

Public Prosecutor v Lim Yi Jie
[2019] SGDC 128

Case Number : DAC-921252-2018 & DAC-931531-2018

Decision Date : 27 June 2019

Tribunal/Court : District Court

Coram : Luke Tan

Counsel Name(s) : Deputy Public Prosecutor, Mr Ho Lian-Yi for the Public Prosecution; Defence Counsel, Mr Rajwin Singh Sandhu (Amarjit Sidhu Law Practice) for the accused

Parties : Public Prosecutor — Lim Yi Jie

[LawNet Editorial Note: The appeal in MA 9133/2019/01 against sentence was dismissed by the High Court on 13 September 2019.]

27 June 2019

District Judge Luke Tan:

(1) Introduction

1 The accused, Lim Yi Jie, is a 24-year-old male Malaysian. The two charges that the Prosecution proceeded with against him were both under section 44(1)(a) punishable under section 44(5)(a) of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap 65A, 2000 Rev Ed) ("CDSA"). The proceeded charges read:

a) DAC 921252-2018

"You....are charged that you, on 8 May 2018, at 900 South Woodlands Drive, Singapore, were concerned in an arrangement, knowing that by the arrangement, the control of the criminal benefits of an unknown person with the moniker "Peter" would be facilitated and knowing that "Peter" was engaged in criminal conduct *wit*, you gave two cash cheques amounting to S\$86,400.00/- to one Daniel Foong Weng Kit and instructed him to encash them at the UOB Branch located at 900 South Woodlands Drive, Singapore, which sum was Peter's benefits from criminal conduct, and you have thereby committed an offence under Section 44(1)(a) of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap 65A, 2000 Rev Ed) and punishable under Section 44(5)(a) of the same Act."

b) DAC 931531-2018

"You....are charged that you, between April and May 2018, in Singapore, were concerned in an arrangement, having reasonable grounds to believe that by the arrangement, the control of the criminal benefits of a person who went by the moniker "Peter" ("Peter") would be facilitated *to wit*, you permitted your POSB Bank Account no. XXX to be used to receive a total sum of at least S\$5,950.00/-, which was Peter's benefits from criminal conduct, and having reasonable grounds to believe that "Peter" has

engaged in criminal conduct, and you have thereby committed an offence under Section 44(1)(a) and punishable under Section 44(5)(a) of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap 65A, 2000 Rev Ed)."

2 Two other charges were taken into consideration for the purpose of sentencing (TIC charges). These were charges for abetment by conspiracy to intentionally pervert the course of justice (section 204A read with section 109 of the Penal Code), as well as another s 44(1)(a) CDSA charge punishable under s 44(5)(a) CDSA.

3 The accused, who has no antecedents, pleaded guilty to the proceeded charges and admitted to the contents of the Statement of Facts (SOF) without qualification. For each proceeded charge, the prescribed punishment is a fine not exceeding \$500,000 or to imprisonment for a term not exceeding 10 years or to both.

4 After considering the facts of the case, and the submissions and mitigation put forward, I was of the view that the individual imprisonment sentences of 40 months and 6 months' imprisonment, sought by the Prosecution for DAC 921252-2018 and DAC 931531-2018 respectively, were fair and in line with sentencing precedents and principles. I was also of the view that in light of the totality principle, it would suffice for these imprisonment sentences to run concurrently for a global sentence of 40 months' imprisonment.

5 The accused, being dissatisfied, has filed an appeal against the sentence imposed. I now set out my reasons for my sentencing decision.

(2) The Statement of Facts (SOF)

6 The accused admitted to the contents of the SOF without qualification. I have reproduced the main aspects of the SOF below.

(a) Background Facts

7 The accused is a Malaysian citizen and Singapore Permanent Resident. He is unemployed. His co-accused is Daniel Foong Weng Kit ("Foong"), who is a male Malaysian national who is typically resident in Malaysia.

8 On 7May 2018, at about 7.30 p.m., the victim, a 65-year-old female Singaporean housewife, received an email from customerservice@sc.com, which had purportedly been sent by the Standard Chartered Bank. It concerned an "Urgent Account Update" and requested that she update her personal details online. It warned that if she failed to do so, she would be "permanently locked out" of her account. The victim then proceeded to click on a URL address within the email and was directed to a webpage which prompted her to enter her Internet banking credentials. After she did so, it prompted her to enter a One Time PIN that had been sent to her registered mobile phone number. The headers of these webpages contained the Standard Chartered Bank logo, which led her to believe that they were legitimate. After she complied with these steps, the webpage stopped responding.

