IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2022] SGCA 67

Criminal Appeal No 17 of 2020

Between

Public Prosecutor

… *Appellant*

And

Azlin Binte Arujunah

… *Respondent*

Criminal Appeal No 24 of 2020

Between

Public Prosecutor

… *Appellant*

And

Ridzuan Bin Mega Abdul Rahman

… *Respondent*

In the matter of Criminal Case No 47 of 2019

Between

Public Prosecutor

And

(1) Azlin Binte Arujunah

Version No 2: 18 Nov 2022 (11:38 hrs)

(2) Ridzuan Bin Mega Abdul Rahman

JUDGMENT

[Criminal Procedure and Sentencing — Sentencing — Principles — Murder]

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Public Prosecutor
v
Azlin bte Arujunah and another appeal

[2022] SGCA 67

Court of Appeal — Criminal Appeals Nos 17 and 24 of 2020
Sundaresh Menon CJ, Andrew Phang Boon Leong JCA, Judith Prakash JCA, Tay Yong Kwang JCA, Steven Chong JCA
12, 26 July 2022

18 October 2022 Judgment reserved.

Sundaresh Menon CJ (delivering the judgment of the court):

Introduction

1 This judgment follows our earlier judgment in *Public Prosecutor v Azlin bte Arujunah and other appeals* [2022] SGCA 52 ("CA Judgment"), where we allowed the Prosecution's appeal in CA/CCA 17/2020 ("CCA 17") and convicted Azlin binte Arujunah ("Azlin") of the murder, under s 300(*c*) of the Penal Code (Cap 224, 2008 Rev Ed) ("Penal Code"), of her young son (the "Deceased"). The death of the Deceased was caused by a cumulative scald injury ("Cumulative Scald Injury") that was inflicted on the Deceased by hot water (meaning water that was heated to a temperature above 70°C) being splashed or poured on him. The relevant acts were done either by Azlin herself or by Azlin's husband, Ridzuan bin Mega Abdul Rahman ("Ridzuan"), in furtherance of their common intention, on four separate occasions that occurred

over the course of a week from 15 to 22 October 2016. In this judgment, we shall refer to the four scalding incidents as Incidents 1 to 4 respectively; and we refer to the charge on which we convicted Azlin as the "alternative s 300(*c*) charge".

2 In the CA Judgment, we also allowed the Prosecution's appeal in CA/CCA 24/2020 ("CCA 24") against the aggregate sentence that had been imposed on Ridzuan by the trial judge in the General Division of the High Court ("the Judge") arising from Ridzuan's conviction on various offences, including, most notably, a charge of voluntarily causing grievous hurt by means of a heated substance under s 326 of the Penal Code in carrying out Incident 4 (charge "D1B1"). The Judge sentenced Ridzuan to an aggregate sentence of 27 years' imprisonment and 24 strokes of the cane. On the Prosecution's appeal, we increased the punishment for charge D1B1 to life imprisonment with no caning for that charge, and ordered the other sentences to run concurrently.

3 Following the disposal of the earlier appeals, two issues remain outstanding in connection with the sentence to be imposed on Azlin and Ridzuan. The first issue concerns the appropriate sentence to be meted out to Azlin for her conviction on the alternative s 300(*c*) charge. The sentence for murder under s 300(*c*) is "death or imprisonment for life …" (s 302(2), Penal Code). The Prosecution submits that Azlin should be sentenced to death, while Azlin seeks life imprisonment.

4 As we noted in the CA Judgment at [1], this case presents an especially tragic set of facts, as the Deceased was a young child whose death was caused by his own parents in circumstances that were cruel, inexcusable, and entirely avoidable. However, it is also well established in our jurisprudence that, while cruelty or a display of inhumane treatment is a relevant consideration, the court

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"should not be distracted by the gruesomeness of the scene of the crime" in determining whether the death penalty should be imposed (see our decision in *Chan Lie Sian v Public Prosecutor* [2019] 2 SLR 439 ("*Chan Lie Sian*") at [93]). Therefore, it is incumbent on us to apply the appropriate legal principles to the specific facts of this case and determine whether the imposition of death penalty is warranted for Azlin.

5 The second issue concerns the appropriate aggregate sentence to be imposed on Ridzuan. Aside from charge D1B1, Ridzuan was also convicted of eight other offences before the Judge. These are one other charge in relation to Incident 2 (charge D1B2) and seven charges concerning various other acts of abuse committed by Ridzuan (and Azlin) against the Deceased. After we allowed the Prosecution's appeal in CCA 24, we ordered the sentences for the other eight charges that Ridzuan had been convicted of to run concurrently with the sentence of life imprisonment for charge D1B1, in accordance with s 307(2) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC"). However, the individual sentence which Ridzuan had been sentenced to, in respect of charge D1B2 was 12 years' imprisonment and *12 strokes of the cane*. Section 306(2) of the CPC, which empowers the court to run sentences concurrently, only applies to sentences of imprisonment (see *Public Prosecutor v Poopathi Chinaiyah s/o Paliandi* [2020] 5 SLR 734 at [42]). The remaining issue in relation to Ridzuan is whether the sentence of 12 strokes of the cane for charge D1B2 should be maintained or removed, given that he has now been sentenced to life imprisonment for charge D1B1.

