

JS Metal Pte Ltd v Public Prosecutor
[2011] SGHC 174

Case Number : Magistrate's Appeal No 425 of 2010
Decision Date : 21 July 2011
Tribunal/Court : High Court
Coram : Chan Sek Keong CJ
Counsel Name(s) : Wee Pan Lee (Wee Tay & Lim LLP) for the appellant; Christine Sekhon (Liberty Law Practice LLP) (on a fiat from the Public Prosecutor) for the respondent.
Parties : JS Metal Pte Ltd — Public Prosecutor

CRIMINAL LAW – Statutory Offences – Gas Act

CRIMINAL PROCEDURE AND SENTENCING – Sentencing – Principles

21 July 2011

Judgment reserved.

Chan Sek Keong CJ:

Introduction

1 This appeal concerns two charges brought against the appellant, JS Metal Pte Ltd (“JS”), under the Gas Act (Cap 116A, 2002 Rev Ed), namely:

(a) one charge under s 32A(2) of damaging, in the course of carrying out earthworks between Block 319C and Block 320B Sengkang East Way, a gas pipe in a gas pipeline network owned by a gas transporter (*viz*, SP PowerAssets Ltd); and

(b) one charge under s 32(3)(a) of carrying out earthworks within the vicinity of the aforesaid gas pipe (“the Gas Pipe”) without complying with all reasonable requirements of the gas transporter for the prevention of damage to the Gas Pipe.

The offence under s 32A(2) of the Gas Act (the “s 32A(2) offence”) is punishable with a fine not exceeding \$1m or imprisonment for a term not exceeding five years or both (see s 32A(2)), while the offence of contravening s 32(3)(a) of the Gas Act (the “s 32(3)(a) offence”) is punishable with a fine not exceeding \$100,000 or imprisonment for a term not exceeding five years or both (see s 32(7)).

2 At the first hearing in the District Court on 15 October 2010, JS, through its representative (one Mr Chen Hongtu), pleaded guilty to both of the charges brought against it. The District Judge hearing the case (“the DJ”) accordingly recorded a verdict of guilty for both charges. Counsel for JS then tendered a written mitigation plea for sentencing purposes. Counsel for the Prosecution, who was acting on a fiat from the Public Prosecutor, made no submission on sentence. The DJ adjourned the case to 29 October 2010 for further mention.

3 The case came before another District Judge on 29 October 2010 and was adjourned to 12 November 2010, when the DJ imposed a fine of \$100,000 (with a warrant to levy to be issued in default of payment) for the s 32A(2) offence and a fine of \$10,000 (likewise with a warrant to levy to be issued in default of payment) for the s 32(3)(a) offence. In his minute sheet for that hearing (*ie*,

the hearing on 12 November 2010), the DJ did not record any reasons for his decision on sentence. JS appealed against both of the sentences imposed. The DJ then provided his written grounds of decision (*viz*, *Public Prosecutor v J S Metal Pte Ltd* [2010] SGDC 541 ("the GD")).

4 The sole issue in the present appeal is whether the sentences imposed on JS are manifestly excessive. Notably, there are no sentencing precedents for the two offences committed by JS. However, after the DJ pronounced his decision on sentence on 12 November 2010, three subsequent cases involving (*inter alia*) the s 32A(2) offence were dealt with by the District Court. In each of those cases, the offender concerned was likewise fined \$100,000 for that offence. As those three subsequent cases are clearly not sentencing precedents, I will disregard them in deciding this appeal.

5 In order to determine whether the sentences imposed by the DJ are manifestly excessive, I will first review the facts of this case, and then consider the nature and the gravity of the offences committed by JS against the backdrop of Parliament's intention in prescribing a range of punishments (as set out at [\[1\]](#) above) for the s 32A(2) offence and the s 32(3)(a) offence.

Background facts

6 JS was the main contractor for a project commissioned by Ang Mo Kio-Yio Chu Kang Town Council for the construction of a covered linkway for Sengkang West Division. The contract was a relatively small one: its value was \$182,500, and JS's expected gross profit margin was between 10% and 12%.

7 According to the statement of facts admitted to by JS at the hearing on 15 October 2010 ("the Statement of Facts"), on 13 February 2009, JS, as required under s 32(1)(a) of the Gas Act, submitted a Notice of Commencement of Earthworks to SP PowerGrid Ltd ("SPPG"), which manages Singapore's electricity and gas transmission and distribution networks (SPPG is the management company of SP PowerAssets Ltd). In response, SPPG sent a letter dated 13 February 2009 stipulating several requirements to be complied with by JS in carrying out the earthworks so as to prevent damage to any gas pipe in the vicinity of the work site ("the Work Site"). One of these requirements was that JS was to ascertain the location of any low-pressure gas pipe at the Work Site by digging trial holes *manually* (referred to hereafter as "the manual digging requirement" for convenience). In this regard, SPPG stated: [\[note: 1\]](#)

The gas plans [provided by SPPG] indicate [the] approximate location of the low pressure gas pipes. Exact location of the low pressure gas pipe[s] shall be determined by means of trial holes. Trial holes shall be carried out manually. Mechanical equipment shall NOT be used in digging of trial holes except for the initial breaking of the road surface. [emphasis in original]

It should be noted that the earthworks were not required to be supervised by either SPPG or an approved supervisor.

8 JS subcontracted the preliminary work of detecting underground services at the Work Site, such as telecommunication cables, electricity cables, gas pipes, water pipes and sewer pipes, to a company called Dynamach. In order to conduct the underground detection exercise, Dynamach obtained gas plans from SPPG ("the Gas Plans"), which gave the approximate locations of the gas pipes at the Work Site. Dynamach then drew a to-scale drawing which plotted the predicted path of (*inter alia*) the Gas Pipe (*ie*, where it entered and where it exited the Work Site) by overlaying the Gas Plans onto that drawing ("the Dynamach drawing"). Dynamach carried out this exercise because low-pressure gas pipes are made of polyvinyl chloride (PVC) and are therefore undetectable by cable detection equipment (such equipment can only detect metallic objects). The Dynamach drawing also

included the locations of other cables and pipes at the Work Site.

9 Under the contract for the construction of the covered linkway, JS had to construct six footings for the linkway. This made it necessary for JS to dig trial holes at the Work Site to determine the exact location and direction of the Gas Pipe. To this end, JS dug several trial holes within the Work Site. At theseventh trial hole, it was determined that the Gas Pipe would exit the Work Site at the northern part. Up to that point, the path of the Gas Pipe conformed to the predicted path indicated on the Gas Plans. As JS was not allowed to dig trial holes outside the Work Site, it could only rely on the Gas Plans to project the path of the Gas Pipe. The predicted path of the Gas Pipe showed that the pipe, after exiting the Work Site at the seventh trial hole, would veer slightly to the right. There was no indication that the Gas Pipe would re-enter the Work Site again somewhere to the south.

10 As it turned out, very unfortunately for JS, the Gas Pipe turned sharply eastward after exiting the Work Site at the seventh trial hole and entered the Work Site again at the area where the damage to the Gas Pipe occurred. At the material time, JS's workers ("R" and "N") were digging the eighth trial hole at that area to construct the last footing for the covered linkway. JS had given R and N permission to use a mechanical clawed-bucket to dig the eighth trial hole based on the indication from the Dynamach drawing that there was no gas pipe under the ground at that area. In this regard, counsel for JS emphasised that JS had relied on the Dynamach drawing, which had, up to that point, correctly projected the path of the Gas Pipe. However, it is necessary to add that whatever JS might have thought, it could and should have dug theeighth trial hole manually as required by SPPG.

