Public Prosecutor v Netto Michael George
[2000] SGHC 261

Case Number	: CC 57/2000
Decision Date	: 30 November 2000
Tribunal/Court	: High Court
Coram	: Amarjeet Singh JC
Counsel Name(s)	: Kan Shuk Weng (Attorney General's Chambers) for the Public Prosecutor; S K Kumar (briefed) for the accused
Parties	: Public Prosecutor — Netto Michael George

JUDGMENT:

Grounds of Decision

Charges

1. The Accused was charged and tried on the following amended charges:-

1st Charge

You, MICHAEL GEORGE NETTO,

are charged that you on the 15th day of January 2000, at or about 4.00 am, at No. 25 Jalan Ketumbit, Singapore, committed house-breaking by night, by entering into the said premises belonging to one Chin Lee Lian and used as a human dwelling, after 7.00 pm and before 7.00 am, having made preparation for putting persons in the said premises in fear of hurt or of wrongful restraint, by arming yourself with a knife, and you have thereby committed an offence punishable under Section 458 of the Penal Code, Chapter 224.

2nd Charge

(Amalgamating 4th and 6th charges)

You, MICHAEL GEORGE NETTO,

are charged that you on the 15th day of January 2000, at or about 4.00 am, at No. 25 Jalan Ketumbit, Singapore, did rape one Fredelina Evangelista Manuel, female, 43 years old, and in order to commit the said offence you put the said Fredelina Evangelista Manuel in fear of death to herself, and you have thereby committed an offence under Section 376(2)(b) of the Penal Code, Chapter 224.

3rd Charge

(Amalgamating 5th and 8th charges)

You, MICHAEL GEORGE NETTO

are charged that you on the 15th day of January 2000 between 4.00 am and 5.30 am, at No. 25 Jalan Ketumbit, Singapore, had carnal intercourse against the order of nature with Fredelina Evangelista Manuel, female 43 years old, to wit, by putting your penis into the mouth of the said Fredelina Evangelista Manuel, and you have thereby committed an offence punishable under Section 377 of the Penal Code, Chapter 224.

7th Charge

You, MICHAEL GEORGE NETTO

are charged that you on the 15th day of January 2000 between 4.00 am and 5.30 am, at No. 25 Jalan Ketumbit, Singapore, did use criminal force to one Fredelina Evangelista Manuel, female 43 years old, intending to outrage the modesty of the said Fredelina Evangelist Manuel, to wit, by licking the vagina of the said Fredelina Evangelista Manuel, and in order to commit the said offence, you voluntarily caused the said Fredelina Evangelista Manuel fear of instant hurt, and you have thereby committed an offence punishable under Section 354A of the Penal Code, Chapter 224.

9th Charge

You, MICHAEL GEORGE NETTO

are charged that you on the 15th day of Janaury 2000 between 4.00 and 5.30 am, at No.25 Jalan Ketumbit, Singapore, committed robbery of cash of S$50/- in the possession of one Fredelina Evangelista Manuel, and at the same time of committing the said robbery, you were armed with a knife, and you have thereby committed an offence punishable under Section 392 read with Section 397 of the Penal Code, Chapter 224.

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Prosecution Case

2. The Prosecution adduced evidence showing that on the evening of 14th January 2000, the owner residents of 25 Jalan Ketumbit a semi-detached house left Singapore for an overseas trip. The only person remaining in the house were their infant son Wong Shi Hao ('Shi Hao') and their maid Fredelina Evangelista Manuel ('the Complainant'). Shi Hao after watching television at night, went to sleep in his parents' master-bedroom. The Complainant said she slept in the maid's room as usual that night.

The Complainant testified that at about 4.00 am she was awakened by a tap on her shoulder. She then felt something poking into her neck. A man spoke in Malay to her and told her not to scream or run away and if she does he will kill her. He then asked her to take off her clothes and to do what was asked of her. As she was scared, she removed her clothing, a long-sleeved shirt and a pair of yellow pants and panties pleading with the Accused not to do it and she identified the man to be the Accused, both in Court and earlier at an identification parade. She stated that when the Accused was about to leave her room through a window she saw his features against the light coming through her window from a neighbouring house as there were some lights on in the house. The owner of the neighbouring house later testified to say that they normally left the lights on at night to light up their compound.

3. The Accused then took off his clothes went on top of her body and told her to open her legs. The rest of the account may best be put in her own words:-

> '….And he go and hold my legs to open up my legs wider and he inserted his penis into my vagina and he dig it in and out. After he did it, after he get exhausted, he lay down on the bed and asked me to go on top of him and he even told me that I will put his penis into my mouth. He asked me to sit down beside him while he was lying down and he told me he was going to put his penis into my mouth. I did it because I am very, very frightened. After I did the oral sex, he asked me again to lie down on the bed. Then he went on top of me again and inserted his penis into my vagina. After the second time of going on top of me, when he get exhausted again, he asked me again to lie down. He lie down on the bed and he asked me to do the oral sex again, second time ….
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> …..After the second oral sex, he asked me to lie down again. He got up and went on top of me again and he thrust in and out his penis into my vagina. After the third time of ---he went on top of me and thrust in and out, he got up and lay down again on bed and asked me---and told me that he want to lick my vagina and asked me to sit down, put my vagina on his mouth. After he was licking my vagina, after that performance, I get up, I stand up and I wanted to take a rubber band for my hair, ponytail for my hair and I was having thoughts that I wanted to run away form him but he did follow me.
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> ….After that he lie down again on the bed and asked me that I will put his penis into my mouth and perform oral sex on him the third time. When he did ask me to perform oral sex, I was still sitting beside him. I was reluctant to do it again on him and he told me if I don't do it on him, he again threatened me that he would kill me and he did place the knife on my back. I was frightened. So I complied to his instructions to perform the oral sex the third time. After that he asked me to sit down beside him and he started masturbating. When I sit beside him, he asked me to---and he started masturbating, he even told me that when he is going to ejaculate and the sperm will come out, he asked me to put my mouth into his penis and suck the sperm but I refused to open my mouth. When he ejaculated, he forced my head on to his---my mouth on to his penis and I did not open my mouth until the sperm rubbed on my face. I used my hand to wipe it out and I cleaned it on my legs and on the bedsheets or pillow, on my pillows.
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> ….After he ejaculated, he asked me about my wallet. I told him, "Why? I don't have any money" and he told me "Just take your wallet". And after that I noticed that my neighbours on the light, I sensed that my neighbours' light was on.
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> …….He put on his clothes and he asked me again to take my wallet. I took my wallet and he asked me to put it on my bed.
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> …….After that, after I took my wallet from my cabinet, I placed my wallet on my bed and I sit on my bed as well. When I was sitting on my bed and he was still putting on his clothes, I can see his face and his built. And when he finished putting on his clothes, he told me to open the window. When I opened the window, he told me to sit down on my bed and face the wall. He told me to face the wall so that I won't see him if he goes off.

…..So I sat down on my bed and just faced the wall because that's his instructions.

…..After he gave me instructions to face the wall---sit down on my bed and face the wall, I sensed that he took money from my wallet and I felt that he went out from the window.

…..Before I went out of my room, I checked my wallet and the money was gone.

….It was $50 of $10 notes; five $10 notes.

….After checking my wallet, I went out from my room and went to my employer's son's room to check whether he's still sleeping. I went into my employer's master bedroom and I went to check all the windows and the doors are all closed.

