IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 311

Magistrate's Appeal No 9181 of 2017

Between

Tan Yao Min

… Appellant

And

Public Prosecutor

… Respondent

GROUNDS OF DECISION

[Criminal Law] — [Offences] — [Criminal Intimidation]

[Criminal Law] — [Statutory offences] — [Protection from Harassment Act] — [Intentionally causing alarm]

[Criminal Law] — [Statutory offences] — [Protection from Harassment Act] — [Unlawful stalking]

[Criminal Procedure and Sentencing] — [Sentencing] — [Mentally disordered offenders]

TABLE OF CONTENTS

Tan Yao Min
v
Public Prosecutor

[2017] SGHC 311

High Court—Magistrate's Appeal No 9181 of 2017
See Kee Oon J
20 September 2017

7 December 2017

See Kee Oon J:

Introduction

1 This was an appeal against sentence imposed by the District Court in respect of three charges arising from the appellant's obsession with a pair of biological sisters, who were 14 and 18 years old at the material time (referred to as "the younger sister" and "the elder sister" respectively, and collectively as "the sisters"). The appellant's conduct represented an alarming escalation of his previous conduct in respect of the sisters in October 2010 and March 2015, for which he had undergone a 30-month term in a juvenile home and subsequently 15 months' supervised probation for each respective set of offences.

2 In the present case, the appellant pleaded guilty to three charges – one charge of criminal intimidation under s 506 of the Penal Code (Cap 224, 2008 Rev Ed) ("the Penal Code") ("the criminal intimidation charge"), one charge of unlawful stalking under s 7(1) punishable under s 7(6) of the Protection from

Harassment Act (Cap 256A, 2015 Rev Ed) ("the POHA") ("the stalking charge"), and one charge of intentionally causing alarm under s 3(1)(*b*) punishable under s 3(2) of the POHA ("the alarm charge"). In addition, he consented to have three other charges under ss 3(1)(*a*), 3(1)(*b*) and 7(6) of the POHA ("the TIC charges") in respect of the sisters taken into consideration for the purpose of sentencing.

3 The appellant admitted to the Statement of Facts ("the SOF") without qualification and the District Judge sentenced him to:

(a) Ten months' imprisonment in respect of the criminal intimidation charge;

(b) Two weeks' imprisonment in respect of the alarm charge; and

(c) Eight months' imprisonment in respect of the stalking charge.

4 The District Judge ordered the sentences in the criminal intimidation charge and the stalking charge to run consecutively, and the appellant thus received a total sentence of 18 months' imprisonment.

5 The District Judge's reasons for his decision are set out in his grounds of decision ("the GD") found at *Public Prosecutor v Tan Yao Min* [2017] SGDC 167. After hearing the parties' submissions, I dismissed the appeal and I now set out the reasons for my decision.

The charges

6 I begin by first setting out each of the three proceeded charges in question, as reproduced by the District Judge in the GD (at [3]), as follows:

DAC 912700/2017 [("the criminal intimidation charge")]

You, … , are charged that you, on the 12 January 2017, at or about 12:30 P.M., at Blk XXX #XXX, Singapore, did commit criminal intimidation by threatening [the elder sister], to wit, by means of placing a handwritten note in the flyer box attached to the door of Block XXX #XXX which belongs to XXX, stating that 'I like to kill her', with the threat to cause death to [the elder sister], and you have thereby committed an offence punishable under Section 506 (second limb) of the Penal Code (Chapter 224, 2008 Revised Edition). (*sic.*)

MAC 901562/2017 [("the alarm charge")]

You, … , are charged that you, on the 20 February 2017, at or about 10:00 A.M., at Block XXX #XXX, Singapore, with intent to cause alarm to XXX, did make threatening communications towards the victim, XXX, to wit, by placing two handwritten letters in the flyer box attached to the door of Block XXX #XXX which belongs to XXX, one of which states that,

"I have lost everything in life. The Police has already given me problem. They even want my brother and I to report to them every month. I have a pending case. It will be harder to be employed by the employee. I hate wasting time. I shouldn't do that to your family. Now it is too late to say anything. I wish to go to prison so that I can serve my sentence. I even have to send to IMH by the Police. I have wasted 2 weeks at IMH. I feel that life is meaningless. Please pass another letter to the police so that I will suffer earlier. I really have those problems", and

another which states,

"I love your daughter [the younger sister] [which refers to XXX's granddaughter]. I even think of having sex with her. I love touching her breast because it can help to release my sexual gratification. Please let your second daughter [which also refers to [the younger sister]] to have sex with me. I will pay her money. The most exciting part of her is her body and looks. I want to possess her. I even want to touch your elder daughter [the elder sister] [which also refers to XXX's granddaughter] because she is too pretty. I can imagine having sex with both of them on a bed. I definitely can do it everyday to prove that I am a man",

thereby causing alarm to the said XXX, and you have thereby committed an offence under Section 3(1)(b) of the Protection from Harassment Act (Chapter 256A, 2015 Revised Edition), punishable under Section 3(2) of the said Act. (*sic.*)

MAC 901563/2017 [("the stalking charge")]

> You, … , are charged that you, between 12 January 2017 to 24 February 2017, in Singapore, did unlawfully stalk one [the younger sister] ("the victim"), by engaging in a course of conduct which involved acts associated with stalking, *to wit*, the activities of:
>
> i. Waiting for her at the bench near Blk XXX, the victim's place of residence;
>
> ii. Following her around the neighbourhood in the vicinity of Blk XXX;
>
> iii. Trying to make eye contact with her at the bus stop near Blk XXX;
>
> iv. Knocking on the bus window next to her seat on bus number XXX at the traffic junction near XXX;
>
> v. Sending her a "Facebook" invite to add her as a friend on "Facebook" application;
>
> vi. Adding her friend XXX online as a friend on "Facebook" application; and
>
> vii. Visiting her father XXX's workplace, XXX, to speak to his colleague XXX;
>
> thereby causing harassment, alarm and distress to the said victim, when you ought to have known that your conduct was likely to cause harassment, alarm and distress to the said victim, and you have thereby contravened section 7(1) and committed an offence punishable under section 7(6) of the Protection from Harassment Act (Chapter 256A, 2015 Revised Edition). (*sic*.)

The facts

7 The SOF is set out in full at [5] of the GD. In respect of the criminal intimidation charge, on 12 January 2017, the appellant left two handwritten notes in the flyer box at the door of the Housing Development Board ("HDB") unit belonging to the sisters' uncle ("the flyer box"). The appellant knew that the sisters lived next door to their uncle and would have access to the notes. The first note stated:

> I want to have sex with your elder daughter. It is because **I want to make her pregnant**. I also want to get aids. **I want to rape her so that she will suffer in pain**. Your daughter will not love other guy. **I like to kill her and make myself suffer**. [emphasis added in bold]

The second note stated:

> I really lost everything and find that life is meaningless. I cannot study and work. I have no friends who can trust me. I really want to go to Prison because I feel that I am quite stupid. I am not smart even though I was so hardworking. Please report me to the police.

8 Between 12 January and 24 February 2017, the appellant engaged in a course of conduct in respect of the younger sister that led to the stalking charge. He waited for her at the bench near her block, followed her and tried to make eye-contact with her. He followed her to a bus stop near her home, and when the bus she boarded stopped at a traffic light, he knocked on the window of the bus. He sent her a "Facebook" friend request, and added her friend on "Facebook". He also visited her father's workplace to speak with his colleague.

