Lim Bee Ngan Karen *v* Public Prosecutor
[2015] SGHC 183

Case Number	: Magistrate's Appeal No 118 of 2014
Decision Date	: 16 July 2015
Tribunal/Court	: High Court
Coram	: Chao Hick Tin JA
Counsel Name(s)	: Chan Tai-Hui Jason and Kok Li-en (Allen & Gledhill LLP) for the appellant; April Phang Suet Fern and Nicholas Lai Yi Shin (Attorney-General's Chambers) for the respondent.
Parties	: Lim Bee Ngan Karen — Public Prosecutor

Criminal Procedure and Sentencing – Sentencing – Principles

16 July 2015 Judgment reserved.

Chao Hick Tin JA:

Introduction

1 This appeal is set in the context of the sentencing of an offender who engages with other persons ("co-offenders") in a common criminal enterprise. Should the Public Prosecutor, the respondent in this appeal ("the Respondent"), be under a duty in such a situation to disclose to the court relevant material pertaining to the sentences received by the co-offenders? When and how should the parity principle, which entails that the offenders who participate in a common criminal enterprise should, generally speaking, receive the same sentence, be applied in this context? These questions form the crux of the present appeal, which concerns the sentences imposed by a district judge ("the Sentencing Judge") on the appellant, Karen Lim Bee Ngan ("the Appellant"), in relation to offences under the Betting Act (Cap 21, 2011 Rev Ed) ("the BA") and the Common Gaming Houses Act (Cap 49, 1985 Rev Ed) ("the CGHA"). The Appellant contends that the aggregate sentence which the Sentencing Judge imposed on her – *viz*, ten months' imprisonment and a fine of $141,000 (in default, 22 weeks' imprisonment) – is inappropriate or manifestly excessive. Her challenge relates only to the imprisonment term. The Sentencing Judge's written grounds of decision may be found at *Public Prosecutor v Karen Lim Bee Ngan* [2014] SGMC 14 ("the GD").

The factual background

2 On 28 June 2012 at about 4.30pm, Senior Station Inspector Leong Shee Chun and a party of police officers raided 92 Flora Road, #05-41, Edelweiss Condominium on suspicion that offences under the BA and the CGHA were being or had been committed there. [note: 1] Following the raid, the Appellant was taken to the Criminal Investigation Department ("CID") for further questioning. While at the CID, she logged on to her online football and 4D betting accounts and printed out some betting records ("the Exhibits") from www.st999.net.com, www.galaxy188.com and agt.ibc88.com. [note: 2]

3 Investigations revealed that the Exhibits related to the Appellant's illegal 4D betting, 4D bet collection and football bookmaking activities. In early 2010, the Appellant had obtained an online football "Master Agent" account from her brother, Lim Chin-U Keith ("Keith"), and used it to collect

football bets. That account, which the Appellant accessed via the website agt.ibc88.com, came with a $1.1m credit limit. Investigations revealed that the Appellant collected football bets from her customers and placed their respective bets into the account. She earned a commission of 20% to 90% of the value of the bets collected whenever her customers lost money on their bets, and settled the bets with Keith using cash. [note: 3] It was not clear from the Statement of Facts exactly how much the Appellant earned from the commission received from these bets.

4 Further investigations revealed that the Appellant had also obtained an online 4D betting account from Keith via the website www.st999.net.com, and used it to purchase and place illegal 4D bets. That account came with a credit limit of $12,000, and the Appellant likewise settled the 4D bets with Keith using cash. [note: 4] Separately, the Appellant obtained another online 4D account from "Ah Tee", one Ng Leong Chuan, via the website www.galaxy188.com. The Appellant used this account, which came with a credit limit of $35,000, to collect illegal 4D bets and settled the bets with Ah Tee using cash. She was given a commission of 7% of the value of the bets collected, and an additional 5% when her punters struck 4D bets. [note: 5]

The charges against the Appellant

The charges proceeded with by the Respondent

5 Of the 15 charges brought against the Appellant in total, five charges were proceeded with by the Respondent. I shall refer to each of these five charges as a "Proceeded Charge" so as to distinguish them from the remaining ten charges which were taken into account for the purposes of sentencing.

The facts relating to the first Proceeded Charge

6 Investigations into the first Proceeded Charge, Magistrate's Arrest Case ("MAC") No 9876 of 2013 ("the First Proceeded Charge"), revealed that the printouts from www.st999.net.com related to the Appellant's illegal "10,000 (4D) characters" lottery betting activities. The betting records showed that the Appellant had received stakes of the following values from punters:

(a) 42 "Big" tickets valued at a total of $67.20; and

(b) 108 "Small" tickets valued at a total of $75.60.

7 The bets, which were calculated based on a rate of $1.60 per "Big" ticket and $0.70 per "Small" ticket, were placed against the results of the Singapore Pools 4D Game draw held on 23 June 2012. [note: 6] The Appellant was charged under s 9(1) of the CGHA in relation to these bets.

The facts relating to the second Proceeded Charge

8 Investigations into the second Proceeded Charge, MAC No 9878 of 2013 ("the Second Proceeded Charge"), revealed that the printouts from www.galaxy188.com related to the Appellant's illegal 4D bet collection activities. Those records showed that the Appellant had received bets of the following values from punters:

(a) 200 "Big" tickets valued at a total of $320; and

(b) 200 "Small" tickets valued at a total of $140.

9 The bets, which were likewise calculated based on a rate of $1.60 per "Big" ticket and $0.70 per "Small" ticket, were placed against the results of the Singapore Pools 4D Game draw held on 24 June 2012. [note: 7] The Appellant was charged under s 5(*a*) of the CGHA in relation to these bets.

The facts relating to the third Proceeded Charge

10 Investigations into the third Proceeded Charge, MAC No 9881 of 2013 ("the Third Proceeded Charge"), revealed that the printouts from the Appellant's online football account related to her illegal football bookmaking activities whereby she accepted bets totalling $21,580 to forecast the results of football matches for fixtures held on 16 June 2012 in the following leagues:

(a) UEFA Euro 2012;

(b) Japan J-League Division 1;

(c) Australia Victoria Premier League;

(d) Western Australia State League Premier;

(e) Australia Brisbane Premier League;

(f) USA Major League Soccer;

(g) Japan J-League Division 2; and

(h) Japan Football League.

11 According to para 9 of the Statement of Facts, in relation to the above bets, the Appellant earned "a commission of 20% to 90% from the total bet value collected". I note that this is not entirely consistent with the description at [3] above of the commission payable to the Appellant, but it is what is set out in the Statement of Facts; the same applies to the description at [13] and [15] below of the commission payable to the Appellant. The Appellant was charged under s 5(3)(*a*) of the BA in relation to the above bets.

The facts relating to the fourth Proceeded Charge

12 Investigations into the fourth Proceeded Charge, MAC No 9883 of 2013 ("the Fourth Proceeded Charge"), revealed that the printouts from the Appellant's online football account related to her illegal football bookmaking activities whereby she accepted bets totalling $16,450 to forecast the results of football matches for fixtures held on 18 June 2012 in the following leagues:

(a) UEFA Euro 2012;

(b) AFC U22 Asian Cup Qualifiers;

(c) Women Volvo Winners' Cup;

(d) International Friendly; and

(e) Finland Veikkausliiga.

13 In relation to the above bets, the Appellant similarly earned a commission of 20% to 90% of the total value of the bets collected. On the foregoing facts, she was charged under s 5(3)(*a*) of the BA.

The facts relating to the fifth Proceeded Charge

14 Investigations into the fifth Proceeded Charge, MAC No 9886 of 2013 ("the Fifth Proceeded Charge"), revealed that the printouts from the Appellant's online football account related to her illegal football bookmaking activities whereby she accepted bets totalling $22,500 to forecast the results of football matches for fixtures held on 21 June 2012 in the following leagues:

(a) UEFA Euro 2012;

(b) Indonesia Super Liga; and

(c) Copa Libertadores.

15 The Appellant likewise earned a commission of 20% to 90% of the total value of the bets collected *vis-à-vis* the above bets. On the foregoing facts, she was charged under s 5(3)(*a*) of the BA.

The charges taken into consideration

16 As mentioned earlier, ten charges ("TIC Charges") were taken into consideration for the purposes of sentencing. Of these ten charges, one was brought under s 9(1) of the CGHA, one was brought under s 5(*a*) of the CGHA and the remaining eight were brought under s 5(3)(*a*) of the BA. The bets involved in the eight TIC Charges brought under s 5(3)(*a*) of the BA, together with the bets that were the subject of the Third to the Fifth Proceeded Charges (which were likewise brought under s 5(3)(*a*) of the BA), amounted to $133,045 in total (see the GD at [23]).

The decision below

The individual sentences imposed by the Sentencing Judge

17 The individual sentences imposed on the Appellant by the Sentencing Judge in respect of the Proceeded Charges were as follows:

(a) For the First Proceeded Charge, the Appellant was sentenced to a fine of $1,000 (in default, one week's imprisonment) (see the GD at [7]).

(b) For the Second Proceeded Charge, the Appellant was sentenced to two weeks' imprisonment and a fine of $20,000 (in default, three weeks' imprisonment) (see the GD at [9]). In imposing this punishment, the Sentencing Judge adopted the approach taken in *Lim Li Ling v Public Prosecutor* [2007] 1 SLR(R) 165 ("*Lim Li Ling*"), where Tay Yong Kwang J held (at [91]) that sentencing courts "should continue their current practice of imposing both a fine and imprisonment" [emphasis in original omitted] for offences under s 5(*a*) of the CGHA so as to "adequately deter and punish those who engage in illegal lotteries".

(c) For the Third to the Fifth Proceeded Charges, the Appellant was sentenced in respect of each of these charges to five months' imprisonment and a fine of $40,000 (in default, six weeks' imprisonment) (see the GD at [11]). The Sentencing Judge noted that although *Lim Li Ling* involved an offence under s 5(*a*) of the CGHA, the same reasoning had been applied to offences

under s 5(3)(*a*) of the BA, such that both a fine and an imprisonment term were typically imposed for the latter. Public interest, the Sentencing Judge stated (at [10] of the GD), warranted punishing illegal bookmakers in a similar vein as those who assisted in the carrying on of public lotteries and ran afoul of the CGHA.

The aggregate sentence imposed

18 As s 307(1) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("the CPC") mandated that at least two of the Appellant's imprisonment sentences had to run consecutively, the Sentencing Judge ordered the imprisonment sentences for the Third and the Fifth Proceeded Charges to run consecutively (see the GD at [14] and [28]). The Appellant was thus punished with an aggregate sentence of ten months' imprisonment and a fine of $141,000 (in default, 22 weeks' imprisonment) (see the GD at [15]).

