Public Prosecutor v Abdul Aziz s/o Hameed Sultan @ Nur Mohammad Hafeez [2004] SGHC 13

Case Number : CC 2/2004

Decision Date : 28 January 2004

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Benjamin Yim and Derek Kang (Deputy Public Prosecutor) for prosecution; David Rasif (David Rasif and Partners) for accused

Parties : Public Prosecutor — Abdul Aziz s/o Hameed Sultan @ Nur Mohammad Hafeez

Criminal Law – Offences – Unnatural offences – s 377 Penal Code (Cap 224).

Criminal Procedure and Sentencing – Sentencing – Victim of low intelligence – Whether there were any other special aggravating factors.

Criminal Procedure and Sentencing – Sentencing – Offence of sodomy – Negligible penetration and superficial tears at the anal verge – Whether this amounted to a mitigating factor.

28 January 2004

Choo Han Teck J:

1 The accused is a 30-year-old driver with a logistics company. He was charged for committing four sexual offences. He pleaded guilty to the first and fourth charges. The second charge was withdrawn by the Prosecution, and the accused agreed to have the third charge taken into account for the purposes of sentencing.

2 The first charge was for sodomy on an 18-year-old youth on 7 April 2003 at 9.00am in the flat where the accused was staying. The fourth charge was for making the same youth perform fellatio on the accused on the same occasion that the first offence was committed.

3 The facts were straightforward. The youth was having breakfast in a coffee shop about 9.00am on 7 April 2003. The accused was at the same coffee shop and he beckoned the youth to his table. The youth went over and the accused offered him a job. He offered to pay the youth $23 for washing the aquariums in his flat. The youth agreed and immediately followed the accused to the flat. There the accused stripped himself and told the youth to do the same or he would be assaulted. The youth complied. Thereafter, the accused committed the offences against the youth. In terms of sequence, the offence of fellatio was committed first followed by the offence of sodomy. After the acts were done, the youth washed himself in the bathroom and left. He immediately lodged a police report against the accused.

4 The accused had a long record of traffic offences but no antecedent relevant to the present offences. In mitigation, Mr David Rasif pointed out that the two offences were committed on the same occasion, and secondly, in respect of the sodomy charge, the medical reports indicate that there was but the barest penetration, perhaps sufficient only to constitute the offence. It does appear to me that the medical reports indicated that there were no disturbance to the anal canal and the two superficial tears were in the "anal verge".

5 I accept that s 377 of the Penal Code (Cap 224, 1985 Rev Ed) encompasses a wide range of culpability. It also distinguishes vastly different conduct as falling within its ambit, and I accept that sodomy marks the high end of the range. But within this aspect of the offences under s 377, there is

a range of culpability. We do not merely distinguish between the culpability of fellatio and sodomy but also between the degrees of culpability under each of them. In my view, there were no special aggravating factors apart from the fact that the youth was of low intelligence. Almost every offence will have some degree of reprehensive behaviour on the part of the accused. Hence, there must be some significant features to treat the case as having aggravating factors. On the other hand, the negligible penetration must be a mitigating factor. But for the two superficial tears at the anal verge, the act might have only been an attempt to sodomise.

6 On the above facts, and taking the broad view as to the totality of punishment, I imposed a sentence of six years' imprisonment for the first charge and nine months' imprisonment for the fourth charge, to be served concurrently with the imprisonment under the first charge.

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