IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 72

Criminal Case No 25 of 2014

Between

Public Prosecutor

And

BDA

GROUNDS OF DECISION

[Criminal Law] — [Offences] — [Rape]

Public Prosecutor

v

BDA

[2018] SGHC 72

High Court — Criminal Case No 25 of 2014
Foo Chee Hock JC
5, 7-8, 19-22 July, 7-9 September 2016, 17, 19-20 January, 8, 10 March, 15 May, 21-22 November 2017; 14 March 2018

28 March 2018

Foo Chee Hock JC:

Introduction

1 This case presented the court with two disturbing questions. First, whether a mother would falsely accuse her son of raping her. Second, whether a son would sexually assault his own biological mother. These were finally resolved essentially through a finding of fact.

2 The accused, BDA ("the Accused"), claimed trial to the following three charges ("Charges"):

That you, **BDA**,

[C1] on 4 October 2013, at or about 2.30 a.m., at [address redacted], Singapore, did use criminal force on [xxx], a female / then 53 years old (DOB: [xxx]), to wit, by grabbing her right hand with your left hand and forcing her to hold your penis with her right hand, thereby intending to outrage her modesty and you have thus committed an offence punishable under Section 354(1) of the Penal Code (Cap 224, 2008 Rev Ed).

[C2] on 4 October 2013, at or about 2.30 a.m., at [address redacted], Singapore, did commit rape of [xxx], a female/ then 53 years old (DOB: [xxx]), to wit, by penetrating her vagina with your penis without her consent, and you have thereby committed an offence under Section 375(1)(a) of the Penal Code (Cap 224, 2008 Rev Ed) and punishable under Section 375(2) of the same Code.

[C3] on 4 October 2013, at or about 2.30 a.m., at [address redacted], Singapore, did use criminal force on [xxx], a female / then 53 years old (DOB: [xxx]), to wit, by kissing and sucking her breasts, thereby intending to outrage her modesty and in order to commit the offence, you wrongfully restrained the said [xxx] by pinning her to the bed with your thighs and you have thus committed an offence punishable under Section 354A(1) of the Penal Code (Cap 224, 2008 Rev Ed).

3 At the end of the trial, I found that the Prosecution had proved the three Charges beyond a reasonable doubt. Accordingly, I convicted the Accused of the Charges and sentenced him to a total term of 16 years' imprisonment and 18 strokes of the cane. The Accused has appealed against the conviction. I now provide the reasons for my decision.

4 I start by setting out the essential context. The Accused was 30 years old and was working as a safety coordinator at the time of the offences.[1] The complainant is the Accused's biological mother ("Victim").[2] The Accused is the second of three sons from the Victim's first marriage, which ended in divorce. He was then residing with the Victim and his step-father in a one-bedroom apartment at [address redacted], Singapore ("Flat").

5 The Victim was 53 years old at the time of the offence. She was a housewife and did not receive any formal education.[3] She was then married to her second husband ("Husband") with whom she had no children.

6 I shall first outline the main points of the Victim's evidence as it received intense scrutiny from the Defence.

Victim's evidence

7 On 4 October 2013 (the date of the incident), the Accused returned home at about half past 2.00am. He was drunk.[4] He removed his clothes and covered himself with a towel. He then approached the Victim and said, "Mother is pretty. Mother is not like the prostitute".[5]

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1 Transcript, Day 7, p 52.
2 Transcript, Day 1, p 39.
3 Transcript, Day 1, p 36.
4 Transcript, Day 2, p 9.
5 Transcript, Day 1, p 49.

8 The Accused sat on the bed the Victim was lying on. The Victim sat up. The Accused repeated what he said earlier.[6] Using his hands, he then placed both of the Victim's hands around his penis and proceeded to move them up and down.[7]

9 Next, the Accused pushed the Victim in her right chest onto the bed.[8] He pinned her hands down and pinned his body against hers.[9] He then inserted his penis into her vagina. She felt pain. She could not move.[10] He told her to stick out her tongue, but she turned her face to her right. The Accused then kissed her neck. He also kissed and sucked her breasts.[11] He then rocked upwards and downwards for about 30 minutes until he ejaculated.[12] The Victim pleaded with the Accused to stop but he refused.[13]

10 The Accused then rolled over onto the part of the bed that was on the Victim's right side.[14] He reinserted his penis into her vagina from behind. This time round, the penis was not fully inserted.[15] After this, he got up, went to the toilet and took a shower. That was about after 4.00am.[16] The Victim pretended to be asleep while the

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6 Transcript, Day 1, p 50.
7 Transcript, Day 1, p 56.
8 Transcript, Day 1, p 56.
9 Transcript, Day 1, pp 57–58.
10 Transcript, Day 1, p 57; Transcript, Day 2, p 24.
11 Transcript, Day 1, pp 59, 62; Transcript, Day 2, p 7.
12 Transcript, Day 1, pp 62–63; Transcript, Day 2, pp 7–8.
13 Transcript, Day 3, pp 42–43.
14 Transcript, Day 1, p 63.
15 Transcript, Day 1, pp 63–64; Transcript, Day 2, pp 8–9 and 33.
16 Transcript, Day 2, p 37.

Accused was in the shower. When the Accused came back at about 10 minutes before 5.00am,[17] he masturbated himself.[18] The Victim was very frightened during the entire ordeal.[19] She was also very worried that the Accused would scold her or worse beat her up.[20] She stated that she was afraid of looking at the Accused's face whenever he was drunk.[21]

11 The Victim went to have her shower at about 5.00am and started her prayers at 5.15am.[22] After her prayers, sometime before 6.00am, she wanted to leave the house so that she could "escape … from [her] son".[23] The Victim's daily schedule involved her going to her eldest son's house to look after his children.[24]

12 The Accused asked the Victim why she wanted to leave so early. She replied that she wanted to have coffee downstairs. The Accused told the Victim that she was pretty and asked her to leave later. He tried to make her stay by pulling her over to sit on the bed.[25] The Victim left the house anyway. The Accused followed her. She then went to a coffee shop located near the Flat ("the Coffee Shop").[26]

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17 Transcript, Day 2, p 37.
18 Transcript, Day 1, p 64.
19 Transcript, Day 1, p 52.
20 Transcript, Day 2, p 35.
21 Transcript, Day 2, p 36.
22 Transcript, Day 1, p 66.
23 Transcript, Day 1, p 67.
24 Transcript, Day 1, pp 66–67.
25 Transcript, Day 1, p 68.
26 Transcript, Day 1, p 69.

