

**SITI ATIQAH BINTI MD RADUAN**

**AND**

**PUBLIC PROSECUTOR**

---

**(Court of Appeal of Brunei Darussalam)  
(Criminal Appeal No. 10 of 2018)**

---

Before: Burrell P, Seagroatt and Lunn JJ A.  
**15<sup>th</sup> November 2018**

*Headnote: Conviction-the judge was entitled to choose between the conflicting evidence of the two psychiatric expert witnesses and had given adequate reasons for doing so.*

*Sentence-appeal allowed. The judge erred in sentencing in not giving effect to his finding that the appellant's schizophrenic illness played a substantial causal contributory link to the commission of the offences. The Court of Appeal sentenced afresh: a discount of about one-third was afforded to the victim from the appropriate sentences. The sentence of 1 ½ years' imprisonment imposed for the abuse that led to the disfigurement of the victim's left breast, by the removal of the nipple, was inadequate and the appropriate sentence was 30 months imprisonment. The total sentence imposed on the appellant was 4 years' imprisonment.*

*The appeal against the order of compensation of \$10,000 in favour of the victim, pursuant to section 382 (1) (b) of the Criminal Procedure Code, Cap. 7, was dismissed.*

Mr. Hj Mohamad Rozaiman bin Dato Haji Abdul Rahman (Messrs. Rozaiman Abdul Rahman Advocates and Solicitor) for Appellant  
DPP Hjh Rozaimah binti Haji Abdul Rahman for Respondent

**Cases cited in the Judgment:**

*Public Prosecutor v Richard Chia Kwok Hiong (Criminal Trial No. 13 of 2005; [2006] 2 BLR 168, at 207H)*

*R v Inwood (1974) 60 Cr App R. 70*

*Public Prosecutor v Donoghue Enilia [2005] 1SLR 220*

*R v Martin (1989) 11 Cr App R (S) 424*

**Lunn, JA.:**

1. The appellant appeals against her conviction after trial by Hairol Arni Majid, J in the High Court of five charges, contrary to sections 325 and 326 of the Penal Code, Cap.

22 on 17 March 2018 and the total sentence of 6 years and 2 months' imprisonment imposed on her by the judge on 23 July 2018.

2. All five charges arose from assaults by the appellant in which she had voluntarily caused grievous hurt to Ms Yoyoh Bindi Idris Ata, an Indonesian domestic maid employed by the appellant and her husband, at various dates in the overall period of her employment from March 2011 up to and until 11 September 2012 at the place of her employment, namely at domestic quarters in police barracks at Jalan Istana Darul Hana, Brunei Darussalam.
3. The 1<sup>st</sup> and 2<sup>nd</sup> charges alleged that the appellant had done so by repeatedly pinching the nipple on Ms Yoyoh's left breast causing permanent disfigurement and that she had beaten Ms Yoyoh's hand repeatedly with a belt, causing her left little finger to be permanently bent, respectively in that overall period, contrary to section 325 of the Penal Code. The 3<sup>rd</sup> charge alleged that in the same overall period the appellant had hit Ms Yoyoh's shoulders repeatedly with a stone pestle, which used as a weapon was likely to cause death, contrary to section 326 of the Penal Code. The 4<sup>th</sup> and 5<sup>th</sup> charges alleged that on the 10<sup>th</sup> and 11<sup>th</sup> of September 2012 respectively the appellant had repeatedly struck Ms Yoyoh's shoulders (4<sup>th</sup> charge) and her body (5<sup>th</sup> charge) with a stone pestle, which used as a weapon was likely to cause death, contrary to section 324 of the Penal Code. The 6<sup>th</sup> charge alleged that in the overall period the appellant had recruited Ms Yoyoh for the purpose of exploitation through slavery by means of the use of force, contrary to section 4 of the Trafficking and Smuggling of Persons Order, 2004.

### *Background*

4. The appellant first appeared in Court on 26 January 2013, having been charged with various offences including assault on Ms Yoyoh, contrary to section 325 of the Penal Code. On 6 April 2013, the Court was provided by the defence with a medical report dated 22 February 2013, from Dr Gan Che Kuan of Columbia Asia Hospital, Miri, Sarawak, Malaysia, which the judge noted in his judgment diagnosed the appellant as suffering from schizophrenia (page 3). As a consequence, pursuant to section 317 of the Criminal Procedure Code, Cap. 7, the judge ordered the preparation of a report at RIPAS Hospital assessing the appellant's mental state. Although the initial report that the judge received from Dr Anddy Maz Adanan, dated 2 May 2013, expressed the opinion that the appellant was fit to plead and stand trial, the reports that the judge received thereafter from Dr Jacob K. John, dated 7 October 2013, 2 December 2014, 17 March 2015 all expressed the opinion that the appellant was not fit to plead or stand trial. As a result, proceedings against the appellant were repeatedly adjourned.
5. However, in a report, dated 25 August 2015, Dr Jacob K. John described the appellant as now taking medication in a compliant way and expressed the opinion that the appellant "*seems to function with significant levels of normalcy and can be considered for trial*". On 30 January 2016, the appellant entered pleas of not guilty, having been arraigned, on the six charges on which she stood trial.

