

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

[2021] SGHC 147

Criminal Case No 79 of 2018

Between

Public Prosecutor

And

BOX

GROUND OF DECISION

[Criminal Procedure and Sentencing] — [Sentencing]

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Public Prosecutor

v

BOX

[2021] SGHC 147

General Division of the High Court — Criminal Case No 79 of 2018
Valerie Thean J
9 November 2020

30 June 2021

Valerie Thean J:

Introduction

1 The accused was charged with nine offences committed from 2012 to 2017, involving two victims, V1 and V2 (collectively, “the victims”), who were under 14 at the material times. V1 and V2 are sisters. On 9 November 2020, he pleaded guilty to, and was convicted of, the following four charges:

- (a) two charges of aggravated sexual assault by penetration of a person under 14 years of age (“SAP”), an offence under s 376(1)(a) of the Penal Code (Cap 224, 2008 Rev Ed) (“Penal Code”) punishable under s 376(4)(b) of the same (“the 1st Charge” and “the 3rd Charge”, collectively “the SAP Charges”); and

- (b) two charges of aggravated outrage of modesty of a person under 14 years of age, punishable under s 354(2) of the Penal Code (“the 2nd Charge” and “the 6th Charge”, collectively “the OM Charges”).

The 1st, 2nd and 3rd Charges concerned V1. The 6th Charge concerned V2.

2 The accused admitted to five other charges and consented to having these charges taken into consideration for the purposes of sentencing (“the TIC Charges”). One of the TIC Charges concerned V1 and was of outrage of modesty of a person under 14. The remainder of the TIC Charges involved V2, being two charges of outrage of modesty of a person under 14, a charge of attempted aggravated sexual assault by penetration, and a charge of sexual exploitation of a child under s 7(b) of the Children and Young Persons Act (Cap 38, 2001 Rev Ed) (“CYPA”).

3 After considering the accused’s mitigation plea, the aggravating factors, the sentencing precedents, the Prosecution’s and the Defence’s submissions on sentence and the TIC Charges, I imposed the following sentences:

- (a) for the 1st Charge, ten years’ imprisonment and 12 strokes of the cane;
- (b) for the 2nd Charge, two and a half years’ imprisonment and three strokes of the cane;
- (c) for the 3rd Charge, 12 years’ imprisonment and 12 strokes of the cane; and
- (d) for the 6th Charge, two and a half years’ imprisonment and three strokes of the cane.

4 The terms of imprisonment for the 2nd, 3rd and 6th Charges were ordered to run consecutively, with the term of imprisonment for the 1st Charge to run concurrently. The number of strokes of the cane was limited by ss 328(1) and 328(6) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) (“CPC”). In the result, the aggregate sentence was 17 years’ imprisonment with effect from the date of remand, 20 September 2017, and 24 strokes of the cane.

Facts

5 The material facts are as follows. The accused is at present 37 years of age. At the time of the offences, he was between 28 and 34 years old and had been in a relationship with the victims’ mother (“M”) since 2010.¹ V1 is the third of M’s four children and V2 is the youngest.² Both sisters lived with M and their elder brother in a one-room unit (“the Flat”). Since 2010, they addressed the accused as “daddy” because M had asked them to.³ Near end-2014 or early 2015, as the accused and M were contemplating marriage, the accused moved into the Flat to stay with M and the victims on a permanent basis.⁴

6 The nine offences took place from 2012 to 2017. The offences against V1 took place from 2012 to 2015. V1 was between ten and 14 years of age at the time. In 2014, when V2 was eight years of age, the accused turned his attention to her. His abuse of V2 lasted until 2017, when V2 was 11 years of age. Neither sister was aware of the abuse against the other.⁵

¹ Statement of Facts dated 9 October and filed 19 October 2020 (“SOF”) at paras 1 and 6.

² SOF at para 2.

³ SOF at para 3.

⁴ SOF at para 6.

⁵ SOF at paras 8–9.

