# Koh Jing Kwang *v* Public Prosecutor
# [2014] SGHC 213

**Case Number** : Magistrate's Appeal No 221 of 2013

**Decision Date** : 27 October 2014

**Tribunal/Court** : High Court

**Coram** : See Kee Oon JC

**Counsel Name(s)** : Ramesh Tiwary (Messrs Ramesh Tiwary) for the appellant; Yang Ziliang, James Chew and Dwayne Lum (Attorney-General's Chambers) for the Respondent.

**Parties** : Koh Jing Kwang — Public Prosecutor

*CRIMINAL LAW – Offences – Grievous hurt*

*CRIMINAL LAW – Elements of crime – Mens rea*

27 October 2014

**See Kee Oon JC:**

**Introduction**

1 This is an appeal against the decision of the District Judge in *Public Prosecutor v Koh Jing Kwang* [2014] SGDC 56 ("the GD"). The appellant claimed trial to a charge for an offence punishable under s 325 of the Penal Code (Cap 224, 2008 Rev Ed) ("the PC") and at the conclusion of the trial, was found guilty and sentenced to 15 months' imprisonment. He has appealed against the conviction and sentence.

2 The charge the appellant was found guilty of is as follows:

> You are charged that you, on the 3rd day of March 2012, at about 5.16am, outside the main entrance of Shanghai Dolly, Clarke Quay, Tan Tye Place, Singapore, did voluntarily cause grievous hurt to one Chua Bin Huang (male/28 years old), to wit, by punching him on his face, causing the said Chua Bin Huang to fall to the ground and to suffer a fracture to the skull, and you have thereby committed an offence punishable under Section 325 of the Penal Code, Chapter 224 (2008 Revised Edition)

3 The appeal came before me on 25 June 2014, and I reserved my judgment on the appeal to be delivered on a later date. After considering the arguments raised by the parties, I was satisfied that the *mens rea* element of an offence under s 322 of the PC (voluntarily causing grievous hurt) had not been established. The appeal was therefore allowed. As the evidence was sufficient to support a conviction for a lesser charge under s 323 of the PC (voluntarily causing hurt), the charge was amended accordingly. The appellant was convicted and sentenced to twelve weeks' imprisonment on the amended charge. The reasons for my decision are set out below.

**The facts**

4 The undisputed facts are set out in the GD at [4]–[8]. The appellant and his friends were clubbing on the night of 2 March 2012 at Shanghai Dolly ("the club"). They decided to leave the club

near closing time. The appellant accompanied two of his female friends to retrieve their bags, while his friend Quek Aik Keong Pierre-Milton ("Quek"), proceeded to leave first. Quek somehow got into a fight with one Chua Bin Huang ("the victim"), and this carried on outside the club ("the first altercation"). The appellant was near the entrance of the club when he noticed this had occurred. He then ran towards the victim and made contact with the victim. The victim fell backwards as a result of this and landed on the road motionless. The victim was later conveyed to hospital and diagnosed with having a fracture to the skull.

**The decision below**

5 At the trial, the appellant claimed that he had merely pushed the victim in order to separate the victim and Quek. The trial judge, however, noted (at [18] of the GD) that two independent witnesses, one Kevin Ling Guan Jie ("Kevin") and one Mohamad Sufarpdi Bin Senin ("Sufarpdi") both testified that they saw the appellant deliver a punch to the victim. Although the first information report ("the FIR") recorded by Sergeant Cheng Li Quan ("Sgt Cheng") recorded that the appellant had "pushed" the victim, the trial judge noted (at [20] of the GD) that Sgt Cheng testified that he might have wrongly recorded "punched" as "pushed". The trial judge also noted that other witnesses had testified that the appellant was behaving aggressively just before he ran out and intervened in the first altercation. The trial judge had the opportunity to review the closed-circuit television footage.

6 Given the behaviour of the appellant, the trial judge found that it was unlikely that the appellant wanted to prevent a fight. On the contrary, it was more likely that he was agitated and was running towards the victim with a view of "assaulting that person" (at [21] of the GD). In those circumstances, the trial judge found that the appellant had indeed punched the victim, and that his claim that he had pushed the victim was a mere afterthought "designed to meet the charge".

7 The trial judge noted (at [25] of the GD) that to fulfil the *mens rea* element of a charge of voluntarily causing grievous hurt, the appellant must have intended or known himself to be likely to cause some kind of grievous hurt (in that there was no need for it to be the specific form of grievous hurt actually caused). The trial judge went on to hold that given the considerable force used to punch the victim after the appellant dashed out of the club, the appellant "must at the very least have had reason to believe that he was likely to cause grievous hurt to the victim" (at [28] of the GD). He therefore found that the *mens rea* element of the charge had been fulfilled.

