

Public Prosecutor v AHB
[2010] SGHC 138

Case Number : Criminal Case No 14 of 2010
Decision Date : 05 May 2010
Tribunal/Court : High Court
Coram : Woo Bih Li J
Counsel Name(s) : Ramu Miyapan (Attorney-General's Chambers) for the public prosecutor; Accused in person.
Parties : Public Prosecutor — AHB

Criminal Procedure and Sentencing

5 May 2010

Woo Bih Li J:

Introduction

1 The accused person, AHB (male/43 years old) faced the following charges in respect of his biological daughter, Y. The charges read as follows:

That you, AHB,

- 1st Charge sometime in early 2006, at [address redacted], did use criminal force on [Y], female 13 years old,... to wit, by touching her breasts and vagina, knowing it likely that you would thereby outrage the modesty of the said [Y], and you have thereby committed an offence punishable under section 354 of the Penal Code (Chapter 224. 1985 Rev Ed).
- 2nd Charge sometime in the middle of 2006, at [address redacted], did use criminal force on [Y], female 13 years old,... to wit, by rubbing your penis against her buttocks, knowing it likely that you would thereby outrage the modesty of the said [Y], and you have thereby committed an offence punishable under section 354 of the Penal Code (Chapter 224, 1985 Rev Ed).
- 3rd Charge sometime towards the end of 2006, at [address redacted], had carnal intercourse against the order of nature with [Y], female 14 years old,... to wit, by penetrating the mouth of the said [Y], with your penis, and you have thereby committed an offence punishable under section 377 of the Penal Code (Chapter 224. 1985 Rev Ed).
- 4th Charge sometime in February to September 2007, at [address redacted], did commit rape on [Y], female 14 years old,... by having sexual intercourse with her without her consent, and you have thereby committed an offence punishable under section 376(1) of the Penal Code (Chapter 224, 1985 Rev Ed).

- 5th Charge sometime in December 2008, at [address redacted], did commit rape on [Y], female 16 years old,... by penetrating the vagina of the said [Y], with your penis without her consent, and you have thereby committed an offence punishable under section 375(2) of the Penal Code (Chapter 224, 2008 Rev Ed).
- 6th Charge on 22 June 2009, at or about 5.00pm, at [address redacted], did commit rape on [Y], female 16 years old,... by penetrating the vagina of the said [Y], with your penis without her consent, and you have thereby committed an offence punishable under section 375(2) of the Penal Code (Chapter 224, 2008 Rev Ed).
- 7th Charge on 23 June 2009, in the evening, at [address redacted], did penetrate with your penis the mouth of [Y], female 16 years old,... without her consent, and you have thereby committed an offence under section 376(1)(a) and punishable under section 376(3) of the Penal Code (Chapter 224. 2008 Rev Ed).
- 8th Charge On 24 June 2009, at or about 7.35pm, at [address redacted], did have in your possession 7 video CDs containing 7 obscene films, and you have thereby committed an offence punishable under section 30(1) of the Films Act, Chapter 107.

2 The prosecution proceeded with the fourth, fifth, sixth and seventh charges. AHB pleaded guilty to these charges and I accepted his plea of guilt and convicted him on the charges. AHB agreed to have the first, second, third and eighth charges taken into consideration for sentencing.

3 The facts leading to the commission of the offences, the arrest and other relevant information were contained in the Statement of Facts which AHB agreed to.

Background facts relating to AHB and Y

4 AHB is married to his wife for more than 20 years and they have two children, Y and her elder brother. AHB's wife worked at various shift hours. Therefore, she was hardly able to spend time at home with her children.

5 AHB, on the other hand, was doing odd jobs. He was usually at home, if there were no ad hoc jobs available. According to AHB's wife, AHB was also a very sexually active individual.

Facts pertaining to the fourth charge (rape vide s 376(1) Cap 224, 1985 Rev Ed)

6 Sometime in February to September 2007, Y, who was 14 years old, was alone at home with AHB. AHB called Y into the master bedroom and eventually had sexual intercourse with her without her consent.

7 When AHB inserted his penis into Y's vagina, she felt a distinctive pain in her vagina. She immediately told AHB to stop what he was doing but AHB continued. He only stopped when she began to cry. He then told Y to wash up. According to Y, AHB did not ejaculate during the sexual intercourse. However, when she went to the toilet to clean herself, she noticed that there were blood stains at her vagina. When Y notified AHB about the blood stains, AHB ignored her and went about doing his own things.

