Public Prosecutor v Aniza bte Essa
[2008] SGHC 61

Case Number : CC 9/2008

Decision Date : 28 April 2008

Tribunal/Court : High Court

Coram : Chan Seng Onn J

Counsel Name(s) : Tan Kiat Pheng and Samuel Chua (Attorney-General's Chambers) for the Prosecution; Noor Mohamed Marican (Marican & Associates) for the accused

Parties : Public Prosecutor — Aniza bte Essa

Criminal Law – Offences – Culpable homicide – Accused pleading guilty to abetting culpable homicide not amounting to murder

Criminal Procedure and Sentencing – Sentencing – Mentally disordered offenders – Accused suffering from depression amounting to abnormality of mind at time of offence – Accused not predisposed to violence – Whether accused of unstable character and likely to commit such offence in future

28 April 2008 Judgment reserved.

Chan Seng Onn J:

Introduction

1 The public prosecutor proceeded against the accused, Aniza Binte Essa ("Aniza"), on the following charge:

> That you, Aniza Binte Essa, are charged that you, between mid June 2007 and 1 July 2007, in Singapore, did engage with one Muhammad Nasir Bin Abdul Aziz in a conspiracy to cause death of one Manap Bin Sarlip, male, 29 years old, and in pursuance of that conspiracy and in order to the doing of that thing, an act took place on 1 July 2007, sometime between 5.00am. and 7.47am., at the 16th floor unit #16-328 of Block 74 Whampoa Drive, Singapore, to wit, the said Muhammad Nasir Bin Abdul Aziz did cause the death of the said Manap Bin Sarlip, which act was committed in consequence of your abetment, and you have thereby committed an offence of culpable homicide not amounting to murder punishable under section 304(a) read with section 109 of the Penal Code, Chapter 224.

2 Aniza's original charge of abetment of murder was reduced to the above charge of abetment of culpable homicide not amounting to murder because her mental condition at the time of the offence allowed her to qualify for the defence of diminished responsibility.

3 She pleaded guilty to the reduced charge under s 304(a) read with s 109 of the Penal Code, for which she is liable to be punished 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. She is not liable to caning by virtue of s 231(a) of the Criminal Procedure Code (Cap 68, 1985 Ed), and the court has no discretion to impose a sentence of more than 10 years, but less than life imprisonment: *PP v Tan Kei Loon Allan* [1999] 2 SLR 288. What happens if the case deserves a sentence between 10 years and life imprisonment? The Court of Appeal in *Tan Kei Loon Allan* had already answered that question at [40], where it said:

> In a situation in which the court is desirous of a sentence greater than ten years, but feels that a sentence of life imprisonment is excessive, we have no choice but to come down, however reluctantly, on the side of leniency. Otherwise, the punishment imposed would significantly exceed the offender's culpability. It would, in our view, be wrong to adopt an approach in which the court would prefer an excessive sentence to an inadequate one.

4 I convicted Aniza on the reduced charge and imposed a sentence of 9 years imprisonment. The public prosecutor has appealed against the sentence. I now give my reasons.

Statement of facts

5 I will set out briefly the statement of facts, which was admitted by Aniza without any qualification.

6 Aniza was 24 years old at the time of the offence. At the time of her arrest, she was working as a waitress at Razcals Pub ("the Pub"). Manap Bin Sarlip ("the deceased") was her husband. They were married in September 2001 and have two boys, 2 and 5 years of age. The deceased was 29 years old when he died. Before his death, he was working as a disc jockey at Amaran Discotheque.

7 The co-accused is Muhammad Nasir Bin Abdul Aziz ("Nasir"). He was only 16 years old at the time of the offence.

8 Sometime in November / December 2006, Aniza became acquainted with Nasir when he patronised the Pub where Aniza was working. Nazir went to the Pub regularly and he began to like Aniza. In February 2007, Nasir started working as a bartender in the Pub. Sometime in February / March 2007, Aniza began an extra-marital affair with Nasir.

9 Aniza was having problems in her marriage with the deceased, who was convicted for desertion from the Civil Defence and was imprisoned on 15 June 2005. During the deceased's imprisonment, Aniza worked as a waitress cum hostess at the Pub to support herself and her two children. After the deceased's release from prison on 15 August 2006, he was unable to secure employment with a stable income. Aniza remained as the main breadwinner of the family. She began to quarrel with the deceased over financial problems of the family. Nasir advised Aniza to apply for a divorce but she told Nasir that the deceased would not divorce her.

10 In mid June 2007, Aniza informed Nasir that she could no longer tolerate the deceased. Nasir again advised Aniza to apply for a divorce. Again, Aniza replied that it would be useless because the deceased would not divorce her. After some discussion, Aniza and Nasir agreed that the deceased had to be killed to end her marriage problems. Aniza told Nasir that she had a former boyfriend who was willing to kill the deceased and marry her. She further told Nasir that he had to leave her if her former boyfriend succeeded in killing the deceased. Nasir told Aniza that he was willing to kill the deceased for her since he loved her very much and he feared losing her. However, Nasir asked Aniza to give him some time to think of a way to do so and Aniza agreed.

11 Sometime on or about 21 June 2007, Nasir approached one Mohamad Zulkarnain Bin Hasan also known as 'Saigon' at the Pub to find an assassin. 'Saigon' subsequently told Nasir that he had found an assassin who was willing to kill a man for $500. 'Saigon' told Nasir to provide him with a photograph and the address of the deceased so that he could forward them to the assassin.