19 In arriving at the aggregate sentence, the Sentencing Judge took into account the following as aggravating factors: (a) the Appellant had been involved in illegal betting activities over the Internet since early June 2010; and (b) the sums involved as well as the gains made by the Appellant were substantial (see the GD at [13] and [19]). The Sentencing Judge also noted that offences committed over the Internet were not only difficult to detect, but also on the rise. As such, he took the view (at [28] of the GD) that "severe sentences had to be meted out as clear signals that such misconduct was not to be tolerated".

20 At the same time, the Sentencing Judge carefully considered the Appellant's mitigation plea, noting her "personal circumstances and her medical and mental issues, and the various difficulties that she had faced and was continuing to face" (see the GD at [17]). He held, however, that on balance, the aggravating factors "far outweighed the mitigating effects [which the Appellant's] personal circumstances brought to the fore" (see, likewise, [17] of the GD), so much so that there were "strong reasons" for at least three of the Appellant's imprisonment terms to run consecutively (see [29] of the GD; see also [13] of the GD).

21 Ultimately, bearing in mind the totality principle of sentencing and taking into account all the circumstances of the case, the Sentencing Judge held that it was sufficient to order only two of the Appellant's imprisonment sentences (namely, the imprisonment sentences for the Third and the Fifth Proceeded Charges) to run consecutively, and exercised his discretion accordingly (see the GD at [13]–[14] and [28]–[29]). He also scaled down the default imprisonment sentences for the fines meted out so as not to impose too "crushing" an aggregate sentence on the Appellant (see the GD at [29]). Dissatisfied, the Appellant has appealed.

The parties' submissions on appeal

22 Before me, counsel for the Appellant, Mr Chan Tai-Hui Jason ("Mr Chan"), submitted that:

(a) The Respondent failed to place before the Sentencing Judge relevant material pertaining to two persons mentioned in the Statement of Facts as being involved in the Appellant's illegal 4D betting and football bookmaking activities, namely, Keith and Ah Tee. The Statement of Facts merely stated that those two persons had been "dealt with". Nothing more, particularly the sentences imposed on them, was tendered to the Sentencing Judge when the Appellant was sentenced, even though the Respondent, as the prosecuting authority, was under a duty to do so according to *Muhammad bin Kadar and another v Public Prosecutor* [2011] 3 SLR 1205 ("*Kadar (No 1)*") and *Muhammad bin Kadar and another v Public Prosecutor* [2011] 4 SLR 791 ("*Kadar (No 2)*") in order to ensure a fair trial and avoid a miscarriage of justice. [note: 8]

(b) As the Respondent failed to provide the Sentencing Judge with relevant material pertaining to Keith's and Ah Tee's sentences, the Sentencing Judge was unable to consider and apply the parity principle, which should have been applied. [note: 9] Consequently, a miscarriage of justice resulted as there was now a lack of parity between the aggregate sentence imposed on the Appellant and the aggregate sentences imposed on Keith and Ah Tee, which would cause a right-thinking member of the public with full knowledge of the relevant facts and circumstances to consider that something had gone amiss with the administration of justice. It was, Mr Chan submitted, the duty of this court, in its appellate capacity, to correct this miscarriage of justice.

(c) Alternatively, Mr Chan contended, the Appellant's aggregate sentence was manifestly excessive, bearing in mind: (i) the sentencing precedents for identical or similar offences; (ii) the Sentencing Judge's erroneous consideration of aggravating factors that he should not have taken into account; and (iii) the Sentencing Judge's failure to properly consider the Appellant's mitigating circumstances.

23 In rebuttal, the Respondent, through Deputy Public Prosecutor April Phang Suet Fern ("Ms Phang"), submitted that:

(a) It was trite that the threshold for appellate intervention would only be met if there was a need for a substantial alteration to the sentence being challenged, as opposed to an insignificant correction. [note: 10]

(b) The Sentencing Judge had correctly given "sufficient weight to the need for general deterrence as the predominant sentencing consideration where gaming offences involv[ed] the use of technology to evade detection". [note: 11] In meting out the punishment which he imposed, Ms Phang argued, the Sentencing Judge had also correctly considered the following as aggravating factors: [note: 12]

(i) the Appellant's "intense" criminal conduct, as shown by the fact that her illegal gambling business had lasted for some three years;

(ii) the large amount of bets which had been placed with the Appellant; and

(iii) the large sums of commission which the Appellant had received from the illegal enterprise.

(c) The mitigating factors had been properly considered and balanced against the aggravating factors by the Sentencing Judge, and the sentence imposed on the Appellant was in fact "on the lenient side". [note: 13]

(d) Even if the Sentencing Judge had been informed of the sentences imposed on Keith and Ah Tee and had taken those sentences into account, he would still have arrived at the same conclusion where the Appellant was concerned. [note: 14]

24 It clearly emerges from the written and oral submissions of the parties that the main issue in this appeal centres on the operation of the parity principle *vis-à-vis* the sentencing of offenders who engage in a common criminal enterprise, and whether the Sentencing Judge erred by failing to consider this principle when sentencing the Appellant. In this connection, I shall also address the question of the Prosecution's duty to assist the court in respect of sentencing.

An appellate court's powers of review

25 I first set out the trite law on an appellate court's powers of review over sentences imposed by lower courts. In *ADF v Public Prosecutor and another appeal* [2010] 1 SLR 874, the Court of Appeal held at [17] that the sentence imposed by a trial court would not ordinarily be disturbed by an appellate court unless:

(a) the trial court erred with regard to the proper factual basis for sentencing;

(b) the trial court failed to appreciate the materials placed before it;

(c) the sentence was wrong in principle; or

(d) the sentence was manifestly excessive or inadequate, in that there was a need for a *substantial alteration* to the sentence, as opposed to an insignificant correction, to remedy the injustice.

26 I now turn to address the key issue of parity, upon which considerable importance has been placed by the Appellant.

When is the parity principle applicable?

Divergent approaches to the parity principle

27 The parity principle, as stated by this court in *Public Prosecutor v Ramlee and another action* [1998] 3 SLR(R) 95 ("*Ramlee*") at [7], entails that:

> Where two or more offenders are to be sentenced for participation in the same offence, the sentences passed on them should be the same, unless there is a relevant difference in their responsibility for the offence or their personal circumstances …

28 How widely should the parity principle apply? This has been the subject of disagreement, and Australian judges have diverged on this very issue. In *Lowe v R* (1984) 54 ALR 193 ("*Lowe*") at 194, Gibbs CJ took the view (referred to hereafter as "the Narrow View") that the parity principle applied only to co-offenders in the sense of "persons who [had] been parties to the commission of *the same offence*" [emphasis added]. This view was subsequently echoed in (*inter alia*) *Postiglione v The Queen* (1997) 189 CLR 295 at 325 by Gummow J. In contrast, in *Jimmy v R* (2010) 269 ALR 115 ("*Jimmy*") at [199], the New South Wales Court of Criminal Appeal ("the NSWCCA") took the broader view ("the Broad View") that the parity principle could be applied between persons who "participate[d] in a common criminal enterprise *even if they [did] not all commit the self-same crime*" [emphasis added].

The Narrow View

29 The Narrow View of the parity principle was initially preferred in Australia, as can be seen from (*inter alia*) the decision in *Lowe*. However, subsequent cases saw a gradual widening of the principle's application. In *Sumner v R* (1985) 19 A Crim R 210 ("*Sumner*"), for instance, the Victorian Court of Criminal Appeal applied the parity principle in a case where a common criminal enterprise, that of handling a consignment of stolen cigarettes, was carried out by a few men who handled the consignment at different times and played significantly different roles in the criminal enterprise. *Sumner* was cited by the NSWCCA in *Jimmy* (at [77]) as an example of the parity principle being applied in a case where the co-offenders did not all commit the same crime, but were nonetheless

involved in the same criminal enterprise.

30 The widening of the Narrow View can also be seen from Chief Justice Wayne Martin AC's address at the Sentencing Conference 2014, where he stated (see Wayne Martin, "The Art of Sentencing – an appellate court perspective" (9 October 2014) <http://www.supremecourt.wa.gov.au/_files/The%20Art%20of%20Sentencing%20-%20an%20Appellate%20Court%20Perspective%20Martin%20CJ%2014%20Oct%202014.pdf> (accessed 14 July 2015) at pp 10–11):

> The parity principle is an aspect of the broader principle of equal justice. Like the totality principle, it has two components:
>
> > Equal justice requires identity of outcome in cases that are relevantly identical. It requires different outcomes in cases that are different in some relevant aspect.
>
> The parity principle is often expressed in terms of the disparity giving rise to an objectively justifiable or legitimate sense of grievance on the part of the offender invoking the principle, or an appearance that justice has not been done.
>
> The parity principle is to be distinguished from the general objective of consistency in sentencing, which applies to persons charged with similar offences arising out of unrelated events. In this context, consistency does not mean numerical or mathematical equivalence, but consistency in the application of relevant legal principles. However, *the parity principle applies only to the punishment of those engaged in the commission of the same offence*, ***or in related offences arising from one transaction in which they were engaged*** *. As already noted, the principle allows for different sentences to be imposed upon like offenders in order to reflect differing degrees of culpability or differing personal circumstances, but requires that the sentences imposed bear an appropriate relationship to each other, after taking account of those differences*.
>
> [emphasis added in italics and bold italics]

31 The issue of whether the parity principle should be applied in cases where the offenders involved in a common criminal enterprise are charged with different offences arose in *R v Gibson* (1991) 56 A Crim R 1 ("*Gibson*"). In that case, the offenders concerned were charged with different offences which attracted very different maximum penalties. The NSWCCA declined to apply the parity principle on the grounds that it would, in practical terms, be difficult to apply, and furthermore, applying it would "[stretch] the search for parity to unacceptable limits" (at [8]). In *Jimmy* at [82], the NSWCCA commented on the decision in *Gibson* as follows:

> … Carruthers J did not say that parity would in principle be inapplicable between the people charged with supplying and those charged with possession, nor that it would be inapplicable between the people charged with supplying as those charges related to different acts of supplying. Rather, the difficulty in taking into account all the differences between the factors that had [led] to the differing sentences defeated, *at a practical level*, any attempt to apply the principle. [emphasis added]

The Broad View

32 The Broad View applies the parity principle in a wider context. It is reflected in (*inter alia*) Kow Keng Siong, *Sentencing Principles in Singapore* (Academy Publishing, 2009) at para 13.027, where the

author states that the parity principle should be used as a *practical starting point* in sentencing *offenders who are part of a common criminal enterprise*, with appropriate adjustments being made from that starting point to account for offender-specific circumstances.

