IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 116

Magistrate's Appeal No 9351 of 2017

Between

Muhammad Khalis bin Ramlee

… *Appellant*

And

Public Prosecutor

… *Respondent*

JUDGMENT

[Criminal Law] — [Offences] — [Grievous hurt]
[Criminal Procedure and Sentencing] — [Sentencing] — [Grievous hurt]

Muhammad Khalis bin Ramlee
v
Public Prosecutor

[2018] SGHC 116

High Court — Magistrate's Appeal No 9351 of 2017
Sundaresh Menon CJ
8 March 2018

11 May 2018 Judgment reserved.

Sundaresh Menon CJ:

1 The appellant was convicted of four charges in the District Court. These comprised two charges of rioting punishable under s 147 of the Penal Code (Cap 224, 2008 Rev Ed) ("the Penal Code") ("the first rioting charge" and "the second rioting charge", collectively "the rioting charges"), one charge of voluntarily causing grievous hurt under s 325 of the Penal Code ("the grievous hurt charge"), and one charge of consumption of methamphetamine under s 8(*b*)(ii) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("the MDA") ("the drug consumption charge").

2 The charges against the appellant arose out of various events that transpired on 24 December 2015, when the appellant, together with various others, was engaged in spontaneous group fights along Circular Road at various times between 2am and 3am. More than 20 persons, including a number of victims, were involved in these fights. 18 persons, including the appellant, were

charged with various offences including rioting and voluntarily causing hurt or grievous hurt as a result of the events of that night. The rioting charges against the appellant arose from his involvement in the fights, while the grievous hurt charge was due to his punching a man, Nelson John Denley ("the deceased"), in a separate incident that took place just as the fights were simmering down. The appellant's punch caused the deceased to fall to the ground and hit his head on the kerb, which in turn led to severe head injuries and eventually to his death. The appellant's drug consumption charge arises from a urine sample that was provided to the police after his arrest, which tested positive for methamphetamine.

3 The appellant pleaded guilty to the two rioting charges and the drug consumption charge but claimed trial to the grievous hurt charge. The District Judge convicted him of all four charges. Upon conviction, the District Judge sentenced him to an aggregate sentence of ten years' imprisonment and 24 strokes of the cane. The District Judge's decision is published as *Public Prosecutor v Muhammad Khalis Bin Ramlee* [2017] SGDC 323 ("the GD"). In the present appeal, the appellant challenges the aggregate term of imprisonment to which he was sentenced, on the ground that it is manifestly excessive. He does not appeal against his conviction on the grievous hurt charge although some of his arguments on sentencing make it necessary for me to consider the correctness of that conviction. He also does not appeal against the sentence of caning that was meted out to him.

4 Although the appeal is against the aggregate sentence of imprisonment, in fact, the main issue in the appeal is the sentence of seven years' imprisonment and 12 strokes of the cane, which was meted out to him in respect of the grievous hurt charge. The appellant essentially contends that the sentence of seven years' imprisonment is manifestly excessive given that he had delivered just a single

punch to the deceased's face. He also claims that the blow he delivered had been wrongly assessed by the District Judge to be one of great force, when he had not caused any noticeable injury on the deceased's face.

5 The Prosecution, on the other hand, submits that the sentence is appropriate having regard to numerous aggravating factors which it contends apply in this case. These include the unprovoked and egregious nature of the attack, the context in which the offence was committed, this being a night of alcohol-related group violence, the appellant's lack of remorse as well as his extensive criminal record. The Prosecution does acknowledge that previous sentences imposed for the offence of voluntarily causing grievous hurt have fallen in the range between two and a half years and eight years. In relation to at least some of those cases, the present sentence might seem out of place. But the Prosecution contends that those cases have little precedential value, either because they were decided based on an earlier version of the Penal Code, under which the maximum sentence for the offence was seven years' and not ten years' imprisonment, or because they were influenced by an erroneous interpretation of the decision of the District Court in *Ho Soo Kok v Public Prosecutor* [2002] SGDC 134 ("*Ho Soo Kok*"). As a result, the Prosecution advances a sentencing framework for the offence of voluntarily causing grievous hurt under s 325 of the Penal Code that is based on the offender's culpability and the harm caused. Applying this framework, the Prosecution contends that the appellant's sentence would be seen to be entirely appropriate.

6 Having considered the arguments, I allow the appellant's appeal and substitute his sentence of seven years' imprisonment and 12 strokes of the cane for the grievous hurt charge with a sentence of four and a half years' imprisonment and eight strokes of the cane. The sentences for the grievous hurt charge and the drug consumption charge are to run consecutively, as the District

Judge ordered, yielding an aggregate sentence of seven and a half years' imprisonment and 20 strokes of the cane. I arrive at my decision for the reasons that follow.

Facts

7 I begin by briefly recounting the relevant facts. The first three charges relate to two spontaneous group fights that occurred in the early hours of 24 December 2015. The appellant and some of his friends (collectively referred to as "the offenders") had gathered at a bar named Beer Inn on Circular Road ("the Bar") for drinks. Some of the accused persons were known to be affiliated with secret societies. However, the events of that night were not related to any such affiliations. At around 2.40am, two of the offenders ("the couple"), who were in a relationship, started quarrelling outside the Bar. They were shouting at and pushing each other. Eight of the others in the group, including the appellant, accompanied the couple and tried to intervene.

The first rioting charge

8 The dispute outside the Bar attracted the attention of five onlookers in the vicinity. One of the offenders confronted two of the onlookers and demanded to know what they were looking at, and subsequently started punching and kicking them. Five other offenders joined in the attack.

9 Meanwhile, the appellant was involved in an attack against another onlooker, Akash Kukreja ("Kukreja"), who had walked over to where the couple was standing. The appellant blocked Kukreja's way and asked him what he wanted. Kukreja replied that he wanted to make sure that the girl in the couple was not hurt. The appellant then went up close to Kukreja and told him to move away, and was met by a push from Kukreja. The appellant in turn punched

Kukreja, who tried to retaliate but fell to the ground. Two other offenders joined the appellant and punched and kicked Kukreja while he was on the ground. Kukreja's companion, Charlotte Roscoe ("Roscoe"), tried to help but she was then punched and kicked by two other offenders. Two more offenders subsequently joined in punching and kicking Kukreja and Roscoe. In total, there were seven offenders, including the appellant, who attacked Kukreja and Roscoe.

