# Public Prosecutor *v* Rosli bin Yassin
# [2013] 2 SLR 831; [2013] SGCA 21

**Case Number** : Criminal Appeal No 5 of 2012

**Decision Date** : 08 March 2013

**Tribunal/Court** : Court of Appeal

**Coram** : Chao Hick Tin JA; Andrew Phang Boon Leong JA; V K Rajah JA

**Counsel Name(s)** : Teo Guan Siew and Toh Puay San (Attorney-General's Chambers) for the appellant; Derek Kang Yu Hsien and Nadia Yeo (Rodyk & Davidson LLP) for the respondent.

**Parties** : Public Prosecutor — Rosli bin Yassin

*Criminal Procedure and Sentencing – Sentencing – Appeals – Accused sentenced to 12 years' preventive detention – Whether sentence was manifestly inadequate*

*Criminal Procedure and Sentencing – Sentencing – Appeals – Judge took into account time spent in remand in determining sentence of preventive detention – Whether time spent in remand ought to be taken into account in context of preventive detention*

**Facts**

The accused, Rosli bin Yassin ("the Respondent"), pleaded guilty to eight charges and consented to another 11 charges being taken into consideration for the purposes of sentencing. The eight charges comprised various counts of cheating with common intention, theft, criminal breach of trust, abetment of forgery and culpable homicide not amounting to murder. The Respondent had spent three years in remand. It was not in dispute that the Respondent had met the technical requirements for preventive detention as set out in s 12(2)(*b*) of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) ("CPC"). The trial judge ("the Judge") held that the appropriate starting point was 15 years' preventive detention. Taking into account the three years spent in remand, the Judge sentenced the Respondent to 12 years' preventive detention. The Public Prosecutor appealed against the sentence on two grounds: that the Judge ought not to have taken time spent in remand into account, and that the sentence was manifestly inadequate.

**Held, allowing the appeal and enhancing the sentence to 20 years' preventive detention:**

(1) A sentence of preventive detention was not the same as a sentence of imprisonment. There was no provision equivalent to s 223 of the CPC which conferred on the court an express discretion to take into account the time the accused had spent in remand in so far as a sentence of preventive detention was concerned. Despite this, it was consistent with both logic, common sense as well as justice and fairness that, in considering the overall length of the sentence of preventive detention to be meted out to the offender concerned, the time the offender had spent in remand could be a possible factor which the court took into account: at [17] and [20].

(2) The overarching principle was the need to protect the public. If the individual offender was such a habitual offender whose situation did not admit of the possibility of his or her reform, thus constituting a menace to the public, a sentence of preventive detention would be imposed on him or her for a substantial period of time in order to protect the public. Given this overarching principle, if, in fact, the offender's situation was an extremely serious one, it was likely to be the norm that the court would not consider taking into account the time the offender had spent in remand simply because, in principle, situations

warranting a sentence of preventive detention were likely to be very serious to begin with. Indeed, in the most extreme situations, the court might not only disregard the time the offender had spent in remand but also sentence him or her to the maximum period of 20 years of preventive detention. However, the exceptional situation would not be ruled out: *viz*, where despite a sentence of preventive detention being warranted, there was nevertheless some justification for sentencing the offender to less time in preventive detention (thus in substance, *inter alia*, taking into account time spent in remand). Much would depend on the precise facts before the court: at [11] and [20].

(3) It was trite law that an appellate court had only a limited scope to intervene when reappraising sentences imposed by a court at first instance. This was because sentencing was very much a matter of discretion and required a delicate balancing of myriad considerations which were often plainly conflicting: at [8].

(4) The Respondent had a long list of property-related criminal antecedents. Previous punishments – including a prior eight-year term of preventive detention – had had little (if any) rehabilitative effect on him. Psychiatric reports tendered by both parties supported the proposition that there was a high probability of re-offending on the part of the Respondent. Troublingly, the Respondent's hitherto non-violent conduct had escalated into the taking of a human life. The Respondent lacked remorse and was incorrigible. Most pertinently, the Respondent did not have a supportive social network or any marketable skills. He would not find it easy to be gainfully employed upon release, and there was a high possibility of him turning to crime as the only means of supporting himself. Taking all the foregoing into account, it would be in the public interest not to take the period of remand into account and to sentence him to the maximum period of preventive detention: at [24] to [29] and [31].

