

Public Prosecutor v Christopher S/O M P Nathan
[2000] SGHC 43

Case Number : CC 18/2000
Decision Date : 17 March 2000
Tribunal/Court : High Court
Coram : Tay Yong Kwang JC
Counsel Name(s) : Low Cheong Yeow and Jill Tan (Attorney-General's Chambers) for the prosecution; Accused in person
Parties : Public Prosecutor — Christopher S/O M P Nathan

JUDGMENT:

GROUNDS OF JUDGMENT

1 The Accused conducted his own defence. He could speak and read English. He was tried and convicted on each of the following seven Charges:

"That you, **CHRISTOPHER s/o M P NATHAN**

1ST CHARGE on or about the 4th day of June 1999, at about 3.00 am, at the staircase landing between the 2nd and 3rd floor of Blk 183 Toa Payoh Central, Singapore, did rape one Cheng Lay Peng, a female then 26 years old, and in order to commit the said offence, you put the said Cheng Lay Peng in fear of hurt to herself, and you have thereby committed an offence punishable under section 376(2)(b) of the Penal Code, Chapter 224.

2ND CHARGE

on or about 4th day of June 1999, at about 4.30 am, below the spiral staircase of Block 17A, Lorong 7 Toa Payoh, Singapore, did rape one Cheng Lay Peng, a female then 26 years old, and in order to commit the said offence, you put the said Cheng Lay Peng in fear of hurt to herself, and you have thereby committed an offence punishable under section 376(2)(b) of the Penal Code, Chapter 224.

3RD CHARGE

on or about 4th day of June 1999, at about 2.15 am, along the passageway outside the 7-Eleven store of Block 190, Toa Payoh Central, Singapore, did pretend to hold the office of a public servant, to wit, a police officer, and in such assumed character did question one Cheng Lay Peng, a female then 26 years old, under the colour of such office and you have thereby committed an offence punishable under section 170 of the Penal Code, Chapter 224.

4TH CHARGE

on or about 4th day of June 1999, at about 2.30 am, at the staircase landing between the 2nd and the 3rd floor of Block 183, Toa Payoh Central, Singapore, did use criminal force on one Cheng Lay Peng, a female, then 26 years old, intending to outrage the modesty of the said Cheng Lay Peng, to wit, touching her body by inserting your hands into her bermuda shorts' pockets and you have thereby committed an offence punishable under Section 354 of the Penal Code, Chapter 224.

5TH CHARGE

on or about 4th day of June 1999, at about 4.45 am, below the spiral staircase of Block 17A, Lor 7 Toa Payoh, Singapore, did use criminal force on one Cheng Lay Peng, female, then 26 years old, intending to

outrage the modesty of the said Cheng Lay Peng, to wit, by making her grip your penis and you have thereby committed an offence punishable under Section 354 of the Penal Code, Chapter 224.

6TH CHARGE

on or about 4th day of June 1999, at about 4.45 am, below the spiral staircase of Block 17A, Lor 7 Toa Payoh, Singapore, did use criminal force on one Cheng Lay Peng, female, then 26 years old, intending to outrage the modesty of the said Cheng Lay Peng, to wit, by rubbing your penis against her mouth and in order to commit this offence, you voluntarily caused wrongful restraint to the said Cheng Lay Peng, and you have thereby committed an offence punishable under Section 345A(1) of the Penal Code, Chapter 224.

7TH CHARGE

on or about 4th day of June 1999, at about 4.45 am, below the spiral staircase of Block 17A, Lor 7 Toa Payoh, Singapore, did voluntarily have carnal intercourse against the order of nature with one Cheng Lay Peng, female, then 26 years old, to wit, by forcing her to perform an act of fellatio on you and you have thereby committed an offence punishable under Section 377 of the Penal Code, Chapter 224."

2 The 6th Charge originally alleged that he had "voluntarily caused hurt" but that was amended at the close of the case for the Defence to "voluntarily caused wrongful restraint".

THE PROSECUTION'S CASE

3 The Complainant is 26 years old and single. She resides in the public housing estate of Toa Payoh with her parents and two sisters. The Complainant had formal education up to Primary 6 level. She was able to speak in simple English but was more fluent in Mandarin.

