Chan Kum Hong Randy v Public Prosecutor
[2008] SGHC 20

Case Number : MA 156/2007

Decision Date : 04 February 2008

Tribunal/Court : High Court

Coram : V K Rajah JA

Counsel Name(s) : Abraham Vergis and Darrell Low (Drew & Napier LLC) for the appellant; Han Ming Kuang (Attorney-General's Chambers) for the respondent

Parties : Chan Kum Hong Randy — Public Prosecutor

Criminal Procedure and Sentencing – Sentencing – Principles – Rehabilitated ex-offender belatedly charged for other earlier offences after serving sentence – Mitigating effect of inordinate delay between commencement of investigations and eventual prosecution and sentencing

4 February 2008

V K Rajah JA:

Introduction

1 What is the mitigating effect, if any, of an inordinate delay between the commencement of investigations and the eventual prosecution and sentencing of an accused?

2 The factual matrix of the present appeal brought the various processes of the criminal justice system into sharp focus. In these grounds of decision, I will examine and clarify the inextricably interwoven nature of the different phases of detection, investigation, prosecution, conviction and sentencing, respectively, as well as the extent to which delays or lapses in each phase can potentially have an adverse impact on the fairness of the overall criminal process in relation to the offender.

3 The crux of the present appeal was that the judge in the court below ("the District Judge") erred in failing to grant a discount in sentencing, notwithstanding the prejudice suffered by the appellant as a result of a very substantial delay in prosecution.

Summary of the facts

4 On 27 July 2007, the appellant pleaded guilty to a total of eight charges consisting of seven charges of cheating and one charge of forgery for the purpose of cheating under ss 420 and 468 respectively of the Penal Code (Cap 224, 1985 Rev Ed) (collectively referred to as "the 2007 charges"). Nineteen other charges were taken into consideration for the purposes of sentencing. On 31 July 2007, the appellant was sentenced as follows:

(a) 19 months' imprisonment for District Arrest Case ("DAC") No 16900 of 2007, 19 months' imprisonment for DAC No 16901 of 2007, 18 months' imprisonment for DAC No 16904 of 2007, 17 months' imprisonment for DAC No 16905 of 2007, 18 months' imprisonment for DAC No 16906 of 2007, 19 months' imprisonment for DAC No 16907 of 2007, 24 months' imprisonment for DAC No 16914 of 2007 and 12 months' imprisonment for DAC No 16920 of 2007;

(b) the sentences for DAC No 16900 of 2007, DAC No 16905 of 2007 and DAC No 16914 of 2007 were ordered to run consecutively, making a total of 60 months' imprisonment.

This result would have been unexceptional if not for the conspicuously unfortunate turn of events leading to the appellant's conviction and sentence for the 2007 charges, which can be briefly summarised as follows.

5 The 2007 charges arose from events that transpired between 1997 and 2001. During that period, the appellant participated in a scam to cheat the Land Transport Authority ("LTA") and various finance companies ("the Scam"). He joined a syndicate that engaged in the practice of buying over a vehicle at precisely the point when its certificate of entitlement ("COE") was about to expire. Thereafter, a cheque would be submitted by the syndicate to LTA to revalidate the COE, although the syndicate knew only too well that the cheque would not clear for lack of funds. Believing that the cheque would be honoured, LTA would issue the revalidated COE without waiting for the cheque to be cleared. At the same time, the syndicate would submit an application to a finance company for a hire purchase plan in respect of the vehicle in question, using the revalidated COE to support the application. Once the hire purchase application was approved, the funds disbursed thereunder were divided among the appellant and the other members of the syndicate.

6 Not surprisingly, the Scam did not go undetected for long. From 1998 to 2001, a total of nine investigation files on this matter were opened by three police divisions – those of Geylang, Ang Mo Kio and Tanglin – each of which appeared to have been unaware of the investigations carried out by their counterparts. Statements were recorded from the appellant in the course of the investigations. It is noteworthy that the appellant was neither the mastermind of nor a key participant in the Scam; he also readily admitted to his involvement and complicity in it. There was no suggestion from the Prosecution that he rendered anything less than his full co-operation to the police investigators or that he attempted to conceal any relevant facts. Quite extraordinarily, however, the appellant was not prosecuted for his admitted involvement in the Scam until last year.

7 In May 2002, the Bedok Police Division commenced investigations against the appellant for, *inter alia*, the offences of illegal moneylending, criminal breach of trust and dishonestly inducing the delivery of property. Eventually, a connection was duly, although somewhat tardily, made between this train of inquiry and the earlier investigations carried out from 1998 to 2001. In July 2002, charges were brought against the appellant in respect of three offences which were similar to the offences set out in the 2007 charges and which were committed around the period 2001–2002 (collectively referred to as "the 2002 charges").

8 The appellant pleaded guilty to two of the 2002 charges and agreed to have the remaining charge taken into consideration for the purposes of sentencing. On 1 October 2002, the appellant was sentenced to nine months' imprisonment and a fine of $10,000 (for which he served an additional sentence of ten weeks' imprisonment in default of payment). During his period of incarceration, the appellant was allegedly interviewed by police investigators, who recorded statements from him in relation to the 2007 charges.

