IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2019] SGCA 22

Criminal Appeal No 36 of 2017

Between

Public Prosecutor

… *Appellant*

And

P Mageswaran

… *Respondent*

Criminal Appeal No 37 of 2017

Between

P Mageswaran

… *Appellant*

And

Public Prosecutor

… *Respondent*

JUDGMENT

[Criminal Law] — [Offences] — [Culpable homicide]
[Criminal Procedure and Sentencing] — [Sentencing] — [Culpable homicide]

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Public Prosecutor
v
P Mageswaran and another appeal

[2019] SGCA 22

Court of Appeal — Criminal Appeals Nos 36 and 37 of 2017
Judith Prakash JA, Steven Chong JA and Woo Bih Li J
21 February 2019

11 April 2019 Judgment reserved.

Steven Chong JA (delivering the judgment of the court):

1 These appeals arose from the decision of the High Court Judge ("the Judge") in convicting the appellant ("the accused") of culpable homicide not amounting to murder under s 299, punishable under s 304(*a*) of the Penal Code (Cap 224, 2008 Rev Ed). It is however material to highlight that the accused was charged and convicted for committing an act by which death was caused with the *intention* of causing the victim's death – the most serious form of *mens rea* under s 299. The accused was however not sentenced to the maximum sentence of life imprisonment under s 304(*a*). He was instead sentenced to 18 years' imprisonment.

2 Several interesting issues have emerged from the appeals. This judgment will examine the treatment of the three different levels of *mens rea* under s 299 and how each of them would impact on the eventual sentence under s 304. In doing so, we will bear in mind that there are aspects of s 299 which are co-

extensive with the offence of murder under s 300(*a*) and how the exercise of prosecutorial discretion to proceed with a charge under s 299 instead of s 300(*a*) can impact the Prosecution's burden in seeking for life imprisonment in relation to an act by which death was caused with the *intention* to cause the victim's death. Finally, we will also address the Prosecution's case that the *default position* for a conviction under s 304(*a*) should be life imprisonment and if this is not accepted, indicate when such a sentence would be warranted.

Facts

3 The accused was a family friend of the victim, Mdm Kanne Lactmy. He had come to know the victim through her sons. The victim's younger son, Sivakumar s/o Chinapan ("Mr Sivakumar"), testified below that his elder brother had previously employed the accused.

4 The victim lived in a flat in Yishun with Mr Sivakumar and his family. On 9 December 2013, the day when she was killed by the accused, Mr Sivakumar and his family were away on holiday; she was all alone in the flat.

5 The accused lived with his wife, Parameswary A/P Thimparayan ("Mdm Parameswary"), in a rented room in a flat in Johor Bahru, Malaysia. On the day of the offence, the accused had asked Mdm Parameswary about the payment schedule for their new flat in Johor Bahru. The accused told her that he would try to convince his employer to lend them some money. He also told her that he would be collecting $2,000 in tontine money that day. With that, he left home at 6.30am. He returned later that afternoon around 1pm to 2pm. What happened in the interim would have been beyond Mdm Parameswary's contemplation.

6 The accused had gone to the victim's flat in Yishun. He wanted to borrow money from either Mr Sivakumar or the victim. When he reached the flat, the victim invited him in. She offered to make him some coffee. As he was having his coffee, the accused told the victim that he needed to borrow $2,000 to $3,000 to pay the deposit for his new flat. The victim replied that she did not have that much money. The victim then went to the toilet to brush her teeth. While she was there, the accused searched each of the three rooms in the flat for valuables. He found nothing in the first two rooms. He then entered the master bedroom. He forced open the locked cupboard door and found a box containing jewellery. He decided to steal the box of jewellery.

7 As he was holding the box, the victim entered the master bedroom. The accused placed the box on the bed. He pleaded with the victim to let him keep the jewellery. He promised to repay her the money in instalments. The victim refused. She threatened to call Mr Sivakumar. He pleaded with her not to do so. The victim came closer to him. That was when matters took an unfortunate turn.

8 The accused shoved the victim hard. She fell onto the floor. He knelt down over her; she struggled and pleaded with him to let her go. He grabbed a pillow lying nearby and covered her face with it. With his left hand, he grabbed her neck at the same time. After about three to four minutes, he released his left hand, as he felt tired. He continued pressing the pillow down on her face. The victim struggled throughout the entire ordeal, which lasted for about ten minutes. The accused only removed the pillow at the end of those ten minutes or so when he noticed that the victim was no longer struggling. He threw the pillow onto the bed. At this moment, he noticed that the victim was gasping for air, eyes open. He took the box of jewellery and left the flat.

9 When he arrived back in Johor Bahru that day, the accused called Mdm Parameswary and told her that he had collected $2,000 from his employer and another $2,000 in tontine money. He also bought jewellery for her. Over the next few days, he gave his wife various sums of money as well, including RM5,000 to pay the deposit for the new flat.

10 On 17 December 2013, the couple had a heated argument. Mdm Parameswary insisted on going to Singapore to verify with the accused's employer that he had really taken a loan. While they were at the Woodlands immigration checkpoint, the accused was placed under arrest.

Procedural history

11 The accused claimed trial to the following charge of culpable homicide not amounting to murder, an offence under s 299, punishable under s 304(*a*) of the Penal Code:

> That you … on 9 December 2013, sometime between 8.41am and 9.40am, at Blk 875 Yishun Street 81, #02-179, Singapore, did cause the death of one Kanne Lactmy … female / 62 years old, *to wit*, by strangling the said Kanne Lactmy with your hand and pressing a pillow on the said Kanne Lactmy's face, with the intention of causing her death, and you have thereby committed an offence of culpable homicide not amounting to murder punishable under s 304(*a*) of the Penal Code (Cap 224, 2008 Rev Ed).

12 However, the accused did not deny that he caused the victim's death. His sole defence at the trial was that he only had the *knowledge* that he was likely by his act to cause the victim's death, and that he should therefore be found guilty of a lesser offence within s 299, punishable under s 304(*b*) of the Penal Code which attracts a sentence of up to ten years' imprisonment.

