IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 186

Magistrate's Appeal No 9238 of 2018

Between

Chung Wan

… *Appellant*

And

Public Prosecutor

… *Respondent*

JUDGMENT

[Criminal Procedure and Sentencing] — [Appeal]
[Administrative Law] — [Natural justice] — [Allegation of excessive judicial interference]

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Introduction

1 The appellant was convicted after trial for a charge of voluntarily causing hurt, under s 323 of the Penal Code (Cap 224, 2008 Rev Ed) ("Penal Code"). The District Judge found that the Prosecution had proven beyond a reasonable doubt that the appellant had slapped the complainant, a taxi driver. He sentenced the appellant to four weeks' imprisonment. The appellant now appeals against his conviction and sentence.

2 The appellant also filed a related criminal motion in Criminal Motion No 12 of 2019 ("CM 12/2019") to adduce fresh evidence. I allowed CM 12/2019 in part and allowed parties to address me on the appeal on the basis of the newly adduced evidence. Having considered the parties' submissions and the evidence, I dismiss both appeals against conviction and sentence. I also find

that no excessive judicial interference had occurred at the trial, contrary to the appellant's submissions. I set out my reasons in full below.

Facts

3 On 28 June 2017, the appellant boarded the complainant's taxi after drinking with his friends.[1] During the taxi journey, the appellant placed a cigarette in his mouth. It is disputed whether the cigarette was lit. The appellant and complainant began arguing. At 11.46pm, the complainant called the police while driving and stated that he would drive the appellant to a police station.[2]

4 The complainant then drove his taxi to Blk 58 Marine Terrace, whereupon the appellant and complainant alighted and began arguing outside the taxi. Yussaini Bin Yussoff ("Yussaini"), a passer-by who had parked his Fiat Doblo Maxi[3] ("Fiat") by the roadside, overheard their shouting. It was during this argument that the appellant allegedly slapped the complainant once on his left cheek. At trial, Yussaini drew a diagram (marked and admitted as "Exhibit A" and reproduced below at [24]) which showed the relative positions of the complainant, the appellant and himself, and the complainant's taxi and his Fiat.[4] Yussaini described witnessing the appellant slap the complainant.

5 The complainant called the police at 11.53pm to state that he had called earlier and conveyed his location.[5] The appellant called the police at 11.54pm

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1 Record of Appeal ("ROA") at p 201, Notes of Evidence ("NEs") (3 July 2018) at p 47 ln 12–22.

2 ROA at p 180, NEs (3 July 2018) at p 26 ln 6–8; ROA at p 400, Exhibit P1.

3 ROA at p 46, NEs (2 July 2018) at p 28 ln 11–13.

4 ROA at p 399.

5 ROA at p 180, NEs (3 July 2018) at p 26 ln 11–18; ROA at p 401, Exhibit P2.

to state: "I'm drunk and took a cab [license plate number]. He said I slapped him."[6] After the police responded to the incident, the complainant drove to the Singapore General Hospital ("SGH"), where he was medically examined.[7]

Decision below

6 The District Judge's grounds of decision are set out in full in *Public Prosecutor v Chung Wan* [2019] SGMC 9 ("GD").

7 The District Judge believed the complainant's account of the events prior to the assault, namely, that the appellant opened the taxi door while the taxi was in motion, and subsequently smoked in the taxi and used vulgarities on the complainant. The District Judge found the complainant's evidence to be simple and truthful and corroborated by the evidence of SC Sgt Muhammad Muneer ("Sgt Muneer"), one of the responding officers. The appellant's account that he mistakenly used vulgarities because he believed himself to be in his friend's car instead was not credible, given that he stated in his long statement that he knew he had been in a taxi (GD at [26]–[32]).

8 The District Judge also believed Yussaini's testimony to the effect that he had witnessed the appellant slapping the complainant. He determined that Yussaini was an independent witness with no motive to falsely implicate the appellant (GD at [43]). The District Judge found, however, that the appellant gave three versions of the alleged assault that were internally inconsistent, and that his credit was impeached (GD at [44]–[55], [58]–[60]).

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6 ROA at pp 180–181, NEs (3 July 2018) at p 26 ln 23 – p 27 ln 16; ROA at p 451, Exhibit D1.