10 At this point, two other onlookers, who had been drinking at a nearby bar, saw Kukreja and Roscoe being attacked and tried to intervene, but they too were assaulted. Two more offenders saw the commotion from the Bar and walked towards the attack. One of them pushed Mark Walsh ("Walsh"), who was the manager of a nearby bar and who had approached the scene of the fight to intervene to stop the fight. The fight eventually stopped with the intervention of Walsh and a bartender working at the Bar. The appellant's involvement in these events formed the subject matter of the first rioting charge.

The second rioting charge

11 A short while after the first fight, the appellant and six other offenders left the Bar intending to go to another club. As they were walking away, Kukreja and two other onlookers who had earlier been assaulted, known only as George and Flexy, went back to the Bar intending to confront the offenders. Another fight ensued between Kukreja, George and Flexy and three of the offenders. The appellant, who was together with three other offenders, saw the commotion and rushed back to join this fight.

12 The appellant together with six other offenders punched and kicked Kukreja, George and Flexy. Kukreja managed to escape but George and Flexy were chased by nine of the offenders, including the appellant. During the chase,

one of the offenders threw a bar stool at George and Flexy. George fell down and the appellant and three other offenders then punched and kicked him. George and Flexy eventually managed to escape and ran towards OCBC Centre with the appellant and three other offenders giving chase for some distance. The appellant's involvement in these events formed the subject matter of the second rioting charge.

The grievous hurt charge

13 The appellant returned to Circular Road. At that time, another dispute was taking place between a friend of the appellant and a friend of the deceased near the taxi stand on Circular Road (further down from the scene of the two riots). The deceased, who had been observing the first two riots but had not gotten involved, attempted to intervene and mediate in this dispute. The appellant, intending to stop the deceased from intervening, ran towards the deceased and delivered a lunging punch from behind to the lower jaw of the deceased, causing him to fall and land heavily on the road with his head and shoulders hitting the kerb. The appellant then left the scene. Walsh, who had witnessed this attack, testified that the deceased was knocked unconscious by the blow and fell directly to the concrete ground without taking any evasive action to break his fall. He was later sent to the hospital unconscious and found to have sustained severe head injuries. He eventually died from these injuries about a week later on New Year's Day 2016.

The drug consumption charge

14 The appellant was arrested on 5 January 2016. The appellant provided his urine samples after his arrest, which tested positive for methamphetamine.

The District Judge's decision

15 The appellant pleaded guilty to the two rioting charges and the drug consumption charge and the District Judge accordingly convicted him of these charges. Following a trial, the District Judge found the appellant guilty of the grievous hurt charge and convicted him. In essence, he accepted Walsh's evidence that the appellant had lunged at the deceased from about 2m behind the deceased and punched him on the lower jaw; that the force of the punch knocked the deceased unconscious, such that he was unable to break his fall, and as a result, when he fell, his head hit the kerb. As I have earlier noted, the appellant does not appeal against his conviction on this charge.

16 The District Judge sentenced the appellant as follows:

(a) seven years' imprisonment and 12 strokes of the cane for the grievous hurt charge;

(b) 30 months' imprisonment and six strokes of the cane for each of the first and second rioting charges; and

(c) three years' imprisonment for the drug consumption charge.

17 The District Judge ordered the sentences for the grievous hurt and the drug consumption charges to run consecutively, with the sentences in respect of the two rioting charges to run concurrently. This resulted in an aggregate sentence of ten years' imprisonment and 24 strokes of the cane.

18 The appellant's sentence of three years' imprisonment for the drug consumption charge is the minimum sentence mandated by s 33(4) of the MDA, as the appellant had previously been convicted of an offence under s 8(*b*) of the MDA. Unsurprisingly, the appellant does not raise any arguments against this.

19 In relation to the rioting charges, the appellant does not appeal his sentence of 30 months' imprisonment and six strokes of the cane for each charge. In any event, in my judgment, the sentence imposed by the District Judge was appropriate. The appellant partly instigated the first riot by punching Kukreja and actively participated in both riots, including chasing some of the victims who were trying to get away from the riots (see [9]–[12] above). He received the same sentence as those other offenders with comparable involvement in the riots on that night, such as one Muhamad Adnan Abdullah, who was also involved in the assault in the two riots and chased some of the victims together with the appellant.

20 The appellant primarily contests his imprisonment sentence for the grievous hurt charge. The District Judge imposed a sentence of seven years' imprisonment and 12 strokes of the cane for this charge having regard to the following considerations:

(a) There were a number of general aggravating factors, including the fact that the violence was unprovoked, perpetrated in a group, and fuelled by alcohol (GD at [31]–[35]).

(b) There were no mitigating factors (GD at [36]).

(c) The appellant had caused the death of the deceased, and this was the most serious harm that could possibly be caused. The sentence should therefore be at the higher end of the sentencing range (GD at [38]–[40]).

(d) Viewing his conduct in the context of the events of the night, the appellant was highly culpable. Prior to his attack on the deceased, he had displayed a high level of aggression. Further, the manner of the attack

on the deceased, coming as it did from behind him, was cowardly and made it less likely that the deceased would have been able to defend himself from the attack (GD at [41]–[42]).

(e) The victim impact statements that had been filed showed that the deceased's death had a significant impact on the lives of his family, friends and relatives (GD at [43]).

(f) Even though the Prosecution had also pressed rioting charges against the appellant, it had to be borne in mind that the grievous hurt offence occurred in the context of a night of mindless group violence (GD at [45]).

(g) Finally, the sentence of seven years' imprisonment was in line with the precedents (GD at [47]–[48]).

Cases on appeal

21 The appellant contends that his sentence of seven years' imprisonment for the grievous hurt charge is manifestly excessive on several grounds. First, he contends that the District Judge overstated the force with which he punched the deceased. He further contends that he did not punch the deceased from behind. He also relies on the medical report, which states that there were no injuries, bruises or swelling on the face of the deceased. Second, he relies on the fact that the injury was caused by a single blow, and contends on that basis that the sentence of seven years' imprisonment is manifestly excessive, when compared to the sentences imposed in the precedents for offences under s 325 of the Penal Code.

22 Against this, the Prosecution submits that the finding of the District Judge that the appellant punched the deceased forcefully from behind is

supported by the evidence. It further contends that most of the sentencing precedents for offences under s 325 of the Penal Code should not be followed. Instead, the Prosecution proposes a sentencing framework for such offences that examines the degree of harm caused by the offender's actions and the extent of the offender's culpability. Applying this framework, the sentence of seven years' imprisonment and 12 strokes of the cane for the grievous hurt charge is said to be justified and appropriate. The Prosecution further submits that the District Judge did not err in ordering that the sentences for the grievous hurt and the drug consumption charges run consecutively. Lastly, the aggregate sentence cannot be said to be manifestly excessive.

