

Public Prosecutor v Shamsul bin Sa'at
[2010] SGHC 132

Case Number : CC No 10 of 2010
Decision Date : 30 April 2010
Tribunal/Court : High Court
Coram : Chan Seng Onn J
Counsel Name(s) : Tan Boon Khai and Chua Ying Hong for the Prosecution; Accused in Person.
Parties : Public Prosecutor — Shamsul bin Sa'at

Criminal Law

30 April 2010

Chan Seng Onn J:

Introduction

1 The Accused pleaded guilty and was convicted of the following four charges:

(a) 2nd charge – attempted aggravated rape under section 375(3)(a)(i) read with section 511 of the Penal Code (Cap 224, 2008 Rev Ed) ("Penal Code"), for attempting to penetrate with his penis the vagina of one, without her consent, and in order to commit the offence, voluntarily caused hurt to the said one. The prescribed punishment for this offence is imprisonment for a term of between 8 and 10 years, and caning of not less than 12 strokes.

(b) 4th charge – aggravated sexual assault by penetration under section 376(4)(a)(i) of the Penal Code, for penetrating with his finger the vagina of one, without her consent, and in order to commit the offence, voluntarily caused hurt to the said one. The prescribed punishment for this offence is imprisonment for a term of between 8 and 20 years and caning of not less than 12 strokes.

(c) 6th charge – aggravated rape under section 375(3)(a)(i) of the Penal Code, for penetrating with his penis the vagina of one, without her consent, and in order to commit the offence, voluntarily caused hurt to the said one. The prescribed punishment for this offence is imprisonment for a term of between 8 and 20 years, and caning of not less than 12 strokes.

(d) 7th charge – housebreaking by night under section 457 of the Penal Code, by entering into the premises which were in the possession of one, in order to commit theft on items which were in the possession of the said one, and which offence was committed between 7 pm and 7 am. The prescribed punishment for this offence is imprisonment for a term of between 2 and 14 years.

2 The Accused also consented to the following three charges being taken into consideration for the purposes of sentencing:

(a) 1st Charge – theft in dwelling under section 380 of the Penal Code;

(b) 3rd Charge – aggravated outrage of modesty under section 354A of the Penal Code;

(c) 5th Charge – attempted aggravated rape under section 375(3)(a)(i) read with section 511 of the Penal Code.

3 At the end of the hearing, I sentenced the Accused to a total term of imprisonment of 25 years and 24 strokes of the cane. The Accused has appealed against the sentence imposed on him.

Facts relating to the 2nd Charge

4 The Accused is a male Malay Singaporean and is 27 years old. He used to be in a relationship with the Victim's daughter, R, sometime in 2000 and they remained in contact after their break-up. The Victim is a 48 year old female Malay Singaporean and she resides in a HDB flat ("the Flat") with R. The Accused knew that only the Victim and R reside in the Flat.

5 Sometime in November 2008, the Accused went to the Flat to visit R. While at the Flat, the Accused saw a bunch of keys to the Flat on the TV cabinet and decided to steal them. He did so when R went to the kitchen to get him a drink.

6 On 3 April 2009, the Accused discovered through corresponding with R by text messages that she was not at home and that she would return home late. As he was in need of money, the Accused conceived a plan to break into and steal from the Flat using the stolen keys. He thus packed into his haversack an orange T-shirt and cloth gloves for concealing his face and his fingerprints respectively, and masking tape for tying up whoever was at home.

7 On 4 April 2009, at about 1am, the Victim went to sleep in her bedroom after locking the metal gate and wooden door of the Flat. Shortly after, the Accused entered the Flat using the stolen keys after concealing his face and head with the orange T-shirt. After checking R's bedroom to confirm that she was not at home, the Accused went into the Victim's bedroom and switched on the light. The Accused climbed onto the Victim and covered her mouth with masking tape just as she was waking up. He told her to shut up and tied her hands and arms tightly together using masking tape, and dragged the Victim to one corner of the bed. The Accused then tied the Victim's arms to the bedpost over her head so that her head hung over the edge of the bed. The Accused further covered the Victim's eyes and face with masking tape, and her face with a piece of cloth or T-shirt that he found in the Flat to prevent her from identifying him.

