

Chan Tin Sun v Fong Quay Sim
[2014] SGHC 97

Case Number : DT 1835 of 2011
Decision Date : 12 May 2014
Tribunal/Court : High Court
Coram : Tan Siong Thye JC
Counsel Name(s) : Andy Chiok, Kelvin Ho and Vanessa Ho (Michael Khoo & Partners) for the plaintiff; Wong Chai Kin (Wong Chai Kin) for the defendant
Parties : Chan Tin Sum — Fong Quay Sim

Family Law – Matrimonial Assets – Division

Family Law – Maintenance

[LawNet Editorial Note: The appeal to this decision in Civil Appeal No 87 of 2014 was allowed by the Court of Appeal on 12 November 2014. See [\[2015\] SGCA 2.](#)]

12 May 2014

Judgment reserved.

Tan Siong Thye JC:

Introduction

1 The plaintiff-husband is 74 years old while the defendant-wife is 72 years old. [\[note: 1\]](#) They were married on 29 March 1977. [\[note: 2\]](#) It was a marriage of 34 years. Arising from this marriage, they have one son, Chan Vi Chaya (Chen Weicai), who is 36 years old. [\[note: 3\]](#) He is a veterinarian working in Hong Kong. [\[note: 4\]](#)

The issues

2 The wife is claiming a fair and equitable division of the matrimonial assets. She is also asking for lump sum maintenance. The husband, on the other hand, refuses to give her a share of the matrimonial assets. He also does not wish to pay her any maintenance. The husband's main reason for objecting to the wife's claims is that she had previously tried to kill him by poisoning him with arsenic.

Divorce proceedings

3 On 15 April 2011, the husband filed for divorce. [\[note: 5\]](#) The wife, on the other hand, filed a counterclaim alleging the husband's unreasonable behaviour as a ground for divorce. [\[note: 6\]](#)

4 The husband's ground for divorce is that sometime in 2004, the wife started to poison him with arsenic. [\[note: 7\]](#) On 27 May 2010, the wife was sentenced to one year's imprisonment for causing hurt to the husband by adding arsenic, in the form of insecticide, into his tea and food, an offence under s 328 of the Penal Code (Cap 224, 2008 Rev Ed). [\[note: 8\]](#) Consequently, the husband suffered from arsenic poisoning which caused him to suffer from anaemia and liver cirrhosis, as noted by Choo

Han Teck J in *Fong Quay Sim v Public Prosecutor and other matters* [2011] SGHC 187 at [18].

5 The wife's counterclaim was on the basis that the husband had neglected her and had also verbally abused her. [\[note: 9\]](#) She was diagnosed to have suffered from a long history of chronic spousal emotional and verbal abuse. [\[note: 10\]](#) Her unhappiness with the husband led her to poison him so as to get back at him. [\[note: 11\]](#)

6 On 15 December 2011, the Family Court granted an interim judgment of divorce to both the husband and wife on their claim and counterclaim respectively.

Division of matrimonial assets

7 For the division of matrimonial assets, I shall first identify the operative legal principles that are germane to this case. Thereafter, I shall discuss the facts together with these axiomatic principles.

Just and equitable principle is the bedrock for the division of matrimonial assets

8 Section 112(1) of the Women's Charter (Cap 353, 2009 Rev Ed) prescribes the just and equitable principle applicable in the division of matrimonial assets:

112(1). The court shall have power, when granting or subsequent to the grant of a judgment of divorce, judicial separation or nullity of marriage, to order the division between the parties of any matrimonial asset or the sale of any such asset and the division between the parties of the proceeds of the sale of any such asset in such proportions as the court thinks just and equitable.

Section 112(2) of the Women's Charter also lists a number of non-exhaustive factors that the court has to take into account in the division of matrimonial assets:

112(2). It shall be the duty of the court in deciding whether to exercise its powers under subsection (1) and, if so, in what manner, to have regard to all the circumstances of the case, including the following matters:

- (a) the extent of the contributions made by each party in money, property or work towards acquiring, improving or maintaining the matrimonial assets;
- (b) any debt owing or obligation incurred or undertaken by either party for their joint benefit or for the benefit of any child of the marriage;
- (c) the needs of the children (if any) of the marriage;
- (d) the extent of the contributions made by each party to the welfare of the family, including looking after the home or caring for the family or any aged or infirm relative or dependant of either party;
- (e) any agreement between the parties with respect to the ownership and division of the matrimonial assets made in contemplation of divorce;
- (f) any period of rent-free occupation or other benefit enjoyed by one party in the matrimonial home to the exclusion of the other party;
- (g) the giving of assistance or support by one party to the other party (whether or not of a

material kind), including the giving of assistance or support which aids the other party in the carrying on of his or her occupation or business; and

(h) the matters referred to in section 114(1) so far as they are relevant.

Broad brush approach

9 It has been accepted that the court should adopt a broad-brush approach in the division of matrimonial assets. In *NI v NJ* [2007] 1 SLR(R) 75, V K Rajah J (as he then was) held at [18] that:

The division of matrimonial assets is a subject to be approached with a certain latitude; it calls for the application of sound discretion rather than a purely rigid or mathematical formula. All relevant circumstances should be assessed objectively and holistically. Generally speaking, however, when a marriage ends a wife is entitled to an equitable share of the assets she has helped to acquire directly or indirectly.

