Chong Han Rui
v
Public Prosecutor

[2016] SGHC 25

High Court — Magistrate's Appeal No 9087 of 2015
Sundaresh Menon CJ
8 October; 27 November 2015

Criminal procedure and sentencing — Sentencing — Principles

26 February 2016

Sundaresh Menon CJ:

Introduction

1 Consistency in sentencing is a key principle in our criminal justice system. This is rooted in the notion that all are equal before the law (*Public Prosecutor v Ng Sae Kiat and other appeals* [2015] 5 SLR 167 ("*Ng Sae Kiat*") at [76], citing *Green v R* (2011) 283 ALR 1 at [30]). The principle of parity in sentencing between co-offenders urges that sentences meted out to co-offenders who are party to a common criminal enterprise should not be unduly disparate from each other. To put it simply, those of similar culpability should receive similar sentences, while those of greater culpability should generally be more severely punished.

2 The present appeal concerned the application of the parity principle. The Appellant, Chong Han Rui, had been sentenced to reformative training by the District Judge ("the DJ") for the offences which he had been charged with and pleaded guilty to. He appealed the DJ's decision, seeking probation instead. The DJ's decision can be found at *Public Prosecutor v Chong Han Rui* [2015] SGDC 175 ("the GD").

3 The appeal was first heard on 8 October 2015. The appeal was initially resisted by the Respondent, the Public Prosecutor. Having heard the submissions, I was particularly troubled that the Appellant's co-accused, whom I shall refer to as "B", had been sentenced by a different judge to probation even though he appeared to have a greater degree of culpability than the Appellant. At the suggestion of the Appellant's counsel, Mr Tan Jia Wei Justin ("Mr Tan"), I adjourned the matter for a supplementary probation report to be tendered so as to assess his suitability for probation. I also requested that the parties tender further submissions on:

(a) the relevance to the present appeal of my judgment in *Public Prosecutor v Koh Wen Jie Boaz* [2015] 1 SLR 334 ("*Boaz Koh*"), which had not been released at the date of the hearing but was subsequently issued on 26 October 2015, and in which I had laid down certain sentencing guidelines in relation to youth offenders who reoffended while on probation; and

(b) the relevance of the parity principle in the present circumstances.

4 On 18 November 2015, the Respondent wrote to the court, indicating that the Public Prosecutor, having reconsidered the matter, would be submitting that the Appellant should be sentenced to probation with similar conditions to

those imposed in B's case. Having had the benefit of the supplementary probation report and the additional submissions tendered by Mr Tan, coupled with the Public Prosecutor's reconsidered position, I allowed the appeal on 27 November 2015, and sentenced the Appellant to a term of 27 months split probation (12 months intensive and 15 months supervised), subject to conditions (which are set out at [53]–[54] below). I set out here the detailed grounds for my decision including my observations on the application of the parity principle to an offender in the context of a case such as the present. I also touch on the duty of the Prosecution in such circumstances.

Facts leading to the Appellant's sentence to reformative training

5 The Prosecution proceeded on two charges against the Appellant before the DJ. DAC 929249 of 2014 was a charge under s 147 of the Penal Code (Cap 224, 2008 Rev Ed) ("the PC") for rioting ("the Rioting Offence"). DAC 923500 of 2014 was a charge under ss 28(2)(*a*) and 28(3)(*b*)(i) of the Moneylenders' Act (Cap 188, 2010 Rev Ed) ("the MLA") read with s 34 of the PC ("the Harassment Offence"). I will briefly review the details of each of these two offences.

The Rioting Offence

6 The Appellant was charged along with nine others in the Rioting Offence. His accomplices included Teo Swee Xiong ("Teo"), See You Teck Wilson ("See"), and B. They were all members of the "Hai Kim" Gang.

7 The victim in the Rioting Offence, whom I will refer to as "C", was a secondary school student at the material time. Investigations revealed that B had learnt that a rival gang named "Pak Hai Tong", which I will refer to as "the PHT Gang", was recruiting members from B's school. B informed members of the

Hai Kim Gang that the PHT Gang was doing this with the intention to attack them and take over their "territory". B and his companions then decided to confront the members of the PHT Gang.

