

Public Prosecutor v Bala Kuppusamy
[2009] SGHC 97

Case Number : CC 10/2009
Decision Date : 21 April 2009
Tribunal/Court : High Court
Coram : Tay Yong Kwang J
Counsel Name(s) : Francis Ng, DPP for the prosecution; Accused in person
Parties : Public Prosecutor — Bala Kuppusamy

Criminal Law

21 April 2009

Tay Yong Kwang J:

1 The accused, born on Valentine's Day 1961, admitted that he committed various offences against a number of female victims. All the offences, including those contained in the charges taken into consideration for the purpose of sentence, occurred between 27 April 2008 and 10 June 2008. The charges were therefore framed based on the Penal Code (Cap 224, 2008 Rev Ed) as revised by the amendments which came into force on 1 February 2008.

The Charges proceeded with

2 The prosecution proceeded on nine charges as follows:

- (a) two charges punishable under s 354A(1) (outraging modesty in certain circumstances) which provides for punishment of not less than 2 years imprisonment and not more than 10 years imprisonment and mandatory caning;
- (b) four charges punishable under s 376(4) (the new offence of sexual assault by penetration, with aggravation) which provides for imprisonment of not less than 8 years and not more than 20 years and mandatory caning of not less than 12 strokes;
- (c) three charges punishable under s 394 (voluntarily causing hurt in committing robbery) which provides for imprisonment of not less than 5 years and not more than 20 years and mandatory caning of not less than 12 strokes.

The Facts

3 The accused attacked the following four female victims (their names are not used here):

- (a) V1, then 34 years old, a Myanmar national working as a domestic worker here;
- (b) V2, then 20 years old, a Chinese national studying in a polytechnic here;
- (c) V3, then 18 years old, a permanent resident studying in a secondary school here; and
- (d) V4, then 16 years old, a Singaporean student.

4 At about 8.40 pm on 27 April 2008, V1 was crossing an overhead bridge in the Bukit Timah area when she noticed the accused walking towards her from the other end of the bridge. After he had walked past her, she noticed the accused making an about turn to follow her. V1 tried to run away from the accused but he caught up with her and pushed her to the ground. He then pinned her down and punched her face and body before demanding that she hand over her money. After V1 handed \$400 to the accused, he ran away and went to a fast food outlet in Raffles City to report for work as a cleaner. V1 suffered a bruise over the left side of her face, point tenderness over the left lateral chest wall and abrasion over the right shoulder, right elbow and right wrist. This incident formed the subject of the first charge for robbery with hurt punishable under s 394.

5 At about 7.50 pm on 30 April 2008, V2 was walking along Bartley Road on her way to give tuition to a student living in that area when the accused grabbed her neck and covered her mouth from behind. He told her to be quiet and demanded that she hand over her money and her mobile phone. Out of fear, V2 handed him \$200 and the phone. He then told her to follow him into some bushes but she refused. When she sat down on the pavement to prevent him from dragging her into the bushes, he punched her back and kicked her left leg several times. When she got up and tried to walk away, he held on to her right arm and tried to pull her back. She managed to break free from his grip and to snatch back her mobile phone. She then ran across the road and made a call to the police. The accused fled from the scene and went to his place of work in Raffles City. V2 suffered abrasions over her left foot and tenderness over her right biceps and her right mid-back area. These facts formed the subject of the second charge for an offence under s 394.

6 At about 8 pm on 28 May 2008, V3 was walking along Upper Serangoon Road towards the Woodleigh MRT station when the accused approached her, purportedly to ask for directions. Suddenly, he demanded money from her. She screamed but he snatched her mobile phone from her and covered her mouth. He then dragged her to a grass patch nearby, pushed her to the ground and punched her face and body until she stopped screaming. V3 handed \$30 to him when he demanded money from her. He then told V3 to follow him across Upper Serangoon Road where, he said, he would run away. V3 went along with him towards the said MRT station.

7 Upon reaching the MRT station, the accused dragged V3 to the back of the station and ordered her to remove her clothes and lie down. V3 complied out of fear. He fondled her breasts and when he moved his hands towards her vulva, V3 closed her thighs tightly to stop him from fondling her private area. Upon seeing her do this, the accused punched her chest and stomach until she released her grip. He then fondled her and inserted a finger into her vagina, causing her to scream in pain.

8 The accused next exposed himself to V3 and ordered her to suck his penis, threatening to hurt her if she refused. She complied out of fear. He held on to her head, moving it back and forth until he ejaculated in her mouth. After he was satisfied, he dressed up, covered V3's head with her blouse and told her to count to a hundred. While she was doing so, he disappeared from the scene and went to report for work at the same fast food outlet in Raffles City. These incidents against V3 formed the subject of charge no. 4 (robbery with hurt), charge no. 5 (aggravated outrage of modesty), charge no. 6 (aggravated sexual penetration by digital means) and charge no. 7 (aggravated sexual penetration by fellatio).

9 The next assault was against V4, then 16 years old. At about 7.45 pm on 1 June 2008, V4 was walking home along Marymount Road when the accused approached her, purportedly to ask for directions. He asked her to lead him to Braddell Road and she kindly agreed to do so as it was along her way.