10 The non-mathematical nature of the enquiry is consistent with the broad-brush approach to the division of matrimonial assets. The Court of Appeal in *BCB v BCC* [2013] 2 SLR 324 at [10] has recently reaffirmed the broad-brush approach to give the court the flexibility to pursue a just and equitable outcome:

The broad-brush approach is particularly apposite because, in the nature of things, an approach that is rooted in the forensic search for the actual financial contributions of the parties towards the acquisition of the assets will inevitably fail to adequately value the indirect contributions made towards the other expenses that are incurred in the course of raising a family and will also be a heavily fact-centric exercise. Moreover, these facts will typically not be borne out by contemporaneous records, as underscored by the court in *Soh Chan Soon v Tan Choon Yock* [1998] SGHC 204 at [6] (cited by this court in *NK v NL*, as quoted above at [8] of this judgment). The broad-based approach also avoids what this court has described as an otherwise fruitless "mechanistic accounting procedure reflected in the form of an arid and bloodless balance sheet" that "would be contrary to the letter and spirit of the legislative scheme" underlying s 112 (see *NK v NL* at [36], an observation which was most recently referred to by this court in *AYQ v AYR* [2013] 1 SLR 476 ("AYQ") at [18]). Indeed, such a broad yet principled approach enables us to strike a balance between the search for a just and principled outcome in each case and the need to remain sensitive to the nuances of each fact situation we are confronted with. We pause to note – parenthetically – that this is why the Singapore courts have avoided extreme points of departure. For example, this court has held that there is no starting point, presumption or norm of an equal division of matrimonial assets, a holding that is wholly consistent with the legislative background which resulted in s 112 and its concomitant broad-brush approach (see, for example, the decision of this court in *Lock Yeng Fun v Chua Hock Chye* [2007] 3 SLR(R) 520 at [50]–[58]). Another example – to be considered in a moment – is the fact that the court will take into account *both* direct *as well as* indirect contributions by *both* parties to the marriage.

11 The courts have always acknowledged the importance of indirect contributions of the parties, which originates from the wife in a vast majority of cases, when considering the division of matrimonial assets. The Court of Appeal, in *AYQ v AYR and another matter* [2013] 1 SLR 476 at [23], held that indirect contributions should be quantified with the full benefit of hindsight, and in a broad manner that does not narrowly focus on specific classes of assets:

... The court's assessment of a spouse's indirect contribution should thus be performed with retrospective lenses, looking back and fully appreciating the entire context and circumstances of

the marriage. It should not be done in a time-specific manner, *ie*, assessing the extent of indirect contributions of a spouse as at that specific point in time when a particular matrimonial asset was acquired. Further, this assessment should not be done in a blinkered fashion where the court focuses on each individual class of assets and decides the weightage of a spouse's indirect contribution as regards that particular asset class, resulting in a situation where varying weights are accorded for indirect contributions in different matrimonial asset classes. This approach would accord with the view of the marital enterprise being a partnership of efforts of both spouses and that, during the course of marriage, the spouses contribute to the betterment of it in ways that they can without consciously accounting with mathematical precision as regards the quantum and type of their respective contributions. ...

I agree with the above observations. As I have stated in *BMJ v BMK* [2014] SGHC 14 at [38]:

... Marriage is a unique marital partnership in which parties do not indulge in “accounting with mathematical precision” during the blissful period of their marriage. Marriage is a joint enterprise; indirect contributions should not be filtered through a fine-toothed comb and must be looked at in a broad manner in order to derive a just and equitable outcome.

Application of the broad-brush approach

12 The broad-brush approach requires the court to take into consideration all the circumstances of the case, including the direct and indirect contributions of both parties. In this case, it is not disputed that the husband made significant direct contributions towards the acquisition of the matrimonial assets in the course of their 34-year marriage. The properties were purchased and sold by the husband. The wife did not contribute directly to the purchase of the matrimonial properties. However, the wife did contribute financially in other aspects such as towards the education of their son. The wife also made significant non-financial contributions towards the family.

The husband's financial contributions

13 The husband was the sole breadwinner of the family. He was a contractor and had provided financially for the family. [\[note: 12\]](#) He gave \$500 per month to the wife as maintenance before the marriage broke down. [\[note: 13\]](#) The husband paid for the family's expenses. He also paid for the son's education until the son graduated from Singapore Polytechnic. [\[note: 14\]](#)

The husband's indirect contributions

14 The husband spent most of his time on his work as a contractor. He said he would spend time with the family on weekends and major public holidays.

The wife's financial contributions

15 The wife was a full-time housewife looking after the family which includes the son and the husband. In 1993, the wife received an inheritance of \$80,000 from her late mother. This was used to pay for the son's extra expenses such as book costs, transportation costs and fees for extra-curricular activities while the son was in Singapore Polytechnic and when he was serving National Service. [\[note: 15\]](#) The wife's late mother had also given the wife an allowance of \$500 per month until her death in 1993. Part of the allowance received was also used for the son's expenses. [\[note: 16\]](#)

16 The wife's late brother left her a sum of DM309,071 in 1995. She used this inheritance to pay

for the son's tertiary education in Glasgow University, United Kingdom, where he pursued a degree in veterinarian medicine. [\[note: 17\]](#) The wife also received an inheritance of \$208,003 from her late brother's estate in 1995. She used this to pay for personal and household expenses from 1995 to 2005. The household expenses paid for by the wife include utilities bills, phone bills, property tax, maid salary and levy, etc. [\[note: 18\]](#)

The wife's indirect contributions

17 The wife made significant indirect non-financial contributions during the marriage. It is evident that the wife's indirect contributions far outweigh the husband's indirect non-financial contributions. She was a full-time housewife and she was the primary caregiver of the family. She also assisted the husband in his business as he is illiterate although this was disputed by the husband. [\[note: 19\]](#) She also helped him seek financial support from her mother and family members when he was in need of financial aid. [\[note: 20\]](#) Despite her efforts, the husband treated her badly. She was emotionally abused during the marriage.

18 Should the wife's misconduct of hurting her husband with arsenic be considered when deciding on a just and equitable division of the matrimonial assets? The husband argued that the indirect contributions of the wife should be negated by her attempt to murder him with insecticide such that she should not obtain a share of the matrimonial assets at all. [\[note: 21\]](#) The husband also argued that even if she is to obtain a share, it should be substantially reduced to reflect the court's disapproval of her conduct. [\[note: 22\]](#) Before I address the husband's arguments, I would first like to correct the husband's submission that the wife attempted to murder him. Factually, the wife was not charged for attempted murder but for an offence under s 328 of the Penal Code for causing hurt to her husband using arsenic. Therefore, the misconduct in question was the wife's poisoning of the husband that caused him physical harm and not any attempt to murder the husband. With the correction of this erroneous fact, I now proceed to deal with the husband's submissions.

