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

[2022] SGHC 146

Magistrate's Appeal No 9290 of 2021

Between

Jennifer Toh Suat Leng

… *Appellant*

And

Public Prosecutor

… *Respondent*

JUDGMENT

[Criminal Law — Offences — Property — Forgery for the purpose of cheating]
[Criminal Law — Offences — Property — Cheating]
[Criminal Procedure and Sentencing — Sentencing — Principles — Use of sentencing precedents]

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Vincent Hoong J:

Introduction

1 It is a common refrain that no sentence should be pronounced in a vacuum. Indeed, reliance by the courts on sentencing precedents to arrive at consistent and fair outcomes is a core feature of sentencing practice in Singapore. Yet, the value of each sentencing precedent depends on a whole host of factors and it is important for the courts to bear this in mind when deciding on whether to rely on a particular precedent and if so, to what extent. The present appeal examines some of the principles engaged when assessing the value of sentencing precedents.

2 The appellant pleaded guilty to four charges in the court below, three of which were in respect of offences under s 468 of the Penal Code (Cap 224, 2008 Rev Ed) ("Penal Code") and one in respect of an offence under

s 420 of the Penal Code. She also consented to the remaining six charges being taken into consideration for the purpose of sentencing. Of these, five were in respect of offences under s 468 and the remaining one under s 420. The District Judge ("DJ") imposed a global sentence of 35 months' imprisonment. The DJ's grounds of decision may be found in *Public Prosecutor v Jennifer Toh Suat Leng* [2022] SGDC 16 ("GD").[1]

The facts

3 The proceeded charges concern offences committed against three different victims. I set out the facts briefly which are covered comprehensively in the GD.

4 The first and second s 468 charges involved the first victim, Wong Lee Lieng ("Wong"). At the material time, the appellant was working as an insurance agent for AIA Singapore ("AIA"). In that capacity, the appellant became acquainted with Wong, who was a client of AIA. Sometime in 2015, the appellant sold Wong an AIA policy. As the appellant was indebted to various unlicensed moneylenders at the time, she decided to hatch a plan to forge an AIA insurance policy to obtain more money from Wong.[2]

5 On or about 15 December 2015, the appellant forged an AIA Smart G468 Contract bearing policy number SP10245890 with the AIA letterhead and presented it to Wong. She represented to Wong that it was an investment policy with promised returns of $52,340 by December 2016, if Wong first put in

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1 Record of Proceedings ("ROP"), pp 107–138.

2 GD at [13] (ROP, p 111).

$50,000. In reliance on the forged contract, Wong agreed and delivered $50,000 to the appellant in cash. This formed the subject matter of the first s 468 charge.[3]

6 On or about 29 December 2015, the appellant employed the same *modus operandi*, forging an AIA Smart G468 Contract bearing policy number U094512894 with the AIA letterhead and presented it to Wong. Once again, the appellant promised returns of $52,340 if Wong put in $50,000 upfront. In reliance on the forged policy, Wong agreed and delivered $50,000 to the appellant. This formed the subject matter of the second s 468 charge.[4]

7 Both policy numbers on the forged policies were not valid AIA policy numbers and were not issued by AIA. On or about December 2015, the appellant had dishonestly created the two forged contracts with the intention that they be used for the purpose of cheating Wong. The AIA letterhead and signatures were copied from an existing contract with the intention of causing Wong to believe that the documents were made by the authority of AIA.[5] The appellant has made restitution of $21,200 to Wong.[6]

8 The third s 468 charge involved the second victim, Lee Han Tiong ("Lee"). On 14 October 2013, Lee, a grab driver, picked up the appellant as a passenger. The appellant was an insurance agent with HSBC Singapore ("HSBC") at the material time. The appellant informed Lee that she was employed by HSBC and that there was an insurance plan sold by HSBC that promised better interest rates. Lee had just sold his house and wanted to invest

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3 GD at [14] (ROP, p 111).

4 GD at [15] (ROP, p 112).

5 GD at [16] (ROP, p 112).

6 GD at [17] (ROP, p 112).

the money he obtained from the sale.[7] The appellant then forged a HSBC insurance policy titled "Asset Manager II" and presented the policy to Lee. Believing that the forged policy was a genuine policy from HSBC, Lee signed the document and handed over $32,000 in cash to the appellant.[8] The appellant had dishonestly prepared the forged policy by using copies of existing contracts, with the intention of causing Lee to believe that the document was made by the authority of HSBC, in order to cheat Lee.[9] No restitution has been made to Lee.[10]

9 The last proceeded charge concerned an offence under s 420 which was perpetrated against StarHub Pte Ltd ("StarHub"). At the material time, the appellant was renting a room from Lim Kim Hoon ("Lim").[11] As Lim was illiterate, she would seek the appellant's assistance on matters such as reading letters or paying bills. Lim would hand over her NRIC along with cash to the appellant to facilitate the appellant's assistance with the paying of Lim's bills.[12] On or about 25 September 2014, the appellant had possession of Lim's NRIC. The appellant went to a StarHub outlet to sign up for two mobile service lines which came packaged with two Apple iPhone 6s worth $1,978 in total. The appellant presented Lim's NRIC to a StarHub employee, representing that she was "Lim Kim Hoon". The appellant then signed on a contract prepared by the StarHub employee in Lim's name.[13] In reliance on the appellant's deception, the StarHub employee delivered two Apple iPhone 6s to the appellant, which she

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7 GD at [18] (ROP, p 112).

8 GD at [19] (ROP, p 113).

9 GD at [20] (ROP, p 113).

10 GD at [21] (ROP, p 113).

11 GD at [22] (ROP, p 113).

12 GD at [23] (ROP, p 113).

13 GD at [24] (ROP, pp 113–114).

would not have done had the truth been known to her.[14] No restitution has been made to StarHub. The appellant, however, made restitution of $5,000 to Lim in respect of the s 420 charge which was taken into consideration for sentencing.[15]

10 The amount involved in respect of the proceeded charges is $133,978. The total amount involved in respect of all the charges (including those taken into consideration for the purpose of sentencing) is $330,878.[16]

The decision below

11 The DJ imposed a global sentence of 35 months' imprisonment on the appellant, with the following breakdown:[17]

(a) first s 468 charge (DAC-923529-2019): 18 months' imprisonment (consecutive);

(b) second s 468 charge (DAC-923530-2019): 18 months' imprisonment (concurrent);

(c) s 420 charge (DAC-923536-2019): one month's imprisonment (consecutive); and

(d) third s 468 charge (DAC-923537-2019): 16 months' imprisonment (consecutive).

