Koo Kah Yee *v* Public Prosecutor
[2020] SGHC 261

Case Number : Magistrate's Appeal No 9081 of 2020

Decision Date : 27 November 2020

Tribunal/Court : High Court

Coram : Sundaresh Menon CJ

Counsel Name(s) : Robert Leslie Gregory (L G Robert) and Chow Weng Weng (Chow Ng Partnership) for the appellant; Wong Woon Kwong and Lim Shin Hui (Attorney-General's Chambers) for the respondent.

Parties : Koo Kah Yee — Public Prosecutor

Criminal Law – Statutory Offences – Remote Gambling Act

Criminal Procedure and Sentencing – Sentencing – Appeals

Criminal Procedure and Sentencing – Sentencing – Benchmark Sentences

27 November 2020

Sundaresh Menon CJ:

Introduction

1 The appellant, Koo Kah Yee, is a Malaysian national. She pleaded guilty to one charge under s 11(1) of the Remote Gambling Act (No 34 of 2014) ("RGA") read with s 109 of the Penal Code (Cap 224, 2008 Rev Ed) ("Penal Code") for abetting, by intentionally aiding in, the provision of Singapore-based remote gambling services. Three other related charges were taken into consideration for sentencing.

2 The District Judge sentenced the appellant to 12 months' imprisonment on the proceeded charge: see *Public Prosecutor v Koo Kah Yee* [2020] SGDC 136 ("the GD"). The appellant appealed against the sentence on the ground that it was manifestly excessive.

3 After considering the appellant's submissions, I dismissed the appeal. For the reasons set out below, I was satisfied that the sentence was wholly appropriate in the circumstances, and in fact, quite lenient. In this judgment, I also take the opportunity to set out a sentencing framework for offences under s 11(1) of the RGA.

Facts

4 The facts are set out in the Statement of Facts ("SOF"), which the appellant admitted to without qualification. The appellant worked as an administrative staff member of an organisation that she came to learn was operating as a remote gambling syndicate. The syndicate comprised, amongst others, the following personnel:

(a) Three leaders, namely, Eric Seet, Steven Seet and Philip Seet (collectively, "the Seet brothers"). They operated two remote gambling four-digit ("4D") websites: www.asure6.net ("the

asure6 website") and www.888pool.net ("the 888pool website").

(b) One chief runner, who on instructions from the Seet brothers, would collect and distribute monies for illegal gambling operations.

(c) Three administrative staff, namely, the appellant, Sunny Lai Yen San ("Sunny Lai") and a third person.

The syndicate had three main clusters, each comprising agents who collected bets and shareholders who shared in the profits and losses flowing from the asure6 and 888pool websites.

5 The operations of the asure6 and 888pool websites were centrally managed and controlled from Singapore. Illegal 4D bets placed by agents and punters were keyed into these websites. Public lotteries were then conducted using remote communications.

6 Sometime in early 2012, the appellant, who was then in Malaysia, received a call from Steven Seet, one of the syndicate leaders. The two had become acquainted when the appellant worked for Steven Seet as a secretary in a massage parlour in Singapore back in 2009. Steven Seet offered the appellant a job in Singapore as an accounts assistant with an entity called Erictex Trading ("Erictex"). The appellant was informed by Steven Seet that Erictex was an IT company supporting licensed gambling in Philippines and she accepted the job offer.

7 In February 2012, the appellant commenced work at Erictex. Its premises were located at Ubi Road. There, she worked together with some IT programming workers, who assisted in troubleshooting the asure6 and 888pool websites as well as a bookkeeping website called www.ES123.net ("the ES123 website"). Shortly thereafter, the appellant came to learn that Erictex was dealing with illegal 4D and horse betting activities. Specifically, she learnt that asure6 and 888pool were illegal 4D betting websites operated by Eric Seet and Steven Seet. She also learnt that the ES123 website was a bookkeeping platform maintained by the syndicate to track the syndicate's cash flow and expenses for illegal 4D bets.

8 Further, the appellant learnt that apart from Erictex, two other companies, namely SB IT Developer ("SB IT") and Best Laser Music House, had also been established by Eric Seet and Steven Seet. These two companies, along with Erictex, were companies that had no real legitimate business activities and together, they shared three office units at Ubi Road. The appellant knew that these three shell companies had been established only for the purpose of carrying out illegal 4D and horse betting activities through the asure6 and 888pool websites. Whilst the appellant was, strictly speaking, employed by Erictex, she managed and attended to administrative matters for all three shell companies.

9 The appellant's administrative work consisted of the following:

(a) preparing the payroll for all employees of Erictex and SB IT by obtaining Steven Seet's approval of the list of employees and the amounts payable to them. Eric Seet or Steven Seet would access the Internet banking token, allowing the appellant to log in to Erictex's bank account and then pay the employee salaries;

(b) keying in the accounts of the various companies onto the ES123 website as and when instructed by Steven Seet to do so;

(c) updating illegal betting records (such as payments received from punters) on occasion

onto the ES123 website based on figures gathered from the 888pool website;

(d) issuing various cheque payments for, among other things, computer servers purchased for gambling activities, utilities, rental and renovation of the Ubi Road office premises;

(e) filling up, on the instructions of Eric Seet, Erictex's income tax declaration to the Inland Revenue Authority of Singapore for 2013 and 2014, using the figures that he dictated to her;

(f) managing GIRO deductions in respect of the Central Provident Fund ("CPF") contributions and foreign worker levies for other employees of Erictex;

(g) assisting with applications to the Ministry of Manpower for work permits for employees; and

(h) managing payments of petty cash to employees for meals or stationery.

10 As the appellant admitted in the SOF, her role as an administrative assistant was crucial to the operation of the syndicate's remote gambling activities. In addition to her work in the syndicate as outlined above, the appellant also assisted with the administrative matters of other legitimate businesses set up by Eric Seet and Steven Seet, specifically, a café, a coffee shop and a bakery.

11 Notably, the appellant also recruited another administrative staff, one Sunny Lai, into the syndicate. Sometime in 2013, the appellant learnt that Steven Seet was looking for someone to help key in reports relating to illegal 4D activities. The appellant, despite knowing that the syndicate was engaged in illegal activities, asked Sunny Lai if she would be interested to join Steven Seet's operation and told her that her job would involve keying in data related to illegal gambling activities. Sunny Lai agreed to take the job and started working for the syndicate from July 2013 to the end of October 2016.

