

Public Prosecutor v Sudarsanan Margasagayam
[2006] SGHC 170

Case Number : CC 19/2006
Decision Date : 25 September 2006
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Christopher Ong Siu Jin and Kevin Lim (Deputy Public Prosecutors) for the Prosecution; Surian Sidambaram and Harvindarjit Singh Bath (Surian & Partners) for the accused
Parties : Public Prosecutor — Sudarsanan Margasagayam

Evidence – Witnesses – Weight of testimony – Credibility of complainant and accused person – Whether complainant's testimony sufficient to establish Prosecution's case beyond reasonable doubt

25 September 2006

Judgment reserved.

Choo Han Teck J:

1 The accused is a 48-year-old former Indian national who had become a Singapore citizen in 1996. He has a Bachelor of Science degree in engineering as well as a Masters degree in Commerce, Banking and Marketing from the Madras University. His wife, Vasantha, is a Singapore citizen and was formerly a nurse at the Gleneagles Hospital. Prior to his job in Singapore, the accused worked as a building engineer. At the material time, June 2004, when the alleged offences were committed, he was working as a safety officer with a company called CA Associates drawing a salary of about \$3,500. His wife had stopped working by June 2004. He has a 20-year-old son and a nine-year-old daughter. The family lived together in a flat at Block 310 Woodlands Street 31, Singapore, during the material time. The flat has since been rented out. The accused is in remand and his wife is living with a friend. The accused was tried before me on five charges of rape under s 376(2)(a) of the Penal Code (Cap 224, 1985 Rev Ed). The complainant was then a 35-year-old Indian national who had come to work as a domestic maid in Singapore.

2 On 28 May 2004 Vasantha went to India for medical treatment, and was scheduled to return to Singapore on 13 June 2004. She brought her daughter with her. Her son was already there on holiday after his examinations. The accused had planned to travel with them but cancelled his trip on account of work. On 31 May 2004 the accused contacted one Sulaikah d/o M A Rahman ("Sulaikah") of a maid agency. According to Sulaikah, the accused said that he had a seven-year-old daughter and a wife in ill health. He wanted to know if there was a maid available. He needed her to help send his daughter to school. Sulaikah testified that he gave her the impression that his wife and children were in Singapore. She claimed that she did not provide maids to singles and bachelors, and when asked further by the Deputy Public Prosecutor ("DPP"), she said that she would not have dealt with the accused if she knew that the accused was alone at home. At that time Sulaikah had three maids for employment. One was Selvi, who was 41 years old. The second was Kalavathy, who was about 25 years old. The third maid was the complainant. Sulaikah had initially recommended Selvi, but when the accused arrived at Sulaikah's flat about 7.00pm on 1 June 2004, he asked to see the complainant whom Sulaikah had mentioned to him. The accused eventually preferred to take the complainant. He paid a deposit of \$100 and gave a photocopy of his identity card to Sulaikah and then left with the complainant for home. Sulaikah testified that in the course of her conversation with the accused on

31 May and 1 June 2004, the accused made references to his wife's acceptance of the maid, implying that his wife was in Singapore and was jointly concerned with employing the maid. Thereafter, Sulaikah heard nothing from either the complainant or the accused until the evening of 6 June 2004 when the accused telephoned her to say that the complainant could work, but he was not pleased that she kept calling one "Kumar" who was the Indian agent who had introduced the complainant to Sulaikah. The accused also said that his wife did not like the complainant because "she talked back". Sulaikah then recommended Selvi to the accused again, but he preferred to take Kalavathy. The accused brought the complainant back to Sulaikah on 7 June 2004 and took Kalavathy with him.