9 As for the conduct that led to the alarm charge, on 20 February 2017, the appellant placed two handwritten letters in the flyer box, which were discovered by the victims' 73-year-old grandmother, and which were the subject of the alarm charge. The first note stated:

> I love your daughter [referring to the younger sister]. I even think of having sex with her. I love touching her breast because it can help to release my sexual gratification. Please let your second daughter [referring to the younger sister] to have sex with me. I will pay her money. The most exciting part of her is her body and looks. I want to possess her. I even want to touch your elder daughter [referring to the elder sister] because she is too pretty. I imagine having sex with both of them on a bed. I definitely can do it everyday to prove that I am a man.

The second note stated:

> I have lost everything in life. The police has already given me problem. They even want my brother and I to report to them every month. I have a pending case. It will be harder to be employed by the employee. I hate wasting time. I shouldn't do that to your family. Now it is too late to say anything. I wish to go to prison so that I can serve my sentence. I even have to send to IMH by the police. I have wasted 2 weeks at IMH. I feel that life is meaningless. Please pass another letter to the police so that I will suffer earlier. I really have those problems.

The District Judge's decision

10 In deciding on an appropriate sentence, the District Judge assessed the harm caused by the appellant's conduct against the backdrop of the appellant's similar antecedents in respect of other young girls and the younger sister in 2010, and, again, the younger sister in 2015 (the GD at [19]).

11 On 11 April 2011, when the appellant was 17 years old, he was found guilty of the first set of offences which involved four charges of mischief under s 426 of the Penal Code, one charge of attempted mischief under s 426 read with s 511 of the Penal Code, and one charge of wrongful confinement under s 342 of the Penal Code (the GD at [7]). Seven charges of mischief were taken into consideration. The six proceeded charges largely related to incidents where the appellant had followed young girls home and written on the walls outside their homes asking their parents to let him have sex with their daughters. In respect of two of those charges, he wrote such a message on the wall outside the sisters' residence, and he chained up their unit's gate with a bicycle lock. He was ordered to reside in a juvenile home for 30 months, and was discharged in end 2013 (the GD at [8]–[9]).

12 On 13 March 2015, he was found to have placed five notes at the sisters' home, which stated, among other things (GD at [11]):

(a) "Blk [address redacted] if you let your daughter have sex with me I will give your daughter a lot of $";

(b) "Blk [address redacted] let me touch your daughter nipple"; and

(c) "Blk [address redacted] if you let me touch your daughter or else consequences you face".

13 For this second set of offences, on 20 May 2015, when he was 19 years old, he was found guilty of one charge of making an insulting communication with intent to cause alarm under s 3(1)(*b*) punishable under s 3(2) of the POHA (the GD at [10]). He was ordered to undergo 15 months' supervised probation.

14 The District Judge reproduced the sisters' victim impact statements, and noted the significant negative impact on them and their family's psychological well-being and their day-to-day lives (the GD at [20]). The District Judge remarked that the appellant had conducted a "campaign of harassment" against the sisters stretching across six and a half years, and that this cast "what should have been the best years of [the sisters'] childhood and adolescence respectively under the shadow of the [appellant's] harassment and stalking" (the GD at [23]).

15 In respect of the appellant's culpability, the District Judge found the appellant to be a recalcitrant. He noted that the alarm charge, the stalking charge and the TIC charges related to offences committed while on station bail in respect of the proceeded charges (the GD at [25]).

16 The District Judge did not credit the appellant's lack of physical contact with the sisters to self-restraint, but to the sisters' and their family's self-help measures (the GD at [26]). While the appellant had not carried out his threats, his obsession with them had persisted from October 2010 to February 2017, his

ideation regarding molesting and raping young girls had persisted since 2011, and his obsessions had grown more violent (the GD at [26]).

17 The District Judge held that this case fell within the moderately serious to serious range of stalking and related offences (the GD at [27]). The primary sentencing considerations were the protection of the public and specific deterrence notwithstanding the appellant being 21 years old. In the circumstances, the District Judge held that a relatively lengthy term of imprisonment was the only appropriate sentencing option.

18 In respect of the appellant's mental condition, the District Judge noted that the appellant had a history of autism spectrum disorder, and an immature personality with recurrent conduct issues and antisocial behaviours. The District Judge referred to the report by Dr Cheow Enquan ("Dr Cheow") of the Institute of Mental Health ("the IMH") dated 6 March 2017 (with follow-up reports dated 5 and 17 May 2017) (collectively, "the 2017 Psychiatric Reports"), which concluded that there was no causal link between his autism and the present offences, and there was no direct contributory link between the appellant's immature personality and the present offences (the GD at [13]).

19 The District Judge considered the sentencing precedents submitted by the respondent, in particular the case of *Public Prosecutor v Lai Zhi Heng* (SC-912644-2015, Magistrate's Arrest Case No 909121 of 2015 and others) ("*Lai Zhi Heng*"). In that case, the offender was untraced, and had shared a brief relationship with the victim. Further, the District Judge held that the appellant's threats to bodily integrity through rape, forced pregnancy and murder were significantly more aggravated than the threats to disseminate nude photographs in that case (the GD at [35]–[36]).

The appeal

20 The appellant contended on appeal that the sentence imposed by the District Judge was manifestly excessive. In his skeletal submissions,[1] he stated that he was remorseful and disappointed that he did not do well in his examinations, and he felt that life was meaningless. He thought that the elder sister and her family understood him, and that they would think that he was just joking in his letters, which he was only writing "anyhow" (*ie*, mindlessly and without actual intent to carry out any of the acts). The criminal proceedings prevented him from securing employment. Even when employed, he had to work long hours. He had no time for his doctors' and police appointments. He maintained that he could not control his "urges" to approach the sisters and it was unfair for him to live with "such fear and tension everyday", a phrase which the respondent noted, with no small irony, was borrowed from the elder sister's victim impact statement.[2]

21 On the other hand, the respondent submitted that the sentence imposed was necessary to achieve the objectives of specific deterrence and protection of the public given the appellant's proclivity to reoffend, while permitting rehabilitation.

The appellant's psychiatric condition

22 Before the District Judge, five reports prepared from 2010 to 2017 were put forward relating to the appellant's psychiatric condition. I highlight the conclusions of each report.

---

1 Appellant's Skeletal Submissions dated 10 August 2017.

2 Respondent's Submissions dated 11 September 2017, para 19.

23 The first report: In a Child Guidance Clinic report dated 2 June 2010, at 15 years of age, the appellant was diagnosed with autism.

24 The second report: In 2011, following the appellant's commission of the first set of offences, a report ("the First Probation Report") prepared for the purpose of ascertaining his suitability for probation assessed the appellant's risk of reoffending to be high. The report opined that the characteristics of autism contributed to his offending behaviour. Additionally, the First Probation Report referred to another report in April 2011 by Ms Stacey Soh, a psychologist with the Clinical and Forensic Psychology Branch of the then Ministry for Community, Youth and Sports ("the 2011 Psychologist's Report"). The report found his risk of sexual reoffending to be high, and that he was "[l]ikely to progress to aggressive contact sexual offending behaviours against unsupervised young or teenage girls in enclosed spaces". In the event, he was ordered to reside in a juvenile home and was not placed on probation.