12 In November 2016, after a prolonged period of probes by the police, various members of the syndicate were arrested. The appellant was arrested on 2 May 2017 at the Woodlands Checkpoint. A total of 49 persons were arrested in connection with the syndicate's activities. Based on the betting records seized, the total betting revenue received by the asure6 website alone (for the period 22 November 2015 to 14 August 2016) was $18,207,212.62. This sum did not reflect the total amount of all the betting revenue received because some of the relevant records were not successfully retrieved.

13 The appellant was charged with abetting, by intentionally aiding, Steven Seet and Eric Seet in the provision of Singapore-based remote gambling services through the asure6 and 888pool websites, an offence under s 11(1) of the RGA read with s 109 of the Penal Code as follows:

> You … are charged that you, from 2 February 2015 to 27 November 2016 (both dates inclusive), in Singapore, did abet by intentionally aiding [Steven Seet] and [Eric Seet] in the provision of Singapore-based remote gambling services through the [asure6 and 888pool websites], to wit, you aided [Steven Seet] and [Eric Seet] by performing duties of an administrative staff/accounts assistant for [Steven Seet] and [Eric Seet], which involved the performing of general administrative matters including that of issuing of cheques for rental of office units, electricity bills and internet usage, paying workers' salaries, managing workers' payrolls, applying of permits, managing workers' CPF contributions, payout of petty cash to workers on claims, and helping workers to file their income taxes, which acts were crucial to the operation of the said websites by [Steven Seet] and [Eric Seet] and committed knowing that [Eric Seet] and [Steven Seet]

were providing Singapore-based remote gambling services through [the asure6 and 888pool websites] during this period, and with intent to aid such purpose, offences of providing Singapore-based remote gambling services were committed by [Steven Seet] and [Eric Seet] in consequence of your abetment, and you have thereby committed an offence punishable under Section 11(1) of the [RGA] read with Section 109 of the Penal Code …

14 As the Prosecution clarified before the District Judge, even though the appellant had started working for the syndicate in February 2012, the charge cited 2 February 2015 as the commencement date of the offence because that was when the RGA entered into force. Hence, for the purposes of the proceeded charge, the offending period of the appellant was approximately 22 months.

15 Three other charges were taken into consideration for the purposes of sentencing the appellant:

(a) one charge under s 5(1) of the Organised Crime Act 2015 (No 26 of 2015) ("OCA") for being a member of what the appellant knew to be a locally-linked organised criminal group;

(b) one charge under s 12(1)(*b*) of the OCA for engaging in conduct which the appellant knew would facilitate commission of an offence under s 11(1) of the RGA, in furtherance of the illegal purpose of an organised criminal group; and

(a) one charge under s 5(*a*) of the Common Gaming Houses Act (Cap 49, 1985 Rev Ed) ("CGHA") for assisting in the carrying on of public lotteries.

Decision below

16 The District Judge sentenced the appellant to 12 months' imprisonment. He noted that the predominant sentencing consideration was general deterrence given that the offences in question were inherently difficult to detect (GD at [40]).

17 In respect of the harm caused in this case, the District Judge agreed with the Prosecution that the amount of bets placed was a key measure of the harm caused. This was at least $18m as noted above and that was not an exhaustive figure. Therefore, the harm caused was clearly significant.

18 In respect of the appellant's culpability, what was aggravating about the present offences was that they were committed by the appellant as part of a syndicate with transnational reach. The sole mitigating factor was her guilty plea. It was the common position of both the Prosecution and the Defence that the appellant's culpability as an administrative assistant was lower compared to Sunny Lai, who was more directly involved in the illegal betting operations. I set out Sunny Lai's work in greater detail later (see [45] below).

19 However, the extent of the difference in terms of their culpability was disputed. On the one hand, the Prosecution submitted that while the appellant's role was administrative in nature, she nonetheless played a crucial role in the day to day running of the syndicate's operations and hence she was only slightly less culpable than Sunny Lai. On this basis, it was submitted that a modest adjustment from the latter's sentence would be adequate. On the other hand, the Defence sought to minimise the appellant's role and submitted that a fine would suffice.

20 For present purposes, it may be noted that two charges were proceeded with against Sunny Lai: first, under s 11(1) of the RGA read with s 109 of the Penal Code for abetting, by intentionally aiding in, the provision of Singapore-based remote gambling services; and second, under s 5(1) of the

OCA for being a member of what was known to be a locally-linked organised criminal group. One other charge under the OCA and another charge under the CGHA were taken into consideration. Before the District Court, Sunny Lai was sentenced to 26 months' imprisonment for the s 11(1) RGA charge and 16 months' imprisonment for the s 5(1) OCA charge, with both ordered to run concurrently. On appeal to the High Court, Sunny Lai's sentence was reduced to 18 months' imprisonment and 8 months' imprisonment respectively, and again, these were ordered to run concurrently. No written grounds were issued for the appeal.

21 Having regard to the appellant's and Sunny Lai's roles in the syndicate, the District Judge accepted that the appellant's culpability was less than that of Sunny Lai (GD at [47]). However, the District Judge opined that the differences between their roles should not be overstated and further that there were good grounds for imposing a sentence in excess of 12 months' imprisonment in the appellant's case. Nevertheless, in the absence of submissions for a higher sentence, the District Judge imposed the term of 12 months' imprisonment as sought by the Prosecution (GD at [53]).

22 Before the District Judge, the Prosecution had initially also sought a $55,000 fine over and above the imprisonment term of 12 months. This sum represented the entirety of the salary earned by the appellant during the period specified in the proceeded charge. However, the District Judge noted that the High Court in Sunny Lai's appeal had declined to impose a fine notwithstanding the Prosecution's request there. For reasons of parity, the Prosecution in the event withdrew its submission for a fine against the appellant and accordingly, the District Judge did not order a fine.

