COURT OF APPEAL

[201/18]

The President
McGovern J.
Kennedy J.

BETWEEN/

THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

- AND –

J. O'D

APPELLANT

JUDGMENT of the Court (*ex tempore*) delivered on the 5th day of April, 2019 by Ms. Justice Kennedy

Introduction
1. This is an appeal against severity of sentence. Following pleas of guilty, the appellant was sentenced to 18 years' imprisonment in respect of two counts of rape contrary to s.2 of the Criminal Law (Rape) Act 1981, and four counts of rape contrary to s.4 of the Criminal Law (Rape)(Amendment) Act 1990. The offending conduct concerned two victims and 17 counts were preferred on the indictment, which included a further three counts of rape contrary to s.2, a further four counts of rape contrary to s.4, a count of making a threat to kill, assault causing harm contrary to s.3 of the Non-Fatal Offences Against the Person Act, 1997 and two counts of false imprisonment.

Background
2. The appellant was a former partner of the first of two victims, EK. The second victim, CM, was a foster child of EK and resided with her and was 16 years of age at the time. On the 10th September 2016, the appellant forcibly entered EK's house. EK was asleep in the living room, and awoke to the appellant placing a hand over her mouth and pressing a knife against her neck. When she attempted to raise the alarm by screaming, he threatened to kill her and directed this threat towards the occupants of the house.

3. He instructed her to remove her clothing and when she refused, he struck her to the face on a number of occasions. He then proceeded to rape her vaginally while at all times threatening her with a knife. At one point, he placed the blade of the knife against her anus. She was also subjected by force to oral intercourse. These events continued over a period of time, during which the appellant confined EK, resulting in her having to relieve herself in the living room.

4. During the commission of these offences, the appellant made enquiries as to who else was present in the house. He told EK he wished to commit similar offences on CM and forced EK upstairs, naked, to CM's bedroom in order to retrieve her. When EK attempted to dissuade the appellant from interfering with CM, due to her young age, he threatened her with the knife and forced both females downstairs. He then raped them vaginally, orally and anally. He forced the victims to perform sexual acts on each other. He sexually assaulted CM multiple times, including digitally penetrating her. At one stage EK attempted to use her phone to make an emergency phone call and the appellant took the phone and smashed it against the wall. He destroyed the sim card by chewing it. The events of this evening lasted for a period in excess of seven hours and only ceased when the appellant, who had been drinking heavily throughout, fell asleep and both females took the opportunity to flee and contact the Gardaí.

5. The appellant was arrested in the house and taken to the garda station where he made a number of admissions in respect of EK. In respect of CM, he stated that he had no recollection of meeting her but did not deny the offences. Pleas of guilty were entered ten days before the trial date.

The Sentence
6. In sentencing, the trial judge highlighted the seriousness of the offences and he said: -

> "…on any yard stick, I have asked myself, is this the most serious class of case of this kind with which I have to deal? That is to say, I have dealt -- extreme violence over many hours, two persons coerced and subjected into repeated rapes and extensive sexual acts. The intrusion, by way of burglary, into the household of the complainant. The fact that the accused could not, by any stretch of the imagination, have been of anything other than full responsibility because notwithstanding any question of the consumption of alcohol. One has come across sexual offences which fall into the most serious kind involving, say, abuse of children. But of this class, it is for it is for this class of offence, or because of this level of seriousness, that the penalty of imprisonment for life is available to the criminal courts. I'd like to think that, from such experience as I have or for such reports as exist, I am right in saying that this falls into the more serious category."

7. The sentencing judge considered the primary mitigating factor to be the plea of guilty but he noted that it was not an early plea. He said: -

> "…a considerable length of time has elapsed from the date of return to the date on which the plea was agreed or tendered and accepted by the prosecution, even though the plea was not entered until some relatively short time thereafter. So, whilst there were certain admissions made, extensive admissions in many respects, I do not class it as an early plea. One has pleas of guilty at the last moment, say on the day of trial, but as pleas of guilty go, this was a case where there was very substantial, indeed coercive evidence as to the offences. So less weight is obviously attached to pleas of guilty where the evidence is coercive. And the plea, whilst not a last-minute plea, came relatively late in the criminal justice process, which bears upon the extent of the accused's contrition and of course, also bears upon the

adverse effect of the matter on the victims."

