Public Prosecutor
v
Yeo Ek Boon, Jeffrey

[2017] SGHC 306

High Court — Magistrate's Appeal No 9112 of 2017/01 and Criminal Motion No 45 of 2017
Sundaresh Menon CJ, Tay Yong Kwang JA and See Kee Oon J
15 September 2017

Criminal Procedure and Sentencing – Sentencing – Benchmark sentences – Voluntarily causing hurt to a police officer

Criminal Procedure and Sentencing – Sentencing – Principles

29 November 2017

Tay Yong Kwang JA (delivering the grounds of decision of the court):

1 The respondent pleaded guilty in the District Court to one charge of voluntarily causing hurt to a public servant, a police officer, in the discharge of his duty as a public servant, an offence punishable under s 332 of the Penal Code (Cap 224, 2008 Rev Ed) ("Penal Code"). The District Judge sentenced the respondent to one week's imprisonment. The Prosecution appealed against the sentence. We convened a three-Judge High Court to hear the appeal. After hearing both parties and the young *amicus curiae* appointed for this appeal, we allowed the appeal and increased the sentence to ten weeks' imprisonment. We now give the full reasons for our decision and set out a framework to guide sentencing in such cases.

The charge

2 The respondent, Mr Yeo Ek Boon, Jeffrey, is a 26-year-old male Singapore citizen. He pleaded guilty in the District Court to the following charge:

> You, … are charged that you, on 16 April 2016, at about 3.41 a.m., at the vicinity of Balmoral Plaza, located at 271 Bukit Timah Road, Singapore, did voluntarily cause hurt to a public servant, namely, Sergeant Ong Jiong Yang Andre, a Police Officer with the Singapore Police Force, in the discharge of his duty as such public servant, *to wit*, by slapping his left cheek once, and you have thereby committed an offence punishable under Section 332 of the Penal Code, Chapter 224.

Section 332 of the Penal Code provides for punishment of up to seven years' imprisonment or fine or caning or any combination of such punishments.

The factual background

3 The facts leading to the charge were set out in the Statement of Facts and admitted to by the respondent.

4 In the evening of 15 April 2016, the respondent and his friends went drinking at a club in Balmoral Plaza after attending a company function. The respondent admitted he consumed alcohol that night.

5 The victim, Sergeant Ong Jiong Yang Andre ("SGT Ong"), was a police officer with the Singapore Police Force ("SPF"). On 16 April 2016, at about 2.47am, the police received a call informing them that "there is a drunkard here that is not able to control his temper. Can you send the police?" The location of the incident was stated as Balmoral Plaza. SGT Ong and his partner, SGT Suhaimi, went to the club in Balmoral Plaza and spoke to the staff. The staff told the police officers that a male Chinese had behaved aggressively earlier and

was escorted out of the club. They added that the said male Chinese had headed towards Bukit Timah Road near the canal.

6 At about 3.41am that same day, the police officers located the respondent lying on a grass patch near the canal, covered in some mud and leaves. They managed to wake the respondent up. The respondent started to behave aggressively towards them and told them not to touch him. The respondent pointed his finger at the police officers and directed vulgarities at them. When SGT Ong told the respondent to mind his language, the respondent pointed at him and said "fuck". Suddenly, the respondent used his right hand to slap SGT Ong's left cheek once. The police officers then placed the respondent under arrest.

7 SGT Ong was later examined by a doctor at Tan Tock Seng Hospital. The medical report stated that he sustained tenderness over his left cheek and abrasion over the left shin. The respondent was subsequently charged as set out above.

The proceedings in the District Court

8 The respondent pleaded guilty to the charge. The Prosecution sought a custodial sentence but left the question of the length of the imprisonment to the court. In its submissions, the Prosecution drew the court's attention to the relevant sentencing precedents for the offence, highlighting in particular that:

(a) Sentences of three months' imprisonment were often imposed on first offenders where the assault was relatively minor (citing *Sentencing Practice in the Subordinate Courts* (LexisNexis, 3rd Ed, 2013) ("*Sentencing Practice in the Subordinate Courts*") at p1116); and

(b) The sentencing range for cases involving police and law enforcement officers was between two and nine months' imprisonment (citing the unreported case of *Public Prosecutor v Zhu Guo Feng* ("*Zhu Guo Feng*") in MA 177/2008, referred to in *Public Prosecutor v Ramizah Banu bte Abdul Rahman* [2013] SGDC 327 at [13]).

9 The Prosecution also stressed that general deterrence must take precedence as the primary sentencing consideration and highlighted the following aggravating factors:

(a) The respondent had behaved aggressively toward the police officers, even though they were only trying to help him as he was lying on a grass patch covered in mud and leaves;

(b) Before slapping SGT Ong, the respondent directed vulgarities at both police officers; and

(c) SGT Ong sustained injury as a result of the offence (*ie*, tenderness over the left cheek).

10 The Defence contended that probation was appropriate on the facts here although the respondent was above 21 years in age. This was because of the respondent's character and the fact that he had no previous criminal record. Further, he was pursuing a course in business studies and had stayed away from all kinds of alcoholic drinks since the incident stated in the charge. The injury to SGT Ong was also minor.

11 The District Judge sentenced the respondent to one week's imprisonment. Although he agreed with the Prosecution that general deterrence was the primary sentencing consideration and that probation was not

appropriate, he emphasised that the Prosecution had left the duration of imprisonment to the court's discretion. On the facts, the District Judge considered that one week's imprisonment was appropriate in view of the following mitigating circumstances, which he considered to be significant:

(a) The respondent was only 25 years old at the time of the offence and had a bright future ahead of him, considering in particular his exemplary conduct at work and during his national service;

(b) The respondent was deeply remorseful for his conduct and had stayed away from all alcoholic drinks since the incident; and

(c) SGT Ong's injury was minor.

