Public Prosecutor v Leong Soon Kheong
[2008] SGHC 208

Case Number : CC 24/2008

Decision Date : 13 November 2008

Tribunal/Court : High Court

Coram : Chan Seng Onn J

Counsel Name(s) : Amarjit Singh and Jean Chan Lay Koon (Attorney-General's Chambers) for the prosecution; Thangavelu (Straits Law Practice LLC) for the accused

Parties : Public Prosecutor — Leong Soon Kheong

Criminal Law

13 November 2008

Chan Seng Onn J:

1 Leong Soon Kheong ("the Accused") pleaded guilty to a charge of culpable homicide not amounting to murder under s 304(b) of the Penal Code (Cap 224, 1985 Rev Ed) ("PC") read together with s 149 of the PC. The maximum term of imprisonment for this offence is ten years. I sentenced the Accused to four years and nine months' imprisonment. The Public Prosecutor has filed an appeal against the sentence. I now give my reasons.

Brief facts

Confrontation of the deceased

2 On 15 February 2003, the deceased, Wong Dao Jing, an 18 year old first-year male student at Temasek Polytechnic, and two of his friends, Poh Wen Bin ("Wen Bin") and Lim Boon Kiat ("Boon Kiat"), were at an arcade in Lucky Chinatown Shopping Centre. Whilst playing on a game machine, the deceased spotted an unattended haversack next to the game machine. The deceased took the haversack and left the arcade shortly thereafter.

3 About five minutes later, two of the Accused's accomplices, Sean Leong Hung Chu ("Sean") and Teo Guan Kah, ("Teo"), were seen searching for the haversack. They confronted Wen Bin and Boon Kiat who informed them that the deceased had taken it. Sean and Teo then instructed Wen Bin to call the deceased to return the haversack, and Wen Bin did so.

4 The deceased returned to the arcade and handed the haversack to Sean and Teo who then passed it to Toh Chun Siong ("Toh"), another accomplice. Sean and Teo questioned the deceased as to why he had taken the haversack. After checking the contents of the bag, Toh claimed that "something" was missing from the haversack. This "something" was never specified.

5 Sean and Teo challenged the deceased to go for a talk at a stairwell. The latter agreed and followed Sean, Teo and Toh to the third storey staircase landing of the building. Wen Bin and Boon Kiat followed them out of concern for the deceased's safety.

6 At the stairwell, Sean, Teo and Toh surrounded the deceased and accused him of stealing the haversack. They repeatedly questioned the deceased as to why he had stolen the haversack and

claimed that "something" was missing from it. The deceased explained that he was unaware that the haversack belonged to them as it was left unattended.

7 Unappeased by the deceased's explanation, the group started scolding him for being "cocky" in Hokkien. The deceased's rejoinder was that he had already returned the haversack and asked them what more they wanted from him. The group demanded that the deceased pay for the "missing item" but the deceased refused, claiming that he had no money on him. The deceased produced his wallet to prove his point.

Entry of the Accused

8 It was during the confrontation that Toh made a call (presumably to the Accused) whilst Sean and Teo continued to question the deceased.

9 Later, the Accused and another accomplice, Lim Liang Long Larry ("Lim"), appeared on the scene and joined in the questioning. The Accused, the oldest person in the group, made a sarcastic remark to which the deceased responded that he had taken the haversack, so what more did the Accused want. This caused the Accused to rebuke the deceased for being "arrogant" despite having wrongfully taken the haversack. The Accused then shouted "Take weapon!" in Hokkien but his accomplices did not do so.[note: 1]

10 Not long after, Lim pushed the deceased and questioned if he was a member of any secret society. The deceased denied belonging to any secret society and asked them not to use violence against him. The Accused shouted at the deceased and said that it was difficult for him to let the deceased off so easily because there were so many of his men watching him. Thereafter, Lim pushed the deceased who nearly fell. Lim subsequently challenged the deceased to fight with him "one-to-one". The deceased declined, saying that he was afraid.

The assault

11 Immediately, Sean, Teo, Toh and Lim ("the Group") besieged the deceased and started assaulting him. The Accused remained at the staircase landing with Wen Bin and Boon Kiat and they witnessed the Group punching and kicking the deceased. In his police statement, the Accused admitted that he had taken a few steps down the stairs intending to assault the deceased but the narrowness of the stairwell prevented him from reaching the deceased.

