

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 95

Magistrate's Appeal No 9312/2017/01

Between

Public Prosecutor

... Appellant

And

Ong Heng Chua

... Respondent

Magistrate's Appeal No 9312/2017/02

Between

Ong Heng Chua

... Appellant

And

Public Prosecutor

... Respondent

JUDGMENT

[Criminal Procedure and Sentencing] — [Sentencing]

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Public Prosecutor
v
Ong Heng Chua and another appeal

[2018] SGHC 95

High Court — Magistrate's Appeal Nos 9312/2017/01 and 9312/2017/02
See Kee Oon J
14 February 2018

25 April 2018

Judgment reserved.

See Kee Oon J:

Introduction

1 Both the Prosecution and Ong Heng Chua (“the offender”) have appealed against the sentence of a fine and a disqualification order in respect of a charge of causing grievous hurt by a negligent act which endangered human life, an offence under s 338(b) of the Penal Code (Cap 224, 2008 Rev Ed). The charge read as follows:

You.....are charged that you, on 25 November 2016, at or about 4.50am, being the taxi driver of SH9458L, at the entrance of the carpark of Blk 343 Ubi Ave 1, Singapore, did cause grievous hurt to one Gwee Wan, the rider of motorcycle FX9777K, by doing an act so negligently as to endanger the personal safety of others, *to wit*, by failing to follow the directional sign of the road, allowing your vehicle to encroach into the opposite side of the road against the flow of traffic, thereby colliding into the said Gwee Wan and causing her to sustain serious injuries and fractures, and you have therefore committed an offence punishable under Section 338(b) of the Penal Code, Chapter 224.

2 The offender pleaded guilty to the charge in the District Court, and was sentenced to a fine of \$5,000 (in default 5 weeks' imprisonment) and disqualification from holding or obtaining all classes of driving licences for 18 months. The Prosecution appealed against the sentence of a fine, and submitted that a custodial term of one week is warranted. The offender appealed only against the disqualification order of 18 months, and submitted that a disqualification order of six months is appropriate.

3 Having heard submissions from the parties, I allow the Prosecution's appeal against sentence and dismiss the offender's appeal.

Facts

4 The facts are set out in the statement of facts which the offender had admitted to without qualification. The in-car camera footage from the taxi which the offender was driving at the material time had also been admitted in evidence.

5 As stated in the statement of facts, on 25 November 2016, at about 4.50 a.m., the offender was driving his taxi along Ubi Avenue 1 towards Ubi Avenue 2 on a single lane two-way road. Upon reaching the entrance of the HDB open-air carpark of Block 343 Ubi Avenue 1, the offender made a wide left turn into the said carpark. While completing the left turn, his taxi began to travel in the middle of the opposite lane of the entrance to the carpark. The right half of his taxi was encroaching into the opposite side of the road and therefore going against the road direction. The offender then continued to drive into the carpark with his car straddling the opposite lane, instead of moving back into his own lane. According to his mitigation, he did so because he noticed that the road ahead "inevitably merged into a single lane of road with no lane markings" and had "decided to prematurely travel in the middle of the road in anticipation of the merging lane"¹.

6 At the same time, the victim, a 55-year-old female, was leaving the said carpark on her motorcycle. As the victim was making a left turn from a side road of the carpark, which was on the offender's right, the right side of the front of the offender's taxi collided into her motorcycle. The victim had failed to stop at the stop line before making the left turn after leaving the carpark.

7 As a result of the collision, the victim suffered the following injuries:

- (a) Left proximal humerus fracture;
- (b) Left distal radius fracture;
- (c) Left fibula head and Gerdy's tubercle fracture; and
- (d) Left thigh laceration.

The victim was treated with Open Reduction Internal Fixation². She was warded on 25 November 2016 and was discharged on 7 December 2016 with 32 days of medical leave.

8 At the time of the accident, the road surface was dry, traffic volume was light and visibility was good.

9 The Prosecution sought a sentence of one week's imprisonment and at least 18 months' disqualification from all classes of driving licences. The offender sought a fine of not more than \$4,000 and no disqualification order. He was sentenced to a fine of \$5,000 (in default 5 weeks' imprisonment) and disqualification from holding or obtaining all classes of driving licence for 18

¹ Mitigation at para 12, found at ROP p 64.

² Medical Report for Gwee Wan at ROP p 8.

months with effect from 4 October 2017. The fine of \$5,000 has been paid and the order of disqualification stayed pending appeal.

The proceedings below

10 The District Judge's grounds of decision is reported at *Public Prosecutor v Ong Heng Chua* [2017] SGMC 63 ("GD").

11 In the court below, the Prosecution submitted orally that the custodial threshold was crossed because the culpability of the offender was high and the injuries sustained by the victim were significant: the offender had driven his vehicle against the flow of traffic and continued to travel in the middle of the two lanes without showing any effort to get his car back into his own lane; he had a bad driving record; and he had caused the victim to sustain serious bodily hurt. The Prosecution submitted that one week's imprisonment and at least 18 months' disqualification were warranted.