Offence of voluntarily causing grievous hurt

23 I first address the appellant's contentions against the District Judge's findings of fact, before evaluating the appropriateness of his conviction and sentence.

The District Judge's findings of fact

24 The appellant contends that the District Judge erred in making certain findings of fact in relation to the force and direction of his punch. In my view, these findings were not against the weight of the evidence.

25 First, in relation to the force of his punch, the Judge found that the appellant's punch was forceful and accepted Walsh's evidence that the eyes of the deceased rolled back upon being punched and that he fell without taking any steps to break his fall. In short, the punch was sufficient to and did in fact knock the deceased unconscious. The appellant contends that he did not intend to, and in fact did not, punch the deceased with great force. He states that Walsh's evidence is uncorroborated in that the medical evidence shows that there was

no fracture to the deceased's jaw (which is where the appellant had punched the deceased) or any significant facial injuries. The deceased did sustain a skull fracture but the medical expert, Dr Paul Chui ("Dr Chui"), acknowledged that this was unlikely to have been caused by the appellant's punch. However, in my view, the District Judge was entitled to and appropriately relied on Walsh's testimony.

26 Walsh had a good view of the punch and testified that the punch was a lunging punch. In his words, the appellant took "two very big steps into [the] punch" and it was delivered with "full force and full weight behind it", causing the deceased to be knocked out and completely unconscious before he hit the ground. He further testified that he saw the eyes of the deceased rolling back upon being hit and that the deceased fell without taking any steps to break his fall or avoid further injury. The medical evidence did not contradict this testimony. Although there were no fractures on the deceased's face, Dr Chui explained at trial that the presence of a fracture (or the lack thereof) depends on many variables such as the place of impact, the strength of the bone at that point and the movement of the body following the impact. The absence of any fracture is thus equivocal as to the force of the punch and in the light of Walsh's testimony, in my judgment, the District Judge was correct to find that the appellant's punch was a very forceful one.

27 Second, in relation to the direction of the punch, the appellant contends that he did not punch the deceased from the back but instead from the front. He relies on the testimony of Ami Syazwani binte Mohamad ("Ami Syazwani"), a witness who was sitting outside the Bar. She testified that the appellant and the deceased were standing face-to-face. But Ami Syazwani's evidence was in fact equivocal. She clearly said on the stand that she was "guessing". She was unable to describe any details of the punch with any assurance, much less the direction

it came from, where exactly it landed, or which part of the deceased's body hit the ground first. Conversely, Walsh had viewed the incident from a closer vantage point and could describe the details of the punch and his testimony in this regard was not shaken under cross-examination. The District Judge was therefore correct to prefer his testimony. I also agree with the Prosecution that Walsh's testimony that the appellant had punched the deceased from behind and the fact that the deceased had fallen face-forward towards Walsh is internally consistent and also corroborated by the medical evidence. Walsh was standing to the right of the deceased at an angle of about 45 degrees and the appellant had approached the deceased from his left. When the appellant punched the jaw of the deceased from the appellant's left, from Walsh's perspective, it would have appeared as though the punch was coming from behind the appellant. When the appellant fell to the kerb towards his right, the right side of his head would have hit the kerb, explaining the fracture on the right back of the skull (as is reflected in the medical evidence). Walsh would have perceived the deceased as falling towards him.

28 In any event, the material fact that the District Judge relied on was the fact that the direction of the appellant's punch made it harder for the deceased to defend himself. It is clear from the evidence that regardless of whether the punch came from the deceased's left or back, the deceased did not see or anticipate the appellant's punch, and was wholly unable to and in fact did not defend himself or take any steps to limit his injuries.

Mens rea *for voluntarily causing grievous hurt*

29 The District Judge's findings as to the nature of the appellant's blow are relevant in establishing that the appellant knew that he was likely to cause grievous hurt when he punched the deceased as forcefully as he did. The force

of the blow was such that the deceased fell on the kerb, hit his head and as a result, passed away from the head injuries. Although the appellant only appeals against his sentence and not his conviction, the appellant contends that he never intended the deceased to lose consciousness, or to fall and fracture his skull. This is essentially a challenge as to whether the *mens rea* of the offence of voluntarily causing grievous hurt is made out. Section 322 of the Penal Code frames the offence of voluntarily causing grievous hurt as follows:

> **Voluntarily causing grievous hurt**
>
> **322.** Whoever voluntarily causes hurt, if the hurt which he intends to cause or knows himself to be likely to cause is grievous hurt, and if the hurt which he causes is grievous hurt, is said "voluntarily to cause grievous hurt".
>
> *Explanation.*— A person is not said voluntarily to cause grievous hurt except when he both causes grievous hurt and intends or knows himself to be likely to cause grievous hurt. But he is said voluntarily to cause grievous hurt if, intending or knowing himself to be likely to cause grievous hurt of one kind, he actually causes grievous hurt of another kind.

30 Thus, to satisfy the mental element of the offence of voluntarily causing grievous hurt, it must be shown that the accused intended or knew that his actions were likely to cause some form of grievous hurt. So long as this is so, it does not matter if by his actions, the accused in fact caused grievous hurt of some other kind (for instance, death) and not the precise kind of grievous hurt he intended or knew that he was likely to cause (for instance, a skull fracture). A similar issue was recently discussed by See Kee Oon J in *Koh Jing Kwang v Public Prosecutor* [2015] 1 SLR 7 ("*Koh Jing Kwang*") at [36]–[45]. In *Koh Jing Kwang*, the accused's friend got into a fight with the victim outside a club. The accused was near the club's entrance when this occurred, and had run towards the victim and punched him. The victim fell backwards as a result and landed on the road, suffering a skull fracture. See J set out four possible ways

in which an accused may be proved to possess the requisite mental element under s 322, as follows (at [32]):

> (a) The appellant, when delivering the punch, *intended* for the victim to fall, knock his head, and sustain fractures.
>
> (b) The appellant, when delivering the punch, *knew that it was likely* that the victim would fall, knock his head, and sustain fractures.
>
> (c) The appellant, when delivering the punch, *intended to cause* some form of grievous hurt. Inadvertently, this led to a fall and the subsequent fracture.
>
> (d) The appellant, when delivering the punch, *knew that it was likely to cause* grievous hurt of some sort, including of another type than was in fact caused.

