Wong Hoi Len v Public Prosecutor
[2008] SGHC 146

Case Number : MA 47/2008

Decision Date : 02 September 2008

Tribunal/Court : High Court

Coram : V K Rajah JA

Counsel Name(s) : Tan Siah Yong (Piah Tan & Partners) for the appellant; David Khoo (Attorney-General's Chambers) for the respondent

Parties : Wong Hoi Len — Public Prosecutor

Criminal Procedure and Sentencing – Sentencing – Benchmark sentences – Appellant convicted of voluntarily causing hurt – Victim a public transport worker – Appellant intoxicated during encounter – Section 323 Penal Code (Cap 224, 1985 Rev Ed)

2 September 2008

V K Rajah JA:

1 The appellant pleaded guilty before the district judge to one charge of voluntarily causing hurt, an offence punishable under s 323 of the Penal Code (Cap 224, 1985 Rev Ed). He was then sentenced to a term of imprisonment of one month. Dissatisfied with the outcome, he appealed to the High Court for a lighter sentence. After hearing counsel, I not only dismissed the appeal but increased the sentence to a term of imprisonment of three months. I now give the full reasons for my decision.

The factual background

2 The victim, Toon Chin Joon, was a taxi driver. On 19 May 2007 at about half an hour after midnight, he picked up the appellant who had just finished a drinking session with his friends. Shortly before reaching his destination, the appellant requested that the victim stop the taxi as he felt like throwing up. Before the victim could respond, the appellant threw up and soiled the taxi. The victim then stopped the vehicle, alighted and severely reprimanded the appellant. The appellant responded by angrily pushing the victim to the ground with both his hands. Here, the district judge quite correctly noted that "[e]ven after the victim had fallen, the [appellant] attacked the victim and rained several blows with his fists on the victim's forehead and face" (*PP v Wong Hoi Len* [2008] SGDC 73 at [8]). In the midst of the struggle, the victim stopped moving and lay motionless on the ground. Shortly thereafter, the police and an ambulance arrived. Tragically, the victim was pronounced dead at the scene by the attending paramedics.

3 The appellant was examined by a doctor at Alexandra Hospital some 12 hours after the incident. The doctor observed in his report that "[a] superficial scratch mark was seen over [the appellant's] left cheek 5cm in length. No other injuries were noted". An analysis of his blood sample also revealed 5mg of ethanol per 100ml of blood. It should, however, be noted that the level of alcohol at the time of the incident must have been considerably higher.

4 In stark contrast, the injuries suffered by the victim were far more significant and disturbing. The senior consultant forensic pathologist who performed the autopsy found 13 external injuries on the victim's body. These injuries were:

1. A right peri-orbital haematoma, measuring 5.5x4.5 cm, involving mainly the right upper eyelid, with mild swelling of the left upper eyelid.

2. An abrasion, measuring 2.2x0.6 cm, on the lower part of the right forehead, just above the lateral end of the right eyebrow.

3. An abrasion, measuring 2.1x2 cm, on the upper part of the right upper cheek, just below the outer canthus of the right eye.

4. A bruise, measuring 4x2 cm, of the nose.

5. An abrasion, measuring 1.4x1.3 cm, on the upper posterolateral aspect of the right forearm, just distal to the right elbow.

6. An abrasion, measuring 1.1x1.1 cm, on the right thenar eminence (the right palm of the right hand), just distal to the right wrist.

7. An abrasion, measuring 3.5x0.6 cm, across the dorsum of the right wrist.

8. A pin-point abrasion, measuring 0.1 cm in diameter, on the dorsum of the right hand.

9. An abrasion, measuring 0.4x0.1 cm, over the second metacarpophalangeal joint of the right hand (the knuckle of the right index finger).

10. An abrasion, measuring 0.4x0.2 cm, over the third metacarpophalangeal joint of the right hand (the knuckle of the right middle finger).

11. An abrasion, measuring 0.6x0.4 cm, over the third metacarpophalangeal joint of the left hand (the knuckle of the left middle finger).

12. A group of abrasions, measuring 0.5x0.3 cm – 2.5x1.5 cm, distributed over an area of 10x5 cm, on the anterior aspect of the right knee and the adjacent part of the right upper shin.

13. Small scabs on the left knee and left upper shin, anteriorly, and over the right lateral malleolus (at the right ankle).

5 Apart from the external injuries, the autopsy also revealed that the victim had suffered relatively minor internal injuries. An examination of the latter's scalp revealed "bruising of the right temporalis muscle and some associated subgaleal haemorrhage", while his meninges showed "minimal, patchy, acute [subarachnoid] haemorrhage, mainly over the superior aspect of the left cerebral hemisphere".

6 On the basis of the above injuries, the forensic pathologist commented, *inter alia*, in his report that:

4. There was some limited blunt force trauma to the head, comprising the external injuries to the forehead and face (nos. 1 – 4), together with the corresponding areas of deep facial bruising; the bruising of the left temporalis muscle and the surrounding scalp; and minimal, acute subarachnoid haemorrhage. It is unlikely that these injuries could have caused or contributed to death in themselves.

