IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2024] SGCA 29

Criminal Appeal No 5 of 2024

Between

CRH

… *Appellant*

And

Public Prosecutor

… *Respondent*

GROUNDS OF DECISION

[Criminal Law — Appeal]
[Criminal Procedure and Sentencing — Sentencing — Applicability of mandatory minimum sentence to an attempt to commit the offence of aggravated statutory rape]

CRH
v
Public Prosecutor

[2024] SGCA 29

Court of Appeal — Criminal Appeal No 5 of 2024
Sundaresh Menon CJ, Tay Yong Kwang JCA and Steven Chong JCA
26 June 2024

14 August 2024

Sundaresh Menon CJ (delivering the grounds of decision of the court):

Introduction

1 This was an appeal against the decision of the High Court judge (the "Judge") in *Public Prosecutor v CRH* [2024] SGHC 34 (the "GD") on the sentence to be imposed on the appellant, who had pleaded guilty to two charges of attempted aggravated statutory rape of his biological daughter (the "victim"). The offences were committed in or around 2013, and the charges were framed under s 375(1)(*b*) read with s 511(1) and punishable under s 375(3)(*b*) read with s 511 of the Penal Code (Cap 224, 2008 Rev Ed) which was in force at the time of the offences (the "Pre-2019 Amendment PC").

2 Two questions arose in the court below when determining the appropriate sentences to be imposed for each of the Charges: (a) whether the mandatory minimum sentence of eight years' imprisonment and 12 strokes of

the cane for the offence of aggravated statutory rape also applied to an *attempt* to commit the offence of aggravated statutory rape punishable under s 511 of the Pre-2019 Amendment PC; and (b) if the first question was answered in the affirmative, whether the new s 512(3)(*a*) of the Penal Code, which was introduced by amendments made to the Penal Code in 2019 and in force from 1 January 2020 (the "Post-2019 Amendment PC"), and which provided that the court shall not be bound to impose a mandatory minimum sentence when sentencing an attempt to commit an offence, could be applied retrospectively. The Judge answered both questions in the negative. Having found that the mandatory minimum sentence did not apply to an attempt to commit the offence of aggravated statutory rape punishable under s 511 of the Pre-2019 Amendment PC, the Judge imposed a sentence of six years and six months' imprisonment and eight strokes of the cane for each of the two Charges and ordered these to run consecutively, resulting in an aggregate sentence of 13 years' imprisonment and 16 strokes of the cane.

3 The appellant argued on appeal that the aggregate sentence imposed by the Judge was manifestly excessive, and that the Judge ought not to have ordered the individual sentences to run consecutively. We heard and dismissed the appeal on 26 June 2024. We now furnish the grounds of our decision.

Facts

4 The appellant pleaded guilty in the court below to two charges of attempted aggravated statutory rape of the victim. Each of the charges alleged that the appellant, sometime in or around 2013, attempted to penetrate the vagina of the victim, who was then less than 14 years old, with his penis without her consent.

5 At the time of the offences, the appellant was between 27 and 28 years old, while the victim was between four and five years old. The offences took place in a HDB flat where the appellant, the appellant's wife, the victim, and her two younger brothers resided. We briefly set out below the key facts relating to the two offences based on the statement of facts, which the appellant accepted without qualification:

> (a) On the first occasion, while the victim's mother was at work, the appellant asked the victim to accompany him into a bedroom. She complied, and the appellant shut and locked the bedroom door. The victim then lay on a mattress in the bedroom facing the ceiling while watching videos on a mobile phone that the appellant had handed to her. At the same time, the appellant removed all his clothing, approached the victim and knelt in front of her. The appellant then removed the victim's shorts and undergarments. Though the victim saw the appellant holding his penis with his hands, she continued watching the videos on the phone as she was very confused. The appellant then bent over the victim, held her around the waist area and pulled her towards him. He rubbed his penis against the victim's vagina. While doing this, he also unbuttoned the victim's shirt and touched her breast area directly on her skin (which was the subject of a separate charge that was taken into consideration for the purposes of sentencing). The appellant tried to penetrate the victim's vagina with his penis but was unable to do so because the victim's vagina was too small. When the victim told the appellant that she was experiencing pain, he told her to continue watching videos on the phone. The appellant eventually ejaculated into his hand. The appellant told the victim not to tell anyone what had happened. He then brought the victim to the toilet and showered her before she went back to the living room.

