IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 250

Magistrate's Appeal No 9217 of 2019

Between

Michael Frank Hartung

… *Appellant*

And

Public Prosecutor

… *Respondent*

JUDGMENT

[Criminal Law] — [Offences] — [Sexual offences]
[Criminal Law] — [Statutory offences]
[Criminal Procedure and Sentencing] — [Sentencing] — [Principles]

TABLE OF CONTENTS

Hartung, Michael Frank
v
Public Prosecutor

[2020] SGHC 250

High Court — Magistrate's Appeal No 9217 of 2019
Aedit Abdullah J
4 September, 13 November 2020.

13 November 2020 Judgment reserved.

Aedit Abdullah J:

Introduction

1 These are my reasons for dismissing this appeal against the conviction of the Appellant on two charges under s 376D(1)(*c*) of the Penal Code (Cap 224, 2008 Rev Ed) ("Penal Code"), for distribution of information with the intention of promoting unlawful conduct under s 376C of the Penal Code, specifically, by providing information about child sex tours to undercover officers on two different occasions. The Appellant, who was represented below, argued this appeal on his own.

Background

2 The Appellant, a German national who has apparently lived in Singapore and Asia for some time, was previously involved in the financial industry, and

had since set up a tour agency, ERASIG LLP ("Erasig"). It appears from the Appellant's answers while under cross-examination that Erasig provided the administrative and logistical aspects of tours it organised, including but not limited to transportation, accommodation, entrance fees for sightseeing tours, and travel insurance.

Events relating to the first charge

3 In respect of the first charge, the Appellant had communications on Yahoo Messenger in which an undercover police officer, Prosecution Witness 8 ("PW8"), using the username "jacksonfong4", asked him to organise a tour for a group of men where virgin mid-teen girls would stay overnight with them. The Appellant, in response, suggested, *inter alia*, a "3 day tour including individual travel guide/compangnion [*sic*] all included" costing "1500 p[esos]". This communication led to a meeting in September 2015 at a cafe in a shopping mall, between the appellant, PW8, and Prosecution Witness 6 ("PW6"), another undercover police officer. Various matters relating to a commercial sex tour in the Philippines were communicated by the Appellant to the two undercover officers, which eventually became the subject matter of the first charge.

Events leading to the second charge

4 Separately, the Appellant also communicated with a persona going by the username "Darkthrone" (originally PW8 but subsequently at the meeting below, Prosecution Witness 9 ("PW9")) on a forum for those engaging in bondage and similar activities. It was conveyed during such communications that "Darkthrone" had a sexual preference for "young blood between 14 to 18 [years old]", and "Darkthrone" asked if the Appellant was planning any tours in Asia in which they could "meet to [torture] young blood together". The Appellant indicated that this could be done and suggested a physical meeting.

Thereafter, two undercover officers, PW9 and Prosecution Witness 10 ("PW10"), posing as two persons interested in the tour, met with the appellant at a pub on 15 April 2016. Various matters relating to a commercial sex tour, that eventually formed the subject matter of the second charge, were also discussed at this meeting.

5 The names and identities of PW6, PW8, PW9, and PW10 are subject to a gag order and may not be disclosed.

The Decision Below

6 The District Judge convicted the Appellant of the two charges and sentenced him to 36 and 30 months' imprisonment for the first and second charges respectively, with the sentences running consecutively for a total of 66 months. The District Judge reached his decision after finding that the Prosecution had proven its case beyond reasonable doubt. The Appellant, even before the meetings, was aware of the interest expressed by the undercover officers' personae in commercial sex with minors overseas, through (a) chats on online messaging, and (b) the website on which he interacted with "Darkthrone", which was a website for individuals with an interest in bondage and other such sexual acts. Where there was conflict, the evidence of the undercover officers was preferred to that of the Appellant.

Summary of the Appellant's Arguments

7 The Appellant took issue with his conviction below on various points.

8 In respect of the evidence led by the Prosecution, the Appellant alleged that the investigations were based on false information. The undercover agents involved were unreliable witnesses. No expert evidence was given as to what

was discussed, only the testimony from the undercover agents. No other media was found, as might have been expected from the arrest of an actual paedophile. It was also alleged that the Appellant did not bring up the topic of sex with minors; he had in fact stopped the conversation and terminated contact. Nothing was said about minors; any reference to minors came only from the undercover officers. The officers were contradictory about what was said at the meetings. A transcript was available only for the meeting covered by the second charge. it was further asserted that the reference to "young blood" was not about sex with minors, but about BDSM, *i.e.* bondage, discipline, sadism and masochism.

9 The Appellant also argued that no independent offence is created by the mere distribution of information. The crux of this contention is that the distribution of information, without more, is not, and should not be, an offence. In the present case, no victim was harmed, no follow-up action occurred, no outcome arose from the discussions, and no danger was posed to any parties. No information was conveyed to third-parties, and no charges of child abuse or human trafficking were made out. In fact, the charges against him were said to be only afterthoughts. It was further contended that if too broad a reading was used, even the undercover agents and journalists covering the topic would also be committing offences under s 376D of the Penal Code. Fundamentally, the Appellant takes the position that something more than mere speech should be required to make out an offence.

