Public Prosecutor *v* AFR
[2011] SGCA 27

Case Number	: Criminal Appeal No 9 of 2010
Decision Date	: 27 May 2011
Tribunal/Court	: Court of Appeal
Coram	: Chao Hick Tin JA; V K Rajah JA; Kan Ting Chiu J
Counsel Name(s)	: Cheng Howe Ming and Peggy Pao Pei Yu (Attorney-General's Chambers) for the appellant; N Kanagavijayan and P Thirunavukkarasu (Kana & Co) and Rajan Supramaniam (Hilborne & Co) for the respondent.
Parties	: Public Prosecutor — AFR

Criminal Procedure and Sentencing – Sentencing – Benchmark Sentences

[LawNet Editorial Note: This was an appeal from the decision of the High Court in [2010] SGHC 230.]

27 May 2011

Chao Hick Tin JA (delivering the grounds of decision of the court):

Introduction

1 This appeal was brought by the Prosecution against the sentence of six years' imprisonment imposed by the High Court on the respondent for causing the death of his 23-month-old daughter ("the Child") as a result of the physical injuries which he inflicted upon her. The respondent was held guilty of culpable homicide not amounting to murder under s 304(*b*) of the Penal Code (Cap 224, 2008 Rev Ed) ("the PC") on the grounds that his acts of violence towards the Child were "done with the knowledge that [they were] likely to cause death, but without any intention to cause death, or to cause such bodily injury as [was] likely to cause death" (see *Public Prosecutor v AFR* [2010] SGHC 82 ("the GD on conviction") at [47]). At the conclusion of the hearing of the appeal, we were satisfied, having regard to all the circumstances of the case, that the punishment imposed by the trial judge ("the Judge") was manifestly inadequate and substituted it with a term of imprisonment of ten years, plus ten strokes of the cane. We now give our reasons for so deciding.

Background facts

2 On 6 January 2009 at around 6.30pm, the respondent and his wife, [B], left their three young daughters – *viz*, the Child (who was the eldest), [C] (then aged one) and [D] (then aged two months) – asleep in their flat ("the Flat") while they went out to buy groceries. At the supermarket, the respondent saw some dolls for sale and suggested to [B] that they should buy one for the Child as her birthday was approaching. The respondent and [B] returned home at around 7.30pm. Upon entering the Flat, the respondent saw the Child playing with and chewing on his cigarettes, with several cigarettes scattered on the floor. At that point in time, [B] was still outside the door of the Flat putting their shoes in place. The respondent shouted at the Child and asked her why she was so stubborn. [B] heard the shouts. The respondent also asked the Child why she did not play with her toys instead. According to the respondent, the Child had done something similar to his cigarettes two days earlier, and he had warned her then not to touch his cigarettes. Subsequently, the respondent brought the Child into the kitchen so that his voice would not be overheard by the neighbours. By this

time, [B] had entered the living room and was sweeping up the cigarettes, after which she attended to [C] and [D], who were crying in the bedroom.

3 As the respondent started to scold the Child in the kitchen, the latter began to cry. According to the respondent, he felt stressed because the Child was crying very loudly, and, moreover, he had a lot of things on his mind at that time. The respondent explained that he felt stressed as he was then earning a low salary and was not able to feed his family well. He also had issues with [B] as a man had been sending her text messages and calling her recently. As the Child cried, the respondent slapped her several times (according to the respondent, he slapped her four times). We would at this juncture point out that at the trial, Senior Consultant Forensic Pathologist Dr [EN], who conducted the post-mortem examination of the Child on 7 January 2009, testified that the bruises found on the Child had been caused by a much more severe force than a slap, and had most likely been caused by *punches* instead. The respondent claimed that after slapping the Child, he punched her upper arms several times. As the Child could not take the pain, she turned her body away from him. Despite this, the respondent continued to hit her several more times (according to the respondent's evidence, he "*smacked*" [note: 1] [emphasis added] her several times).

4 Thereafter, the Child fell into a kneeling position. Even so, *the respondent continued to punch her arms a few times while she was still kneeling*. While the Child's back was facing him, the respondent pulled both of the Child's ears and again hit the Child's back a few times. At about this time, [B] walked into the kitchen. According to [B], *the respondent kicked and stamped on the Child's back several times* while the Child was in a seated position on the floor with her upper body bent forward so that *her chest and face were touching the floor*. [B] saw the respondent kick the left side of the Child's back several times with the upper part of his foot. Shortly after, the Child was observed to be weak and "gasping for breath". [note: 2] [B] called for an ambulance, and the Child was taken to [PD] Hospital, where she was pronounced dead approximately 50 minutes after her arrival.

5 The cause of the Child's death was certified as "haemopericardium, due to … ruptured inferior vena cava" [note: 3] [capital letters in original omitted] – *ie*, the Child's inferior vena cava ("IVC"), the vein which carries de-oxygenated blood from the lower half of the body to the right atrium of the heart, had ruptured, and the severe bleeding had caused her heart to fail. Although the respondent denied ever using his feet to stamp on the Child's back, it is pertinent to note at this juncture that the medical evidence, which will be elaborated on in further detail at [25]–[28] below, showed that [B]'s evidence – *viz*, that the respondent had *kicked and stamped on* the Child – was consistent with the rupture of the Child's IVC and the injuries which she suffered.

The Judge's decision

6 The respondent was charged with the murder of the Child. At the conclusion of the trial, the Judge found that the respondent was not guilty of murder. However, in exercise of the powers conferred under s 175(1) of the Criminal Procedure Code (Cap 68, 1985 Rev Ed), the Judge (as mentioned at [1] above) convicted the respondent of the lesser offence of culpable homicide not amounting to murder under s 304(*b*) of the PC, which provides for punishment "with imprisonment for a term which may extend to 10 years, or with fine, or with caning, or with any combination of such punishments". The Judge only imposed a sentence of six years' imprisonment without any caning or fine.

