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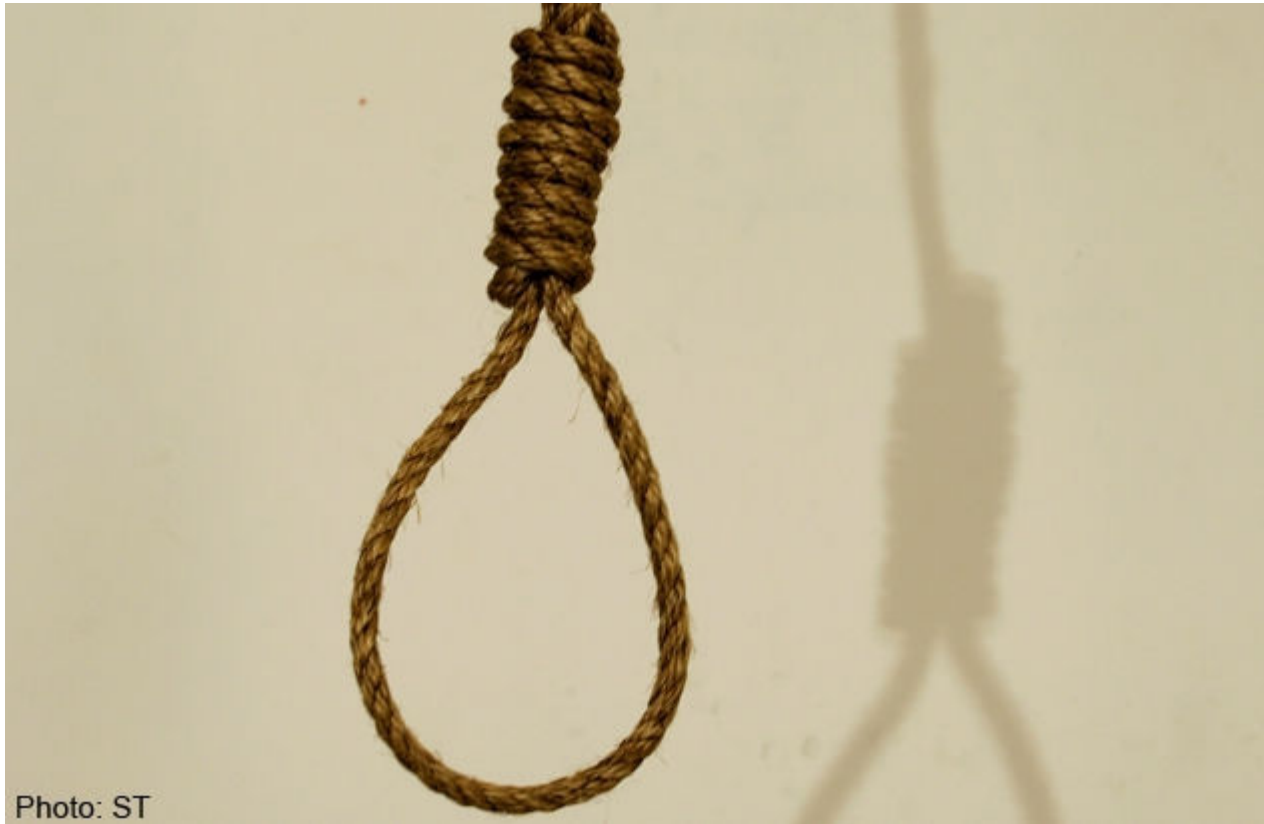


Photo: ST

SINGAPORE - When it comes to a murderer, how brutal must he be to warrant the death penalty? In a landmark decision last month, judges were divided on this point - deciding in the end by three to two that convicted killer Kho Jabing, 31, will hang.

The decision sparked keen discussion among the legal fraternity, who noted that while it did provide some guidelines on when the death penalty should be upheld, these may not be enough.

Kho's was the first murder case to reach the Court of Appeal since new laws kicked in two years ago, giving judges more sentencing discretion for murder and drug-trafficking offences, as an alternative to mandatory hanging.

In 2008, Kho, a Sarawakian rag-and-bone man, bludgeoned a construction worker repeatedly with a branch while trying to rob him.

The decision of the nation's highest court last month hinged on what three of the judges said was the "sheer savagery and brutality" Kho had displayed. In essence, the act "outraged the feelings of the community", which justified the death penalty.

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The two dissenting judges, however, were not convinced there was enough evidence to conclude beyond a reasonable doubt that Kho had struck the victim three or more times, or with such force as to cause the man's fatal skull fractures.

Said Singapore Management University don Chandra Mohan, a former district judge, writing in a law blog: "As the dissenting judgments have demonstrated, differences in the findings of facts as to whether the accused had shown a blatant disregard for life, the manner in which he had done so, and considerations of the relevance of the 'other circumstances' could well lead to inconsistencies in sentencing.

"Hopefully, future judgments of the Appeals Court will help to curb such inconsistencies."

Law graduate Grace Morgan argued in daily legal news service Singapore Law Watch that the court's assertion that the killer's brutal acts "outraged the feelings of the community" raised the question of what kind of outrage was needed to warrant the death penalty. Ms Morgan, who is a pupil at law firm Rodyk and Davidson, said it would be difficult to decide whether, for instance, three blows by the accused would cause enough outrage, rather than two.

A more precise alternative could be whether the offender acted in such a way that it "shocks the conscience", she suggested. A killer who cuts up his victim's body could be one such example.

She argued this would pitch the standard slightly higher than the current test, and would lessen some of the difficulties involved in trying to find the "precise level of moral culpability in borderline cases such as this (Kho Jabing) case".

Criminal lawyer James Masih pointed out that the court's decision was based on the facts of one particular case, and that each case was different. The law would become clearer as more rulings were made, he said.

Ultimately, though, there would be no hard and fast rules as each decision would depend on the facts of a particular case.

Said Associate Professor Mohan: "Unfortunately, the devil may still lie in the details."

Kho's lawyer Anand Nalachandran is currently preparing his appeal for clemency to the President.