

Public Prosecutor v Wang Jian Bin
[2011] SGHC 212

Case Number : Criminal Case No 21 of 2011
Decision Date : 21 September 2011
Tribunal/Court : High Court
Coram : Chan Seng Onn J
Counsel Name(s) : Chua Ying-Hong (Attorney-General's Chambers) for the Prosecution; Irving Choh and Lim Bee Li (RHT Law LLP) for the accused.
Parties : Public Prosecutor — Wang Jian Bin

Criminal Law

21 September 2011

Chan Seng Onn J:

Introduction

1 The accused, Wang Jian Bin, pleaded guilty to and was convicted of a charge under s 375(1) (b) of the Penal Code (Cap 224, 2008 Rev Ed) ("PC") for raping a girl under 14 years of age ("the victim"). The victim was only 13 years old at the material time. This offence is punishable under s 375(2), PC which provides for a maximum sentence of 20 years' imprisonment and/or a fine and/or caning.

2 The following charges were taken into consideration for sentencing:

(a) One charge of criminal intimidation under s 506 (first limb), PC for threatening the victim to bring his gang to her home to cause trouble, and to tell her parents that she had had sex with her boyfriend, intending to cause the victim to meet him, which she was not legally bound to do.

(b) One charge under s 376A(1)(b), PC and punishable under s 376A(3), PC for penetrating with his finger the vagina of the victim.

3 I sentenced the accused to 13 years' imprisonment and 15 strokes of the cane. The accused filed an appeal against his sentence. I now set out my reasons.

The accused

4 The accused is a 24 year-old male, who was 23 years old at the time he committed the offences. He came to Singapore from China with his family in 1997 and became a Singapore citizen in 2005. Prior to his arrest, he was a student of Temasek Polytechnic.

The facts

5 In October 2009, the accused contacted the victim *via* MSN messenger ("MSN"). He had come across her email address in the 'making friends' column of *Teenage* magazine. They then chatted *via* MSN from time to time. During the course of these conversations, the victim revealed her real name, and that she was 13 years old and a Secondary One student.

6 The accused then asked for the victim's mobile number and they started to communicate *via* text messages and telephone calls. When the accused steered the conversation towards intimate topics by asking the victim questions such as whether she masturbated, what the colours of her bra and panties were, and what her bra cup size was, the victim felt uncomfortable and decided to avoid the accused's calls.

7 Undeterred, the accused continued to send the victim numerous text messages asking to meet her. Some of these text messages were sexually explicit, *eg*, whether he could 'finger' her (meaning to use his fingers to penetrate her vagina). He also asked her whether she had a boyfriend and whether she had had sexual intercourse with her boyfriend. To this last enquiry, the victim replied that she had a boyfriend and had engaged in sexual intercourse with him as she thought that this would put an end to the accused's harassment. She also stated that she was not interested in meeting the accused and told him to stop sending her text messages.

8 Even so, the accused continued to send the victim text messages. On 2 December 2009, the accused texted the victim to ask for her address and whether he could meet her at her home. He told the victim that he wanted to go to her room to "play" with her and "touch [her] body". He also expressly told her that he wanted to touch her "pussy" (referring to her vulva) and asked her if she had a condom at home. He instructed the victim prepare for his arrival at her house by masturbating herself and by changing into either a skirt without underwear or into a big shirt without shorts and underwear, so that it would be "easy" for him.

9 The victim was with a 17 year-old Chinese male friend ("W1") at the time when she received the text messages. When the accused learnt that she was with a male friend, he issued a series of threats to back his demands. He told the victim that he would "play gangster" and "find... trouble" for W1 and herself if she did not tell the accused her address. He also stated that W1 should watch out as he could "bring [his] gang down" anytime.

