Public Prosecutor *v* Haliffie Bin Mamat
[2015] SGHC 224

Case Number	: Criminal Case No 16 of 2014
Decision Date	: 25 August 2015
Tribunal/Court	: High Court
Coram	: Kan Ting Chiu SJ
Counsel Name(s)	: Sellakumaran Sellamuthoo and Crystal Tan (Attorney-General's Chambers) for the Prosecution; Lionel Leo and Joel Chng (WongPartnership LLP) for the Accused.
Parties	: Public Prosecutor — Haliffie Bin Mamat

Criminal Law – Offences – Rape

[LawNet Editorial Note: The appeals to this decision in Criminal Appeals No 13, 17 and 18 of 2015 were dismissed by the Court of Appeal on 14 October 2016. See [2016] SGCA 58.]

25 August 2015

Kan Ting Chiu SJ:

Introduction

1 A woman who took a lift in a stranger's car in the early hours of the morning complained that he raped her and robbed her of her handbag. I shall refer to her as "V" to protect her identity. She was born in Indonesia but has been in Singapore for 13 years at the time of the incidents and is a Singapore citizen. She is a divorcee with a teenaged son and she works as a packer with a freight delivery company. The driver is Haliffie Bin Mamat, who shall be referred as "the Accused", was arrested two days after the alleged events. He is 24 years old and was working as a storeman. At the time of the incidents he was married and has an infant son (his wife had divorced him at the time of the trial).

2 The Accused was tried before me on two charges, firstly that he

> on 4th May 2013, at between about 6.30am and 6.45am, in motor vehicle SGN 9936 J at the bridge along Kallang Bahru Road, Singapore, did commit rape of one [V], a woman aged 34 years old (DOB: —), by penetrating the vagina of the said [V] with your penis without her consent, and in order to commit the said offence on her, you voluntarily caused hurt to her by grabbing one of her hands and forcing her hand to hit something hard in the car, and you have thereby committed an offence under section 375(1)(a) of the Penal Code (Cap 224, 2008 Rev Ed) punishable under section 375(3)(a)(i) of the said Act.

("the rape charge") and secondly that he

> on 4th May 2013, at between about 6.30 am and 6.45 am, in the motor vehicle SGN 9936 J at the bridge along Kallang Bahru Road, Singapore, did commit robbery, of the following items:

(a) Louis Vuitton "Palermo" handbag valued at $1,630;

(b) Louis Vuitton purse valued at about $700;

(c) Samsung Galaxy Ace 2 phone valued at $290;

(d) Samsung Galaxy S3 phone valued at about $1,000;

(e) Cash of about $300;

(f) Chanel makeup set valued at about $240;

(g) Bvlgari [*sic*] perfume valued at about $130;

(h) One EZlink card;

(i) One UOB-Amex credit card;

(j) One Standard Chartered credit card;

(k) One POSB ATM card;

(l) One UOB ATM card;

(m) One Identity Card (bearing NRIC No —);

in the possession of [V], a woman aged 34 years old (DOB: —), by voluntarily causing hurt to the said [V] in order to commit theft, and you have thereby committed an offence punishable under section 392 of the Penal Code (Cap 224, 2008 Rev Rd).

("the robbery charge", with original bullet points replaced with letters (a) to (m) for the items).

3 The Accused claimed trial to both charges. His position was that he did not rape V because they had consensual sex, and that he had not taken items (b), (d) and (m) in the robbery charge, and had taken cash of $18 and not $300.

The Prosecution case

4 V's evidence was that she had difficulty getting to sleep on the night of 3 May 2013, and decided to go to the Pump Room, a pub club in Clarke Quay. She arrived at the pub at about 1.30am on 4 May and remained there until closing time at 5am. After leaving the pub, she tried to get a taxi at a taxi stand to go home, but could not get one. Then she decided to try her luck by walking along River Valley Road, but was still unable to catch a taxi. Eventually the Accused stopped his car, and he offered to drive her further up the road where she may be able to find a taxi. She accepted his offer, and got into the front passenger seat of the car. As they moved off, they made some small talk, but she was more focussed in looking out for available taxis. When she saw some taxis she told the Accused to let her out of the car. The Accused offered to send her to her home in Sengkang instead, and she accepted his offer. She then dozed off.