5. The external injuries of the forehead and face (nos. 1 – 4), as well as the corresponding areas of *deep facial bruising, are consistent with their having been inflicted by means of several blows with a fist*.

6. The abrasions near the right elbow and on the palm of the right hand (external injuries nos. 5 & 6) may represent either defensive injuries or injuries associated with a fall.

7. *The abrasions on the dorsal aspects of the right wrist and hand (external injuries nos. 7 – 11) are consistent with defensive injuries*.

8. The abrasions on the right knee and shin (external injury no. 12) are consistent with a fall. It would not be possible to determine from the autopsy findings whether the deceased had fallen on his own accord, or had been pushed, as the very act of pushing per se usually leaves no mark or injury on the body.

[emphasis added]

7 He concluded his report by stating that the victim had died from a natural cause:

9. Death may be deemed to be due primarily to a natural medical cause … possibly aggravated by limited blunt force trauma to the head and/or a fall. *However, it must be emphasised that, given the severity of the underlying heart disease, sudden death could have occurred at any time, even in the absence of any preceding trauma or antecedent stress*. [emphasis added]

The law

Custodial sentence as the starting benchmark

8 Taxi drivers in Singapore provide a 24-hour, seven-days-a-week service. With some 23,000 taxis on the roads, the industry is one with an average daily ridership of over 900,000 passenger-trips, according to the Land Transport Authority's "Singapore Land Transport Statistics in Brief 2007" (available at <http://www.lta.gov.sg/corp_info/doc/Stats_In_Brief(2007).pdf> (accessed 26 August 2008)). Indeed, in *PP v Neo Boon Seng* [2008] SGHC 90 at [13], Chan Sek Keong CJ aptly described taxi drivers as performing a public service and depicted the taxi industry as "a pillar of Singapore's public transport system".

9 Notwithstanding the significant role played by taxi drivers as public transport workers, they are not infrequently underappreciated by the general public. According to one taxi driver,[note: 1] from time to time they have had to endure scolding from unreasonable passengers, deal with rude private car owners who insist on the right of way, and run the risk of picking up passengers who subsequently walk away without paying. Lamentably, on rare occasions such as the present, taxi drivers encounter something far worse.

10 Just two days after this court rendered oral judgment, *The Straits Times* (24 July 2008) at p H6 reported yet another case of a taxi driver who was subjected to physical violence.[note: 2]In that case, the taxi driver was assaulted by a drunken passenger. The driver, fearing for his life, fled his taxi. The passenger then drove off in the taxi. The increase in robberies against taxi drivers has not gone unnoticed and the issue was raised only recently in Parliament, when the Minister for Transport was asked, in the light of the recent rise in robbery cases on taxi drivers, what measures were being taken by his Ministry to enhance the safety of taxi drivers (see *Order Paper*, 11th Parliament of Singapore, First Session (21 July 2008), question No 49 by Dr Muhammad Faishal Ibrahim). More

recently, in a feature article, Leong Wee Keat, "More cabbies attacked" *Today* (4 August 2008), at pp 1 and 4, it was observed that:

> Cabbies may say assaults against them are rare, but they are on the rise, according to the largest taxi operator here.
>
> ComfortDelGro – which has 15,000 of the 24,000 taxis on the roads here – told Today that assaults against the company's drivers have more than doubled from a year ago.
>
> …
>
> [M]ost attacks could happen after fare disputes, when passengers try to cheat their way out of paying and when dealing with drunken passengers – a perennial headache cabbies face.
>
> While passengers might grumble about high fares, cabbies said most would get agitated if they got caught in a traffic jam, or felt that the cabbie was out to cheat them by taking a longer route.
>
> The authorities have taken a tougher stance to deter crimes against cabbies.
>
> …
>
> Unlike other countries, attacks against taxi drivers are just a blip on the crime radar here, but an alarming one nonetheless. *For example, the number of reported taxi robberies rose from 24 to 49 between 2006 and last year, according to the police*.
>
> [emphasis added]

11 The reported increase in criminal acts targeting persons working in the field of public transport is worrying. It should be nipped in the bud through, *inter alia*, deterrent sentencing of offenders. There is little doubt that public transport workers (this includes bus captains) are more vulnerable to criminal violence than their counterparts in most other professions. They are constantly exposed on the service frontline and, very often, are left to fend for themselves when confronted with difficult and/or unruly passengers. In Duncan Chappell & Vittorio Di Martino, *Violence at Work*, (International Labour Office, 2nd Ed, 2000) at p 67, the authors observed that, of lone workers, taxi drivers in many places were at the "greatest risk of violence". At the same time, other public transport workers such as bus drivers were observed to be at "special risk" (*id*, at pp 68–69). The authors also noted that night-time was the highest-risk driving period for taxi drivers, and that customer intoxication appeared to play a role in precipitating violence.

