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

[2022] SGHC 176

Magistrate's Appeal No 9174 of 2021

Between

Sue Chang (Xu Zheng)

… *Appellant*

And

Public Prosecutor

… *Respondent*

JUDGMENT

[Criminal Law — Statutory offences — Road Traffic Act]
[Criminal Procedure and Sentencing — Sentencing — Sentencing framework — Section 65(3)(*a*) of the Road Traffic Act]

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v
Public Prosecutor

[2022] SGHC 176

General Division of the High Court — Magistrate's Appeal No 9174 of 2021
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25 July 2022 Judgment reserved.

Vincent Hoong J:

Introduction

1 The appellant pleaded guilty to a charge of driving without due care and attention causing grievous hurt, an offence under s 65(1)(*a*) punishable under s 65(3)(*a*) read with s 65(6)(*d*) of the Road Traffic Act (Cap 276, 2004 Rev Ed) ("RTA"). The district judge ("DJ") sentenced him to six months' imprisonment and imposed a disqualification order for a period of five years. The DJ's grounds of decision can be found in *Public Prosecutor v Sue Chang* [2021] SGDC 192 ("GD").

2 The appellant's main contention in this appeal is that the sentence of imprisonment imposed by the DJ was manifestly excessive.

3 This appeal is significant as it is the first case to be considered in this court involving the newly legislated s 65(3)(*a*) of the RTA, following the RTA

amendments which came into effect on 1 November 2019. It is thus an opportune time to consider the appropriateness of promulgating a sentencing framework for offences under s 65(3)(*a*) of the RTA.

Facts

4 On 5 December 2020, at about 8.26pm, the appellant was driving a motor car along the Central Expressway ("CTE") towards the Seletar Expressway ("SLE"). As he drove past the 6.8km mark near lamp post 444F, he failed to keep a proper lookout ahead and collided into the rear of the first victim's motorcycle. Upon collision, the first victim was flung off her motorcycle. The appellant's motor car swerved right and collided into the right rear portion of the second victim's motor car.[1]

5 Extensive damage was caused to the first victim's motorcycle. The rear portion of the motorcycle, the right-side exhaust pipe, the left-side rider's footrest and left-side mirror were broken. Multiple other areas of the motorcycle sustained scratches.[2] The second victim's motor car also sustained damage, where the rear left and right portions of the vehicle were broken.[3] The front portion of the appellant's motor car was broken and scratched.[4]

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1 Statement of Facts ("SOF") at [5], Record of Proceedings ("ROP") p 7.

2 SOF at [8], ROP p 8.

3 SOF at [9], ROP p 8.

4 SOF at [10], ROP p 8.

6 Following the accident, the first victim was conveyed semi-conscious to Tan Tock Seng Hospital ("TTSH") by ambulance.[5] Both the appellant and the second victim were not injured.[6]

7 The medical reports obtained from TTSH's Emergency Department, Department of General Surgery, Department of Otorhinolaryngology and the National Neuroscience Institute indicated that the first victim sustained the following injuries as a result of the collision:[7]

(a) occipital cephalohaematoma;

(b) abrasions over the right posterior lower chest wall and right flank;

(c) small abrasions over bilateral hands and feet;

(d) severe head injury with cerebral oedema, acute traumatic subarachnoid haemorrhage and subdural haematoma;

(e) pulmonary contusions;

(f) multiple intracranial haemorrhages with suspicious right parietal bone non-depressed fracture;

(g) right lung contusions; and

(h) rhabdomyolysis.

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5 SOF at [11], ROP p 9.

6 SOF at [10], ROP p 9.

7 SOF at [11], ROP p 9; Medical Report from TTSH (ED) dated 26 January 2021 ("TTSH MR (ED)"), ROP p 65; Medical Report from TTSH (ENT) dated 26 January 2021 ("TTSH MR (ENT)"), ROP p 66; Medical Report from National Neuroscience Institute dated 26 January 2021 ("NNI MR"), ROP p 67; Medical Report from TTSH dated 1 February 2021 ("TTSH MR (GS)"), ROP p 68.

8 The first victim was intubated in TTSH's Emergency Department in view of her low Glasgow Coma Scale score of three. She underwent a series of medical procedures during her time at TTSH, namely: (a) tracheostomy creation on 22 December 2020; (b) surgery for insertion of intracranial pressure monitors on 6 and 9 December 2020; and (c) exploration and haemostasis of the tracheostomy wound on 27 December 2020.[8]

9 At her family's request, the first victim was medically repatriated to Hospital Sultanah Aminah in Johor Bahru, Malaysia on 17 January 2021. At the time of repatriation, she was still unresponsive, unable to obey commands and unable to speak or communicate.[9]

10 At the time of the incident, the weather was clear, the road surface was wet, the traffic volume was moderate to heavy, and the visibility was clear.[10]

11 The appellant subsequently pleaded guilty to the following charge concerning the first victim:

> You… are charged that on 5th December 2020 at or about 8.26p.m., along Central Expressway ("CTE") towards Seletar Expressway ("SLE") 6.8 km near lamppost 444F Singapore, did drive a motor vehicle, SLK3954C on a road without due care and attention, to wit, by failing to keep a proper lookout ahead and had collided onto the rear of motorcycle, VCT5716 whom was travelling ahead of you and grievous hurt was caused to one Nur Farahin Binti Roslaili, female, 21 years old by such driving, you have thereby committed an offence under Section 65(1)(a) punishable under Section 65(3)(a) of the Road Traffic Act (Cap 276, 2004 Rev Ed) ("RTA") r/w Section 65(6)(d) of the same act.

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8 SOF at [12], ROP p 9; TTSH MR (ENT), ROP p 66; NNI MR, ROP p 67.

9 SOF at [14], ROP p 10.

10 SOF at [16], ROP p 9.

12 At this juncture, one irregularity in the Statement of Facts ("SOF") as admitted to by the appellant in the court below must be noted. At [15] of the SOF, it is stated that the appellant had caused grievous hurt to the first victim under s 320(*g*) of the Penal Code (Cap 224, 2008 Rev Ed) ("PC"), as she had sustained a fracture. During the hearing of the appeal, the Prosecution conceded that this was incorrect as the fracture was merely a "suspicious" or suspected fracture. Instead, the grievous hurt caused in the present case related to the category of hurt whereby the sufferer was unable to follow his ordinary pursuits during the space of 20 days, under s 320(*h*) of the PC. Notwithstanding this error, I accept that the Prosecution's reliance on s 320(*h*) of the PC to establish grievous hurt is borne out by the facts admitted to by the appellant in the SOF. Moreover, this irregularity does not cause any prejudice to the appellant who, in any event, does not contest that grievous hurt was caused.

The decision below

13 The DJ accepted the Prosecution's submission that a possible starting point to determine the appropriate sentence in the present case was the framework set out in *Public Prosecutor v Cullen Richard Alexander* [2020] SGDC 88 ("*Cullen*"), hereinafter referred to as the *Cullen* framework which is reproduced at Annex A. *Cullen* similarly concerned an offender charged with an offence under s 65(3)(*a*) of the RTA. The district judge in *Cullen* had modelled the framework on the two-stage, five-step framework set out in *Logachev Vladislav v Public Prosecutor* [2018] 4 SLR 609 ("*Logachev*").

14 In sentencing the appellant to six months' imprisonment and imposing a disqualification order for a period of five years, the DJ assessed the harm caused by the offence to be "very serious" and the appellant's culpability to be

at the higher end of the low range based on the levels of harm and culpability as defined in the *Cullen* framework.

Issues to be determined

15 The ultimate issue to be decided is whether the sentence imposed on the appellant was manifestly excessive.

16 In addition, against the backdrop of the legislative amendments to the RTA, these further issues arise before me for determination:

(a) whether it is appropriate for the court to set out a sentencing framework for offences under s 65(3)(*a*) of the RTA; and

(b) if the first question is answered in the affirmative, what the appropriate sentencing framework for offences under s 65(3)(*a*) of the RTA should be.

17 Given the nascency of s 65(3)(*a*) of the RTA and the extensive amendments to the architecture of the RTA, Ms Thara Rubini Gopalan ("Ms Gopalan") was appointed under the Supreme Court's young *amicus curiae* scheme to assist the court.

