IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2024] SGCA 42

Criminal Appeal No 21 of 2023

Between

CNK

… *Appellant*

And

Public Prosecutor

… *Respondent*

In the matter of Criminal Case No 39 of 2023

Between

Public Prosecutor

And

CNK

JUDGMENT

[Criminal Procedure and Sentencing — Sentencing — Appeals — Principles]

[Criminal Procedure and Sentencing — Sentencing — Appeals — Mentally disordered offenders]
[Criminal Procedure and Sentencing — Sentencing — Appeals — Young offenders]

CNK
v
Public Prosecutor

[2024] SGCA 42

Court of Appeal — Criminal Appeal No 21 of 2023
Sundaresh Menon CJ, Belinda Ang Saw Ean JCA, Woo Bih Li JAD
1 July 2024

23 October 2024 Judgment reserved.

Sundaresh Menon CJ (delivering the judgment of the court):

Introduction

1 On 19 July 2021, sometime between 11.16am and 11.44am, a fatal axe attack occurred at River Valley High School ("RVHS"). A 16-year-old Secondary 4 student killed his schoolmate, Ethan Hun Zhe Kai (whom we refer to as "Ethan" or the "deceased"), a 13-year-old Secondary 1 student, in a male toilet in RVHS by repeatedly slashing him on his head, neck and body with an axe, with the intention of causing death. At the point of the killing, the offender, who was a minor and whom we refer to as "CNK", was suffering from major depressive disorder ("MDD"). CNK did not know Ethan. He killed Ethan as part of his plan to commit "suicide by cop", which was a tragically ill-conceived plan to go on a killing spree that he thought would lead to the police being activated and being left with no choice but to shoot and kill him.

2 The Prosecution was satisfied that on account of CNK suffering from MDD at the relevant time, he was entitled to the partial defence of diminished responsibility. As a result, CNK, who had initially been charged with murder, had that charge reduced to a charge of culpable homicide not amounting to murder punishable under s 304(*a*) of the Penal Code (Cap 224, 2008 Rev Ed) ("Penal Code") and he pleaded guilty to this. The charge read:

> That you, [the accused], on 19 July 2021, between 11.16 a.m. and 11.44 a.m., inside the toilet located at level 4 of Block D in River Valley High School at 6 Boon Lay Avenue, Singapore, caused the death of one Ethan Hun Zhe Kai (the "Deceased"), male, 13 years old, *to wit*, by slashing the head, neck and body of the Deceased multiple times with an axe (measuring 50cm by 22cm), with the intention of causing the death of the Deceased, and you have thereby committed an offence of culpable homicide not amounting to murder punishable under section 304(*a*) of the Penal Code (Cap 224, 2008 Rev Ed).

3 CNK was convicted and sentenced to 16 years' imprisonment by a judge of the General Division of the High Court (the "Judge").

4 This is his appeal against sentence. An important issue in this appeal is the extent to which CNK's MDD might attenuate his culpability for the purposes of sentencing.

5 For the reasons that follow, we dismiss the appeal and uphold the sentence of 16 years' imprisonment.

Background

6 The facts are set out in the Statement of Facts, which CNK admitted to without qualification. CNK was 19 years old when this appeal was heard. At the time of the offence on 19 July 2021, he was 16 years old.

Conception of the plan to commit "suicide by cop"

7 The roots of this tragedy can be traced back to as early as sometime on or around 26 February 2019, when CNK started having suicidal ideations. He first planned his suicide around that time but this was discovered by his friend who alerted his school and family, and CNK was then confined to his grandmother's home before he could act on it. Some months later, in June 2019, CNK went to a tall apartment block in Tanjong Pagar intending to jump to his death off a high floor, but did not carry this out.

8 Sometime in April 2020, CNK chanced upon a website hosting videos depicting actual scenes of human deaths and killings (including murders and suicides), termed "snuff" videos. He was initially disgusted by these snuff videos but then he grew curious about them, and started watching them from time to time.

9 In January 2021, when the new school year started, CNK felt overwhelmed by schoolwork and again entertained thoughts of suicide. Between January 2021 and March 2021, he explored ways of committing suicide. Because he had previously failed in his efforts to commit suicide in February and in June 2019, he concluded that he faced an insuperable psychological barrier that prevented him from taking his own life and the only way he could achieve his goal was to get someone else to kill him.

10 CNK eventually landed on a plan that he would slash others in his school and so unleash a series of events that would end in his committing "suicide by cop". He thought he might even have to kill more than one individual in a killing spree, so that the police would have no choice but to shoot and kill him. CNK decided on a school slashing because he was older than the other students in the

school. He thought this would make it more likely that he could achieve his objective. He also thought that doing this at RVHS would make it less likely that he could be stopped before he was killed, than if he tried to do this in a public place.

11 Sometime between February 2021 and March 2021, CNK wrote two poems titled "Liberation" and "_Liberated_", which alluded to mass killings conducted in a school.

12 Between 8 March 2021 and 18 July 2021, CNK also conducted online searches involving stabbings, school shootings and attacks, and suicide. He explored the following websites, amongst others:

(a) "How long does it take to kill someone with a knife" (Google Search);

(b) "List of unsuccessful attacks related to schools" (Wikipedia);

(c) "School Shooting" (Wikipedia) / "List of school massacres by death toll" (Wikipedia); "Stoneman Douglas High School shooting" (Wikipedia) / "shooting usa" (Google Search);

(d) "i want to kill myself" (Google Search) / "Suicidal tendencies" (Wikipedia); and

(e) multiple searches for "stabbing singapore" (Google Search).

13 He also made a note in his mobile phone on 5 July 2021 that was last modified on 17 July 2021, in which he repeatedly wrote "Kill myself".

The procurement and sharpening of weapons

14 Between 18 February 2021 and 4 March 2021, CNK searched the internet for weapons which were sharp and could be used to harm people. He eventually purchased three weapons on separate occasions:

(a) On 6 March 2021, he bought a Tomahawk Axe.

(b) On 17 March 2021, he bought a Cold Steel Trench Hawk Axe measuring 50cm by 22cm (this was the axe that he used to kill the deceased – "the axe") as well as an axe or machete sharpener.

(c) Sometime in April 2021, he bought a Morankniv Bushcraft Stainless Steel Knife measuring 23.5cm by 4cm (the "knife").

15 CNK chose a machete or axe as his intended weapon because it was readily available and because he was led to believe it would be suitable for an inexperienced user. He chose a combat knife as a secondary weapon. He also undertook some online research on how to use these weapons without injuring himself. After he had obtained the axe, CNK tested its sharpness by trying to cut his thigh and forearm with it but was dissatisfied. He then tried grinding the blade and the butt of the axe with the sharpener that he had purchased but remained dissatisfied. He finally arranged for the axe and the knife to be sharpened professionally.

16 CNK also bought a black badminton racket bag (the "black badminton bag") to hide the axe and the knife. Photographs of the floor plan of RVHS were also found on his mobile phone.

17 One month prior to the killing, CNK resumed watching snuff videos (having stopped doing so sometime earlier in 2021). He focused on knife attack

videos to prepare for the execution of his plan because he wanted to educate himself as to the most efficient way to kill a prospective victim.

The aborted attempt on 14 July 2021

18 He initially planned to carry out his plan on 14 July 2021. On that day, he arrived at RVHS earlier than usual with (a) the axe, (b) the knife, (c) the black badminton bag, and (d) a roll of tape with black and yellow stripes (the "caution tape") in his backpack. He chose the male toilet at Level 4 of Block D as the intended location because it was some distance from his classroom. He pasted a strip of caution tape across the corridor to prevent students from entering the toilet, went into the toilet, took the axe and knife out of his backpack, and placed them in the black badminton bag. He then placed the black badminton bag under a sink in the toilet before returning to his classroom.

19 At about 11.12am, CNK returned to the toilet. He took the black badminton bag containing the weapons and moved it to one of the toilet cubicles and waited there for an opportune time to attack a victim. However, he was not able to bring himself to do it, and felt unsettled by his failure to follow through with his plan.

Events of 19 July 2021 leading to the killing

20 CNK eventually decided to carry out his plan on 19 July 2021.

21 He left his home that day, at about 7.30am, with his backpack, which contained (a) the axe, (b) the knife, (c) the black badminton bag, (d) the caution tape and (e) some transparent sticky tape.

22 At about 7.52am, he arrived at RVHS and went to the male toilet at Level 4 of Block D. He took the axe, knife and black badminton bag from his backpack, placed the axe and knife into the black badminton bag, and hid the bag under a sink in the toilet. At about 7.56am, he left the toilet and went to his classroom. At about 8.03am, he returned to the toilet. At the entrance of the corridor leading to the toilet, he measured the caution tape, cut it, and stuck it across the corridor with the transparent sticky tape. He then left the toilet and returned to his classroom at about 8.06am.

Fatal assault leading to the deceased's death

23 At about 11.16am, immediately after his Mathematics class ended, CNK decided to carry out his plan. He left his classroom and headed to the toilet, where he found the caution tape hanging only on one side of the wall. He waited for the students in the toilet to leave. He then closed the toilet door and windows to prevent the prospective victim's screams of distress from being heard. He removed the black badminton bag he had earlier hidden and brought it to the central toilet cubicle and locked the cubicle door. He took out the axe and the knife, and placed the sheathed knife in his left trouser pocket and removed the cover from the axe.

24 At about 11.21am, CNK left the axe in the cubicle and went out of the toilet waiting for anyone to enter the toilet. He loitered in the vicinity of the toilet before going back in. At about 11.28am, Ethan entered the toilet. Upon noticing Ethan enter, CNK left the toilet and pasted the caution tape across the corridor to prevent others from entering the toilet. He then re-entered the toilet and saw Ethan using a urinal. He armed himself with the axe, holding it as he had learnt to from the internet.

25 He approached Ethan, who was facing the urinal with his back to CNK and did not notice CNK approaching. He then repeatedly attacked Ethan with the axe on his head, neck and body. Ethan could not repel or resist the attack and collapsed onto the toilet floor. CNK observed that Ethan was still breathing and said, "I'm sorry". He then slashed Ethan's body twice more with the axe and noticed that he was motionless.

Events of 19 July 2021 after the fatal assault

26 CNK later said that he felt both catharsis and regret after he had attacked the deceased. He decided not to kill anyone else and washed his hands. At about 11.35am, he left the toilet still holding the axe. He approached two or three groups of students asking them to call the police, but they ran away from him.

27 At about 11.38am, he was approached by a female teacher who asked him to drop the axe, which he did. She kicked the axe away from him. He told her that he had killed someone and asked her to call the police.

28 At about 11.40am, a male teacher approached the scene having been told that CNK had been seen in the vicinity of the toilet holding an axe. The male teacher moved the axe further away from CNK and stood between him and the axe. As the female teacher contacted the school authorities, CNK used his handphone to call the police at 11.41am, and informed them, "*I just killed someone with an axe. I don't know who. Are you going to send someone or not?*"

29 The police came shortly after and CNK was arrested at about 12.10pm.

Autopsy report

30 Ethan was certified to have died from "multiple incised wounds" on his body, scalp, face and neck. In addition, his skull had several fractures and multiple dural lacerations.