13 At the end of the trial, the accused was convicted on the charge, *ie*, under s 304(*a*) of the Penal Code, for having had the *intention* to cause the victim's death. He was then sentenced to 18 years' imprisonment with effect from 17 December 2013, the date he was placed in remand. Since he was more than 50 years old at the time of sentencing, he could not be caned, by virtue of s 325(1)(*b*) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed). The Judge saw no reason to impose an additional term of imprisonment in lieu of caning given the substantial length of imprisonment already imposed. The accused appeals against the Judge's decision on conviction and sentence, while the Prosecution appeals against the Judge's decision on sentence.

Issues on appeal

14 The only issue in the accused's appeal against conviction is whether the Judge had erred in finding on the evidence that he had acted with an *intention to kill the victim*. As there is no denial that the accused caused the victim's death, it is apparent to us that the underlying purpose behind the accused's appeal against conviction is not to seek an acquittal altogether but ultimately a reduction in the sentence.

15 On the assumption that the conviction stands, the issue in the two appeals against sentence is whether the Judge erred in imposing an 18-year imprisonment term on the accused. The Prosecution contends that the gravity of the crime justified a term of life imprisonment; the accused contends that even on a conviction under s 304(*a*) of the Penal Code, the circumstances of this case only warranted a 12-year imprisonment term.

Issue 1: Whether the accused acted with the intention of causing death

16 There are three types of *mens rea* elements under s 299 of the Penal Code for culpable homicide:

(a) first, where the act by which death is caused is done "with the intention of causing death" ("**the first limb**");

(b) second, where the act by which death is caused is done "with the intention of causing such bodily injury as is likely to cause death" ("**the second limb**"); and

(c) third, where the act by which death is caused is done "with the knowledge that [one] is likely by such act to cause death" ("**the third limb**").

17 Section 304, which is the punishment provision for the offence of culpable homicide, provides for a range of punishments where the accused was convicted on the first and second limbs, and for another range of punishments where the accused was convicted on the third limb:

> **Punishment for culpable homicide not amounting to murder**
>
> **304.** Whoever commits culpable homicide not amounting to murder shall —
>
> (*a*) if the act by which death is caused is done *with the intention of causing death*, or *of causing such bodily injury as is likely to cause death*, be punished with —
>
> (i) imprisonment for life, and shall also be liable to caning; or
>
> (ii) imprisonment for a term which may extend to 20 years, and shall also be liable to fine or to caning; or

> (*b*) if the act is done *with the knowledge that it is likely to cause death*, but *without any intention to cause death*, or to cause such bodily injury as is likely to cause death, be punished with imprisonment for a term which may extend to 10 years, or with fine, or with caning, or with any combination of such punishments.
>
> [emphasis added]

18 The legal principles on the ascertainment of an accused's intention under the first limb are uncontroversial; the inquiry under the first limb is fully subjective: *Public Prosecutor v Sutherson, Sujay Solomon* [2016] 1 SLR 632 ("*Sutherson*") at [46(a)]; Stanley Yeo, Neil Morgan & Chan Wing Cheong, *Criminal Law in Malaysia and Singapore* (LexisNexis, 3rd Ed, 2018) ("*Yeo, Morgan and Chan*") at para 9.28. Yet, since it is nigh on impossible for a court to tap into the minds of accused persons, it is trite that "[i]ntention is … pre-eminently a matter for inference": *Tan Joo Cheng v Public Prosecutor* [1992] 1 SLR(R) 219 at [12]. The court will ordinarily take into account all relevant and admissible factors that bear upon the accused's intention, such as the individual characteristics of the accused as well as the objective surrounding circumstances of the crime, including the manner in which the crime was committed, the nature of the acts, the type of weapon used (if any), the location and number of injuries inflicted on the victim, and the way the injuries were inflicted: see *Yeo, Morgan and Chan* at para 9.30.

The medical evidence

Evidence of the forensic pathologist

19 The relevant findings of the forensic pathologist, Dr Marian Wang, are summarised by the Judge at [26]–[32] of the Judge's Grounds of Decision ("the GD"). We propose only to emphasise a few crucial aspects of that evidence.

20 First, the bruises found were spread out on the victim's neck as well as her jawline.

21 Second, there were significant internal neck injuries including fractures of the hyoid bone and the thyroid cartilage, as well as haemorrhaging of the internal neck muscles, tissue surrounding the left vagus nerve and the thyroid gland.

22 Third, there were two principal mechanisms that had caused the victim's death by manual strangulation – compression of the blood vessels and compression of the airway. The former was evidenced by the subconjunctival haemorrhage or petechial haemorrhage in the victim's eyes, which was usually due to the compression of the blood vessels in the neck resulting in back-damming of the blood from the face. The latter mechanism was evidenced by the fractures of the hyoid bone and thyroid cartilage. These are bony structures that are not directly beneath the skin, but are buried deep within the throat beneath multiple layers of muscles. Fracturing these structures would require, in Dr Wang's opinion, "significant or severe force".[1]

The Judge's finding

23 The Judge rejected the accused's submission that he only had the *knowledge* that his acts were likely to cause death, *ie*, his acts fell within the third limb. Instead, the Judge found that the first limb applied because the accused had in fact *intended* to cause the death of the victim, and convicted him accordingly. The Judge's finding on this point was based on three principal factors:

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[1] Record of Proceedings ("ROP") Vol 1 at 21:11.

(a) First, the nature of the accused's acts: The accused had not only strangled the victim; he had also suffocated her with a pillow. The implication of this two-pronged approach was that it was likely to have a fatal outcome than if the accused had merely relied on either strangulation or suffocation alone. Dr Wang testified that manual strangulation alone would cause death if the brain were to be deprived of oxygen for about four to five minutes.[2] But if strangulation were to be coupled with suffocation, oxygen would be prevented from getting to the lungs through the nose and mouth in addition to the compression of the neck, which would mean that death would "occur faster".[3]

(b) Second, the duration of the accused's acts: In his statements, the accused said that he had strangled the victim for three to four minutes, all the while suffocating her. After he stopped strangling the victim, he continued suffocating her, such that the victim was suffocated for a total of ten minutes. Although these were estimates, they were nonetheless considerable periods of time. At the trial, the accused did not dispute the timings he had provided in his statements.

(c) Third, the significant degree of force used: This was evidenced by the fractures of the victim's hyoid bone and thyroid cartilage. Further, the accused had himself admitted that he was perspiring when he stopped suffocating the victim, which was testament to the amount of force he must have applied throughout the ten-minute period.

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2 ROP Vol 1 at 23:31–24:3.

