IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2022] SGHC 119

Magistrate's Appeal No 9210 of 2021

Between

Kuah Teck Hin

… *Appellant*

And

Public Prosecutor

… *Respondent*

EX TEMPORE JUDGMENT

[Criminal Procedure and Sentencing — Sentencing — Preventive Detention]

Kuah Teck Hin
v
Public Prosecutor

[2022] SGHC 119

General Division of the High Court — Magistrate's Appeal No 9210 of 2021
Vincent Hoong J
20 May 2022

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Vincent Hoong J (delivering the judgment of the court *ex tempore*):

1 The appellant pleaded guilty to two counts of snatch theft under s 356 of the Penal Code (Cap 224, 2008 Rev Ed) ("Penal Code"). The offences were committed 18 days apart. The female victims were almost 70 years old and had their necklaces snatched from their necks. He was sentenced to nine years' preventive detention ("PD"). The District Judge's ("DJ") grounds of decision can be found in *Public Prosecutor v Kuah Teck Hin* [2021] SGDC 239 ("GD").

2 He now appeals against his sentence and submits that a five-year imprisonment term or corrective training would be appropriate. In support of his submission, he has raised a number of points which I will deal with *in seriatim.*

Sentencing Considerations

3 The sentencing considerations applicable to preventive detention were reiterated by Sundaresh Menon CJ in *Re Salwant Singh s/o Amer Singh* [2019] 5 SLR 1037 at [52]–[54]. It is well established that the foundation of the sentence of PD is the *need to protect the public*. This is clear from the wording of s 304(2) of the Criminal Procedure Code 2010 (2020 Rev Ed) itself which states that the court shall sentence the accused to PD if the court is satisfied that "it is expedient for the protection of the public".

4 Thus, if the individual offender is such a habitual offender whose situation does not admit of the possibility of his reform, constituting a menace to the public, a sentence of PD would be imposed on him for a substantial period of time in order to protect the public. The court will look at the totality of the offender's previous convictions (see *PP v Rosli bin Yassin* [2013] 2 SLR 831 ("*Rosli*") at [11]). Importantly, since a sentence of PD is underpinned by the need to protect the public, it differs from a sentence of imprisonment and different considerations may apply in determining the appropriate duration and implementation of the sentence.

Appellant's major depressive episode

5 I now turn to the appellant's submissions. First, the appellant contends that the DJ erred in failing to consider the appellant's major depressive episode ("MDE")[1]. In the court below, a Newton hearing was convened by the DJ to consider two questions. The first being the nature of the appellant's psychiatric condition and whether it had contributed to the offences.

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1 Appellant's submission ("AS") at [13.1].

6 At the outset, it bears emphasis that when assessing the extent and nature of an alleged contributory link between an offender's mental condition and the commission of the offences, the court invariably is required to consider the expert opinion of a psychiatrist (see *Ho Mei Xia Hannah v PP and another matter* [2019] 5 SLR 978 at [38] ("*Hannah Ho*")). Where there is a conflict of opinion between two psychiatrists, it falls to the court to decide which opinion best accords with the factual circumstances, and is consistent with common sense, objective experience, and an understanding of the human condition (see *Hannah Ho* at [39]; *Chong Yee Ka v PP* [2017] 4 SLR 309 at [52]).

7 In the present case, the DJ had thoroughly examined the evidence of both parties' expert witnesses before concluding that the Prosecution expert's (Dr Christopher Cheok's) assessment of the appellant's psychiatric condition and its contributory link (or lack thereof) to the offences was more reliable. I see no reason to disturb his finding. In particular, the DJ directed his mind to consider the reliability and objectivity of both expert witnesses. The DJ had good grounds to doubt the reliability and objectivity of the Defence's expert witness, Dr Tommy Tan, who conceded during cross-examination that his assessment appeared to be "lopsided" given the undue emphasis placed on the appellant's self-reporting and probably self-serving accounts.[2] In addition, Dr Tan had omitted crucial details concerning the appellant's high risk of reoffending in his report.[3] Moreover, Dr Tan's diagnosis that the appellant suffered from persistent depressive disorder was suspect as he had failed to take into account important factors in his assessment[4]– a point which the appellant appears to have accepted, absent his contention of this point at this appeal.