33 At this juncture, I should highlight the case of *R v Kerr* [2003] NSWCCA 234 ("*Kerr*"), where the NSWCCA seemed to apply the Broad View of the parity principle very liberally. In *Kerr*, three offenders were involved in a robbery, pursuant to which the applicant was convicted of aggravated robbery after a trial. His accomplices, one Oliver and one Tickner, were charged with and convicted of, respectively, robbery *simpliciter* and concealing a serious indictable offence. The sentencing judge, who did not think the parity principle was applicable (see *Kerr* at [12]), sentenced the applicant to 13 years and six months' imprisonment, with a non-parole period of ten years and six months (at [5]). Oliver, who pleaded guilty, was sentenced to 500 hours of community service (at [10]), while Tickner was given an 18-month suspended sentence (at [11]). On appeal to the NSWCCA, Miles AJ held that: (a) the policy behind the parity principle could not be avoided simply by the Prosecution charging cooperative offenders with less serious offences; and (b) the lighter charge of robbery *simpliciter* against Oliver appeared to be due to his cooperation with the authorities, rather than his actual degree of participation in the criminal enterprise. Applying the parity principle, Miles AJ reduced the applicant's sentence to imprisonment of ten years, with a non-parole period of seven and a half years (at [31]). Miles AJ reasoned that the parity principle should be applied as (at [19]):

> It is established that disparity so called can arise when a co-offender is sentenced after the aggrieved offender has been sentenced … In such cases there can be no error on the part of the judge sentencing the offender later aggrieved … It is also recognised that *the parity principle is of wide application and is not to be applied or withheld in a technical or pedantic way*. It is indeed part of or a reflection of the wider principle that consistency in sentencing by the courts overall is to be aimed at as desirable in the public interest. *Perfect consistency is a goal that can never be reached because of the infinite variety of the circumstances of offences or offenders. However there is a danger that [the principle of consistency] may be compromised by the selection of differing charges so that one offender may be charged with a serious offence and given punishment at the top of an acceptable range for that offence, and a co-offender charged with another less serious offence and dealt with at the very bottom of the acceptable range for that other offence.* There may be no impropriety in that course, which will often arise from negotiation between co-offenders and law enforcement authorities. Sometimes, however, … the result may have the appearance of injustice. [emphasis added]

3 4 *Kerr* is a controversial decision as it seems to advocate the application of the parity principle as a basis for reducing the sentence imposed on an offender if it is disproportionate to the sentence imposed on a co-offender who engaged in the same criminal enterprise but who was *charged with a different offence*, so much so that the courts can correct sentencing disparities created as a result of the Prosecution exercising its discretion to bring different charges against different co-offenders.

35 The backlash against *Kerr* was fast and furious. In *R v Formosa* [2005] NSWCCA 363 ("*Formosa*"), the NSWCCA looked upon *Kerr* unfavourably. Simpson J stated (at [40]) that while *Kerr* could be read as extending the parity principle to situations where co-offenders were charged with different offences and while it was *possible* for the principle to be applied in such a manner, the extreme divergence in the nature of crimes committed in *Formosa* meant that the parity principle could not be practically applied as it was difficult to do so.

36 *Kerr* was also criticised in *Jimmy* at [124]–[130], where Campbell JA commented:

> 124 … At a level of broad policy, the law in sentencing aims to treat like cases alike, and unlike

cases differently. But the policy underlying the law is not the same as the law itself. There are practical difficulties in carrying that policy into effect. One of no small significance is that sometimes there will be occasions when an offender is charged with a lesser crime than would have been justified if all the relevant facts had been discovered by the police, or than would have been justified if the police had admissible evidence, rather than information that does not meet the standards of admissibility. There is always, in one sense, unfairness if one person receives a heavier sentence than a person who if all the facts were known could be seen to be equally culpable but against whom the truth of what actually occurred cannot be proved by admissible evidence. A sentencing judge will usually not be in a position to know whether the reason for one person involved in a criminal enterprise being charged with a lesser offence than another is lack of evidence, rather than that the facts if fully known justified the difference in the charges. …

125 There are other limitations on a judge being able to compare directly the sentences of people charged with different offences. There will be occasions when one person involved in a criminal enterprise is charged with a lesser offence than another in what might be called a comparatively clear exercise of prosecutor's discretion. Such an occasion arises when, even though on the available admissible evidence it would have been open to charge the first of those people with a more serious offence than was actually charged, the prosecutor decided not to do so, perhaps as part of a plea bargain, perhaps as a trade-off for the person charged providing assistance, perhaps because of matters personal to that person like youth, perhaps for other reasons. There will be other occasions when one person involved in the criminal enterprise is charged with a lesser offence than another in circumstances where the available admissible evidence is such that even the most assiduous prosecutor could not realistically have expected to prove a more serious offence against the first of those people. There will be other occasions that have some elements of both of these factual scenarios. It will often be impossible for a judge to know whether the charging of two people with different offences is truly, or wholly, a matter of discretion on the part of the prosecutor. In comparing the sentences of co-offenders courts are well able to factor out the effect on the sentences of differences that the court knows about in the objective circumstances of involvement of the respective co-offenders in the crime, and in the subjective circumstances of the offenders. But *it would not be practicable for a court to try to apply an extended version of the parity principle by comparing the sentences of two people in the common enterprise* ***and factoring out the extent to which the difference in the sentences is a function of prosecutorial discretion*** *. It cannot carry out that task when it does not know to what extent it is truly a discretion, rather than something else, that is the reason for the difference in the charges. In the result, to the extent to which differences in sentence arise from* ***differences in the charges*** *brought against two people involved in the one common criminal enterprise, those differences* ***cannot*** *be corrected … by an application of the parity principle.*

…

130 I am persuaded, for the reasons I have given, that Kerr *was mistaken in extending the parity principle to apply to undo the extent to which differences in the sentences of people involved in a common criminal enterprise, but who are charged with different offences, arose from the charges being different. Kerr* did not rest upon any principle carefully worked out in a series of cases – indeed it ignored the earlier and contrary decision in [*R v Howard* (1992) 29 NSWLR 242]. While there was no disagreement between the judges who decided *Kerr*, it has not been relied on in a series of cases thereafter. Rather, it has been the subject of repeated criticism that has not gone quite as far as actually deciding it is wrong. *I would not follow the aspect of it that permitted the parity principle to undo the effect on sentence of different*

charges being brought against two participants in a common criminal enterprise.

[emphasis added in italics and bold italics]

37 Bell J's criticism of *Kerr* in his minority judgment in *Green v R* (2011) 283 ALR 1 ("*Green*") should also be noted. Bell J stated at [122]–[123]:

> 122 The New South Wales Court of Criminal Appeal was correct in *Jimmy* to hold that *Kerr* was wrongly decided. As Campbell JA observed, the parity principle is not applied to correct differences in the sentences imposed on offenders involved in a common criminal enterprise who are convicted of different offences. The selection of the charges upon which offenders are brought before the court is a matter for the prosecuting authority. *The justifiable sense of grievance which informs the parity principle arises from the manifest disparity in the sentences imposed by the court on offenders convicted of the same offences. As Simpson J explained in* Formosa*, where the discrepancy in sentences derives from* ***the differences in charges between offenders*** *, any sense of grievance is engendered in consequence of a prosecutorial decision and is not a grievance in the* Lowe *or* Postiglione [see *Postiglione v The Queen* (1997) 189 CLR 295, cited earlier at [28] above] *sense.*
>
> 123 In *Postiglione*, Gummow J said that the parity principle only applies to co-offenders. As explained above, since the issue was not raised in *Postiglione*, his Honour's statement may not have been intended to exclude persons who are not co-offenders in the strict sense. However, the extension of a principle concerned with the equality of treatment to offenders charged with different offences raises distinct difficulties. In *Jimmy*, the court said that significant limitations attend to the application of the principle in such a case. These limitations included the "particular difficulties" attending a disparity argument that is based on comparison with an offender convicted of a less serious offence. Howie J's statement [in *Jimmy* at [245]] that the principle should not be confined to a consideration of the sentences imposed upon co-offenders in the strict sense was subject to his agreement with the significant limitations identified by Campbell JA.
>
> [emphasis added in italics and bold italics]

38 The criticisms of *Kerr* may seem to suggest that the parity principle should *never* be extended to cases where the offenders engaged in a common criminal enterprise are charged with different offences. As I see it, the criticisms expressed in *Formosa*, *Jimmy* and Bell J's minority judgment in *Green* (set out *in extenso* above) reveal that the main objection to applying the parity principle in such cases revolves around the use of the principle to correct sentencing disparities caused by the *exercise of prosecutorial discretion* to charge different co-offenders differently. This same concern is reflected in *Phua Song Hua v Public Prosecutor* [2004] SGHC 33 ("*Phua Song Hua*") at [38], where Yong Pung How CJ declined to apply the parity principle in an appeal against (*inter alia*) sentence as the appellant, who claimed trial, had been charged with a more serious offence carrying a maximum imprisonment term of five years than his co-offenders, who had pleaded guilty to a less serious offence carrying a much shorter maximum imprisonment term of six months, such that "there [was] no longer any common basis for comparison". To that extent, I agree with the criticisms of *Kerr*; but that is *not* to say that where the offenders involved in a common criminal enterprise are charged with different offences, the parity principle can never be applied. Much will depend on why different charges were brought against different co-offenders even though they were all engaged in a common criminal enterprise.

