Lim Ghim Peow *v* Public Prosecutor
[2014] SGCA 52

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Tribunal/Court	: Court of Appeal
Coram	: Chao Hick Tin JA; Andrew Phang Boon Leong JA; Tay Yong Kwang J
Counsel Name(s)	: Subhas Anandan, Sunil Sudheesan and Diana Ngiam (RHTLaw Taylor Wessing LLP) for the appellant; Francis Ng, Lim How Khang, Jasmine Chin-Sabado and Norine Tan (Attorney-General's Chambers) for the respondent.
Parties	: Lim Ghim Peow — Public Prosecutor

Criminal Procedure and Sentencing – Sentencing – Mentally disordered offenders

17 October 2014

Chao Hick Tin JA (delivering the grounds of decision of the court):

Introduction

1 This appeal brings into acute focus the challenging task of sentencing an offender who suffers from a mental disorder falling short of unsoundness of mind, but falling within the meaning of Exception 7 (diminished responsibility) to s 300 of the Penal Code (Cap 224, 2008 Rev Ed) ("the Code").

2 The appellant, Lim Ghim Peow ("the Appellant"), pleaded guilty to and was convicted of a charge of culpable homicide not amounting to murder under s 304(*a*) of the Code. The Appellant had set his ex-lover, one Mary Yoong Mei Ling ("the Deceased"), on fire at her residence on 25 May 2012 by dousing her with petrol and setting her ablaze with a lighter. Later on the same day, the Deceased passed away due to her burn injuries. The Appellant was diagnosed as suffering from a major depressive disorder at the time of the offence. The trial judge ("the Judge") sentenced him to 20 years' imprisonment. His decision is reported in *Public Prosecutor v Lim Ghim Peow* [2014] 2 SLR 522 ("the Judgment").

3 The Appellant appealed against his sentence of 20 years' imprisonment on the ground that it was manifestly excessive. He submitted that the Judge failed to appreciate the significance of his psychiatric condition, and instead accorded undue weight to the sentencing principles of retribution and prevention.

4 After hearing the submissions of the parties on 11 July 2014 and carefully considering all the circumstances of the case, we affirmed the sentence imposed by the Judge and dismissed the appeal. We now give the detailed grounds for our decision.

Background to the offence

5 It is apposite to begin with a quick summary of the background facts. These facts are extracted from the statement of facts submitted to the court below by the Prosecution, which the Appellant admitted to without qualification.

6 The Appellant is a 46-year-old divorcee. At the time of the offence, he was working as a taxi driver and was staying at a rental flat in Bendeemeer ("the Rental Flat"). The Deceased was also a divorcee and was aged 43 at the time of her death.

7 The Appellant and the Deceased first met more than 17 years ago when they were still married to their respective spouses. Their romantic relationship started sometime in September 2008, and the Deceased moved into the Rental Flat and cohabitated with the Appellant. However, by late 2011, their relationship began to deteriorate and the Deceased moved out of the Rental Flat. Between late 2011 and April 2012, the Deceased alternated between staying with her friend, Justina Cher Siow Wei ("Justina"), her grandaunt and her aunt. Throughout this period, the Appellant attempted to reconcile with the Deceased, but to no avail. At the time of her demise, the Deceased was already in a relationship with another person, Choo Lye Weng (also known as "Steven"), and was staying with her cousin, Phua Duan Kai ("the Victim"), and his family at their Compassvale flat ("the Flat").

8 On 16 February 2012, the Appellant sent the Deceased a text message threatening to set fire to Justina's home if the Deceased refused to meet him. As a result, the Deceased agreed to meet him in the presence of his brother. During the meeting, an argument ensued, in the course of which the Deceased accused the Appellant of making empty threats. The Appellant immediately drove to a petrol kiosk to purchase a four-litre tin of petrol, and returned to the meeting place where the Deceased and his brother were still waiting. He showed the tin of petrol to the Deceased to prove that his threat was real. The Appellant's brother advised him not to "act crazy". The meeting ended without anything untoward happening and the Appellant brought the tin of petrol home.

9 Sometime in March 2012, the Deceased entered into a relationship with Steven. Between April and May 2012, the Appellant continued to call the Deceased and send her text messages, but she did not respond. On 22 May 2012, the Deceased made a police report against the Appellant for harassment.

10 On 23 May 2012, when the Deceased returned to the Flat after running an errand, she found the Appellant lying in wait for her. The Deceased tried to run away from the Appellant, and called the Victim and another male friend to rescue her. The police were also eventually called in. It was after this incident that the Appellant realised that the Deceased had no intention of reconciling with him. Therefore, he resolved to kill the Deceased by burning her and then commit suicide.

11 On that same day (*ie*, 23 May 2012), upon returning to the Rental Flat, the Appellant proceeded to fill three plastic bottles with petrol from the tin of petrol which he had purchased in February 2012. He sealed the caps of the bottles with transparent tape before placing them into a plastic bag. Later that night, the Appellant went to the void deck of the Flat and slept at the nearby playground.

12 On the morning of 24 May 2012, the Appellant woke up and kept watch at the staircase beside the Flat. However, as he did not see the Deceased, he left after some time. Later that night, the Appellant poured the remaining petrol in the tin of petrol into three other plastic bottles. He likewise sealed the three bottles with transparent tape and put them into the same bag as the three bottles from the previous day.

13 On 25 May 2012, sometime after 1.00am, the Appellant arrived at the vicinity of the Flat. He placed the bag containing the six bottles of petrol on a plant rack outside the Flat. The Appellant then slept at the staircase landing near the Flat and lay in wait for the Deceased. Sometime before 8.30am, the Deceased opened the door and the gate of the Flat. The Victim was still asleep in his room then. When the Appellant heard the door being opened, he rushed down the staircase with one

plastic bottle of petrol in his left hand and a lighter in his right hand. He had retrieved the bottle of petrol earlier after a false alarm from a resident of another unit. A brief exchange between the Deceased and the Appellant ensued. The Appellant asked the Deceased to give him one last chance, but the Deceased reiterated that there was no possibility of reconciliation between them. The Appellant then uncapped the bottle of petrol which he was holding and told the Deceased that "he wanted to take her together with him to die" (see the Judgment at [26]).

