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

[2025] SGHC 130

Magistrate's Appeal No 9241 of 2024/01

Between

Ismail bin Jamaludin

… *Appellant*

And

Public Prosecutor

… *Respondent*

GROUNDS OF DECISION

[Criminal Procedure and Sentencing — Sentencing — Appeals]

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v
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Kannan Ramesh JAD:

Introduction

1 The appellant, Mr Ismail bin Jamaludin, pleaded guilty to two charges of aggravated outrage of modesty under s 354(2) of the Penal Code (Cap 224, 2008 Rev Ed) (the "Penal Code"). He also consented to one charge of aggravated outrage of modesty under s 354(2) and one charge of voluntarily causing hurt under s 323 of the Penal Code being taken into consideration for sentencing (the "TIC charges").

2 A District Judge (the "DJ") imposed an aggregate sentence of five years' imprisonment, backdated to 3 May 2024, and six strokes of the cane. The DJ's grounds of decision may be found in *Public Prosecutor v Ismail Bin Jamaludin* [2024] SGDC 319 (the "GD").

3 The appellant appealed against the sentence on the ground that it was manifestly excessive. I dismissed the appeal on 25 April 2025 and delivered brief oral grounds then. These are my full grounds of decision.

Facts

The charges

4 The charges the appellant was convicted on and those that were taken into consideration for sentencing were as follows:

Charge Number	Period of offence	Offence	Details of offence
DAC 908159 of 2024 (the "First Charge") (Proceeded)	October 2015 to December 2015	Aggravated outrage of modesty under s 354(2) of the Penal Code against [V1], who was then 5 years old.	Swiping [V1]'s vagina using his fingers twice and licking the exterior part of her vagina using his tongue.
DAC 908160 of 2024 (Taken into consideration)	February 2016 to February 2017	Aggravated outrage of modesty under s 354(2) of the Penal Code against [V2], who was then between 7 and 8 years old.	Touching [V2]'s lower abdomen (skin-to-skin).

DAC 908161 of 2024 (the "Third Charge") (Proceeded)	February 2016 to February 2017	Aggravated outrage of modesty under s 354(2) of the Penal Code against [V2], who was then between 7 and 8 years old.	Kissing [V2] on her lips and with his tongue in her mouth and touching her vagina (skin-to-skin).
MAC 903335 of 2024 (Taken into consideration)	June 2017	Voluntarily causing hurt under s 323 of the Penal Code against [V2], who was then 8 years old.	Stepping on [V2]'s calf.

Factual background

5 The two victims, [V1] and [V2] (collectively, the "Victims"), are sisters. [V1] was five years old at the time of the offence in the First Charge. [V2] was between seven and eight years old at the time of the offence in the Third Charge.

6 The biological mother of the Victims (the "Mother") became acquainted with the appellant in or around February 2015. The appellant was seen sleeping outside the childcare centre which [V2] attended. [V2] felt sympathy for his plight and requested the Mother to buy food for him, which she did. The interactions that started then led to a relationship between the Mother and the appellant which eventually resulted in them having a child in July 2016. At all material times, the appellant had a paternal relationship with the Victims. They addressed him as "Papa".

Facts pertaining to the First Charge

7 Between October and December 2015, the appellant, the Victims and the Mother lived with the Victims' maternal aunt and her six children in a one-room flat.

8 On one occasion during this period, [V1] was unwell and the appellant, who was home as he was unemployed, took care of her. They were alone at the time.

9 The appellant approached [V1] and told her to lie down. He then told her to take off her clothes. [V1] complied but left her underwear on. The appellant proceeded to touch her all over her body and asked her to take off her underwear. After [V1] complied, the appellant started touching her vagina. He used four fingers to swipe her vagina twice. There was skin-to-skin contact between the appellant's fingers and [V1]'s vagina. The appellant then licked the exterior part of [V1]'s vagina. There was no vaginal penetration. The appellant did the above with the intent to outrage the modesty of [V1].

10 After the appellant stopped, he told [V1] not to tell anyone. [V1] put her underwear and clothes back on. Later that day, after the Mother returned home, [V1] told the Mother that the appellant had touched her.