8. The judge, in considering the appellant's evidence of rehabilitation, stated: -

> "But in general, I'm prepared to accept that the plea, allied to what he has sought to do in prison, is indicative of contrition, realisation of his wrongdoing and a willingness to seek to rehabilitate himself."

9. The judge remarked that the reason he would not impose a life sentence was due to the appellant's plea of guilty. A sentence of 18 years' imprisonment was imposed being consecutive sentences of nine years in respect of the counts concerning each complainant.

Personal circumstances
10. The appellant was 35 years of age at the time of offending. He has one previous conviction regarding the breach of a barring order contrary to s.17 of the Domestic Violence Act 1996. He has worked in several jobs but has not gained steady or continuous employment. At the time of sentencing, the judge received material concerning the appellant's positive engagement with a number of services and programmes whilst incarcerated.

Submissions
11. The submissions on behalf of the appellant were advanced under four headings and we will now address each in turn.

Submission 1
12. The sentencing judge erred in assessing the offence in the appellant's case as meriting in the first instance an indeterminate sentence of life imprisonment, which resulted in an actual sentence being passed, that was disproportionate and out of kilter with previous sentencing precedents.

Appellant
13. The appellant submits that the judge erred in taking the view that but for the appellant's plea of guilty, the offences in question merited an indeterminate life sentence and it is submitted that the final sentence imposed was disproportionate and misaligned with sentencing precedent. The appellant submits that, notwithstanding the gravity of the offending in this case, it does not fall into the very rare category of cases for which life imprisonment is appropriate. The appellant refers to the judgment of Geoghegan J. in *The People (DPP) v. G. McC* [2003] 3 IR 609. :-

> "Even in relation to a fully fought out rape case, a life sentence would be rare. The kind of circumstances that might justify it would be if the rape had been accompanied by extreme violence or if, say there had been a gang rape and in addition there were previous rape convictions."

14. Mr Heneghan SC on behalf of the appellant refers to *The People (DPP) v. Murray* [2017] IECA 292 wherein the Court of Appeal increased a sentence of 15 years to one of 19 years. This case involved the imprisonment of a mother and her four-year-old son and multiple incidents of rape, attempted rape, sexual degradation and severe violence involving the binding of the victim, as well as repeated threats to kill both the victim and her son which lasted over 13 hours. The accused fully contested his trial and had 20 previous convictions, many of which involved violent offences. The appellant submits that there were greater aggravating factors in the *Murray* case than the present case and yet a similar sentence was imposed.

15. The appellant also refers to *The People (DPP) v. ED* [2018] IECA 200, where a sentence of ten years was upheld in respect of a violent rape. Here, the accused broke into his former partner's home and raped her while the victim's young daughter was at home. The child had to barricade herself into a room armed with a knife as the accused attempted to break down the door. The accused in this case had a previous conviction for assault causing harm and it seems he contested his trial. The appellant accepts that the facts of the current case are more severe but argues that *ED* shows that a sentence of 18 years is out of kilter with accepted and approved sentencing precedents for offences of this nature. The appellant also refers to *The People (DPP) v. Hussey* [2018] IECA 221 where the Court upheld a sentence of 13 years where the appellant had, whilst in a drunken state, broken into the home of the complainant who was a 74-year-old woman living alone in a rural locale. He subjected the injured party to numerous acts of violence including striking her in the face. He made several threats to the effect that if she resisted there were three further assailants who would do her injury. She was raped both vaginally and anally. The appellant also refers to *The People (DPP) v. Bermingham* (Unreported, Court of Criminal Appeal, 5th April, 2005) where a sentence of 21 years was reduced to 15 years where the accused, a taxi driver, had taken three women hostage in his car and subjected them to a prolonged series of offences including vaginal and oral rape and in addition had required them to perform sexual acts on one another. During and throughout the incident he had been armed with a scissors with which he had threatened the victims. The appellant submits that these cases make it clear that the sentence imposed was out of kilter.

