

Public Prosecutor v Kalathithara Subran Hilan and Others
[2003] SGHC 113

Case Number : CC 23/2003
Decision Date : 22 May 2003
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Jaswant Singh (Attorney-General's Chambers) for the Public Prosecutor; Janet Wang (Attorney-General's Chambers) for the Public Prosecutor; Derek Kang (Attorney-General's Chambers) for the Public Prosecutor; Rai (Wong, Gopal & Rai) for the Second Accused; First, Third and Fourth Accused in person
Parties : Public Prosecutor — Kalathithara Subran Hilan; Thankappan Ayyappan; Yong Ah Lai; Marni A/P Konasagaran

1 Four accused persons appeared before me to take a plea in respect of various charges against them. The first accused was Kalathithara Subran Hilan; the second, Thankappan Ayyappan; the third Yong Ah Lai; and the fourth, Marni A/P Konasagaran. The third accused is the husband of the fourth, Marni A/P Konasagaran. The second, third and fourth accused faced a total of seven charges each but the prosecution proceeded only with the third, fourth, and an amended seventh charge. The third and fifth charges were stood down. The first accused faced two charges but the prosecution only proceeded with the second charge against him. The first charge was stood down. These four accused persons together with a fifth person, were scheduled for trial before Justice Kan Ting Chiu. The scheduled trial was interrupted because the four accused indicated that they wished to plead guilty to some of the charges. They thus appeared before me to be dealt with on those charges.

2 The case against the accused persons were connected in this way. The first accused was charged with the rape of a 13-year old female under s 376(1) of the Penal Code. The second, third, and fourth accused were charged with abetment by conspiracy, in procuring men to rape the same 13-year old female, under s 376(1) of the Penal Code read with s 109. That was the amended seventh charge. The fourth and sixth charges related to procuring the same 13-year old for the purposes of prostitution, under s 140(1)(b) of the Women's Charter, and living off the earnings of prostitution, under s 146(1) of the Women's Charter.

3 When the plea was taken all four initially indicated that they were pleading guilty to the charges. Only Thankappan (the second accused) was represented by counsel. The first accused then addressed me saying that when he had sex with the girl he did not know that she was under 14 years of age and that he paid her for the sexual act. In the circumstances, it appears to me that his plea is sufficiently qualified and ought to be rejected. The third accused also qualified his plea. I, therefore, rejected the plea of guilt of the first and third accused persons, and proceeded with the case against the second and fourth accused persons.

4 The central figure in this case was the first accused, so if he is not found to be guilty of any offence a conviction against his abettors may ostensibly appear bizarre. But it is not necessary so. If the charge of abetment is one of conspiracy, the offence which was the subject of the conspiracy need not have been completed for the conspirators to be guilty. It is not a requirement that the principal offender is convicted before his abettors may be dealt with. The abettors can be dealt with even where the principal offender is never caught. However, there is room for improving the procedure in some of these cases. Standing down the charges against the abettors until the trial of the principal offender is one way. But, if the court decides that the abettors or co-accused ought to be dealt with first, and separately, then the court dealing with the abettors and co-accused will have to proceed on the basis of the case as it is presented. The first and third accused have been

remitted for trial and are no longer a matter of comment from this court. Whatever the result may be of their trial, it is best remembered that every case is but a mere pastiche in the vast canvas of case law, each unto its own, unified where consistency permits, but stands alone otherwise. In the present case, the accused persons before me admitted to conspiring to procure men to have sex with a 13-year old girl in circumstances that they admit amounted to rape. The Statement of Facts reveals that the 13-year old girl was taken from her home in Malaysia under the false pretence of bringing her to Singapore as a maid. When she arrived, she was forced into prostitution. With these facts admitted by the accused, I accepted their plea of guilt and convicted them accordingly. I should note, for completeness, that the admission of the facts was also implicitly, but clearly, an admission that there was no consent from the young girl to perform the sexual acts.

5 The offence of abetment of rape of a 13-year old girl is almost as serious as if the abettors had each been the actual rapist, but, in sentencing the abettors, the court is entitled to take into account that those offenders who had not forced themselves physically on the girl. Thus, bearing in mind the general opinion of the court in *Chia Kim Heng Frederick v PP* [1992] 1 SLR 361, and applying them with adjustments to the facts of the present case, I am of the view that a term of imprisonment of 11 years is appropriate. One of the matters that require emphasis here is the commitment of the courts towards the deterrence of sexual offences against young children, especially where they are subjected to prostitution, and drained not only of their innocence, but also of their money. I thus sentenced the two accused to 11 years imprisonment, and also six strokes of the cane in respect of the second accused for the amended seventh charge. I had considered whether the sentence of imprisonment in respect of the fourth accused should be higher since no caning may be inflicted on her. However, I am of the view that an adjustment upwards is not necessary. I have also taken into account the fact that these two accused had pleaded guilty to the charges, a plea of guilt in this instance had spared the child from the rigours and ordeal of trial.

6 An offence under s 140(1)(b) and s 146(1) of the Women's Charter is punishable with imprisonment of up to five years and also with a fine not exceeding \$10,000. In view of the fact that both accused were first offenders, and taking into account the totality of the overall sentences I am of the view that a term of imprisonment of one year and a fine of \$5,000 is sufficient in respect of each of the accused. The sentences of imprisonment under s 140(1)(b) and s 146(1) are to run concurrently but consecutively to that under the term of imprisonment ordered under s 376(1) of the Penal Code. In default of payment of fine the accused will serve six months for each fine unpaid.

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