

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2015] SGHC 165

Criminal Case No 28 of 2015

Between

Public Prosecutor

And

Chang Kar Meng

FOUNDATIONS OF DECISION

[Criminal Law] — [Offences] — [Rape]

[Criminal Law] — [Offences] — [Property] — [Robbery]

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Public Prosecutor

v

Chang Kar Meng

[2015] SGHC 165

High Court — Criminal Case No 28 of 2015

Tay Yong Kwang J

28 May 2015

25 June 2015

Tay Yong Kwang J:

1 The accused is a male Malaysian born on 30 January 1988. He pleaded guilty to the following two charges (with the female victim's name and particulars redacted):

That you, **CHANG KAR MENG**,

1ST CHARGE

on the 8th day of March 2013, at or about 1.30a.m., at the grass patch in the vicinity of Blk [X] Paya Lebar Way, Singapore, did penetrate with your penis, the vagina of one [V], female / 33 years old (D.O.B: [X] [X] 1980), without her consent, and you have thereby committed an offence under s 375(1)(a) of the Penal Code (Cap 224, 2008 Rev Ed), punishable under s 375(2) of the Penal Code (Cap 224, 2008 Rev Ed).

2ND CHARGE

on the 8th day of March 2013, at or about 1.30a.m., at the ground floor lift landing of Blk [X] Paya Lebar Way, Singapore, did commit robbery of the following items:

- 1) one gold necklace with a jade pendant valued at approximately S\$760;
- 2) one Samsung Galaxy S3 mobile phone valued at approximately S\$500;
- 3) cash amounting to approximately S\$300;
- 4) one silver ring valued at approximately S\$250;
- 5) one brown sling bag valued at approximately S\$100;
- 6) one red Casio watch valued at approximately S\$90;
- 7) one pair of gold earrings valued at approximately S\$70;
- 8) one brown 'Toscano' purse valued at approximately S\$60;
- 9) one pair of spectacles valued at approximately S\$60;
- 10) one EZ-link card with a stored value of approximately S\$10; and
- 11) cosmetics valued at approximately S\$10

with a total approximate value of S\$2,210 from the possession of one [V], and in committing the said robbery, did voluntarily cause hurt to the said [V], *to wit*, by hitting her a few times on the back of her neck near her right shoulder with your hand, and you have thereby committed an offence punishable under s 394 of the Penal Code (Cap 224, 2008 Rev Ed).

2 The maximum punishment provided for rape (first charge) is 20 years' imprisonment, with the offender also liable to fine or to caning. For the offence of robbery with hurt (second charge), the offender shall be punished with imprisonment of not less than five years and not more than 20 years and shall also be punished with caning of not less than 12 strokes.

3 The accused admitted the following charge and consented that it be taken into consideration for the purpose of sentence:

3RD CHARGE

on the 21st day of August 2013, at Blk [X] Geylang East Ave 1, #[X], Singapore, did have in your possession one black Nike brand sports bra and one white dress with grey linings, which may be reasonably suspected of being stolen, and you failed to account satisfactorily how you came by the same, and you have thereby committed an offence punishable under s 35(1) of the Miscellaneous Offences (Public Order and Nuisance) Act (Cap 184, 1997 Rev Ed).

4 I sentenced the accused to undergo imprisonment of 12 years and to receive 12 strokes of the cane for the first charge. For the second charge, I imposed the minimum sentence provided by law, imprisonment for 5 years and 12 strokes of the cane. I also ordered both imprisonment terms to run consecutively with effect from 21 August 2013, the date of arrest. The total sentence was therefore 17 years' imprisonment and 24 strokes of the cane, the maximum number of strokes permissible by law.

The Statement of Facts

5 The accused admitted all the facts set out in the following Statement of Facts:

A. THE ACCUSED

1. The accused is Chang Kar Meng (FIN.: [X]), a 27-year-old male Malaysian born on 30 January 1988. At the time of the offences, the accused was 25 years old and was the kitchen-in-charge at DOME Coffee located in Raffles Place, Singapore. He resided with his girlfriend at a rental unit at Blk [X] Geylang East Avenue 1, Singapore.

