

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 37

Criminal Case No 13 of 2018

Between

Public Prosecutor

And

BUT

GROUND OF DECISION

[Criminal Procedure and Sentencing] — [Sentencing] — [Rape] — [Sexual assault by penetration]

[Criminal Procedure and Sentencing] — [Sentencing] — [Abetment]

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Public Prosecutor

v

BUT

[2019] SGHC 37

High Court — Criminal Case No 13 of 2018
26 November; 31 December 2018

18 February 2019

Audrey Lim JC:

Introduction

1 The accused (“BUT”) faced a total of 57 charges. The Prosecution proceeded on three charges, as follows:

(1st Charge)

That you ... on or before 7 August 2016 in Singapore, did engage with [SM] in a conspiracy ... to make arrangements for [SM] to rape [V] ... and in pursuance of that conspiracy and in order to the doing of that thing, an act took place on 7 August 2016 ... at [A Hotel] ... to wit, [SM] penetrated the vagina of [V] with his penis without her consent, which act was committed in consequence of your abetment, and you have thereby committed an offence under Section 375(1)(a) punishable under s 375(2) read with Section 109 of the Penal Code, Chapter 224.

(2nd Charge)

That you ... on or before 29 April 2016 in Singapore, did engage with [SM] in a conspiracy ... to make arrangements for [SM] to rape [V] ... and in pursuance of that conspiracy and in order to the doing of that thing, an act took place on the 1st occasion sometime between 9.37pm on 29 April 2016 and 12.36am on

30 April 2016 at [B Hotel] ... to wit, [SM] penetrated the vagina of [V] with his penis without her consent, which act was committed in consequence of your abetment, and you have thereby committed an offence under Section 375(1)(a) punishable under Section 375(2) read with Section 109 of the Penal Code, Chapter 224.

(5th Charge)

That you ... on or before 29 April 2016 in Singapore, did engage with [SM] in a conspiracy ... to make arrangements for [SM] to sexually assault [V] ... and in pursuance of that conspiracy and in order to the doing of that thing, an act took place sometime between 9.37pm on 29 April 2016 and 12.36am on 30 April 2016 at [B Hotel] ... to wit, [SM] penetrated the vagina of [V] with his finger without her consent, which act was committed in consequence of your abetment, and you have thereby committed an offence under Section 376(2)(a) punishable under Section 376(3) read with Section 109 of the Penal Code, Chapter 224.

2 On 26 November 2018, BUT pleaded guilty to the three charges, and consented to having the following 54 charges taken into consideration for the purposes of sentencing:

- (a) Two charges of abetment of rape by SM of V also occurring sometime between 29 April 2016 and 30 April 2016;
- (b) Four charges of abetment of outrage of modesty by SM of V under s 354(1) read with s 109 of the Penal Code (Cap 224, 2008 Rev Ed);
- (c) 19 charges of making an obscene film under s 29(1) and punishable under s 29(1)(a) of the Films Act (Cap 107, 1998 Rev Ed); and
- (d) 29 District Court charges, pertaining to the insulting of a modesty of two *other* women by recording his sexual intercourse with

them without their knowledge under s 509 of the Penal Code; the possession of obscene films and films without a valid certificate under s 30(1) and s 21(1)(a) of the Films Act respectively; the transmission of obscene objects under s 292(1)(a) of the Penal Code, and the making of obscene films under s 29(1) of the Films Act. The Prosecution applied for these to be taken into consideration under s 148(3) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed).

3 I sentenced BUT to 14 years' imprisonment and 12 strokes of the cane for each of the 1st and 2nd charges and to ten years' imprisonment and eight strokes of the cane for the 5th charge. I ordered the sentences for the 1st and 5th charges to run consecutively and for the 2nd charge to run concurrently with the other two. I also factored in the one month that BUT had spent in custody. Thus, BUT would serve an aggregate sentence of 23 years and 11 months' imprisonment with the maximum 24 strokes of the cane pursuant to s 328(6) of the Criminal Procedure Code. BUT has appealed against my decision on sentence.