Facts pertaining to the Third Charge

11 Sometime in February 2016, the appellant, the Mother, and the Victims moved into the Victims' maternal great-grandmother's flat. They resided there until February 2017.

12 During this period, on multiple occasions, the appellant put his hands under the clothes of [V2] to touch her vagina. There was skin-to-skin contact between the appellant's hands and [V2]'s vagina. At the same time, the appellant kissed [V2] on her lips and placed his tongue in her mouth. [V2] bit his tongue to stop him, but he continued. The appellant did the above with the intent to outrage [V2]'s modesty.

13 The appellant told [V2] not to tell the Mother.

Procedural history

14 The appellant and the Mother ended their relationship in or around October 2017. The appellant left Singapore on 27 October 2019 and did not return until 19 July 2023, when he was arrested (see [16] below).

15 The offences first came to light when [V1] confided in a counsellor that she had been touched inappropriately by the appellant. The counsellor informed [V1]'s school counsellor, who in turn advised the Mother to make a police report. [V1] then lodged a police report on 21 October 2022.

16 The accused was arrested when he returned to Singapore on 19 July 2023 pursuant to a Police Gazette that was issued after [V1]'s police report. The accused was charged in court on 3 May 2024.

17 At the first mention of the matter on 3 May 2024, the appellant entered a "Not Guilty" plea.

18 The first pre-trial conference (the "PTC") was on 31 May 2024, where the appellant indicated that he had made an application for legal assistance

through Pro Bono SG's Criminal Legal Aid Scheme ("CLAS"). The first PTC was thus adjourned for the appellant's CLAS application to be processed.

19 The CLAS counsel was appointed and appeared on behalf of the appellant at the fourth PTC on 23 August 2024. The fourth PTC was adjourned in order for the CLAS counsel to take instructions.

20 The fifth PTC was held on 20 September 2024. At the fifth PTC, the appellant indicated that he would plead guilty.

21 The appellant's plea of guilt was entered on 22 November 2024.

Decision below

22 The DJ noted that the applicable framework in relation to both charges was set out in *GBR v Public Prosecutor and another appeal* [2018] 3 SLR 1048 ("*GBR*") (GD at [17]).

23 The framework in *GBR* ("*GBR* framework") comprises the following three sentencing bands (*GBR* at [31]–[37]):

(a) Band 1: Less than one years' imprisonment. Band 1 comprises cases at the lowest end of the spectrum of seriousness, which include those which do not present any (or at most one) of the aggravating factors. Caning is generally not imposed.

(b) Band 2: One to three years' imprisonment. Cases which present two or more of the aggravating factors "almost invariably" fall within Band 2. Cases at the lower end of this band include cases in which there was an absence of skin-to-skin contact with the private parts of the victim. Cases at the higher end of this band include those involving skin-

to-skin touching of the victim's private parts or sexual organs. Caning is almost always imposed, and the suggested starting point is at least three strokes of the cane.

(c) Band 3: Three to five years' imprisonment. Band 3 comprises cases which, by reason of the number of the aggravating factors, present themselves as the most serious instances of aggravated outrage of modesty. These include cases such as those involving the exploitation of a particularly vulnerable victim, a serious abuse of a position of trust, and/or the use of violence or force on the victim. Caning ought to be imposed, and the suggested starting point would be at least six strokes of the cane.

24 In determining the appropriate sentencing band and where within the band the starting point should be, the court has to first consider the offence-specific aggravating factors. These fall into three main categories, of which the first two relate to culpability and the third to harm: (a) the degree of sexual exploitation; (b) the circumstances of the offence, which includes, *inter alia*, the abuse of a position of trust and the exploitation of a vulnerable victim; and (c) the harm caused to the victim, whether physical or psychological (*GBR* at [27]–[30]). Once the appropriate starting point is ascertained, adjustments are made based on the applicable offender-specific aggravating and mitigating factors which would include the number of charges to be taken into consideration (the "TIC charges"), the lack of remorse and relevant antecedents (*GBR* at [39]).

