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

[2022] SGHC 175

Magistrate's Appeal No 9007 of 2022/02

Between

Saw Beng Chong

… *Appellant*

And

Public Prosecution

… *Respondent*

GROUNDS OF DECISION

[Criminal Procedure and Sentencing — Sentencing — Grievous hurt]

Saw Beng Chong v Public Prosecutor

[2022] SGHC 175

General Division of the High Court — Magistrate's Appeal No 9007 of 2022
Sundaresh Menon CJ
26 May 2022

21 July 2022

Sundaresh Menon CJ:

Introduction

1 In recent years, our appellate courts have provided sentencing frameworks and benchmarks for various offences, in an endeavour to provide principled guidance to sentencing courts and to achieve a degree of predictability and consistency in sentencing outcomes. But sentencing is a nuanced exercise. Depending on the nature of the offence and the applicable provisions, it may not always be possible to place each instance of a given offence neatly along a spectrum of sentences precisely reflecting the offender's culpability and/or the harm caused.

2 This much is certainly true of the offence of voluntarily causing grievous hurt. The harm in a given case may range from a simple fracture to death; and not only are there different types of injury, the extent of each injury and the degree of medical intervention required may also differ quite dramatically. Sentencing courts strive in general terms to treat like cases alike. But given the

possible variances of the nature and extent of harm as I have just outlined, it will often be impossible for each court to embark on a fine-grained inquiry into the relative gravity of the injuries in each case as against that in each of the precedents. In these circumstances, a broad-based approach should be adopted to identify a suitable starting point within the full breadth of the sentencing range. This is how I approached the present appeal.

3 Saw Beng Chong, the Appellant, pleaded guilty to and was convicted of one charge under s 325 of the Penal Code (Cap 224, 2008 Rev Ed) (the "Penal Code"), for voluntarily causing grievous hurt to the victim ("the Victim"). The Victim sustained multiple fractures, all of which were inflicted by the Appellant using his bare hands. The learned District Judge in the State Courts (the "District Judge") sentenced the Appellant to a term of imprisonment of 13 months, and additionally, ordered compensation of $885.71 in favour of the Victim under s 359 of the Criminal Procedure Code 2010 (2020 Rev Ed). Caning was sought by the Prosecution, but the District Judge did not impose any caning. The Appellant appealed against the sentence of imprisonment imposed by the District Judge, contending that it was manifestly excessive.

4 I dismissed the appeal and provided brief oral grounds at the hearing. In this judgment, I provide detailed grounds of my decision.

Statement of Facts

5 The Appellant pleaded guilty to a single charge under s 325 of the Penal Code as follows:

> … that you, [the Appellant,]
>
> on 20 February 2020, at around 5am, near 427 Hougang Ave 6 Singapore, did cause voluntarily cause grievous hurt [*sic*] to [the Victim], namely, you choked, punched and pushed him,

> intending to cause him grievous hurt and thereby causing him grievous hurt, namely, fractures of the nasal bone, left anterior 8th rib, and orbital wall, and you have thereby committed an offence under s 325 of the Penal Code (Cap 224, 2008 Rev Ed).

6 For ease of reference, s 325 of the Penal Code is as follows:

> **Punishment for voluntarily causing grievous hurt**
>
> **325**. Whoever, except in the case provided for by section 323A, 334A or 335, voluntarily causes grievous hurt, shall be punished with imprisonment for a term which may extend to 10 years, and shall also be liable to fine or to caning.

7 Before the District Judge, the Appellant admitted to a statement of facts (the "Statement of Facts"), which set out the relevant factual matrix in this case.

8 The Appellant is a Malaysian citizen who was working in Singapore at the time of the offence. On 20 February 2020, at around 5.00am, he hailed a taxi driven by the Victim near 427 Hougang Ave 6, Singapore. The Victim was 54 years old at the time of the offence.

