IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 123

Magistrate's Appeal No 65 of 2016

Between

Public Prosecutor

… *Appellant*

And

Koh Thiam Huat

… *Respondent*

GROUNDS OF DECISION

[Criminal Procedure and Sentencing] — [Sentencing] — [Principles]

[Road Traffic] — [Offences]

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Public Prosecutor
v
Koh Thiam Huat

[2017] SGHC 123

High Court — Magistrate's Appeal No 65 of 2016
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See Kee Oon J:

1 The Accused pleaded guilty in a District Court to a single charge of dangerous driving under s 64(1) of the Road Traffic Act (Cap 276, 2004 Rev Ed) ("RTA"). The District Judge sentenced the Accused to a fine of $3,000 (in default 15 days' imprisonment) and disqualification from holding and obtaining all classes of driving licence for a period of 11 months (see his Grounds of Decision in *Public Prosecutor v Koh Thiam Huat* [2016] SGDC 354). Dissatisfied, the Public Prosecutor appealed against the District Judge's decision on sentence. After hearing the parties on 12 April 2017, I was satisfied that a custodial sentence was warranted. Accordingly, I allowed the appeal and imposed a sentence of one week's imprisonment. I also increased the period of disqualification to 18 months and ordered that the fine (which had been paid) be refunded. These are the grounds of my decision.

The relevant facts

2 The facts are set out in the statement of facts which the Accused admitted to without qualification.

3 On 20 August 2015, the Accused, a 54-year-old male, was driving his motor lorry on the left-most lane along Hougang Avenue 9 towards the direction of Hougang Avenue 8. The Accused then came to a signalised traffic junction, where he failed to conform to the red light signal. This resulted in a collision with the victim, a 20-year-old female pedestrian, who was then crossing the signalised traffic junction on a green man signal from the Accused's right to left. The Accused said that the left side of the victim's head hit the bottom right portion of the motor lorry's windscreen.

4 At the material time, the weather was fine, the road surface was dry, the traffic flow was light and visibility was clear. The Accused admitted that his view was unobstructed. He also admitted that he did not notice the traffic light signal as he was following a white sedan car in front of him, and that he did not notice the victim until she was about an arm's length away.

5 The victim suffered multiple injuries as a result of the accident, including traumatic head injury features such as a comminuted undisplaced fracture of the skull vault in the left parieto-temporal region extending to the temporal bone. She was warded for seven days and given hospitalisation leave over two periods totalling 42 days (this latter figure included the seven days she was warded). The windscreen of the motor lorry was also cracked near its bottom right side.

The District Judge's decision

6 The District Judge considered the following in sentencing the Accused: (a) the Accused's manner of driving; (b) the extent of the victim's injuries; (c) the Accused's antecedents; (d) the mitigating factors; and (e) the precedents.

7 With respect to (a), *ie*, the Accused's manner of driving, the District Judge held that the Accused's manner of driving was "far below what would be expected of a driver". Although the Accused must have known that he was driving through a junction controlled by traffic lights, he did not ensure that the traffic light signal was in his favour but chose instead to drive through the junction. Accordingly, on the authority of the Court of Appeal's decision in *Jali bin Mohd Yunos v Public Prosecutor* [2014] 4 SLR 1059 ("*Jali*"), the Accused had not merely been negligent but had acted in a rash or reckless manner. The District Judge also considered the fact that the accident occurred at a pedestrian crossing with the victim crossing with the green man signal in her favour. Beyond these facts, however, the District Judge thought that there were no other aggravating factors relating to the Accused's manner of driving. There was no evidence that the Accused had deliberately tried to beat the red light. Nor was there evidence to suggest that the Accused was speeding whilst he drove through the junction; indeed, the unchallenged mitigation was that the Accused was travelling at a speed between 40 and 50 km/h. The Accused was also not driving under the influence of alcohol or drugs, whilst tired or whilst using a mobile phone. Nor was his driving aggressive or erratic. In the District Judge's view, a custodial starting point would only be justified in the presence of the aggravating factors identified in *Public Prosecutor v Hue An Li* [2014] 4 SLR 661 ("*Hue An Li*"), *ie*, speeding, drink-driving and sleepy driving, coupled with serious injuries. On the whole, the District Judge did not consider the manner of the Accused's driving to be sufficient, in itself, to justify a custodial sentence.

8 As regards (b), *ie*, the extent of the victim's injuries, the District Judge found the injuries suffered by the victim to be severe and serious. However, he noted that she did not suffer any permanent disability and consequently found that the extent of the victim's injuries were not so aggravating as to justify a custodial sentence.

9 With regard to (c), *ie*, the Accused's antecedents, the District Judge noted that the Accused had traffic-related antecedents. In the late 1990s, he was convicted for an offence of careless driving and two offences of speeding. He had also compounded an offence of failing to conform to a red light signal in 2007 and an offence of speeding in 2013. However, except for the compounded speeding offence in 2013, most of these antecedents were dated. Thus, the District Judge held that, although there was a need for specific deterrence, the Accused's antecedents did not justify a custodial sentence.

10 As for (d), *ie*, the mitigating factors, the District Judge accepted that the Accused had exhibited remorse by pleading guilty and that there was no undue delay with respect to the conclusion of the case. However, the District Judge did not accord any weight to the fact that the sentence would negatively impact the Accused's employment prospects and cause hardship to him and his family.

11 Finally, with regard to (e), *ie*, the precedents, the District Judge did not rely on some of the precedents submitted by the Prosecution as he considered the circumstances of the offence in these cases to be very different. Nor did he give much weight to the precedents submitted by the Prosecution which he found to be more relevant, as he thought that these cases had more aggravated facts or were unreported. The District Judge found the precedents submitted by the Defence to be more instructive. On his own initiative, the District Judge also considered six cases he had found via the State Courts' Sentencing Information

and Research Repository ("the SIR") which is hosted on Lawnet, and in which imprisonment terms between one day and two weeks were imposed. In his view, however, these cases involved aggravating factors which were absent in the present case.

12 All said, the District Judge found a custodial sentence to be inappropriate. He further noted that a period of disqualification of 12 months or more would usually be ordered for cases which were more aggravated than the present. Accordingly, he sentenced the Accused to a fine of $3,000 (in default 15 days' imprisonment) and disqualification from holding and obtaining all classes of driving licence for a period of 11 months.

