IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2021] SGCA 65

Criminal Reference No 2 of 2020

Between

Teo Seng Tiong

… *Applicant*

And

Public Prosecutor

… *Respondent*

JUDGMENT

[Criminal Procedure And Sentencing] — [Criminal references]
[Criminal Procedure And Sentencing] — [Compounding of offences]

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Teo Seng Tiong
v
Public Prosecutor

[2021] SGCA 65

Court of Appeal — Criminal Reference No 2 of 2020
Sundaresh Menon CJ, Andrew Phang Boon Leong JCA, Judith Prakash JCA, Tay Yong Kwang JCA and Steven Chong JCA
4 March 2021

1 July 2021 Judgment reserved.

Tay Yong Kwang JCA (delivering the judgment of the court):

Introduction

1 In the morning of 22 December 2018, a Saturday, Mr Teo Seng Tiong (the "Applicant"), then 57 years old, was driving his lorry along the left lane of Pasir Ris Drive 3, a two-lane road. Two friends were cycling side by side along the left lane of that road, in the same direction as and ahead of the lorry. The cyclist who was cycling in the middle of the left lane was Mr Cheung Eric Hoyu ("Eric"), then 35 years old, a national of the United Kingdom. The other cyclist was closer to the road kerb.

2 The Applicant attempted to overtake the cyclists but was unsuccessful because there were vehicles on the right lane and Eric's bicycle was in the middle of the left lane. The cyclists stopped at a traffic lights-controlled junction. The applicant's lorry stopped behind them but moved forward

incrementally until it was very close to Eric's bicycle, making Eric very uncomfortable as he was aware of the lorry's movements.

3 When the traffic lights turned green, the cyclists and the lorry moved on. The Applicant tried to overtake the cyclists again by moving into the right lane of the road. A taxi driver on the right lane applied his brakes and sounded his horn at the lorry. Eric eventually relented and moved his bicycle closer to the road kerb to allow the lorry to overtake him. However, when the lorry was alongside Eric, he reached out and struck the lorry's left side-view mirror, causing part of it to break off.

4 In retaliation, the Applicant swerved the lorry sharply to the left into the path of Eric's bicycle and the lorry came into contact with Eric's body, causing him to fall onto the grass verge on the left side of the road. Eric suffered some injuries at his left elbow and left knee. There was also damage to the bicycle. The Applicant stopped the lorry, got down and scolded Eric for damaging the lorry's side-view mirror. He also claimed that he had called the police and he pointed his mobile phone at Eric, telling him that he was recording a video. Eric snatched the mobile phone away but returned it to the Applicant later. The Applicant then got back into the lorry and drove away without exchanging particulars with Eric.

5 The police contacted the Applicant and advised him to make a police report. At 4.41pm on 24 December 2018, the Applicant lodged a police report. This was more than 24 hours after the incident.

6 The Applicant was charged subsequently. He claimed trial to the

following two charges:

> First Charge
>
> You…are charged that you, on 22 December 2018 at about 11.57 am, along Pasir Ris Drive 3 towards New Loyang Link near Lamp-post 80, Singapore, driving motor lorry GBD4011Y, did cause hurt to a pedal cyclist Cheung Eric Hoyu, male aged 35 years old, by doing an act so rashly as to endanger human life, to wit, by suddenly swerving the motor lorry to your left and colliding into the said cyclist, causing him to fall off his bicycle and onto a grass verge on the left side of the road, and you have therefore committed an offence punishable under Section 337(a) of the Penal Code, Chapter 224.
>
> Second Charge
>
> You…are charged that you, being the driver of the motor lorry GBD4011Y, where an accident owing to the presence of that motor lorry occurred on 22 December 2018 at about 11.53 am along Pasir Ris Drive 3 towards New Loyang Link near Lamp-post 80, Singapore, which accident resulted in injury to a pedal cyclist, Cheung Eric Hoyu, male aged 35 years old, failed to report the accident at a police station or to a police officer within 24 hours after the accident, and you have thereby committed an offence under section 84(2) read with section 84(7) and punishable under section 131(2) of the Road Traffic Act, Chapter 276.

7 At the trial, the District Judge ("DJ") found that the Applicant had veered sharply into the path of the cyclist deliberately, with the intention of running him off the road (the DJ's grounds of decision ("DJ's GD") at [44]). He was thus found to have driven rashly in a manner that endangered the life of the cyclist. The DJ rejected the Applicant's reasons for driving away from the accident scene without exchanging particulars with the cyclist or without waiting for the arrival of the police. There was no valid reason for not reporting the accident within 24 hours. The Applicant was therefore found guilty on both charges.

8 On the first charge, the DJ sentenced the Applicant to seven weeks' imprisonment and disqualified him from holding or obtaining all classes of

driving licence for two years ("the DQ Order") with effect from the date of his release from prison. On the second charge, the DJ imposed a fine of $500, in default three days' imprisonment. The Applicant was granted bail pending his appeal against conviction and sentence. The fine and the DQ Order were also stayed.

9 In sentencing, the DJ took into account the Applicant's poor driving record, as was evident from [62] of the DJ's GD:

> The prosecution also highlighted the accused's poor driving record. The accused's conduct was in keeping with his antecedent record. Apart from numerous parking-related offences, the accused was traced for two counts of careless driving, one count of failing to give way to an approaching vehicle, one count of speeding (exceeding the limit by 31 to 40kph) and one count of beating a red light. I was of the view that the accused's bad driving record was entirely consistent with the accused's aggressive and dangerous driving in this case. Considering the number and nature of his prior traffic violations, I agreed that a sufficiently lengthy period of disqualification was justified to underscore the seriousness of the present offence and to specifically deter the accused from future dangerous driving.

10 The Applicant's antecedents record was placed before the DJ. In particular, it included the following offences which had been compounded:

(a) Numerous parking-related offences ranging from 1998 to 2010.

(b) One count of failing to give way to approaching vehicle (on 3 May 1999).

(c) One count of stopping a vehicle on the shoulder of an expressway (on 12 May 1999).

(d) One count of speeding by exceeding the maximum speed limit of his vehicle (on 19 October 2000).

(e) One count of careless driving (on 6 February 2002).

(f) One count of failing to conform to red light signal (on 15 July 2006).

(g) One count of failing to wear a seat belt (on 23 October 2014).

(h) One count of careless driving (on 15 September 2015).

11 The Applicant also had previous convictions for offences which were not related to driving. These included a conviction for an offence of affray in 1999 for which he was imprisoned for one month and for an offence of voluntarily causing hurt in 2012 for which he was fined.

12 The Applicant appealed to the High Court against the present conviction and sentence. On 20 July 2020, Chan Seng Onn J dismissed his appeal with the following brief oral grounds:

> Having seen the video and heard the appellant's submissions and that of the DPP, I am of the opinion that the District Judge has not made any findings of fact that were against the weight of the evidence. I agree wholly with the DPP's submissions. Both charges are aptly made out. And then in regard to the just sentence of this case, I will dismiss the appeal, both against conviction and sentence. The sentence is not manifestly excessive given the fact that this is not only rash, but an intentional act on the part of the appellant when he swerved his lorry to hit the bicycle---bicyclist causing the bicyclist to fall off and fall on to the pavement. And it was a very dangerous act, having viewed the video, and I will therefore, uphold the period of disqualification.
>
> That's all. And in so, sentence is to begin immediately.

As the Applicant did not apply for deferment of sentence, he commenced serving the seven weeks' imprisonment imposed for the first charge. He was

released from prison on 24 August 2020 and the DQ Order for 2 years therefore took effect from that date.

13 On 2 September 2020, the Applicant applied in Criminal Motion No 25 of 2020 (the "CM") for an extension of time to apply for leave to bring a question of law of public interest to this court pursuant to s 397(3) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC") and for such leave to be granted. The question posed in the CM was as follows (the "Question"):

> Whether a Court may take into account any offence that has been compounded under the Road Traffic Act as an aggravating factor to determine the appropriate sentence
>
> > (a) for an offence committed by a person under the Road Traffic Act; and
> >
> > (b) for an offence committed by a person not under the Road Traffic Act
>
> without legislative intervention?

14 The Prosecution indicated by its letter dated 5 October 2020 that it consented to the reliefs sought in the CM and to the CM being dealt with on paper without an oral hearing. Accordingly, on 8 October 2020, a three-Judge Court of Appeal granted the CM by consent of the parties. Subsequently, the present five-judge Court of Appeal was convened to hear oral arguments on the Question. After hearing the parties on 4 March 2021, we reserved judgment.

15 Eric (the cyclist) was dealt with in separate proceedings. On 12 April 2019, he pleaded guilty to one charge under r 29 of the Road Traffic Rules (R 20, 1999 Rev Ed) for riding his bicycle in the middle of the left lane of Pasir Ris Drive 3 instead of keeping to the far left edge of the road and one charge under s 426 of the Penal Code (Cap 224, 2008 Rev Ed) ("the Penal Code") for committing mischief by using his right hand to strike the left side-view mirror of the Applicant's lorry, thereby breaking off portions of the mirror and causing

damage amounting to $15. Eric was fined $800 and $2000 respectively for these two charges.

The circumstances leading to the Question

16 The Question arose for two reasons. First, there appear to be conflicting authorities in the High Court on the issue of whether compounded offences may be taken into account for the purpose of sentencing. In *Public Prosecutor v Koh Thiam Huat* [2017] 4 SLR 1099 ("*Koh Thiam Huat*") and *Public Proseuctor v Ong Heng Chua and another appeal* [2018] 5 SLR 388 ("*Ong Heng Chua*"), See Kee Onn J held that an offence under the Road Traffic Act (Cap 276, 2004 Rev Ed) ("RTA") that has been compounded may be taken into account for sentencing purposes. The position in *Koh Tiam Huat* was accepted by Chong JA (as he then was, sitting in the High Court) in *Public Prosecutor v Aw Tai Hock* [2017] 5 SLR 1141 ("*Aw Tai Hock*"). On the other hand, in the recent decision in *Neo Chuan Sheng v Public Prosecutor* [2020] SGHC 97 ("*Neo Chuan Sheng*"), Chua Lee Ming J disagreed with this view.

