Lim Seng Soon *v* Public Prosecutor
[2014] SGHC 273

Case Number : Magistrate's Appeal No 45 of 2014

Decision Date : 23 December 2014

Tribunal/Court : High Court

Coram : Chao Hick Tin JA

Counsel Name(s) : Chelva Rajah, SC and Chew Wei Lin (instructed) and Ram Goswami (M/s Ram Goswami) for the appellant; Jeremy Yeo Shenglong and David Chew (Attorney-General's Chambers) for the respondent.

Parties : Lim Seng Soon — Public Prosecutor

Criminal Procedure and Sentencing – Sentencing

23 December 2014

Chao Hick Tin JA:

Introduction

1 Lim Seng Soon ("the Appellant") was a relationship manager working in the private banking arm of Deutsche Bank when, in September 2010, he cheated one of his clients, Ms Khoo Bee See ("Ms Khoo"), of S$2 million. He obtained the money by persuading Ms Khoo to take a loan for that amount, purportedly to purchase a non-existent financial product. The money disbursed under the loan was then transferred by the Appellant to a bank account in Hong Kong held in the name of his wife, Jaime Ho Ai Lin ("Ms Ho"), from which, on numerous occasions between October 2010 and February 2011, that money was converted, transferred or used for the Appellant's own benefit.

2 Almost exactly a year after this cheating offence, the Appellant induced Ms Khoo's sister, Ms Khoo Bee Leng, to issue a cheque for S$2 million, again to pay for a fictitious investment product. It is not disputed that the cheque was returned the next day.

3 The Appellant was found out and a police report was made in November 2011. He was subsequently arrested and charged with two counts of cheating (s 420 of the Penal Code (Cap 224, 2008 Rev Ed) ("the Penal Code")) and 16 charges under ss 47(1)(*b*) and (*c*) of the Corruption, Drug Trafficking and other Serious Crimes (Confiscation of Benefits) Act (Cap 65A, 2000 Rev Ed) ("the CDSA") for transferring, using or converting the benefits of criminal conduct.

4 It was not disputed that the Appellant fully cooperated with the Police in their investigation and had quite early in the day indicated his intention to make restitution. In January 2014, with the help of his family, he was able to make full restitution (S$2 million) to Ms Khoo. Subsequently, on 26 February 2014, he pleaded guilty to one cheating charge (for cheating Ms Khoo) and five CDSA charges, and on 10 March 2014 he was sentenced to a total of six years' imprisonment. He appealed to the High Court on the basis that the sentence was manifestly excessive and that a total sentence of four years' imprisonment would be more appropriate.

5 The first hearing of the appeal on 2 July 2014 was adjourned due to the illness of his counsel, Mr Ram Goswami. The hearing resumed on 27 August 2014, at which time the Appellant also engaged

Senior Counsel Mr Chelva Rajah ("Mr Rajah"), to represent him. After hearing arguments from the parties, I was of the view that the aggregate sentence was manifestly excessive in view of the mitigating factors raised by the Appellant and the precedents that had been brought to my attention. In particular, I was concerned if there had been adequate consideration for the fact that the Appellant had made full restitution of the S$2 million taken from Ms Khoo. I was further concerned that the substantial number of CDSA charges preferred against the Appellant constituted a "loading" of charges, causing the trial court to impose a sentence on the Appellant which was heavier than might otherwise have been warranted. I therefore reduced the total sentence to 4½ years' imprisonment and I now give my reasons.

Facts and decision below

6 The Appellant admitted to the following facts without qualification.

7 At the time of the offences, the Appellant was 39 years old and employed as a relationship manager with the private wealth management arm of Deutsche Bank. Ms Khoo had been his client since 2007.

8 On 24 September 2010, the Appellant proposed to Ms Khoo's factotum or assistant, one Rosie Cheong ("Ms Cheong"), that Ms Khoo invest in a fictitious investment product. Ms Cheong had a limited power of attorney which meant that all fund transfers had to be approved by Ms Khoo herself. As the latter had insufficient Singapore dollars in her account, the Appellant suggested that she take up a short term loan from Deutsche Bank so that she could invest in the product. Ms Cheong relayed the proposal to Ms Khoo.

9 On 27 September 2010, the Appellant called Ms Khoo directly. He did not mention the terms and conditions of the fictitious product since the phone conversation was being recorded by the bank. He also did not mention that the monies borrowed by Ms Khoo would eventually be transferred to Ms Ho's bank account with the RBS Coutts Bank in Hong Kong.At the material time, Ms Ho was a private banker with that bank and maintained a staff bank account.

