IN THE GENERAL DIVISION OF THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2021] SGHC 200

Magistrate's Appeal No 9426 of 2020

Between

Rajendran s/o Nagarethinam

… *Appellant*

And

Public Prosecutor

… *Respondent*

Magistrate's Appeal No 9427 of 2020

Between

Arumaikannu Sasikumar

… *Appellant*

And

Public Prosecutor

… *Respondent*

JUDGMENT

[Criminal Law] — [Statutory offences] — [Women's Charter]

[Criminal Law] — [Statutory offences] — [Prevention of Human Trafficking Act]
[Criminal Law] — [Statutory offences] — [Penal Code] — [Obstructing, preventing, perverting or defeating course of justice]
[Criminal Procedure and Sentencing] — [Public Prosecutor] — [Consent of Public Prosecutor]
[Criminal Procedure and Sentencing] — [Irregularities in proceedings] — [Defective consent of Public Prosecutor] — [Curative powers of court]
[Criminal Procedure and Sentencing] — [Charge] — [Alteration]

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Rajendran s/o Nagarethinam
v
Public Prosecutor and another appeal

[2021] SGHC 200

General Division of the High Court — Magistrate's Appeals Nos 9426 and 9427 of 2020
Tay Yong Kwang JCA
10 February 2021

25 August 2021 Judgment reserved.

Tay Yong Kwang JCA:

Introduction

1 The appellants, Rajendran s/o Nagarethinam ("Rajendran") and Arumaikannu Sasikumar ("Sasikumar") appealed against their convictions and sentences. In *Public Prosecutor v Rajendran s/o Nagarethinam and Arumaikannu Sasikumar* [2020] SGDC 156 ("the GD"), the District Judge ("the DJ") found both appellants guilty of several prostitution-related offences and for obstructing the course of justice.

2 The appellants were running an entertainment club called Kollywood ("the Club"). They were assisted by Roky ("Roky"), a male Bangladeshi, whose job was to serve drinks at the Club and to act on the instructions of Rajendran and Sasikumar. The Club employed several female Hindi and Bangladeshi performing artistes to dance and to entertain the Club's customers. The alleged

victims of the offences were two such performing artistes: Victim 1 ("V1") and Victim 2 ("V2"). On separate occasions, Rajendran and/or Sasikumar, assisted by Roky who served as an interpreter, asked V1 and V2 to provide sexual services to customers. Pursuant to the requests, V1 provided such services twice. V2 refused and was assaulted and threatened by Rajendran. However, she remained adamant about not engaging in such activities.

3 Not long after the above events had taken place, in the early hours of 11 February 2016, V1, V2 and two other performing artistes ran away from the apartment that they were housed in. On the instructions of Rajendran and Sasikumar, Roky left Singapore on 11 February 2016, sometime at night. He returned to Singapore later that year and assisted the police in its investigations. Initially, Roky was involved in the joint trial. However, he absconded after the seventh day of trial and remains missing to this day. The trial proceeded without him.

4 The Prosecution proceeded with four charges against Rajendran and three charges against Sasikumar. Both claimed trial and were represented by different sets of defence counsel (whom I refer to collectively as "the Defence"). At the conclusion of the joint trial, the DJ convicted both appellants on their respective charges.

5 Rajendran was convicted on the following four charges:

(a) In furtherance of the common intention of himself, Sasikumar and Roky, he knowingly lived in part on the earnings of the prostitution of V1, an offence punishable under s 146(1) of the Women's Charter (Cap 353, 2009 Rev Ed) ("Women's Charter") read with s 34 of the Penal Code (Cap 224, 2008 Rev Ed) ("Penal Code") ("Charge 1").

(b) In furtherance of the common intention of himself, Sasikumar and Roky, he procured V1 for the purpose of prostitution, an offence punishable under s 140(1)(*b*) of the Women's Charter read with s 34 of the Penal Code ("Charge 2").

(c) He "did recruit" V2, by means of threatening her with bodily harm, for the purpose of the exploitation of V2, an offence under s 3(1)(*a*) punishable under s 4(1)(*a*) of the Prevention of Human Trafficking Act (Act 45 of 2014) ("PHTA") ("Charge 3").

(d) In furtherance of the common intention of himself and Sasikumar, he intentionally obstructed the course of justice by arranging for Roky to leave Singapore in order to evade arrest, an offence punishable under s 204A read with s 34 of the Penal Code ("Charge 4").

Rajendran was given an aggregate sentence of 30 months' imprisonment and a $3,000 fine (in default, three weeks' imprisonment).

6 Sasikumar was convicted on three charges:

(a) In furtherance of the common intention of himself, Rajendran and Roky, he knowingly lived in part on the earnings of the prostitution of V1, an offence punishable under s 146(1) of the Women's Charter read with s 34 of the Penal Code ("Charge 5").

(b) In furtherance of the common intention of himself, Rajendran and Roky, he procured V1 for the purpose of prostitution, an offence punishable under s 140(1)(*b*) of the Women's Charter read with s 34 of the Penal Code ("Charge 6").

(c) In furtherance of the common intention of himself and Rajendran, he intentionally obstructed the course of justice by arranging for Roky to leave Singapore in order to evade arrest, an offence punishable under s 204A read with s 34 of the Penal Code ("Charge 7").

Sasikumar was given an aggregate sentence of 16 months' imprisonment and a $1,000 fine (in default, one week's imprisonment).

7 Rajendran and Sasikumar appealed against their respective convictions and sentences. After hearing the parties' oral arguments, I reserved judgment. I now deliver my judgment in which I allow some parts of the appeals and dismiss the rest.

The facts

8 At the trial, some of the facts were not disputed and these were listed in a Statement of Agreed Facts. The DJ has set out the evidence fully in his 112-page GD. I will refer to only the salient portions of the evidence.

9 Rajendran and Sasikumar were directors of Nine Silver Pte Ltd ("Nine Silver"), a company which operated the Club. Initially, Sasikumar was running the Club by himself. Rajendran joined him in the business later in November 2015 as an equal shareholder and a co-director.

10 V1 and V2 were employed by the Club as performing artistes who danced and entertained its customers. V1 arrived in Singapore on 7 September 2015 and V2 arrived here on 16 January 2016. The Club's performing artistes, including V1 and V2, were housed in an apartment in the Bukit Merah housing estate ("the apartment").

11 The performing artistes had a monthly earning quota of around $6,000. They had to meet this quota by entertaining customers at the Club and earning "collections" in the form of tips and payments by the customers. For their work at the Club, the performing artistes were promised a monthly salary of 100,000 Takas (Bangladeshi currency). According to V2 and V1, they were not paid the full amount of their promised salary.

The first instance of prostitution

12 The alleged first instance of prostitution occurred in early January 2016. V1, Sasikumar and Roky were seated in the Club. Sasikumar spoke to Roky in English and Roky translated to V1 in Bengali, stating that Sasikumar wanted V1 to have sex with a customer. V1 refused but Sasikumar persisted. Roky told V1 that "Boss has told --- His friend has given you lot of collection, so you go out with him". "Collection", as explained earlier, was a reference to tips and payments given by the Club's customers.

13 V1 was worried that Sasikumar would withhold her salary. Previously, she was not paid her full salary. She therefore agreed reluctantly to Sasikumar's request. V1 returned to the apartment. Roky then called her to go downstairs. Sasikumar was waiting there next to a taxi. He asked V1 to board the taxi and go with the customer who was inside the taxi. They proceeded somewhere where they had sex.

14 After the session of sex, the customer offered V1 $500 but she refused to take the money. The customer then sent her back in a taxi to the apartment. Sasikumar was waiting there. There, the customer again offered V1 $500. Sasikumar gestured to her to take the money and she did so. V1 then passed the $500 to Sasikumar.

The second instance of prostitution

15 The alleged second instance of prostitution also occurred in January 2016, after a party at the Club. V1, Sasikumar and Roky were again seated together in the Club. Sasikumar spoke to Roky, following which Roky said to V1, "Boss is asking you to go out with customer again". When V1 refused, Roky told V1 to go, saying that "Boss said he will pay you salary". V1 gave in because she wanted to receive her salary. She returned to the apartment. She was then told by Roky to go downstairs. There, she was led by the disc jockey of the Club to a car where a man was waiting in the driver's seat. She recognised him as someone who had danced with her on the stage at the Club. She left with the customer to a separate location where they had sex.

16 The customer gave V1 $500 which she accepted. When she returned to the Club later that evening, she handed the money to Sasikumar and Rajendran. Roky was present as well.

Facts pertaining to Charge 3 under the PHTA

17 V2 was the alleged victim in Charge 3. The relevant events occurred at the Club sometime in late January 2016, about two weeks after V2's arrival in Singapore on 16 January 2016. On that occasion, Rajendran told V2, through Roky, that one of his friends, Anwar, wished to have sex with her. Roky also said that Anwar was willing to pay $2,000 and V2 could keep half the money while "the boss" would keep the other half. V2 refused.

