IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 49

Criminal Case No 65 of 2017

Between

Public Prosecutor

And

BND

GROUNDS OF DECISION

[Criminal law] — [Offences] — [Rape]
[Criminal procedure and sentencing] — [Statements] — [Admissibility]
[Criminal procedure and sentencing] — [Sentencing] — [Sexual offences]

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Public Prosecutor
v
BND

[2019] SGHC 49

High Court — Criminal Case No 65 of 2017
Lee Seiu Kin J
4–8, 25 September 2017, 26–29 June, 2 July, 15 October, 14 November 2018

28 February 2019

Lee Seiu Kin J:

Introduction

1 The Prosecution brought two charges against the accused for rape of his biological daughter ("the complainant") under s 375(1)(*a*) of the Penal Code (Cap 224, 2008 Rev Ed) ("the Penal Code"), punishable under s 375(2) of the same. The accused denied that he had committed the offences.

2 Having assessed the evidence and considered the submissions made by the prosecution and defence, I convicted the accused of both charges and imposed a global sentence of 26 years' imprisonment and 24 strokes of the cane.[1] I had found that the testimony of the complainant was unusually convincing. Her evidence was also corroborated by DNA evidence, in particular, the presence of the accused's semen on the interior crotch area of the

[1] Minute sheet dated 14 November 2018.

complainant's shorts.

Background

3 The accused is a 35 year-old male Singaporean. He has one son and two daughters.

4 The complainant is the accused's eldest child and was 14 years old at the time of the alleged offences.[2] She is the accused's biological daughter. The complainant claimed that the accused had raped her a total of eight times from November 2014 to January 2015 at their family home ("the flat").[3] The prosecution brought two charges against the accused, in relation to two of those incidents.

5 The complainant confided in her boyfriend sometime in January 2015 about the sexual abuse.[4] The boyfriend thereafter informed their school counsellor ("the school counsellor") about the matter on 13 January 2015, who referred the matter to the Ministry of Social and Family Development.[5] A police report was lodged and the accused was placed under arrest on the same day.[6] That same evening, the police carried out a search of the flat and seized a number of items, including a pair of pink shorts hanging at the window grille of the complainant's room, which the complainant said she wore during the last incident of rape.[7]

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2 Charges marked C1 and C2.

3 Agreed bundle of documents ("AB") at pp 10–15 paras 6–14.

4 AB at p 9 para 4.

5 AB at p 36 para 15.

6 AB at pp 3, 5–6.

7 AB at p 42 para 10.

6 Over the following months, the accused gave a number of statements to the police. The prosecution sought to admit a statement recorded from the accused by Assistant Superintendent Samantha Xu ("ASP Xu") on 2 April 2015 at 2.45pm ("the contested statement").[8] The defence challenged the admissibility of the statement on the basis that it was given under a threat, inducement or promise from the two police officers, ASP Xu and Assistant Superintendent Vimala Raj ("ASP Raj") who interviewed the accused on 2 April 2015. An ancillary hearing was convened to determine the admissibility of the contested statement. Following the ancillary hearing, I declined to admit the contested statement as I found that the prosecution had not proven beyond a reasonable doubt that the statement was given voluntarily.[9]

7 Notwithstanding the non-admission of the contested statement, at the end of an 11-day trial, I found that the prosecution had proven beyond reasonable doubt that the accused was guilty of the two charges in the light of the evidence against the accused. I accordingly convicted the accused of both charges.

The charges

8 The two charges brought by the Prosecution against the accused, to which the accused claimed trial were as follows:[10]

> 1ST CHARGE — [That you] sometime in the afternoon or early evening of 19 November 2014, at [the flat], did commit rape on [the complainant – then 14 years old],to wit, by penetrating the vagina of the said [complainant] with your penis without her consent, and you have thereby committed an offence under section 375(1)(a) of the Penal Code,

8 Prosecution's submissions for the ancillary hearing at para 2.

9 NE dated 29 June 2018 at p 23.

10 Charges marked C1 and C2.

Chapter 224 (2008 Rev. Ed.) which is punishable under section 375(2) of the said Act.

2ND CHARGE — [That you] sometime in the night of 9 January 2015 or the early hours of 10 January 2015, at [the flat], did commit rape on [the complainant – then 14 years old], to wit, by penetrating the vagina of the said [complainant] with your penis without her consent, and you have thereby committed an offence under section 375(1)(a) of the Penal Code, Chapter 224 (2008 Rev. Ed.) which is punishable under section 375(2) of the said Act.

Events pertaining to the first charge

9 According to the complainant, on 19 November 2014, sometime in the afternoon or early evening, the accused had asked her and her siblings to get ready to leave the flat to go to their mother's workplace. The accused did not go to work that day.

10 The complainant alleged that the accused had raped her in the common toilet of the flat as she was changing and preparing to leave the flat. In particular, while the complainant was in the common toilet, the accused tried to open the locked toilet door, upon which the complainant shouted very loudly, asking her sister to "come quickly" in mandarin. However, the complainant only heard either her brother or sister say very loudly "Papa molester!", followed by laughter. Although the door was locked, it could be easily unlocked with a coin. The complainant attempted to push against the door to close it but could not. The accused then entered the toilet, closed the door and locked it. The complainant kept making noises and asked him to leave but was told by the accused to keep quiet. He then turned the complainant around to face the toilet bowl and raped her for about six minutes. Thereafter he told the complainant to wash up and not to tell anyone about what happened. Subsequently, the

complainant washed up, got dressed and left the house with the accused and her siblings to go to her mother's workplace.[11]

Events pertaining to the second charge

11 In relation to the second charge, the complainant claimed that on 9 January 2015, after she got home from a school carnival at about 6 or 7pm, her mother had already left the house to play Mah-jong. The accused and the complainant's siblings were at home. The complainant did her homework and watched some television before deciding to take a shower. She claimed that after she had showered, the accused raped her in her room.

