

## **CHILD VICTIMS IN THE CRIMINAL JUSTICE SYSTEM, 9 APR 2013**

The recent decision of the Court of Appeal to uphold the acquittal of a man previously convicted of raping a child is indeed a sad one for the child, her family, the community and Malaysian society at large.

The family's nightmare, and the long-drawn 5-year ordeal which followed, began in 2008 when their four year old started revealing details of a series of sexual assaults she had undergone in the kindergarten she attended, after it was discovered that she was suffering from a sexually transmitted infection. From the time a police report was made, it took almost two years for the accused to be charged. The accused was convicted of rape of the four year old in 2011 but on appeal the High Court freed the accused of the charge in 2012. The Court of Appeal upheld the acquittal on 25 March 2013.

At both the appellate levels the child's testimony and credibility was always viewed from a premise of disbelief despite the physical and psychiatric proof of some form of sexual abuse of the victim. The primary consideration was the fact that the testimony came from a child and section 133A of the Evidence Act 1950 calls for independent corroboration when relying on the testimony of a young child based on the reasoning that a child cannot differentiate between fact and fantasy.

Needless to say, fulfilling this requirement is almost always an impossible task as more often than not, the only witnesses to the sexual crime are the perpetrator(s) and the victim. The appellate courts also failed to give due consideration to new developments in the law which show that various law commissions such as in Ireland and Australia have concluded that it is unusual for children to fabricate a series of events or to fantasise about a sexual assault.

The appellate courts, unfortunately, opted to adopt the practice of disbelief which still prevails in the Malaysian courts although they should have been reluctant to disturb the finding of the learned sessions judge who, after hearing the testimony of the witnesses and observed their demeanour, had believed the evidence of the child.

At the Court of Appeal, Justice Hamid Sultan Abu Backer reportedly told the prosecution that they should have offered an alternative charge earlier as there was enough evidence to convict on a lower charge. The DPP in turn requested the court to invoke their powers to convict on a reduced charge but this was not done. It remains unclear why neither the trial DPP nor the appellate courts acted on their powers under the law to have the charge lowered in accordance with the evidence presented in court.

To ensure an effective criminal justice system especially in sexual crimes, the Women's Centre for Change, (WCC) Penang strongly maintains: –

a) That the courts must take a more progressive outlook in applying the law on corroboration in view of current empirical findings and comprehensive national consultations. There must also be legislative changes in keeping with these findings. A child should not be deemed untrustworthy by virtue of her age alone;

b) That there must be improved compulsory and specialised training to enhance professionalism and ethical practices of legal practitioners, prosecutors and the judiciary, especially regarding vulnerable victims in the criminal justice process, including children; and

c) That both the prosecution and the courts must at all times be vigilant and not hesitate to respond appropriately to the proof tendered in court, in the interest of justice.

WCC continues to urge for comprehensive changes to the criminal justice system to ensure a better chance at justice for child victims of sexual crimes. This is even more important now in view of the number of child victims of sexual crimes in Malaysia.

WCC will continue to support child victims to ensure justice prevails.

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