7 The four proceeded charges concerned four different incidents, which I now turn to.

The SAP Charges

8 The SAP Charges related to two incidents, both of which involved V1.

The 1st Charge

9 As the Flat was a one-room unit, the household would sleep together on mattresses in the living room at night.⁶ The first SAP offence took place in 2012, at night whilst the family, including V1, was asleep. On this occasion, V1 was ten to 11 years of age and was in Primary 5.⁷

10 V1 was asleep on the accused's right, when he started to touch and comb her hair with his fingers and played with her lips. His erect penis became exposed through his boxers.⁸ He then moved his penis to V1's mouth, guided her head towards his penis with his hands and inserted his penis into her mouth two to three times. V1 woke up but kept her eyes closed because she was scared. She tried turning her head away, but the accused used his hands to move her head back to its original position. After sensing movement from V1, he withdrew his penis.⁹

⁶ SOF at para 8.

⁷ SOF at para 12.

⁸ SOF at para 10.

⁹ SOF at para 11.

The 3rd Charge

11 On a later occasion in 2012, V1 returned home from school and was alone with the accused in the Flat. The accused suggested that they play a “blindfold game” which would entail V1 identifying different spices that he would put into her mouth while she was blindfolded. V1 agreed to participate in the game and he covered her eyes with a cloth after she sat on a sofa.¹⁰ The accused then dipped his finger into various condiments like sugar and salt and inserted his finger into her mouth for her to taste the condiment. The accused then asked V1 to open her mouth. Thinking that he was about to provide her with the next condiment, she complied. The accused lowered his pants and inserted his penis into V1’s mouth. He then withdrew his penis and inserted his penis into her mouth again shortly after.¹¹ After withdrawing his penis, the accused inserted a finger with something spicy into V1’s mouth and asked if she could tell whether there was any difference. As she was scared, she answered that she could not and asked for some water to drink. At this juncture, they stopped playing the game.¹²

The OM Charges

12 The OM Charges related to two separate incidents involving V1 and V2.

The 2nd Charge

13 The 2nd Charge involving V1 occurred in 2012, a few days after the incident which gave rise to the 1st Charge, and again when the rest of the family were asleep, the accused woke up in the middle of the night and realised that his

¹⁰ SOF at para 16.

¹¹ SOF at para 17.

¹² SOF at para 18.

right hand was on V1's bare inner thigh. V1 was wearing shorts and was asleep beside him. When he saw his hand on her thigh, he became sexually aroused and proceeded to move his hand around her thigh. He then gradually placed his hand under her shorts and began touching her vagina. He used his right index and middle fingers to rub her vulva and the area between her vaginal lips, making skin-on-skin contact at all times. He then withdrew his hand.¹³

The 6th Charge

14 The 6th Charge involving V2 occurred in 2015, on an afternoon when V2 was alone with the accused in the Flat.¹⁴ She was in Primary 3, and between eight and nine years of age, at the material time.¹⁵ While she was watching television on the sofa, the accused came to sit beside her. He placed his hands under her shirt and proceeded to touch and grab her breasts with direct skin contact. After some time, he instructed V2 to sit in front of him on the floor. When she complied, the accused unzipped his pants, exposed his penis, and told V2 to hold it. She was scared but complied as she felt that she had no choice. He then asked her to hold his penis tightly and wrapped his hand around her hand to make her do so. Thereafter, he instructed her to kiss his exposed penis. V2 did not want to, but the accused told her that if she did not comply, he would make her do worse things. As V2 felt she had no other choice, she closed her lips tightly together and kissed his penis.¹⁶ The accused then moved his hand, which was holding V2's hand, in an up-and-down motion, causing her to masturbate him. The accused ejaculated into the sofa. V2 began to cry. The

¹³ SOF at paras 13–14.

¹⁴ SOF at para 20.

¹⁵ SOF at para 23.

¹⁶ SOF at paras 20–21.

accused told her to wash her face and not to tell anyone about what had happened.¹⁷

15 The offences came to light after the ninth offence on 17 September 2017, when V2 reported the matter in school on 18 September 2017. The offences against V1 came to light in the course of the subsequent investigations against the accused.¹⁸

The Prosecution's and the Defence's positions

16 The Prosecution asked for an aggregate sentence of at least 17 years' imprisonment and 24 strokes of the cane, with the following minimum terms:¹⁹

- (a) for the 1st Charge, ten years' imprisonment and 12 strokes of the cane;
- (b) for the 2nd Charge, three years' imprisonment and three strokes of the cane;
- (c) for the 3rd Charge, 12 years' imprisonment and 12 strokes of the cane; and
- (d) for the 6th Charge, two years' imprisonment and three strokes of the cane.

