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

[2024] SGHC 132

Magistrate's Appeal No 9111 of 2023

Between

Koh Lian Kok

… *Appellant*

And

Public Prosecutor

… *Respondent*

JUDGMENT

[Criminal Law — Statutory offences — Workplace Safety and Health Act 2006]
[Criminal Procedure and Sentencing — Appeal — Plea of guilty — Appellant appealing against sentence after pleading guilty]
[Criminal Procedure and Sentencing — Sentencing — Benchmark sentences]

Koh Lian Kok
v
Public Prosecutor

[2024] SGHC 132

General Division of the High Court — Magistrate's Appeal No 9111 of 2023
Sundaresh Menon CJ, Steven Chong JCA and Vincent Hoong J
16 February, 1 March 2024

21 May 2024 Judgment reserved.

Sundaresh Menon CJ (delivering the judgment of the court):

Introduction

1 The rules governing workplace safety are written in blood. In 2004, the collapse of Nicoll Highway, the fire on the vessel "Almudaina" at Keppel Shipyard, and an accident at Fusionopolis claimed 13 lives in total, with several more injured. These high-profile incidents added to the urgency of reforming the Factories Act (Repealed) (Cap 104, 1998 Rev Ed), and this culminated in the passing of the Workplace Safety and Health Act 2006 (Act 7 of 2006). One of the objectives of this new Act was to require industry to take ownership of occupational safety standards and so to bring about greater respect for life and livelihoods at the workplace: see Singapore Parl Debates; Vol 80, Sitting No 16; Col 2206; 17 January 2006 (Ng Eng Hen, Minister for Manpower). The lapses of the appellant, Mr Koh Lian Kok ("Mr Koh"), that are the subject of this appeal, cut against this objective.

2 Mr Koh was charged under s 12(2), read with s 20, of the Workplace Safety and Health Act 2006 (Cap 354A, 2009 Rev Ed) ("WSHA") for failing to take, so far as reasonably practicable, such measures as were necessary to ensure the safety and health of persons (not being his employees) who might be affected by the undertaking carried on by him in the workplace. He pleaded guilty and was sentenced to four months' imprisonment by the District Judge ("DJ"). On appeal in HC/MA 9111/2023/01, Mr Koh seeks to persuade us that the sentence of imprisonment should be set aside and in its place, a fine in the range of $75,000 to $175,000 be imposed.

3 For the reasons that follow, we dismiss his appeal and enhance his sentence to 14 months' imprisonment.

Facts

4 Mr Koh admitted to the Prosecution's Statement of Facts ("SOF") without qualification, and we begin by highlighting the salient facts set out there.

Background

5 Mr Koh is a 70-year-old Singaporean male. He was the sole proprietor of Ban Keong Transport Co ("Ban Keong") at the material time. Ban Keong was in the business of providing transportation services including the transportation of heavy equipment and machinery. At the material time, Ban Keong's fleet of transportation vehicles consisted of four lorries and five lorry loaders, which were equipped with hoisting arms and lifting gear.

6 Mr Koh employed as lorry loader operators, lorry drivers who also possessed some form of lorry loader certification. However, as at 12 October

2018, none of them were trained as signalmen, riggers or lifting supervisors. The significance of this omission will shortly become apparent.

7 Mr Koh employed Mr Ho Man Kwong ("Mr Ho") as a Lorry Loader Operator-cum-Driver on 21 July 2015. The scope of Mr Ho's employment required him, amongst other things, to transport goods using a lorry loader, hoist goods onto the bed of the lorry loader and ensure that the lifting gear selected for the job was fit for the intended load and thus, suitable for use. He possessed a valid Class 5 driving licence and had completed a lorry loader safety course in 2010 where he was taught some of the basic operational aspects of lifting loads and basic rigging techniques.

8 JP Nelson Access Equipment Pte Ltd ("JP Nelson") regularly engaged Mr Koh's transportation services. At the material time, Mr Shang Jiawei ("Mr Shang") and Mr Bee Choo Siong ("the Deceased") were employed by JP Nelson as mechanics.

9 On 11 October 2018, an operation executive from JP Nelson contacted Ban Keong to make arrangements for the transportation of a boom lift. The boom lift was to be picked up from the premises of the vendor of the boom lift. We refer to these premises as "the Workplace" because it was a "workplace" within the meaning of s 5 of the WSHA. The boom lift was then to be transported to JP Nelson's workshop. Mr Ho was instructed to report to the Workplace at 9am on the following day to carry out this engagement.

Day of the accident – 12 October 2018

10 On 12 October 2018, Mr Ho set out to execute his assignment. Before Mr Ho was despatched with the lorry loader, neither Mr Koh nor any other employee of Ban Keong had carried out a risk assessment of the assignment, or

established a lifting plan. Nor had any effort been made to establish even basic facts such as the weight of the item to be transported. As a result, when Mr Ho arrived at the Workplace, he was not aware of the weight of the boom lift and was not able to establish this on his own. He therefore asked Mr Shang what the boom lift weighed.

11 Mr Shang, who too was unaware of the weight of the boom lift, replied that it could possibly weigh more than three tons. In truth, the boom lift weighed 7.08 tons. Mr Ho selected two webbing slings to rig and lift the boom lift onto the bed of the lorry loader. The webbing slings were only rated to handle a load of two tons each under normal conditions. A forensic engineering assessment later showed that the way the webbing slings had been connected to the bow shackles and then rigged further reduced their combined effective load bearing capacity to 3.2 tons or less.

12 Mr Ho controlled the ascent of the boom lift while Mr Shang and the Deceased placed their hands on it, apparently so that they could swivel it if necessary, and orientate it such that it would be parallel to the bed of the lorry loader before it was lowered and then secured for transportation.

13 The boom lift was lifted to a height of just about 0.5m above ground when the webbing slings abruptly snapped. The boom lift fell, and struck the Deceased. An ambulance was immediately called but when the paramedics arrived, they pronounced the Deceased dead at the scene. His cause of death was certified as a "head injury" following the autopsy that was performed subsequently.

Measures that Mr Koh failed to undertake

14 The following measures were not in place for this lifting operation (SOF at para 15):

(a) First, as has been noted, no risk assessment or safe work procedure was conducted or provided in relation to the safety and health risks posed to persons who might be affected by the operation of transporting the boom lift.

(b) Second, no lifting plan was developed or implemented.

(c) Third, no trained and competent lifting supervisor, rigger, or signalman was appointed for the lifting operation at the Workplace.

15 Mr Koh was obliged to implement these measures. Under reg 3 of the Workplace Safety and Health (Risk Management) Regulations (2007 Rev Ed) ("Risk Management Regulations"), an employer is under a duty to conduct a risk assessment in relation to the safety and health risks posed to any person who may be affected by his undertaking in the workplace. This duty is reiterated in the 2014 Workplace Safety and Health Council, "Code of Practice on Safe Lifting Operations in the Workplaces" ("Code of Practice") at para 3.1.1, which states that "it is mandatory to conduct a risk assessment on the safety and health risks posed to any person who may be affected by the lifting operation in the workplace".

16 The requirement to establish and implement a lifting plan is provided for in reg 4(1) of the Workplace Safety and Health (Operation of Cranes) Regulations 2011 ("Operation of Cranes Regulations"). Moreover, the Code of Practice at para 7.1 states that "[a]ll lifting operations shall be accompanied by

a lifting plan". It goes on to explain the relevance of the lifting plan at para 7.2: "[t]he lifting plan encapsulates all the important information that must be considered in a lifting operation thus ensuring that the lifting operation is carried out safely".

17 Mr Koh was also under a duty to appoint a lifting supervisor pursuant to reg 17(1) of the Operation of Cranes Regulations. A lifting supervisor's role includes the following (see reg 17(3) of the Operation of Cranes Regulations):

(a) co-ordinate all lifting activities;

(b) supervise all lifting operations in accordance with the lifting plan;

(c) ensure that only registered crane operators, appointed riggers and appointed signalmen participate in any lifting operation involving the use of a mobile crane;

(d) ensure that the ground conditions are safe for any lifting operation to be performed by any mobile crane; and

(e) brief all crane operators, riggers and signalmen on the lifting plan referred to in reg 4.

