

Public Prosecutor v Muhammad Alif bin Ab Rahim

[2021] SGHC 115

Case Number : Criminal Case No 23 of 2019
Decision Date : 12 May 2021
Tribunal/Court : General Division of the High Court
Coram : See Kee Oon J
Counsel Name(s) : David Khoo, Gregory Gan, Chong Kee En (Attorney-General's Chambers) for the Prosecution; Gloria James-Civetta (Gloria James-Civetta & Co) for the accused
Parties : Public Prosecutor — Muhammad Alif bin Ab Rahim

Criminal Law – Offences – Rape

Criminal Law – Offences – Sexual assault by penetration

Criminal Procedure And Sentencing – Sentencing

12 May 2021

See Kee Oon J:

1 The accused pleaded guilty to three charges, comprising one charge of aggravated rape and two charges of aggravated sexual assault by penetration (“SAP”). Seven other charges were taken into consideration (“TIC”) for the purpose of sentencing. Four of the seven TIC charges were also in relation to sexual assault on the same victim. The remaining three charges relate to property offences.

Facts

2 The accused admitted the Statement of Facts (“SOF”) without qualification. I do not propose to recite the SOF in detail for present purposes but only to set out a summary of the salient aspects.

3 The victim was only 13 years of age when the offences were committed by the accused, who was an acquaintance known to her as “uncle” through one of her friends, Mr H. Mr H’s mother, Ms Y, was then in a romantic relationship with the accused. The offences forming the subject-matter of the seven charges involving the victim all took place on the night of 24 October 2017 sometime between 9.01 pm and 10.59 pm at Kallang Riverside Park (“the Park”).

4 The victim was a virgin prior to the offences. The accused raped her and also sexually penetrated her anally, orally and digitally. The victim had continuously struggled and cried, but was too weak and affected by the vodka that the accused had forced her to drink. The accused had also used force to subdue and restrain her in the course of the sexual assault, with the victim suffering various injuries as a result.

5 The accused did not use a condom. After assaulting the victim, he ejaculated on the victim’s body and some of his semen landed on the victim’s bare chest and breasts. The accused threatened the victim not to tell anyone about what had happened, and he then left the scene. The victim was in great pain but she managed to send voice messages via WhatsApp to various persons pleading for help and informing them that she had been raped. The accused returned to the Park later when the victim was still lying on the ground. He again threatened her not to tell anybody before leaving once more.

6 Mr H, together with three of the victim's friends, managed to locate her at the Park. The victim's grandparents arrived soon after and called the police. It was at this point when Mr H asked his mother (Ms Y) to go to the Park as the victim had identified the accused as her attacker. The accused had run into the search party briefly, but had subsequently returned to Ms Y's flat. Dressed in different clothes, he accompanied Ms Y to the Park, where they saw the victim together with her friends and her grandparents. The victim's grandfather had called the police to report the incident. The victim again identified the accused as her rapist before the police arrived. He denied raping her and threatened the victim's grandmother, stating that if anything were to happen to him, he would find the victim's family and harm her (*ie.* the victim's grandmother). He fled the scene when he saw two police officers arriving.

7 The police arrived at Ms Y's flat at about 5.00 am on 25 October 2017. They found the accused hiding in a cupboard in a locked bedroom and placed him under arrest. He attempted to mislead the police by claiming he was wearing different clothes, so that the police would be unable to conduct CCTV screenings and forensic testing of his clothes. When interviewed, the accused lied that he was looking for Ms Y at the Park and had never met with the victim that night. A year later, the accused changed his story, claiming that the victim came onto him and requested for sex, and they only had consensual penile-vaginal intercourse and that he had never employed force on her.

8 The victim was assessed to clearly have symptoms of trauma. She informed Dr Parvathy Pathy of the Child Guidance Clinic that she had flashbacks of the incident when she watched movies with rape scenes. She also stated that she did not want to see the accused in court as it would "hurt" her too much. She was unable to sleep well at night and had nightmares of the incident with the accused and she would cry when she woke up from the nightmares. The victim was fearful of going out alone and seeing male strangers and she could only go out with her family members.

9 The accused was examined by Dr Tan Ming Yee Giles ("Dr Tan") of the Institute of Mental Health ("IMH") on 14, 15 and 17 November 2017. In his report dated 4 December 2017, Dr Tan stated that the accused's intelligence was in the borderline range, but he did not suffer from intellectual disability as he had good adaptive functioning. He was not of unsound mind at the time of the offences, and he was assessed to be fit to plead in court.

10 In his report, Dr Tan reproduced the accused's account of the offences, where the accused denied committing the offence and claimed that he never saw the victim at all on the day of the offences until he went to the Park with Ms Y.

My decision on sentence

11 I agreed with the Prosecution that there were serious offence and offender-specific aggravating factors. As outlined in the Prosecution's sentencing submissions, the accused raped the victim twice, penetrated her anus with his penis twice, digitally penetrated her vagina with his finger, penetrated her mouth with his penis, and grabbed and licked her breasts.

Offence-specific factors

12 The victim was subjected to a harrowing two-hour ordeal of violent and repeated sexual assault by the accused. The Prosecution rightly identified numerous offence-specific aggravating factors.

