Navaseelan Balasingam v Public Prosecutor
[2006] SGHC 228

Case Number : MA 112/2006

Decision Date : 13 December 2006

Tribunal/Court : High Court

Coram : Tay Yong Kwang J

Counsel Name(s) : S Palaniappan (Straits Law Practice LLC) for the appellant; Janet Wang (Deputy Public Prosecutor) for the respondent

Parties : Navaseelan Balasingam — Public Prosecutor

Criminal Procedure and Sentencing – Sentencing – Date of commencement – Whether sentence of imprisonment may be backdated to date of arrest – Whether period of custody under police arrest may be taken into account when imposing sentence of imprisonment

Criminal Procedure and Sentencing – Sentencing – Principles – Application of totality principle when sentencing for multiple offences of same nature

13 December 2006

Tay Yong Kwang J:

Introduction

1 This was an appeal against the sentences meted out by the district court. On 14 July 2006, the appellant pleaded guilty to the following 10 charges:

(1) Five charges under s 4 of the Computer Misuse Act (Cap 50A, 1998 Rev Ed) for causing various Automated Teller Machines ("ATMs") to access data held in the central computer systems of the United Overseas Bank ("UOB") Limited with the intention to commit theft of money; and

(2) Five charges under s 379 of the Penal Code (Cap 224, 1985 Rev Ed) for theft of money from UOB through the above unauthorised transactions.

These will be referred to as "the charges proceeded with".

2 The appellant consented to have another 258 similar charges taken into consideration for the purpose of sentencing. These comprised:

(1) 129 charges under s 4 of the Computer Misuse Act; and

(2) 129 theft charges under s 379 of the Penal Code, with each of these corresponding to one of the charges under the Computer Misuse Act.

These will be referred to as "the charges taken into consideration".

The facts

3 The appellant, a 29-year-old male British national, arrived in Singapore on 28 February 2006 at about 7.40am from Heathrow Airport, London. He was alone. He was here on a 14-day social visit

pass and was scheduled to return home on 14 March 2006.

4 On 4 March 2006, Anthony Goh, a bank officer working at the UOB branch in Novena Square, was alerted by his colleagues from the UOB Card Centre that the bank's ATM along Havelock Road was being operated fraudulently. Anthony Goh rushed to the ATM in question and saw the appellant standing in front of it, trying to withdraw cash. He detained the appellant and called the police.

5 When the police arrived, they searched the appellant and found 22 ATM cards, believed to be counterfeit ones, on him. The appellant was arrested.

6 During the investigations, the appellant claimed that one Kumar had approached him and asked him whether he was interested in making some money. Kumar explained to him that he would supply counterfeit ATM cards for the appellant to withdraw cash from ATMs. The appellant agreed to help Kumar, who also provided a cap for the appellant to wear whenever he was making the illegal cash withdrawals so as to prevent the closed circuit television cameras at the ATMs from having a good view of his face. Using the ATM cards supplied by Kumar, the appellant proceeded to make numerous withdrawals from UOB ATMs all over Singapore. The amount involved in the charges proceeded with was $3,700 while the total amount withdrawn by the appellant, in respect of all the charges, between 28 February and 4 March 2006 was $54,380.

7 The 22 ATM cards found on the appellant were found to be counterfeit ones cloned from originals belonging to account holders living in the United Kingdom. The fraudulent use of these cards was facilitated by their respective 4-digit personal identification numbers ("PIN") having been inscribed in ink on the surface of each card. As a result of these illegal withdrawals, UOB disbursed its funds to the accused. The banks of the foreign account holders subsequently reimbursed UOB by a reduction in the respective accounts.

8 Although the charges proceeded with related to five withdrawals on 3 and 4 March 2006 from UOB ATMs in various parts of Singapore, the charges taken into consideration showed that the first withdrawal was made at Raffles City at 5.27pm on 28 February 2006. This was less than ten hours after the appellant touched down in Singapore after his long flight from London. He then returned to Changi Airport and made withdrawals at 6.06pm and 6.12pm the same day. He next went to Orchard Road and made three withdrawals between 7.08pm and 7.54pm. After that, he hit Serangoon Road and various other locations until 10.49pm. That was his first day in Singapore on his purported tour. Thirteen withdrawals were made on the very first day he set foot here.

