Public Prosecutor v Barokah
[2008] SGHC 22

Case Number : CC 23/2007

Decision Date : 11 February 2008

Tribunal/Court : High Court

Coram : Tay Yong Kwang J

Counsel Name(s) : Amarjit Singh and Stella Tan (Deputy Public Prosecutors) for the Prosecution; Harpreet Singh Nehal SC, Wendell Wong and Kelly Fan (Drew & Napier LLC) for the accused

Parties : Public Prosecutor — Barokah

Criminal Law

Criminal Procedure and Sentencing

11 February 2008 Judgment reserved.

The charge

1 The accused is an Indonesian woman born on 15 May 1979. She was working in Singapore as a domestic helper at the material time. She pleaded guilty to the following charge:

> That you, Barokah, on the 19th day of October 2005, sometime between 12.00am and 7.16am, at Block 19 Chai Chee Road #09-328, Singapore, did commit culpable homicide not amounting to murder by causing the death of one Wee Keng Wah, female, 75 years old, to wit, by pushing her out of the bedroom window of her 9th floor flat, which act was done with the intention of causing her death, and you have thereby committed an offence punishable under section 304(a) of the Penal Code, Chapter 224.

2 The accused was represented in these proceedings by Senior Counsel and his assistants. She was also assisted throughout the court hearing by an interpreter who spoke Bahasa Indonesia.

The statement of facts

3 Wee Keng Wah ("Wee"), the deceased female victim mentioned in the charge, was residing in unit #09-328, a 2-bedroom flat in Block 19 Chai Chee Road ("the HDB block"), with her 78 year old husband, Lee Tang Seng ("Wee's husband"). Their four children had their own homes elsewhere. Wee's husband's age and multiple medical problems (including Parkinson's disease, weak limbs, severely impaired hearing, diabetes, hypertension, ischaemic heart disease) made it necessary for someone to look after him. For that purpose, the accused was employed as a domestic helper by Wee on 20 September 2005. The accused slept in Wee's husband's bedroom in order to attend to him during the night. As a result, Wee and her husband slept in separate bedrooms in the flat.

4 The accused had previously worked in Singapore with three other families. The first was a Malay family living in Bukit Batok, for whom she worked for 16 months between January 2000 and April 2001. In 2003, the accused went to Malaysia to work as a domestic helper for around one year. In September 2004, she returned to Singapore to work for the second family living in Frankel Estate. After about six months, her services were terminated as she was unable to communicate well in

English and was forgetful. In March 2005, she was sent to work for a third employer living in a condominium in the eastern part of Singapore. That lasted a few months. On 20 September 2005, the accused started working for Wee, her fourth employer in Singapore in her five years here.

5 In the morning of 19 October 2005, Wee was found lying in a pool of blood at the foot of the HDB block. The cleaner who saw her body informed a resident living in a ground-floor unit of the HDB block. That resident then informed the police.

6 Police officers arrived at the scene. They then proceeded to Wee's flat on the ninth floor. There, they found Wee's husband who was teary and in a state of shock. The police officers went into Wee's bedroom and noted that the metal grilles of the bedroom window (which was directly above where Wee's body was found) were closed but not locked.

7 The accused was in the flat. She told the police officers that at around 4.30am, she found Wee lying on the floor inside Wee's bedroom. She tried to rouse Wee but the latter merely moved her hands. As the accused was not able to carry Wee onto the bed, she lifted her body to a sitting position leaning against a bedroom wall. She also claimed that Wee's husband was present in Wee's bedroom then. She then went out of the flat with Wee's husband to seek assistance from a neighbour (Richard Chew) living two doors away. When they returned to the flat, Wee was no longer there.

8 The police managed to glean the following information from Wee's husband. According to him, at about 3am on 19 October 2005, he needed to urinate. He therefore called for the accused but she did not appear to be around. He then shouted to Wee who was in her bedroom. Wee went to attend to him. She was upset and angry that the accused was not in the flat.

9 Not long thereafter, the accused returned to the flat. Wee scolded her for leaving the flat. Wee's husband tried to pacify Wee, advising her to speak to the accused at daybreak. He then went back to bed.

10 Sometime past 4am that same morning, Wee's husband needed to urinate again. He shouted to get the attention of the accused and of Wee but no one responded to his calls. He got up from his bed and walked slowly to the living room. As he passed Wee's bedroom, he noticed Wee lying on the floor therein. The accused, who was walking from the direction of the toilet located in the kitchen area, attempted to stop him from entering Wee's bedroom, claiming that Wee was asleep and did not want to be disturbed. However, Wee's husband insisted on going into Wee's bedroom and the accused relented. Wee was lying on the floor, unconscious but breathing. Sensing that something was amiss, he walked to Richard Chew's flat to seek help.

11 When Wee's husband returned to his flat with Richard Chew, Wee was not in the flat anymore. The accused then informed Wee's husband that Wee usually went for her morning exercise at that time. Some time later that morning, the police arrived in the flat to inform Wee's husband about Wee's body having been found at the foot of the HDB block.

12 The police officers at the scene decided to inform the Special Investigation Section of the Criminal Investigation Department ("CID"). The CID officer brought the accused to Chai Chee Neighbourhood Police Post where she was interviewed again. Due to the numerous inconsistencies in her narration of the events and in the light of preliminary investigations, the accused was treated as a suspect. She was brought to the CID where hand swabs were done and her fingernail clippings were taken.

