IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2026] SGHC 24

Magistrate's Appeal No 9151 of 2024

Between

Khua Kian Keong

… *Appellant*

And

Public Prosecutor

… *Respondent*

GROUNDS OF DECISION

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

Version No 1: 29 Jan 2026 (16:59 hrs)

TABLE OF CONTENTS

INTRODUCTION **1**

BACKGROUND **2**

DECISION BELOW **4**

THE DJ'S DECISION ON CONVICTION 4

THE DJ'S DECISION ON SENTENCE 8

THE PARTIES' CASES ON APPEAL **11**

THE APPELLANT'S CASE 11

THE PROSECUTION'S CASE 14

ISSUES TO BE DETERMINED **16**

ISSUE 1: APPEAL AGAINST CONVICTION **17**

THRESHOLD FOR APPELLATE INTERVENTION 17

ANALYSIS AND DECISION 17

The DJ did not err in his assessment of the consistency of the Victim's evidence *18*

The DJ did not err in finding "strong" corroborative value in PW3 Kenneth and PW 7 Jonathan's evidence *19*

The DJ did not err in his assessment that the Victim's version of events was consistent with the CCTV footage *22*

The DJ did not err in his assessment that the Appellant's version of events was inconsistent with the available evidence *23*

The DJ did not err in finding material omissions in the Appellant's statements to the police *26*

The DJ did not err in rejecting the Appellant's arguments on the Victim's credibility *30*

Version No 1: 29 Jan 2026 (16:59 hrs)

Conclusion on the actus reus of the charge *34*

Conclusion on the mens rea of the charge *34*

Summary of findings in relation to the appeal against conviction *37*

ISSUE 2: APPEAL AGAINST SENTENCE **37**

APPLICABLE LAW 37

Threshold for appellate intervention *37*

Applicable sentencing framework *38*

ANALYSIS AND DECISION 39

The Appellant's submissions on "individualised justice" were misconceived *39*

The DJ did not err in his application of the BDB sentencing framework *43*

The DJ did not err in imposing an additional two months' imprisonment in lieu of caning *48*

Summary of decision on sentence *51*

CONCLUSION **51**

Version No 1: 29 Jan 2026 (16:59 hrs)

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Khua Kian Keong
v
Public Prosecutor

[2026] SGHC 24

General Division of the High Court — Magistrate's Appeal No 9151 of 2024
Mavis Chionh Sze Chyi J
24 October 2025

29 January 2026

Mavis Chionh Sze Chyi J:

Introduction

1 The appellant Khua Kian Keong ("Appellant") claimed trial in the district court to one charge of voluntarily causing grievous hurt to one Tan Tock Han ("Victim"), an offence punishable under s 325 of the Penal Code (Cap 224, 2008 Rev Ed) ("Penal Code"). The charge alleged that the Appellant had, on 13 January 2021, pushed the Victim down a flight of stairs, knowing himself to be likely to cause grievous hurt, and thereby causing the Victim to suffer facial fractures. Following a 12-day trial, the Appellant was convicted of the said charge and sentenced by the District Judge ("DJ") to a total of 13 months' imprisonment.[1] The DJ's grounds of decision are set out in *Public Prosecutor v Khua Kian Keong* [2025] SGDC 117 ("GD").

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[1] Charge (DAC-901296-2021) dated 31 May 2022 (Record of Appeal (Amendment No. 1) ("ROA") at p 6).

Version No 1: 29 Jan 2026 (16:59 hrs)

2 The Appellant appealed against both conviction and sentence. After considering the parties' written and oral submissions, I dismissed the appeal. In doing so, I provided a summary of the reasons for my decision. These are my full written grounds of decision.

3 I start by outlining the undisputed facts.

Background

4 As at the date of the incident on 13 January 2021, the Appellant was 52 years old (DOB 2 August 1968) and the CEO of Vibrant Group Ltd, an SGX main board listed company.[2]

5 The Victim was 74 years old as at the date of the incident,[3] and the director and executive chairman of KTL Offshore, a subsidiary of KTL Global, an SGX main board listed company. The Victim's son, PW9 Tan Kheng Yeow @ Wilson ("Wilson"), was the CEO of KTL Global at the material time.[4]

6 Prior to the incident on 13 January 2021, the Appellant and the Victim's families had known each other for many years. Both the Appellant and the Victim were well known within the local Chinese business community, and served in many of the same organisations such as the Singapore Chinese Chamber of Commerce and Industry and the Singapore-China Business Association.[5] The Appellant's father and the Victim played golf with each other;

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2 Charge (DAC-901296-2021) dated 31 May 2022 (ROA at p 6); GD at [9].

3 GD at [1].

4 GD at [10].

5 GD at [9].

Version No 1: 29 Jan 2026 (16:59 hrs)

and the Appellant had known Wilson for more than 40 years, since their teenage years.[6]

7 Between 2018 and end-2020, the Appellant, Wilson and the Victim became involved in a financial dispute, in the course of which the Appellant had attempted to recover monies allegedly lent by him to Wilson and KTL Global.[7]

8 It was not disputed that on 13 January 2021, the Appellant went to KTL Offshore's office to speak to the Victim about the repayment of a sum of $100,000. The Appellant met the Victim at the sofa outside a meeting room. It was not disputed that the Appellant sat down on the sofa next to the Victim, while the latter was talking on his mobile phone; and that while they were sitting on the sofa, the Appellant's hand made contact with the Victim's thigh a number of times. At trial, the Victim testified that the Appellant hit his thigh forcefully with a clenched fist three times.[8] The Appellant, on the other hand, claimed that he simply tapped the Victim's thigh twice.[9]

9 After the Victim ended his phone call, both men proceeded to the staircase with a view to going downstairs. It was at this juncture that the Victim fell down the stairs.[10] The Prosecution's case was that it was the Appellant who pushed the Victim from behind, causing him to fall down the stairs. The Appellant, on the other hand, said that it was the Victim who "lost his balance"

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6 GD at [8].

7 GD at [11].

8 NEs 21 November 2022 at p 69 lines 4–25 (ROA at p 308).

9 NEs 20 March 2023 at p 23 lines 5–8 (ROA at p 461).

10 GD at [12].

Version No 1: 29 Jan 2026 (16:59 hrs)

and fell down the stairs despite the Appellant trying (unsuccessfully) to "catch hold of" him.[11]

10 Following his fall, the Victim was conveyed by ambulance to Ng Teng Fong General Hospital, and subsequently transferred to Mount Elizabeth Hospital the following day. The Victim was discharged from Mount Elizabeth Hospital on 22 January 2021 and given medical leave until 11 February 2021. As for the Appellant, he was arrested on 13 January 2021 at 1.41pm.[12]

11 The Victim suffered the following injuries from the fall:[13]

(a) Contusions to both knees, right shoulder with haematoma, both hands and waist, and chest.

(b) Fractures of his right facial bones.

(c) Lacerations of the right lower lip and right hand.

Decision below

The DJ's decision on conviction

12 The key issue in contention at trial was whether the Appellant had pushed the Victim down the stairs (as the Prosecution contended), or whether the Victim himself had fallen accidentally (as the Appellant contended). At the conclusion of the trial, the DJ was satisfied that the Prosecution had proven the

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11 NEs 20 March 2023 at p 24 lines 20–23 (ROA at p 462).

12 GD at [13]–[14] and [16]; Exhibit P15: Arrest Report dated 13 January 2021 (ROA at p 923).

13 GD at [15]; Exhibit P3: Dr Toh Choon Lai's medical report on Victim dated 26 January 2021 (ROA at pp 888–889).

Version No 1: 29 Jan 2026 (16:59 hrs)

actus reus of the charge (*ie*, that the Appellant had voluntarily pushed the Victim down the stairs).[14] In arriving at this finding, the DJ took into consideration various factors.

13 The DJ found that the Victim was consistent and unwavering in his testimony about having been pushed down. The Victim maintained throughout cross-examination that he was aware all along that someone had pushed him, and that he had not fallen on his own.[15]

14 In this connection, the DJ was of the view that the "unusually convincing" standard did not apply to the Victim's testimony in the present case because there was evidence corroborating his account of events.[16] First, the DJ found that the Victim's testimony was corroborated by PW7 Tan Kheng Kuan @ Jonathan ("Jonathan") and PW3 Yeo Chee Pin Kenneth ("Kenneth"). Both witnesses testified that when they ran to attend to the Victim shortly after his fall, the Victim pointed at the Appellant – who was then standing next to them – and stated in Hokkien, "He pushed me down".[17] The DJ found both Jonathan and Kenneth to be truthful and objective witnesses.[18]

15 Second, the DJ found that the Victim's version of events was consistent with CCTV footage which showed a partial view of the incident.[19]

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14 GD at [108].

15 GD at [69].

16 GD at [76].

17 NEs 2 June 2022 at p 47 lines 17–22 (ROA at p 66); NEs 3 June 2022 at p 54 line 27–p 55 line 2 (ROA at pp 167–168).

18 GD at [79].

19 GD at [80]–[81].

Version No 1: 29 Jan 2026 (16:59 hrs)

16 In contrast, the DJ found that the Appellant's version of events was not supported by the CCTV footage. In particular, the DJ found that the CCTV footage was inconsistent with the Appellant's claims that (a) when he saw the Victim "moving forward" to the stairs, he had gestured with his hand, "showing [the Victim], letting him know to be more careful";[20] and (b) when the Victim's body was "already moving forward", he had "stretch[ed] out [his] right hand" in an attempt to "pull him back".[21] The DJ noted, moreover, that the Appellant had – in his initial statements to the police on 14 January 2021 – omitted to make any mention of his attempt to pull the Victim back, which omission the DJ found to be material.[22]

17 As for the Appellant's evidence that immediately after the fall, he had called for help for a long time without getting any response, this too was disbelieved by the DJ, who pointed out that none of the relevant prosecution witnesses had testified to hearing anyone calling for help.[23]

18 Several other pieces of evidence relied on by the Appellant were found by the DJ to be of no assistance to his defence. *Inter alia,* while the Appellant sought to rely on his own actions in remaining at the KTL Offshore office for the arrival of the police, the DJ found this to be a neutral factor at best.[24] The evidence given by the Appellant's character witnesses was also held to be immaterial to the issues in contention.[25] As for the Appellant's suggestion that

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20 NEs 20 March 2023 at p 25 lines 14–20 (ROA at p 463).

