IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 83

Criminal Case No 10 of 2019

Between

Public Prosecutor

And

BVZ

GROUNDS OF DECISION

[Criminal Procedure and Sentencing] — [Sentencing] — [Sexual assault by penetration]
[Criminal Procedure and Sentencing] — [Sentencing] — [Criminal force and assault] — [Outrage of modesty]
[Criminal Procedure and Sentencing] — [Sentencing] — [Causing hurt by means of poison]

TABLE OF CONTENTS

Public Prosecutor
v
BVZ

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High Court — Criminal Case No 10 of 2019
Hoo Sheau Peng J
4 March 2019

26 March 2019

Hoo Sheau Peng J:

Introduction

1 The accused pleaded guilty to and was convicted of the following four charges:

> That you, [BVZ]
>
> 1ST CHARGE
>
> sometime in September 2016, at [the accused's flat], Singapore, did penetrate with your penis the mouth of [Victim 1] (Female, [date of birth redacted]), without her consent, and you have thereby committed an offence under section 376(1)(*a*) and punishable under section 376(3) of the Penal Code (Cap. 224, 2008 Rev Ed).
>
> 2ND CHARGE
>
> on 3 July 2017, at about 12.50 am, at the 4th floor of the multi-storey carpark at Joo Chiat Complex, located at 1 Joo Chiat

> Road, Singapore, did penetrate with your penis the mouth of [Victim 1] (Female, [date of birth redacted]), without her consent, and you have thereby committed an offence under section 376(1)(*a*) and punishable under section 376(3) of the Penal Code (Cap. 224, 2008 Rev Ed).
>
> 3RD CHARGE
>
> on 17 August 2017, at about 6 am, at a staircase landing of [location redacted], Singapore, did cause a poison, namely, Nitrazepam, to be taken by [Victim 2], with intent to facilitate the commission of an offence, namely, sexual penetration of minor under section 376A(l)(*a*) and punishable under section 376A(2) of the Penal Code (Cap. 224, 2008 Rev Ed), and you have thereby committed an offence punishable under section 328 of the Penal Code (Cap. 224, 2008 Rev Ed).
>
> 8TH CHARGE
>
> on 4 October 2016, sometime in the morning, at [the accused's flat], Singapore, did use criminal force to [Victim 4], (Female, [date of birth redacted]), *to wit*, by touching her breast, intending to outrage her modesty, and you have thereby committed an offence punishable under section 354(1) of the Penal Code (Cap. 224, 2008 Rev Ed).

2 Thereafter, I imposed these sentences:

(a) First and second charges under section 376(1)(*a*) of the Penal Code (Cap 224, 2008 Rev Ed) ("Penal Code"): ten years' imprisonment and eight strokes of the cane on each charge. I shall refer to these as the offences of "sexual assault by penetration";

(b) Third charge under s 328 of the Penal Code: three years' imprisonment. I shall refer to this as the offence of "causing hurt by means of poison"; and

(c) Eighth charge under s 354(1) of the Penal Code: ten months' imprisonment. I shall refer to this as the offence of "outrage of modesty".

3 I ordered the sentences for the first and second charges to run consecutively, with the sentences for the third and eighth charges to run concurrently. The total sentence is 20 years' imprisonment and 16 strokes of the cane with effect 18 August 2017.

4 The accused has appealed against his sentence. I now give my reasons for the decision.

Statement of Facts

5 I summarise the material portions of the Statement of Facts below.

6 The accused is a 49-year-old male Singaporean.

7 At the material time, the accused, his wife and their daughter (referred to as Victim 3 ("V3")), resided together at a flat on the 11th floor of a block of flats (the "flat"). The accused's wife worked the night shift and would only return to the flat in the morning.

8 The first, second and fourth victims, Victim 1 ("V1"), Victim 2 ("V2") and Victim 4 ("V4") are V3's female friends from primary school. When the offences were committed against them, they were 14 years old; by the time of the hearing, they were all 16 years old.

9 Often, V1, V2 and V4 would spend time at the flat. They would occasionally stay overnight. In particular, V1 and V3 were close friends since

childhood; V1 stayed on the 12th floor of the same block of flats.

