IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2021] SGHC 273

Magistrate's Appeal No 9101 of 2021

Between

Wong Tian Jun De Beers

… *Appellant*

And

Public Prosecutor

… *Respondent*

JUDGMENT

[Criminal Procedure and Sentencing] — [Sentencing] — [Sentencing frameworks]
[Criminal Procedure and Sentencing] — [Sentencing] — [Principles]

Wong Tian Jun De Beers
v
Public Prosecutor

[2021] SGHC 273

General Division of the High Court — Magistrate's Appeal No 9101 of 2021
Sundaresh Menon CJ
24 September 2021, 22 October 2021

1 December 2021 Judgment reserved.

Sundaresh Menon CJ:

Introduction

1 The appellant ("Appellant") pleaded guilty to and was convicted of ten charges. Seven charges were for cheating under s 417 of the Penal Code (Cap 224, 2008 Rev Ed) (the "Penal Code), two were for criminal intimidation under the second limb of s 506 of the Penal Code (as was in force prior to 1 January 2020), and the remaining charge was for an offence under s 29(1)(*a*) of the Films Act (Cap 107, 1998 Rev Ed) (the "Films Act"). A further 26 charges, comprising charges for cheating, criminal intimidation, and under the Films Act, were taken into consideration for the purposes of sentencing. The District Judge (the "DJ") sentenced the Appellant to an aggregate sentence of 42 months' imprisonment and a fine of S$20,000 (in default one month's imprisonment).

2 The Appellant's offending took place in the context of what was essentially a scam he perpetrated in order to procure sex for his own gratification. As outlined in the Statement of Facts ("SOF"), which the Appellant admitted to without qualification, he "wanted to look for paid sex", but was unwilling to pay the prices he had seen online for such services. The Appellant accordingly devised a scheme to falsely represent that he was a "freelance agent" for "sugar daddies" who procured "sugar babes" for his well-to-do clients. The Appellant claimed, among other things, that he needed to receive and/or take nude images or videos and engage in sexual acts with women who wanted to be "sugar babes" in order to assess whether he could recommend them to his wealthy clients. However, there were in fact no such wealthy clients, and the Appellant was merely scamming the victims for sex and sexually explicit material. This scheme ensnared at least 11 female victims, who were aged between 18 and 24 years, and went on unabated from April 2015 to February 2016 before the Appellant was reported to the authorities.

3 At the hearing of this appeal, and having heard both parties, I indicated concern as to whether the individual sentences imposed for the various cheating charges had been properly calibrated. In particular, the harm caused by the Appellant's acts appeared to be at the *very highest end* of the harm which might arise under s 417 of the Penal Code. This was because the procuring of sex by cheating represented a grievous and reprehensible intrusion of bodily integrity which was wholly incommensurable with mere loss of property. Moreover, the Appellant had, as I go on to explain, carried out his offences in what can only be described as a cruel and callous manner. I thus gave liberty at the end of the hearing on 24 September 2021 for parties to make further written submissions on two questions if they wished to do so:

(a) How should the court approach sentencing for the individual offences under s 417 of the Penal Code in the context of cheating for sex?

(b) How should the court approach the running of the sentences either concurrently or consecutively in this case in the event that it imposes higher individual sentences for the cheating offences?

I specifically informed the parties that it was possible I might enhance the aggregate sentence even though the Prosecution had not cross-appealed the sentence. Both parties elected to make further submissions. Having carefully considered the submissions placed before me by both parties, I dismiss the Appellant's appeal and instead enhance the sentence imposed by the DJ to eight years and five months' imprisonment and a fine of S$20,000 (in default one month's imprisonment). I set out my reasoning in full below.

Facts

4 The Appellant, a 39-year-old male, was an insurance agent in his father's insurance company at the time of the offences. As alluded to above, the Appellant's multi-faceted and multi-victim scheme was essentially a scam for free sex. Not wanting to pay the rates for commercial sex that he saw online, the Appellant advertised on the website "Locanto" that he was an agent who provided "sugar babes" to his wealthy clients. To capture their interest, he told each of the eleven known victims that he had clients who could pay them sums ranging between S$8,000 and S$20,000 a month for companionship, before telling them that in order to successfully secure a "sugar daddy" arrangement with one of his clients, they had to send him (the Appellant) their nude photographs. This escalated to the Appellant demanding, again in the name of meeting the requirements of his fictitious wealthy clients, that the victims

perform sexual acts with and for him. The Appellant also insisted that he had to record these various acts on a number of different occasions, and demanded to take further nude photographs of a number of the victims. All of these acts were represented to the victims as being "necessary" so that the victims could be evaluated by the Appellant and his "clients" to determine their "suitability" for the "sugar daddy" arrangement. In truth, however, the Appellant did not have any such clients, and all of these representations to the victims were utterly false.

5 In furtherance of his deception, the Appellant did the following:

(a) He created (falsified) chat conversations which appeared to be between himself and his clients in order to convince the victims of the veracity of his narrative. Moreover, when he wanted to dupe one particular victim into providing him with free oral sex, he created false chat conversations and sent screenshots of them to that victim. These screenshots depicted his client(s) asking questions about whether that victim was "good [at] giving oral sex". The falsified chat conversations were thus directed towards the particular acts the Appellant sought to convince the victim(s) in question to provide him.

(b) He showed the victims photos of nude women and claimed that those women had in fact complied with his demands to send him nude photos of themselves. The Appellant also showed the victims videos of women having sex with him. By doing so, the Appellant would highlight that the victims would be at a disadvantage when seeking to be "sugar babes" because the "sugar daddies" would not have seen their nude photographs when deciding which "sugar babe" to pick, and because he would not be able to tell the "sugar daddies" about the victims' sexual abilities. The Appellant thus used photos and videos of women he

alleged were "sugar babes" he had linked with his wealthy clients to further his scheme.

(c) The Appellant also made time-specific enticements to the victims if they expressed any reluctance or hesitancy. When a number of his victims expressed reluctance, he falsely represented that a client was travelling to Singapore in a matter of days, and that the said client was eager to meet the potential "sugar babe" in question. However, the Appellant would then claim that he had to provide an assessment of the potential "sugar babe's" sexual performance before the client would be willing to meet her. On occasion, the Appellant would also falsely claim that the client in question, who was shortly travelling to Singapore, had paid large sums of money – in one case S$16,000 – to his former "sugar babes". These specific enticements and deceptions were aimed at overcoming any reluctance on the part of the victims.

6 In addition, the Appellant undertook the following measures to avoid detection:

(a) First, the Appellant made sure to use a false name in order to avoid detection. He went by the pseudonyms "Kel", "Don", and "Onisac" in order to avoid detection and to prevent his true identity from being known to his victims.

(b) Second, the Appellant pressured at least one of his victims to shift from communicating over WhatsApp to using WeChat, saying "it was safer" to use WeChat.

(c) Third, the Appellant exploited the fact that he held nude photos and/or videos of the victims to deter any of them from going to the

> police. The Appellant also seemed to be entirely comfortable with threatening the victims over the potential use (or further abuse) of these photos and/or videos if they did not comply with his demands. Among other things, the Appellant threatened one particular victim that he was "going to flood the Internet with your photo stating that u are looking for sugardaddy [*sic*]". When another victim raised the possibility of reporting the Appellant to the police, he went so far as to tell her that "now I have to pass your photo to my friends incase [*sic*] anything happen [*sic*] to me they will use the photos as they wish".

By use of these deceptions, the Appellant was able to procure, among other things, unprotected penile-vaginal sex, unprotected oral sex, and the receipt and/or creation of several sexually explicit videos and photos from the victims.

7 Further, the Appellant did not stop once he had procured sex and/or nude photographs and videos from a victim. Rather, he contrived various excuses to convince them to send him further material and/or to provide him with free sex again, and also engaged in various acts of criminal intimidation:

> (a) First, the Appellant would contact various victims after having already met up with them, demanding to see them again. He claimed, among other things, that (i) "I think today rush then u cannot show me properly I think we better meet again like that I dun dare send u to my clients lei [*sic*]", (ii) "[the client] ask me teach u well on bj and on bed first before he want to start", (iii) he had to retake the nude photographs he had taken for his client because the photographs he took previously were not good enough, (iv) he needed to record a video of him and one particular victim engaging in sexual intercourse in order to show this to his client, and that they had to meet up again for this purpose, and (v) in

relation to a different victim, that he needed to take more nude photographs and videos of them engaging in sexual activity because he had deleted all the media he had taken of her after a potential "sugar babe" had reported him to the police out of revenge. These were all lies that the Appellant told in order to get the victims to meet him again and engage in further sexual acts and/or to procure additional nude photos and/or videos.

(b) In relation to one victim, as noted above, the Appellant threatened to circulate her nude photos to his friends for onward dissemination if she reported him to the police.

(c) In relation to another victim, who wanted to focus on her studies and thus indicated that she was not interested in his scheme anymore, the Appellant falsely claimed that he had lost a commission of S$2,000 because she was no longer interested in meeting his (non-existent) clients. The Appellant repeatedly asked the victim how she intended to compensate him for his alleged loss, and demanded that she "meet [him] once at [a] hotel then u service me then we call it quits". When she rejected him, the Appellant sent the following messages: "u playing with me ah" and "otherwise I sell your pics to cover my loss?" The victim was frightened into not making a police report following this thinly-veiled threat.

8 I set out the salient circumstances of the various proceeded charges in a table as follows, using pseudonyms to describe the victims:

Victim	Charge	Circumstances of Charge	Further Considerations
'Belle' (Age: 24)	DAC-903739-2020	Cheating: Victim permitted the Appellant to take nude photographs of her and engage in unprotected penile-vaginal sex with her.	The victim also sent nude photographs to the Appellant. The victim sent several messages begging the Appellant to delete the nude photos of her, but he refused. The Appellant asked to have follow-up sex with the victim, but the victim refused. The victim suffered anxiety attacks after the offences, and was diagnosed by the Institute of Mental Health with adjustment disorder with anxiety.
	DAC-903740-2020	Criminal Intimidation (Second Limb): The Appellant threatened to pass the victim's nude photos to his "friends" in case the victim made a police report.	
'Linhui' (Age: 22)	DAC-903743-2020	Films Act: The Appellant made an obscene film by recording the victim having sex with him.	The Appellant asked the victim for "sexy photos", but she said that she did not have any. The Appellant then asked to meet up to take sexy photos of the victim, and promised to pay her a few hundred dollars for the photos, but did not do so. The victim expressed hesitance, but Appellant convinced her that sex was necessary because "if you don't try with me, how will I know if the clients are alright with you?"

'J' (Age: 18)	DAC-903744-2020	Cheating: The victim permitted the Appellant to take nude photographs of her and engage in penile-vaginal sex with her.	The victim was seeking a "sugar daddy" to supplement her income. The Appellant specifically represented that he could arrange for the victim to meet a potential client "within a few days", and that this client could pay the victim "$12,000 a month" and would give her a credit card. He had previously represented that some clients would provide credit cards with limits of at least S$5,000. The Appellant sought to have follow-up sex with the victim, but she refused. The victim experienced fear and paranoia that the Appellant would leak the photos he had taken of her, and thus did not report the matter to the police.
	DAC-903747-2020	Criminal Intimidation (Second Limb): The Appellant threatened to sell the victim's nude photos unless she "compensated" him with the sum of S$2,000.	
'Jean' (Age: 21)	DAC-903749-2020	Cheating: The victim permitted the Appellant to take nude or topless photographs of her, engage in penile-vaginal sex with her, and fellated him without a condom.	When the victim expressed reservations about having sex with the Appellant, he showed her nude photos and videos of other women and said that he had been able to find "sugar daddies" for them.

