

Public Prosecutor v Lim Ghim Peow
[2014] SGHC 19

Case Number : Criminal Case No 2 of 2014
Decision Date : 27 January 2014
Tribunal/Court : High Court
Coram : Tan Siong Thye JC
Counsel Name(s) : Jasmine Chin-Sabado and Chee Min Ping (Attorney-General's Chambers) for the prosecution; Sunil Sudheesan and Diana Ngiam (RHTLaw Taylor Wessing LLP) for the accused.
Parties : Public Prosecutor — Lim Ghim Peow

Criminal Procedure and Sentencing – Sentencing

27 January 2014

Judgment reserved.

Tan Siong Thye JC:

1 The accused, Lim Ghim Peow, pleaded guilty to the following charge of culpable homicide not amounting to murder without any qualification:

That you, Lim Ghim Peow,

on the 25th day of May 2012, at about 8.30 a.m., at Blk 206B Compassvale Lane #14-83, Singapore, did commit culpable homicide not amounting to murder by doing an act which caused the death of one Mary Yoong Mei Ling, F/43 years old, to wit, by pouring petrol over her body and setting her on fire with a lighter, which act was done with the intention of causing death, and you have thereby committed an offence punishable under section 304(a) of the Penal Code (Chapter 224, 2008 Revised Edition).

He also unequivocally admitted to the Statement of Facts and his criminal antecedents.

The summary of the Statement of Facts

The accused

2 The accused is a 45-year-old male Singaporean and was a taxi driver. He is a divorcee staying at a rental flat at Block 33 Bendemeer Drive #01-751 ("the Rental Flat"). The deceased was his ex-lover.

The deceased

3 The deceased was Mary Yoong Mei Ling, a 43-year-old female Singaporean. She was also a divorcee and was in a relationship with Choo Lye Weng ("Steven") at the time of her demise. Prior to her relationship with Steven, she was cohabitating with the accused.

4 At the time of the offence, the deceased was staying with her cousin Phua Duan Kai ("the victim") and his family. The victim is a 32-year-old male staying at Block 206B Compassvale Lane

#14-83 ("the Flat").

The relationship between the accused and the deceased

5 The accused first met the deceased 17 years ago. At that time, they were married to their respective spouses.

6 Sometime in September 2008, the accused and the deceased, both divorced then, renewed their friendship. They began a romantic relationship and cohabited at the Rental Flat. They referred to each other as "husband" and "wife" even though they were not legally married.

7 In 2011, the accused and the deceased's relationship began to deteriorate. The accused became increasingly possessive and would become violent and break things when he was jealous. When they quarrelled, the deceased would sometimes move out of the flat and stay with her friend, Justina Cher Siow Wei ("Justina Cher"), at Block 207C Compassvale Lane. At other times, she would stay with her grandaunt, or her aunt to avoid the accused. When they had reconciled, she would return to live with the accused.

End of the relationship

8 Sometime in late 2011, the accused slapped the deceased when they were quarrelling. After this incident the deceased was resolved to end her relationship with the accused. She moved out of the flat permanently.

9 The deceased alternated between staying with Justina Cher, her grandaunt, and her aunt. The accused pleaded with the deceased to return to him but she refused. The accused made numerous calls and sent several text messages to the deceased's mobile phone seeking reconciliation. She did not respond. The accused also called Justina Cher and visited her flat to check on the deceased's whereabouts. He approached common friends and the deceased's relatives to request for their assistance in persuading her to return to him.

10 The accused became more desperate in his attempts at reconciliation. His messages became more threatening and he told the deceased on more than one occasion that he would not leave her alone even if he became a ghost.

Threat to burn Justina Cher's home

11 On 16 February 2012, the accused sent a text message to the deceased threatening to set fire to Justina Cher's home if the deceased refused to meet him. As a result, the deceased agreed to meet him in the presence of his brother. The accused and the deceased argued at this meeting. The deceased chided the accused for resorting to empty threats. The accused became angry and told the deceased that he was prepared to carry out his threat. He immediately drove his taxi to a petrol kiosk and purchased a four-litre tin of petrol. Thereafter, the accused returned to the meeting place where the deceased and the accused's brother were still waiting. The accused showed the tin of petrol to the deceased to prove that the threat was real. The accused's brother advised him not to "act crazy". The meeting ended and the accused brought the tin of petrol home.

12 Sometime in March 2012 the deceased and Justina Cher saw the accused in the vicinity of the latter's flat. He was observing the flat from the multi-storey car park. In the same month the deceased agreed to meet the accused at a karaoke lounge. Thereafter, the accused drove to a secluded location in Tuas. He wanted to commit suicide with the deceased by inhaling the carbon

monoxide in the car. The accused attempted to be intimate with the deceased, but the latter resisted and alleged that the accused was trying to rape her. In an attempt to stop him, she pretended to swallow the accused's medication in his vehicle. The deceased continued to cry until the accused agreed to send her home. The accused then sent her to her grandaunt's place.

13 After this incident, the accused started abusing methamphetamine as he felt depressed and hopeless. He wanted to use the drugs to torture himself. He abused methamphetamine daily as he did not want to sleep. He hoped to seek sympathy from the deceased.