12 On the other hand, the offender argued that only a fine was warranted. He submitted that he had slowed down substantially to about 10 to 15 km/h when he made the left turn. It was also submitted that the victim herself had failed to stop at the stop line and had instead made an abrupt and sharp left turn out from the minor road. As a result, she appeared in his line of sight suddenly and he could not take any evasive action except to apply the brakes. The offender further argued that his acts of assistance by calling the ambulance and the police and remaining at the scene, as well as his remorse and cooperation with the police should be given mitigating weight.

13 The District Judge considered at the outset that the main sentencing consideration was deterrence and that this might be achieved by the imposition

of a high fine and a disqualification order. A custodial sentence was not the default punishment for s 338(b) of the Penal Code.

14 The District Judge went on to consider the level of harm and culpability of the offender. At [18] of the GD, he considered that the victim suffered fractures and was hospitalised and discharged with 32 days of medical leave. He noted the absence of any indication of permanent physical disability and any loss of limb. He also considered the harm caused to her motorcycle. He concluded that the level of harm caused was serious.

15 The District Judge found that the offender was driving against the road direction for quite a distance (at [20] of the GD). The visibility was good but it was still dark. He did not accept that the offender had slowed down to 10 to 15 km/h right before the collision but he agreed that there could have been slowing-down due to the presence of a road hump (at [21] of GD). There was no evidence to support the contention that the design of the inward curb of the road would require road users to veer their vehicles to the right, contrary to the offender's submission. As for the victim, she exited the car park without stopping at the stop line. At [24] of the GD, the District Judge concluded that the offender's culpability was low in the circumstances, noting in particular the failure of the victim to stop at the stop line, the location of the accident, and that there was no evidence of speeding on the part of the offender.

16 The District Judge gave weight to the offender's early plea of guilt, and gave him credit for surrendering the video card from his in-vehicle camera, and for rendering assistance and calling the ambulance. The District Judge also found that the offender's bad driving record warranted a deterrent sentence in the form of a high fine and a disqualification order, but not a custodial sentence.

The factor that tipped in favour of a non-custodial sentence was the failure on the part of the victim to stop at the stop line (at [26] of the GD).

The appeal

17 In their submissions on appeal, both the Prosecution and the offender made reference to *Tang Ling Lee v PP* [2018] SGHC 18 (“*Tang Ling Lee*”), where I had set out the sentencing framework for causing grievous hurt by a negligent act which endangered human life under s 338(b) of the Penal Code in the context of road traffic accidents. The Prosecution submitted for a custodial sentence of one week’s imprisonment based on the framework. The Prosecution submitted that the offender’s culpability was moderate: the offender had flouted traffic rules by substantially encroaching into the opposite lane, driving against the flow of traffic and effectively driving in the middle of two lanes for a few seconds before colliding into the victim. The Prosecution also argued that the victim’s negligence had no bearing on the offender’s culpability based on *Guay Seng Tiong Nickson v PP* [2016] 3 SLR 1079 (“*Nickson Guay*”). As the level of harm caused was moderate, the Prosecution argued that the case fell under Category 2 of the framework set out in *Tang Ling Lee*, for which the presumptive sentence was one to two weeks’ imprisonment. The Prosecution further submitted that too little weight was placed by the District Judge on the offender’s bad driving record. Lastly, the Prosecution argued that the disqualification order of 18 months was not manifestly excessive.

18 On the other hand, the offender argued that his culpability was low in comparison with various precedents, including *PP v Lim Pui Kee* [2016] SGMC 15 (“*Lim Pui Kee*”); *PP v Han Peck Hoe* [2014] SGDC 58 (“*Han Peck Hoe*”) and *PP v Lee-Teh Har Eng* (Magistrate’s Appeal No 9099 of 2016) (“*Lee-Teh Har Eng*”). It was submitted that what the offender did was different from the

precedents where the accused collided with other road users who had the right of way due to a failure to keep a proper lookout, where the accused made illegal U-turns, and where the accused failed to conform to traffic light signals. In contrast, the offender had slowed down after the road hump, checked for any oncoming vehicles and the victim did not have the right of way. The failure of the offender was in not keeping to his lane and not following the directional sign of the road, which did not warrant a custodial sentence. The offender further submitted that the District Judge had already accorded appropriate weight to the extent of injuries suffered by the offender, as well as the offender's driving record.

19 In his appeal against the disqualification order of 18 months, the offender argued that greater weight should have been placed on the negligent conduct of the victim and on the mitigating factors. It was also submitted by the offender that the disqualification order of 18 months was not in line with precedents. The offender contended that a disqualification order of six months was appropriate.

