MALAYSIA

IN THE HIGH COURT IN SABAH & SARAWAK AT SRI AMAN

CRIMINAL APEAL NO: 42-01-99-I (SG)

AMAT BIN ENGGE & SULAIMAN BIN CHUNDI

vs.

PUBLIC PROSECUTOR

IN OPEN COURT

THE 7TH DAY OF MARCH 2000

CRIMINAL LAW AND PROCEDURE *- Rape - Appeal against conviction and sentence*

JUDGMENT

Introduction

Amat Bin Engge ("1st accused") and Sulaiman bin Chundi ("2nd accused") were both on 19 June 1999 convicted by the Sessions Court of the offence of rape under s. 376 of the Penal Code and were each sentenced to ten years' imprisonment and one stroke of the rottan. They were jointly tried on separate charges that they on 1 October 1998 each raped an Indonesian called Nurjanah Binti Munsir ("the girl").

The Evidence

On 1 October 1998 the girl was traveling in a bus from Bintulu headed for Kuching when the bus was stopped by policeman manning a road block at a certain road junction near Lubok Antu. This was at

about 9.00 pm. A policeman boarded the bus to inspect the passports of the passengers. The girl was using the passport of another person called Marianti but the girl had her photograph pasted on the passport; it was provided by a pimp called Eric. The girl became a prostitute. Another girl passenger was Lasmina Notodihatjo ("Lasmina") who also used someone's else passport. Both passports had by this time expired. The girl and Lasmina disembarked from the bus as ordered by the policeman and were taken to a police tent set up by the road side. The bus left without them. The girl had earlier entered Sarawak through Tebedu using a border pass which entitled her to remain for a week but she overstayed and was supplied the said passport without knowing its expiry date. She then went to Bintulu where she became acquainted with Lasmina. The following narration of the events are disputed by the two accused but I will set them out as told by the girl and I will thereafter consider the disputes surrounding those evidence.

While in the police tent, four policeman told them that they could be imprisoned for seven years for using expired passports and while inside the prison, they would be beaten, their heads would be shaved and they have to exercise every morning. The girl then asked the policeman what she should do to return to Sanggau, Indonesia. One policeman then said since Sanggau was very near they could send them back on condition that both girls had sex with them. Both the girls refused and they said they would rather die. The policeman then said that if they wish to die or go to prison for seven years, they would be sent to the police station the next day at 8.00 am. The

policeman continued persuading them to have sex with the added promise that they would be paid and sent back safely to Indonesia. The girls said they finally agreed to have sex in view of the threat of imprisonment and of going back to their agent. It was at this time that the 1st accused, who was one of the policeman who had demanded sex, took the girl to a bush and had sex. After that and upon reaching the tent, the 2nd accused, another of the policeman who demanded sex, took the girl to the same bush and had sex with her. According to Lasmina, the 2nd accused had sex with the girl first while the girl said it was the 1st accused. The 1st accused gave the girl 5,000 rupiah but the policeman did not keep their promise to send them back to Indonesia and instead they put them on another bus which was heading for Serian and thereafter Kuching. They were supposed to get off at Serian which is near the Tebedu border with Indonesia but instead they proceeded to Kuching, stopping at the bus station. At the bus station they were met by two Chinese male who took them to the Indonesian Consulate at around 10.00 am, 2 October 1998. It was only on 5 October 1998 that the two girls went to lodge a police report accompanied by an officer of the Indonesian Consulate. It was only on 10 October 1998 that the girl was examined by a doctor who found she had intercourse before which is of no value since she had admitted to being a prostitute.

The 1st accused and 2nd accused denied having sex with her. Thus, it was her words against that of the two accused. Mr Rosli bin Gapor, learned counsel for the two accused, referred to the various contradictions of the evidence of the girl which make her evidence

less preferable to that of the two accused. It is to those evidence that I will now deal with.