12 Afraid of being assaulted themselves, Wen Bin and Boon Kiat did not render any help to the deceased but noticing the severity of the deceased's injuries, they knelt down and apologised to the Accused who was standing between them. According to investigations, the Accused was unmoved and reportedly stated that the deceased deserved the beating and that a person like him would not be so easily beaten to death.

13 The Group continued to punch and kick the deceased even after the deceased had collapsed on the floor and was no longer retaliating but merely using his arms to ward off the blows. It was only some time after the incessant pleadings from Wen Bin and Boon Kiat that the Accused relented and shouted in Hokkien, "Enough, let's go".[note: 2] The attack by the Group immediately ceased. Prior to leaving the stairwell, the Accused told Wen Bin and Boon Kiat to bring the deceased away and warned them not to report the matter to the police.

14 According to Boon Kiat, the deceased was already in a semi-conscious state and in great agony. An ambulance was subsequently called. Upon arrival at the Singapore General Hospital, the

deceased was in cardiac arrest. He failed to respond to resuscitation.

15 The Accused and the perpetrators of the attack, *i.e.* the Group, fled the country following the incident. It was only on 30 November 2007 that the Accused was apprehended by the Malaysian police. He was handed over to the Singapore police on 4 December 2007.

Conviction

16 In the statement of facts, which was admitted by the Accused without any qualification, it was stated that the Accused was, at the time of the offence, a member of an unlawful assembly comprising his accomplices – Sean, Teo, Toh and Lim – and himself. The common object of the assembly was to cause hurt to the deceased and in prosecution of that object, one or more of the members of the assembly had committed culpable homicide not amounting to murder by fisting and kicking the deceased on the head, face and stomach after he had fallen to the ground with the knowledge that such acts were likely to cause the death of the deceased. I accordingly convicted the Accused of the offence as charged.

Culpability of the Accused

17 Though the statement of facts did not explicitly state that the Accused was the "ringleader", it would appear that he wielded considerable influence over the members of the Group. I noted that the Accused was called to the scene when Sean, Teo and Toh did not seem to elicit the response they wanted from the deceased. Upon arrival, the Accused took over the questioning of the deceased and rebuked the deceased for being "arrogant". Before the assault occurred, the Accused remarked that it was "difficult for him to let the deceased off so easily because there were so many of his men watching him".[note: 3] Most tellingly perhaps was the fact that there was immediate compliance by the Group when the Accused called for the assault to cease.

18 Being in a position of some authority and influence within the Group, the Accused could have called off the confrontation well before the attack took place. Instead his behaviour emboldened his younger acomplices to proceed with the assault. His intention to join in the assault was another aggravating factor to be taken into account. Furthermore, the Accused had been obdurate towards the pleas of Wen Bin and Boon Kiat, even though it was obvious to him that the deceased had already collapsed to the ground and was merely shielding himself from the blows. The behaviour of the Accused was therefore malevolent and callous. His failure to halt the attack promptly was reprehensible given that he must have known that the Group would listen to him.

19 It was fortuitous for the Accused that he was prevented from participating in the physical assault because of space constraints. Otherwise, I would have given him a heavier sentence.

Antecedents

20 The only antecedent the Accused had was for voluntarily causing hurt under s 323 of the PC. He was convicted in 1990 and sentenced to 18 months' probation. That one-off skirmish with the law some 17 years ago when he was only 15 years old could be attributed to "youthful indiscretion" and would not indicate to me a consistent pattern of violent criminal behaviour. Hence, I did not place much weight on this antecedent in my sentencing considerations.

Mitigation Plea

Personal circumstances of the Accused

21 The Accused, a 32-year-old Malaysian, moved to Singapore with his family when he was five years old. He has a NTC certificate in injection moulding from the Institute of Technical Education. He worked as a mould maker for six years, then as a salesman for three years. He was running a shop with his brother-in-law at the time of the offence. Whilst hiding in Malaysia, he obtained work at several places; in his last job, he was an engineer in a multinational company in Ipoh.

22 In mitigation, counsel for the Accused ("counsel") stated that the Accused was married with a four-year-old son. He was the sole breadwinner of the family. After the offence, he fled to Malaysia, fearful of the consequences of his involvement with the crime even though he had not actually beaten up the deceased. For the four years that the Accused was working and hiding in Malaysia, his wife had to support herself and their son by working as a petrol pump attendant in Singapore, earning $850 a month.