18 The duty to appoint a properly trained and attired rigger is provided in reg 18 of the Operation of Cranes Regulations. A rigger's duties, pursuant to reg 18(4), include the following:

(a) check the slings to be used for slinging the loads to ensure that these are of good construction, sound and suitable material, adequate strength and free from patent defect;

(b) ascertain the weight of the load which is to be lifted and inform the crane operator of the weight of the load;

(c) ensure that the load to be lifted is secure, stable and balanced; and

(d) report any defect in the lifting gear to the lifting supervisor.

19 Regulation 19 of the Operation of Cranes Regulations further required Mr Koh to appoint a properly trained and attired signalman to:

(a) ensure or verify with the rigger that the load is properly rigged up before he gives a clear signal to the crane operator to lift the load; and

(b) give correct and clear signals to guide the crane operator in the manoeuvre of the load safely to its destination.

20 Mr Koh's failure to implement any of the measures mentioned at [14] above meant that none of the aforementioned safety precautions had been implemented at the Workplace. Mr Koh's lapses breached s 12(2) of the WSHA. Section 12 of the WSHA provides as follows:

> **Duties of employers**
>
> **12.** —(1) It shall be the duty of every employer to take, so far as is reasonably practicable, such measures as are necessary to ensure the safety and health of his employees at work.
>
> (2) It shall be the duty of every employer to take, so far as is reasonably practicable, such measures as are necessary to ensure the safety and health of persons (not being his employees) who may be affected by any undertaking carried on by him in the workplace.
>
> (3) For the purposes of subsection (1), the measures necessary to ensure the safety and health of persons at work include —

> (*a*) providing and maintaining for those persons a work environment which is safe, without risk to health, and adequate as regards facilities and arrangements for their welfare at work;
>
> (*b*) ensuring that adequate safety measures are taken in respect of any machinery, equipment, plant, article or process used by those persons;
>
> (*c*) ensuring that those persons are not exposed to hazards arising out of the arrangement, disposal, manipulation, organisation, processing, storage, transport, working or use of things —
>
> (i) in their workplace; or
>
> (ii) near their workplace and under the control of the employer;
>
> (*d*) developing and implementing procedures for dealing with emergencies that may arise while those persons are at work; and
>
> (*e*) ensuring that those persons at work have adequate instruction, information, training and supervision as is necessary for them to perform their work.
>
> (4) Every employer shall, where required by the regulations, give to persons (not being his employees) the prescribed information about such aspects of the way in which he conducts his undertaking as might affect their safety or health while those persons are at his workplace.

Charges

21 Mr Koh was charged pursuant to s 12(2), read with s 20, of the WSHA. His initial charge was amended to remove the words "which failures caused the death of the deceased". The final charge that Mr Koh faced, read as follows:

> [You] are charged that you, on 12 October 2018, being the employer of Ho Man Kwong … at [the Workplace], which was a workplace as defined in the Workplace Safety and Health Act (Cap 354A, 2009 Rev Ed) ("**the Act**"), did fail to take, so far as was reasonably practicable, such measures as were necessary to ensure the safety and health of persons (not being your employees) who might be affected by the undertaking carried on by you in the Workplace; to wit, you failed to:

> (a) conduct a risk assessment in relation to the safety and health risks posed to any person who might be affected by the transporting of the boom lift for which you were engaged by JP Nelson Access Equipment Pte. Ltd. … to do ("**the Works**");
>
> (b) develop and implement a lifting plan for the Works; and
>
> (c) ensure that there was a trained and competent lifting supervisor, rigger, and signalman appointed for the Works,
>
> and you have thereby committed an offence under section 12(2) read with section 20 of the Act, which is punishable under section 50(a) of the Act.

22 Mr Koh pleaded guilty to this charge, and he was sentenced to four months' imprisonment by the DJ.

23 Besides Mr Koh, JP Nelson and Mr Ho were charged as well. JP Nelson was charged under s 14A(1)(*b*) read with s 20 of the WSHA for *its* failure, as the principal engaging a contractor, to take reasonably practicable measures to ensure that its contractor, Ban Keong, had taken adequate safety and health measures. As for Mr Ho, he was charged under s 15(3A) of the WSHA for his role in the accident. Sections 14A(1)(*b*) and 15(3A) provide as follows:

> **Additional duties of principals in relation to contractors**
>
> **14A.** —(1) It shall be the duty of every principal to take, so far as is reasonably practicable, such measures as are necessary to ensure that any contractor engaged by the principal on or after the date of commencement of section 5 of the Workplace Safety and Health (Amendment) Act 2011 —
>
> …
>
> (*b*) has taken adequate safety and health measures in respect of any machinery, equipment, plant, article or process used, or to be used, by the contractor or any employee employed by the contractor.
>
> …

> **Duties of persons at work**
>
> **15.** …
>
> (3A) Any person at work who, without reasonable cause, does any negligent act which endangers the safety or health of himself or others shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding $30,000 or to imprisonment for a term not exceeding 2 years or to both.
>
> …

24 JP Nelson was sentenced to a fine of $50,000 on 23 November 2021, and Mr Ho was sentenced to five months' imprisonment on 29 November 2022 (SOF at paras 31–32).

Decision below

25 The DJ sentenced Mr Koh to four months' imprisonment on 29 May 2023, and issued his Grounds of Decision ("GD") on 3 July 2023. The only issue before the DJ was the appropriate sentence he should impose. The DJ approached this in two parts. First, he explained the sentencing framework that he thought he should use, and he then applied that framework to the facts.

Applicable sentencing framework

General sentencing framework

26 The DJ generally endorsed the two-stage sentencing framework set out in *Public Prosecutor v Manta Equipment (S) Pte Ltd* [2023] 3 SLR 327 ("*Manta Equipment*") at [28] (GD at [43]). The DJ acknowledged the difference between the facts in *Manta Equipment* and in the present case (GD at [42]). In *Manta Equipment*, the defendant was an employer and a body corporate and was charged pursuant to s 12(1) of the WSHA in respect of duties owed to its employees. In contrast, Mr Koh was a natural person and charged pursuant to s 12(2) of the WSHA in respect of duties owed to persons other than his

employees who may be affected by anything that he did or was responsible for at the Workplace.

27 Notwithstanding these differences, the DJ considered that there was no reason to depart from the sentencing framework in *Manta Equipment*. Both ss 12(1) and 12(2) of the WSHA share many common elements. They impose statutory duties on the employer, and use similar language which suggests a common conceptual standard to which the employer is held. Although the two provisions protect different groups of people as noted above, this did not justify the need to develop an entirely separate sentencing framework (GD at [45]). As such, the DJ adopted the sentencing framework set out in *Manta Equipment*.

Sentencing benchmark

28 The DJ then proceeded to modify that framework to account for an accused person who is a natural person rather than a corporation. In so doing, the DJ accepted the indicative starting sentences laid down by the District Court in *Public Prosecutor v Koh Chin Ban (Xu Jinwan)* DSC-900092-2022 (7 November 2022) (District Court), at [4] as follows (GD at [48], [49] and [53]):

		Culpability		
		Low	Moderate	High
Harm	Low	Fine of up to $75,000	Fine of more than $75,000 and up to $175,000	Fine of more than $175,000 and up to $200,000 or up to 6 months' imprisonment
	Moderate	Fine of more than $75,000 and up to $175,000	Fine of more than $175,000 and up to $200,000 or up to 6 months' imprisonment	More than 6 months and up to 12 months' imprisonment
	High	Fine of more than $175,000 and up to $200,000 or up to 6 months' imprisonment	More than 6 months and up to 12 months' imprisonment	More than 12 months and up to 24 months' imprisonment

Application of sentencing framework

29 Applying the sentencing framework, the DJ found at the first stage that the case featured high harm and moderate culpability (GD at [57]–[64]). Accordingly, the indicative starting point was upwards of six months' imprisonment (GD at [66]).

