IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2022] SGCA 49

Criminal Appeal No 21 of 2021

Between

Gaiyathiri d/o Murugayan

… *Appellant*

And

Public Prosecutor

… *Respondent*

In the matter of Criminal Case No 47 of 2018

Between

Public Prosecutor

And

Gaiyathiri d/o Murugayan

EX TEMPORE JUDGMENT

[Criminal Procedure and Sentencing — Sentencing — Appeals]

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Gaiyathiri d/o Murugayan
v
Public Prosecutor

[2022] SGCA 49

Court of Appeal — Criminal Appeal No 21 of 2021
Andrew Phang Boon Leong JCA, Judith Prakash JCA and Steven Chong JCA
29 June 2022

29 June 2022

Andrew Phang Boon Leong JCA (delivering the judgment of the court *ex tempore*):

Introduction

1 The appellant pleaded guilty before a judge in the General Division of the High Court ("the Judge") to 28 offences under the Penal Code (Cap 224, 2008 Rev Ed) ("the Penal Code"), including a charge of culpable homicide not amounting to murder under s 304(*a*) of the Penal Code for having caused the death of her foreign domestic worker ("the Victim"), a 24-year-old single mother from Myanmar. Another 87 related charges were taken into consideration for the purposes of sentencing.

2 The facts relating to the offences have been set out by the Judge in his grounds of decision (see *Public Prosecutor v Gaiyathiri d/o Murugayan* [2021] SGHC 187 ("the GD")) and we will not rehearse the same save to set out the essential factual background relevant to the present appeal. The Victim started

work in the appellant's household in May 2015. The appellant was unhappy with the Victim's work. Initially, this involved the applicant raising her voice at the Victim, but in October 2015, it escalated to physical abuse and such abuse continued thereafter. All the 115 charges (including the s 304(*a*) charge) which had been preferred by the Prosecution against the appellant involve instances of abuse and ill-treatment inflicted by the appellant on the Victim in the 35-day period between 21 June 2016 and 26 July 2016. The abuse inflicted over the night of 25 Jul 2016 up to the early hours of 26 July 2016 led to the Victim's death and is the subject matter of the s 304(*a*) charge.

3 For the purposes of the Statement of Facts ("the SOF") in the plead guilty proceedings, the Prosecution and the Defence agreed that the assessment of the appellant's psychiatric conditions by one Dr Derrick Yeo ("Dr Yeo") from the Institute of Mental Health was to be taken as reflective of her mental state at the time she committed the offences. Dr Yeo was one of the three psychiatrists who undertook a psychiatric assessment of the appellant after her arrest. He diagnosed the appellant as suffering from Major Depressive Disorder ("MDD") with peripartum onset with moderate severity and Obsessive-Compulsive Personality Disorder ("OCPD") at the time of the offences. He opined that both conditions substantially contributed to her offending and thus partially impaired her mental responsibility.

4 The appellant's plea was taken and recorded on 23 February 2021 ("the PG Hearing"). At the PG Hearing, the parties also made sentencing submissions, following which the Judge reserved his decision. At the time of the PG Hearing, the appellant was represented by Mr Sunil Sudheesan and Ms Diana Ngiam ("the Former Counsel"). For reasons immaterial to the appeal, the Former Counsel applied to discharge themselves sometime after the PG Hearing. On 30 March 2021, Mr Joseph Chen ("Mr Chen") took over

conduct of the appellant's matter and represented her at two further court hearings, on 29 April 2021 and 22 June 2021, respectively. At the hearing on 22 June 2021, the Judge delivered his decision on sentence. Mr Chen was also initially appointed to represent the appellant for the appeal. Under his watch, the appellant also filed CA/CM 3/2021, which was her application for discovery and for leave to adduce further evidence ("CM 3"). Shortly before the hearing of CM 3, Mr Chen applied to discharge himself and the appellant therefore appeared in person at the hearing of the application. We heard CM 3 on 4 May 2022 and dismissed it (see the decision of this court in *Gaiyathiri d/o Murugayan v Public Prosecutor* [2022] SGCA 38).

