Lim Cher Foong v Public Prosecutor
[2005] SGHC 27

Case Number : MA 98/2004

Decision Date : 02 February 2005

Tribunal/Court : High Court

Coram : MPH Rubin J

Counsel Name(s) : M Ravi (M Ravi and Co) and Manicka Vasagam (Manicka and Co) for appellant; Christopher Ong Siu Jin (Deputy Public Prosecutor) for respondent

Parties : Lim Cher Foong — Public Prosecutor

Criminal Procedure and Sentencing – Statements – Voluntariness – Appellant claimed at trial that some aspects of his police statements were involuntary – Appellant's counsel at trial had expressedly informed court that appellant was not challenging the voluntariness of his police statements – Whether trial judge erred in not conducting voir dire

Evidence – Witnesses – Corroboration – Prosecution's witnesses fell within established categories of witnesses requiring corroboration warning – Whether judge should have issued corroboration warning

Evidence – Witnesses – Inconsistencies in testimony – Appellant alleged various inconsistencies in Prosecution's witnesses' evidence – Whether inconsistencies undermined strength of collective evidence of Prosecution's witnesses

2 February 2005

MPH Rubin J:

1 The appellant was convicted in the court below on five charges of committing carnal intercourse against the order of nature under s 377 of the Penal Code (Cap 224, 1985 Rev Ed). The first charge pertained to a single act of anal intercourse committed by the appellant on the first victim ("V1") on 1 April 2003. The subsequent charges were derived from four separate instances where the appellant committed acts of anal intercourse on the second victim ("V2"), over the period spanning the months of January and February of 2003. The appellant was sentenced to a total of 14 years' imprisonment. He appealed solely against his conviction. I dismissed the appeal and now give my reasons.

The facts

2 At the material time, the appellant, then aged 25, had rented a flat at Block 316 Woodlands St 31, #11-124 ("the appellant's residence"). He conspired with an accomplice ("P3"), who knew the two victims, V1, then aged 16, and V2, then aged 15, such that the two would be manipulated into engaging in anal intercourse with him. The appellant's plan succeeded and gave rise to the five charges in this appeal.

The Prosecution's case

Facts pertaining to the first charge

3 On 31 March 2003, P3 requested that V1 help him pass a bottle of mineral water to his god-brother, the appellant. The bottle supposedly contained a mixture of mineral water and "holy water" that P3 had obtained from a temple. V1 complied with P3's request and delivered the bottle to the appellant that evening. That same day, P3 again contacted V1 and arranged for them to visit the

appellant at the appellant's residence at 6.00am the following morning.

4 On 1 April 2003, V1 made his way to the appellant's flat. Along the way, V1 received a call from P3 and was told that the latter would be unable to reach the appellant's residence on time. V1 was subsequently told to proceed to meet the appellant alone. Upon reaching the appellant's flat, V1 was again contacted by P3 and instructed to give the previous night's bottle of mineral water to the appellant to drink. V1 located the bottle and got the appellant to drink from it.

5 Upon consuming the contents of the bottle, the appellant started to complain of giddiness. V1 quickly contacted P3 to inform him of the appellant's condition. It was at this time that P3 told V1 that the water had caused the appellant to have the "urge" and that the only way for V1 to save the appellant was to engage in anal intercourse with him. V1 refused to do such a thing and hung up on P3. V1 then called another friend ("P4") and requested that P4 meet him at the appellant's flat to keep him company. However, when the appellant discovered that P4 had arrived at the flat, he scolded P4 and V1, chasing P4 away after declaring that the matter was solely between V1 and himself.

6 After P4 left the premises, the appellant accused V1 of causing his condition and threatened to report V1 to the police unless he consumed certain blue and orange tablets. V1, having recently been released on probation from a boy's hostel, was frightened of the prospect of being reported to the police and complied with the appellant's orders. The tablets caused V1 to feel drowsy and he soon fell asleep.

7 When he regained consciousness, V1 discovered that he lay completely naked on the appellant's bed. The appellant, who was also naked, was facing him and had both V1's legs on his shoulders. V1 then realised that the appellant was having anal intercourse with him. He tried to resist but did not have the strength to push the appellant away. It was only when the appellant stopped and exited the bedroom that V1 retrieved his clothing and proceed to the toilet to clean himself. While walking to the toilet, he noticed P3 and the appellant in the living room. After he finished bathing, V1 confronted both P3 and the appellant over his treatment. P3 explained that he had induced V1 to engage in the act of anal intercourse in order to get the appellant to amend his will to reflect P3 as his beneficiary. When V1 followed up by demanding to know what that had to do with him, the appellant scolded P3. V1 then asked P3 to open the door to the appellant's residence and left the premises.

