IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2023] SGHC 224

Criminal Case No 27 of 2023

Between

Public Prosecutor

And

Xavier Yap Jung Houn

EX TEMPORE JUDGMENT

[Criminal Law — Offences — Culpable homicide not amounting to murder]
[Criminal Procedure and Sentencing — Sentencing — Mentally disordered offenders]
[Criminal Procedure and Sentencing — Sentencing — Principles]

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v
Yap Jung Houn Xavier

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Vincent Hoong J (delivering the judgment of the court *ex tempore*):

Introduction

1 This is a tragic case involving a father of two young sons, who intentionally caused their deaths whilst driven by a misguided belief that by so doing, he would alleviate their pain and suffering as well as the burdens of his wife. He held this belief because his two sons suffered from autism spectrum disorder ("ASD") and Global Developmental Delay ("GDD") and, therefore, faced various difficulties at the mainstream primary school where they were studying. He also planned to take his own life immediately after taking the lives of his two sons. While he went ahead with taking their lives by strangling them, he failed in his plan to take his own life thereafter.

2 Following his arrest, he was found to be suffering from Major Depressive Disorder ("MDD") of moderate severity around the time of the offences which impaired his judgment of the nature and wrongfulness of the offences. This meant that he would have qualified for the partial defence of diminished responsibility under Exception 7 to s 300 of the Penal Code 1871 (the "Penal Code").

3 He has now pleaded guilty to two charges of culpable homicide not amounting to murder punishable under s 304(*a*) of the Penal Code.

4 Culpable homicide is defined in s 299 of the Penal Code as follows:

> **299.** Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

5 Under s 304(*a*) of the Penal Code, an offender may be punished either with imprisonment for life with the option of caning or with imprisonment for up to 20 years with the option of a fine or caning. Caning is not applicable to the Accused because of his age.

6 In sentencing him today following his plea of guilt, there are two key questions for this Court to determine:

(a) What is the appropriate individual sentence for each of the two charges under s 304(*a*) of the Penal Code?

(b) Should the two individual sentences be ordered to run concurrently or consecutively?

7 I begin by summarising the salient facts of this case which are relevant in determining the appropriate individual sentences and overall sentence to be imposed.

The facts

The Accused's family background and the sons' learning difficulties

8 Mr Yap Jung Houn Xavier ("the Accused") is a 50-year-old Singaporean.[1] The Accused and his wife, Ms Seah Puay Hiang Anna ("Anna"), were the biological parents of Mr Yap E Chern Ethan ("Ethan") and Mr Yap Kai Shern Aston ("Aston") (collectively referred to as the "Victims"). The Victims were twins who were 11 years old at the time of their deaths.[2]

9 The Victims were formally diagnosed with ASD and GDD on 29 May 2017 when they were six years old.[3] The recommendation given following their diagnosis was for the Victims to be enrolled in a special education school.[4] However, this recommendation was not heeded as Anna faced some difficulty accepting the Victims' conditions.[5]

10 The Victims were eventually enrolled at a mainstream primary school in 2019 while they were still non-verbal.[6] Various arrangements were made to address the Victims' learning difficulties, which included Anna and the family's

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1 Statement of Facts dated 7 August 2023 ("SOF") at para 1.

2 SOF at paras 2 to 3.

3 SOF at para 4.

4 SOF at para 4.

5 SOF at para 4.

6 SOF at para 4.

domestic helper accompanying each of the Victims to their classes at the primary school which they attended.[7]

11 The Accused became increasingly concerned sometime in 2019 or 2020 about the Victims' conditions and was saddened by Anna's inability to accept their conditions.[8] In September 2021, the Accused also grew concerned over Anna's anger towards the Victims.[9] The Accused subsequently started to have suicidal ideation and purchased an ice-pick in December 2021 for this purpose.[10]

The Accused's harbouring of thoughts to kill the Victims at the start of 2022

12 Sometime at the beginning of 2022, the Accused began to harbour serious thoughts of killing the Victims and committing suicide thereafter.[11] The Victims were about to be assessed for their suitability to remain in the mainstream primary school where they were studying.[12] The Accused noticed that Anna was depressed and frustrated and felt that she had given up on the Victims.[13] The Accused took the view that killing the Victims would remove Anna's burdens.[14] He was also concerned about the caregiving arrangements of the Victims after he and Anna had passed on.[15]

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7 SOF at para 5.

8 SOF at para 6.

9 SOF at para 6.

10 SOF at para 6.

11 SOF at para 7.

12 SOF at para 7.

13 SOF at para 7.

14 SOF at para 7.

15 SOF at para 7.

13 The Accused had earlier discovered a playground near his house, the Greenridge Crescent Playground (the "Playground") which was quiet and had a big open field and forest nearby.[16] The Accused decided that he would kill the Victims and then commit suicide on 21 January 2022 at the Playground.[17]

The Accused's killing of the Victims on 21 January 2022

14 On the afternoon of 21 January 2022 at about 4.45pm, the Accused drove the Victims to the Playground in his car.[18] The Accused brought along the ice-pick which he had purchased sometime in December 2021 as part of his plan to commit suicide (see [11] above).[19]

15 Upon reaching the Playground, the Victims played for about ten minutes before the Accused brought them to an open field near the Playground. He then carried the Victims, one at a time, into a canal near the field before leading them to a sheltered part of the canal.[20]

16 The Accused then proceeded to cause the death of Ethan and Aston in the following manner:

(a) Beginning with Ethan, the Accused picked up a stick and pressed it hard against Ethan's neck, but the stick broke after some time. He then brought Ethan in front of him and strangled Ethan by placing his forearm across Ethan's neck and pressing down with the intention to cause

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16 SOF at para 8.

