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DELIVERING FAIR, CONSISTENT, AND RELIABLE SENTENCES FOR MURDER IN SINGAPORE

Chan Wing Cheong*

The mandatory death penalty for murder was changed in Singapore in 2012 to give judges the discretion to choose between imposing the death penalty or life imprisonment (with caning) in cases of non-intentional murder. This article reviews the sentences for murder since then and the factors considered by the courts to justify the use of the death penalty or not. The move from an inherently arbitrary mandatory regime to a discretionary one was a watershed moment in Singapore, and it is questioned if the time has come for the death penalty for murder to be abolished completely.

I. Introduction

Singapore is one of a small number of dwindling countries in the world that still uses the death penalty as a form of criminal punishment.[1] This 'exclusive club' comprises 55 countries found mostly in Asia and the Middle East.[2] Among these countries, Singapore belongs to an even smaller group of countries where the death penalty is regularly carried out for certain offences such as drug trafficking and murder.[3]

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* Professor of Law, Yong Pung How School of Law, Singapore Management University. I wish to thank Michael Hor and the anonymous reviewer for their comments on an earlier draft of this article. The title of this article recalls the famous dissent by Justice Blackmun in *Callins v Collins* 510 US 1141 (1994) at 1145:

> I no longer shall tinker with the machinery of death … The basic question – does the system accurately and consistently determine which defendants 'deserve' to die? – cannot be answered in the affirmative … The problem is that the inevitability of factual, legal, and moral error gives us a system that we know must wrongly kill some defendants, a system that fails to deliver the fair, consistent, and reliable sentences of death required by the Constitution.

1 Amnesty International, *Death Sentences and Executions 2020* (Amnesty International Ltd, 2021); Wing-Cheong Chan, "The Death Penalty in Singapore: In Decline but Still Too Soon for Optimism" (2016) 11 Asian J Criminology 179.

2 Most known executions took place in China, Iran, Egypt, Iraq and Saudi Arabia.

3 See Andrew Novak, *The Global Decline of the Mandatory Death Penalty* (New York: Ashgate Publishing Limited, 2014). Giada Girelli & Ajeng Larasati, *The Death Penalty for Drug Offences: Global Overview 2021* (Harm Reduction International, 2022) at 8 note that although 35 countries retain the death penalty for drug offences in law, only a small number actually impose the death sentence or carry it out. In terms of murder, Brunei and Sri Lanka are examples of countries where the mandatory death penalty is retained in law for that offence, but neither country has executed anyone for at least ten years: Amnesty International, *supra* note 1.

A sea-change[4] occurred in Singapore in 2012 when the Singapore Government announced that it would revise the law to give a judge deciding the case the discretion to choose between the death penalty or life imprisonment (with caning) in certain situations of murder and drug trafficking.[5] At the second reading of the *Penal Code (Amendment) Bill*, the Minister for Law said, "we must move towards giving greater discretion to the courts … Mandatory sentences are and should be the exception".[6]

The significance of the Government-initiated change cannot be over-emphasised even though the homicide rate in Singapore is exceedingly low. All previous judicial challenges to the mandatory death penalty in Singapore have resulted in failure: see for example *Ong Ah Chuan v PP*;[7] *Nguyen Tuong Van v PP*;[8] and *Yong Vui Kong v PP* ("*Yong Vui Kong*").[9] The nation's highest court, the Court of Appeal, distinguished the wave of legal developments originating from the Caribbean states by noting that Singapore's *Constitution* did not have a specific prohibition against inhuman punishment and that there is a difference in constitutional history between these countries and Singapore.[10] The decision whether to impose the death penalty as a mandatory measure was held to be one of policy best left to Parliament.[11] With Singapore not being a signatory to the *International Covenant on Civil and Political Rights*, there was also little pressure that the international community could exert to lobby for change. In short, without the Singapore Government's review of the death penalty and the decision to change it to a discretionary one, the mandatory death penalty regime would still be in existence for those offences today. All of the 14 persons convicted of murder shown in the Appendix would have been hanged if not for the change in the law.

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4 Michael Hor describes the change in "Singapore's Death Penalty: The Beginning of the End?" in Roger Hood and Surya Deva, eds, *Confronting Capital Punishment in Asia: Human Rights, Politics and Public Opinion* (Oxford: Oxford University Press, 2013) at 165 as:

> … symbolically the most important thing to have happened in the annals of the death penalty in Singapore since its introduction for drug offences in 1975. Never before has there been a legislative move to reduce the use of the death penalty.

5 *Singapore Parliamentary Debates*, *Official Report* (9 July 2012), vol 89 at 268 (K Shanmugam, Minister for Law). Unfortunately, the change was not extended to firearms offences which also carry the mandatory death penalty because "such offences are a serious threat against law and order, against which [Singapore] must continue to maintain a highly deterrent posture": *Ibid* at 268.

6 *Singapore Parliamentary Debates, Official Report* (14 November 2012), vol 89 at 1261 (K Shanmugam, Minister for Law).

7 [1979–1980] SLR(R) 710. The Privy Council rejected arguments based on the right to equality in Art 12 of the *Constitution of the Republic of Singapore* ("*Singapore Constitution*"), holding that the provision "is not concerned with equal punitive treatment for equal moral blameworthiness; it is concerned with equal punitive treatment for similar legal guilt" (at [39]).

8 [2005] 1 SLR(R) 103. The Court of Appeal rejected arguments based on Arts 9, 12 and 93 of the *Singapore Constitution*. It found that the mandatory death penalty for drug trafficking "is sufficiently discriminating to obviate any inhumanity in its operation" (at [87]).

9 [2010] 3 SLR 489. The Court of Appeal again rejected arguments based on Arts 9 and 12 of the *Singapore Constitution*. It concluded that "[i]t is for Parliament, and not the courts, to decide on the appropriateness or suitability of the [mandatory death penalty] as a form of punishment for serious criminal offences. … If any change in relation to the [death penalty] is to be effected, that has to be done by Parliament and not by the courts under the guise of constitutional interpretation" (at [122]).

10 *Ibid* at [59]–[74].

11 *Ibid* at [49], [122].

