Public Prosecutor *v* Lam Leng Hung and others
[2015] SGDC 327

Case Number : District Arrest Case No 23145 of 2012 and others, Magistrate's Appeal Nos 147-152/2015/01/02

Decision Date : 23 November 2015

Tribunal/Court : District Court

Coram : See Kee Oon

Counsel Name(s) : Mavis Chionh Sze Chyi SC, Tan Kiat Pheng, Christopher Ong Siu Jin, Grace Goh Chioa Wei, Joel Chen Zhi'en, Jeremy Yeo Shenglong, Tan Zhongshan and Eugene Sng Yi Zhi (Attorney-General's Chambers) for the prosecution; Kenneth Tan SC and Soh Wei Chi (Kenneth Tan Partnership) and Nicholas Narayanan (Nicholas & Tan Partnership LLP) for the first accused John Lam Leng Hung; Edwin Tong SC, Aaron Lee, Jason Chan, Lee Bik Wei, Kelvin Kek, Lee May Ling and Jasmine Tham (Allen & Gledhill LLP) for the second accused Kong Hee; Paul Seah, Calvin Liang, Ho Xin Ling, Cheryl Nah and Tan Jie Xuan (Tan Kok Quan Partnership) for the third accused Tan Shao Yuen Sharon; The fourth accused Chew Eng Han in person; N Sreenivasan SC and S Balamurugan (Straits Law Practice), Chelva Rajah SC, Burton Chen, Chen Chee Yen, Megan Chia and Lee Ping (Tan Rajah & Cheah) for the fifth accused Tan Ye Peng; Andre Maniam SC, Liang Hanting and Russell Pereira (WongPartnership LLP) for the sixth accused Serina Wee Gek Yin.

Parties :

23 November 2015

Presiding Judge See Kee Oon:

Overview and background

[note: 1]1 The reasons for my decision to convict the six accused persons after trial have been set out in my judgment of 21 October 2015. In this grounds of decision, I set out my reasons for the sentences I imposed after hearing the parties' respective oral submissions on 20 November 2015. I do not propose to traverse the evidence and factual background or to repeat my observations and findings in any further detail as the relevant material has already been fully dealt with in my earlier judgment[note: 2]. It suffices to note that the observations and findings I had made therein relating to the accused persons' conduct and the circumstances surrounding the commission of the offences are, where applicable, also pertinent for the purpose of sentencing.

[note: 3]2 To recapitulate, the prosecution's case against the accused persons in relation to the sham investment and

round-tripping charges was that they had engaged in a conspiracy for the doing of a thing that amounted to criminal breach of trust ("CBT") by an agent. I found that the prosecution had established its case beyond reasonable doubt that:

[note: 4](a) Dominion over CHC's funds – specifically, the BF or General Fund as the case may be – was entrusted to John Lam, Kong Hee and Ye Peng, who were the accused persons on the CHC board;

[note: 5](b) Such dominion was entrusted to them in the way of their business as agents;

[note: 6](c) Things were done that constituted a "wrong use"[note: 7] of CHC's funds;

[note: 8](d) Each of the relevant accused persons played some role in the things done; and

[note: 9](e) Each of the relevant accused persons acted dishonestly.

[note: 10]3 In addressing the accused persons' culpability on an individual basis, I had focused primarily on the extent of their knowledge and involvement in the plans to use CHC's funds for the Crossover. I found that their conduct in the circumstances showed that they had acted unlawfully and with dishonest intent. I concluded that they were variously inextricably entangled in conspiracies to misuse CHC's funds. One conspiracy consisted of misusing BF monies for the Crossover, and the other involved misusing CHC's funds, a substantial portion of which comprised BF monies, to create the appearance of bond redemptions and to defraud the auditors via falsified accounts. I noted that each of them had participated and functioned in their own way as crucial cogs in the machinery but I also recognised that their respective levels of knowledge and participation could be distinguished[note: 11].

[note: 12]4 I further acknowledged that all six accused persons believed that they had acted in what they considered to be the best interests of CHC. There was no evidence of any wrongful gain; the prosecution's case was premised on wrongful loss caused to CHC through the misappropriation of CHC's funds. I considered that John Lam, Eng Han, Serina and Sharon were all acting in accordance with the instructions of people they considered to be their spiritual leaders deserving of their trust and deference, and Ye Peng, although a leader in his own right, similarly trusted completely the leadership of Kong Hee. Ultimately however I noted that no matter how pure the motive or how ingrained the trust in one's leaders, regardless of the context in which that trust operates, the accused persons would not be exonerated from criminal liability as all the elements of the offences had been made out[note: 13].

[note: 14]5 Against this brief backdrop of my observations and findings upon conviction, I turn now to address the relevant sentencing considerations.

Submissions on the aggravating factors

[note: 15]6 The Prosecution submitted that there are numerous aggravating features to justify deterrent sentences. In summary, these include:

[note: 16](a) misuse of a huge sum of charity funds;

[note: 17](b) betrayal of the high degree of trust reposed in them as CHC's leaders;

[note: 18](c) manipulation and exploitation of CHC's culture of secrecy and deference to formal authority;

[note: 19](d) deliberate deception and circumvention of governance through covert measures and cover stories;

[note: 20](e) planning and premeditation to avoid detection and frustrate investigative efforts.