8 After the Victim was immobilised, the Accused removed her pants and panties, lifted her legs and tried to penetrate her vagina with his penis. He attempted to do so several times, but was unsuccessful as he was unable to sustain an erection. As the Victim was menstruating, the Accused had to use tissue paper to clean her up after each attempt at penetration. During this time, the Victim informed the Accused that she needed to go to the toilet when the masking tape on her mouth came loose but he simply ignored her plea.

Facts relating to the 4th charge

9 At about 4 am, R returned to the Flat. At around that time, she sent a text message to the Accused. Realising that R was home, the Accused remained quiet in the Victim's bedroom so that she would not know that he was at the Flat. After R had gone into her bedroom, the Accused took a hair band and pushed part of it into the Victim's mouth to prevent her from screaming. He then went to the kitchen to get water as he was thirsty. When he went back to the Victim's bedroom, he used a

cloth to cover the gap under the bedroom door to avoid being detected by R.

10 The Accused then fondled and sucked the nipples of the Victim. At about 5.30am, the Accused inserted two of his fingers into the Victim's vagina. All this while, the Victim remained gagged and her arms and hands were bound tightly together.

Facts relating to the 6th charge

11 Following this, the Accused again unsuccessfully tried to penetrate the Victim's vagina several times with his penis. Thereafter the Victim informed the Accused once more that she needed to go to the toilet but he ignored her and even tightened the masking tape on her mouth. As a result, the Victim passed motion and urinated on the bed, while still bound to her bed. The Accused then cleaned the Victim up with tissue paper before attempting to insert his penis into her vagina again. This time round, he succeeded. He moved his penis in and out of her vagina several times before ejaculating on her stomach. The Accused then used tissue paper to wipe away his semen.

Facts relating to the 7th charge

12 After finally successfully raping the Victim, the Accused packed the tissue paper, bottle of water, masking tape, T-shirt and gloves into his haversack to avoid being traced to his crimes. He then left the Flat at about 7 am with the Victim's mobile phone and cash of about \$100 which he had found previously while ransacking the Victim's room and her wallet. He did not release the Victim when he left.

The aftermath of the events

13 After the Accused arrived at his home, he re-packed the tissue paper, bottle of water, masking tape, T-shirt and gloves into a plastic bag which he disposed of in a rubbish bin at the ground floor of his block of flats.

14 The Victim managed to remove the masking tape on her mouth and hands, and to untie herself from the bedpost at about 8 am. She then telephoned her sister for help. The Victim's sister and brother-in-law arrived at the Flat shortly thereafter to find the Victim crying and her arms still bound. They untied her and called the police. After the attack, the Accused sent R several text messages to ask if the police had discovered any evidence about the attack and to notify him if any such evidence was found.

Medical Examinations on Victim

15 On 4 April 2009, the Victim was medically examined at the National University Hospital by one Dr James W S Lee. She complained of pains over her hands from having been bound up and cramps in her thighs. Dr Lee found a superficial glaze over the Victim's left cheek from the masking tape that was applied over the face as well as linear abrasions, areas of skin peeling and blistering over the dorsum aspects of both the Victim's arms. [\[note: 1\]](#)

HSA Reports

16 The HSA laboratory test revealed that the Accused's DNA was discovered in the external and internal vaginal swabs, as well as the anal swab, taken from the Victim. [\[note: 2\]](#) His DNA was also found on the bra, blouse and pants which the Victim wore on the night of the offences. [\[note: 3\]](#)

Submissions on sentence by the DPP

17 The prosecution submitted that the Accused had callously violated the sanctity of the Victim's body and home, immobilising her for an extended period of about six hours during which he treated her as his personal sex slave. It thus strongly urged the court to impose the harshest sentence which would adequately reflect society's condemnation of the Accused's depraved actions as well as to send out a message of general deterrence. I agree. The various aggravating factors clearly necessitated a long custodial sentence. Before going into the detailed reasons for my decision, I shall first set out briefly the relevant sentencing principles.

