

Public Prosecutor v V Murugesan
[2005] SGHC 160

Case Number : CC 6/2005

Decision Date : 30 August 2005

Tribunal/Court : High Court

Coram : V K Rajah J

Counsel Name(s) : Thong Chee Kun, Daphne Chang and Stella Tan (Deputy Public Prosecutors) for the Prosecution; The accused in person

Parties : Public Prosecutor — V Murugesan

Criminal Law – Offences – Rape – Elements of offence – Whether complete penetration required – Section 376(1) Penal Code (Cap 224, 1985 Rev Ed)

Criminal Law – Offences – Kidnapping, abduction, slavery and forced labour – Abduction – Elements of offence – Whether victim abducted with intention of forcing illicit intercourse – Section 366 Penal Code (Cap 224, 1985 Rev Ed)

Criminal Procedure and Sentencing – Sentencing – Deterrent sentencing – Aggravating factors – Conditions under which offence committed – Accused initiator of incident – Accused illegally present in Singapore

Evidence – Weight of evidence – Accomplice evidence – Whether weight should be given to accomplice evidence – Whether accomplice evidence should be treated with caution – Sections 116 illustration (b), 135 Evidence Act (Cap 97, 1997 Ed)

30 August 2005

V K Rajah J:

1 The accused is a 28-year-old male Indian national. He was committed to stand trial on the following four charges comprising:

- (a) illegal entry into Singapore under s 6(3)(a) of the Immigration Act (Cap 133, 1997 Rev Ed) ("illegal entry");
- (b) unlawful possession of a Singapore identity card under s 13(1) of the National Registration Act (Cap 201, 1992 Rev Ed) ("unlawful identity card possession");
- (c) rape under s 376(1) of the Penal Code (Cap 224, 1985 Rev Ed) ("PC") ("rape"); and
- (d) abduction with common intention under s 366 read with s 34 of the PC committed with an accomplice ("abduction").

At the trial, the accused admitted to and pleaded guilty to the charges of illegal entry and unlawful identity card possession but claimed trial to the charges of abduction and rape.

2 The Prosecution's case is relatively straightforward. The accused, together with his accomplice Manikkam (who was guilty of illegally remaining in Singapore), abducted the victim, who was slightly tipsy at the material time, and forcibly dragged her to the refuse area located at Block 715 Woodlands Drive 70 ("the Refuse Area"). With the assistance of his accomplice, he raped her. The victim herself was unable to positively identify either the accused or the accomplice as it was dark and she was extremely distressed. Both the accused and Manikkam accused each other of

perpetrating the crime.

The Prosecution's case

The victim's evidence

3 The victim testified that she had consumed some wine on the evening of 4 March 2004. She subsequently boarded a taxi with a friend and reached the vicinity of her home at around 11.00pm. Upon alighting from the taxi, she still felt somewhat tipsy and vomited on a grass patch at the foot of Block 715 Woodlands Drive 70.

4 She then noticed two men approaching her. One of them spoke to her in a foreign language. The other man stood behind her. She was suddenly grabbed by the waist and arms by the man who had spoken to her and forcibly dragged into a dark room. She was dragged over a distance of about 21.7m. Although still somewhat tipsy and therefore unable to put up a vigorous struggle, she nevertheless remained alert and acutely conscious that she was being forcibly restrained and in grave danger. She continued to scream as well as struggle. She subsequently felt something being inserted into her vagina. A man's body was also in front of her.

5 In her testimony, she steadfastly maintained that she had been sexually violated. Having previously experienced sexual intercourse, she claimed she was familiar with the sensation. During this traumatic ordeal, she was conscious of the presence of two persons – one person held her down by her hands while the other person violated her. The victim also mentioned that she was having her monthly menses when the incident occurred.

The accomplice's evidence

6 Manikkam testified that on the evening of 4 March 2004, the accused invited him for a beer drinking session. He accepted the invitation and joined the accused and some others. The accused had already consumed some alcohol by then and appeared to be tipsy. Manikkam stated that he himself consumed half a bottle of beer as well as half a bottle of stout and also became tipsy. He was wearing a white long-sleeved shirt, known as a "jibba", with black pants, while the accused wore a green short-sleeved T-shirt with dark pants.

