

Public Prosecutor v BMD
[2013] SGHC 235

Case Number : Criminal Case No 5 of 2012
Decision Date : 06 November 2013
Tribunal/Court : High Court
Coram : Tay Yong Kwang J
Counsel Name(s) : Sellakumaran Sellamuthoo and Kavita Uthrapathy, DPPs (Attorney-General's Chambers) for the prosecution; S K Kumar (S K Kumar Law Practice LLP) for the accused.
Parties : Public Prosecutor — BMD

Criminal Law – Offences – Rape

6 November 2013

(Redacted)

Tay Yong Kwang J:

1 The accused, born in August 1973, is presently 40 years old. The alleged victim “S”, born in April 1991, is now 23 years old. S is the half-sister of the accused, having the same mother but different fathers.

2 The accused claimed trial to six charges. There were two charges (charges 1 and 6) of rape punishable under s 375(2) of the Penal Code (Cap 224, 2008 Rev Ed), two charges (charges 4 and 10) of digital-anal penetration (inserting two fingers into the anus), one charge (charge 8) of penile-anal penetration and one charge (charge 9) of fellatio, all punishable under s 376(3) of the Penal Code. All six charges concerned events occurring over two nights between 12 and 14 March 2010, when S was 18 years old, in the accused’s home in a flat in the public housing estate in York Hill (“the flat”). Six other charges were stood down at the start of the trial.

3 The trial was conducted under the new Criminal Procedure Code (Cap 68, 2012 Rev Ed) (“CPC”), which came into operation on 2 January 2011. The accused was found guilty at the conclusion of the trial and sentenced as follows (in terms of years of imprisonment and number of strokes of the cane):

- (a) Charge 1 - 15 years and 12 strokes
- (b) Charge 4 - 2 years and 3 strokes
- (c) Charge 6 - 15 years and 12 strokes
- (d) Charge 8 - 7 years and 6 strokes
- (e) Charge 9 - 7 years and 6 strokes
- (f) Charge 10 - 2 years and 3 strokes.

The imprisonment terms for charges 1 and 9 were ordered to run consecutively with effect from 16

March 2010, the date the accused was arrested and kept in custody, with all other imprisonment terms to run concurrently with the specified two. The total was therefore 22 years imprisonment. The accused would receive only 24 strokes of the cane, the maximum allowed by s 328 of the CPC.

4 With the above conviction, the remaining six charges which had been stood down were withdrawn by the prosecution under s 147(1) of the CPC. The accused was granted a discharge amounting to an acquittal in respect of these six charges.

The Prosecution's Case

5 S gave evidence *in camera* through a Malay interpreter. She testified that she did not consent to any of the sexual activities in the flat over the two days. She is now living with a relative and working at a fast food outlet.

6 S was assessed to possess an IQ score of 58 which placed her within the mild mental retardation range. She could not read or write despite having gone to school as she had difficulty learning. At one stage, she did not even know how to use a mobile phone.

7 After S' mother passed away in 2006, S lived with R, her half-brother, and his wife in their home in the public housing estate in Teban Gardens Road. R and S have the same mother but different fathers. R and the accused are biological brothers (with the accused being older), having the same set of parents.

8 R's wife is a manager in a fast food restaurant in town. She got S a job as a counter staff in the same restaurant. On Friday 12 March 2010, S informed R's wife that she wanted to quit her job. R's wife was unhappy about S' decision and her discussion with her husband over this matter ended up with the spouses quarrelling.

9 R felt that he could not discipline S. He told S that he was going to send her to stay with the accused because he believed that his elder brother was a stern man who would be able to make S listen to him. R did not have regular contact with the accused and had to obtain his telephone number from their uncle.