30 At the second stage, the DJ found that Mr Koh had no relevant or similar antecedents. Moreover, the DJ found that Mr Koh's guilty plea was reflective of his remorse. The DJ also factored in Mr Koh's co-operation with the authorities during the investigations (GD at [67]). Considering the circumstances, the DJ calibrated the sentence down to four months' imprisonment (GD at [71]).

The parties' cases on appeal

31 To assist us in considering how we should approach sentencing in this case, we appointed a Young Independent Counsel ("YIC"), Mr Jason Teo ("Mr Teo"). We are very grateful to Mr Teo for his considerable assistance.

Appellant's Case

32 In his appeal against sentence, Mr Koh seeks a fine in the range of $75,000 to $175,000. He submits that the DJ erred in four ways.

33 First, the DJ erred by relying principally on the sentencing framework from *Manta Equipment* and the sentencing benchmarks in *Koh Chin Ban*. As has been noted, in *Manta Equipment*, the offender was a body corporate and the employer of the deceased and was charged pursuant to s 12(1) of the WSHA. In *Koh Chin Ban*, the position was broadly similar save that the offender was a natural person. In contrast, the charge in the present case is under s 12(2), Mr Koh is not a body corporate, and he was also not the Deceased's employer, though he was the employer of the person who caused the accident. Mr Koh submits that his status as the employer not of the victim but of the person who in fact caused the accident is relevant because according to him, this moves him a step away from the accident, which occurred in a location that was not directly under his control, in circumstances where he might be constrained in being able

to foresee the harm or risks that others may suffer or be exposed to. This is said to be a matter that goes towards culpability.

34 Second, Mr Koh submits that the DJ erred in finding that the harm was in the lower reaches of the "high" category and the culpability was "moderate". The number of people exposed to harm was three, which was not an exceedingly high number. Mr Koh had no control and management over the Workplace. Furthermore, the breaches were systemic in nature, in the sense that this was just the way he ran his business and there was no evidence that Mr Koh acted intentionally or rashly in this case. Additionally, the DJ erred in placing weight on the Deceased's death because the amended charge that Mr Koh pled guilty to did not refer to that death. In any event, Mr Koh's lapses were not a proximate cause of the death. Thus, the harm was in the lower end of the moderate range and the culpability was low.

35 Third, the DJ erred in failing to give adequate weight to the mitigating factors in this case. Fourth, the DJ erred in failing to have regard to the sentences imposed on Mr Ho and JP Nelson and to consider the relative culpability of each of them when sentencing Mr Koh.

Respondent's Case

36 The Prosecution's submissions address: (a) the appropriate sentencing framework; and (b) the application of that sentencing framework to the facts of this case.

Appropriate sentencing framework

37 The Prosecution submits that the sentencing framework in *Manta Equipment* can be adopted. However, the sentencing ranges would need to be

adjusted to cater for the difference in the prescribed punishments for natural persons and for body corporates. Specifically, the Prosecution submits that the sentencing ranges set out in *Koh Chin Ban* ought to apply.

38 The Prosecution further submits that the actual harm that materialised should be considered when sentencing so long as the offending conduct had contributed to that harm in more than a minimal, negligible or trivial manner. In such a situation, there is no need to satisfy the tests of causation in fact and in law. As harm is not an element of the offence, there is no requirement for the charge to refer to the actual harm in order to enable the court to consider it. Indeed, if harm is an integral feature of the incident, it cannot be ignored.

39 In respect of the details of the sentencing framework, the Prosecution agrees with the DJ and the YIC that at the first stage, the harm and culpability factors identified in *Manta Equipment* at [25] and [28(b)]–[28(c)], *Public Prosecutor v GS Engineering & Construction Corp* [2017] 3 SLR 682 ("*GS Engineering*") at [77(b)]–[77(c)] and *MW Group Pte Ltd v Public Prosecutor* [2019] 3 SLR 1300 ("*MW Group*") at [27]–[28] should apply.

40 The level of harm should be assessed with reference to: (a) the seriousness of the harm risked; (b) the likelihood of that harm arising; (c) the number of people likely to be exposed to the risk of the harm; and (d) the extent of actual harm. The level of culpability should be assessed with reference to: (a) the number of breaches or failures; (b) the nature of the breaches; (c) the seriousness of the breaches; (d) whether the breaches were systemic or isolated; and (e) whether the breaches were intentional, rash or negligent.

41 The Prosecution also agrees with the aggravating and mitigating factors endorsed in *Manta Equipment* at [28(d)]. The aggravating factors include the

following: (a) the breach was a significant cause of the harm that resulted; (b) the offender had cut costs at the expense of the safety of the workers to obtain financial gain; (c) there was deliberate concealment of the illegal nature of the activity; (d) any obstruction of justice; (e) any relevant antecedents, suggesting a poor record in respect of workplace health and safety; (f) any falsification of documentation or licences; (g) any breach of a court order; and (h) any deliberate failure to obtain or comply with relevant licences in order to avoid scrutiny by the authorities.

42 The mitigating factors include: (a) a high level of cooperation with the authorities; (b) a timely plea of guilt; (c) voluntarily taking steps to remedy the breach or prevent future occurrences of similar breaches; (d) a good health and safety record; and (e) effective health and safety procedures in place.

Application of sentencing framework

43 Turning to the application of the sentencing framework, the Prosecution submits that Mr Koh violated the applicable regulations in failing to ensure that the lifting operation was conducted safely by suitably qualified persons, and specifically in the following ways:

(a) there was no risk assessment;

(b) no lifting plan was established;

(c) no tag lines were used to guide the load being lifted;

(d) no lifting supervisor was appointed;

(e) there was no rigger; and

(f) there was no trained signalman at the Workplace.

Although Mr Ho had learned some basic operational aspects of lifting loads and some basic rigging techniques, he did not have the requisite or prescribed training and qualifications to undertake this task. Further, he did not in fact carry out the task in an appropriate manner.

44 Contrary to its position at trial, the Prosecution now submits that the Deceased's death is relevant to sentencing. The death and/or the potential harm that the operation gave rise to was such that the level of harm should be assessed to be high. As for Mr Koh's culpability, the Prosecution contends that this fell in the moderate range.

45 The Prosecution also submits that adequate weight was accorded to the mitigating factors. Further, Mr Koh's sentence was not out of line with Mr Ho's, and JP Nelson's sentence is irrelevant to the sentence that ought to be imposed in this case.

YIC's Submissions

46 As noted above, we appointed Mr Teo as the YIC, and directed him to address us on the following questions:

> What is an appropriate sentencing framework for an offence under s 20 of the Workplace Safety and Health Act ("WSHA") read with s 12(2) of the WSHA and punishable under s 50(a) of the WSHA ("the Relevant WSHA Offence")? Without limiting the generality of the question, please consider:
>
> a. Whether, and if so how, the sentencing approach in *Public Prosecutor v Manta Equipment (S) Pte Ltd* [2023] 3 SLR 327, might be adapted for the Relevant WSHA Offence, in particular, where the duty is owed to persons who are not employees, and where the sentence is imposed on a natural person, as opposed to a body corporate.
>
> b. When the custodial threshold is crossed for the Relevant WSHA Offence.

> c. The factors which are relevant to assessing the harm caused by the Relevant WSHA Offence.
>
> d. The factors which are relevant to assessing culpability for the Relevant WSHA Offence.
>
> e. For actual harm to be considered in sentencing, what is the test that should be applied to determine whether the offending conduct had caused the harm in question?

47 The YIC submits that the sentencing framework set out in *Manta Equipment* is appropriate as a starting point, even for use in the context of an offence under s 12(2) of the WSHA. As for the specific ranges and the custodial threshold, the YIC relies on the sentencing benchmarks from *Koh Chin Ban*, with some modifications (in bold) as follows:

		Culpability		
		Low	Moderate	High
Harm	Low	Fine of up to **$60,000**	Fine of more than **$60,000** and up to **$120,000**	Fine of more than **$120,000** and up to **$175,000** or up to 6 months' imprisonment
	Moderate	Fine of more than **$60,000** and up to **$120,000**	Fine of more than **$120,000** and up to **$175,000** or up to 6 months' imprisonment	**Fine of more than $175,000 and up to $200,000, or** more than 6 months and up to 12 months' imprisonment
	High	Fine of more than **$120,000** and up to **$175,000** or up to 6 months' imprisonment	**Fine of more than $175,000 and up to $200,000, or** more than 6 months and up to 12 months' imprisonment	More than 12 months and up to 24 months' imprisonment

48 The YIC further submits that the harm and culpability factors endorsed in *Manta Equipment* should apply in this context (see [40] above). Furthermore, so long as the breach of duty has a contributory link to any actual harm, the court may consider the actual harm at the first stage of the sentencing framework. The greater the extent to which the causative link is established, the more weight a court may place on the actual harm.