8 Finally, the trial judge also held that the appellant could not rely on the right of private defence. He noted (at [33] of the GD) that he found it hard to accept that the appellant reasonably apprehended danger due to an attempt or a threat by the victim to commit the offence against Quek. Furthermore, the appellant had also failed to prove why there was no time to seek the protection of public authorities, or that the harm caused to the victim was reasonably necessary in private defence.

9 In consideration of the sentence, the trial judge observed that there were several aggravating factors. The victim had suffered a serious injury and was now fully dependent on his family for personal care. The appellant remained unremorseful. In the circumstances, the trial judge found that a deterrent sentence was warranted, and imposed a sentence of 15 months' imprisonment.

**The appellant's arguments**

10 The appellant raised two main arguments on appeal, contending that the learned trial judge had:

(a) erred in fact by finding that the appellant had punched (as opposed to pushed) the victim ("the first argument"); and

(b) erred in law by holding that the appellant had the requisite knowledge or intention required under the law to sustain the charge under s 325 of the PC ("the second argument").

11 In respect of the first argument, the appellant raised two main points. The first was that some doubt should be cast on the evidence of Sufarpdi, who testified that he saw the appellant punch the victim. This is because although it was undisputed that the first altercation occurred (between Quek and the victim), Sufarpdi had testified that he never saw the first altercation. This ran contrary to the evidence of Kevin, who testified that he saw the first altercation very clearly. The appellant argued that the trial judge did not take note of this discrepancy, and that more should have been done to clarify whether Sufarpdi (or Kevin) was indeed telling the truth when they testified that they saw the appellant punch the victim.

12 Second, the appellant also argued that the trial judge had erroneously concluded that the FIR (recording that the appellant had "pushed" the victim) was wrongly recorded. According to the appellant, Sgt Cheng's evidence showed that he clearly could not remember the words actually used, and that the word "pushed" appeared more accurate and sensible in the context of the sentence recorded in the FIR. Given that this recording occurred some one year and three months ago, any recollection would be relatively unreliable. The appellant therefore contended that there was reasonable doubt as to whether the appellant did indeed punch the victim.

13 In respect of the second argument, the appellant contended that the Prosecution had failed to prove beyond reasonable doubt that he possessed the necessary *mens rea* to sustain the charge, namely, that the appellant, in hitting the victim, intended or knew himself to be likely to cause grievous hurt to the victim. The victim eventually fell as he had tripped over the kerb while stumbling backwards. The relief of where the victim was standing was also downward sloping. The blow was not so hard as to leave a fracture or a permanent mark on the part of the body which was struck. In such circumstances, the appellant contended that it was entirely possible that the blow was not of such great force as it has been made out to be.

14 According to the appellant, the trial judge had also erred by applying the wrong "standard" of knowledge, concluding (at [28] of the GD) that the appellant "must at the very least have had *reason to believe* that he was likely to cause grievous hurt to the victim" [emphasis added], while what was required was that the appellant must have either intended or *known* himself to be likely to cause grievous hurt.

15 In addition to the above two arguments, the appellant also contended that he should be able to rely on the right of private defence.

**My decision**

16 As to the first argument raised by the appellant (*ie*, that the trial judge had erred in fact by finding that he had punched the victim), I was of the view that there were insufficient grounds to disturb the trial judge's finding of fact. I found that the trial judge did not err in finding that the appellant had punched the victim.

17 As to the appellant's second argument, I was satisfied that the appellant did not possess the requisite knowledge or intention required under the law to sustain the charge under s 325 of the PC, insofar as there was insufficient evidence to reach this conclusion beyond reasonable doubt. I

elaborate on these two points below.

***The evidence supports the finding that the appellant had punched the victim***

18 There are three aspects of the evidence which cast some doubt on the trial judge's conclusion that the appellant had punched the victim. They are:

(a) the evidence of the encounter itself, primarily the evidence of Kevin and Sufarpdi;

(b) the FIR as recorded by Sgt Cheng; and

(c) the medical evidence given by Dr Ivan Ng.

19 Only Kevin had stated unequivocally that he saw the appellant landing a punch on the victim. Sufarpdi had admitted that from his position, he could not really see the appellant land a punch; his evidence that the appellant had punched the victim was his own deduction. This was evident from his testimony in examination-in-chief, when he testified that he "saw slightly a punch" and "[t]hat seems [what] happened". [note: 1]

20 He conceded that he could not really recall "how the punch was" and that there was a blind spot to the side of the lamppost. Under cross-examination, Sufarpdi confirmed again that he did not have a direct line of vision of the fight as the fight occurred behind a lamppost. He had testified that "[f]rom my view on the right side pillar, okay, it's being blocked by that pillar … and the blind spot is the lamppost". [note: 2] Sufarpdi then later characterised the appellant's action as a "right-handed movement", rather than a punch.

