Public Prosecutor v Lim Ah Seng
[2007] SGHC 40

Case Number : CC 18/2006

Decision Date : 26 March 2007

Tribunal/Court : High Court

Coram : Sundaresh Menon JC

Counsel Name(s) : Edwin San and Jason Chan (Deputy Public Prosecutors) for the Attorney-General's Chambers; Subhas Anandan and Sunil Sudheesan (Harry Elias Partnership) for the accused

Parties : Public Prosecutor — Lim Ah Seng

Criminal Procedure and Sentencing – Sentencing – Principles – Accused strangling wife during fight – Accused victim of repeated physical and psychological abuse from wife – Accused pleading guilty to culpable homicide not amounting to murder – Accused suffering from post-traumatic stress syndrome – Appropriate sentence – Section 304(b) Penal Code (Cap 224, 1985 Rev Ed)

26 March 2007 Judgment reserved

Sundaresh Menon JC:

1 Every killing is utterly tragic; but this does not mean that every killer is to be punished in the same way. The law recognises this and it is reflected in the various defences available to a murder charge and in the highly differentiated scheme of sentencing prescribed for a range of offences from a mandatory death penalty for intentional killing to a maximum term of imprisonment of two years for causing death by rash or negligent acts. In the context of culpable homicide not amounting to murder, the circumstances of each killing may be so varied that any attempt to prescribe the precise sentence *in vacuo* would be futile. Even with a growing body of case law that provides much useful guidance, sentencing calls for the sound exercise of judicial discretion, taking into account the specific factual complexion of each case, including the ambient circumstances of the offence and the offender. I can do no better than to recall what was said by V K Rajah J in *Angliss Singapore Pte Ltd v PP* [2006] 4 SLR 653 ("*Angliss*") at [24]:

> … [A] sentencing judge should not hide behind the veneer of platitudes as an expedient substitute for the scrupulous and assiduous assessment of the factual matrix of each case in determining the appropriate sentence.

2 So it is with the case before me. One Lim Ah Seng ("Lim"), 37 years of age at the time of the incident has pleaded guilty before me to a charge of culpable homicide not amounting to murder under s 304(*b*) of the Penal Code (Cap 224, 1985 Rev Ed) ("the Code"). I have the task of sentencing him. The law provides that the offence is punishable with a term of imprisonment which may extend to 10 years, or with a fine, or with both.

The procedural history

3 It is appropriate first to outline the procedural history of this case. On 7 July 2006, Lim pleaded guilty to a charge of culpable homicide not amounting to murder under s 304*(b)* of the Code for causing the death of his wife, Madam Riana Agustina ("the deceased"), by strangling her with the knowledge that it was likely to cause her death. Upon accepting Lim's plea of guilt, I sentenced him to a term of imprisonment of 2 years and 6 months, with effect from 25 October 2005 ("the first

judgment"). The plea of guilt, and my determination of the appropriate sentence, were based on a statement of facts agreed upon by both the prosecution and the defence ("the SOF"), the details of which were narrated in my grounds of decision: see *PP v Lim Ah Seng* [2006] SGHC 122 ("the GD") at [5] to [15]. For the sake of context, it may be noted that in sentencing Lim, I had considered that the SOF revealed that:

(a) Lim was a victim of repeated and sustained physical and psychological abuse since 2003, so much so that he suffered from post-traumatic stress disorder as a result;

(b) No weapon was used in the commission of the offence;

(c) It was the deceased who had instigated the fight on that fateful night;

(d) Lim had shown remorse in his unconditional plea of guilt and his full co-operation with the authorities;

(e) Lim had no antecedents and had, apart from this incident, shown considerable restraint in the face of the deceased's abuse; and

(f) There was no real likelihood of recurrence.

4 The prosecution was dissatisfied with the sentence I had passed and filed an appeal to the Court of Appeal. On 12 October 2006, the Court of Appeal heard the appeal. It expressed certain misgivings in relation to whether the SOF fairly and accurately represented the nature of the relationship between Lim and the deceased, and what had transpired between them on the night of the deceased's death. More specifically, the Court of Appeal was concerned that the external and internal injuries apparently sustained by the deceased called for further investigation to consider whether Lim might have aggressively attacked the deceased. This could alter the complexion of the case at least in so far as a wholly disproportionate response to any instigation or aggression might constitute an aggravating factor: see *PP v Michael McCrea* [2006] 3 SLR 677 at [15]. More fundamentally, it threw into question two important premises in the SOF, *viz*., that Lim's act of strangling the deceased was done in response to the latter's own aggression and that Lim was the victim in an abusive relationship with the deceased. Of course, the fact that Lim may have inflicted serious injuries on the deceased may itself have been inconclusive but it would have had to be taken into account together with the other circumstances of the case for the purpose of sentencing. The Court of Appeal was also concerned whether some of the statements contained in the SOF had been verified by objective evidence. There is much to be said for the prosecution relying on objective evidence as much as possible and even in the context of a case proceeding on the basis of an agreed statement of facts, it is probably useful for the prosecution to have available the key objective evidence upon which the facts were agreed.

5 In any event, the first judgment was set aside by the Court of Appeal and the case was remitted to me in order that further evidence could be received in relation to the matters raised by the Court of Appeal.

6 Pursuant to my directions, the prosecution and the defence agreed upon a list of the matters that the Court of Appeal had raised on 12 October 2006, and in respect of which the further evidence that was to be tendered before me. This list was as follows:

(a) A further report by a forensic pathologist on the injuries found on the deceased;

(b) Reports from the Health Sciences Authority ("HSA"), including that relating to the vaginal swabs taken from the deceased;

(c) Evidence of Lim's loss of hearing and which was said to have been caused by the deceased;

(d) Evidence in respect of the relationship between Lim and the deceased; and

(e) A psychiatric report on Lim's current mental condition and the period of supervision that he will require.

7 It turned out that the further evidence led by the prosecution corroborated and in some respects reinforced the narration of facts in the SOF as was confirmed by the learned deputy public prosecutor, Mr Edwin San. It followed that the statement of facts tendered by the prosecution and on which Lim pleaded guilty for a second time when the case came before me on 9 March 2007 was identical to the first SOF.

