IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 42

Magistrate's Appeals Nos 9079 and 9080 of 2017

Between

(1) Tay Wee Kiat
(2) Chia Yun Ling

… Appellants in MA 9079/2017/01 and MA 9080/2017/01
Respondents in MA 9079/2017/02 and MA 9080/2017/02

And

Public Prosecutor

… Respondent in MA 9079/2017/01 and MA 9080/2017/01
Appellant in MA 9079/2017/02 and MA 9080/2017/02

JUDGMENT

[Criminal Law] — [Offences] — [Hurt] — [Domestic maid abuse]

[Criminal Procedure and Sentencing] — [Sentencing] — [Benchmark sentences]

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v
Public Prosecutor and another appeal

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High Court — Magistrate's Appeals Nos 9079 and 9080 of 2017
Sundaresh Menon CJ, Tay Yong Kwang JA and See Kee Oon J
23 November 2017

2 March 2018 Judgment reserved.

See Kee Oon J (delivering the judgment of the court):

Introduction

1 Magistrate's Appeals Nos 9079 and 9080 of 2017 are cross-appeals by the accused persons and the Prosecution in a case involving the alleged physical abuse of a domestic helper. The accused persons appeal against their convictions and sentences while the Prosecution only appeals against the sentences imposed. The District Judge convicted the first appellant, Tay Wee Kiat ("Tay"), on 10 charges under s 323 read with s 73(2) of the Penal Code (Cap 224, 2008 Rev Ed) ("the Penal Code"), one charge under s 204B(1)(*a*) of the Penal Code, and one charge under s 182 read with s 109 of the Penal Code. The second appellant, Chia Yun Ling ("Chia"), was convicted of two charges under s 323 read with s 73(2) of the Penal Code.

2 Tay was sentenced to imprisonment terms ranging from three to nine months for each of the s 323 charges. He was also sentenced to six months' imprisonment for the s 204B(1)(*a*) charge and three months' imprisonment for the s 182 charge. The District Judge ordered five of the individual sentences to run consecutively. This resulted in an aggregate imprisonment term of 28 months for Tay. Chia was sentenced to two months' imprisonment for each of the s 323 charges. The District Judge ordered both of her imprisonment terms to run concurrently. The aggregate imprisonment term for Chia was therefore two months. The District Judge's grounds of decision are reported as *Public Prosecutor v Tay Wee Kiat and another* [2017] SGDC 184 ("the GD").

Background facts

3 Tay and Chia are husband and wife. The victim is Fitriyah ("the victim"), a 33-year-old Indonesian woman who worked as a domestic maid in the appellants' household from 7 December 2010 to 12 December 2012. During the time the victim worked for the appellants, the appellants employed another maid, Moe Moe Than, who was a witness to some of the incidents of abuse.

4 The incidents of abuse first surfaced after Moe Moe Than lodged a report with an employment agency in Myanmar, after she was sent home to Myanmar, about having been abused while working for the appellants. The report reached Ms Gerkiel Tey Puay Sze ("Ms Gerkiel"), an officer of the Employment and Standards Branch of the Ministry of Manpower ("MOM"). Ms Gerkiel made arrangements for Moe Moe Than to fly back to Singapore to assist in the investigations. On 12 December 2012, Ms Gerkiel lodged a police report of maid abuse.

5 On the same day, a party of police and MOM officers led by Inspector Muhammad Syawal Zain ("Inspector Syawal") visited the appellants' home. During the visit, SSSgt Chu Kok Min brought Moe Moe Than around the house to look for exhibits relevant to the investigations. SSgt Nur Zahidah Sidek ("SSgt Nur Zahidah") asked the victim in Malay whether she had been assaulted by the appellants. At this time, the appellants were standing near the area between the kitchen and living room. The victim replied that she had not been assaulted by the appellants. Inspector Syawal then told SSgt Nur Zahidah to bring the victim into one of the rooms to repeat the question to the victim privately and also to examine her for injuries.[1] Ms Gerkiel was present in the room. This time, the victim replied that she had indeed been assaulted. SSgt Nur Zahidah informed Inspector Syawal of this. Subsequently, the party of police and MOM officers left the house with Moe Moe Than and the victim together with some case exhibits.

6 On 13 December 2012, the victim was examined by Dr Michael Fung ("Dr Fung") at Khoo Teck Puat Hospital. Dr Fung subsequently prepared a medical report dated 21 December 2012. In the medical report, Dr Fung stated that there was tenderness on the victim's right forehead. Dr Fung stated that he did not see any visible injury on the victim's forehead, trunk and limbs. However, when he pressed her forehead, she expressed that it was painful.[2] At trial, Dr Fung gave evidence that with a blunt injury, it was possible for her to have tenderness and pain without exhibiting any visible injury.[3]

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1 Notes of Evidence ("NE")(27 April 2016) at ROP Vol 1 p 691 line 14–p 692 line 22.

2 NE (26 April 2016) at ROP Vol 1 p 671 lines 14–21.

3 NE (26 April 2016) at ROP Vol 1 p 672 lines 13–21.

The charges against Tay and Chia

7 The description and alleged facts of the 10 charges under s 323 read with s 73(2) of the Penal Code that Tay was convicted of are summarised in the table below:

Charge no	Description of charge	Alleged facts
MAC 902869/14	Sometime between June and December 2012, at the appellants' house, Tay slapped the victim on her face.	Tay ordered the victim to slap Moe Moe Than 10 times. Tay said the victim did not slap Moe Moe Than hard enough and said he would show her how to do it. He then slapped the victim hard on the left cheek.
MAC 902872/14 ("the Stool Incident")	Sometime in February 2011 at the appellants' house, Tay instructed the victim to stand on a stool whilst holding another stool above her head, and forced a plastic bottle into her mouth.	The appellants' daughter had swung a jacket which knocked a religious statue off the cabinet and caused it to break. Tay accused the victim of breaking the statue. As punishment, Tay instructed the victim to stand on a plastic stool on one leg and hold up another plastic stool with one hand. While she did this, Tay pushed an empty plastic bottle into her mouth. The victim had to stay in this position for about 30 minutes, until Chia told Tay that they were late for their Chinese New Year visiting.
MAC 902873/14 ("the Carpark Incident")	Sometime in February 2011 at the car park of Blk 925 Yishun Central, Tay pulled the victim out of the car and caused her to fall onto the road.	After the Stool Incident, the victim became fearful of Tay and requested a change of employer. Her request was denied. The victim thus stole $50 from Chia's wallet and admitted this to them, hoping that she would be sent back to Nation Employment Pte Ltd ("the maid agency"). Tay and Chia drove to the maid agency at

		Yishun with the victim seated in the rear passenger seat of the car. When the victim refused to get out of the car for fear that she would be scolded at the maid agency and nothing would be done to help her change her employer, Tay pulled her hand to get her out of the car. This caused her to fall out of the car and onto the ground. She felt pain in her chest as a result.
MAC 902874/14 ("the Second Caning Incident")	Sometime between June and December 2012, at the appellants' house, Tay hit the victim on the head with a cane.	Moe Moe Than and the victim were hit by Tay on their heads with a bundle of three canes tied together.
MAC 902875/14 ("the First Caning Incident")	Sometime between June and December 2012, at the appellants' house, Tay hit the victim on the head with a cane.	The appellants' daughter had lost a piece of paper from school. Tay accused the victim of throwing away her paper. When the victim denied this, Tay took a bundle of three canes, tied together with a rubber band, and hit her on the head a few times with it.
MAC 902876/14 ("the Push-Up Incident")	Sometime between May and December 2012, at the appellants' house, Tay instructed the victim to get into a push-up position and then kicked her on her body.	Immediately after the First Caning Incident, Tay made the victim and Moe Moe Than assume a push-up position near the balcony door. When in this position, Tay kicked the victim on her left waist, causing her body to hit the balcony door.
MAC 902877/14 ("the Falling Down Incident")	Sometime between January and December 2012, at the appellants' house, Tay grabbed the victim's chin and pushed her head	The appellants' son's forehead was swollen after he hit his head on the floor whilst playing at home. When Tay came home from work, the victim explained to Tay what had happened. Tay

	against a wooden cabinet.	pulled the victim by her hair to a room. He then grabbed her chin and pushed her head against the cabinet, causing her head to hit the edge of the cabinet.
MAC 902878/14	Sometime between January and December 2012, at the appellants' house, Tay hit the victim on the head with a bamboo stick.	Tay had accused the victim of stealing his Chinese medicine. When she denied it, he used a bamboo stick to hit her on the head more than once.
MAC 902879/14	Sometime between January and December 2012, at the appellants' house, Tay hit the victim on the head with a bamboo stick.	The appellants' daughter refused to study. When Tay returned home, he found his daughter sleeping instead of studying. The victim told Tay that she had tried to call him earlier, while he was at work, to report this, but did not get through. Tay then took a bamboo stick and hit the victim on her head with it many times despite her pleas for him to stop.
MAC 902881/14 ("the Prayer Incident")	Sometime between January and November 2012, at the appellants' house, Tay abetted Moe Moe Than by instigation to commit an offence of voluntarily causing hurt to the victim by instructing Moe Moe Than to slap her on the face.	Tay found that a white cloth he had placed over a Buddha statue in the house had been moved and accused the victim and Moe Moe Than of moving it. He instructed the victim and Moe Moe Than to clasp the palms of their hands together, kneel on the floor, bow their heads to the floor and get up – and to do this 100 times. He then instructed the victim and Moe Moe Than to slap each other 10 times and they did so.