7 Around 11.00pm, they decided to return to the multi-storey car park, located near Block 715 Woodlands Drive 70, where the accused stayed. On their way back, as they approached Block 715, they noticed the victim squatting and talking on the phone. She appeared to be drunk.

8 Manikkam testified that it was the accused who suggested that he converse with the victim. Feeling tipsy, Manikkam did as he was instructed. The victim ignored him, walked to the void deck and sat down. At this juncture, the accused led Manikkam to the Refuse Area. Showing Manikkam the Refuse Area, the accused instructed Manikkam to grab the victim and bring her over.

9 Manikkam grabbed the victim and dragged her towards the Refuse Area. As he drew closer to the Refuse Area, the victim began kicking. The accused then caught hold of her legs and assisted him in dragging the victim to the Refuse Area. Upon reaching the Refuse Area the accused opened the door. Manikkam dragged the victim in and pinned her to the floor.

10 The accused instructed him to hold onto the victim's hands. As the victim was shouting, Manikkam grabbed both her hands and held them over her mouth while simultaneously pinning her down.

11 At that juncture, the accused exclaimed he was going to "do it". Manikkam understood that to mean the accused was going to have sex with the victim. Despite the darkness, Manikkam could observe the outlines of both the accused and victim's bodies. The accused was on "on top" of the victim "between her legs" while she struggled.

12 After two to three minutes, the accused stood up and started to put on his underwear and pants. Manikkam requested that the accused hold on to the victim, as it was "his turn". The accused however continued clothing himself. Manikkam then clambered onto the victim in an attempt to have sexual intercourse with her. He however failed to achieve an erection.

13 Suddenly, he heard banging on the door of the Refuse Area. The accused, fully dressed by then, urgently pulled him by his collar and said that they had to leave. Manikkam then frantically attempted to put on his clothes. Alarmed by the commotion, the accused opened the door of the Refuse Area and was immediately confronted by a Chinese man. The accused promptly dashed out while Manikkam followed suit, still trying to fully clothe himself. In his haste, Manikkam left behind his underwear and shoes.

14 The accused later brought Manikkam to a flat at Marsiling where they spent the night.

The eyewitnesses' evidence

15 Latipah bte Ismin ("Latipah") and Goh Kim Ean ("Goh") both live in Block 719 Woodlands Avenue 6. Latipah's flat is located on the seventh floor, directly below Goh's. Both their flats face the Refuse Area and they had a clear view of the site and its immediate vicinity.

16 Latipah testified that on the night of the incident, at about 12.15am, she heard screams and then observed from her flat two dark-skinned men dragging a woman from the void deck of Block 715 Woodlands Drive 70 to the Refuse Area. She heard the woman screaming. Latipah shouted "Oei, police". The woman desperately shouted back "Call police". As the two men dragged the woman, she continued to struggle and scream. Latipah hurriedly called the police emergency hotline, which recorded the following first information report, "2 men bring one girl inside the store room. She is shouting. Come now". While calling, Latipah continued to observe what was happening. One of the men opened a door to the Refuse Area, while the other man dragged the victim in. The man who opened the door then went in and closed the door. The screaming continued.

17 Goh testified that she was at the balcony of her flat when her attention was suddenly drawn to two dark-skinned men and a woman outside the Refuse Area. There was a commotion and someone was shouting. One of the men, who was wearing a round-necked T-shirt, was holding open the door to the Refuse Area. The other man, wearing a light-coloured round-necked, long-sleeved T-shirt, was dragging the victim into the Refuse Area. The woman was struggling and screaming. Once the woman had been dragged into the room, the man who held the door open entered the room and closed the door.

18 Having called the police, Latipah proceeded downstairs to await their arrival. She stood near the Refuse Area. She noticed Lee Wai Lup ("Lee") approaching. She urgently related to him what she had witnessed. She could still hear the woman screaming.

