

Case Comment

**SENTENCING CONSIDERATIONS FOR
OFFENCES INVOLVING BICYCLES AND
PERSONAL MOBILITY DEVICES**

Cai Mei Ying v Public Prosecutor [2019] SGHC 24

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I. Introduction

1 There has in recent times been an uptick in the use of bicycles and personal mobility devices (“PMDs”) in Singapore. This is unsurprising, given the Singapore Government’s promotion of alternative modes of transport and “healthy lifestyle” initiatives, as well as the relatively low cost involved in purchasing bicycles or PMDs. Enterprising companies have also stepped in to provide cheap alternative vehicle-renting services, with the most recent advent being e-scooter rentals.

2 Such developments have their hazards. When bicycles and PMDs are allowed on shared paths, they exist in proximity and pose a risk to pedestrians. From May to September 2018, a staggering 1,300 offences involving the “reckless and inconsiderate” use of bicycles and PMDs were detected by

* Whilst the authors are with the Attorney-General’s Chambers, the views expressed in this article are their own.

enforcement officials from the Land Transport Authority¹ (“LTA”). There were also “an average of three accidents a month involving pedestrians and PMD users”, and “[s]ome of the pedestrians involved in these accidents had suffered very serious injuries”.²

3 As a corollary, the criminal courts have seen a prevalence of criminal prosecutions of users of bicycles and PMDs who have caused hurt³ to pedestrians. The most recent such case that was heard by the High Court was that of *Cai Mei Ying v Public Prosecutor*⁴ (“*Cai Mei Ying HC*”).

II. Facts

4 The appellant, Cai Mei Ying, was a stallholder at the Block 85 Bedok North Street 4 market. Every day, the appellant would ride her bicycle from her home to her stall. This was despite the fact that the market was designated as a “no-cycling zone”, with signs to this effect prominently displayed.⁵

5 On the fateful morning of 22 September 2016 at about 9.50am, the appellant rode her bicycle to the market and entered the market. She cycled into the market and arrived at a cross-junction within the compound. The elderly victim was walking in

1 This disconcerting statistic was shared by the Senior Minister of State for Transport, Dr Lam Pin Min, in Parliament during the Second Reading of the Land Transport (Enforcement Measures) Bill which sought to introduce measures to enhance “active mobility safety”: *Parliamentary Debates, Official Report* (10 September 2018), vol 94 (Dr Lam Pin Min, Senior Minister of State for Transport) at p 2.

2 *Parliamentary Debates, Official Report* (10 September 2018), vol 94 (Melvin Yong Yik Chye (Tanjong Pagar)) at p 26.

3 The degree of hurt occasioned to pedestrians has been varied. In one of the more severe cases, the victim fell and hit her head on the pavement after colliding with the offender’s e-scooter. She slipped into a coma and was put on life support: see *Public Prosecutor v Nicholas Ting Nai Jie* DAC 9355992/2017 (unreported).

4 [2019] SGHC 24.

5 *Public Prosecutor v Cai Mei Ying* [2018] SGMC 56 at [2]; statement of facts at [5].

the vicinity at the same time, travelling at a right angle to the appellant's direction.⁶

6 The appellant failed to keep a proper lookout and collided with the victim, causing her to fall to the ground.⁷ The victim was unable to stand thereafter and was later conveyed to hospital. Ironically, the collision took place right in front of a "no cycling" sign.⁸

7 Upon examination, the victim was diagnosed with a fracture of her left femur and had to undergo surgery to implant a screw in her hip. She was hospitalised for seven days and after discharge, had to attend numerous follow-up medical appointments. As a result of the various medical treatments that she had to undergo, the victim was saddled with more than \$12,000 in medical bills that she was unable to pay.⁹

8 The appellant was charged with an offence under s 338(b) of the Penal Code.¹⁰

III. Decision of the lower court

9 The appellant pleaded guilty to the charge before District Judge Jill Tan in the State Courts. The Prosecution submitted for an imprisonment term of at least four weeks,¹¹ whilst the Defence sought a fine coupled with a community service order.¹²

10 In determining the appropriate sentence, District Judge Tan agreed with both parties that whilst the factual context of

6 *Public Prosecutor v Cai Mei Ying* [2018] SGMC 56 at [2]; statement of facts at [8].

7 *Public Prosecutor v Cai Mei Ying* [2018] SGMC 56 at [2]; statement of facts at [9].

8 *Public Prosecutor v Cai Mei Ying* [2018] SGMC 56; statement of facts at [9].

9 *Public Prosecutor v Cai Mei Ying* [2018] SGMC 56 at [3]; statement of facts at [11]–[12].

10 Cap 224, 2008 Rev Ed.

11 *Public Prosecutor v Cai Mei Ying* [2018] SGMC 56 at [6].

