

Public Prosecutor v MX
[2006] SGHC 67

Case Number : CC 12/2006
Decision Date : 18 April 2006
Tribunal/Court : High Court
Coram : Tay Yong Kwang J
Counsel Name(s) : Eugene Lee and Crystal Ong (Deputy Public Prosecutors) for the Prosecution;
Harold Seet Pek Hian and Indra Raj (Harold Seet & Indra Raj) for the accused
Parties : Public Prosecutor — MX

Criminal Procedure and Sentencing – Sentencing – Principles – Accused pleading guilty to various charges of rape and aggravated rape – Additional charges of rape, attempted aggravated rape and outrage of modesty taken into consideration for sentencing purposes – Appropriate total sentence in light of multiple offences – Section 18 Criminal Procedure Code (Cap 68, 1985 Rev Ed)

Criminal Procedure and Sentencing – Trials – Proceedings in camera – Accused pleading guilty to various charges of rape and aggravated rape – Rape victims' presence in court and oral testimony not required – Whether proceedings should be held in camera – Section 153(3) Women's Charter (Cap 353, 1997 Rev Ed)

18 April 2006

Judgment reserved.

Tay Yong Kwang J:

The facts

1 The accused is now 45 years old. He pleaded guilty to five charges of rape under s 376(1) and four charges of aggravated rape under s 376(2) of the Penal Code (Cap 224, 1985 Rev Ed) All five female victims named in the nine charges are his biological daughters from his various wives. All the rape charges involved sexual intercourse with his daughters without their consent. Four of the charges were aggravated rape charges because the daughters involved in those instances were under 14 years of age at the material times.

2 In addition to the above, the accused also admitted and consented to having another 34 charges taken into consideration for the purpose of sentencing. These 34 charges involved 24 charges of rape under s 376(1), three charges of attempted aggravated rape under s 376(2) read with s 511 of the Penal Code and seven charges of outrage of modesty under s 354 of the same.

The facts

3 The accused has ten wives. Four are legal wives while six are contractual wives. He has a total of 64 children from these ten wives, consisting of 33 sons and 31 daughters. They range in age from nine months to 16 years. The accused also has two other daughters from his previous marriage which was dissolved in 1988.

4 The accused resided with his extended family in three Housing and Development Board flats. Before his arrest, he was running a transportation business, assisted by two of his wives. All the rape offences took place in one of the flats between December 2003 and June 2005. The five daughters named in the nine charges that were proceeded with ("the five daughters") were between 12 and 15

years of age at the time of the offences. Only the eldest has since turned 16. Two of the five daughters are now residing in a girls' home while the other three have been placed under statutory supervision in the custody of their mothers. In the charges that were taken into consideration, a sixth daughter, aged 12 at the time of the offences, was the victim in two of the attempted aggravated rape charges and in one outrage of modesty charge. None of the daughter-victims bears the accused's name as he has changed his name.

5 Sometime in March 2004, the accused gathered some of his wives and daughters and told them that according to the Koran, a father had ownership over his children and that such ownership extended to having sexual intercourse with his daughters. His family believed him because he was a devout man who had conducted religious classes for his family. However, according to the Director of Religious Affairs of the Islamic Religious Council of Singapore, the accused's interpretation of the relevant verse in the Koran is not adopted by contemporary or classical Muslim scholars.

6 Investigations by the police revealed that before and after that meeting, the accused had sexual intercourse with the five daughters over a period of more than a year. Whenever he wanted to have sexual intercourse, one of his wives would approach one of the five daughters and inform her to go to his bedroom. This went on until 24 June 2005 when the eldest daughter reported to the police that she had been raped by her father. The next day, the accused was asked to go to the police station. He complied and was placed under arrest there. He has been in remand since that day.

7 The accused was examined at the Institute of Mental Health. In a psychiatric report dated 18 August 2005, Dr Jerome Goh stated that the accused admitted to having had sexual intercourse with six of his daughters. The accused also revealed that he had made two of them pregnant and that they subsequently underwent abortion. The psychiatrist noted that the accused was relevant and coherent during the interviews and was not depressed. The accused was found not to be suffering from any mental illness and was fit to be tried in court.