7 The Judge reviewed some authorities and expressed the view that the imprisonment sentences imposed in previous s 304(*b*) cases (*ie*, cases under s 304(*b*) of the PC or the corresponding provision in earlier revised editions of the PC) which involved young victims ranged from five to seven years'

imprisonment, "with ten years being imposed in an egregious case involving a three[-]month[-]old infant" (see *Public Prosecutor v AFR* [2010] SGHC 230 ("the GD on sentence") at [12]). In imposing the sentence which he did, the Judge took into consideration two factors. First, the respondent had acted in a moment of uncontrollable anger, and, second, the respondent was remorseful for killing the Child, whom he had loved dearly. The Judge said at [12] of the GD on sentence:

> In the present case, the [Child] was the natural daughter of the [respondent], the oldest of three girls and, as was clear from the evidence, *one whom he loved dearly*. Indeed the offence was committed just after he had returned home from a shopping trip during which he had decided at [*sic*] the spur of the moment to buy her a doll for her upcoming second birthday. The knowledge that, in that *moment of uncontrolled anger*, he had brought this tragedy upon the [Child] and his wife and above all, [upon] himself, *will never be erased from his conscience no matter how many years he is imprisoned as punishment*. *That is a burden he will bear for the rest of his life and no punishment meted out by this court can be greater than that*. [emphasis added]

The Judge also did not think, although he did not elaborate on his reasons, that this was a case which merited the imposition of either a fine or caning on the respondent (see the GD on sentence at [4]).

The arguments presented on appeal

The Prosecution's case

8 Before this court, the Prosecution took the position that the sentence of six years' imprisonment was wholly inadequate and disproportionate in view of the overall gravity of the respondent's conduct, and submitted that a longer term of imprisonment as well as caning should be imposed. The Prosecution argued that the Judge had failed to give sufficient consideration to the need for deterrence, especially the need to send a strong and clear message to the public that mistreatment of young children would not be tolerated. The Prosecution contended, in particular, that the Judge had failed to give sufficient weight to the following aggravating factors:

(a) the vulnerability and defencelessness of the Child, given her young age and the fact that she was still very much a baby;

(b) the manner in which the offence was committed, which involved serious violence and which would have caused much pain and suffering to the Child;

(c) the respondent's blatant violation of his duty as the Child's biological father to protect and care for her; and

(d) the general difficulty of detecting and preventing offences that occur within the confines of a home.

9 The Prosecution further argued that the Judge had placed undue weight on the following factors:

(a) the respondent had committed the offence on the spur of the moment in a fit of "uncontrolled anger" (see the GD on sentence at [12]);

(b) the respondent had been a loving father to the Child; and

(c) the offence would never be erased from the respondent's conscience and would be a burden which he would have to bear for the rest of his life.

10 The Prosecution also took the position that the Judge had failed to accord sufficient weight to the relevant sentencing precedents which showed that longer terms of imprisonment had been imposed for offences similar to that committed by the respondent.

The respondent's case

11 On his part, the respondent emphasised before this court that he had been under a lot of stress during the period leading up to the tragic incident on 6 January 2009 ("the Incident"), and that his actions in beating the Child were the result of a build-up of pent-up emotions and stresses. In particular, he alluded to the fact that: (a) he did not earn a high salary; (b) he had to work at night and had difficulties sleeping during the day due to the children's cries; and (c) he had suspected [B] of having an affair. The respondent asserted that he was not someone who would lose his temper easily. He claimed that he had led a relatively crime-free life prior to the Incident. He contended that not all the injuries found on the Child should be attributed to him as some had been caused by mosquito bites and the Child's frequent falls. The respondent also claimed that by the time of his sentencing by the Judge, his second daughter, [C], had already forgiven him for what he had done and hoped (so it was alleged) to see him home as soon as possible. He added that if a long imprisonment term were to be imposed on him, [B] would have difficulties in raising the two younger daughters, [C] and [D], on her own.

The decision of this court

The law

12 In view of the disturbing brutal violence inflicted on the Child (as described at [3]–[5] above and [23]–[26] below) and the disconcerting increase in the incidence of domestic violence cases involving young children, this court, in coming to its decision on the present appeal, felt compelled to send a clear signal to all parents and caregivers (*ie*, those in a position of authority over and/or having a duty of care in relation to young children) that any unwarranted infliction of violence on young children would not be tolerated and would be met with the full force of the law. No parent or caregiver has licence to inflict violence with impunity on any young children under his charge. Any parent or caregiver who does so will not be allowed to mitigate his culpability on the ground of financial or social problems, nor will he be allowed (for mitigation purposes) to exclaim with regret that he did not mean to inflict violence on the victim in question, whom he professes to love. As emphasised by this court in *Public Prosecutor v UI* [2008] 4 SLR(R) 500 ("*UI*"), a parent or caregiver who breaches the trust and confidence reposed in him by abusing his child or ward will face the most severe condemnation of the law. The following observations, which were made in *UI* (at [33]) in the context of sexual abuse of a young child, are just as germane to the present situation, which involves physical abuse of a young child:

> The ultimate relationship of trust and authority is that between a parent and his or her child. There exists between them a human relationship in which the parent has a moral obligation to look after and care for the child. In our view, 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]

13 In *Public Prosecutor v Firdaus bin Abdullah* [2010] 3 SLR 225 ("*Firdaus*"), which involved physical abuse of a three-year-old child, the High Court (*per* Chan Sek Keong CJ) reiterated the need

to protect young children from domestic violence, stating at [19]:

> … [T]he gravity of the offence would be increased in cases involving vulnerable victims. Children and young persons are particularly vulnerable because they are unable to fend for themselves and require their parents or guardians to take care of them. Any person entrusted with the care of young children would be harshly dealt with if that trust is betrayed: see *Purwanti Parji v PP* [2005] 2 SLR(R) 220 at [30] and *PP v Teo Chee Seng* [2005] 3 SLR(R) 250 at [9].

14 It can be readily seen from the relevant sentencing precedents that our courts have consistently adopted a tough stance towards offenders who cause the deaths of defenceless young victims by violence.

15 The maximum imprisonment term of ten years has been imposed in s 304(*b*) cases which involve a *parent* causing the death of his biological child by violence. For instance, in *Public Prosecutor v Mohd Ismail Bin Abdullah @ Nai Henry* Criminal Case No 37 of 1994 (unreported) ("*Mohd Ismail*"), the maximum imprisonment term of ten years was imposed on the accused who, overcome with anger after having twice caught his four-year-old daughter playing with the gas cylinder in the kitchen of his home, pushed his daughter's head into a pail of water, killing her in the process. Similarly, the maximum imprisonment sentence of ten years' imprisonment was imposed in the s 304(*b*) case of *Public Prosecutor v Devadass s/o Suppaiyah* Criminal Case No 41 of 1997 (unreported) ("*Devadass*"), where the accused, who was frustrated by the cries of his three-month-old son, held his son by the neck, slapped him hard several times and then threw him onto a mattress on the floor, causing his death as a result.

