

Public Prosecutor v C
[2003] SGHC 77

Case Number : CC 9 of 2003
Decision Date : 02 April 2003
Tribunal/Court : High Court
Coram : Woo Bih Li J
Counsel Name(s) : Imran Hamid; Cheok Yu-Liang; Accused in person
Parties : Public Prosecutor — C

Criminal Procedure and Sentencing – Sentencing – Outrage of modesty by use of criminal force – Factors to be taken into consideration – Penal Code (Cap 224) s 354.

Criminal Procedure and Sentencing – Sentencing – Unnatural offences – Factors to be taken into consideration – Penal Code (Cap 224) s 377.

Background

1 The accused is C, male, 30 years of age. He faced 23 charges in relation to the same victim who is his step-daughter.

2 There were 12 counts under s 377 of the Penal Code i.e of voluntarily having carnal intercourse against the order of nature.

3 There were 11 counts under s 354 of the Penal Code i.e of using criminal force knowing it to be likely that he would thereby outrage the modesty of the victim.

4 He also faced a 24th charge under s 30(2)(a) of the Films Act i.e of having in his possession video compact discs containing films which he knew to be obscene.

5 The prosecution proceeded with 11 charges:

- (a) the 1st, 4th, 10th, 12th and 22nd charges under s 377
- (b) the 2nd, 3rd, 9th, 11th, 21st and 23rd charges under s 354.

6 The offences came to light in the following manner:

(a) On 13 September 2002, the victim's teacher referred the victim to the school principal when the victim returned to school after being absent for two days from 10 to 12 September 2002.

(b) The victim was referred to the school counsellor. During the counselling session, the counsellor understood that the victim had been molested. The counsellor informed the school principal who contacted the victim's mother to see her the same day.

(c) When the mother came to the school, the victim was brought to the principal's office to meet her mother. Upon seeing her mother, the victim broke down and cried and disclosed to her mother that the accused had been sexually abusing her for some time. The principal then advised the mother to make a police report but the mother requested some time to consider whether to do so.

(d) Two weeks later, on 27 September 2002, when the principal did not hear from the mother, the principal instructed the counsellor to report the matter to the Child Protection Service of the Ministry of Community Development and Sports ("MCDS") for the matter to

be reported to the police and the counsellor did so.

(e) On 30 September 2002, the victim was taken down to MCDS to be interviewed. Later that day, she lodged a police report.

7 The accused pleaded guilty to the 11 charges and was convicted accordingly. He agreed to the remaining charges being taken into consideration for the purpose of sentencing.

8 Most of the offences under s 377 of the Penal Code involved instances of anal intercourse. Only the 20th and 22nd charges, which were also under s 377, involved the accused making the victim perform fellatio on him.

9 Most of the offences under s 354 of the Penal Code involved instances where the accused inserted his finger into the anus of the victim. Only the 21st charge, which was also under s 354, was an instance of the accused touching the vulva of the victim.

10 The accused's reason for committing the offences was that he could not control his lust. He thought that by having anal intercourse, this would be less painful because faeces pass through the anus. He claimed to regret what he had done and sought leniency.

11 Mr Imran Hamid for the prosecution did not press for a deterrent sentence. Mr Hamid submitted that the case before me stood somewhere between the case of *Lim Hock Hin Kelvin v Public Prosecutor* [1998] 1 SLR 801 and *Adam Bin Darsin v Public Prosecutor* [2001] 2 SLR 413.

12 In *Lim Hock Hin Kelvin*, the accused faced a total of 40 charges and pleaded guilty to ten. The offences comprised anal intercourse and coercing or cajoling the victims to perform fellatio on the accused. The victims were five boys between the age of eight and twelve. The accused there also had previous convictions for similar offences. The High Court sentenced the accused to ten years' imprisonment on each of the four charges on anal intercourse which the prosecution proceeded with. Each of these sentences were to run consecutively making a total of 40 years. The accused's appeal against sentence was dismissed.

