

Public Prosecutor v Wong Hwee Ling Patricia [2021] SGDC 9

 lawnet.sg/lawnet/web/lawnet/free-resources

Case Number : DAC 933241/2016 & Ors, Magistrate's Appeal No. 9856/2020/01-02

Decision Date : 19 January 2021

Tribunal/Court : District Court

Coram : Tan Jen Tse

Counsel Name(s) : DPPs Stephanie Koh & Zhou Yang for the Public Prosecutor; Mahmood Gaznavi and Khadijah Binte Yasin (Mahmood Gaznavi & Partners) for the accused

Parties : Public Prosecutor — Wong Hwee Ling Patricia

Criminal Law – Offences – Voluntarily causing hurt by dangerous weapons or means

[LawNet Editorial Note: An appeal to this decision has been filed in MA 9856/2020/01-02.]

19 January 2021

District Judge Tan Jen Tse:

Introduction

1 The accused, Wong Hwee Ling Patricia, female, now aged 51 years, was convicted after trial on the following three amended charges:-

DAC-933241-2016 (Amended 1st charge)

... on the 11th day of April 2015 at or about 12 a.m., at the open-spaced carpark of No. 1 Goldhill Plaza, Singapore, did voluntarily cause hurt to one Loh Siew Chin (Female / 48 years old), by means of a heated substance, *to wit*, by poking a lit cigarette at the area under the left eye of the said Loh Siew Chin and causing a superficial burn of about 8 mm diameter, and you have thereby committed an offence punishable under section 324 of the Penal Code (Cap 224, Rev Ed 2008)

MAC- 907771-2016 (Amended 2nd charge)

... on the 11th day of April 2015, at or about 12.00 a.m., at Open Space Carpark of No 1 Gold Hill Plaza, Singapore 308899, did voluntarily cause hurt to one Ching Geok Lian Rosa, to wit, by using your hand to punch the said Ching Geok Lian Rosa on her nose, and

you have thereby committed an offence punishable under Section 323 of the Penal Code (Cap 224, 2008 Rev Ed).

MAC- 907772-2016 (Amended 3rd charge)

... on the 11th day of April 2015, at or about 12.00.a.m., at Open Space Carpark of No 1 Gold Hill Plaza, did voluntarily cause hurt to one Khairul Annuar Bin Rudy, to wit, by punching the said Khairul Annuar Bin Rudy on his face, and you have thereby committed an offence punishable under Section 323 of the Penal Code (Chapter 224, 2008 Rev Ed).

2 She was sentenced to ten weeks' imprisonment for the first charge and to two weeks' imprisonment for the second and third charges, with the sentences in the first and second charges to run consecutively. The aggregate sentence was therefore twelve weeks' imprisonment.

3 The accused has filed an appeal against conviction and sentence, while the Public Prosecutor has filed an appeal against sentence. The accused has been released on bail pending appeal.

Background facts

4 On the evening of 10 April 2015, Khairul Annuar Bin Rudy ("Khairul") (PW1) went to a pub called *Café and Pub* ("the pub") which was located at No. 1 Goldhill Plaza. The pub was owned by Loh Siew Chin ("Loh") (PW2). Loh's friend Ching Geok Lian Rosa ("Rosa") (PW3) was also at the pub, having drinks.

5 That same evening, the accused was drinking at a karaoke pub a few doors away. She was there for about two to two and a half hours, during which time she consumed alcoholic drinks. She had parked her car (a red Mercedes Benz) in the open air carpark in front of the pub. When she decided to leave, she called for a valet to drive her home. According to the accused, she stopped to smoke and chat to an acquaintance before making her way to her car.

6 At around mid-night, Khairul stepped out of the pub to smoke a cigarette. A pub regular known as Daniel was also smoking outside. Khairul observed the accused approaching her car. He thought that she was intoxicated and that she intended to drive. He then approached her. This triggered off a series of events, where the prosecution alleged that the accused had in succession assaulted Khairul, Loh and Rosa.

