

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 64

Criminal Case No 59 of 2018

Between

Public Prosecutor

And

BSR

GROUND'S OF DECISION

[Criminal Procedure and Sentencing] — [Sentencing] — [Fellatio by a person under 14 years of age] — [Aggravating factors]

[Criminal Procedure and Sentencing] — [Sentencing] — [Prevention of Human Trafficking Act] — [Aggravating factors]

[Criminal Procedure and Sentencing] — [Sentencing] — [Outrage of modesty of a person under 14 years of age] — [Aggravating factors]

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Public Prosecutor

v

BSR

[2019] SGHC 64

High Court — Criminal Case No 59 of 2018
Chan Seng Onn J
19 February 2019

12 March 2019

Chan Seng Onn J:

Introduction

1 The Accused's acts are best described as monstrous. Between March 2016 to August 2016, the Accused sexually exploited and abused three vulnerable women in his life, whom he had every responsibility to protect.¹

2 The charges which the Accused pleaded guilty to speak for themselves in showing the sordid nature of his sexual depravity and transgressions. After considering the submissions on sentence, I took into account the relevant sentencing principles, precedents, the charges that were taken into consideration (being the 4th, 5th, 7th, and 8th charges) for the purposes of sentencing, and the Accused's plea of guilt. I sentenced the Accused as follows:

¹ For The Record, 19 February 2019 (Court 4C) at 11:31.

(a) Fourteen years' imprisonment and 12 strokes of the cane for the first charge of penetrating, with his penis, the mouth of his six-year-old daughter without her consent, an offence under s 376(1)(a) of the Penal Code (Cap 224, 2008 Revised Edition) ("Penal Code"), punishable under s 376(4)(b) of the same ("the 1st charge").

(b) Six years' imprisonment and three strokes of the cane, and a fine of \$6,000 (in default 1 month's imprisonment) for the second charge of recruiting his wife for the purpose of sexual exploitation, by placing her in fear of being physically assaulted if she refused to prostitute herself, an offence under s 3(1)(a) of the Prevention of Human Trafficking Act (No 45 of 2014) ("PHTA"), punishable under s 4(1)(a) of the same ("the 2nd charge").

(c) Six years' imprisonment and three strokes of the cane, and a fine of \$6,000 (in default 1 month's imprisonment) for the third charge of knowingly receiving payments amounting to a total of \$10,930 in connection with the sexual exploitation of his wife, who was a trafficked victim at the material time, an offence under s 6(1) PHTA, punishable under s 6(2)(a) of the same ("the 3rd charge").

(d) Five and a half years' imprisonment and six strokes of the cane for the sixth charge of using criminal force on his 13-year-old niece by removing her bra and T-shirt and touching and licking her breasts and nipples and kissing her neck and face, with intent to outrage her modesty. In order to facilitate the offence, he wrongfully restrained his niece by pushing and pinning her to the bed, thereby committing an offence punishable under s 354A(2)(b) of the Penal Code ("the 6th charge").

3 Thereafter, considering the one-transaction rule and the totality principle, I ordered the sentences for the 1st, 2nd and 6th charges to run consecutively, while the sentence for the 3rd charge was to run concurrently. The Accused's global sentence was 25 and a half years' imprisonment, 24 strokes of the cane and a \$12,000 fine (in default 2 months' imprisonment).

4 Dissatisfied, the Accused has appealed against the sentence for being manifestly excessive. I therefore detail the grounds of my decision herein.

Facts

5 The bare charges belie the severity of the Accused's misdeeds, which warrant exposition in detail.

6 The Statement of Facts which the Accused pleaded guilty to without qualification disclosed the following:

- 1 The Accused is 27-year[s]-old ... At the material time of the offences, the Accused was unemployed
- 2 The Victims are:
 - a. the Accused's biological daughter, ... who was 6 years old at the time of the offence;
 - b. the Accused's niece, ... who was 13 years old at the time of the offences; and
 - c. the Accused's wife, ... she is also [the Accused's niece's] aunt.

...

Facts relating to the 1st Charge

(Sexual assault by penetration of a person under 14 years of age)

6 The assault involving [the Accused's daughter] occurred ... while the Accused and his family were residing at the Hotel ... On the material date, the Accused had engaged in a round of sexual intercourse with [his wife] when she left the bed to use

the toilet. The Accused's 6-year-old daughter ... and 4-month-old son ... were lying on a separate mattress next to the bed. The Accused, who was in a state of arousal post-intercourse, noticed that [his daughter] was awake and beckoned her to come to him, with the intention of making her suck his penis. At the time, the Accused was wearing only a T-shirt, with his genital area completely exposed.

7 On her father's instructions, [the Accused's daughter] obediently made her way to the bed. The Accused instructed [his daughter] to sit in between his legs and pushed her head towards his penis. When [his daughter] resisted and tried to shy away from her father's penis, the Accused forcibly inserted his penis into [his daughter's] mouth and demanded that she suck his penis on the count of three. [His daughter] felt like vomiting as the Accused's penis had penetrated her throat too deeply, and she refused to comply with the Accused's demands to suck his penis. Notwithstanding [his daughter's] refusal, the Accused forcibly gripped [her] hair and guided her head in an up-and-down motion to achieve his objective. Although [his daughter] tried to push the Accused away, she was unsuccessful and was thus forced to fellate the Accused against her will.