21 NEs 20 March 2023 at p 61 lines 7–15 and p 63 lines 4–6 (ROA at pp 499 and 501).

22 GD at [90]–[91].

23 GD at [85]–[89].

24 GD at [93].

25 GD at [103].

Version No 1: 29 Jan 2026 (16:59 hrs)

the Victim could have fallen down the stairs on his own due to his "medical and physical condition", this too was rejected by the DJ following his consideration of the evidence from PW4 Dr Toh Choon Lai ("Dr Toh") of Mount Elizabeth Hospital and the Victim himself.[26]

19 Finally, the DJ found that the evidence showed the Appellant to have been upset with the Victim when he went to the latter's office on the day of the incident. In the DJ's view, the text messages sent by the Appellant and various other pieces of evidence showed that the Appellant was angry at the Victim's unresponsiveness towards his requests for repayment of previous loans, and "in all probability, pushed the Victim down the stairs in a fit of anger".[27]

20 Having found the *actus reus* of the charge to be made out, the DJ also found the *mens rea* element (*ie*, that the Appellant knew in pushing the Victim down the stairs, that he would thereby likely cause grievous hurt to him) to be established on the basis of the evidence adduced.[28] Applying the principles set out in *Koh Jing Kwang v Public Prosecutor* [2015] 1 SLR 7 ("*Koh Jing Kwang*") and *Muhammad Khalis bin Ramlee v Public Prosecutor* [2018] 5 SLR 449 ("*Muhammad Khalis bin Ramlee*") to the evidence, the DJ concluded that any reasonable person in the Appellant's position would have known that by pushing the Victim down the stairs at the time, he would in all likelihood cause grievous hurt, in particular fracture(s), to the Victim.[29]

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26 GD at [104]–[107].

27 GD at [94]–[102].

28 GD at [115].

29 GD at [114].

Version No 1: 29 Jan 2026 (16:59 hrs)

The DJ's decision on sentence

21 In the course of the sentencing of the Appellant, the Prosecution tendered a Victim Impact Statement ("VIS").[30] As the Defence took issue with this VIS, the DJ proceeded to convene a Newton hearing in which the Victim was recalled to the witness stand and cross-examined by the Defence on a number of the statements in his VIS.

22 After considering the parties' submissions on sentence, the DJ imposed a total sentence of 13 months' imprisonment. The DJ held that the applicable sentencing framework was the two-step sentencing process set out in *Public Prosecutor v BDB* [2018] 1 SLR 127 ("*BDB*").

23 In applying the first step of the *BDB* framework, the DJ had regard to the guidance given by Sundaresh Menon CJ in *Saw Beng Chong v Public Prosecutor* [2023] 2 SLR 424 ("*Saw Beng Chong*"). Having considered the injuries suffered by the Victim, the duration of his stay in hospital, and the length of the medical leave given upon discharge,[31] the DJ found that the appropriate indicative starting sentence should be nine months' imprisonment.[32] In coming to this decision, he held that minimal weight should be given to the after-effects of the offence allegedly experienced by the Victim, as he found that the Victim's claims about these after-effects were not supported by medical reports or other evidence.[33]

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30 GD at [134].

31 GD at [154].

32 GD at [161].

33 GD at [155]–[159].

Version No 1: 29 Jan 2026 (16:59 hrs)

24 At the second step of the *BDB* framework, in respect of the Appellant's culpability, the DJ found that the Appellant committed the offence out of "simmering frustration and anger", without any provocation from the Victim.[34] On the other hand, there was no premeditation.[35]

25 In respect of the aggravating and mitigating factors in this case:[36]

(a) The DJ accepted that the Appellant demonstrated a "degree of remorse" in entering into a settlement agreement with the Victim and his sons. At the same time, the DJ noted that this was "not a straightforward restitution by the [Appellant]":[37] *inter alia*, the settlement agreement involved the Victim agreeing to pay the Appellant a sum of $100,000 to settle High Court Suit 346/2021.[38]

(b) Further, while the DJ accepted that the Victim had been fully compensated for the injuries sustained, this did not in any way negate the harm he had suffered for the purposes of sentencing.[39]

(c) The DJ was of the view that the manner in which the Appellant had conducted his defence at trial was not consistent with his claim of genuine remorse.[40] *Inter alia,* the Appellant had made baseless allegations impugning the integrity of the Victim and of numerous witnesses, and following his conviction, had also put the Victim through

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34 GD at [163].

35 GD at [164].

36 GD at [166]–[170].

37 GD at [166].

38 GD at [166].

39 GD at [167].

40 GD at [168].

Version No 1: 29 Jan 2026 (16:59 hrs)

a Newton hearing in which further aspersions were cast on the Victim's integrity and credibility. The DJ stressed that he did not regard the Appellant's decision to claim trial as an aggravating factor: rather, it was "a relevant factor" he considered in ascertaining the degree of the Appellant's remorse.[41]

(d) Insofar as the Appellant sought to rely on the Victim's alleged forgiveness, the DJ held that this submission had to be viewed against the undisputed evidence of the "significant" fallout between them: despite having known each other for more than 40 years, they were no longer on talking terms. In any event, the DJ noted that while a victim's forgiveness might be relevant as evidence of "reduced psychological and/or mental suffering", there was "no such evidence in the present case".[42]

26 Having considered the above factors, the DJ held that an uplift of two months' imprisonment was appropriate, resulting in a sentence of 11 months' imprisonment.[43]

27 Lastly, the DJ accepted the Prosecution's submission that while the Appellant was not subject to caning on account of his age, there was a need to compensate for the retributive and deterrent effect of caning. The Appellant's act of pushing an elderly person down a flight of concrete steps was highly egregious. There was a strong imperative as well for deterring parties from resorting to violence to resolve their disputes. With these considerations in

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41 GD at [169].

42 GD at [170].

43 GD at [171].

Version No 1: 29 Jan 2026 (16:59 hrs)

mind, the DJ imposed an additional two months' imprisonment in lieu of six strokes of the cane.[44] The Appellant was therefore sentenced to a total of 13 months' imprisonment.

The parties' cases on appeal

28 I next summarise the parties' respective submissions on appeal.

The Appellant's case

29 In respect of his appeal against conviction, the Appellant made the following submissions. First, the Appellant argued that the DJ erred in placing too much weight on the supposed "consistency" of the Victim's evidence. According to the Appellant, the Victim's evidence about the push he sustained was "bare", "brief", and devoid of details.[45] The Appellant also claimed that in fact, the Victim displayed "a penchant for making assertions that were embellished, unsubstantiated and/or plainly untrue", even during the Newton hearing.[46]

30 In this connection, the Appellant submitted that the appellate court could consider evidence from the Newton hearing (including the VIS) in assessing whether his conviction should stand.[47] According to the Appellant, the Victim was "highly selective" in his evidence at the Newton hearing, choosing to focus only on matters that put the Appellant in a bad light.[48] While the Appellant accepted that the purpose of a Newton hearing was not for an accused to mount

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44 GD at [172]–[175].

45 Appellant's Written Submissions dated 14 October 2025 ("AWS") at paras 22–25.

46 AWS at paras 50–59.

47 AWS at paras 90–101.

48 AWS at para 51.

Version No 1: 29 Jan 2026 (16:59 hrs)

a collateral attack on the conviction (*Public Prosecutor v Kong Swee Eng* [2024] 5 SLR 1304 ("*Kong Swee Eng*") at [25]),[49] he contended that his case should be distinguished from *Kong Swee Eng*.[50] Further and in any event, so it was argued, the VIS and other evidence from the Newton hearing could be "considered as being equivalent to *further evidence*" [emphasis added], because the requirements for the admission of further evidence (as set out in *Public Prosecutor v Mohd Ariffan bin Mohd Hassan* [2018] 1 SLR 544 at [27]) were met in this case.[51]

31 Additionally, the Appellant claimed that the DJ erred in his assessment of the other evidence presented at trial. It was argued that the DJ erred in finding "strong" corroborative value in Kenneth and Jonathan's evidence;[52] in finding the CCTV footage to be inconsistent with the Appellant's version of events;[53] in rejecting the Appellant's evidence about having shouted at length for help;[54] in declining to find the Appellant's act of remaining at the scene to be evidence of his innocence;[55] and in finding the omissions in his police statement to be material.[56] In respect of the last issue, the Appellant cited the case of *Ilechukwu Uchechukwu Chukwudi v Public Prosecutor* [2021] 1 SLR 67 ("*Ilechukwu*") at [168] for the proposition that the omissions in his statement were not necessarily reflective of guilt.[57]

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49 AWS at para 94.

