

Public Prosecutor v Adam bin Darsin
[2000] SGHC 267

Case Number : CC 73/2000
Decision Date : 06 December 2000
Tribunal/Court : High Court
Coram : Tay Yong Kwang JC
Counsel Name(s) : Mohamed Nasser Ismail (Attorney-General's Chambers) for the prosecution;
Accused in person
Parties : Public Prosecutor — Adam bin Darsin

JUDGMENT:

Grounds of Decision

THE CHARGES

1 The Accused is now 32 years old. He was working as a deliveryman for Kentucky Fried Chicken. He faced a total of 23 Charges under Section 377 of the Penal Code alleging that he had carnal intercourse against the order of nature by performing fellatio on eight boys ranging in age between 12 and 14 years old at various times in his HDB flat. Eight Charges, each involving a different boy, were proceeded with. The Accused pleaded guilty to these eight Charges and admitted and consented to the remaining 15 Charges being taken into consideration for the purpose of sentence.

2 He was sentenced to 10 years imprisonment on each of the eight Charges, with four of the sentences running consecutively with effect from 22 June 2000 (the date he was arrested). The victims in these four consecutive sentences were all below 14 years of age at the material times. The remaining four sentences were ordered to run concurrently with the four consecutive sentences, making a total of 40 years imprisonment.

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THE FACTS

3 In January 1997, the Accused became acquainted with Victim 6 who was playing street soccer at a Street Soccer Court. In July that year, the Accused told Victim 6 that he was looking for a place to live in and asked whether he could stay in Victim 6's flat. Victim 6 approached his mother who agreed to the Accused moving into the flat and paying a monthly rent of between \$150 to \$200.

4 Sometime in the beginning of 1999, the Accused moved out of that flat after a quarrel between him and the brother of Victim 6. He then moved into his present flat where all the offences took place.

5 Victim 6 would go to the Accused's flat regularly to play video games on the Accused's Sony Play Station. Occasionally, he would also deliver food that his mother had prepared for the Accused. He would spend most of his time in the Accused's flat and even had a spare key to let himself in.

6 The Accused met the rest of the victims at the Street Soccer Court through the introduction of Victim 6 who referred to him as Uncle. He would invite the boys to his flat to play video games. In June 2000, they also assembled in his flat to watch the Euro 2000 soccer competition.

7 The Accused would accost the victims when they were alone in his flat. He would proceed or continue to suck the penis of the respective victims despite their mild protests. In some cases, the victims were too afraid or too shocked to resist. They did not tell anyone about the incidents. On one occasion, he accosted Victim 7 in the kitchen of the flat while some of the other boys

were playing the video games elsewhere in the flat. He pulled down Victim 7's shorts when the latter emerged from the toilet in the kitchen and proceeded to suck his penis, stopping only when the victim shouted "Jangan" (or "Don't"). Victim 7 returned to join the others without telling them about the incident in the kitchen.

8 In another incident, when Victim 8 was in the Accused's flat past midnight playing the video games, the Accused sat beside him and talked about his financial woes and work-related problems. Suddenly, the Accused unbuckled Victim 8's pants and pulled them down to his knees. He then proceeded to perform fellatio on Victim 8 who was too shocked to react and did not struggle but told him to stop. The Accused ignored him and continued with his act until Victim 8 ejaculated. The Accused then swallowed the semen.

9 On 21 June 2000, the complainant, a friend of the victims, confronted the Accused with the allegation that he had performed fellatio on some of them. That led to an argument and a fight between the two of them. The complainant then went to Victim 8's home and informed the latter's parents about what the Accused had done to Victim 8. Confronted by his parents about it, Victim 8 admitted that the Accused had performed fellatio on him.

10 The complainant, Victim 8 and his parents then proceeded to lodge a police report against the Accused. Early the next morning, 22 June 2000, the police arrested the Accused in his flat.

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THE PROSECUTION'S SUBMISSIONS ON SENTENCE

11 After noting that the Accused's only criminal record consisted of a traffic offence in 1988, the Prosecution asked that a deterrent sentence be imposed on the Accused based on the guidelines enunciated by the Court of Appeal in *Lim Hock Hin Kelvin v PP* [1998] 1 SLR 801. The Prosecution submitted that the Accused had abused the trust reposed in him by the boys who regarded him as an elder brother or uncle. It was also said that "such an introduction to sexuality by this self-professed homosexual could result in some form of sexual confusion in the victims" and that "these acts of sexual deviancy have a very corrupting effect especially on adolescents such as the eight victims in the present instance". The Prosecution also submitted that there should be no distinction in principle between anal sex and oral sex where Section 377 of the Penal Code was concerned.

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THE MITIGATION PLEA

12 In his handwritten Mitigation Plea, the Accused claimed that "it was a voluntary act by which both parties were interested in the act." Moreover, he added, he "was being seduced" and his mind "was unstable during the incident". He explained that he was not suggesting that the boys had asked him to perform oral sex on them but merely that some of them had disturbed him and talked about oral sex. He was sexually stimulated but the stimulation was not by the boys.