'Shanelle' (Age: 23)	DAC-903751-2020	Cheating: The victim permitted the Appellant to take topless photographs of her, and engaged in unprotected penile-vaginal sex with him.	The victim was seeking a "sugar daddy" as she faced financial problems and was in urgent need of cash. The Appellant requested that the victim send nude photographs of herself, and the victim complied. The Appellant arranged to meet the victim on two further occasions. On the first, he gave her a false excuse to take further nude photos of her. On the second, he falsely told her that he needed to take a video of them engaging in sexual intercourse, and had unprotected sex with her.
'Lijie' (Age: 19)	DAC-903759-2020	Cheating: The victim permitted the Appellant to take nude photographs of her, and engaged in penile-vaginal sex with him.	The victim was seeking a "sugar daddy" to earn money and pay for her expenses. When the victim expressed skepticism about the Appellant's scheme, the Appellant showed her false conversations between him and a "client" where the "client" was asking for new girls. The Appellant also showed the victim nude images and videos of other women engaging in sexual activities with him to convince her. The Appellant requested to have follow-up sex with the victim, and convinced her to record a video of her fellating him. The victim suffered recurring nightmares, fear, and paranoia.

'Jolyn'(Age: 23)	DAC-903765-2020	Cheating: The victim permitted the Appellant to take nude photographs of her and record her masturbating, engaged in penile-vaginal sex with the Appellant, and fellated him.	The victim needed money to pay for her further studies. The Appellant initially told the victim that he had a job offer for her that would pay S$300 to S$500 a week, but that they would need to meet up to discuss further. The Appellant only later revealed the true nature of his plans and told the victim that he had a "client" who was interested in having her as a "sugar babe". When the victim requested to meet the client directly, Appellant showed the victim nude photos and videos of other women and claimed that these other women worked for him as "sugar babes". The Appellant requested to have follow-up sex with the victim, and convinced her to take nude photos of herself, record videos of her masturbating, and engage in penile-vaginal sex with him.
'Nicole' (Age: 22)	DAC-903769-2020	Cheating: The victim permitted the Appellant to have unprotected penile-vaginal sex with the Appellant.	The victim had difficulty paying her school fees and was looking for a part-time job. The Appellant told the victim that his Indonesian business partner was willing to pay her S$12,000 for "companionship", but that to get this job, he needed to record a video of him having sex with her so that the business partner could "review her sexual performance".

			When the victim asked the Appellant to put on a condom, he claimed that his business partner "did not like him to wear protection during video recordings" in order to avoid wearing one. The Appellant requested to have follow-up sex with the victim as the first video of them having sex was "blurry", and convinced her to engage in penile-vaginal sex with him.

These acts form the basis for the ten proceeded charges against the Appellant.

The District Judge's Decision

9 Before the DJ, the Prosecution sought a sentence of at least 30 months' imprisonment, comprising at least 12 months' imprisonment for the cheating charge concerning 'Belle' (DAC-903739-2020), at least nine months' imprisonment for the criminal intimidation charge concerning 'J' (DAC-903747-2020), and at least nine months' imprisonment for the cheating charge concerning 'Shanelle' (DAC-903751-2020). The Defence, on the other hand, sought an aggregate sentence of no more than 24 months' imprisonment. The difference in the parties' positions below may be reflected as follows:

Charge	PP's Position	Defence's Position
DAC-903739-2020 (Cheating, "Belle")	At least 12 months' imprisonment, run consecutively.	No more than 9 months' imprisonment, run consecutively.

DAC-903747-2020 (Criminal Intimidation, "J")	At least 9 months' imprisonment, run consecutively.	No more than 7 months' imprisonment, run consecutively
DAC-903751-2020 (Cheating, "Shanelle")	At least 9 months' imprisonment, run consecutively.	No more than 8 months' imprisonment, run consecutively
Total:	At least 30 months' imprisonment	No more than 24 months' imprisonment

10 The DJ imposed an aggregate sentence of 42 months' imprisonment and a fine of S$20,000 (in default one month's imprisonment). In his judgment, delivered on 20 April 2021, the DJ indicated that he was applying the analytical framework for sentencing a multiple offender set out in *Public Prosecutor v Raveen Balakrishnan* [2018] 5 SLR 799 ("*Raveen*") at [98]. The DJ applied the three stages of the *Raveen* analytical framework to the instant case, as follows:

> (a) In calibrating the individual sentences for the proceeded charges, the DJ made clear that he had considered (i) the fact that the Appellant's culpability was high, particularly given his "well thought-out" *modus operandi* and "carefully made up details of his wealthy clients", (ii) the fact that the harm caused by the Appellant's acts was high as well, given the high number of victims, significant degree of sexual intrusion, and the psychological harm caused by his acts – which included the repeated exploitation of multiple victims, and (iii) the vulnerability of the victims in this case, who were unlikely to report the wrongdoing for fear of stigma, having been sexually exploited in these circumstances. The DJ also considered the fact that the Appellant has no relevant criminal antecedents, had co-operated with the police, and had pleaded guilty,

thus obviating the need for the victims to testify in Court. Accordingly, the DJ reached the following individual sentence for each of the proceeded charges:

Charge	**PP's Position**	**DC's Position**	**DJ's Sentence**
DAC-903739-2020 'Belle' – Cheating	At least 12 months	No more than 9 months	10 months
DAC-903740-2020 'Belle' – Criminal Intimidation	At least 9 months	No more than 7 months	7 months
DAC-903743-2020 'Linhui' – Films Act	At least 8 months	No more than one month	S$20,000 Fine
DAC-903744-2020 'J' - Cheating	At least 8 months	No more than 7 months	8 months
DAC-903747-2020 'J' – Criminal Intimidation	At least 9 months	No more than 7 months	8 months
DAC-903749-2020 'Jean' – Cheating	At least 8 months	No more than 7 months	7 months
DAC-903751-2020 'Shanelle' – Cheating	At least 9 months	No more than 8 months	8 months
DAC-903759-2020 'Lijie' – Cheating	At least 9 months	No more than 8 months	8 months
DAC-903765-2020 'Jolyn' – Cheating	At least 9 months	No more than 8 months	8 months

DAC-903769-2020 'Nicole' – Cheating	At least 9 months	No more than 8 months	8 months

(b) Turning to the second stage of the *Raveen* analytical framework, the DJ considered whether the offences were related or unrelated. He then applied the general rule set out at [41] of *Raveen* in these terms: "as a general rule, a multiple offender who had committed unrelated offences should be separately punished for each offence, and this should be achieved by an order that the individual sentences [for such unrelated offences] run consecutively". The DJ observed that of the nine sentences of imprisonment set out above, they pertained to offences which had been committed against seven different victims. The offences, being committed against different victims, could not be said to be part of a single transaction, and the position at the second stage of the *Raveen* analytical framework would thus be that, at least *prima facie*, seven sentences (one relating to each of the seven victims) would run consecutively.

(c) At the third stage of the *Raveen* analytical framework, the DJ took the view that ordering seven sentences to run consecutively would offend the totality principle, which was concerned with whether the sentence against the offender was crushing and not in keeping with his past record and future prospects. The DJ thus ran only *five*, and not *seven*, sentences consecutively. The DJ explained that this was to give due weight to the aggregation principle (which is that aggregation can result in a compounding effect that bears a more than linear relation to the criminality of the case), as well as the totality principle (given the Appellant's absence of criminal antecedents and his apparent remorse). The DJ thus ran the following sentences consecutively, for an aggregate

sentence of 42 months' imprisonment and a fine of S$20,000 (in default one month's imprisonment):

Charge	DJ's Sentence
DAC-903739-2020 'Belle' – Cheating	10 months' imprisonment
DAC-903743-2020 'Linhui' – Films Act	S$20,000 fine, in default one month's imprisonment
DAC-903747-2020 'J' – Criminal Intimidation	8 months' imprisonment
DAC-903751-2020 'Shanelle' – Cheating	8 months' imprisonment
DAC-903759-2020 'Lijie' – Cheating	8 months' imprisonment
DAC-903765-2020 'Jolyn' – Cheating	8 months' imprisonment

The Appellant appealed against the aggregate sentence, and the DJ granted him bail pending appeal.

The Parties' Submissions

11 The Appellant's central arguments on appeal are threefold: First, the Appellant contends that the DJ failed to attribute sufficient mitigating weight to his psychiatric condition, namely "Adjustment Disorder". Second, the Appellant argues that the DJ erred in placing undue weight on certain aggravating factors, asserting that (a) the DJ placed undue emphasis on the premeditation with which he had committed the offences "without sufficiently

considering that the victims had every opportunity to independently assess the representations [he had] made"; (b) the DJ placed undue emphasis on the vulnerability of the victims when "[t]he victims had on their own accord chosen to respond to the advertisement placed by [him]"; and (c) the DJ had placed undue emphasis on the level of harm suffered by the victims when "[t]here was only one victim who was diagnosed with [A]djustment [D]isorder with anxiety". Third, the Appellant argues that the DJ had erred in running five sentences consecutively, and that only three should have been run consecutively. Cumulatively, the Appellant contends that the sentence imposed on him was manifestly excessive.

12 The Prosecution, on the other hand, aligned itself with the DJ's reasoning. It highlighted that (a) the offences were committed for self-gratification, (b) the offences entailed significant premeditation and planning extending even to the falsified chats with "clients", (c) the number of victims was high, (d) the offences took place over a prolonged period of nearly a year, (e) the victims were vulnerable by virtue of not being likely to report the wrongdoing to the authorities given the moral stigma involved: *Public Prosecutor v Mohammad Al-Ansari bin Basri* [2008] 1 SLR(R) 449 ("*Al-Ansari*") at [84], and (f) the harm suffered by the victims was high, with 'Belle' in particular suffering anxiety attacks and being diagnosed with adjustment disorder with anxiety.

13 In the Appellant's further written submissions dated 22 October 2021 on the matters outlined at [3] above, he argued that:

(a) In relation to the first question, sentencing bands or the use of a harm-culpability matrix as an approach to sentencing for cases of cheating for sex under s 417 of the Penal Code would be warranted.

(b) As for the second question, the Appellant contended that if the individual sentences for the proceeded charges were to be increased, only two sentences, specifically those for DAC-903739-2020 and DAC-903747-2020, ought to be run consecutively. The former charge refers to the cheating charge concerning 'Belle', while the latter refers to the charge under s 506 of the Penal Code relating to 'J'.

While the Appellant urged that "the Totality Principle and Principle of Proportionality should apply with greater effect" if the individual sentences were increased, he did not make any submissions as to the precise *duration* or *term* of imprisonment which was warranted.

14 By contrast, in the Prosecution's further written submissions, it argued:

(a) In relation to the first question, that a harm-culpability matrix akin to that in *Logachev Vladislav v Public Prosecutor* [2018] 4 SLR 609 should be adopted.

(b) As to the second question, that the Appellant's acts disclosed high harm and at least medium culpability, such that the sentences for the cheating charges he faced ought to range between 17 and 20 months' imprisonment. Running four sentences for cheating (namely those for DAC Nos 903739, 903751, 903759, and 903765 of 2020) and one sentence for a charge of criminal intimidation (DAC-903747-2020) consecutively, the Prosecution argued that an aggregate of seven years' imprisonment was appropriate.