50 AWS at paras 99(a)–99(f).

51 AWS at para 99(g).

52 AWS at paras 28–34.

53 AWS at paras 60–64.

54 AWS at paras 65–70.

55 AWS at paras 78–81.

56 AWS at paras 71–77.

57 AWS at para 77.

Version No 1: 29 Jan 2026 (16:59 hrs)

32 Finally, the Appellant argued that even if the DJ had grounds for concluding that the Appellant did push the Victim with "some intentionality",[58] a lesser charge under Section 323A of the Penal Code should have been considered because the "inconclusive" quality of the evidence on the alleged push made it uncertain whether the Appellant had possessed the requisite *mens rea* for an offence under s 325 of the Penal Code.[59]

33 In respect of his appeal against sentence, the Appellant argued that a custodial sentence of three to five days' imprisonment was appropriate. Alternatively, if the court was inclined to consider a lesser charge under s 323A of the Penal Code, the maximum fine of $10,000 would suffice.[60]

34 In so arguing, the Appellant claimed that the DJ had failed to take into account the principle of individualised justice (as reflected in *Sue Chang v Public Prosecutor* [2023] 3 SLR 440 ("*Sue Chang*") at [42] and *Dinesh Singh Bhatia s/o Amarjeet Singh v Public Prosecutor* [2005] 3 SLR(R) 1 ("*Dinesh Singh Bhatia*") at [24]) in calibrating the Appellant's sentence. The Appellant also claimed that "there was no real evidence as to the true nature and implications of Mr Tan's injuries except for the fact that he was hospitalised and given medical leave": *per* the Appellant's submission, while "the Appellant was convicted of having caused grievous hurt by definition … the actual effects of such injuries were minimal as a matter of reality"; and the DJ should therefore have considered a "nominal or short custodial term" as the appropriate indicative starting point for sentencing so as to "balance" things out.[61] Further,

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58 AWS at para 87.

59 AWS at paras 82–89.

60 AWS at paras 112–113.

61 AWS at paras 108(a)–108(b).

Version No 1: 29 Jan 2026 (16:59 hrs)

it was argued that in tempering his assessment of the Appellant's remorse due to the nature of his defence at trial, the DJ had effectively "penalised" the Appellant for claiming trial.[62]

35 In sum, according to the Appellant, the present case was one where "the private interests [had] been fully resolved", and "the public interest implications of the incident [were] so minimal". This made it an "exceptional" case which did not warrant an imposition of the usual benchmark sentencing range.[63]

36 As for the uplift of two months' imprisonment imposed in lieu of caning, the Appellant submitted that this too was wrong because there was little to no need to achieve retribution and/or deterrence in his case. In this connection, the Appellant reiterated his argument about this being a case in which "the private interests were fully resolved", and "the public interest implications of the incident [were] minimal".[64]

The Prosecution's case

37 In response, the Prosecution submitted that the DJ's decision to convict the Appellant should be upheld. There was no error in the DJ's assessment of the Victim's credibility: the Victim's account of events was internally and externally consistent, and corroborated by other sources of evidence. Any inconsistencies in his evidence were not significant; and he was able to provide reasonable explanations for his assertion as to having been pushed down the stairs.[65]

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62 AWS at paras 108(c)–108(d).

63 AWS at paras 109–113.

64 AWS at paras 114–118.

65 Respondent's Written Submissions dated 14 October 2025 ("RWS") at paras 14–28.

Version No 1: 29 Jan 2026 (16:59 hrs)

38 Insofar as the DJ found the Victim's testimony corroborated by Jonathan's and Kenneth's evidence, the Prosecution submitted that this finding too was correct, as the DJ clearly did not rely on the latter two witnesses' evidence as direct evidence of the Appellant's actions. Instead, he relied on the evidence for the fact that the Victim had contemporaneously informed these two witnesses about being pushed down the stairs.[66] As for the CCTV footage, the Prosecution submitted that the DJ also correctly calibrated the weight to be accorded to this evidence.[67]

39 In contrast to the Victim's consistent and credible testimony, the Appellant's account of events was said to be plagued with contradiction and incongruity. His account of events lacked internal consistency and was also at odds with other evidence, including the CCTV footage.[68] Additionally, it was appropriate for the DJ to give weight to the Appellant's failure to say anything in his police statement about trying to pull the Victim back when he slipped at the staircase.[69]

40 The Prosecution also submitted that there was no error in the DJ's other findings of fact, including his finding as to the Appellant's state of mind at the time of his visit to the Victim's office,[70] as well as his rejection of the suggestion that the Victim could have fallen accidentally due to his medical and physical condition.[71]

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66 RWS at paras 25–28.

67 RWS at paras 29–34.

68 RWS at paras 22–24; 35–37.

69 RWS at para 38.

70 RWS at paras 41–44.

71 RWS at paras 45–47.

Version No 1: 29 Jan 2026 (16:59 hrs)

41 As to the Appellant's submissions on sentence, the Prosecution contended that the sentence imposed by the DJ was appropriate, in line with precedent, and reflective of the Appellant's culpability.[72] The DJ's calibration of nine months' imprisonment as the indicative starting sentence was correct, based on the framework set out in *BDB* and the inherent nature of the Victim's injuries (*ie*, right facial bone fractures, with numerous attendant contusions and lacerations). The starting point of nine months' imprisonment was also commensurate with the precedents cited.[73] The DJ's assessment of the weight to be given to other matters – including the Appellant's conduct of his defence at trial and of the Newton hearing – and his decision to impose an additional two months' imprisonment in lieu of caning were also principled and appropriate.[74]

Issues to be determined

42 The following issues arose for my determination in this appeal:

(a) Whether the DJ erred in convicting the Appellant of the charge under s 325 of the Penal Code.

(b) Whether the DJ erred in imposing a total sentence of 13 months' imprisonment.

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72 RWS at para 48.

73 RWS at paras 50–52.

74 RWS at paras 53–67.

Version No 1: 29 Jan 2026 (16:59 hrs)

Issue 1: Appeal against conviction

Threshold for appellate intervention

43 In respect of the appeal against conviction, it is well-established that the role of the appellate court is not to re-assess the evidence in the same way a trial judge would (*Haliffie bin Mamat v Public Prosecutor* [2016] 5 SLR 636 ("*Haliffie*") at [31]). The appellate court is restricted to considering:

(a) whether the trial judge's assessment of witness credibility is "plainly wrong or against the weight of evidence";

(b) whether the trial judge's "verdict is wrong in law and therefore unreasonable"; and

(c) whether the trial judge's "decision is inconsistent with the material objective evidence on record", bearing in mind that an appellate court is in as good a position to assess the internal and external consistency of the witnesses' evidence, and to draw the necessary inferences of fact from the circumstances of the case.

Analysis and decision

44 Having considered the parties' submissions as well as the DJ's GD, I was satisfied that the Appellant had failed to establish any basis for warranting appellate intervention *vis-à-vis* his conviction. The numerous challenges he mounted to the DJ's reasoning and findings of fact were entirely without merit. I explain.

Version No 1: 29 Jan 2026 (16:59 hrs)

The DJ did not err in his assessment of the consistency of the Victim's evidence

45 First, the Appellant sought to attack the DJ's assessment of the consistency of the Victim's evidence. In this respect, the arguments relied on by the Appellant really related to the *amount of detail* which the Victim was able to inject into his narrative of the incident. According to the Appellant, the Victim's account of the push was extremely "bare" and failed to explain "why or how" he was sure he had been pushed.[75]

46 These arguments were entirely unfounded. The Victim was able to provide a number of convincing details about the push. In his evidence-in-chief at trial, the Victim testified that he had brought the Appellant to the stairway with the intention of walking down the stairs; and that he was pushed from behind with "a great force" just as he "almost" reached the stairs.[76] He explained that he could not see behind him but that he could feel that it was "hands that was giving a push" against his back.[77] Under cross-examination, he rejected the suggestion that he was "beginning to fall and [the Appellant] was trying to catch [him]", and maintained that it was a push that he had felt on his back.[78] In re-examination, he testified that the force he felt at his back was a "forward force", which he distinguished from the "downward force" used by the Appellant to hit his thigh while they were seated at the sofa prior to the fall.[79]

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75 AWS at paras 24–25.

76 NEs 21 November 2022 at p 70 lines 27–32 (ROA at p 309).

77 NEs 21 November 2022 at p 71 lines 4–9 (ROA at p 310).

78 NEs 22 November 2022 at p 24 line 29–p 25 line 23 (ROA at pp 355–356).

79 NEs 22 November 2022 at p 54 lines 22–28 (ROA at p 385).

Version No 1: 29 Jan 2026 (16:59 hrs)

47 Quite apart from being able to provide cogent details of the push, as the DJ pointed out in his GD, the Victim's account at trial was also consistent with,[80] firstly his statements to Kenneth and Jonathan almost immediately after the fall; and secondly, the accounts he gave to Dr Toh upon his transfer to Mount Elizabeth Hospital on 14 January 2021 and to the psychiatrist Dr Sim Li Ping Pauline ("Dr Sim") upon being referred to her on 19 January 2021.[81]

48 In short, therefore, the Victim's evidence about having fallen due to a push was both internally and externally consistent. There was simply no basis for the Appellant's attack on the DJ's assessment of the consistency of the Victim's evidence.

The DJ did not err in finding "strong" corroborative value in PW3 Kenneth and PW 7 Jonathan's evidence

49 Next, the Appellant argued that the DJ erred in finding "strong" corroborative value in Kenneth's and Jonathan's evidence because neither Kenneth nor Jonathan had any "direct" knowledge of the events leading to the Victim's fall, and any knowledge they claimed of the alleged push would be based on hearsay.[82] However, this argument was misconceived and apparently based on a misunderstanding of the DJ's reasoning.

50 From his GD, the DJ was very much cognisant of the fact that neither Kenneth nor Jonathan had witnessed the actual fall. This was clear from the

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80 GD at [70].

