IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 255

Criminal Case No 16 of 2019

Between

Public Prosecutor

And

See Li Quan, Mendel

GROUNDS OF DECISION

[Criminal Law] — [Offences] — [Rape]
[Criminal Law] — [Offences] — [Robbery and gang-robbery]
[Criminal Law] — [Offences] — [Theft]
[Criminal Procedure and Sentencing] — [Sentencing] — [Rape]
[Criminal Procedure and Sentencing] — [Sentencing] — [Robbery and gang-robbery]
[Criminal Procedure and Sentencing] — [Sentencing] — [Theft]

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Public Prosecutor
v
See Li Quan Mendel

[2019] SGHC 255

High Court — Criminal Case No 16 of 2019
Valerie Thean J
16 September 2019

30 October 2019

Valerie Thean J:

Introduction

1 On 16 September 2019, the accused pleaded guilty to, and was convicted of, the following three charges:

(a) one charge of robbery by night with common intention under s 392 read with s 34 of the Penal Code (Cap 224, 2008 Rev Ed) ("Penal Code") ("the 1st Charge" or "the Robbery Charge");

(b) one charge of rape under s 375(1)(*a*) of the Penal Code, punishable under s 375(2) of the Penal Code ("the 2nd Charge" or "the Rape Charge"); and

(c) one charge of theft in dwelling with common intention under s 380 read with s 34 of the Penal Code ("the 3rd Charge" or "the Theft Charge").

2 The accused admitted to eight other charges and consented to having these charges taken into consideration for the purposes of sentencing ("the TIC Charges"). The TIC Charges concerned the offences of robbery by day, cheating or attempted cheating, theft in dwelling, forgery and wilful trespass.

3 After considering the accused's mitigation plea, the aggravating factors, the sentencing precedents, the parties' submissions, the TIC Charges and the time spent by the accused in remand, I imposed the following sentences:

(a) for the 1st Charge, the mandatory minimum sentence of three years' imprisonment and 12 strokes of the cane.

(b) for the 2nd Charge, six years and nine months' imprisonment and three strokes of the cane.

(c) for the 3rd Charge, three months' imprisonment.

4 The terms of imprisonment for the 2nd Charge and the 3rd Charge were ordered to run consecutively, with the term of imprisonment for the 1st Charge to run concurrently with the 2nd Charge. In the result, the aggregate sentence was seven years' imprisonment and 15 strokes of the cane. The accused has appealed against the sentences imposed and I furnish the grounds of my decision.

Facts

5 The material facts are as follows. The accused is presently 19 years old and was 17 years of age at the time of the offences. The 1st and 3rd Charges and six of the TIC Charges also concerned two co-offenders, one Yong Dun Zheng Benjamin ("Yong") and one Chow Chia Suan ("Chow"). They were 22 and 23 years old respectively at the time of the offences.

6 In July 2017, the accused was acquainted with Chow, who then introduced the accused to her boyfriend, Yong. The trio became close friends. Around August 2017, they discussed possible ways to make money. They decided to steal money from sex workers, targeting in particular foreign sex workers, as they believed that they would be less likely to report their offences to the police.

7 The trio's plan entailed the following steps. Obtaining the sex workers' contact details from online sites, they would offer up to $900 for them to provide sexual services at either the accused's or Yong's residence. They would employ one of the following two methods in order to steal or rob the victim:

(a) The first method was to steal from the victim's bag while she was in the toilet or shower.

(b) The second method was to stage an argument in front of the victim. Briefly, the accused or Yong would pretend to be a customer who had engaged the victim. The other two co-offenders would turn up sometime later and pretend to be loan sharks. They would demand from the victim payment of the "customer's" debts.

The Prosecution referred to the first method as the "shower method" and the second method as the "loan shark method". The 1st Charge involved the loan shark method. The 2nd Charge involved a rape that happened after the events of the 1st Charge. The 3rd Charge involved the shower method. I turn now to the facts of each charge.

The Robbery Charge (the 1st Charge)

8 The victim of the Robbery Charge and the Rape Charge, [V1], was 53 years old at the material time. [V1] listed her sexual services online and also brokered engagements for other sex workers.

9 On 1 October 2017, the accused contacted [V1] to provide sexual services at his residence. However, [V1] instructed another sex worker instead to go to the accused's residence, and who in turn failed to show up. The accused was angered and wanted to take revenge against [V1].

10 On 2 October 2017, using Chow's phone, the accused offered [V1] $900 for sexual services at Yong's residence ("the Unit"). The large sum of money offered was so that [V1] would take up the engagement herself.

11 [V1] arrived at the Unit at about 10.05pm on 2 October 2017. Pursuant to the loan shark method, Yong received [V1] at the door, while the accused and Chow hid themselves out of sight. Sometime later, the accused and Chow banged the main door to pretend that they were entering from outside the unit. They then entered the bedroom. The accused held a rod which he hit against the wall, and had a chopper tucked behind him.

12 The accused pretended to scold Yong and "demand" the money which he allegedly owed, while "threatening" him with the rod. The rod was also

passed to Chow, who pointed it threateningly at [V1]. It was at this point where the accused also took out the chopper. [V1] pleaded with the accused and Chow to let her leave. However, they shouted at her and told her to pay Yong's debts.

13 The accused then pulled [V1]'s bag away from her. Pointing the chopper at her, he shouted at her not to move. [V1] was frightened and did as she was told. The accused handed the bag to Chow who searched through the items within. When [V1] attempted to walk over to see what Chow was doing, the accused grabbed her neck and pushed her against the wall. Although [V1] pulled his hand away, the accused then pointed the chopper at her face again and shouted at her not to move and to squat down. [V1] was very scared and sat down.

14 In furtherance of the common intention of the trio, Chow dishonestly removed the following items, with a total value of $763, from [V1]'s handbag ("the Items"):

(a) cash amounting to $100;

(b) one Samsung Galaxy A5 mobile phone valued at $550;

(c) one Samsung J1 Ace mobile phone valued at $100; and

(d) one opened packet of cigarettes valued at $13.

The Rape Charge (the 2nd Charge)

15 After the Items were removed from her handbag, [V1] told the accused that she wished to return home. The accused told her to remove all her clothes before he would allow her to do so. [V1] asked the accused why she had to do so and the accused shouted at her again, asking if she wanted to return home.

When [V1] replied that there were many people at the Unit, the accused told Chow and Yong to leave the room. He then closed the door and directed [V1] to remove her clothes in a threatening tone while still holding onto the chopper. [V1], out of fear, removed all her clothes except for her shorts. The accused then shouted at her again and told her to remove all her clothes.

16 While she stood completely naked, the accused put the chopper on the floor and started to remove his clothes. When [V1] began to put her clothes back on, the accused picked up the chopper again. He demanded to have sex with [V1] and threatened that he would not let her leave the Unit unless she complied. [V1] was scared as she believed that the co-offenders were outside, and the accused would harm her if she did not comply. Out of fear, she did not dare to refuse him and asked him not to ejaculate into her.