9 Later that night, the victim was alerted that a sum of S\$93,800.00 had been transferred out of her bank account without her authorisation. She had fallen prey to a phishing scam, whereby the victims of such schemes would receive emails purportedly sent from a legitimate institution, and when they enter their data, the data is harvested and used to access their accounts without authorisation. In this case, this particular victim's Internet login details were used to effect an interbank transfer of money out of her account.

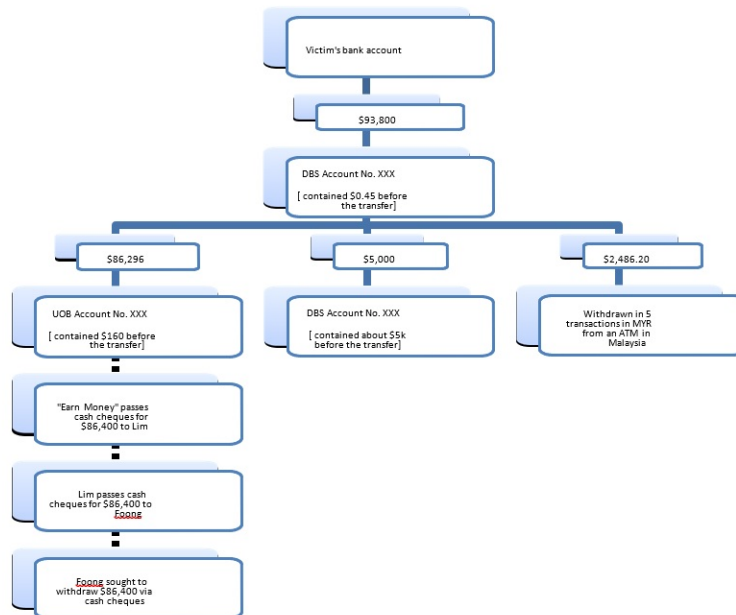
(b) The transfer of funds and investigation findings

10 Investigations revealed that S\$93,800.00 was transferred out of the victim's bank account into DBS Account No. XXX. S\$86,296.00 of this sum was then transferred to a UOB Account No. XXX ("the UOB account"), linked to a company, SL Pek Trading ("SL Pek Trading"), which was registered on 12 April 2018. The

owner of this company was one Pek Siew Lieng (Pek) whilst the accused was its authorised representative who had been appointed on 12 April 2018.

11 Of a remaining sum of \$5,000 from the victim's account, this was transferred to DBS Account No. XXX. A sum of \$2,486.20 was then withdrawn in Malaysian ringgit from an ATM in PNG Times Square in Malaysia. All of these transactions were conducted on 7 May 2018, the same day as the unauthorised transfer from the victim's bank account.

12 These transactions are set out in the chart below.



13 On 8 May 2018 at or about 9.30am, at the UOB branch outlet located at 900 South Woodlands Drive, Singapore, the co-accused, Foong presented two cash cheques amounting to S\$86,400, to be encashed from the UOB account. However, following the intervention of the bank staff, the police was notified and Foong was arrested and the two cheques seized.

14 Subsequent investigations revealed that the accused was involved with a transnational syndicate based in Malaysia. Sometime in March 2018 he became acquainted with one "Peter" who had used a Facebook group, titled "Ta Ma Piemen Cheun Chu" which the accused understood to mean "Malaysia illegal job group" in English, to ask for bank accounts in Singapore. The accused agreed to "rent" "Peter" an account in return for payment. "Peter" subsequently arranged for a person, known as "Earn Money", to meet the accused. Sometime in April 2018, the accused passed "Earn Money" his POSB ATM card and Internet token for POSB account no. XXX ("the POSB account"). "Earn Money" then paid him \$400.

15 Both "Peter" and "Earn Money" told the accused that "Peter" was the "boss" and "Earn Money" worked for "Peter". At "Peter's" invitation, the accused also agreed to work for "Peter". "Earn Money" was to pass him instructions on what to do.

16 Subsequently, "Earn Money" told the accused that he would use the accused's name to be listed as the contact person for a company. The accused agreed to this arrangement. The syndicate then arranged to register SL Pek Trading with the accused as the authorized representative and with Pek as the owner. The accused was instructed by the syndicate to receive, amongst others, the UOB token, PIN number and cheque book for the UOB account. "Earn Money" also told the accused that Pek was one of Peter's personnel. The accused claimed that he was paid \$200 to be the contact person for SL Pek Trading.