3 ROP Vol 1 at 24:5–16.

Our judgment

24 In our judgment, the Judge was correct to find that the accused had the intention of causing the victim's death.

25 In reaching this conclusion, we agree with the Judge's reasons for rejecting the accused's submission that he had in fact only grabbed the victim's jaw and pressed against it so as to stop the victim from shouting. We note that the accused did not in any of his statements recorded by the police mention that he had only held on to the victim's jaw. On the contrary, he stated quite unequivocally in his statements that he had used his left hand to grab the victim's neck, and had even made it clear at one point that he grabbed "her neck below the jaw".[4] The submission that he had only held on to the victim's jaw in an attempt to stop her from shouting only surfaced in the midst of the trial. This submission stemmed from two photographs of an *ex post facto* re-enactment of the offence, where the accused demonstrated what he did during the recording of his sixth statement on 23 December 2013 at 3.10pm. Counsel for the accused, Mr Derek Kang, submitted below and before us that the photographs clearly showed that the accused's left hand only made contact with the victim's jawline without touching her neck.

26 We do not think that much weight ought to be given to an after-the-fact re-enactment of the offence. This is not to say that re-enactments in general are unhelpful. But considering that this point never came up in any of the accused's statements and only surfaced very late in the midst of the trial,[5] there is every reason for us to doubt its veracity. Moreover, in the light of all the surrounding evidence in this particular case, we do not think there is any merit in the

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4 ROP Vol 2A at 574 (Answer to Question 19).

5 See ROP Vol 1A at 438:27–439:29; 443:28–32; 445:25–27.

submission that the accused *only* held on to the victim's jaw; the bruises found on the victim's neck *and* jaw put paid to that submission. If anything, those bruises indicated that, consistent with how a struggle would typically have unfolded, the accused's hand must have been positioned and re-positioned throughout as he attempted to hold on to the struggling victim's neck. Ultimately, the most damning evidence of all, as the Judge found, were the victim's internal neck injuries, in particular, the fractures of the hyoid bone and thyroid cartilage. Regardless of whether these fractures resulted from a prolonged period of force being exerted on the neck or from a momentary application of force to that part of the body, the point is that it would require "significant or severe force", in Dr Wang's words, to fracture these bony structures, as they were protected by layers of muscle.

27 In the circumstances, it is clear to us that the accused had intended to kill the victim. During the appeal hearing, we asked Mr Kang what else the accused could have intended in light of the facts. After all, on the accused's *own case*, he had strangled and suffocated the victim so as to silence her and to make a quick exit. It was not even his case that he had tried to incapacitate her temporarily. Indeed, on his own account of the facts, he never made an attempt to muffle the victim's calls for help using less lethal means; he went straight for the jugular, quite literally. The Judge had considered this and concluded, rightly in our judgment, that in the light of all of the accused's actions, the accused must have intended to silence the victim by killing her.

28 The accused also submitted that he did not have the intention to cause the victim's death because if he did, then he would not have left the flat after noticing that the victim was gasping for air with her eyes open. Instead, if he had intended to cause the victim's death, he would have "finished the job" by

killing the victim and ensuring that the victim no longer displayed any signs of life.

29 The Judge did not make a specific finding as to whether the victim had in fact displayed signs of life just before the accused left the flat. Like the Judge, we are nonetheless prepared to accept the accused's case at its highest and assume that the accused had indeed observed some signs of life in the victim just before he made away with the box of jewellery. But even on that assumption, we agree with the Judge's finding that the accused had the intention to cause the victim's death. The inquiry is to ascertain from the objective conduct of the accused ***at the time when he was suffocating and strangling the victim*** whether he had the intention to cause her death. The mere fact that the accused did not take further steps to "finish off" the victim, when she exhibited some signs of life after he stopped the suffocation and strangulation, does not *per se* create reasonable doubt that he therefore did not intend to cause her death at the relevant time. Here the suffocation and strangulation were over quite a long period of time. The accused only stopped after the victim became motionless. The inference is that the accused wanted to ensure that the victim would not live to identify him especially since she knew him. Indeed, this much was evident from his statement to the police recorded on 22 December 2013 at 1:10pm:[6]

> Question 56 : Can you tell me after you had pushed the deceased to the floor why you need to put a pillow over her face and grab her neck when you can run with the stolen items?
>
> Answer : I was afraid that [Mr Sivakumar]'s mother would shout for help and the neighbours would hear her cries and they would catch me. In addition at that time my mind was only thinking about getting the jewelleries and *[Mr Sivakumar]'s*

6 ROP Vol 2 at 205–206.

> *mother knows me well and she obviously will tell [Mr Sivakumar] about the matter.*
>
> [emphasis added]

The accused also admitted on the stand that if the victim had remained alive, she would have been able to identify him:[7]

> Q … now, you said that you did not intend to kill the deceased. *Now, if she was still alive, would she not have identified you*---maybe I just stop there---as having stolen the jewellery? Yes.
>
> A Yes, Your Honour.
>
> [emphasis added]

We accordingly agree with the Judge that the accused had formed the relevant intention to kill the victim at the relevant time, and had acted on that intention in those fateful ten minutes on the morning of 9 December 2013.

Issue 2: Whether the Judge had erred in imposing a sentence of 18 years' imprisonment

30 Having upheld the accused's conviction under s 304(*a*) of the Penal Code, it remains for us to consider whether the 18-year imprisonment term the Judge imposed was warranted. The range of sentences under s 304(*a*) is provided for as follows:

> **Punishment for culpable homicide not amounting to murder**
>
> **304.** Whoever commits culpable homicide not amounting to murder shall —
>
> (*a*) if the act by which death is caused is done *with the intention of causing death*, or *of causing such bodily injury as is likely to cause death*, be punished with —
>
> (i) imprisonment for life, and shall also be liable to caning; or

7 ROP Vol 1 at 419:17–20.

> (ii) imprisonment for a term which may extend to 20 years, and shall also be liable to fine or to caning …
>
> [emphasis added]

31 The accused is ineligible for caning due to his age. The Judge decided that, given the substantial length of the imprisonment term, there was no reason to impose a further term of imprisonment in lieu of caning. The Prosecution does not pursue this point in its appeal against sentence. Instead, it submits that this was a case that called for the imposition of a term of life imprisonment, as it was one of the worst type of cases of culpable homicide not amounting to murder under s 304. For reasons that we will explain below, this was an onerous burden that could have been avoided by the Prosecution. Based on the charging decision, to achieve the sentence it now seeks, it is incumbent on the Prosecution to persuade the court that the *maximum* prescribed sentence under s 304(*a*) ought to be imposed. Ultimately, we are not so persuaded for the reasons which we explain below.

