

IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2020] SGCA 113

Criminal Appeal No 19 of 2020

Between

Muhammad Anddy Faizul
bin Mohd Eskah

... Appellant

And

Public Prosecutor

... Respondent

EX TEMPORE JUDGMENT

[Criminal Law] — [Offences] — [Rape]

[Criminal Law] — [Offences] — [Sexual assault]

[Criminal Procedure and Sentencing] — [Sentencing] — [Benchmark Sentences]

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Muhammad Anddy Faizul bin Mohd Eskah

v

Public Prosecutor

[2020] SGCA 113

Court of Appeal — Criminal Appeal No 19 of 2020
Judith Prakash JA, Tay Yong Kwang JA and Quentin Loh J
16 November 2020

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Judith Prakash JA (delivering the judgment of the court *ex tempore*):

1 The Appellant faced a total of 68 charges arising out of sexual offences involving 19 victims. He pleaded guilty to and was convicted on nine charges, with the remaining charges being taken into consideration for the purpose of sentencing. The High Court Judge (“the Judge”) ordered three sentences to be run consecutively, which resulted in an overall sentence of 22 years’ imprisonment and 24 strokes of the cane. This sentence was backdated to the Appellant’s date of remand, which was 22 August 2017.

2 The three consecutive sentences stemmed from the 25th, 30th and 47th charges against the Appellant. These charges involved:

(a) A count of aggravated statutory rape of victim number 5 punishable under s 375(1)(b) read with s 375(3)(b) of the Penal Code (Cap 224, 2008 Rev Ed) (“the Penal Code”) (“the 25th charge”). The

Appellant was sentenced to nine years' imprisonment and 12 strokes of the cane for this offence.

(b) A count of sexual assault by penile-oral penetration of victim number 6 punishable under s 376(1)(a) read with s 376(3) of the Penal Code ("the 30th charge"). The Appellant was sentenced to six years' imprisonment and four strokes of the cane for this offence.

(c) A count of sexual assault by penile-anal penetration of victim number 11 punishable under s 376(1)(a) read with s 376(3) of the Penal Code ("the 47th charge"). The Appellant was sentenced to seven years' imprisonment and four strokes of the cane for this offence.

3 The remaining charges similarly concerned offences of sexual assault, rape and statutory rape. The Appellant was a youthful offender. At the time of the earliest offence he was approaching 16 years of age and by the date of the last offence he was aged 18 years.

4 The Appellant mounts two submissions in this appeal. First, he argues that he was not given the opportunity to verify the Amended Statement of Facts ("ASOF") prior to his plea of guilt, and that there were a number of inconsistencies and contradictory facts therein. Secondly, he argues that the sentence imposed was manifestly excessive.

5 Having considered the parties' written and oral submissions, we are satisfied that the Appellant's appeal has no merit.

6 The Appellant's attempt to resile from his earlier plea of guilt appears to stem from his dissatisfaction with the final sentence imposed by the Judge.

His assertion that there were procedural improprieties in the plead guilty process is clearly unfounded.

7 We first note that the Appellant had legal representation at the hearing below. A draft of the ASOF was shown to the Appellant in March 2020. The appellant now says that he had issues with it which he mentioned to his counsel but his counsel advised that it was too late to bring them up. Subsequently, the ASOF was provided to the Appellant's counsel on 2 June 2020. The next day, on 3 June 2020, counsel for the Appellant confirmed that the Appellant had no objections to the ASOF. The Appellant's position now seems to be that he did not see the ASOF before the hearing.

8 Be that as it may, the Appellant did have the opportunity to object to the ASOF before he pleaded guilty. On the day of the hearing, 12 June 2020, the Appellant's interpreter was given a full hour to read the charges and the ASOF to the Appellant before the commencement of proceedings at 10 am. Subsequently, the ASOF was read, again, to the Appellant during the formal High Court proceedings. The Appellant was informed of the relevant facts pertaining to each charge as well as the prescribed maximum sentence for the relevant offences. It was only then that his plea of guilt was taken by the court. At that time the Appellant did not raise any objection to anything written in the ASOF. It bears emphasis that while the Appellant was provided with an interpreter for the court proceedings, the evidence, which includes his performance in the appeal today, shows that the Appellant has a good command of both written and spoken English. At the time of the later offences the Appellant was an ITE student and the various WhatsApp messages that the Appellant exchanged with his intended victims displayed great familiarity with

English slang and shortforms. We are in no doubt that the Appellant fully understood the ASOF then whatever he may say now.

