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

[2022] SGHC 300

Magistrate's Appeal No 9093 of 2021/01

Between

Ewe Pang Kooi

… *Appellant*

And

Public Prosecutor

… *Respondent*

JUDGMENT

[Criminal Procedure and Sentencing — Sentencing —Sections 307(1) and 322(1) Criminal Procedure Code]
[Criminal Procedure and Sentencing — Sentencing — Date of commencement]

Version No 1: 02 Dec 2022 (11:26 hrs)

TABLE OF CONTENTS

Version No 1: 02 Dec 2022 (11:26 hrs)

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Ewe Pang Kooi
v
Public Prosecutor

[2022] SGHC 300

General Division of the High Court — Magistrate's Appeal No 9093 of 2021/01
Vincent Hoong J
14 April 2022

2 December 2022 Judgment reserved.

Vincent Hoong J:

Introduction

1 This is an appeal against sentence by the appellant in respect of a second set of criminal proceedings in the District Court concerning 643 charges which had been stood down pending the determination of the first set of criminal proceedings commenced in the High Court.

2 In 2018, the appellant was tried in the High Court on 50 charges of criminal breach of trust as an agent. Of these, 22 charges were under s 409 of the Penal Code (Cap 224, 2008 Rev Ed) ("Penal Code") and 28 charges were under s 409 of the Penal Code (Cap 224, 1985 Rev Ed) (collectively, "the CBT Offences"). The appellant's remaining 643 charges ("the Remaining Charges") were stood down. At the end of the trial, he was convicted and sentenced to an aggregate sentence of 25 years and ten months' imprisonment, with the

sentences for three of the CBT Offences ordered to run consecutively: see *Public Prosecutor v Ewe Pang Kooi* [2019] SGHC 166 at [40] ("the High Court sentence"). The High Court sentence was upheld by the Court of Appeal in *Ewe Pang Kooi v Public Prosecutor* [2020] 1 SLR 757 ("*Ewe Pang Kooi (CA)*").

3 Subsequently, the Prosecution proceeded with the Remaining Charges in the District Court. In the District Court, the appellant pleaded guilty to three charges, which are the subject of this appeal:

(a) one charge of forgery of a document punishable under s 465 of the Penal Code ("the Forgery Offence");

(b) one charge of making a false statement in a statutory declaration punishable under s 14(1)(*a*)(ii) of the Oaths and Declarations Act (Cap 211, 2001 Rev Ed) ("ODA") ("the ODA Offence"); and

(c) one charge of transferring benefits of criminal conduct under s 47(1)(*b*) of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap 65A, 2000 Rev Ed) ("CDSA") punishable under s 47(6)(*a*) of the CDSA ("the CDSA Offence").

He also consented to the remaining 640 charges being taken into consideration for the purpose of sentencing. These 640 charges comprised: (a) two charges under s 417 of the Penal Code; (b) 182 charges under s 465 of the Penal Code; (c) 235 charges under s 14(1)(*a*)(ii) of the ODA; (d) 177 charges under s 47(1)(*b*) punishable under s 47(6)(*a*) of the CDSA; and (e) 44 charges under s 47(1)(*c*) punishable under s 47(6)(*a*) of the CDSA. The district judge ("DJ") duly convicted the appellant and imposed a global sentence of four months and 25 days' imprisonment and a fine of $1,000 (in default, five days'

Version No 1: 02 Dec 2022 (11:26 hrs)

imprisonment). He ordered the imprisonment sentence to commence after the expiry of the appellant's present High Court sentence. The DJ's grounds of decision may be found in *Public Prosecutor v Ewe Pang Kooi* [2021] SGDC 291 ("GD").

The facts

4 The appellant was a Certified Public Accountant and an approved liquidator. He was the managing partner of Ewe Loke & Partners ("ELP"), a certified public accounting firm. He was also a director of E & M Management Consultants Pte Ltd ("E & M Management Consultants").[1]

5 Between February 2002 and July 2012, the appellant misappropriated a total of S$40,623,313.61 and US$147,000 from companies in which he was appointed liquidator or receiver, or to which he provided outsourced accounting services.[2]

6 The ODA, Forgery and CDSA Offences were representative of three broad categories of wrongdoing the appellant engaged in. The ODA charges arose out of the appellant's efforts to conceal his misappropriation of funds from the companies he was liquidating. In this regard, he would submit statutory declarations to the Official Receiver which contained false statements concerning the use and disposition of the assets of these companies.[3] The forgery charges similarly arose out of the appellant's efforts to conceal his acts of misappropriation by forging a number of documents, including bank

---

1 Record of Appeal ("ROA") at p 41 (SOF at para 2).

2 ROA at p 43 (SOF at para 12).

3 Respondent's submissions ("RS") at para 14; ROA at p 46 (SOF at para 28).

Version No 1: 02 Dec 2022 (11:26 hrs)

statements.[4] The CDSA charges concerned the appellant's use of the misappropriated funds for gambling, repayment of personal debts and reinstatement of the amounts he had previously misappropriated from other companies.[5] I now briefly summarise the facts pertaining to the proceeded ODA, Forgery and CDSA Offences.

