

Public Prosecutor v YD
[2008] SGHC 163

Case Number : CC 12/2008
Decision Date : 23 September 2008
Tribunal/Court : High Court
Coram : Tay Yong Kwang J
Counsel Name(s) : Amarjit Singh, Jean Kua, Gordon Oh and Adrian Ooi (Attorney-General's Chambers) for the Prosecution; Accused in person
Parties : Public Prosecutor — YD

*Criminal Law – Offences – Rape – Statutory rape – Unnatural offences – Father having sexual and carnal intercourse against the order of nature with step-daughter aged below 14 years old
– Whether step-daughter's alleged consent was defence to charge of statutory rape – Section 375(e) Penal Code (Cap 224, 1985 Rev Ed)*

Criminal Procedure and Sentencing – Statements – Voluntariness – Accused alleging he made statements out of fear of police and threats from wife and step-daughter – Whether accused's statements admissible

*Criminal Procedure and Sentencing – Trials – Alleged victim of rape not available to testify at trial
– Whether accused might be convicted on basis of his own statements to police and psychiatrist*

[EDITORIAL NOTE: The details of this judgment have been changed to comply with the Children and Young Persons Act and/or the Women's Charter]

23 September 2008

Tay Yong Kwang J:

1 The accused, aged 37, is an Indian national and Singapore permanent resident. He married his wife, a divorcee, now aged 36 and also an Indian national, in 1995. His wife has a son and a daughter from her earlier marriage. The son ("the step son") was born in 1992 while the daughter ("the step daughter") was born in November 1993. In 1996, the accused's wife gave birth to the accused's daughter. A son was born in 2003.

2 In 1997 or 1998, the accused came to Singapore from India to work. He was employed as an information system specialist here. His wife joined him in Singapore about a month later, leaving her children in India as she did not wish to disrupt their studies in their homeland.

3 In 2004, the accused managed to obtain Singapore permanent resident status for his family, which then came to join him here. The accused, his wife and their family of four children first lived in a flat in Telok Blangah ("the Telok Blangah flat"). In June 2005, they moved to a two-bedroom flat in Yishun ("the Yishun flat").

4 The accused was charged with and claimed trial to a total of 42 charges. These comprised 16 charges of statutory rape under s 375(e) of the Penal Code (Cap 224, 1985 Rev Ed), an offence punishable under s 376(1) of the same, and 26 charges of having carnal intercourse against the order of nature (fellatio) punishable under s 377 of the Penal Code. All the charges were alleged to have been committed against the step daughter when she was under 14 years of age between January

2005 and February 2007 in the Telok Blangah flat and later in the Yishun flat.

5 The accused had engaged Mr Subhas Anandan ("Mr Subhas") as his defence counsel but was unable to pay his fees. After Mr Subhas discharged himself from acting for him, the accused made three unsuccessful applications to the Criminal Legal Aid Scheme ("CLAS") for legal representation. Before me, he requested that the court appoint a lawyer for him as he was unfamiliar with the legal system here and would need help to prove that he did not commit the offences alleged and to get witnesses to testify in his defence.

6 The prosecution informed me that the original hearing dates for this trial were vacated in order to allow the CLAS more time to consider the accused's application for legal representation. After CLAS turned down his three applications, the Supreme Court's registry informed the accused in February 2008 to engage his own counsel or conduct his own defence.

7 As there were three persons sitting in the public gallery in court (an Indian man and two Indian ladies), I enquired whether they could be of assistance to the accused in any way. The male Indian said he was a former colleague of the accused but was unable to help him. One of the Indian ladies also said she was not able to help the accused. The other lady, who identified herself as Susie, told the court that she knew a male lawyer whom she could contact to see if he was willing to be defence counsel. The proceedings were thereupon adjourned to the afternoon for Susie to contact the male lawyer and see if he would be willing to come to court to speak to the accused.

8 When court resumed in the afternoon, a court interpreter informed the court that Susie made the call but passed the telephone to him to speak to the male lawyer (one Mr Abraham T. Kumar). Unfortunately, the said Mr Abraham said he did only civil legal work and was unable to be defence counsel for the criminal case. I therefore informed the accused that he would have to conduct his own defence but offered him the registry's assistance in summoning his defence witnesses if he could give their names and their address.

9 In court, the accused spoke through a Tamil interpreter. However, when the prosecution was reading its opening address, the accused informed the interpreter that he understood English and that there was therefore no need to interpret to him what was being read in court.

The trial within a trial

10 The prosecution's main evidence was the accused's statements to the police and to a psychiatrist. As the accused disputed the voluntariness of all his statements, a trial within a trial was conducted.

11 ASP Aileen Yap ("the ASP") testified that the accused was arrested on 9 May 2007 on a charge of rape and for breach of a Personal Protection Order ("PPO") taken out by his wife. Between that day and 17 May 2007, the accused made the following statements to the ASP:

- (a) an oral statement on 9 May 2007 at about 5.15pm at the Criminal Investigation Department ("CID"), which was reduced into writing by the ASP in her investigation diary;
- (b) a statement pursuant to s 122(6) of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) ("CPC") on 10 May 2007 between 2.05pm and 2.54pm at the CID;
- (c) a statement on 12 May 2007 between 1.47pm and 6.55pm at the Police Cantonment Complex ("PCC");

(d) two statements on 14 May 2007 between 2.46pm and 6.01pm at the PCC; and

(e) a statement on 17 May 2007 between 4pm and 5.38pm at the PCC.

The ASP said that the accused did not mention at any time that what he was saying was not true. At the start of each recording session, the accused would be offered the chance to read through his previous statement. The accused was calm and forthcoming in his answers. The ASP brought the accused to the Yishun flat on 16 May 2007 for photographs of the home to be taken. That was the only occasion his wife saw him during that period.

