Chua Siew Peng
v
Public Prosecutor and another appeal

[2017] SGHC 128

High Court — Magistrate's Appeal No 9091 of 2016/01-02
Chan Seng Onn J
24 February; 13 April; 26 May 2017

Criminal Procedure and Sentencing *— Appeal — Adducing fresh evidence — Offender attempting to adduce evidence of transcripts from other trials — Whether conditions of non-availability, relevance and reliability were satisfied — Section 392(1) Criminal Procedure Code (Cap 68, 2012 Rev Ed)*

Criminal Procedure and Sentencing *— Sentencing — Offender committing offence of wrongful confinement under s 342 Penal Code (Cap 224, 2008 Rev Ed) — Relevant aggravating factors to consider — Section 342 Penal Code (Cap 224, 2008 Rev Ed)*

Criminal Procedure and Sentencing *— Sentencing — Offender responsible for other offences for which no charges were brought — Whether uncharged offending conduct could be considered as aggravating factor in sentencing*

Facts

The accused person, Chua Siew Peng ("Chua") employed the services of a domestic helper, Muegue Jonna Memje ("the Victim") from December 2011 to October 2012. Chua claimed trial and was convicted by the district judge of one charge for voluntarily causing hurt to the Victim by slapping the Victim's face under s 323 of the Penal Code (Cap 224, 2008 Rev Ed) ("the Penal Code") ("the VCH Charge"), and one charge for wrongfully confining the Victim in her place of employment on 30 October 2012 ("the residence") under s 342 of the Penal Code ("the Wrongful Confinement Charge"). Chua was sentenced to three weeks' imprisonment on the VCH Charge and two months' imprisonment on the Wrongful Confinement Charge. Both sentences were ordered to run concurrently, yielding an aggregate term of two months' imprisonment.

For the VCH Charge, in addition to the slapping of the Victim, the evidence also revealed that Chua had also pulled the Victim's hair. For the Wrongful Confinement Charge, even though the charge only specified one date of confinement, the evidence revealed that the Victim had been so confined on other similar periods throughout her term of employment of 11 months.

Chua appealed against her conviction and sentence under both charges. Without filing for a criminal motion ("CM"), Chua also attempted to adduce fresh evidence in the form of transcripts adduced in the earlier trials concerning Chua's mother and sister. The Prosecution cross-appealed against the global sentence on two grounds. First, the sentence imposed for the Wrongful Confinement Charge was manifestly inadequate. Second, the district judge erred in ordering the two custodial sentences to run concurrently.

Held, disallowing the fresh evidence, dismissing Chua's appeal against conviction and sentence for both charges, allowing the Prosecution's appeal, and increasing the sentence to an aggregate term of 24 weeks' imprisonment:

(1) Both the transcripts sought to be admitted by Chua were fresh evidence on appeal, and the proper procedure to have such evidence admitted was through leave of the court obtained by way of a CM: at [19] and [22].

(2) For fresh evidence to be admitted on appeal, the three conditions of non-availability, relevance and reliability had to be satisfied. However, the condition of non-availability was less "paramount" than the other two conditions in the context of criminal appeals. This was all the more so in the case of an appellant who was unrepresented at the trial below. Accordingly, the fact that the fresh evidence was available to Chua during the trial below did not automatically render the evidence inadmissible: at [25] and [29].

(3) Since none of the categories of fresh evidence sought to be admitted in the present case was relevant, the fresh evidence was not admitted: at [32] and [49].

(4) There was no basis to disturb the district judge's decision to convict Chua. The district judge correctly evaluated the evidence given by Chua and the Victim in their totality before concluding that Chua slapped the Victim on 29 October 2012 and also wrongfully confined the Victim on 30 October 2012. Chua's appeal against conviction was accordingly dismissed: at [59].

(5) Generally, at the sentencing stage, the court could not consider as an aggravating factor in sentencing the accused, facts relating to offences for which no charges were brought against the accused ("uncharged offences"). If the Prosecution wanted the sentencing court to consider such uncharged offences, it had to draw up necessary charges in respect of that conduct. If the Prosecution ultimately decided not to proceed on any of these charges, it had to apply for these outstanding charges to be taken into consideration in order for the court to consider them at the sentencing stage upon the accused's conviction on the charges proceeded with. Where the Prosecution failed to do so, it could not expect the court to nevertheless consider such uncharged offences: at [74], [76] and [78].

(6) Even though a sentencing court could not take into account uncharged offences, it was entitled to, and in fact should, consider the aggravating circumstances in which the offence was committed, even where these circumstances technically constituted a separate offence for which no charges were brought. A fact with sufficient nexus to the commission of the offence could be considered at the sentencing stage, irrespective of whether this fact also constituted a separate offence for which the accused was not charged. What constituted sufficient nexus was a fact-sensitive inquiry, depending on the circumstances of each case and in particular on the degree of proximity of time and space to the charged offences. Sufficient nexus would generally be present where it concerned a fact in the immediate circumstances of the charged offences or was a fact relevant to the accused's state of mind at the time the offences were committed: at [81] and [84].

(7) Between two offenders convicted of the same offence, *ceteris paribus*, the one who was more culpable than the other should receive a higher sentence (the "relativity principle"). Given that the culpability of an accused person was largely

assessed by the circumstances in which the offence was committed as well as the consequences of the offence, a sentencing court could not turn a blind eye to these facts just because no charges were brought in respect of these acts: at [71] and [85].

(8) Even though Chua's act of pulling the Victim's hair technically constituted a stand-alone offence under s 323 of the Penal Code, this was a relevant fact with a sufficient nexus to the offence given that it was committed contemporaneously with the slap on the Victim. It formed part of the immediate circumstances in which the offence of slapping the Victim was committed by Chua and thus directly related to Chua's culpability on the VCH Charge. Chua's pulling of the Victim's hair was thus taken into account as an aggravating factor for the purpose of sentencing for the VCH Charge: at [67] and [87].

(9) Since the Wrongful Confinement Charge specified only 30 October 2012 as the date of wrongful confinement, it was inconsistent with the particulars of the charge for Chua to be punished as if she had continuously confined the Victim for a period of 11 months. In any event, the evidence revealed that there was not one continuous period of confinement but rather discrete and separate periods of confinement. Further, all these separate instances of confinement by Chua over a period of 11 months were not acts with sufficient nexus such that they could be taken into account for the purpose of sentencing for the Wrongful Confinement Charge, which only related to confinement on a single day. If the Prosecution wanted the court to consider each of these past offences committed by Chua for the purpose of sentencing, it should have charged Chua accordingly for multiple occasions of confinement and have them treated in the same way as TIC charges: at [89] and [90].

(10) However, the fact that the Victim had previously been subjected to wrongful confinement was relevant as evidence to prove a certain fact in sentencing. The fact which was proved by the offences was Chua's *knowledge* that the Victim had previously been wrongfully confined and subjected to abuse. And this knowledge was relevant to the sentencing exercise as it was relevant to the degree of Chua's culpability. In knowingly prolonging the Victim's wrongful confinement, Chua increased the risk that the Victim would suffer injuries owing to the conditions of the confinement and Chua's actions in so confining the Victim on 30 October 2012 ultimately drove the Victim to take the drastic step of escaping from the premises of the residence through a dangerous exit which resulted in the Victim sustaining serious injuries in the process of doing so. Chua was thus more culpable than an offender who did not have such knowledge of the Victim's past confinement, such that in line with the relativity principle, Chua should get a heavier sentence. In taking into account this aggravating factor, no weight was assigned to the fact that Chua was responsible for the Victim's prior confinement. To do otherwise would violate the well-established rule that the court should not take into account uncharged offences committed by the accused: at [65], [66], [91] and [94].

(11) While there was generally a tension between the sentencing objectives of deterrence and rehabilitation when sentencing offenders suffering from mental disorders, the element of general deterrence might still be accorded full weight where the mental disorder was not serious or was not causally related to the commission of the offence, and the offence was a serious one. In the present

case, the IMH psychiatrist who examined Chua concluded that there was no causal link between her schizophrenia and the commission of the offences: at [98] and [99].

(12) Where there was no causal relation between an offender's mental illness and the offence, the offender's ill-health was only relevant in two ways, either as a ground for the exercise of judicial mercy, or as a mitigating factor where a jail term might cause disproportionate impact on the offender. Neither ground was applicable in the present case: at [100], [101], [104] and [105].

(13) Due to the primacy of deterrence in cases of abuse of domestic helpers, the absence of serious injuries did not preclude the imposition of a custodial sentence. The sentence of three weeks' imprisonment for the VCH Charge was not manifestly excessive because it was at the lowest end of the comparable sentences for similar cases of abuse involving the slapping of domestic helpers. Chua's appeal against sentence for the VCH Charge was accordingly dismissed: at [106] and [108].

(14) A sentencing court dealing with offenders for wrongful confinement under s 342 of the Penal Code ought to consider the following aspects of the offence: (a) the total duration of the wrongful confinement; (b) the conditions in which the victim was wrongfully confined; (c) whether the wrongful confinement was committed to facilitate the commission of another offence; and (d) the consequences of the confinement on the victim: at [115].

(15) Chua in confining the Victim on the day in question was not merely wrongfully confining any normal person but one who had already been subject to prolonged abuse whilst under prolonged wrongful confinement previously (a fact which she knew about). The confinement of the Victim also led to her desperate escape by jumping out of the residence from the sixth floor. This dangerous manner of escape caused her to suffer debilitating injuries. In this connection, the severe injuries suffered by the Victim in the course of making her escape was also a material aggravating factor. On a consideration of all the aggravating factors, Chua was sentenced to 21 weeks' imprisonment on the Wrongful Confinement Charge: at [127], [128] and [129].

(16) The discretion of a sentencing judge had to be exercised in accordance with the one-transaction rule and the totality principle. The one-transaction rule was not applicable in the present case. First, there was a lack of proximity in time between the two charges. Second, the charges violated different legally protected interests – the VCH Charge related to an invasion of the Victim's bodily integrity, while the Wrongful Confinement Charge related to an infringement of the Victim's right to freedom of movement. The totality principle was also not violated. An additional sentence of three weeks' imprisonment in the present case where the difference was between 21 to 24 weeks' imprisonment could not be considered *substantially* higher than the normal range of sentences in cases of abuse of domestic helpers. Neither did it entail a crushing sentence on Chua: at [133], [135] and [137].

Case(s) referred to

ADF v PP [2010] 1 SLR 874 (refd)

Chew Soo Chun v PP [2016] 2 SLR 78 (folld)

Chong Han Rui v PP [2016] SGHC 25 (refd)

Chong Yee Ka v PP [2017] SGHC 47 (refd)

Chua Tiong Tiong v PP [2001] 2 SLR(R) 515; [2001] 3 SLR 425 (refd)

Edwin s/o Suse Nathen v PP [2013] 4 SLR 1139 (refd)

Haliffie bin Mamat v PP [2016] 5 SLR 636 (refd)

Idya Nurhazlyn bte Ahmad Khir v PP [2014] 1 SLR 756 (refd)

Iskandar bin Rahmat v PP [2017] 1 SLR 505 (refd)

Karthi Kesan s/o Raja Gopal v PP Magistrate's Appeal No 83 of 1994 (refd)

Ladd v Marshall [1954] 1 WLR 1489 (refd)

Lim Ghim Peow v PP [2014] 4 SLR 1287 (folld)

Mohamed Shouffee bin Adam v PP [2014] 2 SLR 998 (folld)

PP v Aniza bte Essa [2009] 3 SLR(R) 327; [2009] 3 SLR 327 (refd)

PP v Hue An Li [2014] 4 SLR 661 (refd)

PP v Lim Choon Teck [2015] 5 SLR 1395 (refd)

PP v Tan Thian Earn [2016] 3 SLR 269 (refd)

R v Cincotta 15 October 1997 CA Vic (refd)

R v De Simoni (1981) 147 CLR 383 (refd)

R v Kidd [1998] 1 WLR 604 (refd)

R v Newman and Turnbull [1997] 1 VR 146 (refd)

Sarjit Singh Rapati v PP [2005] 1 SLR(R) 638; [2005] 1 SLR 638 (refd)

Soh Meiyun v PP [2014] 3 SLR 299 (folld)

Sundram Peter Soosay v PP HC/Magistrate's Appeal No 9104 of 2015/1 (distd)

Suventher Shanmugam v PP [2017] SGCA 25 (refd)

Vasentha d/o Joseph v PP [2015] 5 SLR 122 (refd)

Legislation referred to

Criminal Procedure Code (Cap 68, 2012 Rev Ed) ss 148, 148(1), 148(5), 306(2), 392, 392(1), 407

Criminal Procedure Code (Prescribed Forms) Regulations 2010 (S 811/2010) Form 78

Misuse of Drugs Act (Cap 185, 2008 Rev Ed) s 10A(1)(*c*)

Penal Code (Cap 224, 2008 Rev Ed) ss 34, 73(2), 323, 337, 338, 342, 343, 344, 347, 348

Road Traffic Act (Cap 276, 2004 Rev Ed) ss 63(1), 67(1)(*b*)

Quek Mong Hua and Jonathan Cho (Lee & Lee) for Chua Siew Peng;
Zhuo Wenzhao and Siti Adrianni Marhain (Attorney-General's Chambers) for the Prosecution.