17 On or about 5 May 2018, the accused went to Johor Bahru to hand over the UOB token, pin number and cheque book to "Earn Money". The latter told the accused that they dealt with money that had been "hacked" from other persons' bank accounts, and that "Peter" had people working for him who had the capability to do this. This money would be transferred to the UOB account. "Earn Money" also told the accused to "stand by" for someone to withdraw money from the UOB account. The accused admitted that he realized that this meant that the money was not "clean" but he chose not to probe further. Thus, by no later than 7 May 2018, the accused had knowledge that both "Peter" and "Earn Money" were engaged in criminal conduct, and that the sum that was intended to be withdrawn from the UOB account, represented "Peter's" benefits of criminal conduct.

18 Further, sometime in May 2018, the accused was given an OCBC ATM card. He admitted that he followed instructions on multiple occasions to either withdraw money on the syndicate's behalf or to make transfers to other bank accounts. He claimed that he was paid \$100 as salary for doing this. He received payment when he met "Earn Money" in Malaysia to pass the withdrawn sums to "Earn Money".

(c) Facts relating to DAC-921252-2018

19 On 7 May 2018, "Earn Money" texted the accused to tell him to meet a person (i.e., Foong) who would be coming to Singapore on 8 May 2018 to withdraw money from UOB bank. "Earn Money" sent the accused a photo of Foong's identity card and instructed the accused to monitor Foong and to collect the money from Foong once the latter had encashed the cheques. Foong, who was involved with the same transnational syndicate based in Malaysia, had been instructed to come into Singapore on 8 May 2018.

20 On the morning of 8 May 2018, prior to meeting Foong at the Woodlands MRT station, the accused met "Earn Money" in Singapore. The latter then gave the accused an envelope with cash cheques to pass to Foong. One cheque was numbered 000003 and had been made out for \$80,000. The other was numbered 000004 which was for a sum of \$6,400. Both were signed in the name of Pek and bore the UOB account number. The accused inspected the cheques in a toilet to ensure that they were in order before meeting Foong. When he recognised Foong, the accused gestured to him and brought him to a toilet at the Woodlands Civic Centre. Foong asked about the job but the accused refused to answer him. The accused also asked for Foong's passport as he had earlier been instructed by "Earn Money" to do so, as a precaution against Foong running away with the money. However, Foong refused to hand over his passport.

21 The accused subsequently told Foong that his job was to encash cheques at the bank and hand the cash over to him, following which they would bring the cash to Malaysia and hand them over to "Earn Money" who would then pay them. He gave Foong the brown envelope containing the two UOB cheques, and also instructed Foong to delete all their chat logs in his handphone after the job was done. Foong accepted the cheques.

22 The accused knew that by the arrangement he was concerned in, the control of "Peter's" benefits of criminal conduct would be facilitated if he passed the brown envelope containing the two cash cheques to Foong and instructed him to encash them at the UOB Branch. The amount of S\$86,400 in cash cheques that he passed to Foong were proceeds of criminal conduct obtained from the commission of an offence of unauthorised access to computer materials under s 3(1) of the Computer Misuse and Cybersecurity Act (Cap 50A) against the victim, a serious offence pursuant to the Second Schedule of the CDSA. The accused had thereby committed an offence under s 44(1)(a) punishable under s 44(5)(a) of the CDSA.

23 The accused and Foong proceeded to the UOB Branch together. Subsequently, the accused received a text from "Earn Money" to ask why he was so stupid as to queue up together with Foong. The accused then left the queue and waited for Foong outside the bank. Foong later left the bank to ask the accused what he should say if the bank staff asked why he sought to withdraw such a large sum of money. After calling and speaking to "Earn Money", the latter told the accused that Foong should say that the account belonged to a company in the online retail business, and that his lady boss had asked him to withdraw the cash in order to make salary payments. The accused relayed this message to Foong.

24 "Earn Money" was in fact present at the scene. When he subsequently discovered that the UOB account had already been frozen, he instructed the accused to return to Malaysia and to wait for him in Johor Bahru. The UOB and DBS Bank Accounts were frozen, and S\$91,269 of the monies cheated from the victim remained. No restitution has been made.