17 The accused directed [V1] to lie down on the floor next to the bedframe. He placed the chopper down and removed his clothes. He then wore a condom which was found in [V1]'s handbag. Next, he went on top of [V1] and penetrated her vagina with his penis without her consent. The accused ejaculated into the condom five to ten minutes later before withdrawing. He then stood up and dressed himself.

18 [V1] quickly dressed herself and was told by the accused to leave. The co-offenders returned to the room, but did not know that the accused had raped [V1]. Chow left [V1]'s bag on the floor, and [V1] then realised that the Items were missing. She asked for the return of her cash and mobile phones but the accused told her to leave while pointing the chopper at her. When she returned home, [V1] made a police report. The accused and the co-offenders were arrested the following day at the accused's residence.

The Theft Charge (the 3rd Charge)

19 The Theft Charge related to a separate incident from the Robbery Charge and the Rape Charge. The facts pertaining to the Theft Charge occurred sometime in September 2017, before the facts pertaining to the other two charges occurred.

20 The victim, [V2], was 27 years old at the material time. She advertised her massage and sexual services online. Chow and Yong used Chow's phone to contact and engage her for sexual services at the accused's residence.

21 When [V2] arrived at the accused's residence, he represented himself as the person who had engaged her services and offered her $1,500 to keep him company for the entire day. [V2] agreed and the accused paid her $600 which she kept in her wallet. [V2] and the accused then had consensual sex.

22 Thereafter, [V2] went to the toilet, leaving her handbag unattended in the living room of the accused's residence. She did not know that Yong and Chow were at the accused's residence, along with one Wong Jin Sheng ("Wong"). In furtherance of the common intention of his accomplices, Wong dishonestly opened [V2]'s handbag and stole $670. Yong, Chow and Wong left the house, leaving the accused and [V2] behind.

23 [V2] did not realise that her money was stolen. After they washed up, the accused invited [V2] to join him for food, and promised to pay her the remaining $900 after they had eaten. She agreed. They then proceeded to a car in which Yong, Chow and Wong were already in, and the accused drove the group to Upper Thomson Road. Chow and [V2] alighted before the group. While [V2] was ordering food, Chow made an excuse to leave. When the food arrived and [V2] opened her wallet to pay for the food, she realised that all the

cash in her wallet, totalling $670, was missing. She was unable to contact the accused who spent the $670 with the accomplices.

Applicability of reformative training

24 In sentencing young offenders, it is established that the two-stage framework articulated in *Public Prosecutor v Mohammad Al-Ansari bin Basri* [2008] 1 SLR(R) 449 ("*Al-Ansari*") at [77]–[78] is to be applied (affirmed by the Court of Appeal in *Public Prosecutor v ASR* [2019] 1 SLR 941 ("*ASR*") at [96]). The *Al-Ansari* framework is as follows:

> … First, *the court must ask itself whether rehabilitation can remain a predominant consideration*. If the offence was particularly heinous or the offender has a long history of offending, then reform and rehabilitation may not even be possible or relevant, notwithstanding the youth of the offender. In this case, the statutorily prescribed punishment (in most cases a term of imprisonment) will be appropriate.
>
> However, *if the principle of rehabilitation is considered to be relevant as a dominant consideration, the next question is how to give effect to this*. In this respect, with young offenders, the courts may generally choose between probation and reformative training. The courts have to realise that each represents a different fulcrum in the balance between rehabilitation and deterrence. In seeking to achieve the proper balance, the courts could consider the factors I enumerated above …, but must, above all, pay heed to the conceptual basis for rehabilitation and deterrence.
>
> [emphasis added]

25 The main contention in this case pertained to the first stage of the *Al-Ansari* framework. In particular, whether rehabilitation can remain a predominant consideration, such that it would be appropriate to consider reformative training as a sentencing option, rather than sentences of imprisonment and caning. The Prosecution submitted that given the gravity of the accused's offences, rehabilitation ceased to be the dominant sentencing consideration. Instead, "in view of the primacy of deterrence, protection of the

public, retribution and parity in sentencing", imprisonment was the only appropriate sentencing option. In contrast, the Defence submitted that rehabilitation remained the dominant sentencing consideration. It was highlighted that a sentence of reformative training had been imposed on young offenders who committed rape or robbery, and the present offences were "not so grave" as cases where rehabilitation was eclipsed as the dominant sentencing consideration.

26 I deal, first, with whether rehabilitation is the dominant sentencing objective under the first stage of the *Al-Ansari* framework, and whether it follows that reformative training is a suitable option for consideration under the framework.

First stage of the *Al-Ansari* framework

27 Applying the first stage of the *Al-Ansari* framework, I first considered if rehabilitation remained the predominant sentencing consideration in the present case.

28 Rehabilitation is presumptively the dominant sentencing consideration for young offenders aged 21 years old and below. The rationale for the presumption was explained by the Court of Appeal in *ASR* at [95]:

> … that rehabilitation is presumed to be the dominant sentencing objective for young offenders unless otherwise shown … is a reflection of (a) young offenders' generally lower culpability due to their immaturity; (b) their enhanced prospects of rehabilitation; (c) society's interest in rehabilitating them; and (d) the recognition that the prison environment may have a corrupting influence on young offenders, who are more impressionable and susceptible to bad influence than older offenders …

29 In certain cases, rehabilitation can be displaced as the dominant sentencing consideration. As stated by Sundaresh Menon CJ in *Public Prosecutor v Koh Wen Jie Boaz* [2016] 1 SLR 334 ("*Boaz Koh*") at [30]:

> … rehabilitation is neither singular nor unyielding. The focus on rehabilitation can be diminished or even eclipsed by such considerations as deterrence or retribution where the circumstances warrant. Broadly speaking, this happens in cases where *(a) the offence is serious, (b) the harm caused is severe, (c) the offender is hardened and recalcitrant*, or (d) the conditions do not exist to make rehabilitative sentencing options such as probation or reformative training viable. [emphasis added]

30 Factor (d) was clarified by the Court of Appeal in *ASR* at [102] to fall under the second stage of the *Al-Ansari* framework. I turn then to the first three *Boaz Koh* considerations.

Seriousness of the offences; severity of harm caused

31 Here, it was the Robbery and Rape Charges that were serious, the Theft Charge being less so. It was not disputed by the parties that rape and robbery were serious offences, with rape being the more serious of the two. I considered the first two *Boaz Koh* considerations together. In some cases, it could be that the offence may be less serious yet the harm caused more severe. For rape and robbery, it is important to note that the severity of the harm caused could be said to be a corollary of and another facet of the seriousness of the offences. As I explain, the offences are regarded as serious because of the harm that these offences inevitably involve. I will proceed to consider the nature of robbery and rape offences before considering the severity of the harm caused in the present case.