10 I note for completeness that the Appellant also argued that organising tours involving sex was not an offence, and should not be treated as such.

11 As regards the sentences imposed, the Appellant argued that the sentences should be concurrent. There was also reference made to the officers

supposedly obtaining bonuses for successfully making an arrest, though no evidence was provided for this claim.

Summary of the Respondent's Arguments

12 The Respondent defends the conviction and sentences imposed. It is emphasised that the Appellant did not deny much of the communications and what was said. The various explanations put forward below by the Appellant should be rejected, namely (a) that he had a legitimate business interest leading up to and during the meetings, (b) that he was not actually interested in promoting the conduct of commercial sex tours involving minors, (c) that his termination of the communications showed his lack of intention, (d) that he had only played along by providing general information, and (e) that he had been instigated and/or entrapped by the undercover officers to commit the offences.

The Decision

13 I am satisfied, having considered the evidence, that the appeal should be dismissed. I am also satisfied that the sentences imposed should be affirmed, and that the running of the sentences ordered by the District Judge was appropriate.

Analysis

14 This judgment addresses the issues raised in the following sequence:

(a) The appropriate interpretation of the statutory text;

(b) The evidence supporting and refuting each charge; and

(c) The sentences imposed.

The statutory provision

15 Section 376D(1)(*c*) of the Penal Code reads:

> (1) Any person who –
>
> […]
>
> (*c*) prints, publishes or distributes any information that is intended to promote conduct that would constitute an offence under section 376C, or to assist any other person to engage in such conduct,
>
> shall be guilty of an offence.

16 The constituent elements of charges of the type against the Appellant are thus, *per Chan Chun Hong v Public Prosecutor* [2016] 3 SLR 465 ("*Chan Chun Hong*") at [128]:

> (a) To print, publish or distribute information; and
>
> (b) that information is intended to promote conduct that would constitute an offence under s 376C [of the Penal Code] or assist in the engagement of such conduct.

17 As noted in *Chan Chun Hong*, a close foreign analogue to s 376D of the Penal Code, and one which appears to s 376D appears to have been based on, is s 144C(1)(c) of the New Zealand Crimes Act 1961, which reads as follows:

> **144C Organising or promoting child sex tours**
>
> (1) Every one is liable to imprisonment for term not exceeding 7 years who–
>
> […]
>
> (c) prints or publishes any information that is intended to promote conduct that would constitute an offence against section 144A, or to assist any other person to engage in such conduct.

> (2) For the purpose of this section,–
>
> […]
>
> (b) the publication of information means publication of information by any means, whether by written, electronic, or other form of communication; and includes the distribution of information.

While there is some difference in wording, I do not think any different result would follow from different structure of the New Zealand section. I do note, however, the observation at [98] of *Chan Chung Hong* that the offence under s 376D of the Penal Code prescribes a statutory maximum penalty of up to ten years' imprisonment, whereas the New Zealand statute prescribes a maximum of only seven years' imprisonment. This higher maximum sentence in Singapore signals a distinct legislative intention that sentencing courts in Singapore should be mindful of: *Tay Kim Kuan v Public Prosecutor* [2001] 2 SLR(R) 876 at [10]. I add that I am not aware though of any New Zealand decision interpreting s 144C(1)(c) of the Crimes Act 1961, nor was any such case drawn to my attention.

18 The Ministerial speeches accompanying the passage of the amendments in the Singapore Parliamentary Debates which introduced s 376D of the Penal Code do not seem to have expressed anything that could assist in the interpretation of the provisions. There also do not appear to be parliamentary debates in New Zealand which shed light on the precise ambit s 144C of their Crimes Act 1961. In any event, the Court must give the text of the statute its plain meaning, consonant with the Court's understanding of provision's objectives.

Distribution of Information

19 Turning first to the phrase "distribution of information", its plain meaning is indeed wide. The Appellant argues that the distribution of information alone cannot be an offence, while the Respondent argues that the plain words should be given effect to.

20 On a plain reading, all that is required to make out an offence under s 376D(1)(*c*) of the Penal Code is indeed distribution, accompanied only by an intention to promote conduct that would constitute an offence under s 376C of the Penal Code, or an intention to assist any other person to engage in such conduct.

21 The difficulty with the reading advocated by the Appellant, that the distribution must be connected to the actual commission of some (physical) harm to minors, or be practically effective in some way, is that it runs up against the plain words of s 376D of the Penal Code, which does not refer to any such requirements. The main argument in favour of the Appellant's reading appears to be founded upon the point that otherwise, s 376D would criminalise too broad a range of acts: any dissemination or spreading of information could run afoul of the law and render the person doing so liable to prosecution. As argued by the Appellant, the undercover officers involved and any journalist covering the topic could or would commit offences too. But the simple answer, and the Respondent's riposte, is that the appropriate limitation on the breadth of the offence-creating provision comes from the *mens rea* requirement, namely that there needs to be an accompanying intention to promote unlawful conduct or to assist someone to do so.

