Public Prosecutor *v* Development 26 Pte Ltd
[2014] SGHC 233

Case Number : Magistrate's Appeal No 142 of 2014 and Criminal Motion No 62 of 2014

Decision Date : 13 November 2014

Tribunal/Court : High Court

Coram : See Kee Oon JC

Counsel Name(s) : April Phang and Tan Si En (Attorney-General's Chambers) for the appellant; Srinivasan V N and Foo Ho Chew (Heng Leong & Srinivasan) for the respondent.

Parties : Public Prosecutor — Development 26 Pte Ltd

Criminal Procedure and Sentencing – Appeal – Adducing fresh evidence

Criminal Procedure and Sentencing – Sentencing – Carrying out works within conservation area without conservation permission

13 November 2014

See Kee Oon JC:

1 The respondent company faced two charges of carrying out works within a conservation area without having obtained conservation permission, an offence under s 12(2) of the Planning Act (Cap 232, 1998 Rev Ed) ("the Act") and punishable under s 12(4)(*a*) of the Act by a fine not exceeding $200,000. In brief, the first charge was for demolishing a conserved building and the second charge was for partially erecting a new building where the demolished building had stood. I reproduce these charges here:

> **URA 3-2014**
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> You, [the respondent] are charged that you, on or before 21 June 2013, did carry out works within a conservation area at 5 Lorong 26 Geylang on Lot 01024T Mk 25, Singapore ("the said land"), which is within an area designated as a conservation area under the Planning Act, without the prior conservation permission of the Competent Authority, contrary to Section 12(2) of the Planning Act (Cap. 232) to wit: the demolition of the conserved building known as 5 Lorong 26 Geylang on the said land, and you have thereby committed an offence punishable under Section 12(4) of the aforesaid Act.
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> **URA 4-2014**
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> You, [the respondent] are charged that you, on or before 21 June 2013, did carry out works within a conservation area at 5 Lorong 26 Geylang on Lot 01024T Mk 25, Singapore ("the said land"), which is within an area designated as a conservation area under the Planning Act, without the prior conservation permission of the Competent Authority, contrary to Section 12(2) of the Planning Act (Cap. 232) to wit: the carrying out of building operations on the said land to partially erect a new building on the said land at the location of a conserved building known as 5 Lorong 26 Geylang which had been demolished, and you have thereby committed an offence punishable under Section 12(4) of the said Act.

2 The matter was first brought up for mention in the evening of 21 May 2014 in Court 26N of the State Courts, a night court established for the purpose of dealing with regulatory offences. An officer from the Urban Redevelopment Authority ("URA") conducted the prosecution. During the second mention in Court 26N on 18 June 2014, a guilty plea was entered by a representative of the respondent. The URA Prosecuting Officer ("PO") said that he was not offering any facts other than what was stated in the charges. He then informed the court of the maximum fine for each charge and indicated that the usual range for such offences was $6,000 to $8,000 per charge.

3 The respondent's representative put forward a mitigation plea in turn, pleading for a light sentence as this was the respondent's first offence and the plea of guilt was entered at the earliest opportunity. He said that the respondent's act of partially erecting a new building was in fact an attempt to replicate the original demolished building. The PO raised no objections to the mitigation plea and he did not thereafter address the court further on sentence. The District Judge proceeded to impose a fine of $6,000 on each charge, making a total fine of $12,000. This narrative of the proceedings in the court below is taken from the District Judge's grounds of decision, *Public Prosecutor v M/s Development 26 Pte Ltd* [2014] SGDC 251 ("the GD"), at [2]–[5].

4 I have set out the foregoing narrative at some length in order to provide the relevant context to this appeal. This was to all appearances a routine and unexceptional case that was dealt with summarily during a night court session at the second mention. The night courts have been in operation since 1992 and for the overwhelming majority of other night court matters where a plea of guilt is entered and sentence is passed, that would ordinarily have meant the end of the matter. Prosecution appeals are rarely, if ever, filed.