The ODA Offence

7 On 30 September 2009, Hewlett-Packard appointed the appellant as a liquidator to manage the members' voluntary liquidation of its subsidiary, Compaq Asia Pte Ltd ("Compaq Asia"). The appellant opened a bank account for Compaq Asia with Maybank and was the sole signatory of the account. Compaq Asia's assets were moved into this account.[6]

8 Between 5 November 2009 and 18 March 2011, the appellant issued cheques from this account, amounting to $2,035,040, which were made payable to E & M Management Consultants' Standard Chartered Bank account, or in cash. None of the funds was used for any expenses relating to Compaq Asia.[7]

9 As a liquidator, the appellant was obliged to submit a "Form 75" to the Official Receiver and the Registrar of Companies every six months. On the last page of the form, the liquidator has to make a statutory declaration verifying that its contents are a full and true account. The liquidator also has to declare

---

4 RS at paras 4(b) and 17.

5 RS at para 18.

6 ROA at p 45 (SOF at paras 20–21).

7 ROA at p 45 (SOF at paras 22–23).

Version No 1: 02 Dec 2022 (11:26 hrs)

that he has not received or paid out any moneys apart from what is specified in the form.[8]

10 In order to conceal his acts of misappropriation, the appellant made a false statutory declaration before a Commissioner for Oaths on 15 June 2012, in respect of Compaq Asia. In this declaration, the appellant falsely stated that:

(a) the account of receipts and payments in the Form 75 contained a full and true account of his receipts and payments in the winding-up of Compaq Asia and he had not during that period received or paid any moneys on account of the company; and

(b) the particulars contained in the statement of the position in the winding-up were true to the best of his knowledge and belief.

These statements were false as the account of receipts and payments did not reflect the moneys he had misappropriated from the account of Compaq Asia, or that the said misappropriated moneys had in fact been paid to E & M Management Consultants, or in cash to the appellant. The statement of the position in the winding-up was also inaccurate as it did not reflect these discrepancies in the accounts. The appellant knew that these declarations were false.[9]

11 By his aforementioned actions, the appellant committed an offence punishable under s 14(1)(*a*)(ii) of the ODA.

---

8 ROA at p 45 (SOF at para 24).

9 ROA at pp 45–46 (SOF at paras 25–28).

Version No 1: 02 Dec 2022 (11:26 hrs)

The Forgery Offence

12 In 2007, Technology Partners International Inc, Singapore Branch ("TPI") engaged E & M Management Consultants to manage its accounting needs in Singapore as well as its Singapore bank account. For this purpose, the appellant was appointed as TPI's external accountant.[10] There were four signatories of TPI's bank account: (a) two officers from TPI, Gerald Clark and Arno Franz; (b) the appellant; and (c) a member of E & M Management Consultants, Mitsuru Morii ("Morii"). To make any withdrawal from TPI's bank account, approval from Gerald Clark was required.[11]

13 As two signatories were required for cheque withdrawals or fund transfers from the bank account, the appellant asked Morii to pre-sign blank cheques and transfer request forms. Morii did so although he was not handling the work for TPI, as he trusted the appellant. Using the pre-signed cheques, the appellant either issued cash cheques from TPI's bank account or cheques to a bank account of ELP or E & M Management Consultants that was controlled by him. There were a total of 129 transactions involving TPI's account, and the appellant did not seek approval from TPI for these withdrawals.[12]

14 Between 30 May 2011 and 17 May 2012, the appellant misappropriated a total of $1,860,000 from TPI's bank account. Between 2 June 2012 and 20 July 2012, the appellant further misappropriated a total of $510,000 from TPI's bank account. These being the subject of two of the CBT Offences. Sometime in July 2012, he forged a Standard Chartered Bank SGD Business$aver bank account statement, for the period of 1 June 2012 to 30 June

---

10 ROA at pp 46–47 (SOF at para 30).

11 ROA at p 47 (SOF at para 31).

12 ROA at p 47 (SOF at paras 32–33).

Version No 1: 02 Dec 2022 (11:26 hrs)

2012, in the name of TPI, in relation to TPI's bank account, to reflect a balance of $248,252.28, when in fact this was not true. The appellant intended for TPI's staff to believe that this forged account statement had been issued by Standard Chartered Bank, so as to cover up his misappropriation of funds by showing a balance as though no wrongdoing had taken place.[13]

15 By his aforementioned actions, the appellant committed an offence punishable under s 465 of the Penal Code.

The CDSA Offence

16 On 19 May 2010, the appellant dishonestly misappropriated $700,000 from TPI, by transferring the sum into E & M Management Consultants' bank account, which is an offence under s 409 of the Penal Code (this being the subject of one of the CBT Offences). Out of this sum, the appellant transferred $500,000 to one Tan Kim Sing ("Tan"), a gambling junket operator, by way of a cashier's order from E & M Management Consultants' bank account, for the purpose of repaying a loan. This loan arose due to credit extended by Tan to the appellant during gambling trips. By his conduct, the appellant thus committed an offence under s 47(1)(*b*) punishable under s 47(6)(*a*) of the CDSA.[14]

The decision below

17 As stated above at [3], the appellant pleaded guilty to the ODA, Forgery and CDSA Offences, and consequently, the DJ convicted him and sentenced him to an aggregate sentence of four months and 25 days' imprisonment and a

---

13 ROA at pp 47–48 (SOF at paras 35–38).

14 ROA at p 48 (SOF at paras 40–42).

Version No 1: 02 Dec 2022 (11:26 hrs)

fine of $1,000, with five days' imprisonment in default, with the following breakdown:

(a) for the Forgery Offence: four months' imprisonment;

(b) for the ODA Offence: 25 days' imprisonment and a fine of $1,000 (in default, five days' imprisonment); and

(c) for the CDSA Offence: four months' imprisonment.