25 The DJ found that the offence in the First Charge was at the high end of Band 2 and the low end of Band 3. Three offence-specific aggravating factors were identified: (a) [V1]'s young age of five years, which was substantially below the 14 years provided for an offence under s 354(2) of the Penal Code;

(b) the blatant abuse of trust, as [V1] looked to the appellant as a father, and the appellant had committed the offence when he was meant to look after her when she was ill; and (c) the high degree of sexual exploitation, as there was skin-to-skin contact and licking of [V1]'s vagina. The applicable offender-specific factor was the absence of any criminal antecedents. Accordingly, the DJ found that an appropriate sentence before applying a sentencing discount for pleading guilty was between three to four years' imprisonment (specifically, 45 months' imprisonment as the final imprisonment sentence imposed by the DJ, after applying a 20% discount, was three years' imprisonment) and three strokes of the cane (GD at [21]–[23]).

26 The DJ found that the offence in the Third Charge was at the mid to high end of Band 2. Three offence-specific aggravating factors were identified: (a) [V2]'s young age of seven to eight years, which was still materially younger than the 14 years age ceiling; (b) the blatant abuse of trust, as [V2] looked to the appellant as a father; and (c) the high degree of sexual exploitation, as there was skin-to-skin touching of the [V2]'s vagina, as well as kissing with the insertion of the appellant's tongue into [V2]'s mouth. The only relevant offender-specific factor was the absence of any criminal antecedents, which was to be balanced against the TIC charges concerning [V2]. Accordingly, the DJ found that a sentence of two and a half years of imprisonment, before applying a sentencing discount for pleading guilty, and three strokes of the cane would be appropriate (GD at [24]–[26]).

27 The DJ applied a discount of 20% to account for the fact that the appellant pleaded guilty. The DJ accepted the Prosecution's submissions that the plea was taken at Stage 2 of the Sentencing Advisory Panel's Guidelines on Reduction in Sentences for Guilty Pleas (the "Guidelines") as the appellant had indicated he would plead guilty more than 12 weeks after the first mention, but

before any Criminal Case Disclosure Conference directions had been given (GD at [27]). The appellant's submission, that a Stage 1 discount of 30% should apply as the time taken to appoint CLAS counsel should be taken into account as required under the Guidelines, was not accepted by the DJ. The DJ's failure to explain why he preferred the Prosecution's submissions made the analysis of the appellant's challenge on this point on appeal somewhat challenging.

28 The sentences after discount for the offences under the First and Third Charges imposed by the DJ were three years' imprisonment and three strokes of the cane, and two years' imprisonment and three strokes of the cane respectively. The sentences were to run consecutively as they were distinct offences and did not fall within the "one-transaction" rule (GD at [28]), giving an aggregate sentence of five years' imprisonment and six strokes of the cane.

Parties' cases on appeal

Appellant's submissions

29 The appellant submitted that the sentences for the First and Third Charges were manifestly excessive.

30 First, the sentence for the First Charge should have been placed within Band 2 instead of Band 3. The appellant highlighted the guidance from *GBR* that cases which present *two or more* aggravating factors would fall within Band 2 (see above at [23(b)]). He therefore argued that as the offence under the First Charge involved three aggravating factors, it should fall within Band 2. This was because if offences involving three aggravating factors fell within Band 3, the sentencing framework's reference to "two or more" aggravating factors "would not make sense" as that suggested that only offences with two aggravating factors would fall within Band 2. Further, the appellant submitted

that the DJ accorded excessive weight to [V1]'s age as an aggravating factor. Even if the offence under the First Charge was within Band 3, the appropriate sentence should have been 36 months' imprisonment.

31 Second, consistent with the precedents, the starting point for the sentence for the Third Charge should have been in the middle of Band 2 rather than in the mid to high end of Band 2. Further, the DJ erred in applying a 25% uplift to the starting sentence for the TIC charges.

32 Third, the applicable discount for the appellant's plea of guilt under the Guidelines ought to be 30% instead of 20%. The DJ ought to have taken into account the fact that the appellant's late plea of guilt was caused by a delay in obtaining legal advice due to matters outside the appellant's control, namely the processing of his application for legal assistance from CLAS.