9 The appellant was eventually released in March 2003, having served an imprisonment term of approximately six months. About a week after his release from prison, the appellant was summoned by the Tanglin Police Division to assist with further investigations in relation to the 2007 charges. This marked the beginning of a new chapter in what turned out to be a painfully protracted process of inquiry. Meanwhile, in September 2003, fresh investigations were also commenced by the Commercial Affairs Department ("CAD") pursuant to a report by the appellant's ex-wife that the appellant had fraudulently applied for a credit card using her personal particulars (see further [54] below).

10 In March 2007, four years after his release, the 2007 charges, which were based on investigations carried out by the Geylang, Ang Mo Kio and Tanglin Police Divisions as well as the CAD, resurfaced, plunging the appellant once again into the full rigour of the criminal justice system. As mentioned at [4] above, the appellant was sentenced to a total of five years' imprisonment for the offences set out in the 2007 charges, all of which had been committed some six to ten years ago.

The decision below

11 In the proceedings below, the Prosecution candidly explained that the substantial delay in prosecution was occasioned by the fact that the investigations had been carried out by different police divisions. The appellant had not informed the respective police divisions of the investigations undertaken by the other divisions. The police also claimed that subsequently they had difficulty locating the appellant as they were unaware of the latter's incarceration.

12 In addition, it was highlighted that there was, at the material time, no central database of information relating to criminal investigations of suspected wrongdoers. This systemic problem was further exacerbated by several changes of the investigating officers designated to handle the investigations pertaining to the appellant. This combination of factors culminated in a failure to ensure proper and timeous co-ordination of the investigations.

13 Notwithstanding the unusual sequence of events, the District Judge (in *PP v Randy Chan Kum Hong* [2007] SGDC 232 ("the GD")) refused to award any discount on sentence on the following grounds (at [12]):

> The defence had submitted that there was a delay in the prosecution of these offences. However, the prosecution had pointed out that the delay was the accused [*sic*] own undoing as he did not inform the investigating officers when he was first under investigation that he had committed the present set of offences proceeded with [*ie*, the offences constituting the 2007 charges]. This was compounded by the accused having committed different sets of offences ranging from cheating, forgery, theft and criminal breach of trust which were investigated by a few police divisions.

14 The principal grounds relied on by the appellant in the present appeal were:

(a) the inordinate delay between the commission of the offences set out in the 2007 charges and the ultimate trial and disposition of these offences; and

(b) the District Judge's failure to take this delay into consideration for the purposes of sentencing.

For the reasons which will be discussed below, this critical issue of prosecutorial delay warrants careful examination and further clarification.

The present appeal

Delay in prosecution

15 The objectives of our criminal justice system are, *inter alia*, to "ensure that those suspected, accused or convicted of crimes are dealt with fairly, justly and *with a minimum of delay*" [emphasis added] and to achieve these aims as economically, efficiently and effectively as possible (see Chan Sek Keong AG (as he then was), "Rethinking the Criminal Justice System of Singapore for the 21st

Century" in *The Singapore Conference: Leading the Law and Lawyers into the New Millennium @ 2020* (Butterworths, 2000) at p 30).

16 Our criminal justice system is comprised of various mutually dependent and interconnected phases. The judicial phases of conviction and sentencing are entirely contingent upon and facilitated by the efficient dispatch of the executive phases of detection, investigation and prosecution, the more nuanced intricacies of which are often not apparent to a layperson attempting to apprehend the system from without.

17 A key prerequisite to an efficient criminal justice system is that those suspected of serious wrongdoing must not only be brought to justice, but must be brought to justice swiftly and expeditiously, particularly where there is already sufficient evidence to mount a strong case against them. The investigation and the consequent prosecution of criminal conduct should be carried out as quickly as is reasonably practicable if the objectives of the criminal justice system (as summarised at [15] above) are to be met.

18 In this regard, the following exhortation by Chan Sek Keong CJ, "Unlocking the Second Prison", opening address at the Yellow Ribbon Project Conference 2006 (27 September 2006) (available at <http://app.supremecourt.gov.sg/default.aspx?pgID=67> (accessed 24 January 2008)), also bears emphasis:

> Each time a judge decides to punish an offender, he must remember to ask himself the additional question: *Why punish*? This will remind him that the punishment imposed should achieve a societal purpose and cannot be an end in itself. [emphasis added]

19 This overarching question takes centrestage in the present appeal. The effect which a delay in prosecution may have on sentencing must be assessed in the context of both fairness and rehabilitation – recurring themes which also find judicial expression in other common law jurisdictions.

20 The effect which prosecutorial delay may have (if any) on sentencing has been incisively examined by D A Thomas in *Principles of Sentencing: The Sentencing Policy of the Court of Appeal Criminal Division* (Heinemann, 2nd Ed, 1979). He notes (at p 220) that the generic practice of mitigating a sentence to alleviate a legitimate grievance which the offender has suffered *as a result of the way the case against him was conducted* extends to instances of "long delays between the discovery of the offence and the commencement of the prosecution, with the result that the offender suffers a prolonged period of suspen[s]e and anxiety".

