Mohamed Shouffee bin Adam *v* Public Prosecutor
[2014] SGHC 34

Case Number : Magistrate's Appeal No 184 of 2013

Decision Date : 26 February 2014

Tribunal/Court : High Court

Coram : Sundaresh Menon CJ

Counsel Name(s) : The appellant in person; Prem Raj Prabakaran and Alan Hu (Attorney-General's Chambers) for the respondent; Rajaram Vikram Raja (Drew & Napier LLC) as amicus curiae.

Parties : Mohamed Shouffee bin Adam — Public Prosecutor

Criminal Procedure and Sentencing – Sentencing

26 February 2014 Judgment reserved.

Sundaresh Menon CJ:

Introduction

1 This is an appeal brought against the decision of the District Judge in *PP v Mohamed Shouffee bin Adam* [2013] SGDC 288 ("the GD"). The appellant pleaded guilty to four charges under the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("the MDA") and was sentenced to a total of 17 years' imprisonment by the District Judge. Eight other charges were taken into consideration. He appealed against his sentence on the ground that it was manifestly excessive.

2 The charges that were proceeded with and their associated sentences are summarised below:

Charge (DAC No)	**MDA section**	**Offence**	**Imprisonment sentence**
047817/2012	s 7 punishable under s 33(1)	Importation of 139.3g of methamphetamine, a Class A controlled drug	12 years
018135/2013	s 8(*a*) punishable under s 33(1)	Possession of 6.47g of methamphetamine, a Class A controlled drug	2 years
018138/2013	s 8(*a*) punishable under s 33(1)	Possession of not less than 30 tablets of nimetazepam, a Class C controlled drug	6 months
018140/2013	s 8(*b*)(ii) punishable under s 33A(1)	Consumption of methamphetamine, a specified drug	5 years

3 A further eight charges were taken into consideration, summarised as follows:

Charge (DAC No)	MDA section	Offence
018131/2013	s 7 punishable under s 33(1)	Importation of amphetamine, a Class A controlled drug
018132/2013	s 7 punishable under s 33(1)	Importation of not less than 4949 tablets of nimetazepan, a Class C controlled drug
018133/2013	s 7 punishable under s 33(1)	Importation of 51 tablets containing 3.68g of α-methyl-3,4-(methylenedioxy) phenethylamine, a Class A controlled drug
018134/2013	s 8(*a*) punishable under s 33(1)	Possession of 0.01g of diamorphine, a Class A controlled drug
018136/2013	s 8(*a*) punishable under s 33(1)	Possession of amphetamine, a Class A controlled drug
018137/2013	s 8(*a*) punishable under s 33(1)	Possession of 1 tablet of nimetazepam, a Class C controlled drug
018139/2013	s 8(*a*) punishable under s 33(1)	Possession of 0.01g of diamorphine, a Class A controlled drug
018140/2013	s 9 punishable under s 33	Possession of utensils for drug taking

4 When the matter was first heard before me on 21 November 2013, I indicated that having considered the arguments and the GD, I was satisfied that the individual sentences imposed in respect of each of the charges were not manifestly excessive. They were within the range of sentences imposed for such offences and the District Judge had properly considered all the relevant factors. However, I noticed that the District Judge had chosen the two heaviest sentences to run consecutively. These were sentences of terms of imprisonment for 12 and 5 years for importation and consumption of methamphetamine respectively. I was not satisfied that the choice of these two sentences had been adequately explained. I therefore adjourned the matter and invited the Deputy Public Prosecutor, Mr Prem Raj Prabhakaran ("the DPP"), to prepare further submissions as to the principles that should guide a sentencing judge in the exercise of his discretion when choosing which sentences ought to run consecutively and which concurrently. I also appointed Mr Rajaram Vikram Raja from the Supreme Court's Young *Amicus Curiae* panel to assist me with submissions on this important issue.

5 The matter came before me again on 23 January 2014. Having considered the thorough and helpful further submissions put forward by the DPP as well as by the *amicus curiae* as to the relevant principles, I am satisfied that the District Judge erred and that the total sentence was manifestly excessive for reasons that follow.

6 Accordingly, I allow the appeal and order the sentences for DAC 47817/2012 (12 years) and DAC 18138/2013 (six months) to run consecutively while the sentences for the remaining two charges are to run concurrently. In the result, the appellant is to serve an aggregate imprisonment sentence of 12 years and six months.

Background facts

Background facts

7 The appellant was 51 years of age at the time he was convicted on 12 August 2013. He worked as a freelance marine surveyor. On 24 December 2012 at about 7.15pm, the appellant was driving through the Woodlands Checkpoint into Singapore when he was stopped and his car was searched. Packets of crystalline substance were found in the front passenger seat dashboard and in the car boot. The appellant was arrested and the packets were seized and sent for analysis. Two bottles of urine samples were taken and these too were sent for analysis. The packets were subsequently found to contain methamphetamine and amphetamine while the urine samples were found to contain traces of methamphetamine.

8 On 25 December 2012 at about 3am, some hours after his arrest, the appellant was escorted to his residence in Pasir Ris Drive by officers from the Central Narcotic Bureau ("CNB"). The residence was searched, and beside a bed, a briefcase was found containing 30 tablets believed to be Erimin 5.

9 The appellant admitted to the investigating officers that he had been transporting drugs into Singapore since late August or early September 2012. The drugs were "Ice", the street name for methamphetamine, and Erimin 5 tablets which contained nimetazepam. On occasion, he also transported Ecstasy tablets. The appellant admitted that he had made four trips previously and had been paid about $2,000 on each occasion at a rate of $1,000 for every 250g of "Ice" and $2 for each slab of Erimin 5 tablets. His contact was a Malaysian who he referred to as "Ah Bee".

10 The appellant said that on 24 December 2012 at about 11am, "Ah Bee" telephoned him and asked him to go to Johor Bahru to pick up a quantity of drugs and to bring these into Singapore. He left for Malaysia on the same day, but before doing so he consumed some Ice in his residence. Shortly thereafter, at about 2pm, the appellant, in the company of a friend, drove his car through the Woodlands Checkpoint to Taman Sentosa in Johor Bahru. He parked his car there and left the key inside. Some hours later, "Ah Bee" contacted him again and told him he could collect the car. The appellant did so and then drove back to Singapore with his friend. He had been told to contact "Ah Bee" after he had crossed the Woodlands Checkpoint but he was arrested at the Checkpoint when re-entering Singapore.

11 The appellant had a number of antecedents. He had five previous convictions dating back to his first conviction for theft in 1987 for which he was sentenced to a fine of $1,500. In 1990, there were three further convictions: for theft, for theft of motor vehicles or component parts, and for fraudulent possession of property. He was jailed a total of 15 months. In 2000 he was convicted again, for consumption of cannabinol derivatives, for which he was sentenced to a year in prison. Aside from these, the appellant had also been the subject of a total of nine drug rehabilitation orders between 1989 and 2001: five of these were drug supervision orders for a period of 24 months each; and four were orders for committal to a drug rehabilitation centre for varying lengths of time. There were no further convictions or drug rehabilitation orders after 2001.