Pertinent background facts

6 As the facts and procedural history of this matter have been set out in the CA Judgment at [9] to [38], we will only summarise the pertinent

background facts here to the extent this is relevant to the issues before us. Azlin and Ridzuan started to abuse the Deceased some three months prior to the week in which the four scalding incidents occurred. These acts of abuse were the subject of other charges brought against Azlin and Ridzuan. Among other things, Ridzuan had used pliers to hurt the Deceased twice in July 2016 (charges D2 and D3). This was followed in August 2016 by Azlin hitting the Deceased with a broomstick (charge C2). Later that same month, Azlin pushed the Deceased and caused him to fall and hit his head on the edge of a pillar and this caused him to bleed from the head (charge C3). In October 2016, Ridzuan applied a heated spoon on the palm of the Deceased (charge D5), flicked ash from a lighted cigarette on him, and hit him with a hanger (charge D6).

7 In another incident in October 2016, Azlin pushed the Deceased, causing him to hit his head against the wall, and Ridzuan punched the Deceased on the face so hard that his nasal bone was fractured (charges C5A and D7A). On 21 and 22 October 2016, Azlin and Ridzuan also confined the Deceased in a cat cage which measured 0.91m in length, 0.58m in width, and 0.70m in height. At that time, the Deceased was 1.05m tall. He was only let out of the cage to be fed (charges C6 and D9).

8 The four scalding incidents occurred in the period from 15 to 22 October 2016 and may be summarised as follows.

(a) Incident 1: Between 15 and 17 October 2016, Azlin suspected that the Deceased had consumed some milk powder, and she poured hot water on the Deceased several times.

(b) Incident 2: Between 17 and 19 October 2016, Azlin poured hot water on the Deceased (though she does not remember why she did so). This caused the Deceased to shout at Azlin in response saying some

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words that were translated as, "Are you crazy or what?". This angered both Azlin and Ridzuan and, as a result, they both splashed several cups of hot water on the Deceased.

(c) Incident 3: On or around 21 October 2016, Azlin became angry with the Deceased when he kept asking for a drink, and poured nine or ten cups of hot water on the Deceased, though on some of these attempts, she missed the Deceased.

(d) Incident 4: On 22 October 2016 at about noon, Azlin asked the Deceased to remove his shorts so that he could have his bath, but the Deceased did not do so. Azlin got upset and asked Ridzuan to deal with the Deceased. Ridzuan then splashed hot water at the Deceased several times until the Deceased collapsed. He died some hours later.

9 For ease of reference, we reproduce the alternative s 300(*c*) charge here:

> You, … are charged that you, between 15 October 2016 and 22 October 2016 (both dates inclusive), at [her home] … did commit murder by causing the death of [the Deceased], *to wit*, by intentionally inflicting severe scald injuries on him on four incidents, namely:
>
> a) On or around 15 to 17 October 2016, you poured/splashed hot water (above 70 degrees Celsius) at the Deceased multiple times [Incident 1];
>
> b) On or around 17 to 19 October 2016, together with Ridzuan bin Mega Abdul Rahman ('Ridzuan') and in furtherance of the common intention of you both, both of you splashed several cups of hot water (above 70 degrees Celsius) at the Deceased [Incident 2];
>
> c) On or around 21 October 2016, you threw 9 to 10 cups of hot water (above 70 degrees Celsius) at the Deceased [Incident 3]; and
>
> d) On 22 October 2016 at about 12 noon, together with Ridzuan and in furtherance of the common intention of you both, Ridzuan poured/splashed hot water (above 70 degrees Celsius) at the Deceased [Incident 4];

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> which injuries are cumulatively sufficient in the ordinary course of nature to cause death, and you have thereby committed an offence under s 300(*c*) read with s 34 in respect of incidents (b) and (d) above, and punishable under s 302(2) of the Penal Code (Cap 224, 2008 Rev Ed).

The Judge's findings and proceedings on appeal

10 At this juncture, we briefly summarise the Judge's findings below that are relevant to the question of Azlin's intentions at the time of the offence. Azlin and Ridzuan originally each faced one charge of murder under s 300(*c*) read with s 34 of the Penal Code for causing the death of the Deceased through the four scalding incidents ("Murder Charges"). The Judge acquitted Azlin and Ridzuan of their respective Murder Charges primarily because she considered that there was insufficient evidence to infer that they intended specifically to inflict a bodily injury which was sufficient in the ordinary course of nature to cause death. The Judge thought that this had to be shown when a conviction was sought for murder under s 300(*c*) arising from acts done pursuant to a common intention under s 34 of the Penal Code.

11 The Prosecution then sought the conviction of Azlin alone on the alternative s 300(*c*) charge, but the Judge rejected this because, among other reasons, the Judge thought that Azlin needed to share a common intention with Ridzuan to inflict a bodily injury that was sufficient in the ordinary course of nature to cause death (see *Public Prosecutor v Azlin bte Arujunah and another* [2020] SGHC 168 ("GD") at [121]), and the Judge found that the Prosecution was not able to prove such a common intention beyond reasonable doubt in this case (GD at [110] and [121]).

12 Instead, the Judge amended the Murder Charges to charges under s 326 of the Penal Code. The Judge sentenced Azlin to an aggregate sentence of 27 years' imprisonment and an additional 12 months' imprisonment in lieu of

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caning, and Ridzuan to an aggregate sentence of 27 years' imprisonment and 24 strokes of the cane. We allowed the Prosecution's appeal in CCA 17 and convicted Azlin of the alternative s 300(*c*) charge. We also allowed the Prosecution's appeal in CCA 24 and sentenced Ridzuan to life imprisonment for charge D1B1.