The parties' submissions

The Prosecution's submissions

13 The Prosecution urged me to enhance the sentence to one week's imprisonment and 18 months' disqualification. The Prosecution made three broad points.

14 First, the Prosecution submitted that the District Judge placed insufficient weight on the need for general and specific deterrence. According to the Prosecution, the District Judge did not fully appreciate the significance of general deterrence, which was said to be a key sentencing consideration in dangerous driving cases. The Prosecution further contended that the Accused's poor driving record heightened the need for specific deterrence and, in this regard, pointed out that the District Judge overlooked the fact that the Accused had compounded an offence of making an unauthorised U-turn in 2014, which was only a year before the accident. Looked at in totality, the Accused's driving record showed that he had a history of flouting traffic rules stretching back

nearly two decades from the date of the accident. It was submitted that while the Accused's antecedents may not have warranted a custodial sentence in and of themselves, they underscored the need to factor a high degree of specific deterrence into the sentencing equation.

15 Second, the Prosecution argued that the District Judge erred in his consideration of the aggravating factors for the offence of dangerous driving. Firstly, the Prosecution submitted that the District Judge derived an erroneous sentencing formula which required the presence of specific aggravating factors before the starting point could be a custodial sentence (see [7] above). Secondly, it was submitted that the District Judge placed insufficient weight on the aggravating factors that were present, namely: (a) the high degree of danger to the public arising from the Accused driving through a signalised pedestrian crossing in a residential area when the traffic light signal was red against him; and (b) the victim's severe and serious injuries.

16 Third, the Prosecution contended that the District Judge erred in his treatment of the sentencing precedents. It was said that the authorities that the District Judge relied on, in which only fines were imposed, did not in fact support the imposition of a fine. The Prosecution further argued that the six cases the District Judge referred to on his own accord did not support his conclusion as to when dangerous driving would attract a custodial sentence. It was also submitted that the District Judge failed to appreciate that the Prosecution's sentencing position below had already incorporated a downward calibration from the cases the Prosecution had relied on.

17 In addition, the Prosecution also suggested that fines should be regarded as appropriate only in cases of dangerous driving that had not resulted in accidents (or where only minor damage or injury had resulted) and where there

were no other compelling reasons for stronger deterrent sentencing (*eg*, driving that posed a particularly high risk or where an accused had a bad driving record). It was further argued that a custodial sentence ought to be the norm in cases where serious damage or injuries had resulted from dangerous driving.

The Accused's submissions

18 The Accused submitted, firstly, that the District Judge had not erred in finding that the injuries sustained by the victim did not justify crossing the custodial threshold, and that he had adequately considered the extent of the victim's injuries. Secondly, the District Judge had fully appreciated the materials placed before him. In this regard, it was argued that the Accused's compounded offences (which were, in any event, minor offences) should have been disregarded as, pursuant to ss 241(5) and 242(4) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC"), the effect of compounding an offence was a discharge amounting to an acquittal. Thirdly, the District Judge had not erred in either fact or law and had addressed his mind to, considered and weighed all the relevant factors. Fourthly, the District Judge had not erred in principle as he had holistically considered the sentencing principles of prevention, detention, rehabilitation and retribution, without giving undue weight to any one of these principles. Fifthly, the District Judge had imposed a sentence which was well in line with similar precedents. Finally, the District Judge had not erred in his consideration that the sentence was appropriate in the light of the full spectrum of sentences enacted and allowed by Parliament.

My decision

19 The central issue posed by the present appeal was whether the custodial threshold had been crossed in the present case. This, in turn, depended on two anterior matters: (a) the sentencing trend for the offence of dangerous driving

under s 64(1) of the RTA; and (b) the custodial threshold for the offence of dangerous driving under s 64(1) of the RTA. I deal with these issues in turn.

The sentencing trend for the offence of dangerous driving under s 64(1) of the RTA

20 The District Judge considered a fair number of precedents which had been brought to his attention. As mentioned earlier, he also considered six cases he had found via the SIR (see [11] above). For the purposes of the present discussion, however, I focus only on the precedents relied on by the parties in the appeal. In the main, the Prosecution relied on two cases: *Public Prosecutor v Chai Kang Wei Samuel* [2004] SGDC 198 ("*Samuel Chai*") and *Public Prosecutor v Subramaniam Sangili Karupu* (Case No 091009876011) (unreported) ("*Subramaniam*"). In addition, the Prosecution also appeared to rely somewhat on two of the cases the District Judge had found via the SIR: *Public Prosecutor v Muhammad Haridz bin Razali* (DAC 937117/2015) (unreported) ("*Haridz*") and *Public Prosecutor v Rahim bin Rahman* (MAC 907864/2014) (unreported) ("*Rahim*"). On the other hand, the Accused relied on the same "fine-only" cases as the District Judge: *Chue Woon Wai v Public Prosecutor* [1996] 1 SLR(R) 725 (*"Chue Woon Wai*"); *Lim Hong Eng v Public Prosecutor* [2009] 3 SLR(R) 682 ("*Lim Hong Eng*"); *Public Prosecutor v Liew Tow Han* [2015] SGDC 174 ("*Liew Tow Han*"); and *Public Prosecutor v Bhahwatkar Nitin Vasant Rao* [2015] SGDC 254 ("*Bhahwatkar*").

21 In addition to these precedents, it is also apposite to consider the decision of the three-judge coram of the High Court in *Hue An Li* and the decision of the Court of Appeal in *Jali*. These decisions were handed down in September and October 2014 respectively. Although neither *Hue An Li* nor *Jali* involved the offence of dangerous driving under s 64(1) of the RTA, both cases are relevant to the present analysis because they represent a shift in the courts' sentencing

paradigm apropos traffic offences (see [36] below). It is therefore necessary to consider the impact of these two cases on the sentencing trend for the offence of dangerous driving under s 64(1) of the RTA.

Pre-Hue An Li *and* Jali

22 The earliest among the precedents referred to at [20] above is *Chue Woon Wai*. The accused was driving a taxi and failed to conform to traffic red light signals, thus colliding into a motorcycle. The motorcycle rider's left leg was fractured and he had to be hospitalised, while his pillion rider sustained lacerations on both legs and hands and was treated as an outpatient. The accused had a good driving record and had pleaded guilty at the first available opportunity. He was sentenced to a *fine of $1,000* and disqualified from driving all classes of vehicles for one year. On appeal, the period of disqualification was reduced to six months. The Prosecution, however, pointed out that this case preceded the 1996 amendments to the Road Traffic Act (Cap 276, 1994 Rev Ed), which enhanced the penalties for the offence of dangerous driving to their present form.