[Observation: The sentence of preventive detention by the court was, in principle, a prospective one: at [17].

Even under s 223 of the CPC, there was no obligation to take into account the time the accused had spent in remand. Section 223 of the CPC itself made it clear that a sentence of imprisonment ordinarily took effect only from the date of the order itself unless the court otherwise directed: at [17].

While general principles (in the context of preventive detention) were relatively clear, the real difficulty lay in their application because this exercise was an intensely fact-centric one. Relevant case law was more useful from the perspective of general principles as opposed to the resolution of the particular factual situations therein: at [21].]

**Case(s) referred to**

*Chua Chuan Heng Allan v PP* [2003] 2 SLR(R) 409; [2003] 2 SLR 409 (refd)

*Nicholas Kenneth v PP* [2003] 1 SLR(R) 80; [2003] 1 SLR 80 (folld)

*PP v Kwong Kok Hing* [2008] 2 SLR(R) 684; [2008] 2 SLR 684 (folld)

*PP v Mohammed Liton Mohammed Syeed Mallik* [2008] 1 SLR(R) 601; [2008] 1 SLR 601 (folld)

*PP v Perumal s/o Suppiah* [2000] 2 SLR(R) 145; [2000] 3 SLR 308 (folld)

*PP v Raffi bin Jelan* [2004] SGHC 120 (folld)

*PP v Rahim bin Basron* [2010] 3 SLR 278 (refd)

*PP v Salwant Singh s/o Amer Singh* [2003] 4 SLR(R) 305; [2003] 4 SLR 305 (refd)

*PP v Salwant Singh s/o Amer Singh* [2003] SGDC 146 (refd)

*PP v Syed Hamid bin A Kadir Alhamid* [2002] 2 SLR(R) 1018; [2002] 4 SLR 154 (folld)

*PP v Wong Wing Hung* [1999] 3 SLR(R) 304; [1999] 4 SLR 329 (folld)

*Tan Ngin Hai v PP* [2001] 2 SLR(R) 152; [2001] 3 SLR 161 (refd)

*Yusoff bin Hassan v PP* [1992] 2 SLR(R) 160; [1992] 2 SLR 1032 (folld)

**Legislation referred to**

Criminal Procedure Code (Cap 68, 1985 Rev Ed) (since repealed) ss 12(2), 12(2)(*b*), 223

Penal Code (Cap 224, 1985 Rev Ed) ss 34, 109, 304(*a*), 379, 406, 420, 468

[Editorial note: This was an appeal from the decision of the High Court in [2012] SGHC 129.]

8 March 2013

**Andrew Phang Boon Leong JA (delivering the grounds of decision of the court):**

**Introduction**

1 This was an appeal by the Public Prosecutor ("the Appellant") against the sentence of Rosli bin Yassin ("the Respondent") in respect of eight charges which were imposed by the High Court in *PP v Rosli bin Yassin* [2012] SGHC 129 ("the GD"). The charges were as follows:

(a) four charges of cheating with common intention under s 420 read with s 34 of the Penal Code (Cap 224, 1985 Rev Ed) ("the Penal Code");

(b) one charge of theft under s 379 of the Penal Code;

(c) one charge of criminal breach of trust under s 406 of the Penal Code;

(d) one charge of abetment of forgery for the purpose of cheating under s 468 read with s 109 of the Penal Code; and

(e) one charge of culpable homicide not amounting to murder under s 304(*a*) of the Penal Code.

2 The Respondent pleaded guilty to all eight charges, and consented to another 11 charges being taken into consideration for the purposes of sentencing.