The mitigating factors

23 Counsel emphasised that the Accused was unaware of the theft of the haversack and the initial confrontation with the deceased. Only after he was told that the thief (*i.e.* the deceased) had been caught did the Accused (together with Lim who was with the Accused at that time) proceed to the stairwell where his accomplices Sean, Teo and Toh were. The Accused did not instigate the beating of the deceased.[note: 4]

24 Counsel said that the Accused had only threatened to "take weapon" to intimidate the victim as he was fully aware that none of the accomplices were carrying any weapons at that point in time.[note: 5] The deceased had been initially very aggressive when questioned by his assailants and even arrogant, defiant and unapologetic when he told the Accused, "Already taken, what do you want."

25 During the mitigation plea, I questioned counsel on what triggered the whole incident and who really started the whole beating[note: 6]. Counsel explained that it was not the Accused but the accomplice with the nickname "Cockroach", who started the fight by pushing the deceased and challenging the deceased to a "one-to-one" fight with him. The deputy public prosecutor ("DPP") clarified that the accomplice referred to by counsel was Lim. Counsel stressed that the Accused had not uttered words like "Beat him up" or words to that effect which caused the beating to start. The Accused, he said, had not encouraged the fight. Neither did he specifically instruct the Group to assault the deceased. His only fault was in not actively intervening to stop the fight, despite being the oldest and most influential person present

26 Counsel stated in mitigation that the Accused had not realised that the beating would be so severe as to result in the eventual death of the deceased, especially since no weapons were used in the assault. At no point in time did the Accused participate in the assault. In fact, he had shouted at the Group to stop assaulting the deceased, which they did. He also told Wen Bin and Boon Kiat to bring the deceased to see a doctor.

Co-operation with the police and the remorse of the Accused

27 As an indication of his deep remorse, the Accused fully cooperated with the authorities upon his arrest and immediately decided to plead guilty when the prosecution offered to proceed on a reduced charge under s 304(b). Buttressing this claim of penitence was the Accused's tearful description of his fleeing to Malaysia during the psychiatric examination. Counsel submitted that the Accused was forthcoming during the examination and did not prevaricate in his answers. The psychiatric report also indicated that he fled from Singapore because of his fear and apprehension that eye-witness

accounts might misrepresent his involvement in the offence.

The Sentence

Discretion of the court

28 The prosecution contended that an imprisonment term of six years was appropriate. From that indication, the prosecution appeared to take the position that the Accused's degree of culpability warranted a sentence closer to an imprisonment term of five years (which is in the middle of the range of sentences available under s 304(b) of the PC) rather than the prescribed maximum imprisonment term of ten years.

29 The felicitous remarks of Sundaresh Menon JC in *Public Prosecutor v Lim Ah Seng* [2007] 2 SLR 957 ("*Lim Ah Seng*") were particularly instructive (at [1]):

> In the context of culpable homicide not amounting to murder, the circumstances of each killing may be so varied that any attempt to prescribe the precise sentence *in vacuo* would be futile. Even with a growing body of case law that provides much useful guidance, sentencing calls for the sound exercise of judicial discretion, taking into account the specific factual complexion of each case, including the ambient circumstances of the offence and the offender.

30 In determining the appropriate sentence, I have carefully considered all the relevant circumstances of the case including the nature of the offence and the particular situation of the offender. The culpability of the Accused, including all the mitigating and aggravating factors, must be taken into account. What the Accused did was certainly inexcusable and unpardonable in my view. However, as was noted by Menon JC in *Lim Ah Seng* (at [81]), the legislative purpose of providing for a wide range of sanctions under s 304(b) is to enable the court to fit the punishment to the myriad set of circumstances within which such an offence may occur. As the level of culpability will vary according to the unique situation in each case, it is important to scrutinise the particular circumstances and the manner in which the accused himself had participated in the offence. It is necessary for the court to differentiate amongst the different roles played by and the different actions of each member of the unlawful assembly, although the accused before the court might have shared with the other members the same object of that unlawful assembly to cause hurt to the victim. Each member of that assembly must still bear the consequences for his own culpability in terms of the individualised punishment that each will receive if convicted, even though all of them face the same charge. If, on the other hand, the offence carries only one fixed sentence prescribed by law, then it is unnecessary to examine the different roles, the particular actions and the extent of the participation by each member of the unlawful assembly in order to determine the specific culpability of, and the most appropriate sentence for, each offender.