Prosecution's submissions

33 The Prosecution submitted that the sentences for the First and Third Charges were not manifestly excessive as the DJ had correctly applied the sentencing in the *GBR* framework and the appropriate sentencing discount under the Guidelines.

Issues before the court

34 The primary issue in appeal was whether the sentence imposed was manifestly excessive because:

(a) the DJ erred in his application of the *GBR framework*; and/or

(b) the DJ erred in applying the 20% discount under Stage 2 of the Guidelines for the appellant's guilty plea.

My decision

The applicable law for appellate intervention

35 An appellate court will not ordinarily disturb the sentence imposed by a lower court, except where (a) the sentencing judge erred in respect of the proper factual basis for sentence; (b) the sentencing judge failed to appreciate the materials placed before him; (c) the sentence was wrong in principle and/or law; and/or (d) the sentence was manifestly excessive or manifestly inadequate, as the case may be (*Public Prosecutor v Mohammed Liton Mohammed Syeed Mallik* [2008] 1 SLR(R) 601 ("*Mohammed Liton*") at [81]–[82]). As stated above, the appellant appealed on the fourth ground.

36 A sentence is manifestly excessive where it is unjustly severe, and "requires substantial alterations rather than minute corrections to remedy the injustice" (*Public Prosecutor v Siew Boon Loong* [2005] 1 SLR(R) 611 at [22]). It is trite that the mere fact an appellate court might have imposed a higher or lower sentence than the court below is not sufficient to warrant appellate intervention: *Mohammed Liton* at [84]; citing *Angliss Singapore Pte Ltd v Public Prosecutor* [2006] 4 SLR(R) 653 at [14].

37 While due regard may be given to previous sentencing precedents involving similar facts or offences as such cases indicate the appropriate sentence to be imposed, those precedents only serve as guidelines as each case ultimately turns on its own facts: *Mohammed Liton* at [85]. Further, the argument that there were other cases in which the circumstances of the offences were more serious, and yet the sentences meted out had been less harsh, is generally unhelpful in establishing that the court below had erred in the exercise of its discretion. This is because it will "almost always be unhelpful to look for fine distinctions between particular cases", and it "may well be the case that

some of the sentences imposed in other cases decided in the State Courts … were unduly lenient" (*BRJ v Public Prosecutor* [2020] 1 SLR 849 ("*BRJ*") at [11]).

Issue 1: Whether the DJ erred in his application of the GBR framework

The First Charge

38 The appellant's argument was essentially that the offence in the First Charge fell within Band 2 because of the reference in the *GBR* framework that Band 2 applied where there were "two or more" aggravating factors (see above at [23(b)]). It was therefore "self-evident" that offences that involved three aggravating factors should fall within Band 2. Counsel for the appellant, Md Noor E Adnaan ("Mr Noor"), submitted in his written submissions that, if it were otherwise, "the sentencing framework would not make sense as it would suggest that only offences with two aggravating factors fall within Band 2". In his oral submissions, Mr Noor supplemented the argument by suggesting that the offence under the First Charge should not fall within Band 3 because it did not involve the use of violence or force. This was because the two examples of Band 3 cases stated at [37] of *GBR* both involved the use of violence or force. Mr Noor, however, did acknowledge that the use of violence or force would not, in and of itself, warrant placing an offence in Band 3.

39 I was not persuaded that (a) cases which involved only three aggravating factors necessarily or inevitably fell within Band 2, or (b) the use of violence or force was a predicate for an offence falling within Band 3. In my judgment, whether an offence fell within Band 2 or Band 3 of the *GBR* framework was not a numbers game, or a question of whether a particular factor was present. Rather, it was a question of the intensity of the aggravating factors. Where the intensity of a factor was severe, there would be good reason for the offence

falling within Band 3, even if there was only one aggravating factor. *GBR* noted that cases falling within Band 3 "would include cases such as those involving the exploitation of a *particularly* vulnerable victim, a *serious* abuse of a position of trust, and/or the use of violence or force on the victim" [emphasis added] (at [37]). From this, violence was just one of the factors which might show an escalation in the severity of an offence, such that it brought the offence within Band 3. Where an aggravating factor (*eg*, the victim's vulnerability and the degree of the abuse of trust) presented itself with sufficient intensity, that might reasonably form the basis for the offence being placed in Band 3.