…It was all closed. After checking all the doors and windows, I went in again to my employer's son's room, into the master bedroom, and wake him up because I do not know what to do. When I went to the master bedroom and wake up my employer's son, I thought of checking the master bedroom toilet, and I saw the master bedroom toilet window open. I saw the master bedroom toilet open.

…….Yes, your Honour. After I have checked the window, the master bedroom toilet window was opened, I went back to wake up Shi Hao. I wake him up, at the same time I was really crying."

3.1 Apart from the above evidence, the Complainant stated that she always kept a brush with a long handle and a shampoo tube and other such objects for use in the bathroom on the bathroom's window sill.

3.2 Defence Counsel put to the Complainant that the Accused had been introduced to her by one Colin in December 1999 and they knew each other and thereafter had consensual sexual intercourse before and after the 15th January 2000 at 4.00 am on which occasion Colin had taken her to the said residence. He also put to her that consensual sexual intercourse had taken place apart from 15th January 2000:

(i) in December 1999 just after Christmas in her room at the Ketumbit residence when he accompanied Colin there for the first time;

(ii)` in early January 2000 at the same place and

(iii) on 17th March 2000 at about past 3.00 am at the Balestier Hotel after they had a drink at Ipanema bar on the 16th night.

The Complainant denied that the Accused had come with Colin on any occasion to her room or that she had sexual intercourse with him on any of the other occasions as put. The Complainant also denied that the Accused ejaculated in her vagina as she did not feel the ejaculation. She did not feel a condom being used. The Accused, according to her, masturbated and ejaculated outside in her face. She denied that the Accused had thrown the condom in the waste paper basket. She denied she had washed up before the police came save that she had brushed her teeth and washed around the mouth region. When it was put to her that she had told a police officer that she had showered, she stated that she had only told him that she had changed her clothing. She also denied that a cap found in the room had been previously given to her by the Accused. Importantly she denied she had requested $5,000/- from him after the sexual intercourse as a loan because she needed the money back home. She also denied when it was put to her that the Accused did not commit robbery of $50/- from her wallet. When asked how she could

identify him in the darkness of the room, she re-stressed that she saw him in the light coming in from the neighbouring house through her window where the Accused stood and his built was slightly small. She agreed she was shown five photographs by the police before and she identified him by a photograph before picking him out at the identification parade through a one way mirror.

4. The Complainant stated that after that she telephoned Diana Yee Yuet Wah ('Diana Yee'), PW10, a previous employee of her employers whom she had known for some years and told her that someone had come into the house and she cried as she talked and she was told by Diana Yee that she would be coming over to the house. Upon Diana Yee's arrival, she told her a man had come into the house and raped her. Diana Yee called the police. Later, the parents of the employers also came down. The Complainant's evidence was that she did not shower or clean up as it was not on her mind.

4.1 Diana Yee, a Sales Manager with Challenge Systems Components Pte Ltd stated that she had know the Complainant 5 or 6 years as she was previously employed by the Complainant's employers and also because the Complainant used to work for her auntie. She stated that about 6.00 something am on 15 January 2000, she was woken to answer a telephone call from the Complainant. She heard the Complainant crying on the other side of the line and was asked to go straightaway to the Complainant's house as a man had come into the house. Diana Yee drove to the Complainant's house. On arrival, Diana Yee saw the Complainant crying at the doorway and when she asked her what had happened, the Complainant replied that she had been raped by a man who had a knife pointing at her. She appeared to be crying and in a state of shock but settled down after a while. Diana Yee called the police as evidenced by the First Information Report **Exh. P50** received at about 7.32 am:

"Case of rape reported. Further facts refer to NP104."

The evidence of police officers showed that the first police officer arrived within 15 – 20 minutes. The Complainant was questioned. Diana Yee further stated that she went round the house including the master bedroom and the toilet of the master bedroom and saw a window panel opened as shown in **Exh. P8** (from inside) and **Exh. P11** (from outside). Diana Yee also said that she saw a cap **Exh P66** in the Complainant's bedroom. She could not remember whether she had asked the Complainant whether she had secured all the windows and doors to the house before she had retired for the night.

5. Lee Wei Fong ('Wei Fong'), PW21, a tuition teacher staying in the neighbouring 2 storey semi-detached house stated that the compound of her house was usually lit brightly as there had then been a few robberies in the area. There were 3 house lights according to her which shined on to the compound of her house bordering the side where the maid's room was in the Ketumbit residence.

5.1 Testifying, Shi Hao, 12 years old, a Secondary I pupil, gave evidence that he was woken up by the Complainant early in the morning. She was crying. He later saw the left glass window of the bathroom which is attached to the master bedroom open to about 90 upwards. He explained that the window appeared to be open at about 45 in the Photographic **Exh. P8** because his grandfather had gone to look at the window and had shifted the window from the outside after he arrived. He said the bathroom windows were normally left ajar for ventilation.

6. The police party had found the body brush and the tube of shampoo lying on the grass just outside the window as shown in **Photographic Exhs. P11 and P12**. Chin Lee Lian ('Lee Lian), PW13, the Complainant's employer and mother of Shi Hao explained that the window in question could open to a maximum of 90 when it was put to her that a police witness had stated that it could open to 45 and the window as shown in the **Photographic Exh. P8** was open at 45, She went on to identify the brush with the handle as her body scrub brush. She saw the said brush and the shampoo tube lying on the grass in **Photographic Exhs. P11 and P12** were normally left on the window sill of the open window in **Photographic Exh. P8**.

7. The Investigating party seized various exhibits such as the Complainant's clothing and bed linen and pillow cases and submitted them for examined to the Department of Scientific Services, Singapore. Also seized were two slightly moist tissue papers from a waste paper basket near to the Complainant's bed. Asst Supt of Police Amy Ting stated that the waste paper basket was photographed before she took out the 2 moist tissue papers but she left two other small white crumpled pieces of paper and two pieces of facial cotton in the basket. The contents are shown in Exh. P18. It was not put to Amy Ting that there

was anything else in the waste paper basket of significance.

8. Dr Sadhana Nadarajah, PW4, a Registrar with the Reproduction Unit of the Kandang Kerbau Women's and Children's Hospital testified that she examined the Complainant at 7.15 pm on 15 January 2000. She stated that the Complainant gave her a history of a dark complexioned man breaking into her employers' house, entering her room and threatening her with a knife and making her undress and thereafter making her perform oral sex on him and subsequently to have sexual intercourse with her and that he withdrew his penis from her vagina and ejaculated on her upper thigh and face. He then took all her money in her wallet and left. Dr Sadhana stated that on examination, the Complainant was calm and there were no external bruising seen over the face and body. On inspection, she noted that the Complainant had old hymenal tears consistent with her history of having been sexually active previously. There were 2 superficial lacerations over the perineum (space between opening of vaginal and anus) consistent with some form of recent trauma to the genital area. Investigations did not reveal spermatozoa in the vaginal and urethral swabs. She disagreed with Defence Counsel that if there was forced sexual intercourse against the wishes of the Complainant, the chances of there being hymenal tear was high, because the hymen had already been torn previously and unlikely to be torn again.

9. Dr Renuka Sornarajah, Scientific Officer, examined the seized bedlinen and clothing of the Complainant for DNA and submitted a Report.. In her report she stated that she had examined the DNA profile of a bedsheet **Exh. P61** (FEM 6/00) and **Exh P62** a pillow case (FEM 7/00).

