IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2023] SGHC 265

Criminal Case No 30 of 2022

Between

Public Prosecutor

And

DAM

SENTENCING REMARKS

[Criminal Law — Offences — Culpable homicide]
[Criminal Law — Offences — Rioting]
[Criminal Law — Statutory offences — Misuse of Drugs Act]
[Criminal Law — Statutory offences — Children and Young Persons Act]
[Criminal Procedure and Sentencing — Sentencing]

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Public Prosecutor
v
DAM

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General Division of the High Court — Criminal Case No 30 of 2022
Aedit Abdullah J
19 September 2023

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Aedit Abdullah J:

1 These are my sentencing remarks, which I will add to in full grounds if need be. I do not address all points or authorities raised, but only cover the essential matters underpinning my decision on the sentences to be imposed on the accused. I note that Mr Tiwary and the rest of the Defence team have tried their best for the accused. I am grateful for the assistance of the Prosecution's submissions. I will, in the rest of these remarks, address the accused directly.

2 You have pleaded guilty to killing your 2½-year-old daughter, Umaisyah, by forcefully slapping her face multiple times and failing to provide her with medical aid. You admitted committing child abuse against your stepson, causing him suffering by hitting him with a belt, hanger and your hand, slapping his face and body, and punching his body and hand. You have also pleaded guilty to another charge of violence, on a separate occasion, namely rioting with several others in the middle of a road, punching and kicking the

victim in that case. Finally, you admitted that you had consumed a controlled drug, methamphetamine. In addition, you have consented for five other charges to be taken into consideration in your sentencing.

3 The prosecution seeks a total sentence of between 20½ to 21½ years' imprisonment and 18 strokes of the cane against you. Your lawyers have asked for lower individual and total sentences.

4 Before I turn to your punishment, I will first address the gag order in force. There is a prohibition order in force against publication of information that might lead to the identification of the surviving victims related to you. I must emphasise that this order protects not you, but your children who are still alive. Your daughter, Umaisyah, has through your assault and ill treatment died. The gag order cannot protect her. I have lifted that part of the order and specified that her name may be published. This is important. Umaisyah died when she was very young, robbed of any opportunity of growing up, developing her own identity, and leading a fulfilling life. It is important to my mind that we all remember her by her name, and not by cold impersonal nouns, such as the "deceased" or "the victim". I fear Umaisyah will only be remembered as the child who was killed by her father; whose body was burnt by her parents; and whose charred remains were kept in a pot by them. Umaisyah deserved so much more.

5 It is clear from the charges you have pleaded guilty to, the charges that are taken into consideration, and the statement of facts that you have admitted, that you have a readiness to commit violence, and a callous disregard for the effect of your violence and actions on others. The punishment that is imposed on you reflects the State and society's abhorrence for your behaviour, and also aims to deter others from committing similar acts.

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6 The vicious character of these offences outweighs the fact that your previous convictions were only for drug related offences, for which you were sentenced to reformative training and supervision.

7 In addition, there are the five charges to be taken into consideration in sentencing:

(a) failure to return to supervision;

(b) abuse by ill-treating Umaisyah, through acts such as hitting her, slapping her, caning her, and punching her;

(c) perverting the course of justice by burning Umaisyah's body and concealing her remains;

(d) giving false information to a Ministry of Education officer about the whereabouts of Umaisyah; and

(e) ill-treating another child, in hitting him with a belt, cane and hanger and slapping his face.

The Children and Young Persons Act (Cap 38, 2001 Rev Ed) charges show a clear, abhorrent, propensity to commit violence against those who were vulnerable and defenceless though they may have been part of your family. You tried to cover up your killing by burning Umaisyah's body, depriving her even of the dignity of a decent, proper sending off. You hid what happened by lying to a civil servant tasked by the state with ensuring Umaisyah's proper education.

8 There is little to be said in your favour for mitigation. The usual discount for pleading guilty should not be given for the homicide charge. Your expressed regret cannot lighten your sentence especially for this charge. You say you have found solace in religion. If so, that is between you and your Maker, and is

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irrelevant in your sentencing: I am here to impose punishment on behalf of the state.

The fourth charge: Culpable Homicide (s 304(*b*) of the Penal Code)

9 Taking first the charge of killing Umaisyah. Your callous, despicable act ended her life. Not only in the physical assault, but in failing to call for assistance.

10 The prosecution seeks the imposition under the law in force at the time of the offence of the maximum sentence of 10 years' imprisonment as well as 12 strokes of the cane even though you have pleaded guilty. Your lawyers have argued for seven years' imprisonment.

11 While normally a plea of guilt would attract a reduction in sentence because of the saving of time and resources, your acts here were so reprehensible and your criminal responsibility so great, that I agree with the prosecution's submission that the maximum sentence should be imposed on you. The maximum sentence is left usually for the worst cases. I am satisfied that your killing of Umaisyah is among the worst cases of culpable homicide. You had slapped her on her face so much that she went weak; she had to sit on the floor; she then stopped crying and gasped for air. Blood was in her mouth and liquid came out of her mouth or nose. She suffered from a concussive seizure. Umaisyah jerked a few times, and only the white parts of her eyes were visible, her lips turned blue, and she stopped breathing. You did not get medical assistance because you and your wife were afraid that you would get into trouble for causing her injuries and you were also worried that you would be arrested for drug consumption. Neither is an excuse. Had you called for medical help

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there was perhaps some chance of Umaisyah being helped and treated; there was some chance of Umaisyah living.