12 Although the appellant had a substantial number of previous convictions and a long history of drug consumption in the period between 1987 and 2001, his criminal record warranted closer scrutiny as it revealed three distinct phases or periods:

(a) The first ran from the mid-1980s to 2001. In this period, there were four property-related convictions between 1987 and 1990; and a number of drug consumption offences between 1989 and 2001. Aside from some time spent in prison, he was also frequently in and out of drug rehabilitation. He did not have any prior convictions for importation or trafficking of drugs.

(b) The second period of about nine years ran from 2001 to 2010 during which he did not re-

offend. Nor did he relapse into drug taking. At least, that is what the record shows and he is entitled to the presumption that he was free of any criminal activity during this substantial period.

(c) The third period ran from 2010, when, by his own admission, he began smoking Ice. His consumption seemed to have increased and in the period of three to six months before he was arrested he was smoking it two to three times a day. In August or September 2012, as I have said, he became a drug courier importing drugs. This was a more serious offence. He was arrested a few months later in December 2012.

The decision below

13 The District Judge first reviewed the statement of facts and the appellant's antecedents which I have set out above. She then considered the appellant's plea in mitigation. This was to the effect that:

(a) he had no previous convictions for importation, trafficking or possession;

(b) he had committed the offences in order to raise money to purchase a flat for himself and his family;

(c) he was 51 years old, remorseful and unlikely to re-offend; and

(d) he had pleaded guilty at the earliest chance.

14 The Prosecution on the other hand had placed reliance on the appellant having dealt in a substantial quantity of drugs and on his drug antecedents. Moreover, as he was over 50 years old and could not be caned, the Prosecution urged the District Judge to impose a longer period of imprisonment. There were also eight other charges to be taken into consideration. The Prosecution relied on two unreported cases, *PP v Hema Nathan Pachiappan* (DAC 41669/2012) and *PP v Siti Najiha bte Sagri* (DAC 5920/2012), both cases on importation of methamphetamine for which the offenders had been sentenced to six and 12 years' imprisonment respectively, and urged the District Judge to pass a sentence of not less than 12 years' imprisonment.

15 The District Judge said that she did not see any merit in the appellant's plea in mitigation. Given his age and his long string of drug antecedents, he could not be said to be naïve or to have been misled. His descent into drug importation in order to raise money to buy a flat for his family was, in the District Judge's words, an "extremely lame excuse." He had been caught red-handed, which militated against any value being placed on his early plea of guilt. Further, he had admitted to being part of a syndicate as evidenced by his standing arrangement with "Ah Bee" and his admission that he had successfully imported drugs into Singapore on four previous occasions.

16 The District Judge considered that the primary sentencing considerations in drug offences were deterrence and prevention and had regard to the two cases cited by the Prosecution. The District Judge noted that in those cases the offenders had no prior convictions. On that basis, it was considered that the appellant's sentence should not be lighter than that meted out in the latter case (see [14] above). The District Judge accordingly imposed the individual sentences as I have set out above.

17 The District Judge then considered which of them were to run consecutively and she reasoned as follows at [19] of the GD:

Pursuant to section 307(1) of the Criminal Procedure Code (Revised 2012 Edition), the sentences for at least 2 of the offences must run consecutively. Hence, I deliberated on which 2 sentences ought to run consecutively. As elaborated in preceding paragraphs, there are a number of aggravating factors, in particular, the accused's speedy relapse into drugs despite numerous DRC admissions, the accused's pivotal role in importing the drugs and thereby making them available to abusers in Singapore and the substantial quantities involved. I also considered that the importation and the consumption offences were distinct offences, whereas the other offences of possession of the drugs were part of and connected to the importation transaction. After careful consideration, I decided that it was appropriate to order the sentences in *DAC 47817/2012* and *DAC 18140/2013* to run consecutively. With this in mind, I so ordered. The total sentence was 17 years' imprisonment. No caning was imposed on account of his age.

18 In sum, the District Judge gave four reasons for running the two heaviest sentences consecutively:

(a) the appellant's "speedy relapse into drugs" despite numerous stints in rehabilitation;

(b) his "pivotal role in importing the drugs and thereby making them available to abusers in Singapore";

(c) the fact that the appellant had imported substantial quantities of different drugs; and

(d) the fact that the importation and the consumption offences were distinct offences, whereas the other offences of possession of the drugs were part of and connected to the importation transaction.

My decision

19 I should state at the outset that sentencing is a matter which is within the primary purview of the trial court and appellate intervention will only be warranted in limited circumstances, such as where it can be shown that the sentence is wrong in principle or that the sentencing judge has erred in failing to correctly appreciate the material that is before her: see *Public Prosecutor v UI* [2008] 4 SLR(R) 500 at [12]. The issue that arises in this appeal concerns the question of whether the District Judge had erred in exercising her discretion as to which of the sentences she imposed on the appellant were to run consecutively and which concurrently.

The applicable principles

The obligation to impose consecutive sentences

20 As this is a point of importance, it is appropriate to begin by setting out the principles that inform how a sentencing judge who has imposed multiple sentences on an offender ought to approach the question of which among them should run consecutively.

21 In certain situations, a sentencing judge is *obliged* to impose consecutive sentences. Section 307(1) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("the CPC") states:

Consecutive sentences in certain cases

307.—(1) Subject to subsection (2), if at one trial a person is convicted and sentenced to imprisonment for at least 3 distinct offences, the court before which he is convicted must order

the sentences for at least 2 of those offences to run consecutively.

22 However, s 307(1) only mandates that there be no fewer than two consecutive sentences of imprisonment where the accused has been convicted and so sentenced for at least three distinct offences. As such, the section does not apply where the Prosecution agrees to proceed on no more than two charges and not to proceed with the remaining charges but to have them taken into consideration for the purpose of sentencing.

23 The words "distinct offences" are not defined in s 307(1), but s 132(1) of the CPC states:

> **Separate charges for distinct offences**
>
> **132.**—(1) For every distinct offence of which any person is accused, there must be a separate charge and, subject to subsection (2), every charge must be tried separately.

24 It follows from this that as long as the charges have been correctly framed, each separate charge will have been brought in respect of a "distinct offence" for the purposes of s 307(1). In this case, the Prosecution proceeded with four charges to which the appellant pleaded guilty and the District Judge was therefore bound by s 307(1) to impose at least two sentences consecutively.

25 However, s 307(1) is silent on which of the sentences are to run consecutively. Nor does the section or the CPC for that matter provide any guidance on this, though certain principles have developed through case-law. At the outset, it may be noted that the sentencing judge is vested with considerable discretion, but this must be exercised judiciously and with regard to two principles in particular, namely, the one-transaction rule and the totality principle, as well as a number of ancillary principles. I elaborate on these below. For the avoidance of doubt, there is no presumption or rule that the two most severe sentences should ordinarily be selected to run consecutively. Nor is it a rule that the most severe individual sentence of imprisonment must be selected as one of the sentences to run consecutively, so long as the aggregate of the sentences that are so selected exceeds the longest individual sentence. I discuss this further at [77] below.

