

Public Prosecutor v Akbar Late Md Hossain Howlader
[2004] SGHC 128

Case Number : CC 3/2004
Decision Date : 15 June 2004
Tribunal/Court : High Court
Coram : Tay Yong Kwang J
Counsel Name(s) : G Kannan and Lee Jwee Nguan (Deputy Public Prosecutors) for prosecution; Aziz Tayabali Samiwalla (Aziz Tayabali and Associates) and Rajan Supramaniam (Tan See Swan and Co) for accused
Parties : Public Prosecutor — Akbar Late Md Hossain Howlader

Criminal Law – Offences – Rape – Penal Code (Cap 224, 1985 Rev Ed) s 376(1) – Whether sexual intercourse was consensual – Whether there were one or two occasions of intercourse.

Criminal Procedure and Sentencing – Sentencing – Rape – Appropriate sentence to be passed in light of aggravating factors present.

15 June 2004

Tay Yong Kwang J:

1 The accused is a 34-year-old male Bangladeshi National who was working in Singapore for Hong Tar Engineering Pte Ltd located at 2 Bukit Batok Street 24, #03-02 ("Skytech Building"). He was tried on two charges of rape, under s 376(1) of the Penal Code (Cap 224, 1985 Rev Ed) against Y, a 25-year-old Indonesian lady working here as a maid. The offences were allegedly committed between 10.30pm on 4 May 2003 and 2.30am on 5 May 2003, at 45 Jalan K ("45").

The Prosecution's case

2 Y is married with a five-year-old daughter. Y arrived in Singapore from Indonesia on 10 April 2003 and was employed as a domestic maid by PY on 14 April 2003. However, she actually worked for PY's elderly parents, retired dentist PT, 83 years old, and PS, 82 years old, at 45 which is part of a private housing estate.

3 Y was working outside Indonesia for the first time. The first six months of her salary would be used to discharge what she owed her agent in Indonesia. She worked seven days a week without any day off. She was educated in Indonesia in Bahasa Indonesia for nine years and stayed for two months in Jakarta, learning the English language, before coming to Singapore.

4 A few days after Y started working at 45, PS told her that the previous maid, A, was a good worker. A left for Indonesia on 14 April 2003, after her two-year contract expired. Y and A have never met each other.

5 The house in question is a two-storey semi-detached house sharing a common wall with 43 Jalan K. Y's room is located at the back portion of the house, next to the kitchen and outside the main house. There is a toilet next to the maid's room. The maid's room has a door and a window with glass louvres. There is a metal grille fixed on the outside of the window. Both the maid's room and the toilet used to be accessible from the back of the compound as there were then no grilles to prevent access into the backyard. Such grilles have since been installed after the alleged rapes and they are locked at night.

6 A narrow grass verge connects the front compound of the house with the back portion. The front of the house has a driveway and a garden protected by a pair of wire mesh gates and a chain-link fence. The chain-link fence stops at the brick boundary wall of 47 Jalan K which stands on ground some three to four feet higher than that of 45.

7 The maid's room's window is located perpendicular to the room's door. Because of a missing glass louvre at the lower part of the window, near the door's latch, and the design of the metal grille, one could insert one's arm through the grille and unlock the door from the outside. Inside the room were a double-decker bed with mattresses, a wardrobe, a low cupboard, a dressing table, a chair, a bedside table with drawers, a sewing machine and an ironing board. Y slept on the lower deck of the bed. At the material time, there was only one maid employed in the house.

8 The house had an alarm system that was activated at night. Once it was activated, Y could not enter the house *via* the kitchen door. She could do so only after about 6.30am in the morning when PT de-activated the alarm system and went out for his usual morning walk.

9 At about 8.00pm on 3 May 2003, Y saw a Bangladeshi man cycling back and forth on the road in front of 45. She was not sure whether that man was the accused but it appeared to her that he was observing the house. She had intended to go outside the gates to dispose of some rubbish but decided not to do so as the man looked suspicious. He was staring at her. She did so only at about 9.00pm when that man was no longer around.

10 On 4 May 2003, a Sunday, at about 5.00pm, Y saw a Bangladeshi man, whom she identified in court as the accused, seated on the stone bench across the road opposite 47 Jalan K. He had a cap on. He was using his mobile phone and was smiling at her. Out of courtesy, she smiled at him too. They did not talk to each other.