The Rape Charge

32 In the case of rape, "every act of rape invariably inflicts immeasurable harm on a victim" (see *Terence Ng* at [44(h)]). V K Rajah J (as he then was) explained why this is so in *Public Prosecutor v NF* [2006] 4 SLR(R) 849 at [46]:

> … It must be acknowledged that rape is an inherently odious and reprehensible act that almost invariably inflicts immeasurable as well as irreparable harm on a victim because it destroys two central facets of his or her life. First, it cannot be gainsaid that respect for the dignity, privacy and free will of a person must surely include his or her inalienable right not be a victim of predatory sexual aggression. An act of rape violates a person's autonomous choice in sexual matters: see Andrew Ashworth, *Sentencing and Criminal Justice* (Cambridge University Press, 4th Ed, 2005) at p 128. This intrusion of a person's body is infinitely far more heinous, egregious and profound than simply trespassing on or damaging property. As Prof Ashworth incisively observes in *Principles of Criminal Law* (Oxford University Press, 3rd Ed, 1999) at p 349:
>
> > [S]exuality has a certain uniqueness which is absent from much property: sexuality is an intrinsic part of one's personality, it is one mode of expressing that personality in relation to others, and it is therefore fundamental that one should be able to choose whether to express oneself in this way – and, if so, towards and with whom. The essence of such self-expression is that it should be voluntary, both in the giving and in the receiving. Thus, even where a sexual assault involves no significant physical force, it constitutes harm in the sense that it invades a deeply personal zone, gaining non-consensually that which should only be shared consensually.
>
> [original emphasis omitted]

33 The link between the harm caused by rape and its seriousness was observed by the Court of Appeal in *Pram Nair v Public Prosecutor* [2017] 2 SLR 1015 ("*Pram Nair*") at [151], citing *Chia Kim Heng Frederick v Public Prosecutor* [1992] 1 SLR(R) 63 ("*Frederick Chia*") at [9]:

> … our courts have always said that rape is generally regarded as 'the most grave of all the sexual offences' (see *Chia Kim Heng Frederick v PP* [1992] 1 SLR(R) 63 at [9]). This court in that case quoted a passage from a Criminal Law Revision Committee which it felt was consonant with its views:
>
> > Rape involves a severe degree of emotional and psychological trauma. It may be described as a violation which in effect obliterated the personality of the victim. Its physical consequences equally are severe: the actual physical harm occasioned by the act of intercourse; associated violence or force and in some cases degradation; after the event, quite apart from the woman's continuing insecurity, the fear of venereal disease or pregnancy. We do not believe this latter fear should be underestimated, because abortion would usually be available. This is not a choice open to all women and it is not a welcome consequence for any. Rape is also particularly unpleasant because it involves such intimate proximity between the offender and victim. We also attach importance to the point that the crime of rape involves abuse of an act which can be a fundamental means of expressing love for another, and to which as a society we attach considerable value.

34 In *Frederick Chia* at [11], the Court of Criminal Appeal also observed that in *Regina v Roberts* [1982] 1 WLR 133 at 134, the English Court of Appeal emphasised that a lengthy custodial sentence should be imposed following a conviction of rape, save in the most exceptional circumstances.

35 The Court of Criminal Appeal in *Frederick Chia* also stated at [19] that apart from the mandatory custodial sentence, caning, while not mandatory, should also generally be imposed once an offender had been convicted of rape:

> In our opinion, even the offence of rape under s 376(1) [of the Penal Code (Cap 224, 1985 Rev Ed)], without any aggravating or mitigating factors, in which sexual intercourse with a woman is constituted by penetration against her will, *must by its very act contain an element of violence* and a sentence of caning of not less than six strokes should normally be imposed in addition to a term of imprisonment. Any degree of violence amounting to hurt used in the commission of rape will render the rapist liable to a higher punishment under s 376(2), if he is charged thereunder. [emphasis added]

36 Although the sentencing framework in *Frederick Chia* has been superseded by that in *Ng Kean Meng Terence v Public Prosecutor* [2017] 2 SLR 449 ("*Terence Ng*"), I note that even in cases where there are no or limited offence-specific aggravating factors (*ie*, "Band 1" cases under the *Terence Ng* sentencing framework), the indicative sentencing range still remains that of a lengthy custodial sentence (10 to 13 years' imprisonment) and six strokes of the cane (*Terence Ng* at [47]). Imprisonment, which is mandatory, can extend up to 20 years. Further, where an offender is charged for aggravated rape under s 375(3) of the Penal Code, such as by placing the victim "in fear of death or hurt to herself", there is a mandatory minimum sentence of eight years' imprisonment and 12 strokes of the cane. As observed in *Al-Ansari* at [85], in determining the seriousness of an offence, "[a] sentencing court should take particular note of the existence of a mandatory custodial sentence that Parliament may have prescribed" [original emphasis omitted].

37 In dealing with the severity of harm inherent in these offences, I should make clear that the determination of the severity of harm for the purposes of the first stage of the *Al-Ansari* framework is a fundamentally different inquiry from the determination of the appropriate sentence under the *Terence Ng* framework. At this juncture the court is concerned with the type of sentence. The *Terence Ng* framework guides the court in determining the quantum of the sentence to be imposed (*ie*, the length of imprisonment and number of strokes of the cane).

Because "every act of rape invariably inflicts immeasurable harm on a victim" (see *Terence Ng* at [44(h)]), such harm must be especially severe before it can be treated as an offence-specific aggravating factor, in order to avoid double-counting in deriving the appropriate sentence. The court looks for harm outside of that expected from the commission of the offence itself, such as pregnancy, the transmission of sexual disease and psychiatric illness (see also *Public Prosecutor v BMR* [2019] 3 SLR 270 at [32] and *Public Prosecutor v Ong Soon Heng* [2018] SGHC 58 at [154]).

The Robbery Charge

38 Although robbery is a less serious offence compared to rape, it still remains one of the more serious offences in the Penal Code given that it is violent in nature. As defined in s 390(2) of the Penal Code:

> **When theft is robbery**
>
> (2) Theft is 'robbery' if, in order to commit theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender, for that end, voluntarily causes or attempts to cause to any person death, or hurt, or wrongful restraint, or fear of instant death, or of instant hurt, or of instant wrongful restraint.

39 Furthermore, the offence of robbery also carries a mandatory minimum sentence of two years' imprisonment and six strokes of the cane. Where the robbery is committed after 7pm and before 7am (*ie*, robbery by night), as it was in the present case, the mandatory minimum sentence is that of three years' imprisonment and 12 strokes of the cane. That robbery is a serious offence can also be seen from the following passage in *Al-Ansari* at [85]:

> On a more general level, the seriousness of the offence, *viz*, robbery, must be taken into account. As I have said (at [72]), there are certain categories of offences in respect of which even young offenders must expect to be visited, almost as a matter of course (though, it must be stressed, not invariably), with a

> period of incarceration. Rehabilitative efforts, in such cases, can then be conducted in a more structured environment. This will have a beneficial effect on the particular offender and be also concurrently interpreted as an unequivocal sign that society and the courts will take an uncompromising view in relation to the commission of certain types of offending conduct. Almost invariably included in these categories of offences must be those inherently involving gratuitous violence and/or the preying upon of vulnerable victims. All who participate in such offences must be firmly dealt with, in conjunction with any rehabilitative efforts that have been found to be appropriate. I will not attempt in these grounds of decision to exhaustively list out the offences which I think are serious enough to warrant such treatment; suffice to say, the punishment prescribed for the offence would play an essential role in determining the seriousness of the offence concerned. A sentencing court should take particular note of the existence of a mandatory custodial sentence that Parliament may have prescribed. This is, of course, not to say that all instances of robbery involving young offenders will be treated alike. [original emphasis omitted]

