IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 81

Criminal Case No 33 of 2016

Between

Public Prosecutor

… Public Prosecutor

And

Mohd Ariffan bin Mohd Hassan

… Accused

JUDGMENT

[Criminal Law] — [Offences] — [Rape] — [Adverse Inference]

Public Prosecutor
v
Mohd Ariffan bin Mohd Hassan

[2017] SGHC 81

High Court — Criminal Case No 33 of 2016
Kan Ting Chiu SJ
18 to 22, 25 to 29 July 2016; 26 August 2016; 5, 19, 23 September 2016

12 April 2017

Kan Ting Chiu SJ:

1 Mohd Ariffan bin Mohd Hassan ("the accused") was charged with five charges offences against a girl ("the girl"). One charge was for outraging modesty, two for digital penetration of the vagina, and two for rape. The girl was 15 years old at the time of the first offence and 17 years old at the time of the last offence.

2 When the accused was first brought before the State Courts on 23 December 2014, the charges against him were that he:

> 1st Charge
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> … on sometime in March 2009, in a forested area in Punggol, Singapore, did use criminal force to (the girl), intending to outrage her modesty, to wit, you touched and kissed her breast, and in order to commit the offence, you wrongful restrained the said (the girl) by confining her in the prime mover cabin bearing registration number XB 4268 Z, and you

have thereby committed an offence punishable under Section 354A(1) of the Penal Code, Chapter 224.

3rd Charge

… on sometimes beginning of June 2010 at … Circuit Road, Singapore, did sexually penetrate the vagina of (the girl), female 16 years old with your finger, without her consent, and you have thereby committed an offence under Section 376(2)(a) and punishable under section 376(3) of the Penal Code, Chapter 224.

4th Charge

… on sometimes end of June 2010 at … Circuit Road, Singapore, did sexually penetrate the vagina of (the girl), female 16 years old with your finger, without her consent, and you have thereby committed an offence under Section 376(2)(a) and punishable under section 376(3) of the Penal Code, Chapter 224.

5th Charge

… sometimes in the beginning of January 2010, at forested area in Punggol, Singapore, commit rape on (the girl), female 16 years old (DOB: 25.02.1994) to wit by penetrating the vagina of the said (girl), without her consent, and you have thereby committed an offence punishable under section 375(1)(a) and punishable under Section 375(2) of the Penal Code, Chapter 224.

6th Charge

… sometimes in January 2011, at forested area in Punggol, Singapore, commit rape on (the girl), female 17 years old (DOB: 25.02.1994) to wit by penetrating the vagina of the said (girl), without her consent, and you have thereby committed an offence punishable under section 375(1)(a) and punishable under Section 375(2) of the Penal Code, Chapter 224.

3 The second charge, which was for an offence against the girl's sister, was stood down pending the trial on the five charges relating to the girl.

4 When the matter came up for trial on 18 July 2016, the first and sixth charges were revised to read that he:

> 1st Charge
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> … sometime in March 2009, in a prime mover in a forested area in Punggol, Singapore, did use criminal force to (the girl), a 15 year old female (date of birth: 25 February 1994), intending to outrage her modesty, to wit, you touched and kissed her breast, and in order to commit the offence, you voluntarily caused to (the girl) wrongful restraint by confining her in the said prime mover, and you have thereby committed an offence punishable under section 354(A)(1) of the Penal Code, Chapter 224.
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> 6th Charge
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> … sometime in the beginning of 2011, in a forested area in Punggol, commit rape on (the girl), a 16 year old female (date of birth: 25 February 1994), to wit, by penetrating the vagina of the said (girl) with your penis without her consent, and you have thereby committed an offence punishable under section 375(1)(a) and punishable under section 375(2) of the Penal Code, Chapter 224.

The revisions made were curious in that the registration number of the prime mover XB 4268 Z was omitted from the first charge and the date of the sixth offence became less specific from "sometimes in January 2011" to "sometime in the beginning of 2011". Charges are usually revised to contain better particulars as more information become available. In this case, however, over the period of the year and a half between the two sets of charges, particulars were omitted without explanation. A reasonable inference is that over the period, doubts had arisen over the omitted particulars.