25 The third report: In 2015, a second probation officer's report following the commission of the second set of offences in 2015 ("the Second Probation Report") again noted that his autism contributed to his offending behaviour. His risk of non-contact sexual offending was moderate to high, but he was noted to be prepared to change his lifestyle with his brother's support.

26 The fourth report: In connection with the Second Probation Report, a psychological report dated 21 July 2015 was prepared by Mr Dominic Chong ("Mr Chong"), a Senior Clinical Psychologist with the Ministry of Social and Family Development ("the 2015 Psychologist's Report"). The report noted that the appellant had attended 120 individual therapy sessions while in the juvenile home, and made therapeutic progress at discharge. He "demonstrated adequate understanding into his high risk situations and developed a realistic self-

management plan which he affirmed that he will adhere to". The appellant appeared to understand that it is illegal for him to engage in sexual activities with unwilling individuals, such as inappropriate touching, and that only adults can give consent. The appellant's risk of sexual recidivism was moderate to high in the community, with a non-contact sexual offence being the most likely scenario. The report opined that there was "little likelihood" of a contact sexual offence. He was placed on 15 months' supervised probation and he managed to complete the probation term apparently without incident.

27 The fifth report: The 2017 Psychiatric Reports relating to the present case concluded that his risk of engaging in antisocial behaviours which may lead to reoffending was high, despite having no sexual offence history. The reports clarified that there was no causal link between his autism spectrum disorder and his offence. Also, an immature personality with recurrent conduct issues and antisocial behaviours would not amount to a mental disorder, and is not treatable from a psychiatric point of view. The report concluded that the appellant's immature personality did not directly contribute to the offences, stating as follows:

> Although someone who has immature personality such as the accused may be more likely to engage in behaviours which led to the current alleged offence, it must be emphasised that his actions were voluntary and he was fully aware of the wrongfulness of what he did. Therefore, although it can be argued that his immature personality did somewhat lead to his committing the alleged offence, no direct contributory link can be established.

My decision

Appellate intervention in sentencing

28 The principles with regards to appeals on sentence are well-established. In *Public Prosecutor v UI* [2008] 4 SLR(R) 500 ("*UI*"), at [12], the Court of Appeal reiterated the principles as follows:

> 12 It is, of course, well established (see, inter alia, *Tan Koon Swan v PP* [1985-1986] SLR(R) 976 and *Ong Ah Tiong v PP* [2004] 1 SLR(R) 587) that an appellate court will not ordinarily disturb the sentence imposed by the trial court except where it is satisfied that:
>
> (a) the trial judge erred with respect to the proper factual basis for sentencing;
>
> (b) the trial judge failed to appreciate the materials placed before him;
>
> (c) the sentence was wrong in principle; or
>
> (d) the sentence was manifestly excessive or manifestly inadequate, as the case may be.

29 In this regard, it has been held that a sentence is only manifestly excessive or inadequate if it "requires substantial alterations rather than minute corrections to remedy the injustice" (*Public Prosecutor v Siew Boon Loong* [2005] 1 SLR(R) 611 at [22], quoted in *UI* at [13]).

Relevant sentencing objectives given the appellant's psychiatric condition

30 The relevant principles in sentencing an offender with a mental disorder falling short of unsoundness of mind were set out by the Court of Appeal in *Lim Ghim Peow v Public Prosecutor* [2014] 4 SLR 1287 ("*Lim Ghim Peow*") at [25]–[39], and aptly summarised by the High Court hearing a Magistrate's Appeal in *Public Prosecutor v Chong Hou En* [2015] 3 SLR 222 ("*Chong Hou En*"), at [24], as follows:

> (a) The existence of a mental disorder on the part of the offender is always a relevant factor in the sentencing process.
>
> (b) The manner and extent of its relevance depends on the circumstances of each case, in particular, the nature and severity of the mental disorder.
>
> (c) The element of general deterrence may still be accorded full weight in some circumstances, such as where the mental disorder is not serious or is not causally related to the commission of the offence, and the offence is a serious one.
>
> (d) In spite of the existence of a mental disorder on the part of the accused, specific deterrence may remain relevant in instances where the offence is premeditated or where there is a conscious choice to commit the offence.
>
> (e) If the serious psychiatric condition or mental disorder renders deterrence less effective, where for instance the offender has a significantly impaired ability to appreciate the nature and quality of his actions, then rehabilitation may take precedence.
>
> (f) Even though rehabilitation may be a relevant consideration, it does not necessarily dictate a light sentence. The accused could also be rehabilitated in prison.
>
> (g) Finally, in cases involving particularly heinous or serious offences, even when the accused person is labouring under a serious mental disorder, there is no reason why the retributive and protective principles of sentencing should not prevail over the principle of rehabilitation.

31 In *Chong Hou En*, the respondent installed a mini-camera to the tip of his shoe and filmed "upskirt" videos of women in public, and was found with 10,574 obscene videos. He also filmed four of his girlfriend's family members in the shower with a camera disguised as a lighter. He pleaded guilty to five charges under s 509 of the Penal Code for insulting the modesty of a woman, and one charge under s 30(1) of the Films Act (Cap 107, 1998 Rev Ed) ("the Films Act") for possessing obscene films. He consented to ten other charges under s 509 of the Penal Code, and one charge of possessing 578 video films without a valid certificate under s 21(1)(*a*) of the Films Act to be taken into

consideration for sentencing. The district judge took the view that rehabilitation was the main sentencing consideration, because the respondent had been diagnosed with voyeurism and fetishism, and sentenced him to 30 months' probation with conditions.

32 On the Prosecution's appeal against sentence, Chan Seng Onn J applied the principles set out in *Lim Ghim Peow* and substituted the respondent's sentence with 12 weeks' imprisonment for each s 509 charge, and four weeks' imprisonment for the charge under s 30(1) of the Films Act, with a total sentence of 16 weeks' imprisonment. Chan J cautioned that where the nature of the mental disorder is one that invariably manifests itself in the doing of the very act which is criminalised, a causal link, however tenuous, would almost certainly be present (at [26]). Accordingly, in this genus of mental disorders, the concept of a causal link may not be useful or relevant to determine the mitigating value to be ascribed to the mental disorder. In this regard, Chan J held thus (at [27]–[28]):

> 27 … In my view, where the "severity" of the mental disorder in an individual is assessed with respect to the "frequency" of the criminal act and there is a positive correlation between the "severity" and the "frequency", then the severity and nature of the individual's mental disorder ought not to be regarded as a mitigating factor without first examining in detail the *nature* of the mental disorder, in terms of how it has affected the individual's ability or capacity to control or refrain himself from committing the criminal acts and whether punishment will be able to instil fear in him and deter him from committing the same criminal acts in future.
>
> 28 If the nature of the mental disorder is such that the individual retains substantially the mental ability or capacity to control or refrain himself when he commits the criminal acts but he instead chooses not to exercise his self-control, and if it is also shown that punishment will be effective in instilling fear in him and thereby deter him from committing the same criminal acts in the future, I will attribute very little or no mitigating value to the presence of the mental disorder.

33 In that case, Chan J found that voyeurism was merely a clinical description of what was a perverse behavioural option, and did not deprive a person of self-control (at [61]). While rehabilitation remained a relevant sentencing principle, it did not automatically mandate a lighter sentence because there was no suggestion that it could not take place in prison (at [67]).