7 Some of the events were witnessed by Amirul Annuar Bin Rudy ("Amirul") (PW7) a waiter in a nearby restaurant who had also come out to smoke, and Abd Rahman Bin Ahmad ("Abd Rahman") (PW4) who was the accused's valet. Daniel had left Singapore and was not called as a witness.

8 When evidence was adduced at trial, some of the individuals present at the scene were described by their racial and/or physical characteristics, but no disputes arose about identity. In setting out the evidence, I will for the purposes of clarity, refer to the actual names of the persons involved.

The prosecution's case

Evidence of Khairul (PW1)

9 Khairul testified that when he stepped out of the pub to smoke, he chatted with Daniel who was also smoking outside. He observed the accused walking unsteadily and staggering towards her car. She was swaying from left to right. She was “stumbling over herself” and looked like “she was going to fall over herself”.^[note: 1] The accused opened the door and sat at the driver's seat with the headlights on.

10 Khairul was concerned. He felt that as the accused was intoxicated, she should not drive. He then walked up to her and told her that she should not be driving.^[note: 2] He suggested that she use a valet. At this point, the accused started to go crazy. She started hurling vulgarities at him and suddenly punched him in his face with her fist.^[note: 3]

11 As the accused was getting too aggressive, Khairul became concerned about his own safety and backed off. The accused continued to hurl vulgarities at him from inside her car.^[note: 4] Khairul walked towards Daniel. The accused staggered up to them, continued to hurl vulgarities and spat at Khairul. Khairul was quite disgusted and walked back to the pub to join his group.^[note: 5]

12 He informed Loh that one of her customers needed help as she was going crazy and as she had just punched him and spat on him. Loh then went out to attend to the commotion. Khairul did not have further interaction with the accused that night.^[note: 6]

Evidence of Loh (PW2)

13 Loh testified that Khairul came up to her and said that a lady was giving trouble. Loh then walked out to see what had happened. Loh saw the accused (who was not her customer) standing outside. The accused looked drunk and directed her anger towards Khairul as he asked her not to drive.^[note: 7]

14 Loh tried to placate the accused. She offered to get the accused some water and to bring the accused to her car. She suggested the use of a valet. As they walked towards the accused's car, the accused asked for a cigarette lighter. Daniel, who was with them, passed a lighter to the accused so that she could light her cigarette.^[note: 8]

15 Loh testified that the accused took a puff of her cigarette and poked the cigarette into Loh's face, right below her eye. Loh felt pain and was shocked. She pulled the accused's collar while the accused pulled her hair. Daniel intervened and managed to get them to let go of each other. Loh tried to walk away but the accused kept coming after her. In order to stop the accused from advancing, Daniel extended his arms and asked the accused to stay away. At some point, the accused fell.^[note: 9]

16 At this stage, Rosa appeared and enquired as to what had happened. When Rosa learnt that the accused had used a cigarette to poke Loh's face, Rosa said that she would make a police report. Rosa then went towards the accused and told her not to leave as she

wanted to make a police report. Loh then saw the accused punch Rosa on the nose. Rosa told the accused not to leave and called the police.^[note: 10]

Medical report on Loh

17 Loh sought medical treatment at Huang Surgery on 11 April 2015. In his medical report (Exhibit P2), Dr Huang Chia Yung (PW5) stated that Loh complained of pain in her face, forehead and left shoulder. He took a photograph (Exhibit P3) to record the injuries she suffered.

18 Dr Huang documented that Loh had a superficial burn of about 8 mm in diameter under her left eye for which he prescribed an antibiotic cream. Loh also had a haematoma on the centre of her forehead and some tenderness on her left trapezius.

Evidence of Rosa (PW3)

19 Rosa testified that when she noticed a commotion outside the pub, she stepped out. Loh informed her that the accused had burnt her with a cigarette. Rosa observed that there were ashes on Loh's face, near the bridge of her nose. She went up to the accused who was in her car. Rosa told the accused not to leave as she wanted to call the police. The accused said that she wanted to call the police as well.^[note: 11]

20 While she was on the phone with the police, the accused came out of the car, punched her on the bridge of her nose and scolded her with vulgarities. It was quite painful. Rosa responded by exchanging vulgarities with the accused. Rosa then reported the assault to the police.^[note: 12]

Medical report on Rosa

21 Rosa sought medical treatment at *Silver Cross* clinic on 11 April 2015 at about 1.30 p.m.. The medical report on her (Exhibit P5) stated that she complained of being punched in the face. She had pain and swelling over her nose bridge and mild blurring of vision.