10 On that same day, the Appellant faxed an instruction letter for Ms Khoo's written authorisation to issue a cashier's order for S$2 million and this was returned, duly signed by Ms Khoo, on the same day. The Appellant ordered his assistant to note on the signed authorisation that this was "[f]or pty purchase" so as not to arouse any suspicion. The cashier's order was credited into Ms Ho's Hong Kong account on 29 September 2010. The Appellant did this to take advantage of a procedural loophole at RBS Coutts Bank where it was necessary only to state the payee as "RBS HK" without indicating an actual name and this therefore disguised the identity of the actual payee. On numerous occasions from then until February 2011, he instructed Ms Ho to transfer or convert much of the money to his own use.

11 About a year after the first cheating offence was committed, on 29 September 2011, the Appellant induced Ms Khoo's sister, Ms Khoo Bee Leng, to issue a cheque for S$2 million, also purportedly to pay for a fictitious investment product. It is not disputed that the Appellant returned the cheque the next day but it was said that this cheque was only returned after Ms Khoo Bee Leng had spoken to the Appellant's assistant and another relationship manager, and it appeared that his scheme was about to unravel.

12 A police report was made on 3 November 2011 that the Appellant had cheated Ms Khoo of S$2 million. The Appellant was arrested and on 20 August 2013 he was charged as follows (the six shaded charges were proceeded with and the other twelve were taken into consideration):

DAC No	Date of offence	Offence	Amount
031982-2013	27 Sept 10	Cheating Ms Khoo (s 420 of the Penal Code)	S$2m
031983-2013	29 Sept 11	Cheating Ms Khoo Bee Leng (s 420 of the Penal Code)	S$2m
031984-2013	30 Sept 10	Transferring benefits of criminal conduct (s 47(1)(*b*) of the CDSA)	S$478,000
031985-2013	4 Nov 10	Transferring benefits of criminal conduct (s 47(1)(*b*) of the CDSA)	S$150,000
031986-2013	30 Nov 10	Transferring benefits of criminal conduct (s 47(1)(*b*) of the CDSA)	S$50,000
031987-2013	6 Dec 10	Transferring benefits of criminal conduct (s 47(1)(*b*) of the CDSA)	S$100,000
031988-2013	14 Dec 10	Transferring benefits of criminal conduct (s 47(1)(*b*) of the CDSA)	S$52,000
031989-2013	9 Feb 11	Transferring benefits of criminal conduct (s 47(1)(*b*) of the CDSA)	S$120,000
031990-2013	6 Oct 10	Converting benefits of criminal conduct (s 47(1)(*b*) of the CDSA)	S$114,863.05
031991-2013	7 Oct 10	Converting benefits of criminal conduct (s 47(1)(*b*) of the CDSA)	S$108,344.20
031992-2013	26 Oct 10	Converting benefits of criminal conduct (s 47(1)(*b*) of the CDSA)	S$120,679,87
031993-2013	29 Oct 10	Converting benefits of criminal conduct (s 47(1)(*b*) of the CDSA)	S$102,326.80
031994-2013	18 Nov 10	Converting benefits of criminal conduct (s 47(1)(*b*) of the CDSA)	S$114,361.60
031995-2013	3 Dec 10	Converting benefits of criminal conduct (s 47(1)(*b*) of the CDSA)	S$72,440.38
031996-2013	15 Feb 11	Converting benefits of criminal conduct (s 47(1)(*b*) of the CDSA)	S$68,629.36
031997-2013	7 Oct 10	Converting benefits of criminal conduct (s 47(1)(*b*) of the CDSA)	S$156,223.78
031998-2013	4 Nov 10	Converting benefits of criminal conduct (s 47(1)(*b*) of the CDSA)	S$110,930.73
031999-2013	26 Oct 10	Using benefits of criminal conduct (s 47(1)(*b*) of the CDSA)	S$352,024.79

13 With the help of his family, in January 2014 the Appellant made restitution of the full sum of S$2

million to Ms Khoo. The Appellant pleaded guilty to the charges proceeded with and on 10 March 2014 the District Judge imposed the following sentences:

(a) 031982-2013 (cheating, S$2 million): 5 years

(b) 031984-2013 (CDSA, S$478,000): 2 years

(c) 031985-2013 (CDSA, S$150,000): 1 years

(d) 031990-2013 (CDSA, S$114,863.05): 10 months

(e) 031994-2013 (CDSA, S$114,361.60): 10 months

(f) 031999-2013 (CDSA, S$352,024.79): 18 months

14 The sentences in DAC 031982-2013 and DAC 031985-2013 of five years' and one year's imprisonment respectively were ordered to run consecutively, making a total of six years' imprisonment to be served by the Appellant.

