

Balbir Singh s/o Amar Singh v Public Prosecutor and another appeal
[2010] SGHC 123

Case Number : Magistrate's Appeal Nos 293 of 2009 & 300 of 2009
Decision Date : 22 April 2010
Tribunal/Court : High Court
Coram : Lee Seiu Kin J
Counsel Name(s) : S K Kumar (S K Kumar & Associates) for the appellant in MA 293 of 2009; Hay Hung Chun (Attorney-General's Chambers) for the respondent; Tan Lee Cheng (Rajah & Tann LLP) for the appellant in MA 300 of 2009; Hay Hung Chun (Attorney-General's Chambers) for the respondent.
Parties : Balbir Singh s/o Amar Singh — Public Prosecutor

Criminal Law – Voluntarily causing hurt – sections 323 Penal Code (Cap 224)

Criminal Procedure and Sentencing – Sentencing Principles – Offences against public transport workers

22 April 2010

Lee Seiu Kin J:

1 Singapore, with its high population density, relies very heavily on public transport. These range from private limousine services and public taxis in which the routes are personalised but which convey low volumes of passengers, to coaches and mini-buses where the routes may be tailored to suit a small group of users, to public buses and rail transport (both light and mass rapid) where the routes are fixed and high volumes of passengers are carried daily. The vast majority of people in Singapore rely on one mode or other of public transport – sometimes a combination – to go about their daily affairs: to get to their place of work, to school, for meals or recreation, or to attend to urgent matters. Public transport provides a vital service to the population, and is probably the most important facility after housing and utilities.

2 The following incidents highlight the often invidious and sometimes dangerous situations that persons engaged in providing public transport are exposed to. In February 2009, an SBS bus captain was attacked in broad daylight by two parang-wielding robbers on board his bus. He had been wounded when he attempted to thwart the robbers' attempts to rob a lady passenger whom they had threatened with their parangs. With deep gashes on his left shoulder, a fractured left wrist bone and bleeding heavily, he drove 1km to seek help. [\[note: 1\]](#) In January 2010, an SBS bus service was disrupted when a party of five refused to alight from the bus. They had boarded the said bus which did not have wheelchair accessibility and were informed by the bus captain that they were not allowed to bring their wheelchair onto the bus for safety reasons. The quintet however insisted on doing so. For six hours, the group refused to leave, crying and wailing to the police who later arrived at the scene. [\[note: 2\]](#)

3 Public transport, in all its modes, is available throughout the day and well into the night. Taxis are available 24 hours a day. People who work in the public transport industry have to work long hours and in shifts to provide such extensive availability of service. Most public transport passengers

are courteous and appreciative of the service provided. In any event, they are intent on getting to their destinations, and in most instances, they do so uneventfully. But there will always be a minority who are rude, whether by nature or circumstances, or a combination of both. When an incident occurs that does not meet with the satisfaction of such persons, they become disagreeable. In mercifully rarer instances, a passenger is outright malicious and does an act with criminal intent, such as robbery. The point is that people who provide public transport services are constantly exposed to a wide range of people. Such exposure is often in vulnerable situations: the taxi driver alone with a passenger in a deserted part of the island, a bus captain operating the bus on his own. Very often, the public transport worker has a heavy responsibility to discharge: a bus or a train full of passengers whose life and limb are in his hands.

4 The need to take a serious view of assaults on people who provide public transport services was brought to the fore in *Wong Hoi Len v Public Prosecutor* [2009] 1 SLR(R) 115 (“*Wong Hoi Len*”). In that case the appellant (“Wong”) pleaded guilty to a charge under s 323 of the Penal Code (Cap 224, 2008 Rev Ed). Wong, after a drinking session, had boarded the victim’s taxi and, as it was travelling, vomited in it. The victim stopped the taxi, got out and berated Wong, who responded by angrily pushing the victim to the ground with both hands. However Wong did not stop at that. While the victim was still on the ground, Wong punched him several times on the right eye, forehead, cheek and nose, causing deep facial bruises. There were defensive injuries on the right hand, showing that the victim had tried to fend off Wong’s blows. On the other hand, Wong was found to have suffered only a superficial scratch over his left cheek. In the midst of the struggle, the victim stopped moving and lay motionless on the ground. It turned out that he had an underlying heart disease which was triggered by the trauma he had suffered, although his condition was such that sudden death could have occurred at any time even in the absence of stress or trauma.

