

Public Prosecutor v AUB
[2015] SGHC 166

Case Number : Criminal Case No 30 of 2015
Decision Date : 26 June 2015
Tribunal/Court : High Court
Coram : Tay Yong Kwang J
Counsel Name(s) : David Khoo and Joshua Lim (Attorney-General's Chambers) for the prosecution;
Amarjit Singh and Javern Sim (Gloria James-Civetta & Co) for the accused.
Parties : Public Prosecutor — AUB

Criminal Law – Offences – Sexual assault by penetration

26 June 2015

Tay Yong Kwang J:

1 The accused is a male Singaporean who is now 47 years old. He pleaded guilty to the following two charges:

That you, [AUB],

1st CHARGE are charged that you, sometime in 2012, at or about 2230hrs to 2300hrs, at Block [X] Canberra Road #[X], Singapore, did commit sexual assault by penetration on [V], a female who was at the time of offence under 14 years old (DOB: [X] July 1999), *to wit*, by inserting your middle finger into the vagina of the said [V], without her consent, and you have thereby committed an offence under section 376(2)(a) of the Penal Code (Cap 224, 2008 Rev Ed), punishable under s 376(4)(b) of the Penal Code (Cap 224, 2008 Rev Ed).

2nd CHARGE (Amended) are charged that you, on 26 February 2013, at or about 0200hrs, at Block [X] Canberra Road #[X], Singapore, did commit an obscene act with one [V], a female then aged 13 years old (DOB: [X] July 1999), *to wit*, by using your hand to touch and rub the vagina of the said [V], and you have thereby committed an offence punishable under section 7(a) of the Children and Young Person's Act (Cap 38, 2001 Rev Ed).

2 He also admitted the following offence and consented that it be taken into consideration for the purpose of sentence:

3rd CHARGE (Amended) That you, [AUB],

are charged that you, sometime in 2012, at Block [X] Canberra Road # [X], Singapore, did commit an obscene act with one [V], a female then aged 13 years old (DOB: [X] July 1999), *to wit*, by grabbing and squeezing the breasts of the said [V], and you have thereby committed an offence punishable under section 7(a) of the Children and Young Person's Act (Cap 38, 2001 Rev Ed).

3 The punishments provided by law in respect of the first charge are imprisonment of not less than eight years and not more than 20 years and caning of not less than 12 strokes. The offence in the second charge is punishable with a fine not exceeding \$10,000 or imprisonment not exceeding five years or both for a first offender.

4 I sentenced the accused to 12 years' imprisonment and 12 strokes of the cane for the first charge and to 1 year's imprisonment in respect of the second charge. I ordered both imprisonment terms to run consecutively with effect from 23 July 2014, the date of remand.

The Statement of Facts

5 The accused admitted all the facts set out in the following statement of facts:

THE ACCUSED

1. The accused is [AUB], Male / 47 years old (D.O.B.: [X] February 1968). He is the victim's biological father and was 44 years old and working as a deliveryman at the material time of the offences.

THE VICTIM

2. The victim is [V], Female / 15 years old (D.O.B: [X] July 1999) and she is presently a student at [X] School ("**the School**"). The victim is the accused's biological daughter and is the accused's eldest child. At the material time of the offences, the victim was between 12 – 13 years of age. The victim has two younger sisters and a younger brother and is presently staying at '[X]', a children's welfare home. She had been placed at the said welfare home when the offences were discovered, for her protection.

3. At the material time of the offences, the victim resided with the accused together with her mother (the accused's wife), grandmother and her three siblings at Blk [X] Canberra Road #[X], Singapore ("**the Flat**").

FIRST INFORMATION REPORT

4. The complainant is **Chang Yuan Yun, Eunice** and she was a social worker attached to the School at the material time.

5. Sometime in the morning of 26 February 2013, the victim approached the complainant in her capacity as a social worker for the School as she felt troubled. During her conversation with the complainant, the victim revealed that she was no longer a virgin and that the accused had sexually assaulted her in the Flat on numerous occasions in 2012 and 2013 whenever the victim's

mother was not at home. The victim's mother travelled to Malaysia often as she was from Malacca. Whenever she went to Malaysia, she would stay in Malaysia for two to four days.

6. Prior to the revelation by the victim to the complainant, the victim had not informed anyone about the incidents as she was under the impression that no one would believe her as the person who sexually assaulted her was her own father. The victim informed the complainant that she was also worried that the accused would start sexually assaulting her younger sister as she felt that her younger sister was prettier than her and would be reaching puberty soon.

