IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2018] SGCA 31

Criminal Appeal No 52 of 2017

Between

Public Prosecutor

… *Appellant*

And

Kong Peng Yee

… *Respondent*

JUDGMENT

[Criminal law] — [Offences] — [Culpable homicide]

[Criminal procedure and sentencing] — [Sentencing] — [Mentally disordered offenders]

Public Prosecutor
v
Kong Peng Yee

[2018] SGCA 31

Court of Appeal — Criminal Appeal No 52 of 2017
Sundaresh Menon CJ, Judith Prakash JA and Tay Yong Kwang JA
22 January 2018

27 June 2018 Judgment reserved.

Tay Yong Kwang JA (delivering the judgment of the court):

Introduction

1 On 13 March 2016, the then 68-year-old Respondent killed his 63-year-old wife in a brutal and violent manner using a knife and a chopper. He pleaded guilty to a charge of culpable homicide not amounting to murder under s 304(*a*) of the Penal Code (Cap 224, 2008 Rev Ed) ("the Penal Code") and was sentenced by the High Court to two years' imprisonment on 16 October 2017. As a result of backdating and remission of the sentence, the Respondent was released from prison on the day that he was sentenced. As the early release was unexpected by the Respondent's two married daughters who were not prepared to house him in their homes, the Respondent was brought to the Institute of Mental Health ("IMH") where he has been a voluntary patient since that day.

2 The Prosecution appealed against the sentence of two-year imprisonment on the ground that it was manifestly inadequate on the facts. We heard the appeal on 22 January 2018. At the conclusion of the hearing and upon Defence Counsel, Mr Sunil Sudheesan, confirming the Respondent's undertaking that he would continue to stay in the IMH until this appeal is disposed of, we asked the Prosecution to obtain a further psychiatric opinion from the IMH on certain questions posed by us. The further psychiatric opinion dated 8 February 2018 was tendered by the Prosecution on 14 February 2018. Thereafter, the parties requested that they be allowed to make further written submissions on this psychiatric opinion. We granted them leave to do so sequentially and also directed them to submit specifically on a recommendation made by Dr Koh in the further psychiatrist opinion, which we will discuss later in this judgment. Accordingly, the Prosecution tendered its further submissions on 9 March 2018 and the Defence replied on 21 March 2018.

The charge

3 The charge against Kong Peng Yee ("the Respondent") reads:

> That you, Kong Peng Yee, on 13 March 2016, sometime between 3.00 p.m. and 4.38 p.m., at Block XXXX Compassvale Crescent #XX-XXX, Singapore, did commit culpable homicide not amounting to murder, by causing the death of one Wong Chik Yeok (female / 63 years old), to wit, by inflicting multiple incised wounds to the said Wong Chik Yeok's head using a knife and a chopper, which acts were 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).

4 Culpable homicide is defined in s 299 of the Penal Code as follows:

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

5 Under s 304(*a*) of the Penal Code, an offender may be punished either with imprisonment for life with the option of caning or with imprisonment for up to 20 years with the option of a fine or caning. Caning is not applicable to the Respondent because of his age.

Facts

The parties

6 The following are undisputed facts contained in the Statement of Facts. The Respondent is a Singaporean man presently aged 70. He was 68 years old at the time of the offence. He is a retiree. Prior to his retirement, he was employed as a technician with SIA Engineering Company.

7 The deceased, Wong Chik Yeok ("the Deceased"), was a Singaporean woman aged 63 at the time of her death. She was the Respondent's wife for about 36 years.

8 The Respondent and the Deceased had two daughters, Kong Annie ("Annie"), aged 36, and Kong Yanni ("Yanni"), aged 27. At the time of the offence, the Respondent, the Deceased and Yanni lived together in the Housing and Development Board flat ("the Flat") stated in the charge.

First Information Report

9 On Sunday, 13 March 2016 at about 4.38pm, Annie called the police and reported the following: "My father called my sister to say he has just killed my mother. I am rushing home now. Please send police to check." The location of the incident was given as the Flat.

10 After receiving the call, police officers from Sengkang Neighbourhood

Police Centre and paramedics from Lentor Ambulance were despatched to the Flat. The Respondent was placed under arrest at 4.56pm. The Deceased was pronounced dead by the paramedics at about 5pm.

Events leading to the incident

11 In October 2015, the Respondent attended at Khoo Teck Puat Hospital with complaints of headache and eye pain. He was treated with anti-glaucoma and anti-inflammatory medications and laser treatment was performed on him. In January 2016, the Respondent underwent surgery to remove a cataract in his right eye. Over time, the Respondent began to associate various other ailments like constipation, weakness of the knees, insomnia and weight loss with his surgery or his food intake. Although the Respondent sought medical attention for these ailments, he refused to consume the prescribed medication or to heed his doctor's advice. For instance, he refused to consume laxatives to relieve his constipation as he believed that the laxatives were poisonous. The Respondent also believed that the Deceased and Yanni were trying to "torture" him by making him drink prune juice to relieve his constipation.

12 On Saturday, 12 March 2016, the Deceased, Annie and Yanni accompanied the Respondent to a clinic to collect his health check-up report. Although the report was not adverse, the Respondent continued to be worried about his health and felt that either someone was trying to harm him or he was suffering from some illness and was going to die.

13 Annie suggested that the Respondent and the Deceased spend that night at her home as she felt that a change of environment might do the Respondent some good. The Respondent and the Deceased agreed.

14 While at Annie's home, the Respondent appeared troubled. He told

Annie that she must take care of Yanni if he was not around. He also told Annie that he did not think she was his daughter. Annie asked the Respondent if he would abandon her if she was not his daughter and he assured her that he would not. The Respondent told Annie that he did not want her to go for DNA testing to verify if she was his daughter. Nothing else of significance happened that night.

15 On Sunday, 13 March 2016, Annie took the Respondent and the Deceased to her place of worship, Trinity Christian Church. While they were taking the lift in the church, the Respondent made some incomprehensible noises ending with "mad already!". The Respondent kept quiet after that.

16 Later, when Annie accompanied the Respondent to a toilet in the church, they met one Pastor Alana. The Respondent suddenly said something to the effect of "God wanted me to return daughter to the rightful parent". During the sermon, the Respondent told a stranger sitting beside him that people were poisoning him.

17 After the church service, Annie drove the Respondent and the Deceased back to the Flat. The Respondent said that he was tired and went to his bedroom to take a nap. The Deceased remained in the living room. Annie stayed for a while to chat with the Deceased before leaving the Flat at about 3pm to pick up Yanni.

18 The Respondent claimed that after Annie left the Flat, he heard some roaring sounds around his ears which woke him up from his nap. He walked to the kitchen and got a knife from the sink. He then walked out of the kitchen and saw the Deceased folding some clothes in the living room. He stabbed her from the back. The Respondent then moved in front of the Deceased where he

continued to stab her repeatedly.

19 The Deceased struggled and the Respondent dropped the knife. The Respondent then proceeded to the kitchen to get a chopper, returned to the living room and used the chopper to continue his attack on the Deceased. The Respondent stopped hacking the Deceased with the chopper only when he realised that she was dead.

20 After he realised that the Deceased was dead, the Respondent rested on the sofa for a while before he called Yanni. Yanni was with Annie at the time and she missed the Respondent's phone call. The Respondent then called his younger sister, Joanna Kong ("Joanna"), and told her that he had killed his wife. The Respondent told Joanna to call the police and to distribute his money to his two daughters. After the Respondent hung up, Joanna called Annie and instructed her to call the police and to wait for the police to arrive before going up to the Flat.

21 At around this time, Yanni realised that she had missed the Respondent's phone call. When she called him back, the first thing her father said was, "I killed mommy." Yanni told him not to talk nonsense and the Respondent replied, "Already killed." Yanni continued engaging him in conversation over the phone while Annie drove them back to the Flat. Annie also called the police in the meantime (see the First Information Report at [9] above).

22 At about 4.45pm, Annie and Yanni arrived at the void deck of the Flat. The police arrived shortly thereafter. The two sisters went up to the Flat with the police. When Yanni opened the door, she saw the Respondent sitting on the sofa in the living room in blood-stained clothes and the Deceased lying motionless in a pool of blood on the floor next to the sofa. The Respondent

appeared dazed and was quiet. A blood-stained chopper measuring 30cm long (with the blade measuring 19.5cm long and 8.5cm at its widest part) was seen near the Deceased's left foot, while a blood-stained knife measuring 32.8cm long (with the blade measuring 20.8cm long and 3.8cm at its widest part) was seen near the Deceased's body under the coffee table. The chopper and the knife were seized by the police subsequently.

23 At about 4.58pm, the paramedics arrived at the scene and the Deceased was pronounced dead at about 5pm.

24 Following his arrest, the Respondent was examined medically. He was noted to have (among other injuries) minor scratches and abrasions over his face, chest, right elbow, knees and back, as well as a laceration on his right ring finger which required stitching.

Examination and autopsy by Dr Chan Shijia

25 At about 9.25pm that day, Associate Consultant Forensic Pathologist Dr Chan Shijia arrived at the Flat and examined the Deceased's body. She observed that the Deceased was lying on the left lateral position in a diagonal direction facing between the TV console and the main door. She was lying in a pool of blood which was densest around her head. Near her body, under the coffee table, was a kitchen knife with a brown handle and there was a chopper near the foot of the Deceased. In addition to the large amount of blood on the floor where the Deceased was lying, there were blood spatters on the living room wall behind the TV console and on the perpendicular living room wall with a window (behind the Deceased). There was no apparent blood spatter on the curtains. There were blood-stained footprints (in both directions) between the living room and the kitchen.