16. The appellant submits that life sentences are usually reserved for cases in which the offending has been frequent and repeated over a prolonged period of time and in circumstances in which the victims are often young children and in respect of whom the defendant was in a position of authority or trust. The appellant cites the judgment of Clarke J. in *The People (DPP) v. Z* [2014] 1 IR 613: -

> "This Court is strongly of the view that the sentencing judge was more than entitled to come to such a conclusion on the evidence before him. As noted earlier there are striking similarities, at least at a broad level, between the offences to which Mr. Z. ultimately pleaded guilty and the offences which were under consideration in both *The People (Director of Public Prosecutions) v. R. McC.* [2007] IESC 47, [2008] 2 I.R. 92 and *The People (Director of Public Prosecutions) v. D* [2004] IECCA 8, (Unreported, Court of Criminal Appeal, 21st May, 2004). While, as the Court has already noted, it will be always possible to point to certain distinctions, it seems clear to this Court that those two cases and this case all fall into an exceptional category which involves prolonged and depraved sexual and physical violence against persons who are entitled to place their trust in the perpetrator. There may, of course, be other exceptional circumstances which could arise on the facts of other cases. However, this Court is of the view that offences of this type are such as entitle a sentencing judge to take the view, depending on the severity and nature of the abuse concerned, that exceptional circumstances exist which might justify, even in the presence of some mitigating circumstances, the maximum sentence of life imprisonment. The exceptional circumstances in such cases are to be found in the nature of the offences themselves"

17. The appellant submits that this case does not fall within the exceptional category of cases where a single transaction would attract a life sentence.

Respondent
18. Mr Greene SC for the respondent submits that the trial judge did not err in holding that but for the plea of guilty a life sentence would be imposed as the facts of this case warrant such and says that this case falls within the exceptional category described by *The People (DPP) v. G. McC* [2003] 3 IR 609, involving extreme violence and two victims who were repeatedly raped vaginally, orally and anally. The victims were forced to perform sexual acts on each other with one victim aged 16 years.

19. The respondent submits that the facts of *The People (DPP) v. Murray* [2017] IECA 292 are not of a more aggravating kind than present here. Both Murray and *The People (DPP) v. ED* [2018] IECA 200, involved the presence of a child but unlike the present case, they were not subject to sexual offending. In the present case, the child in question was subject to multiple vaginal, oral and anal rapes and sexual assaults in the presence of her foster mother and was forced to engage in sexual acts with her foster mother.

20. The respondent submits that the ordeal of each injured party in the present case was more severe than that suffered in *The People (DPP) v. Hussey* [2018] IECA 221 and furthermore, *The People (DPP) v. Bermingham* (Unreported, Court of Criminal Appeal, 5th April, 2005) can be distinguished from the present case as one victim was 16 years old and both were subject to anal rape and physical violence in their own home. Furthermore, *Bermingham* contained mitigating factors in the form of an early plea of guilty from the accused and a token gesture of remorse by way of compensation.

21. The respondent submits that it is not accepted that life sentences are reserved for cases where the offending is frequent and over a prolonged period of time and in respect of children from a person in authority and the judgment of Clarke J. in *The People (DPP) v. Z* [2014] 1 IR 613 does not limit the imposition of such sentences to the above scenario.

Submission 2

Failure to consider mitigating factors

Appellant
22. The appellant submits that the trial judge erred in considering the guilty plea to be the only mitigating factor. The appellant further submits that the trial judge erred in limiting the value of the guilty plea due to the presence of "coercive evidence" and categorising it as a late plea and says that it is unfair to devalue the guilty plea by virtue of "coercive evidence" as the majority of the evidence was provided by the appellant. Furthermore, the appellant submits that the guilty plea was entered as soon as it was practicable to do so. The timing of the plea was affected by the need of the appellant's legal advisors to confirm certain documents, which was accepted by the respondent.

23. It is submitted greater discount ought to have been afforded to the appellant by virtue of his admissions and it is submitted that the appellant never denied his responsibility concerning the offending towards CM. The appellant submits that his genuine remorse, lack of similar previous convictions and his steps in custody towards addressing his offending behaviour should have also been considered.

24. The appellant says that the judge ought to have considered the degree to which the offending in question was out of character and whilst accepting that intoxication cannot absolve his criminal responsibility says it is relevant in determining the extent to which the offending was out of character. In this regard, the appellant refers to *The People (DPP) v. Hynes* [2016] IECA 102 which was recently approved in *The People (DPP) v. Friel* [2018] IECA 216.

Respondent
25. The respondent submits that the plea came late in the day with no admissions in respect of CM. and says that the sentencing judge was entitled to comment that such was a late plea and entered in the context of coercive evidence in circumstances where the appellant was arrested at the scene of the offences. The respondent submits that the rehabilitative efforts of the appellant are reflected in the 18-year sentence.