9 Upon boarding the Victim's taxi, the Appellant told the Victim that he wanted to go to the casino at Marina Bay Sands. Shortly after the Victim started driving, the Appellant told the Victim that he had forgotten to take something from home and asked the Victim to stop at the bus stop by 427 Hougang Avenue 6 Singapore. As soon as the Victim stopped the taxi to comply with his request, the Appellant grabbed the Victim from the rear passenger seat and choked him. The Victim struggled to break free but was unable to do so. The Victim sounded his car horn in the hope of scaring the Appellant off or getting the attention of any passers-by. The Appellant released the chokehold on the Victim and then grabbed his hands to stop him from sounding the horn. The Victim managed to bite the Appellant's hand and the Appellant let go.

10 The Appellant then got out of the taxi, opened the door where the Victim was seated and then punched him on his face around four times, pushed him towards the front passenger seat, and again choked him on the neck. The Appellant then released his grip and fled from the scene. The Victim immediately called the police.

11 The Victim was accompanied to Sengkang General Hospital and seen at at 6.00am. He was found to have sustained the following injuries:

(a) Bruises over his right eye and nasal bridge;

(b) A mildly displaced nasal bone fracture;

(c) An undisplaced fracture of the left anterior 8th rib; and

(d) A minimally displaced right inferior posterior orbital wall fracture.

12 The Victim was discharged the following day. He was given hospitalisation leave for six days from 20 to 25 February 2020. When he was reviewed on 25 February 2020, the facial bruising and swelling were found to have resolved, and he was advised that his facial fractures could be managed conservatively.

13 The Appellant contended that he attacked the Victim because the Appellant was upset over some personal matters, and because he did not like the Victim's tone. Neither of these claims was particularised in any way. It was not seriously disputed that the attack was unprovoked. The Appellant left for Malaysia shortly after he fled from the scene of the offence. Upon his return to Singapore, he was arrested on 22 October 2021 some 18 months later.

The District Judge's decision

14 The District Judge considered that the main sentencing considerations were deterrence and retribution, and applied the two-step sentencing approach set out by the Court of Appeal in *Public Prosecutor v BDB* [2018] 1 SLR 127 ("*BDB*"), which is as follows:

> (a) First, the court should examine the seriousness of the injury as an indicator of the gravity of the offence, and from that derive the indicative starting point for sentencing, having regard to the wide range of (a) the possible injuries and (b) the possible sentences.
>
> (b) Second, once the indicative starting point has been identified, the sentencing judge should consider the culpability of the offender, and the relevant aggravating and/or mitigating factors.

15 The District Judge found that the indicative starting point in this case should be around 12 or 13 months' imprisonment, and not between 13 and 15 months' imprisonment as the Prosecution had submitted. In arriving at this starting point, the District Judge considered the fact that there were multiple injuries, including fractures mainly at vulnerable parts of the body, and therefore thought that the starting point could not be as low as 6 months' imprisonment, as the Defence had submitted. In rejecting the submission made by the Defence, the District Judge distinguished the decision in *Arumugam Selvaraj v Public Prosecutor* [2019] 5 SLR 881 ("*Arumugam*"), where the court applied a starting point of 6 months' imprisonment, in a case where the victim had suffered a fracture of a single finger accompanied by extensive bruises. The District Judge was satisfied that the nature and severity of the injuries suffered by the Victim was far worse than that inflicted in *Arumugam*.

16 Having identified the indicative starting point of 12 or 13 months' imprisonment, the District Judge proceeded to the second stage of the *BDB* framework and examined the offender's culpability and the relevant aggravating and mitigating factors. The District Judge considered that the attack on the Victim was relentless and entirely one-sided. The District Judge also inferred from the sequence of actions undertaken by the Appellant that the whole attack was premeditated. The District Judge also considered it an aggravating factor that the Appellant fled to Malaysia soon after the offence and thought this demonstrated an intention to avoid detection and arrest. The District Judge rejected the Appellant's bare allegation that he in fact had to return urgently to Malaysia to attend to personal matters because his sister had been hospitalised. The District Judge also noted that the Appellant had deliberately attacked the Victim's face, which was a vulnerable area and considered this an additional aggravating factor. Finally, the District Judge also considered that this was an attack on a public transport worker committed in the very early hours of the morning, which was a riskier driving period for public transport workers since there would less likely be others around who might intervene. Given these aggravating factors, the District Judge adjusted the indicative sentence upwards to 14 months' imprisonment.