*The trial*

6. At the appellant's trial it was an agreed fact that Ms Yoyoh had begun employment with the appellant and her husband on 7 March 2011 and that, having sought refuge with the Indonesian embassy, had made a report to the police at 18:55 hours on 11 September 2012. Photographs of various injuries sustained by Ms Yoyoh were taken and a medical examination conducted of her on 11 and 12 September 2012 respectively. A medical examination conducted of the Ms Yoyoh on 1 October 2012 revealed that the nipple of her left breast was no longer intact and that breast was permanently disfigured, which injury constituted "*grievous hurt*".

*The prosecution case*

7. Ms Yoyoh gave evidence in support of the prosecution case, as did Superintendent Mariyani Abdul Wahab, the police officer in charge of the investigation at the Women and Children Abuse Unit. The statement of the former, dated 6 June 2016, was adduced into evidence, pursuant to section 117 B of the Criminal Procedure Code, Cap. 7 (exhibit P4 at page 12). Ms Yoyoh said that, having been first employed in March 2011, after 7 months of employment the appellant began abusing her and then slapped and kicked her. In addition, the appellant began pinching her nipple with her fingernails causing bleeding and did so altogether about ten times. On the last occasion, the pinching was so forceful that the nipple was severed from her left breast. Next, the appellant assaulted her with a belt, causing the metal buckle to strike her left little finger, with the result that her little finger became bent. Then, the appellant struck the tops of her shoulders with a pestle causing pain and resulting in the skin breaking. She did so on six occasions, one of which was on 10 September 2012. That caused great pain because her skin had already been broken open. That night she slept facedown, because she could not bring her shoulders into contact with the bedding. On the following day, 11 September 2012 the appellant repeated that attack. However, that evening she escaped from her employer's home and made her way to the Indonesian embassy from which she was taken to Berakas Police Station, where she lodged a complaint. In her oral evidence, Ms Yoyoh confirmed that account.
8. Superintendent Mariyani Abdul Wahab said that although she had visited the appellant's home in the police barracks on 19 September 2011 she had not found either the pestle or a belt (witness statement, P5; examination-in-chief, page 45). Then, Dr Jacob K. John, a consultant psychiatrist at RIPAS Hospital, gave evidence, in which he expressed his opinions, in particular as to the psychiatric condition of the appellant at the time of the commission of the offences. It was his opinion, that the appellant had a schizophrenic illness for many years, for which she was now being treated. She was suffering from schizophrenic illness, without diagnosis or treatment, at the time of the events the subject of the charges. Nevertheless, in his opinion, at that time, the appellant was aware of right or wrong (examination- in-chief, page 50; cross-examination, page 55). Further, he did not agree that because of her psychiatric illness the appellant had lost control and acted involuntarily in assaulting Ms Yoyoh in the events the subject of the charges (cross-examination, pages 56 and 57).

### *The defence case*

9. Dr Jacob Rajesh, a consultant psychiatrist in Singapore, gave evidence in the defence case and expressed the opinion that prior to 2013 the appellant had been an undiagnosed, untreated schizophrenic for many years. At the time of the alleged offences the appellant recollected that she had hit Ms Yoyoh and was aware that was wrong and against the law. So, in his opinion, the appellant was not of unsound mind at that time. However, in his opinion the appellant's actions in assaulting Ms Yoyoh were driven by the commanding nature of her auditory hallucinations, instructing her to hit Ms Yoyoh, as well as her persecutory delusions that Ms Yoyoh had poisoned her food and that of her children. The appellant was unable to control her actions (examination-in-chief, page 61). He disagreed that the appellant was acting voluntarily when she assaulted Ms Yoyoh (cross-examination, page 64).