19 The list of considerations in s 112(2) of the Women's Charter does not include the misconduct of a party. This list is not exhaustive and s 112(2) requires the court "to have regard to all the circumstances of the case", which will include any misconduct. However, while considering all the circumstances of this case, the court must bear in mind that the enquiry is focussed upon the direct and indirect contributions of both spouses so as to reach a just and equitable division of matrimonial assets. As stated by Andrew Phang JA in *NK v NL* [2007] 3 SLR(R) 743 ("*NK v NL*") at [20]:

... The division of matrimonial assets under the [Women's Charter] is founded on the prevailing ideology of marriage as an equal co-operative partnership of efforts. The contributions of both spouses are equally recognised whether he or she concentrates on the economics or homemaking roles, as both roles must be performed equally well if the marriage is to flourish. When the marriage breaks up, these contributions are translated into economic assets in the distribution according to s 112(2) of the [Women's Charter]. ...

20 Therefore, I agree with the learned author of *Halsbury's Laws of Singapore* vol 11 (LexisNexis, 2006 Reissue, 2006) ("*Halsbury's*") at para 130.833 that:

... This factor [the misconduct of either spouse] should be used judiciously if the assessment of just and equitable proportions is not to become distorted.

21 It is not the case that any act of misconduct of either spouse would give rise to a reduction in his or her share of the matrimonial assets. A hearing for the division of matrimonial assets is not

another forum for divorced spouses to dredge up petty disputes relating to each other's conduct. In *Ong Chen Leng v Tan Sau Poo* [1993] 2 SLR(R) 545, the former husband had an adulterous relationship with another woman for half of the duration of the marriage. The Court of Appeal, nonetheless, did not give much consideration to this misconduct when dealing with the division of matrimonial assets: see also *Halsbury's* at para 130.833, fn 7. In my opinion, there must be some nexus between the misconduct and the contributions of either spouse which is the focus of the court's enquiry when deciding on the division of matrimonial assets. As noted by the Court of Appeal in *NK v NL* at [11]–[12]:

We note that the proceedings below were chequered by a host of bitter allegations made by the parties against one another. Accusations of infidelity and irresponsibility were rampant as each tried to vilify the other while downplaying their personal indiscretions. In any event, as rightly noted by the Judge, the alleged adulterous behaviour of both parties, even if true, was irrelevant to the determination of the ancillaries.

In the light of our current "no fault" basis of divorce law, *it would serve no purpose to dwell on the question of who did what, save where there might be a direct impact on the legal issues proper (such as a particular party's capacity to contribute towards the matrimonial assets or to care for his or her children)*. Instead, the primary objective of the law is to facilitate this transitional period of emotional upheaval for all parties concerned, not least the children. *The salutary objectives sought to be achieved by the ancillary orders of division of matrimonial assets, maintenance of a former wife and custody of the children remain paramount in guiding our review of the Judge's ancillary orders.*

[emphasis added]

22 Therefore, I do not accept the husband's submission that the wife's act of poisoning him with arsenic serves to negate all her indirect contributions such that she should not obtain any share in the matrimonial assets. There is no relation between her act of poisoning him and her prior indirect contributions to the family and on this basis, such indirect contributions must still be recognised.

23 I also do not accept the husband's submission that this court should reduce the wife's share in the matrimonial assets to reflect its disapproval of her act of poisoning him. This detracts from the objective of this court to reach a just and equitable distribution of the matrimonial assets. The court's power to divide the matrimonial assets between former spouses was never intended to serve a punitive function. Furthermore, as pointed out by the wife, she has already received her just deserts by serving one year's imprisonment for her act of poisoning him.

24 The husband also relied on the case of *Tan Bee Giok v Loh Kum Yong* [1996] 1 SLR(R) 130 ("*Tan Bee Giok*") and the cases cited within to illustrate how misconduct may be factored into the court's consideration. However, that case and the cases it cited dealt with the consideration of misconduct by the court when dealing with the issue of maintenance and not the division of matrimonial assets. Therefore they are not applicable here as the underlying principles concerning maintenance differ from those concerning the division of matrimonial assets. I shall deal with *Tan Bee Giok* in the later part of this judgment when I discuss the issue of maintenance.

25 Nonetheless, I must consider the fact that the poisoning of the husband has a direct implication on the wife's indirect contributions in the form of her caregiver role as regards looking after the husband from 2004 onwards. Instead of caring for her husband, she caused him harm by poisoning his tea and food. At that juncture, she was no longer performing the functions of a housewife with her husband's interests at heart. It cannot be said that her indirect contributions towards the family were

the same before and after she began poisoning the husband. Therefore, her indirect contributions towards her husband declined significantly from 2004. I also note that her son had graduated with a degree in veterinarian medicine from Glasgow University in 2004 and began working and looking after himself. Hence, the wife's indirect contributions towards the family were drastically reduced from 2004 onwards.

26 I do not accept the husband's submission that the wife's indirect contributions towards the family came to an end in 2004 when she started to poison him. On the facts, the wife continued to contribute towards the family after 2004 even though she may not have taken good care of the husband. I emphasise the importance of applying a broad-brush approach in ensuring a just and equitable division. Even though she poisoned the husband, the court must still consider the fact that she had contributed in other ways such as keeping the household in order and paying for other miscellaneous household expenses. Hence, I must still consider her indirect contributions made to the family from 2004 onwards although they would be lesser compared to her indirect contributions made prior to her poisoning the husband.

27 I would also like to mention that by coming to the conclusion that the wife's indirect contributions were reduced from 2004 onwards, I am not punishing the wife for her act of poisoning the husband. I am merely deducing the appropriate indirect contributions made by her in the course of the marriage.

How should the matrimonial assets be divided?