The girl when examined in chief had, with regard to why she agreed to have sexual intercourse with the two accused, said this:-

> The policeman further threatened us to have sexual intercourse with them. They also persuaded us to have sexual intercourse with them with the promise of paying us a large sum of money and sending us safely to Indonesia. Faced with their threats and our reluctance to go back to our agent, Lasmina and I agreed to have sexual intercourse with the policeman. We agreed to have sexual intercourse with them because they promised to send us back to Indonesia ...
>
> ... I did not resist during the sexual intercourse because I have already agreed. In actual fact I was not willing to have sexual intercourse even though I had agreed. After the sexual intercourse both the policeman and I put back our own clothing ...
>
> From the time the policeman threatened us and to the time I had sexual intercourse with two policeman, I was satisfied because they had promised to send us back to Indonesia and gave us money. From the time the policeman demanded sex and to the time we had sexual intercourse, I did not feel scared anymore. I was not willing to have sex but I was satisfied with their promise of sending us back to Indonesia ...
>
> ... I told Hewan that I was scared when I had sexual intercourse with the two policeman ...
>
> ... I told Insp Dora that I have sexual intercourse with them because they promised to send us back to Indonesia after the sexual intercourse. I told her that I did not want to have sexual intercourse with them willingly.

When cross-examined, the girl gave the following answers to the various questions:-

Q: You consented to the sexual intercourse hoping to get something in return ie, to go back to Indonesia and that they would give you money and not because of the threat.

A: Agree.

Q: Without the promise of being sent back to Indonesia and being given money, you would not have consented to have sexual intercourse even if they were policeman.

A: Agree.

Q: After the sexual intercourse one of the policeman did give you money.

A: Yes.

In my view, the evidence thus far as a result of examination-in-chief and cross-examination would support the conclusion that the girl agreed to have sexual intercourse because of the promise to send her back to Indonesia and also because of the promise to pay her money. Whatever that can be regarded as a threat did not feature at all in her consideration of whether to agree to sexual intercourse. However, there was an attempt to change that evidence when the girl was re-examined and that process, the relevant part, went like this:-

Q: In cross-examination you said that you consented to have sexual intercourse with the accused because you hope to be sent back to Indonesia and at that time it was not because of being threatened. At the time you agreed to have sexual intercourse with both the accused and at the time of having the sexual intercourse, did the threat still (linger) in your mind.

A: Yes.

Q: Since the threat still existed in your mind, does that affect you in having intercourse with the accused.

A: Yes.

Q: Why did you say in cross-examination that you consented not because of being threatened.

A: I was still thinking about the question at the time of answering the question meaning I was still thinking about the answer to the question.

Q: What was the exact answer you wanted to give.

A: The consequence of the threats were still there when I consented to have sexual intercourse.

The court also followed through with more questionings that elicited answers to the effect that the threat had induced the consent, *viz:-*

Q: You further testified in xd in chief that you asked the policeman what you should do to get back to Indonesia, one of them said that they could send you back provided you had sex with them, you refused and said that you would rather die than have sex with them. But later you changed your mind and end up having sex with them what made you changed your mind.

A: Because the policeman had promised to send us back to Indonesia safely ...

Q: If the policeman had not threatened you at all. If right from the start they asked you to have sex with them on the promise of sending you back to Indonesia safely and pay you for it, would you have agreed.

A: No.

It becomes important to determine what really induced the agreement of the girl to have sexual intercourse in view of the apparent contradictions in the evidence of the girl that I have just set

out. On the one hand, the girl said it was the promise of money and of being sent back to Indonesia that she agreed to have sexual intercourse. On the other hand, the girl said it was the threat of being sent to the police station the next morning or to her agent that made her agreed to have sex. The learned Sessions Court Judge was of the view that the girl was put in a dilemma of being sent to prison or to her agent unless she agreed to have sex with the two accused. The court was further impressed by the answer to the court's question she gave that if she had not been threatened from the beginning with punishment and even if the two accused had at the very beginning promised to send her back with money, she would not have consented to having sexual intercourse. That shows, according to the court, the lack of consent. This begs the question of why having sex with the policeman should be so disagreeable when the girl had been prostituting herself while in Sarawak before she met the two accused? The learned Sessions Court Judge appears to have the question in mind when she provided the answer in these words:-

