

Public Prosecutor v Amayapan Kodanpany
[2010] SGHC 52

Case Number : Criminal Case No 33 of 2009
Decision Date : 12 February 2010
Tribunal/Court : High Court
Coram : Kan Ting Chiu J
Counsel Name(s) : Diane Tan Yi-Lui, Agnes Chan and Khoo Kim Leng David (Deputy Public Prosecutors) for the Prosecution; Pratap Kishan (Kishan & V Suria Partnership) for the Accused.
Parties : Public Prosecutor — Amayapan Kodanpany

Criminal procedure and sentencing

12 February 2010

Kan Ting Chiu J:

1 The accused Amayapan Kodanpany (“the Accused”), who is 59 years old, was originally brought before me on seven charges of offences of carnal intercourse against the order of nature under s 377 of the Penal Code (Cap 224, 1985 Rev Ed) on the same person (“the Victim”).

2 The Prosecution elected to proceed with three charges for offences which all took place in the early morning of 14 March 2007. The other four charges were stood down and subsequently withdrawn. After the Accused claimed trial on those three charges, the Prosecution called its witnesses, and ten witnesses had concluded their evidence by the end of the second day of hearing. The eleventh witness, the Victim, was giving his evidence in chief when hearing adjourned for the day. He did not continue with his evidence on the following day.

3 The Prosecution decided not to proceed under s 377, and amended the three charges to charges under s 5(5)(b) of the Children and Young Persons Act (Cap 38, 2001 Rev Ed) (“CYPA”).

4 The three amended charges were that the Accused:

Amended 1st Charge:

sometime in the early morning on or about 14 March 2007, on the 1st occasion, at Apt Blk 11 York Hill #03-112, Singapore, being a person who has the care of a young person, namely [the Victim], male/14 years old (DOB: 25 April 1992), did ill-treat the said young person by subjecting him to sexual abuse, to wit, by inserting [his] penis into the anus of the said young person, and [he has] thereby committed an offence under section 5(1) r/w section 5(2)(a) and punishable under section 5(5)(b) of the [CYPA].

Amended 2nd Charge:

sometime in the early morning on or about 14 March 2007, at Apt Blk 11 York Hill #03-112, Singapore, being a person who has the care of a young person, namely [the Victim], male/14 years old (DOB: 25 April 1992), did ill-treat the said young person by subjecting him to sexual

abuse, to wit, by having the said young person perform fellatio on [him], and [he has] thereby committed an offence under section 5(1) r/w section 5(2)(a) and punishable under section 5(5) (b) of the [CYPA].

Amended 3rd Charge:

sometime in the early morning on or about 14 March 2007, on the 2nd occasion, at Apt Blk 11 York Hill #03-112, Singapore, being a person who has the care of a young person, namely [the Victim], male/14 years old (DOB: 25 April 1992), did ill-treat the said young person by subjecting him to sexual abuse, to wit, by inserting [his] penis into the anus of the said young person and then rubbing [his] penis outside the anus of the said young person, and [he has] thereby committed an offence under section 5(1) r/w section 5(2)(a) and punishable under section 5(5) (b) of the [CYPA].

When the charges were amended the Accused immediately changed his plea, and pleaded guilty to them.

5 The Prosecution then presented a Statement of Facts to which the Accused admitted, and he was found guilty and convicted on the three charges.

6 The Statement of Facts disclosed:

The Victim

1. The victim is one [V] male, 17 years old, NRIC No: [xxx] ("the Victim"). The Victim was 14 years old (D.O.B: 25 April 1992) at the material time. The Victim had stopped schooling before he completed his Primary 2 level education. The Victim was not holding any full-time job at the material time.

The Accused

2. The accused is one Amayapan Kodanpany, male, 59 years old, NRIC No.:S1071028F ("the Accused"). He was residing at Block 11, York Hill #03-112, Singapore ("the Flat") in 2007. The Accused is single. Prior to his arrest, the Accused did not have a full-time job and undertook odd jobs. The Accused is not related to the Victim.

First Information Report and Police's Response

3. On 4 October 2007 at 2.17 a.m., the Victim called the police "999" hotline and reported that "THERE IS A MALE INDIAN IN HIS LATE 40S WHO MOLESTED ME. I AM WAITING FOR POLICE AT THE VOID DECK. I AM CLAD IN BROWN SHIRT AND BLACK PANTS." The location given was Block 11, York Hill, Singapore.