12 The legislatures in some countries have provided, for the purposes of sentencing, that a court must take into account as an aggravating factor the fact that the victim is a public transport worker. For instance, in New South Wales, s 21A(2) of the Crimes (Sentencing Procedure) Act 1999 (NSW) provides that:

> … The aggravating factors to be taken into account in determining the appropriate sentence for an offence are as follows:
>
> …
>
> (l) the victim was vulnerable, for example, because the victim was very young or very old or had a disability, or because of the victim's occupation (such as a taxi driver, bus driver or

other public transport worker, bank teller or service station attendant),

…

13 The legislature in the Northern Territory of Australia has also recently passed the Criminal Code Amendment (Assault on Drivers of Commercial Passenger Vehicles) Bill affording transport workers greater protection. According to the Minister of Justice and Attorney General Dr Chris Burns, who moved the Bill, the purpose of the amendment, which increased the maximum sentence for common assault on drivers of commercial passenger vehicles from one year's imprisonment to five years, was to ensure that assaults on such persons be treated with the "maximum degree of seriousness" (see Legislative Assembly of the Northern Territory, *Parliamentary Record*, 10th Assembly, First Session (21 February 2008)).

14 Even in the absence of direct legislative intervention, the courts in some jurisdictions have consistently imposed deterrent sentences in cases where the victim is a transport worker. In *R v Kolodziej* [2008] QCA 184, the Court of Appeal of Queensland noted at [11] that "there was [a] need to impose a deterrent sentence to protect taxi drivers who are … in a particularly vulnerable position".

15 In a similar vein, the English Court of Appeal in *Regina v Mark Paul Winter* [2006] EWCA Crim 1833 made the following observation, at [11]:

> As a taxi driver operating at night the complainant was particularly vulnerable to aggressive and violent behaviour by any passenger who happened to be the worse for drink. The court must be astute to afford such protection as it can to persons in the position of the complainant and to do so by the imposition of sentences that will act both as a suitable deterrent against such behaviour and as an appropriate punishment for the offending behaviour in question.

16 In another recent English decision, *Regina v Steven Gunn* [2008] EWCA Crim 1624, an accused punched a taxi driver and was charged for common assault. The injuries suffered by the victim, consisting of stiffness to the shoulder and a cut, were not particularly serious. The accused, who pleaded guilty, had an antecedent for assault but as the earlier offence took place some 20 years ago, it was not taken into account as a sentencing consideration. A five months' custodial sentence was ultimately meted out, and, in passing sentence, the English Court of Appeal stated at [8] that:

> This was an assault upon a taxi-driver while he was driving. The danger of assaulting a driver itself aggravates the offence, so too does the judge rightly recognise … the fact that the victim was a taxi-driver. This puts the [offence] at the top of the sentencing range for offences of this kind …

17 The position is not dissimilar in Singapore. In *Sentencing Practice in the Subordinate Courts* (LexisNexis, 2nd Ed, 2003), it is noted at pp 126–127 that the seriousness of an offence would be *substantially increased* where the offence was committed on a taxi driver or a bus conductor carrying out his duties. Likewise, in *PP v Law Aik Meng* [2007] 2 SLR 814 at [24], I had stated unequivocally that where an offence involved a vulnerable victim or where a criminal act affected the provision of a public service, general deterrence should then assume special significance and relevance.

18 With the above in mind, I had no hesitation in agreeing with the district judge's view that it would be in the public's interest to impose a custodial sentence. The courts must send a clear message that all acts of criminal violence against public transport workers will not be tolerated. These workers provide the larger community with an invaluable and essential service, and they have every right to work in a safe and secure environment.

19 For purposes of comparison, I also note that in typical cases of road rage where an accused is the aggressor, where the victim's injuries are not particularly serious and the accused is a first-time offender pleading guilty, the sentences imposed range from one to three months' imprisonment. For instance, in *PP v Ong Eng Chong* [2004] SGMC 14, the accused, who had no prior antecedents, pleaded guilty to punching and kicking the victim over a parking incident. The accused was initially sentenced at first instance to ten weeks' imprisonment but this was reduced to four weeks on appeal (*Ong Eng Chong v PP* Magistrate's Appeal No 147 of 2004). In another road rage case, *Neo Ner v PP* Magistrate's Appeal No 113 of 2000, the accused, who was likewise a first-time offender, pleaded guilty to slamming a car door in the complainant's face after a road dispute. The complainant suffered two superficial lacerations. The accused was sentenced to three months' imprisonment and his sentence was upheld by Yong Pung How CJ. Here, it is evident that the custodial sentences imposed in road rage cases have been underpinned by public policy and general deterrence (see, in general, *PP v Lee Seck Hing* [1992] 2 SLR 745).

20 In my view, where the victim of an offence is a public transport worker, policy considerations should apply with equal, if not even greater, force than in the case of road rage offences. As such, in cases where an accused person with no antecedent pleads guilty to a charge under s 323 of the Penal Code and the recipient of violence is a public transport worker, I am of the view that the starting benchmark for a simple assault should be a custodial sentence of around four weeks. The actual sentence meted out would, however, be dependent on the peculiar circumstances of each incident. How was the disturbance initiated? Who was the aggressor? What were the injuries caused? Careful attention must be given to the precise factual matrices. Bearing this in mind, I now turn to consider the appropriate sentence for the appellant.

The decision of the court

The mitigating factors

21 There are certain mitigating factors in the appellant's favour. First, this was the appellant's appeal and not the Prosecution's appeal. In situations such as this, I think a discount is merited as an appellant would not ordinarily come to an appellate court with an expectation that his sentence would be increased. Appellants in general should not be discouraged from exercising their statutory right to appeal because of undue anxiety over the possibility of an enhanced sentence.

