

JUSTICE FOR CHILD RAPE VICTIMS, 7 SEP 2012

The Women's Centre for Change, Penang is extremely disappointed with the judgment of the Penang High Court which overturned the conviction of a man for raping a 4 year old child in 2008. In particular, the way the child's evidence was viewed by the Judge is of great concern.

In his oral judgment, the Judge had said that "... children, at times find it difficult to distinguish between facts and imagination or fantasy." This is contrary to the findings of various law commissions in countries such as Australia and Ireland, which have concluded that children do not consistently confuse fantasy with realities. One report specifically states that it is very unusual for children to fabricate a series of events or to fantasize about a sexual assault.

The courts need to be vigilant and sensitive when assessing a child's testimony and be aware that a child may describe the sequence and details of a sexual assault differently from an adult. Unfortunately this was not appreciated in the appeal process, thus resulting in the regrettable dismissal of the child's account as "fantasy".

The judge reportedly said "We must not forget who is involved in this rape allegation, even if she is an adult, in which women have a tendency to exaggerate about a sexual act." He also commented that "It's easy for a woman to allege rape, but difficult to disprove." These remarks, implying that a woman or a girl child is likely to lie or exaggerate more than a man, are insulting to women and gender insensitive. This shows a complete lack of understanding when dealing with child or women victims of sexual crimes.

That Malaysian courts are lagging behind in crucial developments in evidential law applying specifically to sexual crime cases is deplorable. Victims of sexual crimes look to the courts for justice. If the courts start on a premise of disbelief, what chance do victims have for justice?

The judge also dismissed the family members' testimonies as "...repetitions and cannot be independent evidence". The reality of child sexual abuse cases is that children disclose to trusted adults like family members. It is unfortunate that such important evidence was not viewed in totality and accepted as supporting evidence.

The courts usually require independent evidence in sexual crime trials involving children due to Section 133A of the Evidence Act 1950 which states that no one can be convicted unless the child's testimony has been corroborated by independent evidence. This requirement is extremely difficult to fulfill given the nature of sexual crimes where the victim is often the only witness to the offence. Furthermore medical and other physical evidence is often lost through late reporting which is a common feature among sexual crime victims due to trauma and embarrassment experienced by the victim.

The judge also found no conclusive evidence that penile penetration had taken place to prove the charge of rape. In the interest of justice he could have exercised the court's power to consider whether the evidence showed that other crimes had been committed, like attempted rape, outraging of modesty or sexual connection using an object. Similarly the prosecution themselves could have proposed alternative charges during the trial.

In light of recent judgments, many members of the public are disillusioned over the difficulties in securing justice for child rape victims. Parents of child rape victims whom WCC is supporting are in despair, questioning the chances of getting justice in court if the trial process is so heavily weighted against their children.

For sexual crime victims especially children, it is high time the government fulfills its duty in ensuring skilful investigation, effective prosecution, and an informed, sensitized judiciary. The public has placed its trust in the government to secure justice for victims.

WCC urges an appeal against this High Court decision.

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