11 According to the Statement of Facts, when R had excavated a pit approximately 1m deep at the eighth trial hole, N saw an orange slab within the pit. Suspecting that a gas pipe might have been damaged, N told R to stop the excavation immediately. R stopped work and reported the matter to his supervisor. SPPG's emergency response standby officer was then activated by its customer service centre to attend to the matter. It was later confirmed that the Gas Pipe (described in the Statement of Facts as "a 63 mm, Low Pressure A, Polyethylene gas pipe [located] at a depth of 1 metre") [\[note: 21\]](#) had been damaged. According to the Statement of Facts, the Gas Pipe was part of the gas distribution network between the regulator at the junction of Anchorvale Link and Anchorvale Drive and the gas service isolation valve at Block 320B Anchorvale Link, which served residents of nearby flats.

12 It was evident from the Statement of Facts that the damage to the Gas Pipe was relatively minor. It did not cause any interruption of gas supply to the residential flats in the vicinity, and the cost of repairing the damage, which was paid for by JS, came up to only \$968. It was not disputed that the Gas Pipe was not severed. Indeed, the photographs produced to this court of the Gas Pipe after it was damaged showed that the Gas Pipe was only very slightly bent and was temporarily repaired by what appeared to be masking tape.

The DJ's reasons for his decision on sentence

13 As mentioned earlier (at [\[3\]](#) above), the DJ imposed fines of \$10,000 and \$100,000 for, respectively, the s 32(3)(a) offence and the s 32A(2) offence (in both instances, with a warrant to levy to be issued in default of payment).

14 The DJ gave the following reasons for his decision (see [\[16\]](#)–[\[24\]](#) of the GD):

... Sentence for the offence in EMA 2/10 [ie, the s 32(3)(a) offence]

16. Firstly, it would be useful to understand the purpose of section 32 of the Gas Act ... The statutory predecessor of section 32 of the Gas Act ... is section 96A of the Public Utilities Act (Cap 261, 1996 Rev Ed). [It should be noted that the DJ referred to the wrong statutory provision in this regard. He should have cited s 96A of the Public Utilities Act (Cap 261, 1990 Rev Ed) instead as that was the provision which was the subject matter of the ministerial speech which he proceeded to quote from in the next sentence. Besides, there is *no* s 96A in the Public Utilities Act (Cap 261, 1996 Rev Ed) ("the 1996 Public Utilities Act").] During the Second Reading of the Public Utilities (Amendment) Bill [*ie*, the Public Utilities (Amendment) Bill 1991 (Bill 20 of 1991)], the then Minister for Trade and Industry, BG Lee Hsien Loong, had this to say on the proposed section 96A (Singapore Parliamentary Debates (29 Jul 1991) vol 58 at column 283):

"To curb the damage of water and gas pipes by contractors, a new section 96A makes it compulsory for contractors to determine the location of water and gas pipes before carrying out earthworks. At present, there is no requirement for contractors to determine the presence of such pipes before they start work. In 1990, there were 289 cases of damage to water pipes by errant contractors, and 102 cases of damage to gas pipes. *The cost of such damage is considerable, especially if we take into consideration the consequent disruption to supply.*"

17. The gravity with which Parliament viewed the various offences under section 32 [of the Gas Act] is reflected by the punishment prescribed for them [*ie*, a fine not exceeding \$100,000 or imprisonment for a term not exceeding five years or both] ... It is also trite that in assessing the appropriate sentence, I must take note of the maximum penalty, and for the purposes of the present charge [*ie*, the charge under s 32(3)(a) of the Gas Act], the maximum fine is \$100,000/-. I then must apply my mind to determine where the conduct of JS ... falls within the spectrum of punishment devised by Parliament. I must bear in mind that the sentence ha[s] to be proportionate not only in relation to culpability but also in the context of the legislative scheme.

18. It is not disputed that the excavation work for the last linkway footing between [B]locks 319C and 320B, Sengkang East Way on 1 Apr 2009 falls within the definition of "earthworks" in the Gas Act. It is not disputed that the said earthwork[s] had damaged a 63 mm, low pressure A Polyethylene gas pipe at a depth of one metre. It is not disputed that in permitting the carrying out of the earthwork[s], JS had failed to comply with the [manual digging] requirement ...

19. In my opinion, this case did not fall into the category of the worst type of cases falling within the prohibition set out in section 32(3)(a) of the Gas Act. *There is no allegation that JS had deliberately flouted the requirement. In fact, at its highest, the non-compliance was due to negligence.* However, I cannot ignore the fact that there was a marked absence of diligence in the manner [in which] the earthwork[s] had been carried out. The pipes could not be detected by using cable detection devices because they were made of PVC. As such, JS had to predict the path of the gas pipes by overlaying the [G]as [P]lans onto the construction drawings [*ie*, the Dynamach drawing]. As JS had been expressly warned that the [G]as [P]lans only indicated the approximate locations of the pipes, it was imperative that their exact locations be obtained through digging trial holes manually. This was to ensure that extreme care and caution could be exercised during the digging process in order to avoid damaging the gas pipes. Unfortunately this was not done.

20. Therefore, I could not agree that a nominal fine would be appropriate having regard to the degree of [JS]'s culpability. Also, imposition of a nominal fine would have merely papered over the statutory scheme of punishment that Parliament has designed. As such, I imposed a fine of

\$10,000/-.

... Sentence for the offence in EMA 1/10 [ie, the s 32A(2) offence]

21. Firstly, I will deal with [JS]'s submission ... with regard to drawing an analogy with the Electricity Act [(Cap 89A, 2002 Rev Ed)]. The Electricity Act makes a distinction between damage caused to a low-voltage cable and damage caused to a high-voltage cable. That this was the express intention of Parliament could be seen from the speech of the then Minister for Trade and Industry, BG George Yeo, during the Second Reading of the Public Utilities (Amendment) Bill [ie, the Public Utilities (Amendment) Bill 1999 (Bill 29 of 1999) ("the Public Utilities (Amendment) Bill 1999")], which was the predecessor to the Electricity Act. [To be more precise, the Public Utilities (Amendment) Bill 1999 led to, *inter alia*, changes to s 95(1) and s 107(3) of the 1996 Public Utilities Act, as well as the addition of a new section (*viz*, s 95A) to that Act. It was the amended s 95(1) and s 107(3) of the 1996 Public Utilities Act, together with the new s 95A, which were collectively the predecessors of what are now s 79, s 80 and s 85 of the Electricity Act.] The Minister said:

"To minimise damage to high-voltage cables in the course of construction work, section 95 of the Act [ie, the 1996 Public Utilities Act] will be amended to differentiate the requirements for earthworks in the vicinity of low-voltage electricity cables from those in the vicinity of high-voltage electricity cables.

A new section 95A is proposed to require PowerGrid Ltd, which is the owner of high-voltage electricity cables, and contractors to work together to prevent damage to cables. This new section will regulate earthworks and cable detection works within the vicinity of any high-voltage electricity cable which belongs to or which is under the management or control of a public electricity licensee. Offenders face a fine not exceeding \$100,000, or ... imprisonment for a term not exceeding five years, or both fine and imprisonment, if they do not follow the legislated procedures.

