Public Prosecutor *v* Rosman bin Anwar and another appeal
[2015] SGHC 247

Case Number	: Magistrate's Appeals Nos 9069 and 9070 of 2015
Decision Date	: 25 September 2015
Tribunal/Court	: High Court
Coram	: See Kee Oon JC
Counsel Name(s)	: Kow Keng Siong and Amanda Chong Wei-Zhen (Attorney-General's Chambers) for the prosecution; Ismail Hamid (Ismail Hamid & Co) for the accused persons.
Parties	: Public Prosecutor — Rosman bin Anwar — Khairani binte Abdul Rahman

Criminal Law – Offences – Hurt – Causing hurt to domestic maid

25 September 2015 Judgment reserved.

See Kee Oon JC:

1 These are cross-appeals arising out of the convictions of two accused persons – who are husband and wife – after trial in the District Court on charges of voluntarily causing hurt to their domestic maid. Both accused persons appeal against their convictions and the prosecution appeals against the sentences imposed on both of them. The accused in Magistrate's Appeal No 9069 of 2015 is the husband and the accused in Magistrate's Appeal No 9070 of 2015 is the wife; I will refer to them as "the husband" and "the wife" respectively. I will refer to their domestic maid as "the complainant".

2 The husband was convicted on two charges and the wife on three. The first charge against the husband was that, on one occasion in March 2013, he slapped the complainant four times, twice on each side of her face, and pulled her hair twice; and the second charge was that, on another occasion in August 2011, he slapped the complainant twice on her face. He was sentenced to one week's imprisonment on each charge, with these two sentences running consecutively for a total sentence of two weeks' imprisonment. He was also ordered to pay the complainant $1,520 by way of compensation.

3 As for the wife, the first charge against her was that, on one occasion in March 2013, she slapped the complainant twice on her face; the second charge was that, on another occasion in August 2011, she slapped the complainant four times, twice on each side of her face; and the third charge was that, on yet another occasion in December 2012, she hit the complainant's head twice with a plastic stool. She was sentenced to one week's imprisonment on each of the first and second charges, and to three weeks' imprisonment on the third charge. The sentences for the second and third charges were ordered to run consecutively for a global sentence of four weeks' imprisonment.

Facts, allegations and evidence

4 It is not disputed that the complainant started work in the household of the accused persons on 4 July 2011. The accused persons lived in a Housing and Development Board flat with their three sons. It is also not disputed that the complainant ran away from the flat in the late morning of 25 March 2013.

The complainant's version of events

5 According to the complainant, the first month of her employment passed without event, but in August 2011 the accused persons began to inflict physical hurt on her. She testified that they inflicted hurt on her "frequently", but she could remember only four specific incidents which together formed the subject-matter of the charges against the accused persons. Two of these incidents took place in August 2011, one involving the husband and the other the wife; one incident took place on the night of 24 March 2013, the night before she left the accused persons' household, in which both the husband and the wife inflicted hurt on her; and the final incident took place around 25 December 2012, this one involving just the wife. I shall relate these alleged incidents in chronological order.

6 The two incidents alleged to have occurred in August 2011 were described by the complainant as follows. In the incident involving the husband, something was spilled one evening on a carpet inside the flat, and the husband told the complainant to take the carpet out to the corridor and hang it out to dry. While she was doing so, two men selling ice-cream stopped outside the flat. Not knowing what the men wanted, she called out to the husband and he came to the door to speak to them. After the men had left, the husband reprimanded her for allowing "people to come inside" and slapped her twice on the right cheek. In the incident involving the wife, the complainant ironed a garment – specifically, a *tudong* – belonging to the wife, and when the wife inspected the garment thereafter she discovered that a button was missing. She accused the complainant of "spoiling her things" and proceeded to slap her four times on the face.

7 I turn now to the incident alleged to have occurred around 25 December 2012. The complainant testified that, one night, the youngest son was playing in one of the rooms in the flat when he pulled on a curtain and caused part of the curtain to come off the curtain rail. At once the complainant went to get a plastic stool from the kitchen; she brought it into the room and stood on it attempting to put the curtain back up. While she was doing so, the wife entered the room. When she saw what had happened to the curtain, she reprimanded the complainant for damaging household items and not taking proper care of them, and used the stool to hit the complainant on the head twice.

8 The final incident was alleged to have occurred on 24 March 2013. That night, the family went out but the complainant stayed behind in the flat; before they left, she gave the wife a list of groceries that needed to be purchased. The complainant said that, when the family returned, the husband scolded her for "taking the opportunity of getting [the family] to leave the house" so that she could "rest at home". He then slapped her four times, twice on each cheek; thereafter, while he was standing on a ladder to look into a kitchen cabinet, he pulled her hair twice. The complainant added that the wife was present when the husband slapped her but she could not recall whether the wife was also present when the husband pulled her hair as she might have been praying at the time; the complainant testified that, in any event, the wife subsequently returned to the kitchen after prayer and, while scolding her, slapped her twice.