39 Indeed, the NSWCCA in *Formosa* and *Jimmy*, and likewise, Bell J in his minority judgment in

Green, did not totally reject the notion that the parity principle could, in appropriate situations, apply where the offenders acting pursuant to a common criminal enterprise were charged with different offences. Where *Formosa* is concerned, all that it makes clear is that the parity principle should not be used to redress a situation where the *main* reason for the discrepancy between the sentences of different co-offenders lies in the different charges which they faced (at [50]). With regard to *Jimmy*, the NSWCCA in that case, despite criticising *Kerr*, also stated the Broad View that the parity principle could "within limits, … have a role to play in comparison of sentences for *different crimes* committed by people involved in a common criminal enterprise" [emphasis added] (at [136] *per* Campbell JA; see also Campbell JA's comment at [199] of *Jimmy*, which I referred to earlier at [28] above). I also draw attention to Howie J's judgment in *Jimmy*, where he stated at [245] and [247]:

> 2 4 5 *The principle of parity should* ***not*** *be confined to a consideration of the sentences imposed upon co-offenders in the strict sense, that is persons involved in and charged with* ***the very same crime*** *.* There is nothing in the decisions of the High Court [of Australia] that so confine it. *Where the courts have stated that the principle of parity applies only to co-offenders, it has usually been in situations where the applicant has sought to use the principle for an illegitimate purpose by seeking to compare the sentence imposed upon the applicant with a sentence imposed upon another offender who was not engaged in the offence committed by the applicant.*
>
> …
>
> 247 In particular I agree, for the reasons given by [Campbell JA], that *R v Kerr* [2003] NSWCCA 234 should no longer be followed in so far as the proposition for which it is generally cited [is concerned]. *It is not the business of the courts to try to ameliorate the effects of prosecutorial decisions in charging, or not charging, persons involved in a criminal enterprise.* The facts of *Kerr* do not, in my respectful opinion, justify the decision taken and this Court has not since *Kerr* was decided found or been able to envisage a situation in which a court would be justified in taking into account the effects of prosecutorial discretion when exercising the sentencing discretion. I have been concerned at the number of times that *Kerr* has been relied upon in this Court, at least when I have been a member of it, without any reference being made to the decisions that have raised doubts about its correctness.
>
> [emphasis added in italics and bold italics]

As for Bell J's criticisms of *Kerr* in his minority judgment in *Green* at [122]–[123] (see [37] above), his main concern was that extending the parity principle to a factual situation akin to that in *Kerr* could result in the courts "curing" disproportionate sentences arising from the Prosecution's decision to bring different charges against different co-offenders, as opposed to extending the application of the parity principle in appropriate situations.

40 I return to Miles AJ's concern in *Kerr* that in a case involving co-offenders, the principle of consistency in sentencing might be compromised by the Prosecution's charging decisions in respect of different co-offenders. This concern is apparent from his remark at [19] (also reproduced earlier at [33] above) that:

> … [T]here is a danger that [the principle of consistency] may be compromised by the selection of differing charges so that one offender may be charged with a serious offence and given punishment at the top of an acceptable range for that offence, and a co-offender charged with another less serious offence and dealt with at the very bottom of the acceptable range for that other offence. …

41 With respect, it seems to me that Miles AJ may have put his concern too widely, given the myriad of factors which may lead to different participants in a common criminal enterprise being charged with different offences (see Campbell JA's comments in *Jimmy* at [124]–[125], which I quoted earlier at [36] above). The parity principle should not be used to correct sentences which are disproportionate as a result of charging decisions made by the Prosecution. That said, it could be artificial for the court to limit the application of the parity principle only to situations where the offenders who engage in a common criminal enterprise are charged with the same offence, as held in *Lowe*; form should not override substance. I would imagine that in an appropriate case, where the facts warrant it, the parity principle could well apply where the offenders involved in a common criminal enterprise are charged with different offences – *subject*, however, to the limitations alluded to by Campbell JA in *Jimmy* at [203]:

> … At least some of the limits on the use of the parity principle in such a case are:
>
> (1) It cannot overcome those differences in sentence that arise from a prosecutorial decision about whether to charge a person at all, or with what crime to charge them …
>
> (2) If it is used to compare the sentences of participants in the same criminal enterprise who have been charged with different crimes, there can be significant practical difficulties. Those practical difficulties become greater the greater the difference between the crimes charged becomes, and can become so great that in the circumstances of a particular case a judge cannot apply it, or cannot see that there is any justifiable sense of grievance arising from the discrepancy …
>
> (3) It cannot overcome differences in sentence that arise from one of the co-offenders having been given a sentence that is unjustifiably low …
>
> (4) There are particular difficulties in an appellant succeeding in a disparity argument where the disparity is said to arise by comparison with the sentence imposed on a co-offender who has been charged with an offence that is less serious than that of the applicant. …

42 With regard to the third limitation mentioned by Campbell JA, I should add that this limitation ought not to be applied rigidly. Where there is clearly a well-established body of sentencing precedents and the sentence imposed on an offender is unduly lenient as compared with those precedents, a later court, when sentencing a co-offender, *need not* necessarily punish the co-offender in a similarly lenient fashion *provided* there is an acceptable explanation as to why the Prosecution did not appeal against the earlier lenient sentence. If, however, there is no such acceptable explanation, the parity principle would *prima facie* require the later sentencing court to follow suit and impose a lenient sentence on the co-offender, lest members of the public who have full knowledge of the facts and circumstances of the case think that something has gone awry with the administration of justice where the co-offender's sentence is concerned. Indeed, in the early Singapore case of *Liow Eng Giap v Public Prosecutor* [1968–1970] SLR(R) 681 ("*Liow Eng Giap*"), Choor Singh J revised the sentence of the appellant downwards in view of the light sentence imposed on his co-offender, who had been charged with the same offence as the appellant. That said, it seems to me that if the inadequacy of the earlier-sentenced offender's punishment is "so marked that it amounts to 'an affront to the administration of justice' which risks undermining public confidence in the criminal justice system" (see the majority judgment in *Green* at [42]), then even if there is no acceptable explanation as to why the Prosecution did not appeal against that earlier sentence, it may – depending on all the facts and circumstances of the case – be appropriate for the later sentencing court *not* to sentence the co-offender in a similarly lenient manner.

My view on the two divergent approaches

43 As between the two divergent approaches to the parity principle outlined above, it is my opinion that the Broad View (as advanced in, *inter alia*, *Jimmy*) is logical and makes good sense, and is to be preferred over the Narrow View (as advanced in, *inter alia*, *Lowe*). The Narrow View is simply too rigid and could unfairly exclude situations where parity in sentencing should rightfully apply. This is best illustrated by an example. If two persons agree to rob a victim at a particular location and proceed to carry out the robbery together, this would be a classic case of "co-offenders in the strict sense, that is persons involved in and charged with *the very same crime*" [emphasis added] (*per* Howie J in *Jimmy* at [245]), and the parity principle would undoubtedly apply in relation to the sentencing of those two persons. If, however, the same two persons agree that they will rob two separate victims at the same location, *with each person tackling one victim on his own*, and proceed to carry out that agreement, I see no reason why the parity principle should not apply even though each of the robberies committed would be a separate and distinct offence.

44 In this regard, I note that in *Public Prosecutor v Lee Wei Zheng Winston* [2002] 2 SLR(R) 800 ("*Winston Lee*"), Yong CJ stated (at [16]) that "[t]he principle of parity is well-established in local sentencing law" and cited, as an illustration of this principle, *Liow Eng Giap*. In that case, a man called Santhamoorthi was charged with the theft of a tractor, while one Low Yoke Yong ("Low") and the appellant were charged with dishonest receipt of that stolen tractor (at [2]). Santhamoorthi pleaded guilty and was sentenced to six months' imprisonment. Low similarly pleaded guilty and was fined $1,000. The appellant, in contrast, claimed trial. He was convicted and was sentenced to six months' imprisonment. The appellant appealed, contending that his sentence was manifestly unjust when compared to the sentences imposed on Santhamoorthi and Low (at [3]). His appeal was allowed, and his sentence was reduced to a fine of $2,000 (six months' imprisonment in default). Choor Singh J explained his reasons for reducing the appellant's sentence as follows (at [3]):

> 3 Before me, it was pleaded on behalf of the appellant that in the first place the appellant has received the same sentence as that imposed on the thief and secondly, that whereas Low the first "receiver", who made a profit of $4,800 in the transaction, was let off with a fine of $1,000, the appellant who has lost $6,800 in the transaction has been ordered to undergo six months' imprisonment, and that in these circumstances although the sentence cannot be labelled as excessive having regard to the nature of the crime, it is manifestly unjust having regard to the sentences imposed on the other offenders involved in the criminal transactions concerning the same engine. In my view there is some merit in this submission. As observed earlier *although I consider that the sentence imposed on the appellant appears to be correct in law and not excessive when considered in the light of the facts relating to the appellant's case alone, it is relatively excessive when considered in the light of the sentences imposed on the other persons found guilty on charges relating to the same engine*. I am informed that the three offenders were dealt with by different courts and that that probably accounts for the variance in the sentences imposed on the two "receivers". That may well be so but *where there are no differentiating factors, as in this case, public interest demands that there should be some consistency in the imposition of sentences on accused persons committing the same* ***or similar*** *offences. Failure to observe this principle may, as in this case, lead to a legitimate complaint by an appellant that he has been dealt with more severely than another who committed an identical offence.* It was for these reasons that I decided that the appellant should be given the option of a fine, as such an option was granted to the other "receiver". The maximum fine that a Magistrate's Court can impose on an accused person is $2,000. Accordingly I altered the sentence of the appellant from that of six months' imprisonment to a fine of $2,000 or six months' imprisonment. I am compelled to observe that the learned magistrate who imposed a fine of $1,000 on Low, the first "receiver" treated the matter very lightly. Even after paying the fine, that offender made a profit of $3,800.

> In determining the quantum of a fine a trial magistrate should always take into consideration the profit arising from the offence. … [emphasis added in italics and bold italics]

45 I note that *Liow Eng Giap* dealt with a situation where the three offenders concerned committed distinct offences involving the same piece of stolen property, and that Singh J did not explicitly state that he was applying the parity principle when he reduced the appellant's sentence. However, it seems to me that the learned judge was, in substance, applying the parity principle – and arguably, the Broad View of the principle at that, since he made his comments on the need for consistency in sentencing in the context of "the imposition of sentences on accused persons committing the same *or similar* offences" [emphasis added] (see [3] of *Liow Eng Giap*). Interestingly, it was this very remark by Singh J – *viz*, that "where there are no differentiating factors, … public interest demands that there should be some consistency in the imposition of sentences on accused persons committing the same or similar offences" – which Yong CJ cited at [16] of *Winston Lee* as a statement of the parity principle. This would suggest that the Broad View of the principle may, in appropriate cases, have a place in our law. I should point out here that at [16] of *Winston Lee*, Yong CJ also cited the passage from [7] of his earlier decision in *Ramlee* (see [27] above), in addition to *Liow Eng Giap*, as case authority for the parity principle. That passage from *Ramlee* sets out the *Narrow* View of the parity principle, as can be seen from Yong CJ's specific reference there to "two or more offenders … sentenced for participation in *the same offence*" [emphasis added]. However, since the offenders involved in the common criminal enterprise in *Ramlee* were all charged with the same offence such that the factual situation in *Kerr* did not arise, I do not see that passage from *Ramlee* as ruling out the application of the Broad View in Singapore in appropriate cases. Similarly, Yong CJ's comment in *Phua Song Hua* at [38] that "[t]he principle of parity of sentence is irrelevant once there are different offences" must be read in the context of that case, where, as mentioned earlier (see [38] above), the appellant was charged with a more serious offence which carried a much longer maximum term of imprisonment than the offence which his co-offenders had been charged with.

