Public Prosecutor v Lee Cheow Loong Charles
[2008] SGHC 124

Case Number : MA 257/2007

Decision Date : 05 August 2008

Tribunal/Court : High Court

Coram : Chan Sek Keong CJ

Counsel Name(s) : Solicitor-General Walter Woon and Christopher Ong (Attorney-General's Chambers) for the appellant; Alan Moh and Gill Zaminder (Alan Moh & Co) for the respondent

Parties : Public Prosecutor — Lee Cheow Loong Charles

Criminal Procedure and Sentencing – Sentencing – Principles – Accused sentenced to total of one year's imprisonment for multiple offences including killing pedestrian while driving under disqualification – Whether sentence manifestly inadequate – Application of one-transaction rule and totality principle

Road Traffic – Offences – Driving under disqualification – Rash act causing death – Failing to render assistance after accident – Whether offences committed in one transaction – Sections 43 and 84 Road Traffic Act (Cap 276, 2004 Rev Ed) – Section 18 Criminal Procedure Code (Cap 68, 1985 Rev Ed)

5 August 2008

Chan Sek Keong CJ:

Introduction

1 This was an appeal by the Public Prosecutor against the sentences imposed on the respondent for offences relating to a road traffic accident which took place in the early hours of 16 November 2006 ("the Accident"). Arising from his involvement in the Accident, the respondent was charged with the following:

(a) causing the death of a person by doing a rash act not amounting to culpable homicide (referred to in the specific factual context of these grounds of decision as "causing death by rash driving"), an offence under s 304A of the Penal Code (Cap 224, 1985 Rev Ed) ("the First Charge");

(b) driving while disqualified from holding or obtaining a driving licence ("driving whilst under disqualification"), an offence under s 43(4) of the Road Traffic Act (Cap 276, 2004 Rev Ed) ("the Second Charge");

(c) failing to render after a fatal road traffic accident such assistance as was reasonably within his power to render ("failing to render assistance after an accident"), an offence under s 84(3) read with s 84(7) of the Road Traffic Act and punishable under s 84(8) of that Act ("the Fourth Charge");

(d) moving a motor vehicle involved in a road traffic accident without the authority of a police officer ("moving a motor vehicle after an accident"), an offence under s 84(4) read with s 84(7) of the Road Traffic Act and punishable under s 131(2) of that Act ("the Fifth Charge"); and

(e) using a motor vehicle while there was not in force, in relation to such use, the requisite third-party insurance cover stipulated in the Motor Vehicles (Third-Party Risks and Compensation) Act (Cap 189, 2000 Rev Ed) ("driving without third-party insurance"), an offence under s 3(1) read with s 3(2) of the said Act ("the Seventh Charge").

The respondent pleaded guilty to and was convicted of all of the above charges. The district judge who heard the matter ("the District Judge") sentenced him as follows (see *PP v Lee Cheow Loong Charles* [2007] SGDC 342 ("the GD")):

(a) in respect of the First Charge, eight months' imprisonment and disqualification from obtaining or holding a driving licence for all classes of motor vehicles (referred to hereafter as disqualification from "possessing a driving licence") for ten years after his release from prison;

(b) in respect of the Second Charge, two months' imprisonment and disqualification from possessing a driving licence for three years after his release from prison;

(c) in respect of the Fourth Charge, two months' imprisonment and disqualification from possessing a driving licence for three years after his release from prison;

(d) in respect of the Fifth Charge, two months' imprisonment; and

(e) in respect of the Seventh Charge, two months' imprisonment and disqualification from possessing a driving licence for 12 months with effect from 4 December 2007.

Two other charges were taken into consideration for sentencing purposes, *viz*:

(a) failing to stop after a road traffic accident, an offence under s 84(1) read with s 84(7) of the Road Traffic Act and punishable under s 131(2) of that Act; and

(b) failing to make a police report within 24 hours of the occurrence of a road traffic accident, an offence under s 84(2) read with s 84(7) of the Road Traffic Act and likewise punishable under s 131(2) of that Act.

2 The sentences for the First Charge, the Second Charge and the Fourth Charge were ordered to run consecutively, and the sentences for the Fifth Charge and the Seventh Charge were ordered to run concurrently with the other sentences. Accordingly, the total length of imprisonment imposed on the respondent was 12 months. The respondent was also disqualified from possessing a driving licence for 12 months with effect from 4 December 2007 as well as for ten years upon his release from prison (see the sentences for the Seventh Charge and the First Charge respectively).

3 The Public Prosecutor appealed against the sentences imposed by the District Judge on the ground that they were manifestly inadequate. The Prosecution did not state in either the notice of appeal or the petition of appeal which of the specific sentences it was taking issue with. However, in its written submissions dated 18 February 2008 filed for the present appeal, the Prosecution challenged only the terms of imprisonment (but not the periods of disqualification from possessing a driving licence) imposed in respect of the First Charge, the Second Charge and the Fourth Charge. After hearing the Solicitor-General ("the SG") and counsel for the respondent, I allowed the Prosecution's appeal and increased the total length of imprisonment to 48 months with effect from 4 December 2007. I now give my reasons.

The facts

4 The respondent, aged 30, is the manager of a pub along Craig Road ("the Pub") along with one Kelris Lim Chuan Keat ("Lim"). The respondent was the driver of motor vehicle licence plate number SGJ 7614 Y ("the Car") at the time of the Accident. The pedestrian victim was 79-year-old Pang Hong Koon ("Mdm Pang"). On 16 November 2006 at about 6.39am, the police received a report from a male caller about the Accident: "Traffic accident. Person [i]njured ..."[note: 1] [emphasis in original omitted].

