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

[2024] SGHC 140

Magistrate's Appeal No 9145 of 2023/01

Between

GFX

… *Appellant*

And

Public Prosecutor

… *Respondent*

GROUNDS OF DECISION

[Criminal Law — Offences — Grievous hurt]
[Criminal Procedure and Sentencing — Sentencing]

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v
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General Division of the High Court — Magistrate's Appeal No 9145 of 2023
Sundaresh Menon CJ, Tay Yong Kwang JCA, Vincent Hoong J
12 March 2024

30 May 2024

Tay Yong Kwang JCA (delivering the grounds of decision of the court):

Introduction

1 The appellant, a father of six young children, committed repeated acts of physical abuse against two of his children ("V1" is a daughter and "V2" is a son), resulting in both [V1] and [V2] suffering skull fractures. A total of 11 charges were brought against him under the Penal Code (Cap 224, Rev Ed 2008) (the "Penal Code"). The Prosecution proceeded with three charges: (a) a charge under s 325 of the Penal Code read with s 74B(2) of the Penal Code for voluntarily causing grievous hurt to [V2], who was under 14 years of age; (b) a charge under s 325 of the Penal Code for voluntarily causing grievous hurt to [V1]; and (c) a charge under s 182 of the Penal Code for giving false information to the police.

2 The appellant pleaded guilty to the three charges and consented to having the remaining eight charges taken into consideration for sentencing. The District Court Judge (the "DJ") imposed an aggregate sentence of ten years and four weeks' imprisonment and 12 strokes of the cane (see *Public Prosecutor v GFX* [2023] SGDC 182 (the "GD")). The appellant appealed for a more lenient sentence. We dismissed the appellant's appeal.

3 In the earlier decision of *Public Prosecutor v BDB* [2018] 1 SLR 127 ("*BDB*"), the Court of Appeal invited Parliament to afford the courts the power to enhance the permitted punishment beyond the prescribed maximum penalty for offences where the victim was a child or young person. Since then, s 74B of the Penal Code 1871 came into force and this allows the court to enhance the imprisonment term by up to twice the maximum prescribed punishment, where an offence is committed against a person below 14 years of age. As this was the first case where the High Court had to consider the sentencing implications of s 74B of the Penal Code since its introduction into the law, a three-judge court was convened to hear the appeal to address the appropriate sentencing approach where an offender is charged with an offence under s 325 read with s 74B(2) of the Penal Code.

The factual background

The charges

4 The appellant, a male Singaporean, is now 35 years old. A total of 11 charges were brought against him under the Penal Code. The Prosecution proceeded with the following three charges:

> **DAC 919157/2021 (the first charge)**
>
> You ... are charged that you, on 20 September 2021, between 6.50 p.m. and 7.58 p.m., at [the Bukit Batok flat], did

> voluntarily cause grievous hurt to [V2] … , then under 14 years of age, to wit, by using your hands to shove him on his head thrice causing him to fall to the floor each time, thereby causing him to sustain a skull fracture, and you have thereby committed an offence punishable under Section 325 read with Section 74B(2) of the Penal Code, Chapter 224 (2008 Rev. Ed.).
>
> **DAC-920018-2021 (the third charge)**
>
> You … are charged that you, sometime in the evening of 25 May 2018, at [the Bukit Merah Flat], did voluntarily cause grievous hurt to [V1] … , to wit, by shaking her forcefully, thereby causing her to sustain a skull fracture and fractures of the 6th and 7th posterior ribs, and you have thereby committed an offence punishable under section 325 of the Penal Code (Cap. 224, 2008 Rev. Ed.).
>
> **DAC- 911235-2022 (the eighth charge)**
>
> You … are charged that you, on 31 May 2018, at 3.09 p.m., at Police Cantonment Complex located at 391 New Bridge Road, Singapore, did give false information to a public servant, one Inspector Muhammad Rizal Bin Mohd Noor ("Inspector Rizal") of the Singapore Police Force, to wit, you told Inspector Rizal that your then 2-year-old daughter (referring to [B]) could have caused the skull and rib fractures sustained by [V1], which information you knew to be false, intending thereby to cause the said public servant to omit to investigate you for offences under the Children and Young Persons Act and/or the Penal Code, which the said public servant ought not to omit if the true state of facts respecting such information was given were known by him, and you have thereby committed an offence punishable under section 182 of the Penal Code, Chapter 224 (2008 Rev. Ed.).