The undisputed background facts and the SOF

8 I begin by highlighting some of the salient facts before considering the further evidence. Lim and the deceased were married in 1998 and had two children. For the first five years of their marriage, no instance of violence by either party was reported. It was only in 2003 or 2004 that the deceased began to get abusive and physically lashed out at Lim and their children. It was suggested that Lim had become partially deaf in one ear, as a result of these beatings. These incidents of abuse eventually led Lim to enlist the help of the Ministry of Community Development, Youth and Sports ("the MCYS"), and in November 2004, an official request for help was lodged. Subsequently, the deceased was brought to a shelter but she left sometime in June or July 2005.

9 The SOF then picks up the factual thread a few months later, on 25 October 2006. On that day, at about 6 pm, Lim received a call from the deceased who told him that she wanted to visit his mother's home to see their six-year-old daughter, Angel. Lim told her to go there on her own. About an hour later, Lim returned home to shower. Just as he was about to leave for dinner, the deceased turned up at the flat and told him that she came to see him because she did not have the keys to his mother's house.

10 The deceased then informed Lim that she wanted to bring Angel to Jakarta. When Lim protested, the deceased raised her voice. They quarrelled for some time. The deceased then asked the accused whether he wanted to make love to her because they had not seen each other for some time. Lim agreed.

11 Having had sexual intercourse, the deceased went to wash herself. Upon returning to the master bedroom where Lim was, the deceased again raised the issue of bringing Angel to Jakarta. When Lim refused the second time, the deceased warned Lim that she would report him to the police for rape if he persisted in his objection.

12 A quarrel ensued, and the deceased slapped the accused and told him that because she had a record with the Institute of Mental Health ("the IMH"), it would be all right for her to kill him. She rushed into the kitchen and grabbed a knife, but was stopped by Lim. Lim then followed the deceased into the master bedroom to prevent her from throwing things around, which, it seemed, was what she usually did during such arguments.

13 The quarrel became more intense. The deceased slapped Lim again and then strangled him by squeezing his throat and neck. The accused felt pain and responded by squeezing the deceased's throat and neck. It was only after a while, when he realised that her grip on his neck had loosened, that he released his own grip. She fell down and was motionless. Lim called out to her and tried to revive her, but to no avail.

14 The next thing Lim did was to call his mother and inform her that the deceased had come to his flat to create trouble and wanted to bring Angel to Jakarta.

15 At approximately 9.24 pm, police officers and officers from the Singapore Civil Defence Force arrived at the scene and saw Lim sitting shirtless in the living room of his residence. Lim went into the kitchen and came back with two knives and he stabbed himself in the thighs. He refused entry to the officers and threatened suicide. It was only after officers from the Police Crisis Negotiation Unit were called in that Lim was eventually persuaded to surrender to the police.

16 The deceased was found lying motionless on the floor of the bedroom and was pronounced dead at 12.42 am on 26 October 2006. The pathologist certified her cause of death as asphyxia due to manual strangulation.

The further evidence

17 I turn to the further evidence that the prosecution led in respect of the issues raised by the Court of Appeal.

Changi General Hospital medical report

18 The effect of this report, prepared by Dr Hsu Pon Poh, a consultant at the Department of Otolaryngology of the Changi General Hospital, was to confirm that Lim had suffered a partial loss of hearing in his left ear. This was not disputed.

Report by Tanjong Pagar Family Services Centre dated 22 November 2006

19 A report was prepared by one Ms Peng Hi Ying, Assistant Senor Social Worker at the Tanjong Pagar Family Services Centre ("the Centre"), stating that the deceased had gone to the Centre on 1 April 2005 on a referral by the Institute of Mental Health ("IMH"). According to Ms Peng, she was told by the deceased that *she* felt subjected to "psychological distress" from Lim as a result of his persistent pleas not to divorce him. The Centre assisted the deceased with her application for a personal protection order ("PPO") from the Subordinate Courts, but she withdrew her application a week later because she wanted to give Lim another chance.

20 On 26 April 2005, the deceased came back to the Centre and asked to be referred to a temporary crisis shelter. Ms Peng said that she observed a bruise on the deceased's left knee and inquired about it. The deceased informed her that on the night of 25 April 2005, she had returned home from work and a quarrel with Lim broke out over his not having money for her to buy dinner. She scolded him and he became upset, knocking over the coffee table and causing her knee to be bruised. According to the deceased, Lim then pushed her to the floor, dragged her to the master bedroom and attempted to suffocate her with a cushion.

21 Ms Peng decided it would be best to house the deceased at a shelter at Waterloo Street. She, and another colleague, accompanied the deceased to Lim's residence to pack her belongings. When they arrived, Lim was present. Ms Peng explained that she had arranged for a place for the deceased

to stay temporarily while they tried to sort out their problems. Lim replied that he did not understand why the deceased was so upset. He even told Ms Peng that he had seen the deceased with another man in the flat and suspected her of having an affair.

22 On hearing this, the deceased rushed out of the room where she had been packing her things and screamed vulgarities at Lim. An argument followed, during which, according to Ms Peng, the deceased was relentless in her verbal abuse. Ms Peng called the police, concerned that a physical fight might break out. Before the police arrived, Lim repeatedly asked the deceased not to leave him. When the police came, both Lim and the deceased calmed down and the latter eventually left the flat.

23 The deceased stayed at the shelter for some time after which she moved out of her own accord and rented an apartment. The last contact Ms Peng had with the deceased was on 24 August 2005, when the latter was said to be about to file for a divorce.

24 On 25 May 2005, however, Ms Peng met with Lim at a counselling session during which Lim said that he did not want a divorce and would do his best if the deceased gave him a further opportunity to prove himself. He also revealed that he would not prevent her from divorcing him if she was unwilling to change her mind although he added that he would fight for the custody of both children. Thereafter, he did not turn up for his subsequent appointments and could not be contacted.

