B v Public Prosecutor
[2002] SGHC 290

Case Number : MA No 155 of 2002

Decision Date : 09 December 2002

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Ismail Hamid (Ismail Hamid & Co) for the appellant; David Chew Siong Tai (Deputy Public Prosecutor) for the respondent

Parties : —

Evidence – Weight of evidence – Reliability of evidence of child witness

Evidence – Witnesses – Corroboration – Sexual offences – Whether previous complaints amount to corroboration – Evidence Act (Cap 97, 1997 Rev Ed) s 159

Evidence – Witnesses – Corroboration – Uncorroborated evidence of child witness – Whether safe to convict without corroboration

Judgment

GROUNDS OF DECISION

This was an appeal against conviction. The appellant, B, faced two charges under s 354 of the Penal Code (Cap 224) for using criminal force to outrage the modesty of his three-year old daughter, N. The first charge alleged that he molested her on 13 June 2001 in the playground near their flat, by touching her private parts with his finger. The second charge alleged that he molested her on 14 June 2001 on board a bus, again by touching her private parts with his finger. The punishment prescribed under s 354 is either a term of imprisonment that may extend to two years, or caning, or a fine, or with any two of such punishments. The appellant was found guilty on both charges by the district judge, who sentenced him to 15 months' imprisonment per charge. Both sentences were ordered to run consecutively making it a total term of 30 months' imprisonment. No caning was imposed as he was over 50 years old.

Background Facts

2 The appellant married Mdm Chin in December 1987. They have three children – J aged 13, K aged 9 and N aged 3. The appellant worked as a sales manager in a company. At the time of the trial, Mdm Chin was seeking a divorce from the appellant. She worked as a domestic helper.

3 Sometime in May 2001, the appellant left the family home in Bukit Panjang temporarily to live in a refuge centre at Waterloo Street. According to the appellant, he left the family home for two main reasons. First, because he was suicidal and wanted to commit suicide together with his children and secondly, because the illegal moneylenders, from whom he had taken loans, were pressing him for repayment.

4 He returned to the family home for the first time on 12 June 2001.

5 Sometime during the late afternoon on 13 June 2001, N told her mother that the appellant had touched her private parts, while she was on the "swing" in the playground downstairs. Her mother did not take her comment seriously as there were no swings in the playground that N was referring to. Mdm Chin also presumed that, even if the appellant had indeed touched N's private parts, it would

have been done accidentally.

6 On 14 June 2001, Mdm Chin was working. When she telephoned home from her workplace to check on her children, J informed her that the appellant had taken N out. Mdm Chin then told J to telephone the appellant and ask him to return home. J gave evidence that he called the appellant on his mobile phone and relayed the message to him. The appellant eventually returned home with N at around 1 p.m. J gave evidence that he noticed that N's eyes "were red".

7 J also testified that he overheard his mother asking N if her father had touched her. N stated that he had and that he touched her on her "backside". According to J, N also pointed to her "left side" and touched her left buttock.

8 Mdm Chin gave evidence that as she was bathing N that night, N began to scream with pain, when she aimed the shower head at N's private parts. Mdm Chin asked her if she had hurt herself or fallen down, to which the child responded, "No, must be Daddy touch and hurt me". N maintained this response even after being repeatedly questioned by Mdm Chin. When Mdm Chin examined N's private parts more closely, she was shocked to discover that the left side of N's vagina was a 'bloody red colour'. Mdm Chin then asked N again whether she was certain that the injury was caused by her father. N replied in the affirmative. Mdm Chin testified that she was very upset to discover what her husband had done and was in tears.

9 When the appellant returned home at around 11 pm that night, Mdm Chin confronted him with what N had said. Mdm Chin testified that the appellant's first reaction was to look at N and question her: "N, how can you say that? Daddy loves you so much". According to Mdm Chin, N "looked scared, shook her head" and ran to stand by Mdm Chin's side. Mdm Chin then reassured her and asked N to confirm whether the appellant had touched her. N nodded in reply and said, "yes, Daddy touch". Mdm Chin immediately pointed out to the appellant that the accusation did not come from her, but directly from N. Upon hearing this, the appellant walked up to Mdm Chin and challenged her to make a police report, claiming that a lie-detector test would prove his innocence.

10 The appellant left home the following day. Mdm Chin did not go to the police station, nor did she bring N to see a doctor. This was because she claimed to have been still in a state of shock and confusion, even after consulting her sister as to what she should do.

