IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 26

Magistrate's Appeal No 9148 of 2015

Between

MUHAMMAD NASIR BIN JAMIL

… *Appellant*

And

PUBLIC PROSECUTOR

… *Respondent*

GROUNDS OF DECISION

[Criminal Procedure and Sentencing] — [Sentencing] — [Appeals]

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Muhammad Nasir bin Jamil
v
Public Prosecutor

[2017] SGHC 26

High Court — Magistrate's Appeal No 9148 of 2015
Chao Hick Tin JA
17 March; 25 May; 22 November 2016

10 February 2017

Chao Hick Tin JA:

Introduction

1 Muhammad Nasir bin Jamil ("the Appellant") first appeared before the District Judge ("the DJ") to face 28 charges of committing acts of harassment on behalf of illegal moneylenders (see *Public Prosecutor v Muhammad Nasir bin Jamil* [2015] SGDC 261 ("the GD") at [2]).[1] The Appellant pleaded guilty to the six charges which were proceeded with. He was accordingly convicted on 9 September 2015, and sentenced to a total of six years' and six months' imprisonment (with effect from 10 July 2015) as well as 24 strokes of the cane.[2] He appealed against his sentence, contending that it was excessive.

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[1] ROP at p 80.

[2] ROP at p 3.

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2 When the appeal first came before me for hearing, it appeared to me that there was a legal question relating to the interpretation of the Moneylenders Act (Cap 188, 2010 Rev Ed) ("the current MLA") which could potentially work in the Appellant's favour – namely, whether an offender who was presently convicted of a harassment offence under s 28 of the current MLA was liable to enhanced punishment under that section if his previous conviction was for *abetting* acts of harassment, rather than actually committing such acts ("the Legal Question"). This question turned on the proper interpretation of s 28. As the Appellant was not represented, I adjourned the hearing for him to obtain legal assistance. He was, however, unsuccessful in his application for criminal legal aid. I thus appointed a young *amicus curiae*, Mr Lin Yuankai ("Mr Lin"), to assist the court. After considering the written and oral submissions of both Mr Lin and the Prosecution, I answered the Legal Question in the *affirmative*. Furthermore, having considered the parties' submissions, I did not find the Appellant's overall sentence manifestly excessive. I therefore dismissed the appeal.

3 The grounds set out herein pertain largely to the Legal Question, which I shall address after laying out the relevant background of the case.

Background facts

4 The Appellant, who is aged 36 this year, was, at the material time, a part-time security officer. On 9 July 2015, he was arrested at an open-air car park in a housing estate in Sembawang and held in remand.[3]

5 The following facts are based on the Statement of Facts that the Appellant admitted to. In February or March 2015, the Appellant borrowed

[3] ROP at p21.

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money from an unlicensed moneylender (*ie*, a loan shark) known as "Hasim" to pay for his daily expenses and car instalments. When the Appellant defaulted on the repayments, Hasim told the Appellant to repay him by borrowing money from another loan shark known as "Ben". Instead of lending money to the Appellant, Ben offered him a job – namely, that of "splashing paint at debtors' homes and writing on walls in the vicinity of those homes"[4] in return for a sum of $100 for every home that he beset. The Appellant took up Ben's offer and started accepting assignments from him in June 2015.

6 Between mid-June 2015 and 9 July 2015, the Appellant committed a total of 30 harassment offences before he was arrested.[5] These offences related to the splashing of (mostly red) paint on the doors of housing units in various parts of Singapore and the writing of remarks on the walls of such units. In the State Courts, six of these offences were proceeded with, 22 offences were taken into consideration for sentencing purposes and no further action was taken for the remaining two offences. In each of the six proceeded offences, the Appellant had used his mobile phone to shoot a video of the paint splashed at the unit concerned and the remarks written on the wall of that unit, and then sent it to Ben so that he could claim the sum of $100 per job.[6] In the case of the sixth proceeded offence, the Appellant had knowingly caused property damage to a neighbouring unit instead of to the alleged debtor's unit.[7] The six proceeded offences were all offences under s 28(2) read with s 28(1)(*b*) of the current MLA.

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[4] ROP at p 21, para 4.

[5] ROP at pp4-8, Schedule of Offences.

[6] ROP at p21, see paras 9, 14, 19, 24, 29 and 34.

[7] ROP at p24 at para 35.

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7 The Appellant had previously been convicted on 14 December 2012 under s 28A(1)(*b*) read with s 28(2) of the current MLA (see [15] below) of abetting the commission of a harassment offence by providing transport to another person to a debtor's unit for the purpose of defacing the wall near that unit.[8] Another abetment charge under s 28A had been taken into consideration for sentencing purposes on that occasion.[9] The Appellant had been sentenced to 12 months' imprisonment and three strokes of the cane.

8 In the court below, the Prosecution submitted that given the aforesaid precedent, the Appellant was liable to the enhanced punishment prescribed by ss 28(2)(*b*) and 28(3)(*d*)(i) of the current MLA.[10] In respect of the sixth proceeded offence, which involved damage to an innocent neighbour's unit, the Prosecution submitted that the Appellant should receive at least two to three months' additional imprisonment (on top of the mandatory minimum sentence for repeat offenders who had caused property damage).[11] In mitigation, the Appellant, who appeared in person, expressed remorse and said that he had been "quite desperate during that time".[12]

9 As mentioned at [1] above, the DJ sentenced the Appellant to a total of six years' and six months' imprisonment (with effect from 10 July 2015), and 24 strokes of the cane. For the first five proceeded charges, he sentenced the Appellant to two years' imprisonment and five strokes of the cane – the minimum punishment prescribed under s 28(2)(*b*) read with s 28(3)(*d*)(i) for a

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[8] ROP at p 81 (GD at [5]).