18 After Roky conveyed V2's refusal to Rajendran, Roky informed V2 that "Boss is getting very angry, he wants you to go". V2 refused again and she observed that Rajendran appeared "very angry". Rajendran then asked V2, through Roky, to go into the smoking room in the Club. There, Rajendran closed

the door and spoke to V2 in English, which she did not understand. Only two of them were in the smoking room. Rajendran then gestured to V2 by holding bundles of $50 and $100 notes in his hands and conveyed that some of the money would be hers, while the rest of the money would be his. While doing this, he mentioned Anwar's name repeatedly. V2 refused again by shaking her hand.

19 Rajendran got very angry, raised his voice and scolded V2 in English. He slapped her on her cheek with his right hand, leaving a mark. He then raised his left hand and was about to hit her again but V2 held onto his wrist and then ran out of the smoking room. She headed to the disc jockey's location in the Club, where she told two of her fellow performing artistes that "Boss is asking me to go out with customer to have sex. I refuse, I don't want to go". She also told them that she was slapped and that she wished to return to Bangladesh.

20 Rajendran gripped V2 from behind by her neck and said something in English that she did not understand. She freed herself and went into the makeup room in the Club. She did not report the matter to the authorities as she "had no knowledge of what to do".

21 Subsequently, on 10 February 2016, sometime between 10.00am and 10.30am, Rajendran and Sasikumar went to the apartment with food and drinks. Rajendran apologised to V2 and said, "Whatever happen has happened, I---please forgive me". This was said in English and it was interpreted to V2 by a fellow performing artiste. Alcoholic drinks were then offered to the performing artistes present. V2 refused initially but relented subsequently upon Rajendran's and Sasikumar's insistence.

22 In the early morning of the next day (11 February 2016), at about 3.00am, V2, along with V1 and two other performing artistes from the Club, left the apartment. They went to Mustafa Centre by taxi and met an unnamed Bangladeshi who brought them to the Ministry of Manpower ("MOM"). There, they reported that they had not been paid their salaries and also informed the officer about the instances of prostitution.

Roky left Singapore

23 Later that day, in the evening of 11 February 2016, Sasikumar called Roky and asked to meet him at the back lane behind the Club. When Roky arrived, Rajendran and Sasikumar were already there.

24 Sasikumar informed Roky that "the dancers had [run] away from the lodging house" and told Roky to "return back to [his] country". Rajendran "also asked [Roky] to return back too". Sasikumar then informed Roky that his friend would pick Roky up and drive to Malaysia. Sasikumar would hand Roky's passport to that friend. They were to stay in Malaysia for two days and Rajendran and Sasikumar would let Roky "know the outcome". Rajendran then passed $200 to Roky.

25 On the same night, Sasikumar's friend picked Roky up and drove him to Malaysia. A few days later, Roky called Rajendran and asked whether he could return to Singapore because he did not have much money left. Rajendran told Roky that his work permit had been cancelled and asked Roky to return to Bangladesh. Roky complied and left for Bangladesh on 23 February 2016. In Bangladesh, Roky called Rajendran again. Rajendran informed Roky that "he had been banned and [was] not able to return to Singapore".

26 On 8 November 2016, Roky returned to Singapore. He had applied for a job and obtained in-principle approval. When he arrived in Singapore, at Changi Airport Terminal 2, Roky was told to report for police investigations. He complied.

The DJ's decision

27 At this juncture, to facilitate easy reference, I list several abbreviations:

(a) I refer to Charges 1 and 5 collectively as the "living on earnings charges". I refer to Charges 2 and 6 collectively as the "procurement charges". These four charges, where appropriate, will be collectively referred to as the "Women's Charter charges".

(b) Charge 3 is a reference to the charge against Rajendran under the PHTA.

(c) I refer to Charges 4 and 7 collectively as the "s 204A charges".

The charges

Women's Charter charges

28 As regards the Women's Charter charges, the DJ premised his decision on the facts recounted by V1 in her evidence. The DJ accepted V1's evidence. The DJ found that V1's evidence was "unusually convincing". She was "steadfast and believable" and "gave a highly credible, coherent and consistent account of the circumstances and commission of the offences". Her evidence was cogent and compelling. V1's testimony was also corroborated by other pieces of evidence. For example, a pay advice document (produced as a defence exhibit) showed that V1's monthly salary was approximately 100,000 Takas, as she had testified. The quantum of her salary was relevant as V1 had testified

that she engaged in the acts of prostitution because Rajendran/Sasikumar had withheld part of her salary.

29 In addition, the DJ found that V1 had no reason to implicate the appellants falsely because, among other things, she had a good relationship with Sasikumar even after the two instances of prostitution. She also had a relatively good impression of Sasikumar and Roky. If V1 wanted to lie against Rajendran, there was no reason for her to also implicate Sasikumar or to lie about the involvement of Roky, her fellow Bangladeshi and someone she respected as an elder brother. There was also no evidence raised by the Defence showing a motive on V1's part to implicate the appellants. Therefore, the Prosecution's burden of disproving such a motive did not arise.

30 Based on V1's evidence, the DJ found that the appellants were clearly implicated and that the elements of the Women's Charter charges were made out. It was clear from V1's testimony that she had sex with the Club's customers and received payment which was passed on to (a) Sasikumar for the first instance of prostitution and (b) to Sasikumar and Rajendran for the second instance. V1 had sex with the customers upon Sasikumar's request because she was concerned that she would not be paid her full salary if she refused. Rajendran and Sasikumar had withheld part of her salary and Rajendran had "previously threatened the girls that he would not pay them their salary if they could not collect more money". V1 believed that the money she "earned" from prostitution would go towards her monthly earnings target of $6,000.

31 Based on the above, the DJ convicted both Rajendran and Sasikumar on the Women's Charter charges.

Charge 3

32 The DJ found that V2's evidence, like V1's, was unusually convincing and contained a "ring of truth". V2's evidence implicated Rajendran. Rajendran used physical force by slapping V2 when she refused his request to prostitute herself. He tried to slap her again when she remained adamant and he also grabbed her by her neck. Rajendran's subsequent apology to V2 at the apartment reinforced V2's evidence on the earlier assault and threat made to her.

33 V2's evidence was also corroborated by other evidence. Her account of the monthly earnings target of $6,000 and the monthly salary of 100,000 Takas was consistent with V1's evidence. V1 also testified that V2 had complained to her that "Boss grabbed [her] neck and pushed her". Rajendran's insistence in getting V2 to have sex with Anwar, in expectation of the $2,000 payment, was also consistent with the fact that the Club was not doing well, as evidenced by the repeated capital investments that Rajendran and Sasikumar had to make during that period.

34 Finally, the DJ observed that V2 had no reason to lie and to implicate Rajendran falsely. Rajendran's attempt to impute bad motive against V2 over an alleged incident in December 2015 was blatantly false as she only arrived in Singapore on 16 January 2016. Both V1 and V2 would have received no benefit from making false allegations against Rajendran. Based on the above, the DJ convicted Rajendran on Charge 3.

The s 204A charges

35 The DJ found that the facts set out in Roky's statement, which was admitted into evidence, implicated both Rajendran and Sasikumar in the s 204A charges. Rajendran and Sasikumar did not deny meeting Roky on 11 February

2016 at the back lane behind the Club. Roky's statement showed that during that meeting, the appellants arranged for Roky's transport to Malaysia "by the quickest possible means" and that the appellants gave Roky money to leave Singapore.

36 The DJ also considered that while there were possible self-serving aspects in Roky's statement (*ie*, Roky attempted to distance himself from the various offences committed by Rajendran and Sasikumar), Roky had nothing to gain by framing Sasikumar and Rajendran. Further, in so far as the contents of his statement were corroborated by other evidence, they were believable. The DJ placed weight on this consideration since Roky absconded midway during the trial and was not cross-examined on his statement.

37 The corroborative evidence came in the form of Sasikumar's two statements to the MOM which were tendered as evidence. These statements were recorded on 29 November and 14 December 2016 during the course of investigations. The DJ found that the statements were admissible under s 258(1) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC").

38 In the first statement, Sasikumar confirmed that:

(a) he had made use of Roky as an interpreter with the performing artistes;

(b) he had asked Roky to look for the performing artistes when he found out at 6.00pm on 11 February 2016 that they had run away from the apartment in Bukit Merah;

(c) at around 8.00pm, when he found out that they had lodged a police report at the Criminal Investigation Department ("CID"), he contacted Roky and asked Roky to flee to Malaysia for a few days;

(d) he told Roky to pack his stuff and he arranged for transport to bring Roky to Malaysia;

(e) he cancelled Roky's work permit the following day (12 February 2016) and contacted Roky subsequently to tell him to find ways to leave Malaysia for Bangladesh;

(f) he "wanted Roky to immediately leave the country … Police might arrest Roky and hence [he] decided to send Roky to Malaysia".

39 In the second statement, Sasikumar said that he asked Rajendran to hand over $200 to Roky when both of them asked him to leave for Malaysia. Sasikumar instructed Roky to leave for Malaysia instead of Bangladesh as he was afraid of more trouble. He wanted Roky to leave Singapore immediately and decided to send him to Malaysia since it would have taken longer to send Roky to Bangladesh from Singapore.