17 Secondly, amendments made to the RTA in 2019 introduced a new s 139AA (see the Road Traffic (Amendment) Act 2019 (No. 19 of 2019) that made it clear that offences compounded under the RTA can be an aggravating factor for purposes of sentencing in offences committed under the RTA. Section 139AA provides:

> **Court may take into account compounded offences for purposes of sentencing**
>
> **139AA.** For the purpose of determining the appropriate sentence for an offence committed by a person under this Act, a court may take into account, as an aggravating factor, any offence that has been compounded (whether before, on or after the date of commencement of section 21 of the Road Traffic (Amendment) Act 2019) under this Act before the date of the sentencing.

18 Section 139AA RTA came into effect on 1 November 2019. The legal position in relation to offences committed under the RTA is therefore clear from that date and part (a) of the Question is really moot now because the legal position has been made clear by statute.

19 It is accepted that s 139AA of the RTA did not apply to the present case as the offences took place in December 2018. The Applicant was convicted on 17 December 2019 and was sentenced on 14 January 2020. His compounded driving-related offences were taken into consideration in relation to an offence under s 337(a) of the Penal Code and not an offence under the RTA. It therefore remains to be decided whether the current position under the RTA also applies to the sentencing of offences outside the RTA, such as those under the Penal Code.

The parties' arguments

The Applicant's submissions

20 The Applicant argues that it is relevant to determine whether composition of an offence amounts to an acquittal. Reference is made to stern warnings and conditional stern warnings which carry no legal effect as they are not binding on recipients in the sense that legal rights, interests or liabilities are affected. The Applicant contends that a compounded offence must carry the legal effect of an acquittal unless it is provided for otherwise by statute. If so, it follows that it would be "perverse" to consider such an acquittal as an aggravating factor in a later case.

21 Composition of an offence should also not amount to an admission of guilt. *Koh Thiam Huat* (and by extension, its reference to *Public Prosecutor v Lim Niah Liang* [1996] 3 SLR(R) 702 ("*Lim Niah Liang*")) is erroneous insofar

as it assumes that the composition of straightforward or less serious offences amounts to an admission of guilt. Instead, the observation in Re *Lim Chor Pee* [1990] 2 SLR(R) 117 ("Re *Lim Chor Pee*"), that individuals agree to compound offences for a variety of reasons, is correct.

22 There has also been erroneous reliance on s 228(2)(*c*) of the CPC (which provides that the address on sentence may include any relevant factors which may affect the sentence). When seen how it is used in *Koh Thiam Huat* and *Ong Heng Chua*, it is implicit that compounded offences are taken as equivalent to the "criminal records of the accused" under s 228(2)(*a*) of the CPC. Generally, the courts have classified compounded traffic offences together with convictions as "antecedents" and this term is used interchangeably with "previous convictions" and "criminal records". This difference between compounded offences and criminal records has also been blurred by the Prosecution as a result of their submissions on sentence before the courts. The Applicant also submits that the court should not consider as an aggravating factor facts relating to previous offences for which no charges were brought against the accused person, even if the accused person admitted such previous offences. The Applicant submits that this principle applies to compounded offences as no charges were brought in respect of these offences.

23 If the Question is answered in the negative, this court is invited to exercise its powers to reduce the DQ Order for two years to one that is less than 12 months, pursuant to s 397(5) read with s 390(1)(*c*) of the CPC. This was because the DJ had taken into account the Applicant's record of compounded offences as an aggravating factor in his decision. In comparison to *Ong Heng Chua*, the Applicant was convicted of a less serious offence and a lower disqualification period of less than 12 months should be imposed. The Traffic Police had impounded the Applicant's lorry for slightly more than four months

without any explanation as to why such a long period of seizure was necessary for the nature of offences that the Applicant faced. This resulted in his financial detriment and should be a factor in deciding the length of the DQ Order.

The Prosecution's submissions

24 The Prosecution argues that compounded offences do not amount to an acquittal. This is because:

(a) A person may only be acquitted if he has been charged. There is no mention of an acquittal in s 135(1A) of the RTA or s 243(5) of the CPC, unlike in ss 241(5) and 242(4) of the CPC.

(b) The observation in *Rajamanikam Ramachandran v Chan Teck Yuen and another* [1998] SGHC 259 ("*Rajamanikam Ramachandran*") that s 199(4) of the 1985 version of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) ("the 1985 CPC") (that composition amounts to an acquittal) has general application to all offences is no longer good law. *Rajamanikam Ramachandran* was decided before the RTA and CPC amendments.

(c) Even with the introduction of s 199A of the 1985 CPC, dealing specifically with offences outside of the Penal Code, there was no mention of acquittal. This was similarly the case for the RTA.

(d) It is permissible to consider compounded offences even where discharge amounting to an acquittal has been ordered, as Art 11(2) of the Constitution of the Republic of Singapore (the "Constitution") and s 244 of the CPC only bar a person from being tried again for the offence.

(e) Section 139AA of the RTA is only a statutory recognition of the discretion that the courts already had.

(f) Allowing a court to take compounded RTA offences into consideration allows for a more holistic approach in assessing the level of specific deterrence necessary in the particular case.

(g) An offer of composition constitutes an expression of opinion by the relevant authority that the person is "reasonably suspected of having committed the offence". If the person accepts that offer, at the minimum he has chosen not to dispute the authority's opinion. This was the approach taken in *Lim Niah Liang* and *Ong Heng Chua*.

25 Nevertheless, going forward, compounded RTA offences should not be considered in sentencing for non-RTA offences without notice of this being given. The Prosecution accepts that compounding an offence may not amount to an admission of guilt and it would therefore only be fair that notice is given to the person, at the time when composition is offered, that the composition may be taken into account as an aggravating factor. Such notice can be given through express statutory provision, the composition notice or any other reasonable means.

26 Should the court decide that compounded offences should not be taken into consideration in sentencing, such a change should only apply prospectively. The position in case law has been consistent since *Lim Niah Liang* and to have the changes apply prospectively would avoid wholly disruptive consequences.

27 In any event, the Applicant's two-year DQ Order remains correct. The Applicant had veered sharply into the path of the cyclist deliberately. This was done with the intention of running him off the road in retaliation for the cyclist

breaking the side mirror of the lorry. As a result, the sentence reflected the Applicant's high degree of culpability that warranted a strong measure of specific deterrence. The Applicant's two-year DQ Order is also supported by the precedents.

Our decision

The conflicting High Court authorities

28 We begin by discussing the divergence of opinions in the High Court cases that resulted in the present application to refer the Question to the Court of Appeal.

PP v Koh Thiam Huat [2017] 4 SLR 1099

29 In *Koh Thiam Huat*, the accused failed to conform to the red-light signal at a traffic junction. This resulted in a collision with the victim, who was then crossing the junction on a green man signal, from the accused's right to left. The accused admitted that he had not noticed the traffic light signal as he was following a white sedan car and did not notice the victim until she was about an arm's length away. As a result of the collision, the victim suffered multiple injuries.

30 The accused pleaded guilty to one charge of dangerous driving under s 64(1) of the RTA and was sentenced by the District Court to a fine of $3,000 and disqualification from driving for 11 months. The Prosecution appealed against the decision on sentence. It argued that a custodial sentence ought to be the norm where serious damage or injuries resulted from dangerous driving.

31 In the High Court, See Kee Onn J allowed the appeal. What ultimately tipped the balance in bringing the case over the custodial threshold was the

accused's bad driving record. The accused had argued that compounded offences should be disregarded as they were the same as a discharge amounting to an acquittal, referring to ss 241(5) and 242(4) of the CPC in support of this. See J considered that the question as to whether an offence under the RTA (or its subsidiary legislation) which has been compounded amounts to an acquittal did not have to be answered in that case because that was a separate and distinct question from whether the compounded offence could be taken into account for sentencing purposes. His view was that the latter did not turn on the answer to the former. He held that an offence under the RTA (or its subsidiary legislation) which has been compounded could be taken into account for sentencing purposes (at [55]–[56]). This would allow for a more holistic approach in sentencing. The court should have regard to all relevant factors in sentencing. This was hinted at by s 228(2)(*c*) of the CPC which provides that the Prosecution's address on sentence may include "any relevant factors which may affect the sentence" (at [59]). At [57]–[58], See J referred to Yong Pung How CJ's observations in *Lim Niah Liang*:

> 57 … Yong Pung How CJ held (at [21]) that:
>
> > In my opinion, in the context of s 21A(1) of the [EPHA 1988] and for the purpose of showing that an offender is 'recalcitrant', it would suffice to rely on evidence that he has previously *committed* the same offence on at least one occasion. He need *not* have been *convicted* of the offence. In the circumstances, *I did not see why evidence of a compounded offence could not be relied upon for the specific purpose of imposing a corrective work order under the [EPHA 1988].* … [emphasis added]
>
> Yong CJ subsequently went on to hold (at [23]) that:
>
> > It would also be pertinent to consider that, in the vast majority of cases, enforcement of the anti-littering provisions in the [EPHA 1988] is dependent on the direct observation of an enforcement officer, who witnesses the commission of the offence while he is performing his anti-littering rounds. As the DPP rightly pointed out, it would not be inconceivable that composition of such

> offences, in view of the straightforward nature of the offence itself, amounts to an admission of guilt. The offender having been caught red-handed would probably decide to pay the composition fine, if permitted, rather than go to court. After all, an offence under s 18(1) of the [EPHA 1988] is what one could consider to be a 'strict liability' offence, where no blameworthy mental element need be shown. Hence, the Prosecution would only have to show that the offender had littered and that he had done so voluntarily and not out of accident or automatism …
>
> 58 I accept that the passage just quoted may not apply in its entirety to *all* traffic offences. However, it is fair to say that it is, for the most part, applicable to less serious traffic offences for which composition is offered.
>
> [emphasis in original]

32 Two points emerged from *Koh Thiam Huat*. First, whether a compounded offence amounted to an acquittal was ultimately irrelevant to the question whether it could be considered in sentencing. Second, composition of less serious traffic offences amounts to an admission of guilt.

