

Public Prosecutor v Yeow Ban Soon
[2004] SGHC 73

Case Number : CC 5/2004
Decision Date : 13 April 2004
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Leong Wing Tuck, Lee Cheow Han and Shawn Ho (Deputy Public Prosecutors) for prosecution; Luke Lee (Luke Lee and Co) and Alagappan Arunasalam (A Alagappan and Co) for accused
Parties : Public Prosecutor — Yeow Ban Soon

Criminal Law – Offences – Hurt – Whether accused guilty of causing hurt to complainant – s 323 Penal Code (Cap 224, 1985 Rev Ed)

Criminal Law – Offences – Rape – Whether sexual intercourse between accused and complainant was rape or consensual intercourse – s 376(2)(a) Penal Code (Cap 224, 1985 Rev Ed)

Evidence – Witnesses – Corroboration – Main evidence given by complainant unsatisfactory – Whether statements of accused could be used as primary evidence – Whether statements of accused could be used to corroborate main evidence of complainant

13 April

2004

Judgment reserved.

Choo Han Teck J:

1 The complainant, aged 22, made various allegations against the accused and two other persons. The accused was the former boyfriend of the complainant. The other two, who are married to each other, were godbrother and godsister to the complainant. I shall refer to them as “Steven” and “Lee” respectively. Steven and Lee were dealt with separately in the Subordinate Courts. The accused stood trial before me on three charges, namely for aggravated rape under s 376(2)(a) of the Penal Code, (Cap 224, 1985 Rev Ed) on two occasions, that is, on 28 April 2003 and 9 May 2003. The third charge was for causing hurt under s 323 of the Penal Code.

2 The evidence that sets out the narrative comes in two parts. The first came from the police officers who responded to an anonymous telephone call and found the complainant at a flat known as Block 59 Jalan Berseh #05-128. The first officers to arrive at the flat were Staff Sergeant Ng Thiam Huat (“SSgt Ng”) and Sergeant Mohd Hafiz (“Sgt Hafiz”). The uncontroversial evidence from these two officers was that they arrived at the flat at 9.48pm on 14 May 2003. It was dark and silent inside. Then they heard a soft voice from the flat and then they saw a hand stretching out through the window louvres. It was the complainant. She spoke in a mixture of English and Mandarin. She told the officers that she was locked in and had no key. She told the officers that she had been raped by the accused on 11 May 2003 and that he had also assaulted her on many occasions when she was confined to the flat. She told them that the flat belonged to Steven and was occupied by Steven, Lee and the accused. Steven and Lee had two children aged seven and one years respectively. Steven and the accused worked as scrap metal collectors. Sgt Hafiz referred to his pocket book to refresh his memory and he recalled that the complainant told them that she was at her sister’s flat at Serangoon North on 23 April 2003 when Lee called at the flat. The complainant had been staying at that flat with her sister. Lee asked her to lunch at the market and she agreed. She was taken to Steven’s flat after lunch and, thereafter, was confined there until the police found her. Both officers

testified that the complainant looked weak, sickly, and frightened. Station Inspector Abdul Gaffoor, who was senior to the other two officers, arrived at the flat at 10.50pm. The officers testified that they noticed a scar on the complainant's shaven head. She told them that it was caused by a blow struck by the accused with a beer bottle. The investigating officer, Senior Staff Sergeant Suzana Sajari arrived at the flat at 3.55am on 15 May 2003. In the meantime, the accused, Steven, Lee and Steven's elder child had returned to the flat about 1.55am, according to SSgt Ng. They were asked to open the door of the flat and, subsequently, placed under arrest.

3 The second part of the prosecution evidence came from the testimony of the complainant herself. The complainant was in many ways an enigmatic person. Dr Adrian Wang of the Institute of Mental Health examined her on 15 May 2003, and at trial, testified that although he saw from the record that the Intelligence Quotient ("IQ") tests indicated her IQ to be at 55, he thought that she was more in the range of 60 to 70. The range of "normality" was 70 and above. However, he said that such tests depended on the linguistic ability of the person as well as her motivation. He said that the test was conducted in English. It was not disputed that the complainant had a poor command of English and had taken the test through an interpreter. Dr Wang described her as "nonchalant" when she was giving an account of her history to him.

4 The complainant studied at the Institute of Education, spending three years there on a two-year course. She was working as a hostess in a nightclub when she first met the accused. She was working as a salesgirl at the time of the trial. I shall refer to the peripheral aspects of her evidence shortly because they are important in the assessment of her reliability as a witness.

