

Public Prosecutor v S
[2003] SGHC 70

Case Number : CC 10/2003
Decision Date : 31 March 2003
Tribunal/Court : High Court
Coram : Woo Bih Li J
Counsel Name(s) : Benjamin Yim (Attorney-General's Chambers) for the prosecution; Accused in person
Parties : Public Prosecutor — S

Criminal Procedure and Sentencing – Sentencing – Sexual abuse of siblings by young offender – Factors to be taken into account when determining sentence.

Background

1 The accused is S, male, 15 years of age. He faced seven charges in relation to three victims. All of the victims were his younger siblings whom I shall refer to as A, B and C respectively. All the offences were alleged to be committed at the accused's residence.

2 The prosecution proceeded with the third to seventh charges.

3 The third charge was presented under s 377 of the Penal Code i.e for having carnal intercourse against the order of nature with A, a female, then 13 years old, when he inserted his penis into her anus sometime in mid June 2002.

4 The fourth charge was presented under the limb of s 376(2) of the Penal Code regarding rape by having sexual intercourse with a woman under 14 years of age without her consent. This involved A, then 12 years old. The offence was committed in 2001.

5 The fifth charge was also presented under the same limb of s 376(2) of the Penal code as the fourth charge. The offence was committed in December 2001 against B, a female, then 11 years old.

6 The sixth charge was presented under s 377 of the Penal Code i.e for having carnal intercourse against the order of nature with B, then 11 years old, when he inserted his penis into her anus. The offence was committed at the end of December 2001.

7 The seventh charge was presented under s 354 of the Penal Code i.e for using criminal force on C, male, then 11 years old, intending to outrage his modesty, when the accused repeatedly rubbed his erect penis between the rear of the thighs of C. The offence was committed on 31 July 2002.

8 The offences came to light in the following manner:

(a) two or three days before A lodged a police report on 1 August 2002, she had confided in her classmates that the accused had molested her. As she narrated the incidents of molest, her classmates told her that she had been raped and advised her to inform her parents and teachers. She was reluctant to do so as the accused had threatened to beat her if she told anyone what he had done.

(b) On 31 July 2002, A was at home with the accused and B and C. Their parents had gone out leaving the accused in charge of the home and his siblings.

(c) While A was in the living room, she heard the voice of C (one of the male siblings) coming from the accused's bedroom. She opened the door and saw the accused lying on top of C. The accused and C were naked. A immediately closed the door as she was afraid that the accused might see and beat her.

(d) A pondered over what her classmates had said and finally decided to report to the police what the accused had been doing.

(e) On 1 August 2002, A lodged a police report that the accused had raped and molested her at home since she was in primary three. She also reported that the last occasion of sexual abuse was on 30 July 2002.

9 The accused pleaded guilty to each of these five charges and was convicted accordingly. He agreed to the remaining two charges i.e the first and second charges being taken into consideration for the purpose of sentencing. The first and second charges were presented under the same limb of s 376(2) of the Penal Code as the fourth charge. The victim was A who was under 14 years of age when the respective offences were committed on or about 30 July 2002 (first charge) and on or about 24 July 2002 (second charge).

10 The accused expressed regret for his actions. He said he knew that, as a brother, he should have taken good care of his siblings and while he was remanded at a boys' home, he had learned a lot. He was advised to change by the staff there and he asked for a second chance to continue his studies and have a bright future. He asked to be sent to a home instead of prison.

11 Mr Benjamin Yim for the prosecution said that the prosecution had decided to have this case tried in the High Court and not the Juvenile Court because of the circumstances of the case.

My Decision

12 Although the accused was a juvenile as defined under the Children and Young Persons Act (Cap 38), the nature and the circumstances surrounding the commission of the offences were serious.

13 According to the Statement of Facts, which the accused accepted, the accused had been entrusted by his parents to look after his siblings as he was the eldest child. He would often beat them with belts and a broomstick. When he sexually abused the three victims, he would threaten to beat them with a belt or a broomstick and on occasions, he would carry out his threat. I need refer only to two occasions of sexual abuse by the accused.

14 On one occasion in 2001, the accused had pulled A into his bedroom and raped her despite her protests. On another occasion in mid-June 2002, the accused had inserted his penis into A's anus. Although A was in pain and cried out to the accused to stop, he told her to hold on tight to a pillow.