23 In *Samuel Chai*, the accused was driving a car and failed to follow the turn-right directional arrow along the extreme right lane towards a signalised cross-junction. Instead, he proceeded straight on the extreme right lane while trying to overtake another vehicle (which was in the second right lane) from the right when that vehicle was turning right at the said cross-junction. This resulted in the accused having to swerve his car to the right. The car mounted the pedestrian pavement and knocked into four pedestrians before eventually hitting a tree, ripping off some of its bark. The car also uprooted a concrete bollard on the pedestrian pavement and damaged some wooden barricades. The victims suffered very serious injuries (including fractures) and had to be hospitalised

for periods ranging from one month to one month and three weeks. The accused was driving at a speed of 90 km/h when the speed limit was 50 km/h. He was untraced. He pleaded guilty and was sentenced to imprisonment for three months and disqualified from holding or obtaining a driving licence for all classes for five years, with effect from release. On appeal, the sentence was reduced to a *fine of $3,000 and imprisonment for one month*, with the period of disqualification left undisturbed.

24 In *Lim Hong Eng*, the accused was driving a car and collided with a motorcycle as she crossed into a junction when the traffic lights were not in her favour. The motorcyclist and the pillion were flung off the motorcycle. The former suffered a compound fracture to his left leg while the latter subsequently succumbed to her injuries and died. The accused, who was untraced (see *Public Prosecutor v Lim Hong Eng* [2008] SGDC 320 at [49]), was convicted after trial of one charge of causing death by dangerous driving under s 66(1) of the RTA (for which she was sentenced to imprisonment for 18 months and disqualification from holding or obtaining a driving licence for all classes of vehicles for ten years with effect from the date of release from prison) and one charge of causing grievous hurt by doing a rash act under s 338 of the Penal Code (Cap 224, 1985 Rev Ed) (for which she was sentenced to imprisonment for six months). On appeal, the sentence for the charge of causing death by dangerous driving was reduced to one day's imprisonment, with the disqualification order undisturbed. The charge of causing grievous hurt by doing a rash act was amended to one of dangerous driving under s 64(1) of the RTA on the basis that the accused's conduct was "more negligent than rash", and the accused was sentenced to a *fine of $2,000*. The Prosecution pointed out, however, that *Lim Hong Eng* has since been doubted in *Jali*. In *Jali*, the Court of Appeal observed (at [41]) that the High Court's conclusion in *Lim Hong Eng*

that the accused's conduct was more negligent than rash "might not be appropriate on similar facts in future cases". The Court of Appeal further noted (at [43]) that, to the extent that *Lim Hong Eng* also appeared to suggest that negligence should attract a relatively low sentence compared to recklessness, this was not correct.

25 The last of the pre-*Hue An Li* and *Jali* precedents to consider is *Subramaniam*. Unfortunately, this is an unreported case and the only materials before me are the charge sheet and the statement of facts. The decision date is not evident, although both the charge sheet and the statement of facts are dated 2010. The accused in this case was driving a motor lorry and failed to conform to the traffic red light signal whilst driving straight across a junction, thus resulting in a collision with a taxi. The accused's motor lorry subsequently collided with another motor lorry and a motorcycle which were stationary. There were a total of six victims, three of whom suffered more serious injuries (including fractures) and required medical leave ranging from 37 to 92 days. The accused, who was untraced, pleaded guilty and was sentenced to *imprisonment for three months* and disqualification for 12 months. There was no subsequent appeal.

26 This sampling of pre-*Hue An Li* and *Jali* precedents comports, by and large, with the observation in *Sentencing Practice in the Subordinate Courts* vol II (LexisNexis, 3rd Ed, 2013) ("*Sentencing Practice in the Subordinate Courts* vol II") (at p 1674) that "[w]here injury was caused to other road users, there are cases where fines were imposed and cases where terms of custody were imposed". I note, however, that in the two cases where custodial terms were imposed (*ie*, *Samuel Chai* and *Subramaniam*), there were multiple victims who had suffered serious injuries (four in *Samuel Chai* and three in *Subramaniam*), therefore bringing these cases within the higher end of the severity spectrum.

Hue An Li *and* Jali

27 On 2 September 2014, a three-judge coram of the High Court handed down its decision in *Hue An Li*. The accused in *Hue An Li* was involved in a tragic vehicular accident when she momentarily dozed off while driving and collided into a lorry. Among other consequences, this caused the death of a passenger in the lorry. The accused pleaded guilty to a charge of causing death by a negligent act under s 304A(*b*) of the Penal Code (Cap 224, 2008 Rev Ed) ("PC"), and two further charges under ss 338(*b*) and 337(*b*) of the PC were taken into consideration for sentencing purposes. The accused was sentenced to a fine of $10,000 and was disqualified from driving for five years from the date of her conviction. On appeal, the High Court varied the sentence to imprisonment for four weeks. It also ordered the disqualification period to take effect from the date of the accused's release from prison.

28 What is noteworthy for present purposes is the High Court's consideration of the default punitive position for negligent driving which constituted an offence under s 304A(*b*) of the PC. On this point, the High Court noted (at [56]) that the starting point of its analysis was the High Court's earlier decision in *Public Prosecutor v Gan Lim Soon* [1993] 2 SLR(R) 67 ("*Gan Lim Soon*"), where Yong Pung How CJ drew a distinction (at [10]) between rashness and negligence: for the former, imprisonment would be warranted, while for the latter, "it would be sufficient in most cases to inflict a fine". However, the High Court in *Hue An Li* went on to hold (at [60]) that following the statutory amendments in 2008, the position laid down in *Gan Lim Soon* was no longer tenable, given the bifurcation of the predecessor of s 304A of the PC into two limbs (with s 304A(*a*) of the PC dealing with rashness and s 304A(*b*) of the PC dealing with negligence). In the premises, the High Court was satisfied (at [61]) that the starting point for sentencing in a s 304A(*b*) traffic death case was a brief

period of incarceration for up to four weeks. The High Court further added (at [134]) that the presence of speeding, drink-driving and sleepy driving would call for a starting point of between two and fourth months' imprisonment.