8 In his statements to the police, the accused also admitted to having had sexual intercourse with his daughters. However, he was unable to recall the exact number of times he had sexual intercourse with each daughter.

9 The accused has no previous convictions.

The Prosecution's submissions on sentence

10 The Prosecution submitted that in cases involving young victims, particularly an accused's own children, the courts had never shied away from imposing heavy sentences in order to send a clear signal to all would-be offenders that there was zero-tolerance for such heinous crimes. It argued that this case ranked as one of the most serious cases of sexual abuse in recent years and asked for a deterrent sentence to be meted out so that the accused would be incarcerated for a substantial period and be unable to prey on his own children upon his release from prison.

11 The Prosecution highlighted the following aggravating factors calling for a deterrent sentence in this case:

(a) There was abuse of trust in that the five daughters respected and trusted the accused and therefore did not physically resist him although they felt that what he was doing to them was wrong.

(b) As their father, the accused had easy access to the victims and the rapes occurred in

the sanctity of their home.

(c) Six daughters in all fell victim and the offences were so many that they, and even the accused, were hard-pressed to keep count.

(d) All the victims involved were of tender age.

(e) The offences were not committed on the spur of the moment.

(f) Two of the young girls became pregnant as a result of the rape and had to undergo abortion. The first had the abortion done in Singapore while the second was brought to Batam by the accused and some of his wives for the abortion as they did not want to arouse suspicion since the accused's name would appear as their father in both cases.

12 Three precedents, all involving sexual abuse by a father or stepfather, were cited for my guidance. The sentences imposed in those cases ranged from 24 to 30 years' imprisonment, together with 24 strokes of the cane where the accused was not already 50 years of age.

The mitigation plea

13 The accused is a qualified religious teacher who used to give religious talks at mosques and other institutions. After he converted from the Sunni Sect to the Shi'ite Sect, he continued to conduct religious classes in his home and to provide guidance to his pupils, friends and associates. Three of his friends provided testimonials describing him as a humble and hardworking family man, given to imparting knowledge and good advice. He is also said to be a very responsible husband and father.

14 The accused's ten wives are now between 35 and 40 years old. Six of them are working while the other four are housewives. He was a responsible husband and father towards his extended family, supporting even his two daughters from his previous marriage who are currently pursuing tertiary education.

15 Defence counsel sought to explain that the accused's offences against his own children were not the result of lust. This could be seen from the fact that he did not commit similar offences against his other daughters, some of whom were in the same age group as the six victims in this case.

16 In early 2003, his transportation business was in financial straits and he had problems retaining employees. He had to put in extra hours of work and was stressed in trying to make a living for his large family. In late 2003, his business woes were compounded when he found out that his older daughters (the six victims here) were associating with boys and were behaving inappropriately.

17 The accused decided to take action. He called his wives and children for a discussion. He recalled a verse in the Koran and interpreted it to mean that he had ownership of his children and, accordingly, could have sex with them. He was of the view, now acknowledged to be an erroneous one, that if he could satisfy the sexual needs of his daughters, they would be less likely to engage in sexual activities with boys. He also believed that it would be the lesser of two evils if his daughters had sex with him rather than with other males as it would protect them against diseases and they would always have his love and care. He regretted his decision and admitted that the said verse had been misinterpreted by him. He also acknowledged that he should have consulted scholars on the interpretation of that verse, which he did not due to his business problems then.

18 The accused regrets having impregnated two of his daughters. However, he did not abandon them. Instead, he made the arrangements for the abortions and continued to care for them thereafter. In the sexual encounters with his daughters, the accused did not use force or perform any gross indignities on them.

19 When the accused was contacted by the police, he could have fled and abandoned his family but he did not. Instead, he surrendered himself to the police. He has no criminal record. He co-operated fully with the police in their investigations and as early as during the pre-trial conferences and the preliminary inquiry, he already indicated that he would admit his guilt, which he has done now by pleading guilty. By doing so, he has spared his daughters the agony of having to recount the embarrassing offences in court and of having to testify against their father.

