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

[2025] SGHC 167

Magistrate's Appeal No 9219 of 2023

Between

Prakash s/o Mathivanan

… *Appellant*

And

Public Prosecutor

… *Respondent*

Magistrate's Appeal No 9001 of 2024

Between

Ivan Goh Feng Jun (Wu Fengjun)

… *Appellant*

And

Public Prosecutor

… *Respondent*

Magistrate's Appeal No 9070 of 2024

Between

Lynne Charlotte James

… *Appellant*

And

Public Prosecutor

… *Respondent*

JUDGMENT

[Criminal Law — Appeal]
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Sundaresh Menon CJ, Tay Yong Kwang JCA, and Vincent Hoong J
27 November 2024, 11 December 2024

27 August 2025 Judgment reserved.

Vincent Hoong J (delivering the judgment of the court):

Introduction

1 This judgment concerns three appeals which raise the common and novel issue of the appropriate sentencing approach for offenders convicted of one or more offences amalgamated under s 124(4) of the Criminal Procedure Code 2010 (2020 Rev Ed) (the "CPC"). Section 124(4) of the CPC permits the framing of an amalgamated charge in respect of *multiple* incidents of the commission of the same offence by an accused, provided that the alleged incidents amount to a course of conduct (save for offences punishable with death). Section 124(8)(*a*)(ii) provides that where an accused is convicted of an amalgamated charge under s 124(4), the maximum prescribed punishment is double the punishment prescribed for the offence.

2 Mr Kwong Kai Sheng ("Mr Kwong") was appointed as a Young Independent Counsel, to assist this Court in determining this novel issue. We heard the parties on 27 November 2024. At the hearing on 27 November 2024, we dismissed HC/MA 9219/2023/01 ("MA 9219") and HC/MA 9070/2024/01 ("MA 9070"), and reserved judgment on HC/MA 9001/2024/01 ("MA 9001") pending the receipt of further submissions. Having considered the further submissions from the appellant in MA 9001, we dismiss MA 9001 as well.

Issues raised

3 In this judgment, we set out our decision on the appeals and state the appropriate sentencing approach for offenders convicted of offences amalgamated under s 124(4) of the CPC. Before doing so, we first address the anterior issue of the legal requirements of an amalgamated charge under s 124(4) of the CPC. As the Prosecution and Mr Kwong have correctly recognised in the course of submissions, s 124(4) of the CPC specifies the particulars required of an amalgamated charge under s 124(4) of the CPC and dispenses with the need to provide certain particulars for each incident of offending. Furthermore, the Prosecution is permitted to elect between either stating the total number of incidents of offending or stating the aggregate outcome of the course of conduct, if the causing of an outcome is an element of the offence. The option exercised by the Prosecution will affect the particulars provided and evidence presented before the Court, and consequently, the availability of information (or the lack thereof) to the sentencing Court will determine the appropriate approach to be taken in sentencing.

The required particulars in an amalgamated charge under s 124(4) of the CPC and the relevant statutory framework

The parties' submissions on the statutory objective of s 124(4)

4 Section 124(4) of the CPC was introduced by way of s 32 of the Criminal Justice Reform Act 2018 (No 19 of 2018) ("CJRA 2018") (tabled as cl 32 of the Criminal Justice Reform Bill (Bill No 14/2018)) (the "CJR Bill"), which came into force on 31 October 2018. The Parliamentary Debates on, and the Explanatory Statement to, the CJR Bill are silent on the legislative purpose behind s 124(4).

5 In Mr Kwong's submission, the statutory objective of s 124(4) is to facilitate case management, by permitting the Prosecution to prefer one single amalgamated charge rather than multiple distinct charges with repetitive particulars for connected offences (in so far as they constitute a course of conduct by an accused). In support of his submission, Mr Kwong referred to the relevant portion in Ministry of Law, "Public Consultation on Proposed Amendments to the Criminal Procedure Code and Evidence Act" (24 July 2017) (the "Public Consultation"), set out in full as follows:

> Allowing amalgamation of charges in more circumstances
>
> Presently, multiple instances of the same criminal offence can only be amalgamated into a single charge for a limited set of offences (criminal breach of trust and dishonest misappropriation). Amalgamation can allow for more effective case management by avoiding the need for dozens or even hundreds of separate charges for repetitions of the same offence, without prejudicing the accused person.
>
> Amendments are proposed to widen this category of offences to expressly allow money-laundering offences under ss 43, 44, 46 or 47 of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act to be amalgamated, as well as to allow the Minister to prescribe further offences involving property to allow them to be amalgamated as well.

> In addition to these changes, it is proposed to create a new general provision permitting the amalgamation of *any* offence where multiple instances of the same offence constitute a course of conduct, having regard to the time, place or purpose of commission. To avoid amalgamation resulting in sentencing discounts for multiple offending, charges amalgamated under this general provision will have their maximum sentences doubled. However, this will not change the maximum sentencing jurisdiction of the courts, nor will it allow the court to exceed the existing specified limit of strokes of the cane that can be imposed on any one offender.
>
> [emphasis in original]

6 Thus, in Mr Kwong's submission, amalgamation addresses (a) the concern that hundreds of separate charges might lead to case management difficulties, whilst simultaneously addressing (b) the competing concern of ensuring that "the *full scale* of the offender's conduct or criminality (through his repetitive offending) [is] reflected in the charges that are preferred against him (as the offender can only be sentenced based on what he is charged and convicted of)". Section 124(4) of the CPC is intended to balance these two competing concerns, without prejudicing the accused. The Prosecution broadly agrees with Mr Kwong's characterisation of the statutory objective of s 124(4).

7 In our view, the purpose of s 124(4) of the CPC must be determined as a matter of statutory interpretation. The Public Consultation paper is of limited utility, as there is simply no indication that Parliament had agreed with what was stated in the Public Consultation paper in respect of the introduction of s 124(4). There was nothing in the Explanatory Statement to the CJR Bill indicating Parliament's approval of the Ministry of Law's statement of the intention behind the proposal to create a general provision that allows for the framing of an amalgamated charge for multiple instances of the same offence that constitute a course of conduct. It should be noted that the Public Consultation paper did not provide details of the proposal, and also did not exclude offences punishable with death (unlike s 124(4) of the CPC). Further,

the Public Consultation paper does not assist in explaining why the maximum punishment was merely doubled to avoid "discounts for multiple offending", when the amalgamation of charges for tens or even hundreds of offences was contemplated.

8 In further support of his submission, Mr Kwong also relies on *foreign* case authorities that have pronounced on the purpose underpinning *foreign legislation* in other jurisdictions. In particular, Mr Kwong refers to authorities in New Zealand and the UK, where he submits that "legislation similar to s 124(4) CPC has been enacted": s 20(2) of the Criminal Procedure Act 2011 (New Zealand) and r 10.2(2) of the Criminal Procedure Rules 2020 (SI 2020 No 759) (UK) read with para 10A.11 of the UK Criminal Practice Directions 2015. Mr Kwong's underlying assumption appears to be that the legislation across all three jurisdictions share a common purpose, such that the identified legislative intent behind the foreign legislation should apply equally to s 124(4). In our view, the foreign authorities cited are also of limited utility as there is similarly nothing to indicate that Parliament had reference to any of the foreign statutory regimes, or that s 124(4) was inspired in any way by those regimes or their underlying considerations.

Our analysis

9 To determine the required particulars of an amalgamated charge under s 124(4) of the CPC, it will be necessary to construe s 124(4) in the context of s 124 of the CPC as a whole. Section 124 provides:

> **Details of time, place and person or thing**
>
> **124.**—(1) The charge must contain details of the time and place of the alleged offence and the person (if any) against whom or the thing (if any) in respect of which it was committed, as are reasonably sufficient to give the accused notice of what the accused is charged with.

(2) Despite subsection (1), where the accused is charged with any offence mentioned in subsection (3) —

(*a*) it is sufficient for the charge —

(i) to specify the gross sum in respect of which the offence is alleged to have been committed without specifying particular items; and

(ii) to specify the dates between which the offence is alleged to have been committed (being a period that does not exceed 12 months) without specifying exact dates; and

(*b*) the charge so framed is deemed to be a charge of one offence.

(3) For the purposes of subsection (2), the offences are as follows:

(*a*) any offence under section 403, 404, 406, 407, 408, 409, 411, 412, 413 or 414 of the Penal Code 1871;

(*b*) any offence under section 50, 51, 53, 54 or 55A of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act 1992;

(*c*) any other offence (being an offence involving property) that is prescribed.

(4) Despite subsections (1) and (2) and section 132, where 2 or more incidents of the commission of the same offence by the accused are alleged, and those alleged incidents taken together amount to a course of conduct (having regard to the time, place or purpose of each alleged incident) —

(*a*) it is sufficient to frame one charge for all of those alleged incidents, if all of the following conditions are satisfied:

(i) the charge —

(A) contains a statement that the charge is amalgamated under this subsection;

(B) either —

(BA) specifies the number of separate incidents of the commission of that offence that are alleged, without specifying each particular alleged incident; or

(BB) if the causing of a particular outcome is an element of that offence, contains details of the aggregate outcome caused by all of those alleged incidents, without specifying the particular outcome caused by each particular alleged incident;

(C) contains a statement that all of those alleged incidents taken together amount to a course of conduct; and

(D) specifies the dates between which all of those incidents are alleged to have occurred, without specifying the exact date for each particular alleged incident;

(ii) if a separate charge had been framed in respect of each of those incidents, the maximum punishment for the offence specified in each separate charge would be the same maximum punishment;

(iii) the charge so framed does not specify any offence punishable with death; and

(*b*) the charge so framed is deemed to be a charge of one offence.

…

(5) For the purposes of subsection (4), 2 or more alleged incidents of the commission of an offence, taken together, may amount to a course of conduct, if one or more of the following circumstances exist:

(*a*) where the offence is one that has an identifiable victim, the victim in each alleged incident is the same person or belongs to the same class of persons;

(*b*) all of the alleged incidents involve the employment of the same method or similar methods;

(*c*) all of the alleged incidents occurred in the same place, in similar places, or in places that are located near to each other;

(*d*) all of the alleged incidents occurred within a defined period that does not exceed 12 months.

(6) To avoid doubt, subsection (5) does not contain an exhaustive list of the circumstances where 2 or more alleged incidents of the commission of an offence, taken together, may amount to a course of conduct.

> (7) Subsection (4) ceases to apply to 2 or more alleged incidents of the commission of the same offence by the accused, if the accused indicates that the accused intends to rely on a different defence in relation to each of those alleged incidents.
>
> (8) Subject to subsection (7), where a charge is framed under subsection (2) or (4), and a person is convicted of the offence specified in that charge —
>
> > (*a*) the court may sentence that person —
> >
> > > (i) in any case where the charge is framed under subsection (2) — to 2 times the amount of punishment to which that person would otherwise have been liable for that offence; or
> >
> > > (ii) in any case where the charge is framed under subsection (4) — to 2 times the amount of punishment to which that person would otherwise have been liable if that person had been charged with and convicted of any one of the incidents of commission of the offence mentioned in that subsection; but
> >
> > (*b*) any sentence of caning imposed by the court in respect of that offence must not exceed the specified limit in section 328.
>
> (9) Despite anything to the contrary in this Code, where a Magistrate's Court or District Court would (apart from this section) have jurisdiction and power to try a particular type of offence, and a charge specifying an offence of that type is framed under subsection (2) or (4) — the Magistrate's Court or District Court (as the case may be) —
>
> > (*a*) has jurisdiction to hear and determine all proceedings for the offence specified in that charge; and
> >
> > (*b*) has power to award the full punishment provided under subsection (8) in respect of the offence specified in that charge.
>
> (10) Subsections (8) and (9) do not apply to a charge framed under subsection (2) or (4) in respect of any act or omission that took place before 31 October 2018.

10 In construing s 124(4) of the CPC in light of the relevant statutory context, it is apparent to us that its statutory objective is the balancing of expediency in the administration of justice by dispensing with the need for the Prosecution to frame separate charges against a person accused of multiple

connected offences on the one hand, and ensuring fairness to the accused, who ought to be provided with sufficient particulars that would enable him to reasonably know what he has been accused of, on the other. Hence, s 124(4) permits the Prosecution to prefer one consolidated charge for a course of conduct comprising multiple incidents of offending instead of multiple charges particularising each and every incident. This balance is manifested in s 124(4), which prescribes the essential particulars that must be contained in a charge so amalgamated, and the dispensation with the particularisation of each individual incident.

11 We now elaborate. Section 124(4) of the CPC is clear that it constitutes an exception to the general rule that for each distinct offence, the accused should be separately charged and separately tried (see s 132(1) of the CPC). This can be seen from the clear wording that s 124(4) applies *despite* ss 124(1) and (2), and 132 of the CPC. Section 124(1) of the CPC, which is of general application, requires charges to contain particulars including the:

(a) Time;

(b) Place of the alleged offence; and

(c) The person against whom or thing in respect of which (if any) the offence was committed;

that are reasonably sufficient to give notice to the accused of the offence with which he is charged. Section 132(1) provides that for each distinct offence, the accused must be separately charged and separately tried, subject to the exceptions listed in s 132(2) of the CPC:

> **Separate charges for distinct offences**
>
> **132.**—(1) For every distinct offence of which any person is accused, there must be a separate charge and, subject to subsection (2), every charge must be tried separately.
>
> (2) Subsection (1) does not apply —
>
> (a) in the cases mentioned in sections 133 to 136, 138, 143, 144 and 145;
>
> (b) to charges to which the accused pleads guilty; or
>
> (c) to charges which the accused and the prosecutor consent to be taken into consideration under section 148.