19 Lee immediately approached the Refuse Area after speaking to Latipah. He heard male laughter and the muffled screams of a woman from inside. He kicked the door and shouted, "Come out". A few seconds later, the door opened. Two dark-skinned persons emerged one after the other and promptly fled. After ascertaining from the victim that she had been raped, Lee unsuccessfully

chased after them.

20 None of the eyewitnesses could positively identify the two men.

Forensic evidence

21 Dr Christopher Syn ("Dr Syn") testified that a semen stain had been found on the victim's panty. He further confirmed that the DNA profile of this semen stain matched the DNA profile of a blood specimen that had been submitted to him. Dr Syn stated that the probability of another person having the same DNA profile, selected at random from the Indian population, is estimated to be one in 970 trillion (9.7×10 to the power of 14). This to all intents and purposes amounts to a positive identification and confirmation, leaving no room for any doubt that the DNA profiles matched.

22 Inspector David Chan, the investigation officer, confirmed that the relevant blood specimen submitted to Dr Syn had been obtained from the accused. It is of crucial importance that the accused did not challenge the fact that his semen stain was found on the victim's panty. Finding it impossible to deny this, he attempted to explain how this might have occurred: see [28] below.

Medical evidence

23 Dr Ng Kok Kit ("Dr Ng") examined the accused and confirmed that the accused was physiologically able to achieve a good erection, sufficient for penetration. Dr Ng confirmed that the accused had informed him of his purported history of premature ejaculation. Dr Ng went on to explain that notwithstanding any purported condition of premature ejaculation (which he could not verify by any objective means), the accused could nevertheless achieve penetration prior to any premature ejaculation. Dr Ng opined that premature ejaculation was not an organic condition and that if a male could perform sexual intercourse successfully it usually meant, "that premature ejaculation is not an issue". The accused had paradoxically also informed Dr Ng that he had sex with a commercial worker on 22 March 2004; this was subsequent to the incident in question and prior to his arrest. On this occasion the accused successfully managed to have penetration. In summary, Dr Ng confirmed that the accused's sexual organs were functioning normally and that he could achieve an erection within a reasonable period of time. When I asked the accused whether he wanted to query Dr Ng on his conclusions, he declined to ask any questions.

24 Dr John Yam ("Dr Yam") examined the victim shortly after the incident on 5 March 2004 at about 4.15am. Dr Yam informed the court that he had examined about 20 rape victims over the course of the previous four to five years. He noted that the victim had bruises on her upper lip as well as the left and right knees. No semen was detected in her vagina. The victim was not a virgin and had old hymenal tears. There were no fresh hymenal tears. Dr Yam opined that the victim could have had non-consensual sex shortly before she was examined. As the victim was not a virgin, the elasticity of her hymen had already been breached. She therefore could have just had sexual intercourse without sustaining any fresh tears in her hymen. He also noted that the victim was having her menses at the time of examination. This could have acted as a natural lubricant, thereby minimising the prospects of fresh hymenal tears. The absence of any semen was inconclusive as to whether there had been any sexual violation of the victim prior to examination.

The defence

25 The accused was unrepresented. While he admitted that he was present during the incident, he resolutely denied any responsibility for the abduction and the rape. He labelled Manikkam a troublemaker and adamantly maintained that Manikkam was in fact the sole author and instigator of

the entire incident. The accused insisted that he had neither abducted nor raped the victim. On the contrary, he had repeatedly tried to prevent Manikkam from committing these acts.

26 According to the accused, Manikkam had invited himself to the drinking session with his friends that evening. After drinking some beer and stout, they returned to his residence at the multi-storey car park. Manikkam spotted the victim and attempted to converse with her. The accused claimed he was then talking to a female friend on the phone. He immediately told Manikkam not to get involved but the latter ignored him. Manikkam then followed the victim. Suddenly he heard someone shout "ah" and when he looked up he then saw Manikkam dragging the victim to the Refuse Area. He then ran towards them and attempted to stop Manikkam. By then, Manikkam was practically inside the Refuse Area. The accused claimed that he attempted in vain to close the door to the Refuse Area.