5 After 5-10 minutes, she heard a "tuk" sound like a car door being locked, and she woke up. She realised that the car had stopped on what appeared to be a bridge. She told the Accused that she wanted to alight there, and reached for her handbag which was on the floor of the car near her right

foot. The Accused sprang into action. He took hold of her handbag and threw it to the back seat of the car, then he reached over and reclined her seat and came over to her side and got on top of her. They struggled and he held on to her right hand. She managed to free her hand, but he grabbed hold of it again and hit it against something hard in the car, causing her pain. He tried to kiss her, and then he removed his T-shirt and his pants, and used his knees to restrain her thighs so that she could not move freely. He pulled her hair and she felt strong pain. He then pushed her panties to one side and inserted his penis into her vagina, and moved it back and forth. At one time her right hand managed to break free, but the Accused caught hold of it and hit it against something hard in the car once more, and she felt pain again. He said to her that as she would not be able to do anything, she should enjoy it and then he ejaculated, and returned to the driver's seat. V tried to reach for her handbag at the backseat and she told the Accused that she wanted to call the police, and asked him to let her out of the car. The Accused continued to drive forward. A short while later, he opened the front passenger door, pulled her up in her seat, and used his leg to push and kicked her out of the car. However, the items listed in the robbery charge were left in the car. V got up and tried to seek help, but there was no one about, and she started walking. She saw a taxi which was stopped along the road and she got into the back seat. She told the driver that she had been raped and asked him to bring her to a police station.

6 V was cross-examined at length by defence counsel. One subject that came under attention was the allegation in the charge that the Accused had caused her hurt by grabbing her hand and forcing it to hit something hard in the car. When she was asked to demonstrate the action, the demonstration showed that it was her forearm, and not her hand that the Accused had held onto, and that it was forced backwards. However she was not able to identify the hard item in the car that the hand hit, or point to anything in the car that the hand could have hit. This raised doubts over whether the Accused had hurt her hand in the manner alleged in the charge.

7 However, her complaint of rape was corroborated by other evidence. The taxi driver, Onn Bin Mokri, testified that while he was in his taxi at the junction of Kallang Bahru and Geylang Bahru, V opened the left passenger door of the taxi and got in. She was crying and mumbling and appeared dishevelled. She told him that she had been raped and asked to be taken to the nearest police station. He brought her to the Geylang Neighbourhood Police Centre ("GNPC"). On route to the GNPC Mr Onn went to Geylang Bahru to pick up a friend, Normah Binte Salim, with whom he had a prior appointment.

8 Ms Normah remembered that when Mr Onn arrived in his taxi to pick her up, V was in the back seat and was crying and mumbling, and saying "help" and "police' When V got out of the taxi at the GNPC, she noticed V's hair was "messy".

9 Lance Corporal Toe Saw Chin was performing sentry duty when she saw two women alight from a taxi outside the GNPC at about 7am, and two women alighted. One of them was V. Her elbows and knees were bleeding and her hair was in a mess, and she was crying and repeating that she had been raped.

10 Staff Sergeant Loi Jun Feng who was performing counter duty at the GNPC interviewed V. She was very emotional and told him that she had been raped, then thrown out of a car, and her handbag was taken by the assailant. V was then brought to the Changi General Hospital ("CGH") where she was examined by medical officer Dr Tay Hu-Lin at 8.30–8.45 am. Dr Tay noted that V presented with pain over her head, chest, back and limbs.

11 Later on the same day, V was brought to the KK Women's and Children's Hospital ("KK") and was examined by Dr Jonathan Wee Yeow Sherng at about 12.25 pm. Dr Wee was told by V that she

had been raped by a person who offered her a lift in his car. He observed that V appeared slightly distressed but composed and her clothes and hair were dishevelled.

12 In the course of investigations, clippings from V's ten fingernails were sent to the Health Sciences Authority. DNA was extracted from each of the clippings and DNA profiles were obtained. DNA profiles matching the profiles of the Accused were found on nine of the nail clippings. That tied in with the evidence that there were scratches found on the Accused when he was examined by Dr Lim Hock Hin at the Central Police Division Police lock-up on 7 May 2013. Dr Lim recorded in his medical report [note: 1] that there was one scratch over the posterior aspect of the left arm region and three scratches over the cubital fossa of the left elbow region which the Accused informed him were sustained five days prior to the Accused's arrest during a fight with his wife. [note: 2] In his evidence in court, the Accused said that his wife had grabbed him by his left arm and her nails dug into his fresh. [note: 3] When the Accused's former wife Yunizar Binte Hambali (she had divorced him by the time of the trial) gave evidence, defence counsel did not remind or ask her about any fight or scratches to the Accused's left arm and left elbow. All she was asked was whether she "grab his left hand", and her reply was that she could not remember if that happened. [note: 4] Nothing was asked of a fight or scratches to the Accused's left arm and elbow.