5 Her evidence in respect of the offences by the accused were as follows. She said that Lee called at her sister's flat on 27 April 2001. She accompanied Lee downstairs and at the car park she saw Steven and the accused. She told Steven that she wanted to "go back" (presumably to her sister's flat) but Steven said that he would send her back in the evening. In the meanwhile he wanted her to help him collect scrap metal. Later that evening they took her to Steven's flat. Lee refused to let her return to her sister's flat because she wanted her (the complainant) to look after her children. Steven also persuaded her to stay, saying that it was only for a day or two. She testified that nothing happened on the night of 27 April. But on the following day, 28 April, she was left to look after the one-year-old child in the flat while Steven, Lee and the accused went out with the older child. They returned about 7.00pm or 8.00pm with four or five bottles of beer. She then helped Lee to wash clothes and clean the floor. They all had dinner together and after that watched television. She testified that she was questioned by the trio at dinner. Steven began by asking her why she had "betrayed" Lee by giving away their address to their creditors. When she denied this, Steven and the accused assaulted her. The accused claimed that she had caused his girlfriend, Cecilia, to break up with him. Then Lee scolded her and hit her. She said that Steven and the accused kicked her on the thigh and Lee slapped her twice. Steven continued kicking and later punched her in the eye. Later in her evidence she said that the accused also hit her on the head and it bled. She testified that after the assault Lee told the complainant to take a shower. Then when Steven was in the bedroom, the accused stripped the complainant. Then he removed his own clothes and raped her. She said that Lee was present in the living room when this happened. She said that Lee had asked the accused not to do it but he did not listen to her.

6 The complainant then testified about the next incident of rape. She said that it took place at 6.00am on 1 May 2003. She was asleep when the accused woke her and took her to the bathroom where he raped her on the floor of the bathroom. Shortly after that, Lee knocked on the bathroom door, but the accused told her that he had things to talk about with the complainant.

7 The second material evidence that the prosecution sought to adduce against the accused were three statements made by the accused to the police. Two of the statements, namely P46 and P47, were recorded by Inspector of Police Yew Ai Choo ("Insp Yew"). P46 was recorded on the morning the accused was arrested. P47 was the cautioned statement under s 122(6) of the Criminal Procedure Code (Cap 68, 1985 Rev Ed). It was recorded at 3.13pm on the same day that P46 was recorded. These statements were challenged by the accused and a *voir dire* was held. P46 was recorded at 11.20am when the accused was brought back to the Criminal Investigation Department ("CID"). The accused testified that he was brought to the 17th floor of the CID together with Steven. Three police officers escorted the two accused there. They were Insp Burharudeen, Sgt Adam Gazari, and Sgt Benjamin Oh ("Sgt Oh").

8 The accused said that he and Steven were told to wait outside the interview rooms. When the accused was about to seat himself on a sofa, Sgt Oh gave him a kick to the face and stamped his foot on the abdomen of the accused. He also used Hokkien vulgarities on the accused. Then he took a bowl of water from an aquarium in the room and placed it in front of the accused. He threatened to make the accused drink the water. After that, the accused was taken into Insp Yew's room to be interviewed and to have a statement taken.

9 Insp Yew's evidence was uncontroversial. He denied making any threat or inducement to the accused. In particular, he denied that he would help the accused get a lenient sentence if the accused confessed. Insp Yew mentioned as a throw-away remark that initially, he was supposed to interview Steven and Sgt Oh was to interview the accused. However, since Steven was a Cantonese and the accused was a Hokkien, he (Insp Yew) and Sgt Oh exchanged places. Sgt Oh was a big man and the accused, as well as Steven, are small in comparison.

10 It was not disputed by the police that Steven confessed to raping the complainant when he was interviewed by Sgt Oh. The charge of rape against him was not proceeded with and was withdrawn. At the trial, the complainant herself testified that Steven did not, and would not have raped her. Steven testified that he confessed to Sgt Oh out of fear because he saw the accused being kicked by Sgt Oh. There were some minor discrepancies between the evidence of Steven and the accused but they were not material. For example, Steven said that he saw Sgt Oh kick the accused on the abdomen but did not say whether he had kicked the accused in the face as the accused had testified. In the circumstances at the time, it is possible that Steven might not have seen the first kick, and consequently, would have assumed that the second was the first.