10 He spoke to the accused and asked if he could bring S to stay with him. The accused agreed and gave R his address in York Hill. R then told S to pack up her clothes. She brought along her EZ Link card (with about \$20 in it), her Automated Teller Machine ("ATM") card and identity card. He then brought S on his motorcycle to the flat that same day (*i.e.* 12 March 2010). R told the accused that S was going back to her old ways and asked him to look after her for two weeks or so. The accused replied that he would take care of S and he would not need two weeks to change her. R then left, leaving S in the flat.

11 The accused lived with his wife and her then two year old son (the offspring of her earlier relationship with another man) in the flat. His wife, who had a low or below average IQ, was born in 1982 and was 28 years old at the time of the alleged incidents. The flat was a small one-room unit, with a L-shaped living room cum bedroom, a kitchen and a toilet. It was furnished sparingly. A sofa and a coffee table were placed in one corner facing the door to the flat. In another corner, a large mattress was placed on the floor next to a wall. A television set was on a console facing the mattress.

12 After R left the flat, the accused told his wife to leave the flat with the son. He questioned S about her previous pregnancy (which was terminated by abortion) and told her he was going to

punish her. He then rubbed her right thigh but she pushed his hand away. The accused called his wife to return with the son.

13 When the accused's wife and the son came back, he informed her that he wanted to punish S. His wife told him that what he wanted to do was up to him. The son was sleeping at the edge of the mattress. He then asked S to remove her pants. As she had been beaten up by the accused when she was younger, she obeyed him for fear of being assaulted again. After S had removed her pants and underwear, the accused instructed her to kneel and bend her body forward like a dog. He proceeded to examine her anus using a cigarette lighter, taking pictures of the moles in that region. He showed the pictures to S, telling her that the moles signified that she had had a lot of men.

14 When S started to dress up, the accused ordered her to take off all her clothes. He then asked her to lie down on the mattress. He removed his clothes and proceeded to have sexual intercourse with S. She tried to push him away but could not. He then stopped and smoked a cigarette. The accused's wife merely looked on. After that, the accused instructed his wife to lick S' private parts and she complied. He then told S to turn around and bend forward like a dog. When she did so, he inserted his fingers into her anus. After that, he made her lie down and proceeded to have sexual intercourse with her again until sometime in the morning.

15 When S showered in the morning of Saturday 13 March 2010, she felt pain when the water came into contact with her vagina and her anus. The accused was eating his breakfast. After she finished showering, she sat next to him. He told her to help his wife with the housework and then left the flat to go to his car polishing business at a petrol kiosk. S asked the wife why the accused did those things to S. The wife replied that she was afraid of the accused as he had beaten her up before. S then asked the wife to switch on the karaoke set so that S could relieve her stress by singing.

16 At about 11am, S, the wife and the son went to an ATM to check whether S' salary had been credited into her account. It had not been credited. She used the wife's mobile phone to try to call R but he did not pick up the call. The wife thought that S was using her mobile phone to listen to songs. They returned to the flat. S said she could not run away as the wife was keeping an eye on her. The door of the flat was also locked and the key was held by the wife.

17 When the accused returned from work that evening, he gave S some money to buy bread. He quarrelled with his wife and hit her with a belt. S left the flat with the son to buy bread. When asked in court why she did not run away then, she retorted, "How to run away with the child?" She also did not want to leave the son downstairs.

18 Later, the accused told his wife to play an obscene film on the television set. He told S to watch the film. He then asked her to remove her clothes. Subsequently, he also told his wife to remove her clothes and proceeded to have sexual intercourse with his wife because he wanted to teach S about sex. After that, his wife taught S how to perform fellatio on the accused. S then took the accused's penis in her mouth out of fear. The accused had told S to keep quiet and she did not know what to do or to say. His wife also taught S how to kiss the accused. She was instructed by him to lick S' breast and as she was doing so, the accused proceeded to have sexual intercourse with S. Subsequently, he pushed S to bend forward like a dog and inserted his fingers into her anus. He then inserted his penis into her anus. After that, he turned her on her back and had sexual intercourse with her.