29 Slightly over a month later, on 9 October 2014, the Court of Appeal handed down its decision in *Jali*. The accused in *Jali* was driving a car and failed to conform to the traffic red light signal. He entered into a junction, resulting in a collision with another car that was entering into the junction from his left on a green light. The accused's car then veered into a pedestrian crossing, thereby colliding into the victim who was then crossing the road. The victim eventually succumbed to her injuries. The accused did not check to see whether the traffic light was green in his favour. Instead, he simply followed the vehicle in front of him. He pleaded guilty to a charge of causing death by dangerous driving under s 66(1) of the RTA and was sentenced to four months' imprisonment and disqualification from obtaining or holding a licence for all classes of vehicles for seven years. The accused's appeal against sentence was dismissed by the High Court. The accused then brought a criminal reference in the Court of Appeal; the question was whether a finding of rashness in road traffic offences required consciousness as to risk. For present purposes, it suffices to note that the Court of Appeal affirmed the sentence imposed by the courts below, although it should be perhaps also be noted that imprisonment is mandatory under s 66(1) of the RTA.

Post-Hue An Li *and* Jali

30 I now come to the precedents referred to at [20] above which were decided after *Hue An Li* and *Jali*.

31 *Rahim* is an unreported case and the materials before me are limited to the charge sheet, the statement of facts and the accused's criminal records. The decision date is again not evident, although both the charge sheet and the statement of facts are dated 9 December 2014. The accused was driving a motor lorry and made an unauthorised U-turn against the flow of traffic, which resulted in a collision with a motorcycle which caused injury to the motorcyclist. The victim suffered various injuries which included a number of fractures. He was warded for 19 days and given medical leave from 12 July 2014 to September 2014. The accused, who was untraced, pleaded guilty and was sentenced to *imprisonment for one week* and disqualification for 12 months. There was no appeal.

32 In *Liew Tow Han*, the accused was driving a tipper truck and failed to give way to the victim who was pushing his bicycle across a zebra crossing, thereby colliding into him. The victim suffered extensive injuries to his right hand and haematomas to his scalp. The accused was convicted after trial and sentenced to a *fine of $2,500* and disqualification from holding or obtaining all classes of driving licence for 6 months. He had previously been convicted for speeding in 2013. The sentence was upheld on appeal. The Prosecution tendered an extract of the notes of evidence of the trial to show that the injury to the victim's hand was likely to be permanent.

33 In *Bhahwatkar*, the accused was driving a car and made a right turn when the directional arrow for cars turning right was showing red. In so doing, he failed to give way to a motorcycle which was coming in the opposite direction, thereby causing a collision with the said motorcycle. The pillion rider sustained light injuries and was discharged with three days' medical leave, but the motorcycle rider suffered multiple traumatic injuries, including fractures and a left deep scrotal tear which required the removal of his left testicle, and

was warded for nine days and granted medical leave for a total of 219 days. The accused admitted to drinking alcohol before the accident, although his alcohol level was below the prescribed legal limit. The accused, who was untraced, pleaded guilty and was sentenced to a *fine of $2,500* and disqualification from holding or obtaining all classes of driving licences for 12 months, with effect from the date of conviction. The Prosecution's appeal was discontinued.

34 *Haridz* is, again, an unreported case and the only materials before me are the charge sheet, the statement of facts, the accused's criminal records and a printout from the Integrated Criminal Case Filing and Management System which shows the decision date as 9 December 2015. The accused was driving a car and failed to have proper control of it, resulting in a collusion with a taxi which was proceeding straight. Prior to the collision, the accused had been driving his car at a fast speed and had made abrupt lane changes before losing control of his car. The victim (the taxi driver) suffered minor injuries and complained of neck and chest pain. He was put under observation for 24 hours and was discharged the next day with six days of medical leave. The accused had some antecedents (including two prior traffic offences) but these were not directly relevant. He pleaded guilty and was sentenced to *imprisonment for one week* and disqualification from holding or obtaining all classes of driving licences for two years. There was no appeal.

35 These precedents show that both fines and imprisonment terms continued to be imposed even post-*Hue An Li* and *Jali*. It is, admittedly, not easy to discern much of a trend from these precedents. For instance, the injuries suffered by the victim in *Bhahwatkar* appear to be considerably more serious than those suffered by the victim in *Haridz*. Yet, the accused in *Bhahwatkar* was sentenced to only a fine, while the accused in *Haridz* was sentenced to

imprisonment. I accept, however, that the culpability of the accused in *Haridz* seems to be higher than that of the accused in *Bhahwatkar*.

Analysis

36 In *Lee-Teh Har Eng v Public Prosecutor* (Magistrate's Appeal No 9099 of 2016) (unreported) ("*Lee-Teh Har Eng*"), I observed in oral grounds that, after the decision in *Hue An Li*, there had been a discernible shift in the sentencing trend towards more custodial sentences being meted out for offences under s 338(*b*) of the PC. I further noted that the consequence of *Hue An Li* was that the lower courts were *no longer bound by precedent to consider a non-custodial punishment as the default starting point* for offences under s 304A(*b*) of the PC, but should *consider all the relevant considerations* in each case in determining the appropriate sentence. *Jali* can be seen as further approval of this shift in approach in so far as the Court of Appeal affirmed the not-insubstantial sentence of imprisonment imposed in that case. In my view, this shift in approach applies with equal force *vis-à-vis* the offence of dangerous driving under s 64(1) of the RTA.

37 Indeed, a brief examination of the sentencing statistics in the SIR suggests that there has already been some recognition of this shift in approach. As of 24 May 2017, the SIR contains sentencing information relating to 130 charges under s 64(1) of the RTA (when only the base offence is considered). The breakdown of the sentence types is as follows:

Sentence type	**Number of charges**
Fine	93
Imprisonment	36
Reformative training centre	1

What is perhaps more illuminating, however, is the yearly breakdown, which shows a gradual increase in the percentage of charges where imprisonment was ordered (for present purposes, I exclude the sentence of reformative training):

Year	Number of charges	Number of charges where imprisonment ordered	Number of charges where fine ordered	Percentage of charges where imprisonment ordered
2014	10	0	10	0
2015	43	12	31	27.9
2016	57	16	40	28.1
2017	20	8	12	40.0

I accept that there are some limitations to the sentencing information on the SIR. In particular, there is no information relating to any charges prior to 2014. Moreover, s 64(1) of the RTA also includes the offence of reckless driving. I accept also that the increase in the percentage of charges where imprisonment was ordered could have been due to other reasons (for instance, the offences in the more recent years could have simply been more serious). Nonetheless, these statistics are helpful to *further support* the point made in the preceding paragraph.