11 At about 7.00pm that day, PT's daughter and her husband went to 45 to take PT out for dinner. PS did not join them and had dinner at home. After dinner, PS retired to her room upstairs while Y waited in the living room for PT to return. He returned home at about 10.00pm. After locking up the house, Y went out to her room *via* the kitchen door, locking the kitchen door behind her. The keys to the main door of the house were kept in the living room while the keys to the kitchen door were kept by her in her room. She then entered her room and latched the door. She drew the curtains but did not shut the window panes as a few pieces were missing.

12 Y then read a book on English vocabulary with translations in the Indonesian language, dozing off with the room light on after about half an hour. She awoke suddenly when she heard the sound of the door to her room being opened. The accused then walked into the room. She was shocked but did not scream as she was afraid that he would harm her.

13 The accused switched off the room light and moved towards her. He then assaulted her sexually, removing her shorts and panties and lifting her brassiere. She pulled her brassiere back down. He then raped her. She struggled and pleaded with him to stop. After he ejaculated, she managed to push him away. She grabbed a towel hanging by the bed and moved towards the room door but was pulled back by the accused to the bed. While he was hugging and restraining her, she could feel his penis was erect. He forced her to lie down on the bed again and then sexually assaulted her and raped her a second time. There was some violent struggle but the accused did not hit her. During the second rape, when she turned her buttocks and tried to push him away, his penis slipped out of her vagina. She covered her private parts with the towel and ran out of the room.

14 Y ran into the toilet next to the room and locked the PVC folding door. She urinated and then

took a shower. She also used some toothpaste to clean her vagina. All this time, she was crying. She heard the accused knocking on the folding door and telling her to come out of the toilet but she did not dare to do so.

15 After about an hour, she emerged from the toilet as she thought the accused had left the premises. However, he was still outside the toilet. She dashed back into the toilet and locked the folding door again. He knocked softly on the folding door and tried to force it open but she held onto the folding door to keep it from opening. She asked him to go away. After a while, the knocking stopped and the toilet light was switched off momentarily. She remained quiet and waited inside the toilet.

16 After about an hour of silence, Y emerged from the toilet again and walked slowly into her room. However, when she entered the room, the accused pounced on her from behind the ironing board. She rushed out immediately and opened the sliding window of the kitchen. She then inserted her arm through the window grilles into the kitchen, to turn on the rear lights. She also threatened to scream if he refused to leave. The accused then left the house quickly. In cross-examination, Y initially agreed that she had to lock all the doors and the windows before going to bed at night but stated later that she usually would not lock the sliding windows in the kitchen. This was because she had to wash clothes in the backyard early in the morning when it was still dark and, therefore, needed to turn on the lights there using the switch that was located within the kitchen.

17 Y went back into her room, closed the door and pushed the sewing machine against it. It was about 2.30am then. She took a T-shirt from the cupboard and placed it on the bed over the semen on the bed sheet as she felt it was very dirty. She then switched off the light and tried to sleep but could not as she was confused.

18 At about 6.00am, she got up from bed and went about the household chores. Later, she saw the maid ("S") working in 47 Jalan K through the fence and informed her about the rape, crying as she related the ordeal. Both of them had talked to each other before this incident and S did mention that the previous maid at 45 had a boyfriend. However, she did not mention his name or his nationality. S left the employ of the residents of 47 in October 2003 and the investigators were not able to contact her as there was no forwarding address in Indonesia.

19 At about 8.00am, Y informed PS that an intruder had entered her room during the night. She was in tears as she told PS this. PS spoke to her in Malay and got the impression that Y had been raped. When PT returned from his morning walk, his wife related to him what Y had told her earlier. He then informed their daughter who told her husband, D, an advocate and solicitor, about the matter.

20 D arrived at 45 at about 10.30am that same day. They called the maid agency and asked the sole proprietor, Shirley, to come over to 45 as they needed someone who could speak Bahasa Indonesia to check with Y and verify her account of what had happened. Y was pleading with PT not to send her back to Indonesia. Shirley arrived about an hour later with another Indonesian maid who was waiting for her employers to pick her up from the agency.