The change was also significant in terms of ensuring a fair and just criminal justice system. At the debate on the *Penal Code (Amendment) Bill*, one Member of Parliament criticised the "moral dilemma" that judges were placed in where they had to impose the mandatory sentence even if they felt it was not deserved. This resulted in "the occasional odd result" where the law was applied in "an uncharacteristically liberal way" in order to avoid the mandatory death penalty.[12]

This article will examine how judges have utilised their discretion in deciding whether or not to impose the death penalty for murder.[13] It bears repeating that the use of the discretionary power has had a significant impact on the number of executions in Singapore. As can be seen in the Appendix, only three persons (or 21%) of the total were hanged as a consequence; all the others were sentenced to life imprisonment instead because judges were given a choice.[14]

The experience of other countries with a discretionary death penalty has not been an entirely happy one: there have been criticisms of inconsistency and even irrationality in judicial attempts to decide which side any particular case falls on such that death is the appropriate punishment.[15] This article will consider the criteria that the Singapore judges use when deciding whether to impose the death penalty or not for murder, and how they have tried to steer a course between a harsh mandatory system and an unguided discretionary system of sentencing.[16] Before doing so, we will first turn to consider the structure and punishment for murder in Singapore and what makes intentional murder arguably different such that the mandatory death penalty continues to be applied to this category of murder.

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[12] *Singapore Parliamentary Debates, supra* note 6 at 1262 (Alvin Yeo, Member of Parliament).

[13] Although judges are also given the discretion to impose a sentence of death or life imprisonment for drug couriers who fulfil certain criteria under s 33B of the *Misuse of Drugs Act 1973*, all those who meet the sentencing criteria have so far been sentenced to life imprisonment (with caning where applicable). As a consequence, there have not been any legal developments on sentencing discretion in drug trafficking offences which explains why this aspect will not be examined in this article. Judicial challenges in this area have instead been on whether the sentencing criteria have been met and the justiciability of the criteria.

[14] The same point can also be seen from the low number of persons executed from 2013 to 2020 for murder: two in each of the years 2016, 2018 and 2019; and one in 2015. No executions for murder were recorded in the other years. See Singapore Prison Service, *Annual Report* (various years).

[15] See for example criticisms of the Indian and the US systems: Amnesty International India, *Lethal Lottery – The Death Penalty in India: A Study of Supreme Court Judgments in Death Penalty Cases 1950-2006* (Amnesty International, 2008); Surya Deva, "Death Penalty in the 'Rarest of Rare' Cases: A Critique of Judicial Choice-making" in Roger Hood and Surya Deva (eds), *supra* note 4; Asian Centre for Human Rights, *India: Death in the Name of Conscience* (ACHR, 2015); Richard A Rosen, "The 'Especially Heinous' Aggravating Circumstance in Capital Cases – The Standardless Standard" (1986) 64 NC L Rev 941; Daryl Kessler, "Eighth Amendment – Sentencer Discretion in Capital Sentencing Schemes" (1994) 84 J Crim L & Criminology 827; Jeffrey L Kirchmeier, "Aggravating and Mitigating Factors: The Paradox of Today's Arbitrary and Mandatory Capital Punishment Scheme" (1998) 6 Wm & Mary Bill Rts J 345. See also The Law Commission of India, *The Death Penalty* (Report No. 262) (2015), which recommended the abolition of the death penalty because of these flaws, but inconsistently held back from recommending its abolition for terrorism-related offences.

[16] The need for clear guidance was called for shortly after the change in the law, see S Chandra Mohan and Priscilla Chia Wen Qi, "The Death Penalty and the Desirability of Judicial Discretion", *Singapore Law Gazette* (March 2013), 11; S Chandra Mohan, "The Discretionary Death Penalty for Murder: Guidance at Last", *Singapore Law Blog* (25 February 2015) <https://www.singaporelawblog.sg/blog/article/87>.

II. Structure and Punishment for Murder

The structure of the offence of murder has remained the same ever since the *Penal Code* was enacted in Singapore in 1871. Under s 300 of the *Penal Code*,[17] murder may be committed in four different ways depending on the offender's state of mind:

(a) With the intention of causing death;
(b) With the intention of causing such bodily injury as the offender knows is likely to cause death;
(c) With the intention of causing bodily injury and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death;
(d) With the knowledge that the act is so imminently dangerous that it must in all probability cause death, or such bodily injury as is likely to cause death, without any excuse for incurring the risk of causing death or such injury.

Even though the elements of the offence of murder have not changed, the penalty for murder has changed twice. At the time of enactment, murder was punishable with either death or penal servitude for life. This was changed 12 years later, in 1883, to death being the only sentence available.[18] For almost 130 years after that, judges imposed the mandatory death penalty on all persons convicted of murder. As mentioned above, the penalty was changed again in 2012 such that the mandatory death penalty was restricted to only persons convicted of intentional murder under s 300(*a*) of the *Penal Code*.[19] Persons convicted of the other three forms of murder, namely under ss 300(*b*), (*c*) or (*d*) of the *Penal Code*, are "punished with death or imprisonment for life and shall, if he is not punished with death, also be liable to caning".[20] The exact form of murder that the accused is charged with, and convicted of, becomes a matter of crucial importance – literally a matter of life and death.

III. The Divide Between Murder and Culpable Homicide Not Amounting to Murder

Will a person who causes death purposefully and methodically always be subject to the mandatory death penalty? The answer is no, both in terms of the structure of the *Penal Code* and practice from past cases.

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17 *Penal Code 1871,* 2020 Rev Ed ("*Penal Code*").

18 *Penal Code (Amendment) Ordinance 1883* (SS Ord No 2 of 1883).

19 *Penal Code (Amendment) Act 2012* (No 32 of 2012). The amendment came into effect on 1 January 2013 but applied retrospectively to murders committed before then. Procedural provisions were put in place to allow the convicted person to be resentenced under the new law even after their appeal had been dismissed.

20 Section 302 of the *Penal Code*. The options available are therefore limited to: (1) death; (2) life imprisonment with caning; or (3) life imprisonment without caning. In Singapore, life imprisonment means the duration of the person's natural life (s 54 of the *Penal Code*), but the prisoner may be released (subject to various conditions) and the remainder of the sentence suspended after he has served a minimum of 20 years' imprisonment (ss 50P–50T of the *Prisons Act 1933,* 2020 Rev Ed). There are certain limits to the sentence of caning. For example, it is limited to 24 strokes and it cannot be imposed on women or men above 50 years old (ss 325, 328 of the *Criminal Procedure Code 2010,* 2020 Rev Ed).