Sentencing Principles

Offence of aggravated rape

18 The Court of Appeal in *Chia Kim Heng Frederick v PP* [1992] 1 SLR(R) 63 has determined that the starting point in sentencing adult offenders for rape committed without aggravating or mitigating factors is ten years' imprisonment in a contested case, in addition to six strokes of the cane. In *PP v NF* [2006] 4 SLR(R) 849 ("*PP v NF*"), V K Rajah J (as he then was) considered *R v William Christopher Millberry* [2003] 2 Cr App R (S) 31 ("*Millberry*") and adopted the four broad categories of rape. He stated at [20] that the second category of rapes includes cases where there is repeated rape in the course of one attack (including cases where the same victim has been both vaginally and anally raped). Rajah J was of the view that the appropriate starting point for category 2 rapes is 15 years' imprisonment and 12 strokes of the cane (see [36]). This position has since been adopted by the Court of Appeal in *PP v Mohammed Liton Mohammed Syeed Mallik* [2008] 1 SLR(R) 601 ("*Mohammed Liton*") at [96].

19 In this case, although the Accused has been charged for only one count of aggravated rape under section 357(3)(a)(i) of the Penal Code, the Prosecution rightly pointed out that this was not for want of trying. [\[note: 4\]](#) The evidence shows clearly that the Accused had repeatedly tried to rape the Victim, but had failed only because he was unable to sustain an erection. [\[note: 5\]](#) Given the repeated sexual assaults on the Victim, this case clearly falls within a Category 2 rape where the starting point for the term of imprisonment is 15 years and 12 strokes of the cane.

20 In determining the appropriate punishment to be imposed, the court has to bear in mind the various aggravating and mitigating factors present in each individual case. In *PP v NF*, Rajah J cited (at [55]) *Millberry* where the English Court of Appeal identified a list of nine aggravating factors that are often present in rape offences:

- (a) the use of violence over and above the force necessary to commit the rape;
- (b) use of a weapon to frighten or injure the victim;
- (c) the offence was planned;
- (d) an especially serious or physical or mental effect on the victim; this would include, for example, a rape resulting in pregnancy, or in transmission of a life-threatening or serious disease;
- (e) further degradation of the victim, e.g. by forced oral sex or urination on the victim;
- (f) the offender has broken into or otherwise gained access to the place where the victim is living;

- (g) the presence of children when the offence is committed;
- (h) the covert use of a drug to overcome the victim's resistance and/or obliterate his or her memory to the offence;
- (i) a history of sexual assaults or violence by the offender against the victim.

21 In *Regina v Roberts* [1982] 1 WLR 133 ("*Roberts*") (cited in *Mohammed Liton* at [93]), the English Court of Appeal further considered the many aggravating factors and stated as follows:

Some of the features which may aggravate the crime are as follows. Where a gun or knife or some other weapon has been used to frighten or injure the victim. Where the victim sustains serious injury, whether that is mental or physical. Where violence is used over and above the violence necessarily involved in the act itself. Where there are threats of a brutal kind. Where the victim has been subjected to further sexual indignities or perversions. Where the victim is very young or elderly. Where the offender is in a position of trust. Where the offender has intruded into the victim's home. Where the victim has been deprived of her liberty for a period of time. Where the rape, or succession of rapes, is carried out by a group of men. Where the offender has committed a series of rapes on different women, or indeed on the same woman.

22 As will be seen in the subsequent paragraphs, some of the aggravating features listed in *Millbery* and *Roberts* were clearly present in this case.

Offence of aggravated sexual assault by penetration

23 I note at this point that the offence of sexual assault by penetration under section 376 of the Penal Code only came into effect on 1 February 2008. Hence, there are not many cases involving convictions under this provision. In *PP v Robiul Bhoreshuddin Mondal* [2010] SGHC 10, the offender was convicted of, amongst other offences, 4 counts of aggravated rape charges and one count of aggravated sexual assault by penetration under section 376(4)(a)(ii) of the Penal Code for sexually penetrating the victim's vagina with his finger. For the charge of aggravated sexual assault by penetration, the offender was sentenced to 10 years' imprisonment and 12 strokes of the cane.