[Editorial note: This was an appeal from the decision of the District Court in [2016] SGMC 44.]

26 May 2017 Judgment reserved.

Chan Seng Onn J:

Introduction

1 Muegue Jonna Memje is a Filipino national who came to Singapore in December 2011 to work as a domestic helper ("the Victim"). This case concerns the serious abuse she endured at the hands of her employers. The abuse was so intolerable that she eventually decided to escape her employers' residence by jumping out of a window from the sixth floor to the rooftop of an adjacent building.

2 The three members of the household are Chua Siew Peng ("Chua"), her elderly mother, Lum Wai Lui ("Popo", meaning grandmother in Chinese) and her elder sister, Kathleen Chua Siew Wei ("Kathleen"). They have been separately tried for abusing the Victim at their residence in Maplewoods Condominium ("the residence"). The appeals before me concern only the convictions and sentences in respect of Chua's prosecution.

3 Chua was convicted in the State Courts on one charge for voluntarily causing hurt under s 323 of the Penal Code (Cap 224, 2008 Rev Ed) ("the Penal Code") ("the VCH Charge") and one charge for wrongful confinement under s 342 of the Penal Code ("the Wrongful Confinement Charge"). Both charges are read with s 73(2) of the Penal Code and provide as follows:

> **VCH Charge**
>
> are charged that you on the 29th day of October 2012, between 9.00pm and midnight, at [xxx] Maplewoods Condominium, Singapore, as an employer of a foreign domestic maid, one Muegue Jonna Memeje (FIN No: [xxx]), did voluntarily caused [*sic*] hurt to her, to wit, by slapping the face of the said Muegue Jonna Memeje, and you have thereby committed an offence punishable under Section 323 read with Section 73(2) of the Penal Code, Chapter 224.
>
> **Wrongful Confinement Charge**
>
> are charged that you on the 30th day of October 2012, sometime in the morning before 11.00am, at [xxx] Maplewoods Condominium, Singapore, as an employer of a foreign domestic maid, one Muegue Jonna Memeje (FIN No: [xxx]), did wrongfully confine one Muegue Jonna Memeje, in a condominium unit, and you have thereby committed an offence punishable under Section 342 read with Section 73(2) of the Penal Code, Chapter 224.

4 Chua was sentenced to three weeks' imprisonment on the VCH Charge and two months' imprisonment on the Wrongful Confinement Charge. Both sentences were ordered to run concurrently such that the aggregate term of imprisonment was two months' imprisonment. The

grounds of decision of the district judge ("District Judge") is reported at *PP v Chua Siew Peng* [2016] SGMC 44 ("the GD"). Chua now appeals against her conviction and sentence under both these charges ("Chua's appeals"). The Prosecution cross-appeals against the global sentence imposed on Chua ("the Prosecution's appeal").

5 Having considered the GD, the parties' submissions, and the evidence, I dismiss Chua's appeals and allow the Prosecution's appeal against sentence. I order the sentence in respect of the Wrongful Confinement Charge to be increased from two months' imprisonment to 21 weeks' imprisonment. I also order this sentence to run consecutively with the imprisonment term of the VCH Charge, rendering an aggregate imprisonment term of 24 weeks.

Background facts and evidence

6 I begin with a summary of the facts which are material to these appeals. A more detailed account of them can be found in the GD.

Undisputed facts

7 The Victim was 24-years-old at the time of Chua's offences. During the period of her employment as a domestic helper from 20 December 2011 to 30 October 2012, she lived with Chua, Popo, Kathleen, Kathleen's husband and Kathleen's daughter at the residence.

8 The charges which Chua faces in the present case arise from the events taking place on 29 and 30 October 2012. In relation to the VCH Charge, only Chua, Popo and the Victim were at the residence on 29 October 2012 as Kathleen's immediate family were on holiday overseas.

9 In relation to the Wrongful Confinement Charge, after Chua and Popo left the residence in the morning of 30 October 2012, the Victim packed her bags and climbed out of a bedroom window onto a narrow ledge and then jumped onto the rooftop of an adjacent building. Shortly after the Victim exited the residence in this manner, she was spotted by two domestic helpers, who came to her aid. One of them telephoned for help from Humanitarian Organisation for Migration Economics ("HOME"), an independent charity organisation which looks after the welfare of migrant workers in Singapore. Volunteers from HOME arrived and brought the Victim back to their offices, where they called the ambulance and police.

10 The Victim suffered multiple fractures in her feet and ankles when she landed on the rooftop and was rendered wheelchair-bound for four to six weeks. The doctor who examined the Victim also noted injuries to her face, left eye, hands and forearms. In particular, the doctor noted that her left eye was swollen and bruised.

11 Chua was diagnosed with paranoid schizophrenia in 2008. However, Chua does not dispute that at the time of the alleged offences, and the period prior thereto, she was not in any major relapse.

Victim's evidence

12 At the trial below, the Victim testified to the following:

(a) From March or April 2012 to October 2012 when the Victim ran away, she was physically abused by Chua, Popo and Kathleen, who would punch, slap and kick her, and also hit her head against the wall.

(b) On 29 October 2012, the Victim mistakenly ate some fish for lunch which was not meant for her. Popo learnt of this in the evening and told her to go to the toilet. There, Popo poured bleach on her body. Popo also punched and slapped her, and slammed her head against the wall. A few minutes later, Chua entered the toilet and slapped the Victim's face repeatedly. Chua also pulled her hair. The Victim estimated that this assault by Popo and Chua lasted an hour, between 9.00pm to 10.00pm. After that, Chua instructed her to stand in the toilet until about 12.00 midnight when she was told by Chua to take a shower.

(c) The next morning on 30 October 2012, Popo left the residence first and then Chua left the residence at about 10.00am. Chua locked both the door and the gate of the residence when leaving. At around 11.00am, the Victim decided that she could no longer tolerate the abuse and hence decided to run away. She went to Kathleen's room and climbed out of the window onto a narrow ledge on the sixth floor. She then walked along the ledge and jumped onto the rooftop of an adjacent building, which was on the fifth floor of that building.

(d) The Victim decided to climb out of the window as she had no other way out of the residence. Both the door and gate to the residence were locked and she had never been given access to any keys to the residence ("the keys") from the time she started working for Chua's family. While the Victim had a mobile phone, she did not have a SIM card. She also did not have any off days, was not allowed to keep a diary, and did not know anyone other than Chua's family members in Singapore as she was prohibited from speaking to outsiders.

(e) Before the Victim left the residence, she wrote on two yellow Post-It sticky note papers, inserted them in a small notebook, and placed the notebook near the telephone in the living room. In the first note, the Victim wrote: "Thank you for all the kindness. Sorry Madam Kat, Sorry Madam Carrie, Sorry Sir, Sorry Lydia." ("the first farewell note"). The Victim explained that she was thanking Chua and her

family members (except Popo) for the kindness that they had shown to her in the first three months of her employment before the abuse started. In the second note (which was never recovered), the Victim recalled that she wrote: "I am leaving. I am going to a place where no one can hurt me, where there is no bleach."

Chua's evidence

13 Chua's case at the trial below was one of bare denial to both the VCH and the Wrongful Confinement Charges. In particular, Chua testified as follows:

(a) She was seldom home and had little or no opportunity to assault the Victim. She denied slapping the Victim on her face or pulling her hair on 29 October 2012.

(b) The keys to both the door and the gate of the residence were on a key ring, which was placed either on top of the intercom device in the living room or hung from a nail on the wall by the main door. The keys were always there at either of these two places for common use and the Victim was aware of this. The Victim thus had the right to leave the residence anytime she wanted and in fact did so on several occasions to fetch groceries and wash the family's car.

(c) On 30 October 2012, Chua left the residence at about 11.00am and had locked the door and the gate to the residence. She was unsure whether she was the last to leave as she did not see Popo that morning.

14 Apart from a suggestion that the Victim had been paid or threatened to lie in court, the Victim's testimony was unchallenged during cross-examination by Chua (who was unrepresented at the trial below). Neither did Chua allege any internal or external inconsistencies in the Victim's evidence. All Chua did was to assert that the Victim was fabricating allegations of abuse as a ploy to break her bond without incurring the facilitation fee (comprising flight costs and agent fees) and to get monetary compensation from her family. She also made unsubstantiated allegations that the Victim had "exhibited strange behaviour" for about two to three weeks before the incident and thus might not have been in the right frame of mind before jumping out of the window.

District Judge's determination

15 The District Judge had to decide two main factual questions (GD at [29]):

(a) on the VCH Charge, whether Chua slapped the Victim's face on the night of 29 October 2012; and

(b) on the Wrongful Confinement Charge, whether Chua wrongfully confined the Victim in the residence on the morning of 30 October 2012 by locking the Victim in the residence before she left.

16 In deciding both issues in the affirmative and convicting Chua of both charges, the District Judge made the following findings of fact:

(a) The Victim was a credible witness who was a "witness of truth" (GD at [30]).

(b) The Victim's version of events was amply corroborated by the evidence of independent witnesses, as well as medical evidence (GD at [31]–[33]).

(c) Chua was an untruthful witness. There were inconsistencies between her evidence in court and her statement to the police, which she was not able to explain satisfactorily (GD at [35]–[36]).

(d) Chua's assertions that the Victim had fabricated the allegations of abuse and that the Victim was not in the right frame of mind were unsupported by any evidence (GD at [37]–[43]) and were "nothing more than wild and baseless speculation" (GD at [43]).

(e) Chua's suggestions that the bruises on the Victim's face were pigmentation marks or could have been sustained as a result of the impact between the Victim's bag and her cheek when she jumped down whilst holding on to her belongings were contradicted by the medical evidence – Dr Tan Shera eliminated both these possibilities (GD at [44]).

(f) Chua's evidence that there were keys in the residence for the Victim's use was incredible. The photos taken of the residence on the very day of the incident did not show any such keys. Neither did Popo point the investigation officer, who had visited the residence, to where the keys could be found (GD at [46]).

Adduction of fresh evidence

17 Before I determine the merits of the respective appeals before me, there is a preliminary point on the admissibility of fresh evidence which I have to deal with.

18 During the hearing before me, counsel for Chua, Mr Quek Mong Hua ("Mr Quek"), made several references to the court transcripts of the concluded trials of Popo and Kathleen. The Prosecution objected to these references on the basis that no criminal motion ("CM") had been filed by Chua to seek leave from the court to adduce further evidence. Mr Quek then submitted that no CM was required as these transcripts had been referenced by Chua at the trial below.

Whether the evidence sought to be admitted is fresh evidence

19 Having perused the transcripts of the trial below, I am of the view that Mr Quek is indeed adducing fresh evidence on appeal and should have filed a CM in order to do so.

20 Dealing first with the transcripts of Popo's trial, I note that Chua expressly decided not to have those transcripts admitted into evidence in the present case. This is evident from the following exchange between Chua and the District Judge at the trial below:

> Ct: You know, Ms Chua, you can't pick and choose your mother's evidence as it suits you. You're the one who raised her evidence *in your submissions*, not the prosecution. *So you can't cherry pick and only choose those parts that are suitable to you …*
>
> A: *Yes, of course*, Your Honour.
>
> Ct: … Ms Chua, I'm not done… and then try and disregard those bits that are not suitable to you. So either you want to place complete reliance on her evidence, on her testimony, and the transcripts of her evidence in Court or not. *So if you choose to rely on her evidence, and choose to cite it in your submissions*, then prosecution is now responding by highlighting those bits in her evidence that show that certain facts are otherwise. So if you are now saying that I should disregard all of her testimony, and I mean all of her testimony, on account of her… what did you say, insanity? I don't know if that has exactly been pleaded. But if that is your position then I will disregard all of your mother's evidence as has been led in in my sister Judge's Court. *Which is it, are you relying or not?*
>
> A: *No, Your Honour.*
>
> Ct: Alright.
>
> [emphasis added]

21 In relation to the transcripts of Kathleen's trial, Chua similarly did not apply for these transcripts to be admitted into evidence. Crucially, Chua at the trial below made only immaterial references to Kathleen's testimony (adduced at Kathleen's trial). So all the references that Mr Quek now makes to the testimonies of the Victim and Dr Heng Gek Hong in the transcripts of Kathleen's trial are references to fresh evidence. Mr Quek is thus wrong to say that these transcripts are not new evidence. A mere passing reference in the trial below to a testimony given in a separate trial cannot possibly mean that the transcripts containing that testimony have been admitted, much less in their entirety (containing the testimonies of all the witnesses).