5 Before the Judge, the Prosecution sought a sentence of life imprisonment for the s 304(*a*) charge. The Defence argued that a sentence of life imprisonment for the s 304(*a*) charge would be manifestly excessive, and instead sought a global sentence of around 14 years' imprisonment. After Mr Chen took over conduct of the appellant's defence, he made submissions in which the length of the proposed global sentence was adjusted downwards to 8–9 years' imprisonment. The Judge sentenced the appellant to a global term of 30 years' imprisonment, imposing the maximum sentence of 20 years' imprisonment for the s 304(*a*) charge (see the GD at [83], [86] and [90]). The Judge considered that "this was undoubtedly among the worst cases of culpable homicide imaginable" (see the GD at [69]). He accepted that the appellant's culpability was "somewhat attenuated" by her psychiatric conditions, but judged that it remained high because the appellant had been "fully cognisant of her actions and purposeful in her criminal conduct", and her psychiatric conditions was not of such an extent that it affected her capacity to appreciate the gravity and significance of her criminal conduct (see the GD at [73], [75] and [80]). The Judge considered that there were multiple aggravating factors and few, if any,

material mitigating factors in the appellant's favour (see the GD at [64]). In particular, he rejected the appellant's claims of remorse (see the GD at [65]).

The parties' arguments on appeal

6 The appellant appeals against the Judge's decision on sentence, on the basis that it is manifestly excessive. She contends that an aggregate sentence of 12–15 years' imprisonment would be more appropriate. Her Petition of Appeal sets forth the following arguments in support of her appeal:

(a) The mitigating force of her psychiatric conditions (namely, MDD with peripartum onset and OCPD) is substantial and compelling enough to warrant a reduction in the length of her imprisonment.

(b) The Judge had erred by placing undue weight on Dr Yeo's opinion that she had retained the "cognitive and volitional capacity to engage in purposeful, planned actions in choosing methods in which to inflict physical punishment [on the Victim]" (see also the GD at [76]). The appellant argues that the Judge failed to have regard to the various stressors which she had faced at the material time (such as her children's ill-health which she believed to be the result of the Victim's poor hygiene standards) and which had contributed to her psychiatric conditions. The Judge also failed to properly consider the opinion of one Dr Jacob Rajesh ("Dr Rajesh"), who had diagnosed her as suffering from Obsessive Compulsive Disorder ("OCD") (instead of OCPD) in addition to MDD. Dr Rajesh was one of the three psychiatrists who examined the appellant after her arrest and he was engaged by the Defence. The appellant says that Dr Rajesh's diagnosis of OCD would "negate or contradict" Dr Yeo's opinion.

(c) The Judge has not given sufficient weight to her feelings of repentance and remorse.

(d) The Judge failed to give weight to the fact that her psychiatric conditions have improved since she was put on remand and received proper treatment in prison, which is evident from how she had refrained from using violence despite allegedly being subject to bullying and ill-treatment by her fellow inmates in prison. This, the appellant says, shows that her offending behaviour had been a result of her psychiatric conditions, in respect of which she had had no access to medical treatment at the time of the offences.

(e) She had "felt pressured into hastening the receipt of her sentences in her case" because she thought that by doing so, she could hasten the sentencing process for her mother, Prema d/o Naraynasamy ("Prema"). Prema is the appellant's co-accused in relation to some of the offences. Thus, the appellant says, due weight ought to have been given by the Judge to Dr Rajesh's diagnosis of OCD, and in the alternative, a Newton Hearing should have been convened to deal with the differences in opinion between Dr Rajesh and Dr Yeo.

(f) Judicial mercy warrants a reduction in her custodial sentence because her psychiatric conditions and the difficult conditions in prison mean that she would suffer disproportionately in prison as compared to other inmates who are not suffering from similar psychiatric conditions.

7 In her skeletal arguments, the appellant made some further related points:

(a) Her children's ill-health and her perceived hygiene issues with the Victim, in her words, "made [her] more [stressed] which caused [her] to snap".

(b) It is important for a sentencing court to take note of her improvement in behaviour since she was placed on remand.

