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

[2024] SGHC 172

Magistrate's Appeal No 9081 of 2024

Between

Public Prosecutor

… *Appellant*

And

JCS

… *Respondent*

EX TEMPORE JUDGMENT

[Criminal Law — Offences — Sexual offences]
[Criminal Procedure and Sentencing — Sentencing — Young offenders]
[Criminal Procedure and Sentencing — Appeal]

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Introduction

1 The Respondent was 20 years old when he pleaded guilty to and was convicted in the District Court on the following three charges.

(a) Statutory rape under s 375(1)(*b*) punishable under s 375(2) of the Penal Code (Cap 224, 2008 Rev Ed). Sometime between 2 December 2020 and 31 December 2020, the Respondent, then 17 years old, had penetrated the vagina of a 13-year-old female victim ("V1") with his penis.

(b) Sexual penetration of a minor below 16 years of age under s 376A(1)(*a*) punishable under s 376A(2)(*b*) of the Penal Code 1871. Sometime in mid-August 2022, the Respondent, then 19 years old, had penetrated the vagina of a 14-year-old female victim ("V2") with his penis.

(c) Rioting punishable under s 147 of the Penal Code 1871. On 4 July 2022, the Respondent and eight other persons were members of an unlawful assembly with the common object of voluntarily causing hurt to a 16-year-old male victim ("V3"). Some members of the unlawful assembly used violence towards V3 in prosecution of that common object.

Ten further charges were taken into consideration with the Respondent's consent. These comprised nine charges of the sexual penetration of a minor under s 376A(1)(*a*) or s 376A(1)(*b*) punishable under s 376A(2)(*b*) of the Penal Code 1871, all pertaining to further offences committed against V2; and one charge of having in his possession a scheduled weapon otherwise than for a lawful purpose punishable under s 7(1) of the Corrosive and Explosive Substances and Offensive Weapons Act 1958. These thirteen charges are set out in the Schedule of Offences marked and admitted as "P2".

2 The District Judge (the "DJ") called for a pre-sentencing report to assess the Respondent's suitability to undergo reformative training (the "RT Report"). After the Respondent was found suitable for reformative training, the DJ sentenced him to undergo reformative training for a minimum of six months' detention (at level 1 intensity) as recommended in the RT Report: *Public Prosecutor v JCS* [2024] SGDC 107 ("GD") at [50]. The DJ declined to order a stay of execution pending the Prosecution's appeal and ordered the sentence to commence on the day he was sentenced, *ie*, with effect from 17 April 2024: GD at [51]–[54].

3 The Prosecution appealed against the DJ's sentence on the grounds that it was wrong in principle as well as manifestly inadequate. In its place, the

Prosecution sought to substitute a global sentence of between nine years and ten months' to 11 years and one month's imprisonment, along with six strokes of the cane, subject to a two-and-a-half-month reduction in the imprisonment term to account for the time spent by the Respondent in custody.

The sentencing framework applicable to youthful offenders

4 The sentencing framework applicable to youthful offenders comprises two stages: *Public Prosecutor v Mohammad Al-Ansari bin Basri* [2008] 1 SLR(R) 449 ("*Al-Ansari*") at [77]–[78]; *Public Prosecutor v Koh Wen Jie Boaz* [2016] 1 SLR 334 ("*Boaz Koh*") at [28]. At the first stage, the court identifies and prioritises the primary sentencing considerations appropriate to the youth in question. At the second stage, the court selects the appropriate sentence that would best meet those sentencing considerations and the priority placed upon the relevant ones.

Stage 1: Identification of the primary sentencing considerations

5 I begin with the first stage. Although the primary sentencing consideration for youthful offenders will generally be rehabilitation, the focus on rehabilitation can be diminished or even eclipsed by such considerations as deterrence or retribution where the circumstances warrant. Broadly speaking, this happens in cases where (a) the offence is serious, (b) the harm caused is severe, (c) the offender is hardened and recalcitrant: *Boaz Koh* at [29]–[30]. I should add that, although the Prosecution has also relied on factor (d) in *Boaz Koh* at [30], namely that the conditions do not exist to make rehabilitative sentencing options such as probation or reformative training viable, the Court of Appeal in *Public Prosecutor v ASR* [2019] 1 SLR 941 ("*ASR*") has since clarified that this factor properly falls under the second stage of the sentencing

framework in cases which do not involve foreign offenders who are not locally resident.

