IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2019] SGCA 47

Criminal Appeal No 19 of 2017

Between

Public Prosecutor

… *Appellant*

And

Mohd Ariffan bin Mohd Hassan

… *Respondent*

In the matter of Criminal Case No 33 of 2016

Between

Public Prosecutor

And

Mohd Ariffan bin Mohd Hassan

JUDGMENT

[Criminal Law] — [Offences] — [Rape]
[Criminal Law] — [Offences] — [Sexual penetration]
[Evidence] — [Witnesses] — [Corroboration]

Public Prosecutor
v
Mohd Ariffan bin Mohd Hassan

[2019] SGCA 47

Court of Appeal — Criminal Appeal No 19 of 2017
Sundaresh Menon CJ, Andrew Phang Boon Leong JA and Judith Prakash JA
23, 25 January 2019

8 August 2019 Judgment reserved.

Judith Prakash JA (delivering the judgment of the court):

Introduction

1 This is an appeal by the Prosecution against the decision of a High Court judge ("the Judge") to acquit the respondent of two counts of sexual assault by penetration, two counts of rape and one count of aggravated outrage of modesty allegedly committed between 2009 and 2011. The respondent was in a relationship with the complainant's mother at the material time. Three of the offences allegedly took place in a prime mover parked in a forested area, belonging to the respondent's employer. The other two offences allegedly took place in the flat where the respondent was residing with the complainant, and her family.

2 The respondent denied committing the offences. His primary defence in relation to the offences that allegedly occurred in the prime mover was that he

had never, in fact, driven any prime mover from 2009 to 2011. In addition, he claimed that it was not possible that the alleged offences could have occurred in the cabin of the prime mover, which was dirty and filled with tools.

3 The Judge held that the Prosecution had failed to prove the charges against the respondent beyond a reasonable doubt due to inadequacies in the complainant's testimony and inconsistencies in the evidence of the Prosecution witnesses.

4 Dissatisfied with the outcome, the Prosecution appealed against the Judge's decision. It also made an application to adduce further evidence in the criminal appeal. We heard that application on 9 November 2017. On 14 February 2018, we allowed it in part. We heard the substantive appeal in January 2019.

5 Having heard the parties' submissions and assessed the evidence, we agree with the Judge that the Prosecution did not prove the charges against the respondent beyond a reasonable doubt.

Background

The parties

6 The complainant was born in 1994. Her parents divorced in 2001. Thereafter, the complainant lived in a flat with her mother and siblings ("the flat"). She has two siblings, an elder brother ("the brother") and a younger sister ("the sister").

7 In 2004, the respondent met the complainant's mother and they entered into a romantic relationship. A few months later, he moved into the flat.

Thereafter, the respondent helped to support the complainant's family and, at least until the alleged offences, was seen as a father by the complainant.

8 At all material times, the respondent was employed as a crane operator by Sim Hock Beng Company ("the Company"), which was owned and run by Mr Sim Hock Beng ("Mr Sim"). The Company owned four prime movers, one of which bore registration number XB4268Z ("the Prime Mover"). Before being disqualified from driving in 2004, the respondent had had a licence to drive prime movers and did drive them. As a result of two disqualification orders, the respondent was not allowed to drive any class of vehicles between 5 May 2004 and 5 February 2018. It was not disputed that despite this disqualification, the respondent owned and regularly drove a Suzuki Swift car. A central aspect of the respondent's defence, however, was that he did not have access to and did not drive any of the Company's prime movers during the period from 2009 to 2011 during which the offences were said to have been committed.

The charges

9 Six charges were brought against the respondent. The second charge, which concerned the sister, was stood down at trial. The five charges that were proceeded with against the respondent at the trial pertained to the following alleged acts:

(a) aggravated outrage of modesty in March 2009, when the complainant, then 15 years old, was allegedly confined by the respondent in the Prime Mover and molested by him in it;

(b) sexual assault by penetration (digital-vaginal) on two occasions in June 2010, allegedly in the flat; and

(c) rape on two occasions, at the beginning of January 2010 and at the beginning of 2011, allegedly in the Prime Mover.

10 The charges were amended a number of times from the time the respondent was first charged in the State Courts, to the time he was tried in the High Court. The five charges, to which the respondent claimed trial, finally read:

> 1st Charge
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> … sometime in March 2009, at night, in a prime mover bearing registration number XB4268Z parked in a forested area in Punggol, Singapore, did use criminal force on [the complainant], a 15-year-old female …, intending to outrage the modesty of [the complainant], to wit, you touched and kissed her breasts, and in order to commit the offence, you voluntarily caused to [the complainant] wrongful restraint by confining her in the said prime mover, and you have thereby committed an offence punishable under section 354A(1) of the Penal Code, Chapter 224.
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> 3rd Charge
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> … sometime in the beginning of June 2010, in the morning, at [the flat], in the living room, did sexually penetrate with your finger the vagina of [the complainant], a 16-year-old female …, without her consent, and you have thereby committed an offence under section 376(2)(a) and punishable under section 376(3) of the Penal Code, Chapter 224.
>
> 4th Charge
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> … sometime in the end of June 2010, in the afternoon, at [the flat], in the bedroom, did sexually penetrate with your finger the vagina of [the complainant], a 16-year-old female …, without her consent, and you have thereby committed an offence under section 376(2)(a) and punishable under section 376(3) of the Penal Code, Chapter 224.

> 5th Charge
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> … sometime in the beginning of January 2010, at about 10.00 p.m., in a prime mover bearing registration number XB4268Z parked in a forested area in Punggol, did commit rape of [the complainant], a 15-year-old female …, to wit, by penetrating the vagina of [the complainant] with your penis without her consent, and you have thereby committed an offence under section 375(1)(a) and punishable under section 375(2) of the Penal Code, Chapter 224.
>
> 6th Charge
>
> … sometime in the beginning of 2011, at night, in a prime mover bearing registration number XB4268Z parked in a forested area in Punggol, did commit rape of [the complainant], a 16-year-old female …, to wit, by penetrating the vagina of [the complainant] with your penis without her consent, and you have thereby committed an offence under section 375(1)(a) and punishable under section 375(2) of the Penal Code, Chapter 224.

Disclosure and reporting of the offences

11 The complainant kept silent about the offences for some time. The first person she said anything to about them was her boyfriend. This was sometime between 2010 and early 2011 and all she indicated then was that the respondent had been sexually abusing her.

12 After her boyfriend had persuaded her to inform her mother of the abuse, the complainant told her mother sometime later perhaps in May, June or July 2011 that the respondent had molested her. The complainant's mother gave evidence that after the complainant told her of the molest, she did not confront the respondent or take any action in respect of the complainant's allegations as the complainant did not want her to do so.

13 It was only after the complainant told the brother of the sexual abuse, more than a year later, that a police report was lodged. The material events

leading to the complainant's disclosure to her brother and the lodgement of the police report may be summarised as follows:

(a) On 24 December 2012, the sister had not returned home at night and the brother had anxiously and repeatedly tried to locate her.

(b) The next day, on 25 December 2012, the complainant met the sister at Yishun. During the meeting, the sister told the complainant that she had not returned home the previous night as she was seeking to avoid the respondent as he had molested her.

(c) The complainant's evidence was that upon finding out that the sister was also being sexually abused by the respondent, she suggested to the sister that they inform the brother about the abuse so that he would know the real reason the two of them had been staying out late, behaviour which had greatly upset the brother.

(d) Therefore, on the same day, the complainant and the sister (along with the complainant's boyfriend) met the brother. The complainant then told the brother that she had been sexually abused by the respondent.

(e) Upon learning of the sexual abuse, the brother was infuriated and later there was a commotion at the flat. The mother left the flat and met the respondent to tell him not to return to the flat.