The individual sentences

26 The sentencing judge must begin by deciding on the appropriate *individual* sentences in respect of each charge or offence. In arriving at the individual sentences, the sentencing judge will generally have considered the relevant aggravating and mitigating factors that bear upon each discrete sentence.

The one-transaction rule

27 Having decided on the appropriate sentence for each offence, it then falls on the sentencing judge to consider which of the sentences should run consecutively. The first rule that the sentencing judge should consider is what has been referred to as the one-transaction rule. This is not an inflexible or rigid rule but it serves as a filter to sieve out those sentences that ought not as a general rule to be ordered to be run consecutively. The clearest statement of the principle may be found in the High Court decision of *Public Prosecutor v Law Aik Meng* [2007] 2 SLR(R) 814 ("*Law Aik Meng*"), where V K Rajah J (as he then was) said as follows at [52]:

> The one-transaction rule requires that where two or more offences are committed in the course of a single transaction, all sentences in respect of those offences should be concurrent rather than consecutive: *Maideen Pillai v PP* [1995] 3 SLR(R) 706; *Kanagasuntharam v PP* [1991] 2

SLR(R) 874 ("*Kanagasuntharam*"). Prof Andrew Ashworth in *Sentencing and Criminal Justice* [Cambridge University Press, 2005, 4th Ed] at p 245 interpreted the *raison d'être* for the "single transaction" principle in terms of proximity in time and proximity in type of offence. Such an interpretation was also adopted by Dr D A Thomas in *Principles of Sentencing* (Heinemann, 2nd Ed, 1979) ("*Principles of Sentencing*"), who opined at p 54:

> The concept of 'single transaction' may be held to cover a sequence of offences involving a repetition of *the same behaviour* towards the *same victim* ... provided the offences are committed *within a relatively short space of time*.

[emphasis in original]

28 In *Law Aik Meng* at [52] the touchstones identified were whether there was proximity of time and proximity in the type of offence. The Malaysian Court of Appeal has developed this into four elements: proximity of time, proximity of place, continuity of action and continuity of purpose or design: see *Bachik bin Abdul Rahman v Public Prosecutor* [2004] 2 MLJ 534 at [7].

29 Although Rajah J in *Law Aik Meng* interpreted the rationale for the rule in terms of proximity, in my judgment, this is better understood as a preliminary enquiry to help ascertain whether or not the distinct offences are to be seen as part of a single transaction.

30 The better articulation of the rationale for the rule is found in the principle that consecutive sentences are not appropriate if the various offences involve a "single invasion of the same legally protected interest" (see D A Thomas, *Principles of Sentencing* (Heinemann, 2nd Ed, 1979) ("*Principles of Sentencing*") at p 53):

> The essence of the one-transaction rule appears to be that *consecutive sentences are inappropriate when all the offences taken together constitute a single invasion of the same legally protected interest.* The principle applies where two or more offences arise from the same facts — as when the same series of blows constitutes assault occasioning actual bodily harm and wilful ill treatment of a child, or malicious wounding and indecent assault — *but the fact that the two offences are committed simultaneously or close together in time does not necessarily mean that they amount to a single transaction.* … [emphasis added]

31 On this formulation, the real basis of the one-transaction rule is unity of the violated interest that underlies the various offences. Where multiple offences are found to be proximate as a matter of fact but violate different legally protected interests, then they would not, at least as a general rule, be regarded as forming a single transaction. However, it should be said for the avoidance of doubt that even if this offers a better rationale for the one-transaction rule, that does not make it a test which is to be rigidly applied. As will be evident from the analysis that is set out below, even where a sentencing judge is able to identify that a set of offences violates different legally protected interests, it does not always or necessarily follow that those offences cannot be regarded as part of the same transaction.

32 But the main point I make here is that a straightforward application of the tests for proximity of time and proximity of type of offence cannot be determinative of the question whether a series of offences are to taken *by the law* to be part of the same transaction so as not to warrant separate punishment. The one-transaction rule is an *evaluative* rule that is directed towards the ultimate enquiry that a sentencing court is engaged in: whether an offender should be doubly punished for offences that have been committed simultaneously or close together in time. This will often, if not inevitably, bring into play moral considerations and it would be impossible to resolve these *solely* by

reference to facts (such as proximity in time) which, in and of themselves, might be devoid of moral significance.

33 An illustration will help in making the point. Take the example of a date rapist who rapes his unconscious victim and then makes off with her purse. Notwithstanding the proximity in time and place in which these offences have been committed, it would be wrong to regard both as forming a single transaction. It is quite evident that two separate interests, namely the right to bodily integrity and the right to property, have been implicated and warrant separate punishment.

34 However, it must not be thought that the proximity test is without utility. A lack of proximity would generally rule out the operation of the one-transaction rule. Take the case of a serial burglar who breaks into two homes, with the second break-in occurring three months after the first: these two offences would quite evidently not form part of a single transaction.

35 Although helpful, the test of proximity has not been (and should not be) unthinkingly applied and its utility is best appreciated as an indicator towards the question of whether in all the circumstances the distinct offences should be treated as forming part of a single transaction or whether in principle these call for multiple punishments. Thus, in *Public Prosecutor v Lee Cheow Loong Charles* [2008] 4 SLR(R) 961 ("*Charles Lee*"), the accused, who had been disqualified for driving, sped through a traffic crossing and hit and killed an elderly pedestrian before escaping the scene. He was charged for three groups of offences: causing death by a rash act, driving while disqualified, and failing to render assistance after a fatal accident. Chan Sek Keong CJ considered that the actions of the accused were not part of the same transaction but were distinct offences because each group of offences was serious and did not necessarily or inevitably flow from the others.

36 In *Public Prosecutor v Firdaus bin Abdullah* [2010] 3 SLR 225 ("*Firdaus*"), Chan CJ again rejected the rigid application of the proximity-based test. There, the accused had punched a child's face several times before lifting him off the ground and slamming him into the wall. He then continued slapping the child on his back. This was the basis of one charge of voluntarily causing grievous hurt. The accused then removed the child's shorts and abused him by grabbing, shaking and biting the child's penis and scrotum. This was the basis of another charge for ill-treatment of a child under s 5(1) of the Children and Young Persons Act (Cap 38, 2001 Rev Ed). The two offences were proximate in time and were arguably similar in nature. However, Chan CJ considered that the second offence was entirely independent of and causally unconnected from what had transpired until then. The accused had hit the child in the first instance because he had refused to stop crying. When the child did stop crying after he had been slammed against the wall, the accused embarked on the final sequence of offences (at [36]–[37] of *Firdaus*).

37 Clearly, the rule is easier to state than it is to apply in practice. In *Firdaus*, Chan CJ noted the "uncertain boundaries" of the one-transaction principle (at [31]). The foregoing discussion demonstrates that the rule should in reality be seen as a set of guidelines and these are not determinative or comprehensive; nor should they be rigidly applied.