10 Despite the threats, the victim refused to meet the accused, giving him a range of excuses. She also told him that she did not want him to touch her. The victim even asked W1 to pose as her father and call the accused to tell him to stop harassing her. However, the accused was not convinced and insisted on going to the victim's house. He then told the victim that he already knew where she lived (as she had given him her address in an earlier conversation) and threatened to bring his gang to her house to "disturb" her and "mess up" her flat.

11 By this time, W1 had called another male Chinese friend, 18 years of age ("W2"), to come to the victim's house to help them and W2 duly did so. W1 also telephoned the police to report the accused's harassment of the victim, but told the police that there was no need to send officers yet because the accused had not yet come to the victim's home. He told the police officer that he would call again once the accused arrived at the victim's house. The victim asked W1 and W2 to hide in her mother's room when the accused arrived. She would then tell the accused to leave and asked W1 and W2 to call for help if she could not handle the accused.

12 When the accused arrived at the victim's flat, she recognised him from his photograph on Facebook. While outside her door, the accused repeated his threats to call his gang if she did not bring him to her room quickly. As if to make good his threat, the accused took out his mobile phone

and appeared ready to call someone. Out of fear, the victim let him into her flat. W1 then telephoned the police for assistance. At that time, along with W1 and W2, the victim's brother and his piano teacher were also in the flat.

13 The accused walked behind her, pushing her at her back, as she walked to her room. She believed that he would not dare to do anything to her as there were many other people in her house. Unfortunately, she was wrong. The accused shut her room door but left it unlocked at her request. He then told her that he wanted to hug her, but pushed her onto the bed, laid on top of her and started touching her breasts. The victim told him that he had only asked for a hug and that she did not allow him to do such things to her. She said that she would scream for help if he did not move away from her.

14 The accused warned her that if she screamed he would call his gang, and would tell her parents that she had had sexual intercourse with her boyfriend. She fell silent and he then inserted his fingers into her vagina and moved them in and out, causing her pain. The victim tried to push him away but to no avail.

15 At this point, W2 opened the door to her bedroom and saw what the accused was doing to the victim. W2 then hit the accused on the back with the blunt end of a Chinese martial arts spear that belonged to the victim's brother. The accused struggled with W2 for some time, until the accused told the victim to tell W2 to leave; otherwise he would carry out his earlier threats. On hearing this, the victim whispered to W2 to call the police. W2 accordingly left the room and went with W1 to seek help from the nearby fire post.

16 Following this, the accused instructed the victim to close the door, and pushed her onto the bed again. He then pulled down his shorts and pulled down the victim's shorts and panties. Although she tried to push him away, he overpowered her and continued to touch her breasts. The accused again inserted his fingers into, and moved them in and out of the victim's vagina. He subsequently inserted his penis into the victim's vagina and moved it in and out of her vagina, causing her considerable pain. Despite her resistance, and to prevent her from screaming, the accused kissed the victim on her mouth. A while later, the accused ejaculated, and the victim felt something wet at her vagina.

17 At about this time, the victim heard W1's voice outside her room and she told the accused that the police had arrived. She then put on her clothes and quickly walked out of her room. The accused pulled up his shorts and followed behind her.

18 W1 and W2 had returned with several Singapore Civil Defence Force officers from the nearby fire post. The officers separated the accused from the victim when they came out of the room. Shortly thereafter, the police arrived to arrest the accused. After his arrest, the accused sent the victim a text message to apologise.

Benchmark sentences for rape

19 In *PP v NF* [2006] 4 SLR(R) 849 ("*PP v NF*"), V K Rajah J (as he then was) considered and adopted the four broad categories of rape elucidated in *R v Keith Billam* (1986) 8 Cr App R (S) 48 ("*Billam*") for sentencing purposes. In discussing the *Billam* classification system, Rajah J opined as follows (at 19]):

These categories were designed and calibrated to ensure both stability and a measure of predictability in sentencing rape offenders by assigning a benchmark sentence to each category.

In *PP v UI* [2008] 4 SLR(R) 500, the Court of Appeal endorsed the principles and sentencing benchmarks set out in *PP v NF*.