17 The Defence did not make any specific suggestions on the length of the individual sentences but submitted on various aspects of the Prosecution's submissions and the totality principle. The Defence suggested a global sentence

¹⁷ SOF at para 22.

¹⁸ SOF at paras 24–25.

¹⁹ Prosecution's Sentencing Submissions dated 9 October 2020 ("PSS") at paras 5–6.

of 14 to 15 years' imprisonment and 24 strokes of the cane on the premise that only two terms of imprisonment should be ordered to run consecutively.²⁰

The SAP Charges

The applicable sentencing framework

18 In *Ng Kean Meng Terence v Public Prosecutor* [2017] 2 SLR 449 (“*Terence Ng*”) at [39], the Court of Appeal set out a two-step sentencing framework for the offence of rape, involving the use of sentencing bands. The two-step framework in *Terence Ng* was later transposed to the offence of digital penetration in *Pram Nair v Public Prosecutor* [2017] 2 SLR 1015 (“*Pram Nair*”). The sentencing bands were calibrated downwards to reflect that the offence of digital penetration was of a lesser gravity than rape: *Pram Nair* at [159]. In *BPH v Public Prosecutor and another appeal* [2019] 2 SLR 764 (“*BPH*”), the Court of Appeal affirmed at [55] that the *Pram Nair* framework is applicable to all forms of sexual assault by penetration.

19 At the first step of the framework, the court should consider the offence-specific aggravating factors in deciding which sentencing band the offence in question falls under. The court should identify precisely where within that sentencing band the offence falls in order to derive an indicative starting point: *Terence Ng* at [39(a)].

20 In *Pram Nair* at [119], the Court of Appeal highlighted that the court ought to consider both the *number* and the *intensity* of the relevant offence-specific aggravating factors in each case. Accordingly, the court is guided not only by the number of offence-specific aggravating factors but also by the

²⁰ Transcript, 9 November 2020 at p 21 lines 4–19 and 26–27.

seriousness of the particular factor *vis-à-vis* the offence committed. By thus identifying and weighing the factors, the court is able to come to a sentence that is, when viewed holistically, proportionate to the overall criminality involved.

21 As stated in *Terence Ng* at [44], examples of offence-specific aggravating factors include abuse of trust, premeditation, violence, a vulnerable victim and the infliction of severe harm. In *Pram Nair* (at [159]), the Court of Appeal adapted the *Terence Ng* framework and set out three sentencing bands for the offence of digital penetration. The sentencing bands set out in *Pram Nair*, and the type of cases falling within each band (as explained in *Terence Ng*), are as follows:

Band	Type of cases	Sentence
1	Cases at the lower end of the spectrum of seriousness, which feature no offence-specific aggravating factors or are cases where these factors are only present to a very limited extent and therefore should have a limited impact on sentence (<i>Terence Ng</i> at [50]).	Seven to ten years' imprisonment and four strokes of the cane (<i>Pram Nair</i> at [159(a)]).
2	Cases of a higher level of seriousness which usually contain two or more offence-specific aggravating factors (<i>Terence Ng</i> at [53]).	Ten to 15 years' imprisonment and eight strokes of the cane (<i>Pram Nair</i> at [159(b)]).

3	Extremely serious cases by reason of the number and intensity of the aggravating factors (<i>Terence Ng</i> at [57]).	15 to 20 years' imprisonment and 12 strokes of the cane (<i>Pram Nair</i> at [159(c)]).
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22 At the second step, the court should have regard to the aggravating and mitigating factors personal to the offender (the “offender-specific” factors): *Terence Ng* at [39(b)]. Aggravating factors would include offences taken into consideration for the purposes of sentencing, the presence of relevant antecedents and an evident lack of remorse. Mitigating factors would include a display of evident remorse, youth, advanced age and a plea of guilt: *Terence Ng* at [64]–[71].

23 A caveat to the two-step framework is the totality principle. In the light of the totality principle, where the offender faces two or more charges, and it is necessary to order one or more sentences to run consecutively, the court can, if necessary, further calibrate the individual sentences downwards to ensure that the global sentence is appropriate and not excessive: *Terence Ng* at [73(d)] and *Pram Nair* at [171].

Step 1 – the indicative starting point

24 Turning to the facts of this case, I first had to consider the appropriate sentencing band for both of the SAP Charges (the 1st and 3rd Charges). Under s 376(4)(b) of the Penal Code, sexually penetrating a person under 14 years of age carries a mandatory minimum sentence of eight years' imprisonment and 12 strokes of the cane.