(b) A few days later, when the victim's mother was again not at home, the appellant asked the victim to accompany him into the bedroom. The appellant removed the victim's pants and underwear, and then his own pants and underwear. As the victim lay on the mattress facing the ceiling, the appellant bent over her and tried to insert his penis into her vagina. However, he again could not do so because the victim's vagina was too small. The appellant rubbed his penis against the victim's vagina, and the victim cried. The appellant ejaculated outside the victim.

6 The appellant admitted in the statement of facts to other occasions when he committed acts of attempted aggravated statutory rape against the victim even until the victim was in her early years of primary school, though the victim was unable to particularise these other incidents. The appellant also agreed to three charges being taken into consideration for the purposes of sentencing arising from other offences committed against the victim, including two offences of using his mobile phone in 2020 to take photographs of the victim's vagina under her shorts without her consent while she was sleeping, and one of outraging her modesty as noted at [5(a)] above.

7 As a result of the sustained offending by the appellant, the victim's mood and daily functioning were impacted. Based on various medical reports and a victim impact statement, the victim suffered from, among other things, intrusive memories of the incidents, negative feelings of disgust and discomfort, aversion to talking about the incidents and the perpetrator, self-blame in relation to the incidents, difficulties in relating to people around her, difficulties in having positive feelings and engaging in activities in which she was interested, self-harm, attentional difficulties, and difficulties sleeping. Her symptoms were consistent with a diagnosis of adjustment disorder with mixed anxiety and depressed mood.

The parties' submissions and the Judge's decision below

Parties' submissions

8 The Prosecution submitted that a sentence of eight and a half to nine years' imprisonment and 12 strokes of the cane was appropriate for each of the two charges, and that the two individual sentences ought to run *concurrently*. In adopting this position, the Prosecution took the view that the mandatory minimum sentence of eight years' imprisonment for the offence of aggravated rape under s 375(3)(*b*) of the Pre-2019 Amendment PC (meaning an offence of rape committed against a woman under 14 years of age without her consent) extended to an offence of attempted aggravated rape. We note that this was the view taken by the court in previous decisions such as: (a) *Public Prosecutor v Ho Wee Fah* [1998] SGHC 128 ("*Ho Wee Fah*"); (b) *Public Prosecutor v Tan Jun Hui* [2013] SGHC 94; (c) *Public Prosecutor v BZT* [2022] SGHC 148; (d) *Public Prosecutor v Huang Shiyou* [2010] 1 SLR 417; and (e) *Public Prosecutor v Shamsul bin Sa'at* [2010] 3 SLR 900, though the point was not argued or reasoned in those cases save that in *Ho Wee Fah*, the court did observe that s 511 of the Pre-2019 Amendment PC did not expressly impose any restriction in relation to the mandatory minimum sentence prescribed for an offence applying also to an attempt to commit that offence.

9 On the other hand, the appellant submitted that a sentence of six and a half years' imprisonment and 12 strokes of the cane was appropriate for each of the two charges. Like the Prosecution, the appellant too submitted that the two individual sentences ought to run concurrently. The appellant also argued in the court below that if a mandatory minimum sentence was applicable, then the prescribed sentence of eight years' imprisonment for aggravated rape offences ought to be halved to four years' imprisonment in the case of attempted aggravated rape offences.

10 In view of the difference in the positions taken on whether the mandatory minimum sentence applied in the case of attempted rape that was punished pursuant to s 511 of the Pre-2019 Amendment PC, the Judge directed the parties and also appointed a Young Independent Counsel ("YIC") to address two questions: first, whether under s 511 of the Pre-2019 Amendment PC the mandatory minimum sentence prescribed for an offence applied also to an attempt to commit that offence; and second, if the first question was answered in the affirmative, whether, in any event, s 512(3)(*a*) of the Post-2019 Amendment PC should be applied retrospectively. For context, s 512(3)(*a*) of the Post-2019 Amendment PC states that the court is not bound to impose any mandatory minimum sentence that is prescribed for an offence in the case of an *attempt* to commit that offence.