[9] Respondent's submissions at para 10.

[10] ROP at p25 at para 37.

[11] ROP at p75.

[12] ROP at p76.

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repeat offender who had caused property damage – for each charge. As the sixth proceeded charge involved the harassment of an innocent neighbour's home, the DJ meted out a higher sentence – 2½ years' imprisonment and five strokes of the cane – for that charge. He ordered the imprisonment sentences for two of the first five proceeded charges to run consecutively with the imprisonment sentence for the sixth proceeded charge.[13]

10 On 15 October 2015, the Appellant appealed against the DJ's decision on the ground that the sentence imposed was excessive.[14]

The decision below

11 In the GD, the DJ noted that the Appellant was subject to enhanced punishment as this was his "second conviction for harassing borrowers on behalf of an unlicensed moneylender" (see the GD at [3]).[15]

12 In explaining the reasons for his sentence, the DJ held that:

(a) The principle of deterrence was the dominant object in such cases,[16] and the sentence imposed "must adequately meet the ends of both specific and general deterrence" (see the GD at [39]).[17]

(b) The culpability of the Appellant was significant, with six offences (*ie*, the six proceeded offences) committed from 19 June 2015 to 6 July 2015 at various locations in Singapore.[18] The Appellant's

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[13] ROP at p77.

[14] ROP at p71.

[15] ROP at p80.

[16] ROP at p85 (GD at [35]).

[17] ROP at p87.

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> actions were premeditated and calculated to evade police detection. The Appellant was persistent in his approach, and even harassed one household despite the presence of a CCTV camera outside that residence. He was also indiscriminate, as could be seen from his harassment of a housing unit that did not even belong to the alleged debtor in the case of the sixth proceeded charge. Motivated by the lure of easy money, the Appellant caused property damage. His mitigation was unexceptional – he claimed to have acted out of desperation, but he had (so he said) borrowed money from Hasim to pay, in part, his car instalments.[19] A car, the DJ pointed out, "was something [the Appellant] could forgo to pay off his debt to 'Hasim' rather than work for 'Ben'" (see the GD at [48]). Furthermore, despite having been trained as a security officer, whose job was to protect persons and property, the Appellant had engaged in "acts that were the direct antithesis" (see the GD at [50]). In addition, the "aggravating effect" of the 22 charges taken into consideration for sentencing purposes could not be ignored – the number of charges was large and "reflected a campaign of harassment/terror" (see the GD at [51]).[20]

13 For the preceding reasons, and in view of a number of sentencing precedents (set out at [52] of the GD) which the DJ found pertinent even though they concerned first-time rather than repeat offenders,[21] the DJ decided, as stated earlier at [9] above, to impose the "mandatory minimum" punishment of two years' imprisonment and five strokes of the cane for each of the first

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[18] ROP at p87 (GD at [42]).

[19] ROP at p89.

[20] ROP at p90.

[21] ROP at p90.

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five proceeded charges. For the sixth proceeded charge, he sentenced the Appellant to 2½ years' imprisonment and five strokes of the cane (see the GD at [53]).

14 The DJ further ordered that three of the imprisonment terms should run consecutively so as to arrive at the appropriate global sentence (see the GD at [55]–[61]; see also [9] above).[22] He noted that although all the charges against the Appellant were framed under s 28 of the current MLA, they related to "incidents at different dates, times, addresses and in connection with different loans [to] different debtors" (see the GD at [56]). The Appellant's offences could thus be considered "distinct offences", and "not part of [a] single transaction" (see likewise [56] of the GD). In the DJ's view, ordering only two of the Appellant's imprisonment sentences to run consecutively "would not adequately reflect the total culpability of the [Appellant] for all his acts" (see the GD at [58]); it would also result in an aggregate imprisonment sentence which was shorter than that imposed on some first-time harassers who had committed multiple offences.[23] An aggregate imprisonment term of six years and six months would not be crushing as the Appellant "would still be at the economically viable age of 40 (or younger) when he [was] released" (see the GD at [62]).

The Legal Question

15 It is helpful at this point to set out the relevant legal provisions so that the Legal Question can be placed in context. Sections 28 and 28A of the current MLA read as follows:

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[22] ROP at p95, GD at para 55.

[23] ROP at p95.

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Harassing borrower, besetting his residence, etc.

28.—(1) Subject to subsection (3), where an unlicensed moneylender —

(*a*) displays or uses any threatening, abusive or insulting words, behaviour, writing, sign or visible representation; or

(*b*) commits any act likely to cause alarm or annoyance to his borrower or surety, any member of the family of the borrower or surety, or any other person,

in connection with the loan to the borrower, whether or not the unlicensed moneylender does the act personally or by any person acting on his behalf, the unlicensed moneylender shall be guilty of an offence and —

(i) in the case where the unlicensed moneylender is a body corporate, shall be liable on conviction to a fine of not less than $10,000 and not more than $100,000; or

(ii) in any other case —

(A) shall on conviction be punished with imprisonment for a term not exceeding 5 years and shall also be liable to a fine of not less than $5,000 and not more than $50,000; and

(B) in the case of a second or subsequent offence, shall on conviction be punished with imprisonment for a term of not less than 2 years and not more than 9 years and shall also be liable to a fine of not less than $6,000 and not more than $60,000.

(2) Subject to subsection (3), any person who, acting on behalf of an unlicensed moneylender, commits or attempts to commit any of the acts specified in subsection (1) shall be guilty of an offence and —

(*a*) shall on conviction be punished with imprisonment for a term not exceeding 5 years and shall also be liable to a fine of not less than $5,000 and not more than $50,000; and

(*b*) in the case of a second or subsequent offence, shall on conviction be punished with imprisonment for a term of not less than 2 years and not more than 9 years and shall also be liable to a fine of not less than $6,000 and not more than $60,000.