12 *Public Prosecutor v Cai Mei Ying* [2018] SGMC 56 at [10].

*Tang Ling Lee v Public Prosecutor*¹³ (“*Tang Ling Lee*”) differed from the instant case, the sentencing principles therein could nonetheless be used as a guide to calibrate the appropriate sentence.¹⁴ District Judge Tan also considered the decision in *Public Prosecutor v Lim Choon Teck*¹⁵ (“*Lim Choon Teck*”), which also involved a cyclist colliding with a pedestrian.¹⁶ However, District Judge Tan ultimately took the view that *Tang Ling Lee* and *Lim Choon Teck* were both irreconcilable with this case due to the differing factual circumstances,¹⁷ and that there were thus no clear binding sentencing precedents.¹⁸

11 District Judge Tan thus proceeded to determine the sentence by adapting the *Tang Ling Lee* framework. In that regard, she held that the appellant’s culpability was “moderate”,¹⁹ and the harm caused to the victim was on the “greater” end of the spectrum. She also considered that there was a clear need for general deterrence, especially in the light of the “number of cases in recent times” involving similar circumstances. As such, she agreed with the Prosecution that a “measure of general deterrence needed to be factored into the sentence”.²⁰ She found that the custodial threshold had been crossed, and that the Defence’s submission for a fine was inappropriate.²¹

12 District Judge Tan eventually sentenced the appellant to two weeks’ imprisonment and ordered the appellant to compensate the victim \$7,000 for her medical fees.²²

13 [2018] 4 SLR 813.

14 *Public Prosecutor v Cai Mei Ying* [2018] SGMC 56 at [23].

15 [2015] 5 SLR 1395.

16 *Public Prosecutor v Cai Mei Ying* [2018] SGMC 56 at [19].

17 *Public Prosecutor v Cai Mei Ying* [2018] SGMC 56 at [25].

18 *Public Prosecutor v Cai Mei Ying* [2018] SGMC 56 at [27].

19 *Public Prosecutor v Cai Mei Ying* [2018] SGMC 56 at [31].

20 *Public Prosecutor v Cai Mei Ying* [2018] SGMC 56 at [37].

21 *Public Prosecutor v Cai Mei Ying* [2018] SGMC 56 at [39]. District Judge Tan also observed that under the Criminal Procedure Code (Cap 68, Rev Ed 2012), it is not permissible to impose a fine with a community service order.

22 *Public Prosecutor v Cai Mei Ying* [2018] SGMC 56 at [46].

13 Both the Prosecution and Defence filed notices of appeal against sentence, although the Prosecution subsequently withdrew its appeal.

IV. Proceedings in the High Court

A. Appellant’s submissions

14 The appellant argued that the sentence was manifestly excessive, and instead urged the court to substitute the sentence with a \$2,000 fine.

B. Young amicus curiae’s submissions

15 Abdullah J appointed a young amicus curiae to assist with the consideration of a sentencing framework for offences under s 338(b) of the Penal Code, where grievous hurt is caused by the negligent riding of bicycles and PMDs.

16 The young amicus curiae proposed the following sentencing framework:²³

Category	Level of harm	Level of culpability	Presumptive sentencing range
1	Lesser	Lower	A heavy fine and/or a short custodial sentence of up to one week
2	Greater	Lower	One to four weeks’ imprisonment
	Lesser	Higher	
3	Greater	Higher	More than four weeks’ imprisonment

C. Prosecution’s submissions

17 The Prosecution argued that the appellant’s two-week jail term should be upheld.

23 Young amicus curiae’s submissions at [74].

18 First, general deterrence was a key sentencing principle, in the light of the significant number of accidents of a similar nature in recent times. When a cyclist or PMD user was riding in places where he should not be in, for instance, the “no cycling” zone that the appellant was riding in, it is all the more necessary that deterrence feature in sentencing.²⁴

19 Adopting the language of *Tang Ling Lee*, the Prosecution also argued that District Judge Tan had correctly concluded that the appellant’s culpability was “moderate”, and that the harm occasioned to the victim was “greater”.²⁵ Compared to *Lim Choon Teck*, as well as other recent precedents involving similar cases, the sentence of two weeks’ imprisonment meted out to the appellant was not only appropriate, but could also be said to be on the low end of the scale.²⁶

20 The Prosecution submitted that the presumptive sentencing ranges should be higher in cases involving bicycles and PMDs, as compared to road traffic cases, *inter alia*, because (a) pedestrians are more vulnerable to bicycles and PMDs by virtue of their closer physical proximity, and (b) there is a lack of formal regulation compared to roads where existing infrastructure (*eg*, traffic lights, pedestrian crossings, prescribed speed limits, and designated traffic lanes) lends to greater pedestrian safety and registration. Insurance regimes also support effective detection of offending behaviour and recourse for injured parties. There is thus an even greater need for general deterrence for offences involving bicycles and PMDs, as compared to road traffic cases; higher sentences are therefore necessary.²⁷