3 After the accused had left with Kalavathy, Sulaikah scolded the complainant for about five minutes for calling Kumar when she (Sulaikah) was her agent. Sulaikah then settled down to dinner prepared by her maid Priyani, and was also on the telephone talking to her friend, Maha, about the complainant. In the meantime, the complainant went into a room near the kitchen with Selvi and Priyani. Under cross-examination, Sulaikah said that in the midst of her dinner and conversation with Maha, the three maids ran out all of a sudden, screaming. They told her that the accused was alone in the house, and that there were no wife and children in the house. The complainant then told Sulaikah that she had been raped by the accused. Sulaikah was alarmed, and telephoned her friend, Shaikh Ikhlague Gulam Dastagir ("Ikhlague"), and asked him to take her to the accused's flat to rescue Kalavathy. They arrived at the flat and Ikhlague took control of much of the proceedings there. He knocked on the door and met the accused when the accused opened the door. Sulaikah ran in and hugged Kalavathy, a scene dramatically described by Ikhlague as if Kalavathy "saw God, like she saw the Saviour". He then turned to the accused and said, "You are in deep trouble my friend. You raped a maid." He also said, "You are threatening the women there. I am a man, now can you threaten me?" He said that the accused appeared shaken up and he (the accused) said, "No, no, sir, no, no, sir, no, no, sir." The accused invited Ikhlague to sit down but he declined, saying, "No, I am not sitting here. I've just come to take the maid, and we are going back. And we are going to the police." He, however, denied the suggestion of defence counsel, Mr Surian, that he had shouted or threatened the accused. He said that his anger abated when he saw that the accused was "so shaken up". Later that evening Sulaikah brought the complainant to the Neighbourhood Police Post and reported the accused for rape. The first information report was recorded by one Senior Staff Sergeant Tan Kok Wah ("SSSgt Tan") in the following words: "I was rape[d] by my prospective employer: Sudarsanan Margasagayam at his house on 7/6/04 @ 12 am." Sulaikah acted as the interpreter for SSSgt Tan and the complainant. SSSgt Tan testified that he recorded faithfully what was told to him and he read it back to the complainant before she made some corrections and then signed it. The word "prospective" and "on 7/6/04 @ 12 am" were added on after the typed copy was read to her. Eventually, the case was transferred to the Serious Sexual Crimes Branch of the Criminal Investigation Department, and the accused was charged on 27 March 2006 for the offences in question. In the meantime, from December 2004 to date, the complainant has been staying in the Good Shepherd Centre pending her testimony at trial.

4 The alleged offences took place two years ago and there was virtually no forensic evidence except for the medical reports on the complainant as well as the accused. I shall revert to these shortly. The Prosecution's principal evidence was the testimony of the complainant. The principal defence evidence was the testimony of the accused. The following was the complainant's version. The accused took her to his flat on 1 June 2004 about 8.30pm. When they were in the flat he asked her to cook. She finished dinner about 9.30pm. She then went to bed in the room next to the master bedroom. The accused and his wife said that that was their daughter's room but the daughter, then seven, was actually sleeping in their room, on the smaller of two beds there. The complainant said that a short while later, the accused entered her room and carried her bodily to his room. There he threw her on the bigger of the two beds and then removed her nightdress, and after that, he removed her underwear. A hook from her brassiere came off, and one of the sleeves of her nightdress

was torn in the process. Then he raped her. She said the act was painful and she was menstruating at the time. After it was over and he had ejaculated in her, he gave her some tissue paper to wipe herself, and when she said that she wanted to go out, he told her that she could use the bathroom of that bedroom. After she had cleaned herself, he told her not to fear because he "won't do anything to [her]" and asked her to sleep on his bed. She testified that the accused raped her a total of five times that night. By that she meant the time in between the late hours of Tuesday, 1 June 2004, and the early hours of Wednesday, 2 June 2004.