22 Accordingly, both Popo's and Kathleen's transcripts are fresh evidence on appeal, and the proper procedure to have this evidence admitted is through leave of the court obtained by way of a CM (see ss 392 and 407 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC")

and Form 78 in the Criminal Procedure Code (Prescribed Forms) Regulations 2010 (S 811/2010)).

23 Nevertheless, even though Mr Quek did not file a CM, I was concerned that Chua's conviction may be unsafe given Mr Quek's submission that the new evidence in these transcripts will indubitably undermine the credibility of the Victim. I thus allowed Mr Quek to direct my attention to this evidence through further submissions, and the Prosecution agreed to this direction, albeit after recording its procedural objection concerning the failure to file a CM. To ensure fairness to both sides, I offered the Prosecution an opportunity to reply to the further submissions made by Mr Quek, and the Prosecutors took that opportunity. In this regard, I must commend Mr Zhuo and Ms Adrianni, who appeared on behalf of the Prosecution, for not being obstructive in insisting on the filing of a CM. This special direction is, however, not to be seen as condoning Mr Quek's failure to file a CM: only as a matter of exception and for the purpose of case management did I waive the procedural requirement of filing a CM as I did not wish for the proceedings to be delayed any further.

24 I turn now to analyse the admissibility of the fresh evidence.

Whether the fresh evidence should be admitted

25 It is well established that for fresh evidence to be admitted on appeal under s 392(1) of the CPC, the three conditions of non-availability, relevance and reliability as laid out by Denning LJ in *Ladd v Marshall* [1954] 1 WLR 1489 must be satisfied. The stringency of these conditions in the criminal context has been refined by subsequent case law, which I will refer to below. The Prosecution submits that all three conditions are not satisfied in the present case.

Non-availability of evidence

26 It is undisputed that the transcripts were available for Chua's use at the trial below. The Prosecution goes further to submit that Chua had in fact made the "tactical decision" not to admit these transcripts into evidence. I disagree. Given that Chua is not legally trained and was acting in person, she might not know the consequences on appeal of not having the evidence admitted at trial. Seen in this light, it is unlikely for it to have been a "tactical decision" on her part to do so.

27 The Prosecution relies on the case of *Sundram Peter Soosay v PP* HC/Magistrate's Appeal No 9104 of 2015/1 ("*Soosay*") to submit that an appellate court will not allow a litigant to recant his decision not to adduce evidence at the trial, even if the litigant is in person. In *Soosay*, the appellant, who had been convicted of one charge of voluntarily causing hurt to a taxi driver, Sun Chuan Hua ("Mr Hua") appealed against his

conviction. In his appeal, one of the arguments made was that the trial judge had erred in refusing to recall Mr Hua for the purpose of allowing the appellant to admit Mr Hua's police statement which was allegedly inconsistent with Mr Hua's oral evidence. The High Court dismissed the appellant's appeal and held that once Mr Hua's police statement had been furnished to the appellant (who was acting in person), it was for the appellant to decide what to do with it. The appellant sought leave from the Court of Appeal to refer this issue as a question of law, but leave was denied.

28 In my view, *Soosay* does not stand for the proposition that the Prosecution advances as the High Court in that case was not faced with the question of non-availability in admitting further evidence. Instead, the question was whether the trial judge correctly exercised his discretion not to permit the appellant to recall Mr Hua. Further, even at the broader level of principle, the decision is eminently justifiable given that the appellant in that case was not only legally trained but also happened to be a law professor, teaching criminal law in one of the leading law schools in Asia. It will not be appropriate to hold Chua to the same standard as the appellant in *Soosay*.

29 Even if I agree with the Prosecution that the condition of non-availability is not in favour of admission, this does not *ipso facto* render the transcripts inadmissible. This is because, as the Prosecution itself acknowledges, the condition of non-availability is less "paramount" than the other two conditions in the context of criminal appeals (*Soh Meiyun v PP* [2014] 3 SLR 299 ("*Soh Meiyun*") at [16]; approved by the Court of Appeal in *Iskandar bin Rahmat v PP* [2017] 1 SLR 505 at [72]). I am of the view that the following observations made by Chao Hick Tin JA in *Soh Meiyun* at [16] apply *a fortiori* to an appellant who, like Chua, was unrepresented at trial:

> In my view, *where the fresh evidence would go towards exonerating a convicted person or reducing his sentence, the spirit of greater willingness to admit such evidence on appeal* as demonstrated by the Court of Appeal in *Mohammad Zam* is to be preferred. The *Ladd v Marshall* condition of non-availability is designed to prevent the waste of judicial resources that results from reopening cases which ought to have been disposed of the first time around, but there is the countervailing consideration that *an erroneous criminal conviction or erroneously heavy punishment will have drastic ramifications for the convicted person*. It could spell an unjustifiably lengthy period of incarceration and/or corporal punishment, or in the worst case, death. Even if none of these undeserved penalties ensues, since one of the functions of the criminal law is to label persons as deserving of society's condemnation by reason of their conduct, a conviction carries with it an indelible moral stigma that affects the person's life in many real ways. Hence, an appellate court exercising criminal jurisdiction should generally hold that *additional evidence which is favourable to the accused person and which fulfils the Ladd v*

> *Marshall conditions of relevance and reliability is 'necessary' and admit such evidence on appeal.* [emphasis added]

Relevance of evidence

30 I turn next to consider the condition of relevance. Mr Quek submits that the fresh evidence is relevant in showing that the Victim was not a credible witness because she had given inconsistent testimonies in the different trials and had embellished her allegations of abuse and wrongful confinement.

31 The Prosecution divides the fresh evidence into three categories, differentiated according to subject-matter. I accept these categories as accurate and set them out, together with the arguments made by Mr Quek, as follows:

> (a) The first is the Victim's testimony in Kathleen's and Popo's trials, with regard to how the Victim was never given access to the keys, as well as how she was abused by Popo and Chua on 29 October 2012. Mr Quek claims that the Victim's testimonies in Kathleen's and Popo's trials are inconsistent with her evidence in Chua's trial, and this affects her credibility as a witness.
>
> (b) The second is the evidence given by Dr Lee Haur Yueh ("Dr Lee") in Popo's trial. Dr Lee was the dermatologist who examined the burns on the Victim's body and hands. Mr Quek submits that Dr Lee's evidence contradicts the Victim's evidence that Popo poured bleach on her hands and body on 29 October 2012. This too goes to the credibility of the Victim as a witness.
>
> (c) The third is the Victim's testimony in relation to the first farewell note in all three trials. Mr Quek submits that this is inconsistent with the Victim's general and specific allegations of having been assaulted and ill-treated by Chua.

32 The Prosecution submits that none of the evidence in these categories are relevant. First, the evidence given by the Victim in Chua's trial is consistent with her previous testimony in Popo's and Kathleen's trials. Second, the objective medical evidence supports the Victim's claim that she was abused by Popo with bleach on 29 October 2012. Third, the Victim's explanation as to why she wrote the first farewell note is consistent and credible. For the reasons cited by the Prosecution in their reply submissions, I find that none of the fresh evidence is relevant. I shall explain my reasons in relation to each of these categories of evidence.

(1) Victim's testimony in relation to the assault and keys

33 On this category, the inconsistences in the Victim's testimony highlighted by Mr Quek are only apparent and not real. They arise out of selective quotations from the different trial transcripts, and fail to

appreciate the fact that different questions were asked of the Victim in the different trials. Thus, this evidence is not relevant in affecting the Victim's credibility as a truthful witness, which the District Judge found her to be.

34 On the matter of the keys to the residence, Mr Quek submits that the Victim's testimony in Chua's trial is inconsistent with her testimony in Kathleen's and Popo's trials in two main ways, and that these inconsistencies undermine her credibility. I do not accept his submission.

35 First, Mr Quek highlights that in Popo's trial, the Victim said that when she *first started work*, the keys would be placed at a long table next to a flower vase, presumably for common use, whereas in Chua's trial she did not mention anything about the keys being available for common use at *any time*. In my view, there is little merit to this observation. In Chua's trial, the deputy public prosecutor ("DPP") asked if the Victim was given a set of keys to the gate and the door, and the Victim's answer was in the negative. There is absolutely no falsity in the reply given that it is common ground that the Victim was not given a personal set of keys for her own use. Crucially, after hearing the Victim's reply, it was then up to Chua to ask the Victim whatever questions in cross-examination relating to the keys as she wished to. However, Chua failed to do so. The Victim should not be faulted for failing to volunteer additional information about the existence of the keys in the first few months of her employment since these questions were not asked of her at Chua's trial, whilst they were asked of her at Kathleen's and Popo's trials.

36 Second, Mr Quek observes that in Kathleen's and Popo's trials, the Victim said that she had seen the keys in various locations in the residence, whereas in Chua's trial she claimed that she had never seen those keys before. This observation is simply incorrect. This is evident from the following testimony given by the Victim at Chua's trial:

> Ct: Are you able to explain to me how the doors … the main door and the gate to the unit is secured; how is it locked?
>
> …
>
> A: There was a time when … there were times when I had to clean the gate, the gate was always locked, so I would not know if there was a key or how the key to that gate looked. If the family was inside the house the wooden door … the main door is always closed but not locked, if the family is inside. I have tried opening that gate before, in the beginning with one key when I was cleaning the grills and the area, and that's it, Your Honour, that's what I know. There was one key to the gate. I think there are two keys; one for the gate, one for the main door, *but I have not seen* or I have not used. In the past I have tried using the key to the gate when I was cleaning. *I have not seen* … I think the key to the main door is with a bunch of keys, so I would not know which key is used for the main door. I know though that it is among the bunch of keys. ***I have seen it before but I don't … I would not know which one. I***

> ***have seen the bunch of keys but I don't know which key was used for the main door.***
>
> [emphasis added in italics and bold italics]

37 Although the Victim initially said "I have not seen" the keys before, read in the context of her overall testimony, what she was in fact saying is that she was not sure how the individual keys to the gate and door looked like respectively, not that she had never seen the bunch of keys before.

38 On the Victim's testimony in relation to the physical abuse on 29 October 2012, Mr Quek highlights the following inconsistencies:

(a) The time and duration of the alleged abuse: In Popo's trial, the Victim testified that the abuse lasted from 9.00pm to 3.00am, but in Chua's trial, the Victim expressly or impliedly testified that the alleged abuse ended around midnight with Chua asking her to shower.

(b) Chua's involvement: In Popo's trial, the Victim testified that Chua was sitting outside the kitchen toilet, watching her being abused, and at one point, even standing guard to make sure that she could not shower. However, in Chua's trial, the Victim testified that she was not sure where Chua was when she was being assaulted by Popo.

(c) Who caused the Victim's injuries: Despite testifying in Popo's trial that Popo was responsible for all the injuries she sustained on 29 October 2012, the Victim testified in Chua's trial that Chua also slapped her and pulled her hair.

39 I agree with the Prosecution that these alleged inconsistencies arise primarily from Mr Quek's failure to appreciate that the abuse in question took place in two parts:

(a) The first part of the abuse took place from 9.00pm to 12.00 midnight, and involved both Chua and Popo hitting the Victim, and Popo pouring bleach and then telling the Victim to stand in the toilet. At about midnight, Chua told the Victim to take a shower, and this was when Chua's involvement in the abuse ended ("pre-showering abuse").

(b) The second part of the abuse started after the Victim went to bed after showering. At some point in time, Popo woke the Victim up, asked her to go to the kitchen to do laundry, and started to abuse the Victim again. Chua was not involved in this latter abuse ("post-showering abuse").

40 During Chua's trial, the Victim did not mention the post-showering abuse because she was not asked about it. In any event, the post-showering abuse was irrelevant in Chua's trial since it was never the Prosecution's case that Chua was involved in the latter abuse. Accordingly, there is no

inconsistency in the Victim's evidence about how the pre-showering abuse by Chua and Popo ended at about midnight, while Popo continued to abuse her after the shower.