4 After completing her primary school education, she did not look for employment until some three years later. She then worked in various factories until about six years ago when she stopped working altogether as she could not cope with her work. She has been unemployed since that time.

5 A psychological assessment of her intellect conducted by Dr Helen Chen of Woodbridge Hospital in June 1999 revealed that "she was functioning in the borderline range of intelligence". The doctor also opined that "her understanding of sexual intercourse and contact is fairly adequate, and she is fully competent to give consent to sexual intercourse".

6 On 3 June 1999, the Complainant was watching television in her Toa Payoh flat. At around 9 pm, she felt hungry and decided to go to Kopitiam (a food centre) at the Meridien Hotel in Orchard Road as many of the food stalls in her neighbourhood were already closed. She travelled by the Mass Rapid Transit to the Somerset Station and then walked to the Meridien Hotel.

7 She spent about one and a quarter hours at the food centre. After having her meal, she had only some coins left. Although it was around midnight by then, she decided to walk all the way home to Toa Payoh. She had done this more than ten times previously and thought it was alright for her to do so again that night. The long trek home finally brought her to the bus interchange at Block 190 Toa Payoh Central.

8 It was about 2 am on 4 June 1999 by then. Feeling thirsty after the long walk from Orchard Road, the Complainant went into the 7-Eleven shop at Block 190 to purchase a packet of drink with the coins that she had. She then went out of the shop.

9 When she was outside the shop, the Accused (who was unknown to her then) asked her in English why she was rushing out and whether she had paid for the drink. She replied that she had. He then flashed a pink card at her. The card had the words "Tanglin Police" on it. The Accused told her he worked in a police

station and that he suspected that she had stolen things from the 7-Eleven shop. He then pulled her by the arm as he walked away from the shop. She tried to push his hand away but he only held her arm more tightly. She followed the Accused as she was afraid of being harmed by him.

10 The Accused brought her to Block 183, which was adjacent to Block 190, and they went up to a staircase landing on the third floor where the Accused told her to sit down on the stairs. He then began to smoke a cigarette and to drink a can of beer. He questioned her on whether she had consumed drugs. When she said she had not, the Accused put his hand into the pockets of her Bermuda shorts to search. He then pulled her arm and asked her to lie down on the landing. She was afraid of being harmed by him and therefore did as instructed.

11 The Accused proceeded to remove all the clothing of the Complainant, warning her not to shout or else suffer a beating. He then stripped off his clothes and lay on top of her, fondling her breasts, her vagina, sucking her nipples and kissing her neck. He then inserted his penis into her vagina. She felt a sharp pain and wanted to cry but did not dare do so for fear that he would assault her.

12 After gratifying himself, he told her to dress up and to go up the stairs to the highest floor and remain there. She complied. He did not follow her up.

13 After remaining at the fourth floor for some 45 minutes, the Complainant decided to leave for home. She went down the stairs and walked towards Lorong 7 Toa Payoh.

14 As she was walking along Lorong 7 near the market, the Accused saw her and shouted at her. She was afraid to see him after the first encounter. Although there were some other male Indians at the market, she did not call for help as they had been talking to the Accused and appeared to be his friends. He walked towards her and pulled her by the arm again, mumbling something which she did not comprehend. He brought her to Block 17A which housed a bank and where there was a spiral staircase, pushing her into the corner where the underside of the spiral staircase met the ground. She therefore had to sit on the floor.

15 The Accused lit a cigarette and smoked. After that, he stripped the Complainant who did not dare to resist as he was staring at her fiercely. He then took off his clothes and sat down beside her. He lowered her body to the floor, went on top of her and began to fondle her body. He tried to kiss her on the mouth but she refused to open it. He then used his hand to try to force her mouth open and tried to kiss her. He stopped after a while and inserted his penis into her vagina for the second time, pushing forcefully and causing her immense pain. She tried to push him away with both her hands but he held them to the floor.