### *The Judgment*

10. Having adverted to the Statement of Agreed Facts, the judge said that *"the defence is in agreement as far as the injuries sustained by the victim is concerned"* (page 13). Of the evidence of Ms Yoyoh of the assault on her by the appellant, the judge said that the defence *"disputed the testimony of the victim as to the account of the assault on her by the defendant and the cross-examination of the victim centers on these issues"* (page 13). However, it is to be noted, that no challenge was made in cross-examination of Ms Yoyoh's evidence of the manner in which the appellant assaulted her.

### *The issues*

11. Of the central issues between the parties, the judge said that the defence *"submits that the defendant (s) actions were involuntary due to her mental illness such that there is no intention on her part to cause or inflict hurt... that her actions were controlled by the "the commanding auditory hallucination" which dictated her to commit the offence due to her paranoid schizophrenia"* (page 13) Of the prosecution's position, the judge said it was submitted that *"the defendant throughout the ordeal had control and she was able to exercise control of her action. The fact that she was selective as to her aggression only against the victim was demonstrative of exercise of will, self-control and voluntary action."* Of the resolution of the dispute between the experts, having referred to the judgment of the High Court in the *Public Prosecutor v Richard Chia Kwok Hiong (Criminal Trial No. 13 of 2005)* the judge said *"I am entitled to accept or reject the opinion of one expert to another after having considered the evidence in totality."* (page 14.)
12. The judge noted that, notwithstanding the long-standing, undiagnosed and untreated psychiatric illness of the appellant, nevertheless the two doctors said, in effect that her perception of right and wrong *"had not been warped by her mental illness"* (page 15). He said that he accepted Dr Rajesh's report that the appellant *"was not of unsound mind as she was still able to rationalized her actions to be wrong in law"* (page 16). Although he accepted that the appellant's schizophrenic illness *"played a substantial causal contributory link to the alleged offence"* nevertheless, the judge said *"I find it*

does not diminished her culpability to any extent. I believe she was aware of (what) she was doing" (page 16).

13. In the result, having determined that "... all along she knew what she was doing to the victim and had intended it to happen", the judge convicted the appellant on the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> charges. (Page 16)

#### *Sentence*

14. Having noted that the appellant had never acted violently before and had no previous convictions for assaults, nevertheless the judge said that "*the injuries suffered by the victim after a prolonged abuses was extremely serious and life-threatening*" and that "*dangerous weapon*", had been used so that a deterrent sentence was called for to signify "*public abhorrence and... to protect domestic servants as well as to deter any employer to this type of offences*" (Page 17).
15. In the result, the judge's sentenced the appellant to the following sentences of imprisonment, which sentences he ordered to be served consecutively: (page 18)

1<sup>st</sup> charge: 1 ½ years;  
 2<sup>nd</sup> charge: 1 ½ years;  
 3<sup>rd</sup> charge: 2 years;  
 4<sup>th</sup> charge: 6 months; and  
 5<sup>th</sup> charge: 6 months.

Accordingly, the total sentence of imprisonment imposed on the appellant was 6 years' imprisonment.

#### *Compensation*

16. In addition, having acknowledged that the prosecution sought an order of compensation in favour of Ms Yoyoh, the judge ordered the appellant to pay Ms Yoyoh \$10,000 compensation, pursuant to section 382 (1)(b) of the Criminal Procedure Code, Cap. 7 to provide "*redress to the victim*". [Page 18.] In their written submissions, the prosecution asked the judge to make an order of compensation in favour of Ms Yoyoh "*for the injuries that she had sustained in the hands of the defendant*". The judge ordered the appellant to make that payment within two months, in default of which payment the appellant was to serve two months' imprisonment, consecutively to the rest of the sentences of imprisonment he had imposed. [Page 18.]

#### *Grounds of appeal*

##### *Conviction*

17. By ground 2 (a), of the grounds of appeal against conviction, Mr Rozaiman submitted that the judge had erred in failing to give any or any adequate reasons for preferring the expert evidence of Doctor Jacob K. John in preference to that of Doctor Rajesh. By

ground 2 (b), it was contended that the judge had failed to take into account what was said to be the inconsistencies and conflicts between the report of Dr Adanan, dated 2 May 2013, and Doctor Jacob K. John's report, dated 7 October 2013. In the former report, the opinion was expressed that whilst the appellant had a psychotic illness she was fit to plead whereas, in the latter report the opinion was expressed that the appellant's psychotic illness had worsened and she was not fit to plead.