12 In his cross-examination of the ASP, the accused alleged that during the first statement (at [11](a) above), the ASP told him not to beat around the bush, thereby causing him to be frightened. The accused also alleged that the ASP led him to his answers by telling him that the facts stated were as stated by the step-daughter, to which he then merely agreed. The ASP denied having uttered the words in question and having led the accused to his answers. Except for the first statement, all the rest were recorded with the assistance of interpreters. The ASP maintained that everything in the statements was said by the accused voluntarily.

13 At the close of the first day's proceedings, the accused requested that he be allowed by the prison authorities to make an overseas call to his brother in India to bring money immediately for Mr Subhas' legal fees. A male Indian sitting in court, who identified himself as the brother of one Dilna (the lady with whom the accused was having an affair), while not willing to speak to the accused, volunteered to help make the call to the accused's brother if the accused could provide the contact number. The accused agreed to let him make the telephone call on his behalf. Three days later, the same gentleman returned to court and stated that he made a telephone call in the evening of the first day of trial but there was no response. Two days later, the accused's brother returned his call and said neither he nor his relatives could help the accused. The brother did not have the funds and the relatives were apparently too busy with their own lives.

14 The female Tamil interpreter (Jeya Letchumi) involved in the recording of the second statement (at [11](b) above) testified that the accused was calm during the recording. He did not complain about anything to her. He also did not tell her that his first statement was untrue. She added that the ASP did not suggest answers to the accused during the recording. She agreed that she felt uncomfortable as the questions concerned sexual acts. To the accused's suggestion that he felt worse because he was being questioned about such matters in the presence of two women and therefore wanted to finish the interview as quickly as he could, the interpreter replied that she had no answer to this. She said it was not her duty to suggest to the accused to ask for a male interpreter.

15 Mdm Malliga Ananda Krishnan, the female Tamil interpreter involved in the recording of the third statement (at [11](c) above) testified that the accused appeared normal during the recording and gave his answers voluntarily. He did not inform her that his previous statement was not true. Although the accused apologised to her for having to say the things recorded in the statement in her presence, he was able to give the details comfortably.

16 The male Tamil interpreter (P Manickam) involved in the recording of the statements on 14 May 2007 (at [11](d) above) testified that the accused was calm and collected during the recording and was spontaneous in giving the answers to the questions posed. The accused did not tell him that anything in the previous statements was false.

17 Dr Gavin Lim Hock Tai of Alexandra Hospital examined the accused in the morning of 10 May 2007, before the statement at [11](b) above was recorded. He found the accused alert, comfortable

and cooperative. The accused had a history of high blood pressure. The doctor prescribed some medication for the accused for this condition.

18 SSGT Alfred Cheong was the police officer in the Ang Mo Kio Police Division who recorded a statement from the accused in respect of the alleged breach of the PPO reported by the accused's wife. The wife reported on 4 May 2007 that they had a dispute and the accused pushed her in the region of the stomach. On 9 May 2007, after his arrest, the accused was very calm. He asked the recorder what he had been arrested for. He did not admit to any breach of the PPO. No mention was made at that stage of any rape allegation although the recorder was aware that the accused was a wanted man for alleged rape.

19 SSGT Lee Yang Chea ("SSGT Lee") and SI Bong Fook Seng ("SI Kelvin") were the police officers who escorted the accused from Ang Mo Kio Police Division to the PCC on 9 May 2007. Between 10 May and 16 May 2007, they escorted him to various locations, including Alexandra Hospital for his pre-statement, and later his post-statement, medical examination.

20 SSGT Lee denied that he asked the accused to remove his t-shirt when he was brought up from the lock-up on 9 May 2007 and that he then looked at the front and subsequently the back of the accused's body. He denied having spoken to the accused, whether in a harsh tone or otherwise, or having handcuffed him in a rough manner. He further denied having driven the car to Alexandra Hospital (for the post-statement medical examination) in a way that caused the accused to fall off his seat and then asking the accused whether he was sleeping.

21 SI Kelvin testified that the vehicle they were in when they went to Alexandra Hospital was a saloon car and not a van as alleged by the accused. His evidence was generally the same as that of SSGT Lee.

22 The accused was the sole defence witness for the trial within a trial. He testified that he gave the statements in fear because his wife's and his step daughter's pre-occupation was to threaten him. The problem within the family started when his girlfriend (Dilna) began to stay in the Yishun flat, sharing the children's bedroom. The whole family returned to India to try to resolve this problem. While in India, his wife made a police report against him and his passport was impounded. That caused him to be frightened. The accused's wife's younger brother also got some people to beat up the accused in India.

23 On 4 April 2007, the accused returned to Singapore. He saw a notice on the door of the Yishun flat informing him to go to the Family Court. When he asked his wife about it, she replied that if he continued to have a girlfriend, she (the wife) would give him problems. She wanted him to leave his girlfriend in exchange for her withdrawing her application for the PPO. The accused promised to do so and the wife withdrew the said application. However, outside the court, she threatened him again, saying that if he carried on his relationship with his girlfriend, she would take action in some other way.

24 Subsequently, due to another dispute, a second application for a PPO was made by his wife. His wife and his step-daughter told him that they would both do anything to him if he continued the relationship. His step-daughter warned him that his wife knew a certain ASP Selvakumar and was planning something against the accused. His wife also said that she would use the step-daughter "to play against" the accused.