22 Dr Lee Kay Hun who examined Rosa noted that there was swelling over the nose bridge which was tender to palpitation. There were also minor overlying skin injuries. In his view, the findings were consistent with a blow from a blunt object such as a fist.

Evidence of Amirul (PW7)

23 At the material time, Amirul worked as a waiter at a restaurant called *Pigsfly* at Goldhill Plaza. At around 12.00 a.m., he was smoking outside the restaurant. He observed the accused walking unsteadily and thought that she was drunk. Loh assisted the accused towards the car. The accused asked for a lighter and smoked while she talked to Loh. Amirul then saw the accused poke Loh's face with her cigarette. He was unsure if this was accidental or done on purpose. At that time, Loh and the accused were facing each other. Amirul saw sparks when the cigarette touched Loh's face.^[note: 13]

24 Amirul then saw Loh and the accused pulling each other's hair. Daniel tried to stop the fight. He tried to prevent the accused who was acting aggressively from hitting Loh. Daniel tried to stop the accused from moving towards Loh by putting his hand forward to stop her. He made contact with the accused who fell and injured her knees.^[note: 14] Amirul then went to help the accused while Daniel and Loh went towards the pub.

25 Amirul then returned to where he had first been smoking. He saw Rosa approach the accused. He heard Rosa say that she wanted to call the police. The accused then slapped Rosa on her face and said something angrily to Rosa. Loh then went to assist Rosa. The valet arrived later and spoke to the accused. In his view, the accused had been behaving aggressively.^[note: 15]

Evidence of Abd Rahman (PW4)

26 Abd Rahman was the valet driver assigned by his employer to attend to the accused. When he arrived, he had difficulty locating the accused although he managed to find her car. The accused later approached him, unlocked the door of her car and sat in the front passenger seat. She asked him to take note of her injuries, and he saw some bruises on her knees.^[note: 16]

27 Prior to that, he noticed the accused moving towards a group of four to five people and making a fast hand movement towards the group. He did not actually see what happened or who the accused hit. However, Rosa became angry and tried to attack the accused, but the other people prevented her from doing so. According to Abd Rahman, the accused was aggressive and probably drunk.^[note: 17]

28 On the accused's instructions, he drove her to a 24-hour clinic near her home at Bukit Panjang. She entered the clinic for a few minutes and later directed him to Tan Tock Seng Hospital ("TTSH"). Abd Rahman parked the car and waited for the accused at the lobby of TTSH. The accused refused to pay his valet charges, and he had to call his manager. When his manager came down and asked for payment, the accused scolded his manager. When his manager enlisted police help, the accused scolded the police officer as well. In the end, the accused did not pay for the valet services.^[note: 18]

The case for the defence

The accused's evidence

29 The accused testified that when she got to her car, her valet had not yet arrived. As her car was very messy, she decided to put things away and opened the boot of her car. Khairul then approached her and started flirting with her. He asked if she was alone and if she wanted to join him for drinks. Although she told him that she was not interested, he followed her around. She found him quite irritating and went to sit at the driver's seat of her car.^[note: 19]

30 The accused stated that she turned on the music, wound down the window of her car and started to smoke. When Khairul appeared, she tried to shut the door of her car, but Khairul grabbed hold of it to prevent her from doing so. When she managed to close the

door, Khairul stuck his head through the window and tried to strike up a conversation. She told him that she was not interested, turned her back to him and started to scroll through her handphone. When Khairul walked away, the accused stepped out of her car again to tidy it up.^[note: 20]

31 A short while later, Khairul and Daniel approached her. Khairul pointed at her and said, “This is the bitch.” She exchanged words with Daniel, after which he punched her really hard in her chest. The accused fell to the ground and cut herself. She screamed and yelled loudly. Daniel charged at her and pushed her shoulder as she was trying to get up. In order to distract him, she asked for lighter so that she could light her cigarette. Daniel then handed her a lighter.^[note: 21]

