Public Prosecutor v Peh Thian Hui and Another
[2002] SGHC 112

Case Number : CC 29/2002

Decision Date : 24 May 2002

Tribunal/Court : High Court

Coram : Tay Yong Kwang JC

Counsel Name(s) : Ravneet Kaur and Francis Ng (Attorney General's Chambers) for the public prosecutor; Kertar Singh (briefed) (Kertar & Co) for the first accused; Peter Yap (briefed) (Chor Pee & Partners) for the second accused

Parties : Public Prosecutor — Peh Thian Hui; Anor

Criminal Procedure and Sentencing – Sentencing – Rape – Aggravated rape – First accused raping and molesting nine-year old daughter of second accused – Second accused aware of and consenting to such acts – Second accused aiding and participating in some of the acts – Mitigating factors – Serious aggravating factors – Need for stiff deterrent sentences – s 30(2)(a) Films Act (Cap 107, 1998 Ed) – ss 109, 352, 354, 376(1), 376(2) & 377 Penal Code (Cap 224)

Judgment

GROUNDS OF DECISION

1. Peh Thian Hui, 48 years old, was the boyfriend of LMH, 35 years of age. They had a sexual relationship from 1991. Peh is married and has three children. LMH is married but has filed for divorce. She also has three children – two boys and a girl. The youngest child, the girl, is the victim in this very deplorably depressing case. She is LMH's biological daughter and is now 15.

THE CHARGES

2. Peh has pleaded guilty to five charges of aggravated rape against the victim under section 376 (2) Penal Code ("PC") in that he had sexual intercourse with her when she was under 14 years of age without her consent. These five charges involve rape of the victim when she was 9, 10, 11 and 13 years of age.

3. He has also pleaded guilty to one charge of using criminal force on the victim under section 352 PC, two charges of outrage of modesty under section 354 PC, one charge of abetment of outrage of modesty under section 354 read with section 109 PC and one charge of voluntarily having had carnal intercourse against the order of nature (fellatio) under section 377 PC.

4. Having pleaded guilty to the said 10 charges, he has admitted and consented to have the following charges taken into consideration for the purpose of sentence :

Two charges of rape under section 376 (1) PC ;

47 charges of aggravated rape under section 376 (2) PC ;

One charge of molest under section 354 PC ;

One charge of abetment of molest under section 354 read with section 109 PC ;

One charge of voluntarily having had carnal intercourse against the order of nature (fellatio) under section 377 PC.

5. LMH has pleaded guilty to a total of seven charges – five of which were for abetting Peh by intentionally aiding him in committing the aggravated rapes on her daughter, offences punishable by virtue of section 109 read with section 376 (2) Penal Code, one charge of outrage of modesty of her daughter under section 354 PC and one charge of possession of 22 obscene films under section 30 (2) (a) Films Act.

6. Section 376 (2) PC provides that whoever commits rape by having sexual intercourse with a woman under 14 years of age without her consent shall be punished with imprisonment for a term of not less than eight years and not more than 20 years and shall also be punished with caning with not less than 12 strokes. Section 109 PC provides that where no express provision is made by the Code for the punishment of abetment of an offence, the punishment shall be the same as that provided for the offence.

7. Section 352 PC provides for imprisonment of up to three months or a fine of up to $500 or both. Section 354 PC provides for a maximum of two years imprisonment or fine or caning or any two of such punishments. Section 377 PC allows the Court to impose imprisonment for life or for up to 10 years and a fine. Section 30 (2)(a) Films Act provides for a fine of $1,000 for each film (subject to a maximum of $40,000) or imprisonment of up to 12 months or both.

THE STATEMENT OF FACTS

8. Peh got to know LMH in 1988 through LMH's husband. Peh and LMH's husband were childhood friends. Peh was then a housing agent. He asked LMH to join him in that line of work. As a result, they operated their business from the flat with LMH's bedroom functioning as the office. Peh spent many working hours in the flat and sometimes worked late and slept there for the night.

9. In 1990, LMH's husband began to stay away from the flat and would return only during the weekends and the public holidays. LMH then developed a sexual relationship with Peh. He would visit the flat regularly except for the weekends and the public holidays. He also bought household appliances for LMH and supported her and her children.

10. The sexual abuse of the victim started in 1996. Sometime in September that year, Peh told LMH he wanted to touch her daughter's groin. LMH, who was deeply in love with Peh and did not want to lose him, agreed to let him do so. When the victim, then 9, returned home after school and had taken her shower and her lunch, LMH called her into the bedroom. LMH then left the bedroom, shutting the door and leaving the victim alone with Peh. Peh removed the victim's shorts, asked her to lie down on the bed, spread her legs and began to lick her private parts. He then inserted a finger into her vagina. After some time, he put her shorts back on and allowed her to leave the bedroom. This forms the subject of one of the section 354 PC charges.