Her evidence was that in the report of the **Exh P61** a bedsheet, the genetic loci of the profile of the semen stain matched that of the blood sample taken from the Accused namely that each had the identical pairs of allele in the genetic loci as appear below:

HUMTHOi 6, 8

HUMfes 11, 13

HUMvWA 18, 8

HUMF13A 5, 5

She further stated that she found the same main pairs of genetic loci on the semen stains on the **Exh P62** a pillow case but however had also found a secondary or minor base pair or allele of genetic loci as follows (which she bracketed):

HUMTHOi (7, 9)

HUMfes (12)

HUMvWA (14, 17)

HUMF13A (6)

She stated that the secondary pair or allele arose because the sample was of mixed origin i.e. that there was other genetic material in the sperm sample belonging to someone else. Most but not all of the secondary base pair of the genetic locii were the same as that of the Complainant Fredelina Evangelista Manuel whose genetic locii was as follows:

HUMTHOi ***7, 9***

HUMfes *11*, **12**

HUMvWA **14, 17**

HUMF13A ***3.2, 6***

However, she concluded that as the genetic locii **11** and **3.2** was missing from her analysis as the secondary material was not sufficient amount she was unable to categorically state that the secondary genetic locii was that of the Complainant. However, she explained that the secondary allele could appear as a result of the presence of the skin cells of the Complainant, her saliva or her vaginal fluids mixing on the seminal area of the seminal stain. She agreed that such a situation of mixed sample could possibly arise if for instance the Complainant after oral sex spat out or wiped her mouth with her hand and then wiped the hand on the bed linen. When cross-examined by Defence Counsel if the secondary allele could be that of another male, she replied that while it not possible, there was little chance of that as there was a three locii match with the Complainant's profile.

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Trial-Within-A-Trial

10. The Prosecution had sought to admit in evidence two police statements made by the Accused as follows:-

> (i) an *oral statement* made to Insp Halim at about 5.10 pm at his office in the CID on 29th March 2000 and reduced by him into writing in his field book (**Exh. P49(id)**).
>
> (ii) extracts of a *written statement* being paragraphs 17 – 29 (**Exh. P54(id)**) recorded under s 121 of the Criminal Procedure Code (CPC) by S/S/Sgt Lai on 4th April 2000 at about 2.30 pm.

10.1 The Accused challenged the admissibility of the statements, amongst other things, on the ground that they were extracted from him under repeated threats from the recording officers Insp Halim and S/S/Sgt Lai and to the effect that unless he co-operated, his family members were liable to arrest for harbouring him as a fugitive deserter and exhortations that he should admit to what he had done. The two officers denied they had made such threats or exhortations to the Accused or his family members.

10.2 I ruled that the statements were inadmissible. I shall now briefly outline and evaluate the evidence resulting in the ruling I made in respect of the non-admissibility of the two statements and the reasons therefore.

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The Evidence

(i) The Oral Statement dated 30th March 2000 at 5.10 pm

11. It was Insp Halim's evidence that he sat facing the Accused from his table in his office at the CID which he shared with S/S/Sgt Lai. Both were seated on chairs. The Accused had one of his hands cuffed to the chair. This was soon after the Accused's arrest in his house. Insp Halim said he asked the Accused what he had done. Insp Halim said he himself was not very well-versed with the case. He decided to question the Accused although he was not told by anyone to do so and he did not tell the Accused what charges he faced and nor was any charge registered against the Accused at that stage in the charge book at the station. He had just wanted the Accused to tell what he knew. The Accused then narrated certain incidents without him asking any questions. After the Accused had finished he went to his table and told the Accused he intended to write down what he had said if the Accused had no objection. The Accused then started to recount the events which Insp Halim said he wrote down in his field book. Thereafter, the Accused signed the account he had given after having read to the Accused what he had written. The accused made no amendments though invited to do so. Insp Halim denied that the Accused had not uttered the statement made to him by the Accused.

11.1 It is pertinent to mention the earlier train of events resulting in the arrest of the Accused. Insp Halim testified that he was one of the arresting officers of the Accused at his house, the others being Insp Soh and S/S/Sgt Lai. Insp Halim testified that the

Accused who was in the hall had seen the police party outside the main door of the house but had refused to come out when invited by the Accused's elder brother Netto Gerard George who was accompanying them. Instead the Accused took some steps back and started to 'dash' into the house. He was chased, lost his balance and was caught and handcuffed but refused to get up. He only got up and accompanied the officers back to the station when his father who had then arrived, advised him to go with the police officers to the station. Whilst Insp Halim did not state if the Accused was told the reasons for his arrest. Insp Soh testified that they told the Accused that he was wanted by Civil Defence for being a deserter and also for other serious offences. These were not specified. S/S/Sgt Lai further stated that Insp Halim had told him at the station that the Accused had volunteered a statement.

11.2 The account of the Accused and that of the members of his family was very different. It was that the family was entertaining some visitors, including visitors from London when the police party of three arrived at the front door of the house with Gerard whose flat in Woodlands the police officers had raided earlier. Gerard testified that outside the house, he was told to restraint the dog, that one Patrick should not get involved and the Accused should not run and if any of these things happened, the police would open fire. Gerard called out to the Accused who was then on the telephone to come out as the police wanted to talk to him. Gerard had his hand across Insp Halim's chest to prevent him from going into the house and to await the Accused. There was some confusion and commotion thereafter. The Accused's mother testified that she told the Accused to go into the bedroom and she would talk to the police. It was the Accused's evidence that he saw Insp Halim push Gerard and his mother aside and make a dash for him, grab him by his neck and force him to the floor after he had taken a few steps towards the bedroom. He had not run. He had a previous injury to his ankle which was bandaged and he was in pain as his leg assumed an awkward position when he fell. He struggled with Insp Halim because of the pain. He stopped struggling when he had moved his leg. Upon asking Insp Halim as to who he was he was told by Insp Halim not to struggle or he will shoot him. Insp Halim had then put his hands into his pocket gesturing as if to shoot. The mother Mary d/o J P Pereira testified that she had retorted that for desertion, the Provost would come or civil defence officer would come to arrest the Accused. The Accused said his arrest had all happened very quickly in about 3 seconds. He had no intention of running away. He agreed to accompany the police to the station when his father told him to go. The Accused said his family members were threatened in the house when S/S/Sgt Lai upon being asked by the Accused (who was doing National Service) as to why he was being arrested stated that the Accused was a deserter and that he could arrest all his family members. The same threat was repeated to the Accused's father Netto George Gerard by S/S/Sgt Lai namely that he was harbouring a fugitive and he can be arrested when he arrived at the house. The Accused's mother Mary d/o J P Pereira (Mary) stated that S/S/Sgt Lai had stated to her that unless the Accused co-operated they would take all of them away. She told them not to do so.

11.3 The Accused narrated subsequent threats both on the way to the C.I.D. in a police car and in the interview room by Insp Halim soon after his arrival at the C.I.D. as well as threats that were uttered by S/S/Sgt Lai.

11.4 The Accused testified that Insp Soh, S/S/Sgt Lai and Insp Halim kept on asking him to admit what he had done when travelling in the car. He had not been told of any other offences he had committed save the assertion that he was a deserter which he did not deny. All the police officers in the car denied the allegations made against them when they were travelling in the car asserting that they did not even speak to the Accused in the car. However, Gerard, who was also taken in the same car for questioning (although not arrested) stated that in the car, S/S/Sgt Lai was angry with the Accused and used vulgar words. Insp Halim told the Accused: "to come out with it" in English. However, Insp Soh and S/S/Sgt Lai spoke in Hokkien and he could not make out what they were saying.