The Prosecution prefers a charge under s 304(a) instead of s 302(1)

32 We begin with a consideration of the relationship between the offences of culpable homicide and murder. Section 299 of the Penal Code lays out the definition of the offence of culpable homicide, while s 300 describes when the offence of culpable homicide becomes the offence of murder:

> **Culpable homicide**
>
> **299.** Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.
>
> …

> **Murder**
>
> **300.** Except in the cases hereinafter excepted culpable homicide is murder —
>
> (*a*) if the act by which the death is caused is done *with the intention of causing death*;
>
> (*b*) if it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused;
>
> (*c*) if it is done with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death; or
>
> (*d*) if the person committing the act knows that it is so imminently dangerous that it must in all probability cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death, or such injury as aforesaid.
>
> …
>
> [emphasis added]

33 In *Sutherson* (*supra* [18]), the High Court examined the relationship between both s 299 and s 300. We reproduce the relevant portions of that judgment (at [46]–[47]):

> 46 It was similarly observed by the Indian Supreme Court in *State of Andhra Pradesh v Rayavarapu Punnayya* [1977] 1 SCR 601 … that '[i]n the scheme of the Penal Code, ***'culpable homicide' is genus and 'murder' its specie'*** (at 606B). In other words, ***all instances of murder would also constitute culpable homicide, but not vice versa.*** In delivering the judgment of the court, Sarkaria J, provided a comparative table of the co-relation between ss 299 and 300 of the Indian Penal Code (which are *in pari materia* with ours), and also provided what I think to be a harmonious reading of the two provisions. In summary, he held:
>
> (a) The first limb of s 299 ('intention of causing death') and s 300(*a*) ***map onto each other and are coextensive***. The inquiry is ***fully subjective***.
>
> (b) The third limb of s 299 ('knowledge that he is likely by such act to cause death') corresponds with

> s 300(*d*). Both require knowledge of the probability of causing death. The main difference is in the degree of probability that death would result, with the latter requiring that the accused must know that the act in question 'is so imminently dangerous that it must in *all* probability cause death or such bodily injury as is likely to cause death'. Once again, the inquiry is fully subjective.
>
> (c) The second limb of s 299 ('intention of causing such bodily injury as is likely to cause death') is unique in that it corresponds with *both* ss 300(*b*) and 300(*c*). The point of commonality between all is that they all demand proof of the accused's intention to cause bodily injury. The second limb of s 299 further requires that the injury be likely to cause death. Section 300(*b*) requires proof of something more specific: *viz*, that the offender *knows* that the act in question will be likely to cause the death of the specific person to whom the harm is caused. Section 300(*c*) only requires that the injury in question be 'sufficient in the ordinary course of nature to cause death'. In *PP v Lim Poh Lye* [2005] 4 SLR(R) 582 … our Court of Appeal cited the well-known decision of the Indian Supreme Court in *Virsa Singh v State of Punjab* [1958] SCR 1495 … and held that this s 300(*c*) inquiry is an *objective* one.
>
> 47 While s 300(*b*) invites a purely subjective inquiry, s 300(*c*) invites an inquiry which is one part subjective (of the intention of causing bodily injury), and one part objective (that the particular injury is sufficient in the ordinary course of nature to cause death). In order for both ss 300(*b*) and 300(*c*) to fall within the ambit of s 299, the interpretation of s 299 has to be wider than both. This explains my view … above that the second limb of s 299 encompasses a subjective inquiry of the intention to cause a particular bodily injury, and an objective inquiry that the particular injury is likely to cause death. …
>
> [emphasis in original in italics; emphasis added in bold italics]

34 The first point to note from the extract reproduced above is that murder is a species or subset of the offence of culpable homicide: see *Yeo, Morgan and Chan* (*supra* [18]) at para 9.24. It follows that there are distinct forms of culpable homicide that do not amount to murder. In this regard, the Malaysian Federal Court of Criminal Appeal in *Tham Kai Yau & Ors v Public Prosecutor* [1977] 1 MLJ 174 (at 176G–176I) stated that there are two situations in which

culpable homicide not amounting to murder may be made out: (a) where the elements of the offence of murder have been proved, but one or more exceptions provided under s 300 apply; or (b) where the necessary degree of *mens rea* in s 299 has been proved, but not the special degree of *mens rea* in s 300 (*ie*, the *mens rea* requirements under ss 300(*b*) to 300(*d*)): see *Sutherson* at [45]; *Yeo, Morgan and Chan* at para 9.24.

35 The other point we note from *Sutherson* (at [46(a)]) is that the ingredients of the crime under the first limb of s 299 are *exactly the same* as the ingredients of the crime under s 300(*a*): see *Yeo, Morgan and Chan* at para 8.57. This is significant because although the ingredients are the same, the penalties they attract are vastly different. As referenced at [30] above, a conviction on the first limb of the culpable homicide offence attracts, under s 304(*a*), a maximum sentence of life imprisonment or imprisonment for a term that may extend to 20 years. However, a conviction under s 302(1), which is the punishment provision for the *same* conduct under s 300(*a*), attracts the mandatory death penalty:

> **Punishment for murder**
>
> **302.**—(1) Whoever commits murder within the meaning of section 300(*a*) *shall be punished with death.*
>
> (2) Whoever commits murder within the meaning of section 300(*b*), (*c*) or (*d*) shall be punished with death or imprisonment for life and shall, if he is not punished with death, also be liable to caning.
>
> [emphasis added]

36 Of course, where one or more of the exceptions under s 300 applies, a conviction for murder under s 302(1) can be reduced to culpable homicide under the first limb. But because s 299 itself creates a substantive offence, "it is open to the prosecution to charge the accused under s 299 even where they intended to kill, and there may not be any partial defences open to the accused": *Yeo,*

Morgan and Chan at para 8.57. Indeed, *Yeo, Morgan and Chan* went on to say (at para 8.57) that "[t]here are at least two recent Singapore cases where this has happened" (*ie*, where the Prosecution has charged the accused under the first limb of s 299 instead of s 300(*a*) even though no relevant exceptions under s 300 applied). The two cases cited are *Dewi Sukowati v Public Prosecutor* [2017] 1 SLR 450 ("*Dewi Sukowati*") and the present case.