38 What, then, does this shift in approach call for in terms of the courts' treatment of the precedents? First, to the extent that the pre-*Hue An Li* and *Jali* precedents appear to establish a non-custodial punishment as the default starting point for the offence of dangerous driving under s 64(1) of the RTA, the courts should not be bound by these precedents. Rather, the courts should consider all the relevant considerations in each case in determining the appropriate sentence. Second, the post-*Hue An Li* and *Jali* precedents must be carefully scrutinised because the shift in approach may not always have been immediately appreciated. In this connection, I note that, aside from some passing reference to *Hue An Li* and *Jali* in *Bhahwatkar*, neither *Liew Tow Han* nor *Bhahwatkar*

had meaningfully considered the impact of *Hue An Li* and *Jali* on the sentencing trend for the offence of dangerous driving under s 64(1) of the RTA.

39 However, this shift in approach does *not* mean that a custodial term is now the norm for the offence of dangerous driving under s 64(1) of the RTA. In *Lee-Teh Har Eng*, I effectively rejected this notion *vis-à-vis* offences under ss 304A(*b*) and 338(*b*) of the PC, and the same must, *a fortiori*, be the case *vis-à-vis* the offence of dangerous driving under 64(1) of the RTA, which carries a lower maximum sentence (at least for first offenders). Rather, what this shift in approach calls for is a careful consideration of all the relevant considerations in fashioning a condign sentence. Indeed, the facts and circumstances which give rise to traffic offences are so infinitely varied that a blind and rigid adherence to precedents and sentencing norms by default is inadvisable. In this class of offences, attention to the particular facts and circumstances is of paramount importance.

The custodial threshold for the offence of dangerous driving under s 64(1) of the RTA

40 I now turn to the question of the custodial threshold for the offence of dangerous driving under s 64(1) of the RTA. On the one hand, the District Judge thought that the presence of the aggravating factors identified in *Hue An Li*, *ie*, speeding, drink-driving and sleepy driving, coupled with serious injuries would justify the imposition of a custodial sentence as a starting point. On the other hand, the Prosecution made two submissions. First, the Prosecution suggested that fines should be regarded as appropriate only in cases of dangerous driving that had not resulted in accidents (or where only minor damage or injury had resulted) and where there were no other compelling reasons for stronger deterrent sentencing, *eg*, driving that posed a particularly high risk or where an accused had a bad driving record. Second, it was further suggested that in cases

where serious damage or injuries had resulted from dangerous driving, a custodial sentence ought to be the norm. It was said that such an approach would conduce towards a stronger deterrent message and make our roads safer for everyone.

41 As I noted in *Lim Ying Ying Luciana v Public Prosecutor and another appeal* [2016] 4 SLR 1220 (at [28]), the two principal parameters which a sentencing court would generally have regard to in evaluating the seriousness of a crime are: (a) the *harm* caused by the offence; and (b) the accused's *culpability*. "Harm" is a measure of the injury which has been caused to society by the commission of the offence, whereas "culpability" is a measure of the degree of relative blameworthiness disclosed by an offender's actions and is measured chiefly in relation to the extent and manner of the offender's involvement in the criminal act. In the context of the offence of dangerous driving under s 64(1) of the RTA, the primary factor relating to the *harm* caused would be the extent of injury or damage caused. A related and equally important consideration would be the *potential* harm that might have resulted, given that driving is an inherently dangerous activity that can pose serious risk to road users and pedestrians alike. The factors increasing the accused's *culpability* would include a particularly dangerous manner of driving. As illustrations, the aggravating factors identified in *Hue An Li*, *ie*, speeding, drink-driving and sleepy driving, would clearly contribute to this, as would driving while using a mobile phone. In addition, if the dangerous driving was deliberate (for instance, in "hell riding" cases), this would also indicate a higher level of culpability. Aside from these two principal parameters, the court should also have regard to other mitigating and aggravating factors which do not directly relate to the commission of the offence *per* se. These include (but are not limited to) an accused's good or bad driving record, as well as his remorse or lack thereof.

42 Seen in this light, the District Judge's approach and the Prosecution's submission are not that far apart in substance. Given the range of sentences prescribed by s 64(1) of the RTA, I would agree that a fine would suffice where there is a low level of harm caused by the offence (or none at all) and the accused's culpability is also low (substantially the Prosecution's first submission (see [40] above)). On the other hand, imprisonment would be warranted where there is a high level of harm caused by the offence and the accused's culpability is also high (substantially the District Judge's approach (see [40] above)). Situated between these two obvious extremes are myriad cases of varying levels of harm and culpability, and it would not be fruitful to attempt to lay down too fine a rule. It suffices to state that the role of a sentencing court is to appreciate the facts in each case and properly situate the case before it along the continuum of severity, having regard to both the level of *harm* and the accused's *culpability*, as well as the applicable *mitigating and aggravating factors*.

43 The Prosecution's second submission was that a custodial sentence ought to be the norm in cases where serious damage or injuries had resulted from dangerous driving (see [40] above). Essentially, this calls for a custodial norm where there is a high level of *harm* caused by the offence. I would agree that this is an appropriate starting point, but I hasten to add that this is not because the consideration of harm invariably eclipses any consideration of *culpability*. As I have already emphasised in the preceding paragraph, a sentencing court must have regard to *both* the level of *harm* and the accused's *culpability*, *as well as* the applicable *mitigating and aggravating factors*. However, if there is a high level of *harm* caused by an accused's dangerous driving, a custodial sentence may very well be the presumptive sentencing approach because the accused's corresponding *culpability* is unlikely to be low

in such cases. Even then, however, the sentencing court must still add the applicable *mitigating and aggravating factors* into the balance and weigh all the relevant considerations holistically before determining if the overall severity of the offence may be said to bring the case across the custodial threshold.

Whether the custodial threshold had been crossed in the present case

44 As I pointed out earlier, the central issue posed by the present appeal was whether the custodial threshold had been crossed.