8 The s 204B(1)(*a*) charge against Tay (DAC 908849/14) stated that on 12 December 2012, Tay had offered to pay the victim's full salary and send her back to Indonesia on condition that she abstains from reporting an offence of

voluntarily causing hurt committed by him. The s 182 charge (MAC 902884/14) stated that on 12 December 2012, Tay had instigated the victim into giving false information to the police, *ie*, that she had not been physically abused by Tay.

9 The particulars of the two charges under s 323 read with s 73(2) of the Penal Code that Chia was convicted of are as follows:

Charge no	**Description of charge**	**Alleged facts**
MAC 902891/14 ("the Bedsheets Incident")	Sometime between June and December 2012, at the appellants' house, Chia slapped the victim on the face.	Sometime during the second half of 2012, Tay detected a bad smell coming from the balcony where the washing machine was located. He found that the smell came from damp bedsheets. Tay questioned the victim about her failure to remind Chia to dry the bedsheets. When the victim said that she had reminded Chia, Chia denied this and slapped Fitriyah twice on her left cheek.
MAC 902892/14	On or about 7 December 2012, at the appellants' house, Chia punched the victim on her forehead.	Three to four days before the police and MOM officers visited the house, there were no more diapers inside the cupboard in the bedroom. Chia scolded the victim for not reminding her to replenish the diapers in the cupboard from the stock in the storeroom. The victim replied that it was Chia's duty to do so and she was not allowed to do so on her own. Chia punched the victim thrice on her forehead and said "bloody hell".

The appellants' defence before the District Judge

10 Before the District Judge, the appellants' main defence was one of complete denial. Both Tay and Chia denied doing any act to hurt the victim, and consequently denied that the victim suffered hurt. They contended that the alleged assaults by Tay could not have happened because he was often at work or overseas, or must have been fabricated because the items used to inflict the hurt were non-existent and were not retrieved by the police officers when they visited the appellants' house on 12 December 2012. They also argued that the fact that the victim had not reported the alleged assaults to a third party, despite having had opportunities to do so, pointed to the conclusion that her allegations were fabricated. They claimed that both the victim and Moe Moe Than had conspired to lie to the police in order to frame the appellants so as to effect a change of employers.

The District Judge's decision

11 The District Judge convicted the appellants on all charges. He based his decision mainly on the credibility of the evidence given by the victim and Moe Moe Than. He was satisfied that the victim's evidence was so compelling that the conviction of the appellants could be based entirely on it:

(a) The District Judge found the victim's evidence to be "mainly consistent" with "very few inconsistencies" and that the victim's inability to pinpoint the dates and times of most of the incidents of assault did not affect her credibility ([52] of the GD).

(b) The District Judge found the victim's demeanour to be that of a credible and truthful witness who did not attempt to embellish any part of her testimony ([56]–[57] of GD).

(c) The District Judge found that the victim's evidence was externally consistent with the evidence given by Moe Moe Than which corroborated the victim's account of five incidents of assault, *ie*, the First and Second Caning Incidents, the Push-Up Incident, the Prayer Incident and the Bedsheets Incident ([53] of the GD). The District Judge recognised that there were some minor discrepancies between the evidence given by Moe Moe Than and the victim, but these were "innocent" discrepancies which were not critical given the passage of time and human fallibility in observation and recollection ([53]–[54] of the GD).

(d) The District Judge also found that the appellants were not truthful witnesses. He observed that they were "defensive in their stance", unforthcoming, and had been belligerent during cross-examination ([77] and [93] of the GD).

(e) Finally, the District Judge dismissed the various other arguments advanced by the appellants, for example, that the victim would have reported the assaults earlier had they been true ([63]–[67] of the GD).

12 In sentencing the appellants, the District Judge was guided by *ADF v Public Prosecutor* [2010] 1 SLR 874 ("*ADF*"), where it was held that "a custodial sentence is almost invariably warranted in cases of domestic maid abuse where there has been any manner of physical abuse" (*ADF* at [91]). He found that there were no extenuating or exceptional circumstances warranting a departure from this position in this case (GD at [89]). On the contrary, it was aggravating that the victim had been put through punishments that "humiliated and degraded" her, such as being ordered to slap Moe Moe Than 10 times and being slapped by Moe Moe Than 10 times in turn, being made to perform worship rituals and being made to stand on a stool and have a plastic bottle

pushed into her mouth. These were "mean and vicious and bordered on torture" and "spoke volumes" about Tay's character (GD at [90]). Both appellants had also treated the victim in a manner that "bordered on the abusive", using abusive language on her when they were displeased and accusing her on one occasion of sleeping with a Bangladeshi worker (GD at [91]). Moreover, the victim was made to pen "humiliating confessions" about stealing food, and many of the assaults arose from mistakes that she had not made, but for which she was wrongly blamed. The picture which emerged was one of an "oppressive environment at the accused persons' household" (GD at [92]).

13 To make matters worse, the appellants showed no remorse for their actions. They were more focused on casting aspersions on the victim's credibility and blaming others than on the suffering that the victim had faced while in their charge (GD at [93]).

14 The District Judge considered the sentencing precedents tendered by the Prosecution, which showed that sentences for maid abuse ranged from three to six months' imprisonment. He thought the aggregate sentence ought to be higher than in *ADF* (two years' imprisonment) and *Ang Lilian v Public Prosecutor* [2017] 4 SLR 1072 ("*Ang Lilian*") (16 months' imprisonment) given the duration and nature of abuse, as well as the fact that both appellants had claimed trial. He also thought that the incidents involving the use of a cane or bamboo stick should attract a longer imprisonment term, and the Push-Up Incident should be dealt with the most harshly given its demeaning nature (GD at [99]). He thus imposed the following sentences on Tay:

(a) three months' imprisonment each for MAC 902869/14, MAC 902872/14, MAC 902873/14 and MAC 902884/14;

(b) four months' imprisonment each for MAC 902874/14 and MAC 902875/14;

(c) six months' imprisonment each for MAC 902877/14, MAC 902878/14, MAC 902879/14, MAC 902881/14 and DAC 908849/14; and

(d) nine months' imprisonment for MAC 902876/14.

15 The District Judge ordered five sentences to run consecutively, resulting in an aggregate sentence of 28 months' imprisonment.

16 The District Judge imposed two months' imprisonment for each of the two charges of which Chia was convicted, and ordered these to run concurrently.

The parties' cases on appeal

17 In their petition of appeal, the appellants contend that the District Judge erred on the following grounds:

(a) not giving sufficient regard to the Prosecution's amendment of the charges before and during the trial;

(b) finding that the victim and Moe Moe Than were credible witnesses;

(c) disbelieving the appellants' evidence;

(d) failing to rule on the impeachment application by the Prosecution against Tay; and

(e) finding that the appellants had failed to raise a reasonable doubt, based on the totality of the evidence adduced at trial.

18 The appellants are also dissatisfied with the sentences imposed by the District Judge on the ground that the individual and aggregate sentences imposed on the appellants were manifestly excessive having regard to all the circumstances of the case.

19 In its petitions of appeal, the Prosecution contends in turn that the individual and global sentences imposed by the District Judge were manifestly inadequate. It emphasises the duration of the abuse; the degree of harm caused to the victim; Tay's abuse of authority and subjection of the victim to humiliating and degrading punishment; Tay's attempts to avoid detection and prosecution; and his lack of remorse.