24 Similarly, in *PP v Bala Kuppusamy* [2009] SGHC 97, the offender was convicted of, *inter alia*, four charges of aggravated sexual assault under section 376(4) of the Penal Code. He had forced two of his victims to perform fellatio on him and had also inserted his finger into their vaginas. He was sentenced to 12 years' imprisonment and 16 strokes of the cane for each act of fellatio performed on him and 10 years' imprisonment and 14 strokes of the cane for each offence of digital penetration. In *PP v AEY* [2010] SGHC 3, a case involving an 8 year old victim, the offender was convicted under section 376(2)(a) for penetrating, with his finger, the vagina of the victim. Woo Bih Li J sentenced the offender to 12 years' imprisonment and 14 strokes of the cane. This term was ordered to run consecutively with the other charge of forcibly penetrating the victim's mouth with his penis, an offence for which the offender was also sentenced to 12 years' imprisonment and 14 strokes of the cane.

25 These cases thus show a general sentencing norm of about 10 years' imprisonment and 12 strokes of the cane for the offence of aggravated sexual assault by digital penetration under section 376 of the Penal Code.

Offence of housebreaking by night in order to commit theft

26 As for the 7th Charge, viz, housebreaking by night in order to commit theft, the prescribed term of imprisonment is a minimum of 2 years and not more than 14 years and the offender shall also be liable to a fine. In *PP v Chen Jianhua* [2008] SGDC 383, the offender was charged with and convicted of 10 counts of housebreaking in order to commit theft by night under section 457 of the Penal Code. The learned District Judge stated at [6(a)] that the benchmark for cases involving housebreaking and theft of residential property is 30 months imprisonment term. He also cited *Sentencing Practice in the Subordinate Courts*, LexisNexis (2nd Ed, 2001) at p 502 which provides as follows:

As for housebreaking, the statutory minimum (in some instances) and maximum sentences are a reflection of the extreme seriousness with which Parliament, and hence the courts, will regard the offence of housebreaking. The courts generally apply the principle of deterrence in sentencing in order to discourage such offences. Despite the basic seriousness with which housebreaking is regarded, not all housebreaking can be placed on the same level of seriousness. For an adult offender, the length of custody would be determined by how high or low on the scale of severity the offence falls. *The factors which would determine where the offence falls on the scale of severity are: the method of entry (for example, putting a hand through a window which the offender has opened to take a radio is a far cry from forcible entry); the degree of sophisticated planning and organisation engaged in; whether the offender was part of a group; the time of break-in (night as opposed to day time); the type of premises (residential as opposed to non-residential); whether the offence was accompanied by acts of wanton vandalism or by force or violence; whether the occupier was present; the effect on the occupier; whether the offence was directed at the elderly, the disabled and the sick; the value of property taken; the number of offences committed; and the antecedents of the offender...* As regards the time of the commission of the offence, the Code prescribes a higher punishment for housebreaking committed at night (between 7pm and before 7am). Whilst no distinction is drawn in the punishment prescribed for housebreaking committed in a dwelling house and those in commercial and industrial premises, for sentencing purposes, however, housebreaking of dwelling houses is viewed more seriously than housebreaking of commercial and industrial premises... (emphasis added)

27 The learned District Judge further stated at [8(d)] that another aggravating feature was that the offences were committed in the early hours of the morning where the victims would be asleep and most vulnerable. After considering the other circumstances of the case, he sentenced the offender to 30 months' imprisonment on each charge and with 3 charges to run consecutively.

Aggravating factors

28 Having set out the general sentencing principles for the relevant offences, I now turn to the aggravating and mitigating factors which I took into account when deciding the appropriate sentences to be imposed.

The sexual offences

29 The Accused arrived at the Flat at about 1 am on the day of the attack and thereafter subjected the Victim to utter humiliation for six long hours. During this period, the Victim was immobilised as a result of having her hands and arms bound tightly together using masking tape. She was also placed in an awkward and highly uncomfortable position where her arms were tied to the bedpost over her head so that her head hung over the bed. As stated in *Roberts* at 135, the aggravating features of a crime include the intrusion by the offender of the victim's home and the deprivation of a victim's liberty for a period of time. The breach of the sanctity of the Victim's home

for such a prolonged period clearly constituted an aggravating factor (see *PP v Akbar Late Md Hossain Howlader* [2004] SGHC 128 where the offender trespassed into the victim's home and intruded into her privacy at [86]).