12 In arriving at the individual sentences imposed for the s 468 charges, the DJ had regard to the benchmark sentence of 12 months' imprisonment set out

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14 GD at [25] (ROP, p 114).

15 GD at [26] (ROP, p 114).

16 GD at [40] (ROP, p 119).

17 GD at [2] (ROP, p 107).

by the court in *Lim Ek Kian v Public Prosecutor* [2003] SGHC 58 ("*Lim Ek Kian*") at [35].[18] She also considered the sentencing precedents cited by the parties. In particular, the DJ took reference from the two District Court cases of *Public Prosecutor v Choy Yut Hong* [2017] SGDC 132 ("*Choy Yut Hong*") and *Public Prosecutor v Tang Wai Kit* [2020] SGDC 222 ("*Tang Wai Kit*") cited by the Prosecution.[19] The DJ found the sole precedent cited by the Defence, *Ang Hui Hoon Candace v Public Prosecutor* (MA 146/2009) ("*Candace Ang*") to be of limited relevance.[20]

13 The DJ also found that there were various aggravating factors in the present case which warranted the sending of a strong deterrent signal against like-minded individuals tempted to engage in similar offending conduct.[21] I will discuss these factors in detail below at [64]–[68].

14 Additionally, contrary to the appellant's submissions that mitigating weight should be accorded to the appellant's major depressive disorder ("MDD"), the DJ found that there was no evidence that the appellant had been suffering from a MDD at the time of the offences. Further, there was no evidence that the appellant's MDD had contributed to the commission of the offences. Accordingly, the DJ declined to grant any weight to the appellant's MDD.[22]

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18 GD at [53] (ROP, p 124).

19 GD at [55]–[57] (ROP, pp 125–126).

20 GD at [59]–[62] (ROP, pp 127–128).

21 GD at [63] (ROP, p 128).

22 GD at [69] and [72] (ROP, pp 129–130).

15 As regards the offence under s 420 of the Penal Code, the DJ had reference to the sentencing framework set out in *Public Prosecutor v Gene Chong Soon Hui* [2018] SGDC 117 ("*Gene Chong*") at [26]. She agreed with the parties that the offence fell within the band of low culpability and slight harm based on the relevant sentencing factors present.[23]

16 Lastly, the DJ was of the view that it would be consistent with the one-transaction rule (see *Mohamed Shouffee bin Adam v Public Prosecutor* at [27]) for the individual sentences for the first and third s 468 charges and the s 420 charge to run consecutively. The DJ found that the three incidents forming the bases of those three charges were plainly separate and unrelated, took place on different locations, were committed in different years, and involved different victims.[24] The DJ also directed her mind to the totality principle (see *Public Prosecutor v Raveen Balakrishnan* [2018] 5 SLR 799 ("*Raveen Balakrishnan*") at [73]) and considered that the total sentence of 35 months' imprisonment was sufficient and proportionate to the appellant's overall criminality on the facts of the case.[25]

The appeal

The appellant's case

17 In this appeal, the appellant contends that sentence imposed by the DJ is manifestly excessive.

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23 GD at [75] (ROP, p 131).

24 GD at [89] (ROP, pp 136–137).

25 GD at [90] (ROP, p 137).

18 The appellant submits that the DJ erred in failing to give due consideration to the following factors:

(a) the appellant's MDD;[26]

(b) the appellant's personal circumstances that motivated the commission of the offences;[27]

(c) the relevant precedent cases cited by the appellant;[28] and

(d) other mitigating factors, including: (i) the appellant's plea of guilt and co-operation with the authorities;[29] (ii) the appellant's lack of antecedents;[30] and (iii) the partial restitution made by the appellant.[31]

19 At this juncture, I pause to note the clarifications made by the appellant's counsel at the hearing of the appeal. First, the appellant's counsel confirmed that the appellant is in fact submitting for a sentence of 12 months' imprisonment for the third s 468 charge, despite her written submissions indicating that she was seeking an individual sentence of ten months' imprisonment.[32] Second, it was clarified that the appellant is not disputing the DJ's decision to run the sentences for the first and third s 468 charges and the s 420 charge consecutively, contrary to her written submissions which proposed that only the sentences for the first s 468 charge and the s 420 charge should run

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26 Appellant's submissions ("AS") at [20(d)–(e)].

27 AS at [20(c)] and [25]–[27].

28 AS at [20(m)] and [21(b)].

29 AS at [20(j)] and [20(k)].

30 AS at [20(b)(iii)(a)].

31 AS at [20(b)(iii)(f)].

32 AS at [42].

consecutively. Accordingly, the appellant submits that an appropriate global sentence is 26 months' and two weeks' imprisonment, with the following breakdown:

(a) first s 468 charge (DAC-923529-2019): 14 months' imprisonment (consecutive);

(b) second s 468 charge (DAC-923530-2019): 14 months' imprisonment (concurrent);

(c) s 420 charge (DAC-923536-2019): two weeks' imprisonment (consecutive); and

(d) third s 468 charge (DAC-923537-2019): 12 months' imprisonment (consecutive).

The Prosecution's case

20 In response to the appellant's submissions, the Prosecution argues that the sentence imposed by the DJ is not manifestly excessive in view of the aggravating factors present that warrant a sentence which sends a strong deterrent signal.[33] The Prosecution cites a number of sentencing precedents to illustrate that the individual sentences imposed for the s 468 charges are eminently reasonable.[34] In relation to the s 420 charge, the Prosecution submits that the DJ properly applied the sentencing framework in *Gene Chong* based on a holistic consideration of the facts.[35]

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33 Prosecution's submissions ("PS") at [21]–[23].

