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

[2021] SGHC 261

Magistrate's Appeal No 9865 of 2020

Between

Wu Zhi Yong

… *Appellant*

And

Public Prosecutor

… *Respondent*

JUDGMENT

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

Wu Zhi Yong
v
Public Prosecutor

[2021] SGHC 261

General Division of the High Court — Magistrate's Appeal No 9865 of 2020
Sundaresh Menon CJ
27 July 2021

19 November 2021 Judgment reserved.

Sundaresh Menon CJ

Introduction

1 This is an appeal against the sentence imposed on the appellant, Wu Zhi Yong ("Wu"), for the offences of driving under the influence of drink pursuant to s 67(1)(*b*) of the Road Traffic Act (Cap 276, 2004 Rev Ed) ("RTA") (which, for convenience, I refer to where appropriate as "drink driving"), and of reckless driving under ss 64(1) of the RTA. In the court below, Wu was sentenced to 17 days' imprisonment and also a disqualification order for a period of 42 months in respect of each offence (under ss 64 and 67 of the RTA respectively), with the sentences running concurrently. The central issue in this appeal is whether the sentence imposed was manifestly excessive.

2 The statutory provisions invoked in this case are the result of recent legislative amendments that introduced extensive changes to the sentencing

regime under the RTA. Among these changes was the enactment of the enhanced penalty provision under s 64(2C)(*c*) of the RTA that was applicable in this case.

3 In the circumstances, when this appeal was first fixed for hearing, I notified counsel of my intention to examine the framework when sentencing an accused person for both drink driving and reckless driving, and whether the sentencing frameworks previously laid down in case law remain relevant following the RTA amendments. I also appointed Mr Torsten Cheong ("Mr Cheong") as young *amicus curiae* to assist the court. Mr Cheong was of considerable assistance to me, and indeed to all parties, with his diligent research and thoughtful submissions, and I am most grateful to him for this. All before me agree that it would be helpful and appropriate for me to re-examine and develop the frameworks in this area. Where they part ways is as to the direction of this development. As I will elaborate shortly, the approach to sentencing that I have arrived at takes various suggestions from the differing approaches put forward by the parties and Mr Cheong, and strikes something of a middle ground between them.

Facts

4 Wu, a Singaporean male who was 26 years old at the time of the offences, drove a motorcar at about 4.05am on 11 February 2020. When he noticed a police roadblock along Crawford Street, he stopped his motorcar about 50m before the "Police Stop" sign and then made a three-point turn in an attempt to evade the roadblock. Wu then travelled against the flow of traffic for at least 140m. The police officers on duty gave chase and eventually caught up with him.

5 When Wu was apprehended, the officers observed that he reeked of alcohol. A preliminary breath test was administered and, having failed that test, Wu was arrested at the scene. The Breath Analysing Device test conducted at the Traffic Police Headquarters revealed that he had 46 microgrammes of alcohol per 100ml of breath, which was above the prescribed limit of 35 microgrammes of alcohol per 100ml of breath.

6 As a consequence, Wu was charged with one count of drink driving under s 67(1)(*b*) read with s 67(2)(*a*) of the RTA, as well as one count of reckless driving under s 64(1) punishable under s 64(2C)(*a*) read with ss 64(2C)(*c*) and 64(2D)(*i*) of the RTA.

7 Wu pleaded guilty to both charges on 30 October 2020. In respect of *each* of the charges, he was sentenced to 17 days' imprisonment and disqualified from holding or obtaining all classes of driving licences for a period of 42 months. The disqualification period for the drink driving charge, however, took effect from the date of his release while the disqualification period for the reckless driving charge took effect from 30 October 2020. I note that pursuant to s 64(8) of the RTA, the disqualification period for the latter offence should also have taken effect from the date of his release from imprisonment, although this did not, in the event, make a difference in relation to Wu given that disqualification periods were imposed for each of the two offences.

Sentencing a driver who drives recklessly while under the influence of drink

The relevant statutory provisions

8 The pertinent portions of s 64 of the RTA provide 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, the person (called the offender) shall be guilty of an offence.
>
> (2) If death is caused to another person by the driving of a motor vehicle by the offender, the offender shall be punished with the following on conviction of an offence under subsection (1):
>
> (*a*) with imprisonment for a term of not less than 2 years and not more than 8 years;
>
> (*b*) where the person is a repeat offender, with imprisonment for a term of not less than 4 years and not more than 15 years;
>
> (*c*) where the offender is a serious offender in relation to such driving, with imprisonment for a term of not less than one year and not more than 2 years, in addition to any punishment under paragraph (*a*) or (*b*); or
>
> (*d*) where the offender is a serious repeat offender in relation to such driving, with imprisonment for a term of not less than 2 years and not more than 4 years, in addition to any punishment under paragraph (*a*) or (*b*).
>
> …
>
> (2A) If grievous hurt is caused to another person by the driving of a motor vehicle by the offender, the offender shall be punished with the following on conviction of an offence under subsection (1):
>
> …

(2B) If hurt is caused to another person by the driving of a motor vehicle by the offender, the offender shall on conviction of an offence under subsection (1) —

…

(2C) In any other case involving the driving of a motor vehicle by the offender, the offender shall on conviction of an offence under subsection (1) —

(*a*) be liable to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 12 months or to both;

(*b*) where the person is a repeat offender, be liable to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 2 years or to both;

(*c*) where the offender is a serious offender in relation to such driving, be liable to a fine of not less than $2,000 and not more than $10,000 or to imprisonment for a term not exceeding 12 months or to both, in addition to any punishment under paragraph (*a*) or (*b*); or

(*d*) where the offender is a serious repeat offender in relation to such driving, be punished with a fine of not less than $5,000 and not more than $20,000 and with imprisonment for a term not exceeding 2 years, in addition to any punishment under paragraph (*a*) or (*b*).

(2D) A court convicting a person of an offence under subsection (1) in the following cases is to, unless the court for special reasons thinks fit to not order or to order otherwise, order that the person be disqualified from holding or obtaining a driving licence for a disqualification period of not less than the specified period corresponding to that case:

…

(*i*) for a serious offender in subsection (2C)(*c*) — 2 years;

(*j*) for a serious repeat offender in subsection (2C)(*d*) who has been convicted (whether before, on or after the date of commencement of section 13 of the Road Traffic (Amendment) Act 2019) on only one earlier occasion of any specified offence — 5 years.

…

(8) In this section and section 65 —

> 'disqualification period', for an offender convicted of an offence under subsection (1), means a period starting on the later of the following dates:
>
> > (*a*) the date of the offender's conviction;
> >
> > (*b*) the date of the offender's release from imprisonment, if the offender is sentenced to imprisonment;
>
> 'grievous hurt' has the same meaning as in section 320 (except paragraph (*aa*)) of the Penal Code;
>
> 'serious offender' means an offender who is convicted of an offence under section 67 or 70(4) in relation to the offender's driving which is an offence under subsection (1);
>
> 'serious repeat offender' means an offender who —
>
> > (*a*) is convicted of an offence under section 67 or 70(4) in relation to the offender's driving which is an offence under subsection (1); and
> >
> > (*b*) has been convicted on at least one other earlier occasion of a specified offence;
>
> 'specified offence' means —
>
> > (*a*) an offence under section 67, 68 or 70(4); or
> >
> > (*b*) an offence under section 67 as in force immediately before the date of commencement of section 17 of the Road Traffic (Amendment) Act 2019.

9 Section 67 of the RTA provides as follows:

> **Driving while under influence of drink or drugs**
>
> **67.**—(1) Any person who, when driving or attempting to drive a motor vehicle on a road or other public place —
>
> > (*a*) is unfit to drive in that he is under the influence of drink or of a drug or an intoxicating substance to such an extent as to be incapable of having proper control of such vehicle; or
> >
> > (*b*) has so much alcohol in his body that the proportion of it in his breath or blood exceeds the prescribed limit,

shall be guilty of an offence and shall be liable on conviction to a fine of not less than $2,000 and not more than $10,000 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 of not less than $5,000 and not more than $20,000 and to imprisonment for a term not exceeding 2 years.

(2) Subject to sections 64(2D) and (2E) and 65(6) and (7), a court convicting a person for an offence under this section in the following cases is to, unless the court for special reasons thinks fit to not order or to order otherwise, order that the person be disqualified from holding or obtaining a driving licence for a period of not less than the specified period corresponding to that case, starting on the date of the person's conviction or, where the person is sentenced to imprisonment, on the date of the person's release from prison:

(*a*) for a first offender — 2 years;

(*b*) for a repeat offender — 5 years.

