

Public Prosecutor v Teng Boon Leng
[2003] SGHC 25

Case Number : CC 57/2002
Decision Date : 14 February 2003
Tribunal/Court : High Court
Coram : Kan Ting Chiu J
Counsel Name(s) : Lim Yew Jin for the Public Prosecutor; Imran Hamid for the Public Prosecutor;
Tan Joo Khoon (Tan Joo Khoon & Co) for the Accused
Parties : Public Prosecutor — Teng Boon Leng

1. The accused was charged that he

on the 14th day of March 2002, at or about 1.45 p.m., in front of store #03-05A, Parco Bugis Junction, located at No. 230 Victoria Street, Singapore, did abduct one (M) by deceiving her into believing that (he was) a security officer who had detained her for an alleged act of shop-lifting at the said store, and by such deceitful means, (he) induced her to accompany (him) from the said store to a utility room described as "Fan Room C13" at the 4th level of Parco Bugis Junction, in order that she might be forced to illicit sexual intercourse with (him), and (he has) thereby committed an offence punishable under section 366 of the Penal Code, Chapter 224.

and that he

on the 14th day of March 2002, at or about 1.50 p.m., in a utility room described as "Fan Room C13" located at the 4th level of Parco Bugis Junction, No. 230 Victoria Street, Singapore, attempted to rape one (M) and in order to commit the said offence, (he) voluntarily caused hurt to her by using (his) forearm to forcibly pin her neck against a wall, and (he has) thereby committed an offence punishable under section 376(2)(a) read with section 511 of the Penal Code, Chapter 224.

2. The person referred to as M was a girl twelve and a half years old on the day of the alleged offences.

3. M was the main prosecution witness and the accused was the only defence witness at the trial.

4. When he opened his case, the prosecutor gave notice that he intended to lead evidence that the accused had on a previous occasion used the same method to commit rape.[\[1\]](#) This was going to be new evidence for the trial, as no such evidence was tendered at the preliminary inquiry. When I asked whether it was proper to lead such prejudicial evidence, the prosecutor could not see the objection to his proposal. He was given time to reflect on the matter, and subsequently decided that the evidence will not be adduced. I am surprised that it was thought that prejudicial evidence of that nature could be admitted.

5. M was a secondary two student on the day of the alleged offence. On that day, she had gone to Parco Bugis Junction with her mother. They went to a bookshop [\[2\]](#) on the second level of the building. After a while when her mother went to the toilet, M left the bookshop with the intention of going to another shop nearby.

6. Suddenly the accused approached her and told her that he had seen her shoplifting from

the CCTV (closed circuit television) in his office. Although she protested that she had not stolen anything the accused insisted that the stolen items were in her bag and told her to follow him to his office. When she refused, he snatched her bag and held onto her wrist and led her away.

7. He led her by the wrist out of the shopping area to an exit to a staircase. When they reached the staircase landing at the fourth level, he told her that he could call for the police to report her shoplifting, and she could be sent to a girls' home. She panicked and told him again that she did not steal. His response was that the offence was captured on the CCTV and that she can give her explanation in his office. He went through her sling bag and took out three pens and asked for another eraser that she had stolen. He asked for her particulars and had her write her name, identity card number, address, parents' names, house telephone number and handphone number on a piece of paper, which he kept.

8. After this stop they proceeded to an open area of the building to a room marked "Fan Room C13"[\[3\]](#), which she thought was a security office. He opened the door and pushed her inside and followed her in, then closed the door.

9. When she was inside the room, she realised that it was not a security office. She tried to get out, but the accused blocked her way. He then turned her to face the wall and used his forearm to pin her neck against the wall. He also used his body to press against her back so she could not move. When defence counsel put to her that the accused did not do that, she disagreed.[\[4\]](#)

10. He told her to remove her blouse. When she refused, he raised her arms and removed her blouse and her brassiere. He then touched her breasts and removed the nipple tapes she was wearing. He also pulled down her jeans and panties. She disagreed with his counsel that she removed her clothes herself without protest.[\[5\]](#)

11. He then turned her to face him. He had unzipped his trousers and pulled down his underwear, exposing his erect penis. He kissed her neck and breasts and sucked her nipples. He then inserted a finger into her vagina and then he tried to insert his penis into it. When she felt his penis pushing into her vagina, she tensed her lower body to prevent it from entering her vagina, and after a few tries he stopped.

12. The accused then told her to masturbate him. When she refused he pulled her hand to his penis and made her hold it. She was disgusted and angry and pulled it hard. He masturbated himself and ejaculated. Some of the ejaculate got on her body and he wiped it off with his handkerchief.

13. After that she put on her clothes again. The accused warned her not to tell anyone of the incident. He also told her that she was to write a letter of apology that he was to deliver to his boss.

14. They then parted. She turned to the shopping centre and called her mother. When her mother came to her, she told her mother she was molested.

15. The two of them left the shopping centre and went to Kangar Hospital as her mother had an appointment there. Her father subsequently joined them at the hospital.