My Decision

15 Given the Appellant's arguments on appeal, I set out my decision on each of the Appellant's contentions, as follows:

(a) First, I address the suggestion that the psychiatric evidence that was tendered below somehow assists the Appellant;

(b) Second, I consider the appropriateness of the charges under s 417 of the Penal Code which have been preferred;

(c) Third, I set out the appropriate sentencing framework for cases such as the present, which involve cheating for sex;

(d) Fourth, I consider the sentences imposed for the individual charges, and in particular the relevant aggravating and mitigating factors; and

(e) Fifth, I assess the application of the *Raveen* framework in the running of the sentences to determine the overall sentence.

I take each of these areas in turn, and begin with the psychiatric evidence placed before me.

The Psychiatric Evidence

16 The law on what is expected of psychiatric evidence is clear, and imposes unambiguous duties on psychiatrists. These duties cannot be satisfied by mere recitation of a statement that the psychiatrist is cognisant that his duty lies to the Court. Rather, they are *substantive* and *weighty* duties which a psychiatrist takes on, with serious consequences should they be breached. As I observed when writing for the Court of Appeal in *Public Prosecutor v Chia Kee*

Chen and another appeal [2018] 2 SLR 249 ("*Chia Kee Chen*") from [117] to [119]:

> 117 The principles relating to expert evidence bear emphasis. First and foremost, an expert must be *neutral and independent*. A useful starting point is O 40A r 2 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("the Rules"). While the Rules apply to civil proceedings only, the principles relating to an expert's duty to the court set out therein are equally applicable to criminal proceedings. As stated in O 40A rr 2(1) and 2(2) of the Rules respectively, the duty of an expert is to assist the court on matters within his expertise and this duty "overrides any obligation to the person from whom he has received instructions or by whom he is paid". An expert should neither attempt nor be seen to be an advocate of for a party's cause. That being said, it is "entirely permissible for him to propound and press home the opinion he seeks to persuade the court to accept". The court "will not hesitate, in an appropriate case, to disregard or even draw an adverse inference against expert evidence that exceeds the judicially determined boundaries of coherence, rationality and impartiality".
>
> 118 It is also critical that an expert *provides the reasoning behind his conclusions*. A report that states conclusions without reasons and which cannot be probed or evaluated is useless and prone to be rejected. In this connection, our observations in *Pacific Recreation* (at [85]) bear repeating:
>
> > Whatever the case, *it is clear that the expert cannot merely present his conclusion on what the foreign law is without also presenting the underlying evidence and the analytical process by which he reached his conclusion*. For instance, in *The H156* at [27], Selvam J quite rightly warned against "the expert deciding the issue by assuming the power of decision", saying:
> >
> > > The function of an expert on foreign law is to submit the propositions of foreign law as fact for the consideration of the court. The court will then make its own findings of what the foreign law is. Even though the expert may submit his conclusions, he must present the materials and the grounds he uses to make his conclusions. The expert may not usurp the function of the court and present his finding. Further he cannot decide the issue by applying the law to the facts without setting out the law and the reasoning process.

…

[emphasis added]

> 119 Although *Pacific Recreation* was a case which involved an expert witness on foreign law, there is no reason why the basic principles relating to an expert's duty to give reasons that were enunciated there should not apply equally in the context of criminal cases where expert medical evidence is provided by psychiatrists. As noted by the High Court in *Chong Yee Ka v Public Prosecutor* [2017] 4 SLR 309, whether appointed by the Prosecution or the Defence, a psychiatrist "ought to do his utmost to assist the court". He should "state his opinion as definitively as possible to the best of his ability, avoiding ambiguity and minimising room for subjectivity in interpretation. Otherwise, his opinion may be unhelpful and unreliable" (at [49]). Ultimately, if the psychiatric report appears "contrived and flimsy", or the psychiatric report does not show that the offender is "suffering from a clearly diagnosed and recognised psychiatric disorder", the court will be justified in rejecting the evidence of the offender's purported mental condition.
>
> [Emphasis original, references omitted]

17 In *Chia Kee Chen*, a number of specific criticisms of the expert evidence were made, from [125] to [130]:

> 125 In our assessment, although the Lee Report contains, on its face, a diagnosis of a recognised medical condition, the overall quality of the Lee Report is so lacking that it fails to meet the *minimum* standards of expert evidence, and must therefore be disregarded. We explain our reasons below.
>
> 126 First, there was *no explanation* of how the mood and behavioural changes allegedly observed in Chia "[met] the diagnoses of [MDD]". Other than a cursory reference to the "American Psychiatric Association 2013", the Lee Report did not provide any definition or explanation of MDD [*ie,* major depressive disorder], let alone specify the key symptoms of such a medical condition. Without this key information, it is impossible for us to assess the correctness of the conclusion or the cogency of the reasoning.
>
> 127 Second, the mood and behavioural changes and "stressors" cited by Dr Lee for the basis of his diagnosis of MDD were, in large part, *based on self-reported information by Chia*, including his version of events. However, some of those were not accepted

> facts … It is unclear to us whether Dr Lee's diagnosis of MDD would be maintained if these disputed facts are disregarded.
>
> 128 Third, the Lee Report *omitted or failed to consider certain key materials*. The entirety of the section titled "[Chia's] account of the offence" comprised just three short paragraphs. It provided no detail about what actually occurred during the offence and simply reiterated Chia's alleged overwhelming desire to retrieve the recordings from the Deceased. Critically, there was no consideration of the narrative of the offence contained in Chia's statements to the police, in particular his 11 January statement, where Chia admitted to joining Febri in the assault on the Deceased with the hammer, and also explicitly stated at various points that while hitting the Deceased, Chia wanted the Deceased to die.
>
> 129 Fourth, the Lee Report was *devoid of reasoning and purely conclusory in nature*. As alluded to above, there was no explanation or elaboration in relation to the crucial conclusion that MDD "affected" or "contributed much to" Chia's mental state around the time of the offence [original emphasis omitted]. The language employed in the Lee Report lacked specificity and elaboration, and could lend itself to any number of interpretations …
>
> 130 Finally, the Lee Report was, in our judgment, *partisan and contrived at parts* …
>
> [Original emphasis omitted, emphasis added]

On account of the foregoing criticisms, each of which I regard as relevant to the instant facts, it was concluded at [131] of *Chia Kee Chen* that the psychiatric report in that case failed to meet even the "minimum standards of expert evidence".

18 Despite the robust and oft-repeated stance the courts have taken on expert psychiatric evidence, the Court of Appeal recently had occasion to reject the psychiatric evidence that was sought to be adduced in *Miya Manik v Public Prosecutor and another matter* [2021] SGCA 90 ("*Miya Manik*"). In *Miya Manik*, the Court of Appeal categorically stated as follows:

> 49 Turning to reliability, even this requirement was not met. Dr Ung's Reports were, as the Prosecution correctly highlighted,

devoid of detail. They merely state the medications prescribed to Manik, the symptoms or diseases that such medications are meant to treat, and a one-line diagnosis of "adjustment disorder". There is no explanation of how Manik came to be diagnosed with such disorder.

50 This was wholly unsatisfactory. There is a body of case law on the minimum standards expected of experts who tender opinions to court concerning the alleged mental illnesses of accused persons. In each of these decisions, the court has emphasised that ***experts owe a duty to the court* to ensure that their evidence is cogent, reliable, and may be gainfully used in the proceedings for which they were prepared.**

51 In *Anita Damu v Public Prosecutor* [2020] 3 SLR 825 ("*Anita Damu*"), the court emphasised that an expert's opinion must be scrutinised for factual and logical cogency. A judge who assesses such evidence must "resort to the usual methods [he or she] employs in all other cases which do not require expert evidence: that is [by] sifting, weighing and evaluating the objective facts within their circumstantial matrix and context in order to arrive at a final finding of fact": at [35] and [36]. The court concluded, in that case, that "the relevance and reliability of the psychiatric evidence was for practical purposes critically undermined by the appellant's failure to give evidence at the Newton hearing": at [43].

52 In *Kanagaratnam Nicholas Jens v Public Prosecutor* [2019] 5 SLR 887 ("*Kanagaratnam*"), the court severely criticised the psychiatric evidence tendered by parties and also reiterated what the court expects of experts; and specifically in this context, what it expects of psychiatrists. The court reminded experts that they cannot merely present conclusions without also presenting the underlying evidence and the analytical process by which the conclusions are reached. Otherwise, "the court will not be in a position to evaluate the soundness of the proffered views": at [2]. The report raised by the accused in *Kanagaratnam* was described as "singularly unhelpful because the professionals merely stated their conclusions without explaining their reasons": at [3]. The experts' conclusion "was simply stated", with "no explanation as to how the appellant's psychiatric conditions affected his condition or how this impacts on his culpability": at [30]. As a result, the court was "left none the wiser as to whether these conclusions were sound or had any factual basis": at [30].

53 Similar observations were made in *Mehra Radhika v Public Prosecutor* [2015] 1 SLR 96 ("*Mehra*"). The court found that the expert medical report tendered was "patently lacking in objectivity" (at [68]), and that the report "read more like a fact-finding report than a professional medical opinion" (at [67]).

> […]
>
> 55 … [U]nder the existing law, **expert witnesses owe a duty to the court to ensure that their evidence is reliable and fit for court use.** Such is the importance of the standards we hold expert witnesses to, that Parliament has moved to codify the same.
>
> 56 Dr Ung's Reports fell far short of these standards. Each Report is but a page long and consists of bare assertions, sets out a list of medications that had been prescribed, and describes the purposes of the medications. **Dr Ung's Reports did not disclose the methodology, diagnostic criteria, clinical observations or any substantiation for his conclusions. This is not even "evidence" of anything other than the fact that certain drugs were prescribed by Dr Ung and that certain conclusions were held by him. But none of this was relevant or helpful to the court.** It follows that we would not even have admitted Dr Ung's Reports into evidence on this basis alone.
>
> [Original emphasis in italics, emphasis added in bold underline]

19 I take the opportunity *yet again* to emphasise that expert witnesses owe a duty to the court to ensure that their evidence is reliable and fit for court use. Failure to comply with such a duty raises serious questions in respect of the psychiatrist *and* also of the solicitors who may have instructed the psychiatrist and who will have considered the report before seeking to rely on it. I emphasise that the courts will not hesitate to altogether reject evidence which is simply not fit for purpose. When such evidence is rejected, the consequences may well extend beyond making an adverse costs order.

20 In the present appeal, the Appellant sought to rely on a psychiatric report prepared by Dr Ken Ung Eng Khean ("Dr Ung") of Adam Road Medical Centre and dated 25 November 2020 (the "Psychiatric Report"). The Psychiatric Report was prepared after the Appellant was assessed by Dr Ung on 30 October and 9 November 2020. Broadly, the Psychiatric Report concludes that the Appellant was suffering from an adjustment disorder with depressive symptoms at the time of the offences, which had been committed about four or five years earlier. This

conclusion is based on Dr Ung's opinion that the Appellant fulfils a number of the criteria for adjustment disorder, though the Psychiatric Report is entirely silent on explaining *how* or *why* the criteria for adjustment disorder have been met on the facts. In any event, the Psychiatric Report goes on to suggest that the symptoms linked to the Appellant's adjustment disorder were "likely to have contributed to his offending behaviour", and that the adjustment disorder was a "significant contributory factor" to the commission of the offences. In the present appeal, the Appellant relies on the Psychiatric Report to suggest that the disorder contributed to his offending behaviour, and that his sentence should accordingly be reduced.