34 In contrast, in another case concerning a mentally disordered appellant, the appellant in *Chong Yee Ka v Public Prosecutor* [2017] 4 SLR 309 ("*Chong Yee Ka*") pleaded guilty to two charges of voluntarily causing hurt to her domestic maid. The district judge sentenced the appellant to three weeks' imprisonment for each charge, with both terms to run concurrently. On the appeal which came before me, I considered the conclusions reached by the two psychiatrists as to whether the appellant's depressive disorder and obsessive-compulsive disorder caused or contributed to her commission of the offences. Despite the areas of disagreement by the psychiatrists, they both agreed that there was a substantial diminution in the appellant's ability to exercise self-control, and an impairment of her consciousness in the light of her psychiatric conditions. On a balance of probabilities, the appellant's psychiatric conditions had contributed significantly to the commission of the offence, which was a weighty consideration in mitigation (at [82]). On that basis, I held that there was reason to depart from the sentencing norm of a custodial sentence, and I substituted her imprisonment term with the maximum fine (at [86]).

Specific deterrence not displaced

35 In the present case, the five reports before the Court did not suggest that the appellant lacked the mental ability or capacity to control himself or refrain from committing the criminal acts. He demonstrated an understanding that his acts were wrong. The First Probation Report noted that he understood that his

actions were against the law, but he was unsure if he could abide by the law. The 2015 Psychologist's Report noted that the appellant appeared to understand that it was illegal for him to engage in sexual activities with unwilling individuals, and that only adults can give consent. In the 2017 Psychiatric Reports, Dr Cheow opined that the appellant was "clearly aware of the nature of his actions".

36 The respondent pointed out that the appellant had received substantial and targeted intervention for his issues each time he offended. In 2011, during the appellant's term with the juvenile home, he underwent the Basic Education and Sexuality Treatment programme, which assists mildly intellectually challenged males with sexual offending behaviours to develop essential skills, knowledge and awareness. From 2011 to 2013, during the appellant's term with the juvenile home, he attended 120 individual therapy sessions. In 2015, during his supervised probation, he was referred for offence-specific psychotherapy at the Clinical and Forensic Psychology Branch to advise him on the consequences of reoffending, to instil victim empathy, and to guide him on appropriate behavioural boundaries between the opposite sexes.

37 However, within a few months following his discharge from supervised probation, the appellant committed the offence in the criminal intimidation charge. He was arrested and while released on station bail, he went on to commit the remaining offences.

38 The respondent highlighted that the 2017 Psychiatric Reports concluded that there was no causal link between his autism and the offence, and that there was no direct contributory link between his immature personality and the offences. In this light, there was no basis to treat the appellant's psychiatric

condition and his immature personality as displacing the need for deterrence and, in particular, specific deterrence.

39 For completeness, I noted that the First Probation Report and the Second Probation Report had assessed that the characteristics of autism contributed to his offending behaviour. Even so, based on the principles set out in *Chong Hou En* at [24], specific deterrence may remain a relevant sentencing objective even where a causal or contributory link is established if the offence was premeditated or where there was a conscious choice to commit the offence.

40 In the present case, the appellant undertook a sustained course of conduct despite his past offences and the substantial rehabilitation efforts. The offences were premeditated, and he continued to commit offences even after arrest. When asked why he committed the offences, even though he denied an intention to threaten and claimed that he wanted to be imprisoned so that he could continue his studies, the appellant acknowledged that he knew the consequences of his actions when he told Dr Cheow that the family knew him from the previous time he did similar acts, and he knew that the family would escalate the matter to the police.

41 In the circumstances, I agreed with the District Judge that the appellant must have realised the wrongfulness of his actions, but was undeterred. In other words, he exercised his conscious choice in committing the acts leading to the present charges. The nature and the extent of the appellant's psychiatric condition was distinguishable from that of the offender's in *Chong Yee Ka*, where the offender's psychiatric condition caused a substantial diminution in her ability to exercise self-control, which justified a departure from the sentencing norm (at [82]).

42 For the above reasons, the sentencing objective of specific deterrence was not displaced by the appellant's psychiatric condition.

Protection of the public

43 The District Judge also held that protection of the public was a primary sentencing objective (the GD at [27]). It was alarming that the appellant's conduct in respect of the sisters had escalated. While the appellant's writings in 2010 and 2015 involved a vague threat of "consequences", the appellant had concretised his threats to rape, forced pregnancy and murder. He had become more brazen by contacting the younger sister and her friend on "Facebook", and by speaking with her father's colleague.

44 Tracing the reports, the appellant's risk of sexual reoffending appeared to have remained at a high level over the years, apart from a period of improvement between 2013, when he was discharged from the juvenile home, and 2015, when his risk of reoffending was assessed at a range of moderate to high. Having said that, in the 2015 Psychologist's Report, Mr Chong assessed that there was "little likelihood" that the appellant would progress to committing a contact sexual offence, and he appeared to demonstrate some empathy for the victim. However, this assessment was plainly no longer tenable in the light of the present offences, and in particular, one of the TIC charges in which the appellant chased after the younger sister and tried to touch her with his outstretched hands. I agreed with the District Judge's view that protection of the public, and in particular, the sisters, was a primary sentencing objective.

Rehabilitation can be achieved with imprisonment

45 As held by the Court of Appeal in *Lim Ghim Peow* at [38], and the High Court in *Chong Hou En* at [67], rehabilitation is not incompatible with a

lengthier term of imprisonment and can take place in prison. However, the High Court in *Chong Hou En* also cautioned that particular care must be taken when calibrating the global sentence so that it is not crushing and does not destroy any hope of recovery or reintegration (at [67]).

46 The appellant appeared to have benefited from his term in the juvenile home, and was assessed to have made some therapeutic progress on release. He had variously expressed that he was keen to pursue his education and to stop his offending behaviour. The 2015 Psychologist's Report noted that he "expressed a desire to lead an offence-free lifestyle in the community and importantly to continue his education". In the 2017 Psychiatric Reports, the appellant told Dr Cheow that he "wanted to be sent to prison so he could retake his O levels". It is hoped that, with a longer term of imprisonment, he will be able to make progress in his goals of rehabilitating himself, pursuing his studies, and complying with therapy recommendations.

47 The District Judge held that specific deterrence and protection of the public outweighed rehabilitation in the present case (the GD at [27]). While I agreed that specific deterrence and protection of the public necessitated a relatively lengthy imprisonment term, rehabilitation within a structured environment would also conceivably be better achieved with an imprisonment term in the present case.

Criminal intimidation under s 506 of the Penal Code

48 I turn next to consider relevant sentencing precedents in respect of the various charges.

49 Criminal intimidation is an offence under s 503 of the Penal Code and punishable under s 506, both of which provide as follows:

> **Criminal intimidation**
>
> **503.** Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.
>
> …
>
> **Punishment for criminal intimidation**
>
> **506.** Whoever commits the offence of criminal intimidation shall be punished with imprisonment for a term which may extend to 2 years, or with fine, or with both; and if the threat is to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or with imprisonment for a term which may extend to 7 years or more, or impute unchastity to a woman, shall be punished with imprisonment for a term which may extend to 10 years, or with fine, or with both.

50 In the present case, the criminal intimidation charge was framed based on the appellant's threat in the written note stating that "I like to kill her", which was a threat to cause death to the elder sister. A threat to cause death is punishable under the second limb of s 506 and with a term which may extend to ten years, or a fine, or both.