Deceased's relationship with Steven

14 Sometime in March 2012, the deceased entered into a relationship with Steven. Between April and May 2012, the deceased stayed with Steven in Johor Bahru, Malaysia on several occasions. They soon decided to get married and started making preparations to register their marriage in Singapore on 6 August 2012. They were also making arrangements to purchase a flat. Throughout this time, the accused continued to call and send text messages to the deceased, but she did not respond. On 22 May 2012 the deceased made a police report against the accused for harassment.

Accused knelt before the deceased

15 On 23 May 2012, when the deceased was returning to the flat after an errand, she met the accused who had been lying in wait for her. The deceased tried to run away but the accused chased her and caught her. The deceased was very afraid and called the victim and another male friend to rescue her. The victim went down and saw the accused kneeling on the floor sobbing. He addressed the deceased as his "wife". The deceased was standing with her arms across her chest scolding him. Shortly after, the police arrived at the scene. The accused was interviewed briefly before the deceased and the accused were allowed to leave.

16 At this point, it was clear to the accused that the deceased had no intention of reconciling with him. He resolved to kill the deceased by burning her and to commit suicide thereafter.

The day before the offence

17 The accused returned home after he was interviewed by the police on 23 May 2012. He proceeded to fill three empty plastic mineral water bottles with petrol from the four-litre tin of petrol he had purchased in February 2012 (see [11] above). He did so as he believed that it would be more convenient to carry out his plan of killing the deceased by burning her if the petrol was stored in these mineral bottles rather than the bulky tin. He used transparent tape to seal the caps of the plastic bottles to prevent spillage and to ensure the smell of petrol could not be detected by others. He then placed the said bottles into a plastic bag.

18 Later that night, the accused went to the deceased's flat at Blk 206B Compassvale Lane. He loitered around at the void deck and slept at the playground. Sometime after 5.00 am on 24 May 2012, the accused woke up and kept watch by observing the window of the Flat. At about 9.00 a.m., the accused walked up the block and kept watch at the staircase beside the Flat. He was hoping to see the deceased to talk to her. Shortly after, he saw the deceased's aunt returning to the Flat. As he did not manage to see the deceased, he left the place.

Lay in wait for the deceased on the day of the offence

19 Later that night, the accused poured petrol from the four-litre tin into three other plastic

bottles. The accused kept the remaining petrol in the four-litre tin in the kitchen behind a gas cylinder. He again sealed the three bottles with transparent tape and put them in the same plastic bag that contained the three bottles he had filled up the previous day. The accused placed the said plastic bag into a black "SMRT" carrier bag and took a taxi to Toa Payoh where he loitered around for a while.

20 At about 9.25 p.m., the accused sent a text message to Tan Swee Fei ("Tan"), one of his fellow taxi drivers. The accused informed him that he had made arrangements to return Tan his money. The accused also requested Tan to forward funds to his three daughters if he were to meet with any mishap. The accused ended the message by saying that he was going to do something big and that he hoped it would be successful. Tan asked him what had happened but the accused did not respond. Tan thought the accused was going to commit robbery.

21 On 25 May 2012, sometime after 1.00 am, the accused arrived at the vicinity of the Flat. He placed the plastic bag containing the six plastic bottles on the plant rack outside the Flat. The accused then proceeded to sleep at the staircase landing between the 14th and 15th floor.

22 At about 3.00 a.m., the accused woke up and watched for movement outside the Flat. At about 4.00 a.m., the deceased's aunt opened the door. It was part of her routine to go to the church to pray at that hour. When the accused heard the door opening, he noticed that the main gate was wide open. The accused peeped into the flat but could not see anyone. The accused returned to the staircase landing between the 14th and 15th floor and waited. Later, the deceased's aunt left the Flat. The accused continued to lie in wait for the deceased.

23 At about 7.45 am, the accused again heard the sound of a door opening. Thinking it was the deceased who had opened the door, the accused rushed to retrieve his plastic bag of mineral bottles filled with petrol which he placed on the plant rack. He intended to chase after the deceased and to set her on fire by pouring petrol over her and igniting the petrol. However, it was a false alarm as it was a resident from another unit that was leaving for work. He returned to the staircase landing with one plastic bottle containing petrol.

24 Shortly afterwards, the accused noticed the deceased's uncle leaving the Flat for work. At this juncture, the accused knew that only the deceased and the victim remained in the Flat. The accused continued waiting at the staircase landing between the 14th and 15th floor. He planned to pull the victim out of the Flat if he opened the door and gate and lock the deceased and himself in the flat thereafter.

The attack on the deceased

25 Sometime before 8.30 a.m., the deceased opened the door and the gate of the Flat. She was going to the Immigration and Checkpoints Authority to collect her passport. The victim was still asleep in his room. When the accused heard the sound of the door opening, he rushed down the staircase with the plastic bottle of petrol in his left hand and a lighter in his right hand. He held the lighter so that he could use it to light the deceased up if she tried to run.

26 The deceased was shocked when she saw the accused and asked him what he wanted. The accused asked the deceased to give him one last chance to prove that he was capable of change and said that he would do whatever the deceased wanted. The deceased reiterated that there was no possibility of reconciliation. The accused was very disappointed. He uncapped the plastic bottle he was holding in his left hand. The deceased asked him what he was doing. The accused replied that he wanted to take her together with him to die.