16 The Accused then stopped and pulled the Complainant's left hand to hold his penis and her right hand to hug him. They lay like that for about half an hour, with him holding on to her right hand. When she saw that he was asleep, she tried to release her numb left hand from his penis but the movement roused the Accused. He started to kiss and fondle her body again.

17 He then caused her to sit up and spread her legs apart and he sat facing her with his legs resting on her thighs. He held his penis with one hand and used the other to push her head forcefully towards his penis. She refused to open her mouth but he used his hand to force her to open it. He then inserted his penis into her mouth and pushed her head up and down with such force that she could hardly breathe.

18 After ten minutes or so of fellatio, the Accused released the Complainant who was panting by then. Before she could catch her breath, he forced her head down to his penis again. This time, she kept her mouth shut but he continued to rub his penis against her mouth.

19 After that, he stopped and caressed her vagina. He then told her to get dressed. While she was putting on her clothes, he asked her whether she wanted some coffee. When she said she would like some, he told her to wait there for him while he went to bring the coffee.

20 When the Complainant saw the Accused was a distance away, she fled in a panic, afraid that he might turn around at anytime. She ran towards Block 17 until she reached Lorong 6 where she managed to flag a taxi which brought her to her home in Lorong 8. As she did not have money to pay the fare, she told the taxi driver to wait while she went up to her flat to get some money. In her flat, she took \$5 from the altar table and then went back down to pay the fare.

21 After doing that, she went up to her flat and lay on the sofa in the living room. Her father woke up and asked her why she had returned home so late. She did not reply and wanted to cry. Her father noticed that her face was pale, her hair was messy, her arms, her face and her t-shirt were dirty and enquired further. She then revealed to him that she had been raped by an unknown Indian while walking home. Her father then went to wake her mother up and together they proceeded to Kim Keat Neighbourhood Police Post to lodge a report. It was past 5 am then.

22 At the NPP, Sgt Lim Chee Peng interviewed the Complainant's father and was informed by him that the Complainant had been raped by an unknown male Indian on two occasions, the first having taken place at about 2 am at the staircase landing of Block 190 near the 7-Eleven shop and the second at Block 17A. When I asked the Complainant's father why he had told the police officer that the first rape was at Block 190, he denied that he had mentioned the block number. He testified that he was not very familiar with the block numbers although he lived in Toa Payoh and had merely told the police officer that the Complainant was dragged to a place somewhere in Toa Payoh Central.

23 The Complainant and her parents were referred thereafter to Tanglin Police Division HQ.

24 At 9.10 am on 4 June 1999, the Complainant was examined by Dr Kenneth Edward Lee at KK Women's & Children's Hospital. In his report, he said:

"Her history was vague.

She was allegedly taken to a block of flats by an Indian male and was forced to perform oral sex on him. There was also penile-vaginal penetration and anal sex. She was unsure if there was ejaculation.

She was then released and left alone. However, she encountered the same man on her way home and was forced to have sex with him again. She was uncertain if there was ejaculation.

Physical examination was as follows:

She was anxious, slightly distressed and appeared dazed. She was in a blue t-shirt and shorts with unkempt hair. There was no evidence of alcohol or drug usage".

The doctor also found a superficial abrasion on the left corner on the left corner of her mouth and dirt marks on the soles of her feet, her back and her thighs. There was a fresh tear of the hymen with slight bleeding. There were no bruises.

25 Asked in cross-examination by the Accused whether he had beaten her up at any time, the Complainant replied that he did. She did not think it was necessary to mention this in her statement. Later, she explained that he had asked her to shut up, beating her face once lightly as a threat, during the second incident of rape. She affirmed that he had not asked for her consent to engage in sex with her and that she had not given such consent at any time.

26 Asked by the Accused how he could have pulled her along outside the 7-Eleven shop when there were

residents around, the Complainant replied that it was already past midnight then and nobody was around. Similarly the residents living in the flats overlooking that area did not see this happening as they must have gone to bed since their flats were dark. She did not scream as she was very afraid of the Accused who was holding on to her arm tightly.

27 Before the second incident at Block 17A, when they were along Lorong 7, she also did not scream for help as she was fearful. This was despite the fact that the Accused was about ten steps away from her when she saw him and in spite of the fact that that was an open space.