(d) Facts relating to DAC-931531-2018

25 As stated earlier, the accused had agreed to "rent" Peter the POSB account sometime in April 2018, and subsequently passed "Earn Money" his POSB ATM card and Internet token in return for \$400. "Earn Money" had also told the accused that the account would be used for "tax evasion" and that "Peter" would be using that account.

26 Between April and May 2018, the accused permitted the POSB account to be used to receive at least S\$5,950.00, which were "Peter's" benefits from criminal conduct as follows:

(1) Nor Mariana Binte Rahim, female / 21 years old, had transferred \$600 as payment for a loan from an unlicensed moneylender. Unlicensed moneylending is a serious offence under the Second Schedule to the CDSA;

(2) Khoo Chuan Boon, male / 67 years old, had transferred \$500 as payment for a loan from an unlicensed moneylender;

(3) Kumaresan s/o Nagaiya, male / 26 years old, had transferred \$50 for betting credits for online betting. Providing unlawful remote gambling service for another is a serious offence under the Second Schedule to the CDSA.

(4) Leau Hong Wee, male / 48 years old, transferred \$4,800 as payments for online betting.

27 Thus, the accused was concerned in an arrangement, having reasonable grounds to believe that by the arrangement, the control of "Peter's" criminal benefits would be facilitated, having reasonable grounds to believe that "Peter" had engaged in criminal conduct, an offence under s 44(1)(a) and punishable under s 44(5) (a) of the CDSA.

(3) Summary of Prosecution's Submissions on Sentence

28 The Prosecution submitted for the following sentences to be imposed^[note: 1].

Charge	Value involved	Mens rea	Proposed sentence
DAC-921252-2018	\$86,400	"Knowing"	At least 40 months' imprisonment
DAC-931531-2018	\$5,950	"Reasonable grounds to believe"	At least 6 months' imprisonment

29 In its submissions, the Prosecution referred to the decision of See Kee Oon J in *Huang Ying-chun v PP* [2019] 3 SLR 606 ("*Huang Ying-chun*") where his Honour set out a sentencing framework for offences under s 44(1)(a) CDSA, involving the laundering of cash proceeds of offences committed in Singapore. These guidelines apply to offenders who fall into one of three categories (see [47] and [48]):

- (1) Runners who collect cash in Singapore and dissipate the monies, for example, by remitting the monies or handing them to other persons to remove the monies from the jurisdiction;
- (2) Persons who recruit these runners; and
- (3) Persons managing and/or coordinating these runners.

30 The Prosecution submitted that based on the offence-specific and offender-specific factors summarised at [98], and adopting the five-step sentencing framework set out at [100] – [105] of *Huang Ying-chun*, the appropriate sentence for the accused would be a term of at least 40 months' imprisonment for DAC 921252-2018, and a sentence of at least 6 months' imprisonment for DAC 931531-2018.

31 In this regard, the Prosecution argued that for DAC 921252-2018, the harm caused was at least moderate, and the accused's culpability was on the high end of medium to severe. As for DAC 931531-2018, the level of harm would be on the highest end of slight or the low end of moderate, and the accused's culpability was on the highest end of low or the low end of "moderate" (i.e. medium). The Prosecution also highlighted that there were two fairly serious TIC charges in this case. In calibrating its sentencing position, the Prosecution acknowledged that the accused was untraced, that he had pleaded guilty, and that he had also co-operated with investigations.

32 Further, the Prosecution informed the court that the co-accused, Foong, had pleaded guilty earlier to a lesser charge under s 44(1)(a) of the CDSA punishable under s 44(5)(a) of the same Act read with s 116 of the Penal Code, Chapter 224, which was a charge that had similar elements to the accused's charge in DAC 921252-2018. In Foong's case, he had been sentenced to 16 months' imprisonment for his offence. However, the Prosecution emphasised that the roles of Foong and the accused were different, as there was clear pre-meditation and planning involved for the accused, and he had not been kept in the dark about the predicate offence. Moreover, the accused has two TIC charges.