26 The next day, 14 March 2016, Dr Chan performed an autopsy on the Deceased in the mortuary at the Health Sciences Authority. She subsequently produced an autopsy report in which she certified the cause of death to be "(IA) HAEMORRHAGE DUE TO (IB) MULTIPLE INCISED WOUNDS TO HEAD". A total of 189 injuries were noted in the autopsy report, the most severe of which were concentrated around the Deceased's head and neck region. A large number of incised wounds were on the Deceased's head. Some of these resulted in facial fractures. There were five incised wounds on the neck which were superficial in nature. Eight stab wounds were also noted on the Deceased's head, chest, back and left thigh. These too were generally superficial in nature. There was also extensive bruising all over the Deceased's body which was the result of blunt force trauma.

27 Dr Chan was of the opinion that "[d]eath was due to haemorrhage from the multiple incised wounds to the head, including the face and scalp". While the incised wounds and stab wounds may have been superficial in nature, massive haemorrhage could result from the overall effect of the multiple scalp and facial injuries, which could result in death. This was evident from the large amount of blood found at the scene, as well as the autopsy findings of a body with marked pallor and lack of discernible hypostasis.

28 Dr Chan also noted that there was no evidence of an underlying medical condition which could have contributed to the Deceased's death. No alcohols, volatiles or drugs were detected in the Deceased's blood or urine.

The Respondent's version of events

29 In his statements to the police, the Respondent admitted that he killed the Deceased. He claimed that he believed his family would not look after him

if he were unwell and that Annie had reconciled with her "real" parents and disliked him. He believed that he should kill the Deceased first because his family might want to kill him.

30 On the day of the offence, the Respondent was awakened by "roaring" sounds around his ears. His mind told him to let Annie leave the house first so that he could kill the Deceased when she was alone. After getting a knife from the kitchen, he approached the Deceased from the back and stabbed her multiple times. She fell to the floor and they struggled. He then went to the kitchen, got a chopper and attacked her further while she lay on the floor. His mind told him to "make sure she die". After he realised that she was dead, he was "happy" and stopped attacking her. He then called Yanni to tell her what he had done and wrote a statement on a piece of paper to set out how his property and savings should be distributed.

Psychiatric reports on the Respondent

31 Following his arrest on the day of the offence, the Respondent was admitted to Changi General Hospital. On admission, the Respondent was perplexed, disorientated and agitated, banged his head about 44 times and said he had heard voices.[1] Over the course of admission, he said repeatedly that he wanted to die. On 15 March 2016, the Respondent was remanded in Changi Prison Complex Medical Centre for psychiatric evaluation.

32 The Respondent was assessed by Dr Kenneth Koh ("Dr Koh"), a psychiatrist and senior consultant with the IMH. Dr Koh issued four reports dated 11 April 2016 ("the First Report")[2], 6 December 2016 ("the Second

1 ROP Vol 2 p 45.

2 ROP Vol 2 p 43.

Report")[3], 9 May 2017 ("the Third Report")[4] and 3 January 2018 ("the Fourth Report")[5]. The Fourth Report was issued after the High Court's decision of 16 October 2017 and before the appeal was heard by the Court of Appeal. A further report dated 8 February 2018 ("the Fifth Report") was prepared by Dr Koh after the hearing of this appeal because it was requested by the Court of Appeal during the hearing. We set out the Fifth Report at [51] below.

33 Dr Koh issued the First Report after examining the Respondent on four occasions. The Respondent said he had never previously consulted a psychiatrist, had no history of suicidal or violent behaviour and had never hit his late wife before the incident stated in the charge. He also told Dr Koh that he had a good relationship with the Deceased until about three months before the incident when he began to suspect that she had been unfaithful in the distant past and that Annie was not his daughter. The Deceased gave him conflicting answers when he asked her about it. The Respondent said that after the blow-up with the Deceased over these suspicions, matters settled somewhat, although he continued to be disturbed by such thoughts occasionally. The First Report also stated that the Respondent said he did not know why he stabbed the Deceased, despite the question having been posed to him many times in different ways.

34 According to the Respondent's sister Joanna, when Annie was about five years old, the Respondent told her he suspected that the Deceased had had an affair but he did not raise it again thereafter. Joanna, Annie and Yanni said that the Respondent and the Deceased had a normal marital relationship without any past violence. However, after the eye operation in October 2015, the Respondent became inordinately preoccupied with his physical health and

3 ROP Vol 2 p 47.

4 ROP Vol 2 p 48.

5 Defence's Bundle of Authorities, Tab 1.

began consulting many doctors. He said that his wife and Yanni were harming him. Once, he also claimed that one of the doctors in a polyclinic was in cahoots with the Deceased to harm him.

35 The First Report also recorded that the Respondent had nihilistic/somatic delusions. For example, he said that while giving his statement to the police, he had put his thumbprint on a document consenting for his organs to be taken away. He believed that his left eye had been taken out and donated and that his internal organs and intestines had been "robbed and donated already" to other people. He suspected this because he had been having constipation in the past few months.

36 Dr Koh concluded the First Report with the following opinion:

> 1. [The Respondent] has late onset psychosis with persecutory, jealous and nihilistic/somatic delusions. The cause of the psychosis is, for the purposes of this report, academic, but his psychotic state could have its origins in a severe depression secondary to the mild physical impairments after his eye surgery which he then blew out of proportion. It could also be a precursor to a dementing illness or be purely a functional psychosis.
>
> 2. He was not of unsound mind at the time of the alleged offence in that he was aware of his actions and knew that his acts were wrongful.
>
> 3. He is currently fit to plead in court although it might be good for another assessment to be made nearer the time of trial as his presentation is somewhat atypical (for example, the late onset of his illness and his hyper-sensitivity even with starting doses of medication). There is also some uncertainty as to how his illness will progress and if superimposing conditions (if any) that are currently sub-clinical will become more apparent with the passage of time (such as dementia).
>
> 4. His psychotic delusions would have significantly adversely affected his mental responsibility for his actions at the time of the alleged offence.

37 In the Second Report, Dr Koh gave the following clarification:

> By my statement that Mr Kong's 'psychotic delusions would have significantly adversely affected his mental responsibility for his actions at the time of the alleged offence', I meant that from a psychiatric point of view, his mental responsibility for his actions would have been substantially impaired by his psychotic delusions. I would therefore venture to say that he would qualify for a defence under exception 7 of section 300 of the Penal Code.

Section 300 of the Penal Code sets out the offence of murder. Exception 7 to that section, commonly known as the defence of diminished responsibility, states:

> Culpable homicide is not murder if the offender was suffering from such abnormality of mind (whether arising from a condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury) as substantially impaired his mental responsibility for his acts and omissions in causing the death or being a party to causing the death.

38 Dr Koh provided an updated assessment of the Respondent in the Third Report after examining the Respondent in Changi Prison on 4 May 2017 and perusing the prison's psychiatric notes. After reiterating his conclusions in the First Report, Dr Koh stated:

> When I examined Mr Kong today, he was relevant and engaged well. There were times when he was slow to respond in both the verbal as well as written forms (the latter as part of bedside cognitive testing), but this slowness was not pervasive throughout the interview and indeed, most of the conversation proceeded at a normal pace. This time, he did not stray off topic as he had a year ago. His mood was normal. He no longer had the persecutory, jealous and nihilistic/somatic delusions that he had suffered last year, at the time of and after the alleged offence. He was not experiencing hallucinations.
>
> Bedside cognitive testing revealed no pronounced cognitive deficit in him. His short and long term memory was intact as was his concentration and judgement. There was no agnosia, aphasia and apraxia (respectively, inability to recognize things, inability to speak and inability to do tasks). When asked to draw a clock face, he did so in an organized way. There was some mild perseveration, but not more pronounced compared to what

> he had displayed last year (perseveration being the tendency to be unable to switch to a new topic even though the conversation may have moved on).
>
> The Prison psychiatric notes corroborated my mental state findings today. There was an initial period of adjustment for Mr Kong in the first part of his prison remand, with some switching of types and changing of doses of medication needed. However, he has constantly been on antipsychotic and antidepressant medication; and over the last half year or so, he has been reported to have been mentally stable by the Prison Psychiatrist who manages him.
>
> With the passage of time, it is now clear that Mr Kong had had a **brief psychotic episode** at the time of the alleged offence, but he has since responded well to medication and entered into remission for several months now. There does not appear to be any significant dementing process detected in him nor any serious physical illness that had led to his disordered mental state at the time of the offence.
>
> Mr Kong has no known past history of violence, substance abuse and imprisonment. His psychiatric disorder is now in remission with medication. His family continues to visit him in prison. Given these good prognostic factors as well as his advanced age, his risk of dangerousness to others is low. Naturally, he will require long term follow up with psychiatric services and he should reside with family who are able to monitor and supervise him.
>
> He is presently fit to plead in Court.
>
> [emphasis in original]

39 Dr Koh was present at the hearing before the High Court trial Judge ("the Judge"). The Judge recited the portion of the Third Report stating that the Respondent had a brief psychotic episode but had responded well to medication, entered into remission for several months and posed a low risk of dangerousness to others. He then asked Dr Koh whether his opinion remained true as at the date of the hearing (16 October 2017). Dr Koh confirmed that, based on recent medical notes from the prison psychiatrist, the Respondent was still in a state of remission and it appeared that his mental state had not changed significantly since the Third Report.[6]

40 The Prosecution obtained the Fourth Report from Dr Koh after the Judge sentenced the Respondent and about three weeks before we heard the appeal. There, Dr Koh stated:

> Mr Kong arrived at our hospital on 16/10/17. He had been released from prison earlier than had been anticipated due to his unexpectedly short sentence. As such, his 2 daughters (one of whom had already been married and staying apart from him at the time of his offence, and the other, who had married and then also moved out while he was in remand) were caught unawares and could not house him in their new homes. Given the nature of his illness and the gravity of the offence, in caution we advised that he could be brought to IMH for him to be observed and to stay in a safe environment.
>
> Mr Kong has been a voluntary patient in IMH since then. He is not detained under the Mental Health (Care and Treatment) Act as the assessment at the time of admission, or since then, was and is that he is not a danger to himself or others. He has also not requested for discharge from hospital.
>
> Mr Kong is presently in remission of his brief psychotic disorder. He is maintained on an antipsychotic medication at a low dose, risperidone 1 mg at night, an antidepressant, fluoxetine, 20 mg in the morning and a night sedative as needed, zopiclone 3.75 mg at night as necessary. These medicines are to help him maintain his state of remission, and they have done so. In addition to medication, occupational therapy and nursing-led activities are also available to him in the ward. He is also regularly reviewed by members of the inpatient team, including myself.
>
> His prognosis in terms of the risk of future re-offending and dangerousness to himself and others is low, provided he remains in his state of remission. He has done so for many months now, both in the latter part of his prison remand as well as since he has arrived in IMH. …

41 After reproducing the penultimate paragraph of the Third Report (see [38] above) stating the Respondent's low risk of dangerousness to others, Dr Koh concluded the Fourth Report with the following remarks:

> My current assessment remains the same. The family is not presently ready to have him stay with them, but he is welcome

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6 ROP Vol 1 pp 30–31.