17 The District Judge then considered the mitigating factors, and given that the Appellant had pleaded guilty, he adjusted the sentence to 13 months' imprisonment. The sentence was backdated to 22 October 2021, being the date of his arrest and remand.

Parties' cases on appeal

18 Before me, the Appellant submitted that the imprisonment term of 13 months was manifestly excessive. The Appellant's contention was that the

District Judge had erred in identifying the starting point. The Appellant contended that the appropriate starting point in this case should be a term of imprisonment of between 6 and 9 months. In terms of the aggravating factors, the Appellant submitted that the District Judge had erred in finding that (a) the attack was premeditated, and (b) the Appellant had fled to Malaysia in order to avoid detection.

19 The Appellant contended that the precedents did not support the District Judge's starting point of 12 or 13 months' imprisonment. The Appellant relied on *Public Prosecutor v Tan Xian Wen Denny* [2014] SGDC 459 ("*Tan Denny*"), *Public Prosecutor v Samson Tanuwidjaja* [2018] SGDC 228 ("*Samson Tanuwidjaja*") and *Public Prosecution v Cheng Boon* [2017] SGDC 78 ("*Cheng Boon*") to support his position that the indicative starting point should be 6 months' imprisonment. It was suggested that the Victim's injuries in this case were less serious in comparison to those in the aforesaid precedents. The Appellant also submitted that there was no long-term impairment or persistent pain in this case. I will address these precedents in detail below at [34]–[37].

20 The Appellant's counsel also referred to the sentencing benchmarks set out in *Low Song Chye v Public Prosecutor and another appeal* [2019] 5 SLR 526 ("*Low Song Chye*"), which established sentencing bands based on the nature of hurt for the offence of voluntarily causing hurt under s 323 of the Penal Code. The Appellant submitted that the injuries here would fall under Band 2 of that sentencing framework, which was for moderate harm with the indicative starting range of six weeks' to a maximum of nine months' imprisonment. The Appellant's counsel suggested on this basis that the starting point should be no higher than nine months' imprisonment, which would also be consistent with the indicative starting points applied in *Tan Denny*, *Samson Tanuwidjaja* and *Cheng Boon*.

21 As to the aggravating factors, the Appellant submitted that the District Judge was not entitled to infer from the Statement of Facts that (a) the attack was premeditated; and (b) the Appellant intended to flee to Malaysia to avoid arrest. It was submitted that the Statement of Facts in fact suggested that the Appellant committed the offence in the heat of the moment. As to the second point, the Appellant contended that this inference was contradicted by the fact that the Appellant eventually returned to Singapore in October 2021. Therefore, the District Judge should not have relied on these two aggravating factors. The Appellant accordingly submitted that the sentence should be calibrated downwards, on account of this and taking into account the Appellant's timeous plea of guilt.

22 The Respondent, on the other hand, maintained that the District Judge had rightly assessed the starting point to be a term of imprisonment of 12 or 13 months and maintained that this was in line with the precedents. It was also submitted that the sentence of 13 months' imprisonment was not manifestly excessive, as it fairly accounted for the Appellant's culpability, the Victim's injuries and the Victim's vulnerability.

23 The Respondent submitted that in cases involving multiple fractures, as in the present case, sentences of at least a year's imprisonment had been imposed. It was said that the starting point of 12 or 13 months' imprisonment was an appropriate downward adjustment from the starting points applied in *Public Prosecutor v Pettijohn William Samuel* [2019] SGDC 290 ("*Pettijohn*") and *Public Prosecutor v P Rajenthirun* [2018] SGDC 95 ("*Rajenthirun*"), where the injuries were more serious. Hence, the indicative starting point chosen by the District Judge was not manifestly excessive.

24 The Respondent also submitted that the Appellant's culpability was demonstrated by his unprovoked and relentless attack against the Victim. Further, when the Victim bit the Appellant to release his grip, the Appellant only escalated the confrontation by going to the front of the taxi, opening the Victim's door, and punching him in the face repeatedly and choking him. In all the circumstances, a deterrent sentence was warranted, and the sentence of 13 months' imprisonment with no caning could not be said to be manifestly excessive. For the avoidance of doubt, the Respondent did not appeal against the District Judge's refusal to impose caning, notwithstanding the observations of the Court of Appeal in *BDB* at [76].