Psychological and psychiatric reports

31 On 18 August 2021, Dr Kenji Gwee ("Dr Gwee"), the Principal Clinical Forensic Psychologist at the Institute of Mental Health, prepared a psychological report ("Dr Gwee's Report"), in which he opined that CNK met the criteria for MDD at the time of the killing. Factors that contributed to the killing included:

(a) CNK's misguided curiosity as to how he could address existential angst;

(b) the onset of depression, which accentuated CNK's fatalistic thinking, limited his perceived range of options when thinking about possible courses of actions, and hardened his otherwise empathic nature into a callous persona; and

(c) CNK's consumption of snuff videos, which exacerbated this callousness, and also removed psychological obstacles that might have impeded his killing the victim by desensitising him to the physicality and gore of killing someone.

32 On 19 August 2021, Dr Cai Yiming ("Dr Cai"), a Psychiatrist at the Institute of Mental Health, prepared a psychiatric report ("Dr Cai's Report") in which he opined that:

(a) CNK had been suffering from MDD of moderate severity for about six months prior to the killing. Although CNK was not of unsound mind at the time of the offence, he was suffering from an abnormality of mind that substantially impaired his criminal responsibility.

(b) There were three major and interacting factors of importance that affected CNK: (i) his sensitive temperament with a tendency to keep things to himself and an unwillingness to get external help; (ii) his MDD; and (iii) the harmful effects of his misguided exploration of the internet.

(c) CNK had a genetic predisposition to develop depression leading to a sense of hopelessness, in which he tended to feel that there was no way out of his predicament except by committing suicide. His actions in killing the victim were extraordinarily callous and out of character.

33 On 26 September 2022, Dr Cai and Dr Gwee prepared their First Clarification Report, in which they stated that:

(a) CNK's response to treatment had been positive, and his depression was in remission.

(b) CNK's likelihood of re-offending in the next year was low.

(c) Over the longer term, a potential change in CNK's risk profile could not be ruled out. While CNK was in the recovery phase at the time of the report, there was no guarantee that his medical condition would not relapse.

34 On 9 December 2022, Dr Cai and Dr Gwee prepared their Second Clarification Report, in which they stated:

(a) CNK had been able to comprehend and appreciate the physical damage required to increase the chances of killing his victim, and had methodically prepared for the axe attack.

(b) CNK was suffering from MDD at the material time and this impaired his judgment in that it caused him to seriously consider suicide, and it limited his consideration of alternative measures to address his plight. When he conceived of "suicide by cop" as a way to end his life, he knew this was legally and morally wrong, and wrestled with some ambivalence over it for a few months. However, as his depression compromised his ability to make rational decisions, CNK ultimately resolved to proceed with his plan to commit "suicide by cop". His depression had contributed to his irrational choice of suicide as the answer to his plight, and of the tragic means to achieve this.

(c) CNK's choice and conviction to commit "suicide by cop" were distorted and irrational. However, his depression did not undermine his ability to control his physical acts to realise his plan.

(d) If CNK was not suffering from MDD at the time of the killing, he would not have made the decision to attack the deceased with the axe. His actions were the result of an irrational choice as to how he would commit suicide. Absent his depression, there were no other factors present that could sufficiently account for his killing the deceased.

(e) CNK did not have any realistic moment of rationality and self-control that would have enabled him to resile from his intention or plan to kill the deceased. At the time he decided to commit "suicide by cop", he appeared to be intensely determined to carry out his plan. He subsequently resiled from his intention to commit a mass school slashing

because after he killed the deceased, he experienced a "psychological barrier" that prevented him from continuing to kill more people.

35 On 20 June 2023, Dr Cai and Dr Gwee prepared their Third Clarification Report, in which they stated that:

(a) The major domains in CNK's life that could affect the management of his MDD (currently in remission) continued to be addressed and remained stable. CNK remained aware of, and was on the lookout for, his symptoms of depression. The short-term prognosis was positive.

(b) A longer-term prognosis was not possible because of the possibility of unforeseeable, potential major life disruptions.

(c) CNK's depression remained in remission and there had not been any relapses.

(d) CNK's likelihood of re-offending remained low. He continued to be in the recovery phase.

36 We make a few observations on CNK's mental impairment which will set the stage for our further analysis of his culpability:

(a) He was suffering from MDD of moderate severity at the material time. While this did not affect his understanding of what was right or wrong, or his ability to control his actions, it did affect his response to the plight that he thought he faced. He experienced depressive feelings and suicidal ideations, and because of his mental state, he could not develop a viable set of options to deal with these issues.

(b) His response to his plight was also adversely affected by his consumption of snuff videos and his unwillingness to seek help from others. These were matters within his control and although his MDD was a causative factor that led to the killing, these other factors contributed significantly to the killing, by making him more callous and desensitising him to what his eventual plan would entail.

(c) It does not appear that CNK stopped to think about the victim prior to and at the point of the killing. He did not know Ethan at all and was indifferent to whoever it might be who came into the toilet at the relevant time.

(d) While CNK's condition appeared to be in remission during his remand, it was not possible to arrive at a longer-term prognosis.

Prosecution's charging decision

37 As has been noted, by virtue of the psychiatric evidence presented by Dr Cai and Dr Gwee, the Prosecution considered that the partial defence of diminished responsibility was applicable and accordingly amended the charge against CNK from that of murder under s 300(*a*) of the Penal Code, punishable under s 302(1) of the Penal Code, to that of culpable homicide not amounting to murder under s 299 of the Penal Code, punishable under s 304(*a*) of the Penal Code.

The decision below

38 The Judge convicted CNK of the charge of culpable homicide not amounting to murder punishable under s 304(*a*) of the Penal Code and sentenced him to 16 years' imprisonment.

39 Having regard to the Second Clarification Report, as well as CNK's actions leading up to the killing, the Judge found that he had exhibited a chilling degree of premeditation and cold logic in planning and preparing for the killing. However irrational CNK's goal of "suicide by cop" might have been, and however twisted and perverse the means by which he sought to achieve them were, the Judge found from the degree of sophistication and planning that CNK had displayed that he fully retained his ability to think logically and coherently. While she noted the opinion of Dr Cai and Dr Gwee that CNK had been significantly influenced by his MDD and did not have any realistic moment of rationality and self-control that might have enabled him to resile from executing his plan, the Judge considered that this had already been sufficiently taken into account in the Prosecution's charging decision to reduce the charge of murder on account of the partial defence of diminished responsibility to that of culpable homicide not amounting to murder: Grounds of Decision ("GD") at [24]–[25] and [30]–[31].

40 The Judge also observed that despite his mental affliction, CNK knew that what he intended to do was legally and morally wrong, and retained the capacity to talk himself out of going through with his plan. However, even after his aborted attempt to put his plan into action on 14 July 2021, rather than resiling from it entirely, CNK resolved to complete it (GD at [32]).

41 The Judge also noted that CNK's MDD was one of three major factors which contributed to the killing, the other two being his refusal to get external help and his consumption of snuff videos and other materials, which were matters within his control (GD at [33]).

42 The Judge was also troubled by a disturbing aspect of CNK's psyche, that was reflected in the two poems which he wrote prior to the killing. She

agreed with the Prosecution's submission that the poem "_Liberated_" painted CNK as someone who was enthralled with the idea of a school killing and followed this idea through to completion (GD at [36]).

43 The Judge considered in all the circumstances that this was so serious and heinous a case that retribution had to prevail over rehabilitation, even though CNK was a young offender afflicted with a serious mental disorder (GD at [38]). In addition, the Judge also thought that general deterrence was a material consideration because it was necessary to deter any other potentially like-minded individuals who might find themselves in a similar state of mind from even entertaining the thought of engaging in similar conduct (GD at [40]).

44 After considering the relevant precedents, as well as balancing the aggravating factors against the mitigating factors of CNK's mental condition, youth and plea of guilt, the Judge imposed a sentence of 16 years' imprisonment (GD at [42]–[45]).

The appellant's case

45 CNK raises three principal arguments on appeal. First, he submits that the Judge erred in according insufficient weight to his mental disorder in assessing his culpability. CNK submits that the Judge failed to properly recognise and appreciate his lack of rationality because she had placed undue weight on the fact that he retained the ability to plan. Simply put, CNK submits that his planning did not mean he was rational. Rather, he was just following through on a decision that was the product of a disordered mind. CNK also contends that the Judge focused too heavily on penumbral facts (such as his poetry) to arrive at a conclusion that was incompatible with the psychiatric evidence, which was to the effect that he would not have made the decision to

kill but for his MDD and that there was no realistic moment of rationality and self-control to enable him to resile from carrying out his plan.

46 Second, CNK submits that the Judge failed to appropriately weigh the relevant sentencing principles. Specifically, he submits that the Judge accorded inordinate weight to retribution and general deterrence as sentencing considerations, and failed to consider and accord adequate weight to rehabilitation as a sentencing consideration.

47 Finally, CNK submits that the sentence of 16 years' imprisonment is manifestly excessive. The Judge is said to have erred in (a) pegging the sentence at the wrong point on the continuum of sentences in precedent cases, (b) according insufficient weight to the other relevant mitigating factors such as CNK's youth, his significant and genuine remorse, and the low risk of recidivism, and (c) taking into account the irrelevant factor of the possibility of remission for good behaviour when calibrating the length of sentence.

48 CNK urges us that a sentence of between eight and ten years' imprisonment would be appropriate.

The Prosecution's case

49 The Prosecution, on the other hand, submits that the Judge correctly prioritised retribution and general deterrence, given the seriousness of the offence and the limited effect of CNK's mental disorder on his culpability. The Prosecution emphasises, as the Judge did, that CNK's MDD was but one of three major factors which contributed to the killing, the other two (namely, his refusal to get external help and his consumption of snuff videos) being matters of choice within his control. The Prosecution also contends that CNK's MDD only ameliorated his culpability to a limited degree, in that he retained control

over his actions and understood that what he was doing was morally and legally wrong.

50 The Prosecution submits that the sentence of 16 years' imprisonment is not manifestly excessive. The Prosecution also submits that the Judge did not take into account the possible remission of the sentence when calibrating the appropriate sentence.

Issues to be determined

51 Central to this appeal is the question of the effect of an offender's mental condition on sentencing, and how that ought to be determined. Beyond this, it is also necessary to consider what the appropriate sentence should be, having regard to the precedents, which seem to us to need some explanation and rationalisation. While offences of culpable homicide under s 304(*a*) of the Penal Code are committed in a wide variety of circumstances, we think it would be helpful to analyse the precedents, at least in the present context where the offender suffers from a mental condition, having regard to their principal factual elements in assessing the appropriate sentencing range.

52 We digress to make a preliminary point. Culpable homicide is defined in s 299 of the Penal Code. Where the elements of s 300 are met, culpable homicide will amount to murder unless any one of seven exceptions, which each operate as a partial defence, applies. Where an exception applies, then the offender will be convicted of culpable homicide not amounting to murder. However, an offender may also be charged and convicted of culpable homicide not amounting to murder, independently of any of the exceptions under s 300 applying. In this category of cases, it is a matter of the evidence and the charging decision resulting in the offender being prosecuted for the offence of culpable

homicide not amounting to murder under s 299, the wording of which overlaps with but is not identical to that of s 300. As the Court of Appeal observed in *Public Prosecutor v P Mageswaran and another appeal* [2019] 1 SLR 1253 ("*P Mageswaran*") (at [36]–[38]):

> 36 Of course, where one or more of the exceptions under s 300 applies, a conviction for murder under s 302(1) can be reduced to culpable homicide under the first limb. But because s 299 itself creates a substantive offence, "it is open to the prosecution to charge the accused under s 299 even where they intended to kill, and there may not be any partial defences open to the accused": *Yeo, Morgan and Chan* at para 8.57. …
>
> 37 … In a case like the present though, which for starters does not engage any of the exceptions under s 300, and where it is not apparent to us whether there has been any form of plea bargaining, the Prosecution's decision to prefer a charge under the first limb of the culpable homicide offence instead of under s 300(*a*) can only lead to one irresistible inference – having weighed all the relevant circumstances in the exercise of its prosecutorial discretion, the Prosecution has arrived at the view that the mandatory death penalty for the offence under s 300(*a*) might not be warranted in the circumstances of this case. …
>
> 38 The decision as to what charge to bring against an accused is entirely within the realm of prosecutorial discretion, and is based on a whole host of factors, including what the Prosecution would have thought the accused deserved in the circumstances, as well as what offence the Prosecution itself would have felt confident of being able to prove on the facts.