25 On 9 May 2007, the accused was arrested. His wife told him that the police would question him about the step-daughter and he must admit to what the police said or face more problems. At that

stage, the accused felt like taking his own life by jumping down from a height of 12 storeys. When he arrived at the police station, he realized that the case concerned the PPO and not his step-daughter. He then realized that his wife was joking about linking him to the step-daughter's case. However, he soon learnt from the recording officer that he was linked to another case and would not be released.

26 The accused said he was generally afraid of the police and if the police accused him of something, he would admit what they said even if it were a lie. That was why his wife "played the police against" him. He was also very frightened of SSGT Lee and SI Kelvin because of the harsh treatment he had received from them. He was frustrated with his family for doing all this to him just because of his relationship with his girlfriend. He had done so much for them and regarded the step-children as his own flesh and blood. Having got him into this mess, his wife has disappeared. Out of frustration and anger, he gave the impugned statements which he now realized was a big mistake as they were all false statements.

27 Under cross-examination, the accused maintained that he had a phobia of the police and had made the statements in question out of fear. His wife told him to say that he had a sexual relationship with the step daughter since 2005. Although there was no benefit to the accused in admitting this, he was afraid the police would not let him go and would assault him. When he made the statements, he was actually thinking about his girlfriend rather than the step daughter. In other words, he was describing sexual acts between him and his girlfriend, not between him and the step daughter. If he did not make the statements as insisted by his wife, he feared that no one would visit him or help him to engage a defence lawyer while he was under remand, particularly since he was a foreigner here. This happened to him on the trip back to India as his wife knew many people there. In India, he claimed, the police would break his limbs if he refused to admit to offences he was accused of there. The same could happen to him in Singapore as his wife knew ASP Selvakumar. He had heard talk that the police would assault a suspect or make him sit in an air-conditioned room without clothes if the suspect refused to admit to offences alleged against him. He thought he would be released if he made the impugned statements.

28 Asked why he was not afraid to deny breach of the PPO when questioned by the police after his arrest but was so afraid of the police on 10 May 2007, the accused said he did not know how the police would view a rape allegation, which was a far cry from breach of a PPO. He was arrested right after finishing his night shift work on 8 May 2007. He did not sleep on 8 and 9 May 2007. That was the first time in his life that he was arrested by the police. The police at Ang Mo Kio Police Division also did not treat him the way the police officers investigating the rape offences did, by asking him to remove his t-shirt when there were female police officers around.

29 The accused said he was fearful as SSSGT Azman had stared at him in a threatening manner when he arrived at the PCC. SSSGT Azman asked his fellow officers in an angry tone, "Is he the one?". That caused the accused to be frightened. SI Kelvin had handcuffed him roughly and told him not to cause any trouble. Further, the ASP then asked him not to beat about the bush and that frightened him. Having admitted the offences alleged by the ASP on 9 May 2007, he could not tell her that his other statements were lies.

30 The accused maintained that he had fallen down in the vehicle along the way to Alexandra Hospital. As it was a minor injury, he did not complain to anyone about the incident.

31 He also did not make any complaint about the police officers or retract any of his statements when he was brought to the Subordinate Courts because those occasions were only for mention and no one asked him anything. He was legally represented at that time. The first time he retracted his statements was in the remand prison in late September 2007 when the ASP went to record

statements under s 122(6) of the CPC in respect of 41 new charges. This was after he had spoken to his then lawyers.

32 When asked what he meant in his letter of 20 August 2007 (exhibit P34) to his wife in which he asked for her forgiveness "for the mistake I have done", the accused said the mistake pertained to his affair with Dilna. He disagreed with the prosecution's suggestion that the "mistake" referred to his sexual offences against the step daughter. He then added that his statement recorded on 14 May 2007 between 4.06pm and 6.01pm was a voluntary one.

33 In re-examination, the accused said that when his wife visited him at the remand prison, she said she would engage a lawyer for him and that she would have to sell their house in India, which was in their joint names. After the accused had signed the necessary documents and given her a power of attorney, she stopped visiting. She has taken away all his belongings in the remand prison save for his identity card. The accused's brother went to the Yishun flat last month and noticed that most of the valuable things, such as the computer, were missing. The accused said he wanted to know where his wife was as she was an important witness for him. She was the one who got him into trouble with the law in the first place. He claimed that his wife had forgiven him for his affair and he admitted that he had made a mistake in giving false statements, for which he was willing to accept punishment. All the statements were made out of fear and frustration. He added that SI Kelvin warned him in an angry tone, before leaving him and the ASP in the interview room, to "better behave yourself, don't try to play anything".

34 As allegations had been made against SSSGT Azman, the prosecution called him as a rebuttal witness. SSSGT Azman testified that he was recording a statement from a female victim in an unrelated case on 9 May 2007 between 3.20pm and 5.10pm on the 17th floor of the PCC. He did not think he saw the accused that day. He denied having spoken to the accused or having stared at him like he was going to assault him. He also denied the accused's suggestion that they had a conversation while they were together in the police car on 11 May 2007.

The court's decision in the trial within a trial

35 The prosecution has to prove beyond reasonable doubt that the statements made by the accused were voluntary ones. From the evidence adduced by the prosecution, I was left with no doubt that the accused had not been coerced or pressurised in any way to say anything that he was not willing to say. I believed the evidence of the police officers involved. There was also no question of the accused not being able to understand what was being asked and said during the various recording sessions. There was an interpreter present each time to assist him and the female interviewer.

