

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 284

Criminal Case No 11 of 2014

Between

Public Prosecutor

And

Sumanthiran s/o Selvarajoo

GROUND OF DECISION

[Criminal Law] — [Offences] — [Grievous hurt] — [Hurt] — [Culpable homicide]

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Public Prosecutor
v
Sumanthiran s/o Selvarajoo

[2016] SGHC 284

High Court — Criminal Case No 11 of 2014
Woo Bih Li J
13 July 2015; 1 March 2016

28 December 2016

Woo Bih Li J:

Introduction

1 The accused, Sumanthiran s/o Selvarajoo (“the Accused”), was convicted of four charges on 1 March 2016 to which he pleaded guilty. With three other charges being taken into consideration (“TIC”), he was sentenced to a total of 16 years’ imprisonment and 12 strokes of the cane. He was recently granted an extension of time to appeal to the Court of Appeal against his sentence.

Background

2 The Prosecution had proceeded on the 1st, 2nd, 6th and 7th charges with the 3rd, 4th and 5th charges being taken into consideration for the purpose of sentencing. I set out below the 1st, 2nd, 6th and 7th charges:

1ST CHARGE

on the 4th day of June 2011, sometime at about 6.39am, at Ang Mo Kio Town Garden West, a park along Ang Mo Kio Avenue 6, Singapore, did commit culpable homicide not amounting to murder by doing an act which caused the death of one Loo Nam S[h]eng, to wit, by punching and kicking the said Loo Nam S[h]eng on his face a few times, which act was done with the intention of causing such bodily injury as is likely to cause death, and you have thereby committed an offence punishable under section 304(a) of the Penal Code (Cap 224, 2008 Rev Ed).

2ND CHARGE

on the 22nd day of June 2010, at about 7.00pm, at the pavilion of Block 224 Ang Mo Kio Ave 3, Singapore, did voluntarily cause grievous hurt to one Segaran s/o Socklingam, to wit, by inflicting a right parietal (skull) fracture and lacerations on his chest and right forearm, with a parang, an instrument for cutting which when used as a weapon of offence is likely to cause death, and you have thereby committed an offence punishable under section 326 of the Penal Code (Cap 224, 2008 Rev Ed).

6TH CHARGE

on the 29th day of September 2010, at or about 2.10pm, at the void deck of Block 468 Ang Mo Kio Ave 10, Singapore, did voluntarily cause hurt to one Thevendran s/o Elangoven, to wit, by punching and kicking him, and you have thereby committed an offence punishable under section 323 of the Penal Code (Cap 224, 2008 Rev Ed).

7TH CHARGE

on the 18th day of November 2010, at or about 7.00pm, at the car park of Block 444 Ang Mo Kio Ave 10, Singapore, did voluntarily cause hurt to one Shaikh Abdul Rasheed s/o Abdul Rahman, to wit, by inflicting lacerations over the right shoulder, elbow, forearm and face, with a bread knife, an instrument for cutting which, used as a weapon of offence, is likely to cause death, and you have thereby committed an offence punishable under section 324 of the Penal Code (Cap 224, 2008 Rev Ed).

3 As the history of all the seven offences committed by the Accused was an important factor in the court's consideration for sentencing for the four

charges which the Prosecution had proceeded with, I set out a table of the seven offences in chronological order with a brief description of the offences, the relevant provisions of the Penal Code (Cap 224, 2008 Rev Ed), the dates of commission and the dates he was arrested. I will thereafter summarise the facts pertaining to the charges which the Prosecution proceeded with, also in chronological order. I would also mention that the Accused's date of birth is 11 February 1993. When he committed six offences in 2010, he was 17 years old. When he committed the s 304(a) offence on 4 June 2011, he was 18 years old.

Charge	Offence	Penal Code	Date committed	Date arrested
4th charge (TIC)	Shop theft of two bottles of "Jim Beam Cola" (alcoholic beverage).	Section 380 read with section 34	2/6/2010	2/6/2010
5th charge (TIC)	Shop theft of six cans of "Anchor Smooth Pilsener Beer".	Section 380 read with section 34	2/6/2010	2/6/2010
2nd charge (Proceed)	Caused grievous hurt to a victim by inflicting a right parietal skull fracture and lacerations on chest and right forearm with a parang.	Section 326	22/6/2010	1/7/2010
3rd charge (TIC)	Caused hurt to a victim by inflicting lacerations on ears and right upper back with a parang.	Section 324	22/6/2010	1/7/2010
6th charge (Proceed)	Caused hurt to a victim by punching and kicking him.	Section 323	29/9/2010	30/9/2010

7th charge (Proceed)	Caused hurt to a victim by inflicting lacerations on right shoulder, elbow, forearm and face with a bread knife.	Section 324	18/11/2010	19/11/2010
1st charge (Proceed)	Caused death to a victim by punching and kicking victim's face.	Section 304(a)	4/6/2011	4/6/2011

Facts pertaining to the 2nd charge under s 326 Penal Code

4 The offence under the second charge for causing grievous hurt was committed on 22 June 2010. The victim was Segaran s/o Socklingam (“Segaran”), then 45 years old.

5 On 22 June 2010 at about 5.30pm, the Accused entered into a conversation with Vadiveloo Raju (“Veloo”) while waiting in line at a supermarket checkout counter. The Accused was buying beer and Veloo was buying some Chinese rice wine. After making their purchases, they proceeded to a nearby pavilion and joined Segaran who was already there drinking a bottle of Chinese rice wine. They chatted for more than an hour while consuming their alcoholic drinks.