25 Although this report was admitted by consent without calling the maker, Mr Subhas Anandan, who appeared for Lim, noted that the only part of this report which could be relied on as casting light on the relationship between Lim and the deceased was the interaction between the parties that Ms Peng had witnessed and that is set out at [21] and [22] above. This is to be distinguished from what had been told to Ms Peng by the accused.

HSA report on the DNA profiling of a vaginal swab dated 17 February 2006

26 Ms June Tang Sheau Wei, an analyst at the DNA Profiling Laboratory of the HSA testified as to her findings that were set out in her report dated 17 February 2006. According to Ms Tang, a vaginal swab obtained from the deceased's body was found to have a trace of a stain, which was insufficient to enable the analyst to confirm that it was semen. It was sufficient however, to determine that there was male DNA in the deceased's vagina which matched Lim's DNA profile. Ms Tang added that this could be due to direct contact or secondary transfer. This was, in fact, consistent with the SOF in so far as it stated that Lim and the deceased had consensual sexual intercourse shortly before the latter's death and that the deceased had gone to wash herself after that.

HSA report on other objects found at the scene dated 17 March 2006

27 Forensic analysis was conducted on several items recovered at the scene of the deceased's death. The significant findings were these:

(a) a swab taken from two knife handles revealed a DNA profile matching that of the deceased, suggesting that the deceased had handled the knives at some point during her fight with Lim on 25 October 2006; and

(b) cells found deposited under the finger nails of the deceased matched Lim's DNA profile, suggesting that she had "some form of contact" with Lim.

Autopsy Report No. AZ20052916

28 Dr Gilbert Lau, a senior consultant pathologist at the Centre for Forensic Medicine, HSA, who also conducted the autopsy of the deceased, testified as to the effect of his autopsy report.

29 Dr Lau first testified that the cause of death by manual strangulation was confirmed by the presence of bilateral conjunctival petechial haemorrhages (pinpoint or dot like haemorrhages on the eyelids), taken together with evidence of central and peripheral cyanosis (the purplish tinge on the lips, face, fingertips and extremities) as well as a group of three faint, pinpoint abrasions on the neck. According to Dr Lau, extensive external injuries are not always found in cases of manual strangulation. Dr Lau also referred the court to his internal examination of the body, and in particular, his findings in relation to the anterior dissection of the neck. Here, the bruising that was found correlated with the external injuries just described. In addition, there was a fracture found at the right superior horn of the thyroid cartilage (commonly called the Adam's apple), which would have required "moderate to considerable force" to have been applied. Dr Lau added that the fracture could have occurred within a relatively short time if sufficient force had been applied to the neck.

30 Dr Lau also testified that in a case of manual strangulation, one act of compressive force could simultaneously give rise to a number of injuries (including those described in [29] above). He said as follows:

> [I]t is important to understand that…when an assailant applies…his hand to the neck of the victim, in the case of manual strangulation…his grip may not remain static. If the deceased, the victim, had put up a certain amount of resistance for instance, then the grip should shift even if it is only…to a small extent. But that itself would be quite sufficient to cause the injuries that have – that were found at the autopsy, both the external as well as the internal injuries.

31 Similarly, when Mr San directed Dr Lau's attention to the 17 sets of external injuries reported in the autopsy and asked whether this meant that the deceased was attacked 17 separate times, Dr Lau unequivocally rejected this inference. Instead, he testified that the injuries were consistent with what one might expect in a scuffle between Lim and the deceased:

> [J]ust because there are…say, three bruises on one part of the deceased's body, say an arm, it does not necessarily mean that…three separate blows had to be…inflicted on that part of the body. Most of these bruises are actually – would have been caused by fingertip pressure from gripping. And so a single grip…of say, the deceased's elbow, for instance, could result in as many as three bruises in that particular region.

32 Dr Lau then clarified that in characterising the multiple bruises along both of the deceased's upper limbs as "defensive-type injuries or grip marks", he was employing a very broad definition of that term, and said that the injuries could have been sustained by the deceased either in defending herself or by striking Lim during the scuffle.

33 Most significantly, Dr Lau was asked by Mr San whether his findings in the autopsy report were consistent with the facts set out in the SOF, and specifically, whether they were consistent with the portrayal there that:

(a) The deceased had slapped Lim earlier in the quarrel;

(b) Lim had stopped the deceased from grabbing a knife in the kitchen;

(c) Lim had followed the deceased into the master bedroom to prevent her throwing things around;

(d) The deceased slapped Lim again and strangled him by squeezing his throat and neck; and

(e) Lim had reacted to the strangulation by also strangling the deceased until she loosened her grip and fell down.

Dr Lau's testimony was that his autopsy findings were, indeed, "entirely consistent" with this narration of the events in the SOF.

34 Before Dr Lau was released, I asked him to clarify one of the conclusions in his autopsy report, namely that there was an acute subdural haemorrhage, associated with focal subgaleal bruising of the scalp, consistent with falls upon, and/or blows inflicted, to the head.

35 Dr Lau explained that this showed that there had been some direct trauma inflicted to the deceased's head. Crucially, he stated that there were a number of possibilities as to how those injuries could have been suffered. One possibility was, of course, that Lim had inflicted the blows directly. Another was that in the course of the scuffle, the deceased had fallen on or been thrown against an object. Yet another possibility was that judging from the position of the body at the scene of the incident, and assuming that the body had not been moved, those injuries could have been caused by her final fall on to the floor.

36 I also asked Dr Lau about a photograph (P 48) showing what looked like bruising on the lower portion of the deceased's back. Dr Lau stated that this was not so, and that the colouration was due to the passive accumulation of blood as a result of her body resting on its back after her death.

Psychiatric reports on Lim dated 7 December 2005 and 9 February 2007

37 Dr Tommy Tan, a consultant and forensic psychiatrist at the IMH, prepared two psychiatric reports on Lim some 14 months apart. These were tendered by the prosecution to demonstrate that Lim was suffering from post-traumatic stress disorder at the time of the incident due to prolonged physical and psychological abuse from the deceased.