Effect of seriousness of offences and severity of harm

40 Societal interests would therefore weigh more heavily in the present sentence, in view of the seriousness of the offences and the severity of harm caused. As observed by the Court of Appeal in *Public Prosecutor v Kwong Kok Hing* [2008] 2 SLR(R) 684 at [17]:

> Our criminal law is, in the final analysis, the public's expression of communitarian values to be promoted, defended and preserved. These communitarian values include the preservation of morality, the protection of the person, the preservation of public peace and order, respect for institutions and the preservation of the state's wider interests; see *PP v Law Aik Meng* [2007] 2 SLR(R) 814 at [24]–[29]. Sentences must protect the fabric of society through the defence of these values. Community respect is reinforced by dint of the prescription of appropriate sanctions to proscribe wrongful conduct. A sentence must therefore appropriately encapsulate, in any given context, the proper degree of public aversion arising from the particular harmful behaviour as well as incorporate the impact of the relevant circumstances engendering each offence. …

41 In my judgment, it follows that where Parliament and the common law are consistent that certain offences are serious and carry severe harm, a finding that rehabilitation is the dominant sentencing consideration where those offences are committed would be reserved to cases where exceptional circumstances are strong. This would explain the Court of Criminal Appeal's observation in *Mohd Noran v Public Prosecutor* [1991] 2 SLR(R) 867 at [3] that as a general rule, neither probation nor reformative training is suitable in cases of rape.

42 An illustration of the general rule is provided by *Public Prosecutor v Mohamed Noh Hafiz bin Osman* [2003] 4 SLR(R) 281 ("*Mohamed Noh Hafiz*"), which was referred to by Menon CJ in *Boaz Koh* at [31]–[32]:

> One example of a case where rehabilitation yielded its usual primacy in the sentencing of a youthful offender is *PP v Mohamed Noh Hafiz bin Osman* [2003] 4 SLR(R) 281 ('*PP v Mohamed Noh Hafiz*'). The offender there was a 17-year-old male who had on separate occasions followed prepubescent girls into the lifts of public housing estates as they were returning home alone. When the girls emerged from the lifts, he approached them from behind, covered their mouths and dragged them to a staircase landing. He then attacked and molested them violently. The offender faced four charges of aggravated outrage of modesty, two of rape, three of unnatural sex offences and a robbery charge which arose from an incident where the offender forcibly took a mobile phone from a girl's pocket after he accosted her. The offender pleaded guilty to the ten charges. In mitigation, counsel for the offender asked for a sentence of reformative training to be imposed. The counsel emphasised that the offender was young and willing to change, and that he had a difficult childhood and had suffered emotional scars.
>
> Tay Yong Kwang J sentenced the accused to 20 years' imprisonment and 24 strokes of the cane. Tay J held that reformative training was inappropriate in the light of the number and seriousness of the offences. The accused had been shockingly audacious in committing most of the attacks in the day, near the homes of his victims. Eleven young girls had been subject to intense emotional trauma and indelible hurt by his despicable acts. *PP v Mohamed Noh Hafiz* was a clear example

> of a case where the offences were sufficiently serious and the actions of the offender were sufficiently outrageous that rehabilitation had to yield to other sentencing considerations.

43 Two reported cases, albeit concerning more serious sibling rape, are also relevant precedents where young rape offenders were sentenced to imprisonment and caning given the gravity of their offences and the harm caused.

(a) In *Public Prosecutor v S* [2003] SGHC 70 ("*PP v S*"), the offender was a juvenile who committed multiple sexual offences, including rape, against three younger siblings aged between 11–13 years old. Woo Bih Li J held that imprisonment with caning was the only appropriate sentence. The sentences for two charges of rape were ordered to run consecutively, resulting in an aggregate sentence of 20 years' imprisonment and ten strokes of the cane, the specified limit of strokes that can be imposed on a juvenile (s 230 of the Criminal Procedure Code (Cap 68, 1985 Rev Ed), which is similar to s 328(6) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC") that is currently in force).

(b) Similarly, in *Public Prosecutor v AGG* [2010] SGHC 89 ("*PP v AGG*"), the young offender committed various sexual offences, including rape, against his younger sister from 2005 to 2007. While there were no other victims, unlike in *PP v S*, the offender was likewise sentenced to imprisonment and caning. The aggregate sentence was 13 years' imprisonment and 15 strokes of the cane (the sentences of one of the rape charges and the outrage of modesty charge were ordered to run consecutively).

Application on the facts

44 The facts in the present case illustrate the inherent seriousness of offending and severity of harm detailed above. In addition, there were two aspects which made the Robbery and Rape Charges particularly aggravating.

45 First, both charges involved the use of a dangerous weapon and therefore carried a greater threat of violence. In particular, for the Rape Charge, the use of the weapon to frighten or injure the victim is a clear aggravating factor, as stated in *Terence Ng* at [9] and [17], referring to the list of nine aggravating factors set out in *Regina v Millberry* [2003] 1 WLR 546 at [32]. For the Robbery Charge, while violence is an element of the offence of robbery, the use of a dangerous weapon to threaten violence ought to be an aggravating factor given the potential for more significant harm to be caused to the victim.

46 Pursuant to the trio's plan to rob [V1], which involved a high degree of planning and premeditation, the accused held a rod and tucked a chopper behind him when he first entered the bedroom. When he then passed the rod to Chow, the accused took out the chopper. He pulled [V1]'s bag away from her and while pointing the chopper at her, told her not to move. [V1] was frightened for her life and did as she was told. While Chow was searching [V1]'s bag, [V1] attempted to walk over to see what she was doing. The threat of violence materialised when the accused grabbed her neck and pushed her against the wall. When [V1] pulled his hand away, the accused then pointed the chopper at her face, shouting at her not to move and to squat down. The victim was very scared and did as instructed. The threat of further violence continued when Yong and Chow left the room. The accused directed [V1] to remove her clothes in a threatening tone while holding onto the chopper. There was a degree of persistence in his conduct. When he placed the chopper on the floor and started

removing his clothes, [V1] started to put her clothes back on. By picking up the chopper again and demanding to have sex with her, this showed that the use of the chopper was integral rather than incidental to the offence. The Prosecution pointed out that while the charge was one of rape *simpliciter*, the victim was put "in fear of death or hurt to herself", a specified statutory aggravating factor under s 375(3)(*a*)(ii) of the Penal Code.