13 Investigations conducted on and after 19 October 2005 revealed the following evidence

pointing to foul play in Wee's death and militated against the possibility of suicide. As Wee's body was found directly below her bedroom window, that suggested that it had been dropped from a height. If Wee had jumped out of her bedroom window, her body would have landed further away from the base of the HDB block. The grime-like dirt stains on the right sleeve and the right rear portion of her t-shirt were similar to the grime-like dirt stains found on the top of the air-conditioning compressor installed directly outside the bedroom window, with a drop of 22.2cm from the window ledge. That suggested that Wee's right upper back had been in contact with the top of the compressor. The top of the compressor also had a fresh drag mark on its left. If Wee had committed suicide, one would have expected to find some evidence of contact between her feet and/or her hands and the compressor. However, there were no foot or hand prints found on the top of the compressor. All the above evidence suggested that Wee had been pushed sideways out of the bedroom window.

14 In Wee's bedroom, several tiny blood droplets and blood stains were found on the wall and the floor near the window and at the lower portion of a cupboard. There were also blood stains on the bed sheet and on both sides of a pillow case lying on the bed. All the blood droplets and stains were later established to have come from Wee. Strands of Wee's hair were found along the floor skirting below the window. A plastic rack with rollers had been toppled and had broken into pieces, with its contents scattered about in the bedroom. There was therefore evidence of some fight or struggle having taken place inside the bedroom.

15 A resident living in the flat directly above Wee's informed the police that at about 4am on 19 October 2005, she was awakened by some loud noise coming from Wee's flat, lasting a few minutes. It sounded like someone was choking. Another resident living one floor below Wee's flat said that she was studying for her examinations that morning when she heard a loud thud coming from above her flat. After that, there was a dragging sound lasting several seconds.

16 The autopsy report on Wee revealed that she had multiple bruises on the front of her body, consistent with having fallen from height. The front of her face was flattened. Several abrasions resembling fingernail marks were found on the left of her neck, indicating the possibility of strangulation. The pathologist certified that death resulted from the multiple injuries. He was also of the opinion that Wee had been strangled before she was thrown down the HDB block and that she was alive, although possibly unconscious, when the injuries from the fall were suffered.

17 There was no dispute that the accused had not been ill-treated by Wee or any other member of her family during the one month of her employment. Police investigations revealed that on the night of the incident, the accused sneaked out of the flat to meet her boyfriend. When she returned to the flat, Wee scolded her for leaving the flat late at night. The accused was unhappy with the scolding and therefore retorted that Wee could ask her (Wee's) son to send her back to the maid agency the next day. The verbal exchange continued for some time and then escalated into a struggle between the two women in Wee's bedroom. The accused confirmed that the multiple superficial abrasions on her face and arms were caused during her struggle with Wee. This was supported by the forensic findings that Wee's and the accused's fingernail clippings were stained with each other's DNA. The accused admitted in statements made by her to the police that after her struggle with Wee, Wee fainted but was still breathing as the accused could see Wee's chest and abdomen moving and could hear some sounds coming from Wee.

18 The accused left Wee lying unconscious on the bedroom floor and went to Wee's husband's bedroom. Shortly after that, Wee's husband wanted to go into Wee's bedroom but was blocked by the accused from doing so as she knew that Wee was unconscious on the bedroom floor. When Wee's husband persisted in going into Wee's bedroom, the accused allowed him to do so.

19 Wee's husband was shocked by what he saw. He asked the accused what had happened to Wee but the accused claimed that she did not know. The accused then tried to revive Wee by slapping her cheeks and her legs. Wee's husband asked the accused to call for assistance by dialling "three nine" but the accused claimed that she did not understand that meant to dial nine, nine, nine. Wee's husband then returned to his bedroom and activated the portable personal alarm given to him by the residents' committee in that area for use in an emergency. He then asked the accused to open the grille gates of the flat so that he could go and seek assistance. He stood at the locked grille gates and shook them repeatedly while calling out for assistance. Eventually, the accused opened the gates for him and he proceeded gingerly towards Richard Chew's flat two doors away.

20 The accused went out of the flat with Wee's husband but did not accompany him to Richard Chew's flat to seek assistance. She went back into Wee's bedroom, carried the still unconscious Wee onto the bed (the width of which was next to the window) and then pushed her out of the window. She then shut the window grilles and left Wee's bedroom.

21 When Wee's husband returned to the flat with Richard Chew, they searched the flat for Wee but could not find her. In reply to Richard Chew, the accused said that she did not know where Wee was. Later, she told the two men that Wee had gone for her morning exercise. She repeated these conflicting answers on Wee's whereabouts to the police and to Wee's family members several times that morning when she was asked.

22 After her arrest, the accused was sent for psychiatric evaluation. Dr Tommy Tan, a consultant at the Woodbridge Hospital, examined her over four occasions in November 2005. He reported that the accused was forthcoming, polite and cooperative and that her behaviour and appearance were appropriate. She described her mood as sad and was tearful during part of the examination. She explained that she felt sad because she missed home and her child and was worried. She was relevant and rational and did not have any psychotic symptoms and was able to give an account of the incident.

23 Dr Tommy Tan opined that the accused did not have a mental disorder before and at the time of the offence and was not of unsound mind at the material time. However, she had a depressive reaction (F43.2, International Classification of Diseases, edition 10) caused by her arrest and remand. It was characterised by a depressed mood, worries about her future and her mother and missing her home and her child. Dr Tommy Tan found the accused fit to plead and capable of making her defence and instructing counsel.

24 Dr R Nagulendran, a psychiatrist in private practice and consultant psychiatrist to the National University of Singapore Health Service, was engaged by defence counsel to examine the accused. In his report dated 19 March 2007, Dr Nagulendran stated that he examined the accused on three occasions in October 2006. She married around 1995 when she was 16 years old. Her husband worked in Malaysia as a labourer. In August 2003, the accused started a relationship with another married Indonesian man and gave birth to a baby boy. That man wanted the accused to be his second wife but that was not acceptable to her and so she broke up with him. The baby boy was given away to a friend.