Background facts

4 I set out the facts, which BUT admitted to without qualification. BUT is a 27-year-old Singaporean male. He was about 24 to 25 years old at the material time, and was employed as an auxiliary police officer. The victim ("V") was 25 years old at the material time.

5 Sometime in 2014, BUT and V entered into a relationship. They would occasionally book a hotel room, where they would be sexually intimate. BUT was interested in "soft-bondage" sexual activities, and asked V to engage in them with him. V initially rejected his request and told him that she was

uncomfortable doing so. However, he continued to cajole V and told her that they should try new things to “spice up” their relationship. Eventually, V relented and allowed herself to be physically bound, effectively placing herself at the mercy of BUT as she wanted to please him and because she loved and trusted him. Over the course of their relationship it was BUT who invariably initiated the soft-bondage acts during sexual intercourse.¹

6 On at least one occasion, BUT floated the idea of a “threesome” with V. However, V firmly told him that she was not interested. In addition to soft-bondage activities, BUT regularly recorded their sexual intercourse as he claimed that viewing the erotic videos would facilitate a more rapid onset of orgasm for him. V similarly disliked the idea of recording their intimate moments, but she relented as BUT had told her it was for his personal viewing pleasure only. To win V’s trust, he promised to delete the videos after watching them. V’s fears were assuaged as she trusted BUT.²

7 Unbeknownst to V, BUT had been viewing pornography on social media and engaging in sexual-related discussions with other persons. Sometime in 2015, he initiated contact with his would-be accomplice (“SM”), a Singaporean male. At the time of the offences, SM was about 20 years old.³ BUT and SM would trade lurid details and photographs of their “sexual conquests”.⁴ BUT disclosed to SM his sexual fantasy of watching a third party engaging in sex with his girlfriend, V. Fuelled by his desire to fulfil his fantasy, BUT conceived of a plan for him and SM to engage in a threesome with V. BUT knew that he had to keep SM’s participation in the illicit threesome a secret from V, as she

¹ SOF, at paras 4–6.

² SOF, at paras 6–7.

³ SOF, at paras 3 and 18.

⁴ SOF, at para 18.

had earlier disagreed with the idea of a threesome when he first broached the topic with her.⁵

Events of 29 to 30 April and facts pertaining to the 2nd and 5th charges

8 Sometime around 9.37 pm on 29 April 2016, BUT and V checked into “B Hotel”. Without V’s knowledge, BUT had arranged for SM to come to the hotel to participate in a sexual tryst.⁶

9 That night, BUT presented V with a red rope (that he had purchased from a sex toy shop) and proceeded to loosely bind her hands. He also got V to put on a pair of pantyhose and blindfolded her with a bandana. BUT knew that V trusted him when she was placed in such a position and that because of that trust, she would not attempt to untie herself or remove the blindfold. This gave BUT and SM the opportunity to perform the sexual acts on V without her knowledge. V was completely unaware of the scheme hatched by them, and she simply thought that BUT wanted to engage in soft bondage play during sex as usual.⁷

10 When SM arrived at the hotel, he texted BUT, who replied with the room number and directed SM to wait for his cue before entering the room. SM then made his way to the room. Shortly after, BUT opened the door and gestured for SM to enter the room. BUT indicated to SM to remain silent so as not to arouse V’s suspicion. He then ushered SM to the bathroom and told SM to remove all his clothes and to wait inside the bathroom. BUT also turned on the tap to give V the impression he was using the toilet. Thereafter, BUT opened the bathroom

⁵ SOF, at para 19.

⁶ SOF, at paras 20.

