Public Prosecutor v Kwong Kok Hing
[2008] SGCA 10

Case Number : Cr App 8/2007

Decision Date : 10 March 2008

Tribunal/Court : Court of Appeal

Coram : Andrew Phang Boon Leong JA; V K Rajah JA; Tan Lee Meng J

Counsel Name(s) : Walter Woon SC and Stanley Kok (Attorney-General's Chambers) for the appellant; Shashi Nathan and Adrian Wee (Harry Elias Partnership) for the respondent

Parties : Public Prosecutor — Kwong Kok Hing

Criminal Law – Offences – Attempt to commit culpable homicide – Section 308 Penal Code (Cap 224, 1985 Rev Ed) – Definition of "hurt" – Section 319 Penal Code (Cap 224, 1985 Rev Ed) – Whether definition of "hurt" extending to non-physical injury

Criminal Procedure and Sentencing – Sentencing – Whether sentence manifestly inadequate – Sentencing considerations – Whether "denunciation" a separate sentencing objective – Range of possible sentences – Offender's act among worst conceivable conduct – Mitigating factors – Offender's psychiatric condition – Offender having been released from prison

Evidence – Principles – Functions of judge – Psychiatric opinion – Duty of both psychiatrist and counsel to ensure evaluation is accurate – Judge should resolve any inconsistency

10 March 2008

V K Rajah JA (delivering the grounds of decision of the court):

Introduction

1 The respondent, Kwong Kok Hing, was charged with attempting to commit culpable homicide pursuant to s 308 of the Penal Code (Cap 224, 1985 Rev Ed) for pushing his ex-girlfriend ("the victim") into the path of an oncoming train at a Mass Rapid Transit ("MRT") station. On 23 May 2007, he pleaded guilty to the charge in the High Court. The trial judge ("the Judge") sentenced the respondent to one year's imprisonment and backdated the sentence to his date of remand: see *PP v Kwong Kok Hing* [2007] SGHC 86 ("the GD"). As a result, the respondent was released on the same day. Upon his release, he promptly returned to his home in Malaysia. Dissatisfied with the sentence, the Prosecution subsequently appealed. We allowed the appeal. The sentence of one year's imprisonment imposed by Judge was substituted with a sentence of three years' imprisonment. This sentence of three years' imprisonment included the period the respondent spent in remand from 16 September 2006 to 23 May 2007.

Preliminary observations

2 We were only informed at the commencement of the hearing of the appeal that the respondent would not be present. This was a rather unfortunate situation that transpired in part because of the unusual circumstances of the case, which were that the respondent, a Malaysian, was released from prison before the appeal could be heard. Two suggestions are offered for the conduct of similar matters in future.

3 First, the Prosecution should consider applying immediately to the Court of Appeal for directions pending an appeal. In the event the release of the offender is scheduled to take place on the same day, the Prosecution can request for it to be deferred until the Court of Appeal considers the appropriate modalities to be adopted in the particular matter. The Registry should arrange for such matters to be heard on a very urgent basis as the liberty of an individual is at stake. Such an application by the Prosecution in the present case, if granted, could have led to two possible results. In the first scenario, the respondent could have been released on bail, thus providing some measure of assurance that he would be present for the appeal. This was of particular importance in the present case, as the respondent was a foreigner and promptly returned home for medical treatment. In the second scenario, the Court of Appeal could have heard the appeal on its merits on the same day or as soon thereafter as was possible. In any event, it is critical in such cases that both the Prosecution and the Defence act promptly to mitigate any possible injustice caused by delay. The respondent was released on 23 May 2007, but the appeal was not heard until 13 November 2007. This six-month delay was unfortunate, and perhaps, with the benefit of hindsight, avoidable. As Yong Pung How CJ advised in *PP v Siew Boon Loong* [2005] 1 SLR 611 ("*Siew Boon Loong*") at [29]:

> Finally, I noted that the respondent had long finished serving his sentence on 8 December 2004 before this appeal was heard. The Prosecution informed me that it had kept to the prescribed time-lines, and that there was no delay on its part. For such future appeal cases, *it may be prudent for the Prosecution to highlight to the Registry that the accused is serving a very short sentence, and is expected to be released before the appeal is heard, so that a decision can be made as to whether the appeal should be re-scheduled to be heard on an expedited basis.* [emphasis added]

