IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2022] SGCA 19

Criminal Appeal No 22 of 2021

Between

CCG

… *Appellant*

And

Public Prosecutor

… *Respondent*

EX TEMPORE JUDGMENT

[Criminal Procedure and Sentencing] — [Sentencing]

Version No 1: 04 Mar 2022 (12:43 hrs)

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CCG
v
Public Prosecutor

[2022] SGCA 19

Court of Appeal — Criminal Appeal No 22 of 2021
Andrew Phang Boon Leong JCA, Judith Prakash JCA and Steven Chong JCA
4 March 2022

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Andrew Phang Boon Leong JCA (delivering the judgment of the court *ex tempore*):

Introduction

1 The appellant (redacted as "CCG") pleaded guilty to and was convicted of three charges. The first two were for sexual assault by penetration under ss 376(2)(*a*) and 376(1)(*a*) of the Penal Code (Cap 224, 2008 Rev Ed) (the "PC") respectively, both punishable under s 376(4)(*b*). They involved a victim who was aged between ten and 12 years at the time of the offences. The third was for outrage of modesty under s 354(1) of the PC, and this charge involved another victim aged 17 at the time of the offence. A further nine charges, eight of which were also for sexual offences involving these same two victims, were taken into consideration for sentencing. The last of these nine charges was for causing annoyance in a public place whilst drunk, an offence under s 14(2)(*b*)(i) of the Liquor Control (Supply and Consumption) Act 2015.

2 The High Court judge (the "Judge") imposed an aggregate sentence of 23 years' imprisonment for the three proceeded charges, and ordered that CCG's sentence would be taken as having started on 16 August 2019, the date on which he was placed in remand. In respect of the two sexual assault by penetration offences, the Judge imposed terms of 11 years and three months each, and for the offence of outrage of modesty, she imposed a term of six months. She ordered that the three sentences run consecutively. The circumstances of the offences are set out in the Judge's Grounds of Decision, *Public Prosecutor v CCG* [2021] SGHC 207, and we shall not repeat them here as CCG states unequivocally in his petition of appeal, that he does not contest the underlying facts of the case.

3 CCG only appeals the 23-year imprisonment term imposed by the Judge. In essence, he pleads for leniency on three grounds – to which we will turn in a moment – and asks that this court allow his sentences to run concurrently instead of consecutively. If we were to do that, the total period CCG would have to serve would not exceed 11 years and 9 months, a substantial reduction of his present term. Having considered the grounds of appeal raised by CCG and the Judge's reasons, we find that there is no basis for appellate intervention and dismiss the appeal accordingly.

4 Our reasons are as follows.

Grounds of appeal raised by CCG

5 Given that CCG is acting in-person, not surprisingly, he did not raise precise grounds of appeal; that is, any of the four grounds established in numerous decisions such as that of this court in *Public Prosecutor v Kwong Kok Hing* [2008] 2 SLR(R) 684 at [14]. He did, however, point to circumstances which appear to us to be in the category of "offender-specific mitigating factors"

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that the Judge had not considered. These were, first, that he has a dependent wife as well as children. Second, that he is a first-time offender. Third, that if he is made to serve out a long 23-year sentence, he would be in his mid-70s by the time he is released, whereupon – as we gather is the import of his submission – he would not be able to reintegrate into society.

6 None of these grounds is meritorious. First, the extent to which CCG's wife and children are dependent on him is not even clear as a factual premise. CCG states that he was a widower, and that from his first marriage, he has three children aged 30, 28, and 26 years old, and six grandchildren. Given the ages of his children, and the fact that they have children of their own, it does not appear to us that they are financially dependent on him. That said, CCG also explains that he remarried after his first wife's death, and that his second wife is not working "as she is always falling sick", and that she has "2 school-going children" who depend on him. However, even if we accept that they depend on him as a sole breadwinner, this is not a valid mitigating factor. This was established in *Lai Oei Mui Jenny v Public Prosecutor* [1993] 2 SLR(R) 406. Here, Yong Pung How CJ held that an offender's financial circumstances alone would not ordinarily amount to a mitigating factor (see [11]–[12]), and this was most recently affirmed by Woo Bih Li J (as he then was) in *Public Prosecutor v Ridhaudin Ridhwan bin Bakri* [2020] 4 SLR 790 at [34]. Exceptional circumstances are required, and the facts of the present case are, by no means, exceptional.

7 Second, CCG's assertion that this is his "first time in committing crime in [his] this whole life [*sic*]" is, quite simply, false. Though he has not previously been convicted for commission of *sexual* offences, his criminal record reflects multiple prior convictions for earlier offences including voluntarily causing hurt in 1995, trafficking in a controlled drug in 2001, doing a rash act which

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endangered the life or personal safety of others in 2007, as well as criminal intimidation in 2008 and again in 2015. In any case, as this court observed in *Purwanti Parji v Public Prosecutor* [2005] 2 SLR(R) 220, although it is typical to impose a more lenient sentence on first-time offenders, such a discount is not to be given mechanistically. The sentence imposed ultimately needs to be weighed against the public interest, particularly when the offences in question are serious (see [36]–[39]). In this case, we cannot overemphasise the severity of sexual offences committed against *children*. Such offences are, by their very character, repugnant and grave, and there is a clear and obvious public interest in ensuring that such offences are firmly deterred.