81 Exhibit P3: Dr Toh Choon Lai's medical report on Victim dated 26 January 2021 (ROA at pp 888–889); Exhibit P9: Dr Sim Li Ping Pauline's medical report on Victim dated 4 April 2021 (ROA at p 899).

82 AWS at paras 28–33.

Version No 1: 29 Jan 2026 (16:59 hrs)

DJ's summary of both witnesses' testimony.[83] In analysing the significance of these two witnesses' testimony, he also explained that their testimony corroborated the Victim's account of events insofar as they were both able to testify "that the Victim had informed them that someone had pushed him when they attended to the Victim after he had fallen down the stairs".[84] In other words, the DJ found their evidence about the Victim's statements that he had been pushed to be relevant insofar as this constituted evidence of complaints made by the Victim immediately following the fall.

51 As for the Appellant's statements to Kenneth and Jonathan about the Victim having fallen on his own, on the other hand, while an accused person's denials of guilt may technically amount to corroboration under s 159 of the Evidence Act 1893 (2020 Rev Ed), it is open to the trial court to accord little or no weight to such denials, depending on the evidence available before the court. In the present case, the DJ explained in detail in his GD why he found the Appellant's version of events to be unsupported by or inconsistent with the other evidence adduced at trial, and ultimately lacking in any credibility. For the reasons explained below at [56]–[61], I was satisfied that the DJ's reasoning in this respect was also correct and borne out by the evidence adduced. Given the DJ's findings as to the credibility (or lack thereof) of the Appellant's version of events, any technical corroboration to be derived from his denials of guilt was of no practical relevance.

52 I should address another point which arose from Jonathan's testimony at trial. In his evidence-in-chief, Jonathan had testified that prior to viewing the CCTV footage for himself, he had refrained from "mak[ing] any judgement" as

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83 GD at [25]–[26].

84 GD at [70].

Version No 1: 29 Jan 2026 (16:59 hrs)

to whether the Appellant could have pushed the Victim down the stairs. As Jonathan explained, prior to viewing the CCTV footage, he himself was unsure as to what had happened:[85]

> Q: … So prior to your actually viewing the clip, what did you think had happened?
>
> A: I wasn't sure at---at all. Because I mean it's … my father's [the Victim's] word against Eric's [the Appellant's] words. And … it could … be either way. I also don't want to say that because it's my father … what he say must be real … I just did not make any judgement at that point in time. That's why I wanted to see of [*sic*] the CCTV can capture anything …
>
> Q: Okay. So prior to viewing the clip, why did you think what Eric said about your father falling down the stairs might be true?
>
> A: … [A]ccidents do…happen … I can't say for sure that, you know, definitely … it's 100% that … my father would not fall down. And to be honest, I don't see that we had that much of a hatred between us that he will push someone close to 80 years old down the stairs … it couldn't really cross my mind that something … like that would happen.

53 In the interest of completeness, it should be noted that Jonathan went on to testify that after seeing the CCTV footage, he "felt" the footage supported the Victim's account of having been pushed by the Appellant.[86]

54 On appeal, it was argued that Jonathan's initial willingness to contemplate the possibility of an accidental fall supported the Appellant's version of events. I found no merit in this argument. As the Appellant's then counsel was at pains to highlight in the trial below,[87] Jonathan did not witness the actual fall, and his thoughts about whether it could have been an accidental fall – as opposed to a push – amounted to irrelevant opinion evidence. In the

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85 NEs 3 June 2022 p 59 line 29–p 60 line 5 (ROA at pp 172–173).

86 NEs 3 June 2022 p 62 lines 9–26 (ROA at p 175).

87 NEs 3 June 2022 p 60 line 27–p 61 line 6 (ROA at pp 173–174).

Version No 1: 29 Jan 2026 (16:59 hrs)

same vein, Jonathan's "feeling" that the CCTV footage supported the Victim's version of events was obviously also irrelevant opinion evidence. That the DJ appreciated these fundamental evidential rules was apparent from his GD: neither Jonathan's initial opinion about the possibility of an accidental fall nor his subsequent opinion about the likelihood of the fall having resulted from a push was cited by the DJ as corroboration of the Victim's account of events. Instead, as I pointed out earlier (at [50]), the DJ was clear that the corroborative value of Jonathan's and Kenneth's testimony arose from their evidence as to the Victim's complaint of a push from the Appellant immediately after the fall.

The DJ did not err in his assessment that the Victim's version of events was consistent with the CCTV footage

55 In respect of the corroborative value of the CCTV footage, I also found no basis for faulting the DJ's assessment of the evidence. While it was true that the CCTV afforded only a partial view of the staircase, having carefully viewed the footage for myself, I was satisfied that the trial judge was well-justified in finding that the Victim's account of events was consistent with what could be seen on the CCTV footage. In particular, I agreed with the DJ that from the footage between 11:09:10 and 11:09:11, the Appellant could be seen shifting from a standing position next to the Victim to one of leaning forward while behind the Victim (or, as the Prosecution put it, "on the balls of his feet") [88] while his right elbow was seen to be raised and bent. As the DJ put it, this was more consistent with a pushing action on the Appellant's part rather than a pulling action as he claimed.[89]

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88 GD at [32], Timestamp "11:09:11".

89 GD at [81].

Version No 1: 29 Jan 2026 (16:59 hrs)

The DJ did not err in his assessment that the Appellant's version of events was inconsistent with the available evidence

56 In this connection, the Appellant was given ample opportunity during the trial to explain the apparent inconsistency between what could be seen in the CCTV footage and his own account of having "stretched out" his hands to "try and catch hold of [the Victim]".[90] In particular, it was pointed out to him in cross-examination that the freeze-frame image at 11:09:11 showed his right hand *already retracted* – as opposed to being stretched out.[91] The Prosecution's position was that the Appellant had retracted his arm before bringing it forward in a pushing motion. When shown the freeze-frame image, the Appellant claimed that to stretch out to pull the Victim back, he had "*lifted up* [his] arm" [emphasis added].[92] Clearly, this answer made no sense, since it did not explain the *retracting* motion seen in the footage. It was then pointed out to him that the CCTV footage showed *his right hand already in front of him* and *his arm bent at the elbow* – so there was no need for him to *retract* that arm in order to reach out to pull the Victim back.[93] In response, the Appellant said that because the Victim was heavy, he needed to "stretch out both hands and with some force in order to pull him back"[94] – which, again, was no answer at all to the point made by the Deputy Public Prosecutor ("DPP").

57 In short, therefore, the Appellant was unable to provide any coherent explanation for the anomalies in his account of events. In fact, it appeared to me that in answering the Prosecution's questions in cross-examination about his

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90 NEs 20 March 2023 p 24 lines 21–23 (ROA at p 462).

91 NEs 20 March 2023 p 61 lines 13–14 (ROA at p 499).

92 NEs 20 March 2023 p 61 lines 16–19 (ROA at p 499).

93 NEs 20 March 2023 p 62 lines 14–20 (ROA at p 500).

94 NEs 20 March 2023 p 63 lines 4–6 (ROA at p 501).

Version No 1: 29 Jan 2026 (16:59 hrs)

actions as seen in the CCTV footage, the Appellant was simply making up his answers on the fly. Thus, for example, as the DJ pointed out in his GD,[95] the Appellant's evidence about having needed to "use a lot of strength to pull" the Victim back due to the latter's "heavy" weight was irreconcilable with his assertion that he never made any contact with the Victim's body.[96]

58 The Appellant's account of what he did shortly prior to and immediately following the Victim's fall was also inconsistent with the other evidence on record. As the Prosecution highlighted in its submissions,[97] the CCTV footage made nonsense of the Appellant's claim that he tried to alert the Victim to the steps ahead by gesturing with his hand. Tellingly, the screenshot from the footage showed that the Victim was facing *away* from the Appellant at the material time. This meant that the Victim could not have seen any gesture from the Appellant; and it made no sense, accordingly, for the Appellant to gesture at him to warn him about the steps ahead.

59 As for the Appellant's claim that he shouted for help immediately following the Victim's fall, this claim was refuted by the evidence given by PW1 Khoo Mei Han ("Cylia"), who testified that she did not hear any shouting for help.[98] PW2 Ong Nick Kee ("Nick Kee") and PW5 Yap Hong @ Jimmy ("Jimmy") said nothing in their evidence about hearing someone shouting for help; and they were not cross-examined about this point.

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95 GD at [83].

96 NEs 20 March 2023 p 62 lines 25–28 (ROA at p 500).

97 RWS at para 34.

98 NEs 2 June 2022 p 21 line 23–p 22 line 12 (ROA at pp 40–41).

Version No 1: 29 Jan 2026 (16:59 hrs)

60 In his written submissions, the Appellant argued that the fact that Cylia claimed not to have heard him shouting for help was not consistent with the CCTV footage.[99] I found this argument to be completely unfounded, because in fact, the CCTV footage contradicted the Appellant's claim that he shouted for help. As the DJ pointed out in his GD,[100] the Appellant claimed that *at 11:09:19* of the CCTV footage, he was still shouting for help.[101] However, the CCTV footage showed a cleaner walking past the staircase *at 11:09:19* with no apparent reaction to any alleged shouts for help.[102] Plainly, it was unbelievable that the Appellant would not have been heard by anyone if he had in fact been shouting "very long".[103]

61 In the interests of completeness, I add that I did not find the Appellant's post-incident behaviour in remaining at the scene to await the police to be of any assistance to his case. From a commonsensical point of view, nothing would have been gained by his leaving the scene, given that various other persons present at the scene would have been able to identify him to the police. In any case, I did not think much needed to be made of this point one way or the other. In my view, the DJ's decision to consider this a neutral point was sensible and fair.[104]

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99 AWS at paras 65–67.

