

Public Prosecutor v S Bin N
[2000] SGHC 211

Case Number : CC 31/2000
Decision Date : 20 October 2000
Tribunal/Court : High Court
Coram : Lee Seiu Kin JC
Counsel Name(s) : Toh Yun Cheong for the prosecution; Shashi Nathan assisted by Anand Nalachandran (Harry Elias Partnership) for the accused
Parties : Public Prosecutor — S Bin N

ORAL JUDGMENT:

1 The Accused stands charged with committing 3 offences of rape on the Complainant under section 376(2) of the Penal Code. Now these offences are particularly serious and to reflect this, they attract very heavy maximum punishments. Furthermore, these offences are alleged to have been committed under especially aggravating circumstances. First of all, one of the offences was alleged to have been committed on the Complainant while she was below the age of 14, the other 2 not too long after she had turned 14. Secondly they were alleged to have been committed by threat of violence. But in my view, the worst thing about the allegations is the fact that the Complainant is the natural daughter of the Accused.

2 Any society that calls itself civilised must treat these allegations seriously and if proven, deal with the Accused with the full force of the law. Now the Complainant had not only accused her father of raping her on the 3 occasions the subject of the charges, but she had also accused him of raping her on 2 other occasions. These are the subject of 2 other charges that were stood down at the start of this trial. Not only did the Complainant make these allegations, she had provided detailed accounts of the offences, i.e. where, when and how she was raped. She had first revealed this to her friend at her school, sometime in April 1997. That friend is PW8. PW8 was shocked by this and reported it to her teacher, PW10. She in turn reported this and eventually the matter was handled by PW6, the Head of Department. The Complainant being a Muslim, PW6 contacted the Muhamadiyah Welfare Home ("MWH"). MWH sent a welfare officer, PW7, to interview the Complainant. This was initially done at the school, in the presence of PW6. PW7 recorded 4 statements from the Complainant, written by hand. In the first 3 statements, the Complainant gave details of each of 3 occasions that she alleged her father had raped her. In her 4th statement, she alleged that her paternal uncle, i.e. the father's elder brother had also raped her.

3 PW7 subsequently brought the Complainant back to MWH and there he got the Complainant to elaborate further on the events. PW7 reduced this into 4 typed statements. These are essentially similar to the 4 handwritten statements taken at the school, with some details added here and there.

4 PW7 then lodged a police report on 16 April 1997 and thereafter the matter was passed to the hands of the Police. PW7 also handed over to the Police all the statements he had recorded. Staff Sgt Rahman Khan, the Investigation Officer, recorded a number of statements from the Complainant between 29 April 1997 and 11 July 2000. In the first statement recorded on 29 April 1997, the Complainant revealed that she had sexual intercourse with 3 persons. The first was a boy called R., a neighbour. The second was the Accused, who raped her on 3 different occasions. The third was her uncle on one occasion.

5 The Complainant's statement proceeded with a detailed description of her sexual intercourse with R., who was a friend of her brothers. This took place sometime in January 1996. These details are not relevant to the charges against the Accused. This first statement ended with an assertion by the Complainant that the 3 occasions that the Accused had sexual intercourse with her were in June 1996, in late November 1996 and on 18 January 1997.

6 The second and third statements were recorded on 7 and 8 May 1997. In these statements, the Complainant described the three occasions that the Accused had raped her. In the third statement, the Complainant described in detail the incident concerning her uncle. It took place on 6 April 1997 somewhere at the Changi Golf course. However the Complainant said that

there was no penetration by the uncles penis although he attempted it; instead he had fondled her breasts and genitals and inserted his finger into her vagina.

7 In her fourth statement recorded almost 2 years later on 1 March 1999, the Complainant disclosed to S/Sgt Rahman 2 further instances of rape. S/Sgt Rahman was asked about the circumstances leading to these late revelations. He explained that he managed to trace the Complainants younger brothers only in January 1999. Two of them, the oldest two, gave him some information based on which he decided to question the Complainant further and as a consequence of this, the fourth statement was recorded.

8 In this statement the Complainant said that apart from the 3 occasions she had mentioned earlier, the Accused also had sexual intercourse with her on a few other occasions. She then described 2 incidents which took place in the middle of the night sometime at the end of 1996. The Complainant also described an incident in her paternal grandmothers flat in which the Accused attempted to have sexual intercourse with her but did not succeed.

9 The Accused was arrested sometime in January 1999. He has been remanded in custody since that time. The Complainant is now 18 years old. She gave evidence in court and was subjected to cross-examination for almost 15 days. I hasten to add that the reason for this prolonged cross-examination was not the fault of counsel for the Accused, Mr Shashi Nathan. His conduct of the Defence had been absolutely impeccable and this deserves to be placed on the record. The cross-examination had been prolonged solely because the Complainant had great difficulty in answering the questions posed to her. To virtually every question, she took a long time to answer, ranging from a minute to perhaps 10 minutes. On many occasions she broke down and cried and the court had to adjourn for her to compose herself. Again, I must record that her breaking down was not because Mr Nathan had been less than gentle with her. Indeed, I was at a loss to understand it because there were some occasions when she cried in response to questions that did not directly pertain to the rape. For example, she broke down and cried when she was questioned as to where she had resided or slept at various periods. Further there were times when she got sick in the course of her evidence and the hearing had to be adjourned for her to recover.