9 The next day (1 March 2006), his ATM excursion began at 8.37am and ended at 10.28pm, after hitting the bank's ATMs 43 times. Much the same thing happened on 2 and 3 March 2006, with 29 and 33 "hits" respectively. On 4 March 2006, the spree began less than 3 hours after the last withdrawal at 11.28pm on 3 March 2006. This time, it started from 2.14am in Serangoon Road, proceeded to Orchard Road, then Changi Village, back to town in Marina Square and Millenia Walk, Rochor Road, Victoria Street and then into Chinatown and ending at 18, Havelock Road, where the appellant was arrested after making six withdrawals there.

The proceedings in the district court

10 The following points were raised in mitigation by defence counsel:

(a) the appellant had lost some 40 close relatives, including his father, in Sri Lanka during the December 2004 tsunami. He was here on a holiday to take his mind away from the despair and financial difficulties he was facing after the said tsunami. While in Singapore, he met Kumar, a

stranger, who sought his help in using the fake ATM cards to withdraw money. Although initially reluctant, the appellant eventually agreed to help after learning that he would be paid for his assistance and that the money could be used to alleviate the plight of his relatives in Sri Lanka. He relied on Kumar's assurance that the fake cards did not belong to any local bank account holder, that the local banks would not suffer financially and that the withdrawals would not be an offence here. Kumar directed the accused to the various ATMs and he handed the money over to Kumar once he had withdrawn it.

(b) the appellant was a first offender.

(c) the numerous charges were essentially of a similar nature.

(d) he was not part of a syndicate but had merely acted out of temptation.

(e) there was no evidence that anyone had suffered financial loss as a result.

(f) the appellant did not benefit from the crimes as Kumar did not pay him as promised. His business in the United Kingdom and his family would be adversely affected by his conviction and imprisonment here.

(g) he was badly affected by anxiety and loneliness as he was a foreigner incarcerated here.

(h) he was remorseful, had cooperated with the police and pleaded guilty after some plea bargaining.

11 The prosecution, however, urged the district judge to impose a deterrent sentence as:

(a) the offences were committed under aggravating circumstances.

(b) a substantial amount of money was involved.

(c) there was a need to discourage like-minded criminals from targeting our financial institutions.

(d) the way the offences had been committed made detection and apprehension difficult.

12 Agreeing with the prosecution that a deterrent sentence was warranted in this case, the district judge (see *PP v Navaseelan v Balasingam* [2006] SGDC 156) sentenced the appellant to six months' imprisonment on each of the five theft charges under s 379 of the Penal Code and to 18 months' imprisonment on each of the five charges under s 4 of the Computer Misuse Act. He ordered the imprisonment terms for two of the theft charges (2 x 6 months) and for three (3 x 18 months) of the Computer Misuse Act charges to run consecutively. The result was a total of 66 months or 5½ years imprisonment to run with effect from 20 April 2006, the date when the appellant was first remanded. This, in the district judge's view, was not a "crushing" sentence, bearing in mind the one-transaction rule and the totality principle enunciated in *Kanagasuntharam v PP* [1992] 1 SLR 81 and *Maideen Pillai bin P N Mohamed Shah v PP* [1996] 1 SLR 161.

The appeal against sentence before the High Court

13 The maximum prescribed punishment for the offence of theft under s 379 of the Penal Code is as follows:

> Whoever commits theft shall be punished with imprisonment for a term which may extend to 3 years, or with fine, or with both.

The maximum prescribed punishment for an offence committed under s 4 of the Computer Misuse Act is stated in s 4(3) of the Computer Misuse Act which reads:

> Any person guilty of an offence under this section shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 10 years or to both.

