Public Prosecutor *v* Sivakumar s/o Selvarajah
[2013] SGHC 174

Case Number	: Criminal Case No 6 of 2012
Decision Date	: 13 September 2013
Tribunal/Court	: High Court
Coram	: Choo Han Teck J
Counsel Name(s)	: Sellakumaran Sellamuthoo and Ng Yiwen (Attorney-General's Chambers) for the Public Prosecutor; Foo Cheow Ming (instructed), Gloria James and Amarjit Singh H.S. (Gloria James-Civetta & Co) for the Accused.
Parties	: Public Prosecutor — Sivakumar s/o Selvarajah

Criminal Law – Offences – rape

Criminal Law – Offences – Offences by or relating to a public servant

[LawNet Editorial Note: The appellant's appeal in Criminal Appeal No 7 of 2013 was dismissed and the Public Prosecutor's appeal in Criminal Appeal No 8 of 2013 was allowed by the Court of Appeal on 15 January 2014. See [2014] SGCA 17.]

13 September 2013

Choo Han Teck J:

1 The accused person was an aircraft technician, 42 years of age. He was 39 at the time the offences were committed. He is married with children. He did not say how many. As a result of a complaint by one XX (then 16 years of age) the accused was charged with four offences under the Penal Code (Cap 224, Rev Ed 2008) ("The Act"). The first charge was for "impersonating a public servant, to wit, a police officer of the Singapore Police Force", an offence under s 170 of The Act. The second charge was outraging the modesty of the complainant by touching her buttocks and her vagina, an offence under s 354(1) of The Act. The third charge was for sexual assault against the complainant, namely, forcibly making her perform fellatio, an offence under s 376(3) of The Act. Finally, he was charged with raping the complainant, an offence under s 375(1)(a) of The Act.

2 The complainant's evidence was as follows. At the material time, 16 July 2010, the complainant was a secondary school student. She had a boyfriend, then 20 years old. The boyfriend picked up the complainant in the afternoon that day and drove her to Woodlands Drive. He parked his car at the multi-storey car park at Block 685. The boyfriend initially drove to the highest deck but because there were a couple of boys there, he drove to the deck below and parked at Lot 621. He and the complainant began to get intimate with each other, first in the front seats and subsequently at the rear seats where they had protected sex. The boyfriend used two condoms because the first one was torn after use. The complainant also performed oral sex on the boyfriend.

3 Unknown to the boyfriend and the complainant, the accused had parked his car, a Honda SJD 9255H in Lot 629, several lots away from the boyfriend's car. He walked up to the boyfriend's car while the complainant was performing fellatio on him (the boyfriend). The accused knocked on the window of the boyfriend's car and demanded angrily that they should get out of the car. The complainant was frightened and initially she was afraid to get out of car. The boyfriend got out and

spoke to the accused. The accused insisted that the complainant get out of the car. She did so. Whereupon, the accused demanded to see their identity cards but the complainant only showed him her EZ-Link card. The accused angrily told them that he had seen them littering and also demanded to know what they were doing in the car. He snapped a few photographs of the litter near and underneath the boyfriend's car. He told them that he had seen everything and would charge them and take them to the police station. The evidence on this point was not clear or consistent as to what the accused actually said. The prosecution counted on the evidence of the complainant to prove their case in respect of the first charge, namely, for impersonating a public servant, namely, a police officer. However, the testimony of the complainant merely said that the accused told them that "he was doing his rounds with his team". She also said that the accused said that he was a "civilian". The boyfriend, on the other hand, testified that the accused merely said that he "was from an authority". He seemed certain that the accused did not say "police". The boyfriend's evidence was that he thought that the accused was from CNB (Central Narcotics Bureau) or CID (Criminal Investigation Department) but that the belief seemed to have sprung from the way the accused behaved and from his assertion that he was from "an authority". Eventually, the boyfriend stated that he allowed the complainant to go with the accused because he believed that the accused was a police officer. The accused denied that he had claimed to be a police officer at all. Even the complainant at times was not sure if the accused was a police officer or a CNB officer.

4 Reviewing the evidence and all the instances in which this issue was concerned, I am not satisfied that the evidence from the prosecution was sufficiently cogent and consistent that the accused had indicated to the boyfriend and the complainant that he was a police officer. Furthermore, I am not satisfied, even if the accused had said in the course of his verbal exchange with the boyfriend and the complainant that he was a police officer, that that was sufficient to amount to an impersonation of a police officer. I am of the view that the offence of impersonation of a police officer requires stricter proof than someone merely saying that he was a police officer. Moreover, it seemed to me that the complainant and the boyfriend were not quite clear who the accused was or where he was from but they were frightened because he seemed fierce and looked like he could cause them trouble. I had taken into account the instances in which the complainant had claimed that the accused referred to the police or police station when she was in his car with him. So, not only was the evidence unclear as to whether the accused actually said he was from the police, neither the complainant nor the boyfriend clearly believed he was a police officer. I noted that they had had used the word 'believed' in their testimonies but the overall evidence indicated that they were not sure what the accused was, other than that he might be someone 'with authority'. In the circumstances, I gave the benefit of the doubt to the accused, and acquitted him of the first charge.