18. Finally, by ground 2 (c), it was submitted that the judge had erred in relying on the evidence of Doctor Jacob K. John that the appellant was aware of what she was doing when she assaulted Ms Yoyoh, given the acceptance in the report dated 2 May 2013 of Doctor Adanan, to which Doctor Jacob K. John was a party, that the appellant was then experiencing commanding audio hallucinations; the observation in the report dated 25 August 2015 that the circumstances were suggestive of a worsening in the appellant's schizophrenic illness at the time of the offence the subject of the charges and his acceptance that pregnancy at that time was an exacerbating factor in the impact of that illness on the appellant. Further, although Doctor Jacob K. John had said in evidence-in-chief that he had been unable to discern in the appellant "*a false belief*" in the appellant (page 48) nevertheless, in cross-examination he had said "*she has an illusion about her victim*" at the time of the events the subject of the charges (page 55). The latter finding was confirmed by Dr Rajesh who said that the appellant said that "*she believed that the victim was poisoning her food and her children's food.*" (Report; 18 May 2016, at paragraph 21: cross-examination, page 63).
19. In his oral submissions, Mr Rozaiman acknowledged that the nub of his complaint was that the judge had erred in accepting the evidence of Doctor Jacob K. John rather than that of Doctor Rajesh, in particular the latter's evidence that the appellant not only suffered from schizophrenia at the time of the events the subject of the charges but also from commanding paranoid delusions, so that she was not in control of or responsible for her actions. Further, that the judge erred in failing to give reasons for so doing deciding.

#### *Sentence*

20. Mr Rozaiman submitted that the judge erred in imposing lengthy custodial sentences on the appellant, given her psychiatric condition and her ongoing need for treatment "*for a long time*" (Dr Jacob K. John's report, dated 5 April 2018). He suggested that, in place of those sentences, this Court ought to impose a Community Service and Probation Order.

#### *Compensation*

21. Further, Mr Rozaiman contended that the judge erred in imposing a Compensation Order against the appellant in favour of Ms Yoyoh, having failed to assess the appellant's ability to make payment of such an order and given the fact that the appellant was a married woman with four children, who was now separated from her husband and who was, and always had been, unemployed.

## *The respondent's submissions*

### *Conviction*

22. For the respondent, Ms Rozaimah invited the Court to note that in his judgment the judge had said that *"it is important to understand that medical diagnosis dictate that her understanding of perception of right and wrong has not been warped by her mental illness."* (Page 15) Further, that the judge went on to find that, although he accepted that the appellant's schizophrenia *"played a substantial causal contributory link to the alleged offences"* nevertheless, *"it does not diminished her culpability to any extent. I believe she was aware of what she was doing and I agree with the prosecution submission that she appears to be selective on her aggression, which centers solely on the victim, demonstrative of her exercise of will, self-control and voluntary action. I believe all along she knew what she was doing to the victim and intended it to happen."* (Page 16) In particular, Ms Rozaimah pointed to the evidence of Doctor Robert K. John in cross-examination in which he had said of the appellant *"I cannot agree that she has lost control of her action. Her behaviour is not suggestive of long loss of control."* (Page 57).
23. Moreover, she submitted that, as he was entitled to do when confronted with the conflicting evidence of two experts, the judge had done no more than prefer the evidence of one over that of the other. Finally, she suggested that in truth, there was no conflict in the evidence and reports of Doctor Jacob K. John.

### *Discussion*

24. It is clear that, although the judge had received no fewer than six medical reports prepared by psychiatrists on the appellant during the trial, together with the oral evidence of Dr Jacob K. John and Dr Jacob Rajesh he was very much alive to what was agreed and the narrow issue that lay between them. They were agreed that, at the time of the events the subject of the charges, the appellant was an undiagnosed and untreated schizophrenic of long-standing. Subsequent to those events, she had been diagnosed and treated with medication for her illness and, when compliant with directives to take that medication, her condition improved.
25. The issue between them was simple: namely whether or not at the time of the relevant events the appellant was subjected to auditory hallucinations of a commanding nature, together with a false belief that the appellant was taking hostile actions against her and her children. Of that central issue, the judge said: (page 14)
- "...the prosecution's expert accept that the defendant had been hearing them throughout her life but he found she had none of these commanding hallucinations at the time of the commission of the offence. As well, he found no false belief which is an important factor to elicit, given that both together is vital to assess a delusional state at the time of the commission of the offence."*
26. Of the evidence of the defence expert, the judge said that he: (page 14)

*“...believes the defendant’s actions were triggered by the presence of “commanding nature of the auditory hallucinations” instructing her to hit the victim as well as “the persecutory delusions” she experienced believing that the victim is poisoning her food and her children’s food.”*

27. Of the resolution of that conflict, the judge rejected the defence submissions, that it was *“delusion and paranoia that leads her to commit the offences she did”*, adding *“I have to disagree simply because the experts reports say otherwise”* (page 15). Of that, he said: (page 15)