36 The accused was clearly composed and confident enough in the presence of the police officers to deny any breach of the PPO alleged by his wife. There was no credible reason why he should suddenly change into such a fearful man when he was transferred from Ang Mo Kio Police Division to the PCC to the extent that he was willing to sign a statement implicating him in a sexual relationship with the step daughter. If his wife and/or the step daughter had threatened him in any way, why did the threats not work while he was in Ang Mo Kio Police Division? In any event, his wife and the step daughter were not "person[s] in authority" within the meaning of the proviso in s 122(5) of the CPC. The accused has also acknowledged that there was no benefit due to him from making an admission about a sexual relationship with the step daughter other than the apparently self-contradictory assurance from his accuser (his wife) that she would help him if he made the said admission.

37 If the statements were made by him out of frustration and anger with his wife and/or the step

daughter, that had nothing to do with any of the police officers involved. I disbelieved his allegations about any threats or rough treatment from any of the police officers involved. Even if what he alleged did take place, which in my view they clearly did not, they would not have amounted to inducement, threat or promise. Bearing in mind the educational standing achieved by the accused, it was hard to believe that he would think that the female ASP was going to beat him up when she allegedly told him not to beat about the bush. The interpreters testified that the accused was giving his answers willingly and in a calm manner. The ASP could not have been suggesting answers or putting words into the accused's mouth. Even if SSSGT Azman did glare at the accused when he was first brought to the PCC, the police officer was not even involved in any way in the recording of the statements. At any rate, it was highly unlikely that the effect of any of the alleged acts and words would continue to affect the accused days after their occurrence on 9 May 2007.

38 From the way the accused conducted himself in court, it was clear that he was a confident person who was not easily frightened into submission. He is highly educated and has been in Singapore long enough not to feel intimidated when questioned by the police. I was satisfied beyond reasonable doubt that the impugned statements were made by the accused voluntarily and that they contained what he told the ASP rather than what he was told to agree to. Accordingly, I admitted all the statements into evidence.

The trial proper

39 The ASP testified that the accused told her on 9 May 2007 that he had sex with the step daughter at least once a month for the past one year or so. He spoke to her in English. In his s 122(6) CPC statement made on 10 May 2007 in response to the original charge of having sexual intercourse with the step daughter without her consent in February 2007, an offence under s 376(2) of the Penal Code, the accused stated that he did not force her to have sex but that she had sex with him willingly. He alleged that he was resting in his bedroom when the step daughter went in and told him that she wanted to have sex with him. He agreed and the step daughter and he then took off all their clothes. They kissed and hugged on the bed. The step daughter then sat on top of his lower body and they had sexual intercourse in that position. After about 5 to 10 minutes, they dressed up and the step daughter left the bedroom.

40 In his statement of 12 May 2007, the accused told the ASP that he worked on shifts in an information-technology company. The day shift would be from 7.30am to 8pm while the night shift would be from 7.30pm to 8am. Each day shift would be followed by a night shift the next day and then two days of rest. His wife was working as a beautician. As a result, the accused had more time with the children than his wife had.

41 While the family was living in the Telok Blangah flat, he would usually ask one of the four children to massage his legs. One afternoon in 2005, the step daughter went into his bedroom and started massaging the lower portion of his legs. She moved progressively higher and then inserted her hand through the bottom of his shorts to touch his private parts. After that incident, the step daughter would massage his private parts once in a while.

42 About a month after the above incident, the step daughter went into the accused's bedroom again. She locked the room door without him asking her to. She massaged him and when she was touching his private parts, she asked him what she was supposed to do with his penis. The accused told her that people would normally put the organ in their mouth. She did so and started to fellate him without any prompting or instructions from him. After he ejaculated, she spit out the semen onto the floor. The accused then cleaned the floor.

43 The step daughter would perform fellatio on the accused at least once a month in the year 2005. She would address him by a short form of his name and would call him "daddy" only when there were others around. The accused believed that she loved him and regarded him as "her man" rather than as her father. That could be due to the fact that the step daughter was living with her biological father until she was about 5 years old and got to know the accused only after she arrived in Singapore in 2004.

44 Sometime in end-2005, the accused's mother and elder brother came to Singapore from India to visit. They lived with the family for about two months. It was then that the accused first had sexual intercourse with the step daughter, who had attained puberty a few months earlier.

45 One day, while one of his children was in the living room watching television, the step daughter went into the accused's bedroom and locked the room door. She then pulled down the accused's shorts and performed fellatio on him. While she was doing so, the accused told her that "we can do sex with this". She replied that she knew about that but had heard that it was very painful. He asked her whether they could have sex. She consented but asked him to do it painlessly. The accused undressed her and asked her to lie down on the bed. He then parted her legs and inserted his penis into her vagina. When she complained of pain, he suggested that they stop the intercourse. She asked him whether it was always painful having sex. He explained that perhaps it was due to the fact that it was her first time. She then suggested that they continue. As they did so, she did not cry or struggle at all. He withdrew his penis and ejaculated onto her stomach. He could see her pain and also her enjoyment. As there was no bleeding at her vagina, she asked him whether he suspected that it was not her first time. He replied that it was alright for him. She appeared quite knowledgeable about not getting pregnant. She went into the toilet to wash herself and then left the bedroom.

46 The accused then went on to elaborate on the three "sex positions" adopted by him and the step daughter in their sexual encounters which took place around once in two weeks from the end of 2005 until early 2007. On some occasions, she would even ask him to think of an excuse to ask the other children to leave the flat so that they could have sex. She would be jealous when the accused talked to other females, including her mother.

47 Sometime in 2004, the accused got to know Dilna, a colleague in his workplace. She was also from India. Her brother worked in the same company. The accused's wife knew this brother quite well because he visited their home frequently. Dilna could not get along with her brother's wife. In February 2006, the brother asked the accused's wife whether she could allow Dilna to live in the accused's home. The accused's wife agreed. Dilna shared the other bedroom with the accused's two daughters and paid rental of \$400.