7 ROA at p 122, NEs (2 July 2018) at p 104 ln 2–18.

9 The District Judge next found that the complainant's account of the assault was corroborated by the medical evidence, which established that he was diagnosed with a "contusion of face" and "tenderness" over his left cheek (GD at [65]–[70]). He dismissed the Defence's submissions that the inconsistencies in the complainant's oral testimony (relating to the number of calls he made to the police and what he said during those calls) undermined his credibility, as the inconsistencies raised were not material (GD at [72]–[77]). The non-availability of recordings from the in-car camera of the complainant's taxi was also not material, as there was insufficient proof that the evidence had been suppressed or that such evidence would contain relevant footage (GD at [78]–[81]).

10 The District Judge concluded that the Prosecution had proven its case against the appellant beyond a reasonable doubt, and convicted the appellant (GD at [82]). Balancing the relatively minor nature of the complainant's injury against the aggravating factors that the appellant had been intoxicated and had been the source of the disagreement between himself and the complainant, the District Judge applied *Wong Hoi Len v Public Prosecutor* [2009] 1 SLR(R) 115 ("*Wong Hoi Len*"), which established at [20] a four-week sentencing benchmark for a simple assault against a public transport worker. He thus sentenced the appellant to a sentence of four weeks' imprisonment (GD at [85]–[86], [100]–[101]).

Criminal Motion No 12 of 2019

11 The applicant sought in CM 12/2019 to adduce the following evidence:[8]

[8] Appellants' submissions dated 24 May 2019 ("AS") at para 36.

(a) brochures obtained from the Fiat website that showed that Yussaini's Fiat had a height of 1.88m; and

(b) photographs of a scene reconstruction conducted by the appellant, based on Exhibit A (reproduced below at [24]),[9] that showed that Yussaini could not have witnessed the slap occur.

12 The Prosecution objected to the application to adduce fresh evidence. It argued that the evidence as to whether Yussaini could have witnessed the slap was inadmissible opinion evidence.[10] Furthermore, Yussaini's diagram had not contained sufficient evidence as to ground a reliable reconstruction of the scene.[11] Finally, the new evidence would not have an important influence on the result of the case, as the appellant mischaracterised Yussaini's evidence to be that he had seen the events from over his Fiat, when he had testified that he was standing at such an angle as to be able to see the appellant and complainant at the time.[12]

13 Having considered parties' submissions, I agreed with the Prosecution to the extent that the evidence from the scene reconstruction was not of a level of reliability that satisfied the requirement set out in *Ladd v Marshall* [1954] 1 WLR 1489 (affirmed in *Soh Meiyun v Public Prosecutor* [2014] 3 SLR 299 at [14]) that the evidence to be adduced must be such as is presumably to be believed, *ie*, apparently credible, although it need not be incontrovertible. The

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9 ROA at p 399.

10 Prosecution's submissions for CM 12/2019 dated 14 May 2019 ("PS for CM 12/2019") at paras 8–9.

11 PS for CM 12/2019 at paras 11–12.

12 PS for CM 12/2019 at paras 15–17.

scene reconstruction involved opinion evidence about the angle or line of sight that Yussaini had: whether or not Yussaini could hypothetically have seen the offence take place would have been a point of "scientific, technical or other specialised knowledge" which would have required expert evidence on the basis of such specialised knowledge, using the language of ss 47(1) and 47(2) of the Evidence Act (Cap 97, 1997 Rev Ed). The evidence to be adduced did not involve any such expert opinion.

14 Furthermore, the strength and putative weight of the evidence in the form of the scene reconstruction would have been little, given that there was no clear evidence about exactly where Yussaini actually stood. While, from the record, one interpretation would be that he stood right next to his Fiat (see Exhibit A reproduced below at [24]), it was also possible, and perhaps probable, that he meant that he was not immediately next to the Fiat. But I allowed the evidence as to the height of Yussaini's Fiat to be adduced, and proceeded to hear the parties' submissions on the appeal on that basis.

The parties' cases

The appellant's case

15 The appellant argued that the conviction should be overturned on the following bases:

(a) First, Yussaini's evidence was at real risk of contamination as he conversed with the complainant immediately after the slap allegedly occurred. In the alternative, his evidence was not materially relevant as he would not have been able to see the slap take place as the Fiat would have blocked his view of the alleged offence.