*“I believe it is important to understand that medical diagnosis dictate that her understanding of perception of right and wrong had not been warped by her mental illness.”*

28. Of that evidence, the judge said: (page 16)

*“I accept Dr Rajesh’s report that at the time of the commission of the offence the defendant was not of unsound mind as she was still able to rationalised (sic) her actions to be wrong in law and her recollection of the events was still intact albeit patchy and not in detail. I accept his diagnosis that the defendants “mental disorder (schizophrenia)” played a substantial contributory link to the alleged offences. Given the scenario, I find it does not diminished her culpability to any extent. I believe she was aware of (what) she was doing and I agree with the prosecution submission that she appear to be selective on her aggression, which centers solely on the victim, demonstrative of her exercise of will, self-control and voluntary action. I believe all along she knew what she was doing to the victim and intended it to happen.”*

29. Clearly, the italicised findings were a resounding rejection of Dr Rajesh’s evidence in respect of the appellant that *“she is convinced that the maid is poisoning. She lost her judgment because she’s convinced it’s real.”* On the other hand, it resonated with the evidence-in-chief of Dr Jacob K. John that, in respect of the time of the events the subject of the charges” in his many interviews of the appellant he had been unable to elicit a *“false belief”* associated with the hallucinations (page 48).
30. Accordingly, there being no dispute that, in circumstances in which there was a fundamental conflict in the evidence of two expert witnesses, the judge was entitled to reject the evidence of the one and accept the evidence of the other, we are satisfied that the judge gave adequate reasons for his acceptance of the evidence of Dr Jacob K. John and his rejection, in part only, of the evidence of Dr Rajesh.
31. The contention made by Mr Rozaiman that, in cross-examination, Dr Jacob K John resiled from that evidence is not made out by careful examination of the judge’s handwritten notes from which the transcript of the Notes of Proceedings was compiled. Having been asked, in effect, whether or not the appellant could *“control her action”*, if she was aware of the difference between right and wrong, Dr Jacob K John’s answer is properly understood to have been: (page 55)

*“Theoretically it’s possible she has illusion about her victim. But there is a different (ce) from defending and continue actively being the aggressor over a period of time. I do see that happening. She demonstrated the correct behaviours through the time she had been ill.”*

32. There is no merit in the suggestion that there were material inconsistencies in the various psychiatric reports on the appellant and that, in consequence, the judge erred in accepting the evidence of Dr Jacob K John. Very obviously, those reports were made against a background of changing circumstances in the treatment of the appellant, her compliance with the medication prescribed for her and the consequential effects on the control of her psychiatric illness. In that context, the opinions expressed in the report, dated 2 May 2013, that she was fit to plead and stand trial is in no way inconsistent with those expressed in the report, dated 7 October 2013, that the appellant was unfit to plead or stand trial, any more than it is inconsistent with the determination 21 months later in the report, dated 25 August 2015, that the appellant was now fit to plead and stand trial.
33. Similarly, the fact that Dr Jacob K. John acknowledged in the report prepared by Dr Adanan, dated 2 May 2013, that the appellant was then experiencing auditory hallucinations and the subsequent opinion expressed by Dr Jacob K. John in the report dated 25 August 2015 that the *“clinical picture is suggestive of a psychotic worsening of her schizophrenia at the time of the event”*, together with the acceptance that added stress of pregnancy would have an adverse effect on a person suffering from schizophrenia, in no way precluded Dr Jacob K. John expressing his opinion in conclusion that, nevertheless the appellant was aware of and in control of her actions at the time of the events the subject of the charges.

### *Conclusion*

34. We are satisfied that there are no merits in the appeal against conviction, which is dismissed.

### *Sentence*

35. At the outset, it is appropriate to note that the offences the subject of the charges occurred in the period March 2011 to 11 September 2012, fully 6 to 7 years earlier than date on which she was sentenced, namely 23 July 2018 . The delay, after the appellant’s first appearance in Court in January 2013, in commencing the appellant’s trial on 13 June 2016 was obviously attributable in very large part to the treatment of the appellant’s schizophrenic illness, which resulted finally in the decision that she was fit to stand trial. However, although only four witnesses were called in the trial, evidence was not concluded until September 2017. Judgment was not delivered until March 2018, whereas sentence was handed down on 23 July 2018.
36. As noted earlier, although the judge accepted that the appellant’s schizophrenic illness *“played a substantial causal contributory link to the alleged offence”*, (paragraph

21 of the 18 May 2016 report of Dr Rajesh; evidence-in chief, page 61” nevertheless the judge went on to find that *“it does not diminished her culpability to any extent”* (page 16).

