

Public Prosecutor v AEY
[2010] SGHC 3

Case Number : Criminal Case No 56 of 2009
Decision Date : 05 January 2010
Tribunal/Court : High Court
Coram : Woo Bih Li J
Counsel Name(s) : Sellakumaran Sellamuthoo and Chua Ying-Hong (Attorney-General's Chambers)
for the public prosecutor; Accused in person.
Parties : Public Prosecutor — AEY

Criminal law – Ill-treatment of child – Sexual assault by penetration – Sentencing

5 January 2010

Woo Bih Li J:

Background

1 The accused AEY (“the Accused”) faced seven charges involving the same victim (“the Victim”) on various occasions. The charges read:

That you, [**AEY**],

1st Charge on a day between 8 and 16 March 2008, at about 6.00 pm, at [XXX] Singapore, being a person who has care of [XXX] [DOB: XXX], then a child of 8 years, did ill-treat the child, namely, by subjecting her to physical abuse by using a carrot-shaped glass table decorator to slash her stomach, and you have thereby committed an offence under section 5(1) of the Children and Young Persons Act, Chapter 38, and punishable under section 5(5) of the same Act.

2nd Charge on a day in the month of April 2008, sometime in the afternoon, at [XXX], Singapore, being a person who has care of [XXX] [DOB: XXX], then a child of 8 years, did ill-treat the child, namely, by subjecting her to physical abuse by pulling her hair and punching her face, and you have thereby committed an offence under section 5(1) of the Children and Young Persons Act, Chapter 38, and punishable under section 5(5) of the same Act.

3rd Charge on a day in the month of April 2008, sometime in the evening, at [XXX], Singapore, being a person who has care of [XXX] [DOB: XXX], then a child of 8 years, did ill-treat the child, namely, by subjecting her to physical abuse by using a towel to strangle her, and you have thereby committed an offence under section 5(1) of the Children and Young Persons Act, Chapter 38, and punishable under section 5(5) of the same Act.

4th Charge on a day in the month of April 2008, sometime in the afternoon, at [XXX], Singapore, being a person who has care of [XXX] [DOB:XXX], then a child of 8 years, did ill-treat the child, namely, by subjecting her to physical abuse by using force to separate the middle and ring fingers of her right hand, and you have thereby committed an offence under section 5(1) of the Children and Young Persons Act, Chapter 38, and punishable under section 5(5) of the same Act.

5th Charge sometime in February 2008, at [XXX], did penetrate with your penis, the mouth of XXX [DOB: XXX], a person under 14 years of age, without her consent, and you have thereby committed an offence under section 376(1)(a) of the Penal Code, Chapter 224, and punishable under section 376(4)(b) of the same Act.

6th Charge on a day in April 2008, at [XXX], Singapore, did sexually penetrate, with your finger, the vagina of XXX [DOB: XXX], a person under 14 years of age, without her consent, and you have thereby committed an offence under section 376(2)(a) of the Penal Code, Chapter 224, and punishable under section 376(4)(b) of the same Act.

7th Charge on a second occasion in April 2008, at [XXX], Singapore, did sexually penetrate, with your finger, the vagina of XXX [DOB: XXX], a person under 14 years of age, without her consent, and you have thereby committed an offence under section 376(2)(a) of the Penal Code, Chapter 224, and punishable under section 376(4)(b) of the same Act.

2 The prosecution proceeded with the first, second, fifth and sixth charges. The Accused pleaded guilty to these charges. After considering a statement of facts which the Accused accepted, I convicted him of the offences under the first, second, fifth and sixth charges. For the purposes of sentencing, the Accused consented to the remaining three charges to be taken into consideration.

3 The charges under s 5(1) of the Children and Young Persons Act (Cap 38, 2001 Rev Ed) ("CYPA") were punishable with a fine not exceeding \$4,000 or imprisonment for a term not exceeding four years or both.

4 The more serious charges were those in respect of offences under s 376(1)(a) and 376(2)(a) of the Penal Code (Cap 224, 2008 Rev Ed). As the Victim was under 14 years of age at the time of the offences, the prescribed punishment under s 376(4) of the Penal Code was imprisonment for a term between eight years to 20 years and caning of not less than 12 strokes.

5 I sentenced AEY as follows:

(a) First charge – 24 months' imprisonment.

(b) Second charge – 12 months' imprisonment.

(c) Fifth charge – 12 years' imprisonment and 14 strokes of the cane.

(d) Sixth charge – 12 years' imprisonment and 14 strokes of the cane.

The sentence for the sixth charge was to run consecutively from the sentence for the fifth charge which was backdated to 27 May 2009. That was the date of remand. Therefore, the total sentence of imprisonment was 24 years. The maximum number of strokes of the cane was 24 as provided under s 230 of the Criminal Procedure Code (Cap 68, 1985 Rev Ed).