25 The accused told the defence psychiatrist that she discovered later that her husband was also having an extra-marital relationship. For some months before the accused became employed by Wee in September 2005, she was experiencing depressed mood and guilt feelings concerning her own and her husband's unfaithfulness. In June or July 2005, she met Ali, a Bangladeshi man who befriended her. She became intimate with him and that increased her feelings of guilt. On the night leading to the offence, she had gone out to meet Ali to tell him that she wanted to break up with him. However, Ali

did not want to break up. She was therefore "troubled". She has since given birth to a baby girl (in May 2006) while in remand.

26 The accused also told the defence psychiatrist that she was tired while working in Wee's household because her sleep was interrupted by Wee's husband's constant need to urinate at night. She felt then like returning to her country. When asked if she had any suicidal thoughts, she replied that it was against her religion. From March to September 2005, she kept a diary (in two notebooks) in which she penned her thoughts and feelings, mainly in Bahasa Indonesia. The defence psychiatrist had read the English translation of the entries in the diary. The accused further stated that Wee was angrily scolding and nagging her when she returned to the flat on the night of the incident. She was initially ashamed and afraid when first confronted by Wee but with the continuous anger displayed by Wee, the accused felt increasingly depressed. She wanted to stop the tirade by telling Wee that she could let her son know about her night out and ask him to inform her agent to take her back. That did not stop Wee. The accused then realized that she would lose her job if Wee informed her son about the matter. The first three months of her wages were going to be paid to the agent and she would have no income until the fourth month of work. She therefore asked Wee not to inform her son about it. The accused's state of mind was aggravated by this impending financial loss.

27 She also felt angry when Wee pushed her and swung a bag (a cloth pouch) at her, hurting her abdomen. When Wee hit her head against the wall and the floor and then became motionless, the accused became frightened.

28 At the time of examination, the accused was rational and relevant. She expressed sadness at Wee's death and was tearful during the course of the three sessions. There was no impairment of her cognitive functions of memory, attention, concentration, insight and intelligence. Dr Nagulendran concluded that at the time of the offence, the accused was suffering from severe reactive depression. Although this condition did not amount to unsoundness of mind, it was an abnormality of mind of such severity as to have substantially impaired her mental responsibility, thereby allowing the accused to plead diminished responsibility. She was found fit to plead.

29 The report from the defence psychiatrist and the accused's translated diary entries (the latter being unavailable earlier as they had been sent for translation to be done and were not ready at the time of Dr Tommy Tan's first report) were referred to Dr Tommy Tan to see if they affected his opinion. In his supplemental report of 5 April 2007, Dr Tommy Tan stated that there was information in Dr Nagulendran's report that the accused had not informed him about earlier during the interviews, probably because she was then in the custody of CID and wanted to maintain with Dr Tommy Tan the same account that she had given to the CID. Dr Tommy Tan reported:

> From Barokah's diary there were many entries, which showed that she could have a **depressive episode**.
>
> She had several depressive thoughts:
>
> 1 asking God to forgive her sin,
>
> 2 her "sin was most despicable of all",
>
> 3 not feeling strong,
>
> 4 missing her son and husband, longing for husband,

5 "can't forgive myself"

6 "life is useless"

7 "feel troubled, painful and grieved"

8 "problems after problems pile up"

9 Asked for separation from her husband,

10 wrote about "her betrayal"

11 time cruel toward me and without showing sympathy for me.

She might had thoughts of dying:

"Oh God please forgive all my sins, make me depart from apostasy, to depart from this accursed behaviour, bring me close to you."

She was unable to concentrate on her work.

The diary also indicates that she may have a **dependent personality disorder**.

She expressed fear of abandonment by her husband. She asked that they remained good friends if he leaves her.

She wanted reassurance from husband in what she did. "I wish to have a husband who can guide me in all ways so that I cannot go wrong in taking steps in all matters".

Dr Nagulendran made a diagnosis of **severe reactive depression**. Reactive depression subsumes under depressive episode in the International Classification of Diseases, edition 10 or major depressive disorder under the Diagnostic and Statistical Manual edition 4.

Under ICD 10, a person with severe depressive episode would show considerable distress, agitation or marked retardation. Under the DSM 4 severe means clear-cut observable disability eg unable to work. The deceased family and the police did not observe these.

However based on the additional information made available to me through the diary and the additional information Barokah had given Dr Nagulendran, I am of the opinion that Barokah could have a **moderate depressive episode** (F32.1, ICD 10) at the time of the alleged offence. The evidence is that she had several depressive thought over several months, she could have thoughts of dying. She had told Dr Nagulendran that she was tired and her appetite was "on and off". The indicator for the moderate severity of the depressive episode is that she wrote that she could not concentrate on her work.

In addition, she may have a **dependent personality disorder** (F60.7, ICD 10) as evidenced by her fear of abandonment and wanting husband to guide her in all things. This could explain why she was involved with another Indonesian man and a Bangladeshi man when she was away from her husband. She has the need to depend on another man to feel stable emotionally. However her involvement with other men made her guilty and exacerbated the depression.

> Hence she can qualify for a defence of diminished responsibility. She was suffering from **moderate depressive episode**. The term moderate should be taken in the psychiatric context, which means that it is moderately severe; it is not "mild or not severe" in the layman understanding. It could have caused her to have an abnormality of mind, which could have substantially impaired her mental responsibility for the acts, which caused the death of the deceased. When the deceased was nagging her and Barokah feared a loss of her job, she might have acted impulsively or overreact and caused the death of the deceased. She might not have done so is she was not suffering from a mental disorder.
>
> When I examined Barokah for my initial report dated 30/11/05, it was immediately after she was in the custody of the Criminal Investigation Department. Hence she did not tell me the information that she had told Dr Nagulendran, as she probably wanted to maintain the same account that she had given to the CID.