The accused poured petrol over the deceased and set her aflame

27 As the accused reach for more bottles of petrol from the plant rack, the deceased tried to run inside the Flat. She managed to close and locked the padlock to the gate. When the accused realised that he would not be able to get inside the Flat, he reached out his right arm through the grilles of 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. He saw the deceased trying to close the door by leaning on it with her back and someone holding on to the deceased's left arm. The victim saw the accused holding on to the deceased and pouring a bottle of liquid over the deceased's head. The victim tried to close the door and pull the deceased away but the accused managed to keep the door open.

28 At this point, the accused felt his grip on the deceased loosening. He quickly dropped the bottle on the floor and used the lighter to set the deceased on fire. The deceased caught fire immediately. The accused then released his grip on her and let the door close. The accused could hear the deceased and the victim screaming inside the Flat. The accused's right arm also caught fire in the process but he managed to put it out. Unable to open another bottle of petrol, he threw an unopened bottle of petrol on the floor, hoping that it would open.

29 In the meantime, inside the Flat, the deceased was fully engulfed in flames. The victim's left arm and left leg also caught fire. The fire spread to the door and the ceiling. The victim used his waist-pouch that was hanging near the door to beat the flames on the deceased's body but was unable to put it out. He pushed her towards the kitchen and shouted for her to go into the bathroom. The victim then rolled on the floor in the living room and managed to put out the fire on his body. He rushed into the kitchen and saw that the deceased had managed to put out the fire on her body. Her whole body had blackened.

30 By then, it was getting smoky and difficult to breathe in the Flat. The victim tried calling for help using his mobile phone but was unable to make any calls. The victim then tried to put out the fire at the main door using two half-filled buckets of water that he found in the master bedroom toilet and the kitchen toilet.

Neighbours extinguished the fire

31 At about the same time, one of the neighbours staying on the 13th floor, Ng Hock Bin ("Ng"), was on his way to work. He heard the sound of a woman shouting and tiles cracking. He looked up and saw thick smoke coming out from the Flat. He was concerned that someone might be trapped in the Flat and shouted at his wife for a wet towel. He took the wet towel and rushed upstairs.

32 Ng saw the accused sitting on the floor, away from the fire. The entire door of the Flat was ablaze. As the accused had burn injuries on his hands and legs, Ng proceeded to wrap the wet towel around the accused's hands. The accused was shouting that his wife was inside the flat.

33 In the meantime, another neighbour, Kwek Ah Hock ("Kwek"), ran towards the Flat with a pail of water. Ng and Kwek were trying to put out the fire with water. Eventually, they managed to put out the fire. They also noticed two bottles of liquid on the floor near to the accused. They suspected that it might be petrol. Ng moved the bottles away from the accused and the fire.

34 Ng noticed that the gate was padlocked and that the door was closed. However he managed to open the door. He saw that the flat was dark and filled with smoke. The victim appeared at the

doorway. He was seen to have burn injuries on his hands and legs. Ng asked for the keys to the gate. The victim returned shortly with the keys and Ng opened the gate.

Accused rushed into the flat when it was opened

35 The accused rushed into the flat to look for the deceased when the gate to the flat was opened. He approached the deceased. She told him not to go near her and not to touch her. Later, the victim brought the deceased out of the flat. She was badly burnt. The deceased's jeans were burnt, exposing her buttocks, and she was also almost topless.

Arrival of SCDF, police and ambulance

36 Soon SCDF officers and the police arrived separately at the scene. Upon questioning by the police the accused admitted that he had started the fire. He told the police that the deceased wanted to leave him and he had set the flat on fire because he wanted to die with the deceased.

37 Soon the deceased was brought to the hospital by the ambulance. The accused and the victim were also conveyed to the hospital.

Injuries sustained by the deceased

38 The deceased's medical report indicated that she sustained 75 percent total body surface area burns with inhalational injury. Her condition subsequently deteriorated and she eventually succumbed to her injuries on the same day, 25 May 2012, at about 10.56 pm.

Victim's injuries

39 The victim sustained 23 percent burns over his lower limb and bilateral fingers. The bronchoscopy showed soot in his airways. Further examination revealed mid-to-deep dermal burns over the victim's lower limbs up to his knees and the dorsum of the victim's fingers on both hands. The victim also had singed nasal hair and soot on his face. The victim was intubated prophylactically in view of the inhalational injury, and sent to Burns Intensive Care Unit where he continued on fluid resuscitation. He then underwent burns excision and split skin graft surgeries to his lower limbs. The victim recovered well after the operation and was discharged on 15 June 2012.

Accused's injuries

40 The accused sustained deep dermal burns over his right arm and right leg. Excision and skin grafting were performed on 29 May 2012. His postoperative recovery was uneventful and he was discharged on 6 June 2012. When he was reviewed in clinic on 20 June 2012, all the accused's wounds had healed.

The prosecution's address on sentence

41 The prosecution urged the court to impose an imprisonment term ranging from 16 to 20 years. The main reason is because there were many aggravating factors in this case as revealed in the Statement of Facts. There was also a high level of premeditation by the accused in planning the vicious attack on the deceased after the latter refused to reconcile with him. The deceased sustained very severe burns and died soon afterwards. The victim suffered 23% burns to his body. The accused also has a latent propensity towards violent behaviour which, together with his major depressive disorder, would pose serious danger to the public and himself. According to Dr Goh Hern Yee ("Dr

Goh”), the consultant psychiatrist at the Institute of Mental Health (“IMH”), the accused requires indefinite psychiatric care and treatment as well as close supervision and monitoring.