12 The District Judge also took into account the lack of pre-meditation in the offence and the respondent's full cooperation with the authorities.

13 The Prosecution appealed on the ground that one week's imprisonment was manifestly inadequate. The respondent's sentence was stayed on the Prosecution's application.

Events leading up to the appeal

14 At the Prosecution's request to set sentencing guidelines for offences under s 332 of the Penal Code, a High Court comprising three Judges was convened. A young *amicus curiae* was also appointed to assist the court in its deliberations.

15 Prior to the hearing, the Prosecution filed Criminal Motion No. 45 of 2017 ("CM 45/2017") seeking to admit further evidence for the appeal in the form of an affidavit by Assistant Commissioner How Kang Hwee ("Assistant

Commissioner How"), Director of Operations of the SPF. The motion was filed on the basis that the evidence would assist the court by providing a contextual understanding of the operational issues and challenges faced by the SPF. This application was not opposed by counsel for the respondent and we admitted the further evidence accordingly.

The appeal

The Prosecution's submissions

16 The Prosecution's submissions on appeal were threefold.

17 First, the Prosecution argued that the threshold for appellate intervention was crossed. The sentence imposed was said to be manifestly inadequate and the District Judge erred by:

(a) failing to give due weight to the principle of general deterrence;

(b) failing to give due weight to the aggravating factors in the case;

(c) giving undue weight to the purported mitigating factors raised; and

(d) failing to impose a sentence according to established principles and relevant precedents.

The Prosecution stressed that the sentence of one week's imprisonment was a "nominal" one that fell far short of the sentencing norm for similar offences which was brought to the District Court's attention.[1]

---

[1] Prosecution's submissions at para 58.

18 Second, the Prosecution stated that a new sentencing framework should be considered for offences under s 332 of the Penal Code. In particular, the existing sentences imposed for offences against police and other law enforcement officers, as a specific class of victims, were inadequate to meet the aims of general deterrence. To this end, CM 45/2017 sought to provide the court with evidence that demonstrated the need to enhance the sentences meted out in such cases. The Prosecution cited the following reasons:

> (a) Although offences against public servants generally warrant the imposition of deterrent sentences, offences against police and law enforcement officers deserve special consideration to maintain public trust and confidence in our law enforcement authorities and to enable them to perform their duties effectively.[2]
>
> (b) Unlike other public servants, police and law enforcement officers carry weapons in the discharge of their daily duties. Offences against this class of victims carry the risk of escalating the violence that results should these weapons fall into the wrong hands or should the officer need to draw his weapon to meet a perceived threat.

19 The Prosecution submitted that there should be a separate sentencing framework for s 332 offences committed against police and law enforcement officers, in much the same way a benchmark sentence was set for s 323 Penal Code offences against public transport workers in *Wong Hoi Len v Public Prosecutor* [2009] 1 SLR(R) 115. It was also submitted that a separate benchmark for attacking police and other law enforcement officers was

---

[2] Prosecution's submissions at para 35.

warranted as such offences were common enough to be singled out for special attention.

20 The Prosecution's proposed sentencing framework would operate as follows:

(a) For cases of hurt against public servants (non-police officers), the indicative starting point of about three months' imprisonment for a minor case by a first offender would remain.

(b) For cases of hurt against police or other law enforcement officers, a two-step sentencing bands approach should be adopted. The first step was to derive a starting point sentence based on the following sentencing bands:

Category	**Circumstances**	**Indicative Starting Point**
1	Lesser harm and lower culpability	At least four months' imprisonment
2	Greater harm and lower culpability or Lesser harm and higher culpability	At least nine months' imprisonment
3	Greater harm and higher culpability	At least 24 months' imprisonment

21 The second step would be to adjust the starting point sentence to account for specific aggravating and mitigating factors personal to the offender. While "offence-specific" factors were used to determine an indicative starting point in the first step, "offender-specific" factors would be taken into account in the second step of deriving the eventual sentence.

22 The third and final aspect of the Prosecution's submissions was that the doctrine of prospective overruling should not apply and that the respondent should be sentenced in accordance with the new benchmarks set by this Court.

This was because none of the recognised exceptional factors which merited prospective overruling was present in this case and there was a strong countervailing need for general deterrence and retribution in sentencing here.

23 Drawing together the strands of its analysis, the Prosecution asked that a sentence of four months' imprisonment be substituted for the sentence of one week's imprisonment imposed. It was argued that the facts of this case came within Category 1 of the above proposed framework for these reasons:

(a) The level of harm was minimal, given that the act of slapping SGT Ong left no serious injury on him.

(b) The level of culpability was not high, given that there were no other factors that raised the respondent's culpability beyond the fact that he was drunk and abusive toward the police officers.

(c) Some weight may be accorded to the fact that the respondent demonstrated genuine remorse and that the incident might have been a one-off error of judgment on his part.

The respondent's submissions

24 Reiterating the views of the District Judge, the respondent asked that the appeal against sentence be dismissed as one week's imprisonment was justified on the facts. It was emphasised that, even if a sentencing benchmark were to be applied, the ultimate sentence imposed must be calibrated based on the specific circumstances of the offence and tailored to the individual offender. Counsel drew the Court's attention to the following considerations in particular:

(a) The respondent's actions were not intended to deter SGT Ong from discharging his duties as a police officer. In fact, the respondent

was so intoxicated at the material time that he did not even realise that SGT Ong was a police officer.