7. The matter was then reported to the principal of the School and it was subsequently decided that the victim be brought to the KK Women's and Children's Hospital ("**the KKH**") for a medical check-up. On the same day at about 1624hrs, a police report was lodged stating that a case of sexual abuse had been reported.

FACTS PERTAINING TO THE OFFENCE OF SEXUAL ASSAULT BY PENETRATION

8. As the Flat only had two bedrooms, the victim slept in the Master Bedroom with the accused, her mother and youngest sister whilst the remaining two siblings slept with their grandmother in the second bedroom.

9. Police investigations revealed that sometime in 2012 at night, just before going to sleep, the victim told the accused that her body was aching. The accused then volunteered to give her a body massage and told the victim to take off her clothes and lie face down on the bed. The victim did so but left her panties and bra on. The accused unhooked the victim's bra and then slathered some cream on the victim's back and legs and began to massage her. The accused then put his hands under the victim's body and grabbed and squeezed both the victim's breasts. The accused then asked the victim to take off her panties and the victim complied.

10. The accused then ***inserted his middle finger into the victim's vagina and moved it in and out of her vagina***. The victim turned her head and saw that the accused was using his middle finger to penetrate her vagina and she felt pain as he was doing this. The victim was shocked and scared but did not tell the accused to stop as she was afraid of him. The victim did not consent to the act.

11. After some time, the accused stopped penetrating the victim's vagina with his middle finger. He did not say anything to her and went to sleep shortly thereafter. The victim put her clothes back on and subsequently fell asleep.

12. The victim's youngest sister was outside the same room at the material time and their mother was on an overseas trip to Malaysia.

FACTS PERTAINING TO THE OFFENCE OF COMMITTING AN OBSCENE ACT ON 26 FEBRUARY 2013

13. After several months, on 26 February 2013 at or about 2.00 a.m., the victim woke up after her alarm clock had rung. She had, the night before, set her alarm for 2.00 a.m. as she wanted to wake up early to make herself some fried rice that she would consume in school. However, after the alarm sounded, she decided against cooking and wanted to go back to sleep. At the material time, the accused, the victim's mother and her youngest sister were also sleeping in the same room.

14. As the victim tried to go back to sleep, she felt the accused touching her. The victim knew immediately that it was the accused who was touching her as he was sleeping beside her. The accused then put his hand into the victim's skirt and under her panties and **rubbed and touched her vagina with his fingers**. He continued rubbing and touching her vagina for about one – two minutes and thereafter stopped. The victim was too afraid of the accused to move or do anything. She did not consent to the act.

THE ARREST

15. The Accused was arrested on 27 February 2013 at about 1135hrs at Police Cantonment Complex and was released on police bail pending investigations on 28 February 2013. He was only charged in Court 26 of the State Courts on 23 July 2014. He has been in remand since that date.

POLICE INVESTIGATIONS

16. After the accused was released on police bail, the victim received several private messages from the accused on her *Facebook* account¹, on different occasions as follows:

- (i) On 1 March 2013, at 0631hrs – From a user named '[AAA]':

"My belove sister, do u remember (DDy) say a sentence to u, If i would done somethings wrong on you, would u forgive me. If yes reply me in here & do not lets anybody know? Ok"

- (ii) On or around 2 March 2013 – From a user named '[BBB]':

"My belove sister, do u remember (DDy) say a sentence to u, If i would done somethings wrong on you, would u forgive me. If yes reply me in here & do not lets anybody know? Ok"

- (iii) On 2 March 2013, at 1034hrs – From a user named '[BBB]':

"granny ask u to think properly. As D is going to jail forever our family will doom"

- (iv) On 2 March 2013, at 0823hrs – From a user named 'Wesley Casey':

"Do u remember one day we had a conversation on topic of if u had do something wrong, u will always be forgive, cos' u are my beloved daughter thru out my whole life!! Hope u know it, now it up to u whether u will forgive"

Police investigations revealed that the accused had set up *Facebook* accounts for each of his children and knew the passwords for the respective accounts. The accused then used the accounts he set up for the victim and her brother to send the victim private messages on her *Facebook* account. 'Wesley Casey' was the accused's moniker on *Facebook* and the accused had sent the victim the last message using his own *Facebook* account.

MEDICAL REPORT ON THE VICTIM

17. The victim was sent for a medical examination on 28 February 2013 and in her medical report dated 4 April 2013 (enclosed at **Tab A**), Dr Crystal Chin Hsuan, Associate Consultant at the Department of Obstetrics & Gynaecology at the KKH, indicated that an old hymen tear at 12

o' clock was seen.

