

Public Prosecutor v K S
[2003] SGHC 9

Case Number : CC 53/2002
Decision Date : 23 January 2003
Tribunal/Court : High Court
Coram : MPH Rubin J
Counsel Name(s) : Eddy Tham and Francis Ng (Deputy Public Prosecutors) for the Public Prosecutor.; Accused in person
Parties : Public Prosecutor — K S

1 The accused is a 47-year-old male Singaporean. He was charged and tried before me for raping and outraging the modesty of his underaged step-daughter (whose name is omitted in these grounds to protect her identity) on five occasions between 1995 and 2002. The five charges he faced (marked A1 to A5) read that he:

1st Charge (A1):

sometime in February 2002 at REDACTED, Singapore, did commit rape on one [AJE] female/14 years old (D.O.B. 15.XX.1987) and [he had] thereby committed an offence punishable under section 376(1) of the Penal Code, Chapter 224.

2nd Charge (A2):

sometime in January 2002 at REDACTED, Singapore, did commit rape on one [AJE] female/14 years old (D.O.B. 15.XX.1987), and [he had] thereby committed an offence punishable under section 376(1) of the Penal Code, Chapter 224

3rd Charge (A3):

sometime between October 2001 and November 2001, at REDACTED, Singapore, did commit rape on one [AJE] female/13 years old (D.O.B. 15.XX.1987), to wit, by having sexual intercourse with her without her consent whilst she was under the age of 14 years, and he had thereby committed an offence punishable under section 376(2) of the Penal Code, Chapter 224

4th Charge (A4):

sometime in 1996, at REDACTED, Singapore, did use criminal force on one [AJE] female/8 years old (D.O.B. 15.XX.1987), intending or knowing it to be likely to outrage her modesty, to wit, by pressing and rubbing your penis against her buttocks and [he had] thereby committed an offence punishable under section 354 of the Penal Code, Chapter 224.

5th Charge (A5)

sometime in 1995, at REDACTED, Singapore, did use criminal force on one [AJE] female/7 years old (D.O.B. 15.XX.1987), intending or knowing it to be likely to outrage her modesty, to wit, by pushing your penis in between her buttocks and [he had] thereby committed an offence punishable under section 354 of the Penal Code, Chapter 224.

2 Three other charges against the accused relating to possession of obscene video discs under the Films Act (Cap 107) were stood down pending the outcome of the trial herein.

3 The accused claimed trial to all the charges. At the close of the case, after considering all the evidence and arguments presented by the accused and the prosecution, I convicted the accused on four charges (charges A1, A2, A3 and A5), acquitted him of the charge marked A4 and sentenced him to a total of 24 years' imprisonment and 24 strokes of the cane. My grounds now follow.

4 The prosecution's evidence was that the victim's mother who is from the Philippines married the accused on 7 September 1991. The woman had, through a previous union, a daughter, the victim AJE. The child who was born on 15 REDACTED 1987 was 4 years old at that time and was being cared for by her maternal grandparents in the Philippines.

5 Sometime in December 1993, the victim came to Singapore to stay with her mother. At that time, the accused and his wife (the victim's mother) were residing at a flat at REDACTED, Singapore. Sometime in 1994 the family moved to REDACTED, Singapore (AB Court). In 1995, the family moved yet again to a rented flat located at REDACTED, Singapore (EF Central). The family moved again to various rented flats owing to financial woes and last moved to a flat at REDACTED ('REDACTED Road flat') in December 1999. The family comprised the accused, his wife, the victim and two children – a boy who is 3 years younger and a girl 4 years younger than the victim – born through the wedlock between the accused and his wife. Shortly before the family came to live at the REDACTED, the victim's mother secured a job at a store in Woodlands.

6 The main evidence against the accused came from the victim and her mother. Having been satisfied that the victim was of sufficient maturity and understanding, I allowed her to testify under oath.

7 The testimony of the victim who is currently a secondary school student in Singapore and 14 years of age at the time when this trial commenced was as follows.

8 On 15 March 2002, during the school holidays, she confided in her mother for the first time that the accused had been for over a period of time sexually assaulting her. Following the disclosure, she and her mother went to the Neighbourhood Police Post at about 8.00am on 16 March 2002 and lodged a report of rape against the accused.

9 The victim's narration of the events as regards the acts committed by the accused could be summarised in the following sequence.

A5 – The fifth charge allegedly committed sometime in 1995 at AB Court

10 According to the victim that sometime in 1995, when she was in primary 1 and was staying at AB Court, there was an occasion when she entered the master bedroom of the flat, the accused was seen emerging from the toilet after a shower with a towel wrapped around his waist. Upon seeing her, he told her that he needed her help with an exercise as his back was painful. The accused then directed her to face the wall which she did. The accused then pulled the victim's hands and placed them against the wall above her head. When she asked him what he was doing, he told her that he was trying to exercise as his back ached much.

11 He then pulled her shorts and panties until they were below her knees. Thereafter, he leaned towards her back. She could feel the lower part of his body pressing against her buttocks. His hands were on her hips and she felt something fleshy and bigger than a finger pressing in and out between her buttocks. She felt a slight pain. The accused stopped his movements after a while and pulled her panties and shorts up. This done, he pulled her by her hands out of the bedroom and led her into the prayer room where he made her promise not to tell anyone what he had done, warning her that

something would befall her grandparents if she did. He then made her promise before some Hindu idols by raising her right hand.

12 The next day the accused was hospitalised. The victim's mother having been told by the victim that the accused did something to her, asked her what happened the day before the accused was admitted to hospital. As the victim was frightened to say much, she told her mother that the accused had pushed against her back and that it was painful.

A4 – The fourth charge allegedly committed sometime in 1996 at EF Central flat

13 The victim testified that sometime in 1996, after the family had shifted to the EF Central flat, there was an occasion at night when she was at home with the accused and her step-siblings. Her mother was not in the flat then. During that time when she happened to be in the kitchen standing on a chair reaching out for the cookie jar, she suddenly felt the accused behind her, holding her hips. The accused kept pushing against her back and she felt something hard pushing in between her buttocks. They were both fully clothed at that time. At that juncture, her step-sister came into the kitchen and asked the accused what he was doing, whereupon the accused stopped whatever he was doing. After her step-sister had left the kitchen to watch television, the accused pulled the victim by her hand and took her to the guest room. After closing the room door, he asked her to help him with some exercise by leaning against the side of the bed. The victim knelt on the floor with her upper body lying face down on the bed with her palms on the bed. The accused then came from behind, pulled her shorts and panties down and grabbed her hips. He then began pushing his lower body against her back. She felt something hard and warm pushing in between her buttocks. The accused stopped when the horn of the lorry belonging to his sister's husband sounded outside the window of the flat signifying that her mother had returned. The accused quickly pulled her panties and shorts up and instructed her not to mention the incident to anyone. As a result, she did not relate the incident to anyone.

A3 – The third charge allegedly committed sometime between October 2001 and November 2001 at REDACTED.

14 The victim claimed that after the family had shifted to the REDACTED, sometime before the year-end school holidays in November 2001 she was alone at home with the accused. Her siblings had yet to return from school. Presently, the accused asked her to give him five minutes and to go to her bedroom. When she refused, the accused told her that she gave him luck, as advised by a Hindu priest, and accused her of being selfish. He then pulled her into the bedroom and locked the door. Despite her struggles, the accused pushed her backwards by her shoulders and pinned her down on her bed. The accused then grabbed her wrists and removed her shorts and panties. She began to cry and then felt 'something hard and warm' pushing into her vagina. She felt the accused's penis pushing in and out of her vagina and experienced sharp pains. The accused then proceeded to suck her breasts and vagina before re-inserting his penis into her vagina. After a while, the accused removed his penis and ejaculated on her abdomen before leaving the room. She remained in her room for sometime before going to the kitchen toilet to wash herself. She was aged 13 at the time of this incident.