13 V was put through thorough cross-examination by defence counsel. Her accounts of the Accused's offer to send her home, the conversation they had in the car, the manner in which he overpowered her and caused her hand to hit against something hard in the car, and the subsequent expulsion from the car were reviewed and challenged. It was put to her that she had consented to have sex with the Accused, and that she had claimed that he raped her because she felt cheated that he robbed her of her handbag after they had sex.

The Defence case

14 The Accused is 24 years old and was working as a storeman. He was married at the time of the incidents, but his wife has divorced him by the time of the trial, and they have an infant son. In a nutshell, the Accused's defence was that he had intended to, and did, rob V of her handbag (although he did not admit to all the items listed in the charge), and he denied raping V, and claimed that they had consensual sex instead.

15 On the evening of 3 May 2013 he had a quarrel with his wife at the flat where they were staying. The quarrel over money escalated into a fight. He was upset and left the flat at Bukit Batok East Avenue 5 and drove off in his car by himself with no particular destination in mind. He drove to Killiney Road to watch people skateboarding, and then to Lorong 25 Geylang to meet and talk with a friend, and after that he went to Clarke Quay to meet another friend at a bar where the friend was working as a bartender there. They had a smoke together while the friend was on his smoking break, and when the friend had to resume work, they agreed that the Accused would drive him home after his work. After spending some time at the bar the Accused decided to take a walk, and then he went to his car which was parked alongside Liang Court, and he waited there till 5.30–5.40 am, when he decided to drive off and wait for the friend along a queue of taxis. He drove his car onto River Valley Road, and while he was travelling in the direction of Hill Street, he noticed V who was walking alone along the opposite side of River Valley Road, carrying a handbag.

16 He decided to rob her. He turned his car to her side of the road and drove up to her. He asked her if she needed a lift. His intention was to rob her of her handbag. He hoped that if she placed her handbag into his car before she got in the car, he will drive off with the handbag. V asked if she had to pay, and he told her that she did not have to pay him. V then went into the front passenger seat

of his two-door car with her handbag. He realised that he could not drive off with the handbag, and he had to come up with another plan. He asked V to be comfortable and asked her where she stayed, and she told him she stayed in Sengkang, they drove off. She offered him a cigarette, and they talked. He asked for her name, and he told her his name was Alif. He noticed her peculiar accent, and she told him she was from Indonesia. She also told him that she was a divorcee and that her son stayed with her.

17 He decided to try his luck. He remarked that since she was a divorcee, it would have been a long time since she had sex, and she agreed. He touched her thigh and asked her if she liked sex, and she said "Yes" and smiled, and touched his hand and shoulder. When they came to Kallang Bahru Road he was still planning to rob her and getting her out of the car, but when he stopped his car on the bridge he moved over to the passenger side and started kissing V and he reclined her seat. He rubbed her vagina, licked her breast, pulled down her dress and slid her panties to one side, pulled down his pants, and they had sexual intercourse. After he had ejaculated he returned to the driver's seat and asked V if she liked it and she said "Yah". He moved her seat back to the normal position, and drove off.

18 He had seen V throw her handbag to the back seat of the car when he reclined her seat earlier, and he still had the intention to rob her of it. After driving for about 100 metres, he stopped the car, opened the passenger door, reached over, and used his hand to push V by her shoulder out of the car. V went out of the car with her head facing down towards the road, and her leg or legs dangling over the side of the car, and he gave another push to get her fully out of the car, and he drove off.

19 He drove back to Bukit Batok East Avenue 5, and parked his car in a carpark. He took out V's Louis Vuitton handbag from the car's backseat and checked it for valuables. There were a Samsung Galaxy Ace 2 phone, a bottle of Bulgari perfume, one $10 note and four $2 notes, a number of credit cards, a makeup set, a cardigan, and EZlink card. He threw the handbag, the makeup set, credit cards and the cardigan at a dustbin area, and kept the EZlink card, the perfume, the phone and the cash.