Appeals against conviction

Procedural arguments raised by the appellants

20 In their petition of appeal and written submissions, the appellants raise a number of procedural arguments:

(a) First, the appellants contend that the Prosecution's amendment of charges occasioned prejudice to the conduct of the appellants' defence at trial. The majority of the amendments to the charges involved replacing precise dates and times with a range of dates as well as amendments to the particulars of the assault, *eg*, from hitting the victim on the head with a cane to slapping her face.

(b) Second, the appellants argue that the way in which some of the amended charges were framed by the Prosecution resulted in double-counting offences. This is because some of the charges were phrased in the exact same terms. For example, the charges relating to the First Caning Incident and the Second Caning Incident both read:

> Sometime between June 2012 and December 2012 at… did voluntarily cause hurt to one Fitriyah, … by hitting her on the head with a cane, …

(c) Third, the appellants contend that the Prosecution failed to disclose the victim's statements to the police in breach of its obligations under *Muhammad bin Kadar and another v Public Prosecutor* [2011] 3 SLR 1205 ("*Kadar (No 1)*"). In particular, the appellants contend that in the light of the inconsistencies in the victim's evidence especially with respect to the dates and time of the abuse, the witness statements of the victim (where she would have likely provided details of the various incidents such as dates and times) fell within the Prosecution's disclosure obligations in *Kadar (No 1)*, namely, its obligation to disclose any unused material that is likely to be admissible and that might reasonably be regarded as credible and relevant to the guilt or innocence of the accused.

21 We do not think any of these preliminary objections has any force. First, the allegations pertaining to the amendment of the charges rest on the unrealistic expectation that some years after the events in question, a court should be presented with a perfectly matched set of testimonies, charges and submissions. The District Judge was fully alive to the reality that human observation and recollection can be fallible. Inconsistencies are inevitable since the victim and Moe Moe Than would not be able to pinpoint with exactitude the precise dates and times of the abuse, which occurred about four years before the trial. In our judgment, the critical issue is whether the totality of the evidence suggests that their evidence in respect of the material elements of the charges is untrue or unreliable. The fact that amendments were made to the dates in the charges and the precise formulation of how the alleged incidents occurred does not by itself undermine the veracity or reliability of the victim's evidence. In our view, the

District Judge was entitled to focus on whether the victim's evidence was consistent on matters of importance.

22 Most crucially, the amendments to the charges by the Prosecution did not prejudice the appellants in the conduct of their defence. The charges were amended at the very latest on 29 April 2016, at the close of the Prosecution's case and before the Defence was called. On the facts, we also do not see how anything turns on Tay's contention that the charges were amended only after his alibi notice had been given. There was sufficient opportunity for the appellants to reconsider their position and meet the Prosecution's case, for example by applying to recall witnesses.

23 There is still less substance in the alleged duplication or double-counting of the charges. Although some of the charges are phrased in identical terms, there is no doubt that the charges referred to separate and distinct incidents of abuse. The details pertaining to each charge were dealt with in the evidence and the submissions. In the GD, the District Judge fleshed out the relevant facts and the supporting evidence for each charge, including those which were phrased in identical terms (see [13]–[17] and [19]–[20] of the GD). The defence being essentially one of complete denial, we do not accept the suggestion that the appellants did not know the case they had to meet. We would only make an additional observation that in cases where multiple similar offences have allegedly been committed within a specified time span, it may be useful for the Prosecution to consider framing the charges in the following manner where appropriate: "On a first occasion between July and September 2014…."; "On a second occasion between July and September 2014…." and so on. This would enable the court, the parties and the witnesses to identify more clearly which incident is being referred to.

24 Turning finally to the appellants' contention that the Prosecution had breached its disclosure obligations, this is similarly founded on the point that there were amendments to the particulars of the charges and the dates when the alleged incidents occurred. Counsel for the appellants suggested at the hearing that the victim's statements to the police must have revealed inconsistencies prompting these amendments, and therefore formed material that ought to have been disclosed.

25 The starting point of the analysis is that the statements in question would not have been admissible. As stated in s 259 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("the CPC"), witness statements made by a person other than the accused are inadmissible unless they fall within the scope of the exceptions listed:

> **259.**—(1) Any statement made by a person other than the accused in the course of any investigation by any law enforcement agency is inadmissible in evidence, except where the statement —
>
> (*a*) is admitted under section 147 of the Evidence Act (Cap. 97);
>
> (*b*) is used for the purpose of impeaching his credit in the manner provided in section 157 of the Evidence Act;
>
> (*c*) is made admissible as evidence in any criminal proceeding by virtue of any other provisions in this Code or the Evidence Act or any other written law;
>
> (*d*) is made in the course of an identification parade; or
>
> (*e*) falls within section 32(1)(*a*) of the Evidence Act.

26 It is trite that the court does not have the power to depart from or vary the requirements of statute, and the Prosecution's obligations under *Kadar (No 1)* do not affect the operation of any ground for non-disclosure recognised by any law (*Muhammad bin Kadar and another v Public Prosecutor and another matter* [2011] 4 SLR 791 at [18]), including the CPC. The District Judge declined to invoke any of the exceptions to s 259 of the CPC as he saw no basis

for the Defence's application for disclosure, which was premised on counsel's assertion that there would have been inconsistencies in the victim's statements. In our view, the District Judge did not err in doing so. The Defence was unable to point to any other area where the victim had given previous inconsistent evidence on a material aspect, or to articulate anything which could form the basis for an application to impeach the victim's credit (which was not made in any case). There was nothing more specific beyond, in counsel's own words, his having "surmised" from "comparing the original charge with the amended charge"[4] that the victim must have been inconsistent in her accounts relating to the Stool Incident.

27 Given that the victim's statements to the police were likely to be inadmissible, the Prosecution would only be obliged to disclose them to the Defence if they "would provide a real (not fanciful) chance of pursuing a line of inquiry that leads to material that is likely to be admissible and that might reasonably be regarded as credible and relevant to the guilt or innocence of the accused" (*Kadar (No 1)* at [113(b)]). But it was not at all clear that the disclosure of the statements would provide a real chance of pursuing such a line of inquiry. As we have noted above (at [21]), we concur with the District Judge that inconsistencies on points of detail are not unexpected given the fallibility of human observation and recollection over time. With respect, this was no more than a speculative attempt to fish for possible inconsistencies, tenuously tethered to the contention that the particulars of the charge were amended because the victim must have changed her evidence. Taking counsel's argument at its highest and accepting that there were possible inconsistencies to be found in the victim's statements, this does not necessarily or by itself entitle the Defence to disclosure or it would otherwise entail what could well amount to a general "duty" to disclose the victim's statements. *Kadar (No 1)* does not

4 NE (7 April 2016) at ROP Vol 1 p 404 lines 19–25.

purport to go that far, or else the exceptions to s 259 of the CPC would almost invariably be the rule rather than exceptions.

28 The appellants' challenge premised on *Kadar (No 1)* is in any event met squarely by the Prosecution's confirmation at the hearing that it had reviewed the relevant material and determined that there was nothing meriting disclosure. In short, nothing relevant was kept from the appellants. The presumption of constitutionality applies in relation to the Prosecution's duty of disclosure under *Kadar (No 1)*, and it is for the appellants to satisfy the court that there exist reasonable grounds to believe that the duty has been breached (*Lee Siew Boon Winston v Public Prosecutor* [2015] SGCA 67 at [8]–[12]). The mere fact that the charges had been amended did not constitute such grounds.

Credibility of the victim's evidence

29 The appellants' case on this front rests largely again on highlighting various internal and external inconsistencies in the victim's evidence. However, these inconsistencies were carefully considered by the District Judge and there is nothing in the GD to suggest that he was not alive to the inconsistencies. On the contrary, the District Judge set out the relevant principles to be applied in the evaluation of the evidence in a case such as this (see GD at [46]–[51]) and formed his conclusions after a thorough review and analysis of the evidence.