8 At about 7am on 22 April 2013, Teo had a dispute with C, who was a member of the PHT Gang. They challenged each other to a fight, which was to take place later in the day. At about 3pm, the Hai Kim Gang gathered at a coffee shop in Jurong East. B then led them to a nearby basketball court to confront C, who was there with others from the PHT Gang.

9 As the Hai Kim Gang walked towards their opponents, Teo pulled out a hammer and gestured in the direction of the PHT Gang. The Hai Kim Gang then charged at their opponents, which led the latter to disperse. A chase ensued. C was spotted by Teo, See, B, and one other member of the Hai Kim Gang, who together chased him to a construction site where he was beaten up. A witness called the police and the four attackers fled when the witness shouted at them. Meanwhile, the Appellant chased one other member of the PHT Gang and had a struggle with him, but the other party managed to escape.

10 C sustained a head injury with a laceration on his scalp and a right ring finger tuft fracture. The Appellant was initially given a conditional warning in lieu of prosecution for the Rioting Offence.

The Harassment Offence

11 Less than 18 months later, on 23 October 2014, the Appellant met three of his friends, Ong Beng Yee ("Ong"), Lee Wei Jian ("Lee"), and B. They decided to act together on behalf of an unlicensed moneylender named "Adrian" to vandalise the dwelling of a debtor, whom I shall refer to as "H".

12 The background to this sequence of events is as follows. Ong contacted B a day before to inform him of the opportunity to carry out a job for Adrian. The job was to harass H by splashing paint on the door of H's home, locking the gate to the unit and writing offending words on the wall. Ong was to receive $200 from Adrian for harassing H in this manner. Ong, in turn, agreed to pay B $100 for his assistance. B contacted Lee and the Appellant to inform them of this. Lee and the Appellant agreed to participate, and they agreed that B's $100 share would be split equally among the three of them.

13 Ong drove to B's house to pick B and the rest up before driving them to purchase the supplies needed to harass H. They purchased a can of black paint and two cans of red paint, a bicycle chain and lock, and an indelible red ink marker. Ong paid for the items and drove the group to H's unit. On the way to the unit, their roles were apportioned as follows:

(a) Ong would wait in the carpark;

(b) Lee would lock the gate using the bicycle chain and lock;

(c) B would splash the black and red paint on the door and the gate of the unit; and

(d) the Appellant would use the red marker and write the offending words on the wall next to H's unit and take photographs of the scene using his mobile phone so that they could prove to Adrian that they had accomplished their mission.

14 At about 1am, H heard noises outside her unit and discovered that her home had been vandalised when she went out to check. There was red and black paint splashed at her unit, her main gate had been locked with a bicycle padlock,

and the words "OP ROMEO/ADRIAN #05-445" were written with a red marker on the wall next to her unit. She called the police, who later arrested all the culprits. Upon investigation, it was discovered that after committing the Harassment Offence, the offenders had gone to have supper together. On their way to supper, the Appellant sent photographs of the harassed unit to Ong, who then forwarded them to Adrian. The cans of paint and the marker were disposed of. Ong gave B $50, and promised to pay the remainder subsequently. Of this, a sum of $16 was given to the Appellant, while Lee did not receive anything.

15 The Appellant was thereafter charged for both the Rioting Offence and the Harassment Offence.

16 From this brief narrative, the relative roles of B and the Appellant in each of these incidents may be noted as follows:

(a) In relation to the Rioting Offence:

(i) B had instigated the confrontation by telling members of the Hai Kim Gang that the PHT Gang was seeking to attack them and take over their territory;

(ii) B had led the Hai Kim Gang to the basketball court to confront C;

(iii) B had been part of the gang that attacked C causing him the injuries outlined at [10] above. The Appellant was not part of the group that attacked C; and

(iv) the Appellant had chased another member of the PHT group and had a physical struggle but it appears no injuries were sustained as a result.

(b) In relation to the Harassment Offence:

(i) Ong had contacted B and asked him to act as his assistant. It was B who then extended this offer to the Appellant and the others. Consistent with this, B was to receive $100 as Ong's assistant and B would then divide his share with the Appellant and Lee; and

(ii) the actual roles played by B and the Appellant in the commission of Harassment Offence were not dissimilar. But consistent with the observation in the preceding sub-paragraph, Ong paid B the sum of $50 who then paid the Appellant the sum of $16.