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2 GD at [13].

3 GD at [15].

4 GD at [16].

8 I also agree with the DJ that Dr Tan's assessment that the appellant's MDE had a contributory link to his offending was flawed and plainly inconsistent with the facts.

9 In order to determine whether the appellant's mental condition contributed to the commission of the offences, I find the four factors outlined by this court in *Hannah Ho* at [59] to be a good starting point (of which the third and fourth factors may be assessed together):

> (a) Severity of the mental disorder: Dr Cheok did not expressly assign a label to the severity of the appellant's mental disorder. However, he noted that it was not so severe as to impair the appellant's judgment of the nature of his acts or his ability to resist his actions. Conversely, Dr Tan assessed the severity of the appellant's MDE to be moderate. Notably, Dr Tan agreed with Dr Cheok's assessment that the appellant's MDE was not so severe;
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> (b) Nature of the offender (*eg*, his past behaviour and conduct): The appellant has a long history of past offending. However, both Dr Tan and Dr Cheok noted that he had no past psychiatric history. It thus appears that the appellant's MDE did not have any contributory link to the present instances of offending; and
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> (c) Manner and circumstances of the offending and the nature of the offence: In this regard, Dr Cheok's observations of the appellant's offending are apposite. I can do no better than to cite the DJ's analysis:[5] "[Dr Cheok] explained that the two offences were 'very goal directed' and comprised 'very complex actions' including choosing potential

[5] GD at [21].

> targets that gave him the highest probability of success. He had aimed at the gold chain and gold necklace worn by the victims, snatched them and made his escape. He had then pawned both items almost immediately. These actions were not random, accidental, and certainly not impulsive." Based on the above analysis, the appellant demonstrated that he was cognisant of the nature and wrongfulness of his actions.

10 Further, the appellant's submission that the DJ had given too much or undue consideration to Defence counsel's incorrect submission at the Newton hearing that the appellant's MDE had no contributory link to the offences because "he was doing his first trial"[6] is, with respect, devoid of merit. The DJ cannot be faulted for relying on the very submissions made by the Defence at the hearing below. As I find that the DJ rightly accepted Dr Cheok's assessment that the appellant's MDE had no contributory link to his offending, the DJ was therefore correct in disregarding his mental condition in determining the appropriate sentence to impose.

Appellant stayed crime free for 10 years

11 Next, the appellant submits that he stayed crime free for 10 years between 1992 and 2002.[7] In *Rosli* at [11], the Court of Appeal noted that the court will have to look at the *totality* of the offender's previous convictions in evaluating whether a term of PD is warranted to protect the public. To this end, I agree with the Prosecution that focusing purely on this crime free period completely overlooks the appellant's extensive criminal record, which includes two terms of PD served in 1985 and 2010. Importantly, it neglects to take into account the circumstances of the present set of offences.

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6 AS at [13.2].

7 AS at [61].

Appellant's remorse and plea of guilt

12 While I recognise that some credit may be given to the appellant for pleading guilty and making restitution to the victims, this must be considered in context of the observations made in the appellant's PD report. It was observed that the appellant presented with limited insight into the consequences of his actions. Pertinently, when asked if he believed that he harmed anyone in his offences, he opined that he had not harmed anyone as he had "returned everything to everyone". It was clear that the appellant did not assume responsibility over his actions. His plea of guilt and any submission of remorse must thus be viewed in this light.

Appellant's personal circumstances

13 The appellant submits that the DJ had failed to appreciate the appellant's personal circumstances including his difficult childhood.[8] As the appellant himself recognises, this can in no way be used as a justification or an excuse for his criminal conduct. The appellant's personal circumstances are not new. Yet he has demonstrated no constructive way of coping with his problems. In the absence of such coping mechanisms, he has a clear propensity to commit further offences. The DJ was right not to accord any weight to this factor.

Appellant's familial, social and church support

14 The appellant contends that the DJ failed to consider the appellant's familial, social and church support.[9] In spite of the appellant's church community's well-intentioned testimonies asserting their belief in his amenability for reform, it is plain that they were unable to stop him from

8 AS at [13.4] and [13.6].

9 AS at [13.7].

reoffending upon his release from his second stint in PD.[10] Seeing as their support was readily available to the appellant at the time of his commission of the offences, it is certainly telling that this should not be regarded as a significant protective factor.

