

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 240

Magistrate's Appeal No 5 of 2017

Between

Public Prosecutor

... Appellant

And

Aw Tai Hock

... Respondent

JUDGMENT

[Criminal Law] — [Statutory offences] — [Road Traffic Act]

[Criminal Procedure and Sentencing] — [Appeal]

[Criminal Procedure and Sentencing] — [Sentencing] — [Principles]

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Public Prosecutor

v

Aw Tai Hock

[2017] SGHC 240

High Court — Magistrate's Appeal No 5 of 2017
Steven Chong JA
23 August 2017

6 October 2017

Judgment reserved.

Steven Chong JA:

Introduction

1 The respondent pleaded guilty to a charge of dangerous driving under s 64(1) of the Road Traffic Act (Cap 276, 2004 Rev Ed) (“the RTA”). The District Judge (“the Judge”) imposed a sentence of three months’ imprisonment and a disqualification of three years on all classes of driving licences. The Prosecution, who submitted for a deterrent sentence of at least five months’ imprisonment and three years’ disqualification in the court below,¹ appeals only as against the sentence of three months’ imprisonment. There is no cross-appeal by the respondent.

¹ ROP, p 76.

2 In brief, the Prosecution’s case on appeal is that taking into account both the harm (actual and potential) and the respondent’s high culpability, the sentence of three months’ imprisonment is manifestly inadequate.

3 In assessing harm and culpability, the court is suitably assisted and informed by the video footage of the entire incident which was captured on the respondent’s own in-vehicle video camera. The incident as depicted by the video replay is reminiscent of a typical car chase in movie sets. The difference is that here, no stuntman was involved. It is instead a video replay of the entire incident starting from the event which sparked the car chase till the collision between the vehicle which was being pursued by the respondent (“Andy’s vehicle”) and a stationary vehicle with the driver in the driver’s seat. The video replay bears witness to numerous violations of various road traffic regulations by the respondent, resulting in actual damage and injuries caused to other vehicles and their occupants as well as actual danger to other road users and pedestrians.

4 The entire car chase lasted about five minutes. It is apparent from the video replay that the respondent was intent on using his own vehicle to wreak damage on Andy’s vehicle and possibly personal injury on its occupants. In this judgment, it would neither be accurate nor appropriate to describe the occupants of Andy’s vehicle as the victims of the car chase as they were somewhat responsible in *initially* provoking the respondent (“the initial aggression”). The significance of the initial aggression to the sentencing of the respondent will be examined below at [47]–[51].

5 This judgment will judicially calibrate the appropriate sentences for the offence of dangerous driving under s 64(1) of the RTA with reference to the varying degrees of harm in juxtaposition with the different levels of culpability.

The undisputed material facts

6 I begin with the undisputed material facts which the respondent had admitted to below without qualification.

7 The respondent is a 56-year-old male Singaporean. At the material time, he was working as a taxi driver, driving vehicle SHB8877D (“the taxi”).

8 On the evening of 7 June 2015, the respondent and one Mohd Andy Bin Abdullah (“Andy”) had a dispute. On 8 June 2015, sometime before 3pm, Andy was at the carpark near his block in Pasir Ris when he saw the respondent in his taxi. Andy got into his car SGA1687Z, *ie*, Andy’s vehicle, and drove off, but observed the taxi tailing him. Andy called his friend, who asked Andy to drive to his place in Yishun so that together they could “teach [the respondent] a lesson”.²

9 Both the taxi and Andy’s vehicle then arrived at an open-air carpark in Yishun (“the Yishun carpark”) and were stopped some distance away from each other. While the respondent waited, he saw another man approaching Andy’s vehicle with a bag. The respondent then left, but Andy followed him in his vehicle with the other man now seated in the front passenger seat. Andy’s vehicle then cut in front of the taxi, whereupon Andy and his friend alighted and approached the taxi carrying long thin objects, believed to be a parang and a baton.

10 What ensued thereafter was essentially a car chase between the two vehicles, with first Andy’s vehicle chasing the taxi and thereafter the taxi chasing Andy’s vehicle. Andy and the other man also alighted from Andy’s

² ROP, p 6.

vehicle and used the objects they carried to hit the sides of the taxi at one point. During the entire incident, the instances of dangerous driving by the respondent as captured in the charge are as follows:

- (a) deliberately colliding *thrice* into the driver-side door of Andy's vehicle;
- (b) travelling at a fast speed inside the Yishun carpark;
- (c) deliberately colliding into the rear of Andy's vehicle when it slowed down ahead of a speed bump;
- (d) making a wide left turn and travelling against the flow of traffic when exiting from the Yishun carpark;
- (e) failing to give way to a pedestrian at a designated zebra crossing;
- (f) making two unauthorised U-turns, with the first instance almost resulting in a collision with Andy's vehicle; and
- (g) failing to keep a proper lookout and almost colliding into the back of a van.