20 The four categories were arranged in ascending order of severity. At the lowest end of the spectrum were the "Category 1" rapes, which featured no aggravating or mitigating circumstances. Rajah J affirmed the finding in *Chia Kim Heng Frederick v PP* [1992] 1 SLR(R) 63 that the starting point for sentencing in such cases was ten years' imprisonment and not less than six strokes of the cane.

21 Rajah J set out in some detail at [20] in *PP v NF* certain aggravating features, which if present, would bring the case within "Category 2". Rape of a child was identified as one of those in "Category 2" (see (d) at [20] of *PP v NF*). Rajah J explained at [25] that the "common thread running through category 2 rapes is that there has been exploitation of a particularly vulnerable victim". The starting point for "Category 2" rapes was 15 years' imprisonment and 12 strokes of the cane.

22 "Category 3" featured cases where the accused raped multiple victims or the same victim repeatedly. "Category 4" dealt with cases where the offender "manifested perverted or psychopathic tendencies or gross personality disorder, and where he is likely, if at large, to remain a danger to women for an indefinite time" (*Billam* at 50-51). We were not concerned with Categories 3 and 4 here.

23 I noted the caution in *PP v NF* (at [43]) that although sentencing benchmarks served to provide stability and predictability in sentencing, they were "never [to] be applied mechanically, without a proper and assiduous examination and understanding of the factual matrix of the case".

24 I would now proceed to examine all the aggravating and mitigating factors in this case. The appropriate sentence for each case must depend on its own set of facts and circumstances.

Mitigating factors

Plea of guilt and remorse

25 Mr Irving Choh ("Mr Choh"), counsel for the accused, submitted that the accused pleaded guilty at the first opportunity and was cooperative throughout the police investigation. While it is a trite proposition that a timely plea of guilt indicative of genuine remorse is a mitigating factor, it is equally trite that a plea of guilt does not *ipso facto* entitle an offender to a discount in his sentence. What needs to be demonstrated is genuine remorse. As held in *Xia Qin Lai v PP* [1999] 3 SLR(R) 257 (at [26]):

there is no mitigation value in a plea of guilt if the offender pleaded guilty in the circumstances knowing that the Prosecution would have no difficulty in proving the charge against him, or if he had been caught red-handed.

26 In the instant case, the accused was arrested at the scene of the rape, immediately after the commission of the offence. W1 and W2 had witnessed the accused pushing the victim into her bedroom, and W2 had seen the accused using his fingers to penetrate the victim's vagina. The accused's DNA was discovered in the pubic region swab and the vulva swab taken from the victim shortly after the rape. The evidence was indeed overwhelming and the Prosecution would not have any difficulty proving the three charges against the accused.

27 To the extent that the accused's cooperation during police investigations and his plea of guilt had been motivated, not by genuine remorse, but by his knowledge that it would be futile to claim

trial and deny his offences when questioned by the police as he was caught red-handed, the degree of leniency that could be shown on account of these mitigating factors must be correspondingly reduced.

28 However, I believed that there was some degree of remorse on the part of the accused and I took this into consideration when I determined the appropriate sentence. The accused had sent a text message to the victim to apologise shortly after his arrest. However, the sincerity of his apology *via* a text message and the weight to be given to it should not be overstated. The accused belongs to a generation where texting and other means of virtual communication are the preferred or even default modes of communication. It would have been all-too-easy for the accused to simply dash off a quick text message of apology to the victim.

29 Quite apart from the issue of remorse, I attached some weight to the fact that the accused's plea of guilt had spared the young victim the ordeal of testifying in a trial and re-living the horror that he had inflicted on her.

