# Public Prosecutor *v* Wong Tuan Huat
# [2018] SGDC 248

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| **Case Number** | : DAC 946164/2016 & Ors, Magistrate's Appeal No. 9248/2018/01 |
| **Decision Date** | : 20 September 2018 |
| **Tribunal/Court** | : District Court |
| **Coram** | : Edgar Foo |
| **Counsel Name(s)** | : DPP Jaime Pang for the Public Prosecutor; Defence Counsel Lee Wei Liang (M/s Kertar & Sandhu LLC) for the Accused. |
| **Parties** | : Public Prosecutor — Wong Tuan Huat |

[LawNet Editorial Note: The appeal in MA 9248/2018/01 was dismissed by the High Court on 11 January 2019.]

20 September 2018

**District Judge Edgar Foo:**

1 The Accused had pleaded guilty to 2 charges before me and was sentenced as follows :-

i. **DAC 946164/2016**,

"You, Wong Tuan Huat, are charged that you, on the 28th day of August 2016, at or about 9.50 pm, at bus stop number 80051 located along Sims Ave, Singapore, did voluntarily cause grievous hurt to one Khan Md Ferdaus Ahamed, to wit, by punching his face, causing the said Khan Md Ferdaus Ahamed to suffer a nasal bone fracture, and you have thereby committed an offence punishable under Section 325 of the Penal Code, Chapter 224"

Sentence: 13 months' imprisonment;

ii. **MAC 910764/2016**,

"You, Wong Tuan Huat, are charged that you, on the 11th day of December 2016, at or about 1.45 am, at the backlane of Lorongs 14 and 16 Geylang, a public area, did intentionally facilitate a game of "See Goh Lak", which is a game of chance using cash at stakes, to wit, did accept cash bets and made payments to players, and you have thereby committed an offence punishable under Section 8(4) of the Common Gaming Houses Act, Chapter 49"

Sentence: 2 weeks' imprisonment and fine of $20,000, in default 2 months' imprisonment;

2 As the 2 offences are distinct in nature, I ordered the sentences of imprisonment in DAC 946164/2016 and DAC 912531/2016 to run consecutive, giving a total sentence of imprisonment of 13 months' and 2 weeks' imprisonment to take effect from 21 August 2018 and fine of $20,000, in default 2 months' imprisonment.

3 The Accused being dissatisfied with my decision, has filed this appeal against the total sentence of 13 months' and 2 weeks' imprisonment and fine of $20,000, in default 2 months'

imprisonment.

**Brief facts of this case**

*Facts Relating to DAC 946164/2016*

4 The victim is a 28 year old male Bangladeshi National who is working as a construction worker in Singapore. Investigations revealed that on 28 August 2016 at about 9.40 pm, the victim boarded SBS number 197 from Bugis towards Sims Ave. As the bus was approaching Sims Ave, the victim proceeded to the rear exit door where the Accused was standing and the victim tapped the shoulder of the Accused and said "excuse me". The Accused told the victim in an aggressive manner not to rush as the doors had not opened. When the bus reached the bus stop and the bus doors opened, the victim stepped in front of the Accused and exited the bus.

5 The Accused also alighted from the bus and **followed** the victim. The victim looked to his right and saw the Accused on his right side and the Accused then asked the victim why he was looking at the Accused and punched the victim. When the victim asked the Accused why he had punched him, the Accused threw several more punches at the face of the victim because of the earlier incident. The victim held on to the clothing of the Accused to prevent him from leaving and the Accused continued to throw more punches at the victim's face. After a while, the Accused stopped and the victim called for police assistance. In total, the Accused punched the victim more than 4 times.

6 The victim sought medical treatment at Tan Tock Seng Hospital and sustained a minimally displaced nasal bone fracture. The victim had to undergo a manipulation and reduction of his nasal bone fracture. He was given a total of 11 days medical leave and presented with medical fees amounting to $1,280.42.

*Facts Relating to DAC 910764/2016*

7 On 11 December 2016, at about 12.10 am, police officers were performing foot patrols when they observed a crowd gathering around a makeshift table at the backlane of Lorong 14 and 16 Geylang. At the makeshift table, a gambling mat had been set out with the words "Big" and "Small" at the side of the side of the gambling mat. The game of "See Goh Lak" was being played, with cash at stakes. The Accused was standing behind the table, holding a stack of money in his hands. He then collected and distributed money to and from the gambling mat after each game from punters.