13 After going to the Coffee Shop, the Victim saw that the bus to her eldest son's place had arrived at a nearby bus stop, so she ran to the bus stop to board the bus.[27] She stopped three stops before the usual stop for her eldest son's house, went to a void deck and called the Accused's mobile phone.[28] She recorded this phone conversation ("Audio Recording"). She had not consulted or discussed the matter with the other members of her family before the call.[29] She recorded the conversation as proof to the police[30] and also to her Husband that the rape did happen.[31] She felt sad during the conversation and cried.[32]

14 She then proceeded to her eldest son's house. There, she called her youngest son and told him that she was "too embarrassed to live" and that she "[felt] like [she wanted] to jump down".[33] The Victim also informed her daughter-in-law (who was married to her eldest son and conversed with her in English only[34]) ("eldest daughter-in-law") that "Boy fuck me".[35] The Victim, who was wearing a *baju kurung*, lifted it up to indicate to her eldest daughter-in-law that the Accused had "played" her.[36] The eldest daughter-in-law told the Victim to contact her Husband.[37]

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27 Transcript, Day 1, p 75.
28 Transcript, Day 1, p 76.
29 Transcript, Day 3, p 5.
30 Transcript, Day 3, p 3.
31 Transcript, Day 1, p 77.
32 Transcript, Day 1, p 77.
33 Transcript, Day 1, p 78.
34 Transcript, Day 3, p 10.
35 Transcript, Day 1, p 78.
36 Transcript, Day 3, p 37.

15 The Husband then arrived and brought the Victim to a nearby playground where her two other sons and eldest daughter-in-law joined them shortly after.[38]

16 At about 8.50pm on 4 October 2013,[39] the Victim was brought by the police to Singapore General Hospital for a medical examination. There, she was examined by Dr Tan Wei Ching ("Dr Tan").

Accused's defence

17 The Accused's initial defence at trial was that *nothing happened that early morning* and that the Victim and her Husband fabricated the whole exercise to get rid of the Accused from the Flat.[40] This was his clear position, until he stated in his examination-in-chief that on that morning he had lifted up the Victim's blouse with the intention to look at her vagina ("Lifting of the blouse"). In the background, were the Accused's contemporaneous statement ("P45") and cautioned statement ("P46") recorded on the day of his arrest, 4 October 2013. P45 fleshed out a story of consensual sexual acts with the Victim and P46 confirmed his position that he had consensual sex. But at trial, he never pursued the defence of consent.

Trial-within-a-trial

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37 Transcript, Day 1, p 79.
38 Transcript, Day 1, pp 79–81.
39 Transcript, Day 3, p 51; Agreed Bundle, p 29.
40 Transcript, Day 3, pp 52–53; see also P47 to P50.

18 The Accused challenged the voluntariness of P45 and P46. He made various allegations against several Police Officers, namely, DSP Burhanudeen Hussainar ("DSP Burhan"), Inspector Thinagaran Krishnasamy ("Inspector Thina") and ASP Thermizi Thio ("IO Thermizi"). He claimed that he gave these statements as he was in pain, was helpless and did not wish to receive more beatings. In addition, the Accused claimed that the contents of P45 and P46 were untrue. In brief, the Accused alleged the following:

(a) Inspector Thina was present during the statement recording not to assist but to administer threats, inducements and beatings to the Accused – he was present for a "sinister purpose" of extracting a confession;[41]

(b) Inspector Thina slapped the Accused twice on his left ear when he denied committing rape;[42]

(c) Inspector Thina then pushed the Accused against the wall of the interview room;[43]

(d) Inspector Thina slapped the Accused on the back of his head once and on the back of his neck once;[44] and

41 Transcript, Day 13, pp 5–6.
42 Transcript, Day 9, p 66; Transcript, Day 10, p 11.
43 Transcript, Day 9, p 66.
44 Transcript, Day 9, pp 67–68.

(e) DSP Burhan threatened the Accused by telling him that he would be beaten again if he did not cooperate with IO Thermizi.[45]

19 At the end of the ancillary proceedings, I admitted both statements into evidence. I found that the Accused's evidence was unreliable, incongruous with the objective evidence, and incredible at some points. The inconsistencies in his testimony stood in stark contrast to the testimonies of the Prosecution's witnesses, which I found to be objective and truthful.[46] All the relevant procedures for the taking of the statements were also complied with.

20 The Accused's claim that he was subject to assaults was unsupported by evidence of physical trauma, such as bruising, lacerations or abrasions as noted by Dr Wong Kia Boon ("Dr Wong"). These were signs that one would reasonably expect to be manifested if the Accused's allegations were true. Significantly, Dr Wong's medical examinations revealed no signs of trauma or distress,[47] and I found it hard to believe that a person, who was allegedly assaulted to the point of pus "oozing" out of his ear,[48] would display no apparent sign of distress.