⁷ SOF, at paras 20–21.

door and gestured to SM follow him out.⁸

11 SM saw that V was lying blindfolded on the bed with both her hands tied up with the red rope and wearing only her bra and the pantyhose. BUT gestured to SM to wait at the corner of the bed, while BUT proceeded to stimulate V's vagina with his tongue. A short while later, he gestured to SM to replace him and to continue licking V's vagina.⁹ BUT then wanted to remove V's bra and indicated to SM to stop licking V's vagina. Once V was completely naked, BUT gestured to SM to lick V's vagina again. BUT and SM's actions here formed the subject of the 7th and 8th charges of abetting the outrage of V's modesty by cunnilingus, and that were taken into consideration for the purposes of sentencing.¹⁰

12 BUT then gestured to SM to move away from the bed. BUT proceeded to have sex with V. He then stepped off the bed. He gestured to SM to get on the bed and to continue his actions. SM then inserted his penis into V's vagina without a condom. He withdrew his penis after a few minutes and then proceeded to digitally penetrate V's vagina using two fingers. He then inserted his penis into V's vagina again. BUT and SM's actions here formed the subject matter of the 2nd and 5th proceeded charges of abetting rape and sexual assault by penetration, as well as the 3rd charge of abetting rape that was taken into consideration for the purposes of sentencing.¹¹

13 SM withdrew his penis and proceeded to perform cunnilingus on V again. He then penetrated V's vagina for the third time that night. At this

⁸ SOF, at para 22.

⁹ SOF, at para 23.

¹⁰ SOF, at para 23 (and footnotes 3 and 4).

¹¹ SOF, at para 24 (and footnotes 5, 6, and 7).

juncture, on BUT's directions, SM withdrew his penis and proceeded to ejaculate just above V's vagina. As SM did so, BUT pretended to moan in pleasure to reinforce the illusion that it was him (BUT) who had just ejaculated on V. BUT then smeared SM's semen on V's lips.¹² BUT and SM's actions here formed the subject matter of the 9th charge (of abetting the outrage of V's modesty) and the 4th charge (of abetting rape) that were taken into consideration for the purposes of sentencing.¹³

14 BUT then gestured to SM to follow him into the bathroom and turned on the tap whilst SM dressed, before SM left the hotel room. BUT recorded the entire episode on his phone. BUT and V subsequently checked out of B Hotel at about 12.36 am on 30 April 2016.¹⁴ At all material times, BUT and SM knew that V was under the misconception that she was having sex with BUT and therefore had not consented to SM's sexual acts.¹⁵

Events of 7 August 2016 and facts pertaining to the 1st charge

The lead up to the offence

15 Sometime in early August 2016, V decided to celebrate BUT's birthday by arranging a "staycation". V informed BUT she had booked a hotel room on 6 August 2016, but did not tell him the hotel as she wanted it to be a surprise.¹⁶ The offer provided BUT and SM another opportunity to sexually violate V and they began planning for this on 3 August 2016, when BUT first informed SM

¹² SOF, at para 25.

¹³ SOF, at para 25 (and footnotes 8 and 9).

¹⁴ SOF, at para 25 (and footnote 2).

¹⁵ SOF, at para 26.

¹⁶ SOF, at para 8.

that he and V were going to stay over at a hotel. BUT informed SM to “standby”.¹⁷

16 On 6 August 2016, BUT pestered V to find out which hotel had been booked. He claimed he wanted to go to the hotel to deposit his things. V then brought him to “A Hotel”, and they then left the hotel for a meal before returning at 11:00 pm. BUT and V had sex and then fell asleep naked on the bed.¹⁸

17 In the lead up to the offences, BUT forwarded some titillating photographs of V to arouse SM’s interest.¹⁹ The ensuing messages between BUT and SM further revealed the extent of their planning:

- (a) BUT told SM to sneak in only after V was asleep;²⁰
- (b) SM was not to smoke before arriving, and to assuage BUT’s concerns about his breath, SM assured BUT that he would wash his mouth;²¹ and
- (c) BUT reminded SM to make sure V’s hands did not touch him.²²

The commission of the offence in the 1st charge

18 Prior to SM entering the room, BUT wanted to ensure V was sexually aroused and appropriately restrained with no risk of her removing her blindfold so she could discover their ploy. Once again, V had no knowledge of BUT and

¹⁷ SOF, at para 28.

¹⁸ SOF, at para 9.

¹⁹ SOF, at para 28.

²⁰ SOF, at para 28(a) (and Annex B, s/no. 352).

²¹ SOF, at para 28(b) (and Annex B, s/nos. 419–425).

²² SOF, at paras 28(c) and 29 (and Annex B, s/nos. 437–439).