8 The Accused was placed under arrest while still holding a stack of the collected cash bets in his hand.

**Antecedents**

9 The Accused has the following previous convictions which are similar in nature to the current offences:-

| S/No. | Offence | Date of Conviction | Sentence |
|---|---|---|---|
| 1. | Section 7 Chapter 49 – Gaming in a Common gaming House | 27/01/1996 | Fine $1,000 |
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| 2. | Section 7 Chapter 49 – Gaming in a Common Gaming House | 08/12/2005 | Fine $2,000 |
| 3. | Section 324 Chapter 224 – Voluntary Causing Hurt by Dangerous Weapons or Means | 29/11/2006 | Taken into consideration |
| 4. | Section 324 Chapter 224 – Voluntarily Causing hurt by Dangerous Weapons or Means | 01/12/2006 | 12 months' imprisonment |
| 5. | Section 324 Chapter 224 – Voluntarily Causing hurt by Dangerous Weapons or Means read with Section 34 Chapter 224 | 14/09/2009 | 12 months' imprisonment |
| 6. | Section 337(A) Chapter 224 – Causing Hurt by Rash Act, which endangers life or the personal safety of others read with Section 34 Chapter 224 | 14/09/2009 | 6 weeks' imprisonment |

**Prosecution's Address on Sentence**

10 The prosecution had sought a sentence of at least 14 months' imprisonment for the Section 325 offence and 4 weeks' imprisonment with a $20,000 fine for the Section 8(4) offence.

11 As regards to the Section 325 offence, the prosecution submitted the following :-

i. This was the Accused's 5th violence offence in 10 years. The Accused had 3 previous convictions for voluntarily causing hurt by dangerous weapons or means under Section 324 Chapter 224 for which he was sentenced to 12 months' imprisonment each on 2 different occasions in 2006 and 2009. The 3rd Section 324 charge was taken into consideration for purposes of sentencing. The Accused also had 1 previous conviction for causing hurt by rash act, which endangers life or the personal safety of others under Section 337 (A) Chapter 224 for which he was sentenced to 6 weeks' imprisonment.

ii. The Accused's previous lengthy imprisonment sentences have been insufficient to deter the Accused from further re-offending with a more serious violence. The current offence of Section 325 specifies that whoever voluntarily causes grievous hurt " shall be punished with imprisonment for a term which may extend to 10 years and shall also be liable to fine or to caning"

iii. The prosecution also submitted that this was a case involving an unprovoked attack by the Accused on an innocent victim which arose from a public transport incident and this should be taken as an aggravating factor for the purposes of sentencing.

iv. The prosecution also pointed out the manner in which the Accused attacked the victim. The Accused had reacted aggressively when the victim just tapped his shoulder and said "excuse me" in order to get off the bus and the Accused had decided to follow the victim down the bus

and proceeded to punch him without any provocation by the victim. When the victim asked the Accused why he had punched the victim, the Accused proceeded to throw more punches at the victim's face. And when the victim held on the Accused's clothing to prevent him from leaving, the Accused hit the victim a 3rd time by throwing punches at the victim's face.

v. As regard to the injuries suffered by the victim, the prosecution was of the view that the injuries suffered by the victim were serious as the victim had sustained a minimally displaced nasal bone fracture which required surgery for the manipulation and reduction of his nasal bone fracture and he was given a total of 11 days medical leave and incurred medical fees in the sum of $1,280.42.

vi. The prosecution had submitted that the dominant sentencing principles in this case were specific deterrence and protection of the public. This was the Accused's 5th violence offence in the course of 10 years. In addition to the frequency of the Accused's repeated violent offending, it was significant that the Accused had escalated in criminality, by committing more serious offences.

vii. It is trite that deterrence is the cornerstone of Singapore's sentencing jurisprudence (*PP v Law Aik Meng* [2007] 2 SLR(R) 814 at [18] t [19]). This is particularly so in cases where violent offenders threaten the safety of Singapore's citizens and residents [note: 1].