14 The appellant argued before me that the sentence meted out by the district judge was manifestly excessive on the following grounds:

(a) The district judge wrongly concluded that the appellant was part of a criminal syndicate;

(b) The district judge was wrong to place weight on the fact that the appellant did not make any restitution to the victim-bank. The local bank involved did not suffer any financial loss as it had been reimbursed. There was therefore no issue of restitution; and

(c) The theft charges were merely mirror charges or closely related to the offences under the Computer Misuse Act. The theft charges should therefore have been ordered to run concurrently with the offences under the Computer Misuse Act charges.

15 The appellant's counsel relied on the following cases as a guide as to what the appellant's sentence in this case ought to be (see Appellant's Arguments at [18]):

(a) *PP v Ooi May Ling Maria* (DAC 36399/98) – offender who was a bank clerk was sentenced to 12 months' imprisonment for unlawfully effecting an internal transfer of US$22,502.30;

(b) *PP v Chng Peck Hock* (DAC 24562/99 & 555 Others) – offender who was a cashier at a petrol station had accessed the computer system to illegally transfer $65,010 on 556 occasions. The offender pleaded guilty to three charges and was sentenced to a total of 36 months, i.e. 12 months per charge;

(c) *PP v Ooi Lye Guan* [2005] SGDC 228 – offender was a support engineer who exploited a loop hole in the computer system and made $94,000. He was sentenced to a total of 42 months, i.e. 14 months per charge; and

(d) *PP v Chan Choon Lai* (DAC 54533 – 89/2000) – offender was an assistant officer in the bank with its Fraud & Security Department and he surreptitiously pocketed $51,000 and was sentenced to a total of 4 years.

16 The appellant submitted that the cases suggested that the appropriate sentence ought to be between eight months to 12 months for each charge under s 4 of the Computer Misuse Act.

17 The relevant statutory provision concerning charges that are taken into consideration is s 178(1) of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) ("CPC") which reads:

> **Outstanding offences.**
>
> **178.** —(1) Where in any criminal proceedings instituted by or on behalf of the Public Prosecutor

> the accused is found guilty of an offence, the court, in determining and in passing sentence, may, with the consent of the prosecutor and the accused, take into consideration any other outstanding offence or offences which the accused admits to have committed:
>
> Provided that, if any criminal proceedings are pending in respect of any such outstanding offence or offences and those proceedings were not instituted by or on behalf of the Public Prosecutor, the court shall first be satisfied that the person or authority by whom those proceedings were instituted consents to that course.
>
> (2) When consent is given as in subsection (1) and an outstanding offence is taken into consideration, the court shall enter or cause an entry to that effect to be made on the record and upon sentence being pronounced the accused shall not, unless the conviction which has been had is set aside, be liable to be charged or tried in respect of any such offence so taken into consideration.

While it may be said that by admitting the charges taken into consideration, the appellant had saved court time and the prosecution the trouble of proving them, the counterbalancing effect of having admitted such charges would be that the appellant had committed many more similar offences and that fact must aggravate the charges proceeded with. The benefit to the appellant would be his immunity from being charged or tried for the offences taken into consideration (see s 178(2) of the CPC) and he would therefore not have to face further punishment in respect of those.

18 The district judge, in his clear and analytical judgment, set the benchmarks at six months' imprisonment for each charge under s 379 of the Penal Code and 18 months' imprisonment for each charge under s 4 of the Computer Misuse Act. These appear eminently appropriate for the present case and I endorse them.

19 In his sentencing considerations, the district judge quoted cases relating to the intrinsic nature and severity of the appellant's computer crimes warranting a deterrent sentence (at [20]): see *PP v Muhammad Nuzaihan bin Kamal Luddin* [2000] 1 SLR 34. He also emphasized the presence of premeditation and planning which indicated the involvement of a criminal syndicate (at [28] and [33]): see *Tan Kay Beng v PP* [2006] SGHC 117; *PP v Ng Tai Tee Janet & Anor* [2001] 1 SLR 343. The district judge further relied on *PP v Ooi Lye Guan* (supra)(at [36]), a case involving offences committed under ss 4 and 5 of the Computer Misuse Act. In that case, the district court observed (at [21]):