16 In respect of *caregivers* who cause the deaths of young children under their care, the period of imprisonment imposed by our courts has generally been only slightly shorter than the maximum ten-year period prescribed by s 304(*b*) of the PC. For instance, in *Public Prosecutor v Dwi Arti Samad* Criminal Case No 12 of 2000 (unreported) ("*Dwi Arti Samad*"), an eight-year imprisonment term was imposed on the accused, a 22-year-old maid, who, irritated by the constant cries of her employer's 15-month-old son, picked him up and dropped him onto the floor, thereby causing his death. (We should at this juncture point out that *Mohd Ismail*, *Devadass* and *Dwi Arti Samad* all concerned s 304(*b*) of the Penal Code (Cap 224, 1985 Rev Ed) ("the 1985 Penal Code"), as opposed to s 304(*b*) of the PC; there is, however, no difference between these two versions of s 304(*b*) as far as the punishment of imprisonment is concerned.)

1 7 *Firdaus*, although not a s 304(*b*) case, is particularly germane to the present appeal because of the similarity in the essential facts. In *Firdaus*, the accused faced (*inter alia*) a charge under s 325 of the 1985 Penal Code of *voluntarily causing grievous hurt* to his three-year-old stepson. The accused, who was then cohabiting with the child's mother, lost his temper with the child because of the latter's crying. He threw four or five punches at the child's face and forehead, jabbed upwards at the child's chin and slammed the child into a wall. He thereafter continued to slap the child's back, at which point the child stopped crying. The child died from his injuries. In view of the egregious violence inflicted on the child and the serious injuries caused, which resulted in the child's death, the High Court decided that the case constituted "the worst category of cases of causing grievous hurt" (see *Firdaus* at [22]) and imposed the *maximum imprisonment sentence* under s 325 of the 1985 Penal Code of seven years' imprisonment; the accused was also sentenced to *12 strokes of the cane* in respect of the s 325 charge. Together with the sentences imposed on the accused in respect of two charges under s 5(1) of the Children and Young Persons Act (Cap 38, 2001 Rev Ed) ("the CYPA") of ill-treating the child, the High Court imposed a global sentence of 12 years' imprisonment and 12 strokes of the cane.

18 Also of relevance to the present appeal is the recent District Court case of *Public Prosecutor v Mohd Azhar Ghapar* Subordinate Courts Case No 31981 of 2010 (unreported), where the accused, who was the babysitter of his girlfriend's two-year-old daughter, inflicted egregious violence and abuse on the child, which resulted in her death. The accused had taken out his anger on the child by punching her abdomen and pinching her arms, ear, chest and stomach. The accused had also head-butted the child more than once, and had even stepped on her abdomen, thereby fracturing her ribs. The accused pleaded guilty to two charges under s 325 of the PC of voluntarily causing grievous hurt and three charges under s 5(1) of the CYPA of ill-treating the child. The District Court imposed a global sentence of 12 years' imprisonment and 12 strokes of the cane.

19 In the present case, the brutal manner in which the offence was committed and the horrendous violence which was senselessly inflicted on the Child (as shown at [3]–[5] above and [23]–[26] below) were no less heinous than the brutality and violence inflicted on the child in *Firdaus*. If the respondent in the present case had been charged with and convicted of the lesser offence of voluntarily causing grievous hurt under s 325 of the 1985 Penal Code (*viz*, the provision invoked in *Firdaus*), there is, in our view, no doubt that in keeping with *Firdaus*, he would have received the maximum imprisonment term of seven years (*cf* the maximum imprisonment term under s 325 of the PC, which is now ten years). This would be *longer* than the term of imprisonment imposed by the Judge in the present case. Given that the respondent was convicted of the *much more serious offence* of culpable homicide not amounting to murder (as compared to the offence of voluntarily causing grievous hurt), the respondent should, therefore, have received a sentence that was more severe than that imposed in *Firdaus* for the offence of voluntarily causing grievous hurt (which was seven years' imprisonment and 12 strokes of the cane). Yet, not only did the Judge impose an imprisonment term shorter than that in *Firdaus*, he also did not impose any caning on the respondent.

20 As can be seen from the precedents discussed above, our courts have unequivocally adopted a robust sentencing policy towards parents and caregivers who inflict senseless violence on young victims. Society has a special interest in protecting the young from physical abuse, particularly by those whose duty it is to care for the young under their charge. In every case of physical abuse of a young child by a parent or caregiver, there is gross abuse of physical disparity by the offender, which manifests itself in the form of inhumane treatment of a vulnerable young victim. Public interest demands the imposition of a severe sentence in this situation: the court has to send a clear signal that offences involving physical violence against helpless children are regarded with deep abhorrence and will not be tolerated.

21 To this end, the sentencing judge must first determine whether the case at hand is one where physical abuse of a young child by a parent or caregiver has led to the death of the child in circumstances which constitute an offence punishable under s 304(*b*) of the PC. If that question is answered in the affirmative, then a term of imprisonment of between eight to ten years *and* caning of not less than six strokes should ordinarily be imposed as a starting point. Second, the sentencing judge must also take into consideration any mitigating circumstances and/or aggravating factors pertinent to the precise factual context. For example, in *Public Prosecutor v Sumarni Binti Pono* Criminal Case No 11 of 2001 (unreported), a sentence of only five years' imprisonment was imposed on the accused pursuant to s 304(*b*) of the 1985 Penal Code for causing the death of her two-year-old nephew. This was because the medical evidence showed that the accused had at the material time experienced "an Adjustment Disorder with Depressed Mood, which culminated in an Acute Stress Reaction". [note: 4]

22 With the above considerations in mind, we now turn to explain why we were of the view that the Judge (with respect) gave *insufficient* weight to the *aggravating* factors in the present case and *undue* weight to the *mitigating* factors relied on by the respondent, thereby resulting in the sentence

imposed being manifestly inadequate.