Issues to be determined

49 In the light of these submissions, there are two primary issues that arise for our determination.

(a) First, what the appropriate sentencing framework for offences under s 12(2) of the WSHA should be. In this context, we also consider a subsidiary issue as to how we should approach the analysis of any actual harm that may have eventuated from the risk created by the offender's breach.

(b) Second, applying the appropriate framework, whether Mr Koh's sentence of four months' imprisonment was manifestly excessive. In this context, we also consider a subsidiary question as to whether and how the court may enhance the sentence imposed at first instance, in the absence of an appeal by the Prosecution, in the event we were to conclude that the sentence was not manifestly excessive but rather was manifestly inadequate.

The appropriate sentencing framework

50 Mr Koh contends that the DJ was wrong to rely on the sentencing approach set out in *Manta Equipment* for the reasons we have summarised at [33] above.

51 We accept that the class of protected persons under ss 12(1) and 12(2) may differ. Notwithstanding this, we reject Mr Koh's submission that this is a material difference that necessitates the adoption of a different sentencing approach. Instead, we agree with the Prosecution and the YIC that the sentencing approach from *Manta Equipment* can be applied in the context of s 12(2). We will first trace the development of the sentencing frameworks laid

down in successive cases in this area. We will then explain how the framework set out in *Manta Equipment* applies in this context. We will finally address the question of causation and more generally, how we should approach any harm that is causally connected to a breach of the applicable regulations.

Development of the sentencing frameworks

52 In *GS Engineering*, the employer was a company and faced a charge under s 12(1) of the WSHA, after two workers fell to their deaths at a construction site. The court observed that in introducing more severe penalties for breaches of the provisions of the WSHA, Parliament had intended to deter poor safety management and effect a cultural change in employers and other stakeholders. It was thought that this would incentivise them to proactively take measures to prevent accidents at the workplace: *GS Engineering* at [51]. The court laid down a two-stage sentencing framework using a matrix that matched the culpability of the offender with the potential for harm as follows (at [70] and [77]):

(a) First, the court should determine the indicative starting point sentence by considering the *potential* harm that could have resulted and the accused person's culpability.

(b) Second, the court should calibrate the sentence by considering the applicable aggravating and mitigating factors. It was only at this second stage that the assessment of any actual harm that was caused becomes relevant.

53 Subsequently, in *MW Group*, the employer company faced a charge under s 12(1) of the WSHA after its employee was electrocuted at a workplace and died. The court in *MW Group* broadly agreed with the two-stage framework

laid down in *GS Engineering* and noted that potential, as opposed to actual harm, should be used as a determinant of the indicative starting sentence because s 12(1) of the WSHA criminalises the creation of the risk and does not require that risk to materialise into actual harm: *MW Group* at [26].

54 However, the court in *MW Group* modified the sentencing approach in *GS Engineering* in that it considered that greater weight should be placed on potential harm than on culpability when determining the indicative starting sentence: *MW Group* at [35].

55 Following this, the issue was considered again in *Mao Xuezhong v Public Prosecutor and another appeal* [2020] 5 SLR 580 ("*Mao Xuezhong*"), in which the appellant was a supervisor at a worksite where a worker fell to his death. The appellant was charged under s 15(3A) of the WSHA for performing a negligent act which endangered the safety of others without reasonable excuse: *Mao Xuezhong* at [1]–[2]. The court applied a sentencing framework for s 15(3A) that was broadly similar to that laid down in *GS Engineering*: *Mao Xuezhong* at [63]. But there were two key modifications. First, unlike the preceding two cases, actual harm was assessed at the first stage of the framework: *Mao Xuezhong* at [64(a)(i)]. Second, unlike the position taken in *MW Group,* the court held that both harm and culpability should be accorded equal weight when assessing the starting point of the sentence at the first stage of the framework: *Mao Xuezhong* at [67].

56 Finally, in *Manta Equipment*, the employer company pleaded guilty to a charge under s 12(1), read with s 20, of the WSHA. The court affirmed the principles underlying the two-stage sentencing approach in *Mao Xuezhong*, and expressed the view that this approach should be applicable generally to duties

imposed under Part 4 of the WSHA, the breaches of which are punishable under s 50(*b*): *Manta Equipment* at [22]–[23] and [33].

Analysis

57 Against that background, we return to the case at hand. For the reasons that follow, we largely agree with the YIC's submissions as to the appropriate sentencing framework. In our judgment, the sentencing framework that was set out in *Manta Equipment* should apply in the context of the present offence under s 12(2). We are satisfied that the two key modifications to the sentencing framework that were first reflected in *Mao Xuezhong* – namely that actual harm, if present, is to be assessed at the first stage of the test, and that equal weight would be accorded to both harm and culpability – give effect to Parliament's intention (see [55]–[56] above). We also consider that it is artificial to ignore the actual harm that may have been caused at the first stage of the inquiry. While it is true that the primary focus of the WSHA was to eliminate or deter "risk-taking" behaviour, there is no reason to separate the consideration of potential and actual harm into two stages of the analysis.

58 The Workplace Safety and Health Act 2006 (Act 7 of 2006) was introduced following three high-profile accidents in 2004 (see [1] above). When debating the Workplace Safety and Health Bill in 2006, Dr Ng Eng Hen, then Minister for Manpower, stated as follows (Singapore Parl Debates; Vol 80, Sitting No 16; Cols 2206 and 2215; 17 January 2006):

> … First, this Bill will strengthen proactive measures. Instead of reacting to accidents after they have occurred, which is often too little too late, we should reduce risks to prevent accidents. To achieve this, all employers will be required to conduct comprehensive risk assessments for all work processes and provide detailed plans to minimise or eliminate risks.

> Second, industry must take ownership of occupational safety and health standards and outcomes to effect a cultural change of respect for life and livelihoods at the workplace. Government cannot improve safety by fiat alone. Industry must take responsibility for raising OSH standards at a practical and reasonable pace.
>
> Third, this Bill will better define persons who are accountable, their responsibilities and institute penalties which reflect the true economic and social cost of risks and accidents. *Penalties should be sufficient to deter risk-taking behaviour and ensure that companies are proactive in preventing incidents. Appropriately, companies and persons that show poor safety management should be penalised even if no accident has occurred.*
>
> …
>
> *… Penalties should be set at a level that reflects the true cost of poor safety management, including the cost of disruptions and inconvenience to members of the public which workplace accidents may cause.* The collapse of Nicoll Highway not only resulted in the loss of four lives, but also caused millions of dollars in property damage and led to countless lost working hours and great inconvenience to the public. …
>
> …
>
> The Factories Act contains a stepped penalty regime based on the harm done. The inadequacy of this regime is that it does not allow for meaningful penalties in cases where there are severe lapses, but fortuitously no accidents have occurred. Under the Bill, a single maximum penalty is prescribed. *However, the penalty, in any given case, will be applied taking into account all the relevant circumstances, including the culpability of the offender, the potential harm that could have been caused, and the harm actually done.*
>
> [emphasis added]

59 The quoted extracts are consistent with the legislative intent to place an equal emphasis on both culpability and harm. Further, it was plainly contemplated that the assessment of harm would extend to both potential and actual harm and, as we have noted, there is no reason for separating these closely related aspects of harm. We therefore find that the sentencing framework set out in *Manta Equipment* is appropriate for use in the present context.

