

Public Prosecutor v Pick Hoo Kee
[2001] SGHC 175

Case Number : CC No 33 of 2001
Decision Date : 06 July 2001
Tribunal/Court : High Court
Coram : Tay Yong Kwang JC
Counsel Name(s) : Han Ming Kuang (Attorney-General's Chambers) for the prosecution; Accused in person
Parties : —

Judgment:

Grounds of Decision

1 The Accused pleaded guilty to two Charges of rape under Section 376 (1) of the Penal Code. He admitted and consented to have a third Charge under the same provision taken into consideration for the purpose of sentencing. All the incidents of rape took place at the Accused's flat between September and November 2000. The Accused, 55 years old, is the uncle of the victim, 33 years of age.

2 The victim became mentally retarded as a result of meningeal infection at the age of two years old. She requires constant adult supervision and depends on others to feed and to bathe her. Her ability to speak is also limited.

3 In 1982, when the victim was about 15, the victim's mother arranged for her to be taken care of by the Accused's wife, who is the sister of the victim's mother. The victim's parents were both working and were thus unable to take care of her. The victim therefore lived with her aunt, the Accused and their two sons. The victim's mother would visit her during the school holidays or on public holidays.

4 In December 2000, when the victim's mother visited her, she noticed that the victim appeared fat. The aunt explained that the victim had not cleared her bowels for several days. The victim's mother therefore did not suspect anything untoward.

5 On 22 January 2001, the victim's mother brought the victim home for the Chinese New Year. She noticed that the victim's stomach was bigger and her breasts were big and hard.

6 On 25 January 2001, the victim's mother called her sister. She informed her that she suspected the victim was pregnant and asked whether the sister's son had done anything to the victim.

7 The victim's aunt questioned her son but he denied having done anything to the victim. The Accused told his wife that their son could not have made the victim pregnant. He added that she could be fat because she had consumed a lot of water.

8 On 26 January 2001, the victim's mother tested the victim's urine using a pregnancy test kit. The results were positive. She then informed her sister about it. When the sister asked the Accused who could have made the victim pregnant, the Accused admitted that he was the culprit.

9 The first rape took place when the Accused and the victim were alone in the flat. After the

victim had answered the call of nature in the toilet in the master bedroom, the Accused cleaned and washed her. She was naked. The Accused then asked her to dress herself in her bedroom.

10 While she was in her bedroom, the Accused told her to lie down on her bed. She complied. The Accused, who had only his shorts and underwear on, stripped himself. He fondled her breasts and then pushed her legs apart. He had unprotected sexual intercourse with her and ejaculated into her vagina. The victim lay very still and did not make any sound during the episode.

11 The Accused then put on his shorts and underwear and told the victim to put on her clothes. After she had done so, he fed her dinner.

12 The second rape took place one or two weeks after the first and the facts were essentially the same.

13 On 30 January 2001, the victim's mother brought her to the Thomson Medical Centre for an examination. The ultrasound results revealed that the victim was some 20 weeks pregnant. That night, a report was lodged by the victim's mother with the Criminal Investigation Department.

14 On 3 February 2001, an abortion was carried out. The victim underwent a Caesarean hysterectomy and made an unremarkable recovery. Her blood tests for sexually transmitted diseases showed negative results.

15 The blood specimen and placenta tissue of the foetus were sent to the Health Science Authority for analysis. The victim's, the Accused's and his two sons' blood samples were also analysed. The DNA results concluded that the Accused was the biological father of the foetus.

16 A psychological assessment was conducted on the victim on 14 February 2001 by the Institute of Mental Health. Her intellectual level was assessed to be within the moderately retarded range. It was also reported that she was "likely to be overall functioning at a social age of 2 years. Hence it would not be difficult to manipulate her especially if the person is someone that she is familiar with and knows what she likes. She is unable to understand the nature of sex nor give consent or resist to sex. She will not be capable of giving testimony during the trial."

17 The Prosecution submitted that "a stiff sentence should be meted out to take into account the fact that the Accused raped his vulnerable and defenceless mentally retarded niece several times, made her pregnant and exposed her to the dangers of having an abortion after a gestational period of over 20 weeks." I was also told that the number of reported rape incidents had increased about 23% from 1996 to 2000. In the first five months of this year, there were three cases of rape against mentally retarded victims while there was only one for the whole of last year.

18 My attention was drawn to *Liew Kok Meng v PP* (CC 25 of 1999), where a 48 year old man pleaded guilty to two charges of rape (under Section 376 (1) of the Penal Code) against his 13 year old neighbour with one similar charge taken into consideration. The girl there was also mildly retarded and became pregnant after the rapes. She had an abortion. Chan Seng Onn JC sentenced the man to 15 years imprisonment and eight strokes of the cane for each charge, with the imprisonment sentences to run concurrently. The Court of Appeal dismissed the accused's appeal against sentence.

19 In *PP v Abu Bin Talek* (CC 27 of 1995), the 56 year old accused pleaded guilty to one Charge of rape under Section 376 (1) of the Penal Code and had three similar Charges taken into consideration. He was sentenced to 14 years imprisonment but was spared caning as he was more than 50 years old. The victim there was also mentally retarded and had become pregnant. She too

underwent an abortion.

20 The Accused, a forklift driver, pleaded for leniency. He said his wife was of poor health. She is working. His elder son is slightly retarded and is earning a monthly income of about \$500. His younger son is serving in the Singapore Armed Forces. He said he had to do all the housework and take care of his family. He also claimed that he had a heart disease and that his urine was acidic. He urged me to sentence him to no more than eight to ten years.

21 He has no similar previous conviction. He was arrested on 2 February 2001 and has been in custody since.

Sentence

22 The law provides in Section 376 (1) of the Penal Code that whoever commits rape shall be punished with imprisonment for a term which may extend to 20 years, and shall also be liable to fine or to caning. The Accused, being 55 years of age, is not liable to be caned.

23 The Accused has violated a 33-year-old body in which resides a 2-year-old mind. Sexual assault by a stranger is a nasty experience. To be raped by one's uncle must be ghastly. When the victim in question is a lady who cannot fend for or defend herself because of her unfortunate mental condition, the rapes are nothing short of dastardly.

24 The Accused caused the victim to be pregnant and to undergo the risks of an abortion after more than 20 weeks of pregnancy.

25 The fact that no violence was used is of no mitigating effect at all here as absolutely no physical force was necessary to coerce or to subdue the victim.

26 He has pleaded guilty and that is of some mitigating force. However, the Prosecution would have little difficulty proving the crimes against the Accused in view of the DNA report and the Accused's admission to his wife.

27 The only voice that this victim has is that of the Court and this Court must speak to the Accused in words which make it manifestly clear that people who take advantage of vulnerable and defenceless victims will be severely punished by the law. The Accused is 55 years old. If he were below 50 years of age, I would most certainly have sentenced him to at least eight strokes of the cane for each Charge. Bearing in mind the totality principle in sentencing, I sentence the Accused to 10 years imprisonment on each of the two Charges, with both sentences to run consecutively with effect from 2 February 2001, making a total of 20 years imprisonment.

Tay Yong Kwang
Judicial Commissioner

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