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

[2022] SGHC 172

Magistrate's Appeal No 9864 of 2020

Between

Mohamed Ardlee Iriandee bin
Mohamed Sanip

… *Appellant*

And

Public Prosecutor

… *Respondent*

EX TEMPORE JUDGMENT

[Criminal Law — Offences — Outrage of modesty]
[Criminal Procedure and Sentencing — Sentencing]

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

Introduction

1 The appellant was convicted after trial on one charge of aggravated outrage of modesty under s 354A(2)(*b*) of the Penal Code (Cap 224, 2008 Rev Ed) ("PC") ("the First Charge"). The District Judge ("the DJ") found the victim ("V1")'s evidence to be cogent as well as internally and externally consistent. Following his conviction on the First Charge, the appellant pleaded guilty to a second charge of attempted aggravated outrage of modesty under s 354A(2)(*b*) read with s 511(1) of the PC ("the Second Charge").

2 The DJ imposed a sentence of four years and six months' imprisonment and four strokes of the cane in respect of the First Charge and three years' imprisonment and two strokes of the cane in respect of the Second Charge. He ordered both sentences to run consecutively, resulting in an aggregate sentence of seven years and six months' imprisonment and six strokes of the cane. The

DJ's grounds of decision can be found at *Public Prosecutor v Mohamed Ardlee Iriandee bin Mohamed Sanip* [2021] SGDC 64 ("GD").

3 The appellant appeals against his conviction and sentence. I deal first with the DJ's decision to convict the appellant on the First Charge. I will then deal with the appellant's attempt to retract his plea of guilt to the Second Charge, his contention that his legal representative at trial, Mr Mohamed Muzammil bin Mohamed ("the Former Counsel") had acted negligently and finally his appeal against sentence.

Parties' submissions

4 In relation to the First Charge, whilst CCTV footage captured the appellant following V1 and her classmate (PW4) to the incident location, it did not capture him outraging the modesty of V1. The appellant submits that the DJ erred in finding that he had touched V1's vagina over her underwear for three main reasons. First, during V1's examination-in-chief, V1 pointed to different parts of her body when asked where she had been touched. Second, V1's mother, PW7, provided inconsistent and untruthful testimony at trial. Finally, the evidence suggests that V1 had been coached as a witness.

5 In response, the Prosecution submits that the DJ rightly found that V1 had pointed to her vagina area when asked to identify where she had been touched. Any discrepancy between the two areas V1 identified during her evidence-in-chief and cross-examination can be attributed to the fact that the "camera placement in the video-link room during V1's [examination-in-chief] had hindered" V1's testimony.[1] After the necessary adjustments were made to the camera angle, V1 pointed clearly to her vagina area. Further, V1's evidence

[1] Prosecution's Submissions dated 19 July 2021 ("PS") at [19].

that the appellant had placed his hand under her skirt and touched her vagina over her underwear was unshaken under cross-examination and corroborated by her parents, whom she confided in immediately after the incident.[2]

6 Additionally, the Prosecution submits that the DJ rightly rejected the appellant's assertion that V1 was coached for the following reasons:

(a) V1 had no plausible motive to falsely implicate the appellant. This was accepted by the appellant.[3]

(b) The appellant did not adduce any evidence to support his assertion that V1 had been coached.[4]

(c) V1 presented as a child who was simply doing her best to recount the incident that transpired. She was responsive and seemed to provide answers based on her recollection, rather than what she might have been told to say.[5]

(d) Much of V1's account was consistent with the appellant's own version of events.[6]

7 Finally, the Prosecution contends that the DJ's decision to convict the appellant on the First Charge is not against the weight of the evidence. Pertinently, key aspects of V1's testimony were materially corroborated by the other prosecution witnesses and by the appellant himself. Contrastingly, the

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2 PS at [21].