8 ... The entire episode of forced fellatio lasted several minutes and comprised multiple penetrations. After the assault, the Accused warned [his wife] and [his daughter] not to tell anyone about what had happened, and threatened to beat them up if they dared to disobey him. [His daughter] felt scared as a result of the incident and was afraid of sleeping alone. She also felt angry at the Accused for violating her in this fashion.

9 At the time of the incident, the Accused suspected that he had a sexually transmitted disease ("**STD**") as he had been experiencing uncommon white discharge from his urethra, in addition to dysuria (painful or difficult urination). Fearing that he had contracted an STD, the Accused proceeded to seek medical treatment ... after his arrest, ... he was formally diagnosed with an STD. Despite his suspicions that he had contracted an STD – which were subsequently confirmed – the Accused nevertheless callously forced [his daughter] to fellate him, thus placing her at risk of contracting an STD herself ...

Background to the offences against [his wife]

...

13 The Accused and [his wife] entered into a relationship in 2008 and married in 2012. The Accused began physically abusing [her] in 2009 over trivial matters. Over time, the assaults against [her], which involved slapping her face, pulling her hair, hitting her head against the cupboard as well as

kicking and punching her body and face, increased in both frequency and severity. From June 2015, the Accused assaulted [his wife] at least once a week. The abuse persisted throughout [her] pregnancies.

14 The abuse caused [his wife] to be very fearful of the Accused. [His wife] was so afraid of him that she no longer dared to use her handphone or contact her own family members as the Accused explicitly disallowed her from doing so. [His wife] was also constantly stressed as she had to listen very carefully to the Accused for fear that she would make a mistake when complying with his directions to her, and risk getting physically assaulted again. [His wife] did not report the abuse to the Police as the Accused had previously threatened to kill her if she made the abuse known.

Facts relating to the 2nd Charge

(Procuring a woman for the purpose of prostitution)

...

16 In July 2016, ... the Accused suggested that [his wife] prostitute herself to pay for their infant son's diapers, milk powder and other general household expense. The Accused rejected [his wife's] request to apply for a normal job and insisted that prostitution was a quick and lucrative means of earning money to sustain their family. However, the Accused himself remained unemployed at the time. He rejected the notion that he had to work to earn money for the family, and instead demanded that [his wife] support their household as the sole breadwinner by prostituting herself for profit.

17 When [his wife] resisted the Accused's demands to prostitute herself, he badgered her persistently for three days knowing that she was afraid of him as she told him she did not want to be assaulted again. [His wife] eventually succumbed to his pressure, fearing that the Accused's physical assaults would intensify if she continued to disobey him. She also needed money to buy milk powder for their infant son who was then only 3 months old.

18 On the Accused's instructions, [his wife] began soliciting for customers [online]. The Accused was familiar with the online prostitution trade as he had frequented various online platforms to engage prostitutes for himself.

...

20 ... The Accused also forced his wife to abide by a daily quota of customers. If the quota was not met, she had to

compensate for it the following day by securing more customers.

21 In addition to prostituting herself, the Accused directed [his wife] to secretly record her sexual acts with customers and demanded that she provide these recordings to him thereafter. The Accused did so as he had a deviant fetish for seeing his wife engaging in sexual acts with other men. [His wife] complied with each of the Accused's demands out of fear.

22 The Accused closely monitored [his wife's] movements throughout the period of prostitution (June to 19 August 2016) and would scold and assault her if she failed to respond to his calls, secure enough customers, or earn enough money. On one occasion, when [his wife] was trying to solicit for customers online, the Accused kicked her head as he felt she was taking too long. He then rained punches on her. On another occasion, the Accused punched [his wife's] left ear, causing it to bleed. There were also instances when the Accused punched [his wife] on her face because he was jealous due to the sexual positions she adopted when engaging in intercourse with her customers, or when her clients paid her less than the agreed-upon amount.

23 In yet another incident, the Accused insisted that [his wife] provide sexual services to a former classmate [of hers] who had engaged her services [without] knowing who she was. The Accused demanded that [his wife] either take her [former] classmate's money and leave, or persuade him to engage in a threesome with them. The Accused was dissatisfied when [his wife] opted for the former, and punched her repeatedly until she acquiesced to his demand for a threesome.

24 On the Accused's instructions, [his wife] met her [former] classmate in the hotel room whilst the Accused hid in the bathroom. As [his wife] fellated her [former] classmate, the Accused emerged from the toilet and watched the duo. When the customer left, the Accused began punching [his wife] as he was unhappy that she had failed to persuade her [former] classmate to engage in a threesome. In the course of the altercation, the Accused hit [his wife] with a dumbbell and demanded that she solicit for more customers.

25 Desperate to appease the Accused, [his wife] complied and began looking for more customers online, albeit unsuccessfully. She eventually pacified the Accused by fellating him until he fell asleep.

26 Investigations revealed that the Accused's physical and verbal abuse of [his wife] persisted throughout the period of prostitution ...