(2A) Subject to sections 64(2D) and (2E) and 65(6) and (7), where a court convicts a person for an offence under subsection (1) and the person has been convicted (whether before, on or after the date of commencement of section 17 of the Road Traffic (Amendment) Act 2019) on 2 or more earlier occasions of an offence under subsection (1), section 68, or subsection (1) as in force immediately before the date of commencement of section 17 of the Road Traffic (Amendment) Act 2019, the court is to, unless the court for special reasons thinks fit to order a shorter period of disqualification, order that the person be disqualified from holding or obtaining a driving licence for life starting on the date of the person's conviction.

(3) Any police officer may arrest without warrant any person committing an offence under this section.

(4) In this section, a repeat offender means a person who is convicted of an offence under this section and who has been convicted (whether before, on or after the date of commencement of section 17 of the Road Traffic (Amendment) Act 2019) on one other earlier occasion of —

(*a*) an offence under subsection (1) or section 68; or

(*b*) an offence under subsection (1) as in force immediately before the date of commencement of section 17 of the Road Traffic (Amendment) Act 2019.

Legislative intent behind the amendments

10 Because of the complex architecture of these sections of the RTA, I consider it appropriate to begin with the principal changes that were effected by the amendments that I have referred to at [2] above and the legislative intent behind them. The present iteration of the offence under s 64 of the RTA was enacted on 1 November 2019, following the passing of the Road Traffic (Amendment) Act 2019 (Act 19 of 2019) (the "Amendment Act"). Under the Amendment Act, two changes were effected that are relevant to my decision. First, the Amendment Act amended the punishments applicable under ss 64(1) and 67(1) of the previous version of the RTA (the "2019 RTA"). Second, it substituted ss 64(2)–(3) and 67(2) of the 2019 RTA, with ss 64(2)–(3) and 67(2)–(2A) respectively, and inserted ss 64(6)–(8) and 67(4), as reproduced above.

11 Sections 64 and 67 of the 2019 RTA had provided 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.
>
> (2) On a second or subsequent conviction under this section, the convicting court shall exercise the power conferred by section 42 of ordering that the offender shall be disqualified from holding or obtaining a driving licence unless the court, having regard to the lapse of time since the date of the previous or last previous conviction or for any other special reason, thinks fit to order otherwise.

(3) Subsection (2) shall not be construed as affecting the right of the court to exercise the power under section 42 on a first conviction.

(4) Where a person is convicted of abetting the commission of an offence under this section and it is proved that he was present in the motor vehicle at the time of the commission of the offence, the offence of which he is convicted shall, for the purpose of the provisions of Part II relating to disqualification from holding or obtaining driving licences, be deemed to be an offence in connection with the driving of a motor vehicle.

(5) Any police officer may arrest without warrant any person committing an offence under this section.

…

Driving while under influence of drink or drugs

67.—(1) Any person who, when driving or attempting to drive a motor vehicle on a road or other public place —

(*a*) is unfit to drive in that he is under the influence of drink or of a drug or an intoxicating substance to such an extent as to be incapable of having proper control of such vehicle; or

(*b*) has so much alcohol in his body that the proportion of it in his breath or blood exceeds the prescribed limit,

shall be guilty of an offence and shall be liable on conviction to a fine of not less than $1,000 and not more than $5,000 or to imprisonment for a term not exceeding 6 months and, in the case of a second or subsequent conviction, to a fine of not less than $3,000 and not more than $10,000 and to imprisonment for a term not exceeding 12 months.

(2) A person convicted of an offence under this section shall, unless the court for special reasons thinks fit to order otherwise and without prejudice to the power of the court to order a longer period of disqualification, be disqualified from holding or obtaining a driving licence for a period of not less than 12 months from the date of his conviction or, where he is sentenced to imprisonment, from the date of his release from prison.

(3) Any police officer may arrest without warrant any person committing an offence under this section.

12 The Amendment Act arose out of what was described as a "timely"

review of the RTA, and it aimed to provide stronger deterrence against irresponsible driving, according to the explanation presented by the Second Minister for Home Affairs, Mrs Josephine Teo (the "Minister") to Parliament on 8 July 2019 (*Singapore Parliamentary Debates, Official Report* (8 July 2019), vol 94). The reforms enhanced the penalties for irresponsible driving and tightened the regulatory regime against irresponsible driving. The overarching object of the amendments was the consolidation and streamlining of the offences pertaining to irresponsible driving. The Minister set this out in clear terms as follows:

> For better clarity and consistency, we propose to consolidate irresponsible driving offences under the RTA. We will also streamline the offences into two classes: the first category is Reckless or Dangerous Driving, which I will refer to as Dangerous Driving in the rest of the speech. …
>
> The definitions of Dangerous Driving and Careless Driving are currently in the RTA. We will maintain the current definitions.
>
> Dangerous Driving is more serious than Careless Driving. The two can be differentiated, on a case-by-case basis. The three main considerations, among others, are as follows.
>
> First, whether the manner of driving predictably puts other road users at risk and cause [*sic*] other road users to be unable to react in time. Examples of driving that are considered as dangerous, as opposed to careless, include swerving across lanes suddenly and without warning, driving against the flow of traffic and speeding.
>
> Second, whether the motorist had driven, even though he should have known he was not in a condition to drive safely. Examples of behaviour that are considered dangerous include using mobile devices while driving and failing to use visual aids such as spectacles even though he is seriously short-sighted.
>
> Third, whether the road situation required the motorist to take extra care but he did not. Examples include when he is approaching a zebra crossing, or a junction where other road users have the right of way.
>
> *When determining the punishment, we will look at the circumstances under which the offence is committed.* The threshold for Dangerous Driving is higher than Careless

> Driving; so too the penalties.
>
> Besides looking at the circumstances of the offence, *our enhanced approach will also consider the level of harm caused.* If the motorist causes more harm, the level of punishment will be higher.
>
> *There will be four levels of harm: Death, Grievous Hurt, Hurt and Endangering Life. Such tiering of harm is not new in our laws – the Penal Code already has it.*
>
> [emphasis added]

13 Specifically, the Minister explained the amendment to s 64 as follows:

> Let me first deal with penalties in general. Clauses 13 and 14 of the Bill amend sections 64 and 65 to introduce higher maximum jail terms and fines, where applicable, as compared to the existing penalties under the Penal Code and RTA. We will also introduce additional levers to take irresponsible motorists off the roads more quickly and for longer.
>
> First, we will give Traffic Police the discretion to impose immediate suspension for all Dangerous Driving offences, as well as Careless Driving offences that cause Death or Grievous Hurt. …
>
> Second, we will introduce minimum disqualification or DQ periods for offences that cause Death and Grievous Hurt. In exceptional circumstances, such as where the motorist committed the offence while rushing for a medical emergency, the Courts will have the discretion not to apply the minimum DQ periods. …
>
> Third, the Public Prosecutor may apply for forfeiture of a vehicle used for an expanded group of offences, such as Dangerous Driving causing Death or Grievous Hurt. …

14 The Amendment Act also affected the provisions dealing with drink driving. The Minister's explanation of this was as follows:

> … Drivers who are drunk or drug-impaired show a blatant disregard for the safety of other road users. … Currently, such motorists typically face the same maximum penalties as other motorists who cause accidents. The judge may take into consideration that the offender was driving under influence during the sentencing itself. *But it would be clearer to have our*

> *intentions codified in law. In fact, our intention is for offenders driving under influence to face stiffer penalties to signal the aggravated seriousness of their actions.*
>
> …
>
> … [D]uring the public engagement process, respondents felt that even a standalone driving under influence offence where no accident is caused, should attract higher penalties to better reflect its gravity.
>
> We agree with this view. The consumption of alcohol or drugs already makes a motorist a danger to other road users. Section 67 in Clause 17 of the Bill will raise the penalties to about double the current levels. We will also raise the existing minimum DQ period to two years for first-time driving under influence offenders and five years for second-time driving under influence offenders. A lifelong disqualification will be imposed on third-time driving under influence offenders. …
>
> [emphasis added]

15 Three aspects of these amendments bear emphasis. First, the Amendment Act envisaged a new scheme of penalties for reckless or dangerous driving in a tiered structure calibrated according to the degree of hurt caused (as set out in the Minister's explanation, above at [12]). This scheme is now set out in ss 64(2) to 64(2C) of the RTA, calibrated according to whether the harm caused is death, grievous hurt or hurt and then any other case, which includes cases of non-personal injury or potential harm. By doing so, Parliament has expressly taken into consideration the broad range of actual and potential consequences arising from reckless or dangerous driving. Specific ranges of punishments are prescribed for each category of harm; the more serious the harm caused, the harsher the penalties naturally are. This is most evident in s 64(2)(*a*), which is the provision that applies when death is caused, and under which the prescribed punishment for an offender is an imprisonment term of not less than two years and not more than eight years. In comparison, where simple

hurt is caused, pursuant to s 64(2B)(*a*), the offender is liable for a fine not exceeding $10,000 or to imprisonment of up to 2 years or both.