25 The first step of the framework required me to identify the number of offence-specific aggravating factors and their intensity, in order to determine which of the three sentencing bands the case fell under, and the indicative starting sentence: *Pram Nair* at [119].

Age of victim

26 V1 was ten to 11 years old at the time of the 1st and 3rd Charges. The fact that the offence was committed against a person under 14 years of age was in and of itself a statutory aggravating factor pursuant to s 376(4)(b) of the Penal Code. As stated by the Court of Appeal in *Pram Nair* at [160], the presence of this statutory aggravating factor meant that the case “should fall within Band 2 (or even Band 3 if there are additional aggravating factors)”.

27 Furthermore, while this factor was a statutory aggravating factor, V1 was materially younger than the stipulated age ceiling of 14 at the time of the offences. This went towards the intensity of this aggravating factor, which in this case would be accorded more weight.

Abuse of trust

28 The accused was entrusted by M with a position of responsibility towards V1, who acknowledged him as “daddy”. This was indicative of the level of trust that V1 reposed in the accused. Further, this role carried authority, which explained why V1 dared not tell him to stop even despite her fear. She also dared not to speak out against him. It was V2’s reporting of the offences against her that revealed the abuse against V1.

Premeditation and planning

29 As stated by the Court of Appeal in *Terence Ng* at [44(c)], the presence of planning and premeditation reveals a considered commitment towards law-breaking. Premeditation demonstrates a high degree of conscious choice and enlivens the need for a sentence that deters the offender specifically from repeating such conduct: *Gan Chai Bee Anne v Public Prosecutor* [2019] 4 SLR 838 at [70], citing *Public Prosecutor v Law Aik Meng* [2007] 2 SLR(R) 814 at [22].

30 The Prosecution submitted that the accused's behaviour relating to the 3rd Charge showed a certain degree of premeditation,²¹ while the Defence submitted that there was no premeditation.²²

31 Was there premeditation? In *Pram Nair* at [138], the Court of Appeal noted that “the kind of premeditation which the law regards as aggravating an offence involves a *significant degree of planning and orchestration*” [emphasis added]. At [137] of *Pram Nair*, the Court of Appeal provided various examples of the kind of sexual offences that the courts had characterised as being premeditated. These examples were:

- (a) *Ng Jun Xian v Public Prosecutor* [2017] 3 SLR 933 (“*Ng Jun Xian*”): The victim wanted to return to her hostel, but was persuaded by the offender to rest at a hotel. He reassured her that she would be left alone and allowed to sleep. However, after bringing the victim to the hotel room, he took the opportunity to sexually assault her.

²¹ PSS at para 17(d).

²² Transcript, 9 November 2020 at p 18 line 17 to p 19 line 5.

(b) *Public Prosecutor v Lee Ah Choy* [2016] 4 SLR 1300: After observing the victim for a period of time and understanding her morning routine, the offender took the victim to the fourth floor of a nearby HDB block where the offences were committed. He was armed with a paper-cutter which he used to threaten the victim.

(c) *Public Prosecutor v Sim Wei Liang Benjamin* [2015] SGHC 240 (“*Sim Wei Liang Benjamin*”): The offender used the Internet with the clear intention of ensnaring his victims and luring them to engage in sexual activities with him.

32 More recently, in *Public Prosecutor v BNO* [2018] SGHC 243 (“*BNO*”), where the offences took place while the victim was asleep, See Kee Oon J found that there was a “significant amount of deliberation and premeditation” in the offender’s conduct, which was aimed at winning the victim’s trust and taking steps to facilitate his commission of the offences: *BNO* at [188]. For example, the offender told the victim not to wear his underwear before going to sleep and asked whether he was a light or heavy sleeper, to which the victim replied that he was a heavy sleeper for the first two hours after he went to sleep: *BNO* at [8].