> to continue his stay in IMH, where he can be closely monitored and where we can work with the family to bridge relations between Mr Kong and them, with a hope that he may one day return to live with one of them.

Proceedings in the High Court

42 In the High Court, the Prosecution submitted that a sentence of at least nine years' imprisonment should be imposed. It submitted that the principles of retribution and deterrence ought to take primacy because the Respondent "had acted with full knowledge of what he was doing and of the gravity of his actions" and because the offence was "particularly heinous".[7] In particular, the Respondent believed that his family was out to get him and decided to strike pre-emptively to kill the Deceased first. His attack was brutal and violent and he admitted later to wanting to "make sure she die" and to feeling "happy" when she did. General deterrence was relevant because the offence involved an attack on a vulnerable and defenceless victim, involved the use of gratuitous violence and was apt to give rise to public disquiet. Specific deterrence was also relevant because the Respondent had "formed the intention to kill and waited for an opportunity to kill the Deceased when she was alone" and had made a "conscious decision" to kill her.[8] The Prosecution cited the following specific aggravating factors:[9]

(a) the attack by the Respondent was vicious, unrelenting and targeted vulnerable parts of the Deceased's body;

(b) the Respondent used two deadly weapons, a knife and a chopper, in the course of the attack;

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7 Criminal Case No 59 of 2017 ("CC 59/2017"), Prosecution's submissions on sentence, paras 3, 5 and 11–14.

8 CC 59/2017, Prosecution's submissions on sentence, paras 15–18 and 29.

9 CC 59/2017, Prosecution's submissions on sentence, para 19.

(c) the attack was planned in that the Respondent waited for Annie to leave the Flat before assaulting the Deceased and he was determined to carry out the attack until the Deceased died; and

(d) the attack was against a vulnerable and defenceless victim.

43 Defence counsel urged the court to impose a sentence of around five years' imprisonment. He emphasised that the Respondent's actions were not premeditated, displayed a clear lack of proper thought or coherence and were uncharacteristic and unfathomable.[10] Moreover, the Respondent's psychiatric condition was in remission and he stood to benefit from familial support.[11] This was supported by a letter from the Respondent's daughters addressed to the trial court which stated:[12]

> We are the daughters of Mr Kong Peng Yee. We are writing this letter, which outlines our care programme for our father after his release from prison, for your perusal.
>
> We understand that our father suffers from a psychiatric condition (psychosis) and that long-term follow up with the Institute of Mental Health (IMH) is necessary for him. We believe that a team of qualified and round-the-clock medical team is pertinent to the physical, emotional and spiritual well-being of our father.
>
> We will ensure that our father receive 24/7 monitoring and care from Medicare centers that provide on-site access to services from general practitioner, psychiatrist and dietician. We will encourage him to attend chapel services in the centers so as to strengthen his spiritual care support. We are committed to provide support in medication management and ensure that he goes to IMH for his treatment and reviews.

44 On 16 October 2017, the Judge imposed a sentence of two years' imprisonment. He was of the view that punishment was "probably not the most

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10 CC 59/2017, mitigation plea, paras 3, 25 and 27.

11 CC 59/2017, mitigation plea, paras 71 and 90.

12 CC 59/2017, Defence's Bundle of Authorities, Tab 1.

appropriate response" to a man like the Respondent (*Public Prosecutor v Kong Peng Yee* [2017] SGHC 253 ("the Judgment") at [14]). The sentence was imposed "not on the basis of retributive justice, nor deterrence, but on the basis that it is the most appropriate punishment on the facts of this case" (the Judgment at [14]). General deterrence was inappropriate because people who did not suffer from the same psychotic delusions would not act as the Respondent had done. Specific deterrence was also inappropriate because the Respondent was in remission and could be returned to the care of his family (the Judgment at [5]).

45 The Respondent's sentence was backdated to 13 March 2016, the date of his arrest. As a result of the one-third remission of the two-year imprisonment term, resulting in a term of 16 months, the Respondent was released from custody the same day that sentence was pronounced as he had been in custody for 19 months.

The parties' arguments on appeal

46 On appeal, the Prosecution maintains that retribution and deterrence ought to be the main sentencing considerations.[13] Its reasons are as follows:

(a) The principle of retribution should assume primacy because the Respondent "had acted with full knowledge of what he was doing and of the gravity of his actions", given that he had "decided to kill the Deceased, and was determined to 'make sure she die'". The offence was also "particularly heinous as it involve[d] the deliberate taking of a human life".[14]

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13 Prosecution's skeletal submissions, para 21.

14 Prosecution's skeletal submissions, para 23.

(b) General deterrence is relevant because the offence involved an attack on a vulnerable and defenceless victim and the use of gratuitous violence, and was apt to give rise to public disquiet. In support of this proposition, the Prosecution cites *Public Prosecutor v Law Aik Meng* [2007] 2 SLR(R) 814 ("*Law Aik Meng*") at [25(c)].[15]

(c) Specific deterrence is also relevant because the Respondent "had made a conscious decision to kill the Deceased", as opposed to acting during a spontaneous lapse of self-control. He was in "full control of his actions" which were "conscious and deliberate".[16]

The Prosecution also reiterates the specific aggravating factors enumerated at [42] above.[17]

47 The Prosecution cites some 11 precedents, which it classifies into three categories of severity: (1) low-risk offenders with no aggravating factors, (2) low-risk offenders with some aggravating factors and (3) higher-risk offenders and/or with more aggravating factors. It argues that the present case falls within the second category. The Prosecution also highlights the sentences in nine cases under ss 304(*b*) and 308 of the Penal Code, citing the consideration of ordinal proportionality.[18]

48 On the other hand, the Defence submits that the Judge considered and applied the relevant sentencing principles correctly. General and specific deterrence are inappropriate here because the Respondent's actions at the time

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15 Prosecution's skeletal submissions, para 24.

16 Prosecution's skeletal submissions, paras 24 and 58.

17 Prosecution's skeletal submissions, para 88.

18 Prosecution's skeletal submissions, paras 125 and 128 and Annexes A and B.

of the offence were "not a result of conscious deliberation" but rather a result of his psychotic episode. Specific deterrence is also less significant because the Respondent's psychosis is in remission and Dr Koh has opined that he could be returned to the care of his family.[19] Moreover, the Respondent's mental condition stabilised during his incarceration after his arrest and he is "fully rehabilitated". He poses a low risk of danger to others in future. According to the Defence, this obviates the need for any further imprisonment.[20]

49 The Defence submits that precedents may provide some guidance but are of limited value because the facts of this case are unique. It relies on *Public Prosecutor v Han John Han* [2007] 1 SLR(R) 1180, where the appeal against the original sentence of three years' imprisonment was allowed in Criminal Appeal No 1 of 2007 ("*Han John Han*"). On appeal, the offender was sentenced to five years' imprisonment for killing his pregnant wife (and consequently their unborn child) while suffering from a psychotic disorder known as a delusional disorder of the persecutory type. He believed that his wife was using black magic on him and that she was plotting to take away his daughters and his possessions. The Defence points out that both *Han John Han* and the present case involved psychotic delusions which resulted directly in the offender's actions, that there was no planning or deliberation and that both offenders had recovered materially from their disorders at the time of sentencing.[21]

Further psychiatric evidence

50 At the conclusion of arguments in the appeal, we thought it would be useful to have Dr Koh's opinion on the following questions:

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19 Defence's skeletal submissions, paras 26–32.

20 Defence's skeletal submissions, paras 35–36.

21 Defence's skeletal submissions, paras 55 and 61–65.

(a) Is there a material risk of a relapse of the psychotic disorder or other related mental disorder if the Respondent were to cease taking his current course of medication?

(b) Is there a medical benefit, in terms of enhancing the Respondent's prospects of recovery, in having the Respondent remain in a structured environment such as a prison for a time so as to ensure that he continues with his prescribed course of medication?

(c) Is it possible to predict how long the prescribed course of medication will need to be continued?

