

Public Prosecutor v BNN
[2014] SGHC 7

Case Number : Criminal Case No 10 of 2013
Decision Date : 02 January 2014
Tribunal/Court : High Court
Coram : Tan Siong Thye JC
Counsel Name(s) : Prem Raj Prabakaran and Christine Liu (Attorney-General's Chambers) for the prosecution; The accused in person.
Parties : Public Prosecutor — BNN

Rape

2 January 2014

Judgment reserved.

Tan Siong Thye JC:

1 The 37 year old unrepresented accused faced a total of 18 charges, pertaining to rape, sexual penetration of a minor under 14 years of age, outrage of modesty, voluntarily causing hurt and criminal intimidation. He pleaded guilty to 7 charges, with 11 other charges taken into consideration for sentencing.

2 The 2 victims were his stepdaughters, [O] and [Y], who were aged 12-14 and 10-12 respectively at the time of the offences.

The charges

3 The accused pleaded guilty to 7 charges, all of which concerned acts done to [O]. I informed him in simple language the statutory prescribed punishments of each of the 7 charges that were proceeded on. I further explained the effects of s307(2) of the Criminal Procedure Code in which the court must order at least 2 sentences of imprisonment to run consecutively. The accused understood the consequences and maintained his plea of guilt. These 7 charges are as follows:-

- (a) 2nd charge: sexual penetration of a minor under 14 years of age punishable under s 376(4) of the Penal Code (Cap 224, 2008 Rev Ed);
- (b) 6th charge: voluntarily causing hurt punishable under s323 of the Penal Code;
- (c) 9th charge: using force with intent to outrage modesty punishable under s 354(2) of the Penal Code;
- (d) 10th charge: voluntarily causing hurt punishable under s323 of the Penal Code
- (e) 12th charge: using force with intent to outrage modesty punishable under s 354(2) of the Penal Code
- (f) 14th charge: rape punishable under s375(2) of the Penal Code

(g) 15th charge: rape punishable under s375(2) of the Penal Code

4 The following charges were taken into consideration for sentencing:

(a) 1st charge: using force with intent to outrage modesty punishable under s 354(2) of the Penal Code

(b) 3rd charge: voluntarily causing hurt punishable under s 323 of the Penal Code.

(c) 4th charge: voluntarily causing hurt punishable under s 323 of the Penal Code

(d) 5th charge: criminal intimidation punishable under s 506 of the Penal Code

(e) 7th charge: voluntarily causing hurt punishable under s 323 of the Penal Code

(f) 8th charge: voluntarily causing hurt punishable under s 323 of the Penal Code

(g) 11th charge: sexual penetration of a minor under 14 years of age punishable under s 376(4)(b) of the Penal Code

(h) 13th charge: sexual penetration of a minor under 14 years of age punishable under s 376(3) of the Penal Code

(i) 16th charge: rape punishable under s 375(2) of the Penal Code

(j) 17th charge: rape punishable under s 375(2) of the Penal Code

(k) 18th charge: voluntarily causing hurt punishable under s 323 of the Penal Code

The sexual offences pertained only to [O]. Both [O] and [Y] were the victims for the charges of voluntarily causing hurt. [Y] was the victim of the criminal intimidation charge. The accused agreed to these charges being taken into consideration for sentencing.

The summary of the statement of facts

5 The accused married the wife, aged 38 years old, in January 2008. This was his third marriage and his wife's second marriage. The wife has 2 daughters, [O] and [Y], from her first marriage. The accused and the wife also had a son, [S], who is now 3 years old.

June 2008 to February 2009 in Larkin

6 In June 2008, the accused's family left their Bukit Batok flat in Singapore to stay in Larkin, Johor, Malaysia. The accused soon started touching [O] while she slept alone in her bedroom at night. While everyone else was asleep, he would enter her bedroom, slide both of his hands under her tee-shirt and bra, and groped her breasts and nipples. [O] did not know what to do when he did this and could only turn her body, trying to pretend she was asleep. The accused did these acts at night when everyone else was asleep. [O] did not like the accused touching her. She did not tell her mother because she was afraid that she would not believe her. [O] was only 11 years old at that time.

7 During this period the accused also started to assault [O] and [Y]. He used metal ladles or rulers to hit them on their hands and faces. He would also slap their faces or heads if they were noisy. The wife found it difficult to stop him. [Y], then 9 years old, was beaten more often as she

was mischievous and liked to talk back to the Accused.

February 2009 to August 2009 in Skudai

8 Sometime in February 2009, the family left Larkin for Skudai, Johor, Malaysia. The whole family slept in the master bedroom. The accused and the wife slept on the bed while [O] and [Y] slept on a mattress next to it. The Accused dictated that [O] occupy that side of the mattress closest to where he slept on the bed. During their stay in Skudai from February 2009 to August 2009, [O] was 11 to 12 years old and [Y] was 9 to 10 years old.

9 While everyone else was asleep, the accused would grope [O]'s breasts and nipples, after sliding his hand under her tee-shirt and bra. Later when they were staying in Skudai, the accused started to slide his hands under [O]'s shorts and touched her vulva for a few minutes while everyone else was asleep. He would, at times, also insert his fingers into her vagina. [O] felt painful and sore when he first penetrated her digitally.

10 On several occasions, when the accused was alone with [O], he would bring her to the toilet, remove her clothing, and insert his finger into her vagina. He would also touch her body in the process. On some occasions, he would lubricate his finger with some soap before inserting it into her vagina.

11 On another occasion, the Accused barged into the toilet while [O] was bathing. He told her to lie down on the floor, and then inserted his fingers into her vagina. He also touched the rest of her body. [O] cried after the Accused left the toilet. There was no one in the house when this happened.