31 Returning to the facts in the present case, I considered that the Accused was not entirely devoid of a conscience despite his reprehensible behaviour. He did, to his credit, instruct the Group to cease the assault and they did so. According to counsel, the Accused had told Wen Bin and Boon Kiat to seek medical attention for the deceased, although by then, unbeknown to the Accused, life was already ebbing away from the deceased's injured body and his order to cease the attack had no practical effect on the deceased. Had the Accused relented earlier, the deceased might have had a higher chance of survival. This brings me to a second, somewhat mitigating aspect of the Accused's behaviour.

32 This other aspect relates to the Accused's belief (though eventually proven wrong) that the deceased would not die from the beating. The deceased was described in the autopsy report as being

"well nourished, muscular,…measuring 172cm in height and weighing 80kg". The relevance of the deceased's physique lies in ascertaining the tenability of the Accused's remarks that the deceased would be able to withstand the beatings and hence he saw no impetus to stop the assault when Wen Bin and Boon Kiat beseeched him to. If the words issuing from a person's lips betray his thoughts, then given the muscular and well nourished physical appearance of the deceased, as well as his weight and height, I could not summarily dismiss the Accused's remarks on why he saw no urgency in calling the attack off earlier as unbelievable. It could not be said that the Accused could not reasonably hold any genuine belief that the deceased would be able to withstand the assault. I could see some grounds to support the statement by counsel that the Accused had in fact informed Wen Bin and Boon Kiat to bring the deceased to see a doctor since the Accused must have reasonably believed that the deceased would survive the assault. Such a situation is to be distinguished from one whereby the accused orders the assaults to cease only after he becomes aware that the victim is hovering on the brink of death or has died from the beatings.

33 I also studied the autopsy report to see if the deceased had sustained any fractures as that would have helped to indicate the magnitude and ferocity of the attack. There were no fractures. However, there were a number of bruises found on the deceased. In particular, there was extensive bruising over an area of 13 x 8 cm of the posterior aspect of the left ear and the adjacent left retro-auricular region and the left upper posterolateral aspect of the neck. Death was due to traumatic subarachnoid haemorrhage, consistent with blunt force trauma to the head.

34 Nonetheless, this would not remove the malevolence in the Accused's omission as the "ringleader" of the Group to stop the attack promptly. As the Group's "ringleader", he would have to bear responsibility for the criminal behaviour and actions of the Group. That the Accused indirectly prolonged the attack by adopting the mentality that the deceased deserved the beating was an aggravating factor, although I accepted that the deceased himself had incensed and provoked the Group and the Accused by firstly, misappropriating the haversack belonging to one of them and thereafter, behaving arrogantly towards them instead of apologising immediately. In the eyes of the Accused and the members of the Group, the deceased had not only stolen their haversack; the deceased had also taunted them and hurt their ego, and they wanted to punish him. That probably explains why they did not pick any fight with the deceased's friends, Wen Bin and Boon Kiat, at that time but only with the deceased.

35 After having invited the DPP to submit on the appropriate sentence, I also asked the same of counsel since both had referred me to numerous sentencing precedents. Relying on his precedents, counsel submitted that 3½ to four years was appropriate. However, having regard to the totality of the circumstances, I found that counsel's indication of a 3½ to four year jail term was perhaps too lenient. The mitigating circumstances raised by him were not so compelling that they could ameliorate the cruelty of the Accused's actions and omissions. However, to impose a sentence of six years as suggested by the prosecution would be somewhat harsh, especially when the other comparable cases below are examined.

Sentencing Precedents

36 The following precedents were raised by the DPP and I have made some observations with respect to each of them.

(a) *Public Prosecutor v Jamal anak Nyalau and Others* [2002] 3 SLR 66 ("*Jamal*"). Resulting from a dispute over the engagement of the services of a prostitute, all the three accused persons attacked the victim by repeatedly punching the face and head region of the victim without even the slightest provocation from the victim. The second accused further kicked the victim's body,

held onto the victim's hair and hit his head against the wall. The victim's plight, cries and non-retaliation did not seem to have moved the accused persons at all. At one point during the assault, the second accused searched the victim, took his wallet and removed $15, which was all the money the victim had in his possession. The cause of death was intracranial haemorrhage. The court sentenced each of the accused persons to six years and six months' imprisonment. The second charge for the theft of $15 was taken into consideration for the purpose of sentencing.

My observation: All three accused persons in *Jamal* had physically attacked the victim. This was unlike the present case where the Accused did not physically assault the deceased at all; the attack was in fact carried out by the Accused's accomplices after the deceased had been provocative by remaining arrogant even after having misappropriated the haversack belonging to one of the accomplices. Unlike the facts in *Jamal*, the present Accused and his accomplices did not commit any robbery or theft of any belongings of the deceased.