32 She had taken two puffs when Loh ran up to her from behind and accused her of seducing “my husband, my man”. Loh slapped her right ear straightaway and started to assault her. The accused blocked and dodged the attack. Loh grabbed what she thought was the accused’s hair but was shocked when she pulled off the accused’s wig. Loh threw the wig onto the floor and continued to assault the accused by slapping her with both hands. The accused screamed and yelled. She tried to block the assault but was hit on her ear, head, neck and shoulder. The attack stopped when Daniel pulled Loh away with the help of an unidentified tall skinny Indian man. The tall skinny Indian man stood in front of her and stretched out his hands to prevent a further attack. Daniel and Loh went to one side and started quarrelling.^[note: 22]

33 At this stage, the accused noticed that Abd Rahman had arrived and called out to him. She tried to stand up straight and attend to her wounds. Rosa came and hit her on her head and slapped her left ear. The accused tried to block the attack and ran a few steps. Rosa ran after her and when she learnt that the accused was going to call the police, Rosa also said that she would do so. The accused then went to her car, closed the door and called the police. Rosa walked away.^[note: 23]

Injuries suffered by the accused

34 The accused was examined by Dr Daniel Seng Wei Ren (PW6) at TTSH. Her injuries were recorded in TTSH’s records (“hospital records) (Exhibit P10) and the medical report on her from TTSH (Exhibit P9). The accused also tendered 14 photographs of her injuries (Exhibit D1) which she took.

35 The accused informed Dr Seng that she was approached by three strangers who claimed to be good citizens to prevent her from driving because she was drunk, and that she fell forwards on her hands and knees when she was assaulted. From the hospital records, the accused sustained nine injuries from the alleged attack. She had abrasions to her knees, hands and palms. She had redness over her left forearm and bruising on her middle finger. She also complained of an ache at the top of her head (left vertex), but when Dr Seng pressed at that site, there was no tenderness.^[note: 24]

36 The accused testified that she also suffered inflammation, redness, and throbbing pain. She claimed that her body was aching everywhere, including her head, face, shoulders neck and eyes. The accused claimed to have informed Dr Seng of these injuries. However, no such injuries were documented in the hospital records.^[note: 25] While the accused did not complain to Dr Seng of injuries to her eye area, she claimed that she found bruising around her right eye (as shown in Exhibits D1.8 to D1.14) when she got home and removed her make up.

Evaluation of evidence

37 I will deal with the offences in the order in which they were committed.

The third charge (assault on Khairul)

38 The prosecution's case was that the accused punched Khairul in his face when he approached her and asked her not to drive. The accused denied punching Khairul. She asserted that he approached her to flirt with her. She further claimed that Daniel had attacked her.

Khairul was an honest witness

39 I found Khairul to be an honest witness whose evidence was worthy of credit. His evidence displayed internal and external consistency. There were no material discrepancies in his evidence. It was also corroborated by other evidence.

40 He saw the accused walking unsteadily towards her car and was concerned that she might drive. He therefore had a good reason to approach the accused. The accused sought to downplay her own level of intoxication and denied she was heavily intoxicated.^[note: 26] However, all those who saw her supported Khairul's account and testified she was drunk. For example, Abd Rahman's view was that the accused behaved aggressively as she was probably drunk.^[note: 27] Amirul observed that the accused was drunk and that she was not walking steadily.^[note: 28]

41 The accused's claim that Khairul flirted with her (instead of asking her not to drive) was untrue. Her complaint to Loh was that Khairul told her not to drive.^[note: 29] She informed Dr Seng that three strangers prevented her from driving since she was drunk (Exhibit P10). This supported Khairul's claim that he approached the accused to ask her not to drive. The accused did not inform Loh or Dr Seng that Khairul flirted with her. Her late claim that Khairul did so and that he had in effect harassed her was totally unbelievable.