12 The complainant related that she had gone to her room after her shower and was hanging up her bath towel when the accused entered her room. She then walked out of her room to retrieve her phone from her parents' room, but just as she was about to enter it, the accused grabbed her from behind and lifted her slightly and brought her back to her own room. The complainant shouted for her sister but she did not respond. The accused pushed the complainant onto her bed, closed and locked the door. He covered her face with a blanket and pulled down her pink shorts and underwear. The complainant kicked her legs in an attempt to move away from him but was unsuccessful. The accused then raped her for ten to fifteen minutes. Thereafter the complainant felt the accused use something rough to wipe her vagina area and she assumed he had ejaculated. The accused then told her to go to the toilet to wash up.[12]

13 The complainant put on the same pink shorts[13] and went back to the toilet to shower again, during which she felt discharge coming out from her vagina.

11 AB at p 13 para 11; NE dated 5 September 2017 at p 69 lines 3–21.

12 AB at pp 15–17 para 14–16.

13 NE dated 5 September 2017 at p 44 lines 7–15.

She then washed the underwear that she had worn during the incident and hung it to dry at the yard after showering.[14] However she did not wash the pink shorts and instead hung it on the window grille of her room. This was because she had the habit of wearing the same clothing at least twice before sending it for washing.[15]

The prosecution's case

14 The prosecution submitted that the complainant was an unusually convincing witness whose testimony alone warranted the conviction of the accused on both charges. Her testimony was internally and externally consistent.[16] Her recollection of material background particulars in relation to the two charges was confirmed by the testimony of the accused and his wife (who is also the complainant's mother, and who will be referred to in this GD interchangeably as "complainant's mother" and "accused's wife"). This included, in relation to the first charge, the fact that the accused did not go to work and was on medical leave on 19 November 2014.[17] In relation to the second charge, the accused prevaricated on the stand and attempted to belatedly manufacture an alibi for himself by suggesting that his wife could have been at the flat on the night of 9 January 2015. However, the accused's wife herself could not recall with any certainty whether she was out playing Mah-jong that night or not and her position did not assist the defence.[18] The prosecution further submitted that the complainant was candid on the stand and testified in a forthright manner that was fair to the accused.[19]

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14 AB at p 17 para 17.

15 NE dated 5 September 2017 at p 44 (lines 5–31), p 53 (lines 14–21), p 55 (lines 22–24).

16 Prosecution's closing submissions dated 13 August 2018 ("PCS") at paras 19–36.

17 PCS at para 31.

18 PCS at paras 34–36.

15 The prosecution further submitted that the complainant's testimony was corroborated by other evidence. First, the presence of the accused's semen on the interior crotch area of the complainant's shorts was strong incriminating evidence against the accused.[20] The accused was unable to account for the presence of his semen on the pink shorts.[21] The defence did not challenge the chain of custody of the evidence or the accuracy of the DNA analysis either.[22] The medical report of the complainant, which showed that there was an old tear on the complainant's hymen, was also corroborative evidence.[23]

The defence's case

16 The accused denied committing the offences. The defence's principal case was that the complainant had a motive to fabricate the allegations against the accused as the accused and his wife were strict with her in terms of discipline and she wanted to obtain freedom from them.[24] The defence submitted that the possibility of fabrication was supported by the testimony of the accused's wife, given that the wife had testified that the complainant was rebellious and had disciplinary issues.[25]

17 The defence also submitted that the complainant's credibility was undermined given that the complainant had not complained of the alleged offences that took place on 19 November 2014 and 9 January 2015 to her mother or any other persons immediately after the incidents, and had only

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19 PCS at paras 37–38.

20 PCS at paras 39–41

21 PCS at paras 45–51.

22 PCS at paras 42–44.

23 PCS at paras 52–55.

24 Defence's closing submissions ("DCS") at paras 6a, 6g, 38.

25 DCS at paras 48–49.

reported the incidents to the police on 13 January 2015. In fact, the complainant's mother had testified that the complainant had acted normally and did not show any distress on 19 November 2014, after the alleged rape had taken place. The family had even gone for dinner together that night after the alleged rape.[26]

18 The defence also submitted that there were inconsistencies in the testimonies of the prosecution witnesses in relation to how the complainant had disclosed the sexual abuse, which affected the complainant's credibility. The alleged incidents of rape came to light when the complainant asked her boyfriend if he would still like her if she was no longer a virgin, which led to the complainant confiding in her boyfriend of the sexual abuse.[27] According to the boyfriend, the complainant had asked him this question face-to-face[28] whereas according to the complainant, the conversation took place over on an online platform, *ie*, "Instagram" and "Dance Up".[29] In addition, in relation to the timing of the conversation, the boyfriend stated that it took place in January 2015 after school had reopened following the holidays, while according to the complainant,[30] the conversation took place in December 2014.[31] Further, the complainant's account is that subsequently, her boyfriend had told a mutual friend of theirs ("B") that she had been raped by her father.[32] However, B's account was that it was the complainant herself who told him about the rape over a phone call.[33] The defence submitted that these inconsistencies were

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26 DCS at para 50.