6 After 6.30pm, the Accused called his friend, Suresh s/o Mohammad Rafei, who was then 14 years old, to meet him somewhere nearby. In the meantime, the Accused went up to the flat of another friend, then 14-year-old Parthiban s/o Raja (“Parthiban”), to use the toilet. While at the flat, he secretly took a knife and a parang from the kitchen before leaving.

7 The Accused then met Suresh and told him that there were two “old men who wanted to take his territory” and “refused to leave”. The Accused

said that he wanted to “cut them both”. He then passed Suresh the knife. Together, they walked towards the pavilion where the Accused had been drinking earlier to look for Veloo and Segaran.

8 When they arrived at the pavilion, the Accused took out his parang and confronted Veloo and Segaran, saying, “This one Blue Brothers’ place you also sit?”. At the time, the Accused was a member of a gang called “Blue Brothers”. The Accused proceeded to slash Segaran with the parang. Both the Accused and Suresh then attacked Segaran with their weapons and chased Veloo who was running away to escape the attacks. The Accused caught up with Veloo and attacked him with the parang as well.

9 Segaran managed to make his way back to his apartment where he then lost consciousness. His sister who was home at the time called for police assistance.

10 Segaran was subsequently conveyed to the hospital by ambulance where he was treated for the following injuries:

- (a) right parietal (skull) fracture with overlying 6-cm laceration;
- (b) multiple superficial lacerations on chest wall; and
- (c) right distal forearm laceration with cut extensor tendons (extensor carpi radialis longus tendon completely severed and extensor carpi radialis brevis tendon half-severed).

11 Veloo was conveyed separately to the hospital for treatment of his injuries (lacerations on ears and right upper back).

12 The Accused subsequently found out that the police were looking for him. On 1 July 2010, he and Suresh surrendered themselves to the police and were arrested for the assault.

Facts pertaining to the 6th charge under s 323 Penal Code

13 The offence under the sixth charge for causing hurt was committed on 29 September 2010. The victim was Thevendran s/o Elangoven (“T”), then 16 years old and a Secondary 3 student.

14 T was a friend of the Accused’s cousin, Sukanthan s/o Balakrishnan (“Sukanthan”), then a 14-year-old Secondary 3 student at the same school as T. Sukanthan and T had a falling out in September 2010. Following that, Sukanthan and T had a fight and Sukanthan told the Accused that he was unhappy with T. On the night of 27 or 28 September 2010, Sukanthan and the Accused agreed to meet near the school on 29 September 2010 to confront T.

15 On 29 September 2010 at about 2.05pm after the school session had ended, Sukanthan asked T to follow him out of school. T agreed to do so, thinking that Sukanthan wanted to talk and settle their prior dispute. They left the school building together with another friend of Sukanthan’s. They walked to the void deck of the HDB Block 468 Ang Mo Kio (“AMK”) Avenue 10, Singapore.

16 As they arrived at the void deck, the Accused and his friend, one Vinod, who were already there waiting for them, rushed towards T and started to punch him in the face, causing him to fall onto the floor. While T was on the floor, Sukanthan, Vinod and the Accused all kicked and punched him. The

Accused then demanded that T apologise to Sukanthan. Vinod kicked T and dragged him towards Sukanthan for T to apologise. T apologised to Sukanthan by touching his feet. Sukanthan then warned T not to mess with him anymore. Thereafter, Sukanthan, Vinod and the Accused left T lying on the floor.

17 After the incident, T went back home to inform his family members about the assault before lodging a police report at AMK South Neighbourhood Police Centre (“NPC”) at about 4.06pm.

18 T was conveyed from the NPC to the hospital by ambulance on the same day and given four days’ hospitalisation medical leave. A medical report dated 20 October 2010 noted the following injuries on him:

- (a) small superficial abrasions over left forehead and left upper lip;
and
- (b) left angle of cheek, maxilla and temporal region were tender on palpation.

19 The next day on 30 September 2010, the Accused’s father brought him to AMK Police Division Headquarters where he was arrested for the assault.

Facts pertaining to the 7th charge under s 324 Penal Code

20 The offence for the seventh charge for causing hurt was committed on 18 November 2010. The victim was Shaikh Abdul Rasheed s/o Abdul Rahman (“Rasheed”), then 17 years old. He was a friend of T’s and had an ongoing dispute with the Accused at the material time.

21 On 18 November 2010, the Accused spent the afternoon at the void deck of Block 506 AMK Avenue 8 with some friends, drinking alcoholic drinks.

22 At about 5.30pm, Parthiban (see [6] above) called the Accused on the phone and told the Accused that one Sahir Khan Bin Mohd Yusof (“Khan”) had an ongoing dispute with the uncle of Khan’s girlfriend and that they were waiting for him to hold a “settlement talk”. The Accused agreed to join them and proceeded to Block 543 AMK Avenue 10 where Parthiban handed the Accused a 37cm-long bread knife with a red-brown handle. Parthiban told the Accused that he had a cleaver with him and that Khan was also armed with a bread knife. They all agreed that they would use their weapons if the other party drew weapons first.