37. It appears that those findings are to be understood as an acceptance, of the undisputed evidence, that the appellant was an undiagnosed and untreated schizophrenic at the time of the commission of the offences, but not somebody suffering from false beliefs of persecution by Ms Yoyoh, so that she knew the difference between right and wrong and was able to exercise control over her actions. The judge made those observations in the context of his determination of whether or not the offences were made out against the appellant. That was relevant to the issue of her *“liability”*. So, the appellant was liable for her actions because she knew the difference between right and wrong and was able to exercise control over her actions. In those circumstances, as a matter of law, she was liable for her action. On the other hand, as noted, the judge found that the fact that appellant suffered from a schizophrenic illness played a *“substantial causal contributory link to the alleged offences”*. Clearly, that was relevant to her *“culpability”* in the commission of the offences, notwithstanding the judge’s statement that it did not *“diminish her culpability to any extent.”* With respect, the judge fell into error in making the latter determination. To what else, since it was not relevant to liability in law, could his finding that her schizophrenic illness played a played a substantial causal contributory link to the offences be relevant?
38. One of the six factors that the judge stipulated as being *“relevant in considering the appropriate sentence”* was *“the psychological/mental state of the defendant”*. He was correct to do so. On the other hand, he erred in determining the appropriate sentence in not taking into account and giving effect to his finding that there was a substantial causal contributory link between her psychiatric illness and the commission of the offences. That was a material error in his approach to sentencing and, in those circumstances, it falls to this Court to sentence afresh.

#### *The appellant’s injuries*

39. The appellant’s injuries are depicted and described respectively in the photographs, taken on 11 September 2012, and the brief medical reports of her examination on 12 September and 1 October 2012 and are in the Statement of Agreed Facts. The photographs of Ms Yoyoh’s left breast, bears eloquent testimony to the description that it had been permanently disfigured. Similarly, the photographs depict the lower part of Ms Yoyoh’s left small finger as being bent. The medical report described the injury as *“fixed flexion deformity of PIPJ of left index finger”*, namely the proximal interphalangeal joint.
40. The injuries to the top of the left and right side of Ms Yoyoh’s shoulders depict the removal of the top layer of skin in an extensive area and bear out the description of pain caused by skin ulceration to the extent that on 10 September 2012 Ms Yoyoh was unable to lie on her back when sleeping. The examination on 12 September 2012 revealed *“swelling and skin ulceration about 15×10 centimetres sustained over both*

*shoulders*". The examination on 1 October 2012 described those sites of injuries as "healed".

41. On the other hand, although Ms Yoyoh had been struck with the stone pestle on her shoulders, there was no fracture of any of the bones that lie immediately beneath the layer of the skin that had been removed nor was there any fracture of bones elsewhere on her body.
42. Although the injuries were undoubtedly very painful to Ms Yoyoh and must have caused her considerable discomfort, in particular since they do not appear to have been medically treated in any way prior to her making a complaint to the police, with respect to the judge it is difficult to understand how he described them as "*life threatening*" (page 17). With respect, they were not.

#### *Duration of the abuse*

43. It was Ms Yoyoh's oral evidence that the appellant's physical abuse of her began only five months after she began to work for the family in March 2011 (cross-examination page 34). But, as noted earlier, she said that, once it began, the appellant's assault on her nipple was a course of conduct in which she used her right fingernails, so that "*she pinched it, altogether 10 times every two weeks she pinched me*" (page 17). Those assaults produced "*so much blood*". Eventually, the appellant pinched her nipple with such force that it was removed from her breast.
44. Of the blows to her shoulder, Ms Yoyoh said that she had been hit on six separate occasions, to a total of "*40 times*" (examination-in-chief page 22). The assault of that kind on 10 September 2012 was the subject of the 4<sup>th</sup> charge, whereas the final assault on 11 September 2012 was the subject of the 5<sup>th</sup> charge.