> Mindful of the fact that the complainant was a woman with varied sexual experience, I do not think she was a woman of loose character who simply sold her body to the policeman for mere promise of being sent home and for money. I believe that she would not have concede to sexual intercourse if the police had not put her in the predicament with their threat of sending her to prison. The complainant does not impress me to be a scheming and vindictive woman who was seeking to get even with both accused who, after having sexual intercourse with her, failed to fulfill their promise. She impressed me to be a truthful witness. I believe her when she said that in giving her consent she was doing it unwillingly and both threat and promise had influenced her decision. I therefore find

> as of fact that though the sexual intercourse took place with the complainant's consent it was not given willingly and has been vitiated by duress.

So, the Sessions Court Judge was of the view that she was not "a loose woman" even though she had varied sexual experience. The Sessions Court Judge was also of the view that the girl would not "simply sold her body to the policeman for mere promise of being sent home and for money". However, the evidence showed that she had worked as a prostitute even though she had the intention of working as a housemaid. The only support for the conclusion that the girl was not a loose woman can only be the deduction from the evidence that the agent in Sarawak had forced her into prostitution though she did not say so and the girl was guarded more or less round the clock with no freedom of movement and there was no opportunity for escape. But there remains the unanswered questions of why the girl did not complain at all that she was held against her will by the agent and forced into prostitution and why she did not attempt to run away during the many bus trips if in fact she was unwilling to be a prostitute. Apart from that the girl did not mind using a fake passport and that is indicative of a person with no scruples. The ease with which she moved around Sarawak with a faked passport is testimony of her liberty. The many opportunities that avail but not taken by her to complain of her alleged confinement belies her unwillingness to prostitute herself. All these the learned Sessions Court Judge had failed to take into account when she concluded that the girl is not of loose character and would not simply exchange sexual intercourse for money and a trip back to Indonesia.

The contradictions in the girl's evidence which I have already set out and which I will set out shortly were the basis for the contention that the girl is not a truthful witness when compared to the evidence adduced by the defence. This leads me to consider whether the court had considered the defence adequately and that is the main thrust of the appeal argued by Mr Rosli Bin Gapor, learned counsel for the two accused. The evidence of the defence are these.

The 1st accused was in charge of the road block on that day with his shift of duty starting at 3.00 p.m. and ending at 11.30 pm on the same day. He had received instruction from his superior officer to detain and interview illegal immigrants who possessed invalid documents to make sure that they go back if they intended to go back to their country. Particulars of the persons must be recorded in a book provided. The 1st accused had with him three policeman, one of whom was the 2nd accused. None of them had any raincoat with them. The rest of his evidence reads:-

> On the night in question Constable Mohktar brought two girls named Wati and Marianti from the bus to see me. Constable Mohktar told me that these girls possessed expired passport. He further informed that their passports were held by the bus driver. When I asked why their passports were held by the bus driver, Mohktar replied "runding-runding". The words "runding-runding" were said by the bus driver and Mohktar just conveyed it to me. I asked the two girls to sit down and interviewed them. I asked them whether they knew their passports had expired and they replied that they knew. I further asked why they allowed the driver to hold their passports, they replied that they did not know because it was the agent who asked the driver to hold the passports. I also asked what they did in Bintulu and Miri, they replied that they worked in karaoke

pub, entertained customers and stayed in hotel. I also asked why they did that kind of job, they replied that they had no choice and they worked for money. I asked them if they wanted to go back to their country, they replied that they wanted to see their agent, Eric. I further asked if they really wanted to go back and they replied that they did. Based on what they said, I was not sure if they really wanted to go back. During the interview the bus driver informed me that the bus wanted to leave, I told them to be patient because we were doing our job. The bus driver kept telling us that the bus was leaving, Constable Mohktar then said that let them leave, since the bus driver only thought for himself but not the policeman who were discharging their duty. After hearing what Mohktar said, the bus left leaving the two girls in the police shed. It was raining at that time. Quite some time later, the time I cannot remember, Biaramas bus came and I asked the driver to send the two girls back. The driver agreed. I did not at any time touch the girl. I did not do untoward things to them. I also did not say anything to them.

