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

[2022] SGHC 91

Criminal Case No 4 of 2022

Between

Public Prosecutor

And

BZT

JUDGMENT

[Criminal Law — Offences — Sexual offences]
[Criminal Procedure and Sentencing — Charge — Joinder of similar offences]
[Criminal Procedure and Sentencing — Impeachment]

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Public Prosecutor
v
BZT

[2022] SGHC 91

General Division of the High Court — Criminal Case No 4 of 2022
Tan Siong Thye J
13, 14, 18–21, 25–28 January, 16 March 2022

25 April 2022 Judgment reserved.

Tan Siong Thye J:

Introduction

1 The accused is [BZT], a 48-year-old male Singaporean. The Prosecution alleges that the accused had sexually abused two very young victims when he was the boyfriend of the victims' mother ("PW1").[1] These sexual offences occurred when the first victim ("V1"), a female, was between seven and 13 years old and the second victim ("V2"), a male, was between 11 and 13 years old (collectively, the "Victims").[2] The accused faces the following 12 charges:

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1 Agreed Statement of Facts ("ASOF") at para 1.

2 ASOF at para 2.

That you, [BZT],

FIRST CHARGE	on an occasion sometime between 1 February 2000 and 5 October 2001 at [Property 1], did use criminal force to [V1], a female aged at least 7 years old and not older than 9 years old, *to wit*, by rubbing your penis against her buttocks (over her clothes), using your hand to rub her vagina (skin-on-skin) and rubbing your penis against her vaginal area (skin-on-skin), intending to outrage her modesty, and you have thereby committed an offence punishable under section 354 of the Penal Code (Cap 224, 1985 Rev Ed);
SECOND CHARGE	on an occasion sometime between 1 February 2000 and 5 October 2001 at [Property 1], did use criminal force to [V1], a female aged at least 7 years old and not older than 9 years old, *to wit*, by rubbing your penis near her vaginal area (skin-on-skin), intending to outrage her modesty, and you have thereby committed an offence punishable under section 354 of the Penal Code (Cap 224, 1985 Rev Ed);
THIRD CHARGE (AMENDED)	on an occasion sometime between 1 February 2000 and 5 October 2001 at [Property 1], did attempt to commit rape by attempting to have sexual intercourse with [V1], a woman under 14 years of age, without her consent, and you have thereby committed an offence punishable under section 376(2) read with section 511 of the Penal Code (Cap 224, 1985 Rev Ed);
FOURTH CHARGE	on an occasion sometime between 1 February 2000 and 5 October 2001 at [Property 1], did commit an indecent act with [V1], a child under the age of 14 years, *to wit*, by viewing images of females in states of nudity on a laptop with her and asking her to perform the same acts as shown in the said images, and you have thereby committed an offence under section 6 of the Children and Young Persons Act (Cap 38, 1994 Rev Ed);

FIFTH CHARGE	on an occasion sometime between the year 2003 and the year 2004 at [Property 2], did use criminal force to [V1], a female aged at least 10 years old and not older than 12 years old, *to wit*, by grinding your penis against her vagina (over her clothing), intending to outrage her modesty, and you have thereby committed an offence punishable under section 354 of the Penal Code (Cap 224, 1985 Rev Ed);
SIXTH CHARGE	on an occasion sometime in the year 2005 at [Property 2], did use criminal force to [V1], a female at least 12 years old and not older than 13 years old, *to wit*, by inserting a cotton bud into her anus, intending to outrage her modesty, and you have thereby committed an offence punishable under section 354 of the Penal Code (Cap 224, 1985 Rev Ed);
SEVENTH CHARGE	sometime between 19 November 2001 and 18 November 2002 at [Property 2], did use criminal force to [V2], a male aged 11 years old, *to wit*, by masturbating him with your hand (skin-on-skin), intending to outrage his modesty, and you have thereby committed an offence punishable under section 354 of the Penal Code (Cap 224, 1985 Rev Ed);
EIGHTH CHARGE	on an occasion in 2003 at [Property 2], did use criminal force to [V2], a male aged at least 12 years old and not older than 13 years old, *to wit*, by masturbating him with your hand (skin-on-skin), intending to outrage his modesty, and you have thereby committed an offence punishable under section 354 of the Penal Code (Cap 224, 1985 Rev Ed);

NINTH CHARGE	sometime between 19 November 2001 and 18 November 2002, at [Property 2], did voluntarily have carnal intercourse against the order of nature with [V2], a male aged 11 years old, *to wit*, by sucking the penis of [V2] and by causing his penis to penetrate your anus, and you have thereby committed an offence punishable under section 377 of the Penal Code (Cap 224, 1985 Rev Ed);
TENTH CHARGE	sometime between 19 November 2001 and 18 November 2002 at [Property 2], did attempt to voluntarily have carnal intercourse against the order of nature with [V2], a male aged 11 years old, *to wit*, by attempting to insert your penis into the anus of [V2], and you have thereby committed an offence punishable under section 377 read with section 511 of the Penal Code (Cap 224, 1985 Rev Ed);
ELEVENTH CHARGE (AMENDED)	sometime between 19 November 2001 and 18 November 2002 at [Property 2], did use criminal force on [V2], a male aged 11 years old, by attempting to put your finger into his anus, intending to outrage his modesty, and you have thereby committed an offence punishable under section 354 read with section 511 of the Penal Code (Cap 224, 1985 Rev Ed);
TWELFTH CHARGE	between 1 January 2017 and 19 May 2019, in Singapore, being a person registered under the National Registration Act (Cap 201, 1992 Rev Ed) ("the Act") and having changed your place of residence from [Property 2] to [Property 3], did fail to report the change to a registration officer within 28 days thereof as required under section 8(1) of the Act, and you have thereby committed an offence punishable under section 13(1)(*b*) of the same.

2 The third and eleventh charges were amended by the Prosecution without objection of the Defence. The third charge was amended on the first day of trial on 13 January 2022 as the reference to paragraph (*b*) in s 376(2) of the

Penal Code was inadvertently added when it should not have been there. The eleventh charge was amended on 26 January 2022 after V2 clarified during his in-court oral testimony that the accused was unsuccessful when attempting to insert his finger into V2's anus.[3] Both amended charges were read to the accused, to which the accused maintains his plea of not guilty.[4] The original third and eleventh charges read as follows (the portions that were later amended are in italics and underlined):

THIRD CHARGE	on an occasion sometime between 1 February 2000 and 5 October 2001 at [Property 1], did attempt to commit rape by attempting to have sexual intercourse with [V1], a woman under 14 years of age, without her consent, and you have thereby committed an offence punishable under section 376(2)*(b)* read with section 511 of the Penal Code (Cap 224, 1985 Rev Ed);
ELEVENTH CHARGE	sometime between 19 November 2001 and 18 November 2002 at [Property 2], did use criminal force on [V2], a male aged 11 years old, by *putting* your finger into his anus, intending to outrage his modesty, and you have thereby committed an offence punishable under *section 354* of the Penal Code (Cap 224, 1985 Rev Ed).

3 The accused has admitted to the fourth, seventh, eighth and twelfth charges. The Prosecution has applied for these charges to be stood down. The accused claims trial to the remaining eight charges, which are more serious.

4 Before the commencement of the trial the Prosecution applied for a joinder of the remaining eight charges. The accused opposed this application.

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3 Transcript (21 January 2022) at p 83 lines 21 to 27.

4 Transcript (13 January 2022) at p 7 line 20 to p 8 line 4; Transcript (26 January 2022) at p 25 lines 1 to 14.

After hearing arguments from the parties, I granted this application. My reasons for allowing the joinder of charges are elaborated below (see [43]–[60] below).

Background facts

The Victims' childhood and places of residence

5 The Victims' biological father passed away in August 1991. At the time, PW1 was pregnant with V1, and V2 was nine months old. Six months after the birth of V1, around November or December 1992, PW1 married her second husband.[5] Their divorce was finalised around 1999.[6]

6 The accused knew PW1, from January 1998, when PW1 started working at a pub called Venom. She called him "Didi". They started dating about two months after knowing each other. Approximately six months after they dated, PW1 introduced the accused to her children, V1 and V2. Her children called him "Papa".[7] Around March 1998 to February 2000, PW1, V1 and V2 stayed at various relatives' houses.[8] Altogether, PW1, V1 and V2 stayed at three different houses during this time, spending a few months at each location. The accused did not stay with PW1 and the Victims at these locations.[9]

7 Around February 2000,[10] the accused rented a flat with two bedrooms together with PW1 at Property 1, and he moved in to stay with her and the

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5 Transcript (13 January 2022) at p 85 line 31 to p 87 line 1.

6 Transcript (13 January 2022) at p 92 line 30 to p 93 line 2.

7 ASOF at para 3.

8 ASOF at para 4.

9 PS6 at para 4.

10 ASOF at para 10.

Victims. The accused registered a change of address to Property 1 on 9 October 1999.[11]

8 The accused and PW1 shared the master bedroom, while V1 and V2 shared the other bedroom ("the children's bedroom"). Aside from the four of them, there were other tenants who stayed in Property 1. They occupied the children's bedroom at various points of time:[12]

(a) S, an adult female, who stayed for less than three months in the first half of the year 2000; and

(b) VL, an adult female who stayed for about half a year sometime in the year 2001. She was not in the unit whenever she was working the night shift from 4.00pm to 5.00pm until 3.00pm to 4.00pm of the following day and she slept in the children's bedroom during the daytime when she was back from work. She went out on her off days.

9 From 4 May 2000 to 2 June 2000, the accused was out of Singapore.[13]

10 Sometime around 5 October 2001,[14] the accused, PW1 and the Victims moved into Property 2 which had three bedrooms.[15] The accused registered a change of address to Property 2 on 22 October 2001.[16]

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11 ASOF at para 5.

12 ASOF at para 7.

13 ASOF at para 8.

14 Exhibit P10, Agreed Bundle ("AB") at p 20.

15 ASOF at para 9; AB at p 258.

16 ASOF at para 11.

11 Several months before moving into Property 2, PW1 and the Victims moved out of Property 1 and lived with one of PW1's cousins' family. The accused did not live with them when they were living at the cousin's house.[17] PW1 and the accused resumed their cohabitation in October 2001 when they and the Victims moved into Property 2.

12 At Property 2, the accused and PW1 shared the master bedroom, while the Victims each had their own bedroom. Aside from the four of them, there was another tenant who stayed at Property 2: L, an adult female and her two children with their helper. They occupied V2's bedroom for a three-month period between the years 2001 and 2002.[18]

13 The accused was out of Singapore during the following periods:

(a) 11 March 2002 to 13 March 2002, 19 March 2002;

(b) 1 April 2002 to 2 April 2002, 9 April 2002 to 10 April 2002;

(c) 7 May 2002;

(d) 15 September 2002;

(e) 2 November 2002;

(f) 10 August 2003, 19 to 20 August 2003, 23 August 2003, 31 August 2003;

(g) 4 September 2003; and

(h) 16 October 2005.

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17 Transcript (14 January 2022) at p 18 lines 4 to 23.

18 ASOF at para 12.

14 In 2006, the accused and PW1 broke up after a dispute that was unrelated to the Victims and he moved out of Property 2. He did not change his registered address with the Immigration & Checkpoints Authority after moving out.[19]

Discovery of the offences and arrest of the accused

15 On 12 December 2016, following a dispute between PW1 and V1, V2 sent text messages to PW1's handphone:[20]

S/N	Time	Message
1	6.40pm	Mama… Didi used to rape us…
2	6.40pm	All she (V1) wanted was your love..
3	6.40pm	We keep it from you for 10 years..
4	6.40pm	Because we know you work very hard..
5	6.57pm	Mama everytime you were not around he'll beat us till we faint. Even randomly while in our sleep, even if late at night. He touched us and made us do weird things. Then whenever you're around he pretends its nothing. And we didn't tell you because we knew how hard you work. But sometimes I think my sister goes thru depression because of this and I know we are all used to be independent. Yet, she's a girl after all and she always want to feel love but sometimes you were too busy

19 ASOF at para 14.

20 ASOF at para 15; Exhibit P5.39 to P5.40, AB at pp 150 and 151.

16 After receiving these messages, PW1 asked V2, and V1 through V2 to lodge a police report.[21] The Victims did so on 13 December 2016.[22] On 19 May 2019, the accused was arrested at Tuas Checkpoint, Singapore.[23]

17 On 4 June 2019, 6 June 2019 and 12 June 2019, the accused was examined by Dr Ong Jun Yan ("Dr Ong"), a psychiatrist from the Institute of Mental Health ("IMH"). The accused was assessed not to be of unsound mind at the time of the alleged offences. However, the accused was diagnosed with Pedophilic Disorder.[24]

The parties' cases

The Prosecution's case

18 The Prosecution's case is that the accused committed a series of sexual assaults against the Victims at Property 1 and Property 2, comprising:[25]

(a) as against V1, one charge of attempted rape (s 376(2) r/w s 511 of the Penal Code) and four charges of outrage of modesty (s 354 of the Penal Code); and

(b) as against V2, one charge of carnal intercourse against the order of nature by fellatio / penile-anal penetration (s 377 of the Penal Code), one charge of attempting carnal intercourse against the order of nature by penile-anal penetration (s 377 r/w s 511 of the Penal Code) and one

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21 ASOF at para 16.

22 ASOF at para 17.

23 ASOF at para 20.

24 ASOF at para 21.

25 Prosecution's Opening Address ("POA") at para 1.

charge of attempted outrage of modesty (s 354 r/w s 511 of the Penal Code).

19 The Prosecution submits that the accused knew the Victims were below 12 years old for the proceeded charges relating to penetration and attempted penetration, namely the third, ninth and tenth charges. Thus, the Victims were unable to give consent. The Prosecution also argues that the accused committed those offences with intent to penetrate the Victims.[26] For the proceeded charges on outraging the modesty of the Victims, namely the first, second, fifth, sixth and eleventh charges, the Prosecution submits that the accused had the intention to outrage the modesty of the Victims.[27]

20 The accused has admitted to viewing pornographic images of naked females with V1. He asked her to perform the same acts depicted in the images at Property 1 when she was at least seven years old and not older than nine years old (the stood down fourth charge). The accused also admitted to masturbating V2 on two occasions at Property 2 when he was between 11 and 13 years old (the stood down seventh and eighth charges).[28]

21 The Prosecution relies on the evidence of 27 witnesses[29] and numerous exhibits[30] to prove, beyond a reasonable doubt, that the accused committed the offences as charged. Their evidence is adduced by way of conditioned statements admissible under s 264(1) of the Criminal Procedure Code (Cap 68,

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26 Transcript (27 January 2022) at p 52 line 1 to line 16.

27 Transcript (27 January 2022) at p 52 line 17 to p 53 line 6.

28 POA at para 5.

29 List of Witnesses ("LOW") filed on 30 January 2022.

30 List of Exhibits ("LOE") filed on 30 January 2022.

2012 Rev Ed) ("CPC"), and supplemented, where necessary, with their oral testimony.[31] Eight witnesses testified in court for the Prosecution's case:

(a) PW1;

(b) V1;

(c) V2;

(d) Dr Ong, the psychiatrist from the IMH who examined the accused;

(e) ASP Muhammad Hafiz bin Roslee ("ASP Hafiz"), the initial investigation officer;

(f) the Victims' maternal grandmother ("PW6");

(g) ASP Vimala Raj s/o Pathmanathan ("ASP Vimala Raj"), the initial investigation officer before ASP Hafiz; and

(h) Dr Lin Hanjie ("Dr Lin"), the doctor from Healthway Medical Group who examined the accused before the accused gave his first statement.

22 The crux of the Prosecution's case rests on the Victims' testimonies. The Prosecution relies on the conditioned statements and oral testimonies of V1 and V2 to establish, beyond a reasonable doubt, that the accused committed the offences in the proceeded charges. The Prosecution submits that the accused knew the young Victims would not report the physical and sexual assaults. The accused had abused the trust of PW1 and the Victims to commit the sexual acts in the proceeded charges.[32]

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31 POA at para 6.

32 Transcript (27 January 2022) at p 57 line 13 to p 58 line 3.

V1's evidence

23 V1's account of the events is briefly stated here for context; a more detailed account will be evaluated below (at [76]–[100]).

24 The Prosecution relies on V1's evidence that one of the earlier incidents happened at Property 1, between 1 February 2000 and 5 October 2001. At that time, V1 was sleeping on the bed in the master bedroom and she was awoken by the accused rubbing his penis against her buttocks over her shorts. She pretended to be asleep. The accused put his hand through one of the leg holes of her shorts and used his hand to rub her vagina directly on her skin. The accused also put his penis through one of the leg holes of her shorts and rubbed his penis against her vagina skin-on-skin until she felt a wetness. On another occasion when they were staying at Property 1, the accused told V1 to lie on the bed in the bedroom and similarly rubbed his penis near her vaginal area skin-on-skin.[33]

25 On another occasion at Property 1, after school in the afternoon, V1 fell asleep after drinking a glass of water provided by the accused. When she woke up, she was naked and lying face-down on the bed in the master bedroom with her legs tucked under her in a Muslim prayer position. She pretended to be asleep. The accused, who was naked, went on top of V1 and tried to push his penis into her vagina. She clenched her legs to prevent him from doing so and he did not manage to fully penetrate her vagina.[34]

26 The accused molested V1 on two other occasions at Property 2. The first took place between the years 2003 and 2004, when the accused entered V1's

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33 POA at para 8.

34 POA at para 9.

bedroom while she was sleeping and grinded his penis against her vagina over her clothes. The second took place in the year 2005, in V1's bedroom, when the accused asked V1 to pull down her shorts and inserted a cotton bud inside her anus. V1 did not disclose the sexual assaults to anyone.[35]

V2's evidence

27 V2's account of the events is briefly stated here for context. A more detailed account will be evaluated below (at [118]–[144]).

28 The accused started physically and sexually abusing V2 in 2000 when he was in Primary 4. During this period of abuse, V2 suffered from fainting spells.[36]

29 The Prosecution relies on V2's evidence of the incident which he remembers most vividly. This occurred at Property 2, between 19 November 2001 and 18 November 2002, when V2 was 11 years old. V2 was sleeping in his bedroom when he was awoken by the accused who pulled down his shorts, powdered and masturbated his penis, and sucked it until it became erected. The accused squatted onto V2's penis, causing it to penetrate his anus. The accused tried unsuccessfully to insert his penis into V2's anus. The accused also attempted to insert his finger into V2's anus. V2 did not disclose the sexual assaults to anyone.[37]

30 The Prosecution submits that the Victims did not consent to any sexual activity with the accused at all times and that the accused intended to outrage

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35 POA at para 10.

36 POA at para 11.

37 POA at para 12.

their modesty. Further, the Victims could not consent to any of the sexual penetration or attempted sexual penetration offences by the accused as they were below 12 years of age, pursuant to s 90(*c*) of the Penal Code.[38]

PW1's evidence

31 The Prosecution relies on PW1's evidence that she came to know the accused sometime in January 1998, when they were working at a pub. Thereafter, PW1 and the accused started dating. Later, she introduced the accused to the Victims. Subsequently, the accused moved in to live with them at Property 1 and Property 2. During the time the accused lived with them, PW1 held various jobs and was often at work and not at home. The accused was often at home and would help her to care for the Victims until PW1 chased him out of the house over unrelated matters sometime in 2006. PW1 did not know about the sexual assaults until 12 December 2016.[39]

32 On 12 December 2016, V1 had a dispute with PW1, and PW1 complained to V2 about V1's seemingly rebellious behaviour. The Prosecution relies on the text messages between PW1 and V2 to show that V2 revealed to PW1, for the first time, that the accused had raped them when they were young. PW1 then arranged for the Victims to lodge a police report regarding the sexual assaults at Bukit Panjang Neighbourhood Police Centre ("the police station").[40]

Evidence of the investigation officers

33 The Prosecution relies on the evidence of the investigation officers to show that the police were unable to trace the accused until the accused was

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38 POA at para 13.

39 POA at para 14.

40 POA at para 15.

arrested on 19 May 2019 at Tuas Checkpoint, as he was not residing at his stated residential address. The accused also gave his statements voluntarily to ASP Vimal Raj and the accused admitted to touching the Victims at their private parts.[41]

Medical evidence

34 The Prosecution also relies on the evidence of Dr Ong, a Senior Resident at the Department of Forensic Psychiatry at the IMH, who diagnosed the accused with Pedophilic Disorder in her report dated 14 June 2019.[42]

35 Based on the totality of the evidence, the Prosecution argues that the accused has committed the offences for which he stands charged.

The Defence's case

36 The accused denies committing the sexual acts and he also denies that he had the intention to commit the acts on the Victims as specified in the proceeded charges.[43] However, the accused admits to three charges of sexual assaults on the Victims. These are less serious charges and were stood down.

37 The primary defence of the accused in relation to the proceeded charges is a bare denial and that the Victims concocted the alleged incidents. For this, the Defence rhetorically reiterates that, for more than ten years, both the Victims did not tell anyone about the sexual abuses they suffered, *ie*, from the time of

41 POA at para 16.

42 POA at para 17.

43 Defence's Case Amendment No 1.

the alleged sexual abuses to when the abuses were reported in 2016. Their claims are, accordingly, either false memories, fabrications or exaggerations.[44]

38 The Defence also seeks to cast a reasonable doubt on the Prosecution's case by arguing that there was little opportunity for the accused to commit the alleged sexual abuses as most of the time the accused was not alone with the Victims. Further, there were other adults staying with the accused, PW1 and the Victims when they were living together in February 2000 until around 2002 (see [8] and [12] above).

39 The Defence also argues that the accused was a father figure to the Victims from the time the accused lived together with PW1 and the Victims in 2000 to 2006 when the accused and PW1 broke up. The Defence points to two key facts. First, the accused would share household expenses with PW1 when he lived together with PW1 and the Victims.[45] Second, the children would call the accused "Papa".[46] The Defence submits that the accused played the role of a father figure as the Victims did not have a father figure in their lives since their biological father passed away when they were very young. Moreover, PW1 was not around the Victims for extended periods of time, which made the Victims turn to the accused for familial support.[47]

40 Furthermore, as PW1 had to work long hours during the Victims' childhood, she was largely absent in the Victims' lives. The Defence submits that PW1's neglect of her children formed the basis of her guilt, which

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44 Transcript (13 January 2022) at p 131 lines 1 to 14; Defence's Closing Submissions ("DCS") at paras 101, 119, 123 and 124.

45 Transcript (13 January 2022) at p 103 lines 11 to 12.

46 Transcript (13 January 2022) at p 120 lines 7 to 31.

47 Transcript (13 January 2022) at p 115 line 28 to p 116 line 1, p 136 lines 25 to 30.

predisposed her to assume the worst of the accused when V2 messaged her about the sexual abuses committed on the Victims (see [15] above). This led PW1 to persuade the Victims into making ostensibly false police reports against him.[48]

41 Finally, the Defence takes issue with the lack of particulars as to the date and time of the offences in the proceeded charges. The Defence argues that the time ranges in the proceeded charges are not sufficiently particularised. For instance, the timeframe of the alleged offences that occurred at Property 1, namely the first, second and third charges, spans over a range of close to two years. The Defence avers that the time ranges stated in the proceeded charges do not appear to be based on any substantive information provided by the Victims, save that the stated periods corresponded with the period of time when the family lived at the particular property.[49]

42 Apart from the accused himself who chose to testify in his defence, the Defence also called one witness – Dr Yak Si Mian ("Dr Yak"), the doctor from Healthway Medical Group who had examined the accused before his second statement was recorded.

Joinder of charges

43 On 15 November 2021 the Prosecution applied for the first to third, fifth, sixth and ninth to eleventh charges to be joined pursuant to s 133 of the CPC.[50] The Prosecution argued that the accused would not be prejudiced or

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48 Transcript (13 January 2022) at p 131 lines 18 to 23.

49 DCS at para 81.

50 Prosecution's Written Submission on Joinder of Charges ("PWSJC") at para 3.

embarrassed in his defence under s 146(*a*) of the CPC.[51] The Defence submitted in response that the accused would be prejudiced or embarrassed in his defence under s 146 of the CPC and such prejudice or embarrassment would arise due to similar fact evidence or evidence of propensity being led in the joint trial, contrary to s 14 of the Evidence Act (Cap 97, 1997 Rev Ed).[52]

44 Section 133 of the CPC states as follows:

> **Joining of similar offences**
>
> **133.** When a person is accused of 2 or more offences, he may be charged with and tried at one trial for any number of those offences if the offences form or are a part of any series of offences of the same or a similar character.

