Public Prosecutor *v* Lim Choon Teck
[2015] SGHC 265

Case Number	: Magistrate's Appeal No 9149 of 2015
Decision Date	: 14 October 2015
Tribunal/Court	: High Court
Coram	: Chan Seng Onn J
Counsel Name(s)	: Prem Raj Prabakaran and Tan Ee Kuan (Attorney-General's Chambers) for the appellant; The respondent in person.
Parties	: Public Prosecutor — Lim Choon Teck

Criminal Law – Offences – Hurt

Criminal Procedure and Sentencing – Sentencing – Appeals

14 October 2015

Chan Seng Onn J:

Introduction

1 The Public Prosecutor ("Prosecution") brought the present appeal on the ground that the sentence imposed on the respondent, Lim Choon Teck, was manifestly excessive. I believe that this is the first time the Prosecution has appealed against a sentence on this ground.

2 The respondent pleaded guilty and was sentenced to eight weeks' imprisonment for one charge under s 336(*a*) of the Penal Code (Cap 224, 2008 Rev Ed) ("the Penal Code") on 7 September 2015. His sentence was backdated to the date of his arrest, *viz*, 1 September 2015. I heard the appeal on an expedited basis on 18 September 2015 and reduced the respondent's sentence to three weeks' imprisonment. I now set out my grounds of decision.

Background facts

3 The respondent is a 35-year-old Singaporean male. On 17 May 2015 at or about 7.23pm, the respondent collided into a 69-year-old woman ("the victim") when he was cycling on his non-motorised bicycle along a narrow pavement within a bus stop at Ang Mo Kio Avenue 8. The respondent was cycling at an "unsafe speed [and] could not stop his bicycle" [note: 1] so as to avoid the victim who was walking with her husband towards the bus stop from a sheltered walkway. Notably, the respondent's view of pedestrians approaching the bus stop from the walkway was blocked by a board that was present at the bus stop. The victim landed on her outstretched right arm, suffering fractures to her right upper arm and wrist.

4 The respondent stopped his bicycle after he collided into the victim. At the request of the victim's husband, the respondent handed over his identification card to the victim's husband for him to record the particulars of the respondent; however, before the victim's husband could record "all of his details", [note: 2] the respondent took back his identification card and sped off on his bicycle. The victim was then conveyed by ambulance to the Khoo Teck Puat Hospital. In the present appeal, Mr

Prem Raj Prabakaran ("the DPP") submitted on behalf of the Prosecution. The DPP informed the Court that the respondent was located by the police based on the particulars that the victim's husband had managed to take down.

5 The respondent was initially charged for causing grievous hurt to the victim by doing an act so rashly as to endanger human life or the personal safety of others under s 338(*a*) of the Penal Code. Pursuant to s 320(*g*) of the Penal Code, a "fracture or dislocation of a bone" would amount to "grievous hurt" within the meaning of s 338(*a*) of the Penal Code.

6 As noted at [2] above, the Prosecution decided to proceed instead on a reduced charge under s 336(*a*) of the Penal Code which provides as follows:

> **Punishment for act which endangers life or the personal safety of others**
>
> 336. Whoever does any act so rashly or negligently as to endanger human life or the personal safety of others, shall be punished —
>
> (a) in the case of a rash act, with imprisonment for a term which may extend to 6 months, or with fine which may extend to $2,500, or with both; or
>
> …

7 I pause to set out the charge to which the respondent pleaded guilty to and was convicted and sentenced on ("the Charge"):

> You … are charged that you, on 17 May 2015, at or about 7.23 p.m., in the vicinity of bus stop 54321, located along Ang Mo Kio Avenue 8, near Block 354 Ang Mo Kio Street 32, in Singapore, *did an act so rashly as to endanger the personal safety of others*, to wit, by cycling on the pavement near the said bus stop at an unsafe speed, when your view of pedestrians approaching the bus stop from the walkway connecting the bus stop and Block 354 was obscured, resulting in a collision with [the victim], which caused the said [victim] to sustain an oblique fracture of the neck of right humerus, and you have thereby committed an offence punishable under section 336(a) of the [Penal Code] .
>
> [emphasis added]

8 There are two limbs to an offence under s 336(*a*) of the Penal Code. The offender may be charged for doing a rash act so as to (i) endanger human life ("Endangering Life Limb"); or (ii) the personal safety of others ("Personal Safety Limb"). The limb under which the offender was charged and convicted on is relevant towards determining where along the sentencing spectrum the offender should be placed in relation to an offence under s 336(a) of the Penal Code. In the present case, the Charge states that the respondent did an act "*so rashly as to endanger the personal safety of others*".

9 Before I discuss the substance of the present appeal, I make a few observations:

(a) The speed at which the respondent was cycling prior to the collision was not specified. Nevertheless, the respondent admitted without qualification to the Statement of Facts ("SOF") that he was cycling at an "unsafe speed".

(b) While the SOF seems to suggest, at first blush, that the board at the bus stop blocked the

respondent's view by reason of being positioned perpendicular to the direction of his motion, I note that the photographs of the bus stop and the board adduced at the hearing of the appeal by the DPP without objections from the respondent showed that the board was, in reality, positioned to the right hand side of the respondent and parallel to the direction of his motion. While the board might not have blocked the respondent's view of the pavement ahead, it blocked his view of pedestrians approaching the pavement from the sheltered walkway.

The decision below

10 At the hearing below, the Prosecution urged the court to impose "a short custodial sentence of least a two weeks' [imprisonment]" [note: 3] on the respondent. The Prosecution argued that a custodial sentence was warranted in the light of the following aggravating factors:

(a) the respondent's riding of his bicycle on the pavement was itself a breach of r 28(1) of the Road Traffic Rules (Cap 276, R20, 1999 Rev Ed) ("the RTR");

(b) the respondent's riding of his bicycle at an "unsafe speed" so near the bus stop was especially dangerous as the respondent's view of approaching pedestrians was obscured;

(c) the collision between the respondent's bicycle and the victim caused her to sustain "grievous hurt", in the form of fractures; and

(d) although the respondent gave some of his particulars to the victim's husband after the collision, he did not assist the victim or wait for an ambulance.

11 The District Judge ("DJ") sentenced the respondent to eight weeks' imprisonment. The DJ released her grounds of decision on 17 September 2015 (see *Public Prosecutor v Lim Choon Teck* [2015] SGMC 30 ("the DJ's GD")). The pertinent parts of the DJ's GD are reproduced below:

15 I would have viewed it differently if the Accused had remained with the victim and [her husband] until the police or ambulance arrived. This incident occurred at night and the victim and her husband were elderly persons. I believe it would have afforded them some measures [*sic*] of security and comfort if the Accused had remained with them instead of speeding off. He callously sped off to avoid the consequences of his rash act and abandoned the elderly and vulnerable couple at night to cope with the aftermath of his rash act. This showed his lack of remorse. It would appear that the Accused did not extend any apologies or offers of compensation to the Victim, thereby reinforcing my belief that he lacked remorse.