28 SSG Png Chen Chen was the Investigating Officer in charge of this case. At about 4.30 pm on 4 June 1999, she went with two other police officers and the Complainant to the scenes at Block 183 and Block 17A. Nothing was found at the staircase landing on the third floor of Block 183. At Block 17A, beneath the spiral staircase, they found a torn-off piece of newspaper, some strands of hair and a cigarette butt. There were blood stains on the floor and blood swabs were taken.

29 The Complainant's outer and inner clothing were seized by the Investigating Officer as exhibits.

30 The circumstances leading to the arrest of the Accused were as follows. From the lead given by the Complainant that she had seen a pink card with the words "Tanglin Police Station" flashed by the Accused, the Investigating Officer believed the card was a Urine Test Reporting Card issued by the Central Narcotics Bureau ("CNB"). She sought the assistance of CNB (Tanglin) to provide information on male Indian supervisees, giving them the description of the suspect. When the photographs of the said supervisees were ready, the Complainant was asked to go and view them. She picked out one of the photographs.

31 From the particulars of that suspect provided by the CNB (Tanglin), the Investigating Officer led a team of police officers to the Accused's address on 1 September 1999. When they arrived at the carpark of the Accused's block of flats at Block 17, Lorong 7 Toa Payoh, they saw him seated nearby. They checked the Accused and seized the pink CNB supervision card from his person. They then placed him under arrest and brought him up to his flat where five items of his clothing were seized.

32 They brought the Accused to CNB (Tanglin) and then to Criminal Investigation Department. Later that day, the same team escorted the Accused to view the scenes at Block 183 and Block 17A.

33 On 2 September 1999, the Investigating Officer charged the Accused with the First Charge and proceeded to record a statement from him pursuant to Section 122(6) Criminal Procedure Code after having administered the Notice of Warning provided in that section. The Accused, speaking in English, said:

"I have nothing to say for I am not guilty. I wish to explain everything to your majesty."

34 On 6 September 1999, the Accused was brought to the Department of Scientific Services where a blood sample was taken from him for the purpose of DNA testing.

35 On 7 September 1999, the Investigating Officer charged the Accused with the other six Charges and proceeded to record his statements in respect of each of the Charges. In each case, the Accused responded with words to the effect that he wished to explain everything in Court and to prove his innocence when he would be having legal counsel. At the trial, the Accused agreed that all the seven statements taken from him had been made by him voluntarily.

36 On 9 September 1999, the Accused was sent to Changi Prison Hospital for a Potency Test. Dr Leow Kee Fong examined him and reported that there was no indication of impotence and that the results of investigation for sexually transmitted diseases were negative.

37 That afternoon, the Accused was brought to Jurong Police Division HQ for an Identification Parade to be

held. The Complainant managed to identify the Accused out of a total of nine persons participating in the parade.

38 The report from Mrs Tan Wai Fun, Scientific Officer at the Department of Scientific Services showed that the saliva found on the cigarette butt located at Block 17A was in all probability the Accused's. The semen stains on the Complainant's shorts and panties and the semen found in the vaginal and anal swabs taken from the Complainant were likewise all found to have come from the Accused.

THE CASE FOR THE DEFENCE

39 When the Accused was called upon to make his defence to the seven Charges, he elected to testify as a witness. He called no one else in his defence. He was educated up to Primary 6 in the English stream. Before his arrest, he worked as a labourer in the Maritime & Port Authority of Singapore.

40 On 3 June 1999 before midnight, the Accused returned to Toa Payoh after visiting a friend in Bishan. He went to the 7-Eleven shop at Block 190 Toa Payoh to buy a can of beer. He then sat outside the shop. There were a few men in the vicinity.

41 About half an hour later, he saw the Complainant walking out of the shop and walking away from where he was. He decided to walk home and happened to be going along the same way as the Complainant.

42 When the Accused caught up with the Complainant, he spoke in a friendly manner to her. She appeared shocked and started to edge closer to the wall. He asked her why she was afraid of him but she merely mumbled something. He asked her whether she was going home but again she said something unintelligible and looked afraid. The Accused then asked her why she was afraid and whether she had stolen the packet of drink from the shop. The Complainant appeared more shocked and edged all the way next to the wall.