23 After some time when nobody turned up for the “settlement talk,” they decided to give up waiting and proceeded to the McDonald's fast food outlet at Block 448 AMK Avenue 10. There, the Accused saw Rasheed with a friend and decided that he wanted to teach Rasheed a lesson. The Accused then called Rasheed's friend to tell Rasheed to meet the Accused at the void deck of Block 444 AMK Avenue 10. After he was told that the Accused was waiting for him, Rasheed went to look for the Accused.

24 When Rasheed arrived at the void deck, the Accused, who was already waiting there, charged at Rasheed without saying a word and slashed Rasheed using the bread knife which Parthiban had handed him earlier. Bleeding from his injuries, Rasheed ran back towards the McDonald's outlet at Block 448 with the Accused chasing after him. The Accused managed to slash Rasheed again before Rasheed escaped.

25 After the assault, Parthiban ran away from the scene to return home while the Accused left the scene together with Khan. The Accused sent a text message to his mother telling her that he loved her and bade her goodbye because he believed that the bail previously granted to him for his earlier offences would be revoked as a result of this latest offence. After some discussion, the Accused handed Khan his backpack with the bread knife for Khan to dispose of. After he arrived home, Khan threw the accused's backpack containing all the bread knives which they had had with them (see [22]) into the rubbish chute.

26 After arriving at the McDonald's outlet, Rasheed continued to bleed heavily all over the floor. His friend called for medical assistance and a police report was made.

27 An ambulance arrived at the McDonald's outlet and conveyed Rasheed to the hospital where he was admitted and treated for the following injuries before he was discharged the next day:

- (a) 8-cm wound over left lumbar area;
- (b) 2-cm superficial facial laceration;
- (c) 10 x 4-cm laceration over right radio-dorsal forearm;
- (d) 5 x 4-cm laceration over right lateral elbow; and
- (e) 20 x 6-cm laceration over right lateral shoulder.

28 At about 12.05pm on 19 November 2010, the accused surrendered himself at Choa Chu Kang NPC for the offence.

Facts pertaining to the 1st charge under s 304(a) Penal Code

29 The offence for the first charge in respect of culpable homicide not amounting to murder was committed on 4 June 2011. The victim was Loo Nam Sheng ("Loo"), then 64 years old.

30 At the material time, Loo shared a flat with two housemates at #02-4029 of Block 123 AMK Avenue 6, Singapore, which was a community home provided by Asian Women's Welfare Association (AWWA) Elderly Services for senior citizens with no family or means of financial support. Loo was described by one of his housemates, Tan Kim Buck, as a "very pleasant and friendly man" and they got along well during the time they lived together.

31 Loo, a divorcee, left behind an 84-year-old mother and a 32-year-old daughter among other family members.

32 On the evening of 3 June 2011, sometime not long after 6pm, the Accused met some of his friends to celebrate the birthday of one of their number, Shakeel s/o Iftikharezaman ("Shakeel"), at their weekly hangout, a garden-like area with a playground at the top of a multi-storey car park in the vicinity of Serangoon Road. Only Shakeel, the Accused and later one Vengadeswaran Seenivasan ("Vengadeswaran") consumed alcoholic drinks while the others had soft drinks. Eventually, by about 10pm, only the Accused and Vengadeswaran remained after the others had left. The two of them finished the alcoholic drinks and parted ways at about 10.30pm.

33 Subsequently, the Accused joined a different group of friends at Club Blue Magic, a pub nearby at No 29 Dalhousie Lane, off Clive Street. At Club

Blue Magic, the Accused drank a quarter jug of Bourbon Coke and three to four glasses of Chivas Regal whiskey.

34 The next morning on 4 June 2011, at about 3.30am, the Accused left Club Blue Magic. Together with one Karthigesan s/o Vijaya Kumar ("Karthigesan") and some other friends, the Accused travelled by taxi to Karthigesan's uncle's flat at #02-2368 of Block 504 AMK Avenue 10 to continue hanging out. There, the Accused drank some beer.

35 Sometime between 5am and 6.39am, the Accused left the flat with a friend, Satiesh s/o Surah ("Satiesh"). The Accused walked Satiesh to the nearby AMK MRT station before heading home on foot to Block 104A AMK Street 11.

36 While on his way home, the Accused was feeling angry at his eldest brother Parthiban s/o Selvarajoo, who had been trying to contact him to check on him. The Accused then decided to take a walk through AMK Town Garden West ("the Park") along AMK Avenue 6.

37 As the Accused was walking through the Park, he spotted Loo standing on the grass verge by some trees. The Accused noticed that Loo was facing the trees with his palms touching and chanting prayers while swaying back and forth. The Accused felt "irritated at the sight of the old man praying" so he approached Loo to confront him and asked him in English what he was doing. Loo replied that he was "praying" and the Accused then asked Loo to whom he was praying. Loo replied "Buddha", which further angered the Accused. The Accused then pointed at the plants and asked Loo whether he regarded the plants as "Buddha". Loo nodded.