30 As a result of Dr Tommy Tan's further report, the prosecution amended the original murder charge and proceeded with the present one under s 304(a) of the Penal Code. It was the prosecution's case that when the accused pushed Wee out of the bedroom window, she intended to cause Wee's death.

Prosecution's submissions on sentence

31 The accused had no previous convictions or antecedents. The prosecution highlighted that there were 8 cases of domestic helpers charged with culpable homicide involving their employers or family members since 2002. 6 cases have been dealt with by the court. The present case was one of the 2 not dealt with yet.

32 The prosecution submitted that while it was not specifically urging the court to impose life imprisonment, that remained an option which the court should consider when deciding on the appropriate term of imprisonment for the facts at hand. The prosecution argued, on the authority of *PP v Tan Fook Sum* [1999] 2 SLR 523 that it did not have to apply for a deterrent sentence before the court could consider it in the exercise of its discretion. While the prosecution left the question of the appropriate length of imprisonment to the court, it contended that the sentence, if it was not life imprisonment, should not be less than 10 years in any event.

The mitigation plea for the accused

33 Harpreet Singh SC began the mitigation by reading a typewritten statement from the accused as follows:

> Ah Kong, Sir and Madam,
>
> I am sincerely sorry for all the trouble and pain I have caused you. I have been very sad because of Ma Ma's death. I feel responsible. I have suffered a lot mentally and emotionally in Prison because I keep thinking of what had happened to Ma Ma. I always pray to God to ask for forgiveness. I wish I can turn back time and prevent what had happened but I know I cannot. I do not wish to fight and bring more trouble to everyone. I accept that I will have to be punished. I am sorry. Please forgive me.
>
> Barokah

34 The defence submitted that life imprisonment in this case would be manifestly excessive and

unjust and noted that the prosecution was not specifically asking for that to be imposed. It reminded the court, citing V K Rajah J's judgment in *PP v Chee Cheong Hin Constance* [2006] 2 SLR 707 that the burden was on the prosecution to establish that the accused was likely to remain a future and real danger to the public without medication and permanent incarceration.

35 The accused's father is an odd-job labourer and her mother is a worker in rice fields. She is their youngest daughter. She grew up in a village in Central Java and undertook religious studies until the equivalent of our secondary 3 level. Her husband was from the same village. Their 10 year old son is living with her parents in Java. She has been a responsible mother and has shown great love and affection to her baby daughter born in prison. She came from a close-knit family and sent most of her salary home.

36 The months preceding the offence were very stressful ones for the accused. There was substantial stress in her relationship with her husband, in her finances and in her dealings with her employers. Her main concern was that her parents had her financial support back home. She was also deeply troubled by her husband's infidelity and that was aggravated when he told her that he had lost $1,000. Nevertheless, she missed him and harboured fears of being abandoned by him. In turn, she had to struggle with her own infidelity. She missed her son and also had to cope with the guilt of having to give up another son (from the earlier extra-marital relationship). She was a religious person who strived to live an upright life and who struggled constantly with her own shortcomings. She also had to struggle with the pressure of caring for Wee's husband, whose incontinence deprived her of sound sleep for the one month of her employment. It was these feelings of shame, depression, anger and fear that caused the accused to crack and commit the offence.

37 During the scuffle in the flat in the early hours of that morning, both women sustained injuries to their bodies. Wee fell backwards and hit her head against the wall. She then lost consciousness. That caused the accused to panic. After checking that Wee was still breathing, she left her on the bedroom floor and returned to the husband's bedroom to sleep, thinking that Wee would probably wake up and get back into bed. The scuffle did not result in Wee's death.

38 When Wee's husband awoke and wanted to urinate again, he asked the accused where Wee was. The accused then helped him to Wee's bedroom where she tried to revive Wee by slapping her cheeks and her legs. When Wee's husband told her to call the police for help by dialling "three nine", she left the bedroom. Wee's husband then wanted to leave the flat to seek help but was unable to find the house keys. The accused suggested that he call his son or go to his son's house. Wee's husband then sounded the emergency alarm and the two of them left the flat to seek help. When he reached the neighbour's flat, the accused returned to Wee's flat.

39 In a further report dated 11 July 2007, Dr Nagulendran opined that the onset of the accused's severe reactive depression was in 2004 when she broke off from her first extra-marital relationship with the Indonesian man while pregnant with his child. In May 2006, the accused gave birth to a girl as a result of her second extra-marital relationship. Her husband has agreed to be named as the father of the girl and has indicated that he will accept the accused and the girl. Due to the change in circumstances and the passage of time, the reactive factors had lessened in significance and that was reflected in her current state of mind which showed significant improvement. The accused would now have to deal with a new set of factors such as her sadness at Wee's death, her return to her family and to society and her rehabilitation as a wife and mother. She would require psychotherapy, counselling and supervision. The duration of the treatment would be two years. The defence psychiatrist also concluded that the incident was specific to a particular set of circumstances which were reactive in nature and not due to genetic, organic or personality defects and that it was unlikely that there would be a recurrence of such abnormality of mind as the causes of her mental disorder

were transient and not of recurrent or lasting nature. The defence submitted therefore that the accused was not a threat to society. It further argued that as the particular set of circumstances which triggered the accused's reaction was no longer present and since she would return to be with her family upon her release, there was unlikely to be any risk of re-offending.

40 The defence submitted that evidence of premeditation was absent in this case and that the accused's actions were a direct result of her mental disorder that impaired her mental responsibility, thereby resulting in a totally irrational action. Both psychiatrists supported this conclusion. She acted impulsively. She had no history of violent behaviour. Given her mental condition, the night's events triggered by the threat of losing her job was the proverbial straw that broke the camel's back.

41 The cause of Wee's death was not the alleged strangulation. While the prosecution had argued that the accused had strangled Wee before the fall, the defence contended that the circumstances in which those injuries were inflicted were unknown. As there was no eye witness to the scuffle between the two women, the evidence concerning strangulation should be viewed with circumspection.

