IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 75

Magistrate's Appeal No 9041 of 2015

Between

CHAN CHUN HONG

… *Appellant*

And

PUBLIC PROSECUTOR

… *Respondent*

JUDGMENT

[Criminal procedure and sentencing]—[Sentencing]—[Sexual Offences]

Chan Chun Hong
v
Public Prosecutor

[2016] SGHC 75

High Court — Magistrate's Appeal No 9041 of 2015
Sundaresh Menon CJ
8 October 2015

20 April 2016 Judgment reserved.

Sundaresh Menon CJ:

Introduction

1 Child sex tourism has given rise to a global human rights crisis. It is an industry that caters primarily to paedophiles who travel, usually to developing countries, to engage in commercial sex with the world's poorest children. The former United States ("US") Secretary of State Colin Powell has described it as "a sin against humanity and … a horrendous crime": see Kelly M. Cotter, "Combating Child Sex Tourism in Southeast Asia" (2009) 37 Denv. J. Int'l. L. & Pol'y. 493 at 504.

2 The cross-border nature of the problem demands a transnational response. As part of this response, several developed countries have acceded to international conventions and treaties that seek to protect the rights of children and have enacted complying domestic legislation targeted at deterring

the *demand* for child sex tourism from within their borders. In 2007, Singapore followed this path by introducing two provisions into the Penal Code (Cap 224, 2008 Rev Ed) ("the Penal Code"). The first of these provisions, s 376C, gives extra-territorial effect to the offence of engaging in commercial sex with minors. The second provision, s 376D, separately criminalises acts that facilitate or promote the commission of an offence under s 376C. The subject matter of this appeal pertains to s 376D.

3 The present appeal has been brought by Chan Chun Hong ("the Appellant") against the decision of the district judge ("the District Judge"), which is reported as *Public Prosecutor v Chan Chun Hong* [2015] SGDC 125 ('the GD"). In the proceedings below, the Appellant pleaded guilty to and was convicted of 12 charges which, amongst other offences, included one charge under s 376D(1)(*a*) of the Penal Code and three charges under s 376D(1)(*c*) of the Penal Code. The offence under s 376D(1)(*a*) pertains to the Appellant having made travel arrangements for a subject to engage in commercial sex with minors overseas. The offences under s 376D(1)(*c*) pertain to the Appellant having acted to promote commercial sex with minors overseas. The District Judge sentenced the Appellant to a term of 36 months' imprisonment for the offence under 376D(1)(*a*) and 20 months' imprisonment for each of the offences under s 376D(1)(*c*). The Appellant was convicted of seven other offences under s 292(1)(*a*) of the Penal Code for which he was sentenced to two months' imprisonment for each charge, and an offence under s 30(1) of the Films Act (Cap 107, 1998 Rev Ed) for which he received a S$8,000 fine. The District Judge ordered the sentence for the offence under s 376D(1)(*a*) and for one of the offences under s 376D(1)(*c*) to run consecutively, giving an aggregate imprisonment term of 56 months. The Appellant contends on appeal that the sentence meted out for each of the four offences under s 376D is

manifestly excessive, and in any case, that the aggregate sentence too is manifestly excessive. The sentences imposed in respect of the other offences which the Appellant was convicted of were not appealed against. Accordingly, the sentences imposed in respect of the s 376D offences are the sole focus of this appeal.

4 The appeal came before me on 8 October 2015. I reserved judgment at the end of the hearing to consider the questions arising from this appeal in greater detail. Having considered the matter, I am satisfied that save in one respect, which has no bearing on the ultimate outcome of the appeal, the sentences imposed by the District Judge were not manifestly excessive. In the circumstances, the appeal is dismissed save that I order the sentence for one of the offences to be reduced. As the reduced sentence is to run concurrently with two other sentences which I order to run consecutively, there is no effect on the aggregate sentence that was imposed by the District Judge. Finally, I consider that two of the sentences could have been even higher than the sentence imposed by the District Judge. However, I did not interfere because there was no appeal by the Prosecution and also because I am satisfied that an aggregate term of 56 months' imprisonment is reasonable. I now give my detailed reasons.

The charges

5 The charges that were proceeded with and the corresponding sentences imposed by the District Judge are summarised in the following table:

Charge No.	**No. of charges**	**Provision**	**Offence**	**Imposed sentence**
MAC 900841, 900843, 900854, 900976, 900978, 900998 and 901001 of 2014	7	s 292(1)(*a*) of the Penal Code	Transmitting any obscene object by electronic means	2 months' imprisonment per charge (to run concurrently)
DAC 903310 of 2014	1	s 376D(1)(*a*) of the Penal Code	Making travel arrangements for a person to facilitate the commission of an offence under s 376C	36 months' imprisonment (to run consecutively with DAC 903313/2014)
DAC 903313, 903314, 903318 of 2014	3	s 376D(1)(*c*) of the Penal Code	Distributing information to promote conduct that would constitute an offence under s 376C	20 months' imprisonment per charge (DAC 903313/2014 to run consecutively)
MAC 901049 of 2014	1	s 30(1) of the Films Act	Having possession of obscene films	$8,000 fine (in default 4 weeks' imprisonment)

6 The Appellant consented to the following 133 charges being taken into consideration for the purposes of sentencing:

(a) 128 further charges of transmitting obscene materials by electronic means under s 292(1)(*a*) of the Penal Code;

(b) four further charges of distributing information to promote the conduct of commercial sex with a minor outside Singapore under s 376D(1)(*c*) of the Penal Code; and

(c) one charge of being in possession of films without a valid certificate under s 21(1)(*a*)(i) of the Films Act.

7 As s 376D of the Penal Code is the focus of this appeal, I set out the provision in full:

> **Tour outside Singapore for commercial sex with minor under 18**
>
> **376D.**—(1) Any person who —
>
> (*a*) makes or organises any travel arrangements for or on behalf of any other person with the intention of facilitating the commission by that other person of an offence under section 376C, whether or not such an offence is actually committed by that other person;
>
> (*b*) transports any other person to a place outside Singapore with the intention of facilitating the commission by that other person of an offence under section 376C, whether or not such an offence is actually committed by that other person; or
>
> (*c*) prints, publishes or distributes any information that is intended to promote conduct that would constitute an offence under section 376C, or to assist any other person to engage in such conduct,
>
> shall be guilty of an offence.
>
> (2) For the purposes of subsection (1)(*c*), the publication of information means publication of information by any means, whether by written, electronic, or other form of communication.
>
> (3) A person who is guilty of an offence under this section shall be punished with imprisonment for a term which may extend to 10 years, or with fine, or with both.

The facts

8 The Appellant first encountered child pornography in 2009. While researching child sex crimes and child abuse, he chanced upon sexually explicit images of child victims. Over time, he found himself attracted and then addicted to child pornography. His interest in child pornography intensified and he turned to internet platforms on which child pornography is distributed and shared amongst its users.

9 From December 2011 to early September 2012, the Appellant exchanged child pornographic material with other internet users by email. He typically saved the obscene materials onto his portable hard disk and then transmitted them to other users in exchange for which they would furnish him with new child pornographic materials. He was particularly interested in pornography involving children below the age of 12 years. By the time of his arrest, the Appellant had transmitted hundreds of sexually explicit photographs and videos of young girls to other users by email. The 135 charges under s 292(1)(*a*) that were preferred against the Appellant were in connection with the transmission of such obscene materials over the internet. Seven of the emails containing photographs and videos of young girls performing sexual acts formed the subject matter of the seven charges under s 292(1)(*a*) that the Prosecution proceeded with.

10 The level of the Appellant's involvement in trading items of child pornography was such that it caught the attention of the US Federal Bureau of Investigation ("FBI"). On 30 January 2013, the Singapore Police Force ("SPF") was tipped off by the FBI that the Appellant had been distributing child pornography. The FBI also passed on information suggesting that the Appellant had engaged in child sex tourism in some South-East Asian

countries including Indonesia, Cambodia and Philippines. A string of emails that he exchanged with a person called "Mike Timothy" beginning on 20 May 2012 revealed the following:

(a) The Appellant asked to trade pornographic pictures and videos of young girls with Mike Timothy.

(b) The Appellant suggested that Mike Timothy and the Appellant visit Thailand, Philippines, Vietnam or Cambodia together to have sexual intercourse with girls under the age of 14.

(c) The Appellant revealed that the youngest girl he had had sexual intercourse with was a 15-year-old girl in Phnom Penh, Cambodia.

(d) The Appellant informed Mike Timothy that he wanted to look for girls between the ages of 8 and 12 in Cambodia.

(e) The Appellant wanted to join Mike Timothy on a short weekend trip to Cebu, Philippines sometime in January or February 2013 to engage in sexual intercourse with young girls, preferably between the ages of 10 and 14.

(f) During the trip to Cebu, Philippines, the Appellant also intended to do a photo shoot of nude young girls holding sexy poses.

(g) The Appellant in fact travelled to Cebu, Philippines in January 2013 to meet Mike Timothy. The photo shoot was carried out and the Appellant posted the photos taken during the trip on his account on an internet platform. The photographs posted by the Appellant were of young girls wearing make-up and posing for the Appellant, dressed in cropped tops, short skirts and short dresses.

11 Following the FBI's tip-off, the SPF deployed an undercover police officer who used a moniker "Teo Dennis" to interact with the Appellant from 24 November 2013 until 10 February 2014 with a view to investigating the commission of offences under ss 376C and 376D. Teo Dennis initiated contact with the Appellant by adding him as a friend on Facebook and telling the Appellant that he had done so after chancing upon his profile. After some inconsequential exchanges, Teo Dennis broached the subject of there being "cheap and young girl [sic]" in Vietnam. The Appellant responded offering to "share more with [him] offline if [they] meet".

12 What appears to have transpired subsequently was that they continued to communicate by email. In these emails, Teo Dennis informed the Appellant that he wished to visit Vietnam in early 2014 to "find young girls" between 16 and 18 years old and invited the Appellant "to share his experience".

13 The Appellant responded by suggesting that Teo Dennis should consider younger girls between 12 and 16 years old. He informed Teo Dennis that he found "12 to 14 year olds the best as they are freshest [sic] … innocent … and very curious about sex". He went on to say that it was "sure safe" and the cost would depend on whether Teo Dennis was looking specifically for virgins. The Appellant also suggested visiting Cambodia instead of Vietnam because it was "cheaper" and "easier to find" commercial sex with minors there. He introduced Teo Dennis to a place called "Svay Pak" in Cambodia where girls between the ages of 6 and 16 could apparently be found.

14 The Appellant then suggested to Teo Dennis that he would accompany Teo Dennis to Cambodia to engage in commercial sex with minors on the condition that Teo Dennis paid for his "budget airplane return ticket to

Cambodia". The Appellant said he would pay for the rest of his expenses incurred during the trip. He assured Teo Dennis that the "[p]lace [was] definitely safe as [he had] been there", and that it was "quite well-organized". He told Teo Dennis that S$700 would be more than enough to cover all the expenses of the trip.

15 Subsequently, the Appellant asked Teo Dennis to transfer him a sum of S$1000 to cover both their air tickets and accommodation expenses. Teo Dennis duly did so on 1 February 2014.

16 In preparing for the trip, the Appellant planned that they would visit night spots to select young girls who would return with them to their hotel room. If they wished to be more adventurous, they could visit rural areas in search of even younger girls. On 9 February 2014, the Appellant emailed a person named "Le Minh Chau" seeking information on brothels in Phnom Penh with young child sex workers. On being told that Le Minh Chau would not be available to accompany the Appellant, he asked if Le Minh Chau could introduce him to any other local who was "well versed with the sex places in Cambodia". Le Minh Chau duly provided him with a contact.

17 On 10 February 2014, the Appellant purchased tickets for the both of them to travel to Phnom Penh. The departing flight TR 2816 was scheduled to leave Singapore on 1 April 2014 and the return flight, TR 2819, was scheduled to arrive in Singapore on 4 April 2014.

18 The proposed trip never materialised. The Appellant was arrested at Changi Airport on 1 March 2014. The SPF then conducted a search of the Appellant's house which yielded a total of 64 discs and 15 DVDs. 16 obscene films were found amongst those materials.

Decision below

19 The District Judge sentenced the Appellant to 36 months' imprisonment in respect of the s 376D(1)(*a*) offence and 20 months' imprisonment in respect of each of the three s 376D(1)(*c*) offences proceeded with against the Appellant. His reasons may be summarised as follows:

(a) The primary sentencing consideration at play is deterrence: at [9] of the GD.