5 We set out below the events relating to these three charges.

The third charge

6 Chronologically, the events which gave rise to the third charge took place first. The appellant and his wife ("W") were then staying at a flat in Bukit Merah with [V1] and [V2]. [V1], their daughter, was then only two months' old.

7 In the evening of 25 May 2018, [V1] was sleeping at home. As [W] was in the shower, the appellant carried [V1] when she started crying. The appellant

began rocking [V1] like a "baby spring", in an up-and-down motion, such that he shook her forcefully. He rocked her faster in this manner when she cried louder as he was frustrated with her cries.

8 After her shower, [W] saw the appellant holding [V1] at the stomach and rocking her up and down. She also noticed that [V1]'s head was wobbling. She immediately took [V1] away from the appellant.

9 [V1] cried throughout the night. The next day, on 26 May 2018, the appellant and [W] brought [V1] to the Singapore General Hospital. [V1] was referred to the KK Women's and Children's Hospital ("KKH"). As a result of the appellant's forceful shaking, [V1] suffered subdural and subretinal haemorrhage, haemorrhages on the optic discs, multiple areas of retinal edema, a skull fracture and two fractured ribs. The injuries showed Shaken Baby Syndrome (Abusive Head Trauma). [V1] was hospitalised for 33 days.

10 Following [V1]'s admission to KKH, the Ministry of Social and Family Development ("MSF") intervened and placed [V1] and [V2] in foster care in August 2018 and September 2019 respectively. They were allowed to reside with the appellant and [W] on weekends.

The eight charge

11 Following [V1]'s admission to KKH, the police were alerted. On 27 May 2018, the police recorded the appellant's first statement. The appellant stated falsely that he did not know how [V1] suffered the skull fracture. He also claimed that he noticed a bump on her head a few days earlier and thought it was due to a bedbug or a mosquito bite.

12 On 31 May 2018, at about 3.09pm, Inspector Muhammad Rizal Bin Mohd Noor ("Insp Rizal") recorded a second statement from the appellant at the Police Cantonment Complex because new injuries were found on [V1]. The appellant informed Insp Rizal that his other daughter ("B"), who was then two years old, could have caused the skull and rib fractures sustained by [V1]. He claimed that [B] was very active and might have jumped onto [V1]. The appellant knew that this information was false. He intended to cause Insp Rizal to omit to investigate him for offences under the Children and Young Persons Act and/or the Penal Code.

The first charge

13 The appellant and [W] were staying at a flat in Bukit Batok (the "Bukit Batok flat") at the material time in 2021. [V2], their son, was only two years and one month old when the events in the first charge took place.

14 Between 18 June 2021 and 20 September 2021, [W] sent the appellant various photos and videos via WhatsApp showing [V2] crying or walking away from the Bukit Batok flat and refusing to enter the flat when he was supposed to have a homestay with the appellant and [W].

15 On 20 September 2021, sometime after 5.00pm, a child protection co-ordinator from MSF brought [V2] to the Bukit Batok flat for his usual weekend homestay with the appellant and [W]. [V2] did not want to enter the flat.[W]took videos showing [V2]'s reluctance and sent the videos to the appellant who was not at home then. Eventually, [W] carried [V2] into the flat.

16 At about 6.50pm, the appellant returned home. Subsequently, the appellant and [V2] were in the living room together. The appellant started looking at the videos sent to him by [W] and felt angry that [V2] was reluctant

to enter the flat. He told [V2] to stand up, showed him one of the videos and asked [V2] why he did not want to enter the flat. [V2] did not reply and this angered the appellant further.

17 The appellant shoved the left side of [V2]'s head with his right hand. [V2] fell sideways onto the mat. The appellant then asked [V2] to stand up. The appellant then showed [V2] another similar video and questioned him again. He then shoved the right side of [V2]'s head with his left hand. [V2] fell sideways onto the mat a second time. The appellant then asked [V2] to stand up again. Following this, the appellant showed [V2] another video of him crying at the void deck and refusing to follow [W]. The appellant asked [V2] why he cried. He then shoved the left side of [V2]'s head with his right hand. [V2] fell sideways onto the mat a third time. The appellant asked [V2] to stand up and [V2] did so. This time, [V2] shook his head and the appellant took it to mean that [V2] was asking him to stop. The appellant told [V2] to stand aside.