31 See J further held that the court must at least find that the accused actually *knew* that his actions were likely to cause some type of grievous hurt (at [45]). It was thus insufficient for the purposes of s 322 that the accused was reckless (or rash) or negligent as to whether he would cause grievous hurt by his actions. In so holding, he declined to follow the earlier decision of Yong Pung How CJ in *Chang Yam Song v Public Prosecutor* [2005] SGHC 142 ("*Chang Yam Song*"). In *Chang Yam Song*, the accused had punched the victim in the face, causing the victim to fracture his nasal bone. Yong CJ held that knowledge of the likelihood of causing hurt "encompassed 'both recklessness (where an accused knows he is likely to cause a result) and negligence (when an accused has reason to believe that he is likely to cause a result)'" (at [40]). Applying this definition, Yong CJ held that the accused in *Chang Yam Song* "must at the very least *have had reason to believe* that he was likely to cause

grievous hurt to [the victim]" [emphasis added] and was thus guilty of the offence of voluntarily causing grievous hurt (at [41]). In defining knowledge as such, Yong CJ was following his earlier decision in *Sim Yew Thong v Ng Loy Nam Thomas and other appeals* [2000] 3 SLR(R) 155 ("*Sim Yew Thong*"), which dealt with the offence of voluntarily causing hurt under s 323 of the Penal Code. In *Sim Yew Thong*, he held that such a definition of "knowledge" was supported by the Penal Code's definition of "voluntarily" in s 39, which states that a person is said to cause an effect "voluntarily" when he causes it by means which he knew or had reason to believe were likely to cause that effect (at [18]).

32 In declining to adopt the standards of knowledge and the mental elements laid down in *Chang Yam Song*, See J reasoned in *Koh Jing Kwang* that first, the plain language of s 322 did not support an interpretation encompassing rashness and negligence since it required *knowledge* of the likelihood of causing grievous hurt (at [39]). Second, situations where grievous hurt was caused by an accused's rashness and negligence were already adequately addressed by s 338 of the Penal Code (at [41]). That section makes it an offence for a person to cause grievous hurt to any person by doing any act so rashly or negligently as to endanger human life or the personal safety of others. To include rashness and negligence in s 322 would thus be over-inclusive (at [40]). Third, the general description of voluntariness in s 39 of the Penal Code, which includes a person having *reason to believe* that he would cause an effect, did not justify incorporating concepts of rashness and negligence into s 322. Section 39 only dealt with the more fundamental principle of the common law that a person should not be liable for involuntary behaviour. It did not follow that all forms of voluntary behaviour causing grievous hurt, encompassing all possible fault elements, would be punishable under s 322 read with s 325 of the Penal Code (at [42]–[45]).

33 I agree with See J's conclusion in *Koh Jing Kwang* that s 322 contemplates a mental element that goes beyond rashness or negligence, both of which are insufficient to constitute the offence of voluntarily causing grievous hurt. As See J observed, where the act is done rashly or negligently, this is dealt with under a different provision. Indeed, having regard to the penalties prescribed in the various provisions, it becomes evident that a hierarchy of offences has been created whereby the mental element and the corresponding punishment prescribed are gradated and this may also be seen elsewhere in the Penal Code. Thus where one is dealing with the causing of death, there are distinct provisions that criminalise and punish such conduct with varying severity depending on whether death was *intended* or *known to be likely* or the consequence of a *rash or negligent* act (see ss 299, 300 and 304A of the Penal Code).

34 The meaning of rashness or negligence at least in the context of s 304A of the Penal Code was considered in *Public Prosecutor v Hue An Li* [2014] 4 SLR 661 ("*Hue An Li*") and it was there held at [65] that rashness (or recklessness) entails acting with advertence to a real risk of the harm ensuing from the actions of the accused. Although rashness generally requires some form of subjective awareness, it is sufficient that the accused is aware of a real (as opposed to a theoretical or fanciful) risk of a particular consequence occurring, even if the accused perceives that risk to be small or ultimately unlikely to eventuate. Negligence on the other hand does not require such advertence, knowledge or awareness of the risk or likelihood of the consequence in question ensuing. Rather what it contemplates is that as a matter of objective assessment, there are grounds that could have led a reasonable person in the position of the actor to foresee the consequence in question flowing from the action (see *Hue An Li* at [33], citing *Public Prosecutor v Poh Teck Huat* [2003] 2 SLR(R) 299 at [17]).

35 A similar hierarchy can be seen in relation to offences that concern the infliction of hurt or grievous hurt. Thus s 321 provides for the offence of voluntarily causing hurt where the requisite mental element is as set out in that provision, namely intending that consequence or knowing it to be likely, with a punishment under s 323 of up to two years' imprisonment and/or a fine of $5,000; in contrast, s 337 provides for the offence of causing hurt by doing an act rashly or negligently so as to endanger life or the personal safety of others with a punishment of up to one year's imprisonment and/or a fine of $5,000 where the act is done rashly and up to six months' imprisonment and/or a fine of $2,500 where it is done negligently. The same hierarchy may be observed for the infliction of grievous hurt under s 322 read with s 325 (for intentional or knowing infliction) and under s 338 for doing so by a rash or negligent act with corresponding differences in the punitive provisions. It follows from this that the offence under s 322 cannot be understood as encompassing the mental element of rashness or negligence.

36 I turn to the language of s 322, which specifically requires either intention or knowledge of the likelihood of causing grievous hurt. In *Sim Yew Thong* – see [31] above – Yong CJ considered that the mental element of the offence of causing hurt under s 321 (which ought to be analysed in the same way as the mental element of the offence of causing grievous hurt under s 322) could be met by either rashness or negligence. He found support for this conclusion in the general definition of "voluntarily" causing an effect that is contained in s 39 of the Penal Code (*Sim Yew Thong* at [18]). That definition sets out the effects of acts done with three states of mind: (a) where it is done with the intention to cause that effect; (b) where it is done with the knowledge that the effect would be its likely consequence; and (c) where it is done where the actor had reason to believe that the effect would be its likely consequence.

37 In my judgment the foregoing three states of mind may be understood as follows:

(a) The first is intention, which signifies knowledge that a particular consequence will likely ensue and requires that the actor be actuated by the objective of securing that consequence.

(b) The second is knowledge that a particular consequence will likely ensue, which does not require that the act be done with the object of securing that consequence.

(c) The third is a purely objective state which may loosely be compared with the notion of negligence. It describes the state of mind which a reasonable person ought to have in relation to the foreseeable consequence of her actions and is described in terms of one having reason to believe that the consequence in question was likely to flow from the act.

38 Comparing the three states of mind contained in the general definition of "voluntarily" in s 39 with the definitions of the offences of voluntarily causing hurt or grievous hurt in ss 321 and 322, it becomes immediately apparent that the last of the states of mind contained in s 39 (*ie*, [37(c)] above) is simply absent in the latter provisions. In my judgment, Yong CJ must have overlooked this when he imported the terms of s 39 into s 321 (and by extension into s 322) and in so doing, with great respect, I consider that he erred.