16 Second, Parliament also intended to prescribe stiffer penalties for the offence of drink driving, as reflected in the passage from the Minister's explanation set out at [14] above. Third, the penalties were further enhanced where drink driving occurred in conjunction with reckless or dangerous driving, through the introduction of the "serious offender" provisions. Specifically, this is provided for in subsection (*c*) of each of ss 64(2), (2A), (2B) and (2C) read with s 64(8), the latter of which defines a serious offender as one who has also been convicted of certain other offences including drink driving under s 67. As the Minister made clear, the enhanced punishment provision also applies in instances where no hurt is caused, which is now provided for in s 64(2C)(*c*) of the RTA.

17 This wide range of changes underscored Parliament's aim to deter acts of reckless or dangerous driving and drink driving, and to reduce the "deadly consequences" of such acts. The increased penalties were designed to "make our roads safer", as the Minister stated at the outset of her speech, and which was reiterated by the Senior Parliamentary Secretary to the Ministry of Home Affairs, Ms Sun Xueling, at the end of her speech.

The key issues for determination

18 In the light of these legislative objects underlying the Amendment Act, with particular reference to ss 64 and 67, three broad issues arise for determination, which will inform how the appeal should be disposed of on the

facts:

(a) First, what is the appropriate sentencing framework for offences under s 64 of the RTA having regard, in particular, to the serious offender provisions?

(b) Second, what is the appropriate sentencing framework for offences under s 67 of the RTA?

(c) Finally, where an offender has been charged with separate offences under ss 64 and 67 and where the enhanced penalty for serious offenders is applicable, how should these provisions be applied in tandem?

19 The answer to these questions should be informed by several considerations. The primary aim should be to arrive at an approach to sentencing that is faithful to the legislation and that appropriately accounts for the seriousness of the offence, and accords the necessary weight to (a) the fact that the driving occurred while the offender was under the influence of drink; and (b) the harm caused by the offender; while (c) also having due regard to other relevant factors. At the same time, however, such an approach must be workable by first instance sentencing judges.

The framework for sentencing under s 64 of the RTA

General principles

20 I begin with a preliminary point. As I shall elaborate below, s 64 is concerned with creating a single offence. But its punishment provisions are prescribed by reference to a range of different circumstances. First, different

provisions exist for the punishment of the offence depending on the harm caused. For reasons that are explained below, my approach to developing a sentencing framework is confined to the punishment prescribed under s 64(2C), which is a residual category of cases not involving death, grievous or other hurt. More particularly, each of the discrete punishment provisions is subject to further enhancement where the serious offender provision is applicable. This is the specific issue that is raised in this case. Hence, although I make some observations on sentencing in relation to s 64 generally, it is more particularly the question of sentencing under s 64(2C) and, even more specifically, under s 64(2C)(*a*) read with s 64(2C)(*c*) that I am concerned with and my judgment should be understood in this light.

21 The task of developing an appropriate sentencing framework falls to the judiciary: see *Ng Kean Meng Terence v Public Prosecutor* [2017] 2 SLR 449 ("*Terence Ng*") at [25]. To this end, different approaches have been taken including the "sentencing matrix", "sentencing bands", "benchmark" and "multiple starting points" approaches (see *Terence Ng* at [26] and [39]).

22 I begin with the "sentencing matrix" approach. Under this approach, a court first determines the "severity of the offence on the basis of the *principal* factual elements of the case that are closely related to (a) the culpability of the offender in carrying out the offence and (b) the harm resulting from the offender's actions" [emphasis in original]: *Poh Boon Kiat v Public Prosecutor* [2014] 4 SLR 892 at [74]. This approach sets out a "matrix", with each cell featuring a different *indicative starting point* and range of sentences. Thereafter, the sentencing court will have regard to the aggravating and mitigating factors *other than* the principal factual elements to determine the precise sentence: *Terence Ng* at [33].

23 In contrast, under the "sentencing bands" approach, as developed in *Terence Ng*, sentencing occurs in two steps. The first involves the court considering the offence-specific factors to determine the appropriate "band" in which the particular offence before the court should be situated; such factors include the manner and mode by which the offence was committed, and the harm caused to the victim. This sentencing band defines the range of sentences that may usually be imposed for offences that have the characteristics of the particular offence in question. Once such a band has been identified, the court identifies where precisely within the corresponding range the offence falls, in order to derive an "indicative starting point". In the second step, the court then calibrates the sentence, having regard to offender-specific factors: *Terence Ng* at [39] and [73]. In my view, the "sentencing bands" approach is preferable to the "sentencing matrix" approach in the present case for reasons I explain below.

24 The "benchmark" approach was urged upon me by the Prosecution, who suggested that the court should set a benchmark sentence of two weeks' imprisonment and 36 months' disqualification for offenders who do not contest charges of both drink driving and reckless driving in a manner that is not aggravated. This benchmark sentence should then be calibrated with reference to aggravating and mitigating factors. In my judgment, it would not be appropriate to adopt a benchmark sentence in this case. As stated in *Terence Ng* at [32], the benchmark approach is "particularly suited for offences which overwhelmingly manifest in a particular way or where a particular variant or manner of offending is extremely common". However, there is no typical set of facts that would characterise the present offence. For this reason, I do not accept the approach suggested by the Prosecution.

25 I also considered the "multiple starting points" approach, but in my judgment, this would not be suitable in this context. Such an approach involves setting different indicative starting points, each corresponding to a different degree of seriousness of the offence: *Terence Ng* at [29]. Examples of offences where such an approach would be appropriate include drug possession or consumption, for which the gravity of the offence essentially varies along the axis of the quantity of drugs possessed or consumed (see *Mohd Akebal s/o Ghulam Jilani v Public Prosecutor and another appeal* [2020] 1 SLR 266 at [17], referencing *Vasentha d/o Joseph v Public Prosecutor* [2015] 5 SLR 122 at [19] and *Suventher Shanmugam v Public Prosecutor* [2017] 2 SLR 115 at [21]). Another example is drink driving under s 67 of the RTA where no harm has materialised, for which the benchmark starting points are calibrated based on the level of alcohol in the appellant's blood or breath, as this indicates the relative seriousness of the offence (*Edwin s/o Suse Nathen v Public Prosecutor* [2013] 4 SLR 1139 ("*Edwin Suse*") at [22]; see also [50] below). In contrast, there is no identifiable key determinant of a starting point sentence when sentencing an offender convicted of both a drink driving and a reckless or dangerous driving offence.

26 I return then to the two principal approaches that I considered, namely, the "sentencing matrix" and "sentencing bands" approaches. Mr Cheong urged me to base the framework for the present case on a sentencing matrix, with harm and culpability as the principal elements, drawing upon the framework in *Stansilas Fabian Kester v Public Prosecutor* [2017] 5 SLR 755 ("*Stansilas*"). In order to ascertain whether this is appropriate, it is apposite to return to the architecture of s 64 of the RTA. Section 64(1) encapsulates the primary offence of reckless or dangerous driving. The subsequent sub-sections, from ss 64(2) to 64(2C) all follow from s 64(1) as *sentencing* or *penalty-prescribing* provisions.

Nevertheless, it is critical to note that each of these sub-sections deals with the very same offence of reckless or dangerous driving, albeit tiered according to the degree of harm (as outlined above at [15]).

27 It follows from this, as Mr Cheong suggested, that harm and culpability are relevant factors in determining the appropriate sentence. However, it is not evident that a sentencing matrix based on harm and culpability is appropriate in the circumstances. First, the architecture of s 64 does not sit easily with the manner in which such a sentencing matrix would typically operate. The utility of a sentencing matrix is that it sets out a *set* of principal factual elements, by which sentencing in all such cases may be assessed in a generally consistent way. It is implicit in this approach that the court should be able to identify two principal sentencing elements with which to fashion the matrix. In *Terence Ng*, the matrix approach was rejected because the offence of rape can take place across a wide variety of different circumstances, making it impossible to identify a set of principal factual elements applicable to most such cases: *Terence Ng* at [34]. The opposite problem is faced in this case. Parliament has already identified one principal element – that of harm – and delineated the range of sentences applicable in relation to each type of harm. In some of these situations, such as where death is caused, the nature of the harm ceases to be a relevant differentiating factor for the purposes of sentencing offenders falling within the ambit of the applicable provision. The same may also be said to some, albeit varying, degrees even in cases of simple hurt, or of harm other than personal injury.