(b) Second, no other evidence corroborated the complainant's account. The medical report was based on the complainant's self-reporting. The evidence allegedly from Sgt Muneer was wrongly admitted as hearsay evidence.

(c) Third, due to the lack of corroborative evidence, the complainant's testimony had to be "unusually convincing": see *XP v Public Prosecutor* [2008] 4 SLR(R) 686 at [27]–[34]. This was not the case, given the internal and external inconsistencies in his testimony and his failure to produce relevant in-car camera footage. His embellishment of evidence also displayed his motive to incriminate the appellant.

(d) Fourth, the District Judge erred in finding that the appellant's evidence was inconsistent.

16 The appellant also submitted that the District Judge had excessively interfered with the proceedings and had prejudged the case: *BOI v BOJ* [2018] 2 SLR 1156 ("*BOI*") at [107]–[113]. The District Judge had excessively interrupted the Defence counsel's cross-examination of Yussaini and the complainant.

17 In the alternative, the appellant submitted that the sentence was manifestly excessive. The District Judge should have departed from the *Wong Hoi Len* sentencing benchmark given the appellant's lack of antecedents, good character and cooperation with the authorities; the appellant had also not provoked the complainant, and the offence consisted of a single slap. A fine or a short detention order was more appropriate in the circumstances.

The Prosecution's case

18 The Prosecution responded that the District Judge's findings were supported by the evidence:

(a) The appellant's failure to produce the in-car camera footage and the inconsistencies pertaining to his calls to the police were not material to the question of whether the slap had occurred.

(b) Yussaini's evidence was credible notwithstanding the fresh evidence relating to the height of his Fiat. His evidence at trial was that he had witnessed the slap from an angle over the complainant's taxi, and the height of the Fiat did not affect the credibility of this account.

(c) The fact that the medical evidence was based on the complainant's self-reporting did not undermine the complainant's evidence. His self-reporting was itself corroborative: *Haliffie bin Mamat v Public Prosecutor* [2016] 5 SLR 636 ("*Haliffie*") at [30] and [66].

(d) The appellant's credibility had been rightly impeached. He had failed to explain why he claimed at trial that he accidentally knocked the complainant's face, when he had earlier admitted in his police statement to having "push[ed]" the complainant's cheek in self-defence.

19 As regards the allegation of excessive judicial interference, the Prosecution submitted that the District Judge had confined himself to intervening only to clarify certain matters.

20 Finally, the Prosecution submitted that the appeal against sentence should be dismissed as no mitigating factors warranted a downward adjustment of the indicative starting sentence set out in *Wong Hoi Len*.

The threshold for appellate intervention

21 Appellate intervention is called for only in limited circumstances. The appellate court is not to reassess the evidence as the trial judge would, but is restricted to considering: (a) whether the judge's assessment of witness credibility is plainly wrong or against the weight of evidence; (b) whether the judge's verdict is wrong in law and therefore unreasonable; and (c) whether the judge's decision is inconsistent with the material objective evidence on record, bearing in mind that an appellate court is in as good a position to assess the internal and external consistency of the witnesses' evidence, and to draw the necessary inferences of fact from the circumstances of the case (*Pram Nair v Public Prosecutor* [2017] 2 SLR 1015 at [55]).

22 As for appeals against sentence, an appellate court will be slow to disturb a sentence imposed except where it is satisfied that: (a) the trial judge erred with respect to the proper factual basis for sentencing; (b) the trial judge failed to appreciate the materials placed before the court; (c) the sentence was wrong in principle; or (d) the sentence was manifestly excessive or manifestly inadequate: *Public Prosecutor v UI* [2008] 4 SLR(R) 500 at [12].

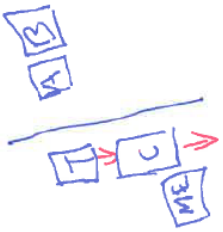
My decision

23 In my judgment, the appellant's conviction under s 323 of the Penal Code should be upheld. I was satisfied that the District Judge's conclusions were supported by the evidence on record. As there are no exceptional facts warranting departure from the benchmark sentence of four weeks' imprisonment established in *Wong Hoi Len*, I also uphold the District Judge's decision on sentence.

