

Public Prosecutor v ABC
[2003] SGHC 281

Case Number : CC 38/2003
Decision Date : 15 November 2003
Tribunal/Court : High Court
Coram : MPH Rubin J
Counsel Name(s) : Nor'ashikin Samdin and Ho So-Lyn (Attorney-General's Chambers) for public prosecutor; Accused in person
Parties : Public Prosecutor — ABC

Criminal Procedure and Sentencing – Sentencing – Appropriate imprisonment term – Repeat offender and aggravating circumstances – Consecutive sentences by operation of s 18 of the Criminal Procedure Code (Cap 68) – Section 230 of the Criminal Procedure Code (Cap 68).

1 ABC, a 24-year-old male Singaporean, a private security guard by occupation, was charged for four offences, two counts of aggravated rape, one of outraging modesty in aggravated circumstances and one of theft. All of them were said to be committed in the early hours of 28 February 2003, in a residential apartment block in Singapore. The victim was a Filipino national, residing at the material time in one of the apartments in the said apartment block.

2 The charges preferred against the accused, insofar as they are material, with the omission of the name of the victim, read as follows:

1st Charge

on the 28th day of February 2003, in the early hours of the morning, [] did rape one ... whilst she was on the floor, and in order to commit the said offence, you voluntarily caused hurt to the said ..., to wit, by hitting her head with a wooden stool, and you have thereby committed an offence punishable under section 376(2)(a) of the Penal Code, Chapter 224.

2nd Charge

between 7pm on the 27th February 2003 and 7am on 28 February 2003 [], did commit housebreaking by night, to wit, by entering an apartment used for human dwelling by one ..., in order to commit theft of \$110.00 in Singapore currency in the possession of the said ... and you have thereby committed an offence punishable under Section 457 of the Penal Code, Chapter 224 to be read with Section 458A of the said Code.

3rd Charge

on the 28th day of February 2003, in the early hours of the morning, at [], did rape one ... again whilst she was on the bed, shortly after you had raped her on the floor, and in order to commit the said offence, you put the said ... in fear of hurt to herself, to wit, by threatening to kill or hurt her if she resisted you, and you have thereby committed an offence punishable under section 376(2)(b) of the Penal Code, Chapter 224.

4th Charge

on the 28th day of February 2003, in the early hours of the morning, at [], did use criminal force to one ..., intending to outrage her modesty, to wit, by licking her vagina, and in order to commit the said offence, you voluntarily caused the said ... to be in fear of instant hurt, to herself, to wit, by threatening to kill or hurt her if she resisted you, and you have thereby committed an offence punishable under section 354A(1) of the Penal Code, Chapter 224.

3 The accused who was unrepresented, pleaded guilty to all four charges. He was, through a court interpreter in Tamil, advised of the consequences of his plea, including the range of sentence(s) for the charges he was facing and the effect of Section 18 of the Criminal Procedure Code which prescribes that where at one trial a person is convicted and sentenced to imprisonment for at least 3 distinct offences, the court before which he is convicted shall order that the sentences for at least two of the offences shall run consecutively. The accused informed the court that he was aware of the consequences of his plea.

Facts

4 The facts pertaining to the four charges as read out by the prosecution and admitted by the accused are as follows:

5 The victim is a Philippines national bearing FIN No. At the time of the offences she was residing at She is working as an underwriter withCompany.

Arrest of the accused

6 On 28 February 2003 at about 5.13am, the victim called the police for assistance to ascertain if the man who had broken into her apartment was still there. She reported that the man, who was the security guard at her condominium, had climbed into her apartment from the balcony and tried to rape her while she was sleeping in her bedroom. The police arrived shortly and found the accused sleeping on the victim's bed, whereupon they immediately placed him under arrest.

7 Investigations revealed that the victim had come to Singapore to work sometime in May 2002. She moved into QW about a month after and lived there alone.

