IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 15

Magistrate's Appeal No 9255 of 2018

Between

Bong Sim Swan, Suzanna

… Appellant in HC/MA 9255/2018/01
and HC/MA 9255/2018/04
… Respondent in HC/MA 9255/2018/02
and HC/MA 9255/2018/03

And

Public Prosecutor

… Respondent in HC/MA 9255/2018/01
and HC/MA 9255/2018/04
… Appellant in HC/MA 9255/2018/02
and HC/MA 9255/2018/03

GROUNDS OF DECISION

[Criminal Law] — [Assault] — [Maid abuse]
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Chua Lee Ming J:

Introduction

1 Mdm Bong Sim Swan Suzanna ("the Accused") was tried and convicted in the District Court on the following charge ("the Charge"):

> You … are charged that you, on the 17th day of May 2015, at Blk 453D Fernvale Road #23-547, Singapore 794453, being the employer of a domestic maid named Than Than Soe, did voluntarily cause hurt to the said Than Than Soe, to wit, by using a glass medicated oil bottle to hit her a few times on her left cheek, and you have thereby committed an offence punishable under Section 323 read with Section 73(1)(a) and Section 73(2) of the Penal Code (Cap 224, 2008 Rev. Ed.).

2 She was sentenced to 20 months' imprisonment and ordered to pay a compensation sum of $38,540.40 (in default, seven weeks' imprisonment) to the domestic maid, Ms Than Than Soe ("the Victim"). The Accused appealed against conviction and sentence, as well as the compensation order. The Prosecution appealed against the sentence and the compensation order.

3 I dismissed the Accused's appeal against conviction but allowed her appeals against sentence and the compensation order. I reduced the sentence of imprisonment to eight months and the compensation sum to $1,000 (in default, three days' imprisonment). I dismissed the Prosecution's appeals.

Background

4 At all material times, the Accused was the employer of the Victim, a Myanmar national. The Victim began working for the Accused in May 2013, first, at the home of the Accused's parents in Yishun ("the Yishun flat"), and subsequently, at the Accused's own flat at Blk 453D Fernvale Road #23-547, Singapore 794453 ("the Fernvale flat"). According to the Agreed Statement of Facts, the Accused was 45 years old and the Victim was 27 years old as at 6 July 2017.[1]

5 On 18 May 2015, at about 9.51am, the Victim called the Police "999" hotline stating: "My madam always beat me. Please help me. No need ambulance".[2] The incident was alleged to have taken place at the Fernvale flat.

6 Two police officers responded to the report and went to the Fernvale flat. The Victim was brought to the police station and three photographs were taken of a bruise on her face.[3]

7 On the same day, the Victim was brought to Khoo Teck Puat Hospital ("KTPH") for medical attention. In a report dated 23 July 2015,[4] Dr Kolhe Lokesh Krishnaji, a Resident Physician at the Acute and Emergency Care Centre of KTPH, stated that on examination, the Victim had a 3 cm bruise on her left zygoma that was tender. She was diagnosed as having suffered a contusion secondary to the alleged assault. The Victim was discharged the same day.

8 After spending one night at the police station, the Victim was sent to the Good Shepherd Centre where she remained until the trial. The Good Shepherd Centre provides shelter and help to women who have been abused. Whilst at the Good Shepherd Centre, the Victim was brought to see an optician because she could not read some documents that she was required to sign. The optician suggested that the Victim should see an eye specialist in hospital.

9 On 25 May 2015, the Victim was brought to KTPH where she was examined by Dr Tan Sye Nee. The medical report dated 27 July 2017[5] stated that the Victim complained of blurring of vision for two years and that her left eye was in constant pain and had watery discharge. The Victim was also reviewed by an eye doctor who found that her left eye had "remnant vision of 5% with likely traumatic blindness". Her right eye was "thought to have cataract". The Victim was discharged with a follow up appointment. According to the Victim, KTPH scheduled an operation a month later. The Sisters at the Good Shepherd Centre felt that the Victim should not wait for a month for her operation and decided to bring her to the National University Hospital ("NUH").