22 Second, the appellant had, until the present transgression, been a law-abiding citizen. Third, the appellant had unconditionally offered to compensate the victim's mother to mitigate the economic impact she would suffer as a result of the victim's demise. While the offer had not been accepted, the fact that it was made voluntarily was, on the facts of this case, to my mind, a convincing testament of genuine remorse (see *Angliss Singapore Pte Ltd v PP* [2006] 4 SLR 653 at [74]). The same, however, cannot be said for the appellant's plea of guilt as this was clearly a case where the appellant was caught red-handed (see *Wong Kai Chuen Philip v PP* [1990] SLR 1011 at 1014, [13]–[14]).

The aggravating factors

23 Turning now to the aggravating factors, while the victim might have verbally abused the appellant for soiling his taxi, the appellant's subsequent response was wholly disproportionate and utterly uncalled for. In *PP v Lee Seck Hing* ([19] *supra*), Yong Pung How CJ aptly emphasised at 748, [12] that "[road rage offenders] must not be allowed to go away thinking that they can beat up somebody else on the slightest provocation for the price of a few thousand dollars". In my view, the same sentiments would apply to the present case with even greater force.

24 As I had observed earlier, those who resort to physical violence against a public transport worker must be promptly and firmly dealt with by the courts. As a matter of policy and deterrence, a simple assault on a public transport worker should attract a custodial sentence of around four weeks. There are, however, several other aggravating factors which, in spite of the mitigating circumstances in the instant case, have compelled me to impose an even lengthier term of imprisonment.

25 The first is the fact that the assault occurred at night, a time when taxi drivers are most vulnerable (see [11] above). The second is the manner in which the assault was carried out. While the agreed statement of facts describes the incident as a "scuffle" and two eye witnesses described it as a "fight", the objective, and indeed undisputed, medical evidence strongly alludes to something considerably more troubling. The victim, at 1.70m and weighing 83kg, was by no means a puny man. If the latter had any intention of retaliating when the appellant pushed him to the ground, the appellant would have sustained far greater injuries than a mere superficial scratch on his face. In contrast, the catalogue of injuries inflicted on the victim unequivocally indicates that what took place in the wee hours of 19 May 2007 was a relentless and entirely one-sided pummelling of the victim by the appellant.

26 This was not a simple assault involving one or two blows. In this case, in the light of the objective evidence, there can be no question that the appellant was the aggressor. Some 13 external injuries were inflicted on the victim. Of these injuries, four were the result of multiple blows to the head or face while seven were defensive injuries. As correctly noted by the district judge, the fact that the victim had sustained numerous injuries would, in itself, be an aggravating factor. Further, the repeated blows to the victim's head and face (with force that was sufficient to cause minimal acute haemorrhage) were deliberately aimed at a vulnerable spot, thereby exacerbating the gravity of the assault and constituting yet another aggravating factor. The fact that the appellant was somewhat inebriated during the incident does not, from any objective point of view, diminish his culpability for the incident. Those who drink, unless they can invoke the defence of intoxication as narrowly defined in the Penal Code, must assume the full consequences of any legal transgressions. Indeed, as I will turn to consider, intoxication should ordinarily be considered as an aggravating feature.

Intoxication *vis-à-vis* sentencing

The position in England

27 The early English cases treated an accused's state of intoxication at the time of commission of a crime as an aggravating factor. For instance, as noted by Lord Birkenhead LC in *Director of Public Prosecutions v Beard* [1920] AC 479 at 494:

> Under the law of England as it prevailed until early in the nineteenth century voluntary drunkenness was never an excuse for criminal misconduct; and indeed the classic authorities broadly assert that voluntary drunkenness must be considered rather an aggravation than a defence. This view was in terms based upon the principle that a man who by his own voluntary act debauches and destroys his will power shall be no better situated in regard to criminal acts than a sober man. An early statement of the law is to be found in *Reniger* v. *Fogossa*. "If a person that is drunk kills another, this shall be felony, and he shall be hanged for it, and yet he did it through ignorance, for when he was drunk he had no understanding nor memory; but inasmuch as that ignorance was occasioned by his own act and folly, and he might have avoided it, he shall not be privileged thereby." In Hale's Pleas of the Crown, vol. i., p. 32, the learned author says: "This vice" (drunkenness) "doth deprive men of the use of reason, and puts many men into a perfect, but temporary phrenzy; and therefore, according to some civilians, such a person committing homicide shall not be punished simply for the crime of homicide, but shall suffer

> for his drunkenness answerable to the nature of the crime occasioned thereby; so that yet the formal cause of his punishment is rather the drunkenness than the crime committed in it: but by the laws of England such a person shall have no privilege by this voluntary contracted madness, but shall have the same judgment as if he were in his right senses." To the same effect is the passage in Hawkins' Pleas of the Crown, Book I., c. 1, s. 6: "He who is guilty of any crime whatever through his voluntary drunkenness, shall be punished for it as much as if he had been sober." Coke upon Littleton, 247a, similarly treats drunkenness as an aggravation of the offence. "As for a drunkard who is voluntarius dæmon, he hath (as hath been said) no privilege thereby, but what hurt or ill soever he doth, his drunkenness doth aggravate it." Blackstone, in his Commentaries, Book IV., c. 2, s. III., p. 25, has a passage to the same effect: "As to artificial, voluntarily contracted madness, by drunkenness or intoxication, which, depriving men of their reason, puts them in a temporary phrenzy; our law looks upon this as an aggravation of the offence, rather than as an excuse for any criminal misbehaviour."

