

Public Prosecutor v Kalathithara Subran Hilan and Others
[2003] SGHC 221

Case Number : CC 23/2003

Decision Date : 25 September 2003

Tribunal/Court : High Court

Coram : Kan Ting Chiu J

Counsel Name(s) : Jaswant Singh, Ms Janet Wang and Derek Kang (Deputy Public Prosecutors) for the Public Prosecutor;
Accused In Person

Parties : Public Prosecutor — Kalathithara Subran Hilan; Thankappan Ayyappan; Yong Ah Lai; Marni A/P
Konasagaran; Chidamparam Palanivelu

Criminal Procedure and Sentencing – Sentencing – Several accused charged with rape, abetment, procurement and living on the earnings of prostitution – Proper sentence to be imposed in such circumstances.

1. This is a case of a 13 year-old girl brought into Singapore to work as a prostitute.
2. The girl, who shall be identified by her nickname T, is born on 1 October 1989.
3. Five persons were charged in connection with her prostitution activities. They are Kalathithara Subran Hilan (“Hilan”), Thankappan Ayyappan (“Vijay”), Yong Ah Lai, Marni A/P Konasagaran (“Marni” or “Bavani”) and Chidamparam Palanivelu (“Velu”).
4. Hilan was charged with two counts of rape of T on 10 May and between 10 and 23 May 2002.
5. Vijay, Yong Ah Lai and Marni were charged with (i) abetting Hilan to rape T on 10 May 2002, (ii) bringing T into Singapore by false pretences for the purpose of prostitution, and (iii) living on the earnings of the prostitution of T.
6. Vijay, Yong Ah Lai, Marni and Velu were charged with abetting Hilan to rape T between 10 and 23 May 2002.
7. At the beginning of the trial, Hilan, Vijay, Yong Ah Lai and Marni indicated that they wanted to plead guilty. Their cases were transferred to another court to be dealt with.
8. Vijay and Marni pleaded guilty and were convicted and sentenced on three offences
 - (i) for procuring T for the purpose of prostitution, an offence under s 140(1)(b) of the Women’s Charter, for which they were sentenced to one year imprisonment and fined \$5000 or six months imprisonment in default of payment,
 - (ii) for living on the earnings of the prostitution of T, an offence under s 146(1) of the Women’s Charter, for which they were given similar sentences to that of under s 140(1)(b), and

(iii) for abetting Hilan to rape T, an offence under s 376(1) of the Penal Code for which they were both sentenced to 11 years imprisonment with an additional six strokes of the cane for Vijay.

The custodial sentences for offences (i) and (ii) were concurrent and consecutive to that for offence (iii).

9. Hilan and Yong Ah Lai were sent back to be tried together with Velu before me.

10. Before me Hilan faced two charges of raping T, Yong Ah Lai faced two charges of abetting Hilan to rape T and one charge of procuring T for the purpose of prostitution, one charge of bringing T into Singapore for the purpose of prostitution and one charge of living on the earnings of the prostitution of T. Velu faced one of abetting Hilan to rape T.

11. At the end of the trial I convicted the three of them on all the charges they faced except the charge against Yong Ah Lai for bringing T into Singapore. Hilan and Yong Ah Lai have not appealed against the convictions and sentences, but Velu has appealed against his conviction and the sentence imposed on him.

12. Against this backdrop, these grounds will deal only with Velu's case. The evidence adduced at the trial which relate to the charge he faced will be referred to.

13. The charge that Velu faced with Yong Ah Lai was that they together with Vijay and Marni

sometime between 10 May 2002 and 23 May 2002, in Singapore, did engage with one another in a conspiracy to do a certain thing, namely to procure men to rape one [T], and pursuant to that conspiracy sometime between 10 May 2002 and 23 May 2002 at Room 7, No. 3 Lorong 18 Geylang, Singapore, one Kalathithara Subran Hilan, male/36 years old, raped the said [T] and [they have] thereby abetted the said offence of rape which act was committed in consequence of [their] abetment, and [they have] thereby committed an offence punishable under section 376(1) read with section 109 of the Penal Code, Chapter 224.

14. The offence referred to is rape as defined in s 375(e), that a man commits rape against a woman if he has sexual intercourse with her, with or without her consent, when she is under 14 years of age.