The Judge's failure to give sufficient weight to the relevant aggravating factors

23 In the present case, the extreme violence and force inflicted on the Child were undeniably clear. The respondent repeatedly punched the Child even when she had fallen into a *kneeling position* [note: 5] (see [4] above); her IVC was ruptured as a result of the violence inflicted on her, and she died minutes thereafter. Rupture of the IVC is an injury that is *very rare*: Dr [EN]'s evidence in this regard was that such an injury was more commonly seen in *high-speed collisions*. This only goes to show the intensity of the violence inflicted on the Child, which resulted in (*inter alia*) contusion (bleeding) in her caecum and her left lung. The pain and suffering caused to the Child must have been unbearably severe as, during the post-mortem examination, her pericardial cavity (the cavity in the chest where the heart sits) was found to contain 40ml of blood. In addition, there were, as Dr [EN] found during the post-mortem examination, 58 external injuries to the Child, consisting of bruises and abrasions distributed all over her body: her scalp, face, ears, neck, arms, chest, back, abdomen, external genitalia, anus, hip, buttocks and thighs.

24 In our view, the Judge did not accord sufficient weight to the heinous manner in which violence was inflicted upon a helpless child of less than two years old, who could do nothing but remain where she was and receive the abuse inflicted on her. Although the Judge noted in the GD on conviction the horrendous manner in which the Child was beaten by the respondent at the material time (including the respondent's vicious stamping on her back), it appeared from the GD on sentence that he did not give sufficient weight to that factor for sentencing purposes, nor did he regard it as an aggravating factor.

25 In this connection, we noted earlier that the respondent denied ever using his feet to stamp on the Child's back (see [5] above). His evidence on this point was, however, contradicted by [B], who said in her statement dated 29 July 2009 (at para 12) that she saw the respondent "kicking and *stepping on* [the Child's] left back several times" [note: 6] [emphasis added] in the course of the Incident. [B] also demonstrated in court, by the use of a mannequin, how the respondent had stamped on the Child's back with his feet several times and how he had kicked the left side of the Child's back even when the Child's chest and face were touching the floor. More significantly, [B]'s evidence that the respondent had stamped on the Child's back is consistent with the medical evidence of Dr [EN], who testified as follows at the trial: [note: 7]

> Q Dr [[EN]], … [c]an you tell us whether what [[B]] had witnessed is consistent with your … pathological findings?
>
> A Your Honour, … I think that *the mechanisms of kicking and stamping … are consistent with … the injuries on the left side of the back* that I found. …
>
> [emphasis added]

Dr [EN] also said: [note: 8]

> … [T]he kicking and the stamping as … stated by [[B]] … are consistent with the injuries.

26 We further noted that the respondent's claims that he had only punched the Child and had not kicked her were undermined by Dr [EN]'s evidence on the high degree of improbability of the Child's IVC having been ruptured by only a punch. Dr [EN]'s testimony on this point was as follows: [note: 9]

Q On the forces required to cause the rupture o[f] the [IVC], … you have given evidence that force like a kick or a stamp or a *very severe* punch would cause the rupture of the [IVC].

A Yes, your Honour.

…

A The reason why I use the word "severe" with punch, your Honour, is that *generally … it is not so easy to deliver a very severe force with just a punch*. … [G]enerally you would need … a punch that generates severe force … not just a simple punch of the movement of the arm. *… [A]s any martial artiste will know, to put speed and power into a punch, it is not just a simple movement of the arm. To deliver a severe force with a punch, there are many components. For example, you would need to lock your wrists* … because if you do not lock your wrists, if you impact an object and your wrist bends, the wrist will absorb some of the force.

Court: Yes.

Witness: *Not only that, you must keep your elbows straight[;] otherwise if you unlock your elbow, that also absorbs force. If the force of your punch only comes from, say, your arm muscles, it is quite limited unless you're a … bodybuilder* … [T]he amount of force you can generate is limited. But how can you increase the force of your punch, you increase … *as martial artistes are taught*, you increase the force of your punch by free mechanisms. One is that you swing your shoulder so that you impart force through the punch while locking your elbow, one is that you swing your waist and one is that you move your foot forward so you're increasing the acceleration into your punch and this is what I mean by severe punching. And … severe punching is like, for example, if a person is throwing a baseball. If you are throwing a baseball, you're not just using your arm to throw it, you're using your entire body with the swing and the rotation of the hip and this imparts greater acceleration to the baseball. If you just throw a baseball, just using your arm, you might throw it at a very slow speed. But top baseball players, for example, who learn how to throw with their entire body, not just the arm, can easily reach speeds of 60, 70, 80, 90 kilometres per hour of the ball, for example. So this is why I use the terms [*sic*] 'severe punch'. Then ***in terms of kicking and stamping … it is different. Because in kicking and stamping, we have to move our hips and we are using our leg muscles and we are using the buttock muscles. And these muscles which we are using for kicks and punches … and stamping … are among the largest and most powerful muscles in the body. And therefore these muscles can generate very severe force*** . …

[emphasis added in italics and bold italics]

27 It would appear that the Judge accepted Dr [EN]'s evidence that the rupture of the Child's IVC was consistent with her having been stamped on by the respondent in the course of the Incident. This can be seen from [11] of the GD on conviction, where the Judge stated:

> On 7 January 2009, Senior Consultant Forensic Pathologist Dr [[EN]] performed the post-mortem examination on the [Child]. He certified the cause of death to be haemopericardium due to a ruptured IVC. Dr [[EN]] opined that the rupture of the IVC sustained by the [Child] was sufficient in the ordinary course of nature to cause death and that, based on [[B]]'s account of events, it was due to the mechanism of [the] kicking, stamping, punching of the [Child] by the respondent.

> When asked how certain he was as to when the rupture of the IVC occurred, *Dr [[EN]] testified that the rupture of the IVC had occurred during the time of the kicking and stamping*, as otherwise "no reason why [the Child] should be becoming weaker and then losing consciousness, unless there were some injury to the brain, for example, there is a head injury. In this case, there was none." [emphasis added]

28 Indeed, the following statement at [37] of the GD on conviction made it clear beyond doubt that the Judge accepted [B]'s evidence that the respondent had kicked and stepped on the Child's back:

> [The respondent] had used his fist *and feet* on the [Child]. He had hit her until there was severe bruising below the skin in several instances. [emphasis added]

29 Yet, nothing was said in the GD on sentence about the respondent kicking and stamping on the Child. This left us in considerable doubt as to whether this aspect of the physical abuse inflicted on the Child, which was clearly an aggravating factor, was given sufficient consideration by the Judge.

30 Given that this was a clear case where heinous and violent conduct caused the death of a helpless young victim, it was plain to us that the two main sentencing considerations relevant in determining the appropriate punishment were that of deterrence and retribution.