> In my opinion, the relevant factors that would determine the appropriate length of the custodial term would include (i) the nature and seriousness of the offences perpetrated whilst abusing the computer technology (ii) the level of pre-meditation and sophistication involved, namely, whether it is an one-off incident committed out of boredom or curiosity or whether it is a persistent course of conduct (iii) whether the offender had abused his position of trust in committing these offences as well as the quality and degree of trust reposed in the offender (iv) the extent of the harm or damage caused, the potential mischief occasioned or the amount of inconvenience entailed in establishing the extent of the intrusion (v) his personal mitigating factors and (vi) whether the offending acts have a significant impact on public confidence in the use of computer technology or computer system in that particular form or generally in our society.

20 The appellant had claimed that he was in Singapore solely for the purpose of holidaying and had unwittingly been instigated to commit the offences by Kumar while he was in Singapore. The district judge found such a claim highly dubious as, among other reasons, the appellant's conduct during his brief stay here was clearly inconsistent with that of a tourist (at [32]). I agree entirely with

his observations.

21 The district judge also considered the appellant's counsel's suggestion that in deciding on the appropriate sentence, the court should take into account the fact that the appellant was a foreigner badly affected by a sense of loneliness and anxiety. The district judge referred to this point as the 'dislocation factor' (at [61]-[69]). He was of the opinion that this factor was not a serious concern in Singapore as there were adequate provisions in the Prisons Act (Cap 247, 2000 Rev Ed) and the Prisons Regulations (Cap 247, R 2 , 2002 Rev Ed) to mitigate this hardship. For instance, a foreign inmate may be allowed a different kind of diet if so required. The district judge surveyed several cases from New Zealand, Australia and Hong Kong and agreed with the positions taken in those authorities. Some of the principles enunciated stated that it was only in very exceptional cases that an offender would be able to show that he would suffer significantly greater hardship because of incarceration in a foreign land and that no weight ought to be given to the dislocation factor where a person deliberately went to a foreign country to commit a crime. I agree with these views. Foreigners who travel to another country in order to commit crimes should not make the plaintive cry that they should have a shorter imprisonment term on the ground that they will be living in an environment and culture different from what they are accustomed to.

22 In general, I am in agreement with the learned analysis of the district judge. The only difficulty I had with his decision was in his concluding remarks (at [71] and [72]):

> 71 Bearing in mind the one-transaction rule and totality principle of sentencing as enunciated in *Kanagasuntharam v PP* [1992] 1 SLR 81 and *Maideen Pillai bin P N Mohamed Shah v PP* [1996] 1 SLR 161, I ordered the sentences for 2 of the theft charges and 3 of the Computer Misuse Act charges to run consecutively. The Accused would thus have a serve a total of 66 months' imprisonment. In my view, the total sentence is not 'crushing'. Neither is it in excess to the maximum prescribed sentence for the most serious offence for which the Accused had been convicted on.
>
> 72 I further ordered that the sentences be backdated to the time when the Accused was first remanded, ie 20 April 2006.

23 I note three salient points from the above. First, the district judge was conscious of the fact that the sentence he ordered should not breach the one-transaction rule and totality principle. Second, he ensured that the sentence also did not extend beyond the maximum prescribed sentence of 10 years under s 4(3) of the Computer Misuse Act, which was the more serious offence (in terms of the prescribed maximum punishment) that the appellant had been convicted on. Third, he refused to backdate the sentence to the date of arrest, which was 4 March 2006.

24 The district judge was bound to adhere to his sentencing jurisdiction provided in s 11(3)(a) of the CPC which states:

> (3) A District Court may pass any of the following sentences:
>
> (a) imprisonment for a term not exceeding 7 years; …

This relates of course only to each of the charges (and not the cumulative sentences) and is subject to the maximum provided for the individual offence. As the appellant was technically a first offender, the proviso to s 11(3) of the CPC was not applicable. That proviso reads:

> Provided that where a District Court has convicted any person and it appears that by reason of

any previous conviction or of his antecedents, a punishment in excess of that prescribed in this subsection should be awarded, then the District Court may sentence that person to imprisonment for a term not exceeding 10 years and shall record its reason for so doing.