#### *Discussion*

45. We approach the issue of sentencing the appellant afresh, first by identifying the appropriate sentence for each of the respective charges and secondly, by discounting those sentences to give effect to the judge's finding that there was a substantial causal contributory link between her psychiatric illness and the commission of the offences. Finally, we shall have regard to the appropriate totality of sentence.
46. It is clear that the appellant's assaults on Ms Yoyoh were a course of conduct, in which Ms Yoyoh was subjected to different forms of abuse. First, she was subjected to repeated manual attacks, which involved repeated forceful pinching of her nipple. Then, she was attacked with weapons: a belt was used to strike her hand repeatedly on one occasion and on multiple subsequent occasions she was struck repeatedly on her shoulders with a stone pestle, approximately 6 inches in length
47. Clearly, the most serious injury sustained by Ms Yoyoh was the permanent disfigurement of her left breast by the removal by repeated pinching by the appellant's fingernails of her nipple. The injury to Ms Yoyoh's small finger on her left

hand, caused by repeated blows with a belt also caused permanent injury, but was less serious in nature. The injuries to Ms Yoyoh's shoulders, caused by repeated hitting with the pestle, whilst of a dramatic nature when photographed and no doubt very painful, were clearly susceptible to medical treatment and do not appear to have caused any permanent injury. They were described as "healed abrasions" in the examination on 1 October 2012.

48. In the result, we are satisfied that, whilst the judge was correct in identifying a sentence of 1 ½ years' imprisonment as being appropriate for the assault the subject of the 2<sup>nd</sup> charge, he was unduly lenient and in error in imposing the same sentence for the assault the subject of the 1<sup>st</sup> charge. Having regard to the gravity of the offence the subject of the 1<sup>st</sup> charge, the appropriate sentence is 30 months' imprisonment. The 3<sup>rd</sup> charge encompassed all the assaults on Ms Yoyoh with the stone pestle in the overall period, whereas the 4<sup>th</sup> and 5<sup>th</sup> charges were specific examples of such assaults on 10 and 11 September 2012 respectively. In our judgment, the judge was correct to reflect the respective gravity of those offences by identifying a sentence of 2 years' imprisonment as appropriate in respect of the 3<sup>rd</sup> charge and sentences of 6 months' imprisonment in respect of the 4<sup>th</sup> and 5<sup>th</sup> charges.

#### *Discount*

49. In order to give effect to the judge's finding that the appellant's schizophrenic illness played a substantial causal contributory link to the appellant's commission of the offences, and necessarily taking a broad approach to the issue, in our judgment it is appropriate to discount the otherwise appropriate sentences of imprisonment identified by the judge by about one-third.

#### *Sentence*

50. For the reasons set out earlier, we quash the sentences of imprisonment and related orders imposed by the judge. The sentences of imprisonment imposed by this Court on the appellant are:

1<sup>st</sup> charge-20 months' imprisonment;  
 2<sup>nd</sup> charge-12 months' imprisonment;  
 3<sup>rd</sup> charge-16 months' imprisonment;  
 4<sup>th</sup> charge-4 months' imprisonment; and  
 5<sup>th</sup> charge-4 months' imprisonment.

#### *Totality*

51. As noted earlier, the conduct the subject of the 4<sup>th</sup> and 5<sup>th</sup> charges were specific assaults by the appellant on Ms Yoyoh on 10 and 11 September 2012 respectively. However, clearly that conduct was subsumed within the overall ambit of the 3<sup>rd</sup> charge, namely of repeatedly hitting Ms Yoyoh's shoulders with the stone pestle in the overall period between March 2011 and 11 September 2012. Accordingly, in our judgment it is appropriate to order that the sentences of 4 months' imprisonment

imposed in respect of the 4<sup>th</sup> and 5<sup>th</sup> charges be served concurrently with the sentence of imprisonment imposed in respect of the 3<sup>rd</sup> charge.

52. In the result, we order that the sentence of 12 months' imprisonment, imposed in respect of the 2<sup>nd</sup> charge, is to be served consecutively to the sentence of 20 months' imprisonment, imposed in respect of the 1<sup>st</sup> charge and that the 16 months' imprisonment imposed in respect of the 3<sup>rd</sup> charge be served consecutively to the resulting total of 32 months' imprisonment imposed in respect of the 1<sup>st</sup> and 2<sup>nd</sup> charges. The sentences of 4 months' imprisonment imposed in respect of the 4<sup>th</sup> and 5<sup>th</sup> charges are to be served concurrently with the other sentences of imprisonment. Accordingly, the total sentence imposed on the appellant is 4 years' imprisonment.