21 It was also odd that Sufarpdi did not notice the fight between Quek and the victim earlier on. It was undisputed that Quek and the victim were fighting initially just before the appellant intervened, and that Quek had landed a punch on victim, causing the victim to fall down on his backside before the victim stood up again. However, Sufarpdi described this only as a minor scuffle where no blows and only Chinese vulgarities were exchanged. Given his close proximity to the entrance of the club, it would have been reasonable to expect Sufarpdi to have noticed this scuffle.

22 I also considered the points the appellant raised regarding the FIR recorded by Sgt Cheng. As stated above, the trial judge noted Sgt Cheng's evidence that he (Sgt Cheng) might have wrongly recorded "punched" as "pushed" in the FIR report. Two observations can be made. First, while it is true that Sgt Cheng did give evidence suggesting that he could have made a mistake, I note that this had been stated hypothetically, in response to a question asked by the Prosecution – Sgt Cheng was asked whether it was "possible" that the caller could have used a different word, and Sgt Cheng had simply agreed that it was. This was not a case where he had admitted that he had recorded the FIR wrongly. His answer was in fact a result of leading questions from the Prosecution. Second, as was pointed out in the closing submissions for the defence in the trial below, the full context of the FIR must be considered. The statement in the FIR was that "there is a fight here and someone was *pushed* to the road". If the word "pushed" was substituted for the word "punched", the sentence would make less sense. It was not clear whether the trial judge had taken note of this as there was no mention of the point in the GD.

23 I also considered the medical evidence before the court. In this appeal, the Prosecution also asserted that the medical evidence supports a finding that a punch was landed. I found that this was an inaccurate representation of the medical evidence. In the Prosecution's submissions for this appeal dated 16 June 2014 at paras 28 to 30 ("the Prosecution's submissions"), the Prosecution contended

that the medical evidence showed that the injury suffered by the victim was an "acceleration-deceleration" injury. It was submitted that this supports a finding that the victim sustained a "sudden impact from a forceful punch", seemingly attributing the "acceleration" to the punch. This is incorrect, as an acceleration-deceleration injury as explained by Dr Ivan Ng is simply when something moving quickly (acceleration) comes to a sudden stop (deceleration), causing an impact thus resulting in an injury. In fact, Dr Ivan Ng was very clear that the injury could be attributed to a fall and not necessarily a punch. [note: 3]

24 Taking these three points into consideration, it could perhaps be said that there was some doubt as to whether the appellant did punch the victim. However, I was of the view that they did not raise doubts sufficient to warrant appellate intervention, as there was sufficient evidence to support the trial judge's finding that the appellant had indeed punched the victim.

25 A punch is clearly distinct from a push. While both might involve some form of hand action, a push designed to separate two people, as claimed by the appellant, is distinctly different from a punch swung to injure. Although Sufarpdi did admit that his line of sight was not perfect, he had maintained numerous times that it was a punch rather than a push. This was likewise for Kevin, who had expressly disagreed that the appellant had simply run towards the victim to break up the fight: [note: 4]

> Q: And I am suggesting to you in the process of pushing them away, the white-shirted person fell when the 2nd person pushed both side away
>
> A: Uh, no it didn't happen that way.
>
> Q: And that is exactly why in your text to the police you said "pushed" not "punched"?
>
> A: After---after he separated the 2 of them, right, he---he punched the guy.

As can be seen, Kevin clearly maintained that the appellant had delivered a punch. Apart from the inconsistency in the recorded FIR, there was nothing to suggest that he was mistaken in his recollection. There was also never any suggestion that he had lied or fabricated evidence.

26 In my view, it was also not so significant that the FIR had recorded Kevin as having stated "pushed" instead of "punched". Given the language of the FIR as discussed above, it was entirely possible that Kevin had in fact mentioned "pushed". It was also equally possible that Sgt Cheng had indeed made a mistake in recording the FIR in an effort to summarise what was being said. It is a well-settled principle in criminal law that it is only in cases of *material discrepancies* whereby the credibility of the witness (and hence his account of what had occurred) might be called into question.

