IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2020] SGCA 61

Criminal Appeal No 34 of 2019

Between

See Li Quan, Mendel

… *Appellant*

And

Public Prosecutor

… *Respondent*

EX TEMPORE JUDGMENT

[Criminal Procedure and Sentencing] — [Sentencing] — [Young offenders]

See Li Quan Mendel
v
Public Prosecutor

[2020] SGCA 61

Court of Appeal — Criminal Appeal No 34 of 2019
Sundaresh Menon CJ, Steven Chong JA and Quentin Loh J
30 June 2020

30 June 2020

Sundaresh Menon CJ (delivering the judgment of the court *ex tempore*):

Introduction

1 The sentencing of young offenders generally proceeds first from the level of principle, and afterward from the level of practicability. Where rehabilitative sentences are concerned, it is meaningless to speak of their appropriateness to the young offender unless the dominant sentencing consideration in the case at hand is rehabilitation. The appellant, See Li Quan, Mendel, appeals against the sentence of imprisonment and caning that was imposed by the High Court judge ("the Judge") on the basis that reformative training should have been ordered, even though the Judge found that rehabilitation had been displaced as the presumptive primary sentencing consideration given the gravity of his crime and the harm caused (see *Public Prosecutor v See Li Quan Mendel* [2019] SGHC 255 ("the GD")). For the reasons that follow, we dismiss the appeal.

Background facts

2 The facts are undisputed. The appellant was 17 years old at the time of the offences. He pleaded guilty to one charge each of robbery by night, rape, and theft in dwelling, and consented to another eight offences being taken into consideration for the purpose of sentencing ("the TIC charges").

3 The proceeded offences were committed in the course of a scheme devised by the appellant and two co-offenders, Yong and Chow, to steal money from sex workers. The trio would procure the services of sex workers at one of their residences, and while one of them posed as a customer, the other two would either extort money from the victim by pretending to be loan sharks, or steal from the victim's bag while she was in the shower. The robbery and rape charges involved the same victim, V1, a 53-year-old Singaporean woman who provided massage and sexual services and also brokered engagements for other sex workers.

4 On 1 October 2017, the appellant had contacted V1 to provide sexual services at his residence. V1 passed the engagement on to another sex worker, who failed to show up at the appellant's residence. Angered by this, the appellant wanted to take revenge on V1. On 2 October 2017, the appellant lured V1 to Yong's residence with an offer of $900 for sexual services. After V1 arrived at Yong's residence, the appellant and Chow entered the house pretending to be loan sharks, and demanded money from Yong and V1. The appellant carried a rod and also brought a chopper with him. During the staged altercation, the appellant passed the rod to Chow and took out the chopper, which he pointed at V1 while Chow removed cash and other items from V1's handbag. To this point, all the acts done by the appellant were in furtherance of the common intention of the trio.

5 When V1 asked to leave, the appellant told her to remove all her clothes first, and he asked Yong and Chow to leave the room. V1 did as the appellant directed as he was still holding on to the chopper. The appellant told V1 he would not allow her to leave unless she agreed to have sex with him. V1 did not dare to refuse out of fear for her safety. The appellant raped V1, and only afterwards was V1 allowed to leave the residence without her valuables. The appellant's co-offenders were not aware that the appellant had raped V1.

6 The theft charge was a separate incident that took place before the robbery and rape charges, and involved a different victim ("V2"). Sometime in September 2017, the trio contacted V2 to provide sexual services at the appellant's residence. The appellant paid $600 to V2 upfront, and had consensual sex with her. While V2 was in the toilet, the appellant's co-offenders stole $670 from V2's handbag. V2 only discovered that her money was missing after she left the residence, and she was unable to contact the appellant again.

The decision below

7 In sentencing a young offender, the Judge was mindful of the two-stage framework set out in *Public Prosecutor v Mohammad Al-Ansari bin Basri* [2008] 1 SLR(R) 449 ("*Al-Ansari*"). The court must first consider whether rehabilitation remains the dominant consideration, and if so, it then considers how it may best achieve this consideration. Applying the first stage of the *Al-Ansari* framework, the Judge found that the presumptive emphasis on rehabilitation had been displaced in this case. Robbery and rape were serious offences; they were further aggravated in the present case because of the threat of violence by the appellant's use of a chopper, and the vulnerability of V1 as a sex worker. The offences were therefore sufficiently serious that deterrence displaced rehabilitation as the dominant sentencing consideration (GD at [48]).