11 I was not satisfied, after considering the accounts from the prosecution and defence witnesses, that it would be safe to admit the statements recorded by Insp Yew on 15 May 2003. However, the circumstances leading to his statement to SSSgt Suzana Sajari were different. His main complaint was that the officer kept asking him, "Are you sure?" There was some other evidence that I had taken into account but which is unnecessary for me to relate in detail. This includes the evidence of the accused that he was told not to "anyhow say to doctor", and his evidence that he had told his father about the incidents of the threat and duress. Consequently, I admitted only P49, the statement of the accused recorded by SSSgt Suzana Sajari on 20 May 2003.

12 Lee was the last witness called to testify on behalf of the Prosecution. She told the court that she had indeed asked the complainant for lunch on 27 April 2003 and, thereafter, they helped Steven and the accused look for scrap metal. They all returned to her flat in the evening and that the complainant thereafter did not leave the flat until the police came to the flat on 14 May 2003. During the material period from 27 April to 14 May, she slept in the living room with the complainant and the accused while Steven slept in the bedroom with their two sons. She testified that she found the

accused and the complainant in the toilet one evening. She heard the complainant say "no" and "don't hit me", but not in the same sentence. She peeped in and saw the accused with his shorts down to his knees, but she did not see the complainant. The accused told her that they were talking. Two other significant parts of Lee's evidence were first, the accused had physically assaulted the complainant. Secondly, that one night, she saw the complainant stripping herself naked and getting under the blanket with the accused. All three were, on the Prosecution's unchallenged evidence, sleeping in the living room at the material time. Steven and his two sons slept in the bedroom.

13 The Prosecution sought leave at the close of its case to amend the three charges. The changes involved the deletion of the specific dates on each of the charges and substituting, in lieu, the general period between 27 April 2003 and 14 May 2003. Defence counsel, Mr Lee, had no objections to the amendments but said that the date in which the alleged rape in the toilet took place should be specified, but he subsequently accepted that it would not be crucial to the defence. Counsel made no submission at the close of the prosecution case and I called upon the Defence. The accused declared that he would not challenge the charge of causing hurt but elected to give evidence in respect of the two rape charges. Consequently, I stood down the charge under s 323 and called upon his defence in respect of the two rape charges.

14 Although the charges were straightforward, the case was unusually complex because the offences were alleged to have taken place within a period of 17 days, from 27 April 2003 to 14 May 2003. There were four material witnesses, excluding the two young children, but including the complainant and the accused. All four were known to each other. Steven is married to Lee and the complainant was their "godsister". The complainant was also the former girlfriend of the accused and admitted to having consensual sex with the accused on at least two occasions prior to the period of 17 days in question. She maintained even in court that she "still had feelings for [the accused]" during the 17 days in question. She testified that she "still could not forget him". When the police arrived at the flat where she was found, she cut a woeful appearance with sad eyes, a shaven head and multiple bruises as well as a laceration wound. So much for the undisputed facts. The complainant claimed that during the period of 17 days she was raped by the accused on four or five occasions. The accused denied the allegations. He admitted joining Steven and Lee in beating the complainant, but on the two occasions that he had sex with the complainant during the 17 days it was with her consent.

15 It would be useful to remind ourselves what it was that the Prosecution had to prove in this case. I shall confine myself to the two charges of rape for the time being because the accused had admitted to the charge of causing hurt. That charge and the facts behind it, like the numerous odds and ends in the various accounts of the four material witnesses, are still relevant, and I shall revert to them at the appropriate juncture. The Prosecution's case was that the accused was persuaded by Lee into leaving her sister's flat on 27 April to join her, Steven, and the accused, for lunch, and thereafter, to help them look for scrap metal, which was the occupation of the trio. When evening came, the complainant was taken to Steven and Lee's flat and subsequently, when the complainant asked to leave, the accused told her that if she did he would rape her and take nude photographs of her. So she stayed because "she had no choice". The Deputy Public Prosecutor ("DPP") submitted in his closing address that the first rape occurred in the living room of the flat on the evening of 28 April, after the complainant was beaten up by Steven, Lee, and the accused. This was also the charge as it was originally framed. However, at the close of the prosecution case, the DPP amended the charge to allege that the first rape took place between 27 April 2003 and 14 May 2003. In respect of the second rape, the DPP submitted in his closing address that it took place in the toilet of the flat on 1 May 2003. The charge originally alleged that it took place on 9 May 2003. But, again, at the close of the prosecution case the DPP amended the second charge of rape to state that it

occurred between 27 April 2003 and 14 May 2003. The compelling reason behind the amendments was the mess created by the complainant about the dates. The dates in the original charges were obviously made specific on the basis of the complainant's evidence to the police. In her conditioned statement admitted as exhibit D1 she had stated that she was raped on 28 April, 1 May, 9 May, 10 May, and 11 May. Under cross-examination she said that she was raped on 28 April, 29 April, 30 April and 9 May. When asked why she did not tell the police that she was raped on 29 April, she said that she did but the police did not make a note of it. She was also not consistent as to how many times she had been raped in the toilet. Under cross-examination she surprised everyone by saying that she was raped twice in the toilet. Dr Adrian Wang interviewed the complainant on 23 June 2003 for a post-trauma assessment. He testified that she had told him that she was raped four times in the living room. She did not mention any rape having taken place in the toilet.