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(3) Subject to sections 325(1) and 330(1) of the Criminal Procedure Code 2010 —

(*a*) except as provided in paragraph (*b*), a person who is convicted for the first time of an offence under subsection (1) or (2) shall also be liable to be punished with caning with not more than 6 strokes;

(*b*) a person who is convicted for the first time of an offence under subsection (1) or (2) shall also be punished with caning —

(i) with not less than 3 and not more than 6 strokes if it is proved to the satisfaction of the court that, in the course of committing the offence, damage was caused to any property;

(ii) with not less than 5 and not more than 8 strokes if it is proved to the satisfaction of the court that, in the course of committing the offence, hurt was caused to another person; and

(iii) with not less than 6 and not more than 12 strokes if it is proved to the satisfaction of the court that, in the course of committing the offence, hurt was caused to another person and damage was caused to any property;

(*c*) except as provided in paragraph (*d*), a person who is convicted of a second or subsequent offence under subsection (1) or (2) shall also be liable to be punished with caning with not more than 12 strokes; or

(*d*) a person who is convicted of a second or subsequent offence under subsection (1) or (2) shall also be punished with caning —

(i) with not less than 5 and not more than 10 strokes if it is proved to the satisfaction of the court that, in the course of committing the offence, damage was caused to any property;

(ii) with not less than 6 and not more than 12 strokes if it is proved to the satisfaction of the court that, in the course of committing the offence, hurt was caused to another person; and

(iii) with not less than 9 and not more than 18 strokes if it is proved to the satisfaction of the court that, in the course of committing the

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offence, hurt was caused to another person and damage was caused to any property.

(3A) For the purposes of paragraph (*a*) of subsection (1), a person who —

(*a*) uses any threatening, abusive or insulting words in any telephone call made by him; or

(*b*) by any means sends any thing which contains any threatening, abusive or insulting words, writing, sign or visible representation,

whether from a place in Singapore or outside Singapore, to any person or place in Singapore shall be taken to have committed an act referred to in that paragraph.

(3B) For the purposes of paragraph (*b*) of subsection (1), a person who makes any telephone call, or by any means sends any article, message, word, sign, image or representation, whether from a place in Singapore or outside Singapore, to any person or place in Singapore, which is likely to cause alarm or annoyance to a person referred to in that paragraph, shall be taken to have committed an act referred to in that paragraph.

(4) For the purposes of subsection (2), any person who does any of the acts specified in subsection (1) in connection with a demand for the repayment of a loan to an unlicensed moneylender shall be presumed, until the contrary is proved, to act on behalf of such unlicensed moneylender.

(5) For the purposes of subsection (3), a person is deemed to have caused damage to any property if he does any of the following acts:

(*a*) defacing the property by means of any pen, marker or any other delible or indelible substance;

(*b*) defacing the property by affixing, posting up or displaying on such property any poster, placard, bill, notice, paper or other document;

(*c*) defacing the property through the use of paint, coffee, soya sauce or any other delible or indelible substance;

(*d*) destroying or damaging the property through the use of fire or any other substance;

(*e*) doing any other act of mischief which causes a change in any property or which diminishes its value or utility.

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Abetment of section 28

28A.—(1) For the purposes of Chapter V of the Penal Code (Cap. 224), a person shall be taken to have abetted the commission of an offence under section 28 if —

(*a*) he gives instruction to another person to carry out any act specified in section 28(1) in connection with a demand for the repayment of a loan to an unlicensed moneylender;

(*b*) he provides or arranges transport for another person for the purpose of carrying out any such act knowing or having reasonable cause to believe that the act is in connection with such a demand;

(*c*) he acts as or arranges a lookout for a person carrying out any such act knowing or having reasonable cause to believe that the act is in connection with such a demand; or

(*d*) he provides or arranges transport to a person for the purpose of his acting as a lookout for a person carrying out any such act, and he knows and has reasonable cause to believe that the act is in connection with such a demand.

(2) For the purposes of Chapter V of the Penal Code, where —

(*a*) a person gives instruction to another person to carry out any act specified in section 28(1) in connection with a demand for the repayment of a loan to an unlicensed moneylender; and

(*b*) a person, knowing or having reasonable cause to believe that the act is in connection with a demand, verifies that the act has been carried out in accordance with such instruction,

the person referred to in paragraph (*b*) shall be taken to have abetted the commission of an offence under section 28(1) or an offence under subsection (1)(*a*) (as the case may be) by the person giving the instruction.

(3) For the avoidance of doubt, this section is without prejudice to the generality of the term "abetment" under the Penal Code.

16 With regard to abetment, s 109 of the Penal Code (Cap 224, 2008 Rev Ed) ("the Penal Code", which expression also denotes (where applicable) the Penal Code (Cap 224, 1985 Rev Ed)) states:

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> **Punishment of abetment if the act abetted is committed in consequence, and where no express provision is made for its punishment**
>
> **109.** Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.
>
> …

17 When this appeal first came before me on 17 March 2016, I questioned whether the Appellant was even liable to enhanced punishment under ss 28(2)(*b*) and 28(3)(*d*)(i) of the current MLA in the first place, given that his antecedent was for *abetting* the commission of the acts of harassment specified in s 28(1), rather than for actually committing such acts. This question arose due to the wording of, *inter alia*, s 28(2)(*b*), which provides that a person who acts on an unlicensed moneylender's behalf to commit or attempt to commit "*any of the acts specified in [s 28(1)] shall be guilty of an offence*" [emphasis added], and "in the case of *a second or subsequent offence*" [emphasis added], shall, on conviction, be subject to enhanced punishment.