21 I also disbelieved the Accused's reasons for not reporting the alleged assaults to Dr Wong during his medical examinations. His

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45 Transcript, Day 9, p 70.
46 Transcript, Day 13, pp 42–43.
47 P43 and P44; Transcript, Day 9, pp 46–47.
48 Transcript, Day 9, p 68.

claim of perceiving Dr Wong as being in the same team as the police officers was spurious and contradicted by his candid disclosure to the doctor about his medical history.[49] As pointed out by the Prosecution,[50] the Accused's failure to mention the alleged assaults in his later statements recorded on 7 and 10 October 2013, *ie*, "P47" and "P48" respectively, further discredited his allegations of the assaults. A statement recorded on 27 June 2014, "P49", mentioned that he "got beaten up" during the statement recording of P45 and P46 but this only surfaced about eight months later.[51]

22 Indeed, at some points within the trial-within-a-trial, the Accused's evidence was falsified in the face of overwhelming objective evidence. For instance, the Accused's allegation that IO Thermizi was at the medical examination conducted by Dr Wong was flatly contradicted by the two escorting officers[52] and IO Thermizi himself.[53] I also found the Accused's claims of undergoing only one medical examination similarly discredited, especially in the light of the Prosecution's witnesses' corroborated testimonies to the contrary.[54] Similarly, I could not accept the Accused's evidence that Inspector Thina was present in the interview room for the "sinister purpose" of extracting a confession (see [18(a)] above). Inspector

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49 Transcript, Day 10, pp 18–19.
50 Prosecution's Submissions on the Admissibility of Accused's Statements, para 28.
51 Transcript, Day 9, p 74.
52 Transcript, Day 10, pp 68 and 76.
53 Transcript, Day 10, p 86.
54 Transcript, Day 9, p 50; Transcript, Day 10, p 86.

Thina's evidence[55] was materially corroborated by DSP Burhan who testified that he had sought Inspector Thina's assistance as he knew the Accused was a local Indian and may have wished to speak in Tamil, which DSP Burhan was not proficient in. DSP Burhan testified that Inspector Thina was dismissed once DSP Burhan was comfortable with the Accused's competency in English.[56]

23 Finally, the Accused did not confess to the offences when P45 and P46 were recorded, since the statements disclosed consensual sexual acts, and yet the officers accepted his statements. This flew in the face of the suggestion that Inspector Thina was present only to extract a confession.[57]

24 For these reasons, I was satisfied that the Prosecution had discharged its burden of proving the voluntariness of P45 and P46 beyond a reasonable doubt and admitted them into evidence.

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55 Transcript, Day 9, p 34.

56 Transcript, Day 9, pp 5–6, 12–13.

57 Prosecution's Submissions on the Admissibility of Accused's Statements, para 27.

Addressing Defence's arguments

25 The Defence raised numerous arguments by compiling a catalogue of doubts in the Prosecution's case, primarily arguing that the lack of objective evidence raised reasonable doubts in the Charges. Despite the best efforts of the Defence, I was convinced that the Victim was telling the truth and found her testimony to be sufficiently corroborated by the other evidence in the case. Below, I deal with the Defence's strongest arguments that attempted to cast shadows of doubt on the Prosecution's case.

DNA evidence

26 The Defence argued that the lack of DNA or seminal fluid found on the Victim's bed sheet, pillowcases, blouse and in her vagina, as well as the Accused's towel and shorts, contradicted the Victim's account and raised doubts as to whether there was any sexual intercourse between them.[58] The Defence also alleged that there were deficiencies in the investigations in relation to the collection, submission and analysis of relevant exhibits and samples which could have yielded DNA evidence.

27 In my judgment, the true issue was whether any reasonable doubt had been raised in the Prosecution's case on the *totality* of the evidence it had put forward. The lack of DNA evidence was a red herring in this case. First, I noted that both the Accused and the Victim had showered after the incident,[59] thereby reducing the

[58] Defence's Closing Submissions ("DCS"), paras 70–96.

possibility of DNA being collected from them. Second, this was not a case where it was proved that there was *in fact* a lack of DNA evidence, as much as it was a case where the non-collection (and non-submission)[60] and botched analysis[61] of relevant exhibits and samples, which could have yielded DNA evidence had contributed in some way to such evidence *appearing* to be lacking. In any event, I noted that two areas of the Victim's blouse did test positive for the presence of potential semen stains.[62] When they were tested for DNA, the Victim was found to be the major contributor.[63] A minor contributor, whose identity could not be matched, was also detected.[64] As such, I found that the state of the DNA evidence did not exonerate the Accused.[65] I therefore agreed with the Prosecution that this was at best a neutral factor[66] in the particular circumstances of this case.

Medical evidence

28 The Defence argued that the lack of physical injuries militated against a finding of sexual assaults. I acknowledged that there were no physical injuries. However, I was not convinced that this was fatal to the Prosecution's case. Dr Tan testified that the absence of

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59 Transcript, Day 2, pp 37–39; P45, para 2.
60 Transcript, Day 5, pp 34–37; Prosecution's Closing Submissions ("PCS"), paras 170–171.
61 Transcript, Day 6, p 6; PCS, para 174.
62 Agreed Bundle, p 15; Transcript, Day 1, p 12.
63 Agreed Bundle, p 17; Transcript, Day 1, p 14.
64 Agreed Bundle, p 18, Transcript, Day 1, p 14.
65 PCS, para 167.
66 PCS, para 177.

injuries on the Victim did not mean that she had not been sexually assaulted[67] and satisfactorily explained why this could be so.[68] Separately, the Defence's own expert, Associate Professor Peter George Manning ("AP Manning"), conceded that he could not, based on the medical evidence, conclude "with *confidence* whether or not sexual intercourse took place between [the Victim] and the [A]ccused" [emphasis added].[69] AP Manning's opinion of the *unlikelihood* of any occurrence of sexual assault[70] was based on his view that Dr Tan had not documented that the Victim suffered any tenderness,[71] or in his words, the absence of "appropriate documentation",[72] or "documentation that is insufficient".[73] AP Manning fairly conceded that he would "think twice" about his opinion if there were some documentation of tenderness.[74]

29 The Defence also took issue with the fact that the Victim had not verbalised any pain or discomfort to Dr Tan during her medical examination after the incident.[75] I accepted the Victim's evidence that she was *experiencing* pain during the medical examination but did not convey this to Dr Tan.[76] I also noted that she felt embarrassed during the examination.[77] This accorded with Dr Tan's observations

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67 Transcript, Day 6, pp 4–5 and 27.
68 Transcript, Day 6, p 5.
69 D3, para 23; Transcript, Day 14, p 53.
70 DCS, paras 105–110.
71 Transcript, Day 14, p 44.
72 Transcript, Day 14, p 48.
73 Transcript, Day 14, p 53.
74 Transcript, Day 14, p 54.
75 DCS, para 99.
76 Transcript, Day 3, p 51.