16 In the light of the fact that the complainant and the accused were former lovers, the main evidence of rape depends substantially on the reliability of the complainant's evidence, which I shall now consider. After this, I shall revert to the evidence of the accused's statements to the police and the physical assaults. The complainant began her evidence-in-chief with an unnecessary lie which surprised even the investigating officer and the learned prosecutors. She claimed that she was married and when asked for details, stated that her husband's name was "Alvin" and that the marriage certificate was kept by him. Pressed to produce the certificate, she said that she had to look for it, but added that if Alvin would not hand it to her she "cannot do anything about it". When the DPP questioned her further, she said that she was not sure if her husband would object. At that point the DPP told her to inform her husband that the court required it. She repeated her point that she did not know if her husband would object. Then she added, "What happens if he objects?" Eventually, after given a day to get it, she confessed the lie. It became more apparent later that this gratuitous and elaborate falsehood was really an indication of her motive for revenge against the accused, not only for scorning her in preference for a woman called Cecilia, but also for adding injury to insult by beating her up.

17 The second major lie that the complainant perpetrated was that she had initially also accused Steven of raping her during the 17 days. Consequently, Steven was charged. It will be recalled that not only was he charged with raping her, he had given a confession to the police on the day of his arrest that he had raped the complainant. The rape charge against Steven was subsequently withdrawn and he was not prosecuted for it. In this trial, however, the complainant on not less than two instances rejected any notion that Steven could have or would have raped her. She testified that Steven was too devoted to his wife (Lee) to do a thing like that. Not realising that her lie had been exposed, she embellished it by denying that she had told anyone that Steven had raped her. She had obviously forgotten that she had given that information about Steven to the police.

18 An IQ test conducted on the complainant on 7 July 2003 by a clinical psychologist, Clare Yeo, indicated that the complainant had a IQ score of 55 which is regarded as being within the range of "mild mental retardation". However, to regard the complainant as a case of "mild mental retardation" is grossly unfair to her. The implication of that label throughout the prosecution case was that such a person could not rationalise and was utterly defenceless, unlike a woman with normal IQ. The "normal" range, according to the psychiatrist, Dr Adrian Wang, is 70 and above. Those between 60 and 70 can be regarded as "below average". Dr Wang who interviewed her testified that he "would not be surprised if she was graded 60 something to 70". Dr Wang further explained that IQ tests are not always accurate and that the scores could be affected by two factors. First, he said that the test was in English and if a person, such as the complainant, was not conversant with that language he or she would not score well. Secondly, a person who had low motivation in taking the test was also likely not to score well. In this case, he found the complainant to be "nonchalant" when describing the

offences to him. In court, she was unafraid, petulant at times, and appeared easily bored. She did not appear to me to be of such low intelligence that independent verification of her evidence was necessary to show that she was clear and understood her own evidence. However, I am firmly of the view that independent verification was important in her case, not because of her low IQ score, but because of her transparent motives, and her propensity to lie. When she was confronted by defence counsel on her false story about being married to Alvin, her answer was: "Yes I know. I will be finished if I lose this case and he'll be released." When asked to explain, she said: "If he is released he will bring me back again to assault me. He will bring me back to Block 25 Jalan Berseh at 05-128 to assault me. I do not want this to happen again. This [was] the first time I tell lies". That last comment was, again, not true, but the point made was that she wanted to see the accused locked away because of the physical assaults on her. The accused also stated in his statement (P49) that the reason he and Steven and Lee shaved the complainant's head was to prevent her from leaving the flat. They feared that she might make good her threat of "revenge". That statement was in reference to the beatings and was not to rape. It is true that the complainant was subjected to some severe beatings in the flat, but in the entire circumstances of this case, taking into account the relationship of the parties among themselves and their history in relation to each other, it appeared to me that the matter between the complainant and the accused was more likely one of domestic violence than rape. Her desire to send the accused to jail was expressed with an unpolished hardness in her testimony. Furthermore, she revealed at trial that she still had feelings for the accused until he beat her, and it became clear that he did not care for her, preferring Cecilia to her. So I am left doubtful as to whether she was more offended by the assault or the loss of favour – the climbdown from love – that the beatings he gave her made explicit.