Appeal against conviction

The effect of the fresh evidence on Yussaini's credibility and evidence

24 The appellant submitted that Yussaini could not possibly have seen the slap take place as his Fiat would have blocked his line of sight.[13] For reference, I reproduce Exhibit A, as drawn by Yussaini and included in the GD at [40]:



A and B respectively indicate the positions of the complainant and the appellant, and T and C respectively refer to the complainant's taxi and Yussaini's Fiat.[14] Yussaini marked out where he was standing with the figure labelled "me".

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13 AS at paras 39–42, 76–79.

14 ROA at p 36, NEs (2 July 2018) at p 18 ln 20 – p 19 ln 7.

25 The appellant submitted in CM 12/2019 that his scene reconstruction based on Exhibit A and involving persons of roughly the same height as the complainant, appellant and Yussaini showed that Yussaini would not have been able to look over his Fiat. While I did not allow the evidence in the form of the scene reconstruction to be adduced as part of this appeal, I still considered whether the District Judge wrongly believed Yussaini's evidence. Having done so, I find that the appellant's arguments do not go far.

26 First, the argument that Yussaini did not witness the slap must be taken against his consistent testimony under cross-examination to the contrary.[15]

27 Second, the sole fact that the Fiat was taller than Yussaini does not exclude the possibility that the positioning of the parties and the gap between the Fiat and the taxi could have created a vantage point for Yussaini to witness the offence take place. Yussaini was clear under cross-examination that he was able to see the complainant and appellant from above the taxi at an angle, and that his view of the pair was completely unobstructed:[16]

Q	So I'm just imagining this, seems that you---**you have quite of bit an angle for you to see what exactly is going on**. Would that be correct?
A	**Yes**.
Q	So could I---can I suggest to you that you may not have been able to see very clearly what was going on because you were blocked actually by your own car as well as the taxi?
A	I can see very clearly.
Q	How is that?

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15 See, *eg*, ROA at pp 26–29, 37–38, 40–41, 43–44, NEs (2 July 2018) at p 8 ln 20 – p 11 ln 17, p 19 ln 29 – p 20 ln 14, p 22 ln 30 – p 23 ln 17, p 25 ln 29 – p 26 ln 4.

16 ROA at pp 34–36, NEs (2 July 2018) at p 16 ln 19 – p 18 ln 19.

A Because it does not block any view at all.

Q But there are 2 vehicles between you and the incident?

A The taxi is just behind my car and I just beside my door which is my car and **the taxi is not beyond my height. My head is above the rooftop**.

Court: His head is above the top of the car? That is your evidence, right?

Witness: Uh, yes, Your Honour.

Q Okay. But that means you would have then see the head, alright? Above the roof of the car---

A Yes.

Q [---O]f the accused and taxi driver?

A Yes.

Q So you wouldn't have seen their body---of most---

A I can see---

…

A [---**T]he whole figure because they are standing at the pavement.** … It's a pavement … just a bit high then the parking of the car.

…

Court: Alright, so Counsel, is saying that the taxi could have blocked your line of sight. … [W]hy did you disagree then?

Witness: Because, uh, the taxi and my car is just align but **the accused and the taxi driver is at the pavement which is beside like of---apart of---apart from the taxi. So which is---it's a very clear view---**

…

Witness: **from my angle.**

[emphasis added]

28 As regards this portion of the evidence, the appellant submitted that the fresh evidence as to the height of Yussaini's Fiat affected Yussaini's credibility. Although the Fiat (which was 1.88m tall) was taller than Yussaini (who was 1.79m tall),[17] Yussaini had claimed at trial that his Fiat was shoulder-height:[18]

> Q And could you stand up and indicate how high the roof of your car was relative to your body when you came out of the car. Please stand up and show the Court with your hand, how high the roof of your car was to your body.
>
> …
>
> A Approximately it's about my---my shoulder level.

The appellant also orally submitted that it was misleading for Yussaini to refer to his Fiat as a "car".