(b) The New Zealand case of *R v Wales* [2011] NZHC 2074 ("*R v Wales*") (affirmed on appeal in *Wales v R* [2013] NZCA 233) was a relevant precedent in this connection. Section 376D of the Penal Code was based on s 144C of the New Zealand Crimes Act 1961. Wales, a 47-year-old male, had been convicted after trial of an offence under s 144C and sentenced to three years' imprisonment. Wales had booked flights to and made hotel reservations in Thailand for an undercover police officer to have sex with Thai boys as young as 13 years old. The undercover officer was the offender's first and only customer in the three years that Wales had been operating a travel agency website that offered tour services to Thailand. The District Judge thought *R v Wales* would be a "useful starting point" in relation to the offence under s 376D(1)(*a*): at [16] of the GD.

(c) The offence is serious and posed great harm to the victims involved even though (i) the Appellant was not running an organised business or syndicated operation; (ii) the present case appeared to be the only occasion where the Appellant had actually arranged a child sex tour; and (iii) his motivation for the trip, aside from having his

flight and accommodation expenses paid by Teo Dennis, was to have some companionship for his illicit venture: at [22] and [25] of the GD.

(d) The Appellant had no antecedents and has taken steps since his arrest to try to prevent a relapse of his paedophilic tendencies: at [26] of the GD.

20 As I have already noted, the District Judge imposed an imprisonment term of two months for each of the seven s 292(1)(*a*) offences proceeded with against the Appellant. He further imposed a total fine of S$8000 for the offence under s 30(1) of the Films Act pertaining to the 16 obscene films in the Appellant's possession. No appeal was brought against those sentences.

21 The District Judge also ordered that the 36 months' imprisonment sentence in respect of the s 376D(1)(*a*) offence was to run consecutively with the 20 months' imprisonment sentence in respect of one of the offences under s 376D(1)(*c*). He reasoned that the offences were distinct and that even if they were to be viewed as forming part of a single transaction, it was necessary for these two sentences to run consecutively because of the "strong need for general deterrence": at [40] of the GD.

The Appellant's submissions

22 The Appellant argues that the appropriate sentence for the offence under s 376D(1)(*a*) should be a term of 12 months' imprisonment for the following reasons:

(a) The New Zealand case of *R v Wales*, being a foreign authority, should be treated with caution. The District Judge erred in treating it as an applicable sentencing precedent.

(b) Even if the three-year imprisonment term in *R v Wales* should be treated as the relevant benchmark for the present appeal, the case can be distinguished on two grounds:

(i) First, the offender in *R v Wales* ran a website offering group tours to Thailand and made sexual references in the website metadata. Furthermore, he committed the offence for profit, causing the undercover officer to pay him NZ$12,500 to book air tickets for him from New Zealand to Thailand.

(ii) Second, the length of the imprisonment term in *R v Wales* must be viewed in the context of a more lenient remission scheme that New Zealand has as compared to Singapore. Under the New Zealand Parole Act 2002, offenders are eligible for parole on completion of one-third of the length of the sentence.

(c) Section 376B of the Penal Code makes it an offence to have commercial sex with a minor. The present offences are closely analogous to abetting the commission of an offence under s 376B. In cases of abetment, courts have generally meted out sentences of imprisonment that ranged between 18 and 24 months. This line of cases should be considered relevant when assessing the Appellant's culpability. Moreover, unlike the pimps charged in those cases, the Appellant was not operating an organised syndicate.

(d) A facilitator or promoter of child sex tourism who is charged with an offence under s 376D should be sentenced as if he were abetting the commission of an offence under s 376C. Under s 116 of the Penal Code, the maximum sentence for abetment in such

circumstances would be one quarter of the maximum punishment under the primary offence. Given that s 376C prescribes a maximum punishment of seven years' imprisonment, the Appellant should receive no more than a quarter of that term, which is a term of imprisonment of one year and nine months.

(e) Further, the sentences imposed in respect of offences under s 376B are relevant benchmarks. Where an offender has commercial sex with a minor, the starting sentence is around 12 months' imprisonment: see *Tan Chye Hin v Public Prosecutor* [2009] 3 SLR(R) 873 and *Public Prosecutor v Wang Minjiang* [2009] 1 SLR(R) 867.

(f) The offence of s 376D(1)(*a*) was procured by an agent provocateur. This should be treated as a mitigating factor.

The Prosecution's submissions

23 The Prosecution, on the other hand, argues that the sentence imposed by the District Judge is not manifestly excessive. The principle of general deterrence assumes centre stage because offences of this nature take place on an international stage. The offence seeks to prevent further harm being inflicted upon children involved in the child sex industry and this necessitates sufficient emphasis being placed on the principle of general deterrence. An additional factor that calls for a strong deterrent message is that local involvement in the child sex industry is prevalent and such offenders are difficult to apprehend. Accordingly, the Prosecution submits that the starting point for sentencing for an offence under s 376D(1) should be a term of about 30 months' imprisonment.

24 In the present case, it was contended that three factors justified the imposition of a 36-month imprisonment term for the s 376D(1)(*a*) offence:

(a) a significant number of minors could potentially have been implicated;

(b) victims as young as six years old were being targeted by the Appellant; and

(c) a significant degree of preparation had already taken place. The Appellant had even contacted a local guide to lead Teo Dennis and himself to their desired objectives.

25 The Prosecution also contends that *R v Wales* is a relevant sentencing precedent because:

(a) Its facts are analogous to the facts of this case.

(b) New Zealand and Singapore both impose a fairly similar range of sentences for sexual offences.

(c) The more lenient scheme of remission in New Zealand does not render the sentence that was imposed in that case irrelevant. It is incorrect as a matter of law and policy to consider the remission period in sentencing. The court imposes a sentence of imprisonment as a punishment for *past* conduct, whereas decisions on remission are matters for the executive and serve as a reward for *future* conduct which the offender may or may not earn during his time in prison.

26 As for the offence under s 376D(1)(*c*) and the 20-month imprisonment term, the Prosecution submits that this is justified for the following reasons:

(a) The Appellant, in disseminating information to Teo Dennis, was motivated by the prospect of obtaining, by way of exchange, further information about the child sex industry.

(b) The Appellant was not a mere conduit of information; he was an active "promoter" of child sex tourism.

27 Turning to the aggregate sentence of 56 months' imprisonment, the Prosecution contends that this is justified for the following reasons:

(a) The one-transaction rule is not violated because the two offences protect distinct legal interests. Moreover, the individual sentences are each appropriate for the reasons that have already been outlined.

(b) The fact that the Appellant suffers from paedophilia should not significantly detract from the focus on deterrence because this offender, despite his condition, was fully capable of appreciating the gravity of his criminal conduct.

(c) There is no basis for the sentence to be reduced on account of the fact that an undercover police officer was involved in the communications that led to the commission of the offence under s 376D(1)(*a*). On the facts, the involvement of the police officer did nothing more than give the Appellant an unexceptional opportunity to commit the offence.

Young *amicus curiae*'s submissions

28 As the case involved some novel issues in sentencing, I appointed Mr Jerald Foo to assist me under the Young Amicus Curiae Scheme. Mr Foo submits that the sentencing framework for s 376D offences should be based on a broad distinction drawn between, on the one hand, the sex tour operator who operates a commercial venture and whose acts can be seen as part of an ongoing course of conduct, and, on the other, the ad-hoc organiser whose acts may be seen as isolated or opportunistic and not primarily driven by pecuniary motives.

29 Mr Foo also submits that foreign jurisprudence may be useful in distilling the relevant sentencing principles pertaining to s 376D offences because: (a) the section was enacted in order to give effect to Singapore's obligations under an international treaty; and (b) there are no local precedents pertaining to s 376D offences. However, he also submits that these should not be applied or treated as sentencing benchmarks in the strict sense.

30 Accordingly, he contends that *R v Wales* should be considered for the purpose of identifying the relevant sentencing principles and approach to sentencing for an offence under s 376D, but little weight should be placed on the precise sentence imposed there because of, among other things, the significant factual differences between that and the present case. On the whole, according to Mr Foo, the offender in *R v Wales* was more culpable than the Appellant.

31 Mr Foo also notes from the Parliamentary debates pertaining to the enactment of s 376D that the legislation had been introduced in order to discourage *demand* for child sex tourism, recognising that Singapore is a

"sending country of sex tourists". Parliament also took pains to emphasise the seriousness of the offences.

32 Section 376D offences therefore call for the imposition of a deterrent sentence because:

(a) It is difficult to detect the commission of such offences and to apprehend the offenders.

(b) The offences are serious.

(c) The offences are widely committed.

(d) The offence is directed at protecting vulnerable victims.

33 Mr Foo further advocates a two-stage approach to sentencing for offences under s 376D:

(a) At the first level, the court should examine the role of the offender and his motivation in committing the offence. Specifically, the degree to which the offender encouraged or facilitated the commission of the s 376C offence will be a relevant sentencing consideration for s 376D(1)(*c*) offences. This necessitates closer attention being given to precisely what the offender has done to promote or assist in the commission of an offence under s 376C.

(b) At the second level, the court should examine the consequences of his actions. This is important because the level of harm caused is an important yardstick to gauge the seriousness of the offence.

34 Finally, Mr Foo submits that the two offences under s 376D(1)(*a*) and (*c*) could be said to protect the same legal interest of combating the demand for child sex tourism. In the circumstances, he submits that having the sentences for these offences run consecutively would offend the one-transaction rule. Instead, he submits that it would be more appropriate to run two or more of the sentences in respect of the s 292(1)(*a*) offence consecutively with one of the s 376D offences, especially given that the Appellant's culpability, in Mr Foo's view, resides at the lower end of the culpability spectrum.

The issues arising in this appeal

35 It is necessary for me to apply my mind to three broad issues:

(a) whether the term of imprisonment of 36 months for the single offence under s 376D(1)(*a*) is manifestly excessive;

(b) whether the term of imprisonment of 20 months for each of the three offences under s 376D(1)(*c*) is manifestly excessive; and

(c) whether the aggregate sentence of 56 months' imprisonment, arising from the District Judge's decision to run the sentences for the s 376D(1)(*a*) offence and for one of the s 376D(1)(*c*) offences consecutively, is either wrong in principle or manifestly excessive.

36 I begin with a discussion of the principles that should govern sentencing in this area, before turning to each of the three specific issues outlined above.

Sentencing principles applicable to s 376D offences

The problem of child sex tourism in its context

37 In developing the sentencing principles and considerations relevant to s 376D offences, it is important to have regard to the legislative intent behind its enactment (*Mehra Radhika v Public Prosecutor* [2015] 1 SLR 96 ("*Mehra Radhika*") at [27]-[28]). To fully appreciate that, it is important to come to grips with the background against which the impetus to enact s 376D arose.

38 This in turn can be traced to the Government's commitment to implement its obligations under the United Nations Convention on the Rights of the Child 1989 ("UNCRC"). The UNCRC was entered into with the aim of combating the growing prevalence of international child sex tourism, and was in line with the Stockholm Declaration and Agenda for Action 1996 ("the Declaration") which had been adopted by Singapore.

39 It is estimated that over one million children worldwide are exploited in the commercial sex trade every year (Jonathan Todres, "Prosecuting Sex Tour Operators in U.S. Courts in an Effort to Reduce the Sexual Exploitation of Children Globally" 9 B.U. Pub. Int'l. L.J. 2-3 (1999) at p 1). It has also been reported that the child sex trade is a five billion dollar industry (Cynthia Price Cohen, "Child Sexual Exploitation in Developing Countries" 44 Int'l Comm of Jurists Rev 42 (1990) at p 42).

40 The rapid growth of this industry can be traced to the confluence of several factors including (1) devastating poverty, (2) armed conflicts, (3) rapid industrialization, and (4) explosive population growth (David Batstone, *Not For Sale* (HarperOne, 2007), at p 21). These factors may be seen as

contributing to the supply side of the problem. For impoverished families, selling women and children to criminal syndicates can offer a quick, even if a tragic and painful, exit from their economic plight (Patricia D. Levan, "Curtailing Thailand's Child Prostitution Through an International Conscience" (1994) 9 Am. U. J. Int'l. L. & Pol'y. 869 ("*Curtailing Thailand's Child Prostitution*") at p 875). From the perspective of criminal syndicates, children are viewed as coveted commodities because of the higher premium they command in the sex trade industry – a minor often fetches a higher price than an adult would (*Curtailing Thailand's Child Prostitution* at p 871). The push and pull factors on both sides of the supply chain gravely exacerbate the situation for child victims, turning them into prime targets of the sex trade.

41 On the demand side, child sex tourists are drawn to destination countries not only because of the ready supply of child victims, but also because this tends to come with "high levels of anonymity and seclusion" (John A. Hall, "Sex Offenders and Child Sex Tourism: The Case for Passport Revocation" (2011) 18 Va. J. Soc. Pol'y & L. 153 at p 157). This has been augmented in recent years by the expansive reach of the Internet, which has been described as "likely the single most important factor in the explosion of sex tourism" (Patrick J. Keenan, "The New Deterrence: Crime and Policy in the Age of Globalization" (2006) 91 Iowa L. Rev. 505 at p 514). The Internet has enabled users around the globe to share information with the click of a mouse (at pp 514-515); and again, users are assured of virtual anonymity.