10 As they were walking past a forested area, he suddenly grabbed her and dragged her into that

area. Fearful of what might happen to her, V4 lied that she was only 12 years old in the hope that the accused would not rape her. He ordered her to undress, threatening to beat her up if she disobeyed. After V4 complied, he fondled her body intimately.

11 The accused next made V4 kneel in front of him and ordered her to perform fellatio on him, again threatening her with a beating if she refused. She complied with his demand. Subsequently, he ejaculated in her mouth. After that, he made her stand in front of him and inserted his index finger into her vagina repeatedly. After telling her to count to a hundred, he fled from the scene to report for cleaning work at a fast food outlet in Chinatown.

12 These incidents against V4 formed the basis of charge no. 9 (aggravated outrage of modesty), charge no. 10 (aggravated sexual penetration by fellatio) and charge no. 11 (aggravated sexual penetration by digital means).

13 On 30 June 2008, the police arrested the accused after several of his victims managed to identify him from police records. He confessed to his crimes.

The Charges taken into consideration

14 In addition to the nine charges set out above, the accused also admitted six other charges and these were taken into consideration for the purpose of sentence. These six charges involved robbery with hurt against a fifth female victim aged 28, robbery against V4 under s 392 Penal Code, robbery with hurt against a sixth female victim aged 19, and robbery with hurt, aggravated outrage of modesty and aggravated sexual penetration by digital means against a seventh female victim aged 26.

The previous convictions

15 On 2 November 1987, the accused was sentenced to 9 years imprisonment and 12 strokes of the cane for aggravated rape under the former s 376(2) Penal Code (Cap 224, 1985 Rev Ed). On 20 November 2007, he was sentenced to terms of imprisonment and 16 strokes of the cane for two charges of snatch theft and one charge of robbery with hurt (with two offences of fraudulent possession of property under the Minor Offences Act (Cap 184, 1985 Rev Ed) taken into consideration. He was released on 8 September 1992. I shall refer to these convictions as the first series of offences.

16 However, within seven weeks of his release, the accused committed another series of offences beginning on 23 October 1992 ("the second series of offences"). These five offences (three were proceeded on with two taken into consideration) involved aggravated rape, carnal intercourse against the order of nature (under the former s 377 Penal Code (Cap 224, 1985 Rev Ed), robbery and aggravated outrage of modesty. On 16 July 1993, he was sentenced to a total of 23 years imprisonment and 24 strokes of the cane. He was released on 17 March 2008. On 27 April 2008, the first of the offences in issue before this court was committed ("the third series").

The Prosecution's submissions on sentence

17 In view of the accused's history of serious sexual offences, the prosecution urged the court to impose a sentence which would protect the public adequately and not allow history to be repeated yet again. In a risk assessment conducted by the Prison Psychological Services Branch, the report dated 26 February 2009 opined that the accused's "imminent risk of sexual violence is assessed to be **High**" (emphasis in the original).

18 Citing V K Rajah J's (as he then was) judgment in *PP v NF* [2006] 4 SLR 849 regarding the four categories of rape and their benchmark sentences (approved by the Court of Appeal in *PP v Mohammed Liton* [2008] 1 SLR 601 and in *PP v UI* [2008] 4 SLR 500), the prosecution suggested that the guidelines for rape could be usefully adapted for the new offence of sexual assault by penetration under s 376 of the Penal Code (Cap 224, 2008 Rev Ed). This was because both types of sexual offences involve penetration of a victim's orifices without the victim's consent and the law prescribes identical punishments for both, in their simple as well as their aggravated forms (see s 375(2) and (3) and s 376(3) and (4) Penal Code). Using this analogy, the present offences of the accused with all the aggravating circumstances would fall within the worst category (category 4 offences), deserving the maximum punishment prescribed by law.

19 The aggravating circumstances are as follows. The accused is an inveterate predator who is a clear and present danger to society. There were multiple victims attacked within a short span of time and all were subject to violence or threats thereof. Multiple acts of sexual assault were also committed on V3 and V4. When the charges taken into consideration were factored into the equation, they revealed a disturbing pattern of the accused preying on young women walking alone at night. There was long-term harm inflicted on the victims as evidenced by the victim impact statements of three of them.

20 The prosecution referred to various sentencing precedents for sexual offences and submitted that the aggregate sentence for the accused here should be in the region of 40 to 45 years imprisonment. Such an aggregate term of imprisonment would not offend the "one transaction rule" because the accused's offences were distinct in terms of victim, time and place. It would also not run contrary to the "totality principle" since this principle must be applied subject to s 18 of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) as noted by the Court of Appeal in *Kanagasuntharam v PP* [1992] 1 SLR 81. Such an aggregate term of imprisonment could not be said to be a sentence that was crushing and not in keeping with the accused's record and prospects, bearing in mind the overall gravity of his criminal conduct, the circumstances in which he offended and the pattern of his previous behaviour.