My decision

20 The central issue before this court is whether the sentence of a \$5,000 fine and 18 months' disqualification is correct. Within this issue is the effect of the victim's negligence on the culpability of the offender. To be clear, the victim's negligence goes towards the sentencing and not the liability of the offender, which was not disputed since the offender had pleaded guilty and it was clear that the offender's negligence was a substantial cause of the victim's injuries (see [38] of *Nickson Guay*). I will deal with the appeal against the fine first, followed by the appeal against the disqualification order.

Whether the custodial threshold is crossed

21 Both parties are in agreement that the framework set out in *Tang Ling Lee* applies to the present facts. I recognise, however, that the District Judge did not have the benefit of reference to the judgment in *Tang Ling Lee* at the relevant time. After surveying the case law for road traffic cases under s 338(b) of the Penal Code, I had, in *Tang Ling Lee*, set down a basic analytical framework outlining presumptive sentencing ranges to foster greater consistency and predictability. The main considerations in determining the appropriate sentence are the level of harm and the culpability of the offender (at [25] of *Tang Ling Lee*), and the presumptive sentences are pegged to the different levels of harm and culpability.

22 There are three sentencing bands set out at [31] of *Tang Ling Lee* for road traffic cases under s 338(b) of the Penal Code where the accused claims trial. Category 1 applies to cases involving lesser harm and lower culpability, and the applicable presumptive sentencing range is a fine. Category 2 applies to cases involving greater harm and lower culpability, or lesser harm and higher culpability, and the applicable presumptive sentencing range is one to two weeks' imprisonment. Category 3 applies to cases where there is greater harm and higher culpability and the applicable presumptive sentencing range is more than two weeks' imprisonment.

Level of harm

23 I explained at [25] of *Tang Ling Lee* that in the context of s 338(b) offences, the degree of harm caused would generally refer to the nature and degree of the grievous bodily injury caused to the victim(s). The period of hospitalisation leave or medical leave would be a relevant consideration insofar as it represents a medical professional's opinion as to the length of time required

for treatment of the injuries and for the victim to resume his daily activities (at [26] of *Tang Ling Lee*).

24 There is a greater level of harm where there are injuries of a very serious or permanent nature and/or which necessitate significant surgical procedures. In this connection, serious long-term injuries occasioned to the victim, such as loss of limb, sight or hearing or paralysis in particular would cause the case to fall under either Category 2 or Category 3 depending on the culpability of the offender (at [35] and [36] of *Tang Ling Lee*). In *Tang Ling Lee* itself, the victim suffered multiple fractures, and had to undergo 12 surgeries in the span of two months. He was hospitalised for 69 days and upon his discharge, he was given 180 days' hospitalisation leave. Accordingly, I found in that case that the injuries were very serious.

25 In the present case, the victim suffered from a left proximal humerus fracture, a left distal radius fracture and a left fibula head and Gerdy's tubercle fracture that were treated with Open Reduction Internal Fixation, and a left thigh laceration that was treated with left thigh wound debridement and exploration. She was warded for 13 days and discharged with 32 days' hospitalisation leave. There is no indication of any permanent injury, paralysis or loss of limb, sight or hearing. It is unclear from the available evidence whether the Open Reduction Internal Fixation surgery is a significant surgical procedure. Compared to the injuries sustained by the victim in *Tang Ling Lee*, the injuries suffered by the victim in the present case are not very serious or permanent.

26 In this connection, I note that the District Judge had overlooked the fact that the evidence before him contained the victim's medical report which reflects that a surgical procedure was undertaken (*ie*, the Open Reduction Internal Fixation) (at [18] of the GD). Nonetheless, he concluded that the level

of harm caused was serious. Applying the framework in *Tang Ling Lee*, the Prosecution quite fairly took the considered view that the degree of harm was moderate. I see no reason to disagree.

Level of culpability

27 The degree of culpability would generally refer to the degree of relative blameworthiness disclosed by an offender's actions, and is measured chiefly in relation to the extent and manner of the offender's involvement in the criminal act (*ie*, the manner of driving) (at [25] of *Tang Ling Lee*). In relation to the manner of driving, some examples of situations where culpability would be increased include speeding, drink-driving, sleepy driving, driving while under the influence of drugs, driving while using a mobile phone, flouting traffic rules, driving against the flow of traffic or off the road, involvement in a car chase or a racing competition, or exhibiting poor control of his vehicle (at [28] of *Tang Ling Lee*). The circumstances surrounding the incident should also be taken into account. This would include instances where the offender drives without a licence or while under disqualification (at [29] of *Tang Ling Lee*).