18 In essence, the Legal Question was whether, in view of the Appellant's antecedent offence of *abetting* the commission of acts of harassment, his present offence of actually committing such acts would constitute "a second or subsequent offence" for the purposes of ss 28(2) and 28(3) of the current MLA. To state the question in another way, does the word "offence" in the context of the phrase "a second or subsequent offence" include an offence of *abetting* the commission of acts of harassment? Although s 109 of the Penal Code provides that an abettor of an offence shall, if no express punishment for such abetment is stipulated in the Penal Code, be punished with the same punishment as that prescribed for that offence, the offence of abetment and the

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principal offence abetted remain distinct offences in law. Section 109 does not appear to have equated the abetment of an offence with the commission of that offence. In this regard, I note that s 28(1) of the current MLA, to which both ss 28(2) and 28(3) refer, does not include the offence of abetting the commission of acts of harassment; instead, such abetment is separately addressed in s 28A.

19 The hearing on 17 March 2016 was adjourned for the Prosecution to submit on the Legal Question. The parties appeared before me again on 25 May 2016. Given that the Appellant was unrepresented and therefore ill-equipped to respond to a question of law, I adjourned the second hearing so that the Appellant could apply for criminal legal aid. The Prosecution, quite rightly, did not object. As mentioned earlier at [2] above, the Appellant's application for criminal legal aid was rejected. I therefore appointed Mr Lin as the *amicus curiae* to assist the court in relation to the following issue (*ie*, the Legal Question):

> Whether an offender is liable [to] enhanced punishment under s 28(2) and/or [s] 28(3) of the Moneylenders Act (Cap 188, Rev Ed 2010) if his antecedent concerns the abetment of an offence stipulated in s 28, instead of the commission of an offence stipulated in s 28. Counsel may have recourse to legislative intention and cases such as *Prosecutor v Choi Guo Hong Edward* [2007] 1 SLR(R) 712, *[Ho] Sheng Yu Garreth v Public Prosecutor* [2012] 2 SLR 375 and *Choy Tuck Sum v Public Prosecutor* [2000] 3 SLR(R) 456.

20 After hearing the parties and Mr Lin on 22 November 2016, I was satisfied that given Parliament's intention, the word "offence" in the phrase "a second or subsequent offence" in ss 28(2) and 28(3) of the current MLA should be construed to include an offence of *abetting* the commission of any of the acts of harassment specified in s 28(1). As such, I held that the Appellant was liable to the enhanced punishment prescribed by ss 28(2) and

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28(3). Furthermore, I found that the overall sentence meted out by the DJ was not manifestly excessive when the relevant sentencing principles, including the totality principle, were applied (see, *eg*, *Mohamed Shouffee bin Adam v Public Prosecutor* [2014] 2 SLR 998). I therefore dismissed the appeal. In explaining (at [21]–[43] below) the reasons for my decision on the Legal Question, I shall refer to the current MLA as well as its predecessor statutes, the now-repealed Moneylenders Act (Cap 188, 1985 Rev Ed) ("the 1985 MLA") and the Moneylenders Act 2008 (Act 31 of 2008) ("the 2008 MLA"). I shall also use the generic term "the MLA" where it is necessary to refer to the Moneylenders Act (Cap 188) generally, be it the current MLA, the 2008 MLA or the 1985 MLA.

Analysis of the Legal Question

21 As stated earlier at [2] above, the resolution of the Legal Question and, in turn, this appeal largely hinged on the construction of s 28 of the current MLA. Where a present harassment offender – *ie*, an accused person who is presently charged with a harassment offence under s 28 – has previously committed any of the acts of harassment set out in s 28(1), there is no doubt that he is liable to the enhanced penalties specified in s 28(2) and s 28(3). However, it is unclear from the literal wording of s 28 whether a present harassment offender whose antecedent is for *abetting* the commission of acts of harassment is likewise subject to these enhanced penalties. Read literally, s 28 seems to suggest that the offence of abetting the commission of acts of harassment is excluded from the ambit of the phrase "a second or subsequent offence" in ss 28(2) and 28(3).

22 In this regard, Mr Lin, who took the same position as the Prosecution, submitted that the word "offence" in the aforesaid phrase should be interpreted

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to include the offence of abetting the commission of acts of harassment. I accepted this contention after examining the statutory purpose of ss 28 and 28A, the pre-existing case law and the relevant extrinsic materials.

The legislative intent

23 The provision which is now s 28 of the current MLA was first introduced in the form of s 28 of the 2008 MLA to replace (the now-repealed) s 33 of the 1985 MLA. During the second reading of the Moneylenders Bill (Bill 33 of 2008) (later enacted as the 2008 MLA) in November 2008, the then Senior Minister of State for Law, Assoc Prof Ho Peng Kee ("Assoc Prof Ho"), explained that cl 28 of the Bill was intended to re-enact s 33 of the 1985 MLA, and would extend the punishment of caning "to those who instigate or direct the harasser to commit the acts of harassment". He said (see *Singapore Parliamentary Debates*, *Official Report* (18 November 2008) vol 85 at cols 1006–1007):[24]

> There is no reason why those higher up the hierarchy of a loansharking syndicate should not also be similarly punished for the despicable acts of those they use to carry out their directions. They are equally, if not, more culpable.

24 The above extract from Assoc Prof Ho's parliamentary speech indicates that certain individuals – specifically, those higher up the hierarchy in a loan shark syndicate who deploy others as a shield to do the dirty work of harassing debtors – should be viewed as being *equally culpable as*, *if not more culpable than*, the pawns who commit the actual acts of harassment. Such instigators of acts of harassment are undoubtedly abettors – s 107(*a*) of the Penal Code makes it clear that a person abets the doing of a thing if he instigates any person to do that thing.