8 The next question the Judge asked herself was whether, despite the need for deterrence in this case, the appellant's capacity for rehabilitation was sufficiently high that rehabilitation ought to remain at the fore. The Judge concluded that the appellant's circumstances did not demonstrate a particularly strong capacity for rehabilitation. Among other things, she had regard to the number of TIC charges, the appellant's escalating trajectory of criminal behaviour since being administered a conditional warning in 2016, and his deliberation in carrying out the robbery and rape (GD at [60]). The Judge therefore held that rehabilitation was not the dominant sentencing consideration, and declined to call for a reformative training suitability report (GD at [61]).

9 Nonetheless, the Judge noted that in calibrating the sentences of imprisonment and caning, the rehabilitation of the appellant remained a significant factor (GD at [61] and [64]). With the totality principle in mind, she sentenced the appellant as follows:

(a) For the robbery charge: the appellant was sentenced to three years' imprisonment and 12 strokes of the cane.

(b) For the theft charge, the appellant was sentenced to three months' imprisonment.

(c) For the rape charge, applying the framework in *Ng Kean Meng Terence v Public Prosecutor* [2017] 2 SLR 449 ("*Terence Ng*"), the Judge found that this was a case that fell at least into the higher end of Band 1 of that framework, with an indicative starting sentence of 10 to 13 years' imprisonment and six strokes of the cane. But on account of the appellant's plea of guilt and his youth, the Judge was minded to reduce the appellant's sentence. She therefore imposed a sentence of six years and nine months' imprisonment, and three strokes of the cane.

10 The aggregate sentence imposed on the appellant was seven years' imprisonment and 15 strokes of the cane, with the imprisonment terms for robbery and rape to run concurrently.

11 The appellant appeals against this sentence on the primary basis that reformative training is the more suitable sentencing option than imprisonment and caning. Crucially, the appellant does *not* dispute the Judge's finding that rehabilitation has been displaced as the *dominant* sentencing consideration in this case. Rather, he submits that at the first stage of the *Al-Ansari* framework, even if rehabilitation is not the *dominant* sentencing consideration, it is sufficient that rehabilitation remains a "co-equal" or material one. It is submitted that this, in and of itself, would justify the court calling for a reformative training suitability report. Consequently, when selecting between the available sentencing options at the second stage of *Al-Ansari*, the court should have chosen reformative training as it was the option best able to uphold the twin considerations of deterrence and rehabilitation in this case. In the alternative, the appellant seeks a reduction in his sentence.

Our decision

12 The two-stage framework laid down in *Al-Ansari* was recently affirmed by a five-judge panel of the Court of Appeal in *Public Prosecutor v ASR* [2019] 1 SLR 941 ("*ASR*") and it is therefore the applicable legal framework in this context. In *Public Prosecutor v Koh Wen Jie Boaz* [2016] 1 SLR 334 ("*Boaz Koh*") at [30], the High Court had set out the circumstances that would tend to displace the presumptive emphasis on rehabilitation in the case of young offenders. These include where (a) the offence is serious, (b) the harm caused is severe, (c) the offender is hardened and recalcitrant, or (d) the conditions do not exist to make rehabilitative sentencing options viable. The Court of Appeal

in *ASR* at [101] explained that factor (d) was best considered at the second stage of the analysis as part of the inquiry into whether and how rehabilitative options could practicably be implemented. But having regard to the first three of these factors, it is clear that on all these grounds, the appellant fell into the category of young offenders for whom the presumptive focus on rehabilitation had indeed been displaced. He was sentenced for rape and robbery which in and of themselves would have fulfilled the factors of gravity and harm thus tending to displace the presumptive focus on rehabilitation. It bears mentioning that the appellant used a chopper to terrify the victim during the robbery and the rape, and that he and his co-offenders had set out specifically to target a vulnerable class of persons. Then there were the offences that were the subject of the eight TIC charges, committed in the years prior to the robbery and rape, which were also not minor transgressions. For these reasons, the Judge was correct to find that rehabilitation had been displaced as the presumptive dominant consideration in the appellant's case.

13 The appellant contends that rehabilitation remains *a* consideration, even if not the dominant one. This suggestion is, with respect, misplaced. At the first stage of the *Al-Ansari* framework, once rehabilitation has been displaced as the dominant sentencing consideration, as for instance in this case by reason of the gravity of the offence and the harm caused, the dominant consideration almost necessarily turns to deterrence. By this point, reformative training is no longer an appropriate option. It bears reiterating that reformative training lies within the spectrum of *rehabilitative* sentences (*Al-Ansari* at [75]; *Public Prosecutor v Ong Jack Hong* [2016] 5 SLR 166 at [11]; *ASR* at [134]; see also *Sentencing Practice in the Subordinate Courts* (LexisNexis, 3rd ed, 2013) at p 53). Between reformative training and probation, reformative training is the better choice for a young offender for whom rehabilitation remains the principal consideration, but who *also* needs a measure of deterrence. But where, as in this case,

rehabilitation has been displaced as the dominant sentencing consideration, reformative training ceases ordinarily to be a viable option and the appropriate sentences must be the legislatively prescribed options such as imprisonment and caning.