40 While Sasikumar made "desperate attempts to dissociate himself from the damning contents of his two statements", his denials were unbelievable. He did not challenge the voluntariness of his statements. There was also no issue with the recording process of the statements and they were duly read back to Sasikumar. Finally, Sasikumar's statements were consistent with and corroborated by Roky's account of the events in his statement.

41 The evidence was "overwhelming" and "clearly established" the s 204A charges against both Rajendran and Sasikumar. In the GD, the DJ stressed that

the haste and extent to which both Sasikumar and Rajendran worked to "remove Roky from Singapore to prevent his arrest" showed that "they were worried that Roky would implicate them in offences that *both* Rajendran and Sasikumar were involved in" [emphasis in original]. Accordingly, the DJ convicted them on the s 204A charges.

Sentencing

42 For the Women's Charter charges, the DJ applied the sentencing framework set out by Sundaresh Menon CJ in *Public Prosecutor v Poh Boon Kiat* [2014] 4 SLR 892 ("*Poh Boon Kiat*"). Having assessed the evidence and the parties' submissions, the DJ found that the present case was one of "Category 2 Harm" and "B Culpability" and that it warranted imprisonment of eight months for each of the Women's Charter charges. The DJ also imposed a fine that corresponded to "double of what each accused person presumably received in profits" which "would be sufficient to disgorge profits and to act as deterrent". This was rationalised on the basis that the two payments of $500 made to V1 were shared equally by the appellants as equal partners, with each having received $500. A fine of $1,000 was therefore imposed on each of the appellants.

43 For Charge 3, the DJ adopted the approach used in *Public Prosecutor v BSR* [2019] SGHC 64 ("*BSR*"). Based on this approach, the DJ found that the present case involved "Category 2 Harm" (as there was actual and threatened violence and coercion) and "B Culpability" (as Rajendran had exploited V2's vulnerability within a short time of her arrival in Singapore). The DJ recognised that V2 ultimately did not engage in the proposed sexual activity. In the circumstances, the DJ would have imposed a sentence of 16 months'

imprisonment. As for the fine, the DJ pegged the quantum to the $2,000 that Anwar agreed to pay for sex with V2.

44 For the s 204A charges, the DJ took into account the factors stated in *Public Prosecutor v Tay Tong Chuan* [2019] SGDC 58 ("*Tay Tong Chuan*") at [34]: see GD at [269]. The DJ found that the appellants' actions "were clearly intended to deprive the enforcement agency of important evidence that was relevant to the investigations, and which could have resulted in [the appellants] evading the law". The appellants acted "quickly and with deliberation after the discovery about the victim's escape" and carried out further acts "to ensure that Roky remained out of Singapore" to frustrate the police investigations: GD at [271] and [272]. In the circumstances, the DJ decided that a sentence of nine months' imprisonment would have been appropriate.

45 Pursuant to the totality principle (enunciated in *Public Prosecutor v Raveen Balakrishnan* [2018] 5 SLR 799 at [64]–[67]), the DJ reduced the appellants' sentences for the s 204A charges from the indicative nine months' imprisonment to eight months' imprisonment. Rajendran's imprisonment term for Charge 3 was also re-calibrated from the indicative 16 months to 14 months.

46 As a result, Rajendran received the following sentences:

(a) for Charge 1, eight months' imprisonment and a $1,000 fine (in default, one week's imprisonment);

(b) for Charge 2, eight months' imprisonment;

(c) for Charge 3, 14 months' imprisonment and a $2,000 fine (in default, two weeks' imprisonment); and

(d) for Charge 4, eight months' imprisonment.

The sentences for Charges 1, 3 and 4 were ordered to run consecutively. The aggregate sentence imposed on Rajendran was therefore 30 months' imprisonment and a $3,000 fine in default of which Rajendran is to serve three weeks' imprisonment.

47 Sasikumar was sentenced as follows:

(a) for Charge 5, eight months' imprisonment and a $1,000 fine (in default, one week's imprisonment);

(b) for Charge 6, eight months' imprisonment; and

(c) for Charge 7, eight months' imprisonment.

The sentences for Charges 5 and 7 were ordered to run consecutively. The aggregate sentence imposed on Sasikumar was therefore 16 months' imprisonment and a $1,000 fine in default of which Sasikumar is to serve one week's imprisonment.

The parties' cases on appeal

48 Several factual and legal issues were raised. I will summarise the parties' cases on appeal briefly and then proceed to examine the merits of the submissions for each of the issues.

Rajendran's case

49 Broadly, Rajendran makes eight arguments on appeal. The first four pertain to Charge 3 (the PHTA charge):

(a) The Public Prosecutor's consent was not procured properly. The consent was only tendered validly on 11 September 2018 after the trial had already begun. This falls foul of the mandatory requirement under s 22 of the PHTA. The DJ erred in law and fact by disregarding the non-compliance with s 22 of the PHTA.

(b) Rajendran did not "recruit" V2 for sexual exploitation within the meaning of s 3(1) of the PHTA. When V2 was recruited to work at the Club, it was not for the purpose of exploitation (*ie*, to provide sexual services). She was recruited and asked to come to Singapore to be a domestic worker and then a performing artiste.

(c) V2's testimony about the threat by Rajendran was riddled with inconsistencies. Her testimony was not corroborated and she admitted that there were no such threats from Rajendran prior to the alleged incident.

(d) There was no sexual exploitation within the meaning of s 3(1) of the PHTA. V2 never had sex with any customers as she refused Rajendran's requests.

(e) On the Women's Charter charges, Rajendran did not procure V1 for prostitution. He was not the one running and managing the Club. The Club was run by Sasikumar. In any event, V1 was "only 'procured' at most for the purposes of being a performing artiste" and not a prostitute. In addition, the customers that V1 allegedly had sex with were not called by the Prosecution to testify in court.

(f) For the living on earnings charges, Sasikumar was the "main protagonist", as identified by the DJ in the GD. It is unclear how the DJ

found Rajendran to have a common intention with Sasikumar and Roky. Rajendran invested in Nine Silver only after V1 joined as a performing artiste. Further, the elements of the offence under s 146(1) of the Women's Charter were not made out. There was a lack of evidence showing that Sasikumar shared the proceeds of V1's prostitution with Rajendran. V1's testimony also contained many inconsistencies.

(g) On the s 204A charges, the DJ was wrong in law and in fact:

(i) At the time of the alleged offence, there was no information on whether there was an impending arrest. The s 204A charges are for "an offence that had yet to be investigated". There was a plethora of distinct offences that the appellants were potentially facing charges for.

(ii) The main evidence came from Sasikumar "which cannot be said to be independent". Further, "particulars of the charge are speculative and vague, rather than supported by evidence". The act of arranging for Roky to leave Singapore was carried out by Sasikumar. There was no "specific particularization" of how Rajendran acted in furtherance of the common intention set out in the charge. Rajendran gave Roky $200 out of compassion.

(iii) The Prosecution's witnesses, including V1 and V2, gave inconsistent testimonies that should not have been accepted. Their evidence also did not make out the elements of the offences, as indicated in the preceding arguments.

(h) The total sentence imposed on Rajendran was manifestly excessive. The DJ misapplied the *Poh Boon Kiat* framework. The harm suffered by the victims (V1 and V2), if any, was minimal. Rajendran's

culpability was low. The performing artistes, in particular V2, were not recruited by Rajendran. V2 came through an agent in Bangladesh who knew Roky. Rajendran joined the Club only after the performing artistes were recruited. The case of *BSR* was inapplicable and distinguishable on its facts.

Sasikumar's case

50 Sasikumar's arguments mirror Rajendran's. He makes the following points:

(a) On the Women's Charter charges:

(i) Much emphasis was placed on the inconsistent and "incredible" nature of V1's evidence. She gave inconsistent evidence on her salary, the instances of prostitution and other material facts such as the circumstances under which the performing artistes were allowed to move in and out of the apartment. These inconsistencies were not given weight by the DJ.

(ii) In contrast, Sasikumar's evidence was cogent, credible and highly believable. He maintained under rigorous cross-examination that he had never asked V1 to go out with a customer for sex. It was significant that Sasikumar's investigative statements relating to the Women's Charter charges and the s 204A charge were not adduced in the Prosecution's case. The only statements by Sasikumar adduced at the trial were for the purposes of investigation into MOM offences. These statements were of little utility or relevance to the present case.

(iii) The lack of a proved motive by V1 and Roky to implicate Sasikumar falsely may not be determinative. The suggestion by Sasikumar is that the complaints made were false.

(b) On the s 204A charges:

(i) The investigations into the offences relating to the Women's Charter took place only after Roky was told to leave Singapore. Based on Sasikumar's statements to the MOM, Sasikumar's desire for Roky to leave Singapore had more to do with MOM offences.

(ii) However, the DJ found that the s 204A offence was committed in order to prevent Roky from implicating the appellants in the offences under the Women's Charter. This was an untenable position that went against the weight of the evidence.