38 In Lim's case, post-traumatic stress disorder, as Dr Tan described it, was characterised by:

(a) constant anxiety and fear of the deceased, even after her death;

(b) hypervigilance, in which he was always alert to her presence;

(c) avoidance behaviour, in which he tried to avoid her or locked himself in the flat and kept the lights off;

(d) being easily startled by any noise; and

(e) depressed mood with suicidal thoughts and poor concentration.

Even in remand, Lim was said to be feeling anxious, easily startled by noise and unable to sleep well at night. Lim could not explain why he continued to be anxious since his wife had died, but during his first examination with Dr Tan, Lim had even expressed doubt that the deceased had in fact died. In the course of his oral evidence, Dr Tan reiterated that Lim's illness had been caused by repeated physical and psychological abuse by the deceased. This was accepted by the prosecution and it was reflected in the SOF. Dr Tan explained how he came to this conclusion and why he did not think Lim had exaggerated his symptoms. Dr Tan also testified that Lim's mental responsibility was impaired by

reason of this. Dr Tan stated that although Lim nevertheless would have known what he was doing at the time of the offence, "*he couldn't have controlled himself*". It is noteworthy that Dr Tan in his first report had stated the following:

> Mr Lim was able to give an account of the alleged offence. He said that the deceased started beating him. She then put her hands on his neck to strangle him. He said that he let her strangle him until he could not control himself anymore and he strangled her back. He said that he [was] "out of control" unlike in the past he would just let her beat him. …

39 In his second report, dated 9 February 2007, Dr Tan stated that in his opinion Lim had recovered from post-traumatic stress disorder. In his oral testimony, he confirmed that there was an "appreciable and definite difference" in Lim's condition between the time of the first and second reports. However, Dr Tan concluded his report as follows:

> He will require long-term follow-up because there is a risk that his mental disorder may recur, especially if he is stressed or reminded of the deceased. However, I do not think that he is a danger to others as he had a good pre-morbid personality, good family support and has been compliant with treatment thus far and the circumstances that caused him to commit the offence may not recur.

40 In direct examination by Mr San, Dr Tan stated that the risk of Lim suffering a relapse of post-traumatic stress disorder was small. I asked Dr Tan whether this meant that as long as there was regular and long-term medical follow-up and treatment, the risk of his relapsing into post-traumatic stress disorder would be controlled. Dr Tan then clarified that the reason for his recommendation that there be long-term follow-up was not because Lim required medication but that he (*ie* Dr Tan) wanted to see him once or twice a year to keep track of him and to remind him that there was help should he need it or should he suffer a relapse of the symptoms. However, Dr Tan also said that he did not think Lim would suffer a relapse given his personality, the family support he enjoyed with regular visits by his mother and children and his compliance with treatment thus far. Dr Tan also did not think Lim was a danger to others.

Analysis of the further evidence

41 As stated above, the effect of the further evidence was to lend support to the SOF. To summarise, the further evidence supported the agreed facts that:

(a) Lim was hearing impaired in one ear;

(b) The deceased had contact with two knife handles found at the flat, suggesting that she did try to grab them sometime that night;

(c) The deceased and Lim had sexual intercourse on 25 October 2005. (That semen could not be detected is consistent with the fact that the deceased had washed herself after they had intercourse); and

(d) The injuries found on the deceased's body indicate that there had been a scuffle and was consistent with the SOF in particular as summarised at [33] above.

There are perhaps only two further points that I should briefly discuss.

42 The first has to do with the report by Ms Peng at the Centre (*supra* [19] to [25]). This report

appeared in parts to cast Lim not as the victim of abuse but as the aggressor in his relationship with the deceased. I accept Mr Anandan's submission that Ms Peng's report was based largely on the deceased's own narration of the events and to that extent was unreliable in so far as the veracity of that narration remained untested. What is significant in supporting the notion that Lim was a victim of the deceased's abuse was Ms Peng's description of what transpired when she went with the deceased to Lim's flat. Her report showed the deceased to be the more aggressive and abusive of the two until it got to the stage that Ms Peng thought it best to call the police to maintain control of the situation.

43 It was also undisputed on the SOF that the deceased had first seduced Lim to have sexual intercourse with her, and then threatened to report him for rape and then taunted Lim that she could kill him and get away with it because she had a record with the IMH. This showed the deceased to be someone who was scheming and manipulative. This is to be seen in the light of the fact that the psychiatric report and the SOF state that Lim was a victim of repeated physical and psychological abuse to such an extent that he suffered from post-traumatic stress disorder as a result of this.

44 The second point relates to the head injuries suffered by the deceased. As stated above, there were a number of possibilities as to what could have caused these injuries. Dr Lau in fact stated that one scenario with which the injury was consistent, was the deceased falling down after being strangled, especially if she had not been moved between the time she fell and the time she was seen by Dr Lau. Mr San accepted that there was nothing to suggest that she had been moved. I found it significant that the accused in his statement made under s 122(6) of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) said that she had fallen down onto the bed or the floor after she had been strangled. This was also reflected in the SOF. Indeed, it defies belief to imagine that Lim had hit the deceased, and then purposefully placed her in such a position on the floor as would match precisely with the injuries found on her head had she actually fallen down. In this light, I asked Mr San what the prosecution's case was on this issue. Mr San, quite correctly, accepted that the prosecution could not maintain that the deceased's head injuries were caused by the accused hitting her given the various possibilities identified by Dr Lau.

45 In the circumstances, after considering the evidence led by the prosecution and having regard to the parties' submission that the SOF was borne out by the objective evidence, I am satisfied that the SOF accurately depicts the relationship between Lim and the accused, as well as the events that took place on the night of the deceased's death. Indeed as I have noted above, in some respects the further evidence reinforced the narration of facts contained in the SOF.