My decision

Applicable framework

25 As the District Judge correctly noted, the applicable sentencing approach to be adopted for an offence under s 325 of the Penal Code has been set out by the Court of Appeal in *BDB*. I have summarised this at [13] above.

26 At the first stage, when identifying the indicative starting point, the court should have primary regard to the seriousness of the injury caused to the victim because it is the gravity of the injury that differentiates this offence from the offence of voluntarily causing hurt under s 323 of the Penal Code. As the court noted in *BDB* at [58], the indicative starting points should correspond to the seriousness of the injury, which should be assessed along a spectrum. This exercise is informed by a range of factors, including the number and seriousness of any fractures, the location and extent of the pain suffered by the victim, the permanence or duration of the injuries, the extent of post-injury care that may be needed, and the degree of disruption experienced by the victim. This follows from recognising the importance of the degree of harm as a sentencing

consideration in the context of this offence. At the same time, the court should also be cognisant of the wide range of possible forms and permutations of grievous hurt, extending from simple fractures all the way to death. As a result, the first stage of the *BDB* inquiry will necessarily and inherently be broad-based. As I highlighted to the Appellant's counsel, Ms Megan Chia, during the hearing, it would be wholly unrealistic to expect that the court will in each case finely calibrate the punishment by scrutinising how the injuries in the instant case differ from those in every other broadly comparable precedent. There could be different types and permutations of hurt, with the extent of hurt, the degree of medical intervention needed and the permanence or duration of the injuries differing from one case to the next, making it impossible to finely compare and calibrate each case. On top of this, there is the fact that the sentences in the precedents may have been adjusted upwards or downwards at the second stage of the inquiry. The court made a similar point in *Muhammad Khalis bin Ramlee v Public Prosecutor* [2018] 5 SLR 449 at [56] as follows:

> 56 More importantly, the sentencing matrix proposed by the Prosecution may not be suitable for offences under s 325 of the Penal Code, which ***are invariably very fact-specific and the severity of which the Prosecution acknowledges "lies on a continuum"***. It is less useful to delineate the types of harm caused by an accused person into two broad categories, as opposed to treating such injuries as spread along a spectrum having regard to the nature and permanence of the injury. The Court of Appeal in *BDB* expressly stated at [56] that it was not appropriate to try to set out a range of starting points for each type of grievous hurt. The two indicative starting points specified by the Court of Appeal, namely multiple fractures on limbs (three years six months) and death (eight years) were identified because that was the nature of the injury that had been sustained in two of the charges. However, the court noted at [58] that the starting points should be calibrated along a spectrum having regard to the type and seriousness of the injuries caused.
>
> [emphasis added in bold italics]

27 In that case, the court rejected the sentencing matrix proposed by the Prosecution for s 325 offences, essentially because such offences would invariably be fact-specific and the severity of the harm suffered would lie on a continuum. That is not to say that no comparison is to be done at all. Instead, the court should consider the factors I have highlighted to arrive at a broad sense of where the index offence should be situated within the overall sentencing range.

28 Further, the court's assessment of the indicative starting point should be informed by the full breadth of permitted sentencing range (*BDB* at [59]). In *BDB*, the court held that because the maximum sentence for a grievous hurt offence is ten years' imprisonment, the indicative starting point where death is the hurt caused should be around eight years; on the facts of that case, where the grievous hurt took the form of fractures of the limbs and ribs, the indicative starting point was held to be a term of imprisonment of around three years and six months. I note that the court in *BDB* had regard to the type and gravity of fractures caused in concluding that three years and six months was the appropriate starting point. That is plainly correct. One might imagine that a serious skull fracture with grave consequences might attract a higher starting sentence while a fracture of a single finger would entail a lower one.