A2 – The second charge allegedly committed sometime in January 2002 at the REDACTED

15 The victim related another incident in January 2002 that occurred in the afternoon after she had returned home from her National Cadet Corps activities. Nobody was at home except she and the accused. After changing into a T-shirt and shorts, she took a nap in her bedroom. She was suddenly awakened by something heavy at the lower part of her body and pain at her vagina, which felt like

tearing of her skin. When she opened her eyes she saw the accused on top of her. She realised that her shorts and underwear had been removed. She screamed, struggled and punched the accused's chest but he managed to pin her hands against the bed. The accused tried to kiss her and continued to push his penis into her vagina. The accused then sucked her breasts and pushed his penis into her vagina again. After a while, he got up and left the room. She then went to the kitchen toilet to wash herself. While she was at the toilet she heard the accused say that he was going out and she should not tell anyone what had happened. Fearful that the accused would enter the toilet, which could not be locked from within she ran to her room and locked the door until her step sister returned home before going to the kitchen toilet to wash herself again. She was aged 14 at the time of this incident.

A1 – The first charge allegedly committed sometime in February 2002 at the REDACTED

16 The victim testified that the last incident of rape occurred one evening sometime between the first and second week of February 2002. She was at home after school together with her step-sister and the accused. As she was taking a nap in her bedroom, she was suddenly awakened by weight at the lower part of her body. She awoke and found that it was the accused. Despite her struggles to push him away, the accused still managed to grab both her wrists, pin them to the bed and remove her shorts and underwear. The accused then used his knees to part her thighs apart and pushed his penis in and out of her vagina. She felt pain so she cried. The accused told her that he had done this to her many times and she should not be afraid as she was still a virgin. He further told her that he was not having sex with her. The accused later withdrew his penis from her vagina and started ejaculating on her abdomen. He used a towel to wipe away the semen but some of the semen spilled onto the foam mattress covered by a cloth cover and a mattress protector on her bed. He then later sucked and squeezed her breasts, as well as sucked her vagina. She finally managed to break free of him and ran to the kitchen toilet. She realised that it was dark outside and there was no one else at home. Consequently, she stayed in the toilet until she heard her stepsiblings return home. She then returned to her bedroom and locked herself inside. She subsequently heard the accused leaving the flat. As he did, he stopped outside her bedroom window for a while and told her not to tell her mother anything unless she wanted the family to break up. After this incident, she eventually removed the mattress protector from the mattress for washing and flipped the mattress over as she did not want to sleep on the side on which the rape had taken place.

Disclosure of details

17 On 15 March 2002, she went to help her mother at the store in Woodlands. That night at about 11.20pm, whilst they were walking back to their flat after work, she told her mother that she had something to tell her. She then hesitated and declined to proceed further. When her mother became persistent, she finally revealed that the accused had been doing something to her. Her mother questioned her further, whereupon she broke down and cried. Eventually she narrated to her mother what the accused had done to her on the first week of February 2002. Before she could elaborate, her mother's handphone rang. It was the accused who called her. Both of them quickly ended their conversation and hurried home. Her mother told her to lock her bedroom door that night. She told the victim that she would take her to the police station the next day to lodge a report.

18 She said that apart from disclosing the acts of sexual assaults on her by the accused to her mother, she had sometime in 1999 confided in her friend and former classmate K about her being often molested by the accused when no one was at home.

19 She added that throughout the times that she was being molested and raped by the accused since about 1995, she did not mention them to her mother because the accused had made her swear to God not to disclose the details to anyone as otherwise something bad would befall her

grandparents in the Philippines. Another reason was that she did not want the family to break up and was worried that her brother and sister would grow up without a father.

20 She said that she kept a red diary in which she recorded what the accused had done to her over the years. These entries however were never specific about what he had done except to say that the accused 'do this' (sic) to her. She kept the diary in her own drawers where she used to keep her clothes. However, in February 2002 she could not locate it. She asked her mother and siblings about it but all of them said that they had not come across it. The diary was missing.

21 When she was being cross-examined by the accused, he declared to her that he happened to read her diary and the entries in it suggested that she was having an affair with someone in June 2001. Her response was that she did not have any affair with anyone. Her wistful reply to the allegation was: 'Your Honour, he's trying to say 'an affair', can I please clarify this, that is, is it wrong to write down about how you feel for somebody? Is it wrong to write that? I am not having an affair, your honour, and he's putting it that way that I am having a boyfriend.' (pages 260 and 261 of the NE).

22 In reply to a question by the court (see page 265) she said: 'Sir, I meant I did not have a boyfriend. What I meant was I did like a guy but it's just the feelings that I write (sic) down.' She was emphatic that she never wrote in her diary that she had an affair with anyone (see page 265, lines 9 to 15).

23 The police report made by her on 16 March 2002 read: 'Sometime in January or February, at REDACTED, I was raped by my father.' When asked to explain why she had mentioned that the rape took place in January or February, she said that she was afraid at that time and found it hard to narrate everything then (see page 248 to 249 of the NE).

24 Insofar as is material, the evidence of the victim's mother was as follows.

25 She had been married to the accused for almost 12 years. The victim was her daughter through her union with another man out of wedlock. The accused agreed to adopt the victim as his daughter and consequently the victim who was then only 4 years of age was told that the accused was her natural father. According to the mother, the victim did not know prior to lodging the police report on 16 March 2002 that the accused was not her real father.

26 After recounting how the victim came to live in Singapore when she was about six years old and the accused's job-hopping as well as his inability to find employment for long periods, she mentioned that in 1995 the accused was warded at Tan Tock Seng Hospital for back pain. They were then staying at AB Court. On the day the accused was admitted to hospital, the victim told her that she wondered whether the victim was to blame for not helping the accused with his exercise the day before.

27 When questioned further about the exercise, her daughter told her that the accused had 'gone to her back and was rubbing and pushing up and down at her buttock area.' She also told her that she felt pain. She then decided to call her husband at the hospital from home. Upon her asking him about the incident, the accused denied doing anything to the victim. He just told her that he was merely doing his exercise and perhaps what he did was too hard on the victim. She did not pursue the matter further.

28 From AB Court, the family moved to EF Central in mid-1993. Since the accused was unemployed most of the time, she decided to find a job to support the family and started work as a part-time

cleaner as well as a baby sitter for households in the vicinity of Yishun.

29 Due to the family's inability to meet rental payments, they had to move residence several times. From AB Court, they moved to a 4-room flat at REDACTED. From there, they shifted to a two-room flat at REDACTED. Next, they went to live at REDACTED and thence in December 1999 finally to a three-room flat at REDACTED.

30 Shortly before the family moved to REDACTED, she found a job with a store at Woodlands. The victim sometimes came to help her out at the store. On 15 March 2002, she requested the victim to help her with her work at the store as she was then having some back pain. The victim did not have to attend school that day. In the event, both mother and daughter went to the store in the morning and after it closed at about 11.00pm, they were given a ride by the owner of the store to their flat.

31 At about 11.20pm as both of them were walking along the corridor along the 5th floor of their apartment block back to their unit located on the 4th level, the victim said she had something to tell her. Having said it, the girl became hesitant and told her that she would relate to her some other day as there was not enough time.

32 Out of concern, she made her daughter sit on the staircase and asked her what she wanted to talk about. Initially, her daughter refused to speak but when she became persistent, her daughter eventually revealed to her that the accused had done something to her. When asked for details, the victim told her that at times, the accused had entered the victim's bedroom whilst she was asleep and lay on top of her and her panties had been pulled down.

33 Before the victim could narrate more, the accused called her through her handphone. As a result, both rushed home. She wiped her daughter's tears and advised her to act as if everything was normal as they would be lodging a report with the police the next day.