29 To my mind, while Yussaini's recollection about the height of the Fiat was inaccurate, this discrepancy is not material. I also do not place much weight on the fact that Yussaini occasionally referred to his Fiat as a "car". As seen from his testimony in its full context, he used the word "car" to refer to the complainant's taxi and his own Fiat without distinction. While this was not the most precise usage, it is clear to me that his evidence was not that he viewed the slap from looking over and above his Fiat. Rather, he implied that he viewed the incident from an angle and from above the taxi:

> [T]he taxi is not beyond my height. My head is above the rooftop. … I can see … the whole figure because they are standing at the pavement … It's a pavement … just a bit high then [*sic*] the parking of the car … [T]he accused and the taxi driver is at the pavement which is beside like of---apart of---apart from the taxi. So which is---it's a very clear view--- … from my angle.

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17 ROA at p 45, NEs (2 July 2018) at p 27 ln 30–31.

18 ROA pp 46–47, NEs (2 July 2018) at p 28 ln 32 – p 29 ln 8.

30 Accordingly, I do not agree with the appellant that Yussaini was mistaken or "outright lied to the court about what he allegedly saw" [emphasis in original].[19] The appellant's argument assumes without clear basis that Yussaini's only vantage point of the slap was from above the Fiat, and does not account for the possible positioning of the parties that would have allowed Yussaini to witness the slap from above the taxi instead.

31 In the alternative, the appellant argued that Yussaini's evidence could have been contaminated: his memory of the event might have been "the subject of a transfer of recollection from the Complainant's version of events" or he might have been motivated by a desire to help the complainant, whom he perceived to be the victim.[20] In my view, both possibilities are inherently speculative and unlikely.

32 In *Lee Kwang Peng v Public Prosecutor and another appeal* [1997] 2 SLR(R) 569, the High Court discussed the concept of "innocent infection" at [92] (citing *R v H* [1995] 2 AC 596 at 880): communications between witnesses may lead to the transfer of recollections between them and an unconscious elision of the differences between their accounts. The High Court held that the court should remain sensitive to the possibility of contamination, and the veracity of the evidence and the strength of recollection of the witness must be subject to scrutiny. However, this does not require the Prosecution to prove beyond reasonable doubt that there was no risk of contamination (at [95]–[97]).

33 Here, the likelihood that Yussaini's recollection of the slap was transferred from the complainant's is minimal. While the appellant correctly

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19 AS at para 80.

20 AS at paras 81–93.

noted that Yussaini and the complainant spoke before the police arrived, the conversation between them lasted at most ten minutes, according to Yussaini.[21] This corresponded with the evidence of the complainant, who stated that it took five to ten minutes for the police to arrive after he called the police at around 11.55pm.[22] Sgt Mohamaed Zamil Bin Mohamed Anis ("Sgt Zamil") confirmed that that he and the other responding officers arrived at the scene at 11.59pm.[23] Yussaini was also clear even on the day of the incident that he had witnessed the slap, and conveyed as much to Sgt Zamil.[24]

34 Weighing the probabilities of the situation, this was not a situation where either a sustained conversation between Yussaini and the complainant or repetition over a period of time would have caused Yussaini to develop false memories. I also agree with the District Judge that it was unlikely that Yussaini would have been so motivated to fabricate a story to help a "victim" (who was a stranger to him) as to maintain a fabricated story throughout police investigations and at trial (see GD at [43]).

35 Finally, the appellant argued that Yussaini's evidence was not materially relevant as he could not state definitively whether the slap was "accidental".[25] I agree with the Prosecution that this did not detract from Yussaini's credibility.[26] Yussaini could not have answered questions as to the appellant's state of mind, which was not within his knowledge. The value of his evidence instead lay in

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21 ROA at pp 29–30, NEs (2 July 2018) at p 11 ln 31 – p 12 ln 22.

22 ROA at p 61, NEs (2 July 2018) at p 43 ln 12–24.

23 ROA at p 140, NEs (2 July 2018) at p 122 ln 3–7.

24 ROA at p 144, NEs (2 July 2018) at p 126 ln 6–13.

25 AS at paras 97–99.

26 Prosecution's submissions dated 14 May 2019 ("PS") at paras 37–38.

establishing that the appellant had contacted the complainant's cheek with his hand and in corroborating the complainant's evidence that he had been slapped.