19 In the morning of Sunday 14 March 2010, when S was showering, she felt pain and some blood at her anus. She put on a sanitary pad. When she sat next to the accused, he apologised to her but

she kept quiet. He then left for work.

20 The wife and S brought the son to a tuition centre and then returned to the flat. S lied to the wife that she had religious class every Sunday. When the wife messaged the accused about this, he refused to let S attend the class. S told the wife she wanted to go downstairs to relieve her stress. The wife opened the gate for her and asked her to wait for her at the playground. S brought the wife's mobile phone with her as she wanted to listen to songs. She also brought along her EZ Link card, her ATM card and her identity card but did not take any money from the flat. She decided to run away.

21 S went to Outram Park and called a female neighbour living in the Teban Gardens housing estate who had befriended her some time earlier. The neighbour asked her husband to return the call. S then informed him in Malay that she had been raped, using the word "rogol". He told her to meet him at a block of flats near his home. The male neighbour confirmed that S said "rogol" but his wife believed S used the Malay word "main", meaning play.

22 When they met, S told him about the rape. He noticed that she had some difficulty walking properly. As a man, he did not want to check her body. He then brought her to R's flat and told her to repeat to R's wife her allegations about the rape. R's wife did not believe S. She told S to wait for R to return home. S was angry with her for disbelieving her and so when she went into the toilet, S decided to run away.

23 S left for Paya Lebar to meet Sam, a man from Sabah whom she had known for more than a year, and told him about the rape, hoping he could help her. Instead, Sam asked her for sex. S was angry and did not accede to his request. Sam then passed her \$10 for her to buy food. She used it to top up her EZ Link card.

24 At about 7pm that day, S returned to Teban Gardens, hoping to meet R. When she was at the nearby reservoir, she saw the accused and his wife from a distance. She did not know what they were doing there and therefore hid from them. It turned out that they were there to meet R and a relative at a coffee shop nearby.

25 An Indian man approached S who was crying. She informed him that she had problems with her family. He invited her to have a meal nearby. After that, they returned to the reservoir. She had no plans at that time and suggested to him that they go to a hotel in Pasir Panjang as she wanted to have a place to rest in. S had been to that hotel before with a former boyfriend.

26 At the hotel, S wanted to relax but the Indian man asked her for sex. She did not know what to do. Assuming they were "boyfriend-girlfriend", she allowed him to have unprotected intercourse with her, once in the vagina and once in her anus. She felt pain in her anus but did not know what to do. They slept there for the night and she left the hotel the next morning (Monday 15 March 2010) to return to R's flat. She has since lost contact with that Indian man and the police was not able to trace him.

27 At Teban Gardens, S noticed that R's motorcycle was not around. She therefore waited on the ground floor for him to return home. She waited until about 2pm and then left to look for her step-father in the West Coast area. Her step-father was working. His flat-mate invited her into the flat and cooked some food for her. She had pain in her vagina and her anus and had difficulty moving about.

28 At about 5pm, her step-father returned home. She informed him that she had been raped (again using the Malay word "rogol") by her brother. He was shocked and told her to wait for him to take his

shower. After that, he wanted to bring S to R's flat so that he could speak to R. The flat-mate told him to report the matter to the police but the step-father wanted to speak to R first. The step-father supported her as she walked as she was suffering from pain in her vagina and her anus. After they left the flat, the flat-mate felt uneasy as he was worried about the step-father and S. He called the police anyway.

29 At the void deck downstairs, S felt giddy and fainted. The step-father called for an ambulance. When S regained consciousness, she was already in the National University Hospital. The police was there. She told a doctor in English that she had been raped by her brother. She did not mention anything about the Indian man and the hotel in Pasir Panjang. She was still feeling pain when a doctor tried to examine her vagina.

30 S reiterated that she did not agree to any of the sexual acts with the accused. Although they had little contact with each other, she has been afraid of him since she was a young girl. The accused had hit her head with an ash tray and beaten her up when she was much younger.