18 [V2] walked away in an unsteady manner. He appeared drowsy. The appellant asked him to lie down on the mat. Shortly after, [V2] vomited twice. [W] brought him to clean up in the toilet. Subsequently, [V2] developed seizures. The appellant applied cardiopulmonary resuscitation on him. The appellant and [W] eventually brought [V2] to KKH Children's Emergency where he was seen at about 7.58pm.

19 [V2] was found to have decreased movement in his right limbs, facial asymmetry with right sided facial weakness, bruising under the left clavicle, over the forehead and the right ear. The x-ray done on his skull showed a right parietal skull fracture line. A CT scan showed subdural haemorrhage and a displaced skull fracture involving the right parietal bone extending to the left parietal bone.

20 [V2] underwent surgery on 20 September 2021. He was in the hospital for 24 days, including five days in the Children's Intensive Care Unit.

Proceedings in the District Court

21 In the District Court, the appellant was represented by counsel appointed under the Criminal Legal Aid Scheme. The appellant pleaded guilty to the three charges set out earlier. He consented to having the eight additional charges taken into consideration for the purposes of sentencing. Three charges were for offences under s 323 of the Penal Code read with s 74B(2) of the Penal Code for voluntarily causing hurt to [V1] and [V2], who were under 14 years of age. One charge was for dishonestly misappropriating a mobile phone under s 403 of the Penal Code and one charge was for giving false information to a police officer under s 182 of the Penal Code. Three other charges under ss 182 and 109 of the Penal Code were for abetting [W] by instigating her to give false information to a police officer.

22 The Prosecution sought five to 5.5 years' imprisonment and six strokes of the cane each for the first charge and the third charge and four to six weeks' imprisonment for the eighth charge. The Prosecution further submitted that the sentences for all three charges should run consecutively to arrive at a global sentence between ten years and four weeks' imprisonment and 11 years and six weeks' imprisonment, as well as 12 strokes of the cane. Conversely, the appellant submitted that the sentences for the first charge and the third charge should run concurrently and that the global sentence should be no more than five years.

23 The DJ sentenced the appellant to five years' imprisonment and six strokes of the cane each for the first and the third charges and to four weeks'

imprisonment on the eighth charge. He ordered all three imprisonment terms to run consecutively, thereby arriving at a total of ten years and four weeks' imprisonment and 12 strokes of the cane (GD at [63]). The imprisonment term was backdated to the date of arrest on 21 September 2021.

24 We note here that the first charge (involving grievous hurt against [V2] in September 2021) invoked s 74B(2) of the Penal Code. This provision provides for enhanced punishment of up to twice the maximum prescribed punishment where the offender knew or ought reasonably to have known that the victim was below 14 years of age. However, the third charge (involving grievous hurt against [V1] in May 2018) did not invoke s 74B(2). This was because the offence against [V1] took place before s 74B was introduced as a new provision in the Penal Code.

25 The DJ considered the dominant sentencing considerations to be deterrence and retribution (GD at [40]). The DJ analysed the sentences for the first charge and third charge together and applied the sentencing framework set out in *BDB* to each charge (GD at [46]–[47]). At the first step, the DJ held that the indicative starting point for each offence against [V1] and [V2] should be about five years' imprisonment, given the seriousness of their injuries (GD at [50]). At the second step, the DJ found the presence of various aggravating factors, namely: (a) the victims were particularly young, vulnerable and completely defenceless; (b) the appellant's violent acts were senseless and unwarranted; (c) the appellant abused his position of trust and authority as the victims' father; and (d) the appellant's use of violence against the victims were not isolated incidents, as evidenced from the charges taken into consideration (GD at [51]). The DJ decided that an upward adjustment to about seven years' imprisonment (with six strokes of the cane) would be appropriate for each

offence. These individual sentences would be subject to considerations under the totality principle (GD at [52]).