12 Nasir informed Aniza that he had found someone to kill the deceased for a fee and that he had to provide the assassin with the deceased's photograph and the block number of the flat. Aniza gave

the deceased's photograph and the block number to Nasir. On or about 27 June 2007, Nasir gave Saigon the block number and the deceased's photograph, and instructed 'Saigon' that he wanted the deceased to be killed by 29 June 2007.

13 On 28 June 2007, Aniza complained to Nasir that she could not tolerate the deceased's yelling at her anymore. She asked Nasir when he was going to kill the deceased. Nasir said that the deceased would be killed by 29 June 2007. He promised to leave her if he did not succeed.

14 Subsequently, Nasir tried calling 'Saigon' on his mobile phone but the latter did not answer. Nasir also sent messages to 'Saigon's' mobile phone on 28 and 29 June 2007 asking him whether the deceased could be killed. 'Saigon' never gave him an answer.

(i) First attempt to kill the deceased

15 When Nasir could not reach 'Saigon', he decided to ambush the deceased himself and slit his throat with a Swiss Army knife when the deceased returned home.

16 On 30 June 2007, at about 3.15am, Nasir waited at the ground floor of Block 74 Whampoa Drive. He planned to attack the deceased near lift 'D' of the said block. Aniza told Nasir that she would not be around when he killed the deceased and that she would go out with her colleagues that morning. Nasir called Aniza and asked her to call the deceased to check his whereabouts. Aniza replied that the deceased was on his way home. At that time, Nasir was reluctant to kill the deceased himself and so he abandoned his plan to kill the deceased that morning.

17 When Nasir told Aniza that he could not carry out his plan to kill the deceased, Aniza was disappointed. She told Nasir that since he failed to kill the deceased he had to leave her as promised. Aniza again told Nasir that she would get her friend to kill the deceased. He asked Aniza to give him one more day to kill the deceased. Aniza agreed and she promised Nasir that she would be with him all her life and love him more if he succeeded in killing the deceased that day.

(ii) Second attempt to kill the deceased

18 On 30 June 2007, Nasir and Aniza went to the Pub. At the locker room in the Pub, Aniza saw that Nasir had brought along a motorcycle crash helmet, a Swiss Army knife and a pair of gloves in a sling bag. Nasir told Aniza that he planned to kill the deceased that afternoon and asked Aniza what time the deceased would usually leave home for work. Aniza told Nasir that the deceased would usually leave for work at about 5pm. Nasir told Aniza that he would attack the deceased at about 5pm. Aniza agreed to Nasir's plan and cautioned him to be careful.

19 While they were at the Pub, Aniza saw Nasir taking a knife from the bar counter which he usually used to cut lemons, sharpening it, wrapping it in newspaper and placing it inside the motorcycle crash helmet. She also saw Nasir sharpening the Swiss Army knife.

20 At about 3.30pm, Aniza saw Nasir preparing to leave the Pub with the sling bag containing the motorcycle crash helmet, the sharpened knife and Swiss Army knife and the pair of gloves. Before leaving the Pub, Nasir informed Aniza that he was going to the flat to kill the deceased. Nasir told Aniza that if he succeeded in killing the deceased, he would end her suffering and they could be together. Nasir asked Aniza to call the deceased to ascertain his whereabouts. Aniza sent a message to the deceased on his mobile phone and asked him where he was. The deceased replied that he was still at home and Aniza informed Nasir accordingly. Aniza instructed Nasir to delete his messages and call details from his mobile phone.

21 About 20 minutes later, Aniza received a call from Nasir, who informed her that he was already on the 16th floor of Block 74 Whampoa Drive and was waiting for the deceased to leave the flat. At about 4.28pm, Nasir informed Aniza that the deceased had not left the flat. Aniza told Nasir to wait.

22 At about 5.25pm, Nasir called Aniza to inform her that he had failed to kill the deceased because a neighbour had suddenly appeared on the same floor just as the deceased was leaving the flat. That was, however, not the case. Nasir made up this story because he was still reluctant to kill the deceased. Aniza expressed her disappointment and asked Nasir what he was going to do about it. Nasir assured Aniza that he would kill the deceased that night. Aniza agreed but she told Nasir that if he failed again, he had to leave her. She then told Nasir to return to the Pub. At about 6pm, Nasir returned to the Pub in a taxi.

(iii) The killing of the deceased

23 While Aniza and Nasir were at the Pub, Nasir asked Aniza what time the deceased would be going home. Aniza replied that the deceased would reach home at about 5am. Nasir told her that he would carry out the attack when the deceased returned home.

24 On 1 July 2007, at about 3.30am, after closing the Pub, Nasir and Aniza boarded the Pub's van together. Nasir carried with him the sling bag containing the motorcycle crash helmet, the sharpened knife and Swiss Army knife and the pair of gloves. Nasir instructed the driver to send both of them to Aniza's residence in Whampoa.

25 Upon reaching Block 74 Whampoa Drive, Aniza and Nasir took the lift to the 16th floor. Aniza asked Nasir again if he really wanted to kill the deceased that night. Nasir replied that he wanted to kill the deceased once and for all. Aniza and Nasir agreed that Aniza would remain in the flat and pretend not to know anything while Nasir would wait at the 16th floor lift lobby for the deceased to arrive home and kill him. Aniza and Nasir planned to make it look as if the deceased was killed by an unknown person. They promised each other that their plan to kill the deceased would be kept a secret between them and that no one would find out.