12 As the Court of Appeal explained in *Public Prosecutor v Wee Teong Boo and other appeal and another matter* [2020] 2 SLR 533 ("*Wee Teong Boo*") at [114], the rationale for the general rule in s 132(1) of the CPC is to ensure fairness to the accused person:

> … The rationale for that general rule [that there must be a separate charge and trial for each offence against the accused] is among other things, to: (*a*) ensure that the evidence in support of each limb and element of each offence is sufficiently led by the Prosecution; (*b*) that a proper assessment is made of whether sufficient evidence has been led to warrant calling for the defence to be entered; (*c*) to ensure that the accused is not overwhelmed by having to defend several unconnected charges … and (*d*) ultimately, to ensure that the accused knows what case he is required to meet. These are critical safeguards embedded within the criminal justice process …

13 Section 124(4) also applies "[d]espite" s 124(2) of the CPC. Section 124(2) was amended at the same time that s 124(4) was introduced, *vide* the CJRA 2018. Before its amendment, s 124(2) provided for a limited exception to s 124(1) permitting the amalgamation of charges for two specific property offences, *viz.*, dishonest misappropriation of property and criminal breach of trust. When s 32 of the CJRA 2018 came into force, s 124(2) permitted amalgamation for a more extensive list of property offences, set out in s 124(3) of the CPC (see above at [99]). For present purposes, it is not necessary to

discuss the full list of offences under s 124(3). It suffices to note that post-amendment, s 124(2)(*a*) of the CPC provides that it would be sufficient for a charge so amalgamated to:

> (a) Specify the gross sum in respect of which the offence is alleged to have been committed without specifying particular items; *and*
>
> (b) Specify the dates between which the offence is alleged to have been committed without specifying exact dates, if the time period does not exceed 12 months.

14 Section 124(4) of the CPC was introduced to further expand the scenario in which amalgamated charges may be preferred, at the same time that s 124(2) of the CPC was amended. Section 124(4) broadens the range of circumstances in which amalgamated charges may be preferred. Unlike s 124(2), s 124(4) permits amalgamation for *all offences* save for those punishable with death, if the incidents of offending constitute a course of conduct. The amalgamation of offences under s 124(4) of the CPC is subject to the fulfilment of two key criteria in the *chapeau* of s 124(4), namely:

> (a) There are two or more incidents of the commission of the *same offence*; and
>
> (b) those alleged incidents taken together amount to *a course of conduct* (having regard to the time, place or purpose of each alleged incident).

15 An amalgamated charge would be sufficiently particularised if four cumulative conditions stipulated in s 124(4)(*a*)(i) of the CPC are satisfied by the Prosecution. In our view, these four conditions generally serve to provide

sufficient notice to the accused of the conduct that he has been charged with. The conditions are:

(a) A statement that the charge is amalgamated under s 124(4) of the CPC (s 124(4)(*a*)(i)(A)) ("Condition A");

(b) *Either*:

(i) the *number* of separate incidents of the commission of that offence that are alleged, without specifying each particular alleged incident (s 124(4)(*a*)(i)(B)(BA)) ("Condition BA"); or

(ii) if the causing of a particular outcome is an element of that offence, details of the *aggregate outcome* caused by all of those alleged incidents, without specifying the particular outcome caused by each particular alleged incident (s 124(4)(*a*)(i)(B)(BB)) ("Condition BB");

(c) All of those incidents amount to a course of conduct ("Condition C"); and

(d) The dates between which all those incidents are alleged to have occurred, without specifying the exact date for each particular alleged incident ("Condition D").

16 Mr Kwong submitted that the objectives of s 124(4) of the CPC, as a primarily procedural tool, were to:

(a) Firstly, avoid inundating the courts with hundreds of charges in cases of high volume, repetitive offences, as this causes both administrative and legal difficulties in a trial.

(b) Secondly, the amalgamation of charges should prevent the offender from receiving a different sentencing outcome due to the difficulties associated with having hundreds of charges brought against him.

(c) Finally, the amalgamation of charges is not intended to prejudice the offender in the conduct of his defence by depriving the offender of notice of the particulars of the offence that he has been charged with.

17 We are in broad agreement with Mr Kwong that one of the statutory objectives of s 124(4) of the CPC is expediency. The statutory objective of expediency in the administration of justice is manifested in the dispensation with particulars which need to be stated in a single amalgamated charge for multiple incidents of offending. We also agree with Mr Kwong that one of the key objectives is to provide adequate notice to the offender of the offences that he has been charged with. The cumulative details specified in s 124(4)(*a*)(i) manifest the balance between expediency and fairness, *viz.*, to ensure that the accused is provided with sufficient particulars that would reasonably provide notice to the accused of the conduct that he has been charged with. However, it is not apparent from the words of s 124(4), when read in context of the remainder of s 124, that one of its objectives is to ensure identical or similar sentencing outcomes upon conviction, regardless of the amalgamation of charges. As we will explain at [36]–[46], this cannot be correct as the correct sentencing approach requires cognisance of the fact that s 124(8)(*a*)(ii) expressly doubles the sentencing limit for an offence, *regardless* of the number of incidents of offending or the aggregate outcome of the offending.

18 The requirement that the offences constitute a course of conduct ensures that the incidents are sufficiently connected due to various unities in the

incidents (see below at [21]). Hence, Parliament has provided that it will suffice to frame a charge particularising the entire course of offending rather than individual incidents. This can be seen from the four conditions in s 124(4)(*a*)(i) of the CPC, in particular Condition BA or BB. As regards Condition BA or BB, the Prosecution may elect to either state the total number of incidents of offending without specifying the details of each incident (Condition BA) *or* state the aggregate outcome of the offences if the causing of a particular outcome is an element of the offence, without stating the individual outcome of offences (Condition BB).

(a) In respect of Condition BA, the words "without specifying each particular alleged incident" dispenses with the need for the Prosecution to *individually* list particulars of each incident. It would not be necessary for the Prosecution to provide a list of incidents with detailed particulars of *each incident eg*, the corresponding date, place, victim, or the conduct in each incident.

(b) Condition BB is an available option to the Prosecution only if the causing of an outcome is an element of the base offence. Thus, like s 124(2) which requires the charge to state the total amount involved rather than the number of incidents of offending, Condition BB requires a statement of the aggregate outcome of the course of conduct. The outcome of the individual incidents is not required. While the words of s 124(4) of the CPC does not specifically define an "outcome" of an offence, s 124(4) contains illustrations of when the causing of an outcome is an element of the offence. Illustrations (c) and (d) are set out for ease of reference:

Illustrations

…

(c) *A* is charged under section 426 of the Penal Code 1871 with committing mischief by setting fire to a dustbin, and thereby causing the destruction of the dustbin. By virtue of section 425 of that Code, ***the destruction of the dustbin is an outcome*** (caused by *A*'s conduct of setting fire to the dustbin) that is an element of the offence that *A* is charged with.

(d) *A* is charged under section 417 of the Penal Code 1871 with cheating *B* by deceiving *B*, and thereby intentionally inducing *B* to do a thing which *B* would not do if *B* were not so deceived. By virtue of section 415 of that Code, ***the thing that B is induced to do is an outcome*** (caused by *A*'s conduct of deceiving *B*) that is an element of the offence that *A* is charged with.

[bold emphasis added]

19 Further, Conditions A, C and D are cumulative with either Condition BA or BB, which altogether provide particulars of the *course of conduct* (of the same offence) that the offender has been charged with. Thus, regardless of its option between Condition BA or BB, the Prosecution is *still* required to provide the necessary particulars of the alleged offending *course of conduct* which *would* include the time frame within which the incidents took place, the victims, places and manner of offending where applicable. It is also notable that Condition D expressly dispenses with the need to specify the exact date of each incident of offending, and that it suffices to state a *date range* within which the various incidents constituting a course of conduct occurred. The dispensation of the need to detail particulars of *each* incident of offending in multiple discrete charges is consonant with the statutory objective of expediency in criminal prosecutions concerning multiple charges for conduct that are so related that they constitute a course of conduct.

20 We are fortified in our view by the statutory context, *viz.*, ss 124(5) to (7) of the CPC, which provide further details on the operation of s 124(4) of the

CPC. Section 124(5) provides a list of circumstances in which two or more alleged incidents of offending may amount to a "course of conduct". Section 124(6) clarifies that the circumstances in s 124(5) are not exhaustive. The circumstances enumerated are:

> (a) Where there is a common victim or where the victim belongs to the same class of persons (if there is an identifiable victim);
>
> (b) The alleged incidents involve the employment of the same or similar methods;
>
> (c) The occurrence of the offences at the same or similar places, or places located near to each other; and
>
> (d) Where the alleged incidents occurred within a defined period that does not exceed 12 months.

Section 124(5) and (6) thus complement s 124(4) by setting out a non-exhaustive list of circumstances in which incidents of offending will generally be considered so sufficiently connected that the preferring and particularisation of individual charges may be dispensed with, thereby furthering the objective of expediency in the administration of justice.

21 Section 124(7) is a key aspect in the statutory framework, which demonstrates that one of the statutory objectives is to ensure fairness to the accused by requiring the Prosecution to sufficiently particularise the course of offending conduct that is charged. Section 124(7) provides that s 124(4) ceases to apply to two or more incidents of alleged offences against the same accused, if the accused indicates that the accused intends to rely on a different defence in relation to each of those alleged incidents. In other words, the amalgamation of

offences will not be available where the accused intends to rely on different defences, and the accused will be entitled to be charged separately for each incident of offending. This ensures that the accused will not be prejudiced in his defence and will be provided with separate charges for disparate incidents for which the accused will mount a different defence. Without sufficient particularisation of the course of conduct contained in the charge preferred pursuant to s 124(4), s 124(7) would be rendered inoperable. Whether an amalgamated charge is sufficiently particularised is inherently context-dependent and will depend on the facts and circumstances of each case.

22 Thus, it can be discerned from the statutory context that the objective of s 124(4) is to balance two competing considerations. First, expediency in the administration of justice in dispensing with the need to prefer separate charges for multiple incidents of offending if they constitute a course of conduct. Second, to ensure that the accused is provided with sufficient notice that would reasonably allow him to know the conduct that he has been charged with. The Prosecution achieves this by preferring a charge that complies with the four conditions stipulated in s 124(4)(*a*) of the CPC. Of the four conditions that must be satisfied cumulatively, Condition B is unique as it allows the Prosecution to make an election between what particulars it is allowed to omit, dispensing with the need to either: specify each particular alleged incident (Condition BA) or the particular outcome of each alleged incident if causing an outcome is an element of the offence (Condition BB). The option exercised by the Prosecution will affect the information and details of the offending placed before the court, which will no doubt in turn affect the evidence that a sentencing court may consider as the ensuing analysis will show.

23 We observe in closing, in relation to the anterior issue, that the sufficiency of particulars is ultimately a matter of common sense and is highly

dependent on the circumstances of the case. Section 124(4) does *not* carve out s 125 of the CPC, which requires particulars of the *manner* in which offences are alleged to have been committed to be stated, if compliance with ss 123 and 124 does not suffice to reasonably give the accused notice of what he has been charged with:

> **When manner of committing offence must be stated**
>
> **125**. If the particulars mentioned in sections 123 and 124 do not give the accused sufficient notice of what he is charged with, then the charge must also give details of how the alleged offence was committed as will be sufficient for that purpose.

For present purposes, it is unnecessary to delve into the details of s 123, save to briefly state that it provides for other requirements of a charge, including that it must state the offence that the accused has been charged with, with sufficient details. The basic principle remains that the accused must be provided with sufficient notice.

The appropriate sentencing approach for a course of conduct deemed to be one offence

24 We turn now to consider the main issue of the appropriate sentencing approach for amalgamated offences under s 124(4) of the CPC. Parliament has expressly provided that a charge properly amalgamated under s 124(4)(*a*) is "deemed to be a charge of one offence" (per s 124(4)(*b*)), and that s 124(8)(*a*)(ii) of the CPC provides that for a charge framed under s 124(4), the offender may be sentenced to "2 times the amount of punishment to which that person would otherwise have been liable if that person had been charged with and convicted of any one of the incidents of commission of the offence", save for offences punishable with death. Any caning to be imposed must not exceed the limit specified in s 328 of the CPC (see s 124(8)(*b*)).