12 On another occasion, the Accused directed [O] to follow him into the toilet. In the toilet, he pulled down his shorts and demanded that she put his penis into her mouth. When she refused, he held onto her head with both of his hands, pushed her head towards his penis, and pushed his penis into her mouth. On hearing the wife approaching, he quickly withdrew his penis from [O]'s mouth and pulled up his shorts. [O] immediately went to the wash basin and washed her mouth. The accused then told his wife that he had asked [O] to clean the toilet. As [O] was leaving the bedroom, he gestured to her to keep quiet.

13 [O] did not reveal these incidents to anyone because she was scared that if she told her mother or [Y], this would lead to a confrontation and the Accused would become more violent towards them.

14 The accused also got more abusive towards his step-daughters. He would punch them on their faces and pulled their hair. He would also kick them at times. On one occasion, after slapping [Y]'s face, he lifted her by her neck and then released his grip, causing her to fall to the floor. He then carried on hitting her thighs with a metal ladle. The wife could not stop him.

September 2009 to October 2010 in Singapore

15 Sometime in August 2009, the family returned to Singapore so that [O] could sit for her Primary School Leaving Examinations at Keming Primary School. The family stayed with the wife's sister at Jurong West Street 61, Singapore. The family shared a bedroom in this flat. The wife, who was then pregnant, occupied the bed. The rest slept on a mattress next to it. The accused dictated that [O] sleep next to him. The offence relating to the 1st charge (taken into consideration, see [4] above) occurred while the wife and [Y] were asleep in the bedroom. [O] was then between 12 to 13 years old.

November 2009 to April 2010

16 Sometime in November 2009, the family moved to Jurong West Street 42 to reside with the wife's friend. There, they occupied a bedroom. The sleeping arrangements were the same when they were staying with the wife's sister. The offences relating to the 3rd, 4th, and 5th charges (taken into consideration, see [4] above) occurred while the family stayed at this flat. [O] was then between 12 to 13 years old. [Y] was then between 10 to 11 years old.

Facts relating to the 2nd charge

17 One evening, between November 2009 and April 2010, the accused entered the bathroom while [O] was bathing. He directed [O] to lie down on the floor and he used his finger to penetrate her vagina several times. He also touched the rest of her naked body. [O] did not open her eyes as she was terrified. She did not struggle because she thought that the accused would beat her if she did. [O] was 12 years old when this happened.

April 2010 to August 2010

18 The wife gave birth to their son, [S], on 12 April 2010. The family returned to stay at the wife's sister's flat in Jurong West. They occupied a bedroom. The wife, [Y], and [S] slept on the bed while the accused slept on a mattress with [O] sleeping next to him.

19 On a few occasions, while everyone else was sleeping in the bedroom, the accused slide one of his hands under her tee-shirt and bra, and then groped her breasts and nipples for a few minutes before he went back to sleep. [O] dared not resist as she was afraid that the accused would beat her.

Facts relating to the 6th Charge

20 On one occasion, the accused could not enter the flat despite calling out to his step-daughters to open the door as they were sleeping. The accused was very angry. Eventually, when he managed to gain access to the flat he entered the bedroom, woke up [O] and slapped her on her face. He pulled her hair and slammed her on the floor. He also punched her on her ribs and kicked her on her back.

21 He also assaulted [Y]. This offence is the subject matter of the 7th charge (taken into consideration, see [4] above). The accused only stopped assaulting them when the wife intervened. [O] was then 13 years old. [Y] was then 11 years old.

October 2010 in Wadihana, Johor

22 Sometime in October 2010, the family went to stay at a condominium at Wadihana, Johor, Malaysia. This condominium belonged to the wife's friend. They occupied one bedroom. The wife slept on the bed with [S] while the rest slept on a mattress. The accused ensured that [O] slept next to him.

23 The Accused groped [O]'s breasts, nipples and vulva at the Wadihana condominium while everyone else was asleep. [O] did not know what to do when he touched her on these occasions. She did not tell anyone about these incidents as she feared he would harm her if she resisted.

November 2010 to December 2010 in Sri Samudra, Johore

24 Sometime in November 2010, the family moved from Wadihana to a studio apartment at Sri Samudra, Johor, Malaysia. The accused, the wife and [S] slept on a bed near the balcony while [O] and [Y] slept on a sofa-bed placed next to it.

25 The accused continued to grope [O]'s breasts, nipples and vulva at the Sri Samudra Apartment while everyone else was asleep. [O] tried to avoid the accused's advances by turning her body away from him. However, the accused would always use his hands to turn her over to his side.

January 2011 to February 2011

26 The family returned to Singapore from Sri Samudra, Johor, Malaysia in early January 2011. They occupied one room in an apartment unit at Jurong West Street 52, Singapore. The offence relating to the 8th charge (taken into consideration, see [4] above) occurred here. [Y] was then between 11 and 12 years old.

February 2011 to March 2011 at the wife's office

27 Between February and March 2011 the family stayed in a tent at Pasir Ris Park for a short time before moving to stay at the wife's office. At the office, the wife slept close to her workstation while [S] slept on a mattress next to her. The rest slept on the floor. [O] was then 13 years old.

Facts relating to the 9th charge

28 On one occasion, while everyone else was sleeping in the office, the accused slid one of his hands under [O]'s tee-shirt and bra, and groped her breasts and nipples for a few minutes. He also slid his hand under [O]'s panties and touched her vulva.

Facts relating to the 10th charge

29 There was an occasion when the Accused drove the family to Changi Village for dinner. He saw [O] text messaging a boy using her mobile-phone. The accused disapproved of this. He became angrier when he found a packet of cigarettes in her school bag. He slapped her face. When the wife asked the accused to stop hitting [O] in public, he directed everyone to get into the car and then drove them to a secluded spot in the vicinity of Changi Village.

30 After parking the car, he told [Y], who was sitting in the rear seat of the car, to get out. He then proceeded to the rear seat of the car where [O] was sitting. He punched her and pulled her hair. He also grabbed her head and slammed it, repeatedly, against the rear door of the car. He also kicked her back. He only stopped when the wife intervened some 5 to 10 minutes later.