viii. In the light of the Accused's repeated violent offending, specific deterrence was clearly a key consideration. Specific deterrence operates on the understanding that there would be reduction in the possibility of recidivism through the prospect of having to experience a similar, or more sever sanction: *PP v Loqmanul Hakim bin Buang* [2007] 4 SLR9 R) 753 at [29]. Where the offender has a high propensity to re-offend, sentences would be escalated on the basis that the penalties previously imposed were insufficient to deter: Kow Keng Siong, *Sentencing Principles in Singapore* (Academy Publishing, 2009) [note: 2].

ix. The general principle that repeated offending should and does attract "harsher punishment unless there are good reasons to the contrary" is also affirmed by the High Court in *PP v Ali bin Bakar and another appeal* [2012] SGHC 83 at [6] [note: 3].

x. As regards to the issue of antecedents, the prosecution referred me to the case of where it was noted in *Sim Yeow Kee v PP* [2016] 5 SLR 936 at [99] that:

> *The principle of escalation could justify a longer imprisonment term being imposed on a present offender in the light of his antecedents (see Tan Kay Beng v PP [2006] 4 SLR( R) 10 at [14]. This may be significant if a subsequent sentence for an offender who has already committed the same sort of offence needs to be escalated in order to specifically deter him from committing further offences of that nature (see PP v Fernando PayagalaWaduge Malitha Kumar [2007] 2 SLR (R )334 at [34] and PP v Ng Bee Ling Lana [1992] 1 SLR (R ) 448 at [13]* [note: 4].

xi. The principles for treatment of an accused person's antecedent record when considering the appropriate sentence is set out in *Veen v The Queen (No. 2)* (1988) 164 CLR 465, cited with approval by the High Court in *Tan Kay Beng v PP* [2006] 4 SLR ( R) 10 at [17]:

> *"… the antecedent criminal history of an offender is a factor which may be taken into account in determining the sentence to be imposed, but it cannot be given such weight as*

*to lead to an imposition of a penalty which is disproportionate to the gravity of the instant offence. To do so would be to impose a fresh penalty for past offences: Director of Public Prosecutions v Ottewell. The antecedent criminal history is relevant, however, to show whether the instant offence is an uncharacteristic aberration or whether the offender has manifested in his commission of the instant offence a continuing attitude of disobedience of the law. In the latter case, retribution, deterrence and protection of society may all indicate that a more severe penalty is warranted. It is legitimate to take into account of the antecedent criminal history when it illuminates the moral culpability of the offender in the instant case, or shows his dangerous propensity or shows a need to impose condign punishment to deter the offender and other offenders from committing further offences of a like kind. Counsel for the applicant submitted that antecedent criminal history was relevant only to a prisoner's claim for leniency. That is not and has never been the approach of the courts in this country and it would be at odds with the community's understanding of what is relevant to the assessment of criminal penalties."* [note: 5]

xii. The prosecution had submitted that the brutal and unprovoked attack on the victim took place in a public bus-stop and it is a clear manifestation of the Accused's continued disobedience of the law

xiii. Given the above, an enhanced sentence of at least 14 months would be an appropriate sentence both deter the Accused from further violent offending and also to protect the public from nature. An enhanced sentence is required to deter the Accused after 2 attempts at deterring him with 12 months imprisonment terms were ineffective.

12 As regards to the Section 8(4) offence, the prosecution had submitted the following:-

i. That the Accused cannot be regarded as a first offender in respect of offences of this nature as he had been convicted of 2 similar offences of gaming in a common gaming house in 1996 and 2005 for such he was fined $1,000 and $2,000 respectively.

ii. In this case, the Accused had graduated from just gaming to operating and facilitating the game of "See Goh Lak" and also profiting from the same.

iii. Having regard to the above, the prosecution was of the view that a proper sentence to be meted out for the Section 8(4) offence was 4 weeks' imprisonment and a $20,000 fine. The current offence of Section 8(4) specifies that anyone who is guilty of instigating, promoting or intentionally facilitating gaming in public "shall be liable to a fine of not less than $20,000 and not more than $200,000 and shall also be punished with imprisonment for a term not exceeding 5 years".