PP v Aw Tai Hock [2017] 5 SLR 1141

33 In *Aw Tai Hock*, the accused was a taxi driver who pleaded guilty to a charge of dangerous driving under s 64(1) of the RTA. The District Court sentenced him to three months' imprisonment and imposed a driving disqualification of three years. The accused and one Andy had a dispute which escalated into a car chase between their vehicles which ended only when Andy's vehicle collided with another vehicle which overturned upon impact. The Prosecution appealed against the imprisonment term.

34 In the High Court, Steven Chong JA observed that deterrence, both specific and general, was the primary sentencing consideration for dangerous

driving offences, noting at [27] as follows:

> Equally relevant is the role of specific deterrence which has been inherently built into the sentencing regime for the offence through the tiered punishment ranges. The legislative intention is clear that repeat offenders of dangerous driving should be subject to an enhanced level of punishment. In *Koh Thiam Huat* ([18(a)] *supra*), it was thus held (at [60]) that a court may also take into account a compounded offence under the RTA (or its subsidiary legislation) to better give effect to the need for specific deterrence.

35 This particular paragraph was referred to subsequently by See J in *Ong Heng Chua* at [46] who noted that "Steven Chong JA echoed my sentiments in *Koh Thiam Huat* (at [60]) in this regard and accepted that the court may take into account a compounded offence to better give effect to this need [for specific deterrence]".

PP v Ong Heng Chua [2018] 5 SLR 388

36 In *Ong Heng Chua*, the accused was driving his taxi along a single two-way road in the early morning. He made a wide left turn into an open-air public car park. While completing the turn, the right side of his vehicle encroached into the opposite lane meant for oncoming traffic. The taxi continued to encroach into at least half of the opposite lane and collided with the victim's motorcycle which was moving out of the car park. The victim suffered serious injuries.

37 The accused pleaded guilty to one charge under s 338(*b*) of the Penal Code for causing grievous hurt by his negligent driving which endangered the personal safety of others. He was sentenced to a fine of $5,000 and was given a disqualification from driving for 18 months.

38 The Prosecution appealed against the fine and submitted that imprisonment of one week was warranted. The accused also appealed, arguing that the disqualification order should have been for six months only.

39 Referring to his earlier decision in *Koh Thiam Huat*, See J repeated his holding there that an offence compounded under the RTA or its subsidiary legislation could be taken into account in sentencing (at [39]). He noted that the accused did not dispute that his compounded offences could be taken into account. He observed further that although no further proceedings were to be taken against the driver upon payment of the composition amount under the RTA, this did not mean that composition carried no consequence whatsoever and could be ignored. In his view, composition was relevant indication of a person's driving record and it would be wholly illogical to suggest that the offender's slate of traffic violations was wiped clean upon composition. He held that such an offender was "no less a 'repeat offender' with a poor driving record in the eyes of the court": at [42]. Further, a bad driving record reflected an accused person's attitude towards road safety and his unwillingness to comply with the law: at [46].

40 Reiterating the point in *Koh Thiam Huat*, See J noted that the issue of the relevance of composition of a traffic offence for sentencing purposes was separate and distinct from the question of whether composition amounted to an acquittal. He acknowledged that the two previous High Court decisions of Re *Lim Chor Pee* and *Rajamanikam Ramachandran* had established that composition of an offence did not amount to an admission of guilt. Further, Re *Lim Chor Pee* was cited with approval in *Lim Niah Liang* where Yong CJ reiterated the need to observe scrupulously the principle of *autrefois acquit* so that an offender who had compounded an offence was not tried again for the

same offence. In See J's view, however, this was not relevant to the case before him. He explained (at [45]):

> What is pertinent is that in *Lim Niah Liang*, Yong CJ went on to hold (at [23]) that given the relatively straightforward nature of littering offences, where most offenders are observed and thence caught red-handed by enforcement officers, it would "not be inconceivable" that composition of such offences amounts to an admission of guilt. I have set out my views in *Koh Thiam Huat* (at [57]–[60]) as to why I found these observations instructive. Traffic enforcement cameras, especially those recording vehicle speeds or capturing vehicles beating red light signals, are hardly new or unfamiliar technologies in our enforcement landscape. They have become increasingly sophisticated and more reliable and prevalent over time. Turning to the present case, the offender had compounded 12 speeding offences and one offence of failing to conform to a red light signal out of 16 compounded offences in all. In all likelihood, he would have had no viable defence to any of these 13 enumerated offences, since he was probably quite literally caught in the act, whether by an enforcement officer or through enforcement technologies which recorded his violation(s). Unsurprisingly, he did not attempt to suggest otherwise either in the proceedings below or before me.

41 In the result, See J held that the DJ there had taken an "unjustifiably lenient view in determining the weight attached to the offender's driving record": at [48]. Taking all the circumstances into account, he concluded that the custodial threshold was crossed and imposed a sentence of one week's imprisonment in place of the fine. He therefore allowed the Prosecution's appeal and dismissed the accused's appeal against the length of the disqualification order.

Neo Chuan Sheng v PP [2020] SGHC 97

42 The consistent position taken in *Koh Thiam Huat*, *Aw Tai Hock* and *Ong Heng Chua* was departed from in the latest High Court decision in *Neo Chuan Sheng*. In *Neo Chuan Seng*, at about 2.10am on 7 December 2017, the accused was driving his car along Bukit Batok East Avenue 6 when he noticed a

roadblock further ahead. He stopped his car about 176 m from the roadblock, reversed for about 203 m before turning into Jalan Jurong Kechil towards the Pan Island Expressway. A closed-circuit television camera at a nearby condominium captured the accused's car as it reversed past the condominium.

43 The accused pleaded guilty to an offence of dangerous driving under s 64(1) of the RTA. The DJ imposed on him a fine of $4,500 and a driving disqualification for ten months. The accused paid the fine and appealed to the High Court, arguing that the period of disqualification should not exceed five months.

44 Chua Lee Ming J did not agree with every reason given by the DJ for the period of disqualification. However, after considering all the circumstances, he did not think that the disqualification period was manifestly excessive and he therefore dismissed the appeal.

45 The DJ there considered the accused's history of compounded traffic offences as an aggravating factor. Chua J was of the view that a compounded offence was relevant for sentencing only if could be said to amount to an admission of guilt. He did not agree with the proposition that compounded offences could be taken into consideration for sentencing in the absence of legislative intervention. In his view, it was wrong to assume that composition of an offence amounted to an admission of guilt: at [27]–[29].

46 Chua J referred to s 135(1A) of the RTA which provides that on payment of the composition amount, "no further proceedings are to be taken" in respect of the offence. He acknowledged that s 135(1A) of the RTA does not state that payment of the composition sum amounted to an acquittal. He then referred to ss 241(5) and 242(4) of the CPC and noted that s 241 applied to composition by

victims of offences while s 242 applied to composition of prescribed offences by the Public Prosecutor. He opined that "acquittal" was referred to in s 241(5) and s 242(4) only because an accused had been charged in court. Where an accused had not been charged in court, the question of an acquittal did not arise and all that could be said was that no further proceedings shall be taken.

47 Chua J reasoned therefore, that the fact that s 135(1A) of RTA does not use the word "acquittal" made no difference to the effect of composition. Whether an offender has been charged in court or not, the effect of compounding an offence must be the same and that means that the composition could not be regarded as an admission of guilt. The fact that composition of an offence, after an accused had been charged in court, had the effect of an acquittal made it clear that it would be wrong to take that compounded offence into consideration in sentencing. It would also be wrong in principle to treat the composition of an offence, where an offender had not even been charged in court, less favourably: at [31]–[35].

48 Referring to Re *Lim Chor Pee*, Chua J reiterated that composition of an offence could not be regarded as an admission of guilt because people may choose to compound an offence for a host of other reasons without admitting liability. *Koh Thiam Huat* concerned the effect of composition under the RTA. However, whether a compounded offence could be taken to be an admission of guilt was a matter of principle that must apply to all offences. It would be curious if, absent statutory intervention, compounded RTA offences were relevant to sentencing but not compounded offences under other legislation which were of a similarly regulatory and/or straightforward nature. Whether the compounded offence was less or more serious was irrelevant. Apart from the ambiguity as to what a "less serious" traffic offence was, the relative severity of

an offence bore no rational nexus to the question of whether the offence should be taken into account in sentencing: at [35]–[37].

49 In Chua J's view, proof of conviction was proof that an accused had committed the relevant offence but proof of composition was not proof that an accused had committed the offence compounded. Once an offence was compounded, the offender could no longer be said to have committed the offence. Leaving aside the issue of whether the Prosecution would still be able to prove the compounded offence when evidence could have been lost with the passage of time, it could not be right that the Prosecution could still seek to prove the commission of a compounded offence because having to do so would defeat the very purpose of composition: at [38]–[39].

50 Finally. Chua J noted that the addition of s 139AA to the RTA in 2019 allowed the court to consider compounded RTA offences as an aggravating factor in sentencing for offences under the RTA. Although this new provision was not applicable to the appeal before him, Chua J opined that it was an implicit acknowledgement of the general principle that compounded offences were not relevant for purposes of sentencing and that the general principle should be departed from only by way of statutory intervention: at [40].

Composition of an offence and its effect

51 A composition refers to a form of settlement agreement between the injured party and the accused. This was explained in *Emperor v Alibhai Abdul* AIR 1921 Bom 166 at 167 (and cited with approval in *Public Prosecutor v Norzian bin Bintat* [1995] 3 SLR(R) 105 at [26]) as follows:

> A composition is an arrangement or settlement of differences between the injured party and the person against whom the complaint is made, and it may well happen that where there is

> more than one such person, a satisfactory settlement may be possible with one of them and may not be arrived at with another.