33 I disagreed with the Defence’s stand that the 3rd Charge involved no premeditation. In *Pram Nair*, where the Court of Appeal characterised the accused’s moves as “hatched on the spur of the moment” (*Pram Nair* at [138]), the accused and victim were strangers to each other before the night of the offence, and the accused’s actions only involved separating her from her friends and taking her to the beach. In my view, while every case turns on its specific facts, this accused exhibited as much deliberation as the accused in *BNO* or *Ng Jun Xian*. In those two cases and this one, the accused persons chose to take advantage of the particular access that they knew would arise out of the

circumstances in which they placed the victims. In the present case, and with the benefit of his experience from the first SAP offence, the accused knew that V1 would not know how to resist the offence because of her vulnerability and relationship with him. For the 3rd Charge, the context and circumstances show forethought and a deliberate design to exploit the special access to V1 which the accused enjoyed.

34 Nonetheless, in holding that there was sufficient evidence of a “significant degree of planning and orchestration” such that premeditation ought to be taken into account as an offence-specific aggravating factor, I considered that the intensity of this factor was not as high as, for example, in the case of *Sim Wei Liang Benjamin* (see [31(c)] above). Whilst there was the use of a deceptive “game” by the accused, sophisticated planning was not required because of his access to V1 and the very trust reposed in him. This was not as intense an aggravating factor as the first two I found (at [26]–[28] above). I also agreed with the Defence’s submission that I should bear in mind that there was some relation between this factor and the first two. An alternative way of analysing this issue could be to consider this factor as heightening the intensity of the first two factors. It should not, however, be ignored.

Risk of sexually transmitted disease

35 The risk of sexually transmitted diseases has been recognised as an aggravating factor by the Court of Appeal in *BPH* at [61] and *BSR v Public Prosecutor and another matter* [2020] 2 SLR 758 at [14]. Here, no protection was used in both cases of penile-oral penetration, exposing V1 to a risk of contracting sexually transmitted diseases which could have taken place by an exchange of bodily fluids.

Conclusion on step 1

36 In the present case, a statutory aggravating factor under s 376(4)(b) (namely, the age of the victim) was applicable. In *Pram Nair* at [160], the Court of Appeal stated that cases with any of the statutory aggravating factors in s 376(4) “should fall within Band 2 (or even Band 3 if there are additional aggravating factors)”. I found that there were, in total, four offence-specific aggravating factors: the age of the victim, the abuse of trust, premeditation and the risk of sexually transmitted diseases. In terms of intensity, the age of the victim and the abuse of trust was seriously aggravating given that the victim was a vulnerable individual materially below the age ceiling of 14 and did in fact repose significant trust the accused, whom she addressed as “daddy”. These factors placed the SAP offences squarely towards the upper range of Band 2 or even in Band 3 of the *Pram Nair* framework.

Step 2 – offender-specific factors

37 I next considered the offender-specific aggravating and mitigating factors to determine if there ought to have been any adjustment to the indicative sentence: *Pram Nair* at [119].

TIC Charges

38 I considered only the fifth charge against the accused (the “5th Charge”) for the purposes of the SAP Charges, due to the similar *modus operandi* employed by the accused. The 5th Charge was of attempted aggravated sexual assault by penile-oral penetration in 2014 against V2, who was seven to eight years old at the time. The circumstances of this charge were serious: the accused was in the same position of trust, and V2 was materially younger than the 14-year age ceiling and younger than the age at which he had abused V1. The

Prosecution's position that the same game and deception used in the 3rd Charge was repeated for this offence against V2 was not disputed.²³

39 The remaining TIC Charges were considered in the context of the OM Charges, to which they were more closely related.

Plea of guilt

40 In my view, the only relevant offender-specific mitigating factor was the accused's plea of guilt. I was guided by the Court of Appeal's holding in *Chang Kar Meng v Public Prosecutor* [2017] 2 SLR 68 at [47]:

... [I]n the context of sexual offences, we think there will often be a further benefit from a plea of guilt – namely, the victim will thereby be spared the trauma of having to relive the experience in court and being cross-examined on it. *We therefore hold that offenders who plead guilty to sexual offences, even in cases where the evidence against them is compelling, ought ordinarily to be given at least some credit for having spared the victim additional suffering in this regard.*

[emphasis added]

Conclusion on step 2

41 Concluding on the offender-specific factors, I found that the 5th Charge (as one of the TIC Charges) was serious; on the other hand, the accused's plea of guilt was a mitigating factor.

Sentence for the SAP Charges

42 Here, at the first step, the seriousness of the offence meant that the indicative starting points for the SAP Charges would fall within high Band 2 or even Band 3. At the second step, I considered the aggravating factor of the

²³ Transcript, 9 November 2020 at p 23 line 22 to p 24 line 7.