[note: 21]7 The prosecution cited a number of sentencing precedents in support of the proposed sentence range for the court's consideration in respect of each accused person. At the highest end, the prosecution suggested sentences in the range of 11 to 12 years' imprisonment for Kong Hee, Eng Han, Ye Peng and Serina. They were the ones who were most heavily involved in planning and executing the movement of funds for the Crossover. Almost all of the precedents cited however had involved some element of direct personal gain to the offenders. Effectively it was acknowledged that the present case is without a precedent on comparable facts which fall squarely on all fours.

[note: 22]8 Although this case is without a direct precedent, I agree that there are serious aggravating factors that must be taken into account and given due weight. Some factors are evidently much weightier than others. The primary aggravating factor to my mind is that the offences involved the misuse of massive amounts of donors' funds held by CHC, a registered charity. The sums involved are huge by any objective standard. The breach of trust in the present context was all the more egregious given the accused persons' positions as trusted leaders and senior members of CHC. They were duty-bound to act with the utmost integrity and accountability.

[note: 23]9 Those who had served on the CHC board in particular must be held to higher standards of conduct. They were expected to act as stewards, being entrusted to ensure that CHC's funds were properly safeguarded and put to their intended use. They had regrettably chosen to act in flagrant breach of the exceptional trust placed in them, with the active participation and assistance of the other accused who were not board members.

[2002] 2 SLR(R) 59910 In the 21 October judgment, I had noted Kong Hee's exhortations for CHC members to trust them and refrain from asking any questions while concealing the true purpose of the bond investments[2007] SGDC 334. This was designed to ensure that inconvenient facts about how the Crossover would be funded could remain undisclosed. Perhaps a fair number of CHC's members might not have required too much persuasion; they might have seen no need to question their leaders' motives or methods in any event. As the prosecution has rightly pointed out, all this was premised on their absolute trust and belief in their leaders, carefully cultivated and nurtured so that virtually no questions would be asked. Evidently, the basis for their trust is dubious, at least in relation to the use of CHC's funds for the Crossover since the truth had never actually been fully disclosed.

[note: 24]11 The culture of absolute and unquestioning trust can be gleaned by recalling Eng Han's evidence in relation to Kong Hee's address at the CHC EGM of 10 August 2008[note: 25]. According to Eng Han, when Kong Hee had told the EMs "don't ask, don't tell", "many of the executive members understand that the leadership doesn't tell them everything and the members trust the leadership, that they are not being told because it's for good reasons and pure reasons; and we, as executive members, all defer to the wisdom of Pastor Kong and Pastor Tan"[note: 26]. John Lam had also once described CHC's congregation as "sheep"[1995] 2 SLR(R) 766, remarking to Kong Hee in an e-mail that "sheep often don't see the big picture, that's why we have leaders". In similar fashion, I had noted that even John Lam, despite being within CHC's trusted inner circle, did not always know the full picture and would only be told to see the wood but never ask about the trees[note: 27].

[2006] 4 SLR(R) 3112 I had thus characterised John Lam, Ye Peng, Eng Han, Serina and Sharon as being both "trusted and trusting", but I must emphasise again that they were not just blind followers as they were the leaders and/or part of the most trusted inner circle of CHC[1991] 2 SLR(R) 704. They chose to place their trust in Kong Hee to lead and guide them. I have found that they went along in full support of Kong Hee to participate and play their respective roles in the conspiracies. They convinced themselves that the end would justify the means and consciously chose to support both the means and the end, and to go ahead with enthusiasm, resourcefulness and not a small measure of guile[2005] 3 SLR(R) 1.

[note: 28]13 Kong Hee saw himself first as CHC's "shepherd" in CHC's formative years but later as a "rancher" when the numbers in CHC's congregation started to increase[note: 29]. Whatever the distinctions in these terms may really mean, in substance he was always CHC's "chief leader" and the source of CHC's vision and spiritual direction. Eng Han had spoken of the high level of trust they had in CHC's leadership, specifically in Kong Hee, but it is painfully ironic that in spite of what he had expressed, he would also convey his disappointment in his evidence-in-chief over his realisation that he had been misled by Kong Hee. He lamented that from looking at the evidence he had found "exaggerations, half-truths, things that are said are not what they really were". In particular, he openly voiced his disappointment that Sun Ho's success was "not real" but was "manipulated, in some cases falsified, and the worst is this … we were supposed to be a church"[note: 1]. His claims of regret however betray a hindsight bias, since he, like the other accused persons, had failed to question his own claims of trust and belief in Kong Hee's vision and the wisdom of his chosen path and directions[note: 2].

[1997] 1 SLR(R) 87614 Did all of CHC's members and donors continue to trust their leaders and give unwavering support to the Crossover from its inception to the present? CHC would have undergone changes in membership over time and correspondingly the degree of trust and support can wax and wane[note: 3]. Roland Poon aired his views and raised awkward questions in January 2003 pertaining to the misuse of CHC's funds to fund Sun Ho's music career. He was roundly singled out for his "baseless accusations". And it is by no means clear that all the EMs or even the committee members remained on board and were supportive throughout. Charlie Lay, someone who was seen to be "not exactly 100 pct with chc leadership"[note: 4] and from whom information had been concealed, was one such example. Most glaringly, Eng Han was an obvious example of a disillusioned and disenchanted ex-CHC member who felt "short-changed", but only on hindsight.