Facts relating to the 3rd Charge**(Receiving payment in connection with exploitation of trafficked victim)**

27 ... Between June 2016 and 19 August 2016, [his wife] provided sexual services to approximately 138 customers, serving an average of 3 to 5 customers a day. She earned an estimated \$10,930 and handed all her earnings to the Accused.

...

Facts relating to the 6th Charge**(Outraging the modesty of [his niece] on 1 August 2016)**

...

31 ... on 1 August 2016, the Accused insisted that [his wife] bring her niece ... to him. ... Fearful of the Accused's threats, [his wife] eventually complied with the Accused's demands ...

...

33 [His wife] took [her niece] to [the Hotel] which she had booked on the Accused's instructions. ... the Accused direct[ed] her to instruct [her niece] to take a shower. While [her niece] was having a shower, [his wife] left the room, met the Accused in the lobby, handed him the room key and told him not to hurt [her niece]. ...

34 The Accused proceeded to [the Hotel room], undressed himself and waited for [his niece] to finish her shower. When [his niece] emerged from the toilet, the Accused hugged her from behind, pushed her onto the bed, climbed atop her and pinned her to the bed with his body. Despite [his niece's] repeated attempts at resisting the Accused, he managed to remove her T-shirt and bra and began touching, fondling and squeezing her breasts. He then licked her nipples and breasts and kissed her neck and face.

35 [His niece] cried throughout and despite efforts to push the Accused away, was unable to do so. When she tried to shout for help, he covered her mouth and nose with his hand. He then placed a pillow over her face to muffle her screams. After a while, [his niece] stopped struggling as she could no longer breathe. The Accused panicked, ceased the sexual assault on his niece and removed the pillow. He then called [his wife] and asked her to return to the room.

7 The Accused's psychiatric reports from the Institute of Mental Health ("IMH") disclosed that he was somewhat boastful of his sexual exploits.² Dr

Cheow Enquan (“Dr Cheow”) also opined in his report on the Accused dated 16 September 2016 that the Accused “continues to pose a risk to his daughter”, and “also a high risk of violence towards his wife”.³ Furthermore, Dr Cheow opined that “[f]ollow up at IMH will be of limited benefit as [the Accused] does not have a treatable mental disorder.”⁴ In a separate report dated 29 November 2018, Dr Cheow took the view that there was also no contributory link between the Accused’s mental state and the alleged offences.⁵

8 The Accused’s mother, who had made the police report against the Accused, also noticed that her grand-daughter (the Accused’s daughter) was “very disturbed and tearful after returning from” the hotel stay with her parents.⁶ When asked what had happened to her, the Accused’s daughter told her grandmother that “the accused had done something bad to her, as per the alleged offence.”⁷

9 Atop the four proceeded charges, the other four charges taken into consideration for the purposes of sentencing involved occasions whereby the Accused voluntarily caused hurt to his wife (4th and 5th charges) and outraged the modesty of the same 13-year-old niece by rubbing and touching her breast with his hand in a cinema on two separate occasions (7th and 8th charges).

² Statement of Facts, Annex B at [17].

³ Statement of Facts, Annex B at [25].

⁴ Statement of Facts, Annex B at [26].

⁵ Statement of Facts, Annex C at [25].

⁶ Statement of Facts, Annex B at [21].

⁷ Statement of Facts, Annex B at [21].

The sentence for the 1st charge of forced fellatio

10 The 1st charge involved the Accused forcing his 6-year-old daughter to fellate him against her will.

11 In this regard, the mandatory minimum sentence that the Accused could receive was eight years' imprisonment with 12 strokes of the cane (s 376(4)(b) of the Penal Code).

12 In *Pram Nair v Public Prosecutor* [2017] 2 SLR 1015 ("*Pram Nair*"), the Court of Appeal transposed the framework for rape to the offence of digital penetration, and proposed the following sentencing bands (at [159]):

- (a) Band 1: seven to ten years' imprisonment and four strokes of the cane;
- (b) Band 2: ten to 15 years' imprisonment and eight strokes of the cane;
- (c) Band 3: 15 to 20 years' imprisonment and 12 strokes of the cane.

13 While I was cognisant of the differences between digital-vaginal penetration and penile-oral penetration in the present case, I found that the framework proposed in *Pram Nair* was a useful starting point for cases of penile-oral penetration, which is generally regarded as more severe than digital-vaginal penetration (see *Public Prosecutor v BMD* [2013] SGHC 235 at [73]) and is covered by the same penal provision (s 376 of the Penal Code).

14 Applying the *Pram Nair* framework, the Accused's act of forced fellatio against his own daughter fell within the highest end of Band 2, or even Band 3. As the court in *Pram Nair* observed at [160], "where the offence [of sexual

assault by penetration] is committed against a person under 14 years of age (s 376(4)(b)) – there is a prescribed minimum sentence of eight years’ imprisonment and 12 strokes of the cane. These cases should fall within Band 2 (or even *Band 3 if there are additional aggravating factors*)” [emphasis added].