14 The Deceased ran back inside the Flat and closed and locked the gate. The Appellant reached his right arm through the gate and grabbed the Deceased. He doused the Deceased with petrol from the plastic bottle which he held in his left hand. The Deceased struggled to free herself and screamed for the Victim to save her. The Victim was awakened by the Deceased's screams and rushed out of his room. The Victim tried to close the door and pull the Deceased away, but the Appellant managed to keep the door open. At this point, the Appellant quickly dropped the bottle and used the lighter to set the Deceased on fire. The Deceased was set alight immediately. The Appellant then released the Deceased and let the door close. Inside the flat, the Deceased was engulfed in flames. The Victim's left arm and left leg were also on fire, and the fire spread to the door and the ceiling.

15 Eventually, the Deceased and the Victim managed to put out the fire on their bodies, and the fire in the Flat was extinguished with the help of neighbours. Singapore Civil Defence Force officers and the police arrived separately at the scene. Upon questioning by the police, the Appellant admitted that he had started the fire because the Deceased wanted to leave him and he wanted to die with her. The Deceased, the Appellant and the Victim were conveyed to the hospital.

16 The medical report on the Deceased showed that she sustained 75% total body surface area burns with inhalational injury. Most of the burns were of full thickness. Her condition subsequently deteriorated and she succumbed to her injuries on the same day (*ie*, 25 May 2012) at about 10.56pm. The cause of death was stated in the autopsy report as "extensive severe burns". The Victim and the Appellant both sustained some non-fatal burn injuries from the incident.

The sentence imposed by the Judge

17 The prescribed punishment for the offence of culpable homicide not amounting to murder under s 304(*a*) of the Code is either life imprisonment with the option of caning, or a term of imprisonment which may extend to 20 years with the option of a fine or caning. It was against this statutory framework that the Judge decided to sentence the Appellant to the maximum fixed term of imprisonment, *viz*, 20 years' imprisonment.

18 It should be noted that the charge faced by the Appellant was one of culpable homicide not amounting to murder by operation of Exception 7 to s 300 of the Code. The Prosecution conceded at the hearing below that at the time of the offence, the Appellant was suffering from an abnormality of mind (namely, a major depressive disorder) which substantially impaired his mental responsibility for the commission of the offence and therefore reduced the offence from that of murder to that of culpable homicide not amounting to murder. At the hearing before the Judge, the Prosecution did not press for the maximum punishment of life imprisonment, but argued instead for an imprisonment term of 16 to 20 years. The Appellant, on his part, pleaded for an imprisonment term in the region of ten years.

19 Given the Appellant's major depressive disorder, the Judge was of the view that while rehabilitation of the Appellant was important, it should not be the sole or principal consideration in this case. He felt that there was a need to balance the public interest in protecting society against the interests of the Appellant. Considering the gravity of the offence and the circumstances of the case,

the Judge held that the public interest should prevail over the interests of the Appellant, and that the primary operative sentencing principle in this case ought to be retribution rather than rehabilitation. Retribution would entail consideration of the concept of "just deserts" and the principle of proportionality. In addition, there was a need to consider the principle of prevention, given the Appellant's latent violent disposition.

20 The Judge further noted that there were many aggravating factors in this case. First, there was a strong element of premeditation on the part of the Appellant, who formed the motive and made preparations to kill the Deceased two days before the offence. Second, the Judge took into account the fact that the Appellant's mental disorder "[did] not appear to … [have] dispossessed him of his self-control" (see the Judgment at [60]) or to have made him unable to fully appreciate the consequences of his actions. Third, the Appellant's attack on the Deceased was vengeful and vicious, causing her severe injuries. The Appellant also did not pay heed to the consequences of his actions on others, such as the Victim and the residents of neighbouring flats. Fourth, the Appellant had a violent temperament, a history of substance abuse and drug consumption, as well as previous detentions for gang-related offences. This led the Judge to conclude that pursuant to the sentencing principle of prevention, society had to be protected from the Appellant, who was quick-tempered, impulsive and had a latent violent disposition.

21 However, the Judge also took into account a number of mitigating factors. The Appellant had pleaded guilty to the charge. Further, at the time of the offence, he was suffering from a major depressive disorder that significantly impaired his judgment. The Judge noted the findings in the psychiatric reports that the Appellant required psychiatric care and treatment for an indefinite period of time in a correctional setting, and that his condition would inevitably relapse should he leave a correctional environment. The Judge also considered the fact that the Appellant's three daughters had filed affidavits indicating that they would support the Appellant upon his release from prison.

22 Applying the sentencing principle of retribution and the principle of proportionality in sentencing, the Judge stated that the maximum sentence of life imprisonment might not be appropriate. However, he was of the view (at [80] of the Judgment) that notwithstanding the Appellant's mental disorder, "a very substantial sentence" was required to meet the community interest in retribution because of "the very aggravating features of the case". A long custodial sentence was also warranted by virtue of the principle of prevention. The Judge therefore sentenced the Appellant to 20 years' imprisonment.