5 Wong pleaded guilty to the charge and was sentenced to one month’s imprisonment by the district judge (“DJ”). He appealed and VK Rajah JA not only dismissed the appeal but enhanced the sentence of imprisonment to three months even though the Public Prosecutor did not appeal. In so doing, the Judge emphasised the importance of taxi drivers to the community, their arduous working conditions and their vulnerability to physical violence. He highlighted reports of rising incidents of violence committed against taxi drivers. Turning to public transport workers in general, VK Rajah JA (“the learned Judge”) said at [11]:

11 The reported increase in criminal acts targeting persons working in the field of public transport is worrying. It should be nipped in the bud through, *inter alia*, deterrent sentencing of offenders. There is little doubt that public transport workers (this includes bus captains) are more vulnerable to criminal violence than their counterparts in most other professions. They are constantly exposed on the service frontline and, very often, are left to fend for themselves when confronted with difficult and/or unruly passengers. In Duncan Chappell & Vittorio Di Martino, *Violence at Work* (International Labour Office, 2nd Ed, 2000) at p 67, the authors observed that, of lone workers, taxi drivers in many places were at the “greatest risk of violence”. At the same time, other public transport workers such as bus drivers were observed to be at “special risk” (*id*, at pp 68–69). The authors also noted that night time was the highest-risk driving period for taxi drivers, and that customer intoxication appeared to play a role in precipitating violence.

6 The learned Judge pointed to legislation in New South Wales and Northern Territories of Australia that provided for greater punishment for offences against public transport workers. He noted that even in the absence of legislation, the courts in Queensland and England took a more serious view of offences against public transport workers. The learned Judge also referred to cases in Singapore in which a similar attitude was adopted. He concluded as follows at [20]:

20 In my view, where the victim of an offence is a public transport worker, policy considerations should apply with equal, if not even greater, force than in the case of road rage offences. As such, in cases where an accused person with no antecedent pleads guilty to a charge under s 323 of the Penal Code and the recipient of violence is a public transport worker, I am of the view that the starting benchmark for a simple assault should be a custodial sentence of around four weeks. The actual sentence meted out would, however, be dependent on the peculiar circumstances of each incident. How was the disturbance initiated? Who was the aggressor? What were the injuries caused? Careful attention must be given to the precise factual matrices ...

7 The foregoing provides the background to two appeals from two DJs that I heard on 26 November 2009. In each case the appellant pleaded guilty to a charge under s 323 of the Penal Code of voluntarily causing hurt to a person providing public transport service. *Wong Hoi Len* was relied on by both DJs below. In MA 293 of 2009, Balbir Singh s/o Amar Singh ("Singh") was convicted of voluntarily causing hurt to an SBS bus captain and sentenced to four weeks' imprisonment. In MA 300 of 2009, Taniguchi Mitsuru ("Taniguchi") was convicted of the same charge, but to a taxi driver, and sentenced to six weeks' imprisonment. I dismissed the appeal by Singh but allowed the appeal by Taniguchi. As these are two contrasting cases, it would be useful to deal with them in a single judgment.

MA 293 of 2009

8 In MA 293 of 2009, the appellant, Singh had kicked a bus captain when told by the latter to pay the bus fare. Upon his plea of guilt, Singh was convicted by the DJ and sentenced to a four-week imprisonment term. His appeal was against the sentence.