29 It also follows from all I have said that the Appellant's reliance on *Low Song Chye* was misplaced. The court in *Low Song Chye* set out the sentencing benchmark for a different offence altogether: namely, that of voluntarily causing hurt under s 323 of the Penal Code. In my judgment, it was quite unhelpful to have regard to any sentencing framework developed for s 323 offences. Indeed, it would be erroneous to try to derive from that a sentencing range for the distinct offence of voluntarily causing grievous hurt under s 325, for a number of reasons. First, the full breadth of the sentencing range, which is a critical

element that informs the choice of a suitable starting point, is very different for the two offences. The maximum sentence for an offence of voluntarily causing hurt under s 323 of the Penal Code is *three years* after the amendment of the Penal Code in 2020, and it was two years at the time the decision in *Low Song Chye* was rendered. In contrast, the offence of voluntarily causing grievous hurt may attract a maximum imprisonment term of *ten years*. The difference in the maximum sentence for each offence would naturally mean that the sentencing bands in *Low Song Chye* cannot logically or accurately be transposed to the offence of voluntarily causing grievous hurt, since the relevant starting point for each offence would have to be situated within its own permitted range.

30 Second, as the Court of Appeal has stated in *BDB* at [56], it is the seriousness of the *grievous* hurt in grievous hurt offences that sets it apart from a case concerning causing simple hurt, which is also why a more severe sentencing range of up to ten years is prescribed. The range of hurt in cases of grievous hurt can be extremely wide and will be quite different from the range of hurt that is not grievous in nature and that is typically the subject matter of a charge under s 323 in practice. Additionally, the Prosecution may within its discretion charge an offender with the offence under s 323 even if the hurt could be classified as grievous. But this only exacerbates the difficulty of trying to extrapolate from the sentencing approach taken in the case of offences under s 323. By way of illustration, suppose an offender has caused a single finger fracture to the victim, but is charged for voluntarily causing hurt under s 323 of the Penal Code. The starting point for such an offence would necessarily have to be at the higher end of the sentencing spectrum for voluntarily causing hurt offences just because the hurt involves a fracture. But the identical harm, if prosecuted under the offence of voluntarily causing grievous hurt, would almost certainly *not* be situated at the higher end of the sentencing spectrum, because

there would be far more serious types of harms that may arise under s 325 of the Penal Code. For these reasons, I did not consider the Appellant's reliance on the sentencing benchmark in *Low Song Chye* to be helpful or even appropriate.

31 Turning to the second stage of the analysis, the court will take into account the level of culpability of the offender, based on the offence-specific and offender-specific aggravating factors, and any mitigating factors (see *BDB* at [62]). The relevant aggravating factors include the extent of deliberation or premeditation, the manner and duration of the attack, the victim's vulnerability, the use of any weapons, whether the attack was undertaken by a group, and any relevant antecedents of the accused. This is by no means an exhaustive guide, as there may be other relevant factors.

First stage: the indicative starting point

32 In the present case, the Victim sustained multiple injuries that were inflicted by the Appellant. Having regard to the degree and nature of harm caused, I did not think that the District Judge was wrong to determine that a starting point of 12 or 13 months' imprisonment was applicable.

33 As I have already noted, in *BDB*, the court held that a starting point of three years and six months was appropriate for a case involving multiple rib fractures, and fractures to the elbow and calf. I accepted that those injuries in *BDB* were more severe in terms of the harm sustained by the victim. The Respondent also accepted that the injuries in *Pettijohn* and *Rajenthirun* were worse. In *Pettijohn*, the victim sustained mildly displaced fractures around his eye and jaws and a left zygomatic arch fracture which was on the cheek. The victim had to undergo a surgery for the reconstruction of his eye socket, and lost

sensation from under his nose to his cheekbone; he also had lasting peripheral double vision (*Pettijohn* at [16]). The starting point adopted by the court there was 18 months' imprisonment. In *Rajenthirun*, the victim suffered multiple fractures in his head, and was given medical leave for eight days (*Rajenthirun* at [19]). That case also involved the use of a weapon by the accused person and he had antecedents for violent offences. The total sentence imposed was 2 years' imprisonment. I was satisfied that these two precedents were more serious in terms of the degree of harm, and the District Judge rightly took this into account in calibrating the starting point downwards in this case.