The strength of the complainant's evidence

36 The appellant's submissions as regards the District Judge's erroneous reliance on the complainant's evidence turned on:

(a) The complainant's inconsistencies about the number of "999" calls made: he claimed to have made three calls but the police only received two calls.[27]

(b) Whether the complainant informed the police of the alleged slap during his second call: while he claimed to have done so, this was not reflected in the First Information Report of his second call to the police.[28]

(c) The possibility that the complainant suppressed in-car audio recordings that would have disclosed the circumstances leading up to the alleged slap.[29]

37 Regarding the first two points, the Prosecution attributed the complainant's inconsistencies about the number of phone calls made to a lapse in his memory, and his apparent failure to inform the police of the slap to his worry that the appellant would leave without paying his taxi fare.[30]

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27 AS at paras 126–130.

28 AS at paras 131–135.

29 AS at paras 136–144.

30 PS at paras 27–33.

38 In this matter, I agree with the District Judge's view that while the complainant's memory was faulty, this did not raise a reasonable doubt on its own as to undermine the Prosecution's case (GD at [73]). Even if it might be that the complainant sought to embellish his version of events, the core of his testimony regarding the slap was sound and corroborated by Yussaini's eyewitness account and the appellant's own admission in his long statement recorded under s 22 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) (marked and admitted as "Exhibit P4" and discussed below at [40(a)(i)]).

39 Regarding the in-car camera footage, I also agree with the District Judge that any in-car recording would not have disclosed whether a slap had taken place (GD at [79] and [80]). Even if such footage showed that the complainant had provoked the appellant (which is speculative), the appellant's use of force would have been disproportionate in the circumstances.

The inherent weaknesses of the appellant's defence

40 Weighed against Yussaini's independent evidence and the complainant's testimony is the appellant's shifting and unconvincing defence at trial. The District Judge's reasoning in the GD was as follows (at [44] to [63]):

(a) The appellant gave three versions of the slapping incident:

(i) First version – in Exhibit P4, the appellant admitted to having "used [his] right hand to push [the complainant's] left cheek away" to "fend him off" as the complainant "[kept] moving closer and closer to [him]".[31]

[31] See ROA at p 403 at para 4.

(ii) Second version – at trial, the appellant's counsel put to the complainant and Yussaini that the appellant's right hand had "slip[ped] up and hit the taxi driver face" because the complainant had been pushing the appellant.

(iii) Third version – in the appellant's evidence-in-chief, he claimed that the complainant had been "leaning forward" while he pushed the appellant's hands down. When the appellant raised his hands to their original position, the complainant's hand slipped, and the appellant's hand "knocked against [the complainant's] face".

(b) The appellant's credit was impeached, given four material discrepancies between his oral testimony and his account in Exhibit P4. The District Judge rejected the appellant's argument that these material discrepancies were attributable to a lack of proficiency in English, the language Exhibit P4 was recorded in.

(c) The appellant's bare denial of the offence in his cautioned statement (marked and admitted as "Exhibit P5") was further evidence of his changes in legal position, which shifted from his invocation of private defence in Exhibit P4, to his bare denial in Exhibit P5, to his reliance on the defence of accident at trial.

41 While I agree with the appellant that the alleged second and third versions of the appellant's evidence were not materially inconsistent,[32] I

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32 See AS at paras 171–178.

disagree with his arguments to the effect that the District Judge erred in impeaching his credit. His arguments are set out and assessed as follows.

42 First, the appellant claimed that the evidence in Exhibit P4 was not reliable: he had not given detailed answers and did not thoroughly vet the long statement as he did not want to complicate matters and thought the giving of the statement was a formality.[33] This is unconvincing; the appellant was surely aware of the seriousness of the statement-recording. He had even pre-emptively called the police a minute after the complainant reported that he had been slapped (see above at [5]).[34] His claim that he did not include details in Exhibit P4 because he wanted to expedite matters is also at odds with the contents of the statement, which included specific details as to whether he had smoked in the complainant's taxi and the sequence of events that followed.

43 Second, the appellant argued that the District Judge erred in failing to consider his lack of proficiency in English.[35] I do not consider that his proficiency (or lack thereof) should reduce the weight that should be given to his statement in Exhibit P4, and take into account the following.

(a) The District Judge's finding of fact that the appellant was conversant in English is justifiable, given the instances where the appellant answered questions under cross-examination in English despite having a translator present in court (see GD at [59(i)]).

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33 AS at paras 153–158, 168.