(c) On sentence:

(i) Sasikumar submits that his sentence was manifestly excessive. The DJ applied *Poh Boon Kiat* wrongly. While the DJ was correct in finding "Category 2 Harm", Sasikumar's culpability did not rise to the level of "B" culpability. Sasikumar was hardly around in the club after December 2015. He had little control over V1. V1 was not forced or entrapped.

(ii) For the s 204A charge, the predicate offence (*ie*, the Women's Charter charges) was never proved to have been on the mind of Sasikumar. As a result, the Prosecution and the DJ "cannot now rely on the gravity of the s 204A offence to

calibrate the appropriate sentence". Further, Sasikumar did not threaten or coerce Roky to leave Singapore. This reflected low culpability.

(iii) Based on the above, Sasikumar's sentence should be reduced.

The Prosecution's case

51 The Prosecution submits, at the outset, that the appellants' grounds of appeal against their convictions do not satisfy the threshold for appellate intervention. The DJ's findings "fully cohere with the evidence". V1's and V2's evidence was highly textured, internally consistent and corroborated by documentary evidence. They remained unshaken during cross-examination. Accordingly, the court should disregard the appellants' challenges against the DJ's findings that V1 and V2 were unusually convincing witnesses.

52 The Prosecution makes the following arguments:

(a) On the issue of the Public Prosecutor's consent, the DJ applied s 423 of the CPC correctly and found that the belated tendering of the consent did not affect the proceedings.

(b) The DJ adopted the correct definition of the term "recruits" in s 3(1) of the PHTA. While the Parliamentary debates are silent on the issue, the term "recruits" has a very wide dictionary meaning. "Recruits" can encompass the process of seeking to enrol someone. Further, the other forms of *actus reus* listed in s 3(1) (transports, transfers, harbours or receives an individual) are similarly not predicated on the victim having been actually exploited.

(c) For the Women's Charter charges, the DJ's factual findings were sound. Any purported inconsistencies in V1's and V2's evidence were inconsequential. V1 and V2 did not have any motive to implicate the appellants falsely.

(d) For the s 204A charges, the contents of Roky's statement and Sasikumar's two statements to the MOM incriminate the appellants. These statements were admitted into evidence correctly and it was appropriate that the DJ gave full weight to the material portions of those statements.

(e) On sentence, the DJ applied correctly the relevant sentencing frameworks in *Poh Boon Kiat* and *BSR*. There was a need for deterrence. The DJ considered the totality principle and made the necessary downward adjustments to the appellants' sentences.

Issues

53 I address the issues that arise in this appeal in the following order:

(a) For Charge 3 (under the PHTA):

(i) the significance, if any, of the defective consent issued by the Public Prosecutor initially;

(ii) whether the DJ erred in finding that the elements of the charge were made out; and

(iii) whether Charge 3 ought to be reframed.

(b) For the s 204A charges:

(i) whether, as a matter of law, the predicate offence must have been identified by or known to the accused before a charge under s 204A could be made out; and

(ii) whether the DJ erred in finding that the elements of the charges were made out.

(c) Whether the DJ erred in finding that the elements of the procurement charges were made out.

(d) Whether the DJ erred in finding that the elements of the living on earnings charges were made out.

(e) Whether and how the appellants' sentences should be adjusted.

The appellants' convictions

54 In my opinion, none of the DJ's factual findings can be challenged seriously on appeal. The factual findings are not against the weight of the evidence and are based on the DJ's assessment of the witnesses' credibility at the trial. The DJ, having heard V1's and V2's testimony and having observed their demeanour, found them to be unusually convincing witnesses. As the Prosecution highlighted, their evidence was "highly textured" and contained very specific details which suggest that it was not fabricated. I agree with the DJ's view that V1, V2 and Roky (in his statement admitted into evidence) stood to gain nothing from implicating Rajendran and Sasikumar.

55 The key portions of V1's and V2's testimony which incriminated the appellants were consistent. They gave similar accounts of their promised salary and the fact that their salary was withheld. This, as the DJ found, was the impetus for V1 to comply with Sasikumar's requests for her to provide the

sexual services. V1 gave clear evidence on the circumstances of both instances of prostitution and V2 also gave clear evidence about the assault and the threats made by Rajendran against her. I therefore see no basis to interfere with the DJ's factual findings.

Charge 3 under the PHTA

The Public Prosecutor's consent

56 The Prosecution accepts that the consent issued by the Deputy Public Prosecutor on 1 December 2016 was partially defective. The defect lies in the portion of the consent that concerns Charge 3.

57 Section 22 of the PHTA requires the consent of the Public Prosecutor before a prosecution under the PHTA (*ie*, Charge 3) can be instituted. In contrast, prosecution under ss 140 and 146 of the Women's Charter (*ie*, the procurement and living on earnings charges), being offences under Part XI of the Women's Charter, require the consent of the Public Prosecutor "or his deputy": s 154(2) of the Women's Charter. The Prosecution had obtained the consent of a Deputy Public Prosecutor for all the charges that required consent, including Charge 3. When this mistake was discovered in the course of the trial, the Public Prosecutor issued a fresh consent on 11 September 2018 for Charge 3.

58 The question then arose as to whether the initial partially defective consent issued by the Deputy Public Prosecutor and the subsequent issuance of the fresh consent on 11 September 2018 affected the validity of Rajendran's conviction and sentence under Charge 3. The relevant statutory provision is s 423(*b*) of the CPC, which states:

> **423.** Subject to this Code, any judgment, sentence or order passed or made by a court of competent jurisdiction may not be reversed or altered on account of —
>
> (*a*) an error, omission or irregularity in the complaint, summons, warrant, charge, judgment or other proceedings before or during trial or in an inquiry or other proceeding under this Code;
>
> (*b*) the lack of any consent by the Public Prosecutor as required by law; or
>
> (c) the improper admission or rejection of any evidence,
>
> unless the error, omission, improper admission or rejection of evidence, irregularity or lack of consent has caused a failure of justice.

59 The Prosecution and the Defence do not dispute the applicability of s 423 of the CPC. Section 423(*b*), which is derived from s 396 of the previous edition of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) ("old CPC"), was intended "to reflect the variation in nomenclature from the old CPC to [the CPC]": *The Criminal Procedure Code of Singapore: Annotations and Commentary* (Jennifer Marie & Mohamed Faizal Mohamed Abdul Kadir eds) (Academy Publishing, 2012) ("*CPC Commentary*") at para 22.007. In particular, while s 396(*b*) of the old CPC applied only to the Public Prosecutor's consent under s 129 of the old CPC, s 423(*b*) applies to "all consents": *CPC Commentary* at para 22.007. This would include the consent required under s 22 of the PHTA.

60 The key issue is whether the partially defective consent issued by the Deputy Public Prosecutor resulted in a "failure of justice" within the meaning of s 423. I make two observations on this issue:

(a) The inquiry is invariably fact-specific and would "necessarily turn on the precise factual matrix before the court": *CPC Commentary* at para 22.008.

(b) Some of the procedural requirements which are within the scope of s 423 are framed in mandatory language, such as the use of the words "shall not" in s 22 of the PHTA. Even so, a failure to comply with mandatory statutory requirements would not invariably be fatal to the verdict. The "curative powers" of the court may be invoked as long as there is no injustice occasioned to the accused: *Ulaganathan Thamilarasan v Public Prosecutor* [1996] 2 SLR(R) 112 at [15]–[16].

Clearly, the CPC mandates that procedural flaws need not floor the decision made in those proceedings. The key question is always whether, looking at all the circumstances in totality, the irregularity renders the judgment, sentence or order unsafe or unfair such that it should not be allowed to stand at all or should be allowed to stand only with rectifications.

61 In the present case, Defence Counsel for Rajendran was unable to point to any prejudice suffered as a result of the irregularity. In fact, the issue of possible irregularity in the consent was not raised by the Defence. It was raised by the DJ at the conclusion of the Prosecution's case when the DJ was looking through the papers to ensure that everything was in order (GD at [66]). Consent was in fact obtained but under the mistaken impression that the power to give such consent had been delegated to a Deputy Public Prosecutor. The Prosecution remedied the mistake the very next day by tendering a consent signed by the Public Prosecutor himself (GD at [73]). No new charge was preferred after the proper consent was issued on 11 September 2018. The nature of Charge 3 did not change. Further, the issue of the defective consent was

brought up in 2018, before the start of the Defence's case and well before the DJ delivered his decision on 7 April 2020. There was ample time for the parties and the DJ to consider the effect, if any, that the irregularity could have had on the conduct of the proceedings.

62 All these points were dealt with adequately by the DJ at [66]–[77] of the GD. I agree with his conclusion that there was clearly no failure of justice occasioned by the Prosecution's defective initial consent.