(b) The offence was a one-off incident and an aberration in the respondent's usual conduct.

(c) There were personal mitigating circumstances and compassionate grounds for exercising leniency in this case.

The young* amicus curiae*'s submissions

25 The young *amicus curiae* was asked to address us on the following issues:

(a) What are the factors and sentencing principles that a Court should consider in deciding whether to impose a custodial sentence for an offence under s 332 of the Penal Code?

(b) Where the Court decides to impose a custodial sentence for an offence under s 332, what further factors should the Court consider in deciding the appropriate term of imprisonment as well as whether caning ought to be imposed?

26 She submitted that, based on sentencing policy and practice, the current position where a custodial term was generally imposed for offences under s 332 was justifiable. The sentencing principles of general deterrence and retribution should be the primary considerations here. Factors specific to the commission of the offence and the offender would therefore be more relevant in determining the length of the custodial sentence than in determining whether the custodial threshold was crossed. Such factors would include:

(a) the degree and extent of injuries caused;

(b) the use or attempted use of weapons;

(c) circumstances of the attack that demonstrated contempt for the public servant;

(d) unprovoked and sudden attacks;

(e) group violence; and

(f) intoxication.

27 In contrast to the Prosecution's proposed sentencing framework, the young *amicus curiae* advocated a single sentencing benchmark that should apply to all public servants, whether or not they play an enforcement role. In her opinion, setting a separate benchmark for cases involving hurt against police and law enforcement officers as a specific class of victims was not appropriate for the following reasons:

(a) Although there was some intuitive force to the argument that those who discharge crucial public functions such as policing should be protected due to the importance of these functions and the likelihood that these frontline officers would encounter physical aggression and abuse, on the face of s 332, the policy of protecting public servants extended equally to all who fell within its ambit and not only those who discharge certain functions.

(b) The symbolic attack on a fundamental institution that is implicit in the offence would apply to any governmental institution. It was not feasible, as a matter of sentencing practice, to ask whether the discharge

of a particular function involved a greater or lesser degree of social authority.

28 On the young *amicus curiae*'s proposed approach, there were essentially two steps to be undertaken in determining the appropriate sentence for an offence under s 332 of the Penal Code:

(a) First, the "baseline" sentence of eight to ten weeks' imprisonment should be used as a starting point for causing hurt against all public servants.

(b) Second, the "baseline" sentence would be adjusted according to the aggravating and mitigating factors present in each case.[3]

The "baseline" sentence would apply to the archetypal case where there were no "offence-specific" aggravating factors. Such a case would be one where the assault only involved a single blow, the intended force was minimal, no weapons were used, the injuries sustained were minor, the assault took place on the spur of the moment, there was no overt intention to undermine the functions to be performed by the public servant and the assault was not unprovoked.

29 The young *amicus curiae* submitted that the proposed range of eight to ten weeks' imprisonment as the "baseline" sentence was justified for two main reasons:

(a) First, it was consistent with the existing sentencing practice; and

[3] YAC's submissions at para 64.

(b) Second, it was in line with the principle of "ordinal proportionality".

The argument on "ordinal proportionality" was premised on a comparison of the range of sentences imposed for offences under s 323 of the Penal Code (voluntarily causing hurt) and those imposed for offences under s 332 of the Penal Code (voluntarily causing hurt against public servants). In her submissions, the baseline sentence proposed reflects adequately a penalty "premium" that should attach to cases of causing hurt to a public servant as opposed to causing hurt generally. The enhanced sentencing regime was justified on the basis that causing hurt to a public servant was a more serious type of criminal conduct as compared to causing hurt generally.

Our decision

The issues

30 Based on the parties' submissions, the central issues in this appeal may be defined as follows:

(a) Are there grounds for appellate intervention in the sentence imposed?

(b) Should there be a new sentencing regime, which takes into account the distinctive role of police and law enforcement officers as public servants, for offences under s 332 of the Penal Code?

(c) If yes, what should the appropriate sentencing framework be? and

(d) Based on the sentencing framework, what should be the appropriate sentence on the facts of this case?

Preliminary issues

31 Before turning to our decision on sentence, we first make some observations on two preliminary issues that arose in the proceedings.

Whether the respondent qualified his plea

32 In the course of argument, counsel for the respondent made a passing reference to the fact that the respondent's actions were not intended to deter SGT Ong from discharging his duty as a police officer. It was submitted that the respondent was so intoxicated that he did not even realise that SGT Ong was a police officer at the material time. While this was put forward as a mitigating factor, it raised the issue of what is the *mens rea* required to establish a charge under s 332 of the Penal Code and whether the respondent was qualifying his plea by virtue of this submission.

33 It is helpful, first, to set out the distinct limbs contained in s 332 of the Penal Code in order to identify the elements that must be proved in establishing a charge under each limb. Section 332 of the Penal Code reads as follows:

> **Voluntarily causing hurt to deter public servant from his duty**
>
> **332.** Whoever voluntarily causes hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment for a term which may extend to 7 years, or with fine, or with caning, or with any combination of such punishments.

34 The offence under s 332 therefore comprises three separate limbs which are essentially the different stages at which hurt is caused – during, before and after the discharge of duty as a public servant. The *actus reus* is the causing of

hurt and the *mens rea* of the offence is that the hurt was caused voluntarily with the knowledge that the victim is a public servant going about his duties. "Hurt" is defined in s 319 of the Penal Code as "bodily pain, disease or infirmity". "Voluntarily" is defined in s 39 of the Penal Code in the following manner:

> 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.