11 Throughout the entire episode, the respondent failed to slow down at 11 speed bumps and five "Stop" lines, ignored six "Slow" signs, almost collided with a lamp post, continued to pursue Andy even in a designated school zone, and only stopped the chase when Andy's vehicle collided with another vehicle SKF484A ("the white car") which overturned upon impact.

12 The driver of the white car suffered from a chest contusion and neck sprain, whilst Andy suffered from musculoskeletal injuries and was given four days' medical leave.

The decision below

13 The Judge delivered her written grounds on 8 May 2017 in *Public Prosecutor v Aw Tai Hock* [2017] SGDC 131 (“the GD”).³

14 The Judge agreed with the Prosecution on “most of the aggravating factors” that were highlighted by the latter and that the custodial threshold in the present case was crossed, but could not agree that a deterrent sentence of at least five months’ imprisonment was warranted (GD at [11]–[12]). Out of the two precedents highlighted by the Prosecution, the Judge regarded the case of *Public Prosecutor v Pang Chon Seng* (case number E401-009766711) (“*Pang*”)⁴ as the more relevant reference (GD at [13]). The offender in *Pang* was sentenced to four months’ imprisonment and four years’ disqualification from all classes of driving licences.

15 However, the Judge found that the present case to be less aggravated than *Pang* because (a) the reaction of the respondent had to be understood in the context of Andy and his friend being aggressive and violent towards him; (b) this was not a typical road-bully or road-rage case given the genesis of the incident; (c) the consequences in the present case were less serious than in *Pang* where the offender’s dangerous actions on the expressway caused three separate traffic incidents involving a total of seven vehicles, one death and injuries to two others; (d) the respondent was a first-time offender unlike the offender in *Pang* who had traffic-related antecedents; and (d) the respondent was remorseful of what he had done (GD at [14]–[28]).

³ ROP, pp 51–64.

⁴ ROP, pp 152–161.

16 Thus, the Judge calibrated the sentence in *Pang* downwards and imposed a sentence of three months' imprisonment and a disqualification of three years on the respondent. She was of the view that this sentence would be sufficient to send a strong deterrent message (GD at [29]).

The Prosecution's case on appeal

17 On appeal, the Prosecution seeks to enhance the respondent's sentence to at least five months' imprisonment. The Prosecution does not appeal against the three-year disqualification order imposed.⁵

18 The Prosecution argues, in the main, that:

(a) The Judge failed to appreciate that the respondent demonstrated a most culpable form of dangerous driving. She did not adopt the appropriate framework for assessing an offender's culpability in dangerous driving as laid out in recent cases such as *Public Prosecutor v Koh Thiam Huat* [2017] SGHC 123 ("*Koh Thiam Huat*").⁶

(b) The initial aggression that the Judge placed great weight on does not reduce the respondent's culpability in his *subsequent* actions when the respondent pursued Andy deliberately.⁷

(c) The Judge failed to consider the serious *potential* harm posed by the respondent's conduct.⁸

⁵ Prosecution's submissions, para 7.

⁶ Prosecution's submissions, paras 34–39.

⁷ Prosecution's submissions, paras 40–47.

⁸ Prosecution's submissions, paras 48–56.

(d) The Judge failed to consider the entire permissible sentencing range; and a sentence towards the midpoint, as opposed to the lower end, of the custodial range is most appropriate in this case.⁹

(e) The Judge erred in her consideration of *Pang*.¹⁰

19 I first set out the appropriate sentencing framework for dangerous driving offences, before addressing the present appeal.

The sentencing framework

20 Section 64(1) of the RTA reads as follows:

Reckless or dangerous driving

64.—(1) If any person drives a motor vehicle on a road recklessly, or at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case, including the nature, condition and use of the road, and the amount of traffic which is actually at the time, or which might reasonably be expected to be, on the road, he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a second or subsequent conviction, to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both. [emphasis added]

The relevant sentencing considerations

21 In dangerous driving offences, the primary sentencing considerations are those of specific and general deterrence: see *D’Rozario Pancratius Joseph v Public Prosecutor* [2015] SGHC 46¹¹ at [27], as recently affirmed in *Koh Thiam Huat*¹² at [60].

⁹ Prosecution’s submissions, paras 57–71.

¹⁰ Prosecution’s submissions, paras 72–76.

¹¹ Prosecution’s authorities, Tab 5.

22 The primary concern of general deterrence is evident from Parliament’s multiple upward revisions to the penalties prescribed for such offences. The range of penalties under s 64(1) of the RTA has been increased twice, in 1996 and again just this year in 2017, as follows:

Offender	Type of sentence	Before 10 May 1996	From 10 May 1996	From 20 June 2017
		<i>Maximum sentences</i>		
<i>First-time</i>	<i>Fine</i>	\$1,000	\$3,000	\$5,000
	<i>Imprisonment</i>	6 months	12 months	12 months
<i>Repeat</i>	<i>Fine</i>	\$2,000	\$5,000	\$10,000
	<i>Imprisonment</i>	12 months	2 years	2 years

23 The date of the respondent’s offence is 8 June 2015, and hence the latest increased penalties do not apply to him. In any event, the maximum imprisonment term of 12 months for first-time offenders under s 64(1) of the RTA remains unchanged.