Submissions on sentencing

46 The question then arises as to the sentence that would be appropriate in the circumstances. Mr San accepted that there were no aggravating factors present in this case. However, he sought to suggest that I should not exercise my discretion too leniently in favour of Lim on the basis of two related arguments. The first was that there was a disparity in the physical sizes of Lim and the deceased, the former being somewhat taller and heavier than the latter. The relevance of this, Mr San submitted, was that Lim could easily have pushed the deceased away when she was strangling him. In fact, Mr San continued, the fact that Lim was able to disarm the deceased of the kitchen knives shortly before the fight in which she was strangled, showed that he had the ability to prevent the fight if he wanted to. Mr San submitted that instead of exercising restraint, Lim exploited his physical advantage and even fractured the deceased's thyroid cartilage, which Dr Lau had testified would have required moderate to considerable force to inflict. The second argument Mr San made was that I should use the decision in *PP v Oon Oon Sang Tee*, Criminal Case No. 11 of 2006 (Unreported) ("*Oon Oon*") as a suitable benchmark for the purposes of deciding the appropriate

sentence in the present case. In that case, the court sentenced the accused to 4 years and 6 months' imprisonment. Mr San submitted that having regard to the possibility that Lim might be more deserving of leniency than the accused in that case, the sentence in this case should be no less than 4 years.

47 On the other hand, Mr Anandan submitted that there were strong mitigating factors that warranted a sentence at the lowest end of the sentencing range for convictions under s 304(*b*) of the Code. He placed particular emphasis on Dr Tan's diagnosis that Lim had recovered from his post-traumatic stress disorder and was no longer a danger to others, and cited cases where it has been held that this should be a factor that counts in the accused person's favour.

Analysis of the contentions

48 Four considerations are usually paramount in sentencing: deterrence, retribution, prevention and rehabilitation. However, not all of these factors are always relevant in every case. As V K Rajah J observed in *Tan Kay Beng v PP* [2006] 4 SLR 10 ("*Tan Kay Beng*") at [29]:

> [T]hese principles are not always complementary and indeed may even engender conflicting consequences when mechanically applied in the process of sentencing. In practice, judges often place emphasis on one or more sentencing considerations in preference to, and sometimes even to the exclusion of all the other remaining considerations.

49 It was not earnestly disputed before me that deterrence was not a significant issue in this case. Where a person suffers from a mental impairment such that his actions are not the result of conscious deliberation, deterrence, both general and specific, is not the predominant sentencing consideration. This is only commonsense because deterrence operates on the assumption of human autonomy. In *Ng So Kuen Connie v PP* [2003] 3 SLR 178 at [58], Yong Pung How CJ held, citing *R v Wiskich* [2000] SASC 64 in support:

> I found that…the element of general deterrence can and should be given considerably less weight if the offender was suffering from a mental disorder at the time of the commission of the offence. This is particularly so if there is a causal link between the mental disorder and the commission of the offence…In my view, a general deterrence will not be enhanced by meting out an imprisonment term to a patient suffering from a serious mental disorder which led to the commission of the offence.

50 This was reiterated in *Goh Lee Yin v PP* [2006] 1 SLR 530, where Yong CJ also remarked (at [29]):

> The rehabilitation of the offender could also take precedence where other sentencing considerations such as deterrence are rendered less effective, as might be the case for an offender belabouring under a serious psychiatric condition or mental disorder at the time of the incident.

51 More recently, in *PP v Law Aik Meng* [2007] SGHC 33 at [22], Rajah J made the following comments:

> Specific deterrence is usually appropriate in instances where the crime is premeditated: *Tan Fook Sum* at 533, [18]. This is because deterrence probably works best where there is a *conscious* choice to commit crimes. Nigel Walker and Nicola Padfield in *Sentencing: Theory, Law and Practice* (Butterworths, 1996, 2nd Ed) ("Padfield & Walker, 1996") at p 99 explain the theory of

'undeterribility'. Pathologically weak self-control, addictions, mental illnesses and compulsions are some of the elements that, if possessed by an offender, may constitute 'undeterribility', thus rendering deterrence futile. Such elements seem to involve some form of impulse or inability to make proper choices on the part of the offender, which, by definition, runs counter to the concept of premeditation. It should be pointed out here that this reasoning applies with equal cogency to *general* deterrence.

[emphasis in original]

52 If deterrence is not the predominant factor that I should take into account in sentencing Lim, perhaps the need to imprison him for the sake of his rehabilitation or simply to prevent him from committing further crimes may be. Yet, even these factors cannot justify a long term of imprisonment because as Mr Anandan rightly pointed out, and Mr San agreed, the prognosis for Lim according to Dr Tan was optimistic. Not only had he recovered, Dr Tan was also of the view that the risk of any recurrence of his post-traumatic stress disorder was small. There had been definite improvement in Lim's condition according to Dr Tan and he was not thought to be a danger to others. Moreover, Lim had apparently benefited from good family support during his incarceration so far and there is no reason to think this will not continue.

53 What remains then is the retributive aim of sentencing: the need for a person to be punished for his wrong having regard to the degree of culpability in his conduct. It is in this context that the mitigating circumstances urged by Mr Anandan are potentially significant.

Lim's history of abuse

54 By far the most important consideration in my view – though certainly not the only one – is the undisputed fact that Lim suffered severe and repeated physical and psychological abuse at the hands of the deceased, so much so that he suffered post-traumatic stress disorder not to mention a partial loss of hearing in one ear.

55 The simple fact of the matter is that Lim was the victim of a violent and abusive spouse over a period of time so much so that according to Dr Tan, Lim suffered from hypervigilance; he startled easily; he locked himself in his own home and kept the lights off; he was unable to sleep and continued to be in this state despite the source of his trauma passing away. He had initially persevered in the belief that the deceased was alive and continued to be afraid of her even after she had died. There is a danger that such symptoms may be passed off as the wiles of a malingerer but an experienced government psychiatrist, whose evidence was accepted by both sides, stated that he had addressed his mind to this possibility and had excluded it in this case.