The background facts

15. T stayed with her parents in Muar. Marni was their neighbour. Marni and Vijay approached T's mother and proposed that T come to Singapore with them to work as a house maid. After thinking over the matter, T's mother agreed. On 3 May T left home with Marni and Vijay. They spent a few days in Johore Baru, and entered Singapore on 9 May. Yong Ah Lai, who is Marni's husband, joined the group after they arrived in Singapore on 9 May.

16. All of them checked into the Lai Ming Hotel at 424 Geylang Road. From the next day on, T was made to offer her services as a prostitute in the backlanes of Geylang Road. They were arrested by officers of the Anti-Vice Branch on 23 May. Hilan was arrested separately on the same day, and the appellant was arrested on 25 May.

T's evidence

17. On the day following her arrival in Singapore she started work as a prostitute. She was with Vijay and Yong Ah Lai when Hilan came and became her first customer. They had sex in a room, after which he gave her a tip of \$4 and his telephone number.

18. A few days later, she met Velu through Yong Ah Lai. Her evidence was that "(o)nce Velu came into the picture, Velu started bringing me" to ply her trade. [1]

19. Subsequently she met Hilan again. On this occasion, she was at a backlane and Velu and Yong Ah Lai were standing nearby. When Hilan approached her Velu went to speak with him. After they spoke, Velu brought her and Hilan to a room and had sex while Velu waited outside. Hilan paid \$30 including \$5 for the room, and Velu let her keep the balance \$25. [2]

20. On other occasions Velu would collect money from the customers and hand it over to her, and at other times he would collect the payment, pay for the room, and gave her the balance. [3]

21. T also remembered that Velu had visited the room at Lai Ming Hotel where she stayed with Vijay, Yong Ah Lai and Marni. On that occasion Velu asked for her passport which he examined and returned. After it was returned, she discovered that her identity card which was kept inside the passport had been removed. Subsequently Velu brought the identity card back. On another occasion, Velu bought a chain for her, and put it around her neck. [4]

Hilan's evidence

22. He admitted that he had sex with T on two occasions. On the first occasion, Yong Ah Lai was involved. He told him of the price for T's services, arranged for the room, and received the payment. [5]

23. After they had sex, he gave her a tip and his handphone number.

24. About a week later on 18 or 19 May [6] he met Yong Ah Lai when he was at Lorong 18. While they were speaking to one another, T came up to him and asked him if he remembered her. When he confirmed that he did she asked him to follow her to have sex with her. She led him to a room, and they had sex. [7] Velu was not there and he claimed he did not meet Velu till after they were arrested.

Yong Ah Lai's evidence

25. He had known Velu since February/March 2002. He knew that Velu frequented the places where the prostitutes were, and was friendly with them. He introduced T to Velu while she was prostituting herself. A few days later Velu went to his room at the Lai Ming Hotel. Velu looked at T's passport and after he left, it was discovered that T's identity card was missing from her passport.

26. On the purchase of T's chain, he suggested to T that she gave money to Velu to buy the chain for her and T told him that Velu had bought it for her.

27. Yong Ah Lai made statements to the police after his arrest. One of those statements recorded on 6 June 2002 [8] was admitted in evidence without objections from him. In this statement, Yong Ah Lai was questioned about the appellant

Q1: Can you tell me when did you actually get to know 'Velu'?

A1: It was sometime towards the end of February 2002 that I got to know 'Velu' at Geylang. He was talking and joking to the prostitutes there. I decided to talk to him. I have seen him before on several occasions during my visits to Geylang. On that day, when I spoke to him, I was asking him as to whether he could recommend any new girls that I could engage. I would like to say that 'Velu' is always around the prostitutes there, he is quite well known among the Indian men there and they would call him '9'. The prostitutes that he always hangs out with are Indians. I do not know why he was called '9' but whenever I was there, the people there would asked me if I was looking for '9'.

Q3: Can you explain to me as to how did 'Velu' help you to take care of the Indian girl when you were not around?

A3: I told 'Velu' to help me to take care of the Indian girl whenever I have to leave the place. He agreed to do so. I did not specifically tell 'Velu' what to do, I told him to be there and to keep an eye on the Indian girl. When I returned back to the place, he would not tell me anything but asked me as to where I have gone.

Q8: Can you tell me how many times did 'Velu' help you to take care of the Indian girl when she was prostituting herself?

A8: Only 2 times.