Our decision

Overview

23 The issue before us was whether, given the circumstances of the case, the sentence imposed by the Judge was manifestly excessive. It is trite law that an appellate court has only limited grounds for intervention with respect to sentences meted out by a lower court, one of the grounds being that the sentence concerned is manifestly excessive. To establish this ground, it must be shown that the sentence is unjustly severe, and "requires substantial alterations rather than minute corrections to remedy the injustice" (see *Public Prosecutor v Siew Boon Loong* [2005] 1 SLR(R) 611 at [22]). In this regard, as pointed out in *Angliss Singapore Pte Ltd v Public Prosecutor* [2006] 4 SLR(R) 653 at [14]:

> … The mere fact that an appellate court would have awarded a higher or lower sentence than the trial judge is not sufficient to compel the exercise of its appellate powers, unless it is coupled with a failure by the trial judge to appreciate the facts placed before him or where the trial judge's exercise of his sentencing discretion was contrary to principle and/or law. …

24 It was evident that the offence committed in the present case was both premeditated and heinous in nature. The Appellant doused the Deceased with petrol and set her on fire, causing extensive and severe burns which ultimately resulted in her death. Indeed, the Deceased must have suffered excruciating pain before she eventually succumbed to her burn injuries. This case was therefore one of the more serious cases of culpable homicide not amounting to murder to have come before our courts.

25 That said, the existence of a mental disorder on the part of the offender is always a relevant factor in the sentencing process. The manner and extent of its relevance depends on the circumstances of each case, in particular, the nature and severity of the mental disorder. In fact, the existence of a mental disorder often gives rise to contradictory sentencing objectives. As V K Rajah JA noted in *Public Prosecutor v Goh Lee Yin and another appeal* [2008] 1 SLR(R) 824 ("*Goh Lee Yin (2008)*") at [1], "the paradox of sentencing the mentally ill" is that "[s]uch illnesses can be a mitigating consideration or point towards a future danger that may require more severe sentencing". This echoes what was stated by the High Court of Australia in *Veen v The Queen (No 2)* (1988) 164 CLR 465 at 476–477 (cited with approval by the Singapore Court of Appeal in *Public Prosecutor v Aniza bte Essa* [2009] 3 SLR(R) 327 ("*Aniza*") at [70]):

> … The purposes of criminal punishment are various: protection of society, deterrence of the offender and of others who might be tempted to offend, retribution and reform. The purposes overlap and none of them can be considered in isolation from the others when determining what is an appropriate sentence in a particular case. They are guideposts to the appropriate sentence but sometimes they point in different directions. *And so a mental abnormality which makes an offender a danger to society when he is at large but which diminishes his moral culpability for a particular crime is a factor which has two countervailing effects: one which tends towards a longer custodial sentence, the other towards a shorter.* [emphasis added]

Sentencing principles for mentally disordered offenders

26 In sentencing a mentally disordered offender, there is generally a tension between the sentencing principles of specific and general deterrence on the one hand, and the principle of rehabilitation on the other. The approach which our courts have adopted is that the element of *general* deterrence *may* be given considerably less weight if the offender was suffering from a mental disorder at the time of the offence, particularly if the mental disorder was causally related to the offence. This was stated by Yong Pung How CJ in the Singapore High Court case of *Ng So Kuen Connie v Public Prosecutor* [2003] 3 SLR(R) 178 ("*Connie Ng*") at [58] as follows:

> … [T]he element of general deterrence can and should be given considerably less weight if the offender was suffering from a mental disorder at the time of the commission of the offence. This is particularly so if there is a causal link between the mental disorder and the commission of the offence. In addition to the need for a causal link, other factors such as the seriousness of the mental condition, the likelihood of the [offender] repeating the offence and the severity of the crime, are factors which have to be taken into account by the sentencing judge. In my view, general deterrence will not be enhanced by meting out an imprisonment term to [an offender] suffering from a serious mental disorder which led to the commission of the offence.

27 The proposition in the passage above has been cited with approval in numerous Singapore authorities (see, *eg*, *Public Prosecutor v Lim Ah Liang* [2007] SGHC 34 at [40], *Public Prosecutor v Lim Ah Seng* [2007] 2 SLR(R) 957 at [49], *Public Prosecutor v Aguilar Guen Garlejo* [2006] 3 SLR(R) 247 ("*Aguilar*") at [44] and *Goh Lee Yin (2008)* at [94]). The policy rationale underlying this proposition is that an offender who suffers from a mental disorder is usually not an appropriate object

for exemplary punishment.

28 That said, we should clarify that the element of general deterrence may still be accorded full weight in some circumstances, such as where the mental disorder is not serious or is not causally related to the commission of the offence, and the offence is a serious one. In this regard, it is pertinent to note that the passage in *Connie Ng* quoted at [26] above can be traced to the decision of the Supreme Court of South Australia in *R v Wiskich* [2000] SASC 64 ("*Wiskich*"). In *Connie Ng*, Yong CJ referred to *Sentencing Practice in the Subordinate Courts* (Richard Magnus *et al* eds) (LexisNexis, 2nd Ed, 2003) at p 93 and noted that the authors had cited an excerpt from *Wiskich* at [62], which was reproduced in *Connie Ng* (at [57]) as follows:

> An assessment of the severity of the disorder is required. A sentencing court must determine the impact of the disorder upon both the offender's thought processes and the capacity of the offender to appreciate the gravity and significance of the criminal conduct. … *It is not difficult to understand that the element of general deterrence can readily be given considerably less weight in the case of an offender suffering from a significant mental disorder who commits a minor crime, particularly if a causal relationship exists between the mental disorder and the commission of such an offence.* In some circumstances, however, the mental disorder may not be serious or causally related to the commission of the crime, and the circumstances of the crime so grave, that very little weight in mitigation can be given to the existence of the mental disorder and full weight must be afforded to the element of general deterrence. In between those extremes, an infinite variety of circumstances will arise in which competing considerations must be balanced. [emphasis in original]

29 It is evident from the passage cited above that there is *no* blanket rule that the court will give less weight to the element of general deterrence on the basis that the offender was suffering from a mental disorder at the time of the offence. In fact, the court in *Wiskich* found that weight should be given to general deterrence notwithstanding the existence of a mental disorder on the part of the respondent offender in that case.