56 When one views the events on the night of 25 October 2005 through the lens of this abusive relationship between Lim and the deceased, it becomes clear that the prosecution's position that Lim had exploited their disparity in size and failed to appropriately calibrate his response to the deceased's actions rings hollow. The very fact that the deceased, notwithstanding her diminutive physical stature, was able to manipulate and physically as well as psychologically abuse Lim to a point that he suffered a mental illness with the symptoms outlined in [38] above (a fact undisputed by the prosecution) proves that size was no barrier to her aggression towards Lim. Neither was size relevant to Lim's perception of danger, given his fear of the deceased, the abuse that he had suffered, the deceased's threats to take his child to Jakarta, her threat to report him for rape, her threat to kill him followed by her attempt at grabbing the knives in the kitchen, and then her strangling him – all of which came to a sharp point within the space of a few hours on 25 October 2005.

Lim's reaction to the abuse on 25 October 2005

57 I also could not accept the prosecution's argument that Lim's ability to disarm the deceased meant that he could simply have pushed her away if he wanted to and so this should in some way be held against him for his failure to successfully rebuff her subsequently. In my judgment, this fact, if anything, shows that Lim was exercising considerable restraint right up to the point when the deceased began to strangle him. Lim's disarming of the deceased demonstrates that he had wanted to prevent the conflict from escalating. How could this not be a mitigating factor?

58 Lim's actions showed, in my view, that he was not prone to resort to arbitrary or excessive violence even in the face of potential danger as long as there was a way out of the situation. One inference to be drawn from his act of disarming the deceased when she took the knives is that if he had thought that there was an alternative to stopping the deceased from strangling him to death, he would not have retaliated or strangled her in return. This serves to mitigate, not aggravate, his moral culpability.

59 In addition, the prosecution's argument that Lim should have displayed greater control over his actions belies a failure to appreciate the circumstances of Lim's troubled relationship with the deceased, and the traumatic events that had happened before and were happening even on 25 October 2005. It should be noted that even in respect of defences that require the accused's actions to be proportionate to the danger posed such as provocation or the right of private defence, the courts have refused to weigh in golden scales the means which a threatened person adopts or the force he uses to repel the danger. In *Seah Kok Meng v PP* [2001] 3 SLR 135 ("*Seah Kok Meng*"), the Court of Appeal reiterated its holding in *Lau Lee Peng v PP* [2000] 2 SLR 628 that the fact that the retaliatory acts may have been out of proportion to the provocation offered does not necessarily mean that the defence must fail. In *Seah Kok Meng*, Chao Hick Tin JA wrote (at [34]):

> All we stated was that the fact that the act of retaliation may be out of proportion to the provocation offered does not mean that the defence must fail. In as much as there are degrees of provocation, the same applies to the severity of the response. Besides, there are also degrees of disproportionality. In an issue such as this, which is a question of fact, *one cannot be so clinical or emphatic as to say that the provocation and the response must always be matched, otherwise the defence will fail. It is the overall circumstances which the trial judge must weigh, and superimposed into that consideration how a reasonable person in those circumstances would have reacted, and then come to a conclusion*. [emphasis added]

60 In *PP v Vijayakumar s/o Veeriah* [2005] SGHC 221, Tay Yong Kwang J stated the proposition in the following terms at [52]:

> I appreciate that one should bear in mind the difficult circumstances during a struggle and that there would not be the luxury of time and calmness to think about the possible courses of action to take. In other words, one should not weigh the proportionality of the accused's response on golden scales.

61 On the facts of that case, however, given that the accused had stabbed the deceased several times, Tay J found that there was no basis for invoking the right of private defence.

62 It is true that these cases are not directly relevant because the issue before me does not concern an attempt to raise a defence of provocation or private defence to a charge of murder. But the statements I have referred to illustrate the simple common sense inherent in human experience, that one cannot evaluate the relative culpability of the combatants in the throes of a violent physical

conflict, by reference to the standards that might be expected in situations that are not similarly charged.

63 In a supplementary note filed in response to an invitation I made to counsel to address me on some of these cases, Mr San stated that he was not suggesting that a precisely calibrated measure should be applied to assess Lim's actions. However, he submitted that Lim knew he was likely to cause the deceased's death when he strangled her. Second, he submitted that the fact that the accused had used force sufficient to fracture the deceased's thyroid cartilage was a relevant fact in assessing the weight to be accorded to the fact that no weapon was used. Third, although the deceased was the aggressor the significance of this was to be seen in the context of her small size.

64 I have addressed some of these points elsewhere but it is convenient to make a few short points here. As to the first point, the prosecution did not challenge or address Dr Tan's opinion that although Lim knew what he was doing at the time of the offence, he could not control himself. This in turn is also relevant to the second point.

65 Indeed, it may be taken for granted that Lim did react somewhat excessively. Otherwise, as I pointed out to Mr San, the prosecution would have accepted that Lim was exercising his right of private defence. The real question is how much culpability is to be attached to his actions. The fact that no weapon was used is relevant in this regard because a victim killing his aggressor with bare hands in the midst of a physical fight is almost an archetypal case of a loss of control in the most trying of circumstances. To this may be added the following considerations:

(a) the history of the abusive relationship between the deceased and Lim in which he was the victim in fear of the deceased;

(b) the provocative actions of the deceased leading up to the fatal fight;

(c) the absence of any planning or premeditation in the commission of the offence;

(d) the absence of any plan or attempt to cover up the incident;

(e) the fact that Lim stopped strangling the deceased the moment he felt her grip loosening; and

(f) the fact that he had, prior to the fatal incident, tried to prevent the violence from escalating by disarming the deceased.

66 As to the third point, with great respect to the prosecution, it is wholly unrealistic to consider the relative size of the two parties (leaving to one side Mr Anandan's observation that Lim was not a large man himself) without regard to the matters set out at [54] to [56] above. Absent those matters, the question of size may well have been relevant. However, when seen in the context of these matters, it is apparent that the deceased's size was no barrier to her ability to abuse Lim; or to make him live in fear of her. Frightening aggression can come in a small package and in this case, it evidently did. The fact that Lim had been scared out of his mind by the deceased over the course of some time makes it untenable for the prosecution to suggest that the deceased was not that much of an aggressor or that Lim's actions are made more culpable because he was larger than her.

67 Looking at all the facts in the round, I am satisfied that Lim had not acted egregiously or wantonly or so culpably as to deserve a lengthy sentence. I turn to some other considerations.