46 Before moving on, I must stress that while the parity principle states that the sentences imposed on the offenders engaged in the same offence or the same criminal enterprise should, generally speaking, be the same, relevant differences in the offenders' respective degrees of responsibility and/or respective personal circumstances must be accounted for. As Yong CJ pointed out in in *Lim Poh Tee v Public Prosecutor* [2001] 1 SLR(R) 241 at [36]:

> … [W]hile consistency in sentencing is desirable, the varying degrees of culpability and the unique circumstances of each case play an equally, if not more important role. …

Application of the parity principle in the present case

47 I turn now to the application of the parity principle to the facts of the present case. In this regard, it is necessary for me to first set out those passages in the Statement of Facts which disclose some sort of relationship between the Appellant, Keith and Ah Tee in their illegal 4D betting and football bookmaking enterprise: [note: 15]

> 4. Investigations revealed that the exhibits seized were related to [the Appellant's] illegal 4-D betting, 4-D [bet] collection and illegal soccer bookmaking activities. Sometime in early June 2010, [the Appellant] had obtained an online soccer 'Master Agent' account from her brother Lim Chin-U Keith and used the online soccer account to collect soccer bets. The soccer account came with a $1,100,000 credits [*sic*] bet limit via agt.ibc88.com. Investigations further revealed that the [Appellant] had collected bets from her bettors and placed the respective soccer bets into the account.

5. Investigations further disclosed that the [Appellant] would have earned 20% to 90% of commission whenever her bettors had incurred losses from their bets placed on every soccer match. Investigations also revealed that [the Appellant] had obtained an online 4-D betting account from her brother Lim Chin-U Keith and used the account to purchase and place illegal 4-D bets. The online 4-D account came with a credit limit of $12,000/- via a website www.st999.net.com. ***At the end of the day, [the Appellant] would settle the soccer bets and 4-D account with her brother Lim Chin-U Keith using cash.***

6. Separately, [the Appellant] had also obtained another online 4-D account from 'Ah Tee' via website www.galaxy188.com, and used the online 4-D account to collect illegal 4-D bets. The online 4-D [account] came with a credit limit of $35,000/-. [The Appellant] was given a commission of 7% from the total bets collected and an additional 5% when her punters [struck] 4-D bets. ***At the end of the day, [the Appellant] would settle the 4-D bets accounts with 'Ah Tee' using cash. [The Appellant] would usually communicate the bets with her punters and bettors, 'Ah Tee' and her brother via her 'I-phone' phone and login to her online agent soccer account and 4-D accounts using her laptop or I-pad.***

…

12. The identity of 'Ah Tee' is known as Ng Leong Chuan, male, 56 years old. Both Ng Leong Chuan and Lim Chin-U Keith have been ***dealt with*** .

[underlining and emphasis in bold in original omitted; emphasis added in bold italics]

48 The Third, Fourth and Fifth Proceeded Charges against the Appellant involve the same offence as the charges proceeded with against her brother, Keith (namely, the offence under s 5(3)(*a*) of the BA), the difference being in the value of the bets and the football matches involved. As for Ah Tee, although the charges proceeded with against him involved the offence under s 5(*a*) of the CGHA, the prescribed punishment for that offence is the same as the prescribed punishment for the offence under s 5(3)(*a*) of the BA. There is thus no complication arising from the Third to the Fifth Proceeded Charges against the Appellant involving an offence of a different degree of seriousness from the offences set out in the charges proceeded with against her co-offenders, Keith and Ah Tee.

49 It seems to me clear that this case attracts the operation of the parity principle. To set things in context, while the Appellant was sentenced to an aggregate of ten months' imprisonment and a fine of $141,000 (in default, 22 weeks' imprisonment) for the Proceeded Charges, Keith was sentenced to an aggregate of four weeks' imprisonment and a fine of $18,000 (in default, 16 weeks' imprisonment), and Ah Tee, to an aggregate of 24 weeks' imprisonment and a fine of $165,000 (in default, 66 weeks' imprisonment). I acknowledge that the value of the bets placed with each offender was an important factor in determining the aggregate sentence that each of them received. However, the question that remains is whether the disparity between the respective sentences received by the Appellant, Keith and Ah Tee, particularly as between the Appellant and Keith, would result in right-thinking members of the public with full knowledge of the facts and circumstances considering the aggregate sentence imposed on the Appellant to be unjust. In this regard, I note that the Respondent acknowledged (at para 27(f) of its written submissions) that pertinent information relating to Keith's and Ah Tee's sentences was not provided in the court below, and was thus *not considered* by the Sentencing Judge when the Appellant was sentenced:

> Both Lim Chin-U Keith and one "Ah Tee" were less culpable than the [Appellant] and hence, *even if the [S]entencing [J]udge had considered their sentences*, he would still come to the same conclusion. [emphasis added]

50 At the hearing before the Sentencing Judge, the Respondent provided scant material on Keith's and Ah Tee's sentences and how they were arrived at. In the context of sentencing procedure, I find this less than ideal, given that Keith and Ah Tee were clearly involved in the Appellant's illegal activities in two ways:

(a) First, as can be seen from those passages of the Statement of Facts quoted at [47] above, Keith and Ah Tee were the ones who roped the Appellant into the business of illegal 4D betting and football bookmaking.

(b) Second, Keith and Ah Tee also assisted the Appellant in her commission of the offences by facilitating the operation of her illegal enterprise. The Statement of Facts reveals that some form of accounting took place between the Appellant and Keith as well as between the Appellant and Ah Tee, whereby she would settle football bets and 4D bets with them separately, and would communicate with them separately regarding the illegal bets placed by her punters and bettors. [note: 16]

The same point is mentioned (in greater detail) in the Statement of Facts in Ah Tee's case, and I set out the relevant portion below:

> 6 Investigations revealed that [Ah Tee] decided to enlist the help of two friends to help him collect bets. He enlisted the help of one Karen Lim Bee Ngan [*ie*, the Appellant] … to collect illegal 4-D lottery. To do so, he issued Karen Lim with an online betting account … Investigations further revealed that Karen Lim was to charge punters a rate of S$1.60 for one "Big" ticket and S$0.70 for one "Small" ticket. In return, [Ah Tee] promised Karen Lim a commission of 7% of the total bet value [placed] by her punters. In addition, Karen Lim was also entitled to another 5% of the winnings by her punters. Upon completion of the lottery, [Ah Tee] would settle the accounts with a runner … before settling the accounts with Karen Lim personally.

51 Reading both Statements of Facts together, it is clear that a business arrangement – albeit an unlawful one – existed between the Appellant and Keith as well as between the Appellant and Ah Tee, pursuant to which illegal 4D betting and football betting were carried out. The Appellant's involvement in illegal football betting was initiated, facilitated and assisted by Keith; the Appellant was also introduced to illegal 4D betting by both Keith and Ah Tee. It thus appears that the Appellant engaged in two types of illegal betting – one of 4D betting involving Keith and Ah Tee, and another of football betting involving Keith. Although this criminal enterprise was arranged in a rather loose and informal fashion, I do not think that is of any consequence as the operation of the parity principle should not be dictated by how the parties organise their common criminal enterprise – an illegal betting ring might be run in a very top-down fashion with a single figure having most of the decision-making power; or, conversely, in a more *laissez-faire* manner with each person running his or her own illegal betting enterprise, but mutually facilitating each other in the commission of illegal betting through the pooling of resources or in other ways. Under both models, a criminal enterprise is perpetuated. I also find that the disparity between the respective sentences imposed on the Appellant, Keith and Ah Tee is not due to the different charges proceeded with against them, given that: (a) as mentioned earlier at [48] above, s 5(*a*) of the CHGA and s 5(3)(*a*) of the BA prescribe the same minimum and maximum punishments; and (b) sentences for offences under these two provisions are meted out in a similar manner (see Practitioners' Library, *Sentencing Practice in the Subordinate Courts* (LexisNexis, 3rd Ed, 2013) ("the *Sentencing Book*") at p 1789). Thus, the concern underlying the criticisms of *Kerr* in *Formosa*, *Jimmy* and Bell J's minority judgment in *Green* (see [35]–[37] above) – *viz*, that the parity principle might be inappropriately used to remedy sentencing disparities caused by a prosecutorial decision to bring different charges against different co-offenders – does not arise here.

52 For the above reasons, I agree with the Appellant that the Sentencing Judge erred as to the proper factual basis for sentencing by failing to consider the parity principle in sentencing the Appellant. As pointed out by the Appellant's counsel, Mr Chan, the Statement of Facts did not disclose how Keith and Ah Tee were "dealt with". [note: 17] I also note that at the oral hearing before me, Mr Chan, who was not the Appellant's counsel in the court below, stated that he had faced difficulties in obtaining the relevant material from the State Courts when he requested for the material after he took on the case. In response, the Respondent submitted that the Appellant, being Keith's sister, would have known of Keith's sentence and should have mentioned his sentence to the Sentencing Judge even though the Respondent had not provided the relevant details. In my view, this is hardly an adequate retort – if it is the Prosecution's duty to assist the court by providing relevant material pertaining to the sentences received by co-offenders (a point which I shall discuss at [53]–[62] below), then the question of whether an accused informs his sentencing judge of the sentences that his or her co-offenders received (assuming the accused has this information) is beside the point. It might be wise for the accused to highlight to the court the sentences received by his or her co-offenders; but, even if he or she does so, he or she might not be able to assist the court meaningfully due to the information asymmetry between him or her and the Prosecution – the accused might not even have the relevant information to begin with; and even if he does have such information, the co-offenders' sentencing judge might have taken into account factors unique to the co-offenders, such as antecedents, which would not be applicable to the accused.

Is the Respondent under a duty to disclose to the court all relevant material pertaining to the sentences imposed on Keith and Ah Tee?