21 After speaking to Y and cautioning her not to lie, Shirley gathered that Y had been raped by a man who was wearing a cap. D asked Y to write about the alleged rapes as he wanted to be sure about her complaint. Her first note in Bahasa Indonesia, which Shirley translated, was found by D to be too brief. It omitted details like penetration of the vagina and the lack of consent. It was discarded subsequently. D asked Y to write another note giving more details about the alleged rapes without telling her what to write. She did so. The English translation of that second note reads as follows:

Initially, I was lying down reading a book until I fell asleep the light was not off. Then I was shocked to see that man was already opened my bedroom door. He then approached me and said; Hi [A]. EhI am not [A]. He said, ok slowly – slowly then he switched off the light. When he switched off the light I wanted to scream afraid that he would hurt me. After he switched off the light he took off all his clothing, and he pushed me and he straightaway grabbed my breast. I told him don't don't. He said, ok slowly then my mouth was covered. And my panty he pulled down. And this man raped me for about 5 minutes and the sperm ejaculated into my body and some dripped on the bedspread. I struggle but have no strength. Then I pushed and I managed to run to the door. At the door he carried my body again to the bed. And he said, ok I everyday love you. I then pleaded to him so that I could be freed. I said ok I want to go to the toilet first. He seemed to believe me and I went into the toilet by wearing a towel. I was in the toilet for about 2 hours. While I was in the toilet he knocked the door and tried to come in. After for some time I was in the toilet and when I feel the situation was quiet I went out, however he was still in my room. Immediately I ran toward the door switched on the outside light and said that if you do not want to go I'll scream. Then he said, ok I apologise just now I was very hot.

22 The matter was then reported to the police who went to 45 to interview Y. She was sent to the National University Hospital for a medical examination the same day at about 6.00pm. PT informed the police that one G, a worker who worked in the housing estate there, might be able to provide information about one Akbar who had had an affair with the previous maid at 45.

23 The police managed to locate G. After further investigations, they also located the accused at his place of work at the Skytech Building. On 12 May 2003, the police arrested the accused there. On 13 May 2003, Y attended an identification parade at the Criminal Investigation Department and identified the accused as the man who raped her.

24 The doctor who examined Y on 5 May 2003 testified that spermatozoa were found in the endocervical swab done. The scientific evidence from the Health Sciences Authority showed that stains found on the internal and external vaginal swabs and the semen stain found on the endocervical swab taken from Y contained deoxyribonucleic acid ("DNA") matching the accused's DNA profile. The stain on the towel used by Y and the semen stain on the bedsheet also contained DNA matching the accused's DNA profile. However, no blood or semen was detected on the T-shirt that Y used to place over the bed sheet.

25 A, the maid who was Y's predecessor at 45, was not a witness at the preliminary inquiry. A got the accused's telephone number from another maid ("F") who worked in a house in the street next to Jalan K. That maid, in turn, got his telephone number from another maid ("L") who also worked in that area. The accused had been L's boyfriend. L has returned to Indonesia. A got to know the accused sometime in 2002. They first spoke over the telephone and later started meeting frequently in the park opposite 45. The accused would ride a yellow bicycle to Jalan K and would usually wear a cap.

26 In December 2002, during the Hari Raya Puasa holidays, A was given a day off and she went out with the accused. They had some food at the McDonald's restaurant in the Bukit Batok housing estate. Shortly after that day, they began having sexual intercourse in the maid's room at 45 about once every week. A would lead the accused through the front garden to the room and would lead him out the same way later. PT and PS were either not at home or were upstairs.

27 However, on many occasions, she woke up to find him standing in the room even though the door was latched before she went to bed. She assumed he had unlatched the door by putting his arm through the gap in the window panes. The accused left by climbing onto the brick boundary wall of 47

Jalan K and going over the fence. The sexual relationship between the accused and A lasted until A returned to her homeland in April 2003. After 5 May 2003, in addition to the grilles at the backyard, some spikes were also installed at the top of the fence to make it difficult for a person to climb over the fence.

28 Although the accused had promised A, upon her request for \$1,000 as she was returning to Indonesia, that he would be sending her some money, he did not keep his promise. After making a couple of telephone calls to him from Indonesia within a fortnight of leaving Singapore to ask him about the money he had promised her, A ceased to have any contact with him. She denied that she was lying in order to get back at the accused for failing to remit money to her. She got married in Indonesia in October 2003.