…

17 In my views [*sic*], this incident is akin to a "hit and run" road traffic accident. Precedent cases show that the sentences for "hit and run" offences under section 84(1) of the Road Traffic Act ranged from 2 weeks to 3 months' imprisonment. Another consideration was that a bicycle, unlike a motor vehicle, had no registration number which would enable the police to trace the rider. I would envisage that in this case, time and efforts [*sic*] were expended to trace and locate the Accused. And, unlike motor vehicles, there is no insurance where a person injured by a cyclist could seek to recover damages. It is extremely unlikely that the Victim in this case would be compensated at all.

18 The sentencing norm for "rash acts" under section 336(a) of the Penal Code ranged from 6 weeks to 10 weeks' imprisonment. "Killer litter" cases are where the offenders threw items from

their high rise flats to the ground and they were punished under section 336(a) of the Penal Code (Cap 224). … I felt that the Accused who intentionally broke road traffic rules by cycling on and through the pavement to the bus stop, in an unsafe manner and injuring the elderly victim, cannot be treated more leniently.

19 In the ultimate [*sic*], I decided that there was a need for general and specific deterrence for offences committed in similar environment and situation. I felt that it should be a custodial term that would deter the Accused and cyclists from cycling on pavements and pedestrians' pathways in such manner as to endanger the safety of other persons on the pavements. As stated in preceding paragraphs, the chances of a cyclist 'escaping' apprehension is much higher than a driver of a motor vehicle while the chances of an injured getting compensation from a cyclist is negligible. Cyclists know the risks against them are very low. It can be said that generally they suffer no consequences when they cycle on pavements in unsafe manner. Hence, I felt that the punishment ought to be more severe to deter cyclists from such irresponsible conduct, especially when they had injured innocent rightful users of the pavement or pathway.

Prosecution's submissions on appeal

12 The Prosecution submitted that the eight weeks' imprisonment, which was about one-third of the maximum sentence for an offence under s 336(*a*) of the Penal Code, was manifestly excessive given the respondent's culpability and the fact that he pleaded guilty to the reduced charge at the first reasonable opportunity. The Prosecution submitted that the respondent's sentence should be "reduced to a term of between [two] to [four] weeks' imprisonment." [note: 4] In this regard, the Prosecution submitted that the DJ erred, *inter alia*, in meting out a sentence of eight weeks' imprisonment by:

(a) relying on specific deterrence as a sentencing consideration;

(b) comparing the respondent's offence to "killer litter" and "hit-and-run" cases;

(c) placing excessive weight on the respondent's lack of remorse; and

(d) relying on entirely irrelevant considerations.

My Decision

The legal principles relevant to sentencing an offender for "rash cycling"

13 The starting point of this analysis is to appreciate that an offence under s 336(*a*) of the Penal Code may attract a fine which may extend to $2,500, a custodial sentence which may extend to six months, or both.

14 The plain wording of s 336(*a*) of the Penal Code, like other offences in the Penal Code, does not state explicitly the threshold that has to be crossed for the imposition of a custodial sentence ("the custodial threshold"). Given the insignificant number of prosecutions under s 336(*a*) of the Penal Code (other than for "killer litter" cases), it is difficult to obtain guidance or deduce from precedent cases the relevant significant considerations that will determine when the custodial threshold is crossed for an offence under s 336(*a*) of the Penal Code.

15 Given the high incidence of cyclists riding their bicycles on pavements meant for pedestrians, there is an overwhelming need for general deterrence in cases of "rash cycling" on pavements that

endangers human life or the personal safety of others (and the consequent need for a deterrent sentence to be imposed). The general deterrence signalled in this case may to some extent also be applicable to those who use roller blades, small scooters, skate boards and other personal mobility devices to travel at *high speeds* on pavements in rash disregard of the presence of pedestrians. This is all the more so, when they (including cyclists) are using mechanically powered versions, which enable them to travel at even higher speeds. [note: 5] Increasingly, we are seeing more of these personal mobility devices being used on pedestrian pavements. This is causing much public concern.

16 Having regard to the need to educate and deter potential offenders and prevent such rash cycling offences from becoming prevalent, and in order to enhance pedestrian safety on pavements, I am of the view that a fine that is close to the upper limit of $2,500 or a short custodial sentence (under one week) would be an appropriate starting point for an offence under s 336(*a*) of the Penal Code where a cyclist on a non-motorised bicycle is convicted for "rash cycling", *ie*, where the cyclist is involved in rash riding that endangers the life or personal safety of a pedestrian. This sentence will then be calibrated upwards to take into account the specific limb of s 336(*a*) under which the accused is charged and convicted on, the type of bicycle, the degree of rashness and the extent of personal injury caused if any. Before I elaborate, I must stress that this starting point may well be calibrated upwards if it is demonstrated to have no deterrent effect. As this appears to be the first case of this nature, it may well be inappropriate to start off by immediately setting a very heavy deterrent sentence of long imprisonment as a benchmark and make an example of the respondent in the process. It would be prudent to take measured steps and watch how it pans out.

A custodial sentence is generally warranted in cases involving "rash cycling" on pavements

17 The situations where the sentencing principle of general deterrence are engaged have been identified by the High Court in *Public Prosecutor v Law Aik Meng* [2007] 2 SLR(R) 814 ("*PP v Law Aik Meng*") (at [24]-[25]). A summary of these circumstances are as follows:

(a) Offences against or relating to public institutions, such as the courts, the police and the civil service;

(b) Offences against vulnerable victims;

(c) Offences involving professional or corporate integrity or abuse of authority;

(d) Offences affecting public safety, public health, public services, public or widely used facilities or public security;

(e) Offences affecting the delivery of financial services and/or the integrity of the economic infrastructure;

(f) Offences involving community and/or race relations;

(g) Offences that are prevalent;

(h) Group/syndicate offences;

(i) Offences that lead to public disquiet;

(j) Offences that are difficult to detect and/or apprehend; and

(k) Offences affecting several victims.

18 As noted in *PP v Law Aik Meng* (at [26]), the above circumstances are not collectively exhaustive. Neither can they be said to operate in a mutually exclusive manner both *inter se* and in relation to an offence. Often, some of the factors do overlap and a particular offence may engage a number of the above factors.

19 A case where a cyclist rides his bicycle in a rash manner on a pavement thereby endangering the life or the personal safety of pedestrians engages the following factors that demand that a deterrent sentence be imposed:

(a) the offence is prevalent;

(b) the offence affects public safety; and

(c) the offence is difficult to detect and/or the offender is difficult to apprehend.

20 As noted in Parliament, the share of cyclists amongst commuters has doubled from 1% to 2% between 2011 and 2013. What has also seen a correlational increase is the number of summonses issued to errant cyclists who have been cycling on pavements. The number of summonses issued to errant cyclists has grown at a compound annual growth rate ("CAGR") of about 21% for the period from 2009 to 2013 [note: 6] and 1,455 summonses were issued in 2013 alone. This trend reveals that the number of cyclists taking to pavements has steadily increased. The CAGR is probably more instructive than the actual number of summonses issued because of the difficulty in enforcing the offence due to the human resource intensity that widespread enforcement demands.