March 2011 to May 2011

31 Sometime in March 2011, the family left staying in the wife's office and moved into an apartment unit at Havelock Road. They shared the flat with another family. They stayed in one bedroom. The wife and [S] slept on one mattress while the rest slept on another mattress. [O] slept next to the accused. The offence relating to the 11th charge (taken into consideration, see [4] above) occurred here.

Facts relating to the 12th charge

32 Sometime before [O]'s 14th birthday, while she was lying on the mattress, the Accused knelt

down in front of her, pulled down her shorts and panties to her knees, lifted up her legs, and licked her vagina for a few minutes. [O], who was disgusted by his actions, did not want to see what he was doing and used a pillow to cover her face. After performing cunnilingus on [O], the accused went back to sleep. [O] dared not resist because she feared he would beat her up severely.

May 2011 to August 2011

33 Sometime towards the end of May 2011, the family returned to the Wadihana Condominium in Johor, Malaysia. The wife, [Y] and [S] occupied a bedroom. The accused ensured that he and [O] slept in the living room. The accused continued to grope [O]'s breasts, nipples and vulva in the living room of the Wadihana Condominium while everyone else was asleep in the bedroom.

August 2011 to November 2011 in Singapore

34 The family left the Wadihana Condominium sometime in early August 2011 and returned to Singapore. They occupied the master bedroom in a flat at Bedok South Avenue 3, Singapore. In the master bedroom, the wife, and [S] slept on a sofa-bed. The accused, [O] and [Y] slept on the floor. The accused ensured that [O] was sleeping on the floor next to him. The offences relating to the 13th charge, the 16th charge, and the 17th charge (taken into consideration, see [4] above) took place at this flat. [O] was then 14 years old.

Facts relating to the 14th charge

35 Sometime between 7 October 2011 and 14 October 2011, [O] was at the Bedok South flat with the accused, [Y], and [S]. At about noon, [O] was bathing in the toilet attached to the master bedroom. The accused told [Y] to bring [S] to the playground and to buy something from a shop. Thereafter, the accused barged into the toilet while [O] was still bathing. Although [O] resisted and told the accused, in English, "I don't want" (as she was very worried the accused wanted to touch her again), he pulled her out of the toilet and told her that she could bathe later.

36 The accused demanded that [O] lie down on the sofa-bed. [O] complied because she was scared he might hit her if she did not obey him. The accused then climbed onto the sofa-bed and started to kiss [O]'s naked body. He squeezed her breasts and inserted his fingers into her vagina. Shortly thereafter, he lifted [O]'s legs and placed it on the sofa-bed. Although [O] tried to close her legs, he pulled them apart. [O] then felt the accused licking her vagina. The accused then lay on top of her, with both of his hands at the sides of her shoulder. At this juncture, [O] felt a sharp pain in her vagina. She then felt the accused moved his penis in and out of her vagina. The accused, who was not wearing a condom, then ejaculated inside [O]. The accused then got up from the sofa-bed. There were blood stains on the bed-sheet. The accused then told [O] to wash up in the toilet. When [O] came out of the toilet, she noticed that the bed-sheet had already been changed. Subsequently, the accused informed the wife that [O] had stained the bed-sheet as she was menstruating.

37 On that same day whilst the family was having dinner at a hawker centre, the accused told [O] to buy pineapple juice for herself. He told her not to drink pineapple juice in the wife's presence. [O] believed that the accused had told her to drink pineapple juice so that she would not get pregnant following their earlier unprotected sexual intercourse where he had ejaculated into her.

38 [O] was a virgin before the accused raped her on this day. She was then 14 years old.

Facts relating to the 15th charge

39 Sometime between 14 October 2011 and 21 October 2011, [O] was in the Bedok flat with the accused and [S]. [S] was sleeping. The wife was working and [Y] was at school.

40 [O] was sleeping on the sofa-bed when the accused approached her. He slid his hand under her tee-shirt and bra, and started to grope her breasts. He then removed [O]’s tee-shirt, shorts, and panties before inserting his fingers into her vagina. After some time, he removed his shorts and inserted his penis into her vagina. After moving his penis in and out of her vagina for a few minutes, he withdrew his penis (he was not wearing a condom) and ejaculated onto [O]’s stomach. During the acts [O] used a pillow to cover her face as she did not want to see the accused’s penis. Similarly, [O] did not reveal this incident to anyone as she was afraid of the accused.

Divorce

41 On 30 November 2011, the wife left the accused with the 3 children because of the accused’s increasing abusive behaviour. She initiated divorce proceedings against the accused on 1 December 2011. The divorce was finalised on 29 August 2012.

Police report

42 [O] initially revealed the commission of the sexual offences to two of her school friends. On their advice [O] decided to tell her mother about the offences. When the latter asked [O] why she had not told her sooner, [O] replied that she was scared and worried that the accused would harm her. Eventually, a police report was lodged on 14 March 2012.

The prosecution’s submissions

43 The prosecution urged the court to impose deterrent sentences against the accused on all the 7 charges. There were numerous aggravating features. [O] was subject to the accused’s sexual and physical abuse and will suffer from long-term psychological harm. The accused lacked genuine remorse. The prosecution also submitted that the accused could not be considered as a first offender despite his lack of antecedents as he had committed numerous premeditated offences over the course of nearly 3 years. The prosecutor suggested a total net sentence of at least 30 years and 24 strokes, and the following sentences in particular:

- (a) Rape charges: sentences in excess of 15 years’ imprisonment and 12 strokes for each of the 2 charges. The punishment for the 14th charge should be higher.
- (b) Sexual penetration of a minor: at least 10 years’ imprisonment and 12 strokes of the cane
- (c) Outrage of modesty: at least 18 months’ imprisonment and 4 strokes of the cane each
- (d) Voluntarily causing hurt: at least 6 months’ imprisonment each

The accused’s plea for leniency

44 The accused tendered a letter pleading for leniency. He is the only child of an elderly couple who is suffering from “chronic aging medical issues”. His parents are currently residing in Malaysia and are anxious to see him after his release from prison.