28 In short, the specific harm factors identified in s 64 do not themselves allow for a harm-culpability framework to be deployed in relation to at least some of the defined harm categories, because such frameworks would typically

be appropriate where a *broad range of outcomes* can arise under the specific axes of harm or culpability. This allows any case to be situated at an appropriate point within the matrix by calibrating across *both* axes. Due to the structure of s 64, however, the *range* of outcomes on the harm axis that can arise under some of the limbs could be essentially non-existent or very narrow, as I have already explained. Put another way, the factor of "harm" is, in large part, already reflected in the different penalty-prescribing provisions and in the choice between the different provisions, such that it is no longer significant enough to justify it as a principal sentencing element in a matrix for a specific provision.

29 In my judgment, a modified "sentencing bands" approach would be more suited to the present inquiry. To be clear, the approach that I set out in the following paragraphs applies only to the sentencing of an offence punished under s 64(2C)(*a*) read with s 64(2C)(*c*). I leave the frameworks for the other limbs of s 64 open for consideration when they arise in the future.

The sentencing approach

30 At the first step, as set out in *Terence Ng* at [39], the court should identify the band applicable to the offence and the indicative starting point with reference to that band, having regard to the *offence*-specific factors present. These would encompass factors relating to the manner and mode by which the offence was committed, as well as the harm caused by the offender. At the second step, the court would have regard to the *offender*-specific factors, being the aggravating and mitigating factors that are personal to the offender. Such an inquiry, however, would necessarily have to encompass the serious offender provision that is contained in s 64(2C)(*c*) of the RTA. I therefore set out my

views in relation to the serious offender provision before returning to elaborate on the two steps.

(1) The application of the serious offender provision

31 Mr Cheong suggested that one way to approach the additional penalty provision under s 64(2C)*(c)* was to stack a further penalty *over and above* that to be imposed under s 64(2C)*(a)*, which further penalty should be "consistent with" the sentence imposed for the corresponding offence that makes the offender a serious offender. On this basis, a sentencing court would first consider the appropriate penalty to be imposed under s 64(2C)*(a)* *without* accounting for the fact of drink driving, and thereafter, consider as a discrete step the penalty to be added under s 64(2C)*(c)* to account for the fact of drink driving as a specific factor. The language of the statute, which uses the words "in addition to any *punishment*" [emphasis added] under sub-section (a), appears to favour such an approach. In my judgment, however, this would not accord with what Parliament intended. On this, I agree with the Prosecution that the additional penalty provision serves to *enhance* the *overall* range of punishment prescribed under s 64(2C).

32 I reach this conclusion for the following reasons. Parliament's intention in introducing the serious offender provisions (including s 64(2C)(*c*)) was to punish offenders for the *aggravated* conduct of driving recklessly or dangerously *whilst under the influence of drink.* The full criminality of such conduct would only be reflected if the punishment under s 64(2C)(*a*) read with s 64(2C)(*c*) was considered *as a whole*. The two-step process proposed by Mr Cheong would cut against this, artificially separating the offender's act of drink driving and of reckless or dangerous driving into two discrete components, thus

displacing the gravity that was meant to be captured by taking the two elements together. By doing so, the court would fail to capture the essence and gravity of the offence punishable under s 64(2C)(*c*). The enhanced culpability of the offender arises from the fact that the reckless or dangerous driving was undertaken *at the time when* he was under the influence of drink; that distinct aggravating factor does not feature in the analysis when the fact of drink-driving is only considered as a discrete component. In short, the gravity of the compound offence of driving dangerously or recklessly while under the influence of drink is greater than the sum of the component parts.

33 As the Prosecution observes, by artificially separating the factor of drink driving from the fact of reckless or dangerous driving, the court would in essence minimise that component of the sentence; similarly, assessing the penalty of reckless or dangerous driving without regard to the fact of the influence of drink would understate the gravity of the offence. This is not appropriately addressed by combining the two components of the sentence. To take an obvious example, the penalty for drink driving *simpliciter* would typically be a fine. In order to avoid double counting, an approach which separated the two factors would require an assessment of the sentence for reckless or dangerous driving apart from drink driving, and, likewise, drink driving apart from reckless or dangerous driving. If this is done, the additional penalty under s 62(2C)(*c*) may end up being just a fine. This, however, would not be appropriate in cases where the act of drink driving occurred in conjunction with other elements such as reckless or dangerous driving. The end result is that such an approach could lead to unduly lenient sentences. In contrast, when the conduct of drink driving is considered together with that of reckless or dangerous driving, the likely result is that the length of the aggregate custodial sentence imposed on an offender would be increased – in fact, even

apart from the amendments in 2019, this was the approach already taken by the courts. As a result, if I were to adopt the approach proposed by Mr Cheong, a sentence imposed *prior* to the Amendment Act, where the offender's culpability is considered as a whole, could be higher than that imposed under the amended regime. Such an outcome would defeat Parliament's intention, expressed through the 2019 RTA amendments to introduce more deterrent sentences by having these *enhanced* for individuals who drive recklessly or dangerously *whilst under the influence of drink*.

34 Finally, calibrating the punishment to be imposed under s 64 as a whole allows for a holistic assessment of all the factors that go toward the offender's culpability, and in this way, the sentencing would utilise the full sentencing range. This point is, in fact, borne out on the punishments prescribed under s 64(2C)(*c*). A serious offender is liable to a fine of not less than $2,000 and not more than $10,000, or a imprisonment term not exceeding 12 months or both, *on top of* the punishment under s 64(2C)(*a*). To put it another way, this translates to a compounded effect of at least 40 percent (and up to two times) of the maximum fine under the basic offence, or up to the full imprisonment term or both. The sheer severity of this additional punishment suggests that the extent of drink driving is, at all times, a necessary and significant consideration for sentencing under s 64(2C)(*c*). This approach is also more appropriate because the relevant sentencing factors that feature in both the offences of reckless or dangerous driving and drink driving are closely related. I turn to the two-step approach to sentencing in that light.

(2) The first step: classification of the offence

35 To recapitulate, the court would have regard to the offence-specific factors at the first step to identify the sentencing band within which the offence falls.

(A) FACTORS TO BE CONSIDERED UNDER THE SENTENCING BANDS

36 While it is neither possible nor sensible to attempt to provide an exhaustive list of all the possible factors, regard can be had to the following offence-specific *aggravating* factors when selecting the appropriate sentencing band. Some of these have been considered in precedent cases as aggravating factors in respect of a s 64 or s 67 offence, and remain relevant under the present framework:

(a) *Serious potential harm*: Apart from actual harm, it has long been accepted that regard should also be had to the potential harm that can result from the act of dangerous or reckless driving (see *Stansilas* at [47]; *Public Prosecutor v Koh Thiam Huat* [2017] 4 SLR 1099 ("*Koh Thiam Huat*") at [41]). The level of potential harm would be "assessed against facts which would include … the condition of the road, the volume of traffic or number of pedestrians actually on or which might reasonably be expected to be on the road at the relevant time, the speed and manner of driving, visibility at the relevant time, the type of vehicle, and any particular vulnerabilities (*eg*, a truck or car colliding into a motorcycle or pedestrian)": *Neo Chuan Sheng v Public Prosecutor* [2020] SGHC 97 at [22]. As is evident, these relate to the circumstances of driving that could increase the danger posed to road users (see *Edwin Suse* at [28]). Where an assessment of these facts reveal that the potential harm

occasioned to road users would have been serious, this would be an aggravating factor.

(b) *Serious property damage*: The extent of property damage caused is a relevant sentencing factor. As a general rule, the amount of any loss or damage may serve as a proxy indicator of harm.

(c) *High alcohol level found in the accused person's blood or breath*: A high level of alcohol that substantially exceeds the prescribed limit would be an aggravating factor. As noted by the court in *Stansilas* at [37], an offender's alcohol level is an indicator of his inability or unfitness to drive due to his alcohol intake, and heavier punishment should therefore be imposed on drivers with higher alcohol levels. This determination of whether an offender's alcohol level is high can be made with reference to the sentencing framework for an offence under s 67, recently set out in *Rafael Voltaire Alzate v Public Prosecutor* [2021] SGHC 224 ("*Rafael Voltaire Alzate*") at [31], which is calibrated in accordance with the alcohol levels found in an offender's blood or breath. In the context of sentencing under s 64(2C)(*c*), this will be a factor of particular importance: see [33]–[34] above and [37] below.