Taking into account all relevant considerations, the district judge sentenced the appellant to a total of 5½ years' imprisonment. With respect, I am of the view that not only did the total term of imprisonment not adequately reflect the gravity of the offences here, it was based on an erroneous view of the law relating to the totality principle.

25 The Court of Appeal in *Kanagasuntharam v PP* [1992] 1 SLR 81 (at 83 and 84) explained the one-transaction rule thus:

> In considering the appeal, our first concern was whether the sentences in this case should run concurrently or consecutively as the offences took place in a short space of time and were against the same victim. At common law, this would be a situation where the sentencing principle commonly known as the one-transaction rule would be likely to apply. The rule may be stated shortly: where two or more offences are committed in the course of a single transaction, all sentences in respect of these offences should be concurrent rather than consecutive. The difficulty, of course, is with the question of what constitutes one transaction and this question is necessarily one of fact depending on all the circumstances of the case. …
>
> The general rule, however, is not an absolute one. The English courts have recognized that there are situations where consecutive sentences are necessary to discourage the type of criminal conduct being punished … The applicability of the exception is said to depend on the facts of the case and the circumstances of the offence. It is stated in broad and general terms and although it may be criticized as vague, it is necessarily in such terms in order that the sentencer may impose an appropriate sentence in each particular case upon each particular offender at the particular time the case is heard.
>
> The applicability of the principle of the one transaction rule in Singapore is qualified by s 18 of the Criminal Procedure Code (Cap 68)('the Criminal Procedure Code') in cases where an accused is convicted and sentenced to imprisonment for more than two distinct offences. The section provides:
>
> **Consecutive sentences in certain cases.**
>
> **18.** Where at one trial a person is convicted and sentenced to imprisonment for at least 3 distinct offences, the court before which he is convicted shall order that the sentences for at least two of those offences shall run consecutively.

The above pronouncements were made in the context of continuous sexual offences against the same victim in a toilet cubicle over a period of two hours. In the present case, an astonishing number of 134 illegal withdrawals were made continually over four days at different locations. Each theft charge with its corresponding charge under the Misuse of Computers Act could fall within the one-transaction rule. Similarly, consecutive withdrawals made at the same ATM on one occasion may be regarded as one transaction for the purpose of sentencing. However, it is quite impossible to view the multiple offences, particularly the charges proceeded with, as one transaction as they were committed at different ATMs in various parts of the island. The district judge must have been of this view when he said he had the one-transaction rule in mind before he ordered five of the sentences to run consecutively. He was therefore correct on this point.

26 The totality principle states that the aggregate sentence should be fair and proportional to the overall gravity of the offences, i.e. not excessive or crushing, as noted by the district judge. The district judge was careful to ensure that the aggregate sentence was also not in excess of the maximum prescribed sentence for the most serious offence for which the Accused had been convicted on. He was obviously referring to the view stated in *Principles of Sentencing* (2nd Ed, D A Thomas), where the learned author stated (at pages 57-58):

> A cumulative sentence may offend the totality principle if the aggregate sentence is substantially above the normal level of sentences for the most serious of the individual offences involved, or if its effect is to impose on the offender 'a crushing sentence' not in keeping with his records and prospects.