The accused’s plea for lower term of imprisonment

42 The counsel for the accused pleaded for an imprisonment term in the region of 10 years. The emphasis of the mitigation plea was on the accused’s major depressive disorder at the time of the commission of the offence. The accused was first diagnosed in December of 2011 by IMH to be suffering from major depressive disorder but he did not follow up with the treatment as he opined that the deceased did not care about him. It was submitted that the accused’s condition can be cured with medical rehabilitation. His family will also provide a support structure upon his release from prison to ensure that there is no relapse of his medical condition. The counsel pleaded that the accused is very remorseful and deeply regrets his actions. He also pleaded that the accused also had no intention to injure the victim.

The court’s decision

43 The accused in this case torched a living human being immediately after dousing her with flammable petrol. When she was set ablaze, she screamed as a result of the excruciating pain from the burns. 75 percent of her body surface area had severe burns. Most of the burns were of full thickness. She eventually succumbed to her injuries and died on the same day of the attack. This was a horrific attack on the deceased. When she was adamant in not returning to the accused, he decided to kill her and then commit suicide. The accused clearly had the motive and intention to kill the deceased. This would have been a clear case of murder if it had not been for his major depressive disorder diagnosed by Dr Goh.

What is the sentencing principle for this case?

44 What is the appropriate sentencing principle to apply when the accused faces the charge of culpable homicide not amounting to murder when he is diagnosed with major depressive disorder? The prosecution submitted that deterrence is of “penumbral significance”. The defence, on the other hand, advocated rehabilitation. It is thus clear that both the prosecution and the defence have given due weight to the accused’s major depressive disorder in their respective submissions by appreciating the diminished primacy of deterrence in this case. What then is the degree of importance or focus this court should accord to the accused’s mental disorder which had clinically impaired his judgment when he killed the deceased? The question will involve the balancing of the public interest in protecting society and the interest of the accused. Should the societal needs and concerns be subordinated to the accused’s mental disorder? This must depend on the gravity of the offence and the circumstances of the case. I am of the view that the public interest must prevail over that of the accused in this case.

45 There are four sentencing principles as mentioned by Lawton LJ in *R v Sargeant* (1974) 60 Cr App R 74 (“*R v Sargeant*”). He said at 77:

What ought the proper penalty be? ... [The] classical principles [of sentencing] are summed up in four words: retribution, deterrence, prevention and rehabilitation. Any judge who comes to sentence ought always to have those four classical principles in mind and to apply them to the facts of the case to see which of them has the greatest importance in the case with which he is dealing.

The defence counsel in advocating for rehabilitation principle referred me to *Public Prosecutor v Lim*

Ah Seng [2007] 2 SLR(R) 957 in which Sundaresh Menon JC (as he then was) restated the approach in sentencing accused persons who have mental disorder at [49]:

... Where a person suffers from a mental impairment such that his actions are not the result of conscious deliberation, deterrence, both general and specific, is not the predominant sentencing consideration. This is only common sense because deterrence operates on the assumption of human autonomy. In *Ng So Kuen Connie v Public Prosecutor* [2003] 3 SLR(R) 178 at [58], Yong Pung How CJ held, citing *R v Wiskich* [2000] SASC 64 in support:

... I found that ... the 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 my view, general deterrence will not be enhanced by meting out an imprisonment term to a patient suffering from a serious mental disorder which led to the commission of the offence.

46 This was reiterated in *Goh Lee Yin v Public Prosecutor* [2006] 1 SLR(R) 530, where Yong Pung How CJ also remarked at [29]:

The rehabilitation of the offender could also take precedence where other sentencing considerations such as deterrence are rendered less effective, as might be the case for an offender belabouring under a serious psychiatric condition or mental disorder at the time of the incident ...

47 I do not dispute that the rehabilitation of the accused is important but it should not be the sole and principal consideration in this case. In *Public Prosecutor v Goh Lee Yin and another appeal* [2008] 1 SLR(R) 824 ("*Goh Lee Yin*"), V K Rajah JA stated at [107]:

... 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.

48 I would also like to refer to the *Sentencing Practice in the Subordinate Courts* vol 1 (LexisNexis, 3rd Ed, 2013) at pp 152–153:

Mental Condition

The existence of a mental disorder is always a relevant factor in the sentencing process, but its impact will vary considerably according to the circumstances of the individual case.

The following approach in *R v Wiskich* [2000] SASC 64 has been endorsed; see *Ng So Kuen Connie v Public Prosecutor* [2003] 3 SLR(R) 178:

An assessment of the disorder is required. A sentencing court must determine the impact of the disorder upon the offender's thought processes and the capacity of the offender to appreciate the gravity and significance of the criminal conduct ... [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. The gravity of the

criminal conduct is also an important consideration. 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.

The 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 appellant repeating the offence and the severity of the crime, are factors which have to be taken into account by the sentencing judge. General deterrence will not be enhanced by meting out an imprisonment term to a patient suffering from a serious mental disorder which led to the commission of the offence; see *Ng So Kuen Connie v Public Prosecutor* [2003] 3 SLR(R) 178.