5 It was also unsatisfactory that right up to the trial, the rape charges only referred to a "forested area" in Punggol. By that time, the investigations must have disclosed if the offences took place in a building, on the open ground or in a motor vehicle (as was disclosed on the first charge). Such particulars ought to be included in the charges.

Primary evidence

6 The girl and the accused are not strangers. The accused was the girl's mother's stay-in lover, and had been residing with the girl's mother[1], elder brother[2] and younger sister[3] for seven years from 2004 to 2011 at the family flat where the third and fourth offences took place. He was contributing towards the family expenses, and had kept a good relationship with the girl and her siblings, and they had outings together.

7 The primary evidence on all the charges came from the girl who did not tell anyone of the offences for a long time. She first told her boyfriend in or about April 2011 and then to her mother on the prompting of the boyfriend, and lastly to her brother and sister in December 2011.

8 The police investigations which would have commenced after the first information report was made in December 2012 should have been carried out better than they were. To give two examples, firstly no photographs were taken of the interior of the cabin of the prime mover where the rapes were alleged believe taken place, although photographs of the exterior of the prime mover where taken. As the prime mover was subsequently scrapped no photographs could be taken when they would have been important evidence. Secondly, apparently no information was obtained from the sister who the girl said the accused and instructed to leave the flat immediately before the commission of the fourth offence, because she did not refer to the incident in her evidence.

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1 PW 3

2 PW 5

3 PW 4

What the girl said of the offences

9 The girl did not tell anyone of the offences till April 2010, and she did not make any police report, and was not in favour of a report being made.

10 The first person the girl spoke to about the accused's actions was her boyfriend.[4] His evidence was that in about April 2010, she told him that the accused had *raped* her,[5] and that she had not told her mother or her brother about it.[6] Upon hearing that he persuaded her to tell her mother about it.

11 The mother stated in her statement[7] that the girl did not say that the accused had sex with her, only that he had *touched* her. She added that the girl did not want her to confront the accused or to report the matter to the police, and consequently nothing was done.

12 The girl's younger sister had stayed out late and did not return home on 24 December 2011 because she was afraid of the accused. On the following day, she met up with the girl and they revealed to each other that they had been raped by the accused, and they decided to tell their brother about it. She said the girl told her that she had been *raped* by the accused.[8]

13 The girl's elder brother gave evidence that when he met the girl and her younger sister later that day on 25 December 2011, the girl told him that the accused had *raped* her.[9] He was angered by what he heard, and he made a

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4 PW6

5 NE 21/7/2016 p 97 lines 21 -23, p 98 lines 27 – 30.

6 NE 21/7/2016 p 99 lines 1 – 9.

7 PS 3 para 6.

8 NE 21/7/2016 p 29 lines 13 – 18, p 30 lines 5 -11.

9 NE 21/7/2016 p 50 lines 3 – 5.

police report[10] on his own without the girl's consent. This was the first information report that:

> "Case of raped reported."

The girl's allegations

14 The girl's case against the accused, was that the first, fifth and sixth offences took place in a prime mover XB 4268 Z and the third and fourth offences took place in the family flat at Circuit Road, Singapore.

15 Her evidence was that over the years she had gone with the accused in the prime mover at the accused's request. He would tell her mother that he needed her to accompany him to collect debts from his friends. If her mother refused to let her go with him he would be angry with them,[11] and she obeyed the accused because she was afraid of him[12] although he had never been physically violent with her[13] (her mother confirmed that he was not a violent man or a man who would get angry easily).[14] She and the accused would go out together in the prime mover two to three times a week from 2009 to 2012.[15]

16 The offences took place in the cabin of the prime mover, on the rear bench behind the front driver's and passenger's seats. Regrettably, no photographs were taken of the interior of the cabin, and the girl's description of the state of the interior and the positioning of some curtains she said were installed in the cabin was not easy to understand. She said that behind the