Arguments on appeal

Appellant

23 On appeal, counsel for the appellant, Mr Robert Leslie Gregory ("Mr Robert"), argued that the sentence of 12 months' imprisonment was manifestly excessive. In particular, Mr Robert submitted that the District Judge failed to give proper weight to the following aspects of the case:

(a) There was no evidence that when the appellant accepted the job, she knew she was joining a criminal group, which was quite unlike the position of Sunny Lai.

(b) The appellant's work was exactly what any administrative assistant would ordinarily have to do.

(c) The appellant was involved with the administrative and accounting matters for legitimate businesses as well.

(d) She only assisted in keying in betting data on a few occasions when Sunny Lai was away from work.

(e) When issuing the cheques for the purchase of computers or for renovation of the Ubi Road premises, the appellant was simply acting on the instruction of her bosses and there is no evidence that she knew the computers were going to be used for the illegal activities.

Respondent

24 On the other hand, the Prosecution sought to uphold the sentence imposed by the District Judge.

25 It highlighted that the total sum of bets placed, which was more than $18m, reflected the great degree of harm resulting from the appellant's offence. This was a factor the District Judge had properly considered. The appellant had knowledge of the scale of the operations given that as part of her role, she knew the number of employees involved and had assisted in the payment of their salaries and CPF contributions and had prepared cheques of sizeable amounts for services rendered to the syndicate.

26 The District Judge had also correctly applied the principle of parity given that Sunny Lai, who had also performed administrative tasks (albeit more directly related to the betting operations), was sentenced to 18 months' imprisonment on appeal. The appellant played a crucial role in enabling the provision of the remote gambling services by the syndicate, which differed only slightly from that of Sunny Lai. Accordingly, the sentence of 12 months' imprisonment was appropriate.

Issue before this Court

27 The sole issue before me was whether the sentence of 12 months' imprisonment was manifestly excessive in the circumstances.

The Remote Gambling Act

Parliamentary intention

28 It is helpful to begin by considering the legislative intention behind the RGA. Whilst s 11(1) of the RGA was not specifically discussed in Parliament, the overarching purpose of the legislation was articulated by the Second Minister for Home Affairs, Mr S Iswaran, during the Second Reading of the Remote Gambling Bill (Bill No 23/2014) (*Singapore Parliamentary Debates*, *Official Report* (7 October 2014) vol 92 ("*RGA Debates*") at p 2 as follows:

> … first, to tackle the law and order issues associated with remote gambling; second, to protect young persons and other vulnerable persons from being harmed or exploited by remote gambling.

29 These twin purposes are expressly reflected in s 7 of the RGA, which reads:

> **Purpose of Act**
>
> 7. The purpose of this Act is to regulate remote gambling and remote gambling services affecting Singapore with the object of —
>
> (*a*) preventing remote gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime or disorder; and
>
> (*b*) protecting young persons and other vulnerable persons from being harmed or exploited by remote gambling.

30 As the Minister noted in Parliament, before the RGA was introduced, the statutory framework in relation to the regulation of gambling activities primarily consisted of the Betting Act (Cap 21, 2011 Rev Ed) ("BA") and the CGHA. However, the BA and CGHA did not expressly address *remote* gambling activities since they were enacted before the Internet era (see *RGA Debates* at p 2). Hence, the RGA targeted the particular problem of remote gambling. This is reflected in ss 43(1) and 43(4) of the RGA, which specifically state that the provisions of the BA and CGHA do not apply to remote gambling under the RGA (see also, s 2A of the BA and s 2A of the CGHA). The problem of remote gambling was

considered to be especially pernicious for three reasons. First, illegal remote gambling operators are typically associated with other criminal activities and syndicated crime, which may also operate on a transnational scale. Second, the nature and design of certain games that are offered remotely lend themselves to repetitive play and addictive behaviour. Third, remote gambling is ubiquitous and easily accessible, due to the growing reach of the Internet and widespread use of mobile devices (see *RGA Debates* at pp 1 to 2, 8 to 10).

31 The provision of remote gambling services is an offence under s 11(1) of the RGA, which states:

> **Prohibition against Singapore-based remote gambling service**
>
> 11.—(1) A person who provides a Singapore-based remote gambling service shall be guilty of an offence and shall be liable on conviction to a fine of not less than $20,000 and not more than $500,000 *or* to imprisonment for a term not exceeding 7 years *or to both*.
>
> [emphasis added]

32 Remote gambling is defined in s 5(1) of the RGA as "gambling in which a person participates by the use of remote communication, even if the gambling is done only partly by means of remote communication". In turn, "remote communication" is defined in s 5(2) of the RGA as follows:

> (2) In this Act, "remote communication" means communication through —
>
> (*a*) the Internet;
>
> (*b*) telephone;
>
> (*c*) television or radio; or
>
> (*d*) any other kind of electronic or other technology for facilitating communication,
>
> but does not include any specific system or method of communication that the Minister declares, by order in the Gazette, is not to be treated as remote communication for the purposes of this Act.

33 Importantly, s 5(4) of the RGA stipulates a wide range of acts which would constitute the provision of a remote gambling service under s 11(1) of the RGA:

> (4) In this Act, a person provides a remote gambling service where the person does any of the following in the course of carrying on a business:
>
> (*a*) provides facilities for remote gambling by others in accordance with arrangements made by the person;
>
> (*b*) organises, manages or supervises remote gambling by others in accordance with arrangements made by the person, which may include inviting others to gamble, or placing, making, receiving or accepting bets, using remote communication in accordance with those arrangements;
>
> (*c*) distributes a prize offered in remote gambling in accordance with arrangements made by the person;

(*d*) distributes money or money's worth paid or staked by others in remote gambling in accordance with arrangements made by the person;

(*e*) facilitates participation by others in remote gambling in accordance with arrangements made by the person (including by allowing others to participate in such remote gambling);

(*f*) uses a document, device, piece of equipment or other thing for the purposes of enabling remote gambling by others to take place in accordance with arrangements made by the person.