5th Charge and mitigating effect of the plea of guilt. The Prosecution's suggestions of ten years' imprisonment and 12 strokes of the cane for the 1st Charge, and 12 years' imprisonment (which was under the mid-point of Band 2) and 12 strokes of the cane for the 3rd Charge, were relevant and appropriate. The 3rd Charge was more serious than the 1st Charge, given that this was a repeated offence, and involved the deceptive cover of a "game".

43 I considered that this sentence was in line with the reported decisions relating to the offence of sexual assault by penetration:

(a) *Public Prosecutor v BSR* [2020] 4 SLR 335 ("*BSR*"): The accused pleaded guilty and was sentenced to 14 years' imprisonment and 12 strokes of the cane for the offence of forced fellatio. The accused was aroused after having sexual intercourse with his wife and forced his daughter to fellate him. In *BSR*, the victim was materially younger at 6 years of age; there was an abuse of trust in the context of a father-child relationship; force was used and violence threatened; and the victim was exposed to the risk of contracting a sexually transmitted disease: *BSR* at [16]–[20].

(b) *BNO*: The accused claimed trial and was sentenced to 12 years' imprisonment and 12 strokes of the cane for each of the SAP charges. The accused was the father of the victim's friend. The victim slept at the accused's house after a Halloween party, and the accused fellated him while the victim pretended to be asleep. In *BNO*, the victim was slightly older at nine years of age; the abuse of trust in that case was not as egregious; and there was no persistent pattern of offending over a long period of time. There was no plea of guilt.

(c) *BPH* concerned two sentencing appeals (“*BPH*” and “*BVZ*”) before the Court of Appeal, where two different High Court judges had imposed a sentence of ten years’ imprisonment for SAP offences. In *BPH*, where the victim was 11 years old, there was only one SAP charge. In the other appeal, *BVZ*, the charge was less serious as the accused was not charged under s 376(4)(b). I deal with this pair of cases below, at [56]–[57].

44 I did not take into account various unreported cases cited to me, in view of the availability of the above reported decisions and the danger of placing undue reliance on unreported cases highlighted in *Luong Thi Trang Hoang Kathleen v Public Prosecutor* [2010] 1 SLR 707 at [21] and *Keeping Mark John v Public Prosecutor* [2017] 5 SLR 627 at [18].

The OM Charges

The applicable sentencing framework

45 Turning to the OM Charges, the sentencing framework for the offence of aggravated outrage of modesty waws set out in *GBR v Public Prosecutor and another appeal* [2018] 3 SLR 1048 (“*GBR*”). The *GBR* framework can be summarised as follows (*GBR* at [31]–[38]):

Band	Type of cases	Sentence
1	Cases which do not present any (or at most one) of the aggravating factors. Examples of such cases include those that involve a fleeting touch or a touch over the clothes of the victim, and do not involve intrusion into the victim’s private parts.	Less than one year’s imprisonment; caning is generally not imposed.

2	Cases with two or more aggravating factors. The dividing line between the lower and higher end of the spectrum within Band 2 cases could turn on whether there was skin-to-skin touching of the victim's private parts or sexual organs.	One to three years' imprisonment; caning will nearly always be imposed, with the suggested starting point being three strokes of the cane.
3	Cases involving the most serious instances of aggravated outrage of modesty. These would include cases involving the exploitation of a particularly vulnerable victim, a serious abuse of a position of trust and the use of violence or force on the victim.	Three to five years' imprisonment; caning ought to be imposed, with the suggested starting point being six strokes of the cane.

The applicable sentencing band

46 The Prosecution submitted that the appropriate sentence for the OM Charges fell within the upper range of Band 2 and the lower range of Band 3.²⁴

47 Referencing the *GBR* framework, I agreed with the Prosecution that these charges fell within Band 3, for the following reasons:

- (a) the two victims were materially below the age ceiling of 14, and were therefore particularly vulnerable: *GBR* at [29(f)];
- (b) the degree of sexual exploitation was high because the victims' private parts were touched, there was skin-to-skin contact and the sexual exploitation continued for a sustained period rather than a fleeting moment: see *GBR* at [28]. In particular, during the events of the

²⁴ PSS at para 25.