28 In the present case, the offender flouted traffic rules and drove against the flow of traffic. As can be seen in the in-car camera footage, the offender's taxi was way beyond the central divider after he turned left into the lane leading to the entrance of the open-air car park at Block 343 Ubi Avenue 1. He continued to encroach into at least half of the lane meant for oncoming traffic. Furthermore, the offender continued driving in this way and did not move back to his own lane, ostensibly because he noticed that the road ahead "inevitably merged into a single lane of road with no lane markings"³. It was a deliberate decision on the offender's part to drive his taxi in the middle of the two lanes,

³ Mitigation at para 12, found at ROP p 64.

with little regard for the safety of other road users. Although it was about 4.50 a.m. in the morning, there were still other road users on the road, as seen from the in-car camera footage.

29 Furthermore, the road where the collision occurred is narrow. Therefore, the offender should have taken even greater care not to encroach into the opposing lane. The in-car camera footage also shows that he had been driving rather fast along Ubi Avenue 1 before executing the left turn at Block 343 Ubi Avenue 1. He had earlier overtaken another taxi at considerable speed by moving partially into the opposite lane along Ubi Avenue 1. After turning left at Block 343 Ubi Avenue 1, he was compelled to slow down only by two road humps right before the collision took place. In addition, as is evident from the in-car camera footage, the victim's headlight could be seen to the right of the offender before the victim made the turn. Taking all the circumstances into consideration, the offender's culpability is at least at a moderate level. Certainly, it cannot be said that it falls within the lowest end of the spectrum.

30 The next issue is whether the negligence of the victim diminishes the culpability of the offender. The District Judge evidently placed considerable emphasis on the fact that the victim was negligent in not stopping at the stop line before making the left turn, concluding (at [26] of the GD) that this factor "tipped in favour of the Accused for a non-custodial sentence". The offender also argued strongly in his submissions that his culpability was reduced by the negligence of the victim. With respect, I do not agree that this reasoning is correct. The law in this area, as established in *Nickson Guay*, is clear. Where the conduct of the victim or a third party has a direct bearing on the culpability of the offender, it should, in keeping with the principle of proportionality, be taken into account when determining the sentence ([65] of *Nickson Guay*). On the other hand, where the conduct of the victim or a third party, whether negligent

or otherwise, has materially contributed to the outcome for which the offender is being charged, but has no bearing on the culpability of the offender, it should not affect the sentence to be imposed (at [70] of *Nickson Guay*).

31 In *Nickson Guay*, the court held that the failure to properly secure the deceased, a two-month-old infant, in an approved restraint was not a relevant consideration in sentencing since it could have no bearing on the negligence of the appellant; the fact remained that the appellant drove across the cross junction without keeping a proper lookout. *Nickson Guay* can be contrasted with the English case of *R v Smith* [2011] EWCA Crim 2844 (“*Smith*”), which was considered by the court in *Nickson Guay*. In *Smith*, the driver collided into a 74-year-old man, causing him to sustain fatal injuries. The collision occurred on a rural road where there was no ambient lighting and no footpath for pedestrians. The victim was walking on the road about 1.1 metres from the road kerb in the same direction that the accused was driving, and was wearing a black jacket, dark trousers and brown shoes. The court noted that the road surface was dark and offered no contrast in shape and colour to the deceased. The accused was driving at 55 mph (the speed limit was 60 mph) with dipped headlights. In reducing the sentence from four years’ imprisonment to 30 months’ imprisonment, the English Court of Appeal noted that the actions of the victim contributed significantly to the likelihood of collision. The conduct of the victim in the case had a bearing on the negligence of the offender and could be said to have diminished his culpability (at [66] of *Nickson Guay*).

32 The Prosecution and the offender have also referred me to *PP v David Joseph John* [2017] SGMC 25 (“*David Joseph*”), a recent case concerning the effect of the victim’s negligence in road traffic accidents. The accused had collided into a victim who had jaywalked across the road wearing light-coloured clothing on the upper half of his body. The district court held that the deceased’s

act of jaywalking had mitigated the extent of the accused's blameworthiness and the custodial threshold was not crossed as a result. On the prosecution's appeal against sentence, the High Court substituted the fine with a sentence of two weeks' imprisonment, accepting that the deceased's act of jaywalking did not affect the culpability of the accused.

33 It is only in unique circumstances such as those in *Smith* that the culpability of the accused will be affected. The present case is more analogous to *Nickson Guay* or *David Joseph John* than *Smith*. The negligence of the victim did not affect the offender's negligence in encroaching into the lane of oncoming traffic and driving in the middle of two lanes. This is not to say that the victim did not contribute at all to the collision, but rather that her negligence did nothing to affect the offender's culpability. I find that the District Judge erred in placing great weight on the victim's negligence in sentencing the offender to a fine instead of a custodial term.

34 In considering the factors set out at [27]–[29] above, I conclude that the culpability of the accused is moderate. The harm caused, while not insignificant, is not very serious and can be properly characterised as moderate. The offender falls within Category 2 of the framework set out in *Tang Ling Lee*, for which the starting point is an imprisonment term of one to two weeks.