8 In response, the Prosecution submits that the Judge's decision on sentence was entirely appropriate and there is therefore no ground for appellate intervention. In particular, it argues that the Judge had already placed appropriate weight on the appellant's psychiatric conditions in his decision on sentence, and that he had been correct in concluding that there were no real mitigating factors operating in the appellant's favour. Also, the Prosecution says, there is no factual basis for the doctrine of judicial mercy to apply in this case. Finally, the Prosecution argues, in so far as the appellant seeks to rely on Dr Rajesh's opinion and resile from her admission in the SOF that Dr Yeo's assessment of her psychiatric conditions was reflective of her mental state at the time of the offences, she should not be permitted to do so. This is because there is no evidence that in relation to her guilty plea, the appellant was not genuinely free to decide whether or not to plead guilty, and her admission to the SOF had been fully voluntary and unequivocal.

The issues

9 There are two issues arising in this appeal for our determination:

(a) First, given the appellant's unqualified admission to the SOF at the PG Hearing, which sets out Dr Yeo's assessment of her psychiatric conditions as being reflective of her mental state at the time of the offences, is she permitted to rely on Dr Rajesh's diagnosis of OCD in this appeal?

(b) Second, has the appellant demonstrated any ground for us to intervene in the sentence imposed by the Judge, whether in respect of the s 304(*a*) charge, the remaining 27 charges, or in the aggregate global sentence?

Whether the appellant can rely on Dr Rajesh's diagnosis of OCD in this appeal

10 We turn to the first issue. This requires us to consider if Dr Rajesh's diagnosis of OCD is inconsistent with Dr Yeo's assessment as set out in the SOF. This can readily be answered in the affirmative, because Dr Yeo (who examined the appellant *after* Dr Rajesh did), in coming to his diagnosis of OCPD, expressly rejected Dr Rajesh's diagnosis of OCD. The following extract from para 25 of Dr Yeo's report makes this clear:

> f) While I am in agreement with the diagnosis of Major Depressive Disorder opined by Dr Jacob [Dr Rajesh], **I however, disagree with his opinion about the accused suffering from Obsessive Compulsive Disorder (OCD)**. Cogently, as mentioned repeatedly in this report, her concerns about cleanliness were ***not*** intrusive, unwanted or distressing for her, and that her behaviours were not attempts to reduce anxiety or distress and she consistently denied them as being unreasonable and hence considered to be ego-syntomic.
>
> [emphasis in original in bold; emphasis added in bold italics]

11 Thus, Dr Yeo had considered the facts which Dr Rajesh relied on and concluded that they did not warrant a diagnosis of OCD. Also, it should be noted that Dr Rajesh had considered, but excluded, the possibility of a diagnosis of OCPD for the appellant. As Dr Rajesh explained at para 75 of his report:

> Obsessive compulsive disorder with absent insight can be confused with obsessive compulsive personality disorder but

> the differentiating characteristics for these two disorders is the timing of the onset of symptoms and worsening of the illness if it remains untreated. OCD patients are able to identify the onset of their symptoms, which in this case was in 2005 and she had worsening of symptoms following the birth of her son in 2015 which was also noticed by her family members. *In contrast, Obsessive compulsive personality disorder has onset in late adolescence and early adulthood, remains constant throughout and will also have other defining characteristics which this defendant did not fulfil.*
>
> [emphasis added]

12 Given the appellant's unqualified admission to the SOF at the PG Hearing, she is precluded from now relying on any fact inconsistent with the SOF, unless she seeks to qualify her admission and retract her plea of guilt. At the hearing before us, the appellant confirmed that she was not seeking to do so. In these circumstances, she is necessarily precluded from relying on Dr Rajesh's diagnosis of OCD, which is inconsistent with Dr Yeo's assessment of her psychiatric conditions, as set out in the SOF.

13 For completeness, we add that in any event, we would not have allowed the appellant to qualify her admission to the SOF and retract her plea of guilt even if she attempted to do so. As this court held in *Public Prosecutor v Dinesh s/o Rajantheran* [2019] 1 SLR 1289, where an accused person seeks to retract his guilty plea at the post-sentence stage, a court will almost inevitably take a dim view of his assertions because the obvious inference to be drawn in the circumstances is that the accused person had simply come to regret his decision to plead guilty after the specific sentence had been imposed (at [48]–[49]). In these cases, it will be rare for the court to allow the accused person to qualify his plea of guilt and set aside his conviction. Such qualification will only be allowed in exceptional cases, such as if the court was satisfied on the evidence that the accused person did not have genuine freedom in deciding whether to plead guilty (at [51]).