60 We also see no merit in the submission advanced on Mr Koh's behalf, by his counsel, Mr N Sreenivasan SC ("Mr Sreenivasan"), that the framework developed in *Manta Equipment* is unsuitable for use in the context of offences under s 12(2) because it concerns injured persons who are not the employees of the accused person. In our judgment, while there is undeniably a difference in the class of persons who are to be protected from being exposed to dangers to their health and safety pursuant to ss 12(1) and 12(2) respectively, this distinction does not seem to us to make a material difference when considering the development of an appropriate framework. The critical point, in our view, is that the words chosen to describe the duty that is applicable to the offender is identical in both instances. The only difference is that the duty placed on an employer in relation to its employee under s 12(1) is extended also to any other persons who may be affected by any undertaking carried out at a workplace. This leads us to conclude that the material elements of the two offences are not so different as to mandate that the same sentencing framework may not be used.

61 The YIC also suggested that this framework should be limited in its application to industrial or construction works only. We disagree. In our judgment, the sentencing framework should apply to all the workplaces that fall within the scope of the WSHA. It is clear that Parliament intended for the WSHA to cover all workplaces (Singapore Parl Debates; Vol 80, Sitting No 16; Col 2207; 17 January 2006 (Ng Eng Hen, Minister for Manpower)):

> … Our current legislation only covers factories. This is of course archaic, as every worker deserves to be protected against safety and health risks. Occupational safety and health (OSH) legislation in other developed countries, including the US and the United Kingdom, has long moved on to cover all workplaces.
>
> We will extend coverage of the Act in stages in consultation with industry. Our immediate priority is to focus on the sectors with the highest accident and fatality rates: these are construction sites, shipyards and metalworking factories. Clause 2(2) of the Bill allows the Minister to extend the scope to cover other

> workplaces in due course, which we intend to do over the next three to five years. …

62 The legislative intent was therefore for the provisions of the WSHA to govern the range of workplaces in a consistent way. It would cut against that purpose if the applicable sentencing framework varied across the different types of workplaces encompassed by the statute where the scope of the Act has been so extended by the Minister. Thus, the framework should continue to apply to all workplaces falling within the scope of the WSHA.

63 As for the appropriate sentencing benchmarks, we agree with the Prosecution that the sentencing ranges set out in *Koh Chin Ban* should apply (see [28] and [37] above). We note that in three categories – low harm-high culpability, moderate harm-moderate culpability and high harm-low culpability – the court has a discretion to either impose a fine of more than $175,000 to $200,000 or a sentence of up to six months' imprisonment. The YIC submits that the question of when the custodial threshold is crossed, and when a term of imprisonment should be imposed as opposed to a fine, can be answered based on whether the case exhibits three indicative factors: (a) where the accused person's breaches are rash or intentional, and not merely negligent; (b) where the number of people likely to be exposed to the risk of harm exceeds those directly involved in the particular undertaking which gave rise to the offence; and (c) where the offence involves risk to public safety.

64 With respect, we disagree with this submission. The conclusion of whether the custodial threshold has been crossed follows from the court's assessment of the severity of the offending conduct in the totality of circumstances, not simply because certain factors are present: *Goh Ngak Eng v Public Prosecutor* [2023] 4 SLR 1385 ("*Goh Ngak Eng*") at [91]. Indeed, Vincent Hoong J rightly stated in *Goh Ngak Eng*, at [94]:

> 94 The point we make here is that a sentencing court should not ordinarily be required to make a predetermination of the severity of the offending conduct simply because some factors had been, as a matter of form, engaged by the facts of the case. In our view, that is precisely the effect of designating certain offence-specific factors as being "seriously aggravating". That would have the untoward effect of fettering the discretion of a sentencing court, which fundamentally undermines the objectives which the adoption of a sentencing framework like the present seeks to achieve.

65 Thus, the question of when the custodial threshold is crossed should be left to the sentencing court to answer in each case.

66 We turn to consider the applicable aggravating and mitigating factors in the second step of the sentencing framework set out in *Manta Equipment* at [28(d)] (see [41]–[42] above). With respect, we disagree with the inclusion of certain aggravating and mitigating factors as "offender-specific" factors in the framework. Before we turn to those factors, we emphasise that offender-specific factors are those that are personal to the offender. They relate to the offender's particular circumstances and, by definition, cannot be the factors that are taken into account in categorising the offence. Offender-specific factors will include matters such as an offender's character, personal attributes, expression of remorse or any other considerations particular to the offender, not the manner and mode of the offending or the harm caused by the offence: *Ng Kean Meng Terence v Public Prosecutor* [2017] 2 SLR 449 ("*Terence Ng*") at [39(b)] and [62]. On the other hand, "offence-specific" factors are those which relate to the circumstances of the offence such as the harm caused, or the specific role played by the offender in the commission of an offence: *Terence Ng* at [42].

67 Most of the aggravating factors listed above at [41] are not offender-specific, but rather are offence-specific factors. They relate to the features of the *offence* that was committed, not the *offender*. These offence-specific factors can

be considered as part of the court's assessment of culpability (see [40] above). For instance, cutting costs at the expense of the safety of the workers, breaching a court order, and obstructing justice are matters that relate to culpability when considering "the nature of the breaches". Similarly, the question of whether there was a deliberate concealment of the illegal nature of the activity relates to culpability in assessing "whether the breaches were intentional". Instead, we consider the following to be offender-specific aggravating factors that may be considered: (a) the offender's evident lack of remorse; (b) the presence of relevant antecedents; and (c) offences taken into consideration for the purposes of sentencing: *Terence Ng* at [64].

68 Similarly, the following are not offender-specific mitigating factors: (a) the offender has a good health and safety record; and (b) the offender has effective health and safety procedures in place. To the extent these are present and relevant, they may go towards calibrating the degree of the offender's culpability. Rather, the mitigating factors that are offender-specific are whether: (a) the offender has voluntarily taken steps to remedy the problem, (b) the offender has provided a high level of co-operation with the authorities for the investigations, beyond that which is normally expected; (c) there is self-reporting and acceptance of responsibility; and (d) there is a timely plea of guilt.

Causation

69 We turn to the subsidiary issue of how we should approach the question of proving causation before any actual harm that is caused by an offence may be considered in this sentencing framework. As mentioned at [21] above, Mr Koh's charge was amended to omit any reference to the death of the Deceased. Mr Koh submits that as a result, we should not accord much, if any, weight to this fact because the charge does not assert that Mr Koh's offence caused the

death. The Prosecution and the YIC, on the other hand, submit that a court may generally consider actual harm, including the death in this case, if the offending conduct had contributed to the said harm in "more than a minimal, negligible or trivial manner".

70 According to the Prosecution and the YIC, this stands in contrast to the test for causation that would be required under s 51 of the WSHA, where, they contend, causation would have been established in fact and in law. Section 51 provides as follows:

> **Penalty for repeat offenders**
>
> **51.** Where a person —
>
> (*a*) has on at least one previous occasion been convicted of an offence under this Act (but not including the regulations) that causes the death of any person; and
>
> (*b*) is subsequently convicted of the same offence that causes the death of another person,
>
> the court may, in addition to any imprisonment if prescribed, punish the person with —
>
> (i) in the case of a natural person, a fine not exceeding $400,000 and, in the case of a continuing offence, with a further fine not exceeding $2,000 for every day or part thereof during which the offence continues after conviction; and
>
> (ii) in the case of a body corporate, a fine not exceeding $1 million and, in the case of a continuing offence, with a further fine not exceeding $5,000 for every day or part thereof during which the offence continues after conviction.

71 The Prosecution and the YIC refer to the observation of the court in *Guay Seng Tiong Nickson v Public Prosecutor* [2016] 3 SLR 1079 ("*Nickson Guay*"), at [31], that "[g]enerally, causation consists of causation in fact and

causation in law ... causation in fact "is concerned with the question of whether the relation between the defendant's breach of duty and the claimant's damage is one of cause and effect in accordance with scientific or objective notions of physical sequence"". The test for factual causation is often referred to as the "but for test": *Nickson Guay* at [31], citing *Sunny Metal & Engineering Pte Ltd v Ng Khim Min Eric* [2007] 3 SLR(R) 782 at [52]. Causation in law looks to whether there is a sufficient nexus between the conduct and the damage to justify the attribution of responsibility to the actor: *Nickson Guay* at [33]. The contention advanced before us is that the more stringent test noted in *Nickson Guay* should be adopted in cases where a court is required to assess whether an offender has previously been convicted of an offence under the WSHA that "*causes* the death of any person" [emphasis added] because s 51 expressly contemplates that the element of causation must be made out before the enhanced penalty provided for there may be imposed. In contrast, s 12(2) does not expressly impose such a requirement. To the extent the court considers any harm that materialised when it is sentencing the offender, a lower threshold for making out a causative link should be imposed.