29 A used to be in love with the accused. They spoke frequently over the telephone. The accused treated her well while she was working here. He gave her several gifts such as a mobile phone and a gold chain. However, she did not know any of his friends or even his place of work. She only knew that the accused lived in Bukit Batok. She denied having gone to the accused's place of work. She also denied having had sex with him at the wooden bench in the park opposite 45 although she did go out to the park occasionally to meet him for a short while. She denied that in March 2002, when the accused returned from Bangladesh, he saw her at the park with another Bangladeshi man.

30 Besides coming from the same maid agency here, A did not know Y. They were from different villages in Indonesia and had not met each other before.

31 F, the maid who gave the accused's telephone number to A, testified that A had told her that she had gone out with the accused once at night but F did not know where they had gone to. F saw them at about 3.30pm on 6 December 2002 when they were at the McDonald's restaurant in Bukit Batok.

32 PT and his wife would usually sleep with the air conditioning on. PT lodged a police report in 2002 or thereabouts, that someone was disturbing A and that A was associating with a Bangladeshi worker. This was after he was told about this by another worker whom he had met on his daily walks.

33 H, PT's and PS's 70-year-old neighbour living in 47 Jalan K, testified that a dark complexioned man wearing a black cap approached her at about 9.00pm on 4 May 2003 when she was at the front porch of her house. He asked her, in Malay, how he could contact A, whom she knew had been the previous maid at 45. He did not leave the vicinity after that. However, she was not able to identify that man.

34 The investigating officer, Station Inspector Sitimarsita Bohari, testified that fingerprint dusting was done at 45 on the maid's room door, its handle and the area around its latch as well as the backyard area. No fingerprints were lifted from all those areas.

35 At the conclusion of the Prosecution's case, defence counsel applied for all the statements made by the accused to the investigators, to be furnished to the Defence. The Prosecution agreed to and did furnish those statements.

The case for the Defence

36 The 33-year-old accused is married and has no children. He worked for Hong Tar Engineering Pte Ltd in Singapore for about seven years, installing and servicing air conditioners. His working hours were between 8.30am and 5.30pm on weekdays. He often worked overtime on weekdays and on

Sundays as well. His salary was slightly more than \$1,000 a month.

37 In the seven years that he worked here, he returned to Bangladesh twice. The first occasion was when his brother met with an accident and later passed away. The second occasion was in January 2002 when he returned home to get married.

38 He was planning to return home a third time as his sister had met with an accident and fractured her arm. His wife was also unwell. His relatives had called his office and his mobile phone (applied for by his employers) several times, asking him to go home. He told his employers about his plans to return to Bangladesh at the end of April 2003 but they could not release him due to their manpower constraints. About a week later, he received another call from Bangladesh and his employers agreed to let him return home for a short period. Originally, he planned to leave on 12 May 2003 but later changed to a flight leaving on 13 May 2003.

39 On 11 May 2003, he withdrew \$2,000 from his bank account. The next day, he withdrew another \$3,465, practically depleting the amount of money in his bank account. He claimed that part of the money was to be returned to his friend as he had been keeping it for him and part of it was to be remitted home. However, he was arrested on 12 May 2003 at his place of work.

40 He got to know A through F in 2002. After two to three months of talking over the telephone, he met A in the vicinity of 45. In December 2002, they had their first sexual intercourse on a bench in the park opposite 45. After that first encounter, they had sex either on that bench (about five times) or in a room at his workplace in the Skytech Building in Bukit Batok which his employers had allowed him to use as his living quarters. A would go there by herself in a taxi and on a few occasions, went there without giving him prior notice. He never had sex with A in the maid's room at 45.

41 Before A returned home to Indonesia, she informed him of her home address and gave him a photocopy of her bank passbook. She called him three times from Indonesia and asked him to remit some money to her. He surmised that she was probably angry with him for not doing so after having promised her some money.

42 On Sunday, 20 April 2003, the accused finished his work at about 4.30pm and, as was his habit, went to the park near Jalan K. He liked going there to make telephone calls home, from a public telephone booth, as there were fewer workers in that area unlike in Bukit Batok and he therefore did not need to queue with others to use the public telephone. He saw Y watering the plants in the garden of 45 and they smiled at each other. He then walked to the bench across the road from 45 and asked, "How are you?" Y said, "Fine", and in return asked how he was. He also replied, "Fine". He then asked her where she was from and she told him she was from Indonesia and that her name was X. The accused introduced himself as Akbar. They spoke a while longer in English and he then left for Serangoon Road to meet up with friends and fellow workers from his homeland, a routine he usually followed after going to the park to make telephone calls.

