IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 152

Criminal Case No 65 of 2015

Between

Public Prosecutor

And

Dewi Sukowati

GROUNDS OF DECISION

[Criminal Procedure] – [Sentencing]
[Sentencing]

Public Prosecutor
v
Dewi Sukowati

[2016] SGHC 152

High Court — Criminal Case No 65 of 2015
Foo Chee Hock JC
31 May 2016

16 September 2016

Foo Chee Hock JC:

1 The accused pleaded guilty to one charge of culpable homicide not amounting to murder under s 304(*a*) of the Penal Code (Cap 224, 2008 Rev Ed). The charge read as follows:

> That you, **DEWI SUKOWATI**,
>
> on the 19th day of March 2014, at about 7.30 a.m., at 43 Victoria Park Road, Singapore, did cause the death of one Nancy Gan Wan Geok, female/69 years old, with the intention of causing death, to wit, by hitting the back of the said Nancy Gan Wan Geok's head forcefully against a wall, hitting the said Nancy Gan Wan Geok's head forcefully against

> the edge of a step, and then flipping the said Nancy Gan Wan Geok face down into a swimming pool after, and you have thereby committed an offence of culpable homicide not amounting to murder, an offence punishable section 304(a) of the Penal Code, Chapter 224 (2008 Rev. Ed.).

2 The accused admitted the Statement of Facts ("SOF") without qualification. The narrative following ([3] to [13]) is extracted with minor amendments from the SOF.

3 On 19 March 2014, the sixth day of the accused's employment (with the deceased), at about 5.30 am, the accused woke up and began her daily chores. Two hours later, at about 7.30 am, the deceased woke up and rang the call bell, which the accused understood to be a signal for her to bring a glass of water to the deceased's bedroom.

4 The accused brought a glass of warm water on a tray to the deceased's bedroom, and knocked on the door. The deceased opened the bedroom door, and began to scold the accused in Bahasa Indonesia, "*Salah lagi, salah lagi, dasar gadis bodoh, apa pun tak tahu*", which means "wrong again, wrong again, very stupid girl, don't know anything" in English. The accused had delivered the glass of water on the wrong type of tray, despite the deceased's specific instructions previously.

5 The deceased then splashed the water in the glass onto the accused's face and threw the tray onto the floor. The accused squatted down and proceeded to pick up the tray. However, the deceased snatched the tray from the accused's hand and hit the left rear side of the accused's head with the base of the tray. The accused was still in a squatting position and the deceased was bending over in front of her. The deceased continued scolding the accused, saying in Bahasa Indonesia, "*Sudah saya bilang lupa lagi salah lagi, kalu kayak gini saya potong gaji kamu jadi dua ratus*", which means in English "I've already told you, you forget again, you make mistakes again, I will cut your salary until it becomes S$200/-".

6 At this point, the accused lost control of herself and suddenly grabbed hold of the deceased's hair with both the accused's hands and swung the deceased's head against the wall on her right with all the strength that the accused had. The accused had intended for the front of the deceased's head to hit the wall. However, the deceased resisted and the back of her head hit the wall instead. As a result of the blow against the wall, the deceased collapsed, unconscious and bleeding profusely from the back of her head. The deceased lay face down on the floor, with her left arm bent near her head, her right arm stretched to the back and both legs straight out.

7 The accused was frightened. Initially, she did not know whether the deceased was alive or merely unconscious. Confused, she stood up and squatted down a few times, thinking about what she had done. After about ten minutes, the accused flipped the deceased's body over to a supine position, so that she could check if the deceased was still breathing. The accused could not see whether the deceased was breathing, and placed her right ear on the deceased's chest. The accused could hear the deceased's heart beating weakly.

8 The accused was worried that if the deceased woke up and called the police, she would be arrested. She then decided to place the deceased's body in the swimming pool of the house so the deceased would drown and not be able to call the police.

9 Pursuant to her plan, the accused dragged the deceased's supine body by the hair with both her hands towards the swimming pool. The accused reached a ceramic-tiled step on the accused's way to the swimming pool. The accused recalled the deceased's daily scolding and criticism and became angry again. The accused grabbed the deceased's hair and slammed the back of the deceased's head against the edge of the step. Even more blood flowed out from the back of the deceased's head.