39 But aside from this, it is also evident from *Sim Yew Thong* and *Chang Yam Song* that no regard was had to the hierarchy of offences that is created by the Penal Code in relation to the infliction of harm according to the prescribed mental element. I return here to what I think is the correct understanding of the

relevant mental element in s 322 (and in this context I include s 321 as well), having regard to what is provided also in s 338 (and in this context I include s 337 as well). It is evident that the first state of mind, intention, is found only s 322 but not in s 338. It follows from this, in my judgment, that intention in the context of s 322 means intention as I have described it at [37(a)] above. Hence, to succeed in a charge on this basis, the Prosecution would have to prove not only that the accused knew that the type of harm in question was a likely consequence of his actions but also that this was the objective he wished to secure.

40 Turning to the second state of mind, knowledge, this appears in s 322, in which the operative words are "knows himself to be likely to cause". In contrast s 338 uses word "rashly" which, in my judgment, connotes an *awareness of possible* consequences, rather than a *knowledge of likely* consequences, and being indifferent to them. I therefore do not equate knowledge in s 322 with rashness in s 338. I further agree with See J's conclusion in *Koh Jing Kwang* (at [39]) that this limb is concerned with the accused's subjective state of mind. This means that the court must find that the accused *actually* knew that his acts would likely cause grievous hurt. Wilful blindness is also included within the ambit of knowledge. The requirement of actual knowledge is plain from the legislative choice of the word "know" in s 322. In *Ang Jeanette v Public Prosecutor* [2011] 4 SLR 1, the High Court held that "when we say that a person 'knows' something, what we are trying to communicate is that the person is subjectively aware of a state of affairs that really exists" (at [30]). Similarly, in *Lee Chez Kee v Public Prosecutor* [2008] 3 SLR(R) 447 ("*Lee Chez Kee*"), the Court of Appeal stated that the "usage of the term 'knowledge' supports the use of the subjective knowledge analysis" (at [237]). The requirement for subjectivity is consonant with the fundamental principle of criminal law that an accused person should only be punished when

he has a guilty mind, and the hierarchy of mental culpability has always been gradated according to the extent of one's actual intent and awareness of the risks and consequences of one's actions. A person who truly does not know the consequences of his actions, no matter how obvious such consequences may be, is not as culpable as one who is so aware.

41 It is also clear that s 322 requires subjective knowledge in contrast to the third state of mind mentioned at [37(c)] above, *ie*, *having reason to believe* that one's actions are likely to result in a particular consequence, which speaks to objective knowledge. As I have noted at [38] above, this is not reflected at all in s 322. The inquiry in this context is purely objective and may, in my view, be seen as analogous to the state of mind that applies in the context of doing something negligently. In such a case, the actor neither intends nor knows that a particular type of consequence will ensue but, objectively, there were reasons that could have caused a reasonable person to have anticipated that. This state of mind equates to the mental element of negligence in s 338 but has no place in s 322.

42 Thus, the mental element required for an offence of voluntarily causing grievous hurt is that the accused actually intended grievous hurt to result from his actions or knew that it was likely that grievous hurt would so result. The inquiry is as to the accused person's subjective state of mind. However, there is an important distinction between the specific mental element required by the law for an offence to be made out, which has been discussed in the preceding paragraphs, and the way in which the relevant mental element may be proved by the Prosecution or found by the court. The law may require that the accused possess certain subjective states of mind for the purposes of an offence, but that does not mean that the accused's intention and knowledge cannot be judged and inferred from his objective conduct and all the surrounding circumstances.

Barring a personal admission by the accused, this will often be the only way to ascertain his state of mind. As the Court of Appeal held in *Tan Joo Cheng v Public Prosecutor* [1992] 1 SLR(R) 219 at [12], intention (and to my mind, knowledge as well) is "pre-eminently a matter for inference". The same point was made by V K Rajah JA in *Lee Chez Kee* at [254]:

> Very often, it will not be the case that the accused states that he had a particular state of knowledge. The existence of a state of knowledge is therefore to be carefully inferred from the surrounding evidence. This is not to say that the courts should "objectivise" subjective knowledge with what they think the accused ought to have known; what this simply requires is for a careful evaluation of the evidence to disclose what the accused actually knew but had not stated explicitly. Indeed, this is the entire nature of circumstantial evidence.

43 The need to infer intention and knowledge from the objective facts is also well-explained in Sri Hari Singh Gour, *Penal Law of India* vol 3 (Law Publishers (India) Pvt Ltd, 11th Revised Ed, 2011) ("Gour") at pp 3215–3216, in a passage also accepted and quoted by the court in *Koh Jing Kwang* (at [36]). Commenting on s 322 of the Indian Penal Code 1860 (Act No 45 of 1860) (India) ("the IPC") which is for all purposes in the same terms as s 322 of the PC, Gour writes:

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

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

44 It is thus open to, and often useful for, the court to undertake the inquiry into the accused's actual knowledge by a consideration of the objective circumstances and with reference to what a reasonable person in the position of the accused would have known. As explained in *Masoud Rahimi bin Mehrzad v Public Prosecutor and another appeal* [2017] 1 SLR 257, in relation to the accused's knowledge of the nature of the drug under the Misuse of Drugs Act (Cap 185, 2008 Rev Ed), the reasonable person's perspective is "one of the evidential tools for the court to assess the accused's subjective state of mind" (at [59]). I consider that the same principles apply in the context of s 322. Practically speaking, therefore, if it is shown that a reasonable person in the accused's position, having regard to all the facts and circumstances before him, would have known that grievous hurt was likely to result from his acts, then in order for the accused to deny actual knowledge, he would have to prove or explain how and why he *did not in fact* have such knowledge as the reasonable person would have had.

45 In the present case, the Prosecution has run its case on the basis that the appellant intended to cause, or at least knew that his actions were likely to cause, grievous hurt of some sort, though probably not the death of the deceased. The appellant denies this. The true question is thus whether as a matter of all the objective evidence that is before the court, it can be inferred that the appellant

knew that the likely consequences of his intentional act extended to the causing of some grievous hurt. In my judgment, such a conclusion was justified on the evidence.