41 Next, concerning the person responsible for her injuries, I bear in mind that the Victim testified at the outset that she would have difficulties identifying the person (as between Chua and Popo) who caused each of the injuries she suffered, because she was assaulted simultaneously by Chua and Popo. Indeed, I consider that it would be very unfair to expect her to be able to do so given the nature of the assault she endured. What matters is that the Victim has been consistent in her testimonies in Popo's and Chua's trials that she was assaulted by both of them. Thus, if the transcripts of Popo's trial is admitted, it will only go to fortifying the Victim's credibility as opposed to weakening it.

(2) Objective medical evidence

42 I turn now to Dr Lee's medical evidence. Mr Quek submits that Dr Lee gave evidence in Popo's trial that the injuries on the Victim's hands could not have been sustained within the past 24 hours before his examination of her, and that this disproves the Victim's claim of being abused by bleach on 29 October 2012.

43 This is a misrepresentation of Dr Lee's evidence. What Dr Lee was asked about was the age of the injuries sustained by the Victim on her hands. In this regard, Dr Lee's evidence was that those injuries could not have been the result of bleach poured on the Victim's hand a mere 24 hours before the Victim was examined by Dr Lee, but were indicative of a skin condition that had "gone on for days and weeks". This is entirely different from saying that it is unlikely that the Victim had bleach poured on her hand within 24 hours before Dr Lee examined her. The true import of Dr Lee's evidence is clear from his re-examination by the DPP at Popo's trial, which Mr Quek did not highlight to me:

> Q: And your answer to Her Honour's first question. You said it is highly unlikely that it is due to something done 24 hours prior to consultation. Do you mean … correct me if I'm wrong. *Do you mean that if the hands were totally normal 24 hours before consultation and something was done to them, it was highly unlikely to see this result?*
>
> A: Yes, you are correct.
>
> [emphasis added]

44 Thus, far from weakening the Victim's credibility, Dr Lee's evidence is in fact consistent with the Victim's account of not only having bleach poured on her on 29 October 2012 but also of her being forced to soak her hands in bleach several times during her period of employment.

(3) First farewell note

45 In relation to the first farewell note, Mr Quek submits that it is incredulous for the Victim to have apologised and thanked everyone in Chua's family (with the exception of Popo), despite her claims that Kathleen and Chua had also abused her.

46 This submission however does not engage the point on relevance of the fresh evidence because Mr Quek himself concedes that the Victim's testimony on this point was in fact consistent in all three trials. If anything, the evidence only shows that the Victim is a consistent witness. Thus, I prefer to address the substance of the first farewell note below when I consider the merits of the appeal against conviction.

Reliability of evidence

47 Since I have found that the fresh evidence sought to be adduced is not relevant, I need not address the question of reliability other than by making a brief observation: all the pieces of fresh evidence in the present case are *prima facie* reliable given that they are oral testimonies of witnesses made under oath in court.

48 However, the Prosecution submits that the reliability condition is not satisfied as the reliability of the new evidence cannot be ascertained without cross-examination of the relevant witnesses. I agree that the witnesses should be given an opportunity to explain any inconsistencies with their differing testimonies (if any) at the separate trials. However, the fact that this was not done does not mean that the evidence automatically fails the condition of reliability. The proper recourse in such a case would be to remit the matter to the trial judge for the witnesses to explain the inconsistency or be cross-examined on this evidence. Thus, if I had found the fresh evidence sought to be adduced to be relevant in the present case, I would have been inclined to remit the matter to the District Judge to allow the witnesses an opportunity to explain the inconsistency or be cross-examined on the matter.

49 Since all the categories of fresh evidence are not relevant, I find that the fresh evidence, which Mr Quek attempts to adduce at this stage, is not admissible.

Chua's appeal against conviction

50 During the hearing before me, the submissions made by Mr Quek in relation to Chua's appeal against conviction on both charges primarily related to the credibility of the Victim, which was largely based on the fresh evidence that he sought to have admitted. Given my decision not to admit this evidence, I will only consider the other arguments that do not relate to the fresh evidence.

51 In assessing these arguments, I bear in mind the role of an appellate court in relation to issues of fact. In short, it should not go beyond considering (a) whether the trial judge's assessment of witness credibility is "plainly wrong or against the weight of evidence"; (b) whether the trial judge's "verdict is wrong in law and therefore unreasonable"; and (c) whether the trial judge's "decision is inconsistent with the material objective evidence on record": see *Haliffie bin Mamat v PP* [2016] 5 SLR 636 ("*Haliffie*") at [32] and *ADF v PP* [2010] 1 SLR 874 ("*ADF*") at [16].

VCH Charge

52 Mr Quek's main argument on the VCH Charge relates to the first farewell note. He says that it is incredulous for the Victim to have apologised and thanked Chua in the first farewell note, despite her claim that Chua had also abused her the very night before the first farewell note was written. On a consideration of the evidence adduced at the trial below, I agree with the Prosecution that this note is not necessarily inconsistent with the abuse inflicted on her by Chua.

53 During the trial below, the Victim explained that she had been taught that she needed to obtain permission before leaving, and hence she felt that she had to apologise for leaving the residence without seeking their permission to do so. The Victim also explained that she had included Kathleen and Chua in the first farewell note as they had been kind to her in the initial two to three months of her employment. Popo was left out of the note because Popo was the only member of the household who had abused her "consistently every day".

54 Furthermore, Mr Quek omits to mention that the first farewell note was followed by a second note where the Victim had stated that she was going to a place where no one could hurt her, where there was no bleach (see above at [12(e)]). Read in context, the two notes simply show that while the Victim was grateful for the initial good treatment given to her by Chua's family (with the exception of Popo), she could no longer tolerate the subsequent abuse meted out on her by Chua and Kathleen (in addition to that from Popo).

Wrongful Confinement Charge

55 On the Wrongful Confinement Charge, I see no merit in Mr Quek's argument that Chua may not have left before Popo on the morning of 30 October 2012. The Victim testified that Chua was the last person to leave the unit at about 10.00am on 30 October 2012, and Chua locked the main door and gate when she left the residence, leaving the Victim with no means of leaving the unit. It was for Chua to then rebut this evidence but all she did was to state that she was *unsure* whether she was the last to leave but had admitted that she had locked the gate and the door of the residence before she left. Given the equivocal nature of Chua's testimony, the District

Judge was entitled to believe the Victim and find that Chua had left after Popo.

56 I am also not persuaded by Mr Quek's argument that there was always a set of keys in the residence for common use. The District Judge carefully considered this possibility and ruled it out on the strength of the Victim's testimony. In my view, given the extent to which the Victim was isolated and restricted in her freedom (no off days, no SIM card, not allowed to keep personal diaries, *etc*), it would have been incongruous for the Victim to have been afforded the means to leave the residence whenever she wished.

57 Even if there were such keys for common use, I am inclined to believe that Chua in all likelihood would have intentionally removed those keys from the residence or kept them somewhere in the residence such that they were not available for common use and in particular for use by the Victim on 30 October 2012. This is because Chua was alive to the victim's visible injuries before she left the residence on the morning of 30 October 2012. Under cross-examination by the DPP, Chua admitted to being aware of the "redness" in the Victim's hands:

> Q: … Were there any injuries on her when you last saw her on the morning of 30th October 2012?
>
> A: No, there were no injuries on her.
>
> Q: What about her hands? Were they red or were they normal?
>
> A: No, her hands were red with scratches, because she … she … the… her hands were itchy and she scratch, so her hands were red with scratches on them.
>
> Q: Now, I will refer you to P18 to 26, that bundle.
>
> A: Yes, I have the photos.
>
> …
>
> Q: Have you seen these bruises on [the Victim's] face before?
>
> A: No, not on the day before I left the house. The bruises were not on her face.
>
> Q: And look at P23 to P26. Have you seen these injuries on [the Victim's] hands before?
>
> A: Yes. The … the … *the injuries were on her hands* as I have described. They were red with scratches. Her own scratches, because they were itchy. *So her hands were as they were in the photo now on the day before she jumped.*
>
> [emphasis added]

58 Thus, even if the Victim had access to the keys on most days, Chua had a very good reason to keep them out of the Victim's reach on 30 October 2012 – to prevent her from leaving the house so that no one would notice the patently visible injuries she had sustained from the assault

the night before and be alerted to the possibility that she was being physically abused. In the circumstances, I see no reason to disturb the District Judge's finding of fact that Chua had voluntarily locked the Victim in the residence.

59 In the overall analysis, I am not persuaded that the District Judge's decision to convict Chua was erroneous or against the weight of the evidence. She correctly evaluated the evidence given by Chua and the Victim in their totality before concluding that Chua slapped the Victim on 29 October 2012 and also wrongfully confined the Victim on 30 October 2012. Accordingly, I dismiss Chua's appeal against conviction on both the charges.

The appeals against the sentences

60 Before me, both Chua and the Prosecution appeal against the sentences imposed by the District Judge. Chua appeals against the sentences for both charges. The Prosecution appeals against the sentence for the Wrongful Confinement Charge and the order that the two custodial sentences run concurrently.

Relevance of uncharged offending conduct in sentencing

61 These appeals raise an important question of sentencing principle: to what extent can a sentencing court take into account offending conduct of the accused for which no charges have been brought ("uncharged offending conduct"). I will consider and set out my views on this question as it has a bearing on the appropriate sentences in these appeals.

62 The issue arises because the District Judge, in determining the appropriate sentence for both charges, took into account facts which could constitute standalone independent offences, based on the findings of fact she made. For the Wrongful Confinement Charge, the District Judge agreed with the Prosecution that "the wrongful confinement was present well before the date specified in the charge", and she took this into account in sentencing Chua (even though each occasion technically constitutes an independent offence and grounds a separate charge of wrongful confinement) (GD at [97]). For the VCH Charge, the District Judge considered the fact that Chua had also pulled the Victim's hair (even though there was no charge brought against Chua for this act and it was also not specified in the VCH Charge) (GD at [91]).

63 During the hearing before me, Mr Quek submitted that the District Judge erred in considering other instances of confinement for the Wrongful Confinement Charge. Although no specific arguments were made in relation to the VCH Charge, I believe the logic of his argument applies equally to the consideration by the District Judge of the fact that Chua had also pulled the Victim's hair.

64 Having considered the law on the facts that may be taken into account by a sentencing court, I agree with the District Judge that the uncharged offence of pulling the Victim's hair is a valid aggravating factor which I should take into account in sentencing Chua but not the uncharged offences of any previous wrongful confinements committed by Chua. I will first summarise why I take this view and then turn to analyse the law.

65 For the Wrongful Confinement Charge, even though each past instance of confinement discloses a separate offence for which no charges have been brought against Chua, the fact that the Victim had previously been subjected to wrongful confinement is relevant as evidence to prove a certain fact relevant to Chua's sentencing. The fact which is proved by the offences is Chua's *knowledge* that the Victim had previously been wrongfully confined and subjected to abuse. And this knowledge is relevant to the sentencing exercise in the present case as it is relevant to the degree of Chua's culpability. To be clear, the previous wrongful confinement offences are relevant to Chua's sentencing in only this specific evidential sense. The offences themselves, being very detached in time from 30 October 2012, the date of the Wrongful Confinement Charge, are not relevant for the purpose of sentencing. The point here is simply that in knowingly prolonging the Victim's wrongful confinement, Chua increased the risk that the Victim would suffer injuries owing to the conditions of the confinement and Chua's actions in so confining the Victim on 30 October 2012 ultimately drove the Victim to take the drastic step of escaping from the premises of the residence through a dangerous exit which resulted in the Victim sustaining serious injuries in the process of doing so. This is an aggravating factor that I cannot ignore.

66 In taking into account this aggravating factor, I only attach weight to Chua's knowledge of the past instances of confinement and give no weight to the fact that Chua was responsible for the Victim's prior confinement. To do otherwise would violate the well-established rule that the court should not take into account uncharged past offending on the part of the accused, a rule which I discuss below. In other words, if the Victim's previous wrongful confinement had not been the doing of Chua but the doing of others, I would have still held that Chua's offence is aggravated because Chua knew about that previous period of confinement, and was by her offence on 30 October 2012 adding salt to a festering wound. It can be seen that for the purpose of this analysis, taking into account as an aggravating factor Chua's *awareness* (at the time of her commission of the offence of wrongful confinement on 30 October 2012) of the mental and physical state of the Victim resulting from the previous periods of wrongful confinement and the various acts of physical abuse inflicted on the Victim (whether attributable to Chua, Popo or others) does not at all mean that Chua's sentence for the Wrongful Confinement Charge has been enhanced in any

way on account of Chua having *committed* other offences during those earlier periods for which she was not charged.

