

Public Prosecutor v C
[2002] SGHC 275

Case Number : CC 51/2002
Decision Date : 20 November 2002
Tribunal/Court : High Court
Coram : Choo Han Teck JC
Counsel Name(s) : Christopher Ong, Wong Sook Ping and Sia Aik Kor (Attorney-General's Chambers)
for the Public Prosecutor; Accused in Person.
Parties : Public Prosecutor — C

Evidence – Proof of evidence – Standard of proof – Rape and attempted rape – Outrage of modesty – Proving case against accused beyond reasonable doubt

Judgment

GROUND OF DECISION

Background

1. The 39-year old accused was charged on one count of rape, one count of attempted rape, and one count of using criminal force with the intention of outraging modesty, all in respect of his 16-year old daughter. The rape was alleged to have been committed in 1999, the attempted rape in February 2000 in the flat at Boon Lay Place owned by the accused, and the outraging modesty charge between September and December 2000 in a room at the Alana Hotel at Geylang.

2. The accused and the complainant's mother divorced when the complainant was still in kindergarten. They have three children, a son and two daughters. The complainant is the youngest of the three siblings. After her parents' divorce the complainant stayed with her mother at Stirling Road until 1998 when they moved to her maternal grandparents flat. She testified that she lived apart from her mother about two years ago and now lives only with her said grandparents. She said that she did not have much contact with the accused after his divorce.

The Prosecution Case: (A) The First Charge (Rape)

3. In respect of the first charge, she testified that the offence took place about two or three weeks after January 1999. She (then 13 years old) and her elder brother (then about 15 years old) went window shopping with the accused at the Boon Lay Shopping Centre. They met a friend of the accused. This friend and the complainant's brother later parted company from the accused and the complainant. After waiting about twenty minutes for their return the accused took the complainant back to his flat saying that they can wait for them there. When they were in his flat the accused told the complainant that he was practising some form of ritual and needed to remove an object from his body. He needed a virgin about the complainant's age to help him. He asked her to remove her skirt and put on a sarong. She testified that the accused asked if she loved him, and if she did she should help him. And she agreed to help him. She then described how he went about the act of sexual intercourse with her. All through the act she had shut her eyes on his instructions. When asked if she had told anyone in her family about the incident she said no and that was because the accused told her not to tell anyone.

(B) The Second Charge (Attempted Rape)

4. In respect of the second charge the complainant alleged that the accused brought her to his Boon Lay Place flat and raped her there. This occurred on the eve of the Chinese New Year. He had called to say that he wanted to give the complainant money. So she met him before going to school. He brought her to his flat and there told her that the attempt to remove the object the previous time was unsuccessful. She testified that she could feel the accused try to penetrate her private part. She told him that she would be late for school and he told her to be patient - "it won't be that long". The DPP then asked if the accused did penetrate her on this occasion and she replied that he did. It was on the basis of this reply that the DPP, at the close of the prosecution case, applied to amend the second charge from attempted rape to rape.

(C) The Third Charge (Outraging Modesty)

5. In respect of the third charge, the complainant's evidence was that this took place during the fasting month in 2000. The DPP pointed out that there were two fasting months in 2000, but there was no confusion because the evidence related clearly to the second one, that is, the one in November. The complainant testified that the accused called to tell her that he wanted to give her some money. They then met at the Kallang MRT station. After that the accused brought her to a hotel in Geylang. The complainant identified the hotel as the Alana Hotel when she was brought to the Geylang area by the police to point out the hotel in question. Whilst in the hotel room the accused asked the complainant to make a telephone call to someone he described as his boss, but the call was unanswered. The accused then asked the complainant about her friends in school and whether she had any special friends. She told him about a 20-year old friend called Taufiq. The accused voiced his disapproval at Taufiq being her boyfriend because he thought that he was too old for her. Then the accused pushed the complainant onto the bed. She struggled and asked him not to do it. The accused told her that he was only testing her reaction. The complainant said that she was lying supine on the bed and the accused was trying to get on top of her. Then she sat on the bed and the accused made his telephone call to his boss. After that he gave the complainant \$20 saying that he would give her more the next time.