15 In this case, the aggravating factors were aplenty.

16 First, the Accused exploited an extremely vulnerable victim in his own biological daughter, who was only 6-years-old at the time of the offence and almost entirely defenceless against him during the course of the assault, as evinced by her futile attempts at resisting the Accused’s persistent advances. As See Kee Oon J (“See J”) observed in *GBR v Public Prosecutor and another appeal* [2018] 3 SLR 1048 (“*GBR v PP*”) at [29(f)]:

I note that s 354(2) is itself a provision that deals with outrage of modesty of a child below the age of 14. However, ... although the enhanced framework represents a general position that offences against minors should be dealt with more severely than those against non-minors, the framework did not intend to treat *all* offences against minors equally. The aggravating factor of young age would, in relation to enhanced offences, apply if the victim concerned was ***materially younger than the stipulated age ceiling, and in a graduated manner depending on how much younger the victim was*** ... if the offence were, for example, perpetrated against a toddler, this would be more aggravated than that against an older child for the reason that the toddler would be defenceless and unable to extricate himself or herself from the situation.

[emphasis added in bold italics]

17 Second, there was an abuse of a position of trust of the highest order. The Accused was the biological father of the victim, his daughter, and was thus “in a position of responsibility towards” her (*Ng Kean Meng Terence v Public Prosecutor* [2017] 2 SLR 449 (“*Terence Ng*”) at [44(b)]). Instead of protecting his own daughter from harm, the Accused flagrantly abused his position as the victim’s father, forcing her to fellate him against her own will. When she

resisted, the Accused “forcibly gripped [her] hair and guided her head in an up-and-down motion to achieve his objective”⁸ of having her fellate him. After several minutes of forcing her to fellate him, during which he also penetrated her mouth multiple times with his penis,⁹ the Accused then sought to leverage on his position of power over his daughter by threatening to beat her if she dared to tell anyone.¹⁰ The entire chain of events speak for themselves in showing the Accused’s despicable misuse of his position of trust as the victim’s biological father, and cannot be condoned in any way.

18 Overlaying the Accused’s abuse of his position of trust was the Accused’s propensity for preying on vulnerable women who were the close to him, and who did not have the physical and/or psychological will to resist his sordid acts. As the charges disclosed, apart from sexually assaulting his own daughter, the Accused had sexually assaulted his young niece on at least three occasions (forming the 6th to 8th charges). Furthermore, he had physically and verbally abused his own wife to the point that she became compliant to his every demand, going so far as to prostitute herself. This demonstrated the Accused’s disregard for his privilege (and the responsibilities that flow from it) as the parent, uncle, or husband to the women in his life, whom he callously utilised for his own means.

19 Third, in the course of achieving his desired fellatio, the Accused blatantly disregarded his daughter’s welfare. In *Terence Ng*, the Court of Appeal considered at [44(i)] that it would be aggravating for a sexual offender to assault his victim with knowledge that he is suffering from a life-threatening sexually transmitted disease (“STD”). Here, while the Accused had not yet been

⁸ Statement of Facts at [7].

⁹ Statement of Facts at [8].

¹⁰ Statement of Facts at [8].

diagnosed with a STD at the material time, he suspected that he had a STD due to the visible uncommon white discharge coming from his urethra, as well as the dysuria (painful or difficult urination) which he felt.¹¹ The Accused's suspicions ought to have been further aroused considering that he frequently engaged prostitutes,¹² thereby increasing his susceptibility to contracting a STD. Notwithstanding the warning signs, the Accused forced his daughter to fellate him for several minutes, exposing her to the risk of contracting a potentially incurable STD at her young age.

20 While I noted that due weight must be given to the Accused for having spared the victim additional suffering through his plea of guilt (*Chang Kar Meng v Public Prosecutor* [2017] 2 SLR 68 at [47]), I found that a sentence of 14 years' imprisonment (falling within the highest end of Band 2 in the *Pram Nair* framework) with 12 strokes of the cane (the mandatory minimum under s 376(4)(b) of the Penal Code) was commensurate with the severity of the aggravating factors in this case.

The sentences for the 2nd and 3rd charges of forcing his wife into prostitution and receiving the proceeds

21 The 2nd charge related to the Accused's coercion of his wife into prostitution by placing her in fear of being physically assaulted if she refused to do so. The 3rd charge related to his receipt of the payments derived from his wife's prostitution, as his wife was a trafficked victim for the purposes of the PHTA at the material time.

22 As disclosed in the Statement of Facts (at [6] above), the Accused was able to coerce his wife into prostitution in 2016 due to a long history of physical

¹¹ Statement of Facts at [9].

¹² Statements of Facts at [18].

and verbal abuse, which began in 2009.¹³ The abuse persisted throughout her pregnancies with the Accused's and her children,¹⁴ and the Accused threatened to kill her if she reported the abuse to the authorities.¹⁵ Throughout the prolonged abuse, the Accused's wife suffered in silence due to her fear of the Accused, and became compliant with his demands.¹⁶

23 In determining the appropriate sentences for the 2nd and 3rd charges, I considered *Poh Boon Kiat v Public Prosecutor* [2014] 4 SLR 892 ("*Poh Boon Kiat*"), where Sundaresh Menon CJ ("Menon CJ") proffered a sentencing framework for prostitution and vice-related offences under ss 140 and 146 of the Women's Charter (Cap 353, 2009 Rev Ed).