34 ROA at p 451, Exhibit D1.

35 AS at paras 159–165.

(b) Even if the appellant's command of the language was imperfect, when given an opportunity to explain what he actually meant in Exhibit P4, he only replaced his use of the word "push [his left cheek away]" with the words "bump" or "knock".[36] Both characterisations incriminated the appellant and would have made out the charge, namely, that the appellant had voluntarily caused hurt to the complainant.

44 In the circumstances, it was incriminating that the appellant acknowledged in Exhibit P4 that he had "used his right hand to push [or bump or knock the complainant's] cheek away". His account in Exhibit P4 implied that he acted intentionally "to fend [the complainant] off", albeit because he was concerned that the complainant was "moving closer and closer … too close to [him]". This account is inconsistent with his oral testimony that the contact made with the complainant's cheek was unintentional and accidental. The District Judge was also entitled to draw an adverse inference against him (GD at [49]) for his failure to mention the exculpatory facts that it was the complainant was the physical aggressor at the time, and that the contact between them was merely accidental: see *Kwek Seow Hock v Public Prosecutor* [2011] 3 SLR 157 at [19].

45 That said, some parts of Exhibit P4 were inconsistent with the appellant's testimony, and it was on this basis that the District Judge found his credit to be impeached (see above at [40(b)]). The material inconsistencies that affected his credibility pertained to (a) whether he uttered vulgarities during the taxi journey; (b) the manner in which he contacted the complainant's face; (c) whether he could recall that police officers brought him home; and

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[36] ROA at p 233, NEs (3 July 2018) at p 79 ln 1–12.

(d) whether he asserted during the recording of the statement that the incident was a "misunderstanding" (see GD at [56]–[57]). Regardless, these discrepancies did not raise a reasonable doubt as to the reliability of the inculpatory portions of Exhibit P4 that made out the charge, especially when considered alongside the evidence as a whole.

Other aspects of the appellant's case

46 I now consider the remaining arguments raised by the appellant.

The District Judge's reliance on hearsay evidence

47 The appellant argued that the District Judge was wrong to have relied on hearsay evidence: at [27] of the GD, the District Judge held that Sgt Zamil's evidence of what Sgt Muneer said corroborated the complainant's account that the appellant had opened his taxi door in the middle of the taxi journey.[37]

48 While I agree with the appellant that this constitutes hearsay evidence, I disagree that the District Judge's consideration of it undermined either the complainant's credibility or the Prosecution's case. The District Judge had found the complainant to be a credible witness independently of his consideration of Sgt Muneer's evidence (GD at [26]); this matter was also peripheral to the making out of the charge.

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[37] AS at paras 105–111.

The value of the medical evidence

49 The appellant argued that the medical evidence did not corroborate the complainant's allegation that he was slapped, as the diagnosis of "tenderness" in the medical report was based on the complainant's subjective self-reporting.[38]

50 In this regard, I am inclined towards the Prosecution's approach towards corroboration that subsequent complaints by the complainant may be treated as corroboration provided that the statement implicating the accused person was made at the first reasonable opportunity after the commission of the offence: *Haliffie* at [30].[39] This was the case here: right after the alleged slap, the complainant told several third parties that he had been slapped by the appellant. These third parties included Yussaini, Sgt Zamil and the doctor who examined him (see also *Haliffie* at [64]–[66]).

51 While there will always be some inherent risk that reports of "tenderness" may be fabricated, there is no basis to conclude that this was the case here. The theoretical possibility that the complainant faked his account to the doctor must still be measured against: (a) his insistence on the day of the event to Yussaini and Sgt Zamil that he had been slapped by the appellant; (b) Yussaini's eyewitness account of the argument between the complainant and appellant and the slap; (c) the complainant's willingness to seek medical treatment and to attend follow-up reviews;[40] and (d) the deficiencies in the appellant's own case.

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38 AS at paras 112–118.

39 PS at para 40.

40 ROA at p 92.

Allegations of excessive judicial interference and prejudgment

52 The appellant in his written submissions highlighted several instances at trial that allegedly showed the District Judge to have "descended into the arena" such that a reasonable observer would have formed the view that there was prejudgment on his part amounting to apparent bias.[41] This point was not strongly pursued in oral arguments.