Lim's lack of antecedents

68 In *Tan Kay Beng* (*supra* [48]), Rajah J held that an accused's antecedents may be indicative of the need for a heavier sentence if it reflected a pattern or tendency for repeat offending. In the present case, such a concern does not arise. As both counsel agreed, Lim has no criminal record apart from this incident; and as far as Dr Tan's evidence goes, the chances of relapse are slim.

Lim's plea of guilt and cooperation with the authorities

69 A timeous plea of guilt is often a relevant sentencing consideration unless it is animated by cynical motives: *Angliss* (*supra* [1]). Even though in the present case Lim pleaded guilty in circumstances where he was caught red-handed, this does not invariably mean that he is deprived of the mitigating value of his plea of guilt. As explained by Rajah J in *Angliss*, at [69]:

> [T]he exceptions to the practice of reducing sentences for guilty pleas simply represent and reflect judicial and common experience that where the evidence against the offender is truly overwhelming or where the offender is caught red-handed or where it was only a matter of time before the offender's illegal activities would come to light, it would not be wrong to surmise that a plea of guilt in these circumstances is merely tactical and not genuine. However, it must be cautioned that these are no more than helpful analytical and evidential presumptions to assist a court in assessing whether the offender's guilty plea is activated by sincere remorse. *I do not interpret the cases as laying down an inexorable principle of law that a plea of guilt cannot ever mitigate a sentence where, to use the learned district judge's language, the plea is inevitable.* After all, even many obviously guilty persons do not plead guilty or express remorse.
>
> [emphasis added]

70 In that case, Rajah J also observed that at least one "persuasive indication" of whether the accused has pleaded guilty out of a sense of genuine remorse is an early bid to cooperate with the investigating authorities and the surrender of an accused person at the early stages of investigation: *ibid*, at [74], citing *PP v Siew Boon Loong* [2005] 1 SLR 611 at [21]. In the present case, it was again undisputed that Lim did not attempt to flee the scene of the crime or to cover up what he had done but had surrendered to the police and then cooperated fully with the authorities, and has since then been faithful to his medical regime. Whatever initial resistance there may have been to his arrest is to be seen in the context of his mental affliction at the time (he even stabbed himself and threatened suicide), and should not be held against him.

The precedents

71 In my view, the unique combination of facts and events in the present case removes it from the clutch of other cases concerning s 304(*b*) of the Code, and warrants a sentence at the lower end of the sentencing range provided by Parliament. Nonetheless, given that the prosecution placed much reliance on *Oon Oon* (*supra* [46]), I will address that case in more detail. There is no reasoned judgment in that case and one is left to draw from it such assistance as may be had from the statement of facts and the sentence that was passed.

72 In *Oon Oon*, the accused was sentenced to four years and six months' imprisonment for strangling his wife to death. The deceased there had been having an affair and the accused, her husband, was distraught by this. Some days after the wife's extramarital affair began, and amidst another attempt by the accused at reconciliation, the deceased told the accused that she could not change the way she felt and intimated that she would find a solution to their problems within the next

three months. The accused interpreted this to mean she would get a divorce from the accused and he then strangled her. They struggled for some time and fell from the bed but continued struggling with the accused strangling the deceased until he saw blood oozing from her face. Mr San urged that there were similarities between that case and the present in so far as the dispute giving rise to the fatal incident was within a dysfunctional spousal context with mental cruelty being inflicted on the accused; there was no premeditation; no weapon was used in either case; and there was an underlying psychiatric condition in the case of each of the accused persons in the two cases.

73 Beyond these beguiling similarities, however, lies a gulf of difference between *Oon Oon* and the present case. First of all, even though both incidents took place within a dysfunctional domestic context, I do not think that it can be seriously challenged that the repeated physical and psychological abuse suffered by Lim in the course of an abusive relationship which resulted in his suffering post-traumatic stress disorder and which culminated in the events of that fateful evening was of a wholly different order to the taunting suffered by the accused in *Oon Oon*. More significantly, the precipitating cause of the accused's violence in *Oon Oon* was rage and jealousy. In my view, the actions of the accused in *Oon Oon* were much more culpable than those of Lim, who acted not out of jealousy but in the context of intense abuse, manipulation and violence directed at him and at a time when the deceased was strangling him. Lim was not acting in rage in spite of all he had endured. He was reacting to this series of provocative events.

74 Second, the accused in *Oon Oon* was the aggressor. There had been no threat to his life. He interpreted something his wife had said to mean that she would divorce him and reacted to that by killing her with his bare hands. This is far removed from the present case. Lim was afraid of his wife and clearly he was not the aggressor as Mr San accepted. Rather, Lim had been the victim of an abusive spouse and was the victim of aggression by that same person when he reacted as he did.

75 Third, the medical prognoses for both accused were very different. As Mr Anandan pointed out, the psychiatrist in *Oon Oon* had testified that the accused would require at least 2 years of medical treatment and another one or two years of monitoring because he was likely to have a *genetic predisposition to depressive mood disorders* as was found to be the case with several of his family members who were also undergoing psychiatric treatment. In the present case, Dr Tan's testimony that Lim was already cured of his post-traumatic stress disorder makes a vital difference. Further, the source of the disorder was not a genetic predisposition but the abuse by the deceased. While Mr San relied on the fact that Dr Tan had recommended long-term medical follow-up, it is clear that this was only for the purpose of providing support for Lim. It was not in any way an indication that Lim was still labouring under his abnormality of the mind, or that he posed a risk to others and/or himself. Dr Tan in fact rejected such a notion. Further, Mr San accepted that there was no real likelihood of a recurrence that I needed to be concerned with in determining the appropriate sentence.

76 These factors, in my judgment, are sufficiently important and significant that *Oon Oon* should not be used as a benchmark for assessing the appropriate sentence in the present case. While I accept the general proposition that the common law evolves by analogy to similar cases, as noted by Choo Han Teck J in *Robertson Quay Investment Pte Ltd v Steen Consultants Pte Ltd and Others* [2007] SGHC 30 at [8], an inherent difficulty with analogies is that they are often not the same as the thing or situation they are being compared with. Only like cases should be treated alike and in my judgment, *Oon Oon* is not a case like the present.