35 Although knowledge that the victim is a public servant going about his duties is not stated explicitly in s 332, it cannot be right that someone who hit another person without even knowing that that person was a public servant going about his duties would be guilty of an offence under s 332. However, the knowledge required is objective and not subjective knowledge. Therefore, if an ordinary person would have such knowledge in the circumstances of the case, it is not open to the accused person to claim that he did not know. Hence, an intoxicated accused person would not be permitted to say that he was so drunk he was not aware of the status of the victim and was merely lashing out at any person who was in his proximity or who went near him. Being in a state of intoxication would afford no defence to a charge under s 332 unless he could bring himself within the defence of intoxication in ss 85 and 86 of the Penal Code.

36 As the respondent's counsel confirmed at the hearing before us, he was not trying to qualify the respondent's plea of guilt in any way in submitting that the respondent was so intoxicated that he did not even realise that SGT Ong was a police officer at the material time. He must therefore be considered to have the objective knowledge that SGT Ong was a police officer, particularly when SGT Ong and his partner must have been in police uniform in the course of their duties that night. As seen in [5] and [6] above, while the respondent was drunk

and hot-tempered, he was able to tell them not to touch him. The respondent also pointed his finger at the police officers and uttered vulgarities at them. When SGT Ong told him to mind his language, the respondent could point at him and utter an offensive word before slapping SGT Ong's left cheek. The respondent might have been able to control himself better were he not drunk but, as was emphasised in earlier cases, self-induced drunkenness could not be used as an excuse.

The Prosecution's application to adduce further evidence

37 The second preliminary issue related to the Prosecution's application to adduce further evidence in CM 45/2017. As mentioned earlier, the evidence in question was an affidavit by Assistant Commissioner How, Director of Operations of the SPF and the purpose of the evidence was to provide the court with a contextual understanding of the operational issues and challenges faced by the SPF and to demonstrate that the current sentencing norm was inadequate to meet the need for general deterrence.

38 The contents of the affidavit may be described shortly. The affidavit drew attention to the unique position of police officers as public servants in that they were often placed in dangerous and vulnerable situations in the course of their work where they risked their lives and personal safety. The affidavit documented the recent rise in the number of cases involving the abuse of police officers. In addition, it narrated the egregious nature of recent cases where hurt was caused to police officers and explained the undesirable consequences if such abuse was allowed to continue. Chief among these consequences were the erosion of the public's respect for and confidence in the SPF and its police officers, the disincentive for potential recruits to join the SPF in an already shrinking police force, as well as the risk of defensive policing that it might

engender. These factors demonstrated the need for deterrent sentences in cases involving the abuse of police officers.

39 The Defence did not object to the Prosecution's application at the hearing and the evidence was admitted by consent. Although the Prosecution has filed the application as a matter of prudence, we think it was not necessary to have made a formal application in order to admit the facts set out above. Most of the facts cited were common knowledge and could have been dealt with by way of submissions to the Court. The remaining aspects of the affidavit consisted of facts and figures derived from sources such as newspaper publications or research and policy institutes. These were similarly uncontroversial and it was highly unlikely that they would be seriously disputed if referred to in the course of submissions.

40 Having considered the preliminary issues, we now consider the issues pertinent to sentencing, which constituted the heart of this appeal.

The Prosecution's appeal against sentence

The grounds for appellate intervention

41 It is well established that the scope for appellate intervention is a limited one. The appellate court should interfere with the District Judge's decision only if it is satisfied, among other grounds, that the sentence imposed was wrong in principle or manifestly inadequate.

42 We begin with the sentencing trends for the offence. In the unreported High Court decision of *Zhu Guo Feng*, it was observed by Chan Sek Keong CJ (as he then was) that a custodial sentence was the norm for any assault against a police or law enforcement officer and that the cases established that the usual

custodial sentence was around two to nine months' imprisonment. Apart from this, there are no reported High Court decisions setting out benchmark sentences for offences under s 332 of the Penal Code.

43 Despite the absence of benchmark sentences, it appears that a sentencing trend has evolved for such offences. The authors of *Sentencing Practice in the Subordinate Courts* observe that offenders can generally expect an imprisonment term of about three months where there are no aggravating factors and higher sentences of six to 12 months' imprisonment for aggravated offences (at p1116):

> Sentences of three months' imprisonment are often given to first offenders where the assault is relatively minor. Higher sentences in the range of six to 12 months' imprisonment and above can be expected where the assault is serious, where a weapon is used, or where the offender has a prior record of violence.

44 The Prosecution's Table of Sentencing Precedents lent further support to the sentencing trends described. Further, a search in the State Courts Sentencing Information and Research Repository database revealed that out of 335 cases decided between 22 July 2005 and 31 July 2017, imprisonment terms were meted out in the overwhelming majority of cases (318 cases).[4]

45 On the basis of the prevailing sentencing trends, we were satisfied that the sentence of one week's imprisonment imposed by the District Judge was manifestly inadequate. Although much was made of the fact that the Prosecution had left the length of the imprisonment term to the District Judge's discretion, the exercise of discretion must be guided by legal principles and sentencing norms. In trying to achieve individualised justice in that the sentence fits both

[4] Prosecution's submissions at para 54.

the offence and the offender, the court should not disregard sentencing norms without good reason. In the present case, after giving due weight to the mitigating circumstances, the result was still one which fell far below the normal sentencing range.