27 The FIR is merely a quick report of what is happening, and it is not expected to be totally accurate all the time. Significantly, the court can take into account the circumstances in which the FIR was made. In this case, it was made at the moment, spontaneously and immediately, and therefore, some latitude should be given to inaccuracies in recording. As held in *Sarjit Singh Rapati v Public Prosecutor* [2005] 1 SLR(R) 638 at [41]:

> In so far as the first information report was concerned, the law does not require the report to contain the entire case for the Prosecution. Its main purpose is merely to give information of a cognisable offence to the police so as to set them in motion: *Tan Pin Seng v PP* [1997] 3 SLR(R) 494 at [27]. While the existence of a material discrepancy between the report and the complainant's testimony in court is relevant, the circumstances in which the report was lodged

must be borne in mind. As the court put it in *Herchun Singh v PP* [1969] 2 MLJ 209 at 211:

> … it is wrong to hold up the first information report as a sure touchstone by which the complainant's credit may invariably be impeached. It can only be used for that purpose with discrimination, in much the same way as previous statements by the witness are used, so that irrelevant errors in detail are not given exaggerated importance, nor omissions, objectively considered in the light of surrounding circumstances.

28 Third, the trial judge had also noted that the appellant was behaving aggressively, was shouting vulgarities and had sprinted out of the main door. He characterised these as actions which were more in line with an aggressor, rather than someone who wanted to break the fight up. It was not disputed that the appellant had behaved in this manner, and this did, to a certain extent, support the trial judge's finding that a punch, and not a push, was delivered.

29 In the circumstances, I did not find sufficient grounds to disagree with the trial judge's finding of fact. It is well-settled that an appellate court will be slow to overturn findings of fact made by the trial judge, and intervention is only justified when the assessment is plainly wrong or against the weight of the objective evidence before the court – see *ADF v Public Prosecutor and another appeal* [2010] 1 SLR 874 at [16].

***The mens rea element for a charge of grievous hurt is not made out***

30 Section 322 of the PC provides:

> **Voluntarily causing grievous hurt**
>
> **322**. Whoever voluntarily causes hurt, if the hurt which he intends to cause or knows himself to be likely to cause is grievous hurt, and if the hurt which he causes is grievous hurt, is said "voluntarily to cause grievous hurt".

31 The explanation to s 322 further provides that:

> *Explanation*—A person is not said voluntarily to cause grievous hurt except when he both causes grievous hurt and intends or knows himself to be likely to cause grievous hurt. But he is said voluntarily to cause grievous hurt if, intending or knowing himself to be likely to cause grievous hurt of one kind, he actually causes grievous hurt of another kind.

32 In this appeal, the parties agreed that the appellant must have *intended* or *known himself to be likely* to cause grievous hurt before the *mens rea* element of the charge is made out. From the explanation of the offence, there are four permutations by which the Prosecution can establish that the appellant possesses the requisite *mens rea*:

(a) The appellant, when delivering the punch, intended for the victim to fall, knock his head, and sustain fractures ("the direct-knowledge approach").

(b) The appellant, when delivering the punch, knew that it was likely that the victim would fall, knock his head, and sustain fractures ("the direct-reasonable knowledge approach").

(c) The appellant, when delivering the punch, intended to cause some form of grievous hurt. Inadvertently, this led to a fall and the subsequent fracture ("the indirect-knowledge approach").

(d) The appellant, when delivering the punch, knew that it was likely to cause grievous hurt of

another type ("the indirect-reasonable knowledge approach").

33 As can be seen, the "direct" approach establishes a direct link between the actions of the appellant and the grievous hurt actually sustained by the victim (in this case, a fracture). It is clear that if a "direct" link cannot be established, then, the Prosecution must show that an accused had intended or had known that his actions were likely to cause some other form of grievous hurt.

34 It is not clear through which approach the trial judge found that the *mens rea* element was established. At [28] of the GD, the trial judge mentioned that the appellant must "at the very least have had reason to believe that he was likely to cause grievous hurt to the victim". The use of the phrase "at the very least", as well as "likely to cause" would suggest that the trial judge found that the *mens rea* element was established as described in the fourth approach, namely, the indirect-reasonable knowledge approach.

35 Indeed, it is clear that in the trial below, the Prosecution did not go so far as to suggest that the appellant intended, or knew that his punch would be likely to cause the victim to stumble backwards, trip, and then sustain the injury. In the Prosecution's submissions for this appeal at para 35, the Prosecution asserted that "the outcome of the victim suffering some form of grievous hurt was *clearly a foreseeable and reasonably* likely result of the [appellant's] punch". The legal question can therefore be reduced to this – when the appellant delivered his punch, did he intend or know that it was likely to cause the victim some form of grievous hurt?

