Ong Chee Eng *v* Public Prosecutor
[2012] SGHC 115

Case Number	: Magistrate's Appeal No. 35 of 2012
Decision Date	: 24 May 2012
Tribunal/Court	: High Court
Coram	: Chao Hick Tin JA
Counsel Name(s)	: Appellant in person; DPP Wong Woon Kwong (Attorney-General's Chambers) for the respondent.
Parties	: Ong Chee Eng — Public Prosecutor

Criminal Procedure and Sentencing

24 May 2012 Judgment reserved.

Chao Hick Tin JA:

1 The appellant was caught after a month-long spree during which he harassed loan sharks' debtors by splashing paint, locking doors, setting fires, and writing "OP" outside their homes. The appellant pleaded guilty to 24 charges with a further 48 charges taken into consideration. The charges that the Prosecution proceeded with fell into four categories.

2 The first category (five charges) dealt with harassment by fire. The appellant was sentenced to 24 months' imprisonment and three strokes of the cane for each charge in the first category. The second category (three charges) related to locking the victims' doors with bicycle locks. The appellant was sentenced to 15 months' imprisonment and three strokes of the cane for each charge. The third category (15 charges) concerned the splashing of paint. He was sentenced to 12 months' imprisonment and three strokes of the cane for each charge.

3 These three categories of charges related to the offence under s 28(2) (read with s 28(1)) of the Moneylenders Act (Cap 188, 2010 Rev Ed) ("the Act"). Section 28(2)(*a*) of the Act applies to first-time offenders and provides for mandatory imprisonment for up to five years and a fine of $5,000 to $50,000. The punishment for repeat offenders is found in s 28(2)(*b*): between two to nine years' imprisonment and a fine of $6,000 to $60,000. Where there is damage to property, s 28(3)(*b*)(*i*) provides that three to six strokes of the cane will be imposed. The Prosecution confirmed during the hearing of the appeal that it was not proceeding under s 28(2)(*b*) of the Act.

4 The fourth category comprised a single charge of assisting in unlicensed money-lending activities by distributing the namecards of a loan shark called "David". This is an offence under s 14 of the Act. The punishment for first time offenders is a fine of $30,000 to $300,000 and mandatory imprisonment of up to four years. The appellant was sentenced to one month's imprisonment and fined $30,000 on this charge. The remaining 48 charges were mainly for harassment by splashing paint and writing on walls, with one count of assisting in unlicensed moneylending.

5 The District Judge ordered three sentences for fire harassment and one sentence for paint harassment to run consecutively. That gave a global sentence of 84 months' imprisonment, 24 strokes of the cane, and a $30,000 fine. The appellant has now appealed to this court on the ground that the 84 months' imprisonment term is manifestly excessive in the circumstances of this case.

Facts

6 The appellant is a 44 year old man. He has two daughters. The elder is studying in a Polytechnic and the younger has been diagnosed with Attention Deficit Hyperactivity Disorder. The appellant's wife recently underwent an operation for cervical cancer. He is the sole breadwinner for his family. His parents are old and ill – his father has high blood pressure and diabetes and his mother has recurrent psychiatric issues. The appellant was unemployed at the time of his arrest and had previously worked in sales for the high-end fashion stable Club21. He has an otherwise crime-free record.

7 According to the appellant, his troubles began when he agreed to guarantee a friend's loan from a loan shark. His friend fled Singapore without paying. It appears that the appellant was initially able to service the loan, but in October 2010 he was retrenched from his sales job. He sought help from the Chinese Development Assistance Council and from his Member of Parliament ("MP"), but could not find a job. To repay the outstanding loan, he began borrowing from other loan sharks. To pay these new debts, he took on even more loans. In half a year's time, the amount of money he owed to the loan sharks escalated from $5,000 to $13,000. To repay them he decided to sell his Housing and Development Board ("HDB") flat. But it took some time for the sale of the flat to be completed, and by the time of completion his loans had ballooned to $40,000, owed to some 30 different loan sharks. At this time, he was advised by his friends to run and leave the new homebuyer to face the loan sharks' wrath. The appellant did not take his friends' advice even though he could not pay the loans in full. Only $30,000 was available from the sale proceeds to repay the loans (presumably he downgraded to a smaller flat). He was still unemployed and still short of $10,000.