20 The accused is remorseful. He realises that he has shattered his family's respect for him and that his actions have caused his family to have doubts about their faith.

21 A long period of incarceration would cause grave financial hardship to his large family. He therefore pleaded for a minimum custodial sentence, after which he could continue with his duty to care and provide for his family. Although it was held in *Lai Oei Mui Jenny v PP* [1993] 3 SLR 305 that financial difficulties caused to the accused's family by his incarceration were generally not a good mitigating factor, the court there (at 308, [13]) did consider that there might well be some very exceptional or extreme circumstances where such difficulties could be taken into account in mitigation. Here, the accused's family is a very large one and they rely heavily on him for their sustenance.

22 The accused would be in his twilight years by the time he is released from prison. He would not repeat his foolish acts. Every time he meets the six daughters in question in the future, he would be reminded of his guilt and shame and that would be an effective deterrent to him not to repeat his wrongdoing.

23 The accused also apologises to his family, especially the six daughters in question, for having hurt them. He believes that the six daughters have accepted his apology and that his family is still prepared to give him the support that he would need in prison.

24 Defence counsel pointed out that in the three cases cited by the Prosecution for guidance on the appropriate sentence to mete out here, only two of the imprisonment terms in each case were ordered to run consecutively. He therefore urged me to do the same in this case. However, the Prosecution retorted immediately that only three charges were proceeded with in those three precedents while there are nine charges in the instant case.

The decision of the court

25 At the commencement of this trial, the Prosecution applied for the entire proceedings to be dealt with *in camera* pursuant to s 153(3) of the Women's Charter (Cap 353, 1997 Rev Ed) which reads:

The court shall order proceedings before it to be dealt with *in camera* in any case where the girl in respect of whom an offence under this Part, or under section 354, 354A, 376 or 376B, or sections 354 and 511, or sections 354A and 511, or sections 376 and 511, or sections 376B and 511 of the Penal Code is alleged to have been committed has not attained the age of 16 years.

A literal reading of this provision would mean that all proceedings, whether the accused claims trial or

pleads guilty, have to be conducted *in camera*, which means that the court shall not be deemed an open court and “no person shall have access to or be or remain in the court except such persons as are necessary for the purpose of the proceedings” (see s 153(2) of the Women’s Charter).

26 Section 9A(1) of the Interpretation Act (Cap 1, 2002 Rev Ed) provides:

In the interpretation of a provision of a written law, an interpretation that would promote the purpose or object underlying the written law (whether that purpose or object is expressly stated in the written law or not) shall be preferred to an interpretation that would not promote that purpose or object.

27 The purpose of holding proceedings *in camera* in such cases is to ensure that female victims of sexual offences do not have to appear in court to recount their ordeal under the glare of public scrutiny. Where the accused elects to plead guilty, the female victims are not required to testify or even to attend court at all. Such is the case here. In the instant case, all proceedings are on paper and no one is required to testify orally. The matters raised in the course of the proceedings will be reproduced in the court’s written judgment (where one is given), subject, of course, to editing to protect the identity of the female victims. Such written judgment is openly available to anyone who wishes to read it. There is further protection in s 153(4) of the Women’s Charter to ensure the anonymity of female victims as newspaper reports of such proceedings are not permitted to reveal the name or address or include any particulars calculated to lead to the identification of such victims.

28 I therefore hold, in adopting a purposive approach to statutory interpretation, that the direction in s 153(3) of the Women’s Charter is only mandatory for cases where female victims of the sexual offences listed in that provision are testifying in court. Further, it will be noted that the provision applies only where the female victim has not attained the age of 16 years at the time of the trial rather than at the time of the offence. There is of course a discretion to order proceedings to be dealt with *in camera* anyway (see s 153(1) of the Women’s Charter for example). However, I do not see any reason in this case warranting a departure from the general rule that all proceedings in court are open to anyone who wishes to attend and observe the proceedings.