18. The victim had not been sexually active and was a virgin at the material time.

REPORT FROM THE CHILD GUIDANCE CLINIC ON THE VICTIM

19. Dr Parvathy Pathy, a Senior Consultant at the Child Guidance Clinic ("Dr Pathy"), in her report dated 21 March 2013 (enclosed at **Tab B**), concluded that as the victim was engaging in self-cutting behavior when she was feeling emotionally distressed, appropriate psychological help needed to be obtained for her. The victim informed Dr Pathy that she was tired and heartbroken that her "beloved" father had sexually assaulted her.² The victim also told Dr Pathy that she finally told the complainant about the assaults because she "could not take it anymore".³

CONCLUSION

20. The accused has been charged accordingly.

[Footnotes:

¹ This is a Facebook account that the victim set up herself, and is not the same account as the one the Accused set up for her.

² Dr Parvathy Pathy, Medical Report, Child Guidance Clinic, Institute of Mental Health, 21 March 2013

³ Dr Parvathy Pathy, Medical Report, Child Guidance Clinic, Institute of Mental Health, 21 March 2013

[Emphases in original; Tabs A and B omitted]

The Prosecution's submissions on sentence

6 The accused has no criminal record. The Prosecution submitted that the appropriate sentence for both charges would be a global sentence of at least 13 years' imprisonment and 12 strokes of the cane.

7 Victims of sexual penetration experience the same emotional scars as rape victims. The sentencing considerations that apply to rape should therefore be applied to victims of sexual penetration as well. It has been said that rape is the most heinous offence against a female and that sexual penetration with the finger is another very vicious violation of the female body (*Public Prosecutor v BNN* [2014] SGHC 7 at [51]).

8 In the context of sexual offences against minors, it is stated in *GAJ v Public Prosecutor* [2015] SGHC 134 at [27] ("*GAJ*") that the highest end of the sentencing scale is reserved for cases in which the minor is particularly vulnerable and where the offender has exploited the minor to a significant degree by subjecting him or her to penetrative sexual activity in circumstances involving a great deal of coercion that might include violence. The Prosecution submitted that the present case involved almost all the elements mentioned and that necessitated the application of the highest end of the sentencing scale.

9 In *PP v NF* [2006] 4 SLR(R) 849 ("*PP v NF*"), the High Court discussed four broad categories of rape offences and set a benchmark sentence for each of them. Following from the arguments at [7] and [8] above, the Prosecution submitted that the present case was analogous to a Category 2 rape as formulated in *PP v NF*. Category 2 cases involved particularly vulnerable victims or where there were threats, where the offender was in a position of trust, where the victim was deprived of her liberty for a period of time and/or where the rape was carried out by a group. The suggested benchmark was 15 years' imprisonment and 12 strokes of the cane. The Prosecution also highlighted that Parliament has provided for aggravated sexual penetration offences the same enhanced punishments as those for aggravated rape.

10 The aggravating factors in this case included the fact that the victim was very young, being only 12 to 13 years old at the time of the offences. That was one to two years below the age set by Parliament for enhanced punishment to apply.

11 The accused was in a position of trust as the victim is his biological daughter. Further, the offences took place over a period of more than a year. The victim has suffered emotionally as a result of the sexual assaults. [\[note: 1\]](#) The assaults took place in the victim's home, a place where the victim ought to have felt safest. The victim has also been compelled to leave her home to live elsewhere with others. There was premeditation involved as the accused chose to strike when his wife (the victim's mother) was in Malaysia or when the family was asleep.

12 In further aggravation of his offences, the accused attempted to influence the victim into dropping the case against him by sending her messages on Facebook using different names, including that of the victim's brother. There was also emotional blackmail in the message about "granny". [\[note: 2\]](#)

13 In respect of the first charge, case precedents showed sentences ranging from 9 to 12 years' imprisonment together with 12 to 16 strokes of the cane.

14 For the second charge, the Prosecution submitted that the court should be guided by the key considerations of the vulnerability of the minor and the degree to which the accused has exploited the minor (see *GAJ* at [13]). The younger the minor, the more vulnerable she is likely to be. *GAJ* (at [50]) also suggests a benchmark of between 6 and 8 months' imprisonment where the sexual act that took place involved the touching of naked genitalia (regardless of whose genitalia it was), where the minor was 14 years old or more and did not appear to be particularly vulnerable, where the offender did not coerce or pressure the minor into participating in the sexual act and where there was no element of abuse of trust.

15 The Prosecution argued that the sentence here has to be significantly higher than the benchmark suggested in *GAJ* because the victim was under 14 years of age and vulnerable. She did not consent to being touched and the abuse of trust was of the highest order. The accused had also admitted the third charge and consented to it being taken into consideration for sentencing purposes.