43 The next Sunday, 27 April 2003, at around 5.00pm, the accused was again at the park. He saw Y watering the plants again and went to the same bench across the road from 45 to talk to her. After a while, Y asked him to help her as she needed \$1,000 to repay her agent. He replied that he would try to help her by lending her the money. He was willing to do so as that would strengthen their friendship. If he could not help with \$1,000, he would lend her \$500 instead. He later left for Serangoon Road.

44 1 May 2003 was Labour Day, a public holiday. The accused went to the park near Jalan K sometime before 5.00pm. Y was watering the plants in the garden at 45. She blew him a flying kiss.

They talked and joked and she asked him about the loan again. He told her he would hand her the money later but gave no specific date. He then went to make a call at the public telephone booth and then went to a market nearby.

45 On Sunday, 4 May 2003, the accused was at the said park at about 5.00pm. After making a telephone call, he walked to 45. Y looked quite happy that day. They talked for a while and when he was about to leave for Serangoon Road, she asked him to return to 45 later. The accused told her it would have to be very late in the night but Y said she would wait for him and then blew him a flying kiss.

46 The accused returned to Skytech Building at about 10.30pm and, after his prayers, recalled that Y was waiting for him. He changed up and then took a bus to the park. He sat at the bench near the telephone booth. When someone walked past, he asked for the time and was told it was 11.45pm. He waited there as he knew the lights in the park would be switched off at midnight. He then walked to the bench opposite 45 and noticed Y waving to him. She walked towards the gates, constantly looking up towards the second level of the house where PT's and PS's bedroom was. She knelt down, opened one of the gates and signalled to him to enter the compound of 45. The accused walked in. Y closed the gate without locking it. She then led him by the hand to her room at the back of the house.

47 Once they were in her room, Y closed the door and they started kissing each other. Although the accused was very excited, he was also fearful that he might be caught in somebody's house and "everything would be finished". Y took off her blouse and he took off his T-shirt. They expressed their love for each other, kissed and hugged and then lay down on the bed. Y pulled her shorts down and then helped him take his pants off. She then took off her brassiere and her panties while he removed his underwear. They then had sexual intercourse and he ejaculated.

48 Y said she would like to go to the toilet. She took some tissue paper and used it to wipe his semen from the bed sheet. She also passed him some tissue paper to clean himself with. She then took her towel, wrapped it round herself and went out of the room. The accused dressed up and went to the door to wait for her. When she came out from the toilet, he told her he was going back to his quarters.

49 She asked him whether he brought the money. He replied that he would do so when he was paid his salary. Y's tone changed when she asked him why he did not bring the money. The lights from a neighbouring house were turned on at that moment and the accused, fearing he might be seen by someone, then told her he was going back to his employers' premises. He then walked out through the gates and left.

50 The next Sunday, 11 May 2003, the accused did not return to the park as he was worried about his family's problems. He denied that he had withdrawn practically all his money from his bank account because he was planning to leave Singapore for good. When he left for home in 2002 to get married, he did the same thing with his bank account and then returned here to work subsequently.

51 The Prosecution sought to impeach the accused's credit under s 157(c) of the Evidence Act (Cap 97, 1997 Rev Ed) by reference to the statements given by him during the investigations. The accused did not allege that those statements were given involuntarily. However, he alleged that they were not read back to him after the recording and that the Bengali interpreter did not interpret his words accurately.

52 In his first statement made on 13 May 2003 pursuant to s 122(6) of the Criminal Procedure

Code (Cap 68, 1985 Rev Ed), in response to a charge of rape, he claimed he was with his Bangladeshi colleagues offering prayers on the second floor of the Skytech Building until past 1.00am on 5 May 2003. He also stated he did not leave his room the whole night, woke up at 6.00am and then worked the whole day until 9.30pm when he returned to his quarters. The accused explained that he lied in the statement because he did not believe Y had complained about him and therefore did not want to get her into trouble.

53 In another statement made to the investigating officer on 19 May 2003, the accused claimed he did rub his penis against Y's vulva but denied having inserted his penis into her vagina. That was because he was so frightened he could not achieve an erection. In court, the accused blamed this inconsistency on inaccurate interpretation by the interpreter.

