IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 176

Magistrate's Appeal No 52 of 2016

Between

Public Prosecutor

… *Appellant*

And

Ganesan Sivasankar

… *Respondent*

GROUNDS OF DECISION

[Criminal Procedure and Sentencing] — [Sentencing] — [Benchmark sentences]

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Introduction

1 The Respondent was involved in a road traffic accident and was subsequently charged for offences under ss 304A(*a*) and 337(*a*) of the Penal Code (Cap 224, 2008 Rev Ed) ("PC"). He was convicted after trial in a District Court and sentenced to 12 weeks' imprisonment in respect of the charge under s 304A(*a*) of the PC and four weeks' imprisonment in respect of the charge under s 337(*a*) of the PC. The terms of imprisonment were ordered to run concurrently. In addition, a disqualification order disqualifying the Respondent from holding all classes of vehicle licence for eight years from the date of release was also imposed in respect of each of the two charges. Dissatisfied, the Public Prosecutor appealed against the District Judge's sentence in respect of the charge under s 304A(*a*) of the PC. However, the Prosecution clarified, in its written submissions, that it was only appealing against the 12-week

imprisonment term imposed in respect of this charge and not the disqualification order. In addition, the Prosecution did not appeal against the District Judge's sentence in respect of the charge under s 337(*a*) of the PC.

2 After hearing parties on 28 April 2017, I allowed the appeal and enhanced the imprisonment term in respect of the charge under s 304A(*a*) of the PC to five months. These are the grounds of my decision.

The background facts

3 The Respondent was an Indian national who was 28 years old at the material time. Part of the Respondent's duties involved driving a lorry to ferry workers between their dormitory at Woodlands and his company's premises at Aljunied. The victims were a motorcycle rider, Mr Chan Kock Chong ("Mr Chan"), and his wife and pillion rider, Mdm Lui Yoke Leng ("Mdm Lui") (collectively, the "Victims"). The Victims were Malaysians who lived in Johor Bahru, Malaysia, and worked in Singapore. They commuted to Singapore daily on Mr Chan's motorcycle.

4 On the fateful morning of 3 September 2013, the Respondent woke up late at 7.30 am, which was the time he was supposed to have picked up the workers. In order to make up for lost time, he called one of the workers using his mobile phone and gave instructions for the workers to proceed to an alternative pick-up point outside Woodlands Fire Station along Woodlands Industrial Park D Street 2. It was undisputed that the Respondent had uneventfully used this alternative pick-up point on a number of prior occasions.

5 At about 8.30 am, the Respondent reached a U-turn along Woodlands Road. The Respondent had to execute this U-turn in order to get to the alternative pick-up point, as Woodlands Industrial Park D Street 2 was on the

opposite side of Woodlands Road. He had to very quickly cut across the two lanes of the opposite side of Woodlands Road after executing the U-turn to turn left into Woodlands Industrial Park D Street 2. In fact, there was an additional filter lane for vehicles intending to make the turn into Woodlands Industrial Park D Street 2, and this started even before the U-turn. In his grounds of decision in *Public Prosecutor v Ganesan Sivasankar* [2017] SGDC 40, the District Judge referred to these two steps of executing the U-turn and cutting across the two lanes of the opposite side of Woodlands Road as "the manoeuvre".

6 However, just as the Respondent executed the manoeuvre, Mr Chan's motorcycle was travelling down the opposite side of Woodlands Road after having negotiated an earlier bend along that stretch of road. The result was a collision between the two vehicles.

7 An eyewitness saw the Victims being thrown off the motorcycle. Mr Chan suffered various injuries as a result of the collision. This gave rise to the charge under s 337(*a*) of the PC. Unfortunately, Mdm Lui, who was then five-months pregnant, succumbed to her injuries and passed away. This was the basis of the charge under s 304A(*a*) of the PC. Tragically, the Victims' unborn child also did not survive the accident.

The proceedings below

8 The District Judge thought that the "central contested issue" was whether Mr Chan's motorcycle was in a position to be seen by the Respondent before the Respondent executed the manoeuvre and, accordingly, whether the manner in which the Respondent executed the manoeuvre was rash in the circumstances. After a comprehensive review of the evidence, the District Judge

concluded that Mr Chan's motorcycle *was* in a position to be seen by the Respondent at the U-turn before the Respondent executed the manoeuvre.

9 Following the Respondent's conviction, the Prosecution urged the District Judge to impose a sentence of nine to ten months' imprisonment in respect of the charge under s 304A(*a*) of the PC, together with a disqualification order for eight to ten years. On the other hand, the Respondent submitted that an aggregate term of not more than five weeks' imprisonment would be appropriate.

10 The District Judge first considered the Respondent's degree of rashness. He held that this was a case where the Respondent had "looked without seeing". Thus, while Mr Chan's motorcycle was close enough to be seen by the Respondent at the U-turn, the District Judge "could not find enough evidence to go further and find (or even comfortably infer) that [the Respondent] did in fact see" Mr Chan's motorcycle at the U-turn. The District Judge noted that there could have been many reasons for this. However, there was no explanation from the Respondent as to what was really going on. Based on the evidence presented, there was not enough for the District Judge to go beyond the basic particulars as set out in the charges. Without the ability to discern between the various possibilities, the District Judge resolved the doubt in favour of the Respondent. He stated as follows:

> … This meant that I took the position that the Accused could have, and ought to have kept a proper lookout for all on-coming traffic while at the U-turn point; that he could have seen the scooter approaching as it was then around the area near lamppost 322; that he ought to have given way to the scooter by not encroaching into the path of the scooter; that he ought to have continued to keep a proper look out as he cut left across the lanes, including by checking his left blind spot; that he had failed to keep a proper lookout at both instances; and that his actions of executing the U-turn and cutting left across the lanes

> and into the path of the scooter without having kept a proper lookout was rash in the circumstances. …

Ultimately, the District Judge held that this was a "base lined case of rashness".