(f) Two days later, on 27 December 2012, the brother lodged a police report although the complainant herself was reluctant about taking this step.

14 The alleged sexual assaults were therefore eventually reported to the police due to the brother's discovery of the assaults. The circumstances in which the offences were disclosed to the brother were emphasised by the Defence in the appeal, as it was the Defence's case that the circumstances disclosed a possibility that the allegations were fabricated by the complainant and the sister, as an excuse to avoid the wrath of the brother for having stayed out late on numerous occasions.

The Prosecution's case at trial

15 The Prosecution's case at trial was that the complainant's testimony was unusually convincing and, in any event, was corroborated by other evidence, including the testimony of her family members and also by objective evidence.

The complainant's allegations

16 The complainant's evidence was that from March 2009 to May or June 2011, the respondent had taken her out alone at night, two to three times a week on average, and had sexually abused her on all of those occasions, initially outraging her modesty and thereafter escalating to digital penetration and rape.

17 We set out in the following paragraphs a summary of the complainant's evidence on the five specific incidents which are the subject of the charges against the respondent.

March 2009: aggravated outrage of modesty

18 The complainant claimed that in March 2009, the respondent took her out alone in the Prime Mover one evening a few days before a school camp. He drove to a forested place at Punggol end where he said there was a spirit that he could ask for 4-D numbers from. Upon arriving at the forested place, he asked

the complainant to sit in the cabin of the Prime Mover, on the rear bench behind the front driver and passenger seats. In the cabin of the Prime Mover, the respondent placed his hand underneath her shirt and molested her by caressing and kissing her breasts. The respondent only stopped after she told him several times that she wanted to go home. This incident was the subject of the first charge against the respondent.

January 2010: first alleged rape

19 According to the complainant, in January 2010, at about 10pm, the respondent again took her out in the Prime Mover to a forested area in Punggol. The respondent then raped her in the cabin of the Prime Mover. The complainant attempted to push the respondent away and told him that she did not want to have sexual intercourse, but the respondent ignored her. When the respondent raped her, she was in pain and shouted but was told by the respondent to remain quiet. After the rape, the respondent asked the complainant for 4-D numbers. This alleged rape was the subject of the fifth charge against the respondent.

June 2010: alleged digital penetration

20 The complainant claimed that in the beginning of June 2010, sometime in the morning, the respondent had asked her to sit with him in the living room of the flat whilst her mother was sleeping in the bedroom. The brother and the sister were at their aunt's place. The respondent allegedly cupped and licked her breasts, and inserted his fingers into her vagina. The complainant told the respondent not to continue but he insisted on doing so. This alleged instance of sexual penetration was the subject of the third charge against the respondent.

21 In addition, on a separate occasion, towards the end of the June holidays in 2010, the respondent was at home with the complainant and the sister. The

respondent told the sister to go out to buy lunch. The complainant told the respondent that she wanted to accompany the sister, but the respondent did not allow her to do so. Thereafter, while the complainant was alone with the respondent in the bedroom, he carried out the same acts of inserting his fingers into her vagina and cupping and licking her breasts. The complainant testified that she was frustrated and sad, and told him to stop but he did not. This alleged instance of sexual penetration was the subject of the fourth charge against the respondent.

Beginning of 2011: alleged rape

22 The respondent allegedly continued to rape the complainant between January 2010 and the beginning of 2011. The last incident of rape, which was the subject of the sixth charge, took place sometime in the beginning of 2011, at night, in the cabin of the Prime Mover at a forested area in Punggol.

23 On the complainant's evidence however, other sexual abuse continued until May or June 2011, when she started to avoid the respondent and give excuses whenever he asked her to go out with him.

The evidence of the complainant's family members

24 In addition to the complainant's testimony, which the Prosecution submitted was unusually convincing, the Prosecution relied on the evidence of the complainant's boyfriend, mother and siblings as corroboration of the complainant's account. It relied in this regard on their accounts at trial of how the complainant had divulged the sexual abuse to them, which it argued were largely consistent with the complainant's account.

The evidence relating to the Prime Mover

25 The Prosecution also relied on evidence which it said proved that the respondent had access to and did drive the Prime Mover during the material period during which the offences were committed.

26 First, the Prosecution relied on records of seven parking summonses retrieved by the police which showed that the Prime Mover had been summoned for illegal parking on multiple occasions between 2009 and 2010 at a location ("X") close to the flat. This was the same location which the complainant and her family members had testified as being the place where the respondent used to park the Prime Mover on a regular basis. The Prosecution submitted that the inexorable conclusion was that it was the respondent who had driven the Prime Mover there.

27 Second, the Prosecution also relied on the evidence given by the complainant's mother and siblings that the respondent had driven the Prime Mover at that time. The mother and brother testified that the respondent had taken them for family outings in a prime mover.

28 Third, the Prosecution relied on the evidence of Mr Sim. It argued that Mr Sim's evidence showed that the respondent had access to the Prime Mover during the material period. In particular, Mr Sim testified that the keys to the Prime Mover were not guarded in any way and the respondent could have had access to them. Mr Sim also testified that the economy was bad from 2010 to 2012 such that the Prime Mover would not have been in use on a regular basis then. The Prosecution submitted that this created opportunities for the respondent to drive the Prime Mover for his own personal use. In addition, although Mr Sim had testified that the Prime Mover was driven by another

employee during the material period, one Idris bin Mohamad ("Idris") (who had died by the time of the trial), the Company's CPF records showed that Idris was only on permanent employment for a few months, from April to October 2010.

The Defence's case at trial

29 The respondent denied all of the allegations against him. As mentioned earlier, a significant aspect of the respondent's defence was that the sexual assaults could not possibly have occurred in the cabin of the Prime Mover. A second matter which the Defence advanced was the possibility that the complainant and the sister had colluded to fabricate the allegations against the respondent on 25 December 2012, in order to placate the brother and avoid his wrath.

The evidence relating to the Prime Mover

Respondent's use of the Prime Mover

30 The Defence submitted that there was insufficient evidence to prove that the respondent did drive the Prime Mover during the material period between 2009 and 2011. Mr Sim's evidence was that the Prime Mover was driven by Idris at the time. Mr Sim had also testified that he had never suspected that the respondent had been driving any of the Company's prime movers. In this respect, it was significant that Mr Sim's evidence was that he did not remain in the office but was present on site and helped when containers needed to be loaded onto trailers attached to the Company's prime movers. He testified that he usually finished work between 3 and 4am. The Defence submitted that thus Mr Sim would know who drove his prime movers away.

31 On the parking summonses relied on by the Prosecution which showed that the Prime Mover had been parked at X, the Defence submitted that they were insufficient to establish that the respondent had driven the Prime Mover. This was because the Prosecution was unable to rule out the possibility that someone other than the respondent, such as a permanent or *ad-hoc* driver employed by Mr Sim, was responsible for parking the Prime Mover there on those occasions. The police were unable to obtain the Company's trip forms to ascertain the identity of the driver of the Prime Mover on the dates when the parking offences had been committed due to the delay in their investigations.

Inconsistent evidence from Prosecution witnesses on interior of Prime Mover

32 It was also argued by the Defence that the Prosecution witnesses did not give a consistent description of the interior of the Prime Mover at the trial. In addition, no photograph of the interior of the Prime Mover was obtained by the police during the investigations, before the vehicle was scrapped.

33 The Defence submitted that the descriptions of the interior of the Prime Mover by the complainant and her mother were inconsistent with the description given by Mr Sim. When asked under cross-examination if the seat in the cabin was normally empty or if there were items on the seat, the complainant testified that there was sometimes a rag cloth on the seat. The complainant's mother's testimony was that the cabin was clean and there were two pillows on the seat for the respondent to use when he rested.

