Siew Yit Beng v Public Prosecutor
[2000] SGHC 157

Case Number : MA 322/1999

Decision Date : 03 August 2000

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Teo Siew Kuey (Chang Teo & Partners) for the appellant; Jennifer Marie and Gilbert Koh (Deputy Public Prosecutor) for the respondent

Parties : Siew Yit Beng — Public Prosecutor

Criminal Law – Offences – information to police – Accused confesses to lying – Accused making cautioned statement – Whether confession and cautioned statement show knowledge of commission of offence

Criminal Law – General exceptions – Consent – Understands nature of sexual act – Whether consent vitiated – s 90(a) Penal Code (Cap 224)

Evidence – Admissibility of evidence – Admissibility of confession – Accused shown result of polygraph test – Whether being shown result of polygraph test renders confession inadmissible – Whether that amounts to inducement, threat or promise

Criminal Procedure and Sentencing – Sentencing – No remorse by accused – Whether sentences excessive for false allegation of rape

: ***Introduction***

The appellant was charged with two counts of knowingly giving false information to the police when she alleged that she had been raped by one Tan Eng Huat (`Tan`), an offence punishable under s 182 of the Penal Code (Cap 224). She was convicted on both charges and was sentenced to four weeks` imprisonment on each charge. The sentences were ordered to run concurrently. She appealed against both her conviction and sentence. Having considered the submissions, I dismissed the appeal and I now set out my reasons.

The background

The appellant was a 40-year-old housewife who had been seeking medical treatment from Tan, her Chinese physician, for aches and pain in various parts of her body for about eight years. On 14 July 1998, the appellant lodged a police report alleging that Tan had outraged her modesty. Corporal Edmund Yong (PW1) recorded a statement from her in which she claimed that she had on various occasions since November 1996 consulted Tan regarding the pain in her spine, left knee and stomach. On the pretext of improving her blood circulation, Tan molested her by massaging her breasts and the areas under her armpits. He also allegedly fondled her nipples.

About a month later, on 21 September 1998, the appellant informed the police that she had more facts to add to her earlier statement. On 22 September 1998, Sgt Eddie Sim Hark Beng (PW2) recorded a further statement from her (exh P5). Apart from affirming the molest incidents, she added that she was raped by Tan at his clinic-cum-residence on 20 June 1998 during her medical treatment. In a further statement dated 23 September 1998 (exh P6), which was also recorded by PW2, the appellant gave more details of the alleged rape. Exhibits P5 and P6 (collectively referred to as the `police statements`) formed the basis of the present charges against the appellant.

On 3 April 1999, Senior Sgt Young Khow Ming (PW3) recorded a further statement from the appellant (exh P7) in the presence of W/Sgt Khairani (PW4). According to him, he needed to clarify more facts with the appellant as the latter had undergone a polygraph test earlier and had been found to be untruthful. During this interview, she retracted her earlier allegations of rape and admitted that they were false because her sexual relationship with Tan was in truth consensual. She explained in the statement that her husband found out about their sexual relationship after reading a letter dated 21 September 1998 (exh D1) from Tan`s lawyers. She gave the false statement because she was afraid that her husband might divorce her if he knew the truth. For ease of reference, I will refer to this statement as the `confession`.

On 20 May 1999, the present charges were brought against her. In her cautioned statement, she did not deny the charges. She stated, "I hope for leniency as my daughter is still young. I ask for a fine sentence. Also I`m going for a surgical operation."

Evidence of the prosecution

At all material times, Tan was a Chinese physician who specialised in finger-massaging. He was introduced to the appellant about ten years ago by a friend of hers. Tan denied all the allegations of molest and rape but he admitted to having a sexual relationship with the appellant. He said that he had sexual intercourse with her on two occasions when the appellant came for treatment, the first time in March 1998 and the second time about three weeks later. According to him, she seduced him into having sexual intercourse with her in the hope that he would cure her of her illness. At first, he was unwilling to accept her sexual advances but he eventually succumbed when she stroked his private parts with her hands. On the second occasion, the appellant again used titillating words to encourage him to have sexual intercourse with her. He testified that she said, as long as he could cure her of her illness, she would let him `play with her`. Tan gave her $100 and $50 respectively after intercourse on both occasions, claiming that he did it out of guilt and also because the appellant had frequently complained about her financial difficulties.

