IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 237

Magistrate's Appeal No 9143 of 2018

Between

Public Prosecutor

… *Appellant*

And

Holman Benjamin John

… *Respondent*

GROUNDS OF DECISION

[Criminal Procedure and Sentencing] — [Sentencing] — [Voluntarily Causing Hurt] — [Public Order]

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Introduction

1 In the court below, the respondent pleaded guilty to one charge of voluntarily causing hurt, an offence punishable under s 323 of the Penal Code (Cap 224, 2008 Rev Ed) ("Penal Code"), and was sentenced to four weeks' imprisonment. The Prosecution appealed and sought a sentence of eight months' imprisonment before me. Having considered the precedents and the circumstances of the case, I allowed the appeal and substituted the original sentence with an imprisonment term of two months.

Facts

2 The District Judge's Grounds of Decision can be found at *Public Prosecutor v Holman Benjamin John* [2018] SGDC 162.

3 On 3 February 2017, around 6.30pm, the victim and respondent were walking along the same platform at the Raffles Place MRT station in opposite directions. The respondent had his head down and was looking at his phone. As the two crossed paths, the victim's left shoulder hit against the respondent's left shoulder. The victim then turned to look at the respondent before continuing his walk towards the end of the station. Noticing that the victim had looked at him, the respondent shouted at the victim. The victim turned and shouted in response. An altercation soon ensued between the two. This drew the attention of commuters on the platform.

4 The victim eventually disengaged and walked to the end of the station platform. The respondent, however, strode after the victim. Upon coming into close proximity with the victim, the respondent pushed the victim once on the chest. This prompted the victim to push the respondent away. The victim then pointed his finger at the respondent and told the respondent to back off. The respondent suddenly reached out and slapped the victim once on the right cheek. The victim pushed the respondent away for the second time and told the latter to back off. The respondent then raised both his fists, approached the victim and landed two blows to the victim's face. In retaliation, the victim punched the respondent. At some point during the exchange, the victim started to crouch and was almost kneeling on the ground. The respondent continued to punch the victim multiple times on the face. There were many other commuters at the station platform at this time. Both parties were eventually separated by passers-by. The respondent attempted to walk away from the scene but was detained by a bystander. The police subsequently arrived.

5 The victim was brought to the Singapore General Hospital and examined on the same day. He was found to have sustained the following injuries:

(a) Nasal bone fracture;

(b) Two 2cm lacerations over the nasal bridge with dried blood in the right nares but no septal haematoma; and

(c) Bruising over the left temple.

The victim's lacerations were sutured and he was discharged with analgesia on the same day. He was also given seven days' medical leave and an outpatient appointment with the Department of Plastic Surgery.

6 For completeness, the entire scuffle lasted for about a minute or two. The respondent had been consuming alcohol with his colleagues within a few hours before the incident.

Decision below

Sentencing principles, mitigating and aggravating factors

7 The District Judge below considered the principles of deterrence and retribution to be operative. He added that the sentence imposed must be proportionate to the offender's culpability and the harm caused by the offence. With that in mind, the judge proceeded to consider the mitigating and aggravating factors of the case.

8 The District Judge accepted the defence's submission that there had been no undue delay in the respondent's plea of guilt and saw this as a mitigating factor. The District Judge, in particular, noted that there was an early offer of compensation by the respondent (which was not accepted) and took this, together with the respondent's plea of guilt, as evidence of genuine remorse.

9 The District Judge then addressed the Prosecution's submission on the public disquiet caused (or could have been potentially caused) by the respondent's actions. The judge was of the view that the mere occurrence of an offence in public is not invariably an aggravating factor. There had to be evidence on which an inference of public disquiet could be drawn. The prosecution had not adduced such evidence. Further, the incident happened in a very short span of time and was quickly stopped by members of the public. While some weight was given to the public disquiet caused, it was not a significant aggravating factor.

10 The District Judge rejected the Prosecution's submission that the respondent's intoxication was an aggravating factor. He explained that the respondent had not been behaving in a disorderly and loutish manner and was not spoiling for trouble. The respondent's self-induced intoxication was therefore not an aggravating factor.