16. At about 6 p.m. they all went to Parco Bugis Junction to look for the accused, but they could not find him. Eventually her father reported the matter to a security officer there, and the police were notified subsequently.

17. In the course of the police investigations, M made four statements. The first was made on

15 March, the next two on 23 March, and the last on 5 April.^[6] These statements were not admitted in evidence but were produced for my inspection. I will refer to this later.

18. The accused was not arrested immediately but was apprehended after he continued to communicate with M.

19 On 15 March he called her on her handphone and asked her to meet him, but she refused. When he repeated his request on 24 March, she agreed to meet him on the following day at the Takashimaya Shopping Centre at Ngee Ann City. He told her to be there by herself and bring her letter of apology with her.

20. The police were informed of the appointment and an ambush was set up. He was arrested by the waiting police officers when he went to meet her.

21. M was sent to the Department of Obstetrics and Gynaecology, Singapore General Hospital on 8 April where Dr Chua Hong Liang examined her on a complaint of attempted rape. Dr Chua found no hymenal tears, and that the vaginal orifice could admit one finger without causing any tears.^[7]

22. This was a very late examination, done three weeks after the alleged incident. What caused the delay? Was it because M had not complained of attempted rape earlier, or was it inaction by the police?

23. The investigation officer Acting Inspector Mohamed Razif bin Majid gave evidence that on 26 March, he recorded a cautioned statement from the accused for an offence of outrage of modesty, and on 27 March another cautioned statement was recorded in relation to a charge of attempted rape. On 9 April, a third cautioned statement was taken in answer to a charge of abduction.^[8] He explained that the statement on the attempted rape charge was recorded on the instructions of his officer-in-charge and not because of M's account of the events.^[9]

24. It was against this backdrop that I directed that M's statements be shown to me for me to ascertain whether M had changed her story. When the prosecutor produced them, I found that M had given an account of events that would amount to attempted rape in her first statement of 15 March.

25. If the statements showed that her account of the events changed, I would have directed on the authority of *Yohannan v R* [1963] MLJ 57 and *Rosli bin Othman v PP* [2001] 3 SLR 587 that the statements be furnished to the defence so that they may be used to impeach her credit under s 122(2) of the Criminal Procedure Code.

26. That left the long delay in the medical examination to be addressed. It was well that in this case, the delay not prejudice the prosecution or the defence, but there should not be a delay like this.

The accused's defence

27. He was at Parco Bugis Junction on 14 March to meet a client in the course of his employment as a sales executive. The client did not keep the appointment, so he went to lunch and then went to the third level of the building.

28. He saw M inside a shop. They had never met before. He saw her slip three pencils into her sling bag and he confronted her to ask her if she had taken anything without paying. She told him

that she could return everything to him, and pleaded with him not to notify her mother. He told her to follow him because he wanted to ask her some questions. She walked with him along the passageway, repeating her plea not to inform her mother. When they came to the end of the passageway, they walked up a staircase. When they reached a landing he asked for the three pencils and she handed them to him. He also got her to write down her particulars on a business card.

29. Then they continued on their way and went to the fan room. When he opened the door M entered the room and closed the door. He asked her to face the wall and remove her blouse and brassiere as well as her jeans and panties. After she had complied he touched her breasts and her vagina. He asked her to turn around and he saw the nipple tapes on her breasts. He peeled off the tapes and kissed and sucked the nipples.

30. He unzipped his pants and took out his penis, and put her hand on it. She held it tightly and tugged it roughly. He took her hand away and masturbated himself. He ejaculated and some semen got on her stomach, and he wiped it with his handkerchief. After that they both dressed up and they left the fan room.

31. When they were back at the staircase M asked if she would get into trouble. He assured her he would help her, but he needed to check if her theft was captured on the CCTV, and he will call her to let her know if it was, and they parted.

32. He telephoned M the following day and told her that her theft was recorded on the CCTV, and suggested that she prepared a letter of apology and deliver it to him so that he can help her. They agreed to meet the following day, 25 March at Ngee Ann City. When he went there and approached her, he was arrested by the police.

33. While he was in the custody of the police, cautioned statements were recorded from him on the two charges he faced before me. On the attempted rape charge he stated "I maintain myself to be innocent"[\[10\]](#) and on the abduction charge he stated

At anytime at all, I did not use any force to drag her or physically compel her to follow me. At the point where I met her, which I asked her about the stolen items, she promptly admitted and when I asked her to follow me, she followed very anxiously and closely and if not to be seen by anyone. We walked together towards the exit and then to the 4th level. I did not drag her to the fan room. I asked her to follow me and we were walking together side by side towards the fan room. I was the first one to enter the fan room and she followed later and she was the one who closed the door. I did not attempt to rape her and there was no intention to rape her at all.[\[11\]](#)

34. Under cross-examination by the prosecutor, he admitted that he was not employed by the bookshop or Parco Bugis Junction as a security officer. He also admitted that he wanted to give M the impression that he was a security officer and he had caught her stealing and she had willingly followed him at his request.[\[12\]](#)

35. He denied that he thrust his penis at her vagina or had attempted to rape her.

Evaluation of the evidence

36. By his own admission, the accused is a devious person. He set out to deceive M into thinking that he was a security officer with access to the CCTV monitors, an office in the building, and powers to deal with shoplifters.[\[13\]](#) He was nothing like that. He was a sales executive whose client had

stood him up.