15 On 17 March 2014, the District Judge issued her grounds of decision in *Public Prosecutor v Lim Seng Soon* [2014] SGDC 102 ("the GD"). After summarising the facts, the District Judge noted that the Prosecution had pushed for an overall sentence of seven to eight years' imprisonment. This was on the basis that:

(a) The offences were premeditated as the Appellant had deliberately taken steps to avoid detection;

(b) The offences involved a very large sum of S$2 million in a single charge and another for the same sum (DAC 031983-2013) was taken into consideration for sentencing;

(c) His criminal activity took place over a period of months without discovery;

(d) He had abused his position of trust as relationship manager to Ms Khoo and the integrity of Singapore's banking and financial industry had to be protected; and

(e) There was a sentencing precedent, *PP v Tan Wei Chong* (DAC 18217/2011 & Ors) (unreported) ("*Tan Wei Chong*"), in which the offender, a relationship manager, had misappropriated moneys from four clients and thereby obtained S$3.6 million and €88,122.28; he was sentenced to a total of seven years in prison for 11 charges under s 420 of the Penal Code and four charges under s 47(1)(*b*) of the CDSA.

16 The District Judge also noted the following factors raised by the Appellant in mitigation:

(a) He had cooperated with the Police in their investigation and had pleaded guilty at the earliest opportunity;

(b) He had demonstrated genuine remorse in immediately returning Ms Khoo Bee Leng's cheque instead of banking it in;

(c) He had presented numerous testimonials from his family members and friends to attest to his character;

(d) He had made full restitution of the S$2 million taken from Ms Khoo; and

(e) He was a first offender, driven to crime by gambling debts, but he was not a hardened criminal and his family had been put into great distress by his actions.

17 In respect of the charge for cheating Ms Khoo, the District Judge explained her decision in these terms. The offence was serious and merited a substantial jail term. The Appellant's financial difficulties carried little mitigating weight. On the other hand, the victim (Ms Khoo) had suffered significant loss and in respect of Ms Khoo Bee Leng, the return of the cheque had little effect in mitigation because, by then, it was clear to the Appellant that his crimes had been discovered.

18 The District Judge agreed with the Prosecution that the facts showed that the Appellant had committed the offences with a high degree of premeditation and planning and the offences had taken place over the span of a year, from September 2010 to September 2011. Further, he had abused his position of trust as Ms Khoo's private banker, with concomitant impact on public confidence in Singapore's financial institutions. A sentence of five years' imprisonment for the cheating charge was therefore warranted.

19 In respect of the CDSA charges proceeded with, the District Judge noted that the relevant factors were:

(a) The charges involved a very substantial sum of money;

(b) The Appellant was directly involved in the transfer, conversion and use of the monies and he knew that they represented the benefits of criminal conduct;

(c) The way the moneys were funnelled to Hong Kong was sophisticated;

(d) But there was full restitution of all the monies taken.

20 The District Judge chose a one-year sentence to run consecutively with the five-year sentence imposed for the cheating offence as that would not in her view offend the totality principle and the total sentence was not one that would be considered crushing in the circumstances.

The parties' submissions on appeal

The Appellant's submissions

21 The Appellant's case on appeal was that the District Judge had erred in failing to give sufficient weight to the mitigating factors present in the case, in particular, the fact that he had pleaded guilty at the earliest opportunity and made full restitution.

22 Mr Rajah made three specific arguments. First, he admitted that the sum involved was very large and would ordinarily bear significant weight in aggravating the offence. But set against this was the fact that that would make it all the more difficult for the Appellant to make restitution for the full amount and yet the Appellant did so and that undoubtedly demonstrated the depth of his remorse, which ought to have been given more weight in mitigation. Mr Rajah submitted that to a significant extent therefore the aggravating factor of the substantial amount involved should have been offset by the fact that full restitution was made.

23 The second argument was that the five CDSA charges proceeded with all related to the use,

transfer or conversion of the same sum of S$2 million (see above at [12]). Mr Rajah, correctly, did not take issue with whether the charges had been properly framed and brought, but submitted that there was little difference in culpability whether the sum was transferred out from Ms Ho's bank account all on one occasion, or over 16 occasions. In essence, Mr Rajah was saying that the five CDSA charges fell afoul of the one-transaction rule.

24 The third argument advanced by Mr Rajah was that the sentence was manifestly excessive in relation to a number of relevant sentencing precedents.

The respondent's submissions

25 The respondent took issue with the specific arguments raised by Mr Rajah. On the point of restitution, Mr Jeremy Yeo ("Mr Yeo"), the Deputy Public Prosecutor appearing for the respondent, did not deny the mitigating effect of full restitution but submitted that, first, the mitigation could not be premised on the basis that no loss was caused, because a temporary deprivation to the victim was still a loss; and second, that the District Judge had adequately taken this factor into account in calibrating the sentences she had imposed.