The elements of the offence

63 Section 3(1) of the PHTA states:

> **3.**—(1) Any person who recruits, transports, transfers, harbours or receives an individual (other than a child) by means of -
>
> (*a*) the threat or use of force, or any other form of coercion;
>
> (*b*) abduction;
>
> (*c*) fraud or deception;
>
> *(d)* the abuse of power;
>
> *(e)* the abuse of the position of vulnerability of the individual; or
>
> (*f*) the giving to, or the receipt by, another person having control over that individual of any money or other benefit to secure that other person's consent,
>
> for the purpose of exploitation (whether in Singapore or elsewhere) of the individual shall be guilty of an offence.
>
> …
>
> (3) In determining whether an offence has been committed under this section, the following shall be irrelevant:
>
> (a) …
>
> (b) in any other case, whether the alleged victim of the offence consented to the actual or intended exploitation.

64 The only point of contention on appeal where the elements of Charge 3 are concerned is whether Rajendran "did recruit" V2 within the meaning of s 3(1) of the PHTA. The other elements of that charge (by means of threatening V2 with bodily harm for the purpose of "exploitation") are uncontroversial and Defence Counsel for Rajendran rightly did not raise these points on appeal.

65 The alleged recruitment refers to Rajendran's words and actions to get V2 to provide sexual services in Singapore. It does not refer to Rajendran and Sasikumar recruiting V2 from Bangladesh to be a performing artiste at the Club. On this basis, Rajendran's arguments on his alleged lack of involvement in the recruitment process of the performing artistes at various points in time are irrelevant.

66 Rajendran submits that V2 was not recruited for the purpose of sexual exploitation. On the other hand, the Prosecution submits that while V2 did not succumb to Rajendran's threats and she refused to have sex with Anwar, the process of attempting to recruit V2 satisfies the requirement of "recruits … an individual … for the purpose of exploitation" in s 3(1) of the PHTA.

67 "Exploitation" is defined in s 2 PHTA as "sexual exploitation, forced labour, slavery or any practice similar to slavery, servitude or the removal of an organ". The same section further defines "sexual exploitation" as "the involving of the individual in prostitution, sexual servitude or the provision of any other form of sexual service, including the commission of any obscene or indecent act by the individual or the use of the individual in any audio or visual recording or representation of such act". "Prostitution" is further defined as "the offering of an individual's body for hire, whether for money or in kind, for the purpose of sexual penetration".

68 However, the term "recruits" is not defined in the PHTA. The Parliamentary debates do not assist in ascertaining the scope of its meaning. I therefore look at its ordinary meaning. As a verb, to recruit someone is to hire that person as a worker or to enrol that person as a member in some group or organisation. As a noun, *The Oxford English Dictionary* (Clarendon Press, 2nd Ed, 1989) vol XIII at p 374 defines "recruit" as "[a] fresh supply or number of persons … either as additional to the previous number, or to make up for a decrease". Similarly, *Black's Law Dictionary* (Thomson Reuters, 11th Ed, 2019) at p 1528 defines "recruit" to be "[a] new member of an organization, team or group of people".

69 It is apparent from the wording in s 3(1) of the PHTA that it is not necessary for actual exploitation to have taken place in order to constitute an offence under that provision. As long as the actions (recruits, transports, transfers, harbours or receives) and the means (which include threat, abduction and fraud) are to achieve the purpose ("exploitation"), an offence under s 3(1) PHTA is made out. If actual exploitation takes place, that will aggravate the offence.

70 While the verbs other than "recruits" are fairly easy to define in practice, the word "recruits" is more nuanced. Generally speaking, when a person or organisation is in the process of engaging candidates with a view to bringing them in as new members or employees, that person or organisation may be said to be "recruiting". However, one can only say that a candidate is "recruited" when that candidate is brought into the recruiter's control or into the group or organisation, willingly or unwillingly. The candidate does not need to be detained or confined physically but must be considered to have come under the recruiter's control or to have become a part of the group or organisation that the recruiter represents. If the candidate turns down or rebuffs the offer and is at

liberty to walk away from the situation, it would seem contrary to common sense and the ordinary use of language to say that the candidate has been recruited or has become a recruit.

71 The same reasoning applies to s 3(1) PHTA. If V2 had been brought under Rajendran's control, whether willingly (perhaps through "fraud or deception") or unwillingly (perhaps by "the threat or use of force"), for the purpose of exploitation, then one may say that she was "recruited" within the meaning of that provision. Since V2 rebuffed Rajendran's recruitment efforts repeatedly and was free to leave the Club in spite of the threats and violence, it would be more in keeping with the ordinary sense of "recruits" to say that Rajendran attempted to recruit her by the relevant unlawful means but did not succeed. V2 had to return to the apartment because she was housed there and not because she was restrained or kept there against her will.

72 It follows from the above discussions that I do not accept that Rajendran "did recruit" V2 for the purpose of exploitation within the meaning of s 3(1)(*a*) PHTA, as charged. In my opinion, what Rajendran did to V2 amounted to an attempted recruitment which is punishable under s 3(1) PHTA read with s 511 of the Penal Code. Charge 3, as it is currently framed, is therefore not made out.

Alteration of Charge 3

73 On the evidence, Rajendran clearly attempted to recruit V2 for the purpose of prostitution. V2 testified that Rajendran had told her, through Roky, that one of Rajendran's friends was willing to pay $2,000 to have sex with her. This occurred in the Club. V2 refused to have sex with the said friend, Anwar. Rajendran slapped her and threatened to slap her again. Rajendran also gripped V2 from behind by her neck when she walked away from the conversation. The

DJ found V2 to be a credible witness and accepted her testimony, which he considered to contain the "ring of truth". I see no reason to disagree with the DJ's findings, especially when they hinged on his assessment of V2's credibility.

74 Section 390(4) of the CPC provides that an appellate court may frame an altered charge if it is satisfied that there is sufficient evidence to constitute a case which the accused has to answer. A key consideration is that the alteration to the charge will not cause any injustice, or affect the presentation of the evidence, in particular, the accused's defence: *Public Prosecutor v Koon Seng Construction Pte Ltd* [1996] 1 SLR(R) 112 at [21]; *Sim Wen Yi Ernest v Public Prosecutor* [2016] 5 SLR 207 at [12].

75 Based on the facts found by the DJ, there is clearly sufficient evidence that Rajendran attempted to recruit V2 for the purpose of exploitation. Rajendran will not be prejudiced by an alteration of Charge 3 to a charge for attempted recruitment. In the course of oral arguments during the appeal, I raised the possibility of altering Charge 3 to an attempted offence. Defence Counsel for Rajendran accepted that Rajendran's defence would have remained the same because Rajendran would still deny that the events constituting the attempted recruitment of V2 took place. Further, there is no need for any new evidence to be introduced for the purpose of making out the altered charge.

76 Accordingly, I now exercise the powers under s 390(4) of the CPC to alter Charge 3, to read as follows:

> You,
>
> [Rajendran]
>
> are charged that you, sometime in January 2016, at 'Kollywood Music Lounge', in Singapore, did **attempt to** recruit [V2],

> female Bangladeshi, 26 years old, Bangladesh Passport No: BHXXXXXXX, by means of threatening the said victim with bodily harm, for the purpose of the exploitation of the said victim, and you have thereby committed an offence under Section 3(1)(*a*) punishable under Section 4(1)(*a*) of the Prevention of Human Trafficking Act **(Act 45 of 2014) read with Section 511 of the Penal Code (Cap 224, 2008 Rev Ed)**.

I refer to this as the "amended Charge 3". I have indicated in bold the words added to the original wording of Charge 3.

77 As noted, there is little doubt that Rajendran did attempt to recruit V2 by conveying his request through Roky to her and then by using physical force on V2 when she refused to comply. On the evidence, the amended Charge 3 has been clearly made out.

78 Section 390(5) of the CPC provides that "[I]f the offence stated in the altered charge is one that requires the Public Prosecutor's consent under section 10, then the appeal must not proceed before such consent is obtained, unless the consent has already been obtained for a prosecution on the same facts as those on which the altered charge is based". As seen from the discussions above, no new evidence has been adduced and none is needed. The facts supporting the amended Charge 3 are exactly the same as those on which the appellant was convicted on the original Charge 3 at the trial. The only difference is the legal consequence arising from those facts. A fresh consent from the Public Prosecutor is therefore not required for the amended Charge 3.

79 In compliance with s 390(6) of the CPC, I will read the amended Charge 3 to Rajendran. I will also confirm with him that his defence to the amended Charge 3 remains the same as his defence to the original Charge 3 at the trial, as indicated by his counsel during the appeal hearing. (After consulting his counsel, Rajendran gives the confirmation sought.)

The s 204A charges

80 The key facts in the s 204A charges are not in dispute. On 11 February 2016, Rajendran and Sasikumar instructed and arranged for Roky to leave Singapore for Malaysia immediately. This was in the light of "the dancers [running] away from the lodging house". While Roky was in Malaysia, he received instructions from Rajendran to return to Bangladesh and he did so on 23 February 2016. Quite clearly, Rajendran and Sasikumar intended for Roky to leave Singapore because they expected, quite reasonably, that the performing artistes would lodge a report with the police or other authority and that Roky would be called up or be arrested for investigations and that he might inculpate Rajendran and Sasikumar for their activities involving V1 and V2. In fact, they did find out at about 8.00pm that night that the performing artistes had lodged a police report and that explains their surreptitious meeting with Roky and the haste with which Roky was told to leave Singapore.