17 SOF at paras 8 to 9.

18 SOF at para 9.

19 SOF at para 9.

20 SOF at para 10.

Ethan's death. Ethan struggled until he eventually stopped moving. The Accused then placed Ethan on the ground with his face submerged in the water in the centre of the canal floor to ensure that Ethan was actually dead.[21]

(b) The Accused then proceeded to cause the death of Aston, who had been standing quietly a few metres away when the Accused was strangling Ethan. He tried to strangle Aston by placing his forearm across Aston's neck. However, as the Accused was not strong enough, both Aston and the Accused fell to the ground. The Accused then went on top of Aston who was lying on the ground face-up and placed his forearm on Aston's neck to choke Aston. Aston struggled as the Accused continued applying force on Aston's neck with the intention to cause Aston's death. Aston eventually became motionless. The Accused then placed Aston on the ground with his face submerged in the water to ensure that Aston was actually dead.[22]

The Accused's unsuccessful attempt to kill himself and his subsequent conduct

17 Following the Accused's killing of the Victims, the Accused tried to kill himself by using the ice-pick to pierce various parts of his body. However, he was unable to pierce himself to an extent which would have led to him to bleed to death.[23] He then used a tree branch and a rock to hit his head. However, these did not result in significant injuries.[24]

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21 SOF at paras 11 and 13.

22 SOF at paras 12 to 13.

23 SOF at para 14.

24 SOF at para 15.

18 After unsuccessfully attempting to kill himself, the Accused decided that he would call for the assistance of the Police and lie that he was attacked.[25] He harboured the hope that by lying to the Police and the Police later discovering that there was no attacker and the Accused had killed the Victims, the Accused would receive a harsher sentence of the death penalty.[26] He proceeded to call for the assistance of the Police and lied as he had planned. This led to the Police deploying resources to search the vicinity of the Playground until the Accused's offences were eventually uncovered.[27]

19 Autopsy reports showed that the cause of death of the Victims was strangulation.[28] In the case of Ethan, he suffered injuries to his neck with the neck structures within which are, in the ordinary course of nature, sufficient to cause death.[29] As for Aston, he suffered injuries to the front and side of his neck and the undersurface of his chin with bruising in the neck structures within which are, in the ordinary course of nature, sufficient to cause death.[30]

The Accused's diagnosis of MDD following the offences

20 In three medical reports prepared by Dr Christopher Cheok ("Dr Cheok") from the Institute of Mental Health ("IMH"), the Accused was

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25 SOF at para 15.

26 SOF at para 15.

27 SOF at paras 16 to 17.

28 SOF at para 20; Annex D to SOF (Autopsy Report of Ethan dated 22 January 2022) at page 8; Annex E to SOF (Autopsy Report of Aston dated 22 January 2022) at page 8.

29 SOF at para 20; Annex D to SOF (Autopsy Report of Ethan dated 22 January 2022) at page 8.

30 SOF at para 20; Annex E to SOF (Autopsy Report of Aston dated 22 January 2022) at page 8.

diagnosed as suffering from MDD of moderate severity around the time of the offences.[31] I highlight the key points made in Dr Cheok's medical reports:

(a) The Accused had the typical symptoms of MDD for the past three years which had worsened in the months prior to the offences, including suicidal and homicidal thoughts.[32]

(b) His MDD was of such severity and persistence that it impaired his judgment of the nature and wrongfulness of the offences. Therefore, the Accused would have qualified for the partial defence of diminished responsibility under Exception 7 to s 300 of the Penal Code.[33]

(c) He was not of unsound mind at the time of the offences and was fit to plead.[34]

(d) He knew killing was wrong.[35]

(e) He felt hopeless about the future of the Victims and wanted to kill them to relieve them of their suffering.[36] He also felt that killing the Victims and himself would allow Anna and her daughter, who was not his biological daughter, to be able to carry on with their lives.[37]

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31 SOF at para 21(a).

32 SOF at para 21(a); IMH Medical Report dated 8 February 2022 at para 13(a).

33 SOF at para 21(b); IMH Medical Report dated 8 February 2022 at para 13(b); IMH Medical Report dated 25 July 2022 at para 11.

34 SOF at para 21(c); IMH Medical Report dated 8 February 2022 at paras 13(c) to (d).

35 SOF at para 22(a); IMH Medical Report dated 8 February 2022 at para 13(b).

36 SOF at para 22(a); IMH Medical Report dated 8 February 2022 at para 13(b); IMH Medical Report dated 25 July 2022 at para 8.

37 SOF at para 22(b); IMH Medical Report dated 8 February 2022 at para 13(b); IMH Medical Report dated 25 July 2022 at para 8.

(f) His risk of reoffending was low as he was employed, had no prior antecedents, and did not have a history of substance abuse.[38]

21 I now set out the parties' respective positions on sentence.

The parties' positions on sentence

The Prosecution's position on sentence

The Prosecution's position on the individual sentences which ought to be imposed

22 The Prosecution seeks an individual sentence of seven to ten years' imprisonment for each of the two charges under s 304(*a*) of the Penal Code.[39]

23 The Prosecution recognises that the Accused in the present case is an offender who suffered from a mental disorder at the time of the offences. However, the Prosecution submits that deterrence and retribution ought to be the dominant sentencing considerations for the following reasons:

(a) In *Public Prosecutor v Kong Peng Yee* [2018] 2 SLR 295 ("*Kong Peng Yee*") (at [59], [65] and [66]), the Court of Appeal (the "CA") stated that deterrence and retribution should still feature in cases of mentally disordered offenders where the offenders retain their understanding of their actions and can reason and weigh the consequences of their conduct.[40]

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38 IMH Medical Report dated 8 February 2022 at para 13(e).