40 Accordingly, whether the offence under the First Charge was in Band 2 or Band 3 was a question of the DJ's judgment based on his assessment of the intensity of the offence-specific factors. A certain degree of deference had to be accorded to the DJ's exercise of discretion as the sentencing judge in this regard (*Public Prosecutor v UI* [2008] SLR(R) 500 at [13]).

41 I did not find that the DJ had placed excessive weight on [V1]'s age as an aggravating factor. The DJ's reasoning at [21] of the GD did not support the appellant's claim that the age of [V1], as a factor in and of itself, moved the offence under the First Charge from Band 2 to Band 3. While the same offence-specific factors applied to both the offences under the First Charge and the Third Charge, there was a difference in the intensity with which some of the factors presented themselves in relation to the former. In particular, not only was [V1] younger than [V2] at the time the offence was committed, there was a higher degree of abuse of trust involved – in the case of the First Charge, the appellant was supposed to be fulfilling his paternal duty to [V1] by taking care of the child when she was unwell (see above at [8]). Hence, he had not only abused his general position of trust as a father figure, but he had also betrayed the specific trust placed in him to care for her during her illness.

42 I was also not persuaded by the appellant's submission that touching or licking a victim's private parts inherently involved a lower degree of sexual exploitation than compelling the victim to perform masturbation. Mr Noor relied on *Public Prosecutor v Rames Paramasivam* [2023] SGDC 73 ("*Rames*"), *Public Prosecutor v BOX* [2021] SGHC 147 ("*BOX*") and *Prosecutor v GEN* [2022] SGDC 98 ("*GEN*") in support of this contention. It was contended that the reason why the offence in *Rames* was in Band 2 whereas the offences in *BOX* and *GEN* were in Band 3, despite the victims being of similar ages, was because the offending conduct in *Rames* of touching and licking the victim's vagina was inherently less severe than the offending conduct in *BOX* and *GEN*, where the victims were made to masturbate the accused person. However, Mr Noor was unable to satisfactorily explain why the act of compelling a victim to perform masturbation was inherently more heinous than touching a victim's private parts. Further, it was pertinent that *GEN* involved a second count of aggravated outrage of modesty, with the offending conduct being skin-to-skin touching of the victim's clitoris, and *both* offences were found to be in Band 3 (at [3] and [138]) – ergo, the second offence, where the accused touched the victim's vagina, independently warranted a Band 3 classification. As such, it was not readily apparent that the precedents cited supported the contention that an offence would be in Band 3 only if it involved a certain type of offending. The real question was whether the DJ had imposed a sentence that was manifestly excessive, bearing in mind the intensity of the offence-specific factors in this case.

43 In my view, the DJ was entitled to conclude that the starting point should be between the high end of Band 2 and the low end of Band 3 in view of the offence-specific factors identified by the Prosecution – *ie*, [V1]'s young age, the blatant abuse of trust, the high degree of exploitation and the offence having

taken place in [V1]'s own home, the very place where she ought to have felt safe and protected.

44 Thus, aside from the sentencing discount for the appellant's plea of guilt, which I shall address below, the starting sentence of 45 months' imprisonment and three strokes of the cane was not manifestly excessive. This clearly fell within the identified sentencing bands – 45 months' imprisonment falls within the low end of Band 3 (three to five years' imprisonment), while the imposition of only three strokes of the cane, as opposed to the six strokes prescribed by Band 3, was in line with Band 2.