13 For ease of reference, we set out the sentences that were imposed for the other charges which Azlin was convicted of, and the sentences for the charges which Ridzuan was convicted of after we allowed the Prosecution's appeal in CCA 24, but not including the 12 strokes of the cane imposed by the Judge for charge D1B2:

(a) Azlin:

<table>
<tr><th>Charge</th><th colspan="2">Offence</th><th>Sentence</th></tr>
<tr><td>C2</td><td rowspan="2">s 5(1) p/u s 5(5)(b), Children and Young Persons Act (Cap 38, 2001 Rev Ed) (“CYPA”)</td><td>Hit with broom</td><td>6 months</td></tr>
<tr><td>C3</td><td>Push shoulder</td><td>6 months</td></tr>
<tr><td>C5A</td><td rowspan="2">s 5(1) p/u s 5(5)(b), CYPA r/w s 34, Penal Code</td><td>Push and punch face</td><td>1 year</td></tr>
<tr><td>C6</td><td>Confine in cat cage</td><td>1 year</td></tr>
</table>

(b) Ridzuan:

<table>
<tr><th>Charge</th><th colspan="2">Offence</th><th>Sentence</th></tr>
<tr><td>D1B2</td><td>s 326 r/w s 34, Penal Code</td><td>Incident 2</td><td>12 years (concurrent)</td></tr>
<tr><td>D1B1</td><td>s 326 r/w s 34, Penal Code</td><td>Incident 4</td><td>Life imprisonment</td></tr>
<tr><td>D2</td><td rowspan="3">s 5(1) p/u s 5(5)(b), CYPA</td><td rowspan="2">Pinch Deceased with pliers</td><td>6 months (concurrent)</td></tr>
<tr><td>D3</td><td>6 months (concurrent)</td></tr>
<tr><td>D6</td><td>Flick ashes and hit with hanger</td><td>9 months (concurrent)</td></tr>
<tr><td>D5</td><td rowspan="2">s 324, Penal Code</td><td rowspan="2">Using heated spoon to burn</td><td>9 months (concurrent)</td></tr>
<tr><td>D8</td><td>9 months (concurrent)</td></tr>
<tr><td>D7A</td><td rowspan="2">s 5(1) p/u s 5(5)(b), CYPA r/w s 34, Penal Code</td><td>Push and punch face</td><td>1 year (concurrent)</td></tr>
<tr><td>D9</td><td>Confine in cat cage</td><td>1 year (concurrent)</td></tr>
<tr><td colspan="3">Aggregate sentence</td><td>Life imprisonment</td></tr>
</table>

14 It was undisputed that Azlin suffered from adjustment disorder at the time of the offences. This was noted by the Judge (see GD at [143] and [144]). Dr Jaydip Sarkar ("Dr Sarkar"), who was called by the Prosecution, concluded that Azlin was suffering from an adjustment disorder due to a combination of the loss of her grandmother and mother, the extra-marital affair that Ridzuan was allegedly involved in, domestic violence directed at her by Ridzuan, financial worries, and the pressure of having to look after several young children (GD at [144]). However, the Judge noted that an adjustment disorder is, by its

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nature, "not an especially serious mental disorder" and thought it could be characterised as "an over-reaction to normal stressor[s] that all of us experienc[e] in different times of our lives". The Judge also viewed this as "a passing phase" which patients would typically recover from within six months (GD at [145]). In any event, the Judge found that "the extent of impairment to Azlin's functioning was not severe", as "Azlin was still able to manage her household and take care of her children" (GD at [146]).

15 Against that background, we first consider what the appropriate sentence for Azlin's conviction on the alternative s 300(*c*) murder charge should be before we turn to the appropriate aggregate sentence for Ridzuan.

Azlin's sentence for the alternative s 300(*c*) charge

The parties' submissions for Azlin's sentence

The Prosecution's submissions

16 The Prosecution seeks the death penalty for Azlin. The Prosecution submits that given the nature of the four scalding incidents, these are sufficient to demonstrate Azlin's blatant disregard for the life of the Deceased, and warrants the imposition of the death penalty. Further, this is reinforced by the following factors.

(a) The abuse was prolonged, escalating and exceptionally cruel.

(b) Azlin had not only abused the Deceased but had also then encouraged Ridzuan to join her in the abuse when she prompted Ridzuan to splash hot water on the Deceased in the course of Incident 2; and in instigating Ridzuan to deal with the Deceased on 22 October 2016 which culminated in Incident 4.

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(c) Azlin prioritised her self-interest over the life of the Deceased, in failing to seek medical attention and treatment for him until it was too late. The Prosecution argues in its written submissions that Azlin's "own words" (translated) when asked why she did not send him to the hospital immediately after Incident 4 were that, "[i]f I send him to hospital, myself and my husband die".

(d) Azlin had acted out of spite and with vindictiveness. She told Dr Sarkar that the "the main reason (for the assaults on [the Deceased])" was that she wanted to "take revenge on [Ridzuan]" because "the [Deceased] looked like his father", and she "was angry with [Ridzuan] for having an affair", so she "had to let the emotions out". Azlin also stated in her investigative statement that she was angry because the Deceased refused to call her "Mama".

(e) There are no material mitigating factors. First, Azlin was a 24-year-old adult when the offences were committed and was hence fully accountable for her actions. Second, it appears from her investigative statements and accounts to the psychiatrists that she was not remorseful. Third, Azlin's adjustment disorder did not impair her ability to understand what she was doing or that her actions were wrong.