13 In this case, the Accused had pleaded guilty before me on the 1st day of trial and I was also informed by the defence that the Accused had paid compensation of the medical fees of $1,280.42 to the victim on 16 July 2018. The prosecution has urged me not to place too much weight on the plea of guilty because the Accused had dragged and delayed the case for 2 years and had only decided to plead guilty on the day of the trial. As for the compensation, the prosecution had pointed out to me that the Accused was informed of the amount of medical fees incurred by the victim from the time he was first charged for these offences in 2016 and he had only decided to make payment shortly after before the hearing date. The prosecution was of the view that the Accused's decision to pay the medical fees was a strategic move to try and lower his punishment and it was not a genuine gesture of his remorse.

14 I also note that the prosecution is seeking for the sentences for the 2 offences to run consecutive given the distinct nature of the 2 offences and the defence is not objecting to the same.

**Mitigation**

15 Mr Lee Wei Liang, the defence counsel, had prepared a Plea-in-Mitigation together with a Further Submission on how the Accused's antecedents should be treated for the purposes of sentencing. Mr Lee Wei Liang had urged me to consider the following mitigating factors and to impose a reasonable sentence in respect of the charges:-

i. The Accused is an elderly offender. He is 61 years old and at the time of the offences, his wife was suffering from terminal cancer and receiving hospice care. The Accused was the sole breadwinner and he was working as a helper at a food stall earning about $1,000 a month and the majority of his income went to his wife's medical bills.

ii. The Accused had pleaded guilty before the court. His plea was an indication of his remorse and it also saved precious time and resources for both the court and the prosecution.

iii. As regards to the section 325 offence, Mr Lee Wei Liang had submitted the following :-

a. The Accused was distraught with his wife's condition and he committed the offence on impulse. The whole event was spontaneous with no pre-meditation whatsoever;

b. The injury suffered by the victim is less serious as compared to the wide range of injuries that qualify as "grievous hurt" including death; and

c. The Accused had made full compensation for the victim's medical fees on 16 July 2018.

iv. As for the section 8(4) offence, the Accused had committed the offence because he was having grave financial difficulties due to his wife's illness and he had committed the offence to stave off "financial ruination" and to ensure that his wife is able to continue to receive medical treatment.

**Defence's Sentencing Position**

16 The defence had submitted that the proper sentencing approach to be applied to the section 325 offence is a 2 step approach [note: 6] which is propounded by the Court of Appeal in *PP v BDB* [2018] 1 SLR 127. In *PP v BDB*, it was held [at 55] that:-

a. We should first establish the indicative starting point of the sentencing based on the seriousness of the injury.

b. And after having establishing the starting point of the, the Court should have regard to aggravating and mitigating factors in the case before adjusting the sentence.

17 As for the appropriate indicative starting point of sentencing, the defence had submitted that the imprisonment range for cases involving minimally displaced nasal bone fractures is between 4 to 5 months [note: 7] .

18 On the treatment of the Accused's antecedents, the defence argued that the principle of

specific deterrence should be tempered and circumscribed by proportionality [note: 8]. The defence submitted that I should not just consider the mechanical enhancing of the sentence of the Accused simply by virtue of his criminal record and previous sentences of 12 months' imprisonment. In this context, the defence referred me to the case of *PP v NF* [2006] SGHC 166 where the High Court observed [at 66]:-

> "*Needless to say, it would be wrong to penalize someone again for his past misdeeds, particularly if he had already served his sentence for them. To do so would be tantamount to a violation of the constitutional safeguard eschewing double jeopardy. Accordingly it would be inappropriate to mechanically enhance the sentence of an offender simply by virtue of the fact that he has a criminal record. One's criminal record is relevant to the extent that a sentencing judge may draw inferences about the accused's character, attitude and likelihood of rehabilitation.*" [note: 9]

19 The defence also urged me to give regard to the period between the Accused's current section 325 offence and his previous section 324 offence as the long period evince the Accused's genuine effort at remaining crime free and attenuates the application of specific deterrence. In this regard, the defence referred me to the case of *PP v NF* where the High Court had pointed out [at 70 to 72]:-

> *"apart from examining the similarity and dissimilarity of the offender's antecedents vis-à-vis the present conviction, it may also be relevant to take into account the interval between the most recent conviction and the current conviction… the rationale for according weight to the length of time the offender has stayed clean is two-fold. First, "isolated convictions in the long distant past" should not, as a matter of logic, be considered evidence of irretrievably bad character. They might simply be indicative of an occasional lapse in judgment. Secondly, the nature of the lapse being scrutinised is crucial. A substantial gap between one conviction and another may be testament to a genuine effort to amend wanton ways which may even lead a court to consider the possibility of rehabilitation"* [note: 10].

