

Empirical Analysis of Court Cases on Sexual Violence in Malaysia

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ABSTRACT

Women and children suffer sexual violence despite the harsh punishment in Malaysia under the Penal Code of Malaysia and the Sexual Offences Against Children Act 2017. Statistics from the Malaysian Royal Police show that sexual offences cases are on the rise. However, not all cases result in a guilty verdict in court. Using purposive sampling, this research conducted a qualitative doctrinal analysis of cases from 2013 to 2023 which have been decided by the courts and published in law journals. The objectives of this research are firstly, to examine how women and children become victims of rape and sexual violence; and secondly, to examine the obstacles faced in convicting the accused. It is found from the published articles that vulnerable victims fall prey to the perpetrator's deceit, threat or promises. Failure to promptly report the crime, failure in preserving evidence of sexual violence, and creating common mistakes in court are hurdles in convicting the perpetrators.

Keywords: sexual violence; rape; evidence; convictions; gender

INTRODUCTION

Sexual violence is defined as the unconsented act of a sexual nature against a person. The types of sexual violence include rape, sexual assault, child sexual abuse and exploitation, sexual harassment and the taking or sharing of sexual images without the person's consent [1]. Sexual violence against women and children is a worldwide phenomenon and dilemma. A study by WHO of 161 countries reveal that at least 30% of women are the subject of physical and/or sexual violence [2]. It is of major concern despite the various actions being taken to reduce the occurrence of such crimes which includes the criminalization of the various inappropriate sexual acts, the imposition of harsher sentences on those found guilty of sexual violence, rehabilitation of the perpetrators, and the education of the public. At the international level, the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) urged member countries to address violence against women. Further, the World Conference on Human Rights 1993 recognized that violence against women is a human right violation and a major public health problem.

Global Prevalence of Rape

Rape is a global problem; however, actual rape statistics are hard to obtain due to the underreporting nature of the victims. Globally, about 35% of women have faced sexual harassment, but fewer than 40% seek help, and less than 10% reach out to law enforcement [3]. On top of that, definitions and tracking methods of rape vary globally, hence affecting the statistics, as some countries define it broadly and include statutory rape or marital rape.

However, in most countries where data on rape is available (including the U.S.), fewer than 40% of women seek help—and fewer than 10% seek help from law enforcement. As a result, most rapists escape punishment. In the U.S., for instance; estimates show that only 9% of rapists get prosecuted, and only 3% spend time in prison. The remaining 97% of the rapists walk free [3]. These statistics reveal that the crime out there is under-reported. Very few perpetrators are convicted and punished for this violent act.

Studies report that victims of rape and sexual offences are prone to feel the shame and embarrassment about the

sexual violence committed on them and would very often blame themselves [4]. This attachment of self-blame causes victims to undergo episodes of post-traumatic stress disorder and depression. The stigma that attaches itself to the victims of rape; the perception that they are to be blamed for the incident is the reason, that most rape cases go unreported until the victim is unable to endure the pressure of the incident or until the event is discovered by a third party. Previous research found that it is often for survivors of rape to report the crime to police after substantial delays, which could be after days or sometimes years [5]. Rape victims usually consult their friends and female figures whom they trust. This is because women tend to have more positive attitudes, would not blame the victims and would be more supportive [6].

A higher number of reported rape cases does not necessarily mean that there are more of such cases in a particular country but that it could mean that the legal system is getting better at catching and punishing rapists and/or society is doing a better job of supporting rape victims, so those victims are more likely to come forward and report the rape.

Causes of Rape

Motives behind rape vary and are difficult to define, categorize and quantify. Common characteristics of rapists include, a lack of empathy, narcissism, and feelings of hostility towards women [7]. A study on incarcerated Muslim rapists in Malaysia reveal that their commission of the crimes is ascribable to their not having a strong enough faith and belief in the religion as reasons for the inability to stave off the desire to commit those crimes [8]. The study found that the incarcerated rapists were prone to watching pornography from a very tender age. In fact, most social scientists, psychologists, and feminist activists are of the opinion that rape mostly has to do with issues of power and violence. Rape is not to be about lust but is motivated by the urge towards control and domination, and that possibly also be driven by hatred and hostilities towards women [9].

Earlier studies have shown that rape has a lasting effect on the victims emotionally and psychologically. Victims of rape, particularly female youth, were prone to be commercially exploited as sexual abuse increases the risk of the commercial sexual exploitation of minors [10].