6 In the present case, the DJ accepted that, because the offences were serious and had caused harm to V1 and V2, deterrence and retribution were relevant sentencing considerations. However, in his view, the offences were not *so* serious, nor the harm caused *so* severe, nor the Respondent *so* hardened and recalcitrant, that rehabilitation had been displaced as the primary sentencing consideration: GD at [34], [36] and [49].

7 With respect, I consider that the DJ erred in principle in coming to this view. For the following reasons, I am satisfied that deterrence and retribution have eclipsed rehabilitation as the primary sentencing considerations.

8 First, the offences were serious. Apart from the harsh punishments that each of the offences can potentially attract under statute, the courts have previously recognised the seriousness of the offences of statutory rape (see *Ng Kean Meng Terence v Public Prosecutor* [2017] 2 SLR 449 ("*Terence Ng*") at [51]) and rioting (see *Phua Song Hua v Public Prosecutor* [2004] SGHC 33 ("*Phua Song Hua*") at [39]). The DJ did not deny that the offences were serious but identified several factors as attenuating their seriousness. In my respectful view, the DJ was wrong to attach mitigating weight to these factors, which did not detract from the serious nature of the offences.

(a) The first factor cited by the DJ was that the "sexual acts between the [Respondent] and each victim were consensual and in the context of a romantic relationship. There was nothing to suggest that the [Respondent] had been exploitative, predatory or coercive in his sexual relationship with the two girls": GD at [34] and [39]. Relatedly, the DJ

also accepted the Respondent's account that it was V2 who had started to initiate requests for sex with him: GD at [39(b)]. However, as regards the offence of statutory rape, the fact that a victim consented to intercourse is not a mitigating factor save in "exceptional" cases, *eg*, where the offender and the victim were of the same or similar age at the time the offence was committed: *Terence Ng* at [45(b)], referring to *Public Prosecutor v AOM* [2011] 2 SLR 1057 at [34]. This was plainly not such an exceptional case. The Respondent and V1 were 17 and 13 years of age respectively at the time of the offence. This meant, as the Prosecution submits, that the Respondent had the advantage of several years over V1. The asymmetric nature of their relationship is further evident from the Respondent's controlling behaviour towards V1 (including by asking her to cut off contact with her friends) and the fact that she felt pressured to engage in penile-vaginal sexual intercourse with him. I make a similar observation in respect of the offence committed against V2, which was committed when the Respondent was 19 years old and V2 only 14 years old. Relatedly, the absence of exploitative, predatory or coercive behaviour was plainly a neutral factor. The Respondent submitted at length that the present case must be distinguished from cases in which even "factual consent" is absent due to the application of coercion or force. I entirely agree. The distinction is this: had even factual consent been absent, the Respondent would have committed an aggravated offence of rape against V1 punishable under s 375(3)(*b*) of the Penal Code (Cap 224, 2008 Rev Ed) and an offence of rape against V2 punishable under s 375(2) of the Penal Code 1871. However, the presence of factual consent is not a mitigating factor in respect of the offences with which the Respondent has been charged.

(b) The second factor cited by the DJ was that the Respondent was ignorant of the unlawfulness of his sexual acts with V1 and V2: GD at [40]. However, it is well established that ignorance of the law is no excuse, whether to exculpate from criminal liability or to mitigate in sentencing: *Public Prosecutor v Tan Seo Whatt Albert and another appeal* [2019] 5 SLR 654 at [48].

(c) The third factor cited by the DJ was the Respondent's "relatively low" culpability in the rioting offence: GD at [41]. I accept that there is no indication that the Respondent masterminded or organised the attack on V3. However, he was no mere bystander. He actively participated in the attack by punching V3 on the face, causing him to fall to the ground, apparently because he perceived that V3 had disrespected V2. Further, as the Prosecution submits, the Respondent is not being sentenced for his individual acts considered in isolation, but for his participation in the collective offence of rioting: *Phua Song Hua* at [39]. In any event, even leaving on one side the rioting offence, there can be no doubt that the other offences, especially the statutory rape offence, were very serious.