34 On the other hand, Mr Sim's evidence was that the cabin was dirty and filled with tools. The respondent had given similar testimony. The Defence thus argued that the evidence of Mr Sim, a Prosecution witness, undermined the credibility of the complainant and her family members as his evidence was

inconsistent with theirs. In addition, Mr Sim's evidence cast doubt on whether the sexual assaults could really have taken place within the cabin of the Prime Mover given its condition.

35 Another area of inconsistency related to the presence of curtains inside the Prime Mover. Although the complainant gave evidence that there were curtains all around the Prime Mover, Mr Sim testified that curtains were not allowed in prime movers by the Land Transport Authority and that he had not seen curtains all around the Prime Mover.

Identification of the Prime Mover

36 The Defence also relied on the fact that the complainant had not provided the registration number of the Prime Mover to the investigating officer at an early stage of the investigations. Instead, she provided the registration number to the investigating officer only during the recording of her third statement, upon being shown two photographs of a prime mover (Exhibits P2 and P3) obtained from Mr Sim by the investigating officer. Exhibit P2 was a photograph of a prime mover with the Company's logo on the side, and with the registration number partially visible (a portion of the registration number was covered by the timestamp on the photograph). Exhibit P3 was a photograph of another prime mover which did not bear the Company's logo. Upon being shown the two photographs, the complainant identified Exhibit P2 as the Prime Mover in which the sexual assaults took place and informed the investigating officer of the registration number of the vehicle. The Defence argued in this regard that the identification exercise carried out by the investigating officer was shoddy.

37 The Defence also submitted that the evidence given by the complainant and her family members on the Prime Mover during the trial was contaminated. It had emerged during the cross-examination of the complainant that the brother had circulated a photograph of the Prime Mover to the family WhatsApp group chat on the morning of the first day of trial, before the commencement of the hearing. The photograph had been taken by the complainant's brother when he chanced upon the Prime Mover on 2 January 2013, a few days after the police report was lodged. The photograph had not been shown to the police or the Prosecution and its existence only came to light during the trial.

The disclosure of the offences to the brother

38 A second key aspect of the Defence was that the complainant had colluded with the sister to fabricate the allegations against the respondent because they were afraid of the brother and what he would do, given that he had been upset for some time with the two of them for having stayed out late on a number of occasions. The sexual assaults were disclosed to the brother the day after the sister had not returned home, in circumstances where the complainant and the sister both knew that the brother was angry. It was therefore argued that the Defence had raised a plausible motive for an untrue allegation which motive the Prosecution had failed to disprove beyond reasonable doubt.

The decision below

39 After a ten-day trial, the Judge acquitted the respondent on all five charges. Central to the Judge's decision were his findings that (a) the complainant's evidence was not unusually convincing; and (b) the remaining evidence did not significantly strengthen the Prosecution's case and in fact contained substantial flaws and shortcomings. In the result, the Judge held that the Prosecution failed to prove the elements of the charges beyond a reasonable

doubt (see *Public Prosecutor v Mohd Ariffan bin Mohd Hassan* [2017] SGHC 81 ("GD") at [44]).

Complainant's evidence not unusually convincing

40 The Judge found that the complainant's evidence was not unusually convincing for three main reasons. First, there was a delay in the disclosure of the offences by the complainant. In particular, on her account, she did not tell anyone about the offences until 2010, although the abuse allegedly began in March 2009. The complainant was also reluctant to make a police report even after disclosing the offences to her loved ones (GD at [40] and [41]).

41 Second, the complainant had told her boyfriend, mother, sister and brother separately that she had been sexually abused by the respondent. The Judge noted that her account to each of these individuals on the nature of the sexual abuse was different. The Judge was of the view that the complainant's account was therefore "contradictory and inconsistent" (GD at [41]).

42 Third, the Judge found that the complainant's descriptions of the Prime Mover and the respondent's frequent use of the Prime Mover were inconsistent with the evidence of Mr Sim. He found the complainant's description of the cabin of the Prime Mover confusing and that efforts to get a clear picture from her were thwarted by her inability or unwillingness to draw a sketch of the interior (GD at [26]). There were also no photographs taken of the interior of the Prime Mover before it was scrapped. In addition, the Judge was of the view that the evidence of the complainant and Mr Sim on the Prime Mover revealed inconsistencies on three fronts:

(a) Curtains (GD at [27]): The complainant had described the cabin as being furnished with curtains running from each side and along the

front windscreen. On the other hand, Mr Sim testified that there were no curtains in the front of the cabin because they were not allowed by the Land Transport Authority and he had not seen them in his prime movers.

(b) Interior condition of the cabin (GD at [28] and [30]): The complainant's evidence was that there was a cushion for sitting on and that sometimes a cloth or rag which could be used for wiping was placed on the cushion. However, Mr Sim's evidence was that tools such as lashing gear would take up half the seat and that the interior of the cabin was filthy with oil stains.

(c) Respondent's use of the Prime Mover: Mr Sim gave evidence that from 2009 to 2011, the Prime Mover was driven by Idris who would sleep in the Prime Mover after work instead of going home (GD at [25]). Mr Sim also testified that as a crane operator, the respondent was not allowed to drive the Prime Mover and would have been summarily dismissed if he had done so (GD at [24]–[25]).

The Judge preferred the evidence of Mr Sim to that of the complainant as Mr Sim was a Prosecution and non-partisan witness and his knowledge of the Prime Mover was clearer and greater than the complainant's (GD at [32]). On Mr Sim's evidence, the cabin of the Prime Mover was not a place in which the offences could have occurred since it was dirty and filled with tools (GD at [31]).

No corroboration

43 The Judge also found that there was no corroboration of the complainant's allegations. The evidence of the family members regarding the alleged sexual acts did not provide corroboration of the complainant's evidence

because the complainant had not made her complaints known to them at or about the time the alleged acts took place, and the complaints to them were not, in any event, independent evidence (GD at [40]). In addition, in relation to the fourth charge (see [21] above), the Judge found that the Prosecution should have had the complainant's evidence corroborated by the sister; instead, no questions were asked and no information volunteered by the sister in relation to the events of that day, which warranted an adverse inference being drawn under s 116 illustration (*g*) of the Evidence Act (Cap 97, 1997 Rev Ed) (GD at [34]–[35]).

44 Further, the police investigations as well as the Prosecution's preparation for trial were found to be unsatisfactory by the Judge in the following areas:

(a) The first and sixth charges were amended, to omit certain particulars, between the time the accused was first brought before the State Courts and the time of trial. A reasonable inference was that between the charging of the accused and the trial, doubts had arisen over the omitted particulars (GD at [4]).

(b) Right up to the trial, the fifth and sixth charges only referred to the rapes taking place in a "forested area" in Punggol. The investigations should have disclosed the exact location and the Prosecution should have included this material information in the charges (GD at [5]).

(c) No photographs were taken of the interior of the cabin of the Prime Mover before it was scrapped (GD at [8]).

45 Finally, the Judge was of the view that some of the evidence adduced below, such as the parking summonses, were peripheral and inconclusive (GD at [22]). He, however, did not rule specifically on the issue of the possible

motive of the complainant and the sister for fabricating the allegations against the respondent, as raised by the Defence.

Prosecution's application to adduce further evidence

46 Prior to the hearing of the appeal the Prosecution made an application to adduce further evidence. This application sought to admit:

(a) an affidavit from Idris's son, Muhammad Matin bin Idris ("Muhammad Matin") on the vehicles his father had driven and where he had slept; and

(b) an affidavit by Ms Ng Pei Yu, Vivienne ("Ms Ng"), who is the Chief Psychologist at the Office of the Chief Psychologist, Ministry of Social and Family Development ("MSF"); her expert report dated 17 October 2017 ("the expert report") is annexed to her affidavit.

