IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2023] SGHC 41

Magistrate's Appeal No 9184 of 2022/01

Between

Haleem Bathusa Bin Abdul Rahim

… *Appellant*

And

Public Prosecutor

… *Respondent*

EX TEMPORE JUDGMENT

[Criminal Law] — [Offences] — [Voluntarily Causing Hurt] — [Road rage]
[Criminal Procedure and Sentencing] — [Sentencing] — [Principles] — [Road rage]

Haleem Bathusa bin Abdul Rahim
v
Public Prosecutor

[2023] SGHC 41

General Division of the High Court — Magistrate's Appeal No 9184/2022
Vincent Hoong J
22 February 2023

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Vincent Hoong J:

Introduction

1 This is a case of road rage violence involving an altercation between the Appellant and another motorist which arose from the Appellant swerving his motor vehicle across lanes on an expressway. The Appellant was charged with and convicted after trial of one charge under s 323 of the Penal Code (Cap 224, 2008 Rev Ed) ("Penal Code") for voluntarily causing hurt to another driver ("the Victim"). He was sentenced to five weeks' imprisonment. The Appellant appeals against his conviction and sentence. I dismiss both appeals. These are my reasons.

Background Facts

2 The Appellant is a 46-year-old male Singaporean. He is a property agent in Propnex.[1] In the early morning of 1 February 2020, the Appellant was driving alone in his BMW car along the Bukit Timah Expressway ("BKE") towards the direction of his residence at Hillview Rise.[2] Soon after he exited the BKE, he swerved out of his lane in front of the car driven by the Victim.[3] The Victim sounded his car horn at the Appellant and flashed his headlight at him. There was a verbal exchange between them while they were driving. The Appellant and the Victim continued driving in close proximity to each other for some distance, until they stopped and alighted from their cars in the vicinity of the Appellant's residence.[4]

3 The Victim alighted from his car, which was behind the Appellant's BMW. The Appellant tried to retrieve something from his car boot but decided against it. An altercation then ensued, with one driver aggressively attacking the other driver. At some point during this altercation, the Victim showed a document to the Appellant, which showed that the Victim had pending police cases.[5]

4 The altercation was witnessed by a security officer on duty at Hillview Community Centre ("PW6"). PW6 testified that he heard a commotion and saw two men fighting. One of them pushed the other, causing him to fall. The man who fell was thinner, taller, and was wearing lighter coloured clothes. After

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1 Record of Appeal ("ROA") at p 179, ln 21–25.

2 ROA at p 180, ln 11–24.

3 ROA at p 180, ln 30–31.

4 ROA at p 180, ln 31 to p 181 ln 18.

5 ROA at p 184, ln 2–7.

falling to the ground, he was beaten and kicked by the man who had pushed him.[6]

5 PW6 also extracted video footage from the Closed-Circuit Television ("CCTV") of the Community Centre from the early morning of 1 February 2020 when he had witnessed this fight.[7] It captured an altercation between two drivers who had exited their cars. The assailant driver, who exited from the car in front, punched the other driver twice as he leaned against the windshield of a car. The other driver fell onto the road on his back. The assailant then moved on top of the other driver in a kneeling position. While the other driver was still lying on the road, the assailant hit him thrice and kicked him once. The victim driver got up and backed away, only for the assailant to hit him again, causing the other driver to lose his balance and sit on the ground. The other driver then tried to move away again, during which the assailant attempted to kick him and elbow his head. After the altercation, a third person arrived at the scene in another vehicle. The assailant in the footage then returned to his car and drove off.

6 At some point during the altercation, a taxi driver ("PW2") arrived at the scene. PW2 testified that he stopped because he saw two men arguing.[8] One of the men appeared to be of Chinese ethnicity ("the Chinese man"), while the other appeared to be of Indian ethnicity ("the Indian man"). PW2 identified the Appellant in court as the Indian man he saw on that day.[9] He was also able to identify himself in the CCTV footage extracted by PW6 as the third person

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6 ROA at p 154, ln 11–29.