42 Once the accused had calmed down, she cooperated with the police and was forthcoming with her evidence, even during the long hours of interrogation in the fasting month. She handed over all material evidence.

43 The accused was remorseful and therefore decided to plead guilty. While in remand, she spent a considerable amount of time reflecting on the unfortunate incident, wondering how she could have lost control of herself and caused Wee's death.

44 The accused loved her family and her family loved and missed her. This was demonstrated by the many testimonials from her family members, including her husband and her ten year old son who would like to show his mother that he could now play football and wanted her to help him with his school work. She was generally of good character and was an inspiration and giver of support to her son and her nephew. She planned to return to her homeland to be with her family upon her release and would therefore not be exposed to the same kind of situation that she found herself in at the time of the offence.

45 The defence also submitted that any considerations of public interest to warrant a deterrent sentence must take into account V K Rajah J's dicta in *Tan Kay Beng v PP* [2006] 4 SLR 10 where the judge said (at [34]) that the precise reasons for invoking deterrence must be clearly and unambiguously articulated. Any public interest would not be undermined by not imposing a sentence of life imprisonment. General deterrence had a diminished role in cases involving mental impairment causally linked to the commission of the offence. Specific deterrence was not even required here since it was unlikely that the accused would re-offend. The accused's culpability was low as the events and her actions on the day in question were spontaneous. Far from being a devious murderer, she was merely a young female domestic worker with her own personal troubles, struggling to perform and to earn a living in a foreign land amidst stressful surroundings and who eventually crumbled under the pressures. Her mental condition was reactive, not chronic, and was at least moderately severe (see Dr Tommy Tan's opinion). There was no evidence to establish that she would be a future and real danger to the public without medication and permanent incarceration.

46 The accused made no attempt to mask the offence that she had committed. She also suggested to the husband to call his son or go to his son's house upon the husband noticing that Wee was lying unconscious on the floor. The accused did not pick up any weapon. She admitted her actions immediately during investigations by the CID. Life imprisonment for a young woman like her

may mean that she would never be released despite the reviews provided for in the Prisons Regulations. Even ten years imprisonment would be too harsh in the circumstances. The defence suggested that a term of 5 to 7 years would not be inappropriate on the facts here.

The decision of the court

47 Section 304(a) of the Penal Code (Cap 224, 1985 Ed) provides:

> Whoever commits culpable homicide not amounting to murder shall be punished –
>
> > (a) with imprisonment for life, or imprisonment for a term which may extend to 10 years, and shall also be liable to fine or to caning, if the act by which death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death; …

The female accused is not liable to caning by virtue of s 231(a) of the Criminal Procedure Code (Cap 68, 1985 Ed).

48 In *PP v Sundarti Supriyanto* [2004] 4 SLR 622 ("*Sundarti*") (judgment on conviction) and [2004] SGHC 244 (judgment on sentence), a 21 year old female domestic helper was charged with murder of her female employer. The defence succeeded in showing grave and sudden provocation and she was therefore convicted on a lesser charge of culpable homicide not amounting to murder under s 304(a) of the Penal Code. The trial judge, M P H Rubin J, also found that there was cogent evidence to conclude that the deceased had subjected the accused to some measure of ill-treatment. The accused there inflicted multiple injuries on the victim including two stab wounds to her neck, one of which was fatal. After killing the victim, she left the scene to buy petrol and then returned to set the office premises on fire, with the victim inside. In sentencing the accused, Rubin J said (at [8] and [9] of the second citation):

> 8 … In my view, the nature of the offence for which the accused was convicted – let alone the charges taken into consideration – called for a higher tariff, and certainly a sentence of ten years would be manifestly inadequate. In this respect, I took into account the nature of the injuries inflicted on the deceased by the accused and the manner in which she had tried to mask the offence with a view to escaping the process of law and justice. …
>
> 9 However, having regard to the fact that there is no middle range of sentence between ten years and life imprisonment, I sentenced the accused to a term of life imprisonment. …

Defence counsel in that case had also read out a message of apology by the accused to the deceased's family. The accused in that case was not mentally impaired but Rubin J (at [179] and [180] of the first citation) did find that she "having had enough, lost her self-control and went berserk in fatally attacking the deceased", that the nature of the injuries found on the deceased strongly suggested that they were "the acts of a person possessed of a frenzy and denuded of self-control", that "the cord of reason suddenly snapped when the accused could no longer control her emotions and feelings of despair" and that she was "not an embodiment of wickedness and evil, but a woman of normal emotions who went awry momentarily".

49 In *Purwanti Parji v PP* [2005] 2 SLR 220 ("*Purwanti*") , the Court of Appeal upheld the sentence of life imprisonment imposed by V K Rajah JC on a female domestic helper who had not turned 18 at the time of the offence. The accused there pleaded guilty to a charge under s 304(a) of the Penal Code for strangling her female employer's 57 year old mother-in-law to death. The accused also admitted to trying to conceal her crime by making it look as if the deceased had committed suicide

before calling the police and feigning concern for the deceased. The Court of Appeal said:

> 19 In *Neo Man Lee v PP* [1991] SLR 146 ("*Neo Man Lee*"), a case cited by both counsel for the appellant and the Prosecution, the then Singapore Court of Criminal Appeal had broadly endorsed at 148, [7] three conditions laid down by the English Court of Appeal in *R v Hodgson* (1968) 52 Cr App R 113 ("*Hodgson*"), which would justify imposing a sentence of life imprisonment, namely:
>
> > (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 defendant's history that he is a person of unstable character likely to commit such offences in the future; and
> >
> > (c) If the offences are committed, the consequences to others may be specially injurious, as in the case of sexual offences or crimes of violence.
>
> For convenience, we will refer to the conditions as the *Hodgson* conditions.
>
> 21 The bone of contention lay in condition (b). Counsel for the appellant submitted that this condition was not satisfied. To this end, counsel argued that firstly, there was no likelihood of the appellant committing similar offences in the future. This was because the appellant would be immediately repatriated to Indonesia upon her release from imprisonment, and that she would never be allowed to return to Singapore. With respect, we did not find that submission assuring. Given that the appellant badly needed to stay employed, she might well assume a different identity, and seek to re-enter Singapore as a domestic worker. To our minds, this was not at all far-fetched. …
>
> 23 With regard to the present case, we were of the view that the appellant is of unstable character although not mentally impaired. The appellant did not attack and kill the deceased because she had laboured under a loss of self-control, and had consequently acted spontaneously or instinctively in response to some grave and sudden provocation by the deceased. Instead, the killing was motivated by ill feelings and resentment that had festered because of her brittle and immature temperament. We sympathised with the appellant's childhood, or the lack thereof, which might well have shaped the very temperament that had led to this regrettable episode. However, we were more concerned that such a disposition had since been deeply rooted in her, and it was unlikely that it could be tempered in the short run. Without long-term rehabilitation to correct such a short fuse, we were of the view that the appellant is unstable and is likely to become sufficiently incensed to kill yet another person, who has the misfortune of crossing her path in the future. To our minds, condition (b) is satisfied in the circumstances.
>
> 24 We should also add that no matter how entrenched the *Hodgson* conditions might have become in our sentencing jurisprudence, they are but mere guidelines. As such, their status should not be overstated. We were fortified in our view by the fact that the guidelines were only broadly endorsed in *Neo Man Lee*.
>
> 25 However, even if the *Hodgson* conditions were satisfied, the court must exercise caution before committing a young offender to life imprisonment, especially since life imprisonment now means imprisonment for the rest of the prisoner's natural life.
>
> 26 … We noted that in the present case, the appellant is a young offender, being only 17

> years old at the time of the offence. However, the presence of aggravating factors, and the fact that the value of the mitigating factors is either limited, or is outweighed by the public interest of upholding the employer-domestic worker relationship, justified putting the appellant away for a longer period of time. In the circumstances, this is a case where a sentence of ten years' imprisonment would be wholly inappropriate and inadequate, and where a sentence of life imprisonment would not be excessive. …

50 The Court of Appeal then proceeded to consider the aggravating factors in the case. The court affirmed that an act done after deliberation and with premeditation would aggravate the offence, as opposed to the situation where it is done on the spur of the moment and "in hot blood". It found that the accused there had put in some thought and planning in her crime, agreeing with the trial judge that she had staged the scene to make it look as if the deceased had committed suicide (among other factors). The court also held that the law needed to protect certain groups of vulnerable and defenceless persons, such as the handicapped, incapacitated, children and the elderly and that anyone who committed an offence against such persons ought to be dealt with more severely. It noted that the deceased there was 57 years old and, if not by virtue of age, was also vulnerable and defenceless as the accused had caught her by surprise by sitting on her chest and strangling her while she was asleep.

51 The Court of Appeal also held that prevalence of an offence was a relevant aggravating factor. It went on to state (at [33]):

> We note that in recent times, there is a worrying trend of domestic workers inflicting violence on their employers and/or family members. … Secondly, not all domestic workers who had inflicted violence were teenagers. … We, therefore, felt a need to impose a heavier sentence to attempt to curb this new wave of socially disruptive behaviour.

This was said by the Court of Appeal in February 2005. The present offence took place in October 2005. The Court of Appeal reiterated this approach when it said subsequently in its judgment (at [48]):

> 48 … We have already stated earlier that in upholding the employer-domestic worker relationship, deterrent sentences need to be meted out to violent domestic workers, as is the case for abusive employers.

52 The Court of Appeal further stated (at [34]) that the court could depart from the general rule (that rehabilitation was the dominant consideration when dealing with young offenders of 21 years of age and below) when dealing with "atypical" young offenders, for instance, those who were calculating in their offences. It held (at [38]) that the absence of antecedents was, like all other mitigating factors, something to be taken into account by the court and weighed against other factors, "the first and foremost of which, in the balancing process, is the public interest". The court added (at [37]) that although past sentencing cases were helpful, they were but mere guidelines and that each case must be looked at on its own unique facts and each offender in his own circumstances, noting that the case before the court involved violence in the "unique context of an employer-domestic worker relationship" and that cases involving violence in other various contexts were accordingly not very helpful.

53 In *PP v Juminem and another* [2005] 4 SLR 536, both accused persons were Indonesian domestic helpers aged 18 and 15 respectively at the time of the offence. The first accused worked for the female victim aged 47 while the second accused worked for the victim's former husband. Both the accused were tried on a joint charge of murder for smothering and strangling the victim to death

after she had gone to sleep. The second accused had agreed to the first accused's suggestion that they kill her employer as the first accused was angry with her employer's ill treatment of her. There was premeditation and planning for about a week. At the conclusion of the trial, Choo Han Teck J held that both accused were entitled to rely on the exception of diminished responsibility and, accordingly, he convicted them on a lesser charge under s 304(a) of the Penal Code. The first accused suffered from a depressive disorder and from some physical abuse by her employer while the second accused was young, immature, of low intellect, possessed a sedate personality and suffered from depressive illness. They were sentenced to undergo life imprisonment and ten years imprisonment respectively.

54 In *PP v Rohana* [2006] SGHC 52, the accused, a 21 year old Indonesian domestic helper, pleaded guilty to having caused the death of her female employer aged 39 by strangling her. She admitted to having hit the victim's head with a large and heavy ornamental crystal object with such force that the object broke upon impact. When neighbours who had heard the commotion in the flat rang the door bell and shouted to the accused to open the door, she lied that she could not do so as her employer was still sleeping. She then tried to clean up the scene of crime. When the neighbours persisted, she lied repeatedly that her employer was out and would not allow her to open the door. Officers from the Singapore Civil Defence Force had to force the door open.