8 Subsequently, the appellant contacted V1 and on the pretext that he had, in the process of having anal intercourse with V1, transferred some of his "*qi*" (a form of internal energy) to V1, demanded that V1 return the "*qi*" to him by engaging in further anal intercourse. V1 refused the appellant's demands and eventually revealed what had transpired on 1 April 2003 to P4. On P4's advice, V1 went with his father to lodge a police report against the appellant on 7 April 2003.

Facts pertaining to the second to fifth charges

9 On 24 January 2003, P3 informed V2 that a friend of his required money to repay some debts. They hatched a plan to steal money from the appellant and arranged to visit the appellant's residence. According to the plan, P3 would lure the appellant out of his bedroom while V2 stole the money from his wallet. They executed their plan the following day.

10 Unfortunately, after V2 had managed to remove some dollar notes from the appellant's wallet, the appellant returned to his bedroom and checked the contents of his wallet. He discovered the theft and searched both V2 and P3. He then compared the serial numbers on the dollar notes he

found on V2's person with a list that he kept in his wallet. After proving that the money belonged to him, the appellant threatened to make a police report. V2 pleaded with the appellant and ended up writing a note promising not to steal again ("the note"). The note, dated 25 January 2003, bore V2's signature and thumbprint.

11 After the note was kept by P3, the appellant instructed V2 and P3 to strip naked. The appellant then commenced practising his "*qigong*" (a Chinese method of controlling internal energy). V2 complied with these instructions only because he wanted to get the note back from the appellant. He was told to lie on the bed in order for the appellant to feel his pulse and inspect his veins. At this point in time, P3 took out the appellant's camera and began to take some pictures. When V2 queried about the camera, he was told by P3 that there was no film inside.

12 Having taken a few photographs of V2, P3 put on some clothing and straddled V2's stomach with his back facing V2. Squatting over V2's stomach, P3 raised both of V2's legs, at which time V2 felt some pain in his anus. When P3 dismounted from his position, V2 saw that the appellant was having anal intercourse with him. P3 then resumed taking pictures of V2 as the appellant had anal intercourse with him.

13 When V2 subsequently complained of stomach pains, the appellant stopped and allowed V2 to visit the toilet. Upon returning to the living room from the toilet, P3 told V2 that the appellant had sustained some internal injuries and that V2 could help to treat these injuries by continuing to engage in anal intercourse with the appellant. If V2 cooperated, the note would be returned to him.

14 Subsequently, V2 visited the appellant on three other occasions. Each time V2 visited, the appellant would apply something from a blue tube onto his penis and V2's anus before commencing anal intercourse with him. V2 testified at trial that several tubes of Durex brand "Top Gel" seized from the appellant's residence and the appellant's room in his mother's flat were identical to the tube used by the appellant on each of those occasions. He also confirmed that the photographs marked P12 to P16, which were developed from the roll of film found in the appellant's room in his mother's flat, were those P3 had taken during the first incident on 25 January 2003.

15 Sometime in March 2003, the discipline master of V2's school confiscated a copy of the note executed by V2 from some of the school's students. The discipline master lodged a police report and it was then that an investigating officer approached V2. This led to the uncovering of the appellant's sordid acts.

Corroborative evidence of P3

16 P3's testimony essentially corroborated both victims' accounts of the facts. Furthermore, P3 admitted that he had conspired with the appellant to induce V1 and V2 into engaging in their respective acts with the appellant.

17 In relation to the first charge, P3 revealed that he and the appellant had concocted two plans to trick V1 into having anal intercourse with the appellant. Ultimately, only the second plan was executed, the details of which largely corresponded to the *modus operandi* of the appellant as related by V1.

18 P3 also testified that he had arrived at the appellant's residence at about 9.00am on 1 April 2003 and had observed the appellant apply gel to his penis and the anus of the then unconscious V1. P3 had left the bedroom when the appellant was about to place his penis into V1's anus.