37 This anomalous situation, where the same ingredients give rise to two different offences attracting different penalties, and where an offender may either be facing the mandatory death penalty or a term of imprisonment depending on what charge the Prosecution prefers, "enhances the importance of prosecutorial decisions and may promote plea negotiation": *Yeo, Morgan and Chan* at para 8.56. In a case like the present though, which for starters does not engage any of the exceptions under s 300, and where it is not apparent to us whether there has been any form of plea bargaining, the Prosecution's decision to prefer a charge under the first limb of the culpable homicide offence instead of under s 300(*a*) can only lead to one irresistible inference – having weighed all the relevant circumstances in the exercise of its prosecutorial discretion, the Prosecution has arrived at the view that the mandatory death penalty for the offence under s 300(*a*) might not be warranted in the circumstances of this case. We should make it clear that we are not in any way questioning the exercise of prosecutorial discretion in the present case. That is the Prosecution's prerogative. However, we do wish to state that any exercise of prosecutorial discretion would inevitably have an impact on the outcome and the eventual sentence. This would have been obvious to the Prosecution.

The Prosecution could have sought a conviction under s 302(2) instead and persuaded the sentencing court to impose a sentence of life imprisonment

38 The decision as to what charge to bring against an accused is entirely within the realm of prosecutorial discretion, and is based on a whole host of factors, including what the Prosecution would have thought the accused deserved in the circumstances, as well as what offence the Prosecution itself would have felt confident of being able to prove on the facts. This was accepted by the Prosecution.

39 Having obtained the conviction under the first limb of the culpable homicide offence, the Prosecution now seeks to secure the *maximum* sentence of life imprisonment by showing that the present case is one of the worst type of cases under s 299, punishable under s 304. But, as we have indicated, this is a burden that the Prosecution could well have avoided from the outset in its examination of the various charging options. For if the Prosecution's position is that the present case does not justify the imposition of the death penalty, but is still sufficiently grave to warrant the imposition of life imprisonment, then it may be more sensible to bring a charge under one of the provisions in s 300(*b*) to 300(*d*) punishable under s 302(2). Once it obtains a conviction under one of the provisions in s 300(*b*) to 300(*d*), the Prosecution can then seek to persuade the sentencing court to exercise its discretion and impose life imprisonment instead of the death penalty. Indeed, this is precisely the rationale for the 2012 amendments to the Penal Code, which, by removing the mandatory death penalty for the offences under s 300(*b*) to 300(*d*) punishable under s 302(2), sought "to introduce more judicial discretion in deciding whether the death sentence ought to be imposed for murder": *Singapore Parliamentary Debates, Official Report* (14 November 2012) vol 89 (K Shanmugam, Minister for Law). Having said this, we reiterate that it is the prerogative of the Prosecution to

frame the charge as it deems fit based on a multitude of factors. However, whatever charge the Prosecution eventually elects to frame, it must be cognisant of the requisite burden in relation to sentencing which accompanies a conviction on the charge.

40 Adopting such an approach would obviate the onerous burden on the Prosecution to press for the *maximum* sentence of life imprisonment for a conviction under s 299 punishable under s 304(*a*). If the Prosecution was of the view that the facts of the case are sufficient to establish beyond a reasonable doubt a charge on the first limb of the culpable homicide offence (and by corollary, s 300(*a*) as well), then *a fortiori* it would have likely taken the view that the facts would also be sufficient to establish at least one if not all of the other offences punishable under s 302(2) (*ie*, s 300(*b*) to 300(*d*)). This follows from the fact that an "intention of causing death" within the meaning of both s 299 and s 300(*a*) is the gravest and most severe form of *mens rea* not just amongst the different *mens rea* elements under s 300, but also amongst the *mens rea* elements of all the offences in Singapore's statute books. As is clear from the parliamentary debates in the lead up to the 2012 amendments to the Penal Code, the view was that the *mens rea* under s 300(*a*) is the most serious and therefore justified the retention of the mandatory death penalty in respect of that offence (see *Singapore Parliamentary Debates, Official Report* (9 July 2012) vol 89 at pp 266–267 (K Shanmugam, Minister for Law)):

> … the Government intends for the mandatory death penalty to apply where there is an intention to kill within the meaning of section 300(a). For cases falling within the other sub-sections of section 300, the mandatory death penalty will be removed. …
>
> …
>
> Why these changes? The changes announced today will result in the mandatory death penalty applying to a much narrower category of homicides, compared to the situation today.

> …
>
> *Intentional killing within the meaning of section 300(a) is one of the most serious offences in our books. Put simply, this is a case where the offender intends the death of the victim.* It is right to punish such offenders with the most severe penalty. It is right to provide for the most powerful deterrent against such offences. It is right, therefore, that the mandatory death penalty should continue to apply to such intentional killing.
>
> …
>
> [emphasis added]

It follows therefore, that the *mens rea* requirement under the first limb of s 299 likewise concerns the most serious state of mind even when compared with the *mens rea* requirements under s 300(*b*) to 300(*d*), since the *mens rea* requirements under the first limb of s 299 and under s 300(*a*) map onto each other and are co-extensive: *Sutherson* at [46(a)] (see [33] above). Logically therefore, establishing the first limb of s 299 would entail proof of the highest threshold of mental intention in comparison with the provisions in s 300(*b*) to 300(*d*). In most cases, proof of the highest threshold (*ie*, intention to cause death) would typically satisfy one if not all of the other limbs under s 300 but the *converse* for obvious reasons is not true.

41 The decision of the High Court in *Public Prosecutor v BPK* [2018] SGHC 34 is a case in point. The accused there was charged with attempted murder under s 307(1) of the Penal Code. The charge stated that the accused had inflicted multiple stab and slash wounds on the victim's head, neck, chest, abdomen, back and arms with a knife measuring about 33cm. One issue in that case was whether any of the *mens rea* requirements of murder under s 300(*a*) to 300(*d*) could be established on the facts to found a conviction for attempted murder. The trial judge found that the accused had the intention to cause death within the meaning of s 300(*a*). This was because the accused had struck repeatedly, relentlessly and forcefully at several parts of the victim's body,

including vulnerable regions like the head and neck. He had also initiated the attack on the victim while she was standing, and continued to strike at her forcefully with the knife even after she had fallen to the ground (at [290]). Pertinently, the trial judge added (at [301]) that based on the nature and number of the victim's injuries and the manner of the accused's attack, even if he was wrong on his conclusion that the accused had the intention to cause death, he would nonetheless have found that the accused had, at the material time, formed and acted on the *mens rea* requirements under s 300(*b*) and s 300(*d*).