31 Under cross-examination, S agreed that she had an abortion in 2009. At that time, she had quarrelled with R and therefore ran away from his flat. She stayed with Kenny, a Malaysian, and had vaginal and anal sex with him. She became pregnant as a result. It was only in December 2010, when the investigating officer told S that the sperm found in her belonged to someone other than the accused, that S first mentioned the Indian man and the hotel. She did not know why she was afraid to tell others about her sexual relationships with men. She was afraid that they would scold her or disbelieve her words. She had education up to Primary 6 level but could only think about simple things. Other things would stress her out. S disagreed with defence counsel's suggestion that there was no incident of her having sex with an Indian man.

32 S agreed that the accused liked to drink beer. However, she disagreed that he went to sleep immediately after drinking beer or that he was too drunk to have sex with her.

33 The accused's wife testified in Malay. She married the accused in March 2007. She said that her husband had to drink alcohol because of his illness and because he did not want to return to drugs. She claimed that the accused, she and the son were sleeping on the mattress while S slept on the sofa. No sexual activity took place between the accused and S in the flat between 12 and 14 March 2010. The pornographic movie that she and her husband were watching came from S' bag. After that, the accused and his wife had sex and they then slept. S did not watch the movie with them.

34 The accused's wife also said that she had a stomach ache during the night of Saturday 13 March 2010. She spent some time in the toilet and when she came out, she saw S sitting astride the accused who was drunk and asleep. S was clothed while the accused was sleeping without his shirt. She was angry. She pushed S and threw an ash tray, which was on the floor near the mattress, at the accused and he fainted. She asked S how she could be doing that to her brother and S replied, "Yes, sis, I understand". S then returned to the sofa and slept there. The accused's wife explained that S was merely sitting on top of her husband and was not having sex with him although she believed that was what she wanted.

35 The accused's wife asserted that S had taken her mobile phone and \$50 from a piggy bank which was on the television console when S left the flat in the morning of Sunday 14 March 2010. The money was meant for purchasing household items. That night, the accused and his wife went to meet R at a coffee shop in Teban Gardens. Two days later, the police came to arrest the accused, handcuffing him in front of the son.

36 The prosecution then sought to cross-examine its own witness because the accused's wife had made earlier inconsistent statements to the police. Three statements (dated 16, 17 and 18 March 2010 respectively) (marked as P 25 to 27) were tendered for this purpose without objection from defence counsel. The statements indicated that she spoke in Malay during the recording and that her words were then translated into English by the Malay investigating officer. She claimed that the investigating officer threatened her by saying loudly that if she did not cooperate with the police and sign the statements, the authorities would take away her son and she would have to go to prison. The officer also banged his hand on the table. She was in fear. Her son was playing in the office area during the recording of the statements. She spoke in Malay but the officer spoke in English. She could understand only a little English. She said she was not a smart person. The contents of the statements did not come from her. At this stage of the trial, she suddenly became hysterical. She cried, gesticulated and shouted in Malay that the accused was innocent and was framed by his siblings. She also walked away from the witness stand.

37 She was given a short break and after she had calmed down, she testified that the threats were made at each recording session. She was very confused by the threats. She added that life was very hard for her and her son without the accused but disagreed that she was lying in court in order to set him free.

38 The accused's wife was asked by the court why she threw the ash tray at her husband if he was drunk and sleeping. She replied that she did it to stop him but then added that he was not doing anything. She then claimed that it could be that she threw it wrongly towards the accused as she was angry at that time and did the throwing without thinking.