Mitigating and aggravating factors

35 The court can make further adjustments taking into account the relevant mitigating and aggravating factors (at [32] of *Tang Ling Lee*) after determining the presumptive sentencing range. Examples of relevant mitigating factors may include an offender's timely plea of guilt, stopping to render assistance to the victim(s), a good driving record, and evidence of remorse. Relevant aggravating

factors, on the other hand, may include the existence of similar antecedents, which are indicative of persistent or prolonged bad driving.

36 There are both mitigating and aggravating factors in the present case. To his credit, the offender had pleaded guilty at the first opportunity, had stopped to render assistance to the victim and had called for an ambulance and notified the police.

37 On the other hand, the offender also has a history of bad driving on record, with 16 counts of non-parking related traffic offences for which he was given composition fines and various demerit points since 1998. These offences included speeding, failing to conform to red signal lights, unauthorised U-turns and inconsiderate driving. His last violation took place on 14 February 2016, about 10 months prior to the present offence. The full list is as follows:

S/N	Offence Date	Details	Outcome
1.	11 Sep 1998 12.18 a.m.	Speeding at 81-90 km/h on a 60 km/h road	\$150 composition fine 6 demerit points
2.	29 Sep 1998 1.42 a.m.	Speeding at 81-90 km/h on a 50 km/h road	\$170 composition fine 8 demerit points
3.	20 Mar 2000 7.49 p.m.	Failing to conform to red light signal	\$200 composition fine 12 demerit points
4.	15 Sep 2000 8.33 p.m.	Making an unauthorised U-turn	\$70 composition fine
5.	15 Aug 2002 12.59 a.m.	Speeding at 91-110 km/h on a 90 km/h road	\$130 composition fine 4 demerit points

6.	27 Dec 2004 1.43 a.m.	Speeding at 121-130 km/h on a 90 km/h road	\$170 composition fine 8 demerit points
7.	7 Aug 2005 1.12 a.m.	Speeding at 81-90 km/h on a 50 km/h road	\$170 composition fine 8 demerit points
8.	21 Nov 2009 12.29 a.m.	Speeding at 71-90 km/h on a 70 km/h road	\$130 composition fine 4 demerit points
9.	24 Mar 2010 9.09 p.m.	Making an unauthorised U-turn	\$70 composition fine
10.	12 Feb 2012 2.51 a.m.	Speeding at 121-130 km/h on a 90 km/h road	\$170 composition fine 8 demerit points
11.	7 Jul 2012 10.58 p.m.	Speeding at 71-90 km/h on a 70 km/h road	\$130 composition fine 4 demerit points
12.	17 Oct 2013 9.32 a.m.	Speeding at 71-90 km/h on a 70 km/h road	\$130 composition fine 4 demerit points
13.	3 Jan 2014 4.04 a.m.	Speeding at 101-110 km/h on a 80 km/h road	\$150 composition fine 5 demerit points
14.	5 Jan 2014 3.59 a.m.	Speeding at 81-100 km/h on a 80 km/h road	\$130 composition fine 4 demerit points
15.	22 Oct 2014 4.51 a.m.	Inconsiderate driving	\$300 ATOMS Court fine 9 demerit points
16.	14 Feb 2016	Speeding at 111-120 km/h on a	\$150 composition fine

	10.12 p.m.	90 km/h road	6 demerit points
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38 In the above list, SN 15 is directly relevant to the present appeal. SNs 3, 4 and 9 are also relevant because they also involve the failure to adhere to road signage.

39 I held in *PP v Koh Thiam Huat* [2017] 4 SLR 1099 (“*Koh Thiam Huat*”) that an offence under the Road Traffic Act (Cap 276, 2004 Rev Ed) (“RTA”) (or its subsidiary legislation) which has been compounded can be taken into account for sentencing purposes, and I explained the rationale for doing so at [51]–[60] of the judgment. In the present case, the offender did not dispute that his record of compounded offences could properly be taken into account. This case nevertheless affords an opportunity to further examine why an offender’s record of compounded offences ought to be a relevant sentencing consideration insofar as road traffic violations are concerned.

40 Like composition schemes for minor regulatory offences, the composition scheme for road traffic offences was created to deal with the efficient disposition of less serious traffic violations. This purpose was alluded to in Parliament by the then Minister for Home Affairs and Second Minister for Law, Professor S. Jayakumar, in the second reading of the Road Traffic (Amendment) Bill on 30 August 1985, during which he explained that the rationale for increasing the maximum composition amount was so that “most road offences could be compounded by the Traffic Police instead of being referred to the court” and “[o]nly the more serious offences will be referred to the courts”.