7 ROA at p 155, ln 12–28; Prosecution Exhibit P7.

8 ROA at p 32, ln 10–19.

9 ROA at p 33, ln 10–26.

arriving at the scene.[10] He testified that the Chinese man was bleeding very heavily. The Chinese man had asked him to call the police, saying that his handphone had been thrown by the Indian man onto a nearby grass patch.[11] The Chinese man told PW2 a licence plate number that matched that of the Appellant. A call to the police by PW2 was logged at 5.53am that day, informing that a driver of a BMW car had beaten somebody else before running away.[12] While PW2 was making this call, he saw the Indian man get into his car and try to flee the scene. The Chinese man was kicking at the car door of the fleeing car.[13]

7 Senior Staff Sergeant Mohamed Nasrudin bin Shahul Hameed ("PW4") interviewed the Victim at his residence later that morning. The Victim informed PW4 that the Appellant had swerved his car left and right. After signalling and stopping to talk things out, the Appellant had started throwing punches at the Victim, and threw his mobile phone to the ground.[14] The interview was recorded.[15] PW4 also took photos of the Victim's injured face and blood-stained shirt.[16] Investigations were also conducted on the Appellant by Senior Inspector Hazmi bin Buang ("PW5"). PW5 tracked down the Appellant using the licence plate number that was given to the police by PW2.

8 Following the incident, the Victim sought medical attention at Ng Teng Fong General Hospital and was diagnosed with a left hand contusion, right

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10 ROA at p 39, ln 10–14.

11 ROA at p 32, ln 9–30; ROA at p 33 ln 31 to p 34 ln 5.

12 Exhibit P2, ROA at p 309.

13 ROA at p 35, ln 20–25.

14 ROA at p 74, ln 6–27.

15 ROA at p 79, ln 2–5.

16 Exhibit P4, ROA at p 311.

eyelid contusion, and nose contusion. He was given five days of medical leave.[17] His injuries were attested to by the examining doctor ("PW3"). PW3 affirmed that the injuries were consistent with the history given by the Victim that he had been assaulted.[18] The Appellant did not seek any medical attention.[19]

9 On 10 March 2020, a statement was recorded from the Victim by PW5 ("the Victim's statement").[20] In this statement, the Victim recounted that the Appellant's BMW had been swerving out of his lane. After the Victim had sounded the horn at him for doing so, the Appellant had wound down his car window and gestured at the Victim to follow him. After stopping, the Appellant opened his car boot, before choking the Victim with one hand. The Appellant pushed the Victim against the Victim's car with his other hand, causing the Victim to fall to the ground. While on the ground, the Victim stated that he felt something kicking his face and head area. He did not defend himself, nor kick or punch the appellant. He also took out legal papers after the assault to show the Appellant why he did not bother to defend himself.

10 On 19 February 2020, a statement was recorded from the Appellant by PW5 under s 22 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed).[21] The Appellant was able to describe that he had accidentally swerved into the adjacent lane while driving on 1 February 2020 at about 5.20am and was scolded with vulgarities by a driver of a white car. That driver continued to chase his motor vehicle despite his apologies, until the Appellant decided to

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17 Exhibit P3, ROA at p 310.

18 ROA at p 62, ln 1–7.

19 ROA at p 183 ln 31 to p 184 ln 7.

20 Exhibit P6, ROA at pp 326 to 327.

21 Exhibit P8, ROA at p 329.

stop his motor vehicle outside the roundabout near Hillview Community Centre. The Appellant claimed that the other driver walked towards him in an aggressive manner, asking for a fight and holding something shiny on his hands. The Appellant specifically mentioned that he remembered punching the other driver twice "towards the face". Both parties fell on the floor and scuffled. The Appellant said he suffered injuries to his left forearm, neck, and right foot. The other driver then took out a piece of paper showing that he had a pending police case. The driver apparently told him not to report the incident. The Appellant then returned to his car and drove off, despite the Victim kicking and punching his car as he left.

11 Following investigations, the Appellant was served with one charge for causing hurt to the Victim. The charge against him is reproduced as follows:[22]

> You… are charged that you, on 1 February 2020, shortly before 5.48am, near Hillview Community Club, did voluntarily cause hurt to one Gabriel Heng Jing Heng, to wit, by kicking, punching and hitting him, causing him to suffer left hand contusion, right eyelid contusion and nose contusion, and you have thereby committed an offence punishable under section 323 of the Penal Code (Cap 224, 2008 Rev Ed).

Proceedings Below

12 The Appellant claimed trial to the above charge. The Victim had unfortunately passed away before the trial in unrelated circumstances. The statement recorded from the Victim by PW5 was thus admitted into evidence under s 32(1)(*j*)(i) of the Evidence Act 1893.[23] Six witnesses (PW1–6) were called by the Prosecution. At the close of the Prosecution's case, the Defence's

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22 ROP at p 5.

23 ROA at p 23, ln 13–16.

submission of "no case to answer" was rejected, and the Appellant elected to give evidence.