21 In addition, the Prosecution referred to an article in a local newspaper and pointed out that an operation by the Traffic Police at a local neighbourhood resulted in at least 100 cyclists being caught within an hour for cycling along pavements. This evidence when viewed with the CAGR and actual number of summonses issued demonstrates that (i) the offence of cycling on the pavement has indeed become prevalent in Singapore; and (ii) many offenders escape penal sanctions because their transgression of the law is not detected.

22 Apart from the fact that cycling on pavements at unsafe speeds may potentially endanger the life or the personal safety of pedestrians (amounting to offence(s) under the Penal Code), I note that it is also in breach of the following Rules:

(a) rule 28(1) of the RTR; and

(b) rule 29 of the Highway Code (Cap 276, R 11, 1990 Rev Ed).

23 Additionally, cycling on pavements may also breach the by-laws enacted by the relevant Town Council. In the present case, s 10(*b*) of the Town Council of Ang Mo Kio (Common Property and Open Spaces) By-laws 2011 was breached by the respondent when he was cycling on the pavement.

24 I further note that the Parliamentary debates on 11 March 2015 highlighted the need for "urgent attention" to make "pedestrian paths safer for all users" in the face of cyclists taking to the pavements. [note: 7] The tenor of the Parliamentary debate also urged deterrence and greater enforcement *vis-à-vis* errant cyclists who ride on pavements unlawfully given both the prevalence of the offence and the danger they pose to pedestrians. The threat to the safety of pedestrians imposed by cyclists cycling on pavements is a real one because, as highlighted by the Prosecution,

personal mobility devices such as bicycles can travel at a speed that is five times faster than the typical person walking on a pavement. When travelling at such speeds, the cyclist may lose control of the bicycle thereby causing danger to pedestrians. As pedestrians often do not walk predictably in a straight line or at a constant speed along a pavement, cyclists may not be able to avoid colliding into pedestrians who move suddenly and unexpectedly by making a left, right or "U" turn or pedestrians who suddenly stop moving. Unless a cyclist slows down very considerably as he approaches pedestrians, it may be difficult to avoid a collision especially when a number of pedestrians are present at the same time walking along a narrow pavement in directions which are largely unpredictable. Furthermore, pedestrians may not look left and right before entering or crossing a pavement as they normally do when they step on to or cross a road. Pedestrians may step on to a pavement from a blind spot without watching out for on-coming cyclists who are not supposed to be cycling on pavements. These factors significantly increase the risk of pedestrians being injured by cyclists who are riding their bicycles unlawfully on pavements. At bus stop shelters erected along pavements, bus commuters congregate to wait for buses. When buses arrive, bus commuters will be busy alighting and disembarking from the buses. It is therefore reckless for a cyclist to simply cycle through bus stop shelters thinking and hoping that he will be able to avoid colliding into bus commuters. Accordingly, general deterrence should feature strongly in sentences meted out so as to reduce "rash cycling" on pavements.

25 Lastly, as rightly noted by the DJ at [17] of the DJ's GD, the chances of apprehending a cyclist are lower than that of a motor vehicle as "*a bicycle, unlike a motor vehicle, [has] no registration number which would enable the police to trace the rider*". This is another factor that points towards imposing a deterrent sentence so as to reduce future incidences of "rash cycling".

26 Therefore, as evinced by the above analysis, the factors that call for a deterrent sentence in relation to "rash cycling" on a pavement that endangers the life or the personal safety of a pedestrian are overwhelming. A deterrent sentence may take the form of a custodial sentence or "a fine if it is high enough to have a deterrent effect" (see *Public Prosecutor v Cheong Hock Lai* [2004] 3 SLR(R) 203 at [42]). I am of the view that the need for a deterrent sentence in relation to "rash cycling" means that the custodial threshold for s 336(*a*) of the Penal Code will be crossed in *many cases*, where the "clang of the prison gates" awaits such offenders. As such a cyclist will, as a starting point, face a hefty fine that is close to the upper limit of $2,500 or a short custodial sentence (below one week) if he is convicted under s 336(*a*) of the Penal Code for riding so rashly as to endanger human life or the personal safety of others. This is to ensure there is a sufficient degree of deterrence even though the offence is the least severe in the Penal Code in relation to a rash act. A fine that is close to the upper limit should generally be reserved for cases where no injuries or only relatively minor injuries are suffered by the victim and the offender pleads guilty at the first reasonable opportunity. I pause to note that the victim in the present case suffered fractures (which fall within the definition of "grievous hurt" in s 320(*g*) of the Penal Code). I therefore agree with the Prosecution and the DJ that the custodial threshold has been clearly crossed in the present case.

The relevant factors in calibrating the length of the custodial sentence for "rash cycling" on pavements

27 When one takes the short custodial sentence to be the starting point, the court will have to place the individual offender within the sentencing spectrum of s 336(*a*) of the Penal Code. In relation to custodial sentences, the court may under s 336(*a*) of the Penal Code impose a short custodial sentence of, for example, one week all the way to a maximum of six months' imprisonment.

28 Three factors primarily determine where along the sentencing spectrum the offender should be placed, *viz*, the degree of rashness, the injury suffered by the victim and whether the offender pleads

guilty at the first reasonable opportunity. Once again, I note that these factors are not exhaustive.

29 As noted at [8] above, the relevant limb of s 336(*a*) under which the offender is charged and convicted on, *viz*, whether he is charged and convicted for doing a rash act under the (i) Endangering Life Limb; or (ii) Personal Safety Limb, is a relevant consideration in sentencing. However, the significance of this distinction is considered under the analysis of the first factor cited at [28] above, *viz*, the degree of rashness. At the end of the day, the distinction between the Personal Safety Limb and the Endangering Life Limb in the context of "rash cycling" will turn on, *inter alia*, (a) the type, size and weight of the personal mobility device used; (b) the actual speed of travel at the material time; and (c) the pedestrian density on the pavement at the time of the offence. Suffice to say for present purposes, riding at an "unsafe speed" would normally endanger personal safety while riding at a "dangerously high speed" would likely endanger human life. Naturally, when an offender is charged under the Personal Safety Limb as opposed to the Endangering Life Limb, it is an indication that his rashness (although proven beyond reasonable doubt for the purposes of conviction) falls at the lower end of the spectrum in relation to an offence under s 336(*a*) of the Penal Code. Therefore, correspondingly, his sentence would (in the absence of other aggravating factors) likely fall at the lower end of the sentencing spectrum of s 336(*a*) of the Penal Code. I will return to this point when discussing the degree of rashness in relation to the present factual matrix.