The appellant continued to seek treatment from him after these two occasions. According to Tan, the appellant told him that she consulted other physicians for a month or two after the second incident but none of them could cure her of her illness. Therefore, she resumed treatment with Tan.

On 15 July 1998, the appellant telephoned Tan`s wife Tan Ah Juan (PW6). As a result of what was said during this conversation, PW6 confronted Tan and the latter admitted that he had an illicit affair with the appellant. That marked the beginning of the deterioration of the relationship between Tan and the appellant. Their relationship soured further when the appellant kept demanding to be cured by Tan. In August 1998, she began harassing him by visiting him almost every day and even threatened to commit suicide by jumping off his block of flats if he did not cure her.

Because of her demands and also because his wife asked him to, Tan continued to give treatment to the appellant. However, he could not cure her of her ailments. Eventually, he and his wife agreed to give the appellant $400 for her to seek treatment elsewhere as the appellant claimed that she had spent all her money on consultation fees. The appellant accepted the money but continued to harass them. On Tan`s instructions, his lawyer sent a letter dated 21 September 1998 (exh D1) to the appellant warning her to cease all forms of harassment and nuisance immediately or face legal action. It was also stated in this letter that the appellant seduced Tan and that they had sexual relations.

PW6 testified that as far as she knew, apart from the incidents involving the appellant, her husband did not have any sexual relationship with his other female patients. PW6 was on familiar terms with

the appellant. Sometime in July 1998, the appellant called her on the telephone and told her that Tan `did not want to treat her`. She also said that Tan `dared not treat her` and she wanted PW6 to persuade Tan to continue the treatment. The appellant further claimed that Tan had `touched` her which PW6 understood to mean that Tan had molested her. PW6 was certain that the appellant did not allege that Tan had sexual intercourse with her. She only came to know about it when she confronted Tan later regarding the allegation of molest and Tan admitted that he had sexual intercourse with the appellant.

PW6 testified that she and Tan decided to give the appellant $400 to consult other physicians. She said that they were under a lot of pressure to find a cure for her due to her constant harassment. In spite of her anger over the affair, PW6 nevertheless persuaded her husband to try his best to cure the appellant. She pitied the appellant because she was in constant pain and she kept asking her to get Tan to help her.

The defence

The appellant gave evidence that she first sought treatment for her aches and pains from Tan in 1990. He earned her trust by successfully treating her for the pain in her leg, spine and left shoulder. However, Tan started making sexual advances towards her in 1996 or 1997. She claimed that Tan massaged and pressed many areas on her body, including the areas below her armpits and around her breasts under the pretence of giving her treatment and to improve her blood circulation. She testified that Tan discovered a lump in her breast in November 1997 and told her that it was a bruise. He added that it would turn cancerous if it was not massaged properly and she would then have to undergo an operation. Tan allegedly told her not to consult any other doctor and that he could cure the lump for her. Thus, she went back to Tan for treatment periodically, believing that he was the only one who could cure her.

The first incident of rape took place on 4 May 1998. The appellant arrived at Tan`s flat for treatment. After removing her brassiere during the treatment, Tan took off his shirt and sat behind her to massage her neck. He then hugged her from behind and asked her to `let him play` or he would not cure her. She refused. However, Tan persisted and made certain pornographic suggestions to her. He also promised her that he would cure her after that. He then dragged her to a mattress and tried to take off her shorts but he had some difficulty with that. At his request, the appellant took them off herself. After intercourse, Tan continued with his treatment. Before she left, he gave her $50 for her daughter, who was ill at that time, to consult a doctor. She refused and told him that she was not a prostitute.