The harm caused by the offence

45 The victim suffered multiple injuries as a result of the accident, including traumatic head injury features such as a comminuted undisplaced fracture of the skull vault in the left parieto-temporal region extending to the temporal bone. She was warded for seven days and given hospitalisation leave over two periods totalling 42 days (this latter figure included the seven days she was warded). Like the District Judge, I had no doubt that the victims' injuries were severe and serious, although I similarly noted that the victim did not suffer from permanent disability. I noted that the victim's medical report stated that an outpatient appointment was arranged as the victim had complaints of reduced hearing in her left ear, but this, in and of itself, was neither here nor there. All things considered, I was of the view that the harm caused by the offence tended towards the higher side.

The Accused's culpability

46 The Accused admitted that he did not notice the traffic light signal as he was following a white sedan in front of him. In *Jali*, the Court of Appeal held (at [22] and [27]) that:

> … In this regard, it is clear and axiomatic that when a driver drives into a signalised traffic junction, he must ensure that the traffic lights are in his favour in order to avoid the dire (or even tragic) consequences that might ensue if they are not, in fact, in his favour. *If he chooses to drive into such a junction and does not bother to check the state of the traffic lights, he is not merely negligent; he has committed a rash or reckless act.* …
>
> …
>
> … In this regard, it must be emphasised that we are here concerned with road traffic offences. This particular context is of the first importance because it means that it is not only appropriate but also principled and commonsensical to place an objective obligation on all drivers (or motorcyclists, as the case may be) to check the state of the traffic lights when travelling across a signalised traffic junction … *A driver or motorcyclist who chooses (for whatever reason) not to do so and drives into such a junction when the traffic lights are not in his favour drives, in our view, in a manner that is rash or reckless.*
>
> [original emphasis omitted; emphasis added in italics]

47 Applying *Jali* to the present case, the Accused clearly drove in a rash or reckless manner. His claim to have simply followed the white sedan in front of his vehicle is a poor excuse for his rashness or recklessness. I also took into account that the present case involved an accident at a pedestrian crossing, which is an aggravating factor (*Sentencing Practice in the Subordinate Courts* vol II at p 1675).

48 However, as the District Judge noted, there was no evidence to suggest that the Accused had deliberately tried to beat the red lights, or that his driving was aggressive or erratic. Moreover, the aggravating factors identified in *Hue An Li*, *ie*, speeding, drink-driving and sleepy driving, which related to the manner of driving, were conspicuously absent. In addition, the Accused was not driving while using a mobile phone.

49 The present case involved the offence of *dangerous* driving. Although I took into account the Accused's rash or reckless manner of driving, as well as

the fact that the an accident had occurred at a pedestrian crossing, I was careful not to accord undue weight to these considerations because these facts were, in many ways, the *very same* facts that made the Accused's driving dangerous and gave rise to *liability* for the offence in the first place. In considering the Accused's manner of driving at the *sentencing* stage, the question was not whether the Accused's manner of driving could be labelled "dangerous", but whether it was *particularly* dangerous so as to increase his culpability for the offence. In the present case, there were no additional aggravating features and also no evidence that the Accused's dangerous driving was deliberate. Notwithstanding my earlier observation that an accused's culpability is unlikely to be low in cases where there is a high level of harm caused (see [43] above), the Accused's culpability was not particularly high in the circumstances.

The Accused's remorse

50 Like the District Judge, I gave weight to the Accused's remorse as evidenced by his plea of guilt. This was a factor that operated in the Accused's favour.

The Accused's bad driving record

51 The Accused's driving record was peppered with a substantial number of traffic offences over a span of 18 years, comprising offences which were compounded and offences which he had pleaded guilty to (and for which he was consequently fined). The full list is as follows:

SN	Date	Offence	Fine or composition / amount
1	25 May 1996	Careless driving	Fine / $500
2	21 March 1997	Speeding	Fine / $1,000
3	11 January 1999	Speeding	Fine / $1,200
4	16 January 1999	Speeding	Composition / $200
5	3 August 1999	Speeding	Composition / $130

6	12 September 2006	Parking at unbroken double yellow lines	Composition / $70
7	12 April 2007	Failing to conform to red light signal	Composition / $200
8	11 November 2009	Disobeying "no entry" sign	Composition / $70
9	11 October 2013	Speeding	Composition / $130
10	29 August 2014	Making an unauthorised U-turn	Composition / $70

52 From the above list, SNs 1–5, 7 and 9 were directly relevant to the present appeal. In addition, I also considered SN 10 to be potentially relevant.

53 The District Judge initially set out all of the Accused's antecedents except for SNs 6 and 8 in the above list. However, when he actually considered these antecedents, his focus was on SNs 1–3, 7 and 9. Before me, parties were at sharp variance over whether the District Judge should have taken into account the offences which were compounded. The Accused submitted that the District Judge should have disregarded the compounded offences, as they were, for all intents and purposes, the same as a discharge amounting to an acquittal. In this regard, the Accused referred to ss 241(5) and 242(4) of the CPC. Sections 241 and 242 of the CPC provide as follows:

> **Compounding offences**
>
> **241.**—(1) An offence specified in the third column of the Fourth Schedule may be compounded at any time by the person specified in the fourth column of that Schedule or, if that person is suffering from a legal or mental disability, by any person competent to act on his behalf.
>
> (2) Notwithstanding subsection (1), where investigations have commenced for an offence specified in the third column of the Fourth Schedule, or when the accused has been charged in court for the offence, the offence shall only be compounded with the consent of the Public Prosecutor on such conditions as he may impose.
>
> (3) Where any offence is compoundable under this section, the abetment of or a conspiracy to commit the offence, or an

attempt to commit the offence when the attempt is itself an offence, may be compounded in like manner.

(4) Where investigations have commenced for an offence which is subsequently compounded under subsection (2), no further proceedings shall be taken against the person reasonably suspected of having committed the offence.

(5) Where after the accused has been charged in court, the offence is compounded under subsection (2), the court must order a discharge amounting to an acquittal in respect of the accused.

Public Prosecutor may compound offences

242.—(1) The Public Prosecutor may, on such terms and conditions as he may determine, at any time compound any offence or class of offences as may be prescribed by collecting from a person who is reasonably suspected of having committed the offence a sum of money which shall not exceed —

(*a*) one half of the amount of the maximum fine that is prescribed for the offence; or

(*b*) $5,000,

whichever is the lower.

(2) Where any offence is compoundable under this section, the abetment of or a conspiracy to commit the offence, or an attempt to commit the offence when the attempt is itself an offence, may be compounded in like manner.