45 To begin with, the Defence conceded that the charges pertaining to both the Victims are of a similar nature because they are sexual in nature.[53]

46 The Prosecution submitted that the following facts showed that a joinder of charges was warranted as the charges were proximate in time, space and purpose:[54]

> (a) the sexual assaults occurred during the same period of time when the accused was living with both the Victims and PW1 in the same houses (*ie*, at Property 1 and Property 2) and there was therefore a continuity of action;[55]

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51 PWSJC at para 5.

52 Defendant's Written Submission on Joinder of Charges ("DWSJC") at para 8.

53 DWSJC at para 21.

54 PWSJC at para 9.

55 PWSJC at para 6.

(b) the circumstances leading up to the police report are the same; and[56]

(c) the same witnesses would be testifying at the trial.[57]

47 The Defence counsel in his written submission argued that the offences did not form a "series of offences" within the meaning of s 133 of the CPC because:[58]

(a) the offences took place during an extended period of time (six years); and

(b) the victims differed in gender.

However, the Defence at the hearing of the Prosecution's application for joinder of charges conceded that s 133 of the CPC was satisfied but urged the court not to allow joinder of charges under s 146 of the CPC as the accused would be prejudiced or embarrassed in his defence.

48 In *Yong Yow Chee v Public Prosecutor* [1997] 3 SLR(R) 243, the Court of Appeal affirmed the trial judge's decision to allow the appellant to be tried for two offences together and later for amalgamating them into one charge as there was "a nexus in terms of proximity in time and location and both the offences also arose from the same set of facts" (at [43]). Likewise, in the present case, I found that there was such a nexus on the facts.

49 I therefore proceeded to consider s 146(*a*) of the CPC.

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56 PWSJC at para 7.

57 PWSJC at para 7.

58 DWSJC at para 22.

50 The Prosecution submitted that under s 146(*a*) of the CPC the accused would neither be prejudiced nor embarrassed in his defence.

51 Section 146(*a*) of the CPC states as follows:

> **Separate trial when accused is prejudiced**
>
> **146.** Notwithstanding any other provision in this Code, where before a trial or at any stage of a trial, a court is of the view that an accused may be prejudiced or embarrassed in his defence because —
>
> (*a*) he is charged with and tried at one trial for more than one offence under section 133, 134, 135, 136, or 145(1)(*a*); or
>
> …
>
> the court may order that he be charged and tried separately for any one or more of the offences.

52 The Prosecution argued that the witnesses would be identical notwithstanding whether the Prosecution proceeded on one charge per trial or across multiple trials as the witnesses' testimonies would be invariably intertwined. Hence, there was no basis to assert that the accused would suffer less prejudice or embarrassment if the charges were separately heard over multiple trials instead of one.[59] Indeed, in reply to the consolidated Case for the Prosecution, the accused was able to file a consolidated Case for the Defence clearly setting out his defence to each charge.

53 The Defence submitted that the following factors were relevant to establish prejudice and embarrassment on the part of the accused:[60]

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59 PWSJC at para 12.

60 DWSJC at para 29.

(a) The charges concern not just alleged sexual offences, but also offences against children, which were furthermore allegedly committed over a period of years. They are of an extremely scandalous nature and likely to arouse hostility.

(b) There are no particulars as to the dates on which the offences were allegedly committed (save presumably that the accused could not have committed them on the dates on which he was out of Singapore).

(c) No adult was ever informed or knew/suspected that the alleged offences were being committed for more than ten years when PW1 and other adults were living in the same premises in which the offences were allegedly committed. Further, the Victims were attending school at the relevant time and V2 was even admitted to hospital at one point, yet they did not inform anyone of the alleged offences.

Hence, the Defence submitted that the Prosecution's entire case rests on the complaints and uncorroborated statements of the Victims, which were first made more than ten years after the time of the alleged offences, with no physical or other objective evidence that the alleged offences had been committed. Moreover, the Defence submitted that neither V1 nor V2 are witnesses in the other Victim's charges.

54 I wish to state that it was not apparent from the Defence's submission how the accused would suffer prejudice or embarrassment. It must be borne in mind that the Victims would be giving evidence from their own point of view, regardless of whether a separate or joint trial was ordered.

55 The Defence also submitted that if the charges were heard in the same trial, the Prosecution would introduce charges that are, in essence, similar fact evidence.[61] This was because:[62]

(a) First, the Prosecution would create a narrative that there was a "series" of continuous, ongoing offences against the Victims when the facts did not bear this out. The Defence submitted that there were no particulars of the actual dates of the alleged offences and the alleged events were spread out over a period of years such that objectively, each of the alleged offences was a distinct offence.

(b) Second, the Prosecution intended to admit the testimony of V1 into the case of the offences against V2 and *vice versa*, when objectively, neither of them were witnesses in their respective cases against the accused. Hence, the Defence submitted that the Victims' respective evidence would be confused and there would accordingly be a significant risk of the court being improperly influenced.

56 Overall, the Defence submitted that the Prosecution was intending to use the testimonies of the two Victims in one charge "to shore up the case in the other charges" and in the process, the Prosecution would insinuate that the accused must have committed all the offences. This would thereby contravene s 14 of the Evidence Act.[63]

57 On this point, the Prosecution asserted that the court should reject any argument in support of a separate trial because a joint trial would introduce

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61 DWSJC at para 31.

62 DWSJC at para 33.

63 DWSJC at para 44.

similar fact evidence and thereby prejudice the accused.[64] In *Lee Kwang Peng v Public Prosecutor and another appeal* [1997] 2 SLR(R) 569, the court held (at [60]) that:

> … the trial judge retains the discretion under s 171 [of the Criminal Procedure Code (Cap 68, 1985 Rev Ed)] to decide whether the degree of prejudice presented by a single trial justifies an order for separate trials. In such cases, *the judge must ask himself whether he would be so influenced by the evidence presented by both victims that he would be unable to preserve the sanctity of the rule against similar facts*.
>
> [emphasis added]

58 In this case even if one charge was proceeded against the accused, both the Victims would have to testify. If there was a joinder of charges against the accused, it is critical that the court ensures that each of those charges is proven beyond a reasonable doubt. If the accused is convicted of one charge, it cannot necessarily follow that the accused is also guilty of the other charges, unless the evidence in the other charges is also proven beyond a reasonable doubt.

59 The parties agreed that s 133 of the CPC allows joinder of similar charges against the accused. The most pertinent consideration was whether the accused would be prejudiced or embarrassed in his defence by the joinder of charges. If the court was of the view that the accused would be prejudiced or embarrassed, then s 146 of the CPC empowers the court to disallow the Prosecution's application for a joinder of charges against the accused. I was of the view that the accused would not be prejudiced or embarrassed by the Prosecution's application to proceed on the first to third, fifth, sixth and ninth to eleventh charges against the accused. Furthermore, it would be perceived to be an abuse of the process to charge and try the accused on each of the similar charges separately and repeatedly on the basis that he has denied committing

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64 PWSJC at para 14.

them. Besides, a joinder of charges would be an efficient and fair disposal of the charges against the accused.

60 For the above reasons, I allowed the Prosecution's application for a joinder of charges made at the pre-trial conference for this case.

My decision

61 I shall now deal with the evidence pertaining to the proceeded charges. I am acutely aware that no one had witnessed the accused's commission of the sexual acts on the Victims which occurred around 20 years ago. There is also no contemporaneous corroborative evidence of the Victims' versions of the sexual events. The Prosecution's entire case rests largely on the Victims' testimonies of the alleged sexual abuse. In these circumstances, for the Victims' testimonies to constitute proof beyond a reasonable doubt of the accused's guilt, I must be completely satisfied, on a close scrutiny, that the Victims' evidence is so "unusually convincing" as to overcome any doubts that may arise from the lack of corroboration (see *AOF v Public Prosecutor* [2012] 3 SLR 34 ("*AOF*") at [111]).

62 If the Victims' evidence is not unusually convincing, a conviction may be unsafe unless there is some corroboration of the Victims' account (*AOF* at [173]).

The applicable law

63 In *Public Prosecutor v GCK and another matter* [2020] 1 SLR 486 ("*GCK*"), a case involving a charge of outrage of modesty, the Court of Appeal elaborated on the "unusually convincing" standard that applies where the

witness' uncorroborated testimony forms the sole basis for conviction. The Court stated at [88]–[90]:

> 88 The "unusually convincing" standard is used to describe a situation where the witness's testimony is "so convincing that the Prosecution's case [is] proven beyond reasonable doubt, solely on the basis of the evidence": see *Mohammed Liton* ([32] *supra*) at [38]. In *Haliffie bin Mamat v Public Prosecutor and other appeals* [2016] 5 SLR 636 at [28], this court considered that (citing *Mohammed Liton* at [39]):
>
> > … a complainant's testimony would be unusually convincing if the testimony, 'when weighed against the overall backdrop of the available facts and circumstances, ***contains that ring of truth which leaves the court satisfied that no reasonable doubt exists in favour of the accused***'.
>
> The relevant considerations in this regard include ***the witness's demeanour, and the internal and external consistencies of the witness's evidence***.
>
> 89 … In the absence of any other corroborative evidence, the testimony of a witness, whether an eyewitness or an alleged victim, becomes the keystone upon which the Prosecution's entire case will rest. Such evidence can sustain a conviction only if it is "unusually convincing" and thereby capable of overcoming any concerns arising from the lack of corroboration and the fact that such evidence will typically be controverted by that of the accused person: see the decision of this court in *AOF v Public Prosecutor* [2012] 3 SLR 34 ("*AOF*") at [111].
>
> 90 Put simply, the "unusually convincing" standard entails that the witness's testimony *alone* is sufficient to prove the Prosecution's case beyond a reasonable doubt: see *Teo Keng Pong v Public Prosecutor* [1996] 2 SLR(R) 890 at [73]. The overwhelming consideration that triggers the application of the standard is the *amount* and *availability* of evidence: see also *Kwan Peng Hong* ([72] *supra*) at [29].
>
> [emphasis in original in italics; emphasis added in bold italics]

The Court of Appeal in *GCK* at [144] also explained the "unusually convincing" standard:

> The assessment of the Prosecution's evidence under the "unusually convincing" standard must be made with regard to the *totality of the evidence* … The totality of the evidence logically includes the Defence's case (both as a matter of the

> assertions put forth by the accused person, and the evidence he has adduced). The evaluative task here is not just *internal* to the Prosecution's case, but rather, also *comparative* in nature. Where the evidential burden lies on the Defence and this has not been discharged, the court may find that the Prosecution has discharged its burden of proving its case beyond a reasonable doubt … At this stage of the inquiry, regard may be had to the weaknesses in the case mounted by the Defence as part of the assessment of the totality of the evidence.

64 The Court of Appeal's pronouncements in this regard were echoed in *Kunasekaran s/o Kalimuthu Somasundara v Public Prosecutor* [2018] 4 SLR 580, another outrage of modesty case, where Chan Seng Onn J emphasised that all the evidence adduced by the Prosecution and the Defence have to be considered to determine if the charge has been proven beyond a reasonable doubt. Chan J stated at [27]:

> … it is necessary for a court to assess *all* the relevant evidence when determining whether the Prosecution's case is proved beyond reasonable doubt. Hence, *a court, when considering whether the complainant's evidence is "unusually convincing", must "assess the complainant's testimony against that of the accused", such that the complainant is found to be "unusually convincing" to the extent that "the court can safely say his account is to be unreservedly preferred over that of another": XP v PP* [2008] 4 SLR(R) 686 at [34] *per* V K Rajah JA.
>
> [emphasis added]

65 While the evidence must be considered holistically, I reiterate Chan J's view in *Winston Lee Siew Boon v Public Prosecutor* [2015] SGHC 186, at [73(a)], that "[t]he legal burden on the prosecution remains to prove guilt beyond a reasonable doubt. This is the ultimate question that the court has to determine after a holistic examination of all the relevant evidence".

66 In *Public Prosecutor v BLV* [2020] 3 SLR 166 ("*BLV*"), the Court summarised at [24] the relevant considerations to assess the credibility of a witness as follows:

> … Relevant considerations include (a) the complainant's demeanour in court, (b) the internal consistency of his or her evidence, and (c) its external consistency when assessed against extrinsic evidence such as the evidence of other witnesses or documentary evidence or exhibits … although the modern judicial tendency appears to lean in favour of relying more heavily on the last two inquiries.

67 The law recognises that discrepancies in the evidence of a witness does not *ipso facto* mean that the witness should not be believed.

68 In *Osman Bin Din v Public Prosecutor* [1995] 1 SLR(R) 419 ("*Osman Bin Din*"), the Court of Appeal at [39] cited with approval the following observation of Abdul Hamid J in *Chean Siong Guat v Public Prosecutor* [1969] 2 MLJ 63 at 63 and 64:

> Discrepancies may, in my view, be found in any case for the simple reason that no two persons can describe the same thing in exactly the same way. Sometimes what may appear to be discrepancies are in reality different ways of describing the same thing, or it may happen that the witnesses who are describing the same thing might have seen it in different ways and at different times and that is how discrepancies are likely to arise. These discrepancies may either be minor or serious discrepancies. Absolute truth is I think beyond human perception and conflicting versions of an incident, even by honest and disinterested witnesses, is a common experience. *In weighing the testimony of witnesses, human fallibility in observation, retention and recollection are often recognized by the court …*
>
> [emphasis added]

69 Similarly, in *Jagatheesan s/o Krishnasamy v Public Prosecutor* [2006] 4 SLR(R) 45 ("*Jagatheesan*") at [82], V K Rajah J (as he then was) stated that:

> It is trite law that *minor discrepancies in a witness's testimony should not be held against the witness in assessing his credibility. This is because human fallibility in observation, retention and recollection is both common and understandable …* Inconsistencies in a witness's statement may also be the result of different interpretations of the same event … But *a court is perfectly entitled, notwithstanding minor inconsistencies, to hold*

> *that a particular witness is in fact a witness of truth and to accept the other aspects of his testimony which are untainted by discrepancies.*
>
> [emphasis added]

70 These principles apply especially where there has been a significant lapse of time. In *Tay Wee Kiat and another v Public Prosecutor and another appeal* [2018] 4 SLR 1315, the High Court with three Judges hearing Magistrate's Appeals, affirmed at [31] (citing *Public Prosecutor v Singh Kalpanath* [1995] 3 SLR(R) 158 at [60]):

> … in respect of inconsistencies in a witness' evidence, especially when a significant period of time has lapsed:
>
> > …
> >
> > 60 … Adequate allowance must be accorded to the human fallibility in retention and recollection … *No one can describe the same thing exactly in the same way over and over again …*
> >
> > [emphasis added].

71 I wish to highlight the unique and salient features of this case. I am mindful that the alleged incidents, namely the alleged sexual assaults, occurred in the early 2000s and the offences were only revealed in 2016, many years later. Thus, out of an abundance of prudence, I approach the evidence with utmost caution, and subject the Victims' evidence to microscopic scrutiny. This includes seeking corroborative evidence to support the Victims' evidence. Realistically, I am aware that the Victims were made to recall events some two decades ago when they were young children. This means that their recollection of the events may suffer from some degree of imprecision at times. Accordingly, inconsistencies are to be expected in this case. Allowing some room for these inconsistencies is appropriate. However, it is critical that I evaluate each inconsistency and discrepancy and ascertain whether it is minor or serious. A minor discrepancy is acceptable. However, a serious discrepancy will cause the

court to be wary and exercise careful caution in evaluating the reliability of the evidence. In my assessment, I also consider whether the inconsistencies highlighted are sufficient to raise a reasonable doubt about the veracity of the Victims' evidence and their credibility as witnesses, such that their evidence falls short of the "unusually convincing" threshold. This is consistent with Yong Pung How CJ's pronouncement in *Public Prosecutor v Annamalai Pillai Jayanthi* [1998] 1 SLR(R) 305 at [12]:

> … the mere presence of several discrepancies in the Prosecution's case cannot, *per se*, render its case manifestly unreliable. It is incumbent upon the trial judge to consider *whether the inconsistencies are sufficiently fundamental to nullify that part of the evidence which supports the charge.*
>
> [emphasis added]

72 I also emphasise that the Victims were told to relate their recollection of the incidents *at the time they were committed*, *ie*, based on the knowledge they would have had as a young child. This aims to minimise, as much as possible, any contamination of their evidence by the knowledge they possess now as adults.

73 I now turn to consider the Victims' evidence. In my analysis of the Victims' evidence, I also consider the Defence's specific contentions against each of the Victims' claims where appropriate and relevant. This analysis supplements my consideration of the Defence's overall case theory (at [226]–[278] below).

V1's evidence

V1's evidence is "unusually convincing"

74 V1's account was coherent, detailed and largely free from internal and external inconsistencies. She was resolute when recounting the incidents on the

stand. She was able to proffer cogent and reasonable explanations when confronted with contrary evidence by the Defence during cross-examination. I find that her evidence is unusually convincing and can be relied on.

75 I shall set out my detailed analysis of her evidence in relation to the various charges.

Charges in relation to V1

(1) The first charge

76 The incident occurred sometime between 1 February 2000 and 5 October 2001 at Property 1, when V1 was between seven and nine years old. V1 was sleeping on the bed in the master bedroom. V1 awoke to the accused rubbing his penis against her buttocks over her shorts. The accused was positioned behind her, with his head behind V1's. V1 did not know what to do and pretended to be asleep. The accused then put his hand through one of the leg holes of V1's shorts and used his hand to rub V1's vagina directly on her skin. The accused then pulled one leg of V1's shorts up and put his penis through that leg hole of V1's shorts, before rubbing his penis against V1's vagina, skin-on-skin, until she felt a wetness. The accused left the room shortly after.[65]

77 V1 was able to relate this incident with considerable detail and clarity. I agree with the Prosecution that V1's description regarding the position of her body, the accused's acts, along with what she saw and felt, was rich and vivid.[66] She recalled that she was lying on her right side with her legs slightly bent when the accused entered the master bedroom[67] and that she was wearing yellow

65 PS4 at para 3.

66 Prosecution's End of Trial Closing Submissions ("PCS") at para 19.

67 Transcript (18 January 2022) at p 13 lines 21 to 22.

shorts.[68] She was able to demonstrate, with the anatomically correct dolls provided by the Prosecution, how the accused first rubbed his penis against her buttocks, before stretching his hand under her shorts to touch her vagina skin-to-skin. She could also describe vividly how the accused then rubbed his penis on her, as it had a different, softer texture from the fingers of his hand.[69] When V1 became older and knew more about sex she realised the wetness she felt when the accused rubbed his penis against her vagina was semen, as it had a different texture from urine.[70]

78 When asked about her understanding of private parts at the time of the incident, V1 testified that she called the male private part "bird" and the female private part "flower". At the time of the incident, she believed the accused had rubbed his private part against her. She explained that she understood the difference between male and female private parts as she had seen V2's penis when she was younger because PW1 would bathe them together. At that time, she did not feel comfortable telling anyone about the incident,[71] and felt disgusted and ashamed as she knew that "for someone to be touching [the private parts] or putting their private parts on you is shameful".[72]

79 The Defence sought to shake V1's credibility by asserting that she had embellished her evidence when she stated that she felt a "bulge" rubbing against her buttocks, as that was the first time she used the term.[73] V1 gave a reasonable and sensible explanation to the Defence's question, namely that she used the

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68 Transcript (18 January 2022) at p 15 lines 6 to 9.

69 Transcript (18 January 2022) at p 15 lines 1 to 3.

70 Transcript (18 January 2022) at p 16 lines 19 to 20.

71 Transcript (19 January 2022) at p 66 lines 1 to 12.

72 Transcript (20 January 2022) at p 46 lines 3 to 10.

73 Transcript (19 January 2022) at p 57 lines 7 to 29.

term "bulge" to explain why she felt it was unnatural when the accused's groin rubbed against her buttocks.[74] Thus, I find that V1's credibility was not affected on this basis.

80 In the course of the cross-examination, the Defence also sought to make the point that as the accused was taller than V1 and V1 could feel his head behind hers, it was not physically possible for him to grind his groin against her buttocks.[75] The Defence also put to V1 that it would have been natural for V1 to have protested, resisted or at least asked the accused what he was doing.[76] The Defence also suggested to her that she had no reason to feel ashamed at the time as she did not understand the accused's action of rubbing his penis against her. In response, V1 stated that she did not resist the accused's advances as she felt it was unsafe to speak up at that time.[77]

81 I have some discomfort with the Defence's notion of an archetypal reaction to sexual assault as different victims react differently to sexual assault. I shall elaborate further on this argument of the Defence at [240]–[245] below. The reaction or responses of victims to sexual assault depend on the circumstances, maturity, relationship with the attacker and the state of the victim's mind. I find V1's explanation for her lack of protest that she felt unsafe and scared to speak up believable as she was very young and vulnerable at that time. I have also taken into consideration that the accused was her "father" at that time.

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74 Transcript (19 January 2022) at p 56 line 17 to p 58 line 14.

75 Transcript (19 January 2022) at p 62 lines 6 to 7.

76 Transcript (19 January 2022) at p 62 lines 29 to 31.

77 Transcript (19 January 2022) at p 55 line 31.

82 Having regard to the above, I find V1's evidence in relation to the first charge to be "unusually convincing". From her account, I am able to arrive at the irresistible inference that the accused intended to outrage her modesty with his acts.

(2) The second charge

83 On another occasion between 1 February 2000 and 5 October 2001 at Property 1, during the day,[78] the accused told V1 to lie on the bed in the master bedroom[79] while they were alone. The accused then removed V1's shorts and his own pants before laying on top of V1. At the trial, when demonstrating the accused's actions, V1 removed the bottom clothing of the male and female anatomically correct dolls. V1 demonstrated that she was lying face up while the accused lay on top facing her. In this position, the accused rubbed his penis against her vaginal area skin-on-skin.[80]

84 During cross-examination, V1 could not remember the full details of the incident, such as what she did before and after the incident and whether the accused spoke to her. The Defence suggested that as V1 could not give a full account of the incident, the incident never happened.[81] The Defence also put to V1 that it would have been natural for V1 to fight, struggle or protest when the accused removed her shorts.[82]

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78 Transcript (19 January 2022) at p 69 lines 19 to 20.

79 Transcript (19 January 2022) at p 68 line 31.

80 PS4 at para 4; Transcript (18 January 2022) at p 19 lines 1 to 7.

81 Transcript (19 January 2022) at p 71 line 22 to p 72 line 4.

82 Transcript (19 January 2022) at p 71 lines 4 to 13.

85 Respectfully, I am unable to agree with the Defence's submissions. Again, I highlight the unique circumstances of this case, namely that the incident occurred more than 20 years before this trial. Moreover, when the accused sexually assaulted V1 she was a very young child of seven to nine years old. Her recollection of the *salient* facts of the offence, namely that the accused took off her shorts and rubbed his penis on her vaginal area skin-to-skin, is intact. Further, I also highlight that she could remember the *key circumstances*, which include, *inter alia*, the location in which the incident took place and the fact that she did not put up a struggle.[83] V1's recollection of the incidents illustrates the Court of Appeal's observations in *GCK* at [113] that rape and trauma survivors have fragmented and incomplete memories, citing the following lines from an article (James Hopper & David Lisak, "Why Rape and Trauma Survivors Have Fragmented and Incomplete Memories" (*Time*, 9 December 2014)): "They will remember some aspects of the experience in exquisitely painful detail. Indeed, they may spend decades trying to forget them. They will remember other aspects not at all, or only in jumbled and confused fragments".

86 Finally, V1's account that she did not protest and simply complied with the request is also internally consistent with the explanation she gave for the first incident (see [80] above). Accordingly, I find V1's account of this incident to be unusually convincing after having considered this charge together with the other evidence of the Prosecution. I am satisfied from V1's account of this incident that the accused intended to outrage her modesty.

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[83] Transcript (19 January 2022) at p 71 lines 4 to 5 and 11 to 13.