52 The concept of composition appeared in the Indian Criminal Procedure Code under s 345 of Act X of 1882. Thereafter, it was imported into the Straits Settlements Criminal Procedure Code under s 248 of Ordinance VII of 1892 and brought into force under s 248 of Ordinance XXI of 1900: Lim & Yap, "Composition: Legal and Theoretical Foundations" (2015) 27 SAcLJ 462 ("*Legal and Theoretical Foundations*") at para 6.

53 The concept remained largely intact in s 199 of the 1985 CPC under "Compounding of offences". There were two key aspects of composition under this provision. First, composition of offences under s 199 of the 1985 CPC had "the effect of an acquittal of the accused": s 199(4) of the 1985 CPC. Secondly, where formal proceedings had been commenced against the accused, offences could only be compounded with the consent of the court. Such consent was required even where the settlement was agreed upon before formal proceedings had commenced: s 199(1) of the 1985 CPC; *Kee Leong Bee and another v Public Prosecutor* [1999] 2 SLR(R) 768 at [15]–[20]; *Wong Sin Yee v Public Prosecutor* [2001] 2 SLR(R) 63 at [8]–[17].

54 In 2004, the composition of offences provision was amended by the Statutes (Miscellaneous Amendments) Act 2004 which made several key changes. First, s 199 of the 1985 CPC was now titled "Compounding of offences under Penal Code". Secondly, s 199A was introduced for the "Compounding of offences under other written laws", in terms largely similar to s 243 of the CPC (as it stands currently). Thirdly, s 199A(4) provided that "The person designated under subsection (3)(b) may compound any offence prescribed under subsection (3)(a) by collecting from a person who is reasonably suspected of having

committed the offence a sum of money not exceeding the maximum sum that is specified under subsection (3)(c) in respect of that offence and s 199A(5) stated that "On payment of such sum of money, no further proceedings shall be taken against that person in respect of such offence". The wording of s 199(4) of the 1985 CPC (that composition had the effect of an acquittal) remained unchanged.

55 The composition provision underwent further changes as a result of the 2012 amendments to the CPC. Under s 241 of the CPC (Revised Edition 2012), entitled "Compounding offences", the power of consent was transferred from the court to the Public Prosecutor. This change sought to bring the composition process in line with prosecutorial discretion for conceptual clarity and to streamline the prosecution process: see *Singapore Parliamentary Debates, Official Report* (18 May 2020), vol 87 at cols 415 and 573 (Mr K Shanmugam, Minister for Law); *Legal and Theoretical Foundations* at para 46. Under s 241(2), where investigations have commenced or when the accused has been charged in court, consent of the Public Prosecutor is required for composition. In relation to the effect of composition, ss 241(4) and 241(5) provide as follows:

> (4) Where investigations have commenced for an offence which is subsequently compounded under subsection (2), no further proceedings shall be taken against the person reasonably suspected of having committed the offence.
>
> (5) Where after the accused has been charged in court, the offence is compounded under subsection (2), the court must order a discharge amounting to an acquittal in respect of the accused.

56 Under s 242 of the CPC (entitled "Public Prosecutor may compound offences"), the Public Prosecutor may, on such terms and conditions as he may determine, at any time compound any offence or class of offences as may be prescribed by collecting from a person who is reasonably suspected of having committed the offence a sum of money which shall not exceed half of the

maximum fine prescribed or $5000, whichever is lower: s 242(1) of the CPC. The purpose of this provision was to allow the Public Prosecutor to compound offences that did not involve specific victims, such as offences relating to damage to public property. This was intended to be similar to composition of "minor regulatory offences by enforcement agencies": *Singapore Parliamentary Debates, Official Report* (18 May 2020), vol 87 at cols 415 (Mr K Shanmugam, Minister for Law). The effect of composition under this regime are set out in ss 242(3) and 242(4) of the CPC as follows:

> (3) Where investigations have commenced for an offence which is subsequently compounded under subsection (1), no further proceedings shall be taken against the person reasonably suspected of having committed the offence.
>
> (4) Where after the accused has been charged in court, the offence is compounded under subsection (1), such composition shall have the effect of an acquittal in respect of the accused.

57 In respect of offences outside the Penal Code, s 243 of the CPC provides as follows:

> **Compounding of offences under other written laws**
>
> **243.**—(1) Where any Act (other than the Penal Code (Cap. 224)) contains an express provision for the composition of offences thereunder, the person authorised under that provision to compound such offences shall exercise the power of composition subject to any general or special directions of the Public Prosecutor.
>
> **…**
>
> (4) The person designated under subsection (3)(*b*) may, subject to such general or special directions that the Public Prosecutor may give, compound any offence prescribed under subsection (3)(*a*) by collecting from a person who is reasonably suspected of having committed the offence a sum of money not exceeding the maximum sum that is specified under subsection (3)(*c*) in respect of that offence.
>
> (5) On payment of such sum of money, no further proceedings shall be taken against that person in respect of such offence.

58 This prohibition against further proceedings is also reflected in s 135 of the RTA which provides:

> **Composition of offences**
>
> **135.**—(1) A relevant authorised officer may compound any offence under this Act or the rules that is prescribed as a compoundable offence, by collecting from a person reasonably suspected of having committed the offence a sum not exceeding the lower of the following:
>
> (*a*) one half of the amount of the maximum fine that is prescribed for the offence;
>
> (*b*) $5,000.
>
> (1A) On payment of the composition sum under subsection (1), no further proceedings are to be taken against that person in respect of the offence.
>
> …

59 Section 243(5) of the CPC and s 135(1A) of the RTA provide that "no further proceedings" are to be taken against an alleged offender in respect of a compounded offence. The phrase "no further proceedings" is used alongside "discharge amounting to acquittal" and "shall have the effect of an acquittal" in ss 241(4) and (5) and 242(3) and (4) of the CPC. The use of all these terms has resulted in the debate as to whether composition amounts to an admission of guilt or whether it is an acquittal.

Composition is not necessarily an admission of guilt

60 The Prosecution acknowledges that the acceptance of a composition offer does not amount necessarily to an admission of guilt. We agree generally with this view, subject to what we say below.

61 The foundation of composition is that it is a sort of settlement agreement. For example, under the Fourth Schedule read with s 241 of the CPC, there are a

number of offences under the Penal Code and some other Acts which may be compounded by the victim of the alleged offence, thereby effecting what is in essence a private settlement. The act of entering into a settlement agreement does not mean necessarily that one is admitting liability or guilt although that is one real possibility.

62 Some offences are compounded for the sake of expedience and efficient administration. In the case of road traffic offences, the composition procedure is used for the "efficient disposition of less serious traffic violations": *Ong Heng Chua* at [40] (relying on the speech by Minister for Home Affairs and Second Minister for Law, Prof S Jayakumar, in the second reading of the Road Traffic (Amendment) Bill on 30 August 1985 where the Minister said, "most road offences could be compounded by the Traffic Police instead of being referred to the court" and "[o]nly the more serious offences will be referred to the courts"). It would appear that the rationale for this is that such offences occur frequently and in relatively high numbers but are generally not so serious that they should go before the courts. Composition of such offences would therefore benefit the alleged offenders, the Traffic Police as well as the courts in terms of time and expense. While most alleged offenders who accept the offer of composition are probably admitting guilt, it is reasonable to expect that some alleged offenders in minor traffic offences may genuinely not recall the circumstances of the alleged offences and choose to pay a relatively low composition amount in order to close the matter quickly.

63 As recognised in Re *Lim Chor Pee* and in *Neo Chuan Sheng*, alleged offenders do accept composition for a variety of reasons and it should not be assumed that they are all admitting guilt. In Re *Lim Chor Pee*, the respondent lawyer had compounded an offence of tax evasion under the Income Tax Act (Cap 141, 1970 Rev Ed). This compounded offence was taken into

consideration by the Disciplinary Committee in disciplinary proceedings commenced against the respondent under the Legal Profession Act (Cap 161, 1985 Rev Ed). The Disciplinary Committee distinguished a composition under the CPC from that under the Income Tax Act and noted that the Income Tax Act had no equivalent of the then s 199(4) of the CPC which provided that a composition had the effect of an acquittal. In the Disciplinary Committee's opinion, "where a taxpayer pays a large sum of money at the rate payable upon conviction in court to compound an offence under the Income Tax Act, it is reasonable to infer as a matter of common sense that the taxpayer is guilty of that offence because no person in his proper mind will do that if he is really innocent".

64 This reasoning was rejected by the Court of Three Judges at [55]–[57]:

> 55 With respect, we are unable to accept this reasoning. Whether the offence is compounded under the Code or under the Income Tax Act, payment of a sum of money is exigible from the alleged offender. The fact that the payment made is a penalty, is a large sum and is imposed at the same rate applicable upon conviction of the offence by court is not a valid ground for raising the inference of guilt against the alleged offender. We accept that there is no equivalent in the Income Tax Act of sub-s (4) of s 199 of the Code. However, in our opinion, on principle, the same rule should apply to a composition of an offence under the Income Tax Act, or to put it negatively composition of an offence by an alleged offender cannot constitute an admission of guilt against him. The effect of a composition is that no further action can be taken by the prosecuting authority against the accused on the offence compounded or indeed any other offence in respect of which he could plead *autrefois acquit or autrefois convict* in respect of the offence compounded.
>
> 56 There are multiple reasons why a person may wish to compound an offence, whether it be an income tax offence or an offence compoundable under the Code, without any admission of guilt. In particular, in the case of a taxpayer being charged for tax evasion under s 96 of the Income Tax Act, where the burden of proof is shifted to him, he may, on grounds of practicality and expediency, if agreeable to the Comptroller of

> Income Tax, compound the offence and pay the requisite composition fee and penalty. …
>
> 57 If one looks at the sequence of events starting from 1978 to the date of finalisation of the settlement in 1982 it is not too difficult to understand why the respondent agreed to compound the various tax evasion charges. Over a period of approximately four years various charges were brought against him, one after another, culminating in eight charges under the Income Tax Act and four charges under the Penal Code, which he faced at the time of the settlement. On any view, this is a formidable list of charges. We find that it is unrealistic in the circumstances to reject, as the Committee did, the suggestion that the composition in this case was a result of "commercial horse-trading" and "buying of peace". … a person in the respondent's position would have been under considerable pressure to come to some form of a settlement with the authorities to bring an end to the prolonged criminal investigations into his affairs regardless of his guilt or innocence. In our judgment, the compositions made by the respondent ought not to be considered as an admission of guilt.