10 On 17 August 2017, at about 6.09am, the police received a 999-call seeking police assistance at the flat. Upon arrival at the flat at about 6.22am, the police officers met V1, V2 and V3. They interviewed the victims, and seized, *inter alia*, some "Epam Nitrazepam BP 5mg" pills from the flat. Thereafter, the accused was arrested.

The first sexual assault by penetration offence

11 One night in September 2016, V1 went to V3's flat to get some instant noodles from V3. The accused was alone at home. He opened the door. V1 went in to collect the instant noodles from the living room. As V1 was about to leave, the accused told her that there was "something" outside the flat, and not to go home yet. As such, V1 waited in the flat.

12 After some time, V1 told the accused that she wanted to go home. As the accused went to the door to open it for her, he suddenly pretended to be spiritually possessed. He acted strangely, performing "*silat*" moves and speaking in a deep voice. The accused then removed his T-shirt, pulled down his jeans, and moved nearer to V1. In Malay, he told her that if she wanted him to become normal again, she had to give him a "blow job".

13 At that time, V1 was feeling very afraid. She was seated on the floor against the wall with her eyes closed. The accused proceeded to kneel in front of V1. When V1 opened her eyes, she saw that he was completely naked and that his penis was erect. The accused then asked V1 to open her mouth. She told him that she did not want to. The accused continued to ask her to open her mouth. Out of fear, V1 relented and opened her mouth. While still kneeling, the accused then put his penis in V1's mouth and instructed her to suck his penis as

he moved his penis in and out of her mouth. For a few minutes, this continued until the accused ejaculated in V1's mouth. Then, the accused instructed V1 to swallow his semen. She did as he told.

14 Thereafter, the accused ran out of the flat. When he ran back into the flat, he pretended to return to normal, and asked V1 what had happened. Then, the accused got dressed. He gave V1 a cup of water, apologised to her and told her not to tell anyone about what had happened. After some time, the accused brought V1 back to her flat.

15 V1 did not consent to the accused penetrating her mouth with his penis.

Outrage of modesty offence

16 Sometime in late September 2016, V4 had run away from home and was at the flat with V3, when she told the accused of her running away from home. The accused allowed V4 to stay at the flat. Thereafter, V4 would sleep in the bedroom with V3 at night. The accused would sleep in the living room, while his wife worked night shifts.

17 On 4 October 2016, sometime in the morning, V4 was asleep alone in the bedroom at the flat. By then, V3 had left for school. The accused entered the bedroom and woke V4 up. He told her that he wanted her to satisfy him.

18 The accused then touched V4's breast over her T-shirt. Quickly, V4 took a pillow to cover her chest. Then, the accused then told V4 that that she was staying for free at the flat, and he wanted her to give him a "blow job". V4 was frightened and began crying. Pretending that she needed to relieve herself, V4 quickly went to the toilet. In the toilet, V4 sent text messages to V2 to seek help.

In turn, V2 informed V3 of what had happened. V3 then approached one of her teachers to seek help.

19 Later that morning, two teachers from V3's secondary school arrived at the flat. They escorted V4 away.

The second sexual assault by penetration offence

20 After the previous incident, V1 only went to the flat when she was with V3.

21 On the night of 2 July 2017, V1 was watching movies with V3 in V3's bedroom. After V3 fell asleep, V1 went out of the bedroom to use the toilet. she saw the accused who was in the living room. The accused asked her where a "LAN" gaming shop she and V3 frequented was. V1 replied that it was at Geylang Lorong 42. The accused asked her to bring him there. V1 wanted to wake V3 up but the accused told her not to.

22 The accused and V1 then rode to the LAN gaming shop on the accused's electronic bicycle. When they got there, V1 asked the accused if she could meet with her friends. He did not allow her to. Instead, the accused brought her to his friend's house at Chai Chee. They then left at about midnight. While they were on the way back to the flat, the accused's electronic bicycle's battery went flat. He parked it at a "Caltex" petrol kiosk nearby. Then, the accused brought V1 to the fourth floor of the multi-storey carpark of Joo Chiat Complex, which was a short walk away. This was at about 12.50am of 3 July 2017.