(3) The third charge

87 This incident occurred sometime between 1 February 2000 and 5 October 2001, when V1 was in Primary 3.[84] It was after school in the afternoon, at Property 1. The accused gave V1 a glass of water to drink, which V1 described as tasting "off" and "more bitter than usual".[85] Thereafter, while doing her homework,[86] V1 fell asleep on the study table in the living room.[87] When V1 woke up, she was naked and lying face-down on the bed in the master bedroom with her legs tucked under her, like the Muslim prayer position, with her buttocks in the air.[88] V1 was on the left side of the bed closer to the wall.[89] She was confused and could not recall how she arrived at that position.[90] She reasoned that she was drugged by the accused because if she had been merely very tired, she would have woken up when she was carried to a different room and had her clothes removed.[91]

88 V1 then turned her head to the left to look behind her and she saw the accused standing in front of a mirror naked. V1 pretended to be asleep. The accused, who was naked, then went on top of V1 and V1 felt the accused's body weight pressing against her body. The accused then tried to push his penis into her vagina. V1 testified that she felt pressure against her vagina as the accused

84 PS4 at para 5; Transcript (18 January 2022) at p 20 lines 4 to 10.

85 Transcript (19 January 2022) at p 75 lines 24 to 31.

86 Transcript (19 January 2022) at p 76 line 31.

87 Transcript (19 January 2022) at p 74 line 13 to 14.

88 Transcript (19 January 2022) at p 79 lines 15 to 17.

89 Transcript (19 January 2022) at p 83 lines 18 to 23.

90 Transcript (19 January 2022) at p 77 lines 25 to 28.

91 Transcript (19 January 2022) at p 74 lines 22 to 31.

attempted to penetrate her.[92] V1 clenched her thighs to prevent him from doing so and he did not manage to fully penetrate her vagina.[93] Only the tip of the accused's penis entered V1's vagina.[94] V1 testified that she knew the accused was trying to insert his penis into her vagina as it felt like her vagina was being "poked".[95] She knew the object the accused was trying to insert into her vagina was not his finger, as the object she felt was thicker than a finger and felt "like a mushroom head".[96] After a while, the accused stopped his attempt and left the room.

89 V1 testified that during the incident, she did not dare to confront the accused or struggle. She also felt ashamed after the incident, as PW1 had told her she should not let other people see her naked or touch her private area. Thus, V1 felt ashamed since she and the accused were completely undressed during the incident.[97]

90 In court, the Defence counsel asked V1 to draw the position of the bed in the main bedroom at the time of the incident.[98] The accuracy of her drawing was confirmed by the accused,[99] rendering her evidence externally consistent.

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92 Transcript (18 January 2022) at p 23 lines 1 to 3.

93 PS4 at para 5.

94 Transcript (18 January 2022) at p 23 lines 7 to 8.

95 Transcript (18 January 2022) at p 23 lines 9 to 31.

96 Transcript (20 January 2022) at p 46 lines 11 to 18.

97 Transcript (18 January 2022) at p 24 lines 4 to 14.

98 Exhibit D1.

99 Transcript (19 January 2022) at p 86 lines 5 to 6.

91 The Defence seeks to cast doubt on V1's account of this incident by relying on very minute and technical details relating to the position of V1's body. The Defence raises the following points.

(a) First, the Defence alleges that because V1's body was in a prayer position, turning her head around to look at the accused behind her would have involved a large motion of her neck.[100] Accordingly, she could not have done so without the accused realising she was awake.[101]

(b) Second, the Defence also argues that based on V1's description, she could not have seen the accused behind her as her vision would have been blocked by her arm when she turned her head[102] and she would have faced the wall on her left.[103]

(c) Third, the Defence submits that as a certain degree of muscle control was required to maintain a prayer position,[104] she could not have been asleep in this position and would have fallen to her side or collapsed.[105]

(d) Fourth, the Defence argues that V1's account is senseless as the accused would not have executed the elaborate plan of drugging and undressing her only to suddenly abandon his attempt to penetrate her after a while.[106]

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100 Transcript (20 January 2022) at p 15 lines 4 to 6.

101 Transcript (20 January 2022) at p 20 lines 18-19.

102 Transcript (20 January 2022) at p 15 lines 6 to 7.

103 Transcript (20 January 2022) at p 15 line 1.

104 Transcript (20 January 2022) at p 21 lines 16 to 17.

105 Transcript (20 January 2022) at p 21 line 29.

106 DCS at para 114.

(e) Fifth, V1 testified that V2 was in the kitchen when the accused gave V1 the glass of water to drink. The fact that V1 could not recall what happened to V2 in her account diminishes its believability.[107]

(f) Sixth, V1's evidence that the tip of the accused's penis felt like a "mushroom" and that she believed it was the accused's semen were superimpositions of her adult knowledge and experience.[108]

The Defence submits that V1's account is improbable based on all of the above.[109]

92 The Defence's criticism of V1's evidence for this charge is without any logical basis. With respect, the Defence's first and second arguments are based on the assumption that V1's movement of her neck was somehow restricted or handicapped. There is no evidence suggesting this was the case. Rather, I find V1's explanation that there was still ample space for her to turn her head around to see behind her without the accused realising she was awake believable and that such a motion would not be as large as the Defence suggests. Her explanation is also internally consistent with her drawing that the mirror was on the left wall of the main bedroom, away from the kitchen.[110] I also disagree with the Defence's characterisation of the prayer position described by V1 as one which requires effort to maintain. Rather, I am of the view that the Muslim prayer position is a relaxed position. Accordingly, it does not follow that V1 would have collapsed or fallen on the side if she were asleep in that position. In any case, V1 was not asleep but was pretending to be asleep.

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107 DCS at para 112.

108 Defence's Reply Submissions ("DRS") at paras 29(i) and 29(ii).

109 Transcript (20 January 2022) at p 27 lines 17 to 18.

110 Exhibit D1.

93 The Defence submits that V1's evidence cannot be believed, as she claimed V2 was in the kitchen but she could not recall what V2 was doing. With respect, I am unable to accept this argument as the role of V2 in the kitchen is insignificant and V1 could not be expected to remember all conceivable details. Further, V1 explained that she could not account for V2's whereabouts as subsequently she had fallen asleep and woke up in the master bedroom with only the accused.[111]

94 I also reject the Defence's fourth argument that V1's account is senseless as the accused had allegedly made an elaborate plan to penetrate her and then abandoned it. The accused's abandonment of his plan to penetrate V1 is entirely consistent with V1's evidence that she had prevented him from penetrating her by clenching her legs.[112] Thus, the accused had difficulty penetrating V1. If the accused was determined and adamant to penetrate and rape V1 this could have been done. Only the accused would know why he decided to abandon his intention to penetrate V1. The accused's unsuccessful attempt to penetrate V1 thereafter is not beyond belief.

95 Finally, V1's descriptions of the accused's penis as a "mushroom head" and his semen as "gel-like" and not "watery" like urine[113] were based on what she felt at the time. She might have been too young to know that the liquid from the accused was semen. This is also borne out from her conditioned statement, where she stated that "… I felt wetness at my vagina area. I did not know what it was then, but now I think it could be semen."[114] In court, V1 cogently

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111 Prosecution's End of Trial Reply Submission ("PRS") at para 13; Transcript (19 January 2022) at p 73 lines 3 to 4.

112 Transcript (20 January 2022) at p 23 lines 26 to 27.

113 Transcript (18 January 2022) at p 16 lines 16 to 17.

114 PS4 at para 3.

explained the latter part of the statement by stating that she realised the wetness she felt was semen when she became sexually active.[115] Therefore, I find that the Defence has failed to cast any doubt on the veracity of V1's account of this incident.

96 V1's evidence on this incident, which was the most serious of the sexual assaults, was detailed and lucid. For the above reasons, I find that the evidence V1 gave in relation to the third charge is also unusually convincing in light of the Prosecution's other evidence. It is clear from V1's evidence that the accused attempted and intended to penetrate V1's vagina with his penis without her consent. As V1 was below 12 years old at the time of the incident, she could not give consent under s 90(*c*) of the Penal Code.

(4) The fifth charge

97 This incident occurred sometime between 2003 and 2004 at Property 2 after S and her children moved out. The accused, smelling of alcohol, entered V1's bedroom while she was sleeping and he grinded his penis against her vagina over her clothes. The accused then kissed V1 on her face before leaving the room.[116] V1 testified that she knew the accused had been drinking alcohol as the smell of the accused's breath reminded her of antiseptic.[117]

98 The Defence argues that V1 would have protested or struggled had the accused assaulted her in the way she described.[118] Again, I find V1's lack of protest internally consistent with her overarching explanation that she was

115 Transcript (18 January 2022) at p 16 lines 12 to 20.

116 PS4 at para 9.

117 Transcript (20 January 2022) at p 47 line 24.

118 Transcript (20 January 2022) at p 29 lines 15 to 21.

afraid of the accused. I, therefore, find that V1's evidence in relation to the fifth charge is also unusually convincing and it evinces the accused's intention to outrage V1's modesty.

(5) The sixth charge

99 In 2005, while in V1's bedroom at Property 2, the accused asked V1 to pull down her shorts. V1 complied as she was afraid the accused would scold and ridicule her.[119] The accused then told V1 he wanted to see if her anus was dirty and inserted a cotton bud inside her anus[120] for a few seconds.[121] V1 testified that she could not remember if she had seen the cotton bud beforehand, but she was sure the accused had inserted a cotton bud into her as it felt like one.[122]

100 The Defence argues that this incident was imagined by V1 as notwithstanding that V1 was in Secondary 1 at the time, she could not remember further details of the incident, such as what happened after the incident and whether the accused remained in V1's bedroom.[123] I am unable to accept this submission for the same reasons as stated in [85] above, namely that it is reasonable that V1 would not be able to recall some details as the offence took place a long time ago. Moreover, V1's testimony was uncontradicted on the salient and relevant facts of the offence. I am satisfied that V1's evidence in relation to the sixth charge is also unusually convincing when it is considered with the Prosecution's other evidence. From V1's account, I am satisfied that

119 Transcript (18 January 2022) at p 27 lines 11 to 13.

120 PS4 at para 10.

121 Transcript (20 January 2022) at p 33 line 26 to p 34 line 1.

122 Transcript (20 January 2022) at p 33 lines 16, 20 and 21.

123 Transcript (20 January 2022) at p 34 line 29 to p 35 line 9.

the accused intended to outrage her modesty when he inserted the cotton bud into V1's anus.

V1's explanation for her silence

101 When asked why she kept silent for more than ten years, V1 explained that she was embarrassed, ashamed, and did not know who to turn to. She did not want others to think of her as impure.[124] V1 did not tell her brother, V2, about the sexual abuse, as she felt embarrassed to share details about the sexual abuse with a male.[125] When she was asked why she did not tell PW1, V1 said she did not feel safe telling her about the incidents. V1's insecurity stemmed from a previous occasion when PW6 confronted the accused over his beatings of the Victims. PW1 defended the accused and said he was only trying to discipline the Victims.[126] Thus, V1 did not expose the accused's wrongdoings as she would have had to continue living with the accused and was afraid life at home with the accused would "get worse" for her.[127] V1's account of the incident with PW1 and PW6 is also externally consistent with PW6's evidence. PW6 testified that she spoke to PW1 after learning that the accused had beaten the Victims, to which PW1 responded that the accused was taking care of the Victims.[128]

102 When asked why she did not tell anyone about the sexual assaults when she was older and in secondary school, V1 explained that she was unsure what action could be taken. She felt that the police "couldn't do anything about it"

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124 Transcript (18 January 2022) at p 29 lines 8 to 13.

125 Transcript (18 January 2022) at p 37 lines 20 to 28.

126 Transcript (18 January 2022) at p 29 lines 16 to 22.

127 Transcript (18 January 2022) at p 28 lines 22 to 26.

128 Transcript (25 January 2022) at p 70 lines 21 to 29.

even if she were to make a police report, as the police would have asked her for evidence which she lacked.[129]

103 V1 testified that there were two occasions when she mentioned the accused's sexual abuse of her.

104 First, in 2007 or 2008, V1 posted on her blog that she was sexually abused by the accused, before deleting it shortly after.[130] She stated that she had done so to "let out steam" at that point of time and "to see if any of [her] friends would notice what [she] wrote".[131] The portion on the sexual abuse was "a tiny part" of the post and she deleted it after she "cooled down", as she did not "want anyone to know about the sexual abuse" due to her shame of what had happened to her.[132]

105 Second, V1 testified that she mentioned briefly to her ex-boyfriend, Faris, that the accused had sexually assaulted her, without any details. This is externally consistent with Faris' conditioned statement:[133]

> 4. During the initial stage of our relationship, [V1] had shared with me that one of her mother's boyfriends had "*tried to be funny*" with her before. I asked for more details, but she did not share more. I did not ask her again about this.
>
> [emphasis in original]

106 However, the Defence argues that V1's actions in (a) running away from school in Primary 5; (b) throwing her motorcycle helmet down from the flat of

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129 Transcript (18 January 2022) at p 28 lines 27 to 31.

130 PS4 at para 12.

131 Transcript (18 January 2022) at p 11 line 20 to 24.

132 Transcript (18 January 2022) at p 12 lines 1 to 14.

133 PS7 at para 4, AB at p 21.

Property 2; and (c) mentioning to Faris about the alleged sexual abuse in order to distract him from their quarrel paint her as a confident, assertive and even manipulative person. The Defence also argues that V1's publication of her blog post to gauge her friends' reactions was "an attention seeking stunt".[134] These actions are inconsistent with the shy and diffident personality implied from her alleged hesitation to report the accused's sexual abuse.[135]

107 Respectfully, I do not agree with the Defence's argument, which seeks to straitjacket her reaction and expects a sexual assault victim to react and behave only in one particular way. Menon CJ in *GDC v Public Prosecutor* [2020] 5 SLR 1130 ("*GDC*") at [13] observed that in "assessing the credibility of the victim, the court must bear in mind that there is no prescribed way in which victims of sexual assault are expected to act" (citing *Public Prosecutor v Wee Teong Boo and other appeal and another matter* [2020] 2 SLR 533 at [55]). As explained below at [253]–[260] not all sexual assault victims behave or react the same way. The undisputed fact is that the accused admitted to showing V1 nude images of females from the laptop and then told her to perform the same acts as shown. Notwithstanding what the accused had done to her, and this is admitted by the accused, she had not disclosed the accused's sexual acts to anyone. I find V1's explanations for her silence (see [101] and [102] above) to be consistent with her evidence on her actions. These include her refusal to reply to the accused's Facebook messages on 14 May 2010 and 6 August 2013 (see [168] below), which she explained was due to her disgust for the accused[136] and her anger at the accused for "ha(ving) the cheek" to message her after the abuse

134 DRS at para 26(viii).

135 DCS at paras 95, 96, 98 and 99.

136 Transcript (18 January 2022) at p 33 lines 28 to 31.

he inflicted on her, which "ruined her childhood".[137] V1 also explained that had it not been for PW1's insistence to pursue the sexual assaults by the accused, she would have taken her "secret", *ie*, the accused's sexual abuse of her, to the grave.[138]

108 Further, V1's actions at [106] above must be seen in context. First, the circumstances show that V1 had thrown the motorcycle helmet down from the flat in a fit of anger. This is internally consistent with her own evidence on how the accused's sexual abuse had affected her, where she described herself as having "anger management issues".[139] Second, V1 was a teenager when she posted about her experiences on her blog and deleted the blog post shortly after. I do not find this to be behaviour consistent with an "attention-seeking stunt". If V1's intention of posting about her experiences was truly to seek attention, she would not have deleted the post. Rather, her action appears to be the act of a teenager attempting to come to terms with traumatic past events.

109 V1's claim that she was afraid of being seen as impure is also consistent with her own evidence throughout the trial that she was ashamed by the incidents, and in her own response on how the accused's sexual acts affected her:[140]

> Q: And how do you feel today about the sexual acts that [the accused] did to you?
>
> A: Sometimes I think about what I could have done differently. *And I don't blame myself for what happened anymore.*
>
> Q: And how has it affected you?

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137 Transcript (20 January 2022) at p 55 lines 12 to 27.

138 Transcript (18 January 2022) at p 44 lines 10 to 18.

139 Transcript (18 January 2022) at p 44 lines 23 to 24.

140 Transcript (18 January 2022) at p 44 lines 19 to 26.

> A: After he left, I felt like I had anger management issues because I feel like I didn't stand up to [*sic*] myself enough. I felt---*I felt depressed because I was hiding something in myself that I---I feel like I cannot tell anyone about it. And I'm mostly angry at myself*.
>
> [emphasis added]

From V1's revelation of self-blame, it can be inferred that she viewed the accused's sexual abuse as her dark secret, the weight of which she felt was hers to bear alone. It is clear that V1's non-disclosure of the incidents resulted from a complex mix of trauma, insecurity and shame, all of which she was made to experience from a tender age. Her evidence paints a compelling and poignant picture of the emotional scars she suffered that stretched well into the future and caused her decades-long silence. This explains why V1 continued to maintain her silence even after the accused left the family in 2006.

110 Considering all of the above in totality, I find V1's actions and evidence to be consistent with someone who wished to forget and heal from the trauma inflicted on her as a victim of sexual abuse at a very young age. Her long silence for all those years does not undermine her credibility. Moreover, her evidence on why she did not tell PW1 about the abuse and that she only mentioned the abuse briefly to Faris is externally consistent with the evidence of PW6 and Faris. I, therefore, find that the internal and external consistencies of V1's evidence on this issue of disclosure strengthen her credibility as a witness.

V1's act of sending a text message on the stand

111 On 19 January 2022, which was the second day of V1's in-court testimony, V1 sent a text message to the Investigating Officer ("IO") with her

handphone while on the stand.[141] V1 claimed that she was not aware that she was disallowed from doing so:[142]

Court:	… What did you text to the IO?
Witness:	I texted the IO that something happened at the camp. [The accused] did something. So I'm not sure – I just remembered this information now. So I'm not sure if I should disclose this.
Court:	From now onwards, you are not allowed to speak to the IO or to anyone else because you are on the witness stand.
Witness:	Okay, understood. I apologise I was not aware that I was not supposed to---
Court:	What is it that you want to tell us, you can tell us in Court. You do not have to go and communicate to the IO.

112 The Defence submits that V1's act of sending a text message to the IO while on the stand "shows a certain and blatant disregard for the law and proceedings."[143]

113 It is regrettable that it was not made clear to V1 that she was not allowed to use her handphone on the stand. However, I do not think this necessarily shows a "blatant disregard for the law and proceedings". V1 was contrite when she was questioned on her use of her handphone while on the stand as seen at [111] above. The Prosecution also apologised and admitted that it was not explained to V1 that she was not to use her handphone on the stand.[144]

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141 Transcript (19 January 2022) at p 12 line 19 to p 14 line 17.

142 Transcript (19 January 2022) at p 13 lines 6 to 15.

143 DRS at para 34.

144 Transcript (19 January 2022) at p 13 lines 1 to 2.

114 In any event, V1's act of using her handphone to message the IO did not impact the fairness or integrity of the present proceedings for the following reasons:

(a) First, V1's act of using her handphone was spotted immediately by the Defence.

(b) Second, V1 and the Defence both confirmed that the IO did not reply to V1's message.[145]

(c) Third, V1 confirmed that she did not discuss her evidence on the stand with anybody else.[146] V1 gave evidence on 18, 19 and 20 January 2022. Apart from this message, the remaining communication between V1 and the IO was administrative in nature: it was a message from the IO after court adjourned on 18 January 2022 informing V1 that she may have to attend court on either 19 or 20 January 2022.[147]

(d) Fourth, the subject matter of the text message, which concerned something that the accused did during a camping trip, was not relevant to this case. V1 was being questioned on meeting PW6 on a camping trip just before she sent the message. The irrelevance of the subject matter of the text message to the present proceedings was confirmed by both V1 and the Defence.[148] The Defence gave its confirmation a day

145 Transcript (19 January 2022) at p 13 lines 22 to 27.

146 Transcript (19 January 2022) at p 14 lines 5 to 10.

147 Transcript (19 January 2022) at p 13 line 29 to p 14 line 4.

148 Transcript (20 January 2022) at p 51 line 22 to p 52 line 22.

> after viewing the text message that the subject matter of the text message does not "feature any weight".[149]

All of the above put to rest the concerns of witness-coaching or that V1's evidence was otherwise falsified or suppressed. I, therefore, find that while this incident was highly irregular, it was because V1 lacked knowledge on court procedure. The incident has no bearing on her credibility as a witness. The Defence counsel further assured the court that he was not making an issue out of this incident.[150] Thus, I am surprised that the Defence counsel changed his mind and now uses this incident to attack V1 in the Defence's reply submission.

Conclusion on V1's evidence

115 V1's account of the offences and material facts was detailed, cogent and largely consistent internally and externally. She was forthcoming and not shaken on the stand when she was thoroughly cross-examined by the Defence counsel. There were no signs of exaggeration or unreasonableness in her testimony. She never sought to embellish her evidence to mount a stronger case against the accused, maintaining throughout that the accused never fully penetrated her vagina with his penis.[151] Examining the totality of V1's evidence together with all the circumstances of the case, I agree with the Prosecution that the "ring of truth" in her testimony peals loud and clear.[152] I, therefore, find that V1's evidence is unusually convincing.

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149 Transcript (20 January 2022) at p 51 lines 22 to 29.

150 Transcript (20 January 2022) at p 51 lines 7 to 31.

151 Transcript (20 January 2022) at p 25 line 27 to p 26 line 4.

152 PCS at para 14.

V2's evidence

V2's evidence is "unusually convincing"

116 I have carefully scrutinised V2's evidence and I find V2's evidence detailed, coherent, and largely consistent internally and externally. Having regard to the totality of the evidence, including V2's demeanour in court and the internal and external consistencies of his evidence, I find that V2's evidence is also unusually convincing.

117 I shall set out in detail my analysis of V2's evidence below.

(1) V2's fainting spells and the 2016 text messages

118 The accused started physically and sexually abusing V2 in 2000 when he was in Primary 4. On multiple occasions, the accused touched and rubbed V2's penis against his consent. The accused would then put V2's penis into his own mouth and suck it. The accused also attempted to put his penis into V2's mouth, but V2 would close his mouth tightly to prevent the accused from doing so[153] as he thought the accused's penis was "dirty" since it is "where your urine comes out from".[154]

119 V2 alleged that he had fainting spells as a result of the accused's sexual and physical abuse.[155] The Defence submits that on the face of the evidence, V2 only had *one* fainting spell on 27 May 2000 which is evinced by an invoice from Tan Tock Seng Hospital ("TTSH") dated 27 May 2000.[156] PW1 said that there

153 PS5 at para 6.

154 Transcript (20 January 2022) at p 71 lines 20 to 24.

155 PS5 at para 4.

156 DCS at para 120.

were no other fainting incidents at home or in school.[157] The Defence argues that this discrepancy, taken together with V2's claim that his classmates and teachers teased him about his fainting spells,[158] show that V2 has "an overdeveloped sense of drama and hyperbole and is prone to exaggeration".[159] To support this assertion, the Defence also refers to V2's text messages to PW1 on 12 December 2016 where he claimed that the accused had raped him and V1 (see [15] above), without first verifying this information with V1.[160] V2's evidence was that he assumed the accused had raped V1 after he chanced upon her blog in 2007, where she mentioned she had been sexually abused by the accused.[161]

120 Respectfully, I disagree with the Defence's submissions that V2's credibility is adversely affected by his evidence on these issues. It is clear on the face of the evidence that PW1 was not physically present in the Victims' lives for a large portion of the day. In the day, PW1 would be sleeping most of the time, and at night, she would be at work for her night shift. It is PW1's own evidence that she would not know if V2 had fainted when she was not with him.[162] Hence, when PW1 said she was not aware of any other fainting spells, this does not mean that V2 did not have other fainting spells which are not to her knowledge.[163] As for the messages on 12 December 2016, it can be inferred from the tone of both PW1's and V2's messages that they were sent under

157 Transcript (14 January 2022) at p 1 lines 26 to 30.

158 PS5 at para 4, AB at p 12.

159 DCS at paras 119 to 123.

160 DCS at para 124.

161 Transcript (21 January 2022) at p 94 - lines 1 to 22.

162 Transcript (14 January 2022) at p 85 lines 3 to 6.

163 Transcript (21 January 2022) at p 46 lines 1 to 2.

emotionally charged circumstances (see [149] below). Further, the layman's understanding of rape may be different from the legal definition of rape. This is supported by V2's own evidence that he *felt* he was raped because the accused caused V2's penis to penetrate his anus.[164] V2 also explained that, having come across V1's blog, he realised that she had "gone through the same problems with [the accused]".[165] In these circumstances, I agree with the Prosecution's submissions that V2 has not exaggerated his evidence, given his own experiences and what he perceived of V1's experience having seen her blog.[166] Accordingly, the fact that V2 messaged PW1 that he and V1 were raped without confirming the veracity of this fact with V1 does not affect his credibility.