5 The Attorney-General's Chambers ("AGC") subsequently decided to lodge an appeal against the sentences passed in this case. The AGC must have appreciated the paucity of facts placed before the District Judge, for it also applied by way of Criminal Motion No 62 of 2014 to admit additional evidence in support of its appeal. This evidence took the form of three affidavits sworn or affirmed by URA personnel. In essence, the affidavits asserted three things. The first was that there was great national and public interest in the protection of conservation areas such that carrying out unauthorised works within such areas ought to be considered a serious offence. The second was that the extent of the respondent's unauthorised works was very substantial; it went far beyond mere minor alterations and instead amounted to a wholesale tearing down of a colonial-era bungalow earmarked for conservation. The third was that the respondent was especially blameworthy for having committed its offences in a flagrant and cynical manner, in that it had been expressly denied permission by the URA to demolish the bungalow but gone ahead to do so anyway.

6 Having heard parties, I dismissed the prosecution's application in the criminal motion as well as its appeal against sentence. I intimated that I would release written grounds and I do so now. In making known my detailed reasons, I have three broad objectives in mind. The first is to explain that, given the circumstances, this case should not be taken as having established a sentencing benchmark for offences under s 12(2) of the Act. The second is to affirm the principle that when accused persons plead guilty timeously they should generally be able to expect that, save for a prosecution appeal against sentence based on the facts and evidence on record, their plea of guilt will bring a swift end to the criminal proceedings against them. The third is to emphasise that when government agencies other than the AGC have carriage of criminal prosecutions involving offence provisions which have not hitherto been tested in court, it would be good practice and prudent for them to consult the AGC on how policy aims may be properly translated and communicated in a courtroom setting. This may entail careful and extensive preparation for submissions on sentence in consultation with AGC. Regrettably, this was not observed in the present case even though this was the first such prosecution undertaken by the URA under s 12(2) of the Act.

The application to adduce additional evidence

7 I begin with my reasons for dismissing the prosecution's application to adduce additional evidence in the form of the three affidavits sworn or affirmed by URA personnel. As to the law, the governing statutory provision is s 392(1) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC"), which stipulates that an appellate court "may, if it thinks additional evidence is necessary, either take such evidence itself or direct it to be taken by the trial court". Thus, the threshold is whether the additional evidence is "necessary".

8 Since the early 1990s, our appellate criminal courts have consistently approached the question of whether additional evidence was "necessary" by referring to the guidelines articulated in the English Court of Appeal decision of *Ladd v Marshall* [1954] 1 WLR 1489. In that case, Denning LJ, as he then was, held (at 1491) that in order for additional evidence to be admitted on appeal "three conditions must be fulfilled". For brevity's sake, these conditions can be assigned the labels "non-availability", "relevance" and "reliability". The condition of non-availability requires that it be shown that the evidence could not have been obtained with reasonable diligence for use at the trial. The condition of relevance requires that the evidence be such that, if given, it would probably have an important influence on the result of the case though it need not be decisive. The condition of reliability requires that the evidence be such as is presumably to be believed, *ie*, it must be apparently credible though it need not be incontrovertible.

9 In the present case, the affidavits which the prosecution sought to introduce as additional evidence fulfilled two of the three *Ladd v Marshall* conditions. They fulfilled the condition of relevance because the assertions contained therein taken together – that the respondent tore down completely a protected building of architectural or cultural significance and did so in a deliberate and cynical manner – would, if true, mean a high degree of culpability on the respondent's part such as could justify enhancing the sentence imposed. They fulfilled the condition of reliability because there was nothing to suggest that the URA personnel had lied in the affidavits or that they had been mistaken as to the material facts. I record for completeness that they did concede making an error in stating that a certain meeting had taken place on a particular date, but I did not think that this error was material nor did I think that it cast any doubt on the rest of the contents of the affidavits.

10 On the other hand, the affidavits did not meet one of the *Ladd v Marshall* conditions, that of non-availability. The matters attested to in the affidavits would have been within the knowledge of the URA personnel long before 18 June 2014, the day on which the respondent pleaded guilty. It would not have been at all difficult to prepare those affidavits by that time had some measure of diligence been exercised.

11 Thus, there arose the question of whether a failure to meet the *Ladd v Marshall* condition of non-availability necessarily precluded an appellate criminal court from permitting the additional evidence to be adduced. In my judgment the answer is "no". I would add that in my estimation this answer in the negative is more emphatic now than it was two decades ago.