27 At the same time, Birkenhead LC, having surveyed the jurisprudence on self-induced intoxication, also observed that the more modern authorities (up till the early 20th century) had gradually shifted away from treating intoxication as an aggravating factor (at 495):

> Judicial decisions extending over a period of nearly one hundred years make it plain that the rigidity of this rule was gradually relaxed in the nineteenth century, though this mitigation cannot for a long time be affiliated upon a single or very intelligible principle.

28 In the landmark case of *Director of Public Prosecutions v Majewski* [1977] AC 443, the House of Lords again remarked that the English courts no longer treated intoxication as an aggravating factor. Lord Salmon, for instance, stated at 481 that:

> Prior to the 19th century, for a prisoner to have committed a crime, having voluntarily made himself drunk, was never regarded as any excuse or mitigation but rather as an aggravation of his offence. *Hawkins' Pleas of the Crown*, Book 1, C.1, S.6: *Coke upon Littleton* 247a; *Blackstone's Commentaries*, Book IV, C.2, SIII, p. 25. This attitude, however, began to change under the more humane influences of the 19th century.

29 In more recent times, the judicial attitude in England has unsurprisingly shifted back towards recognising intoxication as an aggravating factor as a consequence of a disturbing and unmistakable increase of intoxication-related offending. The first shot, however, was not fired by the courts but by the Sentencing Guidelines Council ("the Council"). In its definitive guideline titled "Overarching Principles: Seriousness" (issued in December 2004), the Council formally recognised intoxication as an aggravating factor. Specifically, the guideline stated at para 1.22 that the commission of an offence by a person while under the influence of alcohol or drugs, was a factor indicating a higher level of culpability.

30 The English courts responded to the Council's invitation almost immediately. For instance, in *R v Andrew Furby* [2006] 2 Cr App R (S) 64, a decision of the English Court of Appeal, Lord Phillips CJ remarked at [25] that:

> In two recent cases [*Attorney-General's Reference No 9 of 2004 (Alim Uddin)* [2005] 2 Cr App R (S) 105 and *R v Miah* [2005] EWCA Crim 1798] a particular factor has been identified as justifying a heavier sentence. *That is the need to mark and to discourage the growing tendency, particularly in the young, to get drunk in clubs and public houses and then to resort to violence in the streets*. [emphasis added]

31 More pertinent, perhaps, was the declaration by the Lord Chief Justice at [28] that:

> Getting drunk and resorting to violent behaviour under the influence of drink will be a *significant aggravating factor*, particularly where the violence occurs in a public place. [emphasis added]

32 Thus, there is little doubt that the current position in England *vis-à-vis* intoxication is, as observed by Nelson J in *R v Victor McDermott* [2007] 1 Cr App R (S) 28 at [9], that: "[a]lcohol is in fact, as this Court [*ie*, the English Court of Appeal] has often said, an aggravating feature, not a mitigating feature".

The position in Australia

33 The approach in Australia is less unified. In some offences entailing violence, the judges have treated intoxication as an aggravating factor. Some other judges, on the other hand, have treated intoxication as both an aggravating, and a mitigating, factor, thereby cancelling out each other's effect. An illustration of the former treatment can be seen in *The Queen v Sewell and Walsh* (1981) 29 SASR 12 ("*Sewell*"), a decision of the Supreme Court of South Australia. There, Zelling J (with Mitchell and Cox JJ in agreement) stated at 15 that:

> Mr. Johnson [counsel for the accused] argued that effects of liquor or marijuana are always to be taken in extenuation and not as an aggravation. That is not true. At the common law the taking of drink was an aggravation both in relation to *mens rea* and as to penalty. The motto of the common law was *qui peccat ebrius luat sobrius*. We have moved away from that concept as far as *mens rea* is concerned, but there are still many offences in which drink is an aggravation in relation to penalty. There are others in which it is not. For example, a person under the influence of liquor, who is otherwise of a blameless character, may do something which is quite out of character and the liquor may be both an explanation and a factor in mitigation, but in other cases it may swing the penalty towards deterrence. In crimes of violence one may have some hope of putting rational arguments to deter a sober would-be assailant. That chance is much diminished if the assailant is under the influence of drink or drugs. Certainly an assault by a person under such influence is more frightening to the average person. Bray C.J. said in *Birch* v*. Fitzgerald* [(1975) 11 SASR 114 at 116–117]:
>
> > "Nevertheless there are offences in which, as it seems to me, the deterrent purpose of punishment must take priority. When people act under the influence of liquor, passion, anger or the like so as to constitute themselves a physical danger or potential physical danger to other citizens it may well be that a sentence of imprisonment will be appropriate, even in the case of a first offender of good character, in order to impress on the community at large that such behaviour will not be tolerated."
>
> I entirely agree with respect with the observations of Bray C.J. in this matter. I think the Judge was entitled to take the fact these men were to some extent under the influence of alcohol and marijuana as being of importance in a crime of violence …