34 One notable feature of s 11(1) of the RGA is that it does *not* impose a mandatory imprisonment term, unlike the companion provisions under the BA and CGHA. The plain language of s 11(1) makes clear that the court is permitted to issue a fine of at least $20,000 without any accompanying custodial sentence. This is in contrast to s 5(3) of the BA, which states:

Betting in a common betting-house

…

(3) Any person who —

(*a*) acts as a bookmaker in any place;

(*b*) for the purpose of bookmaking or settling bets loiters in any common betting-house or in any place to which the public has or may have access; or

(*c*) assists, by giving warning or otherwise, any person committing an offence under this Act to evade arrest or detection,

shall be guilty of an offence and shall be liable on conviction to a fine of not less than $20,000 and not more than $200,000 *and shall also be punished with imprisonment for a term not exceeding 5 years.*

[emphasis added]

35 Section 5 of the CGHA also imposes a mandatory imprisonment term:

Assisting in carrying on a public lottery, etc.

5. Any person who —

(*a*) assists in the carrying on of a public lottery;

(*b*) receives, directly or indirectly, any money or money's worth for or in respect of any chance in any event or contingency connected with a public lottery or sells or offers for sale or gives or delivers or collects any lottery ticket;

(*c*) draws, throws, declares or exhibits, expressly or otherwise, the winner or winning number, ticket, lot, figure, design, symbol or other result of any public lottery; or

(*d*) writes, prints or publishes or causes to be written, printed or published any lottery ticket or list of prizes or any announcement of the result of a public lottery or any

announcement or riddle relating to a public lottery,

shall be guilty of an offence and shall be liable on conviction to a fine of not less than $20,000 and not more than $200,000 *and shall also be punished with imprisonment for a term not exceeding 5 years.*

[emphasis added]

36 Therefore, under s 11(1) of the RGA, a court has greater flexibility in terms of sentencing options as compared to s 5(3) of the BA and s 5 of the CGHA. While the reason for the difference is not evident from the legislative debates, it seems possible that it was in recognition of the multitude of factual scenarios that could be caught by the RGA. It follows that the imposition of a fine alone may be appropriate where both the level of harm occasioned by an offence is slight and the culpability is low (see [83] below).

The imposition of fines

37 A separate question which arises is when it may be appropriate to impose a fine *in addition to* a custodial sentence. As I noted earlier, the District Judge below had declined to issue a fine of $55,000, which had initially been sought by the Prosecution together with a term of imprisonment. The District Judge expressed reservations as to whether as a matter of principle, the sum of $55,000, which represented the appellant's entire salary earned during the period stated in the proceeded charge, could be disgorged (GD at [57]). Further, the District Judge had also noted that the High Court in Sunny Lai's appeal had declined to issue a fine despite the Prosecution having asked for a fine (see [48] below).

38 In my view, in the context of an offence under s 11(1) of the RGA, a fine would generally be imposed in addition to any custodial sentence to disgorge any profits made by the offender. As I recently noted in *Public Prosecutor v Su Jiqing Joel* [2020] SGHC 233 ("*Joel Su*"), the imposition of a fine to disgorge profits serves both a deterrent and retributive function (at [48]–[51]). In particular, I agreed with the following observations made by Pretheroe J in *Public Prosecutor v Goh Ah Moi (F)* [1949] MLJ 155 at 156 in the context of an offence of assisting in the carrying on of lotteries contrary to the Common Gaming Houses Ordinance:

> … the penalty imposed should be such that ***it will take away from the convicted offender the desire to offend in a similar manner again.*** Quite clearly a balance of income left in [an offender's] pocket after payment of a fine will have precisely the opposite effect and for a Court to leave any such balance would be a wrongly application of the accepted principles. [emphasis added]

This was also alluded to by Tay Yong Kwang J (as he then was) in *Lim Li Ling v Public Prosecutor* [2007] 1 SLR(R) 165 ("*Lim Li Ling*") at [91].

39 In the context of remote gambling offences, deterrence similarly calls for the imposition of fines to disgorge the profits of offenders who may also be sentenced to imprisonment. This is essential to dispel the notion that the pecuniary rewards reaped from unlawful remote gambling activities can be enjoyed without consequence. Therefore, whilst s 11(1) of the RGA permits the issuance of a fine only, the general rule should be that aside from cases where both harm and culpability fall on the lowest end of the spectrum, a combination of a fine and custodial sentence would be warranted (see [83] below). Even where a fine alone is imposed, following from my judgment in *Joel Su*, it would be appropriate to calibrate the fine to achieve the twin aims of disgorging the profits from the unlawful

endeavour and also of punishing the offender.

40 At a broad level, it should be noted that when determining the appropriate quantum of a fine, the offender's ability to pay the fine may be a relevant consideration (see *Koh Jaw Hung v Public Prosecutor* [2019] 3 SLR 516 at [54]). This point may assume some significance when a combination sentence of imprisonment and fine is imposed on an offender, such that there may be a real risk that the default sentence in lieu of the payment of the fines might result in the overall sentence becoming excessive or disproportionate (see *R v Jonathan Russell Green and John Green* (1984) 6 Cr App R (S) 329 at 332 cited in *Ho Sheng Yu Garreth v Public Prosecutor* [2012] 2 SLR 375 at [127]).

41 A subsidiary question arises as to what deductions, if any, from the revenue generated by the illicit activities, may be permitted when the court imposes a fine. In *Joel Su*, a key issue was whether the expenses incurred by the offender in the unlawful provision of short-term accommodation proscribed under s 12(1) of the Planning Act (Cap 232, 1998 Rev Ed) should be deducted when computing the profits to be disgorged. I held that the deduction of *necessary* expenses was justified on the basis of the overarching requirement of proportionality in sentencing, as noted in *Mohamed Shouffee bin Adam v Public Prosecutor* [2014] 2 SLR 998 at [47]. The goal of the fine is to disgorge the offender's actual profits and ensure that the offender is not better off by reason of having committed the offence. To this end, the starting point is that the entire revenue represents the offender's profits. However, the court may permit a deduction for *necessary* expenses, meaning expenses the sole purpose of which are to enable the offender to commit the offence. The burden of proof rests on the offender to identify and evidence any such necessary expenses to justify a deduction.