15 Further, it is not evident from the appellant's wife's undertaking alone that she would cease her ongoing relationship with a third party. This is significant as the appellant has claimed that one of the main triggers behind his criminal offending stemmed from his wife's association with this third party and her cohabitation with him. It is also relevant that the appellant had entreated his wife to end her relationship with the third party on multiple occasions with no success. Notably, her undertaking merely states vaguely that she intends to look after the appellant and ensure that he stays out of trouble. Therefore, it is unclear how, if at all, the appellant's wife's support would serve as a protective factor.

Appellant's age

16 The appellant argues that the DJ erred in not giving any or due consideration to the fact that the appellant was 66 years of age and with nine years of PD he would be 75 years old when released.[11] Further, he submits that if he were to be sentenced to a term of five years' imprisonment, he would be around 70 years old when released and by then he would be too old and frail to be of any danger to the public.[12]

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10 GD at [45].

11 AS at [13.8].

12 AS at [21].

17 With respect, I am unable to accept this submission. I agree with the Prosecution that an offender's advanced age, in and of itself, does not mean that a substantial sentence should be avoided. Moreover, as mentioned earlier, in determining whether a term of PD is appropriate, it is the *public interest* which retains primacy.

Cases cited on behalf of the appellant where some evidence of remorse or inclination towards reform led to the courts not imposing PD

18 The appellant has cited a number of cases where he claims the court had declined to impose a term of PD despite the preponderance of factors in favour of such a sentence.

19 As observed by the DJ,[13] citing the Court of Appeal's observations in *Rosli* at [21], the assessment of whether a term of PD is warranted is an intensely fact-centric exercise and relevant case law is more useful from the perspective of general principles as opposed to the resolution of particular factual situations. There is clear sense behind this observation. Whether PD is appropriate in any given case involves an interplay of many different factors. No two offenders would present with the same offending history, background, mental conditions, risk factors and protective factors. I thus find these cases cited by the appellant to be of little assistance.

Proportionality

20 Lastly, the appellant argues that given the aggravating and mitigating factors present, he should be sentenced up to 16 months' imprisonment for each charge. Further, after taking into account his antecedents, the sentence should be enhanced by two times, with the sentences to run consecutively. This would bring

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13 GD at [49].

the global sentence to 64 months' imprisonment. Based on this calculation, the appellant thus contends that a 9-year term of PD would be *disproportionate* in comparison.[14]

21 With respect, I am of the view that the appellant's submissions on proportionality are wholly misconceived. In *Sim Yeow Kee v PP and another appeal* [2016] SGHC 209 at [97], this court made clear that considerations of proportionality would *not* apply rigorously in the context of PD. This is because general deterrence and the social value in keeping a hardened criminal out of circulation provide a legitimate basis and operative justification for the application of this regime.

The public interest warrants the imposition of PD

22 In my view, there is an overwhelming sense that the appellant is a recalcitrant offender incapable of reform who is a menace and danger to the public. This is evidenced by his lengthy history of offending, the nature of the present offences, as well as his blatant disregard for the law. It suffices to note that over the course of 50 years, the appellant has been faced with more than 100 charges. He was sentenced to two terms of PD, and yet he continues to reoffend without compunction.

23 Indeed, the present set of offences were committed shortly after his release from his second term of PD. Moreover, his 2010 PD sentence was for offences *including* snatch theft, which is identical to the present set of offences. This not only shows that the appellant has made no effort to change for the better despite a lengthy term of PD, but also his utter contempt for the law.

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14 AS at [69]–[75].

24 Further, the nature of the present offences was not trivial in the slightest. The appellant targeted vulnerable elderly women and snatched gold jewellery off their necks. It is purely fortuitous that no serious harm resulted. The appellant evidently poses a danger to the public.

25 For these reasons, the appellant's appeal against sentence is dismissed.

Vincent Hoong
Judge of the High Court

Bachoo Mohan Singh (BMS Law LLC) for the appellant;
Marcus Foo and Benedict Teong
(Attorney-General's Chambers) for the respondent.