20 His counsel referred him to the cautioned statement recorded pursuant to s 23 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC") he made in answer to a rape charge on 7 May 2013, following his arrest on the previous day. The charge against him at that time was for simple charge (without hurt) under s 375(2) of the Penal Code ("PC") [note: 5] . The statement which was admitted in evidence with no objections from the Accused reads:

> Actually my intention was just to rob, to get money. But I don't know why I cross over, my mind, to have sex with the girl. Since this is my first time, I hope to get lighter sentence. I want to see my son growth [*sic*]. He is 1 year 8 months now. And my wife can't be the one to take care of him all by herself. As my wife need support from husband. I admit this is my mistake. I wish to apologise to the girl in person. I am really sorry. The reason I did this was because I am under depression.

21 The Accused explained that when he stated that he admitted his mistake in the statement, the mistake was for robbing V. The exact and full words of explanation in his examination-in-chief in the trial on 22 May 2015 were:

(a) "The mistake that I --- that I did was to rob her --- that I robbed her"; [note: 6] and

(b) "That I caused her trouble from robbing". [note: 7]

22 In cross-examination, the DPP took him through the process by which the cautioned statement was taken. The Accused did not dispute that:

i. he had elected to speak in English;

ii. the rape charge was read and explained to him in English;

iii. the Notice of Warning under s 23 CPC that "If you keep quiet about any fact or matter in your defence…This may have a bad effect on your case in court." was administered to him in English;

iv. the charge and Notice of Warning were read and explained to and served on to the Accused in English;

v. the cautioned statement was recorded after that; and

vi. the statement was read over to the Accused in English, and he declined the invitation to make any addition, correction or deletion to the statement, before he signed the statement.

23 He agreed that although the charge had stated clearly that he had sex with V without her consent, his case was that they had consensual sex although he did not say anything about that in his statement. He was asked:

Q	So why didn't you tell your---why didn't you say that you didn't rape her?
A	I said at that point of time my own thinking was that it was consensual but I ---I say because of the robbery, that's what I said.
Court	But why didn't you say it was consensual? If you think it was --- if you actually you even thought that now we --- now that we have one more element, it's not that you didn't think about it but you said you had thought it was consensual. Then why didn't you --- just say, "Hey, it's consensual" in your statement?
Witness	I don't know about that, er, Your Honour. [note: 8]

Evaluation of the Evidence

24 At the close of the prosecution case the prosecution amended the rape charge by substituting the word "hands" with the word "forearms" to reflect the clarification had by V's demonstration. While the amendment brought clarity to that aspect of the charge, there was another aspect of the charge which came to my attention.

25 That was the element of hurt in the charge of aggravated rape. Section 319 PC defines hurt as bodily pain, disease or infirmity. In the charge which the Accused faced, the hurt was particularised a s the hurt caused by the Accused when he grabbed V's forearm and forced her hand to hit something hard in the car. There was another form of hurt which the charge did not refer to. V's evidence was that the Accused had pulled her hair during their struggle, and it was very painful. There was supporting evidence of that in the observation of the persons who saw her after the incident that her hair was dishevelled, and the notation of Dr Tay Hu-Lin that she presented pain over her head. I had commented on the absence of the second form of hurt from the charge. [note: 9] There was no response to that comment, nothing further was done to the charge, and the Accused

made his defence to the charge as it stood.

26 The hurt from the pulling of the hair could have been added by amending the charge. The court and the prosecution could have done that. Section 128(1) CPC empowers a court which is dealing with a charge to alter the charge or frame a new charge. I did not exercise the power in this instance for a reason.

27 The primary power over the conduct of criminal proceedings is vested in the Attorney-General. Article 35(8) of the Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) states that the Attorney-General

> shall have the power, exercisable at his discretion, to institute, conduct or discontinue proceedings for any offence.

and s 11(1) CPC gives the Attorney-General the control and direction of any proceedings under the CPC, and that would include the right to prefer and amend charges. The Attorney-General's prosecutorial discretion is extensive. He has the power, *inter alia*, to decide whether to prosecute and select the charge to be preferred. Judges have to acknowledge and respect the prosecutorial discretion. In the present case I take it that there are reasons for not including the hair-pulling in the charge, and when no action was taken after that omission was pointed out, the necessary inference is that the prosecution had intentionally left it out of the charge. I did not think that I should amend the charge to put that in when the prosecution did not want it. If the charge was amended, witnesses may be recalled, with the consequential inconvenience and the extension of trial time.