11.5 The Accused stated that Sgt Lai had brought him to a room at the CID and he was made to squat down and later he was allowed to sit on a chair to which he was handcuffed. He was told that if he wanted to be treated like a human being he should behave like one and if he co-operated with them they would co-operate with him. In the room Insp Halim was left alone with him. Insp Halim asked him whether he had committed any offences. He denied if he committed any offences. Rape was mentioned. He denied committing such an offence. However, Insp Halim went on to write a statement. He was looking at a brown file on the table as he did so. He was then asked to sign the statement. He had refused to sign it because he had not made it. He was threatened by Insp Halim that he was going to arrest his family members and his brother was already arrested. The Accused stated that he had seen his brother in the same room a little earlier as he had also accompanied them to the station. He was shocked when Insp Halim told him about wanting to arrest his family. Later S/S/Sgt Lai came into the room and Insp Halim told

him that he had refused to sign the statement he had made for him. S/S/Sgt Lai told the Accused that his investigations showed that it was the Accused who had committed rape and he had better sign the statement. The Accused said he did not know what investigations they had done but because of the threats to arrest his family although they had nothing to do with the matter, he signed the statement. He also signed the statement because he was scared for the safety of his parents as Insp Halim had repeated the threats relating to the arrest of his family 3 times. He had believed his brother was under arrest because he saw him in the same room earlier.

11.6 Insp Soh, Insp Halim and S/S/sgt Lai denied all the allegations made by the Accused and his family relating to the threats to arrest members of the family and stated that they had only asserted that the Accused was a deserter and he was wanted as such.

(ii) Written Statement dated 4th April.2000 at 2.30 pm

11.7 Before the above statement was made, the Accused had on 30th March 2000 made two statements (**Exhs. D6 and D7**) one at 12.01am (rape) and the other at 12.40 am (robbery) under s 122(6) after the notice under the said section had been read to him. The Defence admitted these statements through the Investigating Officer. S/S/Sgt Lai had recorded the statements. In the statements, the Accused had stated that he had nothing to say.

At 1.15 am on 30.3.2000 S/S/Sgt Lai had proceeded to record the s 121 statement (the long statement) from the Accused and completed it at 2.40 am The Prosecution did not seek to admit this statement.

In seeking to admit only paragraphs 17 – 29 of the long statement made on 4.4.2000 at 2.30 pm, S/S/Sgt Lai who recorded it, stated that he had brought the Accused to his room where the Accused after telling him that he wished to speak in English volunteered the statement in question. S/S/Sgt Lai stated that he simultaneously recorded what the Accused said. After the completion of the statement, it was read out to the Accused. The Accused signed it after some corrections were made. The statement made was free from threats, inducements or promises.

In his *cross-examination*, S/S/Sgt Lai admitted that paragraphs 17 – 29 of the statement of the Accused made on 4.4.2000 which the Prosecution sought to admit, covered the same ground as the earlier long statement made by the Accused on 30 March 2000 at 1.15 am. He agreed that essentially it was the same save the date on which the rape and robbery had taken place had been mistakenly put down by him as 15.3.2000 when it should have been 15.1.2000. The Accused had correctly referred to the date as 15.1.2000 in his statement dated 4.4.2000. The mix-up of the dates was the subject matter of only one small paragraph. When asked why did he wish to cover the same grounds on 4.4.2000 in respect of all the paragraphs, S/S/Sgt Lai stated that he could not give any reason.

The Accused, on the other hand, in his statement stated that he had sat in front of S/S/Sgt Lai while S/S/Sgt Lai typed the whole statement. Before giving it to him to sign it, S/S/sgt Lai had told him to "sign it and forget about it". He had resisted signing it but eventually he signed it as he had no choice because of the insistence of S/S/Sgt Lai telling him you have already admitted it and just to project that he would get 10 – 15 years imprisonment.

Ruling

12. Having considered and assessed all the evidence, it appeared to me that the two statements sought to be admitted by the Prosecution had been caused by threats as a result of the Accused believing that his family members would be spared if he made the statements as required by the two officers i.e. that he would thereby gain an advantage by making the statements as required by the officers. I found the evidence of Insp Halim questionable when he stated that he did not have much knowledge of the facts of the case and that he simply let the Accused tell him about what he had done and the Accused had as such

volunteered the statement. Insp Halim's admission that he did not even tell the Accused what the charges were against him was unconvincing. He was a senior officer. He took part in the arrest of the Accused. He must have known what the Accused was being arrested for and he must have told what the charges were against him. The Accused was also rushed to Insp Halim's room without even his arrest being registered in the charge book or the lock up. It appeared to me the pressure was put on him to admit the charges and to make the statement **Exh P49(id)**. I was equally disdainful if the evidence of S/S/Sgt Lai concerning the making of the statement **Exh. P54(id)**. I was satisfied, having heard and observed the versions of the evidence given by the Accused and his family that threats had been made by the two said police officers to the Accused at the CID and in his house to him and members of his family that they could be arrested for harbouring the Accused as a deserter. Their evidence had a ring of truth and remained intact during the Prosecution's cross-examination The Prosecution had therefore not discharged its burden of proving beyond a reasonable doubt that the statements were voluntarily made. In ***Poh Kay Keng v P P*** (CA) [1996] 1SLR pg 209 threats against the Accused's family members to have them charged or have their property confiscated were held to be an inducement vitiating the Accused's statement. In this case as in the above case, I similarly held on the evidence that the Accused was induced by the threats made against his family to make the statements he made. As such, I rejected the statements **Exhs. P49 (id) and P 54(id)** and returned them to the Prosecution.

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Prima Facie Case

13. Defence Counsel did not make a 'no case' submission.

In the light of the Complainant's identification of the Accused as the one who had forcibly committed the offence after putting her in fear of death at knife point and in view of the Accused's identity being further established as a result of the DNA results of semen stains which matched his blood group, I was satisfied that a *prima facie* case against the Accused had been made out in respect of the offences of rape and the other charges which if unrebutted would warrant his conviction. The Complainant's evidence of the open window in the bathroom circumstantially showed that the Accused had climbed in through the window to break into the house as he was not there at her invitation. The other doors and windows according to the Complainant were all closed. There was nothing inherently incredible about her evidence on these matters and on the other offences relating to unnatural sex (oral sex), the criminal force used on her as stated in the charge and robbery of the $50/- in her wallet although the police had omitted to recover the wallet from her. She had indeed withdrawn $300/- on 10th and 12th January 2000 from her bank and as she had said, remitted most of the monies to the Philippines leaving the $50/- as her change in her wallet.

In the circumstances, I called for the Accused to enter his defence.

The Accused elected to give evidence on oath.

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Defence

14. The Accused's defence was that he had been introduced to the Complainant, a Lina, by Colin in a coffee shop along Jalan Selaseh in Seletar. A few days after Christmas in December 1999, Colin took him to Lina's house at 1.00 am The Complainant allowed them through the front gate and front door of the house and went to the kitchen where the Complainant made coffee for them. Colin then went into her room and came out 5 – 10 minutes later and after that left the house. She thereafter took the Complainant to her room saying she wanted to speak to him and there they had sexual intercourse after she undid his pants. He had used a condom. On this occasion the Complaint had told them not to make noise because her employers might wake up. He did not ask her if the owners were in. He next met her at the same coffee shop in early January 2000 when he saw the Complainant using a phone at the provision store. He made an arrangement to see her that night. On arrival at the place where she stayed, he was again allowed in by the front entrance and they had sexual intercourse. He had noticed a car parked in the porch of the house and he had suspected the owners were in and because of that she did not go to the dining area.