77 Reference was also made to *PP v Lim Boon Seng* [2004] SGHC 113 ("*Lim Boon Seng*"), where the accused was sentenced to three years and six months' imprisonment. According to Mr San, the accused there was more deserving of sympathy than Lim because in *Lim Boon Seng*, the deceased was the aggressor and was larger than the accused whom he was pummelling and the latter was

justifiably in fear for his life. Mr San also added that while the accused in *Lim Boon Seng* had used a knife to stab his aggressor, the fact that no weapon was used in the present case should not be regarded as too significant a mitigating factor.

78 I accept Mr San's latter argument that one must look at the entirety of the circumstances. Thus, a single factor such as whether a knife was employed in the commission of the offence is not necessarily paramount or critical. However, the entirety of the circumstances in *Lim Boon Seng* includes that fact that the accused had been able to retreat somewhat from his attacker when he saw and picked up a knife and used it to stab his attacker. Furthermore, that was not a case involving serious spousal abuse directed at the accused over a period of some time or where the deceased had just threatened to kill the accused and attempted to get a knife just prior to strangling the accused. These factors separate *Lim Boon Seng* from the present case. For these reasons as well as those set out in my first judgment at [39] to [40] of the GD, I consider that Lim's actions are less culpable than those of the accused in *Lim Boon Seng* and is thus deserving of a lesser sentence.

79 As for the other cases which demonstrate how the courts have sentenced accused persons under s 304(*b*) of the Code, I have addressed them in my first judgment and it is not necessary to repeat the analysis here: see [27] to [40] of the GD.

Conclusion

80 In arriving at my decision, I have not overlooked the fact that a life has been lost. On any basis, this is tragic; and indeed, Lim will have to live with the burden of having taken the life of the deceased, from whom he endured much abuse and yet with whom he continued to harbour hopes of reconciliation almost to the end. But to focus on this is to come to the issue from the wrong perspective. The question is not what a life is worth for every life is priceless and the loss cannot ever be measured in punitive terms. The loss of a life can never be remedied or compensated even by the ultimate sanction of the death penalty. The right perspective is to weigh the circumstances of the offence and the offender in the context of the entire factual matrix and then to determine the punishment that fits this particular criminal who has committed this particular crime.

81 To accept the prosecution's argument that a longer term of imprisonment is warranted even in the face of all the mitigating factors present in this case because a life has been lost is tantamount to imposing an artificial minimum sentence by judicial fiat. This would be to ignore the fact that Parliament in its wisdom has conferred on the courts a wide discretion as to the appropriate sentence that may be imposed for offences under this sanction, ranging from a mere fine to a term of imprisonment of up to 10 years. Such a wide range does not feature in the other offences in the Code that concern homicide.

82 In the end, my analysis of the decided cases and the circumstances of this case as well as the consideration of the wide sentencing discretion that Parliament has allowed, have all led me to conclude that an appropriate sentence would be one at the lower end of the sentencing spectrum. Just as the maximum penalty is reserved for the "worst type of cases falling within the prohibition" (*Sim Gek Yong v PP* [1995] 1 SLR 537 at 542, [12]-[13]), sentences near or at the minimum should be meted out where a case displays a remarkable lack of aggravating factors and a number of significant mitigating factors and where the interests of deterrence, rehabilitation or prevention do not mandate otherwise. This is one such case. The prime interest here is punishment or retribution and the critical consideration is the degree of culpability on the part of the accused.

83 This is a case of a man who did momentarily lose control and killed his wife. There is no denying that he lost control of himself. He said as much to Dr Tan. There is also no denying that his loss of

control had the most horrific of consequences. That much could be said of many killings especially those that take place in a fit of enraged passion. But in considering the degree of culpability that is to be attached to the actions of the accused who is before me, it is imperative to have regard to all the circumstances that led to that loss of control. I have canvassed those circumstances in some detail in the forgoing paragraphs but by way of summary only it may be noted that:

(a) Lim had been the victim of the deceased who was an abusive spouse who had physically and psychologically abused him to a point where he become mentally disordered;

(b) he was afraid of the deceased;

(c) the deceased had sought him out on that fateful day and had physically abused him, seduced him to have sexual intercourse and then threatened to report him for rape, threatened to kill him, tried to take hold of one or more knives and then hit him again before strangling him;

(d) it was at that point that he retaliated by strangling her;

(e) the fact that the deceased was smaller than Lim did not prevent her from abusing him or from being the aggressor that night or from having Lim live in fear of her; and

(f) no weapon was used. The setting was that of an intense physical fight initiated by the deceased and still continuing with each strangling the other until Lim felt the deceased's grip on his neck loosen. There is no trace or suggestion of any premeditation or planning. This was a case where Lim lost control under the most trying of circumstances, none of which appear to have been of his making.

84 It is also relevant to consider Lim's actions after the event. He was clearly in a state of distress. He did not flee or try to cover up his actions. He co-operated fully with the authorities and he pleaded guilty to the offence with which he was charged. He has responded well to his treatment. The medical prognosis is positive and there is no real likelihood of a recurrence. Finally, he had no antecedents at all.

85 In my judgment, there is a unique abundance of factors that call for leniency in this case.

86 I must emphasise that none of what I have said should be taken as suggesting that the deceased's life was worth less than that of anyone else because she was an abusive spouse or that victims of spousal abuse should automatically be entitled to leniency. To come away with either of those notions would be to miss completely the underlying approach which I consider appropriate here and which I have taken in this case, namely: how culpable are the actions of this accused person in all the circumstances of this crime; and in that light, what is the appropriate sentence?

87 Having considered all the arguments raised on both sides, I sentence Lim a term of imprisonment of two years and six months. This is to be backdated to the date of his arrest.

Accused sentenced to two years and six months' imprisonment backdated to date of arrest.

Copyright © Government of Singapore.