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10 P 21

11 NE 18/7/2016 p 36 lines 4 – 14.

12 NE 19/7/2016 p 119 lines 22 – 23.

13 NE 19/7/2016 p 100 line 29 – p 101 line 3.

14 NE 20/7/2016 p 101 lines 26 – 27.

15 NE 18/7/2016 p 62 lines 17 – 23.

driver's seat and the passenger's seat, there was "some space and it's like a cushion that can sit down on"[16] which can sit four persons in a squeeze. On the left and right sides of the cushion, there were curtains which stretched along each side and the windscreen.[17]

17 The prosecution's case was that the accused had possession the prime mover which belonged to his employer Sim Hock Beng Construction (he was employed as a crane operator and not a prime mover driver, and he did not hold a licence to drive a prime mover) but he would drive a prime mover home after work and park it at Lorong Bengkok near the Circuit Road flat.

18 With regard to the two offences in June 2011 (the third and fourth charges) the offences took place during the June school holidays. For the third charge, it took place in the morning in the living room of the flat while the girl's mother was sleeping in the bedroom. The third offence took place during the June school holidays. The girl's evidence was that she was sharing the bedroom with her mother and sister and the accused was in the living room. On that morning she woke up, and she went to the living room where the accused asked her to sit next to him, and he inserted his fingers into her vagina and cupped and licked her breast. She told him to stop because her mother was sleeping in the bedroom and she was anxious that she may see them. The accused assured her that would not happen as he would be fast, and he stopped after a few moments,[18] and that she was lying down at the accused's request when he fingered her vagina.[19] When defence counsel put it to her that there

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16 18/7/2016 p 67 lines 7 – 9.

17 NE 18/7/2016 p 68 line 8 to p 69 line 16, 19/7/2016 p 22 lines 21 – 30.

18 NE 18/7/2016 p 23 line 22 to p 24 line 15.

19 NE 19/7/2016 p 117 line 21, p 118 lines 24 – 27.

was nothing to stop her from running back to the bedroom, her response was that she obeyed him because she was afraid of him.[20]

19 The fourth offence took place one afternoon when her mother and brother were not at home. The accused instructed her sister to go out to buy lunch for them. The girl was afraid that the accused will misbehave towards her and wanted to go with her sister, but the accused told her not to do that, and after the sister had left the flat, the accused "fingered" her in the bedroom.[21]

The defence

20 The accused denied that any of the events alleged by the girl took place. With respect to the charges relating to the prime mover he denied that he had access and use of it. He said that other persons were engaged on a permanent or casual basis by Sim Hock Beng Construction Company to drive the company's fleet of prime movers including XB 4268 Z.

21 He was employed to operate a top loader crane (also described, perhaps inaccurately, as a forklift) to lift cargo containers. As the company's crane and prime movers are deployed together in loading/unloading and movement of containers, he would get into a prime mover to rest when he is not operating the crane, but he did not have the keys of the prime movers to drive them home after work.

Other points raised

22 There were points raised by both sides which have not been addressed here. For example, whether the accused had paid some parking fines for the

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[20] NE 19/7/2016 p 119 lines 19 – 25.

[21] NE 18/7/2016 p 25 lines 16 – 24, p 28 line 28 – p 29 line 10.

prime mover, and whether the girl knew its registration number. I have not done that not through any attention to disregard them, but because I found that they were peripheral matters and the evidence adduced was incomplete or inconclusive and a finding one way or the other would not have any material impact on the ultimate decision on the accused's innocence or guilt on the charges. The points which are addressed are the essential and substantial ones which need to be examined.

Issues with the prosecution's cases

23 The use of the prime mover was disputed during the trial.

24 Mr Sim Hock Beng, the proprietor of Sim Hock Beng Construction was called as a witness for the prosecution. He confirmed that he had employed the accused from 2004 as a lashing/unlashing worker and from 2005 as a crane operator.[22] He added that, as a crane operator the accused was not allowed to drive the company's prime movers and he did not know if the accused had driven XB 4268 Z.[23] The keys to the prime movers were kept in the company's store.[24] The accused clarified that the company's storeroom was at PSA F5 at Tanjong Pagar, while his worksite was at Pulau Brani, and he did not have to go to the storeroom to get the keys of the crane as he kept them with him. He would only go to the storeroom with Mr Sim when they had to go there to arrange things.[25]