10 On 1 June 2015, the Victim was brought to NUH where she was examined by a doctor in the Emergency Department and a doctor from the Department of Ophthalmology. The next day, she was examined by Dr Chee Ka Lin Caroline ("Dr Chee"), Head of Vitreoretinal Service in the Department of Ophthalmology at NUH. The Victim was found to have serious problems with her eyes. She had cataract and mild vitreous haemorrhage in both eyes. In addition, the left eye had a subtotal retinal detachment (three-quarters or more of the retina had detached) associated with a retinal dialysis (*ie*, a retinal tear). The Victim was told she needed surgery.

11 Between 3 June 2015 and 9 November 2016, the Victim underwent six operations to treat her eyes. The operations included one to repair a macular hole, which was discovered during the first operation. The macular is the centre part of the retina.[6]

12 In her report dated 28 September 2017,[7] Dr Chee set out the findings on examination of the Victim, the operations that the Victim underwent, and concluded as follows:

> (a) The Victim's right eye had recovered near normal vision although she required spectacles to see clearly. The amount of disability was estimated at 22% loss. There was a good probability that this eye would remain with good vision in the long term; there was however a risk that she may develop glaucoma (which can result in loss of vision) in the future.
>
> (b) The left eye had reduced vision, with a disability calculated at 48% loss. There was permanent visual loss because of damage to the retina and macular hole as a result of the retinal detachment. Dr Chee "hoped" that the vision in the left eye would remain stable. The left eye also had a risk of developing glaucoma with its attendant visual loss in the future.

13 By the time of the trial, the Victim had incurred medical expenses amounting to $45,907.65. Of this amount, the Good Shepherd Centre paid $19,329.10. Another $6,208.15 was paid by person/s unknown, leaving an amount of $20,370.40 still owing to NUH.

14 The Accused did not pay the Victim her salary during her employment. The Victim received her salary for two years, in a lump sum, at the Ministry of Manpower some time after 17 May 2015.

Accused's appeal against conviction

15 The evidence adduced at the trial is dealt with in detail in the District Judge's Ground's of Decision (the "GD"): *Public Prosecutor v Bong Sim Swan Suzanna* [2018] SGMC 75.

16 In brief, the Victim testified that four months after she was employed, the Accused began finding fault with her. Scoldings developed into incidents of violence, such as hitting her, pulling her ear and punching her eye. The Victim also testified that the Accused would slap her and pull her hair "two to three times a week".

17 The Victim testified to the following incidents at the Yishun flat:

(a) The Accused punched her eyes, causing a blood vessel in her eye to burst. The Victim told the Accused's mother who took her to an optician after the redness in the Victim's eye had subsided.

(b) The Accused hit her with a slipper, after she overslept.

(c) The Accused rubbed her face with curry, pulled her hair and slapped her because she did not heat up the curry for dinner.

18 The Victim also testified to the following incidents at the Fernvale flat:

(a) The Accused continued to punch her eyes "every time [the Accused was] angry". This happened about two to three times a week. The Accused would punch both eyes but mostly punched her left eye.

(b) Once, after the Accused returned from Korea, she told the Victim the bathroom was not clean and pulled the Victim's hair, kicked her waist, slapped her face and punched her. The Victim's nose bled.

19 With respect to the Charge, the Victim testified that she was having a very bad headache on the day in question and applied medicated oil. When the Accused returned, she complained that the "whole house was smelly". The Victim explained that she had applied medicated oil to her head. The Accused became angry and used the base of the medicated oil bottle (which was made of glass) to punch the Victim's face, below her left eye, a few times. The Victim's face became blue-black below her eye and there was swelling.

20 The next day, after the Accused left for work, the Victim called the police.

21 The Accused denied having physically abused the Victim. With respect to the Charge, the Accused admitted she was angry at the Victim for taking her medicated oil without permission but denied punching the Victim. The Accused claimed that she merely asked the Victim to throw the empty medicated oil bottle away.

22 After examining the evidence in detail, the District Judge preferred the Victim's testimony. She found the Victim to be a credible witness. She accepted the Victim's evidence that although not altogether a bad employer, the Accused was "maybe one day good, happy and the next day, … unhappy and angry".