39 Prosecution's Sentencing Submissions dated 7 August 2023 ("PSS") at para 3.

40 PSS at paras 4 to 5.

(b) In the present case, the Accused knew that his conduct of killing the Victims was wrong and knew of the consequences of his actions but proceeded to carry out his plan to kill the Victims anyway.[41]

(c) The pre-offence and post-offence behaviour of the Accused further shows that he was able to think coherently, given the location he chose to kill the Victims as well as the plan he devised after he was unsuccessful in his plan to kill himself.[42]

24 In support of its position for seven to ten years' imprisonment for each of the two charges under s 304(*a*) of the Penal Code, the Prosecution cites the following aggravating factors:

(a) The victims were particularly vulnerable which made the Accused more culpable.[43]

(b) There was an abuse of trust which was reposed in the Accused, given the parent-child relationship between the Accused and the Victims.[44]

(c) The offence was premeditated as evidenced by the facts.[45]

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41 PSS at para 6.

42 PSS at para 6.

43 PSS at para 9.

44 PSS at para 10.

45 PSS at para 11.

25 The Prosecution also submits that the Accused's plea of guilt should be accorded limited weight in view of the need for a deterrent sentence as the public interest demands for the type of offences which the Accused committed.[46]

26 The Prosecution cites various sentencing precedents in support of its position which I will consider below.[47]

The Prosecution's position that the individual sentences ought to be ordered to run consecutively

27 The Prosecution states that the two individual sentences ought to run consecutively. This would result in a global sentence of 14 to 20 years' imprisonment.[48]

28 The Prosecution emphasises that while there may have been proximity of time and space between the offences, the Accused had ultimately committed two separate acts of strangulation involving two different victims. Therefore, the sentences ought to run consecutively to reflect the extent of harm caused by the Accused.[49]

29 The Prosecution also cites various cases of "single-transaction double killings and/or attacks" where the individual sentences were ordered to run consecutively.[50] I will consider these below when I set out the reasons for my decision.

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46 PSS at para 12.

47 PSS at paras 13 to 16.

48 PSS at para 17.

49 PSS at para 19.

50 PSS at para 20.

30 The Prosecution's view is that an overall sentence of 14 to 20 years' imprisonment cannot be said to be crushing given the overall criminality of the Accused which led to the loss of two lives.[51]

The Defence's position on sentence

The mitigating factors cited by the Defence

31 The Defence argues that the unusual facts of the present case require the sentencing principle of rehabilitation to be the dominant sentencing principle as opposed to deterrence and retribution.[52]

32 The Defence submits that the following mitigating factors feature in the present case:

(a) This is the Accused's first set of offences, and he has no prior antecedents.[53]

(b) He had fully co-operated with the Police.[54]

(c) He is remorseful and has pleaded guilty.

(d) His risk of reoffending is low,[55] and he was gainfully employed before the offences and can still contribute to society after his sentence.[56]

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51 PSS at para 21.

52 Defence's Plea-In-Mitigation dated 10 August 2023 ("DMP") at para 7.2.

53 DMP at paras 5.1 and 7.1(i).

54 DMP at paras 5.2 and 7.1(ii).

55 DMP at paras 5.3 and 7.1(iii).

56 DMP at paras 5.5, 7.1(vii) and (iv).

(e) The Accused's loss of his two sons ought to serve as sufficient punishment and retribution in itself.[57]

(f) He was suffering from MDD which had substantially impaired his judgment at the time of the offences.[58] He has been diligently taking his medications whilst in remand.[59]

(g) The Accused has a mother aged 80 years old whom he wishes to take care of once he has served his sentence.[60]

The Defence's position on the individual sentences which ought to be imposed

33 The Defence submits that an individual sentence not exceeding five years' imprisonment for each of the two charges under s 304(*a*) of the Penal Code would be appropriate.[61] The Defence cites various sentencing precedents in support of its position which I will consider below when I set out the reasons for my decision.[62]

The Defence's position that the individual sentences ought to be ordered to run concurrently

34 The Defence submits that the individual sentences ought to be ordered to run concurrently on account of the one-transaction rule.[63]

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57 DMP at paras 5.8 and 7.1(viii).

58 DMP at paras 5.11 and 7.1(ix).

59 DMP at para 5.4.

60 DMP at paras 5.7 and 7.1(vi).

61 DMP at paras 6.13 and 7.1.

62 DMP at paras 6.7 to 6.14.

63 DMP at para 6.1.

35 The Defence argues that the two offences committed by the Accused form part of a single transaction for the following reasons:

(a) There was a continuity of purpose and design between the two offences. The Accused had wanted to put an end to the suffering of both Ethan and Aston.[64]

(b) There was proximity of time and space between the two offences, given that the offences took place on the same day, at the same place, and with the second offence taking place immediately after the first offence.[65]

(c) As set out in *Public Prosecutor v Raveen Balakrishnan* [2018] 5 SLR 799 ("*Raveen*") (at [52] and [54]), sentences for related offences forming part of a single transaction should generally run concurrently. In the present case, the two offences were related offences.[66]

36 The Defence also argues that ordering the individual sentences to be run consecutively would lead in an overall sentence which would be too crushing.[67]

37 Finally, the Defence calls for judicial mercy to be exercised on account of the unusual facts in the present case.[68]

38 I now turn to consider the appropriate individual sentences to be imposed.

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64 DMP at para 6.3

65 DMP at para 6.3

66 DMP at paras 6.4 to 6.5.

67 DMP at para 6.6.

68 DMP at para 7.2.

My decision

The appropriate individual sentence for each of the two s 304(a) Penal Code charges

The sentencing considerations which should predominantly apply in the present case

39 I begin by considering the sentencing principles which should take precedence in the present case. While the Prosecution argues that deterrence and retribution should prevail, the Defence submits that the Accused's mental disorder of MDD renders rehabilitation as the primary sentencing consideration.