30 In *Wiskich*, the respondent pleaded guilty to the offence of murder and was sentenced to the mandatory sentence of life imprisonment with a non-parole period of 14 years. The Prosecution applied for leave to appeal against the non-parole period on the ground that it was manifestly inadequate. Amongst other things, the Prosecution argued that the trial judge erred in reducing by seven years the non-parole period that he would otherwise have imposed by reason of the "mental condition" of the respondent (see *Wiskich* at [1]).

31 The factual background against which the offence in *Wiskich* was committed bears much similarity to that in the present case. The respondent there had been in a relationship with a young woman ("J"), which began to deteriorate when J went to university. Attempts by J to end the relationship were strongly resisted by the respondent. Subsequently, the respondent discovered that J was in a relationship with the deceased and became intensely jealous, even threatening to kill himself on a few occasions. The trial judge found that in the weeks preceding the offence, the respondent was constantly preoccupied by his jealousy and eventually formed the intention to kill the deceased and then himself. The respondent undertook preparations for the commission of the offence, such as placing a small axe (described as a "tomahawk") in a backpack in his vehicle and keeping watch on the deceased's house. On the day of the offence, the respondent waited near the deceased's home and trailed the deceased in his vehicle when the deceased left his home on a bicycle. The respondent ran the deceased down from behind and proceeded to strike the deceased, who was still conscious on the ground, on the head at least nine times with the tomahawk. The deceased died at the scene soon after the attack.

32 At first instance, the trial judge found that the respondent was at the material time suffering from "three independent but interacting mental disorders" (see *Wiskich* at [15]), which were set out in the reports of three psychiatrists. Those mental disorders were, namely: (a) obsessive compulsive disorder since childhood; (b) depressive illness since about two years before the commission of the offence; and (c) difficulties in social relationships and obsessive suspiciousness. Significantly, the trial judge also stated that although the respondent's mental illness was such that it had significantly impaired his capacity for self-reason and self-control, he remained capable of understanding the nature and implications of his actions (see *Wiskich* at [15]). Notwithstanding this, the trial judge allowed a reduction of seven years from the non-parole period on account of the respondent's diminished sense of responsibility stemming from his mental disorder, and fixed a non-parole period of 14 years (see *Wiskich* at [16]–[17]).

33 On appeal before the Supreme Court of South Australia, Martin J, who delivered the leading judgment, held that the trial judge had erred in giving little or considerably reduced weight to the element of general deterrence, and had imposed a non-parole period which was manifestly inadequate. Martin J therefore fixed a new non-parole period of 18 years. He noted (at [69] of *Wiskich*) that "the respondent knew what he was doing and knew that it was wrong", and further, that the respondent "formulated a plan to kill the deceased, armed himself for that purpose and carried out the plan", albeit in "an obsessive manner and with disordered thinking". Martin J therefore stated (also at [69] of *Wiskich*):

> … The element of general deterrence is, therefore, of particular importance in fixing non-parole periods for crimes of murder committed in such circumstances, particularly where the crime was not committed on impulse, but was planned over a period of time before being carried into effect with the brutality I have previously described …

34 Martin J also made the following statement in *Wiskich* at [62], which was omitted from the passage reproduced in *Connie Ng*:

> … [A]s a general proposition, if an offender acts with knowledge of what is being done and with knowledge of the gravity of the criminal conduct, the importance of the element of general deterrence otherwise appropriate in the particular circumstances is not greatly affected. …

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

36 Similarly, the sentencing principle of *specific* deterrence *may* be of limited application in cases involving mentally disordered offenders. Whereas general deterrence is directed at educating and deterring other like-minded members of the general public by making an example of the particular offender concerned, specific deterrence is directed at discouraging that particular offender from committing offences in future (see *Public Prosecutor v Tan Fook Sum* [1999] 1 SLR(R) 1022 at [18]). The reason why specific deterrence may not be a relevant consideration when sentencing mentally disordered offenders is that specific deterrence is premised on the assumption that the offender can balance and weigh consequences before committing an offence (see *Tan Kay Beng v Public Prosecutor* [2006] 4 SLR(R) 10 at [32]). The aim of specific deterrence is to deter the particular offender concerned from committing any further offences. It follows that where that offender's mental disorder has seriously inhibited his ability to make proper choices or appreciate the nature and quality

of his actions, it is unlikely that specific deterrence will fulfil its aim of instilling in him the fear of re-offending. Conversely, specific deterrence may remain relevant in instances where the offence is premeditated or where there is a conscious choice to commit the offence (see *Public Prosecutor v Law Aik Meng* [2007] 2 SLR(R) 814 at [22]). This remains the case notwithstanding the existence of a mental disorder on the part of the particular offender concerned.

37 Rehabilitation may take precedence where the sentencing principle of deterrence is rendered less effective by virtue of a serious psychiatric condition or mental disorder on the part of the offender (see *Goh Lee Yin v Public Prosecutor* [2006] 1 SLR(R) 530 at [29]). Rehabilitation, however, has both a public and an individual dimension (see *Goh Lee Yin (2008)* at [99]). On the one hand, the courts are concerned about the welfare of the offender and the manner of reform and treatment which is most suitable, particularly if the offender suffers from a psychiatric illness or other special psychiatric condition. On the other hand, the underlying aim of rehabilitation is to advance the greater public interest by reducing the risk of recidivism.

