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

[2022] SGHC 118

Magistrate's Appeal No 9273 of 2021/01

Between

Muhammad Rahmat bin Abu Bakar

… *Appellant*

And

Public Prosecutor

… *Respondent*

BRIEF REMARKS

[Criminal Procedure and Sentencing — Sentencing — Principles]

TABLE OF CONTENTS

Muhammad Rahmat bin Abu Bakar
v
Public Prosecutor

[2022] SGHC 118

General Division of the High Court — Magistrate's Appeal No 9273 of 2021/01
Aedit Abdullah J
14 April 2022

27 May 2022 Judgment reserved.

Aedit Abdullah J:

1 These are my brief remarks, which are subject to full grounds being issued. The focus of the appeal is the application of the principle of parity with respect to sentencing co-offenders who were involved in the same crime.

2 The appellant and Noor Awwalludeen bin Jamil (the "co-accused") were charged with an offence punishable under s 325 read with s 34 of the Penal Code (Cap 224, 2008 Rev Ed) (the "PC") for voluntarily causing grievous hurt, in furtherance of the common intention of both of them, to another inmate ("the victim") whilst in Changi Prison Complex. The appellant was 20 years old (one month shy of turning 21 years old) at the material time of the offence, while the co-accused was 19 years old then. All parties were remanded in the same housing unit in prison.

Brief background

3 The appellant and co-accused got into a dispute with the victim regarding the noise they had generated in their cells on some nights. Tensions escalated, and the appellant and co-accused decided that they would beat up the victim when they had the opportunity to do so.

4 On the morning of 17 September 2020, the victim, the appellant and the co-accused were brought to a waiting room at the medical centre for their medical reviews. Using this chance encounter, the appellant and co-accused signalled to each other before proceeding to punch, kick and stamp on the victim until the victim lay unconscious on the ground. As a result, the victim suffered severe and extensive injuries which included skull, facial and rib fractures, and he required emergency surgery as well as various forms of therapy.

5 The co-accused pleaded guilty to the offence of voluntarily causing grievous hurt ("VCGH") (amongst other offences) and was sentenced to four years and six months' imprisonment and six strokes of the cane for the VCGH offence. An appeal against the VCGH sentence was filed by the Prosecution initially, but was later discontinued after the co-accused discontinued his own appeal against the total sentence.

6 The appellant pleaded guilty to the very same VCGH offence (committed with common intention), but was given a higher sentence than the co-accused, being sentenced to six years' imprisonment and six strokes of the cane. Now, the appellant appeals only against the imprisonment term imposed and seeks a sentence of four years and six months' imprisonment (with six strokes of the cane). The appellant's main argument in this appeal is that the same sentence that was given to the co-accused should have been imposed on the appellant as well, in line with the principle of parity.

The decision

7 I am satisfied that the appeal should be allowed, and taking into account justifiable differences between the appellant and the co-accused's responsibility for the same harm that was caused, a sentence of four years and six months' imprisonment with six strokes of the cane should be substituted. In gist, the same sentence that was imposed on the co-accused should have been imposed on the appellant as well.

8 The primary issue engaged is the applicability of the parity principle. The classical pronouncement on the scope and effect of the parity principle is found in the seminal decision of *Public Prosecutor v Ramlee and another action* [1998] 3 SLR(R) 95 ("*Ramlee*") at [7]:

> 7 Where two or more offenders are to be sentenced for participation in the same offence, the sentences passed on them should be the same, unless there is a relevant difference in their responsibility for the offence or their personal circumstances … An offender who has received a sentence that is significantly more severe than has been imposed on his accomplice, and there being no reason for the differentiation, is a ground of appeal if the disparity is serious. …

This principle was further expanded upon in *Public Prosecutor v Ng Sae Kiat and other appeals* [2015] 5 SLR 167 at [74] and [78], where it was stated that the operation of the parity principle is not confined to cases where co-offenders were charged with the same offence arising from the same transaction or events. It is also applicable when sentencing offenders who did not participate in the same act constituting the offence but who, as a matter of substance, were participants in a common criminal enterprise.

9 Here, we are looking at a specific situation of the same incident and offence involving the appellant and the co-accused, *ie*, the very situation that

was considered in *Ramlee*. It is not a question of parity within a common criminal enterprise under the expanded principle.

10 To my mind, the correct approach is to first determine the appropriate sentence for the appellant. If the sentence to be imposed on the appellant is comparable to the co-accused, no infringement of the parity principle would arise anyway. On comparison of the sentence for the co-accused, any differences should be justified.

The sentence imposed

11 There was no dispute between the parties on the applicable framework, which was laid down in *Public Prosecutor v BDB* [2018] 1 SLR 127 at [55]–[56]. A two-step sentencing approach should apply for cases under s 325 of the PC: (a) first, an indicative starting point for sentencing should be determined based on the seriousness of the injury; (b) second, the indicative starting point should then be adjusted either upwards or downwards based on an assessment of the offender's culpability and the presence of relevant aggravating and/or mitigating factors.

Indicative starting point

12 The harm that was caused by the appellant and the co-accused was the same in this offence – there was no attribution of specific injuries caused to the victim to the acts of one or the other. Both were involved in the continuous attack against the victim, and both were charged under s 325 read with s 34 of the PC for having acted in furtherance of a common intention with the other to voluntarily cause grievous hurt to the victim.

13 I note that the appellant included culpability factors in arguments on the determination of the indicative starting point. However, these factors should only come in the second stage of the calibration.