14 We pause to comment on a case cited by the Judge when evaluating whether the appellant had a strong capacity for reform notwithstanding the seriousness of his crimes. In *Leon Russel Francis v Public Prosecutor* [2014] 4 SLR 651 ("*Leon Russel Francis*") at [14], the court stated that even where the rehabilitation of a young offender has been provisionally displaced by the need for deterrence in the case of serious crimes, "where the individual offender's capacity for rehabilitation is demonstrably high, this may outweigh the public policy concerns that are traditionally understood as militating against *probation*" [emphasis added]. This principle is correct in the sense that, at the first stage of the *Al-Ansari* framework, the court must have regard to *all* the circumstances of the case when coming to a final determination as to whether rehabilitation has, in fact, been displaced as the dominant consideration. After all, once the court has finally determined that the presumptive emphasis on rehabilitation as the dominant sentencing consideration has been displaced, there will be no question of probation or other rehabilitative sentencing options somehow returning to the fore. However, the reference to "probation" in that passage from *Leon Russel Francis* is liable to mislead. Indeed, in *Muhammad Zuhairie Adely bin Zulkifli v Public Prosecutor* [2016] 4 SLR 697 at [28], it appears that the court mistakenly interpreted that passage as standing for the proposition that at the first stage of the *Al-Ansari* framework, reformative training may still be an option even for young offenders for whom the primacy of rehabilitation had been provisionally displaced, but who showed a somewhat *less* exceptional capacity for reform than would be required to qualify for probation. With respect, that proposition is not correct.

15 We reiterate the point that where young offenders are concerned, the sentencing framework remains the two-step approach set out in *Al-Ansari* and *Boaz Koh* as affirmed and explained in *ASR*. The inquiry proceeds from the foremost question of whether rehabilitation remains the dominant sentencing principle, *before* considering whether probation or reformative training or some other type or combination of community-based sentences would be the correct way to achieve this. At the first stage, the court should not be asking whether the offender showed enough rehabilitative potential for *probation*, as opposed to *reformative training*. Rather, at that stage of the inquiry, the question is whether in all the circumstances, the presumptive emphasis on rehabilitation has been displaced. If it has, then rehabilitative options such as probation or reformative training would typically not be available; and if it has not been displaced, then such options may be considered. We do recognise that, as is bound to be the case when a court comes to sentencing, there remains the possibility of exceptional circumstances when some adjustment to these guiding principles might be required, but this is plainly not such a case.

16 In this case, the Judge directed herself in law correctly, and in the circumstances she rightly found that in all the circumstances, deterrence had displaced rehabilitation as the primary sentencing consideration. Reformative training, which we reiterate is a rehabilitative option, was therefore not an appropriate sentence and we dismiss the appellant's primary argument on appeal.

17 We digress, for completeness, to make a brief observation in respect of the position of adult offenders. Reformative training is, of course, not an option for such offenders under the relevant statutory provisions (s 305(1) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed)). But even for them, rehabilitation may exceptionally come to the fore as the dominant sentencing

consideration and where this is so, the court may, subject to the relevant statutory provisions, have recourse to a range of other sentencing options, including probation. Some of the applicable principles in that context were recently considered by the High Court in *Public Prosecutor v Siow Kai Yuan Terence* [2020] SGHC 82.

18 Turning to the appellant's alternative ground that the sentences imposed were manifestly excessive, in our judgment, the Judge had gone out of her way to reduce the sentence for the rape charge in particular, having regard to the appellant's mitigating factors and keeping alive the hope that the appellant might yet be rehabilitated, albeit through a sentence that was primarily deterrent in nature. In our view, the Judge was correct to do so, although, with respect, it appears to us that she erred on the side of being too lenient on the overall sentence. As there is no appeal by the Prosecution, however, we do not interfere. It is clear nonetheless that there is no basis whatsoever for reducing the term of imprisonment even further.

Conclusion

19 In conclusion, the appellant's appeal against sentence is without merit and we dismiss it accordingly.

Sundaresh Menon Chief Justice	Steven Chong Judge of Appeal	Quentin Loh Judge

Suang Wijaya and Koh Wen Rui, Genghis (Eugene Thuraisingam LLP) for the appellant;
Gail Wong and Sheryl Yeo (Attorney-General's Chambers) for the respondent.