The mitigation plea

16 The accused was the main provider of financial support for his family comprising his wife, his four young children and his elderly mother. He stated that he is deeply remorseful and regrets his mistake. He pleaded for leniency and promised not to repeat his wrongdoing. He "has sought to be a good man, husband and father". [\[note: 3\]](#)

17 The accused is a first offender and he has cooperated in the investigations, willingly disclosing matters pertaining to the offences. He urged the court to order the imprisonment terms to run concurrently.

18 The accused's wife, 41 years of age, wrote to the court to express her hope that her husband would be "given the lightest sentence". Since his remand, she has been having difficulty managing the four children. Recently, she was informed by her second daughter's school teacher that her daughter "has shown suicidal tendency". She requested that the accused be released soon so that he could assist her in managing the children.

19 In his handwritten letter to the court, the accused stated that he is sorry for his mistake and that he had no intention to hurt or harm anybody. He had been a law-abiding citizen all his life and cooperated fully with the police throughout the investigations. His family was in financial difficulties, having a combined income of about \$3,000. His 79-year-old mother has health issues. When his wife visited him while he was in remand, she was in tears and very upset, stressed and tired. Their children are falling apart—they have become vulgar and rude and were stealing money. They need nurturing, love and guidance. He is aware that he has ruined his family whom he loves. He therefore sought leniency, sympathy and forgiveness and asked that he be allowed to be re-united with his family as soon as possible. He promised never to break the law again.

The decision of the court

20 In sentencing the accused, I agreed generally with the Prosecution's submissions. Since this was a case of a father sexually assaulting his young daughter, the decided cases showed that a deterrent sentence was unavoidable.

21 Punishing a father for sexual offences against his own offspring is one of the most unenviable tasks of a sentencing court. Such crimes are abhorrent and, in order to protect young, vulnerable victims, the court metes out severe punishments with the hope of spreading a message of general and specific deterrence. However, punishing the offender in such situations often means taking away the source of financial support for the victim and the rest of the family. In some cases, the victim is even blamed for breaking up the family. Because of this, some victims may not dare to seek help. I certainly hope that the accused's family, particularly his wife, will not turn the victim into the villain in this case. The victim probably needs the love and assurance of her mother even more now than before.

22 Another aspect of imposing deterrent sentences in the form of imprisonment in such cases is that the accused should be kept away from the young victim for a sufficiently long period so that she has time to grow up without worrying that her assailant is living in the same household and possibly alone with her at times. That is the other very unsavoury reality of such offences—often, the offender and the victim have to meet again sometime in the future and probably have to live together, except where the offender's wife divorces him and leaves with the children.

23 I agree that the younger the victim, the more vulnerable and helpless she is. The Prosecution has argued that the victim here was very young and the sentence should therefore be adjusted upwards in severity. However, 12 to 13 years in age is not significantly lower than the 14 years set by Parliament for the purpose of the offence of aggravated sexual penetration, for which minimum punishments have already been mandated. The victim's age in this case therefore should not be a major or a determinative factor. It would be quite different if she were, say, 8 years old or younger at the time of the offences. However, as in all matters of this nature, it is a question of degree and I will certainly not try to ascribe a particular length of imprisonment to each year in age.

24 The overall criminality of the offences should be looked at. In my view, the determinative and weightiest factors in this case are the facts that the victim is the accused's daughter and that the sexual assaults took place within the home, a place where the victim should have felt completely safe.

25 Imprisonment is mandatory for the first charge. In determining the overall criminality, I was of the opinion that the second charge warranted imprisonment, especially in the light of a similar offence taken into consideration. I also decided that both terms of imprisonment should run consecutively. The two offences were clearly not part of the same transaction as they were committed on different occasions although they occurred in the same location and against the same victim. The rationale for the one-transaction rule is that consecutive sentences are not appropriate if the various offences involve a single invasion of the same legally protected interest (*Mohamed Shouffee bin Adam v Public Prosecutor* [2014] 2 SLR 998). Although the two offences involved an unwelcome invasion of the victim's bodily integrity, particularly her vagina, I think it would be against good sense to regard them as a single invasion of the same legally protected interest in the circumstances here. In any case, as mentioned earlier, the two offences occurred on different days and were not part of a continuum of events. Not ordering consecutive imprisonment terms in such a situation is to give an unwarranted discount to the accused for multiple assaults.

26 For these reasons, I imposed the sentences set out at [4] above. The accused has filed a notice of appeal against sentence.

[\[note: 1\]](#) Statement of Facts, para 19.

[\[note: 2\]](#) Statement of Facts, para 16(iii).

[\[note: 3\]](#) Mitigation plea at para 13.

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