The sentences for the Forgery and ODA Offences were ordered to run consecutively while the sentence for the CDSA Offence was ordered to run concurrently.

18 The DJ further ordered that the aggregate imprisonment sentence of four months and 25 days ("the District Court imprisonment sentence") was to commence only upon the expiry of the appellant's High Court sentence (see [2] above). It is against this part of the DJ's order that the appellant has brought this appeal.

The parties' cases

The appellant's submissions

19 At the outset, it bears noting that the appellant does not take issue with the individual sentences imposed by the DJ for the Forgery, ODA and CDSA Offences.[15] Neither does he challenge the DJ's decision to run the sentences for the Forgery and ODA Offences consecutively and the sentence for the CDSA Offence concurrently, to arrive at an aggregate sentence of four months and

[15] Appellant's submissions ("AS") at para 2.

Version No 1: 02 Dec 2022 (11:26 hrs)

25 days' imprisonment and a fine of $1,000 (in default, five days' imprisonment).[16]

20 The appellant's sole point of contention in this appeal is that the DJ erred in ordering the District Court imprisonment sentence to commence upon the expiry of the High Court sentence that he is presently serving. Instead, according to the appellant, the District Court imprisonment sentence should be ordered to commence on the date the appellant was sentenced by the DJ.[17] In this regard, the appellant advances three main submissions.

21 First, applying the one-transaction rule in *Mohamed Shouffee bin Adam v Public Prosecutor* [2014] 2 SLR 998 ("*Shouffee*"), the Forgery and ODA Offences were part of the same transaction as they were committed in order to cover-up the acts of misappropriation which formed the basis of the CBT Offences and are in that sense "ancillary" to the CBT Offences. The DJ had thus erred by sentencing the appellant as though the Forgery and ODA Offences were entirely separate and distinct from the CBT Offences.[18]

22 Second, the DJ failed to consider or give effect to Chan Seng Onn J's (as he then was) reasoning in the High Court proceedings concerning the CBT Offences that an imprisonment sentence of more than 25 years and ten months would effectively result in imposing a life sentence on the appellant, and would be in contravention of the totality principle.[19]

---

16 AS at para 3.

17 AS at para 4.

18 AS at paras 51–52.

19 AS at paras 53–57.

Version No 1: 02 Dec 2022 (11:26 hrs)

23 Third, this was not an exceptional case which justified two additional sentences being ordered to run consecutively as that would effectively result in the appellant having to serve five consecutive sentences.[20]

24 Further, the appellant argues that the Prosecution's administrative decision to stand down charges, proceed with them subsequently in another court and seek the sentences of the stood down charges to commence upon the expiry of the existing aggregate sentence could potentially produce perverse results by operation of s 307(1) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC"). The appellant illustrates this with the following example. If an accused person faces six charges, a court in sentencing the accused for all six charges at the same time may form the view that only two, or exceptionally three, sentences ought to run consecutively to one another. However, the Prosecution could choose to first stand down three charges and proceed on the other three, of which two sentences would have to run consecutively, applying s 307(1) of the CPC. It could then subsequently proceed with the remaining three, of which two sentences would also have to run consecutively, and ask for all four sentences to run consecutively. This, the appellant asserts, was in effect the DJ's decision which circumvents the one-transaction rule in *Shouffee*.[21]

The Prosecution's submissions

25 First, the Prosecution argues that the DJ's order did not contravene the one-transaction rule. This is because s 307(1) of the CPC mandates that a person who has been sentenced to imprisonment terms for three or more distinct charges "at one trial" must have the sentences for at least two charges run

---

20 AS at para 58.

21 AS at para 60.

Version No 1: 02 Dec 2022 (11:26 hrs)

consecutively. The words "at one trial" in s 307(1) apply only to the proceeded charges before a sentencing court in a concomitant sentencing hearing. It therefore follows that, for the purpose of applying s 307(1) in the present case (*ie*, concerning the Remaining Charges that were brought before the District Court), the DJ was correct to disregard the High Court sentence. In fact, the DJ was *required* by operation of s 307(1) of the CPC to order at least two sentences – in this case, the sentences for the Forgery and ODA Offences – to run consecutively.[22]

26 The Prosecution also points out that it does not have full discretion as to whether and when an offender's charges are to be stood down at any sitting in criminal proceedings. The Court of Appeal in *Lim Chit Foo v Public Prosecutor* [2020] 1 SLR 64 made it clear at [24] that the standing down of charges is subject to the supervisory jurisdiction and discretion of the court under s 238 of the CPC. In granting an application for charges to be stood down, a court must be satisfied that there is reasonable cause making this necessary or advisable, having regard to the facts of the case. In any event, it was open to the DJ to order the sentences for the Remaining Charges to commence either immediately and thus concurrently with the High Court sentence, or consecutive to the High Court sentence.[23]

27 As regards the one-transaction rule in *Shouffee*, the Prosecution argues that the Forgery, ODA and CDSA Offences are not mere extensions of the appellant's CBT Offences, but constitute an entirely separate dimension to his offending conduct.[24] These offences were committed by the appellant in order

---

22 RS at paras 47–48.

23 RS at paras 49–51.

24 RS at paras 55–60.

Version No 1: 02 Dec 2022 (11:26 hrs)

to ensure that the CBT Offences would continue to remain undetected, or to unlock the monetary gain from those offences. Indeed, they had allowed him to stave off discovery by his victims and the authorities for a period of about ten years.[25]

28 In addition, the DJ's order for the sentences of the Forgery and ODA Offences to run consecutively with the High Court sentence does not offend the totality principle, having regard to the gravity of the offences and the overall criminality of the appellant as the offences were numerous and spanned a decade.[26]

29 Finally, on the appellant's contention that the High Court sentence operates as a ceiling to limit the DJ's sentencing discretion, the Prosecution submits that:

(a) this argument failed to account for the fact that the High Court sentence was meted out only in respect of the appellant's CBT Offences without consideration of the Forgery, ODA and CDSA Offences; and

(b) an offender's old age cannot be relied upon as "carte blanche" to commit serious crimes with the expectation that their life expectancy operates to limit the duration of the sentence that can be imposed by a sentencing court.