53 We have confined our analysis to cases where the offender was suffering from an operative mental impairment that was taken into account for the purposes of sentencing. This includes the first category of cases in the paragraph above, where a charge of murder could have been or perhaps was brought and where, by reason of a sufficient mental impairment, Exception 7 to s 300 of the Penal Code avails as a partial defence on account of the offender's diminished responsibility. We confine ourselves to this group of cases because they concern the relevance of mental impairment as a factor in sentencing.

54 We also note the Prosecution's submission to the effect that the first *mens rea* limb under s 304(*a*) of the Penal Code, namely the "intention of causing death", is more culpable than the second limb, namely the "intention … of causing such bodily injury as is likely to cause death", and thus the former should attract a longer sentence than the latter. We observe that in cases where there is an operative mental impairment, the length of the sentence will depend principally on the extent of the impairment and its corresponding effect on the offender's culpability, as well as the circumstances of the offence, and that the *mens rea* distinction may not be especially relevant to the calibration of the sentence. However, this distinction may well be relevant in other settings where culpable homicide not amounting to murder is committed in the absence of an operative mental impairment.

The relevance of mental conditions in relation to the partial defence of diminished responsibility and separately in relation to sentencing

55 We begin by discussing how the offender's mental impairment may be relevant to establishing the partial defence of diminished responsibility, and how that is a separate question from calibrating the precise sentence for the case at hand.

56 In many instances, where the offender suffers from a mental impairment, the Prosecution may accept that Exception 7 avails as a partial defence and exercise its discretion to proceed with a charge of culpable homicide not amounting to murder under s 299 of the Penal Code instead of a murder charge under s 300 of the Penal Code. This will typically be done after the Prosecution has had sight of the psychiatric reports indicating that the offender was suffering from a mental condition that substantially impaired his mental responsibility at the time of the offence. In such circumstances, the court will not have to

consider whether the offender qualifies for the partial defence of diminished responsibility under Exception 7 to s 300 of the Penal Code as the Prosecution has proceeded on the basis that Exception 7 applies.

Diminished responsibility

57 However, if the Prosecution does not reduce the charge as aforesaid, the court may first have to decide whether the partial defence of diminished responsibility under Exception 7 to s 300 of the Penal Code is available to the offender. Exception 7 provides:

> *Exception 7.*—Culpable homicide is not murder if at the time of the acts or omissions causing the death concerned, the offender was suffering from such abnormality of mind (whether arising from a condition of arrested or retarded development or any inherent causes or induced by disease or injury) as substantially —
>
> (*a*) impaired the offender's capacity —
>
> (i) to know the nature of the acts or omissions in causing the death or in being a party to causing the death; or
>
> (ii) to know whether such acts or omissions are wrong; or
>
> (*b*) impaired the offender's power to control his acts or omissions in causing the death or being a party to causing the death.
>
> Paragraph (*a*)(ii) of the above exception applies only if, at the time of the acts or omissions causing the death concerned, there was a substantial impairment of the offender's capacity to know that the acts or omissions —
>
> (*a*) are wrong by the ordinary standards of reasonable and honest persons; and
>
> (*b*) are wrong as contrary to law.

58 Exception 7 to s 300 of the Penal Code is in similar terms as s 33B(3)(*b*) of the Misuse of Drugs Act 1973 (2020 Rev Ed) ("MDA"), which provides:

> **Discretion of court not to impose sentence of death in certain circumstances**
>
> **33B.**—(1) Where a person commits or attempts to commit an offence under section 5(1) or 7, being an offence punishable with death under the sixth column of the Second Schedule, and the person is convicted thereof, the court —
>
> …
>
> (*b*) shall, if the person satisfies the requirements of subsection (3), instead of imposing the death penalty, sentence the person to imprisonment for life.
>
> …
>
> (3) The requirements referred to in subsection (1)(*b*) are that the person convicted proves, on a balance of probabilities, that —
>
> (*a*) his or her involvement in the offence under section 5(1) or 7 was restricted —
>
> (i) to transporting, sending or delivering a controlled drug;
>
> (ii) to offering to transport, send or deliver a controlled drug;
>
> (iii) to doing or offering to do any act preparatory to or for the purpose of his or her transporting, sending or delivering a controlled drug; or
>
> (iv) to any combination of activities in sub-paragraphs (i), (ii) and (iii); and
>
> (*b*) he or she 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 or her mental responsibility for his or her acts and omissions in relation to the offence under section 5(1) or 7.

However, in the case of the MDA, if the offender is a courier and fulfils the elements of diminished responsibility, the offender would be sentenced to life imprisonment and the court has no further discretion in terms of the length of the sentence. Nonetheless, the jurisprudence on s 33B(3)(*b*) of the MDA, which determines whether the offender is eligible for the alternative sentencing regime, is relevant to a court faced with having to decide whether an offender

is able to establish the partial defence of diminished responsibility to a charge of murder.

59 To rely on the partial defence of diminished responsibility, an offender bears the burden of proving three cumulative requirements (*Ahmed Salim v Public Prosecutor* [2022] 1 SLR 1110 ("*Ahmed Salim*") at [32]):

(a) first, that he was suffering from an abnormality of mind;

(b) second, that the abnormality of mind: (i) arose from a condition of arrested or retarded development of mind; (ii) arose from any inherent cause; or (iii) was induced by disease or injury; and

(c) third, the abnormality of mind substantially impaired his mental responsibility for his acts and omissions in relation to his offence.

60 In respect of the first requirement, "abnormality of mind" refers to a state of mind so different from that of ordinary human beings that the reasonable man would term it abnormal. This is wide enough to encompass the mind's activities in all its aspects, including an abnormally reduced mental capacity to (a) understand events or perceive physical acts and matters; (b) judge the rightness or wrongness of one's actions; or (c) exercise self-control over one's actions: *Iskandar bin Rahmat v Public Prosecutor and other matters* [2017] 1 SLR 505 ("*Iskandar*") at [81]–[82]; *Nagaenthran a/l K Dharmalingam v Public Prosecutor and another appeal* [2019] 2 SLR 216 ("*Nagaenthran*") at [23]–[25]. The existence of an abnormality of mind is to be determined by the trial judge as a matter of fact: *Iskandar* at [80]; *Nagaenthran* at [22], [27]–[29].

61 The second requirement relates to the aetiology of the abnormality, which is a matter largely to be determined based on expert evidence: *Iskandar*

at [80] and [83]; *Nagaenthran* at [32]. The onus lies on the accused person to identify which of the prescribed causes is applicable in his case: *Iskandar* at [89]. The prescribed aetiologies ought to be read restrictively rather than extensively, such that the partial defence of diminished responsibility for a murder charge or the alternative sentencing regime under s 33B(1)(*b*) read with s 33B(3) of the MDA would only apply to accused persons suffering from recognised and established psychiatric conditions, and would exclude abnormalities of the mind that arise from other sources, such as heightened states of emotion or intoxication, that are not beyond the accused person's control: *Roszaidi bin Osman v Public Prosecutor* [2023] 1 SLR 222 ("*Roszaidi*") at [58] and [60]; *Nagaenthran* at [30]–[31].

62 In relation to *substantial* impairment under the third requirement, the abnormality of mind must have had a "*real and material* (as opposed to trivial or minimal) *effect or influence*" [emphasis in original] on the offender's mental responsibility for his acts and omissions in relation to the offence: *Roszaidi* at [112] and [157]. This need not rise to the level of amounting to the defence of unsoundness of mind under s 84 of the Penal Code: *Nagaenthran* at [33]. This is largely a question of commonsense to be decided by the trial judge as the finder of fact: *Nagaenthran* at [33]. Further, the requirement of substantial impairment does not entail that the offender's abnormality of mind must be the *cause* of his offending; it is sufficient for the abnormality of mind to have had an *influence* on the offender's actions: *Nagaenthran* at [33].

63 There are typically three ways in which a mental condition may substantially impair a person's mental responsibility: (a) where it affects the person's perception of physical acts and matters; (b) where it hinders the person's ability to form a rational judgment as to whether an act is right or wrong; and (c) where it undermines the person's ability to exercise his or her

will to control physical acts in accordance with that rational judgment: *Ahmed Salim* at [35]. The categories of factors that may impair mental responsibility are not closed and it is, in principle, open to an offender to contend that there was substantial impairment by reference to other categories of mental capability and responsibility: *Ahmed Salim* at [35]; *Nagaenthran* at [25]–[26]. But the three modes mentioned here are the obvious ones because they go to the offender's ability to understand what he was doing, to understand that it was wrong, and to act in accordance with a right perception of what he was doing and of what he should do.

64 The Court of Appeal in *Ahmed Salim* elaborated on the element of control, holding at [38] that:

> Nevertheless, an accused person who commits a premeditated murder may yet be able to prove that his abnormality of mind had substantially impaired his mental responsibility by demonstrating that it impaired his *rationality in coming to the decision* to commit the murder. This is an aspect of the element of control, in the sense that although the accused person knows what he is doing, and to that extent has control over his conscious and deliberate actions, these actions are to carry out a decision that is the product of a disordered mind, which is not functioning rationally. In such circumstances, the court in assessing the rationality of the accused person's actions and the extent to which it may be said that these were actions indeed within his control must take into account that the actions flowed from a decision that was the product of his disordered mind.
>
> [emphasis in original]

65 In such cases, where the accused person premeditates to kill under a veneer of rationality, but the decision to kill is in essence the product of his disordered mind, two further requirements must be met to avail of the partial defence of diminished responsibility: (a) the accused person must show that *but for* his abnormality of mind, he would not have made that decision; and (b) the accused person must prove on a balance of probabilities that in executing his

intention to murder, he had no realistic moment of rationality and self-control that would have enabled him to resile from that intention or plan (*Ahmed Salim* at [51]–[52]). These elements are necessary to establish the direct and requisite link between the disordered mind and the disordered act.

66 Similarly, in the context of s 33B(3)(*b*) of the MDA, the Court of Appeal in *Roszaidi* observed that "the distinction between the *execution* of an offence and the prior *decision* to commit that offence is likely to assume even greater significance" [emphasis in original] given that drug trafficking and importation offences will almost invariably require some degree of planning and premeditation (at [96]). The Court of Appeal found in *Roszaidi* that the offender's decision to traffic was not a reasoned choice or the consequence of rational judgment, but rather the product of a disordered mind, caused by the overriding effect of his substance use disorder when it was exacerbated by his MDD. These mental disorders impaired his ability to control his actions to the extent that his overriding preoccupation at the relevant time was procuring and consuming drugs (at [177]).