Sexual Violence on Women and Children in Malaysia

Sexual offences in Malaysia are punishable under the Penal Code which criminalizes rape and other forms of sexual violence such as statutory rape, gang rape, incest, outraging the modesty of a person and carnal intercourse against the order of nature. When the victim is a child, the perpetrator can also be charged under the Sexual Offences Against Children Act 2017 (hereinafter referred to as SOACA). The punishment for sexual offences varies with the nature and gravity of the crime, where most offences are punishable with imprisonment and whipping.

The number of rape and sexual offences cases in Malaysia have increased appallingly. Based on the statistics compiled by the Malaysian Royal Police or Polis Di Raja Malaysia (PDRM), there was a total of 1,858 cases of rape, incest, and gang rape in the year 2022 (Table 1). Rape cases increased from 1,378 in 2020 to 1,491 in 2022. In addition, there were 264 incest cases reported in 2022 as compared to 259 in 2020. Gang rape which is an offence under section 375B of the Penal Code also recorded an increase from 85 cases in 2020 to 103 cases in 2022. The rampancy of gang rape cases resulted in the amendment of the Penal Code in 2018 with the addition of the section 375B as a specific provision for gang rape which is punishable with imprisonment of not less than 10 years and not more than 30 years.

Table 1: Types and Numbers of Reported Sexual Offences from 2020 – 2022

SEXUAL OFFENCES	YEAR & NUMBER OF CASES		
	2020	2021	2022
RAPE	1378	1360	1491

INCEST	259	245	264
GANG RAPE	85	61	103
TOTAL	1722	1666	1858

Source: PDRM

The statistics, however, do not show the number of successfully prosecuted cases, the number of convictions or the number of acquittals. The lodging of a police report of the sexual violence, does not necessarily ensure that the case would make it to court and a conviction obtained as there are various factors that prevent the return of a guilty verdict such as the lack of court admissible evidence, or that the perpetrator could not be traced. Even if a perpetrator pleads guilty to the sexual offence, the case might prolong if he appeals against the sentence imposed by the court. Although the minutes of the court proceedings are not accessible to the public, some judgments of the courts can be obtained by law practitioners and academicians through law journals which hold the facts of the case, the argument from both the prosecution and the defense as well as the judgment of the courts. Examining the judgments of the cases that comes to the courts eases and helps the legal fraternity in the preparations of their cases or in understanding the underlying reason behind the judges' decision as to whether the perpetrator ought to be convicted or acquitted. The facts of the cases found by the courts provide a rich repository of data about the crimes alleged to have been committed.

Hence, the objectives of this paper in studying the reported and published judgments of the cases are: first, to examine how women and children become victims of rape and sexual violence by analyzing the modus operandi of the perpetrators. By doing so, actions can be taken to prevent them from falling victim to these perpetrators. The second objective is to analyze the obstacles that the victims must endure in bringing these perpetrators to justice. By finding them, future victims and those who provide the support system to future victims (such as the victims' family and friends, the investigating officers, prosecutors, medical aid providers) can help to reduce or eliminate such obstacles.

It needs to be reiterated here that all documents used to elicit information are published and made available to the public.

METHODOLOGY

This study empirically analyses documentary evidence of actual criminal cases on rape and other sexual offences from 2013 to 2023 from the judgments of the superior courts, namely the High Courts, the Court of Appeal, and the Federal Court. The judgments are reported and published in reputable law journals, namely, the Malayan Law Journal (MLJ) and the Current Law Journal (CLJ). These law journals provide the sources of the judicial precedents for judges, prosecutors and lawyers involved in the trial process in coming to make the final decisions under Malaysia's adversarial system of justice. The 11 years study period chosen is a significant enough time frame to observe the changes in the nature of the criminalization of sexual offences under the Penal Code and the Sexual Offences Against Children Act 2017 (SOACA), the changes in the development in conducting criminal cases particularly involving children and in the nature of the sentencing passed by the courts.

Using purposive sampling, cases were selected based on three criteria which are: 1) the offences were either rape or sexual offences under the Penal Code or SOACA; 2) the case is concluded with a verdict from the courts which is either conviction or acquittal of the perpetrator; and 3) the published judgment of the courts. The cases were sourced from the online database of the MLJ and the CLJ. Using keywords such as "rape", "sexual offence", "rogol" (which is the Malay word for rape) resulted in 330 cases retrieved from the MLJ online database and 72 cases from the CLJ. After limiting the search to the period from 2013 to 2023 and discarding cases which did not have a published status, the numbers dropped to 90. Cases which cited earlier cases on rape but did not involve a charge for rape or other sexual offences were removed from the sample, leaving the total to 44 relevant cases. These cases were examined to identify how the sexual offences were committed, the severity of the offences, the actions taken by the victims to disclose the incident, the issues raised in the courts affecting the court's decision in finding the perpetrator guilty or otherwise, and the punishment imposed on the perpetrator.