34 On 16 March 2002 at about 7.45am, she accompanied her daughter to the Neighbourhood Police Post to lodge a report. Even at this time, she did not learn the full details from her daughter as her daughter appeared embarrassed to tell her about the whole incident. Her daughter told her, however that she did not relate the matter to her earlier because the accused had threatened that the family might break up and that something bad would happen to her grandparents in the Philippines if the victim were to disclose details of his encounters with her.

35 After making the police report, she and her daughter did not return home. They both went into hiding in her sister-in-law's house in Singapore where her two younger children were also staying. She later learnt that the accused had been arrested. She added that she knew that her daughter kept a diary. Her daughter informed her sometime in February 2002 that it was missing. They both tried to look for it but could not find it.

36 The medical examination of the victim by Dr Roland Chieng on 18 March 2002 established that there were old tears at seven and eleven o'clock positions in the victim's hymenal ring. Dr Chieng testified that the term 'old tears' was used by him to describe tears that were more than two weeks old. He confirmed that his findings were consistent with there being penile penetration of the victim's vagina.

37 Dr Mohd Emran bin Mamat who examined the accused at the Changi Prison Hospital on 22 March 2002 said that his finding was that the accused was not impotent and at any rate the accused had related to him he had erection, masturbated and ejaculated after viewing some pornographic clips on the internet on 17 March 2002.

38 The flat in which the family was last living was raided. Amongst the seized exhibits was a mattress covering. Analysis by the Health Sciences Authority (HSA) revealed the presence of semen on it. According to Dr Jasmine Heng of HSA that the semen found belonged to the accused. It should be remarked at this stage that there were some unsatisfactory features in the certificate produced in relation to the DNA analysis conducted by Dr Heng.

39 The prosecution as part of its evidence applied to introduce the evidence of K to whom the victim reportedly confided in 1999 about her father's conduct. K was 11 years of age at the time of the alleged conversation. She was born on 4 March 1988, a year younger than the victim and the complaint was reportedly about incidents which happened four years prior to 1999. The prosecution's point was that K's evidence was for the purposes of giving added weight to the victim's present allegations.

40 After hearing arguments from the learned DPP on this issue, I disallowed the prosecution's application. In my view, a complaint made by one child to another child four years after the event did not seem to satisfy one of the three conditions set out in decided cases and referred to in Cross & Tapper on Evidence (8th Edn, pages 296 to 300). The three conditions are that the statement should be spontaneous, that it is contemporaneous and it should amount to a complaint. In my view, although a delayed complaint by itself would not preclude it from being admitted in evidence, in the case at hand, the victim's statement to one of her friends, another child younger than her in 1999, about 4 years after the incident, would add little value to her testimony in court. On the contrary, its admission might well be regarded as a misdirection particularly in view of the fact the accused was unrepresented.

41 The next aspect during the prosecution case related to the statements recorded from the accused after his arrest on 19 March 2002. The accused confirmed that the five statements recorded from him were made voluntarily without any threat, inducement, promise or any form of oppression. As a result, they were admitted in evidence and the material segments of the said statements read as follows.

(1) Exhibit P-32 – Cautioned statement recorded from the accused between 2.30pm and 3.52pm on 20 March 2002 (in respect of the first charge of rape) allegedly committed in February 2002 (pages 116 to 118 of the preliminary inquiry records):

I refused to sign the above charge sheet due to the following statements.

The alleged offence on the early month of February 2002 at or about 8.00pm, never happened.

At about 6.30pm on early month of Feb 2002, me and BKF were having some friendly sparring and boxing each other.

Accidentally, I hit her left breast and she became wild and started punching me seriously in the living area. She went back to her room, I followed behind to apologise that this was an accident not on purpose.

She became very serious and started punching me and started to pull down the mattress and kicking the double deck bed. I went to grip her and brought her down to the floor and tell her to stop damaging the items there. She started screaming and shouting at me.

I left the room to change my clothes to meet my other two children at the playground. After changing my clothes, I went to her room, she was lying underneath the bed and writing

something in a book.

I apologised to her again knowing her temper and I left to meet my other two children which I told her I were going to meet my children.

Me and my children came back around 8.30pm, and I saw her room that she had put back all the mattresses in her original place. It seemed that everything was as per normal.

A couple of days later, we were normal and on talking terms. Somewhere end of February 2002, I noticed her diary on my youngest daughter's drawer where her clothes are kept.

I flipped through some pages and I read some interesting stories about her and her friends.

On the incident that happened in my house about me and her fighting, on her own handwriting, she mentioned in the diary that I tried to rape her and I didn't give in because I was strong enough to fight back.

On the early month of March 2002, I questioned her when she came back from school whether she had any affair with anyone. She said no and started to cry. So, I told her that if she did not have sex with anyone, she did not have to cry.

A couple of days later, I tested her by telling that if she had not had sex with anyone, would she like to go for medical check-up. She said 'yes'.

In the evening I told her that we were going for her medical check-up, then, she kept quiet and later on, she told me that she waited for mommy. I told her if she wanted mommy to know, it was fine with me and to wait for her.

I told her that I was only trying to help her because she knows her mommy's character and there are many things she told me and not to tell mommy.

When her mommy came back, she did not mention anything and just kept quiet. That's All!

I wish to further add that I never had any sex with her at any time. That's All!

(2) Exhibit P-30 – Segments of statement recorded from the accused between 11.15am and 12.40pm on 25 March 2002 (pages 95 and 98 of the preliminary inquiry records).

13. Between Jan to Feb 1995, I remembered carrying and playing with my stepdaughter inside our room. At the time, she was 7 years old and I remembered my sister, Letchmi was at home. I wish to state that she was working permanent night shift as a quality inspector in a factory till today.

14. While I was playing with my daughter, my sister was inside her own room. I did not know whether she was sleeping or otherwise at the time. But I confirmed our bedroom door was open at the time. As I suddenly felt pain at my back, I dropped on the built in bed first and then on the floor. Fortunately, BKF just landed at the edge of the built in bed.

15. After I fell on the floor, it took me sometime to get on my feet. I felt cramped at my back. As a result, BKF helped to pull me up from my left side. As she did not have the strength, she was unable to pull me up. I then tried to pull myself up onto the bed. When I felt pain, I suddenly fell face down onto BKF on on the bed.

16. I then turned around to face the ceiling after falling face down on the bed. I remembered BKF left the room after asking me whether I was alright. She did ask me whether I wanted her to massage my back. However, I told her that it was not necessary and that I would just lie on the bed to rest.

(3) Exhibit P-30A – Segment of statement recorded from the accused between 3.00pm and 5.38pm on 25 March 2002 (pages 99 to 109 of the preliminary inquiry records)

I wish to further state that after I was warded to Tan Tock Seng Hospital either on January or February 1995, the doctor diagnosed me to have a back pain. However, they suspected that I could also suffer from slip discs. I remembered being warded at the said hospital for about 4 to 5 days before being discharged.

2. When the doctor asked me what exactly happened to me, I related to him the incident that I had slipped and landed on my buttock about 4 to 5 days before I played with BKF the day before. I remember telling him that the incident took place either at a market place or my residence's staircase.

3. After two days later, my wife came to visit me at the hospital. She confronted me what had happened whilst I was in the room with BKF when she was not around the day before I got warded. I told my wife that there was an accident and I had dropped on her while she was sitting at the edge of the bed.

4. My wife was not convinced and asked me again whether I was sure that I did not do anything to BKF that day. I told her that if I were to do anything to BKF, I would not have told BKF not to tell anybody. Moreover, when BKF visited me at the hospital with the rest of my family, she was normal and friendly. There was no adverse behaviour on her part.