4 In *PP v Fernando Payagala Waduge Malitha Kumar* [2007] 2 SLR 334 ("*Fernando Payagala*"), the High Court also observed at [14]:

> [I]t is highly desirable that the relevant court registries and counsel involved in criminal cases pertaining to foreigners sentenced to short terms of imprisonment use their best endeavours to ensure that the appeals are expedited: see also the observations of Yong Pung How CJ in *PP v Siew Boon Ling* [2005] 1 SLR 611 at [29]. Indeed, the written appeal submissions and possibly the trial judge's detailed grounds of decision may be dispensed with or alternatively replaced by short skeletal submissions/grounds of decision. *In cases such as this, time is of the essence in ensuring that the legitimate expectations about the administration of justice are not unnecessarily undermined. Where the liberty of an individual is at stake, certainty should always replace uncertainty as a matter of urgency and priority.* I single out foreigners because they may be hard put to raise adequate security for bail in this regard. Similar considerations should also apply to impecunious Singaporeans and permanent residents. [emphasis added]

5 Second, prior or earlier notification to the Registry should have been given by defence counsel once they learnt that the respondent did not intend to appear at the hearing. The appeal could perhaps then have been rescheduled to ensure the respondent's presence. As it was, in the light of the respondent's absence at the hearing, we subsequently directed the respondent to surrender himself to the prison authorities by 3 December 2007. In this connection, we note that the respondent indeed returned to Singapore and surrendered himself to the relevant authorities on 3 December 2007.

The facts

6 The respondent and the victim had been dating for approximately two years prior to the offence. The couple had a somewhat turbulent relationship and several days before the incident, the

victim informed the respondent that she wanted to end their relationship. On 14 September 2006, the day of the incident, the respondent visited the victim at her workplace at Clementi Post Office ("the Post Office") in the afternoon to plead for the resumption of their relationship. As the victim was busy, the respondent did not have an opportunity to have a meaningful conversation with her. He then waited for several hours at the Post Office until the victim left for home.

7 As the victim left the Post Office just after 6.00pm, the respondent again approached her and a heated quarrel ensued. The victim reiterated her decision to end the relationship, but the respondent petulantly insisted that she give the relationship another chance. In the course of the quarrel, the victim made a telephone call to her elder sister, and the latter agreed to meet her at Clementi MRT station ("the station") to accompany her home. The victim then proceeded to the station to wait for her sister, with the respondent trailing and quarrelling with her along the way. On arriving at the train platform of the station, they both stood against part of the parapet wall fronting the westbound side of the train platform and continued with their row.

8 At about 6.58pm, a westbound train travelling at 50–60km/h approached the station. All of a sudden, the respondent, knowing that the train was approaching, grabbed the victim by her shoulders and shoved her toward the edge of the platform. Not content with this, he then forcefully pushed her a second time, causing her to fall off the platform onto the tracks below. The victim fell onto the middle of the train tracks, directly in the path of the fast approaching train.

9 Fortunately, the victim managed to land on the tracks in a crouching position. She then showed great presence of mind in picking herself up and racing to the far side of the tracks, before vaulting over the parapet wall to the safety of the walkway. All this transpired just split seconds before the train hurtled past her and came to a stop in the station.

10 After pushing the victim onto the train tracks, the respondent wandered around the train platform aimlessly. Later, he was detained by several commuters as he made his way back toward the westbound train at the platform. He was subdued after a scuffle, in the course of which he suffered some minor injuries. The police were then notified and the respondent was arrested.

The decision of the Judge

11 In sentencing, the Judge took into consideration reports on the respondent's psychiatric illness, the respondent's lack of antecedents as well as the fact that the victim had survived the incident. He remarked at [9] of the GD:

> It is true that [the victim] was fortunate to be alive. *Her good fortune is thus also the good fortune of the accused.* He might otherwise have faced a murder charge. The danger of the act was inherent in the charge and therefore should not be expanded to the extent that we punish the offender for what might have been instead of what was the fact. *Dr Tan's opinion of the accused person's state of mind at the time of the offence must be considered in the context of the charge.* Dr Tan stated that the accused "had behaved impulsively at the time of the alleged [offence] because of his mental disorder". He did not think of the possible consequences of what he had done." That behaviour was, in his view, connected to the depressive illness that the accused had at the time. *I think that a sentence of one year's imprisonment is sufficient punishment for this accused, a first offender.* [emphasis added]

