

Public Prosecutor v Mohd Razali bin Mohd
[2002] SGHC 161

Case Number : CC 41/2002
Decision Date : 26 July 2002
Tribunal/Court : High Court
Coram : Woo Bih Li JC
Counsel Name(s) : Leong Kwang Lan and Ng Cheng Thiam (Attorney-General's Chambers) for the prosecution; M Mahendran (Surian & Partners) for the accused
Parties : Public Prosecutor — Mohd Razali bin Mohd

1. The accused is MV. He is now 63 years. He faces nine charges in relation to the same victim B who is his step-daughter.
2. The victim's mother is C. C had married the victim's natural father in 1986. She has two children from this marriage. The victim was born in 1988 and is the younger of the two children.
3. C divorced her first husband in or about 1988 and retained custody of the two children, including the victim.
4. C remarried in 1990. She bore her second husband two children. However, this marriage also failed and they were divorced in 1993.
5. In 1994, C came to know the accused. They were working for different companies situated in [xxx]. They went to Tanjong Pinang, Indonesia, where they got married. The "marriage" is not registered in Singapore but she and the accused behaved as husband and wife. The accused would occasionally stay with C at her residence at [xxx], Singapore. She bore the accused two sons.
6. The prosecution proceeded with the 2nd, 8th and 9th charges. The charges are that the accused:

2ND CHARGE

on a second occasion sometime between the 1st day of August 1997 and the 30th day of September 1997, at or about 8.00 a.m., at [xxx], Singapore, did commit rape on one B, female/8 years old (D.O.B: 2.9.1988), to wit, by having sexual intercourse with her without her consent, and you have thereby committed an offence punishable under section 376(2) of the Penal Code, Chapter 224.

8TH CHARGE

on or about the 29th July 2000, in the morning, at [xxx], Singapore, did commit rape on one B, female/11 years old (D.O.B: 2.9.1988), to wit, by having sexual intercourse with her without her consent, and you have thereby committed an offence punishable under section 376(2) of the Penal Code, Chapter 224.

9TH CHARGE

on or about the 21st day of November 2001, at or about 4.00 p.m., at [xxx], Singapore, did commit rape on one B, female/13 years old (D.O.B: 2.9.1988), to wit, by having sexual intercourse with her without her consent, and you have thereby committed an offence punishable under section 376(2) of

the Penal Code, Chapter 224.'

7. Section 376(2) Penal Code states:

'376(2) Whoever, in order to commit or to facilitate the commission of an offence of rape against any woman -

(a) voluntarily causes hurt to her or to any other person; or

(b) puts her in fear of death or hurt to herself or any other person,

and whoever commits rape by having sexual intercourse with a woman under 14 years of age without her consent, shall be punished with imprisonment for a term of not less than 8 years and not more than 20 years and shall also be punished with caning with not less than 12 strokes.'

8. The accused pleaded guilty to each of these three charges. He also agreed to the remaining six charges being taken into account for the purpose of sentencing. Of these six charges: four charges are also under s 376(2) Penal Code for similar offences, one charge is for attempted aggravated rape under s 376(2) read with s 511 of the Penal Code, and one charge is for outrage of modesty under s 354 of the Penal Code.

9. In mitigation, his Counsel Mr M Mahendran stressed the services the accused had performed in the [xxx] for about 20 years during which he received a long service award, a [xxx] medal and award for good conduct.

10. He also submitted that the accused is not a habitual offender in that there is no history of offences other than the ones he is charged with. The accused is the sole breadwinner. The accused has also co-operated with the police and has pleaded guilty.

11. Mr Leong Kwang Lan for the prosecution candidly submitted that as the accused is 63 years of age, he is not liable to be caned in view of s 231 of the Criminal Procedure Code. Furthermore, the court is not at liberty to impose any additional term of imprisonment in lieu of caning: *Er Boon Huai & Anor v PP* [1991] 1 SLR 232.

12. However he submitted that the court should take into account all the factors, including the following:

- (a) The age of the victim,
- (b) The relationship of stepfather-stepdaughter between the accused and the victim,
- (c) The possibility of long term psychological harm occasioned to the victim.

13. A medical report dated 6 February 2002 by Dr Parvathy Pathy on the mental state of the victim was also produced as part of the Statement of Facts. It revealed that the victim denied feeling angry with the accused for what he had done but she has flashbacks about the incidents. She cries whenever she remembers them. The victim is worried for her future and her mother and the family. Her mother is depressed over the accused's remand. The victim is also sad for a younger half-brother who keeps asking for the accused.

My Decision

14. I have taken into account the mitigation plea and the factors specifically mentioned by the prosecution.
15. I also take into account the period over which the incidents took place between August 1997 to about 21 November 2001.
16. The only reason why the accused's Counsel submitted that he was not a habitual offender was because the accused had no previous convictions. However, he had habitually inflicted himself upon the victim over four years on various occasions at various locations (as revealed in the nine charges) when he was aware of what he was doing.
17. As regards the possible long-term effects that the accused's actions may have on the victim, there may also be possible feelings of guilt by the victim, especially if she is blamed by her mother and the rest of the family for the accused's incarceration. I hope that they realise that she is not to blame.
18. The accused has only himself to blame. He, and only he, must take the responsibility for his heinous actions. I do not see any reason why his sentence should be more lenient than others in similar situations.
19. On the 2nd charge, I sentence the accused to 12 years' imprisonment. This sentence is to run from the date of his arrest.
20. On the 8th charge, I sentence the accused to 12 years' imprisonment. This sentence is to run concurrently with the sentence on the 2nd charge.
21. On the 9th charge, I sentence the accused to 12 years' imprisonment. This sentence is to run consecutively after the sentence in relation to the 2nd charge.

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