23 The Accused submitted that the District Judge erred in that

(a) she relied on uncharged offences to convict the Accused;

(b) her finding that the Victim's evidence was internally and externally consistent was against the weight of the evidence; and

(c) her rejection of the evidence of the Accused and the Accused's mother was against the weight of the evidence.

24 I rejected the Accused's submissions.

25 First, the District Judge correctly noted that notwithstanding the past instances of physical abuse alleged by the Victim, she needed to be satisfied that the Accused did cause hurt to the Victim on 17 May 2015 by using a glass medicated oil bottle to hit the Victim's face, as stated in the Charge. The District Judge treated the Victim's testimony of past instances of physical abuse as evidence of the background to the incident in the Charge; she did not rely on the past incidents to convict the Accused.

26 The Accused submitted that by relying on the past incidents in her assessment of the credibility of the Accused and the Victim, the District Judge had committed an error of law in that she had relied on uncharged offences to convict the Accused. I disagreed with the Accused's submission. In my view, the District Judge was entitled to rely on the past incidents in assessing the credibility of the witnesses, including the accused and the victim. The background to an alleged offence may but need not necessarily involve facts which could constitute separate offences. A judge is entitled to take all such facts into consideration in assessing the credibility of the witnesses, including the accused and the victim. I saw no reason why the consideration of

background facts in assessing credibility should depend on whether these facts could constitute separate offences. I note also that under ss 14 and 15 of the Evidence Act (Cap 97, 1997 Rev Ed), the accused's acts on occasions other than the one which gave rise to the charged offence, are admissible to prove his guilt in appropriate circumstances: see Jeffrey Pinsler, SC, *Evidence and the Litigation Process* (LexisNexis, 5th Ed, 2015) at para 3.001.

27 There is also case precedent which supports the proposition that all background facts can be considered in assessing the credibility of the witnesses, including the accused and the victim. In *PP v Rosman bin Anwar* [2015] SGHC 247, the accused persons (who were husband and wife) were convicted on charges of voluntarily causing hurt to their domestic maid. The victim testified that the accused persons inflicted hurt on her frequently but she could only remember four specific incidents which together formed the subject-matter of the charges against the accused persons. The victim kept a diary which detailed some other undated incidents in which she was slapped or verbally abused by the accused persons. Further, in their statements to the police, the accused persons' two sons also stated that their parents slapped the victim "two to three times" a week, although they later denied this at trial. The accused persons claimed that they had treated the victim well at all times. The High Court decided as follows (at [32]):

> The District Judge thought that [the diary] and the police statements of the accused persons' two sons corroborated the complainant's testimony … I think that he was correct to take that view. Even though neither [the diary] nor the two sons' statements point directly towards the specific instances of infliction of hurt that were the subject-matter of the charges against both accused, they strongly suggest that the accused persons sought to suppress the truth in advancing their version of events, which was that they had treated the complainant well at all times. This suggests, in turn, that the complainant's account of having been abused generally is true, and that

> increases the likelihood that her account of specific occurences of abuse is also true. …

28 Second, the District Judge found the Victim's evidence to be internally and externally consistent. She accepted that there were some discrepancies in the Victim's evidence but concluded that they did not affect the credibility of the Victim. She also rejected the evidence of the Accused and her mother. The District Judge found the Accused's evidence to be unsatisfactory in some material respects; certain aspects of her evidence were also contradicted by the Accused's mother. The District Judge found that the Accused's mother was not an objective witness. In my view, for the reasons stated in the GD, the District Judge's findings cannot be said to be plainly wrong or against the weight of the evidence.

29 The Accused also submitted that the District Judge disregarded several of her submissions that dealt with the Victim's credibility. In my view, there was no basis for this submission. The substance of the Accused's submissions were addressed by the District Judge in her GD.