47 Second, I also considered that [V1], as a sex worker, was a vulnerable victim ([44(e)] of *Terence Ng*). Furthermore, the accused and the co-offenders sought to target foreign sex workers in particular, with the belief that such victims were less likely to report the matter to the police. The following extract from *Al-Ansari* at [84] is relevant:

> The respondent's counsel had obliquely suggested that offences against sex workers should perhaps not be viewed as seriously, given their willingness to participate in a dangerous and unpleasant line of work. This was a preposterous suggestion. Such persons are no less deserving of the protection that the law accords to all other individuals. *Indeed, the courts often consider such persons to be vulnerable victims, given their reluctance to come forward when offences are committed against them, for fear of compromising their illegal activities or questionable immigration status.* Indeed, this aspect of the offence which the respondent knew about from the outset should, quite ironically, have been viewed as an aggravating feature … [emphasis added]

48 The two charges, and particularly the Rape Charge, therefore should be seen in the light of the two aggravating factors. In determining the seriousness of the charges, it is not just the number of the aggravating factors that is relevant, but also their intensity, a point made by the Court of Appeal in *Pram Nair* at [119] in the context of the offence of rape. Here, apart from the fact that both rape and robbery involve gratuitous violence, the aggravating factors and their intensity were sufficiently serious such that deterrence displaced rehabilitation as the predominant sentencing consideration.

Inapplicability of co-offenders' sentences as a sentencing consideration in the first stage of the Al-Ansari *framework*

49 In considering the issue of deterrence, I should make clear that I disregarded the Prosecution's submission that reformative training was not suitable on grounds of parity with the accused's co-offenders. The Prosecution, in both their written and oral submissions, submitted that reformative training was inappropriate as the accused was at least of the same level of culpability as his co-offenders. It was contended that the parity principle required the sentences meted out to co-offenders to be consistent, and for those with similar culpability to receive similar sentences.

50 I disagreed with the Prosecution's submission. First, it is clear that the law draws a clear distinction for young offenders. It should be noted that while s 2 of the Children and Young Persons Act (Cap 38, 2001 Rev Ed) defines a juvenile as one aged seven years and above but below the age of 16 years, the cases generally draw a line around 21 (bearing in mind also that offenders above the age of 21 are ineligible for reformative training, see s 305 of the CPC). In *A Karthik v Public Prosecutor* [2018] 5 SLR 1289 ("*Karthik*"), the accused was charged with two counts of abetting by conspiracy the cheating of two motor insurance companies. At the time of the commission of the offences, he was 17 years of age. By the time he pleaded guilty to the charge, with the other being taken into consideration, and was sentenced, he was 22 years of age. In the High Court, Menon CJ mentioned at [36] that rehabilitation should be the dominant sentencing consideration when dealing with youthful offenders. This was for two reasons, which Menon CJ referred to at [37] as the retrospective rationale and prospective rationale, explaining:

> In my judgment, there are at least two primary reasons justifying the view that youthful offenders should ordinarily be

> sentenced on the basis of rehabilitation being the dominant sentencing consideration:
>
> > (a) First, there is the retrospective rationale, which seeks to justify giving a young offender a second chance by excusing his actions on the grounds of his youthful folly and inexperience. This rationale rests on the offender's age at the time of the offence, in so far as it emphasises his relative lack of maturity and his state of mind when he was committing the offence.
> >
> > (b) Second, there is the prospective rationale, which seeks to justify rehabilitation as the preferred tool to discourage future offending on the grounds that: (i) young offenders would be more receptive towards a sentencing regime aimed at altering their values and guiding them on the right path; (ii) society would stand to benefit considerably from the rehabilitation of young offenders, who have many potentially productive and constructive years ahead of them; and (iii) young offenders appear to suffer disproportionately when exposed to the typical punitive options, such as imprisonment, as compared to adult offenders. These considerations rest on the offender's age at the time of sentencing, in so far as they emphasise his mentality and outlook at the time when he is facing the consequences of his earlier criminal conduct.
>
> [original emphasis omitted]

51 Menon CJ stated at [45] that where the accused was below 21 at the time of the offence but above 21 at the time of sentencing, the prospective rationale would not apply as strongly, if at all, while the retrospective rationale would continue to be relevant. In the present case, both the prospective and retrospective elements were engaged. Parity with the co-offenders' sentences was irrelevant in the court's consideration of whether the presumption that rehabilitation was the dominant sentencing consideration was displaced.

Inapplicability of the precedents relied on by the Defence

52 I should also deal with various decisions raised by the Defence. I first deal with three cases where, the Defence submitted, reformative training was

ordered in "far more aggravated" circumstances. These decisions were as follows:

(a) In District Arrest Case No 16513-21 of 2011 and others ("DAC 16513-21 of 2011"), the offender was 14 years old at the time he committed the offences. He pleaded guilty to two charges of rape *simpliciter* and two charges of sexual assault by penetration. The first victim was the offender's girlfriend while the second victim was her best friend. They were 15 and 14 years old respectively. In three separate incidents, the offender pretended to be possessed and demanded the victims to fellate and/or have sex with him in order to avoid "divine punishment".

(b) In *Leow Zi Xiang v Public Prosecutor* [2016] SGDC 251, the offender was 18 years old at the time he committed the offences. He claimed trial to one charge of rape *simpliciter* and one charge of outrage of modesty. The offender invited the second victim, whom he had known for about four years, and her best friend (the first victim) to his house. They were 16 years old at the material time. The first victim left the offender's house shortly after he kissed her. Thereafter, the offender invited the second victim to his bedroom where they lay beside each other talking and he thereafter raped her. A sentence of reformative training was imposed by the District Judge after a trial, and the Prosecution's appeal was dismissed by the High Court without issuing any grounds of decision.

(c) In District Arrest Case No 923356 of 2016 and others ("DAC 923356 of 2016"), the offender was 15 years old at the time of the offence. He pleaded guilty to one charge of rape *simpliciter* and two

charges of rioting. The victim of the rape charge was 13 years old at the material time. While in his bedroom, the offender and the co-offenders removed the victim's clothes, and the offender proceeded to rape her as the co-offenders held her down.

53 I disagreed with the Defence's contention that these cases were "far more aggravated" than the present case. In none of these cases was there actual or threatened violence, much less a threat of death or hurt with a chopper. While not in any way downplaying the seriousness of the offences committed in these three cases, the distinguishing factor here was the serious threat of violence posed by the use of the weapon in this commission of rape. Further, the offenders in DAC 16513-21 of 2011 and DAC 923356 of 2016 were materially younger than 21 years old and younger than the accused at the time of their respective offences and sentencing. The presumptive primacy accorded to rehabilitation would therefore apply with greater force, in line with the retrospective and prospective rationales highlighted in *Karthik*: the younger the age of an offender, the less mature he is likely to be at the time of offending and the better his chances of rehabilitation. These two cases were also unreported decisions. It is well established that such decisions carry little, if any, precedential value because they are not reasoned: see *Public Prosecutor v Lim Cheng Ji Alvin* [2017] 5 SLR 671 ("*Lim Alvin*") at [13], reiterating *Keeping Mark John v Public Prosecutor* [2017] 5 SLR 627 at [18].

54 The Defence also relied, in advancing the case for reformative training, on a number of cases where, in circumstances which they considered more serious than the present, imprisonment was ordered. I do not deal with those cases because it does not, as a matter of logic, follow that reformative training would be appropriate in all cases less serious than one in which imprisonment was ordered. The cases could reflect similar considerations, as seen in my

reference to *Mohamed Noh Hafiz bin Osman*, *PP v S* and *PP v AGG* above, and comparison is only useful (if at all) in consideration of the length of imprisonment to be imposed.