21 More recently, the effect of prosecutorial delay on sentencing was considered in the local context by Yong Pung How CJ in *Tan Kiang Kwang v PP* [1996] 1 SLR 280 ("*Tan Kiang Kwang*") in the following terms (at 286, [20]):

> [I]n appropriate cases, the court may exercise its discretion to order a 'discount' in sentence, if there has been a significant delay in prosecution *which has not been contributed to in any way by an accused person, if it would otherwise result in real injustice or prejudice to the accused*. [emphasis added]

22 It must be reiterated that the significance of a delay in prosecution, if any, in the context of criminal justice hinges primarily on the effect of such a delay on the accused. This can be categorised for easier analysis under two headings: (a) considerations of fairness; and (b) the repercussions of delay on the offender's effective rehabilitation and reintegration into society.

Considerations of fairness

23 From the point of view of fairness to the offender, where there has been an inordinate delay in prosecution, the sentence should in appropriate cases reflect the fact that the matter has been held in abeyance for some time, possibly inflicting undue agony, suspense and uncertainty on the offender. This notion of fairness was succinctly explained by Street CJ in *R v Todd* [1982] 2 NSWLR 517 (at 519–520) in the following terms:

> Moreover, where there has been a lengthy postponement, whether due to an interstate sentence or otherwise, fairness to the prisoner requires weight to be given to the progress of his rehabilitation during the term of his earlier sentence, to the circumstance that he has been left in a state of uncertain suspense as to what will happen to him when in due course he comes up for sentence on the subsequent occasion, and to the fact that sentencing for a stale crime, long after the committing of the offences, calls for a considerable measure of understanding and flexibility of approach – *passage of time between offence and sentence, when lengthy, will often lead to considerations of fairness to the prisoner in his present situation playing a dominant role in the determination of what should be done in the matter of sentence*; at times this can require what might otherwise be a quite undue degree of leniency being extended to the prisoner. [emphasis added]

24 This was further elucidated in the subsequent case of *R v Schwabegger* (1998) 4 VR 649, where Vincent AJA stated (at 659–660): "a legitimate sense of unfairness can develop when the criminal justice process proceeds in what can be perceived as too leisurely a fashion". In the same vein, the court in *Tan Kiang Kwang* (at 286, [20]) acknowledged that where there had been prosecutorial delay, "the accused [might] have to suffer the stress and uncertainty of having the matter hanging over his head for an unduly long or indefinite period", and stated that this was a relevant factor in assessing if a discount in sentencing was warranted (see also *R v Miceli* (1998) 4 VR 588 and *R v King* [2007] VSCA 38).

25 It also bears mention in this context that there is a parallel line of authorities which discusses the court's discretion to *stay* criminal proceedings where there has been prosecutorial delay on the ground that it would not be possible to conduct a fair trial. In *PP v Saroop Singh* [1999] 1 SLR 793, the court emphasised the relevance of inquiring into whether the delay was attributable to the offender's conduct and reiterated (at [18]) that:

> A stay [of criminal proceedings] should rarely be imposed in the absence of any fault on the part of the complainant or prosecution and should never be imposed where the delay was due merely to the complexity of the case or was caused or contributed to by the actions of the [accused] himself ...

The central thread in this line of authorities is, once again, judicial concern to ensure (procedural) fairness in the administration of justice.

The repercussions of delay on the offender's effective rehabilitation and reintegration into society

26 From the rehabilitative and reformative perspectives of the administration of criminal justice, it is appropriate that an accused be prosecuted for all known offences at the same time as far as practicable. Having served out his punishment, the ex-convict should then be accorded a meaningful opportunity to reintegrate into society without being haunted by his past. In my view, it is certainly unjust and unfair to punish in stages, in dribs and drabs so to speak, where it is entirely possible to punish comprehensively once and for all. To do so may effectively undermine and even undo whatever

positive progress an ex-convict may painstakingly have achieved in his determination to rebuild his life following his earlier incarceration.

27 The lapse of time between the commission of an offence and the imposition of an unjustifiably delayed subsequent sentence takes on particular significance when the rehabilitative goal of punishment appears to have been met. This proposition finds considerable support in *inter alia* Australia, as illustrated by the following cases.

28 In *Duncan v R* (1983) 47 ALR 746, the Court of Criminal Appeal of Western Australia held (at 749) that:

> [W]here, prior to sentence, there has been a lengthy process of rehabilitation and the evidence does not indicate a need to protect society from the [offender], *the punitive and deterrent aspects of the sentencing process should not be allowed to prevail so as to possibly destroy the results of that rehabilitation*. [emphasis added]

(In the local context, the above rationale was alluded to in *Tan Kiang Kwang* ([21] *supra*), where Yong CJ opined (at 286, [20]) that the courts could take into account "evidence that the accused has changed for the better between the commission of the offence and the date of sentence".) Similar observations were articulated in *R Cockerell* [2001] VSCA 239 (*per* Chernov JA at [10]), as follows:

> [W]here there has been a relatively lengthy process of rehabilitation since the offending, being a process in which the community has a vested interest, the sentence should not jeopardise the continued development of this process but should be tailored to ensure as much as possible that the offender has the opportunity to complete the process of rehabilitation.