The findings are discussed below.

RESULTS AND DISCUSSION

In most of the cases that were analyzed, the perpetrators were charged for rape under section 376 of the Penal Code, where the main ingredients of rape are: it was done against the victim’s will and without her consent (or even with her consent if she was below 16 years old, or if her consent was obtained by coercion) and that there was penetration. The punishment for rape is imprisonment up to 20 years and whipping. When the rape involved a perpetrator who has family relation with the victim or where he is prohibited from marrying her under the law, custom or religion, the perpetrator would usually be charged for incest. Punishment for incest is considerably heavier than that of rape which is not less than ten years and not more than thirty years with whipping. In the absence of penetration, the perpetrators would be charged for an offence under other sexual offences such as carnal intercourse against the order of nature or physical sexual assault on a child by touching or other physical contact under section 14 of the SOACA. In some cases, there were multiple charges for the different offences. Table II categorizes the nature of the sexual offences that the perpetrators in the 44 cases analyzed were charged with.

Table II: Offences and Number of Cases with Reported Judgment 2013-2023

Offences	Number of cases
Section 376 of the Penal Code (rape)	26
Rape and murder section 302	2
Section 376B of the Penal Code (incest)	1
Section 377 of the Penal Code (carnal intercourse against the order of nature)	3
Section 354 of the Penal Code (assault or use of criminal force to a person with intent to outrage modesty)	2
S 14 of SOACA 2017 (sexual assault on a child by touching)	5
Combination of multiple offences under Penal Code and SOACA	5

To answer the first research objective, based on the analysis of the 44 cases, it was found that the victims fell prey to the perpetrator’s heinous acts of sexual violence due to the following factors: 1) Deceit by the perpetrator; 2) Vulnerabilities of young victims; and 3) Opportunity for the perpetrator to commit the crime. These factors are elaborated below.

Names of the victims are never published to safeguard the identity of the victims; however, the names of the perpetrators are published to identify the cases that are tried in court and further published in newspapers and law journals.

A. Deceit by the Perpetrator.

A perpetrator uses deceit to lure the victims before raping them. This occur commonly when the victim does not know the perpetrator and in normal circumstances, would not easily follow the perpetrator. Using deceit to satisfy his lust filled intentions specifies that the crime was deliberate and planned, showing the *mens rea* element of his intentions. In the published case of *Feezree Bin Ferdause v Pendakwa Raya [2019] 9 MLJ 440*, the perpetrator approached the victim in a car park near the victim’s apartment asking for directions in the pretext of looking for someone. Although the victim was cautious and did not open the door or window of her car, the perpetrator managed to overpower her as she was leaving her car when she thought the belief of danger had passed. He hijacked the victim in her own car and drove off, while trying to molest and rape her. The perpetrator

made the mistake of robbing her mobile phone and he was later arrested, charged, and convicted for rape and 2 other offences.

A brother’s concern for his underaged sister who was allegedly raped by her boyfriend turned out to be a traumatic experience for the victim who was raped by a deceitful police officer in the published case of *Mahmad Bidin v. PP [2016] 2 CLJ 123*. The police officer raped her in his office at the police station when she was called to give a statement. The police officer not only prevented the victim’s brother from going with her to his office, but he also lied to the victim’s brother that action cannot be taken due to changes in the law and that the victim is no longer a minor. The victim’s brother only realized the truth when the victim told his wife after returning home as she was anxious and that she had to go through sham “counselling sessions” with the perpetrator on the next day which had been trumped up. Abuse of such powers result in distrust in the police by the public and for which, the court rightfully imposed a heavy sentence against the police officer.