38 It is, moreover, erroneous to assume that rehabilitation necessarily dictates that a lighter sentence be imposed on a mentally disordered offender. This again depends very much on the nature of the offence as well as the nature and severity of the offender's mental disorder. The case of *Public Prosecutor v Kwong Kok Hing* [2008] 2 SLR(R) 684 serves as a useful illustration. In that case, the respondent was charged with attempting to commit culpable homicide by pushing the victim into the path of an oncoming train at a train station. He was diagnosed as suffering from a mental disorder at the time of the offence. In the Prosecution's appeal against sentence, the Court of Appeal observed (at [37]) that "[w]hile the respondent's rehabilitation was a relevant consideration, there was no suggestion that he could not be similarly rehabilitated in prison", and that "even if one were to place considerable weight on rehabilitation as a sentencing principle, it did not necessitate a light sentence in the current case".

39 In cases involving serious offences, there is no reason why the retributive and protective principles of sentencing should not prevail over the principle of rehabilitation, notwithstanding the offender's mental disorder. As Rajah JA stated in *Goh Lee Yin (2008)* at [107]:

> … [T]his is not to say that in *all* offences committed owing to a psychiatric disease, rehabilitation must be the foremost consideration. Indeed, assuming that an offender suffers from a psychiatric disease which causes him to commit a particular heinous offence, it would surely not be correct to say that such an offender ought to be rehabilitated to the exclusion of other public interests. Rehabilitation may still be a relevant consideration, but such rehabilitation may very well have to take place in an environment where the offender is prevented from recommitting similar offences. [emphasis in original]

We also note with approval the commentary in Kow Keng Siong, *Sentencing Principles in Singapore* (Academy Publishing, 2009) at para 18.125 that "the retributive principle features prominently in the sentencing of mentally disordered offenders or intellectually challenged offenders where the offence is *particularly serious or heinous*" [emphasis in original]. The principle of retribution will be particularly relevant if the offender's mental disorder did not seriously impair his capacity to appreciate the nature and gravity of his actions. Protection of the public will also be a relevant consideration in cases involving serious offences and "dangerous" offenders, notwithstanding the fact that at the material time, the offender was suffering from a psychiatric disorder which caused the commission of the very offence concerned (see *Goh Lee Yin (2008)* at [108]). Indeed, there is no reason why the public interest of protecting society should necessarily cease to be a relevant consideration when dealing with a mentally disordered offender. Ultimately, the court must balance the interests of society against those of the offender. In every case, it is often this search for the right balance which poses

the greatest difficulties.

The Appellant's psychiatric condition

40 In the present case, the relevant clinical evidence on the Appellant's mental disorder consisted of four psychiatric reports issued from July 2012 to December 2013 by Dr Jerome Goh Hern Yee ("Dr Goh"), a consultant psychiatrist at the Institute of Mental Health ("the IMH"). Those reports were based on, *inter alia*, Dr Goh's examination of the Appellant on various occasions, interviews with the Appellant's family members and friends, as well as a review of the clinical notes from a previous visit to the IMH by the Appellant in December 2011.

41 In Dr Goh's first psychiatric report dated 5 July 2012 ("the 1st Psychiatric Report"), he diagnosed the Appellant as having a major depressive disorder which preceded the offence. The Appellant had sought consultation at the IMH in December 2011, and had been diagnosed as having a major depressive episode then. He did not follow up after that visit. In Dr Goh's opinion, the Appellant was "still labouring under symptoms of major depressive disorder around the time of the … offence" and his major depressive disorder led him to adopt desperate acts to get the Deceased to resume their relationship. Dr Goh stated:

> … When [the Appellant] concluded [that the Deceased] would never return to him, his depressive mental state would have limited the options available to him and tip[ped] his decision making towards his plans to kill [the Deceased] and himself. …

42 The nature and severity of the Appellant's major depressive disorder was further explained by Dr Goh in his second psychiatric report dated 6 September 2012 ("the 2nd Psychiatric Report"). In that report, Dr Goh opined that the Appellant's major depressive disorder amounted to an abnormality of mind, and that there was clinically significant impairment in his decision-making capacity with regard to the offence. However, Dr Goh also stated that the Appellant "did not appear to lack the capacity to comprehend the events or the capacity to appreciate the wrongfulness of his actions", noting that the Appellant had: (a) said that he intended to kill the Deceased and then himself; (b) made the necessary preparations; (c) left "final instructions" for his daughters; (d) monitored the scene; and (e) waited for the Deceased to emerge from the Flat. Dr Goh explained the impact of the Appellant's mental disorder on the commission of the offence as follows:

> His depressive outlook, especially given the severity of his depression and significant psychosocial impairments that he had, had contributed to the commission of the act, in that it led him to conclude that he had no other choices and that his life had no meaning when the [D]eceased refused to reconcile with him. A depressed individual like the [Appellant] can be prone to "catastrophizing" and focus only on the negative aspects of his situation, leading to a failure to consider prosocial alternatives in his relationship with the [D]eceased or with others, and to conclude there was "no way out" other than the course of action that led to the death of the [D]eceased.
>
> [The Appellant] already has a violent and impulsive propensity related to his personality attributes, and he was also abusing drugs. Relating to the offence, his major depressive disorder would have further impaired his degree of self-control significantly.

43 The Appellant's "violent and impulsive propensity" was also noted by Dr Goh in his other reports. In the 1st Psychiatric Report, Dr Goh observed that this "violent and impulsive propensity" predated the offence, and had contributed to the Appellant's conflicts and fights with his family and other persons as well as to his suicide and other self-harm attempts. In addition, Dr Goh stated that the

Appellant had a history of substance abuse, which he had resumed shortly before the offence by consuming methamphetamine and marijuana. In Dr Goh's third psychiatric report on the Appellant dated 4 April 2013 ("the 3rd Psychiatric Report"), Dr Goh opined that the Appellant had violent tendencies and an impulsive personality trait:

> [The Appellant] has a severe mental illness and history of treatment discontinuation, conduct problems in his childhood, substance misuse and history of violence and suicide attempts. Furthermore, his past behaviours, including being involved in fights from a young age, two self-harm attempts, and the circumstances leading to the index offence, strongly suggest [an] impulsive personality trait. …

44 As for the Appellant's likelihood of recidivism and his need for follow-up psychiatric care and treatment, Dr Goh stated in the 3rd Psychiatric Report:

> Given the severity of the offence, the [Appellant] would require psychiatric care and treatment for an indefinite period of time, and close supervision and monitoring of his psychiatric treatment, in order to manage the above risk factors well to mitigate his violence and self-harm risks. …

Further, Dr Goh stated that "[t]he supervision and monitoring of [the Appellant's] psychiatric condition to manage such risks could be carried out in a correctional setting".