51 On top of the threat to kill, the appellant's note stated that he wanted to have sex with, rape and force pregnancy on the elder sister. Even though the respondent did not frame the charge to specifically include these threats, it is pertinent to consider sentencing precedents involving threats to kill, as well as threats to force the victims to perform sexual acts.

Sentencing precedents concerning threats to kill

52 Where a threat to kill is not made in person, but over a telephone call, for example, the court may find it less aggravating (*Ramanathan Yogendran v*

Public Prosecutor [1995] 2 SLR(R) 471 at [128]). On the other hand, a threat made in person may not necessarily be a serious one when seen in its context (*Woon Salvacion Dalayon v Public Prosecutor* [2003] 1 SLR(R) 129 ("*Woon Salvacion Dalayon*") at [44]). In those cases, Yong Pung How CJ held that, while an objective view is taken of the words uttered and their effect to determine whether an offence is made out, and the limb it is to be punished under, different considerations apply at the sentencing stage (*Woon Salvacion Dalayon* at [43]):

> In determining the appropriate sentence to be passed in offences of this nature, the court has to consider carefully the events and circumstances surrounding its commission. The question to be determined is always this: to what extent can there be said to have been a serious threat made? In determining this, both the intention of the maker of the threat as well as the fear that the victim was put in due to the threat are of great relevance: see *Lee Yoke Choong v PP* [1964] 1 MLJ 138 and *PP v Luan Yuanxin* [2002] 1 SLR(R) 613.

53 Where the victim was alarmed by the threat and feared for her safety, these are aggravating factors to be borne in mind by a sentencing judge (*Public Prosecutor v Luan Yuanxin* [2002] 1 SLR(R) 613 at [10]). In that case, the threat to kill was carried out with a weapon, and within striking distance of the victim who had no means of escape. A charge that was taken into consideration for sentencing related to the offender's attempt to strangle the victim with his hands some ten minutes before his threat to kill her (at [11]). In that case, the sentence for criminal intimidation was enhanced from two months to two years (at [18]).

54 In the present case, the threat was made by way of a written note placed into the victim's uncle's flyer box, and was not delivered in person or in a situation where the elder sister could expect immediate harm. Nonetheless, the appellant's threats were significantly more descriptive and violent than his

previous threats in respect of the sisters. The elder sister explained in her victim impact statement that she felt threatened and upset by the things described in his letters (the GD at [20]).

55 In the circumstances, even though the appellant did not make the threat to kill in person, the nature of the threat, the context in which it was uttered, and the effect on the elder sister taken together significantly enhanced the seriousness of the appellant's threat, and warranted a sentence appropriately reflecting the gravity of the offence.

Sentencing precedents concerning threats to force sexual acts

56 The sentencing precedents put forward by the respondent and considered by the District Judge involved threats to compel the victims to engage in sexual acts, or threats to make public the victims' nude photographs and other information. As the harm caused by the offender and the offender's culpability turn on the precise facts in each such case, there is no clear delineation between the sentences imposed for charges under the first or second limb – in respect of the first limb, the offenders faced sentences of nine to 12 months' imprisonment; in respect of the second limb, the offenders faced four, eight or 12 months' imprisonment per charge.

57 In *Lai Zhi Heng*, after a brief relationship between the offender and the victim, the offender threatened to harass the victim at her home until she complied with his demand to send him a photograph of her private parts. He then threatened to show the photograph to her mother unless she sent more. As a result, the victim sent him 30 such photographs. The offender additionally engaged in a course of conduct to unlawfully stalk the victim, which I describe more fully below in discussing the stalking charge. Upon commencement of criminal proceedings against him, he threatened to post her nude photographs

online unless she agreed to follow him to a law firm to write a letter pleading for leniency on his behalf. Out of fear, she attended, but she eventually refused to write the letter. The offender was charged under the second limb of s 506 for threatening to impute unchastity to her with intent to cause her to do an act which she was not bound to do and which she did to avoid execution of his threat. He was sentenced to four months' imprisonment in relation to the s 506 charge.

58 In another case involving the second limb of s 506, in *Public Prosecutor v Mani Velmurugan* (SC-800050-2013, District Arrest Case No 800043 of 2013 and others) ("*Mani Velmurugan*"), the offender pleaded guilty to nine counts of criminal intimidation with threats to impute unchastity to nine complainants under s 506 (second limb), with eight similar charges taken into consideration for sentencing. For all the charges, the offender befriended women through the "Badoo" and "WhatsApp" mobile phone applications and obtained their nude photographs and identifying information. He then threatened to post these online unless they had sex with him. The offender was sentenced to imprisonment terms of either eight or 12 months per criminal intimidation charge, with a total sentence of 32 months' imprisonment.

59 In *Tay We-Jin v Public Prosecutor* [2001] SGDC 220 ("*Tay We-Jin*"), the 22-year-old offender pleaded guilty to one charge of criminal intimidation (first limb). The offender wanted to be the pimp of a 16-year-old victim he met over an Internet Relay Chat ("IRC"). He called her, demanded that she draft a contract, and that she send him a copy of her identification card. He dictated that he would decide her customers, and that she would receive $100 per occasion. The court took the view that this was an aggravated case, because the offender sought to peddle the sexual services of an under-aged victim for profit (at [17]), and sentenced the offender to 12 months' imprisonment.

60 In *Public Prosecutor v Ang Chee Hian* [2006] SGDC 151 ("*Ang Chee Hian*"), the 24-year-old offender met the 19-year-old victim through an IRC. The victim initially refused his offers to pay her for sex, but eventually agreed to have sex with him for $500. She also let him photograph her in a bikini and school uniform, which she thought was part of the deal. After the incident, when she ignored him, he repeatedly threatened to show others the photographs unless she had sex with him. The offender was diagnosed with schizophrenia, but the court took the view that the reports were unclear as to whether there was any causal connection to his deliberate and pre-meditated threats (at [56]). The court considered *Tay We-Jin* to be more aggravated, because the offender in that case sought to profit from the victim (at [63]). Having said that, the court noted that the offender in *Tay We-Jin* had cooperated with the police, pleaded guilty and spared the victim a trial (at [64]). The offender was convicted after trial for one charge of criminal intimidation (first limb) and sentenced to nine months' imprisonment.

Determining the appropriate sentence for the criminal intimidation charge

61 In the present case, the District Judge noted that while threats to post a woman's nude photographs online are capable of tarnishing her reputation, causing great embarrassment and distress, and would deserve strong condemnation, the appellant's threats concerning the bodily integrity of the elder sister were significantly more aggravated and attracted the greatest condemnation (the GD at [36]). In finding the appellant's conduct more egregious than that in *Lai Zhi Heng*, the District Judge noted that *Lai Zhi Heng* concerned a first-time offender who had been in a brief relationship with the victim (the GD at [35]).

62 I agreed with the District Judge's reasoning. The cases show that the highest sentences have been imposed on an offender who planned to profit from sexually exploiting the victim (*eg*, *Tay We-Jin*) and an offender who embarked on a scheme and succeeded in coercing the victim (*eg*, *Mani Velmurugan*). Considering the nature of the appellant's threat to kill seen in its context, as well as the effect on the elder sister and her family, the appellant's threat was clearly among the more serious of criminal intimidation offences. In the circumstances, I did not find the sentence of ten months' imprisonment in respect of the appellant's offence under the second limb of s 506 of the Penal Code manifestly excessive.