28. When Velu cross-examined him on the statement, he explained that "Velu came to see me in the hotel. So when I took the girl out, he accompanied me as well" [9], that "he came to visit me and then subsequently I brought the girl out and he followed me but I cannot remember the case. On that occasion I was the one who brought the girl out and not him", [10] that "(h)e did not help me in the work", [11] and that "I only asked him to help me for a short while when I go and buy things at the shops nearby and he helped me out of friendship." [12] He clarified that he wanted Velu to be around and see that T did not talk or quarrel with the other prostitutes, but "I did not engage his service to procure customers. I just want him to be there so that nothing will happen." [13] The clarification is significant as it shows that Velu was not with Yong Ah Lai and T by chance, but that he was there to help ensure that there would be no interference with her activities.

29. That was not the first time Velu had helped him. He said

While I was at Lorong 18, many Indians there bullied me. They told me that since I was new there and I wanted to solicit customers for the prostitute, then I have to pay them \$30 a day and I indeed gave them \$30 a day. These Indians were Indian nationals and they were also taking care of those prostitutes there. If I did not give them money, they would bully me. After I got to know Velu, Velu asked me why did I have to give these Indian nationals money because they were just the same as you, they were also procuring customers for their prostitutes. As such, from then onwards, I stopped giving money to these Indian nationals and also because of that, I have faith in Velu. That was why I asked him to take care of the Indian girl when I wasn't around. [14]

30. Yong Ah Lai had made reference to Velu when he was questioned by SI Poh Boon Choon on the day he was arrested. When the prosecution made reference to it in the opening address, he said that he did not make any oral statement to anyone [15] and then he said that he only told the officer that he procured customers for T. [16] When SI Poh gave evidence on the taking of the statement, Yong Ah Lai contended that he did not say the things that were attributed to him. [17] He accepted that no inducement, threat, promise or oppression was employed, [18] but he alleged that "they have added the name Velu there and also said that I was the one who made arrangements, all these. I never said all these. They were just trying to frame me up by adding these words there." [19]

31. The words in SI Poh's record in his field book he was complaining about were

Yong admitted arranging [T] for prostitution with Thankappan and his wife to backlane of Lor 18 Geylang. He also arranged one pimp Velu to assist in getting clients for [T's] prostitution. [20]

32. This statement tied in with his subsequent statement of 6 June [21] referred to in para 27.

33. After examining and evaluating the evidence of Yong Ah Lai and SI Poh I found that Yong Ah Lai had made reference to Velu to SI Poh and that he had expanded on Velu's role in his statement of 6 June.

Velu's statement

34. The prosecution tendered at the trial a statement made by Velu on 6 June. [22] Velu did not object to its admission.

35. In the statement he admitted that he had taken T's identity card. His explanation for his action was

I took her identity card and kept it with me, since I saw her address at Johor and my foreman, Pathmanathan (*sic*) is also from Johor. I wanted to check with him if he knew this girl and the next day, I met Pathmanathan (*sic*) and I asked him about this girl. Pathmanathan (*sic*) told me that I should not interfere and it is not our business. He told me to return the identity card to the girl. I asked Pathmanathan (*sic*) if he knew the girl, I told him that the girl had come to Singapore to become prostitute and she is still young. [23]

36. He also admitted that T had given him \$20 to buy a chain, and that he bought the chain for her.

Velu's evidence

37. Velu is an Indian national, aged 29 years. He was working as an escalator fitter and electrician and claimed to have a second job as a newspaper delivery man. He recounted that when he first met Yong Ah Lai with T, T looked young. When he discovered from her identity card that she had come from Johore he kept the identity card. His intention was to get his foreman Padmanathan who is also from Johore to find out whether T was in Singapore willingly. [24] When he showed the identity card to Padmanathan, he was advised to return the identity card and not interfere in the matter as it does not concern him. [25]

38. He confirmed that he bought the chain for T [26] and that he helped Yong Ah Lai by speaking to the Indian nationals [27] who were demanding payments from him.

Padmanathan's evidence

39. Padmanathan's full name is Padmanathan s/o Paramansivan. He is a foreman of a lift company and was the only witness called by Velu. He recalled Velu showing him T's identity card that "He said that someone had brought the girl and left her at the place. He said the girl was left at Geylang. He said the girl appeared young" [28] and "I said that the girl is young and she should not be doing this. I said that it's not good for the girl to do this and I told him to do something good for the girl. [29]

40. The following came out during the brief cross-examination

Q Did he tell you anything else?

A He only said this, he did not say anything else.

Q Did you say anything else to him apart from what you've told us?