***The law***

36 How is the court to establish that an accused intended or was likely to have known that his actions would cause grievous hurt? The following commentary, as found in Dr Sri Hari Singh Gour, *Penal Law of India* vol 3 (Law Publishers (India) Pvt Ltd, 11th Revised Ed, 2011) ("*Gour*") at p 3215, commenting on s 322 of the Indian Penal Code 1860 (Act No 45 of 1860) (India) ("the IPC") which is for all purposes *in pari materia* with s 322 of the PC, is instructive. The author elaborates on how intention or knowledge is to be proved:

> But *there must be evidence that what the accused had intended or known to be likely was not only hurt, but grievous hurt*. But how is such intention or knowledge to be proved? This difficulty was suggested to the Law Commissioners who said: "The Judge is not to trouble himself with seeking for direct proof of what the offender thought was likely to happen, but is to infer it from the nature of his act, taking him to have intended grievous hurt, or at least to have contemplated grievous hurt as likely to occur, when he did what everybody knows is likely to cause grievous hurt, and the more certainly drawing this conclusion where there is evidence of previous enmity against the party who has suffered. …" [emphasis added]

The learned author goes on to elaborate at p 3216, stating:

> *This is, of course, the only way in which intention and knowledge can be proved. Overt act and declarations, the amount of violence used, the nature of the weapon selected for that purpose, the part of the body, vital or otherwise, where the wound was inflicted, the effect produced are, indeed, some of the most essential facts from which the Judge or jury may infer an intention*. It cannot be judged from any isolated fact, but must be judged from all together. For, suppose a person strikes a blow with moderate violence, which would not cause death of an ordinary subject, but which owing to the latent disease in him caused his death, the criminality of the act could not obviously be judged by the fatal result, but only by the nature of the act, namely, the severity of the blow. [emphasis added]

37 Similar observations were made by the trial judge in citing the decision of the High Court in *Chang Yam Song v PP* [2005] SGHC 142 ("*Chang Yam Song*") – intention or knowledge must be judged by the actions of the accused.

38 However, quite apart from observing how to judge intention or knowledge, the decision in *Chang Yam Song* goes one step further – it affirms the position (as laid down in *Sim Yew Thong v Ng Loy Nam Thomas* [2000] 3 SLR(R) 155 ("*Sim Yew Thong*")) that even if an accused was merely negligent, meaning that so long as he had *reason to believe* that his actions were likely to cause grievous hurt, the *mens rea* element of s 322 of the PC could be established. Although the word "knows" would seem to suggest that actual knowledge is required before the *mens rea* element is fulfilled, it was held that "knowledge" also encompassed recklessness and negligence. The trial judge, in his GD, cited [40] of *Chang Yam Song*, which states:

> Moving on to the appellant's contention that the district judge was wrong to find that he either intended to cause, or knew he was likely to cause grievous hurt to Chua (supra [17]), I note first of all the explanation of "intention" and "knowledge" given in *Sim Yew Thong v Ng Loy Nam Thomas* [2000] 4 SLR 193 ("*Sim Yew Thong*") at [18]. That case concerned the offence of voluntarily causing hurt under s 323 of the Penal Code, the *mens rea* for which is similar to that for the offence under s 325 of voluntarily causing grievous hurt. The only difference is that while the requisite intention and knowledge relate to hurt *per se* in the case of the s 323 offence, they pertain to grievous hurt where the s 325 offence is concerned. … *As for knowledge of the likelihood of causing hurt, I held that it encompassed* "both recklessness (where an accused knows he is likely to cause a result) and *negligence (when an accused has reason to believe that he is likely to cause a result)"*. [emphasis added]

Given these two decisions, it was understandable why the trial judge held (at [28] of the GD) that the appellant must "at the very least have had reason to believe that he was likely to cause grievous hurt to the victim" despite the different language used in s 322 of the PC. These were decisions of the High Court, and the trial judge might have felt bound to follow this line of authority.

39 However, with greatest respect, I declined to adopt this standard of knowledge as laid down by the High Court in *Chang Yam Song* and *Sim Yew Thong*. In my judgment, an accused must possess actual knowledge, meaning that the court must be prepared to find, beyond reasonable doubt, that the accused *knew* that his actions were likely to cause grievous hurt before the *mens rea* element is made out. First, at the very least, the language used in the PC clearly and unambiguously states that an accused must *know* that he is likely to cause some form of grievous harm before liability attaches. On first principles and on a plain reading, I see no reason why this should be interpreted to encompass rashness and negligence. Neither the Prosecution nor the appellant sought to argue that this should be the case.

40 Second, including the concepts of rashness and negligence also has the danger of causing this section to be over-inclusive. As suggested by the learned authors in Chan Wing Cheong, Stanley Yeo & Michael Hor, *Criminal Law for the 21st Century – A Model Code for Singapore* (Academy Publishing, 2013) ("*Chan, Yeo and Hor*") in chapter 4.1, there are, broadly speaking, four fault elements upon which liability attaches – intention, knowledge, rashness (or recklessness) and negligence. These fault elements reflect varying degrees of moral culpability, the highest being that of intention and the lowest being that of negligence. Hence, offences which are intentionally committed often attract the highest maximum sentence that can be meted out, while offences which are negligently committed attract a lower range of sentences.