26. The respondent argues that the sentencing judge adopted a sensitive approach to intoxication and while there was evidence of intoxication, it did not indicate that the appellant behaved out of character as there was evidence that he was in control of his actions in other respects. The appellant has a previous conviction for breach of a barring order under Section 17 of the Domestic Violence Act which is not irrelevant to his character in the context of this case.

Submission 3

Failure to attach sufficient weight to the public interest in rehabilitation

Appellant
27. The appellant submits that the sentencing judge erred in failing to attach sufficient weight to the public interest in rehabilitating the appellant and, by failing to suspend any portion of the sentence imposed in order to incentivise same. The appellant says that the judge attached minimal weight to the documents before the Court evidencing the appellant's numerous attempts of rehabilitation, that the judge, whilst acknowledging rehabilitation as one of the aims of sentencing, appeared to have dismissed the prospect of same by reference to the gravity of the offence. The appellant submits that this approach was incorrect and resulted in an error in principle. It is submitted that in circumstances in which the appellant had fully accepted responsibility for his behaviour, had demonstrated genuine insight and remorse and was engaged in rehabilitative therapy whilst in custody, the sentence imposed in this case failed to adequately or at all consider the public interest in rehabilitation.

Respondent
28. The respondent submits that the rehabilitative efforts of the appellant were given due weight which was reflected in the final sentence ultimately imposed. There is no error in principle arising from the fact that the sentencing judge did not suspend a portion of the sentence. It is submitted that the objective of incentivising rehabilitation can be accomplished by imposing a sentence which is less than might otherwise be imposed. It is submitted that the appellant's submissions ignore the fact that whilst the appellant accepted responsibility for the offending in respect of EK, he did not do so regarding CM. The respondent submits that the Court made its assessment on the prospects of rehabilitation on limited information as there was no risk assessment before the Court from the Probation Services or any psychological assessment.

Submission 4
Failure in imposing consecutive sentences and failing to observe the principle of totality

Appellant

29. The appellant submits that there is a presumption that concurrent sentences ought to be imposed in respect of offences arising from a single transaction except in exceptional circumstances and this holds true even if there are two victims. The appellant refers to *The People (DPP) v. Coogan* (Unreported, Court of Criminal Appeal, 29th July 1997) where the Court held that it was within: -

> "the judge's power to impose a consecutive sentence but that is a very exceptional course in cases which bear a close resemblance and happen within a reasonably short time scale."

30. The appellant submits that the overall sentence of 18 years with no suspension was disproportionate and offended the principle of totality. The appellant submits that the decision of the trial judge to impose consecutive sentences made it more necessary to ensure that the actual sentence imposed was not disproportionate.

Respondent
31. The respondent submits that exceptional circumstances existed in this case which justified the imposition of consecutive sentences of 9 years in respect of the offences perpetrated against each complainant. It is submitted that, as was acknowledged in the case of *DPP v Coogan* cited by the appellants, it was within the judge's power to impose consecutive sentences in respect of two victims in very exceptional cases such as this one as where the second victim was a 16-year-old child. It is submitted that the overall sentence was proportionate and did not offend against the principle of proportionality and that no error in principle has been identified by the appellant.

Discussion and Conclusion

Submission 1
32. The first submission concerns the judge assessing the offences as meriting a sentence of life imprisonment and it is argued that this assessment of gravity is not in line with sentencing precedent. In imposing sentence, a court must assess the seriousness of an offence with reference to the available penalty and the moral culpability and harm done. In this assessment, the court will consider the aggravating factors. The judge concluded that the present case involved offending of a most serious kind. Aggravating factors are distinct from the ingredients of an offence and can increase moral culpability. The nature or the manner of the commission of an offence can aggravate the offence. It is important to note the aggravating features present in this case which include the following: -

- The appellant breached the injured party's home;
- There were two victims.
- One victim was of a young age.
- He violated both victims in many ways.
- He humiliated them for his own sexual gratification.
- He placed both in fear.
- He used a weapon in the course of the commission of the offences.
- The attacks were accompanied by violence, inflicting injury on EK
- The impact was devastating and life changing for both victims.
- The attacks continued for a period of in excess of some 7 hours.

33. The appellant seeks to rely on the decision of this Court in *DPP v ED*. However, in that case, there was one victim who was subjected to a violent rape. Her daughter barricaded herself into her bedroom in fear of the appellant who tried to force his way into her room. In the present case, there were two victims, each of whom was violated in the most appalling manner; involving conduct which caused humiliation to each victim and over a prolonged period. There is a similarity with the *ED* case in that the violations took place in the home where the victims in each instance should have felt safest.