31 On general deterrence, we have emphasised (at [12] above) that social and financial problems would provide absolutely no excuse for parents or caregivers to vent their frustrations by physically abusing young children under their care. With regard to specific deterrence, we noted that the other two children of the respondent, [C] and [D], would still be at the vulnerable age of around four to five years old if the respondent were imprisoned for only the six-year term imposed by the Judge (on the assumption that the respondent is granted remission of sentence for good conduct).

32 *Vis-à-vis* the sentencing consideration of retribution, we have shown above how the Child was a victim of senseless brutality and mindless violence that was manifestly disproportionate to whatever irritation her disobedience in playing with and chewing on the respondent's cigarettes might have caused the respondent. Indeed, the Child was literally battered like a lifeless doll. In the circumstances, the demands of retributive justice mandate that a heavy sentence must be imposed on the respondent to ensure that his punishment is proportionate to his culpability as reflected by the viciousness with which he inflicted violence on the Child. As opined by Andrew von Hirsch and Andrew Ashworth in *Proportionate Sentencing: Exploring the Principles* (Oxford University Press, 2005) at p 4:

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

33 There are some other comments which we would make in this regard. The respondent blamed the Child for playing with and chewing on his cigarettes, and alleged that her conduct caused him to in turn lose his head and do what he did. He relied on the fact that two days prior to the Incident, the Child had done something similar to his cigarettes, and he had warned her then not to do so. He said that the Child was being naughty and stubborn. But, a child of that age is by nature curious and

her understanding, limited. It is not at all surprising that such a young child might not be able to fully understand the sense of a previous warning or to remember it when the same curious object which prompted the earlier warning reappears before her. If blame is to be attributed, we have no doubt that it should fall on the respondent. He should not have left his cigarettes within reach of the Child. If he had kept his cigarettes away that fateful day, the Child would not have played with them. He would then not have become angry with the Child and would not have beaten her as badly as he did, and she in turn would surely still have been alive today. The respondent also claimed that on that fateful evening, he had hit the Child to discipline her. However, no parent or caregiver can ever justify punching or stamping on a child so hard as to cause the rupture of the IVC – an injury which, as mentioned at [23] above, is very rare. The measure of discipline imposed by a parent or caregiver on a child must be commensurate with the age and the extent of understanding of that child. What the respondent did in the course of the Incident went well beyond what any sensible person would have done by way of discipline. Indeed, this was one of the worst cases of child abuse encountered by this court.

34 In view of the aggravating factors in the present case, and taking into consideration the sentencing principles of deterrence and retributive justice, we were of the view that the respondent's culpability fell within the most egregious end of the spectrum of s 304(*b*) cases, and that the maximum imprisonment term of ten years was warranted.

The Judge's giving of undue weight to the alleged mitigating factors

35 As mentioned at [9] above, two of the mitigating factors which the Judge took into account in sentencing the respondent were that: (a) the respondent had committed the offence on the spur of the moment in a fit of uncontrolled anger; and (b) the respondent had been a loving father to the Child. For the reasons set out below, we agreed with the Prosecution that the Judge placed undue weight on both of these alleged mitigating factors.

The submission that the respondent committed the offence on the spur of the moment in a fit of uncontrolled anger

36 Dealing, first, with the submission by the respondent that he had committed the offence on the spur of the moment in a fit of uncontrolled anger, this excuse should not have been accepted by the Judge as a mitigating factor as there was overwhelming evidence that at the material time, the respondent still had considerable presence of mind and also retained considerable control over his own actions. First, it will be recalled that upon entering the Flat and seeing what the Child had done to his cigarettes, the respondent shouted at her and thereafter *led her to the kitchen to prevent neighbours from overhearing his shouting* (see [2] above). This was hardly the behaviour which one would expect from a person who had (supposedly) lost his head in a fit of anger. On the contrary, this showed that the respondent was fully aware of all the surrounding circumstances despite his anger at the Child. Second, in the statement which he made to Assistant Superintendent David Ang ("ASP Ang") on 9 January 2009 ("the 9 January 2009 police statement"), the respondent stated that he had made a *conscious and deliberate* decision to hit the Child's back rather than anywhere else on her body because, in his view, the back was the strongest part of the body: [note: 10]

> *I punched [the Child] at the back because I think that the back is the strongest part of the body compared to the rest*. I wanted to teach her a lesson so that she can be aware of her mistake and not be so naughty. [emphasis added]

37 In the same vein, the respondent materially admitted in his statement to ASP Ang on 13 January 2009 ("the 13 January 2009 police statement") that he had retained control of the amount

of force which he had inflicted on the Child: [note: 11]

> Q10:You have mentioned that you punched the [Child] on her upper arm three or four times in paragraph 6 of [the 9 January 2009 police statement]. Can you explain why did you punch the [Child]?
>
> A10:… I wanted to teach her a lesson for playing and eating the cigarettes. *I punched her at a spot where I think it was ok to do so*. I did not punch her stomach because she is a small child.
>
> Q11:With reference to Q10, can you describe the amount of pressure you had used when you punched the [Child]?
>
> A11:Like beating a small child. Not hard, not soft. *When I beat her, I was still able to control myself*.
>
> [original emphasis omitted; emphasis added in italics]

38 The respondent confirmed the above statements in court, and went on to admit (in effect) that he knew exactly what he was doing when he was beating the Child: [note: 12]

> Q … [Y]ou said … you decided to punch [the Child's] back … because you thought that that was the strongest part of the body, is that correct?
>
> A That's right.
>
> Q You didn't want to punch her … any other place because [that] would not be as strong as the back, correct?
>
> A Yes.
>
> Q And according to you, you also wanted to teach her a lesson so that she's aware of her mistake and not be so naughty, correct?
>
> A Yes.
>
> Q *So you knew exactly what you were doing?*
>
> A *Yes, and that's why I stopped hitting her* – sorry, I stopped from continuing to beat her.
>
> [emphasis added]

39 Furthermore, even more crucially, the respondent admitted that he had actually had time to cool down in the course of the Incident. In the 9 January 2009 police statement, the respondent explained that there had been an interval during the Incident (which took place in the kitchen of the Flat) when he had walked out to the living room: [note: 13]

> I slapped [the Child] on both cheeks three or four times while she was in a standing position. [The Child] continued crying and sat on the floor. I then punched her on her left upper arm three or four times. She continued crying very loudly. After that, *I left her and went to the living room to pick up the cigarettes on the floor. After putting the cigarettes on the table in the living*

room, I went back to the kitchen. I squat down behind [the Child] and punched her on the back of her body about four times. … [emphasis added]

40 In the 13 January 2009 police statement, the respondent revealed that he had gone to the living room of the Flat to cool himself down after the first round of punches which he dealt to the Child: [note: 14]

Q13:… [C]an you explain why did you continue to punch the [Child] at the back of her body?