25 Mr Sim stated that another employee named Idris (who has passed away) drove XB 4268 Z between 2009 and 2011 and Idris would sleep in the

22 PS 4 para 3.

23 NE 22/7/2016 p 32 lines 11 – 12.

24 PS 4 para 4.

25 NE 27/7/2016 p 13 lines 21 – 32, p 14 lines 1 – 4.

vehicle after work instead of going home because of his home conditions.[26] He emphasized that the accused was not allowed to drive the prime mover and would be summarily dismissed if there was the slightest suspicion that he had done so.[27]

26 The identification of the prime mover was another area of contention. As stated earlier, there were no photographs of the interior of the cabin where three offences were alleged to have taken place. The girl's description of the cabin was confusing. Efforts to get a clear picture from her were thwarted by her professed inability or unwillingness to draw a sketch of the interior which she claimed to have been inside in on so many occasions over an extended period. This left the court and the parties to rely on a composite drawing[28] with an outline sketch drawn by defence counsel and the position the curtains marked by her.

27 The curtains came into question because the girl had described the cabin to be furnished with curtains running from each side and along the front windscreen[29] was contradicted by Mr Sim. He was not a remote owner/ employer, and had hands-on dealings in its operations and was familiar with the vehicles and his employees. He said in response to the prosecutor's questions that there were no curtains in the front of the cabin because they are not allowed by the Land Transport Authority, and he had not seen them in his prime movers.[30]

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26 NE 22/7/2016 p 60 line 12 – p 61 line 9.

27 NE 22/7/2016 p 62 lines 12 – 18.

28 P 1

29 NE 19/7/2016 p 22 lines 1 – 30, p 26 lines 24 -29, p 32 lines 16 – 23, p 33 lines 5 -15 and P1.

30 NE 22/7/2016 p 16 lines 12 – 22.

28 The state of cleanliness of the back portion of the cabin, where the offences were alleged to have taken place, was another point of contention. The girl stated that it was like a cushion that one can sit down on and sometimes there would be a cloth or a rag placed on it for wiping.[31]

29 The accused's description was not nearly as cosy. He said that tools such as lashing gear, tools and helmets would be placed on that seat. These tools are dirty and he would wear his overalls over his clothes when he rested there.[32]

30 Mr Sim gave a similar description of the seat. He confirmed that tools like lashing gear would be kept there[33] which would take up half of the seat[34] and the inside of the cabin would be filthy with oil stains.[35] He explained that he was aware of the condition of his prime movers because he checked on them regularly.[36]

31 By the description of the accused and Mr Sim the place was not a place where the accused would undress himself and the girl as she described

> … He started removing my clothes completely and I was fully naked. I tried to stop him when he was removing my clothes but he said nothing and kept removing all my clothes. I sensed that he was going to do something wrong to me, the place was very dark and I did not dare to shout. He removed his pants and underwear exposing his penis. ….[37]

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31 NE 22/7/2016 p 51 lines 27 – 31 and NE 18/7/2016 p 67 lines 6 – 11, 29 – 30.

32 NE 26/7/2016 p 64 lines 6 – 31 and NE 27/7/2016 p 12 line 23.

33 NE 22/7/2016 p 13 lines 22 – 25, p 18 line 2.

34 NE 22/7/2016 p 41 lines 26 – 27.

35 NE 22/7/2016 p 44 lines 10 – 12.

36 NE 22/7/2016 p 79 lines 8 – 10.

37 PS 1 para 5.

and then go back to the flat with the dirt and stains on their bodies and clothes after that.

32 Mr Sim was a prosecution and non-partisan witness. He was obviously telling the truth as he knew it, and his credibility and veracity were not disputed. His knowledge of the cabin of the prime mover was clearer and greater then the girl's knowledge.

33 The upshot of the accused's evidence, taken together with Mr Sim's evidence, was to put in real doubt the prosecution case on the identity and use of the prime mover.