9 Singh was 45 years old and the victim, the bus captain Yap Eyu Kiong ("Yap") was 56 years of age. The agreed statement of facts states as follows:

4 On 16/02/2009 at about 10.31 pm, at Blk 206 Mars[i]ling Drive Bus stop, complainant called for police informing that "I am the bus driver of 903, TIBS, there is this driver here giving me problem. We stopped at the bus stop. Please send your men here now."

5 Investigation revealed that on 16/02/2009 at about 10.13 pm, complainant was driving bus service number 903 registration number: TIB1193C from Woodlands Regional Interchange. He drove to the designated berth to allow passengers to board and the accused was the last to board the said bus. Complainant then started to drive the bus and he noticed that the accused did not pay for the bus fare and he walked pas[t] the driver's seat and sat on a seat near to the complainant.

6 Investigation further revealed that during the journey, the complainant stopped at the Blk 19 Marsiling Lane bus stop and he asked the accused to pay for the bus fare but he remained quiet. After the passengers have alighted at this bus stop, complainant closed the door and continued with the bus journey. At the next bus stop, which was Blk 206 Mars[i]ling Drive, complainant once again asked the accused to pay the bus fare and the accused aggressively scolded the complainant. Thereafter, the accused kicked complainant once on his left leg. Complainant immediately called for police assistance.

7 Investigation also revealed that at the time of incident, the witness also saw the accused kicking the complainant's left leg.

8 Complainant was examined by Dr Lee Bing Ming Simon on 17th February 2009 from 1054 hrs to 1106 hrs at Woodlands Polyclinic. Complainant was diagnosed to have sustained a contusion on the left leg/calf.

10 In mitigation, counsel for Singh, Mr S K Kumar ("Mr Kumar"), stated that Singh had pleaded guilty thereby saving the Court's time and resources; that Singh was married with three children; that he was the main breadwinner supporting the family and had cooperated with the police and was a first offender.

11 In his grounds of decision ("GD"), the DJ cited extensively from the decision of the High Court in *Wong Hoi Len* (see [9] of GD). The DJ concurred with the Court's observation therein that public transport workers were more vulnerable to criminal violence than other public transport workers. [\[note: 31\]](#) The cited extracts also highlighted that in other jurisdictions there has been found a need to impose deterrent sentences to protect public transport workers and that it is an aggravating factor where the victim is a public transport worker. One of the extracts alluded to the case of *Public Prosecutor v Law Aik Meng* [2007] 2 SLR(R) 814 which the Court in *Wong Hoi Len* pointed out that it was decided in that case that where an offence involved a vulnerable victim or affected the provision of a public service, general deterrence should assume special significance and relevance. Policy considerations, the Court in *Wong Hoi Len* observed, applied with equal, if not greater, force than in the case of road rage offences where the victim of an offence was a public transport worker. The Court in *Wong Hoi Len* proposed a sentencing benchmark of around four weeks' jail for a "simple assault" against a public transport worker where the offender had no antecedents and had pleaded guilty to a charge under s 323 of the Penal Code. The DJ remarked that a "clear message" had to be delivered that violence against public transport workers would not be condoned and that such public transport workers had "every right to work in a safe and secure environment" (at [10]). In the premises, he sentenced Singh to four weeks' imprisonment.

12 Before me, Mr Kumar submitted that the mitigation plea had not been accorded the weight it deserved; that the kick was spontaneous as opposed to pre-meditated and that the injuries caused by Singh were very minor and would thus warrant the operation of s 95 of the Penal Code. Mr Kumar submitted that the circumstances leading to the offence was at variance with that in the agreed statement of facts ("ASOF"). However he conceded that as counsel for Singh in the hearing below, he had not resolved these discrepancies between the ASOF and mitigation plea. Indeed, he had not objected to the ASOF at the hearing below. Neither did he ask for a Newton hearing. There had only been one amendment sought by Singh even though it was open to him to challenge anything in the statement of facts. In any event, I found that the facts which were disputed at the appellate stage were irrelevant. In the circumstances, I proceeded with the appeal on the basis of the ASOF.