14 There is no indication in this case that the appellant did not genuinely have the freedom to decide whether to plead guilty. It should be noted that she had the benefit of legal representation from 1 August 2016 until the conclusion of the plead guilty proceedings. The appellant does not contend that her counsel (whether the Former Counsel or Mr Chen) had pressured her into pleading guilty. Also, before the Judge, the appellant had confirmed (through Mr Chen) that she did not intend to retract her plea of guilt. It is also significant that a further mitigation plea which Mr Chen put forth on the appellant's behalf draws upon Dr Yeo's assessment of the appellant's psychiatric conditions. Mr Chen then relied on Dr Yeo's assessment again at the hearing before the Judge on 22 June 2021. All of this taken together shows that the appellant had been fully aware of all the material facts in the SOF, including Dr Yeo's diagnosis of OCPD (which necessarily excluded a diagnosis of OCD: see [10]–[11] above) and that she intended to plead guilty on the basis of those facts.

15 Even if it were true, as the appellant claims, that she had been "pressured into hastening the receipt of her sentences" (see [6(e)] above), that does not mean that she did not genuinely have the freedom to decide not to plead guilty. In order for the appellant to demonstrate that, it must be shown that she had been overwhelmed by the tremendous pressure of the moment and subjectively believed that there was no other way out except for her to plead guilty (see *R v Sampson* (1993) 112 Nfld & PEIR 355 at [13], cited with approval by the High Court in *Yunani bin Abdul Hamid v Public Prosecutor* [2008] 3 SLR(R) 383 ("*Yunani*") at 411).

16 In this case, the appellant does not explain the *external* pressures which had operated on her and which led to her decision to plead guilty. What the appellant appears to say is that she had pleaded guilty because of her *subjective belief* that Prema's proceedings would be concluded more quickly if she was

sentenced first. If that had been the case, however, then she would have pleaded guilty of *her own accord* based on what *she believed* was in her best interests at the material time. This case is starkly different from cases in which there had been external pressures on accused persons (typically from counsel) which led to the accused person's decision to plead guilty (see *Yunani* at 410–411; see also the decision of the High Court in *Chng Leng Khim v Public Prosecutor and another matter* [2015] 5 SLR 1219 at [9]–[12]).

17 In any event, there is no evidence to substantiate the appellant's claim that she did not genuinely have the freedom to plead guilty because she had been "pressured into hastening the receipt of her sentences". The Prosecution has stated on affidavit that it had agreed with the Defence in September 2018 that proceedings against the appellant would conclude first before Prema's proceedings were heard. At no juncture in these proceedings has the appellant contended that this decision had not been communicated to her, or that this decision had been made against her wishes. It also appears from the Record of Proceedings that at the PG Hearing, the appellant raised no question in court about how her guilty plea would impact Prema's proceedings. Importantly, throughout the plead guilty proceedings, the appellant had the benefit of legal representation. If she indeed felt any pressure or saw the need for further evidence to be adduced at any stage, she could have instructed her counsel to convey those requests to the court. The fact that the appellant never made such requests, and instead reiterated her intention to maintain her plea of guilt (see [14] above), only confirms that she had pleaded guilty voluntarily. In our view, her claim about being "pressured" is an afterthought concocted after receiving what she perceived to be an unfavourable sentence.

18 The appellant is therefore bound by her admission to the SOF and the facts contained therein. Accordingly in this appeal, she is not permitted to rely

on facts which are inconsistent with the SOF, such as Dr Rajesh's diagnosis of OCD. In any case, we do not see how Dr Rajesh's diagnosis of OCD would have assisted her. Dr Rajesh's diagnosis of OCD *per se* did not contradict Dr Yeo's opinion that she had the requisite "cognitive and volitional capacity to engage in purposeful, planned actions in choosing methods in which to inflict punishment" on the Victim. We would also observe that, save for the OCD diagnosis, Dr Rajesh's opinion had been largely consistent with that of Dr Yeo's, as he stated in his report that the appellant "was *aware* of her actions and *knew* that they were wrong and against the law" [emphasis added].