9 The following day, 25 March 2013, the complainant called the maid agency in the morning using her mobile phone. She testified that she had obtained her mobile phone only recently, about a month ago; prior to that, she had to use the accused persons' house phone to make calls, and they would permit her to do so once every few months. On the phone, the complainant related her situation to an employee at the maid agency. Thereafter she left the house and proceeded to the agency, and later that day she went to the police station to make a report. That evening, she saw a doctor shortly before 8.00pm. The doctor examined her and found redness on her scalp. In court, this doctor testified that it was possible that the redness would persist even though the alleged hair-pulling incident took place a day ago, but she acknowledged that it was also possible to cause such redness

simply by combing one's hair.

10 At the trial below, the prosecution tendered a notebook which the complainant said was a diary that she had kept while working for the accused persons. This exhibit was marked "P3" and I will refer to it as such. P3 contains handwritten text in the Bahasa Indonesian language; much of this consists of reflection and contemplation in the vein of diary entries, albeit with no dates furnished for the entries, but there are also recipes for various dishes and what appear to be lists of tasks and duties to perform. On the premise that the text in P3 was written by the complainant during the period of her employment with the accused persons, and assuming that it recorded events truthfully and accurately, it was evidence that the accused persons had indeed inflicted physical hurt on her on more than one occasion. Translated into English, P3 included such statements as: "I did a fatal mistake yesterday and my employer was very angry with me until my male employer slapped me"; "even my employer called me 'stone' and 'monkey', I was willing to accept all these trials even called me animal and have been scolded and kicked by my two employers"; "My employer always slapped my face and pushed my head on every Saturday and Sunday".

11 The accused persons, however, do not accept that P3 should be given substantial weight as evidence incriminating them. They argue that "the origin and content" of the alleged diary is "in doubt", particularly so because the entries were not dated. Moreover, they say, P3 does not record specific instances of abuse, and given the lack of dates it cannot be shown that any allegation of hurt made therein corresponds to any incident described in the charges against either accused.

The accused persons' version of events

12 Both accused persons flatly denied the complainant's allegations of abuse against them. They were adamant that their relationship with the complainant was "good" throughout and that they had treated her as family. They testified that their good relationship with the complainant was exemplified by the fact that they had taken her out on a number of outings with the family, for instance, to the zoological gardens and the bird park. The wife added that the complainant had not expressed dissatisfaction on any matter pertaining to her employment up to December 2012 at least, except that she seemed not to be entirely content with her monthly salary of $380 – the wife said that the complainant would compare her situation to that of a friend who was apparently receiving $470 a month.

13 In relation to the alleged incident in August 2011 in which the husband was said to have slapped the complainant, the accused persons said that the complainant's account could not be true because (i) she could not possibly have carried the carpet out of the flat by herself, as it took at least three persons to do so, and (ii) she could not have been correct when she said that two men selling ice-cream stopped outside the flat because the ice-cream sellers would never come up to their corridor but would remain "downstairs". As for the other alleged incident in August 2011, in which the wife was said to have slapped the complainant after a button went missing from her *tudong*, the wife testified that this could not have happened because she had never worn a *tudong* that had a button in or on it.

14 Both accused also challenged the veracity of the complainant's account of having been hit by a plastic stool around 25 December 2012. They accepted that there had been an occasion on which part of the curtain in one of the rooms had come off the curtain rail as a result of their youngest son having pulled on it. But they denied that the wife had used a plastic stool to hit the complainant thereafter; they argued that there had not been any reason for them to get angry at her since the displacement of the curtain had occurred through no fault of hers. They also contended that the complainant could not have been telling the truth when she said that she had stood on the plastic

stool when attempting to put the curtain back up; according to the accused, her story had to be a lie because there was no space for the placement of a stool between the bed and the wall in the room in question, and she could have reached the curtain rail easily by standing on the bed. For good measure, they testified that this event involving the curtain had taken place in August and not December 2012 as the family had spent the days leading up to 25 December 2012 in a chalet and not at home.

15 Finally, as to the alleged incident of 24 March 2013, both accused denied that they had taken turns to hit the complainant that night. They testified that they had been out of the flat the entire day and had returned home only at night, and that the husband had more or less gone straight to the master bedroom and stayed there. The wife said that, on her part, she had gone into the master bedroom to pray, and had then gone to see her sons in the living room. They added that the husband would not have stood on a ladder to look into the kitchen cabinets, contrary to the complainant's testimony that he did, and that he would have stood on a stool instead for that purpose. According to the wife, she saw the complainant the following morning, on 25 March 2013 – the day on which the complainant left the accused persons' household. She described the complainant as looking "very happy" and "singing softly" while folding the laundry.

16 In relation to P3, the diary allegedly kept by the complainant, the wife testified that she had at no point seen it in the possession of the complainant. She said that she had searched the complainant's bag thoroughly on the day she first arrived at the accused persons' household, as well as on some unspecified subsequent occasion, and both times had not seen anything like P3 among the complainant's belongings. This was another way in which both accused sought to challenge the authenticity and reliability of P3.