The first limb of s 299 of the *Penal Code* defines culpable homicide not amounting to murder ("culpable homicide") in the same way as murder under s 300(*a*): causing death with the intention of causing death. There is therefore no distinction between the two offences in terms of the *actus reus* and *mens rea* of the offence, even though the punishment for this limb of culpable homicide is life imprisonment or imprisonment of up to 20 years.[21] Moreover, case law has repeatedly said that the requisite intention to kill can be formed on the "spur of the moment" immediately before the killing takes place,[22] thus emphasising the similarity between the two offences. The only difference between the two offences is that an offender convicted under s 300(*a*) of the *Penal Code* does not satisfy any of the special exceptions to murder.[23]

In terms of practice, there have been at least two occasions where the Public Prosecutor chose to proceed with a charge of culpable homicide instead even though there was an intention to kill, thus removing the possibility of the death penalty applying.[24] There must therefore be something more to justify choosing a charge under the first limb of s 299 of the *Penal Code* (where there is no death penalty) or s 300(*a*) of the *Penal Code* (where the death penalty is mandatory) in cases of intentional killings.

The facts of *PP v P Mageswaran*[25] illustrate the circumstances where the Public Prosecutor may choose to proceed under culpable homicide instead, and thus why the mandatory death penalty would not be suitable. The accused and the victim were family friends. He went to the victim's flat to borrow money but was rebuffed by her. He then searched the rooms for valuables while the victim was in the toilet and was caught red-handed by the victim. A struggle ensued during which he strangled and suffocated the victim using a pillow. The Court of Appeal noted that offence was not premeditated in the sense that he did not go to the victim's flat with the intention of robbing and killing her.[26] It was no more than a plan to rob. It was "an unfortunate instance of theft gone wrong as a result of a wretched confluence of circumstances".[27]

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[21] If life imprisonment is imposed, the offender is also liable to caning; if imprisonment of up to 20 years is imposed, the offender is also liable to a fine or to caning: s 304 of the *Penal Code*.

[22] See for example *Shaiful Edham bin Adam v PP* [1999] 1 SLR(R) 442 at [64]; *Iskandar bin Rahmat v PP* [2017] 1 SLR 505 at [34].

[23] *Teo Ghim Heng v PP* [2022] SGCA 10 at [118]–[119], [138]. It can be noted that some of the special exceptions expressly require an absence of premeditation. For example, provocation in Exception 1 must not be "sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person". Similarly, exceeding the right of private defence in Exception 2 and sudden fight in Exception 4 must be "without premeditation".

[24] *PP v P Mageswaran* [2019] 1 SLR 1253 (CA); *Dewi Sukowati v PP* [2017] 1 SLR 450. In the latter case, there was evidence of diminished responsibility but this was untested since the accused was not charged with murder. See also Nicholas Khong, "Re-examining Prosecutorial Discretion in the Context of s 300(*a*) Murder and s 299 Culpable Homicide" (2019/20) 11 Sing LR *Juris Illuminae* 1. *PP v Sutherson, Sujay Solomon* [2016] 1 SLR 632 is a case which could have satisfied either ss 300(*b*) or (*c*) of the *Penal Code*, but the Public Prosecutor chose to proceed under the second limb of s 299 instead.

[25] *Ibid*.

[26] "Premeditation" is used in the sense of "forethought and calculation that goes *beyond the mens rea* of the offence" [emphasis in original]: *Dewi Sukowati v PP*, *supra* note 24 at [21].

[27] *PP v P Mageswaran* (CA), *supra* note 24 at [50].

In the High Court, Hoo J pointed out that:

> … though the accused's acts were cruel, the cruelty involved was confined to the very acts which caused death. The Prosecution highlighted that the accused had used not one but two methods (strangulation and suffocation) to kill the deceased, that he had kept at these acts for a prolonged period of time, and that he used a significant amount of force. It will be recalled that these were the same factors that indicated to me that the accused had the intention to kill the deceased … To my mind, these factors established the intention to kill, and no more. Causing a person's death intentionally is, by definition, a violent and cruel act. Without doubt, the accused's acts of prolonged strangulation and suffocation were vicious, and his conduct was not to be condoned. However, there was no exceptional cruelty, and certainly no *added* element of inhumaneness in the accused's conduct, which would have placed the case at the end of the spectrum as being one of the worst type of cases of culpable homicide.[28]
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> [emphasis in original]

As will be seen below, premeditation to kill, gratuitous violence and exceptional cruelty are also central themes identified by the judges for imposing the death penalty for murder under ss 300(*b*), (*c*) and (*d*) of the *Penal Code*.

IV. Intentional Murder Where the Death Penalty Is Mandatory

A clear example of intentional killing which justifies the mandatory death penalty is where the killing is premeditated, for example being part and parcel of a robbery so that the accused cannot be identified. In *PP v Rasheed Muhammad*,[29] the victim was smothered to death with a shirt. The motive for the killing was to rob and it was held by the High Court that the killing must have been part of the plan to prevent him from identifying the accused persons.

Where there is no premeditation to cause death, the number and manner of injuries inflicted are often used to show not only that the accused had the intention to kill but also that the injuries were of such ferocity or cruelty that a conviction for intentional murder (and not just culpable homicide) is justified. This point was brought out clearly by the Minister for Law when explaining why the mandatory death sentence should be retained for cases under s 300(*a*) of the *Penal Code*. He described them as "intentional, cold-blooded, deliberate killing" where none of the general defences or special exceptions to murder applied.[30] "Deliberate" is

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[28] *PP v P Mageswaran* [2019] 3 SLR 1110 at [102] (HC).

[29] [2017] SGHC 29. See also *Muhammad bin Kadar v PP* [2014] 4 SLR 954 at [42] where the Court of Appeal held that the injuries inflicted in the robbery were meant to "permanently silence the deceased so that she would not be able to identify [the accused]". More than 110 stab wounds were inflicted even though none of which, in and of themselves, were fatal injuries.

[30] *Singapore Parliamentary Debates, supra* note 6 at 1271 (K Shanmugam, Minister for Law). There are seven special exceptions to murder including provocation, sudden fight and exceeding private defence.

merely a synonym for "intentional" conduct,[31] but "cold-blooded" conveys the notion of "cruelty", being "merciless", and "indifference to or pleasure in another's distress".[32]

Premeditation to kill and excessive violence were both satisfied in *Ahmed Salim v PP*[33] where the accused was angry that his fiancée was seeing another man. He made plans to kill her at a hotel and remitted all his money back to Bangladesh. He first strangled her with a bath towel and then made sure she was dead by tightening a rope around her neck, pressing over her mouth with a towel, and twisting her head with considerable force. He was convicted of murder under s 300(*a*) of the *Penal Code*.

Excessive violence can also be seen clearly in the following three cases in the manner of killing the unarmed victims. In *PP v Wang Zhijian*,[34] the accused was convicted of three murders under s 300(*a*) of the *Penal Code*. A total of 48 knife wounds were inflicted on one victim, 6 of which were fatal, while 45 were inflicted on the second victim, 12 of which were fatal. For the third victim, he used a knife to slash her fingers as she stood outside the kitchen window so that she would release her grip on the pole holders and fall to her death.