26 At about 3.48am, Aniza called the deceased to find out his whereabouts. The deceased informed Aniza that he was still at work and was waiting for his company's transport. Aniza called the deceased again at 4am. The deceased informed Aniza that he was on the way home and she informed Nasir accordingly. At 4.18am, Aniza sent a message to Nasir and told him that regardless of whether he succeeded in killing the deceased, he must not contact her until she contacted him the next day.

27 Sometime between 5am and 7.47am, the deceased arrived at Block 74 Whampoa Drive. He took lift 'D' to the 16th floor. When the lift doors Fadilopened at the 16th floor, he stepped out, walked a few steps towards the flat, turned around and saw Nasir behind him holding the knife in his right hand.

28 When Nasir saw that the deceased had spotted him, he immediately stabbed the deceased in his back. The deceased ran towards the corner of the 16th floor lift lobby near the staircase. Nasir chased after him. The deceased leaned against a wall and squatted down facing Nasir. Nasir stabbed the deceased once on the left side of his neck. He saw blood gush out of the neck wound. The deceased shouted in Malay, "Apa salah aku pada kau?" ("What wrong have I done to you?"). Nasir stabbed the deceased's neck on the left side again. The deceased coughed out blood while squatting in front of Nasir. Thinking that he had inflicted severe injuries such that the deceased could not have survived, Nasir turned around and ran down the staircase to the 14th floor.

29 Upon reaching the 14th floor, Nasir pressed the lift button. While waiting for the lift to arrive,

Nasir heard a noise from upstairs that sounded like someone trying to open a metal gate by shaking it. Suspecting that the deceased was still alive, Nasir returned to the 16th floor to check. When he reached the 16th floor, he saw the deceased lying on the floor of the common corridor in front of the flat. When Nasir noticed that the deceased was still breathing, he stabbed him once on the left side of his chest. Nasir then pulled the knife out of the deceased's chest, ran down the staircase to the 14th floor where he picked up his sling bag and motorcycle crash helmet. He wrapped the bloodstained knife with some newspapers, placed it into his sling bag and took lift 'B' down to the ground floor.

30 Upon reaching the ground floor, Nasir walked quickly towards a nearby canal and threw the knife and the newspapers into the canal. Thereafter, he took a taxi home.

Pathological findings

31 The autopsy established that the deceased had a total of nine stab wounds of which the stab wound on the chest was the one that caused death due to acute haemorrhage.

Aniza's psychiatric assessment

32 Dr Tommy Tan, formerly a Senior Consultant with the Institute of Mental Health ("IMH"), stated in his report that Aniza had moderate depressive episode which was characterised by a depressed mood, disturbed sleep and suicidal thoughts. A mental state examination showed that Aniza had a depressed affect, depressed mood and psychomotor retardation. However, she was not of unsound mind at the time of the offence. She would have known what she was doing and that what she had done was wrong.

33 Dr Tommy Tan opined that Aniza qualified for the defence of diminished responsibility. She had moderate depressive episode at the time of the offence. She had an abnormality of mind, which would have substantially impaired her mental responsibility for her acts or omissions in causing the death or being a party to causing the death of the deceased.

34 Dr Kenneth G.W.W. Koh, Consultant Forensic Psychiatrist with the IMH, stated that Aniza suffered from chronic depression of mild to moderate severity as a consequence of the deceased's frequent assaults upon her person. Concurrent with an increase in frequency as well as severity of beatings from the deceased from about March 2007, her depression worsened to be of moderate severity from March 2007 until the date of the offence. In addition, Aniza showed some features of post-traumatic stress disorder, although there were insufficient features to warrant a clinical diagnosis of the disorder.

35 Dr Koh stated that Aniza demonstrated "learned helplessness" as a consequence of the repeated abuse by the deceased, which manifested in her failure to act positively to prevent Nasir from following through with his plan to kill the deceased. Together with the impairment of her judgment caused by her resultant moderate depression, it could be considered that Aniza suffered from an abnormality of mind that caused her responsibility to have been impaired.

Prosecution's submission on sentence

36 The prosecution submitted that a deterrent sentence of life imprisonment should be meted out given the gravity of the offence and the facts and circumstances under which she committed the offence. Anything less would not have addressed the severity of the offence committed. The prosecution further submitted that a deterrent sentence is necessary to protect life and the sanctity

of marriage, and to curb socially disruptive behaviour of accused persons who plan to kill their spouses or ex-spouses as there has been a number of murder or culpable homicide not amounting to murder cases involving spouses or ex-spouses in the past few years. The demands of the public interest for a deterrent sentence to be imposed far outweigh any mitigating effect from her guilty plea.

37 On the question whether a life sentence is appropriate, both the deputy public prosecutor ("DPP") and defence counsel referred me to the Hodgson criteria.