30 It is evident that the District Judge applied the relevant principles correctly. He considered the internal consistency of the victim's evidence and assessed areas where there appeared to be weaknesses (GD at [52]–[57]). He also carefully considered the overall consistency of the victim's evidence with the evidence of Moe Moe Than (GD at [13]–[17], [21]–[24], [53], [58] and [59]) and noted areas where the two helpers could have but obviously did not tailor their evidence to fit each other's versions. Moreover, they spoke different languages and would have found it

difficult to conspire to fabricate evidence against the appellants. This reinforced their credibility. The District Judge then considered the appellants' claims in relation to the evidence and rejected their contentions involving:

(a) the victim and Moe Moe Than conspiring to mount a false claim;

(b) how the victim and Moe Moe Than ought to have reported the assaults earlier if they had indeed been assaulted; and

(c) the handwritten notes allegedly written by the victim and Moe Moe Than which made no mention of any abuse, which the appellants claimed showed that no abuse had occurred.

Internal inconsistencies in the victim's evidence

31 It is apposite to reiterate the holding in *Public Prosecutor v Singh Kalpanath* [1995] 3 SLR(R) 158 at [54] and [60] in respect of inconsistencies in a witness' evidence, especially when a significant period of time has lapsed:

> 54 … I reiterate what I said in *PP v Gan Lim Soon* [1993] 2 SLR(R) 67 at [7]:
>
> > As with so many cases, where the lapse of time has caused memories to blur and fade, and result in throwing up many discrepancies in evidence, it is vitally important that courts do not lose sight of the wood for the trees. District judges and magistrates, especially, would be well advised to sit back sometimes, and decide what the essentials of the case are and in fact what the case is all about. …
>
> …
>
> 60 … Adequate allowance must be accorded to the human fallibility in retention and recollection. It is also common to find varying accounts of the same incident by the same person. *No one can describe the same thing exactly in the same way over and over again* …
>
> [emphasis added]

32 In the present case, as we observed in addressing the preliminary objections relating to amendments to the charges (at [21] and [27]), it should be borne in mind that the trial occurred some four years after the alleged incidents of abuse. In the circumstances, it was reasonable, as rightly found by the District Judge, for the victim to have difficulty recalling specific dates and times for each event. In any event, the majority of the charges brought do not mention specific dates and times but were framed in terms of a broad range of dates. Thus, the victim's inability to specify precise dates and times does not lead to the conclusion that the charges are not proved.

33 With respect to the inconsistencies relating to how the hurt was caused, we find that while there were inconsistencies which emerged from the evidence, these are not material. We address these inconsistencies in turn.

(1) The Carpark Incident

34 The appellants contend that the victim was inconsistent in her account of the circumstances leading up to the Carpark Incident. During cross-examination, the victim stated that her luggage had been searched by the appellants but disagreed that she had packed her luggage to be brought to the maid agency.[5] When it was later put to her that Chia had insisted on searching her luggage, the victim stated that she did not have any luggage and that the luggage had been placed at the maid agency.[6] The question was repeated immediately and she reverted to her earlier version of events and agreed that her luggage had been searched.[7]

35 Although we accept that this amounts to an inconsistency, we do not think it is sufficiently material to displace the overall credibility of the victim's

5 NE (7 April 2016) ROP Vol 1 p 366 lines 10–12; p 368 lines 16–24.

6 NE (7 April 2016) ROP Vol 1 p 369 lines 3–7.

7 NE (7 April 2016) ROP Vol 1 p 369 lines 8–10.

account with respect to the Carpark Incident. This is because the Carpark Incident mainly concerned the victim being pulled out of the car by Tay. It is undisputed that Tay and Chia had driven the victim to the maid agency with the victim in the rear passenger seat. Tay even admitted that he had used his right hand to hold the victim's left arm to "persuade" her to get out of the car.[8] The only material disputed issue is whether Tay had pulled her out of the car. The circumstances leading up to the Carpark Incident, such as the existence of her luggage in the appellants' house are, at best, peripheral matters which do not go to the heart of the charge.

(2) The Prayer Incident

36 The appellants contend that there is an inconsistency between the victim's evidence-in-chief ("EIC") and her statements to the police in December 2012 after she was taken away from the appellants' home, with respect to the Prayer Incident. According to the victim, she had told the police in 2012 that the Prayer Incident involved Tay using a cane to hit her. During her EIC, she testified that the Prayer Incident culminated in Tay directing the victim and Moe Moe Than to slap each other 10 times. Despite the inconsistency, we find that the District Judge was correct to accept her evidence on the Prayer Incident. This is mainly due to Moe Moe Than's corroborative testimony that she had slapped the victim at the instigation of Tay after they were both made to "worship" in front of the "altar" 100 times.[9] We also consider that the victim's candid disclosure of this inconsistency on the stand showed that she was a generally honest witness who was concerned with telling the truth.

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8 NE (19 September 2016) at ROP Vol 2 p 507 lines 15–18.

9 NE (4 April 2016) at ROP Vol 1 pp 70–72.

(3) The Falling Down Incident

37 The appellants contend that there is an inconsistency between the particulars in the charge that was framed before the trial and the evidence given by the victim during the trial. The charge framed before the trial alleged that Tay had slapped, kicked, pulled the victim's hair, grabbed her chin, and pushed her head against the wooden cabinet. On the other hand, the victim's evidence during cross-examination was that her hair was pulled, her chin was grabbed and that she had been pushed against the cabinet; she said there was no slapping or kicking.[10]

38 In our judgment, this evidence did not cast doubt on the conviction. Though the victim's evidence at trial was that kicking and slapping had not occurred, contrary to what was originally stated in the charge, she unwaveringly affirmed that Tay had pulled her hair, grabbed her chin and pushed her head against a wooden cabinet. The Prosecution applied for leave to amend the charge at the close of the Prosecution's case to the following:

> … did voluntarily cause hurt to one Fitriyah, a domestic maid employed to work in your household, to wit, by grabbing her chin, and pushing her head against a wooden cabinet, …

Thus, the victim's evidence at trial fell squarely within the particulars of the amended charge.

(4) The First Caning Incident

39 The appellants contend that there is an inconsistency between the victim's testimony during EIC and under cross examination. During EIC, the victim testified that a bundle of three canes was used in the First Caning Incident. [11] Under cross examination, the victim testified that a bamboo stick

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[10] NE (8 April 2016) at ROP Vol 1 p 513 line 3 – p 514 line 3.

[11] NE (6 April 2016) at ROP Vol 1 pp 273–275.

was used in the First Caning Incident.[12] The victim then conceded that she did not know if it was a bundle of three canes or a bamboo stick that was used in the First Caning Incident.[13] Despite the victim's inconsistency as to whether a bundle of three canes or a bamboo stick was used, we find that the District Judge was correct to find that this inconsistency was not material to the charge. This is because the inconsistency did not affect her evidence that she was hit with a type of stick instrument, whether a bunch of three canes or a bamboo stick. Both could fall within the wording of the charge.

External consistency of the victim's evidence

40 To establish their case against the victim's credibility, the appellants also allege a number of external inconsistencies. In our judgment, none of these so-called inconsistencies is sufficient to affect the District Judge's overall findings on the evidence.

(1) The lack of DNA on the canes

41 The appellants contend that the lack of the victim's DNA on the canes, Exhibits P23 and P24, is objective evidence that goes against the victim's account that she was hit with a bundle of three canes in the First Caning Incident and the Second Caning Incident. As admitted in the appellants' submissions, this point was largely unexplored and was not emphasised in the trial before the District Judge. No questions were put to any witnesses regarding the DNA testing. No report from the Health Sciences Authority was in evidence, so it is not known how the canes were swabbed or tested. In any event, it is totally inconclusive as there may be any number of reasons as to why the victim's DNA was not found on P23 and P24. For example, the canes could have been wiped or cleaned or even replaced by the appellants after the assaults.

12 NE (8 April 2016) at ROP Vol 1 p 447 line 12 – p 448 line 6.

13 NE (8 April 2016) at ROP Vol 1 p 494 line 9 – p 495 line 5.

(2) No corroborating evidence from the police and MOM officers

42 The appellants point out that the victim testified that the police and MOM officers who spoke with her on 12 December 2012 had seen a swelling on her head and asked her about it, but this was not corroborated by the evidence of the police and MOM officers. In our view, the lack of corroborating evidence from the police and MOM officers does not undermine the victim's evidence. As emphasised earlier, about four years had elapsed since 12 December 2012 when the police and MOM officers visited the appellants' house. This might have accounted for the inability of the various officers to remember whether they had seen or asked about her swelling.