55 I come then to defence counsel's emphasis on the sentence imposed in *ASR*. In my view, the outcome of *ASR* was not directly relevant to the present case. Courts have drawn a distinction with cases where there exist psychiatric and other mental conditions (see *Lim Alvin* at [7], for example, in the context of drug offences, on the exceptional use of probation for adult offenders with "psychiatric or other conditions that were in some way causally related to their offences"). The Court of Appeal explained in *ASR* that both general and specific deterrence would carry "minimal weight" where there is a causal link between the offender's intellectual disability and the offence. There, the offender raped the victim when he was 14 years old. He had a mental age of between 8–10 at the material time and an IQ of 61. The Court of Appeal explained at [115] why rehabilitation was not displaced by deterrence as the dominant sentencing consideration:

> In our judgment, the extent of the respondent's intellectual disability significantly reduced the importance of both general and specific deterrence in this case. As we observed in *Soh Meiyun v PP* [2014] 3 SLR 299 at [43], general deterrence is premised on the cognitive normalcy of both the offender in question and the potential offenders sought to be deterred: see also *PP v Kong Peng Yee* [2018] 2 SLR 295 ('*Kong Peng Yee*') at [69]. Thus, the precise weight to be accorded to general deterrence would depend on, among other things, the casual link between the offender's intellectual disability and the offence: see *Kong Peng Yee* at [70]. Specific deterrence assumes that the offender can weigh the consequences before committing an offence. It is therefore unlikely to be effective when the offender's ability fully to appreciate the nature and quality of his actions is reduced: see *Kong Peng Yee* at [72]. As we have seen, the respondent is not cognitively normal, and did not fully understand the gravity of his offending conduct. Deterrence in both forms must therefore carry minimal weight here.

56 *Leon Russel Francis v Public Prosecutor* [2014] 4 SLR 651 ("*Leon Russel Francis*") is another example where the offender's medical condition and the *mens rea* for the offence were connected. The offender there pleaded guilty to drug possession and drug consumption. Although he was initially sentenced to eight months' imprisonment, this was substituted with probation on appeal. Chao Hick Tin JA stressed, however, that the circumstances in that case were exceptional. The offender suffered from a rare genetic medical condition, Ehlers-Danlos Syndrome Type IV; the offences therefore had to be seen in the context of his consumption of drugs to relieve the discomfort and anxiety arising from this medical condition. The circumstances in *Leon Russel Francis* could therefore be distinguished from the usual case where drugs are consumed for purely recreational or social reasons. As explained by Chao JA at [26]–[27]:

> First, I would caution against any reliance on this case in the future for its precedential value because the present circumstances here were indeed exceptional in that the Appellant suffers from a rare genetic medical condition which causes him discomfort and anxiety. The circumstances in this case were also exceptional in relation to the strength of familial support which the Appellant enjoyed for his rehabilitation, his genuine remorse for the offences which he had committed and his commendable attitude and diligence towards his work endeavours.
>
> Second, I would emphasise that I am in no way condoning the consumption of drugs for the relief of pain or discomfort arising from an existing medical condition. There are proper legal avenues for drugs to be administered or consumed for medical purposes. Persons who contravene the provisions of the MDA must be prepared to face the full brunt of the law. At the end of the day, each case would have to be assessed on its merits as to the proper sentence.

Capacity for rehabilitation

57 Having said that the present case is not one such that deterrence ought to be given less weight, the facts on which the accused's capacity for rehabilitation rests must be carefully examined (see *Nur Azilah bte Ithnin v*

Public Prosecutor [2010] 4 SLR 731 at [20]). Each case turns on its own particular facts. In the present case, the following were highlighted as showing the accused's capacity for rehabilitation:

(a) Letters from the accused and his parents stated that the accused's relationship with his parents had significantly improved since the commission of the offences. His parents were committed to providing him with the necessary "emotional, moral and family support".

(b) Notwithstanding the numerous TIC Charges, the accused had no prior antecedents.

(c) The accused expressed remorse for his actions. This was evidenced by the contents of his personal mitigation plea and his decision to plead guilty.

(d) Finally, the Defence informed me that the accused had dissociated himself from the co-offenders.

58 In the above-mentioned case of *Leon Russel Francis* where the offender's capacity for rehabilitation was "demonstrably high", the following list of factors were considered relevant at [15]:

(a) the strength of familial support and the degree of supervision provided by the accused's family for his rehabilitation;

(b) the frequency and intensity of the accused's wrongful activities;

(c) the genuineness of remorse demonstrated by the accused; and

(d) the presence of risk factors such as negative peers or bad habits.

59 In this context, it should be noted that the circumstances of *Leon Russel Francis* were also "exceptional" in relation to the offender's capacity for rehabilitation (see *Leon Russel Francis* at [26]). Chao JA noted that the level of familial support for the offender's rehabilitation was "undoubtedly strong" (*Leon Russel Francis* at [17]). Further, he was a first-time offender and did not commit a litany of drug offences or commit further offences while on bail (*Leon Russel Francis* at [20]). He also exhibited genuine remorse and a desire to rehabilitate. There were testimonials provided to the court which attested to the offender's "diligence and good working attitude". The offender also did not have unhealthy habits or negative peers whom he associated himself with (*Leon Russel Francis* at [22]–[23]). In all the circumstances, Chao JA held that rehabilitation remained the dominant sentencing consideration and ordered for the offender to undergo a sentence of 24 months' supervised probation.

60 Similarly strong features of capacity for rehabilitation were not present in this case. The following considerations were relevant in my analysis:

(a) While the accused was a first-time offender, he committed other offences before he was eventually charged. Aside from the three proceeded charges, there were eight TIC Charges. The TIC Charges included offences of robbery, cheating and theft and could not be described as minor misdemeanours. For example, the offence of robbery by day would have attracted a mandatory minimum sentence of two years' and six strokes of the cane. In this connection, it should be noted that where an offender has previously engaged in criminal conduct, even if he has not been charged, then although such conduct should not be considered as an aggravating factor, the lack of a court antecedent certainly cannot be regarded as mitigating (see *Lim Alvin* at [20], citing

Vasentha d/o Joseph v Public Prosecutor [2015] 5 SLR 122 ("*Vasentha*") at [62] and [81]).

(b) Further, I was informed by the Prosecution in the course of oral submissions that the accused had received a conditional warning in 2016 for incidents which formed the subject matter of two TIC Charges. The Defence further informed me that the parents of the accused were informed and aware of the conditional warning when it was administered to the accused. Pertinently, the accused committed these offences before he met the co-offenders in the present case. That he gravitated towards committing even more serious crimes, notwithstanding the receipt of the conditional warning, provides some insight into the solutions appropriate to recultivate his thinking. To be clear, I did not treat the conditional warning as an antecedent or an aggravating factor in sentencing, following *Wham Kwok Han Jolovan v Attorney-Genera*l [2016] 1 SLR 1370 at [44]. A warning has no legal effect and is not binding on the recipient. However, there was no reason why the conditional warning, which in any event formed the basis of two TIC Charges (the 10th and 11th Charge), could not form part of the relevant background in assessing the accused's capacity for rehabilitation.