34 On the other hand, I rejected the Appellant's suggestion that the starting point should be six months based on *Arumugam Selvaraj v Public Prosecutor* [2019] 5 SLR 881 ("*Arumugam*"). In my judgment, the injuries here were clearly more serious, and the starting point that was applied in *Arumugam* would not be applicable here. In *Arumugam*, the injury consisted of a single undisplaced fracture of the middle finger and some bruising, and the accused person was sentenced to a term of imprisonment of six months. There is no question that the injuries were more severe in the present case with three fractures – two in the face and one in the ribs. The Respondent also rightly emphasised that these were inflicted in vulnerable areas of the Victim's body. The Victim was also given six days of hospitalisation leave. The fact that he required no complex post-injury care did not diminish the gravity of the injuries given the number and nature of the fractures. This case was plainly more serious than *Arumugam*, though less so than *BDB*, *Pettijohn* and *Rajenthirun*.

35 I turn to the cluster of cases identified by the Appellant's counsel where sentences of between six and nine months' imprisonment were imposed:

(a) In *Tan Denny*, the victim required a septorhinoplasty procedure as a result of fractured nasal bones and a fractured nasal septum. He had been punched in the face twice by the accused person. The accused person was sentenced to six months' imprisonment.

(b) In *Cheng Boon*, the victim suffered blowout fractures of the left orbital wall and medial wall, and could only see with one eye until the fractures healed. The accused person was sentenced to nine months' imprisonment.

(c) In *Samson Tanuwidjaja*, the accused person punched the victim several times on the face and upper chest area. The victim sustained a displaced fracture at the tip of the nasal bone, with forehead bruises and swelling on the cheek. The sentence was revised from six months' to nine months' imprisonment upon appeal.

36 I make a few observations about these precedents. First, *Tan Denny* and *Cheng Boon* were decided before *BDB*. The sentencing courts therefore would not have had the benefit of the *BDB* framework and I therefore regard these as unpersuasive precedents. In any event, based only on the limited information that is before me, the sentences imposed in *Tan Denny* and *Cheng Boon* appeared to be unduly low and these cases should not be relied on as appropriate reference points. The injuries in those cases required surgical intervention, and left the victims with long-term impairment. Having regard to the permanence or duration of injuries, the extent of post-injury care and the disruption experienced by the victims, the sentences in those cases do not seem to me to be defensible, especially having regard to what was said in *BDB*.

37 Second, turning to *Samson Tanuwidjaja*, that was a case involving a single nasal fracture with bruising and swelling, which suggests it was less serious than the injuries in the present case, which involved multiple fractures at different parts of the Victim's body. Further, there are no written grounds issued for the decision to revise the sentence to nine months on appeal. As this court has repeatedly stated, the absence of written grounds renders the case of little precedential value as it is unreasoned: see, for example, *Keeping Mark John v Public Prosecutor* [2017] 5 SLR 627 at [18].

38 For all these reasons, I do not regard these precedents as providing a reasonable basis for concluding that a starting point of between six and nine months' imprisonment was appropriate in this case.

39 I also took into account a few precedents involving multiple fractures where the court imposed a sentence of more than 12 months' imprisonment, to reiterate the point that the precedents relied upon by the Appellant were not reliable:

(a) In *Public Prosecutor v Ryan Xavier Tay Seet Choong and another* [2020] SGDC 272, an accused person assisted his co-accused in committing the offence, by sitting on the victim's buttocks and holding onto his legs while his co-accused was punching the victim's face and head. The injuries sustained by the victim, for which the accused person was charged, were fractures of the nasal bone and medial wall of the right orbit. The indicative starting point was 12 months' imprisonment.

(b) In *Public Prosecutor v Wong Tuan Huat* [2018] SGDC 248, the victim was punched in the face, and sustained a minimally displaced nasal bone fracture that required surgery for the manipulation and

reduction of his nasal bone fracture. The victim was also given 11 days of medical leave. The total sentence imposed was 13 months' imprisonment.

40 The number and degree of injuries in these two cases were not identical as that in the present case. However, having regard to what I have said about the need to take a broad view, they are certainly comparable to those inflicted here. In my judgment, where there are multiple fractures that are not of a more serious nature – as was the case in *BDB* – and that cause a victim to suffer some degree of disruption and persistent pain, a starting point of between 9 and 14 months' imprisonment would be appropriate. It follows that the District Judge did not err in identifying the starting range of 12 or 13 months' imprisonment. On the contrary, in my view, this was amply justified by the precedents and the nature of the injuries.