(4) Mitigation Plea

33 Defence Counsel, Mr Rajwin Singh Sandhu, gave an oral mitigation. He submitted that a sentence of 16 months' imprisonment should be imposed for DAC 921252-2018, and a sentence of 2 months' imprisonment was appropriate for DAC 931531-2018. He also argued that the sentences could run consecutively, for a global imprisonment sentence of 18 months. The main features of the accused's mitigation plea are summarised below:

- (1) The accused is unmarried and comes from a broken family. He had been wilfully blind when tasked to send Foong to encash the cheques, when he used his name to be the authorised representative of the company, and also when he allowed his bank account to be used. He was only paid a few hundred dollars for his role. Counsel said that the accused is a simple man, is remorseful and has learnt his mistake.
- (2) His co-accused, Foong, was sentenced to only 16 months' imprisonment, and there should be parity in the sentencing of the accused. In this regard, Counsel argued that the accused's role was similar to that of Foong in that he was also a victim mule or the helper of victim mule. Further, he was not the mastermind, nor did he plan the offence. While the accused was aware that something was amiss around 5 May 2018, because he was misguided and due to bad judgment on his part, the accused had committed the offences without understanding the seriousness of what he was doing.
- (3) Further, there was only an attempt to recover the criminal proceeds, but the transaction was not completed.
- (4) The accused has spent a year in remand and has assisted the investigation officers.

(5) Finally, as regards the sentencing matrix in *Huang Ying-chun*, Counsel highlighted that the matrix applies for claim trial cases, whereas the accused had pleaded guilty in this case.

(5) The Court's decision

(a) Applying the sentencing matrix and considerations in *Huang Ying-chun*

(i) Guidance provided by the High Court in *Huang Ying-chun*

34 There is little doubt that the sentencing matrix and considerations set out by See Kee Oon J in *Huang Ying-chun*, apply in the present case, which also involves offences under s 44(1)(a) CDSA. Further, the accused's role was that of a runner and/or a person co-ordinating and managing a runner (i.e. Foong) to collect cash that there were the proceeds of predicate offences committed in Singapore.

35 For such offences, See J had set out a comprehensive framework, at [100] to [105] of *Huang Ying-chun*, for the courts to apply in determining the appropriate sentence:

- (1) Step one: Identify the level of harm and the level of culpability.
- (2) Step two: Identify the applicable indicative sentencing range. See J set out the following indicative sentencing ranges which are to apply to contested cases.

Harm \ Culpability	Harm		
	Slight	Moderate	Severe
Low	Fine and/or short custodial term	10 to 30 months' imprisonment	30 to 60 months' imprisonment
Medium	10 to 30 months' imprisonment	30 to 60 months' imprisonment	60 to 90 months' imprisonment
High	30 to 60 months' imprisonment	60 to 90 months' imprisonment	90 to 120 months' imprisonment

- (3) Step three: Identify the appropriate starting point within the indicative sentencing range.
- (4) Step four: Make adjustments to the starting point to account for offender-specific factors.
- (5) Step five: Make further adjustments to take into account the totality principle.

36 See J also analysed the offence-specific and offender-specific factors (non-exhaustive) that may be relevant when applying the five-step framework. These factors, as summarised by Justice See (see *Huang Ying-chun* at [98]), are reproduced below.

Offence-specific factors	
<u>Factors going towards harm</u>	<u>Factors going towards culpability</u>

(a) The amount cheated (b) Involvement of a syndicate (c) Involvement of a transnational element (d) The seriousness of the predicate offence (e) Harm done to confidence in public administration	(a) The degree of planning and premeditation (b) The level of sophistication (c) The duration of offending (d) The offender's role (e) Abuse of position and breach of trust (f) The mental state of the offender (g) Whether commission of offence was the offender's sole purpose for being in Singapore (h) The offender's knowledge of the underlying predicate offence (i) The prospect of a large reward
Offender-specific factors	
<u>Aggravating factors</u> (a) Offences taken into consideration for sentencing purposes (b) Relevant antecedents (c) Evident lack of remorse	<u>Mitigating factors</u> (a) A guilty plea (b) Voluntary restitution (c) Cooperation with the authorities

(ii) *Determining the appropriate sentence*

37 In determining the sentence to impose in the present case, I applied the 5-step sentencing framework set out by See J, bearing in mind that while some of the considerations apply to both charges, there were also obvious dissimilarities for the two charges which justify the imposition of a different sentence for each charge.

(1) Step one: Identify the level of harm and the level of culpability

Harm

38 For DAC-921252-2018, based on the factors identified in *Huang Ying-chun* at [98], I agreed with the Prosecution that the harm was moderate.

(1) Amount Cheated: First, the amount involved for the charge was substantial – consisting of two cash cheques totalling \$86,400. This was money traced to the predicate offence.