28 The prosecution injected an element of confusion when it stated in it closing submissions that:

> 48 The Prosecution highlights that the victim's assertion that her hair was pulled and caused her pain will also, as the Court highlighted, make out the voluntarily causing hurt element of the aggravated rape charge. The victim's evidence of the hair pulling is part of the overall evidence for the aggravated rape charge. The particularisation of the charge by the Prosecution does not restrict the Court's consideration in any way and only the most aggravated hurt, *viz*, the 3 cm dorsal hematoma, was particularised in this case.

29 On the face of the charge, the prosecution's case was that the Accused caused hurt to V by grabbing her forearm and forcing her hand to hit something hard. It was disingenuous to argue that the hurt from the hair-pulling should or could be read into the charge, or otherwise taken into consideration. The defence was entitled to take the charge as it was stood, and to defend against the specific allegations in the charge. The court should not expand the particulars of hurt. I found that the prosecution had not proved the hurt set out in the charge.

30 Nevertheless, there was evidence of rape (without hurt), thus, for the responsible administration of justice, the trial should continue on that basis, and I exercised my power to amend the charge to one for the offence of rape under s 375(1) punishable under s 375(2) PC. [note: 10] (There is no appeal against the amendment.) After hearing his defence, I found the Accused guilty and convicted him on the amended rape charge. He is appealing against the conviction.

31 I found that the prosecution had proved that the Accused raped V. V had recounted the events of the morning in straight-forward terms, admitting that she could not remember some events, and agreeing that her accounts on some details were inconsistent. I found that those shortcomings and omissions were unexceptional in the recalling and retelling of an unexpected and physiologically and psychologically traumatic event that happened without warning and was over in a few minutes.

32 In addition to that, V's evidence was corroborated by the persons who came into contact with her soon after the incidents. The taxi driver, his lady friend, the two officers at the GNPC, and the two medical officers at CGH and KK confirmed that V was distraught and dishevelled when she complained that she was raped. There was also corroboration from a scientific source—the presence of DNA in V's fingernail clippings which matched the Accused's DNA profile and was supported V's account of their struggle in the car and the scratches to the Accused's left arm and elbow.

33 The Accused also provided the strong evidence of his guilt in his cautioned statement. On the face of it, the statement was a confession to the charge as laid down by the Privy Council in *Anandagoda v The Queen* (1962) 28 MLJ 289 where Lord Guest held at 291:

> The test whether a statement is a confession is an objective one, whether to the mind of a reasonable person reading the statement at the time and in the circumstance in which it was made it can be said to amount to a statement that the accused committed the offence or which suggested the inference that he committed the offence.

The statement was a cautioned statement, and regard must be given to the process of recording it. The Accused was first informed that he was facing a charge of having sex with V without her consent, and he was warned that if he did not state his defence to the charge, that may have a bad effect when the case went to court. After he was informed and warned, he made his statement. At that time he directed his mind to the sex with V when he stated "…I don't know why I cross over, my mind, to have sex with the girl" (and at the same time, there is nothing in the statement which suggested that he was thinking of the robbery he committed), but he did not say that the sex was not without consent, and that V was a willing partner. Instead of denying the charge, he stated that he hoped that he would receive a light sentence, and that he would apologise to V in person. A reasonable objective reading of the statement is that he admitted to the charge. When he was given the opportunity in court to explain why he did not assert his innocence, he did not offer any intelligible explanation. The plain truth is that he did not say when he made his cautioned statement that V had consented to have sex with him and he was unable to explain during the trial why he did not do that. Besides being a confession, the cautioned statement, by failing to mention consent, severely damaged the credibility of that defence. Subsequently, when his first investigation statement under s 22 CPC was taken from him on 11 May 2013, [note: 11] the Accused said that he had sex with V with her consent.

34 The robbery charge was not contested with the same vigour as the rape charge. From the onset, the Accused admitted that he took V's handbag, but he disputed that all the items listed in the charge were in the handbag. In the closing submissions, his counsel submitted that the court should prefer the Accused's evidence as V has been shown to be an unreliable witness while the Accused has been shown to be a forthright person who admitted to robbery of the majority of the items.