34. There were 17 counts preferred on the indictment. The pleas of guilty were entered on a representative basis. Representative counts or sample counts are often representative of extensive sexual misconduct on the part of an accused person, and this is so in the instant case. The judge in assessing gravity was entitled to take into account the fact that the appellant threatened to kill the first victim, he repeatedly struck her to the face causing her injury which ultimately may have caused her vertigo. He detained both victims against their will, he destroyed the first victim's mobile phone when she tried to call the emergency services, and he repeatedly sexually violated the complainants. He forced them to carry out sexual acts on each other for his own sexual gratification.

35. The appellant in submissions refers to *DPP v McC* [2003] 3 IR 609, where Geoghegan J. said: -

> "Even in relation to a fully fought out rape case, a life sentence would be rare. The kind of circumstances that might justify it would be if the rape had been accompanied by extreme violence or if, say there had been a gang rape and in addition there were previous rape convictions.".

36. Whilst Geoghegan J. identified certain circumstances which might justify a life sentence, we would add circumstances such as repeated sexual violations of an individual, the carrying out of different types of sexual acts, the humiliation of victims, violating victims in their own homes and the sexual violation of more than one victim in the same incident.

Conclusion
37. We reject the contention that the judge fell into error in considering this matter to be of the most serious character. The appellant's conduct was nothing short of shocking in terms of the breadth of its depravity, the determination to humiliate the victims and his absolute disregard for his victims, in particular his refusal to be dissuaded from violating the 16-year-old girl notwithstanding pleas to that effect from his first victim. We do not find any error in the judge considering that life imprisonment was the appropriate sentence absent mitigating factors.

Submissions 2 and 3

38. They are that sentencing judge erred in principle by failing adequately or at all to consider the various mitigating factors and by failing to make appropriate reductions by reference to same and that the judge erred in failing to attach sufficient weight to the public interest in rehabilitation, and in particular by failing to suspend any portion of the sentence to incentivise rehabilitation.

39. In particular, in this respect it is submitted that the judge erred in considering that only by virtue of the pleas of guilty an indeterminate sentence would have been appropriate. It is contended that the judge failed to take into consideration the appellant's admissions following arrest, his genuine remorse, his lack of similar previous convictions, that the offending was out of character for him and his efforts towards rehabilitation.

40. In his sentencing remarks, the Court made specific reference to the fact that the appellant acknowledged his guilt and also made reference to the appellant's effort to rehabilitate himself. The judge accepted that his pleas of guilty allied to his efforts of rehabilitation whilst incarcerated were "indicative of contrition, realisation of his wrongdoing and a willingness to seek to rehabilitate himself".

41. Furthermore, in the course of his sentencing remarks, and whilst addressing the issue of the timing of the pleas of guilty, the judge recognised that admissions were made which were extensive admissions in many respects. It should also be noted, as it was by the judge, that the appellant did not admit his wrongdoing in respect of CM by way of admissions to the Gardaí but simply indicated that he had no recollection of that activity.

42. It is submitted on behalf of the appellant, that his conduct on the night in question was to a degree, out of character. Emphasis is placed upon his level of intoxication and whilst it is properly accepted that intoxication cannot absolve the accused from criminal responsibility, it is submitted that it is relevant to his mental state to the extent that the offending may have been out of character for him.

43. The judge considered the issue of intoxication and was of the view that the appellant bore full responsibility for his actions notwithstanding the consumption of alcohol. He pointed to the prolonged course of conduct in which the appellant engaged, the fact that on the night in question he drove for approximately twenty minutes to reach his victims' home, he armed himself with a weapon and he interfered with and destroyed EK's phone. The contention that his drunkenness in some way assists the argument that the course of conduct he engaged in was out of character does not withstand scrutiny. The judge did not err in that respect. The respondent makes the observation that the plea in mitigation outlines that the use of pornographic material was partly to blame for his offending conduct and that he had blurred the lines between fantasy and reality. This is not in aid of the appellant.

The plea of guilty
44. A plea of guilty is an important mitigating factor and it means that the victim is not required to give evidence and be subjected to the rigours of a trial and cross examination. It is trite to say that the earlier a plea is entered the greater the credit for that plea. This is all the more significant in cases involving victims in that if a plea is entered at an early stage, the victim does not have to face the prospect of having to give evidence.