27 With respect, in a case like the present, where there are multiple charges, the district judge ought not to be unduly wary of the maximum provided for the "most serious offence" (which would be ten years' imprisonment but for which the district judge could only sentence up to seven years for the reasons stated earlier), because there are at least five such offences here. In other words, the maximum punishment in this case is not ten years' imprisonment but five times ten years' imprisonment, even without taking into consideration the theft charges. Pursuant to s 18 of the CPC (see [25] above), at least two of the sentences must be consecutive. With the enhanced sentencing jurisdiction of the district judge provided in s 17 of the CPC (reproduced at [33] below), the maximum possible sentence that he could impose in this case is therefore 14 years' imprisonment. It would be wrong, for instance, for the High Court to be wary of sentencing an offender who has raped three victims beyond the maximum of 20 years' imprisonment provided for one offence of rape (under s 376 of the Penal Code). Such a view accords with the position taken by the Court of Appeal in *Kanagasuntharam v PP* (involving one charge of rape with hurt, one charge of fellatio and one charge of anal intercourse) which noted (at pp 85 and 86):

> Although the total term achieved by this combination was 22 years, which was in excess of the 20-year maximum term prescribed by s 376(2) for the charge of aggravated rape, the most serious charge, this could not be said to be wrong in principle in view of what we have said above of the relation between s 18 of the CPC and the totality principle.

28 With respect, it appears to me that the district judge was in error when he appeared unduly constrained by the totality principle, causing him to be concerned that the aggregate sentence imposed by him did not exceed his ordinary sentencing jurisdiction of seven years' imprisonment when he was deciding on the permutation of consecutive sentences. The error of law, in my view, resulted in an aggregate sentence (of 5½ years) that did not quite reflect the severity of the offences in question here and which was indeed manifestly inadequate in the circumstances.

29 The next issue to consider is whether I should enhance the sentence by altering the permutation of the consecutive sentences when this appeal was actually lodged by the accused person and not the public prosecutor. Sections 23 and 27(1) of the Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed) govern the powers of revision of the High Court over subordinate courts:

> **Revision of criminal proceedings of subordinate courts**
>
> 23. The High Court may exercise powers of revision in respect of criminal proceedings and matters in subordinate courts in accordance with the provisions of any written law for the time being in force relating to criminal procedure.
>
> **General supervisory and revisionary jurisdiction of High Court**

27. — (1) In addition to the powers conferred on the High Court by this Act or any other written law, the High Court shall have general supervisory and revisionary jurisdiction over all subordinate courts.

30 The High Court possesses revisionary powers to enhance sentence in an appeal by the accused against sentence by virtue of s 268(1) read with s 256(c) of the CPC which read:

Power of court on revision.

268. — (1) The High Court may in any case, the record of the proceedings of which has been called for by itself or which otherwise comes to its knowledge, in its discretion exercise any of the powers conferred by sections 251, 255, 256 and 257.

Decision on appeal.

256. At the hearing of the appeal the court may, if it considers there is no sufficient ground for interfering, dismiss the appeal or may —

(c) in an appeal as to sentence, reduce or enhance the sentence, or alter the nature of the sentence…

31 In *Sim Bok Huat Royston v Public Prosecutor* [2001] 2 SLR 348, Yong Pung How CJ said that "[a]lthough there was no appeal by the DPP on this, I took it upon myself to review the sentence as I found it to be manifestly inadequate on the facts": at [38]. In *Ang Poh Chuan v Public Prosecutor* [1996] 1 SLR 326, Yong CJ observed (at [17])that to attract the exercise of revisionary jurisdiction, there must be "serious injustice" and "it must be shown that there is something palpably wrong in the decision that strikes at its basis as an exercise of judicial power by the court below."

32 I said earlier that the district judge was in error in his treatment of the totality principle causing him to arrive at an aggregate that was manifestly inadequate on the facts of this case. In my view, such an error of law which had the aforesaid consequence was a serious injustice which warranted the exercise of revisionary power by the High Court. For the reasons which I elaborate on below, the appropriate permutation of consecutive sentences in this case would have been to order all the sentences for the Computer Misuse Act charges to run consecutively, i.e. five times 18 months' imprisonment, so as to result in an aggregate term of 90 months or 7½ years. Accordingly, I exercised my powers of revision to modify the permutation of the appellant's consecutive sentences so that the total imprisonment term was increased by two years.