26 For the eighth charge, the DJ applied the guidance in *Koh Yong Chiah v Public Prosecutor* [2017] 3 SLR 447. The DJ highlighted that the delay in the investigations, resulting from the appellant giving false information to the authorities, enabled him to commit further acts of violence against [V1] and [V2]. The DJ found the Prosecution's submissions to be fair and reasonable and imposed a sentence of four weeks' imprisonment (GD at [54]–[58]).

27 The DJ ordered the sentences for the three charges to run consecutively. The first charge and the third charge were unrelated offences as they were committed more than three years apart and against two different children. While the eighth charge was proximate in time with the third charge, it was unrelated and invaded a different legally protected interest (GD at [61]). Applying the totality principle, the DJ reduced the individual sentences for the first charge and the third charge to five years' imprisonment each (GD at [62]). The aggregate sentence imposed was thus ten years and four weeks' imprisonment, backdated to 21 September 2021 (the date of the appellant's arrest) and 12 strokes of the cane.

The appeal to the High Court

28 The appellant appealed against the sentence imposed on him by the DJ. Appearing in person before us, the appellant asked for a more lenient sentence and, in particular, for the imprisonment sentences for the first charge and the third charge to run concurrently. He said he loved his children and regretted his actions.

29 To assist us in this appeal, we appointed a Young Independent Counsel, Mr Sampson Lim ("the YIC"), and posed the following questions to the parties and to the YIC:

(a) What is the appropriate sentencing approach for offences under s 325 read with s 74B of the Penal Code?

(b) Further, can the sentencing framework in *BDB* be adapted for offences punishable under s 74B of the Penal Code and, if so, how?

30 The YIC proposed the adoption of a distinct sentencing framework for offences under s 325 read with s 74B(2) of the Penal Code modelled after the two-stage, five-step approach set out in *Logachev Vladislav v Public Prosecutor* [2018] 4 SLR 609 ("*Logachev*") (the "YIC's framework"). We summarise here the steps in the YIC's framework:

(a) **Step 1:** The court has regard to the relevant offence-specific factors and identifies the level of harm and the level of the offender's culpability (see *Logachev* at [76]). The factors that assume the most significance should have a nexus to either the seriousness of the hurt caused or the deliberate exploitation or abuse of the vulnerability of the victim.

(b) **Step 2 and 3**: The court identifies the applicable indicative sentencing range and the appropriate starting point within that range, having regard to the level of harm and level of culpability established in the first stage (see *Logachev* at [78]–[79]). We reproduce below the YIC's framework for offenders who claim trial:

Harm / **Culpability**	**Low**	**Moderate**	**Severe**
Low	Up to 5 months' imprisonment	5 months' to 5 years' imprisonment	5 to 10 years' imprisonment
Medium	5 months' to 5 years' imprisonment	5 to 10 years' imprisonment	10 to 15 years' imprisonment
High	5 to 10 years' imprisonment	10 to 15 years' imprisonment	15 to 20 years' imprisonment
1. Fines alone should only be imposed in exceptional situations of extremely low harm and culpability. **2.** Caning should be considered where there is at least moderate harm caused or medium culpability.			

(c) **Step 4**: The court will make adjustments to the starting point as necessary to take into account the relevant offender-specific aggravating and mitigating factors.

(d) **Step 5:** Where an accused person is convicted of multiple charges, the court will consider the need to make adjustments to take into account the totality principle.

31 The YIC submitted that this framework would give due weight to the sentencing factors surrounding the deliberate abuse of vulnerable children that assume prominence in offences under s 325 read with s 74B of the Penal Code. These factors are taken into account when considering the offence-specific factors. The YIC further submitted that the indicative sentencing ranges and options ought to be informed by the approach set out in *BDB*.

32 The Prosecution submitted that the appropriate sentencing approach for offences under s 325 read with s 74B of the Penal Code was one that modified the existing sentencing framework in *BDB*. The Prosecution's suggested approach was as follows:

(a) **Step 1**: An indicative starting point is determined based on the seriousness of the harm caused.

(b) **Step 2**: The indicative starting point is enhanced via a multiplier ranging from 1.05 to 2.0, with the value of the multiplier determined by the severity of the factors relating to the victim's vulnerability. This results in a "preliminary sentence".