5 According to the Prosecution's statement of facts (which the respondent has not denied), on 16 November 2006 at about 6.39am, the respondent was driving the Car along Eu Tong Sen Street on the second lane from the extreme right at a speed of between 69.32km/h and 78.20km/h, which was in excess of the 50km/h speed limit. On approaching the signalised junction of Pearl's Hill Terrace and Eu Tong Sen Street, the respondent failed to slow down or keep a proper lookout for pedestrians. Mdm Pang was crossing Eu Tong Sen Street at the signalised crossing from right to left at that time. She was on the second lane (of a four-lane road) from the right when the respondent collided into her. Investigations showed that he had tried to brake but could not stop in time to avoid colliding head-on into Mdm Pang, and either propelled or pushed her in front for about 27m. After the collision, the respondent stopped the Car some distance away from the scene of the Accident. On seeing Mdm Pang lying motionless on the road, he drove off without rendering any assistance to her. He then drove the Car to Balestier Road and parked it in the basement car park of Balestier Towers.

6 The first police officer dispatched to the scene was Staff Sergeant Max Tan. On his arrival at the junction of Eu Tong Sen Street and Pearl's Hill Terrace, SSgt Max Tan found Mdm Pang lying unconscious on Eu Tong Sen Street, bleeding on the forehead and at the mouth. The front registration plate of a motor vehicle bearing the number SGJ 7614 Y was found at the scene. An ambulance conveyed Mdm Pang to Singapore General Hospital, where she was pronounced dead at about 7.17am. The cause of death was certified as being multiple injuries consistent with a road traffic accident, including bilateral fractures of the arm and the leg as well as fractures of the pelvis, multiple ribs, the facial bones and the skull.

7 The traffic police conducted an island-wide search on the same day (*ie*, 16 November 2006) to locate the Car and its owner. Staff Sergeant Sam Tan visited Lim, who was the registered owner of the Car. Upon questioning, Lim revealed that the driver of the Car was the respondent. SSgt Sam Tan then visited the respondent's home in Woodlands. The respondent was not in at the time of the visit, and SSgt Sam Tan advised his parents to persuade him to surrender to the traffic police.

8 On 17 November 2006 at about 10.30am (about 28 hours after the Accident), the respondent surrendered himself to the traffic police and was placed under arrest. He also informed SSgt Sam Tan that the Car was parked in the basement car park of Balestier Towers. The Car was later retrieved by the police. It transpired that although the registered owner of the Car was Lim, the respondent was the beneficial owner as he had paid $20,000 to purchase it. The Car was then registered in Lim's name as the respondent was and still is an undischarged bankrupt.

9 Investigations also revealed that on 27 September 2006 (which, according to the Prosecution, was approximately two months after the respondent had purchased the Car), the respondent had been sentenced in the Subordinate Courts to, *inter alia*, disqualification from possessing a driving licence for 18 months from 27 September 2006 to 26 March 2008 as a result of having committed the offence under s 67(1)(*b*) of the Road Traffic Act of driving while having a blood alcohol level above the permitted limit (we shall refer to this disqualification order as "the September 2006 disqualification order"). This also meant that at the time of the Accident, the respondent had been driving without third-party insurance (which is a separate offence under the Motor Vehicles (Third-Party Risks and Compensation) Act) since motor vehicle insurance policies for third-party risks only cover authorised

drivers who hold valid driving licences.

10 It was further revealed that at around 1.00am on 16 November 2006, after closing the Pub, the respondent and Lim went to another pub at Clarke Quay ("MOS") with two of their staff. The four arrived at MOS in the Car, which was driven by the respondent, at about 1.30am. A few hours later, the respondent left MOS alone and drove back to the Pub to do some work. At about 6.15am to 6.20am, the respondent left the Pub to go home. He drove from Craig Road to Eu Tong Sen Street in the direction of the Central Expressway. The Accident occurred while the respondent was driving in the second lane of Eu Tong Sen Street. At the time of the Accident, the traffic flow was light, the weather was fine and the road surface was dry. Since it was a good half-hour before sunrise, it would have been dark, but the street lamps would still have been on.

The District Judge's decision

11 In the GD, the District Judge began his consideration of the proper sentences to be passed on the respondent as follows (at [20]):

> In determining [the] appropriate sentence I considered all the facts, the mitigation and the [P]rosecution's submission that a deterrent sentence be passed on the [respondent]. I ... also considered all the various sentencing principles in determining [the] sentence. I considered too, counsel's submission that all the offences were committed in one transaction. It is not in dispute that the [respondent] is not a first offender in committing a traffic offence. On 27 Sep '06, he was convicted for driving under the influence of alcohol. He was fined $2,400 and disqualified from obtaining or holding a driving licence for all classes of motor vehicles for 18 months.

The sentence for the First Charge

12 In relation to the First Charge (which was for causing death by rash driving), the District Judge accepted (*id* at [21]) that the offence committed by the respondent was a serious one, as reflected by the prescribed maximum imprisonment term of two years under s 304A of the Penal Code. The District Judge then went on to describe the nature of the respondent's rash driving at the material time, such as his driving beyond the speed limit, his failure to keep a proper lookout and his colliding into Mdm Pang while she was crossing a signalised pedestrian junction. The District Judge explained (*ibid*) the reason for having signalised traffic junctions along roads such as Eu Tong Sen Street (a four-lane road), and noted the various traffic regulatory devices put in place to encourage safe driving, such as "red-light cameras, speed limiting strips ... [and] humps" (*ibid*). He referred to accident statistics on cases of causing death by rash driving and acknowledged the need to take a serious view of rash driving, especially when it resulted in a needless death. He also referred to the decision of Yong Pung How CJ in *PP v Gan Lim Soon* [1993] 3 SLR 261 ("*Gan Lim Soon*"), where it was held that in most cases where death was caused by a rash act, the sentence imposed should be that of a term of imprisonment.

