; and

(c) C1B1 (Incident 4): 14 years' imprisonment and six months' imprisonment in lieu of caning.

243 Terms of the imprisonment for the following offences were ordered to run concurrently with the above:

(a) C1B2: eight years' imprisonment and three months' imprisonment in lieu of caning;

(b) C1B4: 12 years' imprisonment, and six months' imprisonment in lieu of caning;

(c) C2: six months' imprisonment;

(d) C3: six months' imprisonment; and

(e) C5A: one year's imprisonment.

244 For Ridzuan, the specific sentences for which terms of imprisonment were to run consecutively were as follows:

(a) D1B2 (Incident 2): 12 years' imprisonment and 12 strokes of the cane;

(b) D9: one year's imprisonment; and

(c) D1B1 (Incident 4): 14 years' imprisonment and 12 strokes of the cane.

245 Terms of the imprisonment for the following offences were ordered to run concurrently with the above:

(a) D2: six months' imprisonment;

(b) D3: six months' imprisonment;

(c) D5: nine months' imprisonment;

(d) D6: nine months' imprisonment;

(e) D7A: one year's imprisonment; and

(f) D8: nine months' imprisonment.

246 Ridzuan's term of imprisonment was backdated to the date of his remand, being 24 October 2016. For the same reason, Azlin's term of imprisonment was backdated to 27 October 2016.

Valerie Thean
Judge

Tan Wen Hsien, Daphne Lim and Li Yihong (Attorney-General's Chambers) for the Prosecution;
Thangavelu (Trident Law Corporation), Tan Li-Chern Terence (Robertson Chambers LLC) and Ng Huiling Cheryl (Intelleigen Legal LLC) for the first accused;
Eugene Singarajah Thuraisingam and Syazana Yahya (Eugene Thuraisingam LLP) for the second accused.