Similarly, in *Iskandar bin Rahmat v PP*,[35] the accused was convicted of two counts of intentional murder. One 67-year-old victim had 23 knife wounds, while the other victim had 17, all of which were on vulnerable parts of the body. The Court of Appeal remarked that in both situations, the accused could have stopped after the first stab, but he continued with ferocity and brutality.[36]

In *PP v Teo Ghim Heng*,[37] the accused strangled his wife and daughter to death in what was supposed to be a murder-cum-suicide over money problems and after being scolded and humiliated by his wife in front of his daughter. He used a bath towel to strangle his wife (who was 17 weeks pregnant with their second child) for 15 minutes, and then used his bare hands to strangle her to make sure she was dead for another 10 to 15 minutes. He then used the same bath towel to strangle their daughter for 10 to 15 minutes, and then strangled her with his hands. He tried but failed to commit suicide several times later. He even set fire to the victims' bodies and tried to immolate himself in the process. The Defence did not challenge that the elements for intentional murder were made out.[38]

These cases illustrate the situations where the courts agree that the mandatory death penalty for intentional murder is appropriate: where the killing is premeditated, or where the fatal injuries inflicted are excessive and cruel.

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31 The new s 26C(1) of the *Penal Code* (in force since 10 February 2020) makes this even clearer: "A person is said to do an act intentionally where that person does an act deliberately".

32 The Oxford English Dictionary defines "cold-blooded" as something to describe persons or actions that are "without emotion or excitement, unimpassioned, cool; without sensibility, unfeeling, callous; deliberately cruel".

33 [2022] SGCA 6.

34 [2014] SGCA 58; [2012] SGHC 238.

35 *PP v Iskandar bin Rahmat, supra* note 22.

36 *Ibid* at [45], [60].

37 *PP v Teo Ghim Heng, supra* note 23.

38 *Ibid* at [13].

V. Non-intentional Murder Where the Death Penalty Is Discretionary

A. *"Outrage the Feelings of the Community"*

In *PP v Kho Jabing* ("*Kho Jabing*"),[39] the Court of Appeal noted that there was no preference expressed by the Legislature between the death sentence and life imprisonment for murderers convicted under ss 300(*b*), (*c*) or (*d*) of the *Penal Code*. It was therefore held not correct to restrict the death penalty to a narrow category of cases only and all circumstances of each case had to be considered:

> To adopt [the 'rarest of the rare'] principle would be to artificially confine and sequester the death penalty to the narrowest of regions and to restrict the imposition of the death penalty based on whether the actions of the offender are 'rare' in comparison with other offenders.[40]

On the other hand, it had also been previously noted by the Court of Appeal that "the death penalty is qualitatively different from other lesser punishments".[41] A "formulistic approach" cannot be adopted.[42] Hence, even though the death penalty in Singapore is not reserved for the "rarest of the rare" or "worst of the worst" cases,[43] there must still be a sufficient transgression such that the offender has become an irremediable monster deserving of nothing short of death. He must somehow be different from 'normal' murderers such that "the death penalty is … the only adequate sentence".[44]

The Court of Appeal adopted the test applied in two other areas of law where a choice was given between the death penalty and life imprisonment: kidnapping for ransom[45] and murder-cum-gang robbery.[46] Using a communitarian standard, it was held that the death penalty is deserved only if the actions of the offender "outrage the feelings of the community":

> Undoubtedly, capital punishment is an expression of the society's indignation towards particularly offensive conduct, and the fact that the death penalty continues to be part of our sentencing regime is an expression of society's belief that certain actions are so grievous an affront to humanity and so abhorrent that the death penalty may, in the face of such circumstances, be the appropriate, if

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39 [2015] 2 SLR 112.

40 *Ibid* at [41].

41 *Yong Vui Kong v PP*, *supra* note 9 at [82].

42 *PP v Kho Jabing*, *supra* note 39 at [13].

43 *Ibid* at [38].

44 *Ibid* at [44]. As noted in *PP v Micheal Anak Garing* [2015] SGHC 107 at [10], "when we take into account the viciousness or savagery of the attack we are not far from the 'worst of the worst' and 'rarest of the rare'". In *PP v P Mageswaran* (CA), *supra* note 24 at [42], the "outrage the feelings of the community" standard for imposing the death penalty was described as "a very stringent test".

45 Section 3 of the *Kidnapping Act 1961*, 2020 Rev Ed ("*Kidnapping Act*"); *Sia Ah Kew v PP* [1974–1976] SLR(R) 54.

46 Section 396 of the *Penal Code*; *Panya Martmontree v PP* [1995] 2 SLR(R) 806.

> not the only, adequate sentence. It would therefore, in our judgment, be correct to consider the strong feelings of the community in deciding whether or not to impose the death penalty.[47]

The justification adopted by the Singapore courts for the death penalty is therefore not on the basis of deterrence, but retribution based on personal culpability for the offence.[48] It serves as an expression of moral outrage at the crime, to reinforce a shared sense of community norms, and to give the offender his just deserts. A later case has clarified that "outrage the feelings of the community" is not meant to convey sentencing by public opinion. It is instead a "reasoned normative standard" in which the court "expresses the collective conscience of the community".[49] It is based on the revulsion felt by the community to the murder that is captured by the judge who then gives expression to the feelings of anger and disgust by passing the sentence of death. This is how social order is restored and the community finds closure.

In *Kho Jabing*,[50] the Court of Appeal elaborated that the actions of the offender would outrage the feelings of the community if the offender has acted in a way which exhibits viciousness or a blatant disregard for human life. The savage manner in which the accused has acted takes centre stage. The relevant considerations include the number of stabs or blows inflicted, the area of the injury, the duration of the attack, the force used, the mental state of the offender, and the offender's actual role or participation in the attack.[51]

However, although reformation of the convicted murderer is not considered specifically, the courts will still consider mitigatory circumstances such as the offender's age and intelligence.[52] Another important point which was noted by a subsequent case is that it is the Prosecution who bears the burden to prove that the actions of the accused outraged the feelings of the community.[53]

Let us now evaluate some cases involving non-intentional murder.

B. *Cases Where the Death Penalty Was Imposed*

In *Kho Jabing*,[54] the accused set out to commit robbery with a co-accused. They approached a victim from behind and struck him on the head with a piece of wood, causing his skull to shatter completely. They struck him on the head again even though the victim was not reacting. By a 3-2 majority, the Court of Appeal found

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47 *PP v Kho Jabing*, *supra* note 39 at [44].