21 To borrow from the conclusion of the Court of Appeal at [41] of *Miya Manik* on the report that Dr Ung had put forward in that case, the Psychiatric Report in the present case was similarly one which "could not, even with the utmost charity, be viewed as an expert report". There are two reasons for this. First, as the report *itself* acknowledges at [8], it is predicated *entirely* on the truthfulness of the information the Appellant provided. Put another way, Dr Ung was provided with no independent information he could rely on in the preparation of the report apart from the narrative the Appellant gave him. This is problematic because as it turns out, the account the Appellant provided was riven with falsehoods which go towards Dr Ung's specific conclusions. A relevant part of the Psychiatric Report states as follows:

> 9 Mr Wong claimed that he was under a lot of stress during the period leading up to the charges (2015). Since the birth of their son in March 2012, he had not been able to have sexual intimacy with his (then) wife, Megan. The various stressors and adjustments led him to seek alternative outlets for his sexual needs. At the void deck of his in-law's place, he came across a local classified advertisement at '*Locanto*'. He was curious and intrigued to find out more. After some time, he decided to sign up as a user and later posted an advertisement "looking for people who are keen to be sugar babies".

> *"Man being man, I was horny and need sex. At the void deck, I came across a sugar-baby advertisement under the name 'Locanto', it provides an extra-marital dating website. There were girls posting for sugar daddy. I was thinking* ***maybe I can create an account and have one for myself and refer rest for others****."*
>
> *"Locanto is a classified advertisement. I set up an account. I copied the advertisement from other subscribers on information – simple shots (referring to photos and videos) looking for people who are keen to be sugar baby and maybe refer to sugar daddy; and successful ones may get* ***S$2000-3000/-****".*
>
> 10. **He claimed that he had no intent to cheat his clients at the outset**. He thought that with the website, **he could have a 'girl' for himself and refer the rest to his clients.** With consent with the girls whom he met up, he would take pictures and videos of them and have sex with them. He claimed that the pictures and videos captured were all stored in a secured folder and he did not distribute them. **He told them that he would refer them to their 'sugar daddy' if there is a request.**
>
> *"Then after I post the advertisement, I received alert in my email. I will receive an email notification if someone is interested. Only when we agree 'Yes', then we meet up, I told them if there are pictures or videos taken, they are to be stored in a secure folder. There is no distribution'.*
>
> [Emphasis in italics original, and reflecting the Appellant's own words; emphasis in bold underline added]

22 It will immediately be apparent from this extract that the account the Appellant provided Dr Ung is glaringly at odds with the version he admitted was true in the SOF. In particular, the account to Dr Ung makes no reference to the fact that the Appellant was actively looking for sex, but did not want to pay the prices stated in the online advertisements (SOF at [2]). Moreover, the Appellant appears to have persisted in lying to Dr Ung about wanting to "refer the rest [of the girls he met] to his clients", when there were never any "clients" at all to speak of. The Appellant seemingly reaffirmed this position in his account to Dr Ung, such that Dr Ung records that the Appellant told the victims that "he could have a girl for himself and refer the rest to his clients" and that "he would refer them to *their* 'sugar daddy' if there is a request" (emphasis

added). This is bizarre given that there were no "clients" or "sugar daddies" or anyone in that position to make such "requests". The Appellant also appears to have lied to Dr Ung about the quantum of the money that he represented the successful "sugar babies" might get, quoting a figure of "S$2000-3000" to Dr Ung, when the real figure he admitted to in the SOF was many *multiples* of that figure – between S$8,000 and S$20,000 in fact. Perhaps most significantly in relation to this section, the advertisement which the Appellant told Dr Ung that he had placed, was said to involve "simple shots (referring to photos and videos) looking for people who are keen to be sugar baby and maybe refer to sugar daddy", and makes no reference *whatsoever* to the *actual* advertisement which had been placed, in which the Appellant framed himself as an *agent* helping wealthy clients look for sugar babies. The Appellant was not truthful in his account of what *actually* took place, and Dr Ung does not appear to have had or sought any objective evidence to verify the Appellant's deceptive narrative.

23 Even if one were to ignore that extract from the Psychiatric Report, the narrative the Appellant provided to Dr Ung in the rest of the report is *also* highly problematic. In particular, Dr Ung records that:

> 11. [The Appellant] said that he received a few enquiries a month after putting up the advertisement and he said that he would also ask to have "sex to test out".
>
> *"During active period, I will receive 1-4 notifications a month. I met up with some. Those who approached me, I will take photos and videos with their consent. I keep in a secure folder.* ***I promise them that it will be kept classified****. We have sex".*
>
> *"I will ask them to try to have sex to test out. Upfront, I will ask them.* ***None of them will do things that they don't want to do. I will pay them when the time comes*** *and reimburse the taxi fee for some. Some don't ask for it".*
>
> 12. With respect to the 8th and 9th Charges [which were criminal intimidation charges pertaining to 'J'], **[the Appellant] said that he could not clearly recollect the details as the events were about 5 years ago** … He also confirmed that he had **never**

> **<u>uploaded any compromising pictures or videos</u>** of any of his victims to either the internet or social media sites.
>
> [Emphasis in italics original, and reflecting the Appellant's own words; emphasis in bold underline added]

This extract reflects further inaccuracies in the Appellant's account to his psychiatrist. In particular, while the Appellant claimed that "[n]one of [the victims] will do things that they don't want to do", he pressured 'Nicole' into having unprotected sex with him without a condom even though she did not want to, on the false basis that his "business partner" did not like seeing a condom in the videos. Similarly, the Appellant's claim that he would "pay [the victims] when the time comes" appears to be patently false. Aside from the fact that the whole venture was a scam such that there was no real prospect of *any* payment of the sort that the victims were being induced by, this particular claim was squarely contradicted by the SOF at [22], where the Appellant admitted to not having paid 'Linhui' *any* money despite having promised to pay her a few hundred dollars if she met up with him for him to take "sexy photos" of her for his clients. The Appellant's omissions in this extract are also startling – he does not appear to have acknowledged that even though he "never uploaded any compromising pictures or videos", he had, on *multiple* occasions, threatened to disseminate his victims' nude photos and videos. He had gone so far as to threaten to "flood the Internet" with them. The account extracted above appears to be, at best, a collection of half-truths that Dr Ung made no attempt *whatsoever* to verify or assess the veracity of.

24 It is not open to expert witnesses to seek to breezily absolve themselves of their duty to the court to provide evidence which is reliable and fit for court use. Simply including a caveat that the report is predicated on the truthfulness of the accused person's account, as Dr Ung's report has done, will not suffice. As an experienced psychiatrist who frequently gives expert evidence, Dr Ung

must have been aware that there would be charges and possibly a statement of agreed facts. It does not appear that he inquired into any of this with a view to revisiting his conclusions once these were available. In the circumstances, given the complete lack of reliability of Dr Ung's report, no weight should be placed on it.

25 In any event, there is a second reason why no weight should be placed on the Psychiatric Report. As the DJ rightly observed, the Appellant only consulted Dr Ung in end-2020, more than four years after the time the offences were commissioned. There was no reasoning in the Psychiatric Report explaining how Dr Ung was able to extrapolate his conclusions based on consultations in October and November 2020 to what the Appellant was suffering from some five years prior. Nor did Dr Ung have *any* contemporaneous evidence or medical records from that time upon which he could draw his conclusions. All he had was the Appellant's own and, with respect, self-serving account of what had transpired. This account was not only inaccurate and ridden with significant omissions (see [21] and [23] above), the Appellant *himself* admitted that his memory was flawed in relation to certain *entire charges*. In this regard, while it is curious that the Appellant was able to remember matters relating only to particular charges, it is perhaps more significant that Dr Ung was willing to unreservedly rely on the Appellant's memory, which was, on the Appellant's *own* admission, far from perfect. To the extent that the Psychiatric Report was based *entirely* on the Appellant's recall, and given the Appellant's admission that such recall was imperfect, the *basis* of the Psychiatric Report may rightly be called into question. I underscore that neither Dr Ung nor the Appellant has provided *any* reasoning as to how the Psychiatric Report was able to divine the Appellant's precise psychiatric state

at the time of the commission of the offences given the imperfect evidence before Dr Ung, and the Appellant's own admittedly flawed recollection.

26 On the note of Dr Ung not even having the SOF made available to him when preparing the Psychiatric Report, it is worth emphasising not only the duty of the expert witnesses preparing the relevant reports, but also that of the *solicitors* who would have reviewed the report of such an expert. As the Court of Appeal said in *Miya Manik* at [74]:

> We take the opportunity to restate some duties of solicitors which were relevant to this case. First, solicitors have a duty to properly instruct the experts that they appoint. This has been elaborated in *Pacific Recreation Pte Ltd v S Y Technology Inc and another appeal* [2008] 2 SLR(R) 491, where we stated at [89], in the section titled "The instructing solicitors' duty", that "[s]olicitors should familiarise themselves with the guidelines [on expert evidence]", and observed that "it is the duty of the solicitor instructing the expert to bring these guidelines to the [expert's] attention".

27 Solicitors too, in their capacity as officers of the court, are under an obligation to ensure that the *relevant* material is placed before the expert when procuring an expert report. In a case like this, the relevant material includes not only the charges, but also the SOF. Had the matter proceeded to trial and statements been disclosed, those statements too might have formed part of the relevant material. The underlying principle is that if experts are to prepare expert evidence to assist the court, they should be provided with the material they need in order to reach a robust set of conclusions. It falls to the solicitors who engage experts to ensure that such material is made available. In the present case, there was *no justification whatsoever* for the SOF not to have been specifically made available to Dr Ung. When counsel for the Appellant was confronted with this, he admitted that there was no justification for his failure to provide Dr Ung with the SOF. Given that there was no attempt to defend the indefensible, and the fact that the non-provision of the SOF pre-dated the guidance in *Miya Manik*, I

shall not say more on this. However, solicitors should be under no illusions hereafter that there is a clear and continuing duty on them to properly instruct the relevant experts, and that this duty extends to providing the experts with the relevant material as may be necessary.

28 In sum, the psychiatric evidence relied on by the Appellant is wholly unhelpful. There was nothing in the Psychiatric Report which warrants *any* weight being placed on it. If anything, Dr Ung's Psychiatric Report was *damaging* to the Appellant's case because it illustrated the Appellant's casual disregard for the truth and willingness to flagrantly lie about what had happened even *several years* after the offences. This speaks volumes as to the Appellant's alleged remorse. It is appropriate here to refer again to *Miya Manik* at [61]:

> Put simply, it should have been immediately evident to any reasonably competent legal practitioner that Dr Ung's Reports were unsatisfactory and in no state to be adduced as evidence. At a glance, these one-page Reports raised more questions than they answered. Upon closer examination, these questions gave rise to potentially grave concerns, on our part, over the propriety of the application and the evidence.

While the Psychiatric Report in this case was not a mere one-page report, that did not change the fact that it afforded no assistance *whatsoever* to my decision, and the Appellant's counsel ought to have realised that.