38 Without warning, the Accused suddenly punched Loo once on the face, causing Loo to stagger backwards from the force of the blow. The Accused then challenged Loo to make "Buddha" appear before them. According to the Accused, Loo responded by running towards him and the Accused punched Loo's face a few times until Loo fell onto the ground. As Loo fell, the Accused fell onto the ground together with him. Both of them then tried to get up at the same time. Seeing that Loo had gotten up on his knees, the Accused then punched him twice on the side of his face, causing Loo to fall back onto the ground. The Accused managed to get back on his feet. When he saw Loo attempting to get up again, the Accused delivered a kick to Loo's face using his right leg. This caused Loo to fall back down. When Loo once again tried to get up, the Accused again kicked Loo's face, this time with his left leg, to prevent Loo from getting up. While Loo lay on the grass groaning in pain with blood flowing from his face, the Accused picked up an umbrella which he found nearby and used it to strike Loo on his shin. The Accused continued to challenge Loo to get "Buddha" to come save him and only stopped when he noticed the amount of blood on Loo's face.

39 At about 6.39am, the Accused dialled "999" on his mobile phone and spoke to the operator, Corporal Sathya Vani d/o Paramasivan Raju ("Cpl Sathya Vani") of Radio Division, Singapore Police Force. The Accused asked whether this was the phone line to request ambulance assistance. In between using vulgarities and abusive language, the Accused informed Cpl Sathya Vani that he had "whacked an uncle" at "Mayflower Park" and told her to come if she wanted to save the "uncle". He also said to her, "[Y]ou dare come and catch me". The Accused then ended the call. Cpl Sathya Vani then called the Accused back on his mobile phone in an attempt to find out the location of

"Mayflower Park". The Accused told her that he had "gone in and out many times" and that he "wanted to go in" as he "did not have a life anymore". After repeated questioning by Cpl Sathya Vani, the Accused finally informed Cpl Sathya Vani that he was opposite AMK Library. The Accused added that before this, he had one rioting case and three slashing cases. After confirming that the police were making their way to AMK Library, the Accused ended the call at about 6.44am.

40 At about 6.45am, the Accused dialled "995" and spoke to the operator Sergeant Mohamad Taufiq Bin Abdul Rahman ("Sgt Taufiq") of the Singapore Civil Defence Force ("SCDF"). Similarly, in between using vulgarities and abusive language, the Accused informed Sgt Taufiq that he had beaten up an old man and asked Sgt Taufiq to come save the old man. After Sgt Taufiq found out that an ambulance was already being despatched to the area, he informed the Accused that he could end the call and the Accused hung up accordingly.

41 The Accused then left Loo on the ground bleeding from his face as he walked towards AMK Police Division Headquarters to surrender himself to the police.

42 On his way to AMK Police Division Headquarters, the Accused threw his mobile phone away and removed a book from his bag before throwing the bag away. When he arrived at AMK Police Division Headquarters, he informed the police officers on duty that he had assaulted a Chinese man.

43 Based on information received from the scene where Loo was found, the Accused was placed under arrest for murder.

44 A blood sample collected from the Accused was later analysed and found by the Health Sciences Authority (“HSA”) to contain 15mg of ethanol per 100ml of blood.

45 An ambulance and police officers were despatched to the Park to attend to the reported incident. After some searching, they managed to locate Loo lying face up on a grass verge near some shrubbery. Loo's face was observed to be heavily bruised and bloody and some blood spatter was found on leaves that were a short distance from the top of Loo's head.

46 Paramedic Darwin Bin Rozali, who attended to Loo, found Loo unresponsive with no heart activity and noted swelling in his head when he palpated it, which indicated internal bleeding. At about 7.10am, Loo was pronounced dead at the scene.

47 In his autopsy report dated 16 June 2011, Dr Paul Chui, Senior Consultant and Forensic Pathologist of HSA, certified that the cause of death was "severe facial injuries" and clarified in his letter dated 11 January 2012 that "acute airway obstruction can occur due to bleeding from severe facial injuries pooling in the air passages" and "being unconscious and in a supine position will compound the obstruction, with the tongue naturally falling backwards".

48 In the autopsy report, Dr Chui noted the "profuse oozing of blood" from the mouth and nose with various external injuries on Loo's head and fractures in his skull.

49 There was also a small amount of blood present in Loo's airways with hypostatic congestion and patchy areas of pulmonary haemorrhage in both lungs indicative of inhalation of blood.

50 An examination of Loo's brain revealed a single spot of cortical contusion of 1-mm in diameter present over the inferior aspect of the left temporal lobe, just behind the left temporal pole.

Psychiatric reports

51 In a psychiatric report dated 5 July 2011, Dr Lim Choon Guan (“Dr Lim”) from the Institute of Mental Health, Woodbridge Hospital, diagnosed the Accused as having an antisocial personality disorder with a “past history of conduct disorder which was evident from his conduct problems before the age of 18 including cruelty to animal[s], fire-setting, vandalism, fights with weapons and staying out late without permission”. The information here had been given to Dr Lim by the Accused. Indeed, the Accused had also informed Dr Lim that he had fought in school and had been caned for one fighting incident. Dr Lim also diagnosed the Accused with attention deficit hyperactivity disorder (“ADHD”) and alcohol dependence. Dr Lim was of the opinion that the Accused was not of unsound mind at the time of the s 304(a) offence. He was intoxicated with alcohol at the time as evidenced by his large intake of alcohol, state of feeling “high”, dizziness and disinhibited behaviour towards policemen. His impulsive nature and anti-religious views were likely to have contributed to the aggressive behaviour during the offence. Dr Lim was of the opinion that the Accused was at high risk of future violence. He would need to abstain from alcohol and drugs to mitigate this risk.