(2) Syndicate Involvement, Transnational Element and the ambit of the CDSA: Next, as set out in the SOF, the offence involved a syndicate, whose members consisted largely (if not totally) of foreigners. For this offence, the syndicate essentially targeted a 65-year-old female Singaporean housewife. Thereafter, following the commission of the predicate offence, the syndicate made use of various Singapore banks to move the money, before it sending its members to Singapore to remove its proceeds of crime. Clearly, the involvement of an organised syndicate, and the transnational nature of its activities, were aggravating features which called for the imposition of a deterrent sentence for the CDSA offences. In addition, in deciding on harm, I was reminded of the words of See J in *Huang Ying-chun* at [98] that

“(t)he CDSA is tangentially concerned with the underlying predicate offence, in this case, cheating, but also has a broader ambit in targeting the laundering of monies through Singapore’s financial system that will tarnish Singapore’s hard-won reputation as a financial hub.”

(3) Seriousness of the predicate offence: Another aggravating feature that I noted was the fact that the predicate offence involved serious and well-executed acts of deception carried out through e-mail phishing and the use of fake websites.

(4) Harm done to confidence in public administration: As described in the SOF, the victim was deceived through the use of a bogus message purportedly sent from the Standard Chartered Bank. The entire scheme also made use of the Internet as well as online banking tools and financial institutions in order to commit the predicate offence and to transfer funds from the victim’s bank account to an account from which the ill-gotten gains were meant to be withdrawn (see chart at [12]). I agreed with the Prosecution that the phishing of bank messages and the laundering of money through our bank accounts, could seriously undermine confidence in Singapore’s banking and financial sector.

39 In light of the above considerations, I was of the view that for DAC-921252-2018, the harm could be considered to be at the higher end of the moderate range.

40 As for DAC-931531-2018, the offence essentially involved the accused letting “Peter” “rent” the POSB account. To this end, the accused passed to “Earn Money” his POSB ATM card and an Internet token in return for a reward of \$400. While the illicit funds received in the account of \$5,950 was significantly less than the sum involved in DAC-921252-2018 (which totalled \$86,400), the fact remained that the offence still involved a transnational syndicate. The accused’s participation also enabled the deposit of illicit funds from various crimes into an account in one of our banks, again tarnishing our reputation and status as a financial centre. I was thus of the view that the harm caused for this charge was also in the moderate range, albeit at the lower end of this range.

Culpability

41 For DAC-921252-2018, I was of the view that based on the factors relevant to culpability that were identified by the High Court in *Huang Ying-Chun*, the culpability of the accused for this charge was at the higher end of the medium category, due to the following reasons:

(1) Planning and premeditation involved, and scale and sophistication of scheme: As summarised in the Prosecution’s table^[note: 2], even before the victim fell prey to the phishing scam on 7 May 2018, the accused had been told by “Earn Money” that they dealt with money that had been hacked from others’ bank accounts, and that the money would be transferred to the UOB account that had been set up for SL Pek Trading for which the accused was the authorised representative. “Earn Money” further informed the accused to stand by for someone to withdraw money from the UOB account. Subsequent details were given by “Earn Money” to the accused, who was also involved in co-ordinating between Foong and “Earn Money” in Singapore. In addition, the scheme also extended to the setting up of a bogus website and an apparently bogus company, and the involvement of various individuals and bank accounts. Clearly, the entire affair was not just a small time ruse, but was instead a sophisticated scam carried out with much deliberation and planning.

(2) The accused’s role: The Prosecution argued that the accused played a more major role in the entire arrangement, as compared to his co-accused, Foong, who was merely a runner. Specifically, the accused played at least three roles: (1) he was the authorised representative for SL Pek Trading and handed the necessary means of control of the UOB account to the syndicate in Malaysia; (2) he handed the cash cheques to Foong for the latter to withdraw the money; and (3) he also managed and coordinated Foong’s role in Singapore including giving Foong instructions to delete the call logs in his handphone. In addition, the accused was the one trusted by the syndicate to take over the large sum of \$86,400 from Foong after the withdrawal of the money by the latter. He was apparently also trusted to

relay instructions to Foong from "Earned Money", who was clearly a higher placed member of the syndicate. There can be no doubt that the accused was more involved and culpable than Foong, and that he was "at least one step higher on the hierarchy" than Foong.