34 PS at [27].

35 PS at [34].

21 The Prosecution further submits that the DJ had adequately taken into account the relevant mitigating factors such as the appellant's plea of guilt and co-operation with the authorities.[36] Moreover, the DJ had rightly placed no weight on the appellant's MDD[37] and her personal circumstances.[38]

Issue for determination

22 The central issue for determination in this appeal is whether the sentence imposed by the DJ is manifestly excessive. With this in mind, it is necessary to discuss the following four key aspects:

(a) the relevance of the alleged mitigating factors raised by the appellant;

(b) the relevance of the sentencing precedents cited by the parties;

(c) the relevant sentencing factors pertaining to each offence; and

(d) the application of the one-transaction rule and the totality principle.

My decision

Relevance of the alleged mitigating factors raised by the appellant

23 I first consider the relevance of two of the alleged mitigating factors raised by the appellant, these being the appellant's MDD and her personal circumstances.

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36 PS at [35].

37 PS at [42].

38 PS at [38].

The appellant's MDD

24 It has been held that as a matter of general principle, an offender's mental condition is relevant to sentencing if it lessens his or her culpability for the offence, therefore justifying a reduced sentence: see *Public Prosecutor v Chia Kee Chen* [2018] 2 SLR 249 ("*Chia Kee Chen*") at [112]. Thus, where an offender is labouring under a psychiatric condition at the time of the commission of an offence, this may in some circumstances be of mitigating value, reducing the force of general deterrence. In *Ng So Kuen Connie v Public Prosecutor* [2003] 3 SLR(R) 178, Yong Pung How CJ ("Yong CJ") made the following observations at [58]:

> … the element of general deterrence can and should be given considerably less weight if the offender was suffering from a mental disorder *at the time of the commission of the offence*. This is particularly so if there is a causal link between the mental disorder and the commission of the offence. In addition to the need for a causal link, other factors such as the seriousness of the mental condition, the likelihood of the appellant repeating the offence and the severity of the crime, are factors which have to be taken into account by the sentencing judge. … [emphasis added]

25 To my mind, the DJ was plainly correct to find that there was no evidence before the court that the appellant was suffering from a MDD at the time the present offences were committed. Neither was there any evidence that the appellant's MDD was causally linked to the commission of the offences.[39] Crucially, the appellant's counsel confirmed both at the hearing below[40] and during oral submissions at the hearing of this appeal that there is no such evidence available to support either of these points. According to the medical report prepared by Singapore General Hospital ("SGH") dated 25 November

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39 GD at [69] (ROP, p 129).

40 Notes of Evidence ("NE") on 9 December 2021 at ROP p 69, ln 2–3.

2019,[41] the appellant was diagnosed with a MDD only on 25 August 2016, which was *after* the commission of all the offences that she has been charged with.

26 The appellant seeks to rely on the psychiatric report of Dr Tan Sheng Neng ("Dr Tan"), a consultant psychiatrist at Winslow Clinic dated 16 January 2021 ("the Report"). The Report was prepared with reference to the appellant's charge sheets, two medical reports from the Institute of Mental Health ("IMH") and SGH, and three interviews with the appellant. The Report states that the appellant suffers from a "Major Depressive Disorder of moderate to severe severity".[42] However, this conclusion was based on the medical reports from IMH and SGH, both of which diagnosed the appellant with a MDD *after* the commission of the offences. Dr Tan did not indicate anywhere in the Report that the appellant was suffering from a MDD *at the time of the commission* of the present offences. I am thus unable to draw a conclusion from the Report that the appellant was suffering from a MDD at the relevant time. In *Chia Kee Chen* at [119], the Court of Appeal stated that "if the psychiatric report appears 'contrived and flimsy', or the psychiatric report does not show that the offender is 'suffering from a clearly diagnosed and recognised psychiatric disorder', the court will be justified in rejecting the evidence of the offender's purported mental condition". In my view, the Report is wholly lacking. Without a proper diagnosis that the appellant was labouring under a MDD at the time of the commission of the offences, the DJ was fully entitled to find that there was insufficient evidence to form such a conclusion and therefore no mitigating weight ought to be accorded to the appellant's MDD.

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41 Exhibit D1 (ROP, pp 273–274).

42 Psychiatric report of Dr Tan Sheng Neng, consultant psychiatrist at Winslow Clinic dated 16 January 2021 ("the Report") at [6.1] (ROP, p 282).

27 In any event, even if I accept that the Report did properly diagnose the appellant with a MDD at the time of the commission of the offences (which for the reasons above, I do not), I am of the view that the Report does not establish a relevant causal link between the appellant's MDD and the commission of the offences. Under the section in the Report titled "Opinions", Dr Tan opined that it was "*unlikely* that [the appellant] might have committed the stated offences wilfully" [emphasis added].[43] He further observed that "[a] person who suffers from a Major Depressive disorder will feel a situation to be hopeless. One will usually perceive far fewer options during problem-solving … Negative perceptions can *potentially* colour [the appellant's] decision making and increase her likelihood of making erroneous decisions, without carefully considering the consequences, and thus committing offences" [emphasis added].[44] Dr Tan's opinion in the Report is tentative and unspecific. His suggestion that the appellant was "unlikely" to have committed the offences wilfully is ambiguous; it does not establish a clear causal link between the appellant's MDD and her commission of the offences. Further, his observations regarding how a typical person who suffers from a MDD would behave is unhelpful in ascertaining how the appellant *herself* was affected by the MDD. Even where reference was made specifically to the appellant, Dr Tan's comments were tentative and merely suggested that as a result of the MDD, the appellant's decision making could have been *potentially* coloured by negative perceptions.

28 The appellant's bare assertion that she had a MDD at the time of the commission of the offences is insufficient for any mitigating weight to be accorded to her MDD. Therefore, in my view, the DJ was right not to have

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43 The Report at [10.5] (ROP, p 290).

44 The Report at [10.6] (ROP, p 291).

regard to the appellant's MDD in her consideration of the appropriate sentence to impose.