45 In his final report on the Appellant dated 4 December 2013 ("the 4th Psychiatric Report"), Dr Goh noted that the Appellant's depressive symptoms had resolved with treatment and that his depressive illness was in remission at the time of that report. Dr Goh, however, expressed concern that the Appellant's "insight into his need for treatment for his depression and the role of medications appear[ed] limited", and that the Appellant "appeared over-confident that his depressive disorder would not recur and that he would not resume his substance misuse in the community". According to Dr Goh, the Appellant had also expressed a preference for living on his own after his release from prison, which "would raise concerns about the monitoring and supervision of his psychiatric care in the community". Dr Goh strongly advised that the Appellant should receive "long-term psychiatric follow-up and treatment, to maintain his remission and reduce the risk of relapse of his major depressive disorder". Dr Goh also suggested that the Appellant could receive "close monitoring and supervision with regards to his psychiatric condition and early detection of any recurrence of depressive symptom[s]" in a controlled environment like a prison.

Whether the Judge failed to appreciate the significance of the Appellant's mental disorder and/or accorded undue weight to retribution and prevention

46 Having regard to the four psychiatric reports issued by Dr Goh, we did not think the Judge failed to appreciate the nature or significance of the Appellant's mental disorder.

47 A preliminary point raised by the Appellant was that the Judge had unfairly stated that the offence would have been one of murder had the Appellant not been diagnosed as suffering from a major depressive disorder at the time of the offence. As an example of such a statement, the Appellant pointed to [43] of the Judgment, where the Judge stated that "[t]his would have been a clear case of murder if it had not been for his major depressive disorder diagnosed by Dr Goh". At the hearing before us, counsel for the Appellant also suggested that comments such as the above showed that the Judge had prejudged the case.

48 In our view, the Judge, in making the above statement, was merely stating the fact that but for the Appellant's major depressive disorder, which the Prosecution conceded amounted to an

abnormality of mind, the Appellant would, in all likelihood, have been charged with and convicted of murder. The evidence was clear that the Appellant had made up his mind that unless the Deceased agreed to reconcile with him, he would kill her and then take his own life. He did precisely that on the fateful day when the Deceased persisted in rejecting his plea for reconciliation. It was not disputed that this was a case where the Prosecution had proved the fault element for murder, but the offence was reduced to that of culpable homicide not amounting to murder by operation of the special exception of diminished responsibility (see [18] above). In the circumstances, we could not see anything unfair in what the Judge stated as quoted above.

49 The main issue raised by the Appellant related to the Judge's findings at [60] of the Judgment, which reads as follows:

> **Accused appeared normal to family members and friends**
>
> 60 *This is not a case in which the accused suddenly snapped because of his mental condition. This also does not appear to be a case in which the major depressive disorder had dispossessed him of his self-control. Anyone looking at the facts of this case will not come to the conclusion that the accused was suffering from a major depressive disorder.* His friends and family members, according to Dr Goh, did not observe him to manifest any psychotic behaviour. He was only diagnosed to be suffering from major depressive disorder when he was sent to [the] IMH for an assessment after his arrest. What the accused had done here was methodological and meticulous. He had prepared his murder tool, the petrol, by filling it up in plastic bottles which made it convenient for him to douse the [D]eceased with the petrol. He taped the caps so as to prevent anybody from detecting the petrol which he intended to use to kill the [D]eceased. He lay in wait for the opportune moment to ambush the [D]eceased. He also carried with him a lighter just in case the [D]eceased were to attempt to run away, proving that he had considered contingencies as well. The entire plan to kill the [Deceased] was devised in a cold, conscientious manner over a span of two days. Also, the accused was in no hurry to kill the [D]eceased. He was patient and had no qualms about waiting until the next day when no opportune moment arose when he first lay in wait for the [D]eceased. Instead of giving up, he was persistent in carrying out his plan. *There was nothing to suggest that the accused's major depressive disorder made him unable to fully appreciate the consequences of his actions. Therefore, the accused deserves a harsher sentence than an offender who had committed the offence on impulse arising from a severe mental disorder.*
>
> [emphasis added]

50 We did not think that the remarks made by the Judge in the above passage indicated that he failed to appreciate the significance of the Appellant's mental disorder or the impact of the same on the commission of the offence. While Dr Goh did state in the 2nd Psychiatric Report that the Appellant's major depressive disorder would have impaired his degree of self-control and his decision-making capacity with regard to the offence, Dr Goh also opined in that report that the Appellant did not appear to lack "the capacity to comprehend the events or the capacity to appreciate the wrongfulness of his actions" (see [42] above). Dr Goh's opinion was that the Appellant's major depressive disorder, coupled with his violent and impulsive personality, led him to decide on the course of action that resulted in the death of the Deceased. This, however, did not mean that the Appellant could not comprehend the gravity of his actions or the wrongfulness of his conduct. As both Dr Goh and the Judge noted, the Appellant formed the intention to kill the Deceased some time before the commission of the offence, and carried out his plan in quite a meticulous manner.