of the Victim as being "reticent" and "rather reserved" during the examination because Dr Tan thought that the Victim probably felt "very upset and embarrassed" after what had happened.[78] The Prosecution also suggested, based on the evidence of Dr Tan,[79] that different victims may have different pain thresholds.[80]

The Accused's intoxicated state

30 The Defence cited Dr Derrick Yeo Chen Kuan's ("Dr Yeo") testimony[81] and relied on the intoxicated state of the Accused to say that it was "more likely than not" that the Accused would have suffered some impairment to his muscle coordination and balance such that it was "highly improbable" that he would have been able to carry out the acts as the Victim had claimed.[82]

31 I was not persuaded by this argument for several reasons. First, considering the materiality of this contention, the Accused did not give evidence in court to such effect. Indeed, the Accused did not report to Dr Yeo of having "incoordination or motor problems after his drinking session".[83] Ironically, it was the Accused's own admission that he could hold his liquor very well.[84]

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77 Transcript, Day 3, pp 46, 56–57.
78 Transcript, Day 6, p 3.
79 Transcript, Day 6, p 49.
80 Transcript, 14 March 2018, p 13.
81 DCS, para 118.
82 DCS, para 119.
83 Transcript, Day 15, p 22.
84 Transcript, Day 7, pp 69–70; see also Transcript, Day 15, pp 21–22.

32 Second, Dr Yeo's diagnosis was based essentially on the Accused's self-reporting.[85] Dr Yeo also testified that it was difficult to comment on whether a seasoned drinker would have any or some of the features of acute alcohol intoxication,[86] such as impaired muscle coordination and balance.

33 Third, the Victim's evidence was that the Accused forced himself on her even though he was drunk.[87] Last, the Accused was much younger and stronger than the Victim and I could not believe that he was prevented from committing the offences because of his alcohol consumption.

Lack of corroboration by family members

34 The Defence submitted that the Victim's version of the events was not corroborated by the evidence provided by the Victim's family members given that the precise words in describing the sexual offences were not articulated and the key aspects of the sexual offences were not disclosed to them.[88]

35 I found that this was an exercise by the Defence in splitting hairs. As noted by the *amicus*, Ms Tan Li Jen ("Ms Tan"), it was typical that victims of sexual assault would not be able to verbalise every detail of the assaults.[89] In referencing Ms Tan's expert

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85 Transcript, Day 15, p 8.
86 Transcript, Day 15, p 22.
87 Transcript, Day 2, p 30.
88 DCS, paras 120–132.
89 Transcript, Day 17, pp 38–39; see also PCS, paras 79–91 and

opinion, I admitted her evidence with respect to rape myths and on rape victims generally, which I relied upon where relevant as discussed in this Grounds of Decision. In doing so, I was cognisant of the recent pronouncement by the Court of Appeal in *Public Prosecutor v Mohd Ariffan bin Mohd Hassan* [2018] SGCA 10 (in the context of adduction of further evidence on appeal) that a psychological expert's opinion with respect to the specific victim ought not to be considered where the expert had not personally interviewed the victim and had an incomplete picture of the facts (at [98]). Ms Tan likewise had no opportunity to interview the Victim or her family members and as such I had not relied on her opinion of this specific Victim in my reasoning.

36 Returning to the issue of corroboration, I found that the Victim would naturally have felt distressed and embarrassed at having to disclose details of the offences to her family members. Whilst the Victim gave inconsistent evidence on the issue of whether she told her family members that she was raped,[90] the Victim maintained consistently that she never went into the precise details with her family members because she was too embarrassed about the incident.[91] Any expected disclosure[92] must also be seen in the light of the specific victim here, who was a conservative, religious and illiterate lady in her fifties.

Amicus Brief ("P52"), paras 18–20.

90 Transcript, Day 3, pp 19 and 32.

91 Transcript, Day 1, pp 80–81; Transcript, Day 3, pp 25–26 and 30–32.

92 DCS, para 131.

37 Despite the lack of details conveyed by the Victim to her family members, taking their evidence as a whole, I found that their evidence provided corroboration of the Victim's account. All of them unanimously testified that the Victim was visibly shaken and genuinely distraught when she spoke to them, just hours after the incident.[93] In particular, the eldest daughter-in-law recounted that the Victim was *"*crying very badly, like a little girl. I have never seen her crying this badly".[94] Further, the eldest daughter-in-law testified that the Victim had said to her that, "Boy want to fuck me".[95] The Victim's utterance of the actual word representing sexual intercourse out of desperation because the eldest daughter-in-law was not conversant in Malay,[96] answered the Defence's argument (at [34] above) and indicated that the Accused had sexual intercourse with the Victim.

No attempt by the Victim to escape

38 The Defence argued that it was "illogical" and "improbable" that the Victim did not scream or shout for help at various points during the ordeal, and was willing to just lie and sleep on the bed without attempting to escape even while the Accused was in the shower.[97]

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93 Transcript, Day 4, pp 5 and 43–44.
94 PS16, paras 4 and 6; Transcript, Day 4, p 3.
95 Transcript, Day 4, p 8.
96 Transcript, Day 4, p 5.
97 DCS, paras 148–160.

39 In my judgment, this assessment failed to recognise that such rational and logical reactions would only appear with the benefit of hindsight. As noted by Ms Tan, "passive responses" are quite common amongst rape victims and factors such as "power disparity" and "perception of threat" may influence a victim's responses during the incident.[98] The Prosecution urged the court to view the Victim's behaviour and evidence through a "trauma-informed lens".[99] On the present facts, I was prepared to find that the Victim was stunned and horrified by the entire incident and needed some time to formulate the least risky course of action. There was no standard "reasonable" yardstick to judge the responses of rape victims and each case had to be decided on its specific facts.

40 In the present case, one had to consider the effect of fear on the Victim and her calculation that reacting and escaping might antagonise the Accused further.[100] The Victim also did not try to use her phone to reach the police as she was afraid of her son.[101] Notably, the Victim testified, "I love him, but *I fear him too*." [emphasis added].[102] In the circumstances, the Victim only sought to escape at an hour which would not have raised the Accused's suspicions to avoid any further repercussions. The Victim's behaviour was consistent with my finding that the Victim had a passive personality. The fact that she left the house one hour earlier (at 6.00am instead

98 P52, paras 9–13.
99 PCS, para 14.
100 Transcript, Day 2, pp 34–35.
101 Transcript, Day 3, pp 40–41.
102 Transcript, Day 2, p 19, line 29.

of the usual 7.00am) also signified a heightened level of urgency and need to escape from the Accused.