48 Focusing on retribution also avoids empirical disputes on the effectiveness of capital punishment as a deterrent. In *Yong Vui Kong v PP*, *supra* note 9 at [118], the Court of Appeal noted that there was insufficient evidence to prove the deterrent effect of the mandatory death penalty for drug traffickers.

49 *Kho Jabing v PP* [2016] 3 SLR 135 at [89]–[90]. The term "collective conscience" was first coined by Emile Durkheim, *Division of Labour in Society* (1893) at 34, to mean the "totality of beliefs and sentiments common to average members of a society [which] forms a determinate system with a life of its own".

50 *PP v Kho Jabing, supra* note 39 at [45].

51 *Chan Lie Sian v PP* [2019] 2 SLR 439 at [85].

52 *PP v Kho Jabing*, *supra* note 39 at [48].

53 *Chan Lie Sian v PP*, *supra* note 51 at [93].

54 *PP v Kho Jabing, supra* note 39.

that the accused deserved the death penalty because he: (1) approached the victim from behind and struck without warning; (2) struck him at least once more when the victim was on the ground defenceless; and (3) struck with such great force that there were extensive fractures to the victim's skull.[55]

In characterising the accused's acts as a blatant disregard for human life, the majority described his acts as "sheer savagery and brutality", "savage and callous" and "needless violence that went well beyond the pale".[56]

On the other hand, the minority did not think that the threshold of a "blatant disregard for human life" was crossed. Giving benefit of the doubt to the accused in terms of which injuries were inflicted by him or the co-accused, the accused was said to have inflicted at most only two blows to the victim's head. He did not repeatedly hit the victim even after he was on the ground.

In *Micheal Anak Garing v PP*,[57] Garing set out with Imba and two others to commit robbery. Garing was armed with a parang (a long-bladed machete) and they attacked four victims, the last of whom died from his injuries. He was sentenced to the death penalty while Imba was sentenced to life imprisonment and 24 strokes of the cane by the High Court. He appealed against his death sentence, and the Public Prosecutor appealed against Imba's life imprisonment sentence. Both appeals were dismissed by the Court of Appeal.

The Court of Appeal found that Garing had struck the top of the victim's head with such force that it fractured his head. He also used the parang to slit the victim's throat, severing his jugular vein. Other injuries included a wound to the victim's back that was so deep that the shoulder blade was cracked and the victim's left palm was severed from his hand. In upholding Garing's death sentence, the Court of Appeal said that his:

> … assault on the deceased was a vicious, savage and sustained onslaught … The sheer brutality exhibited by [Garing] warrants the imposition of the death penalty – it seems to us that [he] attacked the deceased in a totally savage and merciless manner as though he were attacking a hunted prey.
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> …
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> [C]onsidering only the manner in which [Garing] attacked the deceased, the imposition of the death penalty is amply warranted because of the sheer viciousness of the attack.[58]

However, the court did not agree that the death penalty should be imposed on Imba because it was not clear if he had held on to the victim in order for Garing to inflict the fatal injuries. As a secondary offender who did not inflict the fatal injuries on the deceased, Imba's mental state and his role at the time of the attack had to be considered. The court found that although Imba knew that Garing would use the parang as he had done with the other victims, this was not sufficient to show blatant disregard for human life. There was no proof of a preconceived plan to inflict the

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55 *Ibid* at [71].

56 *Ibid* at [72]–[73], [78].

57 [2017] 1 SLR 748.

58 *Ibid* at [49], [51].

brutal injuries found on the victim. Mere knowledge that "a savage and merciless attack" was likely was not enough. However, the court did caution that its decision on Imba "rests on a very fine balance".[59]

The final example is *PP v Chia Kee Chen* ("*Chia Kee Chen*"),[60] where the victim was abducted from a car park by the accused and his accomplice. He was forced into a van where numerous injuries were inflicted to his head and face by a hammer, causing extensive fractures to his skull. Almost every bone from the bottom of his eye socket to his lower jaw was fractured. One of his teeth was found lodged in his brain. No defensive injuries were found because he was restrained at the time. His body was later dumped in a deserted area. The reason for the attack was because the victim had an affair with the accused's wife and the accused wanted to exact revenge.

The Court of Appeal disagreed with the High Court's imposition of life imprisonment and sentenced the accused to death instead. It considered the fact that he was the mastermind of the plan to abduct the victim and to beat him up severely; he participated actively in the assault that killed the victim; there was a high degree of planning involved; the attack was to the face, a vulnerable part of the body; he wanted the victim to suffer as much as possible before dying; he was calm and collected throughout the offence and even took a two-day holiday to Malaysia with his family after the killing. The court concluded that the accused's "actions exhibited such viciousness and such a blatant disregard for the life of the Deceased, and are so grievous an affront to humanity and so abhorrent that the death penalty is the appropriate, indeed the only adequate sentence".[61]

In terms of the major depressive disorder suffered by the accused, the court held that this would lessen his culpability for the offence only if there was a causal link between the mental condition and the factors that go towards the imposition of the death penalty, namely, whether his actions outrage the feelings of the community. An illustration given is that if the offender's mental condition significantly diminishes his capacity to comprehend his actions or appreciate the wrongfulness of his conduct, then the court may decide that he did not act in blatant disregard for human life.[62] On the facts, there was insufficient evidence to show that the accused suffered from a mental disorder.

C. *Cases Where the Death Penalty Was Not Imposed*

There was a dispute between the accused and the victim over money in *Chan Lie Sian v PP* ("*Chan Lie Sian*").[63] The accused used a metal dumbbell weighing 1.46kg to hit the victim on the head at least four times. The attack, which lasted about 15 minutes, caused the victim's skull to fracture. He died in hospital seven days later from bronchopneumonia.

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[59] *Ibid* at [62], [64].
[60] [2018] 2 SLR 249.
[61] *Ibid* at [142].
[62] *Ibid* at [113].
[63] *Chan Lie Sian v PP, supra* note 51.

The High Court convicted the accused of intentional murder and sentenced him to death. The court found that it was a vicious attack, causing the victim's blood to splatter onto the ceiling, walls and bed, and leading to extensive head and brain injuries. It was a one-sided attack where the victim was smaller in size and unarmed. The accused pursued the victim through different rooms and beat him again when he was lying on the bed groaning and covered in blood.

However, the Court of Appeal disagreed that intentional murder was made out. It pointed out that the accused was not aware that the injuries were fatal at the time of the attack. Hence, it was a case of s 300(*c*) murder only, where the accused caused injuries which were objectively fatal in nature.