(2) The accused's hypnosis of V2

121 On two of the occasions stated at [118] above, before the accused sexually abused V2, he tried to hypnotise V2 and V1[167] by swinging a pocket watch left and right like a pendulum in front of them. V2 pretended to fall asleep as he was scared the accused would beat him. The accused then committed the sexual acts stated at [118].[168]

122 The Defence's closing submission states that "During cross-examination, [V2] claimed that [the accused] had learned to perform hypnosis by watching Pokemon cartoons…".[169] This is incorrect. V2 said that he knew

164 Transcript (21 January 2022) at p 98 lines 30 to 31.

165 Transcript (21 January 2022) at p 92 lines 28 to 30.

166 PRS at para 15(f).

167 Transcript (21 January 2022) at p 63 lines 18 to 21.

168 PS5 at para 6.

169 DCS at para 127.

what the accused was doing was hypnosis as V2 learned it from the Pokémon cartoon.[170]

123 The Defence counsel raises a few points about V2's account of this incident which he claims detract from the believability of V2's account. I shall deal with them in turn.

124 First, V1 made no reference to the hypnosis incidents, which the Defence submits were "unusual enough [to] warrant V1 making reference to them".[171] However, V1 was *never* asked about whether she was also hypnotised by the accused. Thus, this is not a discrepancy, and V2's credibility as a witness is not undermined.

125 Second, the Defence highlights the portion of V2's evidence where he stated that V1 was also present in the main bedroom during the hypnosis, but did not mention about what happened to her subsequently.[172] I agree with the Prosecution that V2 has adequately explained why he could not account for V1's whereabouts, namely that he was brought by the accused to a different room from her after he pretended to fall asleep.[173]

126 Third, I further note that V2 was able to recall the key circumstances surrounding the offence, namely whether he was on the bed of the main bedroom when the accused attempted to hypnotise him.[174] V2 could also recall

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170 Transcript (20 January 2022) at p 69 lines 1 to 4; Transcript (21 January 2022) at p 64 lines 8 to 14.

171 DRS at para 19.

172 DCS at para 128.

173 Transcript (20 January 2022) at p 70 lines 11 to 13; PRS at para 15(g).

174 Transcript (21 January 2022) at p 63 line 31 to p 64 line 3.

that he knew the accused was trying to hypnotise him as V2 knew about hypnosis from watching Pokémon cartoons.[175] I, therefore, find that V2's evidence on the hypnosis incidents remains cogent and persuasive.

(3) The ninth, tenth and eleventh charges

127 The ninth, tenth and eleventh charges all stem from one incident that V2 remembers most vividly. This incident occurred at Property 2, on an occasion between 19 November 2001 and 18 November 2002 when V2 was 11 years old. V2 explained that he recalled his age at the time as he had cried himself to sleep while asking himself, "Why did [the accused] do this to me? I'm only 11."[176]

128 V2 was sleeping in his bedroom when he was awoken by the accused pulling down his shorts and touching his penis. V2 pretended to be asleep. The accused put powder on V2's penis and masturbated it. V2 knew the accused was touching his penis as he peeked and saw the accused in front of him,[177] and could feel the accused molesting him.[178] The accused then sucked V2's penis until it became erect.[179] The accused squatted over V2's penis, causing it to penetrate his anus.[180] The accused then moved his body up and down while V2's penis was inside his anus. The accused subsequently turned V2 on his side and tried to insert his finger and penis separately into V2's anus.[181] The accused was,

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175 Transcript (20 January 2022) at p 69 lines 1 to 4; Transcript (21 January 2022) at p 64 lines 8 to 14.

176 Transcript (20 January 2022) at p 73 lines 6 to 11.

177 Transcript (20 January 2022) at p 74 lines 6 to 13.

178 Transcript (21 January 2022) at p 103 lines 8 to 10.

179 PS5 at para 7; Transcript (20 January 2022) at p 74 line 29; Transcript (20 January 2022) at p 75 lines 19 to 27.

180 PS5 at para 7.

181 PS5 at para 7; Transcript (21 January 2022) at p 83 lines 20 to 27.

however, unsuccessful in his attempts as V2 clenched his buttocks to prevent the accused from doing so. Subsequently, the accused turned V2 such that V2 was lying on his back, and masturbated V2 until V2 ejaculated. The accused then wiped up V2's semen, put V2's shorts back on, and left the bedroom.[182] V2 saw that there was powder residue on him after the accused left the room.[183] V2 affirmed that he did not protest or struggle and pretended to be asleep during the entire encounter as he was afraid.[184]

129 During examination-in-chief, V2 testified that the accused used an open palm to stroke his penis.[185] V2 later testified during cross-examination that the accused held his penis in a grip when he stroked it.[186] These were different actions carried out by the accused when he masturbated V2, *ie*, stroking V2's penis with an open palm and also grabbing V2's penis in a stroking motion. While this was happening V2 was pretending to be asleep when he felt the accused masturbating his penis.[187] In these circumstances, V2's eyes were closed most of the time, and he could not have fully observed the accused's actions for the whole duration of the sexual assault. This is consistent with V2's later clarification that he did not fully see the accused stroke his penis but he could feel what the accused was doing to him.[188] I reproduce the relevant portion of V2's testimony below:[189]

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182 PS5 at para 7.

183 Transcript (20 January 2022) at p 75 lines 14 to 16.

184 Transcript (21 January 2022) at p 69 line 29 to p 70 line 1, p 81 lines 13 to 30.

185 Transcript (20 January 2022) at p 74 lines 18 to 20.

186 Transcript (21 January 2022) at p 84 line 23 to p 85 line 7.

187 Transcript (21 January 2022) at p 80 line 30.

188 Transcript (21 January 2022) at p 103 lines 8 to 18.

189 Transcript (21 January 2022) at p 103 lines 1 to 19.

Court:	Now the impression I have is that on those occasion where he outraged your modesty by touching your penis and rubbing your penis, you pretended to be asleep, am I---have I got you right?
Witness:	Yes, Your Honour.
Court:	So when you pretended to be asleep, then I assume that you know what was happening because you were actually not asleep.
Witness:	Yes.
Court:	Right, you could actually feel what he was doing to your penis, have I got it right?
Witness:	Yes, Your Honour.
Court:	Can I also assume that you were not---your eyes were most of the time were not opened?
Witness:	Yes, Your Honour.
Court:	Because you were pretending to be asleep. So if your eyes were not open most of the time, can I also assume that you---during the whole period when he molested you, *you did not see him doing exactly what he was to your penis but you could feel it?* Have I got---can I summarise your position correctly?
Witness:	*Yes, Your Honour.*

[emphasis added]

130 I disagree with the Defence's argument that V2 would have protested or struggled when the accused sexually assaulted him and that V2 had no reason to be afraid of the accused.[190] On the contrary, I find V2's reaction to be reasonable and wholly consistent with his testimony that he was afraid of the accused when they lived together.[191] The passive and compliant reactions of V2 to the accused's sexual assaults are also consistent with V1's. This consistency is all the more probative of V2's credibility when one considers that V1 and V2

190 Transcript (21 January 2022) at p 81 lines 13 to 30.

191 Transcript (21 January 2022) at p 89 lines 6 to 7.

did not know that the accused had separately assaulted them. They did not disclose these dark secrets to each other as they considered these sexual assaults as shameful and embarrassing.

131 Finally, V2 was visibly distressed in court when he gave evidence on this incident, describing that the accused had stolen his virginity.[192] V2 had flashbacks of the incident and testified that thinking about the incident angered him greatly.[193] The Prosecution argues that V2 was candid to the point that he admitted he wanted to hurt the accused for the sexual acts done on him and V1.[194] I agree with this argument and V2's candour was also evident when he clarified in his testimony that the accused did not penetrate his anus with his finger and that the accused had merely attempted it. This resulted in the amendment of the eleventh charge to one which carried a lesser punishment (see [1] and [2] above).

132 Overall, I find V2's evidence bears the consistency of a credible witness who truthfully narrated the details of traumatic incidents that occurred to him when he was a very young child more than 20 years ago. Thus, having regard to the totality of the facts and circumstances, I find that V2's evidence in relation to the ninth, tenth and eleventh charges is also unusually convincing. I am satisfied that the accused had the intent to outrage V2's modesty and had intended and attempted to penetrate V2 without V2's consent. V2 was unable to give consent under s 90(*c*) of the Penal Code as he was under 12 years of age.

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192 Transcript (20 January 2022) at p 78 lines 3 to 8.

193 Transcript (20 January 2022) at p 82 lines 10 to 21; Transcript (21 January 2022) at p 103 lines 23 to 24.

194 PCS at para 48; Transcript (20 January 2022) at p 82 line 6; Transcript (21 January 2022) at p 100 lines 13 to 15.

(4) V2's relationship with the accused

133 V2 had a nuanced view of his relationship with the accused, which, in my view, enhanced the reliability of his account and strengthened his credibility as a witness. V2 testified as follows:[195]

> Court: Now I'm going---the time period is 2006 when [the accused] left the family. Now you told Mr Wong that at that time, you were shocked, you were sad and you missed him. I'm trying to understand why were you shocked, why were you sad and why you missed him.
>
> Witness: He was a good person and a good father, Sir, but doesn't mean what he did was right.
>
> …
>
> Court: So did he sexually assault you?
>
> Witness: Yes, Sir. Yes, Your Honour.
>
> Court: Yes, but then why you missed him?
>
> Witness: I was---I was referring to other parts that he treat me better, in a sense where he taught me how to raise up myself. My mum wasn't there, no one---no one was there for us. He was but for everything that he did, what---what---what---the sexual part, it wasn't right.
>
> Court: So in other words, if I try to understand you, what you are trying to tell us here is that if you remove the sexual assault part, he's actually quite alright as a father?
>
> Witness: Yes, Your Honour.

134 V2 also testified that his view of the accused changed drastically after he discovered that the accused had also sexually abused V1 when he chanced upon V1's blog in 2007.[196]

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195 Transcript (21 January 2022) at p 103 line 29 to p 104 line 22.

196 Transcript (21 January 2022) at p 100 line 16 to p 101 line 5.

135 V2's account of how he viewed the accused is internally consistent with his reasons for not disclosing the sexual abuse until more than ten years later. V2 had no intention to disclose the sexual assaults as he felt that PW1 was happy with the accused and wanted to preserve her happiness.[197] The strength of this reason had fallen away by the time the incidents came to light in 2016. I find V2's account in this regard to be consistent with his evidence that he missed the accused in 2006 as the accused was a father to him.[198]

136 It is evident from the above that V2 was willing to speak the truth about how he viewed the accused, without embellishing or fabricating evidence detrimental to the accused. V2's account in this regard thus strengthened his credibility as a witness and gave a further ring of truth to his evidence.

(5) V2's communication with PW1 while the trial was ongoing

137 On 20 January 2022, which was the first day V2 took the stand, the following exchange occurred when V2 was being examined on the circumstances surrounding the police report in 2016:[199]

> Q: On the 13th of December, just want to ask you, whether you would have made this report if your mother had not asked you to.
>
> …
>
> A: No.
>
> Q: So you would not have made the report if your mother had not asked you to. And my question is then why not?
>
> A: I wanted to deal with him myself.
>
> …

197 Transcript (20 January 2022) at p 71 line 29 to p 72 line 14.

198 Transcript (21 January 2022) at p 91 lines 28 to 29, p 103 line 29 to p 104 line 18.

199 Transcript (20 January 2022) at p 81 line 17 to p 82 line 6.

> Q: And what do you mean by "I wanted to deal with him myself"?
>
> A: No comment.
>
> …
>
> Court: You're required to answer the question. There's no such thing as no comment here.
>
> Witness: I wanted to hurt him.

138 On 21 January 2022, which was the second day V2 took the stand, it came to the court's attention that V2 was in contact with PW1 earlier that morning.[200] V2 then gave evidence on the mode and contents of his communication with PW1.

139 I note that V2's evidence on the *mode* of his communication with PW1 was inconsistent. V2 initially testified that he only spoke to PW1 on the phone.[201] PW1 had initiated the contact because she was worried about V2's emotional state.[202] V2 told PW1 that he made a mistake as he had testified he was going to hurt the accused (see [137] above). Thereafter, it was brought to the court's attention that V2 had also communicated with PW1 over text messages.[203]

140 I am of the view that V2's initial omission that he also communicated with PW1 over text messages is a trivial or minor inconsistency which does not affect V2's credibility. When asked about the text messages, V2 was forthcoming, and explained cogently the sequence of events:[204]

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200 Transcript (21 January 2022) at p 6 lines 3 to 9.

201 Transcript (21 January 2022) at p 6 line 29 to p 7 line 1.

202 Transcript (21 January 2022) at p 8 lines 11 to 17.

203 Transcript (21 January 2022) at p 8 line 15 to p 9 line 6.

204 Transcript (21 January 2022) at p 11 lines 4 to 13, p 12 lines 3 to 12.

Q: Now, [V2], coming back to you, this morning, you told the Court that you---your mother texted you and that you spoke with her. Now, we---when you were---did your mother telephone you or text you first?

A: Text me first.

Q: She text you first, and then you called her?

A: I replied, and then I called her.

Q: You replied, then you called her?

A: Mm.

Q: Okay, and what did---and your reply was? What did you say in your reply?

A: I said I told them I made a mistake, and I said I was going to hurt him in Court.

…

Q: …it is your evidence that you text to your mother that you made mistake.

A: Yes, Mr Wong.

Q: And then subsequently, you spoke to her.

A: Yes, Mr Wong.

Q: How long was the conversation?

A: It was very brief, not even 2 minutes.

Q: Okay. Is there anything else? Did you mention anything about how you felt in Court?

A: No, Mr Wong.

141 Weighing this minor discrepancy against the totality of V2's evidence, including his demeanour in court, I find that V2 remains a "witness of truth" (*Jagatheesan* at [82]).

142 When asked why he thought testifying that he wanted to hurt the accused was a "mistake", V2 explained that he was concerned this testimony would

portray him as an angry person.[205] V2, nevertheless, denied that his anger was of such an extent that would predispose him to lie against the accused.[206] This put to rest my concern that V2 would "hurt" the accused by fabricating evidence against him.

Conclusion on V2's evidence

143 I find V2's evidence detailed, coherent, and without major or serious discrepancies. While V2 displayed some emotion while on the stand, as is reasonable of a victim in a case of this nature, V2 was overall lucid and balanced in his testimony, and was able to give an honest account that was cogent in respect of the main particulars of the charges.

144 Having regard to the facts and circumstances of the case, along with the totality of V2's evidence, I find that V2's evidence is simply truthful and I am unable to find any reasonable doubt in his evidence. Accordingly, I am satisfied that V2's evidence is also unusually convincing.

PW1's evidence

145 Apart from the Victims, PW1 also testified against the accused. Her testimony is pertinent to explain how the sexual assaults on the Victims eventually came to her attention after remaining hidden for more than a decade. The sexual assaults came to light after V1 had a dispute with PW1 over an argument between V1 and her then-boyfriend, Faris, on 12 December 2016. Immediately upon finding out about the sexual assaults, PW1 told the Victims to report to the police, even when she was not told of the details, gravity and

205 Transcript (21 January 2022) at p 102 lines 16 to 19.

206 Transcript (21 January 2022) at p 102 lines 23 to 26.

extent of the sexual assaults the accused had inflicted on the Victims. I shall now proceed to consider her evidence.

146 PW1 worked long hours for five to six days of the week to provide for the family.[207] The accused was not working most of the time when they were cohabiting and he looked after the Victims. When PW1, the Victims and the accused were staying at Property 1, PW1 worked from 5.00pm to the wee hours of the morning the following day.[208] When they were staying at Property 2, her night job started from 6.00pm and ended at 4.00am or 5.00am the next day, while her day job would commence from 9.00am to 5.00pm.[209] PW1 would only see the Victims for three to four hours in the weekday before she left for work.[210] During their period of cohabitation, the accused was often at home and would help PW1 care for the Victims,[211] up until he and PW1 broke up sometime in 2006.

147 PW1 was not aware of the accused's sexual assaults on the Victims as she was hardly at home and she did not detect any signs of physical or sexual abuse on the Victims.[212] PW1 did not allow the accused "to scold or hit" the Victims.[213] PW1 observed that the Victims and the accused appeared to have a good relationship initially.[214] However, the Victims and the accused did not

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207 Transcript (13 January 2022) at p 60 line 24, p 64 lines 11 and 17.

208 Transcript (13 January 2022) at p 60 line 18 to p 61 line 26.

209 Transcript (13 January 2022) at p 64 lines 1 to 3.

210 Transcript (13 January 2022) at p 123 line 31 to p 124 line 1.

211 Transcript (13 January 2022) at p 61 lines 27 to 31.

212 Transcript (13 January 2022) at p 65 lines 25 to 30, p 70 at lines 28 to 30; Transcript (14 January 2022) at p 10 lines 21 to 25, p 82 lines 10 to 11.

213 Transcript (13 January 2022) at p 65 lines 27 to 28.

214 Transcript (13 January 2022) at p 63 lines 8 to 10 and p 65 lines 5 to 13.

appear to be close around the time VL stayed with the family.[215] PW1 testified that while she was close to the Victims,[216] the Victims did not mention the incidents to PW1.[217] However, from the Victims' perspective, they were not close to PW1 as she had long working hours.[218]

148 PW1 confirmed that none of her relatives with whom the Victims were close,[219] nor the Victims' teachers at their respective schools,[220] were aware of the physical or sexual abuse. On this point, I note that PW6 also corroborated the Victims' accounts that they did not tell her about the physical or sexual abuse, notwithstanding that they were close to her.[221] The Victims also did not mention to each other of the sexual assaults that the accused had inflicted on them. They were too young to understand what the accused had done to them. When the Victims became more mature and older to understand that the accused had taken advantage of them they were too ashamed and embarrassed to break the long silence. V1 said she wanted to bring the sexual assaults on her by the accused to her grave.

149 PW1 testified that on 12 December 2016, PW1 and V1 had a dispute regarding V1's dispute with her boyfriend, Faris. PW1 informed V2 of her

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215 Transcript (14 January 2022) at p 14 lines 18 to 27.

216 Transcript (13 January 2022) at p 121 lines 10 to 15; Transcript (14 January 2022) at p 25 lines 15 to 17.

217 Transcript (13 January 2022) at p 121 lines 28 to 30; Transcript (14 January 2022) at p 11 line 28 to p 12 line 1, p 14 lines 2 to 17.

218 Transcript (18 January 2022) at p 36 lines 1 to 7.

219 Transcript (14 January 2022) at p 11 lines 10 to 13, p 19 line 19 to p 20 line 20.

220 Transcript (14 January 2022) at p 12 lines 4 to 6.

221 Transcript (14 January 2022) at p 12 lines 7 to 10; Transcript (25 January 2022) at p 70 lines 10 to 17.

dispute with V1 via text messages. V2 was trying to persuade PW1 to be sympathetic to V1. Their exchange of text messages is shown below:[222]

S/N	Text & Translation (PW1)	Text & Translation (V2)
1	[Screenshot]	
2	**Text:** See this msg from faris… **Translation:** [No translation needed.]	
3	**Text:** Im done… I give freedom and all abused **Translation:** [No translation needed.]	
4		**Text:** At least listen what she have to say **Translation:** [No translation needed.]
5	**Text:** Telling bad things abt your mom to outsider this is so cool… **Translation:** [No translation needed.]	
6		**Text:** You go and talk to her. You also don't know if Faris is manipulate her words. I spoke to Faris on the phone also. I don't want to believe all of it still **Translation:** [No translation needed.]
7	**Text:** What ever it is I dnt care… im not happy when she throw stuff kat luar rumah	

222 AB at pp 180 to 187.

	Translation: *What ever it is I dnt care… im not happy when she throw stuff* outside the house	
8	**Text:** Who will pay for the damaged that she do? **Translation:** [No translation needed.]	
9		**Text:** I asked Faris and he said the car ok just now. **Translation:** [No translation needed.]
10	**Text:** Im reaching home soon **Translation:** [No translation needed.]	
11		**Text:** Im still at work finishing last bit. **Translation:** [No translation needed.]
12	**Text:** Never mind.. I handle her **Translation:** [No translation needed.]	
13	**Text:** Your sister is welcome to leave my hse… how dare she scream at me!! **Translation:** [No translation needed.]	
14	**Text:** Kepala dah jadi besar!! **Translation:** Has become big-headed!!	
15		**Text:** Mama… Didi used to rape us… **Translation:** [No translation needed.]

16		**Text:** All she wanted was your love.. **Translation:** [No translation needed.]
17		**Text:** We keep it from you for 10 years.. **Translation:** [No translation needed.]
18		**Text:** Because we know you work very hard.. **Translation:** [No translation needed.]
19	**Text:** Did you tell me never rite? **Translation:** [No translation needed.]	
20	**Text:** How dare she scream at me **Translation:** [No translation needed.]	
21		**Text:** Sometimes I know how she feel.. **Translation:** [No translation needed.]
22	**Text:** I give u all freedom and this is how I pay? **Translation:** [No translation needed.]	
23		**Text:** I was only 11 she was only 9 **Translation:** [No translation needed.]
24		**Text:** Sometimes I also feel she don't get the attention.. **Translation:** [No translation needed.]

25	**Text:** I don't so much for you all.. **Translation:** [No translation needed.]	
26	**Text:** I work 3 jobs to get this hse! **Translation:** [No translation needed.]	
27	**Text:** And you 2 dnt even know how to treasure **Translation:** [No translation needed.]	
28	**Text:** I trust you both but always you both disappoint me. **Translation:** [No translation needed.]	
29		**Text:** Mama everytime you were not around he'll beat us till we faint. Even randomly while in our sleep, even if late at night. He touched us and made us do weird things. Then whenever you're around he pretends its nothing. And we didn't tell you because we knew how hard you work. But sometimes I think my sister goes thru depression because of this and I know we are all used to be independent. Yet, she's a girl after all and she always want to feel love but sometimes you were too busy. **Translation:** [No translation needed.]
30	**Text:** Im going to the polis	

	Translation: *Im going to the* police	
31		**Text:** I know you love your kids and I know all people love differently. But I understand that, maybe she don't. **Translation:** [No translation needed.]
32	**Text:** I do anything for you all… I leave him because of you all nvr expect this happen **Translation:** [No translation needed.]	
33	**Text:** Why I choose ugly man I thought he will treat my children well.. **Translation:** [No translation needed.]	
34	**Text:** I will not leave this alone.. **Translation:** [No translation needed.]	
35		**Text:** Mama its not your fault.. **Translation:** [No translation needed.]
36	**Text:** Mama nak pursue this matter and I want both of your support. I will not let matter rest **Translation:** I want to *pursue this matter and I want both of your support. I will not let matter rest*	

150 It was in the course of the exchange of text messages that V2 revealed to PW1 that the accused had sexually assaulted the Victims when they were young (see [15] above). PW1 then persuaded V2 to make a police report immediately. She accompanied him to the police station to lodge a police report regarding the sexual assaults on the same day. Thereafter, V1 was asked by the police to give a statement at the police station on the same day.[223]

151 PW1's evidence corroborates the Victims' evidence that: (a) PW1 was often not at home, which created ample opportunity for the accused to commit the offences; (b) the Victims did not disclose the incidents to anybody; and (c) the police reports lodged by the Victims were immediately done when PW1 was alerted to the sexual assaults on 12 December 2016.

The circumstances leading to the making of the police reports

152 The circumstances leading to the making of the police reports are significant in several aspects. PW1 and the Victims did not discuss the details of the various sexual assaults that the accused had inflicted on the Victims before they went to the police station. If they had wanted to frame the accused, they would have thoroughly discussed and orchestrated their evidence amongst themselves before going to the police station. They went to the police station without knowing the details of the accused's sexual abuse against each other. PW1, who by then had no contact with the accused for about ten years, insisted that the Victims make the police reports against the accused. If it had not been for PW1's insistence, the Victims would not have reported to the police. Thus, it was not the Victims who initiated the making of the police reports although they were the victims who bore the brunt of the sexual assaults by the accused.

223 Transcript (14 January 2022) at p 80 lines 25 to 27.

153 It was on 12 December 2016 that the dark secrets committed by the accused were exposed for the first time after more than ten years. The police recorded the statements from the Victims separately. The Victims were not given any opportunity to exchange the details of the accused's sexual assaults on them. The truth of the Victims' revelations was first tested when the accused was subsequently arrested on 19 May 2019. The accused did not completely deny the sexual assaults on the Victims. He admitted showing nude images to V1 and telling her to follow suit but she refused. He also admitted to masturbating V2. However, he denied the other egregious sexual assaults on the Victims. Therefore, the Victims did not lie when they informed the police that the accused had sexually assaulted them when they were very young.