55 Counsel for the accused in that case stressed the simple background of the accused and the history of abuse she had suffered, including physical abuse such as slapping by the employer. The accused was suffering from an abnormality of mind resulting from her moderately severe depressive episode. Woo Bih Li J, in sentencing the accused to ten years imprisonment, said:

> 12 … However, I was of the view that the fact that the three conditions were satisfied did not necessarily mean that a sentence of life imprisonment should be imposed and "the court must exercise caution before committing a young offender to life imprisonment, especially since life imprisonment now means imprisonment for the rest of the prisoner's natural life"; *per* Yong Pung How CJ in *Purwanti* at [25].
>
> 13 I did not think that the three cases cited indicated a sentencing norm for cases under s 304(a) where a maid has killed an employer or a relative of the employer. Even if they did, they did not restrict the court's power to impose such a sentence as the court considered appropriate in the particular circumstances of the case.
>
> 14 A key feature which distinguished the case before me from *Purwanti* and *Juminem* was that the actions of the accused persons in those cases were premeditated. The judgment in *Sundarti* on sentencing does not indicate whether the actions there of the accused were premeditated. In any event, as I have mentioned, the accused's actions there caused the death of two lives resulting in a charge under s 304(a) being taken into consideration in sentencing. True, Rohana had also sought to cover up her crime but not in the manner that Sundarti did by starting a fire. I would add that there were various aggravating factors in *Purwanti*.
>
> 15 As for the 75 injuries inflicted on the deceased, most were minor. …
>
> 16 It is obvious that maid abuse cannot be condoned in our society but it is equally clear that acts of violence, which are not in self-defence, by maids against their employers cannot be tolerated, especially when such acts result in a fatality. I was concerned about what appeared to be a recent spate of incidents of maids killing their employers which must obviously be discouraged. …
>
> 17 Nevertheless, having considered all the circumstances before me, including the absence of

premeditation, I did not consider life imprisonment to be appropriate. I also did not consider a term of five to eight years suggested by [defence counsel] to be an adequate sentence. Accordingly, I sentenced the accused, Rohana, to imprisonment for ten years from 4 July 2005, being the date of her remand.

56 In *PP v Aguilar Guen Garlejo* [2006] 3 SLR 247 ("*Aguilar*"), a 30 year old female domestic helper from the Philippines smothered and strangled to death her female friend in her employer's apartment and then dismembered the body, placing the body parts into a bag and a suitcase which she later left at two different locations in Singapore. The victim had visited the accused in her employer's apartment. A bitter argument broke out which escalated into a fight. The accused pleaded guilty to a charge under s 304(a) of the Penal Code. The evidence before the court (at [37]) was that the accused there was labouring from masked depression or a single episode of moderate major depression. In a single episode, there was a clear and distinct start and end to the depression. Taking into consideration the case history and the background of the accused, the prosecution's consultant psychiatrist concluded that the accused had a low risk of recidivism. Before sentencing the accused to ten years imprisonment, V K Rajah J reasoned as follows (including an analysis of the cases discussed above):

> 43 … Generally speaking, the degree of premeditation as well as the age of the offender are crucial factors tipping the scales for or against a sentence of indeterminate duration.
>
> 45 The burden is on the Prosecution to adduce facts intimating that life imprisonment is an appropriate sentence for the accused. This is a burden that the Prosecution has pointedly declined to either address or discharge in the instant case. …
>
> 53 At the outset, I have to acknowledge and duly take into account the accused's improbable likelihood of re-offending as assessed by Dr Tan. The accused's depression had a distinct beginning in that it was triggered by her own domestic complications and compounded by her financial predicament. The accused now appears to have recovered from her transient illness. Familiar support and medical counselling will further diminish any risk of future offences and ameliorate her chances of recovery. It is noteworthy that even the mayor of her home town has given concrete assurances that she will receive the necessary counselling support and supervision once her incarceration ends. In the circumstances, the imposition of a sentence of indeterminate duration on the accused is clearly inappropriate.
>
> 54 Her prevailing illness, at the time the offence was committed, strongly suggests that the element of premeditation was lacking. The injuries sustained by both the accused and the deceased support Dr Wee's postulation that there was indeed a fight. No weapon was used in inflicting the ante-mortem injuries. It is now undisputed that the deceased died from strangulation. It is, however, germane to note in this connection that the ante-mortem injuries sustained by the deceased were very much greater in their severity as compared to those sustained by the accused. This suggests that the accused had the upper hand throughout the struggle.
>
> 55 The accused had at least two opportunities to avoid killing the deceased. … Granting that the accused suffered from a mental abnormality, it still cannot be credibly gainsaid that she could at all material times distinguish between right and wrong.
>
> 56 … It would seem at first blush that the act of dismemberment manifested an intention to conceal her crime as evidenced by her immediate attempts to clumsily conceal the body and clean up the Sunglade apartment. However, by choosing to plant the deceased's head and torso

in two very public places the accused's behaviour strikes one as nothing short of incoherent and incomprehensible. At that juncture she no longer sought to conceal the deceased's demise. Her post-offence conduct was baffling and testament to the workings of a tortured mind. It would be fair, all things considered, to infer that her prevailing illness was in all likelihood severely exacerbated after she killed the deceased.

Conclusion

57 It is most unfortunate that a tragic concatenation of distressing circumstances had conspired to trap the accused in a state of transient mental abnormality. That said, her illness did not in any way dispossess her of the ability to distinguish between right and wrong. While sympathy may be added, justice cannot be subtracted from the sentencing equation. The accused has consciously caused the loss of a life. An appropriate sentence has to be imposed. I determine, upon considering all the relevant circumstances, that the appropriate sentence for the accused is a term of imprisonment of ten years commencing from the date of her arrest on 10 September 2005.

