

ACQUITTAL OF 60 YEAR OLD MAN OF CHILD RAPE SETS DANGEROUS PRECEDENT

Sarawak Women for Women Society is shocked and appalled that a man, who caused his colleague's then 14 year-old daughter to conceive a child, has walked free after the Appeal Court found his conviction on four charges of rape unsound on 7 May 2015. This is even more perplexing when DNA testing proved he is the father of the baby.

Until the written grounds of the Appeal Judges decision is publicly available, it is unclear why there has been such an outcome which is so counter-intuitive. Under the definition of sexual abuse in the Child Act 2001 Sect 17(2)(c)(ii) the action of the man, who has admitted to a hand-job, is clearly an act of sexual abuse. Also, as is widely known, under the Penal Code intercourse with a child under 16 is statutory rape.

In this instance, the man was more than 40 years older than the girl and in a position of trust so is clearly the responsible party. We are very concerned that his acquittal sets a dangerous precedence. Already child rape is under-reported – this verdict, if it is allowed to stand, will make it more difficult to successfully bring cases to court.

It appears our legal system at the highest level still does not understand the well researched dynamics surrounding child sexual abuse including how fear and confusion affect the child's behaviour and testimony; the impact of grooming and the inappropriateness of the concept of consent when an adult is conducting sexual activities with a minor. Yet the same court appears willing – from press reports - to accept the defendant's explanation that the pregnancy occurred through his inserted finger smeared in sperm. This statement makes the rape one done by an object which is a different charge to the one he was charged with under the Penal Code.

SWWS calls for all parties concerned with the welfare of children to examine the grounds for the quashing of this conviction so lessons can be learnt to prevent future similar outcomes. At this stage it is not clear whether alternative charges need to be brought by the Deputy Public Prosecutor, or for the DPP to file for a review of this decision or the Penal Code reformed. Such a reform could re-look at the definition of rape so that for a minor the Penal Code is consistent with the enlightened definition of sexual abuse in the Child Act. Sexual abuse of a child, under this Act, has occurred if the child has "taken part whether as a participant or an observer, in any activity which is sexual in nature" and it also covers sexual gratification of third parties.

Whichever steps are taken there is an urgent need for action. If not our system of child care protection will be seriously flawed and Malaysia will not be upholding the UN Convention on the Rights of the Child which it has signed.

Remember, there is a young girl out there who has been traumatized by becoming a mother, by systems oblivious of her needs and rights and by a court ruling which has exempted the man who made her pregnant. How many more girls and women will have to endure abuse and violence before we, as a civil society, act?

If left unchallenged this legal precedent by the Court of Appeal is a gift to those who exploit children. Justice is symbolised by the image of balanced scales not ones heavily weighted in favour of the adult. Change is needed so children receive social justice within the legal system.

Margaret Bedus
President
Sarawak Women for Women Society
10th May 2015

NB. The above statement was edited on 11/5 by inserting '*convicted on*' before 'four charges of rape'

Extracts of relevant Sections of Acts:

Child Act 2001 Sect 17 (2):

For the purposes of this Part, a child is

(c) sexually abused if he has taken part whether as a participant or an observer, in any activity which is sexual in nature for the purposes of :

(i) any pornographic, obscene or indecent material, photograph, recording, film, videotape or performance; or

(ii) sexual exploitation by any person for that person's or any person's sexual gratification.

Section 377CA Penal Code : Any person who has sexual connection with another person by the introduction of any object into the vagina or anus of the other person without the other person's consent shall be punished with imprisonment for a term which may extend to twenty years and shall also be liable to whipping.