41 Although no further proceedings are to be taken against the driver in respect of the offence on payment of the composition sum under s 135(1A) of

the RTA, this does not mean that a composition carries no consequence whatsoever and can be conveniently ignored. This is well-illustrated by the following examples. A prior composition sets the basis for a higher composition fine to be imposed for subsequent offending, such as in the case of illegal parking offences⁴ (which are compoundable offences under Road Traffic (Composition of Offences) Rules (GN No S 110/1986) read with Road Traffic Rules (GN No S 171/1981) and s 135(2) of the RTA). Under s 110A(5) of the RTA, it is specifically provided that an offer of composition is to be treated as if the driver had been convicted of that offence for the purposes of determining whether the driver had been convicted of a relevant offence.

42 From what I have outlined in the preceding paragraph, this plainly demonstrates that composition is a relevant *indicia* of a person's driving record. It is wholly illogical to suggest that merely because offences have been compounded, the offender's slate of traffic violations is somehow wiped clean irrespective of the number of compounded offences he has amassed. If the offender's record reveals a slew of compounded traffic offences, he is no less a "repeat offender" with a poor driving record in the eyes of the court. Put simply, an offender's driving record remains a highly relevant sentencing consideration, *even if* the record consists entirely of compounded offences. If his slate is truly spotlessly clean or merely contains a few isolated blemishes, then the court would justifiably pay no heed to it.

43 As I have explained in *Koh Thiam Huat* (at [55]), the issue of the relevance of composition of a traffic offence for sentencing purposes is separate and distinct from the question whether composition amounts to an acquittal. The offender may have no prior court convictions but his driving record remains

⁴ See "Targeted measures to deter illegal parking" dated 22 December 2014 on the Land Transport Authority of Singapore website (last accessed on 23 April 2018).

potentially relevant as a sentencing consideration notwithstanding that. All the more so when the offender in question has accumulated 16 compounded offences with corresponding demerit points.

44 I am also conscious of at least two decisions at the High Court level which establish that composition of an offence does not amount to an implied admission of guilt (*Re Lim Chor Pee* [1990] 2 SLR(R) 117 and *Rajamanikam Ramachandran v Chan Teck Yuen and Another* [1998] SGHC 259). The judgment of L P Thean J (as he then was) on behalf of the court in *Re Lim Chor Pee* was cited with approval by Yong Pung How CJ in *PP v Lim Niah Liang* [1996] 3 SLR(R) 702 (“*Lim Niah Liang*”), at [18]. Yong CJ reiterated the need to scrupulously observe the principle of *autrefois acquit* so that an offender who has compounded an offence is not tried again for the same offence. This point is uncontroversial but of no relevance to the present discussion.

45 What is pertinent is that in *Lim Niah Liang*, Yong CJ went on to hold (at [23]) that given the relatively straightforward nature of littering offences, where most offenders are observed and thence caught red-handed by enforcement officers, it would “not be inconceivable” that composition of such offences amounts to an admission of guilt. I have set out my views in *Koh Thiam Huat* (at [57]–[60]) as to why I found these observations instructive. Traffic enforcement cameras, especially those recording vehicle speeds or capturing vehicles beating red lights, are hardly new or unfamiliar technologies in our enforcement landscape. They have become increasingly sophisticated and more reliable and prevalent over time. Turning to the present case, the offender had compounded 12 speeding offences and one offence of failing to conform to a red light signal out of 16 compounded offences in all. In all likelihood, he would have had no viable defence to any of these 13 enumerated offences, since he was probably quite literally caught in the act, whether by an enforcement officer

or through enforcement technologies which recorded his violation(s). Unsurprisingly, he did not attempt to suggest otherwise either in the proceedings below or before me.

46 An accused person's bad driving record is relevant in the case of an offence involving driving because it reflects his attitude towards road safety as well as his unwillingness to comply with the law. Such a record reflects a continuing attitude of disobedience of the law, especially in the case of the present offender, for he has a long string of compositions for traffic violations. The need for specific deterrence indicates that a more severe penalty is warranted. In *PP v Aw Tai Hock* [2017] 5 SLR 1141, Steven Chong JA echoed my sentiments in *Koh Thiam Huat* (at [60]) in this regard and accepted that the court may take into account a compounded offence to better give effect to this need (at [27] of *Aw Tai Hock*).

47 Moreover, s 228(2)(c) of the Criminal Procedural Code (Cap 68, 2012 Rev Ed) stipulates that the Prosecution's address on sentence may include "any relevant factors which may affect the sentence". A bad driving record as demonstrated by a long history of compounded traffic offences is incontrovertibly one such relevant consideration. Taking into account the accused's driving history allows for a more holistic approach in assessing the level of specific deterrence necessary in the particular case. It would also better serve the need for general deterrence and retribution where appropriate.