B. THE VICTIM

2. The victim is [V] (FIN.: [X]), a 35-year-old Vietnamese female born on [X] [X] 1980. At the time of the offences, the victim was 33 years old and was unrelated to the accused. She resided with her Singaporean husband at an apartment unit at Blk [X] Paya Lebar Way, Singapore ("**the Block**"). The victim met her husband in Vietnam and came to Singapore to be with him in 2008. The victim was working as a waitress, and

her working hours were from 5.30pm to 1.00am. The victim would usually take a bus to work and take a taxi back home from work.

C. FIRST INFORMATION REPORT

3. On 8 March 2013, at about 2.46am, the victim's husband called the emergency Police hotline and reported, "*WIFE GOT BEATEN AT THE BACK OF HER HEAD AND THE PERSON TOOKED (sic) HER BACK (sic). HER PHONE IS IN THE BAG. HER PHONE NUMBER IS [X]. THE GUY IS FAIR AND WEARING BLACK SHORTS AND CARRYING A SLING BAG.*" The incident location was given as the void deck of the Block. Police officers were despatched to the incident location.

4. Before the Police arrived, the accused started to run away from the scene. When police officers arrived, they spotted the accused who fitted the description provided by the victim's husband. They chased after the accused, but lost sight of him.

5. The police officers interviewed the victim who informed them that she had been raped and robbed by the accused. The victim was then sent to KK Women's & Children's Hospital ("**KKH**") for a medical check-up.

D. FACTS LEADING TO THE CHARGES

6. On 7 March 2013, the victim reached her workplace at 5.00pm and started working till 1.15am when she left her workplace and took a taxi home. She alighted at the open space carpark near the Block and walked towards the Block while reading news on her mobile phone. She then arrived at the ground floor lift lobby, pressed the lift button and waited for the lift to arrive.

7. On 7 March 2013, the accused went to work at his workplace. At around 11.00pm that night, the accused went to Macpherson food centre for a meal. Whilst he was in the midst of his meal, the accused received a call from his girlfriend telling him that she would treat him to a meal at McDonald's. The accused then told her to wait for him there and that he would make his way over. He then continued eating his meal and left to meet his girlfriend at or about 1.00am. As he was on the way to meet his girlfriend at McDonald's, he received a call from his girlfriend saying that she was not going to wait for him any longer and would be going home.

8. The accused thus headed home and was walking up the overhead bridge in front of the Block when he heard some

noise behind him. He turned around and saw the victim walking along the void deck of the Block. The accused noticed that the victim was carrying a sling bag and looking at her mobile phone. This was at or about 1.30am on 8 March 2013.

E. FACTS RELATING TO THE 1ST CHARGE

9. The accused observed that there was no one around and decided to rob the victim as he was short of money. He got off the overhead bridge and removed his slippers. After placing his slippers in the bushes near the bridge, he walked quickly towards the ground floor lift landing, making as little sound as possible. He approached the victim from behind and covered her mouth with his left hand to prevent her from shouting. He then voluntarily caused hurt to the victim, by using his right hand to hit the back of the victim's neck near her right shoulder. In doing so, the accused intended to make her unconscious, so that he could rob her. He had seen this being done in movies. After being hit, the victim felt dizzy. She felt the accused's hand hitting her on the same spot a few more times after the initial blow. The victim then felt the accused's arm hugging her around the waist before she fainted and collapsed to the ground.

10. After the victim had fallen to the ground, the accused saw that the lift was approaching the ground floor and wanted to drag the victim to the right side of the lift entrance to avoid being captured on the closed-circuit television ("CCTV") inside the lift. The accused was not sure if there was a CCTV inside the lift but wanted to play it safe. Just as he was about to drag the victim away, the lift door opened. The accused lowered his head to prevent his face from being captured by the CCTV. The CCTV inside the lift showed the victim lying on the ground outside the lift, with the accused kneeling beside her and pinning her down. In the process, the victim's Polo t-shirt was lifted, exposing her bra. It was only after the lift doors closed that he half-carried and half-dragged the victim to the right side of the lift entrance.

11. As the accused was dragging the victim, he noticed that she was still holding onto her mobile phone and took it from her hand. He then lifted the victim up so that he could remove her sling bag and took her sling bag. He then also removed her watch, earrings, necklace, and ring.