5 The complainant said that on the second day, 2 June 2004, the accused bought mutton and vegetables and asked her to cook. The accused denied that he bought mutton because he was a vegetarian from childhood. In the course of the trial, DPP Christopher Ong attempted to discredit this evidence of the accused. First, it was shown to him that the prison menu for the day of the trial contained fish. It was, however, not disputed that the fish item was not ostensibly a fish and more like "fish cake" as the accused described. He said that he had cut up the "fish/fish cake" as he suspected that it might be meat. He tasted a bit and threw the rest into the toilet bowl. He then got up and prayed for forgiveness for eating meat. DPP Ong called Chief Warder Low Khye Kong ("CW Low") in rebuttal. CW Low testified that he had watched a video recording of the lockup during the lunch break and he did not see the accused throwing anything into the toilet bowl. He said that the food tray was almost empty and only had some rice remaining when it was collected after the meal. He was not sure if the accused had stood up in the midst of the meal, but certainly was not able to say that the accused was praying because the video recording did not include sound recording. The accused's version of the second day's events was that he had left the house at 11.00am and did not return till 11.00pm. In that sense, he need not have said that he was a vegetarian just to rebut the complainant's evidence that he bought mutton and was back in the flat as she claimed. It was either true that he was a vegetarian or just an embellishment. The evidence itself – whether he was a vegetarian – was unimportant. But his credibility was important, and I shall consider this issue in the context of his overall evidence. Reverting to 2 June 2004, the complainant said that the accused went to her room and asked her to go to his. She obeyed because he had told her that he would not do anything to her, and also out of fear that he might rape her as he did the previous night if she did not obey. As it turned out, she claimed that he did rape her after she went to his room. After it was over, he went to wash himself and told her to do likewise. Then he told her to sleep with him on the same bed, saying that he would not do anything to her. She obeyed although she said that she was not able to sleep well.

6 On the third day, Thursday 3 June 2004, the accused told the complainant to make tea in the morning and thereafter gave her instructions for the household chores to be done. He unplugged the telephone and kept it locked in the master bedroom when he left for work. He also told her to go to his daughter's bedroom and, according to her initial testimony, locked her in that room. It appeared that the door to that room could be unlocked from the inside simply by turning the doorknob. In any event, when pressed further, she testified that she did not know whether he had locked the door or not. She did not try to open the door because she was afraid that if she had gone to the police they might have arrested her and "a case would be filed against [her]" because she was taken to the accused's flat without a work permit. She said that she did not know that the police would give her protection. The accused returned in the evening and opened the bedroom door for her. She cooked. He then went to the temple and returned about 10.00pm. It was not clear how long she took to cook and what time he left for the temple but she testified that before he left for the temple he kept her in the daughter's room again until he returned. She was sleeping when he returned. He asked her to go to his room. She asked whether he would do the same thing he did the previous nights. He said he would not. When asked by the DPP if she believed him, her answer was, "What is there for me to believe him? He never behaved – behaved in such a manner for me to believe him." I understood this to mean that she did not believe him. She then went on to say that the accused did not rape her

that night. She said that she was in the accused's flat from 1 June to 7 June 2004, and in that time, the accused raped her on five of the six nights that she was there. Thursday was the day she was not raped. The complainant had initially told the investigating officer Station Inspector Suzana Sajari that the accused did not rape her on Friday, 4 June 2004. Consequently, the Prosecution applied to amend the third charge to fit the complainant's evidence in court.

7 She testified that on her fourth day there, Friday, 4 June 2004, she got up and made tea. Then she swept the floor. When the accused left for work he kept her in the daughter's room. She did not try to leave that room when he was gone. He returned in the evening. She had her dinner after the accused had eaten. That night, he asked her to go to his bedroom again. She obeyed, and she was raped again. She testified that she asked him not to. She said that she shouted and cried, but he paid no heed to her.

8 The complainant testified that the accused went to work as usual on the fifth day, Saturday, 5 June 2004, and returned about 6.00pm. When he got home, he told her that he was going to the temple and then left. He returned about an hour later with prayer items and told her to place them at the altar. She went to the daughter's room and he was working at the computer in the living room. Later on, he went to her room and asked her to go to his bedroom. She was frightened, she said, but she obeyed, and he raped her again that night.

9 On the sixth day, Sunday, 6 June 2004, the accused did not go to work. He was home and gave the complainant instructions on household chores such as sweeping and mopping the floor and cleaning the windows and toilets. She testified that sometime that morning she had given him a telephone number in India and asked him to ring that number for her. She told him that she wanted to go back. He dialled but hung up and said that there was no connection. She then gave the accused Kumar's telephone number and told him that Kumar was at "Tekka". She asked him to ring Kumar and he did and she spoke to him (Kumar). She told Kumar that she had problems at Sulaikah's place, and at the accused's place as well. She said that Kumar merely said, "I will ask and I will tell", which appeared to mean that he will find out more and revert to her. The complainant also told Kumar "Come over, and come over and see my body." Before she could hear his response the accused "took the phone away." She did not know whether the accused spoke to Kumar. She also explained upon questioning by DPP Ong, that she could not bring herself to tell Kumar that the accused had raped her. She said that she wanted him to take her back to India. That night, the accused called her to his room and she obeyed because she thought that otherwise he would "force [her] and carry [her] there". Shortly after that the accused raped her. He then cleaned himself and went to bed, but he woke up at 3.00am and raped her a second time that night (early morning of Monday).