Lack of antecedents and general good conduct prior to commission of offence

30 Mr Choh drew the court's attention to the fact that this was the accused's first offence and highlighted positive testimonials the accused had received from his course manager in Temasek Polytechnic and his Company Commander during his stint in National Service. The accused's course manager stated that the accused was a conscientious, responsible and respectful student; serious in his studies; independent and reliable; and had strong leadership skills. His Company Commander stated that the accused was an honest, hardworking and diligent soldier who discharged his duties with care and dedication despite his personal problems.

31 Therefore, in view of the fact that the accused was young and could still look forward to a bright future, Mr Choh urged the court to allow the accused to have a second chance and not to impose too long a custodial sentence on him. This was a consideration that I took into account, but in the light of the totality of the circumstances, I felt that a custodial sentence of 13 years was nonetheless warranted.

Lack of intention to carry out his threats

32 While the accused admitted that he had threatened to tell the victim's parents about her sexual experience with her boyfriend if she refused to meet him on 2 December 2009, Mr Choh submitted that this was done in a moment of rashness and anger and that the accused had never intended to carry out his threat. Mr Choh pointed out that the accused had not brought anyone along with him to the victim's flat. Although Mr Choh did not make this clear, I understood this to be in reference to the accused's threat to bring his gang to the victim's house to make trouble for her.

33 However, I found that the accused manipulated the victim, and exploited the young victim's gullibility and vulnerability when he lied to her that he would bring his gang to cause trouble at the victim's house. To force the young victim to capitulate, he put as much fear into the victim as he possibly could by exaggerating his threats and the amount of trouble that she would face should he carry them out.

34 His actions on 2 December 2009 revealed that he was aware of the effects of his unrelenting threats on the victim and he was clearly determined to break her resolve to stand up to him each time she resisted him. First, when the accused was outside the victim's door, he pretended to take out his mobile phone as if to call someone to back up his threat to call his gang to the victim's house

to frighten the victim into letting him into her house. Second, the accused repeated this threat while he pinned the victim down on her bed, when the victim said that she would scream for help if he did not get away from her. He also threatened to tell the victim's parents of her sexual intercourse with her boyfriend if she resisted. Third, the accused reiterated the threats while he was struggling with W2, in order to get the victim to tell W2 to leave her room. The accused succeeded in using such devious means to coerce the victim to do what he wanted. Under these circumstances, I found no mitigating value in the accused's absence of intention to go through with his threats.

Personal circumstances

35 Mr Choh also asked the court to have regard to the fact that the accused came from a broken family and that his parents' divorce had greatly affected the accused. While I accepted that the accused was affected by his parents' divorce and marital problems, I noted however that the psychiatric report mentioned that the accused denied having any low mood or symptoms associated with a depressive disorder. Therefore, I was unable to give much weight to this mitigating factor alluded to by Mr Choh.

Aggravating factors

Harm to the victim

36 A central principle of sentencing is that the court should take into account the degree of harm occasioned to the victim. It is well-documented in psychological literature that the degree of harm occasioned by sexual assault is exacerbated where young persons are the victims of rape (*PP v NF* at [49]).

37 This was borne out in the present case. Dr Cai Yiming of the Child Guidance Clinic at the Institute of Mental Health conducted a psychiatric examination on the victim and diagnosed the victim as suffering from post-traumatic stress disorder which was likely to last at least six months. At the psychiatric examination, the victim stated that she had felt "very painful" when the accused raped her, and that she had flashbacks of the rape. She had also started to imagine perverted things, became sensitive to boys and whatever they did seemed wrong to her. In addition, the victim was "irritable and easily became agitated and boiling inside" when her younger brother talked about rape. In addition, the victim had trouble sleeping.

38 I took this aggravating factor into account for the purpose of sentencing. The victim had suffered much emotionally and mentally from the trauma of the rape, and this could have long term adverse effects on her emotional well-being and her ability to form relationships in the future.