12. In all, the accused took the following items out of the victim's possession:

- a. one gold necklace with a jade pendant valued at approximately S\$760;

- b. one Samsung Galaxy S3 mobile phone valued at approximately S\$500;
- c. cash amounting to approximately S\$300;
- d. one silver ring valued at approximately S\$250;
- e. one brown sling bag valued at approximately S\$100;
- f. one red Casio watch valued at approximately S\$90;
- g. one pair of gold earrings valued at approximately S\$70;
- h. one brown 'Toscano' purse valued at approximately S\$60;
- i. one pair of spectacles valued at approximately S\$60;
- j. one EZ-link card with a stored value of approximately S\$10; and
- k. cosmetics valued at approximately S\$10

with a total approximate value of S\$2,210. All of these items were taken from the victim's possession without her consent.

F. FACTS RELATING TO THE 2ND CHARGE

13. As the accused lifted the victim, he came into contact with her body. He became aroused and had an erection. The accused observed that the victim had no reaction at all when he took her belongings.

14. The accused laid the victim back onto the ground and looked around to confirm that no one was around. He placed all the victim's belongings which he had removed into the sling bag and half-carried and half-dragged the victim to the grass patch at the vicinity of the Block which was about 13 metres away.

15. The accused placed the victim under a small tree at the grass patch, and lifted up the victim's Polo t-shirt and bra. He placed the sling bag beside him, took photographs of the victim's exposed breasts, and then started fondling the victim's breasts. At this juncture, the victim regained consciousness and felt that she was lying on grass. She felt the accused touching her breasts but she was too afraid to shout for help. She thus kept her eyes closed, and pretended to remain unconscious. The victim opened her eyes slightly at

various intervals through the incident and was aware of what the accused was doing to her.

16. The accused removed the victim's three-quarter jeans and panties by pulling them down to her knees. He encountered difficulties unbuttoning the victim's jeans but persisted and eventually managed to unbutton them. Thereafter, the accused knelt down and lifted the victim's legs up to his shoulders. He then removed his shorts and penetrated the victim's vagina with his bare penis, without her consent. The victim dared not resist or fight back as she was afraid that the accused would hurt or even kill her. The accused eventually ejaculated outside the victim's vagina. He did not wear any protection when he had sex with the victim.

17. The accused used his t-shirt to wipe his groin, thighs and hands before using it to wipe the victim's vagina. He then pulled up his shorts and started taking photographs of the victim's bare breasts with his mobile phone camera. Thereafter, the accused put on the victim's clothes for her and propped her up in a sitting position. The accused laid the victim onto the ground again and started rummaging through her sling bag. He placed the victim's work permit, prayer card and house key into her jeans pocket and walked away with the victim's sling bag.

18. The victim sat up and wanted to get away but heard the accused walking back towards her. She then lay on the grass and closed her eyes. The accused lifted the victim and carried her towards the lift landing of the Block. He carried her to the staircase landing between the first and second floors, and laid her on a discarded mattress that he found there. Thereafter, he took a photograph of the victim's clothed body. The accused then left the scene with the victim's sling bag and retrieved his slippers from the bushes.

19. The victim got up and took the lift back to her unit. Upon reaching her bedroom, the victim sat on the floor and cried, waking her husband as a result. The victim informed her husband that she was robbed but did not tell him that she was also raped. The husband thus called the emergency Police hotline reporting that the victim had been robbed.

G. THE ACCUSED'S ARREST

20. Following five-and-a-half months of investigative work, the accused was arrested at his residence at Blk [X] Geylang East Avenue 1, Singapore on 21 August 2013.

21. All of the items taken from the victim during the robbery were recovered, save for the items listed in sub-

paragraphs 12(c), (i), (j) and (k). The accused had discarded the items listed in sub-paragraphs 12(i), (j) and (k) in the drain near Macpherson food centre after leaving the scene and before he returned home on 8 March 2013. The accused had also switched off the victim's mobile phone and threw away the victim's SIM card. He later gave the victim's mobile phone to his girlfriend for her usage and spent the cash amounting to approximately S\$300.

22. The accused had taken photographs of the victim's exposed breasts, with the intention of viewing them subsequently. The photograph at the staircase landing captured the victim's face, but not clearly. The accused deleted the photographs after viewing them. The photographs have been not recovered.