24 In 1996, the then Minister for Home Affairs Mr Wong Kan Seng, citing worrying statistics of our road accident death rate and the rising number of incidents of dangerous driving, explained that the main purpose of the increased penalties was to “introduce measures which will enhance road safety” and check “worrying trends” of “irresponsible and dangerous driving habits”: *Singapore Parliamentary Debates, Official Report* (27 February 1996) vol 65 at cols 716–

¹² Prosecution’s authorities, Tab 16.

719. The Minister warned that if the trend continued, more people would needlessly be killed or injured on our roads.¹³

25 Earlier this year, the Second Minister for Transport Mr Ng Chee Meng during the Second Reading of the Road Traffic (Amendment) Bill (Bill 5 of 2017) expressed that the update to the penalties for offences under the RTA was to ensure that enforcement remained effective amidst “a rapidly evolving operating environment”. In particular, the increase in penalties for dangerous driving was justified as necessary “to ensure that the law is *sufficiently deterrent*” [emphasis added]: *Singapore Parliamentary Debates, Official Report* (7 February 2017) vol 94 at col 66.¹⁴

26 The need for general deterrence has thus been repeatedly emphasised by Parliament. Dangerous driving offences remain prevalent to-date. The Prosecution cites the latest statistics released by the Traffic Police that demonstrate that the number of accidents resulting in injuries has increased in recent years.¹⁵ General deterrence aims to educate and deter other like-minded members of the general public by making an example of a particular offender, and offences affecting public safety, especially if they are prevalent, warrant general deterrence: *Public Prosecutor v Law Aik Meng* [2007] 2 SLR(R) 814 at [24(d)] and [25(a)]. Hence, the mischief targeted behind dangerous driving and the need for general deterrence are both clear.

27 Equally relevant is the role of specific deterrence which has been inherently built into the sentencing regime for the offence through the tiered

¹³ Prosecution’s authorities, Tab 30.

¹⁴ Prosecution’s authorities, Tab 31.

¹⁵ Prosecution’s authorities, Tab 28; Prosecution’s submissions, para 62.

punishment ranges. The legislative intention is clear that repeat offenders of dangerous driving should be subject to an enhanced level of punishment. In *Koh Thiam Huat*, it was thus held (at [60]) that a court may also take into account a compounded offence under the RTA (or its subsidiary legislation) to better give effect to the need for specific deterrence.

28 Thus, deterrence, both specific and general, is the primary sentencing consideration for dangerous driving offences.

Harm and culpability

29 In *Koh Thiam Huat*, which concerned a similar offence of dangerous driving under s 64(1) of the RTA, See Kee Oon J held (at [41]) that the court should have regard to the two principal parameters of harm and culpability in deciding the appropriate sentence:

... “Harm” is a measure of the injury which has been caused to society by the commission of the offence, whereas “culpability” is a measure of the degree of relative blameworthiness disclosed by an offender’s actions and is measured chiefly in relation to the extent and manner of the offender’s involvement in the criminal act. In the context of the offence of dangerous driving under s 64(1) of the RTA, the primary factor relating to the harm caused would be the extent of injury or damage caused. **A related and equally important consideration would be the potential harm that might have resulted**, given that driving is an inherently dangerous activity that can pose serious risk to road users and pedestrians alike. The factors increasing the accused’s *culpability* would include a **particularly dangerous manner of driving**. ... [emphasis in original in italics; emphasis added in bold]

30 This approach of calibrating the seriousness of a road traffic offence by considering where on the continuum of harm and culpability an offender falls was also recently endorsed by Sundaresh Menon CJ in *Stansilas Fabian Kester v Public Prosecutor* [2017] SGHC 185 (“*Stansilas*”) ¹⁶ at [47]–[48], albeit in the context of drunk driving under s 67(1)(b) of the RTA.

31 For dangerous driving offenders under s 64(1) of the RTA, the court should thus first assess based on a range of harm- and culpability-based factors whether the custodial threshold has been crossed. In all situations, the court should have regard to the full spectrum of permissible sentences, be it in terms of the amount of fine or the length of imprisonment imposed (see *eg*, *Public Prosecutor v GS Engineering & Construction Corp* [2017] 3 SLR 682¹⁷ at [53] and [58]). Apart from the levels of harm and culpability, the applicable mitigating and aggravating factors of each case must also be taken into consideration to arrive at a fact-sensitive sentence.