3 It was common ground that the Respondent had met the technical requirements for preventive detention as set out in s 12(2)(*b*) of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) ("the CPC"), which reads as follows:

(2) Where a person of the age of 30 years or above —

…

(*b*) is convicted at one trial before the High Court or a District Court of 3 or more distinct offences punishable with imprisonment for 2 years or more, and has been convicted and sentenced in Singapore or elsewhere to imprisonment for at least one month since he reached the age of 16 years for an offence punishable with imprisonment for 2 years or more,

then, if the court is satisfied that it is expedient for the protection of the public that he should be detained in custody for a substantial period of time, followed by a period of supervision if released before the expiration of his sentence, the court, unless it has special reasons for not doing so, shall sentence him to preventive detention for a period of 7 to 20 years in lieu of any sentence of imprisonment.

4 The trial judge ("the Judge") held that the appropriate starting point was 15 years' preventive detention. Taking into account the fact that the Respondent had spent three years in remand, the Judge sentenced the Respondent to 12 years' preventive detention (see [69]–[76] of the GD).

5 The Appellant appealed against the sentence meted out by the Judge on the ground that it was manifestly inadequate. At the end of the hearing before us, we unanimously allowed the appeal. We sentenced the Respondent to 20 years' preventive detention, which is the maximum possible sentence. We now give the detailed grounds for our decision.

**The issue**

6 The sole issue in this appeal was whether the 12-year sentence of preventive detention imposed by the Judge was manifestly inadequate.

7 Let us turn, first, to the applicable legal principles.

**The applicable legal principles**

***The law on appellate intervention***

8 It is trite law that an appellate court has only a limited scope to intervene when reappraising sentences imposed by a court at first instance. This is because sentencing is very much a matter of discretion and requires a delicate balancing of myriad considerations which are often plainly conflicting (see, for example, the decisions of this court in *PP v Mohammed Liton Mohammed Syeed Mallik* [2008] 1 SLR(R) 601 ("*Mohammed Liton*") at [81] and *PP v Kwong Kok Hing* [2008] 2 SLR(R) 684 at [13]).

9 In so far as the applicable principles are concerned, the following observations from *Mohammed Liton* (at [81]–[84]) may be usefully noted:

81 It is well-settled law that an appellate court has only a limited scope to intervene when reappraising sentences imposed by a court at first instance. This is because sentencing is largely a matter of judicial discretion and requires a fine balancing of myriad considerations: see *Angliss Singapore Pte Ltd v PP* [2006] 4 SLR(R) 653 ('*Angliss*') at [13].

82 Notwithstanding the discretionary nature of the sentencing process, it has also been established in cases such as *Tan Koon Swan v PP* [1985–1986] SLR(R) 976 and *PP v Cheong Hock Lai* [2004] 3 SLR(R) 203 that an appellate court will nonetheless correct sentences in the following situations:

(a) where the sentencing judge erred in respect of the proper factual basis for sentence;

(b) where the sentencing judge failed to appreciate the materials placed before him;

(c) where the sentence imposed was wrong in principle and/or law; and/or

(d) where the sentence imposed was manifestly excessive or manifestly inadequate, as the case may be.

83 With respect to reason (d) in the preceding paragraph, which was relied on by the appellant in the present appeal, Yong CJ in *PP v Siew Boon Loong* [2005] 1 SLR(R) 611 clarified (at [22]) what was meant by a sentence that was manifestly excessive or manifestly inadequate:

When a sentence is said to be manifestly inadequate, or conversely, manifestly excessive, it means that the sentence is unjustly lenient or severe, as the case may be, and *requires substantial alterations rather than minute corrections* to remedy the injustice … [emphasis added]

It has also been said (in the Malaysian High Court decision of *Sim Boon Chai v Public Prosecutor* [1982] 1 MLJ 353) that a sentence is manifestly excessive when it fails to accommodate the existing extenuating or mitigating circumstances. A sentence which is plainly out of line with an established benchmark is also manifestly excessive: see, for example, *Tuen Huan Rui Mary v PP* [2003] 3 SLR(R) 70. By parity of reasoning, the same must also apply in ascertaining whether a sentence is manifestly inadequate. Indeed, in *Moey Keng Kong v PP* [2001] 2 SLR(R) 867, it was observed that a sentence would be manifestly inadequate when, although it should reflect the need for both deterrence and retribution, it reflected only deterrence or retribution (which was not the situation on the facts of that particular case). At this point, we pause to observe that while guidelines and benchmarks provide consistency and predictability so far as sentencing is concerned, courts should never apply benchmarks mechanically without a proper evaluation of the facts of the case.