The *Hodgson* criteria

38 The Court of Appeal in *Neo Man Lee v PP* [1991] SLR 146 and *Purwanti Parji v PP* [2005] 2 SLR 220 had approved and applied the following three broad criteria enunciated by the English Court of Appeal in *R v Rowland Jack Foster Hodgson* (1968) 52 Cr App R 113("the Hodgson criteria"):

> When the following conditions are satisfied, a sentence of life imprisonment is justified:
>
> (i) where the offence or offences are in themselves grave enough to require a very long sentence;
>
> (ii) where 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**
>
> (iii) where if the offences are committed the consequences to others may be specially injurious, as in the case of sexual offences or crimes of violence (emphasis mine)

39 The Hodgson criteria are indeed very useful guidelines (and I have reminded myself that they are not conditions but only guidelines) in aid of the exercise of my discretion as to whether or not the accused should be given the maximum sentence of life imprisonment, which in the Singapore, means an imprisonment for the remainder of the prisoner's natural life: *Abdul Nasir bin Amer Hamsah v PP* [1997] 3 SLR 642 ("*Abdul Nasir*"). For a relatively young offender of 24 years of age, a sentence of life imprisonment, which is of indeterminate duration, is therefore a very severe and crushing sentence. For this reason, care must be taken to scrutinise and evaluate the relevant facts and circumstances to determine whether a life sentence is indeed justified. As a sentence of life is now much harsher than it was before *Abdul Nasir*, the Court of Appeal in *PP v Tan Kei Loon Allan* opined at [37] that:

> .....[T]he courts must now exercise caution before committing a young offender to life imprisonment. Contrary to traditional reasoning, in similar cases involving a youthful offender on the one hand and an older offender in the other, the youthful offender sentenced to life imprisonment would now be subject to a longer period of incarceration than an older offender, assuming they both lived to the same age.

40 The Court of Appeal in *Purwanti Parji v PP* [2005] 2 SLR 220 further cautioned at [25] that:

> …..[E]ven 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.

41 Hence, the maximum sentence of life imprisonment should not be imposed unless it is clearly

necessary and appropriate to do so. It must be one where there is sufficiently persuasive evidence to support those facts that allegedly make it out to be a necessary and appropriate case for a life sentence. The burden is on the prosecution to establish that that life imprisonment is an appropriate and necessary sentence and I am not persuaded in this case that it is.

42 All culpable homicides not amounting to murder, where there is **intention to cause death** or such bodily injury as is likely to cause death, are by their very nature extremely serious offences. The degree of culpability is generally high in cases of s 304(a) since there is intention to cause death, quite unlike that under s 304(b) which is applicable to cases where the act is done only with **the knowledge that it is likely to cause death**, but **without any intention to cause death,** or to cause such bodily injury as is likely to cause death. If the high degree of culpability generally inherent in all s 304(a) cases is, ***per se***, sufficient to warrant a life imprisonment and no less, then Parliament would have simply prescribed a fixed sentence of life imprisonment without making available any other sentencing options for an offence under s 304(a).

43 I cite three examples where a fixed punishment of life imprisonment is prescribed by law for what Parliament has considered as offences, so grave that they warrant nothing less than a sentence of life imprisonment:

(a) Arms Offences Act (Cap 14) – Section 3(3)

Where any person at the time of his committing or at the time of his apprehension for any scheduled offence has on his person any arm, he shall be guilty of an offence and shall on conviction be punished with imprisonment for life and shall also be punished with caning with not less than 6 strokes.

(b) Penal Code – Section 130B(2)

Whoever commits piracy shall be punished with imprisonment for life and with caning with not less than 12 strokes, but if while committing or attempting to commit piracy he murders or attempts to murder another person or does any act that is likely to endanger the life of another person he shall be punished with death.

(c) Hijacking of Aircraft and Protection of Aircraft and International Airports Act (Cap 124) – Section 9

Any person guilty of an offence under this Act shall be liable on conviction to be punished with imprisonment for life.

(This Act provides, *inter alia*, for offences in relation to hijacking of aircraft; violence against passengers or crew; destroying, damaging or endangering safety of aircraft; and endangering safety at aerodromes.)

44 In the case of s 304(a) of the Penal Code, there is still the option of a sentence of ten years or less, apart from the maximum life sentence. Obviously then, for the maximum sentence of life imprisonment to be imposed, the normally high degree of culpability inherent in a s 304(a) offence cannot of itself be a sufficient criterion. There must be something more.

45 Before the latest amendment to s 304(a) of the Penal Code which took effect on 1 February 2008, the sentence prescribed in the Penal Code that is applicable to Aniza, who committed the offence before the effective date of the amendment, is an imprisonment term from zero to ten years,

or the alternative of life imprisonment. There is nothing between 10 years and life imprisonment. The sharp and discrete jump from 10 years to the maximum sentence of life imprisonment represents a huge gulf. This further suggests to me that there must be some other special reason or circumstance before the maximum of life imprisonment is imposed. Indeed, if the only deserving sentence for such a serious offence of culpable homicide not amounting to murder is life imprisonment and no less, then there would have been no need to allow the court to have any discretion of imposing the alternative sentence of an "imprisonment for a term which may extend to ten years". This fortifies my view that the DPP must establish that this case is one that extends beyond the mere fact that the accused has committed a very serious and grave offence under s 304(a) of the Penal Code, which calls for a deterrent sentence.