41 Interpreting knowledge to encompass rashness and negligence in s 322 of the PC will mean that

all four fault elements are captured under this section. Considering this part of the PC in its totality, in my judgment, the fault elements of rashness and negligence are already adequately addressed under s 338 of the PC. Section 338 provides:

> **Causing grievous hurt by an act which endangers life or the personal safety of others**
>
> **338**. Whoever causes grievous hurt to any person by doing any act so rashly or negligently as to endanger human life or the personal safety of others, shall be punished —
>
> (*a*) in the case of a rash act, with imprisonment for a term which may extend to 4 years, or with fine which may extend to $10,000, or with both; or
>
> (*b*) in the case of a negligent act, with imprisonment for a term which may extend to 2 years, or with fine which may extend to $5,000, or with both.

Rashness and negligence are specifically addressed under s 338. This strongly suggests that the *mens rea* element of an offence under s 322 of the PC should be limited to that of intention and knowledge.

42 There is, however, a potential reason why knowledge in s 322 of the PC could be interpreted to include rashness and negligence. The offence under s 322 is one of "*voluntarily* causing grievous hurt". The provisions before and after s 322 likewise employ the same word, "voluntarily". The word "voluntarily" is described in s 39 of the PC, which provides:

> **"Voluntarily"**
>
> **39**. A person is said to cause an effect "voluntarily" when he causes it by means whereby he intended to cause it, or by means which, at the time of employing those means, *he knew or had reason to believe to be likely to cause it*.
>
> [emphasis added]

It could therefore be argued that since the offence under s 322 of the PC uses the word "voluntarily" in its title, this incorporates the standard of knowledge (*ie*, that one "knew or had reason to believe to be likely to cause it") as found in s 39 of the PC. This was in fact part of the reasoning adopted by the High Court in *Sim Yew Thong* (at [18]).

43 I do not agree that the general description of "voluntariness" as found in s 39 of the PC justifies the incorporation of the concepts of rashness and negligence into s 322 of the PC. In my judgment, this is not the purpose of s 39 of the PC. The general description of voluntariness in s 39 of the PC is premised on a more fundamental principle in common law, which is that a person should not be liable for *involuntary* behaviour. This principle has its roots in the common law concept of automatism. As the authors in *Chan*, *Yeo and Hor* at para 3.2.2 explain:

> In general, a person is not liable for involuntary behaviour for the simple reason that he or she has not *done* anything. At common law, this state is termed "automatism". Hence, if there is evidence that the act was not voluntary, the accused in effect denies that there was in fact an offence. Lack of voluntariness is not a "defence" as such and it remains the Prosecution's burden to prove beyond reasonable doubt that the act was in fact voluntary.

44 This fundamental principle means that, apart from strict or absolute liability offences, liability

under penal law attaches only when, in the broad use of the word, there is voluntariness. When an act is committed intentionally, knowingly, rashly, or negligently, it is said to be voluntarily committed. The converse does not hold true – if an act is voluntarily committed, it does not mean that it must include all four fault elements of intention, knowledge, rashness or negligence.

45 The description of the offence "voluntarily causing grievous hurt" therefore, need not necessarily incorporate the concepts of rashness and negligence. For the reasons stated above, I hold that it does not. This seems to be the position taken in the IPC as well. In *Gour*, the learned author at p 3317, commenting on s 337 of the IPC ("causing hurt by act endangering life or personal safety of others", which is for all purposes *in pari materia* with s 336 of the PC), states:

> All these four offences possess the same elements in common, viz. rashness or negligence and absence of "voluntariness" in causing hurt to anyone. As such, they take a lower place in point of criminality *than a voluntary criminal act in which there is either intention or knowledge of the consequence*. The mental elements controlling criminality are thus fourfold: (i) rashness or negligence, (ii) voluntariness, (iii) knowledge or likelihood, and lastly (iv) intention. They each mark an ascending scale in point of criminality as determined by the actor's mentality which is the sole or almost the sole criterion of criminal capacity in the Code.
>
> [emphasis added]

In the context of voluntarily causing grievous hurt, it is therefore clear that this should only include either intention or knowledge, and not rashness or negligence.

***Application to the facts***

46 I return to the legal question posed earlier at [36] – when the appellant delivered his punch, did he intend or know that it was likely to cause the victim some form of grievous hurt? In determining this question, I considered the following factors:

(a) the appellant was running out at a high speed, and had landed a single punch in continuum with his movement;

(b) the appellant was aggressive and was spewing vulgarities just before he made contact with the victim;

(c) the appellant had landed a single punch on the victim's face;

(d) the victim was intoxicated;

(e) the victim had stumbled back as a result of the punch, tripped on a kerb and then fallen.