(3) The accused's knowledge of the underlying predicate offence: The charge was brought under the "knowing" rather than the "reasonable grounds to believe" limb of s 44(1)(a) CDSA. As set out in the SOF, the accused in fact knew (and not merely had reason to believe) that by the arrangement, he was facilitating control of "Peter's" benefits of criminal conduct. Further, prior to the actual date of the offence, the accused had already been told that the UOB account contained money from hacking, and that that his role was to collect money from Foong, after the latter had withdrawn money from the account. In this respect, as noted by See J in *Huang Ying-Chun* at [75], "...where the offender had actual knowledge of the criminal nature of proceeds, this would be grounds to find that the offender had heightened culpability justifying a higher sentence."

(4) Duration of offence and the prospect of reward: As regards these considerations that were identified in *Huang Ying-Chun*, while the date of the offence was set as 8 May 2018 in the charge, various preparatory acts had occurred sometime before this date. In this regard, the accused became acquainted with "Peter" in March 2018, and the scheme was apparently already put into action by or before 12 April 2018, which was the date that SL Pek Trading was registered with the accused as its representative. On a separate matter relating to culpability, it bears mentioning that the accused participated in the scheme as he was motivated by the prospect of a reward, which is yet another relevant culpability factor.

42 As for DAC-931531-2018, the accused was aware that that the account that he rented to "Peter" for a reward of \$400, was to facilitate illegal activities (albeit he was told that it was for "tax evasion"). The account was also used from April to May 2018, During this period, a significant amount of illicit funds was received in the account. However, it should be noted that for this charge, the Prosecution had proceeded on the limb involving the lesser mens rea of "reasonable grounds to believe". All in, I agreed that the accused's culpability on this charge could be regarded as being at the higher end of the low culpability range.

(2) Steps two and three: Identify the applicable indicative sentencing range and appropriate starting point.

43 I now deal with steps two and three of the sentencing framework.

44 In line with the sentencing range (albeit for claimed trial cases) that was set out in *Huang Ying-chun* at [102], the indicative sentencing ranges for the charges are as follows:

Charge	Harm	Culpability	Indicative Range
DAC-921252-2018	Higher end of moderate range	Higher end of medium culpability	30 – 60 months' imprisonment (but trending towards a higher figure)
DAC-931531-2018	Lower end of moderate range	Higher end of low culpability	10 – 30 months' imprisonment (but trending towards a lower figure)

45 Following the identification of the level of harm and culpability for each of the two charges, I agreed with the assessment of the Prosecution that the starting point for DAC-921252-2018 was at least 50 months. As for DAC-931531-2018, I was of the view that the appropriate starting point should be 10 months' imprisonment, as this is the starting figure for the moderate harm-low culpability category of offences.

(3) Step four: Adjustments to starting point for offender-specific factors

46 As far as aggravating factors were concerned, the accused had two TIC charges: one of abetment by conspiracy to intentionally pervert the course of justice, and the second TIC charge being another charge under s 44(1)(a) CDSA offence. In light of the serious and/or similar nature of these charges, the fact of his TIC charges should push the starting point up.

47 However, counter balancing this aggravating feature was the fact that the accused had pleaded guilty. He had also co-operated with the authorities.

48 In addition, I noted that the sentencing range set out in *Huang Ying-chun* (at [102]) was for "claimed-trial" (contested) cases. Due to his plea of guilt, and his co-operation with authorities, I was of the view that there should be a significant sentencing discount given from the identified starting points.

49 Thus, having balanced the applicable aggravating and mitigating factors, I agreed with the Prosecution that the appropriate sentence was 40 months' imprisonment and 6 months' imprisonment for DAC-921252-2018 and DAC-931531-2018 respectively.

(4) Step five: Make further adjustments to take into account the totality principle.

50 While both proceeded charges were framed under s 44(1)(a) CDSA, they clearly involved distinct offences where the actions of the accused were quite different, as were the accounts involved, and the time periods of the offences. It would thus have been entirely appropriate for consecutive sentences to have been imposed in the present case.

51 The Prosecution, however, did not make any submission for the two imprisonment sentences to run consecutively, taking into account "...the totality of the offending, as well as the accused's age, past records and future prospects". [note: 3]

52 Having assessed the matter holistically, and in line with the totality principle, I was of the view that it would be sufficient for the two imprisonment sentences to run concurrently for a global sentence of 40 months' imprisonment.