(i) The Prosecution contended that relevant vulnerability-related factors included: (a) the victim's physical stature and ability to protect himself or herself from physical harm; (b) the victim's ability to identify the offender and seek redress for the offence committed; (c) the victim's level of maturity and knowledge that what the offender did was wrong; (d) the offender's knowledge of the victim's age and vulnerability; and (e) the offender's exploitation of the victim's vulnerability.

(c) **Step 3**: The preliminary sentence is adjusted based on the offender's culpability as well as the other aggravating and mitigating factors (excluding the vulnerability-related factors).

(d) **Step 4**: The totality principle is applied, if applicable.

33 In relation to the appellant's appeal against his sentence, the Prosecution submitted that the appellant's sentences were neither wrong in principle nor manifestly excessive. The Prosecution urged the court to dismiss the appeal.

The law

34 We set out below s 74B of the Penal Code:

> **Enhanced penalties for offences against person below 14 years of age**
>
> **74B.**—(1) Subsection (2) applies to any offence under this Code which may be committed against a person below 14 years of age except where —
>
> (a) it is expressly provided that an enhanced or mandatory minimum sentence will apply to the offence when it is committed against a person below 14 years of age;
>
> (b) the offence is under section 304B, 304C, 377BG, 377BH, 377BI, 377BJ or 377BK; or
>
> (c) the offence is punishable with death or imprisonment for life.
>
> (2) Where any person commits an offence under this Code against a person below 14 years of age, the court may sentence the person convicted of the offence to punishment not exceeding twice the maximum punishment that the court could, but for this section, impose for the offence if at the time of committing the offence the offender knew or ought reasonably to have known that the victim was a person below 14 years of age.
>
> (3) This section does not apply where the offender proves that the victim despite being a person below 14 years of age, was capable of protecting himself from the offender in respect of the harm caused by the offence in the same manner as a person of or above 14 years of age.
>
> (4) Despite anything to the contrary in the Criminal Procedure Code 2010 —
>
> (a) a Magistrate's Court has jurisdiction to try the offences to which subsection (2) applies, where no imprisonment is prescribed or where twice the maximum term of imprisonment prescribed for the offence does not exceed 5 years, and has power to impose the full punishment provided under subsection (2) in respect of those offences; and
>
> (b) a District Court has jurisdiction to try the offences to which subsection (2) applies and has power to impose the full punishment provided under subsection (2) in respect of those offences.

35 Section 74B(2) of the Penal Code applies only to offences in the Penal Code (except those listed in s 74B(1)(*a*)–(*c*)). There are two exceptions to its applicability. First, pursuant to s 74B(2), there will be no enhanced penalties if the offender did not know or it was not reasonable for the offender to have known that the victim was a person below 14 years of age. Second, pursuant to s 74B(3), s 74B(2) does not apply where the offender proves that the victim was capable of protecting himself or herself from the offender in the same manner as a person of or above 14 years of age. Under this exception, the offender will have to show that the victim's young age did not make the victim more vulnerable to the harm caused by the offence.

36 In August 2018, the Penal Code Review Committee drafted a report providing extensive recommendations to review the Penal Code which was then in force. Recommendations that were eventually adopted found legislative expression in the Criminal Law Reform Act 2019 (Act 15 of 2019) (the "Criminal Law Reform Act"). One such recommendation resulted in the introduction of s 74B of the Penal Code. It came into operation in January 2020.

37 Alongside s 74B, Parliament introduced other provisions that enhanced the maximum punishment for offences committed against other vulnerable victims. These enhancement provisions cover persons with mental or physical disabilities (s 74A of the Penal Code), victims in intimate relationships with the offender (s 74C of the Penal Code) and victims in close relationships with the offender (s 74D of the Penal Code).