SM's scheme as she had been conditioned by BUT to assume he merely wanted to engage in bondage play.²³

19 Once BUT had restrained V and blindfolded her, he gestured to SM to follow him into the room. BUT then gestured to SM to lick V's vagina and SM did so while BUT used his laptop to record SM. Then, BUT gestured to SM to move away while BUT kissed V on her mouth. Thereafter, he gestured to SM to penetrate V's vagina with his penis. SM proceeded to insert his penis into V's vagina without a condom. These actions formed the subject matter of the 1st proceeded charge, and of the 6th charge (of abetting SM to outrage V's modesty) taken into consideration for the purposes of sentencing.²⁴ At all material times, BUT and SM knew that V was under the misconception that she was engaging in sex with BUT and that she had therefore not consented to any of the sexual acts performed by SM.²⁵

20 Whilst the above were happening, V woke from her sleep.²⁶ When V felt a penis penetrating her vagina, she was shocked as she could tell that the penis penetrating her was different from BUT's penis. She also felt a pair of hands holding her waist as the person continued thrusting his penis into her vagina and she could also feel someone adjusting the eye mask on her at the same time. V realised something was not right and tried to remove the eye mask to see what was happening.²⁷

²³ SOF, at para 29.

²⁴ SOF, at para 30 (and footnotes 15 and 16).

²⁵ SOF, at para 30.

²⁶ SOF, at para 10.

²⁷ SOF, at para 11.

21 To BUT's alarm, V began to struggle to loosen her hands and to remove her blindfold. BUT started to kiss V on her face to attempt to block her view of SM and also frantically gestured to SM to leave the room.²⁸ V heard BUT telling her to "*go back to sleep, go back to sleep, it's nothing, it's nothing*". However, as the rope was loosely tied around her hands, V was able to free her hands and push away the person who was kissing her. V removed the eye mask and to her utter shock realised that apart from BUT there was another person in the room. V could not see SM very clearly then as she did not have her spectacles on, but she noticed he was trying to flee to the room door and quickly retrieved her spectacles. BUT tried to stop her from doing so and even attempted to block her view of SM. By the time she was able to put on her spectacles, SM had left the room.²⁹

The immediate aftermath

22 V confronted BUT and told him that what the stranger had done to her was rape. V noticed BUT's laptop was switched on and realised he had been recording the events. She insisted he play the videos. BUT was reluctant to do so, but eventually relented. When the videos confirmed that another person was in the room earlier who had sexual intercourse with her, without her consent, V was utterly shocked. She told BUT, "*this is clearly rape, do you know what you have done?*" BUT then apologised profusely. V told him that she would make a police report and proceeded to leave. BUT sought to dissuade her. She then demanded to know the details of the stranger, but BUT initially claimed he did not know them. V knew this could not be true and demanded BUT call SM and to tell him to return to the hotel, which BUT complied with.³⁰

²⁸ SOF, at para 31.

²⁹ SOF, at para 11.

³⁰ SOF, at paras 12–14.

23 After V packed her bags and left the room, BUT deleted the videos on his laptop to erase any evidence of the offence. He sent numerous texts to V begging her not to report the offence to the police. While BUT was messaging SM to return to the hotel, SM reminded him to “delete everything” (to which BUT replied that he had) and to erase the messages in their phones.³¹

24 In the meantime, V proceeded to the hotel lobby and informed the receptionist she could have been raped and asked to see the camera footage near the hotel room. At this time, V noticed SM walking into the hotel lobby and recognised him as the person who had raped her. SM was subsequently detained by the hotel staff. V also made a police report, and BUT and SM were subsequently arrested by the police at the hotel.³²

Sentencing framework for the abetment of rape and digital-penetration

25 At the outset it should be noted that the maximum punishment for abetment of an offence remains the same as for the primary offence (of rape and sexual assault by penetration). The Prosecution submitted, and it was not disputed by the Defence, that the sentencing approaches for the primary offences should apply with equal force.³³

26 The parties agreed that the offences of abetment of rape and digital-penetration fell within Band 2 of the framework in *Ng Kean Meng Terence v Public Prosecutor* [2017] 2 SLR 449 (“*Terence Ng*”) and in *Pram Nair v Public Prosecutor* [2017] 2 SLR 1015 (“*Pram Nair*”) respectively,³⁴ with the following sentencing range:

³¹ SOF, at para 32 and p 12 (at footnote 11); Annex D at s/nos. 38–44.