23 At the multi-storey carpark, the accused asked V1 to give him a "blow job". V1 started crying and told the accused that she did not want to. The accused told her that this would be the last time, and that he would not disturb

her anymore after this. V1 refused again. The accused became angry, and he continued to ask V1 to give him a "blow job". When V1 continued to refuse, the accused held her neck with his hand and threatened to punch her, while making a gesture of punching her stomach. V1 kept quiet and continued crying, feeling helpless and afraid for her safety.

24 The accused then unzipped his jeans and took out his penis. Out of fear, V1 complied with the accused's demand and knelt down. The accused then inserted his penis into her mouth, moving it in and out. After some time, the accused ejaculated in V1's mouth. She spat the semen out.

25 The accused then called for a private-hire car and they returned to the flat. The accused told V1 to take care of V3 and went out again. V1 did not consent to the accused penetrating her mouth with his penis.

Causing hurt by means of poison offence

26 On 16 August 2017, sometime at night, V1, V2 and V3 were at the flat together. The accused was not at home. They took the accused's electronic bicycle to go out.

27 Sometime past 3.00am on 17 August 2017, they returned to the flat. When the accused returned to the flat at about 5.00am, he was angry with V3 for using his electronic bicycle without his permission.

28 At about 6.00am, the accused then asked to speak to either V1 or V2 individually outside the flat at a staircase landing. When both of them refused, the accused brought V3 to the staircase landing. After speaking to V3 for a while, he instructed her to go back to the flat to ask either V1 or V2 to come, and then to go to school.

29 V3 went back to the flat and told V2 that the accused wanted to see her at the staircase landing. V2 was reluctant as she was afraid, and V3 assured her that she would seek help. V2 then went out to meet the accused.

30 At the staircase landing, the accused asked her to promise to take care of V3 and she answered that she would. After that, the accused gave four "Epam Nitrazepam BP 5mg" pills, which contained Nitrazepam, to V2. He told her that this was "Epam", and asked her to consume the pills, with the intention of facilitating the commission of an offence of sexual penetration of a minor under s 376A(1)(*a*) against her. He told V2 that if she refused, he would hit V3. As such, V2 consumed the pills with some "coca-cola" provided by the accused. The accused then gave V2 a rolled-up cigarette and asked her to smoke it. V2 did as she was told. V2 then began to feel dizzy. At this point, the accused then asked her to give him a "blow job".

31 V2 managed to walk away. After V2 walked away, she saw V1 who was waiting for her. They quickly went to V1's flat on the 12th floor. They locked themselves in the flat, stayed there until the police officers arrived, and then went down to the flat to meet the police officers.

32 On the same day, V2 was sent to KK Women's and Children's Hospital ("KKWCH") where she was admitted and warded till 19 August 2017. According to the KKWCH medical report, V2 was found to have clinical symptoms of Nitrazepam overdose, including drowsiness, slurred speech, slowness to response, and unsteady gait.

33 According to the toxicology report by the Health Sciences Authority ("HSA"), 7-aminonitrazepam and Nitrazepam were detected in V2's blood and urine samples. Nitrazepam is a poison listed in the Schedule to the Poisons Act

(Cap 234, 1999 Rev Ed). In a further report clarifying the toxicology report, it was stated that Nitrazepam is a prescription-only medication. It is a hypnotic used to treat insomnia or convulsions. For adults, the usual dose for insomnia is 5mg at night.

Decision on conviction

34 The accused admitted to the facts set out in the Statement of Facts. As all the elements of the four charges against him had been established beyond a reasonable doubt, I convicted him of the four charges.

Sentencing

Charges taken into consideration

35 The accused admitted to having committed six further offences. Both the Prosecution and the accused consented to these being taken into account for sentencing. They were as follows:

(a) Fourth charge of attempt to sexually exploit a young person under s 7(*a*) of the Children and Young Persons Act (Cap 38, 2001 Rev Ed) ("CYPA") committed against V2 on 17 August 2017.

(b) Fifth charge of voluntarily causing hurt under s 323 of the Penal Code committed against V3 on 17 August 2017.

(c) Sixth charge of criminal intimidation under s 506 (2nd limb) of the Penal Code committed against V3 on 17 August 2017.

(d) Seventh charge of attempt to sexually exploit a young person under s 7(*a*) of the CYPA committed against V4 on 4 October 2016.

(e) Ninth charge of mischief under s 426 of the Penal Code committed against V4 on 4 October 2016.