Other witnesses and evidence

17 There was also testimony from two employees of the maid agency who were present when the complainant fled there on 25 March 2013. One of them testified that she had picked up the phone when the complainant called the agency in the morning. The complainant told her that she had been abused, and she told the complainant to come at once to the agency. The complainant did so, and were met by the two employees when she arrived at the agency. One of them – the one who had picked up the phone – described her as having appeared "depressed"; the other said that she had "looked very frightened", was crying and was "very fidgety" and "very disoriented". This latter employee contrasted the complainant's demeanour with that of other maids she had encountered who had also made allegations of abuse – those others, she said, had been able to laugh and joke with their compatriots, but the complainant had kept on crying and had repeatedly said that she was in pain and no longer wanted to stay in Singapore. This employee further testified that she had encouraged the complainant to make a police report, and that, although the complainant had initially been "afraid" to make a report, she eventually went down to the police station with the employee for that purpose. The police indicated that it would be prudent for the complainant to undergo a medical check-up, and this was the course of action taken that evening.

18 In addition, the prosecution called as witnesses the older two of the accused persons' three sons. Their evidence in court was unfavourable to the prosecution; this caused the prosecution to apply successfully to admit statements they had made to the police, parts of which were inconsistent with their oral testimony. In court, the two sons – who were 14 and 15 years old when they took the stand – said that they had never seen or heard their parents inflict hurt on the complainant or scold her. Their statements, however, told a different story. The younger of these two sons said in his statement that his mother would slap the complainant's face at times, and that there were "a few incidents" where his father also slapped her; the older son said that there were "2 or 3 incidents"

when he witnessed either one of his parents slapping the complainant's cheek. Thus their police statements incriminated their parents to some extent. On the other hand, the sons consistently maintained even in their statements that they had never seen their mother use a stool to hit the complainant, and the older son said that he had not seen his father pull the complainant's hair.

19 When the two sons were confronted with their statements to the police and asked to explain the inconsistency between what they had said then and what they were staying on the stand, they both explained that they had indeed told the officer recording the statements that their parents had never hurt the complainant, but the officer had refused to record that down. Instead, the officer raised his voice and spoke harshly to them as he believed that they were not telling the truth. The younger son added that the recording officer had wanted him to lie; at the same time, he claimed that the recording officer might have misheard or misunderstood what he was saying – in particular, when he said only that he had heard his parents' and the complainant's voices outside his room, the officer might have inferred that the accused persons were abusing the complainant. He did not deny signing the statement but alleged that he had not had the chance to read the statement before putting his signature down, and in any event he wanted to leave as soon as possible because he was hungry and the interview was taking a long time. The older son testified that the recording officer had threatened to subject him to a polygraph test, and as he understood a polygraph test to consist of placing a wire on his body and running a current through it, he thought he would suffer electric shocks and was thus fearful. In that state, he said, he told lies that incriminated his parents.

20 As against this, there was testimony from the recording officer in court in which he stated that he had not asked the two sons to lie in their police statements, and that he had recorded what they said truthfully and accurately. He said that both sons had not been forthcoming in the initial stages of his interviews with them, but that they had opened up eventually and told him that they had seen incidents in which the complainant was scolded or hit by their parents. They also told him that the complainant deserved to be punished due to her poor performance on the job. The recording officer acknowledged that he had spoken to the older son about a polygraph test, but he disputed that son's account of having been fearful about the prospect; according to him, the older son declined to take the polygraph test because he was concerned that it might affect his studies.

21 On the side of the defence, there was one other witness besides the accused themselves – this was the father of the husband. His testimony was very brief: he said only that the husband had called him on 31 March 2013 telling him that the husband's eldest son was crying continuously, and that when he visited the husband he saw that the eldest son was indeed crying, and when he asked the family why this was so, he received no answer.

The appeals against conviction

22 I turn now to consider the accused persons' appeals against conviction. They advanced a number of arguments which I shall endeavour to summarise in the paragraphs that follow.

The accused persons' arguments

23 First, the accused persons contend that the complainant's testimony is unreliable for several reasons:

(a) In relation to the alleged incident in August 2011 in which the husband was said to have slapped her, the complainant could not have been telling the truth when she said that she had carried the soiled carpet outside the flat by herself, because the carpet was so heavy that it required at least three people to lift; also, she could not have been telling the truth when she

said that two men selling ice-cream came to the flat because these men would only stay downstairs.

(b) In relation to the alleged incident around 25 December 2012 in which the wife was said to have hit her with a stool, the complainant's account could not be true because there was no space for a stool in the room, and she would have stood on the bed instead if she was attempting to put the curtain back up; in any event, the complainant accepted that it was possible that the entire family was staying in a chalet around the time the incident was alleged to have occurred; and furthermore, the complainant's testimony that she had gone to play with the youngest son after the incident was not consistent with her evidence that she had had a headache soon after having being hit.

(c) In relation to the alleged incident on 24 March 2013 in which both accused persons were said to have slapped her, the complainant's claim that the accused persons would have got angry at her for "taking the opportunity of getting [the family] to leave the house" so that she could "rest at home" was implausible, given that the family had planned to go out anyway; moreover, the complainant gave inconsistent testimony in that she said on one hand that the wife had witnessed the husband slapping her, but had also said on the other hand that the wife had gone off to pray while the husband was scolding her.