The second incident took place on 20 June 1998. Tan called her and promised her treatment if she `let him play` a second time. The appellant asked him if he would treat her if she refused his request. He replied in the negative and told her that it was up to her to decide whether she could `bear the pain`. The appellant acceded to his request. She then arranged for her friend, Lim Kuy Yok Pauline (DW2), to baby-sit her daughter because Tan specifically told her not to bring her daughter along. Again, Tan gave her some treatment first before having sexual intercourse with her. This was followed by more treatment. This time, he gave her $100 and she again refused. However, she subsequently accepted it when Tan told her that he would not treat her if she rejected the money.

In July 1998, Tan called her and asked her if she wanted to `play` the third time. Again, he promised to cure her if she let him play. The appellant felt very cheated and angry. She did not go to Tan`s flat. She called Tan`s wife later and told her about the molest. The appellant testified that she felt `cheated` because she believed Tan when he told her that he was the only one who could have

cured her. She maintained that she did not let him have sex with her willingly.

She also explained that she did not mention the rape incidents in her police statements because she `did not dare to speak`. According to her, she did not want her husband to know about these incidents because she was afraid that he would think less of her. She testified that her husband was enraged after reading the letter from Tan`s lawyers and it was then when she told him that she was raped by Tan. Thereafter, she made a police report against Tan.

With regard to her confession, she claimed that PW3 had fabricated the statement. She alleged that PW3 induced her into signing it by showing her the polygraph test results and accusing her of lying. He also told her that she would not succeed in court and that, if she did not sign the statement, her name would be published in the newspapers. As for the cautioned statement, the defence did not challenge its admissibility.

DW2 gave evidence of the appellant`s good character. She had known the appellant for more than 20 years and had found her to be honest, straightforward and frank. She was neither cunning nor greedy. Initially, she gave evidence that she did not know why the appellant had sexual intercourse with Tan, but later she testified that the appellant did so in exchange for treatment from Tan. She also testified that she overheard Tan asking the appellant over the telephone to let him `play` a third time. On her suggestion, she and the appellant made secret tape recordings of a conversation between the appellant, DW2, Tan and his wife PW6 to obtain evidence of Tan`s wrongdoing. The transcripts were tendered in court. The bulk of the conversation related to the appellant`s frustration resulting from Tan`s failure to cure her and further complaints about her ailments. During the conversation, Tan also broke down and knelt down before them as a demonstration of his remorse.

The appellant`s husband, Tan Kim Leng (DW3), gave evidence that he found out about the affair between his wife and Tan when he read the letter from Tan`s lawyers. The appellant then told him that she was forced to have sex with Tan because Tan told her that, if she wanted to cure her sickness, she must let him have sex with her. He was very angry and he wanted to beat Tan up. The appellant stopped him and asked him not to `blow up the matter`. Following that, he took the appellant to the police station to make a report against Tan. DW3 confirmed that the appellant knew that the sexual intercourse was not part of her treatment and that it was done `in exchange for treatment`.

The findings below

The appellant`s confession was admitted at the close of a ***voir dire*** . The trial judge accepted the evidence of PW3 that he had not fabricated any part of the statement and that there was no threat, inducement or promise given to the appellant in the recording of the statement. She found that his evidence was supported by PW4 who was present during the session. PW4 gave evidence that the appellant looked dejected but she did not appear frightened. From her observation, PW3 did not threaten her or raise his voice at her. He also did not force her to sign the confession.

Having observed the demeanour and considered the testimonies of the witnesses, the trial judge was of the opinion that the prosecution witnesses were credible witnesses. The appellant`s version of events in court was inconsistent with her police statements. She alleged to the police that Tan had used force on her when he raped her. However, her case in court was that she had allowed Tan to have sex with her in exchange for treatment because her mind was `controlled` by him and therefore her consent was vitiated under s 90(a) of the Penal Code. In any event, she found that there was no evidence to suggest that the appellant`s consent was given under `fear of pain or injury or

misconception of fact` in accordance with s 90(a) of the Penal Code.