27 Having placed the victim on the floor, Manikkam then tugged him into the room by pulling his shirt. Manikkam proceeded to remove the victim's panty and placed his hand on her private parts. Manikkam told him to hold onto the victim's hands. He refused to do so. In fact, he tried again to stop Manikkam by pleading with him to release the victim and also tried to tug him away. Had he not tugged at Manikkam, the victim would have been raped.

28 The accused further claimed that he had a longstanding problem of "wetting himself". He claimed that he would get "wet" whenever he was sexually aroused as for instance when he talked to a female for some time. When he saw Manikkam touching the victim's private parts he was aroused and felt a "wet sensation". Feeling uneasy he had reached into his underwear with his hand which then came into contact with his semen. When Manikkam later tugged at him he fell. He hypothesised that his semen-stained hand must have then come into contact with either the victim or Manikkam. This, he ventured to suggest, probably accounted for the presence of his semen on the victim's panty.

Analysis of evidence

29 Latipah, Goh and Lee are all independent and credible witnesses. They are civic-minded citizens who took immediate steps to render assistance once alerted to the victim's distress. It is highly noteworthy and laudable that through their public-spirited conduct they prevented further pain and violence from being visited on the victim. They are to be commended for their public spiritedness, alacrity and courage.

30 I acknowledge, without diffidence, the compelling probative value of their evidence. The few minor differences in their evidence did not in any way tarnish or diminish their testimonies. There was no attempt to tailor the evidence and these differences, if anything, strengthened the Prosecution's case.

31 There is also absolutely no reason at all to doubt the victim's entire testimony. Granting that she was initially somewhat tipsy, I am persuaded nonetheless that she was conscious of what transpired throughout the incident. Although greatly distressed, she remained acutely lucid. She had attempted to initially avoid and later escape from the accused and Manikkam. She struggled. She was dragged. She screamed almost incessantly. Latipah and Goh witnessed this. Although the victim could not positively identify the perpetrators, she was unflinchingly and absolutely adamant that she had been raped. She was also certain that two dark-skinned individuals had been responsible for the incident. It is highly significant that the essence of her testimony depicting how she was dragged into the Refuse Area coincides both with the testimony of Latipah and Goh as well as Manikkam's evidence.

32 There were only three persons in the Refuse Area that night – the accused, Manikkam and the victim. Manikkam's evidence is important in determining the role of the accused.

33 By the time Manikkam gave his testimony, he had already pleaded guilty to three very serious charges – the charge of abducting the victim for illicit intercourse in concert with the accused, the charge of abetting the accused in raping the victim and the charge of attempting to rape the victim. In addition to a sentence of caning, he is currently serving a cumulative term of imprisonment of 14 years for his role in the above offences. I am satisfied that he had not given his evidence purely to inculpate the accused or to play down his responsibility for the incident. He gave his evidence in a forthright manner and appeared genuinely contrite for his earlier reprehensible conduct. Unlike the accused, Manikkam gave a coherent and persuasive account of what took place that night.

34 Manikkam's testimony is also to a large extent corroborated by the evidence of Latipah and Goh, who testified that they saw *not one – but two* men involved in the incident, and more particularly the entry into the Refuse Area. Manikkam's role in abducting the victim is furthermore almost precisely confirmed by Goh's testimony that the man who dragged the victim into the Refuse Area was wearing a long-sleeved T-shirt. Goh also corroborated Manikkam's evidence that the accused (the man with the round-necked T-shirt) had held the door open to allow the victim to be brought in.

35 The physical evidence left at the scene also lends some penumbral support to Manikkam's account of the incident. He testified that the accused had first lain on top of the victim for two to three minutes. Subsequently, he himself did not have sexual intercourse with the victim, though not for want of trying. Because of the sudden commotion created by Lee, he had to immediately abort his attempt and urgently clothe himself. In his hurry to leave the scene, he left behind his shoes and underwear, which were recovered by the police.