Retribution

49 Therefore I agree that "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": *Ng So Kuen Connie v Public Prosecutor* [2003] 3 SLR(R) 178 at [58]. How much weight to be given to the element of deterrence will have to depend on the degree and intensity of the mental disorder that affect the offender's judgment and decision making ability as well as the circumstance in which the offence is committed. There are various types of mental disorders. Such disorder affects a person's mental faculty differently depending on the degree of the intensity of the disorder. The impact of the mental disorder on the offender at the time of the commission of the offence will have an effect on his culpability. For instance, in *Public Prosecutor v Han John Han* [2007] 1 SLR(R) 1180 ("*Han John Han*"), the accused was suffering from delusional disorder of the persecutory type at the time of the offence. He believed that his wife was having an affair and that she intended to kill him using black magic. This caused him to plunge a sword into his wife killing her and an unborn child. In this sort of situation the offender's criminal act was clearly dominated by his mental disorder and he had very little or no influence over his autonomy of judgment and decision making capability. Hence the element of deterrence should only have penumbral significance. The facts of this instant case are materially different from the accused in *Han John Han*. The events preceding the fatal torching of the deceased and the fateful day of the offence clearly revealed a revengeful and scornful lover who had a premeditated plan and who was determined to kill the deceased almost at all cost. If it had not been for Dr Goh's diagnosis that the accused was suffering from a clinical major depressive disorder his actions and behaviour before and during the commission of the offence would appear to be those of a rational person who was resolute to kill the deceased. Be that as it may, I am of the view that the primary operative sentencing principle in this case should be retribution and not deterrence. This principle requires the accused to be punished for his crime. The concept of just desert and the principle of proportionality are important elements in retributive principle of sentencing. Lawton LJ in *R v Sargeant* at 77 said:

... The Old Testament concept of an eye for an eye and tooth for tooth no longer plays any part in our criminal law. There is, however, another aspect of retribution which is frequently

overlooked: it is that society, through the courts, must show its abhorrence of particular types of crime, and the only way in which the courts can show this is by the sentences they pass. The courts do not have to reflect public opinion. On the other hand courts must not disregard it. Perhaps the main duty of the court is to lead public opinion. ...

In *R v Davies* (1978) 67 Cr App R 207, the court at 210 stated:

[T]he courts have to make it clear that crime does not pay and the only way they can do so is by the length of sentences. Sentences show the court's disapproval, on behalf of the community, of particular types of criminal conduct. ...

Similarly, *Halsbury's Laws of England* vol 11(2) (Butterworths, 4th Ed Reissue, 2003) describes the retributive element at para 1188:

The retributive element is intended to show public revulsion from the offence and to punish the offender for his wrong conduct.

50 The foundation of retribution which requires the offender to pay for his crime is also a matter of public interest such that confidence in the administration of justice is maintained. This comes from the belief that the offender has upset societal law and order and the appropriate punishment restores the order of society. It is to quell "the sense of outrage felt by the community" for particular criminal acts: *Public Prosecutor v Tan Fook Sum* [1999] 1 SLR(R) 1022 ("*Tan Fook Sum*") at [20]. As noted by the Court of Appeal in *Public Prosecutor v AFR* [2011] 3 SLR 833, a case which also dealt with culpable homicide not amounting to murder, at [32]:

... In the circumstances, the demands of retributive justice mandate that a heavy sentence must be imposed on the respondent to ensure that his punishment is proportionate to his culpability as reflected by the viciousness which he inflicted violence on the [victim]. As opined by Andrew von Hirsch and Andrew Ashworth in *Proportionate Sentencing: Exploring the Principles* (Oxford University Press, 2005) at p 4:

Proportionalist sentencing is designed to avoid unjust results – through giving conceptions of justice a central role in sentencing policy. The desert rationale rests on the idea that the penal sanction should fairly, reflect the degree of reprehensibleness (that is, the harmfulness and culpability) of the actor's conduct. This comports with common-sense notions of justice, that how severely a person is punished should depend on the degree of blameworthiness of his conduct. ... In desert theory, the societal interest is expressed in the recognition that typical crimes (eg, those of force ...) are wrongs, for which public censure through criminal sanction is due. [original emphasis omitted]

51 In that case, the accused had viciously beaten his daughter to death. The Court of Appeal noticed the viciousness of the attack and sentenced the accused to 10 years' imprisonment (the maximum imprisonment for the case as the charge was under s 304(b) of the Penal Code (Cap 224, 2008 Rev Ed) and 10 strokes of the cane. Therefore, the just desert for the accused requires this court to examine the aggravating factors, the harm caused, criminality of the accused and his mitigation. This will enable this court to arrive at an appropriate punishment that is proportionate to the accused's criminal conduct. I shall examine the aggravating factors, mitigating factors and the accused's mental condition.

Aggravating factors

Motive to kill and premeditation

52 The motive to kill the deceased was formed when the accused failed at all his attempts to win her back. He first used the soft approach of persuasion. He tried to call and send text messages urging her to return to him. He also tried to locate the deceased's place of abode. When all these failed he changed strategy. He used intimidation and threats. He told her that he would not leave her alone even if he became a ghost.

53 He had to threaten to burn Justina Cher's home before he could meet up with her. When the deceased rebuked him for the empty threat he immediately went to purchase four litres of petrol to prove that the threat was real. The accused's brother stopped him and told him not to "act crazy" which dissuaded him from proceeding with his threat. The accused's behaviour at this stage was very much that of a rational person.