30 In relation to the degree of rashness, it is useful to set out the legal definition of rashness. As stated by Sundaresh Menon CJ in *Public Prosecutor v Hue An Li* [2014] 4 SLR 661("*PP v Hue An Li*") at [45], advertence to risk will be the essential element of rashness. The element of rashness is satisfied when the offender is actually advertent to the potential risks which may arise from his conduct, but proceeds anyway despite such advertence. This point is consistent with the following definition of rashness in the decision of the Indian Supreme Court in *Balchandra Waman Pathe v The State of Maharashtra* (1967) 71 Bombay LR 684 (SC), which was accepted by the High Court in *Public Prosecutor v Teo Poh Leng* [1991] 2 SLR(R) 541 at [7] and *Public Prosecutor v Poh Teck Huat* [2003] 2 SLR(R) 299 at [17]:

> … A culpable rashness is acting with the consciousness that the mischievous and illegal consequences may follow, but with the hope that they will not, and often with the belief that the actor has taken sufficient precaution to prevent their happening. The imputability arises from acting despite the consciousness. …

31 In the context of "rash cycling", the degree of rashness is largely a derivative of (a) the type, size and weight of the personal mobility device used; (b) the actual speed of travel at the material time; and (c) the pedestrian density on the pavement at the time of the offence, because these factors go towards the degree of consciousness that an actor has in relation to the fact that "mischievous and illegal consequences may follow" from his actions. Generally, the bigger and heavier the personal mobility device, the narrower the pavement, the higher the speed of travel, the lesser the visibility along the pavement and the higher the pedestrian density at the material time of the offence, the greater is the degree of rashness imputed to the offender. The higher the degree of rashness, the longer will be the length of the custodial sentence.

32 For example, when a rider is using a motorised bicycle on a pavement as opposed to a regular bicycle, he can be said to display a higher degree of rashness as the potential risks of endangering human life and safety are magnified. Motorised bicycles are capable of a higher average speed which results in a greater inability to take evasive action on a pavement and a greater amount of physical impact on the victim in the case of a collision, the latter of which is due both to the likely higher speed of collision and the fact that the motorised bicycle is also heavier than a non-motorised bicycle. Consequently, such a rider would have acted with a greater degree of rashness because he

would have been highly conscious of the fact that extremely serious "mischievous and illegal consequences may follow" from his actions.

33 The next factor that affects the length of the custodial sentence is the extent of the injury or harm suffered by the victim. However, there remains a question of whether the court is entitled to consider the full extent of the injury suffered by the victim. As noted by Sundaresh Menon CJ in *PP v Hue An Li* at [68], this requires the court to select which of the following principles gains ascendancy as regards the specific offence in question:

(a) no man should be held accountable for that which is beyond his control ("the control principle"); and

(b) moral and legal assessments often depend on factors that are beyond the actor's control ("the outcome materiality principle").

34 In this regard, it is apposite to reproduce in full the following instructive observations in *PP v Hue An Li*:

> 68 The question of whether a sentencing court can take into account the full extent of the harm caused by a particular criminal act can be a difficult philosophical issue. It is a cardinal principle of criminal law that the punishment must be proportionate to the crime (see, *eg*, *Mohamed Shouffee bin Adam v PP* [2014] 2 SLR 998 at [47] and *Muhammad Saiful bin Ismail v PP* [2014] 2 SLR 1028 at [21]). Two irreconcilable fundamental principles underlie the notion of proportionality. The first is the principle that no man should be held accountable for that which is beyond his control ("the control principle"); the second is the brute principle that moral and legal assessments often depend on factors that are beyond the actor's control ("the outcome materiality principle").
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> 69 The control principle is but a restatement of the intuitive moral sense that people should not be morally assessed for what is not their fault. Common is the refrain that one cannot be blamed for being late for work because of an unforeseen traffic jam. Specific illustrations of the control principle are legion. Chapter IV of the Penal Code lists certain general exceptions which act as complete defences – for instance, unsound mind (see s 84) and, in certain circumstances, duress (see s 94). The common thread between these two general exceptions is a lack of control on the part of the offender. Where an offender acts in a particular way because of the unsoundness of his mind, the law takes cognisance of the fact that he cannot help but be of unsound mind; similarly, when he acts under duress, the law recognises that he is not acting of his own free will. We absolve such offenders of criminal responsibility, either wholly or partially, because they were not in control of their actions at the material time.
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> 70 This must be juxtaposed against the intuitive moral sense that outcomes do matter. There are many examples of outcomes featuring significantly in criminal law. For instance, the line between attempted murder and murder is a fine one, and details like whether the victim was wearing a bullet-proof vest at the material time or whether a bird flew into the path of the bullet can result in dramatically different outcomes.

35 The court in *PP v Hue An Li* ultimately decided (at [71]) that the outcome materiality principle trumps the control principle in the context of criminal negligence. In the present case, I am of the view that the outcome materiality principle similarly trumps the control principle in the context of criminal rashness.

36 Like criminal negligence (see *PP v Hue An Li* at [71]), I note that the provisions in the Penal Code that sanction against rash conduct have higher prescribed maximum punishments as the gravity of the bodily harm inflicted increases. The provisions of the Penal Code are therefore predicated on outcome materiality. I set out the maximum custodial sentences for the rashness limbs of ss 336, 337, 338 and 304 of the Penal Code in the table below in support of this point:

Section	Outcome/Injury	Maximum custodial sentence
336(a)	Endangering life or personal safety by a rash act	Six months' imprisonment
337(a)	Causing hurt by a rash act	One year imprisonment
338(a)	Causing grievous hurt by a rash act	Four years' imprisonment
304A(a)	Causing death by a rash act	Five years' imprisonment

37 It is therefore clear that the intention of Parliament is for the court to take into account the full extent of the harm suffered by the victim (in accordance with the outcome materiality principle) in exercising its sentencing discretion in relation to criminal rashness.

38 Additionally, the outcome materiality principle gains ascendancy over the control principle in criminal rashness because "there is no exact correspondence between legal and moral assessment". Lastly, the outcome materiality principle should prevail over the control principle because a putative offender for any of the offences noted in the table at [36] above takes the benefit of fortuity where adverse consequences do not eventuate from his rash conduct; such an offender should not be able to enjoy the upside without the downside. Both these points have been elaborated on in *PP v Hue An Li* in the following manner and apply to criminal rashness with equal force:

> 73 The second, and perhaps more fundamental, reason why we are of the view that the outcome materiality principle should trump the control principle where criminal negligence is concerned is that there is no exact correspondence between legal and moral assessment. The law does take into account considerations that go beyond moral assessment. It is well settled that the four principles of deterrence, retribution, prevention and rehabilitation underlie sentencing (see, *eg*, *PP v Law Aik Meng* [2007] 2 SLR(R) 814 at [17]). In particular, general deterrence, prevention and rehabilitation do not quite equate with a moral assessment of the offender. General deterrence has less to do with the moral condemnation of individual offenders, and more to do with advancing the public interest of reducing crime by deterring the general public from similarly offending. Prevention is concerned with incapacitating offenders who pose a danger to society at large. Rehabilitation, where it is a dominant consideration, is aimed at turning offenders away from a life of crime by altering their values.
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> 74 The third and last reason why we are of the view that the outcome materiality principle should prevail over the control principle in the context of criminal negligence is that a countervailing species of legal luck can operate in favour of a putative offender. Take, for instance, two drivers who briefly fall asleep while driving straight at the same speed along the same stretch of road. One driver wakes up before any harm is caused. The other driver collides into and kills a jaywalking pedestrian. It could be said that as a matter of moral assessment, both drivers are equally culpable. However, as a matter of practical fact, the former will not suffer any legal repercussions because no detectable harm has occurred. Putative offenders take the benefit of legal luck operating in their favour if adverse consequences do not eventuate; it is only

fair that an offender should not be heard to raise the control principle as a shield when a harmful outcome does eventuate.

