

Public Prosecutor v Abdul Hamed bin Yahya
[2000] SGHC 193

Case Number : CC 60/2000
Decision Date : 22 September 2000
Tribunal/Court : High Court
Coram : Tay Yong Kwang JC
Counsel Name(s) : David Khoo (Attorney-General's Chambers) for the prosecution; Yahya Syed and Asiah Zam Zam (John Tay Syed & Partners) (briefed) for the accused
Parties : Public Prosecutor — Abdul Hamed bin Yahya

JUDGMENT:

Grounds of Decision

THE CHARGES

1 The Accused is now 38 years old. He pleaded guilty to two Charges under Section 354 of the Penal Code involving outrage of modesty committed against his niece in September 1997 and November 1999 when she was then 10 and 12 years old respectively. His niece (hereinafter referred to as "the victim") is an orphan living with her sisters in their grandmother's flat. The Accused also pleaded guilty to three Charges under Section 377 of the Penal Code for having carnal intercourse against the order of nature with the victim by causing her to perform fellatio on him in November 1997, December 1997 and October 1999.

2 In addition, the Accused admitted 21 other Charges of outrage of modesty under Section 354 of the Penal Code committed against the victim between May 1997 and October 1999. These 21 Section 354 of the Penal Code Charges alleged that the Accused caressed the victim's body, fondled her nipples and rubbed his erect penis against her vagina.

3 The first Section 354 of the Penal Code Charge to which he pleaded guilty alleged kissing of the mouth, sucking of the nipples and rubbing his erect penis against her vagina. The second alleged that he caressed her body, fondled her nipples and kissed her mouth.

4 The Statement of Facts added a prelude to the first outrage of modesty Charge which took place in the Accused's brother-in-law's flat which was the one next to the victim's grandmother's. The Accused first kissed the victim's face and mouth and then put some facial cream on her hand and taught her to masturbate him. When he ejaculated, she was shocked and ran into the toilet. The Accused then called her to the bedroom again and asked her to lie down on the floor. After that, he pushed up her t-shirt and sucked her nipples. He also kissed her mouth and inserted his tongue therein. He then removed her pants and panties and told her to spread her legs. He next went on top of her and rubbed his penis against her vagina until he ejaculated onto a piece of tissue. They then washed themselves and went next door to the victim's grandmother's flat.

5 The second outrage of modesty Charge to which the Accused pleaded guilty was the last in the series of offences committed against the victim. That took place at the Accused's home on 6 November 1999. The victim had gone there with some relatives. The Accused and his wife were home. At first, everyone in the flat was doing karaoke singing in the living room. The Accused then went to one of the bedrooms to rest. When the victim entered that bedroom to get a compact disc, he asked her to lock the door but she merely closed it. He asked her to sit on the bed and, after pushing her gently to lie down, proceeded to fondle and suck her nipples and to kiss her. He then placed her body on top of his with her back towards him. Before anything else happened, the Accused's wife entered the bedroom whereupon the Accused released the victim and both of them jumped off the bed. A heated argument between the Accused and his wife ensued while the victim ran out of the bedroom in tears. She was subsequently brought home.

6 On 13 November 1999, the victim's step-sister brought her to Tanglin Police Division Headquarters to lodge a report that the victim had been raped by the Accused. Subsequent investigations revealed that she was not raped but that the offences in

question had been committed against her.

7 In respect of the three Section 377 of the Penal Code Charges, the victim was asked each time to lick the Accused's penis until it became erect and then to suck it. He would then withdraw his penis and ejaculate onto a piece of tissue.

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THE PROSECUTION'S SUBMISSIONS ON SENTENCE

8 The Prosecution noted that Section 377 of the Penal Code provides for imprisonment for life or for up to 10 years with a discretionary fine and that Section 354 of the Penal Code provides for imprisonment of up to two years or a fine or caning or any two of such punishments. Citing *Chia Kim Heng Frederick v PP* [1992] 1 SLR 361, the Prosecution submitted that the Court should take into account the victim's young age, the Accused's position of responsibility and trust vis--vis the victim and any perversions or gross indignities forced on the victim. Although that case involved the offence of rape, the Prosecution argued that those factors in sentencing were equally apposite here as the present offences were also sexual in nature.