11 On this basis, the District Judge distinguished the precedents tendered by the Prosecution (*Public Prosecutor v Bu Xiao Ming* District Arrest Case No 2644 of 2014 ("*Bu Xiao Ming*"); *Public Prosecutor v Chew Tuan Peow* District Arrest Case No 15059 of 2011 ("*Chew Tuan Peow*"); and *Public Prosecutor v Chua Joo Boon Fabian* District Arrest Case No 19869 of 2010 ("*Fabian Chua*")) as they involved much higher degrees of rashness and clear instances of illegal manoeuvres. Instead, the District Judge found a precedent cited by the Respondent (*Public Prosecutor v Nandprasad Shiwsaakar* [2014] SGDC 391 ("*Nandprasad*")) to be much closer on the facts. The sentence imposed in that case was six weeks' imprisonment and eight years of driving disqualification from all classes. From this, the District Judge made an upward adjustment to take into account the serious consequences in this case and the fact that the Respondent was convicted after a full trial. The District Judge also considered the degree of rashness to be aggravated as there were two distinct points where the Respondent bore the obligation to keep a proper lookout: one at the U-turn and the other while cutting across the lanes. Accordingly, the District Judge sentenced the Respondent to 12 weeks' imprisonment in respect of the charge under s 304A(*a*) of the PC and four weeks' imprisonment in respect of the charge under s 337(*a*) of the PC, with both terms of imprisonment to run concurrently. In addition, he also imposed, in respect of each of the two charges, a disqualification order disqualifying the Respondent from holding all classes of vehicle licence for eight years from the date of release.

The issues arising in this appeal

12 As noted earlier, the Prosecution's appeal was ultimately only against the District Judge's sentence of 12 weeks' imprisonment in respect of the charge under s 304A(*a*) of the PC (see [1] above). In urging me to increase the imprisonment term to one of at least nine months, the Prosecution contended that the District Judge:

(a) erred in finding, or in any event placing undue weight on his finding, that the Respondent did not see Mr Chan's motorcycle;

(b) failed to adequately consider the aggravating factors; and

(c) erred by disregarding the sentencing norm for fatal accident cases under s 304A(*a*) of the PC.

13 The Prosecution's contentions provided a convenient framework for analysing the various issues that were raised in this appeal. Correspondingly, the three broad issues that I had to determine were:

(a) the factual basis for sentencing;

(b) the applicable aggravating factors; and

(c) the sentencing approach for fatal accident cases under s 304A(*a*) of the PC.

14 I now turn to consider these issues *seriatim*. For the avoidance of doubt, the term "fatal accident cases" is used in these grounds of decision to refer only to *traffic death* cases. It is not intended to cover fatal accidents arising in other contexts.

The factual basis for sentencing

The parties' respective positions

15 The Prosecution made two submissions with regard to the factual basis for sentencing. First, it was argued that the District Judge erred in finding that the Respondent did not see Mr Chan's motorcycle. Since Mr Chan's motorcycle was in a position to be seen and was in fact seen by the eyewitness who was the driver of the car immediately behind the Respondent's lorry at the U-turn, there was no reason for the Respondent not to have seen it. In addition, by accepting that the Respondent did not in fact see Mr Chan's motorcycle, the District Judge appeared to have given credit to the Respondent's primary claim that he had checked for oncoming traffic at the U-turn and had seen that the road was clear; this was illogical given the District Judge's conclusions that the Respondent's entire account was false, and that he was not a witness of truth. Furthermore, the Respondent's lorry had inched forward into the inner left lane on the opposite side of Woodlands Road, suggesting that the Respondent did see Mr Chan's motorcycle. The crux of the Prosecution's submissions here was that the District Judge should have found or inferred that the Respondent had *in fact seen* Mr Chan's motorcycle, but *decided to execute the U-turn anyway*. It was said that, "[g]iven the strong evidence in this case that [Mr Chan's] motorcycle could be seen, that the Respondent looked in its direction and the complete lack of credibility of the Respondent's account", there was no reason why the District Judge should not have inferred that the Respondent had in fact seen Mr Chan's motorcycle when he was at the U-turn.

16 The Prosecution's second, and *alternative*, submission was that the District Judge placed undue weight on his finding that the Respondent did not see Mr Chan's motorcycle. The point here was that the District Judge should have found that the Respondent *did not bother to look out for oncoming traffic*

at all, which was the only reason why he did not see Mr Chan's motorcycle. The Prosecution said that such rashness involved an objective consciousness of risk, but contended that this was not (or not necessarily) less culpable than rashness involving a subjective consciousness of risk. There was therefore no basis for the District Judge to categorise this case as a "base lined case of rashness".

17 The Respondent, on the other hand, initially argued that the District Judge made no finding as to whether the Respondent had seen Mr Chan's motorcycle approaching. However, it appeared that the Respondent eventually aligned himself with the District Judge's finding that he had "*looked without seeing*". This was unsurprising. All things being equal, an accused who had "looked without seeing" would, presumably, be less culpable than one who had not bothered to look out for oncoming traffic at all, or one who had seen the oncoming traffic but decided to proceed nonetheless.

My decision on the factual basis for sentencing

18 Ultimately, the choice was between one of three possibilities:

(a) first, the Respondent had *in fact seen* Mr Chan's motorcycle, but *decided to execute the U-turn anyway*;

(b) second, the Respondent *did not bother to look out for oncoming traffic at all*; and

(c) third, the Respondent had "*looked without seeing*".

19 In *Jali bin Mohd Yunos v Public Prosecutor* [2014] 4 SLR 1059 ("*Jali*"), the Court of Appeal held (at [32]) that, in the specific context of sentencing in

road traffic offences, rashness can involve either a subjective or an objective consciousness of risk:

> …
>
> > (1) A finding of rashness in sentencing in road traffic offences requires consciousness as to the risk by the accused (who is in charge of the vehicle concerned). In this regard, rashness and recklessness are treated as interchangeable concepts.
> >
> > (2) *Such consciousness includes*:
> >
> > > (a) *situations in which there was in fact* ***subjective appreciation of the risk*** *by the accused*; and
> > >
> > > (b) *situations in which the risk is so obvious that the accused* ***ought, as a reasonable person, to have known of it*** *inasmuch as had he paused to consider it, it would have been artificial to have ignored such a risk*.
> >
> > (3) However, in Situation 2(b) above, there might nevertheless be no finding of rashness or recklessness on the part of the accused where there exist exceptional circumstances, for example, where the accused acted under some understandable and excusable mistake or where his capacity to appreciate risks was adversely affected by some condition not involving fault on his part. There may also be cases where the accused acted as he did in a sudden dilemma created by the actions of others.
>
> [emphasis added in italics and bold italics]

20 In the context of the present appeal, the first possibility involved a subjective consciousness of risk, whereas the second and third possibilities involved an objective consciousness of risk.