24 Although the Accused was charged under the PHTA, which carries more severe penalties than ss 140 and 146 of the Women's Charter, the respective provisions bore similarities as they dealt with sexual exploitation and living off the earnings of such exploitation. In this regard, the material portions of ss 140 and 146 of the Women's Charter provide:

Offences relating to prostitution

140.—(1) Any person who —

...

(c) by threats or intimidation procures any woman or girl to have carnal connection except by way of marriage with any male person either within or without Singapore;

...

¹³ Statement of Facts at [13].

¹⁴ Statement of Facts at [13].

¹⁵ Statement of Facts at [14].

¹⁶ Statement of Facts at [14] – [26].

shall be guilty of an offence and shall on conviction be punished with imprisonment for a term not exceeding 5 years and shall also be liable to a fine not exceeding \$10,000.

Persons living on or trading in prostitution, etc.

146.—(1) Any person who knowingly lives wholly or in part on the earnings of the prostitution of another person (being a woman or girl) shall be guilty of an offence and shall on conviction be punished with imprisonment for a term not exceeding 5 years and shall also be liable to a fine not exceeding \$10,000. ...

25 Similarly, the material provisions of the PHTA that the Accused was charged under provide:

Trafficking in persons

3.—(1) Any person who recruits, transports, transfers, harbours or receives an individual (other than a child) by means of —

(a) the threat or use of force, or any other form of coercion;

...

for the purpose of the exploitation (whether in Singapore or elsewhere) of the individual shall be guilty of an offence.

Punishment for trafficking in persons

4.—(1) Any person who is guilty of an offence under section 3, upon conviction —

(a) in the case of a first offence, shall be punished with a fine not exceeding \$100,000 and with imprisonment for a term not exceeding 10 years, and shall be liable to caning not exceeding 6 strokes ...

Persons who receive payments in connection with exploitation of trafficked victims

6.—(1) Any person who knowingly receives any payment in connection with the actual or intended exploitation in Singapore of a trafficked victim shall be guilty of an offence.

(2) Any person who is guilty of an offence under subsection (1), upon conviction —

(a) in the case of a first offence, shall be punished with a fine not exceeding \$100,000 and with imprisonment

for a term not exceeding 10 years, and shall be liable to caning not exceeding 6 strokes; ...

26 “Exploitation” under s 3(1) PHTA includes “sexual exploitation”, which means “the involving of the individual in prostitution ... or the provision of any other form of sexual service...” (s 2 PHTA).

27 Given the similarities between the respective Women’s Charter and PHTA provisions, I therefore found *Poh Boon Kiat* and the aggravating factors listed by Menon CJ to be an instructive starting point in determining the appropriate sentence for the Accused.

28 In *Poh Boon Kiat*, Menon CJ considered that the sentence ought to be determined by considering “(a) the culpability of the offender in carrying out the offence and (b) the harm resulting from the offender’s actions” (*Poh Boon Kiat* at [74]). Adopting the harm/culpability matrix, cases involving the most serious level of culpability and harm were termed by Menon CJ as “Cat 1 Harm/A Culpability” cases. Cat 1 Harm/A Culpability cases carried a starting sentence of three years and six months’ imprisonment, with an indicative sentencing range of two years and six months to five years’ imprisonment, after accounting for the mitigating and aggravating factor in each case (*Poh Boon Kiat* at [77]).

29 I considered that the Accused’s acts fell under Cat 1 Harm/A Culpability.

High level of culpability

30 First, the Accused had a high level of culpability, as he had secured his wife’s entry into the trade through violence and threats (see *Poh Boon Kiat* at

[75(c)]), which persisted even after his wife had entered the trade on his demand.

31 As the Statement of Facts disclosed, after his wife had initially resisted his demands for her to prostitute herself, “he badgered her persistently for three days knowing that she was afraid of him as she told him [that] she did not want to be assaulted again.”¹⁷ The background to this was a long history of violence towards his wife that started in 2009, and persisted through her pregnancies, causing her to be so afraid of him that “she no longer dared to use her handphone or contact her own family members as the Accused explicitly disallowed her from doing so.”¹⁸

32 The violence persisted even after his wife had succumbed to his demands for her to prostitute herself, and the Accused “would scold and assault her if she failed to respond to his calls, secure enough customers or earn enough money.”¹⁹ On one particularly egregious occasion, his wife had been engaged by a former classmate of hers. The Accused punched his wife repeatedly until she acquiesced to his demand for a threesome between himself, his wife, and the former classmate. However, when his desired threesome did not materialise, the Accused began punching his wife, and, in the course of the altercation, hit her with a dumbbell and demanded that she solicit more customers. To appease him, his wife had to fellate him until he fell asleep.²⁰

¹⁷ Statement of Facts at [17].

¹⁸ Statement of Facts at [13] – [14].

¹⁹ Statement of Facts at [22].

²⁰ Statement of Facts at [23] – [25].

33 The prolonged violence against his wife so that she would be subservient to his demands in relation to her prostitution undoubtedly pointed to his high level of culpability.