42 Further, although we acknowledge that the court ultimately retains a discretion to sentence an offender to death under s 302(2) notwithstanding the Prosecution's submission for life imprisonment, that 'risk', if one might term it that, is quite remote. In cases where the mandatory death penalty *does not* apply to the offence of murder, the death penalty is warranted only where the actions of the offender have outraged the feelings of the community: see *Public Prosecutor v Kho Jabing* [2015] 2 SLR 112 at [44], [86], [203]. That is a very stringent test. Indeed, even in respect of a conviction under s 302(2), this Court has imposed life imprisonment notwithstanding the Prosecution's submission for the death penalty: see *Michael Anak Garing v Public Prosecutor and another appeal* [2017] 1 SLR 748 at [61]–[62]. Additionally, we are not aware of any case since the introduction of the 2012 amendments removing the mandatory death penalty for the offences under s 300(*b*) to 300(*d*) where, despite the Prosecution's submission for life imprisonment in respect of a conviction under s 302(2), the court has imposed the death penalty instead.

Whether life imprisonment was warranted

43 In the instant case, despite the fact that none of the exceptions under s 300 applied, the Prosecution elected to frame a charge on the first limb of the

culpable homicide offence against the accused, *viz*, that the act by which death was caused was committed "with the intention of causing death". The *maximum* sentence prescribed for that offence is a term of life imprisonment. The Prosecution's submission is that the maximum sentence is warranted since the instant case was one of the worst type of cases of culpable homicide not amounting to murder. We have already expressed our view that the Prosecution could have achieved the sentence it now seeks if it had instead charged the accused under s 300(*b*) to 300(*d*) and sought to persuade the court at the sentencing stage to exercise its discretion to impose the lower *minimum* sentence of life imprisonment. The eventual sentence that the Prosecution secured in the instant case (which it now regards as unsatisfactory) is in part a product of its own charging decision. This is not to say that life imprisonment is never justified where the Prosecution charges an accused person under the first limb of the culpable homicide offence and obtains a conviction on that basis. But to achieve that outcome, the Prosecution will have to demonstrate that the particular case in question is one of the *worst* type of cases of culpable homicide. That is, however, not an easy task to discharge.

44 In this regard, before we proceed further, we sound a note of caution, as we did in *Dewi Sukowati* (*supra* [36], at [18]), about reliance on cases prior to the 2008 amendment to s 304(*a*) in determining whether a term of life imprisonment is appropriate. Prior to the amendment, a sentencing judge could well have been faced with two imperfect options – a maximum imprisonment term of ten years, which may be insufficient, and a term of life imprisonment, which would be crushing. The courts no longer face this dilemma. Since s 304(*a*) was amended to increase the sentencing range to 20 years' imprisonment as an alternative to life imprisonment, greater flexibility in sentencing has been made available to the courts. Indeed, the new sentencing

regime ensures that the option is open for courts to sentence "those who need to be imprisoned for a length of time between 10 and 20 years" (see *Singapore Parliamentary Debates, Official Report* (22 October 2007) vol 83 (Christopher de Souza, Member of Parliament), without having to choose between a manifestly inadequate sentence of ten years' imprisonment or a manifestly excessive one of life imprisonment.

45 Generally, for any criminal offence in our statute books, when Parliament sets a statutory maximum on the sentence that can be imposed for that particular offence, it signals the gravity with which the public, through Parliament, views that particular offence: see *Cheong Siat Fong v Public Prosecutor* [2005] SGHC 176 at [23]; *R v H* (1980) 3 A Crim R 53 at 65. It therefore stands to reason that sentencing judges must take note of the maximum prescribed penalty and then apply their minds to determine precisely where the offender's conduct falls within the spectrum of punishment devised by Parliament: *Angliss Singapore Pte Ltd v Public Prosecutor* [2006] 4 SLR(R) 653 at [84]. In this regard, the maximum sentence "is ***not*** reserved for the worst offence of the kind dealt with it that can be imagined"; instead, the maximum sentence "should be reserved for the worst ***type*** of cases falling within the prohibition" [emphasis added]: *Bensegger v R* [1979] WAR 65 (*per* Burt CJ), cited with approval by Yong Pung How CJ in *Sim Gek Yong v Public Prosecutor* [1995] 1 SLR(R) 185 ("*Sim Gek Yong*") at [12]. What this entails as a matter of practice is the following (see *Sim Gek Yong* at [13]):

> … To restrict the maximum sentence to the 'worst case imaginable' would only invite an endless permutation of hypotheses. … All that a court can realistically do – and all that it should do – when deciding whether or not to impose a maximum sentence is to identify *a range of conduct which characterises the most serious instances of the offence in question*. This would … involve consideration both of *the nature of the crime* and of *the circumstances of the criminal*. … [emphasis added]

46 In our view, Yong CJ's exhortation to examine: (a) the nature of the crime, and (b) the circumstances of the criminal, provides a useful starting point to examine the question whether a particular case is one of the worst type of cases of culpable homicide. Beyond this, it is quite impossible to lay down any more concrete guideline or rule as to when a case of culpable homicide becomes one of the worst type. This is very much for the same reason that the courts have generally shied away from laying down any sentencing benchmark for culpable homicide, *viz*, that the range of circumstances in which such offences are committed is extremely varied: *Public Prosecutor v Tan Kei Loon Allan* [1998] 3 SLR(R) 679 at [33], cited in *Lim Ghim Peow v Public Prosecutor* [2014] 4 SLR 1287 at [55], which in turn was cited in *Dewi Sukowati* at [15]. Suffice to say, it will almost invariably be the case that in examining the nature of the crime as well as the circumstances of the criminal, one may be able to identify certain mitigating circumstances, which would then render the case as ***not*** one of the worst type. To satisfy the criterion of being one of the worst type of cases of culpable homicide would generally entail an absence or at least a lack of material mitigating circumstances. Admittedly it might take a rare case for that criterion to be met. But as one learned commentator noted, "[g]iven that the maximum sentence is reserved only for 'a range of conduct which characterizes the most serious instances of the offence in question', it is not surprising that such a sentence is seldom imposed": Kow Keng Siong, *Sentencing Principles in Singapore* (Academy Publishing, 2009) at para 05.019.