54 When he drove the deceased to Tuas he had thought of killing her and himself by inhaling carbon monoxide from his car as he realised that he could not win her back. When the accused tried to be intimate with the deceased, she spurned his advances and cried to go home. The accused relented and sent her home.

55 On 23 May 2012, two days before the offence, he was lying in wait for the accused. She was staying with her cousin's family at the Flat. When the deceased saw him she started to run away and the accused chased her. She shouted for her cousin to save her. The accused knelt down and sobbed. The deceased was scolding him. The police soon arrived and the accused left. This incident was a clear indication to the accused that the deceased had no intention at reconciliation. He then planned to burn her to death with the petrol that he had bought earlier and then take his own life.

56 He went back to his flat and filled three empty mineral water bottles from the four-litre tin of petrol as it was more convenient, easier and faster to douse the deceased with the petrol. He also sealed the caps of the mineral bottles so as to prevent spillage and to ensure that people would not detect that he was carrying petrol. He brought these bottles of petrol and waited for the deceased outside her flat in the early morning of 24 May 2012. When he did not manage to see her, he returned home. These indicate that the accused was in full control of his faculty and wanted revenge.

57 He filled another three mineral bottles with petrol and returned to the vicinity of the deceased's flat to lie in wait for her. This was during the night of the same day, 24 May 2012. The next morning he saw the deceased leaving the flat and attacked her with the petrol he brought.

58 From the above it is clear that the events two days before the fatal incident revealed the accused's motive and his meticulous plan to burn the deceased with the petrol he had purchased earlier. There was a strong element of premeditation by the accused. It was a well calculated attack on the deceased in which the accused patiently waited for several hours before he seized the opportunity to cause the most harm to her. It is well established that an offender who plans his crime is more culpable, as stated by Yong Pung How CJ in *Tan Fook Sum* at [28]:

... It is well established that where an act is done after deliberation and with premeditation as opposed to the situation where it is done on the spur of the moment and "in hot blood", that is an aggravating and not a mitigating circumstance.

59 Professor Andrew Ashworth also noted in *Sentencing and Criminal Justice* (Cambridge University Press, 5th Ed, 2010) at p 164:

Planning of an offence

Elements of planning or organisation may also be present in crimes committed by individuals. A person who *plans a crime is generally more culpable*, because the offence is premeditated and the offender is therefore more fully confirmed in his criminal motivation than someone who acts on impulse, since he is more considered in his lawbreaking. ... Planned lawbreaking betokens a considered attack on social values, with greater commitment and perhaps continuity than a spontaneous crime. [emphasis added]

Accused appeared normal to family 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 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 deceased with the petrol. He taped the caps of the plastic bottles so as to prevent anybody from detecting the petrol which he intended to use to kill the deceased. He lay in wait for an opportune moment to ambush the deceased. He also carried with him a lighter just in case the deceased were to attempt to run away, proving that he had considered contingencies as well. The entire plan to kill the victim was devised in a cold, conscientious manner over a span of two days. Also, the accused was in no hurry to kill the deceased. 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 deceased. 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.

Harm and damage caused by the accused

61 This was, indeed, a very cruel and vicious attack on a person whom he once loved. When he was unable to win her love he became malicious and vindictive as he sought to kill her since he could not have her. He was not prepared to let her go and let her lead her own life. This was a very vengeful, selfish and ruthless act. Further, the accused paid no regard to the possible harm which could have been caused to others. He was so driven to kill the deceased that he did not care if other people would have been hurt in the process.

The deceased's injuries

62 The deceased was set ablaze. She screamed because of the excruciating pain. Her body sustained 75% burns. Most of the burns were of full thickness. She also sustained inhalational injury as the flames also entered her body through her nostrils. She succumbed to these injuries on the same day. The photographs of her injuries show how much she suffered before she died. Nobody deserves such a gruesome fate.

The victim's injuries

63 The accused was so focused on killing the deceased that he did not pay heed to the consequences of his action. The victim who came to the deceased's rescue was also badly injured. He too screamed in pain. His body sustained 23% burn. He had mid and deep burns over his lower

limbs and hands. He also suffered inhalational injuries. He underwent burns excision and split skin graft surgeries to his lower limbs. He was only discharged after 3 weeks. Fortunately, he did not die from the burns.

Neighbourhood at great risk of runaway fire

64 The fire had put the neighbourhood, especially the adjacent flats, at great risk. The fire had a real probability of going out of control. Fortunately, the fire was put out through the civic actions of the neighbours. Otherwise the consequences could have been direr with more people injured and loss of properties.

Accused's latent violent temperament and criminal antecedents

65 Dr Goh's psychiatric report dated 5 July 2012 revealed that the accused had a violent nature at a very young age. He fought when he was in primary school for which he was caned twice. He has a quick temper and is easily irritable. He was also involved in secret society and was the Chief of the "24" or "Xiao Lao Jun" gang in the Toa Payoh area. He was previously arrested and incarcerated for gang related activities such as being involved in gang fights. He also told Dr Goh that he had difficulty controlling his temper and had quarrelled with other drivers while on the road. He also had quarrels with others including his fellow taxi drivers. His conflicts and quarrels with the deceased, and his subsequent hitting of the deceased, was what caused the deceased to leave him. When the accused quarrelled with the deceased he would overturn tables, chairs and break things. He fought with his eldest brother in 2007 and fought with his second brother in 2010. This may explain why he had problems with his family, his colleagues and the deceased.

