

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

[2025] SGHC 33

Magistrate's Appeal No 9021 of 2024

Between

Lim Hua Tong Jasons

... Appellant

And

Public Prosecutor

... Respondent

EX TEMPORE JUDGMENT

[Criminal Law — Statutory offences — Penal Code]
[Criminal Law — Appeal]

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Lim Hua Tong Jasons

v

Public Prosecutor

[2025] SGHC 33

General Division of the High Court — Magistrate's Appeal No 9021 of 2024
Vincent Hoong J
26 February 2025

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

Introduction

1 The Appellant claimed trial in the court below to one charge of outrage of modesty (the “OM Charge”), an offence under s 354(1) of the Penal Code (Cap 224, 2008 Rev Ed) (“PC”). At the close of trial, the District Judge (“DJ”) convicted the Appellant and sentenced him to seven months’ imprisonment in respect of the OM Charge.¹

2 Relatedly, before the same DJ, the Appellant pleaded guilty to four charges.² These are two charges of forgery, punishable under s 465 of the PC, one charge under s 148(1) of the Companies Act (Cap 50, 2006 Rev Ed) (“CA”), and one charge under s 154(1) punishable under s 154(5) of the CA. Four

¹ Grounds of Decision (“GD”) at [1], Record of Appeal (“ROA”) at p 1907

² GD at [155], ROA at p 1967

additional charges were taken into consideration for the purpose of sentencing.³ In sum, the DJ imposed an aggregate sentence of 14 months' imprisonment.⁴

3 The Appellant now appeals against the conviction in respect of the OM Charge and the aggregate sentence imposed on the basis that it is manifestly excessive.⁵

My decision

4 I shall first address the Appellant's appeal against conviction. The Appellant, in his written submissions, advances arguments which are best understood as falling within four distinct clusters.

5 The first comprises arguments relating to the specific hand which was used to grab the victim's right breast. The Appellant contends that the victim's testimony is inconsistent, as she alleged in her statements to the police that the Appellant had used his left hand to grab her breast, but had later stated that she could not recall which hand was used.⁶ Indeed, the Appellant draws attention to the fact that during the trial, the Prosecution had amended the OM Charge to omit any reference to a specific hand.⁷ The Appellant goes on to assert that he could not have used either of his hands to grab the victim's right breast. Specifically, the Appellant asserts that his left hand was injured and bandaged at the material time,⁸ and that since he was standing face-to-face with the victim,

³ GD at [163], ROA at p 1972

⁴ GD at [194], ROA at p 1985

⁵ Petition of Appeal dated 2 September 2024 at p 2, ROA at p 25

⁶ Appellant's Written Submissions dated 14 February 2025 at p 1

⁷ GD at [2], ROA at p 1907; Notes of Evidence ("NEs"), Day 11, p 132, ROA at p 1071

⁸ Appellant's Written Submissions dated 14 February 2025 at p 3

he could not have crossed his right hand over his body to grab the victim’s right breast.⁹

6 On the first cluster, I agree with the DJ that the victim should not be faulted for this inconsistency, and that her evidence is nonetheless unusually convincing.¹⁰ The victim’s uncertainty as to which hand was used to grab her breast is consistent with her evidence that at the material time, both of the Appellant’s hands were engaged in measuring her bust and were placed around the sides of her breasts.¹¹ I agree with the DJ’s assessment on this issue, that it would have been awkward and potentially disruptive to the measuring process for her to have looked downwards to observe the movement of the Appellant’s hands.¹²

7 I find that the DJ’s decision in respect of this inconsistency is legally sound. In *Tay Wee Kiat v Public Prosecutor* [2018] 4 SLR 1315 (“*Tay Wee Kiat*”), the Court of Appeal held that the amendment of charges and the precise formulation of how alleged incidents had occurred does not by itself undermine the reliability of the victim’s evidence (at [21]). Rather, the critical issue is whether the totality of the evidence suggests that the witness’ evidence on material elements is reliable (*Tay Wee Kiat* at [22]).

8 For completeness, I find that the DJ was right to reject the Appellant’s assertion that he could not have used his left hand, on account of an injury, to grab the victim’s breast. In the court below, the Appellant alleged that he had

⁹ Appellant’s Written Submissions dated 14 February 2025 at p 3

¹⁰ GD at [109], ROA at p 1949

¹¹ GD at [109], ROA at p 1949; NEs, Day 1, p 65 at lines 9–30, ROA at p 95

¹² GD at [110], ROA at p 1949

sustained a deep cut to his left finger on 28 March 2017, two days before the alleged outrage of modesty occurred.¹³ The Appellant had also testified that this cut was sutured at either the Punggol, Sengkang, or Outram Polyclinic.¹⁴ However, no corroborating documentary evidence from any of these Polyclinics were adduced.¹⁵ As for the Appellant's contention that he could not have crossed his right hand over his body to grab the victim's right breast, I find this to be at odds with the DJ's observation that both the victim and the Appellant were "at arms-length" at the material time.¹⁶ In my view, this suggests that the Appellant was not in such close proximity to the victim as to be unable to move his arms. This dispels the notion that he could not have crossed his right hand over to the victim's right breast.