Other aggravating factors

39 I considered that this case disclosed numerous other aggravating facts. Some of these formed the subject matter of two outstanding offences (see [2] above) taken into consideration for the purpose of sentencing. I treated them in a like manner as aggravating facts disclosed in the statement of facts admitted without qualification by the accused. Had these two outstanding offences been proceeded with by the Prosecution, the accused would be exposed to the risk of a higher overall sentence due to the possibility of consecutive sentencing, which fortunately for the accused was avoided in this case.

40 First, as noted earlier, the accused had been harassing and threatening the young victim over a period of several weeks. He ignored the victim's requests for him to leave her alone. He repeatedly

threatened to use his gang connections to cause trouble for the victim and at her home in order to make her succumb to his demands. The psychiatric examination of the victim revealed that she was indeed fearful of the accused, and that this fear was the reason why she had allowed him to enter her bedroom. The victim's fear of the accused can also be seen in her plan to have W1 and W2 hide in her house to offer her protection from the accused. Unfortunately, W1 and W2's actions were too little, too late, and were ultimately unable to protect the victim from the accused's perpetration of the offences against her. On the facts admitted by the accused, I found that he had systematically exploited the vulnerable nature of this young victim by frightening her into yielding to his demands, and he could then carry out his devious plan to sexually attack her at her home. I had to take this aggravating factor taken into account when I sentenced the accused.

41 Second, the accused had perpetrated other acts of perversity on the victim before raping her. The accused pushed the victim into her bedroom, kissed and groped her. He inserted his fingers on two separate occasions into her vagina and moved them in and out of her vagina causing her pain. That the victim was forced to endure the degradation from these multiple sexual indignities in addition to the rape was another serious aggravating factor to be considered.

42 Third, the accused raped the victim at her home, in her bedroom and on her bed. In *PP v Robiul Bhoreshuddin Mondal* [2010] SGHC 10, weight was placed on the fact that the victim had been raped "in the sanctity of her locked room and on the bed on which she rested every night and which she had to continue to use after the [rape]". Instead of being her haven and sanctuary, the accused had turned her home into a constant reminder of her agony during the rape.

The need for general deterrence

43 The Prosecution pressed for a deterrent sentence to be passed. I agreed that this case called for a message of general deterrence to be sent out. The sordid facts of this case read like a cautionary tale of the digital age. When the victim published her email in the seemingly innocuously-titled 'making friends' column of Teenage magazine, she enabled any person who picked up the magazine to come into contact with her and initiate conversations *via* email, MSN or Facebook. The parties might then move on to conversing *via* telephone conversations or text messages. The ease with which conversations can be initiated has vastly increased with the technological innovations of today. However, as the victim in this case found out, this also means that the multiple channels of communication make the termination of such undesirable and unwelcome conversations and messaging even harder should the need arise. The accused in this case was able to continue his harassment of the victim for several weeks. While new media and technological advances can be utilised for a great many purposes, the unimpeded harassment of vulnerable young persons is not a use that we, as a society, are prepared to accept. Sexual predators who seek to use these avenues to seek out, harass and threaten young and vulnerable persons and shelter, faceless, behind such modes of communication, deserve the severe reprobation of society. There is also a pressing need for greater vigilance amongst parents and parental figures to ensure that predatory figures are not able to gather personal information about their children and use such information to seek them out, harass and threaten them, and exploit their vulnerabilities in order to facilitate commission of sexual offences against them.

Conclusion

44 This court would not look kindly on accused persons who forcibly commit both penile and digital rape on young girls. This was not a case of mutual consensual sexual activity between the 13 year old victim and another young boy. The accused, who is ten years older than the victim, was fully aware of the victim's young age. He persisted with his sexual advances, harassment and sexual

attack on the victim at her home despite the very clear rejection of all his sexual advances by the victim. This sexual attack had scarred her emotionally for life.

45 With the aggravating factors far outweighing the mitigating factors, I accordingly imposed a sentence of 13 years' imprisonment and 15 strokes of the cane, which in my view was justified in the light of the totality of the circumstances.

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