[24] YAC's submissions at para 25.

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25 The 2008 MLA was subsequently amended in 2010 by the Moneylenders (Amendment) Act 2010 (Act 5 of 2010) to, *inter alia*, enhance the penalties for the harassment offence under s 28[25] and enact s 28A, which sets out certain situations in which a person shall be deemed to have abetted the commission of a s 28 harassment offence (see [15] above). Notably, these situations include giving instructions to another person to carry out acts of harassment (see s 28A(1)(*a*)), and can thus catch persons higher up the hierarchy than the actual harasser. As can be seen from [23]–[24] above, there is every indication that Parliament intended such persons to be treated as being just as (if not more) culpable as the actual harasser. Section 28A of the current MLA also provides for other situations where a person shall be deemed to have abetted the commission of an offence under s 28. These include situations where a person acts as a lookout for or provides transportation to the actual harasser (see ss 28A(1)(*b*)–28A(1)(*d*)). On the basis of the scheme set out in s 28A, abettors who fall under ss 28A(1)(*b*)–28A(1)(*d*) are not treated any differently from abettors who give instructions as spelt out in s 28A(1)(*a*). Since no express punishment is statutorily-prescribed for the abetment of, specifically, a harassment offence under s 28, therefore, pursuant to s 109 of the Penal Code, an abettor of a harassment offence is liable to the same punishment as that applicable to the actual harasser. In other words, the various types of abettors under s 28A, regardless of their roles, are to be regarded as bearing equal culpability as (and in some cases, possibly greater culpability than) the actual harassers who commit the harassment offences spelt out in s 28(1).

26 This interpretation is fortified by the parliamentary debates when the Bill introducing the amendments made in 2010 was read (see *Singapore*

[25] YAC's submissions at para 27.

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Parliamentary Debates, *Official Report* (12 January 2010) vol 86).[26] Assoc Prof Ho said that a paradigm shift was needed to deal with loan shark syndicates, which were in reality organised criminal groups (at col 2054). In particular, he said (at col 2056): "To cripple the many layers of a loanshark syndicate, anyone who contributes to or facilitates a loansharking operation will attract the wrath of the law". Assoc Prof Ho went on to state (at cols 2058–2059):[27]

> Sir, anyone who participates in loansharking operations contributes to the existence and continuity of loansharking activities. Every perpetrator, in supporting the organisation, perpetuates its illegal activities. In essence, when a person assists or facilitates a loansharking operation, he becomes part of the many layers shielding the masterminds, allowing them to go undetected. More importantly, when he replaces a person who has been arrested, his doing so enables a loanshark syndicate to reorganise its resources and continue to thrive.
>
> In order to target the many layers forming the organisation, anyone who contributes to or facilitates a loansharking operation, no matter what his role is, will not escape the wrath of the law. This will help us disrupt the syndicates. The Bill therefore amends section 14 (which is on unlicensed moneylending) and section 28 (on harassing borrowers [by] besetting [their] residence) to treat certain acts as assistance of unlicensed moneylending and abetment of the harassment offence, respectively. These acts include, for example, selling prepaid SIM cards to loansharks, transporting runners to harassment targets, acting as a lookout for harassment runs and assisting the loansharks in verifying harassment jobs before paying the runners. Indeed, a 27-year-old ex-runner said that he was paid $10 for every address that he verified that harassment had been conducted. Sir, these acts are specifically chosen as they reflect the current *modus operandi* adopted in loanshark harassments. *Persons carrying out these acts are deemed to have assisted or abetted loansharking offences and will be liable to the same penalties.*
>
> [emphasis added]

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[26] YAC's submissions at para 28.

[27] YAC's BOA at p 267.

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27 No further changes were made to s 28 and s 28A of the current MLA by the subsequent amendments enacted by the Moneylenders (Amendment) Act 2012 (Act 8 of 2012). Mr Lin, who helpfully traced the relevant legislative developments, rightly noted that the scope of the provisions pertaining to loan shark harassment had been broadened over the years to now include all layers of a loan shark syndicate, including masterminds and runners, regardless of whether they abetted, instigated or directly committed acts of harassment.[28] In other words, given the nature and methodology of a loan shark syndicate's operations, Parliament intended to adopt an aggressive approach to tackle the scourge of loan shark activities. Based on the statutory purpose as gleaned from the text of ss 28 and 28A of the current MLA as well as the relevant extrinsic materials, it was clear to me that Parliament intended an abettor of acts of harassment to be treated punishment-wise in exactly the same way as the actual harasser. Accordingly, I agreed with the Prosecution that a previous abetment offence under s 28A could be treated as an antecedent for the purposes of determining the applicability of the enhanced punishment set out in ss 28(2) and 28(3) for actual harassers.

The relevant case law

28 Mr Lin also pointed out that our courts had previously answered questions similar to the Legal Question in the present case by adopting a purposive approach to the interpretation of the relevant provisions of the MLA (as defined in the generic sense at [20] above).[29] As the Prosecution submitted, our courts have consistently taken the position that a broad reading of the applicable provisions of the MLA is necessary whenever the question of

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[28] YAC's submissions at para 31.4.

[29] YAC submissions at para 32.

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punishment arises under the MLA.[30] In this regard, I was referred to two cases – *Public Prosecutor v Choi Guo Hong Edward* [2007] 1 SLR(R) 712 ("*Edward Choi*") and *Ho Sheng Yu Garreth v Public Prosecutor* [2012] 2 SLR 375 ("*Garreth Ho*"). These two cases, while not addressing the same provisions as those which feature in this appeal, were nevertheless instructive of the approach that should be taken in the present case.