45 The sentence was also consistent with *GEN*. There, the court identified three applicable offence-specific factors: (a) the serious abuse of a position of trust, as the accused person was the biological father of the victim; (b) the victim was five to six years old at the material time, which is significantly lower than the statutory age ceiling of 14 years; and (c) there was skin-to-skin touching of the victim's clitoris underneath her underwear for one of the charges (*GEN* at [132]). Accordingly, the offence was placed at the lower end of Band 3, which corresponded with a starting sentence of three years' imprisonment and six strokes of the cane (*GEN* at [138]). The intensity of the offence-specific factors in the present case were comparable, if not greater than in *GEN*. While the appellant was not the biological father of [V1], his relationship with [V1] was clearly paternal (above at [6]). Hence, the abuse of position of trust in this case was no less than in *GEN*. The degree of sexual exploitation was also higher (see above at [9]).

46 The appellant relied on a number of precedents in support of his submission that even if the offence in the First Charge was in Band 3, a term of imprisonment of 45 months was manifestly excessive. These precedents

allegedly involved a greater number of and more severe aggravating factors and yet, the sentences imposed were less harsh. Applying the Court of Appeal's guidance in *BRJ* (see above at [37]), I found the precedents to be of limited assistance. Further, this was not a case of comparing like for like. For example, the appellant relied on *BRJ* as well as *Public Prosecutor v GFO* [2023] SGDC 52 ("*GFO*"). However, the accused persons in those cases were the victim's cousin (*GFO* at [3]) or neighbour (*BRJ* at [3]), as compared to the appellant here who, as noted earlier, for all intents and purposes played the role of and was regarded as [V1]'s father.

The Third Charge

47 The appellant submitted that the DJ had applied an uplift of 25% to the starting point for the sentence under the Third Charge, from 24 months' imprisonment to 30 months' imprisonment, in view of the TIC charges. The submission rested on the assumption that the DJ had accepted the Prosecution's submission that (a) the indicative starting point should be two to three years, and (b) a 25% uplift for the TIC charges should be applied. As the sentence imposed was 30 months' imprisonment (*ie*, 2.5 years), which was within the resulting range of 2.5 to 3.5 years, this supported the conclusion that the DJ had accepted the Prosecution's submissions. Essentially, to ground his argument, the appellant worked backwards.

48 I was not persuaded by the appellant's characterisation of the DJ's reasoning. The DJ did not specify in the GD what uplift he applied for the TIC charges. If he had, things would have been clearer. As noted earlier (at [26]), the DJ found that the offence in the Third Charge was at the mid to high end of Band 2. A sentence of 2.5 years' imprisonment fell squarely in the mid to high end of Band 2, as Band 2 prescribed a sentence of between one to three years'

imprisonment. Hence, the mere fact that the DJ arrived at a sentence of 2.5 years' imprisonment did not necessarily mean that he had accepted the Prosecution's submissions on the appropriate starting point or the uplift to be applied for the TIC charges.

49 The fact remained that the DJ did not explain what uplift, if any, he applied for the TIC charges. To reverse engineer in the manner that the appellant did in an attempt to make the submission that the DJ applied an uplift of 25% was to speculate and was therefore incorrect. The fallacy in the appellant's approach was the incorrect assumption that the DJ had started with two years given the Prosecution's submission that the range ought to be two to three years. Only if that assumption held true, could it be said that the uplift for the TIC charges was 6 months or 25%. However, the starting point could have been higher than two years in which case, the uplift would have been less than 25% bearing in mind the sentence that the DJ arrived at. As the DJ did not explain, it was unproductive to speculate.

50 In any case, even if the DJ had applied a 6 months' uplift for the TIC charges, it could not be said that the sentence was manifestly excessive. A significant uplift was clearly warranted for the TIC charges, given that they were specific to [V2] and involved exploitation of or violence on her.

51 The appellant submitted that the uplift of 6 months from 24 months' imprisonment to 30 months' imprisonment (*ie*, a 25% uplift) was not consistent with the precedents – in particular, the case of *Public Prosecutor v GCY* [2019] SGDC 15 ("*GCY*"), where the court had applied an 18.75% uplift to account for two charges that were taken into consideration, as well as the accused's lack of remorse and high risk of reoffending. The Court of Appeal's observations in *BRJ* that it is not helpful to look for fine distinctions between particular cases

(see above at [37]) was again relevant. In any case, the extent to which a sentence should be increased on account of the TIC charges was a matter of the DJ's discretion as the sentencing judge, which is accorded a certain degree of deference (see above at [40])).