40 The principles relating to the sentencing of an offender with a mental disorder but who was not of unsound mind were set out by the CA in *Lim Ghim Peow v Public Prosecutor* [2014] 4 SLR 1287 ("*Lim Ghim Peow*") (at [25]–[39]). These principles were summarised in *Public Prosecutor v Chong Hou En* [2015] 3 SLR 222 ("*Chong Hou En*") (at [24]) which I set out below:

> 24 While the court will always be cognisant of the need for rehabilitation in cases where the accused person is suffering from a mental disorder, the principles with regards to sentencing an accused with a mental disorder can be distilled, for present purposes, as follows:
>
> (a) The existence of a mental disorder on the part of the offender is always a relevant factor in the sentencing process.
>
> (b) The manner and extent of its relevance depends on the circumstances of each case, in particular, the nature and severity of the mental disorder.
>
> (c) The element of general deterrence may still be accorded full weight in some circumstances, such as where the mental disorder is not serious or is not causally related to the commission of the offence, and the offence is a serious one.
>
> (d) In spite of the existence of a mental disorder on the part of the accused, specific deterrence may remain relevant in instances where the offence is premeditated

> or where there is a conscious choice to commit the offence.
>
> (e) If the serious psychiatric condition or mental disorder renders deterrence less effective, where for instance the offender has a significantly impaired ability to appreciate the nature and quality of his actions, then rehabilitation may take precedence.
>
> (f) Even though rehabilitation may be a relevant consideration, it does not necessarily dictate a light sentence. The accused could also be rehabilitated in prison.
>
> (g) Finally, in cases involving particularly heinous or serious offences, even when the accused person is labouring under a serious mental disorder, there is no reason why the retributive and protective principles of sentencing should not prevail over the principle of rehabilitation.

41 What is clear from the above is that an offender's mental disorder is undeniably a relevant factor in the sentencing process. However, the existence of a mental disorder does not necessarily mean that rehabilitation becomes the primary sentencing consideration. Rather, the nature and severity of the offender's mental disorder, whether the accused person acted with premeditation and consciously chose to commit the offences, and whether the offences were particularly serious or heinous would have a significant bearing on the sentencing considerations which would prevail.

42 In *Kong Peng Yee*, the CA recognised (at [65]–[66]) that there are generally two categories of mentally disordered offenders: (a) offenders with temporary and situational mental disorders who *retain their understanding of their actions and can reason and weigh the consequences*; and (b) offenders whose mental disorders severely impair their ability to understand the nature and consequences of their acts. In the case of an offender falling into the former category of mentally disordered offenders, the CA held that deterrence and retribution should still feature because the offender's mind would still have been

rational, and his mental disorder only ameliorates to a limited extent the criminal conduct.

43 In the present case, while the Accused suffered from MDD at the time of the offences, the facts show that he falls within the former category of mentally disordered offenders identified in *Kong Peng Yee* (at [65]–[66]) and listed above at [42] for the following reasons:

(a) First, it is patently clear that the Accused retained a clear understanding of the nature and consequences of his actions. Based on the Statement of Facts ("SOF"), the Accused committed the offences because he was concerned about the Victims' conditions and their caregiving arrangements once he and Anna passed on.[69] He also wanted to take away Anna's burdens.[70] In fact, in the Defence's mitigation plea, the Accused also goes further than the facts which he admitted in the SOF by stating that he was affected by his suspicion over Anna having an extramarital affair and her alleged physical abuse of the Victims.[71] What these facts show is that the underlying reason for the Accused's criminal conduct was "founded on fact, not fantasy or fiction" (see *Kong Peng Yee* at [65]).

(b) Further, as stated by Dr Cheok following his assessment of the Accused, the Accused knew that his actions were wrong.[72] Despite this, he proceeded to commit the offences.

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69 SOF at paras 6 to 7.

70 SOF at para 7.

71 DMP at paras 4.8 to 4.9.

72 SOF at para 22(a); IMH Medical Report dated 8 February 2022 at para 13(b).

(c) Finally, the Accused also had a clear appreciation of the consequences of his actions. In fact, it was because he believed that the consequences of his actions would be relieving Anna of her burden[73] and freeing the Victims "from all mortal sufferings"[74] that he committed the offences.

44 I should also highlight here that the offences committed by the Accused were particularly heinous and serious, being the most serious form of intrusion to bodily integrity, *ie*, causing the death of the Victims. Based on the principles set out in *Lim Ghim Peow* (at [25]–[39]) which were summarised in *Chong Hou En* (at [24]) and set out above at [40], in the case of a particularly heinous or serious offence, the fact that the offender suffered from a serious mental disorder at the time of the offence does not shift away from the need for the retributive and protective principles of sentencing to prevail over the principle of rehabilitation.

45 Given the above, deterrence and retribution should feature as the primary sentencing considerations in the present case.

The aggravating and mitigating factors cited by the Prosecution and the Defence

46 I next consider the aggravating and mitigating factors which feature in the present case.

47 I agree with the Prosecution that the following aggravating factors are present in this case:

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73 SOF at para 7.

74 DMP at para 4.10.

(a) First, the Victims were particularly vulnerable. The Victims were not just young children, but also persons who suffered from ASD and GDD. The SOF also stated that the Victims were non-verbal when they were enrolled at a mainstream primary school when they were nine years old.[75] I also agree with the Prosecution that the fact that Aston stood quietly as his brother was being strangled by his father demonstrates the particularly vulnerable nature of the Victims. In *Public Prosecutor v BDB* [2018] 1 SLR 127 ("*BDB*") (at [34]), the CA highlighted the special need to protect vulnerable persons and noted that an offender's culpability would generally be seen as enhanced where the victim is vulnerable, because the offender's conduct would be viewed as "exploiting or taking advantage of a relatively helpless person".

(b) Second, and related to the point above, was the fact that the Accused had betrayed the deep trust which had been reposed in him as a parent of the Victims. Instead of caring for his children, the Accused proceeded to inflict severe and irreparable harm against the Victims by causing their deaths. In *BDB* (at [35]), the CA stated that violence against children by parents would be met with the full force of the law, citing the CA's observation in *Public Prosecutor v UI* [2008] 4 SLR(R) 500 (at [33]) that "the level of confidence and trust that a child naturally reposes in his or her parent entails that a parent who betrays that trust and harms the child stands at the furthest end of the spectrum of guilt" [emphasis in original omitted].