Ultimately, the Prosecution submits that the seriousness of the appellant's offences and the principles of general and specific deterrence must operate such

---

25 RS at para 56.

26 RS at paras 61–70.

Version No 1: 02 Dec 2022 (11:26 hrs)

as to override the mitigating value of his advanced age. In this regard, the appellant committed 183 forgery, 236 ODA, 222 CDSA and two cheating offences, in addition to the 50 CBT Offences he had previously been sentenced for. The appellant's advanced age at the time of sentencing was moreover a consequence of the period of time for which he managed to conceal his fraudulent activities. If the appellant's argument is accepted, the sentences for the remaining charges would effectively be rendered a nullity.[27]

My decision

30 The sole issue in this appeal for my determination is whether the DJ was correct in ordering the District Court imprisonment sentence to commence only upon the expiry of the prior sentence of imprisonment (*ie*, the High Court sentence).

The interaction of ss 307(1) and 322(1) of the CPC

31 I begin by considering a preliminary point of interest concerning the interaction between ss 307(1) and 322(1) of the CPC, which was an issue that arose in the court below though not contested in this appeal.

32 For ease of reference, I set out the relevant statutory provisions.

33 Section 307(1) of the CPC provides for consecutive sentences in certain cases:

> **Consecutive sentences in certain cases**
>
> **307.**—(1) Subject to subsection (2), if at one trial a person is convicted and sentenced to imprisonment for at least 3 distinct offences, the court before which he is convicted must order the sentences for at least 2 of those offences to run consecutively.

---

27 RS at paras 72–79.

Version No 1: 02 Dec 2022 (11:26 hrs)

34 Section 322(1) of the CPC provides that where a person who is undergoing a sentence of imprisonment is sentenced again to imprisonment, the sentencing court has the discretion to order the latter sentence to commence either immediately or at the end of the imprisonment to which the offender was previously sentenced:

> **Commencement of sentence of imprisonment on prisoner already undergoing imprisonment**
>
> **322.**—(1) Where a person who is an escaped convict or is undergoing a sentence of imprisonment is sentenced again to imprisonment, the latter sentence of imprisonment must begin either immediately or at the end of the imprisonment to which he was previously sentenced, as the court awarding the sentence directs.

35 In the District Court, the parties took the following positions in their submissions regarding the time of commencement of the individual sentences for the Forgery, ODA and CDSA Offences (GD at [75]):

(a) The Prosecution submitted for:

(i) the sentence for the CDSA Offence to commence immediately (*ie*, on the day the sentence was passed); and

(ii) the aggregate sentence for the Forgery and ODA Offences to commence at the expiry of the High Court sentence which the appellant is serving.

(b) The appellant submitted that the three individual sentences for the Forgery, ODA and CDSA Offences should be ordered to run immediately (*ie*, on the day the sentence was passed).

36 The DJ disagreed with the appellant's and Prosecution's positions. He noted that the High Court decision of *Public Prosecutor v Hang Tuah bin*

Version No 1: 02 Dec 2022 (11:26 hrs)

Jumaat [2016] 2 SLR 527 (*"Hang Tuah"*) clearly demonstrated that s 307(1) of the CPC must be applied first before the sentencing court can proceed to consider s 322(1) of the CPC (GD at [77]). In this connection, both the appellant's and Prosecution's positions were unsatisfactory because (GD at [76]):

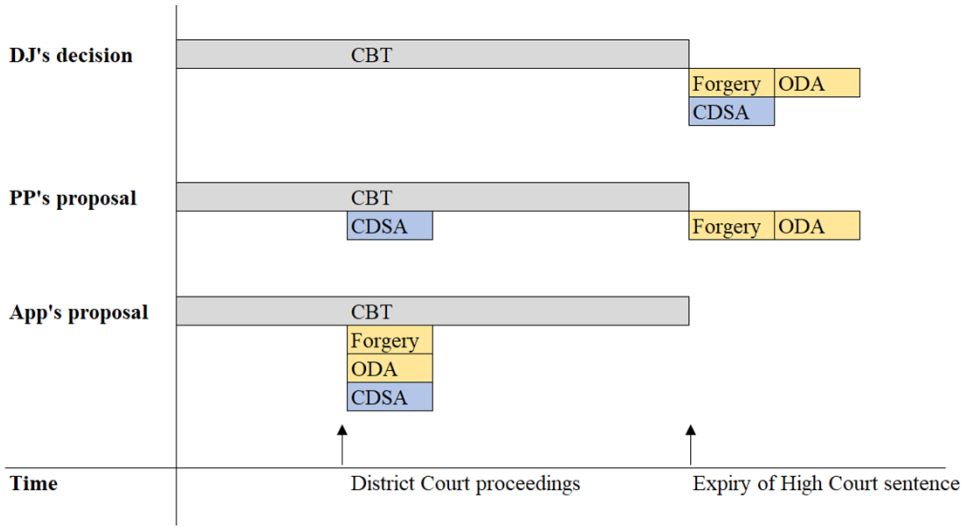
(a) On one hand, the appellant's position failed to apply s 307(1) of the CPC at all.

