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

Criminal Case No 3 of 2022

Between

Public Prosecutor

And

CEP

SENTENCING REMARKS

[Criminal Procedure and Sentencing] — [Sentencing] — [Principles]
[Criminal Procedure and Sentencing] — [Mitigation]

Public Prosecutor
v
CEP

[2022] SGHC 15

General Division of the High Court — Criminal Case No 3 of 2022
Aedit Abdullah J
13 January 2022

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Aedit Abdullah J:

1 These are my brief remarks, outlining the broad reasons for my decision. These remarks are subject to full grounds being given if need be. These remarks are published in light of the adoption of the framework for sentencing.

2 The accused is before me on his plea of guilt on a single charge under s 375(1)(a) read with s 375(2) and s 116 of the Penal Code (Cap 224, 2008 Rev Ed) of an offence of abetment by conspiracy to commit rape, where the rape did not actually occur. Another charge for outrage of modesty under s 354(1) is taken into consideration. The elements of the charge are made out on the facts admitted. The focus of these remarks is on the sentence to be imposed.

3 I am satisfied in common with the parties here that guidance may be taken from the framework laid down in *Ng Kean Meng Terence v PP* [2017] 2 SLR 449 ("*Terence Ng*") for sentencing after trial in rape cases.

4 The Prosecution has suggested a reduction to a quarter of the equivalent sentencing bands laid down in that case to take into account that the offence here has reduced criminality because it is only for attempted rape. I accept that the calibration should be to a quarter of the sentences indicated in *Terence Ng*: the maximum sentence that can be imposed for attempted rape is 5 years' imprisonment, as compared to 20 years for completed rape. In brief:

Band	Type of case	Length of imprisonment
1	No or minimal offence-specific aggravating factors	2.5 to 3.25 years
2	2 or more offence-specific aggravating factors	3.25 to 4.25 years
3	Extremely serious cases	4.25 to 5 years

The application of this framework follows the usual approach, that is, the offence-specific factors are tallied and weighed, before those factors specific to the offender are examined.

Offence-specific factors

5 As noted by the Prosecution, the primary sentencing considerations here are retribution and deterrence. The offence-specific factors identified by the Prosecution are:

(a) Planning and premeditation.

(b) Vulnerability.

(c) Violation of the sanctity of the victim's home.

(d) Exposure to the risk of sexual disease and pregnancy.

6 The offence was planned by the conspirator and the accused, and was not committed on the spur of the moment. There is a greater degree of culpability as compared to a spontaneous offence because such planning would involve prolonged consideration of how the offence was to be carried out, and its effect would generally be greater than that of a spontaneous act. However, I do accept the argument by the Defence that the accused and the conspirator did not conduct meticulous planning for the two years. What I can see from the statement of facts is that there was perhaps a long gestation, but not necessarily minute planning throughout that period.

7 I also accept that there was exploitation of the victim, who was in a vulnerable state, as she was unconscious, naked and blindfolded. Such exploitation of the victim's vulnerability increases the level of criminality and is much more blameworthy than otherwise.

8 To my mind, the fact the attempted rape occurred in the victim's own home was a consideration that should attract a substantial increase in the sentence. The violation of the safe sanctuary that should be every home, called for both retribution and deterrence. It is also substantially aggravating that the attempted rape was committed in the matrimonial home, pursuant to abetment involving the husband of the victim, which was an exploitation and betrayal of a space that should have been safe for family members.

9 However, as for the Prosecution's argument that there was risk of exposure to sexual diseases and pregnancy, while I accept that there was some risk, given the circumstances of the offence, with the incomplete act, I did not think this called for a substantial uplift here.

10 There is a diagnosis of the accused's disposition towards erectile dysfunction, but this did not render the criminal act an impossible attempt; there was some possibility of penetration.

11 Taking all of these matters into account, I find that the starting point for the sentence would be in the higher end of Band 2, that is closer to 4 years' imprisonment. This reflects, in particular, that there was attempted rape while the victim was unconscious and violation of the sanctity of the matrimonial home.

Offender-specific factors

12 Turning then to the offender-specific factors, an uplift should also be given because of the accused's similar antecedents and the charge to be taken into consideration. However, the effect of the antecedents would not be that great, given that, as argued for by the Defence, this was not a case where the accused reoffended after conviction. He had committed this offence before his earlier conviction and sentence. And had the second charge here been proceeded with instead, it would in all probability have been run concurrently under the one transaction rule.

13 In the accused's favour was his plea of guilt. I also took note here of the confession given by the accused which was pressed for by the victim after the incident. I also note that the accused was not the primary instigator, though on the other hand, he was the one who committed the assault on the victim.

Calibration of the sentence

14 The Prosecution seeks a sentence of 2 to 3.5 years, while the Defence seeks 2 to 2.5 years.

15 Even putting aside the framework I have adopted, the sentence sought by the Defence does not in my view adequately address the heightened criminality, especially as regards the exploitation of the vulnerability of the victim and the attack occurring in her home. Such a sentence would only be appropriate where similar factors are absent.

16 As I have noted, the starting point was towards the higher end of Band 2, or 4 years. Taking into account the plea of guilt but offsetting against it the antecedents and the charge taken into consideration, I am of the view that a sentence of 3 years' imprisonment is appropriate, and so sentence the accused.

Aedit Abdullah
Judge of the High Court

Chee Ee Ling and Ang Siok Chen (Attorney-General's Chambers)
for the Prosecution;
Nakoorsha Bin Abdul Kadir, Michelle Tang and Rasveen Kaur
(Nakoorsha Law Corporation) for the accused.