34 There are also disquieting aspects of the girl's events of the offences alleged to be committed in the flat. Firstly, with regard to the third charge which she narrated to have taken place in the living room when her mother was asleep in the bedroom. Defence counsel pointed out that she could have ran back to the bedroom to the protection of her mother, or to raise alarm and complain to her about him, but inexplicably she did neither and remained silent for half a year before telling her that he touched her body. Secondly, the offence in the third charge was committed after the accused was alleged to be instructed the younger sister who was 13 years old at that time to leave the flat to buy lunch, and had refused to let the girl to go along with her. In the face of the accused's denial that the events took place, the prosecution should have the girl's evidence corroborated by her sister, who was presented at the trial as a corroborative witness.[38] The events the girl account was not a routine everyday occurrence, and the sister was old enough to have some recollection of it, but that was not done. The sister gave evidence on the events of 25 December 2011, but no questions were asked and no information volunteered

[38] Prosecution's Closing Submissions para 14.

about leaving the flat to buy lunch in June 2010. It is important to know if she remembered the accused's instructions to her to leave the flat alone to buy lunch. The girl's request and the accused's refusal, and how the girl and accused behaved when they had their lunch could be significant evidence. The omission raised questions over the girl's account on the accident.

35 Section 116 illustration (g) of the Evidence Act (Cap 97 Rev Ed 1997) provides that a court may presume that

> … evidence which could be and is not produced would if produced be unfavourable to the person who withholds it.

In Professor Jeffrey Pinsler's *Evidence and the Litigation Process* 3rd Edn. (LexisNexis) the circumstances for drawing the adverse inference is elaborated on in para 17.05

> … Where the corroborating evidence is in the form of witness testimony, it is vital that the witnesses are available to give evidence. Section 116(g) of the EA provides that the court may presume that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it. It follows from this that the advocate does not produce a witness who could reasonably be expected to give evidence in the circumstances of the case, adverse inferences may be drawn.
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> Example
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> The Plaintiff claims against the defendant for injuries sustained in a car accident. At the time of the accident the defendant had a passenger with him. The defendant does not put forward the passenger as a witness even though he is available to give evidence as to what happened. The court may draw an adverse inference against the defendant.

This shows that an adverse inference may be drawn against the defendant for failing to produce corroborative evidence even when the burden of prove negligence is on the plaintiff. In the present case the burden of proof is on the prosecution, and the prosecution did not lead evidence from the sister on the

events of that day. It may be that the investigators had not verified this with her in the investigations, that she did not have any recollection of the alleged events, or that her recollection did not support the girl's account and the prosecution case. It was regrettable that no reason was disclosed, but whatever the reason may be, that had a negative impact on the prosecution case.

36 Thirdly, when the girl informed her boyfriend, sister and brother about the accused's alleged misbehaviour, she complained of rape, not digital penetration, and she did not make a report to the police.

Review

37 In the closing submissions, the prosecution correctly concluded that the case "rests primarily on the credibility of the girl and the accused".[39] For such cases, the Court of Appeal had made clear in *AOF v PP* [2012] 3 SLR 4 that

> 111 It is well-established that in a case where no other evidence is available, a complainant's testimony can constitute proof beyond reasonable doubt (see s 136 of the Evidence Act (Cap 97, 1997 Rev Ed)("EA")) – but only when it is so "unusually convincing" as to overcome any doubts that might arise from the lack of corroboration (see generally the decision of court in *PP v Mohammed Liton Mohammed Syeed Mallik* [2008] 1 SLR(R) 601 at [37]-[44] ("*Liton*") and the Singapore High Court decision of *XP v PP* [2008] 4 SLR(R) 686 at [27]-[36] ("*XP*")).
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> 112 The need for "fine-tooth comb" scrutiny in so far as allegations of sexual abuse are concerned is particularly acute, "given both the ease with which allegations of sexual assault may be fabricated and the concomitant difficulty of rebutting such allegations" (see the Singapore High Court decision of *Chng Yew Chin v PP* [2006] 4 SLR(R) 124 at [33], cited with approval in *Liton* at [37]-[38]).
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> 113 In *XP*, V K Rajah JA observed (at [31]) that the requirement that the alleged victim's evidence ought to be "unusually convincing":

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39 Prosecution's Closing Submissions para 7.