72 With respect to all the parties, we disagree.

73 In our judgment, there is no reason to adopt different tests for causation under ss 12(2) and 51 of the WSHA. However, this does not mean a higher threshold for causation is in place for both provisions, as Mr Koh seems to contend. In relation to s 12(2), the Prosecution is not required to establish causation, in the technical sense explained above, between the offender's breach and the harm. Simply put, actual harm is not an element of the offence. However, where, as a matter of fact, some harm ensues as a result of the relevant breach, the court cannot ignore that fact. Equally, s 51 does not require an element of causation to be established to that higher threshold before the

enhanced penalty provided for may be imposed on a repeat offender. As we pointed out to the YIC in the course of his submissions, if we were to interpret the provision in this way, we would render it substantively similar to an offence of causing death by rash or negligent act under s 304A of the Penal Code 1871 (2020 Rev Ed) ("Penal Code"). However, that would not cohere with the prescribed additional penalty of just an enhanced fine as provided for in s 51(*c*)–(*d*) of the WSHA, which stands in sharp contrast to the prescribed penalties extending to a term of imprisonment of five years for offences under s 304A of the Penal Code.

74 The question then is what type of cases may fall within the language of s 51(*a*) of the WSHA. We preface our observations by noting that this question does not arise in this appeal, and these are therefore necessarily our preliminary views. Subject to this reservation, it seems to us that the following cases may fall within the scope of s 51(*a*) of the WSHA:

(a) where a repeat offender was previously convicted of an offence under the WSHA, and the charge(s) included an allegation of death caused by the offender's lapses;

(b) where a repeat offender previously pleaded guilty to an offence under the WHSA, and the statement of facts stated, or gave rise to an irresistible inference, that death was caused by the offender's lapses; or

(c) where a repeat offender was previously convicted for an offence, and the court also found that the offender's lapses were causally connected to the death and took this into account in sentencing.

75 With reference to [74(c)**Error! No bookmark name given.**] above, this brings us back to the relevant test that must be met to make out a causative link under s 12(2), and that is that the offending conduct had contributed to the said harm in "more than a minimal, negligible or trivial manner".

76 This is not to be confused with the test for causation explained in *Nickson Guay*. It was held there that an accused person's acts had to constitute a "substantial cause" of the eventual harm before he could be said to be liable: *Nickson Guay* at [38]. The High Court also clarified that this can be satisfied even in the presence of other contributing causes:

> 38 **Hence, in order to escape *liability*, it is not sufficient for the accused to point to the fact that there are other contributing causes. All the prosecution has to show is that the accused is a substantial cause of the injury even if there were other contributing causes.** I should add that I use the term "substantial cause" because it was the expression used in *Ng Keng Yong* ([34] *supra*) at [71]. The test for causation has been variously articulated in other parts of the Commonwealth, with expressions such as "not insignificant", "more than *de minimis*", or "significant contribution" having been used to convey the same notion that an accused's act must be a significant cause of death in order for liability to attach …
>
> [emphasis in italics in original; emphasis added in bold]

77 It should be noted that in this part of its judgment, the court was considering the test for causation as part of the inquiry into liability. This gives rise to a specific burden on the Prosecution because the question of causation is essential to establish a factual element of the offence. As the Court of Appeal observed in *Seah Lei Sie Linda v Public Prosecutor* [2020] 1 SLR 974 ("*Linda Seah*"), at [26]:

> 26 … It is clear that causation can be part of the *actus reus* of an offence. When this is so, it is a necessary element for establishing the offender's liability. Causation may also arise in a broader context, for instance in an inquiry into the seriousness of a particular offence for the purpose of sentencing

> or in the context of an inquiry into damages that "flowed from or were caused by" a tortious act. It is critical not to conflate these two situations in which the question of causation may be engaged. Where causation is a necessary element of an offence, one should take a stricter view of it because of the penal consequences that flow upon finding a violation; whereas in other situations, it is largely a matter of policy preferences. …

78 As alluded to in *Linda Seah* in the passage just cited, the question before us is a different question in that we are not concerned with liability, but with the sort of *consequences* of the offending act, that may be taken into account at the sentencing stage. For this purpose, all that is needed is to show *some* causative link between the breach and the harm (see [75] above). Two further points bear noting. First, where the harm caused is greater then, all other things being equal, the sentence imposed should be more severe: *Nickson Guay* at [43] and *Public Prosecutor v Hue An Li* [2014] 4 SLR 661 at [70]. Second, the closer the causative link between an offender's lapses under s 12(2) and the actual harm, the greater the offender's culpability, and again the more severe the sentence should be: see *Nickson Guay* at [42] and [65].

Restating the applicable sentencing framework

79 In view of our findings above, we restate the applicable two-stage sentencing framework from *Manta Equipment* at [28], with sentencing benchmarks from *Koh Chin Ban* at [4]:

> (a) At the first stage, the sentencing judge is to determine the level of harm and the level of culpability, in order to derive the indicative starting point according to the following benchmarks:

		Culpability		
		Low	Moderate	High
Harm	Low	Fine of up to $75,000	Fine of more than $75,000 and up to $175,000	Fine of more than $175,000 and up to $200,000 or up to 6 months' imprisonment
	Moderate	Fine of more than $75,000 and up to $175,000	Fine of more than $175,000 and up to $200,000 or up to 6 months' imprisonment	More than 6 months and up to 12 months' imprisonment
	High	Fine of more than $175,000 and up to $200,000 or up to 6 months' imprisonment	More than 6 months and up to 12 months' imprisonment	More than 12 months and up to 24 months' imprisonment

(b) In evaluating the level of harm, the court is to have regard to the following factors: (i) the seriousness of the harm risked; (ii) the likelihood of that harm arising; (iii) the number of people likely to be exposed to the risk of the harm; and (iv) the actual harm that was occasioned by the risk that stemmed from the accused person's negligent act. Where the potential harm was likely to be death or serious injury, the harm could be considered to be high even if it did not materialise. If death or serious injury did occur, the harm would typically be assessed near the top end of the high range.

(c) In evaluating culpability, the court may consider the following non-exhaustive list of factors: (i) the number of breaches or failures; (ii) the nature of the breaches; (iii) the seriousness of the breaches – whether they were a minor departure from the established procedure or whether they were a complete disregard of the procedures; (iv) whether the breaches were systemic or whether they were part of an isolated incident; and (v) whether the breaches were intentional, rash or negligent.

(d) At the second stage, the starting sentence should be calibrated according to offender-specific aggravating and mitigating factors.

(e) Aggravating factors may include the following: (i) the offender evidently lacks remorse; (ii) the presence of relevant antecedents; and (iii) any offences taken into consideration for the purposes of sentencing.

(f) Mitigating factors may include the following: (i) the offender has voluntarily taken steps to remedy the problem; (ii) the offender has provided a high level of co-operation with the authorities for the investigations, beyond that which is normally expected; (iii) there is self-reporting and acceptance of responsibility; and (iv) there is a timely plea of guilt.

80 Having set out the applicable sentencing framework, we turn to consider the appropriate sentence.

The appropriate sentence in this case

81 We address this issue in three parts: (a) the weight accorded to the Deceased's death at the first stage of the sentencing; (b) the application of the

sentencing framework; and (c) the requirements for enhancing an offender's sentence in the absence of the Prosecution's appeal.

Weight accorded to the Deceased's death

82 Before we apply the sentencing framework, we first explain why we did not accord significant weight to the fact of the death of the Deceased in this case.

