IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 129

Magistrate's Appeal No 9337 of 2018

Between

Sim Kang Wei

… *Appellant*

And

Public Prosecutor

… *Respondent*

GROUNDS OF DECISION

[Criminal Law] — [Statutory offences] — [Protection from Harassment Act] — [Unlawful stalking]

[Criminal Procedure and Sentencing] — [Sentencing]

TABLE OF CONTENTS

Sim Kang Wei
v
Public Prosecutor

[2019] SGHC 129

High Court — Magistrate's Appeal No 9337 of 2018
Chua Lee Ming J
29 April 2019

21 May 2019

Chua Lee Ming J:

Introduction

1 On 18 June 2018, the appellant, Mr Sim Kang Wei, pleaded guilty to, and was convicted on, two charges:

(a) theft of an iPhone valued at approximately $100, an offence punishable under s 379 of the Penal Code (Cap 224, 2008 Rev Ed); and

(b) unlawful stalking, an offence under s 7(1) of the Protection from Harassment Act 2014 (Cap 265A, 2014 Rev Ed) ("POHA") and punishable under s 7(6). The acts committed by the appellant were as follows:

(i) recording up-skirt videos of the victim without her knowledge;

(ii) gaining unauthorised access to and making unauthorised modifications to email and social media accounts belonging to the victim; and

(iii) unsubscribing the victim from courses which she had registered for at the Singapore Management University ("SMU").

2 Six other charges were taken into consideration for purposes of sentencing. These six charges comprised the following:

(a) two charges under s 30(1) of the Films Act (Cap 107, 1998 Rev Ed) for having in his possession obscene films;

(b) three charges under s 21(1)(a) of the Films Act for possession of films without a valid certificate; and

(c) one charge under s 509 read with s 511 of the Penal Code for attempting to take an up-skirt video of an unknown female subject.

3 The appellant was born in August 1993. He was 21 years old and a first-year student at SMU at the time he committed the acts stated in the stalking charge. By the time he was charged in court, he was almost 25 years old. His victim, a female student at SMU, was 19 years old at the time of the stalking offence that was committed against her. The appellant and the victim knew each other.

4 The District Judge called for a probation report. The probation report recommended supervised probation for 18 months, subject to further conditions

including curfew time restrictions, 120 hours of community service, attendance at a psychotherapy group programme and a bond to ensure his good behaviour.

5 However, the District Judge was of the view that deterrence should be the dominant sentencing consideration and decided against probation. He concluded that the appellant "was a spiteful and vindictive adult offender who had systematically conducted a series of unprovoked stalking attacks" against his victim, and sentenced him to three days' imprisonment for the offence of theft and 10 months' imprisonment for the offence of unlawful stalking. Both sentences were ordered to run concurrently. The District Judge's grounds of decision are reported in *Public Prosecutor v Sim Kang Wei* [2019] SGMC 4 ("GD"). The appellant appealed against the sentences imposed.

The facts

6 The appellant became acquainted with the victim in 2009. They stopped communicating in 2013 after the victim told the appellant that her then boyfriend did not like the appellant contacting her. Both resumed communicating in 2014 and they separately enrolled in SMU in September 2014 in different courses.

7 The appellant took a total of 53 up-skirt videos of the victim between January and March 2015, including seven on the victim's birthday. Another 41 up-skirt videos were attempted but unsuccessful. The appellant claimed that he started to take up-skirt videos of the victim to "understand more about her private life" and he continued to take more up-skirt videos of her "to invade into her private life" as he could not get her attention. The appellant admitted that the last up-skirt videos of the victim on 11 March 2014 were intended to be used

to "harass her" by sending them to her anonymously. The appellant did not manage to do so as the police commenced investigations shortly after that.