65 The above reasoning in Re *Lim Chor Pee* was endorsed by Yong Pung How CJ in *Lim Niah Liang* at [18] and cited in *Rajamanikam Ramachandran* at [37]–[40]. In *Ong Heng Chua*, See J acknowledged the principle discussed in these cases but he regarded it as irrelevant to his decision.

66 The Prosecution raises the further point that, even in cases where an alleged offender was observed committing the offending act by an enforcement officer, guilt may not be proved as the alleged offender could avail himself of potential defences. Our response to this is that while this is correct, if the alleged offender is then offered composition because he is "reasonably suspected of having committed the offence" (using the terminology in provisions such as ss 242(1) and 243(4) of the CPC) and he accepts the composition and pays the specified amount without protest, surely it is reasonable and logical to deduce that he admits that he did commit the alleged offence.

67 Considering all the above reasons, we accept the proposition that the acceptance of a composition offer is not necessarily an admission of guilt in respect of the offence compounded. However, it cannot be correct to say that acceptance of a composition offer can never be such an admission. Under s 135(1) of the RTA, a composition is offered to "a person reasonably suspected of having committed the offence". Similarly, under ss 242(1) and 243(4) of the CPC, the Public Prosecutor or the compounding authority may offer composition to "a person reasonably suspected of having committed the offence". Therefore, when composition is offered to a person, that means effectively that he is an alleged offender even if he has not yet been charged. Accordingly, if that person accepts the composition and pays the amount specified without protest, it would be at least a presumptive admission of guilt until it is shown otherwise, since people who are alleged to have committed an offence would not pay the composition amount if they deny having committed any offence or assert that they have a defence to the alleged offence. This is particularly so in traffic offences if accepting the composition offer would also entail accepting demerit points which can result eventually in disqualification from driving. It would be up to the alleged offender who asserts that he accepted an offer of composition despite his innocence to provide and prove the reason(s) for having done so. Again, this is reasonable and logical as he would be the only person who is aware of the reason(s).

68 This is consistent with Re *Lim Chor Pee* because, as noted at [57] of that decision quoted earlier, the respondent lawyer there did give his reasons to the Disciplinary Committee for paying the composition amounts which the Disciplinary Committee rejected but which the court accepted. It was because of the reasons spelt out at [57] of that decision that the court concluded that the respondent there was under considerable pressure to come to some form of a

settlement with the authorities to bring an end to the prolonged criminal investigations into his affairs regardless of his guilt or innocence. On that basis, the court held that the compositions made by the respondent ought not to be considered as an admission of guilt. The court's holding was not on the basis that compositions could never be an admission of guilt because that would defy logic and common sense.

Composition of an offence has the effect of acquittal

69 In the statutes noted above, three formulations of words are used, namely:

(a) "No further proceedings shall be taken": ss 241(4), 242(3), 243(5) of the CPC and "No further proceedings are to be taken": s 135(1A) of the RTA.

(b) "The court must order a discharge amounting to an acquittal": s 241(5) of the CPC.

(c) "Composition shall have the effect of an acquittal": used in s 242(4) of the CPC.

70 The Prosecution's main argument is that it is significant that there is no mention of an acquittal in s 135(1A) of the RTA and s 243(5) of the Penal Code. It submits that the legislative changes discussed above omitted reference to acquittals and this indicates that Parliament did not intend for compositions to be acquittals.

71 Such a distinction was rejected in Re *Lim Chor Pee* in respect of the CPC and the Income Tax Act. Similarly, we do not see why such a distinction should be made between compounded offences under the Penal Code and

compounded offences under other written law. We think that the better view is that the references to "acquittal" in ss 241(5) and 242(4) of the CPC were necessary only because in the situations covered in those provisions, the accused has already been charged in court. This is clear from the identical opening words in each of these two provisions – "Where after the accused has been charged in court, the offence is compounded … ". This was a point that Chua J noted in *Neo Chuan Sheng* at [33].

72 Further, as the Prosecution states in its submissions, "[f]or a person to be acquitted, he must necessarily first have been charged". Reference to "acquittal" is unnecessary in ss 241(4) and 242(3) of the CPC because these provisions deal with an earlier stage, that is, "Where investigations have commenced for an offence which is subsequently compounded", not the later situation where the accused has been charged in court. Section 243(5) of the CPC and s 135(1A) of the RTA are not so explicit in that they do not contain the opening words "Where investigations have commenced for an offence which is subsequently compounded" but we think they also deal with the same sort of situation as ss 241(4) and 242(3) of the CPC.

73 In *Rajamanikam Ramachandran* at [40], the High Court referred to Re *Lim Chor Pee* and *Lim Niah Liang* and opined that:

> It can be seen from the above two authorities that the rule embodied in Section 199(4) [of the 1985 CPC] has general application to composition of offences outside the Penal Code. I … agree with this proposition and hold that the same rule applies to the composition of an offence under the Road Traffic Act or the subsidiary legislation made thereunder.

Although *Rajamanikam Ramachandran* was a civil action in negligence and was decided before the introduction of s 199A of the 1985 CPC, we agree with its observation. The Prosecution has not shown any material indicating that

Parliament intended to draw a distinction between offences under the Penal Code and those under other statutes.

74 Therefore, what ss 241(4), 242(3) and 243(5) of the CPC and s 135(1A) of the RTA seek to do is to stop further criminal proceedings for an offence once that offence has been compounded. In these situations, the alleged offender has not been charged in court yet and the composition means that he cannot be charged in court subsequently for that offence. There is no acquittal in these situations because such an order can be made only by a court and the alleged offence has not been brought to court at that stage.

75 In the case of ss 241(5) and 242(4) of the CPC, the legislative intention is explicit. Under the first provision, where the offence is compounded after the accused has been charged in court, "the court must order a discharge amounting to an acquittal". Under the second provision, where the offence is compounded after the accused has been charged in court, "such composition shall have the effect of an acquittal".

76 From the above, it is apparent that putting a stop to further proceedings pursuant to ss 241(4), 242(3) and 243(5) of the CPC and s 135(1A) of the RTA has essentially the same effect as an acquittal in ss 241(5) and 242(4) of the CPC. It makes little sense to treat compositions that occur at an early stage as not having the effect of an acquittal but to regard compositions that occur after the alleged offender has been charged in court as acquittals or as having the effect of an acquittal. In both situations, the effect of composition is that the alleged offender cannot be charged subsequently in respect of the compounded offence.

77 This is the manifestation of the doctrine of *autrefois acquit* which prevents double jeopardy and this legal protection is set out in Art 11(2) of the Constitution and in s 244(1) of the CPC: *The Criminal Procedure Code of Singapore: Annotations and Commentary* (Jennifer Marie & Mohamed Faizal Mohamed Abdul Kadir eds) (Academy Publishing, 2012) pp 357–360.

78 Art 11(2) of the Constitution states:

> **Protection against retrospective criminal laws and repeated trials**
>
> (2) A person who has been convicted or acquitted of an offence shall not be tried again for the same offence except where the conviction or acquittal has been quashed and a retrial ordered by a court superior to that by which he was convicted or acquitted.

Section 244(1) of the CPC provides:

> **Person once convicted or acquitted not to be tried again for offence on the same facts**
>
> **244.**—(1) A person who has been tried by a court of competent jurisdiction for an offence and has been convicted or acquitted of that offence shall not be liable, while the conviction or acquittal remains in force, to be tried again for the same offence nor on the same facts for any other offence for which a different charge might have been made under section 138 or for which he might have been convicted under section 139 or 140.

Compounded offences and other past conduct as sentencing considerations

79 From the above discussions, it becomes apparent that composition of an offence is really a hybrid between conviction (where there is a finding of guilt because the charge is proved) and acquittal (where there is a finding of not guilty because the charge is not proved or there is a valid defence in law). Composition is a hybrid because it is presumptively an admission of guilt (until proved otherwise) when the alleged offender accepts the composition offer without protest and yet it is regarded as an acquittal or having the effect of an acquittal.

This hybrid is not an aberration because it exists for good reasons. Composition of an offence is beneficial to the Prosecution and to the alleged offender for the reasons discussed earlier. In addition, the alleged offender does not have to worry about being prosecuted for an offence once he has compounded it. Further, compositions do not amount to a criminal record which can affect a person's employment or profession adversely. Where the alleged offence provides for imprisonment and fine, accepting a composition offer gives the alleged offender the extra comfort of avoiding possible imprisonment.

80 Although the alleged offender cannot be charged anymore for the compounded offence, that does not mean that the composition can never be brought up in court again as part of the past conduct of that alleged offender in the event that he is charged and convicted in some other matter subsequently. The doctrine of a*utrefois acquit* is not infringed where a compounded offence is referred to by the Prosecution only as part of its submissions on sentence. In such a situation, the Prosecution is not seeking to revive an offence which has been compounded and there is therefore no question of double jeopardy. The Prosecution is permitted by s 228(1) of the CPC to address the court on sentence and s 228(2) provides that the address on sentence may include "the criminal records of the accused" and "any relevant factors which may affect the sentence". Even though compounded offences are not "criminal records" on the basis that they have the effect of an acquittal as we have discussed above, they are still part of "any relevant factors which may affect the sentence". We elaborate on this in the discussions below.