43 Not knowing what she was afraid of, with the can of beer and a cigarette in one hand, the Accused took out his CNB supervision card and told her that he was "no police" and gave her the card to read. He took the card back after she had read it.

44 They kept walking. The Complainant smiled after he asked her whether she was going home. He could not have forced her or pulled her along as there were people in the vicinity.

45 When they reached a staircase at Block 183, the Accused asked the Complainant to go up the staircase and she went up with him voluntarily. They sat at the landing on the second floor where he asked her whether she wanted to drink or to eat anything. She said, "No". He also asked her whether she wanted to smoke but again she said, "No". He then asked her whether she had money but she kept quiet. He repeated the question but she maintained her silence.

46 The Accused then placed his hands inside both pockets of the Complainant's Bermuda shorts to see whether there was money in any of them. She did not resist or do anything. As they were right outside two flats, if she had made any sound, the residents therein would certainly have heard her.

47 He then asked her to go up another floor with him. When they had done so, he put his arm around her and caressed her. She still did not resist. He then asked her to lie down. They removed their clothes and had sexual intercourse there.

48 When they were done, he told her to dress up and asked her whether she wanted a drink. She merely kept quiet and stood at the landing. He then told her that he was going home and when there was still no response from her, he left.

49 He went to the market at Block 18 and had a drink with a friend there. There were some men at the stall. After about 45 minutes, he decided to walk back to his flat which was in a block next to the market. That was when he saw the Complainant again. She was about ten steps ahead of him when she turned around and saw him. It was an open area at the roadside.

50 The Accused walked up to her and asked her what she was doing there. She stood there without responding. After getting no reply when he asked her whether she was going home, he told her, "Come" and she followed him to Block 17A.

51 They had sexual intercourse again below the spiral staircase. She did not refuse him or do anything at all. He did not threaten her. It was nearly morning by then. If people passed by that spot, they would have seen both of them. Similarly, if she had screamed, people would have heard her.

52 They remained there until nearly 6 am when he asked her to dress up and asked her whether she wanted breakfast. She said she wanted to have coffee. He went out from that place to buy coffee but when he returned, she was no longer there. When he could not find her, he went home.

53 Asked in cross-examination why he had stopped the Complainant outside the 7-Eleven shop, the Accused replied that sometimes he would approach women to make friends. He showed her the CNB supervision card because a drug supervisee could not be a policeman or some person of authority. He put his hands into her pockets to check whether she had money as she could be shy and did not want to ask him for money. In doing so, he did touch her thighs.

54 At the staircase landing of Block 183, the Accused removed the Complainant's upper clothes. He then asked her to take off her Bermuda shorts and she did so. He then stripped himself and removed the Complainant's panties after which they had sex. Throughout the whole episode, the Complainant remained quiet. He did not ask her whether she wanted to have sex. He deduced from her compliant conduct when he asked her to go up the stairs and from her silence and lack of resistance that she was agreeable to the sexual encounter. He did not have to offer her any money or otherwise persuade her to agree. He was not really surprised by all this as he had gone "to the fullest" with some women on the first date.

55 On both occasions, the Complainant followed him when he asked her to. He did not pull her arms or otherwise coerce her to follow him. He could not have dared to do that as they were in open spaces and on a road. There was also a night market there and people knew him as he had been living in Toa Payoh for 30 years. Asked whether there was anybody around at that time, i.e. past 2 am, the Accused said a man rode by on a bicycle.

56 The Accused then elaborated on the events below the spiral staircase at Block 17A. When they arrived at that spot, they sat down on the floor and he smoked a cigarette. After that, he asked her to remove her clothes and she did so. He then took off his clothes and asked her to lie down and spread her legs apart. They then had sexual intercourse. There was no reaction from the Complainant. She did not try to push him away. He did not kiss her on the mouth because he had a cut on his upper lip.

57 He did not say much to her. He did ask her where she lived and she merely said "234". She either mumbled or did not respond to his queries about why she was not back home and whether she had any problem.