Sentencing offenders who cause hurt to public servants

46 The next issue was what the appropriate sentence in this case ought to be bearing in mind that the hurt here was caused to a police officer discharging his duty. Police officers often find themselves in dangerous situations given the nature of their work. The following statistics tendered by the Prosecution demonstrate the number of cases committed against SPF officers and other Home Team officers (which include officers from the Singapore Civil Defence Force ("SCDF"), the Central Narcotics Bureau ("CNB"), the Immigration and Checkpoints Authority ("ICA") and the Singapore Prison Service ("SPS")):[5]

	SPF Officers			**Home Team Officers**		
Year	**2014**	**2015**	**2016**	**2014**	**2015**	**2016**
Physical hurt	240	238	210	253	262	233
Verbal abuse	37	76	235	39	82	251
Total	277	314	445	292	344	484

47 The statistics show that there has been a steady increase in the total number of cases of physical hurt and verbal abuse from 2014 to 2016 against SPF and Home Team Officers, although there was a dip in the numbers for physical hurt particularly in 2016. There was a notably sharp increase in the incidents of verbal abuse in 2016 but verbal abuse is not "hurt" within the meaning of s 332 Penal Code.

[5] Affidavit by Assistant Commissioner How Kwang Hwee at [17].

48 Police officers are often exposed to violence and aggression in their frontline duties daily. They frequently endanger their lives and risk their personal safety in the discharge of their duties to protect society by maintaining law and order. While one could argue that danger is inherent in the work of the police on the ground, surely those who preserve law and order and protect society dutifully deserve to feel assured that they will be protected adequately by the law that they uphold.

49 Attacks against police officers can have several undesirable consequences at a societal level. First, the incidents of attack, if left unchecked, could undermine public confidence in our police officers as authority figures in society and compromise their effectiveness as a symbol of law and order. Second, with manpower constraints resulting in an already lean police-to-population ratio in Singapore,[6] the continued abuse of police officers will have an adverse impact on the SPF's recruitment efforts. In the long term, this will have repercussions for the operational effectiveness of the police and will affect the country adversely as a whole. Third, challenges to the authority of the police pose a real risk of defensive policing. It would be unfortunate and undesirable if our police officers feel the need too easily and too often to draw their weapons or to use force in reaction to any perceived danger. All these issues are compounded by the increasingly complex and uncertain security environment with which modern-day policing is presented in a densely populated country, where emergency situations could arise at any time with dire consequences for the public.

---

[6] Affidavit by Assistant Commissioner How Kwang Hwee at [29].

50 Police officers must therefore be assured of adequate protection and vindication by the law against behaviour that might compromise the effective discharge of their duties. In that light and coupled with the fact that police officers were often the target in the cases prosecuted under s 332 of the Penal Code, it is appropriate to have a sentencing framework which reflects society's opprobrium of such offences. This will aid especially the State Courts in sentencing in such cases and help maintain uniformity in the sentences.

(1) Devising a sentencing framework for s 332 cases involving police officers

(A) PRELIMINARY CONSIDERATIONS

51 The sentencing framework that we have decided on was informed by the approaches urged upon us by the parties, although it differed in certain key respects. Before we set out our sentencing framework, it would be useful for us to provide an overview of the main differences and explain the reasons for our decision.

52 We begin with the scope of application of the sentencing framework. The Prosecution submitted that the sentencing framework conceived should be applied to police officers and other law enforcement officers. Under its definition, this category includes SPF officers and other Home Team officers (including officers from the SCDF, the CNB, the ICA and the SPS).[7] In our view, it would be more appropriate to confine the application of the sentencing framework to police officers and public servants who are performing duties akin to police duties at the material time. Our reasons are as follows:

---

[7] Affidavit by Assistant Commissioner How Kwang Hwee at p9 fn 3.

(a) Police officers and public servants performing duties akin to police duties form the most visible category of law enforcement officers in daily life, are easy for the public to identify and are the most likely group to be involved in s 332 offences because of the nature of their work.

(b) A more generic class covering police officers and other law enforcement officers may raise problems of definition. Under s 21 of the Penal Code, there are nine broad categories of "public servants" who could be victims of hurt under s 332. Within these categories, it may be difficult conceptually to determine who a law enforcement officer is. For instance, would a Singapore Armed Forces ("SAF") officer (who is a "public servant" under s 21(*a*) of the Penal Code) be considered a "law enforcement officer" for the purposes of the sentencing framework in the sense that he is an enforcer of military law? One would generally regard a member of the SAF as a defender of the country rather than as an enforcer of the law. However, in some situations, he could be involved in law enforcement if he were performing some special duties akin to police duties.

(c) If the sentencing framework covers all Home Team officers, it would include paramedics and fire-fighters in the SCDF who are concerned with dealing with medical and civil emergencies rather than law enforcement. This would result in the sentencing framework overreaching to other public servants when the impetus for the framework in the first place was to address the unique position of police officers. The fact that the Prosecution's motivation in asking for a framework for s 332 offences was its concerns about police officers is buttressed by CM 45/2017 where the evidence sought to be admitted

was practically all about the police. Similarly, its submissions (see [18(b)] above) about weapons allude clearly to police officers, although they could also apply to the SAF members when they are performing duties akin to police duties.

53 Taking guidance from s 4 of the Police Force Act (Cap 235, 2006 Rev Ed) ("PFA") which sets out the functions and duties of the SPF, our concept of "duties akin to police duties" would generally include engagement by a public servant in one or more of the following duties:

(a) maintaining law and order;

(b) preserving public peace;

(c) preventing and detecting crimes;

(d) apprehending offenders;

(e) regulating traffic and processions in public roads and public places;

(f) executing summonses, subpoenas, warrants, commitments and other legal processes issued by the courts and Justices of the Peace;

(g) protecting people from injury or death and public property from damage or loss, whether arising from criminal acts or in any other way;

(h) keeping order in the courts; and

(i) escorting and guarding accused persons and prisoners.