Precedents

11 The District Judge discussed several unreported cases cited by the the Prosecution. He came to the conclusion that these cases did not provide much assistance as the respondent's culpability and the harm caused in the case at hand were collectively far less serious than in the precedents cited.

12 The first case he discussed was a magistrate's appeal decision, *Public Prosecutor v Alamgir Hossain* (Magistrate's Appeal No 7 of 2009) ("*Alamgir Hossain*"). There, the victim was said to have walked past the offender along a public road at about 11pm. The offender hit the victim on the chest. Upon being questioned by the victim, the offender followed her and made obscene remarks. After being warned off by the victim, the offender punched the victim's face

once. The victim slapped the offender. The offender then continued to punch the victim's face several times until she collapsed to the ground and bled from the nose. The victim suffered a 0.3cm laceration on the forehead and a fracture of the nasal bones. The offender had no antecedents. The sentence was 14 weeks' imprisonment.

13 The second case discussed was also a magistrate's appeal decision, *Public Prosecutor v Ramasamy s/o T Ramasamy* (Magistrate's Appeal No 135 of 2008). The offender was staying at the victim's residence at the material time. One day, he found his pot overturned and suspected that the victim had tampered with it. The offender then roused the victim from his sleep and punched the victim's face. The victim suffered from a swollen lip and a missing front tooth. The offender also pointed a knife at the victim and threatened to finish him off. A charge of criminal intimidation was taken into consideration for the purpose of sentencing. The offender had unrelated antecedents. A sentence of six months' imprisonment was imposed.

14 Two other cases were discussed. In brief, in *Public Prosecutor v Xu Maolin* (District Arrest Case No 922792 of 2014) ("*Xu Maolin*"), the offender unleashed a series of punches and kicks against the victim even after the victim had fallen to the ground. This caused the victim to suffer bleeding from both nostrils, multiple abrasions over the face, chest and abdomen and a nasal bridge fracture. Six months' imprisonment was imposed. *PP v Sheikh Manik* (District Arrest Case No 931147 of 2014) concerned a victim who was hit by the offender using a brick. The victim was given 16 days' medical leave on the account of a left iliac fossa hematoma of about 10 x 10cm in size with superficial abrasions, and a fracture of the anterior superior iliac spine on the left side. The offender was sentenced to 9 months' imprisonment.

15 Having examined these cases, the District Judge concluded that there was no cogent explanation proffered as to how the respondent's culpability and harm caused by him were comparable to these precedents. The District Judge then turned to consider the High Court decision of *PP v Goh Jun Hao Jeremy* [2018] SGHC 68 ("*Jeremy Goh*"). I state at this point that the District Judge was particularly influenced by this decision. *Jeremy Goh* was a case involving the offence of affray under s 267B of the Penal Code. The victim in that case suffered a nasal fracture, among other minor injuries, and the court imposed a sentence of two weeks' imprisonment. The District Judge found *Jeremy Goh* to be factually analogous to the case at hand and relied on *Jeremy Goh* to calibrate the sentence in the present case. The District Judge was of the opinion that there is a significant overlap between the offences of affray and voluntarily causing hurt, and took the view that the former is akin to voluntarily causing hurt in that the offending conduct and the harm caused are essentially similar, but that affray also involves an element of disturbance to the public peace.

The Prosecution's case

16 In this appeal, the Prosecution submitted that the judge was wrong in five respects:

(a) First, the District Judge failed to consider the spectrum of punishment prescribed under s 323 of the Penal Code. Instead, the District Judge erroneously relied on the sentence imposed in *Jeremy Goh* for an affray charge as the appropriate starting reference point.

(b) Secondly, the District Judge failed to give due weight to the strong public policy considerations in the present case that warrant the imposition of a deterrent sentence for violence committed at a key public transport interchange.

(c) Thirdly, the District Judge failed to place any weight on the respondent's intoxication as an aggravating factor.

(d) Fourthly, the District Judge erred in his treatment of mitigating factors when he accorded undue weight to the respondent's plea of guilt and lack of antecedents.