67 This, however, is to be distinguished from a situation where it is the offender's ability to assess the risks that inhere in offending that is impaired. Such impairment does not amount to a substantial impairment of one's mental responsibility so as to give rise to a partial defence of diminished responsibility or to entitle the offender to rely on the alternative sentencing regime in s 33B(1)(*b*) read with s 33B(3) of the MDA (*Nagaenthran* at [41]). An impairment in one's ability to assess risk does not fall within any of the three classical categories (see [63] above) – it does not affect one's ability to comprehend the nature or wrongfulness of one's actions, or one's ability to control one's physical acts. While an impairment of one's ability to assess risk might make it more likely that one will decide to commit the offence, this is

born out of the mistaken belief that one is likely to be able to get away with the commission of the offence. It seems to us that the mistaken assessment of the risk calculus cannot be a basis for invoking the partial defence of diminished responsibility or the alternative sentencing regime under the MDA for at least two reasons.

68 First, it does not impair one's rationality or self-control in the same way that, for instance, the synergistic operation of substance use disorder and MDD may overwhelm or preoccupy one's mind such that the commission of a drug trafficking offence is the product of a disordered mind and not an act of "choice" or an "exercise of rational judgment" (see *Roszaidi* at [177]–[178]). Where an offender breaks the law because his ability to assess the risk of committing the offence is impaired, it is not the case that the offender's ability to appreciate either the nature of his actions or their wrongfulness, or to control his actions, has been affected. On the contrary, he offends because he thinks he will not get caught and there is nothing mitigating in this. Thus, in *Nagaenthran*, even if the offender's ability to assess risk had been impaired by virtue of his borderline intelligence and concurrent cognitive deficits (which we found not to be the case), his decision to import diamorphine was nonetheless the working of a criminal mind. He had the ability to control his physical acts, and "fully knew and intended to act as he did" (*Nagaenthran* at [41]). In essence, the alleged impairment of his ability to assess risk did not have a substantial effect on his moral culpability and he was thus not able to avail himself of the alternative sentencing regime under the MDA.

69 Second, it will almost invariably be the case that an offender who is apprehended would have incorrectly assessed the risk of engaging in criminal conduct. This is so because most offenders do not think they will get caught.

This is especially the case with serious offences such as drug trafficking. There is no basis at all for viewing this as capable of attracting any mitigating weight.

70 Turning to the nature of the inquiry that the court is faced with in this context, in our judgment, at the stage of deciding whether the partial defence of diminished responsibility or the alternative sentencing regime under the MDA is available, the question is a binary one: did the mental disorder of the sort contemplated by the legislation substantially impair the accused person's mental responsibility? This is addressed having regard to the cumulative requirements set out in the applicable legislation (see [59] above) as interpreted in the case law (see [60]–[69] above). If the answer to the question is in the negative, then there will be little, if any, room to further consider the offender's mental condition.

71 If, on the other hand, the answer to the question is in the affirmative, then under s 33B(1)(*b*) of the MDA, the offender would be sentenced to life imprisonment. The court has no other sentencing discretion. However, in the case of murder, the offender's charge will be reduced to one of culpable homicide not amounting to murder, which is punishable under s 304(*a*) of the Penal Code, and the court will then have to decide on the appropriate sentence for the offender. This is a separate inquiry because where the partial defence is made out, the offender shall be punished with imprisonment for life and caning, or imprisonment for a term which may extend to 20 years and fine or caning. It is evident that this affords the sentencing court a wide discretion and in exercising that discretion, it will be relevant to revisit the offender's mental condition and specifically to examine *the extent to which it reduces his culpability*. It is to this that we now turn.

Sentencing

72 In *Public Prosecutor v Soo Cheow Wee and another appeal* [2024] 3 SLR 972 ("*Soo Cheow Wee*"), the High Court explored the relevance of mental conditions to sentencing. The offender in *Soo Cheow Wee* suffered from: (a) schizophrenia; (b) polysubstance dependence; and (c) substance-induced psychosis which caused symptoms of auditory hallucinations and persecutory delusions. The offender took a knife that was wrapped in newspaper and loitered along a pavement near Clementi Avenue 1 after he experienced auditory hallucinations that directed him to slash members of the public at random. He attacked a passerby and subsequently was apprehended by police officers. He was charged with voluntarily causing hurt by dangerous weapons or means (s 324 of the Penal Code) and criminal intimidation (s 506 of the Penal Code).

73 In *Soo Cheow Wee*, the High Court set out the specific inquiries the court should undertake in determining the impact that the offender's mental condition would have on sentencing as follows (at [51]):

> (a) the existence, nature and severity of each mental condition;
>
> (b) where there are multiple mental conditions, the interaction between them and in particular, the synergistic manner in which different mental conditions may come together and operate on the accused person's mind;
>
> (c) whether a causal link can be established between the conditions and the commission of the offence;
>
> (d) the extent to which the offender had insight into his mental conditions and their effects; and

(e) whether the overall circumstances are such as to diminish the offender's culpability, and if so, to what extent.

74 Each of the first four inquiries may be seen as signposts that lead the court to answer the fifth of the inquiries listed above. The first two are designed to enable the court to focus on and to come to an appreciation of the gravity of the offender's mental condition and its effect on his mind. The third inquiry concerns the critical issue of causality. The court should assess the impact that the offender's mental condition had on his mental responsibility, having regard to: (a) the offender's basic cognitive ability to perceive his acts and know their nature; (b) the offender's moral and legal cognition to know and appreciate the wrongfulness of his acts; and (c) whether the offender was able to exercise his will to control his actions (*Soo Cheow Wee* at [61]). While this is not an exclusive or exhaustive set of factors, these are the ones most commonly considered. The weaker the link between the offender's mental condition and his decision to commit the offence, the less weight this will have in the sentencing matrix. Where there is *no* causal link, the fact that the offender was suffering from a mental condition will generally be irrelevant to sentencing. The fourth of the inquiries is relevant in circumstances where the mental condition or impairment is triggered by the offender's own actions. As explained in *Soo Cheow Wee* at [64]–[66], in such circumstances, it may be relevant to inquire whether the offender appreciated the trigger event and that his actions would render him more susceptible to the symptoms of his mental conditions surfacing. If he did, this may diminish his reliance upon the mental condition given that he may have knowingly brought it about.

75 In our judgment, the structured approach set out in *Soo Cheow Wee* offers a useful guide in thinking about the relevance of mental conditions to calibrating the sentence to be meted out to the offender. Of course, some of

these inquiries may not arise in some cases. For instance, in the absence of multiple mental conditions operating, it will not be necessary to inquire into the question of interactions or synergy. But as a general guide, we consider that this gives us a useful framework for addressing the impact of a mental condition on the calibration of the sentence.

76 It will be evident that elements of this framework do overlap with the factors to be considered for the purposes of assessing the availability of the partial defence of diminished responsibility. This is unsurprising because the latter is a threshold inquiry, but once it has been crossed, at least in the context of the partial defence of diminished responsibility in respect of a murder charge, it remains a necessary step for the court to go further and undertake a distinct inquiry into the *extent* to which the offender's culpability and moral responsibility for the offence was affected or impacted by his mental condition, given the broad sentencing range that applies in this context.

77 The necessity for the further inquiry that is directed at the calibration of the sentence is reflected in the observation of the Court of Appeal in *Public Prosecutor v Kong Peng Yee* [2018] 2 SLR 295 ("*Kong Peng Yee*") (at [65]–[66]):

> 65 … 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. … Invariably, the factual basis for such offenders' actions is a true and rational one … 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. …
>
> [emphasis added]

78 Similarly, in *Lim Ghim Peow v Public Prosecutor* [2014] 4 SLR 1287 ("*Lim Ghim Peow*"), the Court of Appeal noted that a mental condition cannot be invoked as a blanket excuse for every aspect of the offender's criminal conduct. As the court noted at [52], the nature and gravity of the offender's mental condition and its impact on the commission of the offence must be carefully considered in each case:

> … A mental disorder, even if it substantially impaired the offender's mental responsibility for the commission of the offence and thereby reduced the offence (in the context of the offence of culpable homicide under s 299 of the Code) from that of murder to that of culpable homicide not amounting to murder, *cannot be invoked as a blanket excuse for every aspect of the offender's criminal conduct. In every case, it is imperative that the sentencing court examine the nature and gravity of the offender's mental disorder and its impact on the commission of the offence before arriving at a sentence that takes into account and balances the relevant sentencing objectives.* This echoes what we have said above … that if the offender acts with knowledge of what he is doing and of the gravity of his actions, and the offence is particularly serious or heinous, the principles of deterrence, retribution and protection may assume primacy in the sentencing process. …
>
> [emphasis added]

79 Finally, when it comes to sentencing, it will also be necessary to have regard to other considerations that may aggravate or mitigate the culpability of the offender. Aggravating factors include the heinous and/or brutal nature of the killing, the vulnerability of the deceased, the offender's voluntary intoxication and the offender's criminal record; while mitigating factors may include the offender's youth, the offender's genuine remorse, and the offender's low risk of recidivism.

80 The aggravating and mitigating factors present may also have a bearing on the relevant sentencing considerations that come to the fore in a given case. For instance, where the offender is very young, rehabilitation may assume greater significance. On the other hand, if the circumstances of the offence are especially brutal, or if there is a significant risk of recurrence, considerations of retribution or prevention may become more pronounced. These considerations cannot be applied in a mechanical way. In each case, the court will need to examine the factual matrix as a whole and determine the appropriate sentence.

Culpable homicide sentencing precedents

81 In the light of those observations, we turn to consider the sentencing precedents for culpable homicide not amounting to murder punishable under s 304(*a*) of the Penal Code, where the offender suffers from an operative mental condition. As we have foreshadowed at [51] above, these appear to us to be in need of some rationalisation. In this context, we consider the precedents in relation to offences committed after 1 February 2008, which was when the Penal Code amendment to provide for imprisonment for life or for a term of up to 20 years for the offence of culpable homicide not amounting to murder came into effect (as compared to the previous provision of life imprisonment or a term of up to ten years). In our judgment, it is helpful to analyse these cases in certain categories which appear broadly to correspond to certain sentencing ranges. Of course, we recognise that the decision in each case will ultimately turn on its own facts (*Lim Ghim Peow* at [55]), including the unique aggravating or mitigating factors that may be present. Nonetheless, a broad attempt to categorise the precedents can help make sense of which precedents may be relevant to a given type of case, and why. We have identified the following broad categories with their corresponding typical sentencing ranges:

(a) cases where the offender was labouring under a mental disorder meeting the three criteria in *R v Rowland Jack Forster Hodgson* (1968) 52 Cr App R 113 ("*Hodgson*") – life imprisonment;

(b) cases where the offender had been repeatedly violent and/or physically abusive leading up to the death of the victim – upper end of the range approaching 20 years' imprisonment;

(c) cases where the killing was premeditated and brutal – upper end of the range, typically around 18 to 20 years' imprisonment;

(d) cases where the attack was spontaneous and unplanned – between ten and 18 years' imprisonment;

(e) cases where the offender was suffering from a mental condition that distorted his sense of reality at the material time (such as delusional disorder or psychosis) – typically a lower range of six to nine years' imprisonment;

(f) cases where parents afflicted by a mental condition killed their children as a result – typically a lower range of five to seven years' imprisonment.