The Judge's decision on the two questions

11 Having considered the parties' and the YIC's submissions, the Judge answered both questions in the negative. The parties' submissions in the court below and the Judge's decision on both questions are set out in detail in the GD. We briefly summarise the Judge's decision:

> (a) On the first question, the Judge found that the mandatory minimum sentence for an offence did not apply in the case of an attempt to commit the offence under s 511 of the Pre-2019 Amendment PC. In arriving at this conclusion, the Judge applied the three-step framework to be adopted when undertaking the purposive interpretation of a statutory provision laid down in *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 ("*Tan Cheng Bock*"). Applying this framework, at the first step, the Judge found that there were two possible contending interpretations of s 511: (i) that the minimum sentence prescribed for an offence applied equally to an attempt to commit that offence; and

(ii) that the minimum sentence prescribed for an offence did not apply at all to an attempt to commit that offence. At the second step, the Judge found that the legislative purpose of s 511 of the Pre-2019 Amendment PC was to *criminalise* attempts to commit offences but not to *punish* such attempts as severely as the completed offences. On this basis, at the third step, the Judge found that interpreting s 511 of the Pre-2019 Amendment PC such that the minimum sentence prescribed for a primary offence had no application at all to an attempt to commit the offence would better further the legislative purpose of not punishing attempts as severely as the completed offence.

(b) The Judge then found that it was strictly unnecessary for him to consider the second question as to whether s 512(3)(*a*) of the Post-2019 Amendment PC could be applied retrospectively, given his conclusion that the mandatory minimum sentence for a completed offence had no application to an attempt to commit the offence under s 511 of the Pre-2019 Amendment PC. However, the Judge considered the issue for completeness. Given that it was not relevant to this appeal, we do not set out this aspect of the Judge's decision.

The Judge's decision on sentence

12 Having found that the mandatory minimum sentence for an offence of aggravated statutory rape did not apply in the case of an attempt, the Judge proceeded to consider the appropriate sentences to be imposed for each of the two charges.

13 The Judge found that there were four offence-specific aggravating factors in the present case:

(a) First, there was the grave abuse of position and authority, given that the appellant was the victim's father and the appellant had betrayed and abused this ultimate relationship of trust.

(b) Second, there was the youth and vulnerability of the victim, who was only four or five years old at the time of the offences and was, therefore, defenceless and unable even to fully comprehend what the appellant was trying to do to her.

(c) Third, there was the element of premeditation given the appellant's commission of the offences when the victim's mother was not at home and the steps he took to isolate the victim as well as to distract the victim by making her watch videos on a mobile phone.

(d) Fourth, there was the severe psychological harm that had been caused to the victim.

14 The Judge found that each of the two charges fell within Band 2 of the applicable sentencing framework for attempted rape in *Public Prosecutor v Ridhaudin Ridhwan bin Bakri and others* [2020] 4 SLR 790 ("*Ridhaudin*"). The sentencing range for Band 2 offences was six and a half years' to eight and a half years' imprisonment and six strokes of the cane.

15 The Judge found that the present case was in the middle- to upper-end of Band 2 with an indicative starting sentence of eight and a half years' imprisonment and nine strokes of the cane for each of the charges, and considered the following factors in arriving at this conclusion: (a) the extended period of time over which the offences were committed; (b) the long-lasting psychological injuries caused to the victim; (c) the fact that the severity of the harm suffered was not dissimilar in nature and gravity to those suffered by

victims of rape; and (d) the attempts had almost progressed to completion and would have done so but for the victim's vagina being too small.

16 The Judge then considered the offender-specific aggravating and mitigating factors, which included the charges taken into consideration for the purposes of sentencing, and the appellant's early plea of guilt. On this basis, the Judge calibrated the individual sentences down to eight years' imprisonment and eight strokes of the cane for each of the charges.

17 The Judge then further adjusted the individual sentences down to six years and six months' imprisonment and eight strokes of the cane, and ordered that the individual sentences were to run consecutively. The Judge's reasons for doing so were as follows:

> (a) The two proceeded charges concerned offences which took place a few weeks apart, making them unrelated offences which were subject to the general rule that consecutive sentences should be ordered for distinct offences. This was in line with the guidance set out in *Public Prosecutor v Raveen Balakrishnan* [2018] 5 SLR 799 ("*Raveen*") at [41].
>
> (b) While the Prosecution had taken the position that the two individual sentences ought to run concurrently, it had done so because of its view that the mandatory minimum sentence for aggravated statutory rape also applied to the attempted aggravated statutory rape offences. On this basis, the aggregate sentence would have been at least 16 years' imprisonment if the individual sentences were ordered to run consecutively. The Judge agreed that such an aggregate sentence would not be consistent with the totality principle. However, the Judge considered that he had the option to adjust the individual sentences

downwards and run them consecutively in view of his finding that the mandatory minimum sentence for a completed offence did not apply in the case of an attempt. This was in line with the court's guidance in *Mohamed Shouffee bin Adam v Public Prosecutor* [2014] 2 SLR 998 at [59] and [61]. The Judge considered that an aggregate sentence in the region of 13 years' imprisonment would not offend the totality principle.