45 During his youth he played football for the Football Association of Singapore. He completed his national service in the army in 1997. He had been a good citizen and had led a crime-free life before

this case.

46 He had fully cooperated with the police during investigations. He had also written to his now ex-wife and step-daughters seeking their forgiveness. He is deeply remorseful for these offences and hoped to be given a chance to repent and reform. He also promised not to commit such offences again.

My decision

47 For the purpose of sentencing, it is of paramount importance that the court should impose the appropriate sentences after taking into consideration all the facts and merits of the case. This requires this court to consider the aggravating factors as well as the mitigating features. It is fundamental that the punishment imposed must be commensurate with and befit the accused and his criminal conduct.

Charges taken into consideration

48 In sentencing the accused I shall take into consideration the 11 charges which he had agreed to be taken into consideration for the purpose of sentence. In *Public Prosecutor v UI* [2008] 4 SLR(R) 500 at [37], the Court of Appeal approved of the following passage made by Sir Igor Judge P in *R v Gary Dean Miles* [2006] EWCA Crim 256:

[T]he way in which the court deals with offences to be taken into consideration depends on context. In some cases the offences taken into consideration will end up by adding nothing or nothing very much to the sentence which the court would otherwise impose. On the other hand, offences taken into consideration may aggravate the sentence and lead to a substantial increase in it. For example, the offences may show a pattern of criminal activity which suggests careful planning or deliberate rather than casual involvement in a crime. They may show an offence or offences committed on bail, after an earlier arrest. They may show a return to crime immediately after the offender has been before the court and given a chance that, by committing the crime, he has immediately rejected. There are many situations where similar issues may arise.

49 It is, however, acknowledged that charges taken into consideration have the general effect of enhancing punishment, particularly where the charges taken into consideration are similar to the charges proceeded with. This much was stated in *Public Prosecutor v Chow Yee Sze* [2011] 1 SLR 481 at [34]:

Furthermore, three charges ("TIC charges") were to be taken into account for sentencing. Such TIC charges would generally result in an enhanced sentence particularly where the TIC offences and the offences proceeded with are similar in nature as they would show that the offender was recalcitrant (eg, if **both sets of offences consist of sexual offences against the same victim**): *PP v UI* ([1] supra) and *PP v Mok Ping Wuen Maurice* [1998] 3 SLR(R) 439 at [19]. [emphasis added]

Sentencing approach in this case

50 In my deliberation I shall first determine the broad sentencing approach. Secondly, I shall examine the aggravating features and the mitigating factors. Thirdly, I shall analyse the respective offences in the 7 charges that were proceeded on in order to arrive at the appropriate sentence for each of these charges. Finally, I shall decide which sentences of imprisonment to run consecutively to arrive at the net punishment.

What are the appropriate sentencing principles for this case?

51 Rape is the most heinous offence against a female. Sexual penetration with the finger is another very vicious violation of the female body.

52 In this case the accused, *inter alia*, was charged with 4 counts of rape and 3 counts of digital penetration. Out of the 18 charges proceeded on, 7 were of an extremely serious sexual nature. The victim, [O], was his step-daughter. She was below 14 years of age when these offences were committed. She was extremely young and vulnerable. She also had her virginity stolen by the accused. The accused had destroyed his step daughter for his selfish sexual desire. The fact that this was done to an innocent child of very tender age worsen his sexual crimes many folds. The poor child had to endure the indignity, embarrassment and shame of the ordeal of the rape and other depraved sexual acts forced on her by the accused. Now she has a long road to recover from her psychological injuries. Hence these charges alone warrant the court to impose harsh deterrent punishment on the accused.

53 V K Rajah J (as he then was) aptly described the horrific ordeal of a rape victim in *Public Prosecutor v V Murugesan*:

54 ... *Rape is one of the most heinous and vile crimes proscribed under our laws. It is an abominable violation that leaves the victim with permanent emotional scars. The physical act of rape is just the beginning of a life-long continuum of psychological and emotional trauma that most victims have to confront, endure and manage. In addition, most unfortunately and regrettably, there are also occasionally instances of the victims being irrationally stigmatised. Many victims never regain a sense of normalcy. The emotional damage, quite understandably, cannot ever be fully erased.* It is for this reason that the PC prescribes severe sentences for this and similar offences violating the basic right(s) of a female. Females have an inviolable right to be respected; they have an inalienable right to say no; they have an absolute right to commute without any anxiety or apprehension of physical violence being inflicted upon them. Taking into account these considerations, the courts have severely dealt with rapists and similar offenders.

55 Perpetrators are punished not just for the physical harm they inflict but also for the life-long trauma, debilitating emotional distress and anguish they callously and cruelly inflict and sentence their victims to suffer in silence. *In the circumstances, draconian sentences which primarily encapsulate the principles of both retribution and deterrence are ineluctably required and will be invariably meted out to all such offenders.* Few, if any, right-minded people will complain about heavy-handed sentences in this genre of cases.

[emphasis added]

54 In *Public Prosecutor v Law Aik Meng* [2007] 2 SLR(R) 814, V K Rajah J (as he then was) mentioned that offenders who abused a position of authority to satisfy their sexual urges would be met with harsh penal consequences (at [24] and [25]):

24 General deterrence aims to educate and deter other like-minded members of the general public by making an example of a particular offender: *Meeran bin Mydin v PP* [1998] 1 SLR(R) 522 at [9] ("*Meeran bin Mydin*"). Premeditated offences aside, there are many other situations where general deterrence assumes significance and relevance. These may relate to the type and/or circumstances of a particular offence. Some examples of the types of offences, which warrant general deterrence are:

...