10 And so it was in this manner that the trial painstakingly proceeded. The Complainant was a young girl at the time the offences were alleged to have been committed and if her allegations are true then she would have been traumatised by those events. Her conduct would have been understandable. On the other hand, the Accused was facing very serious charges which he denies completely. He would be perfectly entitled, through his counsel, to examine the Complainants accusations thoroughly, provided that it was done properly. As I have said, I find Mr Nathans conduct of his clients case not only to be entirely proper, but a model to be emulated and this was done under most difficult circumstances.

11 There are no direct witnesses to the events apart from the Complainant and the Accused. No one else was there when the rapes are alleged to have occurred, except for 2 of the Complainants younger brothers who were in the vicinity in relation to the second charge. However the Prosecution did not call them to give evidence, mainly because a psychiatrist had examined them and had certified that they are of low intelligence. I should add that they were and still are of a rather young age.

12 So it is a matter of the Complainants words against those of the Accused: a case of a daughter pitted against her natural father in the most tragic of circumstances. In the event, it was necessary for me to examine the evidence from the point of view of:

- (i) the demeanour of the witnesses;
- (ii) the consistency of their evidence with the circumstances; and
- (iii) any corroborative evidence.

13 The first thing that can be said about the case for the Prosecution is that it is unlikely that a girl of 14 years which was the Complainants age at the time would make such a terrible accusation against her natural father if the events had not taken place. I should add that she had also made similar allegations against her paternal uncle. Secondly, on my first reading of the

conditioned statements, I was struck by the amount of detail given by the Complainant in respect of the charges against the Accused. To my mind, unless the events had not happened, it would be difficult for the Complainant to fabricate a story to that level of detail.

14 However when the Complainant came to the stand to give evidence, she exhibited the behaviour I had described earlier. Now I can understand it if she were a very young person, but she was 18 years of age. Or if she were a person of low intelligence or otherwise overawed by the formal court proceedings. In relation to her intelligence, although she could not be described as a particularly bright person, she had completed her course at the school. But more importantly, although the Complainant appeared at a loss for words for 99% of the time in the witness box, there was the 1% of the time when she exhibited great lucidity of mind. In those moments, which cropped up occasionally throughout her time in the witness box, she was able to answer the question almost like a retort, in rebuttal to some proposition made by Mr Nathan that displeased her. Usually she was driven to do this in anger. I need only give one illustration. This was when Mr Nathan put to her that in January 1997, her father and family were residing at her paternal grandmothers flat. She immediately blurted out: "Who pays the water bill". Now the Prosecution had adduced evidence about the utilities bill of her home for late 1996 and early 1997 to prove that it was occupied during this period. However she was not present in court when this evidence was given. She had not only somehow got wind of this evidence, but more importantly was able to relate it to the question at hand. To me this, and the other similar moments, revealed a young lady with an active mind and rebellious spirit.

15 That she had a rebellious streak, there is no doubt. Although she was dressed with utter decorum in court, she admitted that this was her style of dress only after she was taken to the MWH. Before that, her clothing when she went out with her friends, which was often, consisted of short skirts and low blouses. That was at the tender age of 14. She had taken to smoking cigarettes and had her first sexual encounter at about 13 and a half years. In April 1997 she was taken to MWH. Just prior to that, starting from January 1997, she was camping at the void deck of flats in Chinatown with her boyfriend, A., and another couple. She had engaged in sexual intercourse with A. during that period.

16 Therefore, while her inability to answer questions posed to her in a forthright manner may well be due to any number of innocent factors, I cannot in the circumstances rule out fabrication as she did not appear to me to be incapable of doing it.

17 If the events had actually happened to her, she should have no problem in recounting the details, especially when she had given much of it in her various statements. But try as Mr Nathan did, he was unable to elicit any details from her. Indeed, much time was spent initially on eliciting seemingly innocuous details from her. The prime example is when Mr Nathan asked her as to where she was residing between 24 October 1996, after the death of her mother, and January 1997 when the school term commenced. She appeared to have great difficulty in answering the question. As for the details of the various events the subject matter of the charges, she could not remember much of it, or simply refused to answer the question. In several instances she was able to recall some details; however these details contradicted what she had stated in her statements to PW7 and to the Police. I now deal with some of the more significant contradictions.

(a) In her 2 statements to the MWH officer, PW7, she had alleged that her uncle had raped her at the Changi picnic incident. She had graphically described this incident. She alleged that he had "penetrated" her, that he "forced sexual contact for 1 hour" on her during which period she was "in pain". She said that before he could "release himself" inside her, she "forced him out". Yet in her statements to the Police and her evidence in court she alleged that he only molested her and that her uncle was unable to maintain an erection to penetrate her.