41 Lastly, the Victim explained that she did not leave the Flat while the Accused was showering because she needed to perform her ablutions (she wanted to bathe to cleanse her body) in order to carry out her daily morning prayers.[103] She explained that she would not be able to get out of the house if she had not showered before.[104] I accepted this explanation given how important her religion was to her life.[105]

Motive to frame the Accused

42 The Defence attempted to impute possible motives to explain the Victim's desire for the Accused to be prosecuted. The Defence disparaged the Victim by saying that she was "not a loving and compassionate mother".[106] The Accused testified that when he was just 15 years old, the Victim had turned the Accused away when he sought motherly care and attention from her ("Past Incident").[107] Based on this, the fact that the Accused was a troublemaker at home by virtue of his drug and alcohol consumption, and the claim that there was bad blood between the Accused and the Husband, the Defence asserted that the Victim had fabricated the rape as she could

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103 Transcript, Day 1, p 64; Transcript, Day 3, pp 59–60.
104 Transcript, Day 2, p 38.
105 Transcript, Day 1, p 65.
106 DCS, paras 164–165.
107 Transcript, Day 7, pp 63–64.

not tolerate the Accused's behaviour anymore, and her evidence to the police was thus a ruse to chase him out of the Flat.[108]

43 I agreed with the Prosecution that the Past Incident was not put to the Victim during her testimony in accordance with the rule in *Browne v Dunn* (1893) 6 R 67 ("*Browne v Dunn*"). Instead, it was only volunteered by the Accused in his examination-in-chief.[109] In any event, reliance on the Past Incident as evidence of motive was wholly insufficient.

44 As for the Defence's argument that the Victim had fabricated the rape to chase the Accused out of the Flat, I found that this was an unreal proposition – it would have been wholly disproportionate for a biological mother to accuse her own son of rape just to achieve that purpose. Whilst mother and son may have their quarrels, I did not see anything that would impel the Victim to undertake such a drastic and devious course of action. In fact, on 3 October 2013, both of them had gone out together to meet the Husband and their relationship appeared normal and cordial.[110] The Accused had also been consistently paying rent on a monthly basis of at least $300.[111] The argument that the Victim had fabricated the rape also underestimated how embarrassing it would be for the Victim to express such allegations and follow through with the charade.[112] If

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108 DCS, paras 217–228.
109 PCS, para 208.
110 Transcript, Day 7, p 69.
111 Transcript, Day 7, p 66.

the Victim wished the Accused to leave her Flat, she or her Husband[113] could have reported the Accused to the authorities for consuming drugs or simply turned to her family members to convince him to leave, instead of going down a path where she would have to keep up the lie for as long as the investigations took, undergo stressful and embarrassing investigations, invasive medical procedures and court proceedings.[114] Most pertinently, by the time the Audio Recording was made, the Accused had already informed the Victim that he was willing to leave the Flat.[115] He did not appear to resist the idea of leaving the Flat. Given the above, there was to my mind no extant reason for the Victim to continue (based on the Defence's argument) to allege that the Accused had sexually assaulted her.

45 To round up on all the Defence's arguments above, if there were unusual features in relation to timings, lapses of memories and aspects of the Victim's behaviour, I noted as a general observation that this was an unusual case to begin with. While the Defence left no stone unturned, highlighting every conceivable shortcoming, in challenging the Prosecution's case, it must be reiterated that the Defence's mainstay was to establish the fact that the offences never took place – the Accused's case was that nothing happened save for the Lifting of the blouse. This defence was positively and thoroughly

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112 PCS, para 147.
113 Transcript, Day 4, p 27.
114 PCS, para 147.
115 Audio Recording ("P36") at 03.40.

debunked when the totality of the evidence weighed in, including specifically the following.

Incriminating evidence against the Accused

46 In my judgment, I found that there was more than sufficient corroboration as well as evidence to support a conviction on the Charges based, *inter alia*, on the following:

(a) the Audio Recording;

(b) the Accused's statements made on the day of the incident (P45 and P46); and

(c) my finding that the Accused was not a witness of truth.

47 These interlocking and mutually reinforcing points led to an irrefutable inference and finding of guilt. Not one of the Defence's arguments was able to cast any doubt on the Accused's guilt.

Audio Recording

48 The most damning piece of evidence, which also corroborated the Victim's evidence, was none other than the Audio Recording. This was a contemporaneous recording of the telephone conversation (undisputed by the Accused)[116] between the Victim and the Accused on the morning following the incident. As explained by

116 Transcript, Day 8, pp 19–20.

the Victim (see [13] above), after parting from the Accused and alighting from the bus three bus stops before her usual bus stop, she headed to a void deck and called the Accused on one of her mobile phones, and then used another mobile phone to record this conversation.[117]

49 The Victim's explanation as to why she had recorded the conversation was simply the fear that "no one would believe [her]" if she had said that her son had raped her.[118] In my view, this need to gather proof was intensified in the Victim because of her age and relationship to the Accused. The embarrassment and shame for someone in her position could not be understated.

50 There was no doubt to my mind that the Audio Recording was highly probative of the Accused's guilt.

51 First, the Accused had never rebutted the Victim each time references were made by her to the specific incident that morning. The Defence emphasised that the Victim did not expressly use the precise word "rape" but instead used the word "*kacau*" (which translated to mean "disturb" in Malay) in describing the incident, and therefore the Accused had not confessed to the sexual assaults.[119] However, a careful examination of the actual contents of the Audio Recording demonstrated that this argument was flawed.

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117 Transcript, Day 1, p 76–77.
118 Transcript, Day 1, p 77.
119 DCS, paras 204 and 208.