54 It follows that auxiliary police officers, insofar as they are exercising any police power or carrying out any duties of a police officer and are deemed to be "public servants" pursuant to s 92(5) of the PFA, would be included in the sentencing framework. Similarly, the sentencing framework would include Commercial Affairs Officers appointed under s 64 of the PFA and intelligence officers appointed under s 65 of the PFA. The same applies to the Special Constabulary (s 66 to s 68 PFA).

55 While the Prosecution submitted that the existing sentences imposed for attacks against police officers were inadequate to meet the aims of general deterrence and that the guidelines laid down should provide for more severe punishment in such cases, the sentencing framework we are proposing seeks only to clarify and rationalize the existing state of the law and not to alter it. The sentencing framework also seeks to utilize the full range of sentences prescribed by law.

56 We do not think that the principle of "ordinal proportionality", which was raised by the young *amicus curiae*, should apply to tether the sentences for offences under s 332 to those for offences under s 323 of the Penal Code simply because both offences have their root in the same conduct of causing hurt. This is because under s 323, the punishments provided are imprisonment of up to two years or a fine of up to $5,000 or both. Under s 332, however, offenders may be punished with imprisonment of up to seven years or with fine or with caning or with any combination of such punishments. The significantly different sentencing options and ranges for these two offences indicate that Parliament views s 332 as a much more serious offence. It may thus not be appropriate to extrapolate from the sentencing norms for s 323 offences in order to calibrate a sentence framework for s 332 offences.

(B) THE APPLICABLE SENTENCING FRAMEWORK

57 We now turn to describe the sentencing framework that we have formulated. In our judgment, a principled approach would be to prescribe a framework comprising three broad sentencing bands, within which the severity of an offence and hence the sentence to be imposed, may be determined on the basis of the twin considerations of harm and culpability. "Harm" is the measure of the injury which has been caused to society by the commission of the offence while "culpability" is the measure of the degree of relative blameworthiness disclosed by an offender's actions (see *Public Prosecutor v Koh Thiam Huat* [2017] 4 SLR 1099 at [41]). The offence-specific and offender-specific aggravating and mitigating factors are necessarily factored into the analysis within the harm and culpability considerations themselves.

58 In the context of an offence under s 332 of the Penal Code, the degree of harm caused would refer to the nature and gravity of the hurt caused to the particular police officer and the consequences to the police in general. The degree of culpability is measured chiefly in relation to the manner and the motivation of the offender's involvement in the criminal act.

59 Bearing in mind the prescribed sentencing range for s 332 of the Penal Code and the existing sentencing precedents, the following framework shall apply to cases of causing hurt to police officers and public servants who are performing duties akin to police duties:

Category	**Circumstances**	**Sentencing band**
1	Lesser harm and lower culpability	Fine or up to one year's imprisonment
2	Greater harm and lower culpability or	One to three years' imprisonment

	Lesser harm and higher culpability	
3	Greater harm and higher culpability	Three to seven years' imprisonment

The sentencing band in Category 1 encompasses the existing sentencing norm that was observed in *Zhu Guo Feng*, under which a custodial sentence of two to nine months' imprisonment would generally be imposed for cases involving causing hurt to police officers. This would remain the indicative starting point for most of the offences prosecuted under s 332 of the Penal Code. Fines should be meted out only in very exceptional cases, where the offending act ranks the lowest in the harm-and-culpability spectrum, for instance, a very young offender shoving a police officer lightly in a one-off incident away from the public's eyes and hearing and pleading guilty early.

60 A non-exhaustive list of factors relating to the harm and the culpability of the offence is set out below to assist in the assessment of harm and culpability. We have not separated the factors into those relating to harm and those pertaining to culpability because they often affect both considerations:

(a) The degree of hurt caused and its consequences;

(b) The use or attempted use of a weapon or other dangerous implement or means (*eg*, biting) and its capacity to do harm;

(c) The age, lack of maturity or presence of mental disorder where it affects materially the responsibility of the offender;

(d) The circumstances leading to the commission of the offence (*eg*, the offender's motivations for causing hurt to the victim, whether the offence was planned or premeditated, whether it demonstrated contempt for police officers and their authority);

(e) The timing and location of the offence, in particular whether it was committed within the public's view and hearing;

(f) Whether the offence involved a sustained or repeated attack;

(g) The number of offenders involved;

(h) Whether the offender intended to inflict more serious hurt than what materialised;

(i) Whether any steps were taken to avoid detection or prosecution; and

(j) The offender's criminal history and propensity.

61 The sentencing bands are premised on offenders pleading guilty and not having relevant criminal antecedents. Appropriate adjustments may therefore be made where the offender claims trial and makes unwarranted allegations against the victim. Similarly, an appropriate uplift in sentence may be justified where the offender has a bad criminal record.

(C) ILLUSTRATIONS

62 It will be helpful for us to set out illustrations of cases which fall within each of the sentencing bands described. We emphasise, however, that these are merely indicative examples to assist in analysis. Given the factually diverse ways in which offences under s 332 present themselves, it is not possible to identify exhaustively the features of cases for which particular types or lengths of sentences will be appropriate. The appropriate sentence will always be the product of a fact-sensitive and sensible exercise of discretion.