84 On this premise, it bears repeating that an appellate court should only intervene where the sentence imposed by the court below was 'manifestly' inadequate – that in itself implies *a high threshold* before intervention is warranted. In the light of the highly discretionary nature of the sentencing process and the relatively circumscribed grounds on which appellate intervention is warranted, the prerogative to correct sentences should be tempered by a certain degree of deference to the sentencing judge's exercise of discretion. Indeed, as Rajah J reiterated in *Angliss* ([81] *supra* at [14]):

> The *mere fact that an appellate court would have awarded a higher or lower sentence than the trial judge is not sufficient* to compel the exercise of its appellate powers, unless it is coupled with a failure by the trial judge to appreciate the facts placed before him or where the trial judge's exercise of his sentencing discretion was contrary to principle and/or law. [emphasis added]

***The law relating to preventive detention***

10 The *general* principles relating to preventive detention are clear, and are neatly encapsulated within the following observations of this court in *PP v Syed Hamid bin A Kadir Alhamid* [2002] 2 SLR(R) 1018 at [10]:

> 10 A sentence of preventive detention is intended for habitual offenders, aged more than 30 years, whom the court considers to be too recalcitrant for reformation (see *PP v Wong Wing Hung* [1999] 3 SLR(R) 304). Preventive detention ought to be imposed if the accused has shown that he is such a menace to society that he should be incarcerated for a substantial period of time (see *PP v Perumal s/o Suppiah* [2000] 2 SLR(R) 145). While the court will consider the need for the public to be protected from physical bodily harm, offences against property, such as theft, offences against the peace, such as affray, and offences against society in general, such as the consumption and possession of drugs, may also be taken into account for the purpose of determining whether it is appropriate for an order of preventive detention to be made. In *Tan Ngin Hai v PP* [2001] 2 SLR(R) 152 at [8], Yong Pung How CJ explained:
>
> … In my view, there is no rule of law which states that protection of the public necessarily refers to protecting them only from physical bodily harm … As such, the imposition of preventive detention ought not to be restricted only to persons with a history of violent behaviour as exhibited through the commission of violent crimes. Instead, the real test is whether or not the degree of propensity towards any type of criminal activity at all is such that the offender ought to be taken out of circulation altogether in order that he be not afforded even the slightest opportunity to give sway to his criminal tendencies again. …

11 The overarching principle is the need *to protect the public* (indeed, this principle is to be found in the express language of s 12(2) of the CPC itself (see above at [3])). This does not mean that the situation of the individual offender is irrelevant. However, the applicable principles in this particular regard are formulated with the *public* interest as the central point of reference constantly in view. Put simply, if the individual offender is such a habitual offender whose situation does not admit of the possibility of his or her reform, thus constituting a menace to the public (and this would include, but is not limited to, offences involving violence), a sentence of preventive detention would be imposed on him or her for a substantial period of time in order to protect the public. As Yong Pung How CJ put it in the Singapore High Court decision of *PP v Wong Wing Hung* [1999] 3 SLR(R) 304 ("*Wong Wing Hung*") at [10], the "sentence [of preventive detention] is meant essentially for *habitual* offenders, who must be over the age of 30 years, whom the court considers to be *beyond redemption and too recalcitrant for reformation*" [emphasis added]. The court will look at the *totality* of the offender's previous convictions (see the Singapore High Court decision of *Tan Ngin Hai v PP* [2001] 2 SLR(R) 152 at [7]).