8 On 7 March 2015, during an event organised by the SMU judo club (of which both the appellant and victim were members), the appellant stole the victim's handphone from her bag. The victim discovered the loss and the appellant joined the victim's friends in the unsuccessful search for the handphone. Later that night, the appellant messaged the victim through Facebook and concocted a fake story about someone possibly having found her handphone. The appellant asked for her passcode purportedly to verify that the handphone was hers. The victim gave him her passcode, after which the appellant lied to her that the handphone that had been found was not hers as her passcode had not worked.

9 Using the passcode, the appellant unlocked the victim's phone and went through her photographs. He then used a software to extract the usernames and passwords of the victim's two Gmail accounts, Hotmail account, Facebook account, Instagram account, SMU student account and the victim's ex-boy-friend's Facebook account. The appellant also extracted all of the victim's photographs and chat history from the phone.

10 The appellant accessed the victim's Hotmail account and looked through her inbox. He used the account to send emails (containing URLs of images of the victim) to the victim's SMU email account and two of the victim's friends. The appellant then changed the Hotmail account password and downloaded a Hotmail account verification application to the victim's phone. With the application installed, only the appellant could log into the account.

11 The appellant next accessed the victim's Facebook account using his desktop computer. He went through her private messages including her most recent conversations with her ex-boyfriend.

12 The appellant also accessed the victim's two Gmail accounts and went through the inboxes but found nothing interesting. He then changed the secondary email for both accounts to that of the victim's Hotmail account which he now controlled.

13 The appellant accessed the victim's Instagram account. He also managed to log into the victim's Telegram account. However, the victim managed to remotely disconnect the session because she received a notification when the appellant logged into the account. The appellant logged into the account again by getting another access code from the stolen handphone and disconnected the session that the victim had on her own computer.

14 While going through the victim's SMSes in the stolen handphone, the appellant saw an SMS from the victim to her sister. In the SMS, the victim said that the appellant had "low EQ" because of a previous incident where despite her reluctance to agree, the appellant insisted on hitching a ride when the victim's father gave her a ride home.

15 The appellant was angered by what he saw. On 8 March 2015, he logged into the victim's SMU student account and de-registered her from one of the modules that she had enrolled in. As there was no immediate reaction from the victim, the appellant used her account to de-register her from another module "to get a reaction from her".

16 On 10 March 2015, the appellant logged into the victim's ex-boyfriend's Facebook account and used it to send a private message saying "hello" to the victim. The appellant then used his own Facebook account to send a similar private message to the victim, to make her believe that he was also a victim of the same unknown hacker.

17 As part of his plan to get back at the victim, the appellant created a fake Instagram account with the name "[victim's name] is here", mirroring the spelling of one of the victim's Gmail accounts. The profile picture of the Instagram account was a photograph of the victim. The appellant posted photographs of the victim and her ex-boyfriend with captions that carried sexual innuendos. The Instagram account was set to "public" mode, and these photographs could be viewed by any member of the public.

18 Meanwhile, on 9 March 2015, the victim reported to SMU that her student account had been hacked and that the hacker had de-registered her from two of her subject modules without her consent. On 10 March 2015, the victim informed the appellant that her SMU student account had been compromised and advised him to change his SMU student password.

19 On 11 March 2015, the appellant wrote to SMU claiming that he had also been de-registered from one of his subject modules without his consent. SMU investigated and discovered that the IP address which had accessed the victim's Telegram account without her authority was the same IP address previously tagged to the appellant's SMU student account.

20 SMU confronted the appellant on 23 March 2015. He vehemently denied committing the offences and SMU agreed to give him some time to think about

it. On the same day, the appellant told the victim that SMU was investigating him and lied to her that he had been threatened by the "harasser" who had sent him up-skirt images of the victim and that he had been extorted into giving the "harasser" $2,000 to stop his actions.

21 The victim believed the appellant's lies and accompanied him to meet with SMU staff to try and exonerate the appellant. As the appellant had failed to come clean, the SMU staff informed the appellant that they would leave the investigation to the police.

22 Sufficiently troubled, the victim went to the police station on 24 March 2015 to make a report about the appellant paying the "harasser" $2,000. The police asked the appellant to give a statement.