Domestic nature of the offence does not reduce the Accused's culpability

34 However, counsel for the Accused, Mr Ng Boon Gan ("Mr Ng"), suggested that the Accused's crime ought to fall on the low end of the culpability spectrum, given that it was not a transnational crime.²¹ In this regard, Mr Ng pointed out that the PHTA was passed to address "a lucrative transnational crime" (*Singapore Parliamentary Debates, Official Report* (3 November 2014) vol 92 (Mr Christopher de Souza, Deputy Speaker) ("PHTA Debates")).

35 While the driving force for the PHTA may have been to curb transnational trafficking of persons, the broad statutory provisions, which do not distinguish between transnational or entirely domestic cases of trafficking, demonstrates that the Act was intended to weed out *all* forms of human trafficking, however committed. As the Deputy Speaker observed in the PHTA Debates:

[H]uman trafficking is real; it is cruel; and it must be stemmed. We, as a society, must speak up for the voiceless and helpless by sending as strong a signal as we can against these serious crimes. Indeed, this is the ethos of the Bill. To prevent TIP (trafficking-in-persons) from taking root in our community, *our laws have to be comprehensive yet targeted, possess sufficient bite to punish perpetrators and deter would-be offenders*, and offer protection and support to those in need. ... [The Bill] raises our standards of fighting TIP both *locally and internationally* ... [emphasis added]

²¹ For the Record, Court 4C (19 February 2019) at 10:50:50.

36 Hence, to hold that trafficking of an entirely domestic nature reduces the Accused's culpability would fly in the face of the intention of the PHTA, which seeks to comprehensively deter trafficking, both "locally and internationally".

37 This is supported by s 4(2)(g) of the PHTA, which provides that "[i]n determining the appropriate sentence for an offence [of trafficking in persons], the court may take into account the aggravating factors ... including the following: ... (g) the offender was the trafficked victim's spouse". Cases involving the trafficking of one's own spouse, as in the present, are likely to lack transnational characteristics. Yet, the Act expressly provides that such forms of trafficking may be considered aggravated.

38 As a result, I found that the Accused's culpability was not lowered simply because the trafficking was entirely domestic in this case.

High level of harm

39 I also found that the degree of harm inflicted on his wife was of a high level.

40 Apart from using persistent violence against her, he also levelled systematic psychological abuse against her (*Poh Boon Kiat* at [76(a)(iii)]), making her do degrading and dangerous things such as secretly recording her sexual acts with customers and to provide such recordings to the Accused so as to satisfy his deviant fetish of seeing his wife engaging in sexual acts with other men.²²

41 Furthermore, "the court should also treat as a serious aggravating factor evidence of excessive wage reduction" (*Poh Boon Kiat* at [83]). In this respect,

²² Statement of Facts at [21].

the Accused had imposed a daily quota of customers on his wife. If the quota was not met, she would have to secure more customers the following day to compensate for the shortfall.²³ As a result of his demands, the Accused's wife provided sexual services to about 138 customers, serving an average of three to five customers a day in the short span of less than three months (from June 2016 to 19 August 2016).²⁴ During this period, the Accused's wife "earned an estimated \$10,930 and handed *all* her earnings to the Accused" [emphasis added].²⁵ As his wife had no other job at the material time, she was essentially without wage for her work as a prostitute.

42 While the Accused alleged in his defence that he had taken the earnings as he was mainly motivated "to ensure that there was sufficient cash for his infant son's needs",²⁶ I was not convinced.

43 In particular, had the Accused been so driven to provide for his infant son's needs, he would have sought, or at least attempt to seek, a job for himself. Instead of doing so, he rejected his wife's request that she apply for a job rather than prostitute herself, and further "rejected the notion that he had to work to earn money for the family", remaining unemployed throughout the period he had forced his wife into prostitution.²⁷

²³ Statement of Facts at [20].

²⁴ Statement of Facts at [27].

²⁵ Statement of Facts at [27].

²⁶ Mitigation Plea at [6].

²⁷ Statement of Facts at [16].

PHTA aggravating factors

44 In addition, there were two relevant aggravating factors that the court could take into account in determining the appropriate sentence under s 4(2) PHTA.

45 First, the Accused had actually used a weapon on his wife, being the dumbbell, while she was the subject of his sexual exploitation (s 4(2)(e) PHTA).

46 Second, the Accused had committed the offence against his own wife, which is singled out as an aggravating factor under s 4(2)(g) PHTA (see above at [37]).

The appropriate sentence for the PHTA charges

47 Having considered that the harm and culpability inflicted by the Accused was high, the indicative sentencing range for both the 2nd and 3rd charges in relation to the trafficking of his wife would have been between two years and six months' imprisonment to five years' imprisonment had he been charged under ss 140 and 146 of the Women's Charter (*Poh Boon Kiat* at [77]).

48 Here, however, the Accused was charged under the PHTA, which carries more severe penalties, including imprisonment of up to 10 years and to caning. It is trite that the sentencing judge ought to consider the full spectrum of sentences enacted by Parliament in determining the appropriate sentence (*Poh Boon Kiat* at [60], citing *Ong Chee Eng v Public Prosecutor* [2012] 3 SLR 776 at [24]).