37. He alleged that M had stolen some pens or pencils from the bookshop, and she denied it. There were no investigations into this, and there was neither basis nor necessity for me to make any finding on it.

38. It was clear that M follow the accused along the corridor, up the staircase and to the fan room because she was deceived into believing that he was a security officer. [14] The accused had therefore abducted M, as defined by s 362 of the Penal Code which states that

Whoever by force compels, or by any deceitful means induces any person to go from any place, is said to abduct that person.

39. The next issue was the purpose of the abduction. The accused was never interested in the theft of the pens or pencils, assuming that took place and he claimed to have thrown them away. He had lured M to the fan room to satisfy his sexual desires. She was undressed (whether at his request or by him), and he touched her breasts and vagina and asked her to masturbate him. M said that he also tried to thrust his penis into her vagina, but he denied that.

40. I took particular care to observe M and the accused when they gave evidence. M came across as a straightforward witness giving her account of the events simply and without hesitation or embellishment. The accused was not a satisfactory witness. He appeared to be holding back and had difficulty explaining parts of the events.

41. I had no difficulty in believing M's account and I found that the accused had tried to insert his penis into M's vagina.

42. On this basis, I found that the accused had abducted M in order that she might be forced into illicit intercourse, and I convicted him on the first charge.

43. By those findings, the accused was also guilty of attempting to commit rape on M. However, I was not satisfied that came within s376(2)(a) of the Penal Code which contemplates that the perpetrator voluntarily causes hurt to the victim in order to commit the offence. Section 319 states that whoever causes bodily pain, disease or infirmity to any person is said to cause hurt.

44. The second charge alleged that the accused caused hurt to M by using his forearm to pin her neck against the wall. However M did not say that she experienced bodily pain because of that. She may have felt pain, but it may also be that she did not; no evidence was adduced on this.

45. When that was brought to the prosecutor's attention, he did not accept that and contended that pain could be inferred. [15] I did not see any basis for doing that when M could have said that she felt pain, or could be asked if she did.

46. Inferences are not to be drawn casually to fill gaps in the direct evidence. It has been set down by Thomson CJ in *Liew Kaling v PP* (1960) 26 MLJ 306 @ 309 that to be valid an inference must (i) account for all the known facts and (ii) be the only reasonable inference which will account for all these facts. This is a sound and prudent test, as the benefit of the doubt should be given to the defence. When more than one reasonable inference can be drawn, some favourable to the accused and others unfavourable, the latter cannot be used against the accused. An adverse inference can only be relied on when it is the sole irresistible inference. Applying this test, it cannot be said that the only reasonable inference to be drawn from all the facts was that M experienced

pain.

47. I therefore found that the hurt element was not made out, and I reduced the charge to attempted simple rape under s 376(1) read with s 511.

Sentence

48. The accused is 33 years old. He was a sales executive but had lost the job. He is married. His wife is working, and they have no children. His counsel said he was remorseful over the molestation, and pleaded for leniency.

49. He has a bad record of convictions. In July 1988 he was sentenced to two concurrent terms of imprisonment of three months for theft. In September 1993 he was convicted on two charges similar to those he faced at this trial. He was sentenced to three years of imprisonment for abduction and eight years and twelve strokes for attempted rape, with the custodial sentences to run concurrently. The victim was a 13 year old girl he accused of shoplifting and brought to a plant room and attempted to rape. In August 1994 he was sentenced to one year imprisonment for theft and served a default sentence of one month for fraudulent possession of property.

50. The prosecutor submitted that the accused should be sentenced to preventive detention under s 12(2) of the Criminal Procedure Code in view of his antecedents.

51. I agreed that this was a proper case for preventive detention, and sentenced the accused to 16 years preventive detention. In addition to that I ordered that he be given six strokes of the cane for the first offence and 12 strokes for the second offence. He is unhappy with the convictions and the sentences and appeals against them.

[1] Prosecution's Opening Address para 19

[2] Described as "AB & C" in the trial, though P1 and D4 show the shop to be "A "N" BC"

[3] see P16

[4] Notes of Evidence page 70

[5] Notes of Evidence page 70

[6] Notes of Evidence pages 206-7

[7] P20

[8] Notes of Evidence pages 125-7

[9] Notes of Evidence page 129

[10] See D17

[11] D18

[12] Notes of Evidence page 233

[\[13\]](#) Notes of Evidence pages 233, 259

[\[14\]](#) PS15 para 3, Notes of Evidence page 89

[\[15\]](#) Notes of Evidence page 300

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