The serious consequence to the economy as a result of damage to high-voltage cables makes a severe penalty necessary. A deterrent penalty of \$1 million is therefore proposed for damage to a high-voltage cable. Section 107(3) [of the 1996 Public Utilities Act] will be amended to enhance the current fine of \$200,000 to \$1 million. The enhanced fine is the same as that provided under [s 85(2) of] the Telecommunications Authority of Singapore Act [(Cap 323, 1993 Rev Ed) as amended by s 18(b) of the Telecommunication Authority of Singapore (Amendment) Act 1998 (Act 15 of 1998)] for damaging telephone cables. At the present level of penalty, some contractors are tempted to risk hitting a cable rather than suffer project delay and payment of liquidated damages. A fine of \$1 million will deter such behaviour."

[Emphasise [sic] mine]

(Singapore Parliamentary Debates (18 Aug 1999) vol 70 at column 2161)

22. Parliament had deliberately made a distinction between high-voltage cables and low-voltage cables. It had enhanced the fine in section 107(3) [of the 1996 Public Utilities Act,] which was the predecessor [albeit in the context of damage to high-voltage electricity cables, as opposed to damage to gas pipes] of section 32A(2) [of the Gas Act,] from \$200,000 to \$1 million. This was to remove any incentive in running the risk of damaging a high-voltage cable. In the Gas Act, there is no distinction made between a high pressure gas pipe and a low pressure gas pipe.

There is also nothing in the Parliamentary Debates that showed an intention to differentiate between the two. In the absence of such an intention, we would have to conclude that Parliament had intended that section 32A(2) of the Gas Act is applicable to both low pressure and high pressure gas pipes. On these bases, I would not be able to agree with [JS]'s submission that a ceiling of \$10,000 should be placed for damage to a low pressure gas pipe and that the \$1 million ceiling should only be applicable for damage to a high pressure gas pipe. This is certainly not what Parliament had intended.

23. *Lastly, there is also no evidence to [support] [JS]'s contention that damage to a high pressure gas pipe is more serious and would lead to more dire consequences than damage to a low pressure gas pipe.*

24. On that note, I then determined the appropriate sentence. The fact that the maximum fine prescribed for an offence under section 32A(2) is \$1 million showed the gravity with which Parliament intended the offence to be viewed. *This severe penalty is necessary because, as far as Parliament is concerned, damage to any gas pipe – whether high pressure or low pressure – would have serious consequences.* I must take note of this maximum penalty and then I must apply my mind to determine where JS's conduct fall[s] within this legislative scheme of punishment. Applying these considerations, and having regard to the discussion in [19] above, and the fact that no disruption in supply of gas was occasioned and that JS had paid the repair cost of \$968, I was of the opinion that this case did not fall into one of the worst type[s] of case that warranted a high fine. At the same time a nominal fine as suggested by [counsel for JS] would not be appropriate. As such, I imposed a fine of \$100,000.

[emphasis in bold in original; emphasis added in italics]

15 It can be seen from [17] of the GD that the DJ, in imposing a fine of \$10,000 for the s 32(3)(a) offence, regarded the prescribed maximum fine of \$100,000 under s 32(7) of the Gas Act as indicative of the gravity with which Parliament viewed the various offences under s 32 of the Gas Act. He also found that there was no allegation that JS had deliberately flouted the manual digging requirement, and that JS's non-compliance with that requirement amounted, at its highest, to negligence or lack of diligence on JS's part (see [19] of the GD).

16 With regard to the s 32A(2) offence, the DJ held that because the maximum fine prescribed for that offence was \$1m, and because Parliament had not made any distinction between damaging a low-pressure gas pipe and damaging a high-pressure gas pipe, Parliament took the view that damaging either type of gas pipe "would have serious consequences" (see [24] of the GD). For this reason, the DJ imposed a fine of \$100,000, notwithstanding the fact that the damage to the Gas Pipe was relatively minor as it cost only \$968 to repair and did not result in any interruption of gas supply to consumers.

17 The fines imposed by the DJ work out to 10% of the maximum fines for the respective offences under the Gas Act. In my view, although the s 32(3)(a) offence committed by JS was of a relatively minor nature (in that JS breached the manual digging requirement in respect of only one of the trial holes dug at the Work Site), the fine of \$10,000 for that offence is defensible as a deterrent punishment for contractors who fail to comply with SPPG's directions while carrying out earthworks in the vicinity of any gas plant or gas pipe. In contrast, it seems to me that the fine of \$100,000 for JS's s 32A(2) offence is, even on a deterrent basis, staggeringly punitive in absolute terms, given the very slight damage to the Gas Pipe. Furthermore, as the DJ himself found, JS had merely been negligent, and not deliberate or reckless, in causing damage to the Gas Pipe.

The decision of this court

Whether the \$100,000 fine for the s 32A(2) offence is manifestly excessive

Assessment of the DJ's approach

18 Leaving aside for the moment the sentence imposed by the DJ for the s 32(3)(a) offence committed by JS, I will first deal with the \$100,000 fine imposed for JS's s 32A(2) offence. In my view, the DJ's approach to sentencing is, with respect, wholly unsustainable: it is mechanical, and is also based on a misunderstanding of the relevant legislative materials. The DJ's premise that Parliament is of the view that "damage to *any* gas pipe – *whether high pressure or low pressure* – would have serious consequences" [emphasis added] (see [24] of the GD) is clearly wrong. It is not supported by any ministerial speech and is contrary to the structure of the prescribed punishments in s 32A(2), which range from (*inter alia*) a fine of a nominal sum (*eg*, \$1) to a maximum fine of \$1m. This structure is inconsistent with the DJ's approach, which rests on the basis that *every* s 32A(2) offence *must* be punished with a substantial fine (or even a custodial sentence) to deter contractors from damaging any gas pipe or gas plant in the course of carrying out earthworks, whatever the actual damage caused in the particular case at hand might be.

19 In my view, this approach is not justified for several reasons. Firstly, s 32A(2) of the Gas Act penalises earthworks that may cause different kinds and/or different degrees of damage to gas plants and gas pipes, ranging from damage which can lead to serious social or economic losses (*eg*, destruction of a gas plant, leading to widespread power outage across the country) to, at the other end of the spectrum, damage which may merely inconvenience gas consumers (*eg*, temporary disruption of gas supply) and/or SPPG (in terms of having to repair the damage, as in the present case). A deterrent punishment is justifiable if the damage in a particular case causes serious or "catastrophic consequences to human lives, property and our economy" (*per* Mr S Iswaran, Minister of State for Trade and Industry, at the second reading of the Gas (Amendment) Bill 2007 (Bill 18 of 2007) ("the Gas (Amendment) Bill 2007") (see *Singapore Parliamentary Debates, Official Report* (21 May 2007) vol 83 ("*Singapore Parliamentary Debates* (vol 83)") at col 755)), but not in a case where the punishment would be wholly disproportionate to the actual damage caused. It is difficult to contemplate that Parliament intended that a contractor should be punished with a deterrent fine of \$1m in the worst case of causing damage to a *low*-pressure gas pipe when that same amount is also the maximum fine for causing damage to a *high*-pressure gas pipe.

20 Secondly, the DJ acknowledged that neither the s 32A(2) offence nor the s 32(3)(a) offence committed by JS fell within "the worst type of case that warranted a high fine" (see [24] of the GD; see also [19] thereof). He thus imposed fines that were equivalent to 10% of the maximum fines prescribed for these two offences. Whilst a fine of 10% of the maximum fine which may be imposed for an offence may not, at first blush, seem excessive, this punishment takes on a completely different complexion when it is translated into JS having to pay a fine of \$100,000 (*vis-à-vis* the s 32A(2) offence) for doing nothing more than damaging a low-pressure gas pipe, which damage: (a) was not caused deliberately or recklessly; (b) cost only \$968 to repair; and (c) did not result in any interruption of gas supply to consumers. In my view, the DJ failed to appreciate that the prescribed maximum punishment for the s 32A(2) offence (*ie*, a fine of \$1m coupled with five years' imprisonment) is intended to deter offenders from causing, in the course of carrying out earthworks, damage to gas pipes or gas plants which may lead to serious economic losses due to widespread disruption of power supply, and/or which may lead to injury to persons or loss of life and property due to explosions or fires resulting from the ignition of leaking gas.