13 The Appellant denied assaulting the Victim.[24] He submitted that the Victim had not identified him as the assailant, the CCTV footage was too unclear to identify him, and that none of the Prosecution's witnesses could identify the Appellant as the assailant.[25]

14 The Appellant maintained alongside this that the Victim was the aggressive party, and that he merely acted in self-defence.[26] He claimed that he was the real victim of an assault by the other driver and had suffered injuries as a result of this attack. Any injuries suffered by the Victim were caused by his own fall during the scuffle.[27]

The decision below

15 The DJ's reasons for his decision can be found in *Public Prosecutor v Haleem Bathusa Bin Abdul Rahim* [2022] SGMC 63. The DJ found the Appellant guilty and convicted him of the charge. In view of the CCTV evidence showing a fight between two drivers, the DJ considered that the case turned on two key questions: (a) Was the Appellant one of the two drivers captured in the CCTV footage? (b) If so, was he the assailant or the victim?

16 The DJ answered the first question in the affirmative. There was no doubt that the Victim was one of the drivers in the CCTV footage. He had asked

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24 ROA at p 185 ln 13–23.

25 Defence Closing Submissions ("DCS") at paras 5, 9, and 12; ROA at p 385, 387–389, and 390.

26 DCS at para 10; ROA at p 388–389.

27 ROA at p 69, ln 8 to p 70, ln 25.

PW2 to call the police, and his identity had also been established by the police subsequently. The other driver had to be the Appellant, for several reasons. First, PW2 had identified the Appellant in court as the driver who had driven off.[28] Second, the licence plate number provided by the Victim to PW2 was traced to the Appellant's rented car.[29] Third, the Appellant's own statement was able to describe a series of events exceedingly coincidental to those portrayed in the footage.[30] Fourth, the Appellant did not adduce any evidence of alibi.[31] Fifth, the closing submissions filed by the Appellant's counsel were premised on the Appellant being the victim of the other driver's aggression, which assumed the Appellant's presence at the scene.[32]

17 The DJ then went on to find that the Appellant was the assailant in the footage. Even if the faces of the drivers were unrecognisable from the footage, the two drivers could be easily distinguished by their body shape, the colour of their clothes, and importantly the car that they alighted from.[33] It was undisputed that the Victim had pulled up behind the Appellant's car. This allowed their actions to be attributed accurately thereafter. It was also clear from the footage that the assault was entirely one-sided and carried out by the driver of the car in front. The person seen alighting from the car behind did not retaliate at all. The lack of positive identification by the Victim or witnesses of the Appellant was thus immaterial.

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28 Grounds of Decision ("GD") at [38], ROA at p 279.

29 GD at [39], ROA at p 279–280.

30 GD at [40]–[41], ROA at p 280.

31 GD at [41], ROA at p 280.

32 GD at [42]–[43], ROA at p 280–281

33 GD at [49]–[54], ROA at p 283–286

18 Moreover, there was other evidence incriminating the Appellant as the assailant. The Victim's injuries were captured by police photographs.[34] PW2 testified that the Victim was bleeding when he arrived, whereas the Appellant's face was "perfect" with no injuries.[35] The Appellant had also admitted that he had punched the Victim twice in the face in his statement to the police.[36]

19 The DJ also found that the Victim's statement was reliable as a description of events. It materially corroborated the CCTV footage, despite the Victim not having the opportunity to view the footage prior.[37] The inability of the Defence to cross-examine the deceased Victim thus did not in and of itself render the admission of the Victim's statement prejudicial. The DJ also rejected the Defence's submission that the Victim's statement was unreliable because his pending criminal cases gave him an incentive to lie and cover up his evidence of assault. Such matters were largely irrelevant, and in fact would have incentivised the Victim *not* to report the incident to the police as he did. In fact, the Victim was honest and truthful. He admitted to hitting and kicking the Appellant's car, even though this would form the subject of a charge of mischief against him.[38] Any inconsistencies between the Victim's statement and what he told the police that morning were explainable, and in any event immaterial.[39]

20 In contrast, the DJ did not believe the Appellant's testimony and defence. The Appellant was an evasive witness and cast himself as the victim.

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34 Prosecution Exhibit P4, ROA at p 311.

35 ROA at p 34, ln 31–32.

36 Prosecution Exhibit P8, ROA at p 329.

37 GD at [64], ROA at p 290.

38 GD at [67]–[69], ROA at p 292–293.

39 GD at [72], ROA at p 294.

His defence at trial was materially inconsistent with his statement and the objective circumstances. He opportunistically capitalised on the Victim's death in the hope that he would not be identified, and in fact blamed the Victim for being the aggressive party.[40] His suggestion that the injuries by the Victim were due to a fall was incredulous. Moreover, there was no reason for finding that the Appellant had acted in self-defence, or in response to grave and sudden provocation. The charge against the Appellant was thus proven beyond reasonable doubt.

