

***Public Prosecutor v Raveen Balakrishnan* [2018] SGHC 148**

I. Executive summary

In *Public Prosecutor v Raveen Balakrishnan* [2018] SGHC 148, the Singapore High Court (“**HC**”) clarified the sentencing framework for offenders convicted of multiple offences. The main issue was whether concurrent or consecutive sentences should be meted out to an offender who had been convicted of multiple unrelated offences.

The offender, Raveen Balakrishnan (“**the Offender**”), was first charged with voluntarily causing hurt. While on bail for that offence, he (and his companions) caused injury to another victim, resulting in a second charge of rioting for the Offender. The District Judge (“**DJ**”) sentenced him for both offences at the same hearing. However, the DJ ordered that the two sentences be run concurrently. This was mainly because the Offender retained, in the DJ’s view, the capacity for reform and rehabilitation. On appeal, the HC disagreed with the DJ and held that the Offender’s sentences should be run consecutively, rather than concurrently.

The HC applied a three-stage framework for the sentencing of a multiple offender. At the *first* stage, the sentencing court will consider the *appropriate sentence* for each individual offence. At the *second* stage, the court will determine whether the individual sentences should run *consecutively* or *concurrently*. The general rule is that sentences for unrelated offences should run consecutively (the “**general rule of consecutive sentences for unrelated offences**”), while sentences for offences forming part of a single transaction should run concurrently (the “**one-transaction rule**”). Whether multiple offences form part of a single transaction depends on whether they form a “single invasion of the same legally protected interest.” Additionally, it is possible to depart from this general rule of consecutive sentences for unrelated offences, so long as the court carefully considers the appropriateness of such departure and explains its reasons for doing so.

At the *third* stage, the “**totality principle**” requires the court to take a “*last look*” at all the facts and circumstances, to ensure that the aggregate sentence is sufficient and proportionate to the offender’s overall criminality. This involves examining: (a) whether the aggregate sentence is substantially above the normal level of sentences for the most serious of the individual offences committed, and (b) whether the sentence has a crushing effect on the offender and is also not in keeping with his past record and future prospects. If the aggregate sentence is excessive, the court may adjust the individual sentences or opt for a different combination of sentences to run consecutively.

Across all three stages, the court should not offend the “**rule against double-counting**” of sentencing factors. Thus, a sentencing factor should be given only its due weight in the sentencing analysis. However, this rule against double counting is not necessarily violated if a court uses the same fact as both a mitigating factor in sentencing, and in considering the application of the totality principle.

Applying the three-stage framework here, the HC held that the offences committed were separate and unrelated. As such, the individual sentences imposed should presumptively have been ordered to run consecutively. The DJ’s reasons for departing from this general rule were wrong in principle and also did not stand up to scrutiny. In accordance with the totality principle, however, the HC reduced the derived aggregate sentence by 1 year. This was because the original aggregate sentence would likely have been crushing, given the Offender’s record and prospects.

II. Material facts

In October 2016, the Offender was charged with voluntarily causing hurt under section 324 of the Penal Code (Cap 224, 2008 Rev Ed) (“**Penal Code**”), having slashed and permanently scarred his victim’s face with a knife. In April 2017, while on bail for the first offence, the Offender committed the second offence of rioting under section 147 of the Penal Code. He, along with his companions, had assaulted and caused serious harm to yet another victim. His companions were each issued conditional warnings for rioting.

The DJ ordered the Offender’s sentences for the two individual offences to run concurrently, resulting in an aggregate sentence of 3.5 years’ imprisonment and 9 strokes of the cane. The DJ decided that while it would have been defensible under the one-transaction rule to run the sentences consecutively, such an aggregate sentence would not be in keeping with the Offender’s promising future prospects. This was based on the Offender: (a) not being beyond hope for reform and rehabilitation, based on his handwritten mitigation plea which expressed remorse; (b) having sought to improve himself by sitting for the O-Level examinations while in reformatory training for his antecedents; (c) having an apparent decrease in his rate of offending, on the basis that he faced 13 charges in 2014 compared to 2 charges presently; and (d) having suffered emotional setbacks when he was 14 years old when he found out that he was adopted. The DJ was of the view that the Offender’s reformatory prospects remained good if he resolved his emotional issues and built more constructive relationships.

III. Issues on appeal

The HC laid down a three-stage sentencing framework based on the following:

- (a) how the appropriate sentences for the individual offences should be calibrated;
- (b) how the individual sentences should be ordered to run; and
- (c) how the aggregate sentence should be adjusted to account for the totality principle.