12 It is important, in this regard, to emphasise that a sentence of preventive detention is *not* the same as a sentence of imprisonment. As Yong Pung How CJ put it in the Singapore High Court decision of *Yusoff bin Hassan v PP* [1992] 2 SLR(R) 160 ("*Yusoff bin Hassan*") at [11]:

> 11 *Furthermore, corrective training and preventive detention are meant to supplant a sentence of imprisonment which would otherwise be ordered. These sentences are passed 'in lieu of any sentence of imprisonment'.* It would appear that the sentencing court should simply address its mind to the appropriate period of custody merited by the offences for which the offender has been convicted before it, and his criminal record. Provisions such as ss 17 and 18 [of the CPC] which relate to the ordering of consecutive or concurrent sentences of imprisonment clearly do not apply. I agreed with the submission of the learned DPP that corrective training and preventive detention should be ordered in lieu of the aggregate sentence of imprisonment which the court would otherwise have been minded to impose. The learned DPP drew the court's attention to the fact that it is the practice of district courts to impose a single term of probation or reformative training even though more than one distinct offence is involved. [emphasis added]

13 In a similar vein, in *Wong Wing Hung*, Yong Pung How CJ observed thus (at [10]):

> 10 … The minimum term stipulated in s 12(2) [of the CPC] of 'not less than 7 years' indicates that the normal limitations on sentencing do not apply when the court is considering a sentence of preventive detention. *It would be a mistake to confuse a sentence of preventive detention with a term of imprisonment as the two are obviously distinct sentences.* The wording of s 12(2) [of the CPC] cannot be more unambiguous when it states that preventive detention is to be imposed 'in lieu of any sentence of imprisonment'. … [emphasis added]

14 Further, in the Singapore High Court decision of *PP v Perumal s/o Suppiah* [2000] 2 SLR(R) 145, Yong Pung How CJ referred to the passage cited in the preceding paragraph, observing as follows (at [38]):

> 38 In this regard, I must reiterate my earlier exhortation in *PP v Wong Wing Hung* … at [10] *not to confuse the concept of preventive detention and imprisonment, which are distinct sentences and are underpinned by different objectives and rationales.* The former is essentially aimed at the protection of the public while the latter reflects the traditional policies of prevention, deterrence, rehabilitation and retribution. They are different in duration, character and implementation. *As such, it would be a mistake to view them as fungible sentences.* [emphasis added]

15 In the Singapore High Court decision of *Nicholas Kenneth v PP* [2003] 1 SLR(R) 80, the learned Chief Justice again stated as follows (at [19]):

> 19 … A sentence of preventive detention is not a 'sentence of imprisonment', even though persons sentenced to preventive detention are often, in practice, detained in prison. In *Yusoff bin Hassan v PP* [1992] 2 SLR(R) 160, I drew a distinction between the two sentencing options for the following reasons: first, s 12(2) of the CPC, the provision which empowers the court to order a sentence of preventive detention states that such sentences are passed 'in lieu of any sentence of imprisonment'; secondly, there are different rules relating to the nature and termination of custody for sentences of imprisonment and preventive detention. Sentences of imprisonment are governed by the Prisons Act (Cap 247) and its regulations, while sentences of preventive detention are governed by the Criminal Procedure (Corrective Training and Preventive Detention) Rules. There is usually a one-third period of remission for sentences of

imprisonment, but not for terms of preventive detention. Consequently, a literal reading of s 234(1) [of the CPC] would mean that the court is not empowered to order that a sentence of preventive detention should start at the expiration of another such sentence that the accused is undergoing.

16 Finally, in the Singapore High Court decision of *PP v Raffi bin Jelan* [2004] SGHC 120 ("*Raffi bin Jelan*"), V K Rajah JC (as he then was) observed thus (at [24]):

> 24 It is clear from the statutory scheme in the Criminal Procedure Code (Cap 68, 1985 Rev Ed) ('CPC') that a sentence of preventive detention is an extreme measure that is prescribed for certain classes of habitual offenders and/or potential recidivists who are viewed as being beyond the reach of conventional sentencing and its underlying *raison d'être*. *Preventive detention has a wholly different penological objective. The rationale for preventive sentencing is preventive control that extends beyond the parameters of conventional sentencing which requires the sentence to fit the crime.* The overwhelming consideration is whether the court is satisfied in the circumstances that it is 'expedient for the protection of the public' that an offender be incarcerated for a protracted period. If the court forms the view that such a repeat offender by virtue of his propensity to offend may yet again do so if unchecked, there would be a compelling case for the imposition of a sentence of preventive detention. Such an offender by reason of his past conduct and anticipated future conduct will be viewed as having forfeited his right to be accorded the considerations and attributes peculiar to conventional sentencing. [emphasis added]