30 I saw no reason for appellate intervention and accordingly, I dismissed the Accused's appeal against her conviction.

Appeals against sentence

31 An offence of voluntarily causing hurt under s 323 of the Penal Code is punishable with imprisonment of up to two years, or with fine of up to $5,000, or with both. Pursuant to s 73(2) of the Penal Code, where the victim is a domestic maid and the offender is the employer or a member of the employer's household, the court may sentence the offender to one and a half times the amount of punishment that he would otherwise have been liable for under s 323.

32 The Accused argued that the sentence of 20 months' imprisonment was manifestly excessive and submitted that she should be given the maximum fine of $5,000 instead. On the other hand, the Prosecution argued that the sentence was manifestly inadequate and submitted that the Accused should be given the maximum sentence of three years' imprisonment provided under s 323 read with s 73(2) of the Penal Code.

The Tay Wee Kiat framework

33 In *Tay Wee Kiat and another v Public Prosecutor and another appeal* [2018] 4 SLR 1315 ("*Tay Wee Kiat*"), a three-Judge High Court set out the following sentencing framework to be applied in cases of domestic maid abuse (at [70]–[75]):

> (a) The court first determines whether the harm caused to the victim was predominantly physical or both physical and psychological. If the harm was predominantly physical, the court should consider the degree of harm as well as other aggravating and mitigating factors in determining the appropriate sentence, bearing in mind other maid abuse precedents and that a custodial sentence is almost invariably warranted in cases of domestic maid abuse where there has been any manner of physical abuse.
>
> (b) Where the harm was both physical and psychological, the court identifies the degree of harm caused in relation to each charge. The court next determines an indicative sentence based on the following table:

	Less serious physical harm	**More serious physical harm**
Less serious psychological harm	3–6 months' imprisonment	6–18 months' imprisonment

More serious psychological harm	6–18 months' imprisonment	20–30 months' imprisonment

The court then adjusts the sentence for each charge in the light of other aggravating or mitigating circumstances.

(c) Finally the court decides which sentences to run consecutively and which concurrently, in accordance with the principles set out in *Mohamed Shouffee bin Adam v Public Prosecutor* [2014] 2 SLR 998 at [27]–[82].

The approach taken by the District Judge

34 In sentencing the Accused, the District Judge first concluded that she could not exclude the surrounding circumstances of the offence, including the details of the past instances of abuse. Consequently, she took into consideration the facts relating to the past instances of abuse.[8]

35 The District Judge next took into consideration the following injuries suffered by the Victim ("the Injuries"):[9]

(a) Retinal detachment in the left eye as a result of retinal dialysis.

(b) Bilateral vitreous haemorrhage in both eyes.

(c) Bilateral posterior subcapsular cataracts in both eyes.

(d) Macular hole in the left eye.

36 Based on the above injuries, the District Judge concluded that the physical harm caused to the Victim fell within the "more serious physical harm" category in the *Tay Wee Kiat* framework.[10]

37 As for psychological harm, the District Judge found that although the Victim worked in an exploitative and abusive environment, there was no evidence that the Victim had been subjected to humiliating or degrading treatment that stripped her of her basic dignity as a human being. The District Judge concluded that the degree of psychological harm was at the higher end of the range in the "less serious psychological harm" category.[11]

38 Applying the *Tay Wee Kiat* framework, the District Judge arrived at an indicative sentence of between 15 and 18 months' imprisonment.[12] The District Judge then decided on a final sentence of 20 months' imprisonment after taking into consideration the following:[13]

(a) Aggravating circumstances:

(i) The Accused knew the Victim had been previously physically assaulted in the facial and eye regions. The Accused would also have been aware that the Victim was having problems with her eye because the Victim had complained to her about her worsening eyesight. On 17 May 2015, the Accused chose to strike the Victim on her face near her eye despite knowing of the previous assaults to the same region, and despite having been put on notice that the Victim had trouble seeing. The District Judge found the Accused's culpability to be high.

(ii) The Accused had used a weapon (*ie*, the glass medicated oil bottle) and the injury was inflicted on a vulnerable part of the Victim's body (*ie*, the face and eye area).

(b) Mitigating circumstances: The District Judge found no mitigating circumstances.