81 The sentencing process takes into account all factors that may either mitigate or aggravate the offence before the court. The accused person's conduct, past and present, is probably the most commonly raised factor in the sentencing process, whether it is to his advantage or to his detriment. It cannot

be disputed that a person's composition history is part of that person's past conduct. There can therefore be no impediment in law to look at such past conduct during the sentencing process. Whether the past conduct in a particular case ought to aggravate the instant offence before the court is really quite another consideration. We discuss below four categories of past conduct and indicate the ones that are relevant for the purpose of sentencing.

Warnings

82 The first category of past conduct concerns the practice of issuing stern warnings, with or without conditions, to the alleged offender instead of prosecuting him in court. Whether such warnings could be considered as an aggravating factor in sentencing for a subsequent offence was a question that arose in the High Court cases of *Wham Kwok Han Jolovan v Attorney-General* [2016] 1 SLR 1370 ("*Wham Jolovan"*), *Public Prosecutor v Raveen Balakrishnan* [2018] 5 SLR 799 ("*Raveen Balakrishnan*") and *GCO v Public Prosecutor* [2019] 3 SLR 1402 ("*GCO*").

83 In *Wham Jolovan*, the applicant organised a candlelight vigil at Hong Lim Park. The event's publicity stated that foreigners and permanent residents required a permit in order to participate but several foreigners participated without a permit. As a consequence, the applicant was issued a stern warning instead of being charged for an offence under the Public Order (Unrestricted Area) Order 2013 (S 30/2013). The applicant refused to sign a "Notice of Warning" which set out the offence he was being warned for and the date and place of that offence. Subsequently, he wrote to both the police and the Attorney-General's Chambers, protesting the issuance of the warning. When the applicant received no reply, he sought leave to commence judicial review proceedings to quash the warning administered to him by the police.

84 Woo Bih Li J dismissed the application for leave. He held that a warning was not binding on its recipient and did not affect his legal rights, interests or liabilities: *Wham Jolovan* at [33]. It was nothing more than an expression of the opinion of the relevant authority that the recipient of the warning had committed an offence: *Wham Jolovan* at [34]. Woo J agreed with the Attorney-General's submission that a court is not entitled to treat a warning as an antecedent or as an aggravating factor, since it has no legal effect and is not binding on the recipient: *Wham Jolovan* at [44].

85 These principles were cited with approval by Sundaresh Menon CJ (sitting in the High Court) in *Raveen Balakrishnan*. In that case, the defence argued that there should be parity between the accused's sentence and the 12-month conditional warnings issued to his companions who also participated in the offending conduct. Although the argument was not raised specifically on appeal, Menon CJ noted that the principle of parity was simply not engaged in that case. This was because no comparison could be made between a sentence imposed by the court and a stern or conditional warning issued by the relevant authorities in the exercise of prosecutorial discretion: *Raveen Balakrishnan* at [113]. The fact that a co-offender was issued a warning was not an indicator of the co-offender's guilt or degree of culpability: *Raveen Balakrishnan* at [115].

86 In the case of *GCO*, the appellant pleaded guilty to two charges. The first was a charge of insulting the modesty of a woman under s 509 of the Penal Code (the "s 509 offence"). The s 509 offence occurred in 2015 and the appellant was originally given a 12-month conditional warning instead of facing prosecution for this charge. The conditional warning was administered only in February 2017. The second charge was for outrage of modesty under s 354(1) of the Penal Code (the "OM offence"). This was committed in April 2017, about two months after the conditional warning was administered. In sentencing, the

District Judge determined that it was an aggravating factor that the appellant committed the OM offence soon after receiving the conditional warning for the s 509 offence.

87 On appeal, the Prosecution argued that the position in *Wham Jolovan* was limited to stern warnings and not to conditional stern warnings. See J disagreed with this argument, holding that the receipt of a conditional stern warning or a breach of that condition was not an aggravating factor in sentencing. This was because a conditional stern warning, like a stern warning, was informational in nature and not legally binding: *GCO* at [70]–[72].

88 The cases of *Wham Jolovan*, *Raveen Balakrishnan* and *GCO* therefore established that stern warnings, whether conditional or not, have no legal effect. Accordingly, a court should not treat the receipt of such warnings as an aggravating factor for sentencing in a subsequent offence. This category of past conduct is therefore excluded from consideration in sentencing.

Uncharged past conduct that could constitute a separate offence

89 The second category of past conduct involves the relevance of uncharged past conduct that could constitute a separate offence for the purpose of sentencing. This was considered by this court in *Public Prosecutor v Bong Sim Swan Suzanna* [2020] 2 SLR 1001 ("*Suzanna Bong*"). In that case, the respondent mistreated a foreign domestic helper ("the victim") by hitting her regularly, particularly on the left side of her face. The victim's eyesight started to deteriorate. The abuse culminated in an incident on 17 May 2015 when the accused used a glass bottle to hit the left side of the victim's face several times (the "17 May 2015 incident"). The victim was brought to a hospital where she was diagnosed with several injuries, including permanent visual loss in her left

eye. The accused was convicted on one charge of voluntarily causing hurt to a domestic worker in her employment in the 17 May 2015 incident. The District Judge sentenced her to 20 months' imprisonment and ordered her to pay the victim a compensation amount of $38,540.40.

90 The accused there appealed against her conviction and sentence. The High Court dismissed the appeal against conviction but allowed the appeal against sentence by reducing it to eight months' imprisonment. The High Court also reduced the compensation amount to $1,000. This was because the High Court held that the evidence did not prove that the 17 May 2015 incident caused the victim's eye injury. While the eye injury could have been caused by previous incidents of abuse, the accused was not charged for those incidents and the High Court therefore did not take them into consideration.

91 The Prosecution referred several questions of law of public interest to the Court of Appeal. One of the questions was whether in applying the sentencing framework for the offence of abuse of domestic workers, a court should take into account psychological harm that arises from a sustained pattern of abuse, *ie* multiple incidents of the accused causing hurt to the domestic helper, even though separate charges were not preferred for those incidents. We answered this question in the affirmative, holding that there was no requirement that the psychological harm must be proved through a source independent of the accused's own previous acts even though those acts could also amount to other offences (*Suzanna Bong* at [90(b)]). In the reasoning leading to this answer, the court approved the principles stated by the High Court in *Chua Siew Peng v Public Prosecutor and another appeal* [2017] 4 SLR 1247 ("*Chua Siew Peng*"). The Court of Appeal stated at [65] and [66] as follows:

> 65 In *Chua Siew Peng* …, the High Court observed that while a sentencing court generally could not take into account

> uncharged offences, it was entitled to and in fact should consider the aggravating circumstances in which the offence was committed, even where those circumstances could technically constitute separate offences. … A fact with a sufficient nexus to the commission of the offence could be considered at the sentencing stage, irrespective of whether this fact could also constitute a separate offence for which the accused was not charged. What constituted a sufficient nexus was a fact-sensitive inquiry that depended on the circumstances of each case and the degree of proximity of time and space to the charged offence. A sufficient nexus would generally be present if it concerned a fact in the immediate circumstances of the charged offence or was a fact relevant to the accused's state of mind at the time of committing the offence …
>
> 66 We agree with the above principles stated in *Chua Siew Peng*. If the facts are relevant and proved, they may be, and indeed ought to be, considered by the sentencing court …

92 The past conduct of an offender which has a sufficient nexus to the offence before the court is therefore relevant for sentencing, even if such past conduct could have constituted a separate offence for which the offender was not charged and accordingly has not been found guilty of. As the Court of Appeal elaborated in *Suzanna Bong* at [73]:

> In our opinion, the sentencing court must be able to consider all the circumstances of a case in order to assess it realistically … We think it is important to consider the totality of the circumstances of a charged offence in order to have a true flavour of the offence as the overall perspective may have an impact on the level of the offender's culpability and the extent of the victim's suffering. Naturally, in applying this principle, the court must take a common-sense and contextual approach when considering the importance of the proved relevant facts.

Charges that have been taken into consideration

93 The third category of past conduct concerns charges which are taken into consideration for the purpose of sentencing ("TIC charges"). The CPC has an

express provision for TIC charges in s 148 of the CPC, which reads as follows:

> **Outstanding offences**
>
> **148.**—(1) If the accused is found guilty of an offence in any criminal proceedings begun by or on behalf of the Public Prosecutor, the court in determining and passing sentence may, with the consent of the prosecution and the accused, take into consideration any other outstanding offences that the accused admits to have committed.
>
> …
>
> (3) The High Court may, under subsection (1), take into consideration any outstanding offences an accused admits to have committed when passing sentence, notwithstanding that no transmission proceedings under Division 5 of Part X have been held in respect of those outstanding offences.
>
> …
>
> (5) After being sentenced, the accused may not, unless his conviction for the original offence under subsection (1) is set aside, be charged or tried for any such offence that the court had taken into consideration under this section.

94 The relevant principles regarding TIC charges were explained in Re *Salwant Singh s/o Amer Singh* [2019] 5 SLR 1037 ("Re *Salwant Singh*") at [48]–[49] as follows:

> 48 Section 148 makes it clear that where a defendant has been found guilty of the charges proceeded against him by the Prosecution, the court *may* take into consideration any outstanding offences which the defendant admits to having committed in determining the appropriate sentence to impose. It bears emphasis that where a court takes into consideration outstanding offences in the course of sentencing, the court does not *convict* the defendant of these outstanding offences, but merely relies on the defendant's *admission* to these offences as *a relevant factor* in determining the appropriate length of sentence. The effect of taking into consideration outstanding offences is generally to enhance the sentence that would otherwise be meted out to the defendant (*PP v Mok Ping Wuen Maurice* [1998] 3 SLR(R) 439 at [19]). That said, a separate sentence is not imposed for each of the TIC offences and the defendant avoids a potentially longer global sentence had he instead been *convicted* of each of the outstanding offences, with the sentences for each ordered to run consecutively.