10 On the evening of Monday, 7 June 2004, the accused brought the complainant back to Sulaikah's flat and after handing her over, he took another maid, Kalavathy, back with him. The complainant said that Kalavathy asked her why she was sent back and why she (Kalavathy) was taking her place. She was not able to answer Kalavathy because Sulaikah had called and she went to Sulaikah. The complainant then went into the room near the kitchen with the other maids. Sulaikah was soon settling down to her dinner, but was also scolding her (the complainant) for not being capable of looking after children, which was what she said the accused had said when he returned her to Sulaikah. Sulaikah's account, it will be recalled, was slightly different. The accused had complained only because the complainant was calling Kumar, and also that she liked to talk back.

11 The account of the accused was a shorter one because he denied that he had raped the complainant. He admitted, however, that on the night of Friday, 4 June 2004, she gave him a gratuitous massage of his back and shoulders and he became aroused when her face went close to his. She then led him to his bedroom and thereafter they had consensual sex. He testified that he

asked her to put some talcum powder before they went to bed. He claimed that that was the only time he had sex with her. He also said that he did not achieve a full erection, but nonetheless, managed to ejaculate. Thereafter, he was guilt-ridden, and that was part of the reason he decided to send her back to Sulaikah. Since his defence was one of denial, it is best to consider it against the events outside of the alleged and admitted sexual episodes. I begin with the incidents that differed with the versions of Sulaikah, Ikhlague, or the complainant. The first concerned the reason he gave to Sulaikah for wanting a maid, and whether he wanted a part-time or full-time one. The second concerned the reason he gave for sending the complainant back to her. These two events may be conveniently considered together although they took place eight days apart (from 31 May to 7 June 2004). He said that he spoke to Sulaikah on 31 May 2004 and told her that he wanted a part-time maid to clean his house and cook his meals. He told her that he had a wife and two children and that his wife was in India for surgery. He testified that it was Sulaikah who suggested that he take a full-time maid as it would be good for his wife to have help when she returned. When the accused sent the complainant back, Sulaikah asked what the problem with her was, and he said to Sulaikah that he had already told her over the telephone. However, she insisted that he said it in the complainant's presence. He then repeated that he found her work to be all right, but that her attitude was bad. She would talk back and was always asking for Kumar. This issue was only relevant in respect of the general credibility of Sulaikah and the accused. It was understandable that Sulaikah would not provide maids to single persons, especially to bachelors, but it was not made clear why she would refuse the accused just because his wife, Vasantha, was away for surgery, which, as it was proved, was indeed the case. Vasantha testified that she was away for surgery, and was not challenged. In any event, whether she was away for surgery or not, the incontrovertible fact was that the accused was married with two children at the material time and he was living alone for a brief period. Sulaikah might have a good reason to refuse an applicant employer even under such circumstances, but she did not say so. What was more important was that there was no evidence that the accused felt that unless he lied to Sulaikah that his wife was staying with him he would not obtain a maid.

12 The accused's account of the telephone calls he made to the complainant's husband and Kumar was as follows. On 2 June 2004, which was a holiday in Singapore, he made a call to the complainant's husband at her request. He had to make two calls because the recipient of the first call asked the accused to call again in ten minutes. The accused did so and the complainant spoke to the person at the other end but he did not listen to the conversation. He testified that the complainant told him that the telephone in India was in a shop, and when a call was made to her husband, they would have to look for him, and that was why she had to ring back ten minutes later. One might naturally believe that a story like that was more likely to be true because of the unusual detail. However, since the accused was himself formerly from India, it might be a detail that he was personally aware of. It was also possible that he had embellished the story as he did in respect of the fish cake incident in the lockup, or the story that his wife was in Singapore when he went to Sulaikah for a maid. The Prosecution's submission that these were evidence of falsehood and deceit on the part of the accused was denied and challenged by Mr Surian. I shall revert to these issues shortly.