21 Although age is a relevant factor where the sentence is a long term of imprisonment (as observed in *PP v UI* at [78]), the sentencing considerations there were markedly different from those in the instant case where the principle of prevention should take precedence. As in the case of *Nicholas Kenneth v PP* [2003] 1 SLR 80, the accused here is a menace to society and should be taken out of circulation until such time when he will probably have a greatly reduced libido.

22 It may be noted here that in *PP v UI*, the Court of Appeal intended that the 55 year old offender there (who is the father of the victim whom he had raped) "be released at an age that should give him some time to spend with his family and to fulfil his wish to make amends to the Victim" (at [78]). In the present case, there could be no question of the accused making amends to any of the victims.

The accused's mitigation plea

23 The accused, who is not married, pleaded to be given another chance and vowed that he would turn over a new leaf and not commit another offence until the day he dies. It need hardly be said that in the light of his criminal history, such a promise sounded extremely hollow.

The decision of the court

24 In sentencing the accused to a total of 42 years imprisonment together with the maximum 24

strokes of the cane, I made the following remarks.

25 Between 27 April and 10 June 2008, under the cover of the darkness of the night, the accused terrorized seven ladies, four of whom were below 21 years of age, by robbing and/or sexually assaulting them using very violent and vile acts. In the nine charges that the prosecution proceeded with, four ladies were involved. He also used trickery and abused a young girl's good intentions of helping him.

26 The accused's criminal history is an appalling one. In November 1987, he was convicted by the High Court of rape by putting a woman in fear of harm and by a District Court of robbery with hurt, together with two counts of snatch theft. He was sentenced to a total of 11 years imprisonment and 28 strokes of the cane (at two separate trials) for this first series of offences. Within 45 days after his release from custody on 8 September 1992, he went on to commit the second series of offences beginning on 23 October 1992.

27 On 16 July 1993, the accused was convicted of rape, carnal intercourse against the order of nature and robbery with hurt. He was sentenced to a total of 23 years imprisonment and 24 strokes of the cane. For this second series of offences, he was released from prison on 17 March 2008. Within 41 days after his release, he went on to commit the present third series of outrageous offences, beginning on 27 April 2008.

28 It is quite obvious that the accused poses a very grave danger to society, especially to our women folk. He has absolutely no qualms about punching defenceless women on the face and body or kicking them to frighten them into giving in to him. In his interviews with a prison psychologist, he told the psychologist that "using physical violence is the fastest avenue in attaining submission from his victims". He simply cannot resist getting back to violence against females. This is amply demonstrated by the three series of offences spanning more than two decades in which he cannot even control himself for more than six or seven weeks despite the long periods of incarceration and the many strokes of the cane.

29 By his atrocious conduct, the accused has shown that he is not fit to live freely in society. I agree with the prosecution's submissions on the law. Even the maximum of 20 years preventive detention would be much too lenient for a predator like the accused here. DPP Francis Ng for the prosecution has suggested an aggregate imprisonment term of 40 to 45 years. I agree entirely – an unusual sentence for a most unique criminal. Too many females have suffered because of this merciless, marauding monster for whom liberty is a licence to rob, rape or ruin the lives of innocent females. He must not be allowed to go on another nocturnal rampage of violent punching and vile penetration.

30 The sentences of the court are therefore as follows:

1 st charge	(s 394 Penal Code)	- 9 years and 15 strokes
2 nd charge	(s 394 Penal Code)	- 9 years and 15 strokes
4 th charge	(s 394 Penal Code)	- 9 years and 15 strokes
5 th charge	(s354A(1) Penal Code)	- 4 years and 8 strokes

6 th charge	(s 376(4) Penal Code) (digital- penetration)	10 years and 14 strokes
7 th charge	(s 376(4) Penal Code) (fellatio)	- 12 years and 16 strokes
9 th charge	(s354A(1) Penal Code)	- 4 years and 8 strokes
10 th charge	(s 376(4) Penal Code) (fellatio)	- 12 years and 16 strokes
11 th charge	(s 376(4) Penal Code) (digital- penetration)	10 years and 14 strokes

31 The imprisonment terms for the 1st, 2nd, 7th and 10th charges are to run consecutively with effect from 30 June 2008, the date of arrest, and all other imprisonment terms are to run concurrently with these four terms. The total length of imprisonment is therefore 42 years with effect from 30 June 2008. The accused is to be subject to the maximum of 24 strokes of the cane.

32 On 12 March 2009, the accused lodged a notice of appeal against sentence through the Prison authorities. However, on 30 March 2009, he filed a notice of withdrawal of his appeal. In his statement, recorded on 26 March 2009 by DSP1 Eugene Goh, annexed to the notice of withdrawal of appeal, the accused said:

"I, Bala Kuppusamy (L905672009), hereby state that I wish to withdraw my appeal against my sentence. The reason is that I do not want my sentence to be enhanced in any way and hence I decided to just accept my sentence and serve my sentence without any incident. I apologise for any inconvenience caused.

This statement was given by me under no threat, inducement or promise by the staff or by anyone. That is all I have to state, Sir."

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