(f) Tenth charge of theft in dwelling under s 380 of the Penal Code on 16 July 2012.

Antecedents

36 The accused admitted to a string of previous convictions, dating back to 1989. From 1989 to 1996, the offences were mainly of desertion under s 14(1) of the Vigilante Corps Act (Cap 343, 1985 Rev Ed) and disciplinary breaches under its regulations. Then, from 1993 to 2008, the accused committed property related offences, mainly of theft in dwelling. In 2000, there was one instance of an assault or use of criminal force to deter a public servant from the discharge of his duty under s 353 of the Penal Code (Cap 224, 1998 Rev Ed). Importantly, the accused did not have any previous records of sexual offences.

The Prosecution's submissions

37 I now turn to the parties' positions. The Prosecution submitted that for cases involving vulnerable victims, and crimes which offend the sensibilities of the general public, general deterrence ought to be the primary sentencing consideration: *Public Prosecutor v Law Aik Meng* [2007] 2 SLR(R) 814 ("*Law Aik Meng*") at [24(b)] and [25(c)]. Also, the Prosecution submitted that specific deterrence considerations were triggered as well, given the accused's proclivity for targeting young girls for sexual gratification. The principle of retribution also featured. This requires that the sentence imposed be commensurate with the degree of seriousness of the offences against the victims: *Public Prosecutor v Tan Fook Sum* [1999] 1 SLR(R) 1022 ("*Tan Fook Sum*") at [16].

38 Turning to the sexual assault by penetration offences, the Prosecution relied on the two-step sentencing framework set out by the Court of Appeal in *Pram Nair v Public Prosecutor* [2017] 2 SLR 1015 (“*Pram Nair*”) from [158]–[159]. While the framework was formulated for cases involving digital penetration, the Prosecution submitted that it can serve as a useful reference for offences concerning fellatio. Applying the two-step process, the Prosecution submitted that the appropriate sentence to be imposed for each charge would be at least ten years’ imprisonment and eight strokes of the cane.

39 Based on the facts and circumstances, and the Prosecution submitted that a sentence of at least three years’ imprisonment ought to be imposed in respect of the accused’s act of causing V2 to consume Nitrazepam.

40 Turning to the outrage of modesty offence, the Prosecution relied on *Kunasekaran s/o Kalimuthu Somasundara v Public Prosecutor* [2018] 4 SLR 580 (“*Kunasekaran*”) at [45]–[49], where the High Court set out a two-step sentencing framework in respect of the offence of outrage of modesty *simpliciter* under s 354(1) of the Penal Code. Applying the framework, the Prosecution submitted that a sentence of at least ten months’ imprisonment would be appropriate.

41 By s 307(1) of the Criminal Procedure Code (Cap. 68, 2012 Rev Ed) (“CPC”), at least two of the imprisonment sentences imposed for the charges must be ordered to run consecutively. Applying the principles set out in *Mohamed Shouffee bin Adam v Public Prosecutor* [2014] 2 SLR 998 (“*Mohamed Shouffee*”) and *Public Prosecutor v Raveen Balakrishnan* [2018] 5 SLR 799 (“*Raveen Balakrishnan*”), the Prosecution contended that the two imprisonment terms in respect of the offences of sexual assault by

penetration ought to run consecutively, resulting in a global sentence of at least 20 years' imprisonment and 16 strokes of the cane.

The mitigation plea

42 In his mitigation plea, Defence Counsel set out the accused's personal and family circumstances.

43 The accused left school early, after completing Secondary Two. Explaining the accused's previous convictions, Defence Counsel stated that as a voluntary constable, he was absent without official leave on multiple occasions, and got into trouble with the authorities. Thereafter, he was incarcerated for a variety of property offences. He was last imprisoned in 2008, for a shoplifting offence. However, he had not been charged for any sexual offences before.

44 Sometime in 2006, the accused and his wife got married. They had their daughter, V3, in 2002, before their marriage. He has been a good and responsible husband, who has been providing for his family to the best of his ability. Prior to his arrest, he was working as an electrical and IT service repairman.

45 Turning to the present offences, the accused was aware of the harm he has caused. He also expressed remorse and regret to the victims and his own family. Having had time to reflect on his wrongful actions, he knew he had been wrong. He asked for leniency.