3 PS at [23]–[24].

4 PS at [25].

5 PS at [26].

6 PS at [27].

appellant's defence vacillated several times in the course of proceedings. Whereas the appellant initially claimed that he did not touch V1's groin area, he later stated that he may have grabbed her on her uniform, before claiming that he may have touched V1 below her skirt but not on her underwear and finally admitting under cross-examination that it was possible that he had touched her on her vagina area over her underwear.[7]

My decision

Appellant's conviction on the First Charge

8 An appellate court should be slow to overturn the trial judge's findings of fact, especially where they hinge on the trial judge's assessment of the credibility and veracity of witnesses. Appellate intervention is justified only when the trial judge's findings of fact are plainly wrong or against the weight of the evidence (*Yap Giau Beng Terence v Public Prosecutor* [1998] 3 SLR 656 at [24]).

9 I find there to be insufficient grounds to overturn the appellant's conviction on the First Charge. The DJ had assessed V1's evidence to be internally and externally consistent. Whilst the appellant contends that V1 vacillated on which part of her body he had touched, I see no reason to disturb the DJ's finding that – after initial technological difficulties with the video-link facility had been dealt with – V1 identified that the appellant had touched her vagina area over her underwear with certainty. In this regard, V1's evidence was supported by the testimony of her father, PW5, and PW7 whom V1 had confided in immediately after the incident.

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7 PS at [35].

10 Moreover, V1's testimony must be understood in the context of the following. First, the appellant's shifting account of whether he had touched V1's vagina. The appellant provided no explanation for his inability to maintain a straight story on whether he had come into contact with V1's vagina and why his claim that he had accidentally touched V1's vagina was only raised at trial. Second, the inherent improbability of the appellant accidentally touching V1's vagina *under her skirt*. Third, that V1's recollection of the incident was largely consistent with what the appellant admitted to in court and in his statements, including that the appellant had approached V1 with the intention of outraging her modesty. Set against this backdrop, the DJ's acceptance of V1's testimony that the appellant had touched her on her vagina area over her underwear could not be said to be against the weight of the evidence.

Appellant's attempt to retract his plea of guilt to the Second Charge

11 Next, I consider whether the appellant's plea of guilt to the Second Charge was voluntary. In his written submissions, the appellant contended that he "intended to contest both charges" and there was no reason for him to elect to plead guilty to the Second Charge whilst contesting the First Charge.[8] Before me, the appellant stated that the foregoing expressed his intention to retract his plea of guilt to the Second Charge.

12 The court will only allow an accused person to retract his guilty plea at the post-sentence stage in exceptional cases, such as where the accused person did not have the genuine freedom to plead (*Public Prosecutor v Dinesh s/o Rajantheran* [2019] 1 SLR 1289 ("*Dinesh*") at [51]).

13 This high threshold is not met in the present case.

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[8] Appellant's Submissions dated 26 May 2022 ("AS") at [22].

14 It must be noted that the appellant had the benefit of legal representation when he elected to plead guilty to the Second Charge. I am cognisant that the appellant alleged that his Former Counsel failed to advise him to claim trial to the Second Charge. However, the crux of the appellant's contention in that regard is that his Former Counsel did not advise him that pleading guilty to the Second Charge would have an adverse effect on the cumulative sentence he eventually received or on the DJ's finding that there was no contributory link between the appellant's alleged psychiatric conditions and his commission of the offences. Even if the appellant's allegations were true, they have no bearing on whether the appellant's Former Counsel pressured him to plead guilty to the Second Charge, of which there is no evidence.

15 On the contrary, the objective evidence shows that at the material time, the appellant confirmed his intention to admit to the Second Charge without qualification and that he understood the nature and consequences of his plea of guilt. The Notes of Evidence illustrates that the appellant expressed his intention to plead guilty to the Second Charge through both the Court Officer and his Former Counsel. It further illustrates that the Former Counsel specifically confirmed the appellant's awareness of the mandatory minimum sentence of imprisonment and mandatory caning associated with the Second Charge. Likewise, the mitigation plea tendered on the appellant's behalf stated that the appellant decided to plead guilty to the Second Charge "because he [did] not want to waste the Court's resources and [did] not wish [for] the Prosecution['s] witnesses" to relive the trauma associated with the appellant's acts.