23 In his initial statement, the appellant denied committing any offences. Instead, he concocted a detailed story about how, on 21 March 2015, he received an email from the victim's Hotmail account attaching a screenshot of a private WhatsApp conversation between the victim and her ex-boyfriend "about masturbating", together with images of a vagina and the victim lying on the bed.

24 The appellant said he had been asked to pay the "harasser" $2,000 and that he met a person at 3.00am in Sembawang Park to pass him the money in a white plastic bag. He described the "harasser" as a man "about 1.7 metres tall, Chinese, skinny, wearing jeans, black T shirt, aged around 18".

25 The appellant also told the police that on 22 March 2015, he received an email from the victim's Hotmail account with his home address and was afraid that the harasser had information to hurt his family. The appellant said that he

thought the harasser had access to his computer, and claimed that he did not want to lodge a police report because he feared for the safety of his family.

26 The police subsequently conducted a raid on the appellant's residence and seized his Apple Macbook and handphone. A preliminary search revealed an up-skirt video of the victim and personal photographs belonging to the victim. When confronted, the appellant maintained his innocence.

27 The appellant was brought back to the police station where he admitted to the offences after he was confronted with the evidence of the up-skirt videos and photographs on his Macbook.

28 Investigations revealed that the appellant had disposed of the victim's handphone in a rubbish bin near an MRT station. The handphone has not been recovered.

The sentencing framework in *Lim Teck Kim v Public Prosecutor*

29 Both the prosecution and the appellant referred me to the recent High Court judgment in *Lim Teck Kim v Public Prosecutor* [2019] SGHC 99 ("*Lim Teck Kim*"). In that case, the learned judge proposed a sentencing framework for the offence of unlawful stalking under s 7 of POHA, which is punishable with a fine not exceeding $5,000 or with imprisonment not exceeding 12 months or to both. The proposed framework identifies seven offence-specific factors and prescribes a maximum of either three or five points to each factor based on their relative weights. The number of points allocated for each factor would depend on the degree of aggravation occasioned by that factor. More points may be added for additional offence-specific factors (if any). The total number of

points would then determine the indicative starting sentence. The indicative starting sentence for each point was proposed to be as follows:

(a) One to five points – a fine of between $1,000 (one point) to $5,000 (five points).

(b) Six or more points – imprisonment of 0.8 months (six points), increasing by 0.8 months for each additional point.

30 The prosecution submitted that whether a particular factor causes more harm than another should turn on the facts of the case and therefore ascribing three or five points as the maximum to each factor was arbitrary. The prosecution proposed instead that every offence-specific factor should be assigned a maximum of five points. Applying its modified version of the *Lim Teck Kim* framework, the prosecution submitted that the appropriate sentence in the present case, after taking into consideration the appellant's plea of guilt, should be an imprisonment term of eight and a half months.

31 The appellant submitted that under the *Lim Teck Kim* framework (without any modification), the appropriate sentence of imprisonment in the present case should not exceed three months.

32 The *Lim Teck Kim* framework sought to refine the sentencing methodology developed in *Ng Kean Meng Terence v Public Prosecutor* [2017] 2 SLR 449 ("*Terence Ng*"), by introducing the points system described in [29] above.

33 In *Terence Ng,* the Court of Appeal enunciated a sentencing framework which requires a court to (a) identify the number of offence-specific aggravating

factors in a case, (b) determine, based on the number and intensity of the aggravating factors, which of three sentencing bands the case falls under, (c) identify where precisely within the sentencing band the case falls in order to derive an indicative starting sentence, and (d) adjust that indicative sentence to reflect the presence of any offender-specific aggravating and mitigating factors (*Terence Ng* at [73]; see also *Pram Nair v Public Prosecutor* [2017] 2 SLR 1015 at [119]). The offence in question in *Terence Ng* was rape but there is no reason why the approach taken in *Terence Ng* cannot be applied in developing sentencing frameworks for other offences.