32 Seen in this light, a fine would usually suffice where there is a low level of harm and the accused's culpability is also low, while imprisonment would typically be warranted where harm and the accused's culpability are both on the high side: *Koh Thiam Huat* at [42]. Between these two extremes are varying combinations of degrees of harm and culpability along the continuum of severity. See J also agreed with the Prosecution in *Koh Thiam Huat* at [43] that it would be an appropriate *starting point* to consider that the custodial threshold would be breached in cases where serious damage or injuries have been caused by dangerous driving, since there is a high level of harm caused.

Harm – actual and potential

33 For the consideration of the level of harm caused, this is a measure of the injury which has been caused to society by the commission of the offence. As indicated above at [29] in the paragraph quoted from *Koh Thiam Huat*, *potential* harm that might have resulted from the dangerous driving incident is

¹⁶ Prosecution's authorities, Tab 25.

¹⁷ Prosecution's authorities, Tab 14.

also relevant. In my view, Menon CJ's guidance at [75(a)] of *Stansilas* as to the various degrees of harm (albeit in the context of drunk driving under s 67(1)(b) of the RTA) is useful and is equally relevant in the context of dangerous driving:

- (a) Slight harm – slight or moderate property damage and/or slight physical injury characterised by no hospitalisation or medical leave;
- (b) Moderate harm – serious property damage and/or moderate personal injury characterised by hospitalisation or medical leave but no fractures or permanent injuries;
- (c) Serious harm – serious personal injury usually involving fractures, including injuries which are permanent in nature and/or which necessitate significant surgical procedures; and
- (d) Very serious harm – loss of limb, sight or hearing or life; or paralysis.

34 These are broad indicators and guidelines of how a court may assess along a continuum the extent of harm caused by an offender of dangerous driving, and these guidelines are not meant to be rigidly applied.

Culpability of the offender

35 As for the level of the offender's culpability, this refers to the measure of the relative blameworthiness disclosed by an offender's actions and is "measured chiefly in relation to the extent and manner of the offender's involvement in the criminal act" (*Koh Thiam Huat* at [41]).

36 The factors affecting an offender's culpability in dangerous driving offences would mainly pertain to the offender's manner and circumstances of

driving that affect the *danger* posed by the offender's driving. The mischief and essence of the offence ultimately lies in the quality and actual manner of the driving. The authors of *Sentencing Practice in the Subordinate Courts* (LexisNexis, 3rd Ed, 2013) at p 1674¹⁸ thus criticise certain dangerous driving precedents as being focused "too much on the consequences rather than the quality of driving and the road conditions".

37 The factors that affect culpability for dangerous driving offences would generally include: (a) the manner of driving; (b) the circumstances of driving; and (c) the offender's reasons for driving.

(1) Manner of driving

38 First, the level of danger posed by the offender's actions may be manifested by the offender's manner of driving. This assesses how dangerous the driving was and the extent of danger to road users posed by the offender's conduct. Examples of situations where the culpability of the offender would be increased include speeding, drink-driving, sleepy driving (identified as aggravating factors in *Public Prosecutor v Hue An Li* [2014] 4 SLR 661 in the context of fatal traffic cases under s 304A(b) of the Penal Code (Cap 224, 2008 Rev Ed) ("the Penal Code") at [82]–[92]), driving while using a mobile phone (identified in *Koh Thiam Huat* at [41]), flouting traffic rules, driving against the flow of traffic or off the road (identified in *Stansilas* at [56]), involvement in a car chase, or exhibiting poor control of his vehicle (*Edwin s/o Suse Nathen v Public Prosecutor* [2013] 4 SLR 1139 ("*Edwin Suse*")¹⁹ at [27]). These

¹⁸ Prosecution's authorities, Tab 29.

¹⁹ Prosecution's authorities, Tab 6.

circumstances in relation to the offender's manner of driving are aggravating due to the increased danger to road users posed by such conduct.

(2) Circumstances of driving

39 Second, the circumstances surrounding the incident that may have increased the danger to road users during the incident must also be taken into account. Aggravating circumstances would include instances “where the offender drives during the rush hours when the volume of traffic is heavy”, where the offender drives within “a residential or school zone”, where the offender drives a heavy vehicle that is “more difficult to control and requires a quicker reaction time”, or where the offender intends to travel “a substantial distance to reach his destination” (*Edwin Suse* at [28]). These circumstances heighten the danger posed to road users.

(3) Reasons for driving

40 Finally, I agree with the Prosecution that the offender's reasons or motivations for driving, as identified by Menon CJ at [33] of *Edwin Suse* for the purposes of determining a drink driving offender's culpability, are equally relevant in considering the culpability of an offender under s 64(1) of the RTA. Culpability would be increased where the dangerous driving was deliberate (*Koh Thiam Huat* at [41]) as opposed to a situation where an offender drove in a dangerous manner on account of an emergency or other extenuating circumstances. An example of the latter would be when an offender “had driven out of impulse” after having received a call from a friend who informed him that she was contemplating committing suicide with her children (see *Sivakumar s/o Rajoo v Public Prosecutor* [2002] 1 SLR(R) 265, as referred to in *Edwin Suse* at [33]).