³² SOF, at paras 16 and 17.

³³ Prosecution’s Submissions on Sentence (“PSS”), dated 21 November 2018, at para 12.

- (a) For rape: 13 to 17 years' imprisonment and 12 strokes of the cane; and
- (b) For digital-penetration: ten to 15 years' imprisonment and eight strokes of the cane.

27 In the present case, the parties agreed that the offence-specific aggravating factors comprised abuse of trust, premeditation on BUT's part, and V's vulnerability.³⁵ The Prosecution further submitted that the element of premeditation was aggravated by the level of deception employed by BUT and that there had been the deliberate infliction of special trauma on V.³⁶

28 The Prosecution submitted that given the number and intensity of the offence-specific aggravating factors, the case fell within the middle range of Band 2 and the indicative starting point was 15 years' imprisonment for the abetment of rape, and 12 years' imprisonment for the abetment of digital-penetration. Taking into account the offender-specific aggravating factors of the number of charges taken into consideration and BUT's deletion of incriminating evidence as against the mitigating factor of BUT's plea of guilt, a sentencing discount of at most a year for each of the charges would be appropriate. The Prosecution thus submitted for a sentence of 14 years' imprisonment and 12 strokes of the cane for the 1st and 2nd charges and of 11 years' imprisonment and eight strokes of the cane for the 5th charge. The 1st and 5th charges were to run consecutively, totalling 25 years' imprisonment and the maximum 24 strokes of the cane.

³⁴ PSS, at p 6 and para 13; Defence's Plea-in-Mitigation ("DM"), dated 21 November 2018, at para 22.

³⁵ PSS, at paras 14–18, 19–22, and 25–27; DM, at para 22; 26/11/18 Notes of Evidence ("NE") at 26 and 28.

³⁶ PSS, at paras 23–24, and 28–31.

29 The Defence submitted that the appropriate starting point was 13 years' imprisonment and nine years' imprisonment for the charges of abetment of rape and of digital-penetration respectively. An additional discount of a year per charge was warranted due to the totality principle. The Defence thus submitted for a sentence of 12 years' imprisonment and eight strokes of the cane for the 1st and 2nd charges and of eight years' imprisonment and eight strokes of the cane for the 5th charge. The 1st (or 2nd) and 5th charges were to run consecutively, totalling 20 years' imprisonment and 24 strokes of the cane.³⁷

Offence-specific factors

30 I turn first to the offence-specific factors.

Abuse of trust

31 The Prosecution submitted that there had been a flagrant abuse of V's trust. She gave in to BUT's pleas to engage in soft-bondage practices for his sexual pleasure because she loved and trusted him as her boyfriend. She reposed such a degree of trust in him that she allowed herself to be blindfolded and tied up during sex thus placing herself at his complete mercy. The soft-bondage routines entrenched V's role as the vulnerable party in intercourse and BUT exploited her trust to create an opportunity for SM to sexually assault her.³⁸ Moreover, even though BUT knew that V had disagreed with the notion of a threesome, he went ahead to orchestrate the acts with SM. He selfishly prioritised his sexual gratification at V's expense.

³⁷ DM, at paras 10–11, 61 and 71.

³⁸ PSS, at para 16.