42 By the same token, the starting point in terms of the quantum of fine to be imposed under s 11(1) of the RGA would be the entire salary and commissions, if any, earned by the offender. The question of whether deductions might be made against the income generated in the case at hand arises in two situations: first, in respect of the administrative work rendered by the appellant for the *illicit* remote gambling activities; and second, in respect of the administrative work for the *legitimate* businesses owned by the Seet brothers. Given that no fine was sought by the Prosecution both below and on appeal, it was not necessary for me to decide on this issue. Further, as there will be difficult questions to be addressed in this context and as the answer may vary depending on whether the revenue is derived from illicit or legitimate activities or a mix of the two, I prefer to leave this open for consideration on a future occasion when the point is fully argued.

Precedents for s 11(1) RGA

43 There was no clear authority before me on the sentencing approach to be taken for offences under s 11(1) of the RGA. At the time of my decision, the only two reported decisions were *Public Prosecutor v Lai Yen San* [2019] SGDC 39 ("*Lai Yen San*") and *Public Prosecutor v Elger Kua Meng Tern* [2019] SGMC 5 ("*Elger Kua*").

4 4 *Lai Yen San* in fact concerned the present appellant's colleague, Sunny Lai, arising from her involvement with the same syndicate. Before the District Court, Sunny Lai had pleaded guilty to one charge under s 11(1) of the RGA (read with s 109 of the Penal Code) and one charge under s 5(1) of the OCA. Two other charges under s 5(*a*) of the CGHA and s 12(2)(*a*) of the OCA were taken into consideration.

45 In brief, Sunny Lai's work for the syndicate consisted of aiding by (*Lai Yen San* at [16]):

(a) maintaining the accounts and updating losses or winnings for the asure6 and 888pool

websites;

(b) reporting issues or errors with the websites or betting records to the Seet brothers;

(c) keying in bets received from Eric Seet's agents and/or punters into the two websites, and liaising with the said agents and/or punters about the amounts owed or paid by them;

(d) checking account balances (profits and losses) for the Seet brothers; and

(e) opening online accounts for Eric Seet's master agents, agents or punters on the websites.

46 That matter was heard by a different District Judge who noted that the case involved syndicated offences which were difficult to detect and stop. Hence, in respect of the s 11(1) RGA charge, the main sentencing considerations were general and specific deterrence. The court considered that the harm arising from Sunny Lai's offence fell within the medium band for two main reasons (*Lai Yen San* at [24]). First, Eric Seet had numerous agents and punters, and Sunny Lai had assisted him by entering in the bets obtained from his agents and punters into the two websites. She also liaised with these agents and/or punters concerning the amounts owed or paid by them. Second, the total bets received were substantial.

47 In respect of Sunny Lai's culpability, the court also considered that this fell within the medium range for the following reasons (*Lai Yen San* at [25]):

(a) she had intentionally aided and facilitated Steven Seet and Eric Seet in providing illegal Singapore-based remote gambling services for a sustained period of 21 months;

(b) she played an important back-end role for Steven Seet and Eric Seet in maintaining accounts of their losses and winnings and reported issues with the illegal betting websites or the betting records to them;

(c) she knew that this was a syndicated offence;

(d) there was significant planning; and

(e) she earned a total salary of $52,000 during this period for her role in the illegal gambling operation.

48 In the circumstances, bearing in mind the other charges taken into consideration and her guilty plea, the court sentenced Sunny Lai to 26 months' imprisonment for the s 11(1) RGA charge and 16 months' imprisonment for the s 5(1) OCA charge, which were ordered to run concurrently. Whilst the Prosecution had sought a fine of at least $52,000, the District Judge declined to order this because he was of the view that the total custodial sentence was sufficient and the accused was only an administrative staff earning a monthly salary without any commission (*Lai Yen San* at [33]).

49 As I mentioned above, on appeal to the High Court, Sunny Lai's sentence on the s 11(1) RGA charge was reduced to 18 months' imprisonment without any fine being imposed. While no grounds were issued, on the basis that the appellant and Sunny Lai were in similar positions, the parties in the present appeal placed substantial reliance on the sentence issued by the High Court.

50 The second case, *Elger Kua*, concerned an accused person who pleaded guilty to one charge under s 11(1) of the RGA and another charge under s 4(1) of the CGHA for running a common gaming house. One further charge under s 8(1) of the RGA was taken into consideration for sentencing.

Briefly, the accused had created a club on a mobile application known as "PPPOKER" that allowed him to invite other account holders to play online poker games with club members. In total, there were around 296 players in his club. The accused person also hosted online games and settled accounts with his club members. Between 8 January 2017 and 14 January 2017, he facilitated the members' remote gambling, using the application to host online games. The aggregate value of the bets amounted to around $159,000. The accused claimed that while his monthly gross revenue was around $40,000, his monthly nett profit was much lower at around $10,000 because he sometimes gave discounts to club members.

51 Given the dearth of precedents for s 11(1) of the RGA, District Judge Kenneth Yap ("DJ Yap") agreed with the Prosecution that regard could be had to precedents under s 9 of the RGA, which makes it an offence for a person to provide unlawful remote gambling services for another as an agent (*Elger Kua* at [54]). For reference, s 9(1) of the RGA states:

> 9.—(1) A person (called an agent) who, inside or outside Singapore —
>
> (*a*) organises, manages or supervises remote gambling by others in accordance with arrangements made by a principal of the agent, which may include —
>
> (i) inviting others to gamble using remote communication in accordance with those arrangements; or
>
> (ii) placing, making, receiving or accepting bets using remote communication in accordance with those arrangements;
>
> (*b*) distributes a prize offered in remote gambling by others in accordance with arrangements made by a principal of the agent;
>
> (*c*) distributes money or money's worth paid or staked by others in remote gambling in accordance with arrangements made by a principal of the agent;
>
> (*d*) facilitates participation by others in remote gambling in accordance with arrangements made by a principal of the agent, which may include allowing a person to participate in such remote gambling; or
>
> (*e*) assists in any conduct described in paragraph (*a*), (*b*), (*c*) or (*d*),
>
> and as a result facilitates one or more individuals to commit an offence under section 8, *shall be guilty of an offence and shall be liable on conviction to a fine of not less than $20,000 and not more than $200,000 or to imprisonment for a term not exceeding 5 years or to both.*
>
> [emphasis added]

52 In comparing ss 9 and 11 of the RGA, DJ Yap noted the differences in the wording of the offences and the maximum sentences stipulated. These suggested that facilitating online gambling as a *principal* under s 11(1) would generally be regarded more seriously than would be the case where an *agent* facilitates one or more of the aspects of running an online game on behalf of a principal under s 9(1). He also noted, in principle correctly in my view, that the imposition of a fine *in addition* to a period of imprisonment under the RGA was necessary to negate the profit motive of remote gambling activities, citing *Lim Li Ling* ([38] *supra*) at [91]. In the premises, DJ Yap imposed a sentence of 14 months' imprisonment and a fine of $20,000 for the s 11(1) RGA charge (*Elger Kua* at [61]).