20 In support of the "gap" principle, the defence also referred me to the Malaysian case of *Soosainathan v PP* [2001] 2 MLJ 337 where the Malaysian courts had taken the position that the longer the gap between a previous conviction and the current offence, the greater the mitigatory effect [note: 11].

21 As regards to the Accused's antecedents, the defence had also urged me to adopt the progressive loss of mitigation approach when considering his antecedents. In this approach, a repeat offender receives a higher sentence not due to a progressive aggravation of the basic penalty, but rather, a progressive loss of credit for good character. Under the progressive loss of mitigation approach, the appropriate reference point (to which an uplift is applied) for a repeat offender is not the previous sentence suffered by the offender, but the sentence that would have likely have been imposed on a first offender for that offence. A first offender who pleads guilty and is genuinely remorseful may be entitled to a sentencing discount. As the offender is seen as being remorseful, the court is prepared to give the offender a "second chance". A repeated offender is seen as one who has failed to take the second chance. Therefore, a repeated offender should not be entitled to the same discount in sentence as a remorseful first offender. In addition, someone who repeatedly claim he is remorseful each time he is hauled before a chance is at risk of having his claim of remorse viewed as an excuse worn thin [note: 12].

22 Having regard to the above, the defence submitted that after considering the appropriate indicative starting point of sentencing, and taking into account the Accused's mitigating factors, and

applying the progressive loss of mitigation approach, the appropriate sentence for the section 325 offence should not exceed 7 months.

23 The defence was also of the view that we should give little or limited weight to the Accused's antecedents as they are dated. The defence was of the view that the last time the Accused was convicted of a similar offence was on 14 September 2009, almost 9 years ago. The defence argued that weight must be given to the Accused's attempt to stay crime free for this period and this is indication of his remorse. The defence also submitted that the prosecution's submission of 14 months' imprisonment is excessive as it placed undue weight on the Accused's dated antecedent while paying insufficient heed to the imperative need for the Accused to be sentenced proportionately in accordance with his moral and legal culpability for the present offence [note: 13].

24 As for the section 8(4) offence, the defence referred me to the unreported case of *PP v Png Yu Xiong* (mentioned in *PP v Mohammed Faruque Mohammed Noor Hossain* [ 2017] SGMC19], where the offender facilitated a game of "See Goh Lak" and was charged under section 8(4) of the Common Gaming House Act. The offender had a previous antecedent, also under section 8(4) and the Court had sentenced him to 2 weeks' imprisonment and a $20,000 fine, in default 1 months' imprisonment [note: 14].

25 For the current offence under section 8(4), the defence had submitted that a sentence of 1 weeks' imprisonment and a $20,000 fine, in default 1 month's imprisonment would be fair and appropriate.

26 In total, the defence was seeking a global sentence of 7 months and 1 weeks' imprisonment and a fine of $20,000, in default 1 month's imprisonment**.**

**Sentencing Considerations**

27 As part of sentencing consideration, this Court will have to arrive at a total sentence which must commensurate with the gravity of the offences and the circumstances by which they were committed and bearing in mind the type of offender before me.

28 In the present case, I would agree with the prosecution that the main sentencing considerations are specific deterrence and protection of the public.

29 I note the following aggravating factors on the part of the Accused:-

**i. The nature of the attack on the victim**

30 I note that the victim and the Accused had boarded the same bus and the victim was merely trying to get the Accused's attention by tapping him on his shoulder and saying "excuse him" in order to get off the bus. However, the Accused had acted in a very unbecoming manner by acting aggressively against the victim in the bus and also following him down the bus for the sole reason for assaulting the victim. This clearly show the Accused is a man of violent disposition and has anger management issues.