82 We elaborate on each of these.

Cases where the offender was labouring under a mental disorder meeting the Hodgson criteria: life imprisonment

83 The court is justified in imposing a term of life imprisonment on mentally unstable offenders for the sake of public protection where it is satisfied that the offenders will pose a serious danger to the public for an indeterminate time. For this purpose, the test first articulated by the English Court of Appeal

in the case of *R v Rowland Jack Forster Hodgson* (1968) 52 Cr App R 113 (hereinafter, the "*Hodgson* criteria") is instructive: *Public Prosecutor v Sutherson, Sujay Solomon* [2016] 1 SLR 632 ("*Sutherson*") at [59]. The *Hodgson* criteria are:

> (a) The offence or offences are in themselves grave enough to require a very long sentence.
>
> (b) It appears from the nature of the offences or from the offender's history that he is a person of unstable character likely to commit such offences again in the future.
>
> (c) If the offences are committed, the consequences to others may be specially injurious.

84 In *Public Prosecutor v Leow Kok Meng* [2011] SGHC 85 ("*Leow Kok Meng*"), the offender and the deceased were not on friendly terms. On the morning of the day of the offence, the deceased had verbally abused the offender and his mother. When the offender was returning home in the afternoon, he noticed that the deceased was still in the vicinity, and this annoyed him. When he got home, he retrieved a hunting knife and later attacked the deceased repeatedly with the knife. The offender was diagnosed with antisocial personality disorder, alcohol dependence and a moderate level of psychopathy. The Prosecution proceeded with a charge of culpable homicide not amounting to murder punishable under s 304(*a*) of the Penal Code and argued that the offender should be sentenced to life imprisonment on the basis that the *Hodgson* criteria were satisfied.

85 The judge held that the *Hodgson* criteria were all met. Specifically: (a) the offence was grave enough to call for the imposition of a very long sentence;

(b) it appeared from the nature of the offences or from the defendant's history that he was a person of unstable character and likely to re-offend; and (c) the offences bore consequences to others that were especially injurious. The offender was sentenced to life imprisonment, having regard in particular to the need to protect the public from the dire consequences of any recurrence of such an incident (*Leow Kok Meng* at [22], [26]–[28] and [31]).

86 In *Sutherson*, the offender stabbed his mother using three different knives, and caused her death. He suffered from paranoid schizophrenia. The psychiatrist opined that this caused the offender's thinking to be significantly deranged, such that his judgment, impulse control and planning abilities would have been severely compromised. The Prosecution proceeded with a charge of culpable homicide not amounting to murder punishable under s 304(*a*) of the Penal Code. The judge found that the *Hodgson* criteria were met and also found no other considerations that militated against the imposition of a very long sentence. The offender was sentenced to life imprisonment in the interest of protecting the public (*Sutherson* at [80]).

87 It is evident that where the *Hodgson* criteria are met, the protection of the public will come to the fore as the primary consideration. This is so because inherent in the *Hodgson* criteria is the likelihood of reoffending behaviour on account of the offender's unstable mental condition, coupled with the grave consequences of such behaviour. In such circumstances, it is the protection of the public that is the foremost consideration, and even serious mental illness will not diminish the offender's liability to be imposed a sentence of life imprisonment.

Cases where the offender had been repeatedly violent and/or physically abusive leading up to the death of the victim: typically approaching 20 years' imprisonment

88 We turn to the next category of cases. In *Public Prosecutor v M Krishnan* [2024] SGHC 128 ("*M Krishnan*"), there was a history of domestic violence and abuse on the part of the offender towards his live-in partner, the deceased. The abuse against the deceased intensified when she confessed that she had sexual relations with several men prior to and during his incarceration. On the day of the fatal assault, the offender drank heavily and repeatedly assaulted the deceased by grabbing her hair, slapping her face, punching and kicking her over the course of two hours. She suffered extensive injuries, including 112 bruises on her body and seven fractured ribs. Her death was caused by serious injuries inflicted to her head.

89 The offender suffered from adjustment disorder and intermittent explosive disorder ("IED"). He was also intoxicated at the material time, which had an additive effect on his IED. It was not disputed that these conditions did not sufficiently impair his mental responsibility to qualify him for the partial defence of diminished responsibility (*M Krishnan* at [2] and [20]). Nevertheless, the offender was charged with and pleaded guilty to culpable homicide not amounting to murder punishable under s 304(*a*) of the Penal Code. The judge found that only the IED, and not the adjustment disorder, had some contribution to the offence because it would have impaired the offender's self-control to some extent, though not to the extent reflected in the level of violence that was inflicted (*M Krishnan* at [21]). It was the offender's voluntary intoxication that bridged the causal gap between his mental illness and the circumstances of the offence (*M Krishnan* at [23]). The judge was satisfied that the offender's voluntary intoxication was an aggravating factor, especially since the offender was aware that he was prone to losing his temper in legally and socially

unacceptable ways and that such behaviour would worsen when he did drink alcohol (*M Krishnan* at [29]). The judge also considered the other aggravating factors of the offender's blatant disregard for the deceased's life and the fact that the offence was perpetrated in a domestic setting (*M Krishnan* at [31] and [33]). The offender was sentenced to 20 years' imprisonment.

90 In *Public Prosecutor v Gaiyathiri d/o Murugayan* [2022] 4 SLR 560 ("*Gaiyathiri*"), the offender physically abused her domestic worker, the deceased, over a period of at least 35 days preceding her death. The offender punched, slapped and kicked the deceased and hit her with her bare hands or with various household implements. The deceased suffered attacks to vulnerable parts of her body such as her head, neck and groin. The offender also starved the deceased during the period in question. In her final hours, the deceased was kicked, strangled, pulled by her hair, stomped upon and punched as though she was an inanimate object. The judge held that the offender employed cruel and inhumane methods consciously and deliberately, which reflected an utter lack of basic humanity (*Gaiyathiri* at [77]).

91 The offender was diagnosed with MDD with peripartum onset of moderate severity and obsessive-compulsive personality disorder. On account of this, the Prosecution had reduced the charge from murder to culpable homicide not amounting to murder (*Gaiyathiri* at [55] and [57]). The judge found that the offender did not appear to be of unstable character or to have a propensity to pose a danger to the public, such that the second *Hodgson* criterion was not met (*Gaiyathiri* at [61]). The central issue before the judge was therefore whether the case at hand was one of the worst type of cases of culpable homicides so as to warrant a sentence of life imprisonment, or whether the offender's psychiatric conditions were sufficient reason to consider a sentence

of 20 years' imprisonment or less in respect of the s 304(*a*) charge (*Gaiyathiri* at [70]).

92 The judge found that the offender's psychiatric conditions had "substantially contributed to the commission of the offences" in that she believed she would not face any consequences for her ill-treatment of the deceased. Because of this, the judge thought that life imprisonment would not be fair or appropriate in the circumstances (*Gaiyathiri* at [73]–[74]). However, beyond this, the judge held that the offender's mental conditions had limited effect on her culpability and "did not accept that the mitigating force of her psychiatric conditions was so substantial or compelling as to warrant a sentence of less than 20 years in relation to the s 304(*a*) charge" (*Gaiyathiri* at [75]).

93 It is evident from these cases that where the offence features a high degree of violence or cruelty toward the victim, considerations of retribution, as well as of prevention, will weigh heavily on the sentencing court. However, in considering whether the maximum penalty of life imprisonment under s 304(*a*) of the Penal Code is warranted, the sentencing court will have to be satisfied that the case before it is one of the worst type of cases of culpable homicides or that the *Hodgson* criteria are satisfied such that the mentally unstable offender will pose a serious danger to the public for an indeterminate time.

94 It would generally be an exceptional case, devoid of any mitigating circumstances, where a sentencing court would be satisfied that it is among the worst type of cases of culpable homicides warranting the imposition of the maximum sentence of life imprisonment: *P Mageswaran* at [49]. As such, where the offender's mental condition has some effect on his culpability, the sentencing court will tend not to impose a sentence of life imprisonment.

Nonetheless, the sentencing range in these cases is usually at the highest end of the next range, typically approaching 20 years' imprisonment.

Cases where the killing was premeditated and brutal: typically around 18 to 20 years' imprisonment

95 We turn to the category of cases where the killing was premeditated. In *Lim Ghim Peow*, the offender and the deceased were ex-lovers who had fallen out with each other. Upon realising that the deceased had no intention of reconciling with him, the offender resolved to kill her by burning her. He filled some empty plastic bottles with petrol and waited for her near her residence. When he saw her, he confronted her, doused her with petrol and set her ablaze with a lighter. The Court of Appeal held that the offence was "both premeditated and heinous in nature" (*Lim Ghim Peow* at [24]).

96 The offender was diagnosed as suffering from MDD at the time of the offence. The Prosecution reduced the charge from that of murder to that of culpable homicide not amounting to murder, acknowledging that the offender qualified for the partial defence of diminished responsibility on account of his abnormality of mind which substantially impaired his mental responsibility (*Lim Ghim Peow* at [18]). The Court of Appeal accepted that the offender's MDD contributed to his decision to kill the deceased because it limited his perception of the choices that were available to him. However, he nonetheless retained the capacity to comprehend his actions and appreciate the wrongfulness of his conduct (*Lim Ghim Peow* at [52]).

97 In deciding on the appropriate sentence, the Court of Appeal considered that the killing was premeditated, particularly heinous and "one of the more serious cases of culpable homicide not amounting to murder to have come before our courts", the offender having doused the deceased with petrol and then

having set her on fire while she was alive (*Lim Ghim Peow* at [24]). At the material time, the offender retained a significant degree of rationality and was able to comprehend the nature of his actions and also the wrongfulness of his conduct. Although his MDD limited his perception of the choices available to him in that he believed the deceased had to die, he had chosen a means that was particularly cruel and vicious (*Lim Ghim Peow* at [52] and [63]). On account of this, the Court of Appeal upheld the sentence of 20 years' imprisonment.

98 In *Dewi Sukowati v Public Prosecutor* [2017] 1 SLR 450 ("*Dewi*"), the offender was a domestic helper, who was 18 years old at the time of the offence. On the day of the offence, she had been reprimanded by the deceased, her employer, who was 69 years old, for bringing her a glass of water using the wrong type of tray. The deceased splashed the water on the offender's face and then used the tray to hit the side of her head while continuing to scold her. The offender lost control and grabbed hold of the deceased by her hair and swung her head forcefully against a wall, as a result of which the deceased lost consciousness and collapsed, bleeding profusely from her head. The offender then became afraid that if the deceased woke up and called the police, she would be arrested. She decided to drown the deceased in the swimming pool, thinking that this would avoid the police being alerted. After drowning the deceased, the offender sought to clean all traces of blood from the deceased's bedroom to the swimming pool. She then went to the neighbour's house where she told a despatch rider who rode past to "help [her]" as "[her] employer [was] in the swimming pool". They proceeded to the pool and the despatch rider called the police. While waiting for the police, the offender broke down and was arrested after the police arrived.

99 At the time of the offence, the offender suffered from an acute stress reaction which, in addition to the other socio-cultural factors in the case –

namely her young age, sudden exposure to a different culture, lack of proper training, a past history of abuse by her father and the deceased's further abuse – interacted with the sudden assault by the deceased on the morning of the offence and brought about an abnormality of mind which in the psychiatrist's opinion qualified her for the partial defence of diminished responsibility (*Dewi* at [14]). The offender pleaded guilty and was convicted of a charge of culpable homicide not amounting to murder punishable under s 304(*a*) of the Penal Code.