46 The primary fact before me, which the District Judge correctly found (see [25]–[26] above), was that the appellant intentionally delivered his punch with sufficient force to knock the deceased unconscious. He did so to prevent the deceased from interfering in the dispute involving his friend. The deceased was a large man at 1.81m tall and weighing 99kg. The evidence showed that the deceased was not drunk at the material time and had not been involved in any previous fights that night. It would thus have been difficult to topple him, much less immediately knock him out cold. This was therefore a case where the sheer force of the appellant's blow was *alone* sufficient to fell the deceased. A reasonable person who delivered such a forceful blow would clearly have known that it was likely that the deceased would either sustain some fracture or other form of grievous hurt, whether directly from the blow or as a result of falling due to the blow (see *Koh Jing Kwang* at [32(c)] and [32(d)]). The appellant could not satisfactorily prove or explain why he nevertheless held the view that no grievous hurt was likely to result. Significantly, there is nothing in his conduct immediately after the incident or in the evidence he furnished that suggested that he was at all surprised by the effect that his blow had on the deceased, who, as noted above, was knocked unconscious and fell without making any effort to break his fall. Walsh's evidence was in fact that the appellant was smiling and appeared to be proud of his punch. From all the evidence, therefore, I am satisfied, as a matter of inference from the facts before me, that the appellant did know at the time of delivering such a forceful punch that some form of grievous hurt was likely to result. It is immaterial in this regard that he may not have specifically intended the deceased to die. Indeed,

were that the case, he would likely have faced a different set of charges for homicide.

47 See J declined to make the same inference as to the accused's intention in *Koh Jing Kwang*, but that case can be distinguished from the present. Although the accused in that case landed a running punch and was speaking vulgarities before he made contact with the victim, See J found that the victim was intoxicated and had already been involved in an earlier fight during the early hours of the morning, such that, combined with the medical evidence, there was a measure of doubt as to whether the accused had delivered so strong a blow that on its own, it would have felled the victim (at [49]–[50]). In the present case, as explained above, the appellant's blow was of such a significant force, that in my judgment, it displayed, at the very least, the appellant's clear knowledge that he was likely to cause grievous hurt, and, having as a matter of fact caused grievous hurt, he was thus guilty of an offence punishable under s 325 of the Penal Code.

The appropriate sentence

48 In that light, I consider the appropriate sentence for the appellant. Before turning to the circumstances of the appellant's offence, I first set out what I consider to be the appropriate sentencing framework when dealing with offences under s 325 of the Penal Code.

The sentencing framework

49 The applicable principles for such offences were recently set out by the Court of Appeal in *Public Prosecutor v BDB* [2018] 1 SLR 127 ("*BDB*"). *BDB* involved a tragic case of sustained child abuse in the course of which the offender had repeatedly abused her biological son, among other things, by

pushing him (which caused him to fall and hit his head), and holding him up by his neck against the wall before letting him go. Her son eventually died from head injuries following these specific assaults. The offender was convicted of two charges under s 325 of the Penal Code and four charges under s 5 of the Children and Young Persons Act (Cap 38, 2001 Rev Ed). To determine the appropriate sentence, the Court of Appeal undertook a comprehensive survey of the relevant authorities and the sentencing considerations for offences under s 325 of the Penal Code (see *BDB* at [39]–[76]) and set out a two-step sentencing approach for such offences as follows:

> (a) First, the seriousness of the injury should be considered to derive an indicative starting point or range for sentencing (at [55(a)]). Where the hurt caused is death, which is the most serious type of harm, the indicative starting point should be a term of around eight years' imprisonment (at [56]). Where the grievous hurt caused is multiple fractures to various parts of the body, such as the ribs, elbows and/or calves, the indicative starting point should be a starting point of around three years and six months (at [56]). These indicative starting points therefore vary according to the type and seriousness of injuries caused: see *BDB* at [55]–[61]. In relation to caning, where death is caused, a sentence of 12 or more strokes may be warranted, whereas for non-fatal serious injuries, a sentence of between six and 12 strokes may be considered (at [76]).
>
> (b) Second, after the indicative starting point has been identified, the sentencing judge should consider any necessary adjustments based on an assessment of the offender's culpability and the presence of relevant aggravating and/or mitigating factors (at [55(b)]). Relevant aggravating factors include the extent of deliberation or premeditation, the manner

and duration of the attack, the victim's vulnerability, the use of any weapon, whether the attack was undertaken by a group, any relevant antecedents, and any prior intervention by the authorities (*BDB* at [62]–[70]). Relevant mitigating factors include the offender's mental condition, the offender's genuine remorse, and the offender's personal circumstances (*BDB* at [71]–[75]).

50 The Prosecution acknowledges the utility of the sentencing approach laid down in *BDB* but proposes that it should be developed by the adoption of a sentencing matrix as follows ("the proposed sentencing matrix"):

	Lower culpability	**Higher culpability**
Lesser harm	0.5 – 3.5 years	3.5 – 7 years
Greater harm	3.5 – 7 years	7 – 10 years

51 In relation to the assessment of the harm caused by the offence, the Prosecution submits that what it has termed "greater harm" should include death; paralysis; serious permanent injuries such as loss of a limb, sight or hearing; emasculation; and injuries which require significant surgical procedures and prolonged periods of hospitalisation. On the other hand, "lesser harm" would include any other type of grievous hurt under s 320 of the Penal Code. In relation to the offender's culpability, the Prosecution submits that the factors identified in *BDB* as relevant aggravating factors (see [49] above) should be used to assess culpability, with the caveat that as a matter of principle, only offence-specific factors should be used. Once the offender's culpability has been assessed on this basis, the offender-specific factors should then be considered to finally determine the appropriate sentence.

52 While I appreciate the efforts of the Prosecution, in my judgment, it is neither necessary nor appropriate for me, sitting as a single judge, to develop the framework laid down by the Court of Appeal and especially after such a short time has passed since that decision was handed down. I am also mindful of the fact that the Court of Appeal in *BDB* was cognisant of the range of circumstances that could arise in these cases and so declined to adopt an unduly categorical or exhaustive framework. As I have noted, the Court of Appeal has only recently set out the two-step sentencing approach for offences under s 325 of the Penal Code in *BDB* and it has not been shown to be deficient so as to require me to develop it. Finally, that framework is clearly sufficient to determine the appropriate sentence for the offence under s 325 in the present appeal. It is therefore not necessary for me to go outside the guidance laid down in *BDB* in order to decide the present appeal.