51 In the Fifth Report dated 8 February 2018, Dr Koh stated as follows:[22]

> a. There is a risk of relapse of his psychiatric illness should he cease taking his current medication. Current evidence supports maintenance treatment with antipsychotics for patients with psychotic illnesses while they are in remission of their psychotic illness. Continuing with antipsychotic medication at low dosage reduces the risk of psychotic relapse. However, the degree of risk of relapse, for Mr Kong specifically, should he cease medication, is hard to establish as he only had one prior psychotic episode and has not come off medication since.
>
> b. Having Mr Kong housed in a structured environment has its advantages, especially in those places where his medication intake can be supervised. This, however, need not be restricted to a prison environment and can take place in IMH or a nursing home. Should he opt to sell his flat, he may finance (or co-finance with his daughters) the cost of residing in a private nursing home. At present, he has been resident in IMH for several months now and has not asked for discharge. While we find no reason to commit him under the Mental Health (Care and Treatment) Act, given the index offence, it would not be difficult to make a case for this should he be in the community, show signs of relapse and be brought back to IMH. While allowing him to stay alone in his flat would highly not be recommended, allowing him to reside in IMH or a nursing home might provide him with greater opportunities to reintegrate with

22 Letter from the Prosecution dated 14 February 2018, appending Dr Koh's report of 8 February 2018.

> his family and for him to have freer access to community activities (for instance when on supervised home leave). As an example, because of his non-detained status, his daughters were able to quickly arrange for cataract surgery for him at Mt Alvernia Hospital on 6/2/18 and he was able to stay overnight there; whereas if he had to wait for public services, he would have had a much longer waiting time, increasing his distress over his impaired vision. As an alternative to oral medication, we may also consider switching him to a depot antipsychotic injection whereupon he need not take oral antipsychotic medication and we can still be assured that he has antipsychotic medication in his system.
>
> c. Given the gravity of the offence that had resulted from his illness, I would prefer for his medication to continue lifelong, or at least for years until his physical health deteriorates to the point where he can pose no danger to others because of this.

52 As mentioned in [2] above, the parties then requested and were granted leave to file further written submissions on this psychiatric report. We asked the parties to address, in particular, the first two sentences in paragraph (b) of Dr Koh's report and to submit how the matters stated therein could be achieved by this Court within its powers under the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("the CPC") or any other written law.

The Prosecution's further submissions

53 The Prosecution filed further submissions on 9 March 2018 urging the Court to enhance the Respondent's sentence[23], stating that the "protective principle is squarely engaged" although the principle of retribution was also invoked implicitly as "the nature of his crime renders it just and appropriate that he spend time in prison".[24] In particular, the Prosecution makes the following points:

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23 Prosecution's further submissions, para 19.

24 Prosecution's further submissions, paras 6 and 14.

(a) The Respondent's mental illness renders him a continuing risk. His current state of remission is maintained with continued medication and there is always a risk of relapse should he cease medication.[25]

(b) The present case is distinguishable from cases where the offenders posed little to no risk of reoffending, for example *Han John Han* (at the time of sentencing, the offender there had already been taken off antipsychotic medication without developing any further delusions of persecution) and *Public Prosecutor v Lim Ah Seng* [2007] 2 SLR(R) 957 (the offender was cured of his Post-Traumatic Stress Disorder by the time of sentencing and there was no real likelihood of another violent outburst).[26]

(c) Since the Respondent's present residence at IMH is voluntary and his daughters are not prepared to care for him full-time or to live with him, the Respondent's consumption of medication is entirely at his own discretion.[27]

54 The Prosecution therefore recommends a longer term of imprisonment (though it does not suggest any particular duration), which will ensure that the Respondent receives the medical care that he needs. Although a non-prison environment could provide (in Dr Koh's words) "greater opportunities to reintegrate with his family and … freer access to community activities", these are secondary concerns. Moreover, by the time that s 10 of the Mental Health (Care and Treatment) Act (Cap 178A, 2012 Rev Ed) ("the MHCTA") is triggered, it may be too late, bearing in mind that the Respondent showed no

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25 Prosecution's further submissions, para 7.

26 Prosecution's further submissions, para 8.

27 Prosecution's further submissions, paras 9 and 13.

discernible signs of impending violent psychosis before he killed the Deceased in the violent manner described earlier.[28] The said s 10 allows designated medical practitioners, like Dr Koh, to detain a person at a psychiatric institution for treatment.

55 The Prosecution also points out that the Court could discount the sentence to allow for the fact that the Respondent was released from custody before the sentence was enhanced (*Public Prosecutor v Kwong Kok Hing* [2008] 2 SLR(R) 684 at [46]). Finally, it submits that the sentence should be backdated to the date of arrest (13 March 2016) but the break in custody from 16 October 2017 (the date on which the Respondent was sentenced at first instance and released) should be excluded in computing the remaining time to be served in prison (*Public Prosecutor v Sivanantha a/l Danabala* [2015] 4 SLR 585).[29]

The Defence's further submissions

56 The Defence's submissions of 21 March 2018 state that the Court should order probation for three years with the specific condition that the Respondent reside in the IMH or a nursing home or report to the IMH periodically for an antipsychotic injection. This would ensure the protection of society while also ensuring that the Respondent is not detained for longer than necessary. Should the Respondent breach the Court's condition, the Court may sentence the Respondent to imprisonment under s 7(2) of the Probation of Offenders Act (Cap 252, 1985 Rev Ed) ("the POA").[30] The Defence highlights the following protective factors:[31]

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28 Prosecution's further submissions, paras 11 and 16–17.

29 Prosecution's further submissions, paras 15, 19 and 20.

30 Defence's further submissions, paras 4–5, 8 and 10.

(a) The Respondent has been residing voluntarily at IMH and adhering to treatment since 16 October 2017. He has insight into his mental disorder and appreciates the importance of long-term treatment.

(b) The Respondent's family can report him to the IMH should he stop medication or display any delusional tendencies. His daughters in particular have worked closely with Dr Koh and can provide an overarching level of supervision.

(c) There is strong and committed familial support, as shown by another letter penned by his daughters on 20 March 2018:[32]

> Dear Honourable Court,
>
> Care Plan for Mr Kong Peng Yee
>
> We are the daughters of Mr Kong Peng Yee. We understand that our father suffers from a psychiatric condition and that long-term follow up with the [IMH] is necessary for him. We have come up with a care plan with our aunt and uncle, where we are all committed to the recovery of our father.
>
> As we have work commitments, our aunt and uncle, both retirees have kindly decided to house our father to care for him. We celebrated his birthday together with relatives and have been spending time with him in the IMH ward.
>
> We will take care of him financially, physically and emotionally. We are committed to work closely with IMH medical team, supervise his treatment plan and ensure that our father adheres to his treatment plan. We would report to Dr Kenneth Koh immediately should our father show any sign of relapse, or unwillingness to adhere to his treatment. We have been communicating with Dr Koh and IMH medical team about our father's treatment ever since he was admitted into IMH.

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31 Defence's further submissions, para 14.

32 Defence's further submissions, Tab G.

> Thank you, my honourable judges. With care, love and support, we are hopeful that our father will be able to keep his psychiatric condition in remission successfully.

57 In the alternative, the Defence submits that the Respondent should be allowed to continue his current living arrangement in the IMH. The Respondent's family has "made arrangements for the Respondent's sister to house and supervise the Respondent in the event that [he] is no longer able to or no longer wishes to continue residing at the IMH". The Defence submits the following letter from the Respondent's sister, Mdm Kong Poh Lan, and her husband:[33]

> Dear Honourable Court,
>
> Care Plan for Mr Kong Peng Yee
>
> I am the sister of Mr Kong Peng Yee. My husband and I are retirees who are able to house my brother in the condominium that we are staying in.
>
> I understand that my brother suffers from a psychiatric condition and that long-term follow up with the Institute of Mental Health (IMH) is necessary for him. As we are retired, we are able to monitor my brother's medication and health condition. My nieces, daughters of Mr Kong Peng Yee, will continue to visit him, and take care of him financially, physically and emotionally. We will ensure that my brother, Kong Peng Yee, will take his medication on time and together with my nieces, we will work closely with IMH, especially with Dr Kenneth Koh's medical team.
>
> Thank you, my honourable judges. My husband and I strongly believe that with strong family support, my brother, Kong Peng Yee, will be able to keep his psychiatric condition in remission successfully.

58 The Defence further argues that using imprisonment to supervise the taking of medication would be an overkill and that if the only concern is that of continued treatment to minimise the risk of relapse, alternatives to prison should

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[33] Defence's further submissions, para 11 and Tab E.

be preferred, particularly given that it is not possible to establish the degree of risk of relapse.[34]

Our decision on sentence

Sentencing mentally disordered offenders

59 The relevant principles in sentencing an offender with a mental disorder falling short of unsoundness of mind were set out by this Court in *Lim Ghim Peow v Public Prosecutor* [2014] 4 SLR 1287 ("*Lim Ghim Peow*") at [25]–[39] and summarised by the High Court in *Public Prosecutor v Chong Hou En* [2015] 3 SLR 222 ("*Chong Hou En*") at [24]:

> (a) The existence of a mental disorder on the part of the offender is always a relevant factor in the sentencing process.
>
> (b) The manner and extent of its relevance [depend] on the circumstances of each case, in particular, the nature and severity of the mental disorder.
>
> (c) The element of general deterrence may still be accorded full weight in some circumstances, such as where the mental disorder is not serious or is not causally related to the commission of the offence, and the offence is a serious one.
>
> (d) In spite of the existence of a mental disorder on the part of the accused, specific deterrence may remain relevant in instances where the offence is premeditated or where there is a conscious choice to commit the offence.
>
> (e) If the serious psychiatric condition or mental disorder renders deterrence less effective, where for instance the offender has a significantly impaired ability to appreciate the nature and quality of his actions, then rehabilitation may take precedence.
>
> (f) Even though rehabilitation may be a relevant consideration, it does not necessarily dictate a light sentence. The accused could also be rehabilitated in prison.

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34 Defence's further submissions, para 18.