12 Back then, as exemplified by the Court of Appeal decision of *Rajendra Prasad s/o N N Srinivasa Naidu v Public Prosecutor* [1991] 1 SLR(R) 402 at [12]–[14] and the High Court decision of *Juma'at bin Samad v Public Prosecutor* [1993] 2 SLR(R) 327 ("*Juma'at*") at [13]–[15], our appellate criminal courts applied the *Ladd v Marshall* conditions with some stringency, treating them more or less as mandatory such that a failure to meet any one of them would almost certainly disqualify the additional evidence from admission. But even then, it was recognised that exceptions might be made as regards the condition of non-availability. In *Juma'at*, Yong Pung How CJ opined at [34] that additional evidence which did not strictly meet the non-availability condition might nonetheless be admitted "if it

can be shown that a miscarriage of justice has resulted", although he hastened to add that this would "arise only in the most extraordinary circumstances".

13 In recent years, however, our appellate criminal courts seem to have adopted a more relaxed stance towards the *Ladd v Marshall* conditions. More than a decade after *Juma'at*, the Court of Appeal in *Mohammad Zam bin Abdul Rashid v Public Prosecutor* [2007] 2 SLR(R) 410 at [7] expressed the view that the three conditions "may be useful points for consideration even in a criminal case" but were no more than that given the "higher burden of proving guilt in a criminal case". This development would appear to signal an even greater readiness to overlook any failure to meet the condition of non-availability. The Court of Appeal in the last sentence of [6] stated that what was "paramount" in deciding whether to adduce additional evidence was "the question of the relevancy, more specifically, materiality, as well as the credibility" of that evidence. From the emphasis placed on two of the three *Ladd v Marshall* conditions, those of relevance and reliability, it might be implied that the court meant to diminish the importance of the remaining condition, that of non-availability.

14 Indeed, very recently the High Court allowed the admission of additional evidence in a criminal appeal even though the condition of non-availability was obviously not met. This happened in *Soh Meiyun v Public Prosecutor* [2014] 3 SLR 299, a decision of Chao Hick Tin JA. The appellant there had been convicted of causing hurt to her domestic maid and she sought on appeal to introduce a psychiatric report which diagnosed her as suffering from two types of mental disorder – a consideration that would call for increased leniency towards her. Chao JA held that, in view of the "drastic ramifications" for the appellant if an erroneously heavy punishment were to be inflicted on her and given that something as fundamental as her liberty was at stake, he should be "slow to reject" that evidence so long as it met the *Ladd v Marshall* conditions of relevance and reliability, even if it did not meet that of non-availability: at [16]–[20].

15 Therefore, it was clear to me from the authorities that the failure in the present case to fulfil the condition of non-availability was not fatal to the prosecution's application to adduce additional evidence. The question that remained was whether I ought to allow it in spite of that failure. My answer to this, in turn, was "no". The appellate criminal court must balance procedural fairness and concerns of finality and due process on one hand with the public interest in ensuring the correct substantive outcome on the other, and in my view the balance came down firmly in favour of finality in the circumstances of the present case.

16 When accused persons plead guilty, their plea marks their acceptance of the charges against them as well as what is set out in the statement of facts if one is prepared. The charges and the statement of facts constitute the four corners of the case against them. To the extent that there may be a submission on sentence by the prosecution as contemplated by s 228 of the CPC, this serves to emphasise the relevant (aggravating) features which the admitted facts disclose for the court's consideration. The submission may also be informed by the relevant policy considerations underlying the offence legislation. What the submission cannot do is to attempt to introduce new facts which the accused person has not already accepted in his plea of guilt, before he is found guilty and convicted on his own plea. If additional facts are introduced in the submission, the accused person may challenge those facts and/or seek to qualify or retract his plea. Thus, viewed in proper perspective, the plea of guilt does not and cannot extend to additional facts or information outside of what has been conceded. This is an important procedural safeguard, without which new aggravating facts can easily slip in by the back door, as it were, in the prosecution's submission.

17 In the present case, no statement of facts was prepared. The facts to which the respondent pleaded guilty had been reduced by the PO to the facts "as per the charges". No other information or address on sentence was deemed necessary other than the PO's mention of the usual sentence range

for such offences. If the prosecution were allowed to adduce additional evidence on appeal, this would completely alter the factual basis for the plea of guilt. This was not merely a plausible risk but a patent reality. In my opinion that would then require the court to seriously consider setting aside what was otherwise a perfectly valid and proper plea. I did not think this at all a desirable outcome and this weighed against allowing the prosecution to adduce the additional evidence. The respondent had no reason to wish to retract the plea and had been duly convicted and sentenced. The fines had been paid. There was no basis to seek the exercise of the court's revisionary jurisdiction in these circumstances and the prosecution must have recognised this in filing an appeal against the adequacy of the sentence instead of a criminal revision.