(I) CATEGORY 1

63 Category 1 encompasses s 332 cases where minor injuries are caused and the bodily pain is momentary and where the culpability is low. The majority of cases that have been prosecuted thus far fall into this category. Some of the recent cases provide illustrations of the offending acts which would fall within the Category 1 sentencing band. It will be evident of course that there would still be a wide range of factual permutations of varying degrees of harm and culpability within Category 1 itself.

64 In *Public Prosecutor v Koh Keng Hong* [2015] SGDC 341, the offender claimed trial to four charges: two of using criminal force against a police officer, one of uttering abusive words at a police officer and one of attempting to cause hurt to a police officer. The offender was approached at a coffee shop by police officers conducting general enquiries and was uncooperative. Subsequently, when a police officer was escorting him out of the coffee shop, the offender attempted to head-butt him. The police officer strained his neck when he evaded the attack. The offender's conduct formed the subject of the charge of attempting to cause hurt to a police officer under s 332 read with s 511 of the Penal Code. The District Court sentenced the offender to nine weeks' imprisonment for the offence. The offender's appeal against conviction and sentence was dismissed by the High Court.

65 In *Public Prosecutor v Ho Eng Huat* [2016] SGDC 105, two police officers were about to subject the offender, who was on bail in relation to suspected drug consumption offences, to a spot check when he pushed one of the police officers down a flight of stairs. The police officer landed on his back. The offender then tried to flee and in the course of being restrained, the offender elbowed another police officer in the face and continued to struggle against the

police officers, causing all three of them to fall down further flights of stairs. Upon the offender's arrest, the police officers discovered drugs and drug-related apparatus on him. The police officer, who was pushed down the stairs, sustained a sprain, abrasion and tenderness in his ankle and bruising in the lower back. The other police officer, who was elbowed in the face, sustained a 3-cm abrasion over his left cheek and several bruises and abrasions over him over his left arm and right shoulder. The offender pleaded guilty to two charges under s 332 of the Penal Code for causing hurt to each police officer. The District Court sentenced him to four months' imprisonment for each of the two charges. These imprisonment terms were ordered to run concurrently with the sentences for the offender's drug trafficking and consumption charges (totalling 20 years' imprisonment). The offender's appeal against sentence was dismissed by the High Court.

66 In *Public Prosecutor v Alfian Bin Abdullah* [2015] SGDC 111, the offender punched a police officer in the back of his head and kicked his stomach. Investigations revealed that the offender had a previous encounter with the said police officer about a year ago, during which the police officer had asked the offender not to intervene in police checks on his friends. These were a group of suspected drug abusers. Offended by the police officer's remarks, he bore a grudge against him and thus approached the police officer to attack him when he spotted the latter at a coffee shop a year later. The offender pleaded guilty to a charge under s 332 of the Penal Code. The High Court increased the offender's sentence to ten months' imprisonment on appeal, taking into account the vengeful nature of the attack and the offender's long list of criminal antecedents spanning across nearly thirty years which demonstrated his scant regard for the law (see *Public Prosecutor v Alfian Bin Abdullah* (MA 9053/2015/01)).

67 The cases show that the custodial threshold is generally crossed for offences under s 332 of the Penal Code. Fines would only be appropriate at the lowest end of the harm-and-culpability spectrum. This sentencing option should generally be available only to young offenders or offenders with some mental disorder. For example, in *Public Prosecutor v Soon Nyet Chin* [2014] SGDC 269, a $10,000 fine was imposed after the District Court took into account the offender's Major Depressive Illness and Alcohol Use Disorder (at [17]).

(II) CATEGORY 2

68 Category 2 comprises offences of a higher level of seriousness. These are usually cases where (a) minor injuries are caused but the culpability of the offender is high or (b) serious injuries are caused to the victim but the culpability of the offender is low. Where there are three or more aggravating factors that indicate enhanced culpability or more serious injuries, the offence would generally fall into Category 2. Examples of such aggravating factors would include the use of a weapon or dangerous means, a more serious harm caused such as a deep cut, sustained or repeated attacks, intimidation and violence by a group of offenders and the presence of violence-related antecedents, particularly where they were also directed at the police. Again, we look at some of the sentencing precedents which provide examples of the types of offending acts which would fall within Category 2.

69 In *Public Prosecutor v Dernny bin Zainalabiden* [2010] SGDC 180, the offender claimed trial to two charges of using criminal force against a police officer and one charge of causing hurt to a police officer. The police officer was at the time trying to prevent a conflict between the offender and another group of people from escalating. The offender became aggressive and pushed the police officer twice in the chest. When the police officer sought to place the

offender under arrest, two of his friends restrained the said police officer by holding on to both of his hands. The police officer was thus unable to block further attacks. The offender then punched the police officer in the face with such force that it split the officer's skin and caused the officer to fall backward onto the ground. The punch formed the subject of the offender's s 332 charge. The District Court sentenced him to 30 months' imprisonment and three strokes of the cane for the offence, taking into account his antecedents for offences involving violence. The offender's appeal against conviction and sentence was dismissed by the High Court.

70 A foreign case which would come within the Category 2 sentencing band is *R v Ramazan Gungor* [2015] EWCA Crim 877 ("*Ramazan*"). In *Ramazan*, the offender bit a prison guard, who was trying to calm him down in his cell, through his prison-issued fleece on his chest. The bite caused the prison guard to bleed. The guard was then tested for Hepatitis B, C and HIV and vaccinated against diphtheria, polio and tetanus. All the test results were negative but it took two to three weeks for them to be ready. In the meantime, the prison guard suffered some psychological harm. The bite wound also resulted in a scar. The offender, who had violence-related antecedents, was sentenced to 31 months' imprisonment.