A13:*Like I told you, I went to the living room to cool down myself*. But her cries were getting louder and louder. I became stressed. I passed by the kitchen, her back was facing me. I squat down and immediately punched her.

[original emphasis omitted; emphasis added in italics]

This revelation was consistent with the statement made by the respondent on 7 January 2009, where he admitted that after slapping the Child and punching her on the arms: [note: 15]

I walked into the [l]iving room to cool myself down.

41 In the light of what the respondent said as set out above, what he did to the Child that fateful evening, contrary to the Judge's view, was *not* something done in a moment of uncontrolled anger. Although the respondent might have been genuinely angry that the Child had damaged and disarranged his cigarettes, he knew precisely what he was doing when he beat her as he retained considerable control over his own actions. He even had an interval during the Incident to cool down before starting his second round of physical assault on the Child. The fact of the matter was that the respondent let his anger get the better of him and deliberately inflicted even greater injury on the Child. It is a matter of common sense that when a parent or caregiver beats a child, the child's natural reaction would be to cry. To continue to beat a child while she is crying and yet expect her to stop crying is totally senseless. In such a situation (*ie*, where a child continues to be beaten while she is crying), it may be that the child will only stop crying when she is so severely injured that she can no longer cry. This was what happened in the present case. It bears reiteration that the disciplining of a child must always be measured, bearing in mind the age and the extent of understanding of the child (see [33] above). In our judgment, and with respect, the Judge failed to give adequate consideration to the entire sequence of events which took place that fateful evening, and consequently fell into error in holding that the offence was committed by the respondent on the spur of the moment in a fit of uncontrolled anger. In this regard, we would also stress that anger should not be accepted as a mitigating factor in child abuse cases.

The submission that the respondent was a loving father who was remorseful for what he did

42 Turning now to the second mitigating factor highlighted at [35] above (*viz*, that the respondent had been a loving father to the Child and was remorseful for what he had done to her), we were of the view that the Judge, in determining the appropriate sentence to impose, was unduly sympathetic to the respondent in this regard. The Judge also placed undue emphasis on the consideration that it would be forever imprinted on the respondent's conscience that he had unintentionally caused the death of his own daughter (the Judge considered that that factor in itself would be sufficient punishment for the respondent as he would have to endure this sense of guilt for the rest of his life). It seemed to us totally unimaginable that a truly loving father would inflict on his own child such severe injuries as the ones suffered by the Child. The actions of the respondent at the material time were fundamentally inconsistent with his claim to be a loving father to the Child. On the contrary, his

conduct showed him to be a wanton and temperamental father who had no consideration at all for his helpless child; all that the respondent wanted to do that fateful evening was to vent his anger on the Child.

43 In this regard, it is significant that the Judge found in the GD on conviction (at [19]) that there was evidence that the respondent had previously been physically abusive towards the Child:

> … I should add that there was also evidence that [the respondent] had been physically abusive towards the [Child]. F [the brother of [B]] gave evidence of one occasion in late 2008 when [the respondent] and the [Child] were at his home. F said that [the respondent] was playing on his PSP (a computer game device) when the [Child] started crying. This caused [the respondent] to become angry and he shouted at the [Child] to be quiet. He then went up to her and *dragged her* into a bedroom. F heard [the respondent] *slap* the [Child] and he went to the bedroom to intervene. They got into an argument over this and thereafter their relationship was strained. It is clear that [the respondent] had a *tendency of physically abusing the [Child]*. [emphasis added]

44 Indeed, [B] also testified that the physical abuse which took place on 6 January 2009 was not the first instance of the respondent beating the Child: [note: 16]

> Q What else did you tell this male paramedic [*ie*, the male paramedic in the ambulance which took the Child to [PD] Hospital on 6 January 2009]?
>
> A This is *not the first time that he beat – beat my child* –
>
> Q Yes.
>
> A – beat [the Child].
>
> …
>
> Court: Sorry, what did you say?
>
> Witness: This is not the first time that he has –
>
> Court: Oh.
>
> Witness: – beat [the Child].
>
> Q He – that he has beat [the Child]?
>
> A Yup.
>
> Q Beat as [in] B-I-T or B-E-A-T?
>
> A B-E-A-T.
>
> …
>
> Q And "he" referring to who?
>
> A My husband [*ie*, the respondent].
>
> [emphasis added]

45 Even more disconcerting was the fact that there were 22 scars on the Child at the time of her death. According to the medical evidence, those scars ranged from a week old to a month old, [note:

[17] and appeared to have been caused by *pinching* [note: 18] and/or *multiple cigarette burns*. [note: 19] Those scars were not disclosed by either the respondent or [B] to the police. If the respondent were responsible for those scars, he would have committed further offences besides the one he was charged with (such as the offence under s 5(1) of the CYPA of ill-treating a child). On the other hand, if [B] were responsible for the scars, then the respondent would also have been guilty of neglecting his duty to prevent such abuse from happening: a loving father would naturally have protected his child from such abuse. Either way, the respondent was not the loving and remorseful father whom he claimed to be.

46 We also considered it significant that neither the respondent nor [B] disclosed to the police the radial lacerations found on the Child's anal rim; they also claimed not to know anything about those injuries. According to the medical evidence, those lacerations were fresh injuries that had been inflicted less than 24 hours prior to the Child's death. [note: 20] When the Child was brought to the emergency department of [PD] Hospital on 6 January 2009, her anus was patulous (*ie*, "loose and slightly protruding") [note: 21] and oozing with blood. Dr [YR], the doctor who attended to the Child, stated in his medical report dated 30 January 2009 that the examination of the Child at the emergency department revealed, *inter alia*, the following: [note: 22]

> Patulous anus with bloody ooze, suggestive of anal tear.
>
> Child was pronounced dead at 2128[h]. The case was referred for Coroner's case in view of *death secondary to child abuse and possible case of sexual abuse*.
>
> [emphasis added]

47 At the trial, Dr [YR] elaborated on his medical report, and confirmed that there was evidence of possible *anal penetration*: [note: 23]

> Q So, Dr [[YR]], what did you see?
>
> A … At the point in time I saw … the anus … appears to be patulous, which means that it appears to be loose and slightly protruding. …
>
> Court: … So patulous means slightly protruding?
>
> Witness: It's loose and slightly protruding.
>
> …
>
> Witness: And I also notice[d] bloody ooze coming from the orifice itself.
>
> Court: Coming from the?
>
> Witness: From the anus.
>
> …
>
> Q Dr [[YR]], in the same report, you stated that it was a possible – it was a case of death secondary to child abuse and possible case of sexual abuse. How did you come to this conclusion?
>
> A This conclusion was drawn based on the history provided as well as the [C]hild's collapsed state upon arrival as well as physical examination.