(3) Where investigations have commenced for an offence which is subsequently compounded under subsection (1), no further proceedings shall be taken against the person reasonably suspected of having committed the offence.

(4) Where after the accused has been charged in court, the offence is compounded under subsection (1), such composition shall have the effect of an acquittal in respect of the accused.

(5) The Public Prosecutor may authorise in writing one or more Deputy Public Prosecutors to exercise the power of composition conferred on him under this section.

(6) The Minister shall designate the person who may collect any sum of money paid under this section for the composition of offences.

The Accused further submitted that the compounded offences were, in any event, minor offences which should not have any bearing on the present sentence.

54 The Prosecution, on the other hand, submitted that the provisions relied on by the Accused dealt with offences under the PC and the Miscellaneous Offences (Public Order and Nuisance) Act (Cap 184, 1997 Rev Ed) ("MOA"). It was said that Parliament intended for composition of traffic offences to be an expedient means of dealing with less serious offences, and not as a means of having an offender acquitted. The Prosecution further pointed to s 243 of the CPC, which it said dealt with composition of non-PC and non-MOA offences, and which made no reference to an acquittal. This provision provides as follows:

> **Compounding of offences under other written laws**
>
> **243.**—(1) Where any Act (other than the Penal Code (Cap. 224)) contains an express provision for the composition of offences thereunder, the person authorised under that provision to compound such offences shall exercise the power of composition subject to any general or special directions of the Public Prosecutor.
>
> (2) Where any Act (other than the Penal Code) does not contain any provision for the composition of offences thereunder, any offence under that Act or any subsidiary legislation made thereunder may be compounded under this section if the offence is prescribed under that Act as a compoundable offence.
>
> (3) For the purposes of subsection (2), the power conferred on any Minister, statutory authority or other person to make subsidiary legislation under any Act to which that subsection applies shall include the power —
>
> (*a*) to prescribe the offences under that Act or any subsidiary legislation made thereunder as offences that may be compounded under this section;
>
> (*b*) to designate the person who may compound such offences; and
>
> (*c*) to specify the maximum sum for which any such offence may be compoundable, except that the maximum sum so specified shall not exceed —

> (i) one half of the amount of the maximum fine that is prescribed for the offence; or
>
> (ii) $2,000,
>
> whichever is the lower.
>
> (4) The person designated under subsection (3)(*b*) may, subject to such general or special directions that the Public Prosecutor may give, compound any offence prescribed under subsection (3)(*a*) by collecting from a person who is reasonably suspected of having committed the offence a sum of money not exceeding the maximum sum that is specified under subsection (3)(*c*) in respect of that offence.
>
> (5) On payment of such sum of money, no further proceedings shall be taken against that person in respect of such offence.

55 Ultimately, however, the question as to whether an offence under the RTA (or its subsidiary legislation) which has been compounded amounts to an acquittal did not have to be answered in the present case. Whether an offence under the RTA (or its subsidiary legislation) which has been compounded *amounts to an acquittal* is a separate and distinct question from whether the same *can be taken into account for sentencing purposes*. The latter does not turn on the answer to the former.

56 In my view, an offence under the RTA (or its subsidiary legislation) which has been compounded *can* be taken into account for sentencing purposes.

57 In *Public Prosecutor v Lim Niah Liang* [1996] 3 SLR(R) 702 ("*Lim Niah Liang*"), the accused pleaded guilty to a charge under s 18(2) and punishable under s 21(1) of the Environmental Public Health Act (Cap 95, 1988 Rev Ed) ("EPHA 1988"). The accused had previously compounded a similar offence, and the essential point for consideration on appeal was whether the respondent could have been properly characterised as a recalcitrant offender, such that a

corrective work order should have been imposed pursuant to s 21A(1) of the EPHA 1988. Yong Pung How CJ held (at [21]) that:

> In my opinion, in the context of s 21A(1) of the [EPHA 1988] and for the purpose of showing that an offender is "recalcitrant", it would suffice to rely on evidence that he has previously *committed* the same offence on at least one occasion. He need *not* have been *convicted* of the offence. In the circumstances*, I did not see why evidence of a compounded offence could not be relied upon for the specific purpose of imposing a corrective work order under the [EPHA 1988].* … [emphasis added]

Yong CJ subsequently went on to hold (at [23]) that:

> It would also be pertinent to consider that, in the vast majority of cases, enforcement of the anti-littering provisions in the [EPHA 1988] is dependent on the direct observation of an enforcement officer, who witnesses the commission of the offence while he is performing his anti-littering rounds. As the DPP rightly pointed out, it would not be inconceivable that composition of such offences, in view of the straightforward nature of the offence itself, amounts to an admission of guilt. The offender having been caught red-handed would probably decide to pay the composition fine, if permitted, rather than go to court. After all, an offence under s 18(1) of the [EPHA 1988] is what one could consider to be a "strict liability" offence, where no blameworthy mental element need be shown. Hence, the Prosecution would only have to show that the offender had littered and that he had done so voluntarily and not out of accident or automatism …

58 I accept that the passage just quoted may not apply in its entirety to *all* traffic offences. However, it is fair to say that it is, for the most part, applicable to less serious traffic offences for which composition is offered.

59 Moreover, allowing a court to take into account a compounded offence under the RTA (or its subsidiary legislation) allows for a more holistic approach in sentencing. It cannot be gainsaid that a court should have regard to all relevant factors in sentencing. This is, in fact, hinted at by s 228(2)(*c*) of the CPC, which provides that the Prosecution's address on sentence may include "*any* relevant factors which may affect the sentence" [emphasis added] (although this

provision appears to apply only to plead guilty proceedings, s 230(1)(*x*) of the CPC makes it applicable to trial proceedings as well). It follows that the court must be allowed to take these same factors into account.

60 Furthermore, the offence of dangerous driving is one that calls for both specific and general deterrence (*D'Rozario Pancratius Joseph v Public Prosecutor* [2015] SGHC 46 at [27]). Allowing a court to take into account a compounded offence under the RTA (or its subsidiary legislation) gives better effect to this need. Indeed, whether a traffic offence is compounded may ultimately depend on the prevailing prosecutorial policy of the day. But the need to deter bad driving remains regardless and is better given effect to when a court is allowed to take into account compounded offences under the RTA (or its subsidiary legislation).