11 On 25 June 2001, Mdm Chin telephoned her social worker to speak about the pressure that the appellant's brother was putting on her to sell the family flat in order to repay the appellant's debts. During the course of the conversation, she informed the social worker about N's vaginal pain and her revelation that they were caused by the appellant touching her. Pursuant to her social worker's instructions, Mdm Chin brought N for a medical examination that same day.

12 The medical examination revealed a tear in N's hymen. According to Dr June Tan, a Registrar of the Department of General Obstetrics & Gynaecology at the KK Women's and Children's Hospital, who examined N, the tear was beyond a week old. The cause of the tear was due to penetration of the vagina by a tubular object such as a finger, pen or pencil. It was also unlikely that a lot of force was used. She was also of the opinion that it was not possible for the tear to have been caused by the child performing a "split" with one leg stretched out in front and the other behind. This was because anatomically, the vagina was situated beyond the hip joints. It was also "highly unlikely" for the tear to have been caused through exercise unless there was a "history of severe trauma" to the vaginal area.

13 A police report was made by the hospital on that very day. On 25 June 2001 Mdm Chin and

her three children also moved out of the family flat to stay with Mdm Chin's sister in Bedok.

14 During cross-examination, Mdm Chin testified that she had spanked N's hand on previous occasions when N had put her hand in her pyjamas and pulled at her panties. However, she denied that she had ever caned the child for putting her fingers into her own vagina.

The prosecution's case

15 The prosecution's main evidence against the appellant, was the testimony of N who was four years old at the time of the trial. N gave evidence of the two incidents of molest. In relation to the first alleged incident, she stated that her "daddy" brought her to the playground near their home during "morning time" one day. She stated that her father touched her "private parts" with his fingers. It was painful. She later told her mother about the incident. As for the second alleged incident, she gave evidence that her father touched her vagina when she was sitting on her father's lap, facing him in a bus. It was painful when her father touched her vagina. She told her mother about this incident as well.

16 During cross-examination, N denied touching herself "where she pass urine".

17 According to the prosecution, N's evidence relating to the two incidents of molest were corroborated by the evidence of Mdm Chin, who testified that N had told her about the two incidents, as well as the medical evidence.

The defence

18 The appellant's defence was one of total denial. As regards the first incident, the appellant denied bringing N to the playground but only to the void deck where there was a considerable amount of human traffic. He also gave evidence that J went down to the void deck together with them. J then left to buy breakfast. After J bought breakfast, all three of them returned home together.

19 As regards the second incident, the appellant testified that he brought N out that morning with the intention of going to the Shell petrol station in Jalan Jurong Kechil so that he could exchange his Shell reward points for some toys. J and A did not accompany them as they were playing a board game at home. In order to get to the petrol station, the appellant and N had to take a feeder bus to Bukit Panjang Interchange where they then boarded bus number 970. On both legs of the journey, N sat on his lap facing him and fell asleep on his shoulder. When they arrived at the petrol station, the appellant discovered that there were no toys available for redemption. He therefore promised to get N a toy at the bus interchange. In the meantime, he received a telephone call on his mobile phone from J, who informed him of Mdm Chin's request to bring N home. He then took bus number 970 back to the bus interchange. N woke up from her slumber when she arrived at the bus interchange. According to the appellant, N became tearful when his promise to buy a toy at the bus interchange did not materialise. As a result, she sat next to the appellant on the feeder bus, and was grumbling for the duration of the journey back home. In his defence, the appellant maintained that their sitting positions on the bus and the distance between the seats made it physically impossible for him to have inserted his finger into N's vagina. He also stressed that the many passengers on board the bus would have made it difficult for him to commit the alleged offence.

The decision below

20 The trial judge who bore in mind the test applicable to the evidence of child witnesses, found N's evidence in relation to the two alleged instances of molest to be coherent and consistent insofar

as the material aspects were concerned. She also found that the medical evidence negated any suggestion that the intrusion into N's vagina arose from a pure fantasy on N's part. She was of the opinion that given N's age, her intellectual development and her grasp of English, the areas of "apparent confusion" in her evidence were not fatal to the prosecution's case as they had not detracted from the cogency of N's evidence in relation to the two incidents.

21 By contrast, the trial judge found the appellant to be "glib and cunning". She disbelieved his evidence which she found to have been carefully tailored to meet the prosecution's case.

22 Having assessed the evidence before her, she was satisfied that the prosecution had proven the two charges against the appellant beyond reasonable doubt and convicted the appellant accordingly.