[note: 5]15 In the light of the totality of the evidence adduced at trial, the pattern of fraudulent and deceptive conduct displayed by each of the accused persons, Eng Han included, was unmistakably clear. Their conduct was not merely reflective of flawed corporate governance or imprudent handling of finances. There was extensive evidence of manipulation, deception, and concealment, all carried out in support of planned and premeditated fraudulent schemes to systematically misuse CHC's funds. Kong Hee was so overwhelmingly confident that they could carry out the fund movements without detection that his deception was sometimes spontaneous. False or misleading statements were casually made up. For example, Kong Hee agreed that he may have "ad-libbed" during the EGM of 7 July 2007 that the bond investments they were about to make were "very safe"[note: 6]. In the same EGM, he had also told the EMs that Eng Han had gone to AMAC's (non-existent) board to negotiate a minimal 0.1% management fee for AMAC's services as fund manager and that the BF investments were meant to maximise returns for CHC, statements which were completely untrue.

[note: 7]16 Self-serving statements about their *bona fides* were made but ultimately these were shallow assertions. Most tellingly, as highlighted by the prosecution in their sentencing submissions[note: 8], at the EGM of 10 August 2008, Kong Hee maintained that "if we are crooks long time ago we'll be exposed"[note: 9]. In the same breath, he had no qualms misleading the EMs that Xtron bonds were for a building purchase when the majority of proceeds had already been channelled to fund the Crossover and also claiming that the EMs "have the right to ask everything pertaining to the church" while telling them not to ask their leaders too many questions. The short point is that it took a long time to expose the fraud because of their active concealment to cover their tracks, their fabrication of misleading cover stories and the careful cultivation of a climate of unquestioning trust within CHC itself. One may also question how much reliance can be placed on the level of trust and support for CHC's leaders and the Crossover if their own leaders had seen no need for transparency with CHC's members and had actively concealed facts and misled them with false pretences and half-truths at various points.

[note: 10]17 In such circumstances, what is strikingly obvious in the accused persons' conduct is the cavalier sense of overconfidence and recklessness that set them up for dishonest behaviour. This was also evident in the manner funds were diverted and expended on the Crossover. While CHC may have experienced successes in many areas over the years, this did not mean that everything they did was always a success or was *bona fide* and lawful. Some investments may have yielded returns. Some were never *bona fide* investments to begin with. The sham bond investments and the

round-tripping and falsification of accounts were clearly unlawful but the accused persons chose to tell themselves that short-term deprivation and misuse of CHC's funds as well as "creative accounting" were not only morally but also legally acceptable, cynically justifying their actions by the idea that the funds were meant for church purposes. This confuses motive with intent and is no excuse for their active complicity. As I had noted earlier, even accepting for a moment (which I did not) that they might have actually lacked individual consciousness of wrongdoing, this was really a vivid illustration of wilful blindness[note: 11].

Submissions on the mitigating factors

[note: 12]18 Counsel for the accused persons identified a number of mitigating factors:

[note: 13](a) they enjoyed no personal gain from the offences;

[note: 14](b) no permanent loss was caused to CHC;

[note: 15](c) the funds were used for church purposes;

[note: 16](d) they have done much good in their role as church leaders or workers; and

[note: 17](e) they and their families had suffered hardship as a result of the investigations and their conviction after trial.

[note: 18]19 I shall touch on the last of these points first. It is settled law that absent exceptional circumstances, personal hardship or hardship to an offender's family resulting from a criminal conviction and sentence carries very little weight in mitigation, especially where the offence involved is serious. While I do sympathise with their families should they be sentenced to lengthy custodial terms, particularly for those accused persons who are breadwinners or caregivers with very young children, personal hardship or hardship to their families is not a relevant mitigating factor that merits a reduction in what would otherwise be the appropriate sentence.

[note: 19]20 The other mitigating factors enumerated above are by and large relevant and valid factors that take the present case some distance away from the various precedents cited by the prosecution. Chief among them are that they were not motivated by personal gain, no permanent loss to CHC was intended, and the monies were subsequently returned. The latter two points perhaps feature most clearly for the round-tripping and falsification charges, as the evidence suggests that permanent deprivation was never intended, especially for SOF Tranches 10 and 11 involving the redemption of the Firna bonds.

[note: 20]21 I am conscious that there was no evidence of wrongful personal gain for all six accused persons. The prosecution had made it very clear that their case was always premised on CHC having suffered wrongful loss rather than the accused persons having derived personal gain. But I should add that the evidence does show that their misuse of CHC's funds directly benefitted Sun Ho, and plainly had been intended for this purpose, since the funds were used to finance her music career under the auspices of the Crossover. In this limited sense, there was undoubtedly also a form of indirect benefit for Kong Hee if efforts to advance his wife's music career had benefitted from the availability of these funds. It is difficult to see how this can be characterised otherwise.

[note: 21]22 If there had been evidence of wrongful gain which the accused persons had intended to benefit from personally, as is common in most typical CBT or property offences, this would have been an aggravating factor. It would indicate that they were motivated by greed and self-interest. That cannot however be said of all six accused persons, and perhaps it can only be true in a limited and indirect sense for Kong Hee. But it is not the prosecution's

case that even Kong Hee had enjoyed any wrongful gain; this point does not feature in the evidence or in the prosecution's submissions and I will say no more about this aspect.

[note: 22]23 The fact that the Crossover had the support of the majority of CHC members at various junctures should also not be overlooked, even if it was conceded that not everyone in CHC was 100% in support of it. Nevertheless, the extent of CHC members' support should also be understood in the context of what was made known then to all the members at different points in time about the use of the BF for purported "investments", and what was deliberately concealed from wider view, including the fact that the BF was being used for the Crossover instead. I accept that a number of CHC's members may have continued to express their support even after the full facts have been brought to light.