The objections on the ground of marital communications

39 After initially not objecting to the admission of the three statements by the accused's wife for the purpose of cross-examination, defence counsel subsequently raised the objection that all or parts of the statements were inadmissible as they were marital communications within the meaning of s 124 of the Evidence Act (Cap 97, 1997 Rev Ed) and the accused was not consenting to their disclosure. The said s 124 provides:

No person who is or has been married shall be compelled to disclose any communication made to him during marriage by any person to whom he is or has been married; nor shall he be permitted to disclose any such communication unless the person who made it or his representative in interest consents, except in suits between married persons or proceedings in which one married person is prosecuted for any crime committed against the other.

40 After hearing the parties on this issue, I ruled that all marital communications between the accused and his wife would be excluded from the evidence. In my view, it was not an issue of whether the evidence would be prejudicial. Instead, the law provided a blanket prohibition against marital communications being admitted in evidence without the consent of the other spouse in order to preserve the sanctity of such communications between husband and wife. I also ruled that acts which flowed immediately as a consequence of such communications would likewise be excluded as they would invite the inevitable question, "Why did you do that?", thereby leading to indirect disclosure of the marital communication. However, acts done by third parties or observations made by the accused's wife would not be excluded. Things said between spouses would also not be excluded if they were uttered with the intention that they be heard by others or with the knowledge that they could be heard by others openly. If a third party eavesdropped on spousal communications when he is not supposed to be listening to the conversation, he is not permitted to disclose the communications that he overheard surreptitiously.

41 With these broad principles in mind, I directed the parties to expunge the portions of the three statements which fell within the prohibition. The cross-examination in court relating to such expunged portions would likewise be excluded from the record. The statements were redacted accordingly.

The redacted statements

42 The accused's wife's redacted statements showed nevertheless that there were various sexual activities between the accused and his wife and between the accused and S between the night of 12 March 2010 and the early morning hours of 14 March 2010. It was clear from the statements that S was not a willing participant in the sexual activities as she was scolded frequently and slapped by the accused and sometimes even held down on the mattress by the accused's wife on the accused's instructions. There was specific mention of various instances of penile-vaginal penetration, painful penile-anal penetration against S and painful digital-anal penetration against S by both the accused and his wife. The accused also forced S to perform fellatio on him.

43 When S cried during and after the sexual acts, the accused told her to stop crying as his actions were punishment for S for having brought shame to the family. The accused's wife also mentioned in her statements that she complied with her husband's instructions as she was afraid of being beaten up by him. He was a hot-tempered man who had beaten her up before. S was similarly afraid of the accused. S was not close to the accused. The last time that the accused met S was during the Hari Raya festivities in 2009.

44 The other portions of the statements were in general agreement with the testimony given by S. The following questions by the recording officer and the answers given by the accused's wife appeared towards the end of the statements:

Q Your husband had denied raping and engaged in anal sex with [S]. What do you have to say about this?

A I do not know what to say. I do no [sic] know why he denied.

Q Your husband said you had lied. He said that you did not see him having sex with [S]. What do you have to say about this?

A I know my husband well. It is up to him to say what he want. I saw what he did. Anyway he is still my husband.

The case for the accused

45 The accused testified in the Malay language. He did not call any other witnesses. He explained that from the first time he was asked by the police after his arrest about the alleged incidents, he had denied having done anything against S.

46 The accused said that he agreed to take S into his small flat for only two or three days. Over the two nights that she spent in the flat, she slept on the sofa while he, his wife and the son slept together on the mattress. He was a workaholic who went to work every day.

47 When he returned home at night, he needed to consume alcohol before he could sleep. He would usually drink between one to four big cans of Baron's Beer, after which he would "knock out" and sleep. He did not do any of the acts alleged in the charges against him. He did not even touch S during the time she was staying in the flat. Her testimony against him was "all nonsense".

48 The accused explained that the rest of his family blamed him for their mother's death although he did not receive a single cent in inheritance. He was a drug addict at that time and had been in prison. He lost contact with his family after his release from prison. Before she passed away, his mother had told him to help R and his wife, to ensure that they would not get divorced. He helped R's wife (who is not Malay) convert to Islam. R used their late mother's words to plead with him and to persuade him to allow S to stay in his flat for a while.