48 A few months later, after Dilna had moved out of the accused's home, she and the accused had sex in a hotel. They went to the hotel several more times for the same purpose.

49 The accused stated that he was a good but strict father. He was not violent and had beaten his wife because she first beat him, probably because of her suspicions about the accused and Dilna. As a result of her complaint, two police officers went to the Yishun flat at about 11am on 9 May 2007 while he was sleeping. His wife told him briefly that it was about the step daughter. He was brought to the Ang Mo Kio Police Division where his statement was taken in respect of an alleged breach of a PPO. The police officer then asked him to look for a bailor for the case. He tried to call his wife but could not reach her. He then called Dilna to bail him out for that case. He was then brought to the PCC for another case involving the step daughter. He was "aware that it must be about my sexual intercourses with [name of the step daughter]".

50 When asked by the ASP how often he and the step daughter had oral sex without vaginal intercourse, the accused replied that it was about once or twice a week between mid-2005 and early 2007. He also told the ASP that his wife's sister had seen some dates written in the step daughter's diary which she was secretive about. When asked by the family members what the dates related to, the step daughter replied that they were the dates when she met some boys in school. Later, the step daughter told the accused that the dates were a record of the days that they had sexual intercourse.

51 Before the accused made his statements on 14 May 2007, his earlier statement of 12 May 2007 was read to him in Tamil by an interpreter. The accused affirmed the correctness of that earlier statement and went on to answer questions posed by the ASP. Asked whether he could recall the last occasion he had sexual intercourse with the step daughter, he replied that it was in February or March 2007. The step daughter performed fellatio on him before they had intercourse. He added that it was "our routine sex procedure" that he would withdraw his penis when he was about to ejaculate.

52 Asked whether he knew that it was an offence for a man to have sex with an underage girl, the accused said he did not know as he had thought that once a girl reached puberty, she would be ready for marriage. Asked whether it was right for him to have sex with the step daughter, he said that her childhood was not spent with him, that it was a matter of infatuation and she was "the one who approached me and she exploited my weakness as a man". She even told him that she had begun loving him as a man since she was 8 years old although she was initially afraid of him.

53 The accused also explained his educational background. He studied in India for 12 years from primary school to higher secondary level. For the first 10 years, the language of instruction was Tamil with only one subject taught in English. English became his first language only in the final two years. He considered his proficiency in English to be average. After that, he started working because his family was not well-off. In 1991, he enrolled in an open university, which had no formal classes, while still working. In 1993, he graduated with a Bachelor of Arts (Economics) degree. In 2003, he obtained several computer-related certificates. They were Microsoft Certified Professional, Microsoft Certified System Administrator, Microsoft Certified Database Administrator and Microsoft Certified System Engineer.

54 He then decided to do a Masters in Arts (Public Administration) with Annamalai University while in Singapore. He completed that distance-learning course in 2005. That year, he started pursuing a Master of Science (IT) in Alagappa University. He completed the course but has not graduated because he has not completed his thesis. All the Masters programmes were taught in English.

55 Besides remitting \$200 to \$400 to his mother and other family members in India every month, the accused also paid \$1800 per month for a shop space in Dunlop Street in Singapore where his wife used to run a beauty salon and spa. He owed a total of some \$35,000 to others besides the monthly instalment payments for the Yishun flat. His wife would not be able to provide for their four children and he therefore pleaded in his statement for mercy and a lighter sentence as he "would not do such a thing any more".

56 Before the accused's statement of 17 May 2007 was recorded, he was offered the opportunity of reading through his earlier statements made on 12 and 14 May 2007 but he declined to do so. In this statement, he confirmed that the step daughter had performed fellatio on him about once or twice a week between January 2005 and February 2007. Their sexual activities were confined to the master bedroom of their home with the room door locked.

57 The accused then explained why he had gone to India from 26 March to 4 April 2007. He said

that his relationship with his wife deteriorated from January 2007 partly due to his extra-marital affair. He brought his family back to India in the hope that some elder in the family could help resolve the dispute between him and his wife. He stayed with his family in India while his wife and children stayed with her family. When his family met his wife's family, the meeting erupted in arguments and was called off until the next day. The following day, the accused quarrelled with his wife's brother and sister, resulting in him slapping his wife and her siblings. The accused claimed that he was drunk at that time. His wife's brother left but returned a short while later with 20 to 25 gangsters. They beat up the accused. His wife's brother also made a police report.

58 At the police station in India, the accused thought that he would be asked about his assault on his wife's brother. However, the police threatened him regarding his relationship with Dilna. The police also told him to return the family's passports and he complied. He then informed the police that he would patch up with his wife. He was made to write out an agreement. After that, he was allowed to leave the police station.

59 The next day, the accused's wife went to speak to the accused. He suggested that the family return to Singapore. However, his wife wanted to leave the step daughter in India without giving any reason for her insistence. When the accused asked her again for the reason, his wife told the accused's mother that he would get into trouble if the step daughter were to return to Singapore with them. The accused reckoned that she was talking about his sexual relationship with the step daughter but did not say anything.

60 Back in Singapore, the accused's wife asked him whether he was having an affair with the step daughter. This was because of the step daughter's outburst when the accused's wife told her that she and the accused were going to be divorced. The step daughter had cried and kept screaming in the presence of the wife's family members that her life was gone. The step daughter also insisted on seeing the accused, saying that she would tell him something and he would then go back to his wife again. The accused denied having done anything to the step daughter.

61 A few days later, the accused's wife told him, "never mind, whatever had happened had happened. You just be with me". As the days passed, his wife found out about his continuing affair with Dilna and was unhappy about it. Their conversation and arguments shifted from the step daughter to Dilna after that.