[note: 23]24 In particular, it cannot be overemphasised that the BF was an accumulation of donations received through CHC's "Arise & Build" campaigns by donors who specifically contributed over the years for the building effort. There is no evidence that each of these donors to the BF would have agreed to the diversion of such funds for the Crossover. One way of appreciating the significance of this point might be to ask: would $24 million have been raised in under two years if CHC members had been asked to contribute to a "Crossover fund" in 2007? And if the $24 million was exhausted by 2009 and needed to be replaced for some reason by 2010, would a similar amount or more have been raised from CHC members within the first half of 2010? One can speculate that all this might have been achieved; but the point is probably moot since CHC members were never asked to make such contributions and had been given the impression all along that the necessary financing for the Crossover was not drawn from church funds.

[2010] 4 SLR 25825 I note that counsel for Kong Hee had submitted that it was "not the Court's finding" that the interests of CHC's donors had been wilfully disregarded[2007] SGDC 334. With respect, this misapprehends my judgment and findings. I had found that the accused persons went ahead to misuse the funds knowing that they were set aside for a specific purpose in a restricted fund. In doing so, they would have wilfully disregarded the donors' wishes in channelling their donations to the BF. This flows naturally from my finding that CHC's funds were misappropriated and used for the wrong use.

[note: 24]26 While I consider it relevant that the accused persons had believed that the funds were ultimately being used for church purposes to further CHC's mission in taking the Crossover beyond Asia, the fact remains that these purposes were not what the BF was meant for. I am also not quite able to see how there was a pure "altruistic" purpose for the use of the Crossover funds, contrary to the submissions of the defence[note: 25]. The direct beneficiary as I see it was Sun Ho, whose music career in the US was being sponsored through these funds. She was not in any financial hardship. No doubt they have maintained that the Crossover was meant to serve a missions purpose and reap "spiritual returns" rather than to benefit any specific individual, and they stood by their belief that what was being done was in CHC's best interests. But I reiterate that no matter how pure the motive, the end does not justify the dishonest means that the accused persons chose to adopt. Even so, I consider that their motives are not altogether irrelevant in sentencing; they should feature towards mitigating the seriousness of the offences, particularly when compared to more typical CBT cases where avarice, self-interest and personal enrichment often feature heavily.

[note: 26]27 All the monies misappropriated eventually came back to CHC with interest. This factor must still count in their favour even though I am also persuaded that their motivation for restitution was not purely *bona fide* but to cover up their earlier misdeeds to avoid detection and allay suspicion which was already then mounting. I note that in their endeavours to return the funds, the accused persons had to resort to diverting the burden of debt elsewhere. Various individuals had to be roped in to extend loans to Xtron to return the ARLA funds to CHC, effectively transferring the burden to Xtron, which was an "insolvent" and unprofitable company to begin with. Thus while due weight must be given to the fact that CHC ultimately suffered no permanent loss, it cannot be gainsaid that loss had already been caused once the funds were channelled to the use of the Crossover, with the attendant high risk that the funds might not ultimately be returned irrespective of their intention to treat the use of funds as a "temporary loan". Moreover, restitution did not come about solely due to the individual accused persons' personal sacrifice. I would also note that

the Xtron and Firna bond redemptions were in fact achieved via round-tripping and entailed falsification of accounts *ie*. being the very subject-matter of offences for which they have been convicted.

[note: 27]28 It is not seriously disputed that the accused persons had done good work for good causes and helped CHC in contributing to the wider community beyond CHC as well. But CBT offences typically involve persons who were placed in positions of trust because they were deemed trustworthy to begin with. As for the "clang of the prison gates" principle, I agree with the prosecution that it does not apply in the present case since the accused persons had gravely abused the very positions that gave them some eminence. These are serious offences so the strong public interest in general deterrence must be the foremost consideration.

[note: 28]29 There were attempts to draw comparisons with cases of prominent personalities involved in fund-raising such as Goh Kah Heng (alias Shi Ming Yi) and TT Durai, well-known for their respective former associations with Ren Ci Hospital and Medicare Centre and the National Kidney Foundation[note: 29]. One key distinction is that similarly massive sums of donors' money were never involved in those cases. In contrast, the millions of dollars which were the subject of misappropriation in the present case came from funds contributed by various donors from various walks of life over the years, and the BF monies were intended for a specific purpose.

30 CHC had tremendous fund-raising capacity and it is not disputed that CHC did channel substantial funds towards work for the benefit of the community. I understand that some $15 million was expended by CHC for charitable and humanitarian causes from 2003 to 2010. There is however an important differentiating element when one compares CHC's efforts with those of Ren Ci Hospital and the National Kidney Foundation. These are organisations whose primary mission is to provide medical care and assistance to the chronically-ill and needy. CHC's community service efforts and charitable donations while laudable were at best peripheral to its objectives as a church focusing on religious worship.

31 I have no desire to disparage or detract from the good work that CHC had done for the wider community, whether local or international, but it is necessary to set things in proper perspective. $15 million was set aside by CHC over eight years for charitable causes. As against this, much larger sums by far were wrongfully used for the sham investments and round-tripping in just under three years.

Sentencing considerations: some observations

32 The main aggravating factors that stand out in this case are first, the large amounts of CHC donors' money misappropriated, at least in relation to the sham bond investment charges, and second, the fact that these were charity monies entrusted to one or more of the accused persons. All of them were in positions of trust and confidence within CHC. As to the second factor, though, care should be taken not to overstate it: as between an offender who is entrusted with charity monies and, say, an offender who is entrusted with the hard-earned income of impoverished foreign workers (as in *Public Prosecutor v Lam Chen Fong* at [29]), I would be slow to conclude that, all things being equal, the former should be dealt with more severely than the latter just because the former was dealing with charity funds.