4. Two police officers who were performing mobile patrol duty were despatched to the location given by the Victim. Upon their arrival, the Victim was interviewed by the said police officers. The Victim informed the police officers that the Accused had made him perform oral sex on him. The Victim also revealed to the police officers that the Accused had engaged in anal intercourse with him.

5. The police officers then proceeded to the Flat and placed the Accused under arrest.

Facts relating to the 3 Charges under Section 5(1) read with Section 5(2)(a) of the [CYPA]

6. Investigations revealed that the Victim had been staying with his mother and his mother's boyfriend at [address]. During his stay at the abovementioned flat, the Victim was subjected to physical and verbal abuse by his mother's boyfriend. About 1 week before 14 March 2007, his mother's boyfriend chased the Victim out of the said flat, refusing to let him sleep in the flat in the evenings. With no where [sic] to go and no one to turn to, the Victim ended up sleeping at the playground or at the void deck around the vicinity of Block 2, Jalan Kukoh, in the evenings. This lasted for about 1 week.

7. On or about 14 March 2007, sometime in the early morning, the Accused approached the Victim whilst he was sleeping at the playground. The Accused noticed that the Victim had been sleeping at the playground at Block 8, Jalan Kukoh for many days. The Accused asked the Victim why he was sleeping there. The Victim told the Accused that he had been chased out of his home by his mother's boyfriend. The Accused then asked the Victim whether he would like to stay with him, to which the Victim agreed. The Accused then brought the Victim back to his Flat and took him under his care by offering shelter to the Victim.

8. Upon reaching the Flat, the Accused told the Victim to sit down on the bed near the window of the Flat. The Accused then went into the kitchen to get some bottles of beer, and asked the Victim to drink the beer. The Victim did as he was told and drank the beer. The Victim felt giddy after having consumed the beer.

9. Thereafter, the Accused gave the Victim some pills, which were sedatives, to take, telling the Victim that these pills were good for him. Following the Accused's instructions, the Victim consumed the sedatives with some tap water. After having consumed the sedatives, the Victim suddenly felt sleepy. He then fell asleep on the bed.

10. Shortly after the Victim had dozed off, he felt someone touching his penis and his anus. The Victim opened his eyes and saw the Accused beside him. The Accused pulled down the Victim's pants and underwear and touched the Victim's penis and anus. The Accused told the Victim to remove his pants and underwear completely. The Victim followed what the Accused told him to do. The Accused also took off his pants then. The Accused was not wearing any underwear at that time. As the Victim was lying sideways, the Accused applied some lubricant around the outside of the Victim's anus, and then inserted his penis into the anus of the Victim. The Accused moved his penis in and out of the Victim's anus a few times before stopping. The Victim found the experience to be very painful.

11. Thereafter, the Accused asked the Victim to turn around and told the Victim to do a "blowjob" on him. The Victim did not understand what the Accused wanted him to do. The Accused told the Victim that he wanted him to "suck" his "cock". Still, the Victim did not understand what the Accused wanted him to do. The Accused directed the Victim's head to his penis and asked the Victim to open his mouth. The Accused then inserted his penis inside the mouth of the Victim and taught the Victim how to suck his penis by moving the Victim's head with his hand, such that the Accused's penis moved in and out of the Victim's mouth. A while later, the Accused told the Victim to stop.

12. The Accused then asked the Victim to turn over and lie face down. The Victim complied. The Accused then further applied more lubricant on the outside of the Victim's anus and again inserted his penis into the Victim's anus and moved it in and out of the Victim's anus. The Victim felt a lot of pain and told the Accused that it was very painful. The Accused then took his penis out of the Victim's anus and rubbed his penis on the area just outside the Victim's anus until he

ejaculated onto the buttocks of the Victim.

13. The Accused told the Victim to wash up and the Victim did so. After this, both the Accused and the Victim went to bed.

Aftermath of the Sexual Incident

14. Despite the sexual abuse that the Accused subjected the Victim to, the latter continued to live at the Flat as he had no where else to stay. In addition to shelter, the Accused took care of the Victim, by providing him with money, food, and even bought the Victim a handphone during his stay at the Accused's Flat.

15. Sometime in August 2007, the Victim was introduced to a neighbour of the Accused, one Faizal bin Yeon ("Faizal"). Faizal came to know of the Victim's personal background and his plight. Faizal told the Victim that the Victim could come to him if he needed any help. Sensing this as an opportunity to leave the Flat, the Victim approached Faizal a few days after their first meeting and asked Faizal whether he could stay with him. Faizal allowed the Victim to stay with him. The Victim stayed with Faizal until the police report was made on 4 October 2007.