(3) Information recorded in Dr Fung's medical report

43 The appellants contend that the victim's evidence that she did not give the information recorded in paragraphs 2 and 3 of Dr Fung's medical report is inconsistent with Dr Fung's evidence that his practice is to obtain information from the patient directly. In our view, this inconsistency is once again not material. The medical examination occurred four years ago and it is not improbable that Dr Fung's and/or the victim's recollections of the event are inaccurate. Moreover, Dr Fung mentioned that other persons (including police officers, a professional interpreter provided by the police and Malay-speaking nurses)[14] may have been in the room and may have assisted in interpretation. In any case, the details contained within Dr Fung's medical report are broadly consistent with the account of the victim before the District Judge.

(4) Moe Moe Than's evidence corroborates the victim's account

44 The District Judge found that Moe Moe Than's account corroborated the victim's account on the material particulars of five incidents, *ie*, the First and

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14 NE (26 April 2016) at ROP Vol 1 p 678 line 14 – p 679 line 9.

Second Caning Incidents, the Push-Up Incident, the Prayer Incident and the Bedsheets Incident. The appellants contend that there are various inconsistencies between Moe Moe Than's and the victim's evidence. Although there are some discrepancies between the victim's and Moe Moe Than's evidence, we agree with the District Judge that they are minor and "innocent" discrepancies and are "not critical", given the passage of time and human fallibility in observation and recollection. Some of the inconsistencies, for example relating to the Push-Up Incident, pertained only to the sequence in which the incidents occurred.

(5) The maid agency employee did not observe any injuries on the victim after the Carpark Incident

45 The victim claimed that the skin on her elbows was scraped off and her clothing was slightly dusty due to the fall sustained from the Carpark Incident. The appellants contend that the victim could not have been in such a state given the evidence of Ms Sherlyn Low Yee Huang ("Ms Sherlyn Low"), an employee with the maid agency, that if she had seen a maid in soiled clothing or injured, she would ask them what had happened and tend to them. Ms Sherlyn Low further claimed that she had never dealt with a maid with fresh injuries and soiled clothing while working at the maid agency. However, Ms Sherlyn Low did not assert that the victim was not in such a state; in fact, she could not even recall the victim at all.[15] In the circumstances, there would be no reason to point to any inconsistency on account of Ms Sherlyn Low's evidence. In any case, there was every possibility that even if Ms Sherlyn Low did see the victim after the Carpark Incident, she simply did not notice the alleged injury on the victim's elbows or her dusty clothes.

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15 NE (28 April 2016) at ROP Vol 2 p 106 lines 1–10.

(6) The victim's account of the Carpark Incident

46 The appellants contend that the victim's account of the Carpark Incident was improbable because it was unlikely that she fell flat on the carpark floor given the way that she was seated in the car. First of all, little can be made of this point because the sketch which the victim drew of the car and her landing position was not drawn to geometric proportions or with technical accuracy. Moreover, this is an immaterial point as the substance of the victim's complaint does not concern the position in which she landed eventually on the carpark floor but rather the fact that Tay had pulled her out of the car forcefully.

(7) The victim's failure to extricate herself

47 The appellants contend that the victim's failure to report the abuse to the police or complain to the doctors during her biannual medical check-up, despite having had the opportunity to do so, was incongruous with her allegations of abuse. The appellants also claim that the victim's renewal of her employment contract with the appellants was also incongruous with her allegations of abuse. We reject this contention. The fact that the victim had not attempted to escape or seek help despite the alleged abuse she suffered is neither here nor there. Not doing so could equally show the extent of the victim's vulnerability and fear of her employer (*Ang Lilian* at [41]). In the present case, the victim and Moe Moe Than were made to believe that they were being constantly monitored by multiple CCTV cameras,[16] which could well have stopped them from seeking help. The difficulties faced by domestic maids in reporting abuse have been recognised by the Court of Appeal in *ADF* at [61]:

> … Many domestic maids work within the confines of the employer's home and have little contact with the rest of the society. Often, they are not well educated and cannot speak English or effectively communicate with the wider public.

[16] NE (4 April 2016) at ROP Vol 1 p 207 lines 16–17; NE (25 April 2016) at ROP Vol 1 p 543.

> Further, not all cases of abuse come to light as some maids may be apprehensive about the consequences of seeking help in a foreign environment. Less educated maids may also not be aware of their rights and the severe view taken by the authorities here in relation to substantiated complaints. Lee Han Shih, "Silence on maid abuse must end", *Business Times* (27 July 2002), observed:
>
> > Many maids come from a background which carries with it a natural fear that the police are working for the rich, and are reluctant to seek their protection even when the opportunity presents itself …

48 Further, the victim adequately explained her passivity. She claimed that the appellants had assured her that they would not hit her again if she renewed her employment contract. With respect to not reporting the incidents of abuse to the doctors during her biannual medical check-ups, she explained that on the occasion when she went for the medical check-up on her own, unaccompanied by the appellants, she did not have any visible injuries and so she thought that the doctor would not be in a position to be able to help her as he or she was not a police officer.

The appellants' evidence was not credible

49 In our opinion, the District Judge was correct in finding that the offenders were untruthful and evasive witnesses, and whose evidence was not worthy of credit. The District Judge found the appellants to be "defensive in their stance", unforthcoming, and to have spent a significant amount of time being belligerent. For instance, instead of answering straightforward questions posed to them in cross-examination, they chose to highlight alleged discrepancies in the maids' evidence or raise arguments. The District Judge even had to caution the offenders numerous times against making legal submissions on the stand. For instance, two contentions that the offenders themselves raised were that the charges had been amended several times, and that the dates and times of the offences were insufficiently particularised.

50 For completeness, there is also no merit in the appellants' assertion that the District Judge erred in failing to rule on the impeachment application by the Prosecution against Tay. As a matter of law, the District Judge was not required to make a ruling on the impeachment application immediately, and it was sufficient for him to rule on it at the end of the case; see *Loganatha Venkatesan and others v Public Prosecutor* [2000] 2 SLR(R) 904 at [56]:

> In our opinion, there is no requirement that the trial judge must, at any stage of the trial, make a ruling on whether the credit of the witness is impeached. All that is required is that the court must consider the discrepancies and the explanation proffered by the witness for the purpose of an overall assessment of his credibility. In this regard, it is important to bear in mind that an impeachment of the witness's credit does not automatically lead to a total rejection of his evidence. The court must carefully scrutinise the whole of the evidence to determine which aspect might be true and which aspect should be disregarded … Thus, regardless of whether his credit is impeached, the duty of the court remains, that is, to evaluate the evidence in its entirety to determine which aspect to believe. …

In this regard, the District Judge had at [70]–[72] of the GD adequately weighed all aspects of the evidence before making the finding that Tay's testimony should not be believed and that he was unworthy of credit. That finding, which we see no reason to disturb, is unaffected by the lack of a ruling on the impeachment application.

51 We turn now to the appeals against the appellants' sentences.

Appeals against sentence

52 The Prosecution appealed against the sentences for eight of the 12 charges against Tay and both charges against Chia. The following table compares the sentences imposed on Tay with the sentences which the Prosecution submits should be imposed:

S/n	Charge	Sentence imposed (imprisonment)	Prosecution's submission
1	MAC 902869/14	3 months	3 months (consecutive)
2	MAC 902872/14	3 months	4 months
3	MAC 902873/14	3 months	3 months
4	MAC 902874/14	4 months (consecutive)	9 months
5	MAC 902875/14	4 months	9 months
6	MAC 902876/14	9 months (consecutive)	10 months (consecutive)
7	MAC 902877/14	6 months	9 months (consecutive)
8	MAC 902878/14	6 months	9 months
9	MAC 902879/14	6 months	9 months
10	MAC 902881/14	6 months (consecutive)	10 months (consecutive)
11	MAC 902884/14	3 months (consecutive)	3 months
12	DAC 908849/14	6 months (consecutive)	6 months (consecutive)
Total		28 months	38 months

53 The Prosecution also submits that the sentence imposed on Chia for each of her offences should be three months' imprisonment instead of the two months' imprisonment imposed by the District Judge.

54 The appellants did not address the sentences in their written submissions, although their petitions

of appeal stated that the individual and aggregate sentences imposed by the District Judge were "manifestly excessive having regard to all the circumstances of the case", and prayed that they be reduced.

55 The need for greater clarity and guidance in the sentencing of maid abuse offences was recently noted in *Janardana Jayasankarr v Public Prosecutor* [2016] 4 SLR 1288 ("*Janardana*"). There, Sundaresh Menon CJ stated at [23] that voluntarily causing hurt to a domestic maid was "an area of sentencing that may benefit from a proper review in an appropriate case", with a view to elucidating the sentencing considerations that the courts should take into account. This case appeared to present an opportunity to do so. We therefore appointed a young *amicus curiae*, Ms Monica Chong Wan Yee ("Ms Chong"), to put forward views on the appropriate sentencing framework for offences under s 323 read with s 73 of the Penal Code. The Prosecution also gave its views on the same.