(b) *Public Prosecutor v Mohd Rashid Bin Yahadi* – Criminal Case No. 66 of 2000 ("*Mohd Rashid*"). There was no provocation from the victim prior to the incident. The accused threw a fire extinguisher at the victim and it hit the victim's head. The victim collapsed to the floor. Some of the accused's friends then proceeded to attack the victim by kicking and punching him. The motive for the assault appeared to be some unhappiness over a certain hostess spending more time with the victim. Death was caused by the severe head injuries. There was a fine crack fracture of the skull on the left side of the victim's head, suggesting that substantial force was applied to the skull, possibly due to the fire extinguisher that was thrown at him. The accused was charged under s 304(b) of the PC. The court imposed an imprisonment term of seven years.

My observation: In *Mohd Rashid*, the accused started the whole attack. He used a "weapon" in the form of a fire extinguisher which he threw at the victim and which hit the head of the victim, thereby causing his death from head injuries. The other accomplices who kicked and punched the victim after he had fallen to the floor did not cause the victim's death. Besides the accused, no one else was physically involved with causing the fatal injury resulting in the victim's death. However in the present case, the Accused never assaulted the deceased although he was a member of an unlawful assembly with the common object to cause hurt. It was Lim who initiated the attack and the rest of the group (excluding the Accused) then started assaulting the deceased. Notably the common object in the present charge was not to cause serious hurt or to cause culpable homicide. In my view, there were far more substantial aggravating factors in *Mohd Rashid*'s case.

(c) *Public Prosecutor v Raffi Bin Jelan and Another* [2004] SGHC 120 ("*Raffi*"). The accused, Raffi Bin Jelan ("*Raffi*"), and his wife, the co-accused, preyed on a 74 year old victim, who was a rag and bone man. Raffi woke the victim up, slapped him and then proceeded to remove his wallet forcibly. When the victim complained loudly to an on-looker, Raffi and his wife grew furious. They commenced a vicious attack on the victim by kicking him repeatedly without restraint whilst the victim had remained prostrate. Further, Raffi rained punches on the victim, besides using a pen knife belonging to the victim to slash the victim's face repeatedly. Raffi also stole a bundle of notes that fell from the victim's right trouser pocket while he was being assaulted. As Raffi had a long criminal history, he was sentenced to 20 years' preventive detention plus 21 strokes of caning for having committed the offence of robbery with hurt pursuant to s 394. The wife was jailed for five years. This assault resulting in the death of a helpless and innocent man was bereft of any mitigating features.

My observation: If the 20 years' imprisonment was meant to suggest that correspondingly, a heavy sentence near the maximum of ten years ought to be imposed by me on the present

Accused, then it would not advance the DPP's case very far, as Raffi had a long criminal record which justified the preventive detention. *Raffi*'s case concerned an unprovoked killing of an elderly defenceless victim, accompanied by robbery and the savage use of a pen-knife in the attack by Raffi himself. But if indeed the five years' imprisonment term for the wife in *Raffi* is to be used as a comparable, then the slightly lower sentence that I imposed on the Accused of four years and nine months would not be inconsistent given the fact that the wife had herself repeatedly kicked the prostrate elderly victim. In contrast, the present Accused did not even physically assault the well-built deceased. Further, the deceased had earlier misappropriated the haversack belonging to one of the members of the group. Instead of being apologetic, the deceased behaved arrogantly and provocatively towards the Accused and the Group whereas the facts in *Raffi*'s case did not indicate to me that there was any provocation from the victim apart from the victim's justifiable complaint to an on-looker that he had been robbed and slapped, which I would not say amounted to any "provocation" that could be regarded as a mitigating circumstance for the offence committed by the wife.

(d) *Public Prosecutor v Aw Teck Hock* [2003] 1 SLR 167 ("*Aw Teck Hock*"). The accused was the son of the victim, a frail 73 year old man. The victim nagged and scolded the accused with vulgarities when the accused returned home late after a night of drinking. The quarrel escalated into violence when the accused pushed the victim who fell. The accused then kicked the victim on the body and the head. He also threw a plastic chair at the victim. The accused later carried the victim to the mattress in the living room before going to his bedroom to sleep. The next morning, the accused found that his father had stopped breathing. The cause of death was due to "multiple injuries". A nine year sentence was meted out.