The injuries from previous instances of abuse

39 Before me, it was common ground that as a general principle, an offender may only be sentenced for offences of which he has been convicted and that in doing so, regard may be had only to any other charges that the offender has admitted to and consented to being taken into consideration for the purpose of sentencing. This fundamental principle is well established: see *Chua Siew Peng v Public Prosecutor and another appeal* [2017] 4 SLR 1247 ("*Chua Siew Peng*") and the cases referred to at [74]–[78]. Prior offending conduct for which no charge has been brought is to be disregarded even if the offender has admitted to such conduct: *Chong Yee Ka v Public Prosecutor* [2017] 4 SLR 309 ("*Chong Yee Ka*") at [47]; referred to in *Chua Siew Peng* at [77]. As the High Court emphasised in *Chua Siew Peng* (at [78]), if the Prosecution wants the sentencing court to consider past offending conduct, it must draw up the necessary charge or charges in respect of that conduct after ascertaining that there is sufficient evidence available to prove the charges. These charges (if not proceeded with) may then be taken into consideration at the sentencing stage if the accused admits these charges and consents to them being taken into consideration.

40 However, in *Chua Siew Peng*, the court also held (at [84]) that a sentencing court may take into consideration facts which have sufficient nexus to the commission of the offence, irrespective of whether such facts could constitute separate offences for which the accused was not charged. The court explained that sufficient nexus will generally be present if it (a) concerns a fact in the immediate circumstances of the charged offence, or (b) is a fact relevant to the accused's state of mind at the time the offence is committed. I respectfully agree with the former and would emphasize that only facts relating to the *immediate* background to the offence may be considered: see *Chong Yee Ka* at

[45], referred to in *Chua Siew Peng* at [83]. However, as explained below, in my view, there are certain limitations to the latter proposition.

41 In *Chua Siew Peng*, the accused was convicted of one charge for voluntarily causing hurt to her domestic helper by slapping her, and of one charge for wrongfully confining the domestic helper in her place of employment. In sentencing her for the offence of voluntarily causing hurt, the court took into consideration the fact that the accused had also pulled the victim's hair. The court found sufficient nexus to take the hair-pulling into account because it was committed contemporaneously with the slap (at [87]). As for the offence of wrongful confinement, the court held that the previous separate instances of confinement over a period of 11 months did not have sufficient nexus to the charged offence, which only related to confinement on a single day (at [88]–[90]).

42 In the present case, the District Judge concluded that the physical harm was "more serious" because she took the Injuries into consideration. She acknowledged that the Accused had not been charged with any of the previous incidents of abuse but concluded that they had sufficient nexus to the charged offence. The District Judge gave two reasons.

43 First, the District Judge was of the view that the previous incidents formed part of the circumstances surrounding the commission of the charged offence.[14] I disagreed with the District Judge's conclusion.

44 The charge against the Accused related to her acts on 17 May 2015. The previous incidents of abuse were separate incidents that took place before 17 May 2015. In fact, according to the Victim, the abuse started some four months after she started working for the Accused in May 2013. Three of the specific

instances of abuse that the Victim testified to happened at the Yishun flat (see [17] above). None of the previous incidents of abuse could be said to relate to the immediate circumstances or immediate background to the charged offence. In the same way that the previous instances of confinement were not taken into consideration in *Chua Siew Peng*, the previous instances of abuse in the present case should not have been taken into consideration in sentencing the Accused.

45 Second, the District Judge agreed with the Prosecution that the frequent abuse was responsible for the Victim's "enfeebled physical state", and made the Victim "especially susceptible to further injury at the time when the final blows were struck by the Accused on 17 May 2015".[15] The District Judge concluded that the Accused's acts on 17 May 2015 actually caused further injury in the form of blindness.