46 Turning to the relevant sentencing precedents, Defence Counsel agreed with the Prosecution that for the first two offences, the facts fell within the lower end of Band 2 of the *Pram Nair* framework. However, it was submitted that

only one of the sentences for these two offences should be made to run consecutively for the overall sentence.

47 Based on the above, Defence Counsel asked the court to take into the following four mitigating factors, and to impose an appropriate sentence:

(a) The accused was remorseful, had readily admitted to his guilt at the earliest opportunity and has been cooperative with the authorities throughout the course of their investigations.

(b) The accused has no related antecedents.

(c) As a result of the case, the accused has lost his family. His wife was in the process of divorcing him, and V3 has expressed hatred towards him.

(d) As he was already 49 years old, he would be relatively old by the end of his sentence. At that time, he will be alone, and will have to rebuild his life all over again.

Decision

48 By way of overview, I agreed with the Prosecution that the accused has been a sexual predator, who has preyed on vulnerable minors. These were serious sexual offences. The principles of deterrence and retribution were applicable. General deterrence is important as the crimes which targeted vulnerable victims offend the sensibilities of the public: *Law Aik Meng* at [24(b)] and [25(c)]. There is a need to protect minors against sexual exploitation and abuse. As the offences were premeditated, in that there was a "conscious choice and effort" on the part of the accused to commit the offences, specific deterrence is appropriate to deter the accused: *Law Aik Meng* at [21]–[23].

Turning to the principle of retribution, any punishment imposed on the accused must reflect the seriousness of the crime: *Tan Fook Sum* at [16]. With that, I go to the sentences for the individual offences.

The sexual assault by penetration offences

49 In respect of the offences under s 376(1)(*a*), which are punishable under s 376(3) of the Penal Code, the prescribed punishment is imprisonment for a term which may extend to 20 years, and liability to fine or to caning.

50 In *Pram Nair*, the Court of Appeal set out a two-step sentencing framework for offences involving digital penetration under s 376 of the Penal Code. Within the framework, three bands are set out. At the first step, the court identifies which band the offence falls within, having regard to the offence-specific factors. These are factors which relate to the manner and mode by which the offence was committed, as well as the harm caused to the victim. The court derives an indicative starting point by determining precisely where the present offence falls within that range. At the second step, the court should have regard to the offender-specific factors in calibrating the appropriate sentence. These are the aggravating and mitigating factors which are personal to the offender

51 The Prosecution submitted that while the *Pram Nair* framework is formulated for acts of digital penetration, it can serve as a useful reference for offences concerning fellatio. This point was accepted by Defence Counsel. Indeed, the *Pram Nair* framework was applied in a recent case cited by the Prosecution involving acts of fellatio: see *Public Prosecutor v Tan Meng Soon Bernard* [2018] SGHC 134 ("*Bernard Tan*"). At [24]–[32] of *Bernard Tan,* Valerie Thean J discussed in detail the applicability of the framework to

offences involving acts of fellatio, and concluded that the bands in *Pram Nair* are applicable and useful.

52 To summarise, Thean J was of the view that the various acts of non-consensual sexual penetration should be accommodated within a framework that is broad in nature. This approach has been adopted in other jurisdictions such as Australia, the UK and Canada. The gravamen of the offence in each case is the harm, and the concomitant sentence, "must depend on the full context, of which the specific sexual act is only one aspect". For instance, an act of fellatio in a particular context could inflict greater psychological trauma on the victim compared to another act of digital penetration in a different context. Therefore, sharp distinctions amongst the various acts of non-consensual sexual penetration should not be drawn: at [28] and [30]. More importantly, this is congruent with the structure of the Penal Code, post-2008 amendments, where one sentencing range is prescribed for all the various forms of sexual penetration under s 376 (at [25]–[27]). Further, there is a degree of impracticality in the alternative of having multiple sentencing frameworks for each type of sexual act within s 376. As illustrated by the overlap between the *Pram Nair* sentencing bands for the s 376 offence and those for the offence of rape, "the specific aggravating factors … could be of greater importance than the precise nature of the sexual act" (at [31]). I agreed with the reasoning, and I found that it would be appropriate to adopt the bands in *Pram Nair* for acts of fellatio.