32 The Defence rightly conceded that there had been an abuse of trust by virtue of the relationship between BUT and V which was an offence-specific aggravating factor. However, referring to *Public Prosecutor v BQW* [2018] SGHC 136 at [37], it suggested the present case involved a different level of trust as compared to precedents where the accused was in an occupation of trust, or where there was a familial relationship between the accused and the victim.³⁹

33 Even if the abuse of trust was not of the *nature* where the trust was derived from the accused's occupation or familial role, this did not mean that the *degree* of the violation of trust could not be equally egregious. Relationships of trust can vary among individuals, and each case turns on its facts. In the present case, I agreed with the Prosecution that there had been a flagrant abuse of V's trust and this was a significant aggravating factor. V was BUT's girlfriend and he claimed as someone "whom he had desire to marry".⁴⁰ BUT knew that V was against participating in a threesome, yet he proceeded to orchestrate the acts with SM. This was a relationship where V had wholly reposed her trust in BUT, and where she had allowed herself to be bound and blindfolded because she loved and trusted him. Indeed, the second occasion of the abetment of rape occurred when V was *celebrating BUT's birthday*. I accepted that V's shock and horror after she discovered on this occasion, that a *stranger* had penetrated her vagina as she struggled to free herself from the rope and to make sense of her situation, would have been immense.⁴¹ As the Prosecution aptly pointed out, the effect of BUT's betrayal was poignantly conveyed in V's own words to him in the immediate aftermath of the offences, when he was imploring her to return from the hotel lobby:⁴²

³⁹ DM, at paras 24–27.

⁴⁰ DM, at para 51.

⁴¹ PSS, at paras 1 and 27; SOF at para 11.

BUT : ...please please don't call the police [please]
 BUT : You hold the key to my future...
 V : So what
 V : **[You] hold the key to my trust**
 ...
 BUT : I will do anything for you...
 V : **I cannot trust [you] anymore**
 V : Never
 BUT : ...Come up
 V : **[You are] the one [I should] feel safe with**
 V : **The most**
 V : **No**
 V : **[I'm] not safe there**
[Emphasis added.]

Premeditation and employment of deception

34 The Prosecution submitted that BUT had displayed premeditation and employed deception. He was the “sole mastermind” of the conspiracy. Specifically, it submitted that BUT capitalised on the fact that he had introduced V to soft-bondage practices and could therefore get her to participate in a threesome against her express wishes.⁴³ In particular, the Prosecution pointed to the extent of BUT’s involvement in the lead up to the offences:⁴⁴

(a) BUT initiated contact with SM to secure his participation in the threesome. On the second occasion, he sent titillating photos of V (without her consent or knowledge) to SM. He also intimated that the

⁴² PSS, at para 18; SOF, Annex C, s/nos. 43352–43406.

⁴³ PSS, at paras 20 and 21.

⁴⁴ PSS, at paras 22 and 23; SOF, Annex B, s/nos. 391–400.

next time such an opportunity to sexually violate V arose would be “*a long time from now*”.

(b) BUT made preparations beforehand such as procuring the ropes and blindfolds to restrain V and obscure her sight, as well as stockings to minimise skin contact between SM and V. He and SM also discussed not drinking alcohol or smoking to prevent arousing V’s suspicion.

(c) During the commission of the offences, BUT carefully orchestrated the rape and digital-penetration, including sexually arousing V before SM sexually violated her, gesturing to SM how and where he should position himself, and even directing exactly where on V’s body SM should ejaculate.

(d) The extreme level of deception was exemplified by the minute details such as turning on the tap so that running water would mask SM’s entry into the hotel room, and simulating an orgasm by moaning when SM ejaculated on V’s body. Even after V realised something was amiss, BUT kissed V’s face and told her to “*go back to sleep*”.

35 I agreed with the Prosecution that there was a considerable degree of premeditation and planning as well as employment of deception in an attempt to conceal the heinous acts and to procure V’s unknowing participation in the acts. It was clear that *both BUT and SM* had carefully coordinated prior to, and during, the offences to violate V in such a way as to prevent her from discovering their reprehensible conduct. Hence, whilst it would not be entirely accurate to describe BUT as the “sole mastermind”, nevertheless it was BUT who had initiated the conspiracy with SM and provided details of when and how they would carry out the sexual violation of V.