47 In *Dewi Sukowati*, the 18-year old accused was a domestic helper who had been chided and physically abused by her employer, the deceased. She lost control and struck the deceased, causing the deceased to lose consciousness but not to die. The accused did not know what to do initially but eventually decided to drown the deceased in the swimming pool so that the deceased would not be

able to report the initial assault to the police. As the accused was dragging the deceased's body to the swimming pool, she slammed the deceased's head on the edge of a step and inflicted further injuries with a view to killing the deceased. The accused was convicted under s 304(*a*) and sentenced to a term of 18 years' imprisonment.

48 Upon close examination of the facts in *Dewi Sukowati*, it is clear to us that *Dewi Sukowati* was not one of the worst type of cases of culpable homicide, since there were mitigating factors at play. In relation to the nature of the crime, the level of premeditation was not as significant as in some other cases (at [22]). Further, there were several mitigating factors clustered around the accused's circumstances, chiefly, the provocation by the deceased, the accused's mental condition at the time of the offence and her youth (at [22]).

49 To sum up, in considering whether the maximum penalty of life imprisonment under s 304(*a*) is warranted, the sentencing court will have to be satisfied that the case before it is one of the worst type of cases of culpable homicides. We note, parenthetically, that life imprisonment is warranted, alternatively, where the *Hodgson* criteria are satisfied such that the court is of the view that the mentally unstable offender will pose a "serious danger to the public for an indeterminate time": *Sutherson* (*supra* [18]) at [59]. But we are not concerned with the *Hodgson* criteria in this case. In determining whether a case is one of the worst type of cases of culpable homicides, the sentencing court will have to examine the circumstances of the case from the perspective of: (a) the nature of the crime; and (b) the circumstances of the criminal. It would take an exceptional case, *devoid* of any mitigating circumstances, for a sentencing court to be satisfied that a case is one of the worst type of cases of culpable homicides warranting the imposition of the *maximum* sentence of life imprisonment.

Our judgment

50 In our judgment, the instant case does not fall within that category. The relevant mitigating circumstances in this case clustered around the nature of the crime. The Judge found, and the Prosecution did not dispute, that the offence here was not premeditated. The accused had not gone to the victim's flat with the intention or plan of robbing and killing her. This is not to downplay the severity or gravity of the crime that eventually occurred; intentional killing is undoubtedly an act that has no place in any civilised society. But one has to adopt a measure of perspective in order to assess whether the killing in this particular case was indeed one of the worst type of cases of culpable homicide. It seems to us that this was not. The accused would probably have made away with the box of jewellery had the victim not caught him red-handed. Even when he was caught with the box of jewellery, the accused did not react violently in an instant; he actually pleaded with the victim to let him have it. Again, here, we must be clear that we are not victim-blaming. But in asking ourselves whether the accused deserved to be locked away for life for having committed one of the worst type of cases of culpable homicide, we have to take a step back to assess the facts. Having done so, we are persuaded that the present case was an unfortunate instance of a theft gone wrong as a result of a wretched confluence of circumstances.

51 We also reject the Prosecution's submission that a conviction on the first limb of the culpable homicide offence must result in a "starting position" of life imprisonment, from which point one calibrates the sentence accordingly. In our view, the fact of conviction on the first limb cannot properly constitute an aggravating circumstance, although it is a relevant consideration. If Parliament had intended for the "starting position" to be life imprisonment for convictions founded on the first limb, Parliament would have expressed that intention with

appropriate language in the provision. Secondly, if the view is correct, as we think it is, that the maximum penalty of life imprisonment for culpable homicide not amounting to murder is warranted only in the worst type of cases of that offence, then it makes no sense to say that a conviction on the first limb of that offence attracts as a "starting position" the maximum penalty of life imprisonment, for the burden is on the Prosecution to show instead why the sentence ought to be calibrated *upwards* towards the maximum. Finally, it cannot be that Parliament would have intended for a conviction under the first limb of the culpable homicide offence to attract a "starting position" of life imprisonment, especially since it specifically amended the punishment provision to prescribe a sentence of up to 20 years' or life imprisonment from the previous position of ten years' or life imprisonment so as to give the courts greater "flexibility" to sentence "those who need to be imprisoned for a length of time between 10 and 20 years" (see [44] above).

52 We note that in imposing an 18-year imprisonment term, the Judge had relied, as a mitigating factor, on her finding that the accused suffered from executive deficits which caused him to act impulsively in deciding to kill the victim. In our judgment however, this point could not properly be relied upon because of the inadequacy of the evidence below. It seems to us that the label "executive deficits" was used below to describe a person – the accused in this case – who had problems of self-inhibition and decision-making. There was no evidence led to show that "executive deficits" *themselves* are a recognised condition or mental illness in the nature of, for example, bipolar disorder or post-traumatic stress disorder. Nor was the evidence led below conclusive that the accused's executive deficits, if he suffered from them, *stemmed from* a recognised mental condition. Instead, the label appears to have been used almost in its lay sense, to describe a person with problems of self-inhibition and

decision-making, just like how one would perhaps describe a person as being "slow" or "not that smart". This is evident from the 24 October 2016 report of Dr Matthew Woo,[8] a principal consultant clinical psychologist in practice at Adelphi Psych Medicine Clinic, who was called by the accused:

> [The accused's] executive functioning has also indicated deficits across domains that assess his ability for divided attention, problem solving and inhibition. … [T]ests on other domains of executive functioning indicated significant deficits in inhibition, problem solving and verbal fluency. …

53 The importance of adducing evidence to show that the alleged executive deficits were a recognised mental condition, or arose from one, cannot be understated. This is because in determining the mitigating value to be attributed to an offender's mental condition, the court must first ask if the nature of the mental condition was such that the offender retained substantially the mental ability or capacity to control or restrain himself at the time of his criminal acts. If the answer was "yes" but the offender chose not to exercise self-control, the mental condition would be of little or no mitigating value: *Chang Kar Meng v Public Prosecutor* [2017] 2 SLR 68 at [33]. That an alleged mental condition is a recognised one, or one that arose from a recognised mental condition, although not determinative, lends credence nonetheless to the view that an offender who laboured under that condition did not or could not retain substantially the capacity to restrain himself at the time of his offending. This would accordingly lend mitigating value to the alleged mental condition.