42 The adverse effects that the child sex trade has on its victims do not need to be elaborated because they are so plain. These are recognised in the Declaration, which was expressly endorsed by Senior Minister of State for Home Affairs Associate Professor Ho Peng Kee ("the Minister") during the

Second Reading of the Penal Code (Amendment) Bill (*Singapore Parliamentary Debates*, Official Report, vol 83, col 2175 (22 October 2007) ("the Parliamentary Debates") at col 2188) and which Singapore has adopted. Articles 6 and 9 of the Declaration under the section titled "The Challenge" read as follows:

> 6. Poverty cannot be used as a justification for the commercial sexual exploitation of children, even though it contributes to an environment which may lead to such exploitation. A range of other complex contributing factors include economic disparities, inequitable socio-economic structures, … armed conflicts and trafficking of children. All these factors exacerbate the vulnerability of girls and boys to those who seek to procure them for commercial sexual exploitation.
>
> 9. The commercial sexual exploitation of children can result in serious, lifelong, even life threatening consequences for the physical, psychological, spiritual, moral and social development of children, including the threat of early pregnancy, maternal mortality, injury, retarded development, physical disabilities and sexually transmitted diseases, including HIV/AIDS. Their right to enjoy childhood and to lead a productive, rewarding and dignified life is seriously compromised.

43 This was the context in which Singapore became a signatory to the UNCRC and adopted the Declaration and which, in turn, led to the enactment of ss 376C and 376D. In the course of enacting ss 376C and 376D, child sex tourism was condemned by all those who spoke in Parliament in the strongest terms possible.

44 The need to combat the scourge is clear. However, for destination countries, the effectiveness of policies directed at curbing the supply side of the problem may be undermined by the legislative and enforcement challenges that some of these countries face. The second reading speech of the Australian Minister for Justice the Honourable Duncan Kerr, when introducing into law

s 50DB of the Crimes Act 1914, the Australian equivalent of s 376D, explains this point (as quoted in *R v ONA* (2009) 24 VR 197 at [54]):

> The principal aim of this legislation is to provide a real and enforceable deterrent to the sexual abuse of children outside Australia by Australian citizens and residents. … *They exploit the vulnerability of children in foreign countries where laws against child sexual abuse may not be as strict, or as consistently enforced, as in Australia.*
>
> The bill aims to ensure that cowardly crimes committed against children outside Australia which are not prosecuted in the country in which they were committed can be prosecuted effectively in Australia. …
>
> [emphasis added]

45 It may also be noted that because the victims are young children, they are usually under the effective control of their traffickers and fearful of the consequences of reporting them to the police (Emily Naser-Hall, "Tourists Have No Shame: Curbing Child Sex Tourism and Prosecuting Child Sex Tourists in Thailand, the United States, and Internationally" (2011) <http://works.bepress.com/emily_naser-hall/1> (accessed 5 April 2016) at p 9). In those cases, where offenders are apprehended, their prosecution is often hindered by the reluctance of the child-victims to come forward to testify against them for fear of reprisals. Of course, the difficulty of gathering evidence is also a relevant factor when it comes to sentencing those who do participate in child sex. This was a point noted during the Parliamentary Debates, in the course of which Member of Parliament Dr Teo Ho Pin said (at col 2205):

> Sir, sexual act committed against minors, especially young children, is one of the most despicable crimes in any society. Child sex abuses will not only destroy the lives of young children but leave them with emotional and physical scars for a lifetime. In a report by *The Daily Telegraph* (London) on 12th June 2007, it was highlighted that over the last five years, almost 8,000 people (including rapists and child molesters)

> who admitted to sexual offences had not been proceeded against in court. These included 1,600 offences involving children (350 of them aged under 13 years and 250 rape offences). *Very often, the Police cannot obtain evidence to bring the cases to court as the victims are not able or will not testify. As such, many of these offenders were not punished and were given only a warning. This is a serious loophole in the law.*
>
> [emphasis added]

46 The obstacles that make it unviable to tackle the problem by seeking to control the supply side are acknowledged in Article 7 of the Declaration:

> 7 Criminals and criminal networks take part in procuring and channeling vulnerable children toward commercial sexual exploitation and in perpetuating such exploitation. *These criminal elements service the demand in the sex market created by customers*, mainly men, who seek unlawful sexual gratification with children. *Corruption and collusion, absence of and/or inadequate laws, lax law enforcement, and limited sensitisation of law enforcement personnel to the harmful impact on children, are all further factors which lead, directly or indirectly, to the commercial sexual exploitation of children. It may involve the acts of a single individual, or be organised on a small scale (eg. family and acquaintances) or a large scale (eg. criminal network).*
>
> [emphasis added]

47 For these reasons, while implementing supply-side policies at "destination countries" is necessary, it has been widely recognised that it is equally, if not even more, important to tackle the issue by curbing *demand* for child sex at its root in the "sending countries". The sex industry in the "destination countries" exists and flourishes because of the demand that is fed by its customers who come mainly from "sending countries".

48 Given the transnational nature of the problem, the Declaration recognises the importance of employing a two-pronged approach directed at both "destination countries" and "sending countries" to shield children both from criminal syndicates and also from sex tourists who keep these syndicates

in business. Hence, the strategies recommended under the section titled "Agenda for Action Against Commercial Sexual Exploitation of Children" of the Declaration include the following:

> 4. Protection
>
> … d) in the case of sex tourism, develop or strengthen and implement laws to criminalise the acts of the nationals of the countries of origin when committed against children in the countries of destination ("extra-territorial criminal laws"); promote extradition and other arrangements to ensure that a person who exploits a child for sexual purposes in another country (the destination country) is prosecuted either in the country of origin or the destination country; strengthen laws and law enforcement, including confiscation and seizure of assets and profits, and other sanctions, against those who commit sexual crimes against children in destination countries; and share relevant data …

49 As recognised by the Minister in the Parliamentary Debates, Singapore has an international obligation to combat this global problem, and the enactment of ss 376C and 376D was an important step taken to bring us in line with other jurisdictions that have enacted similar laws, such as Australia, Canada, Hong Kong, Japan, New Zealand, US and the United Kingdom.

50 Even with the enactment of these provisions within the Penal Code, difficulties arise with enforcement. A Congressional Report prepared by the US Department of Justice (US Department of Justice, *The National Strategy for Child Exploitation Prevention and Interdiction, A Report to Congress* (August 2010) <http://www.justice.gov/psc/docs/natstrategyreport.pdf> at p 37) highlights this:

> Child sex tourists usually travel alone to foreign countries and operate in secret. Identifying victims and finding locations where abuse occurred is difficult, and evidence of the crime often is not preserved. Compounding the difficulties are differences in investigation and conflicts of law. Some investigative techniques such as wiretaps, covert recordings,

> and closed circuit television surveillance are prohibited in certain countries, and procedures for obtaining evidence must follow U.S. standards to be admissible in a U.S. prosecution. Moreover, the time and expense of sending investigators abroad and bringing witnesses to the United States for trial is significant and, for state or local agencies, the cost often is prohibitive. Prosecutors also face extradition challenges and considerable administrative obstacles when securing witnesses. Additionally, it is difficult for foreign victims to come to the United States and live in an unfamiliar environment for several weeks, often without family members, while they await testifying. Also, victims may be ostracized by their family and within their communities when they return home. Document translation also is time consuming and costly.

It is evident from the Parliamentary Debates that this too was recognised at the time the provisions were enacted.

51 In my judgment, a few propositions relevant to sentencing can be gleaned from the foregoing discussion.

(a) First, engaging in commercial sex with minors abroad and the related offence of facilitating or promoting this are *serious offences* which feed the child sex trade and contribute to evils such as child trafficking, child pornography, physical abuse and coercion of child-victims. These victims often suffer irreparable harm as a result of being trapped in the trade. To protect these vulnerable victims, a strong deterrent message must be sent to those who would participate in the trade in any way, including by promoting, encouraging or facilitating child sex tourism. The seriousness of these offences is reflected in the high maximum sentences of seven and ten years' imprisonment for the offences under ss 376C and 376D respectively.

(b) Second, prosecuting either the syndicates or child sex tourists in "destination countries" can often be riddled with difficulties. The success of the battle against child sex tourism hinges heavily upon "sending countries" curbing demand for such services through legislation and robust enforcement aimed at *deterring demand*. Both ss 376C and 376D have the common objective of curbing the demand for child sex tourism. Section 376C aims to deter child sex tourists from engaging in commercial sex with minors overseas, while all three sub-provisions of s 376D are targeted at acts that would promote or facilitate the commission of offences under s 376C. Significantly, promotion or facilitation, which may be described as the ancillary offence, carries a heavier maximum sentence than the primary offence in s 376C.

(c) Third, despite the enactment of the criminal provisions, there are real challenges with enforcement. Offenders hide behind the veils of cyberspace. Furthermore, given that the predicate offence is usually committed in a foreign jurisdiction, enforcement agencies often find it difficult to gather intelligence and sufficient evidence to successfully apprehend and prosecute offenders under s 376D. This gives rise to two considerations:

(i) First, it will generally not be realistic to calibrate the severity of the sentence in each case against the severity of the *actual harm* that has been caused by the offender. Where evidence of actual harm is available, it would undoubtedly be relevant as a potentially aggravating circumstance. But the converse is not true.

(ii) Second, the difficulties of detection call for the courts to adjust the punishment so as to ensure that the element of *deterrence* is properly maintained and would-be offenders are sufficiently discouraged from running the risk in the hope that they might successfully evade the efforts of the enforcement agencies (see *Ding Si Yang v Public Prosecutor and another appeal* [2015] 2 SLR 229 ("*Ding Si Yang*") at [49]).

52 Of course, this will be tempered by considerations of proportionality (*Public Prosecutor v Law Aik Meng* [2007] 2 SLR(R) 814 ("*Law Aik Meng*") at [30]; *Goik Soon Guan v Public Prosecutor* [2015] 2 SLR 655 ("*Goik Soon Guan*") at [22]); and *Vasentha d/o Joseph v Public Prosecutor* [2015] 5 SLR 122 ("*Vasentha*") at [35]–[36]).

53 Aside from this, it is also evident from the wide range of sentences that Parliament has prescribed for the offence under s 376D, that acts which enhance the demand for child sex tourism capture a wide spectrum of offending conduct with varying degrees of culpability. In my judgment, recognising Parliament's intention to (a) deter conduct that could potentially inflict *harm* on child victims (see [51(a)] above), and (b) deter conduct that would enhance *demand* for child sex tourism (see [51(b)] above), two specific considerations should be borne in mind in sentencing:

(a) the degree to which the particular offending conduct enhances the demand for child sex tourism; and

(b) the scale of the offender's activities which may indicate the degree or extent of potential harm that such conduct could have on the child victims.

54 The greater the extent to which the offending conduct enhances demand for child sex tourism or the extent of actual or potential harm on child victims, the more severe the conduct and hence the greater the call for heavier punishment. There is plainly a wide array of circumstances that could influence these considerations. In this regard, I accept Mr Foo's submission (see [28] above) that it is necessary to incorporate within the sentencing framework an inquiry directed at accurately situating the offender's activities in the spectrum that lies between the full-fledged commercial operator driven by profit and the *ad hoc* offender whose acts are opportunistic and not driven primarily by financial returns. Aside from this, the sentencing framework should seek to gauge the extent to which the offender's conduct enhances demand for child sex tourism and the extent of the potential harm that flows from such conduct. In this connection, I set out a non-exhaustive list of factors that may inform the inquiry as follows:

(a) Factors relevant to an offence under s 376D(1)(*a*):

(i) whether the offence was committed in the context of the offender being approached to do so by the recipient as opposed to the offender soliciting customers;

(ii) the extent to which the offender has facilitated the proposed trip: the more sophisticated and comprehensive the proposed arrangement is and the greater the degree of expertise employed, the more culpable the offender would be;

(iii) whether the proposed trip has in fact taken place because actual and not merely potential harm may be presumed to have resulted from his actions if it has;

(iv) the age of the victims in the "destination country" that might possibly be involved in the proposed trip: the younger the minor, the more vulnerable he or she likely would be and therefore the greater the call for the victim's protection (*AQW v Public Prosecutor* [2015] 4 SLR 150 ("*AQW*") at [15]-[16]); and

(v) the number of child victims that might possibly be targeted in the proposed sex tour.

(b) Factors relevant to an offence under s 376D(1)(*c*):

(i) The modes by and means through which the information is distributed. The wider the reach of the information, the more serious the offence.