22 While not raised by the parties, I also considered whether the maxim of doubtful penalisation ought to apply in the Appellant's favour. This maxim applies a strict construction to penal provisions. However, the maxim's application has been modified by the principles of statutory interpretation in cases such as *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 and *Public Prosecutor v Lam Leng Hung* [2018[1 SLR 659 ("*Lam Leng Hung*"). In particular, attention should be had to the doctrine of purposive interpretation as encapsulated in those cases.

23 I understand the objective of the doctrine of purposive interpretation adopted in those cases as focusing on discerning the applicable legislative intent, and contouring the application of the legislative provisions accordingly. As the focus is on ascertaining Parliament's underlying purpose, there is less room for the consideration of maxims of interpretation, such as that of doubtful penalisation. Such maxims would have been based on some conception of determining or deeming the drafting intent when ascribing meaning and interpreting the statute, which unsurprisingly may not track the precise Parliamentary intention as closely as a direct analysis of the provision. The Court of Appeal made it clear in *Lam Leng Hung* that the maxim of doubtful penalisation or strict construction in the context of criminal provisions is thus only of "secondary importance". In fact, the Court of Appeal expressly observed at [235] that:

> This is merely a consequence of the fact that the controlling principle to the interpretation of statutes in Singapore is the need to promote the purpose or object underlying the written law, as enshrined in s 9A(1) of the [Interpretation Act]. The court's first duty is to interpret the statutory provision purposively as a means to give effect to Parliament's intention. Any other principle or canon of statutory interpretation in the common law, no matter how well-established or how distinguished its pedigree, can only be of secondary importance in comparison to this statutory duty.

24 In both *Public Prosecutor v Low Kok Heng* [2007] 4 SLR(R) 183 at [30] to [38] and *Nam Hong Construction & Engineering Pte Ltd v Kori Construction (S) Pte Ltd* [2016] 4 SLR 604 ("*Nam Hong*") at [28], the Court of Appeal made clear that the maxim of doubtful penalisation is of last resort, and that it is the determination of the legislative purpose which is paramount. It is only if there is ambiguous language that there is any scope for the maxim to apply. As the Court in *Lam Leng Hung* emphasised at [234], citing *Nam Hong* at [28(b)]:

> The strict construction rule is a 'tool of last resort' to which recourse may be had only if there is ***genuine ambiguity*** in the meaning of the provision ***even after the courts have attempted to interpret the statute purposively.*** If the meaning of the provision is sufficiently clear after the ordinary rules of construction have been applied, there is ***no room*** for the application of the strict construction rule
>
> [Emphasis as original in *Lam Leng Hung*.]

25 On the instant facts, however, there is no such ambiguity in the statutory provision, and there is also no imperative to read into the section words limiting the scope of the word 'distribute' as requiring that some actual practical effect or action follows from the mere distribution. The doctrine of doubtful penalisation simply does not apply here.

26 The Appellant, at various points, raised further issues with the legality of the provision if the interpretation favoured by the Prosecution was adopted, and in particular its impact on human rights. These were, I took it, concerned with the constitutionality of s 376D of the Penal Code. The best formulation, I think, of the Appellant's criticism, is that the provisions are overly vague. But, on a plain reading of the words of the statute, I could not agree. I found the provision in question to be straightforward and unambiguous. In any event, I do not find anything in the Prosecution's construction of s 376D of the Penal Code that would run afoul of any constitutional doctrine or right.

27 In Singapore, therefore, an offence is made out once information is distributed with the accompanying intention of promoting or assisting the commission of offence(s) under s 376C of the Penal Code. The term "information" in this context is not to be taken narrowly: it should be given its plain meaning, which would encompass any information. Again, the control or limitation would come in the second limb, *i.e.* whether the information provided was intended to promote conduct that would constitute an offence under section 376C, or to assist any other person to engage in such conduct.

28 As for 'information', the term is defined in the *Shorter Oxford English Dictionary* (Oxford, 6th Ed) ("OED") as follows:

> Sense 3: Knowledge or facts communicated about a particular subject, event, etc; intelligence, news.

29 What does limit the ambit of the term "information", however, is that because of the intention element, discussed separately below, it cannot be any information at all, but must relate to the subject of sex tours with minors. This accords with the legislative purpose which is clear from ss 376C and 376D of the Penal Code. Thus, information about other subjects, or information which can reasonably be interpreted in the context of its provision as pertaining to other subjects, would not be caught by the provision.

Intended to promote unlawful conduct

30 Intention will rarely be evidenced directly and expressly. It will usually have to be inferred from conduct. The chain of inference cannot, however, be so tenuous that it fails the requirement that it be shown to exist beyond a reasonable doubt.

31 As for promoting conduct that is an offence under s 376C of the Penal Code, s 376C(1) specifies that an act done outside Singapore will be an offence if it would be an offence under s 376B of the Penal Code had it been done in Singapore. Section 376B of the Penal Code in turn reads:

> **Commercial sex with minor under 18**
>
> **376B.**–(1) Any person who obtains for consideration the sexual services of a person, who is under 18 years of age, shall be punished with imprisonment for a term which may extend to 7 years, or with fine, or with both.
>
> (2) Any person who communicates with another person for the purpose of obtaining for consideration, the sexual services of a person who is under 18 years of age, shall be punished with imprisonment for a term which may extend to 2 years, or with fine, or with both.
>
> […]

32 Section 376B(2) of the Penal Code makes absolutely clear that merely communicating with another person for the purpose of obtaining commercial sexual services of a minor under 18 years of age will suffice to attract liability under s 376B of the Penal Code. Further, s 376C of the Penal Code, and in particular ss 376C(1) and 376C(1A), make clear that doing so even in the context of a minor who is based outside Singapore is an offence. It is in this context that s 376D of the Penal Code goes on to specify that it is an offence to promote conduct that would constitute an offence under s 376C, or to assist any other person to engage in such conduct.