Matrimonial assets for division

28 According to the husband, the matrimonial assets that are for division are as follows:

Matrimonial Asset	Value
Monies paid into Court following the sale of 30 Dafne Street, Singapore	\$1,906,085.44
Husband's CPF Account	
Ordinary account	\$238.22
Medisave account	\$1,500.06
Special account	\$12.12
Wife's CPF Account	
Ordinary account	\$83.04
Medisave account	\$21.61
Retirement account	\$0
Husband's OCBC Easisave Account No XXXXXXXX9001 ("OCBC Easisave Account")	\$192,892.85
Wife's DBS Savings Account No XXXXXX1784 ("DBS Savings Account")	\$322.19
Total value of matrimonial assets	\$2,101,155.53

9 The wife does not dispute the items listed but she submitted that the husband has failed to make full and frank disclosure by concealing some of his assets.

The husband's offer

The husband is unwilling to give a share of the matrimonial assets to the wife because she poisoned him with arsenic. Alternatively, he is only prepared to give her 20% if the court is minded to apportion part of the matrimonial assets in the wife's favour.

The wife's counterclaim

30 The wife, on the other hand, submitted that she is deserving of a share of 50% of the matrimonial assets. She further submitted that this court should draw an adverse inference against the husband as he had concealed some of his assets. She argued that she should be awarded a further 10% of the matrimonial assets on this basis. Thus she is making a counterclaim amounting to a total of 60% of the matrimonial assets.

Review of cases on division of matrimonial assets

31 I shall first deal with the division of matrimonial assets in the absence of any adverse inference drawn. In the husband's submissions, he acknowledges that the case precedents suggest that for marriages of 17 to 35 years with children, the proportion awarded ranged from 35% to 50%. The husband cited the case of *Chan Yuen Boey v Sia Hee Soon* [2012] 3 SLR 402 ("*Chan Yuen Boey*"). In that case, Steven Chong J (as he then was) reviewed the past cases and came to the conclusion that "the proportion awarded to homemaker wives who have made modest financial contributions for marriages lasting 17 to 35 years with children ranged between 35% to 50% of the total matrimonial assets". At [34] to [35], the learned judge said:

From my review of the cases, the proportion awarded to homemaker wives who have made modest financial contributions for marriages lasting 17 to 35 years with children ranged between 35% to 50% of the total matrimonial assets (see *ZD v ZE* [2008] SGHC 225, *Tan Cheng Guan v Tan Hwee Lee* [2011] 4 SLR 1148, *AXC v AXD* [2012] SGHC 15, *Wong Ser Wan v Ng Cheong Ling* [2006] 1 SLR(R) 416, *Yow Mee Lan v Chen Kai Buan* [2000] 2 SLR(R) 659, *Rosaline Singh v Jayabalan Samidurai* [2004] 1 SLR(R) 457 and *Lock Yeng Fun v Chua Hock Chye* [2007] 3 SLR(R) 520 ("*Lock Yeng Fun*"). Where the wife also worked and supported the family financially, the courts have not hesitated to award her up to 60% of the total assets (see *Lim Choon Lai v Chew Kim Heng* [2001] 2 SLR(R) 260 and *Tan Bee Bee v Lim Kim Chin* [2004] SGHC 242 ("*Tan Bee Bee*").

The exceptions, where the apportionment in favour of the wife was less than 35%, typically concerned cases where the total pool of matrimonial assets had been very substantial, in excess of \$100m (see, *Ng Ngah Len @ Datin Sandra Kuah v Kuah Tian Nam @ Dato Peter Kuah* [2003] SGHC 109 ("*Ng Ngah Len*") and *Yeo Chong Lin (CA)*). In those exceptional situations, the apportionment to the wife had been, in absolute terms, substantial.

32 One case cited in *Chan Yuen Boey* is of particular relevance. In *ZD v ZE and Another* [2008] SGHC 225 ("*ZD v ZE*"), the wife in a marriage which lasted 17 years was awarded 40% of the matrimonial assets. There were three children whom she took care of and she also worked in the husband's companies doing accounts. As she was a homemaker, her direct contributions amounted to only 6% of the matrimonial assets.

33 There is another case not cited in *Chan Yuen Boey* that is of relevance. In *Pang Rosaline v Chan Kong Chin* [2009] 4 SLR(R) 935 ("*Pang Rosaline*"), the marriage lasted for 32 years and there were children. The trial judge divided one of two matrimonial properties in the proportion of 80:20 in favour of the husband. This was varied by the Court of Appeal to 60:40 in favour of the husband. The Court of Appeal held at [25] as follows:

Bearing the above principles in mind, we were of the view that a "just and equitable" division of both the Neptune Court property as well as the Sennett Road property pursuant to s112(1) of the Act would (having regard to all the circumstances) be in the ratio of 40% to the wife and 60% to the husband. In the circumstances, we varied the order of the court below to reflect this decision (*viz*, that the Neptune Court property also be apportioned in the ratio of 40% to the wife and 60% to the husband, instead of 20% to the wife and 80% to the husband as the Judge had originally ordered in the court below). In this regard, and by way of recapitulation, *we bore in mind, in particular, the fact that the wife had in fact made indirect contributions to the marriage as well as the fact that she had in fact contributed (albeit in a much smaller proportion) towards the direct financing of the Neptune Court property* (we pause to observe, parenthetically, that, if these additional reasons were not taken into account, the Judge's decision with respect to the Neptune Court property would, in fact, have been rather generous). In arriving at our decision, *we also bore in mind the husband's indirect contributions* (see also *NK v NL* ([21] *supra*) at [37]) as well as the fact that he had contributed significantly more towards the direct financing of the Sennett Road property.

[emphasis added]

Division of matrimonial assets

34 In this case, the marriage lasted 34 years with one child. The husband was the main financial provider of the family. The matrimonial assets in the form of investments in properties were through the sole efforts of the husband. Unlike the homemaker wives in *ZD v ZE* and *Pang Rosaline*, the wife here did not directly contribute to the purchase of the matrimonial properties. However, the wife had made significant financial contributions towards the family in other ways such as financing the son's tertiary education. I bear in mind that the wife had made important indirect non-financial contributions to the family in her role as a homemaker over a long period of time. However, I am also mindful of the fact that the indirect non-financial contributions of the wife from 2004 onwards (7 years) were substantially lesser than that before 2004 (27 years).

