

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

[2022] SGHC 217

Criminal Case No 49 of 2022

Between

Public Prosecutor

And

Mahadi bin Muhamad Mukhtar

EX TEMPORE JUDGMENT

[Criminal Law — Offences — Property — Robbery and gang-robbery]

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Public Prosecutor
v
Mahadi bin Muhamad Mukhtar

[2022] SGHC 217

General Division of the High Court — Criminal Case No 49 of 2022
Vincent Hoong J
13 September 2022

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

1 The accused was, at the material time, an Auxiliary Police Officer in the employ of AETOS Holdings Pte Ltd. He decided to commit robbery to ameliorate his financial difficulties. On 12 April 2021, before reporting for work, the accused went to the OT Credit Pte Ltd store at Jurong Gateway (“OT Credit”) to ensure that it was open for business. He saw that it was open, not crowded and there were two female staff on duty. The accused then reported for work and drew his equipment, which included one M85 Taurus Revolver (“the Revolver”) and five .38 Special Rounds (“the Ammunition”). He loaded the Ammunition into the Revolver, changed into an Adidas navy shirt and left the premises for OT Credit with the Revolver in his sling bag. The accused went to OT Credit and saw that there were only two persons, one female staff and one customer, in the store. Thereafter, he proceeded to a toilet near JCube, wrote “This is a Robbery! Don’t Shout! I got a gun in my pocket. Put all the money in

the bag” on a piece of paper (“the Note”) and placed the Revolver in his pocket. Finally, the accused entered OT Credit, handed the Note to a loan officer (“the Victim”) and instructed her to place money in his bag. Of the \$24,877 the Victim placed in the accused’s bag, the accused transferred \$10,000 *via* ATM to one Shana and deposited a further \$14,000 into his POSB bank account.

2 The accused pleaded guilty to and is convicted of the following three charges:

(a) One charge under s 3(2) of the Arms Offences Act (Cap 14, 2008 Rev Ed) (“AOA”) for unlawfully carrying the Revolver between 3.18pm and 4.48pm on 12 April 2021.

(b) One charge under s 3(1) of the AOA for unlawfully having the Ammunition in his possession between 3.18pm and 4.48pm on 12 April 2021.

(c) One charge under s 392 of the Penal Code (Cap 224, 2008 Rev Ed) (“Penal Code”) for committing robbery of \$24,877.

3 Two other charges under s 47 of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap 65A, 2000 Rev Ed), and which pertain to the accused’s dealings with the benefits of his proceeds of robbery, are taken into consideration for the purpose of sentencing.

4 My decision is briefly as follows.

Offence under s 3(2) of the AOA

5 I deal first with the accused’s offence of unlawfully carrying the Revolver under s 3(2) of the AOA. This offence carries a mandatory minimum

imprisonment term of five years (which extends to a maximum of 14 years) as well as a mandatory minimum six strokes of the cane.

6 In respect of this offence, the Prosecution submits that a sentence of between ten to 12 years' imprisonment and the mandatory minimum six strokes of the cane is appropriate. The Defence seeks a sentence of seven years' imprisonment and six strokes of the cane. Both parties place some weight on *Public Prosecutor v Dave Teo Ming* (CC 16 of 2008) ("*Dave Teo*") wherein the High Court sentenced the offender – a full-time National Serviceman who absconded with an SAR-21 assault rifle and eight rounds of live ammunition while on guard duty and subsequently brought the rifle and ammunition to various locations – to nine years' imprisonment and six strokes of the cane for his offence under s 3(2) of the AOA.

7 Whilst *Dave Teo* bears some factual similarity to the present case, I find the decision to be of limited assistance because it was not accompanied by the sentencing judge's reasons. As I had recently noted in *Abdul Aziz bin Mohamed Hanib v Public Prosecutor and other appeals* [2022] SGHC 101, unreported decisions lack sufficient particulars to paint the entire factual landscape required to appreciate the precise sentences imposed (at [173]) and it is hence not possible to discern what had weighed on the mind of the sentencing judge (*Janardana Jayasankarr v Public Prosecutor* [2016] 4 SLR 1288 at [13(b)]). For the same reasons, I place little weight on the other unreported decision cited by the Defence, namely, *Public Prosecutor v Muhammad Ikram bin Abdul Aziz* (SC-909254-2019).

8 In calibrating the sentence here, I consider it instructive to have regard to the harm caused by the offence, the culpability of the offender, as well as the existence of other factors going to mitigation or aggravation including the effect

of the plea of guilt (see *Public Prosecutor v Sindok Trading Pte Ltd (now known as BSS Global Pte Ltd and other appeals)* [2022] SGHC 52 at [32]).