21 The DJ's mechanical and technical approach to sentencing is also evident from his rejection of the argument by JS's counsel that the court should evaluate the gravity of the s 32A(2) offence

committed by JS and impose an appropriate punishment by reference to the analogous offence under the Electricity Act (Cap 89A, 2002 Rev Ed) of damaging an electricity cable (see [21]–[22] of the GD). The DJ rejected that argument on the ground that the Electricity Act expressly prescribed a lower maximum fine for damaging a low-voltage electricity cable than that for damaging a high-voltage electricity cable (*viz*, a maximum fine of \$10,000 as compared to a maximum fine of \$1m (see, respectively, s 85(1) and s 85(2) of the Electricity Act)), whereas the Gas Act made no such express distinction. This fact also appeared to have led the DJ into mistakenly finding that Parliament intended, via s 32A(2) of the Gas Act, to punish offenders severely for damaging *any* kind of gas pipe while carrying out earthworks. In fact, as will be seen from the relevant parliamentary materials (at [28]–[29] below), that was not Parliament’s intention at all.

22 During the hearing of this appeal, counsel for the respondent was asked about the potential dangers or consequences which could have resulted from the kind of damage that was caused to the Gas Pipe so as to warrant the fine of \$100,000 imposed by the DJ for the s 32A(2) offence. Her response was that Parliament intended that a deterrent sentence should be imposed for all s 32A(2) offences, irrespective of the actual damage caused. In my view, this proposition finds no support from either the ministerial speech at the second reading of the Gas (Amendment) Bill 2007 (*viz*, the Bill introducing, *inter alia*, the provision which is now s 32A(2) of the Gas Act) or s 32A(2) itself. Furthermore, Parliament’s omission to expressly distinguish between damage to a low-pressure gas pipe and damage to a high-pressure gas pipe (unlike the distinction drawn in ss 85(1) and 85(2) of the Electricity Act between damage to a low-voltage electricity cable and damage to a high-voltage electricity cable) is not an indication to the court that it should treat any damage to a low-pressure gas pipe as being equivalent to damage to a high-pressure gas pipe, such that the worst-case scenario apropos damage to a low-pressure gas pipe would invariably warrant the imposition of the maximum fine of \$1m. It is a well-established principle of statutory construction that where Parliament has not prescribed a mandatory punishment for an offence but has merely prescribed a *range of punishments* for that offence, the court has full power and discretion to calibrate the punishment to fit the crime. In the present case, if Parliament had intended that *any* s 32A(2) offence, whatever its nature or consequence might be, must be punished with a fine of at least \$100,000, it would have provided for a minimum mandatory sentence, just as it has done with respect to many other offences.

The difference in consequences between damaging a high-pressure gas pipe and damaging a low-pressure gas pipe

23 At the request of this court for information on “[t]he difference between [damage to] high pressure and low pressure gas pipes in terms of potential damage to the economy”, [note: 3] counsel for the respondent stated that damage to a high-pressure gas pipe would have a much bigger impact (as compared to damage to a low-pressure gas pipe) in terms of potential detriment to the economy. According to counsel, this is because damage to a high-pressure gas pipe will cause a supply interruption that affects a wider area and a larger number of customers, given that high-pressure gas pipes form the “trunk mains” [note: 4] that supply gas to low-pressure gas pipes. Notably, power generation plants, which are served by high-pressure gas pipes, will be affected if these gas pipes are damaged, and electricity outage may result in various parts of Singapore. In contrast, when a low-pressure gas pipe is damaged, the affected customers are usually concentrated at specific locations in the vicinity of the damaged gas pipe. Supply interruption may also occur, but at a lower magnitude than that in the case of damage to a high-pressure gas pipe. Unlike the situation when a high-pressure gas pipe is damaged (as just mentioned, such damage will affect gas supply to low-pressure gas pipes), when a low-pressure gas pipe is damaged, gas supply to high-pressure gas pipes will not be affected. A point to note here is that low-pressure gas pipes supply gas to not only domestic customers, but also commercial customers (such as hospitals, the airport, the integrated resorts, food

courts and coffee shops) as well as industrial customers (such as factories).

24 Counsel for the respondent highlighted that the scale of the impact which damage to a gas pipe might have would ultimately depend on the location of the gas pipe in question and the number of gas consumers in the area affected by the damage. For instance, damage to a low-pressure gas pipe serving the airport or the integrated resorts will have a greater impact than damage to a gas pipe serving a residential estate. Gas leakage will also occur when a gas pipe is damaged, which, in turn, may lead to a fire or an explosion. This risk is present regardless of whether the damaged gas pipe is a low-pressure or a high-pressure one. The difference would only be in terms of the scale of the hazard, with damage to a high-pressure gas pipe presenting a much greater risk to life and property.

25 Counsel for the respondent also informed the court that the gas supply grid in Singapore is designed and built with interconnecting networks, such that "customers are supplied [with] gas from 'ring' networks which provide alternative supplies in events such as damage, unless the damage is at [the] point of the solitary feed pipe going into the customer's premises". [\[note: 5\]](#) Hence, when asked by the court about the number of customers that would have been affected by the loss of gas supply in the present case if there had been an interruption of gas supply (as mentioned at, *inter alia*, [\[12\]](#) above, there was in fact no interruption of gas supply in this case), counsel for the respondent stated that it was not possible to link the damage to the Gas Pipe to the number of customers that would have been affected, given the alternate feeds put in place by the interconnecting networks in our gas supply grid. However, counsel also pointed out that in the event of damage to a gas pipe, manpower would need to be deployed to shut and to turn on segments of the gas pipeline network to provide gas supply via alternative feeds. In this regard, if a bypass of the damaged pipe were required, additional temporary pipes would have to be laid, and the lead time needed to do so would depend on the scale of the bypass.

26 The above information shows that damage to a low-pressure gas pipe may inconvenience SPPG more than consumers (especially domestic consumers, as in the present case), in that SPPG will have to deploy manpower to carry out the necessary work to ensure that gas is supplied via alternate feeds to affected consumers. Damage to a low-pressure gas pipe may, of course, have more serious consequences in the *specific instance* where the damage is at the point of the solitary feed pipe entering an affected customer's premises. But, this was not the case here, as can be seen from the fact that the damage to the Gas Pipe did not cause any interruption of gas supply. Given these considerations, it is necessary to examine whether there are any other factors (apart from those outlined at [\[22\]](#)–[\[25\]](#) above) that can justify the fine of \$100,000 imposed by the DJ for the s 32A(2) offence. To this end, I now turn my attention to the legislative intention behind s 32A and also s 32 of the Gas Act.

The legislative intention behind sections 32 and 32A of the Gas Act

(1) The Gas (Amendment) Act 2007 (Act 24 of 2007)

27 Sections 32 and 32A of the Gas Act were enacted by s 14 of the Gas (Amendment) Act 2007 (Act 24 of 2007) ("the Gas (Amendment) Act 2007"), and came into force on 14 February 2008. They were not the primary focus of the Gas (Amendment) Act 2007, which was intended to restructure the gas industry in Singapore "by separating the contestable sectors of the gas industry from the ownership of the gas transportation business" (see *Singapore Parliamentary Debates* (vol 83) at col 749). In connection with this restructuring, new provisions were also enacted to safeguard our critical gas infrastructure because (see *Singapore Parliamentary Debates* (vol 83) at col 755):

The gas pipeline network is the only means by which gas is transported to key end users, like the

power generation companies and pharmaceutical companies. Any failure of the gas pipeline network, therefore, will have an adverse impact on our economy. ...