13 The material elements of the case are as follows. Singh boarded the bus at around 10pm. He did not pay the bus fare and yet had the temerity to sit near Yap. When Yap asked him a second time to pay the bus fare, he started aggressively scolding Yap and then walked up to him and gave him a kick. As Mr Kumar conceded before me, Yap was only trying to do his job and had not gone about it in an obnoxious manner.

14 What makes offences against public transport workers so repugnant is the exploitation of their vulnerability. The nature and degree of vulnerability of taxi drivers, bus captains, and other public transport workers may vary across the transport modes, but it is undisputed that the multi-faceted risks faced by all of them by virtue of their job makes them more vulnerable than other professions. In this case, Singh's offence was especially reprehensible as it exploited the fact that Yap, as a bus captain, had multiple tasks to perform: Yap had to ensure that commuters paid their fares while

simultaneously focusing on his driving and the road, and ensuring the safety of all his passengers. All these tasks had to be performed constantly throughout the journey while driving long hours. Moreover, the offence took place at night, when it is more difficult to drive due to reduced visibility. Bus captains are without doubt, a vulnerable group of people in that they are exposed to greater risks since they have many matters to attend to simultaneously. In other words, the various demands on their attention by their responsibilities make these bus captains easy targets. They also serve a greater volume of human traffic which increases their risk of being assaulted by rogue commuters. They are also vulnerable in that it is difficult for them to fend off attacks because of where they are seated *vis-à-vis* the commuters.

15 It appears to me that Singh was hoping that his dishonest act of not paying the fare would go undetected by the driver who would be too busy to notice this. When Yap asked Singh to pay up the first time, Singh simply remained silent. But when Yap asked a second time, Singh flared up and started scolding him. Singh probably felt unhappy that Yap was performing his duties so well. This incident would have, at the very least, caused inconvenience to the other commuters and when Singh kicked Yap, it would have also caused consternation and even fear to other commuters.

16 To discharge their duties efficaciously and efficiently, public transport workers need to be protected and to feel protected from all manners of violence and aggression. Bus captains have an especially onerous burden given the large number of commuters they serve everyday and the responsibilities they shoulder. In fact, last month SBS Transit announced a 15% salary increase to attract more Singaporeans into this vocation. [\[note: 41\]](#) The press release reported that the new monthly basic salary of \$1,375 would mean that new Singaporean bus captains could earn over \$1,900 every month in their first year of employment. NTUC Assistant Secretary-General and NTWU Acting Executive Secretary Mr Ong Ye Kung had this to say:

A basic salary of \$1,375 better reflects the scope of responsibilities of a Bus Captain, and the prevailing situation in the Singapore labour market today. It is also a clear signal from SBS Transit that driving buses safely and efficiently is a core capability of the company, and it intends to attract good Singaporean workers to do the job. NTWU will give our full support to SBS Transit to make sure that higher pay incentivises higher productivity, and higher productivity drives higher pay. This way, company and workers all benefit.

17 Indeed, given the heavy responsibilities borne by bus captains and the demands of safety and efficiency that is exacted upon them, the court should not condone any mischief by commuters who disrupt bus services and interfere with the bus captain's discharge of his duties. *A fortiori*, it cannot take lightly acts of violence or aggression towards bus captains which would put the latter in fear of their personal safety and the rest of the commuters.

18 Mr Kumar attempted to invoke s 95 of the Penal Code which provides that

Nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm.