8 Options running out, he started working for the loan sharks in May 2011. The victim had now turned terror. But according to him he was a harasser with a heart, acting with reluctance and regret. He never harassed a house if he saw a sign stating that the debtors had already moved out. He diluted the paint with turpentine in the ratio of 1:1 so it could be easily wiped away. He splattered only half a plastic cup's worth of paint to minimise the occupants' trouble of cleaning up. He wrote on the walls with a non-permanent white board marker so the intimidating scrawls could be removed with a wet cloth. As for the fires he started, he refrained from using highly flammable fuel like kerosene. Instead, he used Zippo lighter fluid that burned out quickly. He would splash a small amount of lighter fluid and ignite it with lighted tissue paper. The fire would die out in about five seconds, and he always stayed behind to ensure that it did not burn for long. It was true that three of the five fire incidents were done in the dead of night, but the appellant said that he was there to ensure that the fire would not get out of hand. Once, he had even moved a shoe rack for fear that he might accidentally set it alight. The Prosecution did not say that the damage caused by the fires lit by the appellant had resulted in anything more serious than minor burn marks on the door. None of the five police reports made by the victims of his harassments by fire mentioned major damage caused by the fires. One occupant did not even say that a fire had been lit. Another mistook the ashes from the fire as the result of someone burning incense paper outside his home. The money was good – about $70 for a paint job, and $300 for a fire job. With more than 70 instances in slightly over a month, he seemed to be in a hurry. His target premises ranged from Pasir Ris to Jurong West. No job seemed too far for him.

9 His luck ran out on 13 June 2011 when the police caught up with him in Toa Payoh. Earlier in the day, he had just been out splashing paint on a flat in Tampines. Arrested with the paraphernalia of a loan shark hitman, he could not deny his guilt. In any event, he said he was filled with relief at finally being stopped. Eager to make amends, he started confessing to instances of harassment that the police would otherwise never have been able to pin on him. Just as his loan debt had escalated,

the charges against him swelled – from fewer than five to 72. As the number of charges ballooned due to his confessions, his difficulties with the law deepened. What began as a favour for a friend had now snowballed into multiple grave breaches of the law on his part. Lacking money to engage a lawyer, he appeals in person. He recognised that he had done grave wrongs and ought to be appropriately punished, but he urged the court to look at the entire circumstances of the case and to show mercy.

Parliament's intended approach towards loan shark offences

10 The High Court has, in *Public Prosecutor v Nelson Jeyaraj s/o Chandran* [2011] 2 SLR 1130 ("*PP v Nelson Jeyaraj*") at [38]–[40], referred to Parliament's rationale in enhancing the penalties for loan shark related offences. This was to more effectively stem the rise of loan shark activities that were causing public disquiet. What is notable is that Parliament has prescribed mandatory imprisonment and caning even for first-time offenders. In the light of the severity of the mandatory sentences, I have no doubt that Parliament's intention is to strongly deter the commission of loan shark offences. But this is not to say Parliament has declared indiscriminate war on loan shark harassers. Indeed, the Parliamentary debates show that deterrence is just one aspect of a sophisticated and holistic solution, sensitively tailored to the complex causes of loan shark offences, with discerning sympathy for those involved – victim or harasser.

Loan shark offences – a complex species of crime

11 Loan shark offences occur almost exclusively within the margins or fringes of society, involving the poor and vulnerable who desperately need loans but cannot get them from legitimate sources. Parliament has recognised that the root cause of loan shark offences is the fact that the poor and non-creditworthy are unable to get loans from legal sources. When loans go unpaid, harassment begins. Nominated MP Assoc Prof Paulin Tay Straughan highlighted this aspect of loan shark offences during the second reading of the Moneylenders (Amendment) Bill 2010 ("the Bill") (*Singapore Parliamentary Debates*, *Official Report* (12 January 2010) vol 86 at col 2101) and here I quote her:

> ... I have been sitting there and trying to understand what would drive a person to turn to a loanshark for money? It must be out of sheer desperation ... Many in this category, I suspect, will not have a strong informal social support. So to say that they should turn to family and friends is pretty much telling them to go down a blind alley. So, as a society, I hope that we will continue to put effort into creating legitimate formal sources of help for the vulnerable group in our community.

12 Addressing the root cause of loan shark offences ultimately requires socio-economic and political decisions that lie outside the courts' remit. For example, it is only Parliament that can decide how much welfare the poor should receive, or how widespread and available licensed moneylending should be. The problem of loan shark offences also has to be seen from many angles. Some borrow from loan sharks to repay gambling debts. Youths are lured by easy money into harassing loan shark debtors. Others borrow from such illegal sources to meet a need due to retrenchment or some other personal misfortune. MP Seah Kian Peng during the Parliamentary debates (*Singapore Parliamentary Debates*, *Official Report* (12 January 2010) vol 86 at col 2112) very perceptively observed that fighting loan shark offences may be like squeezing a balloon: the air/problems simply go somewhere else.