33 The main question in the context of s 376D of the Penal Code is what amounts to promotion of the said unlawful conduct. The dictionary definition of "promotion", as provided by the OED, is:

> Sense 1: The action of promoting someone or something; the fact of being promoted; an instance of this.

To "promote" is in turn defined as:

> Sense 2: [To f]urther the development, progress, or establishment of (a thing); encourage, help, forward or support actively …

The other senses of these words do not appear to be relevant in the present context.

34 The terms "promote", and "promotion" do not appear to have been defined in criminal cases thus far, and no definitions supported by authority were cited to me.

35 Taking the various elements of the offence under s 376D of the Penal Code holistically, the intention of the accused must be to do some act of encouraging, helping, or actively supporting conduct that amounts to obtaining or communicating to obtain the sexual services of a minor. Providing details of possible arrangements, or information that would help in preparing for and/or concretising a planned tour, will generally suffice. The efficacy and usefulness of the information is not generally relevant, as the statute makes no reference to the effectiveness and/or usefulness of the information provided. Thus, the accuracy and/or usefulness of the information would not be material to the liability of the offender unless it were so blatantly obvious on the material's face that it was not true that no one would ever rely on it.

Entrapment

36 One of the legal issues raised by the Appellant was that he was the subject of entrapment. The law on entrapment was summarised by the Court of Appeal in *Law Society of Singapore v Tan Guat Neo Phyllis* [2008] 2 SLR(R) 239 at [150] as follows:

> In summary, therefore, our views on these issues are as follows:

> (a) the court has no discretion to exclude illegally obtained evidence (including entrapment evidence) by reason of the provisions of the [Evidence Act];
>
> (b) a prosecution founded upon entrapment evidence is not an abuse of process;
>
> (c) the court may not stay a prosecution even if it is an abuse of the prosecutorial discretion because of the separation of powers under the Constitution; and
>
> (d) the court has, in an appropriate case, the power within its own judicial sphere to declare a prosecution unconstitutional for breach of constitutional power (which, in the case of the prosecutorial power, would have to be a very exceptional case given that it is a constitutional power) or for infringement of constitutional rights and protections.

37 There is nothing in the present case that would raise any issue of constitutionality in the conduct of the prosecution. This would have required some attack by the Appellant on the exercise of the Public Prosecutor's prosecutorial powers, and despite the extensive submissions on appeal from the Appellant, I saw nothing of that nature, much less substantiation for such an attack.

Application to the specific charges

38 I am satisfied that the elements identified above have been made out on the evidence, and that the appeal against conviction should accordingly be dismissed. I am mindful in this case that fully reproducing the information provided by the Appellant may have, as a regrettable and odious side-effect, the effect of providing information to persons who may be seeking to undertake similar tours. In the interest of denying access to unnecessarily specific or lurid details, I have therefore elided certain more specific facts and descriptors which the Appellant revealed.

The first charge

39 In respect of the first charge, the Appellant took issue with the evidence of the undercover officers. However, I did not see anything to put that evidence into doubt, and reject the Appellant's arguments on this score. For instance, the reference to minors did not, contrary to the Appellant's account, come only from the undercover agents. The record shows that the Appellant did in fact make reference to minors, and that he had previously also accepted as true the Prosecution's account of the course of the conversations at the two meetings, including the information that he was alleged to have conveyed.

40 The Prosecution, on its part, pointed here and below to the following evidence:

(a) There was communication by the Appellant with the undercover officer, PW8, who had sought the Appellant's help to organise a tour for men with virgin minors; the Appellant had suggested in reply a 3-day tour for such purposes, with a travel guide or "companion" who would cost 1,500 pesos.

(b) A meeting was held on 26 September 2015 in which the two undercover officers, PW8 and PW6, indicated that they wanted to go on a commercial sex tour with girls around 14 to 16 years old. The Appellant had informed them that they would need someone with good connections, recommended staying in a city hotel to avoid drawing suspicion, and discussed booking two rooms with the girls recorded as staying in one of them to avoid drawing attention to themselves. The Appellant further indicated that he would make the arrangements for the procurement of minors for the commercial sex. The charges and air tickets, along with other practical arrangements, were also discussed.

(c) Chat logs between the Appellant and the undercover officers showing that arrangements were being discussed for such an overseas commercial sex tour;

(d) Chat logs between the Appellant and an unknown person/persons in the Philippines to assist in procuring young girls for the purposes of the commercial sex tour.