48 The District Judge was conscious of the offender's bad driving record but he observed that this had to be viewed in the context of him being a taxi driver for a period of 39 years (at [26] of GD). This may have been no more than a passing remark simply commenting on the relative frequency of the commission of driving offences measured against the offender's lengthy driving

experience. However, it would appear that the District Judge was in fact implying that some leniency could be accorded to the offender *because* he was a taxi driver who had spent long hours and many years on the road and for whom there was perhaps a higher probability of committing traffic violations compared to other drivers. With respect, the District Judge had taken an unjustifiably lenient view in determining the weight to attached to the offender's driving record. Working as a taxi driver as a means of one's livelihood arguably means that one should take even more care while driving since others' lives and personal safety are in one's hands. There is no cogent basis to hold taxi drivers to a lower standard of care or allow them more leeway as far as requirements to abide by traffic rules are concerned.

49 Moreover, the Prosecution is correct in submitting that little weight should be placed on the handing over of the in-car camera footage by the offender since he had done so merely in compliance with a Police order. It would have been an aggravating factor if he had resisted doing so, or worse, tampered with or deleted the footage. Nevertheless, the fact that he had cooperated with the Police, had called for the ambulance and remained at the scene to render assistance are mitigating factors. He had pleaded guilty. Notwithstanding his attempt to argue that the victim's negligence was relevant in diminishing his culpability, I accept that he was remorseful and willing to assume responsibility for his conduct.

50 Taking all the circumstances into account, I conclude that the custodial threshold is crossed. I allow the Prosecution's appeal and impose a sentence of one week's imprisonment.

The appeal against the disqualification order

51 The offender appealed against his disqualification order of 18 months on two primary grounds. First, he contended that greater weight should have been placed on the negligent conduct of the victim. The effect of the victim's negligence on the offender's culpability has already been addressed at [30]–[33] above. The victim's failure to stop at the stop-line has no bearing on the offender's culpability, and is of no mitigating effect. Second, the offender submitted that the disqualification order of 18 months was not in line with precedents, and that a disqualification order of six months was appropriate.

52 An appropriate period of disqualification should be ordered in a s 338(b) road traffic case, as I have set out at [33] of *Tang Ling Lee*. I will first survey the s 338(b) road traffic sentencing precedents in relation to the disqualification periods imposed, before setting out the relevant considerations in deciding the appropriate disqualification period and applying them to the facts of this appeal.

Analysis of sentencing precedents

53 In the cases that the offender cited in his appellate submissions⁵, the disqualification periods range from 8 months to 3 years. These cases are *Lim Pui Kee*; *PP v Toh Beng Guan* (Magistrate's Arrest Case No 904893 of 2014); *Han Peck Hoe*; *PP v Leow Yong Huat* (Magistrate's Arrest Case No 900709 of 2015); *PP v Mehta Manisha Sood* (Magistrate's Arrest Case No 900577 of 2015) and *Lee-Teh Har Eng*. Out of the six cases cited, only three are reported at first instance. I will only discuss the three reported cases since unreported decisions are of limited assistance.

⁵ At [19] of offender's submissions.

54 In *Lim Pui Kee*, the accused, a 70-year-old taxi driver, failed to keep a proper lookout at the pedestrian crossing while making a right turn, colliding into the victim who was cycling across the pedestrian crossing when the pedestrian crossing light was green. The 74-year-old victim sustained serious injuries, including traumatic left acute subdural haematoma, subarachnoid bleeding, left lateral ventricle and midline shift of 10–11 mm of right side, diffuse cerebral oedema, fractures on his right frontal bone, and was warded for 264 days. The court surveyed the precedents and imposed a disqualification order of 12 months on the basis that it was a momentary lapse by the accused and there was no particularly aggravating factor (at [20] of *Lim Pui Kee*). The court also took into account both the accused and the victim's ages. The accused had no similar antecedents.

55 In *Han Peck Hoe*, the accused made an illegal U-turn and collided into the victim and her grandson as a result, knocking the grandson to the left of the road and dragging the victim along the road for about 25 metres before coming to a stop. The accused did not realise he had collided into them until he saw passers-by attending to the grandson and until his passenger alerted him to the victim. The victim sustained serious injuries, namely right hip posterior dislocation with fractured posterior margin of the acetabulum, transected right popliteal artery/popliteal vein with acute right limb ischemia, lacerated wound at the lateral aspect of the right knee, left side multiple rib fractures with subcutaneous emphysema and pneumothorax, left clavicle fracture, right lower limb open, comminuted fracture at mid tibia and fibula with extensive soft tissue injury at the right lower thigh and calf, and right calcaneal fracture. She was warded for a total of 60 days. A disqualification order of three years was imposed. In imposing the sentence, the court took into account the high culpability of the accused and the two charges taken into consideration for the purposes of sentencing, one under s 338(b) of the Penal Code and the other

under Rule 13(1) of the Road Traffic Rules. The appeal by the accused in Magistrate's Appeal No 23 of 2014 was dismissed by the High Court but no grounds of decision was provided.