46 Examination of the Hodgson criteria shows that the three criteria are not in the alternative but are **cumulative.** Within the three Hodgson criteria, that special reason is signified by the second criterion, which is essentially that the accused is **likely to commit** such a serious offence again. If it appears from the defendant's history or mental condition (*e.g. a chronic schizophrenic who frequently hears an inner voice due to his auditory hallucinations, telling him to kill and it has been shown that he has obeyed that voice and killed someone*) or from the nature of the offences *(e.g. a rapist killer who raped and killed the rape victim, and who is not likely to be able to control his sexual urges*) that he is a defendant of unstable character, who is likely to re-offend in the future, then the maximum sentence of life imprisonment is justified as a preventive measure to remove him entirely out of circulation from the community. The risk to the public at large is simply too high to be acceptable. Hence, the need to protect the public swings the balance in favour of a life term to safeguard the interests of the public. However, on the facts of this case, I am not persuaded that Aniza must be put away for life because she still poses a danger to the public upon her release from a fairly long term of imprisonment of 9 years, and that she is likely to commit a similar offence after her release from prison. See [53] to [66].

47 Another special circumstance in the context of s 304(a) is that the manner in which the defendant commits the offence is so cruel and inhumane that the defendant does not deserve any leniency whatsoever and that the only just sentence is the maximum of life imprisonment and any other sentence is simply too lenient (*e.g. the deceased was tortured to death or was subjected to a very slow and painfull death at the hands of the defendant who burnt the victim to death by fire or by acid*). Here the overriding concern is not so much the protection of the public from a likely repetition by the offender if released, but the need to mete out the maximum punishment to register society's sheer abhorrence of what the offender has done, to deter others accordingly, and to ensure that the offender's punishment is therefore proportionate to the utterly sadistic and cruel acts he did.

48 There is no evidence that Aniza had instructed Nasir for instance to ensure that the killing of the deceased was slow, cruel and painful to revenge for the many years of repeated emotional and physical abuse she had suffered at the hands of the deceased, who had traumatised her into exhibiting features of post-traumatic stress disorders, and who had caused her to be suicidal and to suffer from moderate depression serious enough even to impair her judgment and mental responsibility for her acts.

49 In any event, while the murder of the deceased was in itself tragic, there was nothing exceptionally cruel or unusual about the manner in which Nasir carried out the killing by stabbing the deceased, who was totally surprised by the knife attack sprung on him. The deceased appeared to have died fairly quickly from the stab wounds.

Evaluation with reference to the Hodgson criteria

(a) 1st and 3rd criteria

50 Based on what Aniza had admitted in the statement of facts, I fully agree with the submission of the DPP that the first and third criteria of the Hodgson criteria are satisfied in the present case. It is not necessary for me to repeat the aggravating facts in the statement which support these two criteria.

51 I accept the prosecution's submission that Aniza exploited Nasir's love for her and she deviously and psychologically manipulated a young gullible 16 year old boy into killing the deceased. I agree that Aniza had ample opportunities to repent and prevent the killing but she did not do so. Instead she helped to lure her own husband to meet his death at the doorstep of their flat. She kept instigating and pressuring the reluctant Nasir each time to kill the deceased. Nasir finally plucked up sufficient courage and succeeded at his third attempt. Indeed, there was premeditation and planning by both of them showing that the killing was cold-blooded. Although Aniza had turned a 16 year old boy into a murderer through her manipulative acts, I noted however that she was suffering from an abnormality of mind at that time, which **substantially impaired** her mental responsibility for all her conspiratorial and manipulative acts. Two psychiatrists have reported that as a result of the deceased's frequent assaults and beatings with increasing frequency and severity, she began to suffer from depression of moderate severity from March 2007 to the date of the offence. She harboured suicidal thoughts and also exhibited features of post-traumatic stress disorder. I have no reason to doubt the reports of the psychiatrists that her mental illness, which substantially impaired her judgment at that time, was clearly caused by her husband's protracted physical and emotional abuse arising from the frequent beatings and assaults and his incessant demands of money from her during the marriage, which lasted 6 years. According to the mitigation plea by defence counsel, Aniza was subjected to prolonged spousal abuse since the very tender age of 19 years old and she endured it for 5 years, without retaliation. I give some credence to her claim that she did not retaliate when the deceased assaulted her because the "conditioning" to accept the violence inflicted by the much older husband started when she was still very young and in her teens.

52 Although the deceased was the source of her trepidations and her mental depression, although the deceased was the one who kept assaulting her and who traumatised her emotionally, and although he was the very reason which drove her to conspire with Nasir to kill him to end her suffering, I am not suggesting in any way that the deceased deserved to be murdered.

(b) 2nd criterion

53 While accepting that the first and third Hodgson criteria have been satisfied, nevertheless I must still determine if the second Hodgson criterion is also made out. This is in relation to the very important question whether it would appear from the nature of the offence committed by Aniza or from Aniza's history that she is a person of unstable character likely to commit such an offence in the future.

54 The prosecution referred me to *PP v Chee Cheong Hin Constance* [2006] 2 SLR 707where V K Rajah J held that the reference to "unstable character" would apply to individuals who could pose a risk or danger to society arising from an inability to maintain self-control when confronted with some provocation, real or imagined. Rajah J further held that the *Hodgson* criteria do not require that a case of 'high propensity' be established. The court need only be persuaded that a likelihood of such future offences being committed exists. Rajah J emphasised that the burden remains with the prosecution to establish that the accused is likely to remain a future and real danger to the public without medication and permanent incarceration.

No evidence of personality disorder predisposing to violence

55 In this case, there was no evidence of any personality disorders or any personality traits that predisposed her to commit any violence **herself**. Nothing was stated that she was prone to violent behaviour. I would have expected the two psychiatrists to mention it in their medical reports if indeed Aniza were to exhibit such pre-dispositions or disorders because I would expect the psychiatric examinations to be fairly comprehensive. On the contrary, Dr Kenneth Koh in fact said that Aniza demonstrated "learned helplessness" as a consequence of the repeated abuse by the deceased. This is hardly the trait of a person with a violent personality.