(b) On the other hand, the Prosecution's position represented a modified application of s 307(1) of the CPC that was contrary to the plain wording of the provision.

37 The DJ held that on a proper application of ss 307(1) and 322(1) of the CPC: (a) the sentences for the Forgery and the ODA Offences should run consecutively and the sentence for the CDSA Offence should run concurrently; and (b) the aggregate District Court imprisonment sentence should commence only upon the expiry of the High Court sentence.

Version No 1: 02 Dec 2022 (11:26 hrs)

38 To my mind, the parties' positions and the DJ's decision may be best illustrated as follows:



39 The correctness of the positions taken by the parties hinges on the proper interpretation of the term "latter sentence of imprisonment" in s 322(1) of the CPC. In this regard, the term could potentially be understood to mean either:

(a) **each individual sentence** of imprisonment that the offender is sentenced to while serving a prior imprisonment term; or

(b) the **aggregate sentence** of imprisonment that the offender is sentenced to while serving a prior imprisonment term.

40 The positions taken by both the Prosecution and the appellant in the court below inherently adopt the former interpretation. The appellant's position assumes that the effect of s 322(1) of the CPC is that the court may order each individual sentence to commence immediately on the date of sentencing. The Prosecution's position assumes that the Court, in exercising its discretion under

Version No 1: 02 Dec 2022 (11:26 hrs)

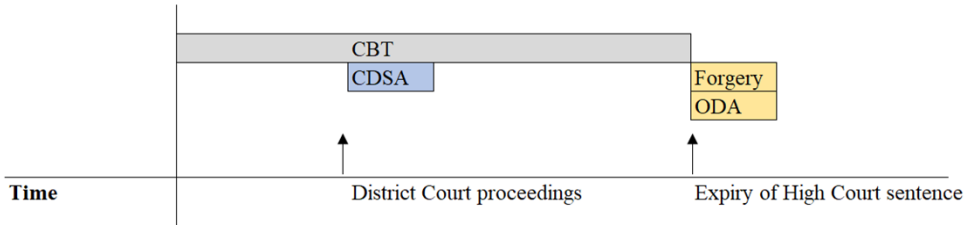
s 322(1), is making the decision *in respect of each individual sentence*. That is the only way in which the commencement date of the sentence for the CDSA Offence on the one hand and the sentences for the Forgery and ODA Offences on the other could be different, which is the result proposed by the Prosecution.

41 In my view, both parties' positions in the court below were rightly rejected by the DJ. This is because they both adopted an incorrect interpretation of the term "latter sentence of imprisonment". It is clear from the binary options in s 322(1) of the CPC that the term "latter sentence of imprisonment" refers to the aggregate of the subsequent individual sentence(s), *ie*, the interpretation at [39(b)] above.

42 If one assumes that the term is taken to refer to *each individual sentence* that the offender is subsequently sentenced to, then the court only has two options available under s 322(1) in respect of each individual sentence. It can either order each sentence to commence: (a) immediately upon sentencing; or (b) at the expiry of the imprisonment term that the offender is presently serving. Thus, where the second sentencing court is dealing with three offences, the court may choose to order all three individual sentences to commence immediately upon sentencing, which would result in an outcome similar to the appellant's proposal set out above at [35(b)]. The court may also choose to order one individual sentence to commence immediately upon sentencing, and the remaining two sentences to commence at the expiry of the imprisonment term being served. This would result in the remaining two sentences effectively being run concurrently with one another. This is because there is no option provided for under s 322(1) for the court to order that the subsequent sentences run one

Version No 1: 02 Dec 2022 (11:26 hrs)

after the other. To read the provision in any other way would simply distort the plain language used. An illustration of this result would be as follows:



43 Therefore, the term "latter sentence of imprisonment" can **only** refer to the **aggregate** sentence of imprisonment that the accused is subsequently sentenced to. This is implicitly the approach which the DJ took in making his decision.

44 It is thus eminently correct in principle to apply s 307(1) of the CPC first, to determine the sentences which are to run consecutively and concurrently. Only then, when the aggregate sentence is derived, can s 322(1) of the CPC be applied.

Exercise of court's discretion under s 322(1) of the CPC

45 I now turn to the exercise of the court's discretion under s 322(1) of the CPC. The guiding principles were set out in the judgment of Chao Hick Tin JA (as he then was) in *Hang Tuah* at [25]–[34], which I outline as follows:

(a) First, the discretion conferred under s 322(1) must undoubtedly be exercised judiciously.

Version No 1: 02 Dec 2022 (11:26 hrs)

(b) Second, the court is not entitled to backdate the sentence of any offender who is an escaped convict or is undergoing a sentence of imprisonment.

(c) Third, in deciding whether to order a subsequent term of imprisonment to run immediately or at the expiration of the earlier term of imprisonment, the court should have regard to whether the subsequent offence(s) arose in the "same transaction" as the earlier offence(s), and also the totality of the sentence to be served. Conversely, the fact that the subsequent offence(s) arose in different transaction(s) is a weighty consideration that warrants the imposition of an order that the subsequent term of imprisonment should start at the expiration of the earlier term of imprisonment.