5. When I got discharged and returned home, I asked BKF why her mother asked me about that day's incident while we were playing in the bedroom. BKF told me that she thought it was her fault that I ended in the hospital. When I asked her why, she took the blame because I was carrying and playing with her and that was why I admitted to the hospital.

35. In Jan and Feb 2002, I did not remember having sex, raped or molested BKF. There were a few occasions that we fought playfully and seriously in the hall, on the floor, on the bed and kitchen area. I remembered having bodily contact and rolling on the floor with BKF. Whenever she was in pain, she would scream and the fighting eventually became serious.

36. Sometime in end Feb 2002, I saw BKF's diary in my younger daughter's drawer. I happened to look for her face towel in the said drawer and subsequently came across the diary. I left it there first and just took a face towel to give to my youngest daughter who was going for her dancing class that day. I did ask my youngest daughter whether the diary was hers. She told me it was BKF's.

37. Thereafter, I went to retrieve BKF's diary from the drawer and began to read it. I wish to state that BKF's diary is pinkish red and I could not recall whether the pages are numbered. I knew it was BKF's diary because after reading the diary, it talked about her family, friends and herself.

38. When I read the diary halfway through, she had written something in pencil. The heading read – "I hate him". Below it, BKF mentioned that she had a big fight with me. She also wrote that I wanted to rape her. Again, she expressed great hatred towards me – "I hate him". I remembered

it said – "He could not do it because I was strong enough to stop him". She further wrote "I hate him hate him hate him hate him". Overall, it appeared that BKF was expressing herself of showing her hatred towards me.

39. After reading it, I then decided to keep the diary on top of my wife's wardrobe without anyone's knowledge. When I read BKF's diary, there was nobody at home at the time. When BKF came back from school, I told her that I was going out. I did not mention anything about her diary. I have no idea whether she was looking for her diary after I left the unit that day. She also never asked whether I had seen her diary.

40. In early March 2002, she came back from school and I asked her whether she had an affair or sex with anyone. BKF cried and replied in a negative to my question. I then assured her that if she did not do anything wrong, she should not be crying. A couple of days later, I asked her the same question again. Again, she replied in a negative to my question.

41. I then told her to go for a medical check-up if we wanted to clear any doubts. I remembered her answering me in a sarcastic manner that she was alright with it. I then told her that we would be going for the medical check up that evening. Thereafter, we went about in doing our own work.

42. Later at about 6.00pm plus, I told her to change as we were going for a medical check up. However, BKF just kept quiet without acknowledging me. I asked her two or three times to get change. Still, there was no response from her. I then accused her of being a liar and that she had done something bad to herself.

43. At that juncture, BKF asked me how I knew that she had done something wrong. We then ensued in an argument that evening. Despite the fact, I did not response (sic) to her question. Instead, I told her that in order to proof that she had never had sex with anyone, let us go for a medical check-up. She just kept quiet.

44. A while later, I returned to her bedroom and she told me to wait for her mother instead. I then told her that I was simply trying to help her by answering the truth to me. Since she wanted her mother to be involved, I had no dispute about it. However, I told her that she needed to face the consequence if the medical check up turned out positive that she had sex before. I then just walked away.

45. When my wife came back home that evening. BKF did not mention it to her mother. I also did not bring up the matter to her either. Later in the evening, I told my wife that her daughter's behaviour had changed. I realized that BKF was no more the playful type of sister to her younger stepsiblings.

46. When my wife asked me what made me said such a thing about BKF, I told her that ever since BKF came back from Philippine, she had changed tremendously. Nowadays, she was more on the handphone or chit-chatting on the internet. I also warned my wife that BKF might end up smoking one day.

47. After giving some thoughts, my wife suggested that we sent BKF back to Philippine. However, I suggested that we gave BKF a grace allowance period for her to change her behaviour before deciding on sending her back to Philippine. I just did not want to waste the time and effort that we had gone through to have her come and stay with us in Singapore.

48. About 2 days later, I retrieved the diary from the wardrobe and put it inside an envelope. I

then scotch-taped it up and brought along with me with the intention to give it to a friend of mine for safekeeping. I did not have any friend in mind at the point of time. However, I change my mind.

49. I feared that whoever that I entrusted the diary to might open and read it. Thus, exposing BKF's stupidity that she wrote in her diary. I then brought it back to the unit and kept it on top of the wardrobe. I wish to state that I had already removed the envelope and threw it away.

50. The reason why I kept the said diary from BKF was because she had mentioned about matter of love on first sight. I also wanted to learn the truth about what she had written in her diary. I wish to state that I could lead the investigation officer (Recorder's note refers – SIO Suzana Sajari) to my unit to trace the diary that I had kept it hidden from my stepdaughter.

(4) Exhibit P-31 – Segments of statement recorded from the accused between 3.10pm and 5.10pm on 27 March 2002 (pages 110 to 112 of the preliminary inquiry notes)

1. I wish to further state that I have requested the investigation officer (Recorder's note refers – SIO Suzana Sajari) to record my statement in English as I am able to converse and understand English language well. I declined to have any interpreter to assist me in the course of recording this statement.

2. On 26 March 2002 morning, I was taken out of the lock up and subsequently escorted to my place at REDACTED by the investigation officer and two of her male colleagues (Recorder's note refers – Insp Laurence Rajoo and SS/Sgt Saw Chong Teng).

3. Upon arriving at my unit, we were met by my wife (Recorder's note refers – Witness namely JFD) who happened to be at home. As I had told the investigation officer that I had placed my stepdaughter's (Recorder's note refers – Victim namely BKF) diary on top of my wife's wardrobe.

4. The investigation officer directed me to lead her to the place that I had placed my stepdaughter's diary. This, I had related to her in my previous statement recorded on 25 March 2002. Upon entering the master bedroom, I was unable to locate the diary that I had earlier placed on top of my wife's beige wardrobe.

5. I tried to look for it but the diary was not there. As such, I was unable to produce the said diary as evidence for my defence, that my stepdaughter had written adversely about me stating I did not succeed to rape her. This statement was mentioned in my statement (Recorder's note refers – 122(6) dated 20 March 2002.

(5) Exhibit P-36 – Cautioned statement recorded from the accused between 11.40am and 12 noon on 30 August 2002 in respect of the 5th charge of outraging modesty allegedly committed sometime in 1995 (page 146 of the preliminary inquiry notes)

I do not agree that I went on top of her, when I carried. This incident happened because I got this back pain and that was how I dropped her and I went on top of her. But never on her back or pushing my penis in between her buttock. And later on, I could not walk or sit. Later in the evening, I was admitted to the hospital for my back problem.

Close of prosecution

42 At the close of the prosecution's case, the accused submitted that the prosecution had failed to make out a prima facie case against him. Contending that except for some circumstantial and hearsay

evidence, the prosecution did not produce anything concrete to substantiate the charges brought against him, he urged the court to dismiss the prosecution's case.

43 The DPP in submission said that the evidence of the victim was direct testimony to the charges brought against the accused. He submitted that the victim's testimony considered together with the evidence of other prosecution witnesses particularly the mother of the accused and the explanation offered by the victim as to why she did not come up with a complaint earlier owing to the threats of the accused, indeed had made out a case against him. He urged the court to call for the defence of the accused on all the five charges.

Standard allocation

44 Having considered all the evidence adduced by the prosecution and the submissions made, I found that the prosecution had indeed made out a case against the accused on all the charges on which he was being tried, which if unrebutted would warrant his conviction. I therefore called upon the accused to enter his defence. The courses open to him were explained and he elected to give evidence from the witness box.

Defence of the accused

45 Insofar as is material, the evidence of the accused in his defence can be summarised as follows.

46 He was born on 28 August 1955. He married the victim's mother on 7 September 1991. He has two children, a boy now aged 11 and a girl presently 10 through their union. The victim is his step-daughter. His schooling did not go beyond primary 6. He is an unarmed combat instructor by training.