21 As for the sentence, the DJ accepted the Prosecution's position that the case fell within Band 1 of the framework in *Low Song Chye v Public Prosecutor* [2019] 5 SLR 526, albeit after an increase of the sentencing bands by a factor of 1.5 in view of amendments to the maximum prescribed imprisonment sentence for offences under s 323 of the Penal Code.[41] It was aggravating that this was an incident of road rage in which the Appellant had attacked a vulnerable part of the Victim's body (*i.e* his face), and that the assault was persistent.[42]

22 The DJ rejected the Defence's submission that the present case was akin to *Public Prosecutor v Oon Joo Seng* [2021] SGMC 23 ("Oon Joo Seng"), where a sentence of four weeks' imprisonment was imposed. The DJ found that the facts in *Oon Joon Seng* were less egregious than the present case, in terms of both the duration of the assault and the extent of injuries caused.[43] The DJ also considered the case of *Public Prosecutor v Shi Ka Yee* [2018] SGMC 21

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40 GD at [75]–[80], ROA at p 295–297.

41 GD at [92], ROA at p 301.

42 GD at [93]–[95], ROA at p 302.

43 GD at [97], ROA at p 303–304.

("Shi Ka Yi"). The accused in *Shi Ka Yi* had also claimed trial and cast spurious accusations against the victim when she had been the aggressor. She was sentenced to four weeks' imprisonment and disqualified from driving for six months for punching the victim once. A harsher sentence than four weeks' imprisonment was thus deserved given the more aggravated nature of assault by the Appellant.[44]

23 Finally, the DJ rejected the Defence's submissions that the Appellant's personal circumstances were exceptional enough to merit a lower sentence, and found that the potential loss of employment of the Appellant should not be a mitigating factor, per *M Raveendran v Public Prosecutor* [2021] SGHC 254 at [32]–[34] .[45]

The parties' arguments on appeal

24 The Appellant submits that the conviction should be set aside because it was not proven beyond reasonable doubt that he had caused hurt to the Victim.[46]

25 The Appellant repeats the same arguments that were canvassed below. Among the arguments that have been rehashed (inexplicably without reference to the DJ's Grounds of Decision) include:

(a) the Appellant has not been identified by either the CCTV footage, the Victim, or any of the witnesses as the assailant;[47]

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44 GD at [100], ROA at p 304–305.

45 GD at [103]–[104], ROA at p 305–307.

46 Appellant's Submissions ("AS") at para 4.

47 AS at paras 8 to 12.

(b) the Victim was in fact the aggressor who initiated the altercation and chased down the Appellant;[48]

(c) the Victim's injuries were exaggerated, and sustained when he fell down during the scuffle;[49]

(d) the admission of the Victim's statement was prejudicial to the Appellant as it was not tested through cross-examination;[50]

(e) the Appellant was acting in self-defence.[51]

26 As for the appeal against sentence, the Appellant submits that his sentence should be a high fine, or alternatively three weeks' imprisonment. He submits that a term of five weeks' imprisonment compares unfavourably with *Oon Joo Seng* and *Shi Ka Yee*. The Appellant also contends, contrary to his own submissions by the same set of counsel below, that the present case should not be considered one of road rage.[52]

27 The Respondent argues that the DJ rightly found that the Appellant and the Victim were the two drivers captured in the CCTV footage. This was evidenced by PW2 having knowledge of the Victim's address and the Appellant's licence plate number and being able to identify the Appellant in court. There were also striking similarities between the incident in the Appellant's statement and that captured in the footage.

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48 AS at para 83.

49 AS at para 5.

50 AS at para 63.

51 AS at paras 57 to 62.

52 AS at para 72(g).

28 The Respondent further argues that the DJ rightly identified the Appellant as the assailant, based on the order in which their cars pulled up, their attire, and the testimony of PW2. The Victim had no reason to lie in his statement, and the Appellant's defence was materially inconsistent with the objective evidence. The Respondent also submitted that it was clear that the Appellant had caused the Victim's injuries and had not been acting in self-defence.

29 The Respondent maintains that the sentence imposed by the DJ was not manifestly excessive after consideration of the Victim's injuries, the lack of provocation, and relevant precedents.

My decision on conviction

The appellant was captured in the CCTV footage

30 The Appellant's arguments disputing the DJ's finding of conviction lack merit and can be easily dealt with.

31 It is clear that the Appellant was one of the people in the CCTV footage. It is thus irrelevant that none of the witnesses personally observed the Appellant's assault. His own submissions assume as much in arguing that the Victim had attacked him. His own statements testify to the same. All other evidence pointed to the footage depicting the incident that occurred between the Appellant and the Victim – the timing of the footage, the oddly coincidental sequence of events captured, the licence plate number given by the Victim to PW2, and the testimony of PW2 and PW6.