38 This point was usefully illustrated in *Tan Kheng Chun Ray v Public Prosecutor* [2012] 2 SLR 437 ("*Ray Tan*"), a decision of our Court of Appeal. This was a case that concerned multiple drug charges. The two relevant charges were for importation of 14.99g of diamorphine found in the offender's car when it was stopped at the Woodlands Checkpoint; and for importation of 1.12g of methamphetamine, also found in the offender's car when it was stopped and searched at the Checkpoint. The former was found to have been imported for distribution while the latter was for the accused person's own consumption. There was undoubtedly proximity as a matter of fact, but separate interests were implicated. The offence of importation for distribution addresses the interest

of others to be protected from harmful drugs; while the offence of possession for one's own consumption implicates the interest of the one in possession in being protected from harming himself. Both charges were ordered to run consecutively but on appeal, the Court of Appeal disturbed this holding and found that the one-transaction rule should apply. This was because a rigid application of the one-transaction rule by focusing solely on whether there was a diversity of interests that were invaded by the offences would have led on the facts of that case to the counterintuitive result that the appellant there would have been better off if he had imported the second quantity of drugs also for the purpose of trafficking, even though trafficking is a more egregious offence and he would have caused even greater harm by trafficking in more drugs (see [17]).

39 This decision provides a salutary reminder that in applying the rule, the sentencing judge must ultimately consider whether in all the circumstances, *this particular offender ought to be doubly punished.* The tests that have developed to ascertain whether the multiple distinct offences ought to be treated as forming a single transaction may have to yield to a different combination of sentences being ordered to run consecutively if this is directed by other countervailing considerations. As the court noted in *Ray Tan* at [17]: "…the application of the one-transaction rule is also an exercise in commonsense. It also bears repeating that the application of this rule depends very much on the precise facts and circumstances of the case at hand".

40 The question whether the offences are part of a single transaction is an important one and it arises with particular frequency in drug offences which lend themselves very easily to a multiplicity of charges being brought: for consumption, possession, importation and even trafficking, or where the incident involves different drugs, or the same drug found in different places, or of the same mixture or package of substance containing two or more controlled drugs. While it may well be helpful to have regard to such factors as proximity in time, proximity of purpose, proximity of location of the offences, continuity of design and unity (or diversity) of the protected interests, in the final analysis, the consideration must be undertaken as a matter of common sense.

41 There may well be circumstances where a sentencing judge may order two sentences to run consecutively even though they are in relation to offences that *do* form part of a single transaction. One instance of this is where the straightforward application of the one-transaction rule results in the offender benefitting from the court's failure to have regard to the enhanced culpability that is reflected in the multiplicity of the offences that have been committed. The point has been noted for instance in Richard G Fox & Arie Freiberg, *Sentencing: State and Federal Law in Victoria* (Oxford University Press, 2nd Ed, 1999) (at p 721) that:

> Courts often fear that concurrent sentences are tantamount to an inducement to criminal conduct inasmuch as offenders may reason that, if caught, they are unlikely to suffer any material extension of their imprisonment by virtue of the further offences.

42 The enquiry into whether there is an invasion of the same underlying interest looks at things from the perspective of the victim. But there is another way of approaching the ultimate question of how the offender should be punished and that is to view it from the perspective of the accused. On this premise, the imposition of consecutive sentences would be appropriate if the second (or other subsequent) offence reflects increased culpability on the accused's part even where, as a technical matter, the multiple offences might form part of the same transaction. The Hong Kong Court of Appeal decision of *HKSAR v Ngai Yiu Ching* [2011] 5 HKLRD 690 is instructive on this point (at [23]):

> The emphasis therefore should be on a reflection in the sentence of true culpability disclosed by the offences of which the accused has been convicted. This is an approach which this Court has consistently adopted in recent times, for example in *HKSAR v Kwok Shiu To* [2006] 2 HKLRD 272

and *HKSAR v Iu Wai Shun* [2008] 1 HKC 79. It is likely to be a more effective approach in reflecting an offender's overall culpability than one which becomes overly concerned with the one transaction rule, although in the case of more than one offence, the court must guard carefully against punishing twice for the same act. *If the second offence which takes place in the course of the suggested single episode adds to the culpability of the first offence*, it will normally follow that the sentence for the second offence will run wholly or partially consecutive to that for the first; to what extent, if at all, will depend upon an assessment of the totality appropriate for the conduct as a whole. *As with most sentencing exercises, the approach is an art, sensitive to the individual circumstances of the case and the offender.* [emphasis added]

43 This is also reflected in the decision of the English Court of Appeal in *R v Greaves (Claude Clifford)* [2011] 1 Cr App R (S) 8, where the court observed (at 84):

> Where the offenders are one and the same, if the conduct involved in the Proceeds of Crime Act offence in reality adds nothing to the culpability of the conduct involved in [the] primary offence, there should be no additional penalty. A person should not be punished twice for the same conduct. …

44 In my judgment, the decisions of Chan CJ in *Charles Lee* and in *Firdaus* (see [35] and [36] above) might also be explained on this basis since it was evident that the culpability of the accused persons in those cases was enhanced by the multiplicity of offences.

45 Aside from this, there are other instances when it would be appropriate for the sentencing judge to impose consecutive sentences notwithstanding that to do so would entail deviating from the one-transaction rule. This would be so, for instance, where:

(a) it is necessary to do so in order to give sufficient weight to the interest of deterrence so as to discourage behaviour of the sort in question: see for instance *ADF v Public Prosecutor and another appeal* [2010] 1 SLR 874 ("*ADF*") at [143]; or

(b) the imposition of consecutive sentences would be in keeping with the gravity of the offences: see *Law Aik Meng* at [56].

46 However, whenever a sentencing judge considers it appropriate to depart from the one-transaction rule it would be appropriate to state the reasons or considerations that prompt such a course. This would displace any prospect of it being construed as a decision made in ignorance of the rule and it would also afford an appellate court the opportunity to assess the appropriateness of the sentence should this arise.

The totality principle

47 The second principle is the totality principle. This is a principle of limitation and is a manifestation of the requirement of proportionality that runs through the gamut of sentencing decisions. The notion of proportionate punishment is one of considerable vintage and features in most articulations of justice. In the ancient texts, one sees the demand for equivalence between offence and punishment expressed in terms of "eye for eye, tooth for tooth". Chapter 20 of the Magna Carta (dating back to 1215 AD) states that "[a] free man shall not be amerced for a trivial offence except in accordance with the degree of the offence". The Bill of Rights, passed in 1689, states that "excessive bail ought not to be required, nor excessive fines imposed". The Roman philosopher Cicero wrote: "[t]ake care that the punishment does not exceed the guilt" (*De Officio* Bk 1, ch 25, s 89, also cited in the High Court of Australia case *Veen v The Queen* (1979) 143 CLR 458 at 494).

48 In *Law Aik Meng*, Rajah J observed (at [60]):

> It is axiomatic that the totality principle, not dissimilarly from its one-transaction counterpart, functions not as an inflexible rule, but rather as a helpful guideline to remind the court that the correlation of the sentence to the gravity of the offender's conduct and offences is of critical importance. *In short, sentences must be restrained by the principle of proportionality.* … [emphasis added]

49 This is echoed in Tan Yock Lin, *Criminal Procedure* vol 3 (LexisNexis, 2010) at para [4101.1]:

> …the totality principle is a salutary reminder to ensure proportionality in a global sense, especially with respect to overlapping offences…

50 Most recently, Chao Hick Tin JA in *Public Prosecutor v Saiful Rizam bin Assim and other appeals* [2014] SGHC 12 at [29] observed pithily that "an offender should only receive a punishment that is in line with what the offence he had committed deserves, and no more."