The parties' submissions

18 I begin by briefly setting out the parties' respective cases as well as Ms Gopalan's submissions on the questions referred by the court. At the outset, I note that they are broadly in agreement that it is desirable for this court to lay down a sentencing framework for offences under s 65(3)(*a*) of the RTA. The disagreement between them lies in the choice of the most appropriate sentencing framework to adopt.

The appellant's case

19 The appellant submits that the sentence imposed was manifestly excessive and a high fine of $5,000 and a disqualification period of five years is more appropriate in the circumstances of the case.

20 The appellant takes the position that it is appropriate to set out a sentencing framework for offences under s 65(3)(*a*) of the RTA. To this end, he submits that a sentencing bands approach reminiscent of that in *Wu Zhi Yong v Public Prosecutor* [2021] SGHC 261 ("*Wu Zhi Yong*") (for offences under s 64(2C)(*a*) read with s 64(2C)(*c*) of the RTA) and *Tang Ling Lee v Public Prosecutor* [2018] 4 SLR 813 ("*Tang Ling Lee*") (for offences under s 338(*b*) of the PC) should be adopted for offences under s 65(3)(*a*) of the RTA.[11] The appellant's proposed sentencing bands are set out in Annex B.

21 Conversely, the appellant argues that the *Cullen* framework is inappropriate as it places undue emphasis on the harm suffered by the victim over the manner of the offender's driving. This thereby fails to account for Parliament's stratification of the offences under s 65 of the RTA into different sub-provisions based on the type of harm caused to the victim.[12] Indeed, this concern is similarly shared by Ms Gopalan in her submissions, which I will consider below.

22 On the facts, the appellant asserts that the DJ had erred in classifying the harm caused to the first victim as "very serious". Instead, he contends that the degree of harm caused was between low to medium.[13] In particular, he points to

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11 Appellant's Skeletal Submissions ("ASS") at [55].

12 ASS at [55]–[56].

13 ASS at [39].

the fact that none of the medical reports tendered have indicated that the first victim had suffered permanent injury or that she would suffer a permanent loss in her quality of life. Moreover, notwithstanding that she had been admitted to TTSH in a comatose state, her condition had gradually improved, and she was subsequently moved from the Intensive Care Unit ("ICU") to the acute care wards on 3 January 2021.[14]

23 In respect of culpability, the appellant argues that the DJ wrongly assessed it to be on the higher end of the low band. He submits that his culpability should instead be assessed as falling on the lower end of the low band.[15] Among other things, he challenges the DJ's finding that he failed to apply his brakes before colliding into the rear of the first victim's motorcycle.[16] I will return to the appellant's challenge on this finding later.

24 The appellant also submits that the DJ failed to accord any or sufficient weight to the mitigating factors present.[17]

25 In sum, the appellant urges the court to find that his culpability falls within the lowest end of the low range and that the harm caused was low to medium. Further, after taking into account the offender-specific mitigating factors, the indicative sentencing range should be a fine between $1,000 and $5,000 and a five-year disqualification order, which corresponds with Band 1 of the appellant's proposed sentencing bands.[18]

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14 ASS at [35]–[36].

15 ASS at [31].

16 ASS at [24]–[25].

17 ASS at [40].

18 ASS at [73]–[76].

The Prosecution's case

26 The Prosecution likewise submits that a sentencing framework should be adopted as it promotes a principled, transparent and consistent approach to sentencing.[19] In this regard, it proposes to adopt the *Cullen* framework with certain modifications ("Modified *Cullen* framework")[20] as opposed to a framework based on the sentencing bands approach as proposed by both the appellant and Ms Gopalan. This, the Prosecution argues would lead to fairer outcomes more proportionate to the culpability of each offender and would provide clear guidance to sentencing judges. The Prosecution's Modified *Cullen* framework is set out at Annex C.

27 Further, the Prosecution submits that the sentence imposed by the DJ was not manifestly excessive and is in line with both the original and Modified *Cullen* frameworks.[21]

The young amicus curiae's submissions

28 Ms Gopalan agrees with both parties that it would be appropriate for this court to adopt a sentencing framework for offences under s 65(3)(*a*) of the RTA.[22] She proposes a sentencing bands approach as opposed to a "sentencing matrix" approach as adopted in *Cullen*. However, for the reasons discussed below at [66], it should be highlighted that the sentencing approach adopted in *Cullen* is not strictly a sentencing matrix approach in the traditional sense.

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19 Prosecution's Skeletal Submissions ("PSS") at [5].

20 PSS at [5]–[6].

21 PSS at [7].

22 Young *amicus curiae's* Skeletal Submissions ("YACSS") at [2].

29 Further, as noted above at [21], Ms Gopalan observes that harm should not feature as a principal sentencing element in the sentencing matrix as it is already featured in the choice between the different provisions.[23] In addition, it would not be appropriate to subdivide grievous hurt into further categories as it occurs on a continuum.[24] Accordingly, as harm only features as one of many offence-specific factors that ought to be taken into consideration for the purpose of assessing the seriousness of an offence, there would no longer be two axes with which to fashion a harm-culpability matrix. In the premises, a sentencing bands framework is thus more suitable.[25] Ms Gopalan's proposed sentencing bands are set out in Annex D.

Legislative amendments to the RTA

30 I find it apposite to begin my analysis with a discussion of the key legislative amendments relating to s 65 of the RTA and the underlying legislative intention. This provides the necessary perspective and background to inform the answers to the questions posed above at [16].

31 On 8 July 2019, Parliament passed the Road Traffic (Amendment) Act 2019 (Act 19 of 2019) ("Amendment Act") which introduced a whole suite of amendments to the RTA, enhancing and fortifying the existing legislative infrastructure regulating road traffic in Singapore with the stated aim of making our roads safer. Particularly relevant to the present case are the significant amendments made to s 65 of the RTA.

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23 YACSS at [64(a)].

24 YACSS at [64(c)].

25 YACSS at [66].

The relevant statutory provisions

32 For ease of comparison, I reproduce the relevant statutory provisions below.

33 The pre-amendment version of s 65 of the RTA ("pre-2019 RTA") provided as follows:

> **Driving without due care or reasonable consideration**
>
> **65.** If any person drives a motor vehicle on a road —
>
> (*a*) without due care and attention; or
>
> (*b*) without reasonable consideration for other persons using the road,
>
> he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $1,000 or to imprisonment for a term not exceeding 6 months or to both and, in the case of a second or subsequent conviction, to a fine not exceeding $2,000 or to imprisonment for a term not exceeding 12 months or to both.

34 The pertinent portions of the current iteration of s 65 of the RTA provide as follows:

> **Driving without due care or reasonable consideration**
>
> **65.**—(1) If any person drives a motor vehicle on a road —
>
> (*a*) without due care and attention; or
>
> (*b*) without reasonable consideration for other persons using 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 on conviction of an offence under subsection (1) —
>
> …
>
> (3) If grievous 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) —

> (*a*) be liable to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 2 years or to both;
>
> (*b*) where the person is a repeat offender, be liable to a fine not exceeding $20,000 or to imprisonment for a term not exceeding 6 years or to both;
>
> (*c*) where the person is a serious offender in relation to the driving, be punished with imprisonment for a term not exceeding 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 the driving, be punished with imprisonment for a term not exceeding 4 years, in addition to any punishment under paragraph (*a*) or (*b*);
>
> (4) 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) —
>
> …
>
> (5) 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) —
>
> …
>
> (6) 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:
>
> …
>
> (*d*) for an offender or a repeat offender in subsection (3)(*a*) or (*b*) — 5 years;
>
> …

Genesis of Parliament's review of the RTA and some key observations

35 At the Second Reading of the Road Traffic (Amendment) Bill (Bill No 13/2019) on 8 July 2019, Second Minister for Home Affairs, Mrs Josephine Teo ("the Minister") explained that the impetus behind the

comprehensive review of the RTA and the consequent amendments to it stemmed from a need for stronger deterrence against irresponsible driving (*Singapore Parliamentary Debates, Official Report* (8 July 2019), vol 94) ("the Parliamentary Debate").