The Prosecution's objective in adducing (a) was to rebut Mr Sim's evidence regarding Idris, while the purpose of (b) was to enable it to address mistaken conceptions of rape victims that it claimed the Judge held.

47 We dismissed the Prosecution's application to admit Muhammad Matin's affidavit but we allowed parts of Ms Ng's expert report to be admitted into evidence. Our detailed grounds on the Prosecution's application to adduce fresh evidence are reported at *Public Prosecutor v Mohd Ariffan bin Mohd Hassan* [2018] 1 SLR 544. We do not propose to repeat our reasons in this judgment.

Parties' cases on appeal

The Prosecution's case

48 The Prosecution submitted that the Judge erred in finding that the complainant's evidence was not unusually convincing. The Judge had wrongly disregarded the reasons given by the complainant for her delayed disclosure of the offences and erred in finding that with the passage of time, the complainant should have had no difficulty in accurately recounting the abuse she was put through.

49 Second, the Prosecution submitted that the objective evidence showed that the respondent did have access to the Prime Mover. The Judge failed to place sufficient weight on the following material evidence:

(a) the seven parking summonses which showed that the Prime Mover had been parked at X;

(b) the complainant's ability to describe the interior and exterior characteristics of the Prime Mover; relatedly, the evidence of the complainant's family members that they rode in the Prime Mover for family outings, and their ability to describe the Prime Mover. All this evidence could not be explained if the respondent's version that he never drove the Prime Mover was accepted;

(c) the respondent's evidence in his statement to the police that he had slept in the cabin of the Prime Mover, which was inconsistent with his evidence at trial that the cabin was dirty and filled with tools; and

(d) the respondent's evidence that he had never been alone with the complainant which was contradicted by the evidence of the complainant's mother.

50 The Prosecution also argued that the Judge erred in having placed excessive weight on the following matters:

(a) Mr Sim's evidence which was not in fact inconsistent with the complainant's evidence and which was, in any event, internally inconsistent on certain issues; and

(b) the changes to the wording of the charges before trial commenced.

51 Finally, the Prosecution also submitted that certain material aspects of the Defence's case was not put to the Prosecution witnesses, including its case on the interior condition of the cabin of the Prime Mover, and the allegation that the offences were fabricated by the complainant and the sister to placate the brother. It thus argued that the Defence had failed to meet its evidential burden.

The respondent's case

52 The respondent did not dispute the Prosecution's submission that the delay in reporting by the complainant did not in and of itself undermine the complainant's credibility. It accepted that the manner and circumstances in which victims of sexual abuse disclose information concerning the offence must necessarily vary from case to case, and from individual to individual.

53 In the circumstances, the respondent asked this court to "re-examine the *totality* of the evidence before re-affirming the verdict of acquittal on sounder

grounds and for better reasons" [emphasis in original]. The "sounder grounds" put forth by the respondent were broadly similar to those which the Defence had submitted before the Judge in the trial below. The respondent argued that the acquittal was sound for three main reasons.

54 Firstly, the complainant's evidence was not unusually convincing. The allegations were raised to the brother in circumstances which did not remove the possibility of fabrication. There were also significant external inconsistencies in the complainant's evidence when weighed against the surrounding facts:

(a) The complainant's evidence was that the respondent had taken her out two to three times a week from 2009 to 2011 and had sexually abused her each time. However, the complainant's mother was unable to corroborate her account of the frequency of her trips with the respondent.

(b) The brother had laboured under the impression, based on what the complainant had told him on 25 December 2012, that the sexual assaults were still continuing at the point of disclosure. On the complainant's own account, however, more than one and a half years had elapsed between the time the sexual abuse had fully ceased in May or June 2011 and her disclosure to her brother on 25 December 2012.

55 In relation to the Prime Mover, the respondent reiterated that doubts had been raised in relation to whether the Prime Mover could have been a possible venue of the offences. The Prosecution failed to prove beyond reasonable doubt that the respondent drove the Prime Mover during the material period given that its own witness, *ie*, Mr Sim, had cast doubt on this. In addition, based on the

evidence of Mr Sim and the respondent, the cabin of the Prime Mover was an impossible venue for the offences to have taken place since it was dirty and filled with tools.

56 Finally, the respondent submitted that all things considered, there was ultimately insufficient evidence to prove the charges against the respondent beyond reasonable doubt. Even if it was accepted that the respondent had lied about his non-use of the Prime Mover and about having never been alone with the complainant, this did not inevitably lead to the conclusion that the respondent had committed the offences alleged.

Key issues in the appeal

57 In the circumstances, the key issues that arose for our determination were as follows:

(a) Whether the complainant's evidence was unusually convincing; and

(b) If not, whether there was other evidence that corroborated the complainant's account.

Whether the complainant's evidence was unusually convincing

58 It is a well-established principle in cases involving sexual offences that in order for the accused to be convicted of the offence based on the complainant's testimony alone, the complainant's evidence must be unusually convincing to overcome any doubt that might arise from the lack of corroboration (*AOF v Public Prosecutor* [2012] 3 SLR 34 at [111]; *XP v Public Prosecutor* [2008] 4 SLR(R) 686 at [31]). Where the evidence of the

complainant is not unusually convincing, a conviction is unsafe unless there is corroboration of the complainant's testimony.

59 As alluded to above, one of the reasons given by the Judge for his finding that the complainant was not unusually convincing was the delay on her part in disclosing the offences to her boyfriend and family members, and the inconsistency in the abuse alleged to different individuals. The Judge stated the following:

> 40 … The focus on a complaint made "at or about the time when the fact took place", or a "recent complaint" is apposite. Good sense dictates that a complaint should be made within a reasonable time after the event. Where a person remains silent, and only complains after a long delay, that delay must be scrutinised. In the present case, [the complainant] was not at all prompt in her complaints although she had every opportunity to complain. There were no reasons for her not to confide in members [of] her family or her boyfriend. She had ample time to recover from any distress or embarrassment that she may [have] experienced.
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> 41 Someone so abused and humiliated would be expected to seek help and redress when she breaks her silence. In her case, however, she was still reluctant to make a police report. Furthermore, when she did speak, what she said was contradictory and inconsistent, with allegation of touching (and no rape) to the mother, and rape (and no digital penetration) to the brother, sister and boyfriend. With the passage of time, [the complainant] should not have difficulty to recount accurately the forms of abuse she was put through.

60 The Prosecution submitted that the Judge's findings were based on an erroneous view of how a victim of sexual assault should react, which was unsupported by the expert report or by decided cases.

61 To determine this issue, we need to examine the premises on which the Judge came to his conclusion. If those premises were not sound, then the conclusion may not be sound. We must also point out, however, that even if the Judge operated on the wrong premises, there may be other material in the

evidence on which his conclusion that the complainant's evidence was not unusually convincing may be upheld.

62 It can be seen from [40] and [41] of the GD that the Judge assessed the quality of the complainant's evidence in the same way as he would assess the quality of the evidence of any witness in a criminal case. In this regard, he was concerned about the length of time it took the complainant to complain, the differences in the versions of the offences that she gave to different people and his assessment that the passage of time should have reduced her feelings of humiliation and reluctance to recount the events. We agree that generally these matters comprise the forensic tools that judges use to assess the strength and credibility of evidence. In this case, however, the expert evidence and other authorities establish that victims of sexual abuse may not react in the same way as other victims of crime. The Judge might have been unaware of this or might have overlooked it since neither the expert evidence nor the authorities were put before him.