My observation: I could not see how this could be a suitable sentencing precedent to assist me in deciding on the appropriate sentence, when the accused there had himself singlehandedly attacked and mercilessly killed his own elderly, frail father with such brutality. When assaulted by the son, the father never retaliated. The accused, as the sole assailant, was therefore entirely responsible for causing the death of his own elderly father. No blame could be attributed or pushed to any other person. The autopsy report revealed not only bruises and abrasions all over the victim's head, neck and limbs, but there were also fractures of the ribs, which indicated to me that the accused must have inflicted heavy blows on his frail father. The court observed that it was quite apparent from the extensive injuries suffered by the victim and the total lack of injury on the accused's body that the victim was frail while the accused was much more robust. In the court's view, the accused "literally kicked a man who was down and out" (*Aw Teck Hock* at [21]).

(e) *Public Prosecutor v Teo Heng Chye* [1989] 3 MLJ 205. There was a dispute at a lounge which was primarily a bar and nightclub at the Textile Centre in Jalan Sultan. It was apparently settled with a handshake by a representative from the accused's group and the victims' group of friends after the intervention of the lounge manager and a shareholder of the lounge. The accused went to his friend's flat on the 18th level of the Textile Centre and armed himself with a bearing scraper. He then came down in the lift and found the victims' group at the entrance of the bowling alley at the Textile Centre as they were about to leave. The accused attacked the group with the bearing scraper and in the process, stabbed two victims and killed them. There were three fatal stab wounds of 10.5cm, 11 cm and 13 cm depth on the first victim, two of which were on his back. There was a single fatal stab wound on the back of the second victim, which appeared to me to be another deep stab wound from the description provided in the autopsy report. The court found that the two deceased victims had their backs to the accused when these wounds to their backs were inflicted by the accused. The sentences imposed were: eight years' imprisonment for the first charge and six years' imprisonment for the second charge, with

both sentences to run consecutively.

My observation: I could not understand why this entirely irrelevant and inappropriate case was enclosed for use as a sentencing precedent. First, the prosecution there had in fact proceeded on two murder charges. Second, a dangerous weapon, *i.e.* a bearing scraper, was used. Third, the accused himself inflicted all the fatal injuries on two victims. At the murder trial, the court found the accused guilty of the lesser offence of culpable homicide under s 304(b) on each of the two murder charges on the ground that the degree of the accused's self-induced intoxication was such that he could not have formed any of the intentions required for murder. The court said that the accused's actions were done with the knowledge that they were likely to cause death and, giving him the benefit of every doubt, without any intention to cause death or to cause such bodily injury as was likely to cause death. In my view, even if the imprisonment term of six years imposed for the charge concerning the second victim were to be used as a comparable, I would not think that, given the very different facts of the present case before me where the Accused did not physically assault the deceased nor were any weapons used in the attack by his accomplices, an imprisonment term of four years and nine months could be regarded as inadequate, or for that matter "manifestly" inadequate. In any event, the learned DPP rightly informed the court at the hearing that he would not be relying on this case.

37 In all the cases cited by the learned DPP, the accused persons had personally assaulted the victim. If the present Accused had actively participated in the assault together with his accomplices, I would certainly have added another one to 1½ years to the present sentence that I had imposed. Even more years of imprisonment would be added if weapons were used on a defenceless victim. Hence, the above precedent cases referred to me by the DPP were markedly different from the facts here, where the Accused's main culpability was in:

(a) stoking the anger of the Group towards the deceased and precipitating, in part, the assault by saying that "it was difficult for him to let the deceased off so easily because there were so many of his men watching him";

(b) failing to contain the situation when the Accused knew that he wielded a significant influence on the unfolding of the tragic events; and

(c) delaying his call to the Group to stop the attack after it began despite the incessant pleas of the deceased's friends.

Indeed there are material distinctions to be drawn (at least for the purposes of sentencing) between active acts of violence and passive acts of violence where in the latter, the accused has omitted to act or intervene to bridle further injury or even prevent death but has not directly caused the death. To be borne in mind also are some mitigating elements arising from the provocation by the deceased who had wronged his assailants by misappropriating their haversack and had thereafter behaved arrogantly and remained unapologetic towards them. A further mitigating factor in the Accused's favour is that he failed to intervene to stop the assault because he was labouring under the mistaken belief that the deceased was a strong person who would be able to withstand the beating with no weapons used. Overall, there were fewer vindictive elements in the Accused's behaviour, a contrast to the precedent cases relied on by the DPP, where the accused person had personally assaulted the victim and the assault directly caused the death in circumstances where the victim had not wronged or provoked the accused person prior to the assault at all or to the extent as that which had occurred in the present case.