27 AB at p 8 para 3.

28 AB at p 22 para 2; NE dated 4 September 2017 at p 27, lines 19–20.

29 AB at p 8 para 3; NE dated 5 September 2017 at p 57–58.

30 AB at p 8 para 3

31 DCS at para 24.

32 AB p 10 at para 4.

material discrepancies which undermined the credibility of the testimonies of the respective witnesses.[34]

19 The defence also pointed to inconsistencies in the complainant's account of the dates of the alleged rapes under the first charge and second charge and of the other instances in which the complainant claimed that the accused had sexual intercourse with her.[35] In relation to the first charge, the complainant's conditioned statement stated that the rape took place on 19 November 2014.[36] However, the complainant had recounted to her school counsellor that the incident took place sometime between 14 and 19 December 2014.[37] Likewise in relation to the second charge, the charge stated that the offence took place in the night of 9 January 2015 or the early hours of 10 January 2015. However, the complainant had previously recounted to her school counsellor that the incident took place on 11 January 2015.[38] When she reported the offences to the police on 13 January 2015, the complainant also stated that the incident under the second charge took place on 11 January 2015.[39]

20 The defence therefore submitted that the complainant's testimony was not convincing.[40] On the other hand, the accused's testimony remained largely unshaken and unchallenged in material aspects.[41] The defence also submitted,

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33 DCS at para 27; AB p 30 at para 4; NE dated 4 September 2017 p 41 lines 26–30.

34 DCS at para 30.

35 DCS at para 31–34.

36 Exhibit C1; AB p 13 para 11.

37 AB p 34 at para 5.

38 AB p 34 at para 6.

39 AB p 15 at para 14; DCS at para 34.

40 DCS at paras 37, 41.

41 DCS at para 44.

though without significant explanation, that there was a lack of corroborating evidence in the present case.[42]

21 In relation to the DNA evidence, which confirmed that the accused's semen was on the pair of pink shorts that the complainant said she had worn during the incident underlying the second charge, the defence submitted that it was probable that the unwashed shorts had been placed inside the family's common laundry basket first before it was hung on the window grille and that the accused's semen was transferred to the pink shorts from other clothing.[43] According to the defence, this was supported by the testimony of the complainant's mother who stated that the family's dirty clothing would normally be mixed together in one common laundry basket.[44] It was argued that there was no other incriminating evidence against the accused and that the accused's defence, *ie*, a bare denial should be accepted.[45]

22 Finally, in relation to the second charge, the defence also suggested that based on the testimony of the complainant's mother, there was a possibility that the complainant's mother had not actually gone out to play Mah-jong on the night of 9 January 2015 and had been at home instead, which would mean that there was no window of opportunity for the accused to have committed the offence alleged.[46]

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42 DCS at paras 39–41.

43 DCS at paras 43, 45.

44 NE dated 2 July 2018 at p 45 lines 1–32.

45 DCS at paras 46–47.

46 DCS at para 51.

The admissibility of the contested statement

The evidence

23 The accused was required to report to the Serious Sexual Crimes Branch ("SSCB") at Police Cantonment Complex on 2 April 2015 to extend his bail, along with his wife, who was his bailor. ASP Xu had also made arrangements and notified the accused in advance that a second statement would be recorded from him immediately after the bail extension on 2 April 2015 at the SSCB.[47] The first statement had been recorded from the accused when he was first arrested on 13 January 2015.[48]

24 Accordingly, on 2 April 2015, the accused reported to the SSCB along with his wife. After the bail extension was completed, the accused was brought into an interview room at SSCB for his second statement to be recorded.[49] The accused's wife waited for the accused at the waiting area of the SSCB while his statement was recorded.[50]

25 The accused claimed that the statement he had given on 2 April 2015 was not given voluntarily. He therefore subsequently sought to retract his confession. On 15 June 2015, he provided another statement to the police,[51] the material portions of which read:

> 11. I provided my statement to ASP Samantha Xu on 2nd April 2015 and I informed my counsel after that that I wish to make some changes to my statement. This is because I gave a false statement to the investigation officer on 2nd April 2015. I did not have sex with [the complainant].

47 NE dated 6 September 2017 at p 37 lines 20–31.

48 NE dated 6 September 2017 at p 52 lines 3–6.

49 NE dated 6 September 2017 at p 41 lines 22–25.

50 NE dated 27 June 2018 at p 48 lines 23–27

51 Exhibit TWT-P6.

> 12. On 2nd April 2015, I said that I had sex with [the complainant] because I was scared to be thrown into lock-up if I denied that I had sex with her. The investigation officer said I would be thrown into lock-up if I did not admit. I have been in jail before and people who have been in jail before are scared to go back to jail.
>
> 13. I was also stressed at that time as the investigation officer repeatedly asked me if I had sex with [the complainant]. That is all.

26 In addition, during his psychiatric interviews on 10 June 2015 and 8 July 2015[52] with Dr Jaydip Sarkar ("Dr Sarkar") from the Institute of Mental Health, the accused informed Dr Sarkar that he was threatened when he was interrogated by the police. Dr Sarkar's report states:[53]

> He vehemently denied that he had engaged in any kind of sexual or molestation type activity with his daughter, during his lock-up and interrogation shortly after the complaint was made. He said 2-3 months later he was interrogated again by SSCB who allegedly threatened to *'put me in lock-up on the spot if I did not admit to it (meaning the allegation of rape). They said I am an ex-convict and hence I must have done it. I knew this was a serious charge but I admitted to it, because otherwise they would put me in police cells'*. He claims that the 'confession' was obtained under pressure and says it is a false confession. [emphasis in original]

The prosecution's version of the events on 2 April 2015

27 According to ASP Xu, on 2 April 2015, after the accused's bail had been extended, she brought the accused to an interview room at SSCB.[54] Prior to commencing the statement recording, she had left the accused alone in the interview room and returned to her workstation where she asked ASP Raj to interview the accused first. She did so as she thought that the accused may feel uncomfortable admitting what he did to a female police officer.[55]

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52 NE dated 7 September 2017 at p 8 lines 10–11.