56 Lastly, in *Lee-Teh Har Eng*, the accused failed to keep a proper lookout when executing a right turn, and collided into the victim who was proceeding straight from the opposite direction and had the right of way, causing the victim to sustain fractures. The victim was warded for 44 days and given hospitalisation leave of 7 months and 9 days. On appeal, the court accepted the appellant in that case was genuinely confused, distracted and disoriented while driving in an unfamiliar set of road conditions and facing an unusual traffic signal setting, where the signalised junction was not programmed to show any red or amber traffic light signals. She was sentenced to three years' disqualification.

57 In *Lim Pui Kee*, as the court determined that there was no particularly aggravating factor in that case. On the other hand, the culpability of the accused in *Han Peck Hoe* was clearly high. In making an illegal U-turn, he paid no regard for the safety of other road users and did not even notice the two pedestrians and did not realise he had collided into them at the point of collision. As for *Lee-Teh Har Eng*, the accident was a result of the accused's genuine confusion, but a three-year disqualification was imposed nonetheless.

58 A brief survey of various reported s 338(b) road traffic cases shows that the disqualification periods imposed are generally within the range of 12 months to 3 years. At the lower end of the range are cases such as *PP v Sia Chee Han* [2015] SGMC 18 ("*Sia Chee Han*") and *PP v Zhang Xiang Guo* [2015] SGDC 98 ("*Zhang Xiang Guo*"), where a 12-month disqualification period was imposed. At the other end of the range are cases such as *Kaleeswaran Sudarsan*

v PP [2017] SGMC 67 (“*Kaleeswaran Sudarsan*”), PP v Lim Gim Chye [2017] SGMC 60 (“*Lim Gim Chye*”) and PP v Koh Saw Khim [2015] SGMC 38 (“*Koh Saw Khim*”) where a disqualification period of three years was imposed (on appeal in the case of *Koh Saw Khim*). The offenders in those cases at the lower end of the disqualification range were often untraced, as in *Sia Chee Han* and *Zhang Xiang Guo*. On the other hand, the offenders in cases at the higher end of the disqualification range often had traffic offence records, as in *Kaleeswaran Sudarsan* (with three previous compositions, including careless driving under r 29 of the Road Traffic Rules compounded shortly before the commission of his offence), *Lim Gim Chye* (with one composition for speeding in 2016, one composition for failing to obey traffic sign in 2013 and two compositions in 1999 for speeding and using a mobile telephone while driving) and *Koh Saw Khim* (with a conviction of causing death by rash or negligent act).

59 I would also refer to *Tang Ling Lee* in this regard. There, a disqualification period of two years was imposed, where the culpability of the offender was moderate to high and the harm caused was substantial. The substantial harm and moderate to high culpability warranted a two-year disqualification even with the offender’s unblemished driving record.

Relevant considerations

60 Sundaresh Menon CJ discussed the general sentencing objectives underpinning disqualification orders in *Edwin s/o Suse Nathen v PP* [2013] 4 SLR 1139 at [13]–[14]:

A disqualification order combines three sentencing objectives: punishment, protection of the public and deterrence (see Peter Wallis gen ed, *Wilkinson’s Road Traffic Offences* (Sweet & Maxwell, 20th Ed, 2001) at para 4.412; Kow Keng Siong, *Sentencing Principles in Singapore* (Academy Publishing, 2009) at paras 32.150–32.159) ...

Where an offence reflects a blatant 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 aims of deterrence are also served by sounding a stiff warning that such drivers can expect a lengthy disqualification order. 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.

These principles are equally applicable to all categories of cases where disqualification ought to be considered.

61 The most important sentencing principles engaged in disqualification orders are the protection of society, because the objective of disqualification orders is to prevent future harm that the offender may cause to the public, and deterrence, because such orders deprive offenders of the freedom to drive. In line with these principles, greater weight should be placed on the culpability of the offender in the commission of the offence as well as his driving record. These reflect how much of a danger he poses to society, and are also indicative of the degree of specific deterrence necessary. The precedents, as set out above at [53]–[59], are generally consistent with this analysis.

Application to the present appeal

62 In the present case, the offender's culpability and the harm caused are both at a moderate level at least (see [34] above). Considering his bad driving record, while giving due weight to his plea of guilt, remorse and his rendering of assistance, a disqualification term of 18 months is evidently not manifestly excessive. It falls very much on the low side, having regard to the precedents discussed above at [53]–[59]. Nevertheless, as the Prosecution has not appealed against the disqualification order, I do not propose to enhance the disqualification period.

Conclusion

63 The appeal by the Prosecution is therefore allowed and the appeal by the offender is dismissed. The offender is sentenced to one week's imprisonment, and the 18-month disqualification order is to remain. The fine will be refunded.

See Kee Oon
Judge

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Magistrate's Appeal No 9312/2017/02;
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