

Public Prosecutor v MW
[2002] SGHC 144

Case Number : CC 31/2002
Decision Date : 12 July 2002
Tribunal/Court : High Court
Coram : Tay Yong Kwang JC
Counsel Name(s) : Ng Cheng Thiam and Hwong Meng Jet (Deputy Public Prosecutors) for the Public Prosecutor; Accused in person
Parties : Public Prosecutor — MW

Criminal Procedure and Sentencing – Sentencing – Rape – Accused having sexual intercourse with natural daughter under 14 years of age without her consent – s 376(2) Penal Code (Cap 224)

Judgment

GROUND OF DECISION

THE CHARGES

1. The Accused pleaded guilty to three Charges of having committed rape against his daughter, then under 14 years of age, by having sexual intercourse with her without her consent, offences punishable under Section 376(2) of the Penal Code. The three incidents of rape took place in February, March and April 2001 in the Accused's home. Section 376(2) of the Penal Code provides for a minimum imprisonment term of eight years and a maximum imprisonment term of 20 years. In addition, caning of not less than 12 strokes is mandatory.
2. The Accused is now 38 years old. He is the natural father of the victim, the eldest among four children. He and his wife are divorced. The victim was educated up to Primary 6 level but did not complete her primary education. At the time of the offences, she resided with her father.
3. On 12 July 2001, the victim lodged a police report alleging that she had been raped by her father from March 2001 until 14 June 2001.
4. In early 2000, the Accused and his wife underwent divorce proceedings and the wife moved out of the matrimonial flat. The four children were left in the care of the Accused until such time as the wife was able to find suitable accommodation.
5. In February 2001, at around midnight, the victim was sleeping in her bedroom when the Accused returned home, seemingly upset that his wife had failed to keep an appointment with him. About ten minutes later, the Accused woke the victim up and asked her to go to his bedroom to rub his back. The victim did so for about half an hour. The Accused then asked the victim to lie down on his bed. When she asked him for the reason, he merely instructed her to comply. She did so. The Accused then closed and locked the bedroom door.
6. He then told the victim to take off her clothes. She was shocked and refused to do so. The Accused raised his voice and demanded compliance. Fearful of her father, the victim hesitated. The Accused then approached and stripped her. Without her consent, he inserted his penis into her vagina.
7. The victim was angry and sad. She cried in her bedroom. When the Accused saw her, he warned her not to reveal the rape to anyone.

8. In March 2001, just after midnight, the Accused told the victim to go to his bedroom. There, he told her to strip. She obeyed him. He licked her neck and then had sexual intercourse with her without her consent.

9. In April 2001, the incident in March was replayed and the third rape took place.

10. On 15 June 2001, the four children left the Accused's home to live with their mother. On 12 July 2001, the Accused told the mother that he wanted to bring the victim for an outing. On learning that her siblings were not going along, the victim told her mother that she did not want to go. Upon being chided by her mother, the victim cried and told her she did not want to be alone with the Accused as he had raped her several times.

11. The mother confronted the Accused with the victim's allegations but he denied them and alleged that the victim must have been having sexual intercourse with other men. A police report alleging rape was lodged that day by the victim.

12. Three days later, the Accused called the mother and asked her to cancel the police report, telling her that he would not be able to pay the maintenance for the children should he be imprisoned.

13. In his statement to the police made on 5 December 2001, the Accused said (among other things):

"For all my efforts and responsibility, my former wife was still trying to make my life miserable. Hence in order to get my own back, I rape (the victim)."

ANTECEDENTS

14. The Accused has no criminal record.

THE PROSECUTION'S SUBMISSIONS

15. The Prosecution highlighted three aggravating factors in this case:

- (1) the Accused is the natural father of the victim;
- (2) he had a warped motive in committing the rapes;
- (3) the effect of the offences on the victim could be seen in the report dated 29 October 2001 by Dr Bernardine Woo of the Child Guidance Clinic which stated:

"(The victim) has been having recurrent thoughts about the abuse and has been feeling sad since the abuse. She feels anxious when males are physically close to her and has difficulty trusting others. She also suffers from loss of self esteem.

Intellectual assessment done by our psychologist, Ms Joyce Leong, on 23.10.01 revealed an IQ of 55, which

suggests that she is currently functioning within the Mildly Retarded range of intelligence.

(The victim) is sad and has difficulty trusting others since the abuse. Her mother is supportive and understanding of her difficulties. She is fairly consistent in her account of events and understands the nature of the abuse. She is fit to give testimony in court. ..."

16. The Prosecution also referred to the sentences in eight previous cases of rape perpetrated by fathers against their daughters for my guidance. It was submitted that the offences here should attract imprisonment terms of more than the statutory minimum of eight years.

THE MITIGATION

17. The Accused said he has pleaded guilty to the Charges. He regretted his actions and pleaded for leniency. He tendered his apology to his daughter and sought her forgiveness. He promised that he would never repeat such offences.

THE SENTENCES

18. In sentencing the Accused, I made the following remarks:

"Mr Mesdi bin Hussain,

1. You have committed a grave crime against your own flesh and blood and have done a great injustice to your family. Sexual offences committed against one's own family members often have repercussions well beyond the trial. The victim may feel bad because her father has been sent to prison because of her complaint. Other family members may unjustly blame the victim for causing the incarceration of their provider. I certainly hope this will not be the case here as the wrongdoing here was yours and yours alone. Further, when the father is finally released from prison, the daughter may have to meet him within family circles again and perhaps re-live the pain of the rapes. Such offences must therefore be punished severely.

2. You said in a statement made to the police that you raped your daughter to exact revenge on your wife for the misery she had caused you. How could your 13 year old daughter be responsible in any way for any alleged misconduct of her mother? The consequences of adult conflict must never be visited upon any child. Since the innocent child has only the voice of the law to speak for herself/himself, the law must speak clearly and loudly to fathers who sexually abuse their children by imposing severe sentences.

3. You have pleaded guilty and spared your daughter the agony of having to recount the embarrassing episodes in Court and of having to testify against her father. You also have no criminal record. These are mitigating factors in your favour.

4. Bearing in mind the sentences imposed in the cases listed by the Prosecution in the Bundle of Cases, the effect of the rapes on your daughter and the points I have made above, I now sentence you as follows: for each of the three Charges on which you have been convicted, 12 years imprisonment and 12 strokes of the cane. The sentences for the First and Second Charges are to run consecutively. The sentence for the Third Charge is to run concurrently with the other two. You will therefore receive a maximum of 24 strokes of the cane and 24 years imprisonment with effect from the date of your arrest, 5 December 2001."

Sgd:

TAY YONG KWANG

JUDICIAL COMMISSIONER