26 On the point of whether the multiple CDSA charges constituted a "loading" of charges, Mr Yeo's submission was that those charges addressed particular modes of concealing the initial cheating offence. In this case, this was the movement of money to a Hong Kong bank account held in Ms Ho's name. In other words, the multiple CDSA charges reflected the Appellant's criminality in that he had relied on offshore accounts to commit the fraud; it was not disputed that, due to the particular safeguards in place in the bank at the time, the Appellant could not have transferred the money to an account in his own name. Those CDSA charges were therefore necessary to deter persons with access to such sophisticated means of evading regulations and safeguards from falling into the temptation of making use of them.

27 Finally, Mr Yeo argued that the sentences passed by the Judge were in line with the sentencing precedents.

My decision

28 An appellate court is generally disinclined to disturb a sentence passed by a lower court unless one or more of the criteria laid down for appellate intervention has been met: see *PP v UI* [2008] 4 SLR(R) 500 at [12].

29 The three main issues raised in this appeal were:

(a) Whether the fact that the Appellant had made full restitution had been adequately taken into account by the District Judge for the purposes of sentencing;

(b) Whether the CDSA charges were in relation to the same transaction; and

(c) Whether the sentence was manifestly excessive in relation to the sentencing precedents.

I will deal with each of these issues in turn.

The Appellant made full restitution

30 It seemed to me that with regard to the issue of restitution, the parties did not at all differ on the principles involved. Mr Rajah was quick to emphasise that he was not taking the position that the

aggravating factor of the large sum involved should be *fully* mitigated by the fact that full restitution was made, only that the District Judge had given insufficient allowance for this factor in mitigation. Mr Yeo did not dispute the first part of this argument; thus what was really in issue was whether, in view of the precedents, the District Judge had given proper weight to this factor. I discuss this issue in more detail below.

The CDSA charges

31 With regard to the CDSA charges, because five CDSA charges had been proceeded with (instead of only one), s 307(1) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("the CPC") was thereby invoked. This sub-section reads:

> **Consecutive sentences in certain cases**
>
> **307.**-(1) Subject to subsection (2), if at one trial a person is convicted and sentenced to imprisonment for at least 3 distinct offences, the court before which he is convicted must order the sentences for at least 2 of those offences to run consecutively.

32 The District Judge was therefore mandated to order the sentences for at least two of the offences to run consecutively, and, in the context of the present case, since the s 420 cheating offence was the predicate offence, the sentence for that offence had to be run consecutively with at least one of the sentences imposed for the CDSA offences.

33 The issue raised by the Appellant was, however, that while the five CDSA charges proceeded with – as well as the 11 others taken into account for the purposes of sentencing – had been correctly framed and brought, all the charges arose from what was essentially the same wrong done by the Appellant, namely, cheating Ms Khoo of the sum of $2 million. The subsequent use of his wife's account in Hong Kong – which resulted in the CDSA charges – was part and parcel of his plan to cheat Ms Khoo, and was not done for its own sake. To the Appellant, the whole point of cheating Ms Khoo of the S$2 million was to get hold of the money for his benefit. This raises an important point of principle in relation to the ambit of the one-transaction rule, and its interaction with s 307(1) of the CPC. The concern, which in my view eventuated in this case, is that the loading of charges that essentially arise from the same wrongful transaction such as to trigger the application of s 307(1) might result in a higher sentence than if such loading had not occurred.

34 I was in full agreement with Mr Yeo's argument that the CDSA charges, taken as a whole, reflected a *separate* act of criminality from the cheating charge: they reflected the fact that the Appellant had used an offshore bank account to route the benefits of his crime and that this was therefore a crime of some sophistication. But this is not to say that *each* CDSA charge was in respect of a separate criminal transaction. In *Mohamed Shouffee bin Adam v Public Prosecutor* [2014] 2 SLR 998 ("*Mohamed Shouffee*"), Sundaresh Menon CJ, sitting as a High Court judge, characterised the one-transaction rule as follows (at [31]):

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

regarded as part of the same transaction.