34 In a similar vein, the Court of Appeal in Victoria took the view that intoxication, in relation to a violent crime, was an aggravating factor. In *R v Groom* [1999] 2 VR 159 at [23]–[25], Batt JA said:

> In my view, the applicant's moral culpability was not reduced by his intoxication. It would, as Mr. Coghlan [counsel for the respondent] submitted, be strange if the applicant's moral culpability were reduced because he was on the night in question even more drunk than usual. It is to be noted that the cases cited make it clear that there is no proposition that intoxication is a matter

which will generally, let alone always, go in mitigation. I refer particularly to the judgment of Hayne J.A. (with whom Southwell A.J.A. substantially agreed) in [*R v Walker* (Court of Appeal, Victoria, 31 May 1996)] at 5-9.

Those cases indeed go further and show, as also does *R. v. Sewell* (1981) 29 S.A.S.R. 12 at 14-15, that intoxication may aggravate the offence by, for instance, making the events all the more frightening for the victim, preventing the victim from effectively reasoning with the assailant to desist. That was the view which the sentencing judge took here. Although there is not a ground directly challenging the finding that the applicant's drunkenness aggravated the offence, such a finding could scarcely stand if ground 1 [that the sentencing judge failed to give sufficient weight in mitigation to the applicant's intoxicated state] succeeded. Accordingly, it is necessary to consider the finding. In my view, his Honour did not err in treating the applicant's drunkenness as aggravating the offence for the reason which he gave. As Mr. Coghlan submitted, the increased unpredictability of the conduct of the applicant brought about by a greater than usual drunkenness on his part increased the fear, if not terror, which the complainant would in any event have experienced. I do not accept the submission for the applicant that for drunkenness to aggravate the offence here his Honour would have had to find that the applicant realised that he would by being drunk increase the fear experienced by his victim or to find that the applicant rendered himself drunk in order to give himself false courage.

For the foregoing reasons, his Honour did not, in my view, err in declining, as he did, to give any mitigatory effect to the applicant's intoxication or indeed in giving it an aggravating effect.

35 However, as I had mentioned earlier, the approaches taken by the various Australian states are not unified. For instance, in *Pappin v The Queen* [2005] NTCCA 2 ("*Pappin*"), a case of aggravated assault, the Court of Criminal Appeal of the Northern Territory was of the view (at [22] and [25]) that:

[T]here is no general rule that intoxication by reason of the consumption of alcohol is an aggravating factor or mitigating factor; *R v Sewell and Walsh* (1981) 29 SASR 12; *R v Lane* (1990) 53 SASR 480; *R v Gordon* (1994) 71 A Crim R 459; *R v Walker* (unreported, Court of Appeal Victoria, 31 May 1996); *R v Groom* [1999] 2 VR 159. In some circumstances, it may operate on the sentencing process in both ways or it may be a neutral fact. …

…

In the context of the appellant's intoxication and his unprovoked and violent attack upon the young female victim, it is appropriate to bear in mind the observations of Zelling J in *Sewell* that in some circumstances intoxication "may swing the penalty towards deterrence". In explaining that observation, his Honour said (15):

> "In crimes of violence one may have some hope of putting rational arguments to deter a sober would-be assailant. That chance is much diminished if the assailant is under the influence of drink or drugs. Certainly an assault by a person under such influence is more frightening to the average person."

36 Martin (BR) CJ then concluded at [27] that:

In my view, bearing in mind the nature of the attack by the appellant upon the young female victim, the appellant's intoxication was also an aggravating feature of his crime. In balancing the mitigatory effect against the aggravating impact of the appellant's intoxication, it is impossible to

be precise as to the end result. Speaking generally, in these particular circumstances I have reached the view that the mitigatory and aggravating effects cancel each other out leaving the factor of intoxication as having a neutral impact upon the sentencing discretion.

The law in Singapore

37 The recent shift in England towards recognising intoxication as an aggravating feature in violent crimes is no doubt underlined by policy considerations. The problems associated with a growing binge-drinking problem in England are only too well-documented and need no further mention here. As alluded to by Lord Phillips CJ in *R v Andrew Furby* ([30] *supra*), the English courts have been compelled by public policy considerations to discourage alcohol-related anti-social behaviour through the imposition of heavier sentences.

38 Fortunately, the alcohol-induced offending situation in Singapore remains, for the present, manageable. Apart from the recurring concerns associated with drink driving, alcohol-related offences do not appear to have appreciably risen in recent years in the same way they have in some other countries. There are a number of reasons for this. Some are sociological, others economical. Effective policing and prosecution as well as the court's general refusal to recognise intoxication as a mitigating factor have also played a significant part in managing this problem.