81 The legal contention relating to the s 204A charges is whether an accused person must know the predicate offence when he was doing the acts that allegedly obstructed the course of justice before he can be found guilty of the offence of obstruction of justice. In other words, must Rajendran and Sasikumar have knowledge of the specific offence(s) that had been committed, the investigation of which they then impeded by asking and arranging for Roky to leave Singapore in order for him to evade arrest?

82 The Defence contends that there is a requirement of such knowledge before the offence under s 204A is made out. The Defence's case is that as at 11 February and around 23 February 2016, *ie*, when Roky was given instructions to leave for Malaysia and then from there to Bangladesh, the appellants were not aware of the specific offences that they might have

committed and no charges had been brought against them yet. The Defence also highlighted during oral submissions that the initial complaints made by V1, V2 and the rest of the performing artistes were to the MOM. Sasikumar's two statements were given to the MOM in aid of investigations into possible employment offences. Therefore, at most, Rajendran and Sasikumar would have suspected that they might face prosecution for violation of manpower regulations and not the present prostitution-related offences.

The law

83 Section 204A of the Penal Code, as it stood before the amendments that came into effect on 1 January 2020, is in the following terms:

> **204A.** Whoever intentionally obstructs, prevents, perverts or defeats the course of justice shall be punished with imprisonment for a term which may extend to 7 years, or with fine, or with both.

It is apparent that s 204A does not state that an accused person must know about the particular charge(s) that might be brought against him or anyone else before he could be guilty under the section.

84 In my view, if an accused person is aware or has reason to believe that some wrongdoing has been or may have been committed, whether by himself or by some other person(s), and consequently takes steps to somehow thwart or prevent the investigation into or the prosecution of the wrongdoing, he is guilty of an offence under s 204A. He does not need to know what specific offence may have been committed. He only needs to be aware of facts that may amount to wrongdoing, not the charges that may be preferred or the legal consequences that could flow from those facts.

85 During investigations, one or more holding charges might be preferred against an accused person if the police has enough information to do so. As investigations progress and after investigations are completed, the holding charges may be maintained or changed to some other charges and more charges could also be added. If the Defence's contention is correct, a person who has committed various wrongdoings and suspects that the police is investigating him and who then causes a potential witness for the investigations to disappear so that the police cannot even obtain the preliminary information that it needs to proceed further would not be guilty of an offence under s 204A since that person is not aware of and cannot predict what specific charges could arise from the investigations. This cannot be correct because that person is clearly thwarting the investigations and thereby obstructing the course of justice. To obstruct the course of justice includes hampering the authorities in their investigations into the truth and one of the ways of doing this is to cause a potential witness to become unavailable for investigations.

86 As mentioned above, the predicate wrongdoing could be committed by the person accused of a s 204A offence or by someone else. For instance, a person A tells his friend B that the police is looking for A and A needs to get out of the jurisdiction immediately to avoid arrest. Without knowing why the police is looking for A, B arranges for A to leave Singapore and A manages to leave. It would seem contrary to reason to say that B is not guilty of intentionally obstructing the course of justice simply because B is not aware of what predicate offence A might have committed.

87 Even if A decides subsequently to return to Singapore voluntarily to face the investigations or is somehow arrested and then repatriated to Singapore, the offence under s 204A is still complete although it could possibly be mitigated by the subsequent events. Further, it may transpire that A is eventually tried and

found not guilty of whatever offences he was charged with. That also does not affect B's culpability for the s 204A offence because "the course of justice" does not mean that there must be a conviction for the predicate offence. By helping A to escape arrest in the first place, B has caused the investigations to be hindered and investigations are part of the course of justice. Justice could not take its natural course, at least initially in the example discussed above, because it was obstructed by B's actions in aiding A's departure from Singapore.

88 If a person accused of a s 204A offence is proved to have been aware of the predicate offence at the time of his actions that intentionally obstruct the course of justice, this could be an aggravating factor in sentencing if the predicate offence is a very serious one. This is reiterated in the very recent decision of the Court of Appeal in *Parthiban a/l Kanapathy v Public Prosecutor* [2021] SGCA 75 at [26] and [27], delivered on 3 August 2021.

89 However, the absence of knowledge of the precise predicate offence does not prevent a conviction under s 204A. I therefore reject the appellants' arguments on the knowledge requirement.

Whether the elements of the offence are made out

90 In my view, the DJ has assessed the evidence correctly in finding that Rajendran and Sasikumar knew exactly what they were doing when they asked Roky to leave Singapore at short notice. There could be no other explanation for what Rajendran and Sasikumar did, in view of the confluence in timing between the performing artistes' departure from the apartment and the instructions to Roky to leave Singapore. This was also borne out by Roky's evidence that the appellants had told him to leave because "the dancers had [run] away from the lodging house".

91 During oral submissions, the Defence confirmed that it was not challenging the admissibility of Sasikumar's two statements to the MOM. In any case, I agree with the DJ's observations at [63] of the GD that s 258(1) of the CPC is broad enough to encompass statements recorded by officers from institutions such as the MOM and is not limited to only statements recorded by the police. This is borne out on the express wording of the provision. Sasikumar's statements corroborated Roky's statement and implicated the appellants further. It did not matter that they were statements given to the MOM for possible employment related offences.

92 The said statements revealed that Rajendran and Sasikumar's motivation for Roky to leave Singapore quickly was due to the sudden disappearance of the performing artistes from the apartment on 11 February 2016. The performing artistes had been asked by the appellants recently to provide sex to the Club's customers. One agreed to do so reluctantly while the other was adamant in her refusal. Roky knew what was going on at the Club as he was the intermediary and interpreter between the appellants and the performing artistes. The appellants were obviously concerned that their involvement in asking the performing artistes to provide sex would be revealed by Roky if he were called up for questioning or arrested by the police. As I have pointed out, there is no need for the specific predicate offences to be on the appellants' minds when they took steps to obstruct the course of justice. Here, they were obviously aware that asking and demanding their employees to prostitute themselves was wrongful even if they did not know the precise offences that their wrongful acts would amount to in law. Consequently, they instructed Roky to flee Singapore immediately, made provisions for him to do so and Roky managed to leave that same night. As I have also indicated earlier, the fact that Roky returned to Singapore subsequently or was arrested and brought back here would not

change the position in law that an offence under s 204A has already been committed.

93 For these reasons, I see no reason to disagree with the DJ's findings on the s 204A charges. I therefore affirm the appellants' convictions on these charges.

The procurement charges

94 On the procurement charges, the Prosecution clarified during oral submissions that these charges pertained solely to the first instance of prostitution which occurred in early January 2016. I deal first with Rajendran's conviction.

Rajendran's conviction under Charge 2

95 In my view, the evidence adduced did not show Rajendran having any involvement in the first instance of prostitution. V1's testimony did not inculpate Rajendran directly. Her evidence was that:

(a) Sasikumar, through Roky, was the one who requested her to have sex with a customer;

(b) Sasikumar was the one who gestured to her to accept the $500 payment from the customer; and

(c) she handed the $500 to Sasikumar.

Nowhere was Rajendran mentioned in this series of events. At all times, it was Sasikumar who dealt with V1. V1 did not testify that she had understood Sasikumar's instructions to be instructions from both Sasikumar and Rajendran.

96 In the GD, the DJ did not make any finding that connected Rajendran directly to that incident. During oral submissions, the Prosecution conceded the point that there was no direct link between Rajendran and the first instance of prostitution. Even so, the Prosecution argued that there were at least several indirect links between Rajendran and the first instance of prostitution. However, I do not think that these links inculpate Rajendran beyond reasonable doubt. The indirect links raised by the Prosecution were as follows:

(a) Rajendran played a significant role in depriving the performing artistes at the Club of their salaries. V1 testified that Rajendran had threatened previously "that he would not pay them their salary if they could not collect more money". This suggested that Rajendran contributed to V1's agreement to prostitute herself as she was afraid of being deprived of her salary. However, this evidence also suggested that Rajendran's conduct simply facilitated the circumstances under which V1 agreed reluctantly to Sasikumar's request during the first instance of prostitution. It did not show that Rajendran knew about or sanctioned the first instance of prostitution or shared in the payment made by the customer.

(b) During the first instance of prostitution, Roky mentioned to V1 that "Boss" wanted her to have sex with the customer. However, it was unclear whether "Boss" was a reference to Sasikumar, Rajendran or both of them and no clarification was sought from V1. As Sasikumar was the only partner present on that occasion, it was more likely that "Boss" was a reference to only Sasikumar.

(c) Rajendran was clearly involved in the second instance of prostitution. However, there was insufficient evidence to deduce from

this that Rajendran must also have been involved in the first instance of prostitution.