38 These enhancement provisions, including s 74B, took reference from s 73 of the Penal Code which was in operation before the Criminal Law Reform Act and which, at the time, provided for enhanced penalties of up to one-and-a-half times the maximum punishments for a specified list of offences committed

by an employer of a domestic maid or a member of the employer's household against their domestic maid (Penal Code Review Committee, *Penal Code Review Committee Report* (August 2018) (the "*Penal Code Review Committee Report*") at p 133). Section 73 of the Penal Code has since been amended to increase the enhancement of maximum punishments to two times, consistent with the other enhancement provisions. Parliament's intention for introducing these provisions was to strengthen protection for vulnerable groups in society and to deter and prevent crimes committed against these vulnerable victims (*Penal Code Review Committee Report* at p 139; Singapore Parl Debates; Vol 94, Sitting No 103; [6 May 2019] (K Shanmugam, Minister for Home Affairs)).

39 The application of these enhancement provisions is subject to s 74E of the Penal Code. This provides that where two or more enhancement provisions apply, the punishment for the same offence shall not be enhanced by the application of more than one of those provisions. The court may determine which section should apply to enhance the punishment. Where any punishment prescribed for an offence is a specified minimum sentence or a mandatory minimum sentence of imprisonment or caning, the enhancement provisions do not apply to enhance such punishment. Where the punishment prescribed is caning, the enhancement provisions do not apply to enhance the maximum number of strokes of the cane that may be imposed.

The applicable sentencing framework

40 In our judgment, the sentencing approach for offences under s 325 read with s 74B(2) of the Penal Code should be a three-step process that utilises the existing sentencing approach for s 325 Penal Code offences set out by the Court of Appeal in *BDB* coupled with the additional factor of the age of the victim in the equation. The age of the victim is the focus of s 74B(2) of the Penal Code

and it is this factor alone that enhances the punishment when an offender is charged with an offence under s 325 read with s 74B(2) of the Penal Code.

41 We first considered the sentencing starting point for the "base" offence under s 325 Penal Code. In *BDB*, the Court of Appeal set out the sentencing framework for offences under s 325 of the Penal Code (*ie*, causing grievous hurt). In that framework, an indicative starting point for the appropriate sentence is based on the seriousness of the injury caused. The Court of Appeal explained that "the seriousness of the injury caused underscores the inherent mischief targeted by s 325" and "it is a good indicator of the gravity of the offence" (*BDB* at [55(a)]). The offence of voluntarily causing grievous hurt is an aggravated offence compared to the offence of voluntarily causing hurt under s 323). A more severe sentencing range is prescribed for s 325 precisely because the hurt is grievous and therefore the injury is more serious. In an offence under s 325 read with s 74B(2), the seriousness of the injury continues to be a key factor as the "base" offence remains the same.

42 Therefore, where s 74B(2) is engaged, the guidance provided by the Court of Appeal in *BDB* for s 325 offences applies with equal force. The indicative starting point should be assessed along a spectrum, having regard to considerations such as the nature and permanence of the injury (*BDB* at [58]). The indicative starting point might be higher or lower depending on the type and seriousness of the injuries caused (*BDB* at [56]). Where grievous hurt takes the form of death, the indicative starting point should be an imprisonment term of around eight years and 12 or more strokes of the cane. Where the grievous hurt takes the form of multiple fractures of the limbs and ribs, the starting point is around three years and six months' imprisonment. Where non-fatal injury is caused, a sentence between six and 12 strokes of the cane might be considered (*BDB* at [55]–[56], [76]). Further, this sentencing framework is not meant to be

applied rigidly and each case must be assessed on its own particular facts (*BDB* at [61]).

43 Having determined the starting point for the s 325 Penal Code offence, we next considered the age factor in s 74B(2) Penal Code. Here, we introduced a multiplier to the starting point for the s 325 offence ranging from 1% to 100%, depending on the victim's age at the time of the offence. The age of the victim is an objective factor and is easily ascertained in the vast majority of cases. The younger the victim, the greater the culpability and the corresponding harm are likely to be. Accordingly, the range of the multiplier in percentage terms is in reverse proportion to the age of the victim so that the younger the victim, the higher the indicative multiplier will be.

44 The range of the multiplier in percentage terms is set out below:

Age of victim	**Enhancement (the younger the victim, the higher the multiplier) (%)**
0–3 years	76–100
Just over 3 years–6 years	51–75
Just over 6–10 years	26–50
Just over 10 years–just under 14 years	1–25

Applying the relevant multiplier to the indicative starting point for the s 325 offence, we arrive at the indicative enhanced starting point for the offence.