(d) The complainant's testimony in court was in some respects inconsistent with what she had said in her police statement – in the statement, she had said that the beatings she received from the wife were not painful, but in court she testified otherwise; also, in the statement, she had said that the husband and the wife were "very nice" people who would allow her to rest after she had completed her work, which was not consonant with her allegations of frequent abuse.

(e) The complainant's testimony was not consistent with the medical evidence – if she had truly been slapped consistently over 20 months, this would have resulted in scars or other visible facial injuries, but no such scars or injuries were observed by the doctor when she examined the complainant on 25 March 2013.

(f) The complainant's testimony was not consistent with the doctor's evidence – the complainant said that, as a result of the abuse, she had frequent headaches and would feel like vomiting, and she said that she had told the doctor this on 25 March 2013, but the doctor testified that she had not been told of this.

24 Second, the accused persons argue that the evidence of the doctor offers scant support to the complainant's version of events. The doctor testified that she could not be certain that the observed redness in the complainant's scalp had been caused by the husband pulling the complainant's hair; that could have been caused by the complainant combing her hair, and it could even have been deliberately self-inflicted.

25 Third, the accused persons contend that their sons' police statements should not have been admitted into evidence or should not be given much weight. Neither son had an interpreter throughout their interviews with the recording officer. The recording officer's explanation was that both sons had not asked for an interpreter and had said that they were comfortable speaking in English. The accused persons maintain that the interviews and recording of the statements had taken place in circumstances that caused stress to both sons. Moreover, the recording officer had refused to record parts of the sons' interviews which would have been favourable to the accused. For instance, in his testimony the recording officer accepted that the sons had stated that they had not seen the accused hitting the complainant. I should note that, although it is true that the recording officer

accepted this, he explained that the sons had said that in the initial stages of the interview and he had considered that they were not being forthright at that point.

26 Fourth, the accused persons argue that P3, which the complainant said was her diary, should not have been admitted into evidence or should not be given any weight. In her statement to the police made in 2013, the complainant had said that the diary entries were written by her "last year", but in court she testified that she had written them in 2011. Further, the accused persons point to the fact that the alleged diary entries were not accompanied by dates and so did not record that specific instances of abuse had taken place at specific times.

27 Fifth, the accused persons argue that the complainant's account of having been abused is undermined by the fact that, for a long time, she did not tell anyone that she had been abused. They say that she had every opportunity to use the phone to report the alleged abuse, or to apprise neighbours and friends of this when she met them in person, but she did not do so, and thus the veracity of her testimony is in doubt.

28 Sixth and finally, the accused persons contend that the District Judge erred in rejecting the wife's evidence on the basis of minor discrepancies and inconsistencies, *eg*, whether the curtain fell off the curtain rail in August 2012, as she said in her police statement, or December 2012, as she said in court. They say that these discrepancies are not sufficient reason to reject their testimonies as untrue.

My decision

29 This is a case in which the oral testimonies of witnesses formed the main bulk of the evidence at trial. In cases of this nature a great degree of deference is accorded to the trial judge's findings of fact since he has had the advantage of observing the witnesses first-hand as they testified before him. As the appellate judge, I have not had a similar opportunity, and hence, in accordance with well-established principles, I should not interfere with the District Judge's findings of fact unless I am satisfied that his conclusion that all the offences had been proven beyond a reasonable doubt was plainly wrong or against the weight of the evidence.

30 In the present case, I accept that the District Judge appears to have rejected the accused persons' evidence largely on the basis of discrepancies and inconsistencies that were of a rather trivial nature. I also accept that the complainant's own evidence contained similar minor discrepancies, although I would add that, in my view, some of the alleged discrepancies were not truly discrepancies – for instance, her acknowledgement in her police statement that the accused persons were "very nice" in a general way does not necessarily conflict with her allegation that they would hit her when they became unhappy with her. But, in any event, all that is, without more, not sufficient reason to set aside the convictions. Given two competing versions of events each of which was broadly coherent and internally consistent, it cannot be said on the basis of the discrepancies alone that the District Judge was plainly wrong or went against the weight of the evidence in finding that the complainant's version had been established beyond any reasonable doubt.

31 Thus I turn to consider the surrounding evidence. In this connection, the accused persons have sought to undermine the reliability of P3 and the police statements of their two sons. In my view, it cannot be said that the District Judge erred in ascribing full weight to P3 and the sons' statements. As to P3, even though it contained no dates, it was eminently within the province of the District Judge to determine its authenticity and I see no reason to interfere with his determination. There was ample basis for his finding that it was indeed a diary that the complainant had maintained contemporaneously while employed by the accused. I say this because P3 contained recipes and lists

of domestic tasks, which suggests that the complainant wrote in it from time to time as she worked, and because there is some inherent improbability in the notion that the complainant would go to such lengths as to fabricate the entire document at some late stage and pass it off as a diary in anticipation of court proceedings against her employers. As for the sons' statements to the police, the assessment of the reliability of those statements depended very much on an evaluation of the oral testimonies of the sons and the recording officer, which means that the District Judge was better-placed than I am undertake such an assessment. I am not satisfied that his finding that the statements were reliable was plainly wrong or against the weight of the evidence.