52 The Victim's own descriptions strongly pointed to rape and acts which were forced upon her, as follows [emphasis added]:

(a) "Why did you come and *disturb* me";[120]

(b) "Why you *force* me";[121] and

(c) "With me you want to *sleep* like this".[122]

53 Other statements plainly manifested that the acts involved were of an amorous and sexual nature [emphasis added]:

(a) "I love you as my son. *You love me in a different way*." The Accused, instead of denying this disturbing statement, simply said, "now you want the whole world to know".[123]

(b) "Why? There are a lot of women there you came to me and you disturb me. Why?"[124]

(c) "I cannot, I have a husband". The Accused responded by saying, "You divorce him first".[125]

(d) "My [H]usband do me like this, you do this to me".[126]

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120 P36 at 00.40.
121 P36 at 03.58.
122 P36 at 05.31.
123 P36 at 02.16.
124 P36 at 02.51.
125 P36 at 01.39 to 01.43.
126 P36 at 02.05.

(e) "You are my son, you know, *not my boyfriend*. You are my son".[127]

(f) "[I] remember everything Mother. I didn't forget. I remember … I like, I want again".[128]

Given these statements, I found that the use of the word "*kacau*" instead of "rape" did not blunt the probative force of the Audio Recording. The Defence's arguments premised on the possible literal meanings of "*kacau*"[129] were entirely artificial. Moreover, at trial, the Victim was plainly uncomfortable with using *explicit* language, especially when pressed to describe the incident in detail. Hence, the fact that she did not use the precise word "rape" in the Audio Recording was consistent with this.

54 Second, I found that there was palpable emotional distress in the Victim's voice on the phone which confirmed that she was very emotionally distraught by what had happened to her in the morning. She was struggling with her feelings even as she was trying to find the words. This level of distress was also observed by the family members whom the Victim had approached after the incident.[130] The Defence's argument that the Audio Recording was a calculated tactic by the Victim to concoct proof of an alleged rape implied a vengeful and sophisticated lady who would have planned this

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127 P36 at 03.09.
128 P36 at 00.33.
129 DCS, paras 191–207; Transcript, 14 March 2018, pp 7–8.
130 Transcript, Day 1, pp 79–81; Transcript, Day 4, pp 5, 45 and 57.

meticulously down to the tee and executed this with first class acting in the Audio Recording, in front of her family members, and in court. I found that the Victim, who appeared to be obviously still struggling with the trauma of the incident, was incapable of such a level of cunning or textured behaviour, all of which (the Defence argued) was to achieve the goal of ensuring that the Accused would leave the Flat.

55 Third, the Accused sought to explain away the Audio Recording by arguing that the conversation was mainly about the Lifting of the blouse. Notably, such an important plank of his defence was never raised in P45 and P46, the statements taken on the day of his arrest. After listening to the Audio Recording, which was played in court in full on four separate occasions,[131] the Accused must have heard the Victim mention a past occasion concerning pulling up her skirt.[132] The Accused also realised that his initial defence that "nothing happened that morning" was hopeless. He had to come up with some incident that could explain away what happened in the morning that:

(a) was not denied by the Accused;

(b) both the Victim and the Accused were aware of;

(c) caused the Victim tremendous distress; and

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131 Transcript, Day 1, p 85; Transcript, Day 4, pp 46 and 57; Transcript, Day 5, p 4.

132 P36 at 0.40 and 00.51.

(d) was shameful when broadcasted to the world.

In fact, it was obvious that this was the first time he adopted this position. He even took his own counsel by surprise given that the Lifting of the blouse was never put to the Victim; all that was put to the Victim was that nothing happened that night.[133] I thus agreed with the Prosecution that this was all a belated afterthought.[134]

56 The Defence's argument that the Accused had mentioned the Lifting of the blouse earlier in the Audio Recording was totally off the mark and a *non sequitur*. In my judgment, I found that the Victim's reference to the pulling up of the skirt in the Audio Recording was only made as a prelude to what she really wanted to confront the Accused about – which were the sexual assaults that had happened that early morning.

57 Further, the contents of the Audio Recording (as stated at [52(b)] and [52(c)] above) which referred to forcing the Victim and sleeping with the Victim, firmly put paid to any suggestion that the conversation was about the Lifting of the blouse.

58 The Accused was also exceptionally concerned about what his mother would tell other people about the incident.[135] I found that his concern was unduly disproportionate if all he had done was the Lifting of the blouse.

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133 Transcript, Day 3, pp 52–53.
134 PCS, para 131.
135 P36 at 04.58

59 I also agreed with the Prosecution's arguments that the explanations provided by the Accused to the Audio Recording were not exculpatory and were in fact incredible:[136]

(a) The Accused explained that his comment "I like, I want again" in the Audio Recording[137] was a "sarcastic" remark in relation to having cursed the Victim at the Coffee Shop.[138] This explanation was a fabrication and clearly contradicted by the entire context of the conversation.[139]

(b) The Accused initially claimed that the Victim was describing emotional, non-bodily pain in their conversation.[140] However, he later admitted that the word "*sakit*" in the Audio Recording referred to physical pain.[141]

(c) The Accused explained that he did not make a denial when the Victim accused him of "sleeping" with her because he wanted to confront her in person.[142] However, this was contradicted by the subsequent exchange of words between them, in particular, where he inexplicably expressed "I am the one who should be embarrassed not you [*ie*, the Victim]".[143]

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136 PCS, para 124.
137 P36 at 00.33.
138 Transcript, Day 8, pp 24–27; DCS, paras 190 and 192.
139 P36 at 00.40 and 01.32.
140 P36 at 01.21 and 01.28; Transcript, Day 8, pp 28–29.
141 Transcript, Day 8, p 29.
142 Transcript, Day 8, p 46.
143 P36 at 05.43 to 06.05.

The Accused's Statements

60 Apart from the Audio Recording, the Victim's evidence and the Accused's accounts detailed in P45 and P46 were consistent (save for the issue of consent) in the relevant aspects, and confirmed the specific acts of masturbation, kissing, sucking of breasts and sexual intercourse. The uncanny similarities led to the inference that far from his claim that nothing had occurred, the Accused was narrating in his statements what had transpired that morning (leaving aside the issue of consent).