(b) Offences against vulnerable victims: Offences against vulnerable victims often create deep judicial disquiet and general deterrence must necessarily constitute an important consideration in the sentencing of perpetrators. In *PP v NF* [2006] 4 SLR(R) 849, at [42], I stated as follows:

[O]ur courts would be grievously remiss if they did not send *an unequivocal and uncompromising message to all would-be sex offenders* that abusing a relationship or a position of authority in order to gratify sexual impulse will inevitably be met with the harshest penal consequences. *In such cases, the sentencing principle of general deterrence must figure prominently and be unmistakably reflected in the sentencing equation.* [emphasis added]

25 Examples of particular *circumstances* of an offence which may attract general deterrence include:

...

(c) Public disquiet: Certain crimes, in addition to harming their immediate victims, also have the wider-felt impact of triggering unease and offending the sensibilities of the general public. A deterrent sentence is therefore necessary and appropriate to quell public disquiet and the unease engendered by such crimes...

It is critical that a crystal clear signal be conveyed through deterrent sentences that all such offences causing public disquiet will be unstintingly deplored and denounced by the courts. Instances of gratuitous violence will also fall under this broad category.

[emphasis in original]

I have no doubt that the accused's offences, done over the course of 3 years, would cause public disquiet.

55 In *Lim Hock Hin Kelvin v Public Prosecutor* [1998] 1 SLR(R) 37 at [20] the Court of Appeal explained that offences against vulnerable children are particularly serious:

However, the starting position must be that where the victims are vulnerable children, the offence becomes much more serious and the punishment meted on such offenders has to reflect the gravity of the offence. The punishment for rape offences is much more serious where the victim is below 14 years and sexual intercourse takes place without her consent.

56 I shall now examine the aggravating factors.

Aggravating factors

Young victims

57 The offences took place over a period of close to 3 years. In the 7 charges that were proceeded on, the victim was his step-daughter, [O]. At the relevant period [O] was only 11 to 14 years old. According to the statement of facts, the first offence against [O] was the outraging of her modesty when she was just 11 years old. As a young girl she looked to the accused, who was supposed to look after and take care of her, for security. However, the accused betrayed that

parental duty and sexually abused and exploited her. Before the wife's marriage to the accused the home was [O]'s safest place in which she could find love, solace and trust. The accused changed this and made home a living hell for [O]. The court in *Public Prosecutor v Law Aik Meng* stated that offenders of sexual offences against children should be given deterrent sentences. Although the accused did not sexually assault [Y], she was physically abused by him.

58 In *Public Prosecutor v Raffi Bin Jalan and Another* [2004] SGHC 120 at [20], V K Rajah JC (as he then was) said:

Sentencing policy dictates that an offender who commits an offence against a vulnerable victim (this embraces the handicapped, incapacitated, children and the elderly) ought to be more severely dealt with by the court: *R v Allen and Bennett* (1988) 10 Cr App R (S) 466, *R v Boswell* (1982) 4 Cr App R (S) 317

Accused's deplorable conduct as step-father

The accused was the step-father and his duty was to protect, provide and look after his 2 young step-children. Instead he abused his position and breached the trust and authority that was bestowed on him as a step-father. He sexually abused [O]. The accused's sexual abuses on [O] became progressively worse. His first started to molest her by groping her breasts and nipples as she was asleep. Later [O]'s vulva was also molested. Then he proceeded to commit cunnilingus, fellatio, inserted his finger into her vagina and eventually raped her.

The first time the accused raped [O], he pulled her out of the toilet when she was bathing. He then raped her on the sofa bed after molesting her breast, and committed cunnilingus and digital sexual penetration. On this occasion it was an unprotected sex and the accused completed the sex by ejaculating inside her. It was fortuitous that [O] was not impregnated by the accused on this occasion.

59 He was indeed a sexual pervert. I noticed that the first incident of sexual assault on [O] happened barely 6 months into his 3rd marriage to his wife !

60 He also physically abused her in order to have absolute control over her so that she is totally compliant to his demands. He instilled tremendous fear in [O]. This was why [O] was afraid to resist, retaliate or expose the accused's heinous crimes to her own biological mother. The accused by his violent domination over [O] was able to perpetuate his sexual exploits over a period of nearly 3 years. She became the accused's captive sexual object for nearly 3 years. The accused also physically assaulted [Y]. Fortunately, [Y] was not sexually abused by him.

61 The irony is that the home became the most unsafe and dangerous place for [O] as the accused would intrude into her privacy when she was asleep or while she was bathing in order to satisfy his sexual exploits.

62 The following comments made by Chan Sek Keong CJ in *Public Prosecutor v Firdaus bin Abdullah* [2010] 3 SLR 225 at [19] are particularly apposite:

Separately, the gravity of the offence would be increased in cases involving vulnerable victims. Children and young persons are particularly vulnerable because they are unable to fend for themselves and require their parents or guardians to take care of them. Any person entrusted with the care of young children would be harshly dealt with if that trust is betrayed: see *Purwanti Parji v PP* [2005] 2 SLR(R) 220 at [30] and *PP v Teo Chee Seng* [2005] 3 SLR(R) 250 at [9].

63 In *Public Prosecutor v UI* at [32] the court said “those who have charge of children cannot abuse their position to satisfy their urges” In *Public Prosecutor v NF* [2006] 4 SLR (R) 849 at [42] the court mentioned that “the harshest penal consequences to send an unequivocal and uncompromising message to all would-be sex offenders who abuse the relationship... to gratify sexual impulse”

Duration of the criminal conduct

64 It must be emphasised that this is not a case where the accused committed one off criminal offence against his step-daughter. He committed numerous premeditated sexual offences against [O]. He was also very violent towards [O] and the other step-daughter [Y]. This went on for a prolonged period of close to 3 years. [Y] was also not spared the physical assaults.