(b) The issue of parity

53 Counsel argued that as Foong was sentenced to only 16 months' imprisonment, there should be parity in sentencing, and that sentences of 16 months and 2 months' imprisonment should be imposed for DAC-921252-2018 and DAC-931531-2018 respectively, with both sentences running consecutively for a global sentence of 18 months' imprisonment.

54 With respect, I did not agree with Counsel's submissions. In this regard, the High Court in the cases of *Phua Song Hua v PP* [2004] SGHC 33 ("*Phua Song Hua*"), and *Lim Bee Ngan Karen v PP* [2015] SGHC 183 ("*Lim Bee Ngan Karen*"), had made it clear that the principle of parity should not apply to correct discrepancies due to a different charge faced by an accused in comparison with that of his co-accused persons.

55 In *Phua Song Hua*, the appellant was convicted, after trial, on 2 charges of rioting under s 147 of the Penal Code, and he was sentenced to a total of 18 months' imprisonment and 3 strokes of the cane. On appeal, his counsel argued for a lower sentence as the co-accused persons, who had played more major roles but who had pleaded guilty to charges of unlawful assembly under section 143 of the Penal Code, had been sentenced to much lower sentences. Yong Pung How CJ, however, dismissed the appeal. On the issue of parity, his Honour stated as follows:

"38 Phua's counsel scathingly criticised the sentences as being harsher than those meted out to Oh, Bai, Leong and Tan, who had played a more major role. This objection neglected the fact that these witnesses had pleaded guilty to a less serious offence of unlawful assembly (s 143), which has a lower sentencing regime of a maximum penalty of six months' imprisonment. **The principle of parity of sentence is irrelevant once there are different offences, as there is no longer any common basis for comparison....**"

[emphasis added]

56 The case of *Phua Song Hua* was considered by Chao Hick Tin JA in the latter case of *Lim Bee Ngan Karen*. At [41], Chao JA made it clear that "... The parity principle should not be used to correct sentences which are disproportionate as a result of charging decisions made by the Prosecution."

57 In the present case, the accused had been convicted under s 44(1)(a) of the CDSA punishable under s 44(5)(a) of the same Act, while his co-accused, Foong, had pleaded guilty on an earlier date to a lesser charge under s 44(1)(a) of the CDSA punishable under s 44(5)(a) of the same Act, read with s 116 of the Penal Code, Chapter 224 (where the offence is NOT committed in consequence of the abetment). The maximum prescribed punishment for Foong's offence was "a term which may extend to one-fourth part of the longest term provided for that offence" i.e. 2 ½ years' imprisonment, as compared to maximum term of 10 years' imprisonment for the accused's CDSA charge.

58 For reasons not known to this court, the Prosecution, in the exercise of its discretion, had decided to proceed on different charges against the accused from that it proceeded with against Foong. This means that the charges that the accused and Foong pleaded guilty to were different, and with vastly dissimilar punishments. This distinction was explicitly made known to the Counsel and the accused during the court mention, and the accused nevertheless maintained his plea of guilt^[note: 4]. In the circumstances, the principle of parity clearly could not be used to justify a lesser sentence for the accused. Nor should the accused be surprised by this.

59 In any event, the fact remained that based on the considerations set out in *Huang Ying-chun*, and as extensively discussed in the earlier part of this judgment (see [41(2)]), the role and culpability of Foong was very different from that of the accused. The accused was clearly a lot more culpable and very much more involved. He was also more trusted and placed at a higher position in the syndicate's hierarchy. Moreover, the accused had two TIC charges which were relevant to his sentencing. All in all, imposing a global sentence of 40 months' imprisonment on the accused on the two proceeded charges was entirely appropriate, and in accord with sentencing principles.

(6) Conclusion

60 In summary, I imposed a global sentence of 40 months' imprisonment. I also backdated the accused's sentence to 19 May 2018 which was the commencement date of his remand.

61 I am of the view that the global sentence imposed is fair and proportionate, and has taken into account all the relevant considerations.

62 The accused, being dissatisfied, has filed an appeal against sentence. He is currently serving his imprisonment sentence.

[note: 1] Prosecution's Skeletal Submissions on Sentence at [2]

[note: 2] Prosecution's Skeletal Submissions on Sentence at [3]

[note: 3]Prosecution's Skeletal Submissions on Sentence at [26]

[note: 4]Notes of Evidence dated 6 June 2019 at page 22-24

BACK TO TOP

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