13 In *Adam Bin Darsin*, the accused faced a total of 23 charges and pleaded guilty to eight. The accused there had committed fellatio on eight boys between 12 and 15. The High Court sentenced him to ten years' imprisonment on each of the charges under s 377 and ordered four of such sentences to run consecutively. The Court of Appeal reduced each of these four sentences to five years and also ordered these four sentences to run consecutively, making a total of 20 years. The Court of Appeal was of the view that:

(a) of the three forms of unnatural carnal intercourse, anal intercourse was the most serious. Causing a victim to perform fellatio was of intermediate gravity and performing fellatio on the victim stood at the bottom of the scale,

(b) anal intercourse was, depending on the circumstances, equated with rape,

(c) the appropriate sentence for performing fellatio on the victim was around five years in the absence of mitigating or aggravating circumstances.

14 As for cases under s 354, Mr Hamid submitted that in *Chandrash Patel* (unreported), Chief Justice Yong Pung How had suggested that nine months and between three to four strokes of the cane was applicable.

My Decision

15 For cases under s 354, Yong CJ had also said in *Ng Chiew Kiat v Public Prosecutor*

[2000] 1 SLR 370 that nine months' imprisonment and caning is warranted for acts of molest involving intrusion of the victim's private parts although in *Toh Kok How v Public Prosecutor* [1995] 1 SLR 735, the accused was also sentenced by Yong CJ to nine months' imprisonment and three strokes of the cane for using his knuckles to press onto the right breast of the victim. On the other hand, Yong CJ also said in *Ng Chiew Kiat* that there were offences under s 354 which were relatively minor for which a fine would suffice. Ultimately, the appropriate sentence would depend on the nature of the act of molest as well as the circumstances surrounding the commission of the offence.

16 I accepted Mr Hamid's submission that in the case before me, the gravity of the offences and the circumstances surrounding the commission of the offences under s 377 stood somewhere between the case of *Lim Hock Hin Kelvin* and *Adam Bin Darsin*.

17 The actions of the accused before me under s 377 comprised mainly anal intercourse. Although there was only one victim, the accused had committed the offence many times. The accused was in a position of authority and trust being the step-father of the victim, unlike the accused in *Lim Hock Hin Kelvin* and in *Adam Bin Darsin*.

18 For the offences under s 354, the accused had inserted his finger into the anus of the victim which was more painful for the victim than if he had simply touched her private parts.

19 The accused had a previous conviction in 1990 for voluntarily causing hurt with dangerous weapons or means for which he was sent to a reformatory training centre. He also had a previous conviction in 1999 for theft in a dwelling, read with s 34 Penal Code on common intention, for which he was sentenced to two weeks' imprisonment. Those offences were not similar to the offences for which he was charged before me.

20 In the circumstances, I sentenced the accused as follows:

- (a) On the second charge, under s 354 of the Penal Code, one year's imprisonment and four strokes of the cane.
- (b) On the third charge under s 354 of the Penal code, one year's imprisonment and four strokes of the cane.
- (c) On the fourth charge under s 377 of the Penal Code, ten years' imprisonment.
- (d) On the ninth charge under s 354 of the Penal Code, one year's imprisonment and four strokes of the cane.
- (e) On the tenth charge under s 377 of the Penal code, ten years' imprisonment.
- (f) On the 11th charge under s 354 of the Penal Code, one years' imprisonment and four strokes of the cane.
- (g) On the 12th charge under s 377 of the Penal Code, ten years' imprisonment.
- (h) On the 21st charge under s 354 of the Penal Code, nine months' imprisonment and three strokes of the cane. This was the offence in which the accused had touched the victim's vulva instead of inserting his finger into her anus.
- (i) On the 22nd charge under s 377, seven and a half years' imprisonment. This was an offence in which the accused had made the victim perform fellatio on him.
- (j) On the 23rd charge under s 354, one year's imprisonment and four strokes of the cane.

(k) On the first charge under s 377, ten years' imprisonment.

21 The sentences for the fourth, tenth, and first charges were to run consecutively from the date of remand i.e 5 October 2002. The other sentences of imprisonment were to run concurrently with the consecutive sentences. The aggregate term of imprisonment was 30 years. The total number of strokes of the cane was 23.

Accused convicted.