Summary of the parties' submissions

25 Mr Kwong submits, essentially, that there should not be any difference in the approach to sentencing an offender on account of the amalgamation of charges against the offender. Mr Kwong thus proposes a two-stage framework for the sentencing of offenders convicted of charges amalgamated under s 124(4) of the CPC, requiring at the first stage, the determination of a notional sentence for each incident of offending; and at the second stage, for the Court to ensure that the overall punishment is condign and proportionate to the accused's overall criminality across all the incidents. The underlying premise of Mr Kwong's proposed framework is two-fold. First, that the sole objective of Parliament's introduction of s 124(4) permitting the amalgamation of charges is to facilitate case management, and secondly, that the doubled sentencing limit for an amalgamated charge under s 124(8)(*a*)(ii) of the CPC merely serves to ensure that the sentence passed on an offender convicted of a charge framed under s 124(4) of the CPC would be no different from that passed had there been no amalgamation.

26 In addition, Mr Kwong also submits that where the offender is convicted of multiple charges, including one or more charges amalgamated under s 124(4) of the CPC, the Court should apply established principles, *viz.*, the One Transaction Principle and the Totality Principle set out in *Public Prosecutor v Raveen Balakrishnan* [2018] 5 SLR 799 ("*Raveen*") and *Mohamed Shouffee bin Adam v Public Prosecutor* [2014] 2 SLR 998 ("*Shouffee*") in determining the appropriate aggregate sentence for the multiple offences.

27 The Prosecution largely agreed with Mr Kwong's proposed framework, save for the qualifier that departures from the proposed two-stage framework would be necessary where the incidents of offending are numerous.

Specifically, the Prosecution submitted that since s 124(4) of the CPC permits the Prosecution to elect between Conditions BA and BB, and not particularise the individual incidents of offending, Mr Kwong's proposed framework is not capable of application in every case. Even if the aggregate outcome *and* number of incidents *are* specified, the Court cannot divide or average out the outcome over the number of incidents. Without details of each incident, deriving a notional sentence in this way will be based entirely on a hypothetical, defeating the goal of sentencing with transparency and consistency (referring to *Gan Chai Bee Anne v Public Prosecutor* [2019] 4 SLR 838 ("*Anne Gan*") at [22]–[23]). The aggravating and mitigating factors for each incident also cannot be determined when these details are omitted. Additionally, if an amalgamated charge consists of "too many" incidents, ascertaining a notional sentence for each incident is impracticable.

28 Therefore, where insufficient details are specified, the Prosecution submits that the Court may sentence an offender based on its impression of *the totality* of the offender's conduct broadly assessed *across* the incidents comprising the charge. This involves considering the aggregate sentences imposed in analogous past cases involving multiple offenders.

29 The appellant in MA 9001 wholly agreed with Mr Kwong's proposed sentencing approach, and the remaining appellants did not submit on the issue of the appropriate sentencing approach.

The basis for determining the sentencing approach

A holistic appreciation of the harm and culpability associated with the entire course of conduct is necessary

30 Mr Kwong and the parties have premised their proposed submissions on the starting point that a multiple offender convicted of several discrete charges and a multiple offender convicted of a single amalgamated charge should not receive different sentencing outcomes, ***all else being equal***. We generally agree with Mr Kwong and the parties that the amalgamation of offences by the Prosecution makes no difference to the criminality of the offender and like cases should generally be treated alike. However, it does not necessarily follow that the sentencing court ought to proceed *as though* the accused was separately charged in relation to each incident *despite* the express words of s 124(4)(*b*) and s 124(8)(*a*)(ii) of the CPC. We are unable to accept that the proposed two-step approach is the appropriate sentencing approach, for three main reasons.

31 First, Mr Kwong's proposed framework requires the Court to *assume* that there had been *no amalgamation* of the offences to begin with, contrary to the express wording of s 124(4) of the CPC. The underpinning rationale of Mr Kwong's proposed sentencing approach was to ensure that the sentence imposed on an offender convicted of an amalgamated offence would be commensurate with the sentence that he would have received, had he been separately charged, convicted and sentenced for *all* the incidents of offending. As we have already explained above at [3], the statutory objective of s 124(4) which permits the amalgamation of offences, and which provides that an amalgamated charge shall be deemed a charge for *one offence*, must guide and determine the sentencing approach to be taken.

32 Since s 124(4)(*b*) of the CPC deems the offences amalgamated under s 124(4)(*a*) of the CPC to be a *single* offence at law, there is no basis to approximate the sentencing analysis for offenders convicted at one trial of multiple offences in the context of sentencing for an amalgamated offence. To illustrate the point, we make reference to s 307(1) of the CPC, which is inapplicable *within* the incidents constituting the course of conduct by virtue of s 124(4)(*b*) of the CPC. Section 307(1) of the CPC operates by law to persons convicted at one trial of at least three *offences* and sentenced to imprisonment, mandating that at least two imprisonment terms should run consecutively. If Parliament had intended the sentencing approach to approximate the sentencing approach that would have been taken had there been no amalgamated charges, s 124(4)(*b*) of the CPC would have been worded differently, to ensure that similar sentencing outcomes can be achieved. Under s 124(4)(*b*), the charge preferred in respect of the entire course of conduct is *deemed* to constitute a charge of *one offence* at law, rendering s 307(1) of the CPC inapplicable when sentencing for the course of conduct *even if there were three or more such incidents which could have formed the basis for discrete charges*, and if the offender would otherwise have been convicted *and* sentenced to imprisonment for each of those incidents.

33 Secondly, flowing from our first point, it is impractical, and in many cases, impossible for the Court to determine the notional sentence that would have been imposed, had the offender been separately charged for each incident of offending. When Condition BA is utilised, the Prosecution must provide the aggregate number of incidents but need not specify the individual incidents in the charge. Reliance on Condition BA may result in details of the individual incidents, such as the offender's culpability and the harm caused by each incident being unavailable to the sentencing court. Where Condition BB is utilised, the Prosecution may specify the aggregate outcome but need not state

the individual outcome of incidents. It could be unfeasible in some cases to determine the harm caused by each incident of offending and the offender's corresponding culpability for each incident. Consequently, Mr Kwong's proposed first step of determining the notional sentence for each individual incident faces practical difficulties given the option of Conditions BA or BB made available to the Prosecution.

34 Thirdly, it would be meaningless to approximate the sentencing outcome that would have been arrived if the offender had been separately charged for each incident of offending, as the sentencing outcome may be affected by entirely fortuitous events. Even if the offender was separately charged for each incident, the Prosecution may not necessarily proceed with all of the charges at a single trial.

(a) In one possible scenario, the Prosecution may exercise its discretion to proceed on some charges and apply to take into consideration the remaining charges if the offender elects to plead guilty to the offences, in which case the Court will only pass sentence on the charges proceeded with and take into consideration the remaining charges with the offender's consent in sentencing. In the event that the offender elects to plead guilty, the number of charges that were proceeded with (compared to the number of charges taken into consideration for the purpose of sentencing) would no doubt impact on the aggregate sentencing outcome.

(b) In a second possible scenario, separate proceedings are possible if the offender chose to claim trial to some charges and not all of the charges. The availability of a sentencing discount might then apply to

the undisputed charges, but not to the disputed charges for which the offender was convicted after a trial.

35 To be clear, we are also unable to accept the Prosecution's suggestion to moderate Mr Kwong's proposed sentencing approach, by applying the two-stage framework generally *unless* there are "too many" incidents or where the available evidence makes it meaningless or impossible to determine a notional sentence for each incident of offending. The Prosecution's proposed moderation of the two-stage framework does not provide any meaningful guidance in determining when departures from the two-stage framework proposed by Mr Kwong are warranted. More importantly, the Prosecution appears to accept the underlying premise of Mr Kwong's submission that the sentencing court should aim to determine the notional sentence for each incident of offending as a starting point in sentencing, and then approximate the aggregate sentence that would have been imposed had the offender been separately charged, but convicted and sentenced for each incident of offending at one trial.

Our view of the appropriate sentencing approach

*Section 124(8)(*a*)(ii) increases the punishment limit by a factor of two to account for offending in course of conduct constituted by at least two incidents*

36 We turn now to state our view of the appropriate sentencing approach for amalgamated charges under s 124(4) of the CPC, which is distinct from the approach generally taken in sentencing for offences which are not subject to amalgamated charges. In sentencing for offences that are separately charged, it is trite that the prescribed punishment presents the highest end of the range of possible sentences that may be imposed on an offender *for a single offence*. The maximum prescribed punishment is generally reserved for the "range of conduct which characterises the most serious instances of the offence", having regard to

the nature of the crime and the circumstances of the offender (*Public Prosecutor v Sakthikanesh s/o Chidambaram and other appeals and another matter* [2017] 5 SLR 707 at [63], citing *Sim Gek Yong v Public Prosecutor* [1995] 1 SLR(R) 185 with approval). In the context of s 124(8)(*a*)(ii), the punishment spectrum, whilst doubled, caters for the punishment of an offender convicted of an amalgamated charge under s 124(4)(*a*) that is in fact constituted by *multiple incidents of offending*.

37 In our view, the doubling of the sentencing limit by s 124(8)(*a*)(ii) of the CPC for a course of conduct serves two main objectives:

(a) First, the raised sentencing limit expands the sentencing spectrum for a course of conduct *deemed at law* to be a *single* offence. As a course of conduct is constituted by *two* or more incidents of offending with the requisite nexus, the doubling of the sentencing range prescribed for the base offence would, *at the very least*, correspond with the increased criminality of the offender for the course of conduct, in contrast with a single incident of offending.

(b) Second, the doubled sentencing limit also provides an upper limit *regardless* of the number of incidents constituting the course of conduct charged pursuant to s 124(4)(*a*). There is nothing in the Explanatory Statement to the CJRA Bill or the Parliamentary speeches that explains why s 124(8)(*a*)(ii) did not provide for the multiplying of the prescribed punishment of the offence by a higher factor (*eg*, tripling or quadrupling). We surmise that this could be due to the fact that it would not be possible to multiply the prescribed punishment for the offence by the number of incidents constituting the course of conduct in every case. It should also be recalled that the number of incidents need

not necessarily be stated in the charge if Condition BA is not elected (and Condition BB is instead elected) by the Prosecution. The doubled punishment limit is therefore intended to serve as a cap on the sentence, regardless of the number of incidents of offending.

38 A review of the statutory context of s 124(8)(*a*)(ii) of the CPC fortifies our view of the purpose of s 124(8)(*a*)(ii). Section 124(8)(*a*) of the CPC was introduced at the same time as s 124(4) of the CPC to raise the punishment limit for offences that are the subject of *both types of* amalgamated charges (*ie*, under ss 124(2) and 124(4)) by a factor of two, to confer upon the Court the discretion to impose a punishment that better takes into account the offender's criminality for *more than one offence*. Section 124(8) is reproduced here in its entirety:

> (8) Subject to subsection (7), where a charge is framed under subsection (2) or (4), and a person is convicted of the offence specified in that charge —
>
> (a) the court may sentence that person —
>
> (i) in any case where the charge is framed under subsection (2) — to 2 times the amount of punishment to which that person would otherwise have been liable for that offence; or
>
> (ii) in any case where the charge is framed under subsection (4) — to 2 times the amount of punishment to which that person would otherwise have been liable if that person had been charged with and convicted of any one of the incidents of commission of the offence mentioned in that subsection; but
>
> (b) any sentence of caning imposed by the court in respect of that offence must not exceed the specified limit in section 328.

It should be recalled that before s 32 of the CJRA 2018 took effect, the amalgamation of charges relating to dishonest misappropriation and criminal breach of trust was allowed under s 124(2) of the pre-amendment CPC. However, as s 124(8)(*a*)(i) did not then exist, the punishment limit for the base

offence of criminal breach of trust and dishonest misappropriation would continue to apply. Section 124(8)(*a*)(i) of the CPC was introduced when s 32 of the CJRA 2018 entered into force, doubling the punishment limit for offences amalgamated pursuant to s 124(2) of the CPC (*ie*, the expanded list of property offences set out in s 124(3)). The latter also does not require the total number of incidents to be specified in the charge. In our view, s 124(8)(*a*)(ii) was inserted at the same time to similarly provide the Court with greater discretion to reflect the offender's culpability for multiple incidents of offending constituting a course of conduct, even if the number of incidents may not be discernible in all cases.

39 Having regard to the objectives of s 124(8)(*a*)(ii) of the CPC, a holistic appreciation of the offender's criminality for the entire course of conduct comprising at least two incidents of offending must take centre stage. The Court should not place undue emphasis on isolating the facts relating to each incident of offending. The absence of details on the individual incidents of offending should not obscure the overall complexion of the offender's multiple offending over a period of time. Any failure to recognise that the offender had sustained a course of offending conduct would result in an undue discount for multiple offending.

40 It is apposite to observe at this juncture, that the offender's criminality for a course of offending conduct must, of necessity, be assessed by reference to the available evidence. The available evidence may turn on the Prosecution's election between Condition BA or BB. If Condition BA is fulfilled, the number of incidents of offending would clearly be available before the Court. If Condition BB is fulfilled, the aggregate outcome of the course of offending would certainly be available to the Court for the purpose of sentencing. Where the Prosecution *chooses* to adduce additional evidence relating to offender's

culpability for, or the harm caused by, the offending course of conduct *beyond* the particulars required in the charge, such evidence must be considered for the purposes of sentencing. A workable sentencing approach, in our view, should of necessity assume the availability of evidence that must be tendered to sustain a conviction (*ie*, that which must be particularised must be proven), and the non-availability of evidence on matters that need not be particularised.