19 The complainant gave her evidence with scarcely a wrinkled brow. So blasé was she that at one point during her evidence-in-chief she fell asleep and had to be roundly woken up. Many times in the course of her testimony the complainant had her head bowed and rested on her extended elbows. It appeared at first that she was crying, but it soon became apparent that she was just bored. In sum, I find her story to be suspect, and herself as a witness, to be unreliable. In assessing the plausibility of her evidence I took into account her explanation why she could be held prisoner in that flat for 17 days. Her feeble account that it was useless to call for help ran against some very important facts. First, the windows both at the front as well as the back of the flat were opened except for the fixed grills. Steven, Lee and the accused often left her alone in the flat. The corridor in front of the flat was a common corridor and all the nearby flats were occupied. I do not believe that had she screamed it would be not heard. Secondly, the complainant admitted that a neighbouring "auntie" came to visit Lee at the flat several times. Even Cecilia came to the flat. Thirdly, when Steven, Lee and the accused left the flat, they left the complainant to look after Steven and Lee's one-year-old baby. That seemed like a very domestic arrangement to me.

20 In contrast, the accused appeared to me to be more sincere. He might not be a pleasant person so far as his treatment of the complainant may be concerned, but I believe him when he said that whenever he had sexual intercourse with the complainant (twice before the 17 days and twice during) it was with her consent. The DPP submitted that the accused had admitted to rape in his statements to the investigating officer. Reviewing the statements, which were in question and answer form, and assessing them against the rest of the evidence of the Prosecution and Defence, I am satisfied that little weight should be attached to them. It is true that in two of the answers, the accused was replying in response to questions by the investigating officer that contained the word "rape", but it was obvious, in at least one of them, that the accused was referring to answers he had already given to Insp Yew. That statement had been excluded on the ground that it was not a voluntary one. I am also not satisfied that in the circumstances, the accused's response might in fact be a reference to the occasions he had consensual sex with the complainant in the flat, and had not

been alert or steadfast in rejecting the officer's use of the word "rape". Finally, even if I accept the DPP's submission, these statements in question, and I am regarding only the ones before me, of course, cannot be substituted as primary evidence, or even corroborating evidence, if the main and primary evidence, that is, the evidence of the complainant, was found to be unsatisfactory. In this case, I am of the view that the complainant was so unreliable a witness that it would even be unsafe to rely on the accused's own statements to corroborate her.

21 Lee was called as a prosecution witness and she testified that one night during the period of 17 days, she saw the complainant taking off all her clothes and slipping under the blankets on the mattress with the accused. Lee appeared to me to be reliable and forthright. She might have been convicted for assaulting the complainant but I detect no ill-will in her. Likewise, Steven appeared much more serene and with no hint of malice towards the complainant. It is true that he had the time of the toilet sex mixed up, but it appeared that all four witnesses were not particularly accurate about dates and time. It had been a long trial, but the only venom that was apparent flowed from the complainant. And it was obvious to me that it was not because she was raped, but because she wanted to send the accused to prison for a long time because if she merely wanted him punished, she could have been satisfied with the assault charges that had sent Steven and Lee to jail.

22 It would only be too easy to conclude that because the accused had beaten the complainant he must therefore have raped her as well. Steven too, had beaten the complainant. So did Lee. The final matter of relevance was the timing of the beatings and the two occasions of sex between the complainant and the accused. If the sexual acts took place shortly after the beatings in circumstances that suggest that the complainant's will was totally subjugated, then there may be some merit in questioning the consensual nature of the acts. However, the evidence of the complainant (and for that matter, also the evidence of the others) as to the sequence was so nebulous and inconsistent that I am not able to make any finding as to the sequence of events. The Prosecution itself was caught by the shifting evidence of the complainant so that it was compelled to amend the charges and convert specific dates into non-specific ones. The overall evidence had created a doubt in my mind as to whether the complainant had or had not consented to having sex with the accused during the 17 days she spent in Steven's flat, and I am bound to give the benefit of that doubt to the accused. Consequently, I find the accused not guilty of the two rape charges and accordingly, discharge and acquit him of them. However, on his admission to the assault on the complainant, and the supporting medical evidence adduced by the Prosecution, I find him guilty of causing hurt as charged, and convict him accordingly on the sixth amended charge for an offence under s 323 of the Penal Code.