(c) While the appellant argued that he had pleaded guilty on the basis of the Prosecution's representation that it would not be seeking an aggregate sentence higher than nine years' imprisonment and that it would not be seeking consecutive sentences, the Judge found that he was not constrained by such a representation. As made clear in *Janardana Jayasankarr v Public Prosecutor* [2016] 4 SLR 1288 ("*Janardana*") (at [12]), sentencing was ultimately a matter for the court. The submissions on sentence made by the Defence did not set the lower limit of the sentence which the court may impose, just as the submissions on sentence made by the Prosecution did not set the upper limit of the sentence that may be meted out.

18 As a result, the appellant was sentenced in the aggregate to 13 years' imprisonment, which was backdated to the date of the appellant's arrest, 27 January 2022, and 16 strokes of the cane.

The appellant's appeal against sentence

19 On appeal, the appellant submitted that the aggregate sentence imposed by the Judge was manifestly excessive. In particular, the appellant stated that he had operated under the belief that the individual sentences would be ordered to run concurrently regardless of whether the Judge found that the mandatory minimum sentence for the offence of aggravated statutory rape applied to an

attempt to commit such an offence. Had the appellant known that there was any prospect that he might have ended up with an outcome that was worse than what the Prosecution had proposed, he would have accepted the Prosecution's position without raising the points of law which he did.

20 As for the Prosecution, it submitted that the aggregate sentence imposed by the Judge below was not manifestly excessive. It also emphasised that its position in the court below was never that the imprisonment terms for each of the two charges should run concurrently regardless of the length of the individual sentence imposed. Further, the Prosecution noted that sentencing was within the court's purview, and the court was not bound by the parties' submissions.

Our decision

21 There were two issues for us to determine:

(a) First, whether the Judge was correct in finding that the mandatory minimum sentence for the offence of aggravated statutory rape under s 375(3)(*b*) of the Pre-2019 Amendment PC did not apply to an attempt to commit the offence of rape against a woman under 14 years of age without her consent.

(b) Second, whether the aggregate sentence imposed by the Judge was manifestly excessive.

The mandatory minimum sentence for aggravated statutory rape did not apply in the case of an attempt to commit the offence of aggravated rape

22 On the first issue, we agreed with the Judge that the mandatory minimum sentence for an offence of aggravated statutory rape under s 375(3)(*b*) of the Pre-2019 Amendment PC did not extend to an attempt to commit the offence of rape against a woman under 14 years of age without her consent. However, we disagreed with some aspects of the reasoning by which the Judge arrived at his conclusion.

23 The Judge concluded that the mandatory minimum sentence for the primary offence did not extend to an attempt to commit such an offence by applying the *Tan Cheng Bock* framework. The Judge's decision was based on his view that there were two possible contending interpretations of s 511: (a) that the minimum sentence prescribed for an offence applied without any adjustment to an attempt to commit that offence; and (b) that the minimum sentence prescribed for an offence had no application at all to an attempt to commit that offence. We digress to observe that the *Tan Cheng Bock* framework is not invoked by reason of the parties taking different positions on the correct interpretation of a statutory provision. Rather, it is invoked where the court is satisfied that the statutory text admits of two or more plausible interpretations. It was not clear to us how the contention advanced on the appellant's behalf below was arguable given the language of the provision.

24 In any case, while we agreed with the Judge's conclusion and with some aspects of his reasoning, we came to this view on a slightly different basis, as we explain below. In our judgment, the resolution of this issue calls for a close reading of ss 375 and 511 of the Pre-2019 Amendment PC.