18 Moreover, when accused persons elect to plead guilty, they make a choice to forego their right to trial and to challenge the allegations made against them by the prosecution. The courts generally do not go behind the reasons for their choice and assume that the decision is an informed and considered one. Accused persons ought to be able to expect that their acceptance of their guilt and election not to proceed to trial will bring speedy closure to the criminal proceedings against them. That expectation is of course subject to the prosecution's right to bring an appeal against sentence, but the appeal should be confined to the facts that the accused persons have admitted to.

19 In the present case, the respondent having pleaded guilty, it ought to be able to expect that the prosecution would not thereafter seek on appeal to increase the sentence imposed while simultaneously seeking to alter the entire factual basis for its plea of guilt. This would be inherently unfair to the respondent; it should be entitled to a measure of finality as far as the prosecution of the charges was concerned, having already pleaded guilty to an agreed set of facts and in a given set of circumstances. In the interests of justice and fairness, I was of the opinion that the prosecution's application to adduce additional evidence should be dismissed. I would echo the words of the District Judge at [10] of the GD:

> Litigation – especially criminal prosecutions – should not be conducted in instalments or in phases, and appeals should not be casually viewed as a convenient sequential forum/opportunity to do what should have been done in the first place. Such a stance wastes time and resources for all concerned. It is also not right to subject defendants to such unnecessarily protracted prosecutions. One must remember that the defendant company here entered its plea on the basis of the factual context as laid out by the URA before the court. If the URA had laid out the material facts differently, the provisions of the Criminal Procedure Code potentially entitle the defendant company to retract its plea if there was any disagreement over those facts. The issue of fairness therefore goes much deeper. Having secured the defendant company's conviction upon such a factual matrix, one should be careful before attempting to reframe that conviction upon a different factual basis and then use that to critique the adequacy of the sentence.

20 I should add that I do not rule out the existence of situations in which upholding an accused person's expectation of finality in pleading guilty would lead to some intolerable injustice such that it would be right to allow the prosecution to introduce additional evidence on appeal. The appellate criminal court must balance competing considerations and in other cases there may be circumstances which compel a different result.

The appeal against sentence

21 It followed from my decision on the prosecution's application that in considering its substantive appeal against sentence, the facts I could have regard to were extremely limited. My knowledge went no further than that the respondent had "demolished a conserved building" and subsequently carried out building operations "to partially erect a new building". Under s 394 of the CPC the appellate court

may reverse or set aside the sentence of a lower court only when it is satisfied that the sentence was wrong in law, against the weight of the evidence or manifestly excessive or inadequate. Given the extent of the material before me I thought that it was not possible for me to say that the sentence imposed by the District Judge was wrong in law, against the weight of the evidence or manifestly inadequate.

22 I should first situate in its statutory context the offence under s 12(2) of the Act to which the respondent pleaded guilty. Section 12 deals generally with unauthorised subdivision and development of land, and subsections (1) to (3) create three distinct offences. By reason of s 12(4) the maximum fine for each of these three offences is the same. I set out the provisions here:

> **Unauthorised subdivision, development and other works**
>
> **12.**—(1) No person shall without planning permission carry out any development of any land outside a conservation area.
>
> (2) No person shall without conservation permission carry out any works within a conservation area.
>
> (3) No person shall without subdivision permission subdivide any land.
>
> (4) Any person who contravenes subsection (1), (2) or (3) shall be guilty of an offence and shall be liable on conviction —
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> (*a*) to a fine not exceeding $200,000; and
>
> (*b*) in the case of a continuing offence, to a further fine not exceeding $10,000 for every day or part thereof during which the offence continues after conviction.