Parliament's solution is holistic

13 Parliament has chosen to squeeze the balloon with a multi-pronged approach. For example, the

Ministry of Home Affairs has set up a specialised department within the Police Force to fight the loan shark syndicates; measures have been taken to freeze the suspected assets of loan sharks; restrictions on licensed moneylending have been eased to widen the availability of funds to the poor; youth community outreach programs have been initiated; and community financial assistance has been increased. Deterrence in the form of severe mandatory sentences is just one facet of this multi-faceted solution. The legislature is alive to the fact that when the majority of loan shark offences are committed by the vulnerable, there is a limit as to how much sheer punishment can achieve.

A group that is especially vulnerable

14 There is a class of people whom Parliament has recognised as especially vulnerable. These are the people who turn to loan sharks not to pay off their gambling debts, but because of genuinely desperate needs (*eg* someone in a family that is barely making ends meet is unexpectedly hospitalised). MP Hri Kumar observed (*Singapore Parliamentary Debates*, *Official Report* (12 January 2010) vol 86 at col 2066):

> Most people do not go to illegal moneylenders and pay those blood-sucking rates because they want to. They are desperate. Borrowing from banks ... is reserved for those who are creditworthy. The typical customer of an illegal moneylender is not. His need for money may, however, be no less real or compelling than the next person. Not everyone has family or friends he can turn to for help.

MP Irene Ng empathised with the plight of such people when she said (*Singapore Parliamentary Debates*, *Official Report* (12 January 2010) vol 86 at col 2089):

> If they could not turn to loansharks, in their depths of anguish and desperation, they may be driven to other actions for money, such as crime – which could be mugging or robbery; for women, it could be prostitution; and for others, perhaps, even suicide.

15 Then Senior Minister of State for Home Affairs, Assoc Prof Ho Peng Kee, agreed and acknowledged that (*Singapore Parliamentary Debates*, *Official Report* (12 January 2010) vol 86 at cols 2119–2120):

> [n]ow, as many MPs have highlighted ... there are borrowers out there who would have a genuine financial need and some of them turn to loansharks.

This group of people is not very large. But neither is their pool of options. Very often they have no choice but to borrow from their local loan sharks. In so doing, they indirectly contribute to the increase in loan shark offences. But the Minister explicitly declined for the time being to criminalise such borrowing on the basis that it might disproportionately affect the most vulnerable and desperate (*Singapore Parliamentary Debates*, *Official Report* (12 January 2010) vol 86 at col 2062).

16 When the vulnerable are forced to borrow, sometimes they are unable to repay. Trapped, they are forced to turn to crime – loan shark harassment is an option. Such moral dilemmas are on stage often splashed in black and white. But reality is usually in shades of grey. The plight of the vulnerable was recognised by Parliament, and received sympathetic attention. As MP Sin Boon Ann noted (*Singapore Parliamentary Debates*, *Official Report* (12 January 2010) vol 86 at col 2080):

> ... I think more efforts can be put in by the Government through its public education and counselling programmes. At the moment, illegal moneylending operates very much on the fringe of society. People who are involved in money lending, whether as borrowers or runners, almost to a

person, I am confident to say, have personal problems that require help.

At the end of the debate, Assoc Prof Ho said (*Singapore Parliamentary Debates*, *Official Report* (12 January 2010) vol 86 at cols 2127–2128):

> Let me make this point about borrowers who have become harassers. I think there have [*sic*] been some sympathy raised in this House for this group and for the need to distinguish this group of borrowers who become harassers for loan sharks. First of all, what we have done in this Bill is to ensure that both groups are punished and I think rightly so both groups should be punished. And from what we have heard in this House … there is, in fact, organised crime; there is layering. Everybody plays a part. They may play different parts but because they are working in concert the pain and problem is perpetuated.
>
> The example we have used here is Hydra and the tentacles … But really, the nub of this Bill is that we want to do more to attack the source, which is the kingpins … And yet, at the same time, we have to address the ongoing problem on the ground so we have to cut off the tentacles. We have to ensure that the harassers do not perpetuate the ill intentions of the loansharks.

17 Assoc Prof Ho's message is clear: although Parliament sympathises with debtors who turn harassers, they are still to be punished. The expression of legislative compassion nevertheless suggests that: (a) while the vulnerable are still to be punished for their role in perpetuating the loan shark scourge, the *severity* of their punishment might depend on their individual circumstances; and (b) that the court will be entitled, within the range of discretion accorded under the law, to impose such punishment as is consonant with the offender's culpability. Underlying Parliament's empathy may be the recognition that more, perhaps, could be done by society for the group of people who have to seek help from loan sharks. As Nominated MP Audrey Wong observed (*Singapore Parliamentary Debates*, *Official Report* (12 January 2010) vol 86 at cols 2099–2100):

> While the Government has assured Singaporeans that the poor and needy in our midst will be looked after … perhaps our current efforts to educate and reach out to the truly needy and desperate are still insufficient to help this minority of people who resort to borrowing from illegal means. As living costs continue to rise and the wages of the lowest-earning in our population may not keep pace with the inflation rate, I am concerned that we may see more financially desperate Singaporeans who may still go to loansharks or work for them despite the risks.
>
> ... As for debtors who end up working for loansharks as runners and repeat offenders – I know there are many repeat offenders who go to jail for loanshark activities and repeat their behaviour when they are out of jail – the new stricter laws may act as a deterrent but I believe the truly desperate would still continue to run the risk of the harsher punishment ...