14.1 He went a third time to see the Complainant in the house on 15th January 2000 at about 3.00 am after leaving a bar art Chijmes accompanied by Colin who said Lina was free that night. They were again allowed in by the front door. They chatted in the kitchen where the light was on. The Complainant then said she wanted to talk to him and took him to the room where he had sexual intercourse with her again for two to three minutes with a condom which he threw into the waste paper basket after using it. As for conversation with her before the intercourse, she had not said anything but after intercourse she asked him for a loan of $5,000/- as she had problems at home in the Philippines. He said he didn't have that kind of money and offered her $50/- which she refused. He went back to the kitchen and told Colin about it and he told him to help her if he could. The Complainant then came out and to put in the Accused words 'everything was normal. She didn't mention about money ….'. And half an hour later he left leaving Colin behind.

14.2 As for the black cap found in the Complainant's room, he had given it to her as a present on the second occasion they met in her house as he had received several caps as gifts at about that time.

14.3 After 15th January 2000 he met her again on 16 March 2000 at Selaseh Park along Jalan Selaseh at about 4.00 pm. The park was about 150 metres form his house. The house in which the Complainant worked was a few houses away from his own. He made an appointment to meet her outside her house at 10.30 pm. He met her as scheduled and they then went to the Ipanema Bar in Orchard Towers where she ordered a Budweiser Beer and he a jog of Tiger. He produced a receipt of his expenses at the bar **Exh. D4**. After the drinks he picked up some condoms from a 7-Eleven Store nearby (receipt – **Exh. D5**) and he then took her to Balestier Hotel at after midnight on 17th March 2000 where they had sexual intercourse. Only his name was registered there. The Complainant left the hotel at about 6.00 am saying she had to go back in case her employers woke up. He took her back in a cab and got down near her house as his house was only 50 metres away. The Complainant knew where he lived. They parted company.

14.4 Thereafter to the date of his arrest on 30th March 2000 in his house, he had not met up with her.

14.5 Asked by his Counsel if he was facing any problems at about during this one or two months, the Accused stated that he was away without leave (AWOL) for more than 2 months from National Service and was going through a kind of depression. He agreed he had not been paid for 2 months as a National Serviceman but that he works as a deejay. On the night of 15th January, he still at about $150/-. When asked if he had heard the evidence of Colin and that Colin had denied introducing him to Lina or ever going into the house where the Complainant worked on the 2 occasions they met. He disagreed. Asked why Colin would testify in that manner, the Accused said he had come up with his own ideas as to why he was doing this. He had eavesdropped on a conversation at Peyton Place bar which Colin was having with a male Chinese. The Accused said:-

> " …..I heard Colin mentioned to this male Chinese something about drugs. So when I heard this, I knew Colin was dealing in some kind of drugs. I left Peyton Place straightaway. …….
>
> And then after I walked out, I went to 7-Eleven. I bought a drink. I was walking back when Colin ---I saw Colin outside. Then he asked me, "Eh, you haven't finished your work." So I brought up the matter to him. I confronted him with it and I told him, "I overheard what you were telling that guy. You are dealing in some kind of drugs here." I got into a heated conversation with him and he told me to mind my own business and to do the job that I was paid for. So I didn't say anything to him.
> ……..
> **THIS IS THE REASON WHY COLIN MAY HAVE ASKED THE VICTIM TO DO THIS TO ME BECAUSE** ----
> Because I have knowledge that he is not only dealing with these drugs but I have been on other occasions with him to Peyton Place where I have seen him collecting a lot of money.

…..
He collected money on a few occasions when I went with him. And he collected it from a Filipino girl. I don't know who this girl is. Because there are a lot of Filipino girls that patronise this pub called Peyton Place.
…..
I don't know the figure, Sir, but I saw a stack of $50 notes, Sir.
……
About half an inch, Sir.
……
So he must be doing something behind the scenes, for a Filipino to give him the money. "

14.6 Asked in *Cross-Examination* what he had in mind when he saw the Accused having the cash transactions with a Filipino girl, the Accused replied:

"A: I didn't know about it. Didn't look illegal. I didn't have any proof that it was illegal also so I didn't think anything of it."

14.7 The Accused also stated that he asked Colin what were the transactions about and Colin replied it was for some work and he had to take his word for it.

14.8 As for the incident concerning the drugs, it had taken place somewhere around the 2nd or 3rd January 2000. When they parted company after a heated conversation their relationship was tense. However, he added Colin met him a few days again and did some work for him and was paid. Asked if he didn't feel uncomfortable being in Colin's presence, he replied, 'Not really. After the 15th January 2000 when he and Colin were at the Complainant's house after going to Chijmes, everything was back to normal with them.

14.9 Asked what the Complainant's reaction was when he refused her a $5,000/- loan and offered only $50/-, which she refused to take, she did not say anything to him. Subsequently he had not asked Colin if he had given her $5,000/-.

14.10 As for the risk he was taking in going to the Ketumbit house on various occasions in the event that the owners were in, his answer was that he 'didn't make anything out of it'. He did not also think he was doing anything wrong seeing the maid late at night without the knowledge of the houseowner.

14.11 As for the Notice Statement made by the Accused under s 122(6) of the CPC the Accused replied to questions that whilst he was informed of the charges, the Notice of Warning was not read to him by the Investigating Officer nor did he read it when he made the statement 'I have nothing to say'. He merely said this because he was 'very confused' at the time and he did not want to 'provoke' the Investigating Officer.

14.12 The Accused agreed with the Prosecution that the Complainant had not given to him her telephone number and he knew nothing of her person.

14.13 In *Re-Examination*, the Accused explained that at that point of time he 'didn't want to say anything'.

14.14 In clarification, when asked by the Court why the Defence had not put to Colin that he had asked the Complainant to make the allegation of rape and the other sexual allegations against him as charged because the Accused had discovered Colin to be dealing in drugs and stacks of currency bills and had confronted him and that Colin had therefore ill-will against him for that reason, the Accused's answer was:

"A: I cannot explain, Sir"

He went on to say he had instructed his Counsel on this matter so it was up to Counsel to ask or not to ask.

14.15 Asked by the Court why the Complainant would go out with him or have sexual intercourse again with him on 16th/17th March 2000 when she had already made a police report of rape, his answer was:

> "I cannot explain."

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Evaluation and Finding

15. The applicable law in a sexual offence which I had to bear in mind in coming to my findings was that there was no legal necessity that I had to warn myself expressly of the danger of convicting the Accused assuming that the Complainant's evidence was uncorroborated. I though bore in mind the principle that it was dangerous to convict on the words of the Complainant alone unless her evidence was 'unusually compelling or convincing'. That phrase was explained in ***Kwan Peng Hong v P P*** [2000] 4SLR 96 where Yong C.J. stated:

> "The phrase 'unusually compelling or convincing' simply means that the complainant's evidence was so convincing that the prosecution's case was proven beyond reasonable doubt, solely on the basis of that evidence.
>
> …….what is important is for the trial judge to analyse the evidence for the prosecution and for the defence with a view to deciding whether a conviction based solely on the complainant's evidence is not unsafe. If it is not unsafe to so convict, the trial judge need not go further, except to explain clearly the reasoning behind the findings of fact.
>
> ….if it is unsafe to convict, the trial judge should identify which aspect of the evidence is not so convincing. The trial judge should then look for supporting evidence and ask whether in taking the weak evidence, together with the supporting evidence, the trial judge is convinced that the prosecution case is proven beyond reasonable doubt."