At all stages, the sentencing court was to be conscious of the need to avoid double-counting of any sentencing factors. Having laid down the sentencing framework, the HC then applied the framework to the Offender’s case.

A. *The three-stage framework*

(i) Stage One: Appropriate sentence for each individual offence

The HC stated that where multiple offences are involved, the court should first determine the appropriate individual sentence for each offence.

(ii) Stage Two: Running of the sentences

(a) *Multiple related offences (the one-transaction rule)*

The court should then decide whether these individual sentences should be ordered to run consecutively or concurrently. The issue is whether the offences are related, i.e. whether they form part of a single transaction. Where two or more offences are related so as to form part of a single transaction, the “one-transaction rule” states that all sentences in respect of those offences should generally run concurrently rather than consecutively. Offences form part of a single transaction if they entail a “single invasion of the same legally protected interest”. If there is such a single invasion, it is the violation of that single interest that is being punished, and thus concurrent sentences would ordinarily be sufficient to reflect the seriousness of the offences. This also ensures that an offender is not doubly punished for what is essentially the same conduct, even though such conduct may have resulted in several distinct offences. In determining whether there was a single invasion, the courts will consider factors such as

whether there was continuity in purpose or design through the offences, as well as the proximities in time, place and continuity of action.

(b) Multiple unrelated offences

If the offences are unrelated, the offender should generally be separately punished for each offence. Thus, the individual sentence for each offence should, as a general rule, be run consecutively. This general rule of consecutive sentences for unrelated offences is supported by the following reasons:

- (1) Each offence committed by a multiple offender should attract its own distinct consequence. A subsequent offence should not attract less (or no) distinct consequence just because it is one of several offences for which the offender is being sentenced. In general, as compared to an offender who has committed only a single offence, a multiple offender bears greater culpability and will have caused greater harm.
- (2) Concurrent sentences for unrelated offences would not adequately serve, and may even undermine, the sentencing considerations underlying the individual sentences. They would give an offender who has already committed an offence little incentive to refrain from committing a subsequent offence, since he would not bear any real consequence for such further offence. This would detract from the deterrent value of the individual sentences. Additionally, imposing concurrent sentences for unrelated offences would mean that the legally protected interests that were later infringed through the subsequent offences have no apparent vindication in law. It would also not adequately reflect the greater need for public protection against a multiple offender who, in committing multiple unrelated offences, cannot claim to have acted in an isolated instance of misjudgement.
- (3) The situation should be compared to one where the multiple offender is separately sentenced for each unrelated offence. A multiple offender who is sentenced for each such offence at a separate sitting would receive separate, and in fact aggravated, sentences for the later offences. And there is no reason why a multiple offender should receive a more lenient or more serious sentence, depending simply on whether the sentencing occurs at a single sitting or on separate occasions. This is especially since whether a multiple offender is sentenced in one rather than separate sittings often depends on factors unrelated to his criminality, such as scheduling issues.
- (4) Allowing a multiple offender to be punished less seriously (or even not at all) for a subsequent offence would be a perverse outcome that flies in the face of any notion of justice. Public confidence in the administration of criminal justice requires the court to avoid any suggestion that a multiple offender may benefit from some sort of “bulk discount” in sentencing.

The general rule of consecutive sentences for unrelated offences is subject to *three qualifications*. First, it is subject to the totality principle (as discussed below). Second, as with the one-transaction rule, this rule is displaceable (i.e. not invariable or mandatory). Thus it may sometimes be appropriate for a court to choose not to run the individual sentences for unrelated offences consecutively. However, the court should consciously consider whether such a departure is appropriate, and at least briefly explain its reasons.

Finally, the rule is subject to any statutory provision which abridges its operation. For instance, section 307(2) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) requires a sentence of life imprisonment to run concurrently with other sentences of imprisonment. Additionally, under section 307(1) of the same Code, where a multiple offender is sentenced for three or more offences, the sentences for at least two offences must run consecutively. Thus, if all three offences are unrelated, both section 307(1) and the general rule of consecutive sentences for unrelated offences would operate in tandem and result in all three individual sentences running consecutively. Where there is a mix of related and unrelated offences, the sentences for the unrelated offences should generally run consecutively with one of the sentences for the related offences.

