

Public Prosecutor v AA
[2004] SGHC 10

Case Number : CC 1/2004
Decision Date : 20 January 2004
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Leong Wing Tuck and Shirani Alfreds (Deputy Public Prosecutors) for the Prosecution; Subhas Anandan and Anand Nalachandran (Harry Elias Partnership) for the accused
Parties : Public Prosecutor — AA

Criminal Procedure and Sentencing – Sentencing – Principles

20 January 2004

Choo Han Teck J:

1 The accused is 40 years old and was employed as an orderly in the Supreme Court. He pleaded guilty to four charges under s 377 of the Penal Code (Cap 224, 1985 Rev Ed). The first charge (the “1st charge”) concerned the act of fellatio on him by an 11-year-old boy (referred hereafter as “the first complainant”) on 29 May 2003. The second charge (the “9th charge”) concerned the same act but involved a 12-year-old boy (referred hereafter as “the second complainant”). The third charge (the “12th charge”) concerned the act of sodomy in which the accused was the passive partner. The active partner was a 17-year-old (the “third complainant”). The fourth charge concerned the act of fellatio by the accused on the third complainant (the “13th charge”). The three complainants were known to the accused, and their respective families had maintained a close relationship with each other. In pleading guilty, the accused also agreed to have 12 other charges concerning the same complainants be taken into account for purposes of sentencing. Other than these offences, the accused has no antecedents.

2 His counsel, Mr Subhas Anandan, pleaded for leniency and prayed that the court would be compassionate to the accused. However, I am of the view that compassion ought to have as little to do as possible with the sentencing of an offender. A court that is swayed by compassion will also yield to indignation when the opportune case is before it. Such sentiments are obstructive and distracting when reason alone should determine the sentence. The duty of the court is to measure and evaluate all factors that are relevant, whether they are against or in favour of the accused, and then determine a fair and appropriate sentence as punishment in the circumstances of that case before it. I should also mention that the fact that the accused was once an exemplary employee in these courts does not entitle him to any special tenderness on my part in sentencing him. That is a neutral matter.

3 The relevant facts in this case are obvious from the charges and the statement of facts. All three complainants were young; two of them were aged 11 and 12 years old. The third was 17 years old. The tender ages of the first two complainants belie their personal history of sexual conduct. Although this is an indication that they were not entirely innocent minds, it also shows how a chain of corruption is formed by a single act of corruption; and that is what makes the corrupting influence reprehensible. I take cognisance of the fact that the accused might not be the first person to corrupt the two younger complainants. According to the first complainant, it was the third complainant who led him into this kind of activity.

4 The fact that the accused had not been previously charged has been taken into account although in cases where, as in this case, there are other charges that are being taken into account for purposes of sentencing, and those charges cover different occasions, then the fact that he had no antecedents is of lesser value in mitigation. It only meant that he had not previously been charged and not that he had hitherto not engaged in criminal activity.

5 The facts of this case are highly unusual, and quite distinctive. The absence of precedent cases involving the conviction of a sodomised person adds to the unusual circumstances of this case. In sentencing the accused, it is also important to determine the punishment by taking the totality of the sentences into account. I therefore sentenced the accused to:

- (a) three years' imprisonment for the 1st charge,
- (b) three years' imprisonment for the 9th charge,
- (c) nine months' imprisonment for the 12th charge, and
- (d) nine months' imprisonment for the 13th charge.

Sentences for the 1st and 9th charges are concurrent but consecutive to the 12th and 13th charges which are to be served concurrently, making a total of three years nine months for the offences.