9 Stressing that the victim was only 10 years when the first abuse took place and the fact that she is an orphan depending heavily on her extended family for care and emotional support, the Prosecution pressed for a deterrent sentence to be imposed on the Accused. In addition, the Prosecution pointed out that the Accused had told the police that he would often tell the victim that he would buy her sweets and other things if she allowed him to touch her. He had also shown her obscene video tapes of people engaging in sexual intercourse on three occasions when he molested her. It was also emphasized that the offences were a series committed over some two years.

10 Relying on *Wong Kai Chuen Philip v PP* [1991] 1 MLJ 321, the Prosecution submitted that the Accused's plea of guilt should not be the dominant consideration in deciding the appropriate sentence here because he was practically caught red-handed by his wife, had confessed at a "family meeting" that he had "disturbed" the victim and had admitted the offences to the police. He was therefore pleading guilty when he had "no means of escape" (words borrowed from the case cited).

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THE MITIGATION PLEA

11 Defence Counsel informed me that the Accused was working as a postman for 20 years. He was also a first offender. He is married with two young children. His wife is a full-time homemaker.

12 The victim was said to be very fond of and very attached to the Accused.

13 After the confrontation in the Accused's flat on 6 November 1999, the Accused's wife informed her mother (the victim's grandmother) who questioned the victim and disciplined her by beating her. That angered the victim's elder step-sister who decided to lodge a police report after discussing the matter with other family members.

14 The Accused was remorseful and had admitted everything to the police. He had not used force or threats against the victim at any time. He was exempted from performing reserve service after his full-time national service on medical grounds. Defence Counsel also urged me to backdate the imprisonment sentence to the date of his arrest on 3 May 2000. While not implying that the victim had consented to the acts, Defence Counsel submitted that if the Accused had thought about the matter, he would have obtained her consent as she was already 12 years old in 1999.

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THE DECISION OF THE COURT

15 This is another sad and sordid case of an erstwhile innocent young girl sexually abused by an adult relative. The victim was only 10 years old when the first of the series of offences took place. She is now 13 years old and has just begun secondary education.

16 The Accused, now 38 years old, instead of displaying avuncular love, chose to bury the sweet innocence of his young niece in an avalanche of lust. The series of sexual assaults stretched over a period of more than two years. An uncle should be buying games and toys for his growing niece, not treating her as fair game and playing with her as if she were his toy.

17 Children of such tender age and in such an emotionally dependent situation as the present must be protected against adult predators who entice them with gifts or attempt in any way to deprive their young minds of innocence and to deprave their young bodies.

18 Sexual offences committed by relatives cause waves of emotional distress and recrimination long after the events because the offender and the offender's family are likely to come into contact with the victim and her family again. Relationships among family members can become extremely strained if not altogether destroyed. It is therefore appropriate that accused persons in such situations should be kept out of society for a sufficiently long period of time in order to assuage the hurt and to allow the painful memories to fade away.

19 The Accused has no previous conviction but that fact must be viewed in the context that his offences were not uncovered for more than two years. That again underlines the insidiousness of offences committed by adult relatives – they have every reason to be near their vulnerable victims who may feel great discomfort in making any complaints against their uncle. The Accused has however admitted his offences, first, in front of his relatives, and later, when questioned by the police. He has also pleaded guilty and admitted all the offences, obviating the need for his niece to come to Court to face him and to recount all the embarrassing and hurtful events of the past few years. For this, appropriate credit will be given in the sentences.

20 Mr Abdul Hamed Bin Yahya, I now pronounce the sentences of this Court on you. For the 1st and 23rd Charges under Section 354 of the Penal Code – I sentence you to one year imprisonment and eight strokes of the cane per Charge. For the 24th, 25th and 26th Charges concerning Section 377 of the Penal Code – I sentence you to seven years imprisonment per Charge. The imprisonment terms for the 1st, 24th and 25th Charges will run consecutively while the rest will run concurrently with the other sentences, making a total of 15 years imprisonment and 16 strokes of the cane. The imprisonment terms are backdated to commence on 3 May 2000.

Tay Yong Kwang

Judicial Commissioner

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