49 The accused said that he told his wife he did not do the alleged acts and that she must tell the truth when she came to court. She did not understand or speak English and therefore could not have made the statements in question. The police had threatened to take away her son. The police also threatened her when she went to visit him while he was in remand. S and her friends also threatened his wife and had gone to the extent of staying in the flat. He had reported this to the police but nothing was done.

50 The accused is the oldest sibling in his family. Besides R, he has another brother. He found out that he had a half-sister in 2006 during Hari Raya. After that, the next time he met S was when R brought her to his flat in March 2010. He did not know about S' abortion in 2009 at that time. He slapped and scolded S only because she claimed that it was R who impregnated her when he asked about the father of the foetus.

51 On Sunday 14 March 2010, the accused called R because S had run away with his wife's mobile phone and the \$50 meant for groceries. When he met R and their relative at the coffee shop in Teban Gardens, he found out what S had alleged against him. There was a quarrel there because of this.

52 The accused further testified that he did not know that S was intellectually deficient as he had not lived with her before. He said she had had sex with other men but not with him. In his opinion, she was a liar.

53 Similarly, the psychiatrist, Dr Alvin Liew, who testified for the prosecution was also a liar and that was why the accused shouted at him and called him a liar in court. Dr Alvin Liew, who worked at the Institute of Mental Health, examined the accused on 25 March and 1 April 2010. In his psychiatric report dated 12 April 2010, the psychiatrist recorded that the accused "knew that rape was wrong hence he could not have raped the alleged victim. He added that even if he had sex with her, the alleged victim was a willing party to the act". The report also recorded the psychiatrist's interview with the accused's wife. It noted her account of the accused having penile-vaginal intercourse with S while holding her down and later inserting his finger into S' anus during the night of 12 March 2010. The accused's wife was also recorded as having said that on the night of 13 March 2010, after the accused had sex with his wife, he asked S to lie down but S shouted "No". The accused's wife was unsure whether the accused had sex with S that night.

54 The accused testified that he had asked for an interpreter but none was provided. He did not quite understand English and had problems answering in English. He went on to explain that he was not saying that Dr Alvin Liew was lying. Rather, it was the sentence attributed to him that was a lie. He added that he did not have sex with his wife on 12 March 2010. They had sex on 13 March 2010 because she would ask him for sex every Saturday. He gave in to her demands although he was exhausted from work. They had sex after watching a pornographic video. Then he drank more beer and "knocked out" or "blacked out".

55 The accused said he did not ask his wife to guard S and to prevent her from leaving the flat. He was angry with S because she had stolen his wife's mobile phone and money.

The decision of the Court

56 The defence of the accused was one of complete denial of any sexual acts committed against S. Three possible reasons were postulated as to why S had lied about the alleged offences:

- (a) S was instigated by R to make the false allegations as R would benefit from his and the accused's mother's estate;
- (b) S did not like the accused and was angry with him for beating her up; and
- (c) S wanted to get out of the accused's flat and not have to stay there.

The defence submitted that the burden of proving no bad motive on the part of S rested on the prosecution. It was also argued that there was a dearth of objective evidence on the alleged offences and that the medical evidence actually indicated that S had sex with another man and not the accused.

57 S was an unusual witness. She was obviously not intelligent and was rather ponderous in answering questions. She certainly did not strike me as a person capable of cooking up evil schemes to get people into trouble. It would be highly fanciful to imagine that she was somehow in collusion with R to saddle the accused with the heinous acts alleged in the charges. R would have to be extremely foolish to rely on a collaborator like her because I doubt very much that she would be able to act according to a script.

58 S had little cause to lie against the accused in such an egregious way. As acknowledged by the accused and his wife, they had hardly any contact with S before March 2010. Any beating by him was some time ago and there was no threat of further beating that would have prompted the alleged elaborate plan in March 2010 to put the accused away.