The appeal against sentence

12 On appeal, the Prosecution submitted that the Judge had erred both in law and in fact by,

inter alia:

(a) placing undue weight on the fact that the victim survived, when it was completely fortuitous that she did, and her survival could hardly be a mitigating factor when it was in no way attributable to the respondent;

(b) placing undue weight on the respondent's psychiatric condition; and

(c) failing to place sufficient weight on the aggravating factors surrounding the commission of the offence, *viz*, the fact that the respondent had seen the train approaching the station before grabbing and shoving the victim into the path of the train.

Appellate intervention in sentencing

13 It is trite law that an appellate court has only a limited scope for appellate intervention apropos sentences meted out by a lower court. This is because sentencing is very much a matter of discretion and requires a delicate balancing of myriad considerations which are often plainly conflicting: *Angliss Singapore Pte Ltd v PP* [2006] 4 SLR 653 ("*Angliss*") at [13]; affirmed most recently by the Court of Appeal in *PP v Mohammed Liton Mohammed Syeed Mallik* [2008] 1 SLR 601 at [81].

14 This limited scope was defined in *PP v Cheong Hock Lai* [2004] 3 SLR 203 at [26], where Yong Pung How CJ declared that an appellate court could interfere with a sentence meted out by the trial judge only if it was satisfied that:

(a) the trial judge had made the wrong decision as to the proper factual matrix for sentence;

(b) the trial judge had erred in appreciating the material before him;

(c) the sentence was wrong in principle; or

(d) the sentence imposed was manifestly excessive, or manifestly inadequate.

15 As to what was meant by "manifestly inadequate", Yong CJ elaborated further in *Siew Boon Loong* ([3] *supra*) at [22]:

> When a sentence is said to be manifestly inadequate, … it means that the sentence is unjustly lenient … and *requires substantial alterations rather than minute corrections* to remedy the injustice … [emphasis added]

16 Because sentencing is a complex discretionary process, the actual grounds on which an appellate court can intervene in sentencing are relatively circumscribed. The prerogative to correct sentences should be tempered by a significant degree of deference to the sentencing judge's discretion. As the High Court emphasised in *Angliss* at [14]:

> *The mere fact that an appellate court would have awarded a higher or lower sentence than the trial judge is not sufficient to compel the exercise of its appellate powers*, unless it is coupled with a failure by the trial judge to appreciate the facts placed before him or where the trial judge's exercise of his sentencing discretion was contrary to principle and/or law. [emphasis added]

Explaining the sentencing considerations

17 Our criminal law is, in the final analysis, the public's expression of communitarian values to be promoted, defended and preserved. These communitarian values include the preservation of morality, the protection of the person, the preservation of public peace and order, respect for institutions and the preservation of the state's wider interests; see *PP v Law Aik Meng* [2007] 2 SLR 814 at [24]–[29]. Sentences must protect the fabric of society through the defence of these values. Community respect is reinforced by dint of the prescription of appropriate sanctions to proscribe wrongful conduct. A sentence must therefore appropriately encapsulate, in any given context, the proper degree of public aversion arising from the particular harmful behaviour as well as incorporate the impact of the relevant circumstances engendering each offence. In determining any sentence, a good starting point is the four classical principles of sentencing stated by Lawton LJ in *R v James Henry Sargeant* (1974) 60 Cr App R 74 at 77:

> What ought the proper penalty be? … [The] classical principles [of sentencing] are summed up in four words: retribution, deterrence, prevention and rehabilitation. Any judge who comes to sentence ought always to have those four classical principles in mind and to apply them to the facts of the case to see which of them has the greatest importance in the case with which he is dealing.

18 Yong Pung How CJ endorsed this approach in *PP v Tan Fook Sum* [1999] 2 SLR 523 at [15]. In *Chua Tiong Tiong v PP* [2001] 3 SLR 425 at [31], he added:

> There are four pillars of sentencing: retribution, deterrence, prevention and rehabilitation. Criminal courts play their part by ensuring that the sentences of offenders mirror these pillars. The sentence imposed on the appellant not only served to punish him, it also sought to deter potential offenders, through fear of punishment, and to influence offenders who have been appropriately sentenced not to offend again.