41 Keeping in mind the sentencing framework set out above, I turn to the present appeal.

Application to the facts

The traffic violations by the respondent

42 From the video playback of the footage from the taxi's in-vehicle video camera during the hearing, I was able to have a better appreciation of the various traffic violations by the respondent *after* the initial aggression, as well as the circumstances surrounding the violations.

43 Following the initial aggression, the roles in the car chase were reversed and it was the respondent who began to antagonistically pursue Andy's vehicle with Andy and his friend in it. The respondent collided with the rear of Andy's vehicle at a high speed, ignored multiple speed bumps and made a wide (illegal) left turn as he exited the Yishun carpark. During this exit with a secondary school on the opposite side of the road, two students could be seen walking ahead. The respondent then travelled against the flow of the traffic, and narrowly missed contact with a stationary vehicle at a zebra crossing. The respondent did not stop for a pedestrian that was crossing then as well. Thereafter, the respondent made his first unauthorised U-turn in front of a community club and continued to pursue Andy's vehicle. At this point, several pedestrians (many of whom were students) and cyclists were in the area along the pavement, and another pedestrian was trying to cross the road. The respondent then travelled at what appears to be a very fast speed through another zebra crossing. Evidence of the *precise* speed of the taxi is, however, not available.

44 In Andy's attempt to flee from the respondent's pursuit, Andy's vehicle eventually stopped after colliding with the stationary white car which overturned on impact. A lamp post fortunately prevented the white car from hitting a pedestrian. With the driver of the white car still in the car, the respondent continued driving. The respondent stopped the taxi on the first lane of the road while shouting at passers-by to chase Andy who was on foot by this time. The respondent made no attempt to check whether the innocent driver of the white car required any assistance.

45 After this point, the respondent continued driving forward and a black van in front of the taxi was filtering to the right into the taxi's lane, and the respondent almost collided with the back of the van in his haste. The respondent then made his second unauthorised U-turn, and drove past Andy's vehicle and the overturned white car. Again, he made no attempt to provide assistance and continued to drive erratically. By this time, Andy's friend had also fled on foot, and the respondent continued to chase him.

46 From the video playback, as well as the undisputed facts that the respondent admitted to without qualification, this was clearly one of the worst cases of dangerous driving. The entire episode placed many road users and pedestrians at great harm and risks. The respondent used his taxi as *a weapon* with the aim to cause damage and in the process deliberately flouted numerous traffic rules.

The significance of the initial aggression

47 The Judge placed great weight on the initial aggression displayed by Andy and his friend, with Andy driving his vehicle to cut in front of the taxi and initially giving chase to the respondent. Andy and his friend also alighted after

they cornered the respondent in the taxi, whereupon the two walked towards the taxi and used their weapons to hit the sides of the taxi (GD at [17]–[21]). Thus, as I observed above at [4], it would not be entirely apt to describe Andy and his friend as the victims in this incident.

48 During the appeal hearing, I had the benefit of viewing the video footage from the taxi’s in-vehicle video camera that also captured the genesis of the incident and the initial aggression by Andy and his friend. It is clear that Andy and his friend in Andy’s vehicle overtook and stopped in front of the taxi, and alighted and approached the taxi carrying long thin objects (believed to be a parang and a baton). The respondent then tried to drive away by reversing but was chased by Andy and his friend in Andy’s vehicle. The respondent then reversed his taxi until he could no longer do so, and was cornered by Andy’s vehicle that stopped in front of the taxi. This was when Andy and his friend alighted again and used their weapons to hit the sides of the taxi. The respondent then explained that when he deliberately collided with the driver-side door of Andy’s vehicle on the first occasion, he did so in order for him to have “space to escape”. After the first collision, Andy and his friend got back into Andy’s vehicle, and the respondent reversed and collided with the driver-side door of Andy’s vehicle once more, before Andy’s vehicle drove off. It was at this moment onwards when the roles were reversed and the respondent began to pursue Andy’s vehicle aggressively.

49 I disagree with the Judge that the genesis of the incident lowers the culpability of the respondent for his *subsequent* violations. Undoubtedly, the first two occasions of the respondent colliding into Andy’s vehicle can be seen in this light when the respondent was forced into a dead end by two provokers armed with weapons. While the initial aggression is inexcusable, it does not provide any justification or excuse for the respondent’s numerous *subsequent*

violations. The respondent has not been charged for reacting or retaliating against Andy's provocation. The respondent's offence essentially pertained to his dangerous driving for five minutes *after* the roles were reversed with the respondent pursuing Andy's vehicle aggressively.