21 I started by considering the first possibility, *ie*, that the Respondent had *in fact seen* Mr Chan's motorcycle, but *decided to execute the U-turn anyway*. Implicit in the Prosecution's contentions on this point (see [15] above) was that this was the irresistible inference to be drawn from the evidence. In this regard,

the Prosecution appeared to rely on the evidence that Mr Chan's motorcycle was in a position to be seen and that the Respondent's lorry had inched forward into the inner left lane of the opposite side of Woodlands Road, as well as the incongruity between the District Judge's conclusions concerning the Respondent's lack of credibility and the former's seeming acceptance of the latter's claim that he had checked for oncoming traffic at the U-turn and had seen that the road was clear. It was *possible* to infer from all this that the Respondent had in fact seen Mr Chan's motorcycle, but decided to execute the U-turn anyway. However, this was by no means the *only* inference that could be drawn. Nor did I find anything else in the record that indicated that this was the case. Bearing in mind the high standard of proof in criminal cases, any doubt had to be resolved in favour of the Respondent. In the circumstances, I was of the view that the weight of the evidence did not conclusively point towards a finding that the Respondent had in fact seen Mr Chan's motorcycle, but decided to execute the U-turn anyway.

22 Moreover, I agreed with the Respondent that the way the charge was framed did not require the District Judge to find that the Respondent had seen Mr Chan's motorcycle. The relevant part of the charge read as follows:

> … by making a U-turn into Woodlands Road toward Kranji and continuing to filter left toward the filter lane leading into Woodlands Industrial Park D Street 2, when you ***ought to have seen*** *the motorcycle approaching before you made the U-turn*, thus failing to give way to the said motor cycle and encroaching into the path of the said motorcycle, resulting in the said motor cycle colliding into your motor lorry …
>
> [emphasis added in italics and bold italics]

23 It was therefore clear from the charge that the Prosecution's case was premised on rashness which involved an *objective*, rather than a subjective, consciousness of risk. In its submissions, the Prosecution pointed out that,

before the District Judge, it had pursued the line of questioning that the Respondent had in fact seen Mr Chan's motorcycle, but nevertheless took the risk to execute the U-turn. But this, in my view, was neither here nor there. If anything, all it showed was that the Prosecution had taken an inconsistent position before the District Judge. The charge, based as it were on an objective consciousness of risk, therefore fortified my disinclination to find that the Respondent had in fact seen Mr Chan's motorcycle, but decided to execute the U-turn anyway.

24 The charge was more consistent with both the second and third possibilities. To recapitulate, the second possibility was that the Respondent *did not bother to look out for oncoming traffic at all*, while the third possibility was that the Respondent had "*looked without seeing*". The latter was the finding made by the District Judge, and his reasons are summarised at [10] above. It appeared to me that the District Judge reached this conclusion after rejecting the possibility that the Respondent had seen Mr Chan's motorcycle, *ie*, the first possibility. However, it did not follow from this that the Respondent must have therefore "looked without seeing". It was equally (if not more) plausible that the Respondent did not bother to look out for oncoming traffic at all. Given the factual context, I was of the view that the second possibility was more consistent with the truth. The District Judge found that Mr Chan's motorcycle *was* in a position to be seen by the Respondent at the U-turn before the Respondent executed the manoeuvre (see [8] above). Thus, if the Respondent had indeed looked out for oncoming traffic, there was really no reason why he would not have seen Mr Chan's motorcycle. This being the case, the only logical inference had to be that the Respondent did not bother to look out for oncoming traffic at all. Moreover, there was nothing in the evidence which called for a departure from this inference. In fact, the District Judge noted that there were many reasons why a person might not have seen Mr Chan's motorcycle even though

it was in plain sight, but also that there was "*no such profession* from the [Respondent] to indicate what was really going on" [emphasis added].

25 At the hearing of the appeal, the Respondent also pointed to evidence that the Respondent's lorry had inched forward and had waited for some vehicles to pass before moving off, but I failed to see how these brought his case any further. All things considered, I concluded that the Respondent did not bother to look out for oncoming traffic at all.

Further observations

26 The submissions of the parties also gave occasion for me to consider two further issues. The first was whether there ought to be any difference in sentencing *vis-à-vis* rashness involving a subjective consciousness of risk, on the one hand, and rashness involving an objective consciousness of risk, on the other. In the specific context of sentencing in road traffic offences, *Jali* makes it clear that: (a) a finding of rashness requires *consciousness as to the risk* by the accused; and (b) such consciousness includes both a *subjective* and an *objective* consciousness of the risk (see [19] above). However, the Court of Appeal was silent as to the relative culpabilities of these two forms of rashness. As noted earlier, the Prosecution contended that rashness involving an objective consciousness of risk was not (or not necessarily) less culpable than rashness involving a subjective consciousness of risk (see [16] above). Significantly, this was accepted by the Respondent. There is good sense to this approach. Insofar as sentencing is concerned, it is not correct, in my view, to say that rashness involving a subjective consciousness of risk will invariably entail greater culpability than rashness involving an objective consciousness of risk.

27 The second issue had to do with the distinction between rashness and negligence. While emphasising that he was not appealing against his conviction,

the Respondent contended that the evidence appeared more suitable for a charge of negligence rather than rashness. What the Respondent probably had in mind was the bifurcation of s 304A of the PC into two limbs, one dealing with rashness, *ie*, s 304A(*a*) of the PC, and the other with negligence, *ie*, s 304A(*b*) of the PC:

> **Causing death by rash or negligent act**
>
> **304A.** Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished —
>
> (*a*) in the case of a rash act, with imprisonment for a term which may extend to 5 years, or with fine, or with both; or
>
> (*b*) in the case of a negligent act, with imprisonment for a term which may extend to 2 years, or with fine, or with both.