6 The Accused has filed an appeal against sentence.

7 The circumstances in which the offences were committed were found in the statement of facts.

The Victim

8 The Victim was eight years old at the material time.

9 The Victim is in the low average range of intelligence. Based on the findings of Dr [C], Senior Consultant Psychiatrist of [G] Clinic, the Victim has an IQ of 80, whilst the normal IQ range is between 90 and 110.

10 The Victim is currently being cared for by a foster mother.

The Accused

11 The Accused is a 48-year old Malay male. Prior to his arrest, he was residing at a Housing and Development Board flat ("the Flat") with his wife. He was babysitting the Victim at the time that the offences were committed.

First Information Report

12 On 23 April 2008, the Police received information from the [E] Hospital that the Victim had suffered non-accidental injuries.

Background

13 The Victim and her younger sister had been entrusted to the care and guardianship of the Accused and his wife sometime in 2007 as the Victim's biological mother was unable to care for them personally. The Accused's wife had agreed to care for them for a stipulated monthly sum, and the Accused and his wife were fully responsible for all of the Victim's affairs, including school-related matters. The Victim and her younger sister resided at the Flat. The Victim's biological mother only visited the Victim about once a month or once every few months.

14 On 23 April 2008, the Victim's school counsellor noticed some bruises on the Victim's forehead and the outer part of her palm. Upon closer examination, more bruises were discovered on the Victim's body and the Victim was referred to and warded at [E] Hospital. The Ministry of Community Development, Youth and Sports was also notified. The Victim was eventually discharged from [E] Hospital on 9 May 2008. The Victim and her younger sister were then placed in the care of a foster mother.

15 On 18 April 2009, the Victim told her foster mother that the Accused had put his penis in her mouth and had also digitally penetrated her private parts. On 6 May 2009, at about 4.43pm, the Victim's foster mother lodged a police report at [N] Neighbourhood Police Centre about the Victim having been sexually abused by the Accused.

Arrest

16 On 25 May 2009, the Accused was arrested. His wife was also placed under arrest.

17 The wife has since been convicted on four counts of physical abuse of the Victim under s 5(1) of the CYPA and sentenced to 14 months' imprisonment.

Facts relating to the first charge under s 5(1) of the CYPA

18 Sometime during the March school holidays of 2008, between 8 March 2008 and 16 March 2008, at about 6pm, in the Flat, the Accused had used a carrot-shaped glass table decorator to slash the Victim's stomach.

19 During her examination of the Victim on 23 April 2008, Dr [T], Registrar of the [E] Hospital, noted that there was a healed "1cm scar (self-inflicted)" on the Victim's stomach.

20 Dr [T] subsequently clarified that the reference to the 1cm scar as having been self-inflicted was recorded based on information provided by the Victim during the examination on 23 April 2008.

21 The Accused admitted that he had used a carrot-shaped glass table decorator to hurt the Victim in the manner set out in the first charge.

Facts relating to the second charge under s 5(1) of the CYPA

22 Sometime in the month of April 2008, in the afternoon, at the Flat, the Victim was playing in the master bedroom with her younger sister when the Accused came into the room and started pulling the Victim's hair. The Accused also punched the Victim's face.

23 In her medical report dated 30 May 2008, Dr [T] confirmed that there was some dried blood at the Victim's right nostril, and that the area around the Victim's right cheek was tender and swollen.

Facts relating to the fifth charge under s 376(1) of the Penal Code

24 Sometime in February 2008, the Victim helped the Accused's wife put some clothes into the cabinet in the master bedroom of the Flat. The Accused's wife was in the living room. When the Victim was about to leave the master bedroom after putting the clothes in the cabinet, the Accused appeared and told her to go back into the room.

25 The Accused stood in front of the Victim and pulled down his shorts. The Victim was standing and facing the Accused then. The Accused then took out his penis and pushed it into the mouth of the Victim while holding onto the Victim's head.

26 The Accused only withdrew his penis from the Victim's mouth when the Victim shook her head in objection and was about to shout. The Accused then warned the Victim not to tell his wife about what he had done and threatened to beat her if she did. Thereafter, he left the room.

Facts relating to the sixth charge under s 376(2) of the Penal Code

27 Sometime in April 2008, the Victim came out from the toilet in the master bedroom of the Flat and found the Accused sitting on the floor of the bedroom. The Accused told the Victim to sit beside him and she complied. After the Victim sat down on his left, the Accused told the Victim to raise her right leg as she was sitting on something.

28 When the Victim raised her leg, the Accused slipped his hand into the side opening of her shorts and panties, and penetrated her vagina with his finger. The Accused then pushed his finger in and out of the Victim's vagina a few times.