16 Indeed, in expressing dissatisfaction with the DJ's decision to order the sentences for both the First and Second Charges to run consecutively, the more obvious inference to be drawn is that the appellant had simply come to regret his decision to plead guilty after the specific sentence had been imposed (*Dinesh*

at [49]). Disappointment over a sentence different from one that was hoped for, however, is never an acceptable basis for allowing an accused person to seek belatedly to retract his plea of guilt (*Chng Leng Khim v Public Prosecutor and another matter* [2016] 5 SLR 1219 at [12]).

17 Thus, I find that there is no merit to the appellant's attempt to retract his plea of guilt to the Second Charge.

Appellant's allegations against his Former Counsel

18 I now turn to an ancillary issue that the appellant raised in this appeal, namely that his Former Counsel acted negligently in failing to (a) call his psychiatrist, Dr Ang Yong Guan ("Dr Ang") to testify at the trial; (b) adduce Dr Ang's psychiatric report in evidence; (c) brief the appellant on what transpired in chambers (between the Trial Judge, the DPP and the Former Counsel) which "led to Dr Ang being absent in Court"; and (d) advise him to claim trial to the Second Charge.[9]

19 On affidavit, the Former Counsel stated that Dr Ang was not called as a witness at the trial because the appellant was unable to afford Dr Ang's fees. He further denied advising the appellant to contest only the First Charge because of the appellant's indigence and highlighted that the appellant did not raise any objections when asked by the DJ if he intended to plead guilty to the Second Charge.[10]

20 At this juncture, I should point out that this appeal is not the proper forum to determine whether the Former Counsel acted in breach of his

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9 AS at [12]–[30].

10 Mohamed Muzammil bin Mohamed's Affidavit dated 28 April 2022 at [10]–[18].

professional duties. The only germane issue is whether the Former Counsel's conduct of the matter casts doubt on the propriety of the appellant's conviction.

21 In this regard, an appellant seeking to overturn his conviction on the basis that he did not receive adequate legal assistance must first show that the trial counsel's conduct of the case fell so clearly below an objective standard of what a reasonable counsel would or would not have done in the particular circumstances of the case that the conduct could be fairly described as flagrant or egregious incompetence or indifference.

22 At this stage of the analysis, it will not be enough to show that some other counsel, especially eminent or experienced ones, would have taken a different approach. Counsel must be given the latitude in deciding how to conduct the case. If inadequate legal assistance from previous counsel is proved, the second step is to show that there is a nexus between the counsel's conduct of the case and the court's decision in the matter to demonstrate a case of miscarriage of justice. The appellant must show that there is a "real possibility" that any inadequate assistance has caused a miscarriage of justice (*Mohammad Farid bin Batra v Public Prosecutor and another appeal and other matters* [2020] 1 SLR 907 ("*Mohammad Farid*") at [135]–[139]).

23 Even if I assume that the appellant satisfies the first stage of the *Mohammad Farid* test – which, for the avoidance of doubt, I do not make any finding on – the appellant has failed to show how any alleged inadequate assistance on the Former Counsel's part has occasioned a miscarriage of justice.

24 Pertinently, Dr Ang's evidence – as expressed in two reports dated 20 July 2018 and 17 August 2020 respectively – was only relevant (if at all) to the appellant's sentence. It had no bearing on the appellant's conviction. Moreover, Dr Ang's reports were, in fact, adduced in mitigation and considered

by the DJ who stated that he was mindful of Dr Ang's opinion but ultimately found that the appellant "was fully aware of what he was doing in the commission of the offences".