19 As to the second to fifth charges, P3 admitted that the appellant had instructed him to conspire with V2 to steal money from the appellant's wallet. P3's version of the failed attempt to steal the appellant's money also corresponded to V2's version of the facts. In addition, P3 also gave evidence of how he had taken the various pictures of V2 and the appellant, and further, how he had held on to V2's legs while the appellant applied a tube of cream to his penis and V2's anus. In particular, P3 testified as to how he had taken more pictures of V2 and the appellant as the latter penetrated V2.

20 It should be noted that P3 denied colluding with any persons, including the two victims, to frame the appellant. P3 also denied having set the appellant up in order to extort money from him.

21 Relying on the testimonies of the three witnesses above, the medical and psychiatric evidence of the various expert witnesses, and the appellant's various statements to the police, the Prosecution submitted that it had proved its case beyond reasonable doubt.

The appellant's case

22 The appellant denied any collusion with P3 and asserted that the commission of the various acts against the two victims never took place. Additionally, the appellant advanced two possible bases to explain the complaints made against him. First, he claimed that the account by V1, V2 and P3 formed part of an elaborate attempt by one Lim Hock Gin ("Lim") to seek revenge against the appellant for having successfully lodged a Magistrate's Complaint against him sometime in April 2003. Second, he alleged that the entire episode was part of a ploy by P3 to extort money from the appellant.

The decision below

23 The trial judge observed that the main issue for determination was a question of fact, *ie*, whether the appellant did in fact engage in carnal intercourse with V1 and V2. He further reminded himself of the correct approach in dealing with the evidence, especially the testimony of the complainants, in cases involving sex offences as expounded by the High Court in *Tang Kin Seng v PP* [1997] 1 SLR 46.

24 After conducting a comprehensive review of the evidence of the two victims and P3, the trial judge concluded that all three witnesses were truthful and credible. In particular, he noted that the accounts given by V1 and V2 as to the circumstances leading to the accused having committed carnal intercourse on them were "detailed, credible and unusually convincing". Their explanations as to their states of mind and their subsequent conduct after the initial incidents with the appellant were found to be entirely reasonable.

25 The trial judge emphasised that whilst V1 and V2 had narrated different accounts of how the accused had coerced them into having anal intercourse with him, the common thread in their evidence was the perverse manner in which the appellant had disguised his acts as transferring "*qi*" to them. According to the trial judge, this suggested that any conspiracy between them to "fix" the accused was extremely remote. Furthermore, he formed the view that the details of the respective incidents of anal intercourse could not have been "fabrications or [formed] as a result of their imagination".

26 It was likewise noted by the trial judge that the testimonies of V1 and V2 were substantially corroborated by not only the physical exhibits seized from both the appellant's residence and his mother's flat, but also by the medical and psychiatric evidence and the testimony given by P3. It was

further observed that there could not have been any conspiracy to falsely implicate the appellant.

27 While the trial judge did record that there were some discrepancies between the testimonies of V1, V2, P3 and P4, he concluded that those discrepancies were insignificant and did not undermine the strength of the cumulative evidence of these witnesses.

28 As for the appellant's evidence, the trial judge found that the appellant was a wholly unreliable witness who had no compunction about lying when confronted with difficult questions. He was satisfied that the two bases advanced by the appellant to explain the circumstances surrounding the charges were conjectures at best. The appellant's bare denial of the facts was unsustainable in light of the evidence produced by the Prosecution, as well as the fact that the appellant's various statements to the police were clearly at odds with his allegations of conspiracy and extortion. In addition, the trial judge was of the view that, even if no meaningful identification of the accused could be made from the photographs which showed a person engaging in anal intercourse with V2, the person seen in the photographs was none other than the appellant.

29 In the end, the trial judge held that the Prosecution had proved its case beyond reasonable doubt on all five charges and convicted the appellant. He reviewed the sentencing precedents set by the Court of Appeal and, in light of all the aggravating factors in the present case, sentenced the appellant to seven years' imprisonment for each charge with two of the sentences running consecutively.

The appeal

30 The appellant appealed solely against his conviction, disputing the trial judge's findings of fact.

31 The grounds of appeal can be conveniently separated into two segments: first, grounds that go towards the alleged weakness in the Prosecution's case; and second, grounds that challenge the trial judge's finding as to the viability of the appellant's defences.