(f) Finally, the Prosecution submits that this is a horrific abuse of a young child by a parent, which warrants the most severe condemnation.

Azlin's submissions

17 Azlin submits for life imprisonment. Azlin contends that despite the horrific consequences of her actions, she did not demonstrate a blatant disregard for human life. She explains that she never intended to cause the death of the

Deceased. More importantly, she maintains that she did not appreciate and was not aware, at the material time, of the fatal nature of the injuries sustained by the Deceased. In her investigative statements, she repeatedly stated that she only meant to discipline the Deceased and that she did not expect that splashing hot water would cause his death, as she had herself been splashed with hot water as a child.

18 Azlin further submits that her stressors mitigate her personal culpability because the cumulative effect of all the stressors – as outlined at [14] above – was significant enough that it gave rise to an identifiable psychiatric condition, namely her adjustment disorder. While these stressors were no excuse for her actions, Azlin submits that, if not for the cumulative effect of these stressors, she may not have behaved as she did. In support of this contention, Azlin points to the fact that she had been caring for the Deceased for more than a year before the offences took place. The Deceased was returned to Azlin's care in May 2015, but the first incident only took place in August 2016 after the accumulation of the stressors.

19 Finally, Azlin also submits that, although she and Ridzuan have been convicted of different offences, the parity principle should nevertheless apply. As the Judge noted, it was Ridzuan who "introduced a culture of violence into the family and home through his initial abuse of Azlin" (GD at [194]), and who carried out the first abusive act against the Deceased. Further, the more severe acts of abuse that took place subsequently were carried out by him. This included various acts to hurt the Deceased, using pliers, applying a heated spoon to the palm of the Deceased and punching him on his nose so hard that his nasal bone was fractured.

Applicable law

20 The sentence for murder under s 300(*c*) is death or life imprisonment. This sentencing discretion for the offence of murder was first introduced in 2012 following legislative reform through s 2 of the Penal Code (Amendment) Act 2012 (Act 32 of 2012). The circumstances in which the death penalty may be imposed were subsequently considered and laid down by this court in *Public Prosecutor v Kho Jabing* [2015] 2 SLR 112 ("*Kho Jabing*") and this has since guided the courts. In *Kho Jabing*, it was held that the death penalty should be imposed only when the offender's actions "outrage the feelings of the community" [emphasis in original omitted] (*Kho Jabing* at [44]). This however is not a purely subjective or visceral reaction of the sentencing court to the facts before it. As we will shortly explain, our case law has sought to guide this assessment on a principled basis.

21 The Prosecution emphasised in its submissions that Azlin's abuse of the Deceased was vicious, exceptionally cruel and inhumane. From the perspective of the Deceased and the suffering he endured, we entirely agree with and accept this characterisation of the events in question. And we also accept that objectively, reasonable members of the community would find Azlin's actions cruel and inhumane. However, the imposition of the death penalty must be justified in the first place by reference to the *offender's* state of mind and motivation. In *Kho Jabing* at [45], we noted that the key inquiry is whether the *offender acted in a way that exhibited a "blatant disregard for human life"* [emphasis added]. This court went on to observe that it is "the manner in which the offender acted which takes centre stage" and that the "savagery of the attack would be indicative of the offender's regard for human life" [emphasis in original omitted]. In all of this, the attention of the court is directed at and focused upon the offender. The court looks at all the surrounding circumstances

in order to determine the offender's state of knowledge, her intentions and motivation, her sensitivity to the possibility of fatal consequences ensuing and her regard for life. In this, the court examines how the offender has acted in the light of what she knows or apprehends about the danger to life that her actions might pose. In line with this, we have also observed that the focus is on the "***appellant's*** *knowledge and state of mind at the relevant time*" [emphasis in original in bold italics; emphasis added in italics] (see *Chan Lie Sian* at [88]), and the awareness of the possibility of fatal consequences. This is consistent with and follows from the fact that murder under s 300(*a*) of the Penal Code carries the *mandatory* death penalty, because the offender must be shown to have "had the *clear* ***intention*** *to cause death*" [emphasis in original in bold italics; emphasis added in italics] (*Kho Jabing* at [46]). When the relevant intention falls short of that, there should minimally be a finding that the accused person was either alive to the possibility of death and nonetheless proceeded to act as she did, or that she was utterly indifferent to whether death might ensue. This is what is encapsulated by a *blatant* disregard for life.

22 An especially cruel *manner* by which the death was caused could show that the offender acted in a way that exhibited such "blatant disregard for human life" (*Kho Jabing* at [45]), such as where the offender persisted in severely harmful or cruel acts in circumstances where the possibility of death ensuing could not have escaped the offender's consciousness. Or the cruelty or display of inhumane treatment may demonstrate a blatant disregard for human life because it evidences a state of mind "which is *just shy of the requisite intention* to sustain a charge under s 300(*a*) of the [Penal Code]" [emphasis added] (*Kho Jabing* at [47]).