63 In relation to the issue of delay in reporting, we accept the expert opinion of Ms Ng, which was undisputed by the respondent, that only a small proportion of victims of sexual offences report the offences in a timely manner. Ms Ng stated in her expert report that:

> 5.3.4 Very few victims report immediately to law enforcement, but if they do report to law enforcement, it is often after a delay of days, weeks, months, or even years *(please see Section 7 on difficulties in disclosure and delay in reporting).*
>
> …
>
> 7.4 The shock, shame, and stigma attached to being a victim of crime make it difficult for even adults to report victimization. It is not surprising that sexual assault has been found to be the most under-reported violent crime to any authority by adults and teenagers (Ciarlante, 2007). Victims often delay in reporting sexual victimization and face negative

> social reactions to disclosure (Dworkin et al., 2017; Fanflik, 2007). For children, there are additional factors that affect their willingness to disclose sexual abuse. …
>
> [emphasis in original]

64 Ms Ng also explained in her report that the likelihood of delayed disclosure is greater in cases where the sexual assault was committed by an individual known to the victim. There could be a number of reasons for delayed disclosure by such victims, as Ms Ng explained:

> 7.7 Fear of vengeance and feelings of guilt and shame are the most important causes for suspending disclosure (Sauzier, 1989). Victims of intra-familial rape may have to continue to live in proximity with the perpetrator and hence fear punishment or retaliation if they disclose the assault. In the majority of cases, the absolute dominance of the offender upon the victim and the obedience of the latter, via complete submission and passivity, generate in the victim a feeling of "conspiracy" and complicity. Because the perpetrator's strategies are oriented towards the maintenance of the child's compliance and silence, the child is often inhibited to disclose abuse. As the child's relationship with the perpetrator is often an emotionally significant one, many victims report ambivalent feelings for their perpetrators and do not disclose the abuse. Defining oneself as the victim of a family member's assault requires significant and painful alterations in the victim's perceptions of the perpetrator and the role that he/she was expected to demonstrate …
>
> 7.8 Victims of intra-familial assault often have a personal, financial, legal, or social relationship with their abusers that may make them dependent on their abusers. Family or social considerations such as loyalty to family members, wanting to protect the privacy of the family, fear of not being believed, fear of causing family disruption or bringing shame to the family, not [wanting] negative consequences for loved ones when they disclose etc. have a strong impact on the victim's decision on whether to disclose the offence and how the disclosure is made. Some of these themes are consistent with local researchers' views that when there is a relationship between the rape victim and the offender, the victim is more likely to experience a sense of betrayal and may come under suspicion or criticism about whether she had consented to having sexual intercourse with the perpetrator (Lim, Chan, Chan *et al.*,2002). …

65 We accept that 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.

67 In *DT v Public Prosecutor* [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.

68 The above principles on the significance of delayed reporting by victims of sexual offences were also adopted by the High Court in the recent case of

Public Prosecutor v Yue Roger Jr [2019] 3 SLR 749 ("*Roger Yue (HC)*"), which was a decision that we affirmed on appeal in *Yue Roger Jr v Public Prosecutor* [2019] 1 SLR 829. In *Roger Yue (HC)*, Aedit Abdullah J found that the complainant's failure to report the offences until five years later did not make her evidence less credible as there were reasonable explanations provided for her conduct. Aedit Abdullah J stated (at [30]):

> I accepted that victims of sexual offences may not behave in a stereotypical way. Many victims report their sexual abuse early to a family member, friend, the police, or other person in authority. However, 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 (see *DT v PP* [2001] 2 SLR(R) 583 at [62]; *Tang Kin Seng v PP* [1996] 3 SLR(R) 444 at [79]). While I accept that an omission to report the offence in a timely fashion, in the absence of other evidence, may in certain circumstances make it difficult to establish a case against the accused beyond reasonable doubt, I emphasise that the effect of any delay in reporting always falls to be assessed on the specific facts of each individual case.

We endorse the learned judge's remarks in *Roger Yue (HC)*.

69 Having assessed the evidence given by the complainant, we are satisfied that if we were to accept her primary allegations against the respondent, then there were plausible legitimate explanations for the complainant's initial non-disclosure of the offences. Three reasons for the complainant's initial non-disclosure of the offences can be discerned from her testimony.

70 First, she was afraid of the respondent. She testified that she had been warned multiple times by the respondent not to speak to anyone about the acts. The respondent had also allegedly told her about how he had previously participated in a gang-rape, and the complainant was fearful that she would be

subjected to the same treatment should she disobey the respondent's instructions to remain silent.

71 Second, the complainant explained that she had not disclosed the offences earlier to her family members as she did not want to spoil the relationship between the respondent and her mother, especially since the respondent (who she treated as a father figure) had promised to marry her mother. She also did not want to disclose the matter to the brother as she feared that he might do something untoward to the respondent as he was, according to her, a "very hot-tempered person".

72 Third, the complainant explained that she was reluctant to lodge a police report as she was concerned over what she might have to go through at the trial, if the offences were reported.

73 We are satisfied that in this case, the delay in the complainant's disclosure and her reluctance to report the matter to the police were based on reasons that were sound and credible from her perspective, and were in fact aligned with the expert evidence on the thought-processes and behaviour of many victims of sexual offences. Therefore, we find that the complainant's delayed disclosure to her loved ones and her reluctance to make a police report, did not, taken in isolation, undermine her credibility.

74 Next, the Judge was of the view that when the complainant did speak up about the sexual abuse to her loved ones, she gave "contradictory and inconsistent" accounts, with an allegation of touching (and no rape) to the mother, and rape (and no digital penetration) to the brother, sister and boyfriend (see [59] above).

75 The complainant's evidence was that when she disclosed the abuse to her boyfriend, she did not expressly describe to him the nature of the sexual assaults by the respondent which she had been subjected to. Her testimony under cross-examination was as follows:

Q	Okay. We need to be very clear about what exactly you said to [the boyfriend], yes. So, what did you tell him?
A	I said, "*Cik* Pin [*ie*, the respondent] did something to me." And then when he asked, er, "What was it?" So I said, "You should know." Because that's what I told everyone. I mean, it's very embarrassing to tell in detail.

76 Likewise, she explained that she did not describe the nature of the sexual assaults in detail to her mother because she was not generally open with her mother and felt embarrassed:

Q	Okay. And how did you tell your mother?
A	I went inside---inside my house. I asked him---er, I asked her to sit with me at the dining table. I told her whatever *Cik* Pin did to me. But I told her in general, as in briefly.
Q	Okay.
A	Because I'm not that open with my mum and it's very embarrassing to tell.
Court:	"Because I was not that" what? Open with that?
Witness:	Open with my mum.
Court:	Yes.
Witness:	And it's quite embarrassing to tell her.
Court:	Yes, yes.
Q	And what did you not tell your mother?
A	I said, "*Cik* Pin did that thing to me." So, I assume she understand what I meant. But then, she keep on asking me what he do---what he did, so I just said he used his fingers---

Court:	Hold on, hold on.
	Yes.
A	I---I told her he---he used his fingers on me. And she asked me, "Is that all?" Then I say, "You should know." And then, she said, "What is it?" Then, just told her, forget.
Court:	Yes?
Witness:	I just told her, "Forget it."
Q	Okay. So, did you tell her? In paragraph 8, you said:
	[Reads] "… I told my mother that he molested me by touching my breasts and fingering my vagina."
	Did you tell her specifically that [he] touched [your] breasts and fingered your vagina?
A	She asked me question and she said, did---did he touch my breasts? Then, I say, "Yes, he touched the top." And then, she---I said, "Yes, he touched my bottom as well."

77 The complainant's boyfriend, sister and brother testified that when the complainant informed each of them of the abuse, the complainant had said that she had been raped by the respondent. On the other hand, according to the mother's testimony, the complainant had told her that the respondent had "touched her everywhere".