28 In *Public Prosecutor v Poh Teck Huat* [2003] 2 SLR(R) 299 ("*Poh Teck Huat*"), and in the context of a fatal accident case under s 304A of the Penal Code (Cap 224, 1985 Rev Ed) ("1985 PC") (which was *not* bifurcated then, as it is now, into two limbs), Yong Pung How CJ held (at [19]–[20]) that:

> This distinction [between criminal rashness and criminal negligence] is of particular importance when the trial judge examines the facts of the case before him to determine whether the charge is made out. *It however loses some of its significance at the sentencing stage.* At this stage, the concern is to ensure that the sentence reflects and befits the seriousness of the crime. To do so, the court must look to the moral culpability of the offender.
>
> In examining the moral culpability of an offender, the scale would start with mere negligence and end with gross recklessness. *However* ***negligence does not end nicely where rashness begins*** *and* ***there is a certain measure of overlap****.* As such, *it is possible for the* ***moral culpability*** *of an offender who has committed a rash act to be akin to that of a negligent act.*
>
> [emphasis added in italics and bold italics]

29 In *Public Prosecutor v Hue An Li* [2014] 4 SLR 661 ("*Hue An Li*"), the High Court noted (at [40]) the current bifurcation in s 304A of the PC and held that the disparate sentencing regimes in the two limbs of the provision clearly indicate that rashness and negligence are dichotomous concepts. While this may be so, I did not think that these observations undermined Yong CJ's point in *Poh Teck Huat* that it is possible for the *moral culpability* of an offender who has committed a rash act to be akin to that of a negligent act. In this regard, and for reasons that will become evident (see [66] below), I was of the view that the Respondent's culpability was more akin to that normally associated with gross negligence.

The applicable aggravating factors

30 The Prosecution argued that the District Judge failed to adequately consider the following aggravating factors: (a) the extent of harm caused; (b) the Respondent's lack of remorse; (c) the Respondent's rashness as a road user; and (d) the Respondent's duty of care in driving a heavy vehicle. The question before me was whether these aggravating factors were indeed applicable on the facts of the present case.

Extent of harm caused

31 In *Hue An Li*, the High Court considered (at [67]–[76]) two principles in determining whether a sentencing court can take into account the full extent of harm caused by a particular criminal act. The first principle is that no man should be held accountable for that which is beyond his control, *ie*, the control principle; the second is that moral and legal assessments often depend on factors that are beyond the actor's control, *ie*, the outcome materiality principle. The court concluded that the outcome materiality principle should trump the control principle in the context of criminal negligence for three reasons. First, the

provisions of the PC which criminalise negligent conduct are predicated on outcome materiality in two readily-observable aspects. One such aspect is that the prescribed maximum punishment under the PC frequently increases as the gravity of the resultant harm increases. Second, there is no exact correspondence between legal and moral assessment. The law does take into account considerations that go beyond moral assessment. Third, a countervailing species of legal luck can operate in favour of a putative offender. Putative offenders take the benefit of legal luck operating in their favour if adverse consequences do not eventuate, and it is only fair that an offender should not be heard to raise the control principle as a shield when a harmful outcome does eventuate. The court, however, left open the question as to how moral luck should be resolved in contexts other than criminal negligence.

32 I agreed with the Prosecution that the three reasons enunciated by the High Court were equally applicable in the context of criminal rashness. Consequently, the full extent of harm in the present case was something that could, and should, be considered. In this regard, what stood out on the facts was that the Respondent's conduct had not only resulted in the death of Mdm Lui, but also the death of the Victims' unborn child. The extent of harm caused was therefore greater than what one would normally expect in an offence under s 304A(*a*) of the PC. However, this did not appear to have been sufficiently appreciated by the District Judge, who, in articulating his reasons for the sentences he had imposed, alluded to the "serious consequences which resulted at [the Respondent's] hands" but otherwise made no mention of the fact that more than one death was caused. Accordingly, I agreed with the Prosecution that the District Judge had erred by failing to place sufficient weight on this aggravating factor.

33 The Respondent objected to the death of the Victims' unborn child being regarded as an aggravating factor. The crux of this objection was that no separate charge was brought against the Respondent for this. Despite its superficial attractiveness, this argument ultimately missed the point. I did not think that the absence of a separate charge precluded me from taking into account the full extent of harm in this case. Indeed, there could have been any number of reasons for the Prosecution not proffering a separate charge in respect of the death of the Victims' unborn child. A decision to prosecute (or not to prosecute) lies within the sole discretion and domain of the Prosecution, and it is not for a court to second-guess the reasons behind such decisions. Instead, the role of a court is to properly appreciate the facts before it and fashion a condign sentence appropriate to both the harm caused by the offence and the accused's culpability (*Lim Ying Ying Luciana v Public Prosecutor and another appeal* [2016] 4 SLR 1220 ("*Luciana Lim*") at [28]). In the present case, and notwithstanding the Respondent's suggestion that there might be issues of causation involved, it was clear to me that the Respondent's conduct had resulted in more than one death, and that this should properly be regarded as an aggravating factor.

Lack of remorse

34 The Prosecution submitted that the Respondent showed no remorse when he defiantly maintained his untenable claims during the trial, despite being confronted with strong independent eyewitness evidence and CCTV footage.

35 It is well established that the mere fact of claiming trial is not an aggravating circumstance (*Kuek Ah Lek v Public Prosecutor* [1995] 2 SLR(R) 766 at [65]). At the same time, however, the fact that an accused maintains the correctness of his position "in a defiant manner right to the end, despite the

overwhelming evidence to the contrary", is a relevant factor to be taken into account (*Lee Foo Choong Kelvin v Public Prosecutor* [1999] 3 SLR(R) 292 at [36]), as is the fact that an accused has "all but spun an entire fairy tale in court" (*Trade Facilities Pte Ltd and others v Public Prosecutor* [1995] 2 SLR(R) 7 at [116]).

36 For the most part, and bearing in mind the aforementioned principles, I did not think that the Prosecution's submissions on this point necessarily intimated a lack of remorse on the part of the Respondent. In my view, it was not the case that the Respondent had defiantly maintained a patently untenable defence in the face of overwhelming evidence. There was, however, one point raised by the Prosecution which called for greater attention. This had to do with the District Judge's suggestion that the Respondent may have *staged evidence* immediately after the collision. If this were indeed the case, it would have doubtlessly been a very significant aggravating factor. A closer examination of this aspect of the District Judge's grounds of decision is therefore apposite.