29 The punishment provided by law for rape under s 376(1) of the Penal Code is imprisonment of up to 20 years. In addition, the accused may be fined or caned. For s 376(2) cases, the punishment is a minimum of eight years’ and a maximum of 20 years’ imprisonment. The accused also has to be punished with not less than 12 strokes of the cane.

30 Section 18 of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) provides:

Where at one trial a person is convicted and sentenced to imprisonment for at least 3 distinct offences, the court before which he is convicted shall order that the sentences for at least two of those offences shall run consecutively.

The Criminal Procedure Code further provides in s 230 that the maximum number of strokes that an adult accused has to undergo for one trial is 24.

31 In *Chia Kim Heng Frederick v PP* [1992] 1 SLR 361, a 32-year-old accused pleaded guilty to one count of rape of a 16-year-old girl under s 376(1) of the Penal Code and was sentenced to eight years’ imprisonment and eight strokes of the cane. His appeal to the then Court of Criminal Appeal was dismissed as the sentence was not found to be manifestly excessive. The court (at 367, [19]–[20]) provided some guiding principles in sentencing in rape cases under s 376(1). It held that the starting point in a contested case, without any aggravating or mitigating factors, should be ten years’

imprisonment and caning of not less than six strokes. The court should then consider the mitigating factors such as a plea of guilt (which would merit a reduction of one-quarter to one-third of the imprisonment term) and the aggravating factors such as the victim's youth, the accused's position of responsibility and trust towards the victim, and perversions or gross indignities forced on the victim.

32 In *PP v O* [1999] 4 SLR 257, the 51-year-old father pleaded guilty to three counts of rape under s 376(1) against his nine-year-old daughter who was physically handicapped. Two other counts under s 376(1) and two counts under s 354 of the Penal Code were taken into consideration. The accused was a hepatitis B carrier and did not use a condom when raping his daughter. He also had a previous conviction for molesting a young girl. He was sentenced to five years' imprisonment on each charge, with two of the sentences to run consecutively, making a total of ten years. On appeal, the Court of Appeal enhanced the individual sentences to 15 years per charge and ordered two of them to run consecutively, resulting in a total of 30 years. No caning was ordered as the accused was past 50 years of age (see s 231(c) of the Criminal Procedure Code). The Court of Appeal also held (at [34]) that the fact that a longer sentence might result in the accused's family suffering from severe financial hardship was usually not a relevant consideration and that only very exceptionally would the court take such a factor into consideration.

33 In *PP v MV* [2002] SGHC 161, the 63-year-old accused pleaded guilty to three counts of aggravated rape under s 376(2) against his stepdaughter when she was between eight and eleven years old. Four other counts of aggravated rape, one count of attempted aggravated rape and one count under s 354 were taken into consideration. The accused, who had a clean record, was sentenced to 12 years' imprisonment for each charge, with two of the sentences running consecutively, resulting in 24 years. For the same reason as in *PP v O*, he was not ordered to be caned.

34 The final case cited by the prosecution was *PP v MW* [2002] 4 SLR 912. There, the 38-year-old father admitted to three counts of aggravated rape against his 13-year-old daughter. He had no previous conviction. He was sentenced to 12 years' imprisonment and 12 strokes of the cane per charge. With two of the sentences running consecutively, he had to serve a total of 24 years' imprisonment and undergo 24 strokes of the cane. It appears from these cases that the norm for aggravated rape cases where the accused pleads guilty is 12 years' imprisonment and 12 strokes of the cane.

35 I also note that defence counsel cursorily referred to the decision in *PP v MU* [1999] SGHC 107 where a father was tried and convicted on three counts of unnatural sex (fellatio) and four counts of aggravated rape against his daughter. The offences took place over a period of some ten years from the time the daughter was a young girl. The accused, who had previous convictions but not of a sexual nature, was imprisoned for 30 years and ordered to undergo 24 strokes of the cane (15 years' imprisonment and 12 strokes for each of the aggravated rape charges, with two terms of imprisonment to run consecutively). His appeal was dismissed by the Court of Appeal.