> (g) Finally, in cases involving particularly heinous or serious offences, even when the accused person is labouring under a serious mental disorder, there is no reason why the retributive and protective principles of sentencing should not prevail over the principle of rehabilitation.

60 We reiterate that the significance of a mental disorder in the sentencing process "depends on the circumstances of each case, in particular, the nature and severity of the mental disorder" (*Lim Ghim Peow* at [25]). While the Court should maintain a coherent and consistent sentencing approach in such cases as far as possible, the reality is that no two cases of mentally disordered offenders are identical. It may therefore be unhelpful to compare cases involving starkly different mental disorders. Further, the same type of mental disorder may afflict different persons with their individual physical and emotional states in varying degrees and in diverse circumstances and factual settings.

The nature of the Respondent's mental disorder

61 The Respondent was diagnosed with "late onset psychosis with persecutory, jealous and nihilistic/somatic delusions". Dr Koh confirmed in the Third Report that the Respondent had "a brief psychotic episode at the time of the alleged offence" (see [38] above). Dr Koh's view was that this disorder substantially impaired the Respondent's mental responsibility for his actions. The Judge accepted that assessment. We see no reason to disagree.

62 The Prosecution highlights the Respondent's awareness of his actions and their wrongfulness and his capacity to make conscious decisions because he showed some presence of mind during and after the attack. For example, the Respondent waited until Annie had left the Flat and he was alone with the Deceased before he attacked the Deceased. He was also determined to kill her. To be precise, the Statement of Facts at para 31 stated that "[h]is mind told him" to let Annie leave the Flat first so that he could kill the Deceased when she was

alone and that "[h]is mind told him" to "make sure she die". In the aftermath of the attack, the Respondent called his younger sister and his daughters to tell them that he had killed the Deceased and told his younger sister to call the police and to distribute his money to his two daughters. He was also sufficiently lucid at that time to give instructions for the distribution of his property and savings.

63 It was not disputed that the Respondent was psychotic at the time of the offence. In our view, the evidence suggested that the Respondent's psychosis impacted his thoughts and actions severely at the time of the offence. We say this for the following reasons:

(a) The attack was totally out of character and unpremeditated. The Respondent did not appear to be a person prone to violence. Before this incident, the Respondent made no mention of wanting or planning to hurt anyone. He denied ever hitting his wife, the Deceased, before this incident and there was no evidence to show that he had a bad relationship with her. His daughters and his sister reported that he and the Deceased had a normal marital relationship with no inter-personal violence. The Respondent reported enjoying a good relationship with his wife until the onset of his delusions of jealousy about three months prior to the offence. Those suspicions of infidelity "focused on the distant past" (*ie*, when Annie was conceived) and he did not suspect the Deceased of any recent unfaithfulness.[35]

(b) In his statements to the police, the Respondent said he believed his family would not look after him if he were unwell, that Annie had reconciled with her "real" parents and disliked him and that he should kill the Deceased first because his family might want to kill him. These

[35] ROP Vol 2 pp 43–45.

beliefs were not based on evidence or logic and were not merely the result of misunderstandings arising from the family's relationships. It was also inexplicable why the Respondent felt he had to take action at the time when his wife was folding clothes and posed no threat at all to him. There was no catalyst for the attack and no indication of the slightest hostility between the Respondent and the Deceased. His account of being awakened by "roaring sounds" was further evidence that he was not in a rational state of mind at that time. Dr Koh recorded in the First Report that "Mr Kong said that he did not know why he stabbed his wife, despite the question being posed to him many times, in different ways".[36]

(c) The ferocious manner in which the Respondent committed the offence also showed his disordered mind. His attack was excessively violent, given that the Deceased was an elderly and defenceless woman. He stabbed her from the back, then from the front, causing her to fall to the floor. He then continued attacking her savagely while she was in a prone position, first with a knife and then with a chopper. She was found lying in a large pool of blood and blood was also splattered extensively on the living room walls.[37] The Respondent stopped attacking the Deceased only when he "realised" that she was dead. Given the absence of evidence that the Respondent was by nature a violent or sadistic man, the sheer number of wounds inflicted on the Deceased showed that he was not fully lucid or rational at the time.

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36 ROP Vol 2 p 44.

37 Statement of Facts at ROP Vol 2 p 2, paras 16–17 and 31; Autopsy Report at ROP Vol 2 pp 21, 23 and 25.

(d) The Respondent's reaction of feeling "happy" when he realised that he had killed the Deceased was unnatural. When found, the Respondent was sitting on the sofa in the living room in blood-stained clothes. He "appeared dazed and was quiet".[38]

(e) The Respondent's beliefs and actions the day before the offence, as well as after his arrest, were incoherent and clearly showed a disturbed mind which was detached from reality.

64 The Prosecution maintains that the Respondent "retained full control of his actions"[39] and could have controlled his impulse to kill the Deceased at the time of the offence. It has been said that a mental disorder which vitiates the offender's self-control is ordinarily mitigating (see *Chong Hou En* at [33]). Thus in *Chong Yee Ka v Public Prosecutor* [2017] 4 SLR 309 at [82], where the offender was diagnosed with obsessive compulsive disorder and depressive disorder, the crucial issue was "whether the disorder(s) … contributed so significantly to the offending conduct that it diminishe[d] the offender's capacity to exercise self-control and restraint" (cited by this court in *Public Prosecutor v BDB* [2018] 1 SLR 127 at [106]). Self-control is only one aspect of the overall consideration. The essence of a brief psychotic episode is that it warps the individual's sense of reality. Although the Respondent might have known how or even when to kill the Deceased, his mind was truly in an unreal world in which he had to kill or be killed. The underlying factual basis for him to think or to feel the way he felt before and during the offence was totally irrational and was not just the working of an overly suspicious or jealous mind. It is the equivalent of seeing a person seeking to embrace him as one trying to engulf and suffocate him or a delusional architect planning a beautiful mansion

[38] Statement of Facts at ROP Vol 2 p 2, paras 20 and 31.

[39] Prosecution's skeletal submissions, para 58.

on imaginary rocks. The Respondent's delusion altered his appreciation of his actions significantly.

65 The psychosis which plagued the Respondent also served to distinguish this case from many of the precedents cited to us. The moral culpability of mentally disordered offenders lies on a spectrum. On the one hand there are offenders who have temporary and situational mental disorders who retain their understanding of their actions and can reason and weigh the consequences. Such offenders often evince the ability to think logically and coherently, borne out by a sophisticated degree of planning and premeditation. The important distinction between such cases and the Respondent's situation is this. Invariably, the factual basis for such offenders' actions is a true and rational one, unlike the Respondent's case. For instance, it could be severe depression caused by intense jealousy and anger over an unfaithful spouse who is in fact in an extra-marital relationship with another person. It could also be depression due to worry and fear that the offender's employer has found out about the offender's wrongdoing and is about to terminate the employment or to take disciplinary action against him. In such cases, the underlying reason for the offender's subsequent criminal conduct is founded on fact, not fantasy or fiction. Hence, in such cases, the mental disorder invariably dissipates or disappears altogether once the underlying situation is removed (for instance by killing the unfaithful spouse or the third party or by killing the employer) and there is no need for psychotic medication or follow-up medical attention. The mental disorder in such cases can only ameliorate to a limited extent the criminal conduct because the offender's mind is still rational. In such cases, deterrence and retribution should still feature because depression, even if severe, cannot be a licence to kill or to harm others.

66 On the other hand, there are offenders whose mental disorders impair severely their ability to understand the nature and consequences of their acts, to make reasoned decisions or to control their impulses. The Respondent's brief psychotic episode was in this category. He exhibited incoherent and irrational behaviour before, during and after the offence. He muttered incoherently to people he did not know. He stabbed and slashed unrelentingly at an elderly, defenceless woman with two dangerous weapons. Whatever seemingly rational decisions that he made were premised on totally unreal facts and completely irrational thoughts. His actions were not merely a maladaptive response to a difficult or depressive true situation, such as a temporary loss of self-control. Instead, they emanated from an impaired mind.

67 Many of the precedents cited by the Prosecution under s 304(*a*) of the Penal Code fell within or were closer to the first type of case discussed above. Most of those offenders were able to explain their offending acts as conscious and deliberate responses to their feelings of jealousy, envy, hatred or anger. In some cases, there was psychiatric evidence that the offenders' understanding of the nature and consequences of their actions was unimpaired. For example:

> (a) In *Public Prosecutor v Char Chin Fah* (Criminal Case No 11 of 2016, unreported) ("*Char Chin Fah*"), the offender decided to kill his daughter-in-law, with whom he had an acrimonious relationship, after a dispute with her. His actions showed a high degree of premeditation in that he penned instructions to his daughter beforehand to settle his personal matters, drank alcohol before the offence to build up courage and armed himself with a metal pole to commit the offence. During the attack, he stabbed the deceased one inch to the left of the centre of her chest because he recalled from a Chinese documentary that the heart was in that position. He was diagnosed subsequently to have suffered an

acute paranoid reaction at the time of the offence. He told the psychiatrist, "I had decided in my heart to kill her, so I have no regrets, because basically she had no manners". The offender stated that he had been entirely cognisant of the nature of all his actions around the material time. He also said he felt "hatred" for the deceased at the time of the offence and had rapidly dismissed any notion of "letting her go, because she'll be hospitalised, and after she's discharged, she'd sue me … I know what she's like". In the psychiatrist's view, the offender was "still nimble of mind and decisive in his planning to bring about the demise of the other party".[40]