61 Returning to the present case, I was of the view that the District Judge had failed to give sufficient weight to the Accused's bad driving record. I noted the Prosecution's concession that the Accused's antecedents may not, in and of themselves, warrant a custodial sentence. In my view, however, this factor was a significant one to which considerable weight had to be accorded.

62 Leaving aside SNs 6 and 8 in the list at [51] above (which I considered to be irrelevant), the Accused's antecedents could be divided into two broad time periods. The first period was from 1996 to 1999 and comprised SNs 1–5 in the list. I noted that in 1999 alone, the Accused was dealt with for speeding three times (*ie*, SNs 3–5 in the list). The second period was from 2007 to 2014 and comprised SNs 7, 9 and 10 in the list. The Accused's last antecedent (*ie*, SN 10 in the list) was less than a year before the accident in the present case. All things said, it was plain that the Accused had an alarming proclivity to flout traffic rules. Yet, he had, time and time again, been let off with either a fine or

composition. These proverbial slaps on the wrist might well explain the Accused's seeming nonchalance towards his traffic offences. It was also most likely the case that in all these past episodes, no one had actually been injured by the Accused's infractions. The present case, unfortunately, was not as before. In my judgment, this was a case where specific deterrence was called squarely to the fore. A clearer and, indeed, stronger message had to be sent to the Accused that traffic rules are to be strictly obeyed and not flouted with impunity.

Conclusion on whether the custodial threshold had been crossed in the present case

63 In the present case, I found that the harm caused by the offence tended towards the higher side (see [45] above) but that the Accused's culpability was not particularly high (see [46]–[49] above). In addition, the Accused's remorse operated in his favour (see [50] above). If these were all there were to consider, I would have been hesitant in concluding that the custodial threshold had been crossed. However, what ultimately tipped the balance in bringing the present case over the custodial threshold was the Accused's bad driving record (see [51]–[62] above).

64 In the circumstances, I was of the view that a short custodial sentence of one week's imprisonment was appropriate. As for the disqualification order, this combines the three sentencing objectives of punishment, protection of the public and deterrence and should increase in tandem with the severity of the offence (*Edwin s/o Suse Nathen v Public Prosecutor* [2013] 4 SLR 1139 at [13]–[14]). Given the increased severity with which I have viewed the Accused's offending, a concomitant increase of the disqualification period was warranted. I therefore increased the disqualification period to 18 months.

Other observations

65 Before concluding, I make some additional observations on the Prosecution's reliance on two sets of statistics to illustrate the "magnitude of this problem". The first was derived from *Singapore Parliamentary Debates, Official Report* (27 February 1996) vol 65, where the Minister for Home Affairs stated (at col 716) that an average of 7,200 *people* were killed or injured on the roads every year from 1991 to 1995. The Prosecution said that this figure presupposed that there were, at most, 7,200 *accidents* per year (as there may have been multiple victims in some accidents). The second set of statistics was from a Police News Release dated 15 February 2017 ("the Police News Release"), which showed the number of *accidents* resulting in injuries from 2014 to 2016 as follows:

Year	**Number of accidents resulting in injuries**
2014	7,809
2015	8,058
2016	8,277

The Prosecution contended that these figures represented, at least, the number of *persons* injured (as this latter number could be higher if there were multiple victims in some accidents). It was also highlighted that these figures did not include the number of accidents resulting in *death*. Contrasting the two sets of figures, the Prosecution submitted that there were "far more accidents, far more injuries" today than in 1996.

66 Assuming the data was accurate and reliable, I was conscious that the two sets of figures did not correlate with each other: the first set of statistics had to do with the average number of *people* killed or injured on the roads and the second set of statistics had to do with the number of *accidents* resulting in injuries. The first set of statistics would in all likelihood correlate with a lower

number of *accidents* given that there would probably have been multiple accident victims in at least some cases. Adopting the same logic, the second set of statistics would in all likelihood correlate with a higher number of *accident victims* who sustained injuries.

67 From the second set of statistics, the number of accidents involving injuries had certainly registered a continuing increasing trend over the recent few years (*ie*, from 2014 to 2016). Logically, this would also mean that the number of accident victims must have been increasing. However, these statistics only suggest a *possible* recent trend at best and do not reveal any marked longer-term shift towards deteriorating driving behaviour over time. If one were to look slightly further back to 2012 and 2013, it is apparent from the Police News Release that the numbers only tell us so much as a snapshot. They can and will fluctuate with little or no predictability. The 2012 and 2013 figures in fact stood at 8,022 and 7,598 respectively. Viewed in perspective, there is not all that much to be gleaned from the perceived trend from 2014 to 2016 where the numbers began to rise. I do, of course, fully recognise the need for constant vigilance and rigorous enforcement to ensure that the number of accidents on our roads are kept to a minimum, and it is probably because this has been a cornerstone of our traffic enforcement regime that the numbers do not appear to have reached dramatically high levels in spite of our increasing vehicle population.

68 Nor could a longer-term trend be discerned by comparing both sets of statistics. The Prosecution submitted that it was the *absolute* number of accidents and injuries that mattered. While I would agree with this submission if one were simply seeking to identify a short-term trend (such as in the preceding paragraph), I do not think that the absolute numbers tell the whole story when the trend concerned involves a more substantial period of time. Indeed, the Prosecution candidly accepted that the vehicle population and the

number of kilometres of road have increased over time. That being the case, statistics presented as a *percentage* of the vehicle population or the number of kilometres of road would have, in my view, presented a more helpful picture. In this regard, I further note that the absolute numbers have not actually increased all *that* significantly over a period of approximately 20 years, and I would not be at all surprised if any statistics presented along these lines as a percentage were to show a contrary trend.

69 For the above reasons, while I did take into account the apparent increasing trend of accidents resulting in injuries over the recent few years, *ie*, from 2014 to 2016, I did not accord very substantial weight to this in my decision.

Conclusion

70 In the premises, I was persuaded that the sentence imposed by the District Judge was manifestly inadequate. A clear deterrent sentence, in the form of a custodial sentence and a longer period of disqualification, was necessary for both specific and general deterrence. Accordingly, I allowed the appeal and imposed a sentence of one week's imprisonment. I also increased the period of disqualification to 18 months and ordered that the fine (which had been paid) be refunded to the Accused.

See Kee Oon
Judge

Francis Ng *SC* and Tan Zhongshan (Attorney-General's Chambers)
for the appellant;
Goh Teck Wee (Goh JP & Wong LLC) for the respondent.