33 Following *PP v Lee Meow Sim Jenny* [1993] 3 SLR 885, my powers, when sitting in an appellate capacity hearing appeals from a district court, are limited by the power which the district court possesses. Although the total sentence of 7½ years was above the ordinary sentencing jurisdiction of the district court under s 11(3)(a) of the CPC, it still fell within the ambit of the enhanced sentencing jurisdiction of a district court under s 17 of the CPC which applies in this case and which provides:

17. When a person is convicted at one trial of any two or more distinct offences the court may sentence him for such offences to the several punishments prescribed therefor which such court is competent to inflict; such punishments when consisting of imprisonment to commence the one after the expiration of the other in such order as the court directs or to run concurrently if the court so directs, but it shall not be necessary for the court, by reason only of the

aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of one single offence, to send the offender for trial before a higher court:

> Provided that if the case is tried by a District Court or Magistrate's Court the aggregate punishment of imprisonment shall not exceed twice the amount of punishment which such Court in the exercise of its ordinary jurisdiction is competent to inflict.

Since the ordinary sentencing jurisdiction of the district court is seven years' imprisonment, the enhanced sentencing jurisdiction would be 14 years' imprisonment.

34 Anyone who visits this country with a view to going ATM-shopping with cloned bank cards should realise that we take a very serious view of offences which strike at electronic financial and commercial transactions. Such crimes gnaw at public confidence and can stymie the growth of a very efficient way of life.

35 Technology is capable of making our lives much better and ATM cards have become an integral part of life in Singapore. Abuse of technology to commit crimes especially on a large scale, therefore becomes all the more insidious in this electronic landscape and it calls for a decidedly deterrent sentence.

36 On the facts of this case, there can be little doubt that the sinister tentacles of a syndicate are involved. Consider the rapidity of commencement of operations upon the appellant's touchdown in Singapore, the seeming speed and ease with which he moved from ATM to ATM from the east to the central to the west of Singapore – and this coming from a first-time visitor to this country – and the urgency of withdrawals, some occurring even between 2 and 4am. It was as if the appellant had an ATM tour itinerary which he had to complete within his short stay here.

37 Considering the speed and the persistence of the transactions, if he had not been apprehended through the quick action of the bank's officials, I think he was most likely to have gone on to hit other ATMs and then quietly disappear from our shores together with the cash pile. The appellant was definitely not an innocent, lonely tourist suddenly tempted by the mystery man "Kumar". He was here in Singapore on a mission – the mission was to raid as many ATMs as he could before any alarm was raised. Even if his face was captured by the ATMs' security cameras, and indeed, he had put on a cap to try to conceal his face, it would take the investigators some time to track him down as he is a foreigner here, by which time he would already have made a clean and easy exit and returned home, or, perhaps, moved on to his next ATM "El Dorado".

38 The appellant's *modus operandi* presented extreme difficulty in detection and apprehension by the authorities. The accumulated loot of about $54,380 had disappeared with remarkable speed and efficiency even as the appellant was busily traversing the ATM network of the bank. How this was done remains to be seen but it is clearly another hallmark of a well-organised crime.

39 As I have stated, the security of Singapore's financial institutions and protection of public interest against electronic financial scams are paramount in a case like this. Even if the local bank in question did not ultimately suffer any financial loss, there was no doubt that some other financial institution somewhere did suffer loss and that the syndicate involved did benefit from the loot, which was not of an insignificant amount. I am therefore of the opinion that the appropriate sentence to mete out here is 7½ years, arrived at by ordering all sentences for the Computer Misuse Act charges to run consecutively. In the light of the many offences and the circumstances in which they were committed, such a sentence could hardly be said to be a crushing one.

40 In addition, I altered the commencement date of the appellant's imprisonment to the date of his arrest on 4 March 2006 instead of 20 April 2006 as ordered by the district judge. In principle, there is no reason why a sentence of imprisonment should not be backdated to the date of arrest. Whether an accused person is under arrest by the police or under remand ordered by the court, the fact remains that he is in custody and has lost his liberty. The period of custody should therefore be taken into consideration when imposing any imprisonment sentence.

41 For the foregoing reasons, save for the modifications stated earlier, the appeal is dismissed.