The DJ's decision

17 Before sentencing the Appellant, the DJ called for both reformative training and probation reports to be furnished (the GD at [7]). The probation report recommended a total probation term of 27 months split probation (six months intensive and 21 months supervised) with various other conditions. A period of electronic tagging was also recommended. The reformative training report indicated that the Appellant was suitable for reformative training.

18 The sentencing hearing for the Appellant came before the DJ on 3 June 2015. The Prosecution submitted that in the light of the serious offences committed by the Appellant, a term of reformative training would be appropriate. The Prosecution also highlighted that the Appellant lacked strong family support and had not displayed a true change in character. The Prosecution did not, however, make available any information in relation to B's sentence at the hearing before the DJ. B had already been sentenced to probation

before a different district judge on 20 May 2015, about two weeks before the Appellant's sentencing hearing.

19 Having the benefit of both reports and in the light of the position taken by the Prosecution, the DJ sentenced the Appellant to reformative training as he viewed that it would be "the most appropriate sentencing option for his rehabilitation" (the GD at [40]). He took this view because he considered that:

(a) Probation was usually inappropriate for serious offences such as robbery, rioting or other violent crimes. Where such offences had been committed, probation would only be granted exceptionally if there were favourable circumstances such as demonstrable prospects for rehabilitation. In such exceptional circumstances, deterrence may not remain the key consideration (the GD at [26]–[27]).

(b) The Rioting Offence involved gang violence. Moreover, a weapon had been used to inflict injuries on C. While there was little, if any, evidence that the Appellant knew that a weapon had been brought along by Teo, he did not distance himself from the violence that ensued. Indeed, he himself chased one of the PHT Gang members and got into a physical fight. These facts were considered to be sufficient to exclude probation for the Appellant (the GD at [28]–[33]).

(c) While the Appellant's parents had taken steps to bring about some changes in his circumstances, these were not thought to be extraordinary. Moreover, they had admitted that their parenting had been lax in the earlier years of the Appellant's life. It was thus unclear how successful the changes would be (the GD at [35]).

(d) There was nothing exceptional about the Appellant's surrounding circumstances or the degree of remorse shown. He did regularly attend school and the Enhanced Streetwise Programme ("ESWP"), which he had been enrolled in after committing the Rioting Offence. The ESWP lasted six months and consisted of 51 sessions of family sessions, individual counselling sessions, group work and other enrichment activities. While he stopped keeping late nights during the duration of the programme, he resumed his previous habits thereafter. His reoffending by committing the Harassment Offence on 23 October 2014 barely 18 months after he committed the Rioting Offence on 22 April 2013 also showed that he was undeterred and unrepentant (the GD at [36]).

(e) The Appellant had refused to heed his father's advice to break away from the negative influence of the Hai Kim Gang (GD at [37]).

The issue on appeal

20 The sole issue before me was whether the DJ erred in sentencing the Appellant to reformative training instead of placing him on probation.

Preliminary Observations

21 Appellate intervention in criminal sentences will only be warranted if the DJ had made the wrong decision as to the proper factual matrix for sentencing, or had erred in appreciating the material before him, or had erred in principle in making the sentence, or had imposed a sentence which was found to be manifestly excessive or inadequate (*Public Prosecutor v Kwong Kok Hing* [2008] 2 SLR(R) 684 at [14]).

22 It is also well established that rehabilitation is the primary sentencing consideration in sentencing young offenders because they are in their formative years and this makes for a higher chance of reform (*Public Prosecutor v Mok Ping Wen Maurice* [1998] 3 SLR(R) 439 at [21]). This, though, must be balanced against the need for deterrence. In *Boaz Koh*, I summarised the position as follows at [28]–[30]:

> ***General principles for sentencing youthful offenders***
>
> 28 It is well established that when a court sentences a youthful offender, it approaches the task in two distinct but related stages (*Public Prosecutor v Mohammad Al-Ansari bin Basri* [2008] 1 SLR(R) 449 ("*PP v Al-Ansari*") at [77]–[78]). At the first stage of the sentencing process, the task for the court is to identify and prioritise the primary sentencing considerations appropriate to the youth in question having regard to all the circumstances including those of the offence. This will then set the parameters for the second stage of the inquiry, which is to select the appropriate sentence that would best meet those sentencing considerations and the priority that the sentencing judge has placed upon the relevant ones.
>
> *Identification of the sentencing considerations*
>
> 29 In respect of the first stage, the primary sentencing consideration for youthful offenders will generally be rehabilitation. …
>
> 30 But rehabilitation is neither singular nor unyielding. The focus on rehabilitation can be diminished or even eclipsed by such considerations as deterrence or retribution where the circumstances warrant. Broadly speaking, this happens in cases where (a) the offence is serious, (b) the harm caused is severe, (c) the offender is hardened and recalcitrant, or (d) the conditions do not exist to make rehabilitative sentencing options such as probation or reformative training viable.

23 It further bears emphasis that while a young offender's ability to respond positively to rehabilitative efforts is an important consideration in sentencing, it is not the law that all first-time young offenders will be placed on probation simply because they are likely to respond positively to rehabilitation through

community-based programmes (*Public Prosecutor v Mohammad Al-Ansari bin Basri* [2008] 1 SLR(R) 449 at [2]).

24 Where the case involves a co-accused who has been sentenced for offences arising out of the very same criminal enterprise, it will be especially relevant to have regard to the parity principle. This featured substantially in this case. I therefore begin with an examination of the legal proceedings involving B, before moving on to assess his culpability relative to the Appellant's, and then to consider the adequacy of the sentence imposed on the Appellant in all the circumstances.

The legal proceedings involving B

The background

25 It will be noted that B, like the Appellant, was involved in the Rioting Offence. Unlike the Appellant, who received a conditional warning, B was charged for the Rioting Offence and was placed on probation for two years, starting January 2014.

26 Soon after he started probation, B started to receive oral warnings from his Probation Officer. He was warned for underage smoking in February 2014 and breaches of time restrictions in May 2014. He subsequently received a Court Warning for his poor progress in community service at Jurong Bird Park where he had been terminated for missing an influenza vaccination.

27 He was even arrested by the police on 14 September 2014 after he became embroiled in a fight. He subsequently missed two sessions of community service in September 2014 and continued breaching time

restrictions in October and November 2014. On 27 October 2014, he failed to report to his Probation Officer claiming he overslept.

28 He was again arrested on 28 October 2014, this time in relation to the Harassment Offence that the Appellant was also involved in on 23 October 2014. He was held in remand for five days to assist in investigations before being released on bail. He was charged on 29 October 2014 under ss 28(1)(*b*) and 28(3)(*b*)(i) of the MLA read with s 34 of the PC for committing harassment on behalf of an unlicensed moneylender.

29 On 17 November 2014, the Probation Officer initiated breach of probation proceedings against him due to his overall poor behaviour. Pursuant to this, B's probation order was amended on 30 December 2014 to include 12 months' residence in the Singapore Boys' Hostel ("SBH") from 30 December 2014 to 29 December 2015.

30 Meanwhile, on 2 December 2014, an additional charge was preferred against B. This was in relation to the fight he was involved in on 14 September 2014 (see [27] above). B was charged under s 323 of the PC for voluntarily causing hurt to the Appellant ("the VCH Offence"). B had punched the Appellant on the left cheek after a dispute between them escalated into a fist fight. He thus faced two charges when he went before the court on this occasion, one for the VCH Offence and another for the Harassment Offence. At the hearing on 2 December 2014, the Prosecution informed the court that it would only proceed on the charge in relation the Harassment Offence. The charge for the VCH Offence was to be taken into consideration for the purposes of sentencing. B confirmed that he wished to plead guilty. The court adjourned the matter to a date to be fixed and bail was extended.

The 23 January 2015 hearing

31 B pleaded guilty to and was convicted of the Harassment Offence on 23 January 2015.

32 At the sentencing mention, B's counsel submitted that B should be placed on probation. The Prosecution chose not to address the court on sentence at the hearing. The sentencing judge adjourned sentencing to a later date pending the submission of reformative training and probation reports.