62 The ASP testified that the accused's wife and the step daughter were no longer in Singapore. They had left the jurisdiction without seeking her permission or informing her. The step daughter left on 7 August 2007 while the wife left on 12 August 2007. The ASP managed to obtain from the accused's step son the telephone number of an uncle in India. However, when the police tried calling that number, it was always engaged. The step son left Singapore on 25 August 2007.

63 The police has sought Interpol's help to locate the accused's wife and the step daughter. An email and a letter were sent to Interpol New Delhi in August 2007 (see exhibit P35). At least 60 telephone calls were made to Interpol New Delhi. So far, there were only negative replies. A police gazette was issued in Singapore in August 2007 to help locate the accused's wife, the step daughter and the step son. The police has not received any news of any of these three persons' return to Singapore.

64 From the records kept by Queenstown Remand Prison, the ASP found that the accused had sent five letters to his wife at the Yishun flat between 25 June and 7 August 2007. The accused's wife or his mother visited him at the prison almost every day between 30 May and 13 August 2007. The last visit was on 13 August 2007 by the accused's mother and his step son. Upon the court's

directions, the ASP visited the Yishun flat on 15 May 2008 at night and on 16 May 2008 in the morning and found it apparently unoccupied. She found out from the Town Council that the Yishun flat was in arrears of \$874.50 in conservancy charges. The accused's housing loan with OCBC Bank has been in arrears since March 2008.

65 The ASP added that the step daughter returned from India only on 5 May 2007, about one month after the accused had returned here with his wife and two of their children. That same day, she was brought by the accused's wife and her friend to the police station where she lodged a short complaint that she had been raped by the accused. Some other matters were mentioned by the ASP in the course of her evidence-in-chief and during cross-examination but as these related to statements made by persons in the course of police investigations, they were disregarded pursuant to s 122(1) CPC.

66 Dr Wei Ker-Chiah ("Dr Wei"), a Registrar at the Department of Forensic Psychiatry, Institute of Mental Health, testified that he examined the accused on four occasions between 23 May and 4 June 2007. The accused spoke to him in English. According to this witness, the accused told him that the step daughter said in 2004 that she was in love with him and, over the next two years, approached him and wanted to be intimate with him. From November 2005, the accused and the step daughter started to have sexual intercourse about once or twice a month. The accused also told Dr Wei that in all the sexual encounters, the step daughter was a willing party. Dr Wei was of the opinion that the accused had no psychiatric disorder and was not of unsound mind at the time of the alleged offence in February 2007 (the original charge under s 376(2) of the Penal Code).

67 Dr Wei added that the accused expressed concern over the words "without her consent" in the said original charge and said that he would like to clarify this with his lawyer. He recalled the accused telling him that he was quite timid by nature but did not recall him saying that he was afraid of the police.

68 Dr Arun Thomas, a medical officer in the Department of Diagnostic Radiology, Tan Tock Seng Hospital, testified that he examined an X-ray print-out of the step daughter's left hand on 2 July 2007 for a bone age assessment. The two standard deviations for a girl of the reported chronological age of 13 years 7 months ranged from 11 years 8 months to 15 years 6 months. The doctor found the step daughter's bone age to be within the two standard deviations.

69 Dr Hemashree Rajesh, a Registrar at the Department of Obstetrics and Gynaecology, Singapore General Hospital, examined the step daughter on 11 May 2007. The step daughter informed her in Tamil that she had been sexually active with the accused since November 2004. The step daughter said that it was initially fellatio and subsequently sexual intercourse. The last incident of sexual intercourse took place in February 2007. The doctor found the state of the step daughter's vagina to be quite consistent with the narrated history of sexual activity.

70 Dr Ng Kok Kit, an Associate Consultant at the Department of Urology, Changi General Hospital, examined the accused in May and in June 2007. He found no evidence of any erectile dysfunction.

71 ASP Selvakumar testified that on 3 or 4 May 2007, a friend known as Mrs Sudarshan (or Gomathi Govindasamy) telephoned him to discuss a matter of grave concern, saying that one of her Indian neighbours had disclosed to her that her 14-year-old daughter had been raped several times by her father over a period of time. She informed ASP Selvakumar that the neighbour did not know how to go about reporting the matter to the police. ASP Selvakumar advised his friend to bring the neighbour and the daughter to the nearest police station to lodge a report. The friend said that the daughter was in India. He advised her to lodge a report nevertheless. That day, Mrs Sudarshan

brought her neighbour to the PCC. The police officer there advised the neighbour to bring the daughter along for the lodging of the report.

72 At about 10pm on 5 May 2007, Mrs Sudarshan went to the PCC with the neighbour and the daughter to see ASP Selvakumar to discuss the alleged rape. After speaking briefly to the neighbour, he interviewed the daughter (i.e. the step daughter in this case) in his room in the presence of Mrs Sudarshan. In his field book, he recorded that the step daughter said that on 25 November 2004, when she was 10 years old, her father molested her at home. After that date, she had sex with the father several times, with the last occasion in February 2007. She had written in her diary, "There was a change in my life. My mother had read it. Daddy tore it off". At about 11pm, ASP Selvakumar brought the step daughter and the two ladies to the Bukit Merah Neighbourhood Police Centre located in the PCC to lodge a report. The police lodged on 5 May 2007 at 11.47pm merely stated, "I have been raped" with the time of incident indicated as 25 November 2004, 4pm to 1 February 2007, 4pm.