The appropriate sentencing approach

41 We first set out the sentencing approach, before elaborating on the approach below.

42 First, the Court must identify the punishment prescribed for the offences committed (*ie*, the base offence). Sentencing factors that are relevant to the base offence would generally remain relevant in the sentencing of offenders convicted of an amalgamated charge under s 124(4) of the CPC. These include the harm caused and the factors which relate to the manner and mode by which the offence was committed (see *Ng Kean Meng Terence v Public Prosecutor* [2017] 2 SLR 449 at [39(a)]). At this stage, the Court will have regard to the relevant sentencing framework or benchmark for the base offence (or analogise to precedents where no framework or benchmark is applicable) for individual base offences.

43 Second, the Court will determine the appropriate starting point sentence, based on a holistic assessment of the offender's culpability over the entire course of conduct, and having regard to the aggregate harm caused and the offender's overall culpability. The Court should have appropriate regard to the doubled punishment limit provided for in s 124(8)(*a*)(ii) of the CPC. At the second stage, it would be essential to have regard to the offender's criminality over a course of conduct which is constituted by *minimally two* incidents of

offending. Generally, the criminality of an offender would be increased by virtue of the repetition of criminal behaviour, compared to an offender who had committed a single offence, *even if the total harm caused by the two offenders was otherwise identical*.

44 During the second stage, the offender's culpability and the harm caused by the course of conduct must be assessed by reference to the evidence available before the Court. Evidence of any of the offence-specific factors identified at the first step of the sentencing analysis may also be considered in the assessment of the offender's culpability and the harm caused by the course of conduct. As the Prosecution may choose between Conditions BA and BB in the framing of an amalgamated charge under s 124(4) of the CPC, *either* the number of incidents *or* the aggregate outcome must be particularised and accordingly proved. There is no legal requirement that *both* the number of incidents *and* the aggregate outcome should be particularised and proven by the Prosecution. However, if evidence *is* adduced of the number of incidents of offending *in addition to* the aggregate outcome of the incidents, regardless of whether the charge was framed in compliance with Condition BA or BB, *both* the number of incidents and aggregate outcome may be considered where relevant to the offender's culpability and the harm caused by the offence.

45 In the Court's assessment of the offender's culpability and the harm caused by a course of conduct, it will be essential to specifically have regard to the following matters:

(a) First, in addition to the culpability-related factors identified at the first stage, the duration and frequency of the offending conduct are relevant to the offender's culpability. An offender who has repeated the

offence multiple times over a sustained period of time would have demonstrated greater recalcitrance, which is an aggravating factor.

(b) Second, in assessing the harm caused by the course of conduct, the Court should have regard to the relevant factors identified at the first stage. Where the Prosecution elects to satisfy Condition BB in framing a charge under s 124(4)(*a*)(i) of the CPC, the Prosecution is required to particularise and accordingly prove the aggregate outcome of an offence, but not the specific outcome of each incident. The aggregate outcome would be indicative of the harm caused by the entire course of conduct. It would not be necessary to determine or isolate the harm caused by each of the constituent incidents of offending, for the purpose of sentencing. For instance, if the offender had assaulted a victim on multiple occasions, cumulatively bringing about a particular type of physical injury or psychological harm, it may be impossible or even meaningless to seek to apportion the harm caused in each of the various incidents of offending (even if information is available on the number of incidents of offending).

(c) Third, in determining the starting point sentence that would be appropriate having regard to the entire course of conduct, the Court should also consider whether a different *type* of sentence would be warranted. The repetition of offending behaviour may tip the balance from a fine to a custodial sentence, where the prescribed punishment for the base offence includes options of a fine, imprisonment term, or to both.

46 At the third stage, having considered the relevant offence-specific factors and having determined the appropriate starting point sentence, the Court

then considers the relevant offender-specific aggravating and mitigating factors before deciding on whether adjustments are required to the starting point sentence. These considerations would be no different from those to which the Court would have regard in sentencing for non-amalgamated offences, including aggravating factors such as relevant antecedents indicating lack of remorse, and mitigating factors such as a timeous plea of guilty saving the Court's resources and time and the genuine remorse of the offender.

47 If the offender is convicted at one trial of multiple offences that include one or more offences under s 124(4) of the CPC, the Court would have to consider the One-Transaction Principle and the Totality Principle (as laid down in *Shouffee* and *Raveen*) to derive the appropriate aggregate sentence, subject to the application of s 307(1) of the CPC where the offender is convicted of three or more offences and sentenced to imprisonment at one trial. That is to say, where the offender is convicted at one trial of three or more offences and sentenced to imprisonment for these offences, at least two imprisonment terms must run consecutively.

48 In relation to the One-Transaction Principle, the application of the principle will necessarily depend on the factual matrix at hand. As clarified in *Seng Foo Building Construction Pte Ltd v Public Prosecutor* [2017] 3 SLR 201 at [67], the One-Transaction Principle is not mandatory and may be departed from to arrive at a just sentence. As set out in the cases of *Shouffee* and *Raveen,* the One-Transaction Principle provides that where two or more offences are committed in the course of a single transaction, all sentences in respect of those offences should *generally* run concurrently rather than consecutively. In determining whether the offences form a single transaction, the Court must assess whether they constitute a "single invasion of the same legally protected interest" (see *Raveen* at [39]). The Court is to also consider the proximities in

time and place, continuity of action and continuity in purpose or design with respect to the offences. Ultimately, the One-Transaction Principle is a principle of fairness which rests on the notion that an offender should not be doubly punished for what is essentially the same conduct, even though that conduct may disclose several distinct offences at law (see *Raveen* at [69]). Conversely, *Raveen* clarifies that sentences for unrelated offences should generally run consecutively.

49 As recognised in *Public Prosecutor v Loh Cheok San* [2023] 5 SLR 1646 ("*Loh Cheok San*") at [26], this latter aspect of the One-Transaction Principle will prevent offenders from receiving unwarranted discounts for what are essentially separate courses of conduct. It may be rather unlikely for two courses of conduct, each the subject of a separate amalgamated charge under s 124(4) of the CPC, to have the requisite proximities of time and place, or continuities of action, design and purpose, so as to constitute "one transaction". Nevertheless, regard must always be had to the factual circumstances. To illustrate, in *Loh Cheok San*, the offender was convicted of *two* charges amalgamated under s 124(4) of the CPC. Both amalgamated charges related to the same 52 transactions, save that the first amalgamated charge concerned a course of conspiracy *with* the offender's employer and six others to cheat customers, while the second amalgamated charge related to conspiracy with two others to cheat the offender's employer of these ill-gotten gains. In applying the One-Transaction Principle, Gill J carefully considered the incidents amalgamated in each charge, before concluding that they did not constitute one transaction. This was primarily because the two amalgamated charges violated two different legally protected interests, even though the offences stemmed from and related to the same set of 52 transactions. This was so even if the offender's employer's involvement in the cheating conspiracy made it possible for the offender to have cheated his employer in the first place.

50 In relation to the Totality Principle, this serves as a "final check" to ensure that the aggregate sentence is proportionate to the overall criminality presented and is not excessive: *Raveen* at [65]. This principle has two aspects (*Raveen* at [73]):

(a) First, whether the aggregate sentence is substantially above the normal level of sentences for the most serious of the individual offences committed; and

(b) Second, whether the effect of the aggregate sentence on the offender is crushing and not in keeping with his past record and future prospects.

51 In *Anne Gan*, the High Court explained (at [20]) that the Totality Principle may also serve to boost sentences if they would otherwise result in a manifestly inadequate overall sentence:

> This aspect of the inquiry relies on the totality principle, which has generally been taken to possess a limiting function, in the sense that it operates to prevent the court from imposing an excessive overall sentence. That is why it usually examines whether the aggregate sentence is "substantially above" the normal level of sentences for the most serious of the individual offences committed and whether its effect on the offender would be "crushing" and not in keeping with his past record and future prospects: *Shouffee* [54] and [57]. But **as a matter of logic, the totality principle is equally capable of having a boosting effect on individual sentences where they would otherwise result in a manifestly inadequate overall sentence. This is because the totality principle requires not only that the overall sentence not be excessive but also that it not be inadequate.** As the Court of Appeal explained in *Haliffie bin Mamat v PP* [2016] 5 SLR 636, "the totality principle recommends a broad-brushed 'last look' at all the facts and circumstances to ensure the *overall proportionality* of the aggregate sentence" [emphasis added]. In a similar vein, in *ADF v PP* [2010] 1 SLR 874 at [146], the Court of Appeal said, "In the ultimate analysis, the court has to assess the totality of the aggregate sentence with the totality of the criminal behaviour." And *Shouffee* itself contemplates that the principle

> is capable of boosting individual sentences for it is stated there that the sentencing judge may consider running more than two sentences consecutively if the accused is shown to be a persistent and habitual offender, where there are extraordinary cumulative aggravating factors or where there is a particular public interest (at [81(j)]).
>
> [italics in original, emphasis added in bold]

If the Court finds that the Totality Principle has been engaged, it may opt for a different combination of sentences to run concurrently or consecutively, or adjust the individual sentences imposed: *Shouffee* at [81(i)].

52 In the context of amalgamated offences, it would be necessary to ensure that double counting is avoided. Factors that have been given their appropriate weight in the determination of the sentences for individual offences (including those amalgamated under s 124(4) of the CPC) should not be counted again when determining the appropriate aggregate sentence. It would be inappropriate to take into account the fact that the offender had committed multiple incidents of offending *within* an amalgamated charge in determining the aggregate overall sentence across multiple charges, if the Court has already fully considered the repetition of the offending in deriving the specific sentence for the amalgamated charge under s 124(4) of the CPC.

The appeals

53 Having set out the applicable sentencing approach towards amalgamated charges, we now address the three appeals in turn. We note that the sentences appear lenient given the extent of offending disclosed in the three appeals. However, in considering the appeals, we recognise that the Prosecution did not appeal against the sentences imposed and we were also cognisant of the limited role of the appellate court. An appellate court will not readily disturb the sentence imposed by the sentencing judge because sentencing is an exercise of

judicial discretion and requires a balancing of myriad considerations. Intervention is warranted if: (a) the sentencing judge erred with respect to the proper factual matrix for sentencing; (b) the sentencing judge 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. We were ultimately not persuaded that appellate intervention was warranted in any of the three appeals and accordingly dismissed the three appeals.

HC/MA 9219/2023/01 *Prakash s/o Mathivanan v PP*

54 The appellant in MA 9219, Mr Prakash s/o Mathivanan ("Prakash") pleaded guilty to three charges under the Penal Code (Cap 224, 2008 Rev Ed) (the "PC") and was sentenced to an aggregate term of 62 months' imprisonment. The charges are summarised as follows:

Charge	**Brief Description**
DAC-922473-2020 (the "Amalgamated Conspiracy Charge")	Engaging in a conspiracy with two others to cheat Singtel into delivering 40 mobile devices with a total value of $76,666 between 13 August 2020 to 3 November 2020, offences under s 420 read with s 109 of the PC amalgamated under s 124(4) and punishable under s 124(8)(*a*)(ii) of the CPC
DAC-921311-2021 (the "Amalgamated Cheating Charge")	Deceiving Giant staff by presenting a Maybank credit card belonging to one "Solomon" on 11 occasions on 2 June 2020 to make purchases amounting to $4,274, offences under s 420 of the PC amalgamated under s 124(4) and punishable under s 124(8)(*a*)(ii) of the CPC
DAC-921316-2021 (the "Cheating Charge")	Deceiving Challenger staff by presenting a DBS credit card belonging to one "Wang" to purchase nine handphones and other accessories with a total value of $18,379, an offence under s 420 of the PC

He also consented to 30 other charges involving a medley of different offences committed between 2016 and 2020 being taken into consideration for the purpose of sentencing (see *Public Prosecutor v Prakash s/o Mathivanan* [2024] SGDC 31 ("*Prakash s/o Mathivanan*") at [1]–[4]).

55 At the hearing on 27 November 2024, we dismissed MA 9219. We explain our decision below, after setting out the background to the appeal.

Background facts and the decision below

56 In relation to the Amalgamated Conspiracy Charge, from August 2020, Prakash masterminded a scheme with "Firdaus" and "Malani" to cheat Singtel by impersonating individuals using personal particulars he obtained from the dark web. The particulars were used to make online applications for new mobile phone lines. Any initial payments for the phones were made by Prakash using fraudulently obtained credit card details. The phones were sold for cash after being delivered. By this deception, Singtel was dishonestly induced to deliver 40 mobile phones with a total value of $76,666 over 16 applications made between 13 August 2020 to 3 November 2020. Notably, these offences were committed after Prakash had absconded while on court bail on 3 August 2020. Prakash only pleaded guilty to the charge on the first day of trial.