78 Clearly, there were differences in the complainant's account to each person she told. This in itself may not affect the credibility of the allegation according to Ms Ng, who explained that:

> 7.1 Disclosures of abuse are often tentative, may involve some telling and then retracting, may be partial or full, and may occur over time. <u>There is considerable reporting inconsistency in the same individual over time</u> (Fergusson, Horwood & Woodward, 2000). …
>
> [emphasis in original]

79 We accept, based on the expert evidence, that a victim of sexual assault cannot always be expected to provide a completely similar and full account every time he or she discloses the offence to another person. There may, however, be cases where the inconsistent or incomplete accounts of the complainant impact negatively on the complainant's credibility. As with the issue of delay in reporting, the nature of the inconsistency in the offences disclosed and its effect on the credibility of the complainant have to be considered in the light of the facts of each case.

80 On the facts of the case before us, the complainant's account to the four individuals was not, strictly speaking, inconsistent or contradictory. The complainant simply did not provide a full and detailed account of all the sexual offences allegedly committed by the respondent to the four individuals. Before the disclosure on 25 December 2012, the complainant's accounts of the abuse were extremely vague: to her boyfriend she simply said that the respondent had done "something" to her and he "should know" what it was, whereas with her mother she specified that the respondent had used his fingers on her and later amplified that the respondent had touched both her breasts and her private parts. In itself, the lack of detail upon first disclosure is understandable as behaviour commonly displayed by victims of sexual abuse. There are, however, features of this case which trouble us.

81 First, there is the fact that the complainant's disclosure to her boyfriend was in a way forced out of her by him as his evidence itself indicated. She herself described him as having pestered her:

> Q Can you explain to the Court the circumstances that led you to tell [the boyfriend]?
>
> A Erm, he---he always see me, like, so moody, sensitive and I always get angry so easily. And then also there was, erm---he always saw I got a cigarette pack.

…

A And then af---after he keep pestering me because maybe I don't seem really normal to him. Like I get so angry too easily and stuff, then like I said, it's because I've got some problems. That's when I told him---that's when I told him that I got a cigarette from *Cik* Pin.

Q And then what did you tell him?

A He did something to me.

Q Okay. We need to be very clear about what exactly you said to [the boyfriend], yes. So, what did you tell him?

A I said, "*Cik* Pin did something to me." And then when he asked, er, "What was it?" So I said, "You should know." Because that's what I told everyone. I mean, it's very embarrassing to tell in detail.

Q Yes. So all you said to him was, "You should know"? Yes. Was that how the conversation ended?

A We argue.

Q You argued?

A Yah, me---me and him, we got---we got a fight.

Q Okay. Please explain.

A He got angry because I didn't told anyone about it.

Q Yes.

A Yah, so I just said, er, "I don't want to."

Q Sorry, you said to him that he should know, and then you argued with him, is it?

A Yes.

Q And what was the reason for you arguing with him? Because?

A We were talking and he keep pestering me why I didn't tell anyone and stuff, so I say, "I---I---I don't want to tell anyone."

…

Q And then what happened?

A I don't know, I just told him, "No need to interfere with my problems."

Q Yes.

A I---I will tell when---when the time comes.

82 According to the boyfriend, he sensed that something was wrong with the complainant during one of his telephone conversations with her. After questioning her and guessing what was wrong, the complainant confirmed his guess that she was being sexually abused. The boyfriend too used the word "pestering" in relation to his discussion with her and the way in which he elicited the story from her.

83 The complainant was, clearly, very reluctant to say anything about the abuse to her boyfriend, or to say anything about the abuse at all. It is not clear when the complainant and her boyfriend had this discussion; although the boyfriend thinks it was in April 2010, it could have been later though no later than early 2011.

84 The next time the complainant spoke about the abuse was around mid-2011 when she spoke to her mother about it. This disclosure was also the consequence of pestering by her boyfriend. In his evidence, he admitted putting some pressure on her to tell her mother by saying that he would wait outside the house until the complainant told her mother (in circumstances where she knew that the boyfriend would get into trouble if he went home late). The boyfriend testified that the complainant really did not want to speak to her mother about it and she only did so because of his pressure:

Q What advice did you give her?

A I actually told her to confront her parents about it, you know, tell the mum or tell the brother about it.

Q And what did she say in response to that?

A She didn't really want me or, you know, me forcing her to actually go to her parents or anything. Because she

> feels that the mum is happy, you know. The mum doesn't know about this. So the mum is happy in that relationship and she didn't really want to destroy that. And knowing the brother and everything, she just didn't want to tell the brother about it, you know.
>
> …

85 It should be noted that according to the complainant's conditioned statement and her testimony in court, the last incident of rape occurred in the beginning of 2011 and all sexual assaults stopped around the time of her conversation with her mother, sometime in May or June 2011, primarily because she refused to be alone with the respondent any more.

86 The next disclosure was made around 18 months later on 25 December 2012. This was at a meeting between the complainant, her boyfriend, the sister and the brother. At the time the complainant was aged 20 while the brother was 22 and the sister was 17. On the night of 24 December 2012, the brother was looking for the sister, because she had not returned home by around 11pm. The behaviour of the two girls in frequently staying out late at night or not coming home at all had made the brother very angry. The two sisters met on 25 December 2012 and the sister told the complainant that the respondent had sexually assaulted her too. They then decided to tell the brother about the respondent's treatment of both of them. Consequently, later that day the two sisters and the complainant's boyfriend met the brother in the vicinity of the family home and told him what the respondent had done.

87 In court, the complainant testified that at that meeting, she and the sister had told the brother "everything". The brother was very angry but suggested they continue the conversation in the home. They went home and the brother kept questioning the complainant on what had happened until he had answers to all his questions. The complainant did not testify as to exactly what questions

she had been asked and what details she had disclosed. The brother was, however, more detailed in his evidence as to what he had learnt that day. He testified that the complainant had told him that the respondent had "force-raped" her two to three times a week for the prior three years and that the rapes took place in the Prime Mover. He confirmed she told him that the rapes had been going on until very recently and agreed that he understood that this was with reference to the time that she was talking to him about it. She had explained to him that this was the real reason she went out till late and did not want to go home at night.

88 In our view, the above evidence revealed a serious discrepancy in the complainant's account. On the one hand, she told the police in her conditioned statement that the rapes ended in the beginning of 2011 (and that all sexual assaults ended by May or June 2011), a position she maintained in court. On the other, she told the brother that the rapes had taken place two to three times a week almost right up to the time she first spoke to him about them. This meant that the rapes had gone on for almost two more years than what she had stated in her conditioned statement and oral testimony. There was therefore a material inconsistency in her evidence. If her account in her conditioned statement was true, this would have meant that what she had told her brother was a lie and there was no explanation from the complainant as to why she had misled her brother on this matter. This has to be considered in the context of her repeated attestations of how she had not wanted to tell the brother anything earlier because of his hot temper and the fear that he would do something rash. So, in December 2012, she must have known it would make him extremely angry to be told that the assaults had continued for a long period right up to recently. Yet (if her account in her conditioned statement was true), she still misinformed him of the duration of the assaults. Her behaviour on this occasion raises questions

as to her motive for telling the brother what she did when she did and, in any case, indicates that on occasion she was capable of deliberately telling lies in relation to the alleged assaults.

89 We have concluded that the Judge was correct to have found that the complainant was not an unusually convincing witness and it would be unsafe to convict on the basis of her evidence alone, although our reasons are slightly different. Apart from the major inconsistency regarding the length of time during which the offences were repeated, the complainant's evidence contained other incongruities. For instance, she prevaricated about being a social drinker, at first denying it, then when faced with an inconsistent statement she had made to a third party on the issue, asserting first that she only drank in the company of the respondent but finally confirming she had taken alcohol socially though she hastened to add that she had since given it up. The inconsistency impacted negatively on her credibility. Additionally, the complainant testified that after she told her mother about the abuse, the latter confronted the respondent and chased him out of the flat. This assertion was contradicted by other evidence from the mother and the sister.