53 The objective of the parity principle is to ensure that there is a *high level of consistency in sentencing* (see *Public Prosecutor v UI* [2008] 4 SLR(R) 500 at [19]). In cases where the parity principle is applicable, it is appropriate to hold that the Prosecution has a duty to assist the court in sentencing an accused. This was recently alluded to by See Kee Oon JC in *Public Prosecutor v Development 26 Pte Ltd* [2015] 1 SLR 309, where he stated at [24]:

> … *A prosecutor, whether from the [Attorney-General's Chambers] or some other government agency, is duty-bound to assist the court to make a decision on sentence.* This basic tenet was reiterated recently by the Honourable the Chief Justice Sundaresh Menon and Justice Steven Chong in their respective speeches at the Sentencing Conference on 9 and 10 October 2014. When the prosecutor puts forward a range of sentences based on precedent without making an attempt to distinguish the precedents, the court cannot but understand that to be a submission that the sentence ought properly to fall within that range. The court may of course take the view that the correct sentence is nevertheless one that is outside the suggested range, but that is another matter altogether. [emphasis added]

54 For a better appreciation of the remarks made by Sundaresh Menon CJ in the speech mentioned in the above quotation, I now set out that part of the speech *in extenso* (see Sundaresh Menon, "Sentencing Conference 2014: Opening Address" (9 October 2014) <https://www.supremecourt.gov.sg/data/doc/ManagePage/5601/Opening%20Address%20-%20Sentencing%20Confererence%20on%209%20October%20%20%28101014%20-%20Check%20against%20delivery%29.pdf> (accessed 14 July 2015) at paras 34–39):

> 34 … The Prosecution owes a duty to the court and to the wider public to ensure that the factually guilty and only the factually guilty are convicted, and that all relevant material is placed before the court to assist it in its determination of the truth. *This duty extends to the stage of sentencing where the Prosecution should place all the relevant facts of the offence and the offender before the court. Furthermore, the Prosecution should always be prepared to assist the*

court on any issues of sentencing. But what does this mean in practical terms?

35 It is perhaps possible to extrapolate from those principles that are widely accepted and to arrive at some thoughts about the prosecutorial role in sentencing. First, the Prosecution acts only in the public interest. That immediately distinguishes it from those who appear in a private law suit to pursue the interest of a private client. On this basis, there would generally be no need for the Prosecution to adopt a strictly adversarial position. Second, that public interest extends not only to securing the conviction in a lawful and ethical manner of those who are factually guilty, but also to securing the appropriate sentence.

36 The latter point is a critical one. Private victories tend to be measured by the size of the damages awarded or the pain inflicted on the opposing side. But *the prosecutorial function is not calibrated by that scale. The appropriate sentence will often* ***not*** *bear a linear relationship to the circumstances*. … Hence, *this calls for the Prosecution to reflect on why it takes a particular view of what sentence is called for in a given case and to articulate those considerations so that the sentencing judge can assess these and assign them the appropriate weight*.

37 I suggest that the Prosecution can play a vital role by identifying to the court:

(a) The relevant sentencing precedents, benchmarks and guidelines;

(b) *The relevant facts and circumstances of the offence and of the offender that inform where in a range of sentences the case at hand may be situated*;

(c) The offender's suitability and other relevant considerations that may bear upon whether particular sentencing options that might be available should be invoked;

(d) The relevant aggravating and mitigating considerations;

(e) The relevant considerations that pertain to aggregating sentences;

(f) Any particular interest or consideration that is relevant and that pertains to the victim; and

(g) Where it may be appropriate to order compensation to be paid to the victim, the relevant considerations (including the appropriate quantum).

38 *While the Prosecution may take the position that a certain sentencing range is appropriate in the circumstances, it must present all the relevant materials to enable the court to come to its own conclusion as to what the just sentence should be*.

39 These broad guidelines can be supplemented with another very practical point. All the relevant facts must be proven beyond a reasonable doubt; and in guilty pleas, the accused must know all the facts on the basis of which he pleaded guilty. For the Prosecution to raise a fact undisclosed in the statement of facts or ask the court to draw an inference from the facts at the stage of sentencing may be unfairly prejudicial to the offender, who cannot be punished for something that is not proven. Hence, the statement of facts must be prepared with this in mind.

[emphasis in original in bold italics; emphasis added in italics]

55 The Prosecution's duty to assist the court in sentencing is recognised in the Code of Practice for the Conduct of Criminal Proceedings by the Prosecution and the Defence issued by the Attorney-

General's Chambers, which states at para 45:

> 45. Prosecutors and Defence Counsel should bring to the attention of the court *any matters of law relevant to sentence* such as:
>
> (a) any legal limitations on sentence, including the maximum sentence, and whether the court has jurisdiction to impose any particular sentence;
>
> (b) any sentencing guidelines or guideline cases setting out the tariff or benchmark sentence; and
>
> (c) any relevant statutory provisions relating to ancillary orders (e.g. community service orders).
>
> [emphasis added]

56 Where the parity principle is applicable, it is ideal for the offenders involved in the common criminal enterprise in question to be sentenced by the same judge at the same time; indeed, it was recognised in *Dwahi v The Queen* [2011] NSWCCA 67 at [46] that such a practice is grounded in the public interest of having transparency and consistency in sentencing co-offenders. The reasons for this are intensely practical – sentencing is not an exact science, and the views in Australia and England corroborate this. In *Rae v R* [2011] NSWCCA 211 at [52]–[56], the NSWCCA commented:

> 52 There are significant advantages where related offenders are sentenced by the same Judge at the same time, with remarks on sentence containing factual findings and conclusions concerning the relative criminality of the offenders and differing subjective features of each of them …
>
> 53 Different Judges may take different views as to the relevant culpability of related offenders …
>
> 54 Where co-offenders are dealt with separately, there may be differences in the substratum of facts upon which the different sentencing Judges act and the impressions formed by them with respect to the relative roles, levels of responsibility and prospects of rehabilitation involved, with this flowing in part from the different emphases which can be expected to be placed on aspects of the offending behaviour and the circumstances of the offenders. …
>
> 55 Strong maintenance of the practice of related offenders being sentenced by the same Judge at the same time will serve the public interest in consistent and transparent sentencing of related offenders which underlies the parity principle itself …
>
> 56 A recurring theme in the authorities is that, where co-offenders are sentenced after hearings before different Judges, there may be different evidence and submissions, leading to different conclusions being expressed by the sentencing Judges concerning [the] criminal conduct of persons involved in the same criminal enterprise.

Similarly, P J Richardson and William Carter, *Archbold: Criminal Pleading, Evidence and Practice* (Sweet & Maxwell, 2014) states at para 5-158 that wherever practicable, all the offenders involved in a particular offence should be sentenced by the same judge.

57 Unfortunately, ideal as it may be for co-offenders to be sentenced at the same time by the

same sentencing judge, it is often not possible for a variety of reasons. This was recognised by the English Court of Appeal in *R v Stephen Broadbridge* (1983) 5 Cr App R (S) 269, which remarked (at 271–272):

> This court has said many times that it is desirable that co-accused should, if possible, be sentenced at the same time, and in any event by a judge common to all of them. But sometimes it is not possible, since some defendants plead guilty and others not guilty, and those who have pleaded guilty are dealt with if there is to be delay before the others are sentenced. Here the judge had to sentence an accused who had pleaded guilty and had been convicted, and whose co-accused some time earlier had pleaded guilty and had been sentenced by a different judge.
>
> It is a situation which unfortunately often arises. Usually the judge who still has to pass sentence will be told what sentence the co-accused received, and no doubt that will be one of the factors which he considers when determining the sentence that he should pass. But it appears to be submitted here that he ought to pass the same sentence as was passed on the co-accused unless he can distinguish between them. It is argued that to equip himself to perceive whether there are any differentiating features between the two cases the judge should, if asked, and perhaps even if not asked, adjourn the case before him in order to be informed of the detailed circumstances of the case that he has not tried, and no doubt obtain a transcript of the proceedings in that other case. That was the suggestion that was made to the learned judge below in this case, and, in our view, he rightly rejected it. The duty of the sentencing judge is to deal with the person who is before him for the offence that he committed, allowing in so doing for such favourable circumstances as there are, such as, for example, that the accused pleaded guilty. …

58 In cases where the sentencing of co-offenders cannot take place before the same sentencing judge at the same time, the Prosecution should, as far as possible, assist in the sentencing of the particular offender concerned by tendering to the court all relevant material pertaining to the sentences meted out to earlier-sentenced co-offenders. As stated in *Sentencing Principles in Singapore* (at para 13.028):

> For the purpose of ensuring parity in sentencing, it is undesirable for co-offenders to be sentenced by separate judges, or by the same judge on separate occasions: *R v Rudra Nath* (1994) 74 A Crim R 115 at [14]. Australian courts have taken the position that *where co-offenders are sentenced by different judges, it is essential that the judge who sentences the last offender should have full details of the sentence passed on the co-offender earlier, including the reasons for the sentence and the statement of facts relating to the circumstances of the offence for the first offender*: *Dickes* (1983) 10 ACR 89. It was further held in *Brindley* (1993) 66 ACR 204 that *the Prosecution is obliged to supply such information*. [emphasis added]

5 9 *Public Prosecutor v Norhisham bin Mohamad Dahlan* [2004] 1 SLR(R) 48 is a case where the aforesaid duty was satisfactorily discharged. In that case, the sentencing judge imposed on the accused a sentence of ten years' imprisonment and 16 strokes of the cane for the offence of culpable homicide not amounting to murder. Another sentencing judge had earlier sentenced one of the accused's co-offenders ("Hasik") to life imprisonment for the same offence. The sentencing judge in the accused's case was aware of this fact, but nonetheless imposed a less severe sentence on the accused on the grounds that (*inter alia*) unlike Hasik, the accused did not have a previous conviction for a violent offence. The Court of Appeal dismissed the Prosecution's appeal for the accused's imprisonment term to be increased to life imprisonment, noting that (at [11]):

> … [The accused's sentencing judge] was aware of the fact that [another sentencing judge] had

> sentenced Hasik to a term of life imprisonment. He was therefore fully aware of the fact that if he sentenced the [accused] to anything less than life imprisonment …, there would be a large disparity in sentence, since the next longest sentence available … was ten years' imprisonment. … [I]t was clear that [the accused's sentencing judge] had anticipated the issue of disparity in sentence and had addressed his mind to this concern by explaining why he was opting for the ten-year tariff rather than the life tariff.