(d) Fourth, the court ultimately has a primary duty to determine the appropriate sentence which would best ensure that the ends of justice are met. No single consideration can conclusively determine the proper sentence and, in seeking to arrive at the proper sentence, the court must balance many factors, sometimes rejecting some. One factor that the court should consider is whether the totality of the sentence served is proportionate to the inherent gravity of all the offences committed by the offender. Hence, while the individual sentence for a particular offence may be perfectly appropriate, the cumulative effect of the sentences may well result in a total term of imprisonment that is disproportionate to the overall criminality of the offender.

(e) Fifth, in contemplating the totality of the sentences imposed on the offender, the trial judge should consider this question: if all the offences had been before him, would he still have passed a sentence of

Version No 1: 02 Dec 2022 (11:26 hrs)

similar length? If not, the judge should adjust the sentence imposed for the latest offence in light of the aggregate sentence. Whether this is done by imposing a shorter sentence to run consecutively or a long sentence to commence immediately, does not at the end of the day make much difference, although in principle, the judge should, as far as possible, try to impose a sentence that is reflective of the gravity of the latest offence(s) in question.

46 In particular, the considerations that are pivotal in the present case are:

(a) whether the subsequent offences arose in the "*same transaction*" as the earlier offences (the "one-transaction rule"); and

(b) whether the *totality of the sentence* imposed is proportionate to the inherent gravity of the offences (the "totality principle").

47 I address each of these two considerations in turn.

The one-transaction rule

48 I deal first with the one-transaction rule. *Shouffee* provides helpful guidance in this regard, even though it was not cited in *Hang Tuah*. As a general rule, where multiple offences are found to be proximate as a matter of fact but violate different legally protected interests, then they would not be regarded as forming a single transaction: *Shouffee* at [31]. In applying this evaluative rule, the sentencing judge should ultimately consider whether the offender ought to be doubly punished in the circumstances: *Shouffee* at [32] and [39].

49 In *Hang Tuah*, Chao JA held that the DJ had erred in the exercise of his discretion under s 322(1) of the CPC. Chao JA stated that the fact that the subsequent offences arose in *different transactions* from the earlier offences was

Version No 1: 02 Dec 2022 (11:26 hrs)

a "weighty consideration" that warranted the subsequent term of imprisonment commencing at the expiration of the earlier term of imprisonment (at [46]). This principle was not disputed by the appellant in this case.

50 Furthermore, a related but distinct reason which Chao JA gave for his decision was that the district judge's decision "effectively rendered the [latter sentence] nugatory" (at [46]). Let me briefly summarise *Hang Tuah* which involved subsequent offences which were wholly unrelated to the earlier offences:

(a) At the time the subsequent offences were dealt with, the offender was in the midst of serving an imprisonment term of 12 years in respect of two previous convictions – one was for an offence of rape under s 375(1)(*b*) punishable under s 375(2) of the Penal Code, and the other was for an offence of driving a lorry without a valid licence under s 35(3) and punishable under s 131(2) of the Road Traffic Act (Cap 276, 2004 Rev Ed) ("RTA"). The offender had been convicted of both charges following a trial (at [3] and [6]).

(b) Prior to sentencing the offender for those two offences, the trial judge had noted that he also faced several other charges relating to sexual offences and other RTA offences. The offender declined an offer to have the remaining charges taken into consideration for the purposes of sentencing, and he was thus only sentenced for the offences of rape and driving a lorry without a valid licence (at [7]–[8]).

(c) The remaining charges were dealt with about two to three years later. The offender was eventually convicted of one charge under s 376A(1)(*a*) punishable under s 376A(2) of the Penal Code following a trial. Before he was sentenced for that charge, he pleaded guilty to five

Version No 1: 02 Dec 2022 (11:26 hrs)

further charges under the RTA and the Films Act (Cap 107, 1998 Rev Ed), with four other charges under the RTA being taken into consideration (at [11]–[12]).

(d) At the sentencing stage, the DJ ordered three imprisonment terms to run consecutively, resulting in an aggregate sentence of four years and 11 months. The DJ further exercised his discretion under s 322(1) of the CPC and ordered that the imprisonment term of four years and 11 months commence immediately upon sentencing. In practical terms, this meant that the latter imprisonment term was wholly subsumed within the previous imprisonment term of 12 years, thus rendering the latter imprisonment term nugatory (at [14]–[15] and [46]).

(e) On appeal, Chao JA held that the DJ erred in the exercise of his discretion under s 322(1) for the reasons stated above, and ordered that the subsequent imprisonment term commence at the expiration of the existing imprisonment term.

51 On the facts of the present case, I am of the view that the ODA and Forgery Offences are not part of the same transaction as the CBT Offences, as they relate to different protected interests and have a different purpose as compared to the CBT Offences. The mere fact that the ODA and Forgery Offences are related to and not completely divorced from the CBT Offences does not detract from this analysis.

52 Specifically, the CBT Offences were an infringement of the *property interests* of the *companies* which the appellant was appointed liquidator or receiver of, or had provided services to. In contrast:

Version No 1: 02 Dec 2022 (11:26 hrs)

(a) The ODA Offence involved a false statutory declaration to the *Official Receiver*, and relates to the accused's breach of his obligations as a liquidator *vis-à-vis* the Official Receiver.

