



THE COURT OF APPEAL

**The President
Birmingham J.
Sheehan J.**

**66/2013
55/2013**

The People at the Suit of the Director of Public Prosecutions

Respondent

V

Adam Heneghan and Colin O'Sullivan

Appellants

Judgment of the Court (ex tempore) delivered on the 25th day of November 2014, by Birmingham J.

1. In this case the two appellants Mr. Heneghan and Mr. O'Sullivan appeal against the severity of sentences imposed upon them on the 27th February, 2013, in the Cork Circuit Court. The sentences that are the subject of appeal are, in the case of Mr. Heneghan, a sentence of three years imprisonment for a s. 3 assault and a consecutive sentence of six years imprisonment in respect of an offence of sexual assault with one year suspended. In the case of Mr. O'Sullivan, the sentences appealed are four years imprisonment in respect of the s. 3 assault, six years in respect of the sexual assault, again with one year suspended.

2. In terms of the overall sentences that are under examination, we are looking at the situation where in the case of Mr. Heneghan it is an aggregate sentence of nine years with one suspended and in the case of Mr. O'Sullivan, ten years with one suspended.

3. The facts of these cases are that on the 3rd December, 2011, the first injured party Ms. EO, a Polish national and hotel employee, left her place of work outside Cork City around 2.30 in the morning, walking towards Cork city centre. Her route brought her close to the Mercy University Hospital and in the vicinity of the hospital, she was conscious of the presence of two males and it is fair to say, wary at the presence of the two males and alarmed by their presence.

4. In the vicinity of Cork University Hospital, she was struck on the head with a bottle. It would seem that that bottle was wielded by the appellant Mr. Heneghan. As it happened and fortunately, she was wearing her hair in a bun on the occasion and it appears that some of the impact of the blow was taken by the hairclip that was keeping her hair up in the bun. The incident happened close to the University Hospital and was captured on CCTV footage from the hospital and it is also the case that the incident drew the attention of a security guard at the hospital. Conscious of the fact that the security guard was aware of what had happened, the two males fled the scene.

5. The two males in question were of course the two appellants, and then very shortly thereafter, they came into contact with the second injured party, Ms. RM. Ms. M was walking home after a night out socialising and she came across the two appellants. It is of some significance and it is an indication of a degree of planning on the part of the appellants that they pretended to be drunker than they in fact were. It does seem that there was some alcohol consumed, but they pretended to be drunker in order to give effect to their plans.

6. Ms. M. kissed in a consensual way the appellant Mr. O'Sullivan. He it seems became aggressive and she was ushered or steered into the grounds of a Church. There Ms M received a blow to her head with a glass bottle, she was pushed face down to the ground and she was held there by Mr. Heneghan, while Mr. O'Sullivan opened his trousers, took out his penis and placed it in the general anal buttocks area, but did not proceed to penetration. When the victim attempted to call the police on her mobile phone, the incident stopped. Mr Heneghan and Mr O'Sullivan then emptied the contents of the victim's handbag and some €50 was taken. They then left the scene.

7. Even this very brief summary of the facts will leave nobody in any doubt, but that these were incidents of the utmost seriousness and nobody would be surprised to hear that the incidents have had a significant effect on both victims.

8. The first injured party, the hotel employee, has left her employment in Cork city and has moved to another location in Munster. The second victim, the victim of the sexual assault in Church grounds, has commented, and this is entirely to be expected, that she is now very nervous about socialising or being out and about in her native city.

9. In terms of the personal circumstances of the two appellants, and dealing first with Mr. Heneghan, he was eighteen at the time, living with his parents and he was the father of a young child. He was working as a delivery truck assistant and the trial court was told that in July 2012, he was admitted to hospital following a suicide attempt which was seen as being linked to anxiety related to his involvement in this incident.

10. The trial judge saw the mitigating factors in his case as being his age, his absence of previous convictions and over and above that, that he had been law abiding it seemed, until this incident and also the early plea of guilty.

11. So far as Colin O'Sullivan is concerned, he was nineteen at the time of the offence, he too was living with his parents in North Cork, he was employed in a supermarket and like his co-accused, is now the father of a young child. In his case, there was evidence that he had learning difficulties in school and developmental difficulties.

12. This is a case where the court has had the benefit of careful and detailed written submissions from all the parties, as well of course as hearing the oral submissions here in court.