> … *does nothing, however, to change the ultimate rule that the Prosecution must prove its case beyond a reasonable doubt*, but it does suggest how the evidential Gordian knot may be untied if proof is to be found solely from the complainant's testimony against the Appellant. [emphasis added]

114 Apart from stating that its role is that of a cognitive aid, Rajah JA further elaborated on what "unusually convincing" entails (see *XP* at [29]-[35]). Rajah JA's pronouncements can be distilled into the following propositions:

> (a) First, subsequent repeated complaints by the complainant cannot, in and of themselves, constitute corroborative evidence so as to dispense with the requirement for "unusually convincing" testimony. As Yong Pung How CJ noted in the Singapore High Court decision of *Khoo Kwoon Hain v PP* [1995] 2 SLR(R) 591 ("*Khoo Kwoon Hain*") at [51]"
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> If the complainant's evidence is not 'unusually convincing', I cannot see how the fact that she repeated it several times can add much to its weight.
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> (b) Secondly, the "unusually convincing" reminder should not be confined to categories of witnesses who are supposedly accomplices, young children or sexual offence complainants.
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> (c) Thirdly, a conviction will only be set aside where a reasonable doubt exists and not simply because the judge did not remind himself of the "unusually convincing" standard.
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> (d) Fourthly, an "unusually convincing" testimony does not overcome even materially and/or inherently contradictory evidence to prove guilt beyond a reasonable doubt. The phrase "unusually convincing" is not term of art; it does not automatically entail a guilty verdict and surely cannot dispense with the need to consider the other evidence and the factual circumstances peculiar to each case. Nor does it dispense with having to assess the complainant's testimony against that of the accused, where the case turns on one person's word against the other's.
>
> (e) Fifthly, even where there is corroboration, there may still not be enough evidence to convict.

115 Moving from the level of scrutiny to the elements of what an unusually convincing testimony consists of, it is clear

> that a witness's testimony may only be found to be "unusually *convincing*" by weighing the *demeanour* of the witness alongside both the *internal and external consistencies* found in the witness' testimony. Given the inherent epistemic constraints of an appellate court as a finder of fact, this inquiry will *necessarily* be focussed on the internal and external consistency of the witness's testimony. However, this is *not* to say that a witness's credibility is *necessarily* determined *solely* in terms of his or her demeanour. As Rajah JA observed in *XP* ([111] supra at [71]-[72]):
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> > I freely and readily acknowledge that a trial judge is usually much better placed than an appellate judge to assess a witness's credibility, having observed the witness testifying and being cross-examined on the stand. ***However, demeanour is not invariably determinative; contrary evidence by other witnesses must be given due weight, and if the witness fails to recall or satisfactorily explain material facts and assertions, his credible demeanour cannot overcome such deficiencies.*** As I explained in *PP v Wang Ziyi Able* [2008] 2 SLR(R) 61 at [92]-[96], an appellate judge is as competent as any trial judge to draw necessary inferences of fact not supported by the primary or objective evidence on record from the circumstances of the case.
> >
> > *While an appellate court should be more restrained when dealing with the trial judge's assessment of a witness's credibility, there is a difference between an assessment of a witness's credibility based on his demeanour, and one based on inferences drawn from the internal consistency in the content of the witness's testimony or the external consistency between the content of the witness' evidence and the extrinsic evidence. In the latter two situations, the trial judge's advantage in having studied the witness is not critical because the appellate court has access to the same material and is accordingly in an equal position to assess the veracity of the witness's evidence (see Jagatheesan s/o Krishnasamy v PP* [2006] 4 SLR(R) 45 ('*Jagatheesan*') at [40], citing *PP v Choo Thiam Hock* [1994] 2 SLR(R) 702 at[11]).
> >
> > [emphasis added in italics and bold italics]

38 Touching on the same concern, Yong Pung How CJ cautioned in *Kwan Peng Hong v PP* [2012] 2 SLR(R) 824 that

> 32 … although the ease of making an allegation and the difficulty of refutation are not just confined to sexual cases, they are generally of more concern in sexual cases. It is in the nature of sexual offences, that often all the court has before it are words of the complainant against the denials of the accused. …
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> 33 … it is dangerous to convict on the words of the complainant alone unless her evidence is unusually compelling or convincing (*Tang Kin Seng v PP* ([28] *supra* at [43]), *Teo Keng Pong v PP* ([24] *supra* at [72] and *Soh Yang Tick v PP* [1998] 1 SLR(R) 209 at [43]). In short, the court is to be extremely cautious in relying on the sole evidence of the complainant for a conviction. The phrase "unusually compelling or convincing" simply means that the complainant's evidence was so convincing that the Prosecution's case was proven beyond reasonable doubt, solely on the basis of that evidence.