19 In *Teo Geok Fong v Lim Eng Hock* [1996] 2 SLR(R) 957 ("*Teo Geok Fong*"), a couple were in the midst of divorce proceedings. The wife had slapped her husband because she was annoyed with him taking photographs of her removing her belongings from the matrimonial home. She was charged and convicted of committing an offence under s 323 of the Penal Code (the penalties prescribed then were a maximum jail term of one year, or with fine which may extend to \$1,000, or with both). The former Chief Justice Yong Pung How hearing the appeal observed at [50] of the judgment that:

... s 95 provides relief to an offender where the act is negligible or the offence is of a trivial character ... it [also] applies ... where the act was deliberate. The section would apply if the act causes harm or is intended to cause harm or is known to be likely to cause harm, provided the harm is so slight that no person of ordinary sense and temper would complain of such harm.

20 Noting that the wife had administered a single slap and that there were no marks or scratches and the husband had not bothered to seek medical attention, the Court remarked that the injury must have been minor. Further, the husband had been upsetting the wife by his action. Tensions were running high in their matrimonial dispute in the courts and these factors converged to make her sufficiently upset to slap the husband. *Ergo*,

57 ... it would not be in the interest of justice to penalise the appellant for what, in my opinion, was a negligible wrong. Although the appellant was clearly guilty of the offence, I would apply the *de minimis* principle under s 95 of the Penal Code.

21 The wife's appeal was thus allowed but that case is far removed from the present one. Quite apart from the fact that Yap had suffered a bruise arising from the kick by Singh, the circumstances are very different. *Teo Geok Fong* was in the context of a domestic dispute and as it was the wife who had hit the husband; it was not a case of one party taking advantage of its superior strength over the other party. Furthermore, although they were in the midst of a divorce, a criminal conviction arising from the incident could wreck any chance of reconciliation and certainly reduce chances of cooperation between them in relation to the care of their children.

22 In deciding on the appropriate sentence, the degree of violence visited on the victim is but one factor, important though it is. The circumstances in which the act was committed may be relevant. In the present case, Singh was in the wrong in not paying the fare, yet he behaved in a thuggish manner towards the driver who was only carrying out the job he was paid to do. Singh had taken advantage of the vulnerability of Yap for whom the most important task was to operate the bus and ensure the safety of his passengers and other road users. In addition to this important and onerous task, Yap had to see to it that persons boarding the bus should pay the fare. This was a difficult enough task to perform; yet Singh had not only acted dishonestly but had the temerity to carry out an act of physical violence. His offence has to be seen in this context.

23 People who provide public transport services perform tasks that are onerous and dangerous, particularly where they are in charge of large vehicles because the safety of a large number of persons, both in and out of the vehicle, are at stake. The law cannot and will not condone the reprehensible acts of passengers who exploit the vulnerability of public transport workers and threaten their safety and that of other passengers/commuters. The court will not hesitate to impose severe punishment to serve as a general deterrence in appropriate cases. This appeal is one such case in which a deterrent sentence is warranted.

24 For the foregoing reasons, I found that the sentence of four weeks' imprisonment was not manifestly excessive and dismissed Singh's appeal.

MA 300 of 2009

25 In the second appeal, MA 300 of 2009, the appellant, Taniguchi, had also pleaded guilty to a charge under s 323 of the Penal Code. The victim was a 65 year old taxi driver Lim Hing Soon ("Lim"). The relevant parts of the agreed statement of facts tendered to the court below are as follows:

3. On 2 September 2008 at or about 12.40am, an unknown male caller informed the [police]

that a "taxi driver is assaulted here and we have detained the assailant. Please send the police and ambulance." The incident location was given as the main road in front of Block 105B Edgefield Plains, Singapore.

4. Investigations revealed that on 2 September 2008, just after midnight, the accused boarded the victim's taxi along Orchard Road. The accused smelt strongly of alcohol. The accused showed the victim an address on his mobile phone, Block 126 Edgefield Plains Singapore. The victim thus drove to Punggol Estate; however, he was unable to find Block 126.

5. This angered the accused who informed the victim that he would not pay the taxi fare as the victim was unable to find the correct block. The accused instructed the victim to stop by the side of the road.

6. The victim stopped in front of Block 105B Edgefield Plains, Singapore. The accused alighted from the taxi without paying the taxi fare. The victim therefore followed the accused to collect his taxi fare. The accused pushed the victim.