61 The Accused said that he fabricated the account in P45 based on a pornographic show he had watched: "the porn style version".[144] However, I found that this was patently untruthful, as it assumed the ludicrous coincidence that the Victim had also watched the same pornographic show.[145]

62 I also accepted DSP Burhan's unchallenged evidence that during his interview with the Accused on 4 October 2013 – before the recording of P45 – the Accused had stated that "he wanted to apologise to [his] mother". In particular, DSP Burhan testified that the Accused "was quite insistent on meeting [his] mother to apologise. He wanted to even kiss her feet."[146]

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144 Transcript, Day 13, p 50.
145 PCS, para 137.
146 Transcript, Day 9, pp 9–11.

The Accused was not a witness of truth

63 In my judgment, the Accused gave patently untruthful evidence on several aspects of the facts in issue both at trial and the ancillary proceedings. Some lies were outright and outrageous. At certain points his attempts at covering up were also blundering and transparent. As I had expatiated, a clear example was his abrupt claim, after asserting nothing had happened, that (only) the Lifting of the blouse had occurred that morning (see [55] above). This was one of the Accused's three contradictory accounts of what had occurred on the day of the incident (see [17] above). Another instance was his explanation that parts of the Audio Recording related to the altercation with the Victim at the Coffee Shop (see [59(a)] above). A further example would be the Accused's blatant lies regarding the number of medical examinations conducted by Dr Wong, the presence of the police officers and the alleged assaults in his effort to get out of his statements in P45 and P46.

64 In a desperate attempt to buttress his defence, the Accused even gave evidence that the Victim had smiled at him moments after the incident.[147] However, the CCTV footage did not shore this up.

65 The Defence's main response to these lies was that the Victim had also lied (summarised at Section 4 of the Defence's Chart tendered to the court).[148] The Prosecution had provided reasoned

147 Transcript, Day 8, pp 49–50.
148 Transcript, 14 March 2018, p 8.

answers to explain why several of these allegations were neither lies nor constituted material inconsistencies.[149] In any case, even if there were discrepancies, they were either not material or did not affect my assessment of the Victim's credibility as an honest witness. For instance, the Defence harped on the fact that the Victim had testified that she had only three children when she in fact had four.[150] This was easily explicable because one of her children had passed on long before the trial[151] and her mind could have been focused on the children who were alive. Further, the Victim's version of events was sufficiently corroborated by her family members, the Audio Recording and the Accused's statements in P45 and P46 (save for the issue of consent).

66 For the foregoing reasons, I found the Accused guilty and convicted him on the Charges.

Appropriate sentence

67 For the offence of rape in C2, following the guidelines set by the Court of Appeal in *Ng Kean Meng Terence v Public Prosecutor* [2017] 2 SLR 449 ("*Terence Ng*") at [73], I found that the present case fell within Band 2 of the sentencing bands. Of the offence-specific aggravating factors highlighted by the Prosecution (breach of trust, severe harm to the Victim and deliberate infliction of special trauma by the Accused),[152] I found that two factors were present in

149 PCS, paras 57–60.
150 Transcript, 14 March 2018, p 8.
151 Transcript, Day 2, pp 12–13.

this case: (1) breach of trust by the Accused *vis-à-vis* his own mother and (2) harm caused to the Victim (*Terence Ng* at [44]). The first offence-specific aggravating factor of breach of trust was not disputed by the Defence.[153]

68 A related factor was that this case would and did shock the conscience of the community, raising the issue of public disquiet. The very offences against his own biological mother boggled the mind. As the Prosecution put it: "We could label it as depraved, unfathomable, unthinkable. But for all the vastness of the English language, there [was] simply no word that [came] even remotely close to capturing the horror that would have no doubt washed over the [V]ictim as she was cruelly and relentlessly sexually assaulted by the very son she gave life to 30 year[s] earlier."[154]

69 Coming back to the breach of trust, the Accused was supposed to look after his mother as there was no one in the Flat when the Husband left for work in the early morning but yet aided by Dutch courage, he had succumbed to his depraved desires and sexually assaulted the Victim in the sanctity of her own home.

70 In respect of the second offence-specific factor of harm caused to the Victim, the Defence took issue with the absence of long-term harm suffered by the Victim.[155] In my judgment, there was

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152 Transcript, 14 March 2018, pp 33–36.
153 Transcript, 14 March 2018, p 44.
154 Transcript, 14 March 2018, p 28.
155 Transcript, 14 March 2018, pp 44–45.

no such requirement. As stated by the Court of Appeal in *Terence Ng*, what mattered was whether there was any serious physical harm or mental effects suffered by the victim and a *psychiatric illness* would be one such example (at [44h]). In the present case, the IMH psychiatrist had found that the Victim was suffering from "Acute Stress Disorder *precipitated* by the sexual assault incident on 4 October 2013" [emphasis added; emphasis in original omitted].[156] The psychological harm caused to the Victim was patent and she would have to live with the trauma and shame.

71 However, contrary to the Prosecution's submission, I was not convinced that the third offence-specific factor (deliberate infliction of special trauma) was made out. There was no evidence of the Accused's intention to inflict any such trauma on the Victim (*Terence Ng* at [44i]) apart from what had been mentioned under the factor of "severe harm".

72 Since there were at least two offence-specific aggravating factors for the offence in C2, this fell within Band 2 of the sentencing bands and required a sentence in the range of 13 to 17 years' imprisonment with 12 strokes of the cane (*Terence Ng* at [53]–[56]). Taking into account the gravity of the mentioned aggravating factors, I found a sentence of 14 years' imprisonment and 12 strokes of the cane to be the indicative starting point for the offence.

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156 Agreed Bundle, p 33, para 12.