32 The District Judge thought that P3 and the police statements of the accused persons' two sons corroborated the complainant's testimony (see [85] and [91] of the District Judge's written grounds of his decision on conviction, which are published as *Public Prosecutor v Khairani Binte Abdul Rahman and Rosman Bin Anwar* [2015] SGDC 71 – I shall call this the "Conviction GD" to distinguish it from his grounds of decision on sentence, which has the neutral citation [2015] SGMC 13 and which I shall call the "Sentence GD"). I think that he was correct to take that view. Even though neither P3 nor the sons' statements point directly towards the specific instances of infliction of hurt that were the subject-matter of the charges against both accused, they strongly suggest that the accused persons sought to suppress the truth in advancing their version of events, which was that they had treated the complainant well at all times. This suggests, in turn, that the complainant's account of having been abused generally is true, and that increases the likelihood that her account of specific occurrences of abuse is also true. While there exists the possibility that the complainant might have been truthful but honestly mistaken in her recollection of events, there is no material to indicate that this possibility was a substantial one.

33 There is in addition the medical evidence, which shows that the complainant did manifest physical signs consistent with her allegation that her hair had been pulled by the husband. It is possible, of course, that the redness in her scalp was caused by her combing her hair in some idiosyncratic fashion that resulted in redness at that particular spot and nowhere else, or that she deliberately inflicted it on herself in order to support a false allegation against the husband, but these do not seem to me to be very probable. Finally, I would add that the testimonies of the employees at the maid agency as to the complainant's demeanour also corroborate the complainant's version of events to some extent, in the limited sense that the veracity of her story would have been undermined by the presentation of a cheerful and chatty demeanour at the agency.

34 The fact that the complainant left the accused persons' household some 20 months after the physical abuse allegedly began is neither here nor there. The accused persons argue that this suggests that the complainant must have been inventing tales because it is inconceivable that she would have endured the abuse for so long without running away; however, it could be contended that it seems improbable that she would have worked for them for that length of time without incident only to make up these allegations suddenly and for no apparent reason in March 2013. Thus, in my judgment, this does not weaken the complainant's account to any degree.

35 Having considered all the evidence holistically, I am satisfied that the District Judge's findings of fact were neither plainly wrong nor against the weight of the evidence. There is a good deal of evidence that supports the complainant's testimony or casts doubt on the accused persons' story, or both. I am unable to say that the District Judge erred in convicting both accused on all the charges against them, and accordingly I dismiss both appeals against conviction.

The appeals against sentence

36 All the charges against both accused concerned the offence of voluntarily causing hurt as

defined by s 321 of the Penal Code (Cap 224, 2008 Rev Ed). Ordinarily, the maximum punishment for this offence is two years' imprisonment and a $5,000 fine, as set out in s 323 of the Penal Code; in this case, however, since the recipient of the hurt was a domestic maid employed by the accused, the maximum punishment is three years' imprisonment and a $7,500 fine, pursuant to s 73(2) of the Penal Code. It should be noted that, prior to the Penal Code amendments that took effect in early 2008, the maximum punishment for the offence of causing hurt to a domestic maid was lower: it was at the time one and a half years' imprisonment and a $1,500 fine. This is a pertinent point because many of the precedents were governed by the pre-2008 regime.

37 To reiterate, the husband was sentenced to one week's imprisonment on each of the two charges against him, the total sentence being two weeks' imprisonment. The wife was sentenced to one week's imprisonment on each of the first and second charges, which arose out of her slapping the complainant, and to three weeks' imprisonment on the third charge, which arose out of her hitting the complainant with a stool, the global sentence being four weeks' imprisonment. The prosecution argues before me that these sentences should be increased. In essence, the prosecution contends that the District Judge did not give enough weight to the degree of pain and suffering that the complainant underwent, and that the sentence does not adequately take into account her unusual vulnerability and the protracted nature of the abuse she endured.

Precedents involving causing hurt to domestic maids

38 There is no shortage of precedents involving the offence of voluntarily causing hurt to domestic maids, which is itself an unfortunate thing. I shall attend to four of them. In three of these precedents, terms of imprisonment ranging from one to six weeks were imposed on the offenders for each charge of causing hurt. All three were governed by the pre-2008 version of the Penal Code in which the maximum punishment was lower. In the remaining one, one of the two joint offenders received a non-custodial sentence; this case was a more recent one governed by the post-2008 version of the Penal Code in which the maximum punishment is higher. I describe the precedents briefly, leaving to the last the last-mentioned precedent in which a non-custodial sentence was imposed.

39 First, there is *Public Prosecutor v Chong Siew Chin* [2001] 3 SLR(R) 851 ("*Chong Siew Chin*"), a decision of Yong Pung How CJ. The offender there was convicted after trial on three charges for voluntarily causing hurt to her domestic maid. These three charges arose out of three separate incidents that took place within a 24-hour period. In the first incident, which occurred around 3.00am, the offender slapped the victim twice, resulting in the appearance later that morning of a bruise on the victim's face and a cut on her lips; in the second incident, which occurred around 8.30am, the offender slapped the victim once; and in the third incident, which occurred that evening, the offender slapped the victim once. The bruise on the victim's face and the "fairly large" cut on her lips were "visible four days after the assault", as Yong CJ noted at [41]. At first instance, non-custodial sentences were imposed on each charge, but on the prosecution's appeal, Yong CJ imposed a sentence of six weeks' imprisonment for each charge, with two sentences running consecutively for a total of 12 weeks' imprisonment.