34 The learned judge in *Lim Teck Kim* took the view that the *Terence Ng* framework (a) has an overt focus on the number of aggravating factors, (b) implicitly assumes that each offence-specific factor carries the same weightage and (c) disregards the possibility that each factor may carry different aggravating weights in influencing the sentence. In his Honour's view, the proposed points system would "more accurately evaluate the appropriate amount of weight to be ascribed to each offence-specific factor" and take into account not only the number of offence-specific factors present but also the different weightage or intensity of each of these factors (*Lim Teck Kim* at [27]).

35 I disagreed with the view of *Terence Ng* that was taken in *Lim Teck Kim*. The *Terence Ng* framework clearly requires the court to consider *both* the number of offence-specific factors as well as the intensity or aggravating weight of each factor (see [33] above). The *Terence Ng* framework does *not* assume, implicitly or otherwise, that each factor carries the same weightage; neither does the framework disregard the possibility that each factor may carry different aggravating weights. Instead, the *Terence Ng* framework simply leaves the

assessment of the intensity of each factor to the sentencing judge. The real difference introduced by the *Lim Teck Kim* framework is that it uses a points system for this assessment.

36 I had reservations about the points system introduced by the *Lim Teck Kim* framework. I was also not persuaded that the modification proposed by the prosecution was sufficient to address my reservations.

37 First, the points system fixes the correlation of the highest aggravating weight of one factor to that of another factor. Assigning a maximum of three points to one factor and five points to another factor meant that the highest aggravating weight of the former would be 60% of the highest aggravating weight of the latter, no matter what the facts were. Further, the *Lim Teck Kim* framework assumes that three points for one factor is comparable in intensity to three points for another factor. I was not persuaded that this was a better approach to take. As the prosecution submitted, whether one particular factor causes more harm than another should turn on the facts of the case.

38 The prosecution's suggestion of assigning the same maximum number of points to every factor merely treated the highest aggravating weight for any one factor to be the same as another. In my view, this modification did not address the reservations I had with the points system. Indeed, the prosecution's suggestion ran contrary to its own submission that the harm caused by one factor compared to another depends on the facts of the case.

39 Second, by fixing the intensity correlation between one aggravating offence-specific factor and another, the *Lim Teck Kim* framework imposes an unjustifiable constraint on the sentencing judge. In contrast, the *Terence Ng*

framework allows the sentencing judge to assess the intensities of the different aggravating factors in a qualitative and holistic manner.

40 Third, in principle, the maximum sentence is meant for the offender whose conduct has been assessed to be among the worst conceivable for the offence in question: *Angliss Singapore Pte Ltd v Public Prosecutor* [2006] 4 SLR(R) 653 ("*Angliss*") at [84]. Offenders in less serious cases should receive lower sentences. The seriousness of each case is determined relative to the "worst conceivable case". Therefore, the seriousness of a case relative to the "worst conceivable case" should be correlated to the sentence for that case relative to the maximum sentence. As the court said in *Angliss* (at [84]), "sentencing judges must take note of the maximum penalty and then apply their minds to determine precisely where the offender's conduct falls within the spectrum of punishment devised by Parliament" and (at [87]) "there must be a sense that the sentence is proportionate not only to the culpability of the offender but also in the context of the legislative scheme".

41 Under the *Lim Teck Kim* framework, the total points allocated to a case can reach 25 points (*Lim Teck Kim* at [39]). In fact, it can be more because there is provision for "additional independent factors" (*Lim Teck Kim* at [34]). Taking 25 points as the worst conceivable case, the seriousness of a case (based on the total points allocated to it) is therefore benchmarked against that of a 25-point case. However, the indicative starting sentence reaches the statutory maximum of 12 months at 20 points (*Lim Teck Kim* at [39]). The indicative starting sentence proposed by the framework is therefore benchmarked against the indicative starting sentence for a 20-point case instead of a 25-point case. The result is a mismatch between the *seriousness* of a case relative to the worst conceivable case, and the indicative starting *sentence* for that case relative to

the statutory maximum sentence. The effect, in my view, is that the indicative starting sentences for the less serious cases are higher than they should be on the spectrum of punishment provided by law for the offence in question.