100 GD at [87].

101 NEs 21 March 2023 p 17 lines 14–16 (ROA at p 525).

102 Exhibit P16: CCTV Footage of Scene, Vid File "01010003739004601", 11:09:19.

103 NEs 20 March 2023 p 25 line 26 (ROA at p 463).

104 GD at [93].

Version No 1: 29 Jan 2026 (16:59 hrs)

The DJ did not err in finding material omissions in the Appellant's statements to the police

62 In addition to finding the Appellant's version of events to be inconsistent with the CCTV footage and other witnesses' evidence, the DJ also found material omissions in both the long statement and the cautioned statement which he gave the police on 14 January 2021.[105] Specifically, the DJ pointed out that in his statements of 14 January 2021, the Appellant made no mention of his (alleged) attempt to pull the Victim back just before the latter fell down the stairs.[106] As the DPP highlighted in her cross-examination of the Appellant, it was only in his further cautioned statement on 27 May 2021 that the Appellant informed the police about being "the one try [*sic*] to pull him [the Victim] after he slipped at the staircase".[107] The DJ held that this was "an important detail which ought not to have been left out by the [Appellant] if his version was in fact the truth".[108] He inferred from this omission that the Appellant's story about trying to pull the Victim back was an afterthought.[109]

63 On appeal, the Appellant contended that the DJ was wrong to arrive at the above findings. According to the Appellant, his main focus when giving his statements on 14 January 2021 was on "explaining how Mr Tan [the Victim] fell in the first place"; and in this context, it was "entirely reasonable that the Appellant's focus would have been on explaining how Mr Tan fell – i.e. he had

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105 Exhibit D11: Statement of Accused recorded on 14 January 2021 (ROA at pp 1197–1199); Exhibit D12: Cautioned Statement of Accused recorded on 14 January 2021 (ROA at pp 1200–1204).

106 GD at [90].

107 Exhibit P21: Cautioned Statement of Accused recorded on 27 May 2021 at p 4 (ROA at p 935).

108 GD at [90].

109 GD at [91].

Version No 1: 29 Jan 2026 (16:59 hrs)

lost balance by himself, rather than explaining any efforts he had attempted to prevent the fall".[110] In other words, according to the Appellant, his attempt to pull the Victim back was a peripheral detail which was "entirely reasonable" for him to have omitted from his statements to the police.

64 I found the above argument to be without merit. In the first place, the Appellant himself did not actually give such an explanation when cross-examined about the omission in his 14 January 2021 statements. As the following extract from the trial transcript showed, the Appellant conceded in cross-examination that his attempt to pull the Victim back was an important exculpatory fact – but was unable to give a coherent explanation for omitting mention of this fact on 14 January 2021:[111]

> Q: … Now, this point that you had reached out to try to pull [the Victim] back is very important to your defence, right?
>
> A: Yes.
>
> Q: In fact, it would clearly show that you had not pushed him because you were pulling him back.
>
> A: Yes.
>
> Q: Okay. But it only emerged 4.5 months after the incident on 27th May 2021.
>
> A: Yes, because *this is very important.*
>
> Q: *And if it was very important, you should have raised it at the point when investigations first started.*

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110 AWS at paras 74 and 76.

111 NEs 21 March 2023 p 6 lines 8–18 (ROA at p 514).

Version No 1: 29 Jan 2026 (16:59 hrs)

> A: *Because at that time, I still don't really know what happened because he kept saying I pushed but I did not push so we keep arguing on this point.*
>
> [emphasis added]

65 Quite apart from his incoherent response when asked at trial to explain the omission, the contents of the Appellant's statements of 14 January 2021 showed that from the outset, he was keenly aware that he was being accused of having pushed the Victim down the stairs. In his long statement, for example, even before being told by the recording officer that he was alleged to have pushed the Victim down the stairs, the Appellant had readily volunteered to the police an account of how – in the immediate aftermath of the Victim's fall – he "got into a dispute with [the Victim's] staff whereby they accused [him] of pushing [the Victim] down the stairs".[112] He was also expressly informed by the recording officer during the recording of the long statement that he was alleged to have pushed the Victim down the stairs; and he was asked what he had to say to this allegation. In replying to this question, the Appellant was at pains to state, *inter alia*, that his objective in going to the office was not to hurt the Victim; that he "will not push [the Victim] at all"; and that the Victim "lost balance while taking the stairs".[113] In the recording of the cautioned statement shortly after the completion of the long statement, the Appellant was told that he was facing a charge of causing grievous hurt to the Victim by pushing him down the stairs.[114] Again he asserted that he did not push the Victim and that it was "never

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112 Exhibit D11: Statement of the Accused recorded on 14 January 2021 at p 2 (ROA at p 1198).

113 Exhibit D11: Statement of the Accused recorded on 14 January 2021 at p 2 (ROA at p 1198).

114 Exhibit D12: Cautioned statement of the Accused recorded on 14 January at pp 2–3 (ROA at pp 1201–1202).

Version No 1: 29 Jan 2026 (16:59 hrs)

in [his] mind" to cause grievous hurt to the Victim.[115] It was simply not believable that in the midst of all these protestations of innocence, the Appellant should somehow have thought that his alleged attempt to save the Victim from falling was a peripheral issue not worthy of mention to the police.

66 As for the Appellant's reliance on the case of *Ilechukwu*, this was misconceived. This case was cited in the Appellant's written submissions, apparently for the proposition that an omission to mention material facts would not necessarily be found to be reflective of guilt. However, as the Prosecution highlighted, in *Ilechukwu*, the reason why the majority in the Court of Appeal declined to impugn the accused's creditworthiness – despite the lies and omissions in his statements – was because they found the accused's lies and omissions to be the result of his post-traumatic stress disorder ("PTSD") rather than a realisation of guilt. Indeed, in coming to this conclusion, the majority noted, firstly, s 261 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed), which allows the court to draw an adverse inference from an accused's omission to state a material fact for his defence in his cautioned statement; and secondly, the long-established principle that a court may, "where appropriate, draw an adverse inference against an accused person for failing to state his defence in his long statements" (*Ilechukwu* at [151]–[152]). It was only after a careful examination of the medical evidence that the majority concluded that the lies and omissions in the accused's statements were to be attributed to his post-traumatic stress symptoms; and that consequently, no adverse inference should be drawn against him in respect of these lies and omissions (*Ilechukwu* at [157]–[168]).

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115 Exhibit D12: Cautioned statement of the Accused recorded on 14 January at p 4 (ROA at p 1203).

Version No 1: 29 Jan 2026 (16:59 hrs)

67 In the present case, as I observed earlier (at [64]), the Appellant was unable at trial to offer any coherent explanation for the omission to mention his attempt to pull the Victim to safety in his 14 January 2021 statements; and on appeal, the explanation proffered in his written submissions found no support at all in the evidence.

The DJ did not err in rejecting the Appellant's arguments on the Victim's credibility

68 Next, insofar as the Appellant sought to reprise on appeal the arguments attacking the Victim's credibility, I found these arguments to be completely baseless. In gist, the Appellant tried to suggest – as he did in the trial below – that the Victim lied about all sorts of things, including whether he knew of Wilson's dealings with the Appellant, whether the Appellant punched him forcefully on the thigh three times when sitting next to him, and whether he (the Victim) instructed his daughter (PW6 Tan Suan Suan @ Karen) to take photographs of his injuries. These arguments were carefully considered by the DJ, who – firstly – declined to make any finding that the Victim had lied in the various instances highlighted by the Appellant;[116] and who – secondly – pointed out that even if one were to *assume* the Victim had not been truthful on the matters highlighted by the Appellant, the purported untruths or discrepancies would not, by any stretch, lead to an inference that the Victim must have *lied about being pushed*.[117] Having regard to the evidence on record, I found that the DJ was fully justified in coming to these conclusions.

69 Thus, for example, in respect of the Victim's testimony about the Appellant having punched him forcefully on the thigh three times while they

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116 GD at [73]–[75].

117 GD at [73].

Version No 1: 29 Jan 2026 (16:59 hrs)

were seated on the sofa, it was argued that this testimony was inconsistent with the Case for the Prosecution, which had referred to the Appellant "[knocking]" the Victim "twice" on the thigh; and that the inconsistency was due to the Victim lying at trial in an attempt to embellish his account of events.[118] Having perused the trial transcript, I did not see any basis for concluding that the difference between the two descriptions *must* have been due to the Victim consciously "[embellishing]" his account at trial – as opposed, for example, to some innocent explanation such as the vagaries of memory and/or translation. Moreover, while in cross-examination the Victim did agree that these punches to his thigh had "frightened" him, he qualified this answer by stating that he was not frightened "to a dreadful stage", since he was "at [his] own place", and he saw no need to seek help from his son.[119]

70 More fundamentally, as the High Court observed in *Koh Jing Kwang,* it is "a well-settled principle in criminal law that it is only in cases of *material discrepancies* whereby the credibility of the witness (and hence his account of what had occurred) might be called into question" (at [26]). In *Koh Jing Kwang*, the court did not find the discrepancy between an eyewitness' testimony and his First Information Report ("FIR") to be a material discrepancy whereby the eyewitness' credibility (and hence his account of the appellant's assault on the victim) could be called into question. In the present case, the precise manner (and the number of times) in which the Appellant's hand came into contact with the Victim's thigh while they were seated on the sofa could not sensibly be regarded as being material to the issue of whether he pushed the Victim down the stairs.

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118 AWS at paras 47–49.