35 Section 112(2) of the Women's Charter requires the court to consider all the circumstances of the case as well as the factors listed therein. Furthermore, under s 112(2)(h), the court is required to have regard to the factors listed in s 114(1) in so far as they are relevant. Section 114(1)(b) expects the court to have regard to "the financial needs ... which each of the parties to the marriage has or is likely to have in the foreseeable future". Bearing this in mind, I note that the husband is in poor health largely because of the wife's arsenic poisoning. He will require a variety of medical care in the future which will likely be costly.

36 Therefore, in the absence of any adverse inference drawn, a just and equitable division will be to award the wife 35% and the husband 65% of the following matrimonial assets:

- (a) money paid into court following the sale of 30 Dafne Street which amounts to \$1,906,085.44; and
- (b) the sum of \$192,892.85 in the husband's OCBC Easisave Account.

37 Each party will retain their respective assets in the CPF accounts. The wife will retain the money in her DBS Savings Account.

38 With this proportion of 65:35 in favour of the husband in mind, I shall consider the wife's submission for an adverse inference to be drawn against the husband for his concealment of some of his assets.

Drawing of adverse inference

39 The wife urged the court to draw an adverse inference against the husband as he had not made full and frank disclosure of all the matrimonial assets. The law on drawing adverse inferences is succinctly stated in the Court of Appeal decision of *Koh Bee Choo v Choo Chai Huah* [2007] SGCA 21 at [28]:

... We consider that the trial judge was correct in rejecting the Wife's plea to do so. It is well established that in order for a court to draw an adverse inference, there must, in the first place, be some substratum of evidence that establishes a *prima facie* case against the person against whom the inference is to be drawn. In addition, it must be shown that the person against whom the inference is to be drawn has some particular access to the information he is said to be hiding (perhaps because it is peculiarly within his knowledge). In other words, the court's ability to draw an adverse inference does not and cannot displace the legal burden of proof that continues to lie with the plaintiff, or, as in this appeal, the Wife.

40 The wife alleged that the husband was not truthful in the disclosure of his assets pertaining to his bank accounts and the sale of several properties during their marriage. She submitted that he had not accounted for large sums of money which were withdrawn from his OCBC Easisave Account and his OCBC Current Account (Account No XXXXXXXX2001) ("OCBC Current Account") and for the sale proceeds arising from the sale of matrimonial properties. After considering the evidence, I am of the view that the husband had failed to make full and frank disclosure for the reasons given below.

Husband's OCBC Easisave Account

41 There was an initial dispute as to the amount stated by the husband in his OCBC Easisave Account. The husband indicated the balance in this account as \$192,892.85 while the wife stated that it was \$412,738.94. The parties clarified that the apparent difference was due to the different times at which the balance in the OCBC Easisave Account was taken. The husband indicated that the balance of \$192,892.85 provided by him was the balance as at 11 August 2012. The wife took the balance as at 31 March 2012 when the amount was \$412,738.94.

42 It is not disputed that large sums amounting to \$832,737.50 were withdrawn from this account from 23 November 2009 to 16 July 2012. [\[note: 23\]](#) These withdrawals were mostly made via cash cheques. The husband alleged that these were used for his medical and personal expenses. However, he could only produce medical bills totalling \$127,833.47. [\[note: 24\]](#) He claimed that his wife had taken many of the other receipts and that he had actually spent close to \$200,000 on medical expenses. [\[note: 25\]](#) However, the burden of proof is on the husband to show that the receipts were in the wife's possession. No such evidence is produced before the court. Furthermore, he could have obtained such receipts from the hospitals or clinics he had visited, or alternatively, sought discovery from the wife. Therefore, only a sum of \$127,833.47 can be accounted for by way of medical expenses and there remains a sum of \$704,904.03 unaccounted for.

43 The husband further added that he had invested a large portion of those monies on oil and gas in Indonesia. These investments were purportedly made by the husband in the name of his maid, Eny Rahayu. He claimed that the maid had drugged him with sleep medication at the end of December 2012 and left with all the documentation relating to the investments. The maid could not be found. The husband purportedly had his niece contact the police and police officers from Bedok Police Division visited him to enquire about the incident. [\[note: 26\]](#) These are all bare assertions which are not supported by any credible evidence.

44 The husband has only adduced evidence in the form of his passport which shows that he had travelled to Indonesia frequently and an Indonesian ATM card. The trips to Indonesia prove nothing and could have very well been for leisure purposes. This can be gleaned from the photographs adduced by the wife showing the husband posing intimately with the maid at informal venues in Indonesia. [\[note: 27\]](#) As for the Indonesian ATM card, I agree with the wife that in the absence of any bank statements (which the husband should have provided), it does not prove the husband's assertions in any way. I find that the husband has failed to prove his assertion that he had invested part of \$832,737.50 on oil and gas in Indonesia on a balance of probabilities.

45 Lastly, the husband also alleged that he had spent part of the monies withdrawn on personal expenses and maid expenses. [\[note: 28\]](#) He has adduced no evidence to prove this and I do not accept his assertions. In any event, based on his own affidavit of assets and means, his personal monthly expenses (inclusive of the maid's salary) add up to \$1,842 per month. [\[note: 29\]](#) Given that there are approximately 32 months between 23 November 2009 and 16 July 2012, the total amount expended on him and the maid during that period should only be an estimated \$58,944 (\$1,842 per month x 32 months). This would mean that even if I believe the husband on this point, there would still be a sum of \$645,960.04 that remains unaccounted for.

46 Therefore, I find that the husband had not adequately accounted for a substantial portion of the \$832,737.50 withdrawn by him between 23 November 2009 and 16 July 2012 from the OCBC Easisave Account.