The appellant's personal circumstances and background

29 The appellant also submits that the DJ erred in failing to consider her personal circumstances and background which led to the commission of the offences. She urges the court to take into account her challenging childhood which was marred by abuse and a constant fear of harassment by unlicensed moneylenders whom her father had borrowed moneys from. This childhood fear manifested once again at the time of the offences as her husband had accumulated a massive amount of debt owing to his gambling habits. In order to help pay off her husband's mounting debt, the appellant began obtaining loans from unlicensed moneylenders. However, when she defaulted on her payments, these unlicensed moneylenders began to harass her and her family, including her two sons.

30 It is trite that financial difficulties are not to be regarded as mitigating factors, save for exceptional circumstances: see *Lai Oei Mui Jenny v Public Prosecutor* [1993] 2 SLR(R) 406 at [10]. In *Lim Bee Ngan Karen v Public Prosecutor* [2015] 4 SLR 1120 at [73], Chao Hick Tin JA ("Chao JA") noted that the "court should examine the motivation behind the offence, and if the offence was prompted by personal hardship caused by factors beyond the offender's control, such mitigating circumstances *may*, in appropriate cases, be looked upon more favourably and given due consideration" [emphasis in original]. While I am sympathetic to the appellant's personal circumstances, I am not satisfied that the appellant's present offences were prompted by personal hardship caused by factors beyond her control. The appellant had made the voluntary decision to borrow from unlicensed moneylenders despite being

acutely aware of the dangers of doing so. She could have availed herself of other legal means of settling her husband's gambling debts. I accept that the appellant had not borrowed from the unlicensed moneylenders because of her own faults, but had done so in order to pay off the debts incurred by her husband's gambling habits. Nevertheless, the main motivation behind the commission of the offences was the appellant's desire to repay the unlicensed moneylenders who were harassing her and her family, which was ultimately borne out of her own conscious decision to borrow from them while cognisant of the likely consequences.

31 I am therefore of the view that no mitigating weight should be accorded to her personal circumstances in this case.

General principles concerning the use of sentencing precedents

32 Before I consider the appropriateness of the individual sentences imposed for the proceeded charges, I first set out some of the established general principles concerning the use of sentencing precedents by the courts.

33 Sentencing precedents function as an aid so that consistency in sentencing may be maintained: see *Tan Kay Beng v Public Prosecutor* [2006] 4 SLR(R) 10 at [45]. However, it has been cautioned that they serve as mere guidelines only. In *Soong Hee Sin v Public Prosecutor* [2001] 1 SLR(R) 475 at [12], this court stressed that "every case which comes before the courts must be looked at on its own facts, each particular accused in his own circumstances, and counsel be kept constantly and keenly apprised of the fact that it is just not possible to categorise cases based simply on mere numerals and decimal points". The truth of this should not be understated.

34 No two cases are ever alike. The value of a particular sentencing precedent in determining the sentence to be imposed in a subsequent case is ultimately dependent on the degree of factual similarity between the two cases, including the offence-specific and offender-specific factors identified. Making bare references to outcomes in precedent cases without consideration of the detailed reasoning leading to those outcomes is ultimately an unproductive exercise.

The appropriate sentence for the s 468 of the Penal Code charges

35 I now address the appropriate sentence to be imposed for the individual s 468 charges. In this regard, it is apposite to first consider the significance of the increase in the maximum penalties for the offence introduced in the 2008 Revised Edition of the Penal Code.

The punishment provision

36 In the present case, the appellant was charged with offences under the 2008 Revised Edition of the Penal Code. Prior to the amendments introduced by the Penal Code (Amendment) Act 2007 (Act 51 of 2007) ("PCAA"), the maximum imprisonment term provided for an offence under s 468 of the Penal Code (Cap 224, 1985 Rev Ed) ("1985 Penal Code") was seven years' imprisonment. The current iteration of s 468 of the Penal Code provides that:

> Whoever commits forgery, intending that the document or electronic record forged shall be used for the purpose of cheating, shall be punished with *imprisonment for a term which may extend to 10 years*, and shall also be liable to fine. [emphasis added]

37 The increase in the maximum sentence of an offence is an indication that Parliament intended that the offence should thereafter attract heavier sentences, and the courts should reflect that intention in their sentencing decisions: see

Keeping Mark John v Public Prosecutor [2017] 5 SLR 627 at [28]. However, as Chao JA went on to add, such a change does not automatically or inexorably have a conclusive effect in raising the punishments for such offences especially when Parliament states otherwise.

38 Proposals to enhance the maximum imprisonment terms for a number of offences including s 468 were discussed during the Second Reading of the Penal Code (Amendment) Bill (Bill No 38/2007). Parliament cited the prevalence and seriousness of the offences, and the proportionality of the punishments to the offences, as reasons for enhancing the prescribed punishments for those offences (see *Singapore Parliamentary Debates, Official Report* (23 October 2007) vol 83 at col 2436 (Senior Minister of State for Home Affairs, Associate Professor Ho Peng Kee ("Assoc Prof Ho"))). However, Assoc Prof Ho went on to explain that these increased maximum sentences would not automatically result in an increase in the punishments meted out by the courts (see *Singapore Parliamentary Debates, Official Report* (23 October 2007) vol 83 at col 2439):

> … when Mr Lim Biow Chuan asks whether what we have done will lead automatically to fines or punishments going up[,] I do not think so. He has mentioned, for example, the benchmarks, the sentencing guidelines, that the courts have. *I think the guidelines will continue*. It does not mean that automatically when the maximum punishment is raised, the punishment will go up. Because every punishment must depend on the facts of the case. … [emphasis added]

To my mind, some weight should still be accorded to the increase in the maximum sentence for s 468 offences in order to give effect to the legislative intent of deterring potential offenders on account of the seriousness and prevalence of the offence.

Assessment of the sentencing precedents cited by the parties

39 With the general principles concerning the use of sentencing precedents set out at [32]–[34] above in mind, I now turn to assess the sentencing precedents cited by the parties in the court below and in this appeal.