29 *Edward Choi* involved the offence of abetting the carrying on of an unlicensed moneylending business. At that time, it was an offence under s 8(1)(*b*) of the 1985 MLA to run an unlicensed moneylending business. The relevant provisions read:

> **8.**—(1) If any person —
>
> …
>
> (*b*) carries on business as a moneylender without holding a licence or, being licensed as a moneylender, carries on business as such in any name other than his authorised name or at any place other than his authorised address or addresses; or
>
> …
>
> he shall be guilty of an offence and —
>
> (i) in the case of a first offence, shall be liable on conviction to a fine of not less than $20,000 and not more than $200,000 or to imprisonment for a term not exceeding 2 years or to both;
>
> (ii) in the case of a second or subsequent offence, shall be liable on conviction to a fine of not less than $20,000 and not more than $200,000 and shall also be punished with imprisonment for a term not exceeding 5 years; and …
>
> …

[30] Prosecution's further submissions at para 13.

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30 The offender in *Edward Choi* pleaded guilty to three charges of abetting unlicensed moneylending under s 8(1)(*b*) of the 1985 MLA read with s 109 of the Penal Code. He had abetted a loan shark to carry out the latter's unlicensed moneylending business by checking debtors' flats for evidence of harassment by other loan sharks and reporting on the situation to the loan shark so that the loan shark could decide whether to issue loans to the debtors or harass them for repayment of any loan previously extended. As the offender had also previously been convicted of a similar offence of abetting unlicensed moneylending, the question was whether he would be liable to enhanced punishment for having twice been convicted of abetment offences in relation to unlicensed moneylending.[31]

31 Tay Yong Kwang J (as he then was) had no problem in answering this question in the affirmative. He recounted the relevant amendments made to the 1985 MLA with effect from 1 January 2006 to (*inter alia*) enhance the punishment provisions set out therein, and noted (at [15] of *Edward Choi*) that when the enhanced punishment provisions were introduced in Parliament, Assoc Prof Ho had said (see *Singapore Parliamentary Debates, Official Report* (21 November 2005) vol 80 at col 1831):

> Sir, this Bill seeks to amend the Moneylenders Act [*ie*, the 1985 MLA] by introducing higher penalties to curb the rise in illegal moneylending activities and related harassment cases.
>
> …
>
> Sir, as for these amendments which are under consideration, Parliament should send a strong signal to loansharks that we will not tolerate the conduct of unlicensed moneylending activities, where exorbitant interest rates are charged and borrowers and even non-borrowers are harassed in their own homes.

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[31] Prosecution's further submissions at paras 14–15.

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> Therefore, this Bill seeks to increase the penalties for unlicensed moneylending under the Moneylenders Act as follows:
>
> …
>
> Fourthly, repeat offenders of illegal moneylending will be subject to mandatory imprisonment, whilst repeat offenders of harassment where hurt to person or damage to property is caused will be subject to mandatory caning.
>
> …
>
> In conclusion, Sir, these amendments are needed to send a strong signal that the Government has zero tolerance for unlicensed moneylending activities. The enhanced deterrent effect should also help stem the increase that we have seen in such activities.

32 Tay J concluded that the legislative intent of the amendments was "to provide enhanced penalties and police powers to deal with the increase in unlicensed moneylending activities and the attendant harassment of debtors arising therefrom" (see *Edward Choi* at [16]). He also ruled that since repeat offenders of illegal moneylending and of harassment would be subject to enhanced punishments, the *abetment* of such offences would "*fall within the same circle of social ills that the amendments hoped to curb* …" [emphasis added] (see likewise *Edward Choi* at [16]).

33 In arriving at his decision, Tay J noted that the 1985 MLA did not contain a provision which explicitly provided that an abettor of an offence under that Act would be guilty of the substantive offence. (As mentioned above at [18], although s 109 of the Penal Code states that an abettor of an offence "shall … be punished with the punishment provided for the offence" if no express punishment for such abetment is statutorily-prescribed, it does not have the effect of eliding the difference between the offence of abetment and the principal offence abetted, which remain distinct offences in law.) Nevertheless, Tay J did not think that this should preclude him from holding

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that the offender in *Edward Choi* was subject to the same enhanced punishment as a repeat offender of the principal offence of unlicensed moneylending under s 8(1)(*b*) of the 1985 MLA.

34 In this regard, I note the case of *Choy Tuck Sum v Public Prosecutor* [2000] 3 SLR(R) 456 ("*Choy Tuck Sum*"), which was cited in *Edward Choi* at [11]. That case did not involve the MLA, but rather, the Employment of Foreign Workers Act (Cap 91A, 1991 Rev Ed) ("the EFWA"), which explicitly stated in s 23(1):

> Any person who abets the commission of an offence under this Act *shall be guilty of the offence* and shall be liable on conviction to be punished with the punishment provided for that offence. [emphasis added]

35 The offender in *Choy Tuck Sum* was convicted of abetting another person in committing the offence under s 5(1) of the EFWA of employing a foreign worker without a valid work permit. The offender had an antecedent of having himself committed an offence under s 5(1) of the EFWA. In other words, his first conviction was for committing the principal offence under s 5(1) of the EFWA, while his subsequent conviction was for abetting the commission of that principal offence. Yong Pung How CJ held that the enhanced punishment set out in the EFWA would apply to the offender as s 23(1) of the EWFA applied to all the liability-creating sections in that Act. Significantly, Yong CJ noted (at [16]):

> … [I]t is necessary for me to emphasise that the above interpretation is particular to the provisions of the EFWA, which were specifically worded by Parliament in order to deal with the mischief behind the Act. To illustrate this point, the wording in s 23(1) of the EFWA can be contrasted with the general provisions on abetment in the Penal Code (Cap 224). Section 109 of the Penal Code provides that "whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be