53 Turning to the first stage, I found that the present case ought to fall within Band 2. This tier is meant for cases with a higher level of seriousness involving two or more offence-specific factors, and carries with it a sentencing range of ten to 15 years' imprisonment and eight strokes of the cane. In coming

to this view, I took into account the following factors, which reflected on the seriousness of the offences.

54 First, V1 was only 14 years old at the time of the commission of both offences. She was a young and vulnerable victim.

55 Second, the accused is the father of V3, V1's close friend since *childhood*. V1 often visited the flat, even staying overnight on occasion. At the time of the two offences, the accused was the only adult in the flat. *Vis-a-vis* V1, the accused should have acted as a *quasi*-parent figure. To my mind, he was in a position of trust. Yet, he exploited V1's close relationship with V3, and seized the opportunities presented to sexually abuse V1.

56 Third, the accused's acts were of a humiliating nature. Fellatio is a highly intrusive act. On the first occasion, it is clear that the humiliation was of a prolonged nature – the accused had engaged in forced fellatio for "a few minutes". At the end of it, the accused even subjected V1 to the degrading act of swallowing his semen. Also, the acts of fellatio exposed V1 to a risk of contracting sexually-transmitted diseases.

57 Fourth, the facts indicate the accused's premeditation of the offences. There was a "conscious choice and effort" to commit the offence. On the first occasion, this was evinced by the lie that fellating the accused would return him to normal, and the accused's persistence despite V1's initial refusal. In effect, the accused practised deception, tricking and scaring V1 into performing fellatio. After committing the offence, he even had the audacity to pretend to become normal again, presumably to cover up his wrongdoing. On the second occasion, the accused told V1 not to wake V3 as they were leaving, and refused her request to meet up with her friends. Instead, he eventually brought her to the

fourth floor of a multi-storey carpark, for no other reason than to force her to fellate him.

58 Fifth, on the second occasion, the accused used force on V1 by holding onto her neck. He also threatened her with more physical force. Basically, he cowered V1 into doing as he asked.

59 Given these offence-specific factors, within the sentencing range of 10 to 15 years, I agreed with the Prosecution that the indicative starting points ought to be pegged at 12 years' imprisonment for each of the charges. This was already in the lower half of the sentencing range. Eight strokes of the cane would be justified.

60 The second stage required consideration of the offender-specific factors. Out of the four mitigating factors raised by Defence Counsel, I was of the view that the accused should only be given substantial credit for the first factor. Indeed, the accused's plea of guilt was a valid mitigating factor. By pleading guilty, the accused had spared the four young victims from having to relive the traumatic events by recounting them at trial, and being subject to cross-examination. By doing so, the accused had also shown remorse for his wrongdoing.

61 However, I did not see any mitigating value in the other factors raised by Defence Counsel. While there were many previous convictions, I appreciated that these were unrelated, and I did not treat them as having any aggravating effect. Nonetheless, the lack of previous convictions of sexual offences was not mitigating. As for his other personal circumstances, they did not have any mitigating effect either.

62 Based on all the above, I agreed with the Prosecution that ten years' imprisonment and eight strokes of the cane was appropriate for each of the two offences. In this regard, I note that Defence Counsel did not disagree with the individual sentences. His main contention was that the sentences for the two charges should not be made to run consecutively, so that an appropriate global sentence be imposed on the accused. I shall return to this shortly.

Causing hurt by means of poison offence

63 I go to the offence of causing hurt by means of poison, for which the prescribed punishment under s 328 of the Penal Code is imprisonment for a term which may extend to ten years, and liability to fine or to caning.

64 Turning to the facts, it bears reiterating that the accused made V2 consume four tablets of Nitrazepam (with each tablet containing five mg of Nitrazepam), in order to facilitate his attempt to procure fellatio from her. Nitrazepam is a hypnotic drug used to treat insomnia. For adults, the usual dose would only be 5mg. Effectively, the accused made V2, who was 14 years old at the time, consume four times of the usual dose for an adult. As a result of this large dose of Nitrazepam, V2 was later observed to display symptoms of drowsiness, slurred speech, slowness to response and unsteady gait. She was hospitalised for three days.