40 In the court below, the DJ had made reference to a number of sentencing precedents cited by the parties. The Prosecution in this appeal also highlight additional precedents to support its submission that the sentence imposed by the DJ is not manifestly excessive. I now analyse these precedents in greater detail.

41 The DJ first considered the benchmark sentence of 12 months' imprisonment set out in *Lim Ek Kian* as a useful starting point for the present offences. In *Lim Ek Kian*, the offender was convicted after trial on a single charge under s 468 of the 1985 Penal Code. The offender was the managing director of a car distributor. He had forged signatures on transfer forms and presented them to an officer of the Land Transport Authority ("LTA"), to deceive the LTA into transferring rebates from one customer to another. The amount involved was $9,237. The High Court noted the aggravating factors identified by the court below, namely that the fraud was a serious one that had adversely affected confidence in the integrity of the system of vehicle registration in Singapore and was practised on a statutory body no less (at [33]). The offender had also abused the position of trust he was in vis-à-vis the car buyers. In dismissing the offender's appeal against the sentence of 12 months' imprisonment imposed by the lower court, Yong CJ observed at [35] that the courts have always treated offences under s 468 seriously, and past cases had adopted a "12 month sentence of imprisonment as a benchmark".

42 However, as the Prosecution duly notes, this benchmark sentence was observed in the context of s 468 of the 1985 Penal Code, which carried a maximum term of seven years' imprisonment.[45] In my view, the precedential value of sentencing precedents relating to an earlier version of the same offence with a different prescribed punishment is somewhat attenuated, although they may still serve as a point of reference. Moreover, as I stated above at [37], some weight should be accorded to the increase in the maximum sentence for s 468 offences to reflect Parliament's views on the gravity of such offences.

43 Furthermore, with respect, I am of the view that the benchmark sentence set out in *Lim Ek Kian* is nonetheless of limited utility. In *Ng Kean Meng Terence v Public Prosecutor* [2017] 2 SLR 449 at [28], the Court of Appeal remarked that the single starting point approach would be most suitable where the offence in question almost invariably manifests itself in a particular way and the range of sentencing considerations is circumscribed. In my assessment, the single starting point approach is inappropriate for offences of forgery for the purpose of cheating under s 468 of the Penal Code. There is simply no paradigmatic manifestation of the offence for which a notional starting-point sentence may be purposefully calibrated. It is clear even on the face of the Penal Code provisions alone that an offence under s 468 may be perpetrated in a diverse range of circumstances. Indeed, "cheating" itself manifests in several different ways as listed in s 415 of the Penal Code. Nonetheless, I agree with the observation by the court in *Lim Ek Kian* (at [35]) that offences under s 468 of the Penal Code are serious offences that should be visited with a strong response by the courts. I should also make clear that nothing I have said about

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[45] PS at [26].

the utility of the benchmark sentence in *Lim Ek Kian* detracts from its relevance as a sentencing precedent in its own right.

44 Next, the DJ also had regard to the two District Court decisions of *Choy Yut Hong* and *Tang Wai Kit*.

45 In *Choy Yut Hong*, the offender pleaded guilty to seven charges, four of which were under s 468 of the Penal Code and the remaining three were under s 420 of the Penal Code. An additional 42 similar charges were taken into consideration. The offences, which were committed between 13 June 2008 and 1 April 2012, related to a rental scam orchestrated by the offender who was a property agent at the material time. The total amount involved was $546,012. In relation to the proceeded s 468 charges, the offender created and forged signatures on various separate tenancy agreements with the tenants and landlords, deceiving tenants of four condominiums into believing that if they paid the total rent upfront, they would be able to stay rent-free for six months out of a 24-month lease period.

46 The offender was sentenced to a total of 60 months' imprisonment. The individual sentence for one of the proceeded charges involving $50,400 was 15 months' imprisonment. The appeal against the decision was dismissed by the High Court. In arriving at the individual sentences to be imposed, the District Judge took into consideration the following factors: (a) the amount involved; (b) the offender's abuse of his position as a property agent; (c) the premeditated nature of the offence; (d) the large number of victims involved; (e) the offender's post-arrest offending; (f) the offender's plea of guilt (which was accorded lesser weight in view of the fact that he had absconded after his first arrest and had committed subsequent offences); and (g) the offender's minimal restitution of $900 (see *Choy Yut Hong* at [43]–[49]). As the s 468 charges

related to separate properties and were therefore separate and distinct offences, the District Judge ordered three of the sentences for the seven proceeded charges to run consecutively, which she considered to be proportionate to the overall offending (see *Choy Yut Hong* at [55]).

47 In *Tang Wai Kit*, the offender pleaded guilty to six charges – four charges under s 468 and two charges under s 420 of the Penal Code. Eleven other similar charges were taken into consideration. At the material time, the offender was employed as an assistant sales manager of a company trading in industrial chemicals and plastic products. In respect of the s 468 charges, the offender had forged a purchase order and multiple delivery orders in order to cheat other employees of the company, thereby inducing them to make various payments, a large proportion of which were ultimately diverted to the offender. The total amount involved was $1.59m. The offender was sentenced to a total of 84 months' imprisonment. In particular, the Prosecution highlights the sentence of 15 months' imprisonment imposed for the s 468 charge involving an amount of $26,910.[46]

48 Curiously, the District Judge in *Tang Wai Kit* found (at [44]) that the correct approach to sentencing in that case was to emphasise the aggregate sentence over a "granular approach relating to the sentence for (the) individual charges", citing *Public Prosecutor v Koh Seah Wee* [2012] 1 SLR 292. In essence, the District Judge accepted that it was proper to first determine the appropriate aggregate sentence before working backwards to determine the corresponding individual sentences. With respect, I find this approach to be incorrect and contrary to the established principles concerning the analytical framework for sentencing of multiple offences. In *Gan Chai Bee Anne v Public*

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46 PS at [28].