47 Dealing with the three rape charges (charge A1 – allegedly committed in February 2002, charge A2 – allegedly committed in January 2002 and charge A3 – allegedly committed sometime between October and November 2001), he said he did not commit any of them. He then started narrating the events that happened on 8 February 2002 in relation to the first charge (A1).

48 On 8 February 2002 at about 6.30pm, he and the victim were having casual contact through sparring which they both used to do previously. She was then wearing jogging pants. And all of a sudden, he accidentally hit the victim on her left breast. Then the whole incident became somewhat wild. The victim started punching him and yelling. She then retreated into her room.

49 He wanted to apologise to her but before he entered her room to do so he heard some sounds from inside her room. All the same, he went into her room and apologised to her but she could not be appeased. She was screaming and was seen pushing and kicking the bed. She also pulled the mattress out of the bed in the process. He tried to pacify her by gripping her and eventually pinning her on the floor of the room. In cross-examination he elaborated that he also arm-locked the neck of the victim, brought her down to the floor with one hand gripping her chin tightly with part of his body pressing the victim down. He let go of her only after she stopped screaming (pages 609 to 615 of the NE).

50 Later, he returned to his room to change and left the flat after telling her that he was going downstairs to pick up his other children who were at that time at the playground at the opposite block of flats.

51 While the commotion was taking place, there was no one else in the flat except for him and his step-daughter. He noticed that she was lying under the bed in her room. The mattress which used to

be on top of the bedroom was not in its place. He also noticed that she was writing something on a book. Subsequently however, when he returned to the flat at about 8.30pm with his two younger children, all seemed to be normal and the mattress was back in its place. According to him, everything returned to normal in a couple of days. He added that in fact prior to his arrest on 12 or 13 of March 2002, he, the victim and his other two children went out for swimming at the Swimming Pool.

52 Dealing with the second and third charges, (A2 – rape allegedly committed in January 2002 and A3 – rape allegedly committed between October and November 2001), he said that did not have anything to say in relation to them because the said incidents never took place.

53 As regards the fourth charge, (A4 – outraging modesty charge allegedly committed sometime in 1996), he averred that no such incident happened as alleged by his stepdaughter.

54 Dealing with the fifth charge (A5 – outraging modesty charge allegedly committed sometime in 1995), he said that in 1995, the victim was still young and he could recall playing with her and carrying her one afternoon. At that time, his elder sister G, was in the flat in her room. He was not sure whether his sister was sleeping at that time but in any event the door to her room was not closed or locked. He mentioned that previously he had once slipped and fallen on his back but he did not then take the fall seriously. But that afternoon when he was playing with the complainant, he suddenly felt pain whilst carrying her and as a result he fell together with her.

55 He was on the floor and his step-daughter happened to land on the edge of the bed in the master bedroom. In fact, his step-daughter fell on the mattress and did not hit any hard object.

56 It was the first time he felt the pain so severely. It took a while for him to recover. He tried to get up from the floor with the help of his step-daughter but she could not do much as she was too young.

57 Eventually, as he stood up, he happened to fall again on his step daughter who was then sitting on the edge of the bed. He then turned around and just lay flat and his step-daughter later left the room. At that stage he told her to open the master bedroom toilet door.

58 He further averred that there was no such incident of him lowering the victim's panties, or that he made her face the wall or went behind her as alleged.

59 He added that sometime in the month of March 1995, he was admitted to Tan Tock Seng Hospital. In relation to this incident, he told the court that in one of his statements to the investigating officer he had said that he was admitted to hospital in January or February 1995. But in fact he was admitted on the day following the incident. Whilst he was in hospital, his wife visited him. She asked him what had happened the day before at home. He told her exactly what had happened and informed her that he was only playing with the victim. He did not however give his wife the full story; he merely told her that he was playing with the victim, fell and as a result sustained the back problem.

60 When his wife asked him what he was trying to do to the victim, he replied: 'If I wanted to do something to her, I would have told [the victim] not to tell anybody.' He then told the court at this juncture that in his statement to the investigating officer he had mistakenly said: 'I would not have told [the victim] not to tell anybody.' However, later in cross-examination, he asserted that the error in the inclusion of the word 'not' in his statement was that of the investigating officer and not his (see page 552 of the NE).

61 He averred that in the event, everything became normal and in the evening when the victim and his two children visited him in the hospital, there was no adverse reaction from the victim and they reacted normally.

62 In effect, he denied any wrongdoing to the victim at anytime. He claimed that the allegations against him were false and unfounded.

Final submissions

63 At the close of the case, the accused submitted that the prosecution had not proven its case beyond a reasonable doubt. His submission insofar as is material was as follows.

64 He first dealt with the fourth charge of outraging modesty said to have been committed in 1996 at EF Central. He contended that there was no such incident. He exclaimed rhetorically what could have been the height of the 8 year-old girl. He questioned the reliability of the victim's evidence since the event was supposed to have happened six years ago.

65 In relation to the 5th charge of outraging modesty said to have been committed in 1995 at AB Court, he submitted that the victim was only 7½ years of age at that time and as such the court should not attach any credence to it. He contended that what the victim had told his wife about the incident was different from what the victim had reportedly told her friend K. He contended that there was no corroboration to the claims of the victim in relation to the incident.

66 He further contended that the victim's statement to the doctor who examined her did not seem to support the evidence she adduced in court. As regards the medical report where it was stated that the doctor found tears in her hymenal ring, he claimed that he had never heard of the word 'hymen' before he was charged. He came to know what it was only after he had consulted a few inmates whilst in remand.

67 Touching upon the first charge of rape said to have been committed in February 2002, he said that the victim in giving evidence elaborated that she finally managed to break free from him, ran quickly and locked herself in the kitchen toilet. According to him, it would be difficult to imagine a 15 year-old girl running semi-naked at home.

68 He submitted: 'I do admit we have struggles (sic), dropping, fighting. [But] there was never any such incident as rape.' (see page 757, lines 1 to 4).

69 Dealing with the three charges of rape (A1, A2 and A3) preferred against him, he said they never happened. His contention in this regard (as appears at pages 757, lines 22 to 26 and pages 758 and 759 of the NE) reads as follows:

... All these three alleged incidents your Honour, the 1st, 2nd and 3rd charge, she's 14 and 15 years old in the year 2001 and 2002. There was never mentioned anything about threat or warning her or bringing her to the Hindu idols to swear. Never mentioned anything about this in the victim's statement. She was young enough to know. She could have a bad experience or trauma if such alleged incident were to take place. She could have confide this to her mother. Or even the extremely close relationship she had with her grandparents in the Philippines in the month of December. She don't have to scared of anybody. She could have easily relate the incident to her grandparents. She never mentioned anything because there was no such incidents happened. Even right up to the end of February, we were still in a normal good terms. All this thing happened just because I found the diary. When I start questioning her --- now, I may not be very intelligent person to question her. But as a

father, I have my ways. Everybody have their own ways of questioning their daughters based on their relationship.

His Honour: But the diary stated you tried to rape her.

Accused: Yes, your Honour.

His Honour: According to you.

Accused: Yes, your Honour.

His Honour: Weren't you offended by it? "What is all this?" Instead you're asking her to go for medical examination.

Accused: Your Honour, when I flipped through the pages, ---

His Honour: This is what you say.

Accused: Yes, your Honour.

His Honour: We don't have the diary. According to your statement, you found the diary in which she mentioned that you tried to rape her.

Accused: That's right, your Honour.

His Honour: But, instead, you're asking her to go for medical examination.