18 Naturally the circumstances of those who help loan sharks, either as runners or harassers, are diverse. For present purposes, it suffices for me to make the point that it is important to distinguish between those who, out of genuinely desperate financial need brought about by events not within their control (*eg* sudden sickness and prolonged retrenchment), borrow from loan sharks whom they are then forced to work for, and others who are perhaps less deserving of sympathy. For the latter category, two groups come to mind. The first are youth harassers, whom the loan sharks seem to be recruiting in increasing numbers. They are apparently lured by the easy money and the thrill. Parliament's response to this development is, among others, to enact s 28B of the Act, which makes it an offence for anyone above 21 to procure a minor to harass debtors. Youth outreach programs have also been initiated to educate and counsel. The second group are gamblers who harass for the

easy money they can obtain to repay their gambling debts.

The application of deterrence in this context

19 It will be apparent from the foregoing that people who are involved in illegal moneylending activities are not a homogenous group. Neither are the offences under the Act. The kingpins are the real and prime targets of the law. But this is not to say that runners and harassers will be treated leniently. This is apparent from the severe mandatory sentences enacted by Parliament targeting loan shark harassers. These prescribed criminal penalties have been carefully and finely calibrated and appear to be based on three main pillars:

(a) mandatory imprisonment;

(b) mandatory caning where property is damaged; and

(c) a reasonably broad range of flexibility vested in the court to ensure that the punishment is proportionate.

20 The importance of flexibility is clear from Assoc Prof Ho's exchange with MPs Arthur Fong and Calvin Cheng during the Parliamentary debates on the Bill. MP Arthur Fong advocated a zero-tolerance approach and suggested that Assoc Prof Ho (*Singapore Parliamentary Debates*, *Official Report* (12 January 2010) vol 86 at cols 2083):

> … consider a stiffer penalty than those proposed …
>
> On section 28(1) and (2), harassing borrower … the revised penalty [is] mandatory imprisonment not exceeding five years for first offenders, I would like to urge the Minister to consider invoking a minimum imprisonment of three years not exceeding five years, and a minimum caning of two strokes, whether there is property damage or a person is hurt. For repeat offenders, to invoke a minimum imprisonment term of four years not exceeding nine years.

Assoc Prof Ho rejected the suggestion, saying (*Singapore Parliamentary Debates*, *Official Report* (12 January 2010) vol 86 at col 2129):

> ... I think the scope of punishment is sufficient for now. And this I also say in reply to ... [those] who have argued that there should be enhanced punishment for various offences. We have, like I said, drafted the provisions very carefully, calibrated, poised, quite balanced. Whether we need to do more, we will take a relook later as the provisions work out on the ground.

21 MP Calvin Cheng had also commented and asked (*Singapore Parliamentary Debates*, *Official Report* (12 January 2010) vol 86 at cols 2086–2087):

> My second point concerns the mandatory jail terms that individuals face. Although a mandatory jail term serves as a much higher deterrent to possible offenders, it also ties the hands of judges during sentencing, especially when considering mitigating factors. *Some of these mitigating factors may be strong; for example, it is not unheard of for people in debt to these loansharks to be forced into working for them. This is especially so, given the ruthlessness of these loansharks, if these people break the law in fear for their lives or the lives of their loved ones. Judges should be allowed to consider these factors when sentencing offenders and a mandatory jail sentence may be too harsh* especially in cases where the perpetrators offend under threat or fear for their lives. Will the Minister consider raising the jail terms whilst not making it mandatory?

> In this way, the deterrent is still increased, without restricting judges when considering mitigating factors. [emphasis added]

While Assoc Prof Ho did not agree with MP Calvin Cheng's proposal, Assoc Prof Ho shared MP Calvin Cheng's concern about inflexibility (*Singapore Parliamentary Debates*, *Official Report* (12 January 2010) vol 86 at cols 2133–2134):

> On mandatory punishment – I think this is the point that Mr Calvin Cheng has made – whether mandatory punishment will put a fetter on the Court's discretion in sentencing. Actually, mandatory punishment, for example, mandatory imprisonment, it means that the Court has to jail a person. But within that power, there is a range where the Court can jail a person either for "x" years or "x plus y" years. In that sense, the Court will still have some discretion, taking into account the mitigating circumstances of the case ... Whether it removes the Court's ability to take into account mitigating circumstances, the answer will be no, because still the Court can consider that. Many MPs, in fact, have highlighted the fact that we have imposed minimum mandatory punishment. I think as this House knows, we do not do that lightly as a government. We do it when the situation warrants it. And that is why at this point in time when we have to send a strong message, we have included some mandatory minimum punishment in the Bill, I am sure the message will sink in.