29 In cases involving an inordinate delay between the commission of an offence and the ultimate disposition of that offence via the criminal justice process, the element of rehabilitation underway during the interim cannot be lightly dismissed or cursorily overlooked. If the rehabilitation of the offender has progressed positively since his commission of the offence and there appears to be a real prospect that he may, with time, be fully rehabilitated, this is a vital factor that must be given due weight and properly reflected in the sentence which is ultimately imposed on him. Indeed, in appropriate cases, this might warrant a sentence that might otherwise be viewed as "a quite undue degree of leniency" (*per* Street CJ in *R v Todd* ([23] *supra*) at 520).

30 Substantial guidance can also be obtained from the recent case of *R v Merrett, Piggott and Ferrari* (2007) 14 VR 392, where Maxwell P adroitly summarised the Australian judicial approach towards an offender's prospects of rehabilitation in the following words (at [49]):

> As I said in [*R v Tiburcy* [2006] VSCA 244], the sentencing court looks to the future as well as to the past. There is very great benefit to the community at large, as well as to the individuals themselves and their immediate families, if future criminal activity can be avoided. It is important that this court, by its own sentencing decisions, recognise and reward efforts at rehabilitation, just as we should support trial judges who do so. *It is important to reinforce in the public mind the very considerable public interest in the rehabilitation of offenders. The preoccupation with retribution which characterises much of the public comment on sentencing is understandable, but it focuses on only one part of what the sentencing court does*. [emphasis added]

31 In the final analysis, however, it should always be remembered that the preceding discussion must be interpreted in the proper context and must not be construed to support the general

proposition that *any* or all delays in prosecution merit a discount in sentencing.

Determining the appropriate sentence where there has been inordinate prosecutorial delay

32 In cases of inordinately delayed prosecution, the first and foremost inquiry should always be whether the accused was in any way responsible for the delay. The courts must be careful to draw a distinction between, on the one hand, cases where the delay is occasioned by the offender's attempts to avoid the consequences of his criminality and, on the other hand, cases where the delay is due to circumstances entirely beyond the offender's control.

33 In cases where the delay is attributable to the offender's own misconduct (*eg*, where the offender has evaded detection, destroyed evidence, actively misled the police or been less than forthcoming to the investigating authorities), the offender cannot complain of the delay in prosecution, much less seek to opportunistically extract some mitigating credit from it. To allow the offender in such a scenario any discount in sentencing would be contrary to all notions of justice. This axiomatic proposition was endorsed in *R v Whyte* (2004) 7 VR 397, where Winneke P observed (at [25]) as follows:

> … I do not think [the trial judge] erred in according to the fact of "delay" little significance. Delay will very frequently be a matter of mitigation, particularly where the accused has used the time involved to rehabilitate himself or herself. For the respondent [*ie*, the prosecuting authorities], Mr Ross contended that the concept of delay as a mitigating factor cannot figure largely in the sentencing process where the delay is "self-inflicted"; rather it will become a major mitigating factor if the delay was not due to the fault of the accused but rather the fault of the prosecuting authority or the system of the administration of justice. *Where, however, the delay cannot be sheeted home to the prosecution or the system, but can be fairly attributed to the accused, such as absconding from bail, fleeing the jurisdiction or otherwise avoiding being brought to justice, delay must necessarily become of less significance, even to the point of giving less credit for rehabilitation established during that period*. [emphasis added]

34 It is therefore clear both as a matter of principle and common sense that the courts should not afford any leniency to offenders who are responsible for delaying justice or preventing justice from taking its course either by concealing the truth or by obstructing investigations. This would be tantamount to allowing the offender to profit from his own wrongdoing.

35 Second, the rehabilitative progress of the offender must be considered in the light of the nature and the gravity of the offence, as well as the wider public interest in each individual case. Considerations of fairness to an accused may in certain circumstances be substantially irrelevant – or, indeed, even outweighed by the public interest – if the offence in question is particularly heinous or where the offender is recalcitrant and/or has numerous antecedents. Convictions for certain offences, I emphasise, cannot be treated lightly, notwithstanding inordinately delayed prosecution.

36 In a similar vein, the length of delay involved must always be assessed in the context of the nature of the investigations – *viz*, whether the case involves complex questions of fact which necessarily engender meticulous and laborious inquiry over an extended period, or whether the case may be disposed of in a relatively uncomplicated manner (for instance, where the offender has fully admitted to his complicity). In the former scenario, an extended period of investigations might not only be expected, but also necessary and vital to uncover sufficient evidence to bring the accused to trial. This is likely to be the case for offences which often, by their nature, resist straightforward inquiry (for instance, sexual offences against young or vulnerable victims and financial fraud involving complex accounting and multi-jurisdictional issues).