25 We begin with the structure of s 375. For convenience, we set out the section in its entirety here:

> **Rape**
>
> **375.**—(1) Any man who penetrates the vagina of a woman with his penis —
>
> (*a*) without her consent; or
>
> (*b*) with or without her consent, when she is under 14 years of age,
>
> shall be guilty of an offence.
>
> (2) Subject to subsection (3), a man who is guilty of an offence under this section shall be punished with imprisonment for a term which may extend to 20 years, and shall also be liable to fine or to caning.
>
> (3) Whoever —
>
> (*a*) in order to commit or to facilitate the commission of an offence under subsection (1) —
>
> (i) voluntarily causes hurt to the woman or to any other person; or
>
> (ii) puts her in fear of death or hurt to herself or any other person; or
>
> (*b*) commits an offence under subsection (1) with a woman under 14 years of age without her consent,
>
> shall be punished with imprisonment for a term of not less than 8 years and not more than 20 years and shall also be punished with caning with not less than 12 strokes.
>
> (4) No man shall be guilty of an offence under subsection (1) against his wife, who is not under 13 years of age, except where at the time of the offence —
>
> (*a*) his wife was living apart from him —
>
> (i) under an interim judgment of divorce not made final or a decree nisi for divorce not made absolute;
>
> (ii) under an interim judgment of nullity not made final or a decree nisi for nullity not made absolute;

> (iii) under a judgment or decree of judicial separation; or
>
> (iv) under a written separation agreement;
>
> (*b*) his wife was living apart from him and proceedings have been commenced for divorce, nullity or judicial separation, and such proceedings have not been terminated or concluded;
>
> (*c*) there was in force a court injunction to the effect of restraining him from having sexual intercourse with his wife;
>
> (*d*) there was in force a protection order under section 65 or an expedited order under section 66 of the Women's Charter (Cap. 353) made against him for the benefit of his wife; or
>
> (*e*) his wife was living apart from him and proceedings have been commenced for the protection order or expedited order referred to in paragraph (*d*), and such proceedings have not been terminated or concluded.
>
> (5) Notwithstanding subsection (4), no man shall be guilty of an offence under subsection (1)(*b*) for an act of penetration against his wife with her consent.

26 The following points emerge from this:

(a) The only offence that is prescribed in the Pre-2019 Amendment PC version of s 375 is the offence of rape. This is set out in s 375(1). It provides that the offence is constituted by the penile penetration of a woman's vagina without her consent, or irrespective of her consent if the woman was under the age of 14 at the time of the offence.

(b) The punishment provision for the offence of rape is set out in s 375(2) and it provides for punishment with imprisonment of up to 20 years, and also with a fine or caning.

(c) There is then provision for enhanced punishment in s 375(3). We refer to this as enhanced only in the sense that in the circumstances set out in s 375(3), a mandatory minimum term of imprisonment of eight years and caning of not less than 12 strokes would apply.

(d) The enhanced punishment is applicable in two situations and in both these situations, the enhanced sentence is stipulated in relation to the commission of or in order to commit or facilitate the commission of the "offence under subsection (1)". This brings us back to the offence of rape.

(e) The two situations are: (i) first, where in order to commit the offence, the woman or other person is hurt or put in fear of hurt or death; and (ii) second, where the offence is committed against a woman under the age of 14, without her consent.

(f) To trigger the enhanced punishment, it is incumbent on the Prosecution to prove the basic facts set out in s 375(1) *and also* one of the additional facts set out in s 375(3).

27 In our judgment, given the way s 375 is structured, a single offence is prescribed, generally with a single sentencing range; but upon the proof of one of the *additional facts* set out in s 375(3), then the enhanced punishment would apply. However, proof of either of the additional facts set out in s 375(3) does not entail the commission of a different offence. The operative offence is nevertheless rape under s 375(1).

28 Further, we reiterate that given the way the provision is drafted, the enhanced punishment is applicable where the basic facts set out in s 375(1) *as well as* the one of the additional facts set out in s 375(3) have been proved.