41 The primary point made by the Prosecution in this regard was that inferences should be drawn from the fact that the personae assumed by the undercover agents wanted a commercial sex tour with minors, and the Appellant did in fact set up a meeting to discuss such a tour following the approach by the undercover agents. The Prosecution then underscored how, at the meeting, the Appellant provided intricate details as to avoiding suspicion and procuring the minors for commercial sex. Issues of price, location, and even transport were addressed.

42 The Appellant's defence below, which he essentially continued to rely upon on appeal, was that (a) he was pursuing an innocent business, (b) he was not interested in providing the information on commercial sex with minors, and (c) that he had ceased communicating with the undercover officers after the meeting. On appeal, while the Appellant did not deny giving information about various matters, he pointed to (i) the lack of expert evidence, (ii) the fact that the statements from the police officers and other documents were suspiciously aligned with the same wording, and (iii) his allegation that the undercover officers could not adequately recollect the events which transpired at the meeting. The Appellant also contended that the chats and records reproduced only a small portion of the discussions, and were not fully representative of his correspondence.

43 On reviewing the evidence, I accept and do not disturb the District Judge's findings that the Appellant had conveyed information to the undercover officers that:

(a) Someone with local connections was needed to facilitate the commercial sex tour;

(b) An arrangement would be made with a friend of the Appellant for the undercover officers to travel to the Philippines for the purpose of having commercial sex with minors;

(c) Arrangements would be made for virgin girls to be procured for the undercover officers to have commercial sex with;

(d) The Appellant would fly in to ensure that everything was ready and the relevant arrangements were made;

(e) The undercover officers would be picked up and transported from the airport;

(f) A hotel in the city was to be preferred as opposed to one in the suburbs or more rural areas where suspicion might be aroused;

(g) Two rooms would need to be booked to further avoid suspicion of having the men and minors in the same room, and the Appellant could assist with such a booking; and

(h) The air tickets should be purchased.

Thus, the elements of the charge are made out. There was information pertaining to sex tours, particularly in relation to the arrangements being made with a friend of the Appellant for the undercover officers to travel to have commercial

sex with minors. The undercover officers were also informed about the arrangements that would be made for procuring six virgin girls aged 14 to 16 years old, and the need for the underaged girls to be housed in separate rooms to avoid drawing suspicion. Such information would clearly assist in the commission of unlawful acts, namely commercial sex with minors abroad, which acts would be offences if committed in Singapore.

44 The evidence giving rise to these findings was testified to by both of the undercover officers and, importantly, was also admitted by the Appellant in his oral evidence. For example, the Appellant admitted to significant portions of what the undercover officers had given evidence on, such as what information he had provided in respect of how many girls were required:

> **Transcript of 21 January 2019, Pages 76 and 77**
>
> **Examination-in-chief of Michael Frank Hartung**
>
> Q: Now, is that account of PW6 from line 19 to 29 correct?
>
> A: Uh, yes, correct.
>
> Q: Now, according to him you had asked, how many girls they want? Now, why didn't you ask that question?
> A: I think I asked the question in the thread five times before earlier, as I said, I didn't---I didn't paid attention, I didn't cared much [*sic*]. So, therefore the just---just normal usual business transaction, uh, or discussion for---for any business is to ask the question about the business …
>
> […]
>
> Q: Yah, so now can you explain why you said that you will make an---make arrangements for them to travel to Manila?
> A: They asked me for a tour and if I can arrange. And as I said before, based on the chats itself, they are expecting me to arrange. So what should---what else should I say in the meeting?
> Q: Then PW6 also said that you had mentioned that you'll prepare, rather you will arrange for six girls, virgins, age 14. Can you explain why you---said this---to them?
>
> A: No, as I remember it says they mentioned I---they mentioned about---I asked about the number, they came up with the

> number, they put---they put somewhere the age, um, my answer only would be, uh, somewhere like "okay" or something. The---the same answers as what I gave in the chats before. So it is very---I'm---I'm---it---it is not my style in the moment that suddenly while in the chat, I'm very disinterested, that suddenly in the meeting I come up and, uh, tell them, I---I give you, uh this number of girl and---and this kind of age. They were driving the discussion and I just responded to that. It maybe that PW6 gets, uh, understanding of---of this context itself, uh, based on---on---on his thoughts, but they waited and I'm just responded itself. And I'm not actively, uh, came and say I will do that for you.

45 I do not propose to extensively reproduce the record of proceedings, but it is clear that the information conveyed by the Appellant related to the tour and was, at least in large part, in response to questions posed by the undercover officer about arrangements for a commercial sex trip to the Philippines. While the Appellant tried to clothe some of the information conveyed by him with innocence, it is clear that this was not so: for instance, he talked about hotel arrangements, with the girls to be in separate rooms, so as not to arouse suspicion. The Appellant went so far as to offer to assist with the hotel booking. He told the undercover officers that on confirmation of the booking, PW6 and PW8 could pay 20% of the hotel charges first, with the remaining 80% to be paid when they met with the Appellant in the Philippines.