40 Second, there is *Ong Ting Ting v Public Prosecutor* [2004] 4 SLR(R) 53 ("*Ong Ting Ting*"), also a decision of Yong Pung How CJ. The offender there was convicted after trial on seven charges, all of which were "related to a single incident of maid abuse", as Yong CJ observed (at [1]). Four charges were for voluntarily causing hurt, two were for using criminal force, and one was for criminal intimidation. The four charges for causing hurt arose out of the offender's acts of (i) pushing the victim and causing her to hit her head against the wall, (ii) kicking her, (iii) pushing her and causing her to fall and injure her elbow, and (iv) pushing her and causing her to fall on a pail. The offender

also poured water on the victim and made her stand in front of a fan, placed ice cubes in her bra and shorts, and told the victim that she was "not scared to kill" her; these acts gave rise to the remaining three charges against the offender.

41 A medical examination conducted the day after the assault revealed a 3-centimetre haematoma on the back of the victim's head that was consistent with a collision against a hard object such as a wall, bruises on both her knees likely to have been caused by kicks, and a 3-centimetre abrasion on her elbow (at [22]). Yong CJ affirmed the sentences imposed at first instance: one week's imprisonment for each charge of causing hurt and for each charge of using criminal force, and three months' imprisonment for the criminal intimidation charge, with three sentences running consecutively for a total sentence of three months and two weeks' imprisonment.

42 Third, there is *Public Prosecutor v Jaya d/o Gopal* [2007] SGDC 189 ("*Jaya Gopal*"). The offender there was convicted after trial on two charges of causing hurt to her domestic maid. The two charges arose out of separate incidents that took place about a month and a half apart. In the earlier incident, the offender slapped the victim once on her face, and in the later incident, the offender used a wooden spoon to hit the victim once on her face, and then used a belt to hit her a few times on her back and the belt buckle to hit her twice on the head. A medical examination conducted more than a month after the later incident revealed a scar on the victim's scalp. The trial judge imposed a sentence of two weeks' imprisonment for the charge relating to the earlier incident and eight weeks' imprisonment for the charge relating to the later, and ordered that the sentences run consecutively for a total sentence of ten weeks' imprisonment. This sentence was affirmed by the High Court.

43 Fourth and finally, there is *Public Prosecutor v Angela Tay Yan Hwee and another* [2009] SGDC 389 ("*Angela Tay*"), which the District Judge dealt with in the Sentence GD (at [22]). The two offenders in this case were husband and wife. They each pleaded guilty to one charge of voluntarily causing hurt to their domestic maid. According to the Statement of Facts, the victim began crying when instructed to carry out a task within a certain time and asked the offenders to send her back to the maid agency. They told her that they would send her back when they pleased, and the wife added that "she wanted to torture the victim and make her suffer before sending her back". In the event, the husband proceeded to call the maid agency to say that they wished to repatriate the victim to her home country that night. When the offenders informed the victim of their intention to repatriate her, she ran to the open kitchen windows and began screaming for help. Quickly the offenders moved toward her, and while the husband put his hand over the victim's mouth and grabbed her by the neck, the wife pulled the victim's hair from behind. Both of them then dragged her to the master bedroom.

44 In the master bedroom, the offenders sat on the bed and ordered that the victim kneel before them with her hands behind her back, which the victim did. Thereafter the husband slapped the victim once on the face and the wife pushed the victim's forehead with her finger. On the husband's instruction, the wife brought him a knife from the kitchen, and he tapped the flat side of the knife against the victim's arm while demanding to know why the tip of the knife was broken. The charge against the husband arose out of his acts of putting his hand over the victim's mouth, grabbing her neck and slapping her once on her face; the charge against the wife arose out of her acts of pulling the victim's hair and pushing her forehead with her finger. As a result of these events the victim sustained numerous bruises on her arms and legs as well as swelling on her chin. At first instance, the husband and the wife were sentenced to six and three weeks' imprisonment respectively. Both offenders appealed against sentence, by way of Magistrate's Appeals No 336 and 337 of 2009. Steven Chong JC (as he then was) allowed the appeals, reducing the husband's sentence to one week's imprisonment and a $5,000 fine, and the wife's to a $5,000 fine.

45 Chong JC did not issue written grounds of decision, but in his minutes of the hearing before him, he recorded comments and observations that are useful for understanding his reasons for allowing the appeals. For convenience I set out these comments and observations in full:

1. Not a typical maid abuse case – not pre-meditated. Over-reaction by the 2 Appellants in the context of them restraining the maid from creating a scene. Appeared that the incident was sparked off when the 2 Appellants informed the victim that she would be repatriated that night.

2. Nature of the injuries, other than the slap was not intended to cause injury. They arose from the struggle.

3. Accept the defence counsel's submission that the [District Judge's] finding that the 2 Appellants had dragged the victim by the neck and hair from the kitchen to the bedroom was not borne out by the evidence. Clearly this finding by the [District Judge] was an important consideration to impose the custodial sentence.