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> punished with the punishment provided for the offence". It should be noted immediately that this provision, as well as the other abetment provisions in the Penal Code, is unlike … s 23(1) [of the] EFWA, in that it does not explicitly provide that the abettor will be treated as being guilty of the substantive offence. At a conceptual level and on the question of conviction, an abetment offence is certainly still distinct from the substantive principal offence. *Therefore, the holding in this case should not be interpreted to mean that in all cases, an abetment offence would automatically be treated as being the same as the substantive principal offence. It also does not mean that a conviction for an abetment offence will always attract enhanced punishment once the accused person is shown to have a prior conviction for the principal offence abetted. As I mentioned earlier, whether or not enhanced punishment should be imposed would depend very much on the exact wording of the provisions dealing with the abetment offence and the substantive principal offence.* [emphasis added]

36 In my view, Yong CJ was correct to emphasise that the holding in *Choy Tuck Sum* should not *ipso facto* be extended to all cases. Indeed, every statute should be construed in the light of its own text and context, and what was stated by Parliament to be its object. In this regard, I note that the MLA does not have a provision similar to s 23(1) of the EWFA equating an abetment offence with the principal offence abetted. Nevertheless, I do not think the absence of such an explicit provision is necessarily determinative. The clear and consistent legislative intent driving the various amendments to the MLA (as discussed above) is to punish persons who abet the commission of harassment offences in the same manner as those who commit the principal offence of harassment. Moreover, it must be noted that s 109 of the Penal Code expressly provides that an abettor of a principal offence shall be punished with *the same punishment* as that which applies to the principal offence in cases where no express punishment for that particular abetment offence is statutorily-prescribed. In other words, if a person abets the commission of an offence and no express punishment for such abetment is statutorily-prescribed, then pursuant to s 109 of the Penal Code, that person

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would be liable to be punished in the same manner as a person who has committed the principal offence abetted. Again applying s 109, if a person were to commit an abetment offence a second time, I do not see any reason why he should not be punished in the same manner as a person who commits the principal offence a second time, *ie*, be liable to enhanced punishment. This could be another basis to justify the holding in *Edward Choi* (see [32] above, and also *Edward Choi* at [17]). There is no reasonable justification for any sentencing incongruities based on the aforesaid difference in the pattern of offending, bearing in mind the policy behind the introduction of the enhanced punishments set out in the current MLA. As I mentioned earlier, a person who issues orders for acts of harassment to be carried out is also considered an abettor under s 28A (specifically, under s 28A(1)(*a*)) of the current MLA (see [25] above). Such a person will likely be more culpable than the actual harasser, who will often be a desperate debtor pressured to reduce his mounting debt or a misguided youth looking to earn a quick buck. Should the instigator, who would be higher up in the hierarchy than the actual harasser, commit the same offence of abetment twice, it is difficult to see why he should not be subject to enhanced punishment merely because he has repeatedly outsourced the dirty work of actual harassment to someone else who might otherwise never have committed any acts of harassment at all.[32]

37 Having said that, I acknowledge that the situation in this appeal was slightly different. What would be the position if a person's first offence is an abetment offence and his second offence is the principal offence which he previously abetted, or *vice versa*? Would that person, in respect of the second offence, still be subject to enhanced punishment? In the present case, the Appellant's first offence was that of abetting the commission of acts of

[32] See Prosecution's further submissions at para 27.

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harassment and his second offence was the principal offence of committing acts of harassment itself. As a matter of logic, I could not see why the Appellant should not be subject to the enhanced punishment set out in ss 28(2) and 28(3) of the current MLA, bearing in mind Parliament's clear intention to impose enhanced punishment on all offenders who are involved in acts of harassment a second time, whether as a primary offender (*ie*, as an actual harasser) or as an abettor. To hold that such offenders would not be liable to enhanced punishment would be wholly illogical and would bring the law into disrepute for the disparity in treatment would be inexplicable.

38 At this juncture, I refer to the case of *Garreth Ho*, where a broad and purposive reading of s 14(1)(*b*)(ii) of the current MLA was similarly adopted to give effect to its statutory purpose.[33] (For completeness, I should mention that there are differences between s 14 as it now stands and s 14 as it then was at the time *Garreth Ho* was decided; these differences are, however, immaterial for the purposes of the present discussion.) In *Garreth Ho*, the offender had prior convictions in 2008 under s 8(1)(*b*) of the 1985 MLA (reproduced at [29] above) read with s 109 of the Penal Code. Those antecedents pertained to abetting (by intentionally aiding) the carrying on of an unlicensed moneylending business (the offender had handed over sums of monies to runners working for a loan shark syndicate).[34] The 1985 MLA was later repealed and re-enacted as the 2008 MLA, which was in turn amended to become the current MLA (see *Garreth Ho* at [2]). As a result of the legislative amendments, the offence of unlicensed moneylending as well as its punishment ceased to reside in s 8(1)(*b*) of the 1985 MLA. Instead, the prohibition of unlicensed moneylending is now set out in s 5(1) of the current

[33] YAC's BOA at p 72.

[34] Prosecution's further submissions at para 21.

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MLA and its punishment, in s 14(1) of this Act. Specifically, s 14(1)(*b*)(ii) provides that "any person who contravenes, or assists in the contravention of, section 5(1)" shall, in the case of "a second or subsequent offence", receive enhanced punishment.

39 The offender in *Garreth Ho* was arrested and charged in 2010 for being involved in a conspiracy to carry on an unlicensed moneylending business. His conduct contravened s 5(1) of the current MLA, and was punishable under ss 14(1)(*b*) and 14(1A) of the current MLA read with s 109 of the Penal Code (at [23]). The offender had canvassed for borrowers, issued loans at an interest rate of 20% and collected repayments from debtors. He had also been introduced to the two men who had started that unlicensed moneylending syndicate as a "new partner" in their business (at [8]).