37 By way of illustration, in *Yau Kong Kui v PP* [1989] 2 MLJ 139 at 141, Roberts CJ considered a lapse of 16 months between the offender's appearance in court and the date of his eventual sentence to be "difficult to excuse for an offence of this nature" (*ie*, the offence of dangerous driving causing death). Similarly, in *Tan Kiang Kwang* ([21] *supra*), the accused, who was investigated and arrested in 1988 for offences which "did not involve what might be termed complex or sophisticated fraud" (*id* at 287, [25]), was not charged until some six years later in 1994. Such an aberration was attributed entirely to the Prosecution and was castigated by Yong CJ as "unacceptable" (*ibid*) by any standards.

38 At the end of the day, it must be appreciated that every factual matrix is infused with myriad imponderables and subject to its own singular permutation of variable factors, and is, to that extent, unique. Not every instance of a long and protracted investigative process warrants a reduction in sentence. The weight to be attached to fairness and/or rehabilitation as attenuating sentencing considerations in the event of inordinate prosecutorial delay must necessarily vary from case to case.

Antecedent criminal convictions

39 At this juncture, certain ancillary observations have to be made in relation to the submission that the District Judge erred in taking into account the appellant's antecedent convictions, given that they only occurred after the commission of the offences which constituted the 2007 charges.

40 I noted that the District Judge did not directly address this issue in the GD ([13] *supra*), which in turn created some doubt as to whether he had disregarded the antecedent convictions when sentencing the appellant or whether he had been implicitly influenced by them. It must be clarified, in any event, that, in the present case, the appellant's antecedent convictions were entirely irrelevant in the context of the 2007 charges, the latter being premised on events that pre-dated his earlier convictions.

41 Having explored and clarified the relevant legal considerations, I now return to the context of the present appeal to explain why a very significant reduction in sentence was in fact warranted by the circumstances of this case.

Key considerations in the present appeal

42 A key factor determining the appropriate sentence to be imposed in this case was the extraordinary and disturbing length of time that elapsed between, on the one hand, the initial detection and investigation of the appellant's offences and, on the other hand, the eventual date when the 2007 charges were actually preferred. The Prosecution's mere assertion that there was a lack of proper co-ordination between the various police divisions and/or a redeployment of the personnel involved in the investigations was neither a good nor a satisfactory excuse. The public expects and is entitled to expect better from our police force.

43 S*ix to ten years* elapsed between the detection of the offences constituting the 2007 charges and the actual prosecution of those charges. This must be ascribed solely to an incomprehensible and what seems to be an entirely inexcusable failure on the part of the police to pursue their investigations diligently. The appellant was in the unfortunate position of having to face, for an indeterminate period of time, the spectre of being prosecuted for the 2007 charges, all the while haunted by a feeling of unassailable doom and gloom although he had earlier already unreservedly and unconditionally acknowledged responsibility for his involvement in the Scam.

The prejudice suffered by the respondent

44 The District Judge's refusal to take into consideration the prejudicial effect of the delay in prosecution (see [13] above) appeared to have been premised solely on the appellant's failure to inform the investigating officers of the facts which gave rise to the 2007 charges. With respect, I found this rigid approach somewhat misguided, having regard to the circumstances of this case.

45 To begin with, there is no basis in law to suggest that an accused person is obliged to voluntarily apprise an investigating officer of offences which are not directly relevant to the offences being investigated. A layperson such as the appellant surely cannot be expected to be attuned to or aware of the dynamics of investigations conducted by different police divisions, let alone to voluntarily inform each division of simultaneous inquiries by other divisions. This would in effect absurdly transfer the responsibility for any possible existing shortcomings in the police investigation units to the offender – which is plainly not right. Admittedly, the situation in the present appeal would have been quite different if the appellant had actively misled the investigating officers in response to an inquiry as to whether investigations in relation to other offences were under way. There was no evidence, however, on the facts that this was ever the case.

46 Secondly, and more fundamentally, the appellant had already admitted to his involvement and complicity in respect of every offence for which he was under investigation. Thus, the onus fell squarely on the respective investigating officers to ensure the timely and proper prosecution of all the admitted offences. It cannot be gainsaid that the offences in question were relatively straightforward and could have been expeditiously proceeded with if the investigators had applied themselves with the due diligence and conscientiousness one normally and readily attributes to the police force in Singapore.

47 The claim that the delay in the prosecution of the 2007 charges was occasioned by one police division purportedly proceeding "first" against the appellant in respect of the 2002 charges struck me as ill-founded, if not alarming. This allegedly led to the appellant's conviction and imprisonment unbeknownst to the other police divisions, whose investigations were then purportedly delayed because the investigation officers could no longer contact the appellant and did not know where he was (see [11] above).

4 8 *I am persuaded that the delay in the prosecution of the appellant in the instant case should not be attributed to him*. *A critical aspect in this regard is that the appellant had, right at the outset, taken pains to acknowledge and establish his involvement and complicity in the offences forming the subject of the 2007 charges.* The police authorities, on the other hand, failed to co-ordinate their resources so as to discharge their duties diligently and in good time. This was not a case where the offender had absconded or had failed to co-operate with the investigating authorities so that his crimes might go undetected or so as to render investigations unavoidably protracted.