54 On 23 September 2003, the accused was charged with a second charge of rape against Y between 11.00pm on 4 May 2003 and 12.30am on 5 May 2003. In his statement, made in response to this charge, he said he had been to 45 only once and he did not have sex with Y because he was frightened as he was in somebody else's house. The accused explained in cross-examination that he meant that nothing happened on 5 May 2003 as he did not have sex with Y a second time. As far as he was concerned, sexual intercourse took place only on 4 May 2003.

55 In his statements, the accused also denied knowing A. He explained in court that he lied in order to protect A as she had returned to Indonesia to get married.

56 The Bengali interpreter involved in the recording of the various statements from the accused was called by the Prosecution to rebut the accused's allegations. The interpreter testified that all the statements were accurately interpreted and amendments were actually made at the behest of the accused.

57 Pek Joo Guan ("Pek"), the accused's boss, testified that the accused was given a room on the lower floor of the office premises, as his living quarters. He was permitted to bring his friends to that room after office hours but no one was allowed to stay there overnight. The company also provided the accused with a mobile phone and a bicycle.

58 Between 2 and 5 May 2003, Pek was told by the accused that he wanted to go back to Bangladesh as he had some personal problems. A few days later, the accused told Pek that he had to return home as his wife was sick. Pek asked him to confirm the date of departure. On 10 May 2003, the accused informed him that he would like to leave on 12 May 2003. However, the accused later changed the date to 13 May 2003. Pek then asked the accused's supervisor, Tan Leong Huat ("Tan"), to purchase the air ticket. That was done on 11 May 2003. The same day, the accused took a \$300 loan from Pek.

59 One week after the accused was arrested, police officers went to the Skytech premises to search the accused's room. There, they found a sealed brown box belonging to the accused containing, among other things, a drill belonging to the company and a gold chain.

60 Tan confirmed that he was informed by Pek, in the first week of May 2003, to check with the accused on the date he wished to return to Bangladesh. The accused was quiet and moody. On 10 May 2003, the accused informed him that he wanted to return home on 13 May 2003.

61 A fellow Bangladeshi worker, Delwar Late Kadir Molla ("Delwar"), was called by the accused to corroborate his assertion that A had gone to his room in the Skytech Building. However, this witness said he was in Bangladesh between November 2002 and April 2003 and did not visit the accused in his

room after July 2002. Although Delwar did see a girl in the accused's room when he went to visit him there, he could not confirm the girl's identity.

62 Several other witnesses were called by the Defence, including PS, but their testimony did not assist in determining whether the sexual intercourse that the accused had with Y was consensual or not.

The decision of the court

63 The only issues in this case were whether Y consented to sexual intercourse since there was no denial by the accused that sexual intercourse did take place and whether there was only one occasion of sexual intercourse between 10.30pm on 4 May 2003 and 2.30am on 5 May 2003.

64 Y and A were the key witnesses for the Prosecution in this case. Y was the only one who could give direct evidence of the events in her room and in the backyard of 45 during the material times. A's evidence showed that the accused was familiar with the maid's room at the back of 45 and knew how to enter and leave the compound without going through the gates at the driveway.

65 Y was working outside her country for the first time in her young life. She had been working at 45 for only three weeks when the alleged rapes took place and had been in Singapore for less than four weeks at the time. I found her to be an honest and guileless witness who was testifying to the best of her memory about the events on 4 and 5 May 2003. She certainly did not appear to me to be the scheming, money-hungry *femme fatale* that the accused made her out to be.

66 It was highly unlikely that the alleged relationship between Y and the accused could have taken off so rapidly after her arrival at 45. It was also incredible that she would have been so bold as to invite a man into the house for sex within that short span of time even if the elderly PT and PS were not likely to go to the ground level of their home during the night. She would have been aware of the dire consequences that would befall her if she was caught in the act. A might have been a braver soul but even she only started the weekly trysts after having worked for PT and PS for 20 months.

67 I believed Y's testimony that she did not have any conversation with the accused prior to his intrusion into her room on 4 May 2003. It was obviously the accused who was observing her from a distance when she watered the plants in the garden during the three weeks that she was working in 45.