40 Reviewing the relevant parliamentary debates (set out at [26] above), V K Rajah JA observed that "assisting" conduct in relation to unlicensed moneylending "should be viewed through exactly the same lenses, at least in the context of s 14(1)(*b*)(ii) of the [current MLA], rather than be semantically micro-analysed as being conceptually different" (at [72]). Rajah JA held that the offences under s 8(1)(*b*) of the 1985 MLA of carrying on an unlicensed moneylending business and abetting (by intentionally aiding) the carrying on of such business were the same as the offences under s 14(1) of the current MLA of carrying on an unlicensed moneylending business and assisting in the carrying on of such business (at [102]). Taking into account the "conspicuous increases" in the penalties for unlicensed moneylending over the years, the relevant parliamentary debates and the more severe penalties for repeat offenders as compared to first-time offenders, Rajah JA held (at [114]):

> … Parliament has signalled that offenders who are repeatedly involved (either as principal or assistant) in unlicensed

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> moneylending operations must be severely dealt with. *On a purposive interpretation of s 14(1)(*b*)(ii) of the [current MLA], previous offences of carrying on the business of unlicensed moneylending under s 8(1)(*b*) of the [1985 MLA] and abetting (by intentionally aiding) the same should count as prior offences for the purposes of s 14(1)(*b*)(ii) of the [current MLA]. This would be the case regardless of whether the second or subsequent offence under s 14(1) of the [current MLA] is one of carrying on the business of unlicensed moneylending or assisting in the same* (respectively, contravening and assisting in the contravention of s 5(1) of the [current MLA]). … [emphasis added]

41 In other words, Rajah JA found that for the purposes of s 14(1)(*b*)(ii) of the current MLA, an equivalence could be drawn between the prior abetment offences of the offender in *Garreth Ho* and his subsequent offences. On the facts, Rajah JA found that the offender's subsequent offences in fact revealed that he had not merely been assisting in the carrying on of an unlicensed moneylending business, but had also conducted such business on his own account (at [117]). He held that even if the offender had been acting alone and had thus not been charged with abetment with regard to his subsequent involvement in unlicensed moneylending, it would not have made any difference to his decision that the offender was liable to enhanced punishment (at [120]).

42 I am aware that there are some differences in wording between s 14 and s 28 of the current MLA besides the offences proscribed. For example, s 14 explicitly states that any person who "*assists*" [emphasis added] in the contravention of s 5(1) "shall be guilty of an offence" as well, whereas the offence in s 28(2) only targets a person "who, acting on behalf of an unlicensed moneylender, *commits or attempts to commit* any of the acts [of harassment] specified in subsection (1)" [emphasis added]. Nevertheless, as the Prosecution observed, Rajah JA came to his conclusion in *Garreth Ho* by expressly relying on Assoc Prof Ho's speech in Parliament (as set out at [26]

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above),[35] which addressed *both* s 14 as well as s 28, which is the section of concern in the present case. In my view, Rajah JA's conclusion in respect of s 14 is also applicable in the context of s 28.

My decision on the Legal Question

43 For the above reasons, I answered the Legal Question (see [2] and also [19] above) in the affirmative. Although s 28 of the current MLA is a penal provision, s 9A of the Interpretation Act (Cap 1, 2002 Rev Ed) requires the rule of purposive interpretation to trump all other common law principles of interpretation, including the strict construction rule (see *Public Prosecutor v Low Kok Heng* [2007] 4 SLR(R) 183 ("*Low Kok Heng*") at [41] and [56]–[57], cited in *Garreth Ho* at [55]). I accepted Mr Lin's submission that the word "offence" in the phrase "a second or subsequent offence" in ss 28(2) and 28(3) of the current MLA could also include the offence of abetting the commission of a harassment offence under s 28.[36] I did not think this reading would "[go] against all possible and reasonable interpretation of the express literal wording of the provision", something that the courts must guard against (see *Low Kok Heng* at [52]). The importance of clear statutory wording cannot be over-emphasised. Legislative drafters should always endeavour to make the wording of statutory provisions, especially penal ones, as reasonably clear as possible so as to avoid the kind of arguments which arose in the present appeal.

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[35] Prosecution's further submissions at para 25.

[36] YAC's submissions at para 59.

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Conclusion

44 Having answered the Legal Question in the affirmative, I did not find the sentence imposed by the DJ manifestly excessive. As mentioned earlier, the DJ imposed the mandatory minimum sentence for each of the first five proceeded charges. Although he fixed the imprisonment term for the sixth proceeded charge at six months above the mandatory minimum term, this was defensible on account of the fact that the victim in that particular charge was an innocent neighbour of the alleged debtor. It is an aggravating factor when innocent persons are deliberately targeted and harassed (see *Public Prosecutor v Quek Li Hao* [2013] 4 SLR 471 at [39]).[37] While it could be argued that the DJ should have increased the imprisonment term for the sixth proceeded charge by only two or three months instead of by six months, this in itself did not render the imprisonment term for that charge manifestly excessive. Given the extent of the Appellant's criminal conduct, it was also appropriate for the DJ to order three of the Appellant's imprisonment sentences to run consecutively in order to adequately reflect his overall criminality. It must not be forgotten that the Appellant faced a total of 28 charges, with six proceeded with and 22 taken into consideration for sentencing purposes.

45 For the foregoing reasons, I dismissed this appeal. It remains for me to express my appreciation to Mr Lin for his assistance and the Prosecution for its submissions on the Legal Question.

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[37] RBOA at Tab C.

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Chao Hick Tin
Judge of Appeal

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