The trial judge disbelieved her evidence that her mind was under the control of Tan who allegedly convinced her that he was the only one who could cure her. The evidence showed that the appellant consulted at least 37 other physicians to seek their second opinion. She did the same on 20 June 1998, the very day she was allegedly raped by Tan. Even though she was found to be of borderline intelligence, there was no sign of weak-mindedness or dependence she claimed to be labouring under. Based on the transcripts of the tape recordings, it was apparent that Tan was not in a position of dominance vis-Ã -vis the appellant as he was reduced to tears and had gone down on his knees. She even scolded Tan when he ejaculated into her without using a condom during their first intercourse. Her consent was also not given under any misconception as to the nature of the sexual intercourse. She had not been tricked into thinking that this was part of her treatment.

With respect to the transcripts which were tendered in court as evidence of Tan`s confession, the trial judge found no shred of evidence to support that allegation. There was no mention of `rape`. While Tan was clearly remorseful about something, there was no evidence to suggest that it was because he had raped the appellant. In fact, his wife testified that he was remorseful that he had sex with the appellant and had knelt down before her. Both the appellant and DW2 could not give any satisfactory explanation why they never alleged `rape` throughout the conversation.

The trial judge gave full weight to her confession and her cautioned statement, taking the view that there was no reason for her to lie. Based on the evidence, the trial judge found that the appellant had decided to offer Tan sex, thinking that he would then have to cure her of her ailments following several unsuccessful treatment sessions with Tan. When he failed to cure her, she became increasingly demanding and their relationship broke down. When he refused to treat her anymore, she felt angry and called up Tan`s wife to tell her that he had molested her. She managed to evoke enough sympathy from Tan`s wife, such that the latter convinced Tan to continue the treatment. When the subsequent treatments remain unfruitful, she started harassing him, making threats that she would report Tan for rape and molest. When Tan`s lawyers sent her a letter alluding to the sexual relationship between her and Tan, she had to make the police report of rape in order to appease her husband. It was also possible that she had lodged the report because she felt cheated that Tan did not fulfil his side of the bargain, that is, to cure her.

Hence, she held that the appellant had knowingly given false information regarding the rape because she knew all along that the intercourse was consensual. In view of the seriousness of the offence and the lack of remorse on the appellant`s part, the trial judge sentenced her to four weeks imprisonment on each charge. The sentences were ordered to run concurrently.

The appeal

Counsel for the appellant raised the following grounds of appeal:

a the trial judge had erred in accepting the prosecution witnesses` version of events;

b the appellant`s police statements were not false because her consent to sexual intercourse with Tan was vitiated under s 90(a) of the Penal Code;

c the appellant`s confession was inadmissible;

d the mens rea of the offence was not established as there was a reasonable doubt whether the

appellant knew or believed that the police statements she made were false; and

e the sentences imposed by the trial judge were manifestly excessive.

Elements of the offence

Section 182 of the Penal Code states:

> *Whoever gives to any public servant any information orally or in writing which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant to use the lawful power of such public servant to the injury or annoyance of any person, or to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, shall be punished with imprisonment for a term which may extend to 6 months, or with fine which may extend to $1,000, or with both.*

Thus, the prosecution must establish that (a) the accused person gave information to a public servant; (b) such information was false; (c) the accused person knew or believed that such information was false; and (d) the accused person intended or knew it to be likely that the information would be acted upon by the public servant in the manner contemplated by the provision. In this case, the counsel for the appellant only contested the issue of whether the second and third element of the offence were established.

Whether the trial judge erred in accepting the prosecution`s version of events

It was argued that the version of facts accepted by the trial judge was inherently improbable. Counsel for the appellant submitted that it was more likely that Tan was the one who demanded sex before he would treat the appellant. He pointed to several factors which, according to him, cast doubt on the likelihood of the appellant taking on the role of a seductress: the appellant was always dressed in casual wear like short pants and T-shirt; there was no evidence of any single attempt by the appellant to date Tan or any single moment where they shared intimate personal matters; and there was no evidence to pinpoint any motive on the part of the appellant to seduce Tan whom she respected and trusted as her physician.