36 As part of the enhanced approach towards dealing with irresponsible driving offences, the Minister set out the following proposals which have been reflected in the current iteration of the RTA:

> 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 second category is Driving without Due Care or Reasonable Consideration which I will refer to as Careless Driving.
>
> 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. …
>
> …
>
> 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.
>
> To summarise, we will enhance our overall approach to penalise irresponsible driving depending on: (a) the circumstances of the offence – whether it constitutes Dangerous Driving or Careless Driving; and (b) the level of harm caused – whether they result in Death, Grievous Hurt, Hurt, or Endangering Life.

37 I make two key observations in relation to the legislative amendments which are especially pertinent in the context of careless or inconsiderate driving offences under s 65 of the RTA.

38 First, as was observed by Sundaresh Menon CJ ("Menon CJ") in *Wu Zhi Yong* at [15] (albeit in the related context of s 64 of the RTA), the Amendment Act envisaged a new scheme of penalties for careless or inconsiderate driving in a tiered structure calibrated according to the degree of hurt caused. This is codified in the RTA as ss 65(2) to 65(5). The maximum punishments which may be imposed for each category of harm increase concomitantly with the seriousness of the harm caused; this translates into wider ranges of punishments where more serious harm is occasioned. For instance, where death is caused, s 65(2)(*a*) provides that a first-time offender is liable to a fine not exceeding $10,000 or to imprisonment for a term not exceeding three years or to both. In contrast, the residual category (where no actual physical harm is caused, but which includes cases of non-personal injury or potential harm) captured in s 65(5)(*a*) provides that a first-time offender is liable to a fine not exceeding $1,500 or to imprisonment for a term not exceeding six months or to both.

39 By tiering the punishment provisions in accordance with the type of harm suffered, Parliament has given clear expression to the need to give explicit consideration to the *outcomes* that result from instances of careless or inconsiderate driving. This is a stark departure from the structure of s 65 of the pre-2019 RTA, where there was a single range of punishment with no differentiation based on the type and/or degree of harm caused.

40 Second, while Parliament has retained the distinction between reckless or dangerous driving under s 64 of the RTA and careless or inconsiderate

driving under s 65 of the RTA, this distinction has been made more pronounced through the refining of the punishment provisions. These two provisions reflect the differing circumstances under which an irresponsible driving offence can occur. As can be seen from the Minister's speech quoted above at [36], the former offence is regarded as being more serious than the latter, reflecting primarily the differing levels of culpability of the offenders. Accordingly, the current architecture of the RTA concerning irresponsible driving offences tiers the punishment provisions according to *both* harm and culpability, not dissimilar to the PC.

The appropriateness of a sentencing framework

41 Having made these preliminary observations on the legislative amendments to the RTA, I now turn to consider whether it is appropriate to lay down a sentencing framework for offences under s 65(3)(*a*) of the RTA.

Purpose of sentencing and sentencing frameworks

42 At its core, sentencing is an exercise of judicial discretion. However, this discretion is neither unprincipled nor unfettered. The sentencing court is guided in arriving at the appropriate sentence in each case by considering and weighing the four classical principles of sentencing, namely, deterrence, retribution, prevention and rehabilitation. The court is also to have regard to sentencing factors which reflect the seriousness of the offence(s) committed by the offender and other circumstances unique to the individual offender. These are often categorised as offence-specific factors and offender-specific factors respectively. Behind this approach is the keen desire to deliver individualised justice which is sensitive to the particular facts and circumstances of each case and offender.

43 Apart from the endeavour to deliver individualised justice, another key aspect of sentencing has also been to ensure consistency in both outcome and approach. To put it simply, the courts strive to treat like cases alike, while being flexible enough to accommodate the subtle differences in every case.

44 One of the means by which the courts have sought to translate these principles of sentencing into practice has been through the adoption of sentencing frameworks. In *Public Prosecutor v Pang Shuo* [2016] 3 SLR 903 at [28], Chan Seng Onn J (as he then was) eloquently described the function of sentencing frameworks as follows:

> A good sentencing framework thus provides the analytical frame of reference to allow the sentencing judge to achieve a reasoned, fair and appropriate sentence in line with other like cases while having due regard to the facts of each particular case. Such guidelines also promote public confidence in sentencing, and enhance sentencing transparency and accountability in the administration of criminal justice. Broad consistency in sentencing also provides society with a clear understanding of what and how the law seeks to punish and allows for members of society to have regard to this in arranging their own affairs and making their own choices.

45 The key aims of a good sentencing framework can thus be distilled into three main goals: (a) to be instructive (without being prescriptive); (b) to be communicative; and (c) to deliver consistent outcomes. These serve as helpful evaluative criteria to ascertain the suitability of a sentencing framework for a particular offence. The first criterion assesses the quality of the guidance provided to sentencing judges. In this connection, the sentencing framework should strike a balance between preserving the flexibility of sentencing judges to deliver individualised justice while providing a clear structure to guide the exercise of their sentencing discretion. Another aspect of this criterion relates to the ease of application of the sentencing framework by the courts. The second criterion assesses the sentencing framework's consonance with legislative

intention and public policy considerations and the effectiveness of the manner in which these are conveyed to the public at large. Finally, the third criterion assesses the sentencing framework's ability to set out a consistent approach which results in consistent outcomes.

Reasons for a sentencing framework for offences under s 65(3)(a) of the RTA

46 Having set out the general principles concerning sentencing and the purpose behind the adoption of sentencing frameworks, I now turn to set out the specific reasons why I agree with the parties and Ms Gopalan that a sentencing framework for offences under s 65(3)(*a*) of the RTA is appropriate.

47 It has been observed that it would not be wise to formulate a framework when there is an insufficient body of case law before the court: see *Kwan Weiguang v Public Prosecutor* [2022] SGHC 121 at [44]. As mentioned above, s 65(3)(*a*) of the RTA is a relatively new provision which came into effect only on 1 November 2019. Consequently, there is a paucity of reasoned decisions to enable the court to plot out with clarity a discernible sentencing pattern on which to base a sentencing framework.

48 However, the lack of a large corpus of case law to draw from does not form an absolute bar to the promulgation of a sentencing framework for a particular offence. In *Wu Zhi Yong*, Menon CJ formulated a sentencing framework for offences under s 64(2C)(*a*) read with s 64(2C)(*c*) of the RTA. This was done despite the dearth of sentencing precedents involving offences under those specific provisions. Indeed, in some cases the lack of reasoned decisions has been cited as one of the reasons to adopt a sentencing framework. In *Huang Ying-Chun v Public Prosecutor* [2019] 3 SLR 606 ("*Huang Ying-Chun*") at [32], See Kee Oon J ("See J") observed that it would be useful for the

High Court to set out a sentencing framework for cash laundering offences under s 44(1)(*a*) of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap 65A, 2000 Rev Ed) ("CDSA") in order to provide guidance on sentencing.

49 More importantly, the key reason for setting out a sentencing framework for this offence arises from a pressing need to ensure consistency in this area for the following reasons.

50 First, there has been a high number of road traffic accidents where grievous hurt has resulted which have been prosecuted under s 65(3)(*a*) of the RTA in the lower courts since the 2019 RTA amendments took effect. A search helpfully conducted by Ms Gopalan on 15 January 2022 in the State Courts Sentencing Information and Research Repository database revealed that there have been no less than 115 charges brought for offences under s 65(3)(*a*). The frequency with which such cases land themselves in the lower courts makes it especially important to ensure a measure of consistency. It has also come to my attention that there are a number of appeals arising from the lower courts' decisions concerning offences under s 65(3)(*a*) of the RTA which are awaiting the outcome of this decision, in view of the possibility that a sentencing framework would be formulated to guide future cases. In *Huang Ying-Chun* at [34], See J similarly accepted that sentencing guidance from an appellate court would be especially useful due to the "pipeline" of pending prosecutions and appeals against decisions relating to offences under s 44(1)(*a*) of the CDSA.