The 1st accused had recorded the details of the two girls. The prosecution had led evidence through Inspector Ibrahim Kawi that he had given instruction to officers who conduct road blocks to detain illegal immigrants with invalid passports or without documents who enter Sarawak and report them to the nearest police station and for those who were leaving Sarawak, to release them after their particulars were recorded but to ensure that they really leave the country. The 1st accused said he released the two girls because he was satisfied that they were going to leave the country.

As for the 2nd accused, he said he stopped the bus which carried the girls and brought them to a shed when the rain started to fall. He did not talk nor do anything to the two girls. The girls were

interviewed and later left in a bus.

Evidence was also led by the defence that the two accused did not bring with them any raincoat and that they were not wet at all when the next shift took over from them at about 11.30 pm. The girl had given evidence that the sexual intercourse had taken place while it was raining.

The Contentions

1. Corroboration.
2. The Sessions Court Judge was of the view that Lasimina provided corroboration for the story of the girl without stating which aspect of it. For the evidence of Lasmina to qualify as corroboration it must connect the accused with the offence although it is not necessary that there should be independent confirmation of every material circumstances and her evidence must not only make it safe to belief the crime was committed but must in some way reasonably connect or tend to connect the two accused with it by confirming in some material particular the testimony of the girl (*Yap Ee Kong & Anor v. PP* [1981] 1 MLJ 144 FC). Lasmina had testified that she saw the two accused took the girl by turn to a bush some distance from the shelter. If her evidence is to be believed then it would provide corroboration of the fact that the girl was taken to the bush as alleged by the girl which is a material particular because the rape was alleged to have taken place immediately thereafter. If that was what the Sessions Court Judge had in mind then she

was correct in stating that Lasmina provided corroboration. In any event she has warned herself of the danger of convicting on uncorroborated evidence but was nevertheless of the view that it was safe to do so since she found the girl to be credible.

3. The credibility of the girl.

How was it that the girl was wet all over as a result of the sexual intercourse when the two accused were not if really sexual intercourse had taken place? That was the question posed by learned counsel for the two accused in the course of his contention that the girl is not a credible witness, apart from his reference to the contradictory answers of the girl concerning the question of consent to the sexual intercourse. The girl had said that this was because the two accused were wearing respectively a raincoat and a jacket which protected them from the rain. However, two policeman, PW10 and PW11, called by the prosecution, one in the party that handed over their shift to the two accused while another was in the party that took over from them, testified that the two accused did not have with them any raincoat or jacket nor any bag to hold such item. PW11 also said that he did not see any wet cloth on the body of the two accused when he took over the shift at 11.30 pm. This is how the Sessions Court Judge considered the issue, *viz*.

> I shall touch on this issue of raincoat and jacket which had been greatly canvassed by the defence in an attempt to raise doubt on the complainant's credibility. The complainant testified in chief that when she had the sexual intercourse with the 1st accused in the bush, she put down a towel on the ground for them to lie on, the 1st accused was wearing a uniform. In the case of the second accused, the 2nd accused put

his raincoat on the ground and he was also wearing a uniform. This has never been challenged by the defence in cross-examination. In cross-examination, the complainant stated that the ground was wet because it was raining. She was never asked the extent of the rain - was it drizzling, or it was a down pour. DW1, DW3 and DW4 claimed that it was raining heavily after the two Indonesian ladies were brought to the shed and they stayed inside the camp. This was never put to the complainant in cross-examination. Yet the defence made a big issue on heavy rain when they testified. If the sexual intercourse could not have taken place because of heavy rain, why was it never put to the complainant. Not only it was not put. The defence has also failed to challenge that there was never any raincoat when the complainant testified that the 2nd accused put his raincoat on the ground. In view of this, one can only conclude that the allegation of heavy rain by the defence is an after-thought.