8 The accused started to work as a security guard at QW on 13 January 2003. Although the victim did not know him personally, she used to greet him whenever she saw him at the guardhouse.

9 On 27 February 2003, the victim walked home alone from Novena MRT station at about 11pm. When she walked past the main gate of QW, she did not see any security guard in the guardhouse, but did not think anything of this as the security guard on duty usually works until 10pm only.

10 After taking a lift to her apartment on the second floor, the victim showered, packed her suitcase as she had planned to return to the Philippines the following day and then went to sleep after locking the main door, through which human entrance or departure from her apartment is effected. As always, she left the door leading to the service balcony closed but unlocked, erroneously believing that nobody would enter her apartment through this door as it was almost 4 metres above the ground, especially in Singapore, a country reputed to be safe.

Housebreaking and theft by night

11 Investigations revealed that in the early hours of the morning of 28 February 2003, the accused had placed a black rubbish bin below the rubbish chute of Block A where the victim lived,

climbed on top of the step above the chute, reached out to grab the metal railing of the service balcony to the victim's apartment and climbed over the said railing onto the balcony, and entered the victim's apartment through the door leading to the service balcony. Upon entering the apartment, the accused saw \$110 placed under a coaster on the table in the living room and promptly pocketed this money.

First aggravated rape

12 After the accused pocketed the money, he heard a noise coming from the victim's bedroom. He then grabbed a wooden stool, entered her bedroom and used the stool to hit her on the head. The victim awoke, but could not recognise the accused because it was dark. The accused then dragged the victim off her bed onto the floor and used his body to pin her down. The victim screamed and struggled against the accused. The accused then used his hand to cover the victim's mouth, and told her not to scream and resist him or he would kill her. Fearing for her life, the victim complied with the accused's instructions.

13 The accused then told the victim that he loved her and wanted to have sex with her. He then told her to take off her panty. When she refused, he leaned on her and pulled off her panty. He then inserted his penis into her vagina. Terrified of the accused, the victim did not dare to struggle or resist but merely kept crying as he continued to thrust his penis in and out of her vagina.

Second aggravated rape

14 After some time, the accused then withdrew his penis and told the victim to lie on her bed. When she refused, he used vulgarities on her and again threatened to hurt or kill her if she did not follow his instructions. The accused then got up and pulled her onto the bed by her hand. He then lay on top of her and told her to remove her nightgown. When she kept crying, he threatened to kill her unless she stopped crying and complied with his instructions. Out of fear, she took off her nightgown. The accused then inserted his penis into her vagina again and continued to thrust his penis in and out of the victim's vagina. The victim did not dare to put up a struggle as she was afraid he might carry out his threat and harm, or kill her.

Aggravated outrage of modesty

15 After the accused withdrew his penis, he told the victim that he wanted to lick her as he loved her very much. He then promptly licked the victim's vagina. The victim did not dare to put up a struggle as the accused's threats to kill or hurt her still operated on her mind.

16 Thereafter, the accused also kissed her on her mouth and touched her all over her body. He again told her that he loved her, and asked her if she could ever love him. She replied that she first needed to know who he was. He then revealed that he was the security guard of QW. At that point, the victim suddenly recognised the accused and realised that he was telling the truth. He also told her that his name was 'Troy'.

17 At this point, the victim complained that her head was very painful and she asked if she could go to the kitchen to get ice. The accused went with her. She then put the ice in a towel and placed it on her forehead. When they returned to her bedroom, the accused told her to lie down on her bed. He then asked if she wanted to see his face. When she said yes, he switched on the light. The victim saw that he was indeed the security guard of QW. He then switched off the light and went to lie beside her. He told her that if she dared to call the police, he would kill her, which would be easy as he had many friends and knew where she lived. He then made her swear that she would not call the

police.