An inhumane act of the perpetrator’s deceit can be seen in *Che Mohd Sufian @ Che Bastian bin Che Rashid v Public Prosecutor [2015] 8 MLJ 643* where the perpetrator knocked down the pedestrian victim with his car and offered to send her to the hospital. Instead of sending her to the hospital, he took her to his home where he tied her up and raped her when she was in a semi-conscious state. Subsequently, she managed to persuade him to send her to the hospital and he fled after leaving her at the hospital grounds. He was charged and found guilty of rape. In another case, *Sazali bin Darus v Pendakwa Raya [2015] 9 MLJ 423*, the perpetrator deceived two victims in separate occasions. The perpetrator offered the first victim a job at a hotel but instead raped her in the hotel. On another night, the perpetrator offered the second victim and her friends a ride in his car but after dropping her friends, he raped her and threatened to leave her at a secluded place if the second victim did not follow his instructions. On both occasions, the perpetrator abandoned the victims after raping them and they went ahead to lodge a police report. He was found guilty and convicted of the crimes.

The perpetrator in *Azhar bin Che' San v Pendakwa Raya [2015] 9 MLJ 601* deceived the victim by telling her that her husband was ill and pretended to take her to visit him who was in another state. Instead, he raped her repeatedly, sodomized her, violently assaulted her when she tried to escape and forced her to drink liquor. She was in captivity for two days before she was released. One of the rapes committed was in the presence of the perpetrator’s wife. When the victim managed to escape, she lodged a police report with the help of her husband’s employer. In another case, *Malek Ridzuan Bin Isroll v Public Prosecutor [2015] 9 MLJ 674*, the perpetrator used the same modus operandi to deceive all three victims – by impersonating a police officer, the perpetrator stopped the victims at a bogus roadblock and told the victims to follow him to the police station but instead, raped or attempted to rape them.

The previous relationship between victim and offender is a relevant factor in the rate of conviction of the courts where more severe punishments are imposed where the offenders are strangers as opposed to less severe penalties on perpetrators who were intimate partners of the victims [11]. The findings in this research supports this as the courts grant heavier sentences when the sexual offence is initiated by the deceit of strangers and involved severe violence. The punishment meted out on the perpetrators when the rape involved deceit are summarized in Table III below.

Table III: Deceit Leading to Rape and the Punishment Imposed for Rape 2013-2023.

Case	Offence	Punishment	
		Imprisonment	Whipping
Case 1	3 charges (rape, carnal against nature, robbery)	12 years	3 strokes
Case 2	Rape	15 years	-
Case 3	Rape	20 years	7 strokes
Case 4	2 charges of rape (2 victims)	20 years	16 strokes

Case 5	2 charges of rape 1 charge of sodomy	38 years	24 strokes
Case 6	7 offences (Rape, sodomy, impersonating police officer and robbery)	36 years	19 strokes

In most cases above, the perpetrators who use deceit to commit sexual offences were often strangers to the victims or knew how to take advantage of the victim’s weaknesses.

B. Vulnerabilities of young and disabled victims.

The number of young victims of rape and sexual offences in the published cases from 2013 to 2023 is alarming. The perpetrators took advantage of the victim’s innocence and fear by threatening them to silence or assuring them that such heinous acts were normal, especially when the victim is under the care of the perpetrator. Of the 44 cases, 33 cases involved victims below the age of 18 and 2 cases involved mentally challenged victims. The perpetrators of the sexual crimes were biological father, stepfather, teacher, police officer, someone known to the victim or someone that the victim thought she could trust. Only in 6 cases the perpetrators were strangers. This shows that the perpetrators took advantage of the victim’s vulnerability by being young and familiar with the perpetrator that the victims would not expect the perpetrators to commit such dreadful acts.

In the case *Wong You Farr v Pendakwa Raya [2019] 8 MLJ 581*, the victim was a 15-year-old special needs child who worked as a waitress with her mother in the perpetrator’s restaurant. The perpetrator raped the victim on two occasions when no one was around. The perpetrator also took her naked pictures and threatened to upload them on social media if she were to tell anyone. She finally told her mother as she was worried when her menses was late. The perpetrator was found guilty for the two counts of rape, for which he was sentenced to 16 years imprisonment and 4 strokes of whipping.