52 In a report dated 23 May 2012, Dr Lim also opined that “[t]he most important risk factor which puts [the Accused] at high risk of future violence is his past history of violence”. There was no effective treatment for antisocial personality disorder and the Accused had a “co-morbid problem of alcohol dependence”. Several incidents of violence had taken place while the Accused was under the influence of alcohol.

53 In a further report dated 27 July 2015, Dr Lim reported that the Accused usually spent his time reading in his solitary prison cell. He also meditated regularly. Dr Lim opined that the Accused had outgrown his ADHD. Although the Accused did not crave alcohol, alcohol dependence tended to be a chronic relapsing condition and it was important for the Accused to remain engaged with an alcohol treatment programme. Given his past history of violence, the risk of future violence remained high. Of importance was the Accused’s strong family support which was a protective factor.

54 The Defence relied on reports from a psychiatrist, Dr Tommy Tan. In a report dated 16 February 2011, Dr Tan opined that the Accused had ADHD. After the Accused had failed to be selected for the Youth Olympic Games, he suffered from a “major depressive order, single episode”. Dr Tan opined that there was a causal link between the commission of the offences and his ADHD and major depressive disorder. His ADHD caused him to behave impulsively. He was drinking alcohol to compensate for his restlessness and depressed mood. The alcohol abuse further increased his impulsivity when he committed the offences of voluntarily causing hurt. The risk of reoffending was low because of various favourable factors:

- (a) the offences were causally linked to symptoms of his ADHD; with effective treatment of his ADHD, he would be less impulsive. It was his impulsivity which had caused him to offend;
- (b) he did not have a past history of offending before June 2010;
- (c) he did not have antisocial traits;
- (d) he was remorseful for what he had done;
- (e) he had good family support. His family would ensure that he continued treatment; and
- (f) he and his family were now aware that he had a disorder that needed treatment.

55 I noted that at the time of the 16 February 2011 report, the Accused had committed various offences but not the s 304(a) offence (see the table at [3] above).

56 Dr Tommy Tan issued another report dated 12 September 2011. By then, the Accused had committed the s 304(a) offence. Dr Tan said that the Accused's parents had admitted to him that they had not been monitoring whether the Accused had been taking his medicine. They initially denied that the Accused had been drinking but the father subsequently admitted that he had "suspected" that the Accused had been drinking. The father said that he had allowed the Accused to go out to attend a friend's birthday the night before the offence because he was worried that restricting the Accused "would make [him] worse".

57 The Accused admitted that he had lied to Dr Tan about taking his medicine when he saw Dr Tan in February and March 2011. He said his parents thought that he was still taking his medicine. The Accused said that he stopped taking his medicine because “he felt “bored” and “dull” and was not as active as before”.

58 Dr Tan was of the view that the Accused did not have a personality disorder because:

(a) There was “no enduring or pervasive pattern of behaviour which is inflexible response to a broad range of personal and social situations”. There was also no record of inability to adapt to school. In fact, he adapted very well to his secondary school. The Accused’s rebelliousness towards his parents and offending behaviour was after he had turned 15 years old. His rebelliousness “might not be more than ordinary adolescent rebelliousness in the absence of his eldest brother”.

(b) There was “no clinically significant distress, except since 16 years old”.

59 He was also of the view that the Accused did not have an antisocial personality disorder because:

(a) The Accused did not have a personality disorder.

(b) There were episodes of dissocial behaviour. However, these were committed with his friends. They could be playful pranks or he could be influenced by his friends to commit them.

(c) He had empathy. After he had beaten the victim, he felt “pity”. He called the police and subsequently surrendered to the police. This behaviour did not reflect the lack of empathy one normally observed in a person with dissocial personality disorder. The Accused did not blame Loo for provoking him. He did not offer any excuse for or rationalise his actions.

(d) A person with antisocial personality disorder would not call the ambulance nor surrender himself to the police immediately because lack of empathy is pathognomic of the disorder.

(e) The Accused’s family disagreed that the Accused had been cruel to animals.

60 On the last point about cruelty to animals, I observed that it was the Accused himself who had informed Dr Lim that he and a friend had found an injured bird and had thrown it repeatedly against a wall until “the body tore open”.¹ This was recorded in Dr Lim’s 5 July 2011 report.

61 Dr Tan further opined that:

(a) The Accused had just turned 18 years old in 2011. All the signs and symptoms elicited were prior to him turning 18 years old. It was not clinically correct to diagnose someone with an antisocial personality before the age of 18. Dr Lim had diagnosed the Accused with an antisocial personality disorder on the basis of his behaviours before he turned 18.

¹ See Dr Lim’s report dated 5/7/2011.

(b) In the Accused, there were other factors to explain his impulsive and dissocial behaviour after the age of 15.

(c) Therefore, it was not clinically correct to have stated that he was at high risk of offending as it had been based on an incorrect clinical assessment of antisocial personality disorder and without benefit of compulsory treatment.

(d) The Accused qualified for the defence of diminished responsibility. He had an abnormality of mind, *ie*, impulsivity, which arises from attention deficit hyperactivity disorder, which substantially impaired his mental responsibility for his acts in causing the death of Loo.