(d) *An offender's reason or motivation for driving*: The court in *Edwin Suse* held that an offender's reason or motivation for driving could be an aggravating (or conceivably, in some circumstances, even a mitigating) factor in respect of an offence of drink driving. The court further considered that the gravity of an offender's conduct would be increased if he had, at that time, been driving a passenger for hire or reward (at [33]).

(e) *Increased culpability*: In *Koh Thiam Huat* at [41], the court considered that factors *increasing* an accused person's culpability for an offence of dangerous driving would include a *particularly dangerous manner* of driving. Examples of such aggravating factors include excessive speeding or deliberate dangerous driving, such as in "hell riding" cases (see *Koh Thiam Huat* at [41]).

(f) *The offender's conduct following the offence or attempt to evade arrest*: Conduct that is "belligerent or violent" upon arrest would constitute an aggravating factor: *Edwin Suse* at [32]. Likewise, the failure to stop in an attempt to evade arrest or to avoid apprehension should also weigh against an offender: *Public Prosecutor v Lee Meng Soon* [2007] 4 SLR(R) 240 at [33].

37 It bears reiterating that the fact of drink driving has been legislatively highlighted as a significant factor in sentencing (as explained at [33]–[34] above). This is reflected in the extent of the increase in the potential sentence that an offender may face due to the application of the serious offender provision under s 64(2C)(*c*) of the RTA. As such, the level of alcohol found in an offender's blood or breath would be a key factor in determining the sentencing band in which a case is situated.

(B) THE SENTENCING BANDS

38 Following from my conclusion above that the punishment to be imposed under s 64(2C)(*a*) of the RTA read with s 64(2C)(*c*) is to be calibrated *as a whole*, the applicable sentencing range is a fine of between $2,000 and $15,000 and/or an imprisonment term not exceeding 24 months, as well as a disqualification period of no less than two years. As the statutory amendments

to the RTA have significantly amended the structure of the offending provisions as well as increased the corresponding sentences, the sentences imposed in precedent cases under the pre-amended RTA cannot be applied directly, particularly in relation to the sentence to be imposed. If the sentencing bands set out in this judgment were applied to these cases, this should generally result in higher sentences. These cases therefore remain useful only as *qualitative* examples of cases that could fall within the various bands.

39 Bearing in mind the precedent cases as well as the statutory maximum punishments, the appropriate bands for s 64(2C)(*a*) of the RTA read with s 64(2C)(*c*), in my view, are as follows:

(a) Band 1: A fine of between $2,000 and $15,000 and/or up to one month's imprisonment and a disqualification period of two to three years.

(b) Band 2: Between one month's and one year's imprisonment and a disqualification period of three to four years.

(c) Band 3: Between one year's and two years' imprisonment and a disqualification period of four to five years.

40 Band 1 consists of cases at the lower level of seriousness, with no offence-specific aggravating factors present or where they are present only to a limited extent. The offender's blood alcohol level is also likely to be at the lowest or second lowest bands in the framework set out in *Rafael Voltaire Alzate*. In the following paragraphs, I set out some examples of fact patterns that might approximate to these bands. It should be noted that because these cases were decided prior to the present appeal, there will not be a clear fit between

these examples and the sort of factors I have outlined as relevant in identifying the appropriate band in any given case. Further, I recognise that some of these cases involved offences other than reckless or dangerous driving. Nonetheless, I set these out purely for illustrative purposes. On that basis, examples of cases that might fall within Band 1 (assuming similar facts which would give rise to the offence of reckless or dangerous driving while under the influence of drink) are as follows:

(a) In *Public Prosecutor v Lechimanan s/o G Sangaran* [2007] SGDC 229, the offender was travelling along an expressway when he lost control of his vehicle and skidded to the left. He collided into some water barricades as a result. The Breath Evidential Analyser ("BEA") test revealed that the alcohol level in his breath was 61 microgrammes of alcohol per 100ml of breath. The offender was convicted of one charge of drink driving and one charge of driving without due care and attention. The District Judge imposed a sentence of three weeks' imprisonment and a period of disqualification for four years, and a fine of $1,500, for the offences.

(b) In *Public Prosecutor v Benedict Goh Whei-Cheh* [2007] SGDC 304, the offender failed to keep a proper lookout and collided into a stationary vehicle. The BEA test revealed that the alcohol level in his breath was 56 microgrammes of alcohol per 100ml of breath. He was convicted of one charge of drink driving and one charge of inconsiderate driving (with other charges being taken into consideration for the purposes of sentencing). He was sentenced to an imprisonment term of three weeks and a period of disqualification of four years in respect of the former, and fined $800 in respect of the latter.

(c) In *Public Prosecutor v Lee Soon Lee Vincent* [1998] 3 SLR(R) 84, the offender was spotted driving his vehicle in a zigzag manner and twice overtaking while over the speed limit. An officer managed to stop him. The BEA test revealed that his alcohol level in his breath was 38 microgrammes of alcohol per 100ml of breath. The offender was convicted of one charge of drink driving and one charge of speeding. On appeal, the court took into account the fact that the respondent had exceeded the legal limit by only three microgrammes, that his previous drink driving offence was some seven years ago, and that he pleaded guilty to the offence and had co-operated when stopped. As he was a repeat offender, however, an imprisonment term was mandatory and he was sentenced to two weeks' imprisonment, in addition to a fine of $6,000 and four years' disqualification: at [39]–[40].

41 These fact patterns could be viewed in broad terms as the sort of cases that might fall within Band 1. Such cases will typically be characterised by relatively low to moderate levels of alcohol content, limited actual harm and an absence of other aggravating circumstances.

42 Band 2 consists of cases reflecting a higher level of seriousness and would usually contain two or more offence-specific aggravating factors. In these cases, the level of culpability and the blood alcohol level will typically *both* be on the higher side. Given the legislative emphasis on the factor of drink driving, where an offender's blood alcohol level is in the highest or second highest band of the framework in *Rafael Voltaire Alzate*, the case is likely to fall *at least* within Band 2. Examples of cases that might fall in Band 2 are as follows:

(a) In *Public Prosecutor v Cheong Chin Swee Jerry* [2015] SGDC 194, the offender suddenly switched to the extreme right lane in front of another lorry travelling on his right. As the driver of the lorry could not stop in time, the front of the lorry collided into the rear of the offender's motor car. Subsequently, traffic police officers arrived at the scene. The BEA test showed that the level of alcohol in the offender's breath was 89 microgrammes of alcohol per 100ml of breath. The offender was convicted of one charge of drink driving and one charge of driving without reasonable consideration. For the drink driving offence, a sentence of three weeks' imprisonment, a fine of $6,000 and a four-year disqualification period was imposed. A fine of $800 was imposed in respect of the other offence. On appeal, the imprisonment term in respect of the drink driving offence was reduced to two weeks' imprisonment.

(b) In *Public Prosecutor v Park Jeoung Sang* [2015] SGDC 311, the offender stopped a few metres away from a roadblock. An officer then approached the offender and ordered him to move to the roadblock point. Instead, the offender made an illegal U-turn and drove against the flow of traffic, colliding into the centre road divider. The BEA test showed that the level of alcohol in the offender's breath was 65 microgrammes of alcohol per 100ml of breath. He also gave false information to the police as to his actions. The driver was convicted of one charge of drink driving, one charge of driving whilst under disqualification, one charge of dangerous driving and one charge of giving false information to a public servant. In respect of the drink driving charge, a sentence of two weeks' imprisonment, a fine of $5,000, and disqualification for a period of three years was imposed. For the

dangerous driving charge, he was sentenced to a fine of $1,500 and a disqualification period of six months.

43 An example of a case coming within the higher end of Band 2 might be *Public Prosecutor v Leong Kum Seng* [2015] SGDC 52. The offender was driving a motor lorry, and he swerved into the path of a stationary motor car which was waiting to make a right turn. As a result, the front right of the offender's motor lorry collided into the front right portion of the motor car. The right turn signal and the right headlight of the motor lorry were shattered as a result. As for the motor car, its right wing mirror was broken off, the right driver and passenger doors were dented and scratched, while the driver's door was also jammed. The offender drove away after the collision. The BEA test revealed that the alcohol level in the offender's breath was 73 microgrammes of alcohol per 100ml of breath. The offender was convicted of one charge of drink driving, one charge of driving without reasonable consideration and one charge of failing to stop after a collision (with other charges taken into consideration for the purposes of sentencing). For the drink driving offence, the court imposed four weeks' imprisonment, a $6,000 fine, and a disqualification order for period of five years. Here the blood alcohol level was on the higher side, the damage was more extensive, and the vehicle was a lorry with the potential to cause even more harm. The driver also left the scene though this was the subject of a separate charge. However, this fact should typically be reflected in the aggregate sentence either by running a consecutive sentence for that charge or increasing the primary sentence in order to ensure that the aggregate sentence reflects the overall criminality.