29 I note for completeness that alongside the Psychiatric Report, the Appellant also sought to rely on a Clarificatory Report dated 6 April 2021 (the "Clarificatory Report") from Dr Ung. The Clarificatory Report was difficult to follow because it appears to consist of answers to certain questions posed by the Appellant's solicitors, but those questions were neither set out either in the Clarificatory Report nor reproduced elsewhere in the Record of Appeal. I raised this at the hearing of the appeal, and was surprised when counsel for the

Appellant indicated that the questions would not be produced because the Appellant was asserting privilege over the instructions given, including the questions that had been directed to Dr Ung, which had given rise to the Clarificatory Report. While this was the Appellant's prerogative, and the Prosecution did not challenge the assertion of privilege, I pointed out to counsel that having made that choice, it would not be open to the Appellant to rely on the Clarificatory Report given that it answered questions which the Court did not have sight of, and for which no context at all was provided. Counsel for the Appellant readily accepted this and then indicated that he would not place reliance on the Clarificatory Report. Before leaving this, however, I am bound to say I find it surprising that an officer of the court could possibly have thought it defensible to put forward, by way of evidence for the court's consideration, an expert report that consisted of a set of answers without also setting out the questions that were asked. This demonstrates a willingness to take something out of its proper context, which is troubling for at least two reasons. First, it suggests a cynical attitude to the use (or abuse) of psychiatric evidence. Second, an officer of the court should ***never*** contemplate putting forward evidence that he knows is being taken out of context. Yet that is just what counsel did, and he did not even make it clear that the report was responding to questions which had not been produced; that was something I deduced and had to inquire into. I find it even more disturbing that when I raised the matter, counsel's response was not to furnish the all-important context to the Clarificatory Report, but to assert privilege over it, even if this meant that the evidence would therefore be disregarded. It seems likely then that the context would have embarrassed the Appellant, and if that is correct, then counsel's conduct is even more troubling.

The Cheating Charges

30 Turning next to the cheating charges preferred against the Appellant, the starting point of the analysis in this case is whether the facts admitted to in the SOF do in fact disclose offences under s 417 of the Penal Code. Having considered the matter, I am satisfied that the charges under s 417 of the Penal Code were made out on the admitted facts. Section 417 of the Penal Code provides the penalty for an offence of cheating, which is defined at s 415 as follows:

> Whoever, by deceiving any person, whether or not such deception was the sole or main inducement, fraudulently or dishonestly induces the person so deceived to deliver or cause the delivery of any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit to do if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to any person in body, mind, reputation or property, is said to "cheat".

31 Even though the offence of cheating is situated in Chapter XVII of the Penal Code, which pertains to offences *against property*, it is nonetheless broad enough to capture the present offences. In particular, there are two ways in which the wording of s 415 indicates that it extends beyond penalising offences relating *only* to property:

> (a) First, the reference to inducing a person to "do or omit to do anything which he would not do or omit to do if he were not so deceived" is in itself broad enough to cover acts which are not related to property. This may be contrasted with the other clauses used in s 415, which make reference to the "deliver[y]" of property and the "re[tention]" of property.

(b) Second, and in addition, the reference to the act or omission being likely to cause "damage or harm to any person in body, mind, reputation **or** property" is significant because it illustrates that the harm envisaged as falling under s 415 relates to *more than* property. In fact, harm relating to property is seen as a *separate and distinct* category from harm caused to a victim in "body, mind, or reputation". Thus, the acts in question in this appeal, which were specifically acknowledged in the SOF and the proceeded charges as causing harm to the victim's mind (see for example, SOF at [10]), would fall within the broad ambit of cheating under s 415.

32 In sum, there was no impediment to the Appellant being convicted under s 417 of the Penal Code for his acts of cheating for sex.

33 However, I also observe that the offence of cheating *simpliciter* did not appear to fully reflect the grievous bodily intrusion experienced by the victims on the present facts. In my view, it might, at least, have been arguable that the offence of rape under s 375 of the Penal Code could have been made out on the instant facts. Section 375(1) of the Penal Code (as applicable as at the time of the offences) provides that any man who penetrates the vagina of a woman with his penis (a) without her consent; or (b) with or without her consent, when she is under 14 years of age, shall be guilty of an offence. An elaboration as to the term "consent" is provided at s 90 of the Penal Code, and s 90(*a*) of the Penal Code provides that:

> 90 A consent is not such a consent as is intended by any section of this Code –
>
> (a) if the consent is given by a person –
>
> (i) under fear of injury or wrongful restraint to the person or to some other person; or

> (ii) under a **misconception of fact**
>
> and the person doing the act **knows, or has reason to believe, that the consequence was given in consequence of such fear or misconception**;
>
> [Emphasis in bold and bold underline added]

Accordingly, it appears arguable, given that the Appellant in this case *created* the very misconception of fact the victims were labouring under, any consent they might have given would have been vitiated under s 90. Accordingly, the offence of rape may well have been made out. I note for completeness that the amendments to s 375 of the Penal Code do not appear to change the foregoing analysis.

34 Counsel for the Appellant suggested at the hearing of this appeal that the offence under s 420A of the Penal Code might be more appropriate for the present factual matrix save that it was not in force at the relevant time. Section 420A came into effect on 1 January 2020, and it penalises the dishonest or fraudulent obtaining of services. It states as follows:

> **Obtaining services dishonestly or fraudulently**
>
> 420A.—(1) A person shall be guilty of an offence if he obtains services for himself or another person dishonestly or fraudulently and –
>
> (*a*) the services are made available on the basis that payment has been, is being or will be made for or in respect of them;
>
> (*b*) the person obtains the services without any payment having been made for or in respect of them or without payment having been made in full; and
>
> (*c*) when the person obtains the services –
>
> (i) the person knows that they are being made available on the basis mentioned in paragraph (a) or that they might be; and
>
> (ii) the person intends that payment will not be made or will not be made in full.

[…]

35 I am not convinced that s 420A of the Penal Code would apply to cases such as the present. In particular, the victims were not generally providing sexual services to the Appellant expecting payment for doing so; nor was it suggested in the SOF that the acts which formed the basis for the charges under s 417 of the Penal Code could be construed as "services". The victims were not sex workers, and were, so to speak, deceived into auditioning for a role rather than providing services to the Appellant. The Appellant's suggestion that future cases which disclosed the instant facts might be penalised under s 420A of the Penal Code seems to me quite possibly to be mistaken.

36 However, s 420A of the Penal Code is nonetheless useful in illustrating the seriousness of cases such as the present. Section 420A of the Penal Code discloses a maximum sentence of *ten years' imprisonment*. This is more than *three times* the maximum sentence available for an offence under s 417 of the Penal Code. The significance of this can be illustrated by a simple example. Assuming a sex worker is not paid for his or her services and the offence under s 420A is made out; the consent of the sex worker to the provision of those services would not be vitiated *per se*. The terms upon which the service was to be provided might have been breached, but the consent to the sexual acts remains. By contrast, in cases such as the present, there is in fact no consent to speak of. Yet, the maximum sentence in cases such as the present which are prosecuted under s 417 of the Penal Code does not appear to fully reflect this lack of consent. This analysis underscores the gravity of cases like the present, which are brought under s 417 of the Penal Code. Such cases should at least be approached as standing at the high end of seriousness for cases under s 417 of the Penal Code, and, in principle, they should be punished accordingly.

The Sentencing Framework to be applied

37 To reflect the seriousness of cases such as the present within the constraints of s 417 of the Penal Code, parties were permitted to make further submissions on how sentencing for cases such as the present should be approached. The parties' respective submissions are summarised at [13] and [14] above.

38 While I agree with the observation in previous cases that offences of cheating do not readily lend themselves to a sentencing framework because of the array of different scenarios that might arise, I consider that a framework *can* be adopted for the particular species of cheating disclosed on the present facts. In cases such as the present, involving cheating to procure sex and other sexual acts, a harm-culpability matrix may be adopted given (a) the narrow and more constrained *forms* in which this particular species of the offence might take, and (b) the fact that the harm engendered can fall at the very highest and most intrusive end of the spectrum depending on the nature of the relevant sexual acts.

39 In developing such a framework, I am mindful that the only case which the parties were able to identify that involved cheating to procure a sexual act in a non-commercial sex setting, which was prosecuted under s 417 of the Penal Code, was the dated case of *Syed Zainuddin Bin Syed Salim v Public Prosecutor* [2002] SGDC 293 ("*Syed*"). In *Syed*, the offender claimed trial to, among other charges, three charges under s 417 of the Penal Code for cheating two girls into believing that he had a modelling job to offer them. Under that pretence, the offender induced the two girls, who were in secondary school at the time, to show him their breasts. The Court held that the girls were "young and vulnerable", and that the Appellant, who was a teacher in that school, had

"abused his position of trust and authority". Accordingly, the offender was sentenced to six months' imprisonment per charge. At the time, six months' imprisonment was half the total maximum sentence that could be imposed under s 417 of the Penal Code. In my view, *Syed* was of limited utility for various reasons, including the fact that it was prosecuted under s 417 of the Penal Code at a time when that provision had a maximum sentence of only *one third* that which it is currently set at. Even more significantly, I also regard it as being of little assistance because the specific type of cheating that is involved in this context, namely, to procure the violation of the victim's sexual integrity and autonomy, was not specifically considered. I think the latter point has particular significance. I have touched on the fact that one typically thinks of cheating as a property offence. But cheating in this context involves not a violation of a property interest but of the entirely different interest of bodily integrity, and within that context, the violation of the victim's sexual integrity must rank at a particularly high level of odium and gravity. The sentence for the offences under s 420A for cheating in the context of services, or that under s 375 for rape reflects this. It is important to note this to see why *Syed* is quite irrelevant in my judgment.

40 Given the dearth of cases directly comparable to the present, the following sentencing approach setting out the indicative starting points in sentencing is appropriate:

		Culpability		
		Low	**Medium**	**High**
Harm	**Low**	Fine or up to 4.5 months' imprisonment	4.5 – 9 months' imprisonment	9 – 18 months' imprisonment
	Medium	4.5 – 9 months' imprisonment	9 – 18 months' imprisonment	18 – 27 months' imprisonment
	Higher	9 – 18 months' imprisonment	18 – 27 months' imprisonment	27 – 36 months' imprisonment

This sentencing framework accounts for the full range of sentences provided for in the offence-creating provision, and does not ignore the higher ranges of the sentences that may be imposed. It is hoped that such an approach to sentencing in this context will help ameliorate the potential concern that prosecuting offences such as the present under s 417 of the Penal Code may result in understating the gravity of such offences. Of course, this does not detract from the Prosecution's discretion to consider and proceed under such a charge if it wishes to do so, but the sentencing court should nonetheless appreciate the true gravity of the criminal act in assessing the appropriate sentence.

41 I emphasise, as always in this context, that this framework merely reflects *starting points* and should not ossify into a rule that is unthinkingly applied. Moreover, while the figures in the table above reflect cases where the offender has *claimed trial*, it should **not** be assumed that cases where the offender has pleaded guilty should automatically adopt sentences which are one third lower than the figures in the table. As I elaborate below at [49(e)], there is *no general rule that pleading guilty entitles an offender to a discount of one*

third off his sentence. In particular, where the Prosecution would have had little difficulty in making out the charge, any discount should be modest, if granted at all. In any event, sentencing falls to be assessed by reference to all the facts and circumstances, and an unthinking approach applying a standard discount of one third simply for pleading guilty ought to be eschewed. As the Court of Appeal had categorically stated in *Ng Kean Meng Terence v Public Prosecutor* [2017] 2 SLR 449 ("*Ng Kean Meng Terence*") at [71]:

> … We expressly observed that whether, and if so, what discount should be accorded to an accused person who pleaded guilty was *a fact-sensitive matter that depended on multiple factors*. Moreover, in cases that were especially grave and heinous, the sentencing considerations of retribution, general deterrence and the protection of the public would inevitably assume great importance, and these *cannot be significantly displaced merely because the accused had decided to plead guilty*. It is *impossible to be prescriptive about this exercise and the discretion is one which must be exercised by the sentencing court*, acting judiciously and in the light of the principles we have set out above. We would reiterate that, at the end of the day, the fundamental principle of sentencing is that *the punishment imposed must fit both the crime and the offender*.
>
> [Emphasis added, references omitted]

The Sentences for the Individual Charges

The Charges Under s 417 of the Penal Code

42 Applying the framework set out above to the charges under s 417 of the Penal Code in the present case, it was clear that the harm engendered was at the very highest end. The Appellant had procured penetrative sex from the victims, which represented one of the most grievous intrusions of bodily autonomy. As a consequence, one of the victims, 'Belle', also developed a psychiatric condition that persists even to the present – more than five years after the offences.