60 In contrast, *Samuel James Dickes* (1983) 10 A Crim R 88 ("*Dickes*") and *Brian John Brindley* (1993) 66 A Crim R 204 ("*Brindley*") are two illustrations of cases where the Prosecution failed to discharge its duty of disclosure in relation to the sentencing of co-offenders. In *Dickes*, the appellant pleaded guilty to breaking into a tavern in the early morning with two other persons and removing A$3,000 in cash (at 92). While his two co-offenders were jointly charged, he was charged separately (at 92–93). As matters turned out, he was sentenced to three years' imprisonment without any non-parole period being specified, while one of his co-offenders was sentenced to two years' imprisonment with a non-parole period of 12 months and the other co-offender, to three years' probation (at 93). The appellant appealed on the basis that his sentence was disproportionate to those imposed on his co-offenders. The Western Australia Court of Criminal Appeal agreed and allowed the appeal, resentencing him to an imprisonment term of two years, but likewise without any non-parole period being specified (at 95). Rowland J held that the sentencing judge should have full details of the following in sentencing an offender involved in a common criminal enterprise (at 94):

> (a) the sentence passed earlier on the co-offender ;
>
> (b) that co-offender's antecedents report, if any;
>
> (c) the reasons given by the earlier sentencing judge for imposing the sentence which he did on the co-offender; and
>
> (d) the statement of facts relating to the circumstances of the offences as given to the earlier sentencing judge.

61 In *Brindley*, the accused, together with three others, assaulted and robbed two men, one of A$90 and the other, of A$2,000, late at night. The accused was charged with being an accessory in relation to the first incident, and with assault in relation to the second. He pleaded guilty to both offences, and was sentenced to two years and eight months' imprisonment for the first incident and a concurrent term of nine months' imprisonment for the second incident. The accused appealed on the basis that his sentence was disproportionate when compared to the sentence imposed on one of his co-offenders ("R"), which was two years' imprisonment for a charge of robbery with striking in relation to the first incident and a two-year bond for a charge of assault in relation to the second incident. The accused contended that although the sentencing judge in his case had been informed of R's sentence, he had not been provided with the details of that sentence and had therefore failed to have "due regard to principles of parity" (at 206). The NSWCCA agreed with the accused and allowed his appeal, resentencing him to 20 months' imprisonment for the accessory charge in relation to the first incident. The NSWCCA did not, however, alter the nine-month imprisonment term imposed by the accused's sentencing judge for the assault charge in relation to the second incident. In arriving at its decision, the NSWCCA noted (at 206–207) that although the accused's sentencing judge had been informed of the sentence imposed on R:

> … [H]e was not given either a copy of Judge Garling's remarks on sentence [Judge Garling being R's sentencing judge] or any idea of the basis upon which that sentence had been imposed. This was very unfortunate. The Crown is under an obligation to give sentencing judges such

assistance, and it failed to satisfy that obligation in this case. It may well have been that a transcript was not then available, but the Crown undoubtedly had the note of its representative who appeared before Judge Garling, and that information was important where another judge was sentencing a co-offender.

… There is a lot less inconvenience and loss of time and expense if the sentencing proceedings are adjourned until the information is obtained than if the prisoner is forced to come to this Court to correct disparity created through the absence of such information.

62 Before moving on, I observe that Mr Chan cited *Kadar (No 1)* at [109] and *Kadar (No 2)* at [20] as authorities for the proposition that the Respondent was under a duty to disclose all relevant material pertaining to the sentences imposed on Keith and Ah Tee. While I agree that *vis-à-vis* the sentencing of offenders involved in a common criminal enterprise, the Prosecution is under a duty to provide the court with relevant material on the sentence(s) imposed on the co-offender(s) of the particular accused being sentenced, I do not agree that *Kadar (No 1)* and *Kadar (No 2)* are the appropriate authorities for this duty. The comments in *Kadar (No 1)* and *Kadar (No 2)* were made in the context of disclosing *unused material in the hands of the Prosecution* for the purposes of securing safe *convictions*; they were not made in relation to disclosing relevant material pertaining to *sentencing*.

My decision on the appropriate sentence to impose

63 In view of the fact that the Sentencing Judge did not take into account the parity principle, and this seems in no small part due to the fact that the Respondent did not place before him pertinent material relating to the sentences imposed on Keith and Ah Tee, the Sentencing Judge, with respect, erred with regard to the proper factual basis for sentencing (see [25(a)] above). This court, sitting as an appellate court, is thus entitled to determine afresh what the appropriate aggregate sentence to impose on the Appellant ought to be. To this end, I begin by setting out in the following table the offences which Keith and Ah Tee were charged with and the aggregate sentences which they received:

Accused	Offences	Sentence imposed
Keith	Proceeded with: Four counts under s 5(3)(*a*) of the BA. Taken into consideration for sentencing: Eight counts under s 5(3)(*a*) of the BA. Total quantum of the bets placed with him was $4,719.	Aggregate sentence of four weeks' imprisonment and a fine of $18,000 (in default, 16 weeks' imprisonment).
Ah Tee	Proceeded with: Eight counts under s 5(*a*) of the CGHA. Taken into consideration for sentencing: 12 counts under s 5(*a*) of the CGHA, and two counts under s 5(3)(*a*) of the BA read with s 109 of the Penal Code (Cap 224, 2008 Rev Ed). Total quantum of the bets placed with him was $7,954.	Aggregate sentence of 24 weeks' imprisonment and a fine of $165,000 (in default, 66 weeks' imprisonment).

64 From the decided cases on offences under s 5(3)(*a*) of the BA, the following can be observed (see the *Sentencing Book* at p 1789):

(a) Where the value of the bets involved is less than $1,000, a first-time offender with no previous convictions or any aggravating circumstances is usually sentenced to a short custodial term of two weeks and fined $20,000.

(b) Where the value of the bets involved is between $1,000 and $10,000, the usual sentence is in the region of one to two months' imprisonment and a fine of at least $25,000.

(c) Where the value of the bets involved is very substantial, the court will impose either a hefty or the maximum fine and a long custodial sentence.

65 Naturally, and quite logically too, the sentence imposed for an offence under s 5(3)(*a*) of the BA would be more severe the greater the value of the bets involved, although the increase in the severity of the sentence need not be proportional or linear to the increase in the value of the bets; equally relevant would be the antecedents (if any) of the offender. The following precedents were cited to me by both counsel:

(a) The first case was *Tan Kwee Swe v Public Prosecutor* (Magistrate's Appeal No 335 of 1999) ("*Tan Kwee Swe*"). In that case, the accused was involved as a runner in an illegal bookmaking operation. The evidence showed that he had taken a substantial number of bets valued at $12,600 in total. He was given a sentence of six months' imprisonment and a fine of $50,000 (in default, six months' imprisonment). No further details were provided as to why the court arrived at this sentence, and the only information about this case is to be found in the *Sentencing Book* at p 1800.

(b) The second case was *Public Prosecutor v Chee Kok Yeong* [2003] SGMC 8 ("*Chee Kok Yeong*"), where the accused was a runner involved in a "well-organised" football betting operation (at [18]). Three charges were proceeded with against him, and four charges were taken into account for sentencing purposes. The total value of the bets involved was $456,750 (at [21]). Similar to the Appellant, the accused suffered from depression and insomnia at the material time, and was seeking treatment at the Institute of Mental Health. He was sentenced to seven months' imprisonment and fined $200,000 (in default, six months' imprisonment) for each of the charges proceeded with. Two of the imprisonment terms were ordered to run consecutively, making an aggregate imprisonment term of 14 months (at [29]).

(c) The third case was *Public Prosecutor v Oke Ah Bang* [2005] SGMC 1 ("*Oke Ah Bang*"). There, the accused elected to claim trial, but he subsequently chose to remain silent at the trial and did not call any witnesses (see the *Sentencing Book* at p 1803). The total value of the bets involved exceeded $10,000. On those facts, the accused was convicted of one charge under s 5(3)(*a*) of the BA. The judge sentenced him to six months' imprisonment and a fine of $50,000 (in default, six months' imprisonment) after referring to *Tan Kwee Swe* (see *Oke Ah Bang* at [43]).

(d) The fourth case was Public *Prosecutor v Goh Liang Seah & Another* [2006] SGMC 19. There, the two offenders had assisted an unknown Malaysian bookmaker as "pencillers" in recording illegal bets. They were part of a cross-border illegal bookmaking syndicate; hence, there was a public interest in imposing a stiff sentence, with general deterrence as a key sentencing consideration. The value of the bets involved was $52,850 in relation to one of the offenders and $53,530 in relation to the other offender. Both offenders were sentenced to eight months' imprisonment and a fine of $20,000 (in default, two months' imprisonment).

66 Returning to the facts of the present case, I note from the Statement of Facts that the Appellant obtained her online football and 4D betting accounts in early June 2010, [note: 18] and carried out her criminal enterprise primarily over the Internet. Before this court, the Respondent contended that the Appellant's use of the Internet to carry out her illegal activities was an aggravating factor for two reasons:

(a) The Internet provided a shroud of anonymity, such that the Appellant's crimes were harder for the police to detect. Had the police not been tipped-off, the Appellant's illegal activities "would [have been] wholly unhampered". [note: 19]

(b) It was easy for offences to be carried out with the aid of technology and computerisation. In this regard, the Respondent pointed out that the *Sentencing Book* highlighted (at p 1790) that the use of high-tech or sophisticated equipment to commit offences such as those committed by the Appellant was a major aggravating factor, as was the use of surveillance systems to avoid detection. [note: 20]

67 I agree with the Respondent that the Appellant's use of the Internet to carry out her nefarious activities is an aggravating factor in this case as it facilitated the commission of those activities and made detection more difficult. In both *Auyok Kim Tye v Public Prosecutor* [2001] SGMC 17 at [18] and *Public Prosecutor v Tan Suan Cheng* (Magistrate's Appeal No 246 of 1993), the use of high-tech equipment which facilitated the carrying out of illegal betting, such as telephones, transceivers and CCTV surveillance systems, was considered to be an aggravating factor. Since the use of the Internet by the Appellant in this case facilitated the placing of bets by her bettors and made detection more difficult, it should similarly be considered an aggravating factor. I now address what the Appellant submits are the mitigating factors.

68 The mitigating factors relied on by the Appellant can be grouped into three categories:

(a) factors which go towards showing whether the Appellant is a first-time offender;

(b) factors which go towards showing whether the Appellant demonstrated genuine remorse for her actions; and

(c) factors which go towards showing whether the Appellant's poor mental health and her role as the primary care-giver in her family were given adequate consideration by the Sentencing Judge.

69 With regard to the first category of mitigating factors, the Appellant contends that she is a first-time offender, [note: 21] whereas the Respondent submits otherwise. [note: 22] In *Chen Weixiong Jerriek v Public Prosecutor* [2003] 2 SLR(R) 334 at [15], Yong CJ held that it was the court's prerogative to *refuse* to consider any person a first-time offender if he had been charged with multiple offences, even if he had no prior convictions. Although the courts should, in general, be cautious in refusing to regard such persons as first-time offenders, in my judgment, the Appellant should not be considered a first-time offender given the number of offences she was charged with and the length of time over which she carried out her illegal activities. It is merely her good fortune that she was not caught earlier. For these reasons, I do not think it appropriate to regard her as a first-time offender.