67 Next is the issue of whether Chua's pulling of the Victim's hair is relevant to sentencing for the VCH Charge. In my judgment, while this fact is not stated in the VCH Charge, it is nevertheless relevant to the sentencing exercise because it forms part of the immediate circumstances in which the offence of slapping the Victim was committed by Chua. Chua's pulling of the Victim's hair can thus be taken into account as an aggravating factor for the purpose of sentencing for the VCH Charge.

68 I turn now to analyse the law.

Role of the courts in sentencing

69 It is apposite to first appreciate the difference in the role played by the courts when sentencing an offender ("sentencing stage") as opposed to when convicting an offender ("conviction stage"). At the conviction stage, the judge is called upon to decide whether the elements of the offence for which an accused is charged have been proved beyond reasonable doubt. In this connection, the judge is required to only consider relevant evidence and should not consider any inadmissible evidence. At the sentencing stage, the judge is to determine the appropriate sentence in light of, amongst other things, the *culpability* of the accused. In assessing the culpability of an offender, the judge should take into account *all* the relevant facts and circumstances. At this stage, the range of facts that can be considered is usually wider than that necessary to determine whether the elements of the offence are satisfied.

70 In the related context of the mitigating facts that are capable of being considered in the sentencing stage, Chan Sek Keong CJ stated in the Court of Appeal case of *PP v Aniza bte Essa* [2009] 3 SLR(R) 327 (at [60] and [62]):

> 60 … In *PP v Chan Yoke Ling Catherine* [2004] SGDC 108 …, District Judge Kow Keng Siong explained the reasons for the court's somewhat indulgent approach as follows (at [37]):
>
> > a. Firstly, the sentencing process and a trial are materially different in terms of their objectives. The reasons for requiring strict proof by admissible evidence of all relevant facts – eg the presumption of innocence – do not apply during sentencing.
> >
> > b. Secondly, *the usual limitations on evidentiary sources and standard of proof could potentially limit the information available to the Judge, information which is necessary for ensuring that a sentence will adequately and effectively protect, deter and rehabilitate: PP v Tan Fook Sum* [1999] 2 SLR 523.
> >
> > c. Finally, a heightened burden of proof may also add to the time and resources spent in the sentencing process, and risk turning it into a

> second trial. Such a spectre is clearly undesirable, as it would result in an *inefficient criminal justice process*.
>
> We endorse these views …
>
> …
>
> 62 We do not think that it is desirable that we lay down too many rules to micro-regulate this area of criminal practice as they may create unnecessary satellite litigation on whether there has been due compliance with the rules. … [T]he role of the court is to ensure that the sentencing process is fair to both the Prosecution and the Defence, and *some degree of flexibility is called for*. As observed in Christopher Emmins, *Emmins on Sentencing* (Oxford University Press, 4th Ed, 2001) (Martin Wasik ed) at p 74:
>
> > The procedure between conviction and sentence is markedly different from that which pertains to the trial itself. *The role of the judge or bench of magistrates changes from that of an umpire to one of a collector of information about the offence and the offender*. Rules relating to the admissibility of evidence are somewhat relaxed, and the combative or adversarial style of the opposing lawyers is less marked. The judge takes a more *central and active role in the gathering of information, which comes from a variety of sources, in reaching the sentencing decision*. In fact there are relatively few legal rules governing the procedure between conviction and sentence …
>
> [emphasis added]

71 The reason for this markedly distinct approach at the sentencing stage is to give full effect to the culpability of the offender. Between two offenders convicted of the same offence, *ceteris paribus*, the one who is more culpable than the other ought to receive a higher sentence. This is what I consider as the "relativity principle". It operates in a similar way to the parity principle, under which co-offenders in a common criminal enterprise, who are of the same culpability, should not receive "unduly disparate" sentences: see *Chong Han Rui v PP* [2016] SGHC 25 at [1].

72 Having said that, I note that there are some categories of facts that cannot be considered at the sentencing stage ("impermissible facts"). One well-established rule is that the sentencing court cannot consider the fact that the accused could have been charged with a more serious offence and therefore treat the accused as if he had been found guilty of the graver charge. This principle was stated very recently by the Court of Appeal in *Suventher Shanmugam v PP* [2017] SGCA 25 ("*Suventher*") in relation to capital offences at [36]:

> The fact that the charge has been reduced from one which would have attracted the death penalty to one which would not is not relevant to sentencing. This principle was explained by Yong Pung How CJ in *Sim Gek Yong v PP* [1995] 1 SLR 537 at [15] in this way:
>
> > The onus lies on the Prosecution in the first place to assess the seriousness of an accused's conduct and to frame an appropriate

> charge in the light of the evidence available. Once an accused has pleaded guilty to (or been convicted of) a particular charge, it cannot be open to the court, in sentencing him, to consider the possibility that an alternative – and graver – charge might have been brought and to treat him as though he had been found guilty of the graver charge.
>
> We agree that the court should not 'regard the DPP's decision to amend the charge to a non-capital one as justifying a higher sentence in itself' (*Rahmat* at [8]).

73 The other impermissible fact in sentencing is that relating to uncharged offending conduct, which I shall now consider in greater detail.

Rule against considering uncharged offending conduct

74 Generally, at the sentencing stage, the court cannot consider facts relating to offences for which no charges have been brought against the accused ("uncharged offences"). In *Chua Tiong Tiong v PP* [2001] 3 SLR 425 ("*Chua Tiong Tiong*"), the appellant was convicted of bribing a senior police officer. At the time of sentencing, several other police officers had already been convicted of accepting bribes from the appellant (although he was never charged with those offences as a giver). The High Court (*per* Yong Pung How CJ) remarked at [28] that:

> … No doubt the appellant may have been responsible for numerous acts of notoriety involving not one officer, but a segment of the police force … I was mindful that any sentence imposed … must always be based on established principles of law … since the appellant was never charged, nor convicted in those previous cases, I was careful not to let the opposite view affect my judgment here. Any punishment here was to fit the crime, not the criminal.

75 This issue has subsequently received considerable judicial attention in our courts. Several recent cases have concluded that if the Prosecution elects not to charge an accused for past offending conduct (either as proceeded charges or as charges to be taken into consideration for the purpose of sentencing ("TIC")), these uncharged offences cannot be considered by the court as an aggravating factor at the sentencing stage. In *Vasentha d/o Joseph v PP* [2015] 5 SLR 122 ("*Vasentha*"), Sundaresh Menon CJ opined at [62]:

> In my judgment, an offender cannot be punished for conduct which has not formed the subject of the charges brought against him; he can only be sentenced for offences of which he has been convicted, either by trial or a plea of guilt, and in doing so, *regard may properly be had **only** to any other charges which the accused has consented to being taken into consideration for the purpose of sentencing.* [emphasis added in italics and bold italics]

76 This principle was further expounded by See Kee Oon JC in *PP v Tan Thian Earn* [2016] 3 SLR 269 ("*Tan Thian Earn*"). In this case, the respondent pleaded guilty in the State Courts to four charges – one of these charges was brought under s 10A(1)(*c*) of the Misuse of Drugs Act

(Cap 185, 2008 Rev Ed). This charge pertained to his possession of several tablets of pseudoephedrine, which was a substance used in the manufacture of methamphetamine (a controlled drug). The respondent admitted that he had intended to use these tablets to manufacture methamphetamine and that he had successfully done so on at least *eight previous occasions*. The High Court opined that such facts relating to prior offending, for which no charges had been brought (proceeded or TIC), cannot be considered as a "sword" to enhance the sentence as an aggravating factor even though it can be used as a "shield" by the Prosecution to deny the accused any mitigating weight associated with being a first-time offender (*Tan Thian Earn* at [61]). The High Court preferred this approach as a matter of principle (at [62]):

> … I would agree with Menon CJ [in *Vasentha*]. *Not punishing an offender for an offence for which he was not charged is an elementary component of fairness*. There is also, to my mind, a constitutional dimension to this issue. At the end of the day, the decision whether to frame a charge and, if so, what charge to frame, is the constitutional prerogative of the PP ('PP'). In the scenario that the PP elects to frame a lower charge, it would not be for the courts to go behind the PP's decision by sentencing the offender as if he had been charged under a more serious provision. Conversely, if the PP chooses not to frame a charge for each of the antecedent acts of offending then I do not think that the court should be asked to *indirectly sanction the offender for the commission of those acts by way of an enhancement to the sentence in respect of a charge which they did frame*. I accept that the example I gave is slightly different but the point of principle is the same. If the Prosecution desires the offence to be taken into consideration, they should draw up an appropriate charge. If they elect not to or if they cannot (eg, because of a lack or insufficiency of evidence), then there is no reason why they should expect to be entitled to ask for this to be taken into account in sentencing. [emphasis added]

77 See J applied this same principle in the subsequent case of *Chong Yee Ka v PP* [2017] SGHC 47 ("*Chong Yee Ka*"), which involved the physical abuse of a domestic helper. The appellant in *Chong Yee Ka* pleaded guilty to two charges under s 323 read with s 73(2) of the Penal Code and consented to having one similar charge to be taken into consideration. In the statement of facts, the appellant admitted to physically abusing her domestic helper on more occasions than the dates specified in the charges that were brought against her. At first instance, the district judge took these uncharged offences into account as an aggravating factor in concluding that there had been a "prolonged period of physical and mental abuse". See J disagreed with this approach and remarked as follows at [47]:

> … Although the appellant has admitted to prior offending conduct for which she has not been charged, this should not be treated as an aggravating factor *per se*. Adopting the reasoning of Sundaresh Menon CJ in [*Vasentha*] (at [62]), I decline to punish the appellant for conduct which is not the subject of any charge brought against her. Logically, this means *I will not*

> *consider instances of past offending conduct as an aggravating factor when no charges in respect of such conduct have been brought.* [emphasis added]

78 I agree with the rule expressed in these cases. The point here is that if the Prosecution wants the sentencing court to consider the accused's past offending conduct, it must draw up the necessary charge or charges in respect of that conduct after ascertaining that there is sufficient evidence available to prove the charges. If the Prosecution ultimately decides not to proceed on any of these charges, it must apply for these outstanding charges to be taken into consideration in order for the court to consider them at the sentencing stage upon the accused's conviction on the charges proceeded with, unless the Prosecution intends to withdraw the outstanding charges entirely or to proceed with them at another trial. If the Prosecution does not apply for the outstanding charges to be taken into consideration, it cannot expect the court to *nevertheless* consider such past offending conduct. If the court does so, it will be recognising a new category of offences, to be taken into consideration for the purpose of sentencing at the sentencing stage, in addition to the legislatively provided category of TIC offences under s 148 of the CPC. This will be an undesirable outcome. There are legal safeguards on how such outstanding offences are to be dealt with as part of the sentencing process. It is trite that both the *admission* by the accused to the commission of the outstanding offences and the *consent* of the accused to have them taken into consideration for determining the sentence is indispensable before the TIC offences can be considered at the sentencing stage: see s 148(1) of the CPC. Section 148(5) of the CPC further protects the accused from being charged or tried for any offences that the court has already taken into consideration for sentencing unless the conviction for the original offence is set aside. Where the accused does not admit to committing the outstanding offences as spelt out in the TIC charges or does not give his consent, the sentencing court is required to ignore these outstanding charges because "[w]hether or not he will be found guilty or not of those charges was still a matter not known" (*Chua Tiong Tiong* ([74] *supra*)at [29]).