36 At this juncture, I turn to address the Defence’s submission that precedents such as *Public Prosecutor v Koh Rong Guang* [2018] SGHC 117 (“*Koh Rong Guang*”) – where the accused was convicted of three charges of statutory rape and where there was use of the threat of violence – had more aggravating factors than the present case.⁴⁵ I did not think a comparison with the facts of *Koh Rong Guang* was entirely appropriate. First, the overall sentence imposed in that case was higher, *ie*, 28 years’ imprisonment (and after taking into account the totality principle) and upon conviction after a trial. Second, I did not think that the lack of a threat of violence in the present case was a commensurate comparison. As the Prosecution rightly pointed out, the abetment of rape here was *insidious* and it was not necessary for BUT to utilise the threat of violence. Rather, he had deployed a significant degree of deception and abuse of V’s trust to procure her unknowing participation in the rape offences.⁴⁶

V was a vulnerable victim

37 The Prosecution submitted that V was vulnerable in that she had been rendered utterly defenceless against SM’s sexual assaults. The Defence conceded that while V was not vulnerable in the sense that she was underage, it accepted that she was at the mercy of BUT while the offences were committed.⁴⁷

38 I accepted that BUT had capitalised on his encouragement of V into accepting soft-bondage practices and further accustomed her to being blindfolded and tied up. V’s engagement in soft bondage activities – though she was initially reluctant – was a choice made because she loved and trusted BUT. It seemed to me that what BUT had done was to foster an assumption in V that

⁴⁵ DM, at para 45.

⁴⁶ PSS, at para 34.

⁴⁷ 26/11/18 NE at 28.

when she placed herself in such a compromising position she would not be harmed. Once V had acceded to his request and allowed herself to be additionally vulnerable (by being placed in “bondage”), BUT had exploited that vulnerability and invalidated both her trust and her sexual autonomy. It was the violation of V’s inalienable right to choose how and who she would or would not have sex with that struck at the very heart of why rape was rightly regarded as a heinous offence: see generally *Public Prosecutor v V Murugesan* [2005] SGHC 160 at [54].

Deliberate infliction of special trauma

39 I turn to the Prosecution’s submission that there was the deliberate infliction of special trauma. The Prosecution clarified it was not submitting that V had suffered severe psychological or psychiatric harm, but rather that this related to the intention of the accused as manifested in the manner of offending: see *Terence Ng* at [44(i)].⁴⁸ BUT had transgressed V’s wishes not to engage in a threesome and had filmed the illicit enterprise for his repeated viewing pleasure. There was a further risk of dissemination of the footage. Moreover, BUT went so far as to dip his fingers in SM’s semen and smeared it over V’s lips, subjecting her to further degradation and humiliation for her perpetrators’ sexual pleasure.⁴⁹ The effect of V’s distress was seen in her reaction in the aftermath of the rape, when she was observed to be trembling and when she refused to put her bag down.⁵⁰

40 I accepted the Prosecution’s submission that there was deliberate infliction of special trauma. It should be noted that on the first occasion (in April

⁴⁸ 26/11/18 NE at 31.

⁴⁹ PSS, at paras 29–30.

⁵⁰ PSS, at para 31.

2016), BUT had enabled SM to repeatedly rape V (the subject of the 2nd, 3rd and 4th charges). Further, on both occasions, SM had penetrated V without a condom and thus BUT had knowingly risked V's exposure to pregnancy and the transmission of a serious disease *by a stranger*. BUT's act of smearing SM's semen over V's lips showed how he reduced V to a mere sex object to be humiliated at his pleasure.

Offender-specific factors

Charges taken into consideration and deletion of evidence

41 Next, I considered the offender-specific factors. There were 54 charges taken into consideration for the purposes of sentencing. This included two other acts of abetment of rape of V by SM (committed on the first occasion in April 2016), four charges of abetment of the outrage of modesty by SM of V (committed on the first and second occasions of the rape by SM in April and August 2016), the making of numerous obscene films pertaining to the acts of the first occasion and, pertinently, committing similar offences of making obscene films of two *other* unsuspecting females thereby insulting their modesty.⁵¹ In addition, BUT's hasty deletion of incriminating evidence on his laptop and of his messages with SM was indubitably an aggravating factor (see *Vasentha d/o Joseph v Public Prosecutor* [2015] 5 SLR 122 at [69] in the context of drug offences). I note that BUT's deletion of the evidence prevented the recovery of the obscene films he had made of SM and V on the second occasion of the abetment of rape.⁵²

⁵¹ PSS, at para 37(a).