53 The Prosecution submits that the several of the previous cases involving s 325 offences resulting in death have limited precedential value. This submission is first predicated on two of those cases having been decided before the 2007 amendments to the Penal Code (which increased the maximum sentence for offences under s 325 from seven years to ten years). That cases predating the present sentencing regime are of limited value was expressly considered by the Court of Appeal in *BDB* when formulating the two-step test: see *BDB* at [51] and [53]. The Prosecution also submits that the sentences in some of these cases were influenced by an erroneous interpretation of *Ho Soo Kok* (*supra* [5]). In *Ho Soo Kok*, the offender was charged under s 325 of the Penal Code for punching the victim and causing the victim to suffer a fracture of the nasal bone and a complex right orbital fracture. The victim was hospitalised for 12 days. The court in that case held that "[t]he tariff for the offence committed by the accused is in the range of 2 years imprisonment to 4½ years' imprisonment with 6 to 9 strokes of the cane" (at [12]). I consider that

the court, in speaking of a "tariff" in that case, was likely to have been referring to the specific context of the offence that was committed by the offender *in that case*, which featured, in relative terms, low culpability and a low level of harm.

54 The Prosecution contends that three subsequent cases, namely *Public Prosecutor v Herry Indra Putra bin Muhamad Noor and Others* [2008] SGDC 185 ("*Herry Indra Putra*"), *Public Prosecutor v Teo Chin Lai* (DAC 927698/2014) ("*Teo Chin Lai*") and *Public Prosecutor v Poh Chong Heng* [2012] SGDC 465 ("*Poh Chong Heng*") erroneously relied on *Ho Soo Kok* as a sentencing benchmark applicable to all s 325 offences. A closer look at the three cases, however, reveals that any such inference would be a weak one. Although *Herry Indra Putra* did consider *Ho Soo Kok* as setting such a tariff down and applied this tariff to an offence under s 325 offence where death was caused (at [40]), the other two cases, *Teo Chin Lai* and *Poh Chong Heng*, could not be said to have been decided on the basis of *Ho Soo Kok* in the way the Prosecution contends. There were no reasoned grounds in *Teo Chin Lai* and the Prosecution has only produced its own sentencing submissions in support of its contention. Similarly, *Poh Chong Heng* specifically referred to *Ho Soo Kok* only when referring to the Prosecution's submissions (at [30]). At its highest, the latter two cases only go so far as to show that the Prosecution itself had been erroneously relying on *Ho Soo Kok* as setting a sentencing benchmark for *all* offences committed under s 325 of the Penal Code. In any event, these cases would no longer be relied on since the Court of Appeal in *BDB* has expressly stated that the indicative starting points for s 325 sentences should be calibrated based on the severity of the harm caused by the offender.

55 Second, the Prosecution's proposed sentencing matrix is not entirely consistent with the approach in *BDB*. *BDB* established a two-step process where

the indicative starting point for the offender's sentence is determined based on the harm caused by the offender, and this starting point is then adjusted based on the offender's culpability. As against this, using the Prosecution's sentencing matrix, one would have to consider both the harm caused and offender's culpability before an initial sentence is determined, and the offender-specific factors are then considered to make further adjustments.

56 More importantly, the sentencing matrix proposed by the Prosecution may not be suitable for offences under s 325 of the Penal Code, which are invariably very fact-specific and the severity of which the Prosecution acknowledges "lies on a continuum". It is less useful to delineate the types of harm caused by an accused person into two broad categories, as opposed to treating such injuries as spread along a spectrum having regard to the nature and permanence of the injury. The Court of Appeal in *BDB* expressly stated at [56] that it was not appropriate to try to set out a range of starting points for each type of grievous hurt. The two indicative starting points specified by the Court of Appeal, namely multiple fractures on limbs (three years six months) and death (eight years) were identified because that was the nature of the injury that had been sustained in two of the charges. However, the court noted at [58] that the starting points should be calibrated along a spectrum having regard to the type and seriousness of the injuries caused.

57 For these reasons, I am satisfied that the two-step approach in *BDB*, summarised at [49] above, is sufficient for determining the appropriate sentence to be imposed on the appellant and I apply it to the facts of the case.

The appropriate sentence

58 The District Judge imposed a sentence of seven years' imprisonment and 12 strokes of the cane for the appellant's grievous hurt charge (see [20] above).

BDB was released shortly after the District Judge delivered his decision on sentence. Nonetheless, the District Judge's considerations in the court below are pertinent to the analysis when applying *BDB*. I thus evaluate his decision on sentence in this light.

59 The first step is to determine an indicative starting point for the sentence. As the appellant's punch led to the deceased's death, the indicative starting point is a sentence of around eight years and 12 or more strokes of the cane: *BDB* at [56] and [76].

60 The second step is to consider the appellant's culpability. The Prosecution submits that the District Judge rightly considered that there were various aggravating factors, including the unprovoked, alcohol-fuelled attack that occurred in the context of group violence, the appellant's high level of aggression and his "cowardly" attack from behind the deceased. The Prosecution also submits that no mitigating factors were applicable to the appellant. Conversely, the appellant claims, relying on the factors in *BDB* (see [49(b)] above), that his culpability was low. His attack was committed in the spur of the moment because he had misinterpreted the actions of the deceased and thought he was being hostile to the appellant's friends. Critically in this context, he contends that it was a single blow and not a repeated attack, against a victim who was not vulnerable; it did not involve the use of any weapons; it was carried out by himself alone and was not done in the context of any group violence. Thus, the appellant submits that none of these factors were aggravating except for the fact that he was drunk at the material time.

61 In my judgment, the District Judge rightly considered that the appellant's attack was unprovoked and sudden, leaving the deceased with little chance to defend himself. This took place while the deceased was attempting to

intervene in a dispute involving his friend but was in no way suggesting any violence or hostility on his (the deceased's) part. As for the appellant's self-induced intoxication, this was indeed an aggravating factor, reflecting irresponsibility and endangering public safety: *Wong Hoi Len v Public Prosecutor* [2009] 1 SLR(R) 115 at [44].

62 However, in determining the appropriate sentence, the District Judge, in my view, placed excessive weight on the background against which the offence was committed. I refer here to the fact that the attack took place at the same time as the two riots, for which the appellant has also been charged and is being punished (see [1], [2] and [16] above). Although the District Judge said that he was mindful that the sentence imposed for the grievous hurt charge should not doubly punish the appellant for taking part in the riots, he nonetheless considered that he "could not ignore the fact that the [grievous hurt offence] had occurred in the context of a night of mindless group violence": GD at [45]. He also observed that prior to the appellant's punch, the appellant had "displayed a high level of aggression and was involved in at least 2 other incidents": GD at [41]. While the context of the appellant's violence might conceivably have been relevant, his attack on the deceased could not be said to be part of the two riots and thus a part of the mindless group violence that pervaded that night. According to Walsh (and the Prosecution accepted this in its closing submissions in the court below), the deceased only witnessed the two riots and did not get involved, and by the time he did get involved in the dispute near the taxi stand (further down from the scene of the two riots) the violence that was the subject matter of the rioting charges had simmered down. The appellant's attack, although ostensibly in support of his friends, was entirely carried out alone without the support of anyone else.