46 The Victim's problems with her vision were a consequence of the Injuries. However, the evidence did not show that the Accused's acts on 17 May 2015 caused the Injuries. Dr Chee's evidence was that:

(a) the retinal detachment (which was the main injury relied upon by the Prosecution) probably happened "at least 3 to 4 weeks, as long as several months" before she examined the Victim on 2 June 2015;[16]

(b) the Victim's type of cataract usually did not occur immediately, it was "unlikely that it would have happened, say, 1 or 2 weeks ago", and it was "probably longer than that".[17]

47 The Victim herself gave a history of blindness in her left eye, which began five months earlier and had been worsening.[18]

48 As for the District Judge's reference to the Victim's susceptibility to further injury on 17 May 2015, that seemed to be a reference to the thin skull rule. The thin skull rule (also known as the eggshell skull rule) is a relevant consideration when sentencing an offender for criminal negligence: *Public Prosecutor v Hue An Li* [2014] 4 SLR 661 at [75]. I agreed with the Prosecution that it should also be a relevant consideration in sentencing offenders for causing hurt under s 323. However, all that the rule does is to allow the court to take into account the full extent of the harm caused by a particular criminal act, even though part of the harm would not have been suffered but for the victim's pre-existing conditions before the criminal act was inflicted. In the context of the present case, this means there must be a causative link between the Accused's acts on 17 May 2015 and the Injuries.

49 However, as already mentioned, there was no evidence that any of the Injuries were caused by the Accused's acts on 17 May 2015. This was not a case where the Accused's acts on 17 May 2015 had caused the retina to detach or had made the retinal detachment worse. Had that been the case, it would not have been a defence for the Accused to say that her acts on 17 May 2015 would not have caused the retinal detachment or made it worse, but for the fact that the Victim already had a tear in her retina or a retinal detachment.

50 The evidence was that the retinal detachment was a pre-existing condition, having occurred before the incident on 17 May 2015. The cataracts too were pre-existing conditions. The retinal detachment and cataracts may have been caused by the previous instances of abuse but the Accused had not been charged for those previous instances.

51 Further, although Dr Chee acknowledged that it was "possible" that the incident on 17 May 2015 could have made the Injuries worse, she was unable

to say that it did since she did not have the opportunity to examine the Victim before the 17 May 2015 incident.[19] The Victim was brought to NUH and examined by Dr Chee only two weeks after the 17 May 2015 incident. In my view, Dr Chee's evidence was not sufficient to prove that the acts on 17 May 2015 did make the Victim's existing condition worse. Dr Chee's evidence therefore did not establish a causative link between the 17 May 2015 incident and the Injuries. In my view, the evidence did not support the District Judge's conclusion that the 17 May 2015 incident caused further injury to the Victim in the form of blindness.

52 Accordingly, in my view, it was wrong to sentence the Accused by taking into account the Injuries. To do so was to punish her for the previous instances of abuse when she had not been charged for them.

The Accused's knowledge of the previous injuries

53 As stated at [38(a)(i)] above, one of the aggravating factors that the District Judge took into consideration was the fact that on 17 May 2015, the Accused chose to strike the Victim on her face near her eye despite knowing of the previous assaults to the same region, and despite having been put on notice that the Victim had trouble seeing. In choosing to strike the Victim at the same facial area, the Accused increased the risk of greater injury to the Victim's eye. The Accused's knowledge or awareness meant that her culpability was therefore higher.

54 In considering the Accused's knowledge based on the previous assaults, the District Judge relied on the proposition in *Chua Siew Peng* that previous conduct (for which the offender had not been charged) can be taken into consideration if the facts are relevant to the accused's state of mind at the time

the offence is committed (see [40] above). As stated earlier, in my view, there are certain limitations to this proposition.

55 In *Chua Siew Peng*, the accused had confined the victim in her apartment. The victim decided to run away. She climbed out of a window and jumped onto the rooftop of an adjacent building, suffering multiple fractures in her feet and ankles in the process. At the trial, the evidence revealed that the victim had been wrongfully confined on other occasions prior to the date specified in the charge. The court held that these previous instances of confinement, for which the accused had not been charged, could not be taken into consideration when sentencing the accused for the charged offence, which only related to confinement on a single day. However, the court went on to hold (at [91] and [94]) that

> (a) the accused's knowledge of the previous instances of confinement was relevant to the consequence of the offence as well as the accused's state of mind at the time she committed the charged offence;
>
> (b) the past instances of confinement made the victim's mental state more vulnerable;
>
> (c) the accused must have been aware of the previous long periods of confinement and abusive treatment that the victim was continuously subjected to;
>
> (d) the wrongful confinement (that the accused was charged for) led to the victim jumping out of the residence to escape from her wrongful confinement, and thereby suffering serious injuries; and

(e) since the accused knowingly committed the charged offence on a victim with a significantly weakened mental state, her culpability was to that extent greater.