49 While the availability of a centralised database of information on ongoing investigations of suspected wrongdoers (see [12] above) might have averted the lack of co-ordination among the officers of the various police divisions during the initial phase of the investigations, no satisfactory explanation was given by the Prosecution as to why a period of four years lapsed after the appellant's release from prison in March 2003 before the 2007 charges were eventually brought. The police certainly knew of the whereabouts of the appellant after his release, but did nothing to charge him for offences in respect of which they had already completed their investigations for some time. This lack of diligence was unsatisfactory. As I pointed out earlier (at [26] above), there is no public interest in prosecution by instalments unless it is unavoidable or caused substantially by the conduct of the accused. The appellant's welfare was clearly compromised and jeopardised by the fact that he was prosecuted, convicted and sentenced in respect of some of the offences constituted by the Scam but not with regard to the rest of those offences. When he was released from prison on 15 March

2003, he was clearly not in a position to start on a clean slate as there were still dues to be paid. This piecemeal prosecution unnecessarily prolonged the mental anguish, anxiety and distress suffered by the appellant.

50 It was this singularly unfortunate and rather disturbing chronology of events that compelled counsel for the appellant to quite aptly liken the 2007 charges hanging over the appellant's head to, in counsel's words, the "Sword of Damocles" – depicting the prospect of a traumatic prosecution which, slowly but surely, would befall the appellant. As a result of the delay in prosecution, the appellant faced the prospect of having to suffer not once but twice the pain and hardship of incarceration as well as the rigours of reintegration into a society where prejudice *vis-à-vis* ex-convicts is, rather unfortunately, still inescapable.

51 It is irrefutable that diligent prosecution would have resulted in all the charges against the appellant – both the 2007 charges and the 2002 charges – being considered together for the purposes of sentencing. The appellant would then conceivably have faced a less severe sentence than if he was sentenced in stages (which was in fact what transpired).

52 While the appellant unquestionably deserved to be punished, the inordinate prosecutorial delay of six to ten years unnecessarily and unfairly inflicted additional prejudice on him. I am satisfied, however, that this delay was neither deliberate nor malicious on the part of the relevant authorities; nor, for that matter, was it attributable to the default or negligence of any one person or department. It is not difficult to envision, even in the best-organised of institutions, the occasional isolated case which falls through the inevitable administrative crevices into an abyss of neglect – in short, the proverbial slip between the cup and the lip.

53 I was also acutely mindful of the Prosecution's submissions that the CAD investigations, which formed the basis of one of the 2007 charges (*viz*, DAC No 16920 of 2007), were only initiated in 2003 when the appellant's ex-wife lodged a police report against him (see [9] above) and that it would not have been possible to bring that charge against the appellant in 2002. It was stressed that the sentence imposed by the District Judge for DAC No 16920 of 2007 was 12 months' imprisonment.

54 The facts relating to DAC No 16920 of 2007 were as follows. In February 2001, the appellant made use of the personal particulars of his ex-wife to apply for a credit card. He submitted the application form in her name with her income tax notice of assessment without her knowledge or consent. Through such deception, the appellant dishonestly induced the credit card company concerned to process and subsequently approve his application for a credit card. He then used that card, which was issued in his ex-wife's name, to incur a total sum of $7,574.34 without his ex-wife's consent.

55 I accepted that the police authorities could not have proceeded with this particular investigation until 2003, when the above-mentioned complaint was made by the appellant's ex-wife in what seems to have been an acrimonious matrimonial context. Nonetheless, the entire chronology of events in this case cannot be reduced to a technical analysis of each and every event leading to each and every individual charge. The broad factual matrix has to be considered as a whole. A pedantic assessment of the action taken in respect of each offence in isolation belies the significance of the appellant's predicament, which was greater than the sum of its parts. In my view, considering that it took four years for the relatively straightforward investigations leading to the 2007 charges to finally come to fruition, the "justification" offered by the Prosecution as stated above (at [53]) was neither entirely adequate nor persuasive. Clearly, a lackadaisical approach was adopted by the authorities concerned when there should have been diligent investigation and prosecution of the matter. Was the appellant's prosecution for the 2007 charges deferred until those charges were

formulated and ready to be proceeded with? This point was not addressed by the Prosecution before me. Indeed, the inexplicable delay which occurred in this case was neither addressed nor accounted for in any satisfactory or plausible manner. The instant case involved precisely the type of delay that Roberts CJ and Yong CJ would have described as "difficult to excuse" and "unacceptable" respectively (see [37] above).

56 At the end of the day, it was abundantly clear that the lack of co-ordination between the various police divisions and the lack of the type of centralised database mentioned above (at [49]) were systemic problems within the police force for which the appellant could not be held accountable. The lack of communication and co-ordination between the various police divisions was, clearly, a lapse in responsibility on the part of the police force.