13 Proceeding on that basis, the District Judge made the following findings of fact in relation to the First Charge (see the GD at [23]–[24]):

> 23. … [T]here was *no evidence at all as to whether the traffic lights were or were not in the [respondent's] favour* at the time of the [A]ccident. [Mdm Pang] was on the 2nd lane from the right when the [respondent] collided into her. *Even if the traffic lights were in the [respondent's] favour, as a driver of a motor vehicle, it was incumbent on the [respondent] to exercise due care and caution in approaching and crossing the junction when a pedestrian was still on it.*

> 24. … [T]here was no evidence at all that the [respondent] due to tiredness suffered a lack of concentration whilst driving or that his concentration was in any way affected by lack of sleep. There was also no evidence too, that the [respondent] had been drinking either at his own pub [*ie*, the Pub] or at MOS or that he was intoxicated when he drove the [C]ar at the time of the [A]ccident. The [respondent] was not charged at all for an offence of drink[-]driving.
>
> [emphasis added]

14 On these considerations, the District Judge sentenced the respondent to eight months' imprisonment and disqualified him from possessing a driving licence for ten years after his release from prison (*id* at [31]).

The sentence for the Second Charge

15 In relation to the Second Charge (which was for driving whilst under disqualification), the District Judge held (*id* at [25]):

> The [respondent] was well aware that he was disqualified from driving all classes of motor vehicles yet, after closing [the] [P]ub, he drove ... Lim and two staff members to MOS. Later, he drove the [C]ar alone from MOS back to [the] [P]ub to work. After completing his work, he drove the [C]ar again knowing full well that he was not supposed to drive. Defiance of a court order is a serious matter. *Driving whilst under disqualification is a serious offence which attracts a maximum punishment of 3 years [sic] imprisonment. I agree with the [P]rosecution that by driving whilst under disqualification, the [respondent] showed total disregard for the order of court disqualifying him from driving all classes of motor vehicles so soon after the order [was made].* The [respondent] was disqualified from driving all classes of motor vehicles on 27 Sep '06 and committed the present offence on 16 Nov '06, [approximately] two [months] later. [emphasis added]

On these considerations, the District Judge sentenced the respondent to two months' imprisonment and disqualified him from possessing a driving licence for three years after his release from prison.

The sentence for the Seventh Charge

16 The District Judge considered the offence set out in the Seventh Charge (*ie*, driving without third-party insurance) as a corollary of the offence set out in the Second Charge (*ie*, driving whilst under disqualification), and accepted (*id* at [26]) the seriousness of the former offence. He pointed to s 3(2) of the Motor Vehicles (Third-Party Risks and Compensation) Act, which provides for, *inter alia*, imprisonment for up to three months, as well as s 3(3) of the said Act, which provides (in the absence of "special reasons" (*ibid*)) for disqualification from possessing a driving licence for 12 months from the date of the conviction. The District Judge said at [26] and [28] of the GD:

> 26. ... The [respondent] in defying or disregarding the order of court disqualifying him from driving all classes of motor vehicles and [in] driving without insurance coverage had deliberately compromised the safety of our roads, in that pedestrians and the motoring public will be unable to recover any compensation from him if he injures or kills someone because no insurance company would be liable. Also such offences are difficult to detect. Such offences are detectable when drivers are either stopped at road blocks or when the offender has been involved in an accident as in the instant case. In the present case there were no eye witnesses to the [A]ccident. Had it not been for the registration number plate of the [respondent's] vehicle becoming dislodged and falling onto the road after the [A]ccident, the identification of the [respondent] and his motor

vehicle would have been most difficult for the police. It was only through the registration number plate found at the scene that identification of the motor vehicle was made possible and the ownership of the [C]ar eventually traced to the [respondent]. In *Chng Wei Meng v PP* [[2002] 4 SLR 595] it was affirmed by the High Court that motorists who drive whilst disqualified must expect a term of imprisonment and not merely a fine. ...

…

28. ... By driving several times that night, the [respondent] in taking the risk that he would not meet with an accident intentionally jeopardized the lives of his passengers and that of other road users. I was firmly of the view that a term of imprisonment was called for in the circumstances.

[emphasis in original omitted]

On these considerations, the District Judge sentenced the respondent to two months' imprisonment and disqualified him from possessing a driving licence for 12 months with effect from 4 December 2007.

The sentences for the Fourth Charge and the Fifth Charge

17 With respect to the Fourth Charge (which was for failing to render assistance after an accident) and the Fifth Charge (which was for moving a motor vehicle after an accident), the District Judge's evaluation of the seriousness of the respondent's acts was as follows (see the GD at [29]):

I also considered the [P]rosecution's submission that the [respondent] in driving away after hitting Mdm Pang and not rendering assistance to her was [*sic*] an insensitive, uncaring and callous act. … The offence [of failing to render assistance after an accident] is serious in that [s 84(3) of the Road Traffic Act] requires the driver to attend to the injured and to provide "such assistance as may reasonably be in the power of the driver to provide". In the instant case, the [respondent] did not render any assistance to Mdm Pang after he hit her. *Even if he was not in a position to render any assistance to her because he was afraid of being assaulted by passers-by, he could have immediately notified the police of the [A]ccident or called for an ambulance. The [respondent] did neither, save to think of himself that he might be assaulted by passersby [sic] if he remained at the scene. He made [no] attempt to immediately admit responsibility for his actions by either reporting the matter or informing the police of the [A]ccident.* The offence is obviously regarded as serious because the timely actions of the driver to render assistance either by rendering first aid to the injured or calling for medical assistance may [make] the difference between life and death. The seriousness of the offence is also reflected in the prescribed maximum punishment of 12 months [*sic*] imprisonment. ... *The [respondent's] actions as a driver were clearly irresponsible and thoughtless.* ... [T]he [respondent] got into [the] [C]ar and drove off without the authority of a police officer. ... The [respondent] by driving away in his motor vehicle deprived the police from preserving the scene of the [A]ccident, studying the evidence and thoroughly investigating the case. It was only after the police had traced that he was the owner of the [C]ar [that] the [respondent] surrender[ed] himself the following day. [emphasis added]

On these considerations, the District Judge sentenced the respondent to:

(a) in respect of the Fourth Charge, two months' imprisonment and disqualification from possessing a driving licence for three years after his release from prison; and

(b) in respect of the Fifth Charge, two months' imprisonment.