Q And why sexual abuse?

A I stated it's a possible case of sexual abuse, … in light that *the [C]hild has received what appears to be child abuse and evidence of possible penetration – anal penetration*.

Q *Evidence of possible anal penetration?*

A *That's right*.

Q And when you examined the [Child], did you see any stools in her pampers?

A No.

…

Q And Dr [[YR]], with your expertise in … paediatrics, all these injuries that you note[d] on the [Child], would the [C]hild [be] in pain?

A Certainly. Whether a child or an adult.

[emphasis added]

48 The radial lacerations on the Child's anal rim were also noted in Dr [EN]'s report on the post-mortem examination of the Child. [note: 24] In his oral evidence at the trial, Dr [EN] opined that there were three possible causes of the lacerations, namely: (a) constipation; [note: 25] (b) "forceful traction of the buttocks"; [note: 26] and (c) "a blunt object … impacted or hit against the anus". [note: 27]

49 On the evidence, it was highly unlikely that the radial lacerations on the Child's anal rim had been caused by constipation, given Dr [YR]'s evidence that there were no stools in the Child's diapers when the Child was brought to the emergency department of [PD] Hospital on 6 January 2009 (see [47] above). In a similar vein, [B]'s evidence was that the Child did not have any constipation problem prior to her demise. [note: 28] This was consistent with Dr [EN]'s post-mortem examination, which revealed that: [note: 29]

> … [A]t [the] autopsy, there was no evidence of hard stools in the rectum. This could be either because there is no constipation or it could be that there was constipation but it was passed out already and therefore I did not – could not see it.

50 Dr [EN] elaborated that if constipation were ruled out as the cause of the radial lacerations found on the Child's anal rim, then it appeared from the evidence that the lacerations had been caused when *someone applied blunt force to force an object into the Child's anus*: because the object in question was larger than the Child's anus, there was no complete penetration, resulting in radial lacerations. Dr [EN]'s testimony on this point was as follows: [note: 30]

Q … [T]he evidence that has been presented in this Court by [[B]] … is that the [Child] did not have constipation prior to her demise. The evidence of the doctor who attended to the [Child] at the A&E [department], Dr [[YR]], … [is] that there [were] no stools in her [p]ampers –

A In her what, sorry?

…

Q No stools in her [p]ampers and he did not perform any forceful traction.

A This was the doctor at the emergency department?

Q Yes, if we can exclude these two.

A … [J]ust solely based on what I see, I cannot definitively exclude it [*ie*, constipation]. But if that is the history, it seems to suggest that perhaps there was no constipation. But just by looking at the injuries themselves, I'm not able to say. … [I]f we can exclude constipation as a cause of [the] … injuries here on the anus, then the other … two possible causes would be the traction … of the buttocks or that there was some blunt object that impacted against the anus, but there is no evidence of a penetration through the anus into the rectum.

Court: What does that mean? That means the blunt object only impacted up to the anal rim but … it didn't go through.

Witness: Yes. So … for example, this is the outside of the anus. If say a blunt object just hit the anus without actually penetrating … through the anus, then that might cause the abrasions and the laceration[s]. But the object has not actually penetrated into the anus. The reason … why an object that just impacts without actually penetrating is that if the object is relatively larger in diameter than the anus itself, the object, of course, would then not be able to enter the anus. But if some force is applied, it may stretch the skin and cause the laceration[s] on the outside. And by impacting the sides of the anus, that would cause the abrasion[s]. But from a forensic or medical viewpoint, … there is no evidence that the tip of the object, if there was an object, had actually penetrated through the anal rim.

Court: What about the … radial tear?

Witness: The radial lacerations.

Court: Yes.

Witness: Yes, your Honour. So if you have a round hole and you are trying to push something in, … you'll be stretching this hole in … radial directions. And that's why you will get radial lacerations. Because the force that is applied to the hole would spread the forces out … almost like [the] spokes of the wheel from the centre of the hole which is the anus.

51 Dr [EN] also stated that one of the *possible objects* that could have caused the radial lacerations found on the Child's anal rim was a penis: [note: 31]

Q You gave evidence … that this object that caused this blunt impact could be the finger, knuckles or even a penis of a man.

A … [Y]es, these are possible objects.

Q Why do you say so?

A … [B]ecause of the crescent shaped area of the abrasions, … it appears … as if something is pressing into the anus if there was an object applied. So you get two symmetrical areas of abrasions on either side and not only that, the lacerations are also symmetrical. So … it

> would appear that if an object was applied, it must be something that is … relatively blunted[,] … perhaps a little more tubular in shape rather than … something that's elongated in shape[;] so that's why I gave the examples of fingers – a finger, maybe the end of a knuckle, … a penis-like object or even a penis, … but similar objects could also cause …

52 From the medical evidence adduced at the trial, it was manifestly clear that less than 24 hours before the Child's death, someone had forced (or attempted to force) a blunt object into the Child's anus, resulting in the injuries, which included bleeding at the anus and radial lacerations of the anal rim. The evidence also revealed that one of the possible objects which might have caused those injuries was the penis of a man. The aforesaid injuries were clearly contemporaneous because when the Child was seen at the emergency department of [PD] Hospital on 6 January 2009, her anus was oozing with blood (see [46]–[47] above). It was clear that both the respondent and [B] were less than truthful to the court about the full extent of the Child's injuries. As we noted at [46] above, neither the respondent nor [B] disclosed to the police the radial lacerations found on the Child's anal rim, just as they did not disclose the 22 scars found on the Child. Although the Judge did not make any determinative finding on whether the Child had been sexually abused and, if so, by whom, we were of the view that in the face of such clear and objective evidence of physical abuse (and possible sexual abuse), it would not be appropriate to accept the respondent's bald claim that he had been a loving father to the Child.