19 Often, some of these considerations will plainly conflict with one another. A sentencing judge may take into account some factors and ignore others, or attribute a different weight to those considered. Thus, a court should always endeavour to explain its sentencing philosophy in the interests of justice and transparency. As the High Court elucidated in *Tan Kay Beng v PP* [2006] 4 SLR 10 ("*Tan Kay Beng*") at [29]:

> It is often said that in arriving at an appropriate sentence, a court should invariably take into account the sentencing considerations of deterrence, retribution, prevention and rehabilitation. It is however less often noted that these principles are not always complementary and indeed may even engender conflicting consequences when mechanically applied in the process of sentencing. *In practice, judges often place emphasis on one or more sentencing considerations in preference to, and sometimes even to the exclusion of all the other remaining considerations. When this occurs, it is imperative for the court to adequately articulate the justification underpinning the sentence meted out and in particular to explicate its preference for certain particular sentencing considerations over others.* [emphasis added]

20 Such explication of the specific sentencing considerations applicable is crucial in order to avoid creating the semblance of arbitrary or impressionistic sentencing. As cautioned in *Angliss* ([13] *supra*) at [24]:

> [A] sentencing judge should not hide behind the veneer of platitudes as an expedient substitute for the scrupulous and assiduous assessment of the factual matrix of each case in determining the appropriate sentence.

The essence of a sentencing judge's duty is therefore to extract, distil and apply the appropriate sentencing principles to achieve a sensible sentence that genuinely takes into account the interests of all stakeholders in the administration of criminal justice as well as those of the offender.

21 In the present case, it was unfortunate that the Judge failed to expound on his sentencing considerations more precisely, especially when some of them appeared to be in conflict. *Prima facie*, the nature of the offence and the circumstances in which it was committed suggested a need for both general and specific deterrence, which ought to have been reflected in the imposition of a longer custodial sentence. On the other hand, the respondent's psychiatric condition weighed in favour of a shorter sentence so that he could return home for medical care and treatment. As we will explain subsequently, the different considerations here did not inexorably justify the sentencing leniency so visibly shown by the Judge in the sentencing equation.

Hurt to the victim

22 The respondent was charged with an offence under s 308 of the Penal Code, which provides that:

> Whoever does any act with such intention or knowledge and under such circumstances that if he by that act caused death he would be guilty of culpable homicide not amounting to murder, shall be punished with imprisonment for a term which may extend to 3 years, or with fine, or with both; *and if hurt is caused to any person by such act, shall be punished with imprisonment for a term which may extend to 7 years, or with fine, or with both.* [emphasis added]

23 The Judge accepted that the victim had suffered some physical hurt in this case, but he did not appear to have appreciated fully the fact that the victim's injury extended beyond the apparently superficial wounds. In his GD at [9], the Judge mistakenly alluded only to the victim's physical injuries:

> Under s 308, the punishment may extend to three [years'] imprisonment and if hurt was caused, up to seven years. The charge on which this accused was convicted alleged that hurt was caused. *The element of hurt in this case was identified from [the victim's] statement during her medical examination that she had "pain over her right calf associated with numbness".* The statement of facts stated that when she was helped out of the MRT tracks shortly after the incident she "realised that her right calf was sore and painful". Considering these statements and after watching the video clip, I am of the view that [the victim] had probably pulled a muscle as she landed on the tracks. Whether an injury of this nature constitutes "hurt" in the context of the charge is not only a test of meaning, of which I think it will pass; it is also a test of judicial charity, of which I hope it will also pass. [emphasis added]

24 The Penal Code, however, expressly provides a definition of "hurt" under s 319:

> Whoever causes bodily pain, disease or *infirmity* to any person is said to cause hurt. [emphasis added]

25 In V R Manohar & W W Chitaley, *The Indian Penal Code* (All India Reporter Ltd, 3rd Ed, 1980) vol 2 at p 952, the authors astutely note in commenting on s 319 of the Penal Code (Act No 45 o 1860) (India) of which the relevant provisions are *in pari materia* with those in our Penal Code:

> Section 44 *ante* defines "injury" as denoting any harm whatever illegally caused to any person in ***body***, mind, reputation or property. Hence "hurt" will obviously be an "injury" within the meaning of S. 44. But "injury" will not necessarily be "hurt". Thus, the terms "injury" and "hurt" are not

synonymous for the purpose of the [Penal] Code. But as "***hurt***" includes any bodily ***pain***, disease or infirmity, *the injury to the body need not be a* ***visible*** *one, in order to constitute* ***hurt****.* [emphasis added, emphasis in original in bold italics]

26 We agree. Indeed, it has long been established that hurt can extend to non-physical injury, *eg*, mental harm. In *Jashanmal Jhamatmal v Brahmanand Sarupanand* AIR 1944 Sind 19, O'Sullivan J said at 20–21:

> The examples ... may, we consider, be extended to cases where serious mental derangement is caused by some voluntary act. It would be ridiculous to say for instance that a person who deliberately set out to cause shock to somebody with a weak heart and succeeded in doing so has not caused hurt; likewise obviously hurt would be likely to be caused to a nervous child, were a person to array himself in a white sheet and suddenly, without warning, spring upon that child on a dark night. Such an act might well cause the victim permanent mental derangement. ...
>
> …
>
> … The duration of this state of mental infirmity would be immaterial. Infirmity denotes an unsound or unhealthy state of the body or mind and clearly a state of temporary mental impairment or hysteria or terror would constitute infirmity ...

27 This decision has been approvingly cited by K L Koh, C M V Clarkson & N A Morgan, *Criminal Law in Singapore and Malaysia* (Malayan Law Journal Pte Ltd, 1989), at pp 513–514. We would qualify this *dictum* by saying that while the duration of the infirmity would usually be irrelevant for establishing hurt, the inquiry should not stop here. In our view, the long-term psychological harm in matters of this nature is a relevant, and indeed often, crucial sentencing consideration. Regrettably, the Judge failed to address this in his sentencing equation. According to the victim impact statement, the victim continues to experience flashbacks whenever she waits for trains. She also remains fearful that the respondent will continue to pursue her after his release. The continuing psychological trauma is not surprising, and as was penetratingly observed by the High Court of Hong Kong in *Secretary for Justice v Lam Kai-Wah* [2000] HKCU 139:

> No one who deliberately pushes another into the path of a moving train could sensibly expect that the victim would not suffer terrible physical injury and *life-long psychological trauma stemming from it*. [emphasis added]

28 Thus, despite the relatively superficial physical injuries suffered by the victim, the emotional trauma callously inflicted upon her by the respondent should not have been overlooked. Psychological wounds, while invisible to the eye, can often be far more insidious and leave an indelible mark on a victim's psyche long after the physical scars have faded. Expert psychiatric evidence could also perhaps have been tendered to evaluate the longer-term impact of the incident on the victim. In the event that the psychological harm is permanent, this would constitute an aggravating factor that would have to be taken into account during sentencing, almost invariably meriting more severe punishment.

Psychiatric reports on the respondent

29 Opinions from two separate psychiatrists were tendered to the court after the incident. Dr Y C Lim ("Dr Lim"), the respondent's private psychiatrist, indicated in his report dated 15 September 2006 that the respondent was suffering from reactive psychosis, associated with depression, paranoia and anxiety. On the other hand, Dr Tommy Tan ("Dr Tan"), a consultant at the

Institute of Mental Health, opined that the respondent had been suffering from dysthymia since his school days, as well as a moderate depressive episode at the material time. The differences in the diagnoses, while not major, should nevertheless have been queried. This is especially so in cases like the instant one, where ascertaining the offender's state of mind at the time of the incident, and consequently his culpability, is critical in calibrating the sentence. In addition, a perusal of Dr Tan's opinion revealed his assessment of the respondent to be less than rigorous, based as it was only on his interview with the respondent and his parents.

30 Indeed, the character references provided by the friends and family of the respondent painted an altogether different picture. The respondent appeared to be an above average student in school, who was conscientious and displayed impressive sporting abilities. He was variously described as independent, kind, understanding, and even demonstrated an admirable, entrepreneurial spirit while studying in Melbourne. There was an unmistakable consensus in the references that the respondent was a well-balanced and capable young man, who simply "snapped" on that fateful day and committed an offence completely out of his character. It bears mention that one of his character referees, Prof Lee Chai Peng from the University of Malaya, described the respondent as "a person of good character but with emotional issues to be resolved *as is so common with many young adults* in our high-pressured society today" [emphasis added]. This portrayal, evidently, did not quite gel with the psychiatric assessments which suggested a maladjusted, nervous and rather unstable young man.