100 The Court of Appeal found that there was premeditation, although it was less significant than in some of the other cases in which sentences of 20 years' imprisonment or life imprisonment had been imposed. Although the offender had not planned to cause the deceased to hit her head against the wall in the initial assault which had rendered her unconscious, she did plan and commit further offences to cover her tracks by killing the deceased so that she would not be able to report the initial assault. The Court of Appeal considered that the other mitigating factors, such as the provocation by the deceased, the acute stress reaction, her youth and personal circumstances, had already been taken into account by the judge below, and upheld the sentence of 18 years' imprisonment (*Dewi* at [20]–[23]).

101 In *Public Prosecutor v Luo Faming* [2011] SGHC 238 ("*Luo Faming*"), the offender and the deceased lived in a flat with several other Chinese nationals. The offender believed that the deceased had unfairly been treated better at work than he had been, and was so affected by this that he decided to kill his supervisor and the deceased. On the morning in question, the offender went to the kitchen, took a knife with a 20cm long blade, proceeded to the room where the deceased was, covered his mouth and stabbed him several times in the chest area. He then destroyed the company's property, including the printing machines and computers of the company, and set fire to its premises. He also

attacked his supervisor at the company's premises by hitting her head with a hammer.

102 It was undisputed that at the time of the offence, the offender was suffering from an abnormality of mind, namely MDD, which substantially impaired his mental responsibility (*Luo Faming* at [15]). He pleaded guilty and was convicted of a charge of culpable homicide not amounting to murder punishable under s 304(*a*) of the Penal Code.

103 The judge thought that there was no premeditation because the offender had stabbed the deceased quickly and almost at a frenzied pace (*Luo Faming* at [15]). In our view, this did not rule out premeditation. In fact, on the night before the killing, the offender had specifically thought about how he could take revenge on the deceased and his supervisor for the perceived unfairness, and had "decided to kill the [deceased] in the flat before killing [his supervisor] on the [c]ompany's premises" (*Luo Faming* at [6]).

104 The judge took into consideration the offender's MDD which substantially impaired his mental responsibility and meted out a sentence of 18 years' imprisonment.

105 In *Public Prosecutor v Wu Yun Yun* (Criminal Case No 16 of 2009, unreported) ("*Wu Yun Yun*"), the offender killed her brother-in-law by stabbing him with a fruit knife and also attempted to cause the death of his wife. At the time, she felt jealous of the deceased and his wife, who appeared to enjoy strong support and love from the family, while she felt that she was treated badly by them. She harboured thoughts of killing either the deceased or his wife. She also wanted her mother-in-law to feel the pain of losing her loved ones. Two weeks

prior to the offence, the offender purchased a fruit knife and hid it beneath the kitchen sink. She subsequently used this to kill the deceased.

106 At the time of the offence, the offender was suffering from MDD, which the psychiatrist opined had substantially affected her such that she qualified for the partial defence of diminished responsibility. The Prosecution proceeded with a charge of culpable homicide not amounting to murder punishable under s 304(*a*) of the Penal Code. Despite her MDD, the psychiatrist observed that she nevertheless "retained the capacity to plan … [and] the capacity to control her impulses". Further, her cognition of right and wrong was not impaired. She was sentenced to 12 years' imprisonment for the charge of culpable homicide not amounting to murder punishable under s 304(*a*) of the Penal Code.

107 It is evident that *Wu Yun Yun* is an outlier in this group of cases. These cases tend to be characterised by premeditation. Where that is the principal factor, a sentence at the high end of the sentencing range would be warranted. Where the offence also features brutality or cruelty, as was the case in *Lim Ghim Peow,* the sentence, in common with those in the previous category, will be near the highest end of the range approaching 20 years' imprisonment. In our judgment, *Wu Yun Yun,* which is an unreasoned case and an outlier, should not be relied on as a relevant precedent. Without any accompanying reasons, and having regard to the other precedents, it seems difficult to explain why the offender's premeditated killing resulted in a sentence of 12 years' imprisonment that was significantly lower.

Cases where the attack was spontaneous and unplanned: between ten and 18 years' imprisonment

108 In *Public Prosecutor v Sumanthiran s/o Selvarajoo* [2017] 3 SLR 879 ("*Sumanthiran*"), the offender, who was 18 years old at the time, was irritated

at the sight of an elderly man praying and proceeded to punch and kick the man in the face several times, killing him as a result. The victim was unknown to the offender. The offender also had a history of committing violent offences.

109 The judge found that the offender's attention deficit hyperactivity disorder ("ADHD") and alcohol dependence were factors which contributed to his history of violent conduct (*Sumanthiran* at [95]). The psychiatrist report tendered by the Defence stated that the offender qualified for the defence of diminished responsibility as he had an abnormality of mind, namely, impulsivity, which arose from ADHD and substantially impaired his mental responsibility for causing the death of the deceased. The offender pleaded guilty and was convicted of a charge of culpable homicide not amounting to murder punishable under s 304(*a*) of the Penal Code.

110 The judge was of the view that the offender's history of violent offences and the circumstances in which the offence was committed outweighed the mitigating factors of the offender's youth, and his ADHD and alcohol dependence which contributed to his history of violent conduct (*Sumanthiran* at [86]). The judge sentenced him to 14 years' imprisonment and eight strokes of the cane for the offence of culpable homicide not amounting to murder punishable under s 304(*a*) of the Penal Code.

111 *Sumanthiran* is the only reported case that stands in the category of spontaneous and unplanned attacks. It is thus difficult to derive a sentencing range for this category of cases. It seems to us that the range should typically be more than ten years' imprisonment, with reference to the other two categories of cases in the sections that follow, where the offender's culpability is demonstrably reduced as a result of the offender's mental impairment, but

would ordinarily not exceed the sentencing range for premeditated and brutal killings that typically attract sentences of 18 to 20 years' imprisonment.

Cases where the offender was suffering from a mental condition that distorted his sense of reality at the material time: typically around six to nine years' imprisonment

112 We turn next to a group of cases, which the Court of Appeal in *Kong Peng Yee* (at [66]) described in these terms:

> 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. …

113 In *Public Prosecutor v Rosdi Bin Joenet* [2016] SGHC 58 ("*Rosdi*"), the offender killed his wife by stabbing her multiple times with a kitchen knife. The offender was diagnosed with delusional disorder – jealousy subtype and also exhibited symptoms of depressive disorder which is a common comorbidity with delusional disorder. The offender pleaded guilty and was convicted of a charge of culpable homicide not amounting to murder punishable under s 304(*a*) of the Penal Code.

114 The judge acknowledged that the offender had committed a serious and heinous offence, but found that the effect of his delusional disorder was devastating when triggered, and accepted that this abnormality of mind caused him to stab his wife multiple times (*Rosdi* at [24] and [26]). The judge also observed that the offender was not well, had not yet healed and had not begun any treatment, and the symptoms of his delusional disorder were still active (*Rosdi* at [16]). There was a likelihood of a relapse of the offender's condition with heinous consequences (*Rosdi* at [25]), such that a more substantial term of

imprisonment was warranted for the protection of the general public (*Rosdi* at [20] and [25]). The offender was sentenced to nine years' imprisonment.

115 In *Public Prosecutor v Ho Wei Yi* [2014] SGHC 96 ("*Ho Wei Yi*"), the offender killed his father by starting a fire in the master bedroom of their home while his father was in the master bedroom. He had heard voices coming from the bed in the master bedroom and wanted to exorcise what he thought were evil spirits by starting the fire. He was diagnosed with "chronic paranoid schizophrenia which manifested itself in paranoid delusion, auditory hallucination, social withdrawal and agitated and aggressive behaviour". He pleaded guilty and was convicted of a charge of culpable homicide not amounting to murder punishable under s 304(*a*) of the Penal Code.

116 The judge considered that the offender's state of mind was directly affected by the extent to which he complied with his medication and treatment regime, and that he had been doing well in the recent past because he was in controlled surroundings, namely in prison or in the Institute of Mental Health. However, the offender's history showed that he could not be counted upon to take care of himself by faithfully consuming his prescribed medication, and without medication, the offender could pose a danger to his family and even injure his neighbours in the housing estate. Having regard to the need to protect the public, the judge thought it would be unsafe and irresponsible to release the offender too soon into society and sentenced him to eight years' imprisonment (*Ho Wei Yi* at [24]).

117 In *Kong Peng Yee*, the offender killed his wife in a brutal and violent manner by attacking her with a knife and a chopper. He was diagnosed with late onset psychosis with persecutory, jealous and nihilistic/somatic delusions. The psychiatrist opined that the offender's mental responsibility for his actions were

substantially impaired by his psychotic delusions and he thus qualified for the partial defence of diminished responsibility. The Prosecution proceeded with a charge of culpable homicide not amounting to murder under s 304(*a*) of the Penal Code, to which the offender pleaded guilty.

118 The Court of Appeal found that the offender's psychosis impacted his thoughts and actions severely at the time of the offence, and his delusion altered his appreciation of his actions significantly (*Kong Peng Yee* at [63]–[64]). The offender's mental disorder severely impaired his ability to understand the nature and consequences of his acts, to make reasoned decisions or to control his impulses. Whatever seemingly rational decisions that he made were premised on totally unreal facts and completely irrational thoughts (*Kong Peng Yee* at [66]). The Court of Appeal observed that the offender's prognosis was good, but this was conditional upon him remaining in his state of remission which required him to take the prescribed medication dutifully (*Kong Peng Yee* at [79]). The Court of Appeal considered that the sentence for the offender should be less severe because he had remained in remission while in a controlled environment (*Kong Peng Yee* at [97]), but it remained necessary to ensure the offender's continued compliance with his medication regime such that he would not relapse with the passage of time (*Kong Peng Yee* at [99]). It was also observed that the offender had strong family support which could facilitate his recovery and eventual reintegration into society (*Kong Peng Yee* at [99]). The Court of Appeal concluded that a sentence of six years' imprisonment was appropriate.

119 It is evident that in this group of cases, the offender's mental condition is so severely impaired, and the offender's sense of reality is undermined to such an extent that it significantly diminishes his culpability. At the same time, the court is concerned with the prevention of harm to protect the public, such that a

substantial imprisonment term is nonetheless warranted. The balance between these considerations is also reflected in the somewhat lower sentencing range where the likelihood of recurrence is lower. However, it should go without saying that the court may impose a significantly higher sentence and go outside this range if it considers that this is warranted in the interests of prevention and the protection of the public.

Cases where parents afflicted by a mental condition killed their children as a result: typically around five to seven years' imprisonment

120 The next group of cases are those that occur in a familial context, and typically feature a parent killing his or her child. There are two such sub-categories. The first is where the parent was motivated by a misguided view of what was best for their child.

121 In *Public Prosecutor v Yap Jung Houn Xavier* [2023] SGHC 224 ("*Xavier Yap*"), the offender killed his two sons. The victims suffered from autism spectrum disorder ("ASD") and global developmental delay. The offender was driven by a misguided belief that by ending their lives, he would alleviate their pain and suffering as well as the burdens on his wife. He was also worried about their caregiving arrangements once he and his wife had passed away. At the time he committed the offences, he also planned to take his own life after taking the lives of his two sons. He strangled both his sons, then submerged their faces in the water to ensure that they were actually dead. However, he did not follow through with his suicide.