13. So far as Mr. O'Sullivan is concerned, while the written submissions raise questions about the appropriateness of the imposition of consecutive sentences and so on, the appeal has really concentrated on the fact that he had entered an early plea of guilty and it is said that this was a valuable plea and that it received inadequate credit. It said that a plea in such matters as this is of value to victims, and it is said that an early plea is indicative of remorse, it says an early plea is indicative of a degree of insight and that the presence of insight is itself an indication of rehabilitation.

14. In the case of Mr. O'Sullivan, his counsel is not in a position to point to an early plea and in those circumstances, the submissions fairly and squarely focus on the question of the appropriateness of consecutive sentences and the manner in which consecutive sentences were actually imposed. The argument that is made is that in the particular circumstances of this particular appellant, it

was wrong in principle to give consecutive sentences. It is said that that might have been appropriate if the court was dealing with an offender of full age and full understanding and full maturity, perhaps with previous convictions, but for somebody with the developmental difficulties, to which there has been reference, that the decision to impose consecutive sentences was inappropriate. Instead it says that having regard to those issues in relation to learning difficulties and developmental difficulties that Mr. O'Sullivan ought not to have been dealt with as someone of his actual age of nineteen years, but should have been dealt with as if he was in fact a younger person. Alternatively it said that if there were consecutive sentences imposed that the totality of the sentences imposed was excessive and disproportionate.

15. The DPP responding says first, that the sentences were measured and appropriate and that the approach taken by the sentencing judge was entirely acceptable. So far as the question of whether consecutive sentences could be imposed is concerned, the DPP says that the offences in question, while close in time, did not form in part a single transaction and that accordingly it was entirely appropriate that sentences were consecutive and that indeed if there had been a failure to impose consecutive sentences that the judge would have been falling into error.

16. So far as the court is concerned, there are two matters that emerge very starkly as being of central significance. First of all there is the very grave nature of the offences. Both of these offences were serious offences and both involved violence, both involved situations of two males singling out and inflicting violence and in the second case, violence including sexual assault, on individual females who were going about their business in the early hours of the morning. They are by any standards offences of very considerable seriousness.

17. On the other side of the coin is the fact that the judge here was dealing with two young offenders and two offenders without previous convictions. In the case of Mr. O'Sullivan, there was the fact of his learning and developmental difficulties, in the case of Mr. Heneghan there was the fact that this was a young offender without previous convictions who had entered a plea at an early stage. Just on the topic of a plea, the court has commented that counsel for Mr. O'Sullivan understandably was not in a position to raise arguments about the values of an early plea, for the obvious reason that there was not one, but he does make the point, and the court accepts that, that it is the situation that a plea was eventually entered in respect of the second incident in time before the injured party was subjected to cross examination and so some degree of credit is to be given for that.

18. The courts view is that this was a situation where the trial judge was absolutely justified in deciding to impose consecutive sentences. These were offences that were close in time, but they were separate and distinct offences and each of them were offences of very, very considerable seriousness, as has been pointed out.

19. On the question of principle, the court is clear that the trial judge was absolutely correct in imposing consecutive sentences.

20. The question that troubles the court is whether adequate credit was given for the fact that the two people being sentenced were as young as they were, that they had no previous convictions, that as I say in Mr. O'Sullivan's case, there were developmental issues and in Mr. Heneghan's case that there had been an early plea. Serious as the offences are, the court is of the view that inadequate credit was given for these factors and these factors were not adequately taken into account and accordingly, the court concludes that there was an error in principle.

21. What the court has decided to do is to leave the starting point sentences as fixed by the trial judge in place, thus reflecting and marking the court's view of the seriousness of the offence. However, recognising the factors that were already mentioned, the lack of previous convictions, the age of the appellants, the early plea in one case, the issue about learning difficulties and developmental issues in the other, the court is of the view that the trial judge ought to have taken these into account by suspending a greater portion of the sentence and that is what this Court will now do.

22. Accordingly, in the case of Mr. O'Sullivan, the court will look at the starting total sentence of ten years and will suspend a period of three and a half years bringing the sentence down from ten to six and a half years. There will be a suspended sentence of three and a half years.

23. In the case of Mr. Heneghan, the court will start with the sentence of nine years and will suspend four years of that. In both cases, this means that the appellants will be left with significant suspended sentences in place when they complete their period in custody. Having regard to the severity of the incidents in which they became involved, and having regard to the need to impress upon them that they must resume a law abiding lifestyle, the court takes the view that that is an appropriate course of action. The court will vary the sentences accordingly.