35 Thus, in determining whether multiple offences form a single transaction, while the usual touchstone is whether the offences are proximate as to time or place, the underlying rationale is whether there was a violation of distinct legally protected interests. In this case, it is true that the CDSA offences took place over a period of months and to that extent it could not be said that there was, necessarily, proximity of time between each offence. As to proximity of place, these offences were all in relation to that one bank account in Ms Ho's name in Hong Kong, but this factor could not carry much weight. In my judgment, the determinative factor in this case that made it crystal clear that these offences were all part of the same transaction was that it could not be said that the CDSA charges represented violations of *distinct* legally protected interests. If the Appellant had fully converted, transferred, or used that sum of S$2 million obtained from Ms Khoo on one occasion only, then only one CDSA charge could have been brought instead of 16. To put it another way, it added very little or nothing to the Appellant's criminality whether he had transferred, converted or used the money on 16 occasions instead of just one. I was therefore of the view that the one-transaction rule applied to the CDSA offences in that all the charges should rightly have been regarded as forming part of the same criminal transaction ie, to get at the $2 million. I should add that the remarks above *might* not apply to situations where an offender transferred or used monies in different ways in order to disguise his tracks or to render his gains untraceable; however, as this was simply not a pertinent consideration on the facts of the present case, I express no concluded view on this point.

36 One typical consequence where the one-transaction rule has been invoked is that the sentences imposed in respect of offences that could be said to form part of the same transaction should not be run consecutively with each other. In *Mohamed Shouffee* at [27], Menon CJ noted that the one-transaction rule was (at [27]):

> … not an inflexible or rigid rule but it serves as a filter to sieve out those sentences that ought not as a general rule to be ordered to be run consecutively.

37 In the present case it would therefore have been wrong to run the sentences imposed in respect of *two or more* of the CDSA charges consecutively. The District Judge correctly did not do this. However, because there were six charges in total, she was therefore constrained by s 307(1) of the CPC to run at least two of the sentences imposed consecutively. The combined effect of s 307(1) and the loading of the CDSA charges in this case was that the Appellant was sentenced for committing *at least three* distinct criminal offences, even though the facts disclosed that the offences fell into *two* distinct criminal transactions: first, the cheating of Ms Khoo; and second, the transfer, conversion and use of the S$2 million cheated from Ms Khoo.

38 The fundamental point is that if only one CDSA charge had been brought against the Appellant, correctly reflecting the fact that all the CDSA charges formed part of the same transaction, such that he faced only two charges in total, one under s 420 of the Penal Code and one CDSA charge, then s 307(1) of the CPC would not have been invoked. Thus the District Judge would have had the discretion whether or not to run the sentences imposed for each charge consecutively. In other words, the loading of the five CDSA charges, even though they arose from essentially the same transaction, had the effect of removing from the District Judge the discretion to decide whether or not to run sentences consecutively. The unfortunate consequence, in my view, was that the *total* sentence was higher than would otherwise have been imposed had the charges arising from the same transaction not been loaded onto the offender such that s 307(1) was invoked.

39 This would be wrong because, as a matter of principle, the absence of this discretion due to the invocation of s 307(1) of the CPC does not – and cannot – negate the sentencing judge's primary

duty in sentencing. As I observed in *Ong Chee Eng v PP* [2012] 3 SLR 776 ("*Ong Chee Eng*") at [23], "[a] key feature in the administration of criminal justice is that, within the range or confines of the criminal sanctions prescribed by law for an offence, the punishment imposed should fit the crime and the criminal." Tailoring the punishment to fit the crime is thus a fundamental duty in criminal sentencing and that duty compels the sentencing judge to consider whether, *regardless of s 307(1) of the CPC*, the sentence *as a whole* is proportionate and adequate in all the circumstances. In cases where s 307(1) statutorily requires the sentencing judge to run sentences consecutively, he should be diligent to consider whether, and to what extent, some re-calibration of the individual sentences, that would otherwise have been imposed, is justified. This would, in my view, give effect to the principle which undergirds the one-transaction rule, which is that notwithstanding s 307(1) an offender should generally not be doubly punished for offences that could be said to be so related to each other as to constitute one and the same transaction: *Mohamed Shouffee* at [32].

40 Putting it another way, it would be entirely appropriate, where the sentencing judge decides that on the particular facts placed before him and the degree of the offender's criminality so justifies it, for him to order that the sentences imposed be run consecutively. No re-calibration would be called for in such a case. Conversely, where, *but for the effect of s 307(1)*, the sentencing judge would have imposed a *shorter* total sentence having regard to the central issue of whether the aggregate punishment was proportionate to the offender's criminality, it would be equally permissible for the sentencing judge to re-calibrate (*ie* reduce) the *individual* sentences such that, at the final stage of the sentencing process, after those re-calibrated sentences are ordered to run consecutively, the aggregate sentence is one that is just and proportionate in the circumstances. An appropriate approach might be for the sentencing judge to treat all offences that properly regarded formed part of the same transaction *as if it were one distinct offence for the purposes of sentencing*.

41 Seen in this light, in certain cases, as in *Mohamed Shouffee*, the application of the one-transaction rule might have the effect of filtering out those sentences which ought not to be run consecutively. In other cases, as in the present, the effect would be to compel the sentencing judge to direct his mind specifically to the issue of whether the offences disclosed justified the total punishment imposed, and that the sentence had not been artificially enhanced by means of the loading of charges.