Reliance on evidence of an accomplice

36 Illustration (b) to s 116 of the Evidence Act (Cap 97, 1997 Rev Ed) ("EA") at first blush appears to suggest that the court ought to presume that an accomplice is generally unworthy of credit. This presumption must, however, be viewed in its proper context. In *Rukiah bte Ismail v PP* [2004] SGHC 98, the court observed that an accomplice's evidence had to be scrutinised carefully as the accomplice *might* be presumed to be unworthy of credit. After such a careful scrutiny, the court could then conclude that an accomplice was a credible witness to be accorded the same weight as any other witness. The evidence of an accomplice might, and not must, be presumed to be unreliable.

37 In *Roslan bin Abdul Rani v PP* [2004] SGHC 121, Yong Pung How CJ declared that the presumption referred to in illus (b) to s 116 of the EA was not mandatory but permissive, and its operation depended on the totality of the circumstances. He reiterated his earlier view as expressed in *Chai Chien Kelvin v PP* [1999] 1 SLR 25 at [52], where he had stated:

Whether or not the court should believe the evidence of the accomplice would depend on all the circumstances of the case and the evidence must be tested against the objective facts as well as the inherent probabilities and improbabilities; but where the court did not discern any attempt by the accomplice materially to minimise his own involvement or exaggerate that of the accused and his evidence was found to be consistent as a whole and reliable on a review of the whole evidence, there was no reason why the evidence should be treated as unreliable.

38 Section 135 of the EA eliminates the need for the court to expressly remind itself of the perils of relying on accomplice evidence. In essence, what is needed in assessing an accomplice's evidence

is measured wariness and not presumptive or inherent scepticism. This is no more than common sense.

39 The crux of Manikkam's evidence was in several material aspects confirmed by the evidence of the eyewitnesses and the victim, not to mention the physical evidence found at the scene. The forensic evidence also indirectly supported his version of the facts. His semen was not found at the scene. His own involvement in the incident had already been resolved in earlier proceedings before another court, and he had received a heavy aggregate sentence. I was satisfied that he was not testifying merely to pin responsibility on the accused. Manikkam's evidence was dependable and consistent.

40 The DNA evidence in this matter was reliably tested and identified. The DNA profile of the semen stain on the victim's panty matched the DNA profile of the accused's blood. The DNA profile of the bloodstains on the same panty matched the DNA profile of the victim. There are no issues in these proceedings pertaining to improper testing procedures, DNA contamination or insufficient DNA sampling.

41 The accused's version of the facts is plainly and irreconcilably inconsistent with the evidence of Latipah and Goh. On the basis of their testimony alone, it is apparent that he was an active participant in the incident. I also found the accused to be an unsatisfactory witness for the following reasons.

42 The accused's police statement recorded on 23 March 2004 by Inspector David Chan in the presence of a Tamil interpreter ("police statement") was introduced in evidence after the accused confirmed that he had given that statement voluntarily. This statement was substantially different from his oral testimony in court. In the police statement, the accused had stated, *inter alia*, that:

- (a) He had not initiated the series of events.
- (b) He saw Manikkam "carrying" the victim into the Refuse Area while she struggled and screamed.
- (c) *When he reached them they were already in the Refuse Area. He had asked Manikkam to release the victim and told him that others could see what was happening.*
- (d) Manikkam had ignored him and instead asked him to hold down the victim's hands.
- (e) *Manikkam had sexual intercourse with the victim while he (the accused) held her down.*
- (f) While pleading with Manikkam to release the victim, someone banged at the door of the Refuse Area.
- (g) He opened the door and Manikkam then rushed out without being properly attired.
- (h) After making their escape, he spent the night in his friend's house with Manikkam.
- (i) He was wearing jeans and a "round necked short-sleeved T-Shirt".