23 We produce the key extracts from *Kho Jabing* here which emphasise these points:

> 45 In determining whether the actions of the offender would outrage the feelings of the community, we find that the death penalty would be the appropriate sentence when the offender has acted in a way which exhibits viciousness or a blatant disregard for human life. Viewed in this light, it is the *manner* in which the offender acted which takes centre stage. For example, in the case of a violent act leading to death, the *savagery of the attack* would be indicative of the offender's regard for human life. The number of stabs or blows, the area of the injury, the duration of the attack and the force used would all be pertinent factors to be considered.
>
> 46 We would observe that the significance of each of these factors would invariably vary, depending on the circumstances of the case. For example, the factors to consider would be extremely different in a case of non-violent acts leading to death, such as where the death was caused by poisoning. It is the offender's (dis)regard for human life which will be critical. This explains why an offence under s 300(*a*) of the [Penal Code], where the offender had the clear *intention* to cause death, still carries the mandatory death penalty.
>
> 47 Therefore when an offender acts in a way which exhibits a blatant disregard for human life which is ***just shy of the requisite intention to sustain a charge under s 300(a) of the [Penal Code]***, the imposition of the death penalty would be the appropriate sentence to reflect the ***moral culpability*** of such an offender. This approach would also be in accordance with what the Minister for Law had explained as being the *seriousness of the offence*, *personal culpability of the accused* and *the manner in which the homicide occurred* in the parliamentary debates.
>
> [emphasis in original in italics; emphasis added in underline and bold italics]

24 This helps contextualise the observation we have previously made that while cruelty or a display of inhumane treatment is a relevant factor, the court "should not be distracted by the gruesomeness of the scene of the crime" (*Chan Lie Sian* at [93]) in determining whether the death penalty should be imposed. Rather, it must, as we have already noted, consider *all* the circumstances of the case, including the offender's age, motive, and intelligence (*Kho Jabing* at [48] and [51(d)]), to determine whether the offender has acted in a way which exhibits such a blatant disregard for human life as would outrage the feelings of

the community. The case precedents show that this threshold can be met in various ways.

(a) In *Kho Jabing*, the offender was part of a group of four who had set out to commit robbery. The offender approached and struck the deceased from behind with a piece of wood, which caused the deceased to fall to the ground. The deceased was in no position at all to retaliate after the first blow. The offender nonetheless went on to strike the deceased several more times which was completely gratuitous and out of place with his original intention, which was just to rob the victim (*Kho Jabing* at [71] and [72]).

(b) In *Micheal Anak Garing v Public Prosecutor and another appeal* [2017] 1 SLR 748 ("*Micheal Anak Garing*"), the offender was part of a group of four who set out to commit robbery. The offender in this case was armed with a *parang* that was 58cm long and struck the deceased on the head with such force that it fractured the victim's skull. The offender then slit the throat of the deceased and cut the deceased on his back and his arm (*Micheal Anak Garing* at [21] and [49]).

(c) In *Public Prosecutor v Chia Kee Chen and another appeal* [2018] 2 SLR 249 ("*Chia Kee Chen*"), the offender directed a co-accused to abduct the deceased (who was his wife) and they inflicted numerous blunt force blows to the head and face of the deceased such that almost every bone in the skull of the victim from below the eye socket to the lower jaw was fractured. There was also evidence showing that the offender wanted to inflict as much suffering as possible. On the facts, it was clear that his mental state was barely shy of an explicit intention to cause the death of the victim.

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25 In the foregoing cases, the nature of the injuries that were inflicted on the victims was *extreme*, and the attack persisted even when the victim was in no position to retaliate or even to resist. And aside from the grievous nature of the injuries, their potential to cause serious injury, even death, could not seriously be doubted or have escaped the offender's consciousness. In these circumstances, the offenders were at least indifferent to whether their actions could cause death, or contemplated a real possibility that death might ensue. It is unsurprising that the court found in these cases that the threshold for the imposition of the death penalty was met because of the blatant disregard for human life that each of the offenders manifested. We will shortly turn to the issue of whether the present case meets this threshold, but before we do so, we reiterate a point we have already made. It will, in the end, usually be a matter for the court to infer whether, in all the circumstances, it is satisfied that there was such a blatant disregard for human life. This will turn on a consideration of all the circumstances and this may include the nature of the relationship between the offender and the victim. Where, for example, the offender is in a relationship with the victim that would typically be characterised as a protective relationship, the fact that the offender acts wholly contrary to this might, in the absence of other *indicia*, suggest such a blatant disregard for human life.

Our decision

26 In that light, we turn to the present facts. The key factor weighing against the imposition of the death penalty in this case is the Judge's finding that Azlin did not "entirely comprehend the likelihood of death resulting from [her] actions" (GD at [191]). The Judge also did not find on the evidence that Azlin intended to cause an injury that was sufficient in the ordinary course of nature to cause death (GD at [110]), which was why the Judge acquitted Azlin of the original and the alternative Murder Charges. Picking up the latter point first, it

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would follow that the Judge was amply satisfied that Azlin did not intend to kill the Deceased. And this much is not disputed. But the earlier point means that as far as the Judge was concerned, Azlin was quite some distance from intending to cause death, because she did not even comprehend the likelihood of death being a consequence of her actions.

27 In its appeal in CCA 17, the Prosecution challenged the former of the Judge's findings, namely that Azlin did not comprehend the likelihood of death resulting from her actions. The Prosecution submitted that it would be obvious to any person that such extensive scalding would potentially be deadly, and Azlin had observed first-hand the dreadful condition that the Deceased was in after each scalding incident. The Prosecution further submitted that both Azlin and Ridzuan knew after Incident 2 that the Deceased was seriously injured. Ridzuan described it as "quite bad", and noticed that the skin colour of the Deceased was changing, and pus was oozing out from his back and left shoulder. Azlin also knew that the Deceased was "weak from this incident"; he needed help to eat, and was unable to "move like usual". She also noticed that skin was peeling from his back, face, hands and legs. The Prosecution submitted on this basis that Azlin must have contemplated that death was a likely consequence.