The Prosecution's case on appeal

18 For the purpose of his submissions to the court, the SG divided the respondent's offences into three categories, namely:

(a) driving whilst under disqualification (the offence stated in the Second Charge) and driving without third-party insurance (the offence stated in the Seventh Charge);

(b) causing death by rash driving (the offence stated in the First Charge); and

(c) failing to render assistance after an accident (the offence stated in the Fourth Charge) and moving a motor vehicle after an accident (the offence stated in the Fifth Charge).

Driving whilst under disqualification

19 In respect of the offence stated in the Second Charge (*viz*, driving whilst under disqualification), the Prosecution submitted that the present case must fall at the higher end of the scale of culpability as a death had been caused, whereas at the lower end would fall cases where no injury had been caused and where the accused had driven for a good reason (for example, in an emergency). It was argued that persons who, whilst disqualified from possessing a driving licence, drove repeatedly for no good reason, blatantly disregarding their responsibility and causing serious injury or damage, must be at the upper end of the range of culpability. In the present case, the respondent had admitted to driving on at least three occasions on the fateful morning of 16 November 2006. Therefore, even ignoring the fact that Mdm Pang had been killed and the respondent had fled the scene of the Accident, the latter had shown utter and blatant disregard for the September 2006 disqualification order, which had been imposed on him only recently (see [9] above). The Prosecution submitted that even if the Second Charge had stood alone, it would have been within the worst type of cases of driving whilst under disqualification and thereby warranted the maximum punishment under s 43(4) of the Road Traffic Act, notwithstanding that there could conceivably be an even worse case of this particular offence.

Causing death by rash driving

20 As regards the offence set out in the First Charge (*viz*, causing death by rash driving), the Prosecution did not submit that the present case fell within the worst type of cases, but drew the court's attention to several significant factors about the respondent's behaviour. First, the respondent had spent the night of 15 November 2006 without any sleep. He had worked at the Pub until 1.00am on 16 November 2006. Thereafter, he had gone to MOS and had then driven back to the Pub to do some work before leaving for his home, speeding in the early morning. Second, the impact of the crash was huge. As Eu Tong Sen Street is a wide straight road with no visual impediments, Mdm Pang must have been visible to the respondent for some distance before the point at which he tried to brake (as indicated by the brake marks at the scene of the Accident). It was submitted that the respondent's conduct in driving at such a high speed without noticing Mdm Pang's presence at the signalised junction of Pearl's Hill Terrace and Eu Tong Sen Street, braking just before the crossing when Mdm Pang was in the second lane of Eu Tong Sen Street, with the result that she was hit by the Car and propelled 27m forward, could only be rash driving. Third, there was nothing to indicate genuine remorse on the respondent's part as opposed to regret at having been caught. The respondent surrendered himself to the traffic police only 28 hours later when he knew that the traffic police had traced the Accident to him.

21 The Prosecution noted that in the cases cited by the respondent's counsel, the benchmark sentence for causing death by rash driving was imprisonment for around nine months. However, citing the cases of *Mohamad Iskandar bin Basri v PP* [2006] 4 SLR 440 ("*Mohamad Iskandar*") and *Wong Shyh Shian v PP* [2002] SGDC 45 ("*Wong Shyh Shian*"), the SG submitted that in the light of the seriousness of and the degree of rashness involved in the respondent's actions as well as the absence of any mitigating factors, a term of eight months' imprisonment for the First Charge was manifestly inadequate and a term of 12 to 15 months' imprisonment would be appropriate.

Failing to render assistance after an accident

22 On the offence which was the subject matter of the Fourth Charge (*ie*, failing to render assistance after an accident), the SG also pressed for the maximum sentence of 12 months' imprisonment, pointing out that Mdm Pang had still been alive when the respondent fled the scene of the Accident. The SG submitted that the respondent's allegation that he had fled out of fear of a gathering crowd was pure invention. The respondent, it was argued, could have called the police but did not do so; nor did he call for an ambulance. He also did not surrender to the traffic police voluntarily. Instead, he hid the Car in the basement car park of Balestier Towers. He would not have been identified and charged for his offences but for the fortuitous fact (which he had apparently overlooked) that the number plate of the Car had fallen on the road due to the impact of the collision.

Manifest inadequacy of the total period of imprisonment

23 The SG submitted that given the facts of this case, the total period of imprisonment of 12 months was manifestly inadequate and should instead be around three to four years. In addition, he submitted that a further factor of "[d]enunciation"[note: 2] [emphasis in original omitted] might be considered, not to add on to the punishment to be imposed, but to make clear that the respondent's offences were serious and to reflect society's revulsion of those misdeeds.