(e) Lastly, the District Judge failed to impose a sentence that accords with the sentencing precedents under s 323 of the Penal Code.

The respondent's case

17 The respondent, in large part, adopted and supported the District Judge's reasons:

(a) First, the District Judge had duly recognised and took into account the appropriate sentencing principles that operated in the present case. The principle of proportionality, in particular, applied.

(b) Secondly, the District Judge's assessment of the aggravating and mitigating factors was correct.

(c) Thirdly, the District Judge's reliance on *Jeremy Goh* as the starting point for sentencing was not misplaced. The factual circumstances of the present case are, if not similar, less egregious than in *Jeremy Goh*.

(d) Lastly, the respondent is presently expecting a child and has just obtained employment in New Zealand. A long term of imprisonment would throw his plans into disarray.

This court's decision

18 The sentence below did not properly reflect the factors at play and was thus manifestly inadequate. I allowed the appeal against sentence. I was, however, not persuaded that the appropriate sentence should be as long as eight months' imprisonment. Taking into account all the factors, deterrence is sufficiently served by a sentence of two months' imprisonment.

Analysis

Sentencing considerations

19 I agreed with the judge below that deterrence and retribution form the predominant sentencing considerations in the case at hand. The element of deterrence is particularly important in the present case. Quite apart from the general condemnation of the causing of harm to others and the use of force, the offence took place in a public space, in a crowded and confined environment, at rush hour. The court must also take into account the proportionality of the sentence based on the seriousness of the offence (*ie*, the harm caused and the culpability of the offender).

Public order

20 The District Judge, however, did not accord sufficient weight to the fact that the incident occurred at a train station at rush hour and was also misdirected in requiring evidence of actual public disquiet (*ie*, evidence demonstrating a level of fear or alarm generated by an incident). The concern is not with public disquiet but with the breach of public order. The response of the public, or any unease, is but an aspect of public order. What mattered here was that the attack took place not only in a public place but also in an area that was crowded and had a high flow of traffic, by persons using public transport facilities.

21 Certainly all assaults are breaches of public order, but the seriousness of such breaches will be significantly increased in a crowded public space. Public spaces in an urban environment are often frantic and congested. It is in these situations that there is greater need to protect public order so as to ensure that society can go about its affairs with as little disruption as possible; a concern that is ever more acute in a city of several million people. There is also a specific need to preserve public order in public transport areas. Persons using public transport should be able to expect as much peace and lack of incident as is possible; they should be able to go about their day without encountering any incidents of violence.

22 It is clear that the lives of fellow commuters were disrupted by the scuffle that occurred between the respondent and the victim. Bystanders had to step into the fray so as to separate the respondent and victim; one even had to detain the respondent. Even if the incident spanned a short period of time and others were present to quell the scuffle, this would not eclipse the breach of public order, which thus merited a stern response.

23 What was not material in sentencing is any supposed vulnerability on the part of the victim here. The Prosecution suggested that the victim belonged to a vulnerable class of victims simply because he was a commuter. That argument extends the notion of vulnerability far too much, and robs it of any meaning: a commuter could be young or old; healthy or ill; male or female.

Intoxication

24 The District Judge viewed the respondent's inebriation as a neutral factor, highlighting that the respondent had not acted in a rowdy or unruly

manner prior to the incident. In other words, the respondent was not spoiling for trouble.

25 While the respondent's inebriation might not have manifested at the outset, the state of his intoxication cannot be overlooked when he chose to engage with the victim. In this relation, the District Judge curiously held the opinion that the respondent's intoxication impaired his judgment and that this consequently led him to react with physical force against the victim.[1] This ignores the fact that the decision to drink is a personal choice and one must accept the consequences that follow. It is not an excuse for an offender to say that he had one too many drinks and expect that the law treats him leniently. Quite the contrary, it would be an aggravating factor not to have exercised self-restraint.