42 The learned judge in *Lim Teck Kim* did point out that during the second stage of the framework, the indicative starting sentence can be calibrated downwards for offender-specific mitigating factors and that this may result in a recommended final sentence below 12 months' imprisonment. That may be true. However, the recommended final sentence in the worst conceivable case would still be expected to exceed the statutory maximum sentence for two reasons. First, the worst conceivable case would be expected to have minimal mitigating offender-specific factors. Second, offender-specific factors can be aggravating as well (*Terence Ng* at [64]–[65]) and the worst conceivable case can be expected to have offender-specific aggravating factors. Therefore, even if one compares recommended final sentences, there would still be a mismatch between the seriousness of the case and the sentence.

43 Fourth, the *Lim Teck Kim* framework is likely to lead to a comparison between the number of points given for individual factors in different cases. This is in turn likely to lead to individual factors being viewed in isolation and I was not persuaded that this was a better approach. With the *Terence Ng* framework, the court is not likely to lose sight of the holistic appreciation of the overall case.

44 The assessment of the impact of aggravating offence-specific factors in sentencing is a qualitative exercise. The *Lim Teck Kim* framework recognises this but attempts to reflect this qualitative assessment, quantitatively using the

points system. For the above reasons, I respectfully declined to adopt the *Lim Teck Kim* framework.

The sentences in the present case

45 As stated earlier, the District Judge sentenced the appellant to concurrent imprisonment terms of three days for the offence of theft and 10 months for the offence of unlawful stalking. The present appeal was against both sentences but the focus of the appeal was on the sentence for the offence of unlawful stalking.

46 Before me, the appellant did not downplay the seriousness of his actions. His submissions on the sentence were generally similar to his submissions before the District Judge.

Whether rehabilitation should be the dominant sentencing consideration

47 The appellant argued that rehabilitation, not deterrence, should be the dominant sentencing consideration and that he should be placed on probation. The appellant relied on the following offender-specific factors:

(a) He was 21 years old at the time of the offences.

(b) He was remorseful and had shown rehabilitative progress during the long intervening period before he was charged in court.

(i) He wrote a sincere letter of apology to the victim.

(ii) He voluntarily dropped out of SMU after learning that the victim preferred not to see him there.

(iii) He faithfully reported to the police every month for three years.

(iv) Initially, he did not engage a lawyer because he wanted to take full responsibility for his actions. He only did so upon the Judge's suggestion when his case was first mentioned.

(v) He has remained crime-free.

(vi) He has adhered strictly to the restrictions imposed by the probation officer.

(vii) He has kept himself gainfully employed.

(viii) He voluntarily sought psychiatric help from the Institute of Mental Health.

(ix) His MSF Psychological Report noted his active efforts at self-improvement and his Probation Report reflected his excellent work attitude. The Probation Report also noted his willingness to receive help to manage his emotions and expectations.

(c) The MSF Psychological Report noted his concrete and realistic plans for his future, including pursuing a degree in computer science, and recommended that his academic or vocational pursuits should be facilitated and reinforced.

(d) The probation officer concluded that there was scope to work with him in a community based setting and recommended that he be placed on probation.

(e) He has strong familial support. His mother is currently not working and can spend more time to guide him.

(f) He has suffered hardship as a result of the three-year delay in prosecuting him.

(g) A long custodial sentence would be crushing as it would dash his hopes of pursuing further education and make it more difficult for him to be accepted to a school.

48 The District Judge referred to *A Karthik v Public Prosecutor* [2018] 5 SLR 1289 ("*Karthik*") in which the Chief Justice said (at [44]) that if an offender is above the age of 21 at both the time of the offence and the time of sentencing, rehabilitation would typically not be the operative concern (GD, at [31]). The District Judge therefore treated the appellant as an adult offender for whom rehabilitation would not be the operative concern and probation an exception rather than the norm.