32 As counsel for the appellant has raised many contentions with regard to each of the two categories defined above, I shall deal only with the general principles that will aptly dispose of this appeal. Where appropriate, I shall highlight certain more pertinent submissions that require particular treatment.

33 Before coming to the substance of the appeal itself, it will be beneficial to first address certain preliminary issues that an appellate court should bear in mind when assessing the findings of a lower court.

Preliminary issues

The role of an appellate court

34 First and foremost, it is a settled principle that the role of an appellate court is not to determine whether it would, in light of all the evidence placed before it, come to the same conclusion as the trial judge below. The function of the appellate court is to determine if the trial judge had, in arriving at any finding of fact, reached a conclusion that was sustainable on all the evidence. An appellate court will not therefore disturb the findings of fact unless they are clearly reached against the weight of the evidence: *Lim Ah Poh v PP* [1992] 1 SLR 713.

35 Furthermore, as the trial judge's findings of fact were largely dependent upon his assessment of the credibility of the two victims and P3, it must be borne in mind that "an impression as to the demeanour of the witness ought not to be adopted by a trial judge without testing it against the whole of his evidence": *PP v Yeoh Choon Poh* [1994] 2 SLR 867 at 878, [45]. Therefore, the credibility of a witness, and, accordingly, the veracity of the witness's testimony, cannot be derived solely from his or her conduct when placed on the stand. In determining credibility, it is the duty of the trial court to test the witness's testimony against the objective facts and independent evidence: *PP v Victor Rajoo* [1995] 3 SLR 417. It is therefore the role of an appellate court to scrutinise the trial judge's treatment of each witness's evidence when deciding his or her credibility. However, once it is shown that the lower court had assessed the witness's evidence in accordance with the test laid down in the cases, an appellate court should generally be slow in overturning the findings of fact which hinge on the trial judge's assessment of the credibility and veracity of the witnesses: *Yap Giau Beng Terence v PP* [1998] 3 SLR 656.

Corroboration

36 A question arises whether there was a need for the lower court to issue a corroboration warning when it received the evidence of V1, V2 and P3. While neither the appellant nor the Prosecution raised this issue, by virtue of the prosecution witnesses falling within the established categories of witnesses requiring corroboration warning, the interests of justice warranted some treatment of this matter. As to both victims, it would appear that they fall within the broad category of "children". P3, on the other hand, can be viewed either as an "accomplice" or a "child".

37 In so far as all three witnesses are deemed "children", the courts have decisively held that there exists no special principle requiring a court to issue a corroboration warning where a "child" is concerned: *Lee Kwang Peng v PP* [1997] 3 SLR 278. All that is required is that the trial judge be satisfied that the "child" witness is "mature and reliable", such that the testimony given may be accepted without any corroboration: *Osman bin Ramli v PP* [2002] 4 SLR 1. To this end, it is evident from the trial judge's Grounds of Decision ([2004] SGDC 197 at [179]) that he was convinced that the evidence of V1 and V2 "could not have been a fabrication or … a result of their imagination". Furthermore, he had evaluated the evidence of P3 and declared him to be a "witness of truth".

38 With regard to V1 and V2 being "complainants of sexual offences", it has been held that the court will treat the evidence of a "child" no differently from that of an adult complainant. Essentially, the court will concern itself with whether the evidence of such witnesses is reliable or unusually compelling, while bearing in mind the fact that children, depending on their level of maturity, may at times be unable to distinguish between fantasy and reality: *B v PP* [2003] 1 SLR 400. In particular, Yong Pung How CJ noted in *Lee Kwang Peng v PP* that, where an allegation of collusion is shown to be a sham defence, the court is entitled to convict the accused on the weight of the testimony of two complainants provided that each complainant's evidence is "unusually convincing" when viewed on its own, or, where each complainant's evidence is not "unusually convincing", such complainants' evidence can be supplemented by some other evidence capable of meeting the standard of proof required of the Prosecution. As the appellant's claims to an alleged "conspiracy" and "attempted extortion" were, on a survey of the evidence in totality, found to be purely conjecture at best, the court would have been entitled to convict the appellant on the sole weight of both victims' testimony. This was especially so in light of the trial judge's finding that the accounts of both V1 and V2 as to the circumstances leading to the alleged offences were "detailed, credible and unusually convincing".