45 The focus of s 74B(2) of the Penal Code is "[committing] an offence under this Code against a person below 14 years of age". It is the age of the

victim, not the relationship between the offender and the victim or any other factor, that results in the enhancement mandated by s 74B(2). Therefore, the sentencing framework for enhanced punishment should focus on the age factor. Our approach in utilising the twin sentencing factors of the severity of the injuries caused and the victim's age therefore spotlights the essence of the offence, which is one of causing grievous hurt to a young victim. This structured approach is useful for the Prosecution and Defence Counsel when they negotiate in a plea-bargain for an enhanced punishment offence because they have the objective factor of the victim's age with the corresponding range of the multiplier as a reference starting point.

46 After we have arrived at the indicative sentencing starting point for the enhanced punishment offence using the first and the second stages described above, we then consider, at the third stage, the particular vulnerability of the victim and all other relevant factors peculiar to the case at hand which may either aggravate or mitigate the offence. Here, for instance, the court may take into consideration the fact that a young victim is particularly small or big for his or her age such that he or she may be more or less vulnerable, as the case may be.

47 At this third stage, the court adjusts the indicative enhanced starting point either upwards or downwards based on the relevant aggravating and mitigating factors (see *BDB* at [55], [63]–[75]). For this purpose, the non-exhaustive list of aggravating factors set out by the Court of Appeal in *BDB* is relevant. They include: (a) the extent of deliberation or premeditation; (b) the manner and duration of the attack; (c) the victim's vulnerability; (d) the use of any weapon; (e) whether the attack was undertaken by a group; (f) any relevant antecedents on the offender's party; and (g) any prior intervention by the authorities (*BDB* at [62]). Factors associated with the victim's vulnerability

include the extent to which the offender exploited or preyed upon the different aspects of the victim's vulnerability to facilitate the commission of the offence, as well as whether the victim is in a relationship of trust and authority with the offender. As the Court of Appeal noted in *PP v UI* [2008] 4 SLR(R) 500 ("*UI*") (at [33]), parents betray the ultimate relationship of trust and authority when they abuse their children and, for this reason, a parent would typically receive a harsher punishment for such abuse.

48 For completeness, the court must bear in mind s 74B(3) of the Penal Code discussed earlier. In a rare case, the offender may be able to prove under s 74B(3) of the Penal Code that the enhanced punishment provision should not apply because the victim was capable of protecting himself from the offender in respect of the harm caused in the same manner as a person of or above 14 years of age.

49 To summarise, the sentencing approach for an offence committed under s 325 read with s 74B(2) of the Penal Code is as follows:

(a) First, the court considers the seriousness of the injury in arriving at an indicative starting point for the s 325 offence.

(b) Second, a multiplier ranging from 1% to 100% is determined based on the age of the victim according to the table set out above (at [44]). The indicative starting point for the s 325 offence is then enhanced by the percentage of the multiplier, resulting in an indicative enhanced starting point.

(c) Third, the court will adjust the indicative enhanced starting point upwards or downwards based on the presence of relevant aggravating and mitigating factors.

50 In our opinion, this sentencing framework which focuses on age, as compared with other vulnerable victims protected in ss 74–74A, 74C–74D, is in line with Parliament's intention in introducing s 74B. It uses the sole factor of age to determine the extent of enhanced punishment and, as we have stated earlier, age is an objective fact easily determined in most cases. The framework here makes a simple addition to the existing sentencing framework for offences under s 325 instead of having a whole new framework for s 325 offences read with s 74B(2). The advantage of such an approach is that the range of the multiplier for enhancement can be applied to other Penal Code offences involving young victims below the age of 14.

Application on the facts

51 In relation to the third charge and the eighth charge, there was no basis at all to find that the sentences imposed by the DJ were manifestly excessive or wrong in principle. For the first charge under s 325 read with s 74B(2) of the Penal Code, the grievous hurt caused was a fractured skull. We agreed with the DJ that this was inherently more serious than the multiple fractures to the limbs and ribs caused to the victim in *BDB* and therefore warranted a higher starting point than three years and six months' imprisonment. Further, [V2] suffered other serious injuries, had to undergo emergency surgery and was warded in the hospital for 24 days, including five days in the Children's Intensive Care Unit.