59 In court, she was visibly shaken whenever the accused shouted at her from the prisoners' dock, accusing her of lying. In spite of that, she appeared completely truthful in her testimony in court, recounting past relationships and sexual encounters in a candid manner.

60 It is true that she failed to disclose the incident with the unknown Indian man to anyone until she was informed about the scientific test results showing that the semen found in her was not the accused's but someone else's. However, there was no evidence that she tried to wriggle her way out of the non-disclosure. Her simplistic answer was that she was not able to say why she felt shy about telling others about this. She feared that her allegations about the accused would not be believed. In any case, that incident was undoubtedly a consensual one and was certainly not "rogol", unlike the incidents with the accused where she protested, resisted and was slapped, scolded and held down.

61 Her behaviour may be viewed as bizarre if she were someone of average intelligence. However, she was patently not. She had also undergone two nights of trauma and pain, had run away from the accused's flat, could not reach the person she was close to (R) and felt that R's wife did not believe her assertions of rape by her half-brother. She was a lost soul, wandering about looking for a place of refuge and someone to comfort her. She was tired and hungry by the time she met the Indian man at the reservoir. He provided her with a meal. She wanted a place to rest in but he wanted sex. In those highly unusual circumstances, this unusual person agreed to let him have his way with her despite her bodily pain and discomfort. The defence had suggested to her that this incident did not happen at all. I am convinced that it took place as described by S.

62 Despite the minor discrepancies in the accounts given by S to different people after the incidents in the accused's flat and her seemingly promiscuous behaviour, I had absolutely no doubt that she was telling the truth in court. The said incidents were real. It would be absurd to expect a female who had undergone such assaults to recall with exactitude the sequence and details of all the events. It could also be argued that S had many opportunities to run away from the flat and to seek help from others on 13 March 2010. However, as indicated earlier, the events must be viewed through her eyes and processed with her mind. She was thrust into a new place suddenly and made to live with people she hardly met. She was not someone who could think quickly and plan ahead.

63 The accused's wife was a person of low or below average IQ. However, her evidence in court was evasive and unclear. Her sudden and rather violent outburst in court showed that she was not someone who could be easily cowed and also demonstrated her actual capability in functioning at a higher level than what her IQ would suggest. She was also able to hold on to jobs in the past and could manage on her own in and out of home.

64 I found it very hard to believe that the police would force three completely false statements out of her by the alleged threats to take away her son. Why should the police support S' allegations against the accused? The recording officer informed the court that the accused's wife kept telling him that she was afraid of the accused and had to be assured that the accused was in custody and was advised to tell the truth. There was independent evidence that the accused was a hot-tempered man. I have also seen the accused demonstrate his fiery temper in court during the trial. As acknowledged by the accused, his wife did visit him in prison and obviously, they discussed this case. The wife also mentioned in court that life without the accused was hard for her and the son. He was the sole income-earner and had apparently supported them adequately while he was with them. The accused's wife must have realized before the trial that her testimony would be crucial for her husband as she was the only adult witness to whatever happened in the flat during those two nights in March 2010. If she succeeded in getting the accused acquitted, it would be of tremendous advantage to her and the son as he would be set free and be able to work to support them again.

65 For this purpose, she changed her testimony to favour the accused and to clear him of all wrongdoing against S. Clearly, she had great incentive to lie and I found that she did so. In fact, she made a Freudian slip about the ash tray throwing incident. She was obviously peeved at her husband having sex again with S and hence threw the ash tray at him. It would make no sense otherwise if he were really "knocked out" and it was S who was attempting to have sex with him.

66 It was incredible that Dr Alvin Liew would, like the police, falsely attribute statements about the sexual activities in the flat to the accused's wife in his report. The psychiatrist had no reason at all to support S' story or to help secure a wrongful conviction on the charges.