13 First, the victim was only 13 when the offences were committed. This consideration is however already reflected in the charges which are framed as aggravated forms of sexual assault.

14 Second, serious harm was inflicted as significant violence was used in the course of the sexual assaults. The accused violently forced the victim to drink vodka by squeezing her cheeks to open her mouth and pouring the vodka into her mouth. He covered her mouth to prevent her from shouting for help. He slapped her face hard and gripped her wrists forcefully. He pressed her cheeks open to perform oral sex on her.

15 The victim suffered various physical injuries as reflected in the medical report by Dr Michelle Lim of Kangar Kerbau Women and Children's Hospital dated 25 October 2017. She had bilateral knee abrasions as well as areas of redness and abrasions on her upper back. She had two lacerations on her right elbow and a 1 cm bruise on the dorsal surface of her right wrist. Her vulva was erythematous, with a 1 cm area of excoriation/abraded skin.

16 The victim also had clear symptoms of trauma and had to undergo regular treatment to help her cope. She experienced flashbacks of the incident and had nightmares. She was fearful of men and of going out alone. In her victim impact statement prepared on 27 January 2021, less than two months before the accused pleaded guilty, she spoke of feeling "dirty and ashamed" of herself and being unable to sustain a relationship with her ex-boyfriend as it triggered her memory of the rape.

17 Third, the Prosecution further suggested that the accused had deliberately inflicted special trauma on the victim in committing repeated rape and penetrations of her anus and mouth, and subjecting her to a full panoply of penetrative activities. He used hair gel as a lubricant when raping her and forced his lubricated penis into her mouth. He subjected her to further degradation by ejaculating on her chest.

18 Fourth, the accused took advantage of the fact that the victim was acquainted with him. She had trusted him enough to accompany him to a secluded area in the Park, ostensibly to have a cola drink and chat. She was unsuspecting of his intentions. The accused's conduct thus demonstrated significant opportunism. The Prosecution did not suggest that the offences were premeditated.

19 Fifth, the accused took deliberate steps to conceal his offences. He also threatened the victim not to report the incident. He changed his clothes before returning to the scene with Ms Y, putting up a show of ignorance. He threatened the victim's grandmother after he was identified as the rapist and then fled. Subsequently, he tried to conceal himself in Ms Y's flat and when discovered, he claimed he was wearing different clothes at the material time to frustrate any forensic testing of his clothes.

20 Sixth, the accused penetrated the victim multiple times without using any protection, thereby exposing her to the risk of sexually transmitted diseases and pregnancy.

21 On account of the accumulated offence-specific aggravating factors, I agreed with the Prosecution that the aggravated rape and SAP charges would fall minimally within the higher end of Band 2 of the sentencing frameworks laid down by the Court of Appeal in *Ng Kean Meng Terence v Public Prosecutor* [2017] 2 SLR 449 ("*Terence Ng*"), *Pram Nair v Public Prosecutor* [2017] 2 SLR 1015 ("*Pram Nair*") and *BPH v Public Prosecutor and another appeal* [2019] 2 SLR 764.

22 Band 2 of the *Terence Ng* framework specifies that for rape cases which contain two or more offence-specific aggravating factors, the sentencing range from which an indicative starting point can be derived ought to fall between 13 to 17 years' imprisonment and 12 strokes of the cane. Band 2 of the *Pram Nair* framework specifies that for SAP cases which contain two or more offence-specific aggravating factors, the sentencing range from which an indicative starting point can be derived ought to fall between 10 to 15 years' imprisonment and eight strokes of the cane.

23 In my view, the Prosecution justifiably identified the appropriate indicative starting point sentences as 17 years' imprisonment and 18 strokes of the cane in respect of the aggravated rape charge, and 15 years' imprisonment and 12 strokes of the cane in respect of the two aggravated SAP charges.

24 Having identified the relevant sentencing bands and the indicative starting point sentences in accordance with the first step of the two-step frameworks in *Terence Ng* and *Pram Nair*, I turned next to consider the second step of the frameworks. This involved consideration of the offender-specific factors, *ie*, the aggravating and mitigating factors which are personal to the offender.

Offender-specific factors

25 The accused was previously convicted for a string of property offences dating back to 2001 when he was 15 years' old. Upon his last release from prison in September 2016, he reoffended within six months. Notably, when he was last imprisoned for various offences in August 2014, he had been convicted of a similar offence of SAP alongside an offence of snatch theft, with one charge of aggravated outrage of modesty taken into consideration. He was sentenced to a global imprisonment term of 42 months and three strokes of the cane. Evidently, he was not deterred by his previous punishments.

26 The Prosecution highlighted the similar facts of his previous SAP offence. He had brought an 18-year-old victim to a Housing and Development Board ("HDB") estate and after consuming alcohol, he forcefully pushed her against a wall and stripped off her shirt and bra. The victim struggled but he inserted his finger into her vagina multiple times. She eventually managed to break free and ran away topless to seek help. There was therefore a clear escalation in the accused's offending conduct barely a year after he was released in September 2016.