(ii) The nature of the information and the impact that it is likely to have on the recipient. For example, distributing child pornography would presumptively be more effective in drawing customers than would the dissemination of information through words alone, though this may depend on the nature of the words used.

(iii) How widely the information is already available in the general public domain. It would be more harmful and culpable to pass on information that the recipient would have difficulty obtaining freely from the public domain.

(iv) The extent to which the offender provided any form of encouragement to the recipient. If the offender encourages the recipient to do an act that was previously unknown to him or

was not something he had already considered, the offender's culpability would be greater.

(c) Factors relevant to both ss 376D(1)(*a*) and s 376D(1)(*c*) offences:

(i) whether the offender has promoted or made arrangements for particular types of sexual conduct to be performed on the minor, and if so, the degree of offensiveness of the sexual conduct promoted or arranged (*AQW* at [19]);

(ii) whether the offence was planned with carefully orchestrated efforts and whether steps to avoid detection were taken, which would be aggravating factors (*Public Prosecutor v Fernando Payagala Waduge Malitha Kumar* [2007] 2 SLR(R) 334 ("*Fernando*") at [39]-[42]);

(iii) the length of time that the offending behaviour had gone undetected (*Fernando* at [43]); and

(iv) the offender's motivations. Committing an offence for financial gain would be an aggravating factor (*Ding Si Yang* at [65]). The greater the reward received, the greater the punishment ought to be (*Mehra Radhika* at [51]). On the other hand, if it can be shown that that the offence was committed out of fear, this may be a mitigating factor (*Zhao Zhipeng v Public Prosecutor* [2008] 4 SLR(R) 879 at [37]).

55 These are the principal sentencing considerations which I shall apply in considering the sentences imposed in this case. However, before I turn to this,

I deal with some miscellaneous arguments that were raised as to why the sentence imposed in this case should be reduced.

Possible grounds for reducing any sentence(s) in this case

Whether it is relevant that the planned offences under s 376C never took place

56 First, counsel for the Appellant, Mr Rajan Nair ("Mr Nair") argues that the non-completion of the primary offence under s 376C should be treated as a mitigating factor. In support of this argument, he draws my attention to the offence of abetment under s 116 of the Penal Code, which states that the abettor may be liable for up to one quarter of the maximum sentence prescribed for the offence abetted. Mr Nair submits that s 376D is in essence an offence of abetment, and so if the predicate offence under s 376C did not eventuate, the severity of the sentence should be reduced to correspond to the position under s 116. In my judgment, this argument, with respect, is misguided for the following reasons:

(a) As a general rule, the fact that the predicate offence, in this case that under s 376C, has not yet been committed should not lessen the culpability of the offender, save possibly where the offender voluntarily abandoned his criminal design (*Public Prosecutor v Tsao Kok Wah* [2001] 1 SLR(R) 252 at [31]). That is not the case here.

(b) The absence of an aggravating factor should not be viewed as a mitigating factor. As I have already noted at [51(c)(i)] above, actual harm would aggravate the offence; but the lack of it is not mitigating.

(c) To treat offences under s 376D differently from an offence of abetment under s 116 accords with Parliament's intent. Section 116

states that the sentencing regime there only applies if no other sentence is prescribed. But s 376D was enacted with its own sentencing framework. Notably, the maximum sentence prescribed for a s 376D offence (*ie*, 10 years) is more severe than the maximum sentence prescribed for the predicate offence in s 376C (*ie*, 7 years).

(d) Finally, there are sound policy reasons that justify this position. First, the focus of these provisions is to reduce demand for child sex tourism. Such demand is fuelled by those who sustain the industry through promotion. Second, as already noted, one of the key concerns highlighted during the Parliamentary Debates was that of apprehending child sex tourists. To overcome this, the legislation targets those within the jurisdiction who encourage or aid others to commit the predicate offence. Viewed from this perspective, to hold that the non-completion of the primary offence is a mitigating factor would denude s 376D of much of its deterrent force.

Should the involvement of an agent provocateur mitigate the sentence?

57 Mr Nair next contends that the Appellant's sentence in respect of the offence under s 376D(1)(*a*) should be reduced because he was set up by an undercover police officer. He contends that this constitutes "entrapment" which occurs when an agent provocateur causes someone to commit an offence in order to apprehend and prosecute him (*R v Looseley* [2001] 1 WLR 2060 at [36]). The Appellant does not contend that he should be acquitted on the ground of the involvement of Teo Dennis; rather, he submits his sentence should be reduced.

58 The issue of entrapment in the context of drug trafficking arose in *Public Prosecutor v Muhammad Fadzli Bin Junaidi* [2008] SGDC 105. The sale of methamphetamine in that case was procured by an officer from the Central Narcotics Bureau ("CNB"). The learned district judge who heard the case rejected the submission that entrapment was a mitigating factor on the authority of *R v Mandica, Spakianos and Spakianos* (1980) 24 SASR 394 ("*Mandica*"). He held (at [8]) that "there [was] nothing to suggest that the undercover officer had encouraged the accused in such a way to sell the drugs to him that it was reasonably possible that the accused would not have sold it had he not been so encouraged". Emphasis was thus directed at the extent to which the acts of the undercover officer had caused the accused to do something that he otherwise would not have done.

59 In *Public Prosecutor v Rozman bin Jusoh and another* [1995] 2 SLR(R) 879 at [34], the Court of Appeal observed that "[i]f entrapment can be considered at all, it is relevant only insofar as mitigation of the sentence is concerned". The point was also tangentially raised in *Tan Boon Hock v Public Prosecutor* [1994] 2 SLR(R) 32. There, Yong Pung How CJ departed from the custodial benchmark sentence for the offence of outrage of modesty on account of the fact that the accused had succumbed to an agent provocateur. He allowed the offender's appeal against his sentence and substituted the sentence of four months' imprisonment and three strokes of the cane with a fine of S$2,000. However, I do not regard that case as bearing on the issue before me. It is evident from the observations of the learned Chief Justice that he was in fact troubled by the notion that an undercover police officer who had given sufficient intimation of his consent to participate in the intimate conduct in question could then claim that his modesty had been outraged. However, as

the accused had pleaded guilty, the only issue was one of sentence, which was very substantially reduced in the circumstances.

60 Various authorities were cited to me from England and Australia. I do not propose to review many of them because I consider that the issue can be addressed as a matter of principle. Before doing so however, it is useful to refer to some of the Australian decisions.

61 A leading authority on sentencing principles relating to entrapment is *Mandica* in which King CJ set out the following test for determining whether leniency may be extended by reason of entrapment (at 403-404):

> … This ground for leniency does not exist … where the effect of the police trap is not to encourage a person to commit an offence which he would not have otherwise committed, but merely to detect and obtain evidence against an offender who is only *too ready to commit the offence*. …
>
> … In deciding whether to extend leniency by reason of entrapment, the sentencing judge should take a common sense view of the evidence for the purpose of deciding whether there is a *reasonable possibility* that the convicted person would not have committed the offence but for the encouragement involved in the setting of the trap.
>
> [emphasis added]

62 Following *Mandica*, no discount in sentence was given in *R v C* (1998) 72 SASR 391, a drug entrapment case where the offender supplied drugs to an undercover officer. The undercover officer had approached the offender suspecting that he would be interested in selling drugs. He made two or three phone calls to the offender, following which a deal was struck for him to supply 18g of heroin for AUS$9,000. The deal went through and the offender was arrested. The Court of Criminal Appeal of the Supreme Court of South Australia refused to accord mitigating weight to the element of entrapment,

following *Mandica* (see at 396). The court also did not consider it relevant that the officer made the first move, because that was almost an inevitable feature of any retail sale. It was further found (at 397) that the offender needed no persuading at all, nor was there the slightest hint of "any inveigling by the police, of any hesitation or reservation" on the offender's part.

63 In contrast, *R v N* [1999] NSWCCA 187 ("*RvN*") demonstrates that *active* police instigation or incitement will lead to the reduction of a sentence.

64 There, an undercover officer induced the target to supply heroin to her. Notably, when the target was vacillating, the officer continued to pressure her into selling the drugs. The offender did not turn up for one of the scheduled appointments with the officer as arranged. The officer then telephoned the offender during which she badgered her to carry on with the deal. In these circumstances, Adams J said as follows (at [21] and [26]):

> [21] This was capable of being regarded as carrying at least the hint of a threat. The language was obviously calculated to overcome a perceived reluctance by the applicant to supply the heroin as requested by the agent. The applicant described the agent as aggressive. I consider that once it becomes apparent that a target such as the applicant is reluctant to commit the proposed crime, it is quite wrong to attempt to overcome that reluctance. Its presence significantly undermines the supposition or suspicion that the police are, as it were, merely joining the queue of customers being supplied with drugs by the target.
>
> …
>
> [26] It will be seen that, viewed objectively and having regard to the conversations which, of course, were recorded in the ignorance of the applicant, she displayed no eagerness to participate in the transactions initiated by the agent and continued by the undercover officer, despite the expressions of doubt and the reluctance indicated by the turning off of the phone, the putting off of the appointments and the statement that things were not all right. Of considerable importance in this context is the applicant's evidence that during the last

> week of August (when it appeared, as the conversations with the undercover officer show, that she was apparently reluctant to proceed further with the matter) the agent visited the applicant at her house. The applicant claimed that he said to her, "Eresebet, you promised, you must keep your promise, you can't look back from this. You want to get killed, your little son what get killed, people can kill you and people can hurt you."

65 The officer was found to have acted illegally and the Court of Criminal Appeal of the Supreme Court of New South Wales accordingly reduced the total sentence of 42 months' imprisonment to a term of 20 months.

66 In my judgment, the courts should not readily reduce sentences on account of the fact that an agent provocateur was involved in the commission of the offence. In particular, entrapment would not have mitigating value if the agent provocateur provides nothing more than an unexceptional opportunity for the crime to be committed. The question of reducing a sentence that is otherwise considered appropriate will only arise if there is a reasonable basis for concluding that the offender would not have committed the offence in question had the agent provocateur not been involved. This would typically arise in exceptional cases like *RvN* where it is shown that the police had played an active role in encouraging or inciting the offending conduct. The key question in each case will be the extent to which the element of entrapment can be shown to have *actually diminished the culpability of the offender*.

67 Where the police have reliable information about a person's willingness to engage in criminal behaviour in terms of supplying illicit goods or promoting prohibited activities and they do nothing more than approach him, as any other consumer or intending participant in such activities would or might, any trap set by the police is only a tool by which evidence necessary for

prosecution can be obtained. There is no basis, in my judgment, for any discount to be applied in such circumstances.

68 The Appellant cites three other cases (*R v Hani Taouk* (1992) 65 A Crim R 387 ("*R v Taouk*"), *R v Marjorie Joy Beaumont* (1987) 9 Cr. App. R. (S.) 342 ("*R v Beaumont*") and *R v Anthony John Chapman and Others* (1989) 11 Cr. App. R. (S.) 222 ("*R v Chapman*")) in support of his position. In my judgment, all of them can be distinguished:

(a) *R v Taouk* was a case involving the bribing of a judge. The element of entrapment in that case was treated as a mitigating factor because, without the involvement of the agent provocateur, the offender may *never* have had access to the judge and hence may *never* have had the opportunity to bribe him.

(b) In *R v Beaumont* the offender pleaded guilty to supplying a controlled drug. She had been approached by undercover agents who asked if she knew of anyone who could supply cannabis. She introduced the agents to her father who said he could supply cannabis. Their home was later raided and the offender was arrested as well. Entrapment was held to be an admissible mitigating factor in that case. What may be noted is that the offender was not herself a supplier and had only introduced the agent to her father because she had been approached by the agent. There is nothing to suggest she was otherwise already involved in the drug trade. Hence, even though the court did not cite the principle in *Mandica* in support of its conclusion, the facts of the case fell within the ambit of the principle in *Mandica* because there was a reasonable basis for thinking the offence would not have been committed but for the encouragement of the agent.

(c) As for *R v Chapman*, the court discounted the sentence on the basis that the offenders had no or insufficient means on their own to commit the offence which they had been lured into committing. The undercover officer had asked for a much larger supply of drugs than the offenders were capable of supplying. That provided the motivation for one of the offenders, Chapman, to begin to supply drugs (where previously he was merely a consumer of drugs), and motivated another offender, Denton, who was already engaged in the supply of drugs, to significantly increase the scale of his operations. Hence, again, there was a reasonable basis for thinking that without the involvement of the police, the offenders would not have committed the particular offence in question, whether engaging in the supply of drugs, or supplying drugs of such a large quantity.