How Police Investigation Began

6. The complainant testified that sometime in 2000 she told her friend Siti Mardiana that she had been raped by her father. She said that she told Mardiana after the second incident, and Siti Mardiana and her mother advised her to make a police report. She was, however, reluctant because she had to think it over, after all, she said, "he was my flesh and blood". Siti Mardiana was called to corroborate this evidence. However, her account had a different slant to it. She said that the complainant told her sometime in 2000 that her father had raped her the previous year, that is, in 1999. The complainant testified that she only told Mardiana about one incident but she could not remember which one. Mardiana's evidence clearly referred to the first charge not only because she mentioned the year 1999 specifically, but that was the only incident in which the accused allegedly told the complainant that he needed to get rid of a spirit from his body and that he needed a virgin. If the complainant is right in that she told Mardiana after the second incident why did she confine herself to the 1999 incident alone and not the more recent one? It was also not explained why the complainant did not report her father after the incident that constituted the third charge. That event took place some months after Mardiana and her mother had advised the complainant to report her father to the police. To complete the overall picture, the complainant had little hesitation in reporting the man who molested her in his van in October 2001. According to the prosecution evidence, the complainant had taken a ride from a man who then touched her thigh and locked her in his van. He did not release her until she obliged him with a kiss. When asked why she had decided to report that man her answer was: "Because initially he said his intention was to find out where he could get a place to eat as well as to send me back, but it seems that he took me for a ride to Bukit Batok and molested

me, that's why I reported him". Upon further inquiry by the DPP the complainant said that she talked to Mardiana about this incident and the latter suggested that she report him. The complainant then thought that "it would be a good deterrent in case he molests other girls" and so she reported the van driver to the police on that same day. She said that it was about a week later that she told Mardiana about the rapes by her father, but did not report him. The van driver was subsequently given a stern warning by the police. It is not known why he was not charged. However, it was in the course of the investigation into that complaint that the police came to know about the alleged offences by the present accused.

7. The offences were disclosed in this way. As a routine exercise in its investigation into the report against the van driver, the police asked the complainant's school for a report on the complainant's conduct in school. The teacher in charge of discipline, Miss Koe then interviewed the complainant for the purpose of preparing the report. It was then that the complainant told her that her father "did it to me twice" and that was understood by Miss Koe to mean "rape" which she thought was the reason for the police request for the report. She then wrote in the report that the complainant said that her father "raped her twice". Upon receiving this report the police began an investigation into alleged rapes as referred to in the report. The report clearly stated that the two incidents were rape, but the police must have formed the view, based on the complainant's statements that the second incident was only an attempt. Hence, if the case was changed from attempted rape to rape on the basis of the evidence from the same person, that evidence must be considered with circumspection.

The Defence

8. The accused maintained throughout that he did not rape or molest his daughter. In respect of the first charge his defence was that he had brought her to the flat to wait for his son and the friend. He said that at that time he had just been released from the Drug Rehabilitation Centre and was still under surveillance by electronic tagging and that he had to be indoors at the given address (which was his sister's home) by 6.30 pm. When he did not see his son and friend he made haste to return to his sister's flat and the complainant went her own way.

9. This case depends primarily on the evidence of the complainant. In his effort to persuade me that the evidence of the complainant is sufficient proof the DPP submitted that the complainant "could not have fabricated such unusual and vivid details". The DPP also submitted that it would be "an unbelievable coincidence" for the complainant to have identified the Alana Hotel unless it was true that that was where the accused had taken her. The explanation by the accused was that the complainant must have been mistaken because the front reception of the Alana and Hotel 81 Cherry were similar and the two hotels were in very close proximity to each other. Both these hotels had been occupied by the accused during the material time in November 2000. The DPP's argument was as follows: "It is submitted that were the allegations complete fabrications, the complainant could not and would not have fabricated such unusual details from the very beginning, particularly given the context in which her first revelation to PW16 Mardiana was made, i.e. when the complainant was suffering from emotional trauma and stress following the unrelated incident of molest by a van driver." The premise here is that if the story carried unusual details, the conclusion must be that the story cannot be a complete fabrication. Logically, that conclusion does not follow the stated premise. The fact that the witness narrated a series of unusual details - of that more later - can mean several things, amongst them, her story may be entirely true; it may be entirely false; it may be partially true and partially false, or it may be substantially true except for one particular fact. In this case, for example, the witness might be able to recite all the details she did and accepting that all the details were true, the story can still be false if the person who did the offensive act was someone else and not the accused. Hence, in the evaluation of evidence the court must examine and take into account