(c) Third, the offences were premeditated. The SOF shows that the Accused first started harbouring serious thoughts of killing the Victims

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75 SOF at para 4.

sometime at the start of 2022, *ie*, a few weeks before the offences on 21 January 2022.[76] The Accused had also selected the Playground as the location to commit the offences at because he had noticed that the Playground was quiet and had a big open field in the vicinity.[77]

48 I next consider the mitigating factors which have been cited by the Defence:

(a) First, I agree with the Defence that the Accused's plea of guilt is a mitigating factor. In this regard, I do not entirely agree with the Prosecution that the Accused's plea of guilt should be accorded limited weight simply because the public interest warrants a deterrent sentence in filicide cases.[78] Here, while there is a clear public interest for a deterrent sentence, this must be balanced against the fact that the Accused has pleaded guilty at an early stage of the proceedings and has expressed remorse.

(b) Second, as I have recognised above at [41], I agree with the Defence that the Accused's mental condition of MDD is, undeniably, a relevant mitigating factor in the sentencing process which must be carefully considered in determining the appropriate sentence.

(c) Third, the Defence states that the Accused has fully co-operated with the Police. I am unable to fully agree with the Defence on this point. The immediate post-offence conduct of the Accused which I have summarised above at [18] makes very clear that the Accused had lied to

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76 SOF at para 7.

77 SOF at para 8.

78 PSS at para 12.

the Police that he was attacked.[79] He did so because he hoped that lying to the Police would lead to him receiving a harsher sentence of the death penalty.[80] Whatever may have been his motivation and even if it was to his detriment, it caused the Police having to deploy valuable resources to search the vicinity of the Playground until the Accused's offences were eventually uncovered.[81]

(d) Fourth, the Defence states that the Accused has a mother aged 80 years old whom he wishes to take care of once he has served his sentence. I fail to see how this is a mitigating factor. It is well settled that, except in the most exceptional circumstances, hardship to the offender's family has very little, if any, mitigating value: *Lai Oei Mui Jenny v Public Prosecutor* [1993] 2 SLR(R) 406 at [11]; *Public Prosecutor v Yue Mun Yew Gary* [2013] 1 SLR 39 at [67]–[68]. In the present case, the Accused has not demonstrated any form of hardship, much less an exceptional level of hardship, which would be caused to the Accused's mother.

(e) Fifth, the Defence highlights that the Accused's risk of reoffending is low and that he was gainfully employed before the offences and can still contribute to society after serving his sentence. However, in my view, this does not serve as a mitigating factor. If at all, this may be only relevant in considering, at the final stage, if the overall sentence is crushing and not in keeping with the Accused's past record

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79 SOF at para 15.

80 SOF at para 15.

81 SOF at paras 16 to 17.

and future prospects: see *Mohamed Shouffee bin Adam v Public Prosecutor* [2014] 2 SLR 998 ("*Shouffee*") at [57].

The appropriate individual sentence to be imposed for each of the s 304(a) Penal Code charges

49 Having considered the facts of the present case, the aggravating and mitigating factors, and the sentencing precedents cited by parties in their submissions, I am of the view that an individual sentence of seven years' imprisonment for each of the two charges under s 304(*a*) of the Penal Code is appropriate.

50 An individual sentence of seven years' imprisonment is consistent with the sentencing precedents cited by the Prosecution. Let me explain:

(a) I first consider the case of *Public Prosecutor v BAC* [2016] SGHC 49 ("*BAC*"). The offender pleaded guilty to a charge under s 304(*a*) of the Penal Code (Cap 224, 2008 Rev Ed) for causing the death of her seven-year-old son who was diagnosed with autism by pushing him out of the kitchen window of their residential unit. The offender had been caught up in a cold war with her husband on the day of the offence and formed a thought that her son was the reason for her exhaustion and marital problems. She then formed an intention in the moment to cause the death of her son, coaxing him to stand on a top of a stool which was at the kitchen window before pushing him out. The offender had a background of MDD, with a relapse of her depression at the time of the offence. Though the offender was aware of the nature and quality of her actions, the psychiatrist opined that her depressive symptoms substantially impaired her mental responsibility for her actions or omissions around the time of the offence. The offender was sentenced

to five years' imprisonment for her offence. In contrast to *BAC*, I agree that the present case is more aggravated given the significant degree of premeditation which featured in the Accused's offences. As I have highlighted above at [47(c)], the Accused started harbouring thoughts of killing the Victims a few weeks before the offences were committed and he also chose to commit the offences at the Playground because it was quiet. Further, I think it is worth emphasising that the Accused's conduct in the present case went one step further than the offender in *BAC* who had pushed her son out of the kitchen window. In the present case, beyond just strangling the Victims, the Accused then submerged their faces in the water in the canal to ensure that the Victims were actually dead. This circumstance makes the conduct of the Accused undeniably more aggravated. For these reasons, an uplift from the sentence of five years' imprisonment in *BAC* is justified.

