

Public Prosecutor v AGG
[2010] SGHC 89

Case Number : Criminal Case No 8 of 2010
Decision Date : 19 March 2010
Tribunal/Court : High Court
Coram : Woo Bih Li J
Counsel Name(s) : David Low and Sellakumaran Sellamuthoo (Attorney-General's Chambers) for the public prosecutor; Accused in person.
Parties : Public Prosecutor — AGG

Criminal Procedure and Sentencing

19 March 2010

Woo Bih Li J:

Background

1 The accused person, AGG (Male/21 years old) faced the following charges in respect of his younger sister, B and in respect of some other unrelated offences. The charges read as follows:

That you, AGG,

- | | |
|------------|---|
| 1st Charge | on a night sometime between the year 2005 and 2006, at [address redacted], did commit rape on [B], by having sexual intercourse with her without her consent, and you have thereby committed an offence punishable under section 376(1) of the Penal Code, Chapter 224. |
| 2nd Charge | on a night sometime in the year 2007, at [address redacted], did commit rape on [B], by having sexual intercourse with her without her consent, and you have thereby committed an offence punishable under section 376(1) of the Penal Code, Chapter 224. |
| 3rd Charge | on a night in the year 2007, on the second occasion, at [address redacted], did commit rape on [B], by having sexual intercourse with her without her consent, and you have thereby committed an offence punishable under section 376(1) of the Penal Code, Chapter 224. |
| 4th Charge | on a night sometime between the year 2005 and 2006, at [address redacted], did use criminal force on [B], intending to outrage her modesty, to wit, by using your hand to rub her vulva while she appeared to be asleep, and you have thereby committed an offence punishable under section 354 of the Penal Code, Chapter 224. |

- 5th Charge on a night sometime between the year 2005 and 2006, on the second occasion, at [address redacted], did use criminal force on [B], intending to outrage her modesty, to wit, by using your hand to rub her vulva while she appeared to be asleep, and you have thereby committed an offence punishable under section 354 of the Penal Code, Chapter 224.
- 6th Charge on a night sometime between the year 2005 and 2006, at [address redacted], did use criminal force on [B], intending to outrage her modesty, to wit, by using your hand to rub her clitoris and vulva, and by inserting a finger into her vagina, while she appeared to be asleep, and you have thereby committed an offence punishable under section 354 of the Penal Code, Chapter 224.
- 7th Charge on the 30th day of January 2009, sometime before 3.33 a.m., at [address redacted], did take and drive away a motor vehicle, to wit, a motorcycle bearing registration number [XXX], without the consent of the owner thereof, namely, [C], or other lawful authority, and you have thereby committed an offence punishable under section 96(1) of the Road Traffic Act, Chapter 276.
- 8th Charge On the 30th day of January 2009, at about 3.33 a.m., along Farrer Road, Singapore, did drive a motor vehicle, to wit, a motorcycle bearing registration number [XXX], when you were not the holder of a Class 2B driving licence, and you have thereby committed an offence under section 35(1) read with section 35(3) of the Road Traffic Act, Chapter 276, punishable under section 131(2) of the said Act.
- 9th Charge On the 30th day of January 2009, at or about 3.33 a.m., along Farrer Road, Singapore, did use a motor vehicle, to wit, a motorcycle bearing registration number [XXX] when there was not in force in relation to the use of the motor vehicle by you, such policy of insurance or such a security in respect of third-party risks as complies with the requirements of the Motor Vehicles (Third-Party Risks and Compensation) Act, Chapter 189, and you have thereby committed an offence under section 3(1) of the said Act, punishable under sections 3(2) and 3(3) of the said Act.

2 The prosecution proceeded with the second, third, sixth, seventh, eighth and ninth charges. AGG pleaded guilty to all the charges and I accepted his plea of guilt and convicted him on the charges. AGG agreed to the first, fourth and fifth charges to be taken into consideration for sentencing.

3 The facts leading to the commission of the offences, the arrest and other relevant information were contained in the Statement of Facts ("SOF") which AGG agreed to. Paragraphs 3 to 30 of that SOF read as follows:

B. FIRST INFORMATION REPORT

3. On 30 April 2009, at about 3.50pm, the victim lodged a police report at the Criminal Investigation Department, in which she stated that between the year 2000 and mid-2007, she had been molested by her brother on several occasions. The victim also stated that the accused had begun to rape her, at their residence, from sometime in either 2005 or 2006.

4 The accused was thereafter arrested on 2 June 2009, at about 4.50pm, at the Serious

C. FACTS RELATING TO THE 6th CHARGE (OUTRAGE OF MODESTY)

5. The victim's immediate family consists of her parents and two older brothers. The accused is the eldest son of the family.

6. ...

7. ...

8. ...