11. Shortly after that first incident, Peh told LMH he wished to have sexual intercourse with the victim. Again, LMH agreed as she was afraid he would leave her otherwise. One afternoon, after school, LMH called her daughter into the bedroom and ordered her to submit to Peh. The victim, who was unwilling to do so, was scolded by her mother with vulgarities in Hokkien. She gave in eventually to her mother's demand. LMH then left her alone in the bedroom with Peh with the door closed.

12. Peh removed the victim's shorts and stripped himself. He then inserted his fingers into her vagina and moved them in and out. He then raped her for about 45 minutes. After that, the victim, who had felt the pain of penetration, rushed to the toilet to wash herself. She was only nine years old then.

13. All this while, LMH remained outside the bedroom knowing that her young daughter was being deflowered.

14. That incident was the beginning of many more regular rapes of the victim by Peh with essentially the same scene being re-enacted – the reluctant victim being ordered into the bedroom by her mother to submit herself to the sexual desires of Peh, being scolded into submission by her and being ravished by Peh in her own home with her mother remaining outside the bedroom, knowing what was going on inside. Peh would withdraw his penis and ejaculate outside the victim's body.

15. On 31 December 1999, Peh stayed for the night in LMH's flat. At sometime past 11 pm, he was raping the victim as usual in the bedroom while watching the programme "Countdown 2000" on television. He had a condom on this time. When it approached midnight, he stopped his thrusting movements but remained inside the victim. When the host of the programme began the countdown to the new year, he resumed his thrusting actions, counting along with the host and telling the victim he wanted to have sex with her on the first day of the year 2000. He finally came to a climax and ejaculated into the condom. As usual, LMH stayed outside the bedroom, well aware of the rape of her daughter inside.

16. The rapes were not confined to the flat. In 2000, Peh drove LMH and the victim, then 13, in his van to Pasir Ris Park. After the van was parked, LMH opened the door leading to the rear cabin and ordered her daughter to go inside and submit herself to Peh. After her daughter reluctantly entered the rear cabin to be raped yet again by Peh, LMH closed the door until it was almost completely shut and stood outside the van as a lookout.

17. The other section 354 PC charge states that in 1999, Peh inserted a vibrator into the victim's vagina and then switched it on while it was inside her. He removed it subsequently and replaced it with his penis.

18. Sometime in 2000, Peh also ordered the victim to perform fellatio on him. After she had done so reluctantly for a few minutes, he proceeded to have sexual intercourse with her. This is the subject of the section 377 PC charge.

19. The abetment of outrage of the victim's modesty occurred in the following manner. Sometime in 1998, when the victim was only 12 and Peh was having sex with her in the same circumstances as before, her mother entered the bedroom. Peh then told LMH to remove her clothes and join them on the bed. He proceeded to have sexual intercourse with LMH and asked the victim to watch. The victim turned away. After a while, Peh withdrew his penis and asked LMH to screen an obscene film on the television set in the bedroom. When the film was on, Peh proceeded to have sexual intercourse with the victim again, with her mother lying next to them. He then pulled LMH's left hand towards the victim's private parts and told her to touch the victim there. LMH moved her hand away but Peh pulled it back. She then complied and touched the victim's and Peh's private parts while Peh continued with the rape of the victim who did not consent to being touched so intimately by LMH.

20. Sometime between 1999 and 2000, Peh was again having sex with LMH and her daughter together. He ordered the victim to lick her mother's private parts. She did so reluctantly for about five minutes. This is the subject of the section 352 PC charge.

21. In November 2000, the victim got to know A and his girlfriend, B when LMH brought her to their shop to purchase a personal computer.

22. The sexual abuse of the victim by Peh aided by LMH continued through the years until

December 2000.

23. In March 2001, LMH told Peh to stop visiting the flat as her husband had returned. However, they continued in their relationship and stopped seeing each other only after September 2001 when LMH decided to petition for divorce. They maintained contact by telephone.

24. In October 2001, the victim learnt that LMH had petitioned for divorce from her husband and was seeking custody of all three children. She refused to go with her mother. She then related the sexual abuse she had suffered to A who advised her to make a police report. The victim was concerned about the repercussions on her mother should she do so. On 5 November 2001, A brought the victim to a police station where she lodged a report against Peh, accusing him of rape. She was examined medically and found to have a sexually transmitted infection.

ANTECEDENTS

25. Both accused persons have no criminal record.

PROSECUTION'S SUBMISSIONS ON SENTENCE

26. The Prosecution submits that deterrent sentences should be imposed on both accused persons and that LMH should be punished as severely as Peh by virtue of her position as the natural mother of the victim and the role she played in the offences. The age of the victim when she was first raped, the number of occasions of rape and the indignities suffered by the victim in being forced to engage in a mnage trois with her mother are aggravating factors which the Prosecution says should be borne in mind.