Young children left alone without an adult female companion are prone to be victims of the perpetrator who are supposed to be the male guardian of the young victims, or someone entrusted with the care of the young victims. Rape and other sexual offences which were committed at home are commonly found to be committed in the middle of the night while the everyone else were asleep or during daytime when no one else is at home. The 13 years old child victim in *Saiful Adlan bin Mohd Nor v Public Prosecutor And Another Appeal [2016] 12 MLJ 314* suffered in silence for over a year being raped by her stepfather in the middle of the night while her mother was asleep. After confiding in her close friends, she finally got the courage to run away to stay with her biological father and when she was there, she revealed her traumatic experiences to her paternal grandmother. The perpetrator was arrested and sentenced to 15 years imprisonment and 10 strokes of whipping. Similarly, in *Mohamad Izzaini bin Zainudin v Public Prosecutor [2019] 7 MLJ 366*, the 8-year-old victim, was sexually abused and raped by her stepfather on numerous occasions after school when her mother was not at home. The victim confided in her friends after learning about the act of unwanted touch in health education class. With the support of her friends, the victim informed the school counsellor who then contacted the victim’s mother. The stepfather was subsequently apprehended and found guilty for 3 offences. The court sentenced him to 7 years imprisonment for each offence to run consecutively which totaled to 21 years.

Children are vulnerable and some may not understand the sexual acts they are forced to endure. Being silenced into secrecy by the perpetrator who is a father figure or someone whom the child thought could be trusted enabled the perpetrator to commit sexual violence recurringly before the offences were revealed. By then, the child would have suffered traumatic experiences which would wound them for life.

C. Opportunity for the perpetrator to commit the crime.

The absence of witnesses gives the perpetrator the opportunity to commit sexual crimes. A violent and premeditated rape is seen in the case of *Mohd Norizam bin Muhamat Suhaimi lwn Pendakwa Raya [2022] 7 MLJ 835*. The victim was raped in the bathroom while she was doing some washing at the request of the perpetrator. The perpetrator threatened to silence her with a knife and there was no one else in the home except for her toddler son as her husband was away at work. The perpetrator was the victim’s half-brother who was then staying with her and knew when the opportune moment was to strike. He was found guilty, sentenced to 14

years imprisonment, and given 13 strokes of the whip.

Trusting the perpetrator because he was a figure of authority also lets the victim’s guard down resulting in her becoming a victim. In *Azizan Ibrahim v. PP [2016] 6 CLJ 240*, the perpetrator was a security officer in a university where the victim was a student. The perpetrator took the victim to check out a place to rent outside the campus. He molested and assaulted her in his car. The court found him guilty of outraging the modesty of the victim and sentenced him to 12 months imprisonment. The perpetrator tried to raise doubt by attacking the victim’s credibility as she had previously committed an offence of being in close proximity with her boyfriend in the university. The High Court judge, however, said: “*what a victim did in the past or in her private life should not prejudice the mind of a judge, particularly a victim in a sexual offence case*”.

In 3 cases, opportunity was presented to the perpetrator when the victim followed the perpetrator to spend the night in a hotel. All 3 victims in those cases were underaged teenagers who are legally unable to give consent to sexual intercourse, thereby resulting in statutory rape. In *Shah Reza bin Zulkifli dan lain-lain lwn Pendakwa Raya [2017] 8 MLJ 224*, the victim who was 16 years old befriended the perpetrator, a 27-year-old married man, for about a month before the incident. She followed the perpetrator’s friend to a hotel as she was supposed to meet him there. The perpetrator raped the victim while two of his friends held her down. Subsequently, the perpetrator invited 3 other men who took turns to rape the victim. An initiative-taking hotel staff called the police after seeing 6 men going in and out of the room through the CCTV of the hotel which was outside the room that the victim had checked into. 3 men were charged for rape and found guilty. The perpetrator who was the mastermind who had called the others to join in was given the severest sentence which was 14 years imprisonment and 10 strokes of the whip. Similarly, in *Tengku Ahmad Hanif bin Tuan Par lwn Pendakwa Raya [2017] 11 MLJ 145*, the 15 years old victim followed the perpetrator to the beach and later put up the night at a budget hotel. She refused his advances for sexual intercourse, but he went ahead with the commission of it anyway. The next morning when he sent her home, her family was waiting and apprehended him. The perpetrator was found guilty for 2 counts of rape and sentenced to 13 years imprisonment. In *Pendakwa Raya lwn Mohamad Malek Ridhuan bin Che Hassan [2014] 1 MLJ 363*, the victim aged 12 years old, followed the 20-year-old perpetrator whom she had befriended to a hotel and allegedly consented to sexual intercourse. Her sister, who was overly concerned as she did not return home, managed to trace her with the help of the victim’s friend. The perpetrator was found guilty of 2 counts of statutory rape and sentenced to 8 years imprisonment.