39 Notwithstanding the above, there was also the additional corroboration from P3's testimony. While P3 may be treated as an "accomplice", it is settled law that whether or not the evidence of an accomplice was unworthy of credit and thus needed to be treated with caution was entirely

discretionary: *Chai Chien Wei Kelvin v PP* [1999] 1 SLR 25. As the lower court had observed P3 to be honest in his answers in respect of his association with the appellant and the manner in which he had betrayed the two victims, there was no reason to treat his evidence as unreliable.

40 In light of the circumstances surrounding the evidence of all three prosecution witnesses, I was of the view that there was no danger of convicting the appellant on the basis of the uncorroborated testimony of V1 and V2. Be that as it may, I think that the trial judge was eminently right in stating that P3's evidence not only corroborated the two victims' testimonies, but further reinforced the collective strength of the evidence as a whole. I now move to the substantive grounds of appeal.

Grounds of appeal

Inadequacies of the Prosecution's case

Disparity in the details relating to the acts of anal intercourse

41 The crucial issue involves establishing whether the appellant had engaged in anal intercourse with the two victims. Any discrepancies in either victim's evidence in this regard could consequently result in the unravelling of the Prosecution's case. This aspect thus warrants particular treatment.

42 In respect of the act committed by the appellant against V1, counsel for the appellant submitted that several discrepancies arose in V1's evidence. I shall only deal with those pertinent to the material elements of the charge. First, there was a disparity between V1 and P4's evidence as to the position that V1 was in when the appellant penetrated him; second, V1's evidence that he had struggled against the appellant conflicted with the medical evidence establishing the absence of lax anal tone or tears; third, V1 had merely related to the doctor who examined him that he had felt pain in his anus when he regained consciousness and had failed to mention that anyone had had anal intercourse with him.

43 The apparent disparity between V1 and P4's version of events arose because V1 had maintained that he was on his back with the appellant facing him, whereas P4's evidence was that V1 had recounted to him that the appellant had penetrated V1 from behind. It should be noted, however, that the trial judge had addressed his mind to the discrepancies between V1's evidence and that of P4, but ultimately decided they were immaterial. The trial judge was entitled to believe V1's version of the facts over P4's as V1's evidence was independently corroborated by P3. Furthermore, the rest of P4's evidence largely corresponded with V1's evidence.

44 As to the absence of any lax anal tone or tears sustained by V1, the medical evidence stated that this finding could either correspond with an absence of anal intercourse, or merely be the consequence of "gentle intercourse" with the use of lubrication. V1's physical condition must be viewed in light of his evidence that he had consumed sedatives and that he was in a relatively weak condition when he first regained consciousness. It was also P3's evidence that the appellant had applied gel to his penis and V1's anus before commencing the act of anal intercourse. It was entirely plausible that V1's struggles amounted to only the slightest of resistance to the appellant, resulting in V1 sustaining no physical injuries. I was therefore of the view that the trial judge was perfectly justified in finding that V1's physical condition corresponded with his version of events.

45 In relation to V1's failure to mention to the medical examiner that he had engaged in anal intercourse with the appellant, I found the issue to be misconceived as V1 was only obliged to tell the doctor which part of his body hurt. There was no need for V1 to relate the sordid details of his

encounter with the appellant to the doctor.

46 The next contention raised by the appellant related to acts allegedly committed against V2. It was submitted that the photographs (P12 to P16) taken by P3 did not identify the appellant as the person engaged in anal intercourse with V2. Counsel for the appellant submitted that the photographs failed to capture the face of the offender and were thus inconclusive. The appellant also maintained that there were disparities between the pictures taken of the alleged offender and those taken of the appellant that were subsequently submitted by the defence at trial (D10 and D11). Particular emphasis was placed by the appellant on the absence of distinguishing physical characteristics on the alleged offender such as the mole on the appellant's right forearm, and the presence of protruding veins on the arm of the alleged offender, where the appellant had none. These disparities, it was submitted, were sufficient to displace the trial judge's finding that the appellant and the offender were one and the same. The appellant also submitted that the trial judge's refusal to allow the Defence to cross-examine V2 on the disparity between the physical traits of the appellant and the alleged offender had rendered any conclusion on this evidence prejudicial and unsafe.