31 I also noted that the attack on the innocent victim is not once off but consist of a series of assaults. The 1st assault was when they got off the bus when the Accused punched the victim without any warning. The second wave of assault took place when the victim asked the Accused why he had punched the victim and the Accused again without any warning time punched the victim a number of times in the face. The third series of assault took place after the victim tried to grab hold

of the Accused to prevent him from leaving and the Accused again punched the victim a number of times in the face.

32 I also note that Accused only targeted the victim's face when he was assaulting the victim. The fact that he was only targeting the face is clearly an aggravating factor as a person's face is a very vulnerable part of a person's body and the injuries to face and the head area can be potentially life threatening and fatal. In this case, the victim is lucky in that he only suffered a minimally displaced nasal fracture. Given the nature of the attack, the victim could have easily suffered other types of fractures to his face area and his eyes could have been injured or blinded or in the worst case scenario, his skull could have been cracked and he could have suffered injuries to his brain.

**ii. The place and timing of the attack**

33 The attack had started from a crowded public bus when the Accused had acted aggressively towards the victim when he was trying to get past the Accused to get off the bus. Unhappy with the victim, the Accused followed the victim after getting down from the bus and proceeded to assault the victim on 3 occasions at a public bus stop where there are other commuters around. This clear show that the Accused was not afraid of the law as he was prepared to carry out his crime in a public place in full public view and he does not care or have any regard to what the people at the public bus-stop may think of his action. I would agree with the prosecution that this is highly reflective of the Accused's disregard for the law.

**iii. The Accused's conduct show there was pre-meditation on his part**

34 The defence had submitted that the whole assault incident was spontaneous and without pre-meditation whatsoever. I do not agree with that submission. It is clear from the Statement of Facts that the whole incident started with the victim trying to get past the Accused in order to get off the bus. At that point of time, the Accused was already unhappy with the victim as he had acted aggressively towards the victim and had told the victim not to rush as the doors had not opened. The Accused could have ended things at this point. He could have just let things go. But he chose not to do that. Instead, he followed the victim after he alighted from the bus and he went up to the victim and punched him. After the 1$^{st}$ punch, the Accused was still unhappy with the victim and he proceeded to punch the victim in the face on 2 more occasions each time punching the victim a number of time in the face. The series of events clearly show that the Accused had deliberately gone after the victim in order to assault him and it cannot be said that the whole incident was spontaneous and there was no pre-meditation on the part of the Accused.

**iv. The injuries suffered by the victim**

35 The defence had submitted that the injuries suffered by the victim was not serious. I do not agree with the defence's submission on this point. Any injury which causes a nasal bone fracture for which the victim is required to undergo a surgery for the manipulation and reduction of his nasal bone and given 11 days medical leave cannot be considered as light.

**v. The Accused antecedents**

36 I accept the principles of law as enunciated in *PP v BDB* and *PP v NF*. I accept the *PP v BDB*'s 2 step approach in dealing with section 325 cases. However, I note that *PP v BDB* was dealing with the sentencing range for section 325 cases involving young and vulnerable victims where they had suffered multiple injuries which are much more serious and cases involving death. I note that *PP v BDB* did not lay down or propose any sentencing matrix for cases for the whole range of grievous hurt

cases or for cases with similar injuries to our current case. As for *PP v NF*, I accept that we should not merely enhance a person's sentence just on the basis of his previous sentence and that we will need to take into account his character, attitude and likelihood of rehabilitation.