Submissions on sentence

62 The Prosecution referred to a few cases on sentencing. In *Public Prosecutor v Tan Keng Huat* (Criminal Case No 25 of 2011), the offender was 34 years old at the time of the offence. He had brought a diving knife from his flat to confront the 46-year-old victim who had had a physical altercation with the offender's elder brother earlier near the car park below their flat. After spotting the victim at the void deck, the offender and another brother of his confronted the victim. The brother swung a plastic chair at the victim before the offender rushed towards the victim, stabbing his chest once and slashing his cheek twice. The victim died. The offender and the brother who was involved in the attack both fled Singapore to Malaysia that same night. After the offender was arrested slightly over a year later, he pleaded guilty to a charge under s 304(a) of the Penal Code and was sentenced to 15 years' imprisonment with 12 strokes of the cane.

63 In *Public Prosecutor v Kumaresen a/l Muthian @ Rathu* (Criminal Case No 16 of 2011), the offender was 28 years old at the time of the offence. Pursuant to a quarrel and an exchange of vulgarities with the 44-year-old victim, the offender: (a) used a 30-cm long metallic angle bar to hit the victim's head several times; (b) punched the victim's face; and (c) stamped on the victim's chest and abdomen with his feet. Subsequently, the offender tried to wake the victim, who was by then in a semi-conscious state. When he realised that the victim's condition was serious, he called the police and the SCDF for assistance. The victim later died from multiple injuries. The offender was sentenced to 12 years' imprisonment. In view of the fact that he was suffering from Major Depressive Disorder at the time of the offence, no order of caning was given.

64 In *Public Prosecutor v Tan Teck Soon* [2011] SGHC 137, the offender was in a relationship with the 20-year-old victim. On the day of the offence, the offender and the victim started quarrelling over a minor dispute. Later, when the couple were at a block of flats, they quarrelled again and went up to the 12th floor corridor. During the argument, the offender felt that the victim was trying to end their relationship and decided to die together with her. The offender pushed the victim to her death over the parapet wall and swung himself over the parapet. However, he survived the fall after landing on some scaffolding works on the ground floor. The offender pleaded guilty to one charge under s 304(a) of the Penal Code. He was 19 years old at the time of the offence.

65 Lee Siu Kin J noted that that was a rather unusual case. There was no grave and sudden provocation from the victim. There was no sudden fight.

The offender did not suffer from any abnormality of mind. The offender had acted out of rash, impulsive reaction to the lovers' tiff and it was not a premeditated act. It was an act of puerile selfishness. Lee J therefore was of the view that a higher sentence was warranted and imposed a sentence of 14 years' imprisonment.

66 The Prosecution submitted that Dr Lim's diagnosis of antisocial personality disorder and ADHD did not override the sentencing objectives of deterrence and retribution.

67 As could be seen from the previous offences committed by the Accused, he had been actively looking for opportunities to commit violence and even obtained deadly weapons before committing some of the offences.

68 A common factor in the Accused's violent offences was that they were committed while he was under the influence of alcohol. Accordingly, the principles of general and specific deterrence should apply. The principle of retribution was also applicable.

69 The Prosecution stressed Dr Lim's opinion that the Accused had a high risk of re-offending in view of his past history of violence. Therefore, the protective principle was relevant. Also, the Accused could be rehabilitated with a sufficiently lengthy prison sentence.

70 As for the s 304(a) offence, the Prosecution described the attack as cruel, one-sided and vicious and was one of the more egregious cases of culpable homicide. The fact that it was not pre-meditated was immaterial. Notwithstanding the Accused's young age, he had been given numerous

chances in the past but persisted on a path of violence leading to the s 304(a) offence.

71 Accordingly, the Prosecution submitted a sentence of 15 years' imprisonment and eight strokes of the cane for the s 304(a) offence.

72 For the other offences, the Prosecution submitted:

(a)	2nd charge under s 326	Three to four years' imprisonment and four strokes of the cane.
(b)	6th charge under s 323	Not less than three months' imprisonment.
(c)	7th charge under s 324	Not less than two years' imprisonment.

73 Under the law, at least two of the sentences must run consecutively. The Prosecution submitted that the sentences for the two most serious offences should run consecutively, making an aggregate sentence of 18 to 19 years' imprisonment and 12 strokes of the cane.

74 The Defence referred to *Public Prosecutor v Sufian bin Nordin and others* [2010] SGHC 74 ("*Sufian*") which involved seven offenders who were charged under s 304(a) read with s 149 of the Penal Code. Six of the offenders were each sentenced to 12 years' imprisonment with ten strokes of the cane. The remaining offender who was the second accused person ("B2") was sentenced to 20 years' imprisonment with 18 strokes of the cane. That case involved a settlement talk with two persons (the deceased and one Seah) for which some of the offenders decided to arm themselves with weapons. During the talk, Seah grabbed the neck of the 7th accused and stated that all the

misunderstandings had been created by him. The deceased and Seah then asked the 7th accused to repay them \$50 every day in order to repay in full a sum of \$800 which had been in issue. The deceased took the 7th accused's handphone away and passed it to Seah, stating that the handphone would be kept as collateral until the money was repaid. The deceased and Seah then walked away to a coffeeshop. However, as they were about to order their food, they were confronted by a group of persons led by B2. B2 shouted something before landing a punch on the deceased's face. This was quickly followed by some of the accused persons who used their knives to attack the deceased. Seah and the deceased ran away but the 7th accused caught up with the deceased and floored him with a kick. As the deceased fell to the ground, he was surrounded and attacked.