Accused: As I said, your Honour, why I asked her this is because there are more disturbing stories in the diary than rather this because this didn't take place. So I rather asked her something which, you know, ---

His Honour: Is it more serious and sinister than an allegation of rape? Or she is mentioning in the diary that she loves someone, or "I gave in."

Accused: Allegation – yes, your Honour, there's more seriousness. But when I read the other stories, I questioned her that first, ---

His Honour: But you didn't confront her about her allegation of rape against you?

Accused: No, I did not ask that first, I only asked about this allegation about what she wrote.

His Honour: Yes, all right.

70 He concluded his submission by saying that he was at a loss for words in relation to the allegations made against him. He said he did not rape his step-daughter and all the evidence against him was merely hearsay.

71 The entire theme in the submission of the accused was that the evidence proffered against him was hearsay and that there was, to borrow his words, 'no concrete evidence' to support the claims of his step-daughter.

72 The closing submission of the prosecution need not be repeated at length here. Suffice it if I said

that it was submitted by the prosecution that the evidence of the victim taken together with the evidence of her mother and other prosecution witnesses was cogent, convincing and compelling against the accused. It was further submitted by the prosecution that on the totality of the available evidence, it had amply discharged its onus in proving all the charges against the accused beyond a reasonable doubt and that the defence of the accused bordered on the fanciful and bizarre.

Conclusion

73 It should be stated at the outset that the offences the accused faced at this trial could be divided into two groups as they straddled two different time frames. The first group comprised the outraging of modesty charges (charges A5 and A4), said to have been committed in 1995 and 1996 when the victim was about 7 or 8 years of age. The second group comprised the rape charges (charges A3, A2 and A1) said to have been committed in the years 2001 and 2002.

74 In evaluating the evidence adduced at this trial the court was particularly mindful of the principles enunciated and the guidelines laid down in some leading cases from Singapore as well as in other common law jurisdictions.

75 In this regard, first of all, it would be instructive to recall an old dictum that the desirability for corroboration of the evidence of a prosecutrix in rape and cases involving sexual offences springs not from the nature of the witness but from the very nature of the offence (see *Din v Public Prosecutor* (1964) 30 MLJ 300 at 301 per Thomson LJ).

76 Equally well-established is the principle that the rule requiring corroboration is one of prudence and practice rather than law. In *Chiu Nang Hong v Public Prosecutor* (1965) 31 MLJ 40, the Judicial Committee of the Privy Council in an appeal from the Federation of Malaya (1963) 29 MLJ 119 (CA) held at page 43 that in a case where the trial judge had in mind the risk of convicting without corroboration but nevertheless decided to do so because he was convinced of the truth of the complainant's evidence, the judge ought to make it clear that he had the risk in question in his mind but nevertheless was convinced by evidence even though uncorroborated, that the case against the accused had been established beyond any reasonable doubt.

77 The position in English law does not appear to be different. The authors of *Halsbury's Laws of England* (4th Edn, Vol 11(2)) at para 1142 say:

In cases of rape and other sexual offences, the jury may convict upon the uncorroborated evidence of the alleged victim, but the trial judge must warn the jury that it is dangerous to do so. The jury should be told that the reason for the warning is that such complaints are easy to make and difficult to refute, and that false complaints are made for all sorts of reasons, and sometimes for no reason at all. ...

78 In relation to the evidence of children who are the alleged victims in a sexual offence case, there is yet another legal principle which exhorts that the evidence of a child must be regarded with suspicion. In this context the Federation of Malaya Court of Appeal in *Chao Chong v Public Prosecutor* (1960) 26 MLJ 238 at 240, reaffirmed Lord Goddard's advice in *Mohamed Sugul Esa Mamasan Rer Alalah v The King* AIR 1946 PC 3, 6 where he said:

It is a sound rule in practice not to act on the uncorroborated evidence of a child, whether sworn or unsworn, but this is a rule of prudence and not of law.

79 In a case from the Indian subcontinent, *State of Kerala v K Govindan* (1969) Cr LJ 818 at 821, the High Court of Kerala observed:

... .. the legal position is this. There is no rule of law or of practice which makes it obligatory that the evidence of the prosecutrix should be corroborated before a conviction for rape could be entered. The only rule that demands corroboration in such a case is a rule of prudence; and even this rule of prudence hardened into a rule only because decided cases had a tendency to treat the victim of a rape (of any sexual or unnatural offence, for that matter) as an accomplice, which, in several cases, the victim is not. And what this rule of prudence requires is that this should be present to the mind of the judge. If, in the circumstances of a particular case, the judge thinks that he can dispense with corroboration and the uncorroborated testimony of the victim can be safely believed, even this rule of prudence may be dispensed with. And merely for the reason that there is no corroboration for the evidence of the victim of an outrageous act, such evidence should not be rejected, if it appears from the circumstances that the victim is speaking the truth. Otherwise, many a crime of such nature can never be brought to justice.

80 The law in Singapore is re-stated by Yong Pung How CJ first in *Tang Kin Seng v Public Prosecutor* [1997] 1 SLR 46. After reviewing a large body of learning and decided cases, Yong Pung How CJ commented at page 58:

... In Singapore, there is no jury trial. There is no legal requirement that a judge must warn himself expressly of the danger of convicting on the uncorroborated evidence of a complainant in a case involving sexual offences. There is, however, authority to the effect that it is dangerous to convict on the words of the complainant alone unless her evidence is unusually compelling. There is therefore no reason for the courts here to be bogged down by legal technicalities as to whether or not there is corroboration and what is or is not, legally speaking, corroboration.

... In my view, the right approach is to analyse the evidence for the prosecution and for the defence, and decide whether the complainant's evidence is so reliable that a conviction based solely on it is not unsafe. If it is not, it is necessary to identify which aspect of it is not so convincing and for which supporting evidence is required or desired. In assessing the supporting evidence, the question then is whether this supporting evidence makes up for the weakness in the complainant's evidence. All these would, of course, have to be done in the light of all the circumstances of each case and all the evidence, including the defence evidence, as well as accumulated knowledge of human behaviour and common sense.

81 Support for the proposition put forward by Yong Pung How CJ can be found from the observations of Lord Reid in *DPP v Kilbourne* [1973] AC 729 at 750 which reads:

There is nothing technical in the idea of corroboration. When in the ordinary affairs of life one is doubtful whether or not to believe a particular statement one naturally looks to see whether it fits in with other statements or circumstances relating to the particular matter; the better it fits in, the more one is inclined to believe it. The doubted statement is corroborated to a greater or lesser extent by the other statements or circumstances with which it fits in.

82 Later in *Kwan Peng Hong v Public Prosecutor* [2000] 4 SLR 96 at 104, Yong Pung How CJ defined the phrase 'usually compelling'. He said:

... I made clear in *Tang Kin Seng* that in Singapore there is no legal requirement for a judge to warn himself expressly of the danger of convicting on the uncorroborated evidence of a complainant in a case involving a sexual offence. But I also took great care to make clear that it is dangerous to convict on the words of the complainant alone unless her evidence is unusually compelling or convincing (*Tang Kin Seng v PP* [1997] 1 SLR 46 at 58, *Teo Keng Pong v PP* [1996] 3 SLR 329 at 340 and *Soh Yang Tick v PP* [1998] 2 SLR 42 at 50). In short, the court is to be extremely cautious in

relying on the sole evidence of the complainant for a conviction. 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.

83 What about the evidence of a child witness? Can the court convict a person on the uncorroborated evidence of a child witness alone? This question was addressed by Yong Pung How CJ in *Lee Kwang Peng v Public Prosecutor* [1997] 3 SLR 278 and he said at pages 295 and 296:

Corroboration

61 Counsel for the appellant premised the thrust of his appeal on the argument that the district judge ought not to have convicted the appellant as the evidence of PW1 and PW2 was not corroborated and it was accordingly unsafe to render a conviction. There are two bases on which corroboration may be said to be required – the first is that the present case involves sexual offences to which the complainants are the only witnesses and, secondly, that those complainants are in fact child witnesses.