53 In this regard, it is helpful to restate some of the principles to be applied when considering if excessive judicial interference has occurred, as articulated in *BOI* at [111(c)] and [111(g)], citing *Mohammed Ali bin Johari v Public Prosecutor* [2008] 4 SLR(R) 1058 at [117] *et seq*:

> (c) … [T]he judge is not obliged to remain silent, and can ask witnesses or counsel questions if (*inter alia*):
>
> (i) it is necessary to clarify a point or issue that has been overlooked or has been left obscure, or to raise an important issue that has been overlooked by counsel; this is particularly important in criminal cases where the point or issue relates to the right of the accused to fully present his or her defence in relation to the charges concerned;
>
> (ii) it enables him or her to follow the points made by counsel;
>
> (iii) it is necessary to exclude irrelevancies and/or discourage repetition and/or prevent undue evasion and/or obduracy by the witness concerned (or even by counsel);
>
> (iv) it serves to assist counsel and their clients to be cognisant of what is troubling the judge, provided it is clear that the judge is keeping an open mind and has not prejudged the outcome of the particular issue or issues (and, *a fortiori*, the result of the case itself).
>
> The judge, preferably, should not engage in sustained questioning until counsel has completed his questioning of the

41 AS at paras 198–217.

> witness on the issues concerned. Further, any intervention by the judge during the *cross-examination* of a witness should *generally be minimal*. …
>
> …
>
> (g) The court will only find that there has been excessive judicial interference if the situation is an *egregious* one. Such cases will necessarily be *rare*. …
>
> [emphasis in original]

54 If the matter had been pursued, I would in any event have concluded that the District Judge's interjections at trial did not cross the threshold for excessive judicial interference. It is clear from the notes of evidence that the District Judge's questioning, while lengthy at points, sought only to clarify answers given by the witnesses or to expedite matters. The extracts relied upon by the appellant also omitted the instances where the District Judge gave the appellant's counsel the opportunity to return to his original line of questioning,[42] and where he treated the Prosecution in a similar manner, such as when he interrupted the Prosecution's cross-examination of the appellant to point out that the Prosecution had mischaracterised the evidence that had been given.[43]

Conclusions on conviction

55 Considering the evidence as a whole, the District Judge did not err in convicting the appellant of the charge. Although the credibility of Yussaini's evidence is affected by the fresh evidence as to the height of his Fiat, his evidence can still be relied upon. The appellant's own case was undermined by his vacillating evidence. The complainant's evidence, while imperfect, is sufficiently convincing in the circumstances.

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42 *Eg*, ROA at p 112, NEs (2 July 2018) at p 94 ln 5–8.

43 *Eg*, ROA at pp 250–251, NEs (3 July 2018) at p 96 – p 97 ln 7.

Appeal against sentence

56 Turning to the appeal against sentence, I accept the appellant's argument that the offence in question involved only a slap and resulted in minor injuries. The District Judge took this into account in the GD at [97].

57 Nevertheless, even leaving aside whether the District Judge correctly relied on the events prior to the assault, two aggravating considerations featured in this case. First, the appellant was, by his own admission, voluntarily intoxicated at the time, and his voluntary intoxication was an aggravating factor in sentencing (see *Wong Hoi Len* at [44]).[44] Second, the offence took place at night, when taxi drivers are more vulnerable (see *Wong Hoi Len* at [25]).

58 The appellant had also claimed trial, and is thus not entitled to any sentencing discount that might otherwise have been granted in view of a timely plea of guilt that could have evidenced his remorse or which would have saved on the costs of a trial (see Sundaresh Menon CJ's recent comments in *Gan Chai Bee Anne v Public Prosecutor* [2019] SGHC 42 at [73]). Finally, there were no mitigating factors present as to justify a departure from the benchmark sentence in *Wong Hoi Len.* I therefore find that the sentence of four weeks' imprisonment was appropriate.

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44 ROA at p 216, NEs (3 July 2018) at p 62 ln 5–9.

Conclusion

59 For the reasons set out above, I dismiss the appeals against conviction and sentence, and find that there was no excessive judicial interference in the trial below.

Aedit Abdullah
Judge

Derek Kang Yu Hsien and Ammar Lulla (Cairnhill Law LLC) for the appellant;
Peggy Pao and Seah Ee Wei (Attorney-General's Chambers) for the respondent.