22 In applying these "tough laws", the courts must be careful to uphold the deterrence objectives that Parliament had in mind when enacting the severe mandatory minimum punishments. But the courts must also apply the law sensitively, keeping in mind the intricate context in which deterrence works and the deliberate decision Parliament made to grant the courts some leeway in sentencing. A nuanced approach is called for, and unintended distortions in the ecosystem of measures Parliament has structured should be avoided.

The present appeal

23 A key feature in the administration of criminal justice is that, within the range or confines of the criminal sanctions prescribed by law for an offence, the punishment imposed should fit the crime and the criminal. Hence even in a case like the present, where the legislature has unequivocally declared war on loan shark offences, unrelenting deterrence does *not* mean indiscriminate deterrence. As the court very aptly remarked in *Tan Kay Beng v Public Prosecutor* [2006] 4 SLR(R) 10 (at [31]):

> *Deterrence must always be tempered by proportionality in relation to the severity of the offence committed as well as by the moral and legal culpability of the offender. It is axiomatic that a court must abstain from gratuitous loading in sentences*. Deterrence, as a concept, has a multi-faceted dimension and it is inappropriate to invoke it without a proper appreciation of how and when it should be applied. It is premised upon the upholding of certain statutory or public policy concerns or alternatively, upon judicial concern or disquiet about the prevalence of particular offences and the attendant need to prevent such offences from becoming contagious. [emphasis added]

Similar sentiments were recently expressed by the Court of Appeal in *Public Prosecutor v Kwong Kok Hing* [2008] 2 SLR(R) 684 ("*PP v Kwong Kok Hing*") (at [42]):

> Where in relation to a particular offence the court is given a wide discretion in terms of the punishment it may impose, it is critical that it exercises that discretion, as far as possible, in a manner that remains faithful to two essential principles: (a) that the punishment fits the crime, having regard to the circumstances attending the case before the court; and (b) that like cases

be treated alike ...

24 The principle of tailoring the punishment to the crime and the criminal also extends to the use of benchmark sentences. Benchmarks usually arise from the steady accretion of the decisions of the courts. They are the result of the practical application of statutory penal laws, but should not be mistaken for those laws themselves. Benchmarks play a crucial role in achieving some measure of consistency of punishment. But the principle of treating like cases alike also means that unlike cases should *not* be treated alike. The court must resist an unhesitating application of benchmark sentences without first thoroughly considering if the particular factual circumstances of a case fall within the reasonable parameters of the benchmark case. Ultimately, where Parliament has enacted a range of possible sentences, it is the duty of the court to ensure that the full spectrum is carefully explored in determining the appropriate sentence. Where benchmarks harden into rigid formulae which suggest that only a segment of the possible sentencing range should be applied by the court, there is a risk that the court might inadvertently usurp the legislative function.

25 At this juncture, I will pause to remind myself of the trite principle that an appellate court should interfere with a sentence meted out by the trial judge only if it is satisfied that (see *PP v Kwong Kok Hing* at [13]–[14] and *Public Prosecutor v UI* [2008] 4 SLR(R) 500 ("*PP v UI*") at [12]):

(a) the trial judge had made the wrong decision as to the proper matrix for sentence;

(b) the trial judge had erred in appreciating the material before him;

(c) the sentence was wrong in principle; or

(d) the sentence imposed was manifestly excessive or manifestly inadequate.