52 The DJ's decision that an indicative starting point of five years' imprisonment was appropriate for the offence against [V2] was therefore acceptable. At the second step of the sentencing framework that we have set out, we applied a multiplier of 80% to the indicative starting point. The multiplier of 80% falls within the top range of the sentence enhancement because [V2] was only two years and one month old at the time of the offence, a mere toddler and

still "pre-verbal". Applying the multiplier of 80% yielded an indicative enhanced starting point of nine years' imprisonment.

53 An uplift of another three years' imprisonment would have been warranted, based on the presence of several aggravating factors. First, the appellant is [V2]'s biological father. His senseless acts of violence against [V2] by repeatedly shoving him to the floor were a serious betrayal of their relationship of trust and dependence (*BDB* at [119]). Second, the appellant's acts of violence against [V2] were not an isolated incident. The appellant had two other charges for causing hurt to [V2], as well as another charge for causing hurt to [V1], taken into consideration for the purposes of sentencing. These incidents showed a pattern of violence with increasing severity over time. Third, the prior intervention of MSF was an aggravating factor. The appellant was investigated after his violent acts against [V1] which gave rise to the third charge and [V2] was placed in foster care as a result. Nonetheless, the appellant committed the offence in the first charge when [V2] was residing with him and [W] during the weekend. Fourth, we noted that the appellant had antecedents for robbery with hurt and voluntarily causing hurt, which signalled a greater need for specific deterrence.

54 The appellant claimed that his actions were done on the spur of the moment. The appellant claimed that he acted the way he did because he was upset that [V2] refused to enter the house and had allegedly shouted at his mother. We did not think this was a mitigating factor in his favour. His actions against [V2] that day were not one-off but were a series of violent acts against the defenceless young child. The frustrations faced by a parent can never justify or excuse the abuse of their children (*BDB* at [75]). Based on the overall circumstances, we considered that a sentence of 12 years' imprisonment would have been appropriate for the first charge.

55 Regarding the aggregate sentence, we agreed with the DJ that the sentences for all three charges should run consecutively. This would be in line with the general rule that consecutive sentences ought to be imposed for unrelated offences (*Public Prosecutor v Raveen Balakrishnan* [2018] 5 SLR 799 at [52] and [54]). The three charges involved distinct offences. Each offence involved a different victim and took place at a different location and date. In particular, the acts of abuse which formed the subject matter of the first charge took place more than three years after the events of the third charge. The eighth charge concerned the giving of false information by the appellant to the police in order to shield himself from investigations into his violent acts.

56 The appellant would therefore have been liable to an indicative aggregate sentence of 19 years and four weeks' imprisonment (*ie*, 12 years' imprisonment (first charge) + seven years' imprisonment (third charge) + four weeks' imprisonment (eighth charge)) and 12 strokes of the cane). Having regard to the totality principle, an aggregate sentence of 15 years' imprisonment and 12 strokes of the cane would have been appropriate for the appellant's offences.

57 The appellant said that he was sorry and asked the court to give him a chance. He should be very sorry but there was no basis whatsoever for us to reduce the sentences he received or to order that one of the sentences run concurrently with the rest.

Conclusion

58 The final aggregate sentence imposed by the DJ was therefore lenient rather than manifestly excessive. Even without the enhancement provision in

s 74B, a longer term of imprisonment would have been appropriate. However, as the Prosecution did not appeal against the sentence and since this appeal was the first case before the High Court where the sentencing framework for enhanced sentences under s 74B(2) was examined, we decided to let the sentence imposed by the DJ stand. We dismissed the appeal against sentence accordingly.

59 We thank the Prosecution and the YIC for their helpful submissions in this appeal.

Sundaresh Menon
Chief Justice

Tay Yong Kwang
Justice of the Court of Appeal

Vincent Hoong
Judge of the High Court

The appellant unrepresented;
Christina Koh, Ng Jun Chong, Jonathan Lee (Attorney-General's Chambers) for the respondent;
Sampson Lim (Allen & Gledhill LLP) as young independent counsel.