The appellant was the aggressor depicted in the CCTV footage

32 It is also clear that the Appellant was the assailant depicted in the CCTV footage. It is thus irrelevant that the none of the witnesses personally observed the Appellant's assault. His actions were identifiable as those by the driver emerging from the car in front. His physical features corroborated the description of PW4 and PW6. His identity as the assailant is also supported by the circumstantial evidence. It was the Victim who had asked for the police to be called.[53] It was the Victim who had sought medical attention for his injuries, while the Appellant did not. It was the Victim who had initially stayed at the scene while the Appellant fled. As the DJ rightly noted, the Victim's pending criminal cases would have incentivised him *not* to do any of these things, and in fact add to the credibility of his statement.

33 Moreover, the Appellant admitted to punching the Victim in his own statement. The Appellant's explanation in court that he used the word "punch" to mean that he was "trying to block" the Victim was patently incredible.[54] So was much of his other evidence at trial, such as his refusal to acknowledge that he was one of the drivers captured in the CCTV footage.[55] In my judgment, there is no reason to disturb the DJ's finding that the Appellant was a conniving and deceitful witness.

34 Having established the Appellant's identity from the CCTV footage, it follows that the Appellant's alternative explanation for the Victim's injuries (*i.e* that he fell) should be rightly disbelieved. As a corollary, it is similarly

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53 ROA at p 32, ln 18–19.

54 ROA at p 234, ln 14–20.

55 ROA at p 207, ln 4–16.

unnecessary to consider the relative reliability of the Victim's statement given the weight of the other objective evidence against the Appellant.

The appellant was not acting in self-defence or private defence

35 I also do not accept the Appellant's argument that he acted in self-defence or was exercising the right of private defence. As a side note, such an argument does not even technically fall within the scope of the Appellant's own submissions. As mentioned earlier at [25], the Appellant's stated basis for setting aside his conviction is that it was not proven beyond reasonable doubt that he had *caused hurt* to the Victim. A defence of self-defence, or private defence, is commonly taxonomized in criminal legal theory as a defence of justification. This is because it involves an attempt to justify the act of what would otherwise be an offence. Raising the defence of self-defence is thus a distinct question that is antecedent to, and contingent on, a finding that the Appellant had in fact caused hurt to the Victim.

36 Notwithstanding this legal inaccuracy, I briefly explain why I reject this argument. There is no evidence that the Appellant was threatened by the Victim holding a "shiny object". The CCTV footage does not show either driver using an implement throughout the altercation. Neither did the Appellant offer any evidence of the "shiny object" that the Victim purportedly was holding. In fact, it was the Appellant who was seen in the footage about to arm himself with an item from the boot of his car to confront the Victim, before changing his mind.

37 Neither is there any evidence that the Victim had attacked the Appellant first. This was at odds with the CCTV footage, and with the Appellant's lack of medical treatment. The Appellant was not even able to give a coherent description of his own injuries in oral testimony without contradicting his own

statement.[56] The Appellant's own behaviour also indicated otherwise. Someone acting in self-defence would be most unlikely to flee from the scene of an assault without making a police report, as the Appellant did.

38 Notwithstanding that the Appellant appears to no longer pursue this argument on appeal, I also agree with the DJ that the Appellant did not cause hurt upon grave and sudden provocation. Even if the Victim had used vulgarities against the Appellant while walking towards him, such conduct arising in the course of the use of the roads would be insufficient to amount to provocation: *Public Prosecutor v Lim Yee Hua and another appeal* [2017] SGHC 308 ("Lim Yee Hua") at [29].

39 In view of the above, I find that the charge against the Appellant was proven beyond reasonable doubt by the Prosecution.

Decision on sentence

40 The Appellant acknowledged as much in his mitigation plea below that this was a case of road rage.[57] However, the Appellant confusingly argued in his written submissions that the incident "was not a road rage case" because the Victim was chasing after the Appellant, who had no choice but to confront him.[58] Counsel for the Appellant sensibly retracted this point in oral submissions.

41 In *Lim Yee Hua* at [21], Chan Seng Onn J defined road rage as follows:

> In my view, an incident of violence should be labelled as an episode of road rage violence only where the facts disclose

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56 ROA at 184, ln 20–21; Exhibit P8 at para 7, ROA at p 329.