43 It is patently obvious that there are significant contradictions between the accused's testimony in court and this police statement. I will deal with just two such patent and jarring differences. In his testimony, he claimed that he had tried to prevent Manikkam from dragging the victim into the Refuse Area by closing the door. There is no mention of this in his police statement. He

claimed in the police statement that by the time he caught up with her, they were already in the room and Manikkam "was putting her down". Also noteworthy is the fact that his oral testimony was completely at variance with what Latipah and Goh had witnessed. Latipah had observed two dark-skinned males working in concert, dragging the victim into the Refuse Area. Both Latipah and Goh noted that one of the men opened the door and later closed it. This completely undermines and demolishes the accused's evidence that he was trying to prevent Manikkam from entering the Refuse Area. Further, in his testimony, the accused claimed that he had repeatedly refused Manikkam's request to hold the victim's hands and pin her down. In his version of events in the police statement on the other hand, he admitted to pinning the victim down by holding her hands. This is a critical point. It completely subverts the accused's credibility and blatantly contradicts his alleged tale of tireless attempts to prevent the incident. The accused initially denied having made any such admission in the police statement. When pressed, he reluctantly conceded he had made a "mistake" in the police statement.

44 Of further significance is the accused's desperate but misguided and incredible attempt to explain the presence of his semen on the victim's panty. He conjured a fictitious story about premature ejaculation which I categorically reject. If he was so desperately intent on preventing or deterring Manikkam from effecting his criminal intentions, it is most implausible that he would also have been "sexually aroused". It was clear to me that the accused was desperately seeking to minimise his unhappy role in the incident. He attempted to pin the entire responsibility for the incident on Manikkam while portraying himself as the innocent, Good Samaritan who had done his utmost to prevent the abduction as well as the purported attempted rape by Manikkam. He of course had no explanation for the laughter emanating from the Refuse Area that Lee heard while approaching it.

45 In the circumstances, I have concluded that the accused was the principal author of the incident. Manikkam was the accomplice. Both were to some extent inebriated when the incident took place. That said; they fully appreciated the heinous and abominable nature of the offences they were committing. Their actions sprung from their basest instincts, so that they observed only the laws of the jungle, wholly oblivious to the consequences of their conduct. The accused, given both his cross-examination of Manikkam and the manner in which he conducted himself in court, appears to be an intelligent and assertive person. Between the two, the accused has a bigger build and also appears to be the more dominant personality. Manikkam, on the other hand, appears to have a more malleable and somewhat servile personality. All of this only further reinforces Manikkam's testimony as to who took the lead during the incident.

46 I am satisfied that the Prosecution has proved the ingredients to substantiate both the charges of abduction and rape. In respect of the charge of abduction the Prosecution has proved that the victim was abducted with the intention of forcing upon her illicit intercourse. In *Ibrahim bin Masod v PP* [1993] 3 SLR 873 it was determined that the Prosecution need not specifically prove that there was a common intention to commit the precise offence. It was sufficient that the Prosecution could prove that there was between the participants a common intention and that the crime actually committed was committed in furtherance of that common intention. In this matter, however, there can be no question that both the accused and Manikkam had jointly resolved to abduct the victim with a view to have illicit intercourse with her. I also unreservedly accept the victim's evidence that an act of penile penetration had occurred. The victim came across as composed and measured when giving evidence. I am satisfied that she had not imagined the incident of penetration. Furthermore her evidence is consistent with Manikkam's evidence that the accused was "on top" of the victim for two to three minutes. Neither the absence of the accused's semen nor lack of fresh hymenal tears detracts from the victim's unequivocal and compelling testimony that she was raped.

47 I am fortified in my conclusion by an observation contained in Dr Sir Hari Singh Gour, *The*

Penal Law of India (Law Publishers (India) Pvt Ltd, 11th Ed, 2000), vol IV at p 3617, which I later unearthed:

For the *Explanation* to Sec. 375, I.P.C. [Indian Penal Code] it is distinctly clear that ingredients which are essential for proving a charge of rape are the accomplishment of the act with force and resistance. To constitute the offence of rape neither Sec. 375, I.P.C. nor *Explanation* attached thereto require that there should necessarily be complete penetration of the penis into the private part of the victim/prosecutrix. *In other words, to constitute the offence of rape it is not at all necessary that there should be complete penetration of the male organ with emission of semen and rupture of hymen.* Even partial or slightest penetration of the male organ within the labia majora or the vulva or pudenda with or without any emission of semen or even an attempt at penetration into the private part of the victim would be quite enough for the purposes of Secs. 375 and 376, I.P.C. That being so it is quite possible to commit legally the offence of rape even without causing any injury to the genitals or leaving any seminal stains. [emphasis added]