28 In relation to the problem of damage to gas pipes and gas plants and the necessary steps to be taken to prevent such damage, the Minister of State for Trade and Industry said at the second reading of the Gas (Amendment) Bill 2007 (*viz*, the Bill which was later enacted as the Gas (Amendment) Act 2007) (see *Singapore Parliamentary Debates* (vol 83) at cols 755–756):

Prevention of damages [sic] to gas pipes

... [T]urning to the provisions on the prevention of damage to our gas pipes and gas plants, such damage can have catastrophic consequences to human lives, property and our economy. Clause 14 of the Bill strengthens the protection of the gas pipes and gas plants by specifying the precautions to be taken before and during excavation works by persons involved in the works, providing for additional offences when damage is caused and increasing the penalties for existing offences.

Enhanced penalties

Amendments have also been proposed to strengthen the penalty framework in the Gas Act for effective regulation of the gas industry. Penalties have been introduced for the new provisions in the Bill. *Existing penalties in relation to offences such as carrying out licensable activities without a licence, and causing damage to gas pipes, have been increased to reflect the severity of such offences.*

[emphasis added]

29 As can be seen from the above passages, when the Minister of State for Trade and Industry referred to “the severity of such offences” (see *Singapore Parliamentary Debates* (vol 83) at col 756), he was referring to offences causing damage which “[could] have catastrophic consequences to human lives, property and our economy” (see *Singapore Parliamentary Debates* (vol 83) at col 755), and not just offences causing any kind of damage.

30 Sections 32 and 32A of the Gas Act provide as follows:

Carrying out of earthworks within vicinity of gas plant or gas pipe

32.—(1) Subject to this section, no person other than a gas transporter shall commence or carry out, or cause or permit the commencement or carrying out of, any earthworks within the vicinity of any gas plant or gas pipe in a gas pipeline network owned by, or under the management or control of, the gas transporter unless the person —

(a) has given to the gas transporter not less than 7 days’ notice in writing of the date on which it is proposed to commence the earthworks;

(b) has obtained from the gas transporter the necessary information on the location of the gas plant or gas pipe; and

(c) has consulted the gas transporter on the steps to be taken to prevent the gas plant or gas pipe from being damaged while the earthworks are being carried out.

(2) The Authority [*ie*, the Energy Market Authority of Singapore] may, if it thinks fit in any

particular case, modify the period for which a notice under subsection (1)(a) is to be given to a gas transporter.

(3) It shall be the duty of the person who commences or carries out, or causes or permits the commencement or carrying out of, any earthworks referred to in subsection (1) —

(a) to comply with all reasonable requirements of the gas transporter for the prevention of damage to the gas plant or gas pipe;

(b) to ensure that reasonable precautions are taken when such earthworks are being carried out to prevent any damage to the gas plant or gas pipe; and

(c) to allow the gas transporter reasonable access to the work site for the purpose of inspecting or taking any necessary measures to protect the gas plant or gas pipe.

(4) It shall be the duty of the gas transporter to whom a notice under subsection (1)(a) has been given —

(a) to promptly inform the person giving the notice of the location of the gas plant or gas pipe, and to provide the person with such other information as may be necessary to enable him to ascertain the exact location of the gas plant or gas pipe;

(b) to advise the person on the precautions to be taken to prevent damage to the gas plant or gas pipe; and

(c) to take all such measures at the work site as may be reasonable and necessary for the protection of the gas plant or gas pipe and, in so doing, the gas transporter shall have regard to the potential risks and dangers that can arise from any damage to the gas plant or gas pipe.

(5) Nothing in subsection (1) shall prohibit a person from commencing or carrying out, or causing or permitting the commencement or carrying out of, any earthworks where he has reasonable cause to believe that it is necessary to do so in the interest of public or private safety.

(6) The person referred to in subsection (5) shall, as soon as practicable but not more than 24 hours after the earthworks have been commenced or carried out, give to the gas transporter notice in writing stating the nature and extent of those earthworks.

(7) Any person who contravenes subsection (1), (3) or (6) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 5 years or to both.

(8) Subject to subsection (9), in any proceedings for an offence under subsection (7), it shall be a defence for the person charged to prove —

(a) that he took all reasonable steps to discharge his duty under subsection (1) or (3), as the case may be; or

(b) that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(9) If, in any proceedings for an offence under subsection (7), the defence involves acting on information supplied by a gas transporter, the person charged shall not, without leave of the court, be entitled to rely on that defence unless he has, within 14 clear days before the hearing, served on the prosecutor a notice in writing giving such information as was then in his possession identifying or assisting in the identification of the person who supplied him with the information.

Damage to gas plant or gas pipe

32A.—(1) Any person who wilfully or recklessly removes, destroys, damages or suffers to be damaged any gas plant or gas pipe in a gas pipeline network owned by, or under the management or control of, a gas transporter or hinders or prevents the gas plant or gas pipe from being used or operated in the manner in which it is intended to be used or operated shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1 million or to imprisonment for a term not exceeding 5 years or to both.

(2) Notwithstanding subsection (1), any person who, in the course of carrying out any earthworks, damages or suffers to be damaged any gas plant or gas pipe in a gas pipeline network owned by, or under the management or control of, a gas transporter shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1 million or to imprisonment for a term not exceeding 5 years or to both.

(3) Where an offence under subsection (2) is committed by any person acting as the agent or servant of another person, or being otherwise subject to the supervision or instructions of another person for the purposes of any employment in the course of which the offence was committed, that other person shall, without prejudice to the liability of the first-mentioned person, be liable under that subsection in the same manner and to the same extent as if he had personally committed the offence unless he proves to the satisfaction of the court that the offence was committed without his consent or connivance or that it was not attributable to any neglect on his part.

(4) In any proceedings for an offence under subsection (2), it shall be a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(5) If in any proceedings for an offence under subsection (2), the defence involves acting on information supplied by a gas transporter, the person charged shall not, without leave of the court, be entitled to rely on that defence unless he has, within 14 clear days before the hearing, served on the prosecutor a notice in writing giving such information as was then in his possession identifying or assisting in the identification of the person who supplied him with the information.

(6) Any person may apprehend any other person if the other person within his view commits an offence under this section and shall, on such apprehension, hand over the person so apprehended to a police officer without unreasonable delay.

(2) The Public Utilities (Amendment) Act 1991 (Act 28 of 1991)

31 At [16] of the GD (reproduced at [\[14\]](#) above), the DJ, to support his view on the purpose of s 32 of the Gas Act, referred to the parliamentary speech made by the Minister for Trade and Industry on 29 July 1991 at the second reading of the Public Utilities (Amendment) Bill 1991 (Bill 20 of 1991) ("the Public Utilities (Amendment) Bill 1991"), which was subsequently enacted as the Public Utilities (Amendment) Act 1991 (Act 28 of 1991). Section 13 of that Act introduced into the Public

Utilities Act (Cap 261, 1990 Rev Ed) ("the 1990 Public Utilities Act") a new s 96A setting out a duty to enquire into the location of any mains, cables or pipes before carrying out any excavation work using mechanical equipment or explosives (referred to hereafter as "the duty to enquire before excavation"), as follows:

96A.—(1) No person shall dig, bore, trench, grade, excavate or break any ground with any mechanical equipment or explosives or allow his servant or agent to do so without first ascertaining the location of any main, cable or pipe belonging to or under the management or control of the [Public Utilities] Board that may be interfered with.