57 ROA at p 250, ln 11.

58 AS at para 72(g).

> violence perpetrated by road users as a result of real or perceived slights by other road users stemming from differences that arise in the course of the shared use of our roads. The litmus test for whether the deterrent sentencing policy associated with road rage offences should apply for a particular offence of violence is thus whether the violence originates from differences arising through common road use. In other words, the harsh deterrent sanctions for road rage incidents only apply when road users engage in violence specifically over disputes that arise from the shared use of our roads. It follows that where incidents of violence happen to break out on the roads, but the cause of the violence has no nexus to the parties' shared use of the roads, the road rage deterrent sentencing policy should not apply.

42 It is clear that this was a case of road rage violence. The Appellant does not dispute that the context of the altercation between him and the Victim arose from his swerving of his car across lanes on the BKE. There was thus reason to conclude that the facts disclosed violence perpetrated by road users as a result of perceived slights by other road users stemming from differences that arise in the course of shared use of the roads. Even if the Victim had, as the Appellant claimed, walked towards him shouting vulgarities, this would not have justified the use of violence, nor changed the fact that the nexus of the violence was shared road use.

43 Having found that this was a road rage case, the Appellant's sentence should be calibrated not only in accordance with the usual considerations of harm and culpability under the framework in *Low Song Chye*, but also with due regard given to the deterrent sentencing policy underlying the sentencing of road rage offenders: *Lim Yee Hua* at [26].

44 The harm caused by the Appellant was low, but not insignificant. The contusions on the Victim's face show that a vulnerable part of his body had been targeted. This places the present case within Band 1. Three caveats are necessary to the indicative sentencing range of up to four weeks stated in *Low*

Song Chye at [77]. First, I agree with the DJ and the Prosecution that the upper end of the indicative imprisonment range should be extrapolated up by a factor of 1.5 from four to six weeks. This was to reflect the increase in the maximum prescribed sentence for a s 323 Penal Code offence from two to three years' imprisonment since that decision. Second, this indicative sentencing range applies to first-time offenders who pleaded guilty. Neither of these considerations applies to the Appellant. Third, if adjustments are necessary after assessment of the Appellant's culpability as well as all other relevant factors, this may take the eventual sentence out of the applicable indicative sentencing range: *Low Song Chye* at [78(b)].

45 The culpability of the Appellant was by no means low, given the persistence of the assault. The Appellant hit and kicked the Victim even after he fell to the ground and continued his assault despite the Victim's attempts to disengage. The whole sequence of the assault lasted more than 40 seconds, which I agree with the DJ is fairly lengthy by any reasonable standard. Throughout this time, there is no evidence that the Victim made any attempt to retaliate during the one-sided assault. This was less a fight between two drivers, and more a vicious assault on a hapless victim.

46 I do not accept the Appellant's submission that mitigating weight should be given because the Victim had contributed to the commission of the offence. The manner in which the dispute started was attributable to both parties. It is at best a neutral factor. Not only was the Appellant's bad driving a catalyst for the dispute, but the CCTV footage showed that the Victim had in fact stopped in front of the Appellant's car boot when approaching him. It was the Appellant who then chose to advance towards the Victim before the altercation turned physical. I thus do not see a reason to attribute any less aggressive behaviour to the Appellant when compared to the Victim. The Victim's actions of hitting and

kicking the Appellant's car are irrelevant to this determination, as they occurred *after* the assault in an attempt to stop the Appellant from fleeing the scene.

The appellant's fleeing from the scene

47 In my view, the DJ in fact erred in not sufficiently taking into account the post-offence conduct of the Appellant in fleeing the scene in his motor vehicle despite the Victim's protests and PW2's attempt to block his exit. I consider the present case much more aggravated than ordinary circumstances where offenders flee from the scene of a crime on foot. There are several reasons for this.

48 First, the use of a motor vehicle allows offenders to flee the scene of the crime much more quickly, increasing the likelihood of evading responding police officers. This diminishes the ability of the police to obtain contemporaneous evidence and statements. The effect such behaviour has in obstructing justice is apparent from the Appellant's own arguments on appeal. The Appellant contends that the Victim had not identified the Appellant as the one who assaulted him. This is precisely the problem. The most appropriate time for the Victim to have identified the Appellant would have been at the scene when the police arrived. He had no opportunity to do so because the Appellant had already fled the scene by that time.

49 Second, it is difficult (if not dangerous) for others to prevent a motor vehicle from leaving the scene of a crime. Indeed, the Victim and PW2 driver tried various means to stop the Appellant from fleeing but to no avail. PW2 also testified that he was afraid of trying to stop the Appellant because he was worried about the damage that the Appellant's motor vehicle would cause to his

taxi.[59] Such forms of escape are also particularly difficult for the police to stop, even if they were at the scene, without causing significant public disruption. This feeling of imperviousness is likely to embolden offenders to think they can flee the scene of an offence without consequences. There is thus public interest in deterring such attempted evasion of law enforcement.