Intentional harassment, alarm or distress under s 3 of the POHA

63 The Protection from Harassment Act 2014 (No 17 of 2014) was passed by Parliament on 13 March 2014, and it came into effect on 15 November 2014. The POHA repealed the offences of intentionally causing harassment, alarm or distress, and causing harassment, alarm and distress in ss 13A and 13B of the Miscellaneous Offences (Public Order and Nuisance) Act (Cap 184, 1997 Rev Ed) ("the MOA"), which were punishable with a fine not exceeding $5,000, and not exceeding $2,000 respectively. These offences are re-enacted in ss 3 and 4 of the POHA respectively, which now provide for a possible imprisonment sentence in addition to a fine. At the Second Reading of the Protection from Harassment Bill in Parliament on 13 March 2014, the Minister for Law, Mr K Shanmugam, said that the penalties "are increased quite substantively", and that wider sentencing options "ensure that the sentence meted out in each case better takes into account the culpability of the offender and the harm caused to the victim" and "better reflect the gravity of the offences" (*Singapore Parliamentary Debates, Official Report* (13 March 2014) vol 91).

64 Section 3(1) of the POHA provides as follows:

> **Intentionally causing harassment, alarm or distress**
>
> **3.—**(1) No person shall, with intent to cause harassment, alarm or distress to another person, by any means —
>
> (*a*) use any threatening, abusive or insulting words or behaviour; or
>
> (*b*) make any threatening, abusive or insulting communication,
>
> thereby causing that other person or any other person (each referred to for the purposes of this section as the victim) harassment, alarm or distress.

65 A person convicted under s 3(1) is liable to be punished under s 3(2) with a fine not exceeding $5,000 or to imprisonment of up to six months, or both.

Sentencing precedents for the alarm charge

66 Following the enactment of the POHA, more aggravated instances of using threatening, abusive or insulting communications with intent to cause harassment, alarm or distress have resulted in imprisonment terms ranging from about one week to three months.

67 In *Public Prosecutor v Mok Wai Lun Calvin* [2015] SGDC 306 ("*Calvin Mok*"), the 41-year-old offender was charged with intentionally causing alarm to a 67-year-old victim following the end of their relationship by threatening to disseminate nude photographs and video clips taken of her during sex without her consent and to ruin her reputation and career, unless the victim paid him $100,000. Being the first such case under the POHA, the district court considered sentencing precedents in respect of criminal intimidation relevant, which could be calibrated to take into account the lower penalties in s 3 of the POHA (at [3]). The court considered that the offence was planned and

premeditated, and that the offender intended to exploit the victim (at [7]). He pleaded guilty, and was sentenced to 13 weeks' imprisonment.

68 In *Public Prosecutor v Liu Tianfu* (SC-908655-2016, Magistrate's Arrest Case No 907592 of 2016 and others) ("*Liu Tianfu*"), the offender sent an email with harassing messages and pictures of disembowelled cats to the first victim, her colleagues and superiors. The offender also sent an email to a second victim and her colleagues stating that the second victim was a prostitute, a mental health patient, a secret society gang member, and that she should resign and be imprisoned. The offender was sentenced to one week's imprisonment for each of the two charges under s 3(1)(*a*) of the POHA for intentionally causing harassment. In respect of other incidents, the offender was charged under s 292(1)(*a*) of the Penal Code for transmitting obscene objects.

69 *Public Prosecutor v Yeoh Boon Hau* (SC-902629-2017, Magistrate's Court Notice No 900355 of 2017 and others) ("*Yeoh Boon Hau*") was a more egregious case than *Liu Tianfu* where the offender faced five charges in connection with filming men relieving themselves in the toilet by holding his camera phone over a toilet cubicle. He was charged under s 3(1)(*a*) of the POHA for intentionally causing harassment and sentenced to four weeks' imprisonment. He was also fined $4,000 for each of two charges under s 4 where such videos were found on his phone.

70 On the other hand, when the threatening, abusive or insulting communication is less aggravated, the court has imposed fines ranging from $1,500 to $2,500 in various cases.

71 The respondent tendered the case of *Public Prosecutor v Yang Yanxiang* (SC-911234-2015, Magistrate's Arrest Case No 908253 of 2015 and others)

("*Yang Yanxiang*") as a precedent, where the offender sent two "WhatsApp" messages to the victim who was a stranger and whose number he obtained through work. The messages stated "Sorry for late reply cos I was masturbating just now… :) LOL", and "Bo bian la cos got seagame ma 2 weeks somemore I also no time to do masturbate lo…", and included two photographs of the offender's penis. The offender was fined $2,500 under s 3(1)(*b*) of the POHA, with two other s 3(1)(*b*) charges taken into consideration.

72 In *Public Prosecutor v Chieu Peng Liang* (SC-905869-2016, Magistrate's Court Notice No 900771 of 2016 and others) ("*Chieu Peng Liang*"), the offender affixed a handwritten note attaching a "hell note" on the victim's door stating, "Your unit family members deserved to be a poor group- 'Beggar group' in Singapore" and, "I believe that your family members will reborn as blind human being due to sins", among other things. For this the offender was fined $1,500 for using insulting words to cause alarm under s 3(1)(*a*) of the POHA. Separately, in respect of a prior physical scuffle with the victim, the offender was fined $3,000 for voluntarily causing hurt under s 323 of the Penal Code.

73 In *Public Prosecutor v Christopher Loo Soon Joo* (SC-91170-2016, Magistrate's Court Notice No 901502 of 2016 and others) ("*Christopher Loo*"), following the end of their relationship, the offender regularly made unsolicited calls, texts and visits to the victim. On one occasion, the offender left a bag of "hell notes" for the victim to burn as an offering to him. On another occasion, during an unsolicited phone call from a private telephone number, the offender claimed that the victim had saddened his mother, and threatened the victim by saying, "I will make sure I return the pain five times more to your mom". For the two incidents, the offender was fined $2,000 for each of two charges under

s 3(1)(*a*) of the POHA for intentionally causing harassment, with one further charge taken into consideration for sentencing.

Determining the appropriate sentence for the alarm charge

74 In the present case, the appellant had left two handwritten notes in the flyer box during the period in which his conduct also gave rise to the stalking charge. In one note, he asked to have sex with the younger sister for money, stated that he wanted to touch and to "possess" the elder sister, and stated that he imagined having sex with the both of them.

75 The cases of *Liu Tianfu*, *Yang Yanxiang, Chieu Peng Liang,* and *Christopher Loo* were instructive because they concerned threatening, abusive or insulting communications delivered via modes such as notes, email and telephone calls. However, they are less aggravated than the present facts where the appellant made concrete, descriptive and graphic threats stating what he intended to do to both sisters.

76 On the other hand, the present facts were less aggravated than in the cases of *Calvin Mok* where the offender planned to blackmail and exploit the victim for profit, and *Yeoh Boon Hau* where the offender's filming of the victim was more intrusive.

77 In the light of the above sentencing precedents and the facts of the present case, in my judgment, the sentence of two weeks' imprisonment in respect of the appellant's conduct in leaving the notes containing threatening communications could hardly be said to be manifestly excessive.