37 The District Judge's suggestion came about as a result of his review of CCTV footage from a CCTV camera located within Woodlands Fire Station. The District Judge gave this CCTV footage a very thorough review, but what was significant for the purposes of the present appeal were two observations from which the District Judge drew rather damning inferences. First, the District Judge noted that the Respondent's lorry came to a complete stop one second after the collision. In its initial stationary position, the front left of the lorry could be seen to be encroaching into the turn to Woodlands Industrial Park D Street 2 by a significant margin, and the lorry was also clearly angled towards the turn. However, about six seconds after the collision, the lorry "inexplicably" started moving again, slowly reversing a short distance and then slowly moving forward a short distance before coming to a new resting position. In this new

resting position, the lorry was at a much gentler angle towards the turn and the margin of encroachment was also much reduced. The District Judge thought that "[t]he slow and deliberate manner in which that adjustment was done … suggest[ed] that it was surreptitious, and the manner of its adjustment suggest[ed] that it was done to afford an excuse". Second, the District Judge noted that about two minutes after the lorry had adjusted its position, the lorry's left indicator light came on. It was said that this was contrary to the Respondent's claim that he had switched on his the lorry's left indicator light from the beginning.

38 As a preliminary observation, I should state categorically that the CCTV footage tendered at trial was hardly overwhelming or irrefutable evidence in support of the charge. In terms of video quality, it was grainy and obscured. More importantly, the stretch of road outside Woodlands Fire Station constituted only about ten per cent (or even less) of the entire screen. Only a tiny sliver of the lorry's left side could be vaguely made out and, even then, this appeared to be a shadow of the lorry as opposed to the lorry itself. The District Judge's *observations* were neither incorrect nor unreasonable: the lorry did reverse and move forward after the collision and its left indicator light did come on some time later. However, I was of the view that the District Judge's *inferences*, however plausible they might have been, should not have been held against the Respondent. It was common ground that the Respondent was neither questioned on the CCTV footage nor given an opportunity to explain what was captured therein. In my view, this was fatal as what little that could be made out from the CCTV footage meant that there could well have been various innocuous explanations for the Respondent's conduct. These could have given the District Judge pause to reconsider his inferences if they had been placed before him.

39 The Respondent submitted that, with respect to the reversing and moving forward of the lorry, this could have been done to align the lorry with the road so as to minimise obstruction to oncoming traffic. As for the coming on of the left indicator light, this could have been the Respondent (or a passer-by) turning on the lorry's hazard lights as a warning to oncoming traffic (the right indicator light was not visible in the CCTV footage). I accepted that these were possibilities equally consistent with what was objectively disclosed by the CCTV footage. In other words, the inferences drawn by the District Judge were not unambiguously clear and obvious from the CCTV footage. In such circumstances, it was unfairly prejudicial for the District Judge to have drawn the inferences that he did, having regard, in particular, to the CCTV footage's poor video quality and inadequate coverage, as well as the lack of an opportunity for the Respondent to put forward any explanation.

40 To be fair, the District Judge did not appear to have taken these inferences into account in his decision on *sentence*. At any rate, he did not articulate how (or whether) they weighed on his mind when it came to his determination of the appropriate sentence. But to the extent that the Prosecution urged me to *now* take into account the District Judge's inferences in determining the Respondent's culpability, I declined to do so for the reasons set out above.

Rashness as a road user

41 The Prosecution accepted that the Respondent did not act illegally when executing the U-turn but submitted that he had nevertheless displayed a "cavalier attitude" towards road safety. I was not persuaded by this submission. Apart from referring to the Respondent running late and his execution of the manoeuvre, all the Prosecution could point to were unrelated minor infractions (*eg*, that Woodlands Fire Station was a no-stopping zone) or other facts which

were of limited relevance to the offence in question (*eg*, how the workers had to walk along the road and across an uncontrolled crossing to get to the alternative pick-up point). With respect to this latter example, I also noted the Respondent's submission that he did not specifically instruct the workers as to how they were to get to the alternative pick-up point and that there were overhead bridges nearby which the workers could have used.

42 The fact that no specific traffic regulations were violated (other than the obvious failure to keep a proper lookout and give way, which was what gave rise to the offence in the first place) was significant. As compared to other cases involving road traffic offences, the usual aggravating factors were glaringly absent. For instance, the aggravating factors identified in *Hue An Li*, *ie*, speeding, drink-driving and sleepy driving, were all inapplicable. The Respondent was not driving while using a mobile phone or while under disqualification. Nor was he beating red lights or disregarding pedestrian crossings or school zones. In the rest of these grounds of decision, I shall refer to these aggravating factors and any other similar factors as "culpability-increasing factors".

43 I was cognisant that the Respondent's rashness was an essential ingredient of the offence. All things considered, I did not find the Respondent's rashness to be of such a degree that, on top of giving rise to liability for the offence, it should be separately regarded as an aggravating factor.

Duty of care in driving a heavy vehicle

44 Finally, the Prosecution submitted that, as the Respondent was driving a lorry, which was considered a heavy vehicle, he was bound to a higher duty of care when driving on the road. It was said that the Respondent's failure to exercise such caution was an aggravating factor.

45 I was not convinced that the Respondent's lorry could properly be considered a heavy vehicle. I accepted that this might have been an inadvertent mischaracterisation. I appreciate that prosecutors (and defence counsel alike) may sometimes feel compelled to amplify their submissions in earnestly endeavouring to advance their respective positions. Nevertheless, it is imperative to maintain a sense of fairness and objectivity and take care to eschew overstatements that may mislead the court. At the hearing of the appeal, the Prosecution rightly accepted that, while there was no definition for a heavy vehicle under the PC, the Respondent's lorry, weighing in at 1,500 kg, was not a heavy vehicle for the purposes of the Road Traffic Act (Cap 276, 2004 Rev Ed). Moreover, it could be driven by a holder of a Class 3 driving licence. Ultimately, the only point that could fairly be made was that the Respondent was not driving a car but a lorry. I also noted that the cases relied on by the Prosecution (namely, *Public Prosecutor v Soh Choon Seng* [2015] SGDC 106 and *Public Prosecutor v Lim Thian Sang* [2014] SGDC 397) were cases involving tipper trucks. In the circumstances, I was not prepared to consider as aggravating the fact that the Respondent was driving a lorry.

The sentencing approach for fatal accident cases under s 304A(*a*) of the PC

46 I finally considered the sentencing approach for fatal accident cases under s 304A(*a*) of the PC. Among the precedents, two were of particular importance: *Hue An Li*, which was a fatal accident case under s 304A(*b*) of the PC, and *Nandprasad*, which was the main precedent relied on by the District Judge. In this section, I will examine these cases in greater detail before setting out what I considered to be an appropriate sentencing framework for fatal accident cases under s 304A(a) of the PC.