27 The Prosecution also pointed to the four similar TIC charges before the court. In total, seven charges in all were involved relating to the same victim, illustrating the full gravity of the offences perpetrated on her.

28 Next, the Prosecution submitted that the accused was patently unremorseful. He denied committing the offences when confronted. He later suggested that the victim had come on to him for consensual sexual activity. He did not cooperate in the investigations and had in fact deliberately sought to frustrate the investigations in various ways. He threatened the victim twice not to tell anyone about the incident and also threatened her grandmother with harm if he were to be apprehended by the police. In addition, he committed the offences while on the run for the three other property offences which comprise the remaining TIC charges.

29 I found no discernible indication of any remorse. The accused eventually decided to plead guilty only on the first day of trial. He elected to claim trial even though he was essentially caught red-handed, with his DNA and semen detected, and CCTV evidence disproving his accounts of where he claimed to have been. As the trial was primed to proceed, the victim would already have had to prepare to relive her ordeal and recall the details of the trauma that she had undergone at the hands of the accused in October 2017.

Defence submissions

30 The Defence did not dispute that the present case fell within Band 2 of the *Terence Ng* and *Pram Nair* frameworks. It was however suggested that the lower end of Band 2 was applicable. The accused contended that the victim had recovered and may not be experiencing continuing trauma,

premised on a reading of selected phrases of reported speech apparently framed in the past tense in the victim impact statement. I found this reading to be strained and unrealistic. I did not agree that on this basis alone it could be fairly said that significant harm and lasting trauma was not caused.

31 It was further suggested that the accused had not threatened the victim or her family, and that any such fear was self-induced. This was clarified during the hearing to mean that the accused did not threaten them (and indeed could not have threatened them) after he was arrested and remanded. I did not see how this carried any mitigating force given that he had admitted in the SOF that he had threatened them both before his arrest.

32 Further, it was submitted that there was no excessive force calculated to cause serious harm in committing the offences, or any deliberate infliction of special trauma. I did not agree. The SOF spoke for itself in documenting the victim's extensive physical and psychological injuries. I had no doubt that she had suffered significant trauma as a consequence, and this had also been documented in the appended medical reports.

33 Next, the accused denied abusing the victim's trust and having acted with premeditation. Once again, the SOF spoke for itself. The accused was not a complete stranger to the victim, who knew him as "uncle". I was also not persuaded by the assertion that not using a condom for protection would have meant that the accused had simply acted on a moment of impulse and had not deliberately sought to target the victim. This was hardly an irresistible inference that one would readily draw from the facts. Nevertheless, the Prosecution had clarified that it was not suggesting that the offences were premeditated.

34 I turn next to address the defence submissions in respect of the offender-specific factors. While the accused was assessed to have borderline intelligence and antisocial personality disorder, this could not be said to have impaired his ability to function as an ordinary member of the community and to observe societal norms. He was found to have good adaptive functioning, and was able to remain within the school system until he left school at secondary two and to secure employment and start a family.

35 More importantly, the accused was clearly able to understand the nature and consequences of his conduct. I did not see how he had demonstrated major difficulty in making appropriate choices or comprehending the consequences of his conduct. He clearly had ample consciousness and presence of mind to deny the commission of the offences and change into a different set of clothes to evade detection. Furthermore, he threatened the victim and her grandmother in an attempt to intimidate them into not implicating him. Thereafter, he had no qualms fabricating different explanations for his alleged involvement, including falsely claiming that the victim had led him on to engage in consensual sexual activity.

36 The Defence also highlighted that the accused was assaulted in prison by other inmates in 2017 and again in 2020. It was not clear how these assaults had any direct connection to the present case. In any event, even if they did, this would not be a relevant mitigating factor to justify reducing his sentence.

Calibration of the sentence

37 The Prosecution fairly conceded that the accused should still be given some credit for his plea of guilt which would at least spare the victim from having to recount her ordeal at his trial. In this connection, the Prosecution proposed a discount of two years off the indicative starting point mentioned at [23] above for each of the charges. I agreed that this was fair and appropriate on the

facts.

38 Apart from the accused's late plea of guilt, there were no other mitigating factors. The proposed imprisonment sentences were also consistent with the sentencing precedents cited. There was a compelling need for a deterrent sentence and also for the sentence to adequately reflect retributive principles. A substantial sentence was manifestly necessary for the protection of the public given that the accused had reoffended very soon after his last SAP offence. To aggravate matters, there was a serious escalation in his offending conduct, which would warrant a measure of specific deterrence.

Conclusion

39 Having taken into account the relevant sentencing considerations, including assessing the sentence in terms of totality and proportionality, the appropriate sentence in my view would be 15 years' imprisonment and 16 strokes of the cane. In respect of the two aggravated SAP charges, the appropriate sentence would be 13 years' imprisonment and 12 strokes of the cane.

40 Pursuant to s 307(1) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed), I ordered the sentences in the first and fourth charges to run consecutively, resulting in an aggregate sentence of 28 years' imprisonment and 28 strokes of the cane. Caning was limited to the maximum permitted of 24 strokes. I further ordered that the sentence of imprisonment be backdated to the date of arrest on 25 October 2017.