Taking all these factors into consideration, I was of the view that the appellant did not intend or know that he was likely to cause grievous hurt.

47 The first form of grievous hurt that the appellant could have intended or known himself likely to cause was the specific grievous hurt the victim suffered, which is the fracture. It must be shown therefore that in the entire context of events, the appellant, in punching the victim, intended or knew that it was likely that the victim would have fallen, tripped, and then hit his head. In the course of a fight, a fall resulting from a punch might not be surprising or even unexpected. However, I was not convinced in the present context that intention or knowledge can be attributed to the appellant for

the entire ensuing chain of events, *ie*, that the victim would stumble, trip and fall and then knock his head, thus sustaining the fracture. At the very most, it could be said that the appellant ought to have known that it was likely that the victim would stumble and fall. That alone does not fulfil the *mens rea* of an offence under s 322 of the PC.

48 The second form of grievous hurt that the appellant could have intended or known himself likely to cause was any other form of grievous hurt. As asserted by the Prosecution at para 35(b) of their submissions for this appeal, the appellant should have known that by punching the victim's face, this could have led to "a whole host of fractures, such as nose fractures, orbital blowouts and maxillary fractures".

49 While there is some merit to this argument, it cannot be the case that the *mens rea* element of the offence is made out once a punch is thrown to the face. Based on the facts of this case, in my judgment, the Prosecution had not proven beyond reasonable doubt that the appellant intended or knew that his punch was likely to have caused grievous hurt. First, I was of the view that this punch, though delivered with some degree of force, was not of such considerable force as suggested by the Prosecution. If the appellant had landed a punch of such considerable force, the victim would in all likelihood have sustained some severe form of injury to his face. It is noteworthy that in the medical report dated 20 July 2012 from Dr Ashfaq A Larik of the Singapore General Hospital to Staff Sergeant Ong Zhiwei to assist with the investigation, there was little mention of bruising to the face, which would be more consistent with an injury sustained from a forceful punch. The injuries noted were as follows:

> Initial findings were hematoma on the forehead, bleeding from right ear, constricted right pupil, some abrasions found on right arm and leg and his breath smelled of alcohol …
>
> According to hospital notes, he sustained almost all major injuries only to his skull and brain, which is consistent with high impact external force, directed to his head area …

50 There were no apparent facial injuries other than hematoma on the forehead and a constricted right pupil. I noted that it was possible that the attending doctor's focus may have been on the more serious injuries sustained by the victim, but this would also support the inference that there were few serious facial injuries sustained. Moreover, the victim was intoxicated and had already been involved in an earlier fight during those early hours of the morning. Taking all these into account, there was at least a measure of doubt as to whether the appellant had delivered such a strong and powerful blow as to have felled the victim through the sheer force of the blow alone, causing him to sustain a fracture as a result.

51 More importantly, I also noted that the appellant had only thrown a single punch at the victim. This was not a situation where the appellant had repeatedly rained blows on the victim on a vulnerable area. Taking the above factors into consideration, I was of the view that the *mens rea* element of the charge was not made out.

***There is no right of private defence***

52 The trial judge at [29]–[34] of his GD addressed why the appellant could not rely on the right of private defence. I agreed with his finding, apart from two points where I differed. At [33], the trial judge concluded that:

> On the facts of the present case I find it hard to accept that the accused reasonably apprehended danger due to an attempt or a threat by the victim to commit an offence affecting

[Quek]. The accused had failed to show that there was no time to seek the protection of public authorities or that the harm caused to the victim was reasonably necessary in private defence.

53 First, there is evidence (given by Kevin) to suggest that Quek had been punched by the victim before the appellant intervened. The victim continued to attempt to assault Quek. As such, I found that the appellant indeed reasonably apprehended that Quek was in danger of further harm. Second, I was of the view that there was insufficient time to seek protection from public authorities. Quek and the victim were already engaged in a fight, and blows had already been exchanged. In those circumstances, it was reasonable that the appellant felt that he had to intervene immediately.

54 However, as stated above, I agreed with the trial judge that the appellant ultimately could not rely on the right of private defence, even if such a right had arguably arisen. The first altercation between Quek and the victim was a hand-to-hand fight. Neither party was armed. The harm that could possibly result from the first altercation was therefore minimal. In order to break up the fight or to disable the victim in that context of exercising the right of private defence, a shove or tackle, a push, or at most a punch to a less vulnerable area might have been more justifiable. A punch to the face was clearly unnecessary and excessive.

55 Finally, doubt can also be cast on the appellant's motivations for intervening in the first altercation, especially given his aggressive behaviour just prior to his intervention. The trial judge rightly accorded weight to the finding that the appellant was the aggressor, and his aggressive conduct would also support the finding that the harm caused was not reasonably necessary.