39 Nevertheless, it bears mention that it is rather puzzling why a leading local sentencing guide has approached this issue quite ambivalently. Citing dated English authorities, *Sentencing Practice in the Subordinate Courts* ([17] *supra*) suggests at p 96 that:

> Intoxication as a mitigating factor is likely to be regarded with scepticism by the courts. (See *Mani Nedumaran & Anor v PP* [1998] 1 SLR 411.) *For crimes of violence and other serious offences, if an offender commits the offence after drinking, the court may well consider it as an aggravating factor or neutral at best (see* Lindley *(1980) 2 Cr App R (S) 3;* Bradley *(1980) 2 Cr App R (S) 12).*
>
> In an exceptional case, if it were to be shown affirmatively that the offence committed under the influence of alcohol was out of character, the court may regard it as an explanation and a mitigation factor.
>
> [emphasis added]

40 The above observations are not entirely helpful as they leave open all three possibilities (*ie*, intoxication being an aggravating, mitigating or neutral factor). Further, I note that the two English cases cited appear not to have adopted a consistent approach. For instance, in *R v Paul Lindley* (1980) 2 Cr App R (S) 3 ("*Lindley*") at 3, the Court of Appeal regarded the appellant as a man of previous good character and "in every other respect a worthy citizen". Nonetheless, it took into account alcohol consumption as an aggravating sentencing consideration. On the other hand, in *R v John William Bradley* (1980) 2 Cr App R (S) 12 ("*Bradley*"), a decision delivered by the same court just three days after *Lindley*, there was no clear indication that the court regarded alcohol as an aggravating feature. Indeed, all the court said at 13 was that "the day is long past when somebody can come along and say 'I know I have committed these offences, but I was full of drink.'" In short, all it seems to suggest is that alcohol consumption is not a mitigating factor.

41 It is of course also important to point out that the High Court in *Mani Nedumaran v PP* [1998] 1 SLR 411 had relied upon *Bradley* for the proposition that the courts should not regard alcohol as a mitigating factor, without at the same time adverting to the consumption of alcohol as being an

aggravating factor. That said, it is plain that *Bradley* is clearly of limited relevance today given the English courts' pragmatic shift in judicial attitude towards alcohol and crime (see [29]–[32] above). In the light of the above, this court ought to revisit the issue of intoxication *vis-à-vis* sentencing.

42 If let unchecked, alcohol-related crime can potentially pose serious problems to our social peace and order. As Charles Clarke, a former British Home Office Minister, aptly put it when he launched the British Government's Action Plan on Alcohol Related Crime in August 2000 (see <http://www.crimereduction.homeoffice.gov.uk/toolkits/ar01.htm> (accessed 25 August 2008)):

> Public drunkenness can give rise to serious problems of disorderly conduct, nuisance, criminal damage and alcohol-related assaults, particularly in the proximity of licensed premises at closing time. In addition, it can increase fear of crime and so reduce the quality of life for many people. This is clearly unacceptable.

43 Singapore, being a cosmopolitan city state reputed for its safe environment, cannot risk allowing alcohol-related offending to spiral out of control. This danger is an ever lurking one and it is in the community's interest that public drunkenness and its attendant disruptive conduct must not be allowed to take root here in Singapore. No intoxicated individual must be given the licence to roam public streets at night spoiling for trouble and/or behave in a disorderly and loutish manner. Such behaviour must be emphatically discouraged. I am therefore of the unwavering opinion that a sentencing judge should *ordinarily* take into account an offender's intoxication as an aggravating consideration. Those who voluntarily imbibe alcohol must, in the usual course of events, take full responsibility for their subsequent offending.

44 I turn now to the Australian cases, whose approach on intoxication involves a blend of policy (which I have already dealt with) *and* retributive justice. First, I must say that, with respect, I do not accept the approach adopted by Martin (BR) CJ in *Pappin* ([35] *supra*) where the aggravating and mitigatory effects of intoxication can cancel each other out (see [36] above). This is because the "out of character" plea, if any, would already be adequately captured by the offender's lack of relevant antecedents, and the courts must therefore be careful not to "double-count" the mitigating factors.

45 On the other hand, as noted by Batt JA in *R v Groom* ([34] *supra*), intoxication may well cause a victim to experience increased unpredictability as well as greater fear and terror during the encounter (see [34] above). Similarly, Zelling J in *Sewell* ([33] *supra*) had expressed the view that an assault by a person under the influence of alcohol is more frightening to the average person (see [33] above). I am in broad agreement with these views. Indeed, in Gavin Dingwall, *Alcohol and Crime* (Willan Publishing, 2006), the author observed at pp 23–24 that the public was generally more fearful of intoxicated individuals (especially at night) as the perceived harm from such individuals was often greater:

> Research has shown that people are particularly frightened about street crime (Hale 1996; Ross and Polk 2003). Crime occurs in other environments as well – and alcohol may also be a factor in these environments, e.g. in domestic violence – but the enduring perception of the street, especially an urban street at night, is as a place of unpredictability and danger. One unpredictable, threatening, and potentially dangerous aspect of this environment is the possibility of coming across intoxicated individuals. Makkai comments:
>
> > In part, fear of crime comes from perceptions of disorder in the local community. Disorder is a term within criminology that is used primarily to refer to behaviour that is not necessarily criminal but is considered by the community as deviant behaviour … Research in the United

> States has shown that within communities there is agreement on what behaviours are constituted as disorderly, regardless of ethnicity, class or other characteristics. Much of this disorder is perceived to be associated with both licit and illicit drugs. Thus, excessive consumption of alcohol in public places can contribute to disorder, and sometimes violence, that heightens fear of crime (2001: 86).