63 The fact that the District Judge placed excessive weight on the violence perpetrated throughout that night can also be seen from his treatment of the precedents. The appellant contends that his culpability is in fact significantly lower than that of the accused persons in the two cases cited by the District Judge in his decision, namely *Public Prosecutor v Jeron Liew Wei Jie* (DAC 919502-2015 & others) ("*Jeron Liew*") and *Public Prosecutor v Radin Abdullah Syaafii bin Radin Badruddin and Muhammad Daniel bin Abdul Jalil* (DAC 902421-2017 & others) ("*Radin*"), both of which involved repeated and continuous attacks on the victims as opposed to the appellant's single blow. In *Jeron Liew*, the accused pulled the victim into an alley and punched him twice in the face, causing the victim to fall onto the floor and hit his head. The accused tried to resuscitate the victim by slapping him and then he forcefully cast the victim down causing him to hit his head on the kerb, and then continued to assault him by kicking his face. The victim suffered severe head injuries including a left temporal bone fracture and a large acute extradural hematoma, and later passed away. The accused pleaded guilty in that case and was sentenced to eight years' imprisonment and 12 strokes of the cane. In *Radin*, the accused persons attacked the victim, punching his head from behind and kicking him in the stomach, and so caused him to fall onto the road whereupon they kicked his body and face while he was lying down. The victim passed away from traumatic head injury. Both accused persons pleaded guilty and were sentenced to five years' imprisonment and six strokes of the cane.

64 Both these decisions did not feature reasoned grounds and the accused persons in both cases pleaded guilty. The precedential value of these cases, especially in relation to the specific sentence imposed, is thus very limited. But I agree with the appellant that the District Judge erred in considering that the appellant's culpability was higher than that of the accused persons in *Radin*, which involved repeated blows to the deceased that were likely to have been the

direct cause of death. The appellant by contrast delivered a single punch to the deceased's face. Although the blow was forceful, it was not part of a continuous or repeated attack; nor was it delivered as part of a group attack, as was the case in *Radin*. Moreover, the death in this case was not caused *directly* by the punch but only *indirectly* so, because it caused the deceased to lose consciousness and to fall on the road with his head and shoulders hitting the kerb.

65 My attention was also drawn by the Prosecution to the case of *Public Prosecutor v Mohammad Noor Helmi bin Mohammed Herman and others* (DAC 908247-2015) ("*Helmi*"), where the accused smashed a beer bottle on the victim's head and kicked and punched him repeatedly with his friends when the victim was on the ground. He then left the scene with his friends but personally returned and punched the victim repeatedly. The victim suffered brain damage and was reduced to a permanent vegetative state. He was sentenced to eight years' imprisonment and six strokes of the cane. The appellant is clearly less culpable than the accused in *Helmi*.

66 In my judgment, although I do not have the benefit of reasoned grounds in any of these cases, it seems to me that the sentences imposed in *Radin* and in *Helmi* were on the low side and I do not think these cases should be regarded as having any precedential significance.

67 In the round, I am satisfied that the District Judge erred in his assessment of the appellant's culpability for the grievous hurt charge because he was unduly influenced by the appellant's involvement in the other violent events of the night that preceded the attack. In my judgment, these other events were sufficiently distinct and should not have influenced the consideration of the appropriate sentence in this case for the offence under s 325.

68 Further, I also consider that the District Judge erred in assessing the appellant's culpability in relation to that of the offenders in the precedents that have been referred. In my judgment, the culpability of the appellant in relation to this offence was appreciably less than that of the accused in *Jeron Liew*. It is material, in this context, that the appellant had delivered only a single blow, and as noted in *BDB*, it is important to have regard to the manner and duration of the assault in determining the culpability of the accused. Indeed, I would add a gloss to this in that I consider it relevant in the context of assessing the culpability of the accused, and having regard to the different shades of the requisite mental element that is required to be shown under s 322, to also consider the relevant mental element that was at play in relation to the harm that was in fact caused. Thus, while it is true that (a) the harm caused in this case is death, which is the most serious form of harm, and that (b) for the purposes of a *conviction* under s 322, it is not material that this was not the harm that was intended or anticipated, yet, as a matter of logic, it seems to me that the less direct the connection between the act of the accused, the harm that he either intended or knew to be likely and the actual harm caused, the more it will be necessary to consider whether to temper the *punishment* to be imposed on the accused. Here, the highest case that can be mounted against the appellant is that he intended to forcefully punch the deceased, in circumstances where he knew this was likely to cause a fracture or other grievous hurt either directly or through causing him to fall. This is at some distance from the death that ensued and it seems to me that this is a further factor that calls for the sentence to be moderated. I therefore consider, having regard to all the relevant circumstances, including the aggravating factors that I have noted at [61] above, that the indicative starting point of eight years' imprisonment and 12 strokes of the cane applying *BDB* should be moderated and I reduce it to four and a half years' imprisonment and eight strokes of the cane.

The appellant's aggregate sentence

69 As mentioned above at [17], the sentences for the grievous hurt charge and the drug consumption charge were ordered to run consecutively, with the sentences for the rioting charges ordered to run concurrently, resulting in an aggregate sentence of ten years' imprisonment and 24 strokes of the cane for the appellant.

70 As the appellant was convicted on four charges, the sentences for at least two charges are required by law to run consecutively (s 307 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed). I agree with the District Judge's decision to order the sentences for the grievous hurt and drug consumption charges to run consecutively, as they are separate and unrelated offences that protect different interests. As against this, the rioting and grievous hurt charges all arose out of the events that occurred over the span of less than an hour on 24 December 2015. As I have reduced the appellant's imprisonment term for the grievous hurt charge from seven years' imprisonment and 12 strokes to four and a half years' imprisonment and eight strokes, his aggregate sentence will therefore be seven and a half years' imprisonment and 20 strokes of the cane.

71 I consider such an aggregate sentence to be proportionate to the appellant's offences, and not crushing having regard also to his extensive criminal record and his present age of 26.

Conclusion

72 I thus allow the appeal and reduce the sentence for the grievous hurt charge to a term of imprisonment of four and a half years' imprisonment and eight strokes of the cane and also substitute the appellant's aggregate sentence of ten years' imprisonment and 24 strokes of the cane with the aggregate sentence of seven and a half years' imprisonment and 20 strokes of the cane.

Sundaresh Menon
Chief Justice

Appellant in person;
Zhuo Wenzhao and Houston Johannus (Attorney-General's Chambers) for the respondent.