44 Band 3 consists of the most serious cases of reckless or dangerous driving whilst under the influence of drink. In these cases, there will be multiple

aggravating factors suggesting higher levels of culpability and higher alcohol levels. An example of a case that might fall within Band 3 is *Public Prosecutor v Ching Ling Ka @ Lincoln Cheng* [2017] SGDC 326, in which the offender was convicted of drink driving and consented to another charge of dangerous driving to be taken into consideration for sentencing. While the BEA test revealed that the offender had a relatively low alcohol content in his body of 43 microgrammes of alcohol per 100ml of breath, there were multiple aggravating circumstances present. The offender beat the red lights at two junctions before colliding into a taxi. The collision caused the victim's taxi to veer off course and mount the road kerb before hitting a metal pole supporting a sheltered walkway. Repairs to the victim's taxi cost about $20,992.81, and the victim experienced pain in his left leg although he did not seek medical treatment. The offender's appeal against his sentence was dismissed. I note that under the present legislative framework, the offender could have been charged with an offence punishable under s 64(2B)(*c*) of the RTA instead, since hurt, though slight, had been caused to the victim.

45 I make three observations in respect of the proposed bands. First, it is likely that the custodial threshold would be crossed in many cases in view of the gravity of the offence reflected in these provisions. The statutory provisions allow for the possibility of a fine to cater to the myriad of factual situations that could arise under this offence. This possibility is accordingly reflected in the framework. A fine, however, would generally be appropriate only where the offence is not aggravated and falls at the lowest end of Band 1.

46 Second, as noted in *Terence Ng* at [49], there exists the possibility that cases have facts that are so unusual that a sentencing point *outside* the prescribed band should be adopted. This is, of course, always open to the court, though in

such circumstances, it should furnish its reasons for departing from the prescribed sentencing range.

47 Third, where the offender is a "repeat offender" or "serious repeat offender" as defined in s 64(8) of the RTA, the range of sentences that can be imposed on the offender has been increased accordingly in ss 64(2C)(*b*) and 64(2C)(*d*). Where a repeat offender is also a serious offender (s 64(2C)(*b*) read with s 64(2C)(*c*)), or where a first or repeat offender is also a serious repeat offender (ss 64(2C)(*a*) or 64(2C)(*b*) read with s 64(2C)(*d*)), the applicable sentencing ranges for each band in the sentencing framework will be correspondingly higher than ranges set out above, bearing in mind the different punishments available. The formulation of these sentencing ranges will need to be done by the court in suitable cases. In accordance with the legislative structure, the fact that an offender is a "repeat offender" or "serious repeat offender" should be reflected in the use of the proper sentencing bands under the proper provisions, rather than reflected as an offence-specific aggravating factor, in order to avoid double counting.

(3) The second step: calibration of the sentence

48 At the second step of the analysis, the court will have regard to the offender-specific factors. Examples of these factors have been set out at [62]–[71] of *Terence Ng* and apply equally in the present framework. Offender-specific aggravating factors include offences taken into consideration for the purposes of sentencing, the presence of relevant antecedents (apart from where the offender's antecedents have been taken into account under the "repeat offender" or "serious repeat offender" provisions), and evidence showing a lack

of remorse. Offender-specific mitigating factors include evidence of genuine remorse and an offender's youth.

49 In summary, to determine the appropriate sentence under s 64(2C)(*a*) read with 64(2C)(*c*) of the RTA, the overall punishment under s 64(2C) is enhanced as a whole. At the first step, the court determines the appropriate sentencing band which the offence in question falls into, having regard to the offence-specific aggravating factors present in the case. The factor of drink driving, as reflected in the alcohol level in an offender's blood or breath, would be given significant weight at this step in determining the appropriate sentencing band. Within the appropriate band and corresponding sentencing range, the court then arrives at an indicative starting point. At the second step, the court calibrates the sentence from that starting point by having regard to the offender-specific factors present.

The framework for sentencing under s 67 of the RTA

50 I turn next to the framework for sentencing under s 67 of the RTA. The offence of drink driving was itself also amended under the 2019 amendments, with the critical difference being a doubling of the punishments imposed under the 2019 RTA. Prior to the amendment, s 67(1)(*b*) provided that a first offender would be liable on conviction to a fine of not less than $1,000 and not more than $5,000 or to imprisonment for a term not exceeding six months. Section 67(2) also provided for a disqualification period of not less than 12 months. After the amendments, s 67(1)(*b*) now provides that a first offender would be liable on conviction to a fine of not less than $2,000 and not more than $10,000, or to imprisonment for a term not exceeding 12 months or to both. Section 67(2) now provides for a minimum disqualification period of two years. This was done to

reflect Parliament's intention to further deter the scourge of drink driving, as explained in the Minister's remarks above at [14]. The appropriate framework for sentencing an offence under s 67 has recently been set out in *Rafael Voltaire Alzate* at [31] as follows:

Level of alcohol (µg per 100ml of breath)	**Range of fines**	**Range of disqualification**
36–54	$2,000–$4,000	24–30 months
55–69	$4,000–$6,000	30–36 months
70–89	$6,000–$8,000	36–48 months
≥ 90	$8,000–$10,000	48–60 months (or longer)

51 I should note that Mr Cheong proposed a slightly different framework (in his submissions which pre-dated the decision in *Rafael Voltaire Alzate*) as follows:

Level of alcohol (µg per 100ml of breath)	**Range of fines or term of imprisonment**	**Range of disqualification**
36–55	$2,000–$5,000	24–30 months
56–70	$5,000–$8,000	30–36 months
71–90	$8,000–$10,000	36–42 months
91–110	Imprisonment of up to 1 month	42–48 months
≥ 111	Imprisonment of 1 to 3 months	48–60 months (or longer)

52 One point of note in Mr Cheong's framework was the proposal of a short imprisonment term where the alcohol level substantially exceeds the prescribed

limit. This was drawn from the UK Sentencing Council's sentencing guidelines under s 5(1)(*a*) of the Road Traffic Act 1988 (c 52) (UK). Mr Cheong also submitted that it would be in-line with the increased need for deterrence.

53 As I noted above at [19], any sentencing framework must be developed with a clear view of the overall circumstances of the case. The situation that the present framework seeks to deal with is one where no harm to person or property has eventuated. That was also the basis upon which the framework in *Rafael Voltaire Alzate* was developed, drawing upon the points emphasised in *Edwin Suse* at [12] and *Stansilas* at [76]. In such instances, it is a matter for the sentencing judge to consider whether the custodial threshold has been crossed. Much will turn on the circumstances. In contrast, a term of imprisonment will generally be an appropriate *starting point* where an offender has caused personal injury or damage to property as a result of driving whilst under the influence of drink. As injury caused by a drunk driver "represents the very evil that the ban on drunk driving was intended to prevent": *Stansilas* at [42], sentences in the higher region of the sentencing range are naturally engaged. It is therefore not necessary to incorporate a custodial term as a starting point within the present framework.

54 However, I reiterate that this framework only provides a *neutral starting point* relative to the level of alcohol present in the offender's blood/breath: *Rafael Voltaire Alzate* at [33]. At that point, regard will not yet have been had to any aggravating or mitigating circumstances. The former may well result in the custodial threshold being crossed in a given case.

Interaction between ss 64 and 67 of the RTA

55 I turn to the final issue which is how an offender convicted of separate offences under ss 64 and 67 of the RTA should be sentenced, and how the two provisions interact with one another. I have already noted that an offender convicted of the offence of dangerous or reckless driving and also of drink driving would be liable for enhanced punishment pursuant to the serious offender provision under s 64. This, however, is the punishment for the offence under s 64, which punishment has been enhanced by reason of the fact that the offence was committed while the offender was under the influence of drink. There remains the *separate* question of sentencing for the offence under s 67, which is the offence of drink driving. The Prosecution and Mr Cheong both submitted that any sentence for the offence under s 67 should run concurrently with that under s 64, if custodial terms were to be imposed in respect of each of the offences.

56 In my judgment, when the serious offender provision in s 64(2C)(*c*) applies, as a general rule the sentences under ss 64 and 67 should run concurrently insofar as any term of imprisonment or disqualification order is concerned. The serious offender provision would only apply when the facts engaged by both charges bear some co-relation to each other. This reading is borne out by the statutory wording of the provisions, as s 64(2C)(*c*) is only engaged when an offender is a serious offender. Section 64(8) in turn defines "serious offender" as an offender who is *convicted* of an offence under section 67 or 70(4) *in relation to the offender's driving* which is an offence under subsection (1). As the facts underlying the offence under s 67 have to be *in relation to* the same act of driving which gave rise to the offence under s 64, the

provisions point to the offences engaging an identical or largely overlapping set of facts.