A: No, I did not say anything else. [30]

Evaluation of the evidence

41. I was aware that the prosecution's case relied substantially on T, a young girl, and that some aspects of her account of her experience in Singapore lacked particulars, for example to dates of events, and to the circumstances in which Velu bought the chain for her.

42. I was nevertheless satisfied that she was an honest witness, trying her best to remember what happened during that traumatic fortnight when she was separated from family and home brought to Singapore and was made to prostitute herself. Velu was not involved in deceiving her into coming to Singapore. There was no animosity or misunderstanding between them for her to make false accusations against him. I accepted her evidence that Yong Ah Lai and Velu were with her as her pimps when she did that.

43. I did not accept the evidence of Hilan that on the second occasion he had sex with her, T had come up to him, asked him if he remembered her, then led him to a room to have sex with no mention of price or payment. This description of the events was at odds to the evidence of Yong Ah Lai and T that some one would always be at hand to oversee her activities. I did not accept Hilan's evidence that he did not see Velu on that occasion.

44. I found that Yong Ah Lai's evidence in fact supported T's evidence. It can be seen from his evidence that Velu was not an innocent observer of the goings-on. He was frequently in the area, he was known to the prostitutes and he helped Yong Ah Lai stop making payment to the Indian nationals. He also admitted that he wanted Velu to ensure that T did not talk or quarrel with the other prostitutes.

45. I was mindful that Velu did not have the benefit of counsel to represent him, and I gave allowance for that.

46. His own evidence showed that he was not a casual acquaintance of Yong Ah Lai or T. As I have pointed out, he helped the former stop paying protection money, and he was entrusted to buy a chain for the latter. He was sufficiently interested in T's age to take her identity card without asking. His explanation that he wanted to seek the help of his foreman Padmanathan to check with her family in Johore whether she had come to Singapore voluntarily was inconsistent with Padmanathan's evidence. Padmanathan said nothing about being asked to check with T's family, or telling Velu not to interfere in T's affairs. To the contrary Padmanathan told him that it was not good for T to be involved in prostitution, and that he should do something for her. Velu's own witness contradicted him.

47. After reviewing the evidence, I had no doubt that Velu had participated in her prostitution, particularly on the second occasion when Hilan had sex with T by bringing them to the room for the purpose, and waiting outside for them. I therefore convicted him and Yong Ah Lai for abetting Hilan to rape T.

Sentences

48. I sentenced Hilan to 12 years imprisonment and six strokes of the cane on each of the rape charges, with the custodial sentences to run concurrently.

49. Yong Ah Lai was sentenced to 12 years imprisonment and six strokes of the cane on each of the rape abetment charge, with the custodial sentences to run concurrently. He was sentenced to one year imprisonment and fined \$5000 or six months imprisonment in default on the procurement charge, and a similar sentence for living on the earnings of prostitution, which sentences were to run concurrently between themselves and consecutively with the sentences for the abetment of rape.

50. I will deal more specifically with the sentence on Velu. Like the other accused persons, he had no antecedents. He pleaded in mitigation that he has been working in Singapore for six years and had not committed any offences. His father has passed away and his mother, sisters, wife and children in India depend on his financial support.

51. Taking these matters into account, and bearing in mind that he had claimed trial to the charge, as well as the sentencing guidelines set down in *Chia Kim Heng Frederick v PP* [1992] 1 SLR 361, as well as the sentences passed on his co-accused, I sentenced him to 12 years imprisonment and six strokes of the cane.

[1] Notes of Evidence page 181

[2] Notes of Evidence pages 182-3

[3] Notes of Evidence page 187

[4] Notes of Evidence pages 193, 233

[5] Notes of Evidence page 348

[6] Notes of Evidence page 376

[7] Notes of Evidence page 355

[8] P25

[9] Notes of Evidence page 451

[10] Notes of Evidence page 455

[11] Notes of Evidence page 459

[12] Notes of Evidence page 465

[13] Notes of Evidence page 460

[14] Notes of Evidence page 474

[15] Notes of Evidence page 28

[16] Notes of Evidence page 29

[17] Notes of Evidence page 101

[18] Notes of Evidence page 86

[19] Notes of Evidence page 469

[20] P28

[21] P28

[22] P26

[23] P26

[24] Notes of Evidence page 515

[25] Notes of Evidence page 518

[26] Notes of Evidence pages 544, 554

[27] Notes of Evidence page 523

[28] Notes of Evidence page 580

[29] Notes of Evidence page 581

[30] Notes of Evidence page 582

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