36 With these precedents in mind, I now turn to the facts of this case. The accused was undoubtedly trusted and respected by all in his family and wielded strong influence over all of them, including his adult wives. It was a sad and shameful abuse of this trust and respect that allowed him to do what he did with the five daughters. Equally, it was because of this trust and respect that no violence accompanied each occasion of violation as none was needed to make the daughters submit to him.

37 All the daughters involved were of tender age, knowing enough to feel that the sexual

violation was wrong but not knowing enough to decide what to do about it. Like any other young girl, I am sure they appreciated their father's love but simply could not comprehend why it was taking on a perverse dimension. Young girls have to be protected from sexual predators, especially those they live with and depend on for sustenance because that makes them easily accessible and even more vulnerable.

38 The numerous rapes in this case were systematic and sickening. The mothers of the young girls had somehow been persuaded by the accused that what he was doing was right. That deprived the daughters of one escape route that they could have taken – that of approaching some adults whom they trusted to confide in them their predicament.

39 Two of the hapless girls had to undergo abortion because of the unprotected sex. However, all the daughters involved had their childhood innocence aborted by the man who turned against his own offspring. This case is unique in that so many daughters became prey to their father.

40 It is always an extremely difficult task for the court to sentence the main provider of a family, particularly where the victim herself is also dependent on him for her livelihood. The court, in delivering the victim from her tormentor by putting him away for a long period of time, becomes her shining light but paradoxically also casts a lengthy shadow on her life by depriving her of her main provider. In this case, the barest minimum sentence is eight years' imprisonment for the s 376(2) charges and ordering just two to run consecutively would already result in incarceration for 16 years. It is difficult to envision a much lower term of imprisonment for the s 376(1) charges in the circumstances of this case. Therefore, whatever the permutation of consecutive sentences, the accused would have to be put away for more than a decade. The family must therefore accept that the accused will not be contributing financially for a significant period and make the necessary adjustments.

41 Six of the accused's wives are earning an income. Two of them have been assisting him in his transportation business. They appear to be coping thus far. I hope all the adults in the family will continue to hold the family together and pull everyone through this difficult phase of the family. Should they require assistance of any kind, I trust that the relevant authorities and institutions will be more than willing to help.

42 Finally, I wish to reassure the eldest daughter that she has done the right thing by reporting these sad incidents to the police. She and her younger sisters have absolutely nothing to be ashamed of or feel bad about. The wrongdoing was on the part of their otherwise responsible father, who has been honourable enough to admit the offences and thereby spare everyone the heartache of having to testify against a father and a husband. I also hope that the accused's wives and other children appreciate what the six girls in this case have gone through and give them the love and support that they so richly deserve.

43 I now come to the delicate task of deciding what the appropriate sentences ought to be. I sentence the accused to ten years' imprisonment and eight strokes of the cane for each of the charges under s 376(1) and to 12 years' imprisonment and 12 strokes of the cane for each of the charges under s 376(2). In cases of multiple offences such as this, the individual sentences for the offences are not as significant as the sum total resulting from the ordering of consecutive sentences. As correctly pointed out by the Prosecution, in the cases which it cited, only three charges were proceeded with and it was therefore not unexpected that only two sentences were ordered to run consecutively. I note that in *PP v MU*, four out of the seven charges proceeded with were aggravated rape charges and only two imprisonment terms were ordered to run consecutively. However, the two imprisonment terms there added up to 30 years. Bearing in mind the totality principle of sentencing

and considering the total number of offences and of victims involved here, it is right that three out of the nine imprisonment terms should run consecutively instead of the minimum two. I therefore order that two of the sentences for the s 376(1) charges and one of the sentences for the s 376(2) charges are to run consecutively with effect from 25 June 2005, the date of the accused's arrest. The total imprisonment term is therefore 32 years. The accused is to be subject to no more than 24 strokes of the cane in total.

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