52 In my view, the DJ was correct in finding that the offence in the Third Charge was in the mid to high end of Band 2. The offence in the Third Charge involved skin-to-skin touching of [V2]'s vagina, which in itself indicated that the offence fell in the higher end of Band 2 (*GBR* at [34]). The other offence-specific aggravating factors identified by the Prosecution also supported this conclusion: (a) the serious abuse of a position of trust, with the appellant being a father figure to [V2]; (b) [V2]'s young age of seven to eight years; (c) the high degree of sexual exploitation with skin-to-skin touching of [V2]'s vagina, kissing and insertion of the appellant's tongue into [V2]'s mouth which persisted even after [V2] resisted by *biting his tongue* to make him stop; and (d) the offence took place in the safety and comfort of [V2]'s own home. In view of this, the sentence of 30 months' imprisonment and three strokes of the cane was not manifestly excessive.

53 The appellant cited a number of cases which he submitted involved a greater number of and more severe aggravating factors, and yet resulted in sentences which were less harsh. Aside from this argument running against the guidance in *BRJ* that it is unhelpful to look for fine distinctions between cases (see [37] above), these cases were not analogous to the present case. In those cases, the accused persons were either friends of the victim's family (see *Rames* at [4] and [57]; *Public Prosecutor v Mohamad Shalahuddin Bin Sahid* [2023] SGDC 60 ("*Shalahuddin*") at [131]), the victim's neighbour (*GCY* at [65(1)]), or the victim's cousin (*GFO* at [3]). Even assuming all other things were equal, the abuse of trust in those cases was not comparable to that in the present case.

While the accused in *Shalahuddin* was described as a "father-like figure", the victim did not actually see him as her father (as her father was still alive and present in her life) (see [11] and [131] of *Shalahuddin*), unlike [V2], who called the appellant "Papa". In other words, [V2] reposed a greater degree of trust in the appellant than the victim did in the accused in *Shalahuddin*.

Issue 2: Whether the DJ erred in applying a 20% discount under Stage 2 of the Guidelines for the appellant's guilty plea

54 Pursuant to the Guidelines, a reduction in sentence of 30% should be applied if an accused indicates his intention to plead guilty within 12 weeks of the Prosecution informing the court that the case was ready for the plea to be taken ("Stage 1"). In this case, the operative date for the end of Stage 1 was 26 July 2024 as that marked 12 weeks after the first mention on 3 May 2024. However, the appellant indicated that he would plead guilty only on 20 September 2024 (*ie*, within "Stage 2").

55 The appellant submitted that the DJ failed to take into account the fact that he was waiting for the outcome of his CLAS application during the 12-week period in Stage 1, and that it was this delay in obtaining legal advice that caused the appellant's plea of guilt to be entered in Stage 2. The DJ should thus have applied the full 30% reduction in sentence pursuant to Scenario 3 at paragraph 11 of the Guidelines ("Scenario 3"):

> The accused person makes an application for criminal legal aid, early during Stage 1. The criminal legal aid lawyer is only assigned during Stage 2. The accused pleads guilty during Stage 2, shortly after the criminal legal aid lawyer has been assigned. The court may apply the maximum reduction in sentence of up to 30%.

56 The DJ appeared to have accepted the Prosecution's submission despite the appellant's explanation as to why his plea of guilt should be taken to be in

Stage 2 (above at [27]–[28]). On appeal, the Prosecution maintained the submission it made below. When questioned on why the appellant's plea of guilt should be taken to be in Stage 2 in view of Scenario 3, the Prosecution was not able to explain or assist the court. I found this unsatisfactory.