51 Second, as the Prosecution highlights, two differing sentencing frameworks for offences under s 65(3)(*a*) of the RTA have surfaced in the courts

below.[26] In *Cullen*, the district judge set out a two-stage, five-step sentencing framework based on the sentencing approach adopted in *Logachev*. In contrast, the district judge in *Public Prosecutor v Chuah Choon Yee* [2021] SGDC 264 declined to follow the approach in *Cullen* as she found that there was a lack of range of outcomes on the harm axis and the suggested working or functional definition for each degree of harm was difficult to apply in practice (at [22]). Instead, she proposed an alternative framework based on the sentencing bands approach set out in *Ng Kean Meng Terence v Public Prosecutor* [2017] 2 SLR 449 ("*Terence Ng*"). It does not conduce to certainty and consistency for differing approaches to be adopted by the lower courts.

52 On balance, I find that it is desirable for this court to clarify the law and lay down a sentencing framework for offences under s 65(3)(*a*) of the RTA. Nevertheless, I must emphasise that the sentencing framework set out below is not to be taken as one that is cast in stone. With the gradual accretion of case law and the manifold factual situations that present themselves before the courts, subsequent amendments and modifications may have to be made to refine the approach.

53 Thus, having determined that a sentencing framework is appropriate, I now turn to address the question of which sentencing approach should be adopted.

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[26] PSS at [34].

The appropriate sentencing framework

Types of sentencing approaches

54 Over the years, the courts have promulgated numerous sentencing frameworks for a wide range of offences. These sentencing frameworks have taken on different forms and various descriptive labels have been used to classify them based on their primary characteristics. In many ways, this has made the selection of particular sentencing frameworks for different types of offences a simpler exercise. However, despite the development of new sentencing frameworks utilising new approaches, the nomenclature used to classify them has unfortunately failed to develop at the same pace. This has resulted in some confusion in the submissions made before this court. I therefore find it timely to restore some clarity in this area.

55 It is helpful to begin with the various approaches set out in *Terence Ng* at [26] and [39]. The Court of Appeal set out five main approaches: (a) the "single starting point" approach; (b) the "multiple starting points" approach; (c) the "benchmark" approach; (d) the "sentencing matrix" approach; and (e) the "sentencing bands" approach. Subsequently, in *Logachev* at [75], Menon CJ laid down a two-stage, five-step sentencing framework (the "*Logachev*-hybrid approach") inspired by the "sentencing bands" approach adopted in *Terence Ng*.

56 I consider in particular the "sentencing matrix", "sentencing bands" and the "*Logachev*-hybrid" approaches, on which the parties and Ms Gopalan have focused their submissions.

The sentencing matrix approach

57 A typical example of a sentencing matrix approach can be found in *Poh Boon Kiat v Public Prosecutor* [2014] 4 SLR 892 ("*Poh Boon Kiat*"). This approach comprises a two-stage analysis. At the first stage, the court considers the seriousness of an offence by reference to the "principal factual elements" of the case, which is used to determine the indicative starting sentence/range within a sentencing matrix. It is implicit in this approach that the court should be able to identify two principal sentencing elements with which to fashion the matrix: see *Wu Zhi Yong* at [27]. These principal factual elements 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: see *Wu Zhi Yong* at [22]. At the second stage of the analysis, once an indicative starting sentence/range is determined, the precise sentence to be imposed will be determined by having regard to any other aggravating and mitigating factors, which do not relate to the principal factual elements of the offence: see *Terence Ng* at [33], citing *Poh Boon Kiat* at [79].

58 This approach, however, is dependent on the availability of a set of principal facts which can significantly affect the seriousness of an offence in all cases: see *Terence Ng* at [34], citing *Koh Yong Chiah v Public Prosecutor* [2017] 3 SLR 447 at [47]. This was found to be the case in *Poh Boon Kiat*, in the context of vice-related offences under the PC. There, the court found that the "principal factual elements" were: (a) the manner and extent of the offender's role in the vice syndicate (which is the primary determinant of his culpability) and (b) the treatment of the prostitute (which is the primary determinant of the harm caused by the offence): see *Terence Ng* at [34], citing *Poh Boon Kiat* at [75]–[76].

The sentencing bands approach

59 Both Ms Gopalan and the appellant submit that the appropriate sentencing framework to adopt in respect of offences under s 65(3)(*a*) of the RTA is the "sentencing bands" approach set out in *Terence Ng*. Before I address their submissions on this in detail, I first highlight the key aspects of this approach.

60 Under the "sentencing bands" approach, the analysis is similarly conducted in two steps. First, the court has to consider the *offence*-specific factors to determine the appropriate "band" in which the particular offence should be situated. The factors which the court should have regard to include the manner and mode by which the offence was committed as well as the harm caused. The court should then determine precisely where within that range the present offence falls in order to derive an "indicative starting point": see *Terence Ng* at [39(a)]. Second, the court has to have regard to the relevant *offender*-specific aggravating and mitigating factors to further calibrate the sentence: see *Terence Ng* at [39(b)].

61 As compared to the sentencing matrix approach, this approach is more suitable where the offence can take place in a wide variety of different circumstances, and it is difficult to identify any set of "principal factual elements" which can affect the seriousness of such an offence across the board: see *Terence Ng* at [34]. To this, I would add that this approach is also more viable where there are difficulties dividing the categories of harm and culpability into varying levels of seriousness to populate a sentencing matrix.

The Logachev-hybrid approach

62 In contrast, the Prosecution urges the court to adopt a sentencing framework based on the *Logachev*-hybrid approach. As explained in *Ye Lin Myint v Public Prosecutor* [2019] 5 SLR 1005 at [46], this approach comprises a two-stage, five-step framework which eschews a focus on the "principal factual elements" of the case (unlike the sentencing matrix approach) and instead employs at the first step a general holistic assessment of the seriousness of the offence by reference to all the offence-specific factors. For analytical clarity, the offence-specific factors are broken down into two main groups that go towards the offender's culpability and the harm caused by the offender's actions. The second and third steps involve first identifying the applicable indicative sentencing range within the sentencing matrix based on the corresponding level of harm and culpability and thereafter identifying the appropriate starting point within that indicative sentencing range. The fourth step involves making adjustments to the starting point to account for any offender-specific factors. The fifth step calls for the court to make any final adjustments to take into account the totality principle.

63 In form, this approach resembles the sentencing matrix approach, where harm and culpability are represented as two axes mapped onto a sentencing matrix. However, in substance, it instead closely adopts the analytical framework behind the sentencing bands approach – requiring a holistic assessment of the various offence-specific factors at the first stage and the offender-specific factors at the second stage. Accordingly, it would be improper, as Ms Gopalan appears to suggest, to regard the *Logachev*-hybrid approach as a sentencing matrix in its purest form (as in the case of *Poh Boon Kiat*).

64 The sentencing matrix approach and the *Logachev*-hybrid approach are conceptually different. The latter approach combines the granularity of a sentencing matrix model with the holistic nature of the sentencing bands approach. This approach may be better suited for offences where a broad range of outcomes can arise under the specific axes of harm or culpability: see *Wu Zhi Yong* at [28].

The appropriate sentencing approach

65 In my judgment, having considered the submissions of the parties and Ms Gopalan, I am of the view that the most suitable sentencing approach to adopt in respect of offences under s 65(3)(*a*) of the RTA is the *Logachev*-hybrid approach. I must, however, emphasise that my reasons for this view as expounded upon in the following paragraphs apply strictly to this specific punishment provision.

66 Before I examine the objections raised by the appellant and Ms Gopalan in respect of adopting a sentencing framework based on the *Logachev*-hybrid approach, I find it necessary to clarify the language used in the latter's written submissions to avoid the potential for confusion. In her submissions, Ms Gopalan took the position that a sentencing framework based on a "sentencing matrix" approach, like the one in *Cullen*, is unworkable in principle. However, as I have sought to clarify earlier at [63]–[64], a pure sentencing matrix approach is conceptually different from the *Logachev*-hybrid approach which was adopted in *Cullen*. With this in mind, I regard Ms Gopalan's objection to be against the latter approach. In the same vein, I understand her criticisms of the "sentencing matrix" to relate to the sentencing matrix *model* (as distinct from the framework) comprising the two axes of harm and culpability which is utilised as part of the *Logachev*-hybrid approach.

67 Having made the necessary clarifications, I return to address the appellant's and Ms Gopalan's concerns relating to the adoption of a sentencing framework based on the *Logachev*-hybrid approach.