46 The various arguments made by the Appellant did not raise any reasonable doubt against this charge.

47 I am satisfied that the messages exchanged before the event showed clearly the context against which the meeting took place, and this indicated that not only did the Appellant know that he was being asked for information about sex with minors abroad, but that the information was sought from him specifically to help facilitate or organise a trip abroad for such purpose. This is seen in the exchange of correspondence between himself and the undercover

officers. The only conclusion that could be drawn was knowledge on the Appellant's part of the commercial sex tour involving minors which was to be organised. Against that backdrop, the imparting of further information for the tour by the Appellant, and in particular his advice on avoiding detection and minimising suspicion, could only be interpreted as assisting or facilitating the organisation of the sex tour with minors.

48 None of the explanations or characterisations given by the Appellant had any ring of truth or raised any reasonable doubt about the inference of his intention to promote such acts.

49 The Appellant argued that there was no intention to promote acts which would constitute offences under s 376C of the Penal Code. I was unable to accept that argument, which flew in the face of what he had told the undercover officers. The Appellant further contended that he had not indicated anything specific in the way of details, that he did not take money for his information, and that no itineraries or materials were given. However, to my mind, these considerations were, for the reasons given above, immaterial to the charge. It was not true that the Appellant had not provided specific details. Moreover, the distribution of information only requires that it be disseminated or spread, and there is no requirement for any practical consequences to eventuate or manifest before the information can be said to have been distributed. In any event, the absence of monetary payment in this context does not detract from the fact that the Appellant had provided the above-described information.

The second charge

50 In relation to a separate meeting, which took place on 15 April 2016 at a pub, the charge was that the Appellant had met two undercover officers, PW9

and PW10, and distributed information concerning the procurement of commercial sex with and torture of girls under the age of 18 in the Philippines.

51 I accept in relation to this charge that there had been distribution of information. In particular, the Appellant indicated possible destinations for a commercial sex tour involving minors, notably the Philippines, which he described as a safer destination, with commercial sex being just about money. The recommended type of hotel, the need for multiple rooms to avert suspicion, difficulties that might arise in procuring especially young girls because they might still be in school, the availability of various ages of minors, the time that might be taken, the price of sex with minors, and the practicalities underpinning the entire tour were all conveyed by the Appellant. I do not propose to reproduce at length the somewhat graphic descriptors the Appellant used, but merely note that the evidence showed that Appellant provided, *inter alia*, the following information:

(a) There were two possible destination to engage in commercial sex with minors – the Philippines and Cambodia. Of the two, the former was a safer option and the latter was more dangerous.

(b) People in the Philippines were poor, and accordingly, that sex with minors was more commercial and "just about money".

(c) Staying in certain named locations was safer than staying in other places which were "dangerous" and in which the undercover officers might attract unnecessary attention

(d) The precise prices, estimated fees, and moneys payable in the entire transaction.

52 The information again clearly related to commercial sex with minors, particularly the availability of ages, the practical steps to take, and difficulties of procuring certain categories of minors for commercial sex. The fact that the Appellant had provided this information was not seriously contested, both below and on appeal.

53 There was an issue taken up by the Appellant about what the term "young blood" meant, but this was in the end not of significance as the other information discussed, in particular the ages of the minors referred to, amply illustrated that the term referred to minors who were to be procured for commercial sex. The Appellant's attempt to suggest otherwise here was simply an instance of grasping at straws.

54 The Appellant also raised an issue about the transcript which was prepared, but this contention appeared to centre on the absence of any record of body language in the transcript. While I do accept that the body language and tone of a speaker may convey a somewhat different message from the spoken words alone, the Appellant was unable to point to any concrete instances where a different meaning was allegedly conveyed. Taking the evidence as a whole, the District Judge was entitled to accept the transcript and the accounts of the undercover officers.

55 Ultimately, there was sufficient evidence against the Appellant in the form of the prior communications, the evidence of the undercover officers, and the transcript of the discussions. As was the case with the first charge, the evidence showed that there was a clear intention on the part of the Appellant to promote unlawful conduct.

The Appellant's arguments

56 The Appellant made a number of general arguments in seeking to impugn the findings of the District Judge across both charges. I address these arguments at this point.

57 First, the Appellant submits that he was the party who terminated discussions with the undercover agents, and that this illustrates that he was not serious in carrying through with the sex tours with minors. However, this does not assist the Appellant at all: the offence was, as submitted by the Prosecution, completed once the Appellant had conveyed the relevant information at the meetings.

58 Second, the Appellant argues that he (a) was merely conducting a legitimate business organising tours under the aegis of Erasig, (b) had shown disinterest in what was being proposed, and (c) was merely playing along. None of these arguments raise any reasonable doubt. Again, an examination of the record of proceedings, and in particular what transpired at the meetings, shows that the discussions between the Appellant and the undercover officers were not innocent by any means. There was no innocent reason for the Appellate to have played along and gone down to the meetings if he was in fact not interested in providing the services requested, and there was nothing beyond his bare assertions to support his case. In light of the other evidence, notably the earlier communications between the Appellant and the undercover officers, the Appellant's characterisation of his acts must be rejected.

59 Third, the fact that a transcript was available only for the meeting covered by the second charge (and not that relating to the first charge) did not raise any reasonable doubt about what was conveyed at the meeting leading to

the first charge. The District Judge was entitled to accept and prefer the evidence of the prosecution witnesses involved in the first charge, particularly when seen in light of the prior correspondence between them and the Appellant.