56 The court reasoned (at [92]) that the above approach did not indirectly take into account uncharged offences because the outcome would have been the same even if the previous instances of confinement had been committed by a third party and not the accused. The focus was solely on the accused's awareness of the victim's weakened mental state when she committed the offence for which she was charged.

57 I agreed with the statement in *Chua Siew Peng* that the accused's knowledge of the victim's vulnerability was a relevant consideration for purposes of sentencing. In *Chua Siew Peng*, the accused's knowledge of the victim's vulnerability was based on the accused's knowledge of the previous instances of confinement. However, the court did not explain the basis upon which the accused was said to have been aware of the previous confinements.

58 In my view, the basis for the accused's knowledge of the victim's vulnerability is important. That knowledge should not be taken into consideration unless it can be established independently of any potentially criminal conduct for which the accused has not been charged. In other words, that knowledge cannot be based solely on the fact that the accused had committed the previous acts for which she had not been charged. It seems to me that where such knowledge is attributed to the accused solely from the fact that the accused had committed the previous acts (for which she had not been charged), reliance on such knowledge would be no different from taking the previous acts into consideration.

59 The principle that a sentencing judge must take into account all circumstances relevant to the commission of the offence is subject to the more fundamental principle that a person cannot be punished for an offence that he has not been charged with. When the two principles conflict, the latter must in appropriate circumstances hold sway, since it is neither fair nor just to sentence a person for an offence with which he has never been charged or convicted: *R v Newman and Turnbull* [1997] 1 VR 146 at 150, cited in *Chua Siew Peng* at [79]. This is why a sentencing court cannot take the accused's knowledge of previous offending conduct into account if such knowledge exists simply because the accused committed the prior offending acts for which he has not been charged.

60 Turning then to the facts of the present case, in my view, it was wrong to take into consideration the Accused's knowledge of the Victim's vulnerability to further strikes on her face near her eye, if such knowledge was based solely on the fact that the Accused had previously struck the Victim in the same place.

61 That said, I agreed with the District Judge that the Accused's awareness of the Victim's worsening eyesight, *based on the Victim's complaints*, was an aggravating factor that could be taken into consideration. Reliance on the Victim's complaints of her worsening eyesight did not require the court to take the previous assaults into consideration.

Applying the Tay Wee Kiat framework to the facts

62 On the evidence, the only injury that could be said to have been caused by the Accused's acts on 17 May 2015 was the bruise on the Victim's face. For purposes of the *Tay Wee Kiat* framework, the physical harm therefore had to be in the "less serious" category. I agreed with the District Judge that the

psychological harm was also in the "less serious" category. I saw no reason to disturb the District Judge's finding that the Accused's treatment of the victim was not particularly humiliating or degrading.[20] Applying the *Tay Wee Kiat* framework, the appropriate indicative sentence in this case was five months' imprisonment.

63 I agreed with the District Judge's finding that there were no mitigating factors in this case. The District Judge found no evidence that the Accused was suffering from any disorder at the time of the offence. Her finding was fully justified.

64 In my view, the indicative sentence of five months' imprisonment ought to be adjusted upwards by an additional three months, after taking into consideration the following aggravating factors:

(a) the Accused's awareness of the Victim's worsening eyesight based on the Victim's complaints of the same;

(b) the fact that the Accused had used a weapon to inflict injury on a vulnerable part of the Victim's body.

I therefore imposed a final sentence of eight months' imprisonment.

Appeals against the compensation order

65 The District Judge ordered the Accused to pay a total amount of $38,540.40 comprising:

(a) $20,370.40 being the balance unpaid medical expenses. The District Judge rejected the Prosecution's submission that a

compensation order should be made in favour of the Good Shepherd Centre for the amount paid by the Centre;

(b) $10,000 for pain and suffering; and

(c) $8,170 being the Victim's loss of prospective earnings, computed at $430 per month for 19 months. The District Judge computed the 19 months from May 2015 (when the incident in the Charge occurred) to November 2016 (when the last surgical procedure was carried out).