Hue An Li *and* Nandprasad

47 *Hue An Li* involved a tragic vehicular accident in which the accused 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 PC. Two other 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, a three-judge coram of the High Court varied the sentence to four weeks' imprisonment and ordered the five-year disqualification period to take effect from the date of the accused's release from prison. Significantly, the High Court held (at [61]) that the starting point for sentencing in a traffic death case under s 304A(*b*) of the PC is "a brief period of incarceration for up to four weeks". The court further added (at [134]) that the presence of speeding, drink-driving or sleepy driving would call for a starting point of between two and four months' imprisonment.

48 *Hue An Li* was a fatal accident case under s 304A(*b*) of the PC, which deals with *negligence*, whereas the present case was a fatal accident case under s 304A(*a*) of the PC, which deals with *rashness*. The maximum sentence for each limb is separately prescribed (see [27] above). In *Hue An Li*, the High Court made it clear (at [62]) that it is possible for a conviction under s 304A(*a*) of the PC to carry a more lenient sentence than a conviction (of a different person in different circumstances) under s 304A(*b*) of the PC, and that it is the presence of mitigating and/or aggravating factors, and not merely the categorisation of an offender's conduct as rash or negligent, that will be determinative of the actual penal consequences that follow upon the commission of an offence under s 304A of the PC. In *Jali*, the Court of Appeal affirmed this proposition, holding

(at [37]) that it is of general application. Unsurprisingly, this proposition was strenuously relied on by the Respondent. However, all this proposition suggests is that a conviction under s 304A(*a*) of the PC does not *necessarily* carry a heavier sentence than a conviction under s 304A(*b*) of the PC. Indeed, the Court of Appeal in *Jali* accepted (at [36]) that, *all other things being equal*, rashness would attract a heavier sentence than negligence. This makes eminent sense in the context of s 304A of the PC, given the different maximum sentences prescribed by the two limbs.

49 In the post-*Hue An Li* era, therefore, a non-custodial outcome for a conviction under s 304A(*a*) of the PC in a fatal accident case will be an exceptionally rare occurrence. To some extent, this was already the case pre-*Hue An Li* (see *Sentencing Practice in the Subordinate Courts* (LexisNexis, 3rd Ed, 2013) at pp 1656–1657, albeit referring to cases decided under s 304A of the 1985 PC). What is perhaps more significant about *Hue An Li* is that it suggests that, in the context of fatal accident cases under s 304A(*a*) of the PC, a starting point *higher* than the four weeks' imprisonment set out in that case would be appropriate. I will return to this point at [58]–[60] below.

50 In *Nandprasad*, the accused was driving his car and made a right turn at a signalised junction without checking for and ensuring that there was no oncoming traffic with the right of way. He encroached into the path of a motorcycle rider, resulting in a collision and the death of the motorcycle rider. He pleaded guilty midway through trial to a charge under s 304A(*a*) of the PC and was sentenced to six weeks' imprisonment and eight years of driving disqualification from all classes.

51 As noted earlier, the District Judge effectively used the sentence imposed in *Nandprasad* as a starting point and made an upward adjustment to

take into account the serious consequences in this case and the fact that the Respondent was convicted after a full trial. The District Judge also considered the degree of rashness to be aggravated as there were two distinct points where the Respondent bore the obligation to keep a proper lookout: one at the U-turn and the other while cutting across the lanes.

52 However, I considered *Nandprasad* to be an outlier as a sentencing precedent. The district judge in that case anchored his decision on sentence on four cases which pre-dated *Hue An Li*. In those cases, custodial terms between one and four months' imprisonment were imposed alongside disqualification for periods ranging from five to eight years. The district judge in *Nandprasad* noted (at [4(viii)]) that the one-month custodial term in two of these cases "appeared to be manifestly on the low side" after *Hue An Li*. But this was hardly a meaningful attempt to reconcile the sentencing approach for fatal accident cases under s 304A(*a*) of the PC with the decision in *Hue An Li*. To the extent that the range of custodial terms imposed in these four cases overlapped entirely with the range of starting points set out in *Hue An Li*, I was of the view that these four cases were inconsistent with *Hue An Li*. Accordingly, notwithstanding that there was no appeal by the Prosecution against the sentence in *Nandprasad*, I did not think that *Nandprasad* was an appropriate reference point in determining the sentence to be imposed in the present case.

A sentencing framework for fatal accident cases under s 304A(a) of the PC

53 In *Luciana Lim*, I stated (at [28]) that 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.

54 In the context of an offence under s 304A(*a*) of the PC, the *harm* caused by the offence is, by definition, the death of the victim. In this sense, this parameter is *generally* uniform in all cases involving an offence under s 304A(*a*) of the PC. Accordingly, what sets one case of offending under s 304A(*a*) of the PC apart from another is, in the vast majority of cases, determined primarily by reference to the accused's *culpability*. In the specific context of fatal accident cases, the culpability-increasing factors mentioned above at [42] above would plainly go towards increasing an accused's culpability. These typically involve the *violation of traffic regulations* or a *high degree of rashness*. In addition to a consideration of the accused's culpability, it will also be necessary for a sentencing court to take into account the other *mitigating and aggravating factors* which are relevant, but which do not directly relate to the commission of the offence *per se*. These include an accused's good or bad driving record, as well as his remorse or lack thereof.

55 Bearing the above in mind, fatal accident cases under s 304A(*a*) of the PC can be categorised into three categories depending on the accused's *culpability*, with the presumptive sentencing range for each category set as follows in a scenario where the accused *claims trial*:

Category	**Accused's culpability**	**Presumptive sentencing range**
1	Low	3 to 5 months' imprisonment
2	Moderate	6 to 12 months' imprisonment
3	High	More than 12 months' imprisonment

56 A few comments are apposite at this juncture. First, a close examination of the accused's *culpability* is necessary not only to determine the applicable category, but also where the particular case falls *within* the applicable presumptive sentencing range. Second, and notwithstanding what has been said at [54] above, there will be exceptional cases where the *harm* caused by the offence can also be used to determine both the applicable category and where the particular case falls within the applicable presumptive sentencing range. One example of this would be where more than one death is caused, as in the present case. Third, further adjustments should then be made to take into account the relevant *mitigating and aggravating factors*, and these may take the eventual sentence out of the applicable presumptive sentencing range.

57 More generally, and for the avoidance of doubt, an appropriate period of disqualification should also be ordered. What must also be emphasised is that the presumptive sentencing ranges are merely starting points which seek to guide the exercise of sentencing discretion. They are not rigid and immutable anchors. The highly fact-specific nature of traffic offences (including fatal accident cases under s 304A(*a*) of the PC) means that sentencing, being ultimately a matter of discretion, must be approached judiciously with the highest level of attention to the facts and circumstances of each case.