51 As with the one-transaction rule, the totality principle is not an invariable rule and "it should not be rigidly and blindly applied to all cases" (*Law Aik Meng* at [58]).

52 Prof D A Thomas ("Prof Thomas") formulates the totality principle in *Principles of Sentencing* thus (at p 56):

> The effect of the totality principle is to require a sentencer who has passed a serious of sentences … to review the aggregate sentence and consider whether the aggregate is 'just and appropriate'. …

53 He goes on to explain (at pp 57–8) that:

> [T]he principle has two limbs. A cumulative sentence may offend the totality principle if the aggregate sentence is substantially above the normal level of sentences for the most serious of the individual offences involved, or if its effect is to impose on the offender 'a crushing sentence' not in keeping with his record and prospects. …

54 The first limb of the totality principle examines whether "the aggregate sentence is substantially above the *normal* level of sentences for the most serious of the individual offences committed" [emphasis added]. This calls for a comparison between the total sentence on the one hand and a yardstick on the other hand (see *Law Aik Meng* at [57]). This appears also to have been the approach of the Court of Appeal in *V Murugesan v Public Prosecutor* [2006] 1 SLR(R) 388 at [37].

55 However, in *Navaseelan Balasingam v Public Prosecutor* [2007] 1 SLR (R) 767 at [26]–[28], Tay Yong Kwong J compared the combined term of the sentences to be run consecutively with the *maximum* permitted sentence for the most serious individual offence. In doing so, Tay J was following an observation of the Court of Appeal in *Kanagasuntharam v Public Prosecutor* [1991] 2 SLR(R) 874 at [14].

56 In the course of the arguments, both the DPP and the *amicus curiae* accepted that the correct formulation ought to be the normal level of sentences imposed for the most serious of the offences rather than the maximum permissible sentence. If the overriding concern of the rule is to ensure proportionality then it would be incongruous to take as a yardstick for comparison a maximum sentence which would usually be reserved for the most serious offenders and which may have no

correlation to the actual circumstances in which the offender who is before the court committed the offence in question. The whole essence of sentencing is to have regard to the actual circumstances that are presented to the court. It therefore seems to me, at least on a provisional basis and pending an occasion where it may be necessary to resolve the issue with the benefit of full arguments, that this is correct.

57 The second limb considers whether the effect of the sentence on the offender is crushing and not in keeping with his past record and his future prospects.

58 The totality principle is a consideration that is applied at the end of the sentencing process. In *Principles of Sentencing*, Prof Thomas suggests that the principle requires the court to take a "last look" at all the facts and circumstances and assess whether the sentence looks wrong (see p 56).

59 If so, consideration ought to be given to whether the aggregate sentence should be reduced. This may of course be done by re-assessing which of the appropriate sentences ought to run consecutively (see p 57 of *Principles of Sentencing*). In addition the *amicus curiae* suggested, and it seemed to me that the DPP agreed with this, that it could also be done by re-calibrating the individual sentences so as to arrive at an appropriate aggregate sentence.

60 This appears to have been the basis of the decision of this court in *Low Meng Chay v Public Prosecutor* [1993] 1 SLR(R) 46. The offender in that case faced a total of 31 charges under s 73 of the Trade Marks Act (Cap 332, 1985 Rev Ed) and a total of 21 charges under s 73 of the Trade Marks Act (Cap 332, 1992 Rev Ed). He was fined various sums in respect of each of the charges but he could not pay any of the fines. In default, he faced a total of 88 months and 23 days in jail.

61 On appeal, Yong Pung How CJ held that the fines were not excessive either individually or in aggregate. But because of the sheer number of charges, the imprisonment term in default of the fine offended the totality principle. Yong CJ accordingly recalibrated the individual sentences: some were made to run concurrently instead of consecutively, while for others, longer terms of imprisonment were imposed but made to run concurrently. In the aggregate the sentence was reduced to 33 months' imprisonment: at [14]–[15]. While this would no longer be possible in relation to default sentences – see s 319(*b*)(v) of the CPC, which directs that all sentences of imprisonment imposed in default of payment of a fine must be run consecutively – the principle nonetheless remains applicable.

62 This was also the position in the Malaysian case of *Mansor bin Meyon v Pendakwa Raya* [2007] 8 MLJ 706. There, the offender was convicted of three counts of raping his underage daughter and was sentenced to 18 years' imprisonment and eight strokes of the cane for each charge, all to run consecutively, for a total of 54 years' imprisonment. On appeal to the High Court (Muar), Jeffrey Tan J held that even though the individual imprisonment sentences were not excessive, the aggregate was close to three times the maximum prison sentence for the most serious of the individual offences and was also crushing given that this was a first offence and that he was already 49 years old: at [18]–[19]. In the result, each sentence was reduced to 12 years' imprisonment, to run consecutively.

63 The power of the court to recalibrate the discrete sentences when these are ordered to run consecutively arises from the common law principle of proportionality, to which I have already referred. It is unquestionably true that a sentencing judge must exercise his sentencing discretion with due regard to considerations of proportionality when considering any given case. If this is valid and applicable when sentencing a single offender to a single sentence of imprisonment, then I cannot see how it can cease to be so when the sentencing judge is required in the exercise of his sentencing discretion to impose an aggregate sentence for a number of offences. In my judgment, such a rule is compatible with and not excluded by ss 306 and 307(1) of the CPC. These sections contemplate that:

(a) when an accused person is convicted at one trial of two or more offences, the court must sentence him to punishments that it is competent to impose (see s 306(1));

(b) the court generally has the discretion to decide whether these are to run consecutively or concurrently (see s 306(2));

(c) but where the accused is convicted and sentenced to imprisonment at the same trial of three or more offences, the court *must* order at least two of those are to run consecutively.

64 The process of deciding whether, and if so which, sentences are to run consecutively is one that is ultimately integrated within the overall sentencing process. I leave to one side the case of mandatory or mandatory minimum sentences where the discretion of the sentencing judge is constrained by statute. In such cases, the judge must work within the applicable constraints. But in general, where the sentencing judge has discretion and is within the reach of s 307(1) of the CPC, he will inevitably be aware when he imposes the individual sentences for each of the offences that he will be obliged, at the final stage of the sentencing process, to order at least two of them to run consecutively. It would be unrealistic to imagine that such a judge would disregard this fact and in particular (a) what the aggregate sentence would be and (b) whether that aggregate sentence would be appropriate in all the circumstances in terms of both its sufficiency as well as its proportionality, when he calibrates the individual sentences. In so doing, the sentencing judge would be doing no more than ensuring that the overall punishment accords with the criminality that is before him. In my judgment, to the extent this is so, it is best done transparently.