Young amicus curiae's proposed sentencing framework

56 Ms Chong proposed a two-stage sentencing framework. First, the court would determine the seriousness of the offence based on (1) harm and (2) culpability. She proposed three degrees of harm (from "1st degree", being the most serious, to "3rd degree", being the least serious) and two degrees of culpability (either "higher" or "lower", depending on a list of indicative factors). The indicative range and starting point would then be determined based on the matrix below:

	Lower Culpability	**Higher Culpability**

1st degree Harm	Category 1A Indicative start: 9 months Indicative range: 7–18 months	Category 1B Indicative start: 20 months Indicative range: 18–36 months
2nd degree Harm	Category 2A Indicative start: 4 months Indicative range: 2.5–7 months	Category 2B Indicative start: 8 months Indicative range: 7–18 months
3rd degree Harm	Category 3A Indicative start: 4 weeks Indicative range: 3–10 weeks	Category 3B Indicative start: 3 months Indicative range: 2.5–7 months

57 After the court derives the indicative starting point and range from the above matrix, the second stage requires the court to consider the offender-specific aggravating and mitigating factors and adjust the sentence accordingly.

58 Of Ms Chong's six possible permutations of harm and culpability, the most serious category (*ie*, 1st degree harm combined with high culpability) occupied the upper half of the sentencing range (*ie*, from 1½ years to 3 years). The five other permutations essentially fell into the first half of the sentencing range. This would suggest that only the worst type of cases would attract sentences in the upper half of the available range.

The Prosecution's proposed sentencing framework

59 The Prosecution proposed a sentencing matrix involving three degrees of harm and culpability each. The three degrees of harm and culpability were not defined, although the Prosecution provided the following non-exhaustive

list of factors going to culpability (many of which, we note, were also raised by Ms Chong):

(a) planning or pre-meditation;

(b) the use of gratuitous violence;

(c) intentionally targeting vulnerable body parts;

(d) using an implement (*eg*, weapon or instrument) in inflicting hurt;

(e) high degree of exploitation of the victim's vulnerability;

(f) prolonged period of abuse, particularly if the severity of the abuse escalates over time;

(g) gratuitous degradation or humiliation of the domestic maid;

(h) cruel, inhuman or malicious treatment of the domestic maid;

(i) institution of an oppressive working and living environment for the domestic maid;

(j) taking steps to prevent the domestic maid from reporting an incident or testifying; and

(k) a lack of genuine remorse.

60 Having assessed the degree of harm and culpability, the court would obtain an indicative starting point as follows:

Category	**Circumstances**	**Indicative starting point**
1	Low degree of harm and low degree of culpability	3 months

2	Low degree of harm and high degree of culpability; moderate degree of harm and culpability; or high degree of harm and low degree of culpability	9 months
3	High degree of harm and high degree of culpability	18 months

61 The table applies to cases where a first-time offender claims trial to the offences. A discount might be accorded where the offender pleads guilty out of remorse.

62 Having considered the submissions, we adopt a modified sentencing framework that differs somewhat from both Ms Chong's and the Prosecution's proposals, although it shares many elements in common with both proposals.

Preliminary observations

63 The relevant portions of s 73 of the Penal Code state:

> **73.**—(1) Subsection (2) shall apply where an employer of a domestic maid or a member of the employer's household is convicted of —
>
> > (*a*) an offence of causing hurt or grievous hurt to any domestic maid employed by the employer punishable under section 323, 324 or 325;
> >
> > …
>
> (2) Where an employer of a domestic maid or a member of the employer's household is convicted of an offence described in subsection (1)(*a*), (*b*), (*c*), (*d*) or (*e*), the court may sentence the employer of the domestic maid or the member of his household, as the case may be, to one and a half times the amount of punishment to which he would otherwise have been liable for that offence.

64 The wording of s 73 may seem to suggest that the court should simply determine what the appropriate sentence would be under s 323 of the Penal Code, and then multiply it by one and a half times to obtain the sentence for the

offender. However, that would be inadvisable for various reasons. First, it would require shoe-horning extreme cases of voluntarily causing harm to a domestic maid into the two-year sentencing range under s 323. Second, as Ms Chong pointed out, that method could create problems with double-counting and would be artificial. The extent of the victim's vulnerability as a domestic maid might then have to be consciously disregarded in determining the appropriate sentence under s 323, since this finds expression in the multiplier that is then applied to that sentence. Third, it would be wrong to approach sentencing in maid abuse cases as though they are like any other s 323 case, as the sentencing considerations would be different. For example, the authors of *Sentencing Practice in the Subordinate Courts* (LexisNexis, 3rd Ed, 2013) suggest at p 176 that the dominant sentencing factors for s 323 offences are "the degree of deliberation, the extent and duration of the attack, the nature of the injury and the use of a weapon (ie the dangerousness of it)". However, maid abuse often occurs in circumstances of inherent inequality and oppression, distinguishing such offences from many other s 323 cases. While the foregoing factors remain relevant, other factors like mental abuse and humiliating or degrading treatment also assume significance.

65 Section 323 of the Penal Code was plainly not written with the abuse of domestic maids in mind. It sits at the lower end of a spectrum penalising different degrees of harm caused by different means and for different purposes (see ss 319–338 of the Penal Code generally). The gravamen of the offence lies in the causation of hurt, which is defined in s 319 of the Penal Code as "bodily pain, disease or infirmity". It also bears mention that illegal omissions may also give rise to an offence of voluntarily causing hurt (see ss 32 and s 323 of the Penal Code) – for example, intentionally starving a domestic maid, as was the case in *Public Prosecutor v Lim Choon Hong and another* [2017] 5 SLR 989.

66 The harm that ensues from the abuse of a domestic maid often but does not always consist solely in physical hurt. Psychological abuse, in conjunction with physical harm, is what characterises egregious instances of maid abuse and makes them especially abhorrent. A number of the cases which have come before the courts have manifested blatant displays of violence, cruelty, and humiliating and demeaning (even dehumanising) behaviour. As was pointedly observed by Chao Hick Tin JA in *Soh Meiyun v Public Prosecutor* [2014] 3 SLR 299 ("*Soh Meiyun*") at [44]:

> … [S]ome employers reduce them to their function of providing domestic help instead of seeing them as human beings with aspirations, interests, intellect and more. These employers might treat their maids as second-class persons who ought to endure uncomplainingly conditions at which they themselves would be aghast. When such employers perceive that their maids have underperformed, harsh reprimands and even invective may be considered par for the course; this could graduate by degrees to physical assault …

67 The dimension of psychological abuse may be underemphasised in cases of maid abuse, although both the Prosecution and Ms Chong recognised its significance in their submissions. It is perhaps best expressed in *Public Prosecutor v Chong Siew Chin* [2001] 3 SLR(R) 851. The offender in that case was convicted on three charges under s 323 read with s 73 of the Penal Code for slapping the victim on her face on three separate occasions on the same day. Yong Pung How CJ found at [40] that the victim was particularly vulnerable, having arrived from Indonesia just a week before starting work, and having worked for the offender less than two days before the assaults began. The offender, on the other hand, was well aware of her position of authority and had abused it. The offences were committed habitually and in response to dissatisfaction over very trivial matters. The offender had also subjected the victim to a regime of threats and coached her to lie if she was ever questioned. The beatings and threats together created, in the victim, an "overwhelming fear" of the offender. Yong CJ stated at [42] that "where mental abuse was

calculatedly applied in conjunction with physical abuse to a domestic maid, this should be viewed as a serious aggravating factor". This principle has been acknowledged in subsequent cases. The infliction of mental abuse in conjunction with physical abuse was described as an aggravating factor in *ADF* at [91], and in *Public Prosecutor v Rosman bin Anwar and another appeal* [2015] 5 SLR 937 ("*Rosman bin Anwar*") the court considered at [49] that:

> … [T]he degree of pain and suffering endured by the complainant [was] not to be measured by reference only to the visible injuries and the severity of the assaults on her, but must take into account the prolonged nature of the abuse and the psychological and emotional toll that it took on her.