The District Court's approach

26 It is clear from the Grounds of Decision ("the GD") that the District Judge treated the principle of deterrence as the main, if not the sole consideration. There was at best only a cursory evaluation of the appellant's mitigating factors. At the urging of the Prosecution, the District Judge also placed primary emphasis on the number of charges that the accused faced. In reaching his sentence, the District Judge referred to two cases in particular (see [23]–[24] of the GD). The first was that of *PP v Nelson Jeyaraj* (cited at [10] above), which was a Magistrate's Appeal to the High Court. In that case the High Court laid down benchmark imprisonment sentences for fire and non-fire harassment offences: 18 months and 12 months respectively. In *PP v Nelson Jeyaraj*, the accused had borrowed from loan sharks to start a business. He could not repay the loan and so began to work for the loan sharks for money. He started work as a runner who verified that others had carried out their acts of harassment. After awhile, he "upgraded" himself and voluntarily took on harassment jobs because they paid better. There was no indication that he was driven to harassment after having taken reasonable steps to service his loan. Neither had he sought to minimise the damage that his harassment caused. Unlike the appellant in the present case, he used highly flammable kerosene as fuel to light the fires, which caused extensive damage. They spread to the ceiling, melting the ceiling lamps and the insulation of electrical wirings in the common corridor. In one instance, the fire had even spread close to the gas tanks. He had a long list of antecedents. He pleaded guilty to six charges, of which five were for fire harassment. He was sentenced to 18 months' imprisonment and three strokes of the cane for each fire harassment charge, with three of them ordered to run consecutively. The total sentence was 54 months' imprisonment, 15 strokes of the cane, and a $30,000 fine.

27 The second case that the District Judge referred to was that of *Public Prosecutor v Soh Hann Kwang* (DAC 20162/11 and others, unreported) ("*PP v Soh Hann Kwang*"). The accused pleaded guilty to 11 harassment charges (of which seven were by fire) with 20 more taken into consideration. In a departure from the benchmark laid down by *PP v Nelson Jeyaraj*, the accused was sentenced to 24 months' imprisonment and three strokes of the cane for each charge of fire harassment. He received 12 months' imprisonment and three strokes of the cane for each charge of paint harassment. Three fire harassment charges and one paint harassment charge were ordered to run consecutively. The total sentence was 84 months' imprisonment and 24 strokes of the cane. The decision is unreported and so nothing is known as to the facts of the case, or why the District Judge there departed from the 18 months benchmark set in *PP v Nelson Jeyaraj*.

28 The Prosecution in the present case also referred to *Public Prosecutor v Goh Kim Leong Jeffrey* (DAC 17821/11 and others, unreported) ("*PP v Goh Kim Leong Jeffrey*"). The accused was a debtor turned harasser. He wrote "OP" on walls, set main doors on fire, splashed paint at homes, and splashed paint remover on cars. He was a first time offender, but faced a total of 50 charges of harassment. The Prosecution proceeded on 15, with the remainder being taken into consideration. He was sentenced to 21 months' imprisonment and three strokes of the cane for each fire harassment charge, and 12 months' imprisonment and three strokes of the cane for each paint harassment charge. The sentences for three fire harassment charges and one paint harassment charge were ordered to run consecutively, for a total of 75 months' imprisonment and 24 strokes of the cane. Like *PP v Soh Hann Kwang*, the case was unreported so even the age of the offender is unknown.

29 In my view, the District Judge's single-minded focus on deterrence led to an insufficient appreciation of Parliament's nuanced approach towards loan shark offences. It also led him to place too much weight on the number of offences *per se* that the appellant faced, without regard to the other circumstances which are addressed at [30] to [35] below.

The number of charges tells only a part of the story

30 The number of charges does not explain how or why the offender committed those crimes. But as explained above, those are issues that also mattered to Parliament. In the present appeal, the number of charges alone did not reveal that the appellant fell into the category of vulnerable people for whom sympathy had been expressed in Parliament. The appellant had been a law abiding citizen. He got into trouble because he foolishly guaranteed a friend's loan and later got retrenched. Even after half a year, his efforts to find a new job were unsuccessful. He began to borrow from new loan sharks to service his existing debts. He tried his best to repay the loan, even going to the extent of selling his HDB flat, but it was not enough. It was in these circumstances that he was pushed towards crime. The matrix of facts within which the appellant committed the harassment is patently different from that in *PP v Nelson Jeyaraj*.

31 The number of charges *per se* is also an imprecise indicator of moral culpability. As described above (at [8]), the appellant took some steps to minimise the damage done by him, whether it was harassment by fire or by paint. This is in stark contrast to the damage wrought by the accused in *PP v Nelson Jeyaraj*, which evidenced a total lack of concern about the consequences of his crimes or the safety of the debtors. At the appeal, the Prosecution did not question that the appellant had used Zippo lighter fluid instead of kerosene to light the fires. But it challenged the appellant's claim that he had diluted the paint and splashed only a small amount so as to reduce the damage. This scepticism was based on its view that "acts of harassment are counter-checked by other runners to ensure that the job is done". This was a new objection which had not been made by the Prosecution at the District Court. In any event, it was not disputed that in respect of the instances involving harassment by fire, little damage was caused to the target. As I see it, this is proof that the

appellant had been concerned about reducing the damage caused by his acts of harassment.