15 The Statement of Facts and the charges showed the accused to be a deviant who used force or the threat of force to abuse his siblings sexually in various ways. This was not a case where he had acted on impulse on one occasion only. In the circumstances, I was of the view that this was not an appropriate case for the accused to be sent to a home only, and that he should be sent to prison.

16 On the term of imprisonment, the Court of Appeal has said in *Chia Kim Heng Frederick v Public Prosecutor* [1992] 1 SLR 361 that the starting point for a charge of rape under s 376(1) of the Penal Code is ten years' imprisonment for a contested case. A court should then consider any mitigating factors of which a plea of guilty is one and which would merit a reduction of one-quarter to one-third

of the sentence. Other factors such as the victim's youth, the accused's position of responsibility and trust towards the victim, and perversions or gross indignities forced upon the victim would justify a longer sentence.

17 However, I noted that a charge under s 376(2) of the Penal Code was more serious. Section 376(2) prescribed a minimum imprisonment of not less than eight years and not more than 20 years with caning of not less than 12 strokes. Under s 376(1), there is no minimum term of imprisonment while the maximum term is 20 years. Furthermore, under s 376(1), an accused is only liable to a fine or caning i.e caning is not mandatory although that is usually part of the sentence meted out.

18 As for an offence under s 377 of the Penal Code, the Court of Appeal in *Lim Hock Hin Kelvin v Public Prosecutor* [1998] 1 SLR 801 upheld consecutive sentences of ten years each for four charges under s 377 involving anal intercourse. However that was a worse case than the case before me in that the accused there was a paedophile, there were five victims and the accused had had previous convictions for similar offences.

19 In *Adam bin Darsin v Public Prosecutor* [2001] 2 SLR 413, the Court of Appeal said that anal intercourse was a more serious offence than fellatio. Where the fellatio was an act performed on the victim, an appropriate sentence would be in the region of five years, subject to any mitigating or aggravating circumstances. In the case before me, the charges under s 377 involved acts of anal intercourse as in the case of *Lim Hock Hin Kelvin*.

20 As for an offence under s 354 of the Penal Code, Chief Justice Yong Pung How had said in *Ng Chiew Kiat v Public Prosecutor* [2000] 1 SLR 383 that nine months' imprisonment and caning is warranted for acts of molest involving intrusion of the victim's private parts. However, this was not restricted to cases where there was an intrusion of the victim's private parts. In *Toh Kok How v Public Prosecutor* [1995] 1 SLR 735, the accused was sentenced also to nine months' imprisonment and three strokes of the cane for using his knuckles to press onto the right breast of the victim. On the other hand, Yong CJ also said in *Ng Chiew Kiat* that there were offences under s 354 which were relatively minor for which a fine would suffice. Ultimately, the appropriate sentence would depend on the nature of the act of molest as well as the circumstances surrounding the commission of the offence.

21 In the case before me, the accused committed the offence under s 354 by pushing his penis between the thighs of C, a male sibling, until the accused ejaculated.

22 I took into account the fact that the accused was in a position of responsibility and trust vis-à-vis the victims but he was not their parent and he was of a young age. I also took into account the fact that he had sexually abused not one but three of his siblings in various ways on various occasions over a number of years.

23 In the circumstances, I sentenced the accused as follows:

- (a) On the third charge under s 377 of the Penal Code, seven years' imprisonment
- (b) On the fourth charge under s 376(2) of the Penal Code, ten years' imprisonment and 12 strokes of the cane
- (c) On the fifth charge under s 376(2) of the Penal Code, ten years' imprisonment and 12 strokes of the cane

(d) On the sixth charge under s 377 of the Penal Code, seven years' imprisonment

(e) On the seventh charge under s 354 of the Penal code, eight months' imprisonment and three strokes of the cane.

24 The sentences of imprisonment for the fourth and fifth charges were to run consecutively from the date of arrest i.e 2 August 2002. The other sentences were to run concurrently with the consecutive sentences. The aggregate term of imprisonment was 20 years. The number of strokes of the cane was limited to ten strokes in view of s 230 of the Criminal Procedure Code. The caning was to be done with a light rattan as provided under s 229(4) of the Criminal Procedure Code.

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