Medical evidence

154 The Prosecution called Dr Ong from the IMH to testify. Dr Ong conducted a forensic psychiatric evaluation on the accused when he was remanded. Dr Ong opined that the accused was not of unsound mind at the time of the offences. However, Dr Ong diagnosed the accused with Pedophilic Disorder. Her diagnosis was based on the criteria set out in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition published by the American Psychiatric Association ("DSM-5").

155 During the cross-examination, Dr Ong was questioned by the Defence counsel on why she diagnosed the accused with Pedophilic *Disorder*, as opposed to mere pedophilic *sexual orientation.* The question arose out of the following sentence in DSM-5:

> However, if they report an absence of feelings of guilt, shame, or anxiety about these impulses and are not functionally limited by their paraphilic impulses (according to self-report, objective assessment, or both), and their self-reported and legally recorded histories indicate that they have never acted on their

> impulses, then these individuals have a pedophilic sexual orientation but not pedophilic disorder.

According to Dr Ong, pedophilic sexual orientation is pedophilia, which refers to a "sexual interest in children". Pedophilic sexual orientation is not a "diagnosable psychiatric mental disorder". In contrast, Pedophilic Disorder is a "diagnosable psychiatric mental disorder". Pedophilic sexual orientation becomes Pedophilic Disorder when all three diagnostic criteria in DSM-5 are met:[224]

> (a) Over a period of at least six months, recurrent, intense sexually arousing fantasies, sexual urges, or behaviours involving sexual activity with a prepubescent child or children (generally aged 13 years or younger) ("Criterion A").
>
> (b) The individual has acted on these sexual urges, or the sexual urges or fantasies cause marked distress or interpersonal difficulty.
>
> (c) The individual is at least aged 16 years and at least five years older than the child or children in Criterion A.

156 The Defence suggested to Dr Ong that the accused had at worst pedophilic sexual orientation and not Pedophilic Disorder.[225] The Defence also suggested that even if the accused suffered from Pedophilic Disorder, his risk of reoffending is low to moderate.[226] While Dr Ong was of the opinion that the accused's risk of reoffending was indeed low to moderate,[227] she maintained that

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224 Transcript (25 January 2022) at p 54 lines 14 to 21.

225 Transcript (25 January 2022) at p 52 lines 1 to 7.

226 Transcript (25 January 2022) at p 52 lines 8 to 11.

227 Transcript (25 January 2022) at p 52 line 14.

the accused suffered from Pedophilic Disorder and not mere pedophilic sexual orientation.[228] Dr Ong testified that she diagnosed the accused with Pedophilic Disorder as he satisfied all three diagnostic criteria for it.[229]

157 Dr Ong's evidence of her diagnosis was well-supported, especially in light of the accused's admission to her that he had sexually abused the Victims. I find that the Defence did not raise any reasonable doubt on the veracity of Dr Ong's diagnosis that the accused has Pedophilic Disorder.

158 I further note that the accused admitted to Dr Ong that he committed sexual acts against the Victims, namely that he (a) masturbated and ejaculated onto V1's body; (b) showed V1 nude pictures and asked her to follow suit; and (c) masturbated V2 twice. This admission to Dr Ong is the accused's third admission of sexual abuse. The other two instances where he admitted to sexually abusing the Victims are (i) in his cautioned statements recorded for the fourth, seventh and eighth charges,[230] which were stood down; and (ii) his second long statement to the police (see [178(b)] below).[231] The accused affirmed that these admissions were voluntarily given by him to the police and Dr Ong.

The accused's evidence

159 At the close of the Prosecution's case, I was satisfied that the Prosecution has established a *prima facie* case to warrant calling upon the

228 Transcript (25 January 2022) at p 52 lines 1 to 7.

229 Transcript (25 January 2022) at p 50 lines 10 to 16.

230 Exhibits P16, P17 and P18.

231 Exhibit P14.

accused to enter his defence. The usual allocution was explained in layman language to the accused. He elected to testify in court.

160 The accused mounted a bare denial with regard to the offences in the proceeded charges.

161 Overall, the accused's evidence was like a net full of holes – beset with numerous serious and material inconsistencies and discrepancies. He also vacillated in his evidence, including frequent departures from positions he had previously affirmed in his prior statements and earlier in his in-court testimony. The persistent and material inconsistencies in the accused's evidence detracted significantly from his credibility as a witness of truth. Therefore, the accused's evidence is largely inconsistent, unreliable and incapable of belief. Nevertheless, I do not jettison his testimony completely but I exercise extreme caution when I consider his evidence. I shall now examine his testimony.

The accused and PW1's joint bank account

162 When PW1 took the witness stand, she said she had a joint bank account with the accused. PW1 said the money in the joint bank account belonged to her as the accused was not working. Later she discovered that the accused had almost emptied the funds in the joint bank account. When the accused heard PW1 testify on this matter I saw the accused giving instructions to his counsel who then suggested to PW1 that the accused never had a joint bank account with PW1.[232] PW1 averred firmly, however, that she and the accused had a joint POSB savings account.[233] The Defence counsel then requested PW1 to produce

232 Transcript (14 January 2022) at p 40 lines 26 to 27.

233 Transcript (14 January 2022) at p 40 lines 21 to 25, p 41 lines 1 to 9.

the joint POSB savings account. PW1 said she would try to obtain it from the bank.[234]

163 Later in the proceedings the Prosecution introduced the joint POSB Bank account [235] through an officer from the DBS Bank.[236] This corroborates PW1's evidence and it shows that the accused was not truthful when he adamantly asserted that there was no joint bank account with PW1.

164 The accused explained his previous inconsistent position that there was no joint bank account by claiming that he suffered a lapse in recollection.[237] If the accused could not remember because of his lapse in recollection why did he instruct his counsel to discredit PW1?

165 I find the accused's claim that he could not recall this joint bank account at all difficult to believe. It was put to PW1, in no less specific terms, that the accused and PW1 *never* had a joint bank account:[238]

> Q: Okay. Now I'm instructed that [the accused] never had any joint account with you.
>
> A: He's lying.

166 The accused's evidence on this issue was inconsistent with the available objective evidence and fell far short of being reliable. In contrast, PW1's evidence was supported by objective evidence, which led me to prefer PW1's evidence on this issue over that of the accused's. Be that as it may, this is not an

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234 Transcript (14 January 2022) at p 41 lines 26 to 30.

235 Exhibit P23.

236 Statement of Au Him Leong, PS24.

237 Transcript (26 January 2022) at p 67 lines 5 to 8; DRS at para 49.

238 Transcript (14 January 2022) at p 40 lines 26 to 28.

important issue as it has nothing to do with the charges of sexual assaults. But it shows that PW1 was reliable and was telling the truth.

167 The Prosecution argues that the accused's credit should be impeached under s 157(*c*) of the Evidence Act as he lied on the straightforward issue of whether he had a joint bank account with PW1.[239] On this point alone, I am unable to find that the credit of the accused was impeached as the issue of their joint bank account is peripheral to the material issue of his sexual abuse of the Victims. Therefore, while I find that the accused's evidence on this issue is unreliable, it does not follow that his credit should be impeached. I shall consider further the impeachment of the accused's credit at [173]–[219] below.

The accused's apology to V1

168 On 14 May 2010 and 6 August 2013, the accused sent the following messages to V1 on Facebook.[240]

S/N	Date	Message
1	14 May 2010	ejay or ej(for short) a nick given to u a longtime ago..miss u dearly..& I wish to apologize for everything. if I can turn back time, of which no one can..I make right on everything..I stop making u all move here & there & all, money was not really a problem but our management was bad(me tho not mama)U all are the best family I had but I blew it..Good to see the 2way door fridge still workin tho..I miss everyone, especially u..My sincere apology..U all will always b in my mind & my heart..Luv u ej..

239 PCS at para 84.

240 Exhibit P6; AB at pp 160 to 163.

2	6 August 2013	Ej, can I ask u for a favour? U know that pa nvr get to take any of my things out with me back then, mama just gave me a pair of white socks, a torn underwear & a tee of which she puts in a small white plastic(the kind u get when u go shop buy stuff) all I want is my picture albums that is so dearly to me, some of my memories are in those albums, u can take out the ones with u all pictures in it but the rest which is mine, I want it…can u do this favour for me one last time? Thank you for reading even if u can't.

169 The first message on 14 May 2010 was sent by the accused to V1's Facebook account four years after he left Property 2 in 2006. In the message he seems apologetic and remorseful of what he did. What was the accused apologising for?

170 The accused was evasive and inconsistent when he was asked what he was apologising for in his 2010 message to V1. He initially disagreed that he was apologising for the sexual assaults on V1 but later changed his position:[241]

> Q: Now I put it to you---I suggest to you, sorry, [accused], that when you say "I wish to apologise for everything", this includes the sexual assaults that you committed on [V1], agree or disagree?
>
> …
>
> A: I agree on the apology but no sexual assault.
>
> Q: And on page 162, P6-6 when you say "I make right on everything"---
>
> A: Yes, yes.
>
> Q: ---that also includes making amends for the sexual assault to [V1]?
>
> A: Yah, I make---if I can make right everything, yes, but *there's no sexual assault to [V1].*

[241] Transcript (27 January 2022) at p 63 line 9 to p 64 line 16.

Q: Because there was---there is no other things to apologise to [V1] and [V2] for, isn't it, apart from the sexual abuse?

A: No, apology is everything, I left them so I couldn't care for them more and I still worried about them so yah, I was missing them, that's why I said what I said on the messages, on this message. I just want to know how are they doing.

Court: No, Ms Wong is interested in your apology. When you apologise to [V2]---[V1], what was it that you're apologising?

Witness: Apologising for everything.

Court: Everything what?

Witness: Everything as in my punishment to them, the one that I hit [V1] and---

Court: What did you do?

Witness: ---when---also but---

Court: No, what did you do?

Witness: When I slapped her hand, when---when I caught her and---when I slapped her hand when she was fiddling with the washing machine, those kind of---those kind of apologies, Your Honour, not---and leaving them like leaving---leaving the house and then not try to do anything more.

Court: Then what about those acts which you admitted, having sexual---

Witness: Your Honour, yes, the one that I---that---that I have made, yes, that's---those include but I think counsel was putting everything, even the one that alleged to me so I'm separating those because what I did, *I admit, yes, and that's why I'm apologizing that as well.*

[emphasis added]

171 The accused alleged that he was apologising for those sexual acts that he had admitted to doing on V1 and not those egregious sexual assaults that were mentioned in the proceeded charges.

172 V1 did not reply to the accused's message. In 2010, after having seen the accused's message, V1 was still not ready to disclose or confront the accused for the sexual assaults that he had inflicted on her.

Impeachment of the accused's credit

173 After the accused was called on to give evidence in his defence, the Prosecution made an application under s 147 of the Evidence Act to cross-examine the accused with the purpose of impeaching his credibility under s 157(*c*) of the Evidence Act. It is well-accepted that the impeachment proceedings is by way of cross-examination of the witness whose credit is sought to be impeached (*Kwang Boon Keong Peter v Public Prosecutor* [1998] 2 SLR(R) 211 ("*Peter Kwang*") at [21]).

174 The relevant portions of s 147 of the Evidence Act provide as follows:

> (1) A witness may be cross-examined as to previous statements made by him or her in writing or reduced into writing, and relevant to matters in question in the suit or proceeding in which he or she is cross-examined, without such writing being shown to him or her or being proved; but if it is intended to contradict him or her by the writing, his or her attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him or her.
>
> (2) If a witness, upon cross-examination as to a previous oral statement made by him or her relevant to matters in question in the suit or proceeding in which he or she is cross-examined and inconsistent with his or her present testimony, does not distinctly admit that he or she made such statement, proof may be given that he or she did in fact make it; but before such proof can be given, the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he or she must be asked whether or not he or she made such statement.

175 Section 157(*c*) of the Evidence Act provides as follows:

> The credit of a witness may be impeached in the following ways by the adverse party or, with the consent of the court, by the party who calls him or her:
>
> …
>
> (*c*) by proof of former statements inconsistent with any part of his or her evidence which is liable to be contradicted.

176 A successful impeachment of a witness' credit under s 157 of the Evidence Act does not mean that all his oral testimony will have to be disregarded (*Peter Kwang* at [24]). In *Public Prosecutor v Somwang Phatthanasaeng* [1990] 2 SLR(R) 414 ("*Somwang*"), the court opined, at [43], as follows:

> Having regard to these material discrepancies, we found that the Prosecution had successfully impeached the credit of the accused. We would, however, say that the fact that the credit of an accused person or a witness has been impeached does not necessarily mean that all his evidence must be disregarded. The court must carefully scrutinise the whole of the evidence to determine which aspect might be true and which aspect should be disregarded.

177 In *Peter Kwang* at [19], Yong Pung How CJ explained that the purpose of impeaching a witness' credit is to "undermine the witness' credibility by showing that his testimony in court should not be believed because he is of such a character and moral make-up that he is one who is incapable of speaking the whole truth under oath and should not be relied on". A witness can be impeached if the "discrepancies were sufficiently material to call into question the [witness'] credit" and if his explanations for the discrepancies were "not credible" (*Peter Kwang* at [26]). That said, the witness' credit stands to be assessed as a whole together with the rest of the evidence at the appropriate stage, that is to say, at the close of the case for the Defence in this case (*Peter Kwang* at [21], citing *Dato Mokhtar bin Hashim & Anor v Public Prosecutor* [1983] 2 MLJ 232). Thus, the court should consider the credit of the accused

arising from the impeachment proceedings at the end of the trial when the evidence of the case is considered holistically.

178 According to the Prosecution, the accused's credit should be impeached because the testimony he had given in court and his account to Dr Ong in relation to his physical and sexual abuse of the Victims were materially inconsistent with the following earlier statements that were previously recorded from him:

(a) First long statement recorded under s 22(1) of the CPC on 19 May 2019 at 5.39pm (the "First Long Statement");[242]

(b) Second long statement recorded under s 22(1) of the CPC on 20 May 2019 at 10.06pm (the "Second Long Statement");[243] and

(c) Third long statement recorded under s 22(1) of the CPC on 22 May 2019 at 3.15pm (the "Third Long Statement").[244]

179 I note that in his Second Long Statement, the accused made admission in relation to the stood down charges. The accused admitted to taking showers with V1 when she was a child on three or four occasions prior to committing the alleged offences against her. He also admitted that the following occurred on separate occasions:

(a) When he showered with V1 on one evening, he touched her buttocks and licked her anus while masturbating himself.

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242 Exhibit D2.

243 Exhibit P14.1 to P14.3.

244 Exhibit P15.1 to P15.4.

(b) He instructed V1 to lie in "frog style" on the bed in the master bedroom. He then licked her anus, masturbated himself and ejaculated on her back.

(c) He called V1 to "come on top of [him]", so that he could lick her anus.

Additionally, in his Second Long Statement, the accused admitted that he masturbated V2 twice, once at Property 1 and once at Property 2.

180 I allowed the Prosecution to impeach the credit of the accused based on these statements, as the statements the accused gave in relation to the stood down charges are relevant and have probative value. The facts and the circumstances surrounding the accused's commission of the acts in the stood down charges are similar and intertwined with that in the proceeded charges. Furthermore, in the Agreed Statement of Facts the accused has admitted to the facts in the stood down charges.[245]

181 At this juncture, I note that the Defence counsel in his closing submissions argued that the accused's credit "had in no way been affected" as the impeachment exercise did not appear to follow the procedure laid out in *Muthusamy v Public Prosecutor* [1948] MLJ 57 ("*Muthusamy*")[246] and in *Peter Kwang* at [21]. In these cases it was suggested that for the purpose of the impeachment exercise the following "three-step" impeachment procedure should apply:

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245 ASOF at paras 25 to 29.

246 DCS at para 139.

(a) First, I would have to read the previous statements of the accused which the Prosecution alleged were materially inconsistent with his testimony in court. Only serious discrepancies and material contradictions are sufficient to invoke the operation of s 147 of the Evidence Act. Minor differences not amounting to discrepancies or apparent discrepancies are insufficient to invoke the operation of s 147 of the Evidence Act. It is common practice for the Prosecution to underline the portions of the statements it alleges to be materially inconsistent with the accused's in-court testimony (see, *e.g.*, *Foong Seow Ngui and others v Public Prosecutor* [1995] 3 SLR(R) 254 at [26]; *Public Prosecutor v Lee Lum Sheun* [1994] SGHC 27).

(b) Second, if I agreed with the Prosecution that there were serious discrepancies or material contradictions between the previous statements and the accused's testimony in court, the accused was to be asked if these statements were in fact given by him.

(c) Third, if the accused admitted that he had given the previous statements, he would then have to be afforded a fair and full opportunity to explain the differences in the discrepant or contradictory accounts.

182 The Prosecution pointed out during closing submission that the *Muthusamy* procedure only applies where the credit of a *witness* is being impeached, and not when impeaching the credit of the *accused*. This was held by the Court of Appeal in *Loganatha Venkatesan and others v Public Prosecutor* [2000] 2 SLR(R) 904 at [53]:

> … In this case, s 122(2) of the CPC [Cap 68, 1985 Rev Ed] is not applicable for the simple reason that the witness, who was being cross-examined on the previous statements made to the police, was Julaiha herself, the accused. Instead, it is s 122(5) of the CPC which is applicable, and under this section any

> statement made by her "to or at the hearing of any police officer above the rank of sergeant" was admissible at her trial, and, as she herself was a witness, the Prosecution was entitled to use it in the cross-examination and for the purpose of impeaching her credit, *provided that such statement was made voluntarily*. By reason of this subsection, which was not in existence at the time of *Muthusamy*, *the Prosecution is not required to go through the "cumbersome and slow" procedure laid down by Taylor J*. There was no need for the Prosecution to apply to court for permission to use the statements made by Julaiha, as appeared to have been done here. Section 122(5) does not require any such permission to be sought.
>
> [emphasis added]

183 Given the accused's confirmation that he gave the statements voluntarily, his statements are admissible for the purposes of cross-examination with a view to impeaching his credit.

184 I shall now consider the effect of the impeachment exercise on the accused's credit.

185 The accused's explanations of the material inconsistencies between his testimony in court and his previous statements (*ie*, the First Long Statement, the Second Long Statement and the Third Long Statement) were *completely unconvincing*, and his oral testimony in court demonstrated that he was an unreliable witness who was "incapable of speaking the whole truth under oath" (see *Peter Kwang* at [19]) in relation to his physical and sexual abuse of the Victims. My reasons for coming to this conclusion are set out below.

(1) The accused's physical abuse of the Victims

186 The accused stated during his examination-in-chief that he only beat V1 once with his hands after V1 "fiddled" with the washing machine, and that he

never beat V2.[247] He also denied ever using a belt or a coat hanger to beat the Victims and averred that he did not wear a belt at the time.[248] These claims are inconsistent with his statements.

187 First, that the accused denied beating V2 during his examination-in-chief in court is inconsistent with his First Long Statement, in which he admitted to, on one occasion, hitting V2 with a belt on V2's arm, back or shoulder.[249] I reproduce the relevant portion of the First Long Statement below:

> Q24) It is alleged that you have hit [V1] and [V2] with clothes hanger, belt and your hands when staying together with them. What do you have to say to this?
>
> A24) No. Wow no. I only remember once when [PW1] told me that [V2] did something wrong. I took a belt and hit [V2] on his arm back or shoulder once. After that he got a fever. I consoled him and said sorry. That was only once. Cannot remember when this happened.

When confronted with this inconsistency during cross-examination, the accused explained that he could not recall this particular incident and he only remembered it after seeing his First Long Statement.[250] He also explained that he did not consider the "hit" as a "beating", and averred that he considered the latter to be more violent.[251] I explore in detail his explanation at [193] below. I note, however, that this explanation raised further inconsistencies (see [194] below). When the accused was confronted with his earlier contradictory evidence that he did not wear a belt at the time, the accused asserted that the

247 Transcript (26 January 2022) at p 36 line 21 to p 38 line 18.

248 Transcript (26 January 2022) at p 38 lines 9 to 12.

249 Exhibit D2 at p 6 para A24.

250 Transcript (26 January 2022) at p 75 lines 25 to 28.

251 Transcript (27 January 2022) at p 2 lines 19 to 26.

belt he admitted to hitting V2 with belonged to V2.[252] I find this difficult to believe. The accused's claim is also inconsistent with V1's evidence that the belt the accused used to hit the Victims was *the accused's own*.[253]

188 Second, the accused's claim that he did not beat the Victims with a clothes hanger is inconsistent with his Second Long Statement, where he admitted to using a clothes hanger to cane V1 on her palm.[254] This admission was also omitted from his First Long Statement. The accused maintained that he only used his hand to hit V1. He gave an unconvincing explanation for the inconsistency, namely that he was in pain and shock when his Second Long Statement was recorded and mistakenly stated that he had used a "hanger" to hit V1 when he meant "hand":[255]

> Q: So, [the accused], which is it that you used? Was it a hanger or your hand? What is your position now?
>
> A: My position, I made a mistake on this statement back then because as I said and I ex---explained to the Court that I explained it from a---I explained it on best of my abilities at that time. So when I recall that I did not any use an---
>
> Court: No, no, no. Just listen to the question. The question is very simple. Ms Wong asked you now: Which is your---what is your position now? Is it that you used your hand to beat [V2], [V1] or you used a clothes hanger?
>
> …
>
> Witness: My confirm is---it's a---was actually my---just my hand, Your Honour.
>
> …

252 Transcript (26 January 2022) at p 75 line 29 to p 76 line 3.

253 Transcript (19 January 2022) at p 20 lines 11 to 13 and lines 28 to 29.

254 Exhibit P14.3 at para 10.

255 Transcript (27 January 2022) at p 9 line 2 to p 10 line 1.

> Q: Okay. So just to confirm your explanation is that you were in pain and shock, is it?
>
> A: That is correct.
>
> Q: I see. And so that is why you said the word "hanger" here, not "hand".
>
> A: Yes, correct.

189 Given that the accused confirmed multiple times that all his statements were given voluntarily and accurately recorded,[256] I find it unbelievable that the accused would admit in his Second Long Statement that he used a clothes hanger to beat V1 if he had never done so in the first place.

190 Third, the accused's in-court admission that he had slapped V1's hand once because she "fiddled" with the washing machine is omitted from his First Long Statement, where he only mentioned that he hit V2 with a belt once and denied any physical abuse against V1 (see [187] above).

191 Fourth, the accused was inconsistent in giving his *reason* for hitting V1.[257] While he stated in his Second Long Statement that he hit V1 because she had done "something wrong in the kitchen", the accused testified in court that he hit V1 as she was "fiddling" with the washing machine and he could recall the conversation he had with her at that time in great detail.[258] It is curious that the accused's memory appears to have improved over time when normally a person's memory fades over time. The Prosecution submits that these details are embellishments by the accused and an afterthought.[259]

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256 Transcript (26 January 2022) at p 49 lines 14 to 15, p 51 lines 4 to 5, p 55 lines 14 to 20, p 57 lines 23 to 27, p 58 line 1 to p 59 line 16, p 91 lines 2 to 7.

257 Transcript (27 January 2022) at p 6 lines 26 to 30.

258 Transcript (26 January 2022) at p 36 line 27 to p 38 line 2.

259 PCS at para 73.

192 The Prosecution also points out that the accused's allegation on whether he had beaten the Victims changed completely within a few days during the trial. I refer to the relevant portion of the cross-examination below:[260]

> Q: …Now on 19th of January 2022, your counsel had put it to [V1] on your instructions that you did not beat [V1] or her brother [V2].
>
> A: Agree.
>
> Q: Okay? Now you say that there were occasions that you did beat them?
>
> A: Yes, agree.
>
> Q: Okay. So within 8 days, your position has changed?
>
> A: I disagree.
>
> Q: And this was not only put to [V1], it was also put to [V2]. And this was on 21st of January 2022, your counsel had put it to [V2], "I suggest to you that there was no beating." Okay, that was based on your instructions, you agree?
>
> A: Yes, I agree.
>
> Q: So now you accept that there were occasions that you've had beaten [V2]?
>
> A: May I explain now or ---
>
> Q: Agree or disagree?
>
> A: Agree.
>
> Q: Okay. So again within 8 days, your position has changed in relation to [V2] and the beatings, agree? Sorry, about 5 days.
>
> A: Yes, I can agree.