33 The key mitigating factors are that the accused persons are first offenders who did not act for personal gain and no permanent loss to CHC was intended or in fact caused, since the monies have been repaid to CHC. The prosecution recognises these considerations but has nevertheless submitted that general deterrence must be given primacy. There is no reference to specific deterrence in the prosecution's submissions on sentence and I think this must be right. The risk of reoffending among the individual accused persons in the present case is so minimal as to be virtually negligible.

34 There are cogent policy considerations to justify deterrent sentences in dealing with CBT where large sums of charity monies are involved, and I would respectfully adopt the views of the District Judge in *Public Prosecutor v TT Durai* at [124] to [125]. While I agree that it is important as a matter of sentencing policy to deter generally people

who are entrusted with charity monies from misusing those monies, I am also mindful that deterrence does not simply entail the imposition of disproportionately crushing sentences. I agree with the defence's point that given the factual context, the mere prospect of a criminal conviction, let alone any substantial custodial sentence, already carries some deterrent value.

35 I also agree with the defence that the case for general deterrence carries less force in the context of cases where there is no direct personal gain and no evidence of such motives. In the usual cases involving personal gain, the idea behind a deterrent sentence is that it should cause an accused person who is presumably capable of reasoning rationally to consider that the prospect of gain is not worth the cost of a potential harsh punishment. But in cases not involving direct personal gain, I would suggest that such a rational cost-benefit analysis is not quite in play: *ex hypothesi* the offender is not incentivised or enticed by the prospect of gain, and so it is not entirely clear how a heavy-handed sentence in the name of deterrence is meant to influence his reasoning.

36 Perhaps the most persuasive precedent that has been raised for my consideration is that of *Joachim Kang Hock Chai v Public Prosecutor* (DAC 15621/2003, unreported) because it involved charity monies, and more specifically, the misuse of church funds. The amount misappropriated in that case was $5.1 million and, while large, the amount is significantly smaller than the amount in the present case; moreover, the offender in *Joachim Kang* was punished under s 406 of the Penal Code, which concerns a less serious offence and so carries a lower maximum sentence. As against that, however, the offender in *Joachim Kang* clearly acted out of a desire for personal gain, and it is not clear that all the monies misappropriated went back to the church. A global sentence of 7 years 6 months' imprisonment was imposed on him upon his plea of guilty after 13 days of trial.

37 Taking *Joachim Kang*'s case as a very broad if somewhat imperfect reference point, the sentence range at the higher end ought therefore to be above 7 years 6 months' imprisonment. While the amount of money misappropriated is often used as the starting point in sentencing for CBT, I agree with the defence that the present case is unique and there are other compelling factors that require consideration, *viz*, the lack of personal gain and motives of self-enrichment, as well as the eventual return of the monies in full.

38 I make some further observations in relation to the fact that the accused persons have been convicted after a lengthy trial. I agree with the defence submission that none of them sought to unnecessarily prolong the trial with lengthy cross-examination of prosecution witnesses or protracted evidence-in-chief. But this a neutral factor and not something deserving of credit in terms of a reduced sentence. Conversely, if the accused persons had prolonged the trial through long and pointless evidence-in-chief or cross-examination, this could be an aggravating factor in sentencing.

39 In their respective written mitigation pleas, Kong and Ye Peng had also suggested that they had demonstrated remorse. I am conscious of the nuanced distinction between expressions of 'regret' by an accused person who has been convicted after trial and 'remorse' by an accused person who accepts responsibility for his conduct and appreciates his wrongdoing. 'Regret' in such circumstances is patently not the same as 'remorse' – it is little more than an expression of disappointment likely borne out of dissatisfaction that the court was not persuaded of the merits of his defence and had not found reasonable doubt to justify an acquittal. And there may well be a stoic and resigned 'acceptance' of the court's decision to convict and 'respect' for that court's judgment and observance of due process, but once again that is not necessarily the same as personal acceptance of responsibility or acknowledgment of culpability and wrongdoing.

40 Genuine remorse is most palpable where there is unreserved acceptance of responsibility and appreciation of wrongdoing. This usually manifests itself in an early plea of guilt. To my mind, it is not possible now to put forward remorse as a possible mitigating factor where the accused persons have been convicted after trial. At no point have the accused persons intimated any acceptance or appreciation of their dishonest and unlawful conduct. Indeed it is ironic that in Kong Hee's mitigation plea, his claims of remorse would tend to suggest otherwise. Kong Hee continues to maintain in mitigation that he had relied heavily on the advice of professionals to "safeguard the legality of the

transactions". This ignores my express findings after trial where I had observed, *inter alia*, that "where professional advice was sought, this was really mainly an attempt to seek out self-supporting confirmatory advice based on selectively-disclosed information".

41 In this regard there appears to have been a misreading of *Kuek Ah Lek v Public Prosecutor* at [65] by the defence. That case stands for the principle that claiming trial is not an aggravating factor; Yong Pung How CJ never propounded that claims of genuine remorse and contrition should still generally be taken into account as mitigating factors after an offender has been convicted after trial. *Kuek Ah Lek* merely makes it clear that an accused person is entitled to claim trial based on what he believes to be a valid reason and a valid defence and the mere fact of claiming trial is not an aggravating factor that can be taken against him.