119 NEs 22 November 2022 p 20 lines 2–25 (ROA at p 351).

Version No 1: 29 Jan 2026 (16:59 hrs)

71 In addition to attacking the testimony given by the Victim during the trial, the Appellant argued on appeal that the evidence adduced in the post-conviction Newton hearing should be considered to be equivalent to "further evidence" of the Victim's predisposition to lie so as to paint the Appellant in a bad light. As I noted earlier, the Appellant made various arguments as to why *Kong Swee Eng* did not apply to him and why no formal application for the introduction of "further evidence" was needed.

72 It is not necessary for me to address in detail these arguments by the Appellant because even assuming for the sake of argument his proposed approach was valid, there was no merit in his allegations about the credibility of the Victim's evidence in the Newton hearing. According to the Appellant, the evidence adduced in the Newton hearing proved that the Victim had been "highly selective about what he had stated in his VIS, choosing only to focus on things which painted the Appellant in a bad light".[120] I surmised that what the Appellant was saying was that because the Victim had told lies at the Newton hearing about the injuries he sustained from the fall, the court should infer that he must also have told lies at trial about having fallen due to a push from the Appellant. It was suggested in the Appellant's written submissions that the Victim had made numerous assertions that were "plainly untrue" in his evidence in the Newton hearing.[121] For example, according to the Appellant, the Victim "heavily exaggerated the effects of his fall in his Victim Impact Statement ("VIS") and sought to portray himself as being severely affected by the fall, even though this was shown to be false".[122]

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120 AWS at para 51.

121 AWS at para 92.

122 AWS at para 5(c)(iii).

Version No 1: 29 Jan 2026 (16:59 hrs)

73 Having gone through the transcript of the Newton hearing, I found no basis at all for this characterisation of the Victim's evidence. In the first place, while the DJ did state that he placed minimal weight on the after-effects allegedly suffered by the Victim (such as alleged phobia when walking downstairs, alleged reduction in participation in work and clan association activities, *etc*),[123] he made it clear in his GD that this was because the Victim had acknowledged that he had not seen any doctors for medical reports to support his allegations about these after-effects.[124] There was no finding by the DJ that the Victim lied or that he was deceitful or dishonest in making these allegations.

74 Further, and in any event, it was plain from the evidence of the Newton hearing that far from dishonestly trying "only to focus on things which painted the Appellant in a bad light",[125] the Victim was truthful and willing to present a balanced perspective. For example, insofar as he alluded to having reduced the frequency of his weekly visits to the office, he was upfront in stating in the VIS that this was due to multiple reasons which included the fact that he had been slowly retiring and letting his children manage the business.[126] As another example, when he was asked by the DPP about his phobia of stairs, far from seeking to exaggerate or embellish his evidence on this matter, the Victim was frank in explaining that he had become used to the phobia such that it had become "a very normal and common experience".[127]

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123 GD at [159].

124 GD at [156].

125 AWS at para 51.

126 Exhibit P23: Victim Impact Statement dated 16 January 2024 at para 6 (ROA at pp 943–944).

127 NEs 7 May 2024 at p 11 lines 27–28 (ROA at p 605).

Version No 1: 29 Jan 2026 (16:59 hrs)

75 In short, even assuming for the sake of argument that the Appellant was entitled to rely on evidence from the Newton hearing to contest his conviction, there was simply no basis for inferring from such evidence that the Victim was an untruthful witness who was intent on unfairly portraying the Appellant in a bad light. Nor was there any basis for saying that evidence of the Newton hearing went towards showing that the Victim had a "penchant for embellishment".[128]

Conclusion on the actus reus *of the charge*

76 For the reasons explained above at [45]–[75], I was satisfied that the DJ was correct in finding the *actus reus* of the s 325 charge to have been made out.

Conclusion on the mens rea *of the charge*

77 In respect of the *mens rea* element of this offence, the charge against the Appellant stated that he knew himself to be likely to cause grievous hurt to the Victim by pushing the latter down a flight of stairs.[129] Having read the DJ's GD and reviewed the evidence on record, I was satisfied that the DJ was also correct in finding the *mens rea* element proven.

78 In *Muhammad Khalis bin Ramlee*, Sundaresh Menon CJ held that 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" (at [42]). Menon CJ also emphasised that while the inquiry was as to the accused's subjective state of mind, there was "an important distinction between the specific mental

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128 AWS at para 91.

129 Charge (DAC-901296-2021) dated 31 May 2022 (Record of Appeal (Amendment No. 1) ("ROA") at p 6).

Version No 1: 29 Jan 2026 (16:59 hrs)

element required by the law for an offence to be made out … and the way in which the relevant mental element may be proved by the Prosecution or found by the court" (at [42]):

> … 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 PP* [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 v PP* [2008] 3 SLR(R) 447] 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.

79 Menon CJ also noted that practically speaking, 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 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 (at [44]). In *Muhammad Khalis bin Ramlee,* the charge of voluntarily causing grievous hurt on which the appellant was convicted involved his having punched the deceased, causing the latter to fall to the ground and hit his head on the kerb, which in turn led to severe head injuries and eventual death (at [2]). On appeal, the appellant argued that he had never intended the deceased to lose consciousness or to fall and fracture his

Version No 1: 29 Jan 2026 (16:59 hrs)

skull – which Menon CJ noted was essentially a challenge as to whether the *mens rea* element of the offence was made out (at [29]). Menon CJ held (at [46]) that as a matter of inference from the facts before the court, the appellant did in fact know at the time of delivering the forceful punch that some form of grievous hurt was likely to result. *Inter alia,* the deceased was a large man whom it would have been difficult to topple, let alone immediately knock out cold. This was therefore a case where the sheer force of the appellant's blow was *alone* sufficient to fell the deceased; and "[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". The appellant was unable to explain why he nonetheless held the view that no grievous hurt was likely to result. There was also nothing in his conduct immediately after the incident (or in his evidence) to suggest that he was surprised by the effect his blow had on the deceased.

80 In the present case, as I explained earlier, there was ample evidence to support the DJ's finding that the Appellant did in fact push the Victim down the stairs. Following from this finding, the DJ noted that the Appellant was aware, firstly, of the Victim's age (74 years at the time of the offence); secondly, of the fact that the Victim was "heavy" (a description applied by the Appellant himself);[130] and thirdly, that the staircase was made of hard concrete such that there was nothing to cushion the Victim's fall down the stairs.[131] I agreed with the DJ that any reasonable person in the Appellant's position would clearly have known that by pushing the Victim down the stairs, it was likely that the Victim would suffer grievous hurt – and in particular, grievous hurt in the form of

130 NEs 20 March 2023 p 63 line 4 (ROA at p 501).

131 GD at [114].

Version No 1: 29 Jan 2026 (16:59 hrs)

fractures. In short, on the evidence adduced, the DJ's finding that the *mens rea* element of the charge was made out could not be faulted.

Summary of findings in relation to the appeal against conviction

81 In sum, I was satisfied that the DJ's decision to convict the Appellant of the charge under s 325 of the Penal Code was carefully reasoned and well supported by the evidence on record. There were no grounds to warrant appellate intervention, and I accordingly dismissed the appeal against his conviction.

82 For completeness, given the conclusions I came to on the evidence, there was no basis for substituting a lesser charge under s 323A of the Penal Code.

Issue 2: Appeal against sentence

83 I next address the appeal against his sentence.

Applicable law

Threshold for appellate intervention

84 Generally, an appellate court will not disturb the sentence imposed by the trial court unless it is shown that the trial court erred with respect to the proper factual basis for sentencing, or the trial judge failed to appreciate the material facts before him, or the sentence was wrong in principle, or the sentence was manifestly excessive or manifestly inadequate, as the case may be: *Public Prosecutor v UI* [2008] 4 SLR(R) 500 at [12].

Version No 1: 29 Jan 2026 (16:59 hrs)

Applicable sentencing framework

85 For offences of voluntarily causing grievous hurt under s 325 of the Penal Code, a two-step sentencing approach was established by the Court of Appeal in *BDB*. First, an indicative starting point for sentencing should be determined based on the seriousness of the injury, which should be assessed along a spectrum. This exercise is informed by a range of factors, including the number and seriousness of any fractures, the location and extent of the pain suffered by the victim, the permanence or duration of the injuries, the extent of post-injury care that may be needed, and the degree of disruption experienced by the victim. Second, the indicative starting point should then be adjusted either upwards or downwards based on an assessment of the offender's culpability and the presence of relevant aggravating and/or mitigating factors.

86 Further guidance on the sentencing process for offences under s 325 of the Penal Code was given by Menon CJ in *Saw Beng Chong.* In that case, the appellant pleaded guilty to a s 325 charge which involved his choking, punching and pushing the victim, causing the latter to suffer fractures of the nasal bone, left anterior 8th rib and orbital wall (at [5]). The victim was given six days' hospitalisation leave (at [12]). The district judge sentenced the appellant to 13 months' imprisonment and declined to impose caning (at [17]). On appeal, Menon CJ held that where there are multiple fractures that are not of a more serious nature (as was the case in *BDB*) and that cause the victim to suffer some degree of disruption and persistent pain, a starting point of between nine and 14 months' imprisonment would be appropriate. Having regard to the degree and nature of harm caused in *Saw Beng Chong*, Menon CJ found that the district judge was not wrong to determine that a starting point of 12 or 13 months' imprisonment was applicable (at [40]).