42 In my judgment this is nothing more than an extension of the common law principle of proportionality in sentencing, which is well established, and which was also discussed in *Mohamed Shouffee*. Of particular relevance is the following passage at [63]–[64]:

> 63 The power of the court to recalibrate the discrete sentences when these are ordered to run consecutively arises from the common law principle of proportionality, to which I have already referred. It is unquestionably true that a sentencing judge must exercise his sentencing discretion with due regard to considerations of proportionality when considering any given case. If this is valid and applicable when sentencing a single offender to a single sentence of imprisonment, then I cannot see how it can cease to be so when the sentencing judge is required in the exercise of his sentencing discretion to impose an aggregate sentence for a number of offences. *In my judgment, such a rule is compatible with and not excluded by ss 306 and 307(1) of the CPC*. …
>
> 64 The process of deciding whether, and if so which, sentences are to run consecutively is one that is ultimately integrated within the overall sentencing process. I leave to one side the case of mandatory or mandatory minimum sentences where the discretion of the sentencing judge is constrained by statute. In such cases, the judge must work within the applicable constraints. But in general, where the sentencing judge has discretion and is within the reach of s 307(1) of the CPC, he will inevitably be aware when he imposes the individual sentences for each of the

offences that he will be obliged, at the final stage of the sentencing process, to order at least two of them to run consecutively. It would be unrealistic to imagine that such a judge would disregard this fact and in particular (a) what the aggregate sentence would be and (b) whether that aggregate sentence would be appropriate in all the circumstances in terms of both its sufficiency as well as its proportionality, when he calibrates the individual sentences. In so doing, the sentencing judge would be doing no more than ensuring that the overall punishment accords with the criminality that is before him. In my judgment, to the extent this is so, it is best done transparently.

[emphasis added]

43 In other words, a sentencing judge must always be alive to the possibility that s 307(1) has been invoked through the loading of charges which, properly regarded, formed part of the same transaction, and which could result in a total sentence that is disproportionate in relation to the proven criminality of the accused person. In such a case it would be permissible to re-calibrate individual sentences accordingly, with the caveat that where such a re-calibration is done, the reasons for it should be stated explicitly.

44 In the present case, the District Judge noted (at [52] of the GD) that:

In imposing the above sentences for the CDSA charges, I am mindful that the predicate offence is cheating and dishonestly inducing the delivery of property and hence I had only ordered one of the sentences of the CDSA charges to run consecutively so that the [*sic*] it does not offend the principle of the totality of sentence and to ensure that the final sentence is not a 'crushing' one.

45 As I noted above at [37], it would not have been correct to run two or more of the CDSA sentences consecutively with that imposed for the cheating charge, and this, the District Judge correctly did not do. But, for the reasons given above, I was of the further view that the District Judge had erred in not considering the admittedly complex interplay between the one-transaction rule, s 307(1) of the CPC, and the principle of proportionality in this case, and that appellate intervention was therefore justified in principle. In my judgment, *as a result of* the effect of s 307(1) of the CPC, the total sentence had been pitched at a level that was higher than would have been imposed had s 307(1) *not* been invoked, taking into account the applicable precedents. I turn now to the precedents that had been relied on by the District Judge and the parties and will at [62] discuss the appropriate degree of calibration required in relation to the present case.

The precedents

46 There were three relevant cases that were brought to my attention: *Tan Wei Chong* (cited at [15(e)] above), *Public Prosecutor v Neo Aileen* [2013] SGDC 315 ("*Neo Aileen*"), and *Public Prosecutor v Sim Wei Min Pauline* [2010] SGDC 273 ("*Sim Pauline*"). It was argued by Mr Rajah, and resisted by Mr Yeo, that on their proper reading these cases demonstrated that the overall sentence in the present case was manifestly excessive. I discuss these cases in order.

47 The first is *Tan Wei Chong*, which was cited by the Prosecution to the court below and which was summarised by the District Judge at [9] of the GD in the following terms:

The prosecution next referred to the case *PP v Tan Wei Chong* (DAC 18217/2011 & Ors) where the accused, an OCBC Bank Relationship Manager, had misappropriated monies from four clients through the use of debit authorization forms and cashier's order's applications. He did so by getting the clients to sign on blank forms or by forging their signatures. The total amount

involved was S$3,600,000 and EURO88,122.28. The sum of S$44,344.99 was seized from him and he made partial restitution of S$21,889.03. The prosecution had proceeded on 11 charges under Section 420 Penal Code and 4 charges under Section 47(1)(b)CDSA. For the cheating charges involving the sums of $250,000, $200,000 and $150,000, he was sentenced to 3 years imprisonment, 30 months imprisonment and 2 years' imprisonment for each of the charges respectively. For the CDSA charges involving the sums of $250,000, $200,000 and EURO88,122.28, he was sentenced to 1 year imprisonment, 10 months imprisonment and 8 months' imprisonment for each of the charges respectively. He was sentenced to a total of 7 years' imprisonment. It was noted that although the amounts involved for the individual cheating charges in Tan Wei Chong's case amount were less than the present case, nevertheless it would give an indication of the appropriate sentence in respect of CDSA charges. It was submitted that the prosecution was seeking an overall sentence in the range of 7 to 8 years in respect of the Accused.