Aguilar was not a case involving a domestic worker-employer relationship.

57 Applying the collective wisdom of the cases discussed above, I now explain why I felt compelled to sentence the accused here to life imprisonment. Wee, the victim, was not only an elderly woman of 75 years of age, she was unconscious and completely at the accused's mercy at the material time. The altercation and the fight between the two women were over. Wee had been decisively defeated and lay on the floor unable to move or even to shout for help. The accused had time to recover and reflect on the incident. I accepted that she did not plan before the altercation and fight to kill Wee that morning. However, as the courts have noted, intention can be formed on the spur of the moment. Throwing any person, let alone a completely helpless, unconscious elderly woman, down from the ninth storey to die on impact shows how cold-blooded and dangerous the killer must be, even after taking into account the diagnosis of depression, whether severe or moderately so. It was undisputed that the accused could still tell the difference between right and wrong when she committed the horrendous act. It must be emphasized that the act of pushing Wee to her death was not a continuum of the struggle, unlike the situation where one party pushes the other over a ledge or a balcony in the heat of a fight. The fight was over and the opponent as it were was knocked out.

58 Wee was effectively the accused's employer. The crime was perpetrated in the very place that Wee and her husband probably felt most secure in – home – by a person in whom a significant amount of trust is reposed. I repeat the words of the Court of Appeal in *Purwanti* (at [52]) above, that "in upholding the employer-domestic worker relationship, deterrent sentences need to be meted out to violent domestic workers, as is the case for abusive employers". It was further not in dispute that the accused did not suffer any ill-treatment or abuse in the one month that she was working for Wee's family.

59 The accused's actions before and after the killing showed that she was actually quite collected in her thought process despite her depression. Initially, she tried to prevent Wee's husband from entering Wee's bedroom, claiming that Wee did not want to be disturbed. She then feigned concern for Wee by trying to revive her, after having abandoned her earlier. When Wee's husband decided to go to his neighbour for help, she went back into Wee's bedroom to dispose of the utterly defenceless woman, obviously knowing that the frail and sickly man would take some time to come back to the flat. After lifting and pushing Wee out of the bedroom window, the accused had the presence of mind to shut the window grilles. She was then able to repeatedly feign ignorance about Wee's whereabouts when questioned and could later lie to the neighbour, to Wee's family and even the police that

perhaps she had gone for her morning exercise. In my opinion, what the accused has done shows her to be a dangerous person especially when her livelihood is at stake, even when she is in the wrong (like she was that fateful morning when she sneaked out of the flat to meet her paramour).

60 The medical diagnosis for the accused was that it was unlikely that there would be a "recurrence of such abnormality of mind as the causes of her mental disorder were transient and not of recurrent or lasting nature" (see Dr Nagulendran's second report) and that she needed treatment (psychotherapy, counselling and supervision) for two years. I note that Dr Nagulendran did not make any comment about Dr Tommy Tan's finding that the accused may have a dependent personality disorder. The accused's husband has been working abroad for the past several years and there is no indication that his family can afford to do away with his income from abroad. In all likelihood, he will continue to do so for the foreseeable future. If the accused is released after a few short years and returns home, she will still not have her husband "to guide her in all things" (see Dr Tommy Tan's second report). That would be so even if she were to work in the same country as her husband (which she did for a while in Malaysia but for some reason, she decided to return to Singapore to work). There is therefore little prospect of amelioration of her dependent personality disorder. She is likely to feel the need to be involved again with another man which will in turn make her feel guilty again and lead to or exacerbate her depression again.

61 The accused will be repatriated to her homeland after she has served her sentence here. She could undertake never to return here but, as the Court of Appeal in *Purwanti* noted, there was the likelihood that such accused persons might return under an assumed identity, especially when the weight of financial needs begins to be felt again. There is no evidence that her family's finances have got any better. The accused and her husband will have a young daughter to take care of in the coming years, in addition to their ten year old son. In all likelihood, her family's financial situation will become more difficult rather than improve and she might be compelled to seek employment here again. Even if she were to seek employment in other countries, we would be doing a disservice to her future employer elsewhere (and indeed, even in her own homeland) if she were to re-offend given her dependent personality disorder with its likely outcome. Of course, the exact scenario of that fateful morning in October 2005 may never replay itself but surely, there is nothing so unique about an argument between a domestic worker and her employer or another worker that it is unlikely to happen again. With the accused's personality disorder, her violent temperament (demonstrated during the quarrel and the fight when she was capable of strangling an elderly woman) and her unstable employment history, there is every likelihood that something will flare up again and that someone in future will get hurt badly, if not killed (and there are many more ways of killing besides pushing an unconscious elderly woman out of the window).

62 Life imprisonment in s 304(a) of the Penal Code is not reserved for only the incurable mentally impaired person or those who require long term treatment. The *Hodgson* conditions are merely guidelines and their status should not be overstated (see *Purwanti* at [50] above). The courts do not determine the length of imprisonment by simply correlating it with the period of treatment needed for the accused person. It has been repeated many times in other cases that all the individual circumstances of a case must be looked at. That is why even a teenaged female accused in *Purwanti*, not mentally impaired but of unstable character, could be sentenced to imprisonment for life. Despite the accused's plea of guilt and the very able mitigation plea put up by her senior counsel and his team, I was of the view that life imprisonment ought to be imposed in this case. The sentence was deemed to have commenced from the date of her arrest on 19 October 2005.

63 At the request of defence counsel, the accused's family and members of the Indonesian Embassy were permitted to speak to the accused in court for 15 minutes after the proceedings concluded.

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