9 Second, the harm caused by the offences was severe. The DJ acknowledged that the offences against V1 and V2 had caused harm. In particular, he accepted that V1 and V2 had suffered physically and emotionally from having to undergo abortions and from their breakups with the Respondent. However, the DJ did not consider that this had risen to the level of severe harm. He did not agree with the Prosecution's submission that the offences had left "indelible psychological scars" because V1 was able to move on from her relationship with the Respondent. As for V2, there was no evidence to show that her feelings of being "cheated" when the Respondent broke up with her, or her

trust issues with male friends, would be permanent. With respect, I disagree. It is clear to me that V1 and V2 did suffer severe harm. It suffices to observe that V1 and V2 had to undergo invasive and traumatic abortion procedures at the tender ages of only 13 and 15 years. V1 suffered physical pain and was placed on medical leave for two weeks afterwards. As for V2, while the physical pain was "manageable", she was greatly affected mentally and continued to "feel like I am a murderer" when her victim impact statement was recorded more than one year later. It is unsurprising that the Court of Appeal in *Terence Ng* stated that it would be a "serious aggravating factor" where "the rape results in especially serious physical or mental effects on the victim such as pregnancy". Indeed, the court gave this as an example of the aggravating factor of "[s]evere harm to [the] victim" (at [44(h)]).

10 Third, the Respondent is a hardened and recalcitrant offender. His offending behaviour has escalated despite earlier stints of probation and reformative training (even at level 2 intensity). In fact, the statutory rape offence was committed while the Respondent was still on probation. The other offences, including those underlying the charges taken into consideration, were committed while the Respondent was undergoing reformative training supervision. The DJ's sole reason for taking a different view was that "[i]t was clear from the RT Report that the [Respondent] had very favourable rehabilitative prospects": GD at [45]. Again, with respect, I disagree. The Prosecution is correct that the findings of the RT Report are more relevant when the court is determining whether the conditions exist to make rehabilitative sentencing options viable, *ie*, factor (d) in *Boaz Koh* at [30] (see [5] above). In any event, it is abundantly clear from the objective evidence that the Respondent is hardened and recalcitrant. The broadly sympathetic nature of the RT Report cannot, in my view, displace this conclusion.

11 I am therefore satisfied that deterrence and retribution supersede rehabilitation as the dominant sentencing considerations in the present case. In particular, against the backdrop of the Respondent's escalating pattern of criminal offending, specific deterrence is plainly called for in the present case.

Stage 2: Selecting the appropriate sentence

12 I now turn to the second stage of the sentencing framework, which involves selecting the appropriate sentence that would best meet the relevant sentencing considerations as identified at the first stage. It follows from my conclusion that deterrence and retribution are the primary sentencing considerations that reformative training is not an appropriate sentencing option. This is because reformative training is a rehabilitative sentence (even if it incorporates a significant measure of deterrence): *Al-Ansari* at [47]; *Boaz Koh* at [36]–[38]. In my judgment, a sentence of imprisonment with caning is necessary to give effect to the need for specific deterrence and retribution.

13 I make two further points. First, I share some of the Prosecution's concerns about the continued existence of risk factors which may make a sentence of reformative training less viable. However, I have not placed significant weight on this because I am satisfied in any event that reformative training would not give sufficient effect to the need for deterrence and retribution in this case. Second, I agree with the Prosecution that it cannot be right for the Respondent to be sentenced to reformative training at a lower level of intensity than previously when, as explained in the above, his offending behaviour has escalated despite undergoing that earlier regime of reformative training.

14 I now consider the appropriate sentence to be imposed for each of the offences. As will be evident, the Respondent's youth and rehabilitative prospects are relevant considerations at this stage notwithstanding my conclusion that rehabilitation has been displaced as the primary sentencing consideration: see *Public Prosecutor v See Li Quan Mendel* [2019] SGHC 255 at [64]–[67]. Also relevant is the presence of ten charges which the Respondent consented to being taken into consideration. In general, offences which are to be taken into account in sentencing should have the effect of increasing the sentence which the court would otherwise have imposed for the offences actually proceeded with by the Prosecution: see *Public Prosecutor v UI* [2008] 4 SLR (R) 500.