the fact that the witness was able to give details of the circumstances, but it must be careful not to draw the wrong conclusion. In cases such as the present where there is no independent corroborative evidence the task becomes that much more difficult. Thus, in forming any view as to the finding of facts based solely on oral evidence of one person against that of another the court must not lose sight of the "golden thread" in criminal law - that the case against the accused must be proved beyond reasonable doubt *by the prosecution*. See the judgment of Viscount Sankey in *Woolmington v DPP* 1935 [AC] 462, 481.

10. Next, the DPP submitted that although uncorroborated the complainant's evidence was consistent. I cannot agree with this submission for reasons which will be apparent shortly in this judgment. Counsel relied on the judgment of the Chief Justice in *Soh Yang Tick v PP* [1998] 2 SLR 42 prosecuting counsel argued that the failure to lodge a police report against the accused should not have any impact on her credibility. The relevant passage in that case reads as follows:

"In the local context the failure to make a police report within reasonable time after the incident is neither here nor there. I have noted that often, the main reason among others, for not making a police report soon after such an incident is not because the victim has something to hide, rather it is because the victim is afraid of the shame it would bring to the family, should others know about the incident. Making a police report and subsequently having the case dealt with by the courts often attract undue attention which can be very traumatic for the victim as well as for the family. Also, some victims may be afraid that their word may not be believed. Therefore, they would rather suffer in silence than to see that the culprit is punished. It is for this reason that victims are often reluctant to report any matter to the police. In view of this therefore, the failure to make an early police report will no longer be seen as fatal to the prosecution's case, unless it can be ascertained with certainty that this failure was due to other reasons which might cast doubt on the victim's claim of the offence." (*ibid*, p.62)

11. I have set out the passage from *Soh Yang Tick* in full for convenience. That passage cannot be understood to mean as the DPP here submitted that "the fact that no police report was made.....has no impact on her credibility at all". The main body of the quoted text refers to examples of reasons why in some cases victims of sexual crimes do not report the matter to the police within what one may regard as a reasonable time. The legal point made is that the omission in itself does not necessarily justify an adverse conclusion against the witness. Every case and every factual situation is different from one another. Hence, the circumstances and reasons for the omission may be as relevant and as important as a nod, a wink, a smile or a scowl from the witness in the stand - they are all but factors to be weighed and considered. In itself, an omission to report may not be fatal to the prosecution case if the reason offered by the witness is accepted by the court. If no reason is given, the omission may still not be fatal to the prosecution case because the absence of explanation is just one factor in the overall evidence. Similarly, the prosecution case is not necessarily strengthened just because an ostensibly palatable reason is given, for instance, that the witness felt ashamed to make public the humiliation of her ordeal. Any witness can learn to utter such or similar lines in order to embellish her evidence in court. The ultimate test is whether that evidence convinces the court. In this regard, it is not only a simple matter of what was said, but also how it was said,

why it was said, and when it was said. In other words, it is an exercise of judgment; a thinking and feeling process that defies verbalization. What it means is that in deciding whether or not to believe a witness, whether wholly or in part, each relevant act or omission must be taken into account even though specific instances cannot be dissected and weighed individually. Many an item amounts to nothing in itself yet in the sum it means everything.

12. In this case, the testimonies of accuser and accused have blemishes here and there, and I shall consider now the larger ones. On the whole, I find that the evidence of the complainant to be more unsatisfactory than that of the accused. She testified that she had told her friend Mardiana of only one rape by her father and she told this to Mardiana shortly after her alleged molest by the van driver. From Mardiana's evidence, it is apparent that the rape told to her was the first one, that is, the one in 1999. There was no explanation by the complainant why she had revealed only one rape when there were two, nor why if she had decided to disclose that past episode, only the first, and not the second which was more contemporary at that time. The complainant's evidence about the second rape also presented another problem for the prosecution. It will be recalled that the accused was initially charged with attempted rape and it was only at the close of the prosecution case that the charge was amended to rape - solely on the testimony of the complainant in court. The inescapable inference is that she had hitherto told the investigators a materially different story.