Category 1

58 Category 1 would cover cases where an accused's culpability is low. Culpability-increasing factors would either be absent altogether or present only to a very limited extent. The presumptive sentencing range for cases falling under this category is three to five months' imprisonment.

59 Although s 304A(*a*) of the PC clearly allows for a non-custodial sentence, it has been noted earlier that such a sentence for a fatal accident case

under s 304A(*a*) of the PC will be an exceptionally rare occurrence in the post-*Hue An Li* era (see [49] above). This does *not* mean, however, that a non-custodial sentence can *never* be imposed. As I have already emphasised, the presumptive sentencing ranges are no more than starting points (see [57] above). If the circumstances of a case are truly exceptional (for instance, where there are very strong mitigating factors), the option of a non-custodial sentence remains available, and a sentencing court should not find itself constrained to impose a custodial sentence.

60 At the same time, s 304A(*a*) of the PC also clearly allows for a custodial sentence below three months. However, the point has already been made that, all other things being equal, rashness would attract a heavier sentence than negligence and that, accordingly, a starting point higher than the four weeks' imprisonment set out in *Hue An Li* would be appropriate (see [48]–[49] above). Having regard also to the High Court's observation in *Hue An Li* that it is possible for a conviction under s 304A(*a*) of the PC to carry a more lenient sentence than a conviction (of a different person in different circumstances) under s 304A(*b*) of the PC (see [48] above), I was of the view that the presumptive sentencing range for Category 1 should start somewhere within the sentencing range of two to four months' imprisonment set out in *Hue An Li* for aggravated traffic death cases under s 304A(*b*) of the PC.

Category 2

61 Category 2 would cover cases where an accused's culpability is moderate. Cases falling within this category would usually involve culpability-increasing factors. The presumptive sentencing range for cases falling under this category is six to 12 months' imprisonment.

62 As noted earlier, the District Judge distinguished the precedents relied on by the Prosecution as they involved much higher degrees of rashness and clear instances of illegal manoeuvres (see [11] above). In my view, these were paradigmatic examples of cases falling within Category 2. These were all unreported cases and, as the relevant primary materials have not been placed before me, the summary of these cases set out below is based solely on what is found in the Prosecution's submissions in this appeal. I also noted that it was possible that some of these cases were decided pre-*Hue An Li*, but took the view that the sentences imposed in these cases were not inconsistent with *Hue An Li*. It should also be noted that two of these cases involved accused persons who pleaded guilty, and it was at least possible that the sentences imposed would have been higher had these accused persons claimed trial:

(a) *Fabian Chua*: The accused was driving his car and failed to comply with a "Turn Left Only" sign when exiting from a minor road into a major road. He intended to turn into another minor road at the other side of the major road. In order to do so, he drove across the four lanes of the major road, cutting across a double white line, and encroached into the path of a motorcycle on the extreme right lane. When the accused arrived at the point of collision, he had travelled against the flow of traffic. The victim tried to take evasive action but his motorcycle collided into the rear right of the accused's car and he was flung out of his motorcycle. The accused pleaded guilty and was sentenced to seven months' imprisonment and ten years' disqualification (all classes).

(b) *Chew Tuan Peow*: The accused was a prime mover driver who drove into the compound of a factory from an unauthorised entrance to avoid queuing at the main entrance. He made a right turn against the

flow of traffic into a driveway, failed to keep a proper lookout, and collided into the victim who was a pedestrian walking from his right to left. He pleaded guilty and was sentenced to seven months' imprisonment and ten years' disqualification (all classes).

(c) *Bu Xiao Ming*: The accused was a tipper truck driver. At the material time, he stopped behind a white truck, and both vehicles were waiting to make a right turn at a signalised T-junction. When their light was green only, the accused cut across the centre continuous white line to overtake the stationary white truck from its right, and made a right turn. The accused encroached into the travel path of the victim, who was a motorcyclist travelling straight from the opposite direction on the green light. The victim swerved to the right but could not stop in time and collided into the left middle portion of the accused's truck. He was run over by the left middle and left rear tyres of the accused's tipper truck. The accused was convicted after trial and sentenced to nine months' imprisonment and eight years' disqualification (all classes).

63 Before me, the Prosecution tendered an additional set of precedents. These precedents involved violations of traffic regulations or high degrees of rashness, and I was of the view that they were similarly representative of Category 2 cases. To the extent that they are relevant, my comments at [62] above (relating to unreported cases, the possibility of some of the cases being decided pre-*Hue An Li* and the fact of accused persons pleading guilty) apply equally here:

(a) *Public Prosecutor v Tan Hie Koon* [2015] SGDC 87: The accused was driving his taxi at an excessive speed (78 km/h on a 50 km/h road). He thereafter failed to have proper control of his taxi,

resulting in him losing control of the taxi along a straight stretch of road, causing his taxi to veer to the right and collide into the victim who was a pedestrian standing on the right-most lane of a five-lane carriageway. The accused was convicted after trial and sentenced to six months' imprisonment and eight years' disqualification (all classes). His appeal against conviction and sentence was dismissed.

(b) *Public Prosecutor v Kevyn Keifer Keith Keanu Wallace Yap C Hock* Magistrate's Arrest Case No 8730 of 2013: The accused was driving a lorry along an expressway, with the victim as a front seat passenger. At this time, there was an off-service bus on the same lane ahead of the accused's lorry, and another white lorry in the middle lane, to the right of the accused and the bus. As the three vehicles approached a slip road, the bus slowed down and came to a halt to allow another bus to enter the expressway from the slip road. Instead of slowing down behind the bus, the accused maintained the speed of his vehicle and attempted to abruptly change lanes to the middle lane and overtake the bus. However, the white lorry on the middle lane was already travelling abreast with the accused's vehicle. As a result, the accused's vehicle collided with the left of the white lorry, causing the white lorry to veer to the left and collide with the right side of the bus. The accused's vehicle then collided into the rear of the bus, with the point of collision at the left front of the accused's vehicle, where the victim was seated. The accused pleaded guilty and was sentenced to eight months' imprisonment and eight years' disqualification (all classes). The Prosecution contended that this case did not involve the violation of a traffic rule. In reply, the Respondent referred to various provisions in the Highway Code (Cap 276, R 11, 1990 Rev Ed) and claimed that they were violated. In my view, however, regardless of whether a traffic

regulation was violated, it was clear that the degree of rashness exhibited by the accused was very high.