32 The number of charges tells only a part of the story of a complex crime. They may be a sign of hardened criminality, or equally a sign of desperation – of someone who for fear of his own safety or for that of his family members, felt unable to resist doing the biddings of the loan sharks. Such statistics, while relevant, cannot be viewed in isolation. Take the case of *PP v Soh Hann Kwang*, which the Prosecution placed heavy reliance upon in this appeal. All the court knows about *PP v Soh Hann Kwang* is that the accused in that case faced 31 charges of harassment, of which at least seven were for fire. He was sentenced to 24 months' imprisonment and three strokes of the cane for each fire harassment offence, and received a total of 84 months' imprisonment and 24 strokes of the cane. But this court knows nothing about the circumstances in which those offences were committed or the extent of the fire damage. Curiously enough, the appellant revealed to this court during the hearing of the appeal that, in an interesting quirk of chance, he happened to be in the same holding cell as Soh Hann Kwang while he was in remand. According to the appellant, Soh Hann Kwang boasted that he had splashed an entire one litre can of pure paint on each of the victims' doors. More alarmingly, he had allegedly mixed a litre of kerosene with a litre of thinner as fuel for the fires he lit. The fires predictably raged, in some cases causing the gate to melt off its hinges. Now *if* those were indeed the facts of *PP v Soh Hann Kwang*, then one begins to see the justification for the sentences imposed on him. But since the appellant's evidence in this regard is clearly hearsay, this court has nothing on which to evaluate the precedent value of *PP v Soh Hann Kwang* or *PP v Goh Kim Leong Jeffrey*.

33 The courts have previously remarked upon the limited precedent value of unreported cases, a warning which seemed to have been overlooked by the District Judge and the Prosecution in the present case. As the Chief Justice said in *Luong Thi Trang Hoang Kathleen v Public Prosecutor* [2010] 1 SLR 707 (at [21]):

> The Prosecution's … case authorities were all unreported cases in which no written grounds of decision were given to explain the sentences imposed … I would first caution against relying on *unreported* decisions indiscriminately in determining the appropriate sentence for the particular case before the court. The dangers of doing so are clear. In *Tay Kim Kuan v PP* [2001] 2 SLR(R) 876, this court cautioned at [6] that unreported cases were only guidelines since "the detailed facts and circumstances of these cases [were] hardly disclosed or documented with sufficient clarity to enable any intelligent comparison to be made". Comparisons based on unreported decisions are difficult and are "*likely to be misleading* because a proper appraisal of the particular facts and circumstances is simply lacking" … [emphasis in original]

Remorse

34 In addition to placing undue weight on the number of charges against the accused, the District Judge appeared not to have adequately considered the appellant's remorse. It is not disputed that at the time of the appellant's arrest, the Police were able to connect the appellant to fewer than five charges. It was the appellant who voluntarily confessed to the other charges, in effect building the Prosecution's case against himself. The appellant's reason for confessing was that he was very much in a dilemma even while committing those offences. He was motivated by a wish to help his victims achieve some form of closure in knowing that the person who harassed their homes had been caught. In my view, the appellant's confession to not just one or two more instances of harassments, but almost 70 instances is a definite and concrete manifestation of his remorse. There is a public interest in encouraging a guilty person to come forward to disclose the facts of the offence that he has committed, and to confess his guilt: *Public Prosecutor v Siew Boon Loong* [2005] 1 SLR(R) 611 at [21]. It is all the more in the public interest to have accused persons disclose other offences which

they had committed, but which the Police are unaware of. No weight was given to this by the District Judge. I would emphasise that one should not merely focus on numbers alone.

35 It is a settled principle of sentencing that true remorse is a mitigating factor. As this court held in the Magistrate's Appeal of *Angliss Singapore Pte Ltd v Public Prosecutor* [2006] 4 SLR(R) 653 (at [77]):

> … A plea of guilt can be taken into consideration in mitigation when it is motivated by genuine remorse, contriteness or regret and/or a desire to facilitate the administration of justice. The mitigating effect should also be compatible with the sentencing purpose(s) and principles the sentencing judge is seeking to achieve and observe through the sentence.

The fact that the appellant came clean and bared his misdeeds demonstrated his genuine remorse. That was a mitigating factor that the District Judge should have more carefully appraised.

The appropriate sentence

36 Parliament has singled out people in the same vulnerable category as the appellant as deserving of compassion. The provisions of the law under which the appellant has been charged also give the courts a reasonably wide discretion to take into account mitigating factors in deserving cases. It seems to me that in many ways the appellant was a victim of circumstances spiralling beyond his control. Not being in his shoes, non-parties are unlikely to know the pressures that pushed him towards crime. I have noted that while it is Parliament's intent that he should still be punished severely, the real question is whether the extent of punishment ought in the present case to be leavened with some compassion. Deterrence should not be indiscriminate.