53 Exhibit TWT-P1 at p 3.

54 NE dated 6 September 2017 at p 41 lines 22–25.

28 ASP Raj testified that he then went over to the interview room and that during the five to ten minute duration that he was with the accused in the interview room, he had only informed the accused that he had failed his polygraph examination and told him to tell the truth.[56] He denied that he had rendered any threat, inducement or promise to the accused.[57]

29 Subsequently, ASP Xu returned to the interview room from her workstation upon which ASP Raj left the interview room. ASP Raj did not return to the interview room at any time after that.[58] After ASP Raj left the room, ASP Xu commenced the statement recording at 2.45pm, which lasted until 5.28pm.[59] ASP Xu testified that the accused was cooperative during the statement recording and she denied that any threat, inducement or promise had been rendered to the accused on 2 April 2015.[60]

30 In addition, according to ASP Xu, she did not and could not have provided any information to the accused on 2 April 2015 concerning the presence of the accused's semen on the complainant's clothing. This was because as of 2 April 2015, she had not yet received any information from the Health Sciences Authority on the presence of the accused's semen on the complainant's clothing and had only received the information on or around 31 May 2015.[61] Likewise, ASP Raj testified that he had not at any time during

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55 NE dated 6 September 2017 at p 43 (lines 2–31) – p 44 (lines 1–14), p 46 (lines 1–7).

56 NE dated 7 September 2017 at p 18.

57 NE dated 7 September 2017 at p 23 lines 22–28.

58 NE dated 7 September 2017 at p 18 (lines 29–31) – p 19 (lines 1–13); NE dated 6 September 2017 at p 47 (lines 14–16).

59 NE dated 6 September 2017 at p 46 (lines 9–28); NE dated 27 June 2018 p 64 lines 24–25.

60 NE dated 6 September 2017 at p 48 lines 24–26; p 51 lines 7–15.

61 NE dated 27 June 2018 p 67 lines 7–13; p 69 lines 5–12; Exhibit TWT–P8 at p 3.

his interview with the accused mention that that the accused's semen had been found on the complainant's clothing.[62]

The defence's version of the events on 2 April 2015

31 On the other hand, the defence submitted that during the statement recording on 2 April 2015, the two interviewing police officers had pressurised the accused to admit to the offence. The accused initially refused to admit. The two interviewing police officers then left the interview room for about ten minutes.[63] Thereafter, both of them returned to the interview room and "the main officer informed the accused person that '[y]ou have previous antecedent, that you have been jailed. If you do not admit, I'll throw [you] in the lock-up.'"[64] In addition, according to the defence, ASP Xu had told the accused that the police had found his semen on the complainant's clothing during the statement recording.[65] It was further alleged that the male interviewing officer, *ie*, ASP Raj, had informed the accused that he would plead for leniency on behalf of the accused if he cooperated.[66] As a result of the threat and promise, the accused gave the contested statement, in which certain admissions were made by him.

32 The defence relied on a number of text messages exchanged between the accused and his wife to support its case that the contested statement was not given voluntarily by the accused. First, the defence adduced the wife's mobile phone billing records which showed that while the accused was in the interview room on 2 April 2015, between 2.59pm to 3.09pm, the accused and his wife had

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62 NE dated 27 June 2018 at p 85 lines 16–19.

63 NE dated 6 September 2017 at p 33 lines 9–18.

64 NE dated 6 September 2017 at p 33 lines 22–30.

65 NE dated 27 June 2018 at p 7 (lines 27–30), p 41 (lines 18–29).

66 Defence submissions for the ancillary hearing at para 9; NE dated 7 September 2017 at p 44 lines 1–5

exchanged text messages.[67] ASP Xu also confirmed that she did not stop the accused from bringing in any mobile phone into the interview room during the statement recording.[68] While the contents of the text messages could not be recovered, the wife testified that she could more or less recall the details of the messages.[69] She testified that the accused was the one who sent her a text message first in which he informed her that the police found semen on the complainant's clothing and that they asked him to admit or they would put him in lock-up. The wife replied by telling the accused that if he did not do it, he should not admit to the offence.[70]

33 Second, the defence adduced records of WhatsApp messages exchanged between the accused and his wife a few days after the statement recording, on 6 April 2015. The accused informed his wife through WhatsApp messages that he had on 2 April 2015 admitted to committing the offence and that he had done so because the police had threatened to lock him up otherwise. The accused stated in his WhatsApp message to his wife:[71]

> … sry…I lie to all of u…report bail that day, they force me till I can't take it le. they say wan lock me up if I really dun admit…so I admitted.. I very scared of lock up now. im sry.. now y I'm so gan jiong to find a lawyer is to ask wats Next I need to do.. any help if now I admitted.. I'm so so so sry.. Hope u dun angry mi.. I'm already at my end of road. I have no more choice to get out of that bloody place just to admit..pls pls dun angry…can u dun tell mama they all 1st?? I dun wan so many ppl worry.. I'm sry.. on weekend I dun wan tell u is becos I dun wanna spoil ur weekend.

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67 NE dated 27 June 2018 at p 48 (lines 23–28) – p 49 (lines 1–12); Exhibit TWT-D1.