90 We also find some difficulty in accepting the complainant's story repeated in court that from the time he first sexually assaulted her, the respondent's assaults had taken place two to three times a week on average, up to May or June 2011. The instances of sexual assault were alleged to have occurred at night, frequently in the Prime Mover, and the complainant testified that she went out with the respondent on these occasions between about 10pm and midnight with her mother's knowledge. This evidence was however inconsistent with the mother's testimony on the frequency of the complainant's trips with the respondent. The mother testified that the respondent would ask her to allow the complainant to go out with him at night on the excuse that if

nobody accompanied him, he would be held up by his friends. Initially, when asked to estimate how many times the respondent had taken the complainant out at night, she replied, "many times". When pressed for a more exact figure she said it was more than two times but when asked if it had been more than ten times, the reply was "I cannot recall". When faced with the complainant's evidence as to the frequency of two to three times a week and told that would mean 96 times in a year and 280 days over three years and pressed as to whether she had really allowed the respondent to take the complainant out so frequently, the mother replied "It was only *sometimes* that he will ask me to get [the complainant] to accompany him" [emphasis added].

91 In addition, the mother gave evidence that if the respondent's job allowed it, he would take the family out up to three to four times a week to Johor Bahru for shopping and meals and used his own car to do so. This cast further doubt on the complainant's assertion that she, separately, was out with him two or three times a week. Between the frequent family trips and the respondent's working hours which sometimes stretched to the early hours of the morning, there would not have been many nights available each week for the respondent to take the complainant out alone. It should also be noted that it was Mr Sim's unchallenged evidence that the respondent regularly drove his car to and from work. If this was so, there would have been no need for him to drive the Prime Mover at all let alone on such a frequent basis as the complainant alleged.

92 Having considered the totality of the complainant's evidence, the circumstances and the evidence of her family members as specified above, we have to agree with the Judge (albeit on different grounds) that she was not an unusually convincing witness. Therefore, it would be unsafe to convict the respondent on her evidence alone and we must now consider whether there was any objective corroboration of her allegations.

Whether there was corroborating evidence

93 There was no objective evidence of the allegations of digital-vaginal penetration which had purportedly taken place in the flat and which formed the substance of the third and fourth charges. We agree with the Judge that it was not corroborated. In particular, in regard to the fourth charge, we agree with the Judge's finding (see [43] above) that the Prosecution could and should have had some of the details of the complainant's account verified by the sister. It did not do so, thus warranting the drawing of an adverse inference. Therefore, there are no grounds on which to reverse the respondent's acquittal on these charges and we need not consider them further.

94 It was the Prosecution's case that there was objective evidence supporting the complainant's account of the offences in the Prime Mover, being the aggravated outrage of modesty and the rapes. To briefly summarise what is stated in [49] above, this objective evidence was centred mainly on the Prime Mover. The Prosecution asserted that it had established not only that the respondent had had access to the Prime Mover but that he had also regularly driven it to the vicinity of the flat and had driven the family around in it. The Prosecution relied on the seven parking summonses, the ability of the complainant and her family to describe the interior and exterior features of the Prime Mover, and their evidence that they had been taken out in that vehicle for family outings. In addition, the respondent's statement that he had slept in the cabin of the Prime Mover was inconsistent with the assertion that the cabin was dirty and filled with tools. Further, his evidence that he had never been alone with the complainant was contradicted by the evidence of the complainant's mother.

95 The most substantial evidence that supports the Prosecution's case is the existence of the parking summonses. These establish that the Prime Mover was on at least seven occasions parked near the flat. They do not prove that the Prime Mover was driven there by the respondent though, admittedly, it would seem that that would be a strong inference to be drawn. As against that would be the evidence of Mr Sim that he, a hands-on employer, never saw the respondent drive the Prime Mover and the fact that the respondent had his own car, also parked near the flat, which he regularly used for family outings (according to the mother) and to take him to work (according to Mr Sim).

96 The fact that the family members could describe the Prime Mover as being red and bearing the Company's name, helped the Prosecution to some degree, but the possibility that they learnt about it from the photograph taken by the brother shortly after the police report was made cannot be completely ruled out. In this connection, it is of some significance that the complainant did not identify the Prime Mover as being the site of the sexual assaults during the recording of either her first statement on 28 December 2012 or that of her second statement on 17 July 2013. The investigating officer only asked Mr Sim for photographs of the Company's prime movers in March 2014. He supplied two photographs in April 2014 and it was only when these photographs were shown to the complainant, about a month later, that she identified the prime mover in one photograph as being *the* Prime Mover. However, the accuracy of this identification was questioned by the Defence because the photograph of the Prime Mover showed that it had the name of the Company on its door while the prime mover in the other photograph had no such identification of ownership. Bearing in mind that the complainant was aware that the respondent worked for the Company, the Defence submitted that it was not surprising that she identified the vehicle bearing the Company's name as the Prime Mover, a

submission that carries some weight. Further, at the time, the Company had had four prime movers, three of which were red but the investigating officer did not know this and simply showed the complainant two photographs. In all the circumstances, it is fair to say that she conducted an inadequate identification exercise.

97 More importantly, the Prosecution has the burden of proving a *prima facie* case that the assaults took place as detailed in the charges.

98 In this respect, the strength of the Prosecution's case was adversely affected by the testimony given by its own witness, Mr Sim. As noted earlier, one of the Judge's main reasons for acquitting the respondent was his acceptance of the veracity and clarity of the evidence given by Mr Sim as contrasted with what he considered to be confusing evidence from the complainant and her family on the Prime Mover (see above at [42]). We have, in our consideration of the evidence, had similar difficulty in reconciling the accounts of the complainant and her relatives as to the condition of the Prime Mover with that of Mr Sim. To explain this problem, we must go into the evidence of Mr Sim in greater detail.

99 We start, however, by repeating the complainant's evidence. She described the backseat of the Prime Mover as a flat sofa with nothing on the seat except a rag for wiping and also stated that there were curtains all around the Prime Mover. She confirmed that there were curtains on the left and right sides of the Prime Mover. Each began running from the back window and could stretch to the windscreen. This evidence was different from that given by Mr Sim. In this regard, the absence of photographs of the interior of the Prime Mover before it was scrapped deprived the court of evidence that could have

helped it establish the condition of the cabin; this omission was one that troubled the Judge as well.

100 In his examination-in-chief, Mr Sim was asked by the Prosecution about the interior of the Prime Mover. He said there was a curtain at the back but not elsewhere. He maintained that curtains were not allowed and therefore, if there, they were detachable. He himself was not aware whether the workers had put up curtains in the Prime Mover. Under cross-examination, he accepted that he did see a two-foot long curtain at the back window of the Prime Mover, behind the cabin. Mr Sim denied seeing four sets of curtains in the Prime Mover. His evidence in cross-examination on this was consistent with what he said in examination-in-chief.

101 Under cross-examination, Mr Sim was also asked about the condition of the cabin and he stated unequivocally that it was not possible for sexual relations to have taken place there because of how filthy the cabin usually was. He went on to say that lashing gear was kept inside the Prime Mover so that goods could be secured for delivery. He explained that the back seat was effectively a storage area for the lashing gear and it was not really a place for people to sit on. He agreed that the seat would generally be stained with filth and grime and would also be very dusty.