79 For completeness, I also observe that a similar approach has been adopted in England and Australia. In England, the Court of Appeal has held in *R v Kidd* [1998] 1 WLR 604 at 607B that an accused "may be sentenced *only* for an offence proved against him (by admission or verdict) or which he has *admitted and asked the court to take into consideration* when passing sentence" [emphasis added]. In that case, the Court of Appeal found that the practice of accepting "specimen" charges for the purpose of sentencing for the entire offending alleged was improper. In Australia, the Australian Court of Appeal expressed in *R v Newman and Turnbull* [1997] 1 VR 146 ("*Newman and Turnbull*") (at 150 *per* Winneke P):

> The common law principle that a person cannot be sentenced for an offence with which he has neither been charged nor convicted is a venerable one, but

> it is one which has created a tension with another equally venerable principle of sentencing; namely, that a sentencing judge is entitled, and indeed bound, to take into account all the circumstances which are relevant to the commission of the offence with which the prisoner has been charged. *The latter principle however must, in the appropriate circumstances, give way to the former because it could never be consistent with fairness and justice to sentence a person for an offence with which he has not been charged or convicted …* [emphasis added]

80 Despite this general rule, it is noteworthy that Winneke P in *R v Cincotta* (unreported, Supreme Court of Victoria, Court of Appeal, 15 October 1997) observed that all the consequences flowing directly from the criminal conduct may nevertheless be taken into account by the sentencing judge (see [115(d)] and [128] where the consequences of the wrongful confinement are considered in sentencing in the present case). Winneke P said:

> I think I should also say that I agree with the views which the learned judge expressed, that too much has been read, in the framing of presentments, into the decision of this Court in the case of *R v Newman and Turnbull* [1997] 1 VR 146. I fully appreciate the caution which must be exercised by the Director of Public Prosecutions to ensure that the entire criminal conduct of an accused person is captured within the four corners of the presentment so that the entirety of the criminal conduct can be punished. But it should be remembered that the decision in the case of *Newman and Turnbull* was but a particular example of the principles expressed in *De Simoni v The Queen* (1981) 147 CLR 383 that a person should not be punished for an offence for which he has neither been charged nor convicted.
>
> Nothing in the decision of *Newman & Turnbull* should be regarded as suggesting that *a sentencing judge is not to have regard to all the consequences that flow directly from the criminal conduct constituting the offence charged …*
>
> [emphasis added]

Facts surrounding the commission of the offence can be considered even where separate offences are disclosed

81 While a sentencing court generally cannot take into account uncharged offences, it is entitled to, and in fact should, consider the aggravating circumstances in which the offence was committed, even where these circumstances could technically constitute a separate offence. This point was explained in the following way in Kow Keng Siong, *Sentencing Principles in Singapore* (Academy Publishing, 2009) at para 9.028:

> The principle that an offender should only be punished for the offence of which he had been charged does not mean that a judge may not consider the aggravating circumstances (which in themselves might *constitute independent offences*) in which the offence charged was committed. Indeed, *Singapore courts have frequently considered such circumstances in sentencing.* [emphasis added]

82 This principle has been applied, for example, in the cases relating to the offence of driving while under the influence of alcohol ("drink-driving") under s 67(1)(*b*) of the Road Traffic Act (Cap 276, 2004 Rev Ed) ("RTA"). Even though this offence is made out once it is established that the level of alcohol in the accused's blood or breath exceeds the prescribed level, it is accepted law that a number of other circumstances can aggravate the drink-driving offence (even though these facts could technically make out independent offences). As stated by Menon CJ in *Edwin s/o Suse Nathen v PP* [2013] 4 SLR 1139 ("*Edwin s/o Suse Nathen*") at [24] and [27]:

> 24 … The fact that an offender had not displayed *poor control of his vehicle or had not caused an accident resulting in property damage or injury is plainly relevant in deciding whether the seriousness of the offence had been aggravated* …
>
> …
>
> 27 In my judgment, there are a number of recognisable factors that may aggravate or mitigate the gravity of an offence under s 67(1)(*b*). … For example, the offender may have exhibited poor control of his vehicle; he might have been *apprehended for speeding*; or he might have been found driving dangerously or recklessly, such as *driving against the flow of traffic* or being *involved in a car chase in an attempt to avoid apprehension by the police*. Each of these would be an aggravating factor because of the increased danger to road users posed by the offender's conduct. I should state however, that *none of these is a constituent element of an offence under s 67(1)(b), and the relevant facts must either be part of the agreed statement of facts or proven by the Prosecution with relevant evidence* (see *Irene Lim* at [26]) …
>
> [emphasis added]

83 Thus for instance, where injury is caused whilst drink-driving, this is treated as an aggravating factor for the drink-driving offence even though technically it could constitute a separate offence of causing hurt or grievous hurt through rash or negligent driving under ss 337 and 338 of the Penal Code. In such a situation, it should not matter that the Prosecution fails to draw up a specific charge in respect of this injury because this fact is so closely intertwined with the commission of the drink-driving offence such that it should be considered at the sentencing stage – it is a consequence of the drink-driving offence. Other than consequences of the offence, the circumstances under which the offence is committed should also be considered. For instance, as stated in *Edwin s/o Suse Nathen*, the fact that the offender had been speeding while drink-driving is an aggravating factor even though the act of speeding discloses a separate offence for which no charge has been drawn up by the Prosecution: see s 63(1) of the RTA. In a related vein, See J also suggested in *Chong Yee Ka* ([77] *supra*) that facts relating to "the immediate background to the offence at hand" can be considered in sentencing (at [45]).

84 Accordingly, the principle that can be drawn here is that a fact with sufficient nexus to the commission of the offence can be considered at the sentencing stage, *irrespective* of whether this fact could also constitute a separate offence for which the accused was not charged. This nexus makes it a relevant fact in assessing the culpability of the offender for the offence(s) for which he is charged. Ultimately, what will constitute sufficient nexus is a fact-sensitive inquiry, depending on the circumstances of each case and in particular on the degree of proximity of time and space to the charged offence(s). Sufficient nexus will generally be present if it concerns a fact in the immediate circumstances of the charged offence(s) or is a fact relevant to the accused's state of mind at the time the offences(s) are committed. This situation is different from the case of antecedent offending conduct with no nexus whatsoever to the offence(s) in question.

85 The reason for treating facts with sufficient nexus as relevant is to give effect to the relativity principle which I have described (see above at [71]). For two offenders charged with the same offence, the offender with the higher culpability ought to receive a higher sentence. Given that the culpability of the accused person in any offence is largely concerned with the circumstances in which the offence was committed as well as the consequences of the offence, a sentencing court cannot turn a blind eye to these facts just because no charges were brought in respect of these acts. In making this assessment, the fact that these concern uncharged offences are less important here because these factors go to the very commission of the offence in question and thus directly inform the court about the culpability of the accused. However, the sentencing judge must bear in mind that he cannot sentence the accused as if he had been convicted of this uncharged offence. He can only take this fact into consideration in deciding on the culpability of the accused in relation to the charges that were brought against him. It is also important for the judge to ensure, as cautioned by Menon CJ in *Edwin s/o Suse Nathen*, that such aggravating factors have been adequately proven by the Prosecution such that a finding of fact is made by the trial judge or the accused admits to this fact.

86 In concluding this discussion, I find apposite the following remarks made on the duties of a sentencing judge by Wilson J in *The Queen v De Simoni* (1981) 147 CLR 383 at 395–396:

> The primary rule is that the judge must sentence the prisoner for the offence of which he has been convicted. … On the other hand, the judge is not only entitled but bound to take into consideration the circumstances surrounding the offence of which the prisoner has been convicted, so long as those circumstances are not inconsistent with the plea or verdict … But he must not punish the prisoner for additional offences with which he has not been charged …
>
> …

> *The view which I have propounded, namely, that the sentencing judge is not required to ignore a circumstance of aggravation merely because it has not been charged in the indictment, has the merit of reducing the occasions when the sentence proceeds on the basis of an artificially constructed set of facts …* the smooth administration of criminal justice is enhanced if the judge can proceed to sentence, consistently with the offence and maximum punishment established by the plea or verdict, *on the basis of the facts surrounding the offence as he finds them to be …* I do not think that a judge, while bound to have regard, for example, to the degree of violence which accompanies the theft in framing an appropriate sentence for the crime of robbery is required to put out of his mind the fact that that violence caused a wounding, if it be the fact, or, that the offence was committed by the prisoner in company with another person or that a firearm was involved. So long as the judge bears steadily in mind the general principles to which I have referred …, there can in my opinion be no misapplication of principle and no miscarriage of justice.
>
> [emphasis added]

87 The application of this principle is straightforward in the case of the VCH Charge. Even though the act of pulling the Victim's hair could technically constitute a stand-alone offence under s 323 of the Penal Code, this is a relevant fact with a sufficient nexus to the offence given that it was committed contemporaneously with the slap on the Victim, *ie*, it directly relates to Chua's culpability on the VCH Charge. Thus, the District Judge did not err in considering this additional fact when sentencing Chua.

88 As for the Wrongful Confinement Charge, even though the Wrongful Confinement Charge specified only one date, the District Judge made a finding of fact that there were other periods of confinement because the Victim was not given access to the keys of the residence and was not allowed to leave the residence on other occasions (at [97]). On appeal, the Prosecution goes one step further to argue that the fact that the Victim had been confined by Chua for about 11 months is an aggravating factor. I disagree with the Prosecution.

89 First, since the Wrongful Confinement Charge specified only one date for the confinement, it will be inconsistent with the particulars of the charge for Chua to be punished as if she had continuously confined the Victim for a period of 11 months. In any event, it is clear from the evidence that there was not one continuous period of confinement but rather discrete and separate periods of confinement. Chua had testified, which evidence was not contradicted by the Victim or the Prosecution, that during the period of the Victim's employment, the Victim had been allowed to go out to fetch groceries, wash the family's car and buy products from the provisional shop located at the ground floor of the condominium.

90 Second, all these separate instances of confinement by Chua over a period of 11 months cannot appropriately be considered as criminal acts with sufficient nexus such that they could be taken into account *per se* for

the purpose of sentencing for the Wrongful Confinement Charge, which only relates to confinement on a single day on 30 October 2012. If the Prosecution wanted the court to consider each of these past offences committed by Chua for the purpose of sentencing in the same manner as TIC charges, it should have charged Chua accordingly for multiple occasions of confinement and have them treated in the same way as TIC charges. As the Prosecution has not done so, I am not acceding to its request to consider these facts relating to other wrongful confinement offences committed by Chua over the past 11 months to enhance the sentence on the Wrongful Confinement Charge or to treat Chua as having committed multiple offences of wrongful confinement previously for the purpose of sentencing, as doing so would flout the rule against consideration of antecedent uncharged offences.

91 Having said that, I agree with the District Judge that the Victim had been confined on other previous occasions (irrespective as to who had confined her). In my judgment, the fact that Chua knew of these previous instances of confinement is a relevant fact in sentencing. This is a relevant fact in relation to the *consequence* of the offence as well as Chua's state of mind at the time she confined the Victim. It is very unlikely for the Victim to have taken the drastic step of jumping out of the residence if the wrongful confinement on 30 October 2012 was simply a one-off incident. She must necessarily have felt desperate and believed that there was no other way out of the residence given that she had not been allowed to leave the residence for some time. As such, in sentencing Chua for the Wrongful Confinement Charge, I cannot turn a blind eye to this circumstance of the offence – the past instances of confinement have a close nexus to the offence in so far as they had made the Victim's mental state more vulnerable and as such the offence in question was committed on a desperate Victim with a weakened mental state. Chua must have been aware of the previous long periods of confinement and the abusive treatment that the Victim was continuously subjected to. Chua's wrongful confinement of the Victim on 30 October 2012 led to the consequence of the Victim jumping out of the residence to escape from her wrongful confinement on the day in question. Since Chua had knowingly committed this offence on a Victim with a significantly weakened mental state, Chua's culpability is to that extent greater.

92 One obvious counter-argument to this approach would be that it indirectly takes into account uncharged offences committed by Chua, thereby flouting the rule against considering uncharged offending conduct. My answer is that it does not because I am not considering the fact that it was *Chua* who had confined the Victim on the past occasions. In other words, I would have arrived at the same outcome even if the Victim had been confined by someone else ("A") and Chua knew of this fact. If the Victim had previously been confined by A for some time, and Chua knew

of this fact, but yet decided on 30 October 2012 to confine the Victim, already made more vulnerable due to previous occasions of confinement (and abusive treatment), it would make no sense to completely ignore the effect of these past instances of confinement by A on the condition of the Victim. Following the same reasoning, just because it was Chua (and not A) who had confined the Victim on these past occasions, should the court ignore the actual condition of the Victim on the day of the wrongful confinement just because no charges were brought against Chua for other periods of wrongful confinement of the Victim by her? Clearly not. Focusing solely on the awareness of Chua as to the weakened mental state and vulnerability of the Victim when Chua committed the offence, and on Chua's decision nevertheless to prolong or add to the suffering which the Victim has endured, the issue of who previously wrongfully confined (or abused) the Victim is irrelevant. In this regard, it cannot be said that the previous offences committed whether by A or by Chua have been taken into account *per se* in the sentencing of Chua for her offence of wrongful confinement on 30 October 2012. In fact, it does not even matter if any past offences were committed in the very first place – what matters is whether Chua knew about the Victim's particular susceptibility or vulnerability but nevertheless proceeded to confine her. Thus for instance, if an offender knows that his victim suffers from claustrophobia but proceeds to wrongfully confine the victim in a very small and dark room, this knowledge will make the offender more culpable than an offender who does not know of this particular vulnerability when similarly confining his victim in such a room.