Psychological Report of the Victim

16. Dr Cai Yiming ("Dr Cai"), Senior Consultant Psychiatrist attached to the Child Guidance Clinic of the Institute of Mental Health interviewed the Victim on 14 November 2007 and conducted a psychological assessment on the Victim to ascertain his Intelligence Quotient ("IQ") on 21 November 2007.

17. In his psychological report on the Victim, Dr Cai found the Victim to have an IQ of 52, indicating that he was functioning at the mild mental retardation range of intelligence.

18. According to Dr Cai, the Victim may experience difficulties in terms of his social judgment and his ability to guard against bad influences given his low IQ level.

Conclusion

19. On or about 14 March 2007, sometime in the early morning, at Block 11, York Hill #03-112, Singapore, the Accused, being a person who had the care of the Victim, did ill-treat the Victim by subjecting him to sexual abuse, namely by inserting his penis into the anus of the Victim on the first occasion, then by making the Victim perform fellatio on him; and finally by inserting his penis into the anus of the Victim and then rubbing his penis outside the anus of the Victim on the second occasion.

20. The Accused is accordingly charged for 3 counts of ill-treatment of a young person under Section 5(1) read with Section 5(2)(a) and punishable under Section 5(5)(b) of the Children and Young Persons Act (Chapter 38).

7 The psychological report by Dr Cai Yiming states:

[The Victim] is 15 years old dishwasher [*sic*] in restaurant [*sic*]. He stayed in the Hope Centre run by the Beyond Social Service after the disclosure of the alleged incidents.

According to him, the mother is a cleaner and the father is in jail. He has a 24 years old [*sic*] sister and a 17 years old [*sic*] brother. He studied up to Primary 2 at the Bukit Ho Swee Primary

School. Thereafter, the parents rejected him and he had to survive on his own. He started to sleep at void decks or in friends' home [*sic*]. It was under such circumstances that the accused let him stay for about 5–6 months and during this period the alleged offence occurred.

He impressed me as [a] friendly and verbal boy who could give an account of the alleged offence. He stated that he was asked to touch and suck the accused's penis. [The portions of this para following these two sentences are omitted as they alluded to facts which were inconsistent with the Statement of Facts.]

He was rather nave [*sic*] about sex. He reached his puberty last year and had not masturbated or experienced wet dreams before.

On psychological test, he scored an IQ of 52. This indicated that he was functioning at the mild mental retardation range of intelligence.

The Accused

8 Some personal data of the Accused is set out in the Statement of Facts, *ie*, that he is 59 years old, single and he worked irregularly as an odd job labourer.

9 After he was arrested, the Accused was examined by psychiatrist Dr Kenneth G W W Koh of the Institute of Mental Health. Dr Koh found that the Accused's IQ was between 66–74, in the range bordering the upper limit of mild mental retardation and the lower limit of borderline intelligence, and that clinically he appeared to be in the borderline range. [\[note: 1\]](#)

10 He has a record of convictions between 1968 and 2008 for offences which fell into three categories: (a) offences against property; (b) possession and consumption of drugs; and (c) causing grievous hurt. [\[note: 2\]](#)

The mitigation plea

11 Counsel pleaded that: [\[note: 3\]](#)

[The Accused] took pity on the victim on the fateful day when he noticed the young boy sleeping at the playground. He invited him to his house and offered him a place to spend the night as he did not want a young boy sleeping in the playground alone. His subsequent conduct was a result of the alcohol he consumed and his failure to appreciate the consequence of his actions.

The Prosecution's submissions on sentence

12 The Prosecution submitted that there were aggravating factors which should be taken into consideration in sentencing:

(a) The Accused had inflicted extreme physical pain on the Victim on both occasions. The Accused also morally degraded the Victim by teaching him how to perform the revolting act of fellatio on him; [\[note: 4\]](#)

(b) The Accused is a hardened criminal with numerous convictions over 40 years between 1968 and 2008; [\[note: 5\]](#)

(c) The Accused had been eyeing the Victim as a potential target for several days before he moved in to execute his plan of subjecting the Victim to sexual abuse; [\[note: 6\]](#)

(d) The Accused had abused the position of trust of the Victim and exploited the age gap between them; [\[note: 7\]](#) and

(e) The Accused had preyed on a victim who was functioning at the mild mental retardation range of intelligence. [\[note: 8\]](#)

Review of the aggravating factors

13 Aggravating factors that are to be taken into consideration for sentencing have to be well-founded, and I have some reservations on some of those mentioned.