58 After they had sexual intercourse, they rested. He did not place her left hand to hold his penis. Instead, he placed her left hand on top of his stomach. He then fell asleep.

59 When he awoke, he tried to move her head towards his penis but she resisted. When he tried a second time, she resisted again. His penis touched her mouth for a few seconds, but she refused to open it. He

gave up after that. He did not force her head towards his penis and neither did he insert it into her mouth. He did not slap her face. He guessed that the Complainant did not like fellatio. She did not say anything when he tried asking her to perform fellatio but she did look rather angry.

60 Asked why he chose not to explain all this in his statements when invited by the Investigating Officer to do so, the Accused said he thought it would be better to give his statement to his lawyer.

61 In response to the Court's questions, the Accused said he thought of becoming friends with the Complainant but did not ask for her name nor introduce himself.

THE DECISION OF THE COURT

62 The Complainant was visibly slow mentally but could respond calmly and clearly to questions in Court. She spoke slowly but certainly not in a manner which suggested that she was concocting a story.

63 I found her account coherent and truthful even if her habit of travelling to town for meals and walking the many kilometres home would seem somewhat bizarre to a person of average intellect and means. However, the evidence showed clearly that she was, unfortunately, not a normal person.

64 Two seemingly unsatisfactory aspects of her testimony must be addressed – her affirmative response to the Accused's question whether he had beaten her up and her account to Dr Kenneth Edward Lee that there was anal sex. In her statements, she had made no mention of any beating. She explained that the slap during the second encounter with the Accused was a light one, interpreted by her to be a warning to her to keep quiet and that she did not think it was necessary to state it. I believed her. The slap was mentioned by her only because of a direct question by the Accused. She had not sought to exaggerate the force or the number of times. I did not think it affected her credibility in any way.

65 I presumed there was no anal penetration as no evidence was adduced from the Complainant about this. When she was seen by Dr Lee on 4 June 1999 at 9.10 am, she had no, or very little sleep after the eventful early hours of the morning. The doctor noted that "her history was vague" and that she was anxious, slightly distressed and appeared dazed. Bearing in mind all the above and the fact that she is of "the borderline range of intelligence", she could have easily made a mistake or miscommunicated to the doctor that there was anal penetration as well. No doubt there was a discrepancy but it did not materially affect her testimony when viewed in its totality.

66 Whether the Complainant's father or the Complainant had told the police that the first incident was at Block 190 (instead of Block 183) or whether the police officer at the NPP had made an error was irrelevant in the light of the Accused's admission that such an incident did take place and that the venue was at a staircase landing in Block 183. In any event, Block 190 did feature prominently as that was where the 7-Eleven shop was located.

67 The Complainant's father's evidence supported the Complainant's testimony that the sexual encounters were entirely against her will. She returned home looking pale, dishevelled and dirty. That certainly did not sound like someone who had had consensual sex, who would certainly have taken a few minutes to at least tidy up. Further, it would be very strange indeed for the Complainant to decide to take a taxi when she was so close to home after having walked all the way back from Orchard Road, and then from Block 183. Clearly she did not have the money for the fare. Why did the Accused, so concerned about whether she needed money but was too shy to ask, not give her even a couple of dollars after rummaging in her pockets?

68 On the other hand, the Accused's version of events over-stretched the bounds of credibility. It was unbelievable that a girl who was so shocked and afraid of someone coming up to her to strike a

conversation that she had to sidle towards a wall would go up to a staircase landing with the same stranger, allow him to grope about in her shorts pockets and to fondle her, remove her clothes when asked to and then "go the fullest" (to borrow the Accused's words). This was even more unbelievable when she was merely muttering unintelligibly or keeping silent most of the time. It was also incredible that the Accused's "introduction" of himself to a female stranger was to prove that he was a drug supervisee. The scenario fitted so much more logically with the Complainant's version.

69 After having such intimacy with the Complainant, it would be highly unusual for the Accused to walk away without even asking for her name or her contact number. Her evidence that she was told to go up to the highest floor and that she remained there for about 45 minutes coincided with the period that the Accused said he was drinking with his friend at the market.