23 I would preface my analysis by acknowledging the great value and importance in the URA's conservation policy. As s 9 of the Act makes clear, conservation areas are those considered to be of "special architectural, historic, traditional or aesthetic interest". It is thus a laudable aim to preserve these areas for the future. The corollary to this is that any attempt to frustrate this aim would ordinarily deserve society's disapproval. Indeed, the additional step has been taken of criminalising the unauthorised development of land within such areas. But these broad ideas, however incontrovertible, do not provide a great deal of guidance to the court that has to decide the specific question of sentence in a particular case with particular facts. Ultimately the court will have to contend closely with those facts and where there are little facts before the court it may be difficult to say that a given sentence is too high or too low. In the present case the prosecution had to demonstrate to my satisfaction that there was good reason to increase the sentence imposed by the District Judge and in my view it did not manage to do so.

24 I go on now to address the contentions advanced by the prosecution. The District Judge in the GD at [7] recorded the PO as having "submitted that a fine of between $6,000/- and $8,000/- should be imposed". The prosecution argued that this was a misunderstanding and that the PO had done no more than to make a "general statement of fact" that fines within that range had previously been imposed for offences under the Act. Even if this was all that the PO thought he was doing, I did not think it was open to the prosecution to say that the court should, in effect, attach no meaning or significance to the PO's words. A prosecutor, whether from the AGC or some other government agency, is duty-bound to assist the court to make a decision on sentence. This basic tenet was reiterated recently by the Honourable the Chief Justice Sundaresh Menon and Justice Steven Chong in

their respective speeches at the Sentencing Conference on 9 and 10 October 2014. When the prosecutor puts forward a range of sentences based on precedent without making an attempt to distinguish the precedents, the court cannot but understand that to be a submission that the sentence ought properly to fall within that range. The court may of course take the view that the correct sentence is nevertheless one that is outside the suggested range, but that is another matter altogether.

25 Next, the prosecution said that the precedents in which fines between $6,000 and $8,000 were imposed were in any event not helpful in the present case because they concerned offences under s 12(1) rather than s 12(2) of the Act. Moreover they were doubly unhelpful because the conduct of the offenders in those precedents consisted of nothing more egregious than using premises for unauthorised purposes with little or no change to the structure of the building, whereas in the present case there had been a wholesale demolition of a conserved building. The prosecution argued that there was greater assistance to be derived from the unreported case of *PP v M/s CGH Development Pte Ltd* (UDC 01/2008) ("*CGH Development*") because that too involved substantial changes to the structure of a building – the offender there added three floors to the roof of a building and was fined $50,000 for an offence under s 12(1).

26 As to the precedents in which the fine ranged between $6,000 and $8,000, I agree that these are not entirely helpful for the reasons furnished by the prosecution. But it does not ineluctably follow that the fine in the present case must be higher than $6,000 for each charge; all it means is that I do not have the benefit of any guidance from past cases. The lack of such guidance is unsurprising and indeed to be expected; this was after all apparently the first such prosecution for an offence of this nature.

27 On the facts before me, I find it exceedingly difficult to say that the present case bears greater similarity to *CGH Development* (above at [25]), where a $50,000 fine was imposed, than the precedents in which lower fines were imposed. I accept the prosecution's point that a "demolition" of a building such as occurred in the present case is probably more comparable to the addition of three floors than using premises for unauthorised purposes. However, even such a comparison was not necessarily meaningful and I did not think that this point took the prosecution very far. At the highest, it might be suggested that there could be broad similarities purely in terms of the extensiveness of the unauthorised work done.

28 There was also a suggestion in the prosecution's appeal submissions that the respondent's act of "replication" of the demolished conserved building which constituted the second charge was an aggravating feature and that the District Judge had erred in according mitigating weight to this. With respect, I found it difficult to follow this submission. The respondent was charged and punished separately for the act of "replication" itself. In the respondent's representations to the URA, it had sought to explain why the building had been demolished and replication of the building was done. To assert that this act of replication amounted to an aggravating feature warranting a sentence above the "norm" suggested by the PO would be to effectively punish the respondent twice. There was also no evidence before me to support the prosecution's suggestions that the "replication" was a devious, calculated and cynical breach aimed at fooling the URA into thinking that the respondent had not demolished a conserved building.