Even though a substantial portion of counsel`s submissions were devoted to this argument, I found it to be devoid of any merit. In spite of the strenuous arguments mounted by him, I found nothing inherently incredible about the version of facts accepted by the trial judge which she arrived at after a detailed evaluation of the evidence. It could not be said that her findings of fact were clearly unsupportable by the evidence and were plainly wrong: see **Lim Ah Poh v PP** [1992] 1 SLR 713 . The appellant appeared to me to be rather obsessed about getting a cure for her ailments and had even resorted to drastic measures such as harassing Tan daily or threatening to commit suicide if Tan did not treat her. It was not inherently improbable that she may have thought, albeit gullibly, that by offering sexual favours to Tan, that would give him an incentive to cure her.

Counsel for the appellant also argued that the transcripts of the taped conversation showed that Tan was guilty of raping the appellant. As the trial judge correctly pointed out, the demonstration of remorse on the part of Tan was equivocal and it was equally consistent with the fact that he felt that it was unethical on his part to engage in a sexual relationship with his patients. Furthermore, if

Tan had indeed demanded sex in exchange for treatment, it was simply inexplicable why the appellant or her friend DW2, nevertheless, did not mention a single word regarding the appalling misconduct of Tan during their taped conversation. Instead, the appellant merely complained and lamented repeatedly that Tan was unable to relieve her of her pain and discomfort.

At this juncture, I would like to make a brief reference to some drawings made by the appellant which allegedly documented the physical contact made by Tan during treatment and the two incidents of rape. It was contended that, since these drawings were made by the appellant contemporaneously, they were therefore reliable evidence of what transpired between the parties. In my view, the drawings did not conclusively prove that the appellant was raped. All they proved, if they proved anything at all, was that Tan had touched the appellant in the course of treatment and that they had sexual intercourse. As such, the documents did not advance the appellant`s case of non-consensual intercourse any further.

In view of the circumstances of the case and for the reasons cited by the trial judge, I found no justifiable basis for this Court to overturn her findings of fact.

Section 90(a) of the Penal Code

Section 90(a) of the Penal Code states:

> *A consent is not such a consent as is intended by any section of this Code -*
>
> *(a) if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that consent was given in consequence of such fear or misconception.*

Counsel for the appellant submitted that submission by a patient to her physician`s sexual demands could not amount to consent as she was labouring under the misconception that Tan would cure her. It seemed to me that the best case the defence could put forward on this issue was that the appellant had given her consent thinking that Tan would cure her thereafter. What was crucial in this case was that there was no misconception on the part of the appellant regarding the nature of the sexual act. By her own admission as well as the evidence of her husband, she obviously did not regard it as part of the treatment and that she had engaged in the act `in exchange for treatment`. In my view, given that she fully understood the nature of the act, her consent to such an act would not be vitiated under s 90(a) even though Tan did not subsequently manage to cure her.

Such a proposition is well established and is illustrated by the case of **R v Flattery** [1876-77] 2 QBD 410. In that case, the accused person engaged in carnal intercourse with the complainant under the pretence of performing a surgical operation to cure her of an illness she was suffering from. The court held that he had raped her and that her consent was vitiated. The complainant submitted to what was being done to her under the belief that he was merely giving her medical treatment. Thus, she only consented to the performance of the `surgical operation` and not to the sexual intercourse. In the premises, it was clear that the appellant and Tan had consensual sexual intercourse and her allegation of rape was therefore false.

Whether the appellant`s confession was admissible

The admissibility of the appellant`s confession was challenged on the ground that PW3 had threatened and induced her into making that statement by telling her that (a) she had no chance to contest the case and she would be better off admitting her guilt; (b) the polygraph test showed that she had lied; and (c) there would be newspaper publicity if she did not sign the confession. These same grounds were canvassed in the court below and were rejected at the conclusion of the ***voir dire*** . Even though PW3 told the appellant that the polygraph test results showed that she had lied, there was no evidence to suggest that any other threats or inducement sufficient to render the statement inadmissible were made. It was held in **Vadugaiah Mahendran v PP** [1996] 1 SLR 289 that there was no reason why an accused person who was charged for unauthorised drug consumption could not be shown the urine test results before the statement was recorded, provided that nothing more was done which could be construed as an inducement, threat or promise. Similarly, the act of conveying to the appellant the results of her polygraph test ***per se*** would also not render her statement inadmissible. As such, I was of the view that the statement was correctly admitted into evidence.