25 Likewise, even if the Former Counsel had advised the appellant to plead guilty to the Second Charge, there was no evidence that the appellant was *pressured* into doing so (see [9] to [13] above). Counsel has "not only a right, but a duty to advise an accused [person] as to the weakness of his case [and] as to the probable outcome of the trial" (*R v Lamoureux* (1984) 13 CCC (3d) 101 at [17]).

26 As such, I decline to overturn the appellant's conviction on the basis that he received inadequate legal assistance.

Appeal against sentence

27 Finally, I consider the appellant's appeal against his sentence.

28 At the outset, I highlight that both the First and Second Charges fall within the ambit of ss 337(1)(*b*)(ii) and 337(1)(*c*) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed). There is therefore no scope for the court to impose a Mandatory Treatment Order. It is a legal impossibility.

29 While the appellant contends that the DJ erred in finding that (a) the dominant sentencing principle in this case is deterrence (and not rehabilitation); and (b) there was no causal link between his alleged psychiatric conditions (set out in Dr Ang's report dated 20 July 2018) and his commission of the offences, I find that there is no merit in either submission.

30 There is no basis for the appellant's suggestion that he was suffering from depression or anxiety or that these purported conditions materially contributed to his offending. Succinctly, I find that the DJ was amply justified

in finding that "there was premeditation and the [appellant] was fully aware of what he was doing in the commission of the offences".[11] In respect of the First Charge, as I alluded to at [10] above, the appellant does not dispute that on the material date, he saw V1 and PW4 at the void deck, followed them into a lift, took the lift to the seventh floor to keep observation of V1 (who was on the sixth floor) and later approached V1 (when she was alone) with the intention of outraging her modesty (see GD at [12]). These actions evinced a high degree of volition fundamentally inconsistent with Dr Ang's claim that the appellant committed the offences in a "dazed and dissociative state".

31 For completeness, I should add here that, for the same reasons, the DJ was correct to reject the Defence's application for a Newton Hearing to determine if the appellant suffered from any psychiatric conditions which materially contributed to his offences.[12] As Sundaresh Menon CJ explained in *Kanagaratnam Nicholas Jens v Public Prosecutor* [2019] 5 SLR 887, "the Court may decline to convene a Newton hearing if the case sought to be advanced is absurd or obviously untenable" (at [37]).

32 Following from the above, there is no basis for the appellant's submission that rehabilitation is the dominant sentencing principle engaged on the facts of the present case. I agree with the Prosecution's submission that rehabilitation recedes as a relevant sentencing principle given the serious nature of the offences committed. Indeed, *even if* the appellant had suffered from anxiety and depression at the material time (which, I reiterate, was unsupported by the objective evidence), the egregiousness and nature of the appellant's

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11 Record of Proceedings ("ROP") at p 413.

12 ROP at p 389.

offences would have rendered deterrence the foremost sentencing consideration (*Public Prosecutor v Siow Kai Yuan Terence* [2020] 4 SLR 1412 at [43]).

33 Likewise, I see no basis to interfere with either the individual or the aggregate sentence(s) imposed by the DJ. It must be remembered that each charge attracted a mandatory minimum imprisonment term of three years and mandatory caning.

34 The DJ's sentence on the First Charge gave adequate weight to several aggravating factors, including that V1 was significantly younger than 14 years of age and the premeditated nature of the offence. The sentence the DJ imposed in respect of the Second Charge – three years' imprisonment and two strokes of the cane – cannot, in view of the mandatory minimum sentence, be said to be manifestly excessive.

35 Finally, the DJ was justified in ordering both sentences to run consecutively; the underlying offences related to two separate victims and were committed on distinct occasions over a period of approximately four months. The aggregate sentence of seven years and six months' imprisonment and six strokes of the cane cannot be considered crushing in view of the egregious acts directed at young, vulnerable school-going children.

36 For the above reasons, I dismiss the appeal against conviction and sentence.

Vincent Hoong
Judge of the High Court

The appellant in person and unrepresented;
Sruthi Boppana and Teo Pei Rong Grace
(Attorney-General's Chambers) for the respondent.