65 In this respect, my attention was drawn by the *amicus curiae* to the decision of the Manitoba Court of Appeal in *R v Wozny* [2010] MJ No 384 for the principle that where the court concluded that some adjustment to the sentences was called for by the application of the totality principle, this should be done transparently. In that case, the judge first decided on the appropriate sentences for each offence without having regard to the totality principle (*Wozny* at [94]) before applying the principle and then adjusting the individual sentences (*Wozny* at [97]).

66 In my judgment this is sound for the same reasons that I have suggested that a judge choosing to deviate from the one-transaction rule should articulate the reasons and considerations that prompt him to do so (see [46] above). But there is an additional point that applies with particular force here. By stating explicitly that the individual sentence that would otherwise have been imposed is being recalibrated by reason of the totality principle, the sentencing judge not only demonstrates principled adherence to the applicable sentencing benchmarks but also ensures that the integrity of those benchmarks for the discrete offences is not affected by the recalibration that he has done *in the particular case that is before him by reason of the particular facts and circumstances at hand*.

67 I turn to the application of the totality principle where one of the offences in question carries a mandatory minimum sentence. In appropriate cases, the aggregate sentence may be reduced by recalibrating the non-mandatory sentence, but care should then be taken to ensure that the mandatory minimum is not rendered nugatory. In *R v Wasim Raza* [2010] 1 Cr App R (S) 56 ("*Wasim Raza*"), the English Court of Appeal (Criminal Division) had to consider the point where one of the offences was subject to a mandatory minimum sentence.

68 The offender had been convicted of three offences: for possession of a firearm (for which he was sentenced to the mandatory minimum sentence of five years); possession of ammunition (two years to run concurrently with the firearms offence); and possession of cocaine (eight years, to run consecutively). A sentence of ten years was the norm for possession of cocaine in the amount that the offender had been charged with but the judge at first instance discounted this by two years to

give effect to the totality principle and accordingly sentenced the offender to 13 years' imprisonment in total. The offender's appeal was dismissed.

69 The court discussed the importance of ensuring that the totality principle should not be applied in such a way as to undermine Parliament's intention in legislating a mandatory minimum sentence as follows (at [17]):

> …we agree with the submission … that in assessing the appropriate length of another custodial sentence for a different offence, one has to have regard in any adjustment for totality to the fact that Parliament has assessed the degree of culpability for possessing a prohibited firearm as requiring a mandatory minimum sentence of five years' imprisonment. In our judgment therefore in a situation in which that is one of the sentences which the court has to pass, the principle of totality has to be applied in such a way that it does not undermine the will of Parliament by substantially reducing an otherwise appropriate consecutive sentence for another offence so as to render nugatory the effect of the mandatory minimum sentence for the firearms offence. …

On the particular facts presented, the court considered that the discount was appropriate and did not dilute or undermine the legislative intent in having a mandatory minimum sentence.

70 For completeness, I mention the practice in some other jurisdictions of giving effect to the interest of proportionality by antedating the later of the consecutive sentences of imprisonment so that it runs partly concurrently with the earlier sentence. This was done by the Supreme Court of South Australia in *The Queen v Smith and Shoesmith* [1983] SASR 219. There the appellants, Smith and Shoesmith, had robbed two general stores at gunpoint; the robberies were committed three days apart. At first instance, they were each sentenced to six years' imprisonment for the first robbery and nine and eight years' imprisonment respectively for the second robbery, both sentences to run consecutively for a total of 15 and 14 years' imprisonment respectively.

71 On appeal, Mitchell J held that while the individual sentences were appropriate, the aggregate was excessive. Relying on the power of the court to order that sentences may take effect from a date other than the date on which they were pronounced, Mitchell J antedated the sentences imposed in respect of the second robbery by two years so that the sentences would be concurrent in part, thus reducing the aggregate sentences to 13 and 12 years' respectively.

72 While we have a corresponding power under s 318 of the CPC to order that a sentence of imprisonment is to take effect from a date other than that on which it is passed, this has hitherto been invoked to backdate sentences for the purposes of giving an offender the benefit of time spent in remand. Undoubtedly, this provision would not entitle a sentencing court to effect any such antedating of sentencing where the sentencing judge is mandated to run the imprisonment sentences consecutively pursuant to s 307(1) of the CPC. The totality principle cannot apply to negate the effect of a rule of statute such as s 307(1).

73 It is a nuanced question as to whether s 318 could be invoked in other circumstances where s 307(1) does not apply but where, as a matter of discretion, a sentencing judge wishes to impose consecutive sentences but also to temper the aggregate sentence by having them run in partial concurrence. To answer this will require consideration of the interaction of s 318 with other provisions of the CPC possibly including, for instance, s 322. I express no view on this here and leave it for decision on another occasion when full arguments might be made on this.

74 In considering the totality principle, there are three other points that should be noted.

75 First, in keeping with the principle recognised in *Wasim Raza*, the sentencing court must recognise that it is generally within the purview of Parliament to decide what type or level of sentence is appropriate for a given offence. The remit of the sentencing court is to determine the sentence to be imposed in each case having regard to the particular facts and circumstances that arise. In this regard it is critical that the sentencing court should not act in a way that undermines the legislative intent. For this reason, regard must be had to the legislative purpose underlying the enactment of s 307(1) of the CPC. This is the successor provision to s 18 of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) to which it is materially similar. When the latter section was enacted in 1984, the Second Minister for Law explained that its purpose was to enhance the sentencing power given to the court when dealing with persistent or habitual offenders and to achieve this by ensuring that those who commit multiple offences receive a longer sentence than those who commit a single offence.

76 The following extract from *Singapore Parliamentary Debates, Official Report* (26 July 1984) vol 44 at cols 1897–1898 is instructive:

> …clauses 2 and 3 of this Bill seek to further enhance the sentencing powers of the court in dealing with persistent or habitual offenders so that they may be kept in custody for longer periods.
>
> …
>
> …the purpose of the amendment [clause 3] … *is to ensure that a person who has committed multiple offences will receive a longer sentence than one who commits a single offence*.
>
> [emphasis added]

77 In my judgment, it follows from this, as was submitted by the *amicus curiae*, that the total term of imprisonment for the sentences that are ordered to run consecutively must exceed the term of imprisonment that is imposed for the highest individual sentence. Thus while it is within the power of the court to select sentences other than the longest individual sentence to run consecutively, the aggregate of such sentences must exceed the longest individual sentence.

78 Second, in situations where the court is dealing with multiple sentences, the sentencing judge must be vigilant to ensure that aggravating factors are not counted against the accused twice over. This was a point made well by V K Rajah JA in *ADF*, where he highlighted the important distinction between sentence specific aggravating factors and cumulative aggravating features, at [92]:

> Here, I should pause and highlight the sometimes overlooked distinction between sentence specific aggravating factors and cumulative aggravating *features*. Where multiple distinct offences have been committed, sentencing is a two-stage process. First, the sentence for each individual offence had to be determined. Second, the court has to determine whether the sentences for these multiple offences ought to run concurrently or consecutively and if consecutively, which combination of sentences ought to be made and whether the overall sentence properly comprehends the criminality of the multiple offender … If sentence specific aggravating factors are present, the sentence for each particular offence should be appropriately enhanced. Cumulative aggravating features, on the other hand, are features that ordinarily have primary relevance at the second stage of sentencing, particularly as regards to the issue of whether the global sentence should be enhanced by consecutive sentencing, when multiple distinct offences have been committed. As the possibility of an overlap may occur in some cases, care must be taken not to re-input an aggravating consideration at the second stage, if it has

already been fully factored into the sentencing equation during the first stage. [emphasis in original]

79 I agree with this. In choosing which of the multiple sentences of imprisonment should run consecutively and which concurrently, the sentencing judge should not take into account aggravating factors that were already taken into account at the first stage of sentencing and to decide that on account of those factors a combination of longer sentences is called for. In line with the general requirement of transparency where sentencing is concerned, the judge should be mindful to articulate which factors have been taken into account at which stage.