(b) In *Public Prosecutor v Zheng Xianghua* (Criminal Case No 22 of 2016, unreported), the offender suspected that his wife was having an extramarital affair. After a quarrel one night, he took a knife and stabbed her to death. The psychiatrist's report noted that the offender asserted almost from the outset that the primary issue in contention with the deceased was that he had suspected her of having engaged in an extramarital affair. The psychiatrist was of the view that the offender had a severe depressive episode without psychotic symptoms and a comorbid delusional disorder, jealous type, at the time of the offence. In the psychiatrist's expert opinion, the offender was "entirely cognizant of the nature, wrongfulness in law, and potential consequence of his alleged offence" at the material time.[41]

(c) In *Public Prosecutor v Wu Yun Yun* (Criminal Case No 16 of 2009, unreported) ("*Wu Yun Yun*"), the offender killed her brother-in-law. She was jealous of the deceased and his wife's apparently loving

40 Statement of Facts in *Char Chin Fah*, Tab F, paras 19 and 39.

41 Statement of Facts in *Zheng Xianghua*, Tab G, paras 23 and 31.

> relationship with her mother-in-law and felt that she was mistreated by the rest of the family. She struggled with thoughts of killing the deceased and his wife for several weeks. She also wanted her mother-in-law to feel the pain of witnessing harm to the deceased and his wife. There was clearly premeditation because the offender had purchased and hidden a fruit knife about two weeks before the offence and she planned to attack the deceased and his wife when they were sleeping on a Saturday morning so that her husband would be home to take care of her children afterwards. The psychiatrist who assessed the offender opined that she suffered from major depressive disorder at the time of offence. He opined that she nevertheless "retained the capacity to plan" and to "control her impulses" although her emotional state was turbulent, and that her ability to "be aware of right and wrong was not impaired".[42]

68 In contrast, the Respondent was much less culpable in that his psychosis impaired his ability to even think rationally. As we have mentioned above, he exhibited incoherent and irrational behaviour before, during and after the offence. The only premeditation was that his mind told him to wait for his daughter to leave the Flat first but this was in the context of having decided irrationally that he had to kill his wife of several decades. There was absolutely no reason for him to decide that he had to kill her or any logical ground to think that she posed any danger to him. It was not a case of misunderstanding the facts but one of inability to understand at all what the facts were.

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42 *Wu Yun Yun*, Notes of Evidence (17 November 2009) at p 7, lines 26–27; p 8, lines 12–14.

Relevant sentencing principles

Deterrence

69 We therefore agree with the Judge that deterrence should not be a dominant consideration in this case. General deterrence has a lesser role where the offender has a mental illness before and during the commission of an offence and this is particularly so if a causal relationship exists between the mental disorder and the commission of the offence: *Ng So Kuen Connie v Public Prosecutor* [2003] 3 SLR(R) 178 ("*Connie Ng*") at [58]; *Lim Ghim Peow* at [28]. As Chao Hick Tin JA observed in *Soh Meiyun v Public Prosecutor* [2014] 3 SLR 299 at [43], general deterrence is premised on the cognitive normalcy of both the offender in question and the potential offenders sought to be deterred:

> … [I]f general deterrence is addressed to persons who, like the appellant, have psychiatric conditions that make it difficult for them to control their emotions and behaviour, I think that object would be little served by a custodial sentence. General deterrence assumes persons of ordinary emotions, motivations and impulses who are able to appreciate the nature and consequences of their actions and who behave with ordinary rationality, for whom the threat of punishment would be a disincentive to engage in criminal conduct. But persons labouring under such mental disorders as the appellant do not possess ordinary emotions, motivations and impulses. For such persons, at the time of their criminal acts, they would be so consumed by extraordinary emotions or impulses that the threat of punishment features hardly, if at all, in their cognition and hence has little if any effectiveness as a disincentive.

70 The precise weight to be accorded to general deterrence depends on the facts of the case, including the causal link between the mental disorder and the offence, the seriousness of the mental condition, the likelihood of recidivism and the severity of the crime (*Connie Ng* at [58]). For example, general deterrence may still be significant if "the mental disorder is not serious or is not causally related to the commission of the offence, and the offence is a serious one", or if the offender remained fully able to appreciate the nature, gravity and

significance of his criminal conduct (*Lim Ghim Peow* at [28], [35] and [39]). In the present appeal, it was undisputed that the Respondent's psychosis was causally linked to the offence and warped his understanding of reality.

71 The Prosecution also argues, on the authority of *Law Aik Meng* at [25(c)], that general deterrence was warranted because the attack was apt to give rise to public disquiet.[43] In that case, it was said that a deterrent sentence may be appropriate for crimes which, in addition to harming the immediate victims, "have the wider-felt impact of triggering unease and offending the sensibilities of the general public". Subject to what we say below about the sentence that we will be imposing, we believe that the discerning public will be sufficiently astute to appreciate that although, from a completely objective viewpoint, the offence here was executed in a very cruel manner, it was committed by a husband who was affected significantly by his mental disorder before and during the offence. If there are any concerns, they would probably relate to whether the Respondent is mentally well when he returns society so that no one is put at risk of harm.

72 We also agree with the Judge that specific deterrence is not relevant here because the Respondent was suffering from a brief psychotic episode at the time of the offence and is unlikely to reoffend in future but only on the condition that his mental state remains stable. Specific deterrence is premised on the assumption that the offender can weigh consequences before committing an offence and is therefore unlikely to be efficacious where the offender's mental disorder "seriously inhibited his ability to make proper choices or appreciate the nature and quality of his actions" (*Lim Ghim Peow* at [36]). While the Respondent might have known that he was going to kill the Deceased, his actions were motivated by the reasoning of an indisputably warped mind.

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[43] Prosecution's skeletal submissions, paras 24 and 66.

Specific deterrence is unlikely to have any effect on a mind devoid of reality and rationality.

Retribution

73 The principle of retribution is premised on the notion that the offender's wrongdoing deserves punishment. The punishment should be proportionate to the degree of harm occasioned by the offender's conduct and his culpability in committing the offence (see *Public Prosecutor v Loqmanul Hakim bin Buang* [2007] 4 SLR(R) 753 at [46]–[48]).

74 The Prosecution points out that the attack was savage and relentless, with a great number of stabs and blows, and that it continued even after the Deceased fell to the floor and was defenceless and vulnerable. The Prosecution also points out that the Deceased was attacked cruelly in her own home and that a knife and a chopper were used as weapons to cause severe injuries to her.[44]

75 There is no doubt that the harm in this case was very severe. However, the brutality of the attack in this case was quite evidently the work of a disordered mind rather than a cold and cruel one. The Respondent's culpability was accordingly very low although the harm caused was very great and indeed fatal. In these circumstances, it is difficult to say that he deserves to be punished severely for the wrong committed against his wife.

76 We pause to address briefly the Judge's remark that the sentencing principles of retribution and deterrence cannot apply concurrently in a single sentencing decision (the Judgment at [4]). He reasoned that retribution requires that an offender "be justly punished for the offence that he had committed; no

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[44] CC 59/2017, Prosecution's submissions on sentence, paras 20, 21, 24, 27 and 32.

more, no less", and imports the notion of proportionality. On the other hand, he said, deterrence focuses on preventing an offender from re-offending and others from committing the same offence. Deterrence may therefore favour the imposition of a sentence which is stiffer than that which "fits" the offence.

77 We are unable to agree that the two principles can never apply concomitantly. While it is true that each of the four classical pillars of sentencing (deterrence, retribution, rehabilitation and prevention) has a noble objective, we do not see why any of them should operate to the exclusion of the others. The delicate task of sentencing is often a function of multiple objectives rather than a single one. For example, the court may have to calibrate its concern for the safety of society against the rehabilitation of the offender. When the applicable sentencing principles are in tension with one another (see, *eg*, *Lim Ghim Peow* at [26]), the court's role is to "achieve a proper balance of the applicable principles" (*Public Prosecutor v Mohammad Al-Ansari bin Basri* [2008] 1 SLR(R) 449 ("*Al-Ansari*") at [28]). It does this by formulating a sentence which gives expression to each applicable principle in accordance with its relative significance (see *Al-Ansari* at [61]–[62]). Where deterrence and retribution pull in different directions, each may constrain the other without nullifying it. For example, considerations of proportionality may restrain the court from imposing a sentence vastly disproportionate to what is warranted by the offence (see *Law Aik Meng* at [30]), while deterrence may result in a sentence higher than what is retributive. For these reasons, deterrence and retribution can operate together and they have informed sentencing decisions jointly in a coherent manner (see, for example, *Public Prosecutor v UI* [2008] 4 SLR(R) 500 at [78]; *Public Prosecutor v Aniza bte Essa* [2009] 3 SLR(R) 327 at [24]; *Public Prosecutor v Vitria Depsi Wahyuni (alias Fitriah)* [2013] 1 SLR 699 at [20]).

Rehabilitation and prevention

78 Where the principle of deterrence is rendered less effective by virtue of the offender's psychiatric condition, rehabilitation may take precedence. The underlying aim of rehabilitation is to advance the greater public interest by reducing the risk of recidivism (*Lim Ghim Peow* at [37]). Rehabilitation does not necessarily mean a non-custodial sentence because it can take place within the prison environment (*Chong Hou En* at [67]). Rehabilitation also does not necessarily dictate that a lighter sentence be imposed as this depends very much on the nature of the offence as well as the nature and severity of the offender's mental disorder (*Lim Ghim Peow* at [38]). Rehabilitation can also function alongside the prevention of further offences (*Public Prosecutor v Goh Lee Yin and another appeal* [2008] 1 SLR(R) 824 at [107]).