193 To account for the inconsistency between his evidence during examination-in-chief, when he said he did not beat V2, and during cross-examination, when he eventually admitted to "hitting" V2, the accused

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260 Transcript (26 January 2022) at p 72 line 30 to p 73 line 17.

attempted to explain that he understood "beatings" to be different from a "slap" and a "hit":[261]

> Q: Okay, now [the accused], please explain to His Honour why your position has changed in the course of this trial.
>
> A: Well, pertaining to [V1] and [V2], when we say "beatings", *beatings is more to like really physically hurt the person and intended to really hurt the person.* But in the course of discipline and in the course of me disciplining like for the first one, [V1], when I slapped her hand because she was fiddling around with her mother's washing machine, the family's washing machine and it was an expensive washing machine for us at that time, so I do not want it to---so---so I slapped her hand because she was fiddling with it, that is---to me is not a beating. *A beating is more severe than that.* To me, that is discipline. Same with [V2] when---on that---that night when---it was in front of [PW1], it was---it was--- [PW1] was around when she told me what he did wrong---
>
> …
>
> … I beat [V2] on the shoulder---on the back or shoulder or the arm is more of a discipline, it's not really beat, it's just a---a---a small slap and [PW1] was around. So it was like I don't consider those beatings. So that's why when---when I instructed my counsel is that, *beatings to me is more physical where there's real pain and there's bruises* and there's---those are called "beatings". But for me, what I did on these two occasion to them individually, to me it's called "discipline", I mean---yah. If you were to call that---those are beatings, then---
>
> Q: Now, you see, [the accused], what was put to them is that you did not beat. Okay, so clarify with me if I'm wrong, okay, but what you are saying is that your understanding of "beat" is not the same as a "slap", is that your---is that what you're telling this Court?
>
> A: Because it mentioned "beatings" so---and *a slap is just a slap. And a slap on the hand of the palm would cause nothing at all, not even an injury. Even the pain will just go away a few seconds later.* Whereas a beating, now that is something severe. When you say no, I got beat

[261] Transcript (26 January 2022) at p 73 line 18 to p 74 line 28.

> up, so that means I got beat up something like there would be marks and there would be pain and the pain would be large---much more longer than a few seconds. So if you ask me, counsellor[sic], a beating would be like more severe than just a slap. So that's why I said to my counsel, I said because it was beatings and *I disagree when you say beatings, I beat them, no, I did not, there was no beatings, I don't physically abuse them at all.*
>
> [emphasis added]

194 I find that the accused's explanation that he believed a "beating" to be different from a "slap" or "hit" hurts his credibility. I am inclined to agree with the Prosecution's suggestion that the accused fabricated the explanation on the stand. I shall now point out a few key observations from the accused's evidence on this point which suggest that the accused was not truthful:

(a) The Prosecution pointed out that the accused's assertion that he did not "beat" the Victims, which he understood as a more severe form of physical contact, is internally inconsistent with his earlier evidence that he "beat" V1 with his hands:[262]

> Q: Now this morning, your counsel---your own counsel had asked you how did you beat [V1], and you said "With my hands." Obviously you understood what Mr Wong was asking, isn't it?
>
> A: Because there's no other way to put that as a sentence, Your Honour. And you ask the question, there's no other way to put that.
>
> Q: Now when Mr Wong asked you and you used the word "beat", you could have denied and explained it as you did now, isn't it?
>
> A: I don't understand how this proceeding goes so I just says as it is at---at that time so---

(b) Even after viewing his admission in the First Long Statement that he "hit" V2 with a belt, the accused maintained that he did not

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262 Transcript (26 January 2022) at p 75 lines 2 to 10; PCS at para 69.

consider this action as a "beating". The accused averred that the "hit" was only a "slight" one. I find it odd that the accused could not remember this incident *at all* during his examination-in-chief, but could, a few hours later, recall minutiae detail such as the force with which he hit V2 with the belt. This was also raised by the Prosecution:[263]

> Q: Alright, so if I can just make clear, slapping a child is not beating, that is your position?
>
> A: Slapping on the hand is not called a "beating".
>
> Q: Okay. Using a belt to hit a child is not beating?
>
> A: One slap on the belt---on the back of the hand or on the arm is not called a beating as well.
>
> Q: And you said "slight".
>
> A: Yes, it's slight---
>
> Q: So now you---
>
> A: ---it's not even---it's not even a hard beat.
>
> Q: Ah, I see. *So in the morning you couldn't remember this belt incident but now you can remember it is a slight beating with a belt?*
>
> A: Because I read the---my statement because I couldn't remember this. I could not recall the statement.
>
> Q: No, no, [the accused], you see, you don't even remember this incident in the morning. Now with the statement you remember and you are also telling us you remember it was a slight beating with a belt?
>
> A: Correct, because it's not a beating to me. It's a---
>
> [emphasis added]

263 Transcript (26 January 2022) at p 76 line 18 to p 77 line 4.

With this strained and inconsistent explanation, the accused struggled significantly when he explained how V2 developed a fever after his purported "slight slap" on V2 with a belt:[264]

> Q: So can you explain to me how a slight hit with the belt could cause [V2] to have a fever?
>
> A: That I could not explain at all how he can have a fever just because of the slight hit. But I can---for example, like the one that when [PW1] explained that she scolded him and he can faint just by a scold, so to me it's not---I couldn't---I have no idea how---I mean, for him to get a---a fever is---to me is like okay, like if a scold can make him faint, maybe one---a small hit can occur---for him to have a fever.

(c) When confronted with the inconsistency between his three long statements and his evidence in court, the accused alleged for the first time that he was in pain and shock when he gave his three long statements.[265] This raised further inconsistencies in the accused's evidence and this diminished his credibility (see [209]–[215] below).

195 The above observations (at [186]–[194]) are the inconsistencies which detracted significantly from the accused's credibility. His explanation on what he understood to be a "beating" raised many further inconsistencies, which were irreconcilable with his earlier evidence. In the circumstances, it is reasonable to infer that the accused made up his explanation on what he understood as a "beating" on the stand, in order to defend the notion that he was consistent in his position that he did not severely "beat" the Victims.

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264 Transcript (27 January 2022) at p 15 lines 1 to 8.

265 Transcript (27 January 2022) at p 7 lines 1 to 12, p 9 lines 28 to 30, p 10 line 27 to p 11 line 2, p 14 lines 24 to 27, p 31 lines 9 to 15, p 37 lines 5 to 8, p 38 lines 4 to 7.

196 The chameleonic nature of the accused's evidence on this point of physical abuse is summarised by the Prosecution as follows:[266]

> (a) In his First Long Statement, the accused admitted to only using a belt to hit V2 either on the arm, back or shoulder and denied hitting V1.
>
> (b) The accused subsequently added in his Second Long Statement that he also used a clothes hanger to cane V1 on her palm.
>
> (c) The accused backtracked on his position during cross-examination of the Victims in court and, through his counsel, put to the Victims that he had never beaten either of them.
>
> (d) The accused's position shifted again during his examination-in-chief when he admitted to slapping V1 once on her hand and beating V2 once with a belt.
>
> (e) During cross-examination, the accused further qualified his beating of V2 to be a "slight" slap once with a belt.

It is clear from the above that the accused has vacillated repeatedly in his evidence on this issue.

197 Finally, I also note that the accused was inconsistent in his accounts of who was the main disciplinarian of the Victims. When the accused was asked, "Who was the main person to discipline V2 and V1?" in his Third Long Statement, he answered, "Actually both of us [accused and PW1]".[267] When the

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266 PCS at para 74.

267 Exhibit P15.3 at Q11 and A11.

accused was asked *the same question* during his examination-in-chief, he averred that the Victims' main disciplinarian was PW1.[268]

198 The accused's explanation of the inconsistencies between his testimony in court and his previous statements was completely unconvincing. Accordingly, I find the accused's evidence on his physical abuse of the Victims to be unreliable and inconsistent. Nevertheless, this aspect of the evidence on physical abuse of the Victims is not critical as it is not the subject matter of the charges that are proceeded against the accused. Thus, despite the serious inconsistencies in the accused's evidence on the physical assaults on the Victims I am not prepared to impeach his credit solely on this ground as physical assaults on the Victims are not the subject matters of the proceeded charges.

(2) The accused's account of the sexual acts

199 The accused's accounts of the sexual abuse he inflicted on V1 were also materially inconsistent across his various statements. First, the accused admitted that he licked V1's anus on three separate occasions in his Second Long Statement ("the licking incidents"). This was omitted from his account to Dr Ong when he met her to be psychiatrically evaluated.

The relevant paragraphs of the Second Long Statement are as follows:[269]

> 5. I remember this was few weeks after I first took show[er] [*sic*] with [V1]. I can't tell exactly after how many weeks. On that day, it was in the evening. We showered together in the master bedroom toilet as usual, but this time I asked [V1] to put her knees on the seat of the toilet bowl and bend forward facing the wall. [V1] did as told. She didn't ask me why she had to do this and I also didn't tell her why. When [V1] did so, I touched her buttocks with my hands. Both of us were naked at that time.

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268 Transcript (26 January 2022) p 36 lines 16 to 18.

269 Exhibit P14.1 to P14.2.

> *Then I used my hands to open up her butt cheek and put my face at her anus and used my tongue to lick her anus.* While I was doing so I saw [*sic*] squatting on the floor behind her and masturbated myself. I ejaculated on the toilet floor. As [V1] had finished bathing she left the toilet. She didn't know what was happening as she didn't turn around to see what was happening. She was also too young to know what was happening. I then washed up the floor and I came out of the bathroom. This only occurred only once.
>
> 6. I remember that there was another incident where I licked [V1]'s anus was on the bed. This was after the toilet incident I mentioned. I remember that on that day it was in the afternoon. I cannot recall how long after the 1st toilet incident. On that day, [V1] showered in the master bedroom toilet by herself. Then when she came out of the toilet, I asked [V1] to go on the bed in the master bedroom. [V1] had a towel wrapped on her body. I asked [V1] to lie on the bed in frog style with her knees bent on the matress [*sic*] and she facing down on the mattress. *I then went behind her and licked her anus also masturbated at the same time*. I remember that it was less than a minute and I ejaculated on her back. [V1] got startled a [illegible], I proceed using [*sic*] a tissue to wipe it off. but I didn't tell her what it was. I told her sorry while wiping it off her. I have no idea how old [V1] was at that time.
>
> 7. There was one last incident at the same house in [Property 1], I was lying down on the bed in the master bedroom. I was topless and was with shorts and underwear. I called [V1] into the room and asked her to come on top of me. She did as told. She didn't ask me why. *I think she knew that I was going to lick her anus. I asked [V1] to come forward above my face. Her buttocks was [sic] above my face and I used my hand to open her buttocks and licked her anus. I remember at this time I was not masturbating. I remember licking her anus for a short while and I stopped. She asked me, "dah ke belum". Which means finish or not. I told her ok and she left the room.* I cannot recall what [V1] was wearing or how she removed her shorts. That was my last incident with [V1] and that [*sic*] it.
>
> [emphasis added]

The relevant paragraph of Dr Ong's report is as follows:[270]

> 17. He stated that he did ejaculate onto his ex-girlfriend's daughter in 1999 but denied rubbing his penis against her. He also denied touching her inappropriately or sexually

[270] Exhibit P13.3.

> penetrating her throughout the years. He recalled the event in 1999 where his ex-girlfriend's daughter came out of the shower. He asked her to lie on the bed facing away from him. He then masturbated and ejaculated onto her body. He stated, "I just used her body as a base…I wiped it off and said sorry".

200 On the face of the evidence, it is evident the accused did not disclose any of the licking incidents to Dr Ong when he met her to be psychiatrically evaluated. The accused claimed that he did in fact tell Dr Ong about the licking incidents, but Dr Ong omitted to record them in her report:[271]

> Q: Licking the anus. Do you agree with me this is sexual contact?
>
> A: At that point of time, yes.
>
> Q: Now, when Dr Ong of the IMH came to Court, and I turn you now to the IMH report at PS18. That is at page 264.
>
> A: I'm here.
>
> …
>
> Q: Okay. Now, you also told Dr Ong:
>
> [Reads] "He also denied touching her inappropriately…"
>
> Do you see that?
>
> A: Yes.
>
> Q: *Now, would you agree with me you did not tell Dr Ong about these acts of licking [V1]'s anus, agree?*
>
> A: *I disagree. I did tell Dr Ong.*
>
> …
>
> Q: Now, if you did not deny this to her, I put it to you that Dr Ong would not have written the report in this manner:
>
> [Reads] "He also denied touching her inappropriately…"
>
> That came from you, do you agree?
>
> A: Can you repeat the question again?

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271 Transcript (27 January 2022) p 23 lines 5 to 18, p 27 line 3 to p 28 line 15.

Q: This line "He also denied touching her inappropriately", I put it to you Dr Ong would not have put this in the report unless that came from you.

A: I disagree with that.

…

Q: So let's be clear, okay? You claimed that you also told her about licking the anus, but she only wrote down at paragraph 17 of the IMH report:

[Reads] "He asked her to lie on the bed facing away from him. He then masturbated and ejaculated onto her body. He stated, 'I just used her body as a base…I wiped it off and said 'sorry'."

So you are saying that you told her you actually licked her anus in between but she omitted it?

A: *Yes, that is true.*

Q: Now, [the accused], I put it to you that Dr Ong was complete in recording the sexual acts told by you to her at paragraphs 16 to 20, agree or disagree?

A: Disagree.

Q: I put it to you that there was no reason for Dr Ong to make up the line that you said you denied touching [V1] inappropriately, agree?

A: Disagree.

Q: I put it to you that you did not tell Dr Ong that you licked [V1]'s anus as you say in your police statement, agree or disagree?

A: Disagree.

[emphasis added]

201 The accused also asserted that Dr Ong had made up the line that he denied touching V1 inappropriately:[272]

Q: I put it to you that there was no reason for Dr Ong to make up the line that you said you denied touching [V1] inappropriately, agree?

A: Disagree.

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272 Transcript (27 January 2022) at p 28 lines 10 to 12; PCS at para 77.

202 If indeed the accused had told Dr Ong about the three licking incidents as he described in his Second Long Statement, I find it curious that Dr Ong would still record that the accused "denied touching [V1] inappropriately" or that she would have omitted to mention any of the licking incidents, given that she had recorded the other incidents that the accused had admitted to, namely his masturbation and ejaculation on V1. The level of detail with which he could recollect the three licking incidents also renders any claim that he could not recollect ever licking V1's anus when being evaluated by Dr Ong manifestly untenable. I also find it far-fetched for the accused to assert that Dr Ong made up the line that the accused "denied touching [V1] inappropriately" as this line seems to exonerate the accused from the sexual acts.

203 Second, while the accused admitted to Dr Ong that he had shown V1 nude images ("the nude image incident"), the accused omitted to mention this incident in any of his long statements to ASP Vimala Raj. I reproduce the relevant portion of Dr Ong's report below:[273]

> 18. He reported that prior to that incident in 1999, he had showered with his ex-girlfriend's daughter on three to four occasions as instructed by his ex-girlfriend. He stopped showering with her after the incident as he "felt that it was wrong". He also reported that he showed her nude pictures in the past and asked her to follow suit. When she declined, he commended her and told her never to show her naked body to others. He stated that he used that as a way of educating her what not to do when others asked to see her naked body. He added "it was the wrong way to teach her what is right".

204 In a similar vein, the accused claimed that he told ASP Vimala Raj about the nude image incident but this admission was mistakenly omitted during the statement recording:[274]

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273 Exhibit P13.3.

274 Transcript (27 January 2022) at p 29 line 30 to p 33 line 13.

Q: Now, still on the IMH report. You have reported an incident at paragraph 18 in relation to nude images. That's at page 264.

A: Yes, I'm still here.

…

Q: Now, [the accused], if you turn to your statements and the three statements in fact, at page 45. P14, all the way to page 51, so P14, P15. This incident, or the naked images, is not in P14 and P15?

…

A: Yes, is still is---it's not in---it's not here in the statement.

Q: Alright, so you agree there is a difference, right, between what you told Dr Ong and what's in your statements?

A: There was no difference in what I told Vimala Raj about this statement and Dr Ong. But why it was not in here and why it was pointed out or not even here, I don't---this part, I cannot---I cannot---I cannot explain that.

Q: Alright.

A: But I did tell ASP Vimala Raj of all the things---of everything.

Q: I'm sorry, I don't quite understand your answer.

A: There's no difference when between what I said on my statement and to Dr Ong. So there's---so I don't understand why it was not in my statement here on ASP Vimala Raj interview. *But I know, and for a fact, that I told both of them the same thing.*

Q: Okay, so can I clarify your position. *Your position then is that you did tell ASP Raj at the point of these three statements, that means D2, P14, P15, about the incident at paragraph 18 of the IMH report but it's not recorded down. Is that your position?*

A: *Yes, that is true.*

Q: I see. *But you earlier confirmed that the three statements were accurately recorded from you, isn't it, [the accused]?*

A: *Yes, to my abilities at that time. Yes, correct. It's true.*

Q: And you had the opportunity to read through the statement before you signed, isn't it, all three statements?

A: Yes. I can concur that.

Q: *But according to you now, you told IO Vimala about showing [V1] some naked images but he didn't put it in and you didn't add it in. Is that your position?*

A: Exactly as that because I must have my mind---*I missed that at that point of time while reading back because I was still in shock* as I was concentrating more on the---seriously of the other offence that I explained to him.

Q: Shock and pain is it? Is that your position?

A: Yes, Your Honour.

Q: *So now are you saying not only did Dr Ong not include things? You said IO Vimala also left out the things you said. Is this your position?*

A: I would not put it as such. I—I myself misread on ASP Vimala Raj at that time because, as I said, to my best ability to give the statement *and I was still in shock and---and in pain.*

…

Q: Did you tell IO Vimala about the naked images? Yes or no?

A: Yes, Your Honour.

…

Q: Now---or rather I will put it to you that this is an important part of the evidence that you have left out in the statements. Agree?

A: I disagree.

[emphasis added]

205 When the accused was confronted with his earlier evidence that he had confirmed the statements were accurately recorded from him, the accused claimed he may have misread the statements due to "shock and pain". I elaborate below at [209]–[216] on why I am unable to accept this assertion.

206 I find the accused's claims that he told both Dr Ong and ASP Vimala Raj about the licking incident and the nude image incident respectively and that

they *both* coincidentally omitted to mention these incidents in their respective report/statements patently unconvincing. Further, when Dr Ong and ASP Vimala Raj took the stand, the Defence counsel did not put to either witness that they omitted to record everything the accused told them. This lends support to the suggestion that the accused made up this explanation on the stand. Considering all these inconsistencies and the facts in totality, the accused clearly was not truthful when he was questioned on these sexual incidents regarding V1.

207 As I mentioned above at [180], the accused's admission to the sexual acts in the stood down charges is salient and relevant to the proceeded charges. The accused's defence to the proceeded charges is a bare denial. Therefore, the material inconsistencies present in the accused's account of the sexual acts he committed against the Victims feature substantially in my assessment of whether the accused's credibility has been impeached.

208 Further, the accused also made a few material admissions in his statements which contradicted the Defence's case theory. The accused agreed that sexual acts could take place even if there were other people in the same room.[275] The accused also agreed that the Victims did not need to be alone for him to commit sexual acts against either of them.[276] These admissions undermine the Defence's argument that there was little opportunity for the accused to commit the offences as there were other people staying in the house (see [246] below).

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275 Transcript (27 January 2022) at p 50 lines 2 to 4.

276 Transcript (27 January 2022) at p 50 lines 7 to 9.

(3) The accused's claim that he was in pain and shock when his statements were recorded

209 During the impeachment exercise when the accused was questioned about material omissions in his long statements, his common and persistent explanation was that he was in pain and shock when the statements were recorded. The accused testified that he was suffering from back pain since he had an accident at work sometime in 2014 or 2015. He stated that the pain he experienced when the statements were recorded was, on a scale of one to ten, around seven or eight.[277] Thus, the pain was quite severe if it was true.

210 The accused's claim that he was suffering from back pain at the time his statements were taken was rebutted by the evidence of three witnesses:

(a) Dr Lin, who examined the accused prior to the recording of his First Long Statement, testified that the accused did not complain of back pain during the physical examination.[278] This was contrary to the accused's claim that he had told Dr Lin that "[the nerve pain on his spine] was very painful".[279] Dr Lin further said the accused was ambulant. Dr Lin testified that if the accused required a walking aid at that time, he would have recorded it down. He did not.[280] Dr Lin's report also made clear that the accused did not have any abnormality.[281] On the contrary, Dr Lin's evidence was that the accused was "able to have a meaningful conversation, he's able to obey commands, he was alert,

277 Transcript (28 January 2022) at p 10 lines 3 to 4.

278 Transcript (27 January 2022) at p 83 lines 4 to 8.

279 Transcript (27 January 2022) at p 44 lines 30 to 31.

280 Transcript (27 January 2022) at p 79 lines 1 to 10.

281 Exhibit P26; Transcript (27 January 2022) at p 43 lines 10 to 12.

responsive and *compo*[*s*] *mentis*, [*ie*] of sound mind".[282] Dr Lin also testified in court that the medical centre at the lock-up had a very low threshold to refer patients out to the emergency department. Thus, if the accused did complain of back pain, the accused would have been referred out to the nearest emergency department.[283]

(b) Dr Yak, who examined the accused prior to the recording of his Second Long Statement, observed that the accused was "alert and comfortable" during the examination.[284] Dr Yak prescribed paracetamol to the accused as he complained of having mild pain on the left side of his ribs due to lying down on the hard floor of the lock-up and for the accused's history of "spine problems". However, Dr Yak explained that the accused did not complain of any back pain during the examination. If the accused had informed him of back pain, he would have recorded it.[285]

(c) ASP Vimala Raj also testified that he did not notice anything unusual about the accused during the recording of the statements.[286]

211 Dr Lin's evidence refuted the accused's claim that he was suffering from back pain when he gave his First Long Statement to the police:

(a) First, Dr Lin's report stated that he checked the accused for cauda equina syndrome, *ie*, the compression of spinal nerve roots.

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282 Transcript (27 January 2022) at p 74 lines 18 to 20.

283 Transcript (27 January 2022) at p 76 lines 8 to 27.

284 Transcript (28 January 2022) at p 38 lines 29 to 31.

285 Transcript (28 January 2022) at p 41 lines 3 to 27.

286 Transcript (25 January 2022) at p 85 lines 14 to 17 and p 86 lines 26 to 28.

Dr Lin testified that he did so because the accused had a history of spinal issues, and *not* because the accused complained of back pain at the time of the examination.[287]

(b) Second, Dr Lin explained why paracetamol was prescribed to the accused although Dr Lin claimed that the accused did not complain of back pain to him.[288] Dr Lin testified that the prescription for paracetamol was on a PRN or "*pro re nata*" basis, which means "only when needed, then serve". In other words, he instructed for the paracetamol dose to be placed on standby for the accused.[289] This was done not because the accused complained of any pain, but because Dr Lin was mindful of the accused's history of spine issues:[290]

> Court: No, if the patient says that "I had a slight pain", I can understand when you issue Panadol. If the patient had no complaints of pain whatsoever, why do you have to prescribe the Panadol.
>
> Witness: Well, *he had a spine issue before so, even though he wasn't in pain but if he ever was in pain, then at least he has access to a---a common analgesia.* Your Honour, in fact, I do that for many of the patients that I see on a daily basis… PI [*sic*] just means, Your Honour, on a standby basis. If they need, they can request for it and the nurses will give it to them as compared to if they need the medication or they need Panadol, and we are not around at that time, then they will have to tell the officers…

[emphasis added]

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287 Transcript (27 January 2022) at p 75 lines 11 to 19.