(b) The Complainant said that after her mother died, she stayed at her paternal grandmothers flat for 2 to 3 weeks and after that she moved to her maternal uncles flat at Marsiling. As her mother died on 24 October 1996, this would mean that she went to Marsiling sometime in mid-November 1996. This is not only contradicted by the Accused and her paternal grandmother, but also by her

maternal uncle. They all maintained that she went there in early January 1997. The Complainants evidence is not really consistent in that she at one stage agreed that from her paternal grandmothers home she went straight to Marsiling, but at one point she seemed to suggest that she, the Accused and her brothers moved back to their flat in mid-November. But this is not supported by the evidence not only of the Accused, but also of her paternal grandmother. I accept that the grandmother is not exactly a neutral witness in that her son was in the dock. Yet, the Complainant was also her granddaughter. Whatever may have been the case, it was essential for the Prosecutions case that the family be residing at their own flat in late November 1996 because that is the subject of the second rape charge. Furthermore, the 2 charges stood down relate to 2 incidents that took place in November or December 1996. The Prosecution adduced evidence of utilities consumption at the flat to prove that it was occupied at the time. Unfortunately the meter reading cycle was on a 2-month basis and I am satisfied that such conclusion as may be drawn from that evidence may support either version and is neutral at best.

(c) The Accused said that there was one incident sometime in early 1997 in which the Complainant, who was staying away from home at the time, had telephoned to say that she was returning home. The Accused said he waited for her until the early hours of the morning. When she returned she displayed love bites on her neck and they had a big quarrel which ended in him throwing the boys shoes at her. The Complainant generally agreed that they had that fight. She had been out with A. and she in effect admitted that there was a slight love bite. To counsels question whether the Accused was right to be angry with her that night, she admitted that he was. Now it has to be borne in mind that, according to the Complainant, by that time she had been raped by the Accused at least five times. If this were true, it is difficult to see what moral standing the Accused would have had in relation to the Complainant to display such outrage at her late nights and love bites, and even more difficult to see how she, given the person she was, could have accepted it.

(d) In relation to the first rape allegation, the Complainant said that the Accused had scolded her for giving their telephone number to one "Joe" and receiving phone calls from him. However the Accused said that they did not have a telephone in the home in 1996. He only got a phone installed in early 1997 when he moved back to his flat from his mothers. This evidence was not deliberate, and it only came about incidentally when the Accused was describing the night his wife died. The subsequent Police check with Singtel revealed that a phone was installed in the flat on 6 January 1997. But Singtel was not able to retrieve any information for 1996. The Accuseds mother confirmed that there was no telephone in the Accuseds flat in 1996, although she also said that there was none in 1997. Be that as it may, the fact that a line was installed on 6 January 1997 is consistent with the Accuseds version that he did not have a line until then. Also, this evidence was discovered incidentally and there is little likelihood of fabrication. This would mean that this aspect of the Complainants evidence, where she said the incident began with the Accused scolding her for giving their phone number to "Joe", is in some doubt although she was not cross-examined on this.

(e) In relation to the second rape charge which the Complainant alleged was

committed in the bathroom, she had told PW7 that she wore a skirt. Yet in her conditioned statement, she said she wore pants. There was some hesitation on her part in relation to this part of her testimony.

18 What struck me about the Complainant was that she was able to repeat what she had said in her statement quite well (and without emotion), but when asked for details, she virtually shuts up. She had to think very hard and yet she hardly answered most questions. But she would get emotional when pressed for seemingly innocuous details that do not directly concern the acts of rape. She often blurted out "Im not lying", and yet she did not want to answer questions that probed the details of her evidence.

19 Now the Accused need not satisfy the court on a balance of probability that he is not guilty of the charges. In our criminal legal system, it is the Prosecution that must prove the charges beyond reasonable doubt. All the Defence need to do is to raise a reasonable doubt as to the culpability of the Accused. However in this case, I would say that the Defence have raised more than a reasonable doubt. I would go so far as to say that there are grave doubts in my mind as to the veracity of the Complainants evidence. Her demeanour in the witness box is far from satisfactory. She did not give a consistent account of the events the subject of the charges and contradicted her own statements as well as the other evidence adduced as to where she and the rest of her family were residing at the material time. Much of the independent evidence corroborates the Accuseds version of events. In my view the Complainant is well capable of making up these allegations. The contradictions in the various versions she had given, as well as the contradictions with the surrounding evidence and circumstances show that this was probably what had happened.

[Accused to stand]

20 S. bin N., in view of what I have said, I find that the Prosecution have not proven their case beyond reasonable doubt and accordingly, I dismiss the 3 charges against you and acquit you of these charges.

Lee Seiu Kin

Judicial Commissioner

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