The learned Chief Justice also went on in that case to explain the nature of corroborative evidence as follows:

> "Finally, in analysing the evidence, the trial judge must weigh it carefully, always bearing in mind the relevant aspects of human nature and behaviour. But it would be wrong to be bogged down by technicalities, especially when they have n o logical bearing to the case in hand. Our approach is clear. We have left behind a technical and inflexible approach to corroboration and its definition. …….
>
> Instead, our approach is liberal, ensuring that the trial judge has the necessary flexibility in treating relevant evidence as corroborative. This is in line with the approach of other jurisdictions. What is important is the substance and the relevance of the evidence, and whether it is supportive or confirmative of the other weak evidence.
>
> Essential qualities of corroborative evidence are its independence, admissibility and whether it implicates the accused in a material particular.

> Even if the evidence is capable of corroboration, whether it does supply corroboration still depends on all the circumstances of the case. The trial judge must pay particular consideration to the extent to which the evidence that is capable of corroboration does provide the corroborative evidence to satisfactorily dispel any doubt on the guilt of the accused. This flexible approach to corroboration ensures that proper weight is given to the right evidence and no undue weight is assigned to some evidence merely because it is called 'corroboration'."

16. The main issue raised in the case was whether the sexual intercourse was consensual. In this regard, the Accused's case was that he had been introduced to the Complainant some time before Christmas 1999 at a coffee shop at Jalan Selaseh in Seletar by Colin for whom he did contract work off and on and then subsequently he had consensual intercourse with the Complainant at her employer's house in the early hours of the morning by visiting her on three occasions there. The three occasions were when he went there with Colin just after Christmas 1999, again when he went there alone in early January 2000 and then again when he went there with Colin **on 15th January 2000, the date relevant to the charges on which he was being tried** and finally again on 17th March 2000 when he met her alone on 16th March 2000 and took her for a drink to the Ipanema Bar in Orchard Tower and thereafter to Balestier Hotel. He produced two receipts. He had a receipt for drink purchases (Budweiser beer for the Complainant and a jug of beer for himself) together with a receipt for purchase of condoms at a 7-Eleven Store nearby before leaving for the Hotel with the Complainant. The Prosecution did not dispute that he went to the Hotel. The Prosecution case was that it was not the Complainant he went there with. The Accused's evidence was that on each occasion when he visited the Complainant at her employer's house, he was allowed by the Complainant to enter into her employer's house through the front gate and front door and would then be led to either the kitchen and/or into the maid's room thereafter. On the first occasion when he went with Colin, the Complainant invited Colin first into the maid's room and when he came out to the kitchen where the Accused waited, he was led to the maid's room next. Colin left the house when he went into the maid's room with the Complainant. She had also earlier made coffee for them. The kitchen lights were on. On the second occasion on 15th January 2000 when he went with Colin again, he had gone into the maid's room first and after he had sexual intercourse, the Complainant had asked him for $5,000/- as she had financial difficulties in the Philippines. He told her he could not afford to pay her and offered her $50/- which she declined to accept. In the event he paid nothing to her. He had conveyed this request for the money to Colin who was waiting in the kitchen when he came out and Colin merely told him to help her if he could. As for the Complainant she did not say anything more about the $5,000/- then or subsequently when they met again.

17. I found that all considered, the Accused's defence of consensual sexual intercourse on 15 January 2000 or on the other dates consisted of only his bare word. It was plain to see that the two receipts did not at all connect the Complainant with an outing with him on 16th/ 17th March 2000 leave alone her accompanying him and having sexual intercourse with him on that day at the Balestier Hotel. Nevertheless, I bore in mind that a 'bare word' defence where circumstances permit is capable of raising a reasonable doubt on the Prosecution case.

17.1 As for the Complainant, she had denied that she had ever been introduced to the Accused before or had ever met him otherwise or had sexual intercourse with him save that as she slept in the maid's room of her employers' house, she was suddenly awakened by him on 15th January 2000 with a knife pointing at her neck. He then raped her and narrated the commission of the other offences as set out in the charges. She denied knowing Colin or such a person ever accompanied the Accused into her employers' house or had sexual intercourse with her.

18. The Complainant was *cross-examined* intensively by Defence Counsel. She withstood the *cross-examination* and the credibility of her complaints as charged against the Accused remained without blemish and intact.

19. I found that there were significant aspects of both the Prosecution and Defence case which convinced me that the Complainant's evidence was unusually compelling and hence convincing. Soon after the Accused had left the Complainant in the early hours of that morning, the Complainant had telephoned Diana Yee who was a former employee of her employer as her employer and her husband had left for China the previous evening. It was Diana Yee's evidence that the Complainant was

crying and she had told her that a man had come into the house whereupon Diana Yee had driven immediately off to see the Complainant and on her arrival saw her crying and in a state of shock although she settled down later. She was told a man had come into the house and raped her. Diana Yee made a 999 call to the police and the recorded time of that call is 7.32 am (**Exh. P50**: 'Case of Rape reported'). The Complainant had therefore reported the matter promptly and she was also seen in a distressed state when Diana Yee came and saw her. Independent evidence of a distressed condition after an alleged offence can amount to corroborating evidence of the offence: ***R v Redpath*** [1962] 46 Cr App Rep 319. I found the fact that the Complainant had made a contemporaneous report to Diana Yee and she had conveyed the information to the police soon thereafter as corroborative evidence of her complaint that she had been raped, robbed and other indignities as charged committed on her. The proviso under s 159 of the Evidence Act provides that former statements of a witness may be proved to corroborate later testimony as to the same fact. It was not necessary for her in the distressed condition she was, to immediately have narrated all the other indignities she charged the Accused with and robbery of $50/- from her. It was sufficient that she told the police of these in recorded statements later as she did. Her distressed state further constituted corroboration of her complaint against the Accused. I found it improbable in the light of the evidence and the inferences I drew therefrom that her complaint and her distress was feigned.

19.1 As for no medical injuries being found on her neck and back area where the Complainant said the Accused had pointed his knife, the Complainant's explanation which I found plausible was that the Accused had not pressed the knife hard on her body. I also accepted as plausible the Complainant's explanation that the cap found in the Complainant's room was not given to her by the Accused. I was satisfied that the Accused had inadvertently left the cap behind when he left the Complainant's room.

20. Defence Counsel had submitted that if the Complainant's story was true that she did not know him previously and the Accused had broken into the Complainant's employer's house and raped her in the maid's room which was then dark as it was in the early hours of the morning, she could not have seen his face and identified him at the identification parade and in any case the Accused was not aware that he had been identified by the Complainant as the Complainant never appeared in the presence of the Accused to identify him at the parade and as such the identification was flawed.

20.1 The Defence Counsel's submission ignored the evidence of the Complainant that she was able to see the 'face' and 'built' of the Accused because of the light coming in through the window of her room from the neighbouring house as he had stood near the window 'putting on his clothes' and had asked her also to open the window before leaving the room through the window. When she was told that the Accused had a moustache and a beard at that time, she said she had not noticed it. In this regard, Wei Fong, PW21, the neighbour testified that she normally left all her garden lights on and her compound was always brightly lit as there had been a few robberies in the area. There were three lights according to her which shone into the compound bordering the side where the maid's room was. Her evidence was not diminished by Defence Counsel's *cross-examination*. From the photographs, I noticed that the two houses were very close. I was satisfied that the Complainant was able to see the Accused's face, recognise it and later identify it from a set of photographs of several persons shown to her by the police and thereafter identify the Accused at an identification parade. As for the Accused's defence that he was unaware that he had been identified, the explanation lay in the fact that the identification was done in the CID from an adjoining room through the glass panel through which only a one way view could be had of the parade. This procedure was used for the protection of witnesses in certain cases, for example, the Complainant in this case and I found nothing improper in the procedure.