30 Further, the Accused had repeatedly ignored the Victim's plea to use the toilet. The Victim had first informed the Accused of her need to use the toilet shortly after he arrived at around 1 am. Yet, instead of allowing her to do so, the Accused simply ignored her and continued his repeated attempts to rape her. About four hours later, when the masking tape on the Victim's mouth came loose, she repeated her plea. Again, the Accused simply tightened the masking tape on her mouth to prevent her from making any noise. Unable to control her urges any longer, the Victim had no choice but to suffer the humiliation of urinating and defecating on her own bed. It bears reminding that the Victim was menstruating and that after each (failed) attempt of penetrating her vagina with his penis, the Accused had to clean up the Victim with tissue paper. Such scant respect for the basic dignity of the Victim clearly constituted an aggravating factor.

31 I also considered the considerable injuries suffered by the Victim. Throughout the attack, the Accused was indifferent to the Victim's pain and suffering. He bound the Victim tightly to her bedpost for more than 6 hours as a result of which she suffered from pains and cramps in her thighs and even pushed a hair band into her mouth to prevent her from shouting when he needed to get water from the kitchen. During the medical examination after the attack on 4 April 2009, the Victim was found to have sustained linear abrasions, as well as areas of skin peeling and blistering over the dorsum aspects of her arms and had a glaze over her left cheek.

32 Finally, I took into account the Charges which the Accused had consented to be taken into consideration for the purposes of sentencing. In *PP v UI* [2008] 4 SLR(R) 500, the Court of Appeal stated the following at [38]:

Section 178(1) of the Criminal Procedure Code does not mandate that, where TIC offences are present, the court must increase the sentence which would normally have been imposed for the offences proceeded with in the absence of TIC offences. But, if there are TIC offences to be taken into account, the effect, in general, would be that the sentence which the court would otherwise have imposed for the offences proceeded with would be increased (see *Sentencing Practice in the Subordinate Courts* (LexisNexis, 2nd Ed, 2003), at p 77). This is commonsensical as the offender, by agreeing to have the TIC offences in question taken into consideration for sentencing purposes, has in substance admitted that he committed those offences. This would *a fortiori* be the case where the TIC offences and the offense proceeded with are similar in nature (eg, if both sets of offences consist of sexual offences against the same victim). As Tay Yong Kwang J stated in *Navaseelan Balasingam v PP* [2007] 1 SLR(R) 767 at [17]:

While it may be said that by admitting the charges taken into consideration, the [offender] had saved [the] court time and the Prosecution the trouble of proving [those charges], the counterbalancing effect of having admitted such charges would be that *the [offender] had committed many more similar offences and that fact must aggravate the charges proceeded with*. The benefit to the [offender] would be his immunity from being charged or tried for the offences taken into consideration... and he would therefore not have to face further punishment in respect of those offences. (emphasis added in original)

Housebreaking by night in order to commit theft

33 With regard to the charge of housebreaking by night, I took into account the fact that the Accused had taken advantage of his prior access to the Flat by virtue of his continuing friendship

with R. The Accused made use of his opportunity to steal the keys to the Flat and on the day of the incident, he found out that the Victim would be alone at home and that R would return home late. He then embarked on a plan to break into the Flat to commit theft, taking extra care to conceal his identity by using a T-shirt to cover his face and cloth gloves to conceal his fingerprints. The offence was clearly premeditated and not one committed on impulse. This constituted another aggravating factor (see *PP v Tan Fook Sum* [1999] 1 SLR(R) 1022 at [28]).

34 Another aggravating feature was that the offence was committed in residential premises and at a time where the Victim was alone in the Flat and was likely to be asleep. She was thus in a vulnerable position. The circumstances thus merited a substantial custodial sentence to reflect the severity of his actions.