15 I begin with the statutory rape offence. The Prosecution seeks between seven years and six months' and eight years and six months' imprisonment; in addition, six strokes of the cane. The Respondent seeks no more than six years' imprisonment and three strokes of the cane. I impose seven years and six months' imprisonment and six strokes of the cane. Cases of statutory rape in which the victim consents and there are no further notable aggravating factors (such as an abuse of position or evidence of particular vulnerability over and above the age of the victim) should fall in the upper band of Band 1 with an indicative starting point of 12 years' imprisonment: *Terence Ng* at [51]. The sentencing band for Band 1 offences also prescribes six strokes of the cane: *Terence Ng* at [47(a)]. Given that it is a serious aggravating factor where the rape results in pregnancy (*Terence Ng* at [44(h)]), I adopt an indicative starting point of 13 years' imprisonment and six strokes of the cane. I calibrate this downwards on account of the Respondent's youth (*Terence Ng* at [65(b)]) and plea of guilt to arrive at seven years and six months' imprisonment and six strokes of the cane.

16 I turn next to the sexual penetration of a minor offence. The Prosecution seeks 18 to 20 months' imprisonment, while the Respondent seeks ten months' imprisonment. I impose 18 months' imprisonment. In *Yap Lee Kok v Public Prosecutor* [2021] SGHC 78, which was a plead-guilty case involving a penile-vaginal sexual penetration of a minor offence, it was stated that "the starting position in this case should be in the region of 14–16 months' imprisonment" (at [24]). I accept the Prosecution's submission that an uplift from this starting position is warranted, notwithstanding the Respondent's youth, given the aggravating factors of V2's pregnancy, the nine similar charges taken into consideration and the commission of the offence while the Respondent was undergoing reformative training supervision.

17 I turn finally to the rioting offence. The Prosecution seeks ten to 11 months' imprisonment, while the Respondent seeks eight months' imprisonment. I impose ten months' imprisonment. I accept the Prosecution's submission that the facts underlying the offence are broadly comparable to those in *Robin Anak Mawang v Public Prosecutor* [2006] 1 SLR(R) 373, where 15 months' imprisonment was imposed on an offender who claimed trial. The Respondent is entitled to a discount on account of his plea of guilt and I therefore impose ten months' imprisonment.

18 I now consider the global sentence to be imposed. I have imposed the following individual sentences: (a) seven years and six months' imprisonment and six strokes of the cane for the statutory rape offence; (b) 18 months' imprisonment for the sexual penetration of a minor offence; and (c) ten months' imprisonment for the rioting offence. The Prosecution submits that all three individual sentences should run consecutively, while the Respondent's position appears to be that the sentence for the sexual penetration of a minor offence

should run concurrently. As a general rule, a multiple offender who has committed unrelated offences should be separately punished for each offence, and this should be achieved by an order that the individual sentences run consecutively: *Public Prosecutor v Raveen Balakrishnan* [2018] 5 SLR 799 at [41]. As there is no dispute that the three offences are unrelated, the starting point is that the three individual sentences should run consecutively. On the facts of this case and arguments canvassed before me, I am unable to identify any reason to depart from this starting point. I am also satisfied that the totality principle does not require any adjustments to the aggregate sentence of nine years and ten months' imprisonment and six strokes of the cane. In particular, this sentence is not crushing but is in keeping with the Respondent's past record and his future prospects: see *Mohamed Shouffee bin Adam v Public Prosecutor* [2014] 2 SLR 998 at [57].

19 Finally, I am aware that the Respondent was remanded on 14 March 2024 and commenced serving his sentence of reformative training on 17 April 2024. I have had regard to his time in custody in determining the sentence to be imposed. It is therefore unnecessary to consider any possible backdating of the imprisonment term.

Conclusion

20 For the reasons above, I allow the Prosecution's appeal against sentence. I set aside the sentence of reformative training and impose an aggregate

sentence of nine years and ten months' imprisonment and six strokes of the cane.

Vincent Hoong
Judge of the High Court

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Liew Hwee Tong Eric and Koo Man Ling Audrey (Advox Law LLC) for the respondent.