28 While we think this is a close call, in the final analysis, we do not agree that the evidence proves beyond reasonable doubt that Azlin knew that death was likely to ensue from the four scalding incidents. It is important to recall that, in the CA Judgment, we did not disturb the Judge's finding, at [191] of the GD, that Azlin did not comprehend the likelihood of death resulting from her actions. We did not need to disturb that finding because of the view that we took as to the applicable mental element the Prosecution had to prove in order to make out the alternative s 300(*c*) charge. In the CA Judgment, we held that the applicable *mens rea* in this context was that laid down in *Virsa Singh v State of*

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Punjab AIR 1958 SC 465, which meant that Azlin only needed to intend to cause the actual injury that was inflicted on the Deceased. In this context, this meant that the court had to be satisfied that Azlin intended to cause the Cumulative Scald Injury (see CA Judgment at [133(b)]). Once that was established, as we found it was, she could be liable for murder under s 300(*c*) of the Penal Code as long as the Deceased's death was an objective consequence of the actual injury inflicted. However, Azlin could, and apparently did, intend the Cumulative Scald Injury without comprehending that there was at least a real possibility that this could kill her son. While that would not displace her liability for the offence of murder under s 300(*c*) of the Penal Code, it does have a bearing on how we answer the question whether she committed the offence with blatant disregard for human life and whether the imposition of the death penalty is warranted in the circumstances.

29 None of this detracts from the horrific, unacceptable and vicious nature of the injuries. Azlin was the mother of the Deceased, and for her to intentionally commit the various acts of abuse against her young son is immensely disturbing. But we reiterate the point we made earlier that the yardstick at law for deciding to impose the death penalty must be one that is rational and principled rather than one that is visceral.

30 The Judge's conclusion that Azlin did not comprehend the possibility of death rested on at least two other findings and observations. First, as noted by the Judge, scalding is not obvious evidence of an intent to cause such injury as would lead to death (GD at [191]), much less an intent to cause death. Azlin had said in her investigative statement that she thought the scald injuries would "be healed by [themselves]", and cited her own experience, that she too had been scalded by her parents when she was a child. This may be usefully contrasted with viciously assaulting a victim with a long chopper or a knife and persisting

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with the assault even after the victim has been completely overwhelmed. In the present case, not only were scalding injuries not patently or manifestly of a potentially fatal nature, the fact that they were inflicted over several days, with some signs of partial recovery in between, further distinguishes the present case from the precedents.

31 Second, Azlin did attempt to administer some self-help treatments on the Deceased, even if these proved woefully inadequate. For instance, after Incident 1, Azlin said in her investigative statement that she "went to a provision shop to buy cream to apply on [the Deceased's] … peeling skin on his arms and chest". After Incident 4, Azlin used tap water to rinse the Deceased, and also put baby powder on the Deceased's chest and stomach area. While these acts were plainly inadequate, they do suggest that Azlin was trying to aid the Deceased. This undermines the inference that Azlin was indifferent to the fate of the Deceased much less that she very nearly intended to kill him. Indeed, the sheer inadequacy of these measures suggests that at the material time, Azlin wanted to help her son but wholly failed to appreciate the possibility that her son was about to die – see further at [34] below.

32 The Prosecution also relies on Azlin's "own words" (translated) that "If I send him to hospital, myself and my husband die. *If I don't send him to the hospital, deceased die*" [emphasis added] to submit that Azlin fully comprehended that the Deceased would die. However, this line must be seen in its proper context. First and foremost, these were not Azlin's "own words" but the words of *Azlin's friend, "[Z]",* who stated in her conditioned statement that this was what Azlin told her when [Z] asked Azlin, *after* the Deceased had already passed away, why Azlin did not send the Deceased to the hospital immediately after he collapsed from Incident 4.

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33 Nevertheless, it is true that Azlin did state in her investigative statement, given after the death of the Deceased, that, after Incident 4, "at the back of [her] mind, [she] knew that if [Azlin and Ridzuan] did not send [the Deceased to the hospital], he would die and if [they] sent [the Deceased] to the hospital, [they] would die." This is consistent with what [Z] claimed Azlin told her. However, by that stage, which was after Incident 4 and the Deceased had collapsed and was unable to get up, even if Azlin understood that there was a possibility that the Deceased might die if he was not sent to the hospital as soon as possible, this contemplation of the possibility of the Deceased's death *after the Deceased collapsed after Incident 4* is not a sufficient basis to infer that Azlin had any such apprehension of the likelihood of death during the commission of each of the four scalding incidents.

34 The Prosecution also relies on our observations at [221] of the CA Judgment to submit that we had already found that *Azlin* comprehended that the Deceased would die. This entails misreading our judgment. First, at [221] of the CA Judgment, we were considering the narrow point of *Ridzuan's* culpability. Second, while we were commenting on the Judge's characterisation of the respondents' attempts to administer wholly inadequate self-help treatments on the Deceased as suggesting that they did not fully comprehend the likelihood of death, the real point we were making, as evident from a fair reading of that paragraph, was that there was ample evidence to show that Ridzuan, and for that matter Azlin, knew that the Deceased was in a bad state and that the principal reason they did not send him to hospital was not because they thought that their self-help remedies would suffice but because they were anxious to avoid the risk of being "charged for *child abuse*" [emphasis added by us in the CA Judgment at [221]]. Hence, the focus of that paragraph was on discrediting the argument that they thought they had done enough to care for the Deceased rather than finding that they in fact comprehended the possibility of

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the Deceased dying. Indeed, the emphasis on the words "child abuse" goes in the opposite direction. Simply put, [221] of the CA Judgment was not in fact concerned with making a finding on Azlin and Ridzuan's contemplation of the Deceased's likelihood of death arising from the four scalding incidents.