5 3 *Lai Yen San* or *Elger Kua* in the final analysis do not offer much guidance for determining the appropriate sentence in this case. It suffices to note that *Elger Kua* was a case of a principal providing remote gambling services whereas the appellant here was charged with abetting in the provision of such services. In the circumstances, notwithstanding that neither party proffered a sentencing framework for s 11(1) of the RGA, it is prudent to approach the matter from first principles.

54 In that light, I begin with the relevant sentencing considerations for an offence of providing Singapore-based remote gambling services under s 11(1) of the RGA. These are broadly divided into offence-specific factors and offender-specific factors (see *Ng Kean Meng Terence v Public Prosecutor* [2017] 2 SLR 449 ("*Terence Ng*") at [39]).

Sentencing considerations

Offence-specific factors

55 In terms of offence-specific factors, the court should generally consider (a) the degree of harm caused by the offence; and (b) the degree of the offender's culpability. A *non-exhaustive* list of offence-specific factors for an offence under s 11(1) of the RGA would include:

Factors going towards harm	Factors going towards culpability
(a) The aggregate value of bets involved	(a) Degree of planning and premeditation
(b) Involvement of a syndicate	(b) Level of sophistication
(c) Involvement of a transnational element	(c) Offender's role
(d) Difficulty of detection	(d) Personal gain
	(e) Duration of offending

56 As shall be seen below, the offence-specific factors do overlap to some degree and hence, care must be taken to avoid doubly penalising the offender in the sentencing assessment (see *Ye Lin Myint v Public Prosecutor* [2019] 5 SLR 1005 at [58]).

Harm

57 The amount of bets involved in a particular gambling offence is an important factor in the court's assessment of harm, as the District Judge rightly noted in his decision (GD at [42]). It is established in the context of ordinary gambling offences under s 5(*a*) of the CGHA, which makes it an offence to assist in the carrying on of a public lottery, that the value of bets placed gives an indication as to the size of the illegal operations (see *Lim Li Ling* ([38] *supra*) at [92]). This logic applies equally to remote gambling operations. Generally, the larger the value of bets collected or transacted, the greater the harm.

58 The involvement of a syndicate in a given offence is also a relevant consideration that would point towards a greater degree of harm. The scale of the syndicate's activities as evidenced by for instance, the number of members, would also be germane. As I noted in *Logachev Vladislav v Public Prosecutor* [2018] 4 SLR 609 ("*Logachev*") at [53], syndicated activities are inherently aggravating because they raise the spectre of organised crime and have deleterious effects on Singapore as a whole. This point assumes particular significance in the present case given that Parliament had

specifically contemplated that remote gambling was especially harmful because of its links with syndicated activity (see [30] above).

59 It follows that the presence of a transnational element to the provision of Singapore-based remote gambling services would also have an aggravating effect. This specific factor was likewise referenced by the Minister during the parliamentary debates for the RGA bill (see [30] above). As V K Rajah J (as he then was) noted in *Public Prosecutor v Law Aik Meng* [2007] 2 SLR(R) 814 ("*Law Aik Meng*") at [42]:

> I should highlight that a particularly important and relevant consideration in the present case is the "international dimension" involved. The respondent had been part of a *foreign syndicate* which had systematically targeted financial institutions *in Singapore* to carry out its criminal activities. The audacity and daring of such a cross-border criminal scheme must be unequivocally deplored and denounced. There is a resounding and pressing need to take a firm stand against each and every cross-border crime, not least because the prospect of apprehending such foreign criminals presents an uphill and, in some cases, near impossible task. [emphasis in original]

60 In a related vein, the difficulty of detecting the offences in question may also be a relevant consideration (see *Law Aik Meng* at [25(d)]). It is not surprising that ordinary gambling activities are often carried out secretly in order to evade detection. However, when gambling activities are offered on remote or online platforms, these tend to add a further cloak of anonymity to both the providers and participants and make detection even more challenging (see *Public Prosecutor v Wang Ziyi Able* [2008] 2 SLR(R) 1082 ("*Wang Ziyi Able*") at [31] in the context of the offence of disseminating false information relating to a particular company on an online forum which was likely to induce the sale of shares in the said company). The means by which the offenders provide the remote gambling services and evidence of the methods employed to conceal the illicit activities would also be pertinent considerations.

Culpability

61 In terms of culpability, it is trite that offences that are committed as a result of deliberation and premeditation will be viewed as attracting greater culpability as compared to those committed opportunistically or on impulse, as I explained in *Logachev* at [56]. This is because the presence of planning and premeditation generally evince a greater commitment towards law-breaking (see *Terence Ng* at [44(c)]; see also, *Mehra Radhika v Public Prosecutor* [2015] 1 SLR 96 ("*Mehra Radhika*") at [41]–[42]). The observations of Prof Andrew Ashworth in *Sentencing and Criminal Justice* (Cambridge University Press, 6th Ed, 2015) (at p 171) bear reiterating in this context:

> … A person who plans a crime is generally more culpable, because the offence is premeditated and the offender is therefore more fully confirmed in his criminal motivation than someone who acts on impulse, since he is more considered in his lawbreaking. … Planned lawbreaking betokens a considered attack on social values, with greater commitment and perhaps continuity than a spontaneous crime.