288 Transcript (27 January 2022) at p 83 lines 4 to 8.

289 Transcript (27 January 2022) at p 86 lines 7 to 16.

290 Transcript (27 January 2022) at p 85 line 23 to p 86 line 3.

212 Dr Lin's evidence also corroborated Dr Yak's evidence that Dr Yak prescribed the accused with paracetamol because he *assumed* the accused had chronic back pain due to his old back injury.[291] Accordingly, Dr Yak's evidence also rebutted the accused's claim that he told Dr Yak about his back pain and that he was suffering back pain when he gave his Second Long Statement to the police.[292]

213 Having considered the totality of the evidence on the back pain of the accused, I find that the evidence does not support the accused's assertion that he was in pain and shock when the three long statements were recorded. He was not in pain or shock that made him unable to give his statements to the police. He also did not inform the recorder that he was in dire back pain that made it impossible for him to give a statement. Indeed, his claim of poor recollection is fundamentally incompatible with the level of detail he gave in his Second Long Statement when he described the sexual acts he committed on V1 (see [199] above). Further, nowhere in any of the three long statements did the accused state he was unwell. On the contrary, in his First Long Statement and his Third Long Statement, the accused stated that he was "comfortable" to give his statements. I agree with the Prosecution that on the face of the evidence, it is also clear the accused had the clarity of thought to make multiple minute amendments in all his three long statements.[293]

214 Even if the accused's case is taken at its highest and assuming the accused had back pain on a scale of seven to eight out of ten as he described, the accused must have accepted the pain as part and parcel of his life, given his

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291 Transcript (28 January 2022) at p 41 lines 25 to 31.

292 Transcript (28 January 2022) at p 4 lines 6 to 7.

293 PCS at para 80.

admission that prior to his arrest in 2019, he had lived with the pain for four to five years.[294] Further, the accused testified that he had stopped taking the medication issued to him by the National University Hospital since 2015,[295] and that he was "dealing" with the pain himself.[296] From these facts, it is clear that the accused's back pain, if any, did not trouble him enough to seek help for all those years. The accused's behaviour in not seeking treatment is inconsistent with his claim that the pain he experienced in 2019 was so severe as to affect his recollection of the incidents. Thus, the accused's claim that his back pain affected his recollection of the incidents conflicts with his own evidence on his behaviour and medical history.

215 The evidence strongly suggests that the accused's claim of back pain is an afterthought and was made up by him while on the stand. I further note that during the cross-examination of ASP Vimala Raj, it was not put to ASP Vimala Raj that the accused was suffering from back pain at the time the First Long Statement was recorded. This claim only materialised when the accused took the stand in his defence, after the Prosecution had closed its case and ASP Vimala Raj had testified as a Prosecution witness. At one stage I was concerned whether the accused was obliquely suggesting that his statements given to the police were involuntary when he alleged about his back pain and shock. Eventually, the accused affirmed that his statements were given voluntarily to the police.[297] This averted the necessity to conduct an ancillary hearing to establish the voluntariness of the accused's statements.

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294 Transcript (28 January 2022) at p 26 lines 11 to 15.

295 Transcript (28 January 2022) at p 13 lines 2 to 8.

296 Transcript (28 January 2022) at p 11 lines 23 to 28.

297 Transcript (26 January 2022) at p 54 line 4 to p 59 line 14.

216 Having regard to the circumstances and the evidence before me, I find the accused's evidence on this issue of back pain and shock to be unreliable and incapable of belief.

(4) Conclusion on impeachment

217 Having regard to the evidence and inconsistencies I have noted above, I find that the Prosecution has successfully impeached the accused's credit under s 157(*c*) of the Evidence Act, as his explanations on the inconsistencies between his various accounts on issues relevant to the sexual assaults were simply not credible. I summarise my reasons for this finding below:

(a) First, there were material inconsistencies between the accused's various accounts of the sexual offences he committed against the Victims. These inconsistencies related to the admitted sexual offences, which are relevant and probative evidence of the facts and circumstances of the offences in the proceeded charges. When the accused was given an opportunity to account for the inconsistencies, his explanations raised even more doubt as they were implausible on the facts or incongruent with the evidence of other witnesses.

(b) Second, the accused did not offer a convincing account for the omissions and inconsistencies in his previous statements *vis-à-vis* his in-court testimony and account to Dr Ong. The accused's first assertion that both Dr Ong and ASP Vimala Raj omitted to mention the details of the sexual acts he admitted committing was completely unconvincing. His second assertion that he was in pain and shock at the time the statements were recorded and that this impaired his recollection was (i) contradicted by the evidence of three witnesses, namely Dr Lin, Dr Yak and ASP Vimala Raj, (ii) inconsistent with the level of detail in

the statements, and (iii) irreconcilable with his own evidence. It was also raised belatedly on the second day of his in-court testimony.

(c) Third, the accused came across as a witness who was very cavalier about the truth and accuracy of his in-court testimony, both of which were sacrificed in an attempt to festoon his answers with a cloak of confidence.

218 In conclusion, I find that the accused's credit is impeached. He is an unreliable witness whose testimony in court on his sexual abuse of the Victims simply could not be relied on. The accused's statements given to the relevant persons such as the police and Dr Ong are more truthful than his testimony in court.

219 I reiterate that the impeachment of the accused's credit does not necessarily mean that all his evidence must be disregarded. The court must carefully scrutinise the whole of the evidence to determine which aspect might be true and which should be disregarded (see *Somwang* at [43]). His defence on the proceeded charges regarding the Victims was a bare denial. It does not follow that an automatic consequence of a successful impeachment is the complete rejection of the accused's defence. Having found that the accused's credit is impeached, I have to exercise caution when I evaluate his evidence.

Weighing the Victims' evidence against the accused's evidence

220 Notwithstanding my finding that the accused is an unreliable witness, there is a remarkable consistency between certain aspects of the Victims' evidence and the accused's version in his police statements and account to Dr Ong:

(a) V1 recalled that while at Property 1, the accused placed her naked "lying on the bed facing head down with [her] legs tucked under [her] like the Muslim prayer position".[298] This bears some similarity to the accused's account in his Second Long Statement, where he "asked [V1] to lie on the bed in frog style with her knees bent on the matress [*sic*] and she facing down on the mattress".[299] Both the accused and V1 described the same posture differently. This proves that V1 was telling the truth about the accused's sexual assault on her.

(b) V1 testified that the accused had shown her naked photographs of a young girl and told her to follow the girl's actions. The accused admitted to this act in his cautioned statement (Exhibit P16) and to Dr Ong.[300] This lends a further ring of truth to V1's evidence.

(c) The Victims testified that the accused beat them with clothes hangers, his belt and his hands. The Victims' evidence on this issue corroborated one another. On the whole, the Victims' evidence also matched with the accused's *holistic* evidence on how he beat the Victims. The accused admitted to (i) beating V2 with a belt in his First Long Statement; (ii) slapping V1's hand with his hand in his in-court testimony;[301] and (iii) caning V1's palm with a clothes hanger in his Second Long Statement.[302] While the Victims were both internally and externally consistent in their accounts that the accused had used these

298 PS4 at para 5.

299 Exhibit P14.2 at para 6.

300 Exhibit P13 at para 18.

301 Transcript (26 January 2022) at p 38 lines 6 to 8.

302 Exhibit P14.3 at para 10.

three methods to beat them, the accused was not (see [186]–[189] above).

221 I note the Defence's argument that the accused's admission to the stood down charges do not align or cohere with any of the proceeded charges. Accordingly, it is "irrelevant and prejudicial" to conflate them with the proceeded charges, particularly the third charge.[303]

222 The evidence of the stood down charges are relevant as it is intertwined with the facts and actions of the accused in the proceeded charges. Thus, it is not prejudicial or irrelevant for me to consider the accused's admission to the stood down charges. However, I reiterate that the court must be satisfied that the evidence against the accused on each and every proceeded charge must be proven beyond a reasonable doubt before he can be found guilty on the proceeded charges. In this analysis, I have to assess the Victims' testimonies against that of the accused. This is crucial where "the case turns on one person's word against the other's" (see *XP v Public Prosecutor* [2008] 4 SLR(R) 686 ("*XP*") at [34]). In that regard, I consider both the consistent *and* inconsistent portions of the Victims' and the accused's testimonies.

223 Thus, weighing the *totality* of the Victims' testimonies against that of the accused's, I conclude that the Victims' evidence is unusually convincing to the extent that I "can safely say [the Victims'] account[s] [are] to be unreservedly preferred over that of [the accused's]" (*XP* at [34]).

303 DRS at paras 39 to 40.

Conclusion on the accused's evidence

224 Having considered the totality of the evidence before me, I find the accused's evidence to be like shifting sands, inconsistent and unreliable, making it difficult to believe. Accordingly, the accused has failed to raise a reasonable doubt in the Prosecution's case.

225 In the final analysis, I accept both Victims' accounts of the incidents and the surrounding circumstances. I find that the Victims' evidence of the incidents in the proceeded charges is unusually convincing and safe to accept.

The Defence's arguments

226 In the attempt to cast doubt on the Victims' accounts in relation to the respective charges, the Defence questioned the Victims in great detail on the technicalities and logic of their accounts. I have already dealt with and dismissed these arguments above (at [79]–[81], [84]–[85], [91]–[92], [98], [100] and [123]).

227 I shall now consider the Defence's arguments that seek to raise a reasonable doubt about *both* the Victims' accounts.

The proceeded charges lacked particulars of date and time

228 The form and particulars of a charge are set out in the CPC. Section 124(1) of the CPC provides:

> **Details of time, place and person or thing**
>
> 124.—(1) The charge must contain details of the time and place of the alleged offence and the person (if any) against whom or the thing (if any) in respect of which it was committed, *as are reasonably sufficient to give the accused notice of what the accused is charged with.*

[emphasis added]

229 Thus, in ascertaining whether the proceeded charges are sufficiently particularised in terms of the date and time, the relevant inquiry is whether the time ranges provided in the proceeded charges "are reasonably sufficient to give the accused notice of what the accused is charged with".

230 I find that this test is clearly satisfied in the present case. I disagree with the Defence's submission that the accused has been prejudiced as he has been deprived of the ability to meet the Prosecution's case or put forth substantive defences (for example, by way of alibi or absence from the country or home).[304] As rightly pointed out by the Prosecution, such a defence has been raised before the High Court and rejected.[305] In *Public Prosecutor v DU* [2004] SGHC 238 ("*DU*"), the accused faced the following two charges:

> That you, [name of the Accused]
>
> 1ST CHARGE
>
> sometime between 1998 and 1999, at Block 370 Tampines Street 34 #xx, Singapore, did voluntarily have carnal intercourse against the order of nature with [the alleged Victim's name was stated and I will refer to her as "V"], female/12 years old, to wit, by forcing the said [V] to perform an act of fellatio on you, and you have thereby committed an offence punishable under section 377 of the Penal Code, Chapter 224.
>
> 2ND CHARGE
>
> sometime between 1998 and 1999, at Block 370 Tampines Street 34 #xx, Singapore, did use criminal force on one [V], female/12 years old, intending to outrage her modesty, to wit, by inserting an object into her vagina, and in order to facilitate the commission of the said offence, you voluntarily caused wrongful restraint to the said [V], and you have thereby

304 DCS at para 82.

305 PRS at para 19.

> committed an offence punishable under section 354A(2)(b) of the Penal Code, Chapter 224.
>
> [words in square brackets above in original]

The defence in that case also argued that the charges were vague as they covered a two-year period and had severely compromised the accused who might otherwise have been able to raise an alibi defence. In finding that the two framed charges contained particulars of time and place as were reasonably sufficient to give the accused notice of the matter with which he was charged, the court stated at [21]–[22]:

> 21 While it would be ideal if the time and date of an offence were stated in the charge, there may be occasions where a victim, *especially a young victim*, cannot remember the time and date of the offence. *This will be all the more so if the victim does not mention the incident, whether out of fear or ignorance or some other reason, until much later.*
>
> 22 Although it could be argued that an accused person would be prejudiced if the time and date of the offence were not stated because he might otherwise be able to raise an alibi defence, this argument would still apply even if the charge were to state that the offence was committed, say, in a particular month of a particular year. *Such an argument, if valid, would mean that very few cases of sexual abuse against young victims would ever proceed to trial since young victims may not report sexual abuse immediately and their concept of time may be less reliable…*
>
> [emphasis added]

231 What is "reasonably sufficient" must be seen in context. In this case, the proceeded charges specify a timeframe of 20 months for the charges relating to V1, and one year for the charges relating to V2. In addition, as the court in *DU* recognised, young victims' concept of time may be less reliable. As the Prosecution points out, the Victims in this case were even younger than the victim in *DU*, who was 12 years old at the time of the offences. V1 was between seven and nine years old during the timeframe stated in the first to the third charges, while V2 was 11 years old at the time of the ninth to the eleventh

charges.[306] Given the gravity of the alleged offences, the timeframes provided, taken together with the stated location, *ie*, whether the offence occurred at Property 1 or Property 2, are sufficient to give the accused notice of the offences he has been charged with. In that regard, it is clear from the accused's evidence that he could recall details of the incidents from the location where they occurred. An example of this is in his Second Long Statement:

> 7. There was one last incident *also at the same house in [Property 1],* I was lying down on the bed in the master bedroom. …
>
> 8. With [V2] I remember that I masturbated him twice. *Once in [Property 1] and once in [Property 2].*
>
> …
>
> 10. *There was one more incident at [Property 1] with V1*. I think she did something wrong in the kitchen. …
>
> 11. Then the last incident at [Property 2] occurred on [V2]. I do not know when this happened but I remember that [V2] was in Secondary School. …
>
> [emphasis added]

It is also clear that he could recall the Victims' ages from the specified location:[307]

> Q: And when you stayed at [Property 1], you knew that [V1] was in the lower primary school?
>
> A: Yes.
>
> Q: And [V2] was 2 years older?
>
> A: Yes.
>
> Q: So you knew that?
>
> A: Yes.

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306 PRS at para 21.

307 Transcript (26 January 2022) at p 66 line 30 to p 67 line 4.

Based on the above, I am satisfied that the details in the proceeded charges as to the time and place of the alleged offences are reasonably sufficient to give the accused notice of the offences he has been charged with.

232 Further, the Victims cannot be humanly expected to recall with precision the exact date or even month when the alleged offences occurred, given the unique features of this case as I have repeatedly emphasised (see [71] above). I agree with the Prosecution that the Victims' inability to recollect the time and date of the offences is all the more understandable considering that they did not recount the incidents to anyone until more than a decade later when the police reports were made.[308] It is also for this reason that I respectfully disagree with the Defence's argument that the Victims' accounts are unreliable, on the ground that, *inter alia*, V1 had in her police report dated 13 December 2016, erroneously put the year of the alleged molest as 1997, which was before PW1 met the accused.[309] Given the Victims' young age and the fact that the alleged offences occurred so long ago, I accept that the details provided in the proceeded charges are the most that can be gleaned from the evidence. Considering the circumstances in totality, I find that they are sufficient to give the accused notice of the offences in the proceeded charges.

233 Even if the Defence's case is taken at its highest, *ie*, there were insufficient particulars in the proceeded charges, s 127 of the CPC provides that omissions in the charge shall not be regarded as material unless the accused had been misled by such errors or omissions. It is clear from the accused's testimony that he was aware of the offences with which he was charged. There is no

308 PRS at para 21.

309 DCS at para 81(c).

evidence to suggest that the accused was misled by the allegedly insufficient particulars in the proceeded charges.

The accused's admission to the stood down charges

234 The Defence highlights that two of the stood down charges, namely the seventh charge and the eighth charge, are offences under s 354 of the Penal Code. The first, second, fifth and sixth charges are also offences under s 354 of the Penal Code. The Defence argues that having admitted to the seventh and eighth charges, there is no reason for the accused to not admit to the first, second, fifth and sixth charges if he did commit the offences under s 354 of the Penal Code.[310] Therefore, the Defence submits that the accused's ready admission to the stood down charges bolsters his credibility as a witness.[311]

235 Respectfully, this submission does not raise any reasonable doubt in the Prosecution's case or lead to any conclusions about the accused's credibility. Just because the accused admitted to committing the offences in the stood down charges and denied committing those in the proceeded charges does not necessarily mean he did not commit those he denied. There are many reasons why an accused person may choose to mount his defence in this way, for example, to avoid a higher sentence that would result from being convicted on a higher number of charges or more serious charges. I, therefore, reject this argument.

236 On a procedural point, the Defence also highlights that the Prosecution did not admit as evidence the accused's cautioned statements made in response to the proceeded charges. The Prosecution only included the accused's

310 DCS at para 138.

311 DCS at paras 43 to 44.

cautioned statements made in response to the stood down charges, which the Defence claims are not relevant to the trial.[312]

237 The Prosecution submits that the accused's cautioned statements in response to the proceeded charges were extended to the Defence during the criminal case disclosure conference process.[313] In the interests of transparency, it would have been good practice for the Prosecution to tender the accused's cautioned statements on the proceeded charges as evidence albeit he denied those charges.

238 I disagree with the Defence that the Prosecution's failure to tender the accused's cautioned statements relating to the proceeded charges before the court is of any significant import in the final analysis. In any case, the Defence admitted the accused's cautioned statements on the proceeded charges as evidence.

239 For the above reasons, I reject the Defence's arguments regarding the accused's admission to the stood down charges. I shall elaborate further on how I treat the accused's admission to the stood down charges at [279]–[280] below.

The Victims did not protest or struggle during the incidents

240 The Defence questioned both Victims on why they did not protest or struggle when the accused sexually assaulted them as per their allegations and put to the Victims that it would have been natural for them to do so. The Defence also argues that because the Victims testified that there was no dialogue, protest or struggle during or after the alleged events, the Victims' accounts have a

312 DRS at para 43.

313 Transcript (26 January 2022) at p 13 lines 13 to 14.

"surrealistic quality" and are indicative of their overactive imaginations.[314] I have already considered this argument on the Victims' reactions in relation to the specific charges and dismissed it as unfeasible (see [81], [85] and [130] above).

241 I wish to highlight and reiterate that there is no archetypal or standard reaction to sexual assault. Attempts to conventionalise the behaviour of sexual assault victims as the Defence seeks to do have been roundly rejected by the Court of Appeal, for instance in *Yue Roger Jr v Public Prosecutor* [2019] 1 SLR 829 ("*Yue Roger Jr CA*") at [3]:

> The trial judge accepted the victim's explanation for her behaviour, and he was sensitive to the fact that people react in different ways to sexual abuse, including compartmentalising or rationalising their reactions. The trial judge was also particularly sensitive to the fact that a child may react very differently from an adult. We agree with the trial judge's assessment.

242 The Court of Appeal in *BLV v Public Prosecutor* [2019] 2 SLR 726 at [57] also affirmed the trial judge's findings that the court should not expect there to be "an archetypal victim of sexual abuse, or … any standard as to how a victim of sexual abuse should or should not have aspects of his or her life visibly affected by the abuse". The Court of Appeal also highlighted the Child Guidance Clinic psychiatrist's evidence that "many sexual assault victims presented a calm demeanour as part of a defence mechanism to distance themselves from the trauma of the abuse", which fittingly describes the Victims in this case.

243 The above pronouncements by the Court of Appeal are particularly relevant to the facts of this case, which concern the sexual exploitation of two

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314 DCS at paras 30, 108, 127, 130 and 131.

very young victims by a parental figure in a position of power over them. The Victims' evidence on their seeming acquiescence is strengthened by the following:

(a) The Victims' evidence that they did not struggle or protest is consistent with their own accounts of the various incidents:

(i) V1's testimony on her response was consistent across all her evidence regarding the incidents in the first, second and fifth charges (see [81], [85] and [98] above); and

(ii) V2's testimony that he did not struggle or protest during the incidents giving rise to the ninth, tenth and eleventh charges is consistent with his testimony that he was afraid of the accused when they lived together (see [130] above). V2 also said he did not wish to sour the relationship between PW1 and the accused.

(b) Following from the above, the Victims' evidence that they did not struggle or protest is consistent with each other's evidence that they were afraid of the accused.

244 Further, I find that the Victims' seeming acquiescence to the sexual assaults is consistent with the Prosecution's argument that the Victims were conditioned to the accused's sexual abuse.[315] This argument is corroborated by the accused's own account of the sexual acts which he admitted to have inflicted on V1:

315 Transcript (27 January 2022) at p 49 lines 14 to 16.

(a) V1 *complied* with the accused's requests for her to (i) kneel on the toilet bowl seat and bend forward; (ii) lie on the bed in a frog style position; and (iii) climb on top of him.[316]

(b) V1 asked the accused if he had finished after he licked her anus for a while.[317]

245 Therefore, with respect, I find that the Defence's suggestions that the Victims did not resist or protest against the accused's sexual assaults did not raise a reasonable doubt about the veracity or credibility of the Victims' evidence. Rather, from the Victims' evidence, their seeming acquiescence allowed the accused to commit the sexual offences in the proceeded charges discretely and insidiously without any detection over a long period of time.

The accused had little opportunity to commit the offences

246 The Defence sought to cast doubt on the Prosecution's case by arguing that the accused had little opportunity to commit the offences in the proceeded charges, as there were other people staying with him and the Victims at the material times. The Defence also avers that if the Victims' claim that the accused beat them or sexually assaulted them were true, the tenants living together with them in their small flat at Property 1 would have been aware of it.[318]

247 I wish to state that even if there were other people staying with the accused and the Victims in Property 1 and Property 2, these people stayed in *a*

316 Exhibit P14.1-P14.2 at paras 5 to 7.

317 Exhibit P14.2 at para 7.

318 Transcript (21 January 2022) at p 32 lines 15 to 19; Transcript (19 January 2022) at p 32 lines 21 to 25.

different bedroom. At Property 1, when S and VL stayed there during different periods, they occupied the Victims' room and the Victims slept on the floor in the same room as the accused and PW1.[319] At Property 2, L occupied V2's bedroom and V2 slept in V1's bedroom.[320] Moreover, these people did not stay throughout the entire period either at Property 1 or Property 2 when the accused was there. Further, the Defence's submission is incompatible with the accused's own admissions that (a) sexual acts could take place with other people in the same room;[321] and (b) the Victims did not need to be alone for him to commit sexual acts against either of them[322] (see [208] above). Thus, the accused had ample opportunity to commit the offences, notwithstanding that there were other people staying with them at different times in the same house. I, therefore, reject this argument.

The Victims' long period of non-disclosure

248 I shall now deal with the issue that the Victims did not tell anyone about the abuse for more than ten years. This is forcefully argued and repeatedly raised by the Defence at the trial.

249 The Defence submits that the Victims had ample opportunity to disclose the abuse to members of their extended family, friends or teachers at school, or other trusted adults, based on the following:

319 Transcript (14 January 2022) at p 7 lines 8 to 14, p 13 lines 9 to 11.

320 Transcript (14 January 2022) at p 22 lines 28 to 31.

321 Transcript (27 January 2022) at p 50 lines 2 to 4.

322 Transcript (27 January 2022) at p 50 lines 7 to 9.

(a) PW1, as the Victims' mother, should have been the first person to notice something was amiss. Her failure to notice anything is indicative that the offences in the proceeded charges did not occur.[323]

(b) Since both the Victims knew they were physically abused, there was no reason for the Victims not to share with each other that they were also being sexually abused.[324]

(c) The Defence relies on the fact that there were other adult tenants staying with the family at Property 1 (see [8] above). Thus, these tenants would have detected signs of the physical or sexual abuse given the small size of Property 1.[325]

(d) The Defence points to the period of time after the Victims moved out of Property 1 and before they moved into Property 2. During this short period, the Victims and PW1 lived with their uncle, aunt and two cousins with whom they were close at a Thomson Road flat.[326] The accused was not staying with them. The Defence contends that there was no reason for the Victims to remain silent then since the alleged sexual abuse had already started and the accused was not staying with them.[327]

(e) Similarly, the Defence argues that L's children, who stayed with the family at Property 2 and were about the same age, would have interacted with the Victims and noticed something was amiss.[328]

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323 DCS at para 84(a).

324 DCS at para 84(b).

325 DRS at para 26(ii); Transcript (19 January 2022) at p 32 lines 23 to 26.

326 Transcript (21 January 2022) at p 42 lines 4 to 22.

327 DCS at para 84(d).

328 DCS at para 84(c).

(f) The Defence also points to the Victims' admissions that some of the physical abuse inflicted on them by the accused was visible. The Defence argues that accordingly, the Victims' classmates or teachers would have asked them about the abuse and the Victims would have disclosed to them the accused's physical and sexual abuse.[329]

(g) The Victims attended at least three different schools in the six years from 2000 to 2006 when the accused lived with them. It follows that they would have different sets of teachers, classmates and friends at each of these schools.[330] This increases the chance of others detecting the accused's abuse and raises more opportunities for the Victims to report his abuse to another person.

(h) The Victims were not socially isolated on the familial front as they had considerable social contact with their extended family during large family gatherings.[331] The members of their extended family the Victims would go with on these trips include, *inter alia,* PW6 and their paternal grandmother (PW1's former mother-in-law).