75 It follows that the thin skull rule cannot be ignored in the context of criminal negligence. The outcome materiality principle trumps the control principle, at least in the context of cases involving criminal negligence. How moral luck should be resolved in other contexts is something that we leave to be explored if and when that issue arises.

The sentence of eight weeks' imprisonment is manifestly excessive

39 I would start by discussing the material points on which the DJ erred. I would then review the relevant precedents and the factors noted at [28] above.

The DJ placed weight on irrelevant considerations

40 As noted at [12] above, the Prosecution submitted that the DJ erred, *inter alia*, in the following respects in meting out a sentence of eight weeks' imprisonment to the respondent:

(a) relying on specific deterrence as a sentencing consideration;

(b) comparing the respondent's offence to "killer litter" and "hit-and-run" cases;

(c) placing excessive weight on the respondent's lack of remorse; and

(d) relying on entirely irrelevant considerations.

41 There are, broadly speaking, two circumstances in which specific deterrence becomes a relevant consideration in sentencing. The first circumstance is where the offence is premeditated and the second is where the offender is a persistent offender. This point has been made in *Public Prosecutor v Tan Fook Sum* [1999] 1 SLR(R) 1022 at [18] in the following manner:

> ***Deterrence***
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> There are two aspects to this: deterrence of the offender and deterrence of likely offenders, corresponding to specific and general deterrence respectively. *Specific deterrence will be appropriate where the offender is a persistent offender or where the crime is premeditated*, though its value in the case of a recidivist offender may be questionable. General deterrence aims at educating and deterring other like-minded members of the general public (*Meeran bin Mydin v PP* [1998] 1 SLR(R) 522 at [7]–[9]) by making an example of the particular offender. The foremost significance of the role of deterrence, both specific and general, in crime control in recent years, not least because of the established correlation between the sentences imposed by the courts and crime rates, need hardly be mentioned.
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> [emphasis added]

42 In relation to premeditation of an offence, the court in *PP v Hue An Li* highlighted the following submissions of the *amicus curiae* (at [25]):

> The *amicus curiae* observed that premeditation and malice were, by definition, absent in s 304A cases, and therefore, considerations of prevention and specific deterrence were "naturally of limited relevance" for sentencing purposes in these cases. …

43 As noted at [36] above, s 304A of the Penal Code deals with situations where death is caused by a rash or negligent act. The court in *PP v Hue An Li* did not disagree with the *amicus curiae* or the District Judge who heard the case below on this point. In my view, the submissions set out at [42] represent a sound proposition of law. As the proposition there relates to s 304A of the Penal Code, which represents the most serious of offences relating to criminal rashness and criminal negligence, it *a fortiori* applies to all offences that sanction against rashness and negligence. I make some brief comments.

44 The idea that premeditation should operate as an aggravating factor that calls for an increased sentence finds its roots in the writings of Plato, who noted in *The Dialogues* (Laws, Book IX at 867): [note: 8]

> … And we should make the penalties heavier for those who commit homicide with angry premeditation, and lighter for those who do not premeditate, but smite upon the instant. …

45 The point made by Plato on premeditation in the context of homicide has for long applied in our law as an aggravating factor across various crimes where the *mens rea* requires a finding of intention. As noted by Sundaresh Menon CJ in *Mehra Radhika v Public Prosecutor* [2015] 1 SLR 96 ("*Mehra Radhika*") at [41]:

> The law generally imposes a more severe punishment on an offender who has planned the commission of the offence with great deliberation than one who has committed the offence on a spur of the moment because the former is deemed to possess a greater commitment to the criminal enterprise than the latter. As Prof Andrew Ashworth explains in *Sentencing and Criminal Justice* at p 164:
>
> > A person who plans a crime is generally more culpable, because the offence is premeditated and the offender is therefore more fully confirmed in his criminal motivation than someone who acts on impulse, since he is more considered in his lawbreaking …

46 I note that *Mehra Radhika* also goes on to highlight the distinction between premeditation and planning at [42]-[43]. However, it is sufficient to note for present purposes that the obverse of a premeditated offence is an offence that "happens on the spur of the moment" (*Mehra Radhika* at [43]). In cases of criminal negligence and rashness, the *actual offence* occurs at the spur of moment and there is no finding of intention; thus, considerations relating to premeditation or planning are not legally relevant to these offences.

47 The second situation that calls for specific deterrence, which was highlighted in *Angliss Singapore Pte Ltd v Public Prosecutor* [2006] 4 SLR(R) 653 at [27], is where the offender displays a propensity to reoffend. In the DJ's GD at [19], it is clear that the DJ relied, *inter alia*, on specific deterrence in imposing the eight weeks' imprisonment term on the respondent. The DJ did not explicitly state that the respondent, being a cyclist, was likely to repeat his offence and therefore called for specific deterrence. But if that was what the DJ had in mind, then I would agree with the DPP that she would have been wrong to do so as there were no factors in the present case that called for specific deterrence in relation to the respondent's propensity to reoffend: the respondent had no relevant antecedents and had an otherwise clean cycling record.

48 I agree with the DPP that the analogy of the present case with "killer litter" cases as seen from the DJ's GD at [18] is not correct. The policy underlying sentencing in "killer litter" cases is that the majority of the population in Singapore live in high-rise apartments/flats and the problem of killer litter being thrown out of flat windows must be severely curtailed quickly before the problem becomes

unmanageable. Hence, a much stronger signal of abhorrence against such unacceptable anti-social behaviour must be sent by imposing a very stiff custodial sentence. This policy is not engaged in the present case. The analogy does not quite hold as cyclists do not form the majority of the population of Singapore to begin with. Further, "rash cycling" on pavements is very different from "killer litter" in many respects, including its environmental, social and safety impact on society as a whole. "Rash cycling" also does not evoke the same degree of public condemnation as that against "killer litter". Therefore, it is wrong to apply the sentencing precedents in "killer litter" cases to the present case. Nevertheless, I pause to note that the strong element of general deterrence that underpins "killer litter" offences has also resulted in a custodial sentence as the norm for a successful conviction under the "rash" limb of s 336 of the Penal Code (see *Ng So Kuen Connie v Public Prosecutor* [2003] 3 SLR(R) 178). This appears to be similar to the analysis at [16] above where I pointed out that the need for general deterrence in cases of "rash cycling" would result in a very large fine or short custodial sentence as the starting point. However, the fact that offences relating to "killer litter" and "rash cycling" both have a strong policy rationale that call for deterrent sentences does not mean that a court can indiscriminately apply the precedents developed in one sphere to the other. The fact remains that the underlying factors that demand a deterrent sentence in each case are different.