12 Slapping a 2½-year-old child to such an extent that she would stop breathing and suffer a concussive seizure is unbelievable. It was nothing less than the infliction of gratuitous violence without regard for her safety and well-being. You did so even though she was but a toddler, defenceless and vulnerable, not capable clearly of being able to withstand the violence inflicted, and capable of little else but to cry in response to it. She could not resist, she could not fight back, she could not run away. What you did went beyond any level of reasonable discipline; it was vicious, callous, and heinous.

13 Against these points, what was raised in your mitigation did not help you. It is said that this was not premediated, and in the spur of the moment. It may be that the attack was not planned, but it is clear from the other charges that you are a violent person, ready to strike and to hit. The fact that you did not plan to hit counts for little. The fact that after your assault you tried to resuscitate her could not help you either.

14 I am satisfied that the maximum sentence of 10 years' imprisonment should be imposed on you. I am also satisfied that you should suffer 12 strokes of the cane. These sentences are in line with the guidance given in cases such as *Public Prosecutor v AFR* [2011] 3 SLR 833 and *Public Prosecutor v BDB* [2018] 1 SLR 127 ("*Public Prosecutor v BDB*").

The eight charge: Abuse (s 5(5)(b) of the Children and Young Persons Act)

15 You are charged with ill-treating your stepchild, who was about six at the time, by causing him unnecessary physical suffering by hitting him over a year or so, with a belt, a hanger, and your hand; slapping; and punching him.

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The prosecution seeks imprisonment of 30 to 36 months. Your lawyers have sought between 24 to 30 months' imprisonment.

16 Your ready resort not just to violence, but to abuse those in your care, who looked to you for love, care, and protection, is deplorable. There is little to operate by way of mitigation. You need to be punished severely for what you have done, and others who may behave like you have to be deterred from doing the same.

17 Terms of imprisonment of between six months and one year were imposed in *Public Prosecutor v BDB* and *Public Prosecutor v Azlin bte Arujunah and other appeals* [2022] 2 SLR 825. These were for less persistent and less continued abuse than what you did here. I hereby impose a sentence of three years' imprisonment on this charge.

The first charge: Rioting (s 147 of the Penal Code)

18 The offence covered by your rioting charge, involved you and the others with you punching and kicking the victim after pulling the victim out of a van. The victim suffered bleeding in the brain, fractures around the eye, and bruising and swelling of his left ear, with a total of three days' hospitalisation. You had pulled your ex-girlfriend out of the taxi that she was trying to leave in and took her away in your vehicle. The rioting occurred in in the early hours of the morning, along Beach Road. Again, you show an inclination to violence and a disregard and disrespect for the law. You committed this offence while on the run from the drug supervision centre.

19 What I must underline to those like you is that Singapore is an orderly and peaceful country; those who disturb its peace through acts of violence, whether in daylight or nighttime, wherever it may be in Singapore, can only

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expect a harsh response. They will be punished and punished severely. The Defence has highlighted that two of the other rioters were not sentenced to caning. Where rioting disrupts public order in a significant way, such as on a public road, even in the early hours of the morning, the court should consider imposing caning, both to punish and deter. I cannot see why caning should not have been imposed on the other two rioters by the lower court, but their matters are not before me.

20 The prosecution seeks a sentence of at least 2½ years' imprisonment and three strokes of the cane.

21 The charges taken into consideration, and your overall criminal conduct call for a heavy sentence. You had committed the offence while having absconded from your supervision sentence. And even after you were arrested for this rioting offence, you breached bail. I am satisfied taking these factors into account as well as your tendency to commit violence a sentence of 2½ years' imprisonment and three strokes of the cane is indeed appropriate. That sentence is within the range of the usual guidance for rioting cases.

The third charge: Consumption of Drugs (s 8(*b*)(ii) of the Misuse of Drugs Act)

22 Finally, you consumed methamphetamine while on the run after violating bail. This was not your first drug offence. You have continued to abuse drugs.

23 The prosecution argues for 5½ to six years' imprisonment and three strokes of the cane on this charge. The Defence argues for the minimum of five years and three strokes of the cane.

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24 Given your antecedents for drug offences, the fact that you were already on bail and on the run when you consumed the methamphetamine, and the charges taken into consideration, especially the breach of supervision, you are sentenced to six years' imprisonment and three strokes of the cane.

Running of sentence

25 In determining how the sentences should run, I am mindful of the totality principle and that the overall sentence should not be crushing; that is, it should not be disproportionate to your overall criminal responsibility. In line with the guidance in *ADF v Public Prosecutor and another appeal* [2010] 1 SLR 874 and *Public Prosecutor v Raveen Balakrishnan* [2018] 5 SLR 799, I am satisfied that the punishment for these separate offences should all run consecutively. You have embraced violence as a response to those around you. That merits severe punishment and retribution. You have flouted the law on drugs again and again. You have displayed persistent and pernicious criminality; there is a strong public interest in deterring criminality of the sort you displayed: in particular, multiple victims have suffered from your acts and your tendency to violence. Each criminal act should be punished in full.

26 Your total sentence of imprisonment is thus 21½ years. The total caning is 18 strokes. These sentences are to run from 1 July 2018.

Aedit Abdullah
Judge of the High Court

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Wong Woon Kwong SC, Norine Tan Yan Ling, Phoebe Tan Hern Hwei and Asran Abdul Samad (Attorney-General's Chambers) for the Prosecution;
Ramesh Chandr Tiwary (Ramesh Tiwary), Si Hoe Tat Chorng (Acacia Legal LLC) and Harjeet Kaur Dhaliwal (Withers KhattarWong LLP) for the accused.

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