60 Fundamentally, in the absence of any plausible explanation of innocent activity, the District Judge was entitled, upon a holistic assessment of the facts, to come to the conclusion that there is no reasonable doubt that the Appellant's intention was to promote unlawful conduct within the meaning of s 376C of the Penal Code.

Sentence

61 The Appellant also appealed against the sentence imposed, arguing that there was no actual seriousness in his intentions, nor was there any serious harm caused. It was asserted that the details shared were not harmful, the information provided was general, and that the offence thus was one of the lowest severity. In fact, according to the Appellant, a combined charge should have been preferred. The Appellant also pointed to his having terminated contact, as well as the absence of secrecy about the conversations. Further, no preparation was actually undertaken, the meetings were not of a long duration, and the information was provoked and elicited only because of the undercover agents' questions. Accordingly, the Appellant argues that the sentences imposed were manifestly excessive, and should not be run consecutively.

62 By contrast, the Respondent argues that the sentences imposed were not manifestly excessive.

63 I am satisfied that the appeal against sentence should be dismissed in its entirety. The District Judge was also wholly correct to run both sentences consecutively.

64 The sentencing framework for offences under s 376D(1)(*c*) of the Penal Code was promulgated at [132] of *Chan Chun Hong*, with deterrence being given, at [51(a)] of the judgment, prominence as the primary sentencing consideration. The relevant framework provides for the classification of the spectrum of offending behaviour into three broad categories, in ascending levels of seriousness and, correspondingly, ascending levels of punishment, as follows:

> To provide some context, I consider it useful at the first stage of the inquiry in respect of this offence to classify the spectrum of offending conduct into three broad categories in ascending levels of seriousness, which will correspondingly attract ascending levels of punishment. These categories are neither comprehensive nor exhaustive. In some instances, they shade into one another. Nonetheless, as an analytical tool, it is useful to see it in this way:
>
> > (a) At the lowest end of the spectrum, there is general information in the form of reportage provided to like-minded individuals. Such information may not actively further the mischief of enhancing demand for child sex tourism having regard to both the quality of the information and the inclinations of the recipient. Hence, in such cases, the offence may not have placed any group of potential victims at greater risk than they would otherwise have been. In offences falling within this category, a sentence in excess of a term of imprisonment of nine months would not as a general rule be called for.
> >
> > (b) Moving up the sentencing spectrum, more serious offending conduct would involve the transmission of detailed knowledge, in particular, information about the availability of the trade in specific locations or information as to particular contacts, but conveyed to like-minded individuals. This may be aggravated where it is done for an ulterior and objectionable motive such as to exchange corresponding information with others of a similar bent. What primarily aggravates the offence here is the nature of the information. For offences falling within this category, a term of imprisonment ranging between 12 and 30 months' imprisonment may be appropriate as a starting point.

> (c) The offender's culpability increases sharply when he is found to have encouraged the recipient to embark on a venture that the recipient was not already intending to embark on. This potentially enlarges the pool of paedophilic travellers, which would in turn drive up demand for the child sex trade. Here, both the nature of the information and the effect on the initial inclinations of the recipients can aggravate the offence and where this is the case, sentences in excess of 36 months' imprisonment may be considered as a starting point.

65 The sentencing framework then goes on to consider two further considerations, as outlined at [133] of *Chan Chun Hong*:

> In my judgment, these thresholds [as reflected above] would apply to the *ad hoc* facilitator as opposed to the commercialised sex tour operator. But I consider that at the next stage of the inquiry, the court should consider where in the spectrum between the *ad hoc* facilitator and the commercial sex tour operator the offender falls. This would be a further yardstick to assess the seriousness of the particular s 376D(1)(*c*) offence that is before it. The further the offender is from the *ad hoc* facilitator, the greater the case for imposing a yet more serious sentence falling outside the ranges I have suggested. Finally, the court should then bear in mind all other relevant factors including those that I have previously noted to consider whether there are further factors aggravating or mitigating the offender's culpability and calling for a further adjustment to the sentence that ought to be imposed.

66 Applying this framework, the District Judge concluded that the Appellant was in the second category of offending conduct as the offences involved more serious offending conduct, with the transmission of detailed knowledge and information specific to the child sex trade in the Philippines. The District Judge determined that the indicative sentence for the first charge should start at 30 months' imprisonment, and the second charge at 26 months' imprisonment. This was in line with the guidance given in *Chan Chun Hong*.

67 As for the second stage of the inquiry, the District Judge concluded that the Appellant was in between an *ad hoc* facilitator and a commercial sex

operator because he served, in effect, as a "middleman" for the two proposed tours. The relevant aggravating factors were identified as (a) the nature of the information provided, (b) the actual attempts to procure girls through contacting a person/persons going by the moniker "imelda.parado" in respect of the first charge, and (c) providing assistance to the undercover officers to avoid suspicion and detection. As for mitigating factors, the District Judge bore in mind that the Appellant had no antecedents, and that this behaviour appeared to be out of character. The District Judge thus concluded that the circumstances required an uplift from the starting points in the second category of offending conduct, imposing 36 months' imprisonment for the first charge, and 30 months' imprisonment for the second charge.