51 The Judge therefore did not err in drawing a distinction between, on the one hand, the present

case and, on the other hand, cases where the mental disorder had completely dispossessed the offender of his awareness of the nature and illegality of his actions or where the offender had committed the offence on impulse due to his mental disorder. Here, the Appellant had carefully planned his moves – he had decided to take the Deceased's life and his own too, reasoning that if he could not have the Deceased, then no one else should have her. We should clarify at this juncture that there is an erroneous statement of fact at [60] of the Judgment (quoted at [49] above). The Appellant was first diagnosed as having a major depressive disorder in December 2011, *before* the commission of the offence, and not (as the Judge stated) after his arrest for the offence. However, this error was not material and does not detract from what we have said in the previous paragraph.

52 In the light of the nature of the Appellant's major depressive disorder and its effect on the commission of the offence, we were of the view that the Judge did not err in considering retribution and prevention instead of rehabilitation to be the primary sentencing principles that were applicable in this case. A mental disorder, even if it substantially impaired the offender's mental responsibility for the commission of the offence and thereby reduced the offence (in the context of the offence of culpable homicide under s 299 of the Code) from that of murder to that of culpable homicide not amounting to murder, cannot be invoked as a blanket excuse for every aspect of the offender's criminal conduct. In every case, it is imperative that the sentencing court examine the nature and gravity of the offender's mental disorder and its impact on the commission of the offence before arriving at a sentence that takes into account and balances the relevant sentencing objectives. This echoes what we have said above at [35]–[39] that if the offender acts with knowledge of what he is doing and of the gravity of his actions, and the offence is particularly serious or heinous, the principles of deterrence, retribution and protection may assume primacy in the sentencing process. In the present case, the offence committed was horrendous, causing severe pain and suffering to the Deceased. No doubt, the Appellant's major depressive disorder contributed to his decision to kill the Deceased by limiting his perception of the choices available to him. However, as we have stated above, there was nothing to indicate that the Appellant lacked the capacity to comprehend his actions or appreciate the wrongfulness of his conduct. In the circumstances, it was open to the Judge to give precedence to the consideration of protecting the public as well as the need to punish the Appellant appropriately for his offence.

53 That said, this did not mean that the Appellant's rehabilitation ceased to be a relevant consideration at all. In fact, there was every suggestion in this case that the Appellant's rehabilitation would be best carried out in a structured and correctional environment. According to Dr Goh, the Appellant would require psychiatric care and treatment for an indefinite period of time, coupled with close supervision and monitoring of his psychiatric treatment. While we agreed with the Appellant that Dr Goh did not state that the Appellant's mental disorder, which is now in remission, would inevitably relapse should he leave a correctional environment, Dr Goh's reports did indicate that the Appellant did not seem to appreciate the need for continued treatment of his mental disorder if he were to be released into the community and be left to his own devices.

54 Dr Goh identified several risk factors in the 4th Psychiatric Report (see [45] above), which pointed towards the need for a long custodial sentence for the Appellant's rehabilitation. First, the Appellant appeared to have a limited insight into his need for treatment and the purpose of medication. Second, the Appellant had a history of treatment discontinuance and his motivation for psychiatric treatment had been low prior to the offence. He had discontinued his treatment at the IMH after his first visit in December 2011. Third, at the time of the 4th Psychiatric Report, the Appellant had expressed a preference for living on his own after his release from prison. We note that the Appellant did subsequently present additional affidavits from his three daughters stating their commitment to provide him with support and look after his welfare upon his release from prison. We agree with the Judge that such family support is heartening and is to be encouraged. However, the

practicalities of the situation need to be taken into account. The Appellant has been identified by Dr Goh as having an impulsive personality trait and violent tendencies, and his history includes several attempted suicide and self-harm episodes as well as periods of substance abuse. Given this background and the inherent character traits of the Appellant, the ability of his daughters to provide him with the supervision and care necessary for his continued psychiatric well-being may be limited.

The sentencing precedents

55 Although the Appellant submitted that the Judge erred in appreciating the relevant sentencing precedents, we did not think that the cases relied on by the Appellant were of much assistance. In the first place, comparisons with the sentences imposed in individual cases are of limited utility, given the wide variety of circumstances in which offences of culpable homicide are committed. This was noted by the Court of Appeal in *Public Prosecutor v Tan Kei Loon Allan* [1998] 3 SLR(R) 679 at [33], where it stated that sentencing for culpable homicide should, for this reason, remain a matter within the trial judge's discretion and be left to be determined on the facts of each particular case.

56 Second, the difficulty with comparing the sentences imposed in other cases of culpable homicide not amounting to murder is intensified by the fact that the maximum fixed term of imprisonment under s 304(*a*) of the Code was increased from ten years to 20 years under the Penal Code (Amendment) Act 2007 (Act 51 of 2007), which came into effect on 1 February 2008. This amendment was intended to give the courts greater flexibility in sentencing offenders for the offence of culpable homicide not amounting to murder. Cases based on the pre-1 February 2008 version of s 304(*a*) ("pre-amendment cases") therefore have to be viewed with this legislative background in mind. However, it should be noted at the same time that the increase in the maximum fixed term of imprisonment under the present version of s 304(*a*) does not *per se* warrant the imposition of a more severe sentence, and the punishment imposed must still reflect the gravity of the offence (see *Public Prosecutor v Vitria Depsi Wahyuni (alias Fitriah)* [2013] 1 SLR 699 at [35]).

57 The pre-amendment cases cited by the Appellant did not indicate that the Appellant deserved a lighter sentence in the present case. The offenders in both *Aguilar* and *Public Prosecutor v Ong Pang Siew (No. 2)* [2011] SGHC 177 ("*Ong Pang Siew*") were each sentenced to ten years' imprisonment (*viz*, the maximum fixed term of imprisonment prior to 1 February 2008), while the offender in *Aniza* was sentenced to nine years' imprisonment. The only pre-amendment case where the sentence imposed was not close to the then maximum fixed term of imprisonment of ten years was *Public Prosecutor v Han John Han* [2007] 1 SLR(R) 1180 ("*Han John Han*"), where the offender's sentence was enhanced by the Court of Appeal from three to five years' imprisonment.