57 I agreed with the appellant that Scenario 3 had to be considered in the present case as on the facts of the present case, it appeared relevant. However, I did not agree with the appellant that it necessarily followed that a 30% discount should apply in this case. Scenario 3 states that "[t]he court *may* apply the maximum reduction in sentence of up to 30%" [emphasis added] – as such, there might be situations or circumstances where the full 30% reduction should not be given even if the accused had made a prompt application for criminal legal aid. This is consistent with the overall purpose of the Guidelines, which serves as a non-binding guide and leaves the decision on the extent of the discount to the sentencing judge's discretion. This is made clear in paragraphs 1 and 2 of the Guidelines.

58 In this regard, I found paragraph 9 of the Guidelines to be of assistance. Paragraph 9 states that "[i]f the accused person wishes to seek legal advice on *whether or not to plead* guilty, he should do so during Stage 1", and that "the court may consider the reasons for any delay in *obtaining legal advice on whether or not to plead guilty* ... in deciding whether the maximum reduction in sentence of 30% should still be available" [emphasis added]. As such, it appears that the situation contemplated by the Guidelines is where the accused seeks legal advice to understand whether he or she should plead guilty.

59 This view is supported by the statements of the then Minister for Law Mr K Shanmugam ("Minister Shanmugam") in the Parliamentary debates on the Guidelines. Minister Shanmugam explained that "[t]he 12-week timeline

under Stage One is intended to provide accused persons sufficient time *to consider if they wish to plead guilty*, as well as to engage a lawyer and *seek legal advice on their plea*, if they wish to do so" [emphasis added]. Hence, "[i]n cases where an accused person takes more time to indicate that he wishes to plead guilty, [the Guidelines] provide that the Court may consider the reasons for any delay", which include "whether the accused person had taken timely steps to obtain legal advice" (*Singapore Parliamentary Debates*, *Official Report* (2 April 2024) vol 95 at col 22 (K Shanmugam, Minister for Law)).

60 In summary, the 12-week timeline under Stage 1 is meant to provide accused persons with sufficient time to consider if they wish to plead guilty. Pursuant to Scenario 3, where this timeline proves insufficient due to delays in obtaining legal advice, the court may grant the maximum reduction in sentence under Stage 1, effectively treating the plea as if it had been made within the 12-week window, even if the plea is only entered in Stage 2.

61 The circumstances of this case did not fall within the type of situation contemplated in Scenario 3 of the Guidelines. In this case, the appellant had pleaded "Not Guilty" at the first mention on 3 May 2024, the first opportunity for a plea to be entered (above at [17]). This was allied by a request for legal assistance through CLAS. Collectively, this was an indication of an intention, at least initially, to contest the charges. Thus, this was not a situation where the appellant had been considering whether to plead guilty, and his decision was delayed because of a delay in obtaining legal advice on his options. Here, the appellant had already come to a decision that he would contest the charges proffered against him. That he changed his mind upon receiving the benefit of legal advice did not change the fact that he chose to contest at the earliest given opportunity. In such a case, the relevant point of reference would be when the

guilty plea was entered, which fell within Stage 2. Thus, the appropriate sentencing discount was 20%.

62 I was fortified in my conclusion by paragraph 11 of the Guidelines, under which Scenario 3 falls. Paragraph 11 states that the sentencing discount of 30% in Stage 1 will apply as long as the accused person indicates during Stage 1 that he *intends* to plead guilty, even if the guilty plea is not actually taken during Stage 1. Hence, it is the accused person's intention which is determinative of whether Scenario 3 applies. In this case, the appellant never indicated an intention to plead guilty during the 12-week period constituting Stage 1. Indeed, his position was that he intended to contest the charges.

63 Even if Scenario 3 is applied, it is worth noting (as alluded to above at [57]) that the scenario is framed in discretionary terms as it states that the court may apply the maximum reduction of 30% in a case where the accused person's plea of guilt is delayed by the time taken for him to be assigned a criminal legal aid lawyer. Hence, it is not necessarily the case that the full 30% discount would be granted just because Scenario 3 applies on the facts.

Conclusion

64 For the reasons above, I dismissed the appeal.

Kannan Ramesh
Judge of the Appellate Division

Md Noor E Adnaan (WongPartnership LLP) for the appellant;
Goh Qi Shuen (Attorney-General's Chambers) for the respondent.