49 In the same vein, the analogy of the present case with that of a "hit-and-run" offence is also not correct for two reasons. The relevant provision for "hit-and-run" cases, *viz*, s 84(1) of the Road Traffic Act (Cap 276, 2004 Rev Ed) ("the RTA"), reads as follows:

> **Duty to stop in case of accident**
>
> 84.—(1) Where an accident occurs owing to the presence of a motor vehicle on a road and the accident results in damage or injury to any person, vehicle, structure or animal, the driver of the motor vehicle must stop the motor vehicle and the driver must do such of the following as may be applicable:
>
> > (a) the driver if requested to do so by any person at the scene of the accident having reasonable grounds for so requesting the driver's particulars, provide the driver's particulars to that person;
> >
> > (b) if no person referred to in paragraph (a) is present at the scene of the accident, the driver must take reasonable steps to inform the owner (if any) of the damaged vehicle or structure, or injured animal, of the damage or injury caused to the vehicle, structure or animal (as the case may be), and provide that owner with the driver's particulars.

50 I agree with the DPP that the DJ should not have raised s 84(1) of the RTA as it does not apply to the respondent: the respondent was not a "driver of a motor vehicle" and the collision with the victim did not "occur owing to the presence of a motor vehicle on a road". Even if I were to accept that the DJ was entitled to draw some kind of analogy to the archetypal "hit-and-run" scenario by reason of her finding of fact that the respondent rode off on his bicycle after the collision "before [the victim's husband] could take down [his] details" (see the DJ's GD at [8]), I am of the view that the DJ erred in this finding of fact as the SOF reveals that the respondent stopped his bicycle after the collision and allowed the victim's husband to take down *some* of the particulars on his identification card before taking back his identity card and riding off.

51 As the DJ wrongly concluded that the respondent rode off after the collision "before [the victim's husband] could take down [his] details", she consequently also fell into error by inferring that much time and effort was expended in locating the respondent (see the DJ's GD at [17]). As noted at [4] above, the DPP informed the Court that the Police had located the respondent based on the

particulars that were recorded by the victim's husband.

52 While the DJ placed weight on the respondent's lack of remorse, which she inferred from the fact that he rode off after the collision (which is not entirely correct), I agree with the DPP that she erred in not according any weight to the fact that the respondent pleaded guilty at the first reasonable opportunity. A timeously-effected plea of guilt may merit a sentencing discount of between a quarter to a third of what would otherwise be an appropriate sentence although this is by no means an entitlement nor a hard and fast rule (see *Tan Kay Beng v Public Prosecutor* [2006] 4 SLR(R) 10 at [36]–[37]).

53 The DJ also placed weight on two irrelevant considerations (see the DJ's GD at [17] and [19]):

(a) there being no compulsory third-party insurance coverage framework for cyclists; and

(b) the chances of an injured pedestrian getting compensation from the cyclist involved.

54 I start by noting that both the above points focus on compensation as opposed to penal sanction. The court has to be mindful of the fact that it is sentencing an offender in the exercise of its criminal jurisdiction. The above considerations on insurance and the chances of getting compensation are factors which are (at best) relevant in a civil suit and not in the present appeal.

55 Whether or not there should be a compulsory third-party insurance coverage framework for cyclists is a matter of policy that is entirely within the purview of Parliament. I note that Parliament has not implemented any such framework for cyclists. As such, I do not think that it would be appropriate to hold it against the respondent, as an aggravating factor in sentencing, that he did not purchase any third-party insurance that could have provided civil compensation to the victim in this case.

56 It is also objectionable to consider the non-payment of any financial compensation to the victim for the injury caused as an *aggravating* factor that will increase the sentence in a case where the offence does not involve financial enrichment, as the law may end up meting out harsher sentences to financially impecunious offenders. I accept that the lack of restitution is a relevant sentencing consideration (normally acting as an aggravating factor and especially when the perpetrator has ample means to make restitution), *inter alia*, when the offence results in the enrichment of the perpetrator (see for example *Goldring, Timothy Nicholas v Public Prosecutor and other appeals* [2015] SGHC 158 at [102]). In such a case, because the lack of restitution pertains to retaining the spoils of crime, it does not impinge on the underlying financial condition of the perpetrator. However, where there is compensation made to the victim in other types of crimes which do not involve financial enrichment, it would be open to the court to consider it as a *mitigating* factor or as evidence of genuine remorse.

57 I also note that the victim in this case would still be able to pursue civil remedies in tort if she wishes to seek any form of compensation from the respondent for her medical expenses, pain and suffering (if factually and legally sustainable) and any other losses. However, she would need to commence a civil suit if she is looking to seek substantial damages from the respondent. Therefore, this criminal prosecution between the State and the respondent in no sense requires the court to prejudge the outcome of any civil suit between the victim and the respondent or take heed of the lack of a civil suit to increase the sentence. As such, it is clear that the DJ fell into error by not appreciating the difference between a criminal prosecution by the Public Prosecutor in the public interest and a civil claim that the victim may bring personally.

58 I appreciate that s 359(1) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("the CPC") allows the court to make an order for payment of compensation. However, I must point out that even in such a situation, *the compensation does not form part of the punishment imposed on the offender*: see the decision of the Court of Criminal Appeal in *Public Prosecutor v Lee Meow Sim Jenny* [1993] 3 SLR(R) 369 at [28], the decision of the Court of Appeal in *ADF v Public Prosecutor and another appeal* [2010] 1 SLR 874 at [157]; and the decision of the High Court in *Soh Meiyun v Public Prosecutor* [2014] 3 SLR 299 at [56]. I make this point to highlight once again that the notion of civil compensation does not form part of the punishment nor can the likelihood of obtaining civil compensation be considered as a relevant factor in sentencing. The powers of the court under s 359(1) of the CPC are meant to merely effect a shortcut for a certain class of victims (primarily impecunious victims) to obtain a civil remedy from those offenders who clearly have the means to pay the compensation as it may be impractical to expect these victims to commence a civil suit: see *Public Prosecutor v AOB* [2011] 2 SLR 793 at [23]-[24].

A sentence of three weeks' imprisonment is appropriate in the present case

59 It bears repeating that the court has to ensure that the sentence imposed is proportionate in relation to the culpability of the offender. In this regard, I refer to *Goik Soon Guan v Public Prosecutor* [2015] 2 SLR 655 where Chao Hick Tin JA expressed as follows (at [22]):

> It is also important to bear in mind that the sentence imposed must, at the end of the day, be fair to the accused, bearing in mind all the relevant mitigating factors. The principle of proportionality "acts as a counterbalance to the principles of deterrence, retribution and prevention", in that "the sentence must be commensurate with the gravity of the offence, … the sentence must fit the crime, and … the court should not lose sight of the 'proportion which must be maintained between the offence and the penalty and the extenuating circumstances which might exist'" (see, respectively, *Muhammad Saiful bin Ismail v PP* [2014] 2 SLR 1028 at [21] and *PP v Saiful Rizam bin Assim* [2014] 2 SLR 495 at [29]).