The relevant provisions of the Indian Penal Code (inclusive of the explanation) are *in pari materia* with the PC. It leaves me to add that where there is no trace of physical evidence of an act of rape having been committed, a court must be particularly circumspect and astute in evaluating the evidence. The evidence of the victim and the relevant circumstances must be compelling and unequivocal. The testimony of the victim and the established factual matrix in this matter satisfied that acid test.

Sentencing

Sentencing precedents on rape

48 In the landmark case of *Chia Kim Heng Frederick v PP* [1992] 1 SLR 361, the then Court of Criminal Appeal ("CCA") laid down guidelines as to the appropriate sentence to be imposed in cases of rape. On the issue of the sentencing tariff for an offence of rape, the CCA articulated at [19] and [20] that:

In our opinion, even the offence of rape under s 376(1), without any aggravating or mitigating factors, in which sexual intercourse with a woman is constituted by penetration against her will, must by its very act contain an element of violence and a sentence of caning of not less than six strokes should normally be imposed in addition to a term of imprisonment. Any degree of violence amounting to hurt used in the commission of rape will render the rapist liable to a higher punishment under s 376(2), if he is charged thereunder.

In Singapore, the unreported cases show that for a long time sentencing practice in respect of adult rapists was not uniform, but in more recent years, the tariff has tended to move upwards and to stabilize at a level of nine or ten years. *In our opinion, for a rape committed without any aggravating or mitigating factors, a figure of ten years' imprisonment should be taken as the starting point in a contested case, in addition to caning.* The court should then consider in turn the mitigating factors which merit a reduction of the sentence, of which a guilty plea which saves the victim from further embarrassment and suffering will be an important consideration and will merit a reduction of one-quarter to one-third of the sentence; and whether there were other factors such as the victim's youth or the accused person's position of responsibility and trust towards her, or perversions or gross indignities have been forced on the victim, which justify a longer sentence.

[emphasis added]

49 In *PP v Solaiyan Arumugam* [2001] SGHC 82, the accused was a 26-year-old Indian national who worked as a driver for a commercial company in Singapore. He was convicted after trial of raping and molesting a 58-year-old victim. The victim was walking down an overhead bridge coming down at the footpath when she was attacked by the accused from behind. The accused grabbed her by the neck and cupped his other hand over her mouth. She was then dragged into the nearby bushes where the accused pulled her pants down and raped her. In the course of the attack he also pressed her breast. The accused was sentenced to ten years' imprisonment and 12 strokes of the cane on account of the rape offence.

50 In *PP v Suresh Nair* Criminal Case No 39 of 2003 (unreported), the accused claimed trial to charges of rape and molest initially. He was convicted in respect of the offences committed at Hyatt Hotel. Subsequently, he pleaded guilty to other offences committed at Maritime House. He was sentenced to 18 years' imprisonment and 16 strokes in respect of the rape charges he had contested and to 12 years' imprisonment and 12 strokes in respect of the other rape charges he subsequently pleaded guilty to.

Sentencing precedents for abduction

51 There is no precise sentencing benchmark for the offence of abduction. In *PP v Victor Rajoo* [1995] 3 SLR 417, the Court of Appeal found the accused guilty on a charge under s 366 of the PC and imposed on him a term of imprisonment of five years in respect of that charge. It will be neither helpful nor practical to prescribe benchmarks in view of the myriad settings and circumstances in which such offences occur.

52 Manikkam has been sentenced to five years' imprisonment in relation to his role in the abduction of the victim.

The appropriate sentences

53 Pursuant to s 11(1) of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) ("CPC"), the High Court may pass any sentence authorised by law provided that it does not impose three punishments by way of a term of imprisonment, fine and caning on an offender in respect of the same offence. The CPC also mandates, pursuant to s 18 of the CPC, that at least two sentences shall run consecutively where the accused is convicted of at least three distinct offences. As it does not stipulate how many of the sentences can run consecutively, the High Court has the discretion to direct sentences in respect of more than two charges to run consecutively. There is no prescribed or implied limit to the aggregate number of sentences that the High Court may impose in a matter.