42 The defence attempted to discredit Khairul by pointing to certain inconsistencies in his evidence. However, all of these were trivial or immaterial. While Khairul testified that the door of the car was open, he had on one occasion in cross-examination stated that it was closed.^[note: 30] From my observation of Khairul's demeanour, this was clearly a slip of the tongue. Khairul had immediately apologized for this slip and it was unfair for counsel to attempt to capitalize on this. Instead, Khairul consistently maintained that the door of

the accused's car was open. His account was supported by the hospital records (Exhibit P10), where Dr Seng contemporaneously recorded that the accused informed him that she did not close the car door.

43 As the car door was never shut, the accused was untruthful in her allegation that due to Khairul's conduct, she fled to her car, closed the door and only re-emerged when Khairul left. It showed that her claim that Khairul tried to prevent her from closing the car door by holding on to it was false. More importantly it showed that the accused was willing to resort to untruths in order to discredit Khairul and that she was not a witness who could be believed.

44 Another unmeritorious submission was that it was physically impossible for the accused to have punched Khairul from inside the car. No evidence was adduced to show how this was so. By the accused's own account, Khairul had stuck his face through her car window.^[note: 31] Since his face would be near her, the accused could have easily reached him with her punch.

45 The contention by the defence that it was "strange and curious" that Khairul could not recall the location and the name of the pub was another dubious submission which was devoid of substance.^[note: 32] This was Khairul's first time at the pub. A substantial period had passed, and it would not be unexpected for Khairul to have forgotten these details. There was in any event no dispute about where the incident occurred.

Khairul's reaction was consistent with one who had been assaulted

46 After Khairul was assaulted, he informed Loh immediately that the accused hit him and spat on him. This was consistent with the reaction of one who had just been assaulted. While Loh's account was that he told her that someone was creating trouble outside the pub,^[note: 33] this difference was not material since the main thing was that Khairul had raised a complaint about the accused's conduct.

47 The defence contended that Khairul's lack of reaction after he was punched and spat on (i.e. that he went back to re-join his friends) defied logic. I found instead that this submission was quite illogical. It could not be the case that Khairul should have reacted by escalating the confrontation. It was proper that he showed restraint, had a calm head and good sense. This showed that unlike the accused, he was in control of his faculties and sense of reason. There would have been little point in confronting the accused who was heavily intoxicated and out of control.

The accused fabricated her claim that Daniel assaulted her

48 The accused claimed that after she rebuffed Khairul's advances, he returned with Daniel. Daniel then assaulted her by punching her in her chest and pushing her shoulder as she was trying to get up. In my assessment, this was a fabricated account of events. The accused failed to mention this alleged attack by Daniel when she made a Magistrate's complaint on 15 April 2015 (Exhibit P11). These facts were not put to the prosecution witnesses. It was only put that Daniel pushed her and not that he punched her. It was therefore clear that the accused was embellishing her evidence.

49 The accused claimed that as a result of Daniel's assault, she fell twice and sustained cuts and abrasions to her hands and knees.^[note: 34] While I accepted that she was injured, her account of how she sustained the injuries was doubtful. The evidence of the prosecution witnesses on this issue was far more compelling. Loh testified that the accused fell when Daniel tried to prevent the accused from advancing towards her. This account was corroborated by Amirul who stated that the accused fell and injured her knees when physical contact was made during Daniel's attempt to stop her from moving towards Loh. Amirul was an independent witness and there was no reason to regard his evidence as unreliable.

50 In view of the above, I rejected any allegation that Daniel assaulted the accused and that she sustained her injuries as a result.

The first charge (assault on Loh)

51 The prosecution's case was that the accused deliberately poked her lit cigarette into Loh's face, under her left eye. The fact that Loh was burnt by a lit cigarette was not in dispute. Rosa had seen ashes on Loh's face soon after. The medical evidence (Exhibits P2 and P3) also showed that Loh was injured under her left eye.