Sexual offence cases involving teachers have also surfaced in the news and social media. Teachers spend substantial time at school with underaged students and some had abused the trust by taking the opportunity to commit sexual offences within the vicinity of the school or during activities outside school. Underaged students are easily impressionable and often would not have the courage to defy their teachers, particularly in an unexpected situation involving sexual overtures. Teachers, having spent considerable time with their students, would be able to choose their victims who are submissive and docile to prevent them from reporting heinous acts. Most teachers in the cases found were shrewd not to commit offences which could leave traces back to them and mostly committed offences without penetration. Table IV sums up cases involving schoolteachers:

Table IV: Sexual Offences Involving Teachers 2013-2023.

CASE	OFFENCE	VERDICT
Case 7	Teacher molested 6 male students in computer lab and camping trip.	Guilty for 9 offences. 18 years imprisonment. 11 strokes of whipping.
Case 8	Teacher inappropriately touching a male student in computer lab and teacher’s common room (Inciting a child to an act of gross indecency).	Guilty. 8 years imprisonment. 1 stroke of the rotan. Fine RM10,000 for each charge.

Case 9	Teacher charged for assault or use of criminal force on an underaged female student with intent to outrage modesty.	Guilty. 10 years imprisonment. Fine RM5,000
Case 10	Religious teacher charged with carnal intercourse against the order of nature on a male underaged student.	Guilty. 15 years imprisonment. 6 strokes of whipping.

The second objective of this paper is to analyze the obstacles that the victims endure to bring the perpetrator to justice. There are three key issues discovered from the published cases analyzed: 1) timely lodging of the police report; 2) ensuring sufficient evidence exists to prove the sexual violence, and 3) errors affecting the conduct of sexual offences cases in court (which occurred during the investigative process, the prosecution case and the defense stages i.e. at the trial stage).

A. Timely lodging of police report.

Lodging a police report of the sexual assault is the first step in initiating police investigation and leads to the next process of prosecuting the perpetrator. It is common for victims to show reluctance when it comes to reporting the crime or as often is in the case of young victims, who have confided their trust in these persons, to report the traumatic incident. Delay in lodging a police report is usually used in the perpetrator’s defense to raise reasonable doubt by arguing that the delay is a sign that the victim fabricated the incident or that it was an afterthought. The perpetrators in the case *PP v. Sony Maldud & Ors [2015] 5 CLJ 996* alleged that the sexual act was not rape but was consensual since the victim did it for money and they raised the issue of delay. Initially during the trial, the court decided that there was no prima facie case because there were no bruises on the victim and concluded that it was consensual. The prosecution appealed on the grounds that the trial judge failed to consider the medical DNA evidence of the perpetrators found on the victim’s clothes and also the intellectual disability of the victim. The victim, who was mentally challenged, was stopped by one of the perpetrators when she was on her way to her sister’s house. He offered her a ride but raped her and called his friends to join in. The High Court judge aptly commented on the issue of delay: “*I have heard many appeals on rapes. Some witnesses would immediately tell her parent or someone whom she trusted about the rape, some would delay before making a decision to tell her parent or someone for reasons best known to her whilst some would deny out of shame or fear or threats or punishments before telling her parent or someone, especially if she was being questioned and whether she was of tender age or has some disability*”.

A person of disability or child of tender age would usually hesitate to disclose the incident and should not be penalized or denied justice with the allegations of delay. As seen in the cases analyzed, the children endured recurring sexual violence over a period of time before they plucked up the courage to confide in someone else. Conversely, victims who are adults are more likely to report sexual violence earlier. In *Pendakwa Raya lwn Yong Choo Kiong [2023] 7 MLJ 744*, an Indonesian maid was raped by her employer when no one was at home. She called the embassy and was advised to lodge a police report. She managed to escape from the house and flagged down a taxi who took her to the police station after she broke down crying in the taxi. Medical examination was also done after the report was lodged. The accused was found guilty and sentenced to 13 years imprisonment as well as 2 strokes of whipping. Lodging a police report early prevented the perpetrator from putting up a sham defense as evidence of sexual violence was recovered and the taxi driver’s testimony supported the victim’s evidence.