This finding led the court to consider if the death penalty should be imposed on the accused. It held that the requirement of a blatant disregard for human life was not satisfied since the accused did not know that the victim's injuries were fatal; there were other blows inflicted on the victim which were not directed at his head; and the indiscriminate manner of the blows showed that the accused did not intend to inflict fatal blows only. The Court of Appeal focused on the accused's knowledge and state of mind at the time:

> If the [accused] honestly believed that the victim's injuries were not fatal, the fact that the victim's injuries were *objectively* fatal would not, in itself, be sufficient to demonstrate that [the accused] acted in blatant disregard for human life in preventing the witnesses from obtaining medical attention for the victim and parading the victim's body to show the consequences of offending the [accused]. The most that can be said about the [accused's] conduct is that his actions exhibit a blatant disregard for the victim's *welfare*, which does not carry with it the necessary sanction of the death penalty.[64]
>
> [emphasis in original]

In the next two cases on s 300(*c*) murder, the Public Prosecutor did not seek the death penalty. In *PP v Boh Soon Ho*,[65] the accused and the victim were work colleagues and the accused was attracted to her. However, she rejected his sexual advances and taunted him that she had sex with her former boyfriend. In frustration, the accused strangled her with a bath towel from behind, taking her by surprise. After she had died, the accused removed her clothes and attempted to have sex with her but failed because he could not achieve an erection. The Prosecution submitted that this was not a case which outraged the feelings of the community: he did not act with premeditation and the manner in which he killed the deceased was not vicious, nor did it show a blatant disregard for human life. The defence also submitted that the accused was a first-time offender and was deeply remorseful. The court accepted these submissions.[66]

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64 *Ibid* at [88].

65 [2020] SGHC 58.

66 *Ibid* at [109].

In *PP v Toh Sia Guan*,[67] the accused and the victim were involved in a fight where the victim was killed with a single stab wound. He was in fact younger, stronger and more aggressive, while the accused was a 64-year-old man. The court noted that the accused did not know that the injury was fatal, the fight lasted only a short time, and there was no premeditation and planning. There was therefore no blatant disregard for human life or level of viciousness as to outrage the feelings of the community.

In the only reported case on s 300(*b*) of the *Penal Code*, the accused was sentenced to life imprisonment but not caning as he was above 50 years of age. In *PP v Khoo Kwee Hock Leslie* ("*Leslie Khoo*"),[68] the accused strangled the victim and disposed of her body by burning it. He did not plan on killing her but had only wanted to dissuade her from exposing his lies to his wife and bosses. Although the judge found that the accused had compressed the victim's neck with great force, there was no evidence on how long he had strangled her and the act of killing only involved a single act of grabbing her neck.[69]

From the case examples above on non-intentional murder, it can be seen that the courts have sought to explain why the death penalty was imposed in some cases but life imprisonment in others. But even though the factual circumstances of each case may be different, the sentencing outcomes must be explicable on the basis of the "outrage the feelings of the community" standard adopted by the courts.

VI. Critique of the Present Law

One obvious criticism of the "outrage the feelings of the community" formulation is that it is vague and imprecise. Of the five cases involving six individuals in the Appendix where the Public Prosecutor thought that this criterion was satisfied,[70] the death penalty was only imposed on three of the individuals.[71] This means that the Public Prosecutor's assessment was only agreed with 50% of the time.

The open-ended nature of the sentencing criterion also provides insufficient guidance to the judges. In three of the four cases where the Public Prosecutor sought the death penalty,[72] there was disagreement between the trial judge and the appellate judges on the appropriate sentence. In *Chia Kee Chen*,[73] the trial judge imposed life imprisonment but the Court of Appeal disagreed and imposed the death penalty. In *Chan Lie Sian*,[74] the trial judge imposed the death penalty, but the Court of

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67 [2020] SGHC 92.

68 [2019] SGHC 215.

69 *Ibid* at [165].

70 *PP v Wang Wenfeng* [2014] 2 SLR 636; *PP v Kho Jabing*, *supra* note 39; *Micheal Anak Garing v PP* (CA), *supra* note 57; *PP v Chia Kee Chen, supra* note 60; *Chan Lie Sian v PP, supra* note 51.

71 *PP v Kho Jabing, supra* note 39; *Micheal Anak Garing v PP* (CA), *supra* note 57; *PP v Chia Kee Chen, supra* note 60.

72 In the case of *PP v Wang Wenfeng*, *supra* note 70, the Public Prosecutor withdrew its appeal against the decision not to impose the death penalty: Lum, "Murderer escapes death after prosecution drops appeal", *The Straits Times*, 10 April 2015 <https://www.straitstimes.com/singapore/courts-crime/murderer-escapes-death-after-prosecution-drops-appeal>.

73 *PP v Chia Kee Chen, supra* note 60 at [33], [143].

74 *Chan Lie Sian v PP, supra* note 51 at [2], [94]. The trial judge had convicted the accused of s 300(*a*) murder but the Court of Appeal changed it to s 300(*c*) murder.

Appeal changed it to life imprisonment. In *Kho Jabing*,[75] the trial judge imposed life imprisonment and 24 strokes of the cane, but three of the Court of Appeal judges disagreed and sentenced him to death instead. The other two Court of Appeal judges disagreed that the facts showed beyond a reasonable doubt that he had acted in blatant disregard for human life. As shown by the last case, the difficulties in applying the test are compounded by lack of clarity in exactly how the fatal injuries were inflicted, for example the number of times that the victim was hit and the position of the victim at the time.

On the other hand, it might be argued that the "outrage the feelings of the community" standard, by requiring consideration of the number of stabs or blows, area of injury, duration of the attack and the force used and so on, uses the very same factors used by the courts to determine whether the accused had the intention to cause death. As noted in this article, situations of intentional murder under s 300(*a*) of the *Penal Code* are punished with the mandatory death penalty. There is therefore symmetry in the punishment provisions in that where there is discretion to impose the death penalty or not, death will only be imposed if the facts would justify a charge of intentional murder where the sentence would be the mandatory death penalty anyway. This approach can be seen clearly in the case of *Chan Lie Sian*.[76] The Court of Appeal held that the acts of the accused were not in blatant disregard for human life because he did not know that the injuries caused were fatal. In other words, the sentencing threshold was not reached because his acts did not amount to intentionally causing the victim's death.