7. The victim returned to his taxi and retrieved an umbrella. The accused grabbed the umbrella and a tussle ensued. During the tussle, the victim fell to the floor. However, the tussle for control of the umbrella continued. In the course of this tussle, the victim suffered injuries.

8. The victim was subsequently conveyed to Changi General Hospital by ambulance. The medical report dated 16 October 2008 stated that the victim suffered the following injuries:

- a. a 7 cm laceration over the forehead;
- b. left upper thigh wound; and
- c. tenderness over the left anterior chest wall.

Intramuscular anti tetanus (IM ATT) injection was administered. The wounds over the forehead and thigh were cleaned and closed with sutures. The victim was discharged and given three days medical leave.

26 The relevant parts of Taniguchi's mitigation plea state as follows:

3. On the night in question, the Accused was out with a friend at a pub. Some time on or around midnight, the Accused headed home in the taxi driven by Lim. At that time, the Accused was feeling very tired (having worked the entire day) and drowsy from the effects of alcohol.

4. The Accused told Lim to head for Edgefield Plains in Sengkang.

5. Due to the fact the Accused spoke English with a strong Japanese accent, he was worried that the taxi-driver would not be able to understand him clearly. The Accused therefore showed Lim his home address stored in his mobile phone. This address stored on the mobile phone is Blk 126A #08-334, Edgedale Plains, Singapore 821126.

6. Though the taxi-driver managed to get to Punggol, he was unable to locate the Accused's block.

7. The Accused was not able to offer meaningful directions to the taxi driver as he had only relocated to the address two weeks earlier. Moreover, he was not fluent in English. It did not help

that the Accused was also at that time rather drowsy and very tired.

8. As Lim kept circling around aimlessly in his taxi, the Accused asked Lim several times to call the taxi company to seek directions as this is some thing which a taxi-driver in Japan would have done readily. Unfortunately, Lim did not oblige and continued to try to find the address himself. The taxi driver stopped the car 4 times to ask to see the address on the Accused's handphone.

9. Out of desperation and at his wit's end, the Accused eventually told Lim that if he continued to drive around aimlessly and not ask the taxi company for directions, the Accused would not pay for the taxi fare.

10. Unfortunately, on hearing this, Lim became rather agitated. He started shouting at the Accused. The Accused also became angry and asked Lim to stop the taxi.

11. When the taxi stopped, the Accused got out of the taxi as he was by then extremely angry with the poor service he was getting and simply wanted to get away from the taxi-driver.

12. The taxi-driver then went after the Accused. The taxi-driver continued to shout loudly and rudely at the Accused. When Lim eventually caught up with the Accused and grabbed him, the Accused pushed him away.

13. Lim then returned to his taxi to get an umbrella.

14. On seeing this, the Accused – still in his tired and drowsy state – felt that the taxi-driver might have wanted to use the umbrella on him. He instinctively tried to seize the umbrella from Lim.

15. A brief struggle then ensued between the two men as both tried to seize control of the umbrella. In the process, Lim fell to the ground but the tussle for control of the umbrella continued. All the time, Lim continued to shout at the Accused.

16. The Accused stopped when he saw that the tip of the umbrella had caused a cut on Lim's forehead.

17. An ambulance and the police subsequently arrived though the Accused is not certain as to who had called for them. Lim walked to the ambulance and was subsequently not seen by the Accused again. After clarifying the events with the police at the scene, the Accused left with a friend whom he called to come to get him.