(b) I next consider the case of *Public Prosecutor v CAD* [2019] SGHC 262 ("*CAD*"). The offender pleaded guilty to a charge under s 304(*a*) of the Penal Code (Cap 224, 2008 Rev Ed) for causing the death of her two-year-old daughter by throwing her on the floor and kicking her. The offender did so because she was frustrated at her daughter who had defecated on a towel and failed to listen to her instructions. The offender suffered from MDD at the time of the offence which was found to have substantially impaired her mental responsibility. The offender was sentenced to seven years' imprisonment for her offence. In *CAD*, I had found (at [10]) that the mental disorder of the offender was not in any way related to the daughter of the offender and the offender had failed to attend a follow up with the IMH prior to the commission of her offence. On this basis, I had accorded less mitigating weight to her condition. I accept that the present case is different, given that the

> Accused's MDD was related to the Victims, and he had not been diagnosed with MDD before the offences. However, this has to be squared against the fact that the Accused acted with premeditation. Coupled with this is the fact that I have highlighted earlier about the aggravated nature of the Accused's conduct where he submerged the Victims' faces in the water to ensure they were actually dead after already strangling them. Balancing these factors, I find that an individual sentence of seven years' imprisonment is appropriate.

51 On the other hand, I am unable to agree with the Defence that an individual sentence not exceeding five years' imprisonment is justified based on the sentencing precedents which the Defence seeks to rely on. These are my reasons:

> (a) The Defence relies on the case of *Public Prosecutor v Han John Han* [2007] 1 SLR(R) 1180 ("*Han*"). The offender pleaded guilty to a charge under s 304(*a*) of the Penal Code (Cap 224, 1985 Rev Ed) for causing the death of his pregnant wife by plunging an old sword into her chest. The offender was found to have suffered from a delusional disorder of the persecutory type at the time of the offence. The offender was sentenced to three years' imprisonment for the offence. In my view, the case of *Han* does not assist the Defence here. Here, I emphasise that a careful review of the offender's mental disorder in *Han* would show that the offender's delusional disorder there led him to view his wife as a perpetrator who had been using black magic on him. This continued to operate on his mind in the days preceding the offence. Seen in this light, his mental responsibility was significantly lower than the Accused in the present case. As I had highlighted above at [42], the CA had helpfully set out two categories of mentally disordered offenders in *Kong Peng*

Yee (at [65] – [66]). In my view, the offender in *Han* would have fallen into the category of offenders whose mental disorders severely impaired their ability to understand the nature and consequences of their acts, and where the underlying reason for their criminal conduct is founded on fantasy or fiction as opposed to fact. The Accused in the present case does not fall into this category. Rather, as I have explained above at [43], the Accused falls into the category of mentally disordered offenders who retain a clear understanding of the nature and consequences of their actions, and where the underlying reason for their criminal conduct is founded fact as opposed to fantasy or fiction. The Accused's sentence must accurately reflect this degree of his mental responsibility. As such, I would caution against a simplistic comparison of the offender in *Han* with the Accused in the present case.

(b) Next, the Defence seeks permission to rely on the unreported case of *Public Prosecutor v Tham Ngan Hoe* (Criminal Case No 37 of 1984). Based on the facts which were admitted to by the offender in that case, the offender pleaded guilty to a charge under s 304 of the Penal Code (Cap 103) for causing the death of her 19-month-old daughter. The offender had been earlier humiliated by her husband who had been having an extramarital affair. The offender had consumed a number of pills on the day of the offence in a bid to commit suicide. Whilst under the influence of the pills, the offender realised that there would be no caregiver for her daughter once she died. The offender therefore suffocated her daughter to death. The offender was sentenced to six and a half months' imprisonment for her offence. While the Defence seeks to rely on this decision in an attempt to convince this Court to exercise judicial mercy and to accord a lower sentence to the Accused, I am unable to agree with the Defence for two reasons:

(i) First, it is trite that unreported decisions lack sufficient particulars to paint the entire factual landscape required to appreciate the precise sentences imposed: *Abdul Aziz bin Mohamed Hanib v Public Prosecutor and other appeals* [2022] SGHC 101 at [173]. The reason for placing little, if any, weight on an unreported precedent is that it is unreasoned, and it is therefore not possible to discern what had weighed on the mind of the sentencing judge: *Janardana Jayasankarr v Public Prosecutor* [2016] 4 SLR 1288 at [13(b)].

(ii) Second, there is simply no basis given the facts of the present case to consider an exercise of judicial mercy. As was set out in *M Raveendran v Public Prosecutor* [2022] 3 SLR 1183 ("*Raveendran*") (at [62]–[64]), it was made clear that judicial mercy exists as an exceptional jurisdiction, and the threshold to warrant the exercise of judicial mercy is an exceedingly high one. Further, as was noted in *Raveendran* (at [60]), the typical situations in which judicial mercy has been invoked has been founded in concerns relating to ill health. While the situations in which judicial mercy may be exercised are not closed, there are no exceptional circumstances in the present case which warrant the exercise of judicial mercy in any way.

52 I pause here to note that while the Prosecution seeks an individual sentence in a range which extends to ten years' imprisonment, I do not find that a sentence above seven years' imprisonment is appropriate in this case. This is because adequate weight must be placed on the Accused's plea of guilt as well as the fact that the Accused was suffering from MDD at the time of the offences which was of such severity and persistence that it impaired his judgment. While

I recognise that his MDD did not affect his ability to understand that killing was wrong or understand the consequences of causing the death of the Victims, Dr Cheok's report makes clear that the Accused's MDD impaired his judgment such that he felt that it was acceptable to kill the Victims to relieve them of their stress and suffering.[82] Having considered these two factors, it is a clear that an individual sentence of seven years' imprisonment would be appropriate.

53 For the reasons above, I find that individual sentences of seven years' imprisonment should be imposed for the two charges to which the Accused has pleaded guilty.

Whether the individual sentences ought to be ordered to run concurrently or consecutively

54 I next consider whether the two individual sentences of seven years' imprisonment ought to be ordered to run concurrently or consecutively.