As for PW10 Corporal 112993 Joshua Anak Julius Intai's testimony in this respect, he said that he did not notice anyone carrying a jacket or police raincoat. This is vague here. It could mean that either he did not see or he was not paying attention. As for PW11 Cpl. 48119 Dunggau anak Balak, he testified that no one was wearing a jacket or carrying a jacket. None was wearing a wet cloth. He was not asked whether they might be carrying a bag.

Defence also submitted that if what the complainant said about her being wet over was true, how come the bus driver PW4 did not notice the clothing of the two Indonesian ladies. In this respect, the testimony of PW4 is that he did not notice the facial expression of Lasmina and he could not remember her clothing. PW4 could not even identify the complainant, plainly it speaks of him having no impression of her.

There is no evidence that the two Indonesian ladies were detained at the shed sometime around 9.00 pm and sent off by the subsequent bus at 11.00 pm sometime before Shift "A" took over at 11.30 pm based on Ex.P4. D.W.1 and D.W.4 said the interview took place for about half an

> hour, the sexual intercourse could not be very long because the complainant said that both accused asked her to be quick. In other words, after the alleged sexual intercourse, there was waiting in the shed, giving ample time for the wet cloth to dry to a small extent. That explained why PW11 did not see any wet cloth on both accused.

As for the conclusion that the girl was never challenged when she described what the two had worn and how the 2nd accused had used a raincoat when having sexual intercourse with her, I am of the view that this is a serious misdirection because the defence has put to her that there was never any sexual intercourse which should be sufficient to contest everything the girl said about how the sexual intercourse had taken place, how the two accused were, during that process, dressed and how the 2nd accused had used a raincoat. If that was not enough then surely it suffice when it was also put to her that she made up the whole story to avoid prosecution for using an invalid passport. It must be remembered that the defence need not cross-examine a witness in detail and a few questions will generally suffice (*R v. Velayuthan* [1935] MLJ 277). It must also not be forgotten that the other witnesses of the prosecution had adduced evidence that the two accused did not have any raincoat or jacket and that their clothing was not wet when another shift took over duty from them. Therefore, there was plenty of indication that the defence would raise the issue of the raincoat or jacket and the defence would rely on the fact that the clothing of the two accused was not wet at all. That it was raining came from the evidence of the girl and there is no duty on the party of the defence to establish how heavy the rain was. In any event, it was the girl's evidence that she was all wet which is some indication as to

the state of the rain. This is the opportune moment to remind myself of the recent decision of *Alcontara a/l Ambross Anthony v. Public Prosecutor* [1996] 1 MLJ 209, particularly the following passages, at p. 217-219.

We now turn to consider three further grounds for our holding that the appeal was bound to succeed.

First, the judge had misdirected himself as regards the burden of proof, especially the burden on the defence. More particularly, as will appear from the following passages in his grounds of judgment, the judge had criticized the defence for not having put to the investigating officer, the name of Che Mat, the latter's telephone number, and address of place of abode. This is how the judge put it:-

1. Furthermore, if the character of Che Mat existed then it is incumbent on the defence to put this question to the investigating officer ...
2. It is settled law that the defence, by its failure so to put such questions to the prosecution witnesses, ought not be allowed to raise such issues at the defence stage.
3. Prosecution witnesses were also not challenged as to whether the police had taken steps (at any rate, not fatal to the prosecution witnesses) to check on the telephone number given in D14 (the cautioned statement) or to locate Che Mat's house with the assistance of the accused and this became the only issue during the defence case.