4. 2nd Appellant's [*ie*, the husband's] conduct is to be differentiated from the 1st Appellant [*ie*, the wife]. Only intentional act to cause hurt was by 2nd Appellant when he slapped her. 2nd Appellant's act in asking the 1st Appellant to retrieve the kitchen knife and tapping it on the victim's arm had the effect of intimidating the victim even if that may not have been his intention.

5. As for the medical report [stating that the wife suffered from depression], it is inconclusive. I note that it is inconsistent with the character references by the 1st Appellant's 2 friends. There was no assessment of the 1s [*sic*] Appellant's condition with reference to any 3rd party other than 2nd Appellant. Not clear whether her current depression was caused by the post-partum depression or the conviction and sentence. Whatever the cause may be, a custodial sentence would impair her recovery.

Allow the appeal.

1st Appellant – Fine $5,000

2nd Appellant – Fine $5,000 and 1 week imprisonment. …

Discussion and decision

46 I should say first that, in my judgment, the District Judge was correct to take the view that *Angela Tay* did not suggest that a non-custodial sentence would be appropriate in the present case. As Chong JC's minutes reveal, he did *not* consider that to be a "typical maid abuse case"; he characterised it as one in which the offenders' conduct was "not pre-meditated", which I understand to mean that the offences arose out of a sudden and spontaneous struggle. Even though many visible injuries were caused, these had all arisen out of that unanticipated struggle. Moreover, Chong JC seems to have accepted that the wife was suffering from depression, and that was a consideration he took into account in imposing a non-custodial sentence. Given the peculiar circumstances of that case, *Angela Tay* is of little relevance to the present case.

47 Turning to the other three precedents – namely, *Chong Siew Chin*, *Ong Ting Ting* and *Jaya*

Gopal – there is one main point of distinction between all of them and the present case. In this case, the visible injuries sustained by the complainant were less extensive than those sustained by the victims in the other cases. No doubt this relative lack of observable effects of abuse in the present case may be due in large part to the fact that most of the abuse occurred long before the medical examination carried out on the complainant. It is unfortunate that the lapse of time could mean that the full extent of the physical harm suffered by the complainant will never be known. Be that as it may, it would not be right for me to fill in the blanks, so to speak, and to speculate that the complainant must have suffered more than what was apparent on the available evidence that was put forth by the prosecution.

48 Furthermore, there is the fact that doctor did not observe any physical signs of having been slapped when she examined the complainant on 25 March 2013 even though the complainant had been slapped by both the husband and the wife just the night before. This is to be contrasted with the fact that, in *Chong Siew Chin*, the slaps left a bruise on the face and a cut on the lip that were visible even after four days. I am thus driven to conclude that the assaults on the complainant perpetrated by both the accused in this case were not so serious as to result in very severe injuries and thus did not fall within the higher range of culpability. That is not to excuse their conduct, still less to justify it, but it is an important consideration in determining the appropriate sentence.

49 As against this, I agree with the prosecution that the degree of pain and suffering endured by the complainant is not to be measured by reference only to the visible injuries and the severity of the assaults on her, but must take into account the prolonged nature of the abuse and the psychological and emotional toll that it took on her. In the Conviction GD, the District Judge opined that the complainant was "a truthful and reliable witness" (at [83]) and that P3 was a "contemporaneous record of the routine verbal and physical abuse which formed the oppressive circumstances of [the complainant's] employment and her resultant emotional state" (at [85]). Thus, in effect, the District Judge found that the abuse suffered by the complainant was not limited to the specific incidents that comprised the subject-matter of the charges but included other unspecified instances, and he found also that this abuse was a source of a considerable amount of distress. I should mention that the District Judge did say in the Sentence GD that the complainant's emotional suffering "was not severe" (at [14]), but it is difficult to reconcile this with his other findings. I am satisfied that her emotional suffering was substantial. These factors justify the imposition of higher sentences on the accused on the individual charges and on a global basis.

50 The District Judge also noted that, according to the complainant, one reason why she stayed in the accused persons' household through 20 months of abuse was that they had "threatened" her (see the Conviction GD at [86]). Moreover, the complainant testified that they had told her that they had the "right" to slap her because they were her employers – although the District Judge did not make an express finding that this had taken place, I accept it as true on the basis of the finding that the complainant was truthful and gave reliable testimony. I agree with the prosecution that all this indicates that the complainant was especially vulnerable in that she was led to believe that she had no choice but to resign herself to the situation she was in. That, too, calls for a higher sentence on the principle of retribution.

51 In all the circumstances, I am of the view that the sentences meted out by the District Judge were manifestly inadequate. I do not think that *Ong Ting Ting* suggests otherwise; even though the sentence in that case was one week's imprisonment per charge for abuse of a more serious nature, that must be seen in the context of the global sentence of three months and two weeks' imprisonment. It may well be that, but for the sentence of three months' imprisonment for the criminal intimidation charge, Yong CJ would have increased the sentences for the charges for causing hurt in order to arrive at the same global sentence. Furthermore, *Ong Ting Ting* was governed by the pre-

2008 version of the Penal Code under which the maximum term of imprisonment was a year and a half, as compared to three years under the present incarnation of the Penal Code. It may well be that a higher sentence could have been imposed had that case been governed by the current Penal Code punishment provision. I would reiterate that *Chong Siew Chin* and *Jaya Gopal* were also governed by the pre-2008 Penal Code punishment provision and the sentences imposed in those cases should be seen in that light.