However, this argument overlooks the ability of the Public Prosecutor to proceed with an offence under culpable homicide even though intentional murder is made out. As shown by the discussion above on the Public Prosecutor's choice to charge an offender for culpable homicide or intentional murder, "something more" must be shown in terms of either premeditation to kill or the cruel manner of inflicting death on the victim that makes this particular killing extreme and shocks the conscience of the community. It is this articulation of what "more" is needed that runs into difficulties. When is the killing "heinous", "savage" or "outrageous" enough to impose the death penalty? As noted by Choo J in *PP v Micheal Anak Garing*,[77] these are just "descriptive adjectives" which "can sometimes confuse and mislead".

Another issue concerns whether acts by the accused after the killing can be considered. Is it only those acts which directly cause the victim's death that can be considered in determining if the threshold of "outraging the feelings of the community" is satisfied? What about later acts such as steps taken to dispose of the victim's body, attempting to extort money from the victim's family members who think that the victim is still alive, or trying to flee the jurisdiction? The latter acts do not appear to be relevant. In *Kho Jabing*,[78] it was said that "[c]entral to our inquiry is the manner

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[75] *PP v Kho Jabing, supra* note 39 at [6], [84], [201], [217].

[76] *Chan Lie Sian v PP, supra* note 51.

[77] *PP v Micheal Anak Garing* (HC)*, supra* note 44 at [10]. In *Chan Lie Sian v PP*, *supra* note 51 at [93], the Court of Appeal also cautioned that a court "should not be distracted by the gruesomeness of the scene of the crime".

[78] *PP v Kho Jabing, supra* note 39 at [52]. See also *PP v Wang Wenfeng, supra* note 70 at [32].

in which the [accused] had committed the murder". In *PP v Boh Soon Ho*,[79] the fact that the accused tried to have sex with the victim's dead body, took the victim's money and mobile phone, and fled to Malaysia afterwards to evade detection were not referred to by the judge when deciding on the sentence. In *Leslie Khoo*, it was specifically pointed out that:

> … even if [the accused] had not called for help after he saw the Deceased become motionless, and had gone to great lengths to dispose of her body, these were not relevant considerations. An examination of the accused's regard for human life must necessarily be informed by his knowledge and state of mind at the relevant time …[80]

However, in *Chia Kee Chen*,[81] the Court of Appeal in holding that the accused demonstrated a blatant disregard for the life of the victim, curiously referred to him remaining calm even *after* the killing as shown by taking a two-day trip to Malaysia with his wife and two young daughters.

If aggravating factors can show that the case is deserving of the death penalty, are there mitigatory factors that can bring the case back across the line? Having sub-normal intelligence,[82] the possibility of having been provoked by the victim,[83] and the accused's mental condition[84] have been considered by the courts.[85] Youthfulness has also been considered: in *PP v Fabian Adiu Edwin*,[86] the fact that the accused was 18 years old at the time of the offence, and in *Daryati v PP*,[87] the fact that the accused was either 21 or 23 years old (the facts were disputed), was considered. However, it appears that mitigatory factors will not be given much weight if the killing was particularly gruesome: in *Kho Jabing*,[88] the fact that the accused was 24 years old was said to be "at best a neutral factor [which] does little to change the gravity of the case."

Even though the cases have repeatedly stressed the lack of premeditation to kill as a basis to impose life imprisonment instead of the death penalty,[89] it appears that the cruel nature of the killing may swing the balance the other way as well. To quote

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79 *PP v Boh Soon Ho, supra* note 65.

80 *PP v Khoo Kwee Hock Leslie, supra* note 68 at [166], citing *Chan Lie Sian v PP*, *supra* note 51 at [88].

81 *PP v Chia Kee Chen, supra* note 60 at [141].

82 *PP v Fabian Adiu Edwin* (Criminal Case No 40 of 2009), mentioned in *PP v Wang Wenfeng*, *supra* note 70 at [17].

83 *PP v Gopinathan Nair Remadevi Bijukumar* (Criminal Case No 40 of 2011), mentioned in *PP v Wang Wenfeng*, *supra* note 70 at [17].

84 In *PP v Daryati* [2021] SGHC 135 at [68], the accused was raped by her brother as a teenager, experienced bouts of sadness, loneliness and homesickness, and felt compelled by financial circumstances and filial duty to leave her home to work as a foreign domestic worker.

85 Other possible mitigatory factors could be a lack of criminal antecedents and an early plea of guilt.

86 *PP v Fabian Adiu Edwin, supra* note 82.

87 *PP v Daryati, supra* note 84 at [68].

88 *PP v Kho Jabing, supra* note 39 at [73]. This is despite the fact that the majority said that "facts such as the offender's age and intelligence" should be considered in sentencing the accused (at [48]).

89 In the case of secondary parties, an intention to inflict the brutal injuries is needed and mere knowledge that it is likely is not sufficient for the death penalty: *Micheal Anak Garing v PP* (CA), *supra* note 57 at [62]. However, there is no need to identify exactly who inflicted the mortal blow(s) so long as the parties share a common intention to do so: *PP v Chia Kee Chen*, *supra* note 60 at [91]–[93].

from *Kho Jabing*[90] again, the majority held that "[t]he fact that the choice of weapon happened to be opportunistic pales in comparison with the savage and callous manner in which the [accused] wielded it."

Finally, as can be seen from the Appendix, in addition to the choice of whether to charge the accused with culpable homicide or murder, the Public Prosecutor plays an almost deciding role in whether to seek the death penalty in cases of non-intentional murder. In all the cases in the Appendix, life imprisonment was imposed by the court where the Public Prosecutor did not seek the death penalty.[91] It would appear that whenever the judge is given a choice, the death penalty would not be imposed by default unless the Prosecution asks for it.

VII. Conclusion

A decisive step was taken by the Singapore Legislature in 2012 to free judges from the shackles of mandatory sentencing for murder. Judges are now able to impose either the death penalty or life imprisonment (with caning) for non-intentional murder. Unfortunately, no guidance was provided on how the discretion is to be exercised and the task fell on the courts to develop the needed guidelines.[92]

The Singapore courts have tried to separate those murders which are more revulsive than others by examining the following factors. In this way, it is hoped that individualised sentencing will not result in inconsistent and arbitrary sentences:

<u>In favour of the death penalty</u>

(a) Premeditation to kill (rather than to commit another offence such as robbery or kidnapping)
(b) Use of a weapon
(c) Number and severity of injuries inflicted
(d) Concentration of injuries in a vulnerable area
(e) Force used
(f) Duration of the attack
(g) Advantage taken (such as by attacking the victim from behind, while the victim was on the ground, or by outnumbering the victim)

<u>Against the death penalty</u>

(a) Mental condition of the accused (which need not meet the requirements for diminished responsibility)
(b) Young age of the accused
(c) Victim's role in precipitating the murder

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90 *PP v Kho Jabing, supra* note 39 at [73].