9 Counsel for the appellant then went on to make a mitigation plea on behalf of the Appellant. The mitigation plea was centred around a plea for leniency in view of the Appellant's youth and remorse for his actions. Crucially, the Appellant's counsel did not raise any concerns regarding inconsistencies or inaccuracies in the ASOF during the mitigation plea. As the Prosecution noted, the Appellant had ample opportunity to dispute any aspect of the charges and the ASOF through his counsel, but simply chose not to do so. At all times, the Appellant's case below focused on his troubled past, his youth, and his remorse, as well as the need for a lower sentence to account for these mitigating factors.

10 The appellant's appeal herein is strictly against sentence. Accordingly, his quibbles with certain aspects of the ASOF, even if they merited attention which in our view they do not, serve no purpose. Having pleaded guilty which means no witnesses were called or evidence adduced, the Appellant cannot now question the credibility of the prosecution's evidence. At the trial, all efforts were made to ensure that the Appellant understood the charges, the possible punishments he faced and the facts that were asserted to support the charges. In fact, the Appellant confirmed during the present proceedings that he had understood the formal High Court proceedings. He did not contest the charges then and he has not provided any basis now on which to contest them. The appellant's first contention cannot stand.

11 Turning to the appellant's direct attack on the sentence as being manifestly excessive, we find little reason to disagree with the Judge's ruling on the applicable sentences for each charge. They were in line with the

sentencing frameworks for rape and sexual assault by penetration as set out in *Pram Nair v Public Prosecutor* [2017] 2 SLR 1015 (“*Pram Nair*”) and *Ng Kean Meng Terence v Public Prosecutor* [2017] 2 SLR 449 (“*Terence Ng*”) respectively. In fact, the sentences imposed by the Judge for the 25th and 30th charges, which respectively concern rape and sexual assault, were below the lowest end of the sentencing frameworks in *Pram Nair* and *Terence Ng*. It was clear that the Appellant’s mitigating factors and the totality principle had been given sufficient consideration and resulted in these comparatively low sentences. We have little doubt that had the Appellant been older, his sentence would have been more severe.

12 The Judge also did not err in ordering three sentences to be run consecutively. Where the overall criminality of the offender’s conduct cannot be encompassed in two consecutive sentences, further consecutive sentences ought to be considered. The offences that were committed were numerous, grievous and had taken place over a period of three years. When the Appellant was initially apprehended on 9 May 2016, he had already committed offences against at least nine victims. After he was released on bail on 10 August 2016, he embarked on a fresh offending spree that involved ten new victims. He did so in a cunning and calculated manner, and actively exploited the vulnerabilities of his victims, all of whom were young, being between the ages of 13 and 18. The three sentences that were directed to run consecutively involved three different victims aged 13, 16 and 17 respectively. In total, the nine charges that were proceeded with related to five different victims. In view of the number of victims involved and the range and number of offences, the imposition of three sentences to be run consecutively properly reflected the Appellant’s culpability.

13 Given the severity of his actions, we do not accept that the sentences imposed were manifestly excessive or inappropriate. Before we conclude the present case, we wish to express our hope that the Appellant will endeavour to take every opportunity afforded to him in prison to improve himself while serving his term. As the Judge noted, the Appellant is still a young man who has his entire life ahead of him – we encourage him to undertake a serious effort to reflect on his actions so that he can become a useful and productive member of society upon his release.

14 The appeal is dismissed.

Judith Prakash
Judge of Appeal

Tay Yong Kwang
Judge of Appeal

Quentin Loh
Judge

The Appellant in person;
Winston Man and Krystle Chiang
(Attorney-General's Chambers) for the Respondent.