65 It is not an exaggeration to describe the accused's actions as dangerous to V2. By forcing V2 to consume such a large quantity of a hypnotic drug, the accused placed V2's health and safety at risk. Fortuitously, no serious lasting harm resulted. What disturbed me was the fact that the accused would go to such lengths to procure fellatio from V2.

66 I should also point out three other surrounding circumstances of the offence. First, he told V2 that if she refused to comply, he would hit V3. The accused's depravity in manipulating V2 must be appreciated in context: the accused had extracted from V2 a "promise to take care of V3" just moments prior. Second, he forced V2 to smoke a cigarette. Third, there was a degree of persistence in the commission of the offence. The accused had initially asked to speak to either V1 or V2 individually, but they had declined. Refusing to take no for an answer, the accused thereafter instructed V3, their friend, to ask them once more on his behalf.

67 The accused's level of culpability was high, and the harm caused significant. A substantial imprisonment term was warranted. By way of sentencing precedent, the Prosecution relied on *Public Prosecutor v Tan Kok Leong* [2017] SGHC 188 ("*Tan Kok Leong*"). In that case, the offender was a doctor who performed liposuction on the adult victim. After the procedure, while the victim was recuperating in a hotel, the offender sedated him. While the victim was unconscious, the accused then outraged his modesty by holding and pulling his penis while taking photographs. The accused was convicted after trial. On appeal, the High Court allowed the Prosecution's appeal against sentence, imposing 40 months' imprisonment in respect of each s 328 charge.

68 Admittedly, the offender in *Tan Kok Leong* was convicted after trial, while the accused had pleaded guilty. There were also other aggravating factors in *Tan Kok Leong* noted by the High Court, being the accused's abuse of trust and authority as a medical professional, the planning and premeditation and the risk posed in sedating the victim outside a hospital environment. However, there were certainly many aggravating factors here. As mentioned above, V2 was only 14 years old, and serious risk was posed to V2's safety due to the large overdose of Nitrazepam given without any medical supervision. Further, the

accused's intention was to commit a very serious offence of sexual assault by penetration against V2. It was fortuitous that V2 managed to get away, and with the help of V1, V2 safely escaped from the accused's clutches.

69 Therefore, I agreed with the Prosecution that a hefty sentence of three years' imprisonment was appropriate. In this regard, Defence Counsel did not make any submissions on sentence, or provide any precedent cases for consideration.

Outrage of modesty offence

70 By s 354(1) of the Penal Code, the prescribed punishment for the outrage of modesty offence is imprisonment for a term which may extend to two years, or with fine or with caning, or with any combination of such punishments.

71 In the sentencing framework set out in *Kunasekaran*, once again, there are three bands. The first step requires consideration of offence-specific factors. Upon identifying the offence-specific factors and ascertaining the gravity of the offence, the court would then place the offence within one of the three bands of imprisonment. At the second step, the court would have regard to the general aggravating and mitigating factors that were offender-specific, and make adjustments to the sentence if necessary.

72 Turning to the present facts, I was of the view that the offence fell within the second category, or Band 2, which carried a sentencing range of five to 15 months' imprisonment. Band 2 is meant to apply to cases with two or more offence-specific factors. Here, the accused had intruded upon V4's private part by touching her breast, when she was only 14 years old.

73 Although the touch was over V4's clothing, the indicative starting point ought to be at the high end of the range, in the region of 12 months' imprisonment. This was because, in addition to the two factors above, there were also elements of abuse of trust and premeditation. Quite apart from being V3's father, the accused had specifically allowed V4 to stay at the flat after V4 had run away from home. I agree with the Prosecution that the accused had placed himself in a position of trust *vis-a-vis* V4. Yet, he sexually violated her. I also note that the accused had entered the bedroom for the sole reason of waking V4 up so she could satisfy him, revealing a degree of premeditation. Furthermore, this offence was committed in the context of attempting to procure fellatio from her. In doing so, the accused even resorted to saying that she was staying rent-free in his home.

74 At the second step, once again, the accused's plea of guilt was an offender-specific mitigating factor which warranted some reduction from the indicative starting point of 12 months' imprisonment. Besides this, I did not see any mitigating value in the other factors brought up by Defence Counsel. Accordingly, I imposed ten months' imprisonment for the offence.