9 I note that the Appellant has alleged two additional inconsistencies in the victim's testimony. In short, the Appellant alleges that the victim was inconsistent in stating whether the casting interview was scheduled for 10.30am or 10.30pm. The Appellant also alleges that the victim was inconsistent in identifying the quality of lighting at the café. I find that these two allegations are based on mischaracterisations of the victim's testimony. In any event, they are not material inconsistencies which would vitiate the credibility of the victim. Indeed, there is nothing which suggests that the victim was unable to state with certainty when the casting interview took place. Likewise, though it is true that the victim testified that the café was "dimly lit" and had later accepted that the café was not dimly lit, the former statement was given from the perspective of

¹³ GD at [104], ROA at p 1947; Exhibit D7, ROA at p 2626

¹⁴ GD at [104], ROA at p 1947

¹⁵ GD at [107], ROA at p 1948

¹⁶ GD at [103], ROA at p 1947

someone standing outside the café,¹⁷ whereas the latter answer was elicited from the perspective of someone inside the café.¹⁸

10 The second cluster comprises arguments relating to the absence of closed-circuit television (“CCTV”) footage. The Appellant observes that there were eight operational CCTV cameras in the café where the offence occurred and asserts that the CCTV footage taken at the material time would have exonerated him.¹⁹ This assertion is accompanied by several other assertions which, in short, blame the police for failing to secure this CCTV footage.²⁰ I am unable to accept this argument. I agree with the DJ that this CCTV footage was in the Appellant’s possession throughout. He could have preserved the evidence himself. He had no reasonable excuse not to do so if the CCTV footage was truly exculpatory in nature.²¹

11 The third cluster is directed at the victim’s conduct immediately after the offence. Specifically, the Appellant notes that there was a waitress present in the café at the material time. He questions why the victim did not seek her assistance after her modesty was outraged.²² I agree with the DJ that this does not detract from the credibility of the victim’s testimony. Indeed, it was reasonable for the victim not to have sought assistance from someone she understood to be employed by the Appellant.²³ In any event, as this court observed in *GBR v Public Prosecutor and another appeal* [2018] 3 SLR 1048,

¹⁷ NEs, Day 1, pp 51-53, ROA at pp 80-83

¹⁸ NEs, Day 8, p 135, ROA at p 500

¹⁹ Appellant’s Written Submissions dated 14 February 2025 at p 4

²⁰ Appellant’s Written Submissions dated 14 February 2025 at p 4

²¹ GD at [92]–[100], ROA at pp 1943–1946

²² Appellant’s Written Submissions dated 14 February 2025 at p 2

²³ GD at [69], ROA at p 1935

victims of sexual crimes cannot be straightjacketed in the expectation that they must act or react in a certain manner (at [20]) (see also *GHI v Public Prosecutor* [2024] SGHC 220 at [35]).

12 I now turn to the fourth and final cluster. It generally revolves around the assertion that the OM Charge was founded on false allegations concocted by the victim. The Appellant asserts that the victim had conspired with her friends to falsely accuse him of outraging her modesty.²⁴ In support of this contention, the Appellant asserts that the victim was emotionally unstable on the basis that she was on psychiatric medication and had family issues.²⁵ I am unable to accept this submission as it is inappropriate. In *Public Prosecutor v GCK and another matter* [2020] 1 SLR 486 at [102], the Court of Appeal observed that where an accused person alleges that the victim had a motive to make a false allegation, the burden is on the Defence to establish sufficient evidence of that motive (at [102]). Plainly, the Appellant has failed to do so in the court below and has not done so before this court.

13 Accordingly, I dismiss the Appellant's appeal against conviction.

14 I now turn to address the Appellant's appeal against sentence. The Appellant submits that the sentence of seven months' imprisonment in respect of the OM Charge is manifestly excessive.²⁶

15 For the avoidance of doubt, in the instant case, it is not in dispute that the applicable sentencing framework is set out in *Kunasekaran s/o Kalimuthu*

²⁴ Appellant's Written Submissions dated 14 February 2025 at p 2

²⁵ Appellant's Written Submissions dated 14 February 2025 at p 2

²⁶ Appellant's Written Submissions dated 14 February 2025 at p 5

Somasundara v Public Prosecutor [2018] 4 SLR 580 (“*Kunasekaran*”). This framework utilises the sentencing bands approach, and Band 1 is applicable where there is one offence-specific factor at most, no intrusion into the victim’s private parts, and involves either a fleeting touch or no skin-to-skin contact (at [80(b)(i)]). Relatedly, Band 2 is applicable where there are two or more offence-specific factors, and the lower end of the band involves cases where the private parts of the victim are intruded, but there is no skin-to-skin contact (at [80(b)(ii)]).