75 The High Court imposed the most severe sentence on B2 because he was the oldest of the accused persons (whose ages at the time of the offence on 23 February 2008 ranged from 15 years to 28 years) and a leader of the attack. He had led them to the coffeeshop and landed the first blow which signalled the attack. In addition, B2 had an antecedent of a violent crime whilst being a member of an unlawful assembly which resulted in the death of the victim in that case. He was convicted and sentenced and then released from prison on 5 December 2007, just a few months before committing the s 304(a) crime.

76 The Defence also referred to *Public Prosecutor v Norezam bin Mohsin and Others* [2007] SGHC 180 and *Public Prosecutor v Muhammad Zulkahil bin Johari and Another* [2009] SGHC 74 which involved a gang fight. I need

not elaborate on the facts in those cases as they do not add much to the precedents already cited above.

77 The Defence stressed the youth of the Accused and that he had voluntarily surrendered to the authorities on each occasion after breaking the law on 22 June 2010 and 18 November 2010. Even for the offence on 4 June 2011, the Accused had contacted the authorities to report the offence.

78 The Defence disagreed that the Accused had an antisocial personality disorder but accepted that he had ADHD and an alcohol problem. The Defence submitted that since the incident on 4 June 2011, the Accused was aware that there was an underlying problem and this, together with his willingness to do what is necessary to manage his ADHD and alcohol problem as well as his family's strong support, significantly mitigated the risk of re-offending.²

79 The Defence also submitted in its Supplementary Mitigation Plea dated 26 February 2016 that the Accused's past history of violence must not be overstated. The Defence further submitted that the past four years in remand had "forced [the Accused] to grow up". He was no longer young, immature and brash. Instead, the Accused had informed Dr Lim that he "preferred sedentary activities" and "was able to spend time reading and enjoyed reading". The Accused's strong family support and the programmes in Prisons would equip him with proper skills for a life away from crime upon his release and mitigate the risk of reoffending.

² Paras 19 and 28 of the Mitigation Plea dated 9/7/2015.

80 As for the other offences for which the Accused was convicted under s 326 and s 324, the Defence provided a range of sentences and submitted that the Accused's level of culpability should fall at the lower end of the range:

(a)	2nd charge under s 326	33 to 35 months' imprisonment and six strokes of the cane.
(b)	7th charge under s 324	18 months' imprisonment and six strokes of the cane in one case and 30 months' imprisonment in another case for an offender who was more than 50 years old and therefore not eligible for caning.

81 The Defence did not cite any precedent for the s 323 offence.

82 Taking into account two consecutive sentences, the Defence submitted that an aggregate sentence of around ten years' imprisonment would suffice. For those offences which the Accused might be subject to caning, the Defence did not make any submission on the specific number of strokes which should be imposed.

The court's reasons

83 The main focus in sentencing was the s 304(a) offence as that was the most serious charge.

84 The mitigating factors were:

- (a) The Accused's youth. At the time of the s 304(a) offence on 4 June 2011, he was 18 years old. For the other offences, he was 17 years old.
- (b) He called the authorities to inform them of the offence after it was committed, even though he was abusive during the calls.
- (c) He suffered from mental disorder.
- (d) There was also some indication of a brighter future for him arising from his willingness to read while in prison.

85 The aggravating factors were:

- (a) His history of crime including violent offences for which he had been arrested, although one should also take into account that on various occasions he had surrendered himself. Indeed, he committed the s 304(a) offence while he was out on bail.
- (b) The circumstances in which the s 304(a) offence was committed.
- (c) The high risk of re-offending.

86 It seemed to me that the history of violent offences and the circumstances in which the s 304(a) offence was committed outweighed all the mitigating factors.

87 The s 304(a) offence was not an isolated offence of violence. That is why it was necessary to set out his history of offences. He had escalated from

theft to violent conduct. His violent conduct just the year before in 2010 involved the use of a parang and a breadknife in different incidents. He could have easily killed someone then. Although he had surrendered himself, he obviously did not learn anything from his past conduct. Indeed, he committed the s 304(a) offence while he was out on bail. The Defence's submission that he should be given a chance did not carry much weight as he had had many chances already.

88 I found it surprising that the Defence would submit that the Accused was aware that there was an underlying problem only from the s 304(a) offence.³ The Defence even described it as a “wake-up call” for the Accused.⁴ Surely the first offence of violence on 22 June 2010 in which he caused grievous hurt with the use of a parang should have been the wake-up call if his earlier conduct of fighting in school (where he had been caned on one incident) had not already been one. The additional offences of violence in 2010, whether with or without a weapon, should have left him and his family in no doubt that he had to restrain himself from criminal and also violent conduct.

89 Although his family were aware of his troubles, it did not appear that they could help him very much. I say this not to put blame on them but to explain why I did not give much weight to the allegation that he had strong family support even though this was a factor that both Dr Lim and Dr Tan had found. In my view, their findings meant that his family loved and cared for him but it was obvious from what the family told Dr Tan (see [56] above) that

³ Paras 19 and 28 of the Mitigation Plea.

⁴ Para 26 of the Supplementary Mitigation Plea (“SMP”).

they could not do much for the Accused. They were not aware that he had stopped taking his medicine and he had lied to Dr Tan about taking his medicine. They even appeared to deny the Accused's drinking issue until the father said he "suspected" this.