The global sentence

75 In deciding which two sentences ought to be run consecutively, the framework laid down by Menon CJ in *Mohamed Shouffee* (at [81]) is instructive. I highlight the following four points. First, as a general rule, the court should provisionally exclude from consideration sentences from any offences which form part of a single transaction. This is the one transaction rule. Second, the consideration of which sentences should run consecutively is likely to be a multi-factorial consideration in which the court assesses what would be a proportionate and adequate aggregate sentence having regard to the totality of

the criminal behaviour of the accused person. Third, while the court seeks to ensure that due regard has been given to the overall criminality of the accused, the court at this stage does not consider aggravating factors if they have already been fully factored into the sentencing equation during the first stage. Fourth, at the end of the day, the court should apply the totality principle, to conduct a final check to assess whether the overall sentence yielded by the combination of the consecutive sentences is excessive.

76 In *Raveen Balakrishnan* at [41], Menon CJ articulated the principle that as a general rule, a multiple offender who has committed unrelated offences should be separately punished for each offence. This should be achieved by an order that the individual sentences run consecutively.

77 The reasoning behind this includes the following three points. First, a second or subsequent offence should attract a distinct punishment, and all else being equal, a multiple offender bears greater culpability and will have caused greater harm than a single offender and should be punished more severely: *Raveen Balakrishnan* at [42].

78 Second, in many situations, concurrent sentences for unrelated offences would not adequately serve, and in fact may undermine, the underlying sentencing considerations of each individual sentence. Should concurrent sentences be imposed for unrelated offences, an offender who has already committed an offence would have less incentive to refrain from further offending acts, as he would not have to bear any real consequence for the further offending: *Raveen Balakrishnan* at [43].

79 Third, allowing a multiple offender to be punished less seriously, or even not at all, for a second or further offending would be a perverse outcome that flies in the face of any notion of justice: *Raveen Balakrishnan* at [46].

80 Applying these principles to the present case, I agreed with the Prosecution that the two imprisonment terms in respect of most serious offences – those of sexual assault by penetration offences – ought to run consecutively. I appreciated that V1 was the victim on both occasions. However, the two offences occurred about ten months apart. They were separate, distinct and unrelated offences. By running these sentences consecutively, the accused would receive a distinct punishment for his second offence against V1. It would be an unjust outcome if the accused were to effectively receive no real punishment for sexually assaulting V1 again.

81 Additionally, the global sentence derived is in line with the two recent cases of sexual assault by penetration involving fellatio which were relied on by the Prosecution. First, in *Public Prosecutor v BUB* (Criminal Case No. 73 of 2018), the offender committed sexual offences against his stepdaughter over a period of about six years. At the High Court, the offender pleaded guilty to three charges of aggravated sexual assault by penetration, with each charge relating to forcing his stepdaughter to perform fellatio on him. The victim was between 12 and 13 years old at the time. The sentence of 12 years' imprisonment and 12 strokes of the cane for each charge was imposed, with a global sentence of 24 years' imprisonment and 24 strokes of the cane.

82 In *Bernard Tan*, the offender was a football coach of a team of primary school boys. Over a period of months, he sexually assaulted various boys, aged eight to 11 years old, in his team by performing fellatio on them. The offender pleaded guilty to five charges of aggravated sexual assault by penetration, with

each charge relating to a different victim. He was sentenced to 13 years' imprisonment and 12 strokes of the cane for each charge, and a global sentence of 26 years' imprisonment and 24 strokes of the cane was imposed.

83 In light of the above, and considering the principles of deterrence and retribution, I was of the view that the global sentence of 20 years' imprisonment and 16 strokes of the cane is appropriate. At this final stage, I also took into account the six remaining charges taken into consideration for the purpose of sentencing. Applying the totality principle, I did not consider the overall sentence to be excessive.

Conclusion

84 For these reasons, I imposed the individual sentences, and the global sentence. No doubt the overall sentence is severe. It is meant to reflect the seriousness of the offences, society's abhorrence of the accused's conduct and to signal the law's role to protect minors from sexual abuse and exploitation.

Hoo Sheau Peng
Judge

James Chew and Selene Yap (Attorney-General's Chambers) for the Prosecution;
Loh Guo Wei, Melvin (Continental Law LLP) for the accused.