68 First, Ms Gopalan submits that harm should not feature as a principal sentencing element in the sentencing matrix because the factor of harm has already been factored into the statutory scheme by the tiering of the punishment provisions.[27] To support her objection she makes reference to Menon CJ's observations in *Wu Zhi Yong*. It is thus useful to reproduce the observations at length:

> 27 … In ***some*** of these situations, such as where death is caused, the nature of 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.
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> [emphasis in original in italics; emphasis added in bold italics]

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[27] YACSS at [64(a)].

69 With respect, I find that this submission does not pay sufficient regard to the context in which Menon CJ's observations were made. In *Wu Zhi Yong*, Menon CJ was tasked with laying down a sentencing framework specifically for reckless driving offences where no personal injury had been caused, which is punishable under s 64(2C)(*a*) read with s 64(2C)(*c*) of the RTA. With this context in mind, he explained that in those limbs of s 64 (*ie,* the various sub-provisions of s 64) where the range of outcomes on the harm axis were "essentially non-existent or very narrow", harm would no longer be significant enough such as to justify it being a principal sentencing element in a matrix. This he found to be the case in relation to the particular limb concerned in *Wu Zhi Yong*, *ie*, the limb where no personal injury had been caused. However, this is not to say that in *every* limb there would not be material gradations in the level of harm caused, and that harm would not be significant enough to be regarded as a principal sentencing element suitably represented in a matrix. In particular, Menon CJ was careful to note that his reservations concerning the suitability of representing harm in a sentencing matrix may only be relevant in *some* situations. For example, where death is caused the nature of harm would cease to be a relevant differentiating factor for the purpose 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" (at [27]). Perhaps, somewhat tellingly, Menon CJ did not comment on whether the nature of harm was similarly denuded of its relevance as a differentiating factor in the specific context where grievous hurt is caused.

70 This segues neatly to my next point. This is in relation to the spectrum of grievous hurt and whether it is sufficiently broad to be represented on a harm axis. In s 64(8) of the RTA, it is stated that "grievous hurt" for the purpose of

ss 64 and 65 has the meaning given by s 320 of the PC, with the exclusion of death which is provided for in s 320(*aa*). As the Prosecution submits, s 320 encompasses many different forms of grievous hurt, some representing more severe injuries than others.[28] For instance, it includes not only simple fractures which require no significant medical or surgical intervention, but also permanent injuries such as the privation of sight or hearing. The expansiveness of the types of injuries that are captured in this provision was expressly recognised by the Court of Appeal in *Public Prosecutor v BDB* [2018] 1 SLR 27 ("*BDB*") at [56], where it was observed that "[s] 325 encompasses a broad spectrum of different forms of grievous hurt ranging from a simple fracture to death". Even though "death" has been expressly excluded from the definition of grievous hurt for the purpose of ss 64 and 65 of the RTA, it is plain that the remaining forms of grievous hurt nonetheless cover a wide range of injuries of varied severity. Therefore, I find that the specific concern raised in *Wu Zhi Yong* concerning the potential limited range of outcomes that may be reflected on the harm axis of a sentencing matrix to be of little relevance in the context of s 65(3)(*a*) of the RTA.

71 A separate but related concern that Ms Gopalan raises is that it would not be appropriate to subdivide grievous hurt into categories.[29] To this end, she cites the observations of this court in *Muhammad Khalis bin Ramlee v Public Prosecutor* [2018] 5 SLR 449 at [56], where Menon CJ opined that "it is less useful to delineate the types of harm caused by an accused person into two broad categories, as opposed to treating such injuries as spread along a spectrum having regard to the nature and permanence of the injury".

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28 PSS at [60].

29 YACSS at [64(c)].

72 In my view, the subdivision of grievous hurt into categories corresponding to "low harm", "moderate harm" and "serious harm" pays sufficient regard to the broad spectrum in which such injuries are spread. These categories, as I have developed below at [87], do not serve to set out a range of starting points for each type of grievous hurt, neither are they so overly prescriptive as to define categorically the forms of grievous hurt which may fall under each category. The descriptive labels of the respective categories of harm are flexible enough to account for the varied forms of grievous hurt that may be caused and they in no way inhibit the court's discretion to have due regard to the nature and permanence of the injury in each case.

73 Second, the appellant and Ms Gopalan suggest that to consider harm as one of two central considerations for the purpose of sentencing would have the effect of placing undue weight on this factor given that it has already been featured in the choice between the different provisions.[30] With respect, I find that this argument misses the point. Sections 65(2) to 65(4) of the RTA, set out different ranges of punishment corresponding to different types of harm suffered: death, grievous hurt, hurt and any other case where no personal injury is caused. These different ranges of punishment are differentiated by the maximum prescribed punishment that may be imposed by the court. Essentially, the more severe the type of harm suffered, the higher the maximum prescribed punishment. This reflects Parliament's intention that higher sentences should be imposed where greater harm has resulted. In this way, the factor of harm is taken into account first in determining the appropriate range of punishment (including the maximum prescribed punishment) which signals the gravity with which the offence is to be viewed.

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30 YACSS at [64(b)]; ASS at [56]

74 However, this does not then obviate the need for sentencing judges to consider the harm again within each limb/sub-provision to assess the extent of the type of harm suffered in order to determine where within that sentencing range a particular offence should be situated. There is no question of undue weight being placed on harm as such. It would detract from legislative intention to say that harm should no longer be treated as one of the other principal sentencing factors together with culpability simply by virtue of the tiering of the punishment provisions. If harm were to be regarded only as *one of several* sentencing factors in the determination of the sentence to be imposed as would be the case under a sentencing bands approach, this would not give meaningful effect to Parliament's intention of increasing the punishment ranges based on the type of harm caused.

75 Moreover, the legislative tiering of punishment provisions to reflect differing types of harm suffered is not without precedent. One such example can be found in the PC. Sections 337 and 338 of the PC provide for different punishment provisions where hurt and grievous hurt respectively are caused by either a rash (ss 337(*a*) and 338(*a*)) or negligent act (ss 337(*b*) and 338(*b*)). In *Tang Ling Lee*, See J laid down a sentencing framework for road traffic cases prosecuted under s 338(*b*) of the PC. See J did not consider that there was any issue of double counting the element of harm, despite Parliament having provided for higher prescribed maximum sentences in respect of offences under s 338 as compared to s 337 based on the type of harm caused (*ie*, grievous hurt and hurt). Harm thus remained one of the twin factors in the determination of the ultimate sentence to impose.

76 I pause to make one additional observation on the sentencing framework adopted in *Tang Ling Lee*. On the one hand, the Prosecution interprets the

framework as having essentially adopted the *Logachev*-hybrid approach.[31] On the other hand, the appellant and Ms Gopalan are of the view that it adopted the sentencing bands approach.[32] I agree with the Prosecution's interpretation. While the sentencing framework in *Tang Ling Lee* was described as comprising "three broad sentencing bands" (at [25]), in substance, the court had utilised a two-by-two sentencing matrix model, with lesser and greater harm on one axis and lower and higher culpability on the other axis. In order to determine the appropriate sentence to be imposed, See J observed that the court should undertake a two-step inquiry (reflecting the two stages of the *Logachev*-hybrid approach). First, the court should identify the sentencing band within which the offence in question falls, and also where the particular case falls within the applicable presumptive sentencing range, having regard to the twin considerations of harm and culpability, in order to derive the starting point sentence. Second, further adjustments should then be made to take into account the relevant mitigating and aggravating factors, which may take the eventual sentence out of the applicable presumptive sentencing range: see *Tang Ling Lee* at [32].

77 For the reasons above, I am unable to agree with the appellant and Ms Gopalan that the *Logachev*-hybrid approach is necessarily the wrong one to adopt in principle. However, the question remains whether it is to be the preferred approach over the sentencing bands approach which the appellant and Ms Gopalan propose.

78 At this juncture, it is useful to have recourse to the evaluative criteria reflecting the key aims of a good sentencing framework discussed above at [45].

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31 PSS at [47].