68 NE dated 27 June 2018 at p 63 lines 17–20.

69 NE dated 27 June 2018 at p 49 lines 13–17.

70 NE dated 27 June 2018 p 49 (lines 18–28) – p 50 (lines 1–7).

71 Agreed statement of facts dated 25 June 2018 at p 8, panel 38.

In the same series of WhatsApp messages exchanged between the accused and his wife on 6 April 2015, the accused also told his wife that the investigating officers informed him that they found his semen on the complainant's clothing and could charge him and lock him up if he did not confess:[72]

> Accused: They say if I dun wan admit they gt evidence now.. n they can charge mi on the spot n put mi lock up
>
> Wife: U tell me now. What evidence they found? What they say
>
> Wife: I go find lawyer now
>
> Accused: They say gt evidence that my semen found on [the complainant] clothing
>
> Wife: Did they say what clothing??
>
> Accused: But idk their clothing mean shirt, shorts or pantie

Finding

34 A statement is deemed involuntary pursuant to s 258(3) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC") if a threat, inducement or promise made by a person of authority operated on the mind of the accused in making the statement. The prosecution has the burden to prove beyond reasonable doubt that the statement was given voluntarily by the accused.

35 Having heard the evidence and the submissions of the parties at the ancillary hearing, I found against the prosecution and did not admit the contested statement recorded from the accused on 2 April 2015.[73]

36 First, the prosecution's version was that ASP Xu and ASP Raj had not informed the accused about his semen being detected on the accused's clothing during the statement recording on 2 April 2015. However, the WhatsApp messages exchanged between the accused and his wife a few days after the

[72] Agreed statement of facts dated 25 June 2018 at p 9, panel 43.

[73] NE dated 29 June 2018 at p 23.

statement was recorded from the accused (see [33] above) seemed to suggest that there must have been some suggestion made to the accused then that his semen had been detected on the complainant's clothing. There would be no other explanation for the accused to be able to mention this in his WhatsApp messages to his wife three days later.

37 The prosecution submitted that the accused had pre-empted the results of the DNA testing on his own, without being influenced by any suggestion from ASP Xu or ASP Raj, as he needed to give an explanation to his wife on why he had given a false confession on 2 April 2015.[74] I did not find this to be a convincing explanation. The accused could have simply stopped at telling his wife that the police officers had threatened to lock him up if he did not confess – which was in fact a part of his explanation to his wife – and say nothing further in relation to the semen evidence. It did not seem possible that the accused would make this up as an explanation for giving a false confession if the police had not mentioned anything about the semen test.

38 In addition, in the statement recorded subsequently on 15 June 2015 where the accused had sought to retract his confession in the contested statement, one of the questions posed by ASP Xu to the accused was as follows:[75]

> **Q35: Why then, in your statement recorded on 2nd April did you say that you masturbated to [the complainant's] black panty?** [emphasis in original]

This seemed to suggest that something had transpired during the recording of the statement on 2 April 2015 which led the accused to feel the need to inform the investigating officer on 2 April 2015 that he had "masturbated to" the

74 NE dated 29 June 2018 at p 10 lines 27–29; p 12 lines 9–17.

75 Exhibit TWT-P6, p 1.

complainant's black panty. In all likelihood, there would have been some suggestion made by the investigating officers to the accused, in relation to the presence of the accused's semen on the complainant's clothing. The prosecution argued that there was a material difference between "masturbated to" and "masturbated into"[76] but any difference did not in my view remove the doubt as to whether some suggestion was made to the accused in relation to the semen evidence.

39 The prosecution further submitted that even if I were to accept that some suggestion had been made by the investigating officer(s) to the accused on the presence of the accused's semen on the complainant's clothing, the suggestion did not constitute nor relate to a threat, inducement or promise which affected the voluntariness of the contested statement.[77] While this may be the case, a finding that such a suggestion had indeed been made would affect the credibility of the two investigating officers since they had clearly denied making any such suggestion to the accused on 2 April 2015.[78]

40 For the reasons that I have articulated, I found that there was a possibility that the investigating officers did confront the accused on the presence of his semen on the complainant's clothing on 2 April 2015. This undermined the credibility of the testimonies provided by ASP Xu and ASP Raj, including their evidence that no threat, inducement or promise whatsoever had been rendered to the accused by either of them. Accordingly, I found that the prosecution had not proven beyond a reasonable doubt that the contested statement was given voluntarily and declined to admit the statement at the conclusion of the ancillary hearing.

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76 NE dated 29 June 2018 at p 17 lines 24–30.

77 NE dated 29 June 2018 at p 13 lines 9–13.

78 NE dated 27 June 2018 at p 67 lines 7–13; p 85 lines 16–19.

41 At the end of the prosecution's cross-examination of the accused, the prosecution made an application under s 279(7) of the CPC for a reconsideration of the admissibility of the contested statement. The provision reads:

> If the court, after hearing evidence in the main trial, is doubtful about the correctness of its earlier decision whether or not to admit the evidence at the ancillary hearing, it may call on the prosecution and the defence to make further submissions.

The prosecution sought to rely on the accused's agreement under cross-examination that there was a difference between the terms "masturbated to" and "masturbated into" to justify its application for a reconsideration of the admissibility of the contested statement.[79]

42 I found that this concession by the accused on the difference between the terms was insufficient to prove that no suggestion was made to the accused on the presence of his semen on the complainant's clothing. This is because I had, in addition to the statement of 15 June 2015, also relied on the WhatsApp messages exchanged between the accused and his wife on 6 April 2015 in making my decision, where the difference between the two terms was irrelevant. I therefore dismissed the prosecution's application under s 279(7) of the CPC and maintained my decision not to admit the contested statement.[80]

43 Notwithstanding the non-admission of the contested statement, I found that the prosecution had established the elements of the charges against the accused beyond reasonable doubt for reasons which I shall now turn to.

Whether the complainant's testimony was unusually convincing

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79 NE dated 2 July 2018 at p 21; Prosecution's skeletal submissions on the application of s 297(7) CPC dated 2 July 2018 at paras 2–3.