(d) Rajendran's involvement in the s 204A charges was even more tenuous when compared to his involvement in the first instance of prostitution because he could have been asking Roky to leave Singapore for a variety of reasons. However, I think that the most likely and apparent reason was because Roky was privy to the second instance of prostitution (which Rajendran was clearly involved in) and to Rajendran's actions and threats against V2. Again, on its own, Rajendran's involvement in the second instance was insufficient to implicate him in the first instance also.

97 Overall, while it is possible that Rajendran knew what was happening where the first instance of prostitution was concerned, this is insufficient to constitute proof beyond reasonable doubt in order to sustain the conviction against him. There was insufficient evidence to show that Rajendran, Sasikumar and Roky had a common intention of the sort alleged by the Prosecution. In these circumstances, I find Rajendran's conviction under Charge 2 not proved beyond reasonable doubt and I therefore acquit Rajendran on Charge 2.

Sasikumar's conviction under Charge 6

98 I see no issue with Sasikumar's conviction, save for the issue of common intention. V1's testimony, which the DJ accepted, was sufficient to make out the elements of the primary offence under s 140 of the Women's Charter. Sasikumar did procure V1 to engage in prostitution by requesting her to have sex with the customer and V1 complied. However, as Rajendran has now been acquitted on Charge 2 in that there was insufficient evidence to prove that he was involved in the first instance of prostitution, it cannot be said that Sasikumar

had a common intention with Roky and Rajendran to procure V1 to engage in prostitution.

99 As Sasikumar did commit the primary offence of procurement, the appropriate course of action is to alter Charge 6 where the element of common intention is concerned. In accordance with the principles relating to alteration of charges discussed earlier, I hold that despite the lack of proof that Rajendran was involved in Charge 6, there is sufficient evidence to constitute a case for which Sasikumar has to answer and that Sasikumar will not be prejudiced by an altered charge which does not mention the involvement of Rajendran because Sasikumar's defence was that the procurement never took place.

100 The evidence is clearly sufficient to sustain this charge against Sasikumar. The removal of Rajendran from the equation does not change the fact that Sasikumar did procure V1, through Roky, to prostitute herself in early January 2016. Although V1's testimony on the first instance of prostitution did not implicate Rajendran, it inculpated Sasikumar clearly and directly. There could be no prejudice to Sasikumar's defence as there is no change at all to the Prosecution's evidence adduced at the trial.

101 Accordingly, I exercise the powers under s 390(4) of the CPC to alter Charge 6, to read as follows:

> You,
>
> [Sasikumar]
>
> are charged that you, sometime in early January 2016, at 'Kollywood Music Lounge', in Singapore, together with one Roky, male, 44 years old, Passport No: BJ0225764, Bangladeshi, in furtherance of the common intention of **both of** you, did procure one [V1], female Bangladeshi, 25 years old, Bangladesh Passport No: BHXXXXXXX for the purpose of prostitution within Singapore and you have thereby committed an offence punishable under Section 140(1)(b) of the Women's

> Charter, Chapter 353 (2009 Rev. Ed.) read with section 34 of the Penal Code, Chapter 224 (2008 Rev.Ed.).

I refer to this as the "amended Charge 6". I have indicated in bold the edited portion of the charge. I have also removed the words "one Rajendran S/O Nagarethinam, male, 55 years old, NRIC No: S2180809A, Singapore Citizen and" from the persons involved in the common intention in the original Charge 6. Pursuant to s 390(6) of the CPC, I will now read the amended Charge 6 to Sasikumar and ask him to confirm that his defence to this amended charge would be the same as that led at the trial. (After consulting his counsel, Sasikumar gives the confirmation sought.)

The living on earnings charges

102 The living on earnings charges state a timeframe during which the alleged offence was committed but did not specify how many instances of living on the earnings of prostitution and which instance(s) each charge is premised on. There were two instances when one or both appellants, together with Roky, collected such earnings from V1 and both fell within the stipulated timeframe. Further, as explained above, it was not proved that Rajendran was involved in the first instance of prostitution. For clarity, I reproduce Charge 1 against Rajendran below:

> You,
>
> [Rajendran]
>
> are charged that you, between sometime in early January 2016 and sometime in mid-January 2016, in Singapore, together with one Arumaikannu Sasikumar, male, 41 years old, NRIC No: S7561244C, Singapore Permanent Resident and one Roky, male, 44 years old, Passport No: BJ0225764, Bangladeshi, in furtherance of the common intention of you three, did knowingly live in part on the earnings of the prostitution of one, [V1], female Bangladeshi, 25 years old, Bangladesh Passport No: BHXXXXXXX and you have thereby committed an offence punishable under Section 146(1) of the Women's Charter,

> Chapter 353 (2009 Rev. Ed.) read with section 34 of the Penal Code, Chapter 224 (2008 Rev.Ed.).

Charge 5, against Sasikumar, is worded in similar terms.

103 When I sought clarification from the Prosecution during oral submissions as to the scope of the living on earnings charges, the Prosecution clarified that Charge 1 and Charge 5 referred to both instances of prostitution. Indeed, this appears to be the basis on which the DJ convicted and sentenced the appellants. At [261] of the GD, when considering the appropriate fine to impose on the appellants, the DJ stated that:

> … as regards V1, it has been shown that she received a total of $1,000 for the two acts of prostitution, which were the moneys she handled over to the accused persons. In the absence of contrary evidence, this sum of monies was presumably to be shared by both the accused persons in a 50/50 division, as they were both equal shareholders and directors of the club. …

104 Given my findings on the procurement charges, specifically Charge 2 against Rajendran, it cannot be said that Rajendran lived off the earnings from the first instance of prostitution. However, he did live off the earnings from the second such instance. On the other hand, the evidence proves that Sasikumar lived off the earnings from both instances of prostitution. Accordingly, adjustments to the appellants' convictions and sentences have to be made to reflect these findings.

Rajendran's conviction under Charge 1

105 It would not be appropriate to acquit Rajendran on Charge 1 as he did live off the earnings from the second instance of prostitution and those earnings were within the ambit of this charge. On that occasion, he and Sasikumar were together when they collected the $500 from V1 when she returned to the Club after having sex with the customer.

106 In my view, there is no need to alter Charge 1 and Rajendran's conviction can stand despite his lack of involvement in the first instance of prostitution. The charge does not stipulate the quantum of earnings from the prostitution or the number of instances of prostitution. It stipulates a time period within which both instances of prostitution occurred. In so far as the proved facts are concerned, the charge has been made out because, to use the language of the charge, Rajendran did, "between sometime in early January 2016 and sometime in mid-January 2016, in Singapore, together with one [Sasikumar] and one Roky … in furtherance of the common intention of [the] three [of them] … knowingly live in part on the earnings of the prostitution of [V1]". It is not the case that Charge 1, as it is currently framed, does not disclose an offence under s 146(1) of the Women's Charter. The charge is therefore not defective. The elements of the charge against Rajendran are borne out by the facts pertaining to the second instance of prostitution. In short, Rajendran did benefit from the $500 received by V1 after she provided the sexual services on the second occasion, pursuant to Sasikumar's request which was conveyed through Roky.

107 Rajendran was therefore implicated to the extent that he was involved in the second instance of living off the earnings of prostitution during the stipulated timeframe. On that occasion, he possessed a common intention with Sasikumar and Roky to live off the earnings of prostitution. Accordingly, I am satisfied that Rajendran was convicted correctly on this charge. However, his sentence will have to be adjusted because he lived off the earnings of only the second instance of prostitution and not the first. I address this issue on sentence below.

Sasikumar's conviction under Charge 5

108 There is also no need for any alteration to be made to Charge 5 against Sasikumar. As mentioned above, Charge 1 (and by extension, Charge 5, which is worded similarly) is not defective. The proved facts established the elements of the offence under s 146(1) of the Women's Charter. Sasikumar was involved in both instances of prostitution during the stipulated timeframe. He procured both instances of prostitution and was present during the collection of the earnings on both occasions. It was on this basis that the DJ convicted and sentenced Sasikumar on Charge 5.

109 However, Charge 5 also has the element of common intention. I have held that it was not proved that Rajendran was involved in the first instance of prostitution. The common intention must therefore be understood as involving only Sasikumar and Roky for the first instance of prostitution but involving all three men – Rajendran, Sasikumar and Roky – for the second instance. Sasikumar's conviction on Charge 5 is affirmed accordingly.

The appellants' sentences

110 The DJ applied the relevant sentencing principles in *Poh Boon Kiat*, *BSR* and *Tay Tong Chuan*. The DJ's observations on the relevant harm and culpability categories applicable to the present case are not against the weight of the evidence. The DJ also reduced the appellants' sentences slightly when he considered all the sentences in the light of the totality principle. I am not persuaded that the sentences imposed by the DJ were manifestly excessive, based on relevant precedents and the evidence before the court. However, in the light of my findings above, some adjustments have to be made to the sentences.