The 16 February 2015 hearing

33 The next hearing took place on 16 February 2015. At this hearing, the sentencing judge was informed by B's counsel that probation was still being sought. The Prosecution, having not submitted on sentence at the previous hearing, now took the position that while there were serious aggravating factors, it would not object to probation.

34 Both the reformative training report and the probation report were available at the 16 February 2015 hearing. It is not necessary to set out the reformative training report in detail. What is material is that B was thought to be suitable for reformative training. As for the probation report, it detailed all of B's indiscretions while on probation (described above at [25]–[30]).

35 The probation report noted that B's community service progress was inconsistent, and B's attitude towards community service had deteriorated since June 2014. It noted that while B mentioned that he was no longer a gang member, he continued to associate with gang members. B's risk of reoffending was assessed to be high, and his reoffending and repeated infringements were also thought to indicate poor problem-solving skills and disregard for the law.

The probation report concluded, however, that with closer supervision and guidance, B had the potential for change. It was recommended that B undergo 24 months split probation, with various conditions.

36 The basis for the optimism reflected in the probation report was not entirely clear to me. In any case, the sentencing judge decided that he would defer sentencing and assess whether there was progress in three months. The judge called for a supplementary probation report on B's progress in the SBH, where he had remained following the breach action, so that his commitment to probation and the likelihood of his adherence to the conditions could be re-assessed. A similar course had been pursued in *Boaz Koh* and I had cautioned against this in that case: see *Boaz Koh* at [66]–[67].

The 20 May 2015 hearing

37 A supplementary progress report was tendered to the court on 20 May 2015 as previously ordered. It reported that B's progress was stable, and the period of remand had impacted him positively. He was released from remand on 10 March 2015 and was observed to have maintained his good behaviour thereafter. He had reflected on his mistakes during the time at SBH, and was engaged in work. He was also willing to be assessed by the Child Guidance Clinic for treatment. The supplementary probation report thus recommended that B be placed on 24 months split probation (14 months intensive, ten months supervised) with conditions. B was accordingly placed on split probation for 24 months (14 months intensive and 10 months supervised) with the conditions that he was to:

> (a) remain indoors from 8pm to 6am unless variations were made by the Probation Services Branch according to court-approved guidelines;

(b) perform 180 hours of community service;

(c) undergo psychiatric treatment and comply with any directions made including the taking of prescribed medication;

(d) reside in the SBH from the date of the order until 29 December 2015;

(e) be electronically tagged for six months upon discharge from the SBH; and

(f) undergo a further review before the Progress Accountability Court.

B was a more culpable offender than the Appellant

38 Having regard to the foregoing narrative, including the summary at [16] above, I considered that B was clearly a more culpable offender than the Appellant for several reasons. First, B was the instigator, while the Appellant was essentially a follower. Two facts in particular attested to this: (a) B was the one who roped the Appellant in to commit the acts leading to the Harassment Offence; and (b) B was also the one who learnt about the PHT Gang allegedly recruiting members in Hai Kim Gang's "territory", and then incited the other Hai Kim Gang members to confront their opponents. It was this that led to the Appellant being involved in the Rioting Offence.

39 Aside from this, B had been prosecuted and was granted probation for the Rioting Offence, while the Appellant had received a conditional warning in lieu of prosecution. In the aftermath of this, B should have realised that he needed to keep away from bad company and should have made a genuine

attempt to mend his ways. He did not. Instead, he repeatedly breached his probation conditions and this eventually culminated in his Probation Officer commencing breach of probation proceedings against him, resulting in his probation order being altered to include 12 months' residence at SBH and an extension of the entire probation period by six months. B also reoffended during the period of his probation, and this led to him being charged with the Harassment Offence. In contrast, the Appellant was administered a conditional warning in lieu of prosecution for his involvement in the Rioting Offence. In these circumstances, B's conduct was clearly more egregious in that he reoffended after having already been prosecuted in a court of law for an earlier offence.

40 In addition, B's poor attitude towards community service and his repeated breaches of the probation conditions in the period leading to his commission of the Harassment Offence while on probation demanded greater emphasis on deterrence within an overarching focus on rehabilitation. There was little evidence of genuine remorse or effort to change on his part. In contrast, the Appellant did not manifest, to the same degree, a disregard for the law.