29 We turn next to s 511. As a starting point, s 511(1) of the Pre-2019 Amendment PC states that whoever attempts to commit *an offence punishable by the Penal Code* would, where no express provision is made by the Penal Code for the punishment of such attempt, be punished with *such punishment as was provided for the offence*. This, however, is subject to the statutory limit under s 511(2) of 15 years where such attempt was in relation to an offence punishable with imprisonment for life, or one-half of the longest term provided for the offence in any other case. We set out below s 511 of the Pre-2019 Amendment PC:

> **Punishment for attempting to commit offences**
>
> **511.**—(1) Subject to subsection (2), whoever attempts to commit *an offence punishable by this Code* or by any other written law with imprisonment or fine or with a combination of such punishments, or attempts to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code or by such other written law, as the case may be, for the punishment of such attempt, *be punished with such punishment as is provided for the offence*.
>
> (2) The longest term of imprisonment that may be imposed under subsection (1) shall not exceed —
>
> (*a*) 15 years where such attempt is in relation to an offence punishable with imprisonment for life; or
>
> (*b*) one-half of the longest term provided for the offence in any other case.
>
> [emphasis added]

30 As we are not concerned with an offence punishable with life imprisonment, the effect of s 511 for the purposes of this appeal is to reduce the maximum term of imprisonment for the offence of attempted rape to one-half of that provided in s 375(2). This results in the maximum term being ten years' imprisonment. Save in this respect, the punishment would be the same as that provided for the "offence". This gives rise to a potential ambiguity: does the adjustment effected by s 511 to the punishment for the offence of attempted rape

apply only in relation to the punishment provided for the offence of rape under s 375(1), or does it also apply to the enhanced punishment provision provided for the offence of rape upon proof also of one or the other of the additional facts in s 375(3)?

31 Had it been the case that proof of the additional facts would have given rise to a distinct offence, it seems clear that s 511 would have applied to the enhanced punishment provision set out under s 375(3). We say this because that would be the punishment prescribed "for the [distinct] offence". However, as we have already explained, that is not the effect of s 375(3). The question then is whether if the additional facts are proved, or are admitted, but the basic facts are not proved save to the extent they constitute an attempt, s 511 is to be applied to the punishment provided in s 375(1) so that the only prescription is a term of imprisonment of up to ten years, and fine or caning; or whether it is to be applied to the enhanced punishment prescribed in s 375(3)(*b*) so that it would be a term of imprisonment of not less than eight years, not more than ten years *and* with caning of not less than 12 strokes.

32 In our judgment, it is the former. We take this view for the following reasons. First, the offence in question is the offence of rape, the punishment for which is set out in s 375(2). While we accept that s 375(2) is made "subject to sub-section (3)", in our judgment, this is limited to situations where the primary offence is completed. We come to this view primarily because s 375(3) contemplates that the primary offence has been committed and it is when this has been done and when certain *additional facts* are proved that the enhanced punishment provision is triggered. Where the primary offence has not been completed, it does not seem to us that the enhanced punishment provision has any application at all. To put it another way, there is nothing to indicate that the enhanced punishment provision was intended to apply in situations where the

primary offence had not been completed. On this basis, it would follow that the enhanced punishment provision has no application in the context of an attempt to commit rape, even if one of the additional facts specified in s 375(3) is proved.

33 We are fortified in this view when we consider, as an alternative, the hypothesis that the punishment for the offence of attempted rape may include that set out in s 375(3) where the additional facts are proved, but the primary facts are not. In these circumstances, we would be driven back to the three-step inquiry laid down in *Tan Cheng Bock*, given the ambiguity inherent in the two competing interpretations that are set out at [30] and [31] above. On this basis, as the Judge observed, the legislative intent underlying s 511 appears to have been to provide for incarceration periods that were generally less severe when punishing *attempts* than when punishing the *actual offence.* It would accord with this purpose to prefer the conclusion that s 511 in this context applies to the sentence set out in s 375(1) and not to the enhanced punishment provision set out in s 375(3). Otherwise, the sentence for an attempt to commit the offence under s 375(1) where the additional facts are proved even if the basic facts are not, would be a term of imprisonment of at least eight years but not more than ten years' imprisonment, and also 12 strokes of the cane. In our judgment, this is unlikely to have been the legislative intent for two reasons. First, it would result in an implausibly narrow sentencing range for the attempted offence, which fails to capture the broad range of circumstances in which this situation might arise. And, second, it could, not infrequently, result in the punishment for the attempted offence being more severe than for the actual offence. This too strikes us as implausible.

34 For these reasons, we agreed that the mandatory minimum sentence for the offence of aggravated statutory rape under s 375(3)(*b*) of the Pre-2019 Amendment PC did not apply to an attempt to commit the offence of rape.