Mitigating factors

35 In this case, the only mitigating factor was that the Accused pleaded guilty to the charges preferred against him. However, it is clear law that a plea of guilt does not *ipso facto* entitle an offender to a discount in his sentence. As stated in *Angliss Singapore Pte Ltd v PP* [2006] 4 SLR(R) 653 at [77], a plea of guilt can be taken into consideration in mitigation when it is motivated by genuine remorse, contriteness or regret and/or a desire to facilitate the administration of justice. This position has been affirmed in *PP v UI* at [71] where the Court of Appeal stated that whether an early plea of guilt is to be given any mitigating value depends on whether it is indicative of genuine remorse, as assessed based on a holistic overview of the continuum of relevant circumstances. The court should also carefully examine the conduct of the offender after the commission of the offence in order to determine whether the offender is genuinely contrite.

36 As stated by Chan Sek Keong J (as he then was) in *Wong Kai Chuen Philip v PP* [1990] 2 SLR(R) 361 at [13]-[14]:

Although the appellant surrendered himself to the CAD, it is significant to note that this event occurred at a time when he really had no other choice. He had no choice because the Council of Law Society had taken over the clients' account of his firm and it was only a question of time before his misdeeds came to light. This is in stark contrast to the defence he put forward in respect of the claim for \$235,000 at a time when he misdeeds remained secret and safe with him. Similarly, the plea of guilty was not made in a case where the Prosecution might have any trouble in proving the charges.

In making these comments, I do not dissent from the principle applied by the Senior District Judge that the voluntary surrender by an offender and a plea of guilty by him in court are factors that can be taken into account in mitigation as they may be evidence of remorse and a willingness to accept punishment for his wrongdoing. However, I think that their relevance and the weight to be placed on them must depend on the circumstances of each case. *I do not see any mitigation value in a robber surrendering to the police after he is surrounded and has no means of escape, or much mitigation value in a professional man turning himself in in the face of absolute knowledge that the game is up.* (emphasis added)

37 In this case, the Accused pleaded guilty. However, he did not surrender himself immediately after the attack and had tried to dispose of the evidence which would incriminate him. He also sent R multiple text messages to ask if the police had discovered any evidence about the attack and asked to be notified of any such evidence. Rather than showing any contriteness, the actions of the Accused merely reflected a fear of being exposed for his guilt.

38 The Accused was finally arrested following police investigations. Traces of his DNA were found in the external and internal vaginal swabs, as well as the anal swab, of the Victim, and on the bra, blouse and pants which the Victim wore on the night of the attack. The evidence establishing his guilt was thus overwhelming. Faced with such a situation, the Accused effectively had no choice but to plead guilty. Accordingly, although I did allow some discount in the sentence for saving the court's time and not making the Victim testify and relive the horror of that night had there been a trial, however I did not give any further substantial mitigating value to his plea of guilt on account of his remorse.

Sentences imposed

39 After considering all the circumstances of the case and the charges which the Accused had consented to be taken into consideration for the purposes of sentencing, I imposed the following sentences on him:

- (a) 2nd Charge – imprisonment for a term of nine years and caning with fourteen strokes;
- (b) 4th Charge – imprisonment for a term of ten years and caning with twelve strokes;
- (c) 6th Charge – imprisonment for a term of fifteen years and caning with fifteen strokes;
- (d) 7th Charge – imprisonment for a term of three years.

40 The terms of imprisonment for the 4th Charge and 6th Charge were ordered to run consecutively and the terms of imprisonment passed on the 2nd Charge and the 7th Charge were to run concurrently to the terms of imprisonment passed on the 4th Charge and the 6th Charge. Accordingly, the total sentence passed was imprisonment for a term of 25 years with effect from 23 April 2009 and caning with 24 strokes.

[\[note: 1\]](#) Statement of Facts Tab B

[\[note: 2\]](#) Statement of Facts Tab F at p 6

[\[note: 3\]](#) Statement of Facts Tab G at p 10

[\[note: 4\]](#) Prosecution's submission on sentence at [14]

[\[note: 5\]](#) Prosecution's submission on sentence – see [14]

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