38 Having studied the cases submitted by the DPP and those cases submitted by counsel (which I

shall be addressing shortly), I am of the view that a six-year sentence as suggested by the DPP would be unduly harsh on this Accused. Bearing in mind that it was the accomplice, Lim, who started the whole assault and not the Accused, who never physically laid his hands on the deceased, some discount in the sentence should, in my opinion, be accorded to the Accused when he was the one who stopped the assault, albeit too late.

39 Further, the Accused had cooperated fully with the authorities upon his arrest and was evidently remorseful as borne out by the psychiatric report. As V K Rajah J observed in *Angliss Singapore Pte Ltd v PP* [2006] 4 SLR 653 (at [74]), at least one "persuasive indication" of whether the accused was genuinely remorseful would be an early bid to cooperate with the investigating authorities and his surrender at the early stages of the investigation.

40 Nonetheless, no amount of remorse or contrition from the Accused can even begin to make up for the loss of so young a life or atone for the pain, grief and suffering endured by the deceased's family members and loved ones. The Accused had acted brashly and thuggishly in concert with the Group and allowed his emotions to rule over his rational mind. Being older and in a position of influence, he could have prevented the acts of violence from arising. However, he was clearly agitated by the deceased's defiance and what he perceived to be arrogance on the part of the deceased. The Accused's anger stoked the collective rage of the Group and allowed the Group's indignation and anger towards the deceased to escalate into acts of violence against the deceased who, as a polytechnic student, was younger than the Accused and his accomplices. The Accused was also unmoved by the pleas of Wen Bin and Boon Kiat till much later, when he felt that the deceased had been punished enough. His callousness was appalling, and if there had been earlier intervention, the deceased might have had a fighting chance of survival. However, the Accused did not know that the injuries inflicted on the deceased were so severe that they were fatal.

41 In venturing to persuade me to impose a 3½ to four year sentence for the Accused, counsel cited the following cases, all of which involved s 304(b) charges.

(a) *Public Prosecutor v Chan Soi Peng* [2007] SGHC 184. The accused was earlier provoked by the victim and tried to avoid him. The victim later struck the accused in the face with a bottle of liniment that he was carrying. The accused retaliated with his fists and a bloody fight ensued. Following this, the accused went to get a knife from the kitchen, and in the subsequent fight, he stabbed the victim in the chest. The accused was given a sentence of three years and nine months' imprisonment.

(b) *Public Prosecutor v Lim Ah Seng* [2007] 2 SLR 957. The accused, who was estranged from his wife, strangled her in the fit of a quarrel. The accused had been subjected to repeated physical and psychological abuse by the victim. The victim herself had started the fight by strangling the accused first after slapping him. The sentence was two years and six months' imprisonment.

(c) *Public Prosecutor v Teo Chee Seng* [2005] 2 SLR 365 ("*Chee Seng*"). The accused was looking after a seven-month-old infant. Frustrated with the infant's incessant crying, the accused poured medicated oil into the infant's mouth. The infant fell unconscious and died of acute salicylate poisoning. The trial judge sentenced the accused to four years' imprisonment. A second charge of fabricating false evidence by getting someone else to admit to administering medicated oil to the infant was taken into consideration. Counsel relied on this sentence of four years in his submission.

My observation: Counsel probably overlooked, and did not inform me, that the Court of Appeal allowed the appeal by the Public Prosecutor and increased the sentence to seven years'

imprisonment (see *Public Prosecutor v Teo Chee Seng* [2005] 3 SLR 250). It behoves counsel always to check precedents to see whether or not they have been overturned before citing them to the court. That must be a standard procedure to be adopted and a serious responsibility to be undertaken at all times by counsel. Having said that, *Chee Seng* involved a young, vulnerable and totally defenceless baby, who was killed by the very person entrusted at that time to care for and look after it. The facts in *Chee Seng* can be distinguished from the present case.

(d) *Public Prosecutor v Katun Bee Bte S Ibrahim* [2004] SGHC 46. The accused stabbed her lover in the abdomen with a knife after a quarrel. Both had been drinking. She claimed trial, was convicted and sentenced to three years and six months' imprisonment. The lover had been spending the accused's money on drinks and had been abusive to her when he was drunk. The court exercised compassion under those particular circumstances.