35 Finally, it is helpful here to bear in mind the distinction that we drew in *Chan Lie Sian* at [88] between a blatant disregard for the victim's *life* and a blatant disregard for the victim's *welfare*. There, the offender viciously attacked the victim after a dispute over whether the victim had stolen the offender's money. The offender hit the victim several times on his head and body with a metal dumbbell rod, and these injuries caused the victim's death some seven days later. We held that "the appellant was not aware, at the time of the attack or in its immediate aftermath, of the fatal nature of the victim's injuries" (*Chan Lie Sian* at [88]). We further observed that because "[a]n examination of *the appellant's* regard for human life must necessarily be informed by *the appellant's* knowledge and state of mind at the relevant time", the "fact that the victim's injuries were *objectively* fatal ***would not, in itself, be sufficient*** to demonstrate that *the appellant* acted in blatant disregard for human life in preventing [others] from obtaining medical attention for the victim", *if* "the appellant honestly believed that the victim's injuries were not fatal" [emphasis in original in italics; emphasis added in bold italics] (*Chan Lie Sian* at [88]). In such a situation, "[t]he most that can be said about the appellant's conduct is that his actions exhibit a blatant disregard for the victim's *welfare*, which does not carry with it the necessary sanction of the death penalty" [emphasis in original] (*Chan Lie Sian* at [88]).

36 That applies here as well. We are satisfied that the Judge correctly found that the evidence does not support the inference that Azlin at the material time believed that the Deceased's injuries could or might have fatal consequences.

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37 For these reasons, we are not satisfied that Azlin manifested such a blatant disregard for human life. We therefore do not consider that the threshold has been crossed for the imposition of the death penalty. We accordingly sentence Azlin to life imprisonment.

Ridzuan's sentence of caning

38 We turn to Ridzuan's sentence and, specifically, the issue of whether his sentence of 12 strokes of the cane for charge D1B2 (which is for Incident 2) should be removed such that his aggregate sentence would be life imprisonment only instead of life imprisonment and 12 strokes of the cane.

The parties' submissions

39 The Prosecution submits that the 12 strokes of the cane imposed for charge D1B1 should be maintained. It contends that charge D1B2 in respect of Incident 2 would in and of itself warrant the imposition of an imprisonment sentence plus 12 strokes of the cane. In *Public Prosecutor v BDB* [2018] 1 SLR 127 (at [56] and [76]), we held that eight years' imprisonment and 12 strokes of the cane would be an appropriate starting point for cases of voluntarily causing grievous hurt where death had been caused. It was on this basis that, having considered all the relevant factors for Incident 2, the Judge had imposed a sentence of 12 years' imprisonment and 12 strokes of the cane for charge D1B2. Second, the Prosecution submits that imposing the caning sentence in addition to the imprisonment sentence would fairly reflect Ridzuan's overall culpability and the heinous nature of his offending.

40 Ridzuan on the other hand highlights that the Prosecution's primary position both at the trial below and in the substantive appeal was that life imprisonment (without caning) would be the appropriate aggregate sentence for

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him. Ridzuan further submits that, in the substantive appeal, this court had already held that life imprisonment is appropriate and this sufficiently meets the aims of prevention, deterrence and retribution. In the circumstances, Ridzuan submits that we should remove the sentence of 12 strokes of the cane for charge D1B2 from Ridzuan's aggregate sentence, and he further notes that this would be exactly the result that the Prosecution was seeking in its primary case in the court below.

Our decision

41 As Ridzuan had committed multiple offences, the two-step framework under *Gan Chai Bee Anne v Public Prosecutor* [2019] 4 SLR 838 ("*Anne Gan*") at [19]–[22] applies to determine his sentence. First, the court should reach a provisional view of the individual sentence for each offence, including the alternative s 300(*c*) charge. Second, the court should determine the overall sentence to be imposed. At the second step, the court should apply the totality principle and consider whether the totality of the offender's conduct justifies an adjustment, whether upwards or downwards, in the individual sentences arrived at the first step.

42 It is essentially not in dispute that the sentence of 12 years' imprisonment and 12 strokes of the cane would be an appropriate sentence for charge D1B2 taken on its own. Indeed, this is also evidenced by the fact that Ridzuan did not appeal against this sentence which had been imposed by the Judge. Thus, the first step of the *Anne Gan* framework is not at issue. The key issue relates to the second step of the *Anne Gan* framework: considering Ridzuan's total criminality, what is the appropriate aggregate sentence? Bearing in mind that, in the substantive appeal in CCA 24, we had *already* imposed a sentence that resulted in an uplift to Ridzuan's aggregate sentence, the

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remaining question is whether the retention of 12 strokes of the cane is warranted.

43 At the second step of the *Anne Gan* framework, we find that the aggregate sentence of life imprisonment (without caning) adequately reflects Ridzuan's total culpability and harm caused.