Harm caused

65 When the accused perpetuated the offences against [O] she was only 11 to 14 years of age. She was a silent sufferer who was very afraid to voice out the heinous crimes of the accused as she was terrified of him. Her victim impact statement reveals that she is presently suffering significant adverse psychological harm. She said that she still feels extremely disgusted by the accused act of performing cunnilingus on her before he raped her. She is also more reserved and feels anxious whenever she is in a crowded environment. She is very badly affected by what the accused has done to her. This has caused her studies to suffer. She is afraid that the accused will look for her and her family members when he is released from prison. She is also extremely uncomfortable with other male friends and she keeps very much to herself. Dr Parvathy Pathy, the senior consultant psychiatrist at the Child’s Guidance Clinic made the following observations on [O]:

[O] reported that she felt disgusted, sad and angry. She often still has flashbacks, especially when it is very quiet. She still has nightmares where she dreams of the accused returning to sexually abuse her again. She also has recurrent memories of the alleged events and these have led to poor sleep

66 Dr Pathy further reported:

[O] reported that she was struggling with an easily irritable mood and that she would get angry easily over minor things. She reported that her anger began when the alleged abuse started and that she was expressing it more now. She reported that she was feeling sad and crying nearly everyday. She had nightmares and flashbacks of the alleged abuse and feared that [the Accused] would come back. She had disturbed sleep and felt worthless, damaged and “not good enough”. She had low self-esteem.

67 The counsellor at the shelter where [O] was housed also observed that “[O] appeared withdrawn and rather irritable at home”.

Premeditation

68 The accused made sure that when he committed the sexual offences on [O] there were either no one present at home or the other family members were asleep. When it came to sleeping arrangement he made sure [O] was sleeping next or close to him. It is quite clear that these sexual offences were not committed on impulse but were all premeditated. Premeditation is an aggravating factor. Professor Andrew Ashworth in *Sentencing and Criminal Justice* (5th ed, 2010, Cambridge University Press) said (at p 164):

Planning of an offence

Elements of planning or organisation may also be present in crimes committed by individuals. A person who *plans a crime is generally more culpable*, because the offence is premeditated and the offender is therefore more fully confirmed in his criminal motivation than someone who acts on impulse, since he is more considered in his lawbreaking...Planned lawbreaking betokens a considered attack on social values, with greater commitment and perhaps continuity than a spontaneous crime.

[emphasis added, footnotes in original omitted]

69 I shall now consider the mitigating factors to determine whether these could alleviate the severe gravity of his criminal conduct.

Mitigating factors

First-time offender

70 The accused pleaded for leniency as he did not have any criminal antecedents prior to this case. The prosecution urged the court not to give any weight for this factor. This is because the accused had committed numerous offences against his step daughters. These offences were committed over a period of nearly 3 years.

71 Technically, the accused is a first time offender. In normal circumstances when an offender commits a crime for the first time, the court usually shows some degree of leniency depending on the factual matrix of the case and the degree of his criminal conduct. In this instant case, the accused had committed numerous heinous crimes against his step-daughters, particularly [O]. In the circumstances, the court would accord very little weight in the accused's favour.

Remorse

72 The accused said that he regretted committing these offences and had fully cooperated with the police in their investigations. He had also written to his ex-wife and step-daughters seeking for their forgiveness. The accused had also pleaded guilty to all the 18 charges. Hence he had spared [O]'s agony of reliving the events which would have caused much anxiety, stress and further psychological harm to her.

73 The prosecution doubted that the accused was genuinely remorseful and contrite for these offences. He said that the accused did not voluntarily surrender to the authorities after he committed the sexual offences. Instead the offences came to light because [O] and her friends were sharing the experiences of how they lost their virginity. Secondly, the accused had down-played the nature and extent of his sexual offences. This was the observation made by Dr Bharat Saluja from the Institute of Mental Health. Thirdly, the numerous offences committed by the accused against his step-daughters over a prolong period only stopped after his ex-wife and step-daughters left the accused.

74 Despite the prosecution's suspicion on the genuineness of the accused's remorse, I am prepared to accept the fact that he now regretted his actions. After his criminal conducts were discovered he fully cooperated with the police during the investigations. He sought forgiveness from his ex-wife and his step-daughters who were victims of his crimes. He had also pleaded guilty and showed genuine remorse in the course of these proceedings.

Low risk of sexual re-offending

75 One very germane factor that is in the accused's factor is mentioned by Dr Bharat Saluja. A risk assessment was conducted and the results indicated that there is a low chance of the accused committing sexual offences again.

Contributions to Singapore

76 The accused said that he served national service in 1997. During his youth he had also represented Singapore International League when he played for the Football Association of Singapore. In my view these are valid mitigating factors that this court should take into consideration in determining the appropriate sentence for the accused (see *Knight Glenn Jeyasingam v Public Prosecutor* [1992] 1 SLR (R) 523 at [27] where the High Court took into account as a mitigating factor the appellant's distinguished record of public service and service to the community in the education sector; and *Siah Ooi Choe v Public Prosecutor* [1988] 1 SLR (R) 309 at [4] where the High Court took into account as a mitigating factor the appellant's contributions to community work and development.

The sentences

77 I have accepted that the accused is now remorseful for his actions and has chosen to plead guilty. I have also acknowledged his contributions to the nation and that he did not have any criminal antecedents. The weightiest mitigating factor is his low probability of re-offending. However, this court cannot ignore the vicious sexual crimes that he had committed over a prolonged period. He had caused untold and almost irreparable harm to a very young, innocent and vulnerable girl. The aggravating features in this case far outweigh his mitigating factors to an enormous extent. Hence despite his low risk of sexual re-offending it is necessary for this court to impose a deterrent sentence that befits his heinous crimes.

The rape charges (charges 14 and 15)

78 In *Public Prosecutor v NF* (at [24] to [38]) the court classified rape into 4 broad categories depending on the gravity of the offence, and suggested benchmark sentences for each of the categories:

Category 1 rapes

24 As noted above, the Court of Appeal in *Chia Kim Heng Frederick* ([17] supra) has already determined that the benchmark sentence for a rape offence without mitigating or aggravating factors should be ten years' imprisonment and not less than six strokes of the cane as a starting point. There is absolutely no reason or basis to revise or revisit this benchmark.