The appeal

23 The main ground of appeal was that trial judge had erred in finding that the prosecution had proven its case beyond all reasonable doubt. Given that this case essentially involved a bare allegation of sexual abuse by a child complainant against a bare denial by her father, the appellant's main point of contention was that the trial judge had erred in convicting the appellant on the uncorroborated evidence of N. In this connection, the appellant submitted that the trial judge was wrong in accepting the medical evidence and Mdm Chin's testimony as corroborative of N's allegation. He further submitted that the trial judge had failed to appreciate that N's evidence was not reliable as the areas of "apparent confusion" in N's evidence, which the trial judge had alluded to in her written grounds, were material and had diminished the prosecution's case.

The law

24 The current legal position vis--vis the evidence of child witnesses and complaints of sexual abuse is that, while corroboration is no longer essential, the trial judge must still remain sensitive to the requirement of corroborative evidence when convicting the accused. Where the only evidence before a court is a bare allegation against a bare denial, the court should bear in mind that it would be dangerous to convict on the uncorroborated testimony of a complainant of sexual abuse unless her evidence is so reliable or unusually compelling: *Tan Kin Seng v PP* [1997] 1 SLR 46*, Soh Yang Tick v PP* [1998] 2 SLR 42. As I have previously explained in *Teo Keng Pong v PP* [1996] 3 SLR 329, there is nothing magical about the words "unusually compelling" which is really another way of stating that the witness testimony was so convincing that the prosecution's case was proven beyond reasonable doubt, solely on the basis of that evidence.

25 In the situation where the complainant of sexual abuse is a child, the manner in which the court should treat the evidence of the child witness is no different from that accorded to the evidence of an adult witness. In other words, the court can only convict the accused on the uncorroborated testimony of the child complainant if the court is satisfied that the child's evidence is so reliable or unusually compelling : see *Lee Kwang Peng v PP* [1997] 2 SLR 278.

26 In determining the reliability of the evidence in question and hence the corresponding weight to be accorded to it, the court should always assess the evidence in the light of all the circumstances of each case as well as the accumulated knowledge of human behaviour and common sense. Consequently, where the assessment of the overall reliability of the evidence of a child witness is concerned, it is prudent for the court to be mindful that children, depending on their level of intellectual maturity, may occasionally confuse fantasy with reality.

Whether there was any corroborative evidence

27 It is well-established that in order for supporting evidence to carry weight in cases of child witnesses or complainants in sexual offences, an essential ingredient is that of independence: *Soh Yang Tick v PP* [1998] 2 SLR 42. As such, although a previous complaint by a victim of sexual abuse to another person would technically qualify as corroboration under s 159 of the Evidence Act (Cap 97), as a recent complaint, it was held in *Khoo Kwoon Hain v PP* [1995] 2 SLR 676 that these are not corroboration by *independent* evidence as the complaints originated from the complainant and would be equally self-serving as a s 159 corroboration of the accused's denial.

28 Turning to the facts of the present case, I noted that Mdm Chin's observation that N's vagina was a "bloody red colour" as well as the medical evidence of a tear in N's hymen were only relevant in establishing the fact that N had sustained injuries to her vagina. They were certainly not corroborative of N's allegation that the injuries were caused by the appellant. In fact, the only evidence available in court as to how N may have sustained the injuries in question was N's testimony that her father had "touched" her "private part" on two separate occasions. As such, I was unable to accept the prosecution's submission that N's evidence relating to the two incidents of molest was corroborated by the evidence of Mdm Chin. This was because Mdm Chin's testimony as to how N had sustained the injuries was nothing more than a repetition of N's previous complaints to her.

29 Nevertheless, I was of the firm opinion that, in light of all the circumstances of the case, N's evidence as a whole, was so reliable that the requirement of independent corroborative evidence could be safely dispensed with.

The reliability of N's evidence

30 In assessing the overall reliability of N's evidence, I took into account the appellant's suggestion that N could have sustained the injuries while "playing with her private parts" and had implicated her father because she was afraid of the punishment that her mother would have meted out when Mdm Chin found out about the state of N's vagina. I found this suggestion to be incredible, considering that there was no evidence before the court that N had inserted her fingers into her vagina. Furthermore, common sense dictated that, even if N had a tendency, not just to pull at her panties, but to touch her private parts, a child would have discontinued doing so the moment pain was felt. It was certainly unlikely that a three-year old child would have been so forceful in touching her private parts as to result in her own vagina turning a "bloody red colour". I also found it implausible for a child of such a tender age to possess the capacity to concoct a story implicating her father in order to escape punishment from her mother.