54 The Prosecution submitted that this matter merited deterrent sentencing. I agree. Rape is one of the most heinous and vile crimes proscribed under our laws. It is an abominable violation that leaves the victim with permanent emotional scars. The physical act of rape is just the beginning of a life-long continuum of psychological and emotional trauma that most victims have to confront, endure and manage. In addition, most unfortunately and regrettably, there are also occasionally instances of the victims being irrationally stigmatised. Many victims never regain a sense of normalcy. The emotional damage, quite understandably, cannot ever be fully erased. It is for this reason that the PC prescribes severe sentences for this and similar offences violating the basic right(s) of a female. Females have an inviolable right to be respected; they have an inalienable right to say no; they have an absolute right to commute without any anxiety or apprehension of physical violence being inflicted upon them. Taking into account these considerations, the courts have severely dealt with rapists and

similar offenders.

55 Perpetrators are punished not just for the physical harm they inflict but also for the life-long trauma, debilitating emotional distress and anguish they callously and cruelly inflict and sentence their victims to suffer in silence. In the circumstances, draconian sentences which primarily encapsulate the principles of both retribution and deterrence are ineluctably required and will be invariably meted out to all such offenders. Few, if any, right-minded people will complain about heavy-handed sentences in this genre of cases.

Aggravating factors

56 The abominable and brazenly predatory manner in which the victim was identified, abducted and sexually violated within the precincts of a housing estate is deeply disturbing. The victim was completely defenceless and vulnerable – weakened by a somewhat inebriated condition and vomiting – when she was preyed on and pounced upon by the accused and his accomplice. She was forcibly and demeaningly dragged into an area used for keeping rubbish and discarded items. Despite her desperate screams and incessant struggle she was raped by the accused. The accused and Manikkam took turns to violate her sexually, notwithstanding her futile attempts to vehemently resist. The victim sustained bruises on her upper lip and knees. Her ordeal was fortuitously cut short by the timely intervention of the concerned neighbours.

57 While the trauma inflicted on the victim lasted but a few minutes, this painful and distressing ordeal will undoubtedly and indelibly haunt her for life.

Accused was the initiator

58 The accused clearly orchestrated the incident. He was by all accounts, while inebriated, fully conscious of his conduct and the consequences thereof. He chose a dark, quiet place – the Refuse Area – to commit the offence of rape. He manifested utter contempt for even the most basic norms of civilised behaviour.

Illegal presence in Singapore

59 The accused was illegally present in Singapore when he committed the offence. This must be considered an aggravating factor and ought to be factored into the sentencing.

60 In order for the sentences for the rape and abduction offences to be appropriate in this case, they should not only punish the accused severely, they should also send a clear and unmistakable message of deterrence to all would-be sexual predators. In the result, I have passed the following sentences:

- (a) in respect of the offence of illegal entry a sentence of imprisonment of one month and three strokes;
- (b) in respect of the offence of unlawful identity card possession a fine of \$3,000 and in default thereof a term of imprisonment of one month;
- (c) in respect of the offence of abduction, a term of imprisonment of seven years and seven strokes;
- (d) in respect of the offence of rape, a term of imprisonment of 14 years and 14 strokes.

The terms of imprisonment for the offences of abduction and rape are to run consecutively. The sentence of imprisonment for the illegal entry offence is to run concurrently with these two consecutive sentences. The commencement of the term of imprisonment is to be backdated to the date of the accused's remand on 22 March 2004. The number of caning strokes is to be aggregated and will therefore add up to 24 strokes. In light of s 224(b)(iv) of the CPC, the accused will have to serve an additional term of imprisonment of one month if he does not pay the fine imposed for the identity card offence.

Accused convicted and sentenced accordingly.

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