26 At the hearing, counsel for the respondent attempted to downplay the intoxication by suggesting that he was simply drinking to celebrate a festive occasion (the Chinese New Year). This is unpersuasive. An individual is responsible for his or her own actions. One must exercise judgment in a given situation. There are various degrees of inebriation – outright drunkenness on the one end and a single tipple which would not normally cause an adverse effect – and the onus is on persons who drink to weigh how they react to alcohol and calibrate their consumption.

Mitigating factors

27 The respondent highlighted the following factors:

(a) First time offending;

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[1] Grounds of Decision, [28].

(b) The early plea of guilt and show of remorse;

(c) Personal hardship as a result of a long imprisonment term; and

(d) That he too suffered injuries.

28 I accepted the respondent's previously unblemished record to be of some mitigating value. This point was relatively uncontentious.

29 There were some arguments over the genuineness of the respondent's contrition. In submissions, both sides addressed the mitigating value of the respondent's plea of guilt, offer of compensation as well as the respondent's motives behind his offer. The respondent was caught red-handed and in the circumstances had little option but to plead guilty. His plea of guilt was therefore a neutral factor at best. Little weight would be given to the offer of compensation, in light of the need to protect and preserve public order.

30 The Prosecution further highlighted that the respondent had attempted to compound the offence by making an offer to the victim to seek legal advice on composition. According to the Prosecution, this should be viewed as an attempt to escape conviction completely. The Prosecution's contention is disingenuous. The law provides for compounding of certain types of offences, such as the present one. The respondent was merely seeking an option available to him.

31 The Prosecution also raised concerns over certain remarks made in the respondent's mitigation plea and suggested that these remarks were victim blaming. I did not find that such remarks were so overboard that they crossed the line and merited an upward adjustment in sentence.

32 As for the claim of personal hardship, this was to my mind not significant to the question of sentence imposed. The hardship that would follow from the respondent's punishment is a mere consequence of his own actions. The respondent had not raised any extenuating circumstances for personal hardship to be a relevant consideration.

33 Finally, the fact that both the victim and respondent suffered injuries is a neutral factor at best. Two wrongs do not make a right. The fact remains that the respondent chose to escalate a mere brush against the shoulder.

Determination of quantum

34 The District Judge placed undue significance on the case of *Jeremy Goh* and was wrong to have used it as the starting point for calibrating the sentence of four weeks' imprisonment. At the same time, I was of the view that the sentence and sentencing matrix proposed by the Prosecution set the starting point too high. The appropriate sentence in this case would be two months' imprisonment, taking into account the considerations I have set out above and the precedents below.

35 While the same facts may give rise to charges of either affray or hurt, the court in determining sentence must look at the offence charged and calibrate the sentence within the confines of that charge. This is because the prescribed sentencing range for each offence is different – the offence of affray attracts an imprisonment term of up to one year whereas the offence of voluntarily causing hurt attracts an imprisonment term of up to two years. Each offence also serves its own objectives though these objectives may overlap. While the offence of affray involves, to some degree, an element of hurt or violence, the language of the provision itself speaks to the protection of public peace. On the other hand,

in the case of voluntarily causing hurt, the language of the provision is focused on the injury caused to the victim. Which charge comes before the court is a matter of prosecutorial discretion, and the court cannot and should not look behind the charge in the normal run of cases.

36 It goes without saying that it would be acceptable to seek guidance from cases concerning analogous offences, particularly when faced with a novel factual scenario not previously considered under a certain charge. Indeed, the offences of affray and voluntarily causing hurt do share some similarities. But cases concerning analogous offences merely serve as a guide. The charge in question is in relation to s 323 of the Penal Code. The District Judge ought not to have characterised cases cited by the Prosecution as unhelpful due to the more egregious circumstances in those cases but instead should have viewed all the cases on a spectrum – with *Jeremy Goh* on the one end, and cases involving more egregious forms of hurt on the other.

37 This brings me to the cases cited before me, which included the same cases cited in the court below. These cases were generally of limited utility as detailed written reasons were not provided for the outcome in most of them. Regardless, from the limited factual descriptions available, the cases showed circumstances that were more egregious compared to the present. These cases were therefore helpful insofar as they demonstrate the sentences appropriate for one end of the spectrum.