Making a prompt police report is crucial when the perpetrators are unknown to the victims so that they can be swiftly traced and apprehended. In *Public Prosecutor v Mohamad Khairi bin Bahauddin [2015] 9 MLJ 656*, the perpetrator broke into the victims’ room, robbed, and raped them at knife point. The victims were roommates, and they were caught by surprise when the accused intruded while they were getting ready to go to work. Before raping them, the accused threatened to kill them, forced them to do sexual acts and took naked pictures of them. The victims lodged police report on the same day and medical examination was also conducted promptly. The accused was arrested 2 months later, and DNA results confirmed that he was the rapist. He was found guilty for two counts of rape and 3 counts of robbery. The court sentenced him to a total of 45 years imprisonment and 12 strokes or whipping. In the judgment, the court stated that: “*While it was true that the total period of 45 years*

imprisonment was long and would have a crushing effect on the respondent, bearing in mind his relatively young age, the fact remains that the respondent had violated the victims without any conscience to human dignity. He deserved a deterrent sentence”.

The cases above show that lodging police report early also helps in getting the victim to be medically examined promptly so that evidence of rape and other sexual violence can be traced. This, in turn, will enable the prosecution to build up a compelling case against the perpetrator.

B. Sufficient evidence to prove sexual violence.

Evidence of sexual violence may be difficult to obtain and may be subjected to disputes by the perpetrator raising various doubts. For rape to occur, there must be penetration, and the most reliable evidence would be the medical report to show a new or an old tear of the hymen as well as other injuries on the victims' vagina. In *Sazali bin Darus lwn Pendakwa Raya [2015] 9 MLJ 423*, the medical evidence of both victims showed a new tear which is evidence of penetration. The doctor who conducted the medical examination also testified that the victims were also sent to a psychiatrist as they were traumatized and crying throughout the medical examination. The medical evidence and the testimony of the doctor supported the victims' version. Postmortem reports also give convincing evidence of rape even though the victim is not alive to narrate the crime. In *Tarmizi bin Yaakob lwn Pendakwa Raya [2022] 6 MLJ 615*, the accused was charged with rape and murder of the 16 years old victim who was home alone. Postmortem report showed that the victim was raped and there were bruises which indicated signs of struggle. Blood-stained fluid was still oozing from her vagina during post-mortem. The victim's DNA was found on the accused's shirt, pants, and knives. The accused was found guilty of rape and murder. Murder is punishable with death under section 302 of the Penal Code.

A child born because of rape is evidence to show that there was sexual act between the perpetrator and the victim. In *Mohd Hanif Kassim v. PP and Another Appeal [2015] 3 CLJ 984*, the 14 years old victim was raped in an oil palm plantation. The victim remained silent as the perpetrator told her not to tell anyone until her mother noticed the abnormal difference in the victim's appearance. Her mother took her to the clinic and discovered that she was 34 weeks pregnant. Upon delivery of the baby boy, the DNA results confirmed that the accused was the biological father. He was arrested, charged, and found guilty of rape. He was sentenced to 10 years imprisonment and given 1 stroke of the whip.

C. Errors affecting the conduct of sexual violence cases in court.

The burden is on the prosecution to prove a prima facie case against the accused. Analysis of the cases from 2013 to 2023 found that there were mistakes made by the prosecutor, the investigating officer or even by the trial courts may be detrimental to the victim's case and may result in justice not being served.

In *Bunya AK Jalong v Public Prosecutor [2015] 5 CLJ 893*, the victim who was 15 years old gave birth to a baby and the DNA proved that the accused was the biological father. The accused was charged with 4 counts of rape. The accused was found guilty in the trial court and the High Court upheld the conviction. However, upon further appeal, the Court of Appeal set aside the conviction and sentence because the doctor who examined the victim testified that the baby was not necessarily due to sexual intercourse but could also be by non-sexual intercourse as there was no penile penetration. The accused's evidence was his semen-laden fingers were inserted into the victim's vagina. The doctor's evidence was not rebutted by the prosecutor in the re-examination of the witness. Further, there was no evidence that the accused and victim checked into the hotel to support the victim's allegation that the rape occurred in a hotel. These raised doubts on the occurrence of rape as one of the elements of rape which is penetration was not proven.

Overzealousness of the courts in disposing of a case can backfire and result in injustice to the victims and the accused. In *Fariied bin Aris lwn Pendakwa Raya [2021] 10 MLJ 539*, the accused was charged under SOACA for molesting his 13 years old illegitimate child. The trial court found the accused guilty after the trial went ahead with the accused forced to represent himself. The accused appealed against the decision on the grounds that the court did not give him reasonable time to get legal representation. Lack of legal representation deprived the accused of a fair trial as the accused did not have the knowledge of how to conduct a case on his own or ask the

relevant questions of the witnesses. The High Court allowed the accused's appeal and ordered a retrial as the trial court did not recommend that the accused obtain legal aid representation from the National Legal Aid Foundation if he could not afford to engage a lawyer.