Prosecutor [2019] 4 SLR 838 ("*Anne Gan*") at [19], Sundaresh Menon CJ ("Menon CJ") stressed that:

> … sentencing for multiple offences comprises two analytically distinct steps which are to be taken in sequence. First, the court must determine the appropriate individual sentence in respect of each charge. Second, the court must determine the overall sentence which should be imposed. …

At the first step, the sentencing judge must consider the relevant aggravating and mitigating factors that bear upon the sentence for each charge. Subsequently, at the second step, the sentencing judge must consider which of the sentences should run consecutively, having due regard to the one-transaction rule and the totality principle (see *Anne Gan* at [18]).

49 In my view, the sentencing methodology adopted by the District Judge in *Tang Wai Kit* is wrong in principle. It effectively reverses the proper order of the two steps cited above. The defect of such an approach is its inability to account for the relevant aggravating and mitigating factors which play an important role in the calibration of the sentences for the individual offences. For this reason, I am cautious of relying on the individual sentences imposed in *Tang Wai Kit*. In this connection, I should add that it is imperative for sentencing courts to examine closely the articulated reasoning behind the sentences imposed in precedent cases which are sought to be relied upon. Where the reasoning is in doubt, the weight to be accorded to the outcomes in those cases is consequently diminished.

50 I now turn to the sole precedent cited by the appellant, which was the unreported decision of *Candace Ang*. The appellant extracted the case of *Candace Ang* from *Sentencing Practice in the Subordinate Courts* (LexisNexis, 3rd Ed, 2013) ("Sentencing Practice") at pp 1012–1013. Based on the passage from the textbook, the offender had forged her husband's signature

on various bank and insurance documents to make unauthorised withdrawals and surrender requests respectively. The misappropriated moneys amounted to $152,453.22 and were used by the offender to settle personal debts and other expenses. The offender was a first-time offender who had pleaded guilty to two charges under s 468, with four similar charges taken into consideration for the purpose of sentencing. The offender did not make any restitution, but instead agreed with her husband and mother-in-law to forgo her right to claim maintenance for their one-year-old child. On appeal, the court reduced the offender's sentence from 12 months' imprisonment per charge to two months' imprisonment per charge, with the sentences to run concurrently.

51 It is well-established that unreported decisions are of limited precedential value. Much judicial ink has been spilt cautioning against reliance on unreported decisions. In *Luong Thi Trang Hoang Kathleen v Public Prosecutor* [2010] 1 SLR 707 at [21], Chan Sek Keong CJ cautioned against relying on unreported decisions indiscriminately in determining the appropriate sentence for any particular case before the court. Unreported decisions are often bereft of crucial details concerning the facts and circumstances of the case. The lack of detailed reasoning behind the sentences imposed also undermines the utility of such cases as relevant comparators. This was recently echoed in *Abdul Mutalib bin Aziman v Public Prosecutor and other appeals* [2021] 4 SLR 1220 at [99], where this court observed that "absent a reasoned judgment explaining a particular sentencing decision, bare reference to the outcomes in other cases will seldom be useful".

52 Notwithstanding the already limited utility of *Candace Ang* as an unreported decision, the extract taken from Sentencing Practice clearly stated that the High Court judge in that case cautioned against the use of the reduced sentence as a general precedent. Moreover, as the DJ observed, *Candace Ang*

appeared to be a case involving the misappropriation of moneys within the family, which can be distinguished from the present case involving a scheme of insurance fraud perpetrated against the general public.[47]

53 Therefore, I am of the view that the DJ rightly placed little weight on this precedent.

54 I turn now to consider the two additional sentencing precedents the Prosecution cites in this appeal. The Prosecution submits that the individual sentences meted out in the present case are consistent with these precedents and consequently are not manifestly excessive.

55 The first precedent that the Prosecution refers to is *Public Prosecutor v Lim Hoon Choo* [1999] 3 SLR(R) 803 ("*Lim Hoon Choo*"). In *Lim Hoon Choo*, the offender pleaded guilty to 12 charges under s 468 of the 1985 Penal Code, with the remaining 470 other similar charges being taken into consideration for the purpose of sentencing. The offender, who had sole charge of her employer's bank accounts, forged bank cheques issued by her employer by making unauthorised changes to the amounts payable and altering the name of the payee on the cheques in order to reflect herself as the recipient. Her offending conduct spanned a substantial duration of seven years and she dishonestly obtained a total sum of $3,117,000. On appeal, the offender's sentence was increased from six years' imprisonment to nine years' imprisonment. She was sentenced to three years' imprisonment per charge with the sentences in three of the charges ordered to run consecutively. The amount involved in each charge ranged from $16,117.66 to $30,011.42. The offender offered to make restitution of about $250,000. She was not a first-time offender and had several property-related

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47 GD at [62].

antecedents for criminal breach of trust under s 408 of the 1985 Penal Code and cheating under s 420 of the 1985 Penal Code. On appeal, the High Court noted that there was an abuse of trust on the part of the offender which was aggravating (see *Lim Hoon Choo* at [15]).

56 I find the case of *Lim Hoon Choo* to be of limited precedential value in in the present case for a number of reasons. First, similar to *Lim Ek Kian*, the offender was prosecuted under s 468 of the 1985 Penal Code, where the maximum term of imprisonment prescribed was lower. Second, several offender-specific aggravating factors present in *Lim Hoon Choo* are absent in the present case. The offender in *Lim Hoon Choo* faced 470 other similar charges which were taken into consideration for the purpose of sentencing, dwarfing the six charges taken into consideration in the instant case. Additionally, the offender in *Lim Hoon Choo* was traced for relevant property-related antecedents. By virtue of the principle of escalation, which calls for the cumulative increase in punishments where an offender's antecedents have displayed an escalating pattern of offending (see *Public Prosecutor v Low Ji Qing* [2019] 5 SLR 769 at [57]–[60]), the sentences imposed on the offender would have been calibrated to reflect his property-related antecedents in order to deter him from committing further offences. In contrast, the appellant in the present case is untraced. Third, the total amount involved in *Lim Hoon Choo* was significantly higher at $3,117,000, compared to $330,878 in the present case. After consideration of all these differences, I do not find *Lim Hoon Choo* to be a helpful precedent to determine the appropriate sentence in the present case.