In the course of the submissions, counsel for the appellant alleged that there were certain procedural irregularities in the investigation process. For instance, even though PW2 and PW3 had in their custody the secret tape recordings, they did not listen to them before taking the appellant`s statement. If they had done so, he alleged that they would have believed that the appellant was telling the truth and would investigate Tan instead. It was also alleged that, during the recording of her police statement in exh P6, she told PW2 that she continued her treatment with Tan because she believed that only Tan could cure her. However, PW2 did not record her explanation in the statement. It was contended that, because of this omission, PW3 suspected that the appellant might not be telling the truth about Tan raping her and that was why he interviewed her again for clarification. Further, it was submitted that PW3 was influenced by the results of the polygraph test before he recorded the confession.

The thrust of the defence counsel`s arguments was that these alleged irregularities had prejudiced the minds of the recording officers. A short answer to these contentions is simply this: the recording officers` subjective opinion of the appellant`s veracity and credibility could not possibly be relevant to the question of the admissibility of her confession, or, for that matter, any of the issues at hand before me.

Whether the appellant knew that she was making a false statement

The defence counsel argued that, even if the appellant`s consent was not vitiated, she did not knowingly give a false statement. For a charge under s 182, it is not sufficient to show that the allegations made were false, the prosecution must prove that the allegations made by the accused person were false to his knowledge or that he did not believe them to be true at the time when he made those allegations. Thus, it is a subjective test: see **Fakirapa Ningappa Chikkabagewadi v The State** [1960] Cri LJ 1113.

In support of his contentions, he argued that the recording officer PW2 did not dispel the possibility that the appellant was telling the truth when she accused Tan of rape during the interview. Again, I failed to see the relevance of his opinion or perception of the credibility of the appellant. The real issue was whether the appellant knew or believed that the allegations she made were false. In this regard, it is pertinent to note the contents of her confession to the police. In her own words, she said:

> *I wish to say that on 22 September 1998, the statement which I gave to the Police Investigation [sic] Eddie Sim at Ang Mo Kio Police Division that I was raped by Tan Eng Huat is* ***not true****. I had given him a* ***false statement*** *that I was raped [sic] by Tan Eng Huat on 20 June 1998 at Blk 304 Ang Mo Kio [num]07-1135 because of the lawyer`s letter dated 21 September 1998. My husband had came [sic] to know that I had sexual relationship with Tan Eng Huat and I was afraid that he might divorce me. I am sorry for what I have done and I hope that I be given a chance. My daughter is still young, only 5 years old and they needed my care. I have done that to save my marriage. I hope the police will not inform my husband that I had made a* ***false report*** *on the matter.* ***I did have sexual relationship with Tan Eng Huat voluntarily and he did that not against my will****. [Emphasis added]*

In her cautioned statement, she merely pleaded for leniency without denying that she had committed an offence. In the light of her statements, the defence counsel`s contention that she did not know that she had given false information was without a doubt untenable.

Appeal against sentence

The appellant had four antecedents for drug consumption. It was submitted that the trial judge was influenced by these antecedents which were unrelated to the present charges when she sentenced the appellant. Having perused the grounds of decision, I noted that, even though the antecedents were brought to the trial judge`s attention, it did not appear from the judgment that she had taken this into account in determining the appropriate sentence. Instead, her main concern was that offences under s 182 were serious, as they involved the perversion and hindering of the administration of justice.

In my view, there were no real mitigating factors in this case and the appellant had shown no sign of remorse throughout the proceedings. Her allegation also led to the arrest of Tan. Any false allegation of rape must not be taken lightly. Not only is it a serious allegation, it is often difficult to verify because, in most of such cases, it is the word of one person against the other. Given the social stigma usually attached to such offences, it could irretrievably damage the reputation of the alleged `rapist` even if the allegations were subsequently proven to be false. In the light of the circumstances, it could not be said that the sentences were manifestly excessive.

Conclusion

For the foregoing reasons, I dismissed the appeal.

Outcome:

Appeal dismissed.