9. At [address redacted], the victim's father occupied the master bedroom, while the victim's mother slept on the living room sofa. This was due to the fact that the victim's parents were estranged and on poor terms. The accused and the victim shared the other bedroom in the flat: the accused slept on the only bed in the room, while the victim slept on a pull-out mattress placed on the floor adjacent to the accused's bed.

10. On a night sometime in the year 2005 or 2006, both the accused and the victim were in their shared bedroom at [address redacted]. The accused was lying on his bed and the victim was lying on her mattress. The accused then came over to where the victim lay on her mattress. Assuming that the victim was asleep, the accused then inserted his hand into the victim's panties, and used his hand to rub on the victim's vulva and clitoris. The accused admitted that he felt aroused and excited whilst touching the victim in this manner.

11. Unbeknownst to the accused, the victim was awake and aware of that the accused was touching her. However, out of fear and embarrassment, the victim refrained from stirring, in order not to alert the accused to the fact that she was awake.

12. In addition to stroking her vulva with his hand, the accused also began to touch the victim's bare breasts by sliding his hands under her top. The accused also caressed and sucked on the victim's nipples. The accused then inserted his finger into the victim's vagina whilst she lay on her mattress in their shared bedroom at night.

13. The above acts were carried out, at night, whilst all of the lights in the bedroom were switched off. When the accused committed the acts of molest against the victim, he had assumed that the victim had remained asleep throughout the entire episode.

14. ...

D. FACTS RELATING TO THE 2nd AND 3rd CHARGES (RAPE)

15. On a night sometime in the year 2007, the accused and the victim were again in their shared bedroom at [address redacted]. At around midnight, the accused went to where the victim lay on her mattress, in the darkness, and proceeded to remove all of the victim's clothing. As the victim did not appear to move, the accused assumed that the victim was asleep. The accused then turned the victim so that she lay facing up, spread her legs apart, and kneeled in between her thighs. He then began to rub, grope, lick and suck on the victim's breasts and nipples. The accused also inserted a finger into the victim's vagina and began to move it in and out of the vagina.

16. When the victim did not stir, the accused then undressed completely and guided his erect penis into the victim's vagina with his right hand. He began moving his hips and thrusting his penis repeatedly in and out of the victim's vagina, supporting his weight by resting his palms at the side of the victim's body. The accused did not use a condom or any other contraceptive devices.

17. ...

18. The accused raped the victim again on a second occasion sometime in the year 2007. ...

19. Although the victim was awake and aware of what the accused was doing on the second occasion as well, she once again remained still due to her fear of the accused, as well as due to the fact that she felt embarrassed by the sexual abuse perpetrated by the accused on her. The victim did not at any time consent to having sexual intercourse with the accused.

20. The accused admitted that he enjoyed having sexual intercourse with the victim, even though he was aware that she had not consented to the said sexual intercourse, and that it was wrong for him to have forced himself on her in such a manner. Prior to each act of sexual abuse committed on the victim, the accused had viewed pornographic material via the Internet, and felt the urge to touch a female. He would thereafter ensure (so he thought) that the victim was asleep, before starting to molest and rape her. The accused therefore continued to have sexual intercourse with the victim as he could not resist his sexual urges.

21. ...

E. SUBSEQUENT EVENTS

i. Confrontation and violence between the accused and the victim

22. Sometime in 2007, at [address redacted], the victim confronted the accused and threatened to tell their parents that he had been having sexual intercourse with her without her consent. Their parents were not at home at the time. The accused was shocked that the victim was aware of the sexual abuse he had committed on her, and surmised that she had not been asleep after all when he committed the acts of molest and rape on her.

23. The accused immediately began punching the victim on her face and body several times, in response to her threat to inform their parents. The victim quickly ran out of the flat and ran to a neighbouring flat for assistance, where she called both the police and their parents. When their parents and the police returned to the flat, the accused admitted that he had assaulted the victim, but did not mention that he had done so after having been confronted by the victim. The police subsequently advised the victim's parents to apply for a Personal Protection Order ('PPO') on behalf of the victim. However, the victim's parents eventually decided against applying for the said PPO.

ii. Discovery of the offences

24. At the end of 2007, the victim ran away from her home at [address redacted] as she could not endure the incidents of molest and rape committed by the accused against her any further. She did not tell her parents that the accused was raping her as she felt that her parents were unsympathetic to her, and would either not believe her or not do anything (a feeling partly engendered by their decision not to apply for a PPO on her behalf against the accused). The victim therefore went to stay with her then-boyfriend at his residence.

25. The victim continued to reside with her then-boyfriend until April 2009, when she finally informed her secondary school principal about the incidents of molest and rape committed by the accused on her. The principal and school counsellor duly informed the police about the matter, after which the victim formally lodged a police report against the accused on 30 April 2009.