42 In *Lim Pei Ni Charissa v Public Prosecutor* at [24] and [30], the offender's subsequent acknowledgment of her wrongdoing post-trial was taken to be indicative of remorse by the appellate court. Conversely, in *Sinniah Pillay v Public Prosecutor* at [27], Chao Hick Tin J (as he then was), in delivering the judgment of the Court of Appeal, noted that the prosecution had to be put to proof of its case even where the appellant had chosen to remain silent during his trial after his defence was called. The Court of Appeal thus ruled that the appellant did not show any remorse nor save the court and prosecution time and expense.

43 It was further suggested in mitigation that the accused persons have suffered from the glare of unrelenting public scrutiny and extensive media publicity since the CAD investigations commenced. Quite ironically, it was on account of their express wishes to avoid scrutiny by deliberately concealing the fraudulent purpose of the use of funds that intense scrutiny has resulted, culminating in these criminal proceedings. It cannot be that their sentences should now bear an inversely proportional correlation to the extensiveness of publicity or media interest. In this connection, even if there had been any inaccurate media reporting, I respectfully adopt the observations made by V K Rajah J (as he then was) in *Dinesh Singh Bhatia v PP* , at [54]: "Incorrect news reporting and/or unfavourable publicity would hardly qualify as legal planks that can legitimately be deployed by the Appellant in diminishing his culpability and/or in mitigating the appropriate sentence".

The sham investment charges

44 I turn next to assess the relative culpability of the five accused persons convicted of the sham investment charges. In my view, from most culpable to the least, they rank as follows:

(a) Kong Hee, because he was the overall leader of the Crossover and hence the driver of the various efforts made to fund the Crossover using BF monies;

(b) Ye Peng, Eng Han and Serina – even though the nature of their involvement in the conspiracy was various, it is difficult to say that any one of the three was more culpable than the others because they were all heavily involved in facilitating the application of BF monies towards the Crossover; and

(c) John Lam, who was only involved at specific junctures.

45 Kong Hee was CHC's spiritual leader, the prime mover and driving force for the Crossover. He exercised control over the direction and approach to be adopted. The others looked to him for direction and took their cue from him and he must therefore be considered the most culpable among them. Ye Peng and Serina, and to some extent, John Lam as well, also relied heavily on Eng Han's expertise. Both Kong Hee and Eng Han put forward dominant views and proffered strategies that all the other accused persons chose not to oppose or question. In choosing to rely on them, to borrow the words of William James, the other accused persons had chosen to put their faith in someone else's faith. I note with no small irony that Eng Han now seeks to pin full blame on Kong Hee for having "short-changed the faith of

the people in City Harvest Church" when Eng Han himself had arguably also short-changed the faith that others had in his honesty, integrity and financial expertise.

46 Given that the present case is effectively without precedent, it is not critical to examine the various sentencing precedents tendered by the prosecution in detail. Nevertheless, they are not completely irrelevant or unhelpful. I should state that I do not find it useful to anchor the enquiry by looking first to the very high sentences of 20 to 40 years' imprisonment imposed in some of those cases as a guide. This would entail working downwards to conclude that, for a case involving about $20 million, a "usual" or "ordinary" sentence might be, say, 15 years' imprisonment, and then applying a "discount" to take into account the lack of personal gain. Such an approach places too heavy a focus on the amount of money misappropriated and skews the sentencing enquiry in that direction, in the sense that one is always working down from a high starting point or anchor.

47 I would instead start from the premises that while huge sums of charity monies and serious breaches of trust were involved, this case requires consideration of the following unique features: (i) the accused persons did not enjoy personal gain, nor was it at all in contemplation that they would enjoy personal gain, and (ii) CHC has not in fact ultimately suffered financial loss as the monies have been returned. I would also note that the accused persons believed that they were working towards an objective that had the support of the church. As to (ii), even though I do not accept that the return of the monies to CHC truly reflects remorse on the part of the accused, I do not think that it negates entirely the mitigating value of the fact that CHC has not suffered permanent loss. I would also take into account the contributions made by the accused persons to CHC and the wider community as demonstrated in the various letters submitted on their behalf and incorporated in their mitigation pleas.

48 In these circumstances, if the amounts involved had been relatively small – say in the region of up to $50,000 – that would still cross the custodial threshold but a shorter term of imprisonment perhaps in the range of one to two months might possibly be appropriate, depending on the facts. Where, as in the present case, the amount is very large, specifically $24 million, the offences must of course be treated with correspondingly greater severity, but imposing the sentences of 11 to 12 years' imprisonment suggested by the prosecution would marginalise the mitigating features of the case as highlighted in the preceding paragraph as well as the good that the accused persons had previously done.

49 Given that the precedents do not afford more than a limited degree of guidance, I am of the opinion that the sentence of 7 years and 6 months' imprisonment imposed in *Joachim Kang* on an offender who misappropriated $5.1 million in charity monies but did so *entirely* for personal gain is a relevant reference point but certainly not a benchmark for the individual sentences in the present case. In my view, the sentences for the first, second and third charges for which Kong Hee has been convicted should be five, three and five years' imprisonment respectively. With the sentences in the second and third charges running consecutively, a global sentence of eight years' imprisonment would be fair even though the amount involved was about five times that in *Joachim Kang*.