The pain experienced

14 Although the Prosecution's Submissions on Sentence referred to "extreme physical pain", the term used in the Statement of Facts [\[note: 9\]](#) and by the Victim was "very painful". Defence counsel also pointed out that there were no physical injuries revealed in the medical report, [\[note: 10\]](#) and no physical injury was mentioned by the Victim when he gave evidence in court.

The Accused's criminal record

15 The Accused's previous convictions were for offences against property, causing hurt, and drug possession and consumption. There were no convictions for sexual offences or offences against young persons. As V K Rajah J stated in *Public Prosecutor v NF* [2006] 4 SLR(R) 849 at [69], when he was sentencing an accused person who had previous convictions for housebreaking and theft, and drug trafficking and consumption for rape, previous convictions for dissimilar offences were of no direct relevance for the purpose of sentencing.

The Accused eyeing the Victim as a potential target

16 The Statement of Facts stated at para 7 that:

On or about 14 March 2007, sometime in the early morning, the Accused approached the Victim whilst he was sleeping at the playground. The Accused noticed that the Victim had been sleeping at the playground at Block 8, Jalan Kukoh for many days. The Accused asked the Victim why he was sleeping there. The Victim told the Accused that he had been chased out of his home by his mother's boyfriend. The Accused then asked the Victim whether he would like to stay with him, to which the Victim agreed. The Accused then brought the Victim back to his Flat and took him under his care by offering shelter to the Victim.

It was not alleged that the Accused had been eyeing the Victim as a potential target for several days, and that did not form any part of the case against him.

The Accused preyed on the Victim functioning at the mild mental retardation range of intelligence

17 The Accused may not have been aware of the Victim's intellectual deficiency because:

(a) According to Dr Cai Yiming's report, the Victim had impressed him as a "friendly and verbal boy who could give an account of the alleged offence". I observed the Victim and heard his evidence in court, and he was composed and articulate, and the only problem he encountered was that he was saying "private part" and "backside" when he should have been more specific and say "penis" and "anus".

(b) As noted by Dr Kenneth G W W Koh, the Accused himself has an IQ in the range bordering the upper limit of mild mental retardation and the lower limit of borderline intelligence. It is doubtful that he was himself able to detect the Victim's mild mental retardation on the morning of 14 March 2007.

Thus, the Prosecution's assertion that the Accused had preyed on the Victim, taking advantage of the latter's low IQ was not made out.

Matters taken into consideration

18 The offences that the Accused admitted to committing involved the sexual abuse of a young person for which the maximum sentence is a fine not exceeding \$4,000, or imprisonment not exceeding four years, or both, under s 5(5) of the CYPA.

19 The CYPA was amended in 2001 and s 5 was introduced through that amendment. Prior to the amendment, acts of cruelty to children and young persons were offences under s 4 of the Act, but that section did not specifically refer to sexual abuse.

20 A review of the available precedents show that cases of sexual abuse of children and young persons were prosecuted under the old s 377 of the Penal Code which was repealed on 1 February 2008, and not under the old s 4 or the current s 5 of the CYPA. Consequently, there are no sentencing precedents for offences of sexual abuse prosecuted under those sections of the CYPA.

21 As an act constituting an offence under s 5 of the CYPA may also constitute an offence under the old s 377 of the Penal Code which dealt with the offence of carnal intercourse against the order of nature, the factors to be taken into consideration in sentencing for offences under that provision can also apply to offences of sexual abuse under s 5 of the CYPA.

22 In *Lim Hock Hin Kelvin v Public Prosecutor* [1998] 1 SLR(R) 37 which dealt with sentencing tariffs for offences under the old ss 377 and 377A, the Court of Appeal ruled that:

21 In considering the appropriate tariffs for sentences, the gravity of the offence and the circumstances in which the offence was committed had to be taken into account:

(a) Harm to the victims: The harm to the victims includes both the physical and the emotional harm. The physical injury may be caused as the direct result of penetration of the victim's anus (as in this case), which may be exceedingly painful. Where the victims are very young, it may leave them for life with embarrassing disabilities ... In addition, the victims are exposed to the risk of sexually-transmitted diseases. What is of greater concern is that violence or threats of violence may be used to compel the victims to submit to the offender. Where violence or threats of injury are used, the punishment should be more severe to deter offenders from reoffending. The long-term emotional harm and psychological scars to the victims cannot be underestimated, though there has been caution in *R v Willis* (1974) 60 Cr App R 146 that the courts should not readily assume that the victims will later develop homosexuality in life because they have been sexually abused when young. Much will also

depend on the support the victims receive from their families.