49 The District Judge decided against probation and concluded that deterrence should be the dominant sentencing consideration because the offence of unlawful stalking is a serious one and the appellant's conduct was "one of the worst" cases seen (GD, at [42]). The District Judge found it gravely disturbing that the appellant had violated his victim repeatedly by surreptitiously taking up-skirt videos of the victim to "invade into her private life".

50 Before me, the appellant argued that rehabilitation is an operative consideration when sentencing adult offenders if the particular offender demonstrates an extremely strong propensity for reform and/or there are exceptional circumstances warranting the grant of probation (*Karthik* at [34]).

51 I agreed with the District Judge that rehabilitation should not be the dominant sentencing consideration in this case. I accepted the appellant's submission that he had demonstrated rehabilitative progress. However, it was clear to me that it fell short of an "extremely strong propensity for reform". There were also no exceptional circumstances warranting the grant of probation.

52 Further and in any event, the focus on rehabilitation can be diminished or even eclipsed by considerations such as deterrence or retribution where the circumstances warrant, such as where the offence is serious, or the harm caused is severe, or the offender is recalcitrant, or rehabilitative sentencing options are not viable: *Public Prosecutor v Koh Wen Jie Boaz* [2016] 1 SLR 334 at [30], cited in *Public Prosecutor v Lim Chee Yin Jordon* [2018] 4 SLR 1294 at [35].

53 The maximum punishment prescribed by law for unlawful stalking does not suggest that the offence should be considered to be so serious that considerations of deterrence should trump those of rehabilitation. However, in the present case, it cannot be disputed that the harm caused to the victim by the appellant's conduct was so severe that considerations of rehabilitation had to give way to considerations of retribution in sentencing the appellant.

54 The District Judge was therefore correct in rejecting probation. I also agreed with the District Judge that a custodial sentence was called for.

Whether 10 months' imprisonment was manifestly excessive

55 I agreed with the appellant that the sentence of 10 months' imprisonment for the unlawful stalking offence was manifestly excessive. First, in my view, the sentence of 10 months was not in line with the precedents.

56 In *Tan Yao Min v Public Prosecutor* [2018] 3 SLR 1134 ("*Tan Yao Min*") the High Court considered seven precedents in which the offenders were sentenced to three to six months' imprisonment for unlawful stalking. The details of these seven cases can be found in the grounds of decision in *Tan Yao Min* at [82]–[88]. However, it is useful to highlight the following four cases in which sentences of six months' imprisonment were imposed:

(a) *Public Prosecutor v Lai Zhi Heng* (SC-912644-2015, Magistrate's Arrest Case No 909121 of 2015 and others) – As a result of the offender's threats, the victim sent him 30 photographs of herself in the nude. The offender printed flyers with harassing messages, her nude photographs and her personal information, and posted them publicly near her home. He also uploaded her nude photographs onto the Facebook group for her interest group at school, with the false message that she was offering prostitution services. The offender also threatened the victim by saying that he would "wreck a havoc" in her life and make her "regret it" if she did not meet him. The offender pleaded guilty to a charge of unlawful stalking under s 7(1) of POHA and was sentenced to six months' imprisonment for the offence.

(b) *Public Prosecutor v Adrian Goh Guan Kiong* (SC-902574-2016, Magistrate's Arrest Case No 902040 of 2016 and others) – The offender took photographs of the victim in the nude, with her consent. He subsequently sent the nude photographs to a WhatsApp chat group comprising her colleagues and superiors. The offender also sent an e-mail to the victim's superior about the victim and her colleague having sex in their organisation's uniform, and a letter to the victim's father purporting to be from the family's church and condemning her

behaviour. The offender pleaded guilty to a charge of unlawful stalking under s 7(1) of POHA and was sentenced to six months' imprisonment. A charge under s 30(2)(*a*) of the Films Act for possessing 331 obscene films, was taken into consideration for sentencing.