49 In *Public Prosecutor v Muhammad Khairulanwar Bin Rohmat* (DAC 914550/2015 and others) (unreported) ("*Muhammad Khairulanwar*"),²⁸ the

accused had persuaded two minors to take up prostitution jobs. While there was no evidence of threat or force used on them, there was some element of coercion, as the accused had continued to message the minors after their initial encounter with the intention of convincing them to accept prostitution jobs.²⁹ However, apart from occasions whereby the minors had engaged in sexual acts with the accused himself on the pretext of determining their suitability to being introduced to his other clients, the minors did not provide sexual services to any of the accused's clients.³⁰

50 For his PHTA offences, the accused, who pleaded guilty, was sentenced to 36 months' imprisonment and a fine of \$10,000 in relation to the first minor, and 39 months' imprisonment and a fine of \$10,000 in relation to the second minor. Both sentences were to run consecutively.³¹

51 In this case, the Accused had, against a backdrop of prolonged domestic violence, forced his wife into prostitution. During the period of her prostitution, he continued to inflict violence on her for various reasons, including to ensure that she met the quota of clients he had stipulated for her, or so that she would give in to his demands. He further ensured that additional trauma and degradation would be visited on her by insisting that she secretly film her sexual acts with her customers, and that she provide those recordings to him thereafter. It is patently obvious that the accused's culpability far exceeds that of the offender in *Muhammad Khairulanwar*.

²⁸ Prosecution's Bundle of Authorities, Tab H.

²⁹ Prosecution's Bundle of Authorities, Tab H, p 172 at para 10; p 174 at paras 22 – 24.

³⁰ Prosecution's Bundle of Authorities, Tab H, p 172 at paras 7 – 8; p 175 at para 27.

³¹ Prosecution's Bundle of Authorities, Tab H, p 170.

52 Having considered the high level of harm and culpability of the Accused as detailed above, as well as the full sentencing range provided under ss 4 and 6 of the PHTA, I sentenced the Accused to 6 years' imprisonment and 3 strokes of the cane and a fine of \$6,000 (in default 1 month's imprisonment) for each of his PHTA charges (ie, the 2nd and 3rd charges). The \$6,000 fines were imposed to disgorge the profits which the Accused had gained by receiving about \$10,930 from his wife during the period of her prostitution.

The sentence for the 6th charge for outrage of modesty against a minor

53 The 6th charge involved the outrage of modesty of his 13-year-old niece by removing her bra and T-shirt, touching and licking her breasts and nipples, and kissing her neck and face. The outrage of modesty was of an aggravated form under s 354A of the Penal Code, as, in order to facilitate the commission of the offence, the Accused had wrongfully restrained his niece by pushing and pinning her to the bed.

54 As his niece was under the age of 14 at the time of the offence, per s 354A(2)(b) the minimum sentence was three years' imprisonment with caning.

55 In *Public Prosecutor v BDA* [2018] SGHC 72 at [77], Foo Chee Hock JC adapted the sentencing framework adopted by See J in *GBR v PP* ("*GBR*") (outrage of modesty of a minor under 14 years old) to aggravated outrage of modesty under s 354A of the Penal Code ("the adapted framework"):

- (a) Band 1: two to four years' imprisonment, with three strokes of the cane;

- (b) Band 2: four to seven years' imprisonment, with six strokes of the cane; and
- (c) Band 3: seven to 10 years' imprisonment, with 12 strokes of the cane.

56 Applying the *GBR v PP* framework, there were multiple offence specific aggravating factors in this case.

57 First, in relation to the degree of sexual exploitation (*GBR v PP* at [28]), the Accused had touched, squeezed and licked his niece's private parts, in particular her breasts and nipples, which were exposed after he had removed her bra and T-shirt forcefully.³² He also kissed sensitive parts of her body, namely her face and neck.

58 The sexual exploitation also continued for a prolonged, rather than fleeting period, as it went on for some time, with the victim crying throughout.³³ The assault only ended after the Accused panicked as he had placed a pillow over his niece's head to muffle her screams, causing her to stop struggling and screaming as she was unable to breathe.³⁴

59 Furthermore, the offence was clearly premeditated (*GBR v PP* at [29(a)]). As disclosed by the 7th and 8th charges which were taken into consideration, the Accused had outraged the modesty of his niece by touching and rubbing her breasts on two earlier occasions. Fuelled by this, the Accused then demanded that his wife, who was subservient to his demands due to her

³² Statement of Facts at [34].

³³ Statement of Facts at [35].

³⁴ Statement of Facts at [35].

fear of him, pick his niece up from school and bring her to the hotel, which she had booked on the Accused's instructions. At the hotel, as per his instructions, his wife then brought his niece to the room to shower, and left the room to pass the Accused the keys to the room. When left in the room with his niece alone, the Accused accordingly undressed, and waited for his niece to finish her shower. After which, the Accused proceeded to assault her.³⁵ The chain of events show that the offence was clearly premeditated.

60 Additionally, there was use of force or violence (*GBR v PP* at [29(b)]), as the Accused had pinned his niece to the bed, and covered her face with a pillow in an attempt to muffle her screams.