Category 2 rapes

25 The common thread running through category 2 rapes is that there has been exploitation of a particularly vulnerable victim - either because the perpetrator is related to the victim in a way that allows him to abuse his position of trust or authority, or the perpetrator exploits a numerical advantage or acts out of hate towards a minority group.

26 The leading case in Singapore involving the rape of vulnerable victims is *PP v B* [1999] 3 SLR(R) 227. In that case, the accused pleaded guilty to 3 counts of raping his daughter pursuant to s 376(1) of the PC. Several aggravating factors were taken into account, including the

following:

- (a) he was the natural father of the victim;
- (b) she was nine years old when he first raped her;
- (c) she was physically handicapped;
- (d) the rapes took place over a period of one year;
- (e) no condoms were used;
- (f) the victim suffered from deep psychological scars as a result; and
- (g) he had a previous conviction of a similar offence.

The accused was sentenced by the trial court to merely 5 years' imprisonment on each of the 3 charges of rape. Two of the sentences were ordered to run consecutively. After an appeal by the Prosecution, the Court of Appeal enhanced the sentence to 15 years' imprisonment on each charge, and ordered that two of the sentences were to run consecutively, making a total of 30 years' imprisonment. No caning was ordered because the accused was 51 years old.

...

36 This catalogue of cases reveals that where vulnerable victims are involved or where the presence of one or more of the factors enunciated in *Millberry* are present (see [20] above), the courts have tended to mete out sentences ranging from 12 to 18 years' imprisonment with the majority of cases settling on 12 strokes of the cane as the norm. In the light of the overarching and compelling need for general deterrence in this genre of offences (see [39] and [40] below), I am of the view that the appropriate starting point for category 2 rapes is 15 years' imprisonment and 12 strokes of the cane.

Category 3 rapes

37 Category 3 rapes are those involving repeated rape of the same victim or of multiple victims. I agree with the courts in *Millberry* ([19] supra) and *Billam* ([19]) supra) that such offenders pose more than an ordinary danger to society and therefore ought to be penalised severely with draconian sentences. However, in most cases where the offender has terrorised the same victim multiple times or where he has assaulted multiple victims, the Prosecution would proceed with multiple charges against the accused. A sentencing judge has then the option to exercise his discretion to order more than one sentence to run consecutively in order to reflect the magnitude of the offender's culpability. As such, there is no overriding need for judges to commence sentencing at a higher benchmark than that applied to category 2 rapes. In fact, to do so may in many cases result in double accounting and excessive sentences.

Category 4 rapes

38 Category 4 rapes are rapes committed by offenders who have demonstrated that they will remain a threat to society for an indefinite period of time. In contradistinction to England, the option of a life sentence is unavailable in Singapore currently. Accordingly, it would not be inappropriate to sentence a category 4 offender to the maximum allowed under s 376 of the PC, ie, 20 years' imprisonment and 24 strokes of the cane, if the circumstances so dictate.

79 I agree with the prosecution that the facts of this case fall within category 2 rapes in which the suggested sentence is 15 years and 12 strokes of the cane. As [O] was raped on four occasions, the facts of this case can also come within category 3. This court can decide to order one of the sentences to run consecutively to reflect the magnitude of the accused's culpability.

80 In *Public Prosecutor v NF*, the 48-year-old offender raped his 15-year-old daughter once. He also had criminal antecedents for housebreaking, theft and drug offences. He was sentenced to 15 years' imprisonment and 15 strokes of the cane for the rape charge.

81 In *Public Prosecutor v YD* [2009] 1 SLR(R) 261, the 37-year-old offender had claimed trial to 16 charges of statutory rape under s 375(e) of the Penal Code (Cap 224, 1985 Rev Ed) and 26 charges of having carnal intercourse against the order of nature (*viz.*, fellatio), offences punishable under s 377 of the Penal Code. The victim was his step-daughter when she was between 11 and 13 years old. He was sentenced to a total sentence of 25 years' imprisonment and 24 strokes of the cane.

82 In *Public Prosecutor v AHB* [2010] SGHC 138, the 43-year-old offender faced 2 charges for outrage of modesty under s 354 of the Penal Code (Cap 224, 1985 Rev Ed), 1 charge of carnal intercourse against the order of nature (*viz.*, fellatio) punishable under s 377 of the Penal Code, 3 charges of rape, 1 charge for sexual penetration punishable under s 376(3) of the Penal Code and 1 charge for possession of obscene films under s 30(1) of the Films Act (Cap 107, 1998 Rev Ed). The victim of the sexual offences was his biological daughter who was 14 to 16 years old when the offences were committed. She was impregnated. He was given a total sentence of 36 years' imprisonment and 24 strokes of the cane.

83 These sentencing precedents on rapes indicate that the courts have been imposing harsh sentences for similar types of cases.

84 The statutory prescribed punishment for rape under s375(2) of the Penal Code is mandatory imprisonment which may extend to 20 years and shall also be liable to fine or to caning. I found the aggravating facts of the first rape charge ie 14th charge particularly very disturbing. I accordingly impose 17 years' imprisonment and 17 strokes of the cane. As for the other rape charge ie 15th charge I sentence him to 15 years' imprisonment and 14 strokes of the cane.

Sexual penetration of a minor (2nd charge)

85 In this case there are 3 charges of sexual penetration although only 1 was proceeded on. [O] was only 12 years old when the accused used his finger to penetrate her vagina repeatedly. At that time she was bathing and he entered the toilet to commit this offence. The accused also molested her naked body. She was so terrified that she did not dare to retaliate for fear of being beaten. Although the prescribed statutory minimum sentence is 8 years up to 20 years and 12 strokes of the cane I impose 10 years' imprisonment and 12 strokes of the cane.