37 In ***PP v NF*** [2006] SGHC 166, the High Court observed [at 66 - 68]:-

> *"..before analysing the implications of an offender's criminal records, it would be useful to bear in mind the exact relevance of such a record. Needless to say, it would be wrong to penalize someone again for his past misdeeds, particularly if he had already served his sentence for them. To do so would be tantamount to a violation of the constitutional safeguard eschewing double jeopardy. Accordingly it would be inappropriate to mechanically enhance the sentence of an offender simply by virtue of the fact that he has a criminal record. One's criminal record is relevant to the extent that a sentencing judge may draw inferences about the accused's character, attitude and likelihood of rehabilitation … a court is not compelled to assign any weight to an offender's previous convictions if they do not constitute a reasonable basis on which to infer that an offender might re-offend. As Yong Pung How CJ held in **PP v Boon Kah Kin** [1993] 2 SLR (R) 26 at [37], a court "shall also be open to persuasion as to the weight that should be assigned to these convictions for earlier offences". In other words, was the present offence a fleeting moment of weakness or did it involve an element of scheming or planning? If the offence under consideration was committed as a result of pressure or provocation that might be viewed as separate and unrelated to any previous offences, a court should not feel obliged to impose a heavier sentence by mere dint of the fact that the accused has a criminal record: see also DA Thomas, Principles of Sentencing: The Sentencing Policy of the Court of Appeal Criminal Division (Heineman, 2nd Ed, 1979) at p203. This general approach is, needless to say, subject to any statutory provision prescribing an enhanced sentence for a repeat offender… One instructive, and entirely logical yardstick that the courts have adopted in determining what, if any weight should be assigned to a previous conviction comes in the form of an enquiry as to whether the previous offence(s) bears any similarity to the offence under consideration. If the offender has committed a similar offence on a previous and/or multiple occasions, it would not be illogical to surmise that a longer sentence is justified on the principle that specific deterrence is necessary to curb his criminal activity. Conversely, a dissimilar offence by parity of reasoning of no direct relevance: **Tan Kay Beng** supra at [14]. However, as with all principles of law, it would be a mistake to apply these considerations unthinkingly, without an adequate assessment of the precise facts before the court… Apart from examining the similarity of the offender's criminal antecedents vis-à-vis the present conviction, it may also be relevant to take into account the interval between the most recent conviction and the current conviction… The rationale for according weight to the length of time that an offender has stayed clean is two-fold. First, "isolated convictions in the long distant past" should not, as a matter of logic, be considered evidence of irretrievably bad conduct. They might be indicative of an occasional lapse in judgment. Secondly, the nature of the lapse being scrutinized is crucial. A substantial gap between conviction and another may be testament to a genuine effort to amend wanton ways which may lead a court to consider the possibility of rehabilitation: see DA Thomas (supra) at pp 200 - 202"*

38 For this case, I will have to decide, based on the particular facts of this case, whether the Accused current offence is merely a lapse in judgment or whether this latest offence is further evidence of irretrievably bad conduct on the part of the Accused. This issue is very relevant as it has a bearing on the issue of specific deterrence.

39 In the present case, looking at the facts and circumstances of the Accused's case, I do not agree with the defence that this current offence is the result of a momentary lapse on the part of the

Accused. I accept the prosecution's contention that the current offence is further evidence of the Accused's bad behaviour. As such, I am of the view that the Accused's antecedents are very relevant for the purposes of sentencing especially on the issue of specific deterrence.

40 This is the Accused's 5th violence offence. He was convicted of his last violence offence under Section 324 Penal Code on 14 September 2009 and given a sentence of 12 months' imprisonment. He committed the current Section 325 offence on 28 August 2016. As such, the period between the Accused's last violence offence under Section 324 and his current offence is only about slightly more than 6 years after taking into account his time spent in prison. To me, a period of about 6 years is not that long a period. And for the Accused to re-offend after this period, it is clear to me that the 2 earlier sentences of 12 month's imprisonment each did not help to deter the Accused from wanting to commit more crimes of this nature and the Accused has clearly not learnt his lesson and stopped re-offending.

41 Given that the Accused has not learnt his lesson from earlier punishments, I am of the view that the current sentence for section 325 must reflect the need to specifically deter the Accused from further re-offending and also to protect the public from offences of this nature.

42 I agree with the prosecution that where an offender has a high propensity to re-offend and previous penalties imposed were insufficient to deter the offender from re-offending, the current sentence to be imposed must be sufficient to specifically deter him from committing further offences of that nature. If necessary, there is a need to escalate the subsequent sentence unless there are good reasons to the contrary. The issue of escalation will not arise if the Accused is able to show that his current offence is tantamount to an uncharacteristic aberration. In the present case, I do not see any circumstances which suggest that the Accused's current offence is an uncharacteristic aberration. Rather, I am of the view that the Accused's current conduct reflects his continuing disobedience of the law for which a more severe penalty is warranted. I also note that the Accused has a shown a propensity towards crime by choosing to commit the section 8(4) offence 6 months later even though he was still being investigated for the section 325 offence.