83 At the hearing, Mr Sreenivasan submitted that the reference to the death had been removed as part of a negotiated plea and this had been material to Mr Koh's decision to plead guilty. Mr Sreenivasan asserted that an agreement had been reached that the Prosecution would not rely on the fact of the death at the sentencing stage. The Prosecution did not dispute this before us. Indeed, the Prosecution's written submissions states that their position before the DJ was that the court should disregard the death for the purposes of sentencing.

84 Notwithstanding any agreement between the parties, ***the court cannot be prevented from having regard to material facts that are before it.*** The court's hands cannot be tied in this way. If facts are to be ignored, they should not be placed on the record that is before the court.

85 In this case, Mr Sreenivasan submitted that Mr Koh's plea had been entered on the basis that the Prosecution would not rely on the fact of the death. We suggested to Mr Sreenivasan, that it was open to us, in that case, to allow him to retract his plea even at this stage and remit the matter to trial. While Mr Sreenivasan agreed that this may be open to us, he vigorously submitted that as a matter of fairness, that would not be an appropriate course of action to take given how far along the proceedings had progressed. We accept this, and accordingly, do not base our assessment of the appropriate sentence on the fact

of the death even though it is an inescapable conclusion from the agreed facts that Mr Koh's lapses caused it.

Application of sentencing framework

86 We turn to consider the appropriate sentence. At the first stage, we consider the indicative starting point sentence. The harm would have been at the upper end of the high category had the death been considered. However, even ignoring that fact, the potential harm that arose from Mr Koh's lapses was plainly in the nature of death or very serious injury. The number of people exposed to this risk of harm was three – effectively everyone involved in the lifting of the boom lift at the material time. Given the nature of the lapses, it was very likely just a matter of time before that risk materialised. Accordingly, there was a high likelihood of the harm arising. In the circumstances, we assess the harm at the low end of the high category.

87 In our judgment, the culpability in this case is at the high range. When we asked Mr Sreenivasan whether safety plans were prepared for previous lifting operations, he submitted that there was no evidence either way before us. This is not quite correct. The nature of Mr Koh's lapses is best reflected in paras 24–26 of the SOF:

> 24. Investigations revealed that on 12 October 2018, the accused only sent [Mr Ho] who was the lorry driver. [Mr Ho] only has a lorry loader training certification. The accused did not ensure that each driver was registered as a crane operator. Neither did he ensure that the drivers knew of their statutory duties as crane operators.
>
> 25. Investigations also revealed that on 12 October 2018, the accused did not ensure that there was a lifting plan, lifting supervisor, signalman or rigger present at each lifting operation. As aforementioned, the accused's practice was to send only one employee each time, who

> would be responsible for both driving the lorry and operating the crane.
>
> 26. The lack of the aforementioned safety measures meant that there would be a general dearth of qualified persons, as described in the OOC Regulations, at all lifting operations conducted by the accused's employees. In place of qualified lifting personnel, unqualified persons such as [Mr Ho], [Mr Shang] and [the Deceased] were involved in the lifting operation.

88 To understand the egregiousness of the breaches in this case, the following points should be noted. Mr Koh utterly failed to perform his duties under the Risk Management Regulations, the Operation of Cranes Regulations and the Code of Practice (see [15]–[19] above). He did not deploy any trained personnel who could have supervised, planned, or properly executed the lifting of the boom lift. Instead, he despatched only Mr Ho to the Workplace, even though he was not suitably qualified or trained. Mr Koh also did not implement any safe work procedures. He had simply entered into a contract to transport the boom lift for a mere sum of $180, without any regard to his statutory duties as an employer. As a consequence, Mr Ho went to the Workplace without any appreciation of the weight of the boom lift that had to be lifted. Moreover, this was not a one-off incident. Mr Koh's *practice* was to only send a single employee to carry out such lifting operations. In these circumstances, it was only a matter of time before an accident, like the one on 12 October 2018, came to pass.

89 Indeed, Mr Koh accepts that his breaches were systemic. He submits (see at [34] above) that this should count in his favour because it was not intentional or rash. We categorically reject this. If he caused the harm intentionally, Mr Koh would be facing consequences of an entirely different nature. As it was, he conducted his business in a *reckless* manner in that he was indifferent to the danger he was posing to others. Indeed, the nature of his lapses

is emblematic of the very behaviour that Parliament intended to curb with the stiffer penalties under the WSHA. We therefore have no hesitation in concluding that Mr Koh's culpability was on the high end, because there was utter indifference to the harm and danger he could cause or expose others to.

90 We also reject two other arguments raised by Mr Koh on appeal. First, he contends that the DJ erred by failing to consider the sentences imposed on Mr Ho and JP Nelson. We begin with s 10(*c*) of the WSHA which states that "a duty or liability imposed by this Act on any person is not diminished or affected by the fact that it is imposed on one or more other persons, whether in the same capacity or in different capacities". Accordingly, the fact that Mr Ho and JP Nelson owed certain duties under the WSHA does not diminish the extent of liability that attaches to Mr Koh's lapses.

91 Second, although he does not expressly refer to it, Mr Koh's submissions appear to be based on the principle of parity in sentencing, which suggests that like cases should be treated alike. However, the principle of parity is irrelevant where there are different offences because there is no longer any common basis for comparison: *Phua Song Hua v Public Prosecutor* [2004] SGHC 33 at [38]. Moreover, the principle of parity is not to be applied in a rigid and inflexible manner. The principle serves to aid the sentencing court to ensure that co-offenders are sentenced in a manner that is broadly consistent and fair. What is consistent and fair depends on the facts of the case: *Chong Han Rui v Public Prosecutor* [2016] SGHC 25 at [52]. Here, Mr Koh, Mr Ho and JP Nelson were all charged under different provisions – s 12(2), s 15(3A) and s 14A(1)(*b*) of the WSHA, respectively. The considerations applicable in each charge, such as the role played by the accused and the gravity of the breaches, will vary. There is little value in looking to the final sentence imposed on Mr Ho and JP Nelson to

justify a shorter sentence here. Accordingly, we dismiss Mr Koh's submissions pertaining to Mr Ho and JP Nelson.

92 Thus, with reference to the applicable sentencing range in this case, the indicative starting sentence is a term of 18 months' imprisonment.

93 At the second stage, we calibrate the sentence based on the applicable aggravating and mitigating factors. The Prosecution's case in the court below highlighted Mr Koh's guilty plea, age and his co-operation with authorities as relevant mitigating factors.

94 We agree that Mr Koh's guilty plea and his co-operation with the authorities are mitigating factors, but we disagree that his age is relevant at all. The degree to which the age of an accused person may be mitigating depends on the facts of the case: *Public Prosecutor v ABJ* [2010] 2 SLR 377 at [18]. In this case, we consider that no weight should be accorded to Mr Koh's age. The duration of the sentence that can be imposed here is not a long-term sentence that "effectively amounts to a life sentence" for Mr Koh: *Public Prosecutor v UI* [2008] 4 SLR(R) 500 at [78]. Further, any mitigatory weight that may be considered is more than negated by the fact that Mr Koh had operated his business with the utter lack of proper safety measures for a considerable time. For the same reason, we place no weight upon the fact that Mr Koh had no antecedents. To put it bluntly, the way he ran his operation in complete disregard of the applicable safety regime meant that this was a tragedy waiting to unfold. Hence, this was not a case where the lack of antecedents suggested a long-standing pattern of law-abiding behaviour.

95 On account of his guilty plea and co-operation, we therefore calibrate the starting sentence down to 14 months' imprisonment. It is evident that Mr

Koh's original sentence of four months' imprisonment was manifestly and grossly inadequate. In view of that, we consider whether we should enhance Mr Koh's sentence.

The consideration of whether to enhance an offender's sentence in the absence of an appeal by the Prosecution

96 At the end of the oral arguments on 16 February 2024, we dismissed the appeal. However, because of the gravity of the breaches, we intimated that we were considering enhancing Mr Koh's sentence. We accordingly permitted Mr Koh to file further written submissions to address us on the question of the possible enhancement of his sentence. The further submissions were filed on 1 March 2024.

97 Mr Koh makes three points. First, he accepts that the General Division of the High Court ("GDHC") may enhance the sentence even where there is no appeal by the Prosecution.