8 Third, an offender's age is not, in itself, a consideration which typically justifies a reduction in sentence. This point was made clear in the High Court decision of *Yap Ah Lai v Public Prosecutor* [2014] 3 SLR 180 ("*Yap Ah Lai*"), with which we agree. In that case, Sundaresh Menon CJ stated that an offender's age may be a relevant mitigatory consideration in the sense that, where a person of mature age commits a first offence, some credit can be given for the fact that he passed most of his life with a clean record (at [85]–[94]). Furthermore, the prospect of rehabilitation in such cases may also be taken to be better. As the learned Chief Justice observed, this consideration "is no more than a special case of the general principle that a first-time offender is often accorded some leniency where there are no special reasons not to do so; but it may be somewhat amplified with an older offender given the length of time during which he had not offended" (at [89]). Since, as stated above, CCG has *multiple* prior convictions, there is no basis to give him credit in this regard.

9 In any event, even if CCG had been a first-time offender, we do not find that his age is sufficiently advanced to support any reduction in his sentence. In *Yap Ah Lai*, Menon CJ explained that a discount given for an offender's

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advanced age serves to avoid the imposition of sentences which effectively amount to life imprisonment (at [87]). This, he observed, is not a consideration based on mercy, but because the court is unwilling to make such offenders suffer crushing sentences disproportionately more onerous than others who are similarly situated (at [91] and [93]). In this case, CCG's 23-year sentence was ordered to commence from August 2019, when he was 52 years old. With good behaviour, in light of the Singapore Prison Service's Conditional Remission System, CCG stands to be released when he is 67 or 68 years old, after serving two-thirds of his sentence. This certainly does not amount effectively to life imprisonment, and in our view, is not disproportionate or crushing. Although we are mindful that it will likely be challenging for CCG to return to society at that age, this alone does not mean that the sentence imposed is necessarily crushing.

10 We therefore reject each of the three bases on which CCG argues that the sentences he faces for each of the three proceeded charges should run concurrently instead of consecutively. As a consequence, there is simply no basis upon which CCG can be granted such a reduction in his sentence.

11 Further, and in any event, we have also examined the Judge's reasoning in arriving both at the individual and aggregate sentences she imposed, and see no other reason which justifies appellate intervention. First, CCG pleaded guilty and accepted the facts as presented to the Judge. As such, the Judge plainly made no error as to the proper factual matrix for sentencing. Second, there is nothing which suggests the Judge erred in appreciating the material placed before her. Finally, the individual as well as aggregate sentences imposed are neither wrong in principle nor manifestly excessive. The Judge applied the relevant sentencing frameworks and arrived at positions which fall squarely within the appropriate bands. Her decision that the three sentences run

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consecutively is supported by the authorities and was, in our view, necessary to reflect the overall criminality of CCG's conduct.

Further allegation raised by CCG

12 The above, in our view, sufficiently addresses the points raised by CCG which actually merited consideration, and is therefore enough to dispose of his appeal. We observe, however, that he also raises a fourth point, namely, that he faced some kind of unfairness as a result of there being multiple Deputy Public Prosecutors in attendance at his sentencing hearings, coupled with the fact that the Judge did not "support or help" him in the proceedings, particularly, in understanding "all kind of discussion [*sic*]" which took place regarding sexual offences. Having reviewed the transcripts of the hearings before the Judge, we dismiss this as an entirely baseless allegation.

13 CCG's plea of guilt was recorded on 3 May 2021, and after the statement of facts had been read out by the Prosecution, the Judge questioned them on the sentencing position they had taken. In particular, the Prosecution submitted that a 23-year and nine month imprisonment term was appropriate, and the Judge expressed concerns about whether the overall criminality in this case justified the imposition of such a sentence. In questioning the Prosecution, she referred to the lower sentences imposed in *BPH v Public Prosecutor and another appeal* [2019] 2 SLR 764, amongst other cases which the Prosecution had cited, and invited them to make further submissions on the overall criminality of CCG's conduct with reference to a wider range of reported decisions, as well as on the issue of whether the aggregate sentence proposed would be crushing in light of his age. Following this discussion, the Judge *specifically* checked whether CCG could follow what had been said, and he responded (through a translator), "Yes,

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Your Honour, I understand". The hearing was then adjourned pending the Prosecution's further submissions.

14 At the next hearing on 28 June 2021, at which CCG was sentenced, there were no further discussions between the Judge and the Prosecution regarding sentence. The main matter of substance which arose at this hearing was whether CCG wished to retract an allegation he had made in his written mitigation plea. At the hearing, CCG stated orally that he felt remorse for his actions, yet in his written mitigation plea, he suggested that one of his two victims – a mere child between ten and 12 years of age at the time of the offences – was a "willing party" and "was the one who started it and made [him] aroused". Reading this, the Judge asked CCG to clarify whether he wished to retract these suggestions because, though he claimed to be remorseful, these statements patently did not reflect remorse. Once he understood the Judge's point, CCG responded, "In that case, Your Honour, I will retract whatever I have said in the written mitigation". Thereafter, when asked by the Judge whether he had anything further to add, he simply said: "Your Honour, I am humbly asking for leniency and to have my sentence to run concurrently and, Your Honour, I have a family to take care of. That's all, Your Honour".

15 Again, nothing took place during this hearing which even remotely indicates that CCG was unable to follow the proceedings, much less that he had suffered any unfair treatment at the hands of the Judge or the Prosecutors. Accordingly, any allegation of such treatment is wholly baseless and must be rejected.

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Conclusion

16 For the reasons set out above, we dismiss CCG's appeal.

Andrew Phang Boon Leong
Justice of the Court of Appeal

Judith Prakash
Justice of the Court of Appeal

Steven Chong
Justice of the Court of Appeal

Appellant in-person;
Nicholas Lai and Andre Ong (Attorney-General's Chambers) for the respondent.

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