Whether the one-transaction rule applies

(1) Principles relating to the one-transaction rule

55 The key issue for me to determine here is whether the one-transaction rule applies. As was set out in *Shouffee* (at [27]), citing *Public Prosecutor v Law Aik Meng* [2007] 2 SLR(R) 814 ("*Law Aik Meng*") (at [52]), the one-transaction rule states that where two or more offences are committed in the course of a *single transaction*, all sentences in respect of those offences should generally be ordered to run concurrently rather than consecutively. Given that parties appear to disagree on whether the two offences were committed in the course

[82] IMH Medical Report dated 8 February 2022 at para 13(b).

of a single transaction, I find it useful to reproduce in full the court's observations on the one-transaction rule in *Shouffee* (at [27]–[32]):

> 27 Having decided on the appropriate sentence for each offence, it then falls on the sentencing judge to consider which of the sentences should run consecutively. The first rule that the sentencing judge should consider is what has been referred to as the one-transaction rule. This is not an inflexible or rigid rule but it serves as a filter to sieve out those sentences that ought not as a general rule to be ordered to be run consecutively. The clearest statement of the principle may be found in the High Court decision of *PP v Law Aik Meng* [2007] 2 SLR(R) 814 ("*Law Aik Meng*"), where V K Rajah J (as he then was) said as follows at [52]:
>
> > The one-transaction rule requires that where two or more offences are committed in the course of a single transaction, all sentences in respect of those offences should be concurrent rather than consecutive: *Maideen Pillai v PP* [1995] 3 SLR(R) 706; *Kanagasuntharam v PP* [1991] 2 SLR(R) 874 ('*Kanagasuntharam*'). Prof Andrew Ashworth in Sentencing and Criminal Justice [Cambridge University Press, 2005, 4th Ed] at p 245 interpreted the *raison d'être* for the 'single transaction' principle in terms of proximity in time and proximity in type of offence. Such an interpretation was also adopted by Dr D A Thomas in *Principles of Sentencing* (Heinemann, 2nd Ed, 1979) ('*Principles of Sentencing*'), who opined at p 54:
> >
> > > The concept of "single transaction" may be held to cover a sequence of offences involving a repetition of *the same behaviour* towards the *same victim* … provided the offences are committed *within a relatively short space of time.* …
> >
> > [High Court's emphasis in *Law Aik Meng*]
>
> 28 In *Law Aik Meng* at [52] the touchstones identified were whether there was proximity of time and proximity in the type of offence. The Malaysian Court of Appeal has developed this into four elements: proximity of time, proximity of place, continuity of action and continuity of purpose or design: see *Bachik bin Abdul Rahman v Public Prosecutor* [2004] 2 MLJ 534 at [7].
>
> 29 Although Rajah J in *Law Aik Meng* interpreted the rationale for the rule in terms of proximity, in my judgment, this is better understood as a preliminary enquiry to help ascertain

whether or not the distinct offences are to be seen as part of a single transaction.

30 The better articulation of the rationale for the rule is found in the principle that consecutive sentences are not appropriate if the various offences involve a "single invasion of the same legally protected interest" (see D A Thomas, *Principles of Sentencing* (Heinemann, 2nd Ed, 1979) at p 53):

> The essence of the one-transaction rule appears to be that *consecutive sentences are inappropriate when all the offences taken together constitute a single invasion of the same legally protected interest*. The principle applies where two or more offences arise from the same facts — as when the same series of blows constitutes assault occasioning actual bodily harm and wilful ill treatment of a child, or malicious wounding and indecent assault — *but the fact that the two offences are committed simultaneously or close together in time does not necessarily mean that they amount to a single transaction*. …
>
> [emphasis added]

31 On this formulation, the real basis of the one-transaction rule is unity of the violated interest that underlies the various offences. Where multiple offences are found to be proximate as a matter of fact but violate different legally protected interests, then they would not, at least as a general rule, be regarded as forming a single transaction. However, it should be said for the avoidance of doubt that even if this offers a better rationale for the one-transaction rule, that does not make it a test which is to be rigidly applied. As will be evident from the analysis that is set out below, even where a sentencing judge is able to identify that a set of offences violates different legally protected interests, it does not always or necessarily follow that those offences cannot be regarded as part of the same transaction.

32 But the main point I make here is that a straightforward application of the tests for proximity of time and proximity of type of offence cannot be determinative of the question whether a series of offences are to taken *by the law* to be part of the same transaction so as not to warrant separate punishment. The one-transaction rule is an *evaluative* rule that is directed towards the ultimate enquiry that a sentencing court is engaged in: whether an offender should be doubly punished for offences that have been committed simultaneously or close together in time. This will often, if not inevitably, bring into play moral considerations and it would be impossible to resolve these

> *solely* by reference to facts (such as proximity in time) which, in and of themselves, might be devoid of moral significance.
>
> [emphasis in original]

(2) The two offences in the present case involved two *different* victims

56 Applying the principles above to the present case, it is apparent that the two offences committed by the Accused do not constitute a single transaction because the two offences related to two *different* victims. As was set out in *Shouffee* (at [27]) which cited *Law Aik Meng* (at [52]), the one-transaction rule is concerned with whether the offences form a sequence that are proximate in time and type of offence *against the same victim*. In the present case, the offences were against two distinct victims. In light of this reality, my view is that the one-transaction rule simply does not apply.

(3) The presence of proximity of time, space and type of offence does not necessarily mean that the one-transaction rule is engaged

57 Further, while both parties accept that there was proximity of time, space and the type of offence in the present case, these still do not in and of themselves mean that the one-transaction rule is engaged.

58 As was set out in *Shouffee* (at [30]), which cited an excerpt by D A Thomas in *Principles of Sentencing* (Heinemann, 2nd Ed, 1979), the fact that the two offences are committed simultaneously or close together in time *does not necessarily mean* that they amount to a single transaction.

59 In the recent decision of *Public Prosecutor v Loh Cheok San* [2023] SGHC 190, the High Court stated (at [24], citing *Raveen* at [39]) that whether the various offences form part of a single transaction depends on whether they

constitute a "single invasion of the same legally protected interest". This was precisely what was stated in *Shouffee* (at [29]) as well.