Outraging of modesty (9th and 12th charges)

86 In this case the 2 charges of outraging of modesty committed by the accused were aggravated. In the 9th charge he lifted [O]'s tee-shirt and bra to grope [O]'s breasts and nipples. He also slid his hand under [O]'s panties and touched her vulva. This lasted a few minutes. As for the 12th charge, he pulled down [O]'s shorts and panties to her knee, lifted up her legs, and licked her vagina.

87 For these 2 charges the prosecution suggested 18 months' imprisonment and 4 strokes of the cane each. The statutory prescribed punishment under s354(2) of the Penal Code is imprisonment up to 5 years or with fine or with caning or with any combination of such punishments. There are many precedents for such offences but the sentences vary widely depending on the facts of each case. I am minded to impose a more severe sentence for each of the 2 charges in view of the aggravating features in these charges. Accordingly, I sentence the accused to 2 years' imprisonment and 6 strokes of the cane on each of these charges.

Voluntarily causing hurt (6th and 10th charges)

88 There are also numerous sentencing precedents for such offence and the sentences vary widely depending on the merits of each case. The most aggravating factor in these 2 charges is the fact that he had assaulted both his young step-daughters for not opening the main door to his flat as they were sleeping. Upon entering the flat he entered the bedroom and slapped [O] on her face, waking her up. He then pulled her hair and slammed her on the floor. He also punched her on her ribs and kicked her on her back. He also assaulted [Y] in the process, this offence forming the basis for the 7th Charge (to be taken into consideration, see [4] above). The accused only stopped assaulting them when the wife intervened. Fortunately, the children did not suffer permanent serious injuries from this incident.

89 In the other incident which is the subject matter of the 10th charge the accused became angry when he saw [O] text messaging with a boy and later found a packet of cigarettes in her school bag. He slapped her face at the car-park. When the wife asked the accused to stop hitting [O] in public, he directed everyone to get into the car and then drove them to a secluded spot in the vicinity of Changi Village:

... He then proceeded to the rear seat of the car (where [O] was still sitting). There, he started to punch her and pull her hair. He also grabbed her head and slammed it, repeatedly, against the rear door of the car. In addition, he also kicked her back. He only stopped assaulting [O] when [the wife] intervened some 5 to 10 minutes later. [\[note: 1\]](#)

90 The aggravating features here are that the accused had repeatedly punched and kicked [O], pulling her hair and repeatedly slamming her head against the rear door of his car. I sentence the accused to 6 months' imprisonment for each of these charges.

How many and which of the sentences are to run consecutively?

91 Section 307(1) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC") requires the court to order at least two terms of imprisonment to run consecutively, if at one trial a person is convicted and sentenced to imprisonment for at least three distinct offences:

Subject to subsection (2), if at one trial a person is convicted and sentenced to imprisonment for at least 3 distinct offences, the court before which he is convicted must order the sentences for at least 2 of those offences to run consecutively.

92 In deciding the number of terms of imprisonment to run consecutively, I have to ensure that the total punishment does not have a crushing effect. In *Maideen Pillai v Public Prosecutor* [1995] 3 SLR(R) 706 at [11], it is stated:

Of course, the sentencing court will bear in mind at all times the second limb of the totality principle, that is, the need to avoid an aggregate sentence so harsh as to be 'crushing' in its

effect on the offender. Where consecutive sentences are imposed on an offender, the overall punishment should be in proportion to the overall gravity of his criminal conduct, taking into account the circumstances in which he offended and also the pattern of his previous behaviour.

93 In dealing with multiple terms of imprisonment, I am aware of the case of *Teo Kian Leong v Public Prosecutor* [2002] 1 SLR(R) 386, where Yong Pung How CJ said that (at [8]):

No single consideration can conclusively determine the proper sentence and, in arriving at the proper sentence, the court must balance many factors, sometimes rejecting some. One factor that the court should consider is whether the totality of the sentence to be served is proportional to the inherent gravity of all the offences committed by the accused. Hence, while the individual sentence for a particular offence may be perfectly appropriate, the cumulative effect of the sentences may result in a total term of imprisonment that is disproportionate to the overall criminality of the accused.

94 Balancing the aggravated criminality of the accused against his mitigating factors, I order the sentences in the 2 rape charges (the 14th and 15th charges) to run consecutively, while the other 5 sentences of imprisonment are to run concurrently. The net result is 32 years' imprisonment. This is an appropriate deterrent punishment and is not a crushing punishment in the context of the accused's despicable and callous crimes.

Caning

95 I have imposed the following sentences of caning:

Charge	Number of Strokes
2nd	12
9th	6
12th	6
14th	17
15th	14
Total	55

96 However s 328 of the CPC imposes a limit of 24 strokes. Therefore, I sentence the accused to 24 strokes of the cane.

97 Section 328(2) of the CPC allows the court to "impose a term of imprisonment of not more than 12 months in lieu of all such strokes which exceed the specified limit." I have decided not to impose further term of imprisonment on the accused for the remainder 31 strokes of the cane as I am of the view that the 32 years' imprisonment is sufficient for his vile criminal conduct.

Conclusion

98 In summary, the following sentences are meted out:

Charge	Sentence
2nd	10 years' imprisonment; 12 strokes of the cane
6th	6 months' imprisonment
9th	2 years' imprisonment; 6 strokes of the cane
10th	6 months' imprisonment
12th	2 years imprisonment; 6 strokes of the cane
14th	17 years' imprisonment; 17 strokes of the cane
15th	15 years' imprisonment; 14 strokes of the cane

99 I order the sentences of imprisonment for the 14th and 15th charges to run consecutively from the date of his remand ie 17 March 2012.

100 The accused's total sentence is thus 32 years' imprisonment and 24 strokes of the cane.

101 I would like to thank the prosecution for their comprehensive submissions.

[\[note: 1\]](#) Para 51 of the Statement of Facts

Copyright © Government of Singapore.