13 In respect of the call to Kumar, the accused testified that the complainant asked him to call Kumar for her on 3 June 2004 when he was about to leave for work. He said that using the residential landline, he called Kumar and then handed the telephone to the complainant. He saw that she was speaking but did not hear what she said. She told him that the person at the other end told her that Kumar was not in, and that he would be arriving in Singapore only later that evening. It will be recalled that the complainant's version was that she asked the accused to call her husband and Kumar on 6 June 2004 (Sunday) but only managed to speak briefly with Kumar, complaining about some unspecified "problems" she had at Sulaikah's and the accused person's homes. The accused took away the telephone from her after that. The accused testified that later that evening he called Kumar again. This time he (the accused) managed to speak to Kumar. He enquired how often the

latter would come to Singapore, and then told him of the complainant's problems with Sulaikah. He invited Kumar to come and see the complainant that night but Kumar said that he was not able to, and that he could only come the next morning.

14 The accused testified that he had consensual sex with the complainant, but only once, on the evening of 4 June 2004. The full context of his version was as follows. He had forgotten to lock his bedroom the previous day when he went to work and when he returned he thought that the coins he kept in a jar in his room were somewhat fewer, so he asked the complainant if she had done any work in the room and if she did, whether she replaced things in their right places after that. She enquired why he asked, and asked him in turn, "Why? Is something missing?" That evening when the accused had gone to bed, he heard knocking on his bedroom door about midnight but he was too tired and sleepy to respond. However, he asked the complainant in the morning if she had knocked on his door. She said that she only wanted to bring him some water. He chided her for disturbing him thus. Instead of appearing contrite, the complainant giggled and that made the accused even angrier but he seemed to have let the matter rest there and went off to work. He returned home after work about 7.30pm and left shortly after that for the temple. He returned from the temple about 9.00pm. He watched television for a while with the complainant. About an hour or more later he asked her to go to bed. As she was moving to her room, she asked him if he was still angry with her. He told her to respect him when he was trying to teach her proper conduct, and not giggle as she did. She put her hand on his shoulder and said that if she were to touch him his anger would subside. She then started to rub him and leaned over with her face close to his. Eventually, he became aroused and she pulled him by his hand towards the bedroom and said that she would massage him. They then had consensual sex. The accused gave a more detailed account of the tryst but since the complainant and the accused had denied each other's account entirely, there was, therefore, no divergence in the details. He testified that the complainant had not mentioned that she was menstruating at that time. He said that because he had ejaculated inside the complainant he was afraid that she might become pregnant, and that was when she told him she had been ligated. The sexual act took about four to five minutes and after that he went flaccid. According to the accused, he then fell asleep but was awakened by the complainant to have intercourse a second time.

15 The accused person's story, from the point of asking the complainant if she had moved things in his room to the one instance he admitted to having sexual intercourse with the complainant, was a matter of his word against hers. He narrated the events as he saw them without comment, and neither did his counsel in his closing submission. It was a plausible story. He continued the narration of the post-coital events as follows. Although he told her to return to her room, she refused and spent the rest of the night on his bed. When he got up in the morning, the complainant had already prepared breakfast, and she asked him if he could see Kumar that day. The accused had maintained that the complainant kept asking him to persuade Kumar to get her out of Sulaikah's control. The accused met Kumar at a coffee shop near the Veerama Kaliamma Temple in Serangoon Road. Kumar told the accused that he would speak to Sulaikah about the complainant, and on that note, the accused returned home for a while before going to the temple. That night he did not sleep with the complainant as he felt guilty about what he and the complainant did the previous night.