Version No 1: 29 Jan 2026 (16:59 hrs)

Analysis and decision

The Appellant's submissions on "individualised justice" were misconceived

87 I next address the key arguments raised by the Appellant in his appeal against sentence.

88 First, the Appellant argued that the DJ "failed to give sufficient heed to the principle of individualised justice in calibrating the Appellant's imprisonment sentence".[132] In so arguing, the Appellant placed heavy reliance on the remarks by the High Court in *Sue Chang* about the courts' "keen desire to deliver individualised justice which is sensitive to the particular facts and circumstances of each case and offender" (at [42]). It was submitted that the DJ's decision on sentence in this case was flawed because he had applied the *BDB* sentencing framework in a "relatively mechanistic fashion" without considering the Appellant's submissions on how the "principle of individualised justice" should operate in the particular circumstances of the Appellant's case.[133]

89 I noted that in the written submissions filed on the Appellant's behalf, there was no attempt to analyse the factors relevant to sentencing according to the two-step approach established in *BDB*. Instead, a list of alleged errors by the DJ was set out, at the end of which the Appellant contended that the DJ should "at least have considered the Appellant's submission that *the appropriate indicative starting point for sentencing could be a nominal or short custodial term*" [emphasis added].[134]

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132 AWS at para 102.

133 AWS at para 108.

134 AWS at para 108(b).

Version No 1: 29 Jan 2026 (16:59 hrs)

90 I did not find any merit in the Appellant's arguments. My reasons were as follows.

91 To begin with, the references made by the Appellant to the High Court's remarks in *Sue Chang* omitted mention of the context in which these remarks were made. This was unfortunate because the context was important to understanding the Court's views on "individualised justice". The remarks in *Sue Chang* about the courts' "keen desire to deliver individualised justice" were made in the course of discussing the various sentencing principles which guide the court in the exercise of its discretion in sentencing offenders (at [42]). To put it in context, what the Court actually said was (at [42]–[43]):

> 42 At its core, sentencing is an exercise of judicial discretion. However, that discretion is neither unprincipled nor unfettered. The sentencing court is guided in arriving at the appropriate sentence in each case by considering and weighing the four classical principles of sentencing, namely, deterrence, retribution, prevention and rehabilitation. The court is also to have regard to sentencing factors which reflect the seriousness of the offence(s) committed by the offender and other circumstances unique to the individual offender. These are often characterised as offence-specific factors and offender-specific factors respectively. Behind this approach is the keen desire to deliver individualised justice which is sensitive to the particular facts and circumstances of each case and offender.
>
> 43 Apart from the endeavour to deliver individualised justice, another key aspect of sentencing has also been to ensure consistency in both outcome and approach. To put it simply, the courts strive to treat like cases alike, while being flexible enough to accommodate the subtle differences in every case.

92 The Court went on to observe that one of the means by which the courts have sought to translate these sentencing principles into practice has been through the adoption of sentencing frameworks. Citing the case of *Public Prosecutor v Pang Shuo* [2016] 3 SLR 903 (at [28]), the Court in *Sue Chang* pointed out that a good sentencing framework provides the analytical frame of

Version No 1: 29 Jan 2026 (16:59 hrs)

reference to allow the sentencing judge to achieve a reasoned, fair and appropriate sentence in line with other like cases while having due regard to the facts of each particular case. In other words, there is good reason why a sentencing court takes reference from, and is guided by, established sentencing frameworks in considering the appropriate sentence in each case that comes before it.

93 To bolster his argument that the DJ had erred in principle in his approach to sentencing, the Appellant also relied on the case of *Dinesh Singh Bhatia*. However, it did not appear to me that *Dinesh Singh Bhatia* was of any assistance in advancing the Appellant's argument about the purported defects in the DJ's reasoning. In *Dinesh Singh Bhatia* (which concerned an offence of consumption of a Class A drug), the High Court had to consider the appropriate use of sentencing benchmarks and/or tariffs. The Court held that sentencing benchmarks and/or tariffs are highly significant as judicial tools, to help achieve a certain degree of consistency and rationality in the courts' sentencing practices (at [24]). At the same time, the Court observed that they ought not to be applied rigidly or religiously: no two cases will be completely identical; and every sentence reflects the very careful evaluation of matters including public interest, the nature and circumstances of the offence and the identity of the offender. What the Court took exception with in *Dinesh Singh Bhatia*, at [24], was the DJ's reasoning that for Class A consumption cases, courts in Singapore had (absent circumstances warranting a departure from the norm) "*always* been imposing sentences in line with the proposed [benchmark sentences]" of 12 to 18 months proposed by the Senior District Judge ("SDJ") in *Ooi Joo Keong v Public Prosecutor* [1996] SGMC 1 ("*Ooi Joo Keong MC*") and affirmed by Yong Pung How CJ in *Ooi Joo Keong v Public Prosecutor* [1996] 3 SLR(R) 866 (see *Dinesh Singh Bhatia* at [27]).

Version No 1: 29 Jan 2026 (16:59 hrs)

94 The Court noted that in *Ooi Joo Keong MC*, the SDJ was addressing the appropriate sentencing tariff for individuals with antecedents (*Dinesh Singh Bhatia* at [31]); further, that although Yong Pung How CJ had apparently approved the SDJ's proposed tariff of 12 to 18 months as a general guideline, he had clearly not intended to suggest it was an immutable tariff for all first offenders. Indeed, Yong Pung How CJ had in three subsequent Class A consumption cases not applied the purported tariff (*Dinesh Singh Bhatia* at [34]).

95 In *Dinesh Singh Bhatia,* where the offender was a first offender, the Court held that it would not be correct to visit upon a first-time consumer of drugs precisely the same sentence that is meted out to an addict or even a casual user (at [39]). For these reasons, the Court reduced the offender's sentence from 12 months' imprisonment to eight months (at [58]).

96 Neither *Sue Chang* nor *Dinesh Singh Bhatia* provided any basis, therefore, for the suggestion that the DJ erred in principle in his approach to the Appellant's sentencing. The issues facing the Court in *Dinesh Singh Bhatia* regarding the proper use of sentencing benchmarks and tariffs did not arise in this case. The DJ correctly followed the two-step *BDB* sentencing approach. Insofar as the courts in *Sue Chang* and *Dinesh Singh Bhatia* adjured sentencing judges to have regard to the particular facts and circumstances of each case, this too was unmistakably done by the DJ, as seen from his careful analysis of various facts at [151]–[171] of his GD.

97 Pertinently, when asked by me for clarification at the hearing, counsel for the Appellant accepted that at the first stage of the *BDB* framework, the indicative starting point of nine months' imprisonment – as calibrated by the DJ

Version No 1: 29 Jan 2026 (16:59 hrs)

in his GD[135] – was in accordance with the guidance laid down by Menon CJ in *Saw Beng Chong.* In other words, at the hearing before me, counsel accepted that the DJ did not err at the first step of the *BDB* framework in his calibration of the seriousness of the Appellant's offence.

The DJ did not err in his application of the BDB sentencing framework

98 Rather oddly, however, despite the above concessions, it continued to be contended on behalf of the Appellant that nevertheless, the DJ should have found the present case so "exceptional" as to warrant a "nominal" custodial term of "three to five days". This argument hinged on two key propositions: firstly, the proposition that the Victim suffered minimal after-effects from grievous hurt caused by the Appellant; and secondly, the proposition that the Victim had been fully compensated.

99 In respect of the first proposition, it must be pointed out that the question of whether or not a victim of grievous hurt sustained lasting after-effects from the injury is actually considered at the first step of the *BDB* process, when the court determines the indicative starting sentence. In other words, despite counsel having conceded at the hearing that the DJ's indicative starting point of nine months was in accordance with the guidance given in *Saw Beng Chong,* it appeared that the Appellant continued to challenge the DJ's calibration of the seriousness of his offence. It was not clear to me whether the Appellant's position (despite his counsel's concession) was that at the first step of the *BDB* sentencing approach, the DJ should have found the indicative starting sentence to be "three to five days" on account of the absence of any after-effects suffered by the Victim. If this was indeed the position being advocated, then there was

135 GD at [161].

Version No 1: 29 Jan 2026 (16:59 hrs)

no basis for it. While it was true that the DJ placed minimal weight on the after-effects stated in the VIS (*eg,* the Victim's stated phobia about stairs),[136] such after-effects are merely one of the numerous factors which the sentencing court takes into account in calibrating the indicative starting sentence at the first step of the *BDB* sentencing approach. As Menon CJ observed in *Saw Beng Chong,* the assessment of the indicative starting sentence is informed by a range of factors which include the number and seriousness of any fractures, the location and extent of the pain suffered by the victim, the permanence or duration of the injuries, the extent of post-injury care that may be needed and the degree of disruption experienced by the victim (at [26]).

100 As noted above at [86], in *Saw Beng Chong,* the victim sustained fractures including a mildly displaced nasal bone fracture, an undisclosed rib fracture and a minimally displaced orbital wall fracture (at [11]). He was hospitalised for one day and given six days of hospitalisation leave (at [12]). On these facts, Menon CJ upheld the DJ's determination that a starting point of 12 to 13 months' imprisonment was applicable (at [40]).

101 In the present case, the Victim suffered facial fractures, as well as other less serious injuries such as contusions to his knee and shoulder. He was hospitalised for eight days and given 20 days of medical leave. On these facts, the DJ was well justified in assessing that the indicative starting sentence should be nine months' imprisonment. Indeed, on these facts, an indicative starting sentence of "three to five days" – or substantially below nine months – would have been entirely inappropriate.

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136 GD at [159].

Version No 1: 29 Jan 2026 (16:59 hrs)

102 If, on the other hand, the Appellant's position was that the indicative starting sentence of nine months should have been adjusted downwards to "three to five days" at the second stage of the *BDB* sentencing approach, this argument too was unfounded. There were simply no grounds at the second stage for such a substantial downward calibration of the indicative sentence; and the DJ's reasoning at this stage could not be faulted.