32 YACSS at [42]–[44].

79 In relation to the first criterion, I agree with the Prosecution that the *Logachev*-hybrid approach would helpfully guide sentencing judges to arrive at the appropriate sentence through a process of increasing granulation which enhances analytical clarity and promotes the transparent articulation of reasons for the eventual sentence imposed.[33] It ensures that all relevant sentencing factors are considered and adequate flexibility is built into the approach to allow for sentencing judges to conduct their own assessment and weighing of the relevant harm and culpability factors to arrive at a principled sentence.

80 Conversely, if a sentencing bands approach were to be adopted, a potential difficulty may arise in that this approach does not satisfactorily account for how the range of harm caused is to be reflected in the overall sentence. Based on the sentencing bands approach proposed by Ms Gopalan (see Annex D), the sentencing bands correspond to the *number* of offence-specific aggravating factors present. For instance, where two or more offence-specific aggravating factors are present, the offender would fall within Band 2 of the framework. Yet, it is unclear how this approach accommodates the range of grievous hurt that may be caused to the victim by the offender's careless or inconsiderate driving. Ms Gopalan suggests that the grievous hurt suffered by the victim would be regarded as an offence-specific aggravating factor where the harm suffered is at the higher end of the continuum.[34] However, I do not find it appropriate to only have regard to grievous hurt as an offence-specific aggravating factor where its severity has crossed a certain arbitrary threshold. This would, in my view, not accord sufficient weight to the wide range of grievous hurt that could be suffered by the victims.

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33 PSS at [56].

34 YAC's Further Skeletal Submissions ("YACFSS") at [42].

81 In relation to the second criterion, much has been said already about legislative intention. Thus, I shall say no more apart from reiterating that the *Logachev*-hybrid approach properly takes into account Parliament's intention for harm to be one of the two main factors in the determination of the sentence to impose. In contrast, on the sentencing bands approach, the role of harm is significantly reduced to being only *one of several* offence-specific factors.

82 In relation to the third criterion, flowing from my conclusion that the *Logachev*-hybrid approach provides more structured guidance to sentencing judges in arriving at the appropriate sentence to impose in each case, I am of the view that this too promotes a consistency of approach, which is better able to translate to consistency of outcome as between like cases.

Formulation of the sentencing approach

83 The *Logachev*-hybrid approach involves the application of the five following steps in sequence.

The first step: Identifying the level of harm and the level of culpability

84 At the first step, the court must have regard to the offence-specific factors set out below at [87]–[95] and identify: (a) the level of harm caused by the offence; and (b) the level of the offender's culpability. The harm caused by the offence may be categorised into three levels of increasing severity: low, moderate and serious. Likewise, the offender's culpability may be categorised into three levels: low, moderate and high.

85 The Prosecution, however, suggests the adoption of *four* levels of harm as proposed by the district judge in *Cullen*. I share Ms Gopalan's concern that such a categorisation unnecessarily narrows the breadth of each level of harm.

Thus, the differences between each level of harm become less significant which may in turn have the effect of arbitrarily resulting in higher sentences for an offender where a marginal increase in harm has been occasioned. I am aware that in *Stansilas Fabian Kester v Public Prosecutor* [2017] 5 SLR 755 ("*Stansilas*") at [75(a)], the court divided the category of harm into four levels: slight, moderate, serious and very serious, not unlike that proposed by the Prosecution in this case. Yet, it is important to bear in mind that the court in *Stansilas* was concerned with an offence under s 67(1)(*b*) of the pre-2019 RTA, which provided a single punishment range for the entire range of possible harm that could be caused – with the lowest end of the range concerned only with property damage and the highest end of the range concerned with death. Accordingly, the range of harm that may be occasioned under s 67(1)(*b*) of the pre-2019 RTA is substantially wider than the range of harm that may be occasioned under s 65(3)(*a*) of the RTA, which is concerned only with grievous hurt. Therefore, in my view, the range of grievous hurt can adequately be taken into account by division into the three levels of low, moderate and serious harm.

86 I now turn to set out the non-exhaustive list of factors within the broad categories of harm and culpability which fashion the two axes of the matrix.

(1) Factors going to harm

87 The degree of harm caused would generally refer to the nature and degree of the grievous bodily injury caused to the victim(s): see *Tang Ling Lee* at [25]. In my judgment, the levels of harm can thus be broadly divided based on the severity of the grievous hurt suffered as follows:

(a) Low: The hurt caused can be managed with conservative treatment, with no or short periods of hospitalisation and/or medical

leave. The harm occasioned would typically involve minor fractures/dislocation at less vulnerable parts of the body.

(b) Moderate: The injuries are of a more permanent nature and/or involve more complex fractures/dislocation which necessitate some surgical procedures with a moderate period of hospitalisation and/or medical leave.

(c) Serious: The injuries are of a very serious or permanent nature and/or necessitate significant surgical procedures. The victim's daily living is usually permanently and severely affected. This includes injuries resulting in loss of limb, sight, hearing, member or other major bodily functions or paralysis.

88 In addition, there are two other factors which may contribute to the severity of the harm caused, namely: (a) property damage; and (b) potential harm. These factors are to be considered in tandem with the above descriptions of each level of harm. I deal with each of these factors briefly.

89 The extent of property damage is an established sentencing factor. The general rule as noted in *Wu Zhi Yong* at [36(b)], is that the amount of any loss or damage may serve as a proxy indicator of harm.

90 Potential harm that might have resulted is also a relevant factor going towards harm. However, I must highlight the pertinent observations by Menon CJ in *Logachev* at [38], where he noted that the categorisation of the relevant sentencing considerations is simply intended to provide a convenient framework for identifying and analysing such sentencing considerations as may arise. Consequently, not too much should be made of the labels used, and the categories may not always be watertight. For instance, where circumstances

arise which call for the offender to exercise special care such as when he is driving through a school zone and the offender fails to do so, this has been treated as an offence-specific factor going towards the offender's culpability (see below at [94]). Yet, in some situations it may also relate to the harm caused by the offence in so far as it affects the likelihood of harm (*ie*, potential harm). Ultimately, how a sentencing judge takes into account these factors would turn on the precise facts of the case.

(2) Factors going to culpability

91 The Prosecution urges the court to adopt the three levels of culpability and the corresponding functional definitions for each level as set out in *Cullen* at [109]. However, to better reflect the requisite mental state for offences under s 65 of the RTA, reference was made to "carelessness" as the primary determinant of culpability for each level. The Prosecution's proposed working definitions thus read as follows:[35]

> (a) Low: Low level of carelessness, generally with no dangerous driving behaviour exhibited. Typically, careless or inconsiderate in the manner of driving like failing to give way when other road users have the right of way or exhibiting poor control of vehicle.
>
> (b) Moderate: Moderate level of carelessness with some manner of dangerous driving behaviour. This may include swerving across lanes suddenly and without warning, driving against the flow of traffic, weaving in and out of traffic, speeding, beating of the red light, handphone driving, sleepy driving or failing to use visual aids while driving, *etc*.

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[35] PSS at [74].

(c) High: High level of carelessness with serious manner of dangerous driving behaviour. This may include several forms of dangerous driving behaviour exhibited, dangerous driving behaviour exhibited over an extended distance of driving or deliberate bad driving behaviour.

92 In response to these suggested working definitions, Ms Gopalan expressed her concern that the descriptions for each level of culpability significantly conflate the offences of careless or inconsiderate driving (in s 65 of the RTA) with that of reckless or dangerous driving (in s 64 of the RTA).[36] I share the same concern. Invariably, there may in some cases be an overlap between the two offences. For example, where an offender charged with careless driving under s 65 of the RTA has exhibited some manner of dangerous driving behaviour, I accept that this would necessarily constitute a culpability enhancing factor for the s 65 offence. Nonetheless, this is far from saying that the different levels of culpability in respect of a careless or inconsiderate driving offence should primarily turn on the extent of dangerous driving behaviour exhibited as the Prosecution appears to propose.

93 It is trite that the degree of culpability generally refers to the degree of relative blameworthiness disclosed by an offender's actions: see *Tang Ling Lee* at [25]. In my judgment, for offences under s 65 of the RTA, this can be measured based on the following factors: (a) circumstances which required the offender to exercise extra care or consideration; (b) the manner of driving; and (c) the offender's conduct following the offence.

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[36] YACSS at [52].

