

Public Prosecutor v Solaiyan Arumugam
[2001] SGHC 82

Case Number : CC No 23 of 2001
Decision Date : 26 April 2001
Tribunal/Court : High Court
Coram : Choo Han Teck JC
Counsel Name(s) : David Chew and Glenn Seah [Attorney-General's Chambers] for prosecution; S S Dhillon and Lim Swee Tee [Dhillon Dendroff & Partners] for the first accused; Amolat Singh [Amolat & Partners] and Kertar Singh [Kertar & Co] for the second accused
Parties : —

JUDGMENT:

Grounds of Decision

1. The accused is a 26-year old Indian national who worked as a driver for a commercial company in Singapore. He has been here from 1995 or so. He was charged with the rape and molest of a 58-year old complainant. He was not represented by counsel at trial, having discharged the two counsel assigned to him by the Criminal Legal Aid Scheme. They had represented him up to the end of the Preliminary Inquiry. The evidence against him was mainly from the complainant herself. She works as a cleaner by day and from 7pm to about 9pm or 10pm she would help at her husbands food-stall. She usually uses a footpath alongside the Bendemeer Secondary School to get to and from her husbands food-stall at Whampoa. She lives with her husband and 30-year old son at St Georges Avenue. Her 28-year old married daughter lives elsewhere.

2. On 31 July 2000 the complainant left her husbands food-stall early to get some health products from a shop at Balestier Road. She left the shop near to closing time at 10pm. She alighted from the bus she was travelling in and walked across an overhead bridge coming down at the footpath that she uses to go home. The footpath was between the Bendemeer Secondary School and a row of trees and shrubs. These can be seen from the photographs of the scene tendered by the prosecution. She testified that she saw the accused at the overhead bridge on the (footpaths side) plucking leaves as she walked by. After she had passed him she was shortly attacked from behind. A man grabbed her round the neck and cupped his other hand over her mouth. She was dragged into the nearby bushes where he pulled her pants down and raped her. In the course of this attack he also pressed her breast. That was the subject of the second charge against the accused in this trial before me.

3. The complainant managed to say a few words in Malay to the assailant. She pleaded, "Tolong! Tolong!", but the attacker just said "Buka" and "Diam". After the rape he said to her, "Shiok, Shiok" and then "Aunty, sorry", and helped her find her shoes. After that he calmly walked off along the footpath in a slow and deliberate manner. The complainant said that because of that and the light from the lamp-posts along the footpath she could see his face clearly although it was a side profile. She was certain that she could see his eyes, nose and face. She described him as fairly dark-skinned with no beard or moustache; and that he was wearing a dark pair of pants and dark shirt.

4. The complainant then went home but was afraid to tell anyone what had happened. However, at midnight she telephoned her daughter and told her that she had lost her pager. The manner and cryptic nature of the call aroused her daughters suspicion and after further enquiry, she told her daughter that she had been molested. The daughter was subsequently told the full story and it was she who made the police report which resulted in the police rape investigation squad going by the complainants home to begin their investigation. The complainant had in the meantime, soaked all the clothing she had worn on the evening of 31 July 2000. Consequently, Mdm Renuka Somarajah from the Department of Scientific Services reported that she was unable to lift any trace of semen or blood from them. She testified that it is possible that soaking the clothing in water may remove any trace of those matter.

5. On 16 November 2000 she attended an identification parade held by the police. There were nine Indians in the line up. She

identified the accused as the person who assaulted and raped her on 31 July 2000. The accused challenged this evidence as vigorously as he challenged her testimony that she saw his face after the rape. He stated that at the time of the identification parade he was sporting a beard and moustache just as he has at the trial. Therefore, he questioned the complainant's testimony that her assailant was clean-shaven on the night of the attack. The complainant said that the beard and moustache could have been worn after the incident; but she was steadfast in her identification of the accused. From my own observation of the accused at trial I am of the view that the beard and moustache of the accused were very thin and hardly concealed his face.

6. I called upon the defence and the accused elected to testify. He had no other witness other than himself. His testimony was very short and consisted of a denial that he was at the scene of the crime. He offered no evidence as to where he was at the material time. The prosecutor applied to introduce the cautioned statement of the accused to impeach his testimony. The statement was recorded on 8 December 2000. The accused challenged the use of the statement and an inquiry was therefore commenced to ascertain the voluntariness of that statement. It appears that more than one statement had been recorded from the accused although the prosecution sought to introduce only the cautioned statement in respect of the second charge. The accused was clearly confused in respect of the circumstances of the recording of his statements. Some of his assertions appear to be out of place. When the CID's Tamil interpreter, Miss Jeyaletchumi gave evidence, even she appeared to me to be unsure as to which interviews some of the statements referred to by the accused were made. In such a case, I think that the prosecution was at least bound to set out the evidence clearly as to how many statements were recorded and the dates when those statements were taken. If there were some threat, inducement or promise which might have occurred in a previous statement recorded shortly before the one in question, the accused might be entitled to the benefit of doubt. Furthermore, it appears that the recording officer had enlisted the assistance of a man called Devarrajan, known as "Roy" to the accused to speak to the accused in the presence of the recording officer. It is not entirely clear what role this man, who is not a member of the CID, was supposed to play and what exactly it was that he said. It was not disputed by the prosecution that Roy was present in one if not more of the sessions when a statement was about to be recorded from the accused. The accused alleged that Roy gave various advice and made some representations to him concerning the matters in this trial as well as other matters. Although Roy was clearly not a person in authority, his presence and nebulous function must be clearly explained, and they were not explained to my satisfaction. Consequently, I am not satisfied that the cautioned statement was made voluntarily by the accused and ruled it inadmissible.

7. There was really only one issue at the trial, namely, whether there could reasonably be a mistake on the part of the complainant in the identification of the accused as the man who attacked her. The complainant identified the accused from a parade of nine men about three and a half months after the event, but was able to pick him out. She appeared to me to have no difficulty in identifying him then or in court. Her testimony was lucid and sure. There is no rule that an accused cannot be convicted on the uncorroborated testimony of a single witness. It is only incumbent upon the court to satisfy itself that the evidence of this solitary eye witness sufficiently identifies the accused, and that nothing in his testimony or other extraneous evidence indicates that there may be a reasonable doubt as to the accuracy of the identification. In this case, I am satisfied with the evidence of the complainant. The accused was unable to raise any reasonable doubt in my mind as to the case of the prosecution.

8. Accordingly, I found the accused guilty as charged and convicted him on both charges. In sentencing him, I had taken into account the fact that the offence of molest was committed in the course of the rape. In the circumstances, I am of the view that the sentence of imprisonment in respect of the second charge should be served concurrently with that of the first. The accused was sentenced to 10 years imprisonment and 12 strokes of the cane in respect of the first charge and two years imprisonment and two strokes of the cane in respect of the third charge.

Judicial Commissioner

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