(2) Any person who fails to comply with or contravenes subsection (1) shall be guilty of an offence.

Breach of that duty was punishable under s 98 of the 1990 Public Utilities Act with a fine not exceeding \$5,000 (and, in the case of a continuing offence, with a further fine not exceeding \$250 for each day or part thereof while the offence continued). The remarks made by the Minister for Trade and Industry at the second reading of the Public Utilities (Amendment) Bill 1991, which the DJ referred to at [16] of the GD, were clearly not directed at the potential problems which might currently arise in relation to damage to gas plants or gas pipes caused by earthworks undertaken negligently or recklessly by contractors. Instead, the enactment of s 96A of the 1990 Public Utilities Act was intended to remedy the mischief of contractors being able to carry out earthworks without having to first find out where the gas pipes (if any) at the work site were, which mischief had led to widespread damage to gas pipes as a result of contractors using mechanical means to conduct earthworks.

32 The duty to enquire before excavation under s 96A of the 1990 Public Utilities Act was later reproduced in s 96A of the Public Utilities Act (Cap 261, 1992 Rev Ed) ("the 1992 Public Utilities Act") and, subsequently, s 117 of the Public Utilities Act (Cap 261, 1996 Rev Ed) ("the 1996 Public Utilities Act"). Section 98 of the 1992 Public Utilities Act retained the same punishment for breach of that duty as the punishment set out in s 98 of the 1990 Public Utilities Act, whereas s 119 of the 1996 Public Utilities Act enhanced the punishment to a fine not exceeding \$5,000 or imprisonment for a term not exceeding 12 months or both (likewise, in the case of a continuing offence, with a further fine not exceeding \$250 for each day or part thereof while the offence continued).

33 The aforesaid duty was similarly retained in the Gas Act 2001 (Act 11 of 2001) ("the 2001 Gas Act"), the immediate predecessor of the Gas Act, but it has since been superseded by s 32 of the Gas Act, which imposes far wider duties on contractors intending to carry out earthworks in the vicinity of any gas plant or gas pipe. Such contractors must now (*inter alia*) notify SPPG in writing at least seven days in advance before carrying out the earthworks (see s 32(1)(a)) as well as comply, during the course of the earthworks, with the conditions laid down by SPPG for the prevention of damage to the gas plant or gas pipe concerned (see s 32(3)(a)). Section 32 of the Gas Act came into effect on 14 February 2008, some 16.5 years after the duty to enquire before excavation was first enacted via s 96A of the 1990 Public Utilities Act. The punishment for an offence under s 32 of the Gas Act (*viz*, a fine not exceeding \$100,000 or imprisonment for a term not exceeding five years or both (see s 32(7)) is much more severe than the punishment for breaching the duty to enquire before excavation (see s 98 of the 1990 Public Utilities Act, s 98 of the 1992 Public Utilities Act, s 119 of the 1996 Public Utilities Act and s 32(1) of the 2001 Gas Act). Obviously, either the imposition of the duty to enquire before excavation was not effective to remedy the mischief of contractors carrying out earthworks without first ascertaining the locations of gas plants or gas pipes in the vicinity of the area of work, or there was some other reason for the enactment of ss 32 and 32A of the Gas Act. In my view, the former inference is the more plausible inference to draw.

(3) The current regime under the Gas Act

34 Sections 32 and 32A of the Gas Act provide a regulatory regime to prevent earthworks from causing damage to any gas plant or gas pipe by empowering the gas transporter (here, SPPG) to give permission to contractors to carry out earthworks subject to certain conditions. A failure to comply with all reasonable requirements imposed by SPPG is an offence punishable under s 32(7) with a fine not exceeding \$100,000 or imprisonment for a term not exceeding five years or both. The wilful or reckless damaging, destruction or removal of any gas plant or gas pipe is an offence under s 32A(1), and is punishable with a fine not exceeding \$1m or imprisonment for a term not exceeding five years or both. Section 32A(2), on the other hand, specifically targets the act of *damaging* a gas plant or gas pipe *in the course of carrying out earthworks*. The s 32A(2) offence is punishable with the same punishment as that for the offence under s 32A(1) (the "s 32A(1) offence"). The s 32A(2) offence is a strict liability offence (*cf* the s 32A(1) offence), and the only defence available is that set out in s 32A(4), *viz*, the offender has "[taken] all reasonable precautions and exercised all due diligence to avoid the commission of the offence".

35 The combined effect of ss 32 and 32A of the Gas Act shows that Parliament's main concern in enacting these two provisions (see in this regard *Singapore Parliamentary Debates* (vol 83) at cols 749–756) was to ensure the reliability and security of the supply of gas from gas terminals to gas plants and power generation plants and, in turn, to all consumers, whether industrial, commercial or domestic. Obviously, damaging or destroying a gas plant or a high-pressure gas pipe that supplies gas to a power generation plant will cause great damage to the economy and may even lead to "catastrophic consequences to human lives, property and our economy" (see *Singapore Parliamentary Debates* (vol 83) at col 755). On the other hand, it is apparent that damaging a low-pressure gas pipe will not cause that kind of damage since, as counsel for the respondent informed the court, low-pressure gas pipes are not used to supply gas to power generation plants (see [23] above). In fact, damaging a low-pressure gas pipe may not even cause any interruption of gas supply to consumers (whether commercial, industrial or domestic) in most cases because of the interconnecting networks in our gas supply grid (see [25] above).

36 Given the range of possible damage and consequences that can result from damage to a gas plant or gas pipe, it would be wholly consistent with the legislative intention behind s 32A(2) of the Gas Act to punish an offender according to the extent of the damage caused by him to the gas plant or gas pipe in question. In this regard, it bears emphasis that Parliament has not prescribed a mandatory minimum punishment for the s 32A(2) offence, but has instead prescribed (*inter alia*) a fine which may range from a nominal sum (*eg*, \$1) to a maximum of \$1m. Accordingly, the court must determine, in accordance with long-established sentencing practices and principles, the punishment that is appropriate in the light of the nature and the gravity of the offending act in question. In other words, the court must differentiate between different instances of the s 32A(2) offence based on, *inter alia*, the nature or type of offending act which constituted the offence, the gravity of the offence in terms of the harm or damage caused to society, the degree of culpability of the offender and all other relevant considerations.

37 None of the above considerations was taken into account by the DJ in determining the appropriate fine to be imposed for the s 32A(2) offence committed by JS. The DJ focused exclusively on the need for deterrence on the basis that the prescribed maximum fine of \$1m under s 32A(2) of the Gas Act had the element of a deterrent punishment, *viz*, he reasoned that the prescribed maximum fine of \$1m was intended to be a deterrent punishment, and, therefore, every s 32A(2) offence must be punished with a deterrent sentence, irrespective of the extent of the offender's culpability and the actual damage caused. While deterrence has a useful role in our penal system, judges should not be over-zealous in invoking this sentencing principle when it is uncalled for, as the

court may otherwise be seen to be acting oppressively. In the present case, no evidence was adduced of the incidence of s 32A(2) offences or of any loss to SPPG which might warrant the imposition of a deterrent sentence on JS, neither did counsel for the respondent seek a deterrent sentence at the hearing before the DJ (in fact, as mentioned at [2] above, the respondent's counsel did not make any submission on sentence at all in the court below).