Whether the appellant has demonstrated any ground for this court to intervene with the Judge's decision on sentence

19 Thus, the only issue which remains before us is whether the appellant has demonstrated any ground on which this court may intervene with the Judge's decision on sentence. It is settled law that an appellate court has only a limited scope to intervene when reappraising sentences imposed by a court at first instance because sentencing is largely a matter of judicial discretion (see the decision of this court in *Public Prosecutor v Mohammed Liton Mohammed Syeed Mallik* [2008] 1 SLR(R) 601 ("*Liton*") at [81]). However, notwithstanding the discretionary nature of the sentencing process, an appellate court will nonetheless correct sentences in the following situations (see *Liton* at [82]):

> (a) where the sentencing judge erred in respect of the proper factual basis for sentence;
>
> (b) where the sentencing judge failed to appreciate the materials placed before him;
>
> (c) where the sentence imposed was wrong in principle and/or law; and/or
>
> (d) where the sentence imposed was manifestly excessive or manifestly inadequate, as the case may be.

20 A sentence is "manifestly inadequate" or "manifestly excessive" when it is *unjustly* lenient or severe (as the case may be) and requires *substantial* alteration rather than minute correction to remedy the injustice (see *Liton* at [83]). For instance, a sentence is manifestly excessive if it fails to accommodate the existing extenuating or mitigating circumstances (see *Liton* at [83]). The threshold for appellate intervention on the ground of a sentence being "manifestly" excessive or inadequate is a high one, and the mere fact that an appellate court would have awarded a higher or lower sentence than the trial judge is not sufficient to compel the exercise of its appellate powers (see *Liton* at [83]–[84]).

21 The appellant's main contention in this appeal is that the sentence imposed on her is "manifestly excessive" because insufficient weight had been given by the Judge to her mitigating circumstances, which include: (a) her psychiatric conditions; (b) the stressors that she faced as a result of her children's ill-health which she attributed to the Victim's poor hygiene; (c) her feelings of remorse and repentance; (d) the improvement in her conduct since coming into prison, as is evident from how she had refrained from retaliating with violence when assaulted by her cell mates; and (e) that judicial mercy would warrant a reduction in her sentence because she would suffer disproportionately while being incarcerated as a result of her psychiatric conditions. We address each of these grounds in turn.

The Judge had accorded due weight to the appellant's psychiatric conditions

22 To begin with, it cannot be seriously disputed that the Judge had accorded weight to the appellant's psychiatric conditions – he accepted that the appellant's culpability was attenuated on account of those conditions (see the GD at [73]–[74]). The appellant's contention is that the Judge ought to have

placed *more* weight on the same and should not have found that her culpability remained high. However, that is a view which the Judge was entitled to take, and which, in our judgment, he was correct in taking. It corresponded with both Dr Yeo's and Dr Rajesh's assessment of her mental state at the material time, which is that her psychiatric conditions had not affected her to such an extent that she was not cognisant of her actions. Dr Yeo's assessment was that, while the appellant's mental responsibility was partially impaired, she remained able to exercise conscious deliberation and volitional control throughout the commission of the offences. On the other hand, Dr Rajesh opined that the appellant had been aware of her actions at the time of her offending and knew that they were wrong. Also, the Judge's view is supported by the extrinsic facts. From the account which the appellant had provided to Dr Yeo, it is clear that she had inflicted hurt on the Victim because of her perception of lapses on the part of the Victim. In other words, the appellant acted in the way she did because of her dissatisfaction with the Victim and so she had been "purposeful in her criminal conduct" (see the GD at [80]). In our view, there is no merit in the appellant's contention that the Judge failed to accord due weight to her psychiatric conditions.