44 First, like Azlin, the Judge also found that Ridzuan did not comprehend the likelihood of death (GD at [191]). Ridzuan only intended and participated in two of the four scalding incidents. Like Azlin, Ridzuan had also applied some self-help, though ultimately inadequate, measures to try to treat the Deceased after Incident 4 – specifically, Ridzuan applied medicated oil on the Deceased, and asked his aunt, Kasmah binte Latiff, to apply baby powder on the Deceased.

45 Second, the other abusive acts which Ridzuan committed on the Deceased (as summarised at [6] to [7] above), while inexcusable, were not so egregious that they justify an uplift in Ridzuan's sentence, which we have already enhanced. Critically, it bears noting that we had already taken into consideration all the relevant cumulative aggravating factors in increasing Ridzuan's sentence from 27 years and 24 strokes of the cane to life imprisonment. These factors were as follows. First, there was a prolonged period of escalating abuse. Second, the manner in which the offence was carried out was cruel. Third, the offences were committed by the Deceased's own parents against their young child, which led to the abuse to continue for four whole months in an escalating fashion (see CA Judgment at [207] to [214]). We had also already considered that Ridzuan's case was devoid of any material mitigating factors, since he was a fully grown working adult aged 24 years when he committed the offences; he did not appear truly remorseful; and his low adaptive functioning did not merit any consideration as his low intellectual

assessment test score was due to him self-reporting his actions in a way that did not accurately reflect his actual adaptive functioning in reality (see CA Judgment at [215] to [225]). Therefore, we may not "double-count" these factors to increase Ridzuan's total sentence further by 12 strokes of the cane.

46 Third, the Judge had reasoned that there should be parity in sentencing between Azlin and Ridzuan, because they shared essentially the same degree of culpability (GD at [194]):

> In the present case, *there was no clear indication that one parent was more responsible, or that more mitigating factors applied in respect of one parent*. I was of the view that there should be parity between the two offenders. Both parents had joint and equal responsibility for the wellbeing of their child; both condoned each other's appalling actions. The Prosecution recommended an overall lighter sentence for Ridzuan because Azlin initiated the second and fourth scalding incidents. I also note that she was convicted on two additional s 326 charges. Nevertheless, it was Ridzuan who introduced a culture of violence into the family and home, through his initial abuse of Azlin. It was also Ridzuan who first started the violence against the child in July, with pliers. Being the stronger partner, his use of force in each joint offence added greater injury, for example in the incident where the Child's head hit the wall, his punch thereafter caused fractures of the nasal bone. The second and fourth scalding incidents were very serious incidents and his participation led directly to the outcome. Participation aside, the injuries sustained called for immediate medical attention, and their repeated omission to do so was the result of a joint parental decision. This neglect, which both acquiesced in, was particularly cruel as the Child would have been in great pain even from the first scalding incident. I consider that there should be parity for the offences for which they were jointly charged, and for their overall sentences. [emphasis added]

47 The principle of sentencing parity contemplates that, "where the roles and circumstances of the accused persons are the same, they should be given the same sentence unless there is a relevant difference in their responsibility for the offence or their personal circumstances" (see the High Court's decision in *Balakrishnan S and another v Public Prosecutor* [2005] 4 SLR(R) 249 at [138]

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(per Yong Pung How CJ)). Put another way, the "sentences meted out to co-offenders who are party to a common criminal enterprise should not be unduly disparate from each other". Instead, "those of similar culpability should receive similar sentences, while those of greater culpability should generally be more severely punished". In determining whether the parity principle is engaged, the question is whether the public, with knowledge of the various sentences, would perceive that the offender had "suffered injustice", and not whether the offender would feel aggrieved that his co-offenders had been treated more leniently. The "central concern" of the principle is "the need to preserve and protect public confidence in the administration of justice" (see the decision of the High Court in *Public Prosecutor v Raveen Balakrishnan* [2018] 5 SLR 799 at [112] (per Sundaresh Menon CJ)).

48 While Ridzuan and Azlin have been convicted of different charges, we agree with the Judge's finding that the two of them share a very similar degree of culpability in this case. Their roles and the surrounding circumstances are similar, and most of the charges were committed by both of them in furtherance of their common intention. Both of them also shared parental responsibility for the Deceased. Consequently, as a matter of fairness, the starting position should be that Ridzuan should not be sentenced to a more onerous sentence than Azlin. If the sentence of 12 strokes of the cane for charge D1B2 were removed, then Azlin and Ridzuan would each be sentenced to life imprisonment.

49 Further, we consider that this would also be fair because it was not the Prosecution's position at the trial below or even in the appeal in CCA 24 that Ridzuan should be sentenced to anything more than life imprisonment. It was only after we had directed the parties to make further submissions on the issue of caning that the Prosecution first submitted for an aggregate sentence of life imprisonment and 12 strokes of the cane for Ridzuan.

50 Ridzuan was originally sentenced by the Judge to an aggregate sentence of 27 years' imprisonment and 24 strokes of the cane. We have already enhanced Ridzuan's aggregate sentence (to life imprisonment) in CCA 24 pursuant to the application of the totality principle having regard to his overall culpability for and the harm caused by the offences. In all the circumstances, we are satisfied that the sentence of 12 strokes of the cane for charge D1B2 should be set aside.

Conclusion

51 It follows that in our judgment, Azlin and Ridzuan are each to be sentenced in the aggregate to a term of life imprisonment.

Sundaresh Menon
Chief Justice

Andrew Phang Boon Leong
Justice of the Court of Appeal

Judith Prakash
Justice of the Court of Appeal

Tay Yong Kwang
Justice of the Court of Appeal

Steven Chong
Justice of the Court of Appeal

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