

Justice for Raped Teenager

Now that the Court of Appeal has delivered its written judgment - in what has become known as the "finger rape" case it is clear that the learned judges clearly see the need for the Penal Code to be amended swiftly to avoid such outcomes reoccurring in the future.

SWWS welcomes this clear statement but remains incensed that the girl who has been traumatized is left without closure or compensation.

A significant reason given for the acquittal was the failure of the prosecution to bring in a further witness to challenge the senior doctor's view that if a finger with sperm on it was placed in the vagina impregnation was possible. Although the statistics given were low the judges felt this gave rise to doubt which was not challenged during the trial.

The above reason alone was not what swayed the judges as, although doubt was there, it was possible not probable. What swayed them was the answer the accused gave when asked what he would say as the chemist's report said he was the biological father. He replied "*I disagree because I did not have sexual intercourse with [name deleted as girl a minor]*"

The Appeal Court then states: "*In the light of the conclusiveness of the DNA that he was the biological father, we can only conclude that it was the answer of an ordinary person who did not expect that use of fingers could result in fertilization and conception*".

What astonishes SWWS is that they made such a conclusion without apparently considering different motives for him to deny the sexual intercourse. We are also astonished that the judges clearly say that they did not consider lesser charges, such as indecent assault, "*lest it lends the notion and the Courts stands accused that the Courts condone such lesser charges as sufficient charge and punishment, and detract from the urgency of introducing necessary legislation*". They further note that prosecution probably felt compelled to charge as rape for "*the very same reason that lesser charges are wholly inadequate.*"

So we have a situation where it is known that a crime was committed but to enable the law to be reformed quickly a young girl is denied social justice. A

“lesser “charge is seen as wholly inadequate. Was sexual abuse under the Child Act considered? The consequence is the girl has to bring up a child with no financial support from the father and no conviction that confirms that she and her rights were violated.

She not only had to endure the trial but also suffered the injustice of the defense lawyer trying to pick holes in her evidence through the newspapers despite the original trial judge – the only one to see her – finding her credible and the Appeal Courts dismissing the inconsistencies as not being grounds for acquittal. The defense lawyer should publically apologize for so widely disseminating so many unproven accusations and both the Sarawak and Malaysian Bar Associations should provide and apply a code of conduct on how lawyers respond to the press post-trial.

Further action is needed. Now that the grounds of the decision is out the feasibility of calling for a review needs serious consideration as does bringing other charges against the accused if the girl can withstand the trauma of giving evidence again. The Evidence Act needs to be amended to enhance the importance given to the testimonies of children and to review corroboration rules for child victims whilst still ensuring the accused receives a fair trial. Crucially, the Penal Code MUST be amended NOW!

The coalition of 48 women and children NGOs known as “Citizens Against Rape” will be holding a walk in KL on June 7th to raise awareness on the need to protect our children and SWWS invites all members of the public in Sarawak to join a similar walk at Friendship Park, Kuching at 11am on the same day. Those coming are encouraged to wear orange and bring flowers and toys with them to symbolize the innocence of children. Those too far away to join us can show support by wearing orange on the 7th.

END

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