23 We reiterate this court's earlier views in *Lim Ghim Peow v Public Prosecutor* [2014] 4 SLR 1287 that, even though the consideration of rehabilitation takes precedence in sentencing a mentally-disabled offender, protective and retributive principles of sentencing will prevail where the offence is particularly serious or heinous, and the principle of retribution will be particularly relevant if the offender's mental disorder did not impair his or her capacity to appreciate the nature and gravity of his or her actions (at [39]). In our view, the Judge had carefully considered the severity of the appellant's offending conduct and the numerous aggravating factors associated with that

offending, as well as the nature of her psychiatric conditions and the extent to which that had impaired her volitional capacity and her ability to appreciate wrongdoing. The Judge was thus correct in concluding that the sentencing principles of deterrence and retribution took centre stage (see the GD at [83]) and we are satisfied that he had accorded due weight to the appellant's psychiatric conditions in coming to that conclusion.

The Judge was correct in not giving weight to the "stressors" that the appellant faced as a result of her children's ill-health which she perceived as being attributable to the Victim

24 In the plead guilty proceedings, the appellant relied on the stressors which she faced due to her children's ill-health as a mitigating factor. This was raised in the further mitigation plea which Mr Chen had made on the appellant's behalf after he took over conduct as counsel. However, the Judge did not consider this to constitute a mitigating circumstance. In his view, the medical conditions suffered by the appellant's children did not appear to have any clear connection with the Victim's perceived poor hygiene standards, assuming that was true (see the GD at [66]). For completeness, we note that a series of further medical records of the appellant's children, which the appellant had annexed to an affidavit filed in CM 3, do not detract from the Judge's assessment.

25 In our view, the Judge was entitled to come to the view which he did because, save for the appellant's allegation, there was nothing before him (nor anything before us) to suggest that the appellant's children's health conditions bore any relationship to the Victim's poor hygiene (assuming that to be true). Thus, the Judge was correct to disregard the appellant's alleged anxiety over her children's ill-health as a mitigating circumstance (see the GD at [75]).

26 In any case, we do not see how any such "stressors" can separately amount to a mitigating circumstance. In so far as these "stressors" contributed to the appellant's psychiatric conditions, it is not in dispute that her conditions did have a substantial contribution to her offending, and that the Judge had already taken those conditions into account in his decision on sentence. Beyond that, these "stressors" cannot provide any excuse for the appellant's behaviour. In fact, by relying on these "stressors", the appellant is only seeking to justify her conduct against the Victim, which goes to demonstrate her patent lack of remorse as she seeks to blame anything and anyone but herself for her offending behaviour (see also [28] below).

The Judge was correct in giving no weight to the appellant's repentance and feelings of remorse

27 The Judge found that, despite the appellant's claims, she was not genuinely remorseful (see the GD at [65]). This was because she had acted in instinctive self-preservation after she discovered that the Victim was motionless in the morning of 26 July 2016, namely, by delaying the Victim's access to proper medical care and covering up her role in causing the Victim's injuries. The Judge also noted, from the reports by the psychiatrists who examined the appellant after her arrest, that she had not been prepared to accept responsibility for her actions for at least a considerable period thereafter (see the GD at [65]).

28 We see no reason to disagree with the Judge's assessment. Indeed, given the appellant's persistence in this appeal with her argument on how those "stressors" which she had faced caused her to "snap" (see [7(a)] above), we are satisfied that she is indeed not genuinely remorseful. The Judge was correct to not accord this factor any weight in his decision on sentence.

The appellant's alleged improvement in conduct since coming under remand is not a mitigating circumstance for sentencing

29 Before dealing with this point proper, we first consider the point made by the appellant in her Petition of Appeal that the improvement in her psychiatric conditions since coming into prison and receiving treatment shows that her use of violence against the Victim had been the result of her psychiatric conditions (see [6(d)] above). We do not see the relevance of this point in this appeal. It is not in dispute that the appellant's psychiatric conditions did make a substantial contribution to her offending behaviour, and her psychiatric conditions have already been properly considered by the Judge in his decision on sentence (see also [26] above).

30 We now turn to the contention made by the appellant about her alleged improvement in conduct. In *Chew Soo Chun v Public Prosecutor and another appeal* [2016] 2 SLR 78 ("*Chew Soo Chun*"), the High Court set out three kinds of mitigating circumstances in law: (a) where the offender's culpability is not as great as the nature of the offence suggested; (b) where the offender has behaved in a meritorious way which, though it affects neither his culpability nor his sensitivity to the penalty, should count in his favour; and (c) where the offender is fully culpable but will suffer more than most offenders would from the normal penalty (at [30]). The court termed the second kind of mitigating circumstance a "behavioural credit".