The decision of this court

Overview

24 I agreed with the SG's division of the offences committed by the respondent into the three groups outlined at [18] above. Each of these groups of offences was distinct and separate, both factually and conceptually, from the other groups of offences, in that each group of offences was in itself serious and did not necessarily or inevitably flow from the other groups of offences. At [20] of the GD, the District Judge referred to the submission by counsel for the respondent that all the offences had arisen from one transaction. The District Judge made no express ruling on this, but appeared to have taken that into account in sentencing. The District Judge's implicit consideration of the respondent's offences as arising from one transaction might well have contributed to the inadequacy of the sentences which he imposed for the various offences. This was incorrect. As the Court of Appeal reiterated in *PP v Fernandez Joseph Ferdinent* [2007] 4 SLR 1 ("*Fernandez Joseph Ferdinent*"), the one-transaction rule, tempered by s 18 of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) ("CPC") (see further [42] below), does not apply where the offences committed are distinct. In the present case, the mere fact that the respondent committed several distinct offences in a short span of time certainly should not result in a more lenient sentence being imposed on him.

25 I did not, however, accept the SG's submission that an element of denunciation should be factored into the punishment to be imposed on the respondent (see [23] above). This argument was raised and addressed in *PP v Kwong Kok Hing* [2008] 2 SLR 684, where the Court of Appeal remarked (at [38]) that "every sentence communicate[d] society's aversion and the proper degree of censure

for the offending behaviour". Certainly, some crimes will prompt greater public outrage than others, but, as a *sentencing consideration*, denunciation adds nothing to the court's decision, which must be based on the law, the factual circumstances (including the accused's moral culpability) and the public interest.

26 Before me, the respondent's counsel sought to excuse the respondent's actions and omissions by raising unmeritorious arguments, such as the lack of evidence to show whether the traffic lights were in the respondent's favour at the material time and the point that the respondent had not been speeding for the thrill of it. He claimed that his client was full of remorse as the latter had gone to church to confess and pray before turning himself in to the traffic police. However, the respondent's post-accident behaviour showed very clearly that he was trying his best to ensure that he would not be detected as the driver who had collided into and knocked down Mdm Pang. The respondent's *ex post facto* explanation for his conduct had little credibility, especially considering that the preservation of one's liberty is often a strong incentive for an offender to flee from the scene of the crime. Indeed, the respondent's conduct in the immediate aftermath of the Accident only threw into harsher relief the callousness of his behaviour. The present case was one where the facts spoke loud and clear for themselves, and the inadequacy of the sentences imposed for the respondent's numerous offences, which could easily have been avoided had the respondent exercised the proper care and caution which one would expect of a driver, was manifest, even glaring.

27 In relation to the First Charge of causing death by rash driving, the District Judge appeared to have regarded the absence of evidence of intoxication on the respondent's part and the fact that the respondent had not been charged with drink-driving as positive factors in favour of the Defence (see [24] of the GD as reproduced at [13] above). In my view, this was wrong, having regard to the fact that the respondent surrendered himself to the traffic police about 28 hours after the Accident. That was ample time for all traces of alcohol in his blood (if any) to fully dissipate. Having avoided facing up to his acts for a good 28 hours, the fact that the respondent could not possibly have been – and was not – charged with drink-driving (if he had indeed committed this offence as well) was definitely not a factor in his favour.

28 The District Judge, in assessing the appropriate punishment to be imposed, seemed more concerned with the imposition of a custodial sentence, rather than with the *length* of the term of the overall custodial sentence. In other words, the District Judge was more concerned with the question of whether the respondent should go to jail, rather than with the question of how long the latter should be jailed for, with the result that he failed to appreciate the enormity of the respondent's irresponsible acts. In my view, those acts were *deliberate* and calculated, and *not* merely "thoughtless" (see the GD at [29]) as the District Judge found. It was quite perplexing that, having noted the seriousness of each of the respondent's offences, his total disregard for the law and his callous attitude toward Mdm Pang, the District Judge thought fit to impose such a lenient custodial sentence in totality when compared with the maximum terms of imprisonment permitted for the respective offences in question. Specifically, for the three offences in respect of which the District Judge ordered the sentences to run consecutively (namely, the offences in the First Charge, the Second Charge and the Fourth Charge respectively), the maximum terms of imprisonment were two years' imprisonment for the offence in the First Charge (see s 304A of the Penal Code), three years' imprisonment for the offence in the Second Charge (see s 43(4) of the Road Traffic Act) and 12 months' imprisonment (in the case of a first conviction) for the offence in the Fourth Charge (see s 84(8)(*a*) of the Road Traffic Act) – in other words, the total imprisonment terms for these offences, taken cumulatively, could amount to a maximum of *six* years. I will now deal with each of these offences in greater detail.

Driving whilst under disqualification

29 In *Chng Wei Meng v PP* [2002] 4 SLR 595 at [43], Yong CJ said that driving whilst under disqualification:

> ... is about as serious an offence as a motorist can commit. ... [T]he irresponsible motorist who has knowledge of an order of disqualification made against him but who continues to drive in blatant disregard of the law and the authority of the courts can also expect to face the full impact of the law upon him and receive enhanced custodial sentences.

30 The punishment set out in s 43(4) of the Road Traffic Act for driving whilst under disqualification was enhanced in 1993, via the Road Traffic (Amendment) Act 1993 (Act 3 of 1993), to a fine of up to $10,000 and/or imprisonment of up to three years. As the Minister for Home Affairs, Prof S Jayakumar, explained in moving the second reading of the Road Traffic (Amendment) Bill 1992 (Bill 37 of 1992), which proposed this enhanced punishment (see *Singapore Parliamentary Debates, Official Report* (18 January 1993) vol 60 at cols 426–428):