73 Gomathi Govindasamy (i.e. Mrs Sudarshan) testified orally in court. She lived in a block of flats near the Yishun flat and was on friendly terms with the accused's wife. She got to know the accused through his wife. Around May 2007, the accused's wife wanted to lodge a police report. She therefore accompanied the accused's wife to the PCC. However, they were told that the victim should be there as well. The next day or so, she brought the accused's wife and the step daughter to see ASP Selvakumar, a family friend, at the PCC.

The case for the accused

74 The accused elected to testify when called upon to make his defence to the charges. He claimed that the alleged offences never took place and that the allegations arose because of his girlfriend, Dilna. His wife had been pestering him to leave Dilna and while they were in India, she even got the police to intimidate him.

75 The first step that his wife took was to apply for the first PPO. His wife told him that if he continued the relationship with Dilna, she would do anything to him. He tried to talk things over with his wife. When they went to India, she made a report to the police there and he was beaten up by the police who then seized his family's passports. He had to spend a lot of money to get them back.

76 The accused and his wife discovered that the step daughter had a boyfriend and their problems increased. They did not know who this boyfriend was. Because of this, they did not bring the step daughter back to Singapore when the family returned from India. He did not know that the step daughter returned to Singapore on 5 May 2007. His wife and the step daughter plotted against him for several months. The step daughter told him that if he left the family for Dilna, she would do anything for her mother. When they returned to Singapore, the accused's wife applied for the second PPO. The problem was again about Dilna. He had asked Dilna to leave the Yishun flat and live somewhere else. Dilna wanted to report to the police that his wife locked her up in the Yishun flat and wanted to assault her but the accused dissuaded her from doing so. He also started to stay in a hotel and did not return home regularly. His wife became afraid that he would leave her.

78 The accused maintained that he did not commit any of the offences alleged against him. He asserted that he made the false statements to the police out of fear and stupidity. If his wife wanted to help him, she would have remained in Singapore. Instead, she has disappeared after getting his authorisation to sell their property in India.

79 Under cross-examination, the accused said that his wife had told him that she would use the step daughter against him by saying that he had a sexual relationship with her for two years and that

she knew how to “ready” the step daughter for this. He denied that he was lying about the step daughter having a boyfriend. He insisted that when describing the sexual acts in the statements to the police, he was actually imagining the acts with his girlfriend and not with the step daughter. He was “led” by the ASP while making the statements. He was feeling fear, frustration and anger and wanted to complete the statements as quickly as possible.

80 Asked about the diary kept by the step daughter, the accused said that the step daughter did not reply when she was questioned by his wife and her sister about the diary. However, that same day, the step daughter told him that she had written down the names of her boyfriends and the dates. He agreed that he had not mentioned the step daughter’s boyfriends in his statements. He wanted to come to court to tell the truth.

81 Asked why he had admitted on several occasions to the psychiatrist, Dr Wei, about having a sexual relationship with the step daughter, the accused replied that when a person was brought before a psychiatrist in India, that meant that the person was mad. He remained in fear while before Dr Wei and therefore stood by what he had said in his statements to the police. He only clarified with Dr Wei about the words “without her consent” as his statements all involved consensual sex.

82 Two witnesses were called to attend and testify in court as requested by the accused. The first, Mrs Kulasekaram, is a mother-tongue teacher in the primary school that the step daughter attended. She remembered the accused only vaguely. He and his wife had attended a parent-teacher meeting in school with Mrs Kulasekaram and her colleague, Mrs Vara, because the step daughter was not attending extra classes and was not doing her homework. When the step daughter was called in to the meeting, she gave the reason for her non-attendance as having to return home in the afternoon. Mrs Kulasekaram could not recall why she had to go home in the afternoon. She could not remember any complaint about the step daughter having altered the marks in some mark sheet or that the step daughter saying that her father (the accused) was a drunkard.

83 According to Mrs Kulasekaram, the step daughter was proficient in Tamil, the language taught by her. She completed and passed her primary school examinations.

84 Mrs Kalyani is the head of department in pupil management in the same primary school. She recalled having met the accused and his wife concerning the step daughter being too withdrawn and quiet and not attending extra classes in the afternoon (which were held twice a week for one and a half hours each time). The step daughter had explained that she had to rush home because she had housework to do. The teacher spoke only to the accused’s wife in the accused’s presence. The accused did not utter a word during their meeting. Mrs Kalyani did not recall the step daughter having altered marks on mark sheets or saying that her father was a drunkard.

85 Mrs Kalyani met the accused and his wife twice although the accused only remembered one occasion. The second occasion was because the step daughter had extra cash which she could not account for. The teachers were concerned whether it had anything to do with her non-attendance at the afternoon classes. The step daughter kept quiet during this second meeting. She was under-performing in the subjects of English and Mathematics.

The decision of the court

86 The applicable law is the Penal Code as it stood before the amendments thereto came into operation on 1 February 2008. For the 16 statutory rape charges, the prosecution has to prove that the accused had sexual intercourse with the step daughter when she was under 14 years at the material times. As s 375(e) of the Penal Code provides, the offence is committed once there is sexual

intercourse with a female below 14 years of age, whether "with or without her consent". For the 26 charges under s 377 of the Penal Code, the prosecution has to prove that the accused had carnal intercourse against the order of nature. Fellatio is accepted as falling within this provision unless the couple engaged in consensual sexual intercourse willingly indulged in fellatio as a stimulant to their respective sexual urges (see the Court of Appeal's decision in *PP v Kwan Kwong Weng* [1997] 1 SLR 697).