80 NE dated 2 July 2018 at pp 23–24.

44 It is trite that in cases involving sexual offences, the complainant's evidence must be "unusually convincing" to overcome any doubts that might arise from the lack of corroboration, in order for the accused to be convicted of the offence based on the complainant's testimony alone (*AOF v Public Prosecutor* [2012] 3 SLR 34 ("*AOF*") at [111]). A complainant's testimony would be unusually convincing if the testimony "when weighed against the overall backdrop of the available facts and circumstances, contains that ring of truth which leaves the court satisfied that no reasonable doubt exists in favour of the accused" (see *Public Prosecutor v Mohammed Liton Mohammed Syeed Mallik* [2008] 1 SLR(R) 601 at [39]; *Haliffie bin Mamat v Public Prosecutor and other appeals* [2016] 5 SLR 636[81] at [28]). Relevant considerations in determining whether a complainant is unusually convincing include his or her demeanour, as well as the internal and external consistencies in his or her testimony (*AOF* at [115]).

45 In this case, I found the testimony of the complainant to be unusually convincing. In any event, there was corroborative evidence of her allegations against the accused.

Internal consistency

46 First, the complainant's version of events in relation to the two charges against the accused contained a level of detail which was consistent with someone who was telling the truth. She could recall specific details which eliminated, or at the very least, reduced significantly the possibility that her account was fabricated. In relation to the first charge for example, the complainant recalled that she had called out to her sister for assistance when the accused tried to enter the toilet but that all she heard was either her brother or

[81] Prosecution's bundle of authorities dated 18 August 2018 at Tab B.

sister say the words "Papa molester!" and that there was laughter thereafter.[82] She recalled the manner she was standing when her father raped her, that she was facing the wall and that she had to place her hands "on the top of the toilet near the flush to maintain [her] balance" and other particulars.[83] Likewise in relation to the incident under the second charge, she recalled that the accused had covered her face with her blanket, that she had pressed her hands against the blanket that was covering her face as she was very scared and that she had kicked her legs to move away from him, amongst other details.[84] The complainant maintained her account of events under cross-examination and I found her demeanour on the stand to be credible.

47 In relation to the inconsistencies pointed out by the defence concerning the complainant's recollection of the dates of the incident underlying the second charge, in particular, the fact that she had initially informed her school counsellor and the police that the events of the second charge took place on 11 January 2015 and not 9 January 2015 (see [19] above), I found the inconsistency to be minor and immaterial. The complainant had also provided a reasonable explanation for the discrepancy, which was that she had earlier given the date of 11 January 2015 as 11 January is the date of her friend's birthday and she had been thinking about that and was confused when she first made the report.[85] The inconsistency in the date provided to the school counsellor in relation to the first charge was also minor and immaterial. This is especially given that there were not just one or two but a total of eight instances of rape alleged by the complainant.

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82 AB p 13 at para 11; NE dated 5 September 2017 at p 68 lines 11–26.

83 AB at p 13 para 11.

84 AB at p 16 para 16.

85 AB at p 15 para 14.

External consistency

First charge

48 There was also external consistency in the complainant's testimony. The complainant's evidence on the material events of the day prior to and subsequent to the rape in the first charge was uncontested. The accused and the complainant's mother both confirmed that on 19 November 2014, the accused did not go to work,[86] and that in the evening, the accused brought the complainant and her siblings to the mother's workplace as the complainant's brother had an appointment that day in the clinic there.[87] The complainant's brother's X-ray record, with a time-stamp indicating that it was taken on 19 November 2014 at 5.11pm at the clinic, was also adduced by the prosecution as corroborative evidence.[88]

49 In addition, although the evidence of the complainant's brother and sister was that they could not recall hearing the complainant call for help on 19 November 2014,[89] given that they were very young at that time (seven years old and nine years old respectively[90]) and with the passage of time, their lack of recollection was understandable I am of the view that this did not undermine the complainant's testimony. It was unlikely that they would have appreciated the gravity of the situation at the time as well.

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86 NE dated 2 July 2018 at p 11 lines 15–17; NE dated 2 July 2018 at p 48 lines 22–27.

87 NE dated 2 July 2018 at p 48 (lines 29–32) – p 49 (lines 1–15); NE dated 2 July 2018 at p 11 lines 9–21.

88 Exhibit P70.

89 PS 18 para 4; PS 19 para 4.

90 PS 18 and PS 19.

Second charge

50 In relation to the second charge, the complainant's boyfriend and the accused both confirmed that there was a school carnival on 9 January 2015 and that the complainant attended it.[91]

51 The defence suggested that there was a possibility that the complainant's mother did not go out to play Mah-jong on the night of 9 January 2015 and therefore that there was no window of opportunity for the accused to have committed the offence that night (see [22] above). However, the complainant's mother, who was a defence witness, could not herself recall if she had gone out that night or not for her Mah-jong session.[92] Therefore, her evidence did not contradict the complainant's version of events. The accused had also prevaricated on the stand in relation to whether the complainant's mother was at home that night. He first testified that the complainant's mother would sometimes go out to play Mah-jong on Friday nights but that he could not remember if she had gone out to play Mah-jong on 9 January 2015 itself (a Friday).[93] Subsequently, he changed his evidence to state his belief that she did not go out to play Mah-jong on 9 January 2015.[94] I found the accused's testimony to be inconsistent and the reason provided by the accused for the inconsistency not credible.[95]

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91 AB p 23 para 4; NE dated 2 July 2018 at p 12 line 23.