Mitigating factors in the present case

38 This was the first prosecution under s 32A(2) of the Gas Act since that provision came into force on 14 February 2008. There were a number of mitigating factors in the present case, namely: (a) the damage to the Gas Pipe was relatively minor; (b) the damage was not caused deliberately or recklessly; (c) no consumer was inconvenienced; and (d) although SPPG was inconvenienced (in that it had to despatch its emergency response standby officer to attend to the damage (see [11] above)), JS paid for the cost of repairing the damage. For the above reasons, I am of the view that the fine of \$100,000 for the s 32A(2) offence committed by JS is wholly disproportionate and manifestly excessive.

How the s 32A(2) offence should be punished: analogy with sections 85(1) and 85(2) of the Electricity Act

39 In my view, in determining the appropriate punishment for s 32A(2) offences, the most useful and appropriate analogy to refer to would be the punishment for offences involving damage to electricity cables. Both electricity and gas are forms of power. Electricity is supplied by electricity cables which are either high-voltage cables or low-voltage cables. Similarly, gas is supplied by either high-pressure gas pipes or low-pressure gas pipes. The same security and economic factors apply equally to the supply of electricity and the supply of gas. Accordingly, the range of punishments prescribed by ss 85(1) and 85(2) of the Electricity Act for offences relating to damage to electricity cables is an appropriate guide for the punishment to be imposed under s 32A of the Gas Act for offences relating to damage to gas pipes which cause similar degrees and/or kinds of damage.

40 At the second reading of the Public Utilities (Amendment) Bill 1999 (Bill 29 of 1999) ("the Public Utilities (Amendment) Bill 1999") (*viz*, the Bill introducing, *inter alia*, those provisions of the 1996 Public Utilities Act that were the predecessors of what are now s 80 and s 85 of the Electricity Act), which the DJ referred to at [21]–[22] of the GD, the Minister for Trade and Industry said (see *Singapore Parliamentary Debates, Official Report* (18 August 1999) vol 70 at cols 2160–2161):

Power Dips & Cable Damage

Feedback from industry indicates that companies, particularly those in high-tech industries which rely heavily on sensitive computerised control systems, have been adversely affected by voltage dips in their power supply. Voltage dips, unlike power outages or blackouts, are momentary reductions of the voltage levels in the power supply system, which can disrupt the functions of sensitive computerised control systems.

Voltage dips occur some 25–30 times a year. They have a severe impact on some industries, particularly high-tech, process industries like the wafer fabrication industry. According to the Economic Development Board (EDB), voltage dip-related losses suffered by five high-tech companies between August 1997 and November 1998 amounted to some \$3 million. This figure does not include the cost of production downtime, labour and delayed product deliveries. The production downtime can amount to as much as 10% of the monthly output of a wafer fabrication company.

In 1998, 57% of voltage dip complaints arose because of cable damage. Although the number of voltage dips caused by cable damage is relatively small (5 out of 36 in 1996, 2 out of 21 in 1997 and 4 out of 30 in 1998), the effect of such damage to high-voltage cables can be major. For Singapore to continue to attract high-tech, knowledge-based activities like wafer fabrication, we must ensure the high quality and reliability of our power supply.

To minimise damage to high-voltage cables in the course of construction work, section 95 of the Act [*ie*, the 1996 Public Utilities Act] will be amended to differentiate the requirements for earthworks in the vicinity of low-voltage electricity cables from those in the vicinity of high-voltage electricity cables.

A new section 95(A) [*sic*] is proposed to require PowerGrid Ltd, which is the owner of high-voltage electricity cables, and contractors to work together to prevent damage to cables. This new section will regulate earthworks and cable detection work within the vicinity of any high-voltage electricity cable which belongs to or which is under the management or control of a public electricity licensee. Offenders face a fine not exceeding \$100,000, or imprisonment for a term not exceeding five years, or both fine and imprisonment, if they do not follow the legislated procedures.

The serious consequence to the economy as a result of damage to high-voltage cables makes a severe penalty necessary. A deterrent penalty of \$1 million is therefore proposed for damage to a high-voltage cable. Section 107(3) [of the 1996 Public Utilities Act] will be amended to enhance the current fine of \$200,000 to \$1 million. The enhanced fine is the same as that provided under [s 85(2) of] the Telecommunication Authority of Singapore Act [(Cap 323, 1993 Rev Ed) as amended by s 18(b) of the Telecommunication Authority of Singapore (Amendment) Act 1998 (Act 15 of 1998)] for damaging telephone cables. At the present level of penalty, some contractors are tempted to risk hitting a cable rather than suffer project delay and payment of liquidated damages. A fine of \$1 million will deter such irresponsible behaviour. With the amendments, offenders will face a maximum fine of \$1 million, imprisonment for five years, or both. The maximum five-year term of imprisonment for high-voltage cable damage remains as before. At the same time, section 95 as amended will reduce the maximum term of imprisonment for damaging a low[-]voltage cable from three years to 12 months, as this is less serious.

Apart from a deterrent penalty, we will require reasonable precautions to be taken against damage to high-voltage cables. ...

[emphasis added]

41 It can be seen from the above ministerial speech that the regulatory regime for preventing damage to electricity cables by earthworks is exactly the same as that for preventing damage to gas plants and gas pipes by earthworks. In fact, the wording of s 32 and s 32A of the Gas Act is substantially similar to that of s 80 and s 85 respectively of the Electricity Act.

42 Under the Electricity Act, Parliament has made a clear distinction between causing damage to a high-voltage electricity cable and causing damage to a low-voltage electricity cable because the former will result in greater harm than the latter. Accordingly, a deterrent fine of up to \$1m or imprisonment for a term not exceeding five years or both has been prescribed to punish offenders who damage high-voltage electricity cables in the course of carrying out earthworks (see s 85(2) of the Electricity Act). In contrast, damage to low-voltage electricity cables is punishable under s 85(1) of the Electricity Act with a fine not exceeding \$10,000 or imprisonment for a term not exceeding three years or both. In my view, the reasons given by the Minister for Trade and Industry in his

parliamentary speech at the second reading of the Public Utilities (Amendment) Bill 1999 for differentiating between damaging high-voltage electricity cables and damaging low-voltage electricity cables as well as the legislative intention underlying s 85(1) and s 85(2) of the Electricity Act are equally applicable to s 32A(1) and s 32A(2) respectively of the Gas Act.

43 Therefore, in sentencing offenders for s 32A(2) offences (and also s 32A(1) offences), the distinction made in the Electricity Act between high-voltage electricity cables and low-voltage electricity cables should similarly be applied to high-pressure gas pipes and low-pressure gas pipes in the context of the Gas Act for the rather obvious reason that damage caused by earthworks to a low-pressure gas pipe is ordinarily much less serious than similar damage caused to a high-pressure gas pipe, especially one that supplies gas to a gas plant, a power generation plant or high-end manufacturing users.

How the s 32(3)(a) offence should be punished: analogy with section 80(4)(a) of the Electricity Act

44 Section 32(3)(a) of the Gas Act is worded in similar terms as s 80(4)(a) of the Electricity Act, on which it is based (s 80(4)(a) of the Electricity Act relates to earthworks carried out in the vicinity of high-voltage electricity cables). In *Public Prosecutor v Pay Ah Heng Contractor Pte Ltd* [2006] SGMC 4 ("*Pay Ah Heng*"), the accused, a construction company, pleaded guilty to one charge under s 80(4)(a) of the Electricity Act of failing to comply with all reasonable requirements of SPPG (in its capacity as the electricity licensee) for the prevention of damage to a high-voltage electricity cable in the vicinity of which earthworks were being carried out. Under s 80(7) of the same Act, this offence is punishable with a fine not exceeding \$100,000 or imprisonment for a term not exceeding five years or both. The equivalent punishment provision in the Gas Act *vis-à-vis* the s 32(3)(a) offence is s 32(7).