52 The two charges against the husband pertain to his acts of slapping the complainant and, in one instance, pulling her hair. I am of the view that the sentence per charge should be higher than that which was imposed in *Jaya Gopal* given the prolonged nature of all the abuse in the present case as well as the fact that the maximum punishment in *Jaya Gopal* was lower. But I am also of the view that the sentence per charge should be lower than that which was imposed in *Chong Siew Chin* given that the assault in this case was less severe. In my judgment, a sentence of three weeks' imprisonment for each charge would be appropriate, and it would be appropriate to order that the sentences run consecutively for a total sentence of six weeks' imprisonment.

53 The wife also faces two charges arising out of her acts of slapping the complainant. In my view, given that these charges appear to be similar in nature to those faced by the husband, the sentence per charge should likewise be three weeks' imprisonment. As for the remaining charge against the wife, which concerns her act of hitting the complainant's head with a plastic stool, the sentence for this charge should be higher than that for the charges involving slapping because being hit on the head with a plastic stool is in all probability more harmful than being slapped. That said, I think that the wife's conduct in this regard is less serious than that of the offender in *Jaya Gopal*, who not only hit the victim on the head with a belt buckle but also used the belt to hit the victim's back and used a wooden spoon to hit her face. I am therefore of the opinion that it would be appropriate to impose a sentence of five weeks' imprisonment on this charge and to order that two sentences run consecutively for a total sentence of eight weeks' imprisonment.

54 In determining the appropriate sentences for the wife, I am conscious that she was in fact serving her sentence of imprisonment when the prosecution's appeals were filed, and had commenced doing so from 14 May 2015, the date sentence was passed. The husband had obtained a deferment of his sentence commencement date to 1 July 2015. Both accused persons had not originally appealed against their convictions or sentences. At the outset, appeals against the District Judge's sentences were filed only by the prosecution. These appeals were set down for hearing on an expedited basis on 29 May 2015 on account of the relatively short imprisonment terms imposed.

55 On that date, then-counsel for the accused persons Mr B Uthayachanran informed the court that he had on 26 May 2015 filed notices of appeal against conviction on behalf of both accused persons and would be applying for an adjournment of the hearing of the appeals, but would concurrently also be applying to discharge himself from further acting for them. The prosecution supported the application to adjourn the hearing so that both sets of appeals could be heard together. As the accused persons had no objections to counsel's application to discharge himself or to the adjournment, I allowed counsel to be discharged and adjourned the hearing of the appeals. Counsel further indicated that the accused persons were planning to engage another lawyer to act for them. The wife elected to continue serving sentence in the meantime.

56 The appeals were next set down on 29 July 2015 and by then the wife had completed serving her sentence, and the accused persons had engaged Mr Ismail Hamid to represent them in the appeals. Mr Hamid submitted that even if the court was minded to enhance the sentences, some allowance ought to be given to the wife as she had already served her sentence and should she be re-admitted to prison, it would "add to her misery". I drew guidance in this regard from the

observations of the High Court in *Public Prosecutor v Fernando Payagala Waduge Malitha Kumar* [2007] 2 SLR(R) 334 at [83] and the Court of Appeal in *Public Prosecutor v Kwong Kok Hing* [2008] 2 SLR(R) 684 ("*Kwong Kok Hing*") at [46]. In both these cases, in determining the appropriate enhancement of sentence, some allowance was made for the sentence imposed given that the offenders had already completed serving sentence before their sentence was enhanced.

57 In the present case, the DPP pointed out that there was no elucidation of the sentencing jurisprudence in those two cases to support such an approach. Nevertheless, I think it is within the court's discretion to determine whether this is a relevant matter on the facts of each case, even if it might be arguable that there is no fixed rule or principle entitling persons in such circumstances to a sentencing discount. It would suffice in my view to cite the observations of the Court of Appeal in *Kwong Kok Hing*, where V K Rajah JA had noted (at [46]) that the offender would have to "now undergo a further prison sentence all over again for the same offence". I would respectfully agree with the Court of Appeal's stated opinion that such a situation justifies some discount to the final sentencing equation.

58 As the wife had completed serving her term of four weeks' imprisonment, I think it is in order to calibrate her sentence downwards slightly in relation to the third charge involving the use of the stool to hit the complainant's head. In ordinary circumstances, I am of the view that the appropriate sentence ought to be six weeks' imprisonment; in the present case, I will impose a sentence of five weeks' imprisonment instead. She will be required to serve an additional four weeks' imprisonment as a consequence.

Conclusion

59 I dismiss the accused persons' appeals against conviction and allow the prosecution's appeals against sentence against both accused. The total sentence imposed on the husband is increased from two to six weeks' imprisonment, and the total sentence imposed on the wife is increased from four to eight weeks' imprisonment.