31 In fact, the trial judge who had the opportunity to observe the demeanour of N, also found that the consistency in her evidence did not arise from some "self-serving instinct or calculated plot". Furthermore, as aptly pointed out by the trial judge, N had informed Mdm Chin about the appellant touching her in the playground even before Mdm Chin had questioned her about the redness and pain in her vaginal area. The spontaneous manner in which N had related the incident to Mdm Chin on 13 June 2001 clearly demolished the appellant's defence. In light of N's age and family circumstances, the trial judge even took into consideration the possibility that N may have been coached in her story. However, she found no evidence to that effect and noted that the defence did not venture to suggest any coaching.

32 Having discounted the possibility that the injuries were self-inflicted or that her allegations were motivated by some ulterior motive, the next consideration was the extent to which the reliability of N's evidence was affected by the inconsistencies that were highlighted by the appellant.

33 Some examples of these inconsistencies included how N had initially stated that she was "sitting" when she was molested, however when she was referred to the photographs of the playground, she stated that the appellant molested her while she was "hanging" from the "monkey-bars". Further, N was asked during her examination-in-chief whether there was "anyone else" in the playground, she replied that there were "two people". Subsequently in cross-examination, she testified that that apart from "me and Daddy" there was no-one else in the playground. The appellant also stressed that N's evidence that her father had touched her private part on the bus was materially inconsistent with the evidence of J who testified that he overheard N telling Mdm Chin that the appellant had touched her "backside" and that he saw N indicating her left "buttock".

34 In my judgment, these inconsistencies did not undermine N's testimony in a material way. This was because they were largely inconsequential, and therefore had little bearing on the crucial aspects of the case or could be satisfactorily explained. Taking the discrepancy between the evidence of N and J as an example, it was perfectly conceivable for the appellant, who admitted to holding N in a hugging motion with both arms around her back while on the bus, to have slipped his fingers into N's panties to touch her vagina while still holding on to her left buttock with his hand. In any event, I noted that the trial judge had exercised great care in the treatment of the evidence and was satisfied with her finding that N, in spite of her age and the areas of apparent confusion, was a reliable witness insofar as her evidence related to the two incidents of molest.

Whether the appellant's defence was credible

35 By contrast, the trial judge was of the opinion that the appellant's defence was riddled with inconsistencies that put his credibility as a witness into question. This was a finding of fact which I found to be fully supported by the evidence before me.

36 The most blatant example of the appellant's inconsistent stand was how he had claimed throughout his evidence-in-chief and cross-examination that N was sitting on his lap. However, it was only after the prosecution's case had been put to him that he suddenly claimed to recall during his re-examination that N was sitting "more on [his] stomach" as he was wearing a waist-pouch. This claim was, no doubt, intended to buttress his defence that their position on the bus and the distance between the seats made it physically impossible for him to have inserted his finger into N's vagina. Given the nature of the appellant's defence of physical impossibility and his claim to have done his own measurements aboard a similar bus a total of five times, I found it unbelievable that the appellant could have failed to recall that N had sat on his stomach instead of his lap because he was wearing a waist pouch at the time. This was particularly since N's sitting position was a crucial aspect of his defence.

37 The appellant also omitted to mention that N was crying until he was confronted with J's evidence that N's eyes were red when the appellant returned home with her on 14 June 2001. He then stated that N had been crying at the interchange because he had failed to keep his promise to buy her a toy. His explanation for not mentioning it earlier during his examination-in-chief when he was giving evidence on what occurred at the interchange was because "her crying was not crying at all… more of a tantrum throwing". When asked to explain what he meant by "crying was not crying", he said that it was "not her normal crying". It was only when the court asked him to clarify whether he meant that she was just shouting and stamping her feet that he conceded that there were tears. Furthermore, his evidence that J and A were playing a board game when he brought N to the petrol station was also in stark contrast with the evidence of J. According to J, he was mopping the floor at the material time when the appellant insisted on taking N out in spite of his attempt to dissuade his father from so doing because N was sick. As there was no reason for J to lie, nor was it put to J that he was mistaken in his recollection, I fully agreed with the trial judge that this discrepancy was an

attempt on the appellant's part to present the outing in an innocuous light.

38 In the circumstances, I had no qualms about rejecting the evidence of the appellant, which was wholly lacking in credibility.

Conclusion

39 Based on the reasons set out above, I found the district judge to be justified in convicting the appellant on both charges of molest. Accordingly, I dismissed his appeal and affirmed his sentence of a total term of 30 months' imprisonment.

Appeal dismissed.

Sgd:

YONG PUNG HOW

Chief Justice