⁵² PSS, at para 37(b).

Plea of guilt

42 The Defence submitted that BUT's plea of guilt had saved the Prosecution and the court valuable time and resources. I did accept that BUT's plea of guilt meant that V would avoid the trauma of testifying at trial and having to relive her ordeal. I also had sight of a letter penned by BUT to V,⁵³ where he expressed his remorse and apologised to her without reservations. I accepted that there was some genuine remorse on BUT's part.

43 It has been held in *Chang Kar Meng v Public Prosecutor* [2017] 2 SLR 68 at [47]–[48] that even in cases where the evidence against an accused is compelling, an accused who pleads guilty should ordinarily be given at least some credit as the victim does not need to undergo the additional suffering of having to relive the experience in court; nevertheless this must be viewed in the context of other factors. Here, BUT was caught red-handed by V and there were video footages retrieved from his computer pertaining to acts on the first occasion. Remarkably, despite the fact that V would have been experiencing immense shock and horror when she discovered *someone else* was penetrating her as she struggled to free herself and to make sense of her situation,⁵⁴ she had the presence of mind to attempt to catch sight of the rapist, question BUT, view the incriminating videos, and compel BUT to call SM to return to the crime scene. Fortuitously, V's fortitude in the face of the trauma she had just experienced, coupled with the conduct of the hotel staff, meant that BUT and SM could be apprehended soon after.

44 The Defence also submitted that BUT had indicated that he was willing to testify against SM, which was evidence of his contrition.⁵⁵ In contrast, the

⁵³ Defence's Bundle of Authorities, at Tab M.

⁵⁴ PSS, at paras 1 and 27; SOF, at para 11.

Prosecution stressed that such an offer was as yet speculative, and it would be easy for BUT to go back on his indication to testify.⁵⁶ In this regard, I accepted that any effect of an offer by an accused to testify would necessarily be of an unprovable quantity and could be resiled from after sentence was passed. However, limited weight might be afforded to an accused where such an offer appeared to be motivated by genuine remorse, which I was of the view was extant in the present case.

Conclusion

45 In my view, the number and degree of the offence- and offender-specific aggravating factors placed BUT's offences at the very least within the middle of Band 2 of *Terence Ng* and *Pram Nair* and hence the indicative starting sentence was 15 years' imprisonment for abetment of rape and 12 years' imprisonment for abetment of digital-penetration. I agreed that general and specific deterrence was warranted, given the heinous nature of the crimes committed by BUT and the offence- and offender-specific factors, such as the degree of premeditation and planning, the significant deployment of deception to procure V's unknowing participation in the acts, how BUT had destroyed incriminating evidence after he was caught, and the number and nature of the charges taken into consideration. It was BUT who had initiated the plan with SM to sexually abuse V and, not being satisfied with having done so once (on the first occasion), repeated the heinous acts again (on the second occasion). His actions led to the degradation and humiliation of V, his own girlfriend. At the same time, I took into account BUT's plea of guilt, his remorse, and that he had no previous antecedents. I also considered that there was some overlap when

⁵⁵ DM, at para 52.

⁵⁶ 26/11/18 NE at 32–33.

referring to various acts and circumstances which were considered in the offence- or offender-specific factors. Further, I was also cognisant that BUT was relatively young when he committed the offences and that any global sentence to be imposed would be lengthy.

46 Bearing in mind the totality principle and with a view to BUT's past record and his future prospects, I thus imposed a term of 14 years' imprisonment and 12 strokes of the cane for each of the abetment of rape charges (1st and 2nd charges) and 10 years' imprisonment and eight strokes of the cane on the abetment of digital-penetration charge (5th charge). I ordered the sentences for the 1st and 5th charges to run consecutively, thus totalling 24 years' imprisonment with the maximum 24 strokes of the cane. As for the total imprisonment term, BUT had previously spent one month in custody in the Institute of Mental Health and would thus serve a sentence of 23 years and 11 months' imprisonment (after deducting the custody period).

Audrey Lim
Judicial Commissioner

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