> We are ... concerned over a small group of incorrigible, habitual, high-risk drivers who show blatant disregard of the law and of the courts, despite repeated prosecutions and convictions. They are undeterred by the punishments presently prescribed by law. The amendments before the House today are targeted only at this small group of recalcitrant offenders, specifically at those who *repeatedly drive whilst under disqualification* or suspension, those who are repeat drunken driving offenders and those who are repeat reckless or dangerous driving offenders.
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> ...
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> … There have been a number of cases ... where motorists who are disqualified by the courts from driving for committing a serious offence, have deliberately ignored the court's prohibition and continued to drive. ...
>
> According to the Traffic Police, there are more [of] such offenders, but *it is not easy to catch them. The Traffic Police can detect them only when they are stopped for some traffic offence or when they are involved in an accident.*
>
> I hope Members will agree that *such a driver is really a menace to all other road users. He is, in fact, a lethal, unguided missile.* Moreover, when he causes an accident, the victims will not legally be covered by insurance. ...
>
> ... [W]e should be strict with such a repeat offender because, firstly, he has committed an offence which [was] sufficiently serious [so] that it was not compoundable and he had to appear and be prosecuted in the courts. Secondly, he was convicted and the court, apart from imposing any other sentence, also decided to impose a disqualification order on him. In short, the court was telling him that he should not be on the roads for whatever period the court decides. Thirdly, the offender blatantly ignores the court's injunction against him and continues to drive on the roads. And fourthly, this repeat offender, after being sentenced for driving while under disqualification, commits the offence yet again, and in some cases, and again.
>
> At present, such an offender who drives whilst under disqualification only faces a maximum punishment of up to six months' jail or a $1,000 fine or both. This is clearly inadequate. In fact, as the Chief Justice commented in August last year on the notorious case of a person having nine previous convictions [*ie*, the High Court case of *Samnasivam s/o Sharma v PP* [1992] 2 SLR 580], the punishments in the law for those who drive while banned from so doing are far from adequate. ... [W]e should confer more powers on the courts to deter such offenders. This is exactly what

this Bill seeks to do.

The amendment increases the maximum penalty to a fine not exceeding $10,000 or to imprisonment for a term not exceeding three years, or both.

[emphasis added]

31 It is clear that driving whilst under disqualification is a serious offence which is to be punished strictly because of the danger posed to the public and the offender's complete disregard for the earlier disqualification order imposed by the court. In the present case, the respondent had, according to the Prosecution, purchased the Car in July 2006, about two months before his conviction for drink-driving and his consequent disqualification from possessing a driving licence for 18 months with effect from 27 September 2006 (see [9] above). The Accident occurred less than two months after this conviction, on 16 November 2006. In the few hours preceding the Accident, the respondent admittedly drove on at least three occasions, namely, from the Pub to MOS and back, and then from the Pub to Eu Tong Sen Street (and, eventually, Balestier Towers). The respondent had also spent the night of 15 November 2006 at two different pubs without any sleep, although there was no evidence that he had been intoxicated.

32 Not only was the respondent driving whilst under disqualification at the material time, but he also audaciously sought to excuse his blatant disregard for the September 2006 disqualification order by saying that he had been driving then because he needed to go home and take his mother to hospital (in his mitigation plea, the respondent stated that his girlfriend was originally to take his mother to hospital, but was later unable to take leave from work to do so). I did not believe this assertion in the absence of any evidence to substantiate it. If the respondent had wanted to take his mother to hospital, he could have taken a taxi – there was no emergency situation *requiring* him to drive. The respondent's conduct in grasping at straws to excuse his calculated disregard for the September 2006 disqualification order demonstrated, rather, a complete lack of remorse for his offence (of driving whilst under disqualification). General and, especially, specific deterrence are important considerations in offences such as the present one, which are very difficult to detect. Given that the respondent caused a fatal accident whilst driving under disqualification – and, additionally, in excess of the speed limit – thereby committing three separate offences in the process (namely, (a) causing death by rash driving, (b) driving whilst under disqualification and (c) speeding (an offence under s 63(1) read with s 63(4) of the Road Traffic Act)), a substantial custodial sentence was warranted for the purposes of both punishment and public protection.

33 The other consideration which I could not overlook was the high probability that during the two months (approximately) since the September 2006 disqualification order was imposed, the respondent must have driven on many occasions. This could be inferred from the fact that in the few hours before the Accident occurred, he had already driven several times from place to place. Taking all the circumstances into account, I was of the view that this case fell close to but was not the worst case deserving the maximum sentence for this particular offence. In the circumstances, I decided that 24 months' imprisonment was appropriate.

Causing death by rash driving

34 With respect to the offence of causing death by rash driving (which was the subject matter of the First Charge), "rashness" has been defined in *Bhalchandra Waman Pathe v The State of Maharashtra* (1967) 71 Bom LR 634 at 637 (which was cited in *PP v Teo Poh Leng* [1992] 1 SLR 15 and *PP v Poh Teck Huat* [2003] 2 SLR 299) as:

> … acting with the consciousness that ... mischievous and illegal consequences may follow, but with the hope that they will not, and often with the belief that the actor has taken sufficient precautions to prevent their happening.

35 Section 304A of the Penal Code was very recently amended (via the Penal Code (Amendment) Act 2007 (Act 51 of 2007)) to bifurcate the punishment for causing death by, on the one hand, doing a rash act and, on the other hand, doing a negligent act. With effect from 1 February 2008, causing death by doing a negligent act remains punishable with up to two years' imprisonment and/or a fine (which was the sole punishment prescribed by s 304A prior to 1 February 2008), while causing death by doing a rash act is now punishable with a term of imprisonment of up to five years and/or a fine. Since the respondent committed the offence of causing death by rash driving in 2006, this higher limit does not apply and the maximum term of imprisonment that the respondent faces is two years. However, even under the pre-amended version of s 304A in force prior to 1 February 2008, a rash act, being more risky to life and limb, was considered to be more reprehensible than a negligent act and to warrant more severe punishment (see *Gan Lim Soon* ([12] *supra*) at 264, [10]).