24 Prosecution’s submissions (22 January 2019) at [35]–[43].

25 Prosecution’s submissions (22 January 2019) at [44]–[60].

26 Prosecution’s submissions (22 January 2019) at [61]–[94].

27 Prosecution’s submissions (22 January 2019) at [110]–[111].

21 The following presumptive sentencing ranges were proposed by the Prosecution:²⁸

Category	Circumstances	Sentencing range in <i>Tang Ling Lee</i>	Presumptive sentencing range for bicycle and PMD cases
1	Lesser harm and lower culpability	Fines	Fines or short custodial term
2	Greater harm and lower culpability or Lesser harm and higher culpability	One to two weeks' imprisonment	Two to four weeks' imprisonment
3	Greater harm and higher culpability	More than two weeks' imprisonment	More than four weeks' imprisonment

22 In so far as “harm” was concerned, the Prosecution submitted that the approach for assessing harm ought to be similar to other offences involving the infliction of grievous hurt, of which relevant considerations would include: (a) the type of grievous hurt; (b) the permanence of injuries; and (c) the period of hospitalisation leave or medical leave, which may be reflective of the extent that the hurt has impeded the victim’s daily activities.²⁹

23 As for “culpability”, the Prosecution argued that the assessment of “culpability” should involve consideration of: (a) size of mobility device; (b) speed; (c) location of offence; (d) flouting of the Active Mobility Act 2017;³⁰ and (e) riding while drunk/sleepy/on drugs. The Prosecution submitted that the *place of use* was especially significant – offences committed in places designated for the exclusive use of pedestrians, or where

28 Prosecution’s submissions (22 January 2019) at [112].

29 Prosecution’s submissions (22 January 2019) at [113]–[114].

30 Act 3 of 2017.

pedestrian flow is high, should attract stronger levels of deterrence because pedestrians in these areas are not alert to the risk of collision, making them especially vulnerable. Therefore, the Prosecution proposed that the illegal use of bicycles/PMDs in these restricted areas must therefore be taken to severely aggravate an offender's culpability.³¹

D. High Court's decision

24 Aedit Abdullah J dismissed the appeal against sentence.

25 He agreed that the appellant's culpability was moderate, given that she "knowingly cycled in a narrow and confined area that prohibited cycling", and agreed that the market was "a place where pedestrians are less likely to be aware of cyclists and where they are entitled to feel safe from harm and injury from negligent cycling". He also accepted that the harm was on the "greater" end of the spectrum, as the victim's injuries "affected her mobility and required surgical correction". In addition, general deterrence was relevant "given the recent rise in bicycle and personal mobility device-related accidents".³²

26 However, Abdullah J expressed reservations about laying down a sentencing framework and opined that it "may be best to allow a number of cases to be brought before the courts before such a framework is established, so that the relevant considerations can be sieved out through the adversarial process".³³

27 Finally, Abdullah J reiterated that shared spaces require consideration and courtesy between all users, and strongly urged those on bicycles and PMDs to exercise due care and consideration. He also cautioned that "where injuries do arise because of the fault of the rider, it is likely that the courts will

31 Prosecution's submissions (22 January 2019) at [115]–[117].

32 *Cai Mei Ying v Public Prosecutor* [2019] SGHC 24 at [4].

33 *Cai Mei Ying v Public Prosecutor* [2019] SGHC 24 at [6].

take a stern view and impose custodial sentences, which may be higher than what has been imposed” here.³⁴

V. Practical implications

28 There are three practical implications that this decision may have for the legal practitioner.

29 First, the number of accidents involving bicycles and PMDs is likely to continue increasing given the proliferation of such modes of transport. Notwithstanding the LTA’s decision to delay issuing PMD-sharing licences pending a further review of the required safety standards, the major ride-sharing company, Grab, has already made arrangements with small property owners to park and rent out PMDs on their land. As at 4 July 2019, Grab had at least 230 e-scooters available at various locations in Singapore, and a total of 13 applicants are seeking operating licences from the LTA to rent out PMDs.³⁵ Many other types of devices within the category of PMDs, including electric unicycles, hoverboards and self-balancing scooters, may eventually become as popular and prevalent as the now-ubiquitous e-scooter.

30 With the rapid evolution of and advancement in personal mobility technology, practitioners would be well advised to keep abreast of developments in usage and accident trends. Should the use of bicycles and PMDs in Singapore become a significant scourge and danger to pedestrians, it would not be surprising to see the sentencing tariff for such offences on an upward trajectory.