57 Fortunately, the mechanism that resulted in such an unfortunate oversight has since been rectified. I am given to understand that the police force has since modernised its computer monitoring system. The current audit system and the central database of criminal investigations of accused persons will, hopefully, render the scenario in the present appeal a historical anomaly, in particular, one that will never recur.

The appellant's rehabilitation in the intervening period

58 The only positive consequence of the prosecutorial delay in this case is that, since his release from prison in March 2003, the appellant has made substantial reformative and rehabilitative progress for which he is entitled to and can now claim credit. I was persuaded that the appellant had, leaving his past behind him, rehabilitated himself and started a new life with considerable success at all levels. He can legitimately and credibly maintain that he is an entirely different person today. Apart from having an unblemished record in the intervening period since March 2003, the appellant continues to contribute positively to both his family and the community. In this regard, several significant developments in his life after his release from his earlier incarceration merit special mention.

59 In the familial context, it is noteworthy that, after his divorce from his ex-wife, the appellant applied for and was granted custody, care and control of his two sons, currently aged 11 and 14 respectively. This is an implicit judicial acknowledgement of the appellant's proactive attempts to discharge his parental obligations during his children's crucial formative years.

60 Further rehabilitative advancements have been impressively manifested via the appellant's rather encouraging career prospects. Since his release, the appellant has been gainfully employed, progressing in his employment from working as an air con technician to a sales executive and, more recently, to General Manager of Inbox International, a local company engaged in the business of selling mobile phones. In my view, the career advancement of the appellant is testament not only to his capability, but also to the trust and confidence reposed in him by his present employer, which faithfully and graciously continued to employ him while he was out on bail pending the disposal of this appeal.

61 I also had the opportunity to peruse letters from the sons and the employer of the appellant attesting to his changed character and persuasively pleading for leniency on his behalf. These letters very compellingly reflected his rehabilitative achievements as a devoted father to his teenage sons, a caring husband to his new wife and a conscientious and responsible employee, making him, arguably, an exemplary, law-abiding role model for all ex-convicts and a persuasive ambassador for the Yellow Ribbon Project. Regrettably, the delayed prosecution of the appellant for the 2007 charges and the consequential sentence imposed by the District Judge threatened to obliterate in one fell swoop all that the appellant had painstakingly and assiduously accomplished since his release from prison. I

noted in this context the compelling public interest in effecting the rehabilitation of ex-offenders. This policy was expressively articulated by Assoc Prof Ho Peng Kee, Senior Minister of State for Law and Home Affairs, "The Yellow Ribbon Project – Giving a Second Chance", speech at the Yellow Ribbon Project Appreciation Dinner 2005 (11 October 2005) (available at <http://www.mha.gov.sg/news_details.aspx?nid=576> (accessed 24 January 2008)), as follows:

> The Yellow Ribbon Project was started last year [*ie*, 2004] as a nation-wide drive to raise the awareness of the Singapore community towards the needs of ex-offenders in their difficult journey towards integrating back into society and leading normal lives. Ex-offenders who show a strong desire to change should be given a second chance to turn over a new leaf.

There is indeed a strong public interest in reintegrating ex-offenders into society. In my view, the present case was one where the offender concerned had been able, by his own efforts, to achieve this rehabilitative goal. In the circumstances, there was no reason to subject the appellant once again to the penal system as though he were a recidivist.

62 The palpable distress often suffered by an accused and his family pending the protracted and laborious resolution of criminal investigations and consequential prosecution cannot be underestimated. Apart from the stigma and embarrassment occasioned by such process, the accused may not only have to take time off from work (which may in turn affect his career prospects), but in addition spend huge amounts of time and money on legal representation. His life cannot return to normal until the matter is resolved one way or the other. Whilst such consequences are often admittedly an inevitable consequence of the offender's own wrongdoing, the investigative and prosecution processes should not be unduly protracted by systemic inefficiencies. In the ultimate analysis, the courts have to conscientiously assess on a case-by-case basis how to do justice – to the victim, to the offender, to their respective families and to the community at large.

63 Accepting these principles, the courts should take a more enlightened approach in cases of inordinate prosecutorial delay. Where possible, all reasonable efforts should be made to minimise the potentially adverse effects that a period of future incarceration may have on the accused's familial relationships, particularly in the case of a rehabilitated ex-offender. Indeed, such a proposition accords wholly with the specific objective sought to be achieved by the Yellow Ribbon Project, which aims to liberate ex-convicts from the "second prison" of societal prejudices and to facilitate their difficult path of reintegration into society.

Conclusion

64 To conclude, let me return to the central issue in this matter (alluded to earlier at [18]–[19] above), reverberating now in amplified tones – *why punish*? In other words, what were the sentencing objectives sought to be achieved by an extended term of incarceration in this particular case? Were the retributive, deterrent and/or preventive considerations of sentencing so compelling as to mandate the five-year term of imprisonment which the District Judge imposed? Were the offences making up the 2007 charges so atrocious as to demand iron-fisted and uncompromising judicial reprobation? Did the public interest necessitate a prophylactic response to deter and/or to prevent the appellant from re-offending? Was the appellant recalcitrant?