27 The learned deputy submitted that Taniguchi had pushed Lim which was why Lim had retrieved the umbrella – he had feared further attack from Taniguchi. She also pointed out that Taniguchi was an intoxicated offender, a larger man than Lim and that even when Lim fell to the ground, the tussle continued when Taniguchi could have stopped. She averred that the assault was sustained even though it was not brutish as in *Wong Hoi Len*. Submitting that no violence against public transport workers should be condoned and that Taniguchi had not wanted to pay the victim, the prosecution observed that the defence's authority of *Public Prosecutor v Andrew Bevan Jones* [2008] SGDC 115 ("*Andrew Bevan Jones*") wherein the accused was fined for assaulting a taxi driver had been decided before *Wong Hoi Len*.

28 In his GD, the DJ noted that the injuries sustained by Lim were closed by sutures and concluded that these injuries were not "superficial cuts" but were "sufficiently serious" to require stitching. He

also noted that Lim was given medical leave of four days. He further observed that it was agreed that Taniguchi had smelt strongly of alcohol at the material time and that Taniguchi's counsel ("Miss Tan") had not disputed the prosecution's submission that Lim was smaller in built than Taniguchi. Adverting to *Wong Hoi Len*, the DJ noted the principle therein that intoxication was an aggravating factor and considered that Taniguchi had indeed been intoxicated thereby aggravating his misdemeanour. A further aggravating factor was that Taniguchi had continued to tussle for the umbrella even when Lim had fell to the ground, and only desisted when he saw that the tip of the umbrella had cut Lim's forehead. The DJ pointed out that Taniguchi could have ceased struggling for the umbrella when Lim fell to the ground (at [11] of the GD). The DJ considered it yet another aggravating factor, the fact that Lim at the material time was an "elderly man" of 65 years of age and smaller in size than Taniguchi ([12] of GD). The DJ alluded to the Court's remarks in *Wong Hoi Len* where at [12] of the said judgment the Court had observed that New South Wales legislation provided that where the victim is vulnerable (eg elderly or a public transport worker), this would constitute an aggravating factor. The DJ added that although local legislation did not expressly provide for this, a victim's advanced years would "generally be an aggravating factor in cases of assault."

29 The DJ noted Miss Tan's submission in the mitigation plea that Taniguchi thought that Lim might use the umbrella on him. However it would appear that the DJ was more inclined towards the prosecution's submission that Lim had taken out the umbrella because he was fearful that Taniguchi would further attack him. He also said that there had been no allegation that Lim had attempted to attack Taniguchi with the umbrella and noted that the latter had not sustained any injury. Of "critical" importance to the DJ ([14] of GD) was Taniguchi's conduct after Lim had fallen to the ground. The DJ remarked that Taniguchi could have stopped once Lim fell but chose to continue tussling for the umbrella instead. The DJ also dismissed other aspects of the mitigation plea such as the language barrier between Lim and Taniguchi and Lim's refusal to call the taxi company for assistance. He pointedly remarked at [15] of his GD that:

... A taxi driver's inability to find the address of a passenger cannot be used as an excuse by the passenger to assault the taxi driver. Similarly, difficulties in communication arising from language barriers cannot be a mitigating factor in our cosmopolitan country ... Disputes arising from such language barriers should never give rise to an assault by the customer against the service provider or vice versa.

30 As for the case of *Andrew Bevan Jones*, the DJ found that it was to be confined to its own facts. Having reference to the four-week benchmark in *Wong Hoi Len*, the DJ ruled that the present case was indeed distinguishable from the former insofar as the severity of the assault was concerned. He found that the present case did not involve a sustained and brutish assault unlike *Wong Hoi Len* and hence a sentence closer to the starting benchmark should be imposed. Having regard to the aggravating factors viz, the intoxication of Taniguchi; his continued tussle for the umbrella even after Lim had fallen to the ground and that Lim was elderly, the DJ was of the view that six weeks' imprisonment was an appropriate sentence.