29 The prosecution argued that the District Judge had erred in characterising the respondent's offences as a "garden variety breach". But in my opinion, he could hardly be faulted for that. The matter after all went before him while he was presiding over Night Court 26N. This forum was created precisely in order to deal with minor cases that could be disposed of expeditiously with minimum judicial time expended. If the present case was not a "garden variety" case, the PO should not have

treated it as such by agreeing to the respondent pleading guilty there and then. As the District Judge put it at [11] of the GD: "If the URA thought that there was something special about this case which demanded a certain penalty, then it made no mention of this before the court". The PO did not even mention that this was the first prosecution under s 12(2) of the Act that the URA had undertaken.

30 The prosecution further submitted that the District Judge had, at [7] of the GD, "trivialised" the offences by "placing undue weight" on the fact that the URA's powers upon a breach of the Act were not confined to initiating a criminal prosecution but extended to such things as demanding and enforcing rectification through the issuance of Enforcement Notices under s 28 of the Act. It was also suggested that he had failed to appreciate the importance of the provisions in the Act which are aimed at preserving areas of special architectural, historic, traditional or aesthetic interest. I did not agree with these submissions. It is clear from [7] of the GD that when the District Judge referred to the URA's parallel powers of enforcement and imposing sanctions, all he meant was that, since the URA had available to it a number of powers other than initiating a prosecution, its decision to prosecute may be taken to be a considered one and thus some weight must be given to its views on what ought to be the appropriate sentence. I do not see how he can be faulted for adopting this approach.

31 Having regard to the entirety of the District Judge's reasoning in the GD, I do not understand him to have diminished the significance of the policy objectives and intent in conservation of heritage buildings. Indeed, given the deference which the District Judge afforded to the PO's views, it seemed to me that it was the conduct of the prosecution at first instance that had ironically and perhaps inadvertently trivialised the seriousness of these offences. The District Judge was thus led up the garden path to understand that this was no more than a "garden variety" breach.

32 Given the way that the proceedings were conducted before the District Judge, I did not think that the GD revealed any error of law on his part. And when the record is so bereft of facts there is very little basis for an appellate court to conclude that the sentence imposed at first instance is manifestly inadequate or, for that matter, manifestly excessive. I found that to be the situation in the present case. Therefore, I did not think that I had any good reason to interfere with the total fine of $12,000 imposed by the District Judge below.

33 It goes without saying that decisions on sentence are ideally made with all the relevant circumstances of the case surfaced for the court's consideration and duly taken into account. Sometimes, though, reality diverges from the ideal. In order that a case may be dealt with quickly, the prosecutor might tender a statement of facts that is very light in narrative detail so long as the accused is willing to admit to it – or indeed, for less serious offences, the prosecutor might tender no facts other than what is stated in the charges. The practice of "fact bargaining" is permissible and I have no wish to disapprove of it. The prosecutor might also indicate that he will leave the sentence to the court. This should of course not be taken as carte blanche for the court to impose any sentence on a whim, however unreasonable, and expect that no appeal will ensue. But one might reasonably and legitimately expect that when a prosecutor sets out a sentence range reflecting the "norm", accompanied by a statement to the effect that he will leave the sentence to the court, a resulting sentence which is within this range should not then become the subject of an appeal. That would certainly be a reasonable and legitimate expectation for an accused person to hold.

34 The lack of factual material before me also means that this case should not be taken as having established a sentencing benchmark for offences under s 12(2) of the Act. This case should not fetter the sentencing discretion of any judge who at some point in the future has to deal with offences under s 12(2) of the Act. It may well be that much more substantial fines are justifiable for future prosecutions involving egregious breaches. I make no further comment at this juncture except

to acknowledge that there can be varying degrees of culpability and the appropriate sentence in each case will need to be carefully calibrated.

The AGC's role in prosecutions conducted by other government agencies

35 I have suggested in a recent judgment that government agencies having carriage of criminal prosecutions should seek guidance from the AGC particularly when prosecutions are being contemplated for specific offences for the first time: see *Ghazali bin Mohamed Rasul v Public Prosecutor* [2014] SGHC 150 at [73]–[74].The present case might have taken a different direction had the URA consulted the AGC in conducting the prosecution at first instance. Indeed, the AGC acknowledged as much in its submissions on appeal.

36 I do acknowledge that in this regard the AGC faces practical difficulties. In its submissions it said that, given manpower constraints, it cannot monitor every single case in the land "without causing significant delays in the criminal justice process". I would readily accept that and it is entirely the AGC's prerogative to strike a balance between expediency and close supervision of government agencies. But the AGC must then take the consequences of its choice. When it brings a matter up for appeal, it must accept that its options are likely to be limited by the way in which another government agency conducted the prosecution at first instance; it must be prepared to be bound by concessions that were made or any failure to dispute points put forward by the defence.