13. The third important aspect of her evidence relating to the second charge is that, according to the complainant, the rape had taken place in the accused person's flat at Boon Lay Place. It was conceded by the prosecution that the accused had already sold that flat at the material time, but the prosecution case was that the accused had retained the keys because the purchaser had not taken possession of the flat. The accused's evidence was that he had handed the keys to the lawyers. I pause to note that at one point the accused stated from the dock that he handed the keys to the housing agent, but, in any event, he was not cross-examined on his earlier evidence that he had given the keys to his lawyers. The impression that formed clearly in my mind after hearing his evidence was that he had no access to the flat. He was not challenged on this point by the prosecution. The purchaser of the flat stated in his conditioned statement that after he had taken over possession of the flat he saw that some old belongings of the accused had been left behind. He called the brother-in-law of the accused to remove them. The brother-in-law only took away the dining table and the purchaser then disposed of the rest himself. It does appear to me that the flat had been abandoned by the accused after the sale. There was no inquiry as to why the purchaser asked the brother-in-law and not the accused himself to remove the articles left behind. It is not known whether the brother-in-law removed the dining table for himself or on behalf of the accused. It is, of course, possible that the accused still had the keys to the flat but I would give him the benefit of the doubt.

14. In respect of the third charge, the prosecution also hoped to pin its case on the identification of the Alana Hotel by the complainant. The DPP argued that the evidence must be true because it would be too much of a coincidence for the complainant to have identified a hotel that was in fact occupied by the accused at the material time. However, given the fact that the accused had also occupied the Hotel 81 Cherry about that time, it is reasonably possible that the complainant might have identified the wrong hotel. The accused's story was that he had brought the complainant to the Hotel 81 Cherry to give her some pocket money, and it was there that he introduced her to his Indonesian lady friend, Julie. The prosecution conceded that an Indonesian woman was arrested in that hotel together with the accused around that time, but it rest its case on the complainant's evidence that the offence took place shortly after that in the other hotel. The accused claimed that the two hotels were in very close proximity to one another was not challenged by the prosecution save to say that they were not along the same street. He also explained that that was a looped street and that one hotel was round the bend from the other.

15. The accused had endeavoured throughout the trial to show that he had given money to his family including the complainant and her mother. They denied this. The complainant's mother had long since remarried and denies being part of the group gathering that went out with the accused after the accused had collected his money from the sale of the flat. The evidence of the complainant's sister provides some support that there was such a gathering although she does not remember any money being given by the accused. The issue of money was raised by the accused in support of his belief that the complainant may have made the allegations against him because she was jealous that the accused had given more money to her brother. Her brother was not called as a prosecution witness but was offered to the accused. When he sought to call him the prosecution informed me that the boy was sitting for his examinations and was not available at the time. Eventually, the accused decided not to call him.

16. Questions like those arising from the complainant's evidence call for explanation, and in the absence of which the issues in contention cannot safely be closed in favour of the prosecution. A complainant's evidence need not be judged harshly if its shortcomings can and have been satisfactorily explained. Some latitude in this regard may be shown to the complainant. But the presumption of innocence is not consequently relinquished. The prosecution is still obliged to prove its case beyond reasonable doubt. I reiterate this important aspect of criminal justice if only to remind myself that matters of fact must not be pressed into doctrines of law. In this case, the only legal principle in play is the duty of proving the prosecution case beyond reasonable doubt. So, when prosecuting counsel suggested that the complainant's failure to lodge a police report (and for that matter, not even telling her family members) about the alleged offences should have no impact on her evidence, it is no more than a plea to accept the complainant's evidence notwithstanding this omission in this particular case. I will not go so far as to say that the complainant was not telling the truth in the present case because that is not the standard measure by which an accused is convicted or acquitted. I am of the view that the accused has raised a reasonable doubt in my mind in respect of all three charges. I therefore discharged and acquitted him accordingly.

17. I would like to record my indebtedness to prosecuting counsel for conducting the prosecution fairly and admirably, and who had been of immense assistance to me in this case where I could not derive assistance from a defending counsel as the accused was not represented.

Sgd:

Choo Han Teck

Judicial Commissioner

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