In part, of course, this fear is wholly rational. The likelihood of victimisation may be low compared to other types of crime, but the harm if one were victimised in this manner generally would be greater. Criminologists may caution that violence by strangers is relatively low, but we too avoid certain places at particular times for exactly the same reason.

46 A real-life example of the potential traumatic impact of an assault by a drunken individual has been given at [10] above, where I had highlighted another recent incident of a taxi driver being assaulted. It bears reiterating that the aggressor in that instance was described by *The Straits Times* ([10] *supra*) to be a person "who reeked of alcohol" and had failed a breathalyser test at the time of his arrest. Here, the victim was reportedly so terrified by the encounter that he fled his taxi *in fear for his life*. More pertinently, the victim was quoted as saying: "I still feel scared when I think about what has happened. I'll be taking an indefinite break from cab driving" (*ibid*).

47 In *PP v Kwong Kok Hing* [2008] 2 SLR 684, the Court of Appeal stated at [28] that the degree of trauma experienced by a victim could be a relevant sentencing consideration:

> Psychological wounds, while invisible to the eye, can often be far more insidious and leave an indelible mark on a victim's psyche long after the physical scars have faded. Expert psychiatric evidence could also perhaps have been tendered to evaluate the longer-term impact of the incident on the victim. In the event that the psychological harm is permanent, this would constitute an aggravating factor that would have to be taken into account during sentencing, almost invariably meriting more severe punishment.

48 *A fortiori*, if the facts show that the offender's intoxicated state during the encounter had, by itself, caused the victim to experience an increased state of terror or alarm, then that might be properly regarded as a further aggravating factor. In the present case, the victim (and perhaps even the two witnesses to the incident as well) had no doubt been subjected to a traumatic experience. However, as the Prosecution did not lead any firm evidence or make any submissions on the likely trauma experienced by the victim (I used the term "likely" here as the victim is now deceased), I therefore refrained from assigning any particular weight to this particular aspect of the appellant's intoxication. Nonetheless, as I had mentioned earlier, the incontrovertible evidence of the appellant's intoxication is already in itself an aggravating consideration.

Conclusion

49 Before I conclude, I would like to stress that I did not take on board, as a sentencing consideration, the fact that the victim had died. The forensic pathologist had concluded that the victim's death was "*possibly* aggravated by limited blunt force trauma" [emphasis added] (see [7] above). Such a "possible" finding was clearly insufficient to meet the standard of proof required in a criminal prosecution. Thus, it would be both unsafe and speculative for the court to conclude that the appellant's actions had, in one way or another, contributed to the victim's death. Indeed, the pathologist had determined in his report (see [7] above) that "given the severity of the underlying heart disease, sudden death could have occurred at any time, *even in the absence of any preceding trauma or antecedent stress*" [emphasis added]. It is also noteworthy that the Prosecution, quite fairly, had never suggested that this was a proper sentencing consideration in these peculiar

circumstances. Finally, it bears mention that the appellant was only charged with causing hurt and not grievous hurt, an offence that would have attracted more severe penal consequences such as a substantially lengthier term of imprisonment and perhaps even caning.

50 Taking into account the combination of mitigating and aggravating circumstances, I determined that a term of imprisonment of one month would be manifestly inadequate. In my opinion, such a sustained and brutish assault on a public transport worker by an intoxicated offender would ordinarily require a lengthier custodial sentence of around six months to a year. In appropriate cases, the courts should not shy away from imposing even more draconian sentences. A clear and unmistakable signal must be sent out that no such attacks will be tolerated. In cases such as this, the overarching sentencing consideration will be that of general deterrence incorporating a distinct element of denunciation. Punishing such offenders severely and unequivocally reaffirms two of the Judiciary's core sentencing principles, that those who are vulnerable, and those providing the public with a service, deserve and warrant special protection.

51 I find it rather surprising that having received a term of imprisonment of one month, the appellant had the temerity to appeal and unmeritoriously plead for a fine. By any yardstick, this was an audacious appeal. Thus, by appealing against the rather "restrained" sentence imposed at first instance, the appellant has compounded his initial folly of thuggishly assaulting a public transport worker. At this point, I should perhaps reiterate that because it was the appellant (and not the Prosecution) who appealed against the sentence and as there were other pertinent mitigating considerations prevailing in the appellant's favour, the court has refrained from imposing a sentence which should have been substantially more severe. The appellant should therefore consider himself fortunate in this sense.

52 In the circumstances, I considered it appropriate to dismiss the appeal and increase the punishment to a more fitting sentence of three months' imprisonment.

[note: 1]Lee Keng Fai, "The other side of the coin – a taxi driver's lament", *The Straits Times* (26 October 2007).

[note: 2]Esther Tan, "Cops nap drunk car thief after chase", *The Straits Times* (24 July 2008) at p H6.