17 The above-stated difference between a sentence of preventive detention on the one hand and a sentence of imprisonment on the other also has, in our view, a practical significance. In particular, there is no provision equivalent to s 223 of the CPC which (in the context of a sentence of *imprisonment*) confers on the court concerned a discretion to, *inter alia*, take into account the time the accused has spent in remand. However, even under s 223 of the CPC, there is *no obligation* as such to do so (see the Singapore High Court decision of *Chua Chuan Heng Allan v PP* [2003] 2 SLR(R) 409 at [9]–[11] as well as Kow Keng Siong, *Sentencing Principles in Singapore* (Academy Publishing, 2009) ("*Sentencing Principles*") at para 27.141). It would appear, therefore, to be the case that there is no express statutory provision conferring on the court the discretion to take into account the time the accused has spent in remand in so far as a sentence of *preventive detention* is concerned. Indeed, as already emphasised above at [11], the overarching principle is to protect the public. In the circumstances, we agree with the view expressed to the effect that the sentence of preventive detention by the court is, in principle, a *prospective* one (see, for example, *Raffi bin Jelan* at [30]). We should note, at this juncture, that, even s 223 of the CPC itself makes it clear that a sentence of imprisonment ordinarily takes effect only *from the date of the order itself* unless the court otherwise directs (*ie*, for a sentence of imprisonment to take effect from an earlier date).

18 Unfortunately, the existing case law remains unclear. For example, in the Singapore District Court decision of *PP v Salwant Singh s/o Amer Singh* [2003] SGDC 146 ("*Salwant Singh (DC)*"), the following observations were made at [43]–[44] (see also *Sentencing Principles* at paras 29.186–29.187 which was authored by the District Judge who wrote the decision just cited):

> 43 At the outset, it must be pointed out that there is no issue of the Accused's sentence of preventive detention being backdated to the date in remand as such a sentence does not fall within the scope of section 223 of the CPC. The power to backdate under section 223 applies only to a sentence of 'imprisonment'. It has been held that preventive detention is a distinct sentence from imprisonment: *PP v Wong Wing Hung* [1999] 4 SLR 329. Other than the increased length of custody in a regime of preventive detention, there are different rules relating to the nature and termination of custody. Sentences of imprisonment are governed by the Prisons Act and regulations made thereunder, whereas sentences of preventive detention are governed by the Criminal Procedure (Corrective Training and Preventive Detention) Rules. For a sentence of imprisonment, a one-third period of remission is usual, whereas under preventive detention, the offender is merely released on licence pursuant to Schedule C of the CPC.
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> 44 On a separate note, I am also of the view that it is inappropriate to consider the Accused's period of remand in determining the duration of his preventive detention.
>
> a. Firstly, it is important to remember that the primary consideration in assessing the period of the sentence must always be the **amount of time** that the Court feels is **required to protect the public from the offender**: *Yusoff bin Hassan & 4 Ors v PP* [1992] 2 SLR 1032; *G Ravichander v PP* [2002] 4 SLR 587 @ para 23–26. This is a

prospective assessment, **made at the time of sentencing**. A Judge would be acting contrary to the objective of preventive detention if he were to 'discount' from an otherwise appropriate term of preventive detention (assessed to be necessary to protect the public from the offender) on account of the offender's period in remand.

b. Secondly, in the interest of justice and effective law enforcement, it is necessary a strong signal to those who are minded abscond to another country in the hope of evading justice that if they are caught and remain in custody in a foreign country for a period of time, that period will not by any means be considered as though it has been spent in this country serving the sentence imposed by its courts: *Peffer* [1992] 13 Cr App.R.(S) 150. This is particularly so where the period in overseas remand is attributable to the offender 'playing the system' by challenging the extradition proceedings: *Stone* [1988] 10 Cr App R (S) 322.