(e) *Public Prosecutor v Low Ah Soy* [2004] SGHC 249. The wife of the accused left him for another man named Koh and filed for divorce. When she and Koh came home to take her belongings, the accused stopped Koh from entering the flat. Koh took out a knife and threatened the accused, who ran to his kitchen to arm himself with a longer knife. When the accused advanced towards Koh, Koh retreated and threw several flowerpots at the accused. Nonetheless, the accused got to Koh and stabbed him three times in the chest. Koh collapsed at the lift landing and died. The accused was sentenced to four years' imprisonment. Another charge was taken into consideration for sentencing, *i.e.* causing mischief by smashing the windscreen of Koh's car, which took place shortly after the accused had stabbed Koh.

(f) *Public Prosecutor v Lim Boon Seng* [2004] SGHC 113. The accused had borrowed money from the victim, who was his friend. The accused asked the victim for time to pay a debt of $1,800 but the victim was unhappy. The victim met up with the accused. He shouted vulgarities at and started fisting the accused, who then found a knife and stabbed the victim once in his chest. After the victim collapsed, the accused tried to aid the victim by using a towel to press on the victim's wound whilst shouting for help. The accused was jailed for three years and six months.

(g) *Tan Seng Aik v Public Prosecutor* [1992] SGCA 59. The victim's gang had summoned gang members (totalling 12 members), and searched for the accused and his three friends with the intention of attacking them over a minor incident in a discotheque. The accused sensed that they were being followed and he proceeded to buy himself a knife. The victim's gang found and stopped the accused and his friends (now only two) from leaving. When they tried to escape, the victim's gang pursued them and attacked them with sticks. The victim struck the accused with a stick. When the victim bent down to pick up the stick that he had dropped, the accused drew his knife and stabbed the victim once in the back. The accused fled the scene, with the other members of the victim's gang in pursuit. The accused was originally sentenced to seven years' imprisonment. The Court of Appeal released the accused after the accused had served only two years and nine months' imprisonment.

My observation: There were obviously extenuating circumstances in this case. There was no pre-meditation to commit the offence. The victim's gang greatly outnumbered the accused and his friends. The victim's gang pursued the accused and his friends who were running away. The accused and his friends were desperately trying to avoid a confrontation with them. The Court of Appeal accepted the submission of defence counsel that the accused, reasonably apprehending imminent and serious danger to himself and his friends, had bought the knife to defend himself in the face of a larger and very aggressive gang. Hence, the relatively light sentence imposed in this case could be explained on its own special facts.

42 The DPP sought to distinguish the cases cited by counsel on the basis that they did not involve group violence, except for the last case where there was a gang fight. However, the DPP himself also cited case precedents that did not involve group violence. In any event, these case precedents, whether or not involving group violence, would serve as useful guides. Generally, I take the position that it is always better to have some guidance than none at all.

43 However, I do recognise the difficulty in comparing the cases and in seeking rational explanations for the differences in the sentences meted out because of the myriad different circumstances in each case. The killings in the above cases cited by counsel have also been the direct result of positive acts perpetrated against the victims by the accused persons themselves. In some of them, weapons were even used. The responsibility for the deaths in these cases could not even be partially deflected to another accomplice who actually inflicted the injuries. Yet, in all of them (with the exception of *Chee Seng*'s case (sub-para (c) of [41] *supra*) where the Court of Appeal enhanced the sentence to seven years for the accused's callous killing of a seven-month-old infant), the sentences were lower than the sentence that I had imposed, which seems harsh by comparison. As the present Accused has not appealed against his sentence on the ground that it was manifestly excessive, I do not propose to reconcile these precedent cases by comparing the mitigating and aggravating circumstances and weighing them in a fine balance, and then justifying why I needed to impose a higher sentence than those meted out in the cases cited by counsel.

Conclusion

44 Nevertheless, I have to determine, in accordance with the well-known sentencing principles, the most appropriate sentence that I believe would best do justice in all the circumstances of the case. I did so and accordingly sentenced the Accused to an imprisonment term of four years and nine months, which would have in my judgment fairly addressed all the aggravating and mitigating circumstances in the case. I backdated the sentence to the date of the Accused's remand on 6 December 2007.

[note: 1] Statement of facts at [17]

[note: 2] Statement of facts at [22]

[note: 3] Statement of facts at [18]

[note: 4] Mitigation at [7] –[8]

[note: 5] Mitigation at [11]

[note: 6] NE at p 21 and 22