79 In the context of the present appeal, rehabilitation and prevention are complementary and not conflicting principles. While the Respondent's prognosis is good, this is conditional upon him remaining "in his state of remission" and that means taking the prescribed medication dutifully. It will be recalled that the Respondent is presently residing voluntarily in the IMH and has given an undertaking through his Defence Counsel to continue to do so pending the outcome of this appeal. As mentioned earlier, Dr Koh also opined that the Respondent "require[s] long term follow up with psychiatric services and he should reside with family who are able to monitor and supervise him". Rehabilitating the Respondent while at the same time preventing him from harming others in the event he suffers a relapse of his psychiatric illness would in turn result in better protection of the Respondent's family and the public. It would be doubly tragic if an incident similar to what happened to his wife of more than three decades should occur and someone else in the Respondent's family or a member of the public is hurt badly or even killed.

80 We have set out the Fifth Report of 8 February 2018 by Dr Koh (at [51] above) which was requested by us after hearing the parties in this appeal. In that report, Dr Koh reiterated that there is a risk of relapse of the psychiatric illness should the Respondent cease to take his medication. Dr Koh also opined that having the Respondent housed in a structured environment has its advantages, especially in those places where his medication intake can be supervised. Dr Koh went on to say that this does not need to be restricted to a prison environment and can take place in the IMH or a nursing home. Given the gravity of the offence that resulted from the Respondent's illness, Dr Koh would prefer that his medication continue lifelong or at least for years until the Respondent's physical health deteriorates to the point where he can pose no danger to others.

81 We now address the parties' post-appeal hearing submissions on the Fifth Report and, in particular, on Dr Koh's observation that a structured environment need not necessarily mean imprisonment but could be the IMH or a nursing home. We asked the parties to submit specifically on how Dr Koh's recommendation could be achieved by the Court of Appeal pursuant to its powers under the CPC or any other written law.

82 As the Defence points out, a Mandatory Treatment Order ("MTO") is not an option because s 304(*a*) of the Penal Code is an offence specified in the Third Schedule to the Registration of Criminals Act (Cap 268, 1985 Rev Ed) and therefore excluded from the scope of an MTO (s 337(1)(*c*) of the CPC). Further, it is also not "an offence that is punishable with imprisonment for a term exceeding 3 years but not exceeding 7 years" (s 337(2)(*c*) of the CPC as amended by the Criminal Justice Reform Act 2018 (No 19 of 2018)) and will still not be within the scope of an MTO even when the Criminal Justice Reform Act 2018 comes into operation. The Court therefore cannot compel the Respondent to continue residing in the IMH.

83 This leaves the Court with the options of (a) dismissing the appeal and relying on the provisions of the MHCTA to be invoked for the protection of the public when necessary; (b) making an order of probation with a condition of residence at IMH or some nursing home; or (c) enhancing the sentence by increasing the term of imprisonment. We now consider each option.

Dismissal of appeal, rely on MHCTA

84 This option maintains the existing situation and relies on the MHCTA to protect the public if the Respondent should suffer a relapse. This is not satisfactory for the following reasons. First, while the Respondent has been residing at IMH voluntarily since October 2017 without incident, this state of affairs was in the context of a regimen of supervised medication and a pending appeal by the Prosecution. If this Court dismisses the appeal, the Respondent is at liberty to leave the IMH at any time without giving any reason. If he does that, there is no assurance that he will continue to take his prescribed medication at the specified intervals and dosage for an indefinite period of time. If he does not maintain his medication, there is the risk of relapse. Given the horrifying consequences which could result from a relapse of his psychiatric illness, as demonstrated by the offence committed while the Respondent was suffering from such, it would be extremely dangerous and irresponsible to allow him to live freely in society among unsuspecting people.

85 Secondly, Dr Koh has also stated in the Fifth Report that "allowing him to stay alone in his flat would highly not be recommended". The Respondent's daughters were and remain unable to accommodate him in their homes. While the Respondent's retired sister and brother-in-law have offered very kindly to take him into their condominium and to supervise him, they have not had any experience doing this and there is no evidence of their ability to do so. In the

not-too-distant past, the Respondent refused to consume medication for his other ailments. He believed then that his family members were trying to "torture" him by making him drink prune juice to relieve his constipation and refused to consume laxatives to relieve his constipation as he believed that the laxatives were poisonous. In the future, if the Respondent were to have similar delusions of persecution by his family, his sister and her husband would probably have great difficulty persuading him to comply with his medication regime. If the non-compliance results in a relapse, history might repeat itself and even the sister and her husband would be in grave danger of being attacked in their own home. Moreover, his sister and her husband, although retired, are not likely to be able to monitor him 24 hours a day. The Respondent would be able to leave the condominium at any time and for however long he wishes, thereby coming into contact with the public. Even if his daughters become willing and able to bring him into their homes and even if they stop working, the risks discussed above will apply to them with equal force.

86 Thirdly, although the Respondent's sister and her husband could report him to the IMH if he refuses to comply with the prescribed medication regime or if he leaves the condominium against their wishes and the IMH could then invoke s 10 of the MHCTA, that may come too late to protect the sister and her husband and the public as well. That section states:

> **General provisions as to admission and detention for treatment**
>
> **10.**—(1) A designated medical practitioner at a psychiatric institution who has examined any person who is suffering from a mental disorder and is of the opinion that he should be treated, or continue to be treated, as an inpatient at the psychiatric institution may at any time sign an order in accordance with Form 1 in the Schedule —
>
> > (*a*) for the admission of the person into the psychiatric institution for treatment; or

> (*b*) in the case of an inpatient, for the detention and further treatment of the person,
>
> and the person may be detained for a period of 72 hours commencing from the time the designated medical practitioner signed the order.
>
> (2) A patient who has been admitted for treatment or detained for further treatment under an order made under subsection (1) may be detained for a further period of one month commencing from the expiration of the period of 72 hours referred to in that subsection if —
>
> > (*a*) before the expiration of the period of 72 hours, the patient has been examined by another designated medical practitioner at the psychiatric institution and that designated medical practitioner is of the opinion that the patient requires further treatment at the psychiatric institution; and
> >
> > (*b*) that designated medical practitioner signs an order in accordance with Form 2 in the Schedule.
>
> (3) A patient who has been detained for further treatment under an order made under subsection (2) shall not be detained for any further period at the psychiatric institution for treatment unless before the expiration of the period of one month referred to in that subsection, the patient has been brought before 2 designated medical practitioners working at the psychiatric institution, one of whom shall be a psychiatrist, who have examined the patient separately and who are both satisfied that he requires further treatment at the psychiatric institution.
>
> (4) Each of the designated medical practitioners referred to in subsection (3) shall sign an order in accordance with Form 3 in the Schedule.
>
> (5) Two orders signed in accordance with subsection (4) shall be sufficient authority for the detention of the patient to whom they refer for a period not exceeding 6 months commencing from the date of the order.
>
> (6) A person shall not be detained at a psychiatric institution for treatment unless —
>
> > (*a*) he is suffering from a mental disorder which warrants the detention of the person in a psychiatric institution for treatment; and
> >
> > (*b*) it is necessary in the interests of the health or safety of the person or for the protection of other persons that the person should be so detained.

87 In his report dated 3 January 2018, Dr Koh stated that the Respondent was "not detained under the [MHCTA] as the assessment at the time of admission, or since then, was and is that he is not a danger to himself or others". Dr Koh's further psychiatric report of 8 February 2018 stated that he "[found] no reason to commit him under the [MHCTA]" at present but that it would "not be difficult to make a case for this should he be in the community, show signs of relapse and be brought back to IMH". Assuming the Respondent does not abscond from the condominium and could be taken to the IMH, it might still be too late if the Respondent has already hurt somebody. For these reasons, this option does not meet the objectives of rehabilitation with prevention as it will not protect the Respondent's family and the public adequately.

Probation

88 The Defence submits that probation is "an imperfect tool" but is "the best tool available" to give the Court "the flexibility to tailor a supervision system suited to the Respondent". While it appears possible in law for an order of probation to be made in respect of an offence under s 304(*a*) of the Penal Code, we do not think it is appropriate to do so. Section 5 of the POA states:

> **Probation**
>
> **5.**—(1) Where a court by or before which a person is convicted of an offence (not being an offence the sentence for which is fixed by law) is of the opinion that having regard to the circumstances, including the nature of the offence and the character of the offender, it is expedient to do so, the court may, instead of sentencing him, make a probation order, that is to say, an order requiring him to be under the supervision of a probation officer or a volunteer probation officer for a period to be specified in the order of not less than 6 months nor more than 3 years:
>
> Provided that where a person is convicted of an offence for which a specified minimum sentence or mandatory minimum sentence of imprisonment or fine or caning is prescribed by law, the court may make a probation order if the person —

> (*a*) has attained the age of 16 years but has not attained the age of 21 years at the time of his conviction; and
>
> (*b*) has not been previously convicted of any such offence referred to in this proviso, and for this purpose section 11(1) shall not apply to any such previous conviction.

89 Section 304(*a*) of the Penal Code is not an offence for which the sentence is fixed by law or for which there is a specified minimum sentence or mandatory minimum sentence. The Defence therefore submits that the Court should make a probation order of three years with the condition that the Respondent is to reside in the IMH or a nursing home or to report to the IMH periodically for an antipsychotic injection. In the event of a breach of the condition, the Court could take breach action against the Respondent and sentence him to further imprisonment. Section 5 of the POA also allows the probation order to incorporate requirements relating to residence:

> (2) A probation order may in addition require the offender to comply during the whole or any part of the probation period with such requirements as the court, having regard to the circumstances of the case, considers necessary for securing the good conduct of the offender or for preventing a repetition by him of the same offence or the commission of other offences …
>
> (3) Without prejudice to the generality of subsection (2), a probation order may include —
>
> > (*a*) requirements relating to the residence of the offender; or
> >
> > (*b*) a requirement that the offender performs such unpaid community service under the supervision of a community service officer.
>
> (3A) Before making a probation order containing any such requirements referred to in subsection (3)(*a*), the court shall consider the home surroundings of the offender; and where the order requires the offender to reside in an approved institution, the name of the institution and the period for which he is so required to reside shall be specified in the order, and that period shall not extend beyond 12 months from the date of the order.