[emphasis in original]

(An appeal against the decision in *Salwant Singh (DC)* was allowed on the issue of sentence, but without apparent discussion of this particular issue in *PP v Salwant Singh s/o Amer Singh* [2003] 4 SLR(R) 305, except perhaps possibly at [26].)

19 However, it seems to us that the issue as to whether the time an offender has spent in remand ought to be taken into account in the context of preventive detention is one that ought to be approached from the perspective of *substance* (as opposed merely to its form) and that, looked at in this light, the observations in *Salwant Singh (DC)* (set out in the preceding paragraph), whilst clear and persuasive, may nevertheless be a little too strict.

20 As already emphasised several times above, the paramount focus is on the protection of the public. To reiterate, it is the court's duty to "simply address its mind to the appropriate period of custody merited by the offences for which the offender has been convicted before it, and his criminal record" (see *Yusoff bin Hassan* at [11]; also cited above at [12]). Hence, although there is no statutory provision as such which confers on the court an express power to backdate a sentence of preventive detention, it is consistent with both logic, common sense as well as justice and fairness that, in considering the overall length of the sentence of preventive detention to be meted out to the offender concerned, the time the offender has spent in remand could be a possible factor which the court takes into account (*cf* also the observations in the Singapore High Court decision of *PP v Rahim bin Basron* [2010] 3 SLR 278, especially at [57]). However, we would observe that such a factor would probably operate in favour of the offender only in *exceptional* cases. Given the overarching principle to protect the public, if, in fact, the offender's situation is an *extremely serious* one, then we would think that the court would *not* consider taking into account the time the offender has spent in remand. We think that this is likely to be the norm rather than the exception simply because, in principle, situations warranting a sentence of preventive detention are likely to be very serious to begin with. Indeed, in the *most extreme* situations, the court might not only disregard the time the offender has spent in remand but also sentence him or her to the maximum period of 20 years of preventive detention. However, as alluded to above, we would not rule out the exceptional situation where, whilst a sentence of preventive detention is warranted, there is nevertheless some justification for sentencing that offender to *less* time in preventive detention, which would, *inter alia* (and *in substance* at least), take into account the time the offender has already spent in remand. This (more general) approach is preferable in light of the fact that (as already noted) s 223 of the CPC is not, *stricto sensu*, applicable to sentences of preventive detention. It is also important to emphasise that there is no pat formula that can be utilised. Much would depend on the *precise facts* before the court, and this brings us to the very important point of application – to which our attention must now briefly turn.

21 Whilst the general principles (considered briefly above) are relatively clear, the real difficulty lies in their *application* because this exercise is *an intensely fact-centric one*. It is, however, wholly crucial to the ultimate decision arrived at. Hence, the focus of the court must always be on all the relevant facts. In the circumstances, the relevant case law is more useful from the perspective of general principles as opposed to the resolution of the particular factual situations therein. This would be an appropriate point at which to turn to the facts of the present appeal. However, before proceeding to do so, it would be useful to set out – in summary form – the arguments of the respective parties.

**Summary of the parties' arguments**

22 The Appellant argued that the 12-year period for preventive detention imposed by the Judge was manifestly inadequate. The Judge's exercise of sentencing discretion was, it was submitted, contrary to principle. First, he placed excessive emphasis on the non-violent nature of the offences committed by the Respondent. Second, he took into account the Respondent's period of remand in determining the duration of preventive detention, and third, he did not sufficiently consider and emphasise the

sentencing imperative of prevention and protection of the public. The Judge had also erred in failing to appreciate the facts before him in that he placed insufficient weight on the following: first, the Respondent's long and continuous history of crime and his lack of responsiveness to his previous punishments; second, the Respondent's high risk of re-offending as well as the threat that he continues to pose to the public; third, the number, nature and circumstances of the offences that the Respondent was convicted of; fourth, the degree of premeditation involved in the numerous offences; fifth, the numerous charges that were taken into consideration for sentencing; and sixth, the Respondent's lack of remorse.