35 Is the Accused, who had set out to rob V, lured her into his car, raped her and took her handbag more credible and reliable than V? While there are discrepancies and inconsistencies in V's evidence, they should be looked at in the context of the events. V was not a dishonest witness or person. The same cannot be said for the Accused, whose conduct was marked by dishonesty and lawlessness. He admitted to the robbery after it was established that he had sold one of V's phones, and her EZlink card was recovered from him. I accepted that the items listed in the charge were in her handbag which the Accused took from her, and found him guilty on the charge. He is not appealing against the conviction.

Sentence

36 The sentences prescribed in the PC for the two offences are:

i. rape—imprisonment for a term which may extend to 20 years, and liability to fine or caning; and

ii. robbery by night—imprisonment for a term of not less than 3 years and not more than 14 years and caning of not less than 12 strokes.

37 The following factors were pleaded in mitigation:

i. there was no pre-meditation, and the offences were committed on the spur of the moment;

ii. the Accused is a soft-spoken, hardworking and non-violent person;

iii. he was experiencing mental distress from the burden of supporting his family and extended families financially;

iv. he was gainfully employed;

v. his wife had divorced him after the incidents;

vi. he had admitted to robbing V and had not pleaded guilty to the charge because of the difference over the items involved; and

vii. he has no antecedents and is unlikely to re-offend.

38 Defence counsel submitted that the Accused should be sentenced to 7 years imprisonment and 6 strokes of the cane for rape and 3 years imprisonment and 12 strokes of the cane for robbery, with the sentences to run *concurrently*, and at most, 10 years imprisonment and 18 strokes of the cane (*ie*, for the sentences to run consecutively).

39 The prosecution sought a global sentence of 15 years imprisonment and 18 strokes of the cane, made up of a sentence of 12 years and 6 strokes for rape, to run *consecutively* with the minimum sentence of 3 years and 12 strokes for robbery [note: 12] on the authority of *Mohamed Shouffee bin Adam v Public Prosecutor* [2014] 2 SLR 998 ("*Mohamed Shouffee*").

40 I do not agree that the offences were committed with no pre-meditation and on the spur of the moment. The Accused had intended to rob V from the time he laid eyes on her. He was not acting on impulse and was in full control over himself when he raped her—his judgment was not affected by drinks or drugs, he was not provoked or egged on by other persons, and she had done nothing to encourage him.

41 The prosecution's submission that the only valid mitigating factors were the Accused's lack of antecedents and his relative youth, and that they were outweighed by the aggravating factors that he lured V into his car on a false pretence, subjected her to unprotected sex and threw her out of his car found greater favour with me.

42 A principal difference between the parties which I must address is whether the sentences for rape and for robbery should run concurrently or consecutively. The considerations for the imposition concurrent and consecutive sentences on convictions for multiple offences were discussed by Sundaresh Menon CJ in *Mohamed Shouffee*.

43 The Chief Justice began with the "one-transaction rule", which is generally taken to be that where several offences are committed in the course of a one transaction in terms of proximity of time and proximity in the type of offence, the sentences imposed should run concurrently. However he found "one transaction" to be better put as "a single invasion of the same legally protected interest" (DA Thomas, *Principles of Sentencing* (Heinemann, 2nd Ed, 1979) at p 53), the essential elements being (i) the *single invasion* and (ii) the *same interest*.

44 He then referred to the "totality principle" with its two limbs. Put very briefly, the first limb is that an aggregate sentence should not be substantially above the normal level of sentences for the most serious of the individual offences committed. The second limb is to avoid a sentence which is crushing and not in keeping with the offender's past record and future prospects, and if an aggregate sentence is crushing, it should be moderated by having some sentences run concurrently, or re-calibrating the individual sentences.

45 The first question is then—does the one-transaction rule apply in this case? The rape and the robbery formed a single invasion in terms of time, but the interests affected were distinct interests. V's right to personal safety was violated when she was raped, and her property rights were violated when she was robbed. As the offences did not come within the one-transaction rule, the case for a concurrent sentence did not arise.

46 The totality principle applies when multiple sentences are imposed and is applied measured against the normal sentence for the most serious offence. In this case rape is the more serious offence to robbery. In *Public Prosecutor v NF* [2006] 4 SLR 849 ("*PP v NF*") VK Rajah J (as he then was) set the benchmark sentence for Category 1 rapes, which was defined as rapes with no aggravating or mitigating circumstances, at ten years imprisonment and not less than six strokes of the cane. This benchmark sentence, which I agree with, can serve as the normal level of sentence which the first limb of the totality principle refers to.