31 However, it stands to reason that any such behavioural credit, if it is to be taken into account in sentencing the offender, should relate back to the offence(s) with which he has been charged. That is why "behavioural credits" have so far been limited by courts to matters such as a timeous plea of guilt by an offender or an offender's cooperation with investigation authorities (see

Chew Soo Chun at [31]). The post-offence conduct which the appellant relies on in this case is entirely unrelated to the offences with which she was charged. It needs no further explanation that such conduct cannot qualify as a "behavioural credit" and cannot be taken into account as a mitigating circumstance in sentencing.

The appellant's ill-health arising from her psychiatric conditions is not a mitigating circumstance for sentencing

32 We now turn to the appellant's contention about how she would suffer disproportionately in prison as a result of her psychiatric conditions and how that warrants a reduction of her sentence. By this argument, the appellant is essentially relying on the third kind of mitigating circumstance as set out by the High Court in *Chew Soo Chun*, namely, that she would suffer more than most offenders would from the normal penalty.

33 As the High Court explained in *Chew Soo Chun*, the ill-health of an offender is relevant to sentencing in two ways:

(a) First, it is a ground for the exercise of judicial mercy, which is an exceptional jurisdiction so that the court displaces the culpability of the offender as one of the central considerations in its determination of the appropriate sentence. For the court to exercise mercy, there must be exceptional circumstances (such as terminal illness, conditions that will lead to an endangerment of life by reason of imprisonment or deprivation of certain necessaries during imprisonment) from which humanitarian considerations arise and outweigh the public interest.

(b) Second, it operates as a mitigating factor on the ground that an offender with ill-health will suffer more than most offenders would from

> the normal penalty and so the court attenuates the sentence accordingly for him so that it will not be disproportionate to his culpability and physical condition. However, the court will not find a sentence disproportionate for an offender even if it has a significantly adverse impact on him, if his condition is one which can be addressed by procedures that can be conducted to an acceptable standard (albeit not the best medical standard) within prison.

34 In this case, there is no basis for this court to exercise judicial mercy on account of the appellant's psychiatric conditions, which are not of such an exceptional nature that they outweigh the public interest that she receive due punishment for her actions. Further, given the severity of the offences that the appellant had committed, which the Judge considered "among the worst cases of culpable homicide imaginable" (see the GD at [69]), the public interest in condemning the crime is so significant that even if there had been exceptional circumstances, the court cannot countenance any reduction of her sentence.

35 Nor do we see any basis for the appellant's psychiatric conditions to operate as a mitigating factor in sentencing. Save for the appellant's own self-serving assertion, there is no evidence that she will suffer disproportionately in prison on account of her psychiatric conditions. On the contrary, it appears that the appellant is making and will continue to make good progress with the treatment that is being administered to her in prison. In two medical reports dated 13 April 2020 and 22 December 2020, Dr Rajesh opined that the appellant has a good prognosis if she continues with treatment in prison. The appellant's Petition of Appeal also mentions that her psychiatric conditions have improved after she began receiving the appropriate treatment whilst in prison (see [6(d)] above).

Conclusion

36 We are satisfied that the Judge had given due consideration to the appellant's psychiatric conditions in his decision on sentence. The Judge was correct in not giving weight to the mitigating circumstances relied on by the appellant below, namely, the alleged "stressors" which she had faced over her children's health and her alleged feelings of remorse. The factors which the appellant has raised in this appeal as mitigating circumstances are also wholly without merit. The appellant has therefore not shown that the sentence for the s 304(*a*) charge, and those for the remaining 27 charges, and the global sentence of 30 years' imprisonment, were "manifestly excessive" and there is no basis for appellate intervention. We therefore dismiss the appeal.

Andrew Phang Boon Leong
Justice of the Court of Appeal

Judith Prakash
Justice of the Court of Appeal

Steven Chong
Justice of the Court of Appeal

The appellant (in person);
Mohamed Faizal SC and Sean Teh (Attorney-General's Chambers) for the respondent.