16 The accused testified that on Sunday, 6 June 2004, he left his flat after breakfast to visit a friend who had since left Singapore. The accused returned to his flat at 1.30pm and had his lunch, after which he retired to his room for a nap. He was awakened about 4.00pm and saw the complainant leaving his room in a hurry. He asked what she was doing there and she said that she was mopping the floor, but she had neither a pail nor a mop in her hand, so he did not believe her. By this time, the accused had decided to send the complainant back to Sulaikah. He telephoned Sulaikah and said that he was not comfortable with the complainant as she was constantly calling Kumar, so he was sending the complainant back to her the next day. That was what he did in the evening of

7 June 2004, and by the end of that evening, the complainant went to the police leading to the five charges against him. The allegation in the first charge was that he had raped the complainant between 1 June and 2 June 2004, the allegation in the second charge was that he had raped her between 2 June and 3 June 2004, the allegation in the third charge was that he had raped the complainant between 3 June and 5 June 2004, the allegation in the fourth charge was that he had raped the complainant between 5 June 2004 and 6 June 2004, and the allegation in the fifth charge was that he had raped the complainant between 6 June 2004 and 7 June 2004. The DPP informed the court that although the complainant's evidence was that the accused raped her five times on the night of the first charge, and twice on the night of the fifth charge, the Prosecution had exercised its discretion to proceed on only one rape for each of those nights. The charges were laid in respect of s 376(2)(a) of the Penal Code because the complainant had alleged the accused had caused her hurt in the course of the rape in "using [his] legs and hands to pin her forcefully to the bed".

17 The Prosecution has the burden of proving its case by the totality of the evidence that is before the court at the end of the trial if the charges against the accused are to succeed. In the present case, there were no eyewitnesses to the alleged offences, but the law does not require an eyewitness to help prove a crime; it is enough if the court accepts the evidence of the complainant as having sufficiently proved the charge against the accused beyond reasonable doubt. In such a case, the court is not bound to look for a pristine and inerrant testimony of the complainant; it will be sufficient if the court finds that the complainant's testimony, in spite of errors and omissions, and perhaps, even some degree of untruthfulness, was in its entirety and in the context of all the rest of the evidence, so persuasive that in so far as the offences were concerned, the court could entertain no reasonable doubt. The conduct of an accused and his evidence are, in that sense, secondary to the evidence of the Prosecution. The accused person's performance as a witness is an indication of his character and personality as well as his culpability. His fortunes at trial may therefore depend on whether he had performed admirably or disastrously. Between the exemplary witness and the incorrigible liar is a vast field of witnesses with varying degrees of imperfect testimonies. The complainant and the accused were the principal witnesses in the present prosecution. In addition, the Prosecution adduced evidence from Sulaikah, Ikhlague, and Dr Ng Kok Kit. Dr Ng Kok Kit was the urologist who examined the accused on 24 May 2006, and reported that the accused was unable to achieve full erection and was tested to have a low level of testosterone.

18 In cases involving personal assaults, such as the present, the evidence of the complainant and the accused person are most material because ultimately, taking into account the burden of proof and other evidence such as forensic evidence, the question is whether their evidence is to be accepted. One of the two primary witnesses in this trial is the complainant and it is her evidence that was the primary and direct evidence against the accused. The evidence of Sulaikah and Ikhlague were corroborative at best, and the question remained, corroborative of what? Hence, prominence must be given to the evidence of the complainant. She testified in the Tamil language. She is 35 years old, and a married woman with children. She did not appear to be a meek sort of person; on the contrary, she seemed to me to have a maturity of mind that is expected of a woman of her age and status. Placing her evidence against the background of the contextual facts, I find important aspects of her evidence implausible. First, she had not convinced me at all that she was unable to raise help. I do not accept that a woman who claimed to be raped a total of ten times over six days (five times on the first night, and twice on the sixth) made no attempt whatsoever to call for help from passers-by. The evidence showed that the accused person's flat was only on the second floor above a public playground and barbecue park. The next-door neighbour was well within earshot, with his living room windows adjacent to the accused person's front door. All it would have taken to attract the neighbours' attention was a few loud thumps on that door from the inside. Not only did she not make any such attempt, she claimed that she never stepped out of the bedroom in which she was kept (the accused person's daughter's room) because she thought it was locked. There was no evidence

to contradict the accused person's assertion that that door (like that of his own bedroom door) could always be opened by a twist knob from the inside, even if the door was locked by a key from the outside. The complainant seemed to have contradicted herself when she later testified that when the accused was at work she did some cleaning in the other rooms in the flat. She also said that she did not shout for help because she had surgery to remove her tonsils shortly before she went to the accused person's flat. There was no evidence, especially from Sulaikah, to suggest that she was unable to speak. Even if I accepted her evidence that she was unable to call out for help, which I do not, she would at the very least be able to attract attention from passers-by by throwing messages or other objects.