57 The second precedent the Prosecution relies on is *Public Prosecutor v Lim Hwee Ling Rina* [2005] SGDC 237 ("*Rina Lim*"). The offender in *Rina Lim* pleaded guilty to 13 charges, of which seven charges were under s 468, another

five charges were under s 420 and the remaining charge was under s 406. All the charges were brought under the 1985 Penal Code. A total of 96 similar charges were taken into consideration for the purpose of sentencing. There were three distinct manners in which the s 468 offences were perpetrated by the offender. On some occasions the offender would obtain cheques which her grandfather had signed in advance but fraudulently insert larger figures than what her grandfather had intended. On other occasions, she would fraudulently withdraw funds from her grandfather's bank account by issuing forged cheques addressed to herself, causing the bank to deliver moneys to her. Lastly, she had also forged bank account statements to convince her grandfather that his accounts were in order. The total loss across all the charges amounted to $2,677,000. She was sentenced to a global term of six and a half years' imprisonment. For the charges which involved sums of between $100,000 and $200,000 and the forging of bank account statements, individual sentences of two years' imprisonment were imposed for each charge. For the charges which involved sums of $300,000 and above, sentences of two and a half years' imprisonment were imposed per charge.

58 As with *Lim Hoon Choo* above, I am of the view that *Rina Lim* is likewise an unhelpful precedent. Apart from the same issues identified with *Lim Hoon Choo* concerning: (a) the fact that the charges were brought under the 1985 Penal Code which prescribed a lower maximum sentence; (b) the significantly higher number of charges taken into consideration; and (c) the fact that the total amount involved ($2,677,000) was much higher (see [57] above), the factual circumstances of the offending in *Rina Lim* differ from the present case. In *Rina Lim*, the victim of the majority of the offences underlying the charges was the offender's grandfather. While there certainly was an abuse of

trust, the consequences of the offender's acts did not have significant public interest ramifications unlike in the present case.

59 After considering the precedents above, I am of the view that the most closely relevant precedent in the present case is *Choy Yut Hong*. I will elaborate more on this later.

The relevant sentencing factors

60 While relevant sentencing precedents serve as good reference points to determine the appropriate sentence to impose, due regard must be had to the specific facts and circumstances of each case, especially the relevant offence-specific and offender-specific factors.

61 In the present case, the DJ accepted that the following factors were relevant: (a) the amount involved;[48] (b) the fact that the offences undermined the delivery and integrity of insurance services in Singapore;[49] (c) the abuse of trust vis-à-vis the victims;[50] (d) the premeditated nature of the offences;[51] (e) the difficulty of detecting the offences;[52] (f) the lengthy period of offending;[53] (g) the fact that the appellant made partial restitution;[54] and (h) the appellant's

48 GD at [52] and [55] (ROP, p 124).

49 GD at [64] (ROP, p 128).

50 GD at [65] (ROP, p 128).

51 GD at [66] (ROP, p 129).

52 GD at [67] (ROP, p 129).

53 GD at [68] (ROP, p 129).

54 GD at [74] (ROP, p 131).

plea of guilt and co-operation with the authorities.[55] I deal with each of these factors *in seriatim*.

(1) The amount involved

62 In *Idya Nurhazlyn bte Ahmad Khir v Public Prosecutor and another appeal* [2014] 1 SLR 756 ("*Idya*") at [48], Menon CJ opined that the primary yardstick in sentencing for an offence of cheating would often be the value of the property involved. There is much sense in this proposition. Yet, that is not to say that the amount involved should be the *sole* factor in determining the appropriate individual sentence to be imposed. This is especially pertinent when comparisons are made between precedent cases where similar amounts are involved. As noted by the District Judge in *Choy Yut Hong* at [54], it is trite that sentences do not always bear a relationship of linear proportionality with the sum involved. Care must be taken not to directly translate sentences imposed in a precedent case unquestioningly to a case at hand based simply on mathematical extrapolation. This simplistic approach would wholly neglect to account for the relevant offence-specific and offender-specific factors that were considered in the calibration of the individual sentence in the precedent cases.

63 For completeness, I am satisfied that the DJ did not solely have regard to the total amount involved in the present case ($330,878), but she had also considered all the relevant sentencing factors in the round before arriving at the appropriate individual sentences to be imposed. In fact, the DJ had also carefully tailored the individual sentences according to the differing amounts involved across the three s 468 charges.[56]

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55 GD at [44(e)]–[44(f)] (ROP, pp 121–122); Notes of Evidence on 15 December 2021 at ROP p 92, ln 6–7 and 9–10.

56 GD at [74] (ROP, p 131).

(2) Undermining of the delivery and integrity of insurance services in Singapore

64 Second, the DJ observed that it was aggravating that the offences committed by the appellant carried with them the serious consequence of undermining the delivery and integrity of the provision of insurance services in Singapore.[57] Here, the appellant committed the s 468 offences in her capacity as an insurance agent in the employ of either AIA or HSBC, which were prominent institutions. These offences have the potential to adversely affect public confidence in the insurance industry. I also accept that such incidents of offending may result in increased efforts and costs on the part of the insurance industry as it seeks to enhance security measures to prevent the recurrence of similar scams.

(3) Abuse of trust

65 Third, it is clear that the appellant had abused the trust reposed in her by the victims who were her clients by forging the insurance policies and deceiving them into delivering moneys to her. Insurance agents like the appellant are expected to uphold high standards of professional integrity in dealings with their clients. Instead, the appellant had taken advantage of the trust her clients had in her by misusing the authority of the insurance companies she worked for on multiple occasions, cheating her clients of large sums of moneys. This is a significant aggravating factor which the DJ rightly took into account.[58]

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57 GD at [64] (ROP, p 128).

58 GD at [65] (ROP, p 128).

(4) Premeditation

66 Fourth, the DJ found that there was a degree of premeditation in the appellant's offending conduct.[59] In *Public Prosecutor v Fernando Payagala Waduge Malitha Kumar* [2007] 2 SLR(R) 334 at [39], V K Rajah J (as he then was) held that a deterrent sentence should be *de rigueur* where an offence is committed with premeditation and planning. The appellant had deliberately forged insurance contracts using copies of existing contracts. I agree with the DJ that this demonstrated careful planning and execution of the forgery to deceive the victims.