48 It was clear to me that the offences disclosed in *Tan Wei Chong* were comparatively more serious. There, the offender pleaded guilty to 11 s 420 charges and 4 CDSA charges. The total amount involved was over S$3.6 million and the total amount recovered in restitution was negligible. I was mindful that where full reasons are not available (as in *Tan Wei Chong*), the case is of limited precedential value (see *Ong Chee Eng* at [33]), but even so, the facts suggested that that case disclosed, on every relevant dimension, a *more serious* crime than the Appellant's: there were more victims, the total sum involved was larger, and very little restitution was made. I was of the view that the one-year difference between the total sentence imposed in *Tan Wei Chong* and that in the present case did not adequately capture the dissimilarity in terms of criminality.

49 The second case is *Neo Aileen*. In this case, the offender deceived the victim into delivering a total of S$1.325 million in exchange for foreign currency at an attractive exchange rate. No restitution was ever made. She pleaded guilty to two charges under s 420 of the Penal Code and was sentenced to a total of 78 months' imprisonment (6½ years). The District Court however took the view that the offender's plea of guilt was not demonstrative of remorse: in the course of her submissions on mitigation the offender made a number of wild allegations to explain what had really happened to the money and a Newton hearing was ordered, where it was shown that those allegations were completely fabricated. It was on this basis that no mitigating weight or discount in sentence was given on account of the plea of guilt: *Neo Aileen* at [3].

50 Mr Yeo submitted that *Neo Aileen* was a comparable case; while there were aggravating factors there not present in the case here, this was accounted for by the fact the sentence in the present case amounted to five years for the cheating offence, against 6 ½ years in *Neo Aileen*, and the discount adequately captured the mitigating effect of the Appellant's early plea of guilt and effort in making full restitution.

51 I did not agree that this was a comparable case. It was clear from the facts of *Neo Aileen* that the offender there hardly demonstrated any remorse at all, with no restitution to boot, thus justifying a higher sentence; therefore this case had very little precedential value in justifying the sentences imposed in the present case.

52 The third case is *Sim Pauline*; the appeal against sentence in Magistrate's Appeal No 201 of 2010 was dismissed with no written grounds. The offender was a relationship manager in Hong Leong Finance. There were six separate counts of cheating involving a total of S$210,000: the offender had induced the victim to deliver those sums to her for placing in fixed deposit accounts that were never in fact opened. The offender initially claimed trial but later pleaded guilty to two charges of cheating. She further made partial restitution of S$150,000. She was sentenced to a total of 16 months in jail.

The District Judge considered that the case was analogous to cases of confidence tricksters and that there were considerable aggravating factors (at [45]):

> The key aggravating factors were the number of offences and amount involved, the accused's abuse of her position and breach of trust and the motive of personal gain underlying her offences. She had also not demonstrated genuine remorse at any stage prior to pleading guilty. Her claims to have cooperated with the police rang somewhat hollow as this was not borne out by her decision to claim trial and challenge the voluntariness of her statements.

53 Although the present case involved a far greater sum of money, again there were aggravating factors present in *Sim Pauline* that were not present here. No doubt the greater sum involved justifies a longer sentence; but on the other hand, the Appellant here had pleaded guilty at the first opportunity instead of contesting the charges and had made full restitution. In the circumstances, the differential of 56 months did not seem to have correctly reflected the difference in criminality.

54 A fourth relevant case, which was not cited by the parties, is *Public Prosecutor v Yap Chee Yen* [2014] SGDC 219 ("*Yap Chee Yen*"), the decision in which was released only after the release of the GD in the present case. As the sentence in *Yap Chee Yen* has been appealed by the accused to the High Court in Magistrate's Appeal No 130 of 2014 which has not been heard yet, I make no comment on the case other than to recount the facts.