69 Based on the authorities cited, the Appellant argues that the offence of organising a sex tour (contrary to s 376D(1)(*a*)) would not have been committed if not for the entrapment. He placed emphasis on the District Judge's finding that there was no suggestion that the Appellant had previously organised a child sex tour. The investigations revealed that his previous conduct pertained to the distribution of child pornography and the Appellant himself engaging in commercial sex with minors overseas. The Appellant submits that the trap laid by the police in this case was not meant to apprehend the Appellant for offences of the sort he had been committing; it caused the Appellant to commit an entirely different offence, and in doing so, it had the effect of escalating his criminal behaviour from a less severe offence under s 376C to a more severe one under s 376D(1)(*a*). In this regard, he drew an analogy with *Re Bozo Jurkovic v R* [1981] FCA 221 where the Federal Court of Australia treated entrapment as a mitigating factor in circumstances where

the offender was an intermediary – as opposed to a drug dealer – drawn into an ongoing supply system by an order of drugs placed by an undercover officer. In short, he submitted that there was a reasonable possibility that he would not have committed the offence had Teo Dennis not intervened.

70 I accept that there is no evidence that the Appellant had previously arranged a sex tour. But I do not think the absence of such evidence necessarily leads to the inference that the Appellant had no propensity to commit the present offence or would not otherwise have done so. In contrast to the foregoing cases, the Appellant had ample means to organise a sex tour. He knew the places to visit and had local contacts in the destination countries to whom he could turn to for advice and assistance. It may be noted from the evidence that the Appellant, had prior to the commission of the subject offences, contacted "Mike Timothy" and suggested that they visit Thailand, Philippines, Vietnam or Cambodia together to have sexual intercourse with girls below 14 years old. The proposed trip did materialise and the two of them did travel to Cebu, Philippines in January 2013. Aside from this, the critical consideration is not whether there exists a past track record of similar offences, but whether the undercover police officer did anything more than present an unexceptional opportunity for the offence to be committed. It is clear to me that Teo Dennis did no such thing. In fact, he did nothing more than show interest in the possibility of a tour, and this was a wholly unexceptional opportunity which the Appellant readily seized. In these circumstances, I do not consider this to be a case where the Appellant's culpability has been diminished in any way by reason of the entrapment.

71 The Appellant also argues that Teo Dennis "incited and encouraged" him to organise the proposed trip and requested the Appellant to bring him on

the trip. The evidence, however, shows that it was the Appellant who suggested accompanying Teo Dennis on the trip on the condition that his flight and accommodation expenses would be covered.

72 In these circumstances, I see no basis for reducing the Appellant's sentence in respect of the offence under s 376D(1)(*a*) of the Penal Code on account of the entrapment. As for his offences under s 376D(1)(*c*), the Appellant did not suggest that any discount was due on account of entrapment and it is therefore not necessary for me to say more on this.

Should the diagnosis of paedophilia mitigate the Appellant's culpability?

73 The Appellant has been diagnosed by the Institute of Mental Health ("IMH") to be suffering from paedophilia at the time he committed the offences. The Prosecution submits that paedophilia should not be regarded as a mental disorder that would diminish the culpability of the Appellant. As a general rule, a mental condition will not be a mitigating factor if it is shown that it had little bearing on the offender's ability to appreciate the nature and consequences of his actions or if it has not affected the offender's ability to stop himself from committing the criminal act. In either of these circumstances, the offender is capable of being deterred by punishment and should therefore face the consequences imposed by the law (*Public Prosecutor v Chong Hou En* [2015] 3 SLR 222 at [28]).

74 Consistent with this, paedophilia has been held not to reduce the culpability of an offender or to warrant a reduction of sentence. In *Lim Hock Hin Kelvin v Public Prosecutor* [1998] 1 SLR(R) 37, Yong CJ noted that the condition neither impacts the offender's understanding of the offence nor diminishes his ability to control his impulses. He said at [31]:

> There were no significant mitigating factors in this case. The learned judge had found, rightly in our opinion, that paedophilia is not a disease or a physical illness but is a disorder. According to the *American Psychiatric Association: Diagnostic and Statistical Manual of Mental Disorders* (3rd Ed, 1980), paedophilia is a condition where there is recurrent and intense sexually-arousing fantasies, sexual urges or sexual activities involving prepubertal children. Even if paedophilia is an illness, we reject any suggestion that the sufferer cannot help it and therefore carries only a diminished responsibility for his actions. There is no evidence that paedophiles cannot exercise a high degree of responsibility and self-control. The learned judge found that the appellant had a choice of whether to commit paedophilic offences against the victims, and chose to do so. The psychiatrist who examined the appellant expressed the opinion that treatment of paedophilia was difficult. Given the high recidivism rate of offenders, the learned judge took the view that the appellant had to be removed from society for a long period of time.

75 Nothing detracts from this general understanding of paedophilia on the present facts. In fact, the IMH Report dated 4 December 2014 confirms that:

> 2. He was cognizant of the events and circumstances surrounding the alleged offences and demonstrated clear understanding and awareness of his actions that pertained to the alleged offences.

76 In the circumstances, I attach no mitigating weight to the Appellant's mental condition of paedophilia.

The Appellant's plea of guilt

77 A timely plea of guilt may merit a sentencing discount which, depending on the circumstances of the case, can materially reduce the sentence if it evidences genuine remorse (*Tan Kay Beng v Public Prosecutor* [2006] 4 SLR(R) 10 at [36]). In this case, while the Appellant pleaded guilty in a timeous manner, the weight to be accorded to this is negligible given the

circumstances of his apprehension (see *Wong Kai Chuen Philip v Public Prosecutor* [1990] 2 SLR(R) 361 at [14]).

78 In the premises, I consider that there are no significant mitigating factors in this case.

Sentencing Precedents

79 I turn next to consider the relevant sentencing precedents.

Relevance of local sentencing precedents involving pimps who abet the offence of having commercial sex with minors in Singapore

80 There are no local precedents directly on point. In the circumstances, the Appellant refers to the sentences that our courts have imposed on pimps who abet the offence of having commercial sex with minors within Singapore as being relevant sentencing precedents. He contends that the level of culpability of his offending should be similar to such pimps, who have committed – in substance – the same offence of abetting underage commercial sex. The only difference is that the predicate offence in those cases took place in Singapore whereas the present offence entails the abetment of an offence that was intended to take place overseas. The Appellant submits that this difference is immaterial given that the predicate offence of having commercial sex with minors whether in Singapore (contrary to s 376B) or overseas (contrary to s 376C) both carry the same maximum sentence of seven years' imprisonment. This, he contends, signals a legislative intent to treat the two offences similarly. He submits that it should accordingly follow from this that a person who abets the commission of an offence under s 376B should be punished in the same way as a person who abets the commission of an offence under s 376C.

81 As to the relevant benchmarks for the offence of abetting underaged commercial sex within Singapore, the Appellant cited three cases: *Public Prosecutor v Tang Boon Thiew* [2013] SGDC 52 ("*Tang Boon Thiew*"); *Public Prosecutor v Seng Swee Meng* (DAC 34801/2011) ("*Seng Swee Meng*"); and *Public Prosecutor v Tang Huisheng* [2013] SGDC 432 ("*Tang Huisheng*"). All three cases involved pimps who were engaged in vice-related activities including the commercial exploitation of prostitutes, some of whom were below the age of 18. In *Tang Boon Thiew*, the pimp received an imprisonment term of 20 months for each of the 11 abetment charges proceeded against him. In *Seng Swee Meng*, the pimp received an imprisonment term of 18 months for each of the two abetment offences. In *Tang Huisheng*, the offender received an imprisonment term two years' for one count of the same offence. The Appellant submits that his own culpability was lower down the scale when compared to these offenders because, unlike them, he had only organised a single trip for one person and his crime was not committed for financial gain. In the circumstances, he contended that he should not be sentenced to a term of imprisonment longer than 12 months.

82 At the outset, I should reiterate my observations in *Poh Boon Kiat v Public Prosecutor* [2014] 4 SLR 892 ("*Poh Boon Kiat*") (at [64]-[66]) that the severity of the offences in *Tang Huisheng* and *Seng Swee Meng* were such that both offenders should have drawn sentences nearer the higher end of the scale (between four and five years' imprisonment). But for present purposes that is beside the point. In my judgment, the comparison which the Appellant seeks to draw fails for two reasons.

83 First, Parliament obviously deemed it fit to enact a separate provision (*ie*, s 376D) specifically to target the offence of facilitating or encouraging the

commission of the offence under s 376C, which is distinct in various ways from the offence of abetting commercial sex with minors in Singapore (contrary to s 376B read with s 109). Thus, while an offence under s 376D may *also* be characterised as an abetment offence, the separate enactment of s 376D with the imposition of a higher maximum sentence of 10 years' imprisonment signals the legislative intent to treat such offences differently and indeed more seriously. It is well-established that the statutory maximum sentence signals the gravity with which Parliament views any individual offence (*Poh Boon Kiat* at [60]).

84 Second, it would be wrong in principle to adopt the sentences imposed in the domestic pimping cases as benchmarks for offences under s 376D. It is undoubtedly the case that these criminal provisions both share the common objective of protecting minors from commercial sexual exploitation. But beyond this veil of similarity lie many differences in the sentencing considerations that govern each of these two offences. For the domestic pimping cases, the severity of the sentence to be imposed is measured against two principal sentencing factors: (a) the degree of exploitation exercised by the pimp; and (b) the extent of harm inflicted on the victim (see *Poh Boon Kiat* at [74]-[76]). These factors cannot be readily assessed and taken into account for offences under s 376D because of the difficulties I have pointed out earlier in gathering evidence of the actual harm suffered by the victim in "destination countries". Furthermore, the rationale underlying the offences under s 376D includes the recognition that the victims in those cases tend to be much younger on the whole. Were it the case that the pimping cases involved minors as young as 12 or 14 years of age (or even younger), I have no doubt at all that these would have attracted considerably stiffer sentences.

85 I therefore consider that offences involving the facilitation or promotion of child sex tourism (under s 376D) should be analysed as a genre of offences that is separate and distinct from the abetment of commercial sex with minors in Singapore (an offence under s 376B read with s 109 of the Penal Code). In this context, it may be reiterated that in determining the appropriate sentence to be given in each case, the court should have regard to the maximum sentence imposed by the statute before determining precisely where the offender's conduct falls, having regard to the full range of punishment options devised by Parliament (*Angliss Singapore Pte Ltd v Public Prosecutor* [2006] 4 SLR(R) 653 ("*Angliss Singapore*") at [86]).

Sentencing decisions from other jurisdictions

The relevance of foreign sentencing jurisprudence

86 In the absence of local precedents that were directly relevant, several foreign cases were tendered to me. The Prosecution urged me to attach significant weight to the decision of the New Zealand High Court in *R v Wales* because the facts were broadly aligned with the facts of the present appeal and because s 376D is modelled after the New Zealand statute. Mr Foo also highlighted several foreign authorities which have dealt with offenders facilitating and/or encouraging the commission of child sex tourism. This raises a question as to when, and to what extent, a sentencing court may have regard to foreign decisions on sentencing.

87 In my judgment, it is permissible for a sentencing court to have regard to relevant decisions of foreign courts in order to discern sentencing principles and considerations. The precise sentence should not be derived unthinkingly from the decisions of foreign courts, however, because sentencing, and in

particular, a deterrent sentence such as that necessitated by the facts of the present case, is founded on, and an expression of, important public policy considerations which may be unique to our society (*Public Prosecutor v Wang Ziyi Able* [2008] 2 SLR(R) 1082 ("*Wang Ziyi Able*") at [26]). The policy considerations that are relevant to a Singapore court for a particular offence may well differ from those affecting a court in a foreign jurisdiction given the unique social mores that undergird each society.

88 Subject to the caution I have just noted, in the present context, there are further reasons to have regard to the decisions of foreign courts. First, as I have already observed, there is no local sentencing precedent on s 376D. Second, the legislative provisions in question in the foreign precedents cited to me are broadly similar because they were all enacted to give effect to similar obligations arising under international treaties or conventions.

The foreign authorities relevant to the present appeal

89 Against that background, I consider three foreign decisions that were tendered before me, which involved broadly similar fact patterns of offenders who had either made travel arrangements for a subject to engage in commercial sex with a minor overseas or distributed information with the intention of promoting such sexual activity. These are:

(a) *R v Wales*;

(b) the decision of the Court of Criminal Appeal (Western Australia) in *Kaye v R* [2004] WASCA 227 ("*Kaye v R*"); and

(c) the decision of the Court of Criminal Appeal (New South Wales) in *Cargnello v Director of Public Prosecutions* [2012] NSWCCA 162 ("*Cargnello v DPP*").