39 Strictly speaking, the girl's evidence did not stand alone. There was the evidence of her mother, brother, sister and boyfriend, who she told about the accused's actions. The corroborative effect of such evidence is stated in s 159 of the Evidence Act that

> In order to corroborate the testimony of a witness, any former statement made by such witness, whether written or verbal, on oath, or in ordinary conversation, relating *to the same fact at or about the time when the fact took* place, or before any authority legally competent to investigate the fact, may be proved.
>
> (Emphasis added)

40 However this provision must be applied with caution as Yong CJ had pointed out *in Khoo Kwan Hain v PP* [1995] 2 SLR(R) 591

> 49 … although s 159 has the effect of elevating a recent complaint to corroboration, the court should nevertheless bear in mind the fact that corroboration by virtue of s 159 alone is *not* corroboration by *independent* evidence. It would be dangerous to equate this form of corroboration with corroboration in the normal sense of the word. …

The focus on a complaint made "at or about the time when the fact took place", or a "recent complaint" is apposite. Good sense dictates that a complaint should be made within a reasonable time after the event. Where a person remains silent, and only complains after a long delay, that delay must be scrutinised. In the present case, the girl was not at all prompt in her complaints although she had every opportunity to complain. There were no reasons for her not to confide in members for her family or her boyfriend. She had ample time to recover from any distress or embarrassment that she may had experienced.

41 Someone so abused and humiliated would be expected to seek help and redress when she breaks her silence. In her case, however, she was still reluctant to make a police report. Furthermore, when she did speak, what she said was contradictory and inconsistent, with allegation of touching (and no rape) to the mother, and rape (and no digital penetration) to the brother, sister and boyfriend. With the passage of time, the girl should not have difficulty to recount accurately the forms of abuse she was put through.

42 Reverting to her evidence regarding the prime mover, it was apparent that her description of the prime mover's cabin and the accused's frequent use of the prime mover was contradicted by the evidence of Mr Sim. The Court of Appeal in *Heng Aik Ren Thomas v PP* [1998] 3 SLR(R) 142 advised that

> 35 Where the quality of the identification evidence is poor, the judge should ask … (I)s there is any other evidence which goes to support the correctness of the identification. If the judge is unable to find other supporting evidence for the identification evidence, he should then be mindful that a conviction which relies on such poor identification evidence would be unsafe….

43 Looking at her evidence of the accused sending her sister out of the flat so that he can be alone with her (which should be corroborated by her sister),

nothing was mentioned by the sister at all. These, and the other matters I have referred to have a negative impact on her credibility. This is the reason for the court to say in *Kwan Peng Hong* that "it is dangerous to convict on the words of the complainant alone unless her evidence is unusually compelling or convincing".

44 The girl's evidence was not unusually compelling or convincing and the other evidence did not strengthen the prosecution case in any significant way. At the end of a case, a court has to decide whether the prosecution had proved the charges against an accused person beyond a reasonable doubt and whether it is safe and fair to convict the accused. Where there is clear evidence which supports each element of a charge, the charge is proved beyond a reasonable doubt. Conversely, when there are substantial flaws and shortcomings in the evidence as there are here, there will be reasonable doubts.

45 Upon a review of the case, the prosecution had not proved any of the charges to the required standard, and the accused is to be acquitted on the five charges.

Kan Ting Chiu
Senior Judge

Lin Yinbing and Michael Quilindo (Attorney-General's Chambers) for the Prosecution;
Mr Abraham Vergis (Providence Law) and Sadhana Rai (CLAS Fellowship, Law Society of Singapore) for the Accused.