55 In this case, the offender was a relationship manager in Clariden Leu, a private bank. He faced a total of 30 charges: 13 charges for forgery for the purpose of cheating under s 468 of the Penal Code, one charge for cheating under s 417, and 16 charges for transferring benefits of his criminal conduct under s 47(1)(*b*) of the CDSA. Five s 468 and three CDSA charges were proceeded with; he pleaded guilty to all eight and he was sentenced to a total of 66 months' imprisonment (5½ years). His modus operandi was to forge the signatures of clients on fund transfer documents. Two client accounts were involved, and the sums transferred totalled about S$2.5 million. The money was transferred to accounts under his control, or to accounts of other bank clients to cover for losses they had incurred.

56 The trial judge considered that there were the following aggravating factors: the offences involved large sums and several clients, and took place over two years comprising multiple instances of forgery; there was a shortfall of S$385,527.82 even after partial restitution; and the offender had wanted to make it difficult to trace his criminal proceeds by transferring moneys to a British Virgin Island company (at [30] of *Yap Chee Yen*).

57 In my judgment, it was clear that the sentence in the present case was manifestly excessive relative to those in the precedents discussed above (with the exception of *Yap Chee Yen* upon which I make no comment). There were two main reasons for this. The first was that in none of those cases had the offender given adequate or full restitution. In my judgment, in cheating and other "white collar" offences, full restitution – accompanied by full cooperation with the investigation and an early plea of guilt – must, as a matter of principle, have significant mitigating value. The essential point is that such actions are generally indicative of genuine remorse.

58 Another factor to be borne in mind is that such crimes are often difficult to uncover, and even more difficult to investigate. The offender's early cooperation and full restitution would therefore have the salutary effect of minimising public resources expended on the case as well as ensuring that the defrauded victim is, at the end, made whole again. It is also a well-established principle of sentencing that a plea of guilt is a strong mitigating factor.

59 I recognise that too much weight should not be accorded on account of restitution as a mitigating factor lest it would appear that those offenders who are well-off (or, equivalently, those with well-off sympathisers, friends, or relatives) would be permitted to buy themselves out of jail time. Of course, no accused person should be allowed to do that. It is the question of determining the appropriate jail time taking into account the restitution made. As a matter of reason and logic, it must follow that an offender who restores (either through his own means or through the help of relatives) what he has taken should be given adequate consideration for purposes of sentencing. This principle is well established in case law (see *Krishan Chand v Public Prosecutor* [1995] 1 SLR(R) 737 at [13]; *Soong Hee Sin v Public Prosecutor* [2001] 1 SLR(R) 475 at [9]; *Tan Kay Beng v Public Prosecutor* [2006] 4 SLR(R) 10 at [38]) In this regard, the *quantum* restored would necessarily indicate the offender's efforts to make good the victim's loss and in turn demonstrate his genuine remorse. It is the same sort of logic which applies when the court treats a plea of guilt as a mitigating factor. In the present case, I was satisfied that the Appellant had made considerable effort to give full restitution: there was evidence that he had been prepared, even in the early stages of the investigation, to sell his property to raise money.

60 The second reason I had for taking the view that the sentence in the present case was manifestly excessive was that, as I have said, there ought to have been some re-calibration of the individual sentences to account for the fact that all the CDSA charges had been brought in respect of the same transaction (see above at [31]–[45]).

Conclusion

61 For the reasons given above and in the circumstances of the case, I was of the view that the total sentence of six years was manifestly excessive and should be reduced to 4½ years, in this way. Whether or not s 307(1) of the CPC had been invoked such that I was bound to run at least one of the CDSA sentences consecutively with the sentence imposed for the cheating charge, I thought that a *total* sentence of between 4½ years' and five years' imprisonment would have been just and appropriate having regard to all the facts of the case, and in particular, taking into account the fact that full restitution was made, that there was prompt and early cooperation with the investigation, and that the Appellant had pleaded guilty early. It follows that had the Appellant been sentenced to five years' imprisonment for the cheating charge *and no other sentence was ordered to run consecutively*, I would not have been minded to interfere because such a sentence, although perhaps on the upper end of the appropriate range, would not be "manifestly excessive".

62 However, due to the effect of s 307(1), some discount on the cheating charge was warranted so that the *total* sentence would be one that was fair and proportionate in the circumstances. I therefore reduced the sentence of five years in respect of DAC 31982-2013 (the s 420 cheating offence) to one of four years' imprisonment. Similarly, while the *individual* sentences imposed for the CDSA charges could not be faulted, for the reasons above, some reduction was merited on account of the fact that s 307(1) applied to the present case. I therefore reduced the sentences of ten months which had been imposed in respect of DAC 31990-2013 and DAC 31994-2013 to sentences of six months' imprisonment for each charge, with the two sentences in DAC 31982-2013 and DAC 31990-2013 to run consecutively for a total sentence of 4½ years. The sentences in respect of the other charges were ordered to remain unchanged and to run concurrently with these two sentences.