Rajendran's sentence

111 For Charge 1, the sentence imposed by the DJ was premised on both instances of prostitution and the total collection of $1,000 divided equally between the appellants at $500 each. With Rajendran's acquittal on the first instance of prostitution in Charge 2, it is only fair to treat Rajendran now as having received only half the amount received for the second instance of prostitution. This means that he received $250 instead of $500. Accordingly, it would be appropriate to halve the sentence imposed by the DJ as he sentenced Rajendran on the basis that he received $500 out of the total of $1,000 received. Rajendran's imprisonment term on Charge 1 is therefore reduced from eight months to four months. Similarly, the fine imposed for Charge 1 is correspondingly reduced from $1,000 to $500, in default four days' imprisonment.

112 For the amended Charge 3, the Prosecution submits that if the charge were reframed as one of attempted recruitment, then an imprisonment term in the range of seven months would be appropriate. This is half of the 14 months' imprisonment that Rajendran received on the original Charge 3. Defence Counsel for Rajendran does not take issue with the Prosecution's position.

113 When the DJ assessed the sentence for Rajendran at 16 months' imprisonment, which he then reduced to 14 months after taking into account the totality principle, he also took into account the fact that V2 did not end up having sex with Anwar. As discussed earlier, it is not necessary for actual sexual exploitation to have taken place to sustain a charge under s 3 of PHTA. In this sense, the sentence imposed on Rajendran already reflected the fact that Rajendran attempted to recruit V2 for sexual exploitation but was not successful in doing so. Nevertheless, I think seven months' imprisonment appears

appropriate for the amended Charge 3. Accordingly, I sentence Rajendran to seven months' imprisonment on the amended Charge 3.

114 However, I do not think it is necessary to also adjust the $2,000 fine that the DJ imposed for the original Charge 3. This was the amount that Anwar agreed to pay for sex with V2 and the DJ imposed the fine on the basis that the money was not received. The fact that the $2,000 was not received as V2 refused to comply with Rajendran's demands does not change because of the amended Charge 3 which now reflects an attempted offence. I agree with the DJ's observation (at [268] of the GD) that the fine imposed serves as a further deterrent. The fine of $2,000, in default two weeks' imprisonment, is therefore affirmed.

115 In respect of Charge 4 under s 204A of the Penal Code, the Prosecution submits that there should be no change to the sentence imposed by the DJ, given the severity of the predicate offences. There was no serious retort by Defence Counsel for Rajendran. I agree with the Prosecution. The DJ took into account the severity of the predicate offences actually involved, the specifics of which the appellants did not need to be aware of at the time that they arranged for Roky to leave Singapore and the prosecution of which could have been thwarted by Roky's disappearance, in determining the appropriate sentence. I see nothing wrong with the sentence imposed, whether in principle or in quantum. I therefore affirm Rajendran's sentence of eight months' imprisonment for the s 204A offence.

116 The DJ ordered the sentences for Charges 1, 3 and 4 to run consecutively and, coincidentally, he ordered the sentence for Charge 2 to run concurrently with those three sentences. The Prosecution submits that if Rajendran is

acquitted on Charge 2, the sentences for the other three charges should still run consecutively as the DJ ordered.

117 I agree with the Prosecution. Charges 1, 3 (as amended) and 4 involve distinct offences and separate transactions. The victims or the subject were also different in each charge. V1 was the victim in Charge 1 in that it concerned her earnings from prostitution. V2 was the victim in the amended Charge 3 in that an attempt was made to recruit her for sexual exploitation. Charge 4 involved Roky in that actions were taken by the appellants to obstruct the course of justice by causing him to leave Singapore to evade arrest. Accordingly, I order that the sentences for these three charges to run consecutively.

118 Rajendran's aggregate sentence is therefore 19 months' imprisonment (four plus seven plus eight months respectively for Charges 1, 3 (as amended) and 4) and a $2,500 fine ($500 plus $2,000 respectively for Charges 1 and 3 (as amended)) in default of which he is to serve 18 days' imprisonment (four plus 14 days respectively).

Sasikumar's sentence

119 There is no reason to adjust Sasikumar's individual sentences for Charges 5, 6 (as amended) and 7. Where Charge 5 is concerned, going by the DJ's methodology of apportioning half of the earnings between the appellants, with the present acquittal of Rajendran on the first instance of prostitution, this means that Sasikumar actually received the full $500 for the first instance (as Rajendran was not involved) and $250 for the second instance ($500 shared equally with Rajendran), a total of $750. The DJ sentenced him on the basis that he received only $500 in total from both instances. I think that the sentence for Charge 5 (eight months' imprisonment and a fine of $1,000) is appropriate as

he benefited from the earnings from both instances of prostitution. In fact, if I apply strictly the DJ's methodology of imposing a fine that is twice the amount of the benefit received, the fine should now be increased to $1,500 (since Sasikumar's benefit is now $750 and not $500). However, I think that the existing sentence is sufficient punishment for this offence. The sentence for Charge 5 is affirmed accordingly.

120 As for the amended Charge 6, I do not think the sentence of eight months' imprisonment is manifestly excessive in the light of the prevailing sentencing principles. No adjustment is needed for the amended Charge 6 as the amendment is a merely technical one of removing Rajendran from the common intention alleged. The common intention to commit the offence with Roky still stands and the underlying offence of procurement is not diminished in any way by the amendment. Accordingly, the sentence is affirmed.

121 As for Charge 7, I repeat what I have stated in relation to Charge 4 against Rajendran. Both appellants were equally culpable in arranging for Roky to leave Singapore to evade arrest. I therefore affirm Sasikumar's sentence of eight months' imprisonment for the s 204A offence.

122 The DJ was correct in ordering the sentences for Charges 5 and 7 to run consecutively and ordering the sentence for Charge 6 (now amended) to run concurrently with these two sentences. Charge 5 and the amended Charge 6 have a clear nexus with each other as it was the procurement of V1 to provide the sexual services in the amended Charge 6 that enabled Sasikumar to receive part of the earnings in Charge 5. The aggregate sentence imposed on Sasikumar therefore remains at 16 months' imprisonment and a $1,000 fine (in default, one week's imprisonment).

Conclusion

123 In summary, my orders in these appeals are as follows:

(a) I dismiss Rajendran's appeal against his conviction on Charge 1 and allow his appeal against sentence. Rajendran's sentence for Charge 1 is reduced from eight months' imprisonment to four months' imprisonment and from a fine of $1,000 to a fine of $500 (in default, four days' imprisonment).

(b) I allow Rajendran's appeal against his conviction on Charge 2 and acquit him on the charge.

(c) I amend Charge 3 and reframe the charge as set out at [76] above. I convict Rajendran on the amended Charge 3. Based on the amended Charge 3, Rajendran's sentence is reduced from 14 months' imprisonment to seven months' imprisonment. The fine of $2,000 (in default, two weeks' imprisonment) stands.

(d) I dismiss Rajendran's appeal against his conviction and sentence on Charge 4. The sentence of eight months' imprisonment is to stand.

(e) All three sentences imposed are to run consecutively. Rajendran's aggregate sentence is therefore 19 months' imprisonment and a $2,500 fine (in default, 18 days' imprisonment).

(f) I dismiss Sasikumar's appeal against his conviction and sentence on Charge 5. The sentence of eight months' imprisonment and a fine of $1,000 (in default, one week's imprisonment) is to stand.

(g) I amend Charge 6 as set out at [101] above, convict Sasikumar on the amended Charge 6 and dismiss his appeal against conviction and sentence. The sentence of eight months' imprisonment is to stand.

(h) I dismiss Sasikumar's appeal against his conviction and sentence on Charge 7. The sentence of eight months' imprisonment is to stand.

(i) As ordered by the DJ, the sentences for Charges 5 and 7 are to run consecutively while the sentence for the amended Charge 6 is to run concurrently with these two sentences. Sasikumar's aggregate sentence remains at 16 months' imprisonment and a $1,000 fine (in default, one week's imprisonment).

124 As the appellants have been on bail, the sentences are to take effect immediately unless the parties have any application to make.

(The court hears the parties on the appellants' applications for postponement of their imprisonment sentences.)

125 Both appellants have applied through their respective counsel for a postponement of the imprisonment sentences for three weeks in order to settle their employment and business matters. Their respective bailors have no objections to these applications and understand their continuing duties as bailors. The Prosecution also does not object to these applications.

126 I allow the appellants' applications for postponement of their imprisonment sentences. Both appellants are to report at Level 4 of the State Courts at Havelock Square at 2.00pm on Wednesday, 15 September 2021, to commence serving their imprisonment sentences. As they have not paid their

respective fines, they should also do so if they do not wish to serve the default imprisonment terms.

Tay Yong Kwang
Justice of the Court of Appeal

K Jayakumar Naidu and Adrienne Grace Milton
(Jay Law Corporation) for the appellant in
Magistrate's Appeal No 9426 of 2020;
Peter Keith Fernando and Kavita Pandey (Leo Fernando LLC) for the
appellant in Magistrate's Appeal No 9427 of 2020;
Winston Man and Grace Chua (Attorney-General's Chambers) for
the respondent in Magistrate's Appeals Nos 9426 and 9427 of 2020.