6th Charge, the accused had escalated from grabbing V2's breasts to forcing her to masturbate him;

(c) there was an abuse of his position of trust (see [28] above): *GBR* at [29(c)]; and

(d) there was premeditation involved, as his conduct in relation to the OM Charges stemmed from the series of sexual offences involving the victims over an extended period (2012 to 2015 for V1 and 2014 to 2017 for V2, as *per* [6] above): *GBR* at [29(a)].

48 As for the offender-specific factors, I considered the remaining TIC Charges to be aggravating. The aggravating effect of these TIC Charges had to be balanced against the mitigating effect of the plea of guilt.

49 The charges at hand also concerned conduct more serious than that in the following reported cases:

(a) *GBR*: The accused claimed trial to one charge of aggravated outrage of modesty and was sentenced to 25 months' imprisonment and four strokes of the cane, which fell within the middle to upper range of Band 2 of the *GBR* framework: *GBR* at [44]. The facts of the present case were more aggravated than those in *GBR*. In *GBR*, although there was premeditation and some psychological harm, the abuse of trust was less severe (the accused and the victim shared an uncle-niece relationship), the victim was older (13 years old), and there was only one charge. On the other hand, the present case involved a quasi-paternal relationship, and importantly, the OM Charges were a part of a pattern of persistent sexual abuse by the accused.

(b) *BNO*: The accused claimed trial and was sentenced to two years' imprisonment and three strokes of the cane for the offence of aggravated outrage of modesty. The facts of the present case were more aggravated than *BNO*, which was discussed at [43(b)] above. The specific act in *BNO* was also less serious because there, the accused had touched the victim's penis with his finger. In the present case, the 2nd Charge involved more prolonged contact with V1's vulva and vaginal area, and the 6th Charge involved the accused forcing V2 to masturbate him.

Sentences for the OM Charges

50 In the light of the accused's plea of guilt, the Prosecution submitted that a sentence of three years' imprisonment and three strokes of the cane for the 2nd Charge, and a sentence of two years' imprisonment and three strokes of the cane for the 6th Charge, were appropriate.²⁵ I was of the view that both charges were equally serious. V2 was younger than V1, and after prolonged intrusion on her breasts, she was effectively made to masturbate the accused. She also kissed his penis under threat that the accused might make her do "worse things".²⁶ The Prosecution's submission of a three-year term of imprisonment and three strokes of the cane was therefore appropriate as a starting point for *both OM Charges*.

51 A second matter related to the multiple SAP and OM Charges. Where the offender faces two or more charges, and it is necessary to run consecutive sentences, a court may calibrate the individual sentences downwards to ensure that the global sentence is not excessive (see [23] above). I adjusted the terms

²⁵ PSS at para 28.

²⁶ SOF at paras 20–22.

of imprisonment for the OM Charges in the light of the multiple charges, which I further explain at [55]–[57] below.

The aggregate sentence

52 Sentencing serves the purpose of enforcing and maintaining the values of our community as expressed in the criminal law. It was necessary therefore that the sentences reflected the abhorrence which right-minded members of the public would have towards the offences committed. As the Court of Appeal stated in *Public Prosecutor v Kwong Kok Hing* [2008] 2 SLR(R) 684 (“*Kwong Kok Hing*”) at [17]:

Our criminal law is, in the final analysis, the public’s expression of communitarian values to be promoted, defended and preserved ... A sentence must therefore appropriately encapsulate, in any given context, the proper degree of public aversion arising from the particular harmful behaviour as well as incorporate the impact of the relevant circumstances engendering each offence. ...

53 The Prosecution submitted that three terms of imprisonment should be made consecutive, with an aggregate sentence of 17 years’ imprisonment and 24 strokes of the cane. The Defence’s main criticism of the Prosecution’s position related to this global sentencing recommendation. The Defence submitted that only two of the terms of imprisonment should be made to run consecutively in order to achieve a global sentence of 14 to 15 years’ imprisonment and 24 strokes of the cane.²⁷

54 The Prosecution’s submission for three sentences to be made consecutive rested on *Mohamed Shouffee* at [80], that such an approach was appropriate where “there is a pressing public interest concern in discouraging

²⁷ Transcript, 9 November 2020 at p 21 lines 4–19.

the type of criminal conduct being punished”, or where there are multiple victims. There was such a public interest seen in the present case. The accused lived at and readily accepted a position of parental authority at the victims’ home. This authority came with unique access to the children and was given in order for him to assist in their care. Instead, the accused gravely misused his position of trust. Societal well-being rests on the proper care of children and their safety in the home, and therefore the sentences at hand must reflect appropriate public aversion.