(1) *R v Wales*

90 Wales, who was found guilty of an offence under s 144C(1)(*a*) of the New Zealand Crimes Act 1961 ("the Crimes Act") when he made arrangements for an undercover police officer to travel to Thailand in order to have commercial sex with minors, was a homosexual with a predisposition towards teenage boys. He knew Thailand well, having visited the country on a number of occasions. In 2007, he set up a website offering personally escorted tours to Thailand for small groups. In June 2010, an undercover officer using the assumed name, Mr Gray, contacted Wales through his website expressing interest in a personal tour to Thailand. After an exchange between them, the two had a meeting during which Mr Gray disclosed that he was gay and that he would like to indulge in "certain attractions" on the trip. He said he wanted to find a young friend. Wales replied, "How young? Don't worry, I don't mind". Mr Gray then said that he had a "really strong attraction for no hair". Wales said he could point him in the right direction, informing Mr Gray about bars in Pattaya in Thailand where boys between the ages of 14 and 16 could be found. He indicated that young boys could be taken back to some hotels, but not others, and suggested that Mr Gray needed to stay in a hotel where it would be possible to do so.

91 Wales and Mr Gray met again on 26 July 2010. During this meeting, Wales mooted the possibility of visiting Nakhon Phanom, a place located in Thailand, where he could have any boy he liked. Wales described a few boys whom he said he "had" there and who were "very green, really raw". During a

third meeting on 5 August 2010, the two got to discuss the itinerary for the trip. Wales suggested that on the first night he and Mr Gray could go to the standard gay bars and on the following night they could look for something "slightly more dodgy".

92 Mr Gray signed up for the proposed trip and paid NZ$12,500 to Wales. In return, Wales made airline bookings for himself and Mr Gray to Thailand. Wales also liaised with an associate in Thailand asking him for advice on places to stay and how to link Mr Gray with young boys. The associate replied attaching pictures of two friends of his son, who were apparently 14 and 16 years of age respectively. He further planned an itinerary suggesting various places that he and Mr Gray could visit. In particular, he suggested visiting an area known as Saranrom Park and another area known as Saphan Kwai, where gay sex was said to be readily available. Wales told Mr Gray that many of the male prostitutes at Saranrom Park were over 18 but that he should be able to find someone "who's perhaps 16, 15 maybe, 14". He then sent an email to Thailand to arrange the services of a gay guide who had knowledge of the Saranrom Park area. Later, he sent Mr Gray a sex phrase card which translated a number of sexually explicit phrases and words from English into phonetic Thai. After meeting Mr Gray again on 20 August 2010 to give him the proposed itinerary, Wales was arrested. The proposed trip never took place. Wylie J sentenced Wales to an imprisonment term of three years after trial.

93 Initially, I was provided with the grounds of decisions recorded in *R v Wales* [2011] NZHC 2074. This pertained mainly to Wylie J's reasons for convicting Wales as opposed to his reasons for the sentence he gave. However, after the hearing of the appeal, the Prosecution managed to obtain the sentencing notes of Wylie J in *R v Wales* [2012] NZHC 138 which sets out

his detailed grounds for the sentence he imposed and these were useful in explaining the sentencing approach that was taken in that case.

94 In his sentencing notes, Wylie J observed that s 144C of the Crimes Act was enacted to honour New Zealand's commitments under article 10 of the Optional Protocol to the United Nations' Convention on the Rights of the Child, the Sale of Children, Child Prostitution, and Child Pornography 2002. He labelled Wales' conduct as "despicable" and that it would "offend every right-thinking member of the community". He highlighted the need to impose a sentence that would denounce such conduct and also a sentence that would serve the interest of general deterrence. On the facts of that case, he listed the aggravating factors as follows:

(a) Wales had significant involvement with Mr Gray. There were numerous telephone calls, emails and four personal meetings, some lasting several hours.

(b) Wales had taken many steps to advance the proposed trip.

(c) When Wales became aware of Mr Gray's interest in having sex with under aged males, he needed no encouragement to discuss this aspect of the tour.

(d) Wales offered to provide a personally escorted tour. He was to keep an eye on Mr Gray and assist when called on.

(e) Wales profited from the venture, having collected NZ$12,500 from Mr Gray.

95 Wylie J then balanced the aggravating factors against the following mitigating features of his offence:

(a) Wales did not initiate discussions about having sex with minors in Thailand and he did not openly solicit customers for such tours. Although falling short of entrapment, it was clear that it was Mr Gray who initiated the discussion from time to time, and he continued to express interest in having sex with minors in Thailand.

(b) Wales made an initial effort to dissuade Mr Gray and did express concern about becoming involved in anything illegal.

(c) Mr Gray was his only client, and his fledgling travel operation was unsophisticated.

(d) The tour did not proceed.

96 I should point out that while Wylie J listed the non-completion of the offence as a mitigating factor, it appears from the following remarks that he did not accord much weight to it:

> … However, I have no doubt that it would have proceeded but for the fact that Mr Gray was an undercover police officer and the police intervened. If it had proceeded, then there may have been other charges against you.

97 Having considered the matter in the round, Wylie J adopted a starting point of a term of imprisonment of three years and three months. He reasoned that the offence committed was not "the most serious of its kind" but rather "relatively typical offending of its type" (at [56]). Recognising Wales' positive rehabilitation prospects, he discounted three months from the starting point, and ordered a total imprisonment term of three years.

98 The Prosecution urged me to follow the benchmark sentence of three years' imprisonment in *R v Wales* for the s 376D(1)(*a*) offence. It was submitted that the facts of *R v Wales* were strikingly similar to the present facts. I make some observations. First, it is apparent that the statutory maximum punishment imposed by s 144C of the Crimes Act and s 376D of the Penal Code are different: s 144C of the Crimes Act imposes a maximum sentence of seven years' imprisonment whereas s 376D imposes a maximum sentence of ten years' imprisonment. This signals a distinct legislative intention that a sentencing court here should be mindful of (see *Tay Kim Kuan v Public Prosecutor* [2001] 2 SLR(R) 876 at [10]).

99 Second, the commercial element in the transaction stands out in *R v Wales*. The offence was committed for financial gain, with Wales collecting NZ$12,500 from Mr Gray. In contrast, the Appellant appears to have committed the offence primarily with the intention of having companionship for his intended trip. He did not run a travel service or other operation that was directed at seeking participants for such tours. Furthermore, the sum of S$1,000 collected by the Appellant from Teo Dennis was meant to cover their basic accommodation and air ticket expenses and not much else.

100 On the other hand, it may also be noted that Mr Gray appeared to have played a far more active role in contributing to the commission of the offence by Wales, than Teo Dennis did in the present case.

(2) *Kaye v R*

101 *Kaye v R* was one of two Australian decisions that Mr Foo drew my attention to. Kaye operated a travel service for tourists seeking to travel to Thailand. A customer, Mr Adair, noticed Kaye's advertisement in the

newspaper offering travel services and contacted him. He then accepted Kaye's invitation to go to his home to discuss the proposed trip to Thailand. During the meeting, Mr Adair noticed photos of young Asian boys on the wall of Kaye's home and enquired about them. Kaye initially said that he was their "guardian" but subsequently explained that he had had sex with one of them who was aged 16. He informed Mr Adair that they were available for sexual activities and offered to arrange a meeting if Mr Adair so desired. He also told Mr Adair that a sexual encounter with a boy would normally cost Mr Adair between 200-300 baht, and that he was able to provide boys or girls of any age.

102 Mr Adair informed Kaye that, although he had a mild curiosity as to a possible sexual encounter with a male aged over 18 while in Thailand, he was not interested in Kaye's proposed activities. Kaye was not deterred and continued to talk about sexual relationships with young boys.

103 At the meeting Mr Adair paid a deposit of AUS$500 for the proposed trip to Thailand. He subsequently met Kaye again when he paid the balance of the cost of the trip and further discussed the trip with him. Mr Adair inquired as to the materials he should take on the trip. Kaye then provided him with a list that he copied down. The list included items for "protection and stimulation" and, at Kaye's suggestion, a "honey dispenser". Kaye was arrested before the proposed trip materialised.

104 The Court of Criminal Appeal of the Supreme Court of Western Australia affirmed the trial judge's decision to sentence Kaye to imprisonment for a term of six years with a non-parole period of three years for having committed one count of the offence of offering to assist a person to engage in

committing an act of indecency on a person under the age of 16 years old outside Australia under s 50DB(1) of the Crimes Act 1914 (Cth) ("Crimes Act (Australia)"). The conviction followed a trial that lasted five days. While the offence fell at the lower end of the spectrum of seriousness contemplated by the legislation, the sentence imposed by the trial judge fell well within her discretion having regard to the high maximum sentence of 17 years' imprisonment set by the legislature for the offence. And although Kaye did not profit from the offence, his status as the operator of a travel business providing accommodation and contacts in Thailand to persons who might be interested meant that there was a greater likelihood of acts of indecency against children under the age of 16 being committed as a result of his efforts. McLure J further noted that the sentence should reflect the need for general deterrence and this was amplified by the practical difficulties of detection given that it occurred abroad (at [66]).

(3) *Cargnello v DPP*

105 Lastly, I turn to *Cargnello v DPP*. Cargnello was convicted of four counts of encouragement of sexual intercourse with a child under 16 years old outside Australia, contrary to s 50DB of the Crimes Act (Australia). This is broadly similar to s 376D(1)(*c*). The offences came to light when Cargnello was arrested at the airport. From his laptop, emails dating from 1999 were recovered. Four charges (*ie*, counts 8-11) under s 50DB were preferred in respect of four particular emails sent by Cargnello to two email addresses. These emails discussed places in Bangkok, Phnom Penh and Costa Rica where girls under the age of 16 could be found for the purposes of sexual activity. Cargnello claimed trial and was convicted by the jury on all counts. He was

sentenced to an aggregate term of five years' imprisonment for each of the s 50DB offences. He appealed against his conviction and sentence.

106 On appeal, the Court of Criminal Appeal of the Supreme Court of New South Wales noted that the focus of the provision was to discourage persons in Australia from engaging in child sex tourism (at [25]). General deterrence was thus the "paramount consideration" in sentencing. The court also considered it relevant that "the offence is, in a sense, committed in secret" (at [53]).

107 Busten JA held that one consideration which might be taken into account is that, although an offence under s 50DB does not require that the conduct that has been encouraged has in fact occurred, at least in some circumstances it is likely that the offending behaviour "will be at a higher level of culpability" where it can be shown that such conduct did eventuate (at [66]). He further cautioned against making a direct comparison between cases involving offenders engaged in sexual activity and those encouraging or facilitating others to engage in such activity.

108 As the only precedent that was directly on point, Busten JA made reference to *Kaye v R*. He found that the offence in *Kaye v R* was more serious for various reasons: first, the offence formed part of an established business venture; second, it involved a degree of facilitation which would have resulted in direct contact with identified individuals; and third, the offender was prepared to press the services of young boys on an apparently uninterested customer (at [73]).

109 The contents of the individual charges were then analysed separately. Count 10 related to one email sent by Cargnello to an unknown recipient. That

email referred to the possibility of having sex with girls under the age of 16 in Costa Rica.

110 Counts 8, 9 and 11 were part of an ongoing exchange of emails between Cargnello and an unknown recipient. They were sent on 1, 5 and 8 March 2000 and were part of an email chain in the course of which Cargnello and the recipient were planning to meet in Bangkok in late March 2000. Cargnello was the primary source of information and experience, and the purpose of the exchange was to meet in Bangkok with the intention of finding girls as young as ten or 11 years of age available to engage in sexual intercourse as well as fellatio.

111 It was held that general deterrence was a weighty consideration in sentencing. The probability was high that the recipient would engage in the activities that were to be deterred. The degree of encouragement was significant. But the following factors were held to have diminished the seriousness of the offence (at [89]):

(a) the offences involved an exchange of a small number of emails between like-minded persons;

(b) the information was mainly at a level of generality about places where young people available for sexual activities might be located;

(c) there was no attempt to identify or place the recipient of the information in contact with any particular individual, whether organiser or victim;

(d) the email exchanges occurred over a period of some ten days;

(e) because Cargnello was not concerned to identify specific individuals, it could not be said that he was exploiting an existing relationship or position of authority; and

(f) except at a high level of generality, it was not probable that his conduct placed any group of potential victims at greater risk than they would otherwise have been; certainly there was no specific inference that any individual had been harmed as a result of his conduct.

112 In these circumstances, the court affirmed the trial judge's sentence of five years' imprisonment in respect of the four offences. However, although the aggregate sentence was undisturbed, the court revised the structure of the individual sentences. The trial judge had imposed identical separate sentences for each of the offences. On appeal, the court took an offence-specific approach where separate sentences in respect of each count of counts 8, 9 and 11 were imposed, recognising that they were discrete steps in a course of conduct warranting a degree of accumulation in order to reflect the totality of Cargnello's culpability (at [95]).