14 The indicative starting point differed between the appellant and the co-accused: the appellant's indicative starting point as found by the District Judge ("DJ") was four years and six months' imprisonment with six strokes of the cane, while that for the co-accused was four years and three months' imprisonment with six strokes of the cane. There was a three-month difference in the imprisonment term. While the appellant takes issue with the difference, to my mind, this was relatively small. Had the matter turned just on this difference, I may not determine that the parity principle is necessarily infringed by a relatively minor or *de minimis* difference. As Yong Pung How CJ noted in *Ramlee* at [7], there must be a significant or serious difference.

Calibration of the sentence

15 Aside from the difference in the starting points, the DJ in the present case concluded that the aggravating factors applicable to the appellant justified the substantial difference of one year and six months. The DJ relied on the age difference between the appellant and the co-accused, and the difference in their antecedent history. These factors were not operative. I do not see how the age difference of one year would justify a difference in the outcome. Differences in maturity could result in different degrees of responsibility and moral culpability being attributable (see, *eg*, s 83 of the PC; *Public Prosecutor v ASR* [2019] 1 SLR 941), but not from a mere one-year age gap between a 20-year-old and a 19-year-old individual. As for the antecedents, I do find that the antecedent histories were largely similar – the co-accused had committed a string of other offences as well.

16 I will not specify when the consideration of parity should be weighed – whether at the harm stage or the culpability stage or in determining the overall sentence for a specific offence. It may be possible that in a particular pair of cases, the first-instance courts may come to different conclusions about the sentence appropriate to the harm done, determine the culpability differently and yet arrive at conclusions on the overall sentences that are in parity. The reasoning may thus differ, but if the overall result is the same, there can be no contravention of the parity principle, though it may be that there are other grounds for distributing the sentences.

17 Here, the DJ had set some store by considering the "crystallisation" of the reformative training sentence. As the appellant was already sentenced to reformative training for a prior set of offences, these would have "crystallised" as antecedents that would amplify his culpability as a relevant sentencing consideration at the VCGH offence hearing. In contrast, because all of the co-accused's offences were dealt with together in a single sentencing hearing, including the VCGH offence, there was no "crystallisation" of antecedents.

18 I cannot see how this crystallisation would have been relevant. Antecedents are material in sentencing because they indicate greater culpability and responsibility because of continuing criminal behaviour, or at least a pattern or tendency toward such behaviour (see *Tan Kay Beng v Public Prosecutor* [2006] 4 SLR(R) 10 at [14]–[16]). While some statutory provisions may indeed specify forms of antecedents as preconditions for enhanced or special punishment, in calibrating the quantum of a particular sentence in the exercise of the court's discretion, the court should not be overly rigid in determining what counts as an antecedent or otherwise. The exercise is one of assessing culpability and responsibility. Weighing whether a prior antecedent or type of punishment has crystallised does not assist.

19 The absence of an appeal or challenge to the adequacy of the co-accused's sentence does preclude the Prosecution from attacking the appellant's sentence as an inappropriate sentence. The Prosecution had chosen not to persist in the appeal against the co-accused's sentence for the VCGH offence for being manifestly inadequate and justifies this by relying on the fact that, ultimately, the global punishment imposed on the co-accused was found to be appropriate and fair. While the global adequacy could possibly be a reason to satisfy a party in terms of an appeal, it is to my mind irrelevant in considering the parity principle. What matters is a direct comparison of the punishment for the offence imposed on one person with the punishment imposed on another person for that very same offence. The affront to notions of fairness arises only from that comparison.

20 The Prosecution raises the case of *Lim Bee Ngan Karen v Public Prosecutor* [2015] 4 SLR 1120 ("*Karen Lim*"). In applying the parity principle, the court in *Karen Lim* at [42] noted that where a sentence imposed on one offender was "unduly lenient", then a later court sentencing a co-offender "need not necessarily punish the co-offender in a similarly lenient fashion". However, this is subject to there being an acceptable explanation as to why the Prosecution did not appeal against the earlier lenient sentence. Here, the explanation provided by the Prosecution was inadequate. The Prosecution should have continued in the appeal against the co-accused in relation to the VCGH offence if they were of the view that the sentence for that offence was inadequate. It is insufficient to only look at the appropriateness of the final global sentence imposed on the co-accused without considering the appropriateness of each individual sentence (see *Public Prosecutor v Sindok Trading Pte Ltd (now known as BSS Global Pte Ltd) and other appeals* [2022] SGHC 52 at [126]).

The appropriate sentence here

21 In terms of divergence in offender-specific factors between the appellant and the co-accused, I note that the appellant had very recently appeared in court merely one day prior to the VCGH offence to plead guilty to a string of offences, while for the co-accused, it was ten days. The appellant should have known better than to commit a criminal offence so soon. There was a blatant disregard for the law. This would not, however, have justified such a substantial uplift as was imposed by the DJ, nor given the similar circumstances of the co-accused, should it lead to a differentiation in their sentences.

22 Thus, examining the sentence imposed below and considering the principle of parity, I cannot see any justification for the sentence imposed on the appellant being so different from that of the co-accused. Accordingly, I allow the appeal and substitute a sentence of four years and six months' imprisonment and six strokes of the cane.

23 Finally, I commend Ms Stephania Wong and Ms Sadhana Rai of the Law Society Pro Bono Services office for their work on the appeal on behalf of the appellant.

Aedit Abdullah
Judge of the High Court

Stephania Wong and Sadhana Rai (Law Society Pro Bono Services) for the appellant;
Norine Tan (Attorney-General's Chambers) for the respondent.