37 The recent case of *Public Prosecutor v Tan Chiah Khing* [2012] SGDC 35 may be an example of a more sensitive and nuanced application of deterrence. The accused there was charged with one charge of paint harassment, and one charge of assisting with unlicensed moneylending. He was a 51 year old man in poor health. His highest level of education was primary six. He lived with his aged and sick father. He had been retrenched repeatedly from his menial jobs and had been looking for employment when he was introduced to a loan shark who offered him $1,600 a month just to insert notes into debtors' letter boxes. Having reeled the accused in, the loan shark proceeded to manipulate him by gradually increasing the severity of the tasks demanded. One month after he began work, the accused was asked to splash paint on debtors' homes. He was caught after his first act of harassment. The district judge considered all the factors and noted that the benchmark laid down in *PP v Nelson Jeyaraj* was not intended to be a hard and fast rule. He noted the accused's plight at that time and decided that six months' imprisonment and three strokes of the cane was an appropriate punishment on the facts of the case. The Prosecution's appeal against sentence was dismissed. There is no doubt that the accused in that case came from the more vulnerable stratum of society. The case shows that the courts will go below the benchmarks where they find it appropriate and just to do so.

38 Returning to the present appeal, I see no justification to impose 24 months' imprisonment for each of the fire harassment offences. The damage caused was much less extensive, and was in fact minimal when compared to that caused in *PP v Nelson Jeyaraj*. This was because the appellant deliberately used a less flammable fuel and took steps to minimise the spread of the fire. I am unimpressed by the Prosecution's contention before me that the 48 other charges to be taken into consideration were in themselves a sufficient ground to increase the severity of punishment for the individual charges of fire harassment. As the Court of Appeal in *PP v UI* (at [37]–[38]) held, the relevance of outstanding charges that are taken into consideration hinges on the context. Given that

none of the outstanding charges related to fire harassment, I felt they were more relevant as an aggravating factor in relation to the paint harassment charges. Not only is there no reason to impose a higher penalty than the benchmark set in *PP v Nelson Jeyaraj* for each of the fire harassment offences, I also find that the sentences should be reduced. I accordingly reduce the sentence for each of the fire harassment charges to 16 months' imprisonment.

39 Similarly, I am of the view that a discount ought to have been given by the District Judge for the charges that dealt only with the splashing of paint and the writing on the walls. This is to reflect the steps that the appellant took to minimize the damage caused to the property. However, sentencing is not a precise science. A small discount of one to two months, after taking into consideration the outstanding charges, will in any event not greatly affect the global sentence to be imposed.

40 In determining the aggregate sentence, I kept in mind the totality principle approved in *Kanagasuntharam v Public Prosecutor* [1991] 2 SLR(R) 874 at [13]. The total sentence should not be much higher than the normal level of sentence for the most serious of the individual offences. Neither should the total sentence be crushing. I was also mindful, having already taken into consideration the outstanding charges when determining the individual sentences, not to double-load the punishment by taking additional account of them in determining the global sentence. Like the District Judge I order that three sentences for fire harassment and one sentence for paint harassment are to run consecutively. The total sentence is hence 60 months' imprisonment and 24 strokes of the cane. This is still longer than the sentence imposed in *PP v Nelson Jeyaraj*. While it is true that that case involved fewer charges, there are stronger mitigating factors here. I have discussed those factors in full above, and will merely summarise here some of the more salient ones:

(a) The appellant was a law abiding citizen who became involved with loan sharks only because he wanted to help a friend by guaranteeing the latter's loan: see [7] above.

(b) The appellant took reasonable steps to pay the loan sharks, even going to the extent of selling his HDB flat. But his retrenchment and inability to find a new job meant that his debts kept mounting: see [7] above.

(c) The appellant took steps to minimise the damage caused by his acts of harassment: see [8] above.

(d) The appellant confessed to the great bulk of charges that were brought against him, and which the police would otherwise have been unable to pin on him. He did so because he wanted the victims to attain some form of closure. This was a concrete manifestation of remorse: see [9] and [34] above.

41 It seems to me that the appellant was a family man who never wanted to fall foul of the law. Through an act of kindness to a friend, who turned out to be wholly unworthy, coupled with the misfortune of losing his job, he found himself more deeply entangled with the law with each day that he did the biddings of the loan sharks. In the interests of the public and as a general deterrence, he should of course be punished severely but he should not be crushed. By no stretch of the imagination can it be said that a punishment of 60 months' imprisonment and 24 strokes of the cane (the maximum permitted by law) for the appellant's wrongdoings is an insufficient deterrent, either to him or to others.

Conclusion

42 The appeal is therefore allowed. The appellant's sentence is reduced to 60 months' imprisonment. The 24 strokes of the cane and fine of $30,000 shall remain.