(b) The Forgery Offence related to the accused's management of TPI's bank account. The accused had forged Standard Chartered Bank statements pertaining to TPI's account to conceal his misappropriations. In my view, the *purpose* of this offence is not so proximate to the CBT Offences that they constitute a single transaction. The CBT Offences related to the accused's cheque withdrawals without approval from TPI, the purpose of which was the appellant's acquisition of funds. The purpose of the forgery was distinct, being the avoidance of detection by TPI.

53 It is also significant that Chan J, in sentencing the appellant for the CBT Offences, ascribed weight to the appellant's efforts to avoid detection specifically in the form of using moneys from the bank accounts of his various victims to reinstate the amounts taken from other companies. Although the appellant submits[28] that the Prosecution had, in its written submissions concerning the CBT Offences dated 28 May 2019, argued that one of the aggravating factors was the use of false account documents and declarations, this factor was not considered in Chan J's sentencing decision. This is relevant to the inquiry of whether Chan J would still have passed a sentence of similar length if all the offences had been before him, as per the approach set out at [45] above.

---

[28] AS at para 18.

Version No 1: 02 Dec 2022 (11:26 hrs)

54 I thus agree with the Prosecution that the Forgery and ODA Offences reflected an entirely separate dimension of the appellant's offending conduct.[29] They arose out of the appellant's deliberate and calculated efforts to conceal his CBT Offences from the relevant stakeholders, including the victim companies and the authorities.

55 It is also notable that on the facts of this case, the High Court sentence is far longer than the District Court imprisonment sentence. If the District Court imprisonment sentence were ordered to commence immediately, this would result in the same situation that Chao JA sought to avoid in *Hang Tuah* (see [50(d)] above), where the further term of imprisonment is wholly subsumed within the earlier term of imprisonment. Given that the ODA and Forgery Offences do not form part of the same transaction as the CBT Offences, this result would not be satisfactory.

56 It is not necessary to consider whether the CDSA Offence was a part of the same transaction as the CBT Offences, as the DJ had ordered the imprisonment term in respect of the CDSA Offence to run concurrently, a decision which the parties do not dispute. However, for completeness, it bears mentioning that while the moneys involved in the CDSA Offence flow from one of the CBT Offences, the CDSA Offence relates to a distinct legally protected interest. As observed recently by the High Court in *Public Prosecutor v Juandi bin Pungot* [2022] SGHC 70 ("*Juandi*") at [88], citing *Zhou Haiming v Public Prosecutor and other appeals* [2017] 4 SLR 247 at [45], the legal interest engaged where CDSA offences are concerned is the public interest in making it as challenging as possible for criminals to dispose of their criminal proceeds.

---

[29] RS at para 57.

Version No 1: 02 Dec 2022 (11:26 hrs)

This is entirely distinct from the legally protected property interest engaged by the CBT Offences.

The totality principle

57 I now turn to the totality principle. In *ADF v Public Prosecutor and another appeal* [2010] 1 SLR 874 at [146] (cited in *Shouffee* at [80]), it was held that where the overall criminality of the offender's conduct cannot be encompassed in two consecutive sentences, further consecutive sentences ought to be considered. For instance, this may be the case where the offender is persistent or habitual, where there is a pressing public interest concern in discouraging the type of criminal conduct being punished, where there are multiple victims and where other peculiar cumulative aggravating features are present.

58 In *Hang Tuah*, after ordering that the subsequent imprisonment term commence after the expiry of the former term, Chao JA applied the totality principle and reduced the overall duration of the subsequent imprisonment term to two years, from four years and 11 months. Chao JA reasoned that had the offender taken up the initial proposal for the offences (for which the four years and 11 months' imprisonment term was meted out) to be taken into consideration for the purposes of sentencing in relation to the first set of proceedings concerning the offences of rape and driving without a valid licence, the sentencing court "would probably have just marginally enhanced the aggregate sentence imposed on the [offender]" (at [47]).

59 In my view, the application of the totality principle in the present case does not tip the balance in favour of ordering the District Court imprisonment

Version No 1: 02 Dec 2022 (11:26 hrs)

sentence to commence immediately, and in fact supports the opposite conclusion. I agree with the Prosecution that:[30]

(a) the appellant was a persistent offender who engaged in a lengthy course of offending over about ten years;

(b) there is a public interest need to deter the offences committed by the appellant as he stood in a position of trust in relation to his clients, as well as the public;

(c) there are multiple victim companies in this case; and

(d) the appellant committed more offences to cover up the fraud, which was an aggravating factor and increased his overall criminality.

60 In particular, on the issue of the appellant's advanced age, I am in broad agreement with the Prosecution's arguments.[31] Case law has established that a sentencing court should be mindful of an offender's advanced age where a substantial term of imprisonment is contemplated in order not to breach the totality principle: *Public Prosecutor v UI* [2008] 4 SLR(R) 500 at [78]. However, as the Court of Appeal observed in *Ewe Pang Kooi (CA)* at [10], there are limits to this principle. The appellant argues that Chan J had taken the view that although a sentence of 28 years' imprisonment was commensurate with his overall criminality *in respect of the 50 CBT Offences*, given his advanced age at the time, any sentence exceeding 25 years and ten months' imprisonment (*ie*, the High Court sentence) would effectively be imposing a life sentence which

30 RS at para 67.

31 RS at paras 75–78.

Version No 1: 02 Dec 2022 (11:26 hrs)

would not be in line with the totality principle.[32] In my judgment, the appellant's arguments are without merit.