37 In the present case, the AGC alleged that the respondent had pleaded guilty suddenly and swiftly "to take advantage of the fact that the URA prosecutor was unprepared to make any compelling submissions on sentence". This was a startling submission to say the least. I did not think it a fair characterisation of the events. If the PO was indeed unprepared and had been conscious of the need to put forward a compelling submission on sentence, he could simply have requested an adjournment. Instead, it was manifestly clear that he was fully prepared for the court to deal with the matter and dispose of it there and then. This was a conscious and deliberate choice on his part. There was nothing whatsoever from the record to suggest that he was unprepared.

38 It was also not relevant to the appeal on sentence or the criminal motion to suggest that "it appears that the URA was not entirely ready to take the plea in such a unique case of the complete demolition of a conserved building". If the thrust of that submission was that the PO was somehow pressured or manipulated by counsel for the respondent to accept a guilty plea, then this was another startling proposition that I could not accept. There was no evidence that counsel for the respondent had sought to capitalise on the PO's unpreparedness and inexperience. The sequence of events was as follows. Counsel for the respondent had written representations to the URA on 17 June 2014, just prior to the second mention date on 18 June 2014, and was awaiting a reply. Counsel highlighted that the respondent had intended to seek an adjournment pending receipt of a reply to the representations. Instead, the respondent went ahead to plead guilty to the offences. In all probability, this quick and decisive plea must have been guided by pragmatism and influenced by some form of offer that the PO had made. I do not see how the acceptance of the guilty plea by the PO was due to any clever manipulation by the respondent's lawyer (Mr Foo Ho Chew) who, as pointed out in the respondent's oral submissions, was in practice for barely a year.

Conclusion

39 It was evident that the appeal and the accompanying motion were filed because the outcome was reviewed and found to be unacceptable to the prosecution. However, this was an outcome that one could reasonably expect to arrive at given the manner in which the prosecution had been conducted. I did not see how the District Judge's decision could be impugned in the circumstances.

40 These circumstances bear repeating in summary. First, the PO had proceeded to prosecute his case and accept the plea of guilt accompanied with only the facts "as per the charges". Second, he chose not to offer a sentence submission or any information beyond the facts as stated in the charges. Third, he maintained that he would leave the sentence to the court, having informed the court of the "usual sentence range" for such offences under the Act. Finally, he saw no need to inform the court that this was the first such prosecution under s 12(2) of the Act. With great respect, it was not tenable to say that the case should effectively be re-heard because things ought to have been done differently had the matter been referred to the AGC for directions in the first place.

41 It further bears repeating that there are prescribed statutory grounds specifying when an appeal against sentence may justifiably be filed. When the prosecution seeks to appeal against sentence, it is principally on the ground that the sentence is manifestly inadequate. An appeal does not serve as a recourse for the prosecution to introduce, by way of an associated criminal motion, fresh facts and additional background information which the respondent had never conceded or accepted in the first place when agreeing to plead guilty.

42 I appreciate and certainly would not wish to trivialise the vital importance of preserving and protecting conserved buildings linking us to our history and socio-cultural heritage. The fact that this was the first such prosecution of an offence involving demolition of a conserved building should have required the prosecution all the more to be fully prepared to put forward its case and assist the court with appropriate submissions. With respect, the PO's ostensible "oversight" or "inexperience" cannot be surfaced as grounds for an appeal against the adequacy of the sentence. These candid concessions of the lapses in the conduct of the prosecution were laudable, but they do not change the fact that the District Judge's decision was entirely consistent with what the PO had proposed.

43 The prosecution had filed the appeal and the accompanying motion in an attempt to rectify the PO's "errors". In my view, however, these "errors" appear to have become evident only with the benefit of hindsight. Given the context within which the plea had been recorded and sentence passed, I did not agree that there was a patent error or manifest inadequacy in the sentence that warranted appellate intervention. I would nevertheless reiterate my observation that this case does not lay down a sentencing benchmark for future prosecutions under s 12(2) of the Act.

44 For the reasons I have set out above, the motion and the appeal were both dismissed.