94 First, in assessing an offender's culpability, due regard must be had to circumstances surrounding the incident which call for the exercise of extra care or consideration. Some examples of these circumstances include where the offender drives: (a) within a school or residential zone; (b) a heavy vehicle that is more difficult to control and requires a quicker reaction time; or (c) in poor road conditions (*eg*, heavy rain or heavy traffic).

95 Second, the offender's manner of driving is also a relevant factor going to culpability. Under this factor, it is apposite to consider any dangerous driving behaviour exhibited by the offender. This would include, for example, driving against the flow of traffic, speeding, sleepy driving, drink-driving, driving while under the influence of drugs, driving while using a mobile phone, flouting traffic rules, or "hell-riding" situations: see *Tang Ling Lee* at [28]. In addition, considerations pertaining to the duration of the offender's inattention (*eg*, momentary or prolonged/sustained), the avoidability of the offender's distraction or the reasonableness of the offender's misjudgment are also relevant.

96 Third, the offender's conduct following the commission of the offence is also relevant. In particular, it has been said that an offender's conduct that is "belligerent or violent" upon arrest would constitute an aggravating factor: see *Edwin s/o Suse Nathen v Public Prosecutor* [2013] 4 SLR 1139 ("*Suse Nathen*") at [32]. In a similar vein, where the offender fails to stop in an attempt to evade arrest or to avoid apprehension by the authorities, this should also weigh against him: see *Public Prosecutor v Lee Meng Soon* [2007] 4 SLR(R) 240 at [33].

97 To afford sentencing judges with more flexibility in the exercise of their sentencing discretion, I decline at this stage to provide a working definition for the different levels of culpability to avoid being overly prescriptive. In any

event, I have some doubt as to the utility of any attempt to condense the wide range of factors into a working definition that would accurately capture the diverse factual circumstances in which the offence may occur. Accordingly, I shall leave the proper categorisation of an offender's level of culpability in each case to be determined by the sentencing court after an assessment and weighing of the various factors discussed above.

The second step: Identifying the applicable indicative sentencing range in the sentencing matrix

98 Having regard to the entire sentencing range stipulated in s 65(3)(*a*) of the RTA, I consider the following sentencing ranges to be appropriate in situations where the offender has elected to claim trial:

Harm / **Culpability**	**Low**	**Moderate**	**Serious**
Low	Fine	Fine or up to 4 months' imprisonment	Between 4 to 8 months' imprisonment
Moderate	Fine or up to 4 months' imprisonment	Between 4 to 8 months' imprisonment	Between 8 to 12 months' imprisonment
High	Between 4 to 8 months' imprisonment	Between 8 to 12 months' imprisonment	Between 12 to 24 months' imprisonment

99 Three points are worthy of note. First, it is important to bear in mind that any term of imprisonment imposed may be accompanied by a fine of up to $5,000, if appropriate. This is explicitly provided for in s 65(3)(*a*) of the RTA. The sentencing judge should thus be alive to possibility of imposing such a

combination of punishments in order to properly take into account the full sentencing range prescribed by Parliament.

100 The second point relates to the relationship between the two axes of harm and culpability. The proposed sentencing matrix in the Prosecution's Modified *Cullen* framework prescribes lower and more flexible sentencing ranges in cases where culpability is low, compared to cases where culpability is found to be moderate or high.[37] This places more emphasis on culpability as compared to the harm caused by the offence, translating to a sharper rate of increase of the sentencing ranges on the culpability axis vis-à-vis the harm axis. To illustrate, where culpability is low, the Prosecution's proposed framework prescribes that fines may be appropriate even where serious harm is caused, and where very serious harm is caused the maximum indicative sentence is capped at eight months' imprisonment. Where culpability is moderate, the starting point is two months' imprisonment even where harm caused is low, increasing to an indicative sentencing range of between 12 and 16 months' imprisonment where very serious harm is caused:[38] see Annex C.

101 The Prosecution suggests that this imbalance in emphasis is justified as it may not be fair and proportionate in every case to prescribe substantial sentences of imprisonment merely because the harm caused was moderate or serious, given that such outcomes may be the unfortunate result of a minor lapse of concentration or a misjudgment, and may be entirely attributable to circumstances beyond the offender's control.[39] Ms Gopalan echoes this

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37 PSS at [81].

38 PSS at [81(a)] and [81(b)].

39 PSS at [82(b)].

sentiment.[40] She further opines that harm caused is not the mischief with which s 65 of the RTA is aimed at; instead, the mischief is in the manner of driving which reflects a lack of care or consideration.[41]

102 To my mind, placing unequal emphasis on considerations of harm and culpability in the context of offences under s 65 of the RTA is not supported by Parliament's intention. Indeed, Parliament has stressed the importance of both factors and did not suggest that one factor should be given more weight in the sentencing analysis than the other. This was underscored during the Parliamentary Debate, where the Minister emphasised:

> 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.
>
> …
>
> To summarise, we will enhance our overall approach to penalise irresponsible driving depending on: (a) the circumstances of the offence – whether it constitutes Dangerous Driving or Careless Driving; and (b) the level of harm caused – whether they result in Death, Grievous Hurt, Hurt, or Endangering Life.

103 Third, the proposed sentencing framework and the corresponding indicative ranges set out above are concerned solely with s 65(3)(*a*) of the RTA. Nonetheless, it bears emphasis that an offender facing a charge under s 65(3)(*a*) is liable not only to a fine and/or a term of imprisonment but also to a disqualification order of at least five years pursuant to s 65(6)(*d*) of the RTA (except where special reasons are found). As observed in *Suse Nathen* at [13], a disqualification order combines three sentencing objectives: punishment, protection of the public and deterrence. Thus, where an offence reflects a blatant

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40 See generally, YACFSS at [39].

41 YACFSS at [39(b)(i)].

disregard for the safety of other road users and a lack of personal responsibility, there is a public interest in taking such a driver off the roads for a substantial period of time. The duration of the disqualification order should therefore increase in tandem with the severity of the offence, whether or not it is also accompanied by a substantial fine or period of imprisonment: see *Suse Nathen* at [14].

The third step: Identify the appropriate starting point within the indicative sentencing range

104 Following the identification of the indicative sentencing range at the second step, the third step is for the court to identify the appropriate starting point within that range. Once again, this is to be informed by the level of harm caused by the offence and the level of the offender's culpability.

The fourth step: Make adjustments to the starting point to take into account offender-specific factors

105 The usual gamut of offender-specific aggravating and mitigating factors established in case law apply to same effect: see *Terence Ng* at [62]–[71]. A non-exhaustive list of these factors can be summarised as follows:

Offender-specific factors	
Aggravating factors	Mitigating factors
(1) Offences taken into consideration for the purpose of sentencing (2) Relevant antecedents (3) Evident lack of remorse	(1) A guilty plea (2) Voluntary compensation (3) Co-operation with the authorities

106 One point to note is that an offender's relevant antecedents may largely be factored into the choice of punishment provision as the current RTA provides

for stiffer punishment ranges where an offender is a "repeat offender" or "serious repeat offender" as defined in s 64(8).

107 Further, it is also possible for an adjustment to be made taking an offender out of the indicative sentencing range, although where this is done, the court should set out clear and coherent reasons for any such departure: see *Logachev* at [80]; *Terence Ng* at [62].

The fifth step: Make further adjustments to take into account the totality principle

108 This fifth step is relevant only where an offender is faced with multiple charges. It requires the court to consider the need to make further adjustments to the individual sentences for each charge to take into account the totality principle. The totality principle has been expressed in *Mohamed Shouffee bin Adam v Public Prosecutor* [2014] 2 SLR 998 at [54] and [57] as comprising two limbs. The first limb examines whether the aggregate sentence is substantially above the *normal* level of sentences for the most serious of the individual offences committed. The second limb considers whether the effect of the sentence on the offender is crushing and not in keeping with his past record and his future prospects.

Application to the facts

109 In light of the sentencing framework developed above, I now turn to examine whether the sentence of six months' imprisonment imposed by the DJ in the present case was manifestly excessive.

The first step

110 As mentioned at [84] above, the first step is to have regard to the offence-specific factors and identify the level of harm caused by the offence and the level of the offender's culpability.