Speaking generally, in a criminal trial, the whole point and purpose of the defence having to put its case to such of the prosecution witnesses as might be in a position to admit or deny it, is to enable the prosecution to check on whether an accused's version of the facts

is true or false, and thus avoid the adverse comment, that the defence is a recent invention - in other words, 'kept up its sleeve', as it were - and revealed for the first time when the accused makes his defence from the witness box or the dock, thus detracting from the weight to be accorded to the defence. However, failure on the part of the defence to put its case, as aforesaid, can never, by itself, relieve the prosecution of its duty of establishing the charge against the accused beyond any reasonable doubt.

At this stage, we would interpolate to remark - though we are digressing somewhat from the point concerning the onus of proof - that the judge went so far as to hold 'that the defence by its failure so to put such questions to the prosecution witnesses ought not to be allowed to raise such issues at the defence stage'. In this, he was clearly wrong, since it is settled law that, although a court may view with suspicion a defence which has not been put to the appropriate prosecution witnesses who might have personal knowledge of the points at issue, the court is still bound to consider the defence, however weak, and to acquit if not satisfied that the prosecution has discharged the burden of proof which rests upon it. We are supported in this by the case of *Lister v. Quaife* [1983] 1 WLR 48 decided by the Court of Appeal in England. May LJ in his judgment at p. 54 of the report said this:-

> We have not found this at all an easy case but in the end we have come to the clear conclusion that the answer really lies in a proper appreciation of what s 9 in fact achieves. As I have already said, this is that the contents of the statements read are evidence in the case just as if, and only to the extent as if, the makers of those statements had been called as witnesses

in the trial and had given the evidence contained in the statements. If that had happened on the hearing before the King's Lynn justices in this case, and there had been no cross-examination about the possibility of mistake, or their evidence had not been challenged in any way, then when the defendant went into the witness box no doubt strong comment could have been made that nothing had been put to the witnesses about the possibility that the defendant might indeed have been able to and did buy the dress somewhere else, in Portsmouth in particular, on 2 July 1981.

Although any such comment by the prosecutor would have had substantial force and might well have led the justices to view the defendant's evidence with a degree of scepticism, the position remains that the burden throughout was on the prosecutor, and although the proper procedure of putting a defence case to prosecution witnesses had not been followed, it would have been open to the justices, having heard all three witnesses, to have said: 'Well, it may be that that procedure laid down by Marks & Spencer was what should have happened, and it may have happened in at least the majority, if not every other case concerning a dress of this nature, but we have also seen the defendant. She has given evidence. We cannot say that her evidence cannot be true, and in those circumstances there must be a doubt in our minds and accordingly we must acquit.

Stephen Brown J said at p. 55:-

This case has very many unsatisfactory features, but I have great sympathy with the justices in the position into which they were put, not through their own fault. In the end, however, it is they who had the duty of weighing the evidence which had been properly admitted before them and the decision of fact was entirely for them. Whilst it may be that this court might itself have come to a different conclusion, none the less it seems to me to be impossible to interfere with the decision of the justices, which was fully within their competence. Therefore, I agree with

May LJ that this appeal must be dismissed.

To resume our discussion regarding the important point of misdirection as regard the burden of proof, especially the burden on the defence, we must point out, with respect, that it was wrong for the judge to have criticized the defence for having failed to put to the investigating officer, the name of Che Mat, or the latter's telephone number or his place of abode, for the simple reason that these particulars had been disclosed in the cautioned statement of the appellant made the day after his arrest so that the police had all the time in the world to check their veracity. That being the case, the onus was on the prosecution to check on whether the appellant's version of the facts, as they appeared in his cautioned statement and to which we have referred, was true or false. In other words, the onus was upon the prosecution to disprove this important part of the appellant's version of the facts. The defence were, therefore, under no duty to put the matters aforesaid to the investigating officer, having regard to their prior disclosure in the cautioned statement. In holding to the contrary, the judge had undoubtedly overlooked the material portions of the cautioned statement touching on Che Mat, reversed the onus, and placed it on the defence, so that on this further ground also, the conviction had to be quashed.