57 In relation to the Amalgamated Cheating Charge, while Prakash was out on bail, on 24 May 2020, he called Maybank and represented himself as Solomon (whose particulars he had obtained in 2017 through a previous spate of offences). Impersonating Solomon, Prakash reported the loss of a credit card and requested a replacement card, using Solomon's personal details for verification. After Maybank mailed a replacement card to Solomon's registered address, someone helped Prakash to retrieve it from Solomon's mail. On 2 June 2020, Prakash used the credit card on 11 occasions at a Giant supermarket to

buy an assortment of cigarettes valued at a total of $4,274. Notably, he had used the same *modus operandi* that he had used in 2017, to obtain the issue of replacement credit cards to Solomon. Prakash had been convicted for those prior offences and committed the offence in the Amalgamated Cheating Charge after being released from prison.

58 In relation to the Cheating Charge, while Prakash was out on bail, he came into possession of a DBS credit card belonging to Wang. On 22 July 2020, he went to a Challenger electronics store and used Wang's credit card to buy nine sets of mobile phones and other accessories totalling at $18,379.

59 The maximum sentence for the Cheating Charge was 10 years' imprisonment. The maximum sentence for each amalgamated charge was 20 years' imprisonment pursuant to s 124(8)(*a*)(ii) of the CPC. In addition, the offender was liable to a fine. We summarise the sentences sought by the Prosecution and Prakash, and the sentences meted out by the court below:

Charge	**Prosecution**	**Defence**	**Court**
Amalgamated Conspiracy Charge	40 to 42 months' imprisonment – consecutive	21 to 27 months' imprisonment - consecutive	42 months' imprisonment – consecutive
Amalgamated Cheating Charge	8 to 10 months' imprisonment – consecutive	4 to 6 months' imprisonment - consecutive	8 months' imprisonment – consecutive
Cheating Charge	12 to 14 months' imprisonment – consecutive	3 to 4 months' imprisonment – consecutive	12 months' imprisonment - consecutive
Total	**60 to 66 months' imprisonment**	**28 to 37 months' imprisonment**	**62 months' imprisonment**

Appellant's Case

60 Prakash submitted that the global sentence of 62 months' imprisonment was manifestly excessive for two reasons. First, he submitted that only two imprisonment terms should have been ordered to run consecutively and that the District Judge had erred in applying the guidance on the Totality Principle set out in *Raveen*. Second, he submitted that the Sentencing Advisory Panel's Guidelines on Reduction in Sentence for Guilty Pleas (the "SAP Guidelines") should apply to reduce the imprisonment term for the Amalgamated Conspiracy Charge by 5% and the imprisonment terms for the other charges by 20-30%. He did not make any submissions regarding the appropriateness of the individual sentences imposed.

Respondent's Case

61 The Prosecution submitted that the overall sentence was just and proportionate to Prakash's overall criminality. First, the three proceeded charges pertained to different victims and were unrelated, thus justifying the District Judge's decision to run the three imprisonment terms consecutively. In the court below, Prakash's defence counsel also agreed that the sentences should run consecutively. Second, the SAP Guidelines were effective from 1 October 2023 onwards, which was after he had pleaded guilty on 15 August 2023.

Issues before this court

62 The following issues arose for our determination:

(a) Issue 1: whether only two sentences should have been ordered to run consecutively; and

(b) Issue 2: whether the SAP Guidelines should apply to reduce the individual sentences.

Issue 1: whether only two sentences should have been ordered to run consecutively

63 We were of the view that the District Judge did not err in ordering the three sentences to run consecutively. The District Judge correctly considered and applied the One-Transaction Principle. Analysing the facts underlying the three proceeded charges, the District Judge found that the offences were committed on different victims at different times and were unrelated. The sentences for each charge were therefore to run consecutively. The District Judge further supported her decision by noting that the charges involved property-related credit card offences that were similar to other charges pending against Prakash, that he had committed the offences while out on bail, and that he had repeatedly committed similar cheating offences using the same *modus operandi* and the particulars of the same person. Public interest and the need for strong deterrence provided further basis for running the sentences consecutively (*Prakash s/o Mathivanan* at [57]–[58]). We agree with the District Judge that, in the circumstances, running the three imprisonment terms consecutively was amply justified.

64 We observed that applying the appropriate sentencing approach, the sentence of 42 months' imprisonment for the Amalgamated Conspiracy Charge can only be said to be lenient considering the total number of incidents of offending. In *Public Prosecutor v Fernando Payagala Wadue Malitha Kumar* [2007] 2 SLR(R) 334 ("*Fernando Payagala*"), the High Court laid down a benchmark sentence of 12 to 18 months' imprisonment for non-syndicated credit card offences (*Fernando Payagala* at [75]). It should be noted that the prescribed punishment for offences under s 420 of the PC has since been

amended with effect from 1 January 2020 (*vide* the Criminal Law Reform Act 2019 (Act 15 of 2019), to increase the maximum imprisonment term from seven to ten years. Prakash's 2018 antecedent also provides us with a useful point of reference. In *Public Prosecutor v Prakash s/o Mathivanan* [2018] SGDC 284, he pleaded guilty to four charges under s 420 of the PC, four charges under s 420 read with s 109 of the PC, one charge under s 419 of the PC and four other charges under s 3(1) of the Computer Misuse and Cybersecurity Act (Cap 50A, 2007 Rev Ed). He gave his consent for 54 other offences to be taken into consideration for sentencing. These offences arose out of, *inter alia*, scams perpetrated by Prakash through the Carousell platform and his participation in a conspiracy with two others to commit cheating offences involving fraudulently obtained credit cards using personal details of third parties. The total amount concerned in 11 fraudulent transactions totalled $47,707 (with each charge concerning cheating of amounts from $2,398 to $18,036), and Prakash had similarly been on court bail, and not made restitution. He was sentenced to between 3 to 15 months' imprisonment for each individual charge relating to cheating. In all, five sentences were ordered to run consecutively which resulted in an aggregate sentence of 34 months' imprisonment. The sentences imposed were upheld on appeal.

65 In relation to the offence-specific factors in the case before us, Prakash had admitted to dishonestly inducing the delivery of the property listed in 16 incidents spanning more than two months, with each incident resulting in the loss to the victim ranging from $1,548 to $28,123. Save for the property involved in the 16th incident amounting to $10,914, the other properties were not recovered, and no restitution was made. Furthermore, his culpability was increased, as the Amalgamated Conspiracy Charge concerned multiple incidents committed in breach of bail conditions. His culpability was also increased as the mastermind of the scheme. Given that the course of conduct

was constituted by 16 incidents in quick succession, inducing the delivery of property of substantial value on each occasion, the sentence of 42 months' imprisonment was lenient especially seen in light of the doubled prescribed punishment of 20 years' imprisonment and liability to a fine. While the District Judge was alive to the need to maintain parity of sentencing with the co-accused persons, the imposition of a longer imprisonment term on Prakash would not have offended the principle of parity.

66 Turning to consider the offender-specific factors, given that he was a patently unrepentant offender, a stiffer sentence was warranted in the interests of specific deterrence. This was especially since his criminality had in fact escalated from participating in a conspiracy to cheat in his 2018 case, to masterminding a conspiracy to cheat involving the forgery of documents, and that the fact that the reoffending behaviour has led to more extensive losses to the victims ($76,666). There were also 30 other charges taken into consideration for sentencing in the present case, which included multiple cheating offences. We recognised that he had pleaded guilty thereby saving the Court's time and resources, but that these savings were significantly attenuated given that he had indicated his plea only at the commencement of the trial. Thus, the application of the appropriate sentencing approach would have resulted in a sentence substantially higher than the 42 months' imprisonment imposed by the District Judge.

67 Similarly, the sentence for the Amalgamated Cheating Charge appeared to also be on the lenient side, considering the available information on the total harm caused and the total number of incidents of offending. Considering the number of instances of offending, and the total amount of losses caused through 11 purchases over one day amounting to $4,274 for which no restitution was made, the sentence of eight months' imprisonment appears somewhat lenient

seen in the light of the doubled sentencing limit of 20 years' imprisonment and liability to a fine. In *Fernando Payagala*, the offender chanced upon the victim's credit card on a plane and used the credit card to fraudulently purchase goods worth $3,279.81. A sentence of six months' imprisonment was imposed, below the benchmark of 12 months' imprisonment, on account of the offender's youth and demonstrated capacity for rehabilitation. The sentence of eight months' imprisonment imposed by the District Judge in this case was lenient in comparison, considering the offending course of conduct, bearing in mind the amounts cheated each time in rapid succession. We have considered that there were no offender-specific factors that were of mitigating value in the present case, and have stated our views, in relation to the Amalgamated Conspiracy Charge above at [66], that Prakash's similar antecedents in fact increased his culpability for the more recent spate of cheating offences. In the final analysis, the sentence of eight months' imprisonment imposed by the District Judge could not be said to be manifestly excessive.

68 Turning now to consider the appropriate aggregate sentence, running of the three imprisonment terms (*viz*., for the Amalgamated Conspiracy Charge, Amalgamated Cheating Charge and the Cheating Charge) did not in any manner offend the One-Transaction Principle as the three offences lacked proximity to one another, and shared no commonalities in design and purpose. The three offences were unrelated and infringed the legally protected interests of three different victims at different times. The aggregate sentence of 62 months' imprisonment was clearly not disproportionate to the totality of his offending and his criminal record. There was therefore clearly no basis for appellate intervention on the ground that the sentence was manifestly excessive.

Issue 2: whether the SAP Guidelines should apply to reduce the individual sentences

69 We agreed with the Prosecution that this ground of appeal was without merit. The SAP Guidelines were effective from 1 October 2023 onwards, which was after Prakash had pleaded guilty on 15 August 2023. In any event, it is clear from the SAP Guidelines that they were not binding on the District Judge. We should also add that his guilty plea was given due consideration in this Court's consideration of the relevant offender-specific factors in sentencing.

Conclusion

70 For the above reasons, we dismissed the appeal in MA 9219.

HC/MA 9001/2024/01 *Ivan Goh Feng Jun v PP*

71 The appellant in MA 9001, Mr Ivan Goh Feng Jun ("Ivan") pleaded guilty to four charges and was sentenced to an aggregate term of 5 years and 12 months' imprisonment. The charges are summarised as follows:

Charge	**Brief Description**
DAC-907857-2023 (the "Amalgamated Charge")	Engaging with a conspiracy with one other to cheat ipaymy Pte Ltd ("ipaymy") on 14 occasions between 23 June 2021 and 30 July 2021 into transferring a total of $635,743.20, offences under s 420 read with s 109 of the PC amalgamated under s 124(4) of the CPC
DAC-907858-2023 (the "CMA Charge")	Knowingly causing a computer system of DBS Bank to perform a function for the purpose of securing access without authority to banking services on 13 occasions between 25 June 2021 and 30 July 2021, offences under s 3(1) of the Computer Misuse Act (Cap 50A, 2007 Rev Ed) (the "CMA") amalgamated under s 11A of the CMA

DAC-907859-2023 (the "Conspiracy Charge")	Engaging in a conspiracy with one other to cheat OCBC Bank by deceiving OCBC Bank into opening a bank account, an offence under s 417 read with s 109 of the PC
DAC-907861-2023 (the "Obstruction Charge")	Obstructing the course of justice by deleting a WhatsApp chat log with the intention of preventing the Singapore Police Force from gaining access to information relevant to the investigations for an offence, an offence under s 204A of the PC

Ivan also gave his consent for two other charges (under s 3(1) of the CMA and under s 204A of the PC respectively) to be taken into consideration for the purpose of sentencing (see *Public Prosecutor v Ivan Goh Feng Jun* [2024] SGDC 46 ("*Ivan Goh*") at [1]–[4]).

72 At the hearing on 27 November 2024, we reserved judgment on MA 9001 pending the receipt of further submissions. Ivan filed his further written submissions on 11 December 2024, while the Prosecution did not file further written submissions. Having considered the further submissions, we dismiss MA 9001 as well. We explain our decision below, after setting out the background to the appeal.

Background facts and the decision below

73 Essentially, Ivan orchestrated and executed a "chargeback" fraud against ipaymy, a payment-processing service provider. ipaymy facilitates payments between buyers and sellers for a fee. Upon receiving payments from a buyer, ipaymy would transfer the payment to the seller less the service fee. Ordinarily, the seller would then provide the goods or services to the buyer. If the transaction was disputed, ipaymy would first refund the buyer, before turning to the seller to claw back the payment. The charges related to a scheme

masterminded by Ivan involving 14 fake transactions between DS Watches Pte Ltd ("DS Watches") as the seller and Ivan's accomplice, "Wilson", as the buyer, which were then disputed.

74 In December 2020, Ivan shared his plan to commit chargeback fraud with an accomplice, "Darren". He assisted Darren in incorporating DS Watches and applying for a DBS bank account with Darren as account holder (the "DBS Account"). Darren then handed over the details of DS Watches as well as access to the DBS Account to Ivan, giving Ivan control. In June 2021, Ivan used Darren's personal details to apply for ACRA records to register DS Watches as a merchant with ipaymy.

75 In relation to the Conspiracy Charge, in June 2021, Ivan approached Wilson to ask the latter to apply for an OCBC bank account (the "OCBC Account") and to give control of the OCBC Account to Ivan from June to August 2021. Wilson then deceived OCBC Bank into creating the OCBC Account by falsely representing that Wilson would be the sole operator and controller of the OCBC Account. Ivan then took over control of the OCBC Account. This laid the groundwork for the chargeback fraud.