68 I accepted that there were some contradictions between Y's testimony in court and the statement written by her on 5 May 2003. However, I was still convinced that she was telling the truth even if she was inconsistent in some respects. Victims of rape and other sexual assault could hardly be expected to reconstruct the exact sequence of events and remember details in a cold, clinical fashion, particularly in situations such as the present case. She had fallen asleep when the accused entered her room surreptitiously. She was so shocked and frightened by the sudden appearance of a stranger in her bedroom that she could not even think of screaming. The light was turned off. She was confused and still reeling from the shocking experience when she was told to write about the event. She had hardly slept after the rape. Her confusion was compounded by her fear that the event would somehow lead to her dismissal as a maid. After all, the maid agency's boss was called to the house and there was talk of making a police report. It was completely understandable that a person in that position would not have got all the details right. She was, however, absolutely clear that she did not consent to having sex with the accused and I believed her.

69 There was some struggle in the room that night but, as Y testified, there was no physical violence from the accused by way of hitting or slapping her. Accordingly, she suffered no bruises or other physical injury.

70 While it was plain that sexual intercourse took place without her consent, I was not convinced beyond reasonable doubt that there were two acts of penetration although she testified that there were. She did not write in her note about having sexual intercourse a second time. More importantly, if the accused had ejaculated after the first rape, it was not likely that he would have been able to maintain an erection and penetrate her a second time so soon thereafter. It was also worth noting that the second charge of rape was preferred against the accused more than four months after 5 May 2003. I attributed her evidence on the second rape to her difficulty in recollecting a traumatic struggle and sexual assault in the dark by a stranger and not to any dishonesty or devious plan to get the accused into more trouble.

71 The fact that no semen stain was detected on the T-shirt that Y placed on the bed sheet after the rape did not indicate that she was lying. According to her, she had been taking refuge in the toilet for close to two hours after the rape. It was possible that the semen had dried up. It was also possible that she did not place the T-shirt in direct contact with the semen stains on the bed sheet. In any event, this did not affect my assessment of her credibility.

72 A, clearly a more confident lady than Y, gave her evidence in a forthright manner and I accepted her testimony. The accused sought to discredit A's evidence by suggesting that she was angry with him for reneging on his promise to remit some money to her. While she appeared disappointed that her erstwhile lover did not keep his word, it did not seem to me that she was out for revenge. In the one or two telephone calls in which the subject of money was raised, she merely asked him about it. There was no evidence of any anger on her part. She would not have known of his defence and would not have been able to guess that saying he climbed over the garden fence in order to go to her room in 45 would affect him adversely in the trial. There was also no possibility of any collusion on the part of Y and A who did not even know each other.

73 The failure of the Prosecution to call S, the maid who was working in 47 Jalan K until October 2003 and the first person Y spoke to after the rape, was criticised by the Defence and I was urged to draw an adverse inference under s 116 illustration (g) of the Evidence Act in respect of this failure. As held in *Ang Jwee Herng v PP* [2001] 2 SLR 474, an adverse inference would be drawn against the Prosecution only if it withheld certain evidence which it possessed and not merely on account of its failure to obtain certain evidence. There was no evidence to suggest that the investigating officer deliberately omitted S from the witness list or that she did so in order to hinder or hamper the defence. S's evidence was not essential at all to the Prosecution's case against the accused and there was, therefore, no reason to draw any adverse inference (see *Chua Keem Long v PP* [1996] 1 SLR 510). In any event, as acknowledged by the Defence, S's evidence could cut both ways in that she might well confirm Y's testimony.

74 The investigators' inability to find the accused's fingerprints in 45 did not cast any doubt on the Prosecution's case in the light of the evidence adduced.

75 The accused's testimony and statements to the police were riddled with improbabilities and lies. It was highly unlikely that A would go to Skytech Building late at night and return to 45 in the middle of the night even though PT and PS would not require her services late at night. It was much safer for the accused and A to have sex in the privacy of the maid's room in 45 so that she would still be able to attend to any unexpected visitor or emergencies. After all, the accused had a bicycle and Jalan K was not far from the Skytech Building in Bukit Batok. He was also accustomed to going to the

park opposite 45. There was no reason for A to lie about this since she was candid about having invited the accused into 45 for their trysts.

76 Delwar, the witness for the Defence, was not able to back up the accused's evidence that he (Delwar) had seen A in the accused's room in Bukit Batok. Delwar did not go to the accused's room between December 2002 and April 2003, the period of the sexual relationship between the accused and A.

77 The accused claimed he was willing to lend Y the \$1,000 she requested at their second casual meeting despite having spoken to her for only a few minutes the Sunday before, and the fact that a loan of that amount would be practically equivalent to a month's salary for him. In any event, he had a few thousand dollars in his bank account but did not see it fit to withdraw some for Y. I believed Y when she said that no such conversation took place.