Facts pertaining to the fifth charge (rape vide s 375(2), Cap 224, 2008 Rev Ed)

8 Sometime in December 2008, when Y was 16 years old, she was alone with AHB at home. Y was in her room while AHB was in the living room watching a pornographic movie. Midway through the movie, AHB called Y into the master bedroom. Feeling afraid of AHB, Y did as she was told. There, AHB had unprotected sexual intercourse with her without her consent. It was during this incident that AHB impregnated Y.

Facts pertaining to the sixth charge (rape vide s 375(2), Cap 224, 2008 Rev Ed)

9 On 22 June 2009, at or about 5.00pm, Y, who was 16 years old, was alone at home with AHB. Y was in her bedroom while AHB was watching a pornographic movie in the living room. Midway through the movie, AHB had the urge to have sex and called Y into the master bedroom.

10 Inside the master bedroom, AHB thrust his penis in and out of Y's vagina a few times but was unable to ejaculate. Thereafter, he told Y to get dressed.

Facts pertaining to the seventh charge (sexual assault by penetration vide s 376(1)(a) punishable under s 376(3), Cap 224, 2008 Rev Ed)

11 On 23 June 2009, Y informed AHB that her menses was irregular and that she had missed her period for a few months. AHB then brought her to dinner and thereafter purchased for her a pregnancy detection kit. When they got home, Y conducted the test with her urine and realised that she was pregnant. Y immediately told AHB about this, whilst he was watching pornographic movies.

12 AHB was shocked to learn of this, and immediately told Y that if the matter were to be reported to the police, she was to lie that he had sex with her on only one occasion when he came home drunk. After instructing her as such, and notwithstanding the shocking news of Y's pregnancy, AHB made Y fellate him by penetrating his penis into Y's mouth without her consent before leaving for some odd-jobs later that night. In his statement to the police, AHB admitted that, he made the victim fellate him on that day because he was unable to ejaculate the day before and was thus unsatisfied.

Arrest of AHB

13 On the same day, at night, after AHB had left home for work, Y sent text messages to her mother telling her that she needed to discuss an important matter with her. When her mother came home, Y told her about the sexual assaults by her father and about the pregnancy. Upon hearing this, the mother told Y and her elder brother to pack their belongings and immediately, they left for their relative's home.

14 On 24 June 2009, at about 10.37am, Y went to a neighbourhood police centre and lodged a report. AHB was arrested later that evening.

Medical and psychiatric examination of Y

15 On 24 June 2009, Y was sent for a medical examination. The examination revealed that Y's hymen was not intact. It was established that a foetus was present and that the biometry measurements confirmed a viable gestation of approximately 26 to 27 weeks. A detailed ultrasound examination of the abdomen was conducted on 25 June 2009 and showed that Y was 27 weeks into her pregnancy. Subsequently, Y was seen in the clinic for her antenatal follow-up.

16 On 30 June 2009, AHB's blood sample was obtained with his consent and was sent to Health Sciences Authority ("HSA") for DNA analysis on 1 July 2009 for the purpose of determining the

paternity of the child. A report was subsequently prepared by HSA.

17 On 21 September 2009, Y delivered a baby girl. A caesarean section was performed. Cord blood and maternal blood were obtained at delivery for DNA analysis. On 23 September 2009, the cord and maternal blood samples were sent to HSA, and a report was subsequently prepared by HSA. The results obtained from the earlier report on AHB as stated in the preceding paragraph were used to confirm that AHB is the biological father of the child.

18 With respect to the child, Y agreed to give the child up for adoption.

Medical and psychiatric examination of AHB

19 On 26 June 2009, AHB was charged and was thereafter sent to the Changi Prison Complex's Cluster Medical Centre. A consultant psychiatrist of the Department of General and Forensic Psychiatry, Institute of Mental Health, subsequently examined him on 9 and 16 July 2009 respectively.

20 The report noted that AHB tested positive for syphilis after a routine syphilis screening. Y was subsequently tested for syphilis and the test turned out negative.

21 The report on AHB also stated that he had no major mental disorder and was clinically not mentally retarded. He was not of unsound mind at the time of the alleged offences and was clearly aware that engaging in sexual intercourses with his daughter was wrongful. AHB was fit to plead in court. AHB blamed his actions on his wife denying him vaginal intercourse.

22 On 12 August 2009, AHB was referred for assessment of potency to Changi General Hospital. The medical report noted that AHB did not have any symptom of erectile dysfunction and that he had normal erectile function.