16 In support of his appeal against sentence, the Appellant cites two cases: *Public Prosecutor v Abdul Karim bin Syed Musgooth* [2023] SGMC 85 (“*Abdul Karim*”) and the unreported case of *Public Prosecutor v Yew Yap How* (“*Yew Yap How*”).²⁷ I place no weight on *Yew Yap How* as it is an unreported decision. It is well-established that unreported decisions are of limited precedential value. Unreported decisions are often bereft of crucial details concerning the facts and circumstances of the case. The lack of detailed reasoning behind the sentences imposed also undermines the utility of such cases as relevant comparators (see *Toh Suat Leng Jennifer v Public Prosecutor* [2022] 5 SLR 1075 at [51]).

17 As for *Abdul Karim*, it is distinguishable from the instant case. In *Abdul Karim*, the sentencing judge held that Band 1 of the *Kunasekaran* framework was applicable (at [85]). This assessment appears to have been upheld on appeal to the High Court. Although the court enhanced the sentence from one month’s imprisonment to three months’ imprisonment, this was still within the Band 1 sentencing range of up to five months’ imprisonment.²⁸

²⁷ Appellant’s Written Submissions dated 14 February 2025 at p 5

²⁸ MA 9059/2023/02 (No published Judgment)

18 However, in this case, I agree with the DJ that the Appellant’s conduct falls within the lower end of Band 2 of the *Kunasekaran* framework.²⁹ The DJ had rightly identified no less than three offence-specific aggravating factors, namely: (a) the degree of sexual exploitation was significant, (b) the Appellant had exploited his position of authority and the victim’s trust, and (c) the Appellant had inflicted emotional and psychological harm upon the victim.³⁰ In addition, the DJ had rightly found that the Appellant’s grab of the victim’s breast was firm and had lasted for a few seconds, which grossly exceeds the ambit of a “fleeting touch”.³¹ Taken together, I find that the sentence of 7 months’ imprisonment in respect of the OM Charge is condign.

19 Indeed, I accord no weight to the Appellant’s assertions that the offence was not premeditated, that no threats of harm were uttered, that no violence was used, and that he had no sex-related antecedents. The absence of these otherwise aggravating factors has no bearing on the appropriate sentence in respect of the OM Charge. Likewise, I accord no weight to the Appellant’s assertions that there was “an absolute absence” of force, and that the grab of the victim’s right breast “could have been” accidental.³² These two assertions go towards the elements of the OM Charge and are irrelevant for the purpose of sentencing.

20 Finally, the Appellant’s also appeals against the sentences imposed by the DJ in respect of the four charges to which he had pleaded guilty. In sum, the Appellant’s arguments in this regard generally amount to bare pleas for leniency and can be briefly summarised as follows:

²⁹ GD at [150], ROA at p 1965

³⁰ GD at [148], ROA at p 1964

³¹ GD at [130], ROA at p 1957

³² Appellant’s Written Submissions dated 14 February 2025 at p 6

- (a) that he was bankrupted due to a serious car accident in 1999;
- (b) that he has since been discharged from bankruptcy and now legally serves as the director of his companies;
- (c) that he is the sole breadwinner for his family;
- (d) that his parents are aged;
- (e) that his wife had divorced him in 2010, which has caused him emotional anguish since;
- (f) that he had not harmed anyone by virtue of his offending; and
- (g) that since his release from prison in 2010, he was able to remain crime-free till 2017.³³

21 None of these points are relevant in the instant case. Simply put, the fact that the Appellant has been discharged from bankruptcy does not change the fact that the Companies Act offences were committed. Similarly, the cause of the Appellant's bankruptcy does not have any relevance to the offences he committed while he was a bankrupt. In addition, it is trite that the hardship caused to an offender's family as a consequence of the offender's imprisonment is to be accorded little, if any, mitigating weight (*Lai Oei Mui Jenny v Public Prosecutor* [1993] 2 SLR(R) 406 at [11]). Lastly, in respect of the charges to which the Appellant pleaded guilty, while the Prosecution has not led evidence to identify specific victims, it is evident that the prohibitions imposed by ss 148

³³ Appellant's Written Submissions dated 14 February 2025 at pp 7–8

and 154 of the CA, along with the prohibition on forgery found in s 465 of the PC, are intended to protect the general public.

22 In my view, the aggregate sentence imposed on the Appellant is proportionate to the overall severity of the Appellant's offending and cannot be said to be manifestly excessive at any level.

23 Accordingly, I dismiss the Appellant's appeal against sentence.

Vincent Hoong
Judge of the High Court

Appellant in person;
Darren Sim and David Menon (Attorney-General's Chambers) for the Respondent.