90 Under s 5(3A), where the order requires the offender to reside in an approved institution, it must specify the name of the institution and the period for which he is so required to reside (not exceeding 12 months). The following questions arise:

(a) Can the Court make an order requiring the Respondent to stay in the IMH?

(b) If it can do so, would a stay of up to 12 months be sufficient for the Respondent?

91 The IMH is not an "approved institution" for the purposes of the POA. There does not appear to be any reported case in which probation has been ordered with a stay at the IMH as a condition, although probation has been ordered with the condition that the probationer undergo psychiatric and psychological follow-up as required by the IMH and take medication as prescribed (*Public Prosecutor v Chong Hou En* [2013] SGDC 387 at [28]). Further, a stay of 12 months may not be enough for the Respondent because the present prognosis is that he should be on medication lifelong or until such time that his physical health becomes too weak for him to pose any danger to others.

92 More fundamentally, while it appears possible to use a probation order as a means to compel the Respondent's residence at IMH for his continued treatment, that would not be in keeping with the spirit and the purpose of a probation order. First, probation is generally regarded as suitable for less serious offences. This point was made by Yong Pung How CJ in *Public Prosecutor v Muhammad Nuzaihan bin Kamal Luddin* [1999] 3 SLR(R) 653 ("*Muhammad Nuzaihan*") at [16]:

> Probation under the Act is intended to be used to avoid the sending of offenders of not very serious offences to jail, where

> they may associate with hardened criminals, who may lead them further along the path of crime. The Act recognises that many of these crimes are committed through ignorance or inadvertence or due to the bad influence of others. The offenders, but for such lapses, might be expected to be good citizens in which case a term of imprisonment might have the opposite effect to what is intended to be served by the imposition of the sentence. …

93 In *Goh Lee Yin v Public Prosecutor* [2006] 1 SLR(R) 530, Yong CJ stated that as a "general rule, probation is deemed inappropriate in cases where serious offences such as robbery or other violent crimes have been committed" (at [46]). For example, probation is generally unsuitable for rape, bearing in mind that rape with hurt is one of the more serious offences in the Penal Code (*Mohd Noran v Public Prosecutor* [1991] 2 SLR(R) 867 at [1] and [3]). Although s 304(*a*) of the Penal Code does not have a fixed sentence or a mandatory or specified minimum sentence, it is surely among the most serious offences in the Penal Code as it involves the taking of a life.

94 Second, probation is tailored for the rehabilitation of young offenders who need guidance and discipline. Yong CJ stated in *Muhammad Nuzaihan* at [16]:

> … The traditional and broad rationale of probation therefore has always been to wean offenders away from a lifetime career in crime and to reform and rehabilitate them into self-reliant and useful citizens. In the case of youthful criminals, the chances of effective rehabilitation are greater than in the case of adults, making the possible use of probation more relevant where young offenders are concerned. …

The Respondent is certainly not young and does not need a counsellor or a mentor. What he truly needs is a regimen of taking the prescribed medication at the right time and in the right amounts.

95 Third, even if a probation order is made requiring the Respondent to reside at the IMH, he would technically be residing there voluntarily in compliance with the Court's condition rather than be under detention. He could choose to breach the condition and move out of the IMH or even abscond. While this would be a breach of a condition of the probation order, it might be some time before he is apprehended and taken to Court for breach action to be taken. As already discussed above, without the regimen and supervision that he needs, if he does not comply with his intake of medication and suffers a relapse of his psychiatric illness, his family and the public might be gravely endangered.

96 In the circumstances, it is clearly in the public interest for the Respondent to remain in prison for a longer duration, not to punish him but to try to achieve the twin objectives of rehabilitation and prevention (resulting in the protection of others) in the best way possible. In prison, he will have free and easy access to psychiatric services, live in a structured environment and be subject to the supervision of trained staff who can ensure that he consumes his medication and assist him along the path of recovery. Moreover, should he relapse while in prison, the prison authorities can invoke s 43 of the Prisons Act (Cap 247, 2000 Rev Ed):

> **Prisoners who are mentally disordered**
>
> **43.**—(1) Whenever a prisoner undergoing a sentence of imprisonment appears to the Commissioner on the certificate of a registered medical practitioner to be mentally disordered, the Commissioner may, by order in writing, setting forth the grounds of belief that the prisoner is mentally disordered, direct his removal from any prison to any mental hospital or other fit place of safe custody within Singapore, there to be kept and treated as the Commissioner directs —
>
> (*a*) until the expiration of the term of imprisonment ordered by the sentence; or
>
> (*b*) if it is certified by a medical officer that it is necessary for the safety of the prisoner or of others that he should

> be detained under medical care and treatment, until he is discharged according to law.

97 The difficulty of course is in determining the further period that he should remain in prison. The principle of prevention and protection in the case of an accused person who needs lifelong medication would mean, in the extreme, imprisoning the Respondent for life to eliminate the risk of harm to the public. At the very least, it would entail imprisonment for many more years to ensure that the 70-year-old Respondent will be too feeble to be a threat to anyone upon his release from prison. While a long term of imprisonment may be justifiable in the case of an offender who remains highly volatile and unstable, the sentence for the Respondent should be less severe because he has remained in remission while in a controlled environment.

98 Sentencing has always been a fact-sensitive exercise even though the Court gives close attention to guiding principles and similar precedents for coherence and consistency in practice. The Court has to make the delicate decision of determining the length of imprisonment that is likely to achieve the best balance between the rehabilitation of the Respondent and the prevention of further offences and the protection of others. This involves looking at the offence and how it was committed, the Respondent's actual mental disorder and the extent to which it caused the offence, the prognosis, his insight into what has taken place and awareness of his condition, his ability to fend for himself, his character, whether he can be trusted to comply with his medication regime continually and the support and care of his family.

The sentence imposed by the Court of Appeal

99 In our view, a sentence of six years' imprisonment is appropriate here. This takes into account the following factors:

(a) Dr Koh's consistent opinion that the Respondent "will require long term follow up with psychiatric services" and that his medication should "continue lifelong, or at least … until his physical health deteriorates to the point where he can pose no danger to others". This naturally entails a longer period of imprisonment in order to ensure the Respondent's continued compliance with his medication regime and to provide greater assurance that he will not relapse or cease to take his medication with the passage of time.

(b) The Respondent appears to have a fairly good insight into his condition since the offence on 13 March 2016 and his prognosis is good. In his report dated 9 May 2017 (more than a year after the offence), Dr Koh stated that despite an "initial period of adjustment" in the first part of his prison remand, the Respondent had been "mentally stable" for the "last half year or so". He "responded well to medication and entered into remission for several months" and has remained so. Dr Koh maintained this opinion on 16 October 2017, more than one and a half years after the offence. To date, the Respondent has not indicated any wish to leave the IMH or to stop his medication.

(c) The Respondent has strong family support which will hopefully facilitate his recovery and his eventual reintegration into society. His family continues to visit him in the IMH. He will also not be left with no one to look to after his release. His family members appear to be aware of the importance of continuing his treatment. The Respondent was manifesting signs of psychosis prior to the offence in the form of incoherent speech and delusional beliefs. Now that his family members are aware of the warning signs of psychosis, they would be better prepared to respond to a relapse.

(d) The Respondent is 70 years old this year and is likely to grow progressively weaker over time. He is not of a large build and is noted to have health issues (including "impaired vision" and "mild physical impairments" following his right eye cataract surgery in January 2016, "weakened knees", and another cataract surgery in February 2018).[45] However, he was still able to kill the Deceased forcefully and brutally on 13 March 2016 when he was 68. That showed that he could be strong and very dangerous while in a state of psychosis.

(e) There was no evidence to show how disciplined his life was before he became unwell and committed the offence against his wife. His good behaviour after the offence may be due in part to the controlled environment that he has been in and the fact that the Prosecution has appealed against his sentence.

100 We believe that an imprisonment term of six years will give the Respondent sufficient time to become accustomed to the new reality of having to take medication in a disciplined manner. This will hopefully be of great benefit to him when he is released and returns to live in an uncontrolled environment where he has the choice regarding his medication. We do not agree with the Prosecution's suggestion of an enhanced imprisonment term of nine years as that was premised on its contention that retribution and deterrence should feature here when, as we have explained above, they ought not to for the Respondent. We think a sentence of six years will also assuage to a reasonable degree any concerns that the public may have about a potentially dangerous man living in its midst, especially someone who killed his wife of more than three decades in a most brutal and violent manner only slightly more than two years ago.

[45] Statement of Facts at para 9, see ROP Vol 2 p 4.

101 The enhanced imprisonment term takes effect from the date of arrest. As the Respondent was in custody from the date of his arrest on 13 March 2016 until the date of his release by the High Court on 16 October 2017, that period is to be taken into account for the purpose of computing the remainder of the enhanced imprisonment term. Naturally, the period thereafter until just before today is to be excluded from the said computation. If the Respondent receives a one-third remission of the six years' imprisonment, he will have to serve four years in total. Taking into account the one year and seven months that he has already served, he will therefore have to serve another two years and five months.

Conclusion

102 For the reasons set out above, we allow the Prosecution's appeal to the extent that the High Court's sentence of two years' imprisonment is enhanced to six years' imprisonment with effect from the date of arrest, with the remaining term of imprisonment to be computed in the way indicated in [101] above.

Sundaresh Menon	Judith Prakash	Tay Yong Kwang
Chief Justice	Judge of Appeal	Judge of Appeal

Tan Wen Hsien, Sarah Shi and Daphne Lim (Attorney-General's Chambers) for the appellant;
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