92 NE dated 2 July 2018 at p 50 lines 22–24.

93 NE dated 29 June 2018 at p 36 lines 15–24.

94 NE dated 2 July 2018 at p 12 lines 12–28.

95 NE dated 2 July 2018 at p 13 (lines 1–32) – p 14 (lines 1–9).

Disclosure of the sexual abuse

52 In addition, the inconsistencies raised by the defence between the testimonies of the complainant, her boyfriend and B in relation to how the abuse was disclosed to the boyfriend and B (see [18] above), were minor and did not undermine the complainant's credibility. The testimonies of the boyfriend and B in relation to how they came to know about the complainant's sexual abuse and how the offences were eventually reported were consistent with material aspects of the complainant's account. This included the boyfriend's testimony that the complainant had first asked him if he would still like her if she was no longer a virgin and her subsequent confiding in him about the sexual abuse.[96] In addition, the boyfriend confirmed the complainant's reluctance to make a police report as she was scared that her family would be broken up. He had to persuade her to report the offences to the police or school counsellor.[97] B likewise confirmed that the complainant was reluctant to report the offences as she was scared and that he had, like the boyfriend, also persuaded her to do so.[98]

Reluctance in reporting the offences

53 Finally, contrary to the submissions of the defence (see [17] above), I did not find that there was any undermining of the complainant's credibility as a result of her initial reluctance to make a police report and seeming lack of distress during and immediately after the incidents of rape (for instance, her failure to shout or scream during the rape and continuation with her activities after the rape). The complainant testified that she was "scared" and "did not know what to do" when the accused started to rape her.[99] She feared that she

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96 AB at p 22 para 2.

97 AB at p 23 para 4; NE dated 4 September 2017 at pp 28 (line 32) – 29 (lines 1–21).

98 AB at p 31 paras 5–6; NE dated 4 September 2017 at p 42 lines 26–28.

99 NE dated 5 September 2017 at p 60 lines 20–30.

would be judged and thought of as a "bad girl" if she were to confide in anyone about the rapes.[100] She was also worried that her mother would not believe her, and that her disclosure would cause her relationship with her family to "turn sour".[101]

54 This was consistent with the testimonies of the boyfriend and B on the explanations the complainant had provided to them for her reluctance to disclose the offences to the police and school counsellor (see [52] above). Similarly, the school counsellor's evidence was that the complainant also told her that the reason she did not disclose the abuse to her earlier was because she was afraid that a police report would be lodged and that her family would be destroyed.[102]

55 I found the complainant's initial non-disclosure and inaction to be completely understandable and the explanations provided by her to be believable, especially in the light of the circumstances and her youth at the material time. The prosecution referred to the following observations by Aedit Abdullah J in *Public Prosecutor v Yue Roger Jr* [2018] SGHC 125 (at [30]–[31]),[103] which I agree with:

> I accepted that victims of sexual offences may not behave in a stereotypical way. Many victims report their sexual abuse early to a family member, friend, the police, or other person in authority. However, there is no general rule requiring victims of sexual offences to report the offences immediately or in a timely fashion. Instead, the explanation for any such delay in reporting is to be considered and assessed by the court on a case-by-case basis (see *DT v Public Prosecutor* [2001] 2 SLR(R) 583 at [62]; *Tang Kin Seng v Public Prosecutor* [1996] 3 SLR(R) 444 at [79]). While I accept that an omission to report the offence in a timely fashion, in the absence of other evidence,

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100 NE dated 5 September 2017 at p 73 lines 20–29.

101 NE dated 5 September 2017 at p 74 lines 4–9.

102 AB p 35 para 13.

103 Prosecution's bundle of authorities dated 13 August 2018 at Tab D; PCS at para 29.

> may in certain circumstances make it difficult to establish a case against the accused beyond reasonable doubt, I emphasise that the effect of any delay in reporting always falls to be assessed on the specific facts of each individual case.
>
> … While the average adult may be expected to react in a particular way – for example, to resist, report or complain about an assault as soon as possible – a child or juvenile cannot be expected to always react similarly. The thinking process, assumptions and viewpoint of a child or juvenile victim may lead to a course of action that may on its face appear unreasonable or improbable to an adult. However, the court must always be mindful of the reasons behind what may seem like unexpected conduct on the part of a child or juvenile victim, and should not measure a child or juvenile by adult standards.

56 Therefore, I was satisfied that the complainant's testimony was unusually convincing and sufficient on its own to prove the charges against the accused. In any event, there was strong corroborative evidence of the complainant's allegations, to which I shall now turn.

The DNA evidence

57 On the day in which the police report was lodged on 13 January 2015, the police carried out a search of the flat and seized a number of items, including a pair of pink shorts hanging at the window grille of the complainant's room, which the complainant told the police she had worn during the last instance of rape, *ie*, the incident under the second charge.[104] According to the complainant, the pair of pink shorts was not washed after the incident.[105]

58 The police handed over the pink shorts, along with other seized items, to the Health Sciences Authority ("HSA") for DNA testing.[106] The accused's

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104 AB p 42 para 10.

105 NE dated 5 September 2017 at p 44 lines 18–22.

106 AB p 50, para 34; AB p 77, para 2.

DNA sample was collected at the Police Cantonment Complex on 14 January 2015 and sent to the HSA on 15 January 2015.[107] The complainant's DNA sample was taken at KK Women's and Children's Hospital on 21 January 2015 and sent to the HSA on 23 January 2015.[108] The accused's DNA profile was marked "S131666"[109] while the complainant's DNA profile was marked "A070570".[110]

59 The DNA testing revealed that the accused's semen was present on the interior crotch area of the complainant's pink shorts.[111] In relation to the methodology of the testing, the evidence of the HSA DNA profiling analyst who conducted the test ("Mr Tan") may be briefly summarised as follows:

(a) A presumptive test for semen and vaginal fluid, known as an "acid phosphatase test" or "AP test", was first carried out on the pair of pink shorts. Two areas on the pink shorts, Area 1 and Area 2 tested positive for seminal and vaginal fluids.[112] Area 1 and Area 2 were both located on the interior of the shorts. Area 2 was located on the interior crotch area of the shorts.[113]

(b) As the AP test was positive, a confirmatory protein test for two types of proteins, semenogelin and prostate-specific antigen, was then carried out on Area 1 and Area 2. The two areas tested positive for both

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107 AB p 49 para 24; AB pp 66–70; AB p 93, paras 2–3.