50 Third, an offender who drives away from the scene of the offence is more likely to drive recklessly in an attempt to get away. This increases the risk of further accident.

51 Fourth, the tracking of offenders who flee on a motor vehicle is likely to require the use of significant police resources. In this case, it was fortunate that the Victim had the presence of mind to note the Appellant's motor vehicle licence plate number and inform PW2 of it. Had he not done so, a substantial amount of time would have to be spent on police investigations to ascertain the identity of the assailant.

52 The importance of these considerations is echoed in s 84(1) of the Road Traffic Act 1961 ("RTA"), which requires the driver of a motor vehicle to stop the vehicle after an accident resulting in damage or injury to any person, vehicle, or structure. While this legislation involves a separate category of offences (hit-and-run accidents) for which different considerations will apply, the underlying rationale of deterring drivers from fleeing the scene is apposite. In this vein, the Minister for Home Affairs observed during the Second Reading of the Road Traffic (Amendment) Act 1996 (Act 11 of 1996) that hit-and-run accidents were an urgent problem because, among other concerns, fleeing from the scene of the accident is an irresponsible act, and it is difficult to trace such culprits in such

[59] ROA at p 35, ln 28–31.

cases (see *Singapore Parliamentary Debates*, *Official Report* (27 February 1996) vol 65 at cols 718–719).

53 These concerns were raised in the context of escaping responsibility for accidents committed out of negligence or recklessness. I do not think they should apply with any less force to deliberate acts of violence by road users arising from shared use of the roads, who then escape in their motor vehicles leaving their victims behind.

54 However, I should emphasise that the act of driving away from the scene of the offence will not necessarily be an aggravating factor in every road-rage case. This is a case-specific determination. That having been said, I highlight three factors that are relevant in making this assessment.

55 The first is the severity of the victim's injuries and the likely availability of medical attention. The greater the victim's injuries, the more likely it is that fleeing the scene should be viewed as aggravating, especially if the offence is committed in a secluded location with little chance that the victim would receive prompt medical attention. Such considerations are reflected in sentences for offences under s 84(8) and 84(9) of the RTA, with enhanced penalties for drivers involved in accidents where death or serious injury is caused.

56 The second factor is the extent to which the offender's decision to flee was a deliberate attempt to evade enforcement, rather than merely motivated by fear or confusion: see for example *Public Prosecutor v Lee Meng Soon* [2007] 4 SLR(R) 240 at [39] in the context of s 84(3) of the RTA. An example of a circumstance from which the former may be inferred is where the offender insists on driving away despite protestations or physical restraint by bystanders.

Conversely, the latter may be inferred if an offender drives off to a police station, rental car company, or taxi company to make a report of the incident.

57 The third factor is the extent to which an enhanced sentence would be necessary to deter an offender from committing such an offence in future. This would more likely be the case where an offender has a history of irresponsible road usage or non-compliance with law enforcement, and less likely for first-time offenders.

58 In the present case, the second and third factors are engaged which point towards an uplift in the Appellant's sentence to take into account his fleeing from the scene. There is evidence to show that the Appellant intentionally fled the scene to avoid identification. Throughout the one-sided assault, the Appellant's behaviour was aggressive, until he took the opportunity to return to his car and drive off. There is no evidence that the Appellant acted in a state of fear or confusion. Moreover, the Appellant deliberately drove past PW2's taxi, which was positioned in an attempt to block him.

59 As for the third factor, I find that specific deterrence is a key consideration given the Appellant's past record. The Appellant has a long history of non-compliance with traffic regulations. In 2012, the Appellant had, without reasonable excuse, failed to provide his breath specimen under s 69(4) of the RTA, after he was detected smelling strongly of alcohol while driving. He acted aggressively and had to be subdued during arrest. Shortly after, he failed to provide his blood specimen under s 69(5) of the RTA by refusing to sign on the warning form. In addition, the accused has numerous compounded offences for speeding in 1999, 2000, 2001, 2006, 2010, and 2020, which are relevant factors in sentencing: *Teo Seng Tiong v Public Prosecutor* [2021] 2 SLR 642 at [103]. The Appellant also faces a further three charges under s 64(1),

s 84(1), and s 84(2) of the RTA, to which he intends to claim trial (although I do not give any weight to the presence of these charges).

60 It can be seen from these offences that they have one factor in common: being emboldened while behind the wheel of a motorised container of metal weighing more than a thousand kilograms. Specific deterrence is thus a foremost consideration in this case.