57 The operation of the enhanced penalty provision in s 64(2C)(*c*) is contingent on the offender also being *convicted* of either an offence under ss 67 or 70(4) of the RTA. For this reason, it necessarily follows that the Prosecution would have to charge an offender for, and proceed on, *both* offences under ss 64 and 67 in order for the penalty provision to apply. This is so even when both charges relate to the identical act of wrongdoing. These factors all point me towards the conclusion that the sentences for both offences should run concurrently because the punishment for the offence of dangerous or reckless driving would already have been enhanced on account of the serious offender provision by a *range* that is similar to that applicable under s 67, although to a degree that is likely to be greater by reason of treating the two as a compound offence rather than as two separate and unrelated offences, as explained at [32]–[34] above.

58 That conclusion is also consistent with the spirit of the principle that a person ought not to be punished twice for the same offence, as to which s 40 of the Interpretation Act (Cap 1, 2002 Rev Ed) provides:

> **Provisions as to offences under 2 or more laws**
>
> **40.** Where any act or omission constitutes an offence under 2 or more written laws, the offender shall, unless the contrary intention appears, be liable to be prosecuted and punished under any one of those written laws but shall not be liable to be punished twice for the same offence.

59 As the enhanced penalty provisions, including that under s 64(2C)(*c*), are contingent on a conviction under s 67 of the RTA, running the two sentences consecutively might amount in effect, if not in form, to punishing the offender

twice for the same act, given that the charges in this context will relate to the same facts. The same principle also undergirds s 308(2) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC"), which applies to the sentencing of an offender liable for multiple offences under different provisions arising out of the same set of facts (see *Zeng Guoyuan v Public Prosecutor* [1997] 2 SLR(R) 999 at [7]). For reference, s 308 of the CPC provides as follows:

> **Limit of punishment for offence made up of several offences**
>
> **308.**—(1) Where anything which is an offence is made up of parts, any of which parts is itself an offence, the person who committed the offence shall not be punished with the punishment of more than one of such offences unless it is expressly provided.
>
> (2) Where —
>
> (*a*) anything is an offence falling within 2 or more separate definitions of any law in force for the time being by which offences are defined or punished; or
>
> (*b*) *several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence,*
>
> *the person who committed the offence shall not be punished with a more severe punishment than the court which tries him could award for any one of such offences.*
>
> *Illustrations*
>
> (*a*) *A* gives *Z* 50 strokes with a stick. Here *A* may have committed the offence of voluntarily causing hurt to *Z* by the whole beating, and also by each of the blows which make up the whole beating. If *A* were liable to punishment for every blow, he might be imprisoned for 50 years, one for each blow. But he is liable only to one punishment for the whole beating.
>
> (*b*) But if, while *A* is beating *Z*, *Y* interferes and *A* intentionally strikes *Y*, here, as the blow given to Y is no part of the act whereby *A* voluntarily causes hurt to *Z*, *A* is liable to one punishment for voluntarily causing hurt to *Z*, and to another for the blow given to *Y*.

[emphasis added]

60 In *Tay Boon Sien v Public Prosecutor* [1998] 2 SLR(R) 39 ("*Tay Boon Sien*"), the court considered that the now-repealed s 71(2) of the Penal Code (Cap 224, 1985 Rev Ed) ("1985 Penal Code") (upon which s 308(2) of the CPC is based) applies "where the act, in itself an offence, might constitute different offences because it became either an aggravated form of that offence or a different offence when combined with other acts" (at [21]). Yong Pung How CJ in *Xia Qin Lai v Public Prosecutor* [1999] 3 SLR(R) 257 ("*Xia Qin Lai*") gave the following illustration at [20], in respect of s 71(2) of the 1985 Penal Code and ss 170(2) and 170(3) of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) (now repealed and replaced by ss 135 and 136 of the CPC respectively):

> … By way of comparison, it can be seen that the first limb of s 71(2) ('an offence falling within two or more separate definitions of any law in force') corresponds to s 170(2) of the CPC; and the second limb of s 71(2) ('several acts of which one or more than one would by itself or themselves constitute an offence constitute when combined a difference offence'), to s 170(3). The result is as follows. Where the acts alleged constitute an offence falling within two or more separate definitions of the law, *eg* if A strikes B he may commit the offence of voluntarily causing hurt and the offence of using criminal force, the accused may be charged with and tried at one trial for each offence, but he cannot be punished with a more severe punishment than the court could award for any one of the offences: s 170(2) of the CPC read with s 71(2) of the Code. *Similarly, where the acts alleged are such that one or more than one would by itself or themselves constitute an offence constitute when combined a different offence [*sic*],* eg *if A commits robbery on B and in doing so voluntarily causes hurt to B, A may be separately charged with and convicted of offences under ss 323, 392 and 394 of the Code, but he cannot be punished with a more severe punishment than the court could award for any one of the offences: s 170(3) of the CPC read with s 71(2) of the Code.* In contrast, in one series of acts so connected together as to form the same transaction there may be more offences than one committed by the same person, *eg* if when A is striking B, C interferes and A strikes C also, A may commit two offences, one in striking B and one in striking C. Here the accused may be charged with and tried at one trial for

> each offence and, subject to the provisions of s 17 of the CPC, is liable for the full punishment for each offence: s 170(1) of the CPC and illus (*b*) to s 71 of the Code. Thus, although it is provided in s 170(4) that nothing in s 170 shall affect s 71, the converse is not always so; the punishment to be awarded is circumscribed by s 71(2) in the situations falling within the ambit of ss 170(2) and 170(3) respectively. As can be seen from s 170(1), however, it is not in every case falling within s 170, when several charges are brought, that only one punishment may be imposed… [emphasis added]

61 As noted in *Tay Boon Sien*, s 308(2) of the CPC would apply in a case where an offender is convicted of two offences, and where one offence is an aggravated form of the other. In *Xia Qin Lai*, the example given was of an offender who is charged and convicted of offences under ss 323 (voluntarily causing hurt), 392 (robbery) and 394 (voluntarily causing hurt in committing robbery) of the Penal Code. Another case to which s 308(2) of the CPC would apply is where an act is itself an offence but can be combined with other acts to form a different offence, such as an offender convicted of drug trafficking and possession in respect of the same set of drugs. Although s 308(2) may not strictly apply to the statutory provisions under the RTA because the elements required to make out an offence under s 67 are not subsumed within the elements of an offence under s 64, the *sentence* that is imposed under s 64 for an offender who is also under the influence of drink at the time of the offence under s 64, punishes that offender both for the fact that he had driven in a reckless and dangerous manner *and* for doing so while drunk. The higher sentence imposed on an offender under s 64 reflects the offender's enhanced culpability and this can be analogised to the situation where a higher sentence is imposed for a conviction on an aggravated form of the basic offence. This too strengthens my view that an offender convicted of both offences under ss 64 and 67 should not ordinarily face the prospect of being sentenced under the

serious offender provision in s 64 and then face a consecutive sentence of imprisonment or even of disqualification for the conviction under s 67.

62 Furthermore, running such sentences under ss 64 and 67 consecutively where they relate to the *same set of facts* would also seem to be inconsistent with the stricture against double counting factors in sentencing. In *Public Prosecutor v Raveen Balakrishnan* [2018] 5 SLR 799, I considered that double counting would arise "where a factor is expressly or implicitly taken into account in sentencing even though it has already formed the factual basis of a statutory mechanism for the enhancement of the sentence, or of other charges brought against the offender" (at [85]). If a factor already forms the basis of a charge framed against the offender or of a statutorily enhanced sentence, the "due weight" that should be given by the court to that factor in sentencing will generally be "none" (at [91]). This principle would apply here as well, where the factor forms the basis of a statutorily enhanced sentence for a different charge. Given that the offender's act of drink driving is taken into account in sentencing under s 64(2C)(*c*), the sentence for the offence under s 67 arising out of the same facts should generally run concurrently to avoid the problem of double-counting.