23 The Respondent, on the other hand, argued that the sentence of 12 years' preventive detention was not manifestly inadequate. This is because the Respondent is no more a menace than other offenders who were sentenced to less than 12 years' preventive detention. The maximum duration of preventive detention is generally meted out in cases involving offenders who had either been engaged in violent criminal activities, claimed trial, possessed a very long history of antecedents, or had alcohol or drug addictions. Further, the Judge was correct in exercising his discretion to give a discount to the period of preventive detention.

**Our decision**

24 The Respondent has a long list of property-related criminal antecedents. Previous punishments – *including a prior eight-year term of preventive detention* – have had little (if any) rehabilitative effect on him. The Respondent has been in and out of prison since 1991. Indeed, since his first conviction in 1991, the Respondent has been unable to stay out of prison for periods of more than ten months. Put simply, there is a clear pattern of chronic recidivism. Extrapolating this into the future, it would appear that there is a high probability of re-offending on the part of the Respondent.

25 Indeed, in a psychiatric report dated 27 February 2012 which was procured by the Defence on behalf of the Respondent, it was opined that the Respondent was at a high risk of re-offending because of mental retardation, lack of occupational skills, lack of social support, lack of family support, impulsive behaviour and lack of remorse.

26 The pre-sentencing report authored by a Medical Officer from Changi Complex dated 23 December 2011 was largely in agreement with the psychiatric report referred to in the preceding paragraph. The pre-sentencing report (though not conclusive in and of itself) found that the Respondent had a 49% to 60% probability of recidivism within two years of release. The Respondent had criminal thinking styles and attitudes and had a readiness to resort to crime as a means of obtaining quick money. Crucially, the pre-sentencing report also found that the Respondent had a poor ability to cope with stressors, exacerbated by a lack of pro-social peers, familial support, and a fixed abode.

27 Troublingly, the Respondent had, in the latest bout of criminal activities, pleaded guilty to culpable homicide not amounting to murder. The Judge nevertheless held that this was uncharacteristic of the Respondent (see [63] of the GD). Regardless of whether it was characteristic or not of the Respondent, the fact remains that the Respondent's hitherto non-violent conduct had *escalated* into the taking of a human life – one of the most egregious and blameworthy crimes on the books.

28 The Judge had also found as a fact that the Respondent "lacked remorse and was incorrigible" (see [64] of the GD). Indeed, in the Judge's own words, the Respondent's "callous conduct in dumping [the deceased's] body and stealing her cheques to cheat yet again once more illustrated his lack of remorse" (see [65] of the GD). The pre-sentencing report (also referred to above at [26]) may also be noted, wherein it was observed that the Respondent, despite his claims that he was remorseful, was in fact in a state of denial in so far as his personal responsibility for his actions was concerned.

29 Most pertinently, the Respondent did not have a supportive social network: he was not in contact with both his ex-wife and children, and did not have a fixed abode. Having been in and out of prison since 1991, it was unlikely that the Respondent had any marketable skills. Coupled with his advanced age, he would not find it easy to be gainfully employed upon release. There was a high possibility of the Respondent turning to crime as the *only* means of supporting himself.

30 With respect, the Judge had not expressly considered any of the above circumstances in determining the appropriate length of the sentence of preventive detention to be meted out to the Respondent.

31 With respect to the time the Respondent had spent in remand, we were of the view that, given the various circumstances (including, in particular, the Respondent's utter inability to cope coupled with his total lack of any support system (noted above at [29])), it would be in the public interest not to take the period of his remand into account and to sentence him to the maximum period of preventive detention instead.

**Conclusion**

32 For the reasons set out above, the sentence of 12 years' preventive detention was manifestly inadequate. Taking all the circumstances into account, we were of the view that the Respondent should be incarcerated for the maximum possible duration, *viz*, 20 years of preventive detention.

Reported by Zhuang WenXiong.

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