87 The unique feature in this case is that the step daughter and her mother apparently left Singapore in August 2007, between the time the accused was remanded and the commencement of the trial, and were seemingly uncontactable since that date. This was despite the fact that the accused's wife had been visiting him regularly while he was in remand. The ASP has testified that the accused's wife and the step daughter left Singapore without informing her. The police has tried various means, including requesting the help of Interpol, to try to locate and contact the accused's wife and the step daughter without success. In these circumstances, no adverse inference could be drawn against the prosecution for not producing the two witnesses to testify in court.

88 Must the alleged victim in sexual offences always be in court to testify? I am persuaded that there is no such requirement in law. In *State of Karnataka v Mahabaleshwar Gourya Naik* AIR1992 Supreme Court 2043, the 15 year old victim of rape committed suicide before the trial of the man accused of the crime commenced. In allowing the appeal brought by the prosecution and convicting the respondent there for attempted rape, the Indian court held (at [15]):

As stated supra, merely because a victim is dead and consequently could not be examined can never be a ground to acquit an accused if there is evidence otherwise available proving the criminal act of the accused concerned.

89 I agree with this decision and apply its logic to the present case where there is no evidence on what has become of the step daughter and her mother. If an accused person can be convicted solely on the basis of a confession made by his co-accused (see *Chin Seow Noi v PP* [1994] 1 SLR 135), there can be no legal impediment to convicting an accused solely on the basis of his own confession, provided that the court is satisfied beyond reasonable doubt that the confession is voluntary and sufficiently reliable to sustain the conviction.

90 The prosecution's case against the accused is based on the accused's statements to the police and to Dr Wei, the psychiatrist. The accused's defence is that he never had sexual relations with the step daughter, whether it was fellatio or sexual intercourse. It can be seen from the statements recorded by the ASP that they were detailed and consistent. The accused, far from denying any sexual relationship with the step daughter, was taking pains to explain that she was a willing party to all the sexual acts. This was because the original charge against him alleged sexual intercourse without the step daughter's consent. As stated earlier, consent is no defence to a charge of statutory rape under s 375(e) of the Penal Code and this is the offence that the accused was charged with in this trial. In any event, I disbelieved his evidence that the step daughter was a willing party who had even initiated sex on a number of occasions. It was obvious that she was merely doing what he wanted her, a young girl of between 11 and 13 years of age at the material times, to do. Even if she was so precocious and so sexually charged up, the accused, as her step father, should never have encouraged her to have sex with him in the first place.

91 As stated earlier in this judgment, I found no merit at all in his assertions that the statements were involuntary and that he was telling a host of lies in the statements. The accused took the trouble to explain in his statements that the step daughter was not really his daughter, as if trying to downplay the abhorrence of a father having sex with his offspring. He has also tried to portray the

step daughter as a rebellious and scheming young girl through the evidence of her former teachers but was not successful in his attempts.

92 In his interviews with Dr Wei, the accused was candid and he also admitted the acts of fellatio and sexual intercourse with the step daughter. There was absolutely no reason for the accused to continue to be in fear in the presence of the psychiatrist such that he would say untrue things to his detriment. Again, his focus was not on whether the sexual activities between him and the step daughter took place but that they were entirely consensual. The sexual activities were corroborated by the first information report made by the step daughter to ASP Selvakumar and by the medical examination performed on the step daughter which found that she had been sexually active.

93 I found the accused's evidence that his wife and the step daughter had plotted against him because of his affair with Dilna quite unbelievable. The wife visited him more than 20 times between May and August 2007 while he was in remand. She even engaged a lawyer for him. He was the family's main source of income as the wife's beauty parlour business was not profitable. Surely, the wife would know that getting the accused into this sort of serious trouble with the law here would cause him to be imprisoned, destroy his career and put their permanent residence status in jeopardy. She would not have invoked the legal process in the way she did if it was merely to make false accusations against the accused in order to get him to leave Dilna.

94 On the totality of the evidence, I was satisfied that the statements made by the accused to the police and to the psychiatrist were all voluntary ones and that they contained the truth. Accordingly, I found the accused guilty as charged and convicted him on all 42 charges.

The sentence

95 The accused had no antecedents. The prosecution submitted that according to the guidelines on sentencing for rape set out in *PP v NF* [2006] 4 SLR 849, the present case would fall within the second category of rape cases for which the recommended starting point was 15 years imprisonment and 12 strokes of the cane.

96 When invited to mitigate, the accused chose only to say that he would leave the question of sentence to the court.

97 It has been said that rape by a parent is one of the worst kinds of sexual offences. The victim cannot sever her ties with the offender and would have to meet him again some day upon his release from prison. Although the accused is not the step daughter's biological father, he is in practically the same position as her natural father. It is his duty to provide for her and to protect her. Instead, he treated this young girl as if she were a sex worker who was to provide him sexual pleasure in the afternoons in the comfort of his home. The abuse took place over a period of two years in the place where the step daughter was supposed to feel most secure in, occurring with a sad and sickening regularity.

98 The punishment provided in s 376(1) of the Penal Code is imprisonment for a term which may extend to 20 years with discretionary fine or caning, while that provided in s 377 is imprisonment which may be for life or which may extend to 10 years with discretionary fine. Bearing in mind the multiple charges and s 18 of the CPC which mandates at least two consecutive imprisonment terms, I sentenced the accused to 10 years' imprisonment and 12 strokes of the cane for each of the 16 rape charges and to 5 years' imprisonment for each of the 26 fellatio charges. I ordered the imprisonment terms for the 1st (rape), 3rd (rape) and 42nd (fellatio) charges to run consecutively with all the others to run concurrently, making a total of 25 years imprisonment, with effect from 9 May 2007, the date

of arrest. Pursuant to s 230 of the CPC, the accused is to be subject to a maximum of 24 strokes of the cane.

Copyright © Government of Singapore.