35 For the avoidance of doubt, we emphasise that whether mandatory minimum sentences for other offences would extend to attempts to commit those offences that are liable to be punished under s 511 of the Pre-2019 Amendment PC would necessarily depend on the interpretation of the specific text of those provisions.

The aggregate sentence imposed by the Judge was not manifestly excessive

36 We next considered whether the aggregate sentence imposed by the Judge was manifestly excessive. In our view, the aggregate sentence of 13 years' imprisonment and 16 strokes of the cane could not be said to be manifestly excessive in any way.

37 There was nothing objectionable about the Judge's approach to sentencing in the present case. We explain:

(a) First, having considered the various offence-specific aggravating factors (set out at [13] above) and having regard to the sentencing framework in *Ridhaudin*, the Judge found that the present case was in the middle- to upper-end of Band 2 with an indicative starting sentence of eight and a half years' imprisonment and nine strokes of the cane for each of the charges. We agreed with this assessment, in view of the sustained nature of the appellant's offending as well as the serious harm caused to the victim.

(b) Second, having considered the charges which were taken into consideration for the purposes of sentencing as well as the appellant's early plea of guilt, the Judge calibrated the individual sentences down to eight years' imprisonment and eight strokes of the cane for each of the two charges. This, again, was entirely justified on the facts.

(c) Third, the Judge found that the individual sentences for the two charges ought to be ordered to run consecutively, given that the charges related to unrelated offences which took place a few weeks apart. In the light of the observations of the court in *Raveen* (at [14]), the Judge was entirely correct. Having regard to the totality principle, however, the Judge adjusted the individual imprisonment terms downwards to six years and six months' imprisonment so that the total imprisonment term of 13 years' imprisonment would not be crushing on the appellant. As we note below, we think this was in fact generous to the appellant. In this light, we could not see how the aggregate sentence could possibly be said to be manifestly excessive.

38 The appellant argued on appeal that his submissions in the court below were premised on the Prosecution's representation to the appellant that it would submit that the individual sentences for the two charges should run concurrently. We rejected this argument for two reasons:

(a) First, it was clear from the record that the Prosecution had consistently maintained that its position to seek concurrent sentences was premised on the individual sentences being between eight years and six months' imprisonment and nine years' imprisonment. This position was logical, given that the question of whether the individual sentences ought to run concurrently or consecutively would necessarily be

influenced by their length so as to ensure that the totality principle was not violated.

(b) Second, it is trite that sentencing is within the court's purview, and the Prosecution's position is not determinative of the sentence which the court may impose: *Janardana* at [12]. Any representation by the Prosecution on its own sentencing position, therefore, could have no bearing on the sentence which the court could impose.

39 The appellant also submitted that, had he not succeeded in his argument that the mandatory minimum sentence for aggravated rape did not apply in the case of attempted rape, the Judge would have sentenced the appellant to individual sentences of between eight years' and eight and a half years' imprisonment per charge, with the individual sentences to be run *concurrently*. However, this argument was flawed. First, it assumed that ordering individual sentences of between eight years' and eight and a half years' imprisonment to run consecutively would offend the totality principle. While the Judge may have taken the view in the court below that he would have found an aggregate sentence of 16 years' imprisonment to offend the totality principle, we did not agree. Given the sustained nature of the appellant's offences and the serious and lasting harm caused to the victim, we did not think that an aggregate sentence of 16 years' imprisonment would have offended the totality principle. However, as the Prosecution had not filed an appeal against sentence, we did not disturb the Judge's decision on sentence.

40 But aside from this, the argument was flawed because it was premised on the notion that a litigant will not be prejudiced by the litigation choices he makes and the strategies he adopts. There was no basis at all for thinking that to be the case. In the final analysis, the appellant had no grounds at all for assuming

that whatever understanding on sentencing that he might have had with the Prosecution would bind the sentencing court.

Conclusion

41 We therefore dismissed the appeal, and affirmed the aggregate sentence of 13 years' imprisonment and 16 strokes of the cane imposed in the court below.

Sundaresh Menon
Chief Justice

Tay Yong Kwang
Justice of the Court of Appeal

Steven Chong
Justice of the Court of Appeal

Akesh Abhilash (Harry Elias Partnership LLP) for the appellant;
Vincent Leow, Sivanathan Jheevanesh and Jocelyn Teo (Attorney-General's Chambers) for the respondent.