45 In *Pay Ah Heng*, the accused failed to comply with three out of 31 requirements imposed by SPPG. The District Judge held that while the number of requirements breached was a relevant consideration, what was more important was the nature of the requirements that were not complied with, which requirements, if complied with, would have averted the damage to the high-voltage electricity cable in question. The District Judge found as follows:

16 Turning now to the extent of the failure to comply with the requirements[,] [t]he recommendation by LCDW Soh [the licensed cable detection worker engaged by the accused] to dig trial holes to ascertain the presence or absence of high voltage cables, which is a stipulated requirement by SPPG to do the same, was ignored and this simple requirement was not undertaken. In addition, mechanical excavation was used to conduct earthworks beyond the hard-core or premix layer instead of manual excavation as required. Subsequently, after encountering foreign objects in the course of excavation, the [accused] did not seek the advice of SPPG but instead continued with the mechanical excavation to remove these obstacles. The failure to comply with these critical requirements resulted in damage to a high voltage cable as well as a pilot cable.

17 As regards the extent of the damage caused, apart from the damage to the cable which cost \$7,179.39 to be repaired, there was a power outage which lasted for about 1 hour 19 minutes which affected seven residential homes and also businesses. Even for a relatively short period of about an hour or so, the power outage would have caused the affected parties inconvenience as well as costs to the running of the businesses. However, the latter was not a factor that I placed too much weight on as there was no evidence of the actual costs suffered by the affected businesses.

The District Judge imposed a fine of \$30,000 (with a warrant to levy to be issued in default of payment). The accused appealed to the High Court via Magistrate's Appeal No 9 of 2006, but that appeal was later deemed withdrawn pursuant to s 247(7) of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) as the accused failed to file its petition of appeal within the prescribed time frame.

46 The accused in *Pay Ah Heng* could have been charged with another offence, namely, that under s 85(2) of the Electricity Act of damaging a high-voltage electricity cable in the course of carrying out earthworks, which is punishable with a fine not exceeding \$1m or imprisonment for a term not exceeding five years or both. This offence is equivalent to the s 32A(2) offence, which is punishable with the same punishment. In the present case, JS, in addition to being charged with the s 32(3)(a) offence, was also charged with the s 32A(2) offence.

47 If one compares the sentence imposed in *Pay Ah Heng* (*viz*, a fine of \$30,000) with the sentence imposed by the DJ in the present case (*viz*, a total fine of \$110,000), it would appear that the offence of damaging a high-voltage electricity cable is regarded – incongruously – as less serious than the offence of damaging a low-pressure gas pipe. Furthermore, as pointed out by counsel for JS, since the s 32A(2) offence committed by JS flowed directly from the s 32(3)(a) offence, it is arguable that JS is being punished twice over for the consequences of the same failure to comply with the manual digging requirement. The s 32(3)(a) offence and the s 32A(2) offence are intended to achieve the same purpose (*ie*, to prevent damage to gas plants and gas pipes from earthworks), even though they are distinct offences. In the context of criminal legislation, it is not uncommon for the same criminal act to give rise to two or more separate offences which are punishable differently. Under the one transaction rule (which applies to punishment by way of imprisonment), if an offender is convicted of two or more offences committed in the course of a single transaction, the terms of imprisonment imposed for the various offences should be concurrent rather than consecutive (see, *eg*, this court's recent judgment in *Fricker Oliver v Public Prosecutor and another appeal and another matter* [2011] 1 SLR 84 at [24]).

48 In the present case, there is no reason why the sentences for the s 32A(2) offence and the s 32(3)(a) offence committed by JS should not be subject to the principle underlying the one transaction rule (namely, that the punishment imposed for an offence should be taken into account in determining the punishment to be imposed for another offence committed in the course of the same transaction) as it was precisely JS's failure to comply with the manual digging requirement that led to the damage to the Gas Pipe. If JS had complied with that requirement in the present case, the Gas Pipe would most likely not have been damaged at all. Of course, it is possible that the Gas Pipe would still have been damaged even if JS had dug all the trial holes at the Work Site manually as required by SPPG (*eg*, if JS's workers had been careless while digging the eighth trial hole by manual means). In that scenario, however, the damage to the Gas Pipe would most likely have been less serious or, at least, not more serious than the damage that actually resulted here. Herein lies the irony – suppose JS had dug the eighth trial hole manually and had caused the same damage to the Gas Pipe, would the court be justified in imposing a fine of \$100,000 for the s 32A(2) offence? If it would not (which is my view), then why would such a hefty fine be justified just because JS had used mechanical means to dig the eighth trial hole, given that JS is also being punished for the s 32(3)(a) offence?

49 In my view, where non-compliance with SPPG's requirements in the course of carrying out earthworks (*ie*, the s 32(3)(a) offence) results in damage to a gas pipe or gas plant (*ie*, the s 32A(2) offence), the proper approach to sentencing for the two offences is to consider *both* offences together. If the damage resulting from the s 32A(2) offence requires that offence to be punished more severely than the s 32(3)(a) offence, then the sentence imposed for the s 32A(2) offence should be harsher than that imposed for the s 32(3)(a) offence. Conversely, if the damage resulting from the s 32A(2) offence is relatively minor (as in the present case), then the sentence imposed for

the s 32A(2) offence should be less severe than that imposed for the s 32(3)(a) offence.

50 On this basis, in the circumstances of this case, the fine of \$100,000 imposed by the DJ for the s 32A(2) offence was manifestly excessive and disproportionate to the consequences of damaging the Gas Pipe, which, as noted earlier (at [11] above), is a low-pressure gas pipe. In my view, given that JS is also being fined \$10,000 for the related s 32(3)(a) offence, a fine of \$5,000 for the s 32A(2) offence would be sufficient on the facts of this case. As I stated earlier (at [17] above), the fine of \$10,000 for the s 32(3)(a) offence was not manifestly excessive when compared with the fine of \$30,000 imposed in *Pay Ah Heng* for the analogous offence under s 80(4)(a) of the Electricity Act (see [44]-[45] above).

Conclusion

51 For the above reasons, the fine of \$10,000 for the s 32(3)(a) offence is affirmed, but the fine of \$100,000 for the s 32A(2) offence is set aside and substituted with a fine of \$5,000. Thus, the aggregate fine for the two offences committed by JS is \$15,000. I direct that the excess amount paid by JS (based on the aggregate fine imposed by the DJ) be refunded to JS.

Observations

52 It appears that thus far, all the s 32A(2) offences which have come before the courts have involved damage to gas pipes which occurred in circumstances where the contractors concerned were left to supervise their own earthworks. This suggests that if the earthworks in those cases had been independently supervised, the offences would likely not have been committed. As prevention is better than cure, an effective way of preventing such incidents may well be to require independent supervision of all earthworks in the vicinity of gas pipes.

[note: 1] See para 5(b) of the Statement of Facts.

[note: 2] See para 4(e) of the Statement of Facts.

[note: 3] See para 2(a) of the Supreme Court's letter to the respondent's counsel dated 13 May 2011.

[note: 4] See the letter from the respondent's counsel to the Supreme Court dated 18 May 2011.

[note: 5] *Ibid.*

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