H. VICTIM'S MEDICAL REPORT

23. The report dated 11 July 2013 prepared by Dr Freda Khoo Wan Yu, a Registrar with the Department of Obstetrics & Gynaecology of KKH [TAB A] states that the victim was examined on 8 March 2013 at 8.48am, and was found to have sustained the following injuries:

- a. a less than 1 cm laceration on the lateral aspect of the right upper arm;
- b. a 1-cm laceration on the lateral aspect of the right forearm;
- c. bruising at the left occipital area with tenderness;
- d. bruising at the lateral posterior aspect of the right shoulder and the posterior aspect of the left upper arm; and
- e. superficial laceration over the right gluteal region.

24. The victim was prescribed contraceptive pills and anti-nausea medication. She was seen at the outpatient clinic on 16 April 2013 and given an open follow-up date.

I. HEALTH SCIENCES AUTHORITY ("HSA") REPORT

25. The reports bearing lab. no.s DN-1343-00422 and DN-1343-00423 dated 25 September 2013 prepared by Crystal Tan Liang-Sung, an analyst with the DNA profiling laboratory of HSA [TABS B & C] state that the accused's DNA was found on the following:

- a. the victim's left nipple;
- b. the victim's right nipple;
- c. the victim's urethra;
- d. the victim's anus;
- e. the victim's vagina;
- f. the victim's jeans;
- g. the victim's shirt;
- h. the victim's panties; and
- i. the victim's brassiere.

J. EXHIBITS

26. The CCTV footages recorded by the CCTV within the lift have been retrieved by the Police and transferred into a CD-ROM **[TAB D]**. Photographs of the scene of the offences and the clothing worn by the victim at the material time are enclosed at **TAB E**.

K. CONCLUSION

27. The accused had voluntarily caused hurt in committing robbery when he committed robbery of the items listed in [12] above from the victim's possession. In committing the robbery, he voluntarily caused hurt to the victim by hitting her a few times on the back of her neck near her right shoulder with his hand at or about 1.30am on 8 March 2013, at the ground floor lift landing of the Block, Singapore. Accordingly, he has committed an offence punishable under s 394 of the Penal Code (Cap 224, 2008 Rev Ed) ("**Penal Code**").

28. The accused had also committed an offence of rape when he penetrated the victim's vagina with his penis without her consent at or about 1.30am on 8 March 2013, at the grass patch in the vicinity of the Block, Singapore. Accordingly, the accused has committed an offence under s 375(1)(a) of the Penal Code, punishable under s 375(2) of the Penal Code.

29. The accused admits to having committed the above two offences.

The Prosecution's submissions on sentence

6 The accused had no previous convictions. The prosecution urged the court to impose on the accused an aggregate sentence of 18 years' imprisonment and the maximum 24 strokes of the cane. This comprised suggested sentences of 13 years' imprisonment and 12 strokes of the cane for the first charge (rape) and of 5 years' imprisonment and 12 strokes of the cane for the second charge (robbery with hurt).

7 The prosecution cited *Public Prosecutor v NF* [2006] 4 SLR(R) 849 where the offence of rape was set out in four broad categories with suggested benchmark sentences for each category. It was submitted that the present case fell within Category 1 which concerns rapes which feature no aggravating or mitigating circumstances. The benchmark for this category is 10 years' imprisonment and not less than 6 strokes of the cane.

8 The Prosecution also referred to the Court of Appeal's decision in *Public Prosecutor v Mohammed Liton Mohammed Syeed Malik* [2008] 1 SLR(R) 601 which states that apart from considering the aggravating and mitigating factors in each case, the court should also be guided by three broad principles. These principles are the level of culpability of the offender, the degree of harm to the victim and the level of risk posed by the offender to society.

9 The Prosecution submitted that several aggravating factors here justify a sentence which is longer than the benchmark sentence mentioned in [7] above. The accused's acts in a residential estate would cause public disquiet and shake the collective sense of safety and tranquillity. Further, he committed rape in an aggravated manner. He knocked the victim unconscious and half-

dragged her over a distance of some 13 metres. He took photographs of her exposed breasts. When the victim regained consciousness, she was in fear as she was unaware of who the assailant was and what he could be capable of. She suffered injuries from the accused's rough handling of her body. The accused had unprotected sex with her, thereby exposing her to the risks of an unwanted pregnancy or some disease. After raping her, the accused degraded the victim further by taking more photographs of her. This would allow repeated viewings and add to the victim's fear that the photographs could be circulated to others. After the rape, the accused tried to make it look like it did not happen. The accused's actions in themselves also suggested that he poses a risk to society.