Unlawful stalking under s 7 of the POHA

78 The POHA introduced the offence of unlawful stalking in s 7, which provides:

> **Unlawful stalking**
>
> **7.—**(1) No person shall unlawfully stalk another person.
>
> (2) Subject to subsection (7), a person (referred to in this section as the accused person) unlawfully stalks another person (referred to for the purposes of this section as the victim) if the accused person engages in a course of conduct which —
>
> (*a*) involves acts or omissions associated with stalking;
>
> (*b*) causes harassment, alarm or distress to the victim; and
>
> (*c*) the accused person —
>
> (i) intends to cause harassment, alarm or distress to the victim; or
>
> (ii) knows or ought reasonably to know is likely to cause harassment, alarm or distress to the victim.
>
> …

79 Section 7(3) provides examples of acts or omissions that are associated with stalking, such as following the victim or a related person, or leaving material where it will be brought to the attention of a victim or a related person. In addition, s 7(5) lists factors to guide the Court in deciding whether a course of action is likely to cause harassment, alarm or distress, such as the number, frequency and duration of the acts, the likely effects on the victim's safety, health, reputation, economic position or his freedom to do any act which he is entitled to do, among others. At the Second Reading of the Protection from Harassment Bill, the Minister for Law, Mr K Shanmugam, noted that the examples of acts or omissions associated with stalking in s 7(3) and the factors to consider in s 7(5) are not exhaustive, and do not limit the Court's discretion.

80 A conviction for unlawful stalking is punishable under s 7(6) with a fine not exceeding $5,000, imprisonment not exceeding 12 months, or both.

Sentencing precedents for the stalking charge

81 I considered seven decisions in which offenders were sentenced to three to six months' imprisonment for different courses of conduct that were found to be unlawful stalking.

82 In *Lai Zhi Heng*, as discussed in [57] above, following the offender's threats, the victim sent him 30 nude photographs. Thereafter, between April 2014 and November 2015, when the victim attempted to avoid him, he printed flyers with harassing messages, her nude photograph, and her personal information and posted them publicly near her home. The offender forced her to write "I promise note [*sic*] to rebel again" a total of 200 times. When she tried to ignore him, he uploaded her nude photographs onto the "Facebook" group for her interest group at school with the false message that she was offering prostitution services. In October 2015, the offender threatened her by saying that he would "wreck a havoc" in her life, and make her "regret it" if she did not meet him. The IMH report called for by the court stated that the offender had a history of bad temperedness, a mix of schizoid, antisocial and histrionic personality traits, and a persistent depressive disorder of mild severity. However, the report did not seek to opine on any causal link, and stated that he was "not of unsound mind at the time of the alleged offences, as he was still aware of his actions and knew that they were wrongful". The offender, who was untraced, pleaded guilty and was sentenced to six months' imprisonment for one charge of stalking under s 7(1) punishable under s 7(6) of the POHA, six months' imprisonment for one charge of causing hurt by a rash act under s 337(*a*) of the Penal Code when he used his car to hurt the victim's brother,

and four months' imprisonment for criminal intimidation against the victim's brother under the second limb of s 506 of the Penal Code. The two six-month terms were ordered to run consecutively leading to a total sentence of 12 months' imprisonment. One additional charge of unlawful stalking was taken into consideration for sentencing purposes.

83 In *Public Prosecutor v Adrian Goh Guan Kiong* (SC-902574-2016, Magistrate's Arrest Case No 902040 of 2016 and others), when the offender and the victim were in a relationship, the offender took her nude photographs with her consent. The offender was resentful that the victim planned to travel with a male colleague. When the victim left her phone with the offender, he sent the nude photographs to a "WhatsApp" chat group comprising her colleagues and superiors. The offender also sent an email to the victim's superior about the victim and her colleague having sex in their organisation's uniform, and a letter to the victim's father purporting to be from the family's church and condemning her behaviour. The offender pleaded guilty and was sentenced to six months' imprisonment for unlawful stalking under s 7(1) punishable under s 7(6) of the POHA, with a charge for possessing 331 obscene films under s 30(2)(*a*) of the Films Act taken into consideration for sentencing.

84 In *Public Prosecutor v Moh Yan Chung* [2017] SGDC 46, the offender pleaded guilty on the first day of trial to five charges under s 376B(1) of the Penal Code for having commercial sex with a minor and one charge under s 7(1) of the POHA for unlawful stalking. Eight further s 376B(1) charges were taken into consideration for sentencing. In respect of the unlawful stalking charge, the offender had contacted the victim's then-boyfriend via "Facebook" under a moniker, and informed him of the investigations and the prostitution activities. The offender also contacted at least five of the victim's friends and "warned them" of the kind of person the victim was. The offender was sentenced to terms

of either ten or 12 months' imprisonment per charge under s 376B(1) of the Penal Code, and six months' imprisonment for the unlawful stalking charge, with a total sentence of 22 months.

85 In *Public Prosecutor v Tan Khoon Aik Nelson* (SC-913209-2016, Magistrate's Arrest Case No 903858 of 2017 and others), the offender had romantic feelings for the first victim which were not reciprocated. Between November 2015 and July 2017, the offender monitored the first victim at her home and at each new workplace, monitored her interactions with her boyfriend (the second victim), and threatened her via three anonymised "Facebook" accounts. Between March 2016 and March 2017, the offender also sent the second victim text messages demanding that he break up with the first victim, and on one occasion, the offender shouted at the second victim at his workplace. A 2017 IMH psychiatric report stated that the offender had borderline intelligence, and with attention deficit hyperactivity disorder in the past. Even though the report discussed a possible causal link, the district court took the view that his conduct crossed the custodial threshold. The offender was sentenced to one week's imprisonment for criminal intimidation against the second victim by threatening injury over a "WhatsApp" message, three months' imprisonment for unlawfully stalking the first victim, and two months' imprisonment for unlawfully stalking the second victim, with the first two sentences to run consecutively with a total sentence of three months and one week's imprisonment. Three other charges in connection with the second victim were taken into consideration for sentencing.

86 In *Public Prosecutor v Ng Han Wei* (SC-912985-2016, Magistrate's Court Notice No 901757 of 2016 and others) ("*Ng Han Wei*"), the offender, a 24-year-old man, chanced upon a 12-year-old girl who responded to his greeting out of courtesy on her way to school. From 29 April to 10 May 2016, he loitered

near her home, followed her to school, spoke to her and tried to obtain her name and number. On one occasion, he followed her into the lift and asked to kiss her, which she ignored. On 10 May 2016, when the victim was waiting at home for her brother to accompany her to school, the offender peered into her window, and waited nearby at the staircase. The offender was sentenced to five months' imprisonment for unlawfully stalking the victim. He had antecedents for outraging the modesty of women, and uttering words or making gestures intended to insult the modesty of a woman.

87 In *Public Prosecutor v Tan Boon Wah* (SC-910153-2016, Magistrate's Arrest Case No 908859 of 2016 and others), the offender did not accept the termination of an approximately three-year relationship, and stalked his former partner for about one year thereafter by confronting him outside his home, following him to places he frequented, calling him daily, and sending him messages that gave the impression that the victim was under surveillance. In addition, the offender uploaded photos of them kissing to his "Facebook" account, emailed him nude photographs that he had surreptitiously taken of the victim during their relationship, and followed him in a taxi. The IMH psychiatric report called for by the courts concluded that he was not suffering from any psychiatric disorder. The offender was sentenced to six months' imprisonment for unlawful stalking. In addition, the offender was sentenced to two months' imprisonment for impersonating the victim to a telecommunications provider to access personal data under s 51 of the Personal Data Protection Act 2012 (No 26 of 2012), with both sentences to run concurrently.