68 It is clear that the extended sentencing powers under s 73 of the Penal Code were introduced in recognition of the vulnerable status of domestic maids (see *ADF* at [221] and *Soh Meiyun* at [44]). In particular, it was observed in *Janardana* at [3] that domestic maids are particularly vulnerable to abuse by their employers and their immediate family members because:

> (a) they are in a foreign land and will often not have the time or opportunity to develop familiarity or a support network;
>
> (b) they are in an inherently unequal position of subordination in relation to their employers; and
>
> (c) the abuse will usually take place in the privacy of the employer's home and without the presence of any independent witnesses – making such offences both harder to detect and harder to prosecute.

69 These same conditions create a hostile environment which opens up opportunities for both physical and psychological abuse. Some offenders may seek to "punish" domestic maids for perceived underperformance by subjecting them to humiliating and degrading treatment and denying them the basic dignity of a human being. Others may

routinely subject domestic maids to working conditions that border on slave-like, treating the victim as chattel. Even incidents of physical or verbal abuse that might seem individually mild can have a profound psychological impact upon the victim if they form part of a pattern or campaign of abusive conduct that is sustained over a period of time. Offenders may also exploit the victim's vulnerability by manipulation and intimidation, by lying to her and threatening her, causing her to believe that her situation is helpless and hopeless. The psychological harm and mental anguish that a domestic maid can suffer from being trapped in a situation of fear, abuse and oppression can be just as acute and enduring as physical harm, if not more. As observed by the Court of Appeal in *Public Prosecutor v Kwong Kok Hing* [2008] 2 SLR(R) 684 at [26]–[28], extreme psychological harm can be characterised as a form of "infirmity" within the definition of hurt contained in s 319 of the Penal Code. For this reason, the emotional trauma resulting from psychological abuse is a critical sentencing consideration where the abuse of domestic maids is concerned, particularly where the abuse is deliberate and relentless. The court's extended powers of punishment under s 73 of the Penal Code should be viewed in this context.

The sentencing framework

70 The first step is for the court to determine whether the harm caused to the victim was predominantly physical, or both physical and psychological. For example, the offender lashes out physically on impulse on one occasion, having lost his/her temper at some misdemeanour. If this does not form part of any broader trend or history of abusive conduct, and does not involve particularly degrading or humiliating treatment, the harm would probably be predominantly physical (in addition to the distress that the victim would invariably feel from being physically assaulted). In that case, the court should consider the degree of harm as well as other aggravating and mitigating factors (see [73]–[74] below) in determining the appropriate sentence, bearing in mind other maid abuse

precedents, and that "a custodial sentence is almost invariably warranted in cases of domestic maid abuse where there has been any manner of physical abuse" (*ADF* at [91]). The court should be wary of relying on precedents in cases under s 323 not involving domestic maids. It should also be careful when considering precedents which were decided before the 2008 amendments to the sentencing range under s 323, particularly if it appears that those cases might have been sentenced differently under a different punishment framework.

71 On the other hand, there may be an additional dimension of significant psychological harm that needs to be given due weight in sentencing, for example if the abuse is sustained, humiliating and degrading, or occurs in the context of a working relationship which is generally oppressive and exploitative. Where the harm is both physical and psychological, the second step is for the court to identify the degree of harm caused in relation to each charge. Where both physical and psychological abuse have occurred, the sentencing range at this stage should start at the level of months rather than days. The following table sets out indicative ranges corresponding to the degree of harm caused:

	Less serious physical harm	**More serious physical harm**
Less serious psychological harm	3–6 months' imprisonment	6–18 months' imprisonment
More serious psychological harm	6–18 months' imprisonment	20–30 months' imprisonment

72 It should be noted that these ranges are merely indicative and the specific sentence will vary depending on other factors taken into account at the third step (see [73] below). In evaluating the degree of psychological harm caused, the court will usually have regard to any victim impact statement or psychological report of the victim, where available. Even where a victim impact statement is not available, this facet of harm should not be wholly disregarded. The

following non-exhaustive circumstances may also be indicative of psychological harm:

(a) Behaviour calculated to reinforce the offender's authority and to oppress and bully the victim into submission. This may be part of the facts relating to a particular offence, but can also occur in the context of a broader framework of systematic oppression by the offender. For example, in *ADF*, the employer was a police officer who played on the victim's fear and respect for authority by constantly underscoring the fact that he was a police officer and threatening to send her to jail for minor oversights in attending to her household chores (see [102]–[103]). In *Rosman bin Anwar*, the offenders threatened the victim and told her that they had the "right" to slap her because they were her employers, leading her to believe that she had no choice but to resign herself to the situation she was in (see [50]). Other examples may include threatening to harm the victim's family or forfeit her salary, and refusing to allow the victim to speak with others, place calls or leave the house. Such behaviour may amplify the psychological damage to the victim arising from incidents of physical hurt, causing the victim to feel trapped and terrified of the employer. However, the court should be careful not to double-count this factor by relying on it to increase individual sentences while also ordering more sentences to run consecutively on this basis.

(b) Humiliating or degrading treatment of the victim. For example, in *Ong Ting Ting v Public Prosecutor* [2004] 4 SLR(R) 53, the offender poured water on the victim, placed ice cubes in the victim's bra and short pants and made her eat some ice cubes. She then turned on a fan and

blew it at the victim, causing her to feel cold and shiver. Later, the offender allowed the victim to change out of her clothes but not her wet underwear. She brought the victim, still in her wet underwear, to the living room and demanded that she kneel before her. She then kicked the victim twice on her thighs while the victim was kneeling. Another example is *Soh Meiyun*, in which the offender forced the victim to strip naked and used a sewing needle to inflict punctures and scratches on various parts of her body.

(c) When psychological harm arises from a sustained pattern of abuse, *ie*, multiple incidents of the accused causing hurt to the domestic worker, it is more appropriate to take such psychological harm into account when determining how many sentences to run consecutively, rather than in sentencing each charge individually (see [75] below).

73 At the third step, the court adjusts the sentence for each charge in the light of other aggravating or mitigating circumstances. Typical aggravating factors include the following:

(a) The use of a weapon or other implement of harm or injury.

(b) Efforts to prevent the victim from seeking or accessing help. In *Ang Lilian*, for example, the court considered it a "serious aggravating factor" that the appellant had "sought to manipulate [the victim] into believing that running away would be futile and might even lead to her being arrested and imprisoned" (at [81]).

(c) The offender's motive. An offender who commits the offence out of cold-blooded malice or vengefulness is more culpable than one who commits the same offence out of a spontaneous lapse of self-control

(see *ADF* at [63] and [151]) or in the heat of an unanticipated and "sudden and spontaneous struggle" (see *Rosman bin Anwar* at [46]).

(d) Similarly, an offender who demonstrates a degree of deliberation or premeditation is generally more culpable than one who does not (*Public Prosecutor v BDB* [2018] 1 SLR 127 ("*BDB*") at [63]). That said, many instances of maid abuse occur as a result of employers venting their anger and frustration on the victims. The victims' vulnerable position and the fact that they reside with the family often make them easy targets for their employers' outbursts of rage. Such habitual abuse can be just as exploitative and widespread as premeditated conduct, and represents a virulent strain of that abuse of authority over domestic maids which s 73 of the Penal Code seeks to punish. The lack of premeditation in such cases amounts at most to the absence of an aggravating circumstance; it is not mitigating.

(e) The court may increase the sentence if the offender intended to inflict greater harm than actually resulted. (The converse also applies, *ie*, the court may consider reducing the sentence if the harm that resulted was much more serious than could reasonably have been foreseen.)

(f) The presence of past convictions for similar offences, as well as similar charges being taken into consideration for the purposes of sentencing, will ordinarily warrant an increase in the sentence in order to serve the purpose of specific deterrence. The lack of antecedents is, in the context of repeated maid abuse, a neutral factor (see *Janardana* at [18]).

(g) A lack of remorse, which may be shown when an offender puts the victim through the traumatic experience of testifying at trial and casts aspersions on her character (see *Ang Lilian* at [82] and *Farida Begam*

d/o Mohd Artham v Public Prosecutor [2001] 3 SLR(R) 592 at [24(f)]), is aggravating.

74 Possible mitigating circumstances include the following:

(a) The offender's remorse. Genuine remorse may be shown by pleading guilty early (see *ADF* at [107] and *Chang Kar Meng v Public Prosecutor* [2017] 2 SLR 68 at [71]), thus avoiding protraction of the proceedings and relieving the victim from having to testify at trial, and compensating the victim.