Loh was a credible witness whose evidence was supported by Amirul

52 I accepted Loh's evidence that the accused had deliberately poked her face with a lit cigarette. Her testimony was corroborated partially by Amirul, an honest independent witness. He showed sympathy for the accused and assisted her after she got injured. It was most unlikely that he was untruthful in his narrative. Amirul honestly testified that he could not tell if the accused had poked Loh accidentally or deliberately. However, he was certain that this occurred when Loh and the accused were facing each other i.e. not when they were struggling. He saw sparks when the cigarette made contact with Loh's face and he could not have been mistaken in his observations.^[note: 35]

53 The contention of the defence that Loh could have been burnt by her cigarette when they struggled, was in all likelihood false. It was speculative as the accused had admitted in examination-in-chief that she had no idea as to what happened to her cigarette.^[note: 36] Her claim was not supported by Amirul who was sure that the cigarette made contact with Loh's face when Loh and the accused were facing each other, and not during a struggle.

54 Defence counsel submitted that it would be unlikely the accused would have poked Loh with a lit cigarette as this would have been disproportional to Loh offering the accused a drink. While this may have been so in the case of a rational person in control of his faculties, the accused was intoxicated and in an aggressive mood. She was on a rampage and had by then already assaulted Khairul.

The accused was untruthful in her claim that Loh assaulted her

55 The accused was also fabricating her evidence when she claimed that Loh accused her of seducing Daniel and assaulted her. Daniel was merely a customer at the pub. There was no reason for Loh to make such an accusation. Amirul did not witness any assault by

Loh. Instead, he supported Loh's account and stated that the accused and Loh only started to tussle after the accused poked the cigarette into Loh's face.^[note: 37]

The second charge (assault on Rosa)

56 It was alleged that the accused punched Rosa on her nose. The medical report (Exhibit P5) stated that on examination, there was swelling over Rosa's nose bridge and that it was tender to palpitation.

Rosa's evidence that she was assaulted was credible and corroborated by Loh and Amirul

57 When she was assaulted, Rosa was on the phone with the police. She contemporaneously reported in the first information report (Exhibit P3) that "A lady has hit me on the nose here. Please send the police here."

58 Rosa's claim that the accused punched her in the nose was supported by Loh, who was next to Rosa.^[note: 38] Due to their close proximity, Loh could not have been mistaken as to what the accused did. Amirul also corroborated Rosa's claim that the accused had struck her face. While he stated that the accused had slapped (instead of punched) Rosa, this was not material as the thrust of his evidence was that the accused had struck Rosa's face.

The accused fabricated her evidence that Rosa assaulted her

59 The accused was untruthful when she testified that Rosa attacked her and hit her on her head, slapped her left ear and chased after her. It was clear that the accused was embellishing her evidence as these issues were never put to Rosa. Instead it was put that she hit the accused on her left shoulder, and scratched her chest and shoulders.^[note: 39] The inconsistency in the defence case showed that the accused was untruthful in her testimony. In any event, Amirul did not witness any assault on the accused by Rosa. Nor did Abd Rahman, who had arrived by that time.

Finding of guilt

60 For the reasons which appear above, I was satisfied that the prosecution had discharged its burden of proving beyond reasonable doubt that the accused had committed all three offences. She was accordingly found guilty and convicted of the three charges.

Sentence

Antecedents

61 The accused had the following antecedents for offences involving violence:-

(a) On 10 May 2010, she was sentenced to four weeks' imprisonment for voluntarily causing hurt to a public servant, punishable under section 332 of the Penal Code ("PC"). She was concurrently sentenced to one week's imprisonment for using criminal force on a public servant, punishable under s 353 of the PC.

(b) On 14 August 2018, the accused was convicted after trial on three counts of causing hurt to a public servant punishable under s 332, one count of using criminal force on a public servant punishable under s 353 and three counts under s 6(1)(a) of the Prevention of Harassment Act. Her global sentence was seven months' imprisonment.^[note: 40]

Consideration of sentence

The prescribed punishment

62 The prescribed punishment for an offence under s 324 of the PC is a term of imprisonment which may extend to seven years, or with fine, or caning or with any combination of such punishments. The prescribed punishment for an offence under s 323 of the PC is a term of imprisonment which may extend to two years, or with fine which may extend to \$5,000, or with both.