47 Notwithstanding the above, I agree with the trial judge's observation that an extensive comparison of the pictures of the appellant and those of the alleged offender would be devoid of any meaning for the simple reason that the circumstances and conditions under which the two sets of photographs were taken were completely different. A cursory review of the photographs themselves made it clear that the angle from which the appellant's photographs was taken was different from that which was taken of the alleged offender. Any conclusion reached as to the disparity between the two would be speculative at best. At most, one could possibly reach the conclusion that the overall frame and build of the appellant did somewhat match that of the alleged offender. In any event, the fact that the photographs produced in court showed a partially visible male Chinese, who looked disturbingly like the appellant, engaging in an indecent act with V2, lent weight to the evidence of both P3 and V2 that the alleged offender was none other than the appellant. In the circumstances, the trial judge was perfectly justified in concluding, with the benefit of V2 and P3's testimonies, that the person in the photographs was the appellant.

Erroneous assessment of the credibility of the two victims and P3

48 A substantial portion of the appellant's submissions was devoted to challenging this aspect of the trial judge's findings. The discrepancies raised by the appellant included issues such as V1's "violent background" and why he allowed the appellant to restrain him; the inconsistencies between V2 and P3's evidence as to where they had met before proceeding to the appellant's residence; and the "failure" on P3's part to mention whether he saw the appellant penetrate V2 when P3 had already given evidence that he took photographs of the appellant and V2 as they engaged in anal intercourse. If anything, the appellant's submissions in this respect merely established that there were minor inconsistencies in the witnesses' evidence. In so far as their testimonies concerned the method in which the appellant had coerced the victims into engaging in anal intercourse, the events which led to the commission of the various offences and the manner in which the appellant had committed these heinous acts, I was of the opinion that the witnesses' evidence formed a seamless rendering of what truly transpired.

49 The legal position on inconsistent testimony is clear. The presence of minor inconsistencies in the evidence of the prosecution witnesses does not lead to the inescapable conclusion that the Prosecution has failed to satisfy its burden of proof: *Balasundaram s/o Suppiah v PP* [2003] SGHC 182. Furthermore, the court is entitled to reject certain parts of a witness's testimony so long as it does not detract from the witness's evidence on the material aspects of the Prosecution's case: *Ng Kwee Leong v PP* [1998] 3 SLR 942. The existence of various immaterial

discrepancies was therefore not fatal to the Prosecution's case. Rather, the trial judge was justified in arriving at his conclusion that the strength of the collective evidence of the Prosecution's witnesses remained intact. In view of the above findings and the test I had alluded to at [35] above, it cannot be said that the trial judge had erred in his assessment of the victims and P3's credibility.

The voluntariness of the appellant's statements to the police

50 The records showed that at one stage in the proceedings, the appellant had claimed that some aspects of his statements were involuntary. The Prosecution immediately suggested to the court that it should hold a *voir dire* to determine whether the statements were voluntary or otherwise. However, before a ruling could be made, the then counsel for the appellant rose to assuage the court that the statements were in fact voluntarily given and that the appellant would not be disputing voluntariness. The court below ultimately decided to proceed with the trial of the accused without holding any *voir dire*. The appellant's present counsel, however, submitted that a *voir dire* ought to have been conducted and that the failure to do so was a miscarriage of justice.

51 Criminal procedure requires that any statement sought to be admitted must first be shown to be voluntarily made. This is a burden that is placed on the Prosecution. Even where, as in the present case, counsel for the appellant did not challenge the admissibility of the statements at the trial below, it is incumbent upon the trial judge to conduct a *voir dire* when the testimony of the appellant indicates that an objection is in effect being made to the admissibility of such statements. This proposition was implicit in the reasoning of Chang Min Tat J in the case of *Lee Weng Sang v PP* [1978] 1 MLJ 168 and was subsequently endorsed by the Court of Appeal in *Teo Yeow Chuah v PP* [2004] 2 SLR 563.

52 In my opinion, an unequivocal declaration by the then counsel for the appellant at the trial below, confirming that there was no challenge as to the voluntariness of the appellant's statements to the police, most certainly put paid to the appellant's present counsel's contention that the trial judge ought to have conducted a *voir dire*. Given the making of such a positive declaration at the trial below, any present criticism that the trial judge had erred in not holding a trial within a trial was found by me to be unmeritorious on the facts of this present appeal. A note of caution is perhaps appropriate at this stage. I do not intend for the above observations to be taken to mean that any allegation of involuntariness at an appeal must be doomed to failure just because the Defence had claimed that the statements were voluntary at the trial below. Trial judges must remain, at all times, vigilant to the likelihood of controversies of this nature and therefore ought to ensure that statements sought to be admitted in evidence by the Prosecution are indeed given voluntarily without threat, inducement, promise or any form of oppression or coercion. In this, they should constantly bear in mind the principles enunciated in *Ajodha v The State* [1982] AC 204.