71 In another foreign case, *R v Darius Ziemelies* [2015] EWCA Crim 1220, the offender deliberately spat at a police officer as he was being put in a police van after being arrested. The spittle went into the officer's mouth and eyes. The officer then learnt that the offender was HIV-positive and was taken to hospital. There, the officer was given anti-hepatitis injections and administered a course of medication to reduce the risk of her contracting HIV. Apart from the unpleasant side effects of the medication, the officer suffered "severe psychological and emotional consequences" from the fear of infection for some

six months until she finally received news that she was not infected. Her severe anxiety at the time significantly impacted her relationship with her husband and her young child, her social activities and her ability to resume her usual police duties. The court sentenced the offender to 30 months' imprisonment, taking into account the fact that the offender wanted the police officer to believe that she would be at risk of infection and the psychological consequences suffered by the police officer for many months.

(III) CATEGORY 3

72 Category 3 covers the most serious of offences under s 332 of the Penal Code, where there is a high degree of both harm and culpability. There is no case which has been brought to our attention in which a sentence of three years or more was imposed for an offence under s 332 of the Penal Code. One reason might be that, for cases of much more serious hurt involving debilitating and long-term effects, a more serious charge may be brought against the accused under s 333 of the Penal Code for voluntarily causing grievous hurt to a public servant.

73 In our judgment, a Category 3 sentencing band would usually feature a large number of aggravating factors. Offences in this category would result in very serious and long-term injuries bothering on and perhaps crossing over into grievous hurt as defined in s 320 Penal Code. Such offences are generally intended to strike at the very heart of the police as an institution of law and order. The blameworthiness of the attacker would be very high, often associated with premeditation or a brazen desire to gain the public's attention by openly challenging the authority of police officers in our society. Weapons or other objects could have been used to intimidate or attack. Category 3 offenders would probably have relevant criminal antecedents in the form of previous

convictions for violence too. Similarly, where the attacker was part of a group resisting the police or was instigating others to attack the police officers.

(D) CANING

74 In our opinion, caning is appropriate as a general rule where an offender exhibits inordinate violence, uses weapons or where he attempts to snatch or to use the police officer's firearms in the course of causing hurt to the police officer. The other considerations justifying caning would be where:

(a) the attack on the police officer involved a high degree of brutality or gratuitous violence, often with some prior planning;

(b) the attack on the police officer involved group or gang-related violence;

(c) the attack resulted in very serious injuries to the police officer;

(d) the attack occurred at a time and place where the public was put at risk, for instance, the attack took place in a crowded coffee shop or shopping centre or at some public event; and

(e) the offender's antecedents demonstrated recalcitrance and a strong propensity to commit violent offences.

Caning would be generally justified therefore where the offence falls within Category 3. In some cases, even within Category 2, caning may be imposed, for instance, where the circumstances and consequences of the attack are egregious and outrageous although the injury caused may not be severe.

Prospective overruling

75 The Prosecution submitted that should the Court be minded to lay down increased sentences for offences under s 332 of the Penal Code, the doctrine of prospective overruling should not apply in this case.8 As stated earlier (at [55] above), our objective in setting out a sentencing framework is to clarify and rationalize the existing state of the law, utilising the full sentencing range prescribed by Parliament and not to alter established sentencing policy. In the circumstances, there is no need for prospective overruling.

The appropriate sentence on the facts

76 In the light of the sentencing framework above, we turn to explain our decision of imposing ten weeks' imprisonment in this case, which was lower than the sentence of four months' imprisonment submitted by the Prosecution. In examining the twin considerations of harm and culpability, we considered this case to fall in the lower end of Category 1 on both those factors. The harm which the police officer sustained was slight, essentially that of tenderness over his left cheek. Besides the fact that the respondent was drunk, vulgar and a nuisance, there were no other factors that increased his culpability. The respondent was relatively young at the time of the offence (25 years old) and his only antecedent concerned an unlawful carnal connection offence when he was 16 years old. At the time the police officers approached the respondent, he was lying asleep on a grass patch near a canal next to a road and was not causing trouble. There was no member of the public in the vicinity. Further, the incident happened at about 3.41am in the morning at the side of a canal and out of public view and hearing. In those circumstances, there would be no prospect of a

[8] Prosecution's submissions at para 112.

possible erosion of public respect for the authority of the police such as would justify a more severe sentence. In the light of the offender's genuine remorse and plea of guilt, while a sentence of one week's imprisonment was totally out of tandem with the sentencing trend and manifestly inadequate, ten weeks' imprisonment was appropriate and sufficient punishment.

Conclusion

77 For these reasons, we allowed the Prosecution's appeal and substituted the sentence of one week's imprisonment with a sentence of ten weeks' imprisonment.

78 We thank the parties for their submissions and especially Ms Melissa Mak, the young *amicus curiae*, for volunteering her time in preparing and presenting her recommendations on the sentencing issues and the framework to be implemented.

Sundaresh Menon Chief Justice	Tay Yong Kwang Judge of Appeal	See Kee Oon Judge

Deputy Attorney-General Hri Kumar Nair, S.C., Tan Wen Hsien, Sarah Shi and Randeep Singh (Attorney-General's Chambers) for the applicant in CM 45/2017 and the appellant in MA 9112/2017/01;
Lim Ghim Siew Henry (G S Lim & Partners) (assigned counsel for Criminal Legal Aid Scheme) for the respondent in CM 45/2017 and MA 9112/2017/01;
Mak Sushan Melissa (Allen & Gledhill LLP), young *amicus curiae*.