43 Even in applying the progressive loss of mitigation approach as suggested by the defence, I am of the view that having been given 4 previous chances to show his remorse for violence offences, this 5th claim of remorse by the Accused can no longer be used as further excuse as his excuse has been worn thin.

**vi. The condition of the Accused's wife and his financial situation are no excuse for him committing the offences**

44 The Accused's personal financial or social problems cannot be regarded as a mitigation factor for the purposes of sentence. The Court of Appeal in *PP v BDB* [2017] SGCA 69 [at 75] had pointed out:-

> *"An often-cited factor raised by offenders relates to the difficult personal circumstances that they faced at the time of the offences. This will, rarely, if ever, have mitigating value: see Lai Oei Mui Jenny v PP [1993] 2 SLR (R) 406 at [10](in the context of giving false information to a public servant) and PP v Osi Maria Elenora Protacio [2016] SGHC 78 at [8](in the context of the offence of criminal breach of trust)".*

45 In the present case, even though the Accused is worried about his wife's medical condition, this is still no reason for him to vent his frustration on the victim and to institute an unprovoked attack on an innocent victim and to injure hurt the victim in such a serious manner for the section 325 offence.

46 Similarly, as regards to the Section 8(4) offence, I am of the view that the Accused decision to operate the stall at the backlanes of Geylang Lorong 14 and 16 to facilitate the game of "See Goh Lak" to earn money to pay his wife's medical fees cannot be taken as a mitigating factor for the Section 8(4) offence. On the contrary, I am of the view that this is an aggravating factor as the Accused is resorting to illegal means to alleviate his financial woes.

**Accused's Mitigating Factors**

47 In sentencing the Accused, I have taken into account the Accused's circumstances and the fact that he has chosen to plead guilty to the all the charges. I note the fact that it has been 2 years since the Accused was charged in court for the offences and that he had only chosen to plead guilty at the date of his trial. However, I am of the view that his plea of guilt is still a mitigating factor as it had saved precious time and resources for both the prosecution and the Court.

48 As regard to the medical fees paid by the Accused, I would consider this point relevant for the issue of a compensation order under section 359 of the Criminal Procedure Code. However, since the Accused has paid the medical fees, there is no need for me to consider the issue of compensation under section 359 of the Criminal Procedure Code.

**The Court's Decision on Sentence**

49 In summary, in deciding where in this range the Accused should be sentenced, I took into account the following:-

i. The Accused's antecedents which are similar in nature.

ii. The aggravating factors on the part of Accused as stated above;

iii. The Accused's mitigation circumstances; and

iv. The harm caused to the victim.

50 Having considered all the relevant factors and all the cases submitted by both the prosecution and defence, I hereby impose the following sentence:-

i. For DAC 946164/2016 – 13 months' imprisonment; and

ii. For DAC 910764/2016 – 2 weeks and fine of $20,000, in default 2 months

51 As both DAC 946164/2016 and DAC 910764/2016 are distinct offences, I am ordering both the sentences to run consecutive and the total sentence is 13 months' and 2 weeks' imprisonment with effect from 21 August 2018 and fine of $20,000, in default 2 months' imprisonment.

52 The Accused is currently out on bail pending appeal.

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[note: 1] See paragraph 12 of Prosecution's Sentencing Submission

[note: 2] See paragraph 13 of Prosecution's Sentencing Submission

[note: 3] See paragraph 14 of Prosecution's Sentencing Submission

[note: 4] See paragraph 15 of Prosecution’s Sentencing Submission

[note: 5] See paragraph 16 of Prosecution’s Sentencing Submission

[note: 6] See paragraph 19 of Defendant’s Plea-in-Mitigation

[note: 7] See pages 6 to 11 of Defendant’s Plea-in-Mitigation

[note: 8] See paragraphs 5 to 9 of the Further Submission

[note: 9] See paragraphs 10 to 13 of the Further Submission

[note: 10] See paragraphs 14 to 17 of the Further Submission

[note: 11] See paragraph 18 of the Further Submission

[note: 12] See paragraphs 21 to 32 of the Further Submissions

[note: 13] See paragraphs 54 to 62 of Defendant’s Plea-in-Mitigation

[note: 14] See paragraph 64 of Defendant’s Plea-in-Mitigation