10 The Victim Impact Statement of 8 March 2015 showed that the victim was affected by the attack even though it happened some two years ago. She changed her job so that she could reach home earlier. She is afraid of taking the lift alone when it is dark and needs her husband to meet her at the void deck to escort her up. She is also wary when walking towards her block. She has unpleasant flashbacks of the incident.

11 Although the accused has pleaded guilty, he was not truly remorseful as he did not surrender himself and was traced by the police more than five months after the offences. In the psychiatric report dated 24 October 2013 by the Institute of Mental Health, he told the psychiatrist that he could not remember if he actually inserted his penis into the victim's vagina as he ejaculated almost immediately. His guilty plea also had no mitigation value as the evidence was overwhelming against him.

12 In the same psychiatric report, he was assessed to be suffering from major depression in and around the time of the offences. The psychiatrist opined that while there was no direct causal link between the major depression and the offences, it was clear that the accused was experiencing tremendous psychological distress and his hitherto fragile self-esteem had been fractured after repeated real and imagined onslaughts. The accused also suffers from fetishistic transvestism. He appeared to have some degree of confusion over his sexual identity. There was no direct causal link between the fetishistic transvestism and the offences in the first two charges. However, it might have driven him to procure lingerie illegally as it was embarrassing for him to do so in a more legitimate fashion. The accused was depressed during his remand and suffered intermittent panic attacks. He was however not of unsound mind at the time of the offences and was aware of what he was doing and that what he was doing was wrong.

13 The Prosecution argued that the accused's mental condition should not be accorded undue weight as a mitigating factor. It did not deprive him of his judgment and decision-making ability. All his acts during the offences showed presence of mind. He removed his slippers to avoid making noise, he knew how to subdue the victim and to bring her to a secluded area, he tried to cover his tracks by wiping her private parts and carrying her to the staircase landing and he knew he had to throw away the victim's mobile phone's SIM card to avoid detection. In any case, the severity of his offences far outweighed the mitigation value of his mental condition.

14 The Prosecution cited *Mohamed Shouffee bin Adam v PP* [2014] 2 SLR 998 ("*Shouffee*") in arguing for consecutive imprisonment terms to be imposed. In that case, Menon CJ held that consecutive sentences would not be

appropriate if the various offences involve a single invasion of the same legally protected interest. In the present case, the victim's right to her bodily integrity and her right to property were violated. Indeed, this case fell within the illustration mentioned at [33] of the case cited above:

An illustration will help in making the point. Take the example of a date rapist who rapes his unconscious victim and then makes off with her purse. Notwithstanding the proximity in time and place in which these offences have been committed, it would be wrong to regard both as forming a single transaction. It is quite evident that two separate interests, namely the right to bodily integrity and the right to property, have been implicated and warrant separate punishment.

15 While there have been precedents involving rape and robbery which resulted in aggregate imprisonment of between 11 and 15 years, the suggested sentence of 18 years' imprisonment would still be justified on the facts here. The victims in the precedents were restrained but conscious and had a chance to resist and to plead with the rapist. Here, the victim was attacked from behind and rendered unconscious. By the time she regained consciousness, she had been robbed and her body was being violated in the secluded grass patch. The accused attempted to cover up his crime. He also took photographs of the victim. Although he deleted them later, the victim was not aware of that and had to live with the possibility of circulation of the photographs for more than five months. He remained at large for more than five months, adding to the victim's fear that her assailant could still be in the neighbourhood.

16 The Prosecution also informed the court that there were 133 rape cases in 2012, 120 in 2013 and 163 in 2014.

The mitigation plea

17 Counsel for the accused submitted that the appropriate sentence would be a global sentence of around 10 years' imprisonment coupled with caning. They highlighted the findings in the psychiatric report (see [11] and [12] above) and contended that the accused's major depression contributed to his inexplicable offending behaviour. They also cited three precedents which they submitted involved offences which were more aggravated in nature than the present but where the sentences for rape ranged from six to 11 years' imprisonment and included caning of four to eight strokes.