Level of harm caused by the appellant's offence

111 In the court below, the DJ assessed the harm caused to be "very serious". Based on the revised levels of harm proposed, I find that the harm caused in the present case is "serious". I am unimpressed by the appellant's submission that the harm caused should be regarded as falling within the range of "low" to "moderate" harm despite none of the medical reports indicating that the first victim suffered permanent injury or that she would suffer a permanent loss in her quality of life. Moreover, I am of the opinion that the mere fact of her being moved from the ICU to the acute care wards did not demonstrate that her condition had improved to any significant extent. It is uncontroverted that the first victim suffered extensive and debilitating injuries extending to vulnerable parts of her body (see [7] above). While admitted at TTSH, she underwent multiple surgical procedures and her course in the ICU was described as being "very stormy".[42] At the time she was medically repatriated to Malaysia in January 2021, she was assessed to be unresponsive, unable to obey commands and unable to speak or communicate. The extent and severity of her injuries taken together with the damage to the two victims' vehicles lead to the inescapable conclusion that the level of harm caused in the present case should be classified as "serious".

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42 NNI MR, ROP p 67.

Level of appellant's culpability

112 The DJ also found that the offender's culpability fell within the higher range of "low". He considered that the appellant was travelling on an expressway in moderate to heavy traffic and despite this he drove at some speed[43] relative to the other vehicles that were travelling slowly on the other lanes.[44] It was notable that the appellant did so notwithstanding that he was not travelling in an overtaking lane. Further, the appellant had failed to brake even on collision with the first victim's motorcycle.[45]

113 As a preliminary point, I should add that at the hearing before me, the Prosecution invited the court to review the in-car camera footage obtained from a neighbouring vehicle which recorded the accident. After having viewed the footage, it was pointed out to the Prosecution that the appellant had in fact engaged his brakes moments before the collision with the first victim's motorcycle. The Prosecution conceded this after reviewing the footage again. On the basis of the Prosecution's concession and my own observations from the footage, I find that it was wrong for the DJ to conclude that the appellant had failed to brake prior to the collision.

114 Nevertheless, I accept the DJ's observation that the appellant was driving at a speed that was relatively higher than the vehicles travelling alongside him at the time. The footage recorded the appellant's brake lights lighting up only momentarily in the seconds before the collision. Despite the appellant's last-minute attempt at braking, he was unable to slow down sufficiently in order to avoid the collision, indicating that he was travelling at

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43 GD at [29(a)], ROP pp 56–57.

44 GD at [28(a)], ROP p 56.

45 GD at [28(b)], ROP p 56.

such a speed that left him scarcely enough time to brake. Moreover, immediately after the collision, the appellant can be seen disengaging his brakes and losing control of his motor car, swerving right and colliding into the rear of the second victim's motor car. Due to the heavy traffic conditions, the appellant should have exercised more care in regulating his speed of travel to ensure that he had adequate response time to react to any unexpected situations. Therefore, I find that there is no reason to disturb the DJ's finding that the appellant's culpability fell on the higher end of "low".

The second step

115 At the second step, the court is to identify the applicable indicative sentencing range taking into account the level of harm and culpability established at the first step. Based on the matrix set out at [98] above, the applicable indicative sentencing range would be between four to eight months' imprisonment.

The third step

116 The third step requires the identification of the appropriate starting point within the indicative sentencing range. I agree with the DJ that the appellant's sentence should fall at the higher end of the indicative sentencing range (*ie*, around eight months' imprisonment) for the reasons canvassed above at [111] to [114].

The fourth step

117 At the fourth step, adjustments should be made to the starting point where necessary to take into account the offender-specific factors listed at [105] above. The DJ properly took into account the appellant's plea of guilt. However,

I should add that the appellant's clean driving record is no more than a neutral factor in the sentencing analysis.

118 The DJ was similarly right to place no weight on the appellant's submission that his imprisonment would cause hardship to his family.[46] In *Public Prosecutor v Mohammed Liton Mohammed Syeed Mallik* [2008] 1 SLR(R) 601 at [98], the Court of Appeal stated that "in the absence of very exceptional or extreme circumstances, little, if any, weight should be attached to the fact that the accused's family will suffer if the accused is imprisoned for a substantial period of time."

119 I am of the view that the DJ's decision to calibrate the appellant's sentence downwards to six months' imprisonment taking into account his plea of guilt cannot be faulted.

The fifth step

120 It is unnecessary for me to consider the totality principle in the present case as the appellant only faces one charge.

121 In my judgment, the sentence of six months' imprisonment imposed by the DJ for the s 65(3)(*a*) charge was not manifestly excessive. For completeness, I also find that the minimum disqualification order of five years was appropriate on the facts.

Conclusion

122 For the reasons above, I dismiss the appellant's appeal against sentence. It is always a Herculean task to set out a comprehensive sentencing framework

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[46] GD at [51], ROP p 64.

for any particular offence. But it has been made easier in this case, in no small part due to the assistance rendered by the parties and Ms Gopalan, to whom I record my gratitude.

Vincent Hoong
Judge of the High Court

Nirmal Singh s/o Fauja Singh (CrossBorders LLC) for the appellant;
Ryan Lim (Attorney-General's Chambers) for the respondent;
Thara Rubini Gopalan (TSMP Law Corporation) as young *amicus curiae*.

Annex A: *Cullen* framework

Harm / Culpability	**Low**	**Medium**	**Serious**	**Very Serious**
Low	Fine of between $2,500–$5,000	Up to 3 months' imprisonment	3–6 months' imprisonment	6–9 months' imprisonment
Moderate	Up to 3 months' imprisonment	3–6 months' imprisonment	6–9 months' imprisonment	9–12 months' imprisonment
High	3–6 months' imprisonment	6–9 months' imprisonment	9–12 months' imprisonment	12–24 months' imprisonment

Annex B: Appellant's proposed sentencing bands

Band	Offence-specific factors	Indicative sentencing range
1	Grievous hurt involved would pertain to fractures/dislocation with no or no significant permanent impairment. This is often reflected in the victim having undergone a relatively brief duration of hospitalisation and medical leave (or none at all) and minimal surgical procedures (if any). Culpability increasing factors would either be absent altogether or present only to a limited extent.	Fine between $1,000 and $5,000 and the minimum period of disqualification of 5 years.
2	Grievous hurt involved would be more serious or permanent in nature and/or necessitate significant surgical procedures. It would typically involve complex fractures/dislocation (including open or multiple fractures) and/or permanent disfiguration of the head or face. This would usually result in significant permanent impairment and/or inability to pursue daily living independently. This band would usually cover cases where: (a) the seriousness of the hurt is low but the culpability is moderate to high; or (b) the seriousness of the hurt is high but the culpability remains low.	1 to 2 weeks' imprisonment and the minimum period of disqualification of 5 years.

3	This would cover the most serious road traffic cases of grievous hurt resulting in the loss of limb, sight, hearing, member or life or other major bodily functions or paralysis. A high degree of culpability with multiple aggravating factors.	More than 2 weeks' imprisonment and the minimum period of disqualification of 5 years.

Annex C: Prosecution's proposed modified *Cullen* framework

Harm / Culpability	**Low**	**Medium**	**Serious**	**Very Serious**
Low	Fine	Fine or up to 2 months' imprisonment	Fine or up to 4 months' imprisonment	4–8 months' imprisonment
Moderate	2–4 months' imprisonment	4–8 months' imprisonment	8–12 months' imprisonment	12–16 months' imprisonment
High	4–6 months' imprisonment	6–12 months' imprisonment	12–18 months' imprisonment	18–24 months' imprisonment

Annex D: Young *amicus curiae's* proposed sentencing bands

Band	Offence-specific factors	Indicative sentencing range
1	Low level of seriousness (No offence-specific aggravating factors present, or where they are present to a limited extent)	Fine of up to $5,000 and/or up to one month's imprisonment and a disqualification period of 5 years
2	Moderate level of seriousness (2 or more offence-specific aggravating factors)	Between one month and one year's imprisonment and a disqualification period of 5-6 years
3	High level of seriousness (Multiple offence-specific aggravating factors)	Between one year's and two years' imprisonment and a disqualification period of 6 to 7 years