122 The offender was suffering from MDD of moderate severity around the time of the offences, which impaired his judgment of the nature and wrongfulness of his actions. The judge held that he would thus have qualified for the partial defence of diminished responsibility (*Xavier Yap* at [2]). The

offender pleaded guilty and was convicted of two charges of culpable homicide not amounting to murder punishable under s 304(*a*) of the Penal Code. The judge was of the view that deterrence and retribution should feature as the primary sentencing considerations as the offender retained a clear understanding of the nature and consequences of his actions despite suffering from MDD at the time of the offences, and the offences were particularly heinous and serious (*Xavier Yap* at [43]–[45]). Nevertheless, the offender's mental condition of MDD was a relevant mitigating factor in the sentencing process which had to be carefully considered in determining the appropriate sentence as it was of such severity and persistence that it impaired his judgment (*Xavier Yap* at [48] and [52]). The offender was sentenced to seven years' imprisonment for each of the two charges, resulting in an aggregate sentence of 14 years' imprisonment.

123 In *Public Prosecutor v Goh Hai Eng* (Criminal Case No 4 of 2010, unreported), the offender suffered from a bipolar disorder and was suicidal. She decided to kill her 14-year-old daughter because she thought that no one would take care of her, and she did not wish to leave her behind upon killing herself. She was sentenced to five years' imprisonment. However, no reasons were published for the decision.

124 The first sub-category of these cases features serious mental impairment on the part of the offender coupled with a sense of despair that leaves the offender thinking in a wholly misguided way that taking the child's life is in the child's best interest.

125 In contrast, the second sub-category concerns a parent who kills the child out of frustration or loss of control, where this is brought about by a mental affliction of the parent.

126 In *Public Prosecutor v BAC* [2016] SGHC 49 ("*BAC*"), the offender pushed her seven-year-old son who was diagnosed with ASD out of the kitchen window which was on the ninth floor. The offender was convinced that her son was the reason for her exhaustion and marital problems and thus decided to kill him. She had a pre-existing and documented mental condition (namely MDD) that was directly attributable to the deceased being diagnosed with autism, at which time she started to have suicidal ideations and thoughts of harming the child. The psychiatrist was of the view that her depression would have substantially impaired her mental responsibility for her actions. The offender pleaded guilty and was convicted of a charge of culpable homicide not amounting to murder punishable under s 304(*a*) of the Penal Code. The judge thought that because the documented pre-existing mental condition was directly linked to the deceased, it carried significant weight as a mitigating factor and sentenced the offender to five years' imprisonment (*BAC* at [11] and [15]).

127 In *Public Prosecutor v CAD* [2019] SGHC 262 ("*CAD*"), the offender killed her child out of anger and frustration. She was suffering from MDD at the material time, which the judge accepted substantially impaired her mental responsibility. The offender pleaded guilty and was convicted of a charge of culpable homicide not amounting to murder punishable under s 304(*a*) of the Penal Code. The judge placed weight on the fact that unlike the offender in *BAC*, her mental impairment was not related to the deceased, and thus less mitigating weight ought to be ascribed to her mental condition (*CAD* at [10]). She was sentenced to seven years' imprisonment.

128 We make two observations on these cases. First, these cases should not be read as an endorsement of frustration as a mitigating factor. It is not. Rather, these cases recognise the mitigating effect of the offender's mental condition and the impact of this condition on their actions. In short, it is the diminution of

their culpability that is taken into consideration. This is quite unlike cases where parents kill their children out of pure frustration or poor self-control. In *Public Prosecutor v Azlin bte Arujunah and other appeals* [2022] 2 SLR 825, we made it clear that such offenders shall be met with the full force of the law.

129 Our second observation is that it is not clear to us why the fact that the offender's mental impairment in *BAC* was related to the deceased seemed to be treated as having additional mitigating weight. We do not think this has any relevance to sentencing. The key issue is the extent of the offender's mental impairment and its effect on the offender's culpability. There is no sense in which it could be said that the victim contributed to this in any way, even if, in the mind of the offender, it was perceived in that way. In such a case, the focus remains on the mental condition and its effect on the offender's culpability.

Summary of the sentencing principles

130 We summarise the foregoing discussion as follows. First, when deciding whether the partial defence of diminished responsibility is available, the question is a binary one: did the mental disorder of the sort contemplated by Exception 7 to s 300 of the Penal Code substantially impair the accused person's mental responsibility (see [59]–[70] above)? If the answer to the question is in the negative, then there will often be little, if any, room to further consider the offender's mental condition.

131 If, on the other hand, the answer to the question is in the affirmative, the offender's charge will be reduced, whether by the Prosecution or by the court, to one of culpable homicide not amounting to murder punishable under s 304(*a*) of the Penal Code, and the court will then have to decide on the appropriate sentence for the offender. In such a scenario, the court must then examine the

extent to which the mental impairment attenuates the offender's culpability in order to decide on the appropriate sentence.

132 In undertaking that task, the court will consider, among other factors, the existence, nature and severity of the mental condition, as well as whether a causal link can be established between the mental condition and the commission of the offence. In assessing causality, the court will have regard to the impact of the mental condition on (a) the offender's basic cognitive ability to perceive his acts and know their nature; (b) the offender's moral and legal cognition to know and appreciate the wrongfulness of his acts; and (c) whether the offender was able to exercise his will to control his actions. While this is not an exclusive set of factors, these are the ones most commonly considered. The moral culpability of a mentally disordered offender lies on a spectrum, and the nature and gravity of the offender's mental condition and its impact on the commission of the offence must be carefully considered in each case. When it comes to sentencing, the court will also have regard to other considerations aside from the offender's mental condition that may aggravate or mitigate the culpability of the offender.

133 While offences of culpable homicide under s 304(*a*) of the Penal Code are committed in a wide variety of circumstances, we have broadly categorised the culpable homicide precedents involving an *operative mental impairment* on the part of the offender at [81]–[129] above, in an attempt to rationalise the precedents and explain which of these may be relevant to a given type of case, and why. We have identified the following broad categories with their corresponding typical sentencing ranges, but emphasise that these ranges are indicative only, and the sentencing court may go outside them as long as it is satisfied that this is warranted:

(a) Cases where the offender was labouring under a mental disorder meeting the *Hodgson* criteria – life imprisonment. Inherent in the *Hodgson* criteria is the likelihood of reoffending behaviour on account of the offender's unstable mental condition, coupled with the grave consequences of such behaviour. In such circumstances, the protection of the public is the foremost consideration, and this justifies the imposition of a sentence of life imprisonment.

(b) Cases where the offender had been repeatedly violent and/or physically abusive leading up to the death of the victim – upper end of the range approaching 20 years' imprisonment. Where the circumstances of the offence feature a high degree of violence, cruelty and inhumane treatment of the victim over a period of time, the sentencing range tends to approach 20 years' imprisonment, second only to the maximum sentence of life imprisonment, and this step down is typically justified by the mitigating weight of the offender's mental condition.

(c) Cases where the killing was premeditated and brutal – upper end of the range, typically around 18 to 20 years' imprisonment. Where premeditation is the principal factor in a case, a sentence at the high end of the sentencing range would be warranted. If the offence also features an element of brutality or cruelty, the sentence will tend towards the highest end of the range approaching 20 years' imprisonment.

(d) Cases where the attack was spontaneous and unplanned – between ten and 18 years' imprisonment. It seems to us that the range should typically be more than ten years' imprisonment, with reference to the other two categories of cases that follow, where the offender's

culpability is demonstrably reduced as a result of the offender's mental impairment, but would ordinarily not exceed the sentencing range for premeditated and brutal killings typically attracting 18 to 20 years' imprisonment.

(e) Cases where the offender was suffering from a mental condition that distorted his sense of reality at the material time (such as delusional disorder or psychosis) – typically a lower range of six to nine years' imprisonment. In these cases, the offender's mental condition is so severely impaired that it significantly diminishes his culpability. At the same time, the court is concerned with the prevention of harm to protect the public such that a substantial imprisonment term is nonetheless warranted.

(f) Cases where parents afflicted by a mental condition kill their children as a result – typically a lower range of five to seven years' imprisonment. These cases fall under two sub-categories: the first is where the parent was motivated by a misguided view of what was best for their child as a result of serious mental impairment, coupled with a sense of despair; the second is where the parent kills the child out of frustration or loss of control, brought about by a mental affliction that led the parent down the tragic path of taking their child's life.

The present case

134 In the light of the foregoing principles, we turn to the facts in the present appeal. To recapitulate, CNK pleaded guilty to a charge of culpable homicide not amounting to murder punishable under s 304(*a*) of the Penal Code. CNK had caused the death of Ethan by slashing Ethan's head, neck and body

repeatedly with an axe, and with the intention of causing his death. At the material time, CNK was suffering from MDD of moderate severity.

Circumstances of the offence

135 CNK exhibited a chilling degree of premeditation and a cold and calculated approach in planning and preparing for the killing. From as early as five months prior to the offence, he had researched the internet for a suitable weapon and picked a machete or axe because it would be suitable for an inexperienced user. He then tested the sharpness of the weapons, and when he was not convinced of their lethality, arranged to have them sharpened (see [15] above). He examined the floor plan of RVHS ahead of the attack (see [16] above) to plan how best he could carry out the attack. He also decided on a school slashing because he was older than most of the other students and thus was more likely to secure his goal (see [10] above). A month prior to the killing, he prepared for the knife attack by seeking out snuff videos online to educate himself on the most efficient way of killing his prospective victim (see [17] above). He taught himself how to grip the axe properly from the internet, with his left hand on the upper grip and his right hand at the lower grip (see [24] above). It seems to us that the degree and extent of planning and preparation that was undertaken by CNK went well beyond that seen in many of the precedents.

136 We digress to comment on the poems titled "Liberation" and "_Liberated_" (see [11] above). It does seem to us that CNK appeared to be enthralled by the idea of a school killing and the notoriety it could bring him (see [12] above). CNK contends that the Judge erred in placing too much focus on his poetry, and wrongfully concluded that he found the idea of a school killing "appealing". We disagree. The Judge was entitled to draw the inferences

relating to CNK's psyche from the contents of the poems (especially "_Liberated_"). The Judge was making an inference of fact and it was not necessary for her to be assisted by expert advice in order to be able to do this. Further, the Judge viewed the poem in the context of the facts and circumstances surrounding the killing. Excerpts from CNK's poem "_Liberated_" are reproduced below and they demonstrate why the Judge was entitled to infer that CNK came to find the idea of killing a schoolmate "appealing":

> Breaking news, a different spree!
> Not like shopping on the streets!
> 16 Left Dead and 4 Bed-bound,
> And a school left in a bloody shroud.
>
> Psychos, maniacs and lunatics alike,
> Eclipsed by the kid's cursed spite.
> Love and animosity put aside, no one thought he'd have done it alright!
>
> …
>
> To kill as many as he was old,
> The whole country was left rightly shook.
> Though not as bad as Sandy Hook,
> It was sure to leave enough stoked!
>
> …
>
> Was it only for the glory?
> For it had sure caused public furore.
> But he did gain notoriety,

> As the first school stabber in history!

137 Aside from the degree of premeditation that was involved, this case also featured a high degree of brutality and callousness, and the targeting of a wholly innocent, defenceless young victim who just happened to be at the wrong place at the wrong time. Having regard to these factors, it is evident from the sentences imposed in the third category of cases at [95]–[107] above that, leaving aside CNK's youth and notwithstanding his mental impairment, the starting sentence would have been in the range of around 20 years' imprisonment.

The effect of the appellant's MDD

138 We next examine his mental impairment. The Prosecution accepted that the partial defence of diminished responsibility was applicable and thus reduced the charge from one of murder under s 300 of the Penal Code to one of culpable homicide not amounting to murder under s 299 of the Penal Code.