93 The factual scenario here is thus very different from that encountered in the cases like *Vasentha* ([75] *supra*) and *Tan Thian Earn* ([76] *supra*). One can readily accept that past instances of drug possession or consumption have little to do with the preferred charges faced by the accused persons in those cases. The fact that the accused had possessed or consumed drugs before (for which there were no preferred charges) cannot be considered as an aggravating circumstance of the present offence of drug possession or consumption – each of them are distinct offences with insufficient nexus between one another.

94 Thus, in determining the sentence for the Wrongful Confinement Charge, I disregard the fact Chua was the one who had confined the Victim on these past occasions (as submitted by the Prosecution) – the only fact I took into consideration was that Chua, despite knowing that the Victim had been confined (and continuously abused) previously which should have at least put her on notice of the Victim's state of desperation and feeble mental condition, nevertheless decided to confine the Victim on 30 October 2012, which then led to the desperate measure taken by the Victim to escape by climbing out of a bedroom window onto a narrow ledge and then jumping onto the rooftop of an adjacent building. As a consequence, the Victim

suffered serious injuries. This allows me to find that Chua is more culpable than an offender who did not have such knowledge of past confinement (and past abuses), such that in line with the relativity principle, Chua should get a heavier sentence. It must be emphasised that the sentence that I am calibrating for Chua is still based on the charge under s 342 of the Penal Code and its particulars of a wrongful confinement for only *one day*, which carries a prescribed maximum sentence of 18 months' imprisonment (see s 342 read with s 73(2) of the Penal Code).

95 Having determined this question, I propose to now deal with the respective appeals against sentence in the following order:

(a) whether the sentence for the VCH Charge is manifestly excessive;

(b) whether the sentence for the Wrongful Confinement Charge is manifestly excessive or inadequate; and

(c) whether the respective custodial sentences ought to run concurrently or consecutively.

Chua's appeal against sentence for the VCH Charge

96 After considering the sentencing precedents for maid abuse under s 323 of the Penal Code and the nature of Chua's assault on the Victim (GD at [87]–[91]), the District Judge imposed a sentence of three weeks' imprisonment for the VCH Charge. In appealing against this sentence, Mr Quek submits that a non-custodial sentence is warranted because of Chua's psychiatric illness, the serious damage that a custodial sentence could do to her and the lack of serious injuries suffered by the Victim. I will deal with each of these arguments in turn.

Relevance of Chua's psychiatric illness

97 In order to ascertain the relevance of any psychiatric condition suffered by an accused person, it is important to first appreciate the dominant sentencing objectives of the offence in question. In this vein, it is trite that sentencing in offences against domestic helpers engages strong considerations of specific and general deterrence (*ADF* ([51] *supra*) at [58]–[59]).

98 The Court of Appeal held *in Lim Ghim Peow v PP* [2014] 4 SLR 1287 that while there is generally a tension between the sentencing objectives of deterrence and rehabilitation when sentencing offenders suffering from mental disorders, "the element of general deterrence may still be accorded *full weight* in some circumstances, such as where the *mental disorder is not serious* or is *not causally related* to the commission of the offence, and the offence is a serious one" (at [28]) [emphasis added].

99 In the present case, whilst Chua has been diagnosed to be suffering from paranoid schizophrenia since 2008, the IMH psychiatrist who examined Chua has concluded that there was no causal link between her schizophrenia and the commission of the offences. Further, Chua herself does not dispute that at the time of the alleged offences, and the period prior thereto, she was not in any major relapse (see above at [11]). As there is clearly no causal relation between Chua's mental disorder and her commission of the offences, her mental disorder is not a relevant sentencing consideration that predisposes me to favour a non-custodial sentence in the present case.

Effect of a custodial term on Chua

100 On the strength of the High Court's recent decision in *Chew Soo Chun v PP* [2016] 2 SLR 78 ("*Chew Soo Chun*"), the Prosecution submits and I agree that in cases where there is no causal relation between an offender's mental illness and the offence, the offender's ill-health is only relevant in two ways, either as a ground for the exercise of judicial mercy, or as a mitigating factor where a jail term may cause disproportionate impact on the offender (at [38]).

101 As regards judicial mercy, the High Court noted that it is an exceptional jurisdiction, only to be exercised in cases where the offender is suffering from a terminal illness or when a custodial term would endanger the offender's life (*Chew Soo Chun* at [22]). This ground is clearly inapplicable in the present case as Chua is not suffering from a terminal illness. Neither is there any evidence to suggest that prison environment will endanger Chua's life.

102 As regards disproportionate impact, the court is to assess whether a jail term would present a "risk of significant deterioration in health or a significant exacerbation of pain and suffering" (*Chew Soo Chun* at [34]). In ostensibly relying on this limb, Mr Quek refers to the IMH report by Dr Manu Lal ("Dr Manu") dated 1 February 2016, which states that:

> The prospect of imprisonment seems to be a major psychological stress for her at this point in time and may have exacerbated her illness and I *suspect that her mental health condition may deteriorate further if she is sentenced to prison*. It is paramount that she continues to receive psychiatric care on an ongoing basis. [emphasis added]

103 The Prosecution submits that Mr Quek's reliance on this report is misplaced because the Singapore Prison Service is fully capable of housing inmates with psychiatric conditions. In fact, it has always been able to manage their condition and to arrange for them to undergo treatment at hospitals should the need arise. I agree that this is a relevant consideration. As the High Court opined in *Chew Soo Chun*, the court will consider whether the prison has adequate medical facilities to address the offender's medical conditions. If so, the offender's ill-health will not be accorded

weight as a mitigating factor even where the contention is that prison life would have a significantly adverse impact on the offender (*Chew Soo Chun* at [39(a)]).

104 More crucially, I find Dr Manu's equivocal remark (as seen in the words used "suspect" and "may deteriorate") insufficient to persuade me that prison life will have a disproportionate effect on Chua. Here, it is apposite to refer to Menon CJ's comments about a similarly worded psychiatric report tendered by the accused in *Idya Nurhazlyn bte Ahmad Khir v PP* [2014] 1 SLR 756 at [42]:

> Although the second medical report notes concerns that Idya's 'mental state *may* worsen if she receives a prison sentence', I make two observations. First, the *equivocal nature of this statement equally suggests that her condition may not worsen*. Further, I am unwilling to accept that *such a risk can be a valid reason for not meting out a custodial sentence*. It has been held that the psychological impact of incarceration on a particular offender is generally not a relevant sentencing consideration. In *R v Joseph Brian Kay* (1980) 2 Cr App R (S) 284, the Court of Appeal (Criminal Division) of England and Wales accepted that prison life was a very harsh experience for the applicant in question and that he had to be seen by a psychiatrist and to be supported by medication. However, it held that 'how a man reacts to prison life is not a matter which should affect the principle of the sentence. When sentencing a man the court is concerned with the character of his crime and with his individual circumstances as revealed in his criminal background, if any'. [emphasis added]

105 For these reasons, I am of the view that Chua's psychiatric condition does not warrant the imposition of a non-custodial sentence.

Lack of serious injuries suffered by the Victim

106 Due to the primacy of deterrence in cases of maid abuse, the absence of serious injuries does not preclude the imposition of a custodial sentence. In *ADF* ([51] *supra*), the Court of Appeal noted that a custodial sentence is almost invariably warranted where there has been *any* manner of physical abuse against a domestic helper (at [91]). The Prosecution cites several sentencing precedents involving maid abuse which do not result in serious injuries to the victim. These precedents show that sentences of between three to six weeks' imprisonment have been imposed on offenders who had *slapped* their domestic helpers. The sentence of three weeks' imprisonment imposed on Chua is thus at the lowest end of the comparable sentences for similar cases.

107 In my view, the sentence should have been slightly higher (at least four weeks' imprisonment), to take into account the fact that Chua had also additionally pulled the Victim's hair whilst slapping her (see above at [87]). However, I am not enhancing Chua's sentence on the VCH Charge as I do

not find that the threshold for appellate intervention has been crossed, *ie*, the sentence is not "manifestly inadequate".

108 Accordingly, I dismiss Chua's appeal against the sentence imposed for the VCH Charge.

Sentence for the Wrongful Confinement Charge

109 For the Wrongful Confinement Charge, the District Judge acknowledged that there was no evidence to show that Chua had confined the Victim in order to cause hurt to her but nevertheless found that the custodial threshold had been crossed. The District Judge was of the view that whilst the Wrongful Confinement Charge specified just one date, the Victim had also been so confined on other occasions. In addition, the Victim was effectively forced to jump out of the window to escape the abuse, and suffered injuries that rendered her wheelchair-bound for four to six weeks. While recognising the severity of Chua's actions in respect of the Wrongful Confinement Charge, the District Judge nonetheless held that Chua's faculties were impaired by her illness, and considered Dr Manu's opinion that a custodial term may have deleterious effects on her mental health condition. As such, she imposed an imprisonment term of two months on Chua (GD at [97]–[98]).

110 In appealing against this sentence, the Prosecution submits for a sentence of at least six months' imprisonment. It argues that the District Judge erred on the following grounds:

(a) gave insufficient weight to the fact that the wrongful confinement by Chua spanned a period of 11 months, and to the fact that the Victim suffered serious injuries as a result of being compelled to jump out of the residence from the sixth floor;

(b) failed to consider that the Wrongful Confinement Charge is read with s 73(2) of the Penal Code, which provides for enhanced punishment if the offence is committed against a foreign domestic worker;

(c) failed to consider that the wrongful confinement of the Victim was coupled with appalling conditions of confinement which included physical abuse and mental anguish; and

(d) placed undue mitigating weight on Chua's psychiatric condition.

111 In relation to Chua's appeal, Mr Quek submits for a fine on account of Chua's psychiatric condition and the fact that Chua had no illegal intentions in confining the Victim.

112 In so far as the relevance of Chua's medical condition is concerned, I have already determined that Chua's medical condition does not qualify her

to a discount from a custodial to a non-custodial sentence (see above at [97]–[105]). Accordingly, Chua's submission on this issue cuts no ice and the District Judge erred in placing weight on this as a mitigating factor.

113 In relation to the Prosecution's submission that the confinement of the Victim by *Chua*, prolonged over a period of 11 months, amounted to an aggravating factor, I have already given the reasons why this cannot be considered in sentencing because it relates to uncharged offences by Chua, which do not have a sufficient nexus to the Wrongful Confinement Charge (see above at [88]).

Sentencing framework for the offence of wrongful confinement

114 Due to prior inconsistent case law and the absence of a settled sentencing framework for the offence of wrongful confinement under s 342 of the Penal Code, I agree with the Prosecution that it will be helpful to set out a sentencing framework for this offence. In establishing this framework, I derived much assistance from the well-reasoned submissions of the Prosecution.

115 In *Sarjit Singh Rapati v PP* [2005] 1 SLR(R) 638 ("*Sarjit Singh*"), the High Court observed that an imprisonment term of three months and above is to be imposed only for an offence of wrongful confinement where aggravating factors are present (at [56]). While *Sarjit Singh* did not elaborate further on these aggravating factors, the structure of the Penal Code and the relevant case law contain helpful insights on the type of aggravating factors that would justify the imposition of a custodial sentence in wrongful confinement cases. Without attempting to exhaustively itemise all these factors, I suggest that the sentencing court dealing with offenders for wrongful confinement under s 342 of the Penal Code, which carries a maximum imprisonment term of one year, ought to consider the following aspects of the offence:

(a) the total duration of the wrongful confinement;

(b) the conditions in which the victim was wrongfully confined;

(c) whether the wrongful confinement was committed to facilitate the commission of another offence; and

(d) the consequences of the confinement on the victim.

(1) Total duration of confinement

116 Generally, the longer the period of confinement, the more aggravated the offence will be. This aggravating factor is implicit in the legislative design behind s 342 and its affiliate offences. The Penal Code specifically provides for enhanced punishment in cases where the period of the wrongful confinement exceeds certain limits. Whilst the maximum term of imprisonment for an offence of wrongful confinement under s 342 of the

Penal Code is one year's imprisonment, a maximum of two years' imprisonment applies where the wrongful confinement is for *three* days or more (s 343 of the Penal Code). Where the wrongful confinement is for *ten* days or more, the accused faces a *mandatory* sentence of imprisonment which may extend to three years' imprisonment (s 344 of the Penal Code).