10 The accused continued to drag the deceased's body towards the swimming pool. Along the way, there were a few more steps and the accused grabbed the deceased by her pyjamas and dragged the deceased's body down the steps. The deceased's head and body hit against the steps multiple times in the process.

11 When the accused eventually arrived at the swimming pool, the accused arranged the deceased's body parallel to the edge of the swimming pool before flipping the deceased face down into the swimming pool. The accused then returned to the deceased's room to retrieve the deceased's sandals, and threw the said sandals into the swimming pool to give the impression that the deceased had committed suicide by drowning herself in the swimming pool.

12 The accused returned to the interior of the house, and cleaned up the blood trail from the deceased's bedroom to the swimming pool by mopping the floor multiple times. She used a cloth to wipe away the blood stains on the wall where she had initially swung the deceased's head against. She also threw away every blood-stained item that she saw in the house. The accused changed into a new set of clothes as the clothes that she was wearing had become stained with the deceased's blood. The accused soaked her blood-stained clothing in a pail in her room's toilet to get rid of the blood stains.

13 After the accused thought that she had cleaned up all traces of blood, she left the house and rang the doorbell of her neighbour's house. However, before the neighbour could answer the door, a despatch rider, one Mohammad Hasri bin Abdul Hamid ("Mohammad Hasri"), rode past. The accused told him in English, "Help me, my employer is in the swimming pool." The both of them then proceeded to the pool and Mohammad Hasri called the police.

14 The accused was remanded for psychiatric evaluation from 20 March 2014 to 10 April 2014 (para 26 of SOF). She was examined by Dr Kenneth Koh, Psychiatrist and Senior Consultant, Department of General and Forensic Psychiatry in the Institute of Mental Health, who found her to be "attentive and organized in her accounts" and there "were no psychotic features and her mood was not overtly depressed" (9 May 2014 report).

15 Dr Koh certified in his report dated 1 April 2015 that "at the moment of the offence" the accused was suffering from "an Acute Stress Reaction". The point that came through plainly from Dr Koh's reports was that the combination of this "disease of the mind" (1 April 2015 report) and the "socio-cultural factors" (1 April 2015 report referring to his 9 May 2014 and 22 January 2015 reports) led to the substantial impairment of "the accused's mental responsibility" for her offence (1 April 2015 report).

16 The "socio-cultural factors" were neatly set out in Dr Koh's 22 January 2015 report (see also his 9 May 2014 report) and summed up in para 3 of the report (at p 1):

> The combination of her very young age, her lack of exposure and sudden dispatch to a vastly different culture, the lack of proper training in how to cope with the vicissitudes of work, her past history of abuse and therefore enhanced sensitivity to further (alleged) abuse at the hands of a perfectionistic employer, interacted with the suddenness of the assault on a vital part of her person and conceivably caused her to have reacted instantaneously without heed of the consequences.

17 The report concluded (at p 2) that her "abnormality of mind at the material time would have caused her to be significantly impaired in her judgement and impulse control and therefore her mental responsibility for her actions, in a situation where she was (allegedly) acutely and severely provoked with insult and injury to her person". As for the accused's present condition, on the basis that the accused had not commenced on any psychiatric medication, it would appear that "she is free from any mental disorder currently" and "has a good prognosis from a psychiatric viewpoint" (Dr Koh's 14 May 2015 report).

18 At the end of the hearing, I sentenced the accused to an imprisonment term of 18 years, with effect from 19 March 2014, the date of her arrest. The accused has now appealed against the

sentence imposed, presumably on the ground that it is manifestly excessive (s 377(1) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC")).

19 Before I detail my reasons for imposing the above sentence, it should be noted that the defence had sought to adduce an affidavit of one Nurul Putri Mildanti ("Nurul"). Nurul was formerly a domestic helper for the deceased and in her affidavit, she averred that she was subjected to verbal and physical abuse by the deceased while she was in the deceased's employ. Nurul returned to Indonesia in March 2014. I decided that this affidavit was inadmissible on the basis that it was irregular and irrelevant (see Transcript, Day 1, p 48, lines 3 to 16). It was irregular because it did not comply with s 262 of the CPC.