36 The Prosecution cited, as authority for an enhanced sentence in respect of the First Charge, the case of *Wong Shyh Shian* ([21] *supra*). There, the accused, as a result of turning back (while he was driving) to look at someone whom he thought he recognised at a bus-stop, hit a mother and her two children while they were in the middle of a zebra crossing. The accused was a first-time offender and had not been speeding when the accident occurred. The trial judge found that the accused had not "drive[n] with wanton disregard for the safety of pedestrians after seeing people crossing the road. His mistake was failing to take note that there were pedestrians crossing ..." (*id* at [23]). The accident resulted in the death of the mother, and serious injuries were suffered by one of the children, who had to be hospitalised for 20 days. The accused pleaded guilty to one charge of causing death by rash driving under s 304A of the Penal Code and one charge of dangerous driving under s 64(1) of the Road Traffic Act (Cap 276, 1997 Rev Ed), with another charge under the latter provision taken into consideration. He was sentenced to a total of 15 months' imprisonment and was disqualified from possessing a driving licence for 15 years upon his release from prison. The accused's appeal to the High Court against his sentence (*viz*, Magistrate's Appeal No 50 of 2002) was dismissed.

37 In *Mohamad Iskandar* ([21] *supra*), the accused, a firefighter who was driving a firefighting vehicle in response to an emergency call, failed to stop at a cross junction while the traffic lights were red against him and collided with a taxi, resulting in the death of one of the three passengers in the taxi. The accused pleaded guilty to one charge under s 304A of the Penal Code, one charge under s 337 thereof (*vis-à-vis* the offence of causing hurt by doing a rash act) and one charge under s 338 thereof (*vis-à-vis* the offence of causing grievous hurt by doing a rash act). He was sentenced in the District Court to a total of 15 months' imprisonment. The differences between that case and the present one are numerous and clear. To begin with, the accused in *Mohamad Iskandar* had been rushing to render aid in an emergency. He had turned on the sirens and the flashing lights of his vehicle as a precaution, but had erroneously assumed that other road users would give way to him. He also had no antecedents. By his actions after the accident and by pleading guilty at his trial, he showed true remorse. Tay Yong Kwang J, in reducing his sentence to seven months' imprisonment on appeal, said at [27]:

> It is difficult to measure remorse. It has been said that *true remorse is about being sorry for the act, not for being caught*. In this instance, I do not see a man cornered into surrendering (see the example given in *Wong Kai Chuen Philip v PP* [[1990] SLR 1011]). The [accused], badly shaken as he must have been after the accident, nevertheless had the presence of mind to take care of the victims of his recklessness. He visited them and attended the funeral for Bedah [the passenger in the taxi who died in the accident]. He sought [the victims'] forgiveness. Obviously,

> Zuraidah [another of the passengers in the taxi at the material time] did not think that the [accused] was putting on an act of contrition in order to save himself. She forgave him and pleaded for leniency on his behalf, acknowledging that he was responding to the call of duty. The plea of guilt was a natural manifestation of his remorse. He had at least spared the victims of that harrowing experience from having to recount their ordeal in open court. He did not seek to push the blame to the taxi driver or others. He blamed the accident on his erroneous assumption that others would give way to him. On top of these, he also had a clean record. [emphasis added]

38 I have already noted the respondent's complete lack of remorse in the present case (see [26] and [32] above). Moreover, the degree of rashness involved in the respondent's driving was high. He was speeding whilst driving under disqualification, having recently been declared by the court (on 27 September 2006) as being unfit to drive. He did not slow down when approaching the signalised crossing at Eu Tong Street and failed to notice Mdm Pang crossing the road. He only reacted – or was only able to react – when his car was barely *2m* away from Mdm Pang, at which point it was impossible for him to reduce the speed of the Car quickly enough to prevent a fatal collision. The force of the impact was evident from the considerable damage done to the Car: There was a large dent on the front bonnet; parts of the bumper and the headlights were broken off; the front licence plate and part of the front vent were knocked off at the scene of the Accident; and a large portion of the windscreen was shattered, although the windscreen remained intact.

39 Given these circumstances, I considered that a sentence of 15 months' imprisonment was appropriate in respect of the First Charge.

Failing to render assistance after an accident

40 Under s 84(3) read with s 84(7) of the Road Traffic Act, failing to render assistance after an accident is an offence, and is punishable under s 84(8)(*a*) (in respect of a first conviction) with a fine not exceeding $3,000 or imprisonment for a term not exceeding 12 months. Parliament's particular concern over hit-and-run accidents is evident from the enhancement of the punishment for, *inter alia*, this particular offence in 1996 (see *Singapore Parliamentary Debates, Official Report* (27 February 1996) vol 65 at cols 718–719 *vis-à-vis* the Road Traffic (Amendment) Bill 1996 (Bill 3 of 1996) ("the 1996 Bill") as well as the Road Traffic (Amendment) Act 1996 (Act 11 of 1996)) and again in 2002 (see *Singapore Parliamentary Debates, Official Report* (23 July 2002) vol 75 at cols 714–715 *vis-à-vis* the Road Traffic (Amendment) Bill 2002 (Bill 24 of 2002) as well as the Road Traffic (Amendment) Act 2002 (Act 21 of 2002)). As the Minister for Home Affairs, Mr Wong Kan Seng, reiterated during the second reading of the 1996 Bill (see *Singapore Parliamentary Debates, Official Report* (27 February 1996) vol 65 at col 718):

> We take a serious view of [hit-and-run] accidents because *fleeing from the scene after knocking down a person is an irresponsible act. The driver has a moral obligation to stop after an accident and assist the victim. It can make a difference between life and death.* [emphasis added]

41 This sentiment is echoed in both sentencing precedents (see, *eg*, *PP v Lee Meng Soon* [2007] 4 SLR 240 at [34]) and legal literature. For instance, *Sentencing Practice in the Subordinate Courts* (LexisNexis, 2nd Ed, 2003) states (at p 954):

> The act of hit-and-run is not the act of a decent and responsible human being. ... Fleeing from the scene after knocking down a person is a cowardly and irresponsible act.