62 The level of sophistication in the planning, execution and concealment of the offence is also a relevant consideration (see *Fernando Payagala Waduge Malitha Kumar* [2007] 2 SLR(R) 334 ("*Fernando*") at [42]). In particular, the use of the Internet generally increases the culpability associated with an offence because it acts as a powerful multiplier that extends the reach of gambling activities as I noted in the context of vice activities in *Poh Boon Kiat v Public Prosecutor* [2014] 4 SLR 892 at [94] (see also, *Public Prosecutor v Quek Chin Choon* [2015] 1 SLR 1169 at [38]). In the context of s 11(1) of the RGA, the level of sophistication would entail, among other things,

consideration of the nature of remote communications used, the *modus operandi* of the remote gambling ring and the scale of the operations.

63 A close examination of the offender's role is also an important determinant of culpability. In the case of organised or syndicated offences, the offender's role within the group and the tasks performed is a fact-specific inquiry to be undertaken with care (see for example, *Public Prosecutor v Adri Anton Kalangie* [2017] SGHC 217 at [35]). With other factors remaining constant, operatives who are essentially runners carrying out the instructions of their controllers, would generally be less culpable than the masterminds behind the criminal operations. On the flipside, where an accused person played a pivotal role in a syndicate, this is likely to enhance his level of culpability (see *Law Aik Meng* at [17]). More specifically, where an offender recruits others as accomplices into a criminal operation, that would usually be an aggravating factor, as I indicated in *Mehra Radhika* at [25] and [53]. This is particularly true where the offender did so intentionally with knowledge of the illicit nature of the activities as opposed to doing so unwittingly (see for example, *Ong Tiong Poh v Public Prosecutor* [1998] 2 SLR(R) 547 at [29] and *Public Prosecutor v Ng Tai Tee Janet and another* [2000] 3 SLR(R) 735 at [25]).

64 Whether the offender in question made any profits or obtained any benefits as a result of the criminal conduct is also a relevant consideration. Where the offender makes profits as a result of his offence, this may be an aggravating factor (see for example, *Wang Ziyi Able* at [15]).

65 Finally, all else remaining constant, a longer duration of offending typically demonstrates persistence in unlawful conduct and greater culpability compared to a one-off offence (see *Neo Ah Luan v Public Prosecutor* [2018] 5 SLR 1153 at [73]).

Offender-specific factors

66 The offender-specific factors generally apply across different offences and cases, and include:

Aggravating factors	Mitigating factors
(a) Offences taken into consideration	(a) Guilty plea
(b) Relevant antecedents	(b) Cooperation with the authorities
(c) Evident lack of remorse	

67 These aggravating and mitigating factors are well-established and need not be separately addressed here (see generally, *Logachev* at [64]–[70] and *Terence Ng* at [64]–[66]; see also, *Tan Kay Beng v Public Prosecutor* [2006] 4 SLR(R) 10 at [14]–[17], *Thong Sing Hock v Public Prosecutor* [2009] 3 SLR(R) 47 at [56]–[62] and *Vasentha d/o Joseph v Public Prosecutor* [2015] 5 SLR 122 at [72]–[73]).

The sentencing framework and application

68 I now turn to the proposed sentencing framework for offences under s 11(1) of the RGA and its application on the facts. This is typically a five-step process as I previously set out in *Logachev*. The framework applies to contested cases where the offender claims trial and thus, an offender's guilty plea ought to be factored in when determining the appropriate sentence at the fourth step (see [88] below).

First step: Identify level of harm and level of culpability

69 The first step is to identify (a) the level of harm caused by the offence (slight, moderate or severe); and (b) the offender's culpability (low, medium or high) having regard to the relevant offence-specific factors.

Level of harm

70 In my judgment, the harm occasioned by the appellant's offence in the present case fell within the low end of the severe range of the spectrum for the following reasons.

71 First, the amount of bets received by the asure6 website alone from 22 November 2015 to 14 August 2016 was more than $18m. Because of the difficulties encountered in retrieving the betting data from the websites, this figure was an under-estimate. It represented only a part of the total amount that was collected on the asure6 website within a limited period compared to the time frame stipulated in the proceeded charge against the appellant, which is from 2 February 2015 to 27 November 2016. The $18m figure also omitted altogether the bets collected on the 888pool website.

72 Second, the offence was committed as part of a syndicate's operations. This was one of the ills associated with remote gambling activities which Parliament had highlighted when enacting the RGA. Further, the syndicate was by no means a small outfit. According to the SOF, a total of 49 persons including the appellant were arrested for their involvement with the syndicate. As mentioned earlier, the syndicate comprised leaders, one chief runner, administrative staff, shareholders and agents who collected bets from participants.

73 Third, the syndicate also had operations in Malaysia, which the appellant knew about. As I noted previously in *Logachev* at [87], where the offence in question features a syndicate and/or transnational element, the harm would usually be *at least* moderate because of the broader harm that is caused to the society in general. Where elements of syndicate involvement, transnational crime or difficulty of detection are present, the paramount sentencing consideration is that of deterrence (see *Law Aik Meng* at [25]).

74 Moreover, I noted that according to the SOF, the appellant and the other members of the syndicate were only successfully arrested after a prolonged period of intensive probes by the police. Apart from the fact that the remote gambling activities had been operated on the Internet, the syndicate had also conducted their operations behind the veneer of the three shell companies. These facts pointed towards the difficulty of detecting the remote gambling offences at hand and so enhanced the assessment of harm here.

75 In the circumstances, I had no hesitation finding that the level of harm caused in this case was at the low end of the severe range. This was broadly consistent with what the District Judge had found below.

Level of culpability

76 In respect of the appellant's culpability, I was satisfied that she fell within the low end of the medium band of the spectrum, primarily due to the important role she played in the syndicate and the duration of offending.

77 As I noted earlier, the appellant admitted in the SOF that she played a crucial role in the operation of the remote gambling services run by the Seet brothers. Whilst I acknowledge that the appellant was only a salaried employee working under the direction of the Seet brothers, the appellant

evidently performed important and extensive tasks (see [9] above). Without the appellant's administration, much of the work essential to the smooth functioning of the syndicate's activities would have been adversely affected. In addition, the offence, as stated in the proceeded charge, took place over a substantial period of nearly two years (from February 2015 to November 2016), though in fact the appellant had been working for the syndicate since February 2012.