78 It was strange that the accused did not return to the Jalan K area again after 5 May 2003. He claimed that this was due to his family's problems which he learnt about in late April 2003 and which weighed heavily on his mind. Those problems did not seem to trouble him on 4 May 2003 when he went to Jalan K, then to Serangoon Road and later back again to the park at Jalan K late at night. Further, why should he wait until the lights went out at the park before walking towards 45 when he was only there to talk to Y? I have no doubt he did not go back to the park after 5 May 2003 because he knew he had committed rape and did not want to return to the scene in case he was identified.

79 The lies that he told in his statements to the police could not have been the result of altruism. He was already in custody for alleged rape and stood to lose his liberty and his livelihood. It was not possible that his first thoughts were to protect Y and A. Why did he lie several times in the 19 May 2003 statements, after spending seven days in custody already, about not having sexual intercourse with Y if it was consensual? I accepted that the interpreter involved in the statements did his duty and did not misinterpret the accused's words. As the challenge was only on accuracy and not admissibility, no *voir dire* was necessary (*Fun Seong Cheng v PP* [1997] 3 SLR 523). Would the accused deny that he knew A in such circumstances because she had returned home to get married? I did not think so. He lied because he did not want A to reveal his numerous forays into 45 in the past.

80 The accused's explanation for his statement in response to the second charge of rape on 23 September 2003 was clever but unbelievable. The second charge was clear about the period of time in issue. It covered the period between 11.00pm on 4 May 2003 and 12.30am on 5 May 2003. If he had consensual sex with Y once during that period, he could have easily said so instead of claiming he went to 45 only once and that he did not have sex with her. Clearly, he was again lying because he knew what the truth was – he had had sexual intercourse with Y without her consent.

81 The lies told by the accused clearly indicated his guilt as they fell within the four criteria set out in *Regina v Lucas (Ruth)* [1981] QB 720. They were deliberate, they related to a material issue and were motivated by a realisation of guilt and a fear of the truth rather than by altruism and concern for Y and A. They were admitted by the accused himself to be complete untruths.

82 I did not agree with the Prosecution that the evidence supported the inference that the accused was planning to leave Singapore for good. The sealed box that the police found in the accused's room contained his personal things as well as a drill belonging to his employers. There was nothing wrong in wanting to bring home his personal items. He could decide to bring them here again if he wished, after his trip home. He could have intended to steal the drill and to bring it home but that

did not necessarily mean he was not going to return here ever again. He also withdrew most of his money from his bank account when he left in early 2002 for his wedding in Bangladesh. I therefore did not think the withdrawals after 5 May 2003 clearly indicated an intention to flee the jurisdiction.

83 For the above reasons, I convicted the accused on the first count of rape but acquitted him on the second count.

The sentence

84 Where the question of sentence was concerned, although the accused had a clean record, the Prosecution urged me to pass a deterrent sentence on him. This was because the accused breached the sanctity of someone's home in order to commit rape, showed no remorse, lied in his statements and caused expenses to be incurred by the police in bringing A back here for the trial.

85 The Defence submitted that the accused was a good, trustworthy worker who had to be responsible financially for his brother's, his sister's and his wife's families. Claiming trial, it was argued, was not tantamount to lack of remorse particularly since the accused was acquitted of one charge of rape. There was no evidence that Y was adversely affected emotionally or physically (for instance by being infected with a communicable disease) by the incident. It was submitted that a sentence minimally above ten years and one stroke of the cane would suffice for the accused.

86 Section 376(1) of the Penal Code provides for a maximum term of 20 years' imprisonment and liability to a fine or to caning. Using the guidelines provided by the then Court of Criminal Appeal in *Chia Kim Heng Frederick v PP* [1992] 1 SLR 361, I was of the view that the proper sentence should be 13 years' imprisonment (to take effect from 12 May 2003) and 14 strokes of the cane. The accused trespassed into someone's home, intruded into a lady's privacy and forced himself on her. His defence accused Y, a married mother, of being a promiscuous woman who was willing to trade her body for money and, when she did not obtain the financial gain that she wanted, was quick to make false accusations against others. He also tormented her for about two hours after the rape by refusing to leave 45.

Accused convicted on first charge of rape and acquitted on second charge of rape.