91 See also *PP v P Mageswaran* (CA), *supra* note 24 at [42].

92 An example of a clear guideline provided by the Legislature is s 307(2) of the *Penal Code* where the death sentence is to be imposed if an accused under a sentence of life imprisonment attempts to commit murder.

(d) Role and participation in the murder (where it is committed by more than one person)

However, it must be remembered that exactly how the murder happened would be extremely difficult to reconstruct after the event in most cases. There are usually no witnesses, the cause and number of injuries may be debatable, and the victim's body may have decomposed or been disposed of completely.

It is also unclear from the case law if actions after the killing such as sexual acts on the corpse and attempts to cover up the crime should be considered; and what weight should be given to mitigating factors.

Even though "sentencing is a fact-sensitive exercise in judicial discretion which involves balancing a myriad of considerations" where "reasonable persons can, and often do, disagree as to what the appropriate sentence ought to be",[93] inconsistencies acceptable for other criminal punishments cannot be acceptable when a life is at stake. Disagreements between the Prosecution and the courts, and even between the judges themselves, show that the "outrage the feelings of the community" test is incapable of consistent application.[94] Such uncertainty could not have been intended by the Legislature.

Singapore has one of the lowest rates of intentional homicide in the world,[95] and with the change to discretionary sentencing, an even lower number of convicted murderers are sent to the gallows each year. Furthermore, even though the Singapore Government has stressed the importance of the death penalty as a "most powerful deterrent" against murder,[96] the courts have not given deterrence much significance at all.[97] For the courts, it is the manner of killing that takes prime importance instead.[98] It is therefore an opportune time for a thorough review of the need for the death penalty for murder.

The past cases on non-intentional murder show that it is not possible to predict with certainty when the death penalty will be imposed when it is discretionary. Since the same factors of premeditation to kill and infliction of excessive or cruel violence are also used to decide whether it is a case of intentional killing under the first limb of s 299 or s 300(*a*) of the *Penal Code*, reservations about possible inconsistent practice apply here too.[99] The mandatory death penalty will apply to persons convicted of the latter, but the death penalty is not even an option for those convicted of the former. A pertinent question to ask is whether we ought to continue

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93 *Kho Jabing v PP* (2016), *supra* note 49 at [91], [102].

94 In comparison, under s 3 of the *Kidnapping Act 1961* where the "outrage the feelings of the community" threshold also applies, case law shows that the death penalty will not be imposed if the victim is unharmed even though the duration of the kidnapping had been fairly long (nine days in *Sia Ah Kew v PP*, *supra* note 45; five days in *PP v Vincent Lee Chuan Leong* [2000] SGHC 78), the kidnappers were armed (*Sia Ah Kew v PP*, *supra* note 45), and the kidnapper attempted to kill the victim (*PP v Selvaraju s/o Satippan* [2004] 3 SLR(R) 615).

95 In 2020, Singapore recorded ten cases of intentional homicide or a rate of 0.17 per 100,000 population, see statistics collected by the United Nations Office on Drugs and Crime <https://dataunodc.un.org>.

96 *Singapore Parliamentary Debates*, *supra* note 5 at 267.

97 *PP v Kho Jabing*, *supra* note 39 at [13], [15], [37].

98 See the discussion above under "Outrage the Feelings of the Community".

99 Another concern is that the choice of charge is made by the Public Prosecutor without any public scrutiny.

to "tinker with the machinery of death" for offenders convicted of murder if it is not possible to "accurately and consistently determine which defendants 'deserve' to die".[100] Justice may require no less than doing away with the death penalty for murder completely.[101]

APPENDIX

Murder cases with discretionary sentencing[102]

Name of case	Murder provision used	Prosecution sought death penalty?	Sentence imposed by the court
PP v Khoo Kwee Hock Leslie (2019)	s 300(*b*)	No	Life imprisonment (no caning as accused was over 50 years old)
PP v Fabian Adiu Edwin (2009)	s 300(*c*)	Not known	Life imprisonment and 24 strokes of the cane
PP v Gopinath Nair Remadevi Bijukumar (2012)	s 300(*c*)	Not known	Life imprisonment and 18 strokes of the cane
PP v Kamrul Hasan Abdul Quddus (2014)	s 300(*c*)	No	Life imprisonment and ten strokes of the cane
PP v Wang Wenfeng (2014)	s 300(*c*)	Yes	Life imprisonment and 24 strokes of the cane
PP v Kho Jabing (2015)	s 300(*c*)	Yes	Death penalty (3-2 decision)
Micheal Anak Garing v PP (2017)	s 300(*c*)	Yes	Death penalty for Micheal Anak Garing, life imprisonment and 24 strokes of the cane for Tony Anak Imba
PP v Chia Kee Chen (2018)	s 300(*c*)	Yes	Death penalty
Chan Lie Sian v PP (2019)	s 300(*c*)	Yes	Life imprisonment (no caning as accused was over 50 years old)
PP v Boh Soon Ho (2020)	s 300(*c*)	No	Life imprisonment (no caning as accused was over 50 years old)
PP v Toh Sia Guan (2020)	s 300(*c*)	No	Life imprisonment (no caning as accused was over 50 years old)

[100] *Callins v Collins*, *supra* note * at 1145 (*per* Blackmun J, dissenting).

[101] *Singapore Parliamentary Debates, supra* note 5: "This change [to the mandatory death penalty regime] will ensure that our sentencing framework properly balances various objectives: justice to the victim, justice to society, justice to the accused, and mercy in appropriate cases."

[102] These 13 cases involving 14 individuals (*Micheal Anak Garing v PP* (CA), *supra* note 57 involved two accused persons) were retrieved from LawNet but there could be other cases which have been inadvertently missed out, particularly those which had been resentenced after changes were made to the law. The sentence imposed on the accused in *PP v Mohammad Rosli bin Abdul Rahim* [2021] SGHC 252 was obtained from Lum, "Teck Whye murder: Life term for man who fatally stabbed flatmate during quarrel over rent", *The Straits Times*, 13 January 2022 <https://www.straitstimes.com/singapore/courts-crime/teck-whye-murder-life-term-for-man-who-fatally-stabbed-flatmate-during-quarrel-over-rent>. According to this media report, the accused is appealing against the conviction.

Name of case	**Murder provision used**	**Prosecution sought death penalty?**	**Sentence imposed by the court**
PP v Mohammad Rosli bin Abdul Rahim (2021)	s 300(*c*)	Not known	Life imprisonment (no caning as accused was over 50 years old)
PP v Daryati (2022)	s 300(*c*)	No	Life imprisonment (no caning as the accused was female)