An overview of the principles that emerge from the foreign jurisprudence

113 From these cases, I draw the following principles:

(a) General deterrence is the key sentencing objective. That offences of this nature are usually committed in secret must be taken into consideration in signalling the level of deterrence to the public and in particular to would-be offenders.

(b) The offence does not require the predicate offence that is facilitated or encouraged to have in fact occurred. Where it has occurred, that may aggravate the offence.

(c) The offender is more culpable if the offence was committed for a profit. The offence in *Kaye v R* was considered to be more serious than that in *Cargnello v DPP* because it was part of a commercial operation that Kaye was running.

(d) The offending conduct in all three cases were situated within the low-to-medium range along the sentencing scale. This appeared to have been because the offences were all committed on an ad-hoc basis. There was no evidence of the offenders having committed the offences as part of a wider commercial operation. It is also significant that Kaye and Wales facilitated or encouraged only one recipient; while in *Cargnello v DPP*, the court found that the information that Cargnello sent to the second recipient was not particularly serious.

(e) The characteristics of the recipient is an important factor. It is an aggravating factor for the offender to press the lure of child sex tourism on an uninterested customer. Conversely, it is not an aggravating factor if the exchange of information takes place with a like-minded individual who is likely to be able to find out the same sort of information elsewhere had the offender not provided it.

(f) The type of information transmitted and the reach of such information is relevant. The more specialised and detailed the information and the less available it is in the public domain, the higher the offender's culpability would be in disseminating it.

(g) If the offence increases the risk of children being harmed, and in particular where arrangements have been made for particular types of sexual conduct to be performed on very young minors, the culpability of the conduct in question correspondingly increases.

(h) The degree of planning and facilitation which was employed is significant. The more sophisticated and comprehensive the proposed arrangement is, and the greater the degree of expertise employed, the more culpable the offender would be.

114 I have touched on most if not all of these factors in my earlier discussion (at [54] above).

The appropriate sentence for the offences committed by the Appellant

Section 376D(1)(a) – organising a sex tour

115 With these principles in mind, I turn to consider the appropriate sentence to be imposed in the context of the present appeal. As I have already noted at [54] above, I accept Mr Foo's submission that the sentencing framework for the offence of facilitating or promoting child sex tourism (contrary to s 376D) should recognise the dichotomy between the ad-hoc organiser at the one end, and the commercially driven sex tour operator on the other and situate the offender accurately within this range.

116 In my judgment, this does provide a useful *starting point* for the analysis when sentencing under s 376D(1)(*a*) and an *intermediate point* when sentencing under s 376(1)(*c*). At the highest end of the scale would lie a sophisticated, organised, large-scale commercial operation or syndicate. The reach or at least the potential reach of a commercial operation of this nature is

far greater, and consequently, far more deleterious, and the sentence to be given should accordingly reflect the severity of such offending conduct. At the other end of the spectrum, offending conduct would usually involve those who facilitate or encourage child sex tourism on an ad-hoc basis and for non-pecuniary purposes.

117 However, as I have also observed (see at [54] above) the analysis can and should be more nuanced because the offence under s 376D can encompass a wide spectrum of offending conduct with varying degrees of seriousness. It is therefore necessary to go further and consider the matters I have set out at [53]–[54] above to assess the severity of the particular conduct of the offender.

The appropriate benchmark sentence for an ad-hoc organiser

118 Benchmark sentences engender a greater degree of consistency and certainty in the sentencing of offenders. It is therefore not unusual for the courts to draw reference from sentencing precedents involving offences of similar nature and analogous facts when determining the appropriate starting points in sentencing. Unfortunately, there are no local sentencing precedents dealing directly with s 376D(1)(*a*). Nonetheless, I agree with Mr Foo that it would be beneficial to set a benchmark sentence, mainly because the difficulty in detecting offences of this sort requires a strong deterrent signal to be sent to the general public (see [51(c)(ii)] above; *Public Prosecutor v NF* [2006] 4 SLR(R) 849 at [39]). Here, I echo the observations of V K Rajah J (as he then was) in *Fernando* that offences warranting deterrent sentences call for the identification of sentencing benchmarks:

> 74 One common thread quite perceptibly runs through cases on credit card offences in all three jurisdictions of Singapore, Hong Kong and the UK: such offences have almost invariably been deemed to warrant deterrent sentences. *There*

> *are indeed sound public interest considerations underpinning and warranting benchmark sentences for this genre of offences so that a deterrent message is unequivocally conveyed. Potential offenders should be alerted to the consequences of committing credit card frauds.*
>
> [emphasis added]

119 On the first stage of the sentencing framework, there is no disagreement that the Appellant is at the lower end of the spectrum akin to an ad-hoc or opportunistic organiser rather than an organised sex tour operator. He had hardly profited from the venture. It also seems clear that the offence was motivated by the desire for companionship. Having regard to the sentencing range afforded by Parliament, which extends to a maximum of ten years' imprisonment, in my judgment, an ad-hoc organiser who knowingly makes travel arrangements for a prospective child sex tourist in circumstances such as the present where there was no profit motive, should, as a starting point, attract a benchmark sentence of a term of imprisonment of two years and six months. This stands at a quarter of the maximum sentence and I regard this as an appropriate starting point because of the strong need for deterrence. It may then be adjusted based on the applicable aggravating or mitigating circumstances.

Whether the benchmark sentence should be followed or departed from

120 I turn to consider whether the starting point I have identified needs to be adjusted on the facts of this case. The offence of making travel arrangements for Teo Dennis was committed against the following factual setting:

(a) He purchased tickets for Teo Dennis to fly to Cambodia.

(b) He offered to accompany Teo Dennis on the trip on the condition that Teo Dennis paid the cost of his airline ticket and accommodation expenses. Teo Dennis transferred him S$1,000 for this purpose.

(c) He planned for the both of them to visit night spots where they would select young girls to bring back to their hotel room. He raised the possibility that they could then be more adventurous and visit rural areas in search of even younger girls.

(d) He arranged a local guide in Cambodia who was "well-versed with sex places" and able to bring them around.

121 It is useful to begin with the essence of the offence under s 376D(1)(*a*), which may be summarised thus:

(a) making or organising a travel arrangement for another;

(b) intending to facilitate the commission of an offence under s 376C.

122 The making of a travel arrangement in and of itself is unlikely, as a general rule, to aggravate the culpability of the particular offender. Rather, the measures taken to facilitate the *planned* commission of the offence under s 376C will usually merit close attention.

123 Of course, it was the Appellant who did purchase the flight tickets. But, in my judgment, beyond this, every aspect of the Appellant's conduct conveyed to Teo Dennis his knowledge of how to go about this horrendous venture, from knowing where to stay to knowing where to go in search of the

hapless victims to even knowing how to arrange an insider as a guide. This is what was being made available to Teo Dennis to facilitate the commission of the offence. The Appellant not only arranged the bare logistics of the trip, but held himself out as a seasoned companion who would ensure that the trip would be a fruitful and safe venture for the both of them. This is at the heart of what makes a material difference in driving the demand for child sex tourism. Without this, the prospective sex tourist might not visit the proposed destination as he might not have the motivation or the confidence to embark on and persevere in the illicit venture. In the circumstances, I do regard the personal culpability of the Appellant as calling for a sentence which is higher than the starting point.

124 There is a further aspect to this. I have said earlier that the Appellant's motivation in committing the offence was to have some companionship. On its own, this motivation is not an aggravating factor as compared to acting out of a profit motive. However, the plan to accompany Teo Dennis and to participate jointly with him in the planned activities is an aggravating factor for at least two reasons. First, had Teo Dennis not been an undercover officer and had the trip gone ahead as planned, the likelihood of actual harm ensuing is inevitably greater when two parties are acting together, effectively egging each other on. Secondly, there is no real question that the actual harm would have affected twice as many victims than if the Appellant had not also planned to go with Teo Dennis.

125 I also consider that the engagement of a local guide who was well-versed in the hotspots for child sex tourism in Cambodia is a significant aggravating factor. This went beyond easily available public information. The guide was not a contact obtained from the internet or other public sources but

from a friend of the Appellant. An experienced or knowledgeable local guide would materially enhance the prospect of harm by being able to more effectively connect the recipient to the trade. A local guide also provides a sense of security as his familiarity with local conditions would likely promote the belief that it would be easier to evade law enforcement agencies in the destination country. This too tends to encourage and sustain demand.

126 A further factor that aggravates the seriousness of the offence is the potential that a significant number of young child victims would have been harmed in the course of the proposed trip had it materialised. The Appellant planned for the both of them to visit rural areas if they were feeling more adventurous, in search of even younger girls than those found in nightspots presumably in the city areas.

127 Having regard to the circumstances, I consider that the sentence imposed by the District Judge of three years' imprisonment for the offence of making travel arrangements for Teo Dennis with the intention that he engage in commercial sex with minors in Cambodia (contrary to s 376D(1)(*a*) of the Penal Code) was not excessive at all. Indeed, having regard to the fact that I have set a starting point of two years and six months' imprisonment, I consider that the sentence for this offence could justifiably have been higher considering the several aggravating circumstances I have noted.

Section 376D(1)(c) – distributing information to promote child sex tourism

128 I turn to the offence under s 376D(1)(*c*). The gravamen of this offence may be summarised as follows:

(a) print, publish or distribute information; and

(b) that information is intended to promote conduct that would constitute an offence under s 376C or assist in the engagement of such conduct.

129 It is evident, as with the offence under s 376D(1)(*a*), that the factors which enhance the culpability of the offender include the nature of the information that is published or distributed and the likely response of the recipient. The more likely the information is to bring about the consequences foreshadowed in the section, the greater the culpability of the offender.

130 In the course of their communications, the Appellant passed on information relating to child sex tourism to Teo Dennis, which resulted in three charges being proceeded with against him under s 376D(1)(*c*):

(a) 134th charge (DAC 903313/2014): He emailed Teo Dennis and informed him that many children aged between six and 16 years could be found at a place called "Svay Pak" in Cambodia, Phnom Pheh offering commercial sex. He further informed Teo Dennis that he could either "blowjob or fuck them".

(b) 135th charge (DAC 903314/2014): He emailed Teo Dennis, saying that he found "12 to 14 years old the best as they are freshest and is [sic] becoming a grown up girl soon. Innocent too … and very curious about sex".

(c) 138th charge (DAC 903318/2014): He emailed Teo Dennis, informing him that a budget of S$700 would be sufficient for them and that the area which he had planned to bring Teo Dennis to was "quite well-organised". The age of the girls who would be available would

vary with the oldest being no more than 17 years old. He also assured Teo Dennis that the place was "definitely safe". In the same email, he enclosed three explicit photographs showing young girls exposing their genitalia, with the labia being parted by adult fingers.

131 The remaining four charges under s 376D(1)(*c*) which he consented to be taken into consideration for sentencing were as follows:

(a) 132th charge (DAC 903312/2014): He emailed Teo Dennis, asking if he wanted girls between 12 and 16 years of age. He assured him that it was "sure safe". He further told him that the expected cost would depend on whether he wanted a victim who was a virgin.

(b) 133th charge (DAC 903311/2014): He emailed Teo Dennis asking him to trade information with him of places where child sex was available. He further informed him that the younger the victim, the more expensive the services would be, and that it would be "worth it" because he would not be able to find this in Singapore.

(c) 136th charge (DAC 903316/2014): He emailed Teo Dennis to tell him that it was cheaper to engage in child sex in Cambodia than in Vietnam.

(d) 137th charge (DAC 903317/2014): He emailed Teo Dennis, telling him that it was easier to engage in child sex in Cambodia than in Vietnam. He said most of the younger sex workers in Ho Chi Minh City tended to be 17 or 18 years old and if he wanted even younger girls he would have to travel to the suburbs. He further offered to bring him on a sex tour provided that Teo Dennis paid for his travel costs.

132 An offence under s 376D(1)(*c*) can traverse a wide spectrum of circumstances. In particular, it can cover a wide array of information of varying degrees of gravity. The severity of the offence must be determined according to the mischief that might be caused by the information transmitted. To provide some context, I consider it useful at the first stage of the inquiry in respect of this offence to classify the spectrum of offending conduct into three broad categories in ascending levels of seriousness, which will correspondingly attract ascending levels of punishment. These categories are neither comprehensive nor exhaustive. In some instances, they shade into one another. Nonetheless, as an analytical tool, it is useful to see it in this way:

(a) At the lowest end of the spectrum, there is general information in the form of reportage provided to like-minded individuals. Such information may not actively further the mischief of enhancing demand for child sex tourism having regard to both the quality of the information and the inclinations of the recipient. Hence, in such cases, the offence may not have placed any group of potential victims at greater risk than they would otherwise have been. (*Cargnello v DPP* at [89(f)]). In offences falling within this category, a sentence in excess of a term of imprisonment of nine months would not as a general rule be called for.