41 In all the circumstances, it was clear to me that B was the more culpable offender.

Should the principle of parity operate in the circumstances?

42 An offender who has a more culpable role in a criminal enterprise should be dealt with more severely than an accomplice who played a lesser role (*Public Prosecutor v Fernando Payagala Waduge Malitha Kumar* [2007] 2 SLR(R) 334 at [44]).

43 In my judgment, in the present circumstances, the principle of parity demanded that the Appellant should not be punished *more* severely than B. However, as I have noted (see [18] above and [45] below), information as to how B had been dealt with was not made known to the DJ at the time of the Appellant's sentencing.

44 I digress here to make two salient observations. First, when co-offenders are being sentenced, it is ideal for all of them to be sentenced together before the same judge. But, moving to my second observation, if for some reason this is not possible or convenient, the Prosecution should then make it a point to tender to the sentencing court all relevant material pertaining to any sentences that have already been meted out to any co-offenders. This much was also noted by Chao Hick Tin JA in *Lim Bee Ngan Karen v Public Prosecutor* [2015] 4 SLR 1120 ("*Karen Lim*") (at [56]–[58]).

45 In the case before me, the DJ did not have the relevant material pertaining to B's sentence. The GD makes no mention that B's sentence was considered by the DJ when the Appellant was being sentenced. The DJ's minutes also show no indication that the DJ was informed of B's sentence. In these circumstances, I asked the Prosecution to provide me with the charge sheets, the statement of facts, the submissions made on sentence, the mitigation plea, the minutes of the sentencing hearings at the State Courts, the probation or reformative training reports, and any other material which was relevant to B's case.

46 *Shortland v The Queen* [2013] NSWCCA 4 is a case which illustrates the consequences of not furnishing relevant details of the co-accused's sentence to the later sentencing judge. There, the New South Wales Court of Criminal Appeal allowed an offender's appeal against his sentence on the basis that the

sentences of his co-offenders, which were far lighter than his, had not been considered by the sentencing judge (at [116]–[117]). Similarly, in *Karen Lim*, the accused's appeal was allowed on the basis that the sentencing judge did not have sight of the relevant material leading to the sentences imposed on the appellant's two co-accused persons who had earlier been sentenced by a different judge.

47 The crucial consideration in considering the application of the parity principle is not whether the accused feels aggrieved that a co-accused person has been treated more leniently, but whether the public, with knowledge of the various sentences, would perceive that the appellant had suffered injustice (Kow Keng Siong, *Sentencing Principles in Singapore* (Academy Publishing, 2009) ("*Sentencing Principles in Singapore*"), citing *R v Lowe, The Times* (14 November 1989) at para 13.019). In my judgment, it is useful to understand that the parity principle ultimately rests on the need to preserve and protect public confidence in the administration of justice. Public confidence in this context demands that sentencing is carried out with due regard to the element of basic fairness. Where this is not the case, and where co-offenders in a common criminal enterprise are sentenced in an unduly disparate manner, the sentences would then seem to be arbitrarily imposed and this raises fundamental rule of law concerns. In this context, Yong Pung How CJ noted in *Public Prosecutor v Ramlee and another action* [1998] 3 SLR(R) 95 ("*Ramlee*") that (at [7]):

> … *An offender who has received a sentence that is significantly more severe than has been imposed on his accomplice, and there being no reason for the differentiation, is a ground of appeal if the disparity is serious.* This is even where the sentences viewed in isolation are not considered manifestly excessive: see *R v Walsh* (1980) 2 Cr App R (S) 224. In *R v Fawcett* (1983) 5 Cr App R (S) 158, Lawton LJ held that the test was whether "right thinking members of the public, with full knowledge of the relevant facts and circumstances, learning of this sentence

> consider that something had gone wrong in the administration of justice?" …
>
> [emphasis added]

48 A related point was emphasised in *Public Prosecutor v McCrea Michael* [2006] 3 SLR(R) 677 where Choo Han Teck J held that (at [17]):

> … When accomplices are t[r]ied or sentenced in separate proceedings, the courts might be influenced differently by the cases as presented to them and thus mete out sentences that differ. If the sentences are not glaringly disparate, then the difference is from discretion. If the difference is great but reasonably explained, then the fact that the sentences differ would not be remarkable. …