(c) *Public Prosecutor v Moh Yan Chung* [2017] SGDC 46 – The offender pleaded guilty on the first day of trial to five charges under s 376B(1) of the Penal Code for having commercial sex with a minor and one charge of unlawful stalking under s 7(1) of POHA. The victim in the unlawful stalking charge was the minor with whom he had had commercial sex. The offender contacted the victim's then-boyfriend via Facebook under a moniker and informed him of the investigations and the prostitution activities. The offender also contacted at least five of the victim's friends and "warned them" of the kind of person she was. The offender was sentenced to six months' imprisonment for the unlawful stalking offence.

(d) *Public Prosecutor v Tan Boon Wah* (SC-910153-2016, Magistrate's Arrest Case No 908859 of 2016 and others) – The offender stalked his former partner for about one year by confronting him outside his home, following him to places he frequented, calling him daily, and sending him messages that gave the impression that the victim was under surveillance. The offender also uploaded photos of them kissing to his Facebook account, e-mailed the victim nude photographs that he had surreptitiously taken of the victim during their relationship, and followed him in a taxi. The offender was sentenced to six months' imprisonment for unlawful stalking.

57 With respect to the remaining three cases:

(a) sentences of five months' imprisonment were imposed in a case involving a 12-year old victim, and a case in which the acts of harassment were incessant and included switching off the electricity and water supplies to the victim's home (see *Tan Yao Min* at [86] and [88]); and

(b) a sentence of three months' imprisonment was imposed in a case in which the offender monitored the victim at her home and at each new workplace, monitored her interactions with her boyfriend and threatened her via three anonymised Facebook accounts. The offender also sent text messages to the victim's boyfriend demanding that he break up with the victim, and shouted at the victim's boyfriend at his workplace. The offender was sentenced to two months' imprisonment for the unlawful stalking offence committed against the victim's boyfriend (see *Tan Yao Min* at [85]).

58 In *Tan Yao Min*, the offender pleaded guilty and was convicted on three charges (see *Public Prosecutor v Tan Yao Min* [2017] SGDC 167):

(a) criminal intimidation under s 506 (second limb) of the Penal Code;

(b) intentionally causing alarm under s 3(1)(*b*) of POHA; and

(c) unlawful stalking under s 7(1) of POHA.

The victim in the criminal intimidation charge and the victim in the unlawful stalking charge were two sisters aged 18 and 14 respectively ("the two sisters"). The victim in the charge for intentionally causing alarm, was the two sisters' grandmother. All three offences were committed in 2017.

59 The offender had antecedents for similar offences. In 2011, the appellant (then aged 17) was convicted on six charges, four for mischief under s 426 of the Penal Code, one for attempted mischief under s 426 read with s 511 of the Penal Code and one for wrongful confinement under s 342 of the Penal Code. He was ordered to reside in a juvenile home for 30 months and was discharged in end 2013. The six charges largely related to incidents where the appellant had identified young girls, trailed them to their homes and subsequently wrote on the walls of their homes asking the girls' parents to let him have sex with their daughters. The two sisters were the victims in two of these six charges.

60 In 2015, the appellant was convicted on a charge of making an insulting communication with intent to cause alarm under s 3(1)(*b*) of the POHA. The offender had posted notes at the two sisters' home in which he expressed his sexual desires towards them in rather explicit terms. He was ordered to undergo 15 months' supervised probation.

61 In *Tan Yao Min*, the District Court sentenced the offender to 10 months' imprisonment for the criminal intimidation offence, two weeks' imprisonment for the offence of intentionally causing alarm and eight months' imprisonment for the unlawful stalking offence. The sentences for the criminal intimidation offence and the unlawful stalking offence were ordered to run consecutively. The High Court dismissed the appeal against the sentences.