(c) The Defence's attempt to attribute the accused's crimes to the negative influence of the co-offenders must therefore be seen in the light of the two TIC Charges that were committed before the accused met them. The Prosecution pointed out that there was no evidence of his being under their influence. The co-offenders were first-time offenders and their scale of offending could be said to be lower than his. The male co-offender received a global sentence of three and a half years and 12

strokes for robbery and cheating offences, and the female co-offender received the same imprisonment term with an additional six months' imprisonment in lieu of caning. Further, the most serious offence in the present case was that of rape, and it was committed by the accused alone and on his own initiative.

(d) The accused wanted to further his studies but had not yet done so in the 18 months that he was on bail. While I gave some credit to the accused for assisting his parents with their business while on bail, this did not carry the same weight as, for example, the third-party testimonials provided by the offender's employers in *Leon Russel Francis* which attested to his diligence, good working attitude and desire to rehabilitate (*Leon Russel Francis* at [22]).

(e) Finally, I had regard to the guidance of *ASR* at [104] that the accused's state of mind at the time of his offences "shed light on his culpability, the kind of offender he is and his risk of reoffending". This is related, in my opinion, to the issue of specific deterrence. Of relevance was the trio's two different modes of offending (as described above at [7]). If the intent of the accused was to receive unpaid sexual services from [V1], he could chosen the shower method, which was used when committing the offence of the 3rd charge. There was, in this instance, a conscious decision to denigrate and subjugate [V1] and to exploit her vulnerability as a sex worker. In this context, while I noted his consideration in using a condom at her request, it did not lessen his culpability.

61 Accordingly, weighed against the seriousness of the offences and the severity of the harm caused, I did not find that the accused's capacity for

rehabilitation was so high such that rehabilitation ought to remain the dominant sentencing consideration. I therefore did not call for a reformative training suitability report. This was because a conceptual distinction between the question whether the predominant consideration is rehabilitation and whether he is suitable for reformative training ought to be drawn (see *ASR* at [99]). In calibrating the sentence, nevertheless, the accused's rehabilitation remained a significant consideration, which I shall explain.

Sentence

Parties' positions

62 The Prosecution sought the mandatory minimum sentence of three years' imprisonment and 12 strokes of the cane for the Robbery Charge, one year's imprisonment for the Theft Charge and at least eight years' imprisonment and three to six strokes of the cane for the Rape Charge. The Prosecution pressed for an aggregate sentence of at least nine years' imprisonment and 15 strokes of the cane, with the terms of imprisonment for the Rape Charge and the Theft Charge to run consecutively.

63 The Defence took the position that the appropriate terms of imprisonment were as follows: the mandatory minimum sentence of three years' imprisonment for the Robbery Charge, seven to eight years' imprisonment for the Rape Charge and two months' imprisonment for the Theft Charge. The aggregate sentence would be in the region of seven to eight years and one to two months' imprisonment, with the terms of imprisonment for the Rape Charge and the Theft Charge to run consecutively. The Defence agreed with the Prosecution in respect of the number of strokes of the cane.

Proportionality of overall punishment

64 In the present case, it was in my view important to assess the overall proportionality of the accused's sentence. He was 19, and while rehabilitation was not the predominant sentencing consideration such that reformative training could be considered, in considering the sentence to be imposed, rehabilitation ought still to be significant in deciding the overall term of imprisonment and number of strokes of the cane, for two reasons, one general and another more specific to the facts of the present case.

65 First, the retributive element in such cases involving young offenders is lower. As stated by Menon CJ in *Karthik* at [41(a)], citing Professors Andreas von Hirsch and Andrew Ashworth in *Proportionate Sentencing: Exploring the Principles* (Oxford University Press, 2005) ("*Proportionate Sentencing*") at 36–47:

> … juveniles should be treated as less culpable than adults because: (i) they have less capacity to assess and appreciate the harmful consequences of their actions; and (ii) they will have had fewer opportunities to develop impulse control and resist peer pressure to offend.

Conversely, and also as part of the proportionality principle, society has an interest that young offenders receive sentences that best encourage rehabilitation and reintegration, in keeping with their future ability to contribute to society.

66 Second, and specific to the present case, the accused has capacity for rehabilitation, notwithstanding my findings at [57]–[61] that such capacity was not sufficient for rehabilitation to remain as the predominant consideration, given the seriousness of the offences and the severity of harm. The support of his family and his remorse were relevant and compelling. He should be

encouraged in his studies, which he may pursue while in incarceration, with a view to a fulfilling working life thereafter.

67 It was therefore critical to have especial regard to the totality principle enunciated in *Mohamed Shouffee bin Adam v Public Prosecutor* [2014] 2 SLR 998 ("*Shouffee*"), in particular that the aggregate sentence must not be crushing or out of step with the offender's past record and future prospects (see *Shouffee* at [54] and [57]). It is in that context, that I turn, then, to the sentences imposed.

The Robbery Charge (the 1st Charge)

68 For the Robbery Charge, the Prosecution sought the mandatory minimum sentence of three years' imprisonment and 12 strokes of the cane, and I so ordered.

The Theft Charge (the 3rd Charge)

69 For the Theft Charge, the Prosecution sought a sentence of one year's imprisonment. The Defence, on the other hand, pressed for a sentence of two months' imprisonment.

70 It was in respect of the Theft Charge that I considered parity of sentencing to be a relevant factor. The co-offenders received three months' imprisonment for committing theft in the same incident. The Prosecution submitted that the sentence it was seeking, which was more than three times that of the co-offenders, was appropriate due to the accused playing a "more active role in the commission of this offence". Specifically, the accused had lured [V2] to his house, had sex with her while the co-offenders stole her property and drove [V2] and the co-offenders to Upper Thomson Road before abandoning

them. Defence counsel, on the other hand, submitted that the accused's culpability should be less than that of his co-offenders, on account of his youth.

71 This is the only facet of the sentence to which I am of the view that the principle of parity applied. First, it was not clear to me why the accused was said to be the one who had lured [V2] to his house. From the Statement of Facts, it was the co-offenders who contacted [V2] and told her to come to the accused's residence. The three planned the crime together and acted in concert in its pursuance. Second, while the accused had consensual sex with [V2], this did not increase his culpability for the Theft Charge. It was part and parcel of their jointly agreed plan and formed the basis upon which all three profited from the offence. The profits were split equally between the three co-offenders. For the same reason, the fact that the accused drove the vehicle did not increase his culpability.

72 Accordingly, I sentenced the accused to three months' imprisonment for the Theft Charge, which was the same sentence received by the co-offenders. In respect of Defence counsel's submission on the accused's youth, I took that into account in respect of the overall sentence, and specifically in respect of the punishment given for the Rape Charge.

The Rape Charge (the2nd Charge)

The applicable sentencing framework

73 For the Rape Charge, both parties agreed that the two-step sentencing framework set out by the Court of Appeal in *Terence Ng* at [47] was applicable. At the first step, the court should consider the offence-specific aggravating factors and decide which sentencing band the offence in question falls under.