103 In assessing the Appellant's culpability, the DJ correctly pointed out the Victim's age at the time of the offence (74 years). The Victim had also done nothing to provoke the Appellant up to the point of the Appellant's push. At the same time, the DJ also correctly noted that there was no premeditation by the Appellant, who appeared to have acted out of anger.[137]

104 Insofar as the DJ was said to have given insufficient weight at this stage of the sentencing process to the "full" compensation made to the Victim, this submission was incorrect. In his GD, the DJ observed that the settlement agreement was signed by the parties in November 2022.[138] It was an agreement which concerned not only the payment of compensation by the Appellant to the Victim, but also the settlement of the Appellant's civil suit in return for payment of a settlement sum by Wilson. The DJ very fairly accepted that the Victim "had been fully compensated for the injuries he had sustained" and that the Appellant "had demonstrated a degree of remorse by entering into the settlement agreement".[139]

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137 GD at [163]–[164].

138 Exhibit D14: Settlement Agreement entered into on 2 November 2022 (ROA at pp 1208–1215).

139 GD at [165]–[167].

Version No 1: 29 Jan 2026 (16:59 hrs)

105 On the other hand, the DJ also found that some of the evidence before him detracted from the Appellant's claims of remorse.[140] Having reviewed the record of appeal, I was satisfied that the DJ's findings on this matter were supported by the evidence. In particular, having gone through the trial transcript, it was clear to me that in the criminal trial proceedings which followed the signing of the settlement agreement, the Appellant consistently castigated the Victim as a liar who had not only made up the story of a push to frame the Appellant and to "exploit" the situation for himself and/or his family,[141] but had even gone so far as to instigate and mobilise his children and employees to further his false agenda.[142] I found that the DJ was amply justified in finding that the manner in which the Appellant chose to conduct his defence at trial was not quite consistent with his claims of genuine remorse.

106 In this regard, I firmly rejected the Appellant's argument that such a finding by the DJ meant that "an accused person will always be penalised as long as he claims trial in a '*he said she said*' situation, since the accused person would inevitably have to take the position that the victim was lying".[143] This was a complete mischaracterisation of the DJ's reasoning. As a matter of general principle, payment of compensation or restitution by an offender to his victim carries mitigating weight because the making of compensation or restitution usually indicates remorse on the offender's part for his crime. However, it is for the sentencing court to assess in each case *how much weight* to give to this factor; and in making this assessment, the court will consider, *inter alia*, the

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140 GD at [168].

141 NEs 22 November 2022 p 17 lines 5–7 (ROA at p 348).

142 See *eg*, Defence's Closing Submissions dated 12 May 2023 at para 19 (ROA at p 1622).

143 AWS at para 108(d).

Version No 1: 29 Jan 2026 (16:59 hrs)

genuineness of the offender's professed remorse. In other words, in each case where an accused claims to have demonstrated remorse through the making of compensation or restitution to his victim, such claims of remorse have to be assessed against the other facts and circumstances in the case.

107 Thus, for example, as I pointed out to counsel at the hearing, if there are two accused persons who both paid compensation to their victims, all other things being equal, the accused person who put his victim through the stress of a lengthy trial and who cast multiple aspersions on the victim's integrity may be regarded by the sentencing court as demonstrating a lesser degree of remorse than the accused who spared his victim such stress and humiliation. This sort of analysis is part of the reasoning process which a sentencing court undertakes in assessing the weight to be given to any one factor in sentencing an offender. Far from this analysis being an attempt to "[penalise]" accused persons for claiming trial, it is integral to the sentencing court's efforts to take account of the particular facts and circumstances of the case before it.

108 The Appellant also sought to argue that the usual sentencing norms did not apply in this case because – according to him – this was a case of a "private dispute that occurred in private and away from the public eye";[144] and the public interest implications of this incident were minimal.[145] Again, this was incorrect. Any dispute between the Appellant, Wilson, and the Victim over the Tans' alleged unwillingness to repay certain loans may have been a private dispute. However, the prosecution of the Appellant for the offence of voluntarily causing grievous hurt to the Victim was a public matter, in which the public interest was certainly engaged. *Inter alia,* there was indisputably public interest in ensuring

144 AWS at para 109.

145 AWS at para 111.

Version No 1: 29 Jan 2026 (16:59 hrs)

that individuals who are embroiled in personal disputes do not escalate to physical violence against each other.

109 In this connection, I should make it clear that there was nothing at all "exceptional" about the present case. Many offences of causing hurt arise, regrettably, from private squabbles between the individuals involved. There is no basis for saying that the "private" or "personal" nature of the underlying dispute is good reason in itself to regard the offender's acts of violence as being "exceptional".

110 Following from this, while the absence of any history of violence on the Appellant's part and his previous good character might have rendered specific deterrence a far less significant sentencing consideration in this case, having regard to the nature of the offence, general deterrence remained an important sentencing consideration: like-minded individuals need to be deterred from giving vent to the frustration and angst inherent in any personal dispute by resorting to physical harm.

111 Taking into account the Appellant's culpability and other relevant factors at the second stage of the *BDB* process, I was of the view that the DJ was fully justified in applying an uplift of two months, resulting in a sentence of 11 months' imprisonment.[146]

The DJ did not err in imposing an additional two months' imprisonment in lieu of caning

112 Finally, I was satisfied that an additional two months' imprisonment in lieu of caning was warranted on the facts of this case. In *Amin bin Abdullah v*

146 GD at [171].

Version No 1: 29 Jan 2026 (16:59 hrs)

Public Prosecutor [2017] 5 SLR 904 ("*Amin bin Abdullah*"), the three-judge High Court held that the correct starting point is that an offender's term of imprisonment should not be enhanced, unless there are grounds to justify doing so. What this means is that the court should not proceed on the presumptive basis that once an offender is exempted from caning, his sentence of imprisonment should be enhanced (at [53]). Enhancement of the exempted offender's sentence may be warranted if there is a need to compensate for the deterrent effect of caning that is lost by reason of the exemption; and the need to maintain parity among co-offenders (at [59]). As the Court in *Amin bin Abdullah* observed at [62], it will generally be helpful to first identify the principal sentencing objectives that underlie the imposition of caning for the offence in question. The following observations by the Court are also pertinent to the present case, where the Appellant was exempted from caning by reason of his age:

> 66 … We are here addressing, in particular, the sentencing objective of general deterrence which looks to deter other like-minded individuals, who are similarly situated as the offender before the court, from engaging in similar conduct. The key question is whether such potential offenders would have known before committing the offence that by reason of their own circumstances, they would be exempted from caning. If so, then an additional term of imprisonment in lieu of caning may be more readily seen as necessary or appropriate in order to compensate for the general deterrent effect lost because the offender knows he or she will be exempted from caning. If, on the other hand, the exemption was unexpected in the circumstances, then there would not be a similar need to replace the lost deterrent effect of caning because the *prospect* of caning would nonetheless have been contemplated by such would-be offenders, even if it might subsequently transpire that they will not be caned.
>
> 67 In general, an offender who was exempted from caning due to gender or age is likely to have known from the outset that he or she would not be caned. Therefore, for this class of exempted offenders, an additional term of imprisonment will be more readily seen to be called for, in order to compensate for the lost deterrent effect of caning. Conversely, an offender who was

Version No 1: 29 Jan 2026 (16:59 hrs)

> exempted from caning on medical grounds is less likely to have known that he would not be caned. Therefore, it would generally not be necessary to enhance the sentences of such offenders. So too might be the position with offenders who will receive the permitted limit of strokes but are exempted only from further strokes beyond this limit. Of course, these are mere guidelines, and each case must be decided on its own facts.
>
> [emphasis added]

113 In *BDB,* the court held that for offences of voluntarily causing grievous hurt, deterrence – both general and specific – is a relevant sentencing principle (at [88]–[98]). While the element of specific deterrence might not feature prominently in the present case (bearing in mind the absence of any history of violence on the Appellant's part), as I highlighted earlier, the element of general deterrence was still important in signalling to other like-minded individuals what the consequences of resorting to physical violence will be (see *BDB* at [94]). Having regard to the fact that the Appellant was exempted from caning by virtue of his age, and applying the principles set out in *Amin bin Abdullah*, I found that the DJ was justified in deciding that an additional term of imprisonment was needed to replace the lost deterrent effect of caning. Further, having regard to the sentence which the offence carried, I also found that an enhancement of the sentence in lieu of caning would provide an effective deterrent to would-be offenders.

114 In addition to deterrence, I agreed with the DJ that retribution too was a relevant sentencing objective in cases of voluntarily causing grievous hurt. I was of the view too that in this case, there was a need to compensate as well for the retributive effects of caning lost by reason of the exemption. In the circumstances, I was satisfied that the DJ was fully justified in enhancing the Appellant's sentence by two months' imprisonment in lieu of six strokes of the cane.

Version No 1: 29 Jan 2026 (16:59 hrs)

Summary of decision on sentence

115 In sum, I found the DJ's decision on sentence to be fair, correctly reasoned, and well-supported by the evidence adduced. There was no basis for any appellate intervention *vis-à-vis* the eventual total sentence of 13 months' imprisonment.

Conclusion

116 For the reasons set out in these written grounds, I found the Appellant's appeal against both conviction and sentence to be without merit; and I therefore dismissed the appeal.

Mavis Chionh Sze Chyi J
Judge of the High Court

Wong Hin Pkin Wendell, Andrew Chua Ruiming, Ling Yuanrong and Chew Hwee Sian Shirin (Drew & Napier LLC) for the appellant; Poon Yirong Yvonne and Ngian Jia Xian June (Attorney-General's Chambers) for the respondent.

Version No 1: 29 Jan 2026 (16:59 hrs)