Husband's OCBC Current Account

47 The wife further alleged that the husband's OCBC Current Account had a sum of \$623,556.71 in November 2009. The husband argued that the wife was mistaken as the balance was marked in the bank statement as "DR". This means that this is a debit entry which is attributable to the husband's overdraft. I notice that there was a large deposit on 23 November 2009 for the sum of \$632,131.00 to clear the debit entry in this account. [\[note: 30\]](#) The husband explained that the overdraft was a result of the purchase of 30 Dafne Street on 4 February 2008 and it was satisfied using the proceeds from the sale of 22G Jalan Ulu Siglap. [\[note: 31\]](#) The husband has adduced evidence in the form of the completion account for 22G Jalan Ulu Siglap and the conveyancing lawyers' letters to show that cashier's orders were indeed made in favour of OCBC to satisfy the outstanding amount in the overdraft account. I see no reason to disbelieve the husband on this and I accept his explanation.

Sale of 22G Jalan Ulu Siglap

48 The wife also took issue with the sale proceeds of 22G Jalan Ulu Siglap. She alleged that the sale proceeds should be \$1,013,072.20 and not \$1,057,541.22. [\[note: 32\]](#) The husband's bank statement shows that \$1,057,541.22 was deposited into his OCBC Easisave Account on 20 November 2009. [\[note: 33\]](#) The wife's only contention was that the completion date for the sale of this property

was on 20 November 2009. [\[note: 34\]](#) The wife is of the belief that the money could not have been deposited on the same day as shown in the husband's bank statement. The earliest possible date would be the next day. Hence, she came to the conclusion that the sale proceeds of 22G Jalan Ulu Siglap was unaccounted for.

49 The wife has adduced no evidence to show that the earliest possible date money would be deposited pursuant to a cashier's order is the following day. It is only the wife's personal belief and I am not inclined to accept it. Furthermore, I am satisfied by the completion account adduced by the husband, which shows that the proceeds to be received by him amounted to \$1,057,541.22. [\[note: 35\]](#) I do not think there is any failure on the husband's part in accounting for the sale proceeds of 22G Jalan Ulu Siglap.

Sale of several matrimonial properties

50 The wife alleged that the husband had sold six properties from 1992 to 2009 (excluding 30 Dafne Street). The husband admitted that in the course of their 34-year marriage he had bought and sold the following properties: [\[note: 36\]](#)

S/No	Property	Amount sold for and date sold
1.	Lippo Factory #02-01	Sold for \$260,000 on 30 April 1992
2.	Block 208 Eastern Lagoon #05-01	Sold for \$740,000 on 5 July 1996
3.	216-3 Syed Alwi Road	Sold for \$860,000 on 29 November 2006
4.	29 Roberts Lane and 29A Roberts Lane	Sold for \$1,115,000 on 25 September 2007
5.	22F Jalan Ulu Siglap	Sold for \$1,250,000 on 10 March 2007
6.	22G Jalan Ulu Siglap	Sold for \$1,720,000 on 20 November 2009
7.	30 Dafne Street	Sold for \$1,915,000 (Bought for \$990,000 on 4 February 2008)

51 The total sale proceeds amount to about \$6m. The husband alleged that these properties were sold with massive loans outstanding and some of the properties were even sold at a loss. I noticed that these were assertions made without any proof. He has failed to produce any accounts regarding the sale and purchase transactions of those properties.

52 Nonetheless, in considering these properties, it would be too simplistic to look at the total sale proceeds alone. The husband may have used the proceeds arising from the sale of one property to purchase the next property, just as how he had used the sale proceeds from 22G Jalan Ulu Siglap to satisfy the overdraft incurred from the purchase of 30 Dafne Street.

53 The most obvious failure of the husband in making full and frank disclosure arises from his failure to account for \$704,904.03 out of the total sum of \$832,737.50 that was withdrawn from the OCBC Easisave Account from 23 November 2009 to 16 July 2012.

54 I would also like to note that the husband has also made allegations that the wife had “siphoned” moneys from him. I am not inclined to believe these bare assertions as they are not supported by any credible evidence at all.

What action can the court take when it decides to draw an adverse inference?

55 In *NK v NL*, the Court of Appeal was also faced with the situation in which it was justified to draw an adverse inference against the husband. The court in that case did not increase the notional amount of assets in the non-disclosing party’s name, but instead, increased the proportion of assets given to the other party. The Court of Appeal held at [62] that:

Although we have drawn an adverse inference against the husband in the present case in so far as the discrepancy in his declared assets is concerned, we note that the amount concerned is large (approximately \$2.7m) and (more importantly) we have been given no explanation as to what has happened to this particular amount. In the circumstances, it might be more just and equitable (not to mention, practical) to order a higher proportion of the *known* assets to be given to the wife. This would also give effect (albeit in a more general fashion) to the adverse inference which this court has drawn against the husband.

56 The husband has similarly failed to account for what happened to the \$704,904.03 withdrawn from the OCBC Easisave Account. Hence, I am inclined to award the wife an additional 7% over and above her 35% share of the matrimonial assets. The final division of the matrimonial assets shall be in the proportion of 58:42 in favour of the husband.

Maintenance of the wife

57 On the issue of maintenance of the wife, I have to decide whether she should be given maintenance. If the answer is yes, I then have to determine the appropriate and just amount for her maintenance.

The Husband’s stand on the wife’s request for maintenance

58 The husband first submitted that the wife should not receive any maintenance as a result of her malicious act of poisoning him with arsenic. However, the husband submitted in the alternative that should the court be inclined to award maintenance to the wife, it should only be for a period of three years. He acknowledged that the request for maintenance of \$980 per month in the wife’s affidavit of assets and means [\[note: 371\]](#) is reasonable. However, he submitted that the wife has been receiving monthly allowances from their son. Furthermore, the wife had led a frugal lifestyle and he had been giving her \$500 per month as maintenance during the marriage. Thus, the amount of maintenance to be awarded should be \$500 per month for a period of three years. On this basis, the lump sum maintenance should only be \$18,000.