61 Indeed, specific deterrence is all the more necessary in light of the lack of remorse shown by the Appellant. Far from acknowledging his guilt after being caught by the CCTV footage, the Appellant has instead tried to paint the Victim as a liar. The Appellant fabricated a version of events where the Victim assaulted him instead. His portrayal of the Victim went against all the objective evidence and the independent testimony of eyewitnesses. In this regard, I note that the DJ was generous to the Appellant in that he decided that the "utterly shameless and deceitful manner in which the accused (the Appellant) had conducted his defence" should not be a distinct aggravating factor. Nevertheless, the DJ was of the view that the Appellant "was and continues to be devoid of remorse".[60] I agree. Such conduct does fortify my belief that he has shown no remorse, thereby necessitating a deterrent sentence.

62 For these reasons, I am of the view that the Appellant's act of fleeing the scene is an aggravating factor which warrants an uplift in the sentence imposed by the DJ.

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60 GD at [105], ROA p. 307.

Comparison with precedents

63 The factors I have mentioned also distinguish the present case from the cases of *Shi Ka Yee* and *Oon Joo Seng*, for which a sentence of four weeks' imprisonment was imposed in those cases. In *Shi Ka Yee*, while the harm caused was more severe, the nature of the Appellant's attacks was far more persistent. The same was true of *Oon Joo Seng*. Moreover, the accused in *Shi Ka Yee* was untraced, while the accused in *Oon Joo Seng* had unrelated and dated antecedents. In addition to his string of offences under the RTA, the Appellant was traced for a related offence of affray, albeit in 2004. In view of the Appellant's conviction and composition history, deterrence is a far more prominent sentencing consideration in the present case and an uplift from the four months is merited. I also consider that having regard to all the circumstances, the present case merits a higher sentence than those in *Public Prosecutor v Tan Zhenyang* [2018] SGHC 209 (5 weeks' imprisonment) and *Public Prosecutor v Fatahurhman bin Bakar* [2019] SGHC 232 (4 weeks' imprisonment), seeing as both accused persons were untraced, and there was no indication that they had intentionally fled the scene.

64 I agree with the DJ that there are no relevant mitigating factors. Neither does the Appellant raise any in his submissions on appeal.

65 In the circumstances, I find that the DJ did not give sufficient weight to the Appellant's fleeing from the scene, and to the Appellant's relevant antecedents. An uplift from the sentence of five weeks' imprisonment is thus necessary to take this into account. Having regard to all the circumstances of this case, a sentence of seven weeks' imprisonment is appropriate, and I so order.

Disqualification order

66 In addition to a term of imprisonment, I also consider whether an order of disqualification should be imposed. The power to do so stems from s 42 of the RTA, which provides that upon conviction for an offence under the RTA or any other written law, the court may impose a disqualification order if (i) at the time of the commission of the offence, the offender was the driver of a motor vehicle on a road, (ii) the person against whom the offence was committed was the driver of another vehicle on the road, (iii) the court is satisfied that the commission of the offence arose from a dispute between the offender and that other person over the use of the road, and (iv) having regard to the circumstances under which the offence was committed and the behaviour of the offender, the court is of the opinion that it is undesirable for the offender to continue to be allowed to drive a motor vehicle.

67 The first three requirements are not in issue. Having regard to the Appellant's behaviour post-offence and his chequered history of non-compliance with traffic regulations, it is undesirable for the Appellant to continue to be allowed to drive a motor vehicle indefinitely. As explained above, both general and specific deterrence are predominant sentencing considerations. Having regard to all the circumstances of the case, I am of the view that a disqualification order of nine months is appropriate.

68 I am cognisant that the Appellant is awaiting trial on other driving-related offences. While these may result in further disqualification orders if he is convicted, I do not see that as a basis not to impose a disqualification order based on the facts and circumstances of this case.

69 Finally, I take the opportunity to reiterate the position of this court in *Goh Ngak Eng v Public Prosecutor* [2022] SGHC 254 at [131] that accused persons who contemplate filing appeals against their sentences should bear in mind that the court will consider enhancing sentence(s) in cases of plainly unmeritorious appeals, even in the absence of a cross-appeal by the Prosecution.

Conclusion

70 I thus dismiss the appeal against conviction and sentence. I set aside the sentence of five weeks' imprisonment and impose a sentence of seven weeks' imprisonment. I further order that the Appellant be disqualified from holding a driving licence for a period of nine months to take effect from the date of his release from prison.

Vincent Hoong
Judge of the High Court

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Tin Shu Min (Attorney-General's Chambers) for the respondent.