In *Mohd Faiz Ismail v. PP [2023] 4 CLJ 949*, the prosecution blundered in their case resulting in the accused's acquittal as reasonable doubts were raised. The accused, a teacher, was charged under SOACA for molesting a student in the school. The prosecution did not show the victim's age as SOACA is applicable for offences against a child below the age of 18. There was also insufficient evidence to place the accused at the location of the alleged offence being committed as there was lack of investigation into the accused's alibi. Despite other students also complaining about the teacher's alleged sexual misconduct and the testimony of another teacher who saw the distraught victim at once after she was molested, the prosecutor had not discharged the burden of proof, and the accused was acquitted.

Flawed investigations of the sexual crime would affect the prosecution's case as found in the case of *Roslan Baki v Public Prosecutor [2022] 1CLJ 818*. The victim was a special needs child whose hearing was impaired. The prosecution relied on the 10-minute video of her being interviewed at the Children Interview Centre. However, the officer who interviewed her did not have the ability to deal with a special needs child such as the victim and asked suggestive questions which the victim merely agreed to. There was no cross-examination to verify the victim's testimony and there was a lack of corroborative evidence. The court was of the view that "*the interview would not have been a fact-finding mission but, instead, a fact-confirming exercise and amounted to a flawed investigation*". Hence, the accused was acquitted.

The acquittal of the accused persons in the above cases does not necessarily mean that they were innocent because the victims may have been sexually abused but it could not be proven that the accused persons were guilty of committing the crimes.

RECOMMENDATIONS AND CONCLUSION

Rape and other forms of sexual violence continue to be a threat to women and children. Despite the harsh punishments imposed by the law, police statistics do not show a decline in the cases reported. Based on the published cases which were reported and analyzed in this study, we have fulfilled the first objective and found that sexual violence on women and children have become more rampant and severe with deceptions by the perpetrator on vulnerable victims. Thus, it is crucial to prevent the opportunity to commit the crimes and be vigilant of situations that would make them victims of the perpetrators. Aside from the improvements to be made to the nature sexual education, women and children need to be educated about the actions to be taken in cases of sexual violence occurring as this would contribute to the successful prosecution and conviction of these sexual predators.

Programs on rape and sexual violence awareness together with the existing systems to assist victims must be enhanced. This would help victims know what to do and where to go in cases of sexual violence. Sexual education needs to start with the basics on right and wrong touches, for example, at elementary school levels. Such programs must be available on social media platforms in addition to schools, colleges, and universities. In addition, special programs need to be given to children with special needs and women with disabilities. In line with the study by [12] which found that people with disabilities require far greater attention in confirming rates of assault experienced, our study has shown that the vulnerabilities of young and disabled victims is one of the reasons they become victims of sexual assaults. Special needs children and women with disabilities would find it more challenging to comprehend the traumatic experience that they endured which would hinder them from reaching out for help. This would result in delayed reporting of the sexual assault which supports earlier findings that survivor age and demographics relate to delayed reporting [5]. Delay in reporting sexual violence would not only deprive the victims of professional and medical support for the traumatic experience but might also affect the legal action against the perpetrator when evidence could not be obtained or when the perpetrator could not be traced. In addition to the age of the victim, the cases analyzed also showed that victims take a longer time to report when the perpetrator is someone known to them. This supports previous research which found that the decision to report is often affected by the relationship between the victim and the offender [13]. It is vital that victims of sexual assault obtain sexual violence support services as many victims were found to have suffered

mental health issues such as anxiety, depression and post-traumatic stress disorder [14].

After enduring sexual violence, victims would have to relive the traumatic experience when they give evidence in court, particularly when being cross-examined by the defense lawyer who would naturally challenge the victim's version of sexual violence alleged. In fulfilling the second objective, it was found based on the analysis of the published sexual violence cases that lack of thorough investigation by police officers investigating the crime and the prosecution's carelessness in conducting the case in court could result in failure of convicting the perpetrator which in turn would endanger the vulnerable victim especially if the perpetrator is someone known to the victim. Thus, support services for victims of sexual violence is indispensable despite the perpetrator being found not guilty because being acquitted of the crime does not necessarily mean that the sexual violence did not take place.

While men need to be exposed to respect for women, women themselves could fight against any culture that makes some assaults/violence seem permissible by increasing their awareness and self-agency. We would see an end to sexual violence against women unless every individual and responsible agency seriously make this a priority.

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