5 The accused then said he would send the complainant home. She followed him into his car, and at that point, the accused asked the complainant for her phone number as well as the boyfriend's phone number. He rang those numbers and registered a "missed call" on them. He then told the complainant that he would drive her to the police station or she could "please him", by which he meant that she was to have sex with him. When she relented under threats, he took her to Tampines Industrial Avenue 4 where he parked his car between two stationary trailers. The road was quiet but a factory was nearby. At this point, the accused committed the offences under the second, third and fourth charges. After he had committed the offences, he drove her to a bus stop near the Darul Ghufran Mosque where the complainant alighted from his car and went home. After she had alighted from the car she called the boyfriend and told him that the accused had raped her. She then went home.

6 Shortly after she returned to her parents' flat, the complainant arranged to see the boyfriend at the void deck of the flat. The boyfriend arrived shortly with his cousin, who was a police officer.

The cousin advised them to make a police report. The cousin rang for the police and eventually a police team arrived at the void deck. By that time, the complainant's family had also been apprised of what had happened. In the course of the evening, the aunts of the complainant also arrived at the flat.

7 The accused presented himself as the sole witness. He did not deny that he had a sexual encounter with the complainant but he claimed that it was not rape but paid sex. His story was that he was on the way from his home to collect electronic goods from a vendor for his company. As he was driving past the multi-storey car park at Block 685 Woodlands Drive 73 he saw two boys behaving suspiciously at the staircase of the multi-storey car park. He wanted to find out what they were up to so he drove into the car park to look for them. He found them on the 5th floor of the car park and chastised them for throwing cigarette butts on the floor. He then returned to his car and that was when he noticed the boyfriend's car parked six lots away. He saw the boyfriend throw a tissue out of the car, and that upset him because he had just told off two boys for littering. The accused walked to the boyfriend's car to confront him. Initially, according to the accused, the boyfriend denied littering but eventually admitted it and, further, admitted having sex with the complainant. He asked where the boyfriend stayed. The complainant then came out of the car and the accused asked for her age and where she stayed. He also asked for her identity card and said that he would inform her parents of what he saw. He then told the young couple that he would send the complainant home.

8 According to the accused person's evidence, the complainant then got into his car and he drove off, following her directions. Along the journey the complainant told him that she was "offering a service". He asked her what sort of service and she told him "sex service" for $200. The accused said that he would not normally have engaged in this sort of service but "at that point I was totally away in my mind" and so he accepted her offer. She then directed him to the spot where they had sexual intercourse and fellatio. He said that he was not comfortable with the situation he was in and so he stopped the sex act and masturbated instead. After cleaning himself, he checked his wallet and offered the complainant $50 because he had only $56 in his wallet. She was angry but took the money and asked him to send her home. He dropped her near the bus stop that she had indicated to him.

9 I was of the view that the version of events according to the accused person was highly improbable and raised no reasonable doubt in my mind (other than the matters concerning the first charge) that he committed the offences as set out in the second, third, and fourth charges. If we assume his initial premise that he was on the way to collect merchandise from a supplier for his work, then everything else in his account that followed was built on a series of incredible turns. First, that as he was driving along the road he became distracted by two suspicious figures in a multi-storey car park, and decided to assume the vigilante's role to check out those suspicious characters. Secondly, that even after he found that they were only two boys littering in the car park, he did not continue with his journey and instead, parked his car in the car park. Thirdly, that he was seized of a sense of duty to send the complainant home just because she was found to be having sex in the car park. It was obvious to him and nothing in his evidence indicated otherwise that the couple were engaging in consensual sex. If the reason he wanted to send the girl home was that he disapproved of the sexual misconduct, then it was difficult to believe that his anger and indignation suddenly turned to desire when the complainant told him that she offered sex services. I do not think that any reasonable man would believe that story.

10 Comparing his account against the evidence of the complainant and the boyfriend as corroborated by the cousin and the complainant's family, I am of the view that the complainant's story was the true account of the events. I do not think that the failure to produce the notebook

that the complainant said she had recorded the events in was detrimental to her testimony, nor was it sufficient to raise a reasonable doubt in favour of the accused person. I was satisfied that the prosecution had proved its case beyond reasonable doubt as to the second, third, and fourth charges, and the accused was convicted of those charges accordingly.

11 Nothing significant was pleaded by way of mitigation because the accused had given counsel certain instructions. In the circumstances, I sentenced the accused to one year's imprisonment and two strokes of the cane in respect of the second charge, and 11 years' imprisonment and 5 strokes of the cane in respect of each of the third charge as well as the fourth charge. The sentence of imprisonment for the third and fourth charges were ordered to be served concurrently but consecutively to that under the second charge, making the overall sentence a sentence of 12 years imprisonment with 12 strokes of the cane.