50 Moving to Eng Han, Ye Peng and Serina, I am of the view that their sentences should be correspondingly lower than the sentences for Kong Hee. Imprisonment terms of four, two and four years' duration would be appropriate for the first, second and third charges respectively. The reductions from the terms imposed on Kong Hee are warranted on the basis that they were ultimately following the vision and direction instituted by a spiritual leader whom they had deferred to and become accustomed to trusting.

51 Finally, for John Lam, a further significant reduction from the terms imposed on Eng Han, Ye Peng and Serina is warranted because he was much less involved in the conspiracy: his main involvement was to draft the investment policy and to convene the investment committee meeting that together lent an appearance of legitimacy to the Xtron bonds, and to sign the secret letter in order to secure the required consent of Wahju's father-in-law to the Firna bonds. He was not involved, for instance, in designing plans to redeem the bonds should the album sales fail to materialise. In the light of his limited role, I would impose terms of two, one and two years' imprisonment for the first, second and

third charges respectively. With the sentences in the second and third charges running consecutively, a global sentence of three years' imprisonment would be adequate for John Lam.

The round-tripping and accounts falsification charges

52 I will consider the round-tripping and accounts falsification charges together because they are in essence part of the same overall criminality, in that they concern aspects of a single criminal enterprise to create the false appearance that the Xtron and Firna bonds had been redeemed. The prosecution has acknowledged that the inherent nature of the round-tripping transactions was that, for the most part, they would not result in permanent financial loss to CHC. The net effect of the transactions was that certain debts owed to CHC, *viz*, the Xtron and Firna bonds, would be substituted by another obligation, namely, the obligations owed under the ARLA, and there was thus no attempt to extinguish the debts owed to CHC. I am of the view that this factor means that the round-tripping and accounts falsification charges involve a significantly lower degree of culpability than the sham investment charges.

53 Having said that, I agree with the prosecution that the sixth charge, involving the payment of $15.238 million under the ARLA, ought to be viewed more seriously because it entailed the payment of some $3.2 million purportedly as Goods and Services Tax ("GST") which would have represented actual loss to CHC if the ARLA had not been rescinded. At the same time, I would take into account the fact that even this sum purportedly paid as GST has been returned to CHC with the rescission of the ARLA. While this would not reflect genuine remorse in that the rescission of the ARLA was, on the evidence, motivated by a fear that past transactions might be discovered in the context of blog posts then in circulation alleging impropriety in CHC's use of funds, it remains relevant that CHC ultimately suffered no loss.

54 In terms of the relative culpability of the four accused persons convicted of the round-tripping and accounts falsification charges, my assessment is that from most culpable to the least, they rank as follows:

(a) Eng Han, because the round-tripping transactions were devised and structured by him, and in this sense he was the driving force behind those transactions and the person whom the others looked to for direction and expertise;

(b) Ye Peng and Sharon – although Sharon's role in the transactions was greater than that of Ye Peng, as shown by the fact that Ye Peng was added into the Blackberry exchanges between Eng Han and Sharon at a fairly late stage, I consider that Ye Peng is more culpable than Sharon in one respect, which is that he was in a position of greater leadership and responsibility, and the evidence shows that Sharon thought herself answerable to Ye Peng, and so ultimately there should be parity in the sentences meted out to the two of them; and

(c) Serina, because her involvement in the round-tripping transactions was perhaps as minimal as that of Ye Peng, but she did not stand in the same leadership role that he did.

55 My starting point in determining the appropriate sentences for the round-tripping and accounts falsification charges is a consideration of the position of Sharon. She was never a church leader, let alone a Board member, and although she was conscious of the fact that the auditors would be deceived by the transactions, she did think that the CHC board had no problems with the use of what might be called "creative accounting" to remove the Xtron and Firna bonds from CHC's books. She did not hold an executive role within CHC, and her culpability must also be assessed in this light.

56 I do not see a compelling need to impose different sentences for the various accounts falsification charges. In view of the significantly less serious nature of the round-tripping and accounts falsification charges compared to the sham investment charges, in relation to Sharon's charges, I impose a sentence of 18 months' imprisonment on the sixth (ARLA) charge, and sentences of three months' imprisonment on each of the four accounts falsification charges

and I will order that the sentence for the sixth charge run consecutively with the sentence for the seventh (accounts falsification) charge. As for the remaining round-tripping charges, *ie*, the fourth and fifth charges involving tranches 10 and 11 of the SOF, I am of the view that 12 months' imprisonment per charge would be adequate and these sentences can run concurrently with the other sentences. An aggregate sentence of 21 months' imprisonment would be sufficient punishment for Sharon.

57 As for Ye Peng, I would consider his culpability for the round-tripping and accounts falsification offences to be on par with that of Sharon's and I would therefore impose the same sentences on both of them. As for Eng Han, his increased culpability in relation to the round-tripping transactions would be adequately reflected by sentences of 2 years' imprisonment for the sixth (ARLA) charge and 15 months' imprisonment on each of the SOF charges. As for Serina, her relatively limited role in the transactions should attract substantially reduced sentences of one year's imprisonment for the sixth (ARLA) charge and nine months' imprisonment for each of the SOF charges.

58 As for the accounts falsification charges, for Eng Han and Ye Peng I would impose the same sentences as for Sharon, *ie*, three months' imprisonment, and for Serina I would impose a slightly lower sentence of two months' imprisonment.