56 The prosecution also pointed out to me (see paragraph 16 of the DPP's submissions) that Aniza was not suffering from any psychotic illness such as schizophrenia and she did not have hallucinations and delusions, nor experience her thoughts being interfered with by external forces. If she had been and if it was an uncontrollable voice in her head that drove Aniza to kill, then the likelihood of a repeat offence in my view would be high and life imprisonment might well be appropriate. But this is not the case here.

No evidence that her mental illness is not amenable to treatment

57 The prosecution also did not adduce any psychiatric or medical evidence that Aniza's mental condition was not amenable to medical treatment. With the removal of the root cause of her mental depression, *viz*, the deceased, and with proper treatment, which I believe is available in the prison, I should think that it is more likely than not, that her depression of moderate severity will improve with time. I am inclined to be optimistic.

DPP's submissions on the 2nd Hodgson criterion

58 The DPP contended in his written submissions that Aniza is likely to re-offend for the following reasons:

(a) Although Aniza has removed the source of her depression through the deceased's murder, it is highly unlikely that the quality of her life would improve or that she would no longer face financial difficulties after her release from prison.

(b) Aniza left school at Secondary 3 and she had been working as a hostess cum waitress in pubs to earn a living. She has two young children who are totally financially dependent on her sole income. In all likelihood, her family's financial situation will become more difficult rather than improve in future. If Aniza is sentenced to 10 years' imprisonment, she may be released from prison in 7 years' time after remission. By then, Aniza would only be about 32 years old and her two children would be about nine and twelve years old. She most probably would support herself by going back to the entertainment industry and work as a waitress or hostess. There is high likelihood that she might end up with another man whom she would meet at pubs while working as a waitress or hostess. In fact, that was how she became acquainted with the deceased and Nasir. Her subsequent marriage, if any, might be plagued with the same problems that she had faced in her marriage to the deceased.

With her temperament and age, there is likelihood that Aniza would fall into depression again in another difficult or abusive relationship. She would most probably be unable to accept another failed marriage or relationship. It is humbly submitted that in that event, there is likelihood that Aniza would resort to violence again to solve her problems with her future spouse or partner in view of the aggravating factors highlighted above. Thus, it is humbly submitted that the second

criterion of the Hodgson criteria is satisfied.

59 I do not accept the DPP's reasoning and conclusions, some of which are premised on a fair amount of speculation and without any realistic basis. I will now comment on each one of them.

(a) DPP: That she is likely to continue to face financial difficulties.

60 I note that the deceased, when he was alive, had been extracting money from her all the time to spend on his drinks, cigarettes and to pay his ex-wife's maintenance. With him gone, Aniza's financial situation might well improve. Even if Aniza might continue to face financial difficulties, there is simply no basis to conclude that it would be likely for her to re-offend by committing culpable homicide.

(b) DPP: That her quality of life is not likely to improve.

61 I do not quite understand how that can be so after the source of her depression, her suicidal thoughts, and the physical and emotional abuse and all her other problems is removed after the death of the deceased. With proper medication and treatment in prison during her long period of imprisonment and with the removal of the cause of her mental illness, I am inclined to believe that her mental condition will improve gradually over time, and hopefully, there can be a complete recovery without relapse. Further, upon her return to her family and her children, I think it is more likely than not that the family will be more prepared to rally round her to support and comfort her now that the violent husband is no longer a part of her life and their lives. I am fairly certain that the prison has rehabilitation and re-integration programmes to prepare long term prisoners for their eventual return to their families and their community upon their release. I think that the prison will be able to supply released prisoners with information on where they can seek social welfare assistance (financial or otherwise), what public and charitable institutions are available and who they can turn to for help if necessary, so that these released prisoners will not be at a loss when they step out of prison. Defence counsel summarised it well when he said that:

> "The medical disorder of Aniza however can be gradually arrested as she returns to a conducive living environment filled with love, laughter and kindness. Furthermore, she does not have a temperamental and violent nature and has always been loving towards her 2 children. It is submitted, that the cause of her medical disorder originated and was compounded from the continuous verbal, emotional and physical abused from the Deceased, which shall now cease to exist."

(c) DPP: As she will have two children to support and with her education level only at Secondary 3, she will again work as a hostess cum waitress in pubs to earn a living due to her. There is a high likelihood that she might fall in love with another man, he will marry her and later become an abusive husband just like the deceased.

62 I find this to be highly speculative and far from being in the realm of "high likelihood", as it needs the confluence of a number of chance events taking place. One must also not forget that the circumstances at the time of her release from prison will be quite different as she will be much older by then. If released with the full one third remission for good behaviour, Aniza will be about 30 years old. She should be a far more matured and responsible mother with an 11year old son and 8 year old son. She ought to have learnt her lesson. Upon her release, I believe she will treasure her freedom and cherish the time with her two growing sons, having missed 6 of their developmental years already. My assessment is that she is not likely to do anything to re-offend and jeopardise all of that again.

(d) DPP: With a second abusive or difficult marriage, she will then fall into depression again, and resort to the same type of violence to solve her problem.