49 Whether or not the applicant's grievance that the sentences are inexplicably disparate is legitimate or justified is a matter to be judged objectively from the stance of a reasonable mind looking at all the circumstances (*Ng v The Queen* (2011) 214 A Crim R 191 ("*Ng v The Queen*") at [81]). More recently, the parity principle was discussed in two Singapore High Court decisions. *Ng Sae Kiat* was a decision of a three-judge bench of this court. It followed the holding in *Ramlee* (at [7]) that when two or more offenders who were party to the same offence were sentenced, the sentences passed should be similar, unless there was a *relevant difference* in their *responsibility* for the offence or in their *personal circumstances* (*Ng Sae Kiat* at [74]). Chao JA elaborated on the application of the parity principle as follows (at [75]–[78]):

> (a) The substance of the parity principle was the rule of equality before the law, and its application should be governed by substance rather than form.
>
> (b) The parity principle would apply between participants in a "common criminal enterprise".

Chao JA also held that despite this, the court retained the discretion to enhance a sentence which it considered manifestly inadequate notwithstanding the parity principle, because in the final analysis, the circumstances of each case were paramount.

50 *Ng Sae Kiat* and *Karen Lim* illustrate the point that the parity principle can and should operate in favour of accused persons if the sentences imposed on them relative to their co-accused persons are sufficiently disparate that it undermines confidence in the administration of justice.

51 In my judgment, the Appellant was less culpable than B, and yet received a sentence which was more onerous than that meted out to B. This resulted in such a disparity in sentencing between the Appellant and B, which I considered would lead the reasonable man to conclude that the Appellant had suffered an injustice. It thus followed that the principle of parity should operate in the Appellant's favour, and he should be granted a sentence of probation on conditions similar to those imposed on B. Finally, I was satisfied that the proposed sentence would not fall foul of the limitation to the applicability of the parity principle found in *Ng v The Queen*, where the New South Wales Court of Criminal Appeal held that the "court will not necessarily intervene where the co-offender's sentence is *so inadequate* that the court should not take it into account" [emphasis added] (at [82]). This was also alluded to by Chao JA in *Karen Lim* (at [41]).

52 I emphasise however that the parity principle is not to be applied in a rigid and inflexible manner. Rather, it is an important aid to the sentencing court to ensure that sentencing of co-offenders is done in a manner that is broadly consistent and fair. But ultimately, what is consistent and fair depends on the facts of the case at hand. Thus, in *Public Prosecutor v Marzuki bin Ahmad and*

another appeal [2014] 4 SLR 623, I declined to apply the principle of parity as between the giver and the receiver in a corruption case, highlighting that the parity principle must yield to the particular circumstances presented (see at [45]). Similarly, I make the point here that it is not the law that every co-offender in a common criminal enterprise *must* be identically charged or sentenced. Rather, the court will have to consider all the circumstances of each case before arriving at the appropriate sentence. The difficulty with the present case is that it was evident upon considering all the circumstances, that the Appellant had received a sentence which was *unduly* disparate from B's sentence, thus offending the parity principle.

Conclusion

53 In the circumstances, I allowed the appeal, and sentenced the Appellant to probation for 27 months (12 months intensive and 15 months supervised). Additionally, the following conditions were imposed:

(a) the Appellant was to remain indoors from 9pm to 6am;

(b) the Appellant was to reside in the SBH for a period of 12 months;

(c) the Appellant was to be placed on the electronic monitoring system for a period of six months upon discharge from the SBH;

(d) the Appellant was to perform 180 hours of community service;

(e) the Appellant was to undergo a drug treatment programme at NAMS or any other equivalent programme;

(f) the Appellant was to undergo urine tests; and

(g) the Appellant's parents were to be bonded in the sum of $5,000 to ensure his good behaviour.

54 I also directed that the Appellant's case was to be reviewed in the Progress Accountability Court within three months and at such suitable intervals as the court might decide thereafter.

Sundaresh Menon
Chief Justice

Tan Jia Wei Justin (Trident Law Corporation) for the appellant;
Tan Wen Hsien and Quek Jing Feng (Attorney-General's Chambers) for the respondent.