62 The appellant also referred me to another case that was reported in The Straits Times (Elena Chong, "Convicted Stalker Jailed Again for Continuing to Harass Victim", *The Straits Times* (17 May 2017)) in which a sentence of nine months' imprisonment was imposed for the offence of unlawful stalking. The case referred to in the report was *Public Prosecutor v Tan Boon Wah* (SC-

910153-2016, Magistrate's Arrest Case No 908859 of 2016 and others). The offender, Tan Boon Wah, is the same offender in the case referred to in [56(d)] above. On the day that he was released from prison for the previous offence on a remission order, the offender started stalking his ex-boyfriend again using a similar *modus operandi*. Despite the police being called a few times, the offender's unlawful stalking activities did not stop. He also persisted in his actions even after he was charged and put on bail, continuing to loiter around the victim's house and posting the victim's personal details and their intimate photographs on the Internet.

63 In *Lim Teck Kim*, the offender was the jilted ex-boyfriend of the victim. He inflicted bruises on himself, threatened to hurt himself, threatened to kill himself, and pleaded with the victim to rekindle her relationship with him. The District Judge sentenced the appellant to three months' imprisonment for the offence of unlawful stalking under s 7 of POHA. The High Court allowed the appeal and imposed the maximum fine of $5,000 instead.

64 In my view, the sentence of 10 months' imprisonment in the present case was manifestly excessive when compared to the precedents. I noted that the up-skirt videos in the present case were not disseminated to third parties. The District Judge was of the view that the appellant was more culpable than the offender in *Tan Yao Min* (GD, at [52]). I disagreed. In *Tan Yao* Min, the younger sister was only 14 years old and the offender's antecedents were highly aggravating. His antecedents involved other young girls and he had been targeting the two sisters over the course of some six years. The younger sister was only eight years old when she was first targeted. There was clearly no remorse. In my view, the facts in *Tan Yao Min* were far more aggravating.

65 I also agreed with the appellant that the second case involving the offender Tan Boon Wah (at [62] above), was also more aggravating than the present case. There, the offender was clearly recalcitrant. He also persisted in his actions even after he was charged, and posted the victim's personal details and their intimate photographs on the Internet.

66 Second, I was of the view that the District Judge had not given sufficient weight to the appellant's mitigating factors. I agreed with the District Judge that the appellant did not show remorse during the investigations. However, I was satisfied that since then, he had shown genuine remorse as demonstrated by his letter of apology to the victim, his decision to withdraw from SMU, and his initial decision not to engage a lawyer because he wanted to take full responsibility for his actions. I noted that the reason for his withdrawal from SMU was disputed. The appellant claimed that he did so out of respect for the victim's request conveyed to him by the investigation officer. The prosecution disputed this and alleged that the appellant did so out of shame. It seemed to me that either reason still demonstrated his remorse.

67 Further, the appellant has shown rehabilitative progress (see [47] above). Although his rehabilitative progress was not sufficient to support rehabilitation being the dominant sentencing consideration, it remained a relevant mitigating factor for the purpose of determining the appropriate sentence of imprisonment to be imposed. I noted the positive recommendations in his MSF Psychological Report and Probation Report, the appellant's willingness to receive help and the strong familial support available to him.

68 In my view, there were strong mitigating factors in this case. Taking into consideration both the offence-specific aggravating factors and the offender-

specific mitigating factors, I was of the view the appellant's case should be pegged just below the four cases set out in [56(a)] to [56(d)] above. I therefore considered that justice would be done with a sentence of imprisonment of five months in respect of the offence of unlawful stalking. I found no reason to disturb the District Judge's sentence of three days' imprisonment in respect of the theft offence or his decision that both sentences run concurrently.

Conclusion

69 For the above reasons, I allowed the appeal in respect of the offence of unlawful stalking under s 7 of POHA and reduced the sentence of imprisonment from ten months to five months.

Chua Lee Ming
Judge

Raphael Louis and Kenii Takashima (Ray Louis Law Corporation)
for the appellant;
Nicholas Khoo and Kang Jia Hui (Attorney-General's Chambers)
for the respondent.