50 It should be noted that the Judge expressly confined the lowered culpability of the respondent to the first two occasions when the respondent collided into Andy's vehicle (GD at [21]). Indeed, the reason for driving dangerously on those two occasions can be likened to self-preservation on the part of the respondent as Andy and his friend were armed with weapons and chasing the taxi.²⁰ However, the respondent's subsequent actions cannot be viewed with the same lens. This was not an immediate impulsive act. It was an intentional deliberate pursuit of Andy's vehicle to retaliate, ignoring all traffic rules in that process. If the incident had stopped at the Yishun carpark where the respondent was cornered and then knocked into Andy's vehicle in order to drive off, the Prosecution's case would be very different. The aggravating factors that the Prosecution has highlighted relate instead to the protracted car chase *after* the incident in the carpark.

51 Thus, the initial aggression that provoked the respondent cannot be taken to reduce the respondent's culpability in the subsequent chase. The respondent's subsequent actions were undertaken as part of a deliberate and calculated decision to pursue and cause damage to Andy's vehicle and possibly its occupants.

²⁰ Statement of Facts, paras 6–7 (ROP 7).

Relevant precedents

52 Apart from the genesis of the incident, the basis of the Judge's sentence also lay with her comparison of the present case with the offender's culpability in *Pang* (see GD at [14]–[28]). She derived the sentence of three months' imprisonment by calibrating the sentence of four months' imprisonment imposed in *Pang* downwards after finding that the present case was less aggravated than *Pang*. She was of the view that the consequences in the present case were less serious than in *Pang* where the offender's dangerous actions on the expressway caused three separate traffic incidents, the death of one motorcycle rider and injuries to two others.

53 In *Pang*, the offender had abruptly swerved from the second to the fourth lane on the expressway, and then suddenly swerved back to the third lane. He then applied his brakes suddenly, causing a vehicle behind him to apply hard braking to avoid collision. Eventually, three separate accidents ensued: the main collision between a motorcycle and a lorry; a three-vehicle chain collision on the first lane; and a four-vehicle chain collision on the second lane of the expressway. After the main collision, the offender drove off. The main collision resulted in the death of a motorcyclist. Two other road users also suffered injuries.

54 However, a closer examination of *Pang* would demonstrate that the respondent is in fact *more* and not less culpable than the offender in *Pang*.

55 First, the actual harm caused in *Pang* was not *solely* attributed to the offender. In fact, *another* driver in the chain collision was convicted for causing the death of the motorcyclist by a negligent act under s 304A(b) of the Penal Code. The death of the motorcyclist did not even feature in the charge against

the offender in *Pang*. Instead the offender in *Pang* was charged and convicted for dangerous driving *simpliciter* that resulted in three separate accidents. Thus, the Judge erred in approaching *Pang* with such a broad brush when the full weight of the resulting harm was not placed on the offender in that case. The comparison of the harm caused in *Pang* and the present case was thus misplaced.

56 Second, while *Pang* and the present case both involved dangerous driving, the actions of the offender in *Pang* in relation to whether harm would eventuate involved only recklessness. The offender in *Pang* had merely intended to intimidate another road user with his actions of swerving to cut in and jam-braking. In contrast, the respondent had *intended* to deliberately cause actual damage and harm to Andy's vehicle and possibly its occupants. Thus, the respondent's reason for driving should be viewed as far more aggravated.

57 Third, while the offence in *Pang* took place in the early morning between 6.40am and 6.45am when the traffic was light, the respondent's high-speed chase took place on a Monday afternoon in a residential and school zone, where a number of pedestrians, including school children, were in the vicinity and were put at risk. The circumstances of the driving in the present case is thus also more aggravated than in *Pang*.

58 Lastly, the respondent's offence was a sustained, high-speed pursuit of Andy's vehicle for a protracted period of time and over a substantial distance in a residential and school zone. When compared against the manner of driving in *Pang* where it was a one-off instance of swerving, cutting-in and jam-braking, the respondent's manner of driving should be viewed as considerably more serious in terms of the magnitude and the duration of the danger posed.

59 Thus, I agree with the Prosecution that the present case is in fact worse than *Pang* and that the Judge had erred in her consideration of this precedent.

The seriousness of the respondent's offence

60 In assessing the present case along the continuum of harm and culpability based on the framework as set out above at [29]–[40], I would consider the respondent's case to be one of *moderate harm* and *high culpability*.

61 There was moderate property damage to both the taxi and Andy's vehicle. The front bonnet of the taxi was crumpled inwards, the front bumper juttied out, and the left-side mirror was missing. As for Andy's vehicle, the rear bumper juttied out and the right side of the car juttied inwards with the rear-right door being unable to close. There were also some personal injuries, with Andy given four days' medical leave, albeit with no permanent major injuries (see [33(b)] above for its relevance). In addition, the white car overturned upon impact (the windscreen and rear-left passenger window were smashed, its front-right passenger door ripped off and crumpled, and its roof dented and cracked) and the driver of the white car suffered chest contusion and neck sprain.