55 Notwithstanding, the aggregate sentence must not be crushing, but be proportionate to the accused’s overall criminality, in keeping with the totality principle enunciated in *Mohamed Shouffee bin Adam v Public Prosecutor* [2014] 2 SLR 998 (“*Mohamed Shouffee*”). For this reason, I adjusted the terms of imprisonment for the OM Charges to two and a half years’ imprisonment each. In this context, the aggregate sentence suggested by the Defence could have been achieved by making three sentences concurrent as well as two. The aggregate term of imprisonment in this case was dependent on which of the SAP Charges was used in the combination of consecutive terms of imprisonment. Conversely, if only two charges were made consecutive but these were the SAP Charges (which carried imprisonment terms of ten years and 12 years respectively), the overall sentence would be crushing, and disproportionate to the accused’s overall criminality.

56 In choosing the particular combination of imprisonment terms to be made consecutive, I took reference from the Court of Appeal’s guidance in *BPH* in respect of the two cases of *BPH* and *BVZ*. Neither case was very similar to the present case, but they provided good reference points for the present case:

(a) In *BPH*, there was a single victim who was 11 years old at the time of the offences. Two charges were proceeded with: one of SAP and another of outrage of modesty. Three other charges were taken into consideration. The Court of Appeal considered the aggregate sentence of 12 years' imprisonment lenient: *BPH* at [75]. The present case was *more serious* than *BPH*. There were double the number of proceeded charges, with two SAP charges within the proceeded charges. There were also more charges taken into consideration, one of which concerned attempted SAP. There were two victims involved. In the light of the Court of Appeal's comments at [75], a combination giving an aggregate imprisonment term of 14 to 15 years, as suggested by the Defence, would not have reflected sufficiently the gravity of the present case.

(b) *BVZ* involved a more serious miscellany of offences, where the offender was described as a serial sexual predator. The offender pleaded guilty to, and was convicted of, four offences. These involved four victims who were 14. Two charges of SAP involving one victim, one charge of outrage of modesty involving a second victim, and one charge of causing hurt by means of poison involving a third victim were proceeded with. Six other charges were taken into consideration, two of which concerned a fourth victim. At first instance, the offender was sentenced to 20 years' imprisonment and 16 strokes of the cane. This aggregate sentence comprised individual sentences of ten years' imprisonment and eight strokes of the cane for each SAP charge, to run consecutively. Whilst there was no change to this aggregate sentence on appeal, the Court of Appeal expressed the view that the individual sentences were lenient and should have been 12 to 14 years' imprisonment under the *Pram Nair* framework: *BPH* at [90] and [96].

In response to the accused's appeal, the Court of Appeal stated that if the appropriate individual sentences had been run consecutively, the aggregate sentence would have totalled more than 24 years' imprisonment: *BPH* at [99]. The Court of Appeal concluded therefrom that the accused's aggregate sentence of 20 years' imprisonment could hardly be said to be manifestly excessive.

57 Having regard to these reference points, I ordered the terms of imprisonment for the 2nd, 3rd and 6th Charges to run consecutively, with the term of imprisonment for the 1st Charge made to run concurrently. The number of strokes of the cane would be limited to 24 under ss 328(1) and 328(6) of the CPC. The sentences for the individual charges were as follows:

- (a) for the 1st Charge, ten years' imprisonment and 12 strokes of the cane;
- (b) for the 2nd Charge, two and a half years' imprisonment and three strokes of the cane;
- (c) for the 3rd Charge, 12 years' imprisonment and 12 strokes of the cane; and
- (d) for the 6th Charge, two and a half years' imprisonment and three strokes of the cane.

Conclusion

58 The aggregate sentence was therefore 17 years' imprisonment, backdated to 20 September 2017, and 24 strokes of the cane. This, in my judgment, sufficiently reflected the seriousness of the accused's crimes but was

not crushing in view of his age and future prospects.

Valerie Thean
Judge of the High Court

Nicholas Lai Yi Shin and Rebecca Wong Pei Xian (Attorney-
General's Chambers) for the Prosecution;
Ramesh Chandr Tiwary (Ramesh Tiwary) for the accused.