(b) Social danger: Paedophilic offences are by their nature unpleasant and most distressing and the society has to express its marked disapproval for such harm to the young and vulnerable victims. The presumption is that the safety of the child must be paramount and chronic paedophiles who have a propensity to reoffend, because they are either totally unable or unwilling to control themselves, have to be put away for long periods.

The Court went on to state that:

25 We considered the relevant circumstances of the offence in placing a particular offence according to its relative gravity:

(a) Abuse of trust and authority: Where an offender is placed in a position of trust by the parents or by the victims, the breach of trust justifies a substantial sentence on the ground of general deterrence. All those who have charge of children cannot abuse their positions for the sake of gratifying their sexual urges.

(b) Moral corruption: Where the offender has enticed or cajoled the victims to indulge in unnatural carnal intercourse by the promise of gifts (for example, money) this has a very corrupting effect on the young victims, especially adolescents: R v Willis. This should be reflected by a more severe sentence.

It is necessary to ascertain if these factors apply in the present case.

Harm to the Victim

23 The offences did not result in any injury or disability to the Victim, and there was no violence or threat of violence used or directed at him, and he was not found to have suffered any emotional harm.

Social danger

24 The psychiatric examination of the Accused and his criminal record did not show him to be a paedophile or a serial sexual offender.

Abuse of trust and authority

25 The Accused did not stand in a position of trust and authority in relationship to the Victim. They were strangers before 14 March 2007, and the hold that the Accused had over the Victim was that he had invited him to his flat so that he would not have to spend the night at the playground or void deck. The Victim was not dependent on the Accused in any way, and could have rejected the latter's offer, or left the flat when he made the overtures.

Moral corruption

26 There is no suggestion that the Victim is now disposed to engaging in anal intercourse or fellatio, or has continued with these practices as a means to obtain money. It was also never part of the Prosecution's case that the Accused had enticed or cajoled the Victim into engaging in the sexual acts by promising him gifts or money.

Sentencing considerations

27 The Accused had anal intercourse with the Victim and caused him to perform fellatio on him. The commission of such acts on children and young persons cannot be condoned, and offenders will not be dealt with leniently.

28 In determining the appropriate sentence, on one hand, I did not consider that sentences at the high end of the range of up to four years' imprisonment were appropriate because:

- (a) the Accused's IQ is at the lower limit of borderline intelligence;
- (b) the Accused had not abused any position of trust or authority vis-à-vis the Victim, nor did he use or threaten violence on the Victim;
- (c) the Accused had pleaded guilty as soon as he was presented with the amended charges; and
- (d) the Victim did not suffer any residual physical or psychological injury.

29 On the other hand, I did not think that sentences at the lower end of the range were appropriate because three offences were committed, and anal intercourse and fellatio were performed.

30 In imposing sentence, I also took into account the fact that the three offences took place in one episode (or "the Sexual Incident", as it was described in the Statement of Facts in the heading to paras 14 and 15) without any resistance or protest from the Victim.

31 I sentenced the Accused to 18 months' imprisonment for each of the three offences with the sentences for the first and second offences of anal intercourse and fellatio running consecutively, and the sentence for the third offence of anal intercourse running concurrently with the first two sentences.

32 In imposing the sentences, I intended the Accused to serve three years' imprisonment, which I consider to be appropriate in all the circumstances.

[\[note: 1\]](#) Report of Dr Kenneth G W W Koh

[\[note: 2\]](#) Memorandum of Certified Previous Convictions, Exhibit N

[\[note: 3\]](#) Plea-in-mitigation, p 2

[\[note: 4\]](#) Prosecution's Submissions on Sentence, para 6

[\[note: 5\]](#) Prosecution's Submissions on Sentence, para 8

[\[note: 6\]](#) Prosecution's Submissions on Sentence, para 9

[\[note: 7\]](#) Prosecution's Submissions on Sentence, para 10

[\[note: 8\]](#) Prosecution's Submissions on Sentence, para 13

[\[note: 9\]](#) Statement of Facts, paras 10 and 12

[\[note: 10\]](#) Plea-in-mitigation, p 3

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