63 This again is speculative. There is nothing to show that she is by nature a violent person herself. In many of the other culpable homicide cases, the accused persons personally carried out the killings. That is an important distinction, when considering whether Aniza could be regarded as inherently violent in her nature or character. The fact she needed Nasir's help indicates to me that it is more likely than not, that she has no nerves of steel to carry out the killing by herself. For a similar offence to recur, it will necessarily mean that she will have to seek unlawful and illegal help from third parties to deal with her problems. Having no other choice, the DPP supposes that she will again resort to manipulation of another gullible person or she will have to hire a hit man to kill her second abusive husband on her behalf since she is not able to do it herself. This assumes that she is able to find this gullible person, who can be successfully manipulated to kill. Otherwise, she will have to find a contract killer who will be willing to commit a capital offence of murder to finish off her second abusive husband for her. I think all this is much too remote, unreliable and speculative for my consideration. For a matter as serious as life imprisonment, I am not disposed to indulging in such speculative probabilities. I cannot see a realistic likelihood of her committing another offence of murder or culpable homicide not amounting to murder or another serious offence of a similar nature. I agree with defence counsel that it is unreasonable for the prosecution to suggest that a real risk of Aniza committing such further offences of similar nature exists.

64 I note the observations of V K Rajah J in *Public Prosecutor v Aguilar Guen Garlegjo* [2006] 3 SLR 247)("*Aguilar*") at [44] and in *PP v Chee Gheong Hin Constance* [2006] 2 SLR 707 at [16], where he said:

> The imposition of an indeterminate prison term should be avoided when addressing offenders with an unstable medical or mental condition if there is a reasonable basis for concluding that the offender's medical condition could stabilise and/or that the propensity for violence would sufficiently and satisfactorily recede after medical treatment and continuing supervision. The burden is on the Prosecution to establish that the accused is likely to remain a future and real danger to the public without medication and permanent incarceration.

65 Bearing in mind that the burden is not on the defence but on the prosecution, I specifically questioned the DPP whether the prosecution had any psychiatric evidence to support their submission that she was likely to re-offend. The DPP replied that they did not have any.

66 With the available evidence placed before me, I am not persuaded that Aniza is of such an unstable character that she is likely to commit a similar offence in the future that requires her to be put away for her natural life under a life imprisonment term. The prosecution has failed to show that the 2nd Hodgson criterion is satisfied. Aniza's cunning and manipulative character is *per se* not a sufficient reason, in my view, to warrant life imprisonment. After careful evaluation of all the facts and circumstances of the case, I am of the opinion that the risk of recurrence of a commission of a similar serious offence by Aniza is low.

Comparable cases

67 It is axiomatic that each case on sentence must be decided on its own set of facts and circumstances. Nevertheless, it may still be useful to survey some comparable cases to see if the present sentence is way off the mark when no life imprisonment was imposed. For this, I need only adopt the helpful survey of the cases that V K Rajah J had done in *Aguilar* at [47] to [50]:

47 In *Purwanti*, the accused was a young maid who killed her employer. She was convicted under s 304(a) of the Penal Code. In imposing a life sentence on her, the court was plainly perturbed by her character, the risk of recidivism and the potential harm to society at large. The accused in the present case has, on the other hand, received a favourable evaluation, not least, from a psychiatrist testifying for the Prosecution. Such an evaluation cannot be legitimately ignored or underestimated.

48 In *Constance Chee*, the accused had kidnapped a child and caused her to fall from a block of flats. She was charged under s 304(a) of the Penal Code. The accused was suffering from schizophrenia and this factor significantly coloured her moral culpability and responsibility for her actions. Nevertheless, the court observed at [13] that the gravity of the offence necessitated a lengthy term of imprisonment. The accused was sentenced to ten years' imprisonment.

49 In *PP v Juminem* [2005] 4 SLR 536, the two accused domestic workers were charged with murdering their employer. The court accepted the defence of diminished responsibility and convicted them on a reduced charge under s 304(a) of the Penal Code. The first accused was suffering from a depressive disorder. This, coupled with her personality and the abuse she suffered at the hands of her employer, diminished her responsibility for her employer's death. She was sentenced to life imprisonment. At 18 years of age, the second accused was young by any account. Her youth, immaturity, low intellect, and depression were all relevant considerations, tipping the balance in her favour and persuading the court to sentence her to ten years' imprisonment.

50 In *Rohana* ([43] *supra*), the accused was a 21-year-old maid who had strangled her employer. She pleaded guilty to a charge under s 304(a) of the Penal Code. In distinguishing *PP v Jumenem* and *Purwanti*, Woo Bih Li J noted that in both those cases, the killing was the result of a significant degree of premeditation, which was conspicuously absent in *Rohana*: see [14]. Similar to the present case, the expert opinion pronounced in *Rohana* intimated that the accused in that case suffered from diminished responsibility arising from a moderately severe depressive episode. The lack of premeditation ultimately persuaded Woo J to rule out life imprisonment. He sentenced the accused to ten years' imprisonment.

68 In *Aguilar*'s case, the accused, Aguilar, in the course of an argument, which soon escalated into a fight, smothered her friend with a pillow until her friend was not moving. When Aguilar saw both of her friend's hands moving, she used both hands to strangle her friend until the latter stopped breathing. Aguilar later dismembered the deceased's body, placing the body parts into a bag and a suitcase, which she eventually placed near Orchard Road MRT station and in MacRitchie Reservoir respectively. Dr Tommy Tan opined that Aguilar suffered from masked depression due to loan problems which lasted for a couple of weeks. That depression had substantially impaired her mental responsibility. Taking into consideration the case history and the Aguilar's background, Dr Tan concluded that Aguilar had a low risk of recidivism and he relied on the following positive prognostic factors:

(a) the accused is female and therefore has a lesser tendency towards violence;

(b) she has no prior psychiatric problems;

(c) she has no criminal antecedents;

(d) she appears to be of good character; and

(e) presence of a strong family support network if and when she is reunited with her family.