The court should identify precisely where within that sentencing band the offence falls under in order to derive an indicative starting point.

74 As I stated at [48] above, the Court of Appeal highlighted in *Pram Nair* at [119] that in determining the appropriate sentence, both the *number* and *intensity* of the relevant offence-specific aggravating factors are relevant. The court is guided not only by the number of offence-specific aggravating factors but also the seriousness of the particular factor *vis-à-vis* the offence committed. Through identifying and weighing the factors, the court is thus able to come to a sentence that is, when viewed holistically, proportionate to the overall criminality involved.

75 In *Terence Ng* at [44], the Court of Appeal provided various examples of the offence-specific aggravating factors which would determine which sentencing band the offence fell under. These aggravating factors include abuse of trust, premeditation, violence, vulnerability of the victim and the infliction of severe harm. The three sentencing bands are as follows:

Band	**Type of cases**	**Sentence**
1	Cases at the lower end of the spectrum of seriousness. These cases feature no offence-specific aggravating factors or are cases where these factors are only present to a very limited extent and have a limited impact on sentence: *Terence Ng* at [50]	10 to 13 years' imprisonment and 6 strokes of the cane.
2	Cases of a higher level of seriousness which usually contain two or more offence-specific aggravating factors: *Terence Ng* at [53]	13 to 17 years' imprisonment and 12 strokes of the cane.

3	Extremely serious cases by reason of the number and intensity of the aggravating factors: *Terence Ng* at [57]	17 to 20 years' imprisonment and 18 strokes the cane.

76 At the second step of the *Terence Ng* framework, the court proceeds to consider the aggravating and mitigating factors personal to the offender. Offender-specific aggravating factors would include offences taken into consideration for the purposes of sentencing, the presence of relevant antecedents and an evident lack of remorse. Offender-specific mitigating factors would include the display of evident remorse, youth, advanced age and the plea of guilty (*Terence Ng* at [64]–[71]).

77 After applying the two-step *Terence Ng* framework, the court finally considers the totality principle. Where the offender faces two or more charges, and it is necessary to order one or more sentences to run consecutively, the court can, if necessary, further calibrate the individual sentences to ensure that the global sentence is appropriate and not excessive (*Terence Ng* at [73(d)]).

78 Turning to the facts of this case, the Prosecution submitted that the indicative starting point was a sentence of at least 12 years' imprisonment and six strokes of the cane. Taking into account the accused's youth and his plea of guilt, the Prosecution's position was that a sentence of at least eight years' imprisonment and three to six strokes of the cane was appropriate.

79 The Defence did not agree with the indicative starting point relied on by the Prosecution. Nevertheless, their final position on sentence was substantially similar. On account of the accused's youth and his plea of guilt, they submitted for a term of imprisonment of seven to eight years. They agreed with the Prosecution's position on the number of strokes of the cane.

Stage 1

80 The first stage of the *Terence Ng* framework required me to identify the relevant offence-specific aggravating factors. Based on the number and intensity of these aggravating factors, I then had to determine which of the three sentencing bands the case fell under.

81 As I identified at [48], there were, in total, two aggravating factors in this case: the threat of violence with a weapon and the vulnerability of [V1]. That the weapon was used to put the victim "in fear of death or hurt to herself" was a statutory aggravating factor. If the accused had been prosecuted under s 375(3) of the Penal Code, the sentence would "almost invariably" would have been within Band 2 (see *Terence Ng* at [53]). While the accused was prosecuted under s 375(2), the statutory aggravating factor remained present in the factual matrix. In the light of the intensity of these various factors, the sentence would as a starting point be a high Band 1 (or even a low Band 2), with a minimum of six strokes of the cane.

Stage 2

82 I then considered the offender-specific aggravating and mitigating factors to determine if the indicative starting sentence had to be adjusted.

(1) Plea of guilt

83 The accused's plea of guilt warranted a substantial reduction in the indicative starting sentence. I was satisfied that his plea was motivated by genuine remorse and a willingness to bear the consequences of his actions. Further, I was also guided by the holding of the Court of Appeal in *Chang Kar Meng v Public Prosecutor* [2017] 2 SLR 68 at [47]:

> … in the context of sexual offences, we think there will often be a further benefit from a plea of guilt – namely, the victim will thereby be spared the trauma of having to relive the experience in court and being cross-examined on it. *We therefore hold that offenders who plead guilty to sexual offences, even in cases where the evidence against them is compelling, ought ordinarily to be given at least some credit for having spared the victim additional suffering in this regard.* [original emphasis omitted; emphasis added in italics]

(2) First-time offender

84 The accused had no antecedents prior to these proceedings but as I mentioned at [60], this was not, in the circumstances of this case, a mitigating factor. In a similar vein the Prosecution relied on *Chen Weixiong Jerriek v Public Prosecutor* [2003] 2 SLR(R) 334 at [15], where the Court regarded a 17-year old boy charged with multiple offences but without prior convictions to be a habitual offender.

(3) Youth

85 The accused's youth, however, was a significant mitigating factor. While in the first stage of the *Al-Ansari* framework, I held that general deterrence had eclipsed rehabilitation as the dominant sentencing consideration in the selection of the appropriate sentencing option, rehabilitation was the most significant factor in coming to a decision on the quantum of the sentence. The accused was young, with supportive parents. A fundamental objective was for him to achieve the full potential of his capacity and prospect for rehabilitation.

Sentence for the Rape Charge

86 I considered that a reduction in the indicative starting sentence was necessary in the light of the accused's remorse and youth. I also took into account that the accused had spent seven months in remand prior to his being

put on bail (*Vasentha* at [86]). As mentioned at [66]–[67], the primary concern of the court was that the overall sentence for the accused, while meeting the needs of deterrence, ought not to be crushing, so as to spur him on in efforts for rehabilitation. I imposed an imprisonment term of six years and nine months' imprisonment, with a view to a total term of seven years' imprisonment. While the *Terence Ng* framework envisaged six strokes of the cane, I imposed three strokes, with a view to an overall number of 15 strokes. This was, in my view, sufficient.

Conclusion

87 In conclusion, while rehabilitation was the presumptive predominant sentencing consideration, deterrence displaced this presumption at the first stage of the *Al-Ansari* framework such that reformative training was precluded as an appropriate sentencing option. The accused's rehabilitation, however, remained a dominant concern at the second stage of the *Terence Ng* sentencing framework and in assessing whether the overall sentence adhered to the proportionality principle in *Shouffee*. Having regard to all the circumstances, I was of the view that a total term of seven years and 15 strokes of the cane would be sufficient to meet the interests of society and the accused in the present case, and I so ordered. The object of the significant discount in the overall sentence is to enable his rehabilitation, restoration and reintegration. I would encourage him and his parents to press on with a future that may yet be extremely bright.

Valerie Thean
Judge

Gail Wong and Sheryl Yeo (Attorney-General's Chambers) for the Prosecution;
Ng Shi Yang and Siraj Shaik Aziz (Criminal Legal Aid Scheme) for the accused.