The viability of the defences

Failure of the trial judge to give due consideration to the appellant's conspiracy theory and the attempted extortion

53 It is clear from the trial judge's Grounds of Decision that he had given due consideration to both segments of the defences raised by the appellant. As to the alleged conspiracy, having evaluated the evidence of the two victims and P3, the trial judge arrived at the conclusion that there was no probability of any conspiracy against the appellant. Further, he noted that the appellant had failed to make known this defence in his statements to the police. In respect of the alleged extortion attempt, the trial judge considered the testimonies of the appellant's mother and brother-in-law and decided to accord little weight to their evidence that P3 had attempted to extort money from them.

He observed that there was nothing that suggested that the alleged extortion note, delivered months after the appellant's offences had come to light, was remotely linked to the complaints made against the appellant by V1 and V2.

54 Having conducted a thorough analysis of all the evidence and circumstances surrounding the alleged defences, the trial judge was convinced that the defences were raised as a convenient afterthought. In light of the cogent justifications evident in the trial judge's reasoning, there exists no basis for me to overturn the findings of the lower court.

Failure to properly consider the appellant's medical condition

55 It was noted during the appellant's first instance medical examination by Dr Pearllyn Quek that the appellant displayed signs of erectile dysfunction. However, subsequent tests performed by the same doctor confirmed unequivocally that the appellant was able to achieve a rigid erection. Counsel for the appellant submitted that more weight ought to have been given to the results of the first test as it was conducted closer in time to the alleged offences.

56 It should be noted, however, that Dr Quek, when cross-examined by the appellant's then counsel, affirmed that "the time at which the [tests were] done does not matter because venous incompetence if present is not reversible" and that "the 2nd ultrasound [did] not show any evidence of venous incompetence and in fact precluded this diagnosis". In light of the unwavering testimony from Dr Quek, the trial judge was justified in concluding that the appellant was not labouring under any medical condition that would render his commission of the alleged offences impossible.

Improper application of Tang Kin Seng and the excessive reliance on circumstantial evidence

57 The appellant submitted that there was no medical evidence to prove that he had indeed penetrated V1 during the alleged offence and that it was therefore unsafe and unsatisfactory for the Prosecution to rely on the "backdoor" of circumstantial evidence to circumvent the strict requirement to prove penetration. As to the alleged offences committed against V2, the appellant submitted that the photographs taken by P3 could not positively identify the person engaging in anal intercourse with V2. It was therefore asserted that "the defence need only raise a doubt, however feeble, in the prosecution's case in order to have the conviction set aside".

58 I find the appellant's submission wholly unmeritorious. It has been established that a court is entitled to convict an accused on the sole basis of circumstantial evidence so long as all the evidence leads inevitably and inexorably to the accused's guilt: *Ang Sunny v PP* [1965–1968] SLR 67 and *PP v Oh Laye Koh* [1994] 2 SLR 385. In any event, it is clear from the reasoning of the trial judge that while he did give weight to the circumstantial evidence, such as the photographs and lubricants recovered from the appellant's residence and his room in his mother's flat, the judge had premised his conviction of the accused primarily on the weight of the direct evidence of the two victims and the corroborative testimony of P3.

59 As for the judge's reliance on the test in *Tang Kin Seng v PP* [1997] 1 SLR 46, I was of the view that the trial judge had correctly considered the evidence of both victims and supplemented any inadequacies in their testimony with the incontrovertible direct evidence of P3, as well as the other circumstantial evidence. At no point in his reasoning did the learned trial judge err in his application of the abovementioned test.

Conclusion

60 For all the reasons set out above, the appellant's attempt to impugn the trial judge's findings of fact had to be rejected. Consequently, the appellant's appeal was dismissed and his conviction upheld. As this appeal arose only in respect of the appellant's conviction, there was no reason to disturb the trial judge's decision on sentence, especially in view of the fact that the lower court had duly considered the many aggravating factors present in this case.

Appeal dismissed.