13 The Accused also said that he did not use any force, that the boys were willing parties and they knew that he was a homosexual. He claimed that his "male genetic hormones have been reduced through the years".

14 Although he wrote that the 23 Charges were "considerably unfair" and he had "pleaded guilty in station due to heavy stress and thorough interrogation", he confirmed in Court that he was willingly confessing to the offences. He was very remorseful and regretted what he had done "though it was not my intention". He felt sorry for the victims. He also felt ashamed and very guilty and begged for leniency.

15 The Accused is single. His father passed away recently. His mother was in Johor and was very ill.

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DECISION OF THE COURT

16 The punishment provided under Section 377 of the Penal Code is imprisonment for life or imprisonment for up to 10 years and a discretionary fine.

17 Since the Court of Appeal's decision in *PP v Kwan Kwong Weng* [1997] 1 SLR 697, it is clear that fellatio between two male persons is unnatural carnal intercourse within the meaning of Section 377 of the Penal Code. Consent is irrelevant although threats or the use of violence would aggravate the offence.

18 The Court of Appeal in *Lim Hock Hin Kelvin v PP* [1998] 1 SLR 801 laid down the following sentencing guidelines in respect of paedophiles:

"24 Bearing in mind the gravity of the offence, we started from the position that a paedophile who commits unnatural carnal intercourse (in the form of anal intercourse) against young children below the age of 14 years, without any aggravating or mitigating factors, should be sentenced to ten years' imprisonment. There should not be any difference whether the victim is a young girl or a young boy. The court would then have to consider the aggravating and mitigating factors in increasing or reducing the sentence."

19 Where chronic paedophiles are concerned, the Court of Appeal said:

"35 ... In future, chronic paedophiles (such as the appellant) who are shown to be unable or unwilling to control themselves and who target children as victims should be sentenced to life imprisonment ..."

20 In the present case, the offences occurred over a period of some 12 months. The Accused here has no previous convictions save for a traffic offence. I do not think therefore that he necessarily falls within the meaning of "chronic paedophile" contemplated by the Court of Appeal in *Kelvin Lim* and life imprisonment is probably not appropriate here.

21 Last month, I dealt with the case of *PP v Tan Ah Kit* (CC No. 67 of 2000), where two Charges of anal intercourse and one Charge of fellatio involving two boys were proceeded with. Six other Charges were taken into consideration there, one of which involved anal intercourse and three involved fellatio.

22 In *PP v Tan Ah Kit*, I made the following remarks:

"23 The Court of Appeal's sentencing guidelines (at paragraph 24 of the judgment) apply to paedophiles performing anal intercourse on young children below 14 years of age. The guidelines apply squarely to the first victim, MF, who was 11 and 12 years old at the material times. Where the second victim S was concerned, he was almost 15 years old at the time of the offences but did not appear to have been materially more mature or intelligent than MF was. Moreover, the unnatural carnal intercourse involved in the two Charges concerning S was fellatio and not anal intercourse. In *Kelvin Lim*, the acts of fellatio were made the subject of Charges under Section 377A and not Section 377 of the Penal Code. Section 377A carries a maximum imprisonment term of only two years and Kelvin Lim received one year imprisonment for each of the five Charges under Section 377A. Whether fellatio is made the subject of a Charge under Section 377 or 377A of the Penal Code is a matter of prosecutorial discretion. ... In my view, fellatio and anal intercourse involving two males are not really distinguishable when they are the subject of Charges preferred under

Section 377. Everything said about anal intercourse applies to oral intercourse except for the potential physical injury caused by penetration of the victim's anus. Further, I do not think any distinction ought to be made on the basis of who is penetrating whom. I am therefore of the opinion that the guidelines set by the Court of Appeal should apply to the case of S in the same way as they patently do in the case of MF."

23 In this case, in the eight Charges proceeded with, eight boys were involved. All had fellatio performed on them. They ranged in age between 12 plus and 14 plus at the time of the offences stated in the said eight Charges. Those who were past 14 years of age did not appear to be materially more mature or intelligent than those who were below 14 years of age.

24 Like *Tan Ah Kit*, the Accused here knew "where to fish and what would make the fishes bite". Here, it was the video game equipment that he used to entice the boys to his lair. He obviously had a paedophilic predator's mind and ability to target the potential victims. While violence or threats would aggravate the offences, the seeming consent or acquiescence of the young vulnerable victims did not make the offences any less abhorrent. The law must punish severely those who have attained maturity but take advantage of the youthful innocence of those who can be easily led astray by gifts, games or money.

25 I see no significant mitigating factors here save for the Accused's plea of guilt. I therefore sentence the Accused to 10 years imprisonment in respect of each of the eight Charges to which he has pleaded guilty. In view of the abhorrent nature of the offences, the number of boys and the total number of offences involved, society should be protected from him for a long time. I am therefore ordering the imprisonment sentences for the 8th, 12th, 14th and 23rd Charges to run consecutively with effect from 22 June 2000. The other four imprisonment sentences will run concurrently with these four, making a total of 40 years imprisonment with effect from 22 June 2000.

Tay Yong Kwang

Judicial Commissioner

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