(b) Moving up the sentencing spectrum, more serious offending conduct would involve the transmission of detailed knowledge, in particular, information about the availability of the trade in specific locations or information as to particular contacts, but conveyed to *like-minded* individuals. This may be aggravated where it is done for an ulterior and objectionable motive such as to exchange corresponding

information with others of a similar bent. What primarily aggravates the offence here is the nature of the information. For offences falling within this category a term of imprisonment ranging between 12 and 30 months' imprisonment may be appropriate as a starting point.

(c) The offender's culpability increases sharply when he is found to have *encouraged* the recipient to embark on a venture that the recipient was not already intending to embark on. This potentially enlarges the pool of paedophilic travellers, which would in turn drive up demand for the child sex trade. Here, both the nature of the information and the effect on the initial inclinations of the recipients can aggravate the offence and where this is the case, sentences in excess of 36 months' imprisonment may be considered as a starting point.

133 In my judgment, these thresholds would apply to the ad-hoc facilitator as opposed to the commercialised sex tour operator. But I consider that at the next stage of the inquiry, the court should consider where in the spectrum between the ad-hoc facilitator and the commercial sex tour operator the offender falls. This would be a further yardstick to assess the seriousness of the particular s 376D(1)(*c*) offence that is before it. The further the offender is from the ad-hoc facilitator, the greater the case for imposing a yet more serious sentence falling outside the ranges I have suggested. Finally, the court should then bear in mind all other relevant factors including those that I have previously noted to consider whether there are further factors aggravating or mitigating the offender's culpability and calling for a further adjustment to the sentence that ought to be imposed.

134 The District Judge analysed the Appellant's offending conduct cumulatively and awarded a uniform sentence of 20 months' imprisonment for each of the three charges proceeded against him. In my judgment, this was wrong in principle. The contents of the various exchanges between the Appellant and Teo Dennis vary somewhat across the three charges, and for this reason, may carry varying degrees of culpability. In my judgment, it is necessary to analyse the subject matter of each of the individual charges, as Busten JA did in *Cargnello v DPP*, in order to determine the punishment that should be imposed for each charge. I accordingly consider the 134th, 135th and 138th charges individually.

134th charge (DAC 903313/2014)

135 The gravamen of the 134th charge pertains to the Appellant informing Teo Dennis of a place called "Svay Pak" in Cambodia where children between the ages of 6 and 16 could be found for child sex services. Svay Pak appears to be a village located in the Russey Keo District of Phnom Penh, Cambodia. A basic search on the internet would reveal that "Svay Pak" used to be an infamous centre of child prostitution (<http://www.telegraph.co.uk/news/worldnews/asia/cambodia/1407280/Its-like-a-sweet-shop-if-this-girls-not-right-get-another.html>). More recently, it has been reported that the "days of brazen selling with a storefront are gone", although the "underground business … is thriving" (<https://www.washingtonpost.com/opinions/the-fight-against-child-sex-trafficking-in-cambodia-is-far-from-over/2015/05/21/743c8e44-ff19-11e4-805c-c3f407e5a9e9_story.html>). It appears that the site is somewhat notorious and this might suggest that the offending conduct was at the lower end of culpability. On the other hand, what brings this to the moderate range

of the scale, in my judgment, is that the Appellant conveyed the sense of greater and reliable knowledge of the site when he spoke of the ages of the children who could be had there as well as the types of activities they would engage in. The issue is not whether he did know this for a fact or had partaken of it himself, but the impression he conveyed was such that he seemed to be recommending it as a worthwhile place for the recipient to visit. Further, in this email, the Appellant mentioned that there were children as young as six years old available. By doing so, he introduced a potential sex tourist to the possibility of younger child victims (than he had contemplated), and so increased the potential for harm that could result if the tour were to take place. It is pertinent that Teo Dennis had not expressed interest in girls as young as six years old.

136 In all the circumstances, I do nonetheless consider that the term of imprisonment of 20 months that was imposed by the District Judge for this offence was manifestly excessive, and I set it aside. The appropriate sentence for this offence should be a term of imprisonment of 12 months.

135th charge (DAC 903314/2014)

137 Turning to the 135th charge, the Appellant told Teo Dennis his personal preference was for girls between 12 and 14 years old because he found them "the freshest" and because he found that they were "innocent", yet "very curious about sex". While this does not point to specific locations, what it seems to do is to encourage and motivate the recipient to seek out children aged as young as 12 years old on account of the Appellant's professed experience with such victims. This pushes the demand for these younger victims. It should be noted that this took place in response to the intimation by Teo Dennis that he was looking for girls aged between 16 and 18 years.

138 In my judgment, the Appellant went beyond sharing a personal preference to actively encouraging Teo Dennis to gravitate towards girls of an even younger age, and who were therefore even more vulnerable than those that Teo Dennis initially contemplated. I consider this as falling in the moderate range of culpability. I also consider the 135th charge more serious than the 134th charge because it was directed towards encouraging the recipient to indulge in an aggravated form of the offence under s 376C, namely having commercial sex with even younger and more vulnerable victims.

139 In these circumstances, I consider the District Judge's sentence of a 20 months' imprisonment term for the 135th charge **not** manifestly excessive. Another sentencing court might reasonably have imposed a term of imprisonment that was slightly longer or slightly shorter, but that does not afford a basis for appellate intervention. I therefore affirm the sentence that was imposed for the 135th charge.

138th charge (DAC 903318/2014)

140 I turn finally to the 138th charge, which, in my judgment, is the most serious amongst the three charges that were proceeded with. The Appellant passed on various pieces of information to encourage Teo Dennis to embark on the proposed trip. First, he passed on information as to the required budget, which was S$700 for the both of them. Second, he assured Teo Dennis that the place he intended to bring him to was "quite well-organised" and "definitely safe". Taken together, the information would have encouraged the recipient to think that the Appellant had identified, with specificity, the places he intended that they would visit, and further, that the venture would be reasonably affordable, likely to be fruitful, and unlikely to pose serious risks to the

recipient. This was precisely conduct that was designed to encourage and promote the commission of an offence under s 376C.

141 This was exacerbated by the Appellant's act of sending Teo Dennis explicit photographs of young girls with their genitals exposed and parted by adult fingers. This was clearly intended to entice Teo Dennis to engage in these gruesome acts. I regard this as the high end of the moderate range.

142 Given the severity of the offending conduct in question, I consider that the sentence that was imposed by the District Judge, which was a term of imprisonment of 20 months, was in fact lenient. I consider that having regard to the totality of the information, a sentence of around 30 months' imprisonment would not have been out of place. However, no appeal was lodged by the Prosecution and in the circumstances, I do not interfere with the sentence that was imposed by the District Judge given that it was certainly **not** excessive.

Which are the sentences that should be ordered to run concurrently or consecutively?

143 In the present case, the Prosecution proceeded with seven charges. In such circumstances, the court is required by s 307 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("the CPC"), to order at least two sentences of imprisonment to run consecutively. The question that remains is whether more than two sentences ought to run consecutively and, in any case, which sentences should be ordered to run consecutively.

144 The approach to be adopted when deciding which sentences should run consecutively was extensively dealt with in *Mohamed Shouffee bin Adam v*

Public Prosecutor [2014] 2 SLR 998 ("*Shouffee*"). There, I observed (at [30]) that the rationale of the one-transaction rule is found in the notion of proportionality and in that context, it would be relevant to have regard to the principle that consecutive sentences may be inappropriate in respect of offences that constitute a *single invasion of the same legally protected interest*. Referring to my observations in *Shouffee*, the Prosecution submits that the one-transaction rule was not violated by the District Judge since the sentences in respect of the s 376D(1)(*a*) and (*c*) offences that were ordered to run consecutively related to distinct offences which each reflected an invasion of a different legally protected interest. According to the Prosecution:

(a) Section 376D(1)(*a*) aims to curb the flow of visitors to the child sex trade overseas.

(b) Section 376D(1)(*c*) aims to curb the flow of information about the child sex trade.

145 With respect, I think the Prosecution's submissions are too blunt and therefore incorrect. In my judgment, although s 376D(1)(*a*) and (*c*) are distinct offences, it is clear that the legislative intent behind their enactment relates to the common purpose of protecting minors in "destination countries" from being commercially exploited by sexual predators coming from "sending countries". Indeed, both these offences may be seen as complementary in that the ultimate goal of both the relevant prohibitions is to curb the demand and appetite for child sex tourism. Hence, I do not agree with the Prosecution that the two sets of offences reflect the invasion of different legally protected interests. Rather, they seek to protect the same interest through different, but complementary prohibitions.

146 However, that is not the end of the matter. The question remains whether the charges proceeded with involved *separate* violations of the single interest identified, or only a single violation. To illustrate the point, the offence of drug trafficking reflects the invasion of a particular interest. But there would be nothing necessarily objectionable in running two sentences imposed for two distinct offences of trafficking to two different purchasers consecutively. Hence, here again it is necessary to condescend to the particulars of each charge and examine whether it may be appropriate to order that the sentence imposed for at least one of the offences under s 376D(1)(*c*) runs consecutively with that for the offence under s 376D(1)(*a*).

147 In my judgment, it would have been wrong to regard the Appellant's convictions in respect of the 134th and the 138th charges as *separate* violations of the same legally protected interest. The emails that were the subject matter of those charges were inextricably linked with the planning and eventual organisation of the trip that was the subject matter of the charge under s 376D(1)(*a*). This is most clearly the case in respect of the 138th charge which I have found to be the most serious of this group. The email in question there dealt with, among other things, the general plans and the budget for the planned trip which was the subject matter of the charge under s 376D(1)(*a*). In my judgment, the convictions for the 134th and 138th charges involved conduct that formed part of a single transaction with the offence under s 376D(1)(*a*) and were a corollary to that offence in the context of this case (*Fricker Oliver v Public Prosecutor* [2011] 1 SLR 84 at [25]). The information was supplied in the context of their planning to go on the sex tour. The offences also satisfied the "proximity test" endorsed in *Law Aik Meng* at [52] in that there was continuity of action and purpose between them (see *Bachik bin Abdul Rahman v PP* [2004] 2 MLJ 534 at [7]).

148 However, the 135th charge, in my judgment, is not beset with the same concerns. As I have noted at [138] above, what I regard as egregious about this charge was the endeavour to drive the recipient to explore the thrill that the Appellant apparently experienced of having sex with children as young as 12 years of age. Hence, quite aside from organising or encouraging a child sex tour, this charge concerned the encouragement of a more egregious variety of child sex. This was a separate invasion of the legal interest of preventing child sex and there was nothing objectionable in principle in ordering the sentence for this offence to run consecutively with the sentence imposed for the offence under s 376D(1)(*a*).

149 I digress to observe that in *Shouffee* at [41] and [46], I had noted that the one-transaction rule is not determinative. It is an analytical tool that is directed at the ultimate enquiry of whether an offender should be doubly punished for related criminal acts that are committed with proximity of time and space (*Shouffee* at [32]). Even if the offences were found to constitute a single transaction, consecutive sentences may nonetheless be imposed if this is considered appropriate to reflect the *overall culpability* of the offender. In other words, after looking at the matter through the lens of the one-transaction rule, the court should take a step back and consider whether the result yielded by adhering to the one-transaction rule fits the *overall criminality* of the offending behaviour. If the court considers that there is a mismatch between the aggregate sentence and the overall criminality of the offender, it remains permissible for the court to order sentences for offences forming a single transaction to run wholly or partially consecutive.

150 I have observed at [148] above that there was nothing objectionable in principle if the sentence for the 135th charge was ordered to run consecutively

with the sentence for the offence under s 376D(1)(*a*). Having reviewed the overall criminality of the Appellant's conduct, I am also satisfied that doing so would not be disproportionate or involve any mismatch between the overall culpability of the Appellant and the aggregate term of imprisonment that would result. In this connection, aside from the various considerations I have already outlined in detail, I also have regard to the remaining charges that the Appellant consented to being taken into consideration for the purposes of sentencing.

Conclusion

151 In all the circumstances:

(a) I set aside the sentence of 20 months' imprisonment imposed for the 134th charge (DAC 903313/2014) and impose in its place a sentence of 12 months' imprisonment;

(b) save for this, I do not interfere with the other sentences imposed by the District Judge;

(c) I order that the sentence for the offence under s 376D(1)(*a*) (DAC 903310/2014) of 36 months' imprisonment and that for the 135th charge (DAC 903314/2014) of 20 months' imprisonment are to run consecutively for an aggregate term of 56 months' imprisonment;

(d) all other sentences of imprisonment are to run concurrently; and

(e) in the circumstances, save as outlined at (a) above, the appeal is dismissed.

152 I finally record my gratitude to Mr Foo, the learned young *amicus curiae*, whose research and submissions were thorough and of great assistance.

Sundaresh Menon
Chief Justice

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