60 After it has been determined that the custodial threshold is crossed, the starting point for "rash cycling" on a pavement prosecuted under s 336(*a*) of the Penal Code (except for exceptional cases) is a short custodial sentence. Nevertheless, the sentence that is ultimately imposed has to be calibrated to take into account the factors noted at [28] above including any relevant mitigating factors and relevant sentencing precedents.

61 In terms of the degree of rashness, the respondent had admitted to cycling at an "unsafe speed". He was also cycling on a pavement towards a bus stop where it could be expected that there would be a greater movement of pedestrians. However, I took into account the fact that his view of the victim and her husband approaching the pavement was blocked at the material time by a board at the bus stop. There was also no mention of any other persons present at the bus stop at that time in the SOF. As such, it appeared to him that the path ahead through the bus stop, was clear of pedestrians or bus commuters when he took the risk to cycle through the bus stop at an "unsafe speed" which resulted in him knocking down the victim who stepped on to the pavement at the bus stop from behind his blind spot. Had it been the case that he continued cycling at an "unsafe speed" when he could already see the victim approaching the pavement or other pedestrians or bus commuters present at the bus stop ahead of him, I would have increased the length of his custodial sentence significantly as his degree of rashness in cycling at that "unsafe speed" under those circumstances would be that much greater.

62 I also considered the fact that in the present case, the respondent was riding a non-motorised bicycle. Had he been on a motorised bicycle, I would also have likely held that his sentence should be

substantially higher than the three weeks' sentence I imposed on him. This is because an individual who uses a motorised bicycle on a pavement is likely to travel at a higher average speed and display a higher degree of advertence to the greater danger he may cause to pedestrians.

63 The point made at [61]–[62] above resonates with my earlier point at [29] above on the distinction between the Endangering Life Limb and the Personal Safety Limb. In this regard, the respondent in the present case was charged under the Personal Safety Limb, which generally attracts a lower sentence. Indeed, while the respondent in this case acted rashly, the circumstances of the case – also taking into account the fact that the Prosecution chose to charge him under the Personal Safety Limb – suggest that his rashness is of a lower order within the scheme of s 336(*a*) of the Penal Code.

64 While the victim suffered some fractures in the present case, this serious aggravating factor must be calibrated against the fact that the Prosecution has chosen to prosecute the respondent under the least serious offence amongst the offences that sanction against criminal rashness in the Penal Code (see table at [36] above) and the less serious of the two limbs under the said offence.

65 I also note that the DJ did not sufficiently consider the effect the respondent's early plea of guilt should have on the sentence. In the present case, this would have in and of itself likely resulted in a reduction of the respondent's sentence by about one-third.

66 On the whole, if one were to look at the respondent's degree of rashness and the extent of the injury caused, and counterbalance it against the fact that the Prosecution charged him for (i) the least serious of the possible offences relating to criminal rashness in the Penal Code, which carries a maximum imprisonment of only six months, and (ii) the less serious of the two limbs within that offence, and the respondent's early plea of guilt, it is clear that the respondent's sentence of eight weeks is manifestly excessive and must be adjusted downwards.

67 The Court would also have to be mindful of the need for relative parity with those convicted under s 304A(*a*) of the Penal Code, which carries a maximum imprisonment term of five years. This is because s 336(*a*) of the Penal Code represents the least serious offence for criminal rashness while, as noted, s 304A(*a*) of the Penal Code represents the most serious offence for criminal rashness. Obviously, the sentence imposed for a case under s 336(*a*) of the Penal Code should not exceed the sentence imposed for a case under s 304A(*a*) of the Penal Code if the *degree of rashness displayed by the offender* in each case falls at the same point of their respective sentencing spectrums and there are no other aggravating factors. Another way of looking at the manner of calibration would be that if the Prosecution charges an offender who has caused death by a rash act under a much reduced charge under s 336(*a*) instead of s 304(A)(*a*) of the Penal Code, with all the other facts and circumstances being identical in both cases, naturally the sentence imposed upon conviction by the court would be significantly lower than if the Prosecution had proceeded under a much more serious charge under s 304(A)(*a*) of the Penal Code. In this regard, the DPP referred me to the case of *Public Prosecutor v Nandprasad Shiwsaakar* [2014] SGDC 391 ("*PP v Nandprasad Shiwsaakar*"). In that case, the offender pleaded guilty while the trial was proceeding to a charge under s 304A(*a*) of the Penal Code. He was driving a car when he executed a right turn without giving way to the victim's motorcycle, which had the right of way. Though the offender was aware, at all times, that there was no green turning arrow in his favour, and that his view of oncoming vehicles was obscured, he made the right turn without ensuring there were no oncoming vehicles. As a result, his car collided with the victim's motorcycle. The victim in that case sustained serious injuries due to the collision and died in hospital a month later. The offender had a relevant antecedent, *viz*, he had been convicted in 2001 for drunk-driving. The offender was sentenced to: (a) six weeks' imprisonment; and (b) disqualified from holding or obtaining all classes of driving licenses for eight years.

68 In that case the court noted that the benchmark for negligent driving cases under s 304A(*b*) of the Penal Code as articulated in *PP v Hue An Li* is a custodial term of up to four weeks' imprisonment which is to be adjusted by reference to the presence of aggravating and/or mitigating factors. The court in *PP v Nandprasad Shiwsaakar* reasoned that since a rash offender was more culpable than a negligent offender, a sentence for rash driving causing death should be higher than the four weeks' imprisonment imposed in *PP v Hue An Li*. The court ultimately arrived at a sentence of six weeks' imprisonment taking into account all factors. It must be noted that the maximum term of imprisonment prescribed for a rash offence causing death under s 304A(*a*) of the Penal Code is five years.

69 This case is useful to the present analysis as the degree of rashness of the offender within the spectrum of rashness in relation to an offence under s 304A(*a*) of the Penal Code would *probably* match the respondent's degree of rashness within the spectrum of rashness in relation to s 336 of the Penal Code – in both cases the offenders proceeded even though their views were obscured. When compared with *PP v Nandprasad Shiwsaakar* (where there were other aggravating factors), the eight weeks' imprisonment imposed on the respondent is manifestly excessive and plainly lacks relative parity as can be seen in the comparison table below:

The respondent (eight weeks' imprisonment)	***PP v Nandprasad Shiwsaakar* (six weeks' imprisonment)**
Fractures to her right upper arm and wrist	Serious injuries causing death
No relevant antecedents	Convicted in 2001 for drunk-driving
Convicted of a less serious charge under s 336(a) of the Penal Code carrying a maximum term of imprisonment of six months	Convicted of a much more serious charge under s 304A(a) of the Penal Code carrying a maximum term of imprisonment of five years
Pleaded guilty at the first reasonable opportunity	Pleaded guilty while the trial was underway already.