20 Quite apart from the fact that the deceased had no opportunity to reply to what had been alleged, the prosecution was also not able to cross-examine Nurul or otherwise test the veracity of the contents of her affidavit.

21 More importantly, the affidavit was irrelevant. I took the view that this affidavit did not add anything to the relevant facts for sentencing since the SOF had already set out the circumstances leading to the commission of the offence and specifically included the acts of the deceased which precipitated the accused's actions. I

was also of the view that the accused was not prejudiced by the inadmissibility of this affidavit. In the circumstances, I declined to admit this affidavit into evidence.

22 On the appropriate sentence to be imposed, the prosecution submitted that a sentence of 20 years' imprisonment be imposed (Prosecution's Sentencing Submissions ("PP's WS") paras 4 and 50) while the defence argued for ten to 12 years' imprisonment (para 52 and 67 of Written Mitigation dated 30 May 2016 ("Mitigation")). The gulf was explicable essentially by the parties' reliance on two different groups of authorities.

23 The prosecution sought to justify the 20 years' imprisonment by reliance on *Public Prosecutor v Vitria Depsi Wahyuni (alias Fitriah)* [2013] 1 SLR 699 ("*Vitria*"), *Purwanti Parji v Public Prosecutor* [2005] 2 SLR(R) 220 *("Purwanti (CA)")*, *Public Prosecutor v Nurhayati (*CC 29/2012, unreported) ("*Nurhayati*") (case materials at Tab H of Prosecution's Bundle of Authorities ("PP's BOA")) and *Public Prosecutor v Barokah* [2008] SGHC 22 ("*Barokah*") (PP's WS paras 39 – 49) (the "first group of cases"). The defence on the other hand sought to show that in terms of culpability, the present case was closer to the other group of precedents set out in Annex A of the PP's WS (the "Annex A cases") where the sentences imposed were between ten to 13 years' imprisonment and hence were considerably lighter.

24 I first considered the defence's submissions on the Annex A cases. Their arguments appeared to focus mainly on two factors:

(a) The accused persons in the Annex A cases, like the present accused, were labouring under a mental disorder at the time of the offence (paras 61 – 66 of Mitigation).

(b) There was no premeditation on the part of the present accused or at least a lower level of premeditation than in the Annex A cases (paras 47, 62 – 66 of Mitigation; and Transcript, Day 1, p 44, lines 12 – 23).

25 With regard to the relevance of the mental disorder, regard must be had to the observations of the Court of Appeal in *Lim Ghim Peow v Public Prosecutor* [2014] 4 SLR 1287 ("*Lim Ghim Peow*") (at [35]):

> We would therefore reiterate that the existence of a mental disorder on the part of the offender does not automatically reduce the importance of the principle of general deterrence in sentencing. Much depends on the circumstances of each individual case. **If the nature of the mental disorder is such that it does not affect the offender's capacity to appreciate the gravity and significance of his criminal conduct, the application of the sentencing principle of general deterrence may not be greatly affected.**
>
> [emphasis added]

26 Indeed, in oral arguments, the prosecution submitted that the "dividing line" (Transcript, Day 1, p 29, lines 23 – 25) between the two groups of cases was the principle enunciated above.

27 The prosecution distinguished the Annex A cases from our present case based on "the severity of the mental disorders and the impact that the mental disorders suffered had on the accused's actions" (para 49 of PP's WS). It was argued that the mental condition of the present accused was "not so debilitating such that she was unable to appreciate the gravity and significance of her criminal conduct" (para 9 of PP's WS) (see also the prosecution's analysis (para 3 of PP's WS) of the offence into three distinct acts).