Aggregate sentences for Eng Han, Ye Peng and Serina

59 For Kong Hee, John Lam and Sharon, the prosecution argues that only two sentences should run consecutively, but it contends that Eng Han, Ye Peng and Serina should have three sentences run consecutively to reflect their increased culpability in that they participated in two distinct sets of criminal activity. But I do not think it must follow from the fact that they participated in two distinct criminal enterprises that three sentences ought to run consecutively; the question is not so much how many sentences should run consecutively but whether the totality of the sentence fairly and accurately reflects the overall culpability of the accused.

60 In my judgment, this notion of having participated in two criminal enterprises may be appropriately reflected in the sentencing outcomes if the longest sentence for the sham investment charges is ordered to run consecutively with the longest sentence for the round-tripping transactions. This would result in the following global sentences:

(a) Eng Han – four years' imprisonment (on the third charge) and two years' imprisonment (on the sixth charge); total of six years' imprisonment.

(b) Ye Peng – four years' imprisonment (on the third charge) and 18 months' imprisonment (on the sixth charge); total of five years and six months' imprisonment.

(c) Serina – four years' imprisonment (on the third charge) and one year's imprisonment (on the sixth charge); total of five years' imprisonment.

Conclusion

61 The issues at trial did not concern mere lapses of corporate governance. I had found that the accused persons were guilty of acting dishonestly and being actively complicit in conspiring to cause wrongful loss to CHC through the misuse of CHC's funds and to defraud the auditors. They have been found guilty of serious offences involving breaches of trust and misuse of donors' monies including large sums given for a specific purpose and held by CHC as a charity. General deterrence must therefore underpin the court's sentencing approach. Wider issues of personal integrity, transparency and accountability in relation to the custody and use of charity monies, particularly where massive sums of money are involved, must also be adequately considered.

62 On the other hand, there are mitigating features which set this case apart from the prosecution's sentencing precedents, chiefly the lack of any personal wrongful gain, any motive of self-interest or enrichment, and the absence of intent to cause permanent loss and the return of the monies ultimately to CHC. I do not believe that they had intended to cause long-term harm to CHC through the permanent deprivation of those funds. Thus I had characterised their plans broadly as being akin to a "temporary loan" arrangement which was unlawful as they were effectively putting CHC's funds into their own hands to use as they needed for the purposes of the Crossover and for round-tripping. These were plainly not authorised purposes for the use of CHC's funds.

63 In the circumstances, I am of the view that the sentences should be sufficiently substantial to serve the needs of general deterrence but they should not be crushing sentences. I have sought to carefully calibrate the sentences so as to ensure that they are proportionate to each accused person's role and culpability, having regard to the seriousness of the offences.

64 In summary, I would therefore impose the sentences on each of the accused persons as set out in the table annexed. The accused persons therefore stand convicted and are sentenced accordingly.

Category of charges	**Charge**	**Subject-matter**	**John Lam**	**Kong Hee**	**Sharon**	**Eng Han**	**Ye Peng**	**Serina**
Sham investment charges	1st	Xtron bonds ($10m)	2 years	5 years		4 years	4 years	4 years
	2nd	Xtron bonds ($3m)	1 year	3 years		2 years	2 years	2 years
	3rd	Firna bonds ($11m)	2 years	5 years		4 years	4 years	4 years
Round-tripping charges	4th	SOF T10 ($5.8m)			12 months	15 months	12 months	9 months
	5th	SOF T11 ($5.6m)			12 months	15 months	12 months	9 months
	6th	ARLA ($15.238m)			18 months	2 years	18 months	1 year
Accounts falsification charges	7th	SOF T10 ($5.8m)			3 months	3 months	3 months	2 months
	8th	SOF T11 ($5.6m)			3 months	3 months	3 months	2 months
	9th	ARLA set-off ($21.5m)			3 months	3 months	3 months	2 months
	10th	ARLA cash ($15.238m)			3 months	3 months	3 months	2 months
		Total	3 years	8 years	21 months	6 years	5 years 6 months	5 years

I shall refer to my earlier judgment setting out my reasons for conviction hereinafter as the "21 October Judgment".

The same abbreviations set out in the Glossary of Terms at Annex B of the 21 October Judgment will be adopted in this judgment.

Adopting Yong Pung How CJ's characterisation of misappropriation in *Tan Tze Chye v Public Prosecutor* at [37].

21 October Judgment, at [474].

21 October Judgment, at [500] to [501].

21 October Judgment, at [280] and [488].

CH-25, pp 27, 28.

Transcript, 28 January 2015, p 104.

E-853.

21 October Judgment, at [280].

21 October Judgment, at [497].

21 October Judgment, at [486], [490] and [491].

Transcript, 11 August 2014, p 32.

Transcript, 27 January 2015, pp 104, 116.

21 October Judgment, at [379] and [490].

This is implicitly acknowledged by the 173 EMs who signed a letter of appeal on behalf of the accused persons dated 13 November 2015, incorporated into Kong Hee's mitigation plea and adopted by the other accused persons.

E-322.

Transcript, 15 August 2014, p 166.

Prosecution's Sentencing Submissions, [42].

CH-25, p 28.

21 October Judgment, at [496].

Written Mitigation Plea for Kong Hee, at [53].

Eg. in the Written Mitigation Plea for Kong Hee, at [43].

Goh Kah Heng (alias Shi Ming Yi) v Public Prosecutor and anor matter ; *Public Prosecutor v TT Durai* .

Written Mitigation Plea for Kong Hee, at [79] and Written Mitigation Plea for Ye Peng, p 41.

Written Mitigation Plea for Kong Hee, at [81].

21 October Judgment, at [482].

Written Mitigation Plea for Kong Hee, at [80].

Transcript, 18 August 2014, p 89.

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