31 Where, as here, the mental condition of the offender falls to be assessed, it is the duty of both the psychiatrist and counsel to ensure that the evaluation is accurate. The apparent inconsistency in the portrait of the respondent should have been resolved by the Judge. This responsibility remains even when an accused has pleaded guilty, or when there is an agreed statement of facts, or where there is no contention regarding the expert opinions. Failure to verify the accuracy and objectivity of the assessment can result in much costs and time being wasted: see *PP v Lim Ah Seng* [2007] 2 SLR 957 ("*Lim Ah Seng*"), where the case was remitted back to the High Court after the Court of Appeal had expressed certain misgivings in relation to some of the evidence, including expert opinions.

32 By dint of a fortunate confluence of facts, it was not necessary to remit this case back to the High Court. Even accepting Dr Tan's opinion that the respondent was depressed and had acted impulsively, it was evident that the respondent was capable of appreciating the consequences of his act. The respondent's decision to push the victim onto the train tracks was not a momentary slip of the mind; it was plainly intended to teach her a lesson.

Sentencing considerations

33 In arriving at an appropriate sentence, a court should almost invariably consider the relevance of the sentencing considerations of deterrence, retribution, prevention and rehabilitation at the outset. It should assess which of these considerations have the greatest cogency in any given factual matrix. In this matter, deterrence, rehabilitation and, to some extent, retribution were clearly the most relevant ones.

34 In *Tan Kay Beng* ([19] *supra*), the High Court expressed its view on deterrence as a sentencing principle (at [31]–[32]):

> Deterrence must always be tempered by proportionality in relation to the severity of the offence committed as well as by the moral and legal culpability of the offender. It is axiomatic that a court must abstain from gratuitous loading in sentences. Deterrence, as a concept, has a multi-faceted dimension and it is inappropriate to invoke it without a proper appreciation of how and

when it should be applied. It is premised upon the upholding of certain statutory or public policy concerns or alternatively, upon judicial concern or disquiet about the prevalence of particular offences and the attendant need to prevent such offences from becoming contagious. Deterrence, as a general sentencing principle, is also intended to create an awareness in the public and more particularly among potential offenders that punishment will be certain and unrelenting for certain offences and offenders.

Deterrence however also has a more specific application. Specific deterrence is directed at persuading a particular offender from contemplating further mischief. This assumes that a potential offender can balance and weigh consequences before committing an offence. The deterrent function may therefore be weak or non-existent when formulating an appropriate sentence for mentally handicapped or unwell persons. In such cases, as well as instances when a court is persuaded that an offender is unlikely to re-offend, specific deterrence fails to qualify as a relevant consideration, let alone a crucial one.

35 The respondent's mental condition here was neither a serious nor permanent one, and the psychiatric opinions suggested that with the right treatment and care, the risk of a relapse was low. Nevertheless, there was a need for specific deterrence in this matter to dissuade the respondent from contemplating another assault on the victim, notwithstanding the fact that the respondent had given a written apology to the victim and an undertaking that he would no longer bother her: see the GD at [8].

36 The Judge was also particularly concerned with the rehabilitation of the respondent, and appeared to have given undue deference to this principle at [8] of the GD:

> [The Prosecutor] says that [the victim] accepted the apology but had not forgiven the accused. I did not require [the victim] to say so personally and prefer to take the more charitable view that even if she had not, she might do so some day. In the meantime, *it was more important to consider that the accused's parents, who were in court, would be looking after the accused in Malaysia after he was released from prison, and that arrangements had been made by them to arrange for psychiatric care to be continued in Malaysia*. [emphasis added]

37 While the respondent's rehabilitation was a relevant consideration, there was no suggestion that he could not be similarly rehabilitated in prison. In fact, Dr Lim, who was the respondent's private psychiatrist, was also a psychiatrist engaged by the prison authorities, and there was no reason to believe that the medical care and treatment here would in any way be inferior to what he would receive back in Malaysia. Hence, even if one were to place considerable weight on rehabilitation as a sentencing principle, it did not necessitate a light sentence in the current case.