76 In relation to the Amalgamated Charge and the CMA Charge, Ivan created the fake invoice for the first transaction with DS Watches on 23 June 2021. Using $40,000 that he had deposited into the OCBC Account, Ivan made payment as the "buyer", which ipaymy then transferred to the DBS Account, representing DS Watches as the "seller". With Darren's help, the funds in the DBS Account were then transferred back into the OCBC Account to begin the cycle anew. Thereafter, Ivan generated 13 further fake invoices between 25 June 2021 and 30 July 3021, using this same cycle. For those 13 subsequent incidents, he used internet banking credentials provided by Darren to control

the DBS Account and transfer the funds back to himself. The fake sales accumulated to $653,503.60. Impersonating Wilson as the "buyer", Ivan then disputed the 14 transactions with ipaymy and sought a drawback of $653,503.60. When ipaymy sought to clarify the dispute, Ivan impersonated both Wilson and Darren as the "buyer" and "seller". In this way, he conspired to cheat ipaymy on 14 occasions between 23 June 2021 and 30 July 2021 and made unauthorised access to the DBS Account on 13 occasions between 25 June 2021 and 30 July 2021.

77 After investigating the disputed transactions themselves, ipaymy reported the matter to the police and managed to stop the full sum from being transferred into the OCBC Account. The Amalgamated Charge was for the sum of $635,743.20 rather than $653,503.60 because of ipaymy's service fee.

78 For the Obstruction Charge, in August 2021, after having been called up for investigations by the police, Ivan deleted his WhatsApp chatlog with Darren, and asked Darren to do the same, to avoid detection by the police.

79 Notably, Ivan had been convicted on 31 March 2020 of seven cheating charges under s 417 of the PC, with 15 similar charges for the same offence taken into consideration. He was sentenced to one month's imprisonment for each of the seven charges, with three of the sentences running consecutively, for a final sentence of three months. In this antecedent, he had similarly masterminded a scheme to cheat Starhub and had instigated others to facilitate his fraud.

80 We summarise the sentences sought by the Prosecution and Ivan, as well as the sentences meted out by the court below:

Charge	**Prosecution**	**Defence**	**Court**

Amalgamated Charge	5 to 6 years' imprisonment – *consecutive*	3 to 3.5 years' imprisonment – *consecutive*	5 years' imprisonment – *consecutive*
CMA Charge	12 to 24 months' imprisonment – concurrent	9 to 12 months' imprisonment – *consecutive*	12 months' imprisonment – concurrent
Conspiracy Charge	12 to 24 months' imprisonment – *consecutive*	9 to 12 months' imprisonment – concurrent	12 months' imprisonment - *consecutive*
Obstruction Charge	5 to 7 months' imprisonment - concurrent	5 to 7 months' imprisonment - concurrent	6 months' imprisonment – concurrent
Total	**6 to 8 years' imprisonment** (after 30% discount for early plea of guilt)	**32 to 42 months' imprisonment** (after 30% discount for early plea of guilt)	**5 years and 12 months' imprisonment**

The Prosecution's submissions on the individual sentence to be imposed per charge appears to already take into account a 30% reduction for an early plea of guilt, whereas Ivan's submissions on the individual sentence to be imposed per charge appears to be before taking into account any reduction.

Appellant's Case

81 Ivan's appeal centres around the Amalgamated Charge. For that charge, he submits that a sentence of 36 to 42 months' imprisonment is appropriate (*before* applying the 30% discount). As for the final sentence, his appeal rests on his submission that the District Judge should have applied a 30% discount to the global sentence for an early plea of guilt. In the round, he seeks a global sentence of 34 to 42 months' imprisonment.

82 First, Ivan submits that the District Judge erred in failing to consider that the lack of actual loss was mitigating. He submits that the absence of harm is a key sentencing consideration, and that "*some* credit has to be given for the lack of actual loss", since ipaymy did not actually lose the sum of $635,743.20. Instead, the only person who suffered actual loss was Ivan himself, who paid ipaymy service fees of $17,760.40.

83 Second, and relatedly, he submits that the District Judge had erred by failing to determine the factual issue of whether he had, upon becoming aware that ipaymy was undertaking investigations, "tried to stop the fraudulent scheme, or at the very least, not take steps to further the scheme". He submits that the issue of whether he had tried to stop the scheme of his own accord was a material fact which was disputed by the parties and could potentially mitigate Ivan's offence.

84 Third, he submits that the District Judge was factually wrong regarding his antecedents. Ivan submits that the District Judge had incorrectly noted that he had previously been sentenced to 2 to 3 months' imprisonment per charge for similar offences in 2017, and 3 to 4 months' imprisonment per charge for similar offences in 2020. This was factually incorrect as it is undisputed that he had been sentenced in 2020 and for only one month per charge, and for a final sentence of three months (above at [79]). However, it became clear at the hearing on 27 November 2024 that the parties were referring to different versions of the judgment of the Court below. We therefore allowed the parties to make further submissions.

85 In essence, the District Judge first issued written grounds on 27 February 2024 (the "Original GD"). Between 20 March 2024 and 30 August 2024, the Record of Appeal was uploaded and then expunged from the case file multiple

times. On 2 September 2024, the Record of Proceedings was filed, and the Court informed the parties that the Court had "replaced the updated Grounds of Decision to the Record of Appeal bundle". Counsel for Ivan candidly acknowledged that the notification had been sent, but that the change had gone undetected. In preparing initial submissions for MA 9001, counsel for Ivan had therefore relied on the Original GD that was contained in an outdated version of the Record of Appeal, whereas the Prosecution had relied on *Ivan Goh*, the latest version of the decision. The main difference between the Original GD and *Ivan Goh* was the deletion of a paragraph and a header which stated (at [79] of the Original GD):

> 79 In applying the principle of proportionality … I was of the view that the individual sentence of 6 months per charge was fair given that the Accused was sentenced to 2 to 3 months' imprisonment per charge for similar offences in 2017, and 3 to 4 months' imprisonment per charge for similar offences in 2020.
>
> *Section 417 of the PC and s 3(1) of the CMA*
>
> 80 The Accused was previously sentenced to 1 month's imprisonment for each of the seven s 417 charges which he faced under the Penal Code. He started planning for this set of offences not long after his release from prison. Both the s 417 charge under the PC and the s 3(1) of the CMA charge were interconnected, and there was another similar s 3(1) charge which was to be taken into consideration.
>
> [deletions underlined]

Following the District Judge's amendment, [80] of the extract above was renumbered and can be found in *Ivan Goh* at [79]. For convenience, we will refer to this deletion as the "Amendment". In short, Ivan's further submissions are essentially that the District Judge should not be allowed to make the Amendment, and that MA 9001 should be considered on the basis of the Original GD. Ivan submits that:

(a) The District Judge was *functus officio* after pronouncing Ivan's sentence and could not make amendments to correct substantive errors. The Amendment was a substantive change as it "arguably laid out, in part, the basis for the DJ's sentence". The deleted paragraph referred to the proportionality principle, incorrectly set out Ivan's antecedents, and specified an individual sentence of 6 months per charge. The deleted paragraph removed points which Ivan relied upon in his appeal (below at [86]).

(b) The District Judge had failed her judicial duty to give reasons. Where the reasons for an adverse ruling are revealed to the litigant but subsequently retracted, this may potentially affect a reasonable person's perception of the legitimacy of the decision.

(c) The Amendment was made nearly six months after the Original GD was issued. This was not within a reasonable time.

86 Fourth, Ivan submits that the District Judge failed to apply the appropriate sentencing approach to the Amalgamated Charge, which should have been the two-step approach proposed by Mr Kwong, leading to a manifestly excessive sentence for the Amalgamated Charge. In *Ivan Goh*, the District Judge held (at [78]):

> … *A sentence of 5 to 5.5 years' imprisonment would have been appropriate if he had been untraced.* Given that he was traced for similar offences, which was a highly aggravating factor, he would have faced a sentence of at least 7 years' imprisonment. *I was of the view that a sentence of 5 years would be appropriate, taking into account his plea of guilt which would attract a 30% discount in sentence.*
>
> [emphasis added]

Based on the Original GD which specified an "individual sentence of 6 months per charge", Ivan submits that the District Judge had reached the pre-reduction sentence of at least 7 years' imprisonment based on a notional sentence of "at least 6 months *per invoice*" [emphasis added]. Ivan submits that the District Judge had erroneously aggregated the notional sentence of 6 months per invoice for 14 invoices to reach the initial sentence of 7 years. Instead, the District Judge ought to have "ordered" only six to eight of the notional sentences to run consecutively, applying the One-Transaction Principle. Each incident was "a repetition of the same behaviour involving the same items towards the same victim within a relatively short space of time". He therefore submits that the appropriate sentence for the Amalgamated Charge is 25.8 to 34.4 months' imprisonment. The sentence of 5 years' imprisonment was also manifestly excessive having regard to the Totality Principle, because his offending should be considered less serious compared to precedents involving actual loss (premised on Ivan's first argument above at [82]). He maintains this position in his further submissions.

87 Fifth, he submits that the District Judge should have regarded the Prosecution's submission of a final sentence of 6 to 8 years' imprisonment as being *before* the application of the 30% plead guilty reduction. He highlights that the Prosecution's initial address on sentence was inconsistent as to whether its submission was before or after the reduction had been applied. The District Judge should not have allowed the Prosecution to subsequently amend its sentencing address without giving him the opportunity to respond and thereby failed to appreciate the facts or materials placed before her. In addition, he submits that the District Judge had only applied the reduction to the Amalgamated Charge, when the reduction should have applied to all charges. The sentence for the CMA Charge and Conspiracy Charge should therefore

have been 8.4 months each, and the sentence for the Obstruction Charge should have been 4.2 months.

Respondent's Case

88 The Prosecution submits that there is no basis for disturbing the sentences imposed on Ivan. The sentences were not wrong in law or in principle as the District Judge had correctly identified the relevant sentencing considerations for each offence. Having compared the case to the precedents, the District Judge had correctly noted that the fact that Ivan was traced was significantly aggravating.

Issues before this court

89 The following issues arise for determination:

(a) Issue 1: whether the District Judge erred in failing to consider the lack of actual loss as a mitigating factor;

(b) Issue 2: whether the District Judge erred in failing to determine the issue of whether he had stopped the scheme of his own accord;

(c) Issue 3: whether the District Judge erred with respect to his antecedents and/or in issuing an amended decision;

(d) Issue 4: whether the sentence for the Amalgamated Charge was manifestly excessive; and

(e) Issue 5: whether the District Judge erred with respect to applying the discount for an early plea of guilt.

Issue 1: whether the District Judge erred in failing to consider the lack of actual loss as a mitigating factor

90 In our judgment, the District Judge did not err in her consideration of whether the alleged absence of loss was mitigatory. It is trite that the absence of an aggravating factor is not mitigatory. Since the harm caused by property offences is typically relevant in the determination of the appropriate sentence to be imposed, the loss sustained by victims *is* relevant in sentencing as an indication of harm caused (*Logachev Vladislav v Public Prosecutor* [2018] 4 SLR 609 at [43]–[50]). However, the losses sustained should not divert attention away from the culpability of the offender. The losses sustained by victims may be reduced due to external interventions or purely fortuitous factors, in which case the absence of, or low degree of, losses do not indicate reduced culpability on the offender's part and should not constitute a mitigating factor (*Fernando Payagala* at [49]–[50]). On the other hand, where the absence of loss is the result of the offender voluntarily stepping forwards out of contriteness and before his personal involvement is noted or detected, this acknowledgment of guilt and willingness to take responsibility must have an impact on the offender's culpability. Cheating offences may be committed in a great variety of circumstances and with varied methods and outcomes. Thus, there should also be proper appreciation of the factors going to culpability, such as the planning and sophistication, offender's role, and whether there was any abuse of position or breach of trust.

91 Furthermore, loss is not limited to *financial* loss caused to the *victim*. Harm incorporates non-pecuniary losses as well as the loss caused to other involved parties and wider society. Non-pecuniary losses include but are not limited to "inconvenience, embarrassment, loss of reputation, time and costs expended in investigations as well as time, research effort and costs involved in

enhancing security measures". The absence of financial loss to the victim becomes less relevant where considerations of public interest are implicated (*Fernando Payagala* at [49]).

92 In this case, the District Judge found that no *financial* loss was occasioned only because of ipaymy's own alertness and efforts to stop the transfer of funds into the OCBC Account, rather than as a result of any efforts by Ivan himself. The fact that no financial loss was suffered therefore could not be credited to Ivan (*Ivan Goh* at [66]). It was fortuitous that ipaymy had suffered no loss, despite Ivan's carefully orchestrated scheme to take advantage of loopholes that he had carefully identified in ipaymy's financial payment platform and conceal his involvement with the assistance of others that he recruited to participate in his scheme, *ie,* Darren and Wilson. The District Judge was therefore justified in finding that the absence of financial loss could only be of limited mitigatory value (if any).