43 As for the Appellant's culpability, it was similarly clear that it was at the very highest end of the spectrum. Not only did the Appellant act with clear premeditation and subterfuge (see above at [5] and [6]), his behaviour was simply cruel. He showed no remorse or doubt whatsoever when going about his spree of offending behaviour. Even where he was begged to relent by one of the victims, he did not do so, and this extract is instructive in that respect:

> **WeChat Conversation Between Appellant and 'Belle' on 30 January 2016** (A: Appellant, B: 'Belle')
>
> B: Did u delete all the photos like you promised?
> A: Yeah why?
> A: ??
> A: U msg just to ask me this?
> B: Yea because it has been affecting me quite a bit for [the] past few months
> […]
> A: I'm more upset that u just left it hanging like that
> A: Had a client for u but u just didn't reply
> A: the last girl decided not to do and at least she was willing to give me a good time to delete the pics
> B: I just couldn't go through with it. I was very disgusted at myself
> B: At what happened
> A: Wow are u insulting me?
> A: Ok
> A: This is ridiculous
> B: No I mean me
> […]
> B: and I wanna thank [y]ou for deleting those photos
> […]
> A: But to me what is said is bloody insulting to me
> A: Let me see if the app made a backup online
> A: This is the first time I feel so insulted by someone
> A: I don't see why u regret when u were well prep for the shoot
> A: With the lingerie and all
> B: Just not used to doing something like that before.
> A: Anyway just realised there's like a backup just before I deleted the pics

B: Thank you so much for doing this
A: No I mean I managed to retrieve the pics
B: But you've deleted it right?
[…]
A: I would have done if u did what [I] said earlier
A: Made me feel so insulted
B: I'm confused? You didn't delete it?
A: Deleted it before but I found that I made a backup before
[…]
B: Oh can you please delete them?
A: Why should I do that now after what u said
A: **Depends on how u going to thank me to delete now**
[…]
A: Anyway to deleted [*sic*] it totally how r u going to thank me
B: I can give you money
A: Lol like how much lol
B: How much would you want?
A: I **rather u thank me the same way as the previous girl**
B: Would you just be kind enough to delete them tho? Just take it as a good deed please? I've been to a psychologist for the last two months because of my actions. I'm just really affected by this. I want to move on. Can you please help me? It would be wonderful if you could just delete those pictures.
[…]
B: Just hope that you can find it in you to show me some kindness and delete those photos
B: I've been very depressed. Please just help me.
A: **Well I told u what I prefer**
B: I won't be able to live with myself if I did it again. Even if it was to erase what happened. I really won't survive. And if you really want to push me off the edge. Then I might as well just leave this world now.
[…]
A: Lol it's so insulting to tell someone I rather die than do with u
A: Lol
B: To try and compensate you. I know I'm not one of your rich clients. I can't give you much

> […]
> B: And spare a thought for me … I was pushed in a corner. Please
> A: Why don't u just take up a client
> B: Kel please.
> […]
> B: Kel please just help me
> A: **Ok thank me with a bj**
> A: How's that?
> B: Take it as a good deed and delete it please? Just that you did some charity or that you helped a helpless girl.
> A: **U really pushing it**
> […]
> A: **Why don't u think about what best way u can thank me to show u really sincere about it**

[Emphasis added in bold underline]

44 I have set this extract out at some length because it shows that the Appellant was cruelly unmoved by 'Belle' literally begging him to delete her nude photos. Instead, he twisted her pleas by framing them in terms of her having insulted him, and demanded that she engage in various further sexual acts with him in order to persuade him to delete the photos. There is not an iota of remorse for what he had done or of mercy or sympathy for her plight. The Appellant's lewd pursuit of sexual exploitation was not only serious, it completely eclipsed *any* consideration of the victims. This reflected culpability at the very highest levels.

45 Accordingly, the starting point applicable for the proceeded charges under s 417 of the Penal Code, all of which entailed cheating which gave rise at the very least to penile-vaginal penetration, was between 27 and 36 months' imprisonment. Of course, the indicative starting points must also be nuanced to reflect the specific facts which each charge entailed. In particular, offences which disclosed greater harm, such as the Appellant's treatment of 'Belle', which engendered lasting and medically established psychiatric harm ought to

attract a higher indicative starting point. Conversely, offences which disclosed only a single instance of penile-vaginal sex with a particular victim, or only oral sex with a victim, could attract a lower indicative starting point within the range.

46 Beyond the nuances in determining the indicative starting points, the precise sentences imposed for each proceeded charge will depend on the specific *acts* each proceeded charge entailed, as well as all of the relevant aggravating and mitigating factors applicable to each charge. I thus turn to consider the applicable aggravating and mitigating factors, as well as the parties' arguments on them.

47 The Appellant contends that the DJ placed undue weight on the aggravating factors. In particular, the Appellant argues that:

(a) The DJ "placed undue emphasis on the level of premeditation and planning by [the Appellant] without sufficiently considering that the victims had every opportunity to independently assess the representations made by [the Appellant]";

(b) The DJ placed undue emphasis on the vulnerability of the victims by not considering that the Appellant had not targeted specific victims by virtue of their vulnerability, and that the victims had "on their own accord chosen to respond to the advertisement placed by [the Appellant]"; and

(c) The DJ placed undue emphasis on the level of harm caused to the victims "despite an absence of evidence as to the psychological impact on the victims", particularly since there "was only one victim who was diagnosed with adjustment disorder with anxiety".

48 Moreover, the Appellant suggests that insufficient weight was placed on the mitigating factor of his clean criminal record.

49 The Appellant's arguments in relation to the aggravating and mitigating factors are unpersuasive:

(a) The Appellant's suggestion that the DJ had placed undue weight on his premeditation is unfounded. As the Court of Appeal observed at [44(c)] of *Ng Kean Meng Terence*, the presence of planning and premeditation reveals a considered commitment towards law-breaking. Premeditation demonstrates a high degree of conscious choice and enlivens the need for a sentence that deters the offender specifically from repeating such conduct: *Gan Chai Bee Anne v Public Prosecutor* [2019] 4 SLR 838 at [70], citing *Public Prosecutor v Law Aik Meng* [2007] 2 SLR(R) 814 at [22]. It cannot be said that the Appellant's acts were anything but highly premeditated – he wove an elaborate tale about being a "freelance agent" for "clients" and "business partners", and even sought to corroborate that story by concocting false exchanges of messages that he then took screenshots of and sent to the victims. Worse, when the victims expressed reticence or hesitation, he sought to erase any doubts by specifically conjuring up screenshots of exchanges which appeared to *directly* relate to the specific areas of doubt. For instance, when he wanted to pressure 'Belle' into performing oral sex on him, he sent her falsified chat conversations and told her that he had been unable to answer his clients' questions on how good she was at oral sex. The Appellant also took pains to show the victims photos of nude women or videos of women having sex with him to buttress his tale about being a "freelance agent" for sugar daddies. It is clear from the prolonged and sustained nature of such conduct, which went on for a little under a year,

that the nature of the Appellant's premeditation was serious and highly contrived. The DJ cannot be faulted for having considered this as a sentencing consideration. I note with dismay the Appellant's impudent suggestion that too much weight had been placed on the element of premeditation because the victims supposedly "had every opportunity to independently assess the representations made by [the Appellant]". This seemed to me to come close to blaming the victims for having been duped into sex by the Appellant, which is striking given the Appellant's role in bringing this about for his own pleasure. Aside from this, the assertion that the victims had the opportunity to independently assess the representations made by the Appellant is absurd given the breadth and depth of the various deceptions – whether this took the form of falsified chat messages, or photos or videos of other women, or the promises of large sums of money – which the Appellant used in perpetrating his offending behaviour, and *all precisely to prevent their finding out the truth about what he had done.*

(b) The Appellant's next argument, that the DJ had placed undue emphasis on the vulnerability of the victims, is again unpersuasive. As the Court outlined in *Al-Ansari* at [84], the reluctance of victims to come forward when offences are committed against them, in the present case because of the stigma associated with being cheated and sexually exploited in the context of responding to an advertisement soliciting offers for a sexual relationship, clearly renders them vulnerable. On the facts, only *one* of the victims came forward to report matters to the police, illustrating the reluctance of the victims to sound the alarm over the egregious, manipulative and predatory behaviour of the Appellant. That the DJ sought to place weight on this consideration is entirely unsurprising, and on the other hand, the fact that the Appellant

challenges this when he actively threatened a victim who even *mentioned* reporting him to the authorities is shockingly brazen. The Appellant further contends in his written submissions on appeal that the victims were not vulnerable because "[t]hey exercised their own independent thought in making the active decision to respond to the Appellant's advertisement", and because he "had not preyed on them or targeted them specifically because he thought that they may not report his wrongdoing to the authorities". This argument is simply bankrupt and devoid of merit:

(i) The argument that the victims were not vulnerable because they exercised "independent thought" and made an "active decision" is hopeless. An underaged victim may well exercise "independent thought" and make an "active decision", as might one who is aged and illiterate. Yet, there is no suggestion that such victims would not be vulnerable. The ability to exercise independent thought is not a bar to being vulnerable. What makes the present group of victims vulnerable is the fact that they were duped by the Appellant and ensnared in a vicious trap by his compromising them, while he secured sexually explicit photos and videos and sexual acts under false pretences for his own gratification.

(ii) As for the Appellant's contention that he did not "pre[y]" on the victims, it is difficult to see what he did to the victims – cheating them for sex and then threatening them with the release of their nude photographs and videos – if not prey on them. If anything, the Appellant's insistence that he did not prey on the victims speaks to his utter lack of remorse for his offences.

(iii) Similarly, the Appellant's argument that he had not targeted the victims specifically because he thought them less likely to report his wrongdoing to the authorities is simply irrelevant because once they had fallen into his trap, *he used whatever means he could to ensure they would not report him*. In cases where the vulnerability of victims has been an aggravating factor, there has been no suggestion that the offender must have specifically targeted that vulnerability, or that he must have specifically sought to use that vulnerability to abuse the victims: *Al-Ansari* at [84].

(c) Third, the Appellant contends that the DJ placed undue weight on the harm caused by the offending behaviour because only one of the victims developed a psychiatric condition as a result of his acts. This is a monstrous submission. The fact is that 'Belle' developed adjustment disorder with anxiety – a condition which persists even almost five years *after* the commission of the offences relating to her. That others may not have is wholly irrelevant. By analogy, a serial rapist cannot possibly contend that it is mitigating that only one of his many victims developed a serious mental illness because of his crime. But aside from this, what of the utterly reprehensible violation of the dignity, bodily integrity, and personhood of each of these women? The DJ was entirely justified to apply an uplift to the charge involving 'Belle", as compared to the other victims. Insofar as the DJ imposed a sentence of ten months' imprisonment for the cheating charge concerning 'Belle', as contrasted with sentences of seven or eight months' imprisonment for the cheating charges concerning the other victims, the DJ cannot be said to have placed "undue" weight on the harm caused. One other victim, 'Lijie', who was 19 at the time of the offences, also developed nightmares as a

result. The harm of the sexual intrusion is clear, and the DJ was again entirely entitled to consider it in the manner he did when sentencing the Appellant.