70 The same comments applied to the second encounter.

71 It was true that everything happened in a densely populated housing estate and that help would probably have come if the Complainant had only screamed and tried to fight off the Accused. It was, however, the small hours of the morning. People were already in bed and not looking out their windows nor going about their daily activities. More importantly, the Accused, who appeared to me to be quite clever despite his lack of formal education, would have noticed, within a very short span of time, that the Complainant was a simpleton of sorts and could be easily bullied and cowed into submission. That was why he dared to accost and pull her by her arm even in an open space, to reach into her pockets to molest her in front of flats and to calmly finish his beer and cigarette before violating the most intimate part of the Complainant's body.

72 Why did she not seek help from the people in the flats at Block 183 after the first encounter? Why did she not take a taxi home like she did after the second encounter? These rhetorical questions were raised by the Accused in his closing submissions. The answer was, simply, the slow intellect of the Complainant. Quite obviously, she did not behave as average adults her age would do. After the second unfortunate encounter, surely even a dullard like her could sense the importance of getting home quickly and out of danger. Her initial reactions might not have been normal but I found them entirely understandable in the circumstances of her case.

73 What was most telling about the Accused's unbelievable testimony was the fact that he had chosen not to even whisper the defence of consent when invited to state his response to the Charges on 2 September 1999 and on 7 September 1999, although he maintained his innocence. Why would a man who had had consensual sex with a girl but who had been accused of rape and molest not want to disclose this complete defence to regain his freedom? The Accused could offer only the feeble reason that he preferred to say all this to his lawyer. I could see no logic at all in this. I therefore drew adverse inferences against his failure to state this defence in any of his statements.

74 On the totality of the evidence, I had no doubt whatsoever that the Complainant's version was the truth. The Prosecution had proved its case beyond reasonable doubt and I convicted the Accused on each of the seven Charges.

SENTENCE

75 The Accused was convicted under Section 380 Penal Code in 1978 and more recently, under Section 8(a) Misuse of Drugs Act for possession of drug in September 1997. He was sentenced to undergo reformatory training the first time and imprisonment of 18 months for the second conviction.

76 The Prosecution sought a deterrent sentence on the grounds that the Accused had taken advantage of a mentally slow victim, had committed repeated rape with threats and had subjected the victim to sexual

indignities and perversions, that the victim had been adversely affected in that she was no longer as cheerful as before and was now afraid to go out by herself. I was also told that there was a general upward trend in the number of rapes reported over the last four years. Various sentencing precedents were also cited for my guidance.

77 Before sentencing the Accused, I made the following remarks at the close of the trial:

"1 Clearly, the Accused has committed dastardly acts against an innocent girl whose fear and mental capabilities did not allow her to fight back or to scream for assistance. On that fateful morning, violating her body at the staircase landing was no satiation for him. He accosted the unfortunate victim a second time when she was making her way home after having suffered the indignity of being raped in the housing estate in which she lived. Obviously, he dared to do this as he had been emboldened by this seemingly simple prey who was visibly slow in intellect.

2 Predators like the present Accused who attack vulnerable females in this horrific manner must be locked up for a long, long time to keep our housing estates and our streets safe by day or by night.

3 The Accused is accordingly sentenced as follows:

1st Charge : 10 years imprisonment and 12 strokes of the cane.

2nd Charge : 10 years imprisonment and 12 strokes of the cane.

3rd Charge : 6 months imprisonment.

4th Charge : 6 months imprisonment.

5th Charge : 9 months imprisonment.

6th Charge : Minimum of 2 years imprisonment and 6 strokes of the cane.

7th Charge : 5 years imprisonment.

The imprisonment terms for the 1st, 2nd and 7th Charges are to run consecutively. The other imprisonment sentences will run concurrently with those three. The Accused is therefore sentenced to a total of 25 years imprisonment with effect from 1 September 1999 and to suffer the maximum number of strokes mandated by law, i.e. 24 strokes of the cane."

TAY YONG KWANG

JUDICIAL COMMISSIONER

SUPREME COURT

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