21. The Accused's version of the events and the manner his case was conducted begged many pertinent questions which went unanswered. In all, I was satisfied that against the backdrop of the Complainant's evidence, the Accused's defence of the Complainant being a friend with whom he previously had sexual intercourse and again after the 15th January 2000 notwithstanding that she had already made a police report concerning the incident of the 15th January 2000 were all, in my opinion, a desperate and elaborate lie to establish his defence. I had asked the Accused in clarification as to why the Complainant would go out with him to have sexual intercourse with him on 17th March 2000 in view of a report of rape committed on her on 15 January 2000. His answer was: 'I cannot explain'.

21.1 I found the Accused's defence of consensual intercourse on 15th January 2000 and the other incidents of consensual

sexual intercourse with the Complainant, incapable of standing up to scrutiny for compelling reasons:

(i) the Accused's defence was refuted by Colin, PW20

Accused's Counsel had indicated to me early during the trial that the Defence was intending to call Colin as a defence witness. Later during the Prosecution case, I was informed that the Accused was not calling him as a witness. In the event, he was called by the Prosecution as a witness pursuant to the usual notice being served, Counsel for the Accused not objecting. Colin denied he knew the Complainant or had ever been to her employer's house alone or with the Accused as alleged by the Accused. He though admitted that he knew the Accused and the Accused had been doing some contract work for him. He stated that as far as he could recollect, he had only seen the Complainant passing by on an occasion at or near a coffee shop in Jalan Selaseh which is a close-by shopping area for the estate where the Complainant lived. Defence Counsel in his *cross-examination* was unable to impugn the evidence of Colin.

(ii) the Accused's allegation that Colin had an ulterior motive for giving evidence unfavourable to him entirely lacked credibility

22. The Accused in his defence from the witness stand, alleged that Colin did not tell the truth about his involvement with the Complainant. He attributed a sinister motive to Colin in giving unfavourable evidence against him namely that they had fallen apart because the Accused had eavesdropped and heard a conversation between Colin and another that Colin was involved in dealing in drugs. He had also seen Colin being given a stack of $50/- notes. He had also stated he believed Colin was doing something behind the scene although he didn't have proof that anything was illegal about it. The Accused had confronted him with what he had overheard and seen. As a result, there was a heated argument between Colin and himself. The Accused then stated in evidence:

'This is the reason why Colin may have asked the victim to do this to me'.

22.1 The Accused's brother as a witness for the defence, further alleged against Colin that Colin was involved in prostitution and that he had on one occasion seen Colin at the Jalan Selaseh coffee shop nodding in the direction of the Complainant when she approached the coffee shop. The net value of all this evidence was to discredit Colin's denial that he knew the Complainant and that both he and the Accused were involved in consensual sexual trysts with the Complainant.

22.2 I found the Accused's allegations of ulterior motive against Colin completely lacked credibility and this finding by me was accentuated by his Counsel in not attributing or **putting** such a motive to Colin.

22.3 If the Complainant was doing the bidding of Colin in a situation where Colin stage-managed for the Complainant and the Accused to have sexual intercourse on 15th January 2000, then the Complainant having made a police report, would have informed the police to arrest him soon after the 15th January 2000 as the evidence was undisputed that the Accused lived in the same estate as the Complainant and his house was only a few doors away from that of the Complainant's employer's house as he had got down from a taxi near her employer's house to walk to his house on one occasion. If the Complainant had not seen exactly which house he lived in, she would know the precise vicinity in which he lived. The Complainant would have tipped off the police as to the vicinity he lived in after the matter was reported to the police. Again, she could have arranged for the police to arrest him on 16th March 2000 when the Accused made arrangements to meet her that night and allegedly took her out for another sexual escapade. As the evidence turned out, the police spent more than 2 months to track down the Accused and arrest him from a description given of the Accused by the Complainant.

22.4 Though the Accused claimed that he had informed Defence Counsel of the Accused's ulterior motive, the same was never put to Colin although Defence Counsel had ample opportunity to do so and Defence Counsel had repeatedly consulted with the Accused in the dock throughout the trial. I was satisfied that the Accused had not informed Defence Counsel of these

allegations he uttered in his evidence from the witness stand as in my opinion he made them up as he went along giving his evidence. Otherwise, Defence Counsel would have put the Accused's allegations of what he had overheard and seen to Colin as well as the allegations made by the Accused's brother i.e. that of prostitution and his noticing Colin acknowledging the Complainant one day at the coffee shop in Jalan Selaseh. They would have been the central planks of his defence to demolish the credibility of Colin. Further, if it was the belief of the Accused that there was collusion between Colin and the Complainant for whatever reason be that one the quarrel between Colin and the Accused or the Accused not paying the Complainant $5,000/-, such collusion was not put to the Complainant and her response tested.

22.5 I held that the Defence could not, in the circumstances, rely on all these allegations of the Accused and his brother to discredit the evidence of Colin. It is sufficient in this regard for me to refer to the rule as enunciated in ***Brown & Dunn***:

> "it seems to me to be absolutely essential to the proper conduct of a cause, where it is intended to suggest that a witness is not speaking the truth on a particular point, to direct his attention to the fact by some questions put in cross-examination showing that that imputation is intended to be made and not to take his evidence and pass it by as a matter altogether unchallenged, and the, when it is impossible for him to explain, as perhaps he might have been able to do if such questions had been put to him, the circumstances which it is suggested indicate that the story he tells ought not to be believed, to argue that he is a witness unworthy of credit. …it will not do to impeach the credibility of a witness upon a matter on which he has not had any opportunity of giving an explanation by reason of there having been no suggestion whatever in the course of the case that his story is not accepted."

The above rule was endorsed in the case of ***Arts Niche Cyber Distribution Pte Ltd v Public Prosecutor***:

> "[a]ny matter upon which it is proposed to contradict the evidence-in-chief given by the witness must normally be put to him so that he may have an opportunity of explaining the contradiction, and failure to do this may be held to imply acceptance of the evidence-in-chief."

(iii) <u>the highly questionable nature of the Accused's alleged relationship with Complainant</u>

23. The Accused's evidence was to the effect that he was close to the Complainant and could see her at his will and have sexual intercourse with her either at her employer's house or outside. Yet, he had not exchanged any contact telephone numbers with the Complainant although the Complainant had a personal cellular phone in her possession. Then again, I failed to understand why the Complainant who was in need of money and had asked the Accused for $5,000/- on 15th January 2000 would continue to have sexual intercourse with him as he had told her he had no such amount to pay her and had offered her instead $50/- which payment she had rejected. The Accused's evidence was also very strange when he stated that notwithstanding him not paying her the $5,000/- or any other sum, his relationship with her was normal and she had never raised the question of asking money from him again. The Accused had also stated that he had other girlfriends younger than the Accused. Yet, curiously he had to go each time to the Complainant's employer's house to meet the Complainant who was 43 years old in the dead of night being completely averse to the risk that the owners of the house may be in and they may wake up and find him there as their master bedroom was on the ground floor not far from the maid's room. The Accused's explanation that there was nothing wrong with going to the employer's house to see the Complainant in the early hours of the morning shows his daring and disregard for consequences. I agree with the Prosecution that the logical explanation was that the Accused was not a truthful witness when he said that the Complainant and he knew each other at all.