(c) *Public Prosecutor v Sum Yew Leong* District Arrest Case No 922727 of 2014: The accused was driving a tipper truck into a car park as he was headed to the rubbish collection centre. At the entrance of the car park, he was required to make a left turn and drive around the car park (which was a one-way road) to reach the rubbish collection centre. However, he took a shortcut by driving straight towards the rubbish collection centre. By doing so, he disobeyed the "No Entry" sign and travelled against the flow of traffic. He did so in order to save time. Thereafter, the accused made a left turn. At this point in time, the victim was cycling at around the left front side of the accused's tipper truck. The accused's execution of a left turn caused his tipper truck to collide into the victim. The accused pleaded guilty and was sentenced to eight months' imprisonment and ten years' disqualification (all classes).

(d) *Public Prosecutor v Yahya Abdul Kader* District Arrest Case No 43409 of 2013: The accused was driving a minibus along a road where there was a gradual right bend ahead. Instead of following through with the right bend, he drove the minibus straight up onto the pavement. At the material time, the two victims, who were tourists, were standing on that portion of the pavement taking photographs. The minibus mounted the road kerb, veered towards the left and collided into the two victims. It came to a stop only after colliding into the side wall of a nearby unit. Both victims were flung off the pavement due to the impact of the collision – one was flung over the side wall and landed in the compound, while the other landed on the left-most lane of the road. Both victims eventually died. The accused pleaded guilty and was sentenced to nine

> months' imprisonment and eight years' disqualification (all classes). Although it was once again contended by the Prosecution that this case did not involve the violation of a traffic rule, the fact that the accused's minibus could end up on the pavement and the fact that one of the victims was flung *over* the side wall made it quite clear to me that this case must have involved a high degree of rashness.

Category 3

64 Category 3 would cover cases where an accused's culpability is high. It is not possible to draw a bright line between Category 2 and Category 3. But what should be borne in mind is that Category 3 is intended to cover the most culpable of accused persons. For instance, if *more than one* of the *more serious* culpability-increasing factors are present, such a case would clearly fall within Category 3. Other examples would include cases where the accused's conduct is *deliberately rash* or exhibits a *blatant disregard for human life*. The presumptive sentencing range for cases falling under this category is more than 12 months' imprisonment.

Summary

65 In summary, a court faced with a fatal accident case under s 304A(*a*) of the PC should approach sentencing using the following framework:

> (a) First, the case should be categorised into one of the three categories depending on the accused's *culpability*. Each category has a corresponding presumptive sentencing range, and the accused's culpability would also determine where the particular case falls *within* the applicable presumptive sentencing range. In exceptional cases, the *harm* caused by the offence can also be used to determine both the

applicable category and where the particular case falls within the applicable presumptive sentencing range (see [55]–[56] above).

(i) Category 1 would cover cases where an accused's culpability is low. The presumptive sentencing range for cases falling under this category, in a scenario where the accused claims trial, is three to five months' imprisonment (see [58]–[60] above).

(ii) Category 2 would cover cases where an accused's culpability is moderate. The presumptive sentencing range for cases falling under this category, in a scenario where the accused claims trial, is six to 12 months' imprisonment (see [61]–[63] above).

(iii) Category 3 would cover cases where an accused's culpability is high. The presumptive sentencing range for cases falling under this category, in a scenario where the accused claims trial, is more than 12 months' imprisonment (see [64] above).

(b) Second, further adjustments should then be made to take into account the relevant *mitigating and aggravating factors* which do not directly relate to the commission of the offence *per se*, and these may take the eventual sentence out of the applicable presumptive sentencing range (see [56] above).

Applying the sentencing framework to the present case

66 Applying the above sentencing framework to the present case, the first step was to determine which of the three categories was applicable. Turning first

to the Respondent's *culpability*, no culpability-increasing factors were present. In particular, the Respondent did not violate any traffic regulations and his conduct did not involve a high degree of rashness. With respect to the aggravating factors relied on by the Prosecution, the Respondent's rashness was not of such a degree that it should be separately regarded as an aggravating factor (see [41]–[43] above). In addition, I also rejected the Prosecution's (initial) contention that the Respondent owed a higher duty of care as the driver of a heavy vehicle (see [44]–[45] above). All things considered, it appeared to me that the Respondent's culpability was more akin to that normally associated with gross negligence. Accordingly, I was of the view that the Respondent's culpability was low. *Prima facie*, the present case therefore fell into Category 1.

67 However, this was not the end of the matter as the present case was one case where the *harm* caused by the offence had to also be considered. As more than one death was caused, the extent of harm caused was greater than what one would normally expect in an offence under s 304A(*a*) of the PC (see [31]–[33] above). Was this sufficient to bring the case into Category 2? On balance, I was of the view that it was not. The cases relied on by the Prosecution, and which I had placed into Category 2, involved conduct which was more aggravated and I found them qualitatively different from the present case *even after* taking into account the greater extent of harm caused. Instead, the increased harm caused could be reflected by placing the present case at the higher end *within* the applicable presumptive sentencing range. I therefore arrived at a tentative sentence of five months' imprisonment.

68 The second step was then to consider if there were any relevant *mitigating and aggravating factors* which did not directly relate to the commission of the offence *per se*. In my view, there were none. On the one

hand, I rejected the Prosecution's submissions concerning the Respondent's lack of remorse (see [34]–[40] above). On the other hand, the fact that the Respondent claimed trial disentitled him from any sentencing discount which might have applied if he had pleaded guilty. I noted that the Respondent was untraced, but did not consider this to be of much significance in the larger scheme of things. In the circumstances, no further adjustments needed to be made to the tentative sentence of five months' imprisonment arrived at after the first step.

Conclusion

69 In the premises, I was satisfied that the sentence imposed by the District Judge was manifestly inadequate. Accordingly, I allowed the appeal and enhanced the imprisonment term in respect of the charge under s 304A(*a*) of the PC to five months. The disqualification order in respect of the same was to remain.

See Kee Oon
Judge

Bhajanvir Singh and Goh Yi Ling (Attorney-General's Chambers) for the appellant;
Tan Cheow Hung and Felicia Ong (Beacon Law Corporation) for the respondent.