31 Second, practitioners should note that *Cai Mei Ying HC* is of limited utility as a sentencing benchmark. It is a trite principle that unreported judgements carry far less weight than fully

34 *Cai Mei Ying v Public Prosecutor* [2019] SGHC 24 at [7].

35 Toh Ting Wei, “Grab’s e-scooter deployment raises concerns” *The Straits Times* (4 July 2019).

reasoned ones.³⁶ The *ex tempore* grounds by Abdullah J, whilst technically “published”, are brief and do not contain detailed reasoning. Accordingly, it would be inappropriate to rely on *Cai Mei Ying HC* for any deeper principle of sentencing for cases involving bicycles and PMDs. As the law currently stands, *Lim Choon Teck* is the only fully-reasoned decision by the High Court that touches on the applicable sentencing principles for cases involving accidents between bicycles and pedestrians.

32 That said, *Cai Mei Ying HC* does provide us with some insight into the conditions that may be necessary for the custodial threshold to be crossed. Abdullah J suggests that where the cyclist or PMD rider is at fault in failing to exercise due care and consideration, and injuries arise as a result, “it is *likely* that the courts will take a stern view and *impose custodial sentences*” [emphasis added].³⁷ Whilst this stops short of setting a “starting point”, it provides a guide for practitioners to consider if imprisonment is warranted in a particular case.

33 *Cai Mei Ying HC* also raises the question of how the sentencing approach should differ as regards collision cases which take place in areas where use of bicycles and PMDs is *permitted*, and those which involve the *illegal* use of such vehicles in restricted areas. If a sentencing framework is to be laid down, should it apply to the latter type of cases, or should the mere illegality of the riding take the case entirely out of such a framework? In *Cai Mei Ying HC*, the Prosecution took the view that any sentencing framework ought to apply to bicycle/PMD collision cases regardless of whether the vehicle was used in a restricted or non-restricted area, and that the illegal use of a bicycle/PMD in a restricted area ought to be regarded as aggravating the offender’s “culpability” in a harm/culpability sentencing framework. However, as Abdullah J ultimately did not set down a framework or make specific comments on this issue, the question remains an open one.

36 *Luong Thi Trang Hoang Kathleen v Public Prosecutor* [2010] 1 SLR 707 at [21].

37 *Cai Mei Ying v Public Prosecutor* [2019] SGHC 24 at [7].

34 Third, practitioners should consider the relevance of *Public Prosecutor v Hue An Li*³⁸ (“*Hue An Li*”) in relation to cases involving accidents between bicycles/PMDs and pedestrians. One pertinent consideration is whether *Hue An Li* operates as an informal “cap” on the sentences to be meted out under s 338(b) of the Penal Code. A plausible argument is that if a sentence of four weeks’ imprisonment was meted out on a motor car driver who killed one person and injured eight others, then the sentence should be lower where a cyclist or PMD user hits and causes “only” fractures to a pedestrian. Abdullah J did not decide on this issue and merely stated that sentences for future cases in which injuries arise because of the fault of the rider “*may be higher* than what has been imposed in this case” [emphasis added].³⁹

35 In our view, there are good grounds for cases involving bicycles/PMDs to be de-coupled from road traffic accident cases. After all, motor vehicles operate within a tightly-regulated framework which includes registration and insurance requirements, thereby allowing for easy detection of offenders and providing a compensation framework. This is in stark contrast to bicycles and PMDs, which travel in undefined paths, are in proximity to pedestrians, and are generally not registrable,⁴⁰ resulting in difficulties in detecting errant use. Given the vastly different contexts in which they operate, it is sensible and reasonable to craft distinct sets of sentencing tariffs for these two areas of offences.

38 [2014] 4 SLR 661.

39 *Cai Mei Ying v Public Prosecutor* [2019] SGHC 24 at [7].

40 Even with the latest amendments to the Active Mobility Act 2017 (Act 3 of 2017) (“AMA”), only personal mobility devices (“PMDs”) with an attached electric motor and handlebars are subject to mandatory registration (s 2 of the AMA). Significantly, the registration regime excludes other forms of PMDs, for example, hoverboards, electric unicycles, and other Segway-like devices, as well as bicycles, all of which are also capable of causing harm to victims in the event of a collision.

VI. Conclusion

36 As the use of bicycles and PMDs on footpaths is a relatively recent development, our local jurisprudence is still in a stage of infancy. *Cai Mei Ying HC* highlights that the courts are alive to the hazards of such vehicles and the possibility that there might be a rise in the number of such cases. Practitioners should also keep updated with developments surrounding the practical usage of bicycles and PMDs in Singapore. *Cai Mei Ying HC* is unlikely to be the final word in this area of law, and, if bicycles and PMDs continue to occasion risks and injury to pedestrians, we can expect comprehensive sentencing benchmarks to follow.