The wife’s claim for maintenance

59 The wife, on the other hand, is seeking a lump sum maintenance of \$200,000. She is now 72 years old. Since her release from prison in 2012, the husband refused to allow her to return to the matrimonial home and stopped providing her any form of maintenance. Thus, she is seeking maintenance in arrears of three years and future maintenance for the next 13 years. The duration for future maintenance is calculated on the basis that the life expectancy of women in Singapore is 85 years old and that the wife is 72 years old now, the difference being 13 years. She denies the husband’s allegation that their son has been giving her a monthly allowance. She is seeking a lump

sum maintenance of \$200,000. This is calculated at \$1,000 per month for 16 years, ie \$192,000, which is rounded up to \$200,000.

Could the court take the conduct of the wife's act of arsenic poisoning into consideration on the issue of maintenance?

60 In relation to the ordering of maintenance of a wife or former wife, s 114(2) of the Women's Charter provides that:

In exercising its powers under this section, the court shall endeavour so to place the parties, so far as it is practicable and, *having regard to their conduct*, just to do so, in the financial position in which they would have been if the marriage had not broken down and each had properly discharged his or her financial obligations and responsibilities towards the other.

[emphasis added]

61 Hence, the conduct (or misconduct in this case) of the parties can be taken into consideration. Nonetheless, it is only one of the many factors, such as those listed in s 114(1) of the Women's Charter, that the court must consider. As in the case of the division of matrimonial assets discussed above (at [22]–[23]), the factor relating to the misconduct of either spouse should be used judiciously and should only be seriously considered if it has a direct impact on the legal issues proper. Bearing this in mind, I consider the case of *Wachtel v Wachtel* [1973] Fam 72 which deals with the consideration of a party's misconduct when deciding the issue of maintenance. Lord Denning MR in delivering the judgment of the English Court of Appeal held at 90:

It has been suggested that there should be a "discount" or "reduction" in what the wife is to receive because of her supposed misconduct, guilt or blame (whatever word is used). We cannot accept this argument. In the vast majority of cases it is repugnant to the principles underlying the new legislation, and in particular the Act of 1969. There will be many cases in which a wife (though once considered guilty or blameworthy) will have cared for the home and looked after the family for very many years. Is she to be deprived of the benefit otherwise to be accorded to her by section 5 (1) (f) because she may share responsibility for the breakdown with her husband? There will no doubt be a residue of cases where the conduct of one of the parties is in the judge's words, ante, p. 80C–D, "both obvious and gross," so much so that to order one party to support another whose conduct falls into this category is repugnant to anyone's sense of justice. In such a case the court remains free to decline to afford financial support or to reduce the support which it would otherwise have ordered. But, short of cases falling into this category, the court should not reduce its order for financial provision merely because of what was formerly regarded as guilt or blame. To do so would be to impose a fine for supposed misbehaviour in the course of an unhappy married life. Mr. Ewbank disputed this and claimed that it was but justice that a wife should suffer for her supposed misbehaviour. We do not agree. Criminal justice often requires the imposition of financial and indeed custodial penalties. But in the financial adjustments consequent upon the dissolution of a marriage which has irretrievably broken down, the imposition of financial penalties ought seldom to find a place.

62 This has been further discussed in *Harnett v Harnett* [1973] Fam 156, where Bagnall J commented at 165 that:

It will not be just to have regard to conduct unless there is a very substantial [display] between the parties on that score. Ormrod J. and the Court of Appeal in *Wachtel v Wachtel* [1973] Fam. 72 used the phrase "obvious and gross." In this phrase I think that "gross" describes the

conduct; “obvious” describes the clarity or certainty with which it is seen to be gross. But the conduct of both parties must be considered. If the conduct of one is substantially as bad as that of the other, then it matters not how gross that conduct is; they will weigh equally in the balance. In my view to satisfy the test the conduct must be obvious and gross in the sense that the party concerned must be plainly seen to have wilfully persisted in conduct, or a course of conduct, calculated to destroy the marriage in circumstances in which the other party is substantially blameless. ...

63 These two cases, which are relied on by the husband, were considered by G P Selvam J in *Tan Bee Giok*. Selvam J went on to state at [25] that if both parties were substantially responsible for the breakdown of the marriage, it would be unnecessary to review the conduct of the parties:

In applying the rule the court must take into consideration not only the conduct of the wife but also that of the husband. If both parties are to blame for the breakdown, no useful purpose would be served in asking the parties to rehearse the bitterness and recriminations which were brought to an end by the divorce.

64 I agree with the principle laid down by Selvam J and the English cases in relation to the consideration of the misconduct of either party. In this case, the wife’s poisoning of the husband could be said to have substantially caused the breakdown of the marriage. However, I also note that the husband cannot be said to be substantially blameless. It was found by the Criminal Court that sentenced the wife to one year’s imprisonment for her act of poisoning the husband that she was trying to get back at her husband as a result of the husband’s behaviour. She was found to have suffered from a long history of chronic spousal emotional and verbal abuse which the Family Court recognised as a ground for divorce when she was granted an interim judgment. The husband referred this court to the wife’s confession to the police that she had wanted to make the husband “suffer in pain by poisoning him with the ‘AntiAnt’ powder”. [\[note: 38\]](#) In this same confession, the wife explained why she did it: [\[note: 39\]](#)

... I told the recorder that I did that as I could not tolerate my husband’s acts of violence towards me as he had physically and mentally abused me in all of our 31 years of marriage. ...

...

At the end of 2004, I totally broke down and one day when I returned from the beach, I was so stressful thinking about my life. I had intended to commit suicide in fact. But then again, I was also very frustrated with my husband who without fail scolded me day and night for nothing. ...

65 Nonetheless, the wife reacted in a grossly disproportionate manner by resorting to poisoning the husband. I find myself unable to turn a blind eye to the wife’s malicious act in arriving at the proper sum of maintenance to be awarded. Her conduct must result in a lower sum of maintenance being ordered. She should have divorced the husband earlier on instead of resorting to poisoning him.