28 I had examined the nature of the mental disorders suffered by the accused persons in the Annex A cases. All of the accused persons in the Annex A cases exhibited psychotic symptoms and their mental disorders were clearly much more serious than the present accused's condition (see [14] – [17] above). After considering the different factual matrixes, I decided that in all the cases this was a significant distinguishing point. The sentences imposed were considerably lower because the "offender's capacity to appreciate the gravity and significance of his criminal conduct" (*Lim Ghim Peow* at [35]) was seriously inhibited. One could appreciate why specific deterrence had to be tempered in such cases where "that offender's mental disorder has seriously inhibited

his ability to make proper choices or appreciate the nature and quality of his actions" (*Lim Ghim Peow* at [36]).

29 Indeed in *Public Prosecutor v Tuti Aeliyah* (CC 29/2015, unreported) ("*Tuti*") (case materials at Tab I of PP's BOA), the accused "suffered from a severe mental disorder namely severe depression with psychotic symptoms" (report dated 29 October 2014, p 3) and had strong suicidal inclinations even during remand. She stated (at p 2 of the report) that "she had heard Satan's voice asking to kill the deceased prior to the alleged offence" and that "she does not know why she acted on the Satan's voice". The same report stated (at pp 3 – 4) that, "[i]t is highly likely that her judgment at the material time was significantly impaired due to her depressive cognitions, paranoid persecutory delusions and auditory hallucinations".

30 Additionally, I was minded to agree with the prosecution that the stated principle in *Lim Ghim Peow* justified the lower sentences in the Annex A cases, even though when analysed in detail, some features in the particular cases appeared to be more grievous than our present case.

31 For instance, in *Public Prosecutor v Than Than Win* (CC 34/2015, unreported) (case materials at Tab J of PP's BOA), the deceased was stabbed 21 times and the attack was a delayed

reaction from a scolding many hours before (paras 9, 15 and 25 of SOF in the case materials). In *Tuti*, it was validly observed by defence counsel that the victim (who was the accused's employer's 16-year-old daughter) had no altercation with nor did she provoke the accused (para 63 of Mitigation). I also took into consideration the defence's submission that in *Public Prosecutor v Yati* (CC 63/2015, unreported) (case materials at Tab K of PP's BOA) "there were elements of premeditation of the offence, the vulnerability of the deceased and betrayal of trust and reliance reposed in the Accused by the deceased and her family" and that Yati still required psychiatric treatment (para 66 of Mitigation).

32 As for the factor of premeditation, the considerations logically overlapped with those discussed above concerning the mental disorder. The discussion herein will reinforce the conclusions reached regarding the present accused's mental state. The prosecution (para 3 of PP's WS) analysed the fatal assault against the deceased into three distinct acts ("Three-Act Analysis"):

(a) grabbing the deceased by the hair with both hands and swinging the deceased's head against the wall ("First Act");

(b) slamming the back of the deceased's already bleeding head against the edge of a ceramic step ("Second Act"); and

(c) flipping the unconscious deceased face down into the swimming pool ("Third Act").

33 In their submissions (para 10 of PP's WS), the prosecution argued that:

> … The Accused had clearly demonstrated her ability to act with deliberation, as can be seen from her conduct during the commission of the offence and her efforts at concealing the offence after the event. The Second and Third Acts committed by the Accused were indisputably deliberate because they were consciously committed after the Accused had at least 10 minutes to compose herself pursuant to the First Act. Specific deterrence therefore remains relevant despite the Accused's mental disorder. A sufficiently long term of imprisonment is necessary to deter the Accused from committing further offences in future.

34 I was of the view that the prosecution's submissions were correct in fact and law. The defence contended (para 47 of Mitigation) that the accused "did not plan or had premeditate[d] to cause the death of the victim", the incident having resulted from the deceased's provocation and sudden fight between them. I found that even if the accused's First Act could be regarded as the result of her having "lost it", there was a sufficient pause for her to compose herself. There was also evidence that she was able to

appreciate the gravity and significance of her acts (paras 8 and 9 of SOF):

> 8. … The Accused could hear the Deceased's heart beating weakly.
>
> 9. The Accused was worried that if the Deceased woke up and called the police, she would be arrested. She then decided to place the Deceased's body in the swimming pool of the House so the Deceased would drown and not be able to call the Police.