42 Indeed, in fleeing the scene after the Accident, the respondent committed up to four distinct offences under s 84 of the Road Traffic Act (see also *Fernandez Joseph Ferdinent* ([24] *supra*) at [23] in respect of ss 84(1) and 84(4) specifically), namely, he:

(a) failed to render assistance to Mdm Pang after the Accident contrary to s 84(3) of the Road Traffic Act;

(b) moved the Car without police authority contrary to s 84(4) of the Road Traffic Act;

(c) failed to stop after the Accident contrary to s 84(1) of the Road Traffic Act; and

(d) failed to make a police report within 24 hours of the Accident contrary to s 84(2) of the Road Traffic Act.

The respondent pleaded guilty to the charges based on the first two offences (*ie*, the Fourth Charge and the Fifth Charge) while the charges based on the last two charges were taken into consideration for sentencing purposes (see [1] above). Pursuant to the one-transaction rule, the offences set out in the Fourth Charge and the Fifth Charge could not be punished cumulatively since they were committed in the same transaction. However, the specificity with which each of the above offences is defined in the legislative scheme of s 84 of the Road Traffic Act demonstrates the seriousness of hit-and-run accidents. As the Court of Appeal observed in *Fernandez Joseph Ferdinent* at [17], the effect of s 84, in particular, the practice of preferring three separate charges under ss 84(1), 84(3) and 84(4) respectively, is most fully appreciated in the light of s 18 of the CPC, pursuant to which an accused person who is convicted of at least three distinct offences has to serve the sentences for at least two of the offences consecutively.

43 It was submitted that the respondent fled the scene of the Accident after stopping some distance from the point of collision because he saw passers-by running over with "rais[ed] arms"[note: 3] and *feared that he would be harassed or assaulted*. The SG contended that this assertion was pure invention and fantasy, a submission which I accepted. Since the respondent had stopped the Car some distance away, no one would have known that he was the driver if he had gone to help Mdm Pang. Moreover, it was unlikely that there would have been a crowd at the scene given the time at which the Accident occurred (*viz*, at about 6.40am).

44 It was also argued by the respondent's counsel that Mdm Pang was being attended to by other people. This was not an excuse for the respondent's conduct since he was required to render assistance to Mdm Pang under s 84(3) of the of the Road Traffic Act, which was enacted precisely to target hit-and-run drivers like the respondent. The respondent fled the scene because he wanted to avoid detection, and would not have been detected as the driver of the Car but for the fact that the Car's number plate had fallen off at the scene. Even if Mdm Pang had received immediate assistance from passers-by, this would still not have excused the respondent's failure to render assistance to her as his omission in this regard stemmed from his attempt to avoid apprehension. I thus decided that a sentence of nine months' imprisonment was appropriate in respect of the Fourth Charge.

Conclusion

45 Having regard to the evidence before me and the circumstances of this case, I found that this must be one of the worst instances of traffic violations to come before this court. The respondent's acts were all calculated and there were no mitigating factors. He did not show any remorse. The only question was what sentence was appropriate, having regard to the large number of offences committed in the course of less than half an hour. Where an offender is convicted of more than one

offence, the totality principle applies to ensure that the cumulative sentences imposed, taken together, are not crushing or disproportionately harsher than the punishment which the offender deserves (see *PP v Law Aik Meng* [2007] 2 SLR 814 at [58]–[60]). However, even taking this principle into account, there is no question that the aggregate custodial sentence of only 12 months' imprisonment imposed by the District Judge for all the serious offences committed by the respondent was manifestly inadequate.

46 The death of Mdm Pang would not have occurred if the respondent had obeyed the law instead of flouting it. This tragedy was caused by a dangerous pattern of irresponsible and selfish behaviour on the latter's part, which manifested his complete and total disregard for the law. Having been arrested for drink-driving and disqualified from possessing a driving licence for 18 months, he remained defiant in the hope that he would get away with driving unlawfully. It led to a tragic accident in which he showed no remorse for his conduct and no human decency to the victim. Instead, he fled the scene of the Accident in the hope of evading responsibility for his actions, and it was only fortuitously that he was identified as the driver of the Car. The combination of these antisocial acts and the resultant loss of a life entailed that a substantial term of imprisonment should be imposed in the present case not only as a specific deterrent to the respondent, but also as a general deterrent to any other driver disqualified from possessing a driving licence who may wish to defy the law.

47 Having regard to all the circumstances of the present case, I therefore substituted the imprisonment terms imposed by the District Judge with the following sentences:

(a) in respect of the offence of driving whilst under disqualification (*ie*, the offence in the Second Charge), 24 months' imprisonment;

(b) in respect of the offence of causing death by rash driving (*ie*, the offence in the First Charge), 15 months' imprisonment; and

(c) in respect of the offence of failing to render assistance after an accident (*ie*, the offence in the Fourth Charge), nine months' imprisonment.

These three sentences are to run consecutively, making a total of 48 months' imprisonment with effect from 4 December 2007. The ten-year disqualification from possessing a driving licence upon the respondent's release from prison is to remain. As the Prosecution did not challenge the sentences imposed by the District Judge in respect of the offences set out in the Fifth Charge and the Seventh Charge respectively (see [3] above), the sentences for these two offences will also remain unchanged.

[note: 1]See para 3 of the Prosecution's statement of facts dated 1 November 2007.

[note: 2]See para 31 of the Public Prosecutor's submissions dated 18 February 2008.

[note: 3]See para 17 of the respondent's mitigation plea dated 4 December 2007.