F. MEDICAL EXAMINATION OF THE VICTIM

26. The victim was examined on 5 May 2009 by Dr. [D], an Associate Consultant at the Department of Obstetrics and Gynaecology at [hospital 1]. In a medical report dated 20 May 2009, Dr. [D] stated that:

- a. Clinical examination of the victim's breast and abdomen were normal;
- b. Pelvic examination revealed multiple old hymenal tears;
- c. The victim's urine pregnancy test was negative; and
- d. Screening for common STD's were negative.

G. MEDICAL EXAMINATION OF THE ACCUSED

27. The accused was examined on 14 July 2009 by Dr. [E], a Consultant at the Department of Urology at [hospital 2]. In a medical report dated 14 August 2009, Dr. [E] stated that the accused did not have erectile dysfunction.

H. FACTS RELATING TO THE TRAFFIC CHARGES (7th – 9th CHARGES)

28. The complainant is Senior Staff Sergeant Kheong Yew Ming, attached to the Tanglin Police Division of the Singapore Police Force.

29. In the early morning of 30 January 2009, the complainant was performing road-block duties along Farrer Road. At about 3.33 am, the accused, who was riding a motorcycle bearing registration number [XXX] along Farrer Road, was stopped by the complainant at the said road-block. Upon conducting a check, the complainant discovered that the accused did not possess a valid Class 2B driving licence in respect of the motorcycle.

30. Investigations revealed that the said motorcycle bearing registration number [XXX] was registered to one [C], the accused's father. On 30 January 2009, the accused had taken the ignition keys of the said motorcycle without the consent or permission of his father. The accused thereafter took the motorcycle from their residence [address redacted] and rode the said motorcycle, until he was stopped by the complainant at the road-block along Farrer Road.

4 AGG pleaded for a lighter sentence. He said that he was extremely remorseful. He was a hooligan a few years ago but had changed. He wanted to finish his national service. He was concerned about his mother and grandmother who were seriously ill.

5 AGG had previous convictions in 2002 in respect of uncensored or obscene films, voluntarily causing hurt and theft for which he was asked to reside in a juvenile home. I did not enhance his sentence because of these prior offences as they were different in nature from the offences of outrage of modesty and rape. However, they demonstrated that he had had a brush with the law before. Instead of changing his ways, he had gravitated to the more serious offences of outrage of

modesty and rape.

6 There is only one other case of rape by a sibling of a young age. This was *PP v S* [2003] SGHC 70 ("*PP v S*") in which I had convicted the accused on his plea of guilt in respect of rape under s 376(2) of the Penal Code (Cap 224, 1985 Rev Ed). I said at [22]:

I took into account the fact that the accused was in a position of responsibility and trust vis-à-vis the victims but he was not their parent and he was of a young age. I also took into account the fact that he had sexually abused not one but three of his siblings in various ways on various occasions over a number of years.

7 In that case, I sentenced the accused to ten years' imprisonment and 12 strokes of the cane for each of the two charges under s 376(2) of the Penal Code with the sentences for each of these two charges to run consecutively making a total of 20 years of imprisonment.

8 However, in *PP v S*, there were three victims and the charge was under the more serious s 376(2) rather than s 376(1) of the Penal Code.

9 On the other hand, AGG, while professing to be remorseful, had escalated his sexual offences from outrage of modesty to rape and had assaulted B when she confronted him instead of feeling shame and remorse.

10 In the circumstances and being mindful of his young age, I sentenced AGG to 12 years' imprisonment and six strokes of the cane on each of the charges under s 376(1) and one year's imprisonment and three strokes of the cane for the charge under s 354 of the Penal Code. While the sentence of ten years' imprisonment on each of the s 376(2) charges in *PP v S* might appear lower than that of 12 years' imprisonment for each of the s 376(1) charges in the present case before me, it must be remembered that in *PP v S*, I had ordered the two stiffest sentences to run consecutively making a total of 20 years whereas I was not minded to do that for the present case. Accordingly, the total imprisonment for AGG was in fact 13 years' imprisonment, *ie*, the sentence of one year for the sixth charge (under s 354) was to run consecutively with the sentence of 12 years for the second charge (under s 376(1)) which was in turn to commence from 4 June 2009, the date of remand. On the totality principle, I was of the view that the conduct of the accused person in *PP v S* was more heinous than that of AGG. This explains why the total imprisonment for AGG was less than that in *PP v S*.

11 As for each of the seventh to ninth charges, I sentenced AGG to a fine of \$600 and in default, six days' imprisonment. I added the mandatory disqualification from holding or obtaining a driving licence under the Road Traffic Act (Cap 276, 2004 Rev Ed) for 12 months from the date of conviction, *ie*, 19 February 2010 for the ninth charge.

12 AGG has filed an appeal against the sentence.

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