(d) Next, the fact of the Appellant's clean record is one that should not be over-emphasised. As Tay Yong Kwang J (as he then was) observed in *Public Prosecutor v Leong Wai Nam* [2010] 2 SLR 284 at [31]:

> … A clean record may be effective in showing that what an accused did on one or two isolated occasions was totally out of character but **carries hardly any mitigating force when an accused person is convicted of a string of offences committed over a spectrum of time. All it means is that the accused person was fortunate not to have been caught by the law earlier** …
>
> [Emphasis added]

Tay J's observation is entirely apposite here. While the Appellant was untraced, he had committed no fewer than *thirty-six* separate offences over the course of around a year. Any mitigating weight which might have been placed on his clean record was, when seen in that context, non-existent. The Appellant was simply "fortunate", in a manner of speaking, to not have been caught earlier. I note for completeness that Tay J's observations extracted above have been approved and followed in several subsequent cases, notably *Public Prosecutor v Yap Weng Wah* [2015] 3 SLR 297 at [74], and *Public Prosecutor v BMF* [2019] SGHC 227 at [51].

(e) Finally, the fact that the Appellant pleaded guilty in this case should not have much, if any, weight accorded to it. While the Appellant pleaded guilty to the proceeded charges, I do not see that his plea of guilt is genuinely reflective of remorse. In *Chen Weixiong Jerriek v Public*

> *Prosecutor* [2003] 2 SLR(R) 334 at [19], the Court made clear that a plea of guilt *could* be indicative of remorse, but that there was little mitigating value in pleading guilty where the proverbial "game was up". On the facts of this case, several of the Appellant's exchanges with the victims were over WhatsApp or WeChat, and there would have been no real difficulty in relying on those messages to establish the Appellant's offending behaviour. While some mitigating credit should be assigned insofar as his plea of guilt saved the victims from having to give evidence and relive the horrific offences, the weight placed on the Appellant's plea of guilt and alleged remorse must be minimal given the fact that the "game was up", and the fact that the Appellant's broader conduct – including his fabrications to Dr Ung in the Psychiatric Report – did not disclose any genuine remorse.

50 In the circumstances, it cannot be said that the Judge erred at all in considering the various mitigating and aggravating factors.

51 Despite the DJ's approach to the aggravating and mitigating factors, which was broadly appropriate, the individual sentences imposed by the DJ do not in my judgment adequately reflect the seriousness of the offences under s 417 of the Penal Code in this case. I turn to apply the sentencing framework set out above. I have already explained at [42]-[45] that the harm and culpability in this case is at the highest end and that as a result, the starting point for each of these charges would be a term of imprisonment of between 27 and 36 months. Having considered the relevant aggravating and mitigating factors, I am satisfied that the individual sentences for the charges under s 417 of the Penal Code ought to be enhanced as set out in the following table, together with brief explanations:

Charge	Sentence	Remarks
DAC-903739-2020 'Belle' – Cheating	36 months' imprisonment	This was the most serious of the offences, causing lasting psychiatric harm in the form of a diagnosed condition which persisted several years after the offence. A sentence at the very highest end of the spectrum was appropriate.
DAC-903744-2020 'J' - Cheating	33 months' imprisonment	This offence involved penile-vaginal sex and the victim being cheated into permitting the Appellant to take nude photos of her. A sentence of 33 months' imprisonment may be said to account for the extent of the intrusion inflicted.
DAC-903749-2020 'Jean' – Cheating	34 months' imprisonment	This offence involved (a) penile-vaginal sex, (b) the victim being cheated into permitting the Appellant to take nude photos of her, and (c) the victim being cheated into fellating the Appellant. Given the fellatio, which represents harm not found in relation to the case concerning 'J', an uplift from the sentence in 'J's' case was warranted.
DAC-903751-2020 'Shanelle' – Cheating	34 months' imprisonment	This offence concerned penile-vaginal sex and the victim being cheated into permitting the Appellant to take topless photographs of her. Moreover, there are two *further* cheating charges pertaining to the same victim – one for taking further nude photos, and another for penile-vaginal sex – which were taken into consideration for the purposes of sentencing. Accordingly, an uplift from the sentence in 'J's' case was again warranted.

DAC-903759-2020 'Lijie' – Cheating	34 months' imprisonment	This offence concerned penile-vaginal sex and the victim being cheated into permitting the Appellant to take nude photographs of her. In addition, there was a further charge relating to 'Lijie', which entailed the Appellant cheating her into fellating him, which was taken into consideration for the purposes of sentencing. Accordingly, an uplift from the sentence in 'J's' case was also appropriate.
DAC-903765-2020 'Jolyn' – Cheating	35 months' imprisonment	This offence concerned (a) penile-vaginal sex, (b) the victim being cheated into permitting the Appellant to take topless photographs of her, (c) the victim being cheated into permitting the Appellant to take videos of her masturbating, and (d) fellatio. Moreover, there was also a further cheating charge relating to 'Jolyn' which was taken into consideration for the purposes of sentencing involving items (a) to (c) set out above. A heightened uplift was thus warranted.
DAC-903769-2020 'Nicole' – Cheating	34 months' imprisonment	This offence concerned only penile-vaginal sex, but there was a further charge pertaining to the same victim involving penile-vaginal sex which was taken into consideration for the purposes of sentencing. Accordingly, an uplift from the sentence imposed for the cheating charge pertaining to 'J' was warranted.

The sentences imposed reflect the seriousness of the offences disclosed and employ the full range of the potential sentences which Parliament provided for.

52 I note for completeness the reasons why I was unpersuaded by the Prosecution's position in its further submissions that each cheating charge

should have attracted sentences of between 17 and 20 months' imprisonment (see above at [14(b)]). Fundamentally, the sentences proposed by the Prosecution adopted an inapposite starting point in framing the Appellant's culpability as only being at the "medium" level. It was difficult to see how the Appellant's subterfuge, premeditation, and repeated offending warranted anything apart from a calibration of his culpability at the very highest levels. Given this misidentified starting point, it was unsurprising that the sentences sought by the Prosecution did not fully reflect the Appellant's offending behaviour.

The Charges Under s 506 of the Penal Code

53 I next turn to the sentences for the proceeded charges of criminal intimidation. The DJ imposed seven months' imprisonment for DAC-903740-2020 relating to 'Belle', and eight months' imprisonment for DAC-903747-2020 relating to 'J', reasoning that the latter charge warranted an uplift in sentence as there was a separate charge of criminal intimidation taken into consideration relating to 'J'. The former charge entailed the Appellant threatening that he would pass obscene photographs of 'Belle' to his friends for them to use as they wished, so as to cause 'Belle' to not report him to the police. In a similar vein, the latter charge entailed the Appellant threatening to disseminate nude photographs of 'J' if she did not either have sex with him or pay him the sum of S$2,000 – which sum he alleged she owed him on account of the commission he would supposedly lose after she told him that she did not wish to be involved in this venture with him anymore.

54 On appeal, as they did below, both the Appellant and the Prosecution relied on unreported cases, namely *Public Prosecutor v Lin Juncheng* (DAC-939986-2017 & Ors) and *Public Prosecutor v Mani Velmurugan* (DAC-80050-

2013 & Ors). In the former case, the offender pleaded guilty to two charges under the second limb of s 506 of the Penal Code. He had threatened to post the victim's topless photographs on Facebook unless she sent him more nude photos or videos of herself. He was sentenced to nine months' imprisonment for each charge. As for the latter case, the offender threatened to post nude photographs of his victims online unless they engaged in sexual intercourse with him. He was sentenced to eight months' imprisonment per charge for the charges where the victims did not give in to his demands, and 12 months' imprisonment per charge where the victims did.

55 I note also the unreported decision of *Public Prosecutor v Sim Boon Teck* (MAC-903115-2020), where the offender threatened the victim with the dissemination of her sex videos if she did not have sex with him once a week for a further six months. In that case, the victim agreed to the accused's demands, and had sex with the accused on a further six occasions. The victim then ceased contact with the offender, who sent multiple emails to her threatening to upload the video, and who created fictitious Instagram accounts purportedly belonging to the victim to upload compromising pictures of her. The offender, who was untraced, was sentenced to 15 months' imprisonment.

56 In my view, these unreported decisions reflect sentences which are unduly low. This is particularly so when one considers that the maximum sentence for offences punishable under the second limb of s 506 of the Penal Code (as applied before 1 January 2020) such as the two proceeded charges for criminal intimidation in the present case is *ten years' imprisonment*. Despite this very significant maximum sentence, *all* the sentences of imprisonment for threats to disseminate intimate images in the cases cited before me appear to have arbitrarily clustered around the range of between eight and 15 months. There does not appear to be any normative basis for this, perhaps in no small

part due to the fact that most of these precedents were not accompanied by written grounds. In any event, it is apparent that the full sentencing range has not been used, and that these sentences are out of line with the overall harm engendered and culpability disclosed.

57 While the present position in relation to sentencing for offences under the second limb of s 506 of the Penal Code (as applied before 1 January 2020) is unsatisfactory, I do not think this is the appropriate case in which to develop or lay down a structured framework for sentencing. There are three main reasons for this:

(a) First, and most importantly, the matter of sentencing in relation to the criminal intimidation charges was not fully canvassed in the arguments before me. The parties' submissions appear to have simply accepted the positions reflected in the precedents set out at [54] and [55] above, and their submissions in relation to the two charges of criminal intimidation below do not appear to have diverged significantly. The issues underpinning sentencing for this offence thus cannot be said to have been properly ventilated in this appeal.

(b) Second, and in any event, s 506 of the Penal Code has been amended by the Criminal Law Reform Act 2019 (No. 15 of 2019) ("CLRA"). The amendments introduced by the CLRA removed the enhanced penalty under the second limb of s 506 of the Penal Code for threats to "impute unchastity to a woman" with effect from 1 January 2020. Offences falling within such a category are now the subject of s 377BE(2) of the Penal Code, which creates an offence of "Distributing or threatening to distribute [an] intimate image or recording". The offence under s 377BE(2) of the Penal Code involves not only a different

maximum sentence from that under the second limb of the old s 506 of the Penal Code, but stipulates different requirements for the offence to be made out. Given that s 377BE(2) of the Penal Code will apply moving forward, the urgency of developing a sentencing framework for the second limb of the old s 506 of the Penal Code is diminished.

(c) Third, the Prosecution has not appealed against the DJ's findings in relation to the approach to be taken to sentencing for the charges of criminal intimidation.

58 In my judgment, the sentences of eight and seven months' imprisonment for the offences under s 506 of the Penal Code concerning 'J' and 'Belle' respectively cannot be said to be manifestly excessive. If anything, they appear to be manifestly inadequate. This is unsurprising, given that those sentences were themselves based upon precedents which did not adequately utilise the full extent of the sentences imposable. However, I do not intend to enhance the sentences imposed in respect of these charges essentially for the reasons set out in the preceding paragraph. The framework for sentencing under the second limb of s 506 of the Penal Code (prior to 1 January 2020) will need to be determined in an appropriate future case, and the sentences imposed here should not fetter the Court's power, in such a case, to consider a sentencing framework which makes full use of the sentencing range. These observations concerning the importance of utilising the full range of sentences available may also be said to apply to s 377BE of the Penal Code, where a sentencing framework should, in the appropriate case, be considered more fully. 57

The Films Act Charge

59 Turning finally to the sentence imposed for the offence under the Films Act, the sentence for this offence is again clearly on the low side. The mandatory

minimum sentence for the offence in question under s 29(1)(*a*) of the said Act is a fine of S$20,000, and that was the sentence the DJ imposed notwithstanding the presence of *several* similar charges with materially identical facts being taken into consideration for the purposes of sentencing. While it is trite that there is no *obligation* on a Court to increase the applicable sentence where there are similar charges taken into consideration for the purposes of sentencing, it cannot be said that the proceeded charge under the Films Act represents the very *least* severe offending under that provision such that it should attract the mandatory minimum sentence. Moreover, where a charge under s 29(1)(*a*) of the Films Act pertains to *multiple* illicit films, the mandatory minimum sentence cannot be said to be appropriate.