The learned Sessions Court Judge with regard to the question as to why the clothes of the two accused were not wet proffered the answer that the sexual intercourse was over quickly and there was ample time for the clothes to dry while the two accused were under the shed and before PW.11 arrived. The waiting time at most was two

and half hours but this has to be further discounted for the interview which took half an hour forgetting the time it took for the sexual intercourse which was said to be over very quickly. That leaves only two hours for the clothes of the two accused to dry. This leads me to ask where is the evidence to say that the clothes can dry in two hours time without any sunlight? There is none. If anything, it is a notorious fact that clothing had to be strung out in the sun for several hours before they can be dried. There is here a serious misdirection in the finding of fact because there is no evidence to support the conclusion that the clothes on the two accused had dried by the time PW11 turned up.

Another reason which the learned Sessions Court Judge gave for disbelieving the two accused was the fact that the 1st accused had decided to set the girl free without ensuring that she is going to leave the country. The learned Sessions Court Judge was of the view that the mere fact that a bus was heading a direction could give rise to a conclusion that a passenger on board was headed for Indonesia was not a reliable basis for such a conclusion. Unreliable it may be, there is no guide-line set by the authority as to how to ascertain whether an Indonesian was headed home or otherwise. The 1st accused cannot be said to be untruthful just because he exercised a discretion which was granted to him, to decide whether an Indonesian was headed home or otherwise.

Even where the court views with suspicion a defence which has not been put to the appropriate prosecution witnesses the court is still

bound to consider the defence, however weak, and to acquit if not satisfied that the prosecution has discharged the burden of proof which rests upon it (*Alcontara a/l Ambross Anthony v. Public Prosecutor*). Therefore, even if the court disbelieved the two accused when they said they did not have sexual intercourse with the girl, the court has still to consider whether there is on a balance of probabilites any doubt cast on the case of the prosecution. This means considering all the evidence again, this time for the purpose not of a *prima facie* case but of a case beyond reasonable doubt. This should lead the learned Sessions Court Judge to ask:-

1. Whether, in view of the denial by the two accused of having sexual intercourse with the girl, the girl had plausibly explained why she at one instant said she had agreed to have sex because of the promise to be sent home and of payment before changing the story in re-examination. It will be recalled that the girl had attempted an explanation in these words: "I was still thinking about the question at the time of answering the question meaning I was still thinking about the answer to the question." That statement does not explain at all the contradiction. This should bring about a doubt as to whether she was forced into having sexual intercourse rather than having agreed voluntarily upon being promise a trip home and the payment of money. Particularly so, when she did not try to run away or report to the authority after she was allegedly confined against her will for the purpose of prostitution when so many opportunities avail themselves; this should make the court wary of her truthfulness. Even more so when she had no qualm in moving around Sarawak using a fake passport.
2. Whether any doubt had been cast on the reliability of the evidence of the girl and thus in the case by the prosecution as a result of the evidence of prosecution other witnesses to the effect that the two accused were not

wearing and did not have any raincoat or jacket which contradicts that of the girl.

3. Whether any doubt had been cast in the prosecution case by the fact that the prosecution other evidence had shown that the clothing of the two accused were not wet at all because if the two accused did not have any raincoat or jacket on but just their uniform when having sexual intercourse, their clothing should be wet just like those of the girl.

In my view, the learned Sessions Court Judge could not after considering those questions but come to the conclusion that a doubt has been cast on the case for the prosecution.

Conclusion

In the premises, the appeal is allowed and the conviction and sentence set aside. In its place will be an order that the two accused be discharged and acquitted.

Justice Datuk Ian HC Chin

For Appellants/Accused:	Mr Rosli bin Gapor
For Respondent Public Prosecutor:	Mr Ahmad Jubir Bin Jantan Deputy Public Prosecuto