45. In the present case, the appellant was returned for trial in February 2017. A trial date was fixed for the 22nd January 2018. It seems that a plea of guilty was canvassed in early December 2017. The written submissions on the part of the appellant indicate a need to confirm certain documents prior to being in a position to advise the appellant as to a plea of guilty. However, whilst the appellant's legal advisers no doubt acted fully in accordance with their professional obligations, the fact of outstanding material does not in and of itself remove from an accused person the option of accepting his or her guilt at an early opportunity without waiting for material by way of disclosure. An early plea of guilty is one which is entered at the earliest possible opportunity, clearly a signed plea of guilty will attract the greatest credit, thereafter, a plea of guilty without taking a trial date and without waiting for disclosure will attract significant credit and the later the plea the less the credit for obvious reasons.

Conclusion
46. In the present case, a period of approximately 10 months elapsed between the date the matter was returned to the Central Criminal Court and December 2017. During this period of time, the complainants would have faced the prospect of having to give evidence which was only removed in December 2017. This was not an early plea and indeed was not put forward by the defence as being an early plea. It was properly classified by the judge as one which came relatively late in the process. He further concluded that the timing of the plea bore upon the extent of the appellant's contrition and impacted adversely on the victims. We do not find an error in this respect. The judge acknowledged that the offer of the plea of guilty was made in December 2017 and gave the appellant credit for that plea. In conclusion, in all the circumstances we are satisfied that the judge did not err in principle and gave sufficient credit to the appellant for the mitigating factors present.

The final submission
47. The final issue on appeal is that the judge erred by imposing consecutive sentences in the circumstances of the appellant's case and/or by failing to adequately or at all observe the principle of totality.

48. The appellant submits that the judge erred in imposing consecutive sentences in circumstances where the offences were committed in the course of a single, albeit prolonged, incident. It is submitted that consecutive sentences should not ordinarily be imposed for offences arising from the same incident. In this respect reliance is placed on the decision of *DPP v Coogan* (Unreported, Court of Criminal Appeal, 29th July 1997), where the Court of Criminal Appeal stated that: –

> "We agreed that, strictly speaking, it was within the judge's power to impose a consecutive sentence but that is a very exceptional course in cases which bear a close resemblance and happen within a reasonably short timescale."

49. A sentencing judge has significant discretion in deciding whether or not to impose consecutive sentences. In imposing sentence, a court must impose a sentence which is proportionate in terms of the gravity of the offence and the personal circumstances of the offender.

50. O'Malley states in his text on Sexual Offences, 2nd Ed., at para. 23-116:

> "It is accepted here and in some other jurisdictions that when several prison sentences are being simultaneously imposed they should ordinarily be ordered to run concurrently, unless there is some exceptional factor to justify making some or all of them consecutive. However, this is merely a general principle and while the circumstances calling for consecutive sentences are often described as exceptional, they need not be highly exceptional or unique. Text writers and courts sometimes adopt as a starting point the idea that concurrent sentences should be imposed for offences arising from the same incident or in the same course of criminal conduct. Otherwise the sentences should be, or maybe, consecutive. This

so – called one – transaction rule has never been particularly convincing."

Conclusion

51. We find Professor O'Malley's comments apposite, particularly as regards sentencing for sexual offences involving more than one victim in certain circumstances such as in the present case where the appellant took a deliberate decision having violated one victim, he was determined to then violate the second victim; therefore, there were two distinct and egregious acts of sexual offending. A fundamental principle is that a sentencing judge must impose a sentence for each particular offence committed. We are satisfied that the trial judge did not err in imposing consecutive sentences.

52. Criticism is made of the judge's methodology in this respect, however, he considered a total sentence of 18 years to be appropriate. He then considered whether he should impose lesser sentences and make those sentences consecutive to give a final sentence of 18 years. He considered consecutive sentences appropriate in light of the fact that there were two victims and he proceeded to sentence the appellant to nine years' imprisonment in respect of the counts concerning each victim. Whilst this may have been a slightly different approach, we find no error in principle.

53. Obviously, the Court must have regard to the totality principle and ensure that the overall sentence is an appropriate one. The sentence must reflect the offending conduct when viewed in totality. A sentence of 18 years does not in the present case offend this principle and we are satisfied that the sentences were proportionate and find no error in the sentence imposed.

54. Accordingly, the appeal stands dismissed.