102 It would be recalled that Mr Sim maintained that the Prime Mover was not driven at all by the respondent but rather by Idris. He confirmed that he kept trip records showing who drove the Prime Mover and when but explained that he would usually discard the records after three years. He said that the investigating officer had asked him sometime in 2016 (the year of the trial) for the trip forms for the period from 2009 to 2011 and that he told her that he needed time to search for them. It does not seem as if he was pressed for them

thereafter until midway through the trial, when the investigating officer decided to go down to Mr Sim's office to search for the trip forms. No relevant trip records were eventually produced in court. Mr Sim's evidence was also that, on average, the Prime Mover in question was used most days between 2009 and 2011. It was the most important Prime Mover for the Company as it was the only one that could do big jobs. He went on to say that when the Prime Mover was doing a job, it would be stuck at the harbour and could not be moved out of it. Mr Sim explained the statement. He noted that the Prime Mover would be connected to a trailer and when a ship came in the cargo would be discharged from the ship and loaded on to the trailer and the Prime Mover had to remain supporting the trailer during the loading process. During the entire period that the load was on the trailer, the Prime Mover would be immobilised and this could be for a few days, a week, or maybe even a month, until the load was taken off and placed on another carrier.

103 In regard to any parking summonses served on any of the Company's vehicles, Mr Sim said that this would have to be settled by the driver who had the vehicle at the relevant time. The Company's trip records should show who had what vehicle at what time. He explained under cross-examination that the investigating officer had only asked for the trip reports relating to the Prime Mover on the various dates that the summonses were issued sometime "last week" and by that time it was very difficult to find the relevant records. As mentioned, no relevant trip records were eventually produced in court.

104 Thus, Mr Sim's evidence contradicted the following:

(a) the evidence of the complainant that there were curtains all around the Prime Mover;

(b) the evidence of the complainant that there was nothing on the seat of the cabin except may be, from time to time, a rag for wiping;

(c) the evidence of the complainant that it was possible to have sexual relations in the cabin of the Prime Mover on a regular and frequent basis; and

(d) the evidence of the family members that the respondent often took them out in the Prime Mover and that some of them sat in the cabin.

105 When it came to re-examination, however, not a single question was asked by the Prosecution about the condition of the Prime Mover or whether the cabin was clean or dirty or whether it was full of gear or not. Instead, Mr Sim was asked if his description was based on what he saw at the beginning of 2016 when he had last seen the Prime Mover before it was scrapped. The Judge then clarified with him that what he saw of the interior of the Prime Mover at the beginning of 2016 was the same as what he had seen previously. The Judge knew that this was significant and the Judge therefore told the Prosecution that it could challenge Mr Sim's evidence if it wished to by putting to him what the other witnesses had said about the condition of the Prime Mover. The Judge said this knowing that the Prosecution could not cross-examine its own witness. He was, therefore, indicating to it what the permissible boundaries of questioning were if the Prosecution did not accept Mr Sim's evidence. Counsel for the Prosecution ("the DPP") replied that she would think about the court's suggestion but thereafter she did not go back to the topic during re-examination that day. The case was adjourned for the weekend soon after that.

106 On the following Monday, the re-examination resumed and the DPP first asked about the curtains. She asked if he was aware of the curtains in the cabin

of the Prime Mover. Mr Sim replied that he did not know as he had not seen them. The DPP, however, never clarified whether he was speaking about the curtains at the back which he had twice said (under both direct and cross-examination) did exist or whether he was talking about curtains elsewhere which he had also said he did not think existed, and had not seen. In our view, there was no internal contradiction in Mr Sim's evidence regarding the curtains, as the Prosecution had submitted there was.

107 The DPP then continued with re-examination on the CPF contributions for Idris and others but this was ultimately irrelevant because Mr Sim confirmed, under further questioning, that he would often treat workers as casual workers for whom he made no CPF contribution and had no medical coverage. Thus, the fact that the CPF records did not show that any particular worker was working for the Company during any particular period did not mean that that worker was not in fact employed by the Company during that period or that the Company only employed the workers shown in its records of that time.

108 In the context of the CPF records, the DPP observed that in 2010 there were only two workers on the records. Mr Sim then commented that at that time there were no jobs because the economy was in poor shape. He was asked, "[s]o the prime movers were not in use in 2010" and he replied in the affirmative. Then he was asked specifically whether the Prime Mover was in use in 2010 and his reply was "don't know". This extract from the evidence which arose in a different context and had nothing to do either with what others had said about the condition of the Prime Mover nor with what he himself had said about that, is the sole evidence that is being relied on by the Prosecution to undermine Mr Sim's evidence on the state of the Prime Mover at the relevant time. We do not think that it can be used for that purpose and, in any event, it is not probative at all of the condition of the Prime Mover because Mr Sim was not challenged

on what he had said regarding its condition despite what the Judge had observed to the DPP.

109 Having re-examined Mr Sim's evidence, we have reached the view that the Prosecution cannot maintain its case that the evidence of the complainant and her mother on the condition of the cabin of the Prime Mover should be preferred to that of Mr Sim. The Prosecution's own case creates a real doubt as to the state of the cabin and whether the complainant's evidence can be accepted. This is especially as the complainant's version is that the sexual assaults happened frequently in the Prime Mover, which would have meant that the cabin would have had to be cleaned frequently and the lashing gear taken out of it and kept elsewhere on a similarly frequent basis. That would not have been an easy task, in particular during periods when the Prime Mover was busy with jobs. During cross-examination, Mr Sim stated that it was not possible for sexual relations to have taken place in the cabin of the Prime Mover because of how filthy the cabin usually was. Mr Sim also said it would only be possible for persons to sit on the back seat in order to go out for dinner if the interior was empty but he emphasised that it was never empty as there were always things inside the cabin and then he went on to explain about the lashing gear.

110 If Mr Sim's evidence on the state of the cabin is accepted, which we think it must be, then it goes to:

> (a) the place of the alleged offence since by contradicting other parts of the Prosecution's case, it raises doubts as to (i) the complainant's allegation that sexual assaults took place in the cabin of the Prime Mover and (ii) the mother's account of how clean the cabin was; and

(b) the complainant's account of how frequently the sexual assaults happened.

111 In the circumstances, there is at least a reasonable doubt whether the sexual offences could have happened in the place, in the manner, and with the frequency, that the complainant alleged they did. This conclusion in turn raises a reasonable doubt as to whether the respondent committed any of the three offences which form the basis of the first, fifth and sixth charges against him.

Conclusion

112 The Prosecution relied on various discrepancies in the respondent's evidence (see [49(c)] and [49(d)] above) which it submitted that the Judge had not placed enough weight on and which it considered were probative of the respondent's guilt. We note these. The problem in this regard for the Prosecution is the burden it always bears. To cite only one reference to this oft repeated legal doctrine, in *Public Prosecutor v Mohammed Liton Mohammed Syeed Mallik* [2008] 1 SLR(R) 601, at [34] ("*Mohammed Liton*"), this court stated that the burden lies squarely with the Prosecution to prove the accused's guilt beyond a reasonable doubt and endorsed the trial judge's elucidation of this "important principle" which was:

> Unlike civil cases, where the court may choose between two competing stories and accept the one on the balance of probabilities, that is to say, accepting that version because it seemed more plausible than the other, in a criminal case, there is an important norm to be taken into account at all times – that where there is a reasonable doubt, that doubt must be resolved in favour of the accused. *It is inherent [in] the requirement that the prosecution proves its case beyond reasonable doubt.*
>
> [emphasis in original]

113 Thus if the Prosecution is not, in its own case, able to establish guilt beyond a reasonable doubt at least on a *prima facie* basis, it is nothing to the point that the story put forward by the accused in defence contains some flaws and may support some aspects of the Prosecution's case. As was explained in [33] of *Mohammed Liton* "the appellate court should bear in mind that the accused does not, in so far as the essential elements of the offence are concerned, bear any burden of proof for the purpose of determining whether or not the acquittal is against the weight of the evidence".

114 For the reasons given above, we are satisfied that the acquittal of the respondent by the Judge was not against the weight of the evidence. We therefore dismiss the appeal.

Sundaresh Menon Chief Justice	Andrew Phang Boon Leong Judge of Appeal	Judith Prakash Judge of Appeal

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