The Defence submits that from the above, it is clear that the Victims had social and emotional support.[332] The fact that the Victims never mentioned the abuse to any of the aforementioned persons, notwithstanding that they had ample opportunity to do so, constitutes evidence that their allegations are untrue.

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329 Transcript (19 January 2022) at p 22 line 2 to p 24 line 5; Transcript (21 January 2022) at p 88 lines 1 to 17.

330 DCS at para 84(h).

331 DCS at para 84(e); DRS at para 26(i).

332 DRS at paras 25-26.

250 The Defence also submits that the fear the Victims had of the accused "was surely removed at latest, in 2006 when [the accused] exited from their lives" and that accordingly, one would reasonably expect them to tell PW1 how they had suffered from the accused's physical and sexual abuse.[333]

251 Regarding V1, the Defence further relies on an occasion when V1 ran away from school to find PW6. At that time, V1 was in Primary 5.[334] However, V1 did not raise any complaint then that she was sexually abused by the accused.[335] The Defence submits that the incident shows that V1 was capable of asserting herself[336] and if V1 had been sexually abused by the accused, she would have told PW6 about the abuse.[337] PW6 did not hear anything about the abuse from V1 and only heard that the accused had beaten the Victims from her niece, who has since passed away.[338] V1 was also close to her cousins[339] and attended counselling sessions during her polytechnic studies.[340] She did not tell her cousins or the counsellor about the accused's sexual abuse.[341]

252 Regarding V2, the Defence further relies on one occasion in May 2000 when V2 fainted at home to argue that V2 had ample opportunity to disclose the accused's sexual abuse. On this occasion, PW1 brought V2 to seek medical

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333 DCS at para 79.

334 Transcript (14 January 2022) at p 29 lines 5 to 7.

335 Transcript (14 January 2022) at p 31 line 9 to p 32 line 3.

336 DRS at para 26(vi).

337 DCS at para 84(f).

338 Transcript (25 January 2022) at p 69 line 30 to p 70 line 9.

339 Transcript (19 January 2022) at p 17 line 4 to p 18 line 15.

340 Transcript (18 January 2022) at p 49 lines 3 to 21.

341 Transcript (18 January 2022) at p 52 lines 12 to 17; Transcript (19 January 2022) at p 18 lines 13 to 15.

attention at TTSH.[342] The Defence suggests that PW1 and the doctors at TTSH who attended to V2 would have asked V2 why he fainted, to which it would have been natural for V2 to disclose the accused's physical and sexual abuse.[343] The Defence also argues that because some of the occasions when V2 fainted occurred in school, V2 would have had an opportunity to disclose the accused's physical and sexual abuse to his teachers, principal and PW1.[344]

253 In *Public Prosecutor v Yue Roger Jr* [2019] 3 SLR 749 ("*Yue Roger Jr HC*") at [30], the High Court held that:

> … there is no general rule requiring victims of sexual offences to report the offences immediately or in a timely fashion. Instead, the explanation for any such delay in reporting is to be considered and assessed by the court on a case-by-case basis …

This was upheld by the Court of Appeal in *Yue Roger Jr CA* at [3].

254 Similarly, in *BLV*, which also concerned a sexual assault case where the victim's evidence was assessed to be "unusually convincing", Aedit Abdullah J stated at [111]:

> Indeed, as a general proposition, in respect of sexual offences, *a mere delay in disclosure or reporting of the assault should not ordinarily be held against the victim… as evidence of a lack of credibility in the victim's account*. In the nature of things, *a multitude of reasons may influence one's decision as to whether and when to make such a report*. It may make for a more compelling case theory if reasons were given for the delay, but *the court should be slow to adjudge these reasons according to its own notion of how a reasonable victim should have reacted: reasonableness in this particular instance is inevitably personalised and contextual …*
>
> [emphasis added]

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342 Exhibit P9.1 to P9.2.

343 Transcript (21 January 2022) at p 52 line 17 to p 56 line 25.

344 Transcript (21 January 2022) at p 45 line 28 to p 46 line 19.

255 The fact that the Victims were very young when the alleged offences were committed is also crucial. In *Public Prosecutor v Mohd Ariffan bin Mohd Hassan* [2019] 2 SLR 490 ("*Mohd Ariffan*") the Court of Appeal stated at [65]–[67]:

> 65 … *a victim of sexual assault, especially a youthful one assaulted in a familial context, may not report the offence in a timely manner as there are empirically-supported psychological reasons for delayed reporting*, including feelings of shame and fear. With respect, we must reject the Judge's suggestion (see [40]–[41] of the GD) that with the passage of time, a victim would have recovered from distress or embarrassment and would have no difficulty in disclosing the offences and recounting the abuse that he or she was subjected to.
>
> 66 Therefore, *that there is a delay in reporting by a complainant is not, on its own, reason to disbelieve the complainant and his or her allegations against an accused person*. In this regard, we affirm the legal principles set out in past cases on how delay in reporting by a complainant should be treated by a court. These principles, in our view, give due regard to the likely thought-processes and behaviour of sexual assault victims as highlighted above.
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> 67 In *DT v PP* [2001] 2 SLR(R) 583, the High Court stated (at [62]) that there is no general rule requiring victims of sexual offences to report the offences to the police immediately. The court explained that, instead, the explanations proffered by the complainant for his or her delay in reporting the offences to the police are to be considered by the court in determining the impact of the delay, if any, on the credibility of the complainant. We would add that *the requirement of examining the reasons proffered by the complainant applies not only to the complainant's delay in reporting the offences to the police, but also to any delay in disclosing the assault to anyone else, such as to his or her family members.*
>
> [emphasis added]

256 These observations were echoed by the High Court in *Yue Roger Jr HC* at [32]:

> … A child or juvenile complainant may not be expected to complain if he or she feels vulnerable, or is otherwise focused on matters other than protecting his or her modesty. A child or juvenile is by definition immature, and should not, in the

> absence of evidence showing otherwise, be held to the measure of an adult. The thought processes and concerns of a child or juvenile may also continue to evolve and permutate as he or she matures, such that it may be some time before he or she is in a position to complain.

257 Having regard to all of the above, I am unable to agree with the Defence's submissions. The fact that the Victims did not report the abuse for more than ten years should not be held against them in these circumstances. The Victims gave reasonable, plausible and internally consistent explanations for their silence (see [101]–[110] and [135] above). Both Victims also testified that they were afraid and felt unsafe to speak up. In V2's case, V2 testified that he was afraid he would get "scolded or beaten up".[345] V2's reasons also echoed V1's, as V2 similarly did not feel safe sharing his account with others.[346] V2 also explained that he did not communicate well with V1[347] as they would only discuss their positive life experiences with each other.[348] These explanations cogently rebut the Defence's arguments (at [248]–[252] above).

258 The issue is not whether the Victims had the opportunities to expose the accused's sexual assaults. There were numerous occasions for the Victims to do so but they had explained why they kept the accused's sexual assaults on them to themselves. In other words, the Victims had no intention and were unwilling to dwell into the shameful and embarrassing dark childhood until 12 December 2016.

259 The accused's admission to the sexual acts in the fourth, seventh and eighth charges also support my finding. The fact that the Victims stayed silent

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345 Transcript (20 January 2022) at p 70 lines 24 to 25.

346 Transcript (20 January 2022) at p 71 lines 29 to 31 and p 72 lines 1 to 7.

347 Transcript (20 January 2022) at p 72 lines 21 to 26.

348 Transcript (20 January 2022) at p 72 lines 30 to 31.

about the incidents alleged in the fourth, seventh and eighth charges, taken together with their continued silence on the incidents alleged in the proceeded charges, renders their respective explanations that they were afraid of the accused[349] believable and consistent. This argument on the Victims' long silence would have been more cogent if the accused denied all sexual acts done on the Victims. This is, however, not the situation in the present case.

260 Considering the circumstances and the Victims' stated reasons, namely their very tender young ages at the time of the incidents and that they were afraid and had no one to turn to, their non-disclosure, taken in context, is reasonable and believable. The Victims' non-disclosure cannot be distilled down to one singular reason. As I have noted previously at [101] and [257] above, the non-disclosure of the Victims was due to a complex mix of not solely fear, but also shame and discomfiture of the sexual acts that were done to them by the accused. This is also supported by the Victims' own testimony that they felt ashamed by the incidents. When the Victims were young, they did not fully appreciate the accused's sexual acts on them. V2 said he initially did not find it "weird" that the accused touched his penis as he "thought this was what fathers and sons did."[350] When the Victims became adults, they did not wish to relive the shameful and embarrassing sexual assaults. Moreover, the accused no longer lived with them and was out of their lives. They were prepared to bury the past until 12 December 2016 when V2 briefly informed PW1 of the sexual assaults and she insisted that the Victims report to the police. Otherwise, the accused's wrongdoings would have continued to be hidden. I, therefore, find that the

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349 Transcript (19 January 2022) at p 19 lines 30 to 31; Transcript (21 January 2022) at p 60 lines 15 to 16.

350 PS5 at para 5, AB at p 12.

Victims' decades-long silence does not raise a reasonable doubt as to the truth of their allegations or otherwise undermine the Prosecution's case.

The Victims' testimonies were uncorroborated

261 The Defence highlights the various *potential* witnesses at [249] above to argue that the Victims' testimonies were uncorroborated by "contemporaneous, independent third party witnesses".[351] The Defence submits that corroboration is a "matter of prudence" and that "the absence of corroboration makes the victim's account less likely to be believed" [emphasis in original omitted].[352] Thus, the Defence submits that "corroboration is a rule of prudence".[353] The Defence relies on, *inter alia*, *Tang Kin Seng v Public Prosecutor* [1996] 3 SLR(R) 444 ("*Tang Kin Seng*") for this proposition, where Yong Pung How CJ stated at [79] that "[t]he evidential value of a previous complaint is that the failure to make one renders the victim's evidence *less* credible" [emphasis in original].[354] Thus, the Defence argues that given the Victims' failure to make a previous complaint and the absence of corroboration in the Victims' evidence, the Victims' evidence is less credible and it would be prudent to ascribe less weight to it.

262 I respectfully disagree with the Defence's understanding of *Tang Kin Seng* that it stands for a rule of prudence and I agree with the Prosecution that the above statement by Yong CJ in *Tang Kin Seng* at [79] must be seen in context.

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351 DCS at para 84.

352 DCS at paras 85 to 86.

353 DCS at para 90.

354 DCS at paras 86 to 90.

263 First, Yong CJ in *Tang Kin Seng* at [43] and [44] distinguished the foreign authorities laying down a rule of prudence for sexual assault offences:

> 43 In Singapore, there is no jury trial. *There is no legal requirement that a judge must warn himself expressly of the danger of convicting on the uncorroborated evidence of a complainant in a case involving sexual offences*. There is, however, authority to the effect that it is dangerous to convict on the words of the complainant alone unless her evidence is unusually compelling. There is therefore no reason for the courts here to be bogged down by legal technicalities as to whether or not there is corroboration and what is or is not, legally speaking, corroboration.
>
> 44 In my view, the right approach is to analyse the evidence for the Prosecution and for the Defence, and decide whether the complainant's evidence is so reliable that a conviction based solely on it is not unsafe. If it is not, it is necessary to identify which aspect of it is not so convincing and for which supporting evidence is required or desired. In assessing the supporting evidence, the question then is whether this supporting evidence makes up for the weakness in the complainant's evidence. All these would, of course, have to be done in the light of all the circumstances of each case and all the evidence, including the defence evidence, as well as accumulated knowledge of human behaviour and common sense.
>
> [emphasis added]

From the above, it is clear that in Singapore, corroborative evidence becomes relevant where the victim's evidence alone is not "unusually compelling".

264 Second, V K Rajah J (as he then was) in *Chng Yew Chin v Public Prosecutor* [2006] 4 SLR(R) 124 rejected a narrow reading of *Tang Kin Seng* and affirmed the need to consider the victim's explanation for her actions (at [38]):

> Next, counsel for the appellant then proceeded to raise what can only be described as a red herring: If the complainant had been molested, why then did she not complain to the neighbour who, coincidentally, was also from the same village in Indonesia as she was? Here, I accept the general proposition in *Tang Kin Seng v PP* [1996] 3 SLR(R) 444 at [79] that:

> The evidential value of a prompt complaint often lay not in the fact that making it renders the victim's testimony more credible. The evidential value of a previous complaint is that the failure to make one renders the victim's evidence *less* credible. … [emphasis in original]

However, in that very same paragraph, the learned Yong Pung How CJ also cautioned in the following terms:

> [A]s in all cases where common human experience is used as a yardstick, *there may be very good reasons why the victim's actions depart from it*. It would then be an error not to have regard to the explanation proffered. *All these merely illustrate the fallacy of adhering to a fixed formula*. [emphasis added]

In the present appeal, the evidence is clear that the reason the complainant did not confide in Lina was because, as Lina herself testified, they were not very close. In my view, ***a victim of molest ought not to be penalised or her credibility prejudiced merely because shame, discomfort or fear has prevented her from telling her story immediately or soon thereafter***. Any reason that impedes such disclosure will always be a question of fact that can be explained or clarified plausibly by the temperament and/or character of a complainant. ***To suggest, as a general proposition, that a victim of molest must immediately report her situation even if it is to a mere acquaintance, is totally unrealistic and reflects a patent lack of appreciation for the plight and dilemma of victims of sexual abuse. In fact, such a submission by counsel has unsheathed a sword that could cut both ways.*** It might also be contended quite plausibly on the other hand that if the complainant was indeed bent on ensuring that the allegations she had fabricated would stick, she *would* have told Lina about the incidents so as to establish a prior and consistent pattern of molestation by the appellant.

[emphasis in original in italics; emphasis added in bold italics]

I agree with the Prosecution's submission that "[v]iewed in context, the Court in *Tang Kin Seng* did not establish any general rule that 'the absence of corroboration makes the victim's account less likely to be believed'. The Court instead pointed out that it would be *an error* to not have regard to explanations

given for any delay, and eschewed the adherence to a fixed formula." [emphasis in original][355]

265 I have already considered at [253]–[260] above that the Victims furnished cogent explanations for their omission to reveal the accused's sexual abuse to anyone. This sufficiently disposes of the Defence's argument that the Victims' credibility is diminished purely on the grounds that their testimonies are uncorroborated. To accept the Defence's argument would be to ignore the reality that many sexual offences are committed in circumstances in which corroboration is difficult if not impossible to obtain (*GCK* at [95]). The sole question is whether the Victims' evidence met the "unusually convincing" threshold so as to sustain the conviction (*GDC* at [12] and [14]). I found at [115] and [144] that both Victims' evidence meets the "unusually convincing" threshold. I, therefore, find that the Defence's argument on the absence of corroboration does not raise a reasonable doubt about the credibility of the Victims.

The Victims had false memories

266 At various points during the trial, the Defence put to the Victims that the Victims imagined or had false memories of the incidents in the proceeded charges. The Prosecution emphasised four key points to show that this "false memory" defence is an afterthought. First, this "false memory" defence was not mentioned in any of the accused's police statements.[356] Second, the accused did not mention to any of his previous solicitors who prepared his Case for the Defence that the Victims had false memories.[357] Third, as the Prosecution rightly

355 PRS at para 9.

356 Transcript (27 January 2022) at p 54 lines 8 to 11; PCS at para 56.

357 Transcript (27 January 2022) at p 55 lines 14 to 17.

points out, the Defence made no attempt to develop the "false memory" defence as it did not adduce any expert medical or psychiatric evidence on the concept of false memories or how it applied in the present case.[358] Fourth, the accused conceded that the first time this defence was raised was during the trial.[359] Finally, the "false memory" defence must fail as the accused admitted to having committed some of the less egregious acts on the Victims.[360]

267 Respectfully, the accused's "false memory" defence is untenable. The accused's admission to committing some of the sexual acts means that if this defence should hold *any* water, the Victims would have, at best, *selective* false memories. Further, the Defence did not adduce any evidence in support of its bare assertion that the Victims had false memories. I have also pointed out the similarities in the Victims' and accused's evidence on some of the sexual acts (at [220] above). It is disconcerting that there would be such an uncanny alignment in their evidence if the Victims did indeed have false memories.

268 For the above reasons, I dismiss the Defence's argument that the Victims had false memories of the incidents in the proceeded charges.

The Victims orchestrated the allegations

269 I turn to the Defence's submission that the Victims orchestrated the allegations. In support of this submission, the Defence points to the evidence of the Victims that they would not have made the police reports if it had not been for PW1's insistence.[361] The Defence argues that the Victims fabricated the

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358 PCS at para 56.

359 Transcript (27 January 2022) at p 53 lines 15 to 20; PCS at para 56.

360 Transcript (27 January 2022) at p 56 lines 18 to 20.

361 Transcript (18 January 2022) at p 44 lines 7 to 18; Transcript (21 January 2022) at p 94 line 27 to p 95 line 4.

allegations in the proceeded charges against the accused as they felt they had no choice but to comply with PW1's insistence. The Defence also asserts that the Victims were children when the offences occurred. Taken together with the fact that the complaints were first raised more than a decade after the offences, there is a risk that the Victims had concocted their accounts.[362]

270 In *GCK*, the Court of Appeal held at [102] that in so far as a motive for a false allegation is raised, it is for the Defence to first establish sufficient evidence of such a motive, specific to the witness concerned. General assertions would not ordinarily suffice.

271 Beyond a brief allusion that the Victims were exaggerating their accounts to get PW1's attention,[363] the Defence fails to show that the Victims or PW1 had the motive to falsely implicate the accused. On the contrary, I find that the Defence's argument is decisively rebutted by the evidence and behaviour of the Victims. The Victims' hesitance in making the police reports constitutes evidence that they were prepared to bury the past and bore no grudge against the accused. The Victims were not seeking vengeance against the accused for taking advantage of them when they were young and vulnerable. The accused, who in the eyes of the Victims was their father, had violated their innocence and destroyed their temple of virginity by his sexual assaults. Despite the horrible acts done to them, the Victims were prepared to let bygones be bygones. The Victims' evidence is not a fabrication or an embellishment as the accused has admitted to some of the less serious sexual assaults.

362 DCS at para 90.

363 Transcript (13 January 2022) at p 131 line 1 to p 132 line 12.

272 My findings in the preceding paragraph are supported by the objective circumstances under which the police reports were made in 2016. I reiterate that the Victims' accounts made under the rushed circumstances surrounding the reports of the incidents are consistent with PW1's evidence (see [151] above).

273 For clarity, I lay out the relevant sequence of events. V2 messaged PW1 that "Didi [the accused] used to rape us" on 12 December 2016 at 6.40pm[364] (see [15] above). V2 admitted he had assumed that the accused "raped" V1 in addition to him, although V1's blog did not state so explicitly.[365] PW1 testified that when she saw V2's message, she was shocked and broke down.[366] At that point in time, V2 was not yet home. PW1 begged V1 to come out of her room to talk, but V1 did not want to and left the house. When V2 arrived home, he too did not want to disclose anything further. Thus, PW1 decided to report the matter to the police.[367] PW1 and V2 then went to the police station to make a police report *that same night*, without any prior discussion on the alleged incidents.[368] V1 was then asked to go to the police station as well. V1's police report was lodged on 13 December 2016 at 1.45am;[369] V2's police report was lodged on 13 December 2016 at 1.49am.[370] Therefore, PW1's account of the rushed circumstances and the Victims' evidence disclosed to the police under these circumstances dispel any allegation of fabrication or collusion.

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364 Exhibit P5.39, AB at p 151.

365 Transcript (21 January 2022) at p 94 lines 19 to 22.

366 Transcript (13 January 2022) at p 70 line 23.

367 Transcript (13 January 2022) at p 70 line 6 to p 71 line 24.

368 Transcript (21 January 2022) at p 5 lines 4 to 16.

369 Exhibit P1.

370 Exhibit P2.

274 Despite the rushed circumstances under which the police reports were made, the allegations reported then in 2016 to the duty specialist investigation officer are *identical* to that in the Victims' eventual conditioned statements taken in 2021, namely "slight but not full penetration of [V1]'s vagina by the accused's penis, and fellatio, penile-anal penetration of the accused by [V2] and attempted anal-penile penetration of [V2] by the accused".[371] Thus, the Victims' evidence as recounted to the duty specialist investigation officer back in 2016 remains consistent across the course of more than five years. This includes their conditioned statements taken in 2021 and their in-court testimony in 2022. Bearing in mind the circumstances under which the police reports were made and having regard to the enduring consistency of their evidence over the years, I find that there was no opportunity for the Victims to confer or fabricate their evidence in order to falsely orchestrate a case against the accused.

The accused was a father figure to the Victims

275 Finally, I turn to the Defence's submission that the accused was a father figure to the Victims and could not have committed the alleged abuse. During the trial, the Defence sought to give weight to this theory by adducing evidence that the Victims and the accused had a warm relationship and had many happy memories together, such as family get-togethers and overseas trips.[372] The Defence also sought to characterise the accused as a pillar of support for the Victims, asserting that the accused supported V2's football aspirations when PW1 refused to do so.[373] The accused further added that he retrieved the

371 PS3 at para 5.

372 Transcript (21 January 2022) at p 89 line 26 to p 90 line 3.

373 Transcript (21 January 2022) at p 90 lines 14 to 22.

Victims' PlayStation game controllers for the Victims when PW1 confiscated them.[374]

276 The Prosecution does not dispute that the accused was a father figure to the Victims. However, the Prosecution argues that the accused abused the trust the Victims had in him as their father figure when he committed sexual offences against them.[375]

277 I am unable to agree with the Defence's submission as it presents a false dichotomy. *Even if* the accused saw the Victims as his own children, that did not mean he was incapable of committing sexual acts against them. This proposition also formed the basis for V2's testimony when V2 stated that the fact the accused was his father figure did not detract from the error of the accused's ways (see [133] above). The presence of a parent-child relationship does not *ipso facto* raise a reasonable doubt about the occurrence of sexual abuse. It does, however, render the commission of sexual assault founded upon an abuse of trust more reprehensible and tragic.

Conclusion on the Defence's arguments

278 For the above reasons, I dismiss the Defence's arguments, and find that the Defence has failed to raise a reasonable doubt as to the Victims' credibility or to the veracity of their evidence.

The evidence on the proceeded charges

279 It is clear from the above that I have considered the evidence on the stood down charges when I evaluate the evidence against the accused on the

374 Transcript (21 January 2022) at p 89 lines 10 to 25.

375 Transcript (27 January 2022) at p 58 lines 2 to 4.

proceeded charges as it is relevant. The parties have also agreed to include the sexual acts of the accused on the stood down charges in the Agreed Statement of Facts for my consideration. Nevertheless, I wish to reiterate and strongly emphasise that the accused's admission on the evidence of the stood down charges cannot be the basis to convict him on the proceeded charges. The evidence of each proceeded charge must be considered separately and each must be proven beyond a reasonable doubt.

280 I am satisfied that the Prosecution has proven the case beyond a reasonable doubt even on the evidence that is strictly relating to the proceeded charges. The case against the accused on the proceeded charges is based primarily on the evidence of the Victims. In this regard, I have reiterated that the Victims are truthful and their evidence is unusually convincing. From the Victims' accounts, I am satisfied that the *actus reus* and *mens rea* of all the sexual offences in the proceeded charges are proven beyond a reasonable doubt:

(a) Regarding the offences in the first, second, fifth, sixth and eleventh charges, I am satisfied from the Victims' accounts of the incidents that the accused intended to outrage the Victims' modesty.

(b) Regarding the offences in the third, ninth and tenth charges, I am satisfied from the Victims' accounts of the incidents that the accused intended to penetrate the Victims while knowing they were below 12 years old and unable to give consent.

Conclusion

281 In conclusion, I find that the evidence of both the Victims is unusually convincing and it constitutes proof beyond a reasonable doubt that the accused committed the offences as charged. Their accounts of the offences and material

facts were sufficiently detailed, coherent, and largely consistent with no serious discrepancy.

282 The accused's sieve-like evidence, on the other hand, was inconsistent and unreliable. The defences he raised were also contrived. Accordingly, the Defence has failed to raise a reasonable doubt in the Prosecution's case.

283 For all the foregoing reasons, I find the accused guilty and convict him on all eight proceeded charges. I shall now hear the parties' submissions on the appropriate sentences for the proceeded charges against the accused.

Tan Siong Thye
Judge of the High Court

Gail Wong, Joshua Lim and Lim Ying Min (Attorney-General's Chambers) for the Prosecution;
Wong Siew Hong (Eldan Law LLP) and Josephine Iezu Costan (David Nayar and Associates) for the Defence.