117 Although the Prosecution is entitled to bring a charge under s 343 or s 344 of the Penal Code, the Prosecution is also entitled to prosecute the offender under a reduced charge under s 342 for wrongful confinement *simpliciter*. By doing so, the Prosecution is not thereby precluded from stating the full duration of the wrongful confinement in the charge. And if, for example, the Prosecution states in a charge of wrongful confinement *simpliciter* under s 342 that the accused was wrongfully confined for a period of 30 days, and if the accused is convicted of that charge, the sentencing court will be entitled to take that duration into account, but not to the extent of sentencing the accused as if he had been convicted on a graver charge (*Suventher* ([72] *supra*) at [36], discussed at [72] above). The longer the total period of confinement specified in the charge, the more severe will be the sentence based on the relativity principle. There is no novelty to this approach. An offender convicted on a VCH charge who caused his victim a fracture will be treated more severely than an offender convicted on a VCH charge who caused his victim a bruise, all things being equal.

(2) Conditions of confinement

118 Given that the *sine qua non* of wrongful confinement is that a victim is prevented from leaving a confined place, the conditions of this confinement ought to be a material factor in sentencing. The court should consider, amongst other things, whether the victim was given inadequate access to basic necessities such as food, water, clothing and sanitation and whether the place of confinement is dirty, uncomfortable or barely habitable. If the offender is responsible for conditions intended to deny the victim access to basic necessities, or to cause prolonged discomfort, or to humiliate the confined person, that would be an aggravating factor.

(3) Confinement facilitating the commission of another offence

119 The cases cited by the District Judge at [93]–[95] of the GD also show that a sentence of at least four weeks' imprisonment is the norm when the offence of wrongful confinement is committed to facilitate the commission of a further offence (or multiple offences) such as criminal intimidation (which may well amount to mental torture if prolonged), voluntarily causing hurt or a sexual offence.

120 An illustrative case is *Karthi Kesan s/o Raja Gopal v PP* Magistrate's Appeal No 83 of 1994, which was cited in *Sarjit Singh* ([74] *supra* at [56]) as an example of a wrongful confinement case with aggravating factors. In that

case, the victim owed the offender money. The offender, together with his co-offenders, kicked and pushed the victim into a lorry, where the victim was wrongfully confined. While in the lorry, they further assaulted him, forced him to hand over his belongings, and asked him to strip to his underwear. The offenders also threatened him with bodily harm if he failed to raise the money. The sentence of three months' imprisonment imposed on the offender under s 342 (read with s 34) of the Penal Code for wrongful confinement was upheld on appeal.

121 It may be noted that ss 347 and 348 of the Penal Code provide for *mandatory* imprisonment if the wrongful confinement was done for the purpose of, *inter alia*, extorting property, constraining to an illegal act, extorting a confession, or compelling the restoration of property. The maximum sentence in such cases is three years' imprisonment.

122 In relation to the wrongful confinement of domestic helpers, I am of the view that a custodial sentence should be the starting point if the wrongful confinement of the domestic helper is intended to abet, allow, facilitate or conceal the physical abuse of a domestic helper. If *any manner* of physical abuse against a domestic helper by the employer or other members of the household warrants a custodial sentence (*ADF* ([51] *supra*) at [91]), it would be anomalous for wrongful confinement in such cases not to attract the same starting point if any manner of physical abuse has been facilitated given that both offences involve an abuse of power or authority over a vulnerable victim.

(4) Consequences of confinement

123 It goes without saying that the severity of the injuries suffered by a victim is a recognised aggravating factor in all offences against the person. In this regard, a narrow issue that arises in this appeal is whether such injuries aggravate the offence even if they did not arise directly from the offender's actions, or are not entirely predictable. In my view, the answer is "Yes".

124 In *PP v Hue An Li* [2014] 4 SLR 661 ("*Hue An Li*"), the High Court considered the inherent tension between the principle that no one should be held accountable for matters which are beyond his control ("control principle"), and the principle that moral and legal assessments often depend on factors beyond the actor's control ("outcome materiality principle") (at [69]–[70]):

> 69 The control principle is but a restatement of the intuitive moral sense that people should not be morally assessed for what is not their fault. Common is the refrain that one cannot be blamed for being late for work because of an unforeseen traffic jam. Specific illustrations of the control principle are legion. Chapter IV of the Penal Code lists certain general exceptions which act as complete defences – for instance, unsound mind (see s 84) and, in certain circumstances, duress (see s 94). The common thread

> between these two general exceptions is a lack of control on the part of the offender. Where an offender acts in a particular way because of the unsoundness of his mind, the law takes cognisance of the fact that he cannot help but be of unsound mind; similarly, when he acts under duress, the law recognises that he is not acting of his own free will. We absolve such offenders of criminal responsibility, either wholly or partially, because they were not in control of their actions at the material time.
>
> 70 This must be juxtaposed against the intuitive moral sense that outcomes do matter. There are many examples of outcomes featuring significantly in criminal law. For instance, the line between attempted murder and murder is a fine one, and details like whether the victim was wearing a bullet-proof vest at the material time or whether a bird flew into the path of the bullet can result in dramatically different outcomes.

125 The court in *Hue An Li* ultimately decided (at [71]–[75]) that the outcome materiality principle trumps the control principle in the context of criminal negligence. Similarly, in *PP v Lim Choon Teck* [2015] 5 SLR 1395, I was of the view that outcome materiality did matter in determining the severity of sentences in relation to criminal rashness (at [38]).

126 In a similar vein, I agree with the Prosecution that the injuries suffered by a victim of wrongful confinement should be considered in determining the severity of the sentence to be imposed on the offender, even if those injuries did not arise directly from the offender's actions, as long as there is a causal link between the wrongful confinement and the injuries suffered. The point is illustrated by the following hypothetical. Suppose a fire breaks out in a place where a victim is confined. The only way for the victim to escape unscathed is to flee the place. However, the victim is unable to leave because the accused has locked the place. The victim suffers severe burns before being rescued eventually. There is no doubt that the accused is not responsible for the fire. Nonetheless, the victim's inability to escape from the fire is a direct result of the accused's act of confining the victim, and thus may be regarded as a risk created directly by the accused's wrongful act. Imposing a higher sentence on the accused on account of the victim's severe burns may be justified on the ground that the accused created a risk of harm to the victim by wrongfully confining the victim, and hence cannot allege unfairness if that risk materialises, which may then influence the sentence to be imposed.

Application to the facts

127 The Victim's physical and mental condition on 30 October 2012 itself is a relevant sentencing consideration. The Victim had previously been subjected to appalling conditions of confinement – which included physical abuse and threat of punishment. The physical abuse suffered by the Victim over a period of six to seven months can be summed up in her own words: "[Chua, Popo and Kathleen] would punch me, slap me, kick me, and hit my head against the wall, and they would use bleach on me" from "March or

April 2012 until October 2012". The Victim was also not merely wrongfully confined – she was deliberately cut off from the outside world and forced into isolation. This is evidenced by the fact that she was not given any off days, deprived of a SIM card for her mobile phone, not allowed to talk to anyone besides Chua and her family members, and not allowed to keep a diary (see above at [12]). This gives the backdrop to better understand the mental and physical condition of the Victim on the day of the offence of wrongful confinement committed by Chua. Chua in confining the Victim on the day in question was not merely wrongfully confining any normal person but one who had already been subject to prolonged ill-treatment and abuse whilst under prolonged wrongful confinement previously (a fact which she knew about). To that extent, her culpability is much higher than an offender who did not have such knowledge.

128 Most significantly, the confinement of the Victim on 30 October 2012 eventually led her to mount a desperate escape by jumping out of the residence from the sixth floor. This dangerous manner of escape was the Victim's only way out of the unit, and it caused her to suffer debilitating injuries in the form of multiple fractures, which led to her being wheelchair-bound for four to six weeks. There is no doubt that Chua was responsible for this eventual result: she took part in the physical assault on the Victim on 29 October 2012, and was the one who confined the Victim to the residence on 30 October 2012, despite being aware that the Victim has already been so confined for some time (see above at [91]–[94]). I am thus in full agreement with the District Judge when she concluded at [97] of the GD that Chua "as good as forced [the Victim] to resort to the extreme measure of jumping out of the window to escape from Ms Chua's abuse". In this connection, the severe injuries suffered by the Victim in the course of making her escape is a material aggravating factor which I have to consider in determining the sentence to impose on Chua.

129 Accordingly, I increase the sentence for the Wrongful Confinement Charge to 21 weeks' imprisonment. This is only about a quarter of the maximum imprisonment term of 18 months (which is about 78 weeks) that could have been imposed on Chua. In this connection, it is worth noting that if the Prosecution had exercised its discretion to charge Chua for the other periods of confinement, over the course of 11 months, I would not have hesitated to impose a sentence upwards of 12 months' imprisonment.

Prosecution's appeal against concurrent custodial sentences

130 The District Judge, primarily influenced by the fact of Chua's psychiatric condition (GD at [98]), decided to order the two terms of imprisonment to run concurrently.

131 The Prosecution submits that the District Judge erred in exercising her discretion under s 306(2) of the CPC to order the two custodial sentences to run concurrently because the District Judge failed to consider

whether the one-transaction rule and totality principle were applicable in the present case.

132 Section 306(2) of the CPC reads:

> **Sentence in case of conviction for several offences at one trial**
>
> **306.**— …
>
> (2) Subject to section 307 and subsection (4), where these punishments consist of imprisonment, they are to run consecutively in the order that the court directs, or they may run concurrently if the court so directs.
>
> …

133 It is established law that the discretion of a sentencing judge under s 306(2) of the CPC must be exercised in accordance with the one-transaction rule and the totality principle (*Mohamed Shouffee bin Adam v PP* [2014] 2 SLR 998 ("*Shouffee*") at [25]). The District Judge did not explain in the GD how the one-transaction rule and the totality principle were considered by her in deciding to run the sentences concurrently.

134 Having considered the one-transaction rule and the totality principle, I agree with the Prosecution that the sentences should run consecutively in the present case.

135 In relation to the one-transaction rule, two key observations made by Menon CJ in *Shouffee* are relevant in the present case. First, the one-transaction rule is generally not applicable where there is an absence of proximity between the offences (at [34]). Second, the "real basis" of the one-transaction rule is "unity of the violated interest that underlies the various offences" (at [31]). Applying both these considerations, I am of the view that the one-transaction rule is inapplicable in the present case. First, there is a lack of proximity in time between the two charges given that the offence in the Wrongful Confinement Charge was committed almost half a day after the offence in the VCH Charge. Second and more crucially, the charges violate different "legally protected interests" (*Shouffee* at [31]). The VCH Charge relates to an invasion of the Victim's bodily integrity, while the Wrongful Confinement Charge relates to an infringement of the Victim's right to freedom of movement. These interests are separate and distinct, and do not necessarily or inevitably flow from each other. Accordingly, the two offences committed by Chua do not fall within a single transaction.

136 As for the totality principle, this principle has two distinct limbs. First, the aggregate sentence should not be substantially higher than the normal level of sentences imposed for the most serious of the individual offences (*Shouffee* at [54]). Second, the aggregate sentence should not be crushing taking into consideration the offender's past record and his future prospects (*Shouffee* at [57]). In *Haliffie* ([51] *supra*), the Court of Appeal further

clarified at [79] that in determining the normal level of sentences imposed for the most serious offence, a court should look at the range of sentences normally imposed for the most serious offence and not at a specific sentencing benchmark or stating point.

137 Applying both limbs, I am of the view that the totality principle is not violated if the custodial sentences were to run consecutively in this case. An additional sentence of three weeks' imprisonment in the present case where the difference is between 21 to 24 weeks' imprisonment cannot be considered *substantially* higher than the normal range of sentences in cases of abuse of domestic helpers (bearing in mind the one and a half times times uplift in sentence mandated by s 73(2) of the Penal Code). Neither would it entail a crushing sentence on Chua.

138 Accordingly, I find that the two custodial sentences should run consecutively in the present case.

Conclusion

139 For these reasons, I dismiss Chua's appeals and allow the Prosecution's appeal against sentence. I order the sentence in respect of the Wrongful Confinement Charge to be increased from two months' imprisonment to 21 weeks' imprisonment. I also order this sentence to run consecutively with the imprisonment term in the VCH Charge, rendering an aggregate imprisonment term of 24 weeks.

140 I close by highlighting the public message which this judgment carries. The law will not tolerate the abuse of persons in any way, shape or form, much less abuse over a prolonged period by any person in a position of power or responsibility, which inevitably poses a real risk of significant and less than temporary harm to the victim, physical and psychological. This is not the first case of its kind in which the court has had to act on the law's uncompromising attitude towards such abuse, and it is unlikely to be the last. Employers of domestic helpers will from this judgment be well apprised of the consequences which will be visited upon them should they choose to treat their helpers in an inhumane manner. These helpers come from abroad to serve our households, not to be placed into servitude and abused, and the law as it now stands will have consequences for those who think and act otherwise.

Reported by Hairul Hakkim.