73 At the second stage of the inquiry, the Prosecution emphasised the offender-specific aggravating factor of evident lack of remorse – manifested in the unfounded allegations launched by the Defence at the Victim throughout the trial.[157] As per *Terence Ng* (at [64(c)]), I agreed with the Prosecution that there was evident lack of remorse by the Accused. During the trial, the Accused had portrayed the Victim as a whore and tried to cast aspersions on her morality and character, both as a mother and a woman. The Defence suggested that she had affairs with other men[158] and attacked her character by pointing out irrelevantly that her son in India was illegitimate.[159] The Accused also personally maligned the Victim by relying on the Past Incident (see [42] above). He elaborated and claimed to have visited her once as a teenager looking for motherly attention, only to be given $2 and turned away by the Victim who appeared at the door dressed only in her brassiere.[160] As mentioned, the Past Incident was never put to the Victim. The Defence had also made the "outrageous submission"[161] that the Victim "could have easily avoided [the Accused's penetration of his penis into her vagina] by not parting her legs".[162] As the Prosecution pointed out, this submission was bizarrely based on the "antediluvian notion that a woman [could] resist a rapist if she really want[ed] to".[163] Lastly,

157 Transcript, 14 March 2018, pp 37–38.
158 Transcript, Day 2, p 13; Transcript, Day 4, pp 30–31.
159 Transcript, Day 2, p 13; Transcript, 14 March 2018, p 37.
160 Transcript, Day 7, pp 63–64.
161 Transcript, 14 March 2018, p 37.
162 DCS, paras 139–140.
163 Transcript, 14 March 2018, p 37.

the Defence also alleged various heinous motives on the part of the Victim that disparaged her character. These factors demonstrated that this was one of the worst cases of lack of remorse. The trial further humiliated the Victim and impeded any progress for her recovery. There were also no relevant mitigating factors in the Accused's favour – he was not a first-time offender as he had antecedents for, *inter alia*, housebreaking and robbery.[164] Weighing these factors, I found a sentence of 15 years' imprisonment and 12 strokes of the cane apposite for C2.

74 For C1, which involved the Accused outraging the Victim's modesty, for reasons similar to C2 and for the additional offence-specific aggravating factor of high degree of sexual exploitation (placing the Victim's "hands onto [the Accused's] bare, exposed penis"),[165] this would also fall within Band 2, leading to a starting point of five to 15 months' imprisonment (*Kunasekaran s/o Kalimuthu Somasundara v Public Prosecutor* [2018] SGHC 09 at [49]). In my judgment, taking into account both the offence-specific and offender-specific factors, a sentence between the mid-point and the high end of the Band, of one year's imprisonment for C1 was justified. Whilst the Prosecution additionally submitted for one stroke of the cane for C1,[166] I did not impose any caning in view of my decision on sentence for C2 and C3.

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164 Criminal Records (Exhibit "E").
165 Transcript, 14 March 2018, pp 39–40.
166 Transcript, 14 March 2018, p 40.

75 For C3, which involved aggravated outrage of modesty, the mandatory minimum sentence was two years' imprisonment with mandatory caning under s 354A(1) of the Penal Code (Cap 224, 2008 Rev Ed) ("Penal Code"). Before me, unlike the earlier two offences, there were no applicable sentencing guidelines for this offence and as such the Prosecution invited me to set out new guidelines,[167] based on an extrapolation of the sentencing framework laid out in *GBR v Public Prosecutor* [2017] SGHC 296 ("*GBR*"). The Defence had no issue with the proposed guidelines.[168]

76 In *GBR*, See Kee Oon J transposed the sentencing framework from *Terence Ng* to offences under s 354(2) of the Penal Code (outrage of modesty of a minor under 14 years old), which had a maximum imprisonment term of five years with no mandatory caning (at [26]–[27]). See J's proposed bands were as follows:

(a) Band 1: less than one year's imprisonment;

(b) Band 2: one to three years' imprisonment; and

(c) Band 3: three to five years' imprisonment.

77 Based on this approach, the Prosecution proposed the following guidelines for offences under s 354A(1) of the Penal Code:

(a) Band 1: two to four years' imprisonment, three strokes;

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167 Transcript, 14 March 2018, p 46.
168 Transcript, 14 March 2018, p 46.

(b) Band 2: four to seven years' imprisonment, six strokes; and

(c) Band 3: seven to 10 years' imprisonment, 12 strokes.

I found these guidelines to be appropriate given that they cohered with the sentencing guidelines that have been laid down for other sexual offences and promoted a measure of consistency in this area. They would also enable the utilisation of the full range of the possible sentences to avoid "a clustering of sentencing outcomes" (*Terence Ng* at [14]; *GBR* at [26]), which had indeed happened with 30 months' imprisonment as the typical sentence for an offence under s 354A(1) of the Penal Code.[169]

78 Applying this framework, for reasons similar to C1, this case would fall within Band 2 and a sentence of five years' imprisonment and six strokes of the cane was justified for C3. Whilst I was mindful of See J's observation in *GBR*, that the higher end of the Band 2 framework for a s 354(2) offence was apt for skin-to-skin contact (at [34]), taking into account the strong case for prospective overruling (see *Public Prosecutor v Hue An Li* [2014] 4 SLR 661 at [126]–[131]), I declined to impose a sentence in the range of six years' imprisonment for C3 because it would have been significantly higher than the typical cluster of 30 months' imprisonment that had erstwhile existed for this offence.

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169 Transcript, 14 March 2018, pp 46 and 57.

79 Under s 307(1) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed), two of the imprisonment terms in the present case had to run consecutively. In line with the totality principle and the one-transaction rule (see *Mohamed Shouffee bin Adam v Public Prosecutor* [2014] 2 SLR 998 at [27]–[82]) and as was common ground for both parties,[170] I decided to run the imprisonment terms for C1 and C2 consecutively with effect from 4 October 2013, the date on which the accused was remanded. I ordered the imprisonment term for C3 to run concurrently with the other two imprisonment terms in C1 and C2. This resulted in the global sentence of 16 years' imprisonment and 18 strokes of the cane.

Foo Chee Hock
Judicial Commissioner

Sellakumaran s/o Sellamuthoo, Sharmila Sripathy-Shanaz and Sruthi Boppana (Attorney-General's Chambers) for the Prosecution;
Harry Elias SC, Lem Jit Min Andy, Lin Chunlong and Tan Yong Seng Nicklaus (Eversheds Harry Elias LLP) for the Accused.

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[170] Transcript, 14 March 2018, pp 40 and 48.