IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2022] SGCA 33

Criminal Appeal No 13 of 2021

Between

BOX

… *Appellant*

And

Public Prosecutor

… *Respondent*

In the matter of Criminal Case No 79 of 2018

Between

Public Prosecutor

And

BOX

GROUNDS OF DECISION

[Criminal Procedure and Sentencing — Sentencing — Appeals]

BOX
v
Public Prosecutor

[2022] SGCA 33

Court of Appeal — Criminal Appeal No 13 of 2021
Judith Prakash JCA, Steven Chong JCA and Quentin Loh JAD
8 April 2022

12 April 2022

Judith Prakash JCA (delivering the grounds of decision of the court):

Introduction

1 In this appeal the appellant sought a reduction in the global sentence of 17 years' imprisonment and 24 strokes imposed by the Judge in respect of two charges of outrage of modesty of persons under 14 years of age ("OM") and two charges of sexual assault by penetration of a person under 14 years of age ("SAP"), to which he had pleaded guilty. The appellant had also consented to having five charges taken into consideration for the purpose of sentencing. The other five charges also related to sexual offences against the same victims. The offences were committed against two young victims whom we will refer to as V1 and V2, who are the daughters of the appellant's then-girlfriend. The individual sentences meted out were:

(a) ten years' imprisonment and 12 strokes for the first SAP charge (charge A1);

(b) two and a half years' imprisonment and three strokes for the first OM charge (charge A2);

(c) 12 years' imprisonment and 12 strokes for the second SAP charge (charge A3); and

(d) two and a half years' imprisonment and three strokes for the second OM charge (charge A6).

2 The Judge had ordered the imprisonment sentences for charges A2, A3 and A6 to run consecutively. Having considered the appellant's arguments against these sentences, we concluded that all of the appellant's arguments were without merit and, at the end of the hearing we dismissed the appeal. These are our grounds of decision.

Our reasons

3 The facts of the case were largely undisputed and have been set out in detail in the judgment below. The appellant started sexually abusing V1 when she was 10 years' old, and V2 when she was between eight and nine years' old. After the appellant and the victims' mother started their relationship, the appellant spent many nights in the flat in which the victims lived. Subsequently, he moved into the flat permanently. The appellant was, in effect, the father figure for both victims.

4 In relation to the appeal, we noted first, that the appellant did not contest the sentencing frameworks applied and the individual sentences imposed by the Judge. In any case, in our view, the Judge had correctly applied the established sentencing frameworks, namely the framework in *Pram Nair v Public Prosecutor* [2017] 2 SLR 1015 ("*Pram Nair*") for the SAP Charges, and the framework in *GBR v Public Prosecutor and another appeal* [2018] 3 SLR 1048

("*GBR*") for the OM Charges. The Judge arrived at the correct indicative starting sentencing bands based on the offence-specific factors, correctly adjusted the sentences based on the offender-specific factors, and arrived at individual sentences which are in line with the precedents.

5 While the appellant argued in his written submission that all four sentences should run concurrently, or that only one OM sentence and one SAP sentence should run consecutively instead of having the sentences in respect of three charges run consecutively, there was no valid legal basis for his submission. We agreed with the Prosecution that to do so would not adequately reflect the criminality of the appellant's repeated offending. He had committed multiple offences on multiple occasions and the global sentence imposed must reflect that fact. To run that many sentences concurrently would amount to letting him get away unpunished for a number of offences. Further, the Judge had already shown leniency to the appellant when she chose to run the two heaviest sentences *concurrently*. As pointed out by this court in *BWM v Public Prosecutor* [2021] SGCA 83 at [19], the Judge would not have been wrong even if she had run the two heaviest sentences *consecutively* to give a global sentence of 22 years' imprisonment.

6 The third point here, and one that the appellant stressed when he came before us, was that he had pleaded guilty and was remorseful and cooperative. This point, however, did not justify a further reduction in his sentence as it had already been fully considered by the Judge in reaching her sentence and did not raise anything new for consideration. Further, the appellant's purported desire to fulfil his parents' wishes, repair his relationships with his family, and resume his role as the primary financial contributor to the family, was not a mitigating factor nor relevant for the purposes of sentencing.