47 However, Rajah J had been careful about the function and use of sentencing benchmarks. In an earlier judgment, *Dinesh Singh Bhatia s/o Amarjeet Singh v Public Prosecutor* [2005] 3 SLR 1 he had explained at [24]:

> … Benchmarks … have significance, standing and value as judicial tools so as to help achieve a certain degree of consistency and rationality in our sentencing practices … They ought not, however, to be applied rigidly or religiously … General benchmarks, while highly significant, should not by their very definition be viewed as binding or fossilised judicial rules, inducing a mechanical application.

and he reiterated in *PP v NF* at [43] that

> … while benchmark sentences serve to provide stability and predictability in our sentencing practices, they should never be applied mechanically, without a proper and assiduous examination and understanding of the factual matrix of the case …

48 Although benchmark sentences are not intended to be imposed as a matter of course, they should not be taken lightly or ignored. A benchmark sentence for an offence is set taking into account the law, prevailing policies and societal conditions, and the sentence arrived at is considered to be appropriate for most cases of that kind. When a sentence is being determined the benchmark sentence should be considered, and due consideration should be given to the benchmark sentence, and to whether there are reasons or grounds for imposing a lighter or heavier sentence. The reasons or grounds may be general, *eg*, that the conditions under which the benchmark sentence was set

have changed, or specific, *eg*, that the benchmark sentence is not appropriate on the facts of the case. In the present case neither party had any disagreement with the benchmark sentence for Category 1 rape, but they contended that it was not appropriate on the facts of the case.

49 Should the benchmark sentence set for Category 1 rape be imposed in this case? Both parties proceeded on the basis that the offence fell within Category 1 rape, which is defined as rape without mitigating or aggravating factors (*PP v NF* at [24]), although they had referred to such factors in support of their preferred sentences. Should they be referring to the benchmark sentence for Category 1 rape when they were referring to aggravating and mitigating circumstances? They were not being inconsistent; the definition should not be read literally to apply to cases with a total absence of mitigating or aggravating factors. If it is construed that way, very few cases will fall within this category. This category should be construed to cover cases with no strong aggravating or mitigating factors which have a significant impact on the sentence to be imposed. Although both the prosecution and the defence sought to persuade me that the benchmark sentence should not be imposed in this case, I found that there were no significant mitigating or aggravating factors, and I set the sentence at 10 years and 6 strokes of the cane, the minimum strokes under the benchmark set. For the offence of robbery I imposed the minimum sentence of 3 years and 12 strokes prescribed by the PC, which both parties had used in their submissions.

50 Consequently, the Accused was sentenced to 10 years with 6 strokes for rape and 3 years with 12 strokes for robbery, making a total of 13 years and 18 strokes. This aggregate sentence is in conformity with the one-transaction rule and the totality principle as the two custodial sentences for the two offences were consecutive, and the aggregate sentence was not substantially higher than the benchmark sentence for rape and not crushing. Although 13 years and 18 strokes cannot be said to be far from 10 years 18 strokes the defence put forward, and 15 years and 18 strokes which the prosecution sought, it was far enough for both parties to appeal against it.

Closing comment

51 This is the first case I have tried with defence counsel appointed under the Law Society's Criminal Legal Aid Scheme ("CLAS"). The counsel appointed, Mr Lionel Leo and Mr Joel Chng, were well-prepared and thorough in presenting the defence (perhaps to excessive lengths at times). I commend and thank them and CLAS for their efforts.

[note: 1] P 107.

[note: 2] NE 21 May 2015 p82 ll 16–17.

[note: 3] NE 22 May 2015 p16 l 4.

[note: 4] NE 20 May 2015 p 19 ll 25–27.

[note: 5] P 98.

[note: 6] NE 22 May 2015 p 41 l 32.

[note: 7] NE 22 May 2015 p 42 l 4.

[note: 8] NE 22 May 2015 p70 ll 4-13.

[note: 9] NE 22 May 2015 p2 ll 8-12.

[note: 10] Exh I.

[note: 11] D1 para 14.

[note: 12] NE 27 May 2015 p 32 ll 16-28 (The reference to "4 strokes " at l 25 should be "12 strokes").