31 In my view, the crucial error made by the DJ was his failure to appreciate that Taniguchi had not intended to cause the injury. This is clear from para 7 of the statement of facts which states that Taniguchi had "grabbed the umbrella and a tussle ensued. During the tussle, the victim fell to the floor. However, the tussle for control of the umbrella continued. In the course of this tussle, the victim suffered injuries." This is confirmed in the mitigation plea, which was not opposed by the prosecution, in which Miss Tan had stated that when Lim returned with the umbrella, Taniguchi had felt that it might be used to attack him and he tried to seize it from Lim. It was in the course of the struggle for control of the umbrella that Lim's head was cut with the tip of the umbrella. It is necessary to examine whether it was reasonable for Taniguchi to apprehend that Lim might use the

umbrella on him. The circumstances were these: Taniguchi had an altercation with Lim on the poor quality of the taxi service and refused to pay him. As Taniguchi walked away from the taxi, Lim went up to him to ask for payment. Taniguchi responded by pushing Lim away. Lim then returned to the taxi, took an umbrella from it, and went up to Taniguchi, umbrella in hand. Now there is no indication that the reason for Lim getting out the umbrella was because he thought that it was about to rain. Unfortunately there is also no indication of the size of the umbrella. However, the fact is that Taniguchi apprehended that Lim might use the umbrella on him and this is consistent with the preceding facts. Therefore Taniguchi, in trying to grab the umbrella, did so to prevent it being used on him. However, Taniguchi did not plead that his acts were carried out in exercise of his right to private defence under s 96 of the Penal Code and it is not necessary to examine whether he had exceeded that right. Indeed he had pleaded guilty to the present charge. However the fact that his act was motivated by his apprehension that the umbrella might be used against him is an important factor to be taken into consideration in sentencing.

32 While Taniguchi might be considered wrong in refusing to pay Lim the taxi fare, it cannot be said his grievance was not genuine. This is quite unlike the appeal in MA 293 of 2009 in which the appellant, Singh, was deliberately avoiding paying the bus fare and when he was caught by the victim, had the temerity to give him a kick. In Taniguchi's case, he was all the time trying to get away from Lim and it was the latter who was following him. And when Taniguchi pushed him away, he went and armed himself with an umbrella. Even if this was motivated by a fear of being attacked by the larger man, it cannot be said that Taniguchi was unreasonable to apprehend that it was intended to be used against him. It was therefore not entirely unreasonable for Taniguchi to try to snatch it away from Lim. It should be noted that Taniguchi did not deliberately set out to inflict hurt on Lim and the latter was injured only in the course of the tussle for the umbrella. Taking these circumstances into account, it was clear that the sentence of six weeks' imprisonment was manifestly excessive; a fine would have been the appropriate punishment for Taniguchi. I therefore reduced the sentence to a fine of \$2,000.

Conclusion

33 In *Abu Syeed Chowdhury v Public Prosecutor* [2002] 1 SLR(R) 182, Yong Pung How CJ said at [15] that a benchmark is but a

... sentencing norm prevailing on the mind of every judge, ensuring consistency and therefore fairness in a criminal justice system. It is not cast in stone, nor does it represent an abdication of the judicial prerogative to tailor criminal sanctions to the individual offender. It instead provides the focal point against which sentences in subsequent cases, with differing degrees of criminal culpability, can be accurately determined. ...

Therefore in considering the appropriate sentence in any case, the benchmark is only a starting point. It is incumbent on the sentencing judge to distil the important factors of the case and the weight to be given to each of them in determining the appropriate sentence to be meted out. The two present appeals provide useful contrasting illustrations of this process.

[note: 1] The Straits Times, 12 February 2009
<www.straitstimes.com/Breaking%2BNews/Singapore/Story/STISStory_337283.html>

[note: 2] Lianhe Wanbao, 18 January 2010. See also The Electric New Paper<
<http://www.tnp.sg/printfriendly/0,4139,227465,00.html>>

[\[note: 3\]](#) [9] of GD

[\[note: 4\]](#) See <http://www.straitstimes.com/BreakingNews/Singapore/Story/STIStory_478981.html>
See also <<http://www.sbstransit.com.sg/press/2010-01-18-01-S.aspx>>

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