90 Bearing in mind the Accused's history of violent conduct after he had been caned in school and even after he had surrendered himself to the authorities on a few occasions in 2010, I was not persuaded that his family would be able to supervise him more effectively than before after he is released from prison. Whether he will himself be able to rein in his violent tendencies is a different point altogether.

91 Whether or not the Accused suffered from an antisocial personality disorder, a point on which the two psychiatrists disagreed, there was no escaping from the fact that he had a history of violent conduct. Indeed, although Dr Tan had opined in his report dated 16 February 2011 that the risk of reoffending was low because of various favourable factors (see [54] above), the Accused proceeded to commit the s 304(a) offence less than four months later on 4 June 2011.

92 It seemed to me that Dr Tan had underestimated the importance of the Accused's history of violent offences and overestimated the weight of the favourable factors which existed. Likewise, while the Defence urged the court not to overstate the Accused's history of violence,⁵ I was of the view that they were in fact understating it.

⁵ Para 7 of SMP.

93 The circumstances of the commission of the s 304(a) offence were also troubling. The victim was a senior citizen minding his own business and engaging in the innocent act of saying his prayers. Yet the Accused became outraged and engaged in an unprovoked and senseless attack on him. He did not just punch the victim but also kicked him twice in the face.

94 The fact that it was not a premeditated attack and that no weapon was used were not mitigating factors in the circumstances.

95 While the Accused's ADHD and alcohol dependence were factors which contributed to his history of violent conduct, it seemed to me that he also had underlying tendencies toward violence and aggression.

96 Furthermore, most of his history of violent conduct in 2010 was not committed in a moment of impulse. There was some planning involved.

97 In the attack on Segaran, the Accused had gone to a friend's flat beforehand and secretly took a knife and a parang from the kitchen. He then met Suresh to enlist his help in attacking the two persons he had in mind (see [6] and [7] above).

98 In the attack on T, there were plans by the Accused and Sukanthan to attack T after school. Vinod's help had also been enlisted.

99 In the attack on Rasheed, the initial plan by the Accused and others was to arm themselves for a settlement talk. When no one else turned up for the settlement talk and the Accused subsequently saw Rasheed elsewhere, he made plans to attack Rasheed by calling Rasheed's friend to tell Rasheed to

meet the Accused at a particular void deck where the Accused and others would be waiting.

100 Ironically, it was the fatal attack on Loo that was truly committed on impulse.

101 I also observed that the attack on T was not preceded by any bout of drinking.

102 In the circumstances, I agreed with Dr Lim that the risk of reoffending is high.

103 I was of the view that the principles of specific and general deterrence and retribution took precedence. For general deterrence, those who have problems of alcohol dependence or similar and commit prior acts of violence under such influence must realise that the courts will come down hard on them if they do not rein themselves in. For specific deterrence, the risk of reoffending is high. I need not elaborate on retribution.

104 None of the facts of the precedents cited to me were close to the facts in the present case. This was not surprising. As the Court of Appeal pointed out in *Public Prosecutor v Tan Kei Loon Allan* [1998] 3 SLR(R) 679 at [33], the range of circumstances in which s 304(a) offences are committed is extremely varied. I noted that in most of the precedents cited, the offender did not have a history of violent conduct although I also noted that the Accused had surrendered himself from time to time. In *Sufian* (see [74] to [75]), B2, who was 28 years old at the time of the offence, was sentenced to 20 years' imprisonment and 18 strokes of the cane as he was one of the leaders of the

attack and he had been convicted and sentenced for an earlier violent crime which resulted in a fatality.

105 In the circumstances, I was of the view that a sentence of 14 years' imprisonment and eight strokes of the cane for the s 304(a) offence was appropriate.

106 As for the other offences, there was not much dispute on the range of sentences and I sentenced the Accused accordingly. For ease of reference, I set out below the sentences for each of the four offences of which the Accused was convicted and the aggregate sentence:

S/N	Penal Code	Sentence
(i)	Section 304(a)	14 years' imprisonment and eight strokes of the cane.
(ii)	Section 326	Three years' imprisonment and four strokes of the cane.
(iii)	Section 324	Two years' imprisonment.
(iv)	Section 323	Two months' imprisonment

(a) the sentence for the s 304(a) offence was to commence from 4 June 2011;

(b) the sentence for the s 324 offence was to run consecutively after the sentence for the s 304(a) offence;

(c) the sentences for the s 326 and s 323 offences were to run concurrently with the sentence for the s 304(a) offence; and

(d) the aggregate sentence was 16 years' imprisonment and 12 strokes of the cane.

107 As can be seen, I ordered the first and third most severe sentences to run consecutively. There was no issue that the most serious offence should be one of the two sentences to run consecutively. Of the remaining three offences: (a) one was for causing grievous hurt with a weapon (s 326); (b) another was for causing hurt with a weapon (s 324); and the third was for causing hurt without a weapon (s 323).

108 I was of the view that one of the sentences for the two offences where a weapon had been used should be part of the aggregate sentence and applied the lower sentence (*ie*, for the s 324 offence) of the two. In my view, the aggregate sentence of 16 years was not crushing.

Woo Bih Li
Judge

Ang Feng Qian and Torsten Cheong (Attorney-General's Chambers)
for the Prosecution;
Sunil Sudheesan and Diana Ngiam (Quahe Woo & Palmer LLC) for
the accused.