*Order for compensation*

53. As noted earlier, in making the order of compensation against the appellant in favour of Ms Yoyoh, pursuant to section 382 (1) (b) of the Criminal Procedure Code, the judge ordered that, if the appellant failed to comply with the order within 2 months, she was to serve a 2 month custodial sentence. In doing so, although he did not state it to be the case, clearly the judge was exercising the discretionary power provided by section 253, to stipulate a term of imprisonment to take effect in default of payment, to give effect to the provision in section 382(2) that an order for compensation "*may be enforced in the same manner as if the amount thereof were a fine*"
54. In that context, it is to be noted that immediately after the judge had handed down judgment on 17 March 2018, counsel for the prosecution informed the judge that the prosecution was "*applying for section 382 of CPC in Compensation in the amount of \$10,000 for the victim.*" [Page 65] Having adjourned the hearing to permit the defence to prepare mitigation and to consult the appellant's Doctor, on 7<sup>th</sup> April 2018 the judge received oral mitigation on behalf of the appellant. Although the judge was informed that the appellant was now divorced, and that her husband had left her, no objection was made to the prosecution application for an order of compensation. In fact, after mitigation, counsel for the prosecution repeated the request for an order of compensation, informing the judge that Ms Yoyoh had left Brunei.
55. In written mitigation provided by Mr Rozaiman to the judge, by cover of a letter dated 19 May 2018, the judge had been informed "*After the incident relating to this case, the defendant was given a property by her late father via his will. The property is located at Muara, No 6, Spg 791-29-31, STKRJ Sg Buloh where she is currently residing at for 3 years now.*" The judge was also informed that the appellant "*has been unemployed since marriage and remains unemployed till now.*" Again, no objection was made to the prosecution request for an order of compensation in favour of Ms Yoyoh.
56. As noted earlier, in written submissions provided to the judge on 11 July 2018, in advance of the sentencing hearing on 23 July 2018, the prosecution articulated their request for an order of compensation in favour of Ms Yoyoh, stating that the application was made in respect of "*the injuries that she had sustained in the hands of the defendant during the prolonged period of abuse.*"

57. In making the order of compensation against the appellant, the judge said of the prosecution request for that order *"It must not be seen as a punishment as against the defendant but rather of providing redress to the victim concerned. It also must not be seen to stop any future proceedings (to) be brought by the victim against the defendant."* [Page 18].
58. The obvious purpose of a compensation order is to provide *"a convenient and rapid means of avoiding the expensive resort to civil litigation when the criminal clearly has means which would enable compensation to be paid"*. (See the judgment of the Court of Appeal of England and Wales in *R v Inwood* (1974) 60 Cr App R. 70.] Before making an order of compensation, the court must be satisfied that the defendant has the means to pay. (See the judgment of Yong Pung How CJ in the High Court of Singapore in *Public Prosecutor v Donoghue Enilia* [2005] 1SLR 220, at paragraph 26.) It is open to a court to make an order of compensation, together with a sentence of imprisonment, if the defendant has sufficient assets. (See the judgment of the Court of Appeal of England and Wales in *R v Martin* (1989) 11 Cr App R (S) 424. The assessment of damages must be based on evidence and be readily and easily ascertained. (See *Public Prosecutor v Donoghue Enilia*, at paragraphs 23 and 24.)
59. As noted earlier, in his written submissions dated 19 May 2018, Mr Rozaiman informed the judge that since the events the subject of the charges the appellant had been given the property in which she and her children had lived for over three years, albeit that she was and had been unemployed. That information was highly relevant to the prosecution application for an order of compensation, which was no doubt why it had been provided. In those circumstances, the judge was entitled to determine that the appellant had assets with which she could meet an order for compensation. Having regard to the length of abuse of Ms Yoyoh, the permanent injuries she suffered to her left breast and left little finger and the pain and suffering necessarily caused by those injuries and the injuries to both her shoulders, the judge's stipulation of the quantum of the compensation order, namely \$10,000, was conservative to say the least. No doubt, that is why the judge said, in making the order, that it was not a barrier to civil proceedings being brought by Ms Yoyoh against the appellant. Mr Rozaiman has not suggested that the judge's assessment of the quantum of the order was wrong.
60. Any concerns that the judge's order that, in default of compliance with the order of compensation within 2 months, the appellant was to serve a sentence of 2 months imprisonment consecutive to the other sentences of imprisonment, failed to take into account the difficulties that the appellant might have in making arrangements to raise those monies and make that payment whilst in custody, have been resolved by the fact that the judge granted a stay of execution immediately on making those orders on 23 July 2018, so that the appellant was and still is at liberty. By now, the appellant has had more than three months to make those arrangements.

*Conclusion*

61. In the result, we are satisfied that it fell well within the judge's discretion to make the compensation order and two months' imprisonment in default that he made. Accordingly, the appeal against the making of the order is dismissed.

**Burrell, P.**

**Seagroatt, J.A.**

**Lunn, J.A**