49 In *PP v UI* [2008] 4 SLR(R) 500 ("*UI*"), Chan Sek Keong CJ provided a useful explanation of the rationale for and the effect of charges taken into consideration for the purposes of sentencing as follows (at [36]–[38]):

> 36 … It saves the Prosecution from the necessity of proving what can be a significant number of similar offences committed by the offender. The offender, conversely, is able to protect himself from being charged on a later occasion with the TIC offences. He can also be fairly sure that, despite the TIC offences being considered by the sentencing court, the increase in the severity of his sentence for the offences proceeded with will be less draconian than the sentence which he would have received had the Prosecution proceeded with the TIC offences as well.
>
> 37 More often than not, when TIC offences feature in a case, the sentence for the offences proceeded with will have to be increased. …
>
> 38 Section 178(1) of the [CPC 1985] does not mandate that, where TIC offences are present, the court must increase the sentence which would normally have been imposed for the offences proceeded with in the absence of TIC offences. But, if there are TIC offences to be taken into account, the effect, in general, would be that the sentence which the court would otherwise have imposed for the offences proceeded with would be increased … This is commonsensical as the offender, by agreeing to have the TIC offences in question taken into consideration for sentencing purposes, has in substance admitted that he committed those offences. This would *a fortiori* be the case where the TIC offences and the offences proceeded with are similar in nature
>
> …
>
> That is *not* to say, however, that the court *must* increase the sentence imposed for the offences proceeded with where TIC offences are present. As stated by Yong CJ in *PP v Mok Ping Wuen Maurice* [1998] 3 SLR(R) 439 at [19]: 'Ultimately, it is the court's discretion whether to consider the [TIC] offence or not.' However, if the sentencing court decides not to consider the TIC offences as aggravating the offences proceeded with where it is clear that the former offences should be so considered and does not justify its decision in this regard, the only conclusion which can be reached by an

> appellate court is that the sentencing court erred in its treatment of the TIC offences.
>
> [emphasis in original in italics]

95 As seen from the above, TIC charges are relevant for the purpose of sentencing. We highlight the observation in Re *Salwant Singh* that where a court takes into consideration outstanding offences in the course of sentencing, the court does not convict the accused on the outstanding offences but merely relies on the accused's admission to the offences as a relevant factor in determining the appropriate length of sentence for the offence which is before the court. Where outstanding offences are included as TIC charges, s 148(5) of the CPC applies the principle of *autrefois acquit* to them and the offender cannot be charged or tried anymore on the TIC charges unless the conviction for the offence which is before the court is set aside.

Previous convictions

96 The fourth category of past conduct involves the court's consideration of an offender's previous convictions and antecedents. This comes at the sentencing stage when the Prosecution addresses the court on the appropriate sentence to impose. As pointed out earlier, at this stage, s 228 of the CPC allows the Prosecution to tender and refer to the offender's criminal record, which is defined under s 2(1) of the CPC as follows:

> (*a*) Conviction in any court, or subordinate military court established under section 80 of the Singapore Armed Forces Act (Cap 295);
>
> (*b*) Order made under section 34(2) of the Misuse of Drugs Act (Cap 185);
>
> (*c*) Supervision order made under section 16 of the Intoxicating Substances Act (Cap 146A);
>
> (*d*) Order made under section 30(1) of the Criminal Law (Temporary Provisions) Act (Cap 67); and

> (*e*) Order as may be prescribed by the Minister charged with the responsibility for home affairs to be a criminal record for the purpose of this Code.

97 An offender who has a criminal record is likely to receive a heavier punishment, as his re-offending shows that his previous sentences did not have sufficient deterrent effect on him: *Iskandar bin Muhamad Nordin v Public Prosecutor* [2006] 1 SLR(R) 265 at [21]. An offender's criminal record may attest to his bad character, poor attitude and low likelihood of rehabilitation: *Sim Yeow Seng v Public Prosecutor* [1995] 2 SLR(R) 466 at [8]. The longer the time span of an offender's criminal record, the more irrefutable it is that the offender manifests the qualities of a habitual offender and that the instant offence was not simply an uncharacteristic aberration: *Public Prosecutor v Fernando Payagala Waduge Malitha Kumar* [2007] 2 SLR(R) 334 at [43] and *Tan Kay Beng v Public Prosecutor* [2006] 4 SLR(R) 10 at [17]. This is particularly so where the previous offences and the instant one are the same or are of a similar nature. Where the instant offence is committed soon after the offender has been punished for the earlier offences, this may also show lack of remorse and an unwillingness or inability to turn away from crime.

98 On the other hand, a substantial gap in time between the previous offences and the instant one may be testament to the offender's genuine effort to change his ways: *Public Prosecutor v NF* [2006] 4 SLR(R) 849 at [72]. It would also be relevant if the previous offences were quite dated and were committed when the offender was much younger. Some latitude is usually accorded by the court for youthful offending.

The answer to the Question

99 We turn now to the Question raised as to whether the court may take into account compounded offences under the RTA as an aggravating factor to

determine the sentence for an offence under the RTA and for an offence under any other Act. From the discussions above, it is clear that composition of an offence (whether under the RTA or not) is not a conviction in law and that compositions cannot therefore be raised as part of "the criminal records" of the offender under s 228(2)(a) of the CPC. However, s 228(2)(c) of the CPC allows the Prosecution in its address on sentence to include "any relevant factors which may affect the sentence".

100 On any reasonable view, an offender's bad driving record or his impeccable driving record must be a relevant factor when the court considers the appropriate sentence after convicting him on a RTA offence. A bad driving record reflects the offender's attitude towards road traffic rules and safety and the particular circumstances may call for both specific and general deterrence in sentencing. Logically, an offender's driving record should include offences which have been alleged against him in composition offers and which he has chosen to compound. For instance, if an offender is shown to have compounded several summonses for speeding and the instant offence for sentencing is also for speeding, common sense dictates that such an offender should not be treated in the same way as one who has a completely clean driving record.

101 Any of the orders listed under s 2(1) of the CPC suffices to show a criminal record and therefore guilt in respect of the previous offences. As for compounded offences, we have indicated earlier that compounded offences are at least presumptive proof of admission of guilt until it is shown otherwise by the offender. The Prosecution's duty is to highlight any composition record to the sentencing court and to make its submissions on sentence accordingly. In practically all cases, the offender accepts the composition record and proceeds to make his mitigation plea. In some instances, the offender may say that he has forgotten the dates and details of the compounded offences but does not

challenge the composition record in any event. It is of course open to the offender to deny that some or all of the compositions listed by the Prosecution occurred. It is further open to the offender to submit to the court that he accepted some or all of the composition offers for reasons other than admission of guilt. If the offender's assertions are disputed by the Prosecution, the offender should adduce evidence to prove the existence of the reasons asserted by him. Under s 228(5) of the CPC, after hearing the plea in mitigation, the sentencing court may:

> (a) at its discretion or on the application of the prosecution or the accused hear any evidence to determine the truth or otherwise of the matters raised before the court which may materially affect the sentence; and
>
> (b) attach such weight to the matter raised as it considers appropriate after hearing the evidence.

102 It may be that the offender is able to prove that he compounded the offences for reasons other than admission of guilt. For example, he is able to show that at the material time of the composition, he was in a hurry to leave for an overseas assignment and did not want the alleged offence to delay his departure and he therefore paid the composition amount although he was not guilty of the alleged offence. If the Prosecution wishes, it is equally open to it to prove that the offender did commit the compounded offences anyway. This is where pragmatic issues arise for consideration. Is the compounded offence so important to the Prosecution's submissions on sentence that it should expend the time and effort to prove guilt? In some cases, especially where the compounded offence took place years ago, it is highly likely that the evidence

to prove the offence has already been disposed of. Accordingly, in such cases, good sense on the part of all concerned should guide the way.

103 It follows from all the discussions above that the answer to the Question has to be an affirmative one. As a matter of law, a court may take into account offences compounded under the RTA as an aggravating factor when sentencing an offence under the RTA. Likewise, a court can take into account offences compounded under the RTA as an aggravating factor when sentencing an offence under any other law. As a matter of fact, whether those compounded offences amount to aggravation so as to warrant an enhancement of the sentence again involves good sense in application, bearing in mind the considerations of time and factual relevance. Just as in the case of previous convictions, one or two compounded offences in the distant past, especially if the offender was much younger then, may not carry much weight as an aggravating factor for the instant offence under the RTA or any other law being considered in sentencing. Similarly, if the compounded offence relates to late payment of the vehicle's annual road tax, it may have no effect on the sentence to be passed for an offence of dangerous driving.

104 Although the Question does not mention the composition of offences under any other law, it is our view that the same considerations apply when considering offences compounded under any other law in the sentencing of an offence which is under the RTA or any other law. It follows that compounded offences under the RTA can be considered in sentencing an offence that is not under the RTA and compounded offences under any other law can likewise be considered in sentencing an offence that is under the RTA.

105 The position regarding the consideration of compositions under the RTA for an instant offence under the RTA is now recognised in s 139AA of the RTA,

reproduced earlier above. The enactment of s 139AA of the RTA was explained in Parliament as follows (*Singapore Parliamentary Debates, Official Report* (8 July 2019) vol 94 (Josephine Teo, Second Minister for Home Affairs) ("the Ministerial Statement"):

> Mr Louis Ng highlighted that some individuals could have compounded an offence without intending to admit guilt. He asked if composition offences in the RTA amount to an acquittal. A person who is charged in Court and appeals may be offered composition. In such instances, once the charge is withdrawn via a discharge amounting to an acquittal, the composition amounts to an acquittal.
>
> However, the current case law states that past composition can be treated as an aggravating factor. The new section 139AA makes it clear that the Courts may take the composition of an offence as a possible aggravating factor when a Court sentences for a later RTA offence. It does not matter how the composition came about. The Courts should be able to consider an individual's history of past compounded offences, for example, whether he had one or many past compositions. In any case, this will only apply within the RTA. As Mr Ng mentioned in his speech, this is in line with the decisions made by the High Court that compounded offences in the RTA may be taken into account for sentencing.
>
> Moving forward, people who choose to accept composition should do so with the awareness that the composition could be treated as an aggravating factor in a future conviction. To be fair to them, due warning will be given at the point the composition is offered.
>
> Mr Ng also asked about the practical differences between a composition and conviction under the RTA. Apart from the typically lower penalties for compositions, compositions will also not be considered as part of an individual's criminal records.