60 The above notwithstanding, I decline to enhance the sentence imposed for the charge under the Films Act given the absence of any meaningful engagement between the parties on appeal in relation to the appropriate sentence to be imposed. As with the charges under s 506 of the Penal Code (prior to 1 January 2020), a sentencing framework will, in a suitable case, have to be considered.

The Running of the Sentences

61 *Raveen* at [98] sets out a useful summary of the law concerning the sentencing of a multiple offender:

> 98 In summary, the relevant principles in sentencing a multiple offender are as follows:
>
> > (a) The first stage of the sentencing analysis is for the sentencing court to consider the appropriate sentence for each offence. This may be done in a number of ways, including by application of a sentencing framework or benchmark, or by analogy to precedents. In arriving at the individual sentences, the sentencing court will generally have to consider the relevant aggravating and

> mitigating factors that bear upon each discrete sentence.
>
> (b) The second stage of the sentencing analysis is to determine how the individual sentences should run. In this regard, the starting point of the analysis is whether the offences are unrelated and this is determined by considering whether they involve a single invasion of the same legally protected interest. As a general rule, sentences for unrelated offences should run consecutively, while sentences for offences that form part of a single transaction should run concurrently, subject to the requirement in s 307(1) of the CPC. If there is a mix of related and unrelated offences, the sentences for those offences that are unrelated should generally run consecutively with one of the sentences for the related offences. This general rule may be departed from so long as the sentencing court applies its mind to consider whether this is appropriate and explains its reasons for doing so. Statutory provisions may also abridge the operation of the general rule.
>
> (c) The third stage of the sentencing analysis is to apply the totality principle and take a "last look" at all the facts and circumstances to ensure that the aggregate sentence is sufficient and proportionate to the offender's overall criminality. Specifically, there are two limbs to the totality principle. First, the court should examine whether the aggregate sentence is substantially above the normal level of sentences for the most serious of the individual offences committed. Second, the court should examine whether the effect of the sentence on the offender is crushing and not in keeping with his past record and future prospects. The court should also bear in mind the aggregation principle which provides that the totality principle ordinarily applies with greater force in cases that involve longer aggregate sentences. If an aggregate sentence is considered excessive, the sentencing court may opt for a different combination of sentences to run consecutively or adjust the individual sentences. In this regard, while it is within the court's power to select sentences other than the longest individual sentence to run consecutively, the aggregate of such sentences must exceed the longest individual sentence and, if appropriate, the court should state explicitly the individual sentence that would otherwise have been imposed for the offence but for the adjustment on account of the totality principle.

[…]

I have set out my analysis on the first stage of the *Raveen* framework from [42] to [60] above, and thus turn to remaining two stages of the analytical framework below.

The Presumptive Running of the Sentences

62 The starting point of the analysis in this regard is whether the offences are unrelated, and this is determined by considering whether they involve a single invasion of the same legally protected interest. The DJ observed that of the ten proceeded charges, custodial sentences were appropriate for nine of them. Those nine charges pertained to seven victims. The DJ then relied on (a) the fact that there were seven distinct victims, and (b) the fact that the offences against each of them were distinct in time and place, to conclude that at least *prima facie*, seven sentences (one pertaining to each victim) ought to run consecutively. This was said to be the starting point upon considering whether the offences involved a "single invasion of the same legally protected interest". In my view, the DJ was correct to suggest that the *starting point* was to determine whether the offences were related or unrelated by reference to whether they involved a single invasion of the same legally-protected interest.

63 However, if anything, the DJ's approach did not go far enough. It was fairly clear that the charges relating to each separate victim were unrelated, but where the DJ's approach fell short was that it did not consider whether the multiple offences committed against 'Belle' and 'J' were *themselves* only a "single invasion of the same legally protected interest". In particular, the cheating charge pertaining to 'Belle' operated against the Appellant's invasion of 'Belle's' interest to not be deceived and suffer loss as a result, in this case by permitting the Appellant to take nude photos and have sex with her. However, the criminal intimidation charge pertaining to 'Belle' operated against the

Appellant's invasion of 'Belle's' distinct interest in not being placed under unlawful duress such that she was forced or compelled to not report his acts to the police. A similar argument may be made in relation to 'J'. The DJ's approach, which focused primarily on there being separate victims, did not consider whether the offences pertaining to the same victim could nonetheless be said to be unrelated.

64 On the facts of this case, it would appear that all *nine* offences which attract custodial sentences are unrelated, and that as a *prima facie* position, all nine sentences ought to run consecutively. I underscore, as the Court in *Raveen* pointed out at [98(b)], that this is simply a general rule, however, and is subject to the operation of, among others, the totality principle in the third stage of the *Raveen* analytical framework. It is to that principle which I now turn.

The Application of the Totality Principle

65 The third stage of the analytical framework in *Raveen* entails the application of the totality principle. This has two limbs – the first entails examining whether the aggregate sentence is substantially above the normal level of sentences for the most serious of the individual offences committed, while the second entails consideration of whether the effect of the sentence on the offender would be crushing and not in accordance with his past record and future prospects.

66 If all nine custodial sentences imposed on the present facts were to be run consecutively, as would be the case if the analysis ended at the second stage of the *Raveen* analytical framework, the total sentence would be 255 months' imprisonment, or 21 years and three months, as follows:

Charge	Sentence
DAC-903739-2020 'Belle' – Cheating	36 months' imprisonment
DAC-903744-2020 'J' - Cheating	33 months' imprisonment
DAC-903749-2020 'Jean' – Cheating	34 months' imprisonment
DAC-903751-2020 'Shanelle' – Cheating	34 months' imprisonment
DAC-903759-2020 'Lijie' – Cheating	34 months' imprisonment
DAC-903765-2020 'Jolyn' – Cheating	35 months' imprisonment
DAC-903769-2020 'Nicole' – Cheating	34 months' imprisonment
DAC-903740-2020 'Belle' – Criminal Intimidation	7 months' imprisonment
DAC-903747-2020 'J' – Criminal Intimidation	8 months' imprisonment
Total:	255 months' imprisonment

67 However, given the application of the totality principle, such a sentence would not be appropriate. Granted, there are difficulties in directly applying the totality principle to the present facts because, in relation to the first limb of the totality principle, the "normal level of sentences" for the most serious of the individual offences committed is not easy to determine. In particular, this case discloses the situation where the charges of criminal intimidation may be said to be the most serious of the offences committed (particularly by reference to the maximum sentence imposable) even though that is not reflected in the sentences that were in fact imposed below or on appeal. Further, this does not reflect the reality that the Appellant's offences of cheating to procure sex are exceptionally serious, and could in fact have been prosecuted as rape. Moreover, whether one seeks to examine the normal level of sentences for the offences of cheating or criminal intimidation, it is difficult to determine a "normal" level of sentences in those contexts.

68 Accordingly, the first limb of the totality principle is not of great utility in this case. However, the second limb suffices to provide a basis to determine an appropriate overall sentence. Under the second limb, the Court has to consider whether the effect of the sentence on the offender would be crushing and not in accordance with his past record and future prospects. Fundamentally, this assessment centres on identifying an aggregate sentence which is *condign* to the offender's behaviour and prospects. The emphasis must be on the aggregate sentence *matching* and being *proportionate to* the offending behaviour.

69 In my judgment, running four sentences consecutively for a total imprisonment term of 113 months (or nine years and five months), would be appropriate on the instant facts. The sentences run consecutively should thus be:

Charge	Sentence
DAC-903739-2020 'Belle' – Cheating	36 months' imprisonment
DAC-903759-2020 'Lijie' – Cheating	34 months' imprisonment
DAC-903765-2020 'Jolyn' – Cheating	35 months' imprisonment
DAC-903747-2020 'J' – Criminal Intimidation	8 months' imprisonment
Aggregate Sentence:	113 months' imprisonment

70 I then extend a further sentencing discount of a year to the Appellant, on account of his plea of guilt having saved the victims from needing to testify and relive the trauma caused by his acts. This brings the final sentence that should be imposed on the Appellant to eight years and five months' imprisonment, and a fine of S$20,000 for the Films Act charge (in default one month's imprisonment). In my judgment, this aggregate sentence is warranted for the following interlocking reasons:

(a) First, it reflects something of the seriousness of the offences the Appellant commissioned, and the grievous extent of bodily intrusion against the victims those offences entailed, albeit within the constraints of the charges that were brought against him.

(b) Second, it reflects the fact that the Appellant carried out a total of *36* known offences against *multiple* victims over an extended period of time of nearly a year.

(c) Third, and as explained above from [47] to [49], the factors the Appellant alleged were mitigating could scarcely be said to be so. If anything, some of the outrageous and victim-blaming suggestions the Appellant made could be said to evince a marked lack of remorse. Any mitigating effect which the Appellant could point to was more than accounted for by the discount of a year from the term which would otherwise be appropriate.

(d) Fourth, and critically, a sentence of eight years and five months' imprisonment does accord with the Appellant's past conduct and future prospects. While the Appellant's past criminal record was otherwise unremarkable, the *scale* and *repeated* nature of his offending over an extended period of time underscored that his past record could not be of much assistance to him. Moreover, there did not appear to be anything about the Appellant's future prospects which warranted a reduction in sentence beyond the aggregate I have arrived at. If anything, the Appellant's apparent lack of remorse would militate the other way.

(e) Fifth, the principle of aggregation does not assist the Appellant. The principle of aggregation underscores that "an aggregation resulting in a longer sentence is going to carry a compounding effect that bears more than a linear relation to the cumulative and overall criminality of the case": *Raveen* at [77]. However, in the same way the principle of aggregation applies such that a longer sentence has a compounding effect that applies in a more than linear fashion, committing multiple criminal acts may be said to illustrate a more than linear relationship with the offender's criminality. Put another way, the criminality involved with committing multiple offences over a long, drawn out period of time does not increase in a linear fashion from an offender who

> commits a single, one-off offence. As an example, an offender who wilfully commits ten offences over the course of a year, takes pains to avoid detection, and threatens those who even contemplate reporting him cannot be said to have acted with the only ten times the criminality of a first-time single offender. The latter may be said to have acted in folly, or on the spur of the moment. The former, by contrast, has no such excuses. Of course, each assessment of criminality will have to fall on its own facts, but the principle of aggregation should *not* be unthinkingly relied on to assist the offender. On the instant facts, the Appellant's aggregated behaviour demonstrated a cynical, exploitative, and simply cruel edge over an extended period of time and in relation to multiple victims, underscoring his overall criminality.

71 As expressly outlined in *Raveen* at [98(c)], the purpose of the third stage of the analytical framework is to " … ensure that the aggregate sentence is *sufficient* and *proportionate* to the offender's overall criminality …" (emphasis added). In my judgment, a custodial term of eight years and five months' imprisonment is sufficient and proportionate, in all the circumstances, to the Appellant's overall criminality.

Conclusion

72 The Appellant's appeal is dismissed, and the sentence imposed is enhanced to eight years and five months' imprisonment and a fine of S$20,000 (in default one month's imprisonment).

Sundaresh Menon
Chief Justice

Isaac Riko Chua and Genesa Tan (Tembusu Law LLC) for the appellant;
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