66 Therefore the accused has a violent disposition and to make it worse he has an uncontrollable temper and is impulsive. When he could not persuade the deceased to return to him his violent nature quickly took over him. He resorted to threat and intimidation and eventually killed the deceased in the most gruesome and painful manner.

67 The accused's criminality is worsened by his history of substance abuse and drug consumption. He told Dr Goh that he sniffed glue when he was sixteen years old. He also took ketamine, "ice" and marijuana.

68 The accused also has a criminal record. He was detained for offences under the Criminal Law (Temporary Provisions) Act ("CLTPA") (Cap 67, 2000 Rev Ed) and its previous editions on various occasions:

- (a) 15/12/1986 – The accused was placed on 3 years police supervision under the CLTPA 1970 (Cap 112, 1970 Rev Ed).
- (b) 31/3/1989 – A detention order was issued against the accused under the CLTPA (Cap 67, 1985 Rev Ed). A police supervision order was also issued for 36 months. This was revoked after a review on 29 November 1995.
- (c) 12/12/1998 – Another detention order was issued against the accused under the CLTPA (Cap 67, 1998 Rev Ed). There was also a 36 months police supervision order.
- (d) 20/7/2004 – The accused was sentenced to 12 months' imprisonment for failing to remain indoors while he was under the police supervision order under the CLTPA (Cap 67, 2000 Rev Ed). He was also sentenced to 3 months' imprisonment for failing to report to the Head Investigation

of the Police Division. These sentences were ordered to run concurrently.

69 The fact that his antecedents were under CLTPA means that he was involved in secret society activities which are often associated with violent activities. He had informed Dr Goh that he was the Chief of the "24" or "Xiao Lao Jun" gang and that he was involved in gang fights. Therefore, I disagree with his counsel that the accused's antecedents did not specifically disclose violent offences. It seems that his infringements of the CLTPA for his secret society activities were from 1986 to 2004, ie about 18 years. To his credit he did not have any antecedent for the last 10 years.

70 Hence, the society has to be protected from the accused who is quick tempered, impulsive and has a latent violent disposition. Prevention is one of the principal considerations when sentencing offenders who pose a danger to the community. This is embodied by the maxim "*salus populi est suprema lex*", ie the safety of the people is the supreme law: *Chan Hiang Leng Colin and others v Public Prosecutor* [1994] 3 SLR(R) 209 at [40].

71 Dr Goh had further opined that the accused's major depressive disorder "had further increased his risk of severe violence" in his report dated 5 July 2012. Although he did not have any antecedents for the last 10 years, his violent streak and vicious attack on the deceased without any regard for the safety of others is very worrying.

Mitigating Factors

72 The accused had chosen to plead guilty. This is a mitigating factor as it indicates that he was contrite and remorseful. The court was also informed that he had found a religion when he was in remand. I am aware that the accused also suffered serious injuries arising from this incident. These injuries were entirely of his own doing. The most relevant mitigating factor is that he was suffering from a major depressive disorder that significantly impaired his judgment.

Accused's psychiatric condition

73 In sentencing the accused I am also aware of Dr Goh's observations of the accused when he was in remand. In his report dated 4 April 2013, Dr Goh said:

... [T]he accused 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 [as well as] to mitigate his violence and self-harm risks. A poorly managed psychiatric condition and resumption of his substance misuse would adversely impact his behavioural, social and psychological functioning and would very likely further impair his impulse control, which would be very destabilizing for him.

The supervision and monitoring of his psychiatric condition to manage such risks could be carried out in a correctional setting. ...

74 In the latest psychiatric report dated 4 December 2013, Dr Goh said that while the accused's condition has improved, it was due to the enforced care that was administered whilst he was in custody. Dr Goh was concerned about the accused's motivation "to persist with such psychiatric treatment in a less structured environment such as living in the community". He further added:

[The accused's] *insight into his need for treatment for his depression and the role of medications appear limited*. He told me he had intended not to take medications but was persuaded by his counsel to continue doing so until his doctor assessed him to no longer require

medication(s). He appeared ambivalent when I canvassed his views about long-term psychiatric follow-up and treatment. He said that "if he felt very well, should have no need to go back to IMH". ...

I note his motivation for psychiatric treatment was also low prior to the offence. He discontinued his outpatient psychiatric follow-up after only one review at IMH (on 28th December 2011), after this visit did not elicit any expression of concern from the deceased.

...

He appeared over-confident that his depressive disorder would not recur and that he would not resume his substance misuse in the community, citing his religious beliefs. In a controlled environment like the prisons, cloistered from stressors he had faced in the community, he could receive close monitoring and supervision with regards to his psychiatric condition and early detection of any recurrence of depressive symptom is possible.

However treatment discontinuance, with its attendant risks, would be a *key concern* in a less structured environment, such as living in the community on his own, as is his preference. The ability of his family to provide tangible support in the community, as well as any limitations they might face, also has to be considered in ensuring that he remains well in the community.

[emphasis added]

75 Dr Goh is of the view that the accused requires psychiatric care and treatment for an indefinite period of time in a correctional setting. He cautioned that the accused's condition would inevitably relapse should he leave the correctional environment. For obvious reason, the accused wanted his treatment to be conducted outside the prison environment.