70 The second category of mitigating factors concerns the Appellant's guilty plea. Mr Chan submits that the Sentencing Judge did not give due consideration to the fact that right from the start, the

Appellant cooperated fully with the police and pleaded guilty at an early stage of the proceedings. He further argues that the Appellant's actions show that she was and is genuinely remorseful for her illegal activities, and that should be taken into account for sentencing purposes. [note: 23] While it is trite that a guilty plea is a factor which the court may take into account in mitigation as evidence of remorse, the weight that should be attributed to it would depend on the facts of the particular case concerned (see *Wong Kai Chuen Philip v Public Prosecutor* [1990] 2 SLR(R) 361 at [10]–[17]). In the present case, I agree with Mr Chan that due consideration should be given to the Appellant for her ready cooperation with the police the minute that she was arrested. Her cooperation is evident from the Statement of Facts, which records that while she was at the CID for further questioning (see [2] above), she logged on to her online football and 4D betting accounts and printed out the Exhibits, thereby assisting the police in the investigations. In my judgment, the Appellant's actions were those of a person who was genuinely remorseful and wished to come clean. Her conduct post-arrest is clearly mitigating for the purposes of sentencing. It would probably not be wrong to infer that had the Appellant not voluntarily logged on to her online accounts to print out the Exhibits, some of the charges which were subsequently brought against her might not even have surfaced.

71 The third category of mitigating factors which the Appellant relies on pertains to her personal circumstances of hardship. The Appellant submits that the Sentencing Judge failed to give sufficient consideration to the fact that she has been experiencing considerable mental distress, has a history of panic attacks and is being medicated for her condition. [note: 24] She also reiterates that her family's financial burdens have fallen upon her – her father is terminally ill with Stage Four cancer, and she has two young children aged five and two this year. Her older child suffers from a chronic respiratory condition and requires frequent medical attention. [note: 25] To give a better feel of the Appellant's personal predicament, I set out what her counsel in the court below submitted in mitigation before the Sentencing Judge: [note: 26]

> 4 Ms Lim [*ie*, the Appellant] and her father are extremely close as she is the only daughter and is much loved by both her father and her mother … Her mother is in her sixties and is a housewife. She is also sickly as she suffers from depression and has been receiving outpatient treatment at the KK Women's Hospital ever since her husband succumbed to cancer.
>
> …
>
> 8 Since she was pregnant with [X], Ms Lim gave up her regular job as she and her husband decided it was best that she became a homemaker and further, she was breastfeeding [X] for more than a year. Her second son … was born on October 2013. This child was only recently, despite much difficulty, weaned off from breastfeeding since Ms Lim found out that the prison did not have facilities to facilitate her pumping breast milk and passing it to her husband daily to feed the baby. This infant falls ill very frequently ever since Ms Lim stopped breastfeeding him since 2 weeks ago when she started to wean him off as she was aware that she would face incarceration for the present offences. This infant is 6 months old at present and the burden of taking care of him falls squarely upon her husband's shoulders, [who] is entrusted to take care of this child.
>
> …
>
> 16 We are mindful that personal hardship is generally of little [mitigation] value as held in 'Jenny's' case in a High Court decision [*ie*, *Lai Oei Mui Jenny v Public Prosecutor* [1993] 2 SLR(R) 406]. But however, in the present case before Your Honour, the hardship that Ms Lim faces [is] not singular but [manifold]. Firstly, her father can [die] at any time. He is literally or to put it medically, left to die with basic care and is bedridden most times. And further, she is being

separated from her 2 very young children. Her eldest boy is barely 3 years old whilst her second child whom she had been nursing is only 6 months old. She has broken down many times and suffered panic attacks not because she is going to be incarcerated but because it is going to be very difficult for her husband to be a single parent for both children and to nurse the younger child given his own job commitments and so forth.

72 Although I sympathise with the Appellant's personal circumstances, it is trite law that generally, the hardship that may be faced by an accused's family because of the sentence to be imposed by the court should not be taken into account for sentencing purposes, unless the circumstances are "*very* exceptional or extreme" [emphasis added] (see *Lai Oei Mui Jenny v Public Prosecutor* [1993] 2 SLR(R) 406 ("*Jenny Lai*") at [10]). A slightly different issue arises where an offender commits an offence due to circumstances which are not brought about by any fault of his own (for example, due to illness or some other pressing personal circumstances that are not of his own making). It is of interest to note that in *Jenny Lai*, Yong CJ said at [10]:

> All too often, it is stated in mitigation of an offence, frequently an offence against property, that the offender was motivated by the need for money, perhaps to purchase drugs to feed an addiction, or to pay off gambling debts, or to relieve some urgent need that arose because he had been unwise or profligate. For my part, I find this argument to be entirely unmeritorious in these cases. The whole purpose of the law is to maintain order and discipline, and that is most necessary precisely when the citizen might be inclined to act to the prejudice of good order. … It may well be that some *very exceptional or extreme* circumstances may arise warranting the constitution of those financial difficulties as a mitigating factor, the weight attributed to it to be at the discretion of the court. However these circumstances will be very rare, if indeed they ever occur. [emphasis added]

73 I agree with Yong CJ that a case involving "very exceptional or extreme circumstances" *may* call for different treatment by the court, as compared to a case where (for instance) the offender steals or engages in illegal betting because of circumstances of hardship caused by his own actions, or because of greed, or simply as a means of making easy money. In short, the court should examine the motivation behind the offence, and if the offence was prompted by personal hardship caused by factors beyond the offender's control, such mitigating circumstances *may*, in appropriate cases, be looked upon more favourably and given due consideration. In the present case, other than the Appellant's bald assertion that she needed money to meet the needs of her family, nothing more concrete was placed before the court. The evidence does not indicate whether at the time the Appellant began her illegal activities, her father had already been diagnosed with Stage Four cancer or whether that fact was made known to her only later. As against this, the criminal activities which were the subject of the charges against the Appellant (both the Proceeded Charges and the TIC Charges) commenced in early June 2010 and continued for some three years before they were detected. All things considered, I do not find it possible to give the Appellant's assertion of manifold personal hardship much weight.

Conclusion

74 As alluded to earlier (at [64]–[65] above), where offences under s 5(3)(*a*) of the BA are concerned, the higher the value of the bets involved, the more severe the punishment imposed should be. However, while the value of the bets involved is a weighty and relevant factor, the increase in the severity of the sentence imposed does not, and should not, progress proportionally or linearly to the increase in the value of the bets (see [65] above); otherwise, it would be hard to explain the sentence imposed on Keith and that imposed in *Chee Kok Yeong*. Bearing in mind the benchmarks set out in the *Sentencing Book* (see [64] above) as well as the relevant aggravating factors and

mitigating circumstances in this case, and taking into account the fact that the Third to the Fifth Proceeded Charges against the Appellant each involved a sum of between approximately $16,000 to $22,000, it seems to me that a reasonable imprisonment term for each of these three Proceeded Charges would be in the range of three to four months. Taking the higher end of this range, and bearing in mind the need to make at least two of the imprisonment sentences for the Third to the Fifth Proceeded Charges run consecutively pursuant to s 307(1) of the CPC, I consider that an imprisonment term of four months for each of these charges, with two of the imprisonment terms running consecutively – *ie*, a total imprisonment term of eight months – would be a fair and adequate punishment for the Appellant.

75 The aforesaid aggregate imprisonment term will also be more in line with the imprisonment terms imposed on Keith and Ah Tee, even though in both their cases, the value of the bets involved was much lower. In this regard, as I pointed out earlier (at [50]–[51] above), it was Keith and Ah Tee who introduced the Appellant to and assisted her with illegal 4D betting and football bookmaking at a time when she was not strong enough to resist the temptation of making easy money, having regard to her personal circumstances. I reiterate that both Keith and Ah Tee engaged in illegal 4D betting and football bookmaking earlier than the Appellant; furthermore, the Appellant obtained her online football and 4D betting accounts through them. Finally, I should briefly mention that Keith had no antecedents, while Ah Tee's antecedents were of a different nature. Thus, their criminal histories are of no consequence to my decision.

76 Ideally, all three offenders – the Appellant, Keith and Ah Tee – should have been sentenced at the same time by the same judge. Unfortunately, that did not occur in the court below. All things considered, I am of the view that an aggregate sentence of eight months' imprisonment and a fine of $141,000 (in default, 22 weeks' imprisonment) would suffice to both adequately punish the Appellant as well as serve the purpose of general deterrence.

77 Consequently, I set aside the five-month imprisonment terms imposed by the Sentencing Judge in respect of each of the three Proceeded Charges under s 5(3)(*a*) of the BA (*ie*, the Third to the Fifth Proceeded Charges), and replace those imprisonment terms with an imprisonment term of four months for each of these three Proceeded Charges. The imprisonment terms for the Third Proceeded Charge and the Fifth Proceeded Charge are to run consecutively, making a total imprisonment term of eight months for the Third to the Fifth Proceeded Charges. I should emphasise that I allow the Appellant's appeal only to this extent. I make no change to the two-week imprisonment term imposed by the Sentencing Judge in respect of the Second Proceeded Charge and on how it should run. In addition, I uphold the fines imposed by the Sentencing Judge for all five Proceeded Charges as well as the default imprisonment terms in respect of those fines.

[note: 1] BOD Tab 2, para 3.

[note: 2] BOD Tab 2, para 3.

[note: 3] BOD Tab 2, para 5.

[note: 4] BOD Tab 2, para 5.

[note: 5] BOD Tab 2, para 6.

[note: 6] BOD Tab 2, para 7.

[note: 7] BOD Tab 2, para 7.

[note: 8] ASS at paras 18–19 & 21.

[note: 9] ASS at paras 20 & 31.

[note: 10] RSS at para 25.

[note: 11] RSS at para 27(a).

[note: 12] RSS at para 27(b).

[note: 13] RSS at para 27(c).

[note: 14] RSS at para 57.

[note: 15] ROP at p 10, paras 5–6 and p 13, para 12.

[note: 16] ROP at p 10, paras 5–6.

[note: 17] ASS at para 14.

[note: 18] ROP at p 10, para 4.

[note: 19] RSS at para 31.

[note: 20] RSS at para 32.

[note: 21] ASS at para 51.

[note: 22] RSS at paras 53–56.

[note: 23] ASS at para 52.

[note: 24] ASS at para 53.

[note: 25] ASS at para 55.

[note: 26] BOD Tab 5 at pp 66–72.