Second stage: aggravating and mitigating factors

41 I turn to the second stage of the inquiry. In my judgment, the level of culpability in this case approached the high end. There were multiple factors warranting an uplift from the starting point of 12 or 13 months. I identified a number of aggravating factors during the hearing, which were as follows:

(a) The attack was sustained and relentless.

(b) The attack was unprovoked and if not premeditated, it was at least a wholly gratuitous act of violence; and

(c) The attack was directed at a public transport worker in the middle of the night.

42 The nature and manner of the assault here was particularly severe. The attack was completely unprovoked and relentless. The Appellant started choking the Victim from the rear passenger seat *immediately* after the Victim stopped driving, when the Victim had complied with his request to return to his home. Despite the Victim's attempts to sound the horn to attract the attention of passers-by, the Appellant persisted in the attack. Even after the Victim bit him and forced the Appellant to let go, he exited the car only to open the driver's seat where the Victim was, and then continued punching the Victim multiple times on the face, choking him and leaving him with multiple fractures on the face and ribs. The utter viciousness of the attack can also be seen from the seriousness of the Victim's injuries despite the fact that these had been inflicted by the Appellant with his bare hands.

43 The nature and the manner of the attack, as well as the fact that there was not a trace of a reasonable explanation for why he had attacked the Victim, suggested that the attack was either premeditated or simply gratuitous. All that the Appellant said, without any particularisation, were that he did not like the Victim's tone and that he was dealing with some personal issues, but plainly, neither of this was a reasonable explanation for what he proceeded to do to the Victim. But even if I were to disregard the element of premeditation, the attack would be wholly egregious by any measure because it would amount to a purely gratuitous act of violence that was unprovoked and unrelenting.

44 Then, there was the fact that this was an attack on a public transport worker. The Victim was accosted while he was providing a service to the Appellant in the very early hours of the morning. As the District Judge rightly observed, this was a high-risk time for taxi drivers, and there was reason to impose a deterrent sentence in line with the exhortation in *Wong Hoi Len v*

Public Prosecutor [2009] 1 SLR(R) 115 that the court should send a clear signal that assaults on public transport workers will not be tolerated.

45 Much attention was directed to why the Appellant went to Malaysia, and whether the District Judge erred in finding that he had sought to evade detection. But in my view, this missed the point. The fact remained that he fled the scene and there was nothing to indicate or suggest that he intended to surrender himself. It was therefore somewhat beside the point whether he went to Malaysia to take refuge or to attend to personal matters. I also considered it relevant that, as the District Judge noted, the Appellant only offered a bare allegation that he had to return to Malaysia shortly after the attack in order to attend to the needs of his sister who had been hospitalised. Nothing was put forward to substantiate this and it did not seem entirely plausible given that he had left Singapore suddenly and *immediately* after the attack on the Victim and then stayed away for a considerable period of time. Finally, whatever else may be said about the timing and duration of the appellant's sudden departure from Singapore immediately after the attack, it was plain that there was a lack of remorse on the Appellant's part.

46 These factors would have warranted a significant uplift from the starting point of 12 to 13 months, even without taking into account any question of premeditation. As for the mitigating factors, the Appellant's plea of guilt was of some – but not significant – mitigating value here, because the case against him was strong and he had little option but to accept liability. In such circumstances, a guilty plea will have limited weight: *BDB* at [74].

47 Taking all these aggravating factors and the one mitigating factor, I would have adjusted the sentence upwards by up to three months at the second stage of the *BDB* analysis. The resulting sentence would have been higher than

that awarded by the District Judge. Hence, the sentence meted out by the District Judge was lenient, and clearly not manifestly excessive.

Conclusion

48 For these reasons, I dismissed the Appellant's appeal.

Sundaresh Menon
Chief Justice

Chia Ru Yun Megan Joan (Tan Rajah & Cheah) for the appellant;
Seah Ee Wei (Attorney-General's Chambers) for the respondent.