78 In submissions, counsel for the appellant sought repeatedly to downplay the appellant's culpability. Mr Robert emphasised that the appellant had first accepted the job offer thinking the business of Erictex was lawful, unlike Sunny Lai who was aware of the illicit nature of the activities. Furthermore, the appellant was merely an administrative staff who had also assisted in the legitimate businesses owned by the Seet brothers. According to Mr Robert, the appellant could also have been easily replaced and thus could not be said to be crucial to the operations.

79 I was not persuaded by the appellant's submissions. The fact is that the appellant, after finding out about the illicit nature of the activities, chose to continue to work at Erictex. This much was candidly accepted by Mr Robert on several occasions during the hearing before me. In the circumstances, it cannot be said that the appellant was hoodwinked into joining a criminal syndicate. The reality is that the appellant made the deliberate decision to stay and assist in the syndicate's operations even after she fully realised what she had gotten involved in. There was no suggestion whatsoever that the appellant was coerced into doing so. Further, I found it quite disingenuous for the appellant to emphasise that unlike Sunny Lai, she had joined Erictex thinking it was a legitimate business. The fact is that the appellant was the one who had solicited Sunny Lai to join her in the syndicate's operations, despite knowing the unlawful nature of its activities. As I mentioned earlier at [63], where offenders recruit others into a criminal operation, that would usually be an aggravating factor. Finally, that the appellant's administrative work encompassed both lawful and unlawful components had no bearing on the question of culpability.

80 The attendant question was how the appellant's culpability compared to that of her colleague, Sunny Lai, who had received a sentence of 18 months' imprisonment on appeal. The parties agreed that Sunny Lai, who was primarily responsible for keying in the betting data onto the websites, was more closely connected to the remote gambling operations than the appellant (GD at [46]–[47]). Hence, it was accepted that the appellant's culpability was lower than Sunny Lai's and that she ought therefore to receive a lighter sentence.

81 The key dispute was the degree of difference in culpability. In this regard, whilst Sunny Lai faced two proceeded charges (instead of one in the appellant's case), I agreed with the District Judge that the difference in culpability was in fact fairly limited (GD at [52]). Three countervailing points should be borne in mind. First, in respect of the duration of offending, the appellant worked with the syndicate for a significantly longer period compared to Sunny Lai, who only joined in July 2013. Second, as I already mentioned, the appellant was responsible for recruiting Sunny Lai into the syndicate operations with full knowledge of its illicit activities. Third, on a few occasions when Sunny Lai was absent from work, the appellant did assist in the same tasks of updating the illegal betting records.

82 In the premises, I was satisfied that the appellant's culpability fell within the low end of the medium band.

Second step: Identify indicative sentencing range

83 The second step after ascertaining the levels of harm and culpability is to identify the indicative sentencing range. Having regard to the full range of punishment prescribed under s 11(1) of the RGA,

I considered the following sentencing ranges to be appropriate:

Harm / Culpability	Slight	Moderate	Severe
Low	Fine of at least $20,000 and/or a short term of imprisonment	Up to 1 year's imprisonment	1 to 2½ years' imprisonment
Medium	Up to 1 year's imprisonment	1 to 2½ years' imprisonment	2½ to 4½ years' imprisonment
High	1 to 2½ years' imprisonment	2½ to 4 years' imprisonment	4½ to 7 years' imprisonment

84 As I alluded to earlier, a fine of not less than the prescribed $20,000 and not more than $500,000 may be imposed in addition to a custodial sentence so as to disgorge an offender's profits. It should also be emphasised that the above sentencing matrix is not meant to be applied rigidly and the appropriate sentence in each case must be determined with reference to the specific facts (see *Dinesh Singh Bhatia s/o Amarjeet Singh v Public Prosecutor* [2005] 3 SLR(R) 1 at [24]). Given the severe level of harm and medium degree of culpability in the present case, the indicative sentencing range is 2½ to 4½ years' imprisonment. Additionally, a fine to disgorge the entirety of the appellant's profits would have been appropriate.

Third step: Identify the appropriate starting point within the indicative sentencing range

85 The next step in applying the sentencing framework is to assess the harm and culpability in the present case on a more granular level. In my judgment, the appropriate starting point would be on the lower end of the indicative sentencing range, namely, 2½ years' imprisonment. While the appellant had played a crucial role as an administrative staff for a substantial period of time, I acknowledged that there were other members of the syndicate such as the runners and agents on the ground who were more intimately involved in the actual gambling operations. I also noted that the appellant was charged with abetting the provision of remote gambling services.

Fourth step: Make adjustments for offender-specific factors

86 With the appropriate starting point determined, the question is whether any adjustments ought to be made having regard to the applicable offender-specific factors.

87 The appellant had no antecedents. The key aggravating factor here was the three other related charges under the RGA, OCA and CGHA respectively taken into consideration for sentencing (see [15] above). As against this, the appellant pleaded guilty at the first opportunity.

88 On the whole, I was satisfied that an adjustment to 24 months' imprisonment would have been appropriate at this stage. Since the appellant faced only one proceeded charge, there was no need to consider the totality principle at the fifth step.

89 The appropriate sentence for the appellant's offence would have been 2 years' imprisonment, which is around 28.5% of the maximum term of 7 years' imprisonment stipulated under s 11(1) of the RGA. This appeared to me to be a proportionate sentence in all the circumstances. As explained earlier, a fine to disgorge the entirety of the appellant's profits would *prima facie* have been

appropriate even though this was not sought. According to the SOF, the appellant drew a salary of $55,000 during the period stated in the charge. Whilst some of the appellant's work related to lawful businesses, no evidence was furnished by the appellant as to the value of that work.

The appropriate sentence in this appeal

90 In the present circumstances, the District Judge's sentence of 12 months' imprisonment cannot be said to be manifestly excessive on any measure. I agreed with the District Judge that given the slight difference between the culpability of Sunny Lai and the appellant, there was ample basis for an uplift on the sentence which had been sought by the Prosecution. However, since no cross-appeal was filed by the Prosecution on the sentence and since no fine was sought before me, I declined to disturb the District Judge's sentence.

Conclusion

91 For these reasons, I dismissed the appeal and affirmed the District Judge's sentence of 12 months' imprisonment.