Issue 2: whether the District Judge erred in failing to determine the issue of whether Ivan had stopped the scheme of his own accord

93 In our judgment, the District Judge did not err in this regard.

94 Taking his case at its highest, Ivan's assurances to ipaymy that no funds had been disbursed to the OCBC Account and his promise that any such funds would be paid back in full could not be treated as mitigatory. These promises, which were made by Ivan in the guise of Darren and only after the transactions were being investigated by ipaymy, were not efforts by Ivan to reveal his scheme out of contrition. As for Ivan's submission that he had "at the very least, not take[n] steps to further the scheme", this could not be mitigatory in any way. Quite obviously, the fact that an offender decides not to carry out *further acts*

of offending cannot conceivably be regarded as mitigatory. We are therefore of the view that the District Judge did not err in this regard.

95 For completeness, we reject Ivan's submission that the District Judge had "summarily dismissed the attempt of Goh's counsel … to clarify the point". This allegation is unwarranted. The notes of evidence show that counsel for Ivan was making the submissions that the offender in *Leck Kim Koon v Public Prosecutor* [2022] 3 SLR 1050 ("*Leck Kim Koon*") did not personally make restitution, a point that was entirely separate from the alleged factual issue.

Issue 3: whether the District Judge erred with respect to Ivan's antecedents and/or in issuing an amended decision

96 In our judgment, while the circumstances were not ideal, the District Judge *was* entitled to make the Amendment. The Amendment rectified a clerical error, and did not effect a substantive change to her decision. Nevertheless, we take this opportunity to set out some guidance on the best practice to be adopted when a clerical error needs to be rectified. In our view, and in all fairness to counsel for Ivan, it would have been in good order for the District Judge to have specifically highlighted and drawn the parties' attention to the specific changes that were made to the text of the judgment (*eg*, by referring to the deleted paragraph). This eliminates the risk that counsel might overlook a change. Such a notification should be made to the parties as soon as practicable. Parties should also be proactive in informing the Court and each other if they become aware of any clerical errors.

97 In our view, the statement that an "individual sentence of 6 months per charge was fair" and the incorrect statement of antecedents in the deleted paragraph was clearly a mistake. First, and as Ivan acknowledges, the reference of a sentence of 6 months *per charge* was not referrable to the facts of this case.

Ivan was sentenced to 6 months' imprisonment only in relation to a single charge: the Obstruction Charge. Second, and more importantly, it is clear from the rest of her decision that the District Judge correctly understood and paid attention to Ivan's antecedents. Although Ivan focuses on the deleted paragraph, the District Judge correctly set out his antecedents in the rest of the Original GD (*Ivan Goh* at [27], [33], [70], [75], and [79]). Indeed, the District Judge set out in detail the circumstances of his previous offending, and how the similarities between the antecedents and the brief period of time before he reoffended demonstrated a "considered commitment towards law-breaking" and showed that he was a "recalcitrant offender" (*Ivan Goh* at [70]–[71] and [75]). In fact, the District Judge correctly recounted his antecedents in paragraph 80 of the Original GD, *immediately after the deleted paragraph* (above at [85]). This made it clear that the deleted paragraph was a mere mistake that did not affect or influence the District Judge's decision.

98 In the circumstances, we are satisfied that the Amendment rectified a clerical error and that the District Judge was entitled to issue the Amendment (see s 301(1) of the CPC). Such a rectification, which is sometimes referred to as an exception to the principle that a Court is *functus officio* after sentence is pronounced (see *Karthigeyan M Kailasam v Public Prosecutor* [2016] 5 SLR 779 at [7]), is not contrary to the principle of finality. The Amendment did not change the outcome or orders made by the District Judge, which were in line with her correct understanding of the case reflected in the other parts of her decision. There was no change to the essential reasoning relied on by the District Judge, which can be found outside of the deleted paragraph.

Issue 4: whether the sentence for the Amalgamated Charge was manifestly excessive

99 Ivan's submission that the District Judge had erred in applying the correct approach in deciding the sentence for the Amalgamated Charge is premised on the deleted paragraph. He reaches this conclusion by construing the District Judge's deleted paragraph as stating that a sentence of 6 months' imprisonment would have been appropriate for *each incident*, and by assuming that the sentence for all 14 incidents would run consecutively. As the paragraph has been deleted, this is not a correct statement of the District Judge's sentencing approach.

100 In our view, the sentence imposed on Ivan was not manifestly excessive and appellate intervention is not warranted. In the circumstances of the case, the District Judge had correctly identified the need for general deterrence. His premeditation and planning were rightly considered by the District Judge, and that he had planned to cheat ipaymy of large sums, *ie*, $635,743.20 over a period of slightly over one month using 14 fraudulent payment invoices. As we have indicated (above at [90]), the avoidance of loss was fortuitous, due to preventive efforts of ipaymy. He was also a recalcitrant offender who re-offended a few short months after serving his sentence for a similar conviction.

101 We note that it was recognised in *Leck Kim Koon* at [43]–[45] that the starting point sentences of 12 to 18 months' imprisonment for cheating offences under s 420 of the PC were not manifestly excessive where the cheated amounts were US$162,673.44 or less, and where no losses resulted from invoice fraud perpetrated on banks. In *Leck Kim Koon,* the offender, who was the managing director and a major shareholder of a company, made applications for invoice financing on six occasions to six different banks supported by the same transhipment documents for the shipment of goods that were already separately

financed (*ie*, there were no genuine goods shipments), resulting in $622,783.95 being disbursed to the offender. The offender claimed trial and was convicted on all six charges under s 420 of the PC. The offender was untraced and made full restitution. The District Court sentenced the offender to an aggregate of 36 months' imprisonment (three imprisonment terms of 12 months to run consecutively). The District Judge reasoned that a sentence of 42 months' imprisonment would otherwise have been appropriate, but reduced the aggregate imprisonment term by six months considering the offender's ill health which would result in his disproportionate suffering in prison. On appeal, the General Division of the High Court upheld the District Judge's decision on sentence. In the present case, Ivan's culpability was higher, by virtue of his detailed planning and his involvement of Darren and Wilson in his criminal scheme, which was executed in order to cause losses of a similar amount, *viz*, $635,743.20, which were fortuitously avoided by ipaymy's vigilance.

102 As for the CMA Charge and Conspiracy Charge, the District Judge correctly took into account the principle of parity and had regard to the sentences imposed on Wilson, and Ivan's comparatively greater culpability. The District Judge was correct to have observed that there was ample justification for more than two sentences to run consecutively (although she did not do so), as the offences were not committed in one transaction.

Issue 5: whether the District Judge erred with respect to applying the discount for an early plea of guilt

103 In our judgment, appellate intervention is not warranted in this regard.

104 First, we disagree with Ivan's claim that he had been deprived of the opportunity to respond to the Prosecution's sentencing position. As Ivan's submissions acknowledge, the Prosecution's initial address on sentence

(notwithstanding some lack of clarity) did in fact state that its submission on sentence was *after* the reduction for the guilty plea had been taken into account. There was nothing to prevent him from making full submissions. In any event, it was clear to us from the notes of evidence that the Prosecution had made known its sentencing position, and that the District Judge understood its position.

105 Second, we accept that the District Judge only explicitly referred to a reduction on account of the guilty plea in relation to the sentence for the Amalgamated Charge. Although the sentences she imposed for the CMA Charge, Conspiracy Charge, and Obstruction Charge were in line with the Prosecution's submissions on sentence which already accounted for the reduction for each charge, this was not explicitly stated. In this regard, the decision could have been clearer. Nevertheless, as we have already found, the final sentence imposed on Ivan was not manifestly excessive.

Conclusion

106 For the reasons above, we dismiss the appeal in MA 9001.

HC/MA 9070/2024/01 *Lynne Charlotte James v PP*

107 The appellant in MA 9070 ("Lynne") pleaded guilty to five charges and was sentenced to an aggregate term of 12 years' imprisonment. All five charges were amalgamated charges for multiple incidents of cheating the same elderly victim ("the Victim"). The charges are summarised as follows:

Charge	**Brief Description**

DAC-908381-2021 (the "First Amalgamated Cheating Charge")	Cheating the Victim of $480,246.15 on 426 occasions from 21 May 2012 to 20 May 2013, offences under s 420 of the PC amalgamated under s 124(4) of the CPC
DAC-908383-2021 (the "Second Amalgamated Cheating Charge")	Cheating the Victim of $523,503.65 on 223 occasions from 21 May 2014 to 20 May 2015, offences under s 420 of the PC amalgamated under s 124(4) of the CPC
DAC-908384-2021 (the "Third Amalgamated Cheating Charge")	Cheating the Victim of $620,047.88 on 260 occasions from 21 May 2015 to 20 May 2016. offences under s 420 of the PC amalgamated under s 124(4) of the CPC
DAC-908385-2021 (the "Fourth Amalgamated Cheating Charge")	Cheating the Victim of $768,982.34 on 336 occasions from 24 May 2016 to 20 May 2017, offences under s 420 of the PC amalgamated under s 124(4) of the CPC
DAC-908386-2021 (the "Fifth Amalgamated Cheating Charge")	Cheating the Victim of $495,404.50 on 162 occasions from 24 May 2017 to 24 October 2017, offences under s 420 of the PC amalgamated under s 124(4) of the CPC

Lynne originally faced ten amalgamated cheating charges in respect of 2,253 distinct incidents of cheating the Victim for the aggregate sum of $3,677,537.03 from 2008 to 2017. She claimed trial to all ten charges and only indicated her intention to plead guilty after the Victim started to give evidence. The Prosecution proceeded on five of the ten charges, encompassing 1,407 distinct incidents of cheating the Victim of the aggregate sum of $2,888,184.52. She consented to the remaining five amalgamated charges and two forgery charges being taken into consideration for the purpose of sentencing (see *Public Prosecutor v Lynne Charlotte James* [2024] SGDC 75 ("*Lynne Charlotte James*") at [15]–[16]).

108 At the hearing on 27 November 2024, we dismissed MA 9070. We explain our decision below, after setting out the background to the appeal.

Background facts

109 The Victim was Ms Lynne's boss at a firm. In gist, Lynne cheated the Victim over a period exceeding nine years, for a total of $3,677,537.03, employing the same *modus operandi* for 2,253 distinct incidents of offending.

110 In 2008, Lynne informed the Victim that she was a bankrupt. She lied that the Insolvency and Public Trustee's Office ("IPTO") had retained funds in her bankruptcy estate and that she required the Victim to help her pay various fees to IPTO before IPTO would release the funds to her. The Victim was induced to deliver moneys as a result of these lies. Over time, she demanded more and more moneys from the Victim based on the same lie, informing him that the released funds would include what she had paid using his moneys. Lynne informed the Victim that she would return him all the moneys he had given her, but that if IPTO did not release her funds, she would be unable to return him whatever he had given to her. This convinced the Victim to continue transferring money to her. She also scared the Victim into continuing the transfers by informing him that if he stopped making payments, all the moneys already transferred would be confiscated. She further warned the Victim against reporting the matter to the police or IPTO, lying that IPTO would confiscate all the moneys if it found out that the Victim was assisting her with making payments.

111 In support of her deception, she also created fictitious emails from government agencies, judges and the Attorney-General's Chambers, which set out demands or requests for Lynne to make payments to IPTO. In consequence of her deception, the Victim depleted his and his wife's life savings and sold

their assets The Victim also had to resort to borrowing moneys from another family member. She used the cheated moneys to settle personal expenses and repay loans, and did not make any restitution.

112 The five amalgamated charges each corresponded to the incidents of cheating that occurred within the span of a given year. We note that details of each incident of offending were annexed to the amalgamated charges, stating the date, amount cheated, and recipient bank account of the cheated funds for each incident.

Amalgamation of incidents taking place before 31 October 2018

113 Section 124(4) of the CPC applies for the purposes of amalgamating incidents of offending that occur before 31 October 2018. Pursuant to s 124(10), s 124(8) does not apply where the amalgamated charge relates to incidents of offending that occur before 31 October 2018. In the present case, the five amalgamated charges were therefore correctly framed under s 124(4) without any reference to s 124(8)(*a*)(ii). The District Judge correctly noted that the maximum sentence for the amalgamated charges was the *same* as the maximum sentence of the base offence, being 10 years' imprisonment: *Lynne Charlotte James* at [35].