27. The Prosecution cites for my guidance the cases of Chia Kim Heng Frederick v PP [1992] 1 SLR 361, PP v Radhakrishna Gnanasegaran [CC 14 of 1999 – unreported] and PP v Yap Koon Mong [1999] 4 SLR 257 where the rape charges are concerned.

PEH'S MITIGATION PLEA

28. Peh's counsel urges me to take into consideration the facts that the Peh is a first offender and is remorseful and contrite, as shown by the fact that he indicated he wished to plead guilty even before the preliminary inquiry was held. A psychiatric report has also been tendered to show that Peh has been deeply affected by his childhood sexual experience when, as a boy of eight to 10 years of age, he was straddled by a slightly older girl and instructed to perform cunnilingus on her while she performed fellatio on him. It appears that the sight of her hairless pubic area never left his mind leading to his fixation with young girls with no pubic hair. It is also submitted that there is no possibility of such an offence recurring because the circumstances were most peculiar to the relationship between Peh and LMH.

LMH'S MITIGATION PLEA

29. LMH's counsel has also tendered a psychiatric report stating her very tragic life. Her counsel submits that "As an infant she was unwanted, in childhood and teenage she was abused, in marriage she was unloved and when she thought she found love, she was exploited." LMH also has a clean record and has shown her contrition by pleading guilty. She was molested on three occasions when she was between eight and 11 years old. She is a weak-willed woman and deeply regrets having failed her daughter. The pain she suffers is no less than that experienced by her daughter.

THE DECISION OF THE COURT

30. I find it almost abominable to refer to LMH as the victim's mother because the facts show that she is the very antithesis of a mother. One cannot help feeling an overpowering sense of sadness over the fate of so young and hapless a girl like the victim here. Surely our hearts spring out to her for the long years of appalling abuse that she had to endure in silent bewilderment.

31. The rape of the child occurred with revolting regularity in the very sanctuary called home, sanctioned by the very person whose maternal instincts should be to protect the victim. The abuse started when the victim had not even seen puberty yet. It lasted more than four years. It is an incomprehensible atrocity that a mother would order her little nine year old girl to submit to her then 42 year old lover in this sordid fashion, all in the name of her love for the abuser. It debases all notions of motherhood when a mother watches and participates in the rape of her young daughter by her lover. She was not merely standing by and making music while the city burns – she fed the flames. It seems to me that any word remotely related to maternal love would be a misnomer if used to describe such a mother.

32. Peh Thian Hui was no simple-minded debutant when he began to direct his dark desires towards the defenceless nine year old. A one-off crime of passion this case was not. The rapes once begun became a deadening routine. He even enlisted the assistance of his lover to rape her child. If indeed he is so obsessed with "the appearance of a pre-pubertal female genitalia", then surely the submission that he will not commit such offences again carries little persuasive weight. Peh's perversion must never be allowed to touch and affect another young girl's life. He must be kept out of society and out of the life and the sight of the victim for a very substantial period of time.

33. While we sympathize with those who may have had a difficult childhood for one reason or the other, we should not be too ready to lay the indefensible ills of the present on the exhumed experiences of the past, not while their minds are still rational at any rate.

34. We hope that today marks the turning point in the life of the victim and that the fortitude and strength that she has demonstrated will soon help dispel the darkness of the past and light up a new hope for her.

35. The sentences I now impose are as follows :

Peh Thian Hui

For each of the five charges under section 376 (2) PC – 12 years imprisonment and 15 strokes of the cane.

For the charge under section 377 PC – five years imprisonment.

For each of the five charges under section 354 PC – one year imprisonment and six strokes of the cane.

For the charge under section 354 read with section 109 PC – six months imprisonment.

For the charge under section 352 PC – three months imprisonment.

Three of the imprisonment terms for the aggravated rape charges are to run

consecutively with effect from 8 November 2001, making a total of 36 years imprisonment. The rest of the sentences are to run concurrently with the said three sentences. He is to be subject to a maximum of 24 strokes of the cane.

LMH

For each of the five charges of abetment of aggravated rape – 12 years imprisonment. No caning is imposed by virtue of section 231 Criminal Procedure Code.

For the charge under section 354 PC – six months imprisonment.

For the Films Act charge – four months imprisonment.

Three of the imprisonment terms for the abetment of aggravated rape charges are to run consecutively with effect from 8 November 2001, making a total of 36 years imprisonment. The rest of the sentences are to run concurrently with the said three sentences.

Sgd:

TAY YONG KWANG
JUDICIAL COMMISSIONER

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