Family Support upon release from prison

76 The counsel for the accused has presented additional affidavits from the accused's three daughters. The accused's eldest daughter who is helping her mother at her coffee shop at Toa Payoh Lorong 6 assured the court that she and the other two daughters will ensure that the accused continues his treatment upon his release from prison. The daughters have agreed that the accused will stay with the second daughter who is a housewife working as a freelance manicurist. The eldest daughter is also happy for her father to reside with her. This family support is heartening and will go a long way to help the accused to be cured of his mental disorder upon his release from prison. I hope the accused will use his time in prison to bond with his daughters so that upon his discharge he will have strong familial support to help him to be cured of the mental disorder permanently.

The charge

77 The charge against the accused is under s 304(a) of the Penal Code. The statutory prescribed punishment is life imprisonment and is also liable to caning or imprisonment for a term which may extend to 20 years and is also liable for caning or fine. I am mindful that s 304(a) was amended in 2007. As a result of the amendment the maximum term of imprisonment has been increased from 10 years to 20 years. The rest of provision remains unchanged. The enhancement of the statutory prescribed punishment does not mean that the punishment must be accordingly increased. At the Second Reading of the Penal Code (Amendment) Bill, Member of Parliament Christopher de Souza, explained the reason for the increase (*Singapore Parliamentary Debates, Official Report* (22 October 2007) vol 51 at cols 2216–2217 (Christopher de Souza, Member of Parliament)):

[T]he revised section 304(a) is a sentencing provision and it allows the Court to sentence an offender who was convicted for culpable homicide not amounting to murder to either (i) up to 20 years' imprisonment or (ii) life. This is an immense improvement over the old section 304(a) which allowed judges the discretion to sentence an offender up to 10 years or life, but nothing in between. What made the old position even more ineffective was the wide gap between life imprisonment (interpreted as the remainder of the offender's natural life) and the relatively short alternative of "up to 10 years". The amendment has remedied this. *It gives the Court flexibility when sentencing offenders, especially those who need to be imprisoned for a length of time between 10 and 20 years.* [emphasis added]

The principle of proportionality

78 The appropriate sentence must take into account all the circumstances, the aggravating features, the mitigating factors as well as the criminality of the accused. The sentence must befit the crime and the accused. Applying the principle of proportionality, what is the just desert for the accused? Both the prosecution and the defence cited past sentencing precedents to assist the court to arrive at the appropriate sentence. The sentences in those cases vary widely depending on the merits of each case.

79 I have earlier mentioned that in my view the correct sentencing principle is retribution and not rehabilitation (see [49] above). If the sole purpose for his incarceration is for his rehabilitation then, perhaps, a term of 10 years' imprisonment may be sufficient as the focus is on the rehabilitation of the accused. However, when applying the retributive principle the focus is on the appropriate punishment of the accused for his heinous crime applying the principle of proportionality. As noted by Abadee J in *R v Fernando* (1997) 95 A Crim R 533 at 544–545:

There are some cases where the level of culpability is so extreme that the community interest in retribution and punishment can only be met through the imposition of the maximum penalty: see *Garforth*. Next, rehabilitation and the prospect of offering a person some hope from incarceration, whilst being important considerations and are to be taken into account in favour of persons in the position of each of the prisoners, nevertheless the requirement of retributive judgments involving the objective features of an instant case may amply warrant not only a case being regarded as in the worst category of cases but as warranting the imposition of the maximum penalty: see *Baker* and *Garforth*. Indeed, as the decision of Hunt CJ in *Milat* illustrates there may be some cases falling within the category of the worst class of cases, where there is even little utility in considering the prospects of rehabilitation. Indeed, it may be that in such cases the subjective circumstances generally of a prisoner himself cannot play any real decisive part.

80 The maximum sentence in this case is life imprisonment. I am of the view that life imprisonment may not be appropriate. However, in my view this is one of the worst cases of culpable homicide not amounting to murder because of the very aggravating features. Therefore, the community interest in retribution can only be met through a very substantial sentence notwithstanding the accused's mental condition.

81 I have also noted that there is a need to consider the principle of prevention given the violent disposition of the accused (see [70] above). As noted by V K Rajah JA in *Goh Lee Yin* at [108]:

... [I]n cases involving serious offense, incapacitation would usually form the focus of the sentencing process. ... It is popularly referred to as "public protection" and advocates the imposition of long, incapacitative custodial sentences on "dangerous" offenders when the potential risk to prospective victims is substantial. ... [S]uch a consideration would be highly

relevant in cases involving serious offences *notwithstanding the fact that the offender suffers from an impulse control psychiatric disorder, which causes the commission of the very offence.*
... [emphasis added]

82 Given that an impulse control psychiatric disorder would not prevent the application of the prevention principle by the Court in reaching a long, incapacitative custodial sentence, *a fortiori*, the accused's major depressive disorder which does not appear on the facts to have caused the accused to act impulsively should not deter such an application as well.

Conclusion

83 Therefore, considering the heinousness of the accused's killing of the deceased and the need to prevent further acts of violence a very long sentence of imprisonment is warranted despite the accused's major depressive disorder. The level of heinousness of this crime and the need for society to be protected give rise to the consequence that the subjective circumstance of the accused cannot displace the need for a long incapacitative sentence: *R v Harris* (2000) 50 NSWLR 409 at [102]. Accordingly, I sentenced the accused to 20 years' imprisonment. The sentence will take effect from the date of remand ie 26 May 2012.

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