29 When the Victim shouted out in pain, the Accused covered her mouth and told her not to

shout. The Accused then withdrew his finger and saw that his finger was stained with blood. He then left the room. After the Accused left the room, the Victim pulled down her shorts and saw that there was blood on her panties.

30 The Victim was examined by Dr [R], Associate Consultant, Department of Obstetrics and Gynaecology at the [E] Hospital, and found to have an old hymenal tear at the 6 o'clock region.

31 In mitigation, the Accused asked for leniency as he has three children.

32 The prosecution submitted that there were many aggravating factors.

33 The Victim was of a tender age of eight years old and also of a low average range of intelligence.

34 In moving the Penal Code (Amendment) Bill through which s 376 of the Penal Code was enacted, the Senior Minister of State for Home Affairs (Associate Professor Ho Peng Kee) stated on 22 October 2007:

"Sir, whilst the Penal Code protects society generally, we should be mindful that some amongst us are more vulnerable to crimes than others. These include persons of a young age and persons with mental disability."

35 The Victim had suffered significant injuries such as the 1cm scar on her stomach, dried blood in her right nostril, tenderness and swelling in her right cheek, a 4cm scar in the web space between the middle and ring finger of her right hand and a tear in her hymen. She had to be hospitalised for more than two weeks.

36 She also suffered considerable pain when the Accused used force to separate her fingers and when the Accused digitally penetrated the Victim's vagina. In the latter situation, the Victim shouted out in pain. The Victim found blood on her panties.

37 The psychiatric report on the Victim stated that she felt ashamed and angry at the Accused. She tried not to think about the incidents.

38 The Victim's Impact Statement dated 2 December 2009 stated that the Accused had hurt her and embarrassed her. The medical examination she had to undergo for police investigation caused her pain and embarrassment. At times before the Victim went to sleep, she would feel sad and troubled over what the Accused had done. She would no longer trust any babysitter suggested by her mother. She now gets angry more easily with her younger sister.

39 The prosecution submitted that for the first charge, an instrument had been used. The Accused had abused the trust reposed in him and abused the Victim in her home which she would have considered to be a safe haven.

40 The physical abuse was without reason and the sexual abuse took place even when it was clear that the Victim was an unwilling participant.

41 The prosecution submitted that the Accused's plea of guilt and lack of antecedents should be given little or no weight. It was only in April 2008 that the Victim's injuries were noticed and the physical abuse was discovered. Even then, the Accused did not surrender himself. It was only after the Victim had confided in her foster mother about a year later in April 2009 that the Accused was

arrested on 25 May 2009. The Accused had also vacillated in his plea of guilt before he affirmed this plea.

42 The prosecution accepted that a psychiatric report on the Accused stated that the Accused was functioning at the borderline or low average range of intelligence. Nevertheless, he was found to be fit to plead and was not of unsound mind. He was aware of the wrongful nature of his offences.

43 The prosecution submitted that the sentences for the two more serious offences under the Penal Code should be ordered to run consecutively and that the Accused should be sentenced to three to four years' imprisonment for each of the CYPA charges. In total, the prosecution sought a minimum of 24 years' imprisonment and 24 strokes of the cane.

44 In *Mohd Iskandar bin Abdullah v PP* (MA No 187/98/01), the accused pleaded guilty to two charges of assaulting two of his sons in a manner likely to cause unnecessary suffering or injury to their health under s 4(1) of the CYPA (Cap 38, 1994 Rev Ed). In one offence, the accused had punched his ten year old son on his right cheek for uttering vulgar language at a boy in the neighbourhood. In the other offence, his twelve year old son had run away from home with his sister. Three days later, the victim returned home alone and the accused kicked him on his head causing him to lose consciousness temporarily. Thereafter, the accused used the buckle of his belt to hit the victim's left hand, buttock, thighs and his head near to a ear until the belt buckle broke off. Three other offences were taken into consideration. He was sentenced to 18 months' imprisonment on each of the two charges in question with the sentences to run concurrently. His appeal on sentence was dismissed.

45 In *PP v Z* [2003] SGDC 62, the accused pleaded guilty to three charges of wilfully causing unnecessary injury to the health of her nine year old step-daughter under s 4(1) of the CYPA (Cap 38, 1994 Rev Ed), ie, the third, fourth and fifth charges. Under the third charge, the accused had slapped and caned the victim. Under the fourth charge, the accused had given the victim one sleeping pill to eat about three times a week because she wanted the victim to sleep. Under the fifth charge, the accused bit the victim on her right ear as she blamed the victim for causing a kitchen cabinet to fall and the plates within to drop onto the floor. The accused was sentenced to nine months' imprisonment for the third and fourth charges and six months' imprisonment for the fifth charge. The first two sentences were to run consecutively making a total of eighteen months. The accused's appeal against sentence lapsed.