63 In line with this, the debates in Parliament do not suggest that Parliament intended that sentences under ss 64 and 67 should generally run consecutively. The following extract from the Minister's remarks during the debates illustrates this (*Singapore Parliamentary Debates, Official Report* (8 July 2019) vol 94):

> Mr Speaker, I will now turn to the amendments for driving under influence. Drivers who are drunk or drug-impaired show a blatant disregard for the safety of other road users. They are one of the biggest contributors to serious accidents on our roads. These are also accidents that clearly could have been avoided if the motorist had not come under influence or did not

> drive. *Currently, such motorists typically face the same maximum penalties as other motorists who cause accidents. The judge may take into consideration that the offender was driving under influence during the sentencing itself. But it would be clearer to have our intentions codified in law.* In fact, our intention is for offenders driving under influence to face stiffer penalties to signal the aggravated seriousness of their actions. [emphasis added]

64 It seems to me that the amendments to s 64 were introduced to ensure that it would be mandatory for the court to impose an additional penalty where an offender had driven recklessly or dangerously *whilst under the influence of drink*, so as to reflect his enhanced culpability. This intention has been codified in the enhanced penalty provisions, such as s 64(2C)(*c*). Therefore, it would usually be appropriate for the sentences under ss 64 and 67 to run concurrently where they are based on the *same facts*, and I accept the views of the Prosecution and Mr Cheong on this.

65 However, my provisional view is that these concerns do not prevent a court from imposing a condign sentence for the offence under s 64 and, separately, a *fine* for the offence under s 67, where that is considered appropriate. As I held in *Seng Foo Building Construction Pte Ltd v Public Prosecutor* [2017] 3 SLR 201, s 306 of the CPC explicitly sanctions the imposition of concurrent sentences when the court is dealing with multiple *imprisonment* terms. However, there is no such provision where the sentences consist of fines, which are therefore inevitably cumulative (at [68]). Nevertheless, the totality principle, which allows for the adjustment of individual fines so that the cumulative fine is sufficient and proportionate to the offender's overall criminality, would enable the court to deal with any concern of unfairness arising from double or excessive punishment. This would, of course, be subject to any contrary statutory provisions having mandatory force

(at [80]). This issue was not material in the present case and so this should be understood as a provisional view.

Application to the facts

66 Turning to the present case, the charges against Wu were as follows:

> You … are charged that you, on the 11th day of February 2020, at about 4.05 a.m, along Crawford Street towards Lavender Street near Beach Road, Singapore, whilst driving **motorcar SLJ1107A,** did have so much alcohol in your body that the proportion of it in your breath, *to wit*, not less than **46 microgrammes of alcohol in 100 millilitres of breath**, exceeded the prescribed limit of 35 microgrammes of alcohol in 100 millilitres of breath, and you have thereby committed an offence under Section 67(1)(b) and punishable under Section 67(1) read with Section 67(2)(a) of the Road Traffic Act (Cap 276, 2004 Rev Ed).
>
> …
>
> You … are charged that you, on the 11th day of February 2020, at about 4.05 a.m, along Crawford Street towards Lavender Street near Beach Road, Singapore, did drive **motorcar SLJ1107A**, on a road recklessly, having regard to all the circumstances of the cases, including the nature, condition and use of the road, and the amount of traffic which was actually at the time on the road, *to wit*, by failing to obey to [*sic*] traffic indicating sign and drive [*sic*] against the flow of traffic from Crawford Street to Beach Road for an estimated distance of about about [*sic*] 140 meters, and you have thereby committed an offence punishable under Section 64(1) punishable under Section 64(2C)(c) read with Section 64(2C)(a) and Section 64(2D)(i) of the Road Traffic Act, Chapter 276.
>
> [emphasis in original]

67 Wu was initially driving while under the influence of drink from Crawford Street towards Lavender Street when he saw a police roadblock. When he saw the roadblock, he stopped about 50 metres before it and made a three-point turn. He then travelled against the flow of traffic for about 140 metres before he was apprehended. I consider that the facts underlying both

charges are common, given that the charges both indicate Wu's driving at 4.05am along Crawford Street towards Lavender Street, and his subsequent act of driving against the flow of traffic from Crawford Street to Beach Road (which ultimately forms the subject of the s 64(2C) charge) took place as part of the same journey.

68 I first consider the appropriate sentence for Wu's offence under s 67. As the appellant had 46 microgrammes of alcohol per 100ml of breath, following the sentencing framework set out in *Rafael Voltaire Alzate* at [50] above, he was liable to be sentenced to a fine of between $2,000 to $4,000, and a disqualification term of between 24 to 30 months. There is no indication in the Statement of Facts that Wu admitted to that there were any further aggravating factors that pertained specifically to this offence. As such, he would fall in the middle of this range, and a fine of $3,000 and a disqualification order for a period of 27 months would have been appropriate.

69 In relation to the offence under s 64, however, a number of aggravating factors are clearly present. The degree of *potential* harm that could have been caused by Wu's action was very high and it was fortuitous that no harm or property damage materialised. As the District Judge noted, Wu drove against the flow of traffic and around a bend from Crawford Street to Beach Road, which is a potential blind spot for vehicles. There was also a zebra crossing just after the bend along Beach Road, rendering his actions especially dangerous to pedestrians who would not be expecting a car from the opposite direction. Wu's culpability was further enhanced by the fact that he had driven in such a dangerous manner in a deliberate attempt to avoid apprehension and evade arrest. I consider that two of the offence-specific aggravating factors identified above are present in this case, and it therefore falls within the lower end of Band

2 of the sentencing framework. In terms of the offender-specific factors, the only mitigating factor present was that Wu had pleaded guilty to his offences.

70 The Prosecution referred to the following unreported cases of dangerous driving under s 64(2C)(*a*), to show a trend of custodial sentences being imposed in cases involving aggravated acts of reckless or dangerous driving, even where the offenders in question did not drive under the influence of drink, or cause hurt:

(a) In *Public Prosecutor v Muhammad Irian Fairiz bin Burhan* SC-909224-2020, the offender weaved in and out of three lanes on his motorcycle along an expressway at a speed of 120km/h (exceeding the speed limit of 90 km/h) while attempting to evade apprehension by the police. The offender then exited the expressway and subsequently failed to stop at a "give way" line, causing an oncoming bus to brake. At the time of the offence, the offender had numerous traffic antecedents. He was also subject to a disqualification order for a period of ten years as a repeat offender. Specifically in relation to the offence under s 64(2C)(*a*), he was sentenced to five days' imprisonment and disqualified for a period of two years.

(b) In *Public Prosecutor v Shahrul Adryjunaidi bin Kamis* SC-911395-2019, the offender was driving a van when police officers instructed him to stop at a roadblock. The offender drove off instead, because he did not possess a valid licence and third-party insurance. The police officers had to pursue him for about 3km before he was arrested. During the chase, the offender beat two red light traffic signals (one at a signalised pedestrian crossing, and the other at a junction). He was

sentenced to one week's imprisonment and disqualified for a period of 36 months for the dangerous driving offence under s 64(2C)(*a*).

(c) In *Public* Prosecutor *v Tony Ng Zhiqi* SC-904567-2020, the offender was riding a motorcycle with a pillion when the police signalled for him to stop as he was suspected of speeding. However, the offender rode off. While he was being chased by the police, the offender travelled at a speed of up to 120km/h (exceeding the speed limit of 60 km/h). The offender also failed to comply with a red-light traffic signal twice. He was sentenced to one month's imprisonment and disqualified for a period of 36 months for the dangerous driving offence under s 64(2C)(*a*).

71 The cases cited by the Prosecution may have reflected culpability for dangerous driving on the part of these offenders that was perhaps higher than that of the present appellant. On the other hand, those offenders were convicted only of dangerous driving under s 64(2C)(*a*), and the serious offender provision was not applicable.

72 Based on the factors identified at [69] above, I consider that Wu's offence fell within Band 2 and that a custodial term of one month and a disqualification term of between 36 and 42 months could have been imposed in respect of Wu's offence under s 64(2C)(*a*) read with s 64(2C)(*c*) and s 64(2D)(*i*). This sentence falls at the lower end of the sentencing range provided under Band 2 of the framework.

Conclusion

73 In the circumstances, I consider that the sentence imposed by the District

Judge of 17 days' imprisonment and a disqualification order for a period of 42 months for each of the offences, both sets of sentences to run concurrently, was not manifestly excessive. In fact, if the sentence had been calibrated in accordance with the approach that I have set out above, Wu would have faced a higher sentence of imprisonment and possibly also a fine for the offence under s 67. For the foregoing reasons, I dismiss the appeal. I once again record my appreciation to Mr Cheong for his extremely helpful submissions.

Sundaresh Menon
Chief Justice

Chooi Jing Yen and Joel Wong En Jie (Eugene Thuraisingam LLP)
for the appellant;
Winston Man and Norine Tan (Attorney-General's Chambers)
for the respondent;
Cheong Tian Ci Torsten (Rajah & Tann Singapore LLP) as young *amicus curiae*.