Sentencing approach

63 In sentencing the accused for the charges under s 323, the two-step sentencing process set out in *Low Song Chye v Public Prosecutor* [2019] SGHC 140 (“*Low Song Chye*”) applied. The first step would be to determine the appropriate sentencing band based on the hurt caused to the victim. The second step would be to make necessary adjustments to the indicative starting point based on its assessment of the offender’s culpability as well as other relevant factors.

64 For an offence under s 324, a three-step sentencing approach was set out in *Ng Soon Kim v Public Prosecutor* [2019] SGHC 247 (“*Ng Soon Kim*”). Firstly, the court had to consider what would be the appropriate sentence had the hurt alone been the subject of an offence under s 323. Second, the court had to consider the application of a suitable uplift, having regard to the dangerous means used. Finally, the court had to calibrate sentence having considered the particular aggravating or mitigating circumstances at play.^[note: 41]

Sentence for the first charge (s 324)

65 I will first deal with the s 324 offence. The prosecution had, relying on *Ng Soon Kim* (where a seven-month term of imprisonment was imposed), submitted that a sentence of eight months’ imprisonment would be appropriate. In my assessment, this was excessive. *Ng Soon Kim* did not serve as a good sentencing precedent. This case involved road rage, where the means of causing burns involved the use of an aerosol can to cause a flash fire in an enclosed space. This was far more dangerous than in the present case. The potential harm there was also much greater. The victim there suffered several superficial burns and singeing of the hair. The injury in the present case was less serious as Loh suffered a superficial 8 mm burn. The cases cited in the table of sentencing precedents tendered by the prosecution were also of little value as they pre-dated *Ng Soon Kim* and it was not clear why such sentences were passed.

66 The present case was more akin to *PP v Jumaane Soon Kai Yuan* [2019] SGDC 246 (“*Jumaane*”), which was cited by the defence. It is not known why the prosecution failed to bring this reported decision to the court’s attention or consider it in their formulation of sentence. In this case, a relatively young offender pleaded guilty to causing hurt by poking a lit cigarette against the victim’s cheek, causing the victim to suffer a superficial burn injury of 0.3 cm by 0.3 cm. The prosecution sought a sentence of four weeks’ imprisonment, which was the sentence imposed.

67 In the present case, the accused had deliberately targeted the victim’s face, which is a vulnerable part. I was of the view that had the accused been charged for an offence under s 323, the starting point would be a sentence of about three weeks’ imprisonment. This would be higher than in *Jumaane* where the court assessed the starting point to be at least two weeks’ imprisonment,^[note:42] since the burn caused in the present case was significantly larger. Considering the dangerous means used i.e. a lit cigarette, I imposed an uplift of sentence by two weeks i.e. to five weeks’ imprisonment. The next step would be to look at the mitigating and aggravating factors.

68 Several offence specific aggravating factors were present. The attacks were unprovoked. The accused was intoxicated and behaved aggressively in a public place for substantial length of time. As for offender specific factors, the accused had a poor history for offences involving violence. This was the most significant aggravating factor. Some measure of specific deterrence would be necessary. In this regard, her conviction in 2018 would be relevant, although in terms of sequence, those crimes were committed after the present offences: *Sim Yeow Seng v Public Prosecutor* [1995] 3 SLR 44. In that case, the court stated at [8]:-

... a sentencing court should have regard to all the accused’s antecedents up to the moment of sentencing because these antecedents reveal his character, his attitudes and likelihood of rehabilitation. So long as previous convictions are shown to exist, therefore, it does not matter whether they were in respect of offences committed before or subsequent to the offence for which the court is considering sentence.

69 No significant mitigating factors were raised by the defence. The accused showed no remorse and continued to cast blame on the victims. It was contended that the accused was not the only blameworthy individual, she was outnumbered three-to-one and that she made the first call to the police. In my findings, the accused was the one who instigated all three events that night and her claim that she was attacked was a fabrication.

70 The defence tendered a psychiatric report from the Winslow Clinic to show that the accused suffers from Attention Deficit Hyperactivity Disorder (ADHD), Obsessive-Compulsive Disorder (OCD) and Cluster B Personality Disorder. This report shed no light on why the accused committed the offences, since she continued to deny her guilt. There was nothing to indicate that her mental illness contributed to the commission of the offences.