(iii) Stage Three: Totality principle

The totality principle requires that the court take a “last look” at all the facts and circumstances to ensure that the aggregate sentence is sufficient and proportionate to the offender’s overall criminality. The court should examine whether (a) the aggregate sentence is substantially above the normal level of sentences for the most serious of the individual offences committed, and (b) whether the effect of the aggregate sentence on the offender is crushing and not in keeping with his past record and future prospects. The aggregation principle also applies, i.e. that the totality principle usually applies with greater force in cases involving longer sentences. For instance, if the individual sentences are of several years each, the concern over proportionality weighs more heavily in assessing whether the aggregate sentence offends the totality principle. In short: the longer the aggregate sentence, the greater the risk of a disproportionate sentence.

If the aggregate sentence is excessive, the court may adjust the individual sentences or opt for a different combination of sentences to run consecutively. However, the aggregate sentence must exceed the longest individual sentence. The court should also state the individual sentence that would otherwise have been imposed but for the abovementioned adjustment.

(iv) All Stages: Rule against double-counting

The HC held that a court should not offend the rule against double-counting of a sentencing factor at any stage of the sentencing analysis. This rule requires the court to give a sentencing factor only its due weight and nothing more. For instance, double-counting occurs when a factor that is an essential element of the charge is also used as an aggravating factor enhancing the sentence for that charge. Another example is where a factor is taken into account in sentencing, even though it formed the basis of other charges against the offender. The rule against double-counting applies to all aspects of sentencing, to both aggravating and mitigating factors, and in cases involving single offences as well as multiple offences.

However, the rule against double-counting is not necessarily violated if a fact constituting a mitigating factor (such as the youth of an offender) is taken into account both in the application of the totality principle and elsewhere in the sentencing analysis. Indeed, this is an intended feature of the second limb of the totality principle, i.e. whether the aggregate sentence is crushing in light of the offender’s past record and future prospects.

B. The present case

While the HC agreed with the individual sentences imposed on the Offender, it disagreed with the DJ’s decision to run the sentences concurrently. In the HC’s view, the two offences were separate and unrelated, with no unity of purpose or design between them. Therefore, the general rule of consecutive sentences for unrelated offences applied: the individual sentences should presumptively have been ordered to run consecutively.

The HC further rejected the DJ's reasons for ordering the individual sentences to run concurrently: (a) the Offender's mitigation plea did not unequivocally demonstrate genuine remorse, and his self-improvement efforts had not stopped him from re-offending; (b) the fact that the Offender had re-offended was an aggravating factor, regardless of whether his "rate of offending" had decreased; and (c) the Offender could not rely on emotional setbacks suffered while he was 14 years of age to mitigate offences committed when he was 23 years of age; in any case, personal circumstances were generally no excuse for criminal conduct.

Nonetheless, when applying the totality principle, the HC held that a strict aggregation of the two sentences, which would derive an aggregate term of 5.5 years' imprisonment and 9 strokes of the cane, would be crushing to the Offender given his record and prospects. The HC specifically noted his relative youth, the hope that he remained amenable to reform and rehabilitation, and the aggregation principle. Thus, the HC reduced his aggregate sentence to 4.5 years' imprisonment and 9 strokes of the cane, by reducing the sentence for the second offence from 2 years' to 1 year's imprisonment.

IV. Further observations by the HC

The HC rejected Balakrishnan's argument that the warnings issued to his companions in respect of the offence of rioting warranted a lighter sentence for himself, based on the "principle of parity". This principle states that sentences given to co-offenders who are party to a common criminal enterprise should not be perceived to be unduly disparate from each other. The HC stated that the fact that a "co-offender" has been issued a *warning* by the relevant non-judicial authorities does not indicate the co-offender's guilt or degree of culpability, and therefore cannot be used to determine the severity of the offender's sentence, which was to be determined by the court (as was the case for the Offender's sentences). In any event, the Offender's conduct was far more egregious than that of his companions'.

V. Legal implications

This case has clarified the sentencing structure for multiple offenders. It is useful to note that while a multiple offender would, in general, serve consecutive sentences for unrelated offences and concurrent sentences for related offences, the sentencing court can depart from this rule for good reasons. The court may also, based on the totality principle, reduce an aggregate sentence if it would have a crushing effect on the offender and/or is also not in keeping with his past record and future prospects.

Finally, offenders who are considering making claims of repentance and reform in seeking leniency from the court should note that the court may accord such claims less weight if the offender has (as in this case) continued to offend even after making such efforts at repentance and reform.

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