The decision below

114 We summarise the sentences sought by the Prosecution and Lynne, as well as the sentences meted out by the court below:

Charge	**Prosecution**	**Defence**	**Court**

First Amalgamated Cheating Charge	5 years and 6 months' imprisonment - concurrent	3 years' imprisonment	5 years and 6 months' imprisonment - concurrent
Second Amalgamated Cheating Charge	5 years and 6 months' imprisonment - concurrent	3 years' imprisonment	5 years and 6 months' imprisonment - concurrent
Third Amalgamated Cheating Charge	6 years' imprisonment - *consecutive*	3 years' imprisonment	6 years' imprisonment - *consecutive*
Fourth Amalgamated Cheating Charge	6 years and 6 months' imprisonment - *consecutive*	3 years' imprisonment	6 years' imprisonment - *consecutive*
Fifth Amalgamated Cheating Charge	5 years and 6 months' imprisonment - concurrent	3 years' imprisonment	5 years and 6 months' imprisonment - concurrent
Total	12 years and 6 months' imprisonment	Not more than 9 years' imprisonment	12 years' imprisonment

Appellant's Case

115 Lynne did not submit on the appropriate sentence she was seeking on appeal in her written submissions. Her submissions essentially canvassed her personal circumstances and her perspective of the events. She also made factual allegations in her submissions that contradicted the agreed statement of facts, which she had agreed to without qualification in the court below. However, she did not seek a criminal revision to retract her guilty plea. She confirmed at the hearing before us on 27 November 2024 that she had understood and voluntarily decided to make the guilty plea. We therefore did not allow her to slip in

unsubstantiated allegations by the back door through her appeal on sentence (see *Public Prosecutor v Andrew Koh Weiwen* [2016] SGHC 103 at [14]). In her petition of appeal, she contended without elaboration that the District Judge had failed to account for mitigating factors and that her sentence was manifestly excessive.

Respondent's Case

116 The Prosecution submitted that Lynne's appeal was without merit. The District Judge correctly considered all the relevant aggravating and mitigating factors and fairly compared the case to the relevant precedents. The Prosecution thus argued that the sentences were not manifestly excessive.

Issues before this court

117 The following issues arose for determination:

(a) Issue 1: whether the District Judge failed to take into account the relevant mitigating factors; and

(b) Issue 2: whether the sentence was manifestly excessive.

Issue 1: whether the District Judge failed to take into account the relevant mitigating factors

118 In our judgment, the District Judge did not fail to take into account the relevant mitigating factors. Instead, we were of the view that the District Judge had in fact given careful consideration to the factors raised by her. The District Judge correctly held that she could not be considered a first-time offender although she was untraced (*Lynne Charlotte James* at [60]). In *Public Prosecutor v Syed Mostofa Romel* [2015] 3 SLR 1166 at [46]–[47], the Court held that it would be reluctant to consider a multiple-offender a first-time

offender. This is all the more so where the multiple offending occurred over a period of time. Here, she demonstrated great persistence in numerous occasions of offending over a very lengthy period. There were *over two thousand* distinct incidents of cheating. She could not be described as a first-time offender, but a seasoned cheat; this was simply the first time that she had been caught. Accounting for the charges taken into consideration, her campaign of cheating had gone unabated for almost ten years.

119 The District Judge gave Lynne a sentencing discount of 4% for her guilty plea, having had regard to the SAP Guidelines which recommended a maximum reduction of 5% where an accused person pleads guilty on or after the first day of trial. As the District Judge correctly took into account, she had only pleaded guilty after the trial had already started, and that she had in fact aborted three prior plead guilty mentions. Although she was first charged in May 2021, abortive plead guilty mentions took place in August 2022, September 2022, and May 2023, before she finally completed the process. There was little in her conduct that exhibited remorse, as exemplified in her submissions in MA 9070, which appeared to attempt to cast some blame on the Victim. That said, as the District Judge correctly held, her guilty plea did save resources that would otherwise have been expended at a full trial (*Lynne Charlotte James* at [62]–[63]). We therefore could not accept the submission that the District Judge had failed to take into account this mitigating factor in granting the generous 4% reduction.

120 The District Judge indicated that he "gave due weight" to her cooperation with the authorities (*Lynne Charlotte James* at [66]). Evidently, significant weight was given to this factor, as the fact that she had numerous serious charges taken into consideration (*Lynne Charlotte James* at [80]) did not

result in a change from the sentence of 12 years' imprisonment reached after the reduction for her guilty plea (*Lynne Charlotte James* at [65]).

121 Finally, we agreed with the District Judge that her personal circumstances and ill-health were not mitigatory. None of her personal circumstances were so exceptional as to be mitigatory and there was no reason to consider her personal, financial and family circumstances as valid mitigating factors (*Lynne Charlotte James* at [69]–[70]). She could not validly rely on the hurt that *she* has caused to her own family, through *her own* criminal actions, to seek leniency. Similarly, no weight could be placed on ill-health as she did not present even at least some evidence to show that imprisonment would have a significantly adverse impact on her health due to her medical conditions (*Lynne Charlotte James* at [78]). There was not a shred of evidence to show that imprisonment would have an unusually disproportionate impact.

Issue 2: whether the sentence was manifestly excessive

122 The sentence imposed by the District Judge cannot be said to be manifestly excessive and can in fact be said to be lenient. The amounts cheated per incident as listed in the Annexes to the five amalgamated charges ranged from about $480,000 to about $769,000 per proceeded charge, and each amalgamated charge concerned hundreds of incidents of cheating. The losses caused were not only substantial in quantum, but her culpability in subjecting the Victim to consistent manipulation with regular frequent intervals for her selfish gain was beyond the pale.

123 Given the devasting financial losses caused by *each* course of offending which is the subject of *each* amalgamated charge, we are of the view that a sentence imposed in respect of each amalgamated charge close to or at the upper punishment limit prescribed by law, *ie*, 10 years' imprisonment (as the doubled

punishment limit in s 124(8)(*a*)(ii) of the CPC did not apply to offences committed before the effective date), cannot be in any way said to be manifestly excessive. Considering her *persistent and systematic* extraction of a stream of moneys over the course of one entire year on hundreds of occasions from the Victim in *each charge,* the sentence of between five years and six months' and six years' imprisonment can only be described as lenient. To recapitulate, it is not the amalgamation of the incidents *per se* that justifies the imposition of a stiffer sentence, but the sheer extent of criminality. In our view, the high premeditation and prolonged deception that prevented the offences from seeing the light of the day for close to a decade ought to have been given more weight in the District Judge's sentencing discretion.

124 It should also be noted that the District Judge further applied the One-Transaction Principle and Totality Principle across all five amalgamated charges. After considering a range of cases (*Lynne Charlotte James* at [82]–[89]), the District Judge found that the sentence was proportionate and that it would be sufficient for two of the sentences to run consecutively (the *minimum* required by s 307(1) of the CPC). We note, however, that the five amalgamated charges concerned different time pockets (with no overlap) within the context of a very lengthy period of deception. In the circumstances, and given the extent of criminality displayed by her, it could have been argued that more of the sentences ought to have been ordered to run consecutively. The present case is not comparable to *Public Prosecutor v Gene Chong Soon Hui* [2018] SGDC 117 ("*Gene Chong*") where the offender had been sentenced to 11 years' imprisonment, her case presented far more aggravating factors: (a) the amount cheated was higher (than the total amount of close to $3.2 million in *Gene Chong*); (b) her actions destroyed the life of an elderly man and his family, as opposed to a company; and (c) the degree of sophistication was higher.

125 Lynne was undoubtedly a habitual offender and had been so for almost ten years. Her offending was systematic and targeted. She preyed on the Victim's trust and then his fears. Her scheme involved the use of falsified documents purportedly from public institutions to perpetrate her deception. Given the high harm caused by her offending, the high degree of premeditation and persistence demonstrated, the lengthy duration of offending, and the alarming regularity with which she abused the Victim's trust, the circumstances called for a deterrent sentence. We were of the view that it could hardly be said that the sentence of 12 years' imprisonment was manifestly excessive. Rather, as we have explained, it appeared lenient in our view. As the Prosecution did not appeal against the sentence, we were not minded to disturb the sentence imposed by the District Judge.

Conclusion

126 For the above reasons, we dismissed the appeal in MA 9070.

Conclusion

127 In conclusion, we set out our views on the two key issues arising in these consolidated appeals *viz*., first, what the legal requirements of a charge amalgamated under s 124(4) of the CPC are, and secondly, what is the approach to sentencing following the conviction of an offender on an amalgamated charge under s 124(4).

128 In relation to the first issue, s 124(4) of the CPC allows for the amalgamation of multiple charges for the same offence which form a course of conduct, as an exception to ss 124(1) and 132. The Prosecution is thus not required to prefer a single charge for each distinct offence and the accused person need not be separately tried; the Prosecution is also not required to

provide full particulars for every incident of offending that the accused has been charged with. The purpose of s 124(4) is to allow the Prosecution to dispense with the particularisation of multiple individual incidents without compromising on the accused's right to know the course of offending conduct that he is charged with. Under s 124(4)(*a*), the Prosecution may elect between: (a) Condition BA which dispenses with the need to specify each incident of offending if the total number of incidents is stated, or (b) Condition BB, which dispenses with the need to specify the individual outcome of each incident of offending (if the outcome is an element of the offence), if the aggregate outcome of the various incidents of offending is stated.

129 In relation to the second issue, the appropriate approach to sentencing an offender convicted of one amalgamated charge under s 124(4) of the CPC is as follows:

> (a) First, the Court must identify the punishment prescribed for a single incident of the offences committed, under what is termed as the base offence. Sentencing factors that are relevant to the base offence will generally remain relevant in the sentencing of offenders convicted of multiple offences amalgamated under s 124(4) of the CPC. At this stage, the Court will have regard to the relevant sentencing framework or benchmark for the base offence (or analogise to precedents where no framework or benchmark is applicable for individual base offences).
>
> (b) Second, the Court will determine the appropriate starting point sentence, based on a holistic assessment of the offender's culpability over the *entire course of conduct*, and having regard to the aggregate harm caused and the offender's overall culpability. The Court should have appropriate regard to the doubled punishment limit provided for in

s 124(8)(*a*)(ii) of the CPC. As the Prosecution may choose between satisfying Conditions BA and BB in the framing of an amalgamated charge under s 124(4) of the CPC, *either* the number of incidents *or* the aggregate outcome must be particularised and accordingly proved. There is no legal requirement that *both* the number of incidents *and* the aggregate outcome should be particularised and proven by the Prosecution. However, if evidence is adduced of the number of incidents of offending, *in addition to* the aggregate outcome of the incidents, *both* the number of incidents and aggregate outcome may be considered where relevant to the offender's culpability and the harm caused by the offence. It would be essential to specifically have regard to the following matters in the Court's assessment of the offender's culpability and the harm over a *course of conduct*:

(i) First, in addition to the culpability-related factors identified at the first stage, the duration and frequency of the offending conduct are relevant to the offender's culpability. An offender who has repeated the offence multiple times over a sustained period of time would have demonstrated greater recalcitrance, which is an aggravating factor. Where the Prosecution elects to satisfy Condition BA, the number of incidents of offending would necessarily be particularised and accordingly proved. Even where the Prosecution elects to satisfy Condition BB, evidence on the number of incidents of offending may nevertheless be presented by the Prosecution, and the Court should consider the number of incidents in sentencing.

(ii) Second, in assessing the harm caused by the course of conduct, the Court should have regard to the relevant factors identified at the first stage. Where the Prosecution elects to

satisfy Condition BB in framing a charge under s 124(4)(*a*)(i) of the CPC, the Prosecution is required to particularise and accordingly prove the aggregate outcome of an offence, but not the specific outcome of each incident. The aggregate outcome would be indicative of the harm caused by the entire course of conduct. It would not be necessary to determine isolate the harm caused by each of the constituent incidents of offending, for the purpose of sentencing. For instance, if the offender had assaulted a victim on multiple occasions, cumulatively bringing about a particular type of physical injury or psychological harm, it may be impossible or even meaningless to seek to apportion the harm caused in each of the various incidents of offending (even if information is available on the number of incidents of offending). Where potential harm is a relevant consideration for the base offence identified at the first step, potential harm resultant from the entire course of conduct should also be considered.

(iii) Third, in determining the starting point sentence that would be appropriate having regard to the entire course of conduct, the Court should also consider whether a different *type* of sentence would be warranted. The repetition of offending behaviour may tip the balance from a fine to a custodial sentence, where the prescribed punishment includes options of a fine, imprisonment term, or to both.

(c) At the third stage, having determined the appropriate sentence as a starting point, the Court then considers the relevant offender-specific aggravating and mitigating factors before deciding on whether

> adjustments are required to the starting point sentence. These considerations would be no different from those to which the Court would have regard in sentencing for non-amalgamated offences, including aggravating factors such as relevant antecedents indicating lack of remorse, and mitigating factors such as a timeous plea of guilty saving the Court's resources and time.

130 If the offender is convicted at one trial of multiple offences including one or more offences amalgamated under s 124(4) of the CPC, the Court would have to consider the One-Transaction Principle and the Totality Principle (as laid down in *Shouffee*) to derive the appropriate aggregate sentence, subject to the application of s 307(1) of the CPC where the offender is convicted of three or more offences and sentenced to imprisonment at one trial. That is to say, where the offender is convicted at one trial of three or more offences and sentenced to imprisonment for these offences, at least two imprisonment terms must run consecutively.

131 Having considered the sentence imposed in each appeal, we were satisfied that the sentences imposed were not manifestly excessive. We therefore dismissed MA 9219 and MA 9070 and dismiss MA 9001.

132 All that is left is for us to record our deep appreciation for Mr Kwong, the Young Independent Counsel for his written and oral submissions which were comprehensive, clear, well-reasoned and thoughtful. He raised many important points for our consideration.

Sundaresh Menon
Chief Justice

Tay Yong Kwang
Justice of the Court of Appeal

Vincent Hoong
Judge of the High Court

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