106 The Ministerial Statement makes it clear that the scope of s 139AA of the RTA is confined to composition of offences under the RTA in the sentencing of instant offences within the RTA. The amendment also shows that Parliament did not think it was wrong in principle to allow compounded offences to be

regarded as an aggravating factor. The amendment was said to be "in line" with the High Court decisions on this issue.

107 The decisions in *Koh Thiam Huat* and *Aw Tai Hock* concerned cases where the offence before the court was under the RTA. However, the offence before the court in *Ong Heng Chua* was under s 338(b) of the Penal Code. While s 139AA of the RTA codifies the position in the case law in respect of compositions under the RTA for the purpose of sentencing of offences under the RTA, it is our view that the same principle is of general application and, as explained above, applies to compounded offences under the RTA or any other law in the sentencing of an offence which is under the RTA or any other law. We do not see s 139AA of the RTA as attempting to change this position.

108 As a further note, the Ministerial Statement also indicates that the policy moving forward is that persons offered a composition will be warned at the time of offer that the composition may be treated as an aggravating factor in the event of a future conviction. The Prosecution informs us that since February 2020, notices of composition issued by the Traffic Police under s 135 of the RTA contain the following note: "If you are convicted of a road traffic offence in future, the court sentencing you for that future offence, may take into account your previous compounded traffic offence(s) as an aggravating factor". The Prosecution also states that for the future, it will have regard to offences compounded under the RTA in sentencing for non-RTA offences only where such warning has been given to the offender. This could be done through an express statutory provision, the composition notice or any other reasonable means.

The Applicant's DQ Order

109 The Applicant submits that if the Question is answered in the negative, his DQ Order of two years should be reconsidered and reduced to one that is less than 12 months because the DJ took into account the compounded offences under the RTA when he decided on the length of the DQ Order. Presumably, a period of less than 12 months is sought because a DQ Order of two years would mean that the Applicant would lose his driving licence and have to take the prevailing tests for a new driving licence. As we have answered the Question in the affirmative, this issue about the length of the DQ Order therefore does not arise at all.

110 It is also clear on the record that the Applicant is merely challenging the DJ's decision on the DQ Order (and consequently, the High Court's affirmation of that order) on the basis that the record of his compositions for offences under the RTA ought not to have been considered in sentencing at all as a matter of law. He did not suggest that the said record was inaccurate in any way or that he did not commit some or all of the offences which he had compounded. The record of his compositions therefore stands as testimony of his "poor driving record" (as noted at [62] of the DJ's GD) and there was no error of law or of fact in considering this during sentencing.

111 In the light of the above, there is therefore no basis at all for reconsidering the DQ Order as the present proceedings are a reference on a question of law and are not an appeal against sentence. However, for the sake of completeness, we discuss this issue briefly.

112 The Applicant's submissions did not point to any cases under s 337(*a*) of the Penal Code under which he was charged and which concerned causing

hurt to the cyclist by doing an act so rashly as to endanger human life. Instead, he relies on the case of *Ong Heng Chua* where the accused there was charged under s 338(*b*) of the Penal Code for causing grievous hurt by negligent driving.

113 In *Ong Heng Chua* at [58], See J stated in the opening sentence that "[a] brief survey of various reported s 338(*b*) road traffic cases shows that the disqualification periods imposed are generally within the range of 12 months to three years." The Applicant submits that he was "convicted for a less serious offence of causing hurt by negligent driving under s 337(*b*) of the Penal Code" and a disqualification period of less than 12 months is therefore appropriate.

114 This contention appears to have overlooked the rest of [58] in *Ong Heng Chua* at [58] where See J stated:

> … The offenders in those cases at the lower end of the disqualification range were often untraced, as in *Sia Chee Han* and *Zhang Xiang Guo*. On the other hand, the offenders in cases at the higher end of the disqualification range often had traffic offence records, as in *Kaleeswaran Sudarsan* (with three previous compositions, including careless driving under r 29 of the Road Traffic Rules compounded shortly before the commission of his offence), *Lim Gim Chye* (with one composition for speeding in 2016, one composition for failing to obey traffic sign in 2013 and two compositions in 1999 for speeding and using a mobile telephone while driving) and *Koh Saw Khim* (with a conviction of causing death by rash or negligent act).

The decision in *Ong Heng Chua* was on the basis that compounded offences could be taken into consideration in sentencing for the offence that was before the court. We have held above that this is the correct position to take. Applying the analysis in *Ong Heng Chua*, the Applicant's history of compositions under the RTA would place him at the higher end of the disqualification range. The DQ Order of two years would therefore appear to be justified on the facts in the

present case.

115 The Applicant also appears to have overlooked the fact that he was charged under s 337(*a*) of the Penal Code (rash act) and not under s 337(*b*) (negligent act) as he has submitted wrongly. The maximum punishments for s 337(a) are double those for s 337(b). Further, s 337(*a*) involves causing hurt by a rash act while s 338(b) involves causing grievous hurt by a negligent act. While "hurt" in the Applicant's case is less serious than "grievous hurt" in *Ong Heng Chua*, the Prosecution points out that there is a material distinction in calibrating the appropriate starting point for offences involving a rash act and those involving a negligent act.

116 The Prosecution referred us to a number of cases, beginning with *Public Prosecutor v Kesavan Pillai Govindan* [2017] SGHC 44. The accused there refused to cooperate with a parking enforcement officer and tried to drive away despite the officer standing in front of him. As a consequence of the accused reversing and driving forward to leave, the officer was hit twice on his left anterior shin and he thereby suffered a contusion. The accused was sentenced to nine weeks' imprisonment for an offence under s 337(*a*) of the Penal Code and disqualified from driving for 15 months.

117 In *Public Prosecutor v Lim Keng Chuan* [2010] SGDC 233, the accused was approached by an officer who showed his warrant card and identified himself as a police officer. Despite this, the accused caused his car to move ahead and then veer to the left in his attempt to drive his car past the police vehicle. The right side of the car hit the police officer who then grabbed the right front door frame of the car instinctively. The police officer was dragged for about one car length before he let go to avoid being crushed between the two vehicles. The accused was sentenced to nine months' imprisonment on a charge

under s 337(*a*) of the Penal Code. For the offence of driving while under disqualification, he received 12 months' imprisonment and was disqualified from driving for 10 years. For the offence of driving without insurance cover, he was sentenced to one month's imprisonment and disqualified from driving for 10 years.

118 The Prosecution also referred to *Public Prosecutor v Loon Chee Chui* [2012] SGDC 216 (four weeks' imprisonment and 18 months disqualification), *Aw Tai Hock* (five months' imprisonment and three years disqualification), *Public Prosecutor v Lim Kok Tiong* [2009] SGDC 186 ("*Lim Kok Tiong*") (three months' imprisonment and three years disqualification) and *Public Prosecutor v Sim En De* [2015] SGDC 200 (eight weeks' imprisonment and four years disqualification). The accused persons in these cases were charged under various provisions of law concerning rash acts or dangerous driving and not under s 337(*a*) of the Penal Code.

119 The Prosecution makes two broad propositions from all these cases:

(a) There appears to be no need for personal injury to be caused for lengthy disqualification orders to be made.

(b) Lengthy disqualification orders are also given for dangerous driving in retaliation to perceived provocation. Reference was made to *Aw Tai Hock* (offence of dangerous driving) where the offender had no criminal record but was given a disqualification of three years after engaging in a car chase and ramming into the other vehicle.

120 On the facts as established at the trial, we see no reason why the DQ Order should be said to be excessive in length. Although some of the earlier compounded offences happened almost two decades before the instant offences,

the list of compounded offences shows a continuum of infringements of traffic rules until September 2015, with no clear break in between. Even if the Applicant's composition history is disregarded, our view about the length of the DQ Order remains the same. Further, even if the DQ Order of two years were considered excessive, the facts do not justify a reduction to below 12 months, which is what the Applicant truly hopes for. The Applicant may have been provoked first by Eric's insistence on cycling in the middle of the left lane and his subsequent conduct in damaging the left side-view mirror but his retaliation by veering the lorry sharply into the path of the moving bicycle shows his attitude towards road safety and lack of concern about possible injury to other road-users. It has been reiterated over the years that a motor vehicle can be a lethal weapon with the wrong person at the steering wheel.

121 The Applicant submits finally that he was penalised by the fact that the lorry was impounded for more than four months, resulting in his financial detriment. The Prosecution's position is that the lorry was impounded for investigations by the Police and upon completion thereof, the police applied for an order to return the lorry to the Applicant. In our view, this point has no bearing on the Question and, as emphasised above, the present proceedings are not an appeal against sentence. We therefore see no need to consider this point.

Conclusion

122 Our answer is "Yes" to the Question of law of public interest placed before us in the following terms:

> Whether a Court may take into account any offence that has been compounded under the Road Traffic Act as an aggravating factor to determine the appropriate sentence
>
> (a) for an offence committed by a person under the Road

> Traffic Act; and
>
> (b) for an offence committed by a person not under the Road Traffic Act
>
> without legislative intervention?

123 As a matter of law, a court can take into account offences compounded under the RTA as an aggravating factor when sentencing an offence under the RTA or any other law. As a matter of fact, whether those compounded offences amount to aggravation so as to warrant an enhancement of the sentence involves good sense in application. The same considerations apply when considering compounded offences under any other law in the sentencing of an offence which is under the RTA or any other law. As a result, the decision of the High Court stands and there is no need for us to make any consequential orders.

Sundaresh Menon
Chief Justice

Andrew Phang Boon Leong
Justice of the Court of Appeal

Judith Prakash
Justice of the Court of Appeal

Tay Yong Kwang
Justice of the Court of Appeal

Steven Chong
Justice of the Court of Appeal

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