18 He then asked her to get him some water. She told him to get it himself as she had a very bad headache. When the accused returned from the kitchen, the victim pretended to be asleep. He lay down beside her and put his arm across her body. After she ascertained that he had fallen into a deep sleep, she got out of bed quietly, put on her nightgown and went into the living room, intending to escape. Whilst waiting in the living room, she noticed that the \$110 she had left on the table in the living room was missing. She then ran out of her apartment to her neighbour's apartment on the 9th floor and told him what had happened. Her neighbour, a male Italian national then called the police. Feeling 'dirty' after having been raped, the victim took a shower whilst at her neighbour's apartment and threw her nightgown into the rubbish bin. The police arrived shortly thereafter and arrested the accused who was found sleeping in the victim's apartment. The \$110 was subsequently recovered from the right front pocket of the accused's pants.

Medical examination of the victim

19 The victim was examined at the K K Women's & Children's Hospital on 28 February 2003 at about 8.55am. She was found to have numerous bruises all over her body, on her chest, hip, knee cap and left thigh. There was also a swelling on her left forehead.

20 On 19 March 2003, the victim was also examined at the Department of Sexually-Transmitted Diseases Control (DSC) Clinic. She had complained of vaginal discharge and pain on passing urine for a week, and was found to be suffering from gonorrhoea infection of the uterine cervix.

Sentence

21 In the event, the accused was convicted of all four charges. He also admitted that he had a record of previous convictions. The memorandum submitted by the prosecution revealed that he had committed a series of offences involving robbery, theft and false personation of another person during the time he was undergoing a period of probation.

22 In mitigation, the accused said that he was thoroughly remorseful and that he committed those offences at the time when he was totally inebriated. He pleaded the court for leniency suggesting that a long custodial sentence would cause great hardship to the support level of his father who is presently paralysed.

23 The prosecution, on the other hand, urged the court to impose a deterrent sentence, bearing in mind that the offender is a security guard who instead of protecting life and property had gone about abusing the very trust placed in him.

24 In my view, the offences committed by the accused could not be treated lightly. It appeared to me that he did not seem to have learnt anything from his past infractions of the law and the opportunities afforded to him previously, namely the previous probation order and the subsequent stint at the rehabilitative training centre. The violence he had committed presently on the hapless female victim and the manner in which he had conducted himself towards the victim in the early hours of 28 February 2003, appeared to evince a pattern of behaviour which required a fitting sentence. No doubt, I took into consideration that he pleaded guilty at the outset and thereby saved the victim having to revisit the agony and trauma she had suffered in the hands of the accused in March this year.

25 Having considered all the facts, including all those said by the accused in his mitigation and

bearing in mind the broad principles articulated by the Singapore Court of Appeal in *Chia Kim Heng Frederick v Public Prosecutor* [1992] 1 SLR 361, I imposed the following sentences:

On the first charge marked A1, a sentence of imprisonment of 9 years and 12 strokes of the cane;

On the third charge marked A3, a sentence of imprisonment of 8 years and 12 strokes of the cane;

On the second charge marked A2, a sentence of imprisonment of 4 years; (As regards the mandatory caning requirement as prescribed under section 458A of the Penal Code in relation to the charge at hand, the accused having already been ordered to receive a total of 24 strokes, no further caning can be ordered in view of the provisions of s 230 of the Criminal Procedure Code which provides that when a person is convicted at one trial of any two or more distinct offences any two or more of which are legally punishable by caning the combined sentence of caning awarded by the court for any such offences shall not, anything in any Act to the contrary notwithstanding, exceed a total number of 24 strokes in the case of adults or 10 strokes in the case of youthful offenders); and

On the fourth charge marked A4, a sentence of imprisonment of 2 years; (no further caning to be imposed in view of the provisions of section 230 of the Criminal Procedure Code).

26 Pursuant to s 18 of the Criminal Procedure Code, the sentences as regards the first and third charges to run consecutively and the rest of the sentences are to run concurrently. The sentences are to be back-dated to the date of arrest of the accused, ie, 28 February 2003.