65 These difficult questions must be assessed in the context of the unique factual matrix prevailing in this case, in particular, the degree of prejudice suffered by the appellant and the remarkable extent of rehabilitation which he achieved after his release from his earlier incarceration. Having regard to the circumstances earlier discussed, I was inclined to think that the appellant was unlikely to commit similar offences or to pose a future threat to the public interest. I also accepted that the appellant

has already spent more than six years racked by the agonising uncertainty occasioned needlessly by rather slipshod investigations.

66 The extraordinary confluence of the above factors ineluctably shifted the retributive, preventive and deterrent components of the sentencing equation in this appeal. A further term of imprisonment was quite clearly not warranted. Indeed, it would be apposite to refer to the following extract from *Lai Oei Mui Jenny v PP* [1993] 3 SLR 305, where Yong CJ astutely observed (at 308, [13]):

> The circumstances which might persuade a court, in mercy, to reduce what would otherwise be the proper sentence cannot be prescribed and will vary not only from one jurisdiction to another but also from case to case. It seems to me that they ought to be quite exceptional before a reduction of the proper sentence would be justified.

67 Unusual cases call for unusual solutions. The exceptional nature and circumstances of the present case compelled me to adopt "a considerable measure of understanding and flexibility of approach" (*per* Street CJ in *R v Todd* ([23] *supra*)) to both compensate for the undue hardship and prejudice to the appellant and his family arising from the delayed prosecution of the 2007 charges, as well as preserve the extent and the benefits of the rehabilitation that the appellant has achieved during the intervening years.

68 I concluded, in the result, that the District Judge had failed to accord sufficient weight to the fact that the appellant had been unfairly and unnecessarily prejudiced by the delayed prosecution. I thus ordered all the sentences of imprisonment imposed by the District Judge (as set out at [4] above) to be reduced to a sentence of one day's imprisonment on each charge.

69 In the light of s 18 of the Criminal Procedure Code (Cap 68, 1985 Rev Ed), which mandates that at least two of the above sentences must run consecutively, I directed that the terms of imprisonment for two of the 2007 charges (namely, DAC No 16900 of 2007 and DAC No 16901 of 2007) should run consecutively while the terms of imprisonment for the remaining charges should run concurrently. The total sentence to be served by the appellant was, therefore, two days' imprisonment.

70 In acknowledgment of the sometimes difficult task and intractable vagaries faced by investigating authorities in general, I do not wish to set an awkward precedent for the treatment of all "dilatory" cases in the prosecution pipeline. I emphasise that the result in the present appeal should be confined entirely to its unique facts, and should not be either inappropriately or dogmatically relied upon or cited as a precedent or benchmark. A delay in prosecution in itself can never detract from liability or culpability. The offence is immutable, but the offender is capable of change. The latter is the vital consideration when there is inordinate prosecutorial delay that is not attributable to the offender. The only golden rule in this notoriously thorny area of sentencing is that there is no golden rule. Arriving at the appropriate sentencing equilibrium requires a delicate balance of myriad incommensurable and often starkly incompatible considerations. I reiterate unequivocally that the courts should not afford any latitude to offenders who are responsible in any way for delaying or preventing justice by obscuring the truth or by delaying investigations – that would amount to allowing an offender to profit from his own wrongdoing (see [34] above).

71 There are bound to be other instances where inadvertent delays, not attributable to a systemic problem, nonetheless occur. It cannot follow that all delayed prosecutions ought to entitle an accused to a mitigated sentence. What was grossly inexcusable in the present case was the much-delayed prosecution for earlier known offences (*ie*, the offences constituting the 2007 charges),

which in turn severely prejudiced a rehabilitated offender who had already paid a price through his previous incarceration for similar offences (*viz*, the offences constituting the 2002 charges). I reiterate that prosecutions in phases are not to be encouraged, especially when they can be easily avoided through the exercise of reasonable diligence. None of the facts or the evidence in the present case suggested, even remotely, that the punitive and deterrent dimensions of sentencing should continue to prevail. Indeed, to allow those considerations to dominate in this particular case would be to ruin all the benefits that rehabilitation has brought to both the appellant and the wider community. Surely, given that the appellant has literally been tossed from pillar to post in a sustained state of anguish and uncertainty, it is now in the wider interests of the community to finally allow him to usefully contribute to society outside the walls of prison as, indeed, he has conscientiously endeavoured to. In an exceptional case such as this, a sentencing court should look to the future as well as to the past and the present. The appellant has, against enormous and seemingly insurmountable odds, found his way back to the straight and narrow and is now contributing positively to his family and society.

72 When all is said and done, I profoundly hope that a similar matter will not resurface and that all investigators and prosecutors will discharge their responsibilities with the utmost conscientiousness and diligence. The public interest is best served when the administration of criminal justice is seen to be both fair and prompt in equal measure. Both crime investigators and prosecutors should assiduously ensure that the wheels of the criminal justice process do not turn at a leisurely pace, particularly when there are no serious obstacles in the way.