80 Finally, it is not inconsistent with the totality principle that there may well be circumstances where a sentencing judge considers that the circumstances call for more than two sentences to run consecutively. In *ADF*, Rajah JA made the following important observations on this (at [146]):

> … There is no rigid linear relationship between the severity of the offending and the length of the cumulative sentence. In my view, an order for more than two sentences to run consecutively ought to be given serious consideration in dealing with distinct offences when one or more of the following circumstances are present, *viz*:
>
> (a) dealing with persistent or habitual offenders (see [141] above);
>
> (b) there is a pressing public interest concern in discouraging the type of criminal conduct being punished (see [143]–[144] above);
>
> (c) there are multiple victims; and
>
> (d) other peculiar cumulative aggravating features are present (see [92] above).
>
> In particular, where the overall criminality of the offender's conduct cannot be encompassed in two consecutive sentences, further consecutive sentences ought to be considered. I reiterate that the above circumstances are non-exhaustive and should not be taken as rigid guidelines to constrain or shackle a sentencing court's powers ….. In the ultimate analysis, the court has to assess the totality of the aggregate sentence with the totality of the criminal behaviour.
>
> [emphasis in original omitted]

An analytical framework

81 In my judgment these principles, all of which emerge from the case-law, may be organised and applied within the following analytical framework after the sentencing judge has decided, at least provisionally, on the individual sentences for the offences that are before him:

(a) As a general rule, the sentencing judge should exclude any offences, which though distinct in the sense described above, nonetheless form part of a single transaction. This is a rule that is applied in order to exclude sentences, at least provisionally, from being considered for selection to run consecutively.

(b) The application of the one-transaction rule yields only a provisional exclusion. In certain circumstances, it may be necessary for the sentencing judge to impose two consecutive sentences even if they relate to a single transaction. This may, for instance, be so for such reasons as to give effect to a particular sentencing interest such as deterrence or to adequately

capture the enhanced culpability of the offender or simply in order to ensure compliance with s 307(1) of the CPC. A sentencing judge who does this should articulate the reasons for it.

(c) If there are no grounds to depart from the one-transaction rule, the sentencing judge should then consider which of the available sentences should run consecutively.

(d) The sentencing judge should ensure that the cumulative sentence is longer than the longest individual sentence.

(e) Beyond this, the consideration of which sentences should run consecutively is likely to be a multi-factorial consideration in which the court assesses what would be a proportionate and adequate aggregate sentence having regard to the totality of the criminal behaviour of the accused person.

(f) This will include what was termed the "cumulative aggravating factors" in *ADF*. It is important that while the sentencing judge seeks to ensure that he has taken due regard of the overall criminality of the accused, he does not, in the words of Rajah JA in *ADF*, "re-input an aggravating consideration at [this] stage, if it has already been fully factored into the sentencing equation during the first stage".

(g) However, the sentencing judge must be careful not to have regard to any matters which are not the subject of a conviction or which the accused has not consented to being taken into consideration.

(h) The sentencing judge should then apply the totality principle, which is a rule of limitation used to conduct a final check to assess whether the overall sentence yielded by the combination of the consecutive sentences is excessive.

(i) If the sentencing judge considers that the cumulative total is excessive, he may either opt for a different combination of sentences or adjust the individual sentences though in doing so, the sentencing judge must be diligent in articulating his reasons.

(j) In exceptional cases, the sentencing judge may consider imposing more than two sentences consecutively. This may be appropriate in such circumstances as where the accused is shown to be a persistent or habitual offender, where there are extraordinary cumulative aggravating factors, or where there is a particular public interest.

82 Of course a sentencing judge should strive to ensure that like cases are treated alike. But this is not something that can be rigidly and mechanically applied: see *Edwin s/o Suse Nathen v Public Prosecutor* [2013] 4 SLR 1139 at [23] albeit in the slightly different context of an analysis of sentencing precedents.

The principles applied to the present case

83 I have already said that in my judgment, there was no basis for appellate intervention in relation to each of the individual sentences. The District Judge gave four reasons for selecting the particular combination of sentences to run consecutively. I have set these out above at [17] and [18] above. Having reviewed the District Judge's reasons for selecting the two heaviest sentences to run consecutively, I am satisfied that she did err.

84 In relation to the first reason she advanced, it is true that the appellant had in the past been

convicted of a number of less serious crimes and also had one conviction for consumption of cannabinol derivatives. It is also true that he had spent a considerable period under drug supervision or in a drug rehabilitation centre. But as I have noted above, he then had a nine-year drug free hiatus from 2001 to 2010 and this was a factor that ought to have been taken into account. The District Judge however appeared not to have appreciated that there were quite distinct phases in the appellant's history (see above at [12]). In the circumstances, it was simply incorrect to say that he had speedily relapsed into drugs.

85 On appeal, the DPP argued that the appellant's previous drug antecedents made it an imperative that he should be "taken out of circulation" for a substantial period of time. The DPP relied on the following speech of the Minister for Home Affairs in moving the Misuse of Drugs (Amendment) Act 1998 (Act 20 of 1998), which introduced a number of changes including statutory minimum sentences for repeat drug consumption (see *Singapore Parliamentary Debates, Official Report* (1 June 1998) vol 69 at cols 42–44):

> It is important that these hardcore drug addicts are not treated as victims. They are bad people. Firstly, to feed their expensive habit, many of them turn to crime. More than 73% of hardcore drug addicts have some form of criminal record, while about 76% of all addicts with criminal records are hardcore addicts. So, they are criminals also. Secondly, these hardcore addicts contaminate the innocent and lead them to experiment with, and consume drugs, thus perpetuating a drug culture. Every addict, especially a hardcore addict, is a potential pusher and trafficker. These hardcore addicts also inflict untold misery on their families and are a financial burden to their family members. They are bad role models, especially if they are fathers or mothers.
>
> That is why the Act is amended to provide for long-term imprisonment and caning for hardcore addicts. This serves a number of objectives. Firstly, by putting these addicts out of circulation for a long time, it will help to protect the public from them, especially as the majority of these addicts turn to crime to feed their habit. Secondly, it is also aimed at deterring drug addicts from persisting in their drug addiction by making the consequences of continued addiction very severe. In the long run, the long-term imprisonment and caning should help to reduce the relapse rate of drug addicts and deter potential drug abusers from falling into the drug trap. Thirdly, it is to punish these recalcitrant addicts for persisting with their drug habit. Public reaction to my announcement that we would enhance punishment for hardcore addicts, has been positive.