38 In urging this court to impose a sentence of eight months' imprisonment, the Prosecution placed heavy reliance on the case of *Xu Maolin*, which imposed a sentence of six months' imprisonment. It was contended that *Xu Maolin* parallels the present case as the victim there had similarly sustained a nasal fracture, and that the offender there (much like the respondent) had a clean

record. I was unpersuaded that the present case comes close to the circumstances in *Xu Maolin*. The victim in that case had already fallen to the ground as the offender continued to hit the victim. There were also other injuries such as multiple abrasions over the face, chest and abdomen. Given that the seriousness of the harm caused and culpability of the offender are different from those in the case at hand, *Xu Maolin* would only assist insofar as it shows one end of the spectrum.

39 The Prosecution cited *Alamgir Hossain* in its written submissions. I found the case of *Alamgir Hossain* to be closer to the circumstances of the present case. That said, *Alamgir Hossain* must be viewed with circumspection. I have set out the factual circumstances of the case at [12] above and do not propose to repeat them, save to note that the court imposed a sentence of 14 weeks' imprisonment. While *Alamgir Hossain* and the case at hand do appear to share some common features – such as a nasal fracture suffered by the respective victims – there are distinguishing factors. First, there was an element of vulnerability in *Alamgir Hossain* that was not present in the case at hand. The offence there took place at about 11pm. Although the victim and offender were on a public road, it was unlikely that there was anyone else present given the time of the offence. Indeed, the brazen actions of the offender also suggested that there was no one present then. Second, there was an element of sexual inappropriateness as the offender started to engage the victim by hitting the left side of the victim's chest and thereafter made obscene remarks. Third, the culpability of the offender and harm caused were slightly more serious. The offender continued to punch the victim until she collapsed on the ground and bled through her nose. Hence, while I found *Alamgir Hossain* to be useful, the sentence imposed in that case should be considered with caution.

40 Finally, I turn to the sentencing matrix proposed by the Prosecution. A table was produced in submissions setting out a spread of punishments that may be considered in relation to the harm caused by and the culpability of the offender. It would be premature for the court, at present, to endorse the proposed matrix in relation to the types of offences of the present nature.

41 Ultimately, in considering the harm caused and the culpability of the offender, a measure of ordinal proportionality must also be considered. In cases involving the voluntary causing of hurt to a public servant, the sentencing band begins with two months' imprisonment (*Public Prosecutor v Yeo Ek Boon Jeffrey* [2018] 3 SLR 1080 ("*Yeo Ek Boon*") at [59]). Indeed, this court in *Yeo Ek Boon* imposed a sentence of 10 weeks' imprisonment against an offender who slapped a police officer. The court declined to follow the Prosecution's proposed sentence of four months' imprisonment noting that the circumstances were not particularly egregious.

42 Overall, the sentence of eight months' imprisonment proposed by the Prosecution (and the range of sentences for offences in the nature of the present) sets the standard too high. Sufficient deterrence would be meted out by a sentence in the range of a few months for offences of the present nature. The circumstances in such offences do not warrant a sentence ranging close to a year of imprisonment.

Conclusion

43 Pulling together the strands of my analysis, I concluded that two months' imprisonment was the appropriate sentence. The most egregious harm caused to the victim in the present case was the nasal fracture. The victim was given seven days of medical leave for the totality of the injuries suffered. While the

victim crouched at some point during the exchange of blows, it was not to the extent that he collapsed to the ground. There were also certain mitigating factors that operated in the respondent's favour. At the same time, the offence took place on an MRT platform at rush hour and did cause a degree of disruption. The respondent was intoxicated at the time of the offence and that intoxication would likely have contributed in some way to his unruly behaviour. In the round, a sentence of two months' imprisonment was appropriate.

Aedit Abdullah
Judge

Han Ming Kuang and Li Yihong (Attorney-General's Chambers) for the appellant;
Vinit Chhabra (Vinit Chhabra Law Corporation) for the respondent.