61 The offence also occurred in an intra-familial setting, whereby deterrence is of particular importance, as the victim may face additional pressure not to come forward "out of an instinctive albeit misguided reaction to preserve the unity of the family and to avoid the publicity and shame that inevitably ensues from such a conviction." (*Public Prosecutor v NF* [2006] 4 SLR(R) 849 ("*PP v NF*") at [40])

62 This difficulty of coming out was apparent in the present case. Here, the victim missed her Primary School Leaving Examinations ("PSLE") as a result of the Accused's demand that his wife was to pick the victim up from school on the morning of the offence. Fortunately, her principal made special arrangements for the victim to sit for her PSLE examination in the afternoon on the same day. Despite the distressing ordeal which would have properly explained her absence, the victim did not recount the events that had unfolded earlier to her principal, and instead sat for her examination,³⁶ with her psyche likely afflicted by the traumatic event.

³⁵ Statement of Facts at [31] – [34].

63 Finally, while no victim impact statement was understandably proffered so as to not inflict any further trauma on the victim by requiring her to recount the event, at least some harm to the Accused's niece can be gleaned from the Statement of Facts. First, she had "cried throughout [the ordeal] and despite efforts to push the Accused away, was unable to do so."³⁷ His niece also suffered scratches to her face in the immediate aftermath of the assault,³⁸ and had a pillow placed over her face to muffle her screams to the point that she could no longer breathe.³⁹

64 As See J observed in *GBR v PP* at [34], cases "involving the skin-to-skin touching of the victim's private parts of sexual organs" would fall at the higher end of the spectrum of Band 2 cases. Furthermore, cases with two or more aggravating factors would invariably fall within Band 2.

65 Here, there were multiple aggravating factors atop the skin-to-skin touching of the victim's breasts and nipples, as explored above. In the circumstances, I was satisfied that the offence fell within Band 2 *at the very least*. While I gave weight to the Accused's plea of guilt, I also considered that there were charges taken into consideration detailing two separate occasions whereby he had touched the same victim's breasts under the cover of a darkened cinema. In the circumstances, I considered that five and a half years' imprisonment with six strokes of the cane, being a sentence which falls in the middle of Band 2 in the adapted framework (at [55] above), was appropriate.

³⁶ Statement of Facts at [36].

³⁷ Statement of Facts at [35].

³⁸ Statement of Facts at [36].

³⁹ Statement of Facts at [35].

Global sentence

66 Having determined the appropriate sentence for each charge, I determined that the sentence for the 3rd charge ought to run concurrently, as the 3rd charge flowed from the Accused's sexual exploitation of his wife, which was the subject of the 2nd charge. This was aligned with the one-transaction principle (see *Public Prosecutor v Raveen Balakrishnan* [2018] 5 SLR 799 at [54]).

67 I also decided that the sentences for the 1st, 2nd and 6th charge ought to run consecutively. This was commensurate with the high culpability of the Accused, as well as the severe harm he had inflicted on each of his three victims. This was also aligned with the sentencing principles.

Sentencing principles

68 In cases of egregious sexual depravity, as in the present, general deterrence is a key sentencing consideration. As V K Rajah J (as he then was) observed in *PP v NF* at [42]:

[O]ur courts would be grievously remiss if they did not send an unequivocal and uncompromising message to all would-be sex offenders that abusing a relationship or a position of authority in order to gratify sexual impulse will inevitably be met with the harshest penal consequences. In such cases, the sentencing principle of general deterrence must figure prominently and be unmistakably reflected in the sentencing equation.

69 Apart from the principle of general deterrence, I also found that retribution was a relevant sentencing consideration in the present case, given the significant harm the Accused had caused to his victims. In particular, his wife had suffered at his hands for a prolonged period, starting in 2009, and ending only in August 2016. Furthermore, while the Accused would be released upon the completion of his sentence, the trauma and emotional distress felt by

his young victims (*ie*, his daughter and his niece) will likely follow them for the rest of their lives.

70 Specific deterrence was also a relevant sentencing consideration. Here, the IMH psychiatrist reported that the Accused did not have a treatable mental disorder, and that his mental state did not have a contributory link to the offences.⁴⁰ As a result, the sentence had to be sufficiently punishing to discourage the Accused from repeating his actions. As observed in *Public Prosecutor v Law Aik Meng* [2007] 2 SLR(R) 814 at [21]:

Specific deterrence operates through the discouraging effects felt when an offender experiences and endures the punishment of a particular offence ... it seeks to instil in a particular offender the fear of re-offending through the potential threat of re-experiencing the same sanction previously imposed.

71 Having considered the aforementioned principles, while I noted that the Accused was untraced, I did not think that the global sentence was crushing on him having regard to all the facts and circumstances of the case.

⁴⁰ Statement of Facts, Annex B at para 26 and Annex C at para 25.

Conclusion

72 In conclusion, having ordered that the sentences for the 1st, 2nd and 6th charges are to run consecutively, the Accused was therefore sentenced to a total of 25 and a half years' imprisonment, with 24 strokes of the cane and a \$12,000 fine (in default 2 months' imprisonment).

73 Dissatisfied with the sentence, the Accused has appealed on the ground that it is manifestly excessive.

Chan Seng Onn
Judge

Eunice Lau and Charlene Tay (Attorney-General's Chambers) for the
Public Prosecutor;
Ng Boon Gan (VanillaLaw LLC) for the accused;