86 While one can fully appreciate the general sentiments expressed in this speech, this does not displace the need for the sentencing judge to consider if on the facts presented, these considerations applied with full force. In my judgment, they do not readily apply here. The appellant did have previous convictions, but the last conviction for drug consumption was in 2000. Although he did have a criminal record, he could not be said to be a hardened criminal. His present convictions were all drug related and there was no evidence that he had turned to other crimes to support his drug habit. The fact that he had remained drug-free for nine years militated against the easy conclusion that he was a "hardcore addict".

87 Turning to the second reason advanced by the District Judge, in my judgment, it was incorrect to say the appellant had a *pivotal* role in importing drugs and making them available to abusers in Singapore. On the admitted facts the appellant was a courier bringing drugs into Singapore. However, it was not clear how his role came to be considered as pivotal. Moreover, it was because he was bringing drugs into Singapore from elsewhere that he was charged for importation and sentenced to a term of imprisonment of 12 years. It is inherent in the nature of the importation offence that the offender makes the imported drug available for distribution in Singapore. That is why it rightly attracts

a substantial sentence. But this same fact cannot also be an aggravating factor to warrant further enhancing the overall sentence imposed on the offender by choosing to run longer sentences consecutively.

88 I turn to the third reason advanced, namely, that substantial quantities of drugs were involved. It is significant that this factor had already been taken into account by the District Judge in determining the appropriate sentence at [17] of the GD:

> In arriving at the appropriate sentence that would serve the purposes of punishment and deterrence, I considered the nature and large quantities of drugs that the accused had and imported. The charges that the accused was convicted on and admitted to, showed that the accused transported a substantial amount of methamphetamine and more than 5,000 tablets of nimetazepam and a-methy-3-4-(methylenedioxy)phenethylamine. …

89 In re-inputting this consideration into the sentencing calculus when choosing the sentences that were to run consecutively, the District Judge had committed the precise error that Rajah JA had cautioned against in *ADF* (see [78] above).

90 I turn finally to the District Judge's last reason, namely, that *only* the methamphetamine importation and consumption offences were distinct while the two possession charges were connected to the importation charge. In my judgment, this too was incorrect.

91 There was at least one other offence that was clearly a distinct offence, namely, DAC 18138/2013. This was a charge for possession of 30 tablets containing nimetazepam which were found in a briefcase beside the bed in the appellant's residence when the CNB officers accompanied him there some hours after his arrest. Although the appellant admitted these were for his own consumption, nimetazepam is a different type of drug from those which formed the subject-matter of the three other charges that the Prosecution proceeded with. Moreover, the tablets containing nimetazepam were not found in the vehicle at the time the appellant was arrested. There is no indication at all as to why the District Judge did not consider this a possible sentence to run consecutively with the sentence for DAC 47817/2012.

92 I am therefore satisfied that the District Judge had erred and this warranted my intervention.

93 In determining the appropriate sentence, the following considerations under the framework that I have set out at [81] are relevant. First, the combined sentences had to exceed the longest individual sentence which was 12 years. This would only be possible in this case if that sentence (for DAC 47817/2012) was one of the sentences that would run consecutively.

94 Second, as I have noted, there were at least two other sentences that could have been combined with DAC 47817/2012. There was the sentence for the consumption charge (five years) which the District Judge selected and the separate charge for possession of nimetazepam (six months). As I have said, the latter was clearly distinct: it was not committed at a proximate point in time or place; it involved a different drug altogether; and there was no evidence that these tablets had been imported by the appellant.

95 DAC 18135/2013 was for possession of 9.46g of crystalline substance containing a mixture of methamphetamine and amphetamine for the appellant's own consumption which was also found in the appellant's car at the Woodlands Checkpoint, albeit located separately from the 139.3g of crystalline substance also containing a similar mixture of methamphetamine and amphetamine that was the subject of the importation charge (DAC 47871/2012). There was thus proximity in both time and

place. Even though different interests were implicated in importation for distribution as compared to possession for consumption, applying the common sense approach in *Ray Tan*, I am satisfied that including the sentence for this conviction would offend the one-transaction rule.

96 The question then is which of the two possible sentences should run consecutively with DAC 47817/2012. The selection made by the District Judge resulted in an aggregate sentence of imprisonment of 17 years. This seems excessive to me for the following reasons:

(a) prior to the present charges the appellant's longest sentence in prison had been for a period of 15 months;

(b) aside from this he had spent a couple of other shorter stints in prison and some periods in drug rehabilitation centres;

(c) the last of this had been some 11 or so years prior to his conviction for the present offences;

(d) the fact that he had remained crime and drug free for a substantial period of nine years indicated that he was not quite in the mould of a hardened criminal and that he was capable of reform; and

(e) the principal way in which his present round of criminal behaviour had become more serious was in the fact that he had resorted to importing drugs. This was not something he had done in the past. Moreover, on his own admission he had gotten involved in a syndicate and had brought substantial quantities of drugs into Singapore. While this was heinous, the dire consequence it demanded was reflected in the heavy sentence of 12 years which the District Judge had imposed for DAC 47817/2012.

97 In all the circumstances, I am satisfied that the aggregate sentence imposed by the District Judge was disproportionate to the totality of the criminal behaviour that was before me. The most serious offence of which the appellant had been convicted was that of importation. It appears from the Prosecution's submissions below that the 12-year sentence that they sought before and obtained from the District Judge for this was already at the high end of the range. The aggregate sentence of 17 years was well in excess of this. It would therefore offend the first limb of the totality principle (see above at [54]).

98 Moreover, having regard to the appellant's record in the way that I see it, the fact that the longest previous sentence he had served was one of 15 months and his long crime-free period which also suggests that there are reasonable prospects for reform, I consider that the aggregate sentence of 17 years would have been crushing and not in keeping with his past record or his future prospects.

99 As against this, I am satisfied that ordering the sentence for the possession of nimetazepam to run consecutively with the sentence for the importation which would result in an aggregate sentence of imprisonment of 12 years and 6 months would be proportionate in the circumstances. As it is possible to achieve a just sentence in this way, it is unnecessary for me to recalibrate the individual sentences.

Conclusion

100 For the foregoing reasons, I allow the appeal and order the sentences for DAC 47817/2012 (12 years) and DAC 18138/2013 (six months) to run consecutively and those for the remaining two

charges to run concurrently, for an aggregate sentence of 12 years and six months' imprisonment.

101 This case highlights the considerable importance of assessing in a principled way which among multiple sentences should be ordered to run consecutively and which concurrently. I urge the Prosecution and defence counsel in future cases to consider this issue carefully and to ensure that the appropriate submissions are made so as to enable sentencing courts to arrive at principled decisions that reflect appropriate and proportionate sentences.

102 Lastly, I wish to record my deep gratitude to the *amicus curiae*, Mr Rajaram Vikram Raja, and the DPP, Mr Prem Raj Prabakaran. I was very greatly assisted in coming to this decision by the well-framed and carefully researched submissions and the authorities that were put forward by each of them. I was also assisted by the fair and measured way in which this was done.