18 It was accepted that the present case was a Category 1 rape. Counsel for the accused submitted that the benchmark of 10 years' imprisonment and caning for this category applies to "contested cases". Here, the accused has pleaded guilty and has no criminal record. He acted on impulse rather than out of premeditation. The penetration by the accused was brief and he ejaculated outside the victim's vagina. He is not a risk to society as this was a one-off transgression and he is receiving treatment to cure the root of his problems.

19 Counsel for the accused submitted that the Prosecution's suggested 18 years' imprisonment would be a crushing sentence which offended the totality principle. Even the cases cited by the Prosecution showed that more aggravated factual situations attracted global sentences of up to 15 years' imprisonment and 24 strokes of the cane.

20 The accused was remorseful and tendered his apologies in court to the victim. In his handwritten note to the court, he expressed his regret and stated that he was not a "cold-blooded animal". He did not run away immediately after the offences because he really wanted to help and compensate the victim.

He did not have the courage to surrender himself and lived in constant fear of being arrested. When his girlfriend asked him for a new mobile phone, he was in financial difficulties and so decided to give her the one that he had robbed the victim of. Thereafter, he was found out by the police very quickly. After his arrest, he had suicidal thoughts. He helped the police during the investigations by providing “lots of evidence” that were detrimental to himself. His family and his fiancée have forgiven him and he greatly appreciated that. He hoped for a chance to be able to take care of his aged mother.

21 One of the accused’s elder sisters wrote to inform the court that “this is not the type of person that he is and he is ashamed of himself for what he has done”. She hoped that their mother, who missed the accused very much, could be reunited with him after his sentence.

22 The accused’s girlfriend wrote to ask the court for leniency for the accused. She and the accused were from the same town in Malaysia. They have been in a relationship for 10 years. Although they were not engaged to each other, they were no different from a married couple. They had frequent quarrels but she described the accused as a very responsible, generous, kind-hearted and caring person who also provided her with financial support. She believed that the accused committed the rape “without a sound mind at that time” and has chosen to forgive him. In her view, “he is definitely not a bad guy” and “he is a boyfriend with grade A in my heart”.

The decision of the court

23 In sentencing the accused, I was in general agreement with the Prosecution that the facts here warranted a deterrent sentence. The accused’s

audacity was amply demonstrated by his acts committed against a helpless female within metres of the flats in the block in question.

24 All his actions spoke of a clear and determined mind despite whatever depression he was in around the time of the incidents. He knew he had to remove his slippers and move silently if he wanted to attack the victim by surprise. He knew how to render her unconscious. He was mindful of being caught by the CCTV installed in the lift when he saw the lift descending to the ground floor. He toyed with her body and took pictures of her with his mobile phone. He even told the psychiatrist that the flash on the mobile phone was turned off. He was clear minded in cleaning up after the rape. He could decide what he wanted to take of her belongings. He had the presence of mind to take more photographs of her after he had moved her to the staircase landing. He remembered to retrieve his slippers before leaving the scene. He knew he had to dispose of the SIM card in the victim's mobile phone.

25 In my opinion, to say that the above acts were the influence of a depressed mind would be contrary to logic and common sense. In any case, depression cannot be used as a licence for someone to harm others and certainly not to rob and rape a helpless female returning home after a day at work.

26 The offences here fell squarely within the principles justifying consecutive imprisonment terms as enunciated in *Shouffee*. The overall criminal conduct clearly called for a severe sentence to be imposed. The robbery charge already demanded a minimum sentence of five years' imprisonment and 12 strokes of the cane.

27 I would have sentenced the accused to 14 years' imprisonment for the rape charge had it stood alone. However, I decided to reduce it to 12 years on account of his relative youth at the time of the offences in 2013 (he was 25 years old then) and also because he would be receiving consecutive imprisonment terms and the maximum of 24 strokes of the cane allowed by law for both offences.

28 For the above reasons, I sentenced the accused as stated in [4] above. The accused has appealed to the Court of Appeal against the sentence imposed.

Tay Yong Kwang
Judge

Zhong Zewei and Kelly Ho (Attorney-General's Chambers) for the
prosecution;
Sunil Sudheesan and Diana Ngiam (Quahe Woo & Palmer LLC) for
the accused.