58 Furthermore, the nature and severity of the mental disorders suffered by the offenders in the above cases as well as the circumstances in which the offences were committed were not analogous to those in the present case. There was no element of premeditation or planning of the offence in *Aguilar*, *Ong Pang Siew* and *Han John Han*. In *Han John Han*, the sentencing court also took into account the low risk of recurrence of the offender's psychotic condition and the fact that he had had good familial and professional relationships up until the time of the offence (see *Han John Han* at [9] and [12]). As for *Aniza*, a key distinguishing factor would appear to be that it was accepted in that case that the offender "was suffering from an impairment of her cognitive appreciation of what she was doing" (at [68]); moreover, the offender's psychiatric illness was "transient" and its dominant cause was "prolonged spousal abuse by the deceased towards her" (at [35]). In contrast, the clinical evidence in the present case was that the Appellant did not appear to lack the capacity to comprehend his actions at the material time, and that his mental disorder required long-term psychiatric treatment and care. Moreover, unlike the offender in *Aniza*, who had been a victim of persistent spousal abuse, in the present case, the Appellant was the aggressor throughout his

relationship with the Deceased.

59 With regard to the cases cited by the Appellant based on the post-1 February 2008 version of s 304(*a*), the sentences imposed in those cases for the offence of culpable homicide not amounting to murder ranged from five years' imprisonment to 18 years' imprisonment. In *Public Prosecutor v Wu Yun Yun* Criminal Case No 16 of 2009 (11 December 2009, unreported), the accused purchased a knife two weeks prior to the offence as she had become jealous of the deceased and the victim, who were her brother-in-law and her sister-in-law respectively. About two days before the offence, the accused decided to carry out her plan to stab either the deceased or the victim in the early hours of the morning. She stabbed the victim twice in the neck and the deceased thrice in his chest and abdomen. She was found to be suffering from a major depressive disorder at the material time, and was sentenced to a total of 16 years' imprisonment, comprising 12 years' imprisonment on one charge of culpable homicide not amounting to murder and four years' imprisonment on a second charge of attempting to commit culpable homicide not amounting to murder.

60 In *Public Prosecutor v Goh Hai Eng* Criminal Case No 4 of 2010 (24 February 2010, unreported) ("*Goh Hai Eng*"), the accused, who was suffering from a bipolar disorder at the material time, killed her younger daughter by stabbing the latter in the chest while the latter was asleep. The accused had been depressed over her recent divorce and financial burdens, which led her to decide to kill her younger daughter and then commit suicide. The accused was sentenced to five years' imprisonment on a charge of culpable homicide not amounting to murder.

61 In *Public Prosecutor v Kumaresen a/l Muthian @ Rathu* Criminal Case No 16 of 2011 (18 July 2011, unreported) ("*Kumaresen*"), the accused, pursuant to a quarrel with the deceased: (a) used a 30cm-long metallic angle bar to hit the deceased's head several times; (b) punched the deceased's face with his fist; and also (c) used his feet to stamp on the deceased's chest and abdomen. The deceased later died from multiple injuries. The accused, who was suffering from a major depressive disorder at the time of the offence, was sentenced to 12 years' imprisonment.

62 In *Public Prosecutor v Luo Faming* [2011] SGHC 238 ("*Luo Faming*"), the accused ("Luo") stabbed and killed his colleague ("Gong") and also hit his supervisor ("Ng") on the head with a hammer. The day before the incident, the accused had quarrelled with Gong, and Ng had intervened. The accused felt that Ng had favoured Gong and resolved that night to take revenge on Gong and Ng by killing them the next day. The accused was found to be suffering from a major depressive disorder which substantially impaired his mental responsibility for his actions at the time of the offence. The accused pleaded guilty, and was sentenced to 18 years' imprisonment on a charge of culpable homicide not amounting to murder and six years' imprisonment on a second charge of attempting to commit culpable homicide not amounting to murder, making a total sentence of 24 years' imprisonment.

63 In view of the aforesaid cases, we did not think that the Judge's sentence of 20 years' imprisonment was out of line. In the first place, most of the above cases were unreported, and thus, we do not have any significant details as to the nature and severity of the mental disorders suffered by the offenders concerned, nor do we have details of the impact of those mental disorders on the commission of the offence. This, as we have mentioned earlier, is crucial in determining which sentencing considerations should apply and what the final sentence to be imposed on the offender should be. Moreover, there were factors distinguishing the above cases from the present case. There was no element of premeditation in *Kumaresen*. While there was premeditation in the other three cases, we note that in *Goh Hai Eng*, the offender and the victim were mother and child. Moreover, in contrast to the three cases in which the offences were premeditated, the method of killing employed in the present case was particularly cruel and vicious (*cf*, for example, *Luo Faming*, where it was

stated at [19] that "[o]ffences under s 304(*a*) of the Penal Code are usually violent but there was no sadistic feature in this case").

Conclusion

64 For the reasons elucidated above, we did not think that the sentence of 20 years' imprisonment imposed by the Judge was manifestly excessive. A long custodial sentence was warranted in the light of the many serious aggravating factors in the present case, notwithstanding that the Appellant was at the material time suffering from a major depressive disorder that substantially impaired his mental responsibility for the commission of the offence. Moreover, on the clinical evidence, particularly the factors mentioned at [54] above, the Appellant's need for rehabilitation would be better met in a correctional setting as compared to in a less structured environment. In our view, the sentence imposed by the Judge served the interests of both the Appellant and society. The appeal was therefore dismissed.