69 The negative factor was the bizarre manner in which the body was dismembered for the purpose of disposal, but Dr Tan felt that this probably went towards Aguilar's state of mind after rather than at the time of the offence.

70 The court said that the applicability of the sentencing considerations pertaining to general deterrence and specific deterrence are of penumbral significance given that the accused had a mental illness when the crime was committed. The court duly took account of Aguilar's improbable likelihood of re-offending as assessed by Dr Tan and the fact that her depression had a distinct beginning triggered by her own domestic complications compounded by her financial predicament. Aguilar appeared to have recovered from her transient illness. Familial support and medical counseling would further diminish any risk of further offences and ameliorate her chances of recovery. The judge felt that Aguilar's prevailing illness at the time of the offence strongly suggested that the element of premeditation was lacking. She had at least two opportunities to avoid killing the deceased but did not. Nevertheless, the court said that a sentence of indeterminate duration was clearly inappropriate and imposed a sentence of 10 years imprisonment.

71 The facts of the present case in terms of the existence of long term spousal abuse inflicted by the deceased leading eventually to the mental disorder suffered by Aniza may not be too different from the case of *PP v Lim Ah Seng* [2006] 2 SLR 957, where the accused ("Lim") pleaded guilty to a charge of culpable homicide not amounting to murder under s 304(b) of the Penal Code for strangling his wife. Lim was sentenced to two years six months' imprisonment. The parties were already estranged when the deceased visited Lim and told him that she wanted to bring their daughter to Jakarta. In the course of the events that followed, they quarrelled and the deceased tried to strangle Lim. Lim responded by squeezing the deceased's throat until her grip loosened.

72 The special mitigating circumstances included the important consideration that Lim had suffered severe and repeated physical and psychological abuse by the deceased, so much so that he had post-traumatic stress disorder and partial loss of hearing in one ear. This was a less common case of spousal abuse of the husband by the wife instead. Dr Tommy Tan was examined as an expert witness and he stated that the risk of Lim suffering a relapse of post-traumatic stress disorder was small with regular and long-term medical follow-up and treatment. Given Lim's personality, the family support he enjoyed with regular visits by his mother and children and his compliance with treatment thus far, Dr Tommy Tan did not think that Lim was a danger to others. As the case displayed a remarkable lack of aggravating factors and a number of significant mitigating factors, and the interests of deterrence, rehabilitation and prevention did not mandate otherwise, a sentence near the lower end of the sentencing spectrum was meted out by the court.

73 What Sundaresh Menon JC said at [49] to [51] in relation to an accused suffering from a mental impairment is also pertinent to the present case before me:

> 49 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.

Conclusion

74 Having careful regard to all the facts and circumstances of the case, the aggravating as well as the mitigating factors, and the guidelines laid down by the Court of Appeal appropriate to cases under s 304(a), I decided that a sentence of 9 years imprisonment (backdated to the date of her remand) is a fair and appropriate sentence, which I believe is adequate on the whole to address the need for retributive punishment, deterrence, and to safeguard the public interest (including that of public safety), whilst at the same time, balancing them against those other mitigating factors in Aniza's favour and her need for treatment and rehabilitation.

75 I have taken the view that some judicial leniency is warranted instead of imposing the maximum punishment of life imprisonment, which is generally to be reserved for the category of very bad cases or the worst kind of cases that can be typically found under s 304(a). This is hardly a case that calls for the severest and harshest sentence that overrides or outweighs any leniency consideration on account of her previous clean record, her guilty plea, her relatively young age (which necessarily entails an extremely long imprisonment term as she is now only 24 years of age), and the fact that she is also the mother of two very young children, who will be denied her motherly care, love and affection were her sentence to be for her natural life. Consideration must also be given to the fact that Aniza unfortunately found herself trapped within a largely abusive and loveless marriage, filled with seemingly unending spousal violence which led to moderate chronic depression and her eventual impaired state of mind.

76 For all the above reasons, I think that a life sentence will be wholly disproportionate in the circumstances of this case. From an assessment of the imprisonment terms imposed in the cases alluded to in the brief survey above, I am of the view that the sentence that I imposed on Aniza is

neither manifestly excessive nor inadequate.

77 I noted the contents in Aniza's mitigation letter which she personally penned in prison (exhibit D). She wrote that she went through a terrible marriage life, underwent a lot of hardships and that really burdened and distressed her. She had nowhere to head to and nowhere to turn to for help. When she thought of committing suicide, the faces of her two kids would appear. Because of them, she built her hopes and went through hardships as a mother to them and ignored what she went through. Having learnt her lesson for the past 8 months in remand in prison, she said she would not want to go back to prison. She suffered a lot in prison and wants to be with her two kids and her family. She promised that she will really take care of her kids because they are her only treasure she has right now, besides her family. She pleaded for a chance to be a better person and a mother to her two beloved kids whom she misses and loves a lot. She wants to turn over a new leaf and be a good mother to her two kids and a good daughter to her parents. I decided to give this mother and daughter a chance.

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