38 More importantly, there was also the consideration of the public interest. The Prosecution alluded to this in its submissions, where it emphasised the pressing need to denounce the conduct of the offender in order to reflect the revulsion of society at his callous misdeed. While denunciation appears as a sentencing objective in several Australian sentencing statutes, it does not *per se* justify the imposition of punishment. The "denunciation" principle is merely another manifestation of the public interest in appropriately censuring wrongful conduct. Denunciation can be achieved through merely formal measures and therefore cannot explain why punishment needs to be in the form of hard treatment: see Richard Edney & Mirko Bagaric, *Australian Sentencing Principles and Practice* (Cambridge University Press, 2007) at p 71. All said and done, every sentence communicates society's aversion and the proper degree of censure for the offending behaviour. The High Court elaborated on this principle in *Angliss* ([13] *supra*) at [16]–[17]:

It is pertinent to analyse precisely what is meant when a court takes into account public interest considerations in sentencing. The genesis of the *dictum* that "the foremost consideration for a court in deciding on an appropriate sentence is that of public interest" is found in *R v Kenneth John Ball* (1951) 35 Cr App R 164 ("*Ball*") at 165–166:

> In deciding the appropriate sentence a Court should always be guided by certain considerations. The first and foremost is the public interest. The criminal law is publicly enforced, not only with the object of punishing crime, but also in the hope of preventing it. *A proper sentence, passed in public, serves the public interest in two ways. It may deter others who might be tempted to try crime as seeming to offer easy money on the supposition, that if the offender is caught and brought to justice, the punishment will be negligible. Such a sentence may also deter the particular criminal from committing a crime again, or induce him to turn from a criminal to an honest life.* The public interest is indeed served, and best served, if the offender is induced to turn from criminal ways to honest living. Our law does not, therefore, fix the sentence for a particular crime, but fixes a maximum sentence and leaves it to the Court to decide what is, within that maximum, the appropriate sentence for each criminal in the particular circumstances of each case. Not only in regard to each crime, but in regard to each criminal, the Court has the right and the duty to decide whether to be lenient or severe. …

It ought to be apparent that Hilbery J did not intend for the notion of public interest to be construed as a separate term of art. Public interest simply refers to what is in the interests of the public. And, in the context of sentencing, it was Hilbery J's view that the interests of the public are best served when a sentencing judge keeps within the periphery of his vision the overarching aim of sentencing, which is the reduction or prevention of criminal conduct – either by deterring or rehabilitating a specific offender or by deterring other would-be offenders. ***In other words, public interest* per se *does not constitute a stand-alone sentencing consideration. Rather, it is merely an expression of the view that in assessing the appropriate sentence to mete out, a sentencing judge should apply his mind to whether the sentence is necessary and justified by the public's interest in deterring and preventing criminal conduct. Such a concern is however already encapsulated within the conventional sentencing rationales of general deterrence, specific deterrence, retributivism, rehabilitation and prevention***. For instance, Hilbery J's concern that the sentence imposed should be sufficient to deter others from similar criminal wrongdoing is reflected by the principle of general deterrence. Similarly, the need to discourage or prevent the specific offender from re-offending is intrinsic in the principles of specific deterrence, prevention and rehabilitation. As such, it would be wrong to cite *Ball* as authority for holding that the public interest should be regarded as a separate and distinct sentencing principle.

[emphasis added in bold italics]

39 In this case, there is plainly a need to send out a clear message to the public that it is wholly unacceptable to commit similar violent and dangerous acts, regardless of whether they are premeditated, rash or impulsive. The MRT plays a major role in the lives of many Singapore commuters. According to the Land Transport Authority's figures, the MRT had an average daily ridership of 1.435 million last year. Of the over 60 train stations currently in operation, over half – 35 – are above ground. Clementi station is one of them, and, extraordinarily, it has seen more than its fair share of incidents. On 30 October 2006, just over a month after the respondent's offence, a man was hit and killed by a train at Clementi, resulting in a delay that affected 11,700 commuters. Two months later, at the same station, a woman got her leg stuck in the gap between the train and the platform, fracturing her leg in the process. On 20 July 2007, another person was killed by an incoming

west-bound train at Clementi. Similar incidents have recently taken place at other MRT stations. It should be pointed out, however, that a number of these incidents were suicides or accidents.