71 Having considered the aggravating and mitigating factors, in particular her poor criminal record, I calibrated sentence upwards by five weeks so that the accused would serve ten weeks' imprisonment for the offence under s 324.

Sentences for second and third charges (s323)

72 It was not in dispute that the harm caused in the s 323 offences was low. The indicative sentencing range under *Low Song Chye* would be a fine or a short custodial term of up to four weeks for a first-time offender who pleaded guilty. Based on the injuries suffered, I was of the view that at most, the indicative starting point for a first offender who pleaded guilty would be a high fine.

73 The aggravating and mitigating factors for the s 324 charge would also apply. In view of the aggravating factors, in particular to the accused's previous convictions involving violence, the custodial threshold had been crossed. I was of the view that a short custodial sentence would be appropriate and imposed a sentence of two weeks' imprisonment per charge.

74 I ordered the sentences in the s 324 charge (first charge) and the s 323 charge involving Rosa (second charge) to run consecutively, so that the accused would serve a total of 12 weeks' imprisonment. The aggregate sentence imposed was proportional to the offences committed and was neither manifestly excessive nor inadequate.

[note: 1]NE day 1, pages 12-14.

[note: 2]NE day 1, page 14, lines 20-32.

[note: 3]NE day 1, page 17, lines 1-15; page 19, lines 3-11.

[note: 4]NE day 1, page 17, lines 28-29; page 18, lines 2-4.

[note: 5]NE day 1, page 19 line 15 to page 20 line 27.

[note: 6]NE day 1, page 20, lines 8-13; page 21, lines 3-4.

[note: 7]NE day 2, page 3 line 30 to page 6 line 7.

[note: 8]NE day 2, page 6 line 9 to page 7 line 17.

[note: 9]NE day 2, page 7 line 17 to page 10 line 8.

[note: 10]NE day 2, page 10 line 11 to page 12 line 9.

[note: 11]NE day 2, page 49 line 21 to page 52 line 22.

[note: 12]NE day 2, pages 53 to 55.

[note: 13]NE day 3, page 42 line 9 to page 44 line 13.

[note: 14]NE day 3, page 44 line 16 to page 46 line 1.

[note: 15] NE day 3, page 48 line 4 to page 49 line 30.

[note: 16] NE day 2, page 73 line 21 to page 76 line 20.

[note: 17] NE day 2, page 77 line 15 to page 79 line 16.

[note: 18] NE day 2, pages 79 to 81.

[note: 19] NE day 4, page 16 line 8 to page 17 line 12.

[note: 20] NE day 4, page 17, lines 8-30.

[note: 21] NE day 4, page 18 line 9 to page 19 line 3.

[note: 22] NE day 4, page 20 line 13 to page 21 line 22.

[note: 23] NE day 4, page 21 line 31 to page 22 line 23.

[note: 24] NE day 3, page 24, lines 1-19.

[note: 25] NE day 4, page 71, lines 11-30.

[note: 26] NE day 4, page 42, lines 14-21.

[note: 27] NE day 2, page 79, lines 14-18.

[note: 28] NE day 3, page 42, lines 9-28.

[note: 29] NE day 2, page 5 line 1 to page 6 line 7.

[note: 30] NE day 1, page 27 line 15 to page 28 line 13.

[note: 31] NE day 4, page 17, lines 14-15.

[note: 32] Defence Closing Submissions at [155]-[157].

[note: 33] Defence closing submissions at [178]-[181].

[note: 34] NE day 4, page 18, lines 19-20; page 46, lines 7-10.

[note: 35] NE day 3, page 62, lines 1-21.

[note: 36] NE day 4, page 38, lines 12-14.

[note: 37] NE day 3, page 44, lines 16-20; page 65, lines 2-4.

[note: 38] NE day 2, page 11, lines 4-30.

[note: 39] NE day 2, page 64, lines 20-31.

[note: 40] NE, 6 October 2020, page 11.

[note: 41] *Ng Soon Kim* at [12].

[note: 42] *Jumaane* at [36].

Copyright © 2021 LawNet, a service provided by
the Singapore Academy of Law. All rights reserved.