(iv) that the Accused used a condom before having sexual intercourse on 15th January 2000

24. The Accused's evidence was that he had used a condom to have sexual intercourse and then discarded it in the waste-paper basket next to the bed. This showed that the sexual intercourse was consensual as the Complainant allowed him to wear the condom. Whilst I did not quite understand this piece of evidence, it was obvious that in this regard the Accused was untruthful. The police had searched the waste-paper basket and had not recovered any condom, only 2 pieces of tiny crumbled white papers and the pieces of damp tissues (**Exh. P65**) which proved negative for any DNA. The Accused then explained that the Complainant would have thrown away the condom before calling the police. This again did not make sense because the Accused had testified he believed Colin had set him up or framed him by conniving with the Complainant though this had never been put to the Complainant. As such, there was all the more reason to keep the incriminating condom for DNA testing to nail the Accused. I therefore accepted the Complainant's version that the Accused had masturbated and ejaculated outside her after having sexual intercourse with her. This is also consistent with her evidence that she had not washed her bottom and was consistent with the DSS evidence that no DNA profile was yielded on vaginal smears taken from her. She had, she explained, only brushed her teeth and washed around the mouth area as was her daily morning habit.

(v) the damming circumstancial evidence of the Accused's entry into the house through the bathroom window of the master bedroom

25. The evidence of the Complainant was that the Accused left her room after raping her by opening her bedroom window and climbing out. She had thereafter gone to inspect all the doors and windows and had found the window of the master bedroom toilet open. She believed the Accused would have come into the house through the said window. She showed the open window to Shi Hao, PW14, after she woke him, who confirmed that the said window was wide open. There was some minor discrepancy as to how wide the window was open but the important consideration was that I was satisfied that its opening was large enough in view of the dimensions given by the Investigating Officer, for the Accused to enter through it as he was slim and that he did enter through this window to gain access into the house. The entry is confirmed by a body brush with a long handle and a shampoo tube which lay at the bottom of the window on the grass verge outside the house. The evidence of the Complainant and her employer was that normally these were placed on the window sill. The only reasonable inference for me to draw, which I drew was that the Accused in order to climb through the window picked up the brush and shampoo tube and threw them out to gain an unimpeded entry through the window and into the house. He had thus committed housebreaking by night as charged.

(vi) the unrealistic return to normality of the relationship of the Accused with Colin

26. In this regard, the Accused's evidence was that notwithstanding the heated quarrel Colin had with the Accused upon accusing him of drug dealings and collecting money under dubious circumstances, 'everything was back to normal' between Colin and him so much so that they were beginning to go to nightspots and Colin also took him to the Complainant's employer's house on 15th January 2000. I disbelieved the Accused's evidence that their relationship would have mended so speedily, if at all in view of the various serious accusations he alleged he made against Colin. I also noticed that the Accused had a habit when giving evidence of explaining away uncomfortable questions with phrases such as 'I didn't make anything of it', 'everything was back to normal', 'I didn't think anything was wrong' and 'it did not occur to me'. He did not strike me as a credible witness.

(vii) the Accused's failure to mention his defence in his Notice Statements under s 122(6) of the CPC

27. The Defence admitted two statements **Exh. D6** (Rape) and **D7** (Robbery) by the Accused on 30th March 2000. The Defence

admitted these statements through the Investigating Officer. I accepted these were voluntarily made otherwise the Defence would not have admitted then. In both statements the Accused had stated:

"I have nothing to say'

Asked in *cross-examination* why he had not stated in his defence after the Notice of Warning had been read to him, he stated he was in a confused state and he did not wish to state matters which would prejudice his case. I rejected the Accused's explanation as the statements were admitted by the Defence. The purpose of giving the Notice of Warning to an accused under s 122(6) is to enable him, upon being charged, to raise his defences then and to guard against an accused raising defences at his trial which are merely afterthoughts. The Accused could have simply mentioned that he knew the Complainant and he had consensual sexual intercourse with her. There was nothing complicating in stating this. The Accused's failure to mention this showed that his defence was an afterthought of his.

28. The Accused had totally denied that he had had unnatural sex (oral) with the Complainant or that he had outraged her modesty by licking her vagina or robbed her of $50/-. Counsel for the Defence pointed out that the police had not seized the Complainant's wallet in which she said she kept the $50/-. I found that the police had not seized the wallet as a result of inadvertence and the Complainant had taken back the wallet and left it in the Philippines when she went home for a visit there. The important fact was that the Complainant had withdrawn a total of $300/- on the 10th and 12th January 2000 from an Automated Teller Machine (ATM) and evidence of the same was furnished in Court. Some of the money had been remitted to the Philippines according to the Complainant and some lent to her Filipino friends. There was no reason in the circumstances for the Complainant to concoct the charge of robbery concerning a small sum of $50/- which in all probability she had in her wallet.

29. There was also no reason advanced by the Defence why the Complainant would exaggerate and add the offences of unnatural sex and outraging modesty as stated above to the charge of rape. She had given her evidence quietly and had sobbed on one or two occasions. I found her narration of the events that night orderly, precise and clear and unusually convincing in the light of all the circumstances I have raised and discussed. I was also satisfied that no reasonable doubt had been thrown on the Prosecution case by the Defence.

As such, I found the Accused guilty as charged and convicted him on all the charges.

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Sentence

30. I was informed by the Prosecution that the Accused had previous convictions. He was convicted on 6th October 1994 under s 456 read with s 511 of the Penal Code – attempted housebreaking by night with common intention together with other offences under s 457, 454 and 380 which were taken into consideration - and sentenced to 2 years probation for the said offences.

30.1 Subsequently, the Accused was also convicted on 8th May 1995 and 6th June 1995 under s 448 of the Penal Code for house trespass and sentenced to 3 months imprisonment for the former offence and under s 9(1) of the Probation of Offenders Act Cap 252 for having committed further offences during probation from which he had been sentenced to the Reformative Training Centre (RTC).

30.2 I took all these offences into consideration as they were recent offences and bearing in mind at the same time the totality principle that the sentence should not be a crushing one as all the offences occurred in one transaction, I sentenced the Accused who had little to say by way of mitigation as follows:

(i) 1st Charge – Housebreaking under s 458: 2 years imprisonment plus 3 strokes

(ii) 2nd Charge – Rape under s 376(2)(b): 11 years imprisonment plus 12 strokes

(iii) 3rd Charge – Unnatural Sex under s 377: 1 year imprisonment

(iv) 7th Charge – Outraging Modesty under s 354A: 2 years imprisonment plus 3 strokes of the cane

(v) 9th Charge -

(a) Robbery under s 392: 3 years imprisonment plus 12 strokes of the cane.

(b) Committing Robbery when armed under s 397: 12 strokes of the cane.

Sentences in respect of the 2nd charge of rape and that of robbery i.e. 9th charge to run consecutively. The other 3 sentences of imprisonment to run concurrently with the 2nd and 9th charges. The maximum number of strokes to be imposed shall not exceed 24.

The total sentence of 14 years imprisonment is backdated to 30th March 2000 being the date of Accused's arrest and remand.

Amarjeet Singh

Judicial Commissioner

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