40 The spate of serious and fatal incidents in recent times has undoubtedly left its mark on the train commuter's psyche, leading to widespread calls from the public for platform screen doors to be installed at above-ground stations. On 25 January 2008, Mr Raymond Lim, Minister for Transport, announced plans to install such doors (see the government media release available at https://app-pac.mica.gov.sg/data/vddp/embargo/6260896.htm (accessed 28 February 2008). This squarely addresses the growing concern about safety at above-ground MRT stations. Nevertheless, it bears mention that installation of these doors at all stations will only be completed by 2012; in the meantime, there is a perception among some that danger continues to lurk on every exposed train platform.

41 Potential offenders must be firmly discouraged from committing offences in the vicinity of MRT trains or stations. Whether a person intends to kill or not, the act of pushing a helpless person off a train platform and onto the tracks is an act so despicable and inherently dangerous that it must be unequivocally censured by the courts so as to deter others from even contemplating carrying out similar acts, let alone actually committing them. MRT trains are a convenient and affordable form of public transport for a large segment of the population. An unambiguous and robust message must be sent out that dangerous conduct similar to the respondent's will not be condoned, and if it does occur, the public must be reassured that the perpetrator will be treated both firmly and promptly.

Determining the appropriate sentence

42 The respondent was charged under s 308 of the Penal Code, and since hurt had been caused by his offence, he was liable to be punished with imprisonment for a term of up to seven years, or with a fine, or with both. Where in relation to a particular offence the court is given a wide discretion in terms of the punishment it may impose, it is critical that it exercises that discretion, as far as possible, in a manner that remains faithful to two essential principles: (a) that the punishment fits the crime, having regard to the circumstances attending the case before the court; and (b) that like cases be treated alike: see *Lim Ah Seng* ([31] *supra*) at [76].

43 To offer the court some guidance, both the Prosecution and the Defence referred to a number of cases that involved attempted culpable homicide. However, none of the cases bore much similarity to the facts here. Indeed, the Judge correctly noted at [7] of his GD that "[t]here was certainly no previously known case similar on the facts as the present". The cases cited therefore offered little assistance by way of a sentencing benchmark for the offence committed.

44 What was necessary was to consider the range of possible sentences, and the unique facts of the offence. It is well established that the maximum sentence should be reserved for the worsttype of cases falling within the prohibition. According to the High Court in *Angliss* ([13] *supra*) at [84]:

> By imposing a sentence close to or fixed at the statutory maximum, a court calibrates the offender's conduct as among the worst conceivable for that offence. In other words, when Parliament sets a statutory maximum, it signals the gravity with which the public, through Parliament, views that particular offence ... Therefore, it stands to reason that sentencing judges must take note of the maximum penalty and then apply their minds to determine precisely where the offender's conduct falls within the spectrum of punishment devised by Parliament.

45 The respondent's act was definitely not at the lower end of the scale, and deserved more than a simple fine. In fact, pushing a person in front of an approaching train arguably ranks among the

worst conceivable conduct for an attempt to commit culpable homicide. Such an act is almost certain to kill and, if death is avoided, likely to maim; that the victim escaped virtually without physical injury owed as much to her presence of mind as to providence and not for want of intent and/or effort on the part of the respondent. This pointed toward a severe sentence being imposed on the respondent. Solicitor-General Prof Walter Woon submitted that a sentence of three to five years would be "appropriate and just". We broadly agreed with the range proposed.

46 Ultimately, however, we decided on a sentence of three years' imprisonment because of two persuasive mitigating factors. First, we took into consideration the psychiatric condition of the respondent. We accepted the expert evidence that suggested the respondent was suffering from depression, and would have qualified for the defence of diminished responsibility if the victim had died and he had then been charged with murder. This to some extent reduces his level of culpability though it must be pointed out that he was aware of, and remained responsible for, the consequences of his actions. We were persuaded that with the right treatment and care, the respondent could be rehabilitated and become once again a useful member of society. The issue of incapacitation does not arise. In addition, we made an allowance for the fact that the respondent had been released from prison custody before the sentence was enhanced. He has to now undergo a further prison sentence all over again for the same offence. In our opinion, such a situation justifies some discount to the final sentencing equation: see *Fernando Payagala* ([4] *supra*) at [83]. This sentence of three years' imprisonment would, in our view, give effect to the relevant sentencing considerations of deterrence, retribution and rehabilitation, and, at the same time, encapsulate society's condemnation of the respondent's conduct.

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