68 Bearing in mind the one-transaction rule and totality principle outlined in cases such as *Public Prosecutor v Raveen Balakrishnan* [2018] 5 SLR 799, the District Judge ordered that the two sentences run consecutively, for a total of 66 months' imprisonment in all.

69 I agree with the conclusions reached by the District Judge. The quality and amount of information given was not just at the broadest, most minimal level. The information was specific about actions, the availability of the possible victims, and what arrangements needed to be made. Specific insights into the commercial sex trade in the Philippines were provided, and these were highly-particularised and granular in nature. While the Appellant was not a full-on commercial operator, he did fall into the middle ground between an *ad hoc* facilitator and a commercial sex operator because of the role he played in seeking to connect the undercover officers with persons who could directly provide the commercial sex. The centrality of the Appellant's role may be seen by how he even indicated that he would travel to the Philippines shortly before the undercover officers did, and would make necessary arrangements before

meeting them there. These factors clearly showed that the Appellant's situation in relation to both charges fell within the second subcategory, with an indicative sentence of between 12 to 30 months' imprisonment, and that an uplift ought to be applied given that the Appellant was not merely an *ad hoc* facilitator.

70 I also agreed with the aggravating factors identified by the District Judge. The fact that the Appellant appears to have taken steps to procure the minors for commercial sex is particularly reprehensible, and should accordingly attract a significant uplift. As for the mitigating factors identified, my view is that there were no real mitigating factors in this case. The Appellant's absence of antecedents can scarcely be considered a mitigating factor. If he did have previous involvement in such offences, that would instead be a significant aggravating factor. Further, whether or not the offences were out of character for the Appellant had little mitigating weight given the nature of the offence under s 376D(1)(*c*) of the Penal Code. It was not an offence that could be committed impulsively or driven by the circumstances.

71 The Appellant also sought to rely on the "entrapment" by the police officers, arguing that the fact that he had been "entrapped" into offending ought to be a mitigating factor. As was noted by the District Judge, even if there was any entrapment, it would only be mitigating if the officers had actively encouraged the offence. This was simply not the case here.

72 All in all, then, I was of the view that the length of the sentences was not manifestly excessive. If anything, I was of the view that the sentences imposed were clearly on the lighter side.

73 The running of the sentences was also correct. The two charges concerned separate offences occurring at different times, and the offending

behaviour which formed the basis of both charges was not part of a single transaction. I note that PW8 was initially involved in the events underpinning the second charge, but he had assumed a different persona, and was, for all intents and purposes, a different person in relation to the charge. These were properly distinct offences and there was no reason to run the sentences for them concurrently. The totality principle is also respected in this context as the aggregate sentences cannot be said to be crushing on the Appellant, nor can they be said to be out of proportion to the criminal nature of his actions.

Miscellaneous Matters

74 The Appellant took issue with a number of other matters which did not actually go towards assisting him in establishing his case on appeal. One of these concerned the Grounds of Decision issued by the District Judge. The Appellant asserted in that regard that matters which had been raised were left out and not addressed. However, I emphasise that Grounds of Decision do not have to be exhaustive. It is sufficient that they indicate the lines of analysis the Judge relied on in reaching his or her conclusion. Ultimately, the question is whether the District Judge has properly examined the evidence and applied his mind to the questions of whether the charges were made out, and what the appropriate sentence was. I am satisfied that the District Judge's Grounds of Decision on the instant facts has done so.

75 The Appellant also complained that there was no proper investigation or check into his background and the like. This was, at the end of the day, immaterial to the decision on his liability. What mattered was whether the charges were made out. If he wished to rely on certain facts and personal circumstances as mitigating factors, those should have been expressly raised. That said, the weight to be placed on such circumstances will need to be

calibrated by reference to whether the personal circumstances relied upon are genuinely "exceptional or extreme". If they are not, it is trite and well-established law that limited, if any, weight will be placed upon them: *Lai Oei Mui Jenny v Public Prosecutor* [1993] 2 SLR(R) 406 at [10] and [12].

76 In addition, the Appellant's complaints about the completeness of the evidence were immaterial and did not assist the Court in narrowing down the material which needed to be considered in determining his liability and/or sentence. What is key is that all relevant evidence is placed before the Court, and I am satisfied that this has been done.

Conclusion

77 For the reasons above, the appeals are dismissed. I pause at this point to underscore the heinous and egregious nature of acts involving the abuse and sexual exploitation of minors. Promoting and facilitating such acts contributes to a deplorable array of evils, and the victims, who are oftentimes coerced into the industry, suffer traumatic and unspeakable harm. The seriousness of the offence under s 376D of the Penal Code is reflected in its weighty maximum sentence, and Courts should not hesitate to apply the full force of the law where the facts and circumstances call for it. Miscreants who seek to foist their own deviant sexual tendencies on mere children and abuse them for carnal purposes should be made fully aware that their despicable acts are viewed with the strongest opprobrium.

Aedit Abdullah
Judge

The appellant unrepresented;
Krystle Chiang and Ong Yao-Min Andre (Attorney-General's Chambers) for the respondent.
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