19 More importantly, she admitted that the accused had helped her telephone Kumar, her Indian agent. There was a disputed call (disputed by the complainant) on the third day but one undisputed one on the fifth day in which she managed to speak to Kumar. That being the case, I find it incredible that she did not immediately tell Kumar that she had been raped virtually every night that she was there. Since Kumar was not called to testify, any doubt arising in respect of his part in the narrative should be resolved in favour of the accused. There was no evidence that the accused was a particularly menacing or violent person. Indeed, I do not have any such impression of him being of that nature. The only assertions of violence were the complainant's allegations that the accused had threatened to throw her from the flat, and that he would kill all the women in Sulaikah's flat if she (the complainant) told them about the alleged rapes. I do not believe those allegations. Instead, my impression in respect of them was that they were too casual and unconvincingly made.

20 The complainant testified that on the first night she was raped five times by the accused. Dr Ng Kok Kit, the urologist, in answer to a question from counsel, said that even a normal person could not accomplish five sexual performances in the space of one evening. He also testified that in the present case, the medical tests showed that the accused had a penile dysfunction and suffers from a low testosterone level. The complainant's claims of ten rapes in five nights from such a man seemed to me implausible. Dr Ng Kok Kit did not say that the accused in his condition would have been unable to have sex at all. The accused person's wife, whose evidence I have no difficulty accepting, was that from about 1999 or 2000 her husband's sexual activity decreased and he was only able to effect soft erections. Vasantha had told the court that the accused had sex with her about three times a month. The complainant's claim (of five penetrations in one evening) alone was a sufficient exaggeration for me to give the benefit of doubt to the accused. Furthermore, in her account to Dr Tracey Lim, the doctor who examined her on 8 June 2004, the complainant said that she was raped five times on the first night and once on the seventh night without mentioning that she was raped once on all the other nights except one. In court, she testified that she did not mention any incident occurring on 7 June 2004 to Dr Tracey Lim. In her report to the police that Sulaikah lodged on her behalf on 7 June 2004 the complainant maintained that she was raped twice on 7 June 2004. It fell on me to determine whether these inconsistencies were adequately explained, or in spite of them, the evidence of the complainant in court could be accepted as sufficient against the accused. I am of the opinion that I am unable to accept her evidence in court with such a degree of certitude.

21 There are several minor aspects of unconvincing evidence from the complainant. For example, I do not believe her evidence that her family in India did not know about her rapes even at the time of the trial. Neither do I believe that she did not know that she had been ligated. These are not critical evidence in themselves, but on the whole, I am unable to find her testimony reliable to secure a conviction on any of the charges against the accused.

22 On the other hand, apart from his "fish cake" *faux pas*, the accused was generally a much more convincing witness than the complainant. In respect of his being caught out on the "fish cake",

I accept his evidence and am satisfied that he had raised a reasonable doubt as to the charges against him. The "fish cake" was, in my view, an attempt by the accused to be too clever. I believe the accused and Vasantha that the accused has been a vegetarian all this time. I also believe that he might have had occasional lapses, and sometimes ate meat like fish. But unless a person has been a devout vegetarian, which, it seems, the accused was not, it would have been foolish to refute a minor point (that he bought mutton on the second day) with such a major claim (that he could not have done so because he was a vegetarian) and sticking by it without qualification. In my judgment, that evidence showed him to be more silly than false.

23 I need not have to find whether or not Sulaikah and Ikhlaque were truthful witnesses. Ikhlaque was the more steady and cogent one but his evidence was not sufficiently material to convict the accused without the complainant's evidence. I need only find that in spite of their (Sulaikah and Ikhlaque's) evidence, there was sufficient doubt as to the charges against the accused, largely because the complainant was an unreliable witness. For the reasons above, I am satisfied that the accused had raised a reasonable doubt in respect of all the charges against him, and I discharge and acquit him accordingly.

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