139 CNK suffered from MDD of moderate severity for about six months leading to his offence. He had at least two episodes of poor mood and suicidal thoughts in 2019, none in 2020, and then a worsening of mood-related symptoms in 2021, including negative self-image, lack of drive, self-deprecatory thoughts, low mood, poor concentration and the idea that life is not worth living. CNK reported that these symptoms intensified from January 2021. He felt life was worthless and started to entertain thoughts of death. He felt that there was no way out of his life predicament other than by committing suicide. However, CNK could not bring himself to commit suicide and decided to "let someone do [it] for [him]". He learnt from the internet that if he were to kill others, he could get himself killed by the police, and decided to embark on this avenue.

140 CNK's MDD clearly led to his seriously considering suicide, and it limited his perception of the alternative courses open to him. We are satisfied that this contributed to his irrationality in choosing to commit suicide by cop, and that but for his MDD, he would not have come to that decision. We also accept that having come to this decision in these circumstances, he did not have any realistic moment of rationality and self-control that would have enabled him to pull back from that intention or plan. For these reasons, CNK would have qualified for the partial defence of diminished responsibility had that been an issue for our determination.

141 However, as we have explained at [72]–[80] above, it remains necessary for us to assess the extent to which CNK's culpability can be attenuated in light of his mental impairment, in order to calibrate the sentence.

142 Dr Cai identified three major and interacting factors that led to the killing: (a) CNK's sensitive temperament with a tendency to keep things to himself and his refusal to get external help; (b) his MDD; and (c) the harmful effects of his misguided exploration of the internet. Dr Gwee too identified three broadly similar factors that contributed to the killing: (a) his misguided curiosity to address existential angst; (b) the onset of MDD, which accentuated his fatalistic thinking, limited his perceived range of options when thinking about possible courses of actions, and hardened his otherwise empathic nature into a callous persona; and (c) consumption of snuff videos, which worsened this callousness, and additionally removed psychological obstacles that might have impeded his killing the victim by desensitising him to the physicality and gore that is inherent in taking a life.

143 In our judgment, while CNK's MDD undoubtedly contributed to the killing, there were also other contributory factors at play. These include, in

particular, his consumption of snuff videos which he knew was "pervers[e] and abnormal", and which ultimately worsened his callousness, desensitised him, and removed the psychological obstacles involved in taking someone's life in an axe/knife attack. He also did not at any time seek help for the despair he felt.

144 Further, despite his MDD, CNK still retained a significant degree of rationality. CNK contends that the killing was not founded on a true and rational factual basis, and that the basis for the killing was closer to "fantasy or fiction", in that he mistakenly believed that he would be shot by the police if he killed his schoolmate. In our judgment, this is incorrect. Although CNK was ultimately mistaken as to the viability of suicide by cop in Singapore, which would depend on, among other things, prevailing police practices, CNK was not acting on the basis of fantasy or fiction. It was neither beyond reason nor delusional to conceive that the police might shoot him had he gone on a killing spree in RVHS. His thought process was logical, and his plan was carefully and meticulously thought out. The killing was founded on a rational factual basis, albeit he may have been mistaken about the viability of his method of suicide by cop.

145 Moreover, as the psychiatric reports show, CNK knew the nature and wrongfulness of his acts, knew that suicide by cop was legally and morally wrong, and wrestled with some ambivalence over it for a few months. His depression did not undermine his ability to wilfully control physical acts to materialise this plan. In fact, he appreciated the physical damage required to increase the chances of death, and methodically prepared for the axe attack. We reproduce below the relevant extracts:

(a) From the First Clarification Report:

> He was capable of knowing both the nature and wrongfulness of his acts.
>
> **[Question 5:] … did this abnormality of mind substantially impair [CNK's] power to control his acts or omissions in causing the death …?**
>
> [Answer to Q5:] No.

(b) From the Second Clarification Report:

> **[Question 2:] Did [CNK's] MDD affect his perception of physical acts and matters?**
>
> [Answer to Q2:] No. He was still able to comprehend and appreciate the physical damage required to increase the chances of death, and methodically prepared for the axe attack …
>
> **[Question 3:] Did [CNK's] MDD hinder his ability to form a *rational* judgment as to whether an act is right or wrong? Please elaborate on your answer.**
>
> [Answer to Q3:] Yes. The mechanism of this impairment is as follows. [CNK's] depression led to a serious consideration of suicide, as well as a limiting of alternative recourses. When he considered suicide by cop as a way to end his life, he knew that this means was legally and morally wrong, and wrestled with some ambivalence over it for a few months…
>
> **[Question 4:] Did [CNK's] MDD undermine his ability to exercise his will to control physical acts in accordance with that rational judgment?**
>
> [Answer to Q4:] … his depression did not undermine his ability to wilfully control physical acts to materialise this plan.

146 For these reasons, we consider that CNK's MDD can only attenuate his culpability to a limited extent.

Sentencing considerations

147 We turn to weigh the relevant sentencing considerations. In our judgment, given the heinous nature of the offence, retribution is the foremost sentencing consideration in this case.

148 The principle of retribution operates on the commonsensical notion that the punishment meted out to an offender should reflect the degree of harm and culpability that has been occasioned by such conduct: *Public Prosecutor v Loqmanul Hakim bin Buang* [2007] 4 SLR(R) 753 at [46]. As the Court of Appeal in *Kong Peng Yee* held, in the case of offenders who retain a degree of rationality and evince the ability to think logically and coherently, borne out by a sophisticated degree of planning and premeditation, their mental disorder can only ameliorate their culpability to a limited extent, and retribution and deterrence should nonetheless feature as dominant sentencing principles (at [65]). Where the offence is particularly serious or heinous, there is no reason why retributive principles of sentencing should not prevail over the principle of rehabilitation, notwithstanding the offender's mental disorder (*Lim Ghim Peow* at [39]) or his youth.

149 Although CNK suffered from MDD which substantially impaired his mental responsibility, in our judgment, his culpability remained on the high end of the spectrum. The fact that the killing took place in a school, which is supposed to be a safe place for young persons between 13 and 16 years old to receive an education, adds to the grievous nature of the offence. As noted in Dr Gwee's Report, CNK decided on a school slashing because of the "law of the jungle: prey on weaker" – CNK explained that he was older than the other students in school, and he sought to play to that advantage.

150 This also gives rise to the importance of general deterrence as a relevant and weighty sentencing principle in the present case. General deterrence seeks to deter other like-minded persons, who are similarly situated as the offender before the court, from committing the same offence. 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, and for whom the threat of punishment would be a disincentive to engage in criminal conduct: *Soh Meiyun v Public Prosecutor* [2014] 3 SLR 299 at [43]. General deterrence may have less significance where the offender is suffering from 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: *Kong Peng Yee* at [69]. However, the existence of such a condition does not automatically displace the importance of general deterrence in sentencing: *Lim Ghim Peow* at [35]. 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: *Kong Peng Yee* at [70]. If the nature of the mental disorder is such that it does not affect the offender's capacity to appreciate the nature, gravity and significance of his criminal conduct, the application of the sentencing principle of general deterrence may not always be significantly affected: *Lim Ghim Peow* at [35].

151 In our judgment, general deterrence does apply in the present case to deter persons similarly situated as CNK, meaning those suffering from a mental condition but still retaining the capacity to comprehend the wrongfulness of their actions, from consciously indulging in their thoughts and inclinations (which they recognise to be perverse and wrong) and taking active steps to turn

those thoughts into reality. In this context, we accept the Prosecution's submission that the homicide in this case was brought about by the confluence of three factors, of which CNK's MDD was but one. The other two factors, namely, CNK's refusal to receive external help and his consumption of snuff videos, were within his control and therefore should be seen as susceptible to deterrence.

152 CNK also contends that the Judge failed to accord adequate weight to rehabilitation as a sentencing consideration. In our judgment, the Judge was fully cognisant that rehabilitation ought generally to be the dominant sentencing consideration in cases involving young offenders, but that there could be exceptions to the rule where the offence was so serious and the actions of the offender so heinous that rehabilitation had to be subordinated to retribution (GD at [38]). She was also aware that the fact that CNK was labouring under a serious mental disorder was a significant countervailing factor against placing retribution, instead of rehabilitation, as the predominant sentencing principle (GD at [38]). Ultimately, considering all the circumstances and the high level of CNK's moral culpability, the Judge decided that retribution should prevail. We see no reason to interfere with the Judge's exercise of her sentencing discretion.

153 CNK placed heavy reliance on the decision of the High Court in *Public Prosecutor v ASR* [2019] 3 SLR 709 to underscore his submissions on the centrality of rehabilitation as the key consideration in the present case. In our judgment, this submission was misplaced. First, that case concerned the question of whether the offender should be sentenced to reformative training instead of imprisonment having regard to his youth and his mental impairment. The issue there concerned a choice between sentencing options that were different in kind, with one tending to emphasise rehabilitative concerns more

than the other. That simply is not the case here, where CNK merely seeks a reduction in the sentence of 16 years' imprisonment. It is not immediately clear to us how rehabilitation is promoted by reducing the sentence.

154 Further, as the Court of Appeal observed in *Lim Ghim Peow* (at [38]):

> It is, moreover, erroneous to assume that rehabilitation necessarily dictates that a lighter sentence be imposed on a mentally disordered offender. This again depends very much on the nature of the offence as well as the nature and severity of the offender's mental disorder. … the Court of Appeal observed [in *PP v Kwong Kok Hing* [2008] 2 SLR(R) 684] (at [37]) that "[w]hile the respondent's rehabilitation was a relevant consideration, there was no suggestion that he could not be similarly rehabilitated in prison", and that "even if one were to place considerable weight on rehabilitation as a sentencing principle, it did not necessitate a light sentence in the current case".

155 As the Judge rightly noted, even while CNK remains in prison, it does not mean that rehabilitation is impossible or that redemption is out of reach (GD at [47]). It appears that CNK has already commenced his rehabilitation in prison, and there is no reason why he cannot continue to do so there.

Other relevant mitigating factors

156 For completeness, we note that the Judge had adequately considered and accorded sufficient weight to the other relevant mitigating factors of: (a) CNK's youth (GD at [38]–[39], [43]–[45]); (b) CNK's significant and genuine remorse (GD at [43]–[44] and [48]); and (c) CNK's low risk of recidivism (GD at [43]–[44] and [47]).

157 In our judgment, CNK's relative youth and the fact that his MDD contributed significantly to his acts, together with the other mitigating factors, were more than adequately reflected in the sentence of 16 years' imprisonment

which the Judge imposed, and which is markedly less than the indicative sentence of 20 years' imprisonment that we have identified in the light of the circumstances of the offence and the relevant precedents (see [137] above).

Whether the Judge took into account remission for good behaviour when calibrating the length of sentence

158 Finally, CNK is plainly wrong to assert that the Judge had taken into account the factor of remission for good behaviour when calibrating the length of sentence. She did not. The Judge merely pointed out, *after* imposing the sentence of 16 years' imprisonment, that the offender will spend slightly more than ten years behind bars taking into account remission for good behaviour. This did not feature as a consideration in the Judge's calibration of the sentence.

Conclusion

159 For these reasons, we dismiss the appeal and uphold the sentence of 16 years' imprisonment.

Sundaresh Menon
Chief Justice

Belinda Ang Saw Ean
Justice of the Court of Appeal

Woo Bih Li
Judge of the Appellate Division

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