56 I should add that the Court of Appeal's observations in *Tan Chor Jin v Public Prosecutor* [2008] 4 SLR(R) 306 at [46] pertaining to whether an aggressor can avail himself of the right of private defence would appear to relate strictly to two-party scenarios. In such situations, it would usually be possible to easily distinguish between the aggressor and the victim. In the present case, the appellant had intervened ostensibly in order to defend Quek. It cannot be correct to suggest that a person who attacks another in order to defend a third party will invariably be characterised as an aggressor and thus be deprived of the right of private defence.

57 I found no reason to disturb the trial judge's holding that the appellant could not rely on the right of private defence. The right of private defence had been exceeded. I agreed with the trial judge that the harm caused was not reasonably necessary in the circumstances.

***Sentencing***

58 Given my finding that the *mens rea* element of the charge was not made out, the appeal against conviction was allowed to the extent that the conviction of an offence punishable under s 325 of the PC was set aside. As stated above, I was of the view that the ingredients of an offence under s 321 of the PC had nevertheless been made out. I therefore amended the charge from one of voluntarily causing grievous hurt to one of voluntarily causing hurt *simpliciter*, punishable under s 323 of the PC, and convicted the appellant accordingly. The amended charge would thus state that he had voluntarily caused hurt to the victim by punching him on his face. The evidence adduced at trial showed that as a result of the punch, the victim stumbled back, tripped and then fell to the ground.

59 Various sentencing precedents (*Abdul Aziz bin Omar v Public Prosecutor* (MA 145/2000/01) (unreported); *Public Prosecutor v Lee Beng Chuan* (MAC 6332-2011) (unreported); *Public Prosecutor v Loh Kim Teow* (MCN 44-2012) (unreported)) were cited in support of the Prosecution's submission seeking a sentence of at least six months' imprisonment. The precedents cited involved cases where the victims died after the assault, in circumstances which did not necessarily suggest any causal link

between the assault and death. There were, however, no precedents where the facts were broadly similar.

60 Counsel for the appellant proposed a fine or at most a short custodial term instead, noting that the appellant had committed the offence on the spur of the moment, as a spontaneous and one-off act. Moreover, he was a first-time offender. A review of the cases as set out in *Sentencing Practice in the Subordinate Courts* vol 2 (LexisNexis, 3rd Ed, 2013) shows that the sentences generally imposed for an offence under s 323 of the PC have ranged from a fine of about $1,000 to up to six months' imprisonment. The wide range in sentences imposed reflects the reality that much depends on the relevant sentencing factors and considerations in each case.

61 I considered the fact that the hurt caused should be viewed in the context of the first altercation between Quek and the victim, and the fact that the appellant had punched the victim in a vulnerable region. He had only thrown a single punch. As counsel had rightly noted, the appellant was also a first-time offender and the offence was committed very much in the heat of the moment.

62 I noted, however, the severity of the injuries suffered by the victim, and I sympathise with the victim's current plight. The sentence must reflect the moral culpability of the appellant even though he cannot be held to account for the full extent of the unfortunate consequences that befell the victim. It was most unfortunate that the victim had sustained these injuries from a situation that could have been easily avoided if either party, right from the start, had chosen to be the bigger man. The law strongly frowns upon the use of violence in any situation, and both parties have a part to play in the whole context of the incident.

63 Finally, I also noted and agreed with the trial judge's observations at [40] that the appellant was unremorseful. He maintained that he had merely wanted to prevent a fight. Nonetheless, he sought to disavow all responsibility for the victim's injuries. Notwithstanding my decision to set aside his conviction of an offence punishable under s 325 of the PC, there was no reason to accord any additional weight to any of the mitigating factors he had raised on appeal.

64 In consideration of all these factors set out above, I sentenced the appellant to 12 weeks' imprisonment. In my view, this was substantial enough to serve the needs of both specific and general deterrence.

**Conclusion**

65 For the reasons stated above, the appeal was allowed to the extent that the conviction of an offence punishable under s 325 of the PC would be set aside, but the charge was amended to one of voluntarily causing hurt *simpliciter*, punishable under s 323 of the PC. The amended charge thus stated that he had voluntarily caused hurt to one Chua Bin Huang by punching him on his face.

66 The appellant was convicted on the amended charge and sentenced to 12 weeks' imprisonment. I allowed him to commence serving his sentence on 27 October 2014 in view of his request for time to attend to his personal arrangements.

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[note: 1] NE, 19 April 2013, p 7, lines 5 – 27.

[note: 2] NE, 19 April 2013, p 17, lines 23 – 26.

[note: 3] NE, 11 June 2013, p 5 line 26 – p 6 line 25.

[note: 4] NE, 18 April 2013, p 44, lines 18 – 32.