66 Section 359(1) CPC provides as follows:

> **359**.—(1) The court before which a person is convicted of any offence shall, after the conviction, consider whether or not to make an order for the payment by that person of a sum to be fixed by the court by way of compensation to the person injured, or his representative, in respect of his person, character or property by —
>
> (a) the offence or offences for which the sentence is passed; and
>
> (b) any offence that has been taken into consideration for the purposes of sentencing only.

67 The Accused was convicted of the sole offence of voluntarily causing hurt to the Victim on 17 May 2015. The Accused was not charged for any of the previous acts of abuse. Therefore, the compensation order can be made only in respect of injury caused by the Accused's acts on 17 May 2015.

68 I had concluded that based on the evidence, the only injury that could be said to have been caused by the Accused's acts on 17 May 2015 was the bruise below the Victim's left eye (at [62] above). The compensation order made by the District Judge was in respect of the previous injuries which had not been shown to have a nexus to the offence for which the Accused was convicted.

There was no evidence of any medical expenses incurred or any loss of earnings suffered as a result of the bruise suffered on 17 May 2015. Accordingly, I set aside the District Judge's compensation order.

69 However, I ordered the Accused to pay the Victim the sum of $1,000 (in default, 3 days imprisonment) by way of compensation for pain and suffering in respect of the bruise.

70 I would only add that in any event, I agreed with the District Judge that s 359 CPC did not give her the power to make a compensation order in favour of the Good Shepherd Centre in respect of the medical expenses paid by the Centre. Section 359 provides for payment of compensation to "the person injured, or his representative". It was clear that the Good Shepherd Centre was neither. It might have been different if the Good Shepherd Centre had loaned the money to the Victim to enable her to pay her medical expenses. However, on the evidence, this was not the case.

Conclusion

71 For the reasons set out above, I

(a) dismissed the Accused's appeal against conviction;

(b) allowed the Accused's appeal against sentence, set aside the sentence of 20 months' imprisonment and substituted in its place a sentence of eight months' imprisonment;

(c) dismissed the Prosecution's appeal against sentence;

(d) allowed the Accused's appeal against the compensation order, set aside the compensation order of $38,540.40 and substituted in its place a compensation order for the sum of $1,000;

(e) dismissed the Prosecution's appeal against the compensation order.

Chua Lee Ming
Judge

Sui Yi Siong and Koh Swee Huang Flora (Eversheds Harry Elias LLP) for the appellant in MA 9255/2018/01 and MA 9255/2018/04 and the respondent in MA 9255/2018/02 and MA 9255/2018/03; Mohamed Faizal and Li Yihong (Attorney-General's Chambers) for the respondent in MA 9255/2018/01 and MA 9255/2018/04 and the appellant in MA 9255/2018/02 and MA 9255/2018/03.

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1 Exhibit PS1 (Record of Appeal ("ROA"), vol 2, pp 752–754).
2 Exhibit P1 (ROA, vol 2, p 755).
3 Exhibit P3 (ROA, vol 2, pp 757–758).
4 Exhibit P4 (ROA, vol 2, p759).
5 Exhibit P8 (ROA, vol 2, p 765).
6 ROA, vol 1, p 302 lines 20-21.
7 Exhibit P9 (ROA, vol 2, pp 766–770).
8 GD, at [93].
9 GD, at [99].
10 GD, at [101].
11 GD, at [106].
12 GD, at [106].

[13] GD, at [107]–[109], [116].
[14] GD, at [86]–[87].
[15] GD, at [89].
[16] ROA, vol 1, p 302 lines 5–12, p 343 lines 15–16.
[17] ROA, vol 1, p 320 line 25 to p 321 line 2.
[18] Exhibit P9 (ROA, vol 2, p 766).
[19] ROA, vol 1, p 331 lines 24–26.
[20] GD, at [104].