53 It is a trite sentencing principle that an offender can only be punished for the offence(s) which he has been charged with and convicted of. Similarly, it is a well-established sentencing principle that the sentencing judge is precluded from taking into consideration facts relating to charges which have been withdrawn or which have not been brought against the accused (see *Knight Glenn Jeyasingam v Public Prosecutor* [1992] 1 SLR(R) 523 at [13], *Chua Tiong Tiong v Public Prosecutor* [2001] 2 SLR(R) 515 at [28]–[29] and *Lim Pei Ni Charissa v Public Prosecutor* [2006] 4 SLR(R) 31 at [19]). In the present case, given that no charges relating to sexual abuse or earlier instances of physical abuse of the Child were brought against the respondent, the evidence of the respondent's previous physical abuse and possible sexual abuse of the Child could not be taken into account as an aggravating factor. However, such evidence was certainly pertinent to the respondent's plea in mitigation that he had been a loving father to the Child. Justice demands that the sentencing court should not and must not blindly accept alleged mitigating factors which are plainly untrue in the face of the evidence before the court. Such mitigating circumstances ought not to be given any consideration by the court.

54 In the present case, there was irrefutable evidence of prior physical abuse (and also possible sexual abuse) of the Child by the respondent, which negated the latter's self-serving assertion that he had been a loving father to the Child. We should add that the fact that on the day of the offence, the respondent thought of buying and did buy a doll for the Child for her forthcoming birthday could not wipe out all the atrocious acts which he committed against her on that fateful day as well as before that. Whatever might have been the psychological explanation for that single act of affection on the respondent's part, the respondent could not by any stretch of the imagination be considered a loving father to the Child as, on the evidence, what he did to her that day was not a mere aberration. Instead, he had been physically abusing the Child all along.

55 Here, we should allude to the fact that the respondent's father-in-law and mother-in-law thought that he had been a loving father to the Child. Perhaps, they did not see the true side of him. In contrast, there was the evidence of the respondent's brother-in-law (*ie*, the person referred to as "F" at [19] of the GD on conviction (reproduced at [43] above)), who told the court that he had witnessed an incident in late-2008 when the respondent had used violence on the Child by slapping her face and he (the respondent's brother-in-law) had intervened. What cannot be denied were the

injuries inflicted on the Child on that fateful day, as well as the 22 scars and the radial lacerations of the anal rim found on her after she died. Further, the fact that the respondent, upon being told on 6 January 2009 that the Child had died, cried and collapsed onto the floor was not in any way indicative of his alleged love for her. There are many possible explanations for the respondent's conduct at that time, not least his fears as to what might befall him since he was the one who had caused the Child's death.

56 Before we conclude our discussion of the alleged mitigating factors in the present case, we would allude to one other factor raised by the respondent, which was not commented on by the Judge in the GD on sentence. This relates to the respondent's assertion that he had led a relatively crime-free life prior to the Incident. In our view, this is a severe understatement given the respondent's antecedents from 1998 to 2004, which included convictions for robbery, the sale and distribution of obscene films, the exhibition of uncensored films and desertion from his civil defence liabilities. In addition, we also note from the psychiatric assessment conducted by Senior Consultant Psychiatrist Dr [TY] that the respondent was not of unsound mind at the time of the offence, and that his adaptive functioning was good by general standards. In the result, we could see no mitigating factors in the present case that could justify a sentence as light as the one imposed by the Judge.

Conclusion

57 For the aforesaid reasons, we found the sentence imposed by the Judge manifestly inadequate. Accordingly, we enhanced the respondent's imprisonment term from six to ten years, backdated to take effect from the date of the respondent's arrest (*viz*, 6 January 2009). In addition, in view of the extreme violence inflicted by the respondent on the Child (see *Chia Kim Heng Frederick v Public Prosecutor* [1992] 1 SLR(R) 63 at [18]), caning was called for, having regard to the need for general and specific deterrence as well as the principle of retributive justice. Thus, we imposed ten strokes of the cane on the respondent.

58 Finally, given the young age of the respondent's other two children, [C] and [D], we requested the Prosecution to alert the appropriate welfare services to ensure that these two children's interests would be taken care of, both during the respondent's imprisonment and after his release from prison.

[note: 1] See the certified transcript of the notes of evidence ("the NE") for Day 7 of the trial at p 47.

[note: 2] See para 13 of [B]'s statement dated 29 July 2009 (at Record of Proceedings ("ROP") vol 5, p 185).

[note: 3] See ROP at vol 5, p 118.

[note: 4] See para 21 of the statement of facts dated 15 March 2001 in *Public Prosecutor v Sumarni Binti Pono*.

[note: 5] See the NE for Day 7 of the trial at p 53.

[note: 6] See ROP at vol 5, p 185.

[note: 7] See the NE for Day 6 of the trial at p 10.

[note: 8] *Id* at p 13.

[note: 9] *Id* at pp 31–33.

[note: 10] See para 6 of the 9 January 2009 police statement (at ROP vol 5, p 90).

[note: 11] See ROP at vol 5, p 94.

[note: 12] See the NE for Day 8 of the trial at pp 56–57.

[note: 13] See para 6 of the 9 January 2009 police statement (at ROP vol 5, p 90).

[note: 14] See ROP at vol 5, p 95.

[note: 15] *Id* at p 70.

[note: 16] See the NE for Day 1 of the trial at p 28.

[note: 17] See the NE for Day 5 of the trial at p 71.

[note: 18] *Id* at pp 69–71.

[note: 19] *Id* at pp 70–71.

[note: 20] See the NE for Day 6 of the trial at p 80.

[note: 21] See the NE for Day 5 of the trial at p 13.

[note: 22] See ROP at vol 5, p 105.

[note: 23] See the NE for Day 5 of the trial at pp 13–14.

[note: 24] See ROP at vol 5, p 113.

[note: 25] See the NE for Day 5 of the trial at p 88.

[note: 26] *Id* at p 89.

[note: 27] *Ibid*.

[note: 28] See para 17 of [B]'s statement dated 29 July 2009 (at ROP vol 5, p 187).

[note: 29] See the NE for Day 5 of the trial at p 89.

[note: 30] *Id* at pp 89–91.

[note: 31] See the NE for Day 6 of the trial at p 6.