Y's impact statement

23 Y said that she has flashbacks of the abuse and she is haunted by it occasionally. She is also fearful that no male person would want to be her boyfriend if he knows what she has gone through.

The court's reasons and decision

24 The punishment for each of the four charges which AHB pleaded guilty to is imprisonment for a term which may extend to 20 years and AHB was also liable to fine or to caning.

25 In *PP v NF* [2006] 4 SLR(R) 849, V K Rajah J was of the view that the starting point for sentences for familial rape was 15 years' imprisonment and 12 strokes of the cane.

26 In *PP v Iryan Abdul Karim & Ors*, Criminal Case No 27/2009, the accused persons claimed trial to charges involving fellatio under the present s 376(1)(a) of the Penal Code (Cap 224, 2008 Rev Ed). Inmates at a prison had allegedly forced the victim to perform fellatio. They were found guilty and each was sentenced to a term of seven years' imprisonment and three strokes of the cane.

27 According to the prosecution, prior to s 376(1), offences of fellatio were dealt with under s 377 of the Penal Code (Cap 224, 1985 Rev Ed) which did not include caning as part of the punishment. In *Adam bin Darsin v PP* [2001] 1 SLR(R) 709, the accused committed acts of fellatio on eight victims. He pleaded guilty to eight charges under s 377. The Court of Appeal sentenced him to five years' imprisonment on each charge and ordered four of them to run consecutively.

28 In *PP v Wong Siu Fai* [2002] 1 SLR(R) 1161, the accused pleaded guilty to a charge under s 377 of performing fellatio on a young boy who was the son of his friend's landlord. The accused was sentenced to six years' imprisonment.

29 The fact that AHB is the biological father of Y was an aggravating factor for the charge under s 376(1)(a). However, it was not, in itself, an aggravating factor in the context of familial rape as the family relationship is already taken into account in cases of familial rape.

30 In any event, there were a number of other aggravating factors.

31 The most obvious and significant aggravating factor was the fact that in 1998, AHB had outraged the modesty of the same victim. He faced three charges under s 354A(2)(b) of the Penal Code (Cap 224, 1985 Rev Ed) and one under s 354. The prosecution proceeded with and AHB pleaded guilty to two charges under s 354A(2)(b). The remaining two charges were taken into consideration for sentencing. He was sentenced to three years' imprisonment and six strokes of the cane for each of the two charges he had pleaded guilty to with one sentence to run consecutively after the other, making a total of six years' imprisonment. He was released on 27 July 2002.

32 It was obvious that notwithstanding his earlier plea then to be given another chance to redeem himself and that he loved his family, AHB had not learned his lesson.

33 The second aggravating factor was that AHB's conduct had escalated over two to three years (from 2006 to 2009) from outrage of modesty to rape.

34 The third aggravating factor was Y's pregnancy.

35 The fourth aggravating factor was that AHB put Y at risk of contracting a sexual disease.

36 The fifth aggravating factor was that he had no concern for Y and was not contrite. When she first told him that she found blood stains at her vagina, he ignored her. When she learned that she was pregnant and informed him of this, his response was to ask her to lie to protect himself without caring for her condition. Worse still, he then proceeded to coerce her to fellate him (that was the subject of the seventh charge).

37 There was no mitigating factor. AHB's plea of guilt was no mitigation in the circumstances and, as I have mentioned, he was not contrite at all. His plea before me for leniency carried no weight.

38 The prosecution pressed for a deterrent sentence, that is, 20 years' preventive detention. The prosecution did not advance any submission on the length of the term of imprisonment if preventive detention was not ordered.

39 I agreed with the prosecution that AHB was an incorrigible monster. In the circumstances and bearing in mind the totality principle, I passed the following sentences.

- Fourth charge - 18 years' imprisonment and 15 strokes of the cane.
- Fifth charge - 18 years' imprisonment and 15 strokes of the cane.
- Sixth charge - 18 years' imprisonment and 15 strokes of the cane.

Seventh charge - 10 years' imprisonment and 5 strokes of the cane.

40 The sentence for the sixth charge was to run consecutively after the sentence for the fourth charge.

41 The sentences for the fifth and seventh charges were to run concurrently with the sentence for the fourth charge.

42 The total term of imprisonment was 36 years. In accordance with s 230 of the Criminal Procedure Code (Cap 68, 1985 Rev Ed), the combined sentence of caning was 24 strokes.

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