(5) Difficulty of detection

67 Fifth, I agree in principle with the DJ that the appellant's meticulous forging of the documents based on existing contracts would have made the offences difficult to detect as they would have resembled standard insurance contracts to the unsuspecting victims.[60] However, I should add that it was only a matter of time before the appellant's offences would have come to light seeing as she had promised Wong returns on her investments within a one-year time period. Indeed, Wong had inquired about the returns on her policies when they were not forthcoming.[61] Accordingly, the aggravating weight to be placed on this factor is somewhat attenuated.

(6) Lengthy period of offending

68 Sixth, the DJ noted that the total period of offending across both the proceeded charges and the charges taken into consideration for sentencing

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59 GD at [66] (ROP, p 129).

60 GD at [67] (ROP, p 129).

61 GD at [17] (ROP, p 112).

spanned a period of three years between 2013 and 2016. In view of this, she did not regard the appellant as a first-time offender.[62] Indeed, it is well-settled that the court may decline to regard an offender as a first-time offender where he or she has been charged with multiple offences, even in the absence of prior convictions: see *Chen Weixiong Jerriek v Public Prosecutor* [2003] 2 SLR(R) 334 at [17].

(7) Partial restitution

69 Seventh, I am unable to accept the appellant's submission that the DJ failed to adequately take into account the partial restitution made of $26,200, of which $21,200 was paid to Wong and $5,000 was paid to Lim.[63] The DJ had acknowledged the sums paid as restitution by the appellant; however, she declined to accord significant mitigating weight to this as the amount of restitution made was merely a fraction of the total loss of $330,878 suffered by the victims.[64] In my view, the DJ did not err in making such an assessment.

(8) Plea of guilt and co-operation with the authorities

70 I agree with the DJ that some mitigating weight ought to be given to the appellant on account of her plea of guilt and co-operation with the authorities.[65] Nonetheless, I am cognisant of the Prosecution's submission that she had only pleaded guilty belatedly – two years, four months and ten days after she was first charged.[66]

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62 GD at [68] (ROP, p 129).

63 AS at [20(b)(iii)(f)].

64 GD at [58(b)] and [74] (ROP, pp 126 and 131).

65 NE on 15 December 2021 at ROP p 92, ln 6–7 and 9–10.

66 PS at [41].

Conclusion on the sentences for the s 468 charges

71 In my judgment, the individual sentences imposed by the DJ in respect of the charges under s 468 of the Penal Code are not manifestly excessive. The DJ had carefully considered the relevant sentencing factors to arrive at the appropriate sentences for each charge.

72 The sentences imposed are also not out of step with the most closely relevant precedent of *Choy Yut Hong*, where the total amount involved was relatively similar with an overlap of certain offence-specific factors including the abuse of trust and the premeditated nature of the offence. Yet, it is important to bear in mind that the facts and circumstances in that case are not wholly coincident with the present case. While there is some overlap of the sentencing factors, a direct comparison of the individual sentences imposed would not be entirely proper.

The appropriate sentence for the s 420 of the Penal Code charge

73 The appellant submits that a sentence of two weeks' imprisonment for the s 420 charge is appropriate.[67] This is notwithstanding her submission in the court below for a sentence of one to two month's imprisonment,[68] which was consistent with the sentence of one month's imprisonment imposed by the DJ.

74 While the DJ applied the sentencing framework for s 420 offences as set out in *Gene Chong*, I find that this is not the proper case for me to consider the correctness of the stated framework. I shall therefore leave it open for consideration by a future court on a later occasion.

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67 AS at [42].

68 Appellant's Plea in Mitigation at [65], ROP p 258.

75 Nonetheless, I am in agreement with the DJ's assessment that the harm caused and the appellant's culpability in respect of this offence was low, based on the balancing of the various aggravating and mitigating factors. The amount involved of $1,978, while not insubstantial, is on the low end.[69] Moreover, as the DJ observed, the level of sophistication in the appellant's offending conduct is also low. She had merely presented Lim's NRIC to a StarHub employee and represented herself as Lim in signing the relevant mobile service line contracts.[70] That being said, as the DJ acknowledged, some aggravating weight has to be accorded to the appellant's abuse of Lim's trust.[71] Moreover, although the appellant was untraced, there was another similar charge under s 420 of the Penal Code taken into consideration for sentencing. While no restitution was made to StarHub, restitution of $5,000 was made to Lim in respect of the other s 420 charge which was taken into consideration for the purpose of sentencing. The appellant's plea of guilt also carries some mitigating weight, despite not having been made at the earliest opportunity.

76 Accordingly, I see no reason to disturb the sentence of one month's imprisonment imposed by the DJ for the s 420 charge.

One-transaction rule and the totality principle

77 As mentioned earlier at [19], at the hearing of the appeal, the appellant's counsel clarified that the appellant was not contesting the DJ's decision to run the sentences in three of the offences consecutively, namely the sentences in the first and third s 468 charges and the s 420 charge.

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69 GD at [76(a)] (ROP, p 131).

70 GD at [76(b)] (ROP, p 131).

71 GD at [76(c)] (ROP, p 132).

78 In any event, I find that the DJ's decision to do so should not be disturbed. It offends neither the one-transaction rule nor the totality principle. As observed by Menon CJ in *Raveen Balakrishnan* at [53], "[i]f all three offences are unrelated, then the general rule of consecutive sentences for unrelated offences would operate for all three individual sentences to run consecutively". The three offences underlying the two s 468 charges and the s 420 charge in the present case are plainly unrelated as they involved different victims and were committed in different years.

79 Further, I am also of the view that the DJ had properly directed her mind to the totality principle.[72] The global sentence imposed of 35 months' imprisonment is entirely proportionate to the overall criminality of the appellant.

Conclusion

80 For the reasons above, I dismiss the appellant's appeal against sentence.

Vincent Hoong
Judge of the High Court

[72] GD at [90] (ROP, p 137).

Abraham Tilak Kumar (Abraham Logan & Partners) for the appellant;
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