7 The appellant alleged that the investigating officer had told him to "just target 6 years". It was not quite clear what that meant, but even if he was implying that the investigating officer indicated he would get a sentence of six year, that could not have influenced the appellant's decision to accept the plea offer. The appellant was fully aware of the global sentence that the Prosecution would be seeking when he decided to accept the plea offer. Further, the appellant himself has stated that he had "accepted what [he] had done and [was] prepare [*sic*] to accept the answer for it"; it was not the case that he was misled into accepting the plea offer.

8 Next, while the appellant argued that the Prosecution had erred in characterising him as a "seasoned criminal skilled at avoiding detection", this was also immaterial as the Judge did not characterise him as such in sentencing him.

9 More importantly, while in his written submissions the appellant disputed the accuracy of various facts in the statement of facts, he did not renew those complaints before us. That was the correct course to take as in any case it was too late for him to do so since he had admitted to them without qualification at the plead guilty mention (see also *Public Prosecutor v Dinesh s/o Rajantheran* [2019] 1 SLR 1289 at [48] to [51]; *Muhammad Amirul Aliff bin Md Zainal v Public Prosecutor* [2021] 2 SLR 299 at [11]). In particular, while he disputed that he had committed SAP against V2, which allegation formed the basis of a charge that was taken into consideration for purposes of sentencing, it was too late for him to challenge this since he had agreed at the plead guilty mention to have this charge taken into consideration. It bears emphasis that the appeal was an appeal against sentence, not a criminal motion to retract his guilty plea. It was not open to him therefore to challenge the facts on which he had

been convicted and which had been considered by the Judge in calibrating his sentence.

10 Finally, we address the appellant's argument that charge A3, which was the second SAP charge against V1, was not premeditated and that the Judge was wrong to find that it was. Charge A3 pertained to one occasion where the appellant played a blindfolding game with V1 when they were alone in the flat, when V1 was between 10 and 11 years' old. The appellant dipped his finger into various condiments like sugar and salt, and inserted his finger into V1's mouth for her to taste the condiment. The appellant then asked V1 to open her mouth and inserted his penis into V1's mouth. The appellant then withdrew his penis and inserted his penis into her mouth again shortly after. The appellant argued that it had been a spontaneous decision to play the blindfolding game with V1 and that playing the game with her was his only intent. When he inserted his penis into her mouth while she was blindfolded, that was also not a premeditated action but a spontaneous one as he had been aroused when V1 sucked on his finger to taste the spice he had challenged her to identify.

11 We were unable to accept this argument. While the statement of facts did not state expressly that this offence was premeditated, in our view the Judge was fully entitled to draw this inference based on the admitted facts in the statement of facts. The appellant had chosen to use his finger instead of a spoon to insert the condiments into V1's mouth and was fully aware that she would have to suck on it to identify the condiments. Additionally, he may have thought that she would not be able to distinguish between his finger and his penis. Bearing in mind that the game was suggested by the appellant, that he blindfolded V1 for it, the way that he used his finger, and that this was not the first time he had penetrated V1's mouth with his penis, the Judge's conclusion that the offence was premeditated was completely justified.

12 In any case, even if this offence was not premeditated, the indicative starting sentence for charge A3 would still fall within the higher end of Band 2 or the lower end of Band 3 of the sentencing framework in *Pram Nair* due to the number of other offence-specific aggravating factors like the young age of V1, her vulnerability, the appellant's abuse of trust of his position as V1's putative stepfather, and the exposure of V1 to the risks of contracting sexually-transmitted diseases. There would consequently be no change to the individual sentence for this charge, which was fully in line with the precedents. Furthermore, as we noted earlier, the Judge had already shown leniency in her calibration of the sentences. Thus, the global sentence was not excessive, regardless of whether A3 was premeditated.

13 For these reasons, the appeal was dismissed.

Judith Prakash
Justice of the Court of Appeal

Steven Chong
Justice of the Court of Appeal

Quentin Loh
Judge of the Appellate Division

The appellant in person and unrepresented;
Mohamed Faizal SC, Nicholas Lai and Tay Jia En
(Attorney-General's Chambers) for the respondent.