46 In *PP v Firdaus bin Abdullah* [2009] SGDC 197, the accused was tried, convicted and sentenced to one year's imprisonment for each of two charges of ill-treatment of a three year old child. The first (DAC 040615/2008) was for punching the victim on the head (the punch was so hard that it caused the accused to injure his knuckle and the victim to fall), an offence under s 5(1) CYPA. The second (DAC 040616/2008) was for grabbling, shaking and biting the victim's penis and scrotum after slamming the victim's head against a wall which was also an offence under s 5(1) CYPA. The accused was also sentenced to six years' imprisonment and 12 strokes of the cane for causing grievous hurt to the victim by repeatedly punching his face and slamming his head against a doorframe. The victim eventually died from the injuries. One sentence for ill-treatment was ordered to run consecutively with the sentence for causing grievous hurt making a total of seven years' imprisonment and 12 strokes of the cane.

47 On appeal, Chan Sek Keong CJ enhanced the sentence for the ill-treatment under DAC 040616/2008 to the maximum four years' imprisonment but did not vary the other sentence for ill-treatment. The charge for causing grievous hurt was enhanced to the maximum of seven years' imprisonment and 12 strokes of the cane. All three sentences were ordered to run consecutively,

making a total of 12 years' imprisonment and 12 strokes of the cane.

48 As for the more serious charges under the Penal Code, I considered two precedents to be helpful as some other precedents involved more than one victim.

49 In *PP v Selvaraju Jayaselvam* (CC No 14/2009), the accused was a 26-year old Indian national male with no antecedents. The accused was sent to a primary school to do some repair work. In the school toilet, the accused performed fellatio on his seven year-old primary school victim and attempted to force the victim to perform fellatio on him. The accused pleaded guilty to one charge of sexual assault by penetration under s 376(1)(b) punishable under s 376(4) of the Penal Code. He was sentenced to ten years' imprisonment and 12 strokes of the cane.

50 In the case of *PP v Chan Kok Weng* (CC No 24/2009), the accused was a 29-year old male who performed fellatio on the victim, a seven year old boy, in the toilet of the Yishun Community Library. The accused was a stranger who had targeted the victim and waited for the victim in the toilet. The accused pleaded guilty and was sentenced to 12 years' imprisonment and 12 strokes of the cane. He had no similar antecedents.

51 I accepted that the lack of antecedents was not a mitigating factor as the Accused had abused the Victim on various occasions.

52 As for his plea of guilt, I did give some weight to that even though he did not surrender himself and even though he did vacillate before affirming his decision to plead guilty. A plea of guilt did save the Victim from having to testify and it would be no easy task to prosecute any accused based on the evidence of a young victim.

53 On the other hand, I accepted the aggravating factors submitted by the prosecution.

54 Unlike the two precedents mentioned above for the charges under the Penal Code, the Accused had abused the trust reposed in him. As one of the care-givers, he was supposed to protect and care for the Victim. Instead, he did the opposite.

55 The young age of the Victim was an aggravating factor as reflected in the minimum punishment provision in s 376(4)(b) Penal Code.

56 The low average range of intelligence of the Victim was an aggravating factor even though the Victim was not mentally retarded.

57 In respect of each of the four offences, the Victim had suffered pain and suffering as the prosecution had outlined.

58 The Victim appeared to have undergone much more severe post-trauma psychologically and emotionally than the victims in the two precedents (for the charges under the Penal Code) who did not appear to have any significant post-trauma. Furthermore, the Victim is now more easily annoyed with her sister who has become an indirect victim.

59 In the case of the offences under the CYPA, the Accused had abused the Victim for no reason at all. It was not as though she had done something wrong that caused him to lose his temper. It appeared that he abused her as and when he felt like it. The Accused's conduct in respect of the first charge, as compared with the second charge, was the more blameworthy. He had deliberately taken the carrot-shaped glass table decorator to slash her stomach, not sufficiently to cause her more

serious injury, but to inflict pain on her which resulted in a scar. That is why I ordered two years' imprisonment for the first charge and one year for the second charge.

60 As for the more serious offences, I was of the view that the Accused should be sentenced to at least 12 years' imprisonment and 14 strokes of the cane for each of them in view of the aggravating factors. In considering whether to impose stiffer sentences of imprisonment, I took into account the fact that I was minded to order both of these sentences to run consecutively. Bearing in mind the totality principle, I was not minded to order stiffer sentences of imprisonment for each of the two of the more serious offences. Neither was I minded to order stiffer caning sentences. In any event, the total number of strokes under the law was 24.

61 In view of the fact that the Accused was convicted of at least three offences, at least two of the sentences were to run consecutively. I was of the view that it would be too light if I ordered the sentence for only one of the more serious offences to run consecutively with the sentence for one of the offences under the CYPA. Hence, I ordered both sentences for the more serious offences to run consecutively.

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