70 I note for completeness that even in *Public Prosecutor v Palaniappan s/o Palaniappan* [2006] SGDC 284, where the accused displayed an *extremely high* degree of rashness by proceeding straight into the junction when the traffic light signal had clearly turned against him and caused the death of an oncoming motorist, the accused's sentence of six months' imprisonment was reduced to three months' imprisonment (or about 13 weeks' imprisonment) on appeal.

71 Apart from relative parity, I am also of the view that the present case may be classed together with another case prosecuted under s 336(*a*) of the Penal Code. In *Public Prosecutor v Yap Wei Wun Raymond* [2009] SGMC 12 ("*PP v Yap Wei Wun Raymond*"), the accused parked his car illegally and was seated in the front seat. The victim in that case who was a security guard asked the accused to move his car. While the accused initially complied with the request, he moved his car to another area in the vicinity and continued to park his car illegally. The victim-security guard, after another futile attempt at asking the accused to move his car, proceeded to place a wheel clamp in front of the accused's car and was squatting on the ground. The accused drove his car forward and the front wheel of the car was caught by the wheel clamp. This caused part of the wheel clamp to break off and hit the victim. The victim suffered some bruises on his right wrist and lower leg. The accused was charged under s 336(*a*) of the Penal Code and sentenced to three weeks' imprisonment. The court in arriving at the appropriate sentence considered (at [16]), *inter alia*, the accused's plea of guilt, lack of antecedents, offer of compensation and relative youth. The accused in that case was 33 years old. When comparing the present case with *PP v Yap Wei Wun Raymond*, it will be noted that while

the injuries suffered by the victim in the present case might arguably be more severe, the degree of rashness of the respondent was lower than that of the accused person in *PP v Yap Wei Wun Raymond*, as the accused there was highly advertent to the fact that mischievous or illegal consequences might almost certainly follow from him damaging the wheel clamp by driving forward, *viz*, it could cause injury to the victim-security guard whom the accused knew was still squatting beside the wheel clamp when he drove his car forward.

72 Having assessed the need for relative parity of a sentence imposed under s 336(*a*) of the Penal Code with sentences imposed under s 304A(*a*) of the Penal Code and the three weeks' imprisonment imposed in *PP v Yap Wei Wun Raymond*, I am of the view that the present case may be placed together with *PP v Yap Wei Wun Raymond* in the sentencing spectrum for s 336(*a*) of the Penal Code.

73 For all the reasons stated above, I decided to allow the Prosecution's appeal and reduced the respondent's sentence to three weeks' imprisonment. In my view, this is an appropriate sentence having regard to the nature and entire circumstances of the offence including the aggravating and mitigating factors, and the public interest that calls for general deterrence against "rash cycling" on pavements.

The Attorney-General *qua* Public Prosecutor

74 As noted at [1] above, this is the first time the Attorney-General *qua* Public Prosecutor has appealed a sentence on the ground that it is manifestly excessive.

75 Section 374(1) read with s 375(3) of the CPC allows the Public Prosecutor to appeal against a sentence imposed on an accused and s 377(1) of the CPC further provides, *inter alia*, that a person who is dissatisfied with a sentence of a trial court in a criminal case to which he is a party may appeal it on the ground that the sentence imposed is manifestly excessive or manifestly inadequate. Read cumulatively, it is clear that the Public Prosecutor is able to appeal a sentence not only on the ground that it is manifestly inadequate but also that it is manifestly excessive. In so doing, the Public Prosecutor plays a crucial role in the fair and impartial administration of criminal justice.

76 Pursuant to Article 35(8) of the Constitution of the Republic of Singapore, the Attorney-General *qua* Public Prosecutor "shall have power, exercisable at his discretion, to institute, conduct or discontinue any proceedings for any offence". The Attorney-General *qua* Public Prosecutor has a constitutional duty to exercise this discretion in good faith and to advance the public interest. This point was noted by the Court of Appeal in *Ramalingam Ravinthran v Attorney-General* [2012] 2 SLR 49 at [53] in the following manner:

> The Attorney-General is the custodian of the prosecutorial power. He uses it to enforce the criminal law not for its own sake, but for the greater good of society, *ie*, to maintain law and order as well as to uphold the rule of law. …

77 I note the following observations of Hilbery J in *R v Kenneth John Ball* (1951) 35 Cr App R 164 at 165–166:

> … The criminal law is publicly enforced, not only with the object of punishing crime, but also in the hope of preventing it. A proper sentence, passed in public, serves the public interest in two ways. It may deter others who might be tempted to try crime as seeming to offer easy money on the supposition, that if the offender is caught and brought to justice, the punishment will be negligible. Such a sentence may also deter the particular criminal from committing a crime again, or induce him to turn from a criminal to an honest life. The public interest is indeed served, and

best served, if the offender is induced to turn from criminal ways to honest living. Our law does not, therefore, fix the sentence for a particular crime, but fixes a maximum sentence and leaves it to the Court to decide what is, within that maximum, the appropriate sentence for each criminal in the particular circumstances of each case. Not only in regard to each crime, but in regard to each criminal, the Court has the right and the duty to decide whether to be lenient or severe.

[emphasis added]

78 Indeed, the public interest in the realm of criminal law and the administration of criminal justice would only be advanced if offenders are appropriately punished, *ie*, the sentences imposed on offenders are neither manifestly excessive nor manifestly inadequate. While the court has the ultimate power and responsibility of ensuring that an appropriate sentence is meted out in each case, the court, apart from certain revisionary powers, can only adjudicate an appeal that is brought before it.

79 In the present case, I note that the respondent did not have the benefit of legal advice or counsel. In bringing this appeal, the Public Prosecutor, as the guardian of the public interest, has advanced the public interest by helping to ensure that offenders are appropriately punished and the correct sentencing benchmarks are also set within the overall sentencing framework. As such, I thank the Prosecution for their detailed submissions in the present appeal which I have found to be of much assistance.

[note: 1] Statement of Facts ("SOF"), para 8.

[note: 2] SOF, para 9.

[note: 3] DJ's GD at [12] and DJ's sentencing minute sheet dated 7 September 2015.

[note: 4] Petition of Appeal dated 17 September 2015.

[note: 5] I note from the Parliamentary debates on 11 March 2015 that some illegally modified motorised bicycles can travel up to 120 kilometres per hour.

[note: 6] The number of summonses issued are as follows: 699(2009); about 800(2010); 1,238(2011); 1,290(2012); and 1,455(2013).

[note: 7] *Cycling in Singapore* and *Safe Cycling*, Singapore Parliamentary Debates, Official Report(11 March 2015) vol 94.

[note: 8] Per Benjamin Jowett's translation: *Dialogues: Translated Into English with Analyses and Introductions* (Clarendon Press, 1953).