62 Furthermore, given the respondent's extremely dangerous manner of driving that posed much danger to the public in a residential and school zone, the fortuity that people on the roads had escaped unscathed cannot be a mitigating factor. It was fortunate that some pedestrians managed to jump out of harm's way and that the presence of a lamp post had prevented the white car from hitting a pedestrian. However, the *potential* harm and significant risks caused by the respondent cannot be ignored and should be reflected in the respondent's sentence.

63 As for the respondent's culpability, I agree with the Prosecution that this is clearly on the high side. In terms of the respondent's manner of driving, it was a persistent and deliberate course of very dangerous driving with no regard to the danger posed. He disobeyed "Slow" signs, ignored a pedestrian at a zebra crossing and put many lives in danger. Throughout the incident, the respondent failed to slow down at 11 speed bumps and five "Stop" lines, and almost collided with a lamp post. This was simply a blatant disregard of numerous traffic rules. He even travelled against the flow of traffic in this deliberate car chase. In the process of evading the taxi, Andy's vehicle eventually collided into the stationary white car which then flipped over. The respondent did not even bother to stop to see whether the innocent driver of the white car needed assistance. He was obsessed to pursue Andy at all cost with no regard to road and public safety whatsoever. The car chase essentially played out as a private dispute that spilled into the public domain in the form of a protracted display of aggression on the public roads. The respondent's manner of driving must be viewed as an extremely aggravated instance of dangerous driving.

64 As for the circumstances surrounding the incident, it took place in a built-up residential area, including a school zone, at about 3.30pm on a Monday afternoon. From the in-vehicle footage, it is clear that there were many pedestrians, including students near the school, and road users who were endangered by the respondent's dangerous driving. There were pedestrians who had to *jump* out of harm's way and there were others who were visibly alarmed. The respondent's chase of Andy's vehicle was also not a short one; it lasted about five minutes and the respondent's dangerous driving covered a substantial distance. These are circumstances that undeniably increased the danger to road users and hence increase the respondent's level of culpability.

65 Clearly the Judge’s assessment of the respondent’s culpability was influenced by the reason which allegedly caused him to drive in the manner which he did, *ie*, the initial aggression. However, as I noted above at [47]–[51], the significance of the initial aggression must not be overstated, and it is the respondent’s subsequent actions that he is the most culpable for. His avowed intent was to damage Andy’s vehicle in order to immobilise it. In the hearing below, the respondent expressly stated that while the reason he collided into Andy’s vehicle on the first two occasions was because Andy and his friend had hit his taxi with their weapons and because he was attempting to drive off, the reasons he hit Andy’s vehicle on the third and fourth occasions were because he was “trying to apprehend them with the weapons in their hands” and that he “wanted the vehicle to be damaged so that it would not move”.²¹

66 Indeed, the Judge observed during the hearing below that she found the respondent “highly culpable” at this moment. She expressly recognised that he “could have stayed put, could have called the police, but he chose not to. Instead, he drove dangerously, giving chase to these two persons”.²² At this juncture, it thus cannot be denied that the respondent’s dangerous driving was *deliberate* and that he intended to use the taxi as *a weapon* on the public roads against others. His pursuit of Andy should be viewed as a considered decision to take justice in his own hands. The respondent’s reason for driving was intentional, deliberate and vengeful.

67 At the hearing of the appeal, the respondent stated that his thoughts were all over the place during the incident, and that his intention was to chase Andy to prevent him from getting away. He said that he was “merely following

²¹ ROP, p 31.

²² ROP, pp 44–45.

Andy's [vehicle] hoping that [he] would encounter any police cars along the way so that [he] could ask the police officer for help". This is simply an untenable explanation that flies against the face of the overwhelming evidence of an aggressive deliberate pursuit of Andy's vehicle. When it was pointed out that he could have just called the police, all the respondent could lamely say was that he had dropped his mobile phone on the floor in the taxi and therefore there was "no way" he could have contacted the police.

68 Given that this case is one of moderate harm and high culpability, the custodial threshold is unquestionably breached. The Judge was of the same view that the custodial threshold has been crossed (GD at [11] and [29]) and the respondent also does not disagree given the absence of a cross appeal. Nonetheless, a sentence at the lower end of the sentencing range at three months' imprisonment does not adequately reflect the culpability of the respondent and the ensuing harm which he caused.

69 The respondent demonstrated a highly culpable form of dangerous driving, and a sufficiently deterrent sentence has to be imposed to signal that irresponsible and dangerous driving habits will not be tolerated. Section 64(1) of the RTA provides for a term of imprisonment up to 12 months. A sentence in the midpoint region would be appropriate given the level of actual and potential harm and the respondent's high culpability. In my judgment, a sentence of five months' imprisonment is appropriate in the circumstances.

