

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

[2024] SGHC 315

Magistrate's Appeal No 9049 of 2024

Between

Ng Cheng Tiam

... Appellant

And

Public Prosecutor

... Respondent

Magistrate's Appeal No 9050 of 2024

Between

Yap Kiat Ching

... Appellant

And

Public Prosecutor

... Respondent

Magistrate's Appeal No 9051 of 2024

Between

Ngo Ngoc Anh

... Appellant

And

Public Prosecutor

... Respondent

Magistrate's Appeal No 9052 of 2024

Between

Siaw Wee Leong

... Appellant

And

Public Prosecutor

... Respondent

BRIEF REMARKS

[Criminal Procedure and Sentencing — Sentencing — Appeals]
[Criminal Law — Offences — Grievous hurt]
[Criminal Law — Complicity — Common intention]

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Ng Cheng Tiam
v
Public Prosecutor and other appeals

[2024] SGHC 315

General Division of the High Court — Magistrate's Appeal Nos 9049, 9050, 9051 and 9052 of 2024

Aidan Xu @ Aedit Abdullah J

29 November 2024

6 December 2024

Judgment reserved.

Aidan Xu @ Aedit Abdullah J:

1 These are my brief remarks in the appeals by the four appellants, three of whom were sentenced to nine months' imprisonment and one to ten months' imprisonment, for charges of common intention to cause hurt which caused grievous hurt under s 323A read with s 34 of the Penal Code 1871 (2020 Rev Ed).

2 I allow the appeals, reducing the sentences imposed, but not to the extent sought by the appellants. For these remarks, I will focus on the main reasons for doing so, applying the approach laid down in *Ang Boon Han v Public Prosecutor* [2024] 5 SLR 754 ("*Ang Boon Han*") by the Chief Justice, which I respectfully agree with.

3 The District Judge determined the case by applying a sentencing approach in *Public Prosecutor v Loi Chye Heng* [2021] SGDC 90. This framework was found to be inappropriate as noted in *Ang Boon Han*, being inconsistent with the position that it is inappropriate to set out indicative starting points or categorise grievous hurt into broad categories. Since the framework adopted by the District Judge was not appropriate, this Court would have to substitute a different approach, following what was laid down in *Ang Boon Han*.

4 In *Ang Boon Han*, the Chief Justice laid down the approach for sentencing in s 323A cases as follows:

(a) At the first stage, an indicative starting point would be determined, considering mainly the seriousness of the injury caused, assessed along a spectrum, bearing in mind the nature and permanence of the injury. Regard would be had to sentencing in analogous situations, especially precedents under s 325, taking into account the different sentencing ranges. This indicative starting point should then be adjusted upwards or downwards based on any asymmetry between fault and the physical element. The greater the asymmetry, the more adjustment should be made in favour of the offender.

(b) Secondly, adjustments should be made to take into account the specific aggravating and mitigating factors on the facts, including premeditation, the manner and duration of the attack, the victim's vulnerability, the use of weapons, and whether the attack was in a group.

(c) Finally, the plea of guilt will be taken into account, bearing in mind the Guidelines on Reduction in Sentences for Guilty Pleas issued by the Sentencing Advisory Panel (the “PG Guidelines”).

5 The parties did not contest the applicability of the approach in *Ang Boon Han*.

6 The appellants argued that the framework did not call for a downward calibration from s 325 sentences, but rather increasing the sentence that might otherwise be prescribed under s 323, citing *Ang Boon Han* at [34].

7 The Prosecution primarily argued that applying the *Ang Boon Han* framework would not result in a substantially different outcome, and thus the sentences imposed were not manifestly excessive. What is of note is that the Prosecution argued that a one-month adjustment should be made to the indicative starting point of six to seven months' imprisonment to reflect symmetry.

8 In *Saw Beng Chong v Public Prosecutor* [2023] 3 SLR 424 ("*Saw Beng Chong*"), a s 325 case, it was indicated that the starting point for multiple fractures was nine to 14 months' imprisonment, and that the district judge there was not wrong in starting with 12 to 13 months. I broadly accept the Prosecution's submission that the injuries here were indeed comparable to that in *Saw Beng Chong*. I find that the indicative range for the number of fractures here, would be between six to six and a half months. Taking into account the injuries as a whole, I am of the view that an indicative starting point would be seven months. The next stage is to determine the refinement to take in the degree of symmetry or correspondence there is between the intent and the act. As noted above, I do not think that the refinement should generally be of such a large magnitude. In the determination of the notional sentence, looking at s 325 cases as guidance, the Court would already have looked at what the sentence would be in a putative or notional s 325 type of case, and brought the sentence in line with the available spectrum under s 323A, of five years. In doing so, the Court

would generally treat the situation as one of close symmetry or correspondence between intent and act. It may be that if there is room for greater correlation then there would be an adjustment upwards, but I cannot see that in this process any increase should be generally significant. If anything, there would probably be more room to adjust downwards if there was a greater gap between intent and act. It is not a rule, but the court must be sensitive to the process and its objective.

9 As it was, the Prosecution's own uplift is not that large: it was suggested that there should be a one-month uplift. I cannot see that this was appropriate here. The range of seven months is on the basis of close correspondence between intention and act.

10 As to the appellants' counsel's submission that the Court in *Ang Boon Han* noted that the objective of s 323A as increasing the sentence that would otherwise have been imposed under s 323, this submission is correct. But this point did not lead to a different result for the appellants. The framework laid out by the Chief Justice in *Ang Boon Han* does take this into account in the first stage.

11 Turning then to the aggravating factors, the Prosecution submitted for this uplift on the basis that that the attack was unprovoked, vicious, relentless, and made with some deliberation, and that it was a group attack, in a public place, while the appellants were intoxicated through their own actions. I accept the arguments that these aggravating factors should lead to a substantial uplift. However, while the attack was a vicious and unprovoked group attack in a public place, I did not find that the degree of planning and premeditation was significant. No substantive mitigation applied aside from the plea of guilt. I did not find anything in the appellants' arguments that weakened these points. For

the three appellants, an uplift of three months was appropriate, leading to ten months each. In respect of Yap, who was the instigator, and thus more culpable, I would have imposed an additional one month, *ie*, a sentence of 11 months at the second stage.

12 Moving to the third stage, taking the effect of the plea of guilt and applying an approximate 30% reduction, leads to seven months for the three appellants and eight months for Yap Kiat Ching (“Yap”).

13 The appeal is thus allowed, with sentences of seven months’ imprisonment imposed for Ng Cheng Tiam (“Ng”), Ngo Ngoc Anh (“Ngo”) and Siaw Wee Leong (“Siaw”), and eight months’ imprisonment for Yap, on their respective charges, in place of the sentences below.

14 The appellants, who have been on bail, were in remand at a couple of points, for relatively short duration. I do not therefore adjust the sentences to take in the previous remand.

Aidan Xu
Judge of the High Court

Wong Siew Hong (Eldan Law LLP) for the appellants;
Sean Teh Lien Wern and Jonathan Lee Wai Kit (Attorney-General’s
Chambers) for the respondent.