9 I find that the harm disclosed in the present case is substantial:

(a) “Arm” is defined in s 2 of the AOA to encompass a wide variety of objects; this may range from an air pistol to an automatic gun to component parts thereof. The accused had armed himself with the Revolver, which was loaded. This was a live weapon capable of inflicting serious and instant harm on others. I am cognisant that the accused faces an additional charge under s 3(1) of the AOA for unlawful possession of the Ammunition. However, I do not consider that calibrating the risk of harm posed by the accused with reference to the fact that the Revolver was loaded offends the rule against double counting. The accused’s offence under s 3(1) of the AOA is targeted at his unlawful possession of the Ammunition. There is space to consider, in respect of his offence under s 3(2) of the AOA, the fact that such Ammunition was utilised in combination with a live weapon.

(b) The accused had carried the Revolver over a significant period of time (between 3.18pm and 4.48pm) and in various public places (including from the AETOS Complex to JCube, to a coffeeshop near JCube, to OT Credit, in the vicinity of the Science Centre and finally back to the AETOS Complex). This wrought significant risk of harm on members of the public. While what is striking about the present case is the fact that the accused utilised the Revolver to rob a moneylender (which point I return to), it must be remembered that the charge under s 3(2) of the AOA pertains to the accused unlawfully carrying the Revolver. Sufficient regard must thus be accorded to how long the

accused had unlawfully carried the Revolver and where he had brought it to.

10 I also consider the accused's culpability to be significant. Pertinently, the accused had abused his position as an Auxiliary Police Officer to obtain possession of the Revolver. I accept the Prosecution's submission that the accused's act constituted a betrayal of his office and thus warranted a generally deterrent sentence. As the High Court observed in *Public Prosecutor v Loqmanul Hakim bin Buang* [2007] 4 SLR(R) 753, public confidence in the enforcement agencies can be corroded by the irresponsible criminal acts of foolish like-offenders and the abuse of trust and confidence placed in CISCO officers could result in enforcement agencies having diminished legitimacy and public acceptance (at [43]).

11 I accord mitigating weight to the accused's plea of guilt, which I accept evinces remorse (*Angliss Singapore Pte Ltd v Public Prosecutor* [2006] 4 SLR(R) 653 at [77]), his co-operation with the authorities and his lack of antecedents. That said, I place no weight on the fact that the accused was moved by his financial difficulties to offending (see *Lai Oei Mui Jenny v Public Prosecutor* [1993] 2 SLR(R) 406 at [10]).¹

12 I find the reported cases cited by counsel for the accused to be unhelpful and deal with them here briefly. I place little weight on *Public Prosecutor v Lim Lye Kim* [2001] SGHC 112 ("*Lim Lye Kim*") where the offender was sentenced to 12 years' imprisonment and six strokes of the cane for an offence under s 3(2) of the Arms Offences Act (Cap 14, 1998 Rev Ed). As counsel for the accused themselves note, the Grounds of Decision in respect of *Lim Lye Kim* does not

¹ Mitigation Plea filed on 6 September 2022 at [20].

disclose sufficient details of the relevant offence. Likewise, *Roshdi v Public Prosecutor* [1994] 3 SLR(R) 1 contains no details of the appellant's offences of unlawful possession of arms and ammunition *vide* s 3(1) of the Arms Offences Act (Cap 14).

13 Having regard to the matters mentioned above, I impose a sentence of ten years' imprisonment and six strokes of the cane in respect of the accused's offence under s 3(2) of the AOA.

Offence under s 3(1) of the AOA

14 Turning to the accused's offence of unlawfully having the Ammunition in his possession under s 3(1) of the AOA, I impose the mandatory minimum sentence of five years' imprisonment and six strokes of the cane. This accords sufficient weight to the gravamen of the accused's offence, in particular, the number of ammunition rounds in his possession.

Offence under s 392 of the Penal Code

15 Finally, I deal with the accused's offence under s 392 of the Penal Code which carries a mandatory minimum sentence of two years' imprisonment and six strokes of the cane. The Prosecution seeks a sentence of between five to eight years' imprisonment and six strokes of the cane. The Defence submits that the custodial term should be three years.

16 Again, notwithstanding the factual similarity between the present case and *Public Prosecutor v Roach David James* (SC-907117-2016) ("*Roach David James*"), I do not place any weight on *Roach David James* as it was unreasoned.

Likewise for the other unreported case cited by the accused’s counsel, namely, *Karrtik s/o Stalniraj* (SC-902449-2020).²

17 In calibrating the appropriate sentence for this offence, I consider it helpful to have regard to *Public Prosecutor v See Li Quan Mendel* [2019] SGHC 255 (“*Mendel See*”).

18 *Mendel See* involved a 17-year-old offender who, together with two co-offenders, decided to steal money from sex workers. On one occasion, the offender wanted to take revenge on the victim as she had passed on an engagement for sexual services to another sex worker who failed to show up at the offender’s residence. The offender thus lured the victim to his co-offender’s residence with an offer of \$900 for sexual services. After the victim arrived, the appellant entered the house, pretended to be a loan shark, brandished a chopper at the victim and demanded she hand him money. His co-accused person removed items valued at \$763 from the victim’s handbag. This formed the basis of an offence under s 392 read with s 34 of the Penal Code, for which the offender was sentenced to the mandatory minimum sentence of three years’ imprisonment and 12 strokes of the cane (as the robbery was committed after 7.00pm and before 7.00am). Thean J’s decision to sentence the offender to imprisonment (in contradistinction to reformatory training) was upheld by the Court of Appeal in *See Li Quan Mendel v Public Prosecutor* [2020] 2 SLR 630.