67 Her three statements to the police held the truth, not her altered testimony in court. I therefore substituted these statements as her evidence pursuant to s 147(3) of the Evidence Act.

68 The accused did not strike me as someone speaking the truth. He was evasive in his answers and frequently chose to target S' apparent promiscuity rather than to establish his version of the events. There was no evidence that an inheritance dispute in the family was brewing and that R would benefit if the accused were put away for a long period of time. The accused's allegations in [49] above about the threats and intimidation against his wife and home were strangely missing from his wife's testimony. In the face of the collective evidence against him, particularly the testimony of S and corroborated in material aspects by his wife's statements to the police and to the psychiatrist, I was left with no doubt that S spoke the truth while the accused did not. The prosecution has proved the charges against the accused beyond reasonable doubt. I therefore found the accused

guilty as charged and convicted him on all six charges.

The sentences

69 The punishment prescribed for rape is imprisonment for up to 20 years with discretionary fine or caning. The same punishment is provided for the other offences of sexual assault by penetration. The prosecution therefore submitted that there should be no difference in sentences for penile-vagina and for penile-anal penetration.

70 Where the charges of rape were concerned, the prosecution argued that this case involved "Category 2 rape" as defined in *PP v NF* [2006] 4 SLR(R) 849 (at [25] to [36]). The following matters were highlighted as aggravating factors in this case:

- (a) rape and sexual assault within the family;
- (b) abuse of trust and authority;
- (c) young and vulnerable victim;
- (d) repeated rapes and use of violence;
- (e) acts of perversion and gross indignities forced on the victim;
- (f) no condom used in the rapes;
- (g) the degree of emotional harm caused to the victim; and
- (h) the lack of remorse and the conduct of the accused during the trial.

Section 307(1) of the CPC stipulates that at least two imprisonment terms should run consecutively. The prosecution urged the court to order at least three imprisonment terms to run consecutively in view of the aggravating factors present here. The accused also has previous convictions for possession of a controlled drug and for consumption of a specified drug in 2001 and for criminal breach of trust in 2006.

71 In mitigation, the defence submitted that the accused's previous convictions had nothing to do with sexual offences and that they occurred some years ago. The accused had determined never to return to his drug habit and was working with pride in his car polishing business. The incidents were not planned. Instead, S came into his life suddenly. S was no stranger to sexual activities, having had an abortion in 2009 and having sex with a stranger on 14 March 2010 after she left the flat. Although S was a half-sister, there was little contact between her and the accused prior to March 2010. The accused's consumption of alcohol was his routine and it caused him to be less inhibited. The offences took place over a short period of time. His wife and the son will suffer hardship if the imprisonment is too lengthy. As the accused would receive the maximum number of strokes permissible under the law, the imprisonment term should be reduced correspondingly.

72 After taking into consideration the above submissions, I imposed the sentences set out at [3]. Contrary to the last submission made by the defence in [71] above, s 328(2) of the CPC provides:

Subject to any other written law, where an accused would but for subsection (1) have been sentenced to an aggregate sentence of caning which exceeds the specified limit, the court may impose a term of imprisonment of not more than 12 months in lieu of all such strokes which

exceed the specified limit.

“Specified limit” is defined in s 328(6) to be 24 strokes in the case of an adult and 10 strokes in the case of a juvenile. In view of the totality of the sentences, I did not think it necessary to invoke s 328(2) in this case. Similarly, two consecutive imprisonment terms should be adequate punishment for what the accused did to S over the two days.

73 Although the maximum punishment provided for each offence is the same, I think penile-vaginal penetration is the most heinous among the four categories of offences listed in the six charges. Fellatio and penile-anal penetration would be next in severity although fellatio would probably be more disgusting as it involves the victim’s mouth and semen could be ejaculated into the front end of the alimentary system. Digital-anal penetration would be the least severe of the penetration offences.

Copyright © Government of Singapore.