60 In the present case, it is clear that the two offences took place in the same period of time and at the same space, *ie*, at the Playground on the afternoon of 21 January 2022. It is also clear that the legally protected interest which was violated in both acts was of the same type – the sanctity of life. However, it is important to emphasise here that the offences led to the infringement of two *distinct* legally protected interests – the legally protected interest of Ethan and the legally protected interest of Aston.

61 Seen in this light, the one-transaction rule is not engaged in the present case because *two* legally protected interests were violated – Ethan's legally protected interest *and* Aston's legally protected interest.

(4) The manner in which the Accused caused the death of the Victims is relevant

62 The analysis above is further bolstered by the fact that the manner in which the Accused the death of Ethan and Aston was also distinct.

63 While the offences relate to the Accused causing the death of the Victims by strangling them, it would be an oversimplification if one glosses over the facts which show the distinct manner in which the offences were committed. The SOF makes very clear that the manner in which the Accused caused the deaths of the Victims (*ie*, the actus reus of the two offences) was not entirely the same. I explain below:

(a) In the case of Ethan, the Accused first used a stick which he had picked up and pressed it hard against Ethan's neck. It was only after this

broke that he strangled Ethan by placing his forearm around Ethan's neck and pressing down. He then submerged Ethan in the water.

(b) In the case of Aston, the Accused first tried to strangle Aston by placing his forearm across Aston's neck but they both fell to the ground. He then went on top of Aston and placed his forearm on Aston's neck to choke him until he became motionless. The Accused then placed Aston on the ground with his face submerged in the water.

64 Given the above, to simply state that the two offences were part of a single transaction involving the strangulation of the Victims ignores the nuances that emerge from a careful reading of the facts.

(5) There was no continuity of purpose or design between the two offences unlike what the Defence suggests

65 I next consider the Defence's suggestion that there was a continuity of purpose and design between the two offences committed by the Accused. Here, the Defence states that "this act of the Accused is part of the same one single transaction of wanting to kill both Ethan and Aston together" and that the Accused "had wanted to put an end to the mortal suffering of both Ethan and Aston".[83]

66 I pause here to note that the Defence appears to conflate the *actus reus* of the offences with the *mens rea* in their submission. However, taking the Defence's case at its highest, the Defence appears to be suggesting that the Accused had a singular purpose – to cause the death of both children – and that there was a continuity of purpose when he proceeded to strangle both of them.

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[83] DMP at para 6.3.

67 In my view, this argument does not take the Defence's case very far. While the Defence may attempt to frame this as a continuity of purpose, this ignores the fact that the Accused had two *distinct* purposes when he set out to carry out the offences on that day – to cause the death of Ethan *and* to cause the death of Aston. He was acting upon each *distinct* purpose when he carried out the offence against Ethan followed by the offence against Aston. I do not accept the Defence's submission that the two *distinct* purposes can be viewed together as a single purpose to cause the death of the Victims so as to advance an argument that there was a continuity of purpose. This would be an impermissible simplification of the facts and the Accused's intentions.

(6) Even if the one-transaction rule was engaged, the rule is an *evaluative* rule

68 Based on the above, it is clear that the two offences in the present case do not constitute a single transaction. Therefore, the one-transaction rule is not engaged.

69 However, even if the one-transaction rule were engaged, it is important to recognise that the court in *Shouffee* made clear (at [32]) that the one-transaction rule is an *evaluative* rule which is directed towards the ultimate enquiry that a sentencing court is engaged in: whether an offender should be doubly punished for offences that have been committed simultaneously or close together in time. This will often, if not inevitably, bring into play moral considerations.

70 In the present case, the Accused caused the death of *two* persons and deprived *two* individuals of their *right to live*. He committed the offences while holding a grossly misguided view that he would be helping the Victims and freeing them of mortal suffering by causing their deaths.

71 In my view, it would be an absurd outcome and morally unjust if the law allows him to avoid being punished adequately for his offences which led to the death of his two children by allowing the sentences to be run concurrently.

An application of the totality principle leads to the conclusion that the overall sentence is appropriate

72 Finally, I consider the totality principle. The totality principle requires the court to examine whether the aggregate sentence is substantially above the sentences normally meted out for the most serious of the individual offences committed: *Shouffee* at [54]. The court would then proceed to consider whether the effect of the sentence on the offender is crushing and not in keeping with his past record and his future prospects: *Shouffee* at [57].

73 By ordering the individual sentences to run consecutively in the present case, the aggregate sentence would be 14 years' imprisonment. In my view, this sentence cannot be said to be substantially above the sentences normally meted out for the most serious of the individual offences committed.

74 In my view, this court is required to order the two individual sentences to run consecutively so as to accurately reflect the overall criminality of the Accused's conduct which led to the loss of two innocent lives.

75 Further, the Accused is presently 50 years old. Taking into account any possible remission from which he may benefit, the aggregate sentence of 14 years' imprisonment cannot be said to be crushing or not in keeping with his past record and future prospects.

Conclusion

76 For the reasons above, I sentence the Accused to seven years' imprisonment for each of the two charges under s 304(*a*) of the Penal Code. The two sentences are ordered to run consecutively, resulting in an aggregate sentence of 14 years' imprisonment. The Accused has been in remand since his arrest on 22 January 2022. Therefore, I order that the aggregate sentence of 14 years' imprisonment be backdated to commence from 22 January 2022.

77 In my view, the overall sentence which I have imposed seeks to balance the fact that a heinous and serious set of offences occurred on 21 January 2022 and the fact that the Accused suffered from MDD at the time of the offences. The sentences cannot in any way compensate for the tragic loss of two innocent young lives. One hopes, however, that the Accused will use this time to reflect on the irreversible harm he has caused to his family as a result of his misconceived belief that he would be easing the suffering and pain of the Victims and of those around him by committing the offences.

Vincent Hoong
Judge of the High Court

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