Child witnesses

62 Although s 136 of the Evidence Act provides that 'no particular number of witnesses shall in any case be required for the proof of any fact', it is a well-established rule of practice in our law that where evidence is given by a child witness, that evidence is not to be accepted at face value without some measure of corroboration: see *Goh Liong Lam & Ors v R* [1958] MLJ 254, *Chao Chong & Ors v PP* [1960] MLJ 238 and *Ng Kwee Piow v R* [1960] MLJ 278.

63 This rule was of more significance in the days before bench trials were introduced in Singapore, as an improper direction to the jury on the issue of corroboration warranted an acquittal on appeal. The rationale for this rule was conveniently set out in the judgment of Thomson CJ in the *Chao Chong* decision, namely, that:

It is a matter of common knowledge that children at times find it difficult to distinguish between reality and fantasy. They find it difficult after a lapse of time to distinguish between the results of observation and the results of imagination.

64 Naturally, this rationale applies to different children in different degrees. Where, therefore, evidence is given by older children whose intellectual faculties are more developed, the danger in convicting without corroboration is diminished. The rationale of the rule makes it very difficult to lay down a guideline as to the point at which a maturing individual, in his progress towards adulthood, crosses the line past which the judicial process considers his testimony credible without independent evidence in support of it and this must therefore be a matter for the judge's assessment in each case.

65 The court's discomfort with requiring a corroboration warning in all cases involving a child witness manifested itself in *Tham Kai Yau & Ors v PP* [1977] 1 MLJ 174 in which the Federal Court considered that a formal warning on the issue of corroboration need not be issued to the jury if they were advised to pay particular attention to or to scrutinise with special care the evidence of young children, explaining the tendencies of such children to invent and distort.

66 In *Tham Kai Yau*, the appellants were convicted of murder on the sole evidence of the deceased's son, who was aged 13 years at the date of the murder and 14 years at the date of the trial. The Federal Court considered that as the child 'possessed sufficient intelligence to

understand the meaning and significance of an oath' a warning was not required. It did not, however, dispense with the need for corroboration in that case.

67 It is in accordance with the approach of the Federal Court that I consider that there is no special rule requiring a trial judge to direct himself as to the dangers of convicting without corroboration where the only evidence is that of a child witness, although he or she must remain sensitive to the requirement of corroborative evidence or alternatively consider that corroboration is not required because of the maturity and reliability of the witness. [Emphasis added.]

84 All said, I approached the testimony of the victim with utmost caution. I weighed in mind her youth, her making the complaint not immediately but after a lapse of time and her first information report to the police where on the face of it, she had mentioned only one incident of rape reported to have taken place sometime in January or February of 2002.

85 Let me first deal with the testimony of the victim in relation to the offences of rape said to have been committed in the years 2001 and 2002. In my evaluation the testimony of the victim in general was cogent, compelling and free from ambivalence. She narrated a consistent account. She had convincingly explained to the court why it took such a long time to reveal the ignominies committed on her person by her step father. I accepted her explanation that she was tormented and traumatised not only by the base acts committed on her by the accused but also by his ever dangling threats of the likelihood of family break-up and possible calamities to her grandparents.

86 In my view, this was not a case of a young woman making up a false story or a person trying to frame another vindictively. The accused attempted to gloss over the last attack on her in February 2002 by his bizarre explanation that on that day he was no more than playing, shadow-boxing and sparring with her in jest and his accidental hand contact with her breast caused all this unnecessary furore. He wanted the court to believe that following such alleged innocuous playfulness, his step daughter became uncontrollable, hysterical and started throwing things about in her bedroom including kicking the bedstead. It was strange that although he had to apply an arm-lock at one stage to bring her down and subdue her, yet he did not deem it fit to mention his step-daughter's alleged unreasonable outburst to his wife upon her return.

87 Still more puzzling was his seemingly inexplicable indifference to an allegation of attempted rape against him which he came across when he read the diary kept by the victim. Instead of confronting her immediately or better still complaining to his wife promptly about such a damaging allegation, what he claimed that he did was utterly ludicrous. He challenged the victim to go for a medical check-up. Why this bizarre request? There was no plausible explanation from the accused. At any rate, the diary which he admittedly recovered from the victim's drawers had mysteriously disappeared, although he claimed that he hid it somewhere on top of his wife's cupboard before his arrest.

88 It would be useful to remember that offences of this nature are often committed by persons in privacy with no witnesses present. In my determination, the victim who could no longer contain it finally decided to unburden herself and expose the accused's wrongdoings to her mother.

89 In my determination, the victim's accounts in relation to the rape charges were recounted by her without any evasion or equivocation. Her testimony in court was cogent, compelling and convincing in relation to all the three rape charges and had an impress of truth.

90 The accused's explanation, on the other hand, was totally unconvincing. The medical evidence of Dr Roland Chieng that he found tears in her hymenal ring appeared to confirm that there was penetration of her vagina at least two weeks before his examining her on 18 March 2002. In this

regard, I accepted her evidence that she never had sex with anyone before and the only entry into her was by the accused, against her will on the occasions mentioned.

91 The accused endeavoured to portray himself as a simpleton. He claimed that he had never heard of the word 'hymen' or 'hymenal tear' until he consulted some inmates of the remand prison after his arrest. Here was a married man with two children, a property executive of some sort at some stage, an unarmed combat instructor, a person who was quite familiar with computers and one who was able to get into the cyberspace to watch pornographic clips trying to persuade the court to accept his claim that he had never heard of the word 'hymen'. Yet, he had admittedly asked his 15 year-old step-daughter to go to the doctor for a medical check up to verify whether she had sex before. His story that he wanted to take her for a medical check-up to verify whether she was a virgin or not, in fact tended to undermine his claim and expose his false and spurious yarns in court.

92 In reviewing the evidence of the accused in his defence, I did carefully consider his protestations of innocence and denials both in court and in the statements given by him to the investigating officer after his arrest. Upon consideration, I formed the view that his narration of the events was more significant for its inconsistencies and improbabilities than for its value in raising a reasonable doubt in his favour. In this regard, it would suffice if I made reference to only one segment of the statement recorded from him on 25 March 2002 (exh P-30A, para 35 at page 104 of the preliminary inquiry records).

93 In para 35 of the said statement, the accused alleged:

In Jan and Feb 2002, I did not remember having sex, raped or molested BKF. There were a few occasions that we fought playfully and seriously in the hall, on the floor, on the bed and kitchen area. I remembered having bodily contact and rolling on the floor with BKF. Whenever she was in pain, she would scream and the fighting eventually became serious.

94 In my analysis, the accused did not categorically say in his statement that he did not commit the offence attributed to him in January/February 2002. What he appeared to say in the preceding para was that he did not remember having done the act alleged against him. The question was: Was it probable for a person of the accused's shrewdness to come up with such a bland 'I can't remember' reply if in fact he was being framed by a vile vixen? A reasonable inference was that he was merely being glib. In any event, his claim that there were a few occasions when he and the victim fought playfully and seriously in the hall, on the floor, on the bed and the kitchen area, having bodily contact and rolling on the floor, did not quite match his testimony in court. What he said in court was only about some sparring in jest in the living room, the alleged hysterical outburst of the victim in the bedroom and his subsequent subduing her to calm her down. There was no assertion of playful rollicking on the bed or in the kitchen in his testimony in court.

95 In my finding, the accused was twisting and turning in the witness box on many an occasion. His explanations in relation to the first charge of rape as well as his bare denials in relation to the second and third charges of rape were rejected by me as being unworthy of credit and credibility.