Parity of sentencing

70 In deciding on the sentence of five months' imprisonment, I have also considered the sentence imposed on Andy and the corresponding application of

the parity principle. This parity point was raised by the respondent during the appeal hearing.

71 Andy was similarly charged for dangerous driving under s 64(1) of the RTA. He was first produced in court on 10 June 2015 for an unrelated drug trafficking charge (District Arrest Case No 921050 of 2015). Additional charges for drug trafficking, drug consumption and possession of drug utensils were subsequently tendered. Andy claimed trial to DAC 921050/2015, and was convicted on 3 June 2016. He then pleaded guilty to his remaining drug charges, and was sentenced on 13 July 2016 to a total of ten years and six months' imprisonment with 16 strokes of the cane. On the same day but in a different court, Andy also pleaded guilty to his dangerous driving charge (District Arrest Case No 912320 of 2016) and was sentenced to a \$2,000 fine and four months' disqualification (all classes) for it. In these circumstances, would the respondent's sentence offend the parity principle?

72 The principle of parity in sentencing between co-offenders urges that sentences meted out to co-offenders who are party to a common criminal enterprise "should not be unduly disparate from each other", in the absence of relevant differentiating factors: *Chong Han Rui v Public Prosecutor* [2016] SGHC 25 ("*Chong Han Rui*") at [1]; see also *Public Prosecutor v Ramlee and another action* [1998] 3 SLR(R) 95 at [7]. It is perhaps pertinent to echo two important observations that Menon CJ made in *Chong Han Rui* at [44]:

... First, when co-offenders are being sentenced, it is ideal for all of them to be sentenced together before the same judge. But, moving to my second observation, if for some reason this is not possible or convenient, the Prosecution should then make it a point to tender to the sentencing court all relevant material pertaining to any sentences that have already been meted out to any co-offenders. This much was also noted by Chao Hick Tin JA in *Lim Bee Ngan Karen v Public Prosecutor* [2015] 4 SLR 1120 ("*Karen Lim*") (at [56]–[58]).

73 In the present case, it would have been ideal for both Andy and the respondent to have been sentenced together before the same judge since the same type (and number) of charge was preferred against them in relation to the same incident. Although the respondent was not sentenced by the same judge who had sentenced Andy, I note that the Prosecution, in the proceedings below, did bring Andy's various offences and sentences to the attention of the Judge.²³ Specifically, it was brought to the Judge's attention in the Prosecution's skeletal submissions on sentence that:²⁴

Andy, who was also convicted of an offence under s 64(1) of the RTA, was sentenced to a fine of \$2,000 and 4 months' disqualification (all classes). However, Andy's dangerous driving was *a result of trying to escape from the Accused, who was pursuing him intently*. The Accused, being the aggressor in the driving incident, should not expect parity in sentencing as his culpability is significantly higher. [emphasis added]

The Judge was therefore fully cognisant of Andy's sentence and applied her mind to the parity principle accordingly. She agreed with the Prosecution's submission that the respondent was the aggressor in the incident and "should not be given parity in sentencing as his culpability was significantly higher" (GD at [10.2] and [11]).

74 It is trite that the severity of sentences imposed on co-offenders should reflect the role played by each offender. An offender who had a more culpable role in a criminal enterprise should rightly be dealt with more severely than a co-offender who played a lesser role.

75 In the present case, likewise I do not think that the sentences received by Andy and imposed on the respondent offend the parity principle. It is

²³ ROP, p 30.

²⁴ ROP, p 78, para 12.

important to highlight that although the respondent and Andy were involved in the same car chase, the culpability between the two are very different. One was the pursuer, while the other was being pursued. The respondent was deliberately and intentionally driving in that manner to damage Andy's vehicle in order to immobilise it and possibly to cause harm to Andy, while Andy was driving in that manner to avoid being harmed. Further, from a perusal of the statement of facts that Andy pleaded guilty to, the extent and number of traffic violations contained in his dangerous driving charge are fewer and less severe than the respondent's. Andy was essentially charged for dangerously driving his vehicle *after* the roles were reversed with the respondent's taxi pursuing him aggressively and colliding into the rear of his vehicle. The parity issue would be more germane if, for example, both the respondent and Andy were charged for dangerous driving in connection with a road race with *similar* traffic violations. Here however, as explained above, the parity principle does not even arise for consideration.

Conclusion

76 For the above reasons, I allow the appeal as I am persuaded that the sentence imposed by the Judge is manifestly inadequate. Accordingly, I enhance the respondent's imprisonment term to five months' imprisonment. The respondent's disqualification of three years on all classes of driving licences remains.

Steven Chong
Judge of Appeal

Bhajanvir Singh and Gabriel Choong
(Attorney-General's Chambers) for the appellant;
The respondent in person.