61 First, as acknowledged by the appellant himself, in arriving at the High Court sentence, Chan J had only considered the appellant's overall criminality *in respect of the 50 CBT Offences*. It is undisputed that the Remaining Charges were not considered by Chan J and rightly so. It is wrong to view the High Court sentence as a bright line which if crossed would necessarily entail imposing a life sentence on the appellant which would fall afoul of the totality principle. At the time of sentencing for the second set of proceedings, the court must undertake *anew* the exercise of determining whether the totality principle would be infringed taking into consideration the additional dimension to the appellant's offending represented by the Forgery, ODA and CDSA Offences.

62 Second, the gravity of the appellant's offences and the principles of general and specific deterrence must certainly operate to override the mitigating value of his advanced age. As the Prosecution points out, the appellant committed 183 forgery Offences, 236 ODA Offences, 222 CDSA Offences and two cheating offences, in addition to 50 CBT Offences for which he has already been sentenced.[33] Furthermore, as recognised by the Court of Appeal when affirming the High Court sentence (see *Ewe Pang Kooi (CA)* at [10]), the appellant's advanced age at the time of sentencing was simply due to his success in keeping his fraudulent activities concealed for a significant period of time. It would therefore be perverse if the appellant could now rely on his advanced age for any further moderation of his sentence.

---

32 AS at para 55.

33 RS at para 76.

Version No 1: 02 Dec 2022 (11:26 hrs)

63 Importantly, I also note that the District Court imprisonment sentence of four months and 25 days' imprisonment is relatively short and could be described as an appropriate "marginal enhance[ment]" (as described in *Hang Tuah* at [47]) of the overall sentence in respect of the CBT Offences and was certainly not crushing.

64 Finally, I address the appellant's argument that allowing the District Court imprisonment sentence to commence after the expiry of the High Court sentence would be tantamount to five sentences being run consecutively and was not justified in the present case. The appellant suggests that if the Forgery and ODA Offences had been before Chan J, he would not have ordered five sentences to run consecutively. The crux of the appellant's objection here is that the Prosecution's administrative decision to stand down charges and proceed with them later on, would circumvent the principle enunciated in *Shouffee* that only in an "exceptional" case would the sentencing court run "more than two sentences consecutively" (at [81(j)]).[34]

65 I am unable to agree with the appellant's submission. First, given the severity of the offences in this case, and the fact that they do not form part of the same transaction and engage different legal interests, ordering more than three sentences to run consecutively is entirely commensurate. Indeed, it is not without precedent that in certain cases where particularly egregious offending conduct is involved, the courts have ordered *more* than two sentences to run consecutively. In the recent case of *Juandi*, the High Court ordered six sentences for offences including criminal breach of trust, CDSA offences and corruption to run consecutively. Notably, in *Juandi*, the offender was one of the masterminds behind a large-scale conspiracy to misappropriate gas oil worth

[34] AS at para 58.

Version No 1: 02 Dec 2022 (11:26 hrs)

around $128m belonging to Shell Eastern Petroleum Pte Ltd from its facility, over a period of more than a decade.

66 Second, the appellant's fundamental objection from principle is misplaced – regardless of whether all the charges had proceeded before Chan J or not, the inquiry would remain the same. This is because the court's exercise of its discretion under s 322(1) of the CPC is informed by the *same considerations*, being the one-transaction rule and the totality principle. Even if the sentences in respect of the later proceedings had to be run consecutively by virtue of s 307(1) of the CPC, the court has the discretion under s 322(1) to order the sentences for those offences to begin immediately, taking into account*, inter alia*, the one-transaction rule and totality principle. There is thus no circumvention of the *Shouffee* principles, which have in fact been encapsulated within the s 322(1) inquiry. An offender would hence not suffer any prejudice arising from the Prosecution's administrative decision.

67 Even taking the appellant's case at its highest, I am unable to identify any potential prejudice that could arise as a result of the Prosecution's administrative decision. I illustrate my point with an example. Assume an accused person faces a set of six charges, which in fact formed part of the same transaction. The Prosecution chooses to proceed with the charges in two separate proceedings involving three charges each. The three less severe charges are proceeded with first, and the accused is sentenced to, and begins serving, the imprisonment term for those charges. Subsequently, while the accused is serving his sentence, and towards the tail end of his sentence, the three more severe charges are proceeded with. By operation of s 307(1) of the CPC, the court has to order the sentences for at least two of the three offences to run consecutively. If the second sentencing court, in exercising its discretion under s 322(1) of the CPC, deems that it would not have passed a global sentence of

Version No 1: 02 Dec 2022 (11:26 hrs)

similar length if all the offences had been before it at once, the court can choose to impose a shorter sentence and order it to run following the expiry of the first imprisonment term or a long sentence and order it to commence immediately (as per the approach in *Hang Tuah* at [34], set out at [45] above). There is thus no lacuna here in which the Prosecution's administrative decision to proceed with different charges at different times would result in perverse outcomes.

Conclusion

68 For the reasons above, the appeal is dismissed.

Vincent Hoong
Judge of the High Court

Tan Zhengxian Jordan and Leong Hoi Seng Victor (Audent Chambers LLC) (instructed), Tay Jia Wei Kenneth (Cavenagh Law LLP) for the appellant;
Hon Yi and Gerald Tan Jiamin
(Attorney-General's Chambers) for the respondent.

Version No 1: 02 Dec 2022 (11:26 hrs)