98 Second, he contends that the power to enhance an offender's sentence should be exercised sparingly where the Prosecution does not appeal against the sentence. While a manifestly inadequate sentence is a necessary requirement, it is not a sufficient condition for the GDHC to enhance the sentence. There must be a "trigger" such as where the appeal is an audacious one. Moreover, the enhancement of the sentence should not have the effect of inhibiting the right to appeal; an offender must be given a fair opportunity to be heard.

99 Third, Mr Koh submits that his sentence should not be enhanced in this case for three reasons: (a) his present sentence is already a custodial sentence; (b) the appeal was not an audacious one; and (c) Mr Koh had a legitimate expectation that a higher sentence would not be sought by the Prosecution

because he had pleaded guilty and was sentenced to four months' imprisonment by the DJ.

100 We disagree.

101 The court's power to enhance an offender's sentence in the absence of the Prosecution's appeal can be found in s 390(1)(*c*) of the Criminal Procedure Code 2010 (2020 Rev Ed) ("CPC"):

> **Decision on appeal**
>
> **390.** —(1) At the hearing of the appeal, the appellate court may, if it considers there is no sufficient ground for interfering dismiss the appeal, or may —
>
> …
>
> (*c*) in an appeal as to sentence, reduce or enhance the sentence, or alter the nature of the sentence …

102 This power may be exercised in any of the following situations (*Ang Lilian v Public Prosecutor* [2017] 4 SLR 1072 ("*Ang Lilian*") at [67]–[68]:

(a) the sentence is manifestly inadequate;

(b) the trial judge had made the wrong decision as to the proper factual matrix before him;

(c) the trial judge had erred in appreciating the material before him; or

(d) the sentence was wrong in principle.

103 In respect of the first situation, Hoong J's observation in *Goh Ngak Eng* at [127], albeit *obiter*, is relevant:

> 127 While the court hearing an appeal for reduction of sentence by an accused person will not normally enhance the sentence in the absence of a cross-appeal by the Prosecution (see *Shafruddin bin Selengka v PP and other appeals* [1994] 3 MLJ 750), such enhancement may nevertheless be ordered in exceptional cases where the sentence is manifestly inadequate (see, *eg*, *Rosli bin Supardi v Public Prosecutor* [2002] 3 MLJ 256 at 263). This was the case, for example, in *Wong Tian Jun*. The High Court was of the view that the sentences imposed by the District Court on an offender for various cheating charges had not been properly calibrated, given that the offender had scammed his victims for sex and sexually explicit material and so the offences that the offender had committed were at the very highest end of the harm which might arise for offences under s 417 of the Penal Code (Cap 224, 2008 Rev Ed) (the "Penal Code"). As such, after specifically informing the parties that an enhancement of the aggregate sentence was possible and considering further submissions from them (see *Wong Tian Jun* at [3]), the court held that, on an application of a sentencing framework for charges under s 417 of the Penal Code, the individual sentences for those charges would be increased from between eight and ten months' imprisonment to between 33 and 36 months' imprisonment (see *Wong Tian Jun* at [51]).

104 We also reject Mr Koh's contention that absent an appeal by the Prosecution, the court must be satisfied that it is faced with an "audacious appeal" before the appellant's sentence may be enhanced. None of the authorities he relied on support this submission. In *Wong Hoi Len v Public Prosecutor* [2009] 1 SLR(R) 115 ("*Wong Hoi Len*"), the court enhanced the offender's sentence to three months' imprisonment because the original term of one month's imprisonment was manifestly inadequate: *Wong Hoi Len* at [51]. The court did go on to observe that the appeal was thought to be audacious because the appellant sought a fine even though he had already received a "restrained" sentence; however, that observation did not have a bearing on the enhancement of the sentence: *Wong Hoi Len* at [52].

105 Similarly, in *Thong Sing Hock v Public Prosecutor* [2009] 3 SLR(R) 47 ("*Thong Sing Hock*"), the court did not rely on the appeal being unmeritorious as the basis for enhancing the sentence. Rather, the court reasoned that the appellant's conduct on appeal reflected a lack of remorse – this was an aggravating factor, which was an *additional* factor that justified an enhancement of the sentence: *Thong Sing Hock* at [62]–[63]. Notably, the court made clear that the primary reason behind the enhancement was that the original sentence was manifestly inadequate: *Thong Sing Hock* at [52].

106 Indeed, we agree that the court should be careful not to stifle a litigant's right to bring an appeal in good faith. That is why the focus should not be on the quality of the arguments supporting the appeal. Rather, the power to enhance may be invoked if the court concludes that the sentence imposed below was manifestly inadequate, or more generally, if any of the grounds set out at [102] above is met. As a matter of judicial self-restraint, as noted by Hoong J in *Goh Ngak Eng* in the extract reproduced at [103] above, the court may normally choose not to enhance the sentence absent an appeal by the Prosecution, but as seen in that same extract, the court *will* do so where the interests of justice call for such a course.

107 We finally consider the High Court's observations in *Wong Hoi Len* that the absence of an appeal by the Prosecution may amount to a mitigating factor. The court reasoned that a discount was merited because an appellant in such cases does not ordinarily come to court with an expectation that his sentence would be increased: *Wong Hoi Len* at [21]. With respect, we disagree.

108 An offender's expectation on appeal whether based on advice or not, is irrelevant to the question of what the appropriate sentence should be. In evaluating the appropriate sentence, the court considers circumstances that are

relevant to the offender and the offence. The fact that the Prosecution did not appeal against Mr Koh's sentence should neither be a constraint on the court's power to enhance the sentence in a suitable case, nor even a mitigating factor when it decides to exercise that power.

109 We therefore set aside the sentence of four months' imprisonment and enhance it to 14 months' imprisonment.

Coda on enforcement measures by the Ministry of Manpower

110 At the hearing of this appeal, we directed the Prosecution to provide us with additional information on the measures taken by the Ministry of Manpower ("MOM") to monitor compliance with the applicable statutory and regulatory provisions on workplace safety and health. We take this opportunity to set out some of these measures.

111 Generally, MOM inspects around 15,000 workplaces annually. Around 5,000 of these inspections are aimed at higher-risk sectors which include, amongst others, the construction, marine and transportation sectors. During these inspections, if lifting operations are observed to be carried out at the workplaces, the Workplace Safety and Health team ("WSH team") will verify the competency of a lorry loader operator. The relevant course that is conducted by training agencies approved by MOM is the Workforce Skills Qualification Operate Lorry Crane Course. This involves 16 training hours and two assessment hours to evaluate a participant's competency in operating a lorry loader.

112 Every year, there are at least 9,000 breaches relating to workplace safety and health detected through these inspections. While some of these breaches relate to the unsafe operation of mobile cranes including lorry loaders, MOM does not have the exact number of such breaches. In the majority of inspections, upon detecting safety breaches, MOM issues notices of non-compliance to prompt rectification measures. In more serious cases, MOM may take more serious steps such as issuing remedial or stop-work orders, or commencing prosecution.

113 It is evident that MOM has taken several steps to monitor compliance. One would expect the number of breaches to decline over the years. However, the Prosecution's note suggests that the figures are hovering around at least 9,000 breaches annually. This staggering number of breaches might be symptomatic of a pressing problem that requires more stringent enforcement efforts and/or more severe penalties, especially in relation to offenders such as Mr Koh, who in an extreme effort to reduce his operating cost, appears to have abandoned safety measures altogether.

Conclusion

114 In the premises, we dismiss the appeal and enhance Mr Koh's sentence to 14 months' imprisonment.

115 We also take this opportunity to emphasise the need for employers to implement adequate safety and health measures at their workplaces to give effect to the provisions under the WSHA. The systemic breaches in this case were alarming and resulted in the preventable loss of an innocent life.

116 We again express our appreciation to Mr Teo, the YIC, for his assistance in researching the issues and advancing his submissions on the appropriate sentencing framework and sentencing benchmarks for our consideration. This was of great assistance to us.

Sundaresh Menon
Chief Justice

Steven Chong
Justice of the Court of Appeal

Vincent Hoong
Judge of the High Court

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