Conditions of both parties

66 In any event, the direct consequence of the poisoning of the husband is his deterioration in health which must be considered. The husband was hospitalised several times from 2004 to 2009. He is now having difficulty walking and eating. There were stages when the husband nearly died. The husband said he now has the following medical conditions due to the arsenic poisoning: [\[note: 40\]](#)

- (a) gastric ulcer;

- (b) decompensated liver cirrhosis;
- (c) sepsis;
- (d) acute renal failure;
- (e) arsenic-induced squamous cell carcinoma (cancer);
- (f) pneumonia;
- (g) acute on chronic arsenic poisoning with arsenic keratosis;
- (h) peripheral neuropathy;
- (i) benign prostatic hyperthrophy;
- (j) pancreatic cyst;
- (k) chronic obstructive airway disease;
- (l) widespread hyperkeratotic plaques; and
- (m) asteatotic eczema.

67 As discussed above at [42], the husband has spent \$127,833.47 on his medical bills from 23 November 2009 to 16 July 2012. The husband will continue to incur such medical expenses. The husband is now 74 years old with no income. He also needs a full-time caregiver to help him with his daily activities. Therefore, as a result of the poisoning by the wife and the consequent deterioration in the husband's health, I must consider the husband's financial needs in terms of added medical expenses and physical disabilities as required by s 114(b) and s 114(e) of the Women's Charter respectively. This will go towards a lower maintenance sum being ordered for the wife. Although the wife is old as well, she is not plagued by the health problems that the husband is suffering from.

Maintenance award

68 Taking all factors into consideration, I am inclined to award the wife a lump sum maintenance of \$18,000, calculated at 3 years x 12 months x \$500 per month. I shall not make an order for arrears of maintenance as I am of the view that this lump sum maintenance is adequate and fair.

Conclusion

69 In summary, the wife will receive 42% of the following matrimonial assets:

- (a) money paid into court following the sale of 30 Dafne Street which amounts to \$1,906,085.44; and
- (b) the sum of \$192,892.85 in the husband's OCBC Easisave Account.

70 Each party will retain their respective assets in the CPF accounts. The wife will retain the money in her DBS Savings Account.

71 The wife will receive a lump sum maintenance of \$18,000.

72 There will be no order as to costs.

[\[note: 1\]](#) Defendant's Written Submissions, at para 1.

[\[note: 2\]](#) Statement of Claim for Divorce, at para 1.

[\[note: 3\]](#) Statement of Claim for Divorce, at para 4.

[\[note: 4\]](#) Defendant's Counterclaim (Amendment No. 1) at para 3(e).

[\[note: 5\]](#) Statement of Claim for Divorce.

[\[note: 6\]](#) Defendant's Counterclaim (Amendment No. 1).

[\[note: 7\]](#) *Public Prosecutor v Fong Quay Sim* [2010] SGDC 189 at [1] upheld in [2011] SGHC 187.

[\[note: 8\]](#) *Public Prosecutor v Fong Quay Sim* [2010] SGDC 224 upheld in [2011] SGHC 187.

[\[note: 9\]](#) Defendant's Counterclaim (Amendment No. 1) at paras 3(a)–(c).

[\[note: 10\]](#) Defendant's Counterclaim (Amendment No. 1) at para 3(g).

[\[note: 11\]](#) *Public Prosecutor v Fong Quay Sim* [2010] SGDC 224 at [6].

[\[note: 12\]](#) Plaintiff's 2nd AOM, at para 13.

[\[note: 13\]](#) Plaintiff's 2nd AOM, at para 5 and Defendant's 1st AOM, at para 18(c).

[\[note: 14\]](#) Plaintiff's 2nd AOM, at para 6.

[\[note: 15\]](#) Defendant's 1st AOM, at para 18(h).

[\[note: 16\]](#) Defendant's 1st AOM, at para 18(c).

[\[note: 17\]](#) Defendant's 1st AOM, at para 18(d).

[\[note: 18\]](#) Defendant's 1st AOM, at para 18(f).

[\[note: 19\]](#) Defendant's 2nd AOM, at para 11.

[\[note: 20\]](#) Defendant's 1st AOM, at para 18, p 8 (2nd and 3rd paragraphs).

[\[note: 21\]](#) Plaintiff's Submissions, at paras 14 and 26.

[\[note: 22\]](#) Plaintiff's Submissions, at para 26.

[\[note: 23\]](#) Plaintiff's 4th Affidavit, para 10(8) and Defendant's AM Fact and Position Sheet, p 2 (although she omits the sums of \$8,600 and \$3,000 in her list).

[\[note: 24\]](#) Plaintiff's 2nd AOM, CTS-3 (from p 14–17).

[\[note: 25\]](#) Plaintiff's 4th Affidavit, para 10(10).

[\[note: 26\]](#) Plaintiff's 3rd AOM, at paras 19–21.

[\[note: 27\]](#) Defendant's 4th AOM, at pp 8–12.

[\[note: 28\]](#) Plaintiff's 4th AOM, at para 10(11).

[\[note: 29\]](#) Plaintiff's 1st AOM, at para 11.

[\[note: 30\]](#) Plaintiff's 3rd AOM, at p 59.

[\[note: 31\]](#) Plaintiff's 3rd AOM, at para 9, pp 74 and 78–79.

[\[note: 32\]](#) Defendant's Submissions, at para 2(iv).

[\[note: 33\]](#) Plaintiff's 3rd AOM, at p 19.

[\[note: 34\]](#) Plaintiff's 3rd AOM, at pp 78–79.

[\[note: 35\]](#) Plaintiff's 3rd AOM, at p 74.

[\[note: 36\]](#) See Plaintiff's Submissions, para 3 (all pinpoint citations to affidavit are there)

[\[note: 37\]](#) Defendant's 1st AOM, at para 13.

[\[note: 38\]](#) Plaintiff's submission at p 14.

[\[note: 39\]](#) Plaintiff's submissions at p 14.

[\[note: 40\]](#) Plaintiff's 2nd AOM, at p 11.

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