108 AB p 50, para 33; AB pp 61–65; AB p 93, paras 4–5.

109 AB p 74, para 2.

110 AB p 71, para 2.

111 AB pp 77–89.

112 NE dated 5 September 2017 at p 7 lines 18–28, p 12 lines 7–19.

113 AB p 88 Figure 8; NE dated 5 September 2017 at p 12 lines 15–18.

proteins.[114] The presence of the two proteins indicated the presence of semen.[115]

(c) DNA analysis on Area 1 and Area 2 was then carried out and the following results obtained:

(i) Area 1: No spermic fraction (*ie*, DNA profile obtained from sperms[116]) was obtained either due to the lack of or insufficient sperms on Area 1 to produce a profile.[117] Epithelial fraction (*ie*, DNA profile obtained from all non-sperm cells[118]) matched A070570 (*ie*, the complainant's DNA) and S131666 (*ie*, the accused's DNA).[119]

(ii) Area 2: Spermic fraction matched S131666 (*ie*, the accused's DNA).[120] Epithelial fraction of Area 2 matched A070570 (*ie*, the complainant's DNA).[121]

60 In essence, the testing result for Area 2 was the most incriminating against the accused. The area tested positive for sperms which matched the accused's DNA.[122] Further, Mr Tan gave evidence that the probability of another person having the same DNA profile as the accused was, among the Chinese population 1 in 6.6 sextillion (6.6×10^{21}), among the Malay population 1 in 12

114 NE dated 5 September 2017 at p 7 lines 18–28; p 14 lines 2–3.

115 NE dated 5 September 2017 at p 15 lines 5–6.

116 NE dated 5 September 2017 at p 30 line 25.

117 NE dated 5 September 2017 at p 24 (lines 30–32) – p 25 (lines 1–7); AB at p 81.

118 NE dated 5 September 2017 at p 30 lines 22–23.

119 NE dated 5 September 2017 at p 32 (lines 25–32) – p 33 (lines 1–2); AB at p 81.

120 NE dated 5 September 2017 at p 25 lines 18–22; AB p 81.

121 AB p 81.

122 NE dated 5 September 2017 at p 25 lines 11–22.

sextillion (1.2×10^{22}) and for the Indian population 1 in 270 sextillion (2.7×10^{23}).[123] The improbability was stark. The test results strongly corroborated the complainant's testimony in relation to the second charge, *ie*, that the accused had raped her and during the rape, the accused had ejaculated.[124]

61 The defence did not challenge the chain of custody of the evidence nor the accuracy of the DNA test results and analysis.

62 In addition, the accused accepted that the pair of pink shorts belonged to the complainant and that the complainant's mother had never worn them.[125] The accused also testified that he had never masturbated and ejaculated into any of the complainant's clothing.[126] Crucially, the accused even agreed during cross-examination that he had no innocent explanation for the presence of his semen on the complainant's shorts:[127]

> Q Yes. I'll put it this way, Mr [BND]. If you didn't rape [the complainant], you have no explanation for how your semen came to be in her shorts. Correct?
>
> A I guess you can say that.

63 The defence explored the possibility that the presence of the accused's semen on the complainant's pink shorts was a result of the pink shorts being mixed with the accused's clothing in a common laundry basket. Mr Tan testified that it was possible for semen to be transferred from one piece of clothing to another, as a result of the two pieces of clothing being placed together.[128] In

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123 NE dated 5 September 2017 at p 26 lines 6–12; AB p 82 para 2.

124 AB, p 16 para 16.

125 NE dated 2 July 2018 p 3 lines 25–27.

126 NE dated 2 July 2018 p 3 lines 11–17.

127 NE dated 2 July 2018 p 3 lines 8–10.

128 NE dated 5 September 2017 p 31 at lines 5–10.

addition, the complainant's mother's testimony was that the family's dirty clothing would all be placed in a common laundry basket prior to washing.[129]

64 However, there was no evidence that the complainant's pink shorts had been placed in a common laundry basket prior to being placed at the window grille. The complainant testified that after the rape under the second charge, she had hung the pink shorts on the window grille of her bedroom rather than send it for washing as she had the habit of wearing the same clothing twice before putting the clothes in the common laundry basket for washing.[130] The investigating officer and the crime scene photographer corroborated the complainant's account when they testified that the pair of pink shorts was hanging on the window grille when they visited the flat on 13 January 2015 (as depicted in the scene photo[131]).[132] Further, although the complainant's mother testified that she did not allow her children to hang their clothing on the window grille, she conceded that her children persisted in doing so despite her prohibition.[133] In any event the police found that pink shorts hanging on the window grille in circumstances where there was no anticipation by the complainant that they would raid the flat. I was therefore satisfied that the pink shorts had not been mixed with any of the accused's clothing prior to being seized.

65 The presence of the accused's semen on the complainant's pink shorts was therefore a strong incriminating piece of evidence against the accused.

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129 NE dated 2 July 2018 at p 45; DCS at para 43.

130 NE dated 5 September 2017 at p 44 lines 7–31, p 53 lines 19–21, p 55 lines 22–24.

131 Exhibit P13.

132 NE dated 4 September 2017 at p 18 