(b) Cooperating with the authorities in the investigations, bearing in mind that cooperation and a plea of guilt should not be regarded as strong mitigating factors if there is overwhelming evidence against the accused (*BDB* at [74]).

(c) The fact that the offender was suffering from a mental illness, psychological condition or learning disability at the time of the offence which significantly contributed to the commission of the offence (see, *eg*, *Soh Meiyun* at [28] and [52]; *Chong Yee Ka v Public Prosecutor* [2017] 4 SLR 309 at [86]; and *Low Gek Hong v Public Prosecutor* [2016] SGHC 69 at [21]).

75 Having determined the sentences for each of the charges, the court then decides which sentences to run consecutively and which concurrently, in accordance with the principles set out in *Mohamed Shouffee bin Adam v Public Prosecutor* [2014] 2 SLR 998 at [27]–[82]. In particular, where an offender faces multiple charges of maid abuse, the court should take into account the duration and frequency of abuse in determining whether to order more than two sentences to run consecutively (see *ADF* at [146(a)]). In *ADF*, the offender escalated his abusive behaviour towards the victim as part of a campaign of

psychological warfare. From an incident of badly knocking her head with his knuckles, he progressed to acts of viciously and unrestrainedly kicking vulnerable parts of the body such as the abdomen (*ADF* at [104]). The court ordered the three longest sentences to run consecutively to give expression to "the cumulative effect of the intentional and perverse conduct of [the accused] over a sustained period" (at [155]). The court should, of course, be careful not to double-count any factors that have already been considered as aggravating at the second stage.

Applying the framework to the facts

76 The appellants did not submit that they should not be sentenced under the new sentencing framework if one was adopted. In our view, there is no question of prospective overruling. As intimated at [55] above, the framework that we have adopted is intended to provide more clarity and coherence to the task of sentencing in maid abuse cases, and to allow the full sentencing range under s 73 of the Penal Code to be properly utilised where appropriate. The framework does not subvert or depart from any established sentencing principles. Its principal feature is to ensure that sentencing courts give due weight to psychological harm, the significance of which has long been recognised (see [67] and [69] above). We therefore now proceed to apply this framework in the present case.

77 In our view, it is unnecessary to enhance the sentences of two months' imprisonment each imposed on Chia. Although she slapped the victim once and punched her once, there is nothing to suggest that these formed part of a broader pattern of violent or abusive behaviour towards the victim on Chia's part. Chia's culpability was nowhere near the level

of Tay's. The harm that resulted from Chia's offences was predominantly physical, and as far as physical harm goes, was relatively minor. The victim did not appear to have suffered any lasting injury. It was noted by Chan Seng Onn J in *Chua Siew Peng v Public Prosecutor* [2017] 4 SLR 1247 that the sentencing precedents suggest that sentences of three to six weeks' imprisonment have been imposed on offenders who had slapped their domestic helpers. Given Chia's lack of remorse and her conduct during trial, two months' imprisonment is not manifestly inadequate or excessive.

78 However, we consider that some of the sentences imposed on Tay are manifestly inadequate given the degree of psychological harm inflicted. We start with MAC 902881/14 (the Prayer Incident), which was one of the most egregious charges. Tay forced the victim and Moe Moe Than to slap each other 10 times, causing them physical pain. But the physical pain is only half of the story. This punishment was both humiliating and degrading, particularly given that Tay forced them to bow and get up 100 times before a Buddhist altar notwithstanding the fact that the victim was Muslim and Moe Moe Than was

Christian. The extent of humiliation, bullying and cruelty reflected in Tay's behaviour placed this charge firmly in the category of more serious psychological harm. That category has an indicative range of 6–18 months' imprisonment; given that the physical harm was not unduly serious, we impose a sentence at the mid-range of 12 months' imprisonment.

79 MAC 902872/14 (the Stool Incident) also involved humiliating treatment. Tay's treatment of the victim, in forcing her to stand on a stool whilst holding another stool above her head, was a serious affront to her dignity. His act of pushing the plastic bottle into the victim's mouth was demeaning and invasive. When he did this, the victim felt pain, cried and begged Tay not to do this to her. However, Tay made her stay in this position for some 30 minutes

and only allowed her to stop when it was time for the family to leave for Chinese New Year visiting. Tay's behaviour in this regard was plainly cruel and almost sadistic. Noting that the physical harm was less serious than in MAC 902881/14, we would impose a sentence of 10 months' imprisonment.

80 MAC 902876/14 (the Push-Up Incident) was highly humiliating and degrading for the victim and Moe Moe Than. Tay forced the victim and Moe Moe Than to position themselves in a push-up position, in which they were vulnerable, and then viciously kicked the victim such that her body moved and she hit a glass panel. Such a forceful kick to the victim's waist would necessarily have caused substantial pain. Moreover, this occurred immediately after Tay had hit the victim and Moe Moe Than on their heads with a cane (MAC 902875/14). Tay's behaviour was cruel and unrelenting. In our view, a sentence of 12 months' imprisonment is appropriate.

81 MAC 902877/14 (the Falling Down Incident) was particularly violent. Tay pulled the victim by her hair and forced her to go with him into a room,

where he then grabbed her chin and pushed her head against the cabinet, causing her head to hit the edge of the cabinet. In the light of the degree of physical harm caused, we would impose a sentence of 10 months' imprisonment.

82 We note, moreover, that no mitigating factors warranted a reduction of these sentences. Tay and Chia did not display any semblance of remorse. On the contrary, as the District Judge rightly noted, they were intent during the trial on casting aspersions on the victim's credibility and blaming others, sweeping aside the suffering that the victim had faced while in their charge (GD at [93]).

83 The sentences in respect of the other charges against Tay are, in our assessment, not manifestly excessive or inadequate. That leaves us to determine

which sentences to run consecutively and which concurrently. Tay's physical abuse of the victim persisted for almost two years and resulted in 10 charges (not including the two charges relating to the obstruction of justice). Although Tay had no past convictions, the number and frequency of the attacks show that he was habitual and unrestrained in his abuse. The psychological effect that Tay and Chia had on the victim over the course of her employment is clear from the incident on 12 December 2012. The victim falsely told the police officer that Tay and Chia had not beaten her, because they were near her and she was afraid of them. Her desire to leave them was so strong that she even pretended to steal money from Chia in the hopes that they would bring her to the maid agency, where she could get help. The District Judge noted that the victim broke down in tears on numerous occasions during the trial while narrating these incidents (GD at [83(viii)]), and also testified to having cried during some of the instances of abuse.[17]

84 We are of the view that the District Judge was right to order five sentences to run consecutively given the cumulative effect of Tay's conduct over the two-year period. We order the sentences in respect of MAC 902881/14 (12 months' imprisonment), MAC 902876/14 (12 months' imprisonment), MAC 902877/14 (10 months' imprisonment), MAC 902869/14 (three months' imprisonment) and DAC 908849/14 (six months' imprisonment) to run consecutively. Tay's global sentence will thus be increased from 28 months to 43 months.

Compensation

85 Section 359 of the CPC requires the court to consider whether or not to make an order for compensation. The Notes of Evidence of the trial bear no mention of compensation nor was any reference to compensation made in the

[17] NE (6 April 2016) at ROP Vol 1 p 265 line 23 and p 291 line 11.

GD. We reiterate that the trial court "has a positive obligation to consider whether or not to make a compensation order", and to make such an order if it considers that such an order is appropriate (*Soh Meiyun* at [55]). Compensation orders are particularly suitable for victims for whom commencing a civil suit would be impractical, and "should generally be a matter of course" where maid abuse cases are concerned (*Soh Meiyun* at [60]).

86 In the present case, there was no evidence of the victim's medical expenses (if any). However, we note that she would have been unemployed for a period of time immediately following her removal from the appellants' household. Taking into account these facts, as well as the number and nature of the assaults, we are of the view that it would be appropriate to consider making an order for compensation. As the parties did not put forward any submissions before us on the matter of compensation, we will hear the parties on this aspect.

Conclusion

87 For the above reasons, the appellants' appeals against their convictions and sentences are dismissed. The Prosecution's appeal against sentence is allowed in part. In closing, we express our deep appreciation to Ms Chong, the young *amicus curiae*, for ably assisting the court with her helpful submissions.

Sundaresh Menon Chief Justice	Tay Yong Kwang Judge of Appeal	See Kee Oon Judge

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