54 This Court's recent decision in *Public Prosecutor v ASR* [2019] SGCA 16 ("*ASR*") is a case in point. The accused in that case was afflicted with an intellectual disability. He was a student at a school for children with special needs, and was assessed by the Institute of Mental Health a few months after

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[8] See ROP Vol 2 at 236.

the commission of the offences to have an intelligence quotient of 61. This Court also found on the medical evidence that the accused had a mental age of between eight and ten, even though he was 14 years of age when he committed the offences in question. The Prosecution accepted that the accused's executive deficits, which impaired his ability to control his impulses, *stemmed from his intellectual disability*. The issue of whether the accused retained substantially the capacity to restrain himself at the time of offending was therefore not in dispute. Nevertheless, this Court went on to consider whether the evidence was sufficient to properly establish, as a fact, that the accused suffered from a lack of impulse control. It answered the question in the affirmative, because the medical evidence was unanimous in *linking* the accused's intellectual disability with his executive deficits and lack of impulse control. This consequently lent mitigating value to the accused's executive deficits.

55 In the case at hand, it was common ground that the accused had low intellectual ability but not to the extent that he was intellectually disabled like the accused in *ASR*.[9] More crucially, the evidence below was inconclusive as to whether the accused's low intellectual ability, or any other mental condition for that matter, was a causal factor for his alleged executive deficits. Dr John Bosco Lee, who was also called by the accused, in his report identified the accused's frontal lobe dysfunction, low intellectual capacity and alcohol use disorder as causal factors of the accused's impulsivity and impaired executive functions. The Judge found that the accused's frontal lobe dysfunction was of no pathological significance (GD at [80]). Dr Stephen Phang, the Prosecution's expert witness, on the other hand, gave evidence that even if the accused suffered from executive deficits, his low intellectual capacity and alcohol use disorder would not have contributed to his executive deficits.

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9 ROP Vol 1A at 649:22–25.

56 The significance of the Wisconsin Card Sorting Test ("WCST") administered on the accused by Dr Woo has to be assessed against the aforementioned evidential context. Dr Woo's assessment that the accused suffered from executive deficits was based entirely on the accused's poor performance on the WCST, a test that is designed to assess conceptual problem solving and mental flexibility. The WCST was administered on the accused only in October 2016 though, close to three years *after* the offence. Even assuming that his poor performance on the WCST in October 2016 can be attributed to his executive deficits, all that can be derived from the fact of his poor performance then is that he suffered from executive deficits *in October 2016*. In order for the conclusions from the accused's poor performance on the WCST in 2016 to be extrapolated accurately to the state of his mind or other executive functioning at the time of offending in 2013, the evidence must go further to demonstrate that there is an *underlying causal factor* for his executive deficits that has remained present all this while even during the time of his offence. Thus, just by way of an example, if the accused has low intellectual ability all this time, *and the evidence shows that his low intellectual ability is the cause for his executive deficits*, then one might be more prepared to conclude that he was labouring under executive deficits at the time of offending just as he was at the time when he took the WCST. But as we have noted, the evidence below on this point was inconclusive. Even Dr Woo seems to proffer a third view, which is that the accused's executive deficits were independent of his low intellectual capacity, and were only a result of the accused's alcohol use disorder and his frontal lobe dysfunction. We therefore hold that no proper conclusion about the accused's mental state at the time of offending can be drawn from the mere fact that the accused had fared poorly on the WCST administered by Dr Woo in October 2016.

57 In any case, notwithstanding our rejection of the Judge's finding that the accused was suffering from executive deficits at the relevant time, for the reasons set out above at [50]–[51], we do not think that the sentence of 18 years' imprisonment was manifestly inadequate such that it should warrant life imprisonment instead. While a sentence of 20 years' imprisonment may well have been more appropriate given our rejection of the accused's alleged executive deficits, it bears repeating that an appellate court should only intervene where the sentence imposed by the court below was "manifestly" inadequate – that in itself implies a high threshold before intervention is warranted: *Public Prosecutor v Mohammed Liton Mohammed Syeed Mallik* [2008] 1 SLR(R) 601 at [84]. In this regard, a sentence is only manifestly inadequate where it is "unjustly lenient" and "requires substantial alterations rather than minute corrections to remedy the injustice": *Public Prosecutor v Siew Boon Loong* [2005] 1 SLR(R) 611 at [22]. We do not think that a difference of two years, in the context of the already substantial period of imprisonment imposed as well as the facts of this case, merits appellate intervention. This is perhaps in line with the Prosecution's appeal to substitute the sentence of 18 years' imprisonment with one of life imprisonment instead of an increase to 20 years' imprisonment.

Whether 18 years' imprisonment was manifestly excessive

58 The accused submits that only a 12-year imprisonment term was warranted in the circumstances. We disagree. Although we have taken the view that this was a case of a robbery gone wrong, that has to be seen in the context of our rejection of the Prosecution's submission that this was one of the worst type of cases of culpable homicide. We should also add that this view does not change nor does it impact on our agreement with the Judge's factual finding that the accused had *intended* to cause the victim's death. In this regard, we agree

generally with the Judge's reasons found at [113]–[119] of the GD save for those in relation to the issue of executive deficits, *ie*, with regard to the accused's antecedents, his conviction under the first limb of s 299, the aggravating factors surrounding the nature of the crime and the circumstances of the accused and the relevant sentencing precedents, and we agree that an 18-year imprisonment term was warranted on the facts of this case. We see no reason to disturb the sentence imposed.

Conclusion

59 We accordingly dismiss both the Prosecution's appeal against sentence as well as the accused's appeal against conviction and sentence.

Judith Prakash Judge of Appeal	Steven Chong Judge of Appeal	Woo Bih Li Judge

Kow Keng Siong, Tan Zhongshan, Kelly Ho and Alexander Woon (Attorney-General's Chambers) for the appellant in CCA 36/2017 and the respondent in CCA 37/2017;
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