19 *Mendel See* is instructive in two respects. First, as Thean J notes, even as violence is an element of the offence of robbery, the use of a dangerous weapon to threaten violence ought to be an aggravating factor given the potential for more significant harm to be caused to the victim (at [45]). As I will

² Mitigation Plea filed on 6 September 2022 at [53(a)], [54]–[60].

explain shortly, I consider the potential harm posed to the victim to be a function of, *inter alia*, the nature of the weapon wielded by the offender. Second, a mandatory minimum sentence of three years' imprisonment was imposed on a young offender who utilised a chopper to rob his victim of \$763. This, in my view, provides a useful reference point to calibrate the sentence to be imposed in the present case.

20 Even accounting for the difference in the mandatory minimum imprisonment sentences associated with the charges in *Mendel See* and the present case, I consider that a significantly higher sentence than that imposed in *Mendel See* is warranted in the present case for the following reasons:

(a) *Nature of the weapon.* The accused was armed with a loaded gun (which was in his pocket) and invoked the threat posed by the gun in the Note. This significantly heightened the risk of harm posed to the victim. I do not accept the Defence's submission that the carrying of a firearm should not be considered an aggravating factor as the possession of the firearm already forms the basis of a separate and distinct charge proceeded against the accused.³ As I alluded to earlier, the charge under s 3(2) of the AOA is concerned with the accused unlawfully carrying the Revolver and is hence distinct from his act of deploying the Revolver to commit robbery.

(b) *Quantum of moneys stolen.* The accused made away with a significant sum of \$24,877, of which \$5,200 remains unrecovered. There is a well-established general principle that in sentencing for property offences (which includes robbery), the greater the economic value involved in the offence, the heavier the sentence. The rationale for

³ Mitigation Plea filed on 6 September 2022 at [48(a)], [50(a)].

this is that economic value is a proxy for the degree of benefit received by the offender and the degree of harm caused to the victim and both are relevant sentencing considerations (*Gan Chai Bee Anne v Public Prosecutor* [2019] 4 SLR 838 at [42]). While a substantial proportion of these moneys (\$19,677) was recovered by law enforcement authorities, the accused cannot be treated as having made voluntary restitution of these sums.

(c) *Degree of premeditation.* I accept the Prosecution's submission that the accused exhibited a significant degree of premeditation in committing the offence. The Statement of Facts details the accused's robbery-related internet-searches⁴ and his acts of scouting OT Credit to ensure that it was open for business, not crowded and that female counter staff were on duty.⁵ The law generally imposes a more severe punishment on an offender who has planned the commission of the offence with deliberation than one who has committed the offence on the spur of the moment because the former is deemed to possess a greater commitment to the criminal enterprise (*Mehra Radhika v Public Prosecutor* at [41]). That the accused only wrote the Note shortly before robbing the store and returned to his workplace after the offence are at best neutral.

21 Drawing the threads together, and according weight to the mitigating factors mentioned above as well as the fact that the economic harm caused to the victim was attenuated by the recovery of a significant proportion of the

⁴ Statement of Facts dated 6 September 2022 at [4], Annex.

⁵ Statement of Facts dated 6 September 2022 at [6], [11].

proceeds of crime, I impose a sentence of six years and six months' imprisonment and six strokes of the cane in respect of this offence.

Global sentence

22 I order the sentences in respect of the accused's offences under s 3(2) of the AOA and s 392 of the Penal Code to run consecutively. The global sentence is thus 16 years and six months' imprisonment and 18 strokes of the cane.

23 This accords with: (a) s 307(1) of the Criminal Procedure Code 2010, which enjoins the court to order the sentences for at least two offences to run consecutively where a person is sentenced to imprisonment for at least three distinct offences; (b) *Mohamed Shouffee bin Adam v Public Prosecutor* [2014] 2 SLR 998 which provides that the total term of imprisonment for the sentences that are ordered to run consecutively must exceed the term of imprisonment that is imposed for the highest individual sentence (at [77]); and (c) *Public Prosecutor v Raveen Balakrishnan* [2018] 5 SLR 799 which states that sentences for offences involving infringements of different legally protected interests should generally be run consecutively (at [44]).

24 I do not consider the global sentence to be crushing or one which requires correction on account of the totality principle.

25 Finally, in coming to my decision, I agree with the Prosecution that deterrence is the dominant sentencing consideration in this case.

Vincent Hoong
Judge of the High Court

Timotheus Koh and Huo Jiongrui (Attorney-General's Chambers) for
the Prosecution;
Yeo Kee Teng Mark and Ng Cho Yang Justin (Kalco Law LLC) for
the accused.