88 In *Public Prosecutor v Muhammad Nurizam* (SC-907489-2016, Magistrate's Arrest Case No 906413 of 2016 and others), when the offender fought with a fellow IMH patient, a nurse reported him, and he was restrained

and medicated. When the offender subsequently recognised the nurse on a bus, he followed her home. He harassed her over four days by repeatedly ringing the doorbell, switching off her electricity and water supplies, leaving a note, and writing her address and that he hated her on a wall of the lift lobby. For two charges of unlawfully stalking the nurse, in breach of a remission order made at the time pursuant to s 50T of the Prisons Act (Cap 247, 2000 Rev Ed), he was sentenced to four and five months' imprisonment for each of the two charges. He was also sentenced to three months' imprisonment for a separate incident of doing an obscene act in public.

Determining the appropriate sentence for the stalking charge

89 In the above cases, the offenders were sentenced for their first offences in respect of the victims whom they had stalked. If they were repeat offenders in respect of the same victims, the courts would have had to take this into account in determining their sentences. In this connection, s 8 of the POHA provides for enhanced penalties where a subsequent offence is committed.

90 The present case concerned facts particularly similar to that in *Ng Han Wei*, where an offender was a stranger to a much younger victim, but had taken an obsessive liking to her. However, the appellant's culpability was demonstrably far higher. The first difference between these two cases was that the stalking in *Ng Han Wei* lasted about two weeks, while in the present case, the stalking lasted about one and a half months. Secondly, the appellant committed similar offences in 2010 and 2015 against the younger sister and in respect of the sisters' residence. Thirdly, unlike in *Ng Han Wei*, the appellant's stalking extended to adding the younger sister's friend on "Facebook", and speaking with the father's colleague at his workplace.

91 The appellant's conduct in the present set of offences concerning unlawfully stalking the younger sister took place over a shorter time than that in *Lai Zhi Heng*, and was not intrusive in the same way that disseminating nude photographs was. Nevertheless, his conduct was still intrusive in that it required both sisters and their families to take numerous self-help measures daily to guard against his stalking.

92 Having considered the above sentencing precedents and the present facts, I found that eight months' imprisonment for the appellant's conduct in unlawfully stalking the younger sister was not manifestly excessive.

Determining the appropriate aggregate sentence

93 As the appellant was convicted of three offences in the present case, the sentences for at least two offences would have to run consecutively, pursuant to s 307(1) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed). In choosing the consecutive sentences, a court will have regard to the one-transaction rule and the totality principle. These rules and the framework for their application were fully set out in the decision of the High Court hearing a Magistrate's Appeal in *Mohamed Shouffee bin Adam v Public Prosecutor* [2014] 2 SLR 998 ("*Mohamed Shouffee*") at [20]–[82] *per* Sundaresh Menon CJ.

94 Menon CJ held that the rationale of the one-transaction rule is that "consecutive sentences are not appropriate if the various offences involve a 'single invasion of the same legally protected interest'" (*Mohamed Shouffee* at [30]). This is an articulation that takes the victim's perspective. On the other hand, from the perspective of the offender's culpability, consecutive sentences would be appropriate if the second (or other subsequent) offence reflects increased culpability even where, as a technical matter, the multiple offences might form part of the same transaction (*Mohamed Shouffee* at [42]).

95 In considering the application of the one-transaction rule, the test of proximity may be a useful indicator as to whether in all the circumstances the distinct offences should be treated as forming part of a single transaction or whether they call for multiple punishments (*Mohamed Shouffee* at [35]). In *Public Prosecutor v Lee Cheow Loong Charles* [2008] 4 SLR(R) 961, the accused, who had been disqualified from driving, sped through a traffic crossing, hit and killed an elderly pedestrian, and fled from the accident scene thereafter. He was charged for three sets of offences: causing death by a rash act, driving while disqualified, and failing to render assistance after a fatal accident. Chan Sek Keong CJ considered the accused's actions to be distinct offences, because each was serious and did not necessarily or inevitably flow from the others (at [24]).

96 Similarly, in the present case, even though the appellant's actions that led to the three charges occurred within the same period, each charge relied on a separate set of actions without overlap, and these actions cannot be said to necessarily or inevitably flow from each other. Given that the aggregate sentence should be longer than the longest individual sentence, the District Judge had two preliminary options: for the ten-month and two-week term to run consecutively; or for the ten-month and eight-month term to run consecutively.

97 In my view, a sentence that was a mere two weeks above the longest individual sentence of ten months would not adequately reflect the enhanced culpability of the appellant given that he faced three charges concerning two separate victims. It would also not be commensurate with the harm occasioned. In my judgment, the one-transaction rule was not violated where the sentences for the criminal intimidation charge and the stalking charge were ordered to run consecutively.

98 Turning to the totality principle, Menon CJ affirmed the following explanation by Prof D A Thomas in *Principles of Sentencing* (Heinemann, 2nd Ed, 1979) at p 56, in *Mohamed Shouffee* (at [53]):

> [T]he principle has two limbs. A cumulative sentence may offend the totality principle if the aggregate sentence is substantially above the normal level of sentences for the most serious of the individual offences involved, or if its effect is to impose on the offender 'a crushing sentence' not in keeping with his record and prospects. …

99 Regarding the first limb of the totality principle, I considered that in the more serious criminal intimidation cases of *Tay We-Jin* and *Luan Yuanxin*, the court imposed one and two years' imprisonment respectively. In this light, the aggregate sentence of 18 months' imprisonment in the present case cannot be said to be substantially above the normal level of sentences for the more serious offences involving criminal intimidation, let alone substantially above the normal level of sentences for the *most* serious of the offences involving criminal intimidation.

100 As for the second limb of the totality principle, even though this was the appellant's first imprisonment term, the appellant had undergone a relatively lengthy 30-month term in a juvenile home, and 15 months' supervised probation. These antecedents could not be lightly disregarded. Given that the present set of offences involved an escalation of his previous offending behaviour, I did not think that the aggregate sentence of 18 months' imprisonment was crushing in view of his past record.

Conclusion

101 The appellant was recalcitrant. Despite his claims of being remorseful, I could not discern genuine remorse as he had refused to learn from his previous brushes with the law in respect of similar offences committed against the sisters.

Evidently, he had managed to complete his terms in the juvenile home and probation and was capable of controlling his professed "urges", but was unwilling to glean insight into his offending conduct.

102 The victim impact statements revealed the severe trauma and distress inflicted upon the hapless sisters. There was clearly alarm caused to their next-of-kin as well. The primary sentencing objectives centred on specific deterrence and protection of the public. The appellant's psychiatric condition did not displace the need for a longer sentence to achieve these sentencing objectives. At the same time, given his relatively young age, the objective of rehabilitation remained compatible with a substantial term of imprisonment.

103 For all of the above reasons, I was not persuaded that the District Judge's sentence was manifestly excessive. I therefore dismissed the appeal.

See Kee Oon
Judge

The appellant in person;
Yang Ziliang (Attorney-General's Chambers) for the respondent.