96 Dealing with the other offences relating to outraging modesty said to have been committed in 1995 at AB Court and in 1996 at EF Central, the victim's narration in relation to the events in 1995 that the accused made her face the wall and rubbed his penis against her buttocks after pulling her panties and shorts down, had a convincing ring of authenticity. Although she was only about 7½ years of age at the time of the offence she had conveyed this to her mother the very next day so much so the mother had in fact confronted the accused the next day with her queries.

97 The accused's story that he was carrying and playing with her step-daughter and suddenly fell and dropped on her was a far cry from the victim's accounts of pants removal and rubbing of something fleshy in her bare bottom. The accused's narration of the events was riddled with inconsistency when he was trying to re-enact the scene.

98 At one stage he said that his wife asked him about his 'rubbing' (see page 547 lines 9 to 15). But realising his unwitting slip, he quickly retracted it by saying that she did not ask him about rubbing (see page 547 lines 16 to 20). But a little later he said (see page 548 line 11) that he couldn't really remember what she said. His vacillation and prevarication were palpable and distinct. In my determination, he was not telling the truth about what in fact happened in the privacy of his home at the material time.

99 He was also caught prevaricating about his statement to the recording officer about what his wife asked him about the foregoing incident (para 44, page 99 of the preliminary inquiry notes). In his statement (exh P-30A) he had stated: 'I told her that if I were to do anything to [the victim], I would not have told [her] not to tell anybody.' He claimed when giving his evidence-in-chief that this was a mistake by him and the sentence should read: 'I told her that if I were to do anything to [the victim], I would have told her not to tell anybody.' In my determination, although nothing significant could be attached to the foregoing correction, his later claim that the said mistake was not made by him but was caused by the recording officer instead (see pages 550 to 553 of the NE) was another instance of his propensity to be evasive and shifty in his defence.

100 In my view, although the victim was only about 7½ years old at the time of the commission of the offence in 1995, her recall of the events and her mentioning to her mother the next day about what happened at home was confirmatory of her testimony in court. As for the accused, in my finding he was trying in vain to fudge the issues by his false claims that he fell over her, dropped on the edge of the bed and fell face down over her. I found his claims to be nothing but fabrication.

101 Dealing next with the fourth charge (Charge A4) of outraging modesty said to have been committed in 1996 at EF Central, I was impelled to note that unlike in relation to the offence committed by the accused in 1995, there was no referral to anyone by the victim until 2002 when she made the statements to the police. Although I had accepted the evidence of the victim in relation to the 1995 incident and the offences of rape which took place in 2001 and 2002, I was left in some doubt whether there was an innocent overlapping of events in the mind of the victim in relation to the fourth charge. Although I was satisfied that her maturity and intellectual faculties were above par and amply developed at the time she was testifying in court, I was, nonetheless, left with a lingering yet real doubt that her recall of events in relation to the 1996 charge might well have been superimposed by her recollection of the events of 1995 – on which there was clearly some confirmatory evidence from her mother. I was, in the circumstances, inclined to give the benefit of doubt to the accused in relation to the fourth charge and held that the prosecution had not proven its case beyond a reasonable doubt in relation to this charge only.

102 Before concluding, I must briefly deal with the first information report made by the victim on 16 March 2002.

103 In my view, despite the feature that the police report made by her on 16 March 2002 happened to mention only one offence of rape, the said feature did not lend itself to the inference that the other incidents did not take place. In *Tan Pin Seng v Public Prosecutor* [1998] 1 SLR 418 (G-I) at page 428, Yong Pung How CJ made the following comments in relation to the first information report:

It is a misconception to regard the first information report or police report as a document which should

contain the entire case for the prosecution. Its main purpose is merely to give information of a cognizable offence to the police so as to set them in motion. The form of the police report merely requires an informant to provide 'brief details including date, time and place at which the offence occurred'. The form itself does not contemplate that the informant or complainant should give elaborate details of the alleged offence. The fact that such details are not mentioned in the report is therefore irrelevant. If, however, there are material discrepancies between the report and the informant's or complainant's testimony in court, the report will then be relevant to impeach the credibility of the witness as a previous inconsistent statement.

104 In my determination, the explanation by the victim that she was at the material time in a state of fear and embarrassment and that it was the first time she was making a police report, was credible and consistent with how a victim of rape in her situation would react.

105 At any rate, as I said earlier, I approached her evidence with utmost caution. The quality and nature of the evidence of the victim in relation to charges A1, A2, A3 and A5, left me in little doubt that she was narrating what in fact took place and I was amply satisfied that what the victim told the court was true. In my finding, the prosecution had proven beyond reasonable doubt the guilt of the accused in relation to all the charges except the fourth charge (Charge A4) of outraging modesty and the accused had not, on balance, raised any reasonable doubt in the prosecution's case.

106 Consequently, the accused was found guilty and convicted of the first, second, third and fifth charges (charges A1, A2, A3 and A5) and was acquitted of the fourth charge (Charge A4). Following the application by the prosecution to withdraw three remaining charges brought against him under the Films Act, he was discharged and acquitted of those charges pursuant to s 177 of the Criminal Procedure Code.

107 Following his conviction, the prosecution produced a memorandum of his previous convictions. The accused admitted the antecedents set out in the memorandum and insofar as is material, the said memorandum reads as follows:

Place Singapore

Date of conviction 23/10/2000

Offence and Ordinance S. 408 C. 224, Criminal Breach of Trust as a Servant

Sentence Taken into consideration with DAC/ 30332/00

Court and Case No. Court No. 005, DAC/30331/00

Place Singapore

Date of conviction 23/10/2000

Offence and Ordinance S. 408 C. 224, Criminal Breach of Trust as a Servant

Sentence Impt only 09 mth wef 22/7/2000 First of series

Court and Case No. Court No. 005 DAC/30332/00

Place Singapore

Date of conviction 23/10/2000

Offence and Ordinance S. 408 C. 224, Criminal Breach of Trust as a Servant

Sentence Impt only 09 mth Concurrent with DAC/30332/00

Court and Case No. Court No. 005 DAC/3033/00

Place Singapore

Date of conviction 23/10/2000

Offence and Ordinance S. 408 C. 224, Criminal Breach of Trust as a Servant

Sentence Taken into consideration with DAC/30332/00

Court and Case No. Court No. 005, DAC/30334/00

Place Singapore

Date of conviction 23/10/2000

Offence and Ordinance S. 420 C. 224, Cheating

Sentence Impt only 09 mth Consecutive with DAC 30332/00

Court and Case No. Court No. 005, DAC/33982/00

Place Singapore

Date of conviction 23/10/2000

Offence and Ordinance S. 420 C. 224, Cheating

Sentence Taken into consideration with DAC/30332/00

Court and Case No. Court No. 005, DAC/33983/00

108 He was invited by the court to say facts which might assist him in mitigation. Except for repeating that he had not committed the offences, he had nothing else to say. Having considered all the relevant facts including the aspect that he being a step-father of the victim, instead of providing affection and protection to his ward, went about abusing the victim ever since she was about seven

years of age, I sentenced him as follows:

First charge (A1) – 10 years' imprisonment and 4 strokes of the cane.

Second charge (A2) – 10 years' imprisonment and 6 strokes of the cane.

Third Charge (A3) – 12 years' imprisonment and 12 strokes of the cane.

Fifth Charge (A5) – 2 years' imprisonment and 2 strokes of the cane.

109 Bearing in mind the provisions of s 18 of the Criminal Procedure Code which reads 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 those offences shall run consecutively', the sentences of imprisonment in respect of the first, third and fifth charges were ordered to run consecutively and the rest concurrently. The sentences were backdated to the date of his arrest ie 19 March 2002.

Order accordingly

Copyright © Government of Singapore.