35 As a matter of fact, she was able to complete the execution of her quickly conceived plan (para 10 of SOF). I pause here to observe that a short time frame did not negate the presence of premeditation and deliberate calculation as could be seen from the accused's acts here. Her acts of flipping the deceased face down into the swimming pool, returning to the deceased's room to retrieve her sandals and throwing them into the pool "to give the impression that the deceased had committed suicide by drowning herself in the swimming pool" (para 12 of SOF) were conscious acts attempting to conceal her offence and revealed her capacity to appreciate the gravity and significance of her criminal conduct. Her further acts were of the same nature: she cleaned up the blood trail "by mopping the floor *multiple times*" [emphasis added]; wiped away blood stains on the wall; changed into a new set of clothes; and soaked her clothing previously worn in a pail to get rid of the blood stains (para 13 of SOF). She rang the doorbell of her

neighbour's house only "[a]fter the Accused thought that she had cleaned up all traces of blood" (para 14 of SOF). Her ability to identify and obliterate the incriminating evidence and set the stage for a cover story that the deceased had committed suicide spoke to the level of thoughtfulness that must be taken into consideration when compared with the other cases.

36 I was therefore not persuaded by the defence that all the three acts could be viewed as emanating from the deceased's provocative acts and resulting "sudden fight" (para 47 of Mitigation). The accused herself admitted that she acted "[p]ursuant to her plan" (para 10 of SOF) after the First Act and she followed through to the point of ringing the doorbell of the neighbour's house (para 14 of SOF).

37 It was also suggested that the Second Act and Third Act were committed when the accused was in "a confused and panic state" (para 56 of Mitigation). I could not agree. The Second Act was driven by anger and revenge (para 10 of SOF), not confusion or a "panic state". As shown by the above analysis, the accused's Third Act and subsequent acts disclosed cold-blooded calculation as she methodically did all that was required to conceal her crime and obliterate the incriminating evidence. By the Second Act and Third Act, the accused finished the job and decisively ensured the deceased's death.

38 The defence took issue with the prosecution's Three-Act Analysis above. It was submitted that based on Dr Koh's report dated 1 April 2015, there was no evidence that the accused's mental capacity was impaired in the First Act but not the Second and Third Acts (Transcript, Day 1, p 45, lines 25 – 27). In my view, the defence had misconstrued the purport of the prosecution's submissions. The prosecution was not suggesting that the accused's abnormality of mind only had an impact on, or was only relevant in respect of, the First Act. Rather, the prosecution sought to highlight the level of deliberation and calculation present in the Second and Third Acts to show that, as a whole, the abnormality of mind suffered by the accused was not so severe as to rob her of her capacity to appreciate the gravity and consequences of her actions.

39 I turn now to consider the prosecution's reliance on the first group of cases. The prosecution submitted that the present case was "analogous" (para 29 of PP's WS) to *Vitria*, in that there were allegations of physical abuse and instances of name-calling over the period of five days the accused worked for her employer, who was "particular" and "impatient" ([31] of *Vitria*). The prosecution also submitted that the culpability of the present accused was "comparable" to the offenders in *Vitria* and *Nurhayati* (para 48 of PP's WS).

40 I will consider *Vitria* first. After examining the factual matrix, I agreed with the defence that the degree of premeditation involved in *Vitria* was more aggravating than on our present facts (paras 57 and 58 of Mitigation and [32] of *Vitria*). The Court of Appeal's account of the premeditation in *Vitria* (at [32]) should be highlighted:

> We could not ignore the fact that Vitria's acts were premeditated and were not committed "in hot blood". Everything was planned. The thought of killing the deceased recurred in Vitria's mind throughout the day after she was scolded for her lapses in the household chores. Much time had elapsed between the deceased scolding her and her deliberate action to kill the deceased. She waited till the deceased was asleep before attacking her, intending to catch her defenceless and at her most vulnerable moment. Vitria even considered that her pillow was too small to smother the deceased and thus stuffed it with two bed sheets. After she strangled the deceased, Vitria remained calm and composed as she disposed of the bloodstained items. She had the presence of mind to consider how to conceal her crime and admitted to putting up a "show" by getting help from the driver of a passing taxi (see [6] above). This was unlike those cases where the domestic worker's acts were in spontaneous response to some provocation (though not necessarily grave and sudden) from the employer or where the intention to kill was only formed while the domestic worker was engaged in a fight with the employer or the employer's relative. …

41 I was also *ad idem* with the defence that the Court of Appeal in *Vitria* had given "due weight that [Vitria] did not suffer from

any abnormality of mind" (para 60 of Mitigation). The Court of Appeal carefully considered the point in this way (at [33]):

> We also noted that unlike the domestic workers in *Juminem* ([17] *supra*) and *Rohana* who qualified for a plea of diminished responsibility, both Dr Phang and Dr Pathy found that Vitria did not suffer from any *mental illness or abnormality of the mind*. Instead, as Dr Pathy opined in her 2 June 2011 report, it was Vitria's immaturity and low tolerance for frustration that could have led her to choose "an inappropriate and tragic solution to her difficulties with her employer" (see [13] above). This was not, however, a sufficient excuse for the disproportionality of Vitria's response. Although Dr Pathy assessed Vitria to be of an "Extremely Low range of intelligence", it was not disputed that Vitria was aware of the nature and wrongfulness of her acts when she committed the offence and demonstrated thought and planning in committing the offence. …
>
> [emphasis added]

42 Applying the principle in *Lim Ghim Peow*, the degree of mental responsibility and culpability in *Vitria* must be higher than that of our present accused, who was certified to have a recognised mental disorder that qualified her under *Exception* 7 to s 300 of the Penal Code (see 1 April 2015 psychiatric report and the discussion at [14] – [17] above).

43 The two issues discussed (premeditation and absence of mental illness or abnormality of mind) and the need for deterrence in the public interest ([35] of *Vitria*) were amongst the factors in

the factual matrix which were highlighted and led the Court of Appeal to find that an imprisonment term of ten years imposed by the High Court was manifestly inadequate on the facts of *Vitria*. Consequently, the sentence was increased to 20 years' imprisonment.

44 In the considered view of the Court of Appeal in *Vitria*, the degree of culpability in *Vitria* was similar to that in *Purwanti (CA)* (see [31] of *Vitria*). *Purwanti (CA)* was a decision on s 304(*a*) of the Penal Code before the amendments in Penal Code (Amendment) Act 2007 (Act 51 of 2007). With regard to the punishment of imprisonment, at that point, the court only had the power to impose either life imprisonment or an imprisonment term of up to ten years. There was no option to impose an imprisonment term of up to 20 years, as is the position now after the said amendments to the Penal Code.

45 Once again the premeditation that drove the offence in *Purwanti (CA)* was a different kind from that present on our facts. In *Public Prosecutor v Purwanti Parji* [2004] SGHC 224 ("*Purwanti (HC)*"), V K Rajah JC, sitting as the High Court, summed that up (at [43]) as follows:

> This is a disturbing case with a number of aggravating features pointing unambiguously to a considerable degree of premeditation on the part of

> the accused. The accused has unjustifiably and abominably caused a tragic death.

46 Earlier on in *Purwanti (HC)*, Rajah JC expounded (at [39] and [40]) on this point in the following manner:

> 39 It is apparent that the accused did not act spontaneously or instinctively as a consequence of some grave and sudden or physical provocation[.] She bided her time that morning until the deceased took a nap. She then wilfully executed her desire and intention to kill the deceased. The systematic attempt to cover up her involvement in the homicide fortifies my view that she had carefully thought through the consequences of her conduct and the need to meticulously conceal her role in the diabolical act.
>
> 40 I also take into account the fact that the accused had the presence of mind to craftily simulate the appearance of a suicide soon after remorselessly strangling the deceased. The accused with remarkable *sangfroid* telephoned the police feigning ignorance about the deceased's death. She consciously sought out the neighbours and attempted to sow the seeds of a theory that the deceased had taken her own life.

47 The sentence of the High Court of life imprisonment was affirmed by the Court of Appeal. It was plain to see that the premeditation was regarded as an aggravating factor (see [27] – [29] of *Purwanti (CA)*). Indeed it was sufficient to trump the mitigating factor of the accused's young age (she was 17 years old at the time of the offence) because she was "calculating" in her offence ([34] and [35] of *Purwanti (CA)*).

48 Comparing *Purwanti (CA)* with our present case, it did not require much to conclude that Purwanti deserved a heavier sentence. The First Act of the present accused being committed "on the spur of the moment and in "hot blood"" ([27] of *Purwanti (CA)*) following the verbal and physical abuse by the deceased should be weighed in the balance. I repeat the point made above (at [42]) about the present accused having an abnormality of mind. Purwanti did not suffer from any mental illness as her own counsel pointed out ([22] of *Purwanti (CA)*) although the Court of Appeal found that she was "of unstable character" and likely to reoffend, which satisfied one of the conditions of the *Neo Man Lee v PP* [1991] 1 SLR(R) 918 test for the imposition of life imprisonment (see [22] and [23] of *Purwanti (CA)*).

49 Another precedent cited by the prosecution to support the imprisonment term of 20 years was *Nurhayati*. This was a truly tragic case where the accused pushed the employer's 12-year-old daughter over the parapet wall of the 16th floor of the HDB flat (para 16 of SOF in the case materials). She did so to make her employer's husband feel her pain and suffering while working for him (para 20 of SOF in the case materials). She then executed an elaborate scheme to conceal her crime, including a cover story that she was rendered unconscious and the deceased had been kidnapped by two persons. She removed all her clothes and laid on the mattress to suggest that she might have been sexually assaulted

by the kidnappers (paras 22 and 23 of SOF in the case materials). The High Court imposed a sentence of 20 years' imprisonment.

50 An insight into Nurhayati's mental state was offered by Dr Parvathy Pathy in the report dated 10 August 2011 (at para 5):

> Even though Nurhayati can be diagnosed as having an Adjustment Disorder with Depressed Mood, there is no evidence that it affected her perception of physical acts and matters, her ability to form a rational judgment as to whether an act is right or wrong and her ability to exercise willpower to control physical acts in accordance with that rational judgment. As such she did not suffer from an abnormality of mind at the time of the alleged offence.

51 Paragraph 28 of the SOF in the case materials added as follows:

> While the Accused was not of unsound mind at the time of the offence, there was evidence that she had difficulty adjusting to her work situation. Psychological testing showed that the Accused was functioning in the borderline range of intelligence.

52 With no abnormality of mind, Nurhayati displayed more thoughtful planning and the factual matrix there warranted a heavier sentence than our present case. Therefore in my judgment the sentence of 20 years' imprisonment advocated by the prosecution was not justified on our facts.

53 Finally, I considered *Barokah*, which was an "outlier" in the sense that it did not fit neatly into the flow of the analysis that the

dividing line between the two groups of precedents was the presence of a serious mental disorder that affected the offender's appreciation of his criminal conduct (see [26] above). Barokah *did* suffer from an abnormality of mind (*ie*, a moderate depressive disorder) and yet Tay Yong Kwang J sentenced her to life imprisonment. The case was unusual in that it was remitted to Tay J for a second hearing (see *Public Prosecutor v Barokah* [2009] SGHC 46 ("*Barokah 2*")) during which the defence took issue with Tay J's earlier finding that the accused also suffered from a "dependant personality disorder". This led Tay J to conclude that he was prepared to sentence the accused to life imprisonment even if she did not suffer from a dependant personality disorder (*Barokah 2* at [72]). A key factor which influenced Tay J's decision to impose this sentence was the accused's violent temperament and unstable employment history, which led to his observation that there was "every likelihood that something will flare up again and that someone in future will get hurt badly" (*Barokah* at [61]). In my view, this last factor was clearly distinguishable from the present case where Dr Koh had concluded that the present accused was unlikely to reoffend (see [56] below).

54 In short, the culpability of the accused here appeared to be much higher than that of the accused persons in the Annex A cases and yet not quite equivalent to the culpability of those in the first group of cases. In determining where exactly on the spectrum her

culpability lay, I was mindful of the sage advice of the Court of Appeal that "the question of [the] appropriate sentence is fact-sensitive" ([31] of *Vitria*).

55 On the one hand, I took into account the fact that the accused was a young (she was 18 years old at the time of offence), first-time offender who had pleaded guilty to the charge. Also, her personal circumstances were extremely unfortunate. As pointed out by the defence, she had been subject to abuse from a young age (paras 5 and 44 of Mitigation) and was sent to work in an unfamiliar environment without having had the benefit of the mandatory three-month training for domestic helpers (paras 10 – 13 of Mitigation). Instead she only received a "one (1) day crash course" (para 12 of Mitigation). To exacerbate matters, she found herself being subject to ill-treatment by the deceased from the first day of her employment (see Dr Koh's report dated 9 May 2014 and para 15 of Mitigation).

56 Additionally, I took into account Dr Koh's view that the accused had a "good prognosis from a psychiatric viewpoint" (see paras (c), (f) and (g) of Dr Koh's psychiatric report dated 14 May 2015). The accused was unlikely to pose a danger to herself and the circumstances of the present offence were noted to be fairly unique and unlikely to be repeated (see para (e) of the same report and para 39 of Mitigation). Dr Koh opined that, "[i]t would be

most appropriate though for her to be returned to her home country for her to be with her family and receive their support" (para (f) of the same report and para 40 of Mitigation). Expressed in another way, she has her whole life in front of her.

57 Having said that, I noted that in *Vitria, Purwanti (CA)* and *Nurhayati*, due to the aggravating factors present, the Court of Appeal considered it appropriate to impose a severe sentence of either life imprisonment or 20 years' imprisonment on the accused persons notwithstanding that they were young offenders (see *Vitria* at [31]–[32] and *Purwanti (CA)* at [34]–[35]). Similarly, in this regard, I could not ignore the brutality of the fatal attack. The victim who was almost 70 years old would fall within the class of vulnerable victims. Although I took account of the provocation by the deceased, I found that the accused's response was wholly out of proportion. The First Act of grabbing the deceased's hair and slamming the head "with all the [accused's] strength" (para 7 of SOF) against the wall was savage. The Second Act was violently executed against an already unconscious victim, who was totally at the accused's mercy. The prosecution also highlighted that the accused had "callously permitted the Deceased's injured head to hit against a few steps as she dragged the Deceased's body to the pool" (para 24 of PP's WS). It should be noted that the medical examination showed that even if the deceased had not drowned, "[h]er head injuries were sufficient enough in the ordinary course

of nature to cause death" (Dr Wee Keng Poh's report dated 2 January 2015). The accused had clearly betrayed the trust reposed in her as the deceased's caregiver and had assaulted the deceased in the sanctity of her home.

58 Bearing the above in mind, while there was some room for the rehabilitative principle, there was no doubt that deterrence was the paramount consideration here. Both general and specific deterrence were applicable on our facts. I had already cited *Lim Ghim Peow* (at [35]) for the proposition that the offender's mental disorder "does not automatically reduce the importance of the principle of general deterrence in sentencing". In *Vitria* (at [20]), the Court of Appeal agreed with *Purwanti (HC)* "that the sentencing considerations of **retribution and deterrence** are particularly relevant in cases of physical violence committed within the domestic worker-employer relationship" [emphasis added]. The Court of Appeal emphasised the "element of public interest in relation to such offences" (at [20]; and see also [35]).

59 Specific deterrence was also relevant here. Having regard to the aim of specific deterrence being "to deter the particular offender concerned from committing any further offences" ([36] of *Lim Ghim Peow*), and that the offence (especially the Second and Third Acts) involved elements of premeditation and a "conscious

choice to commit the offence" ([36] of *Lim Ghim Peow*), this factor had to be given due weight.

60 Therefore, considering the totality of the circumstances, I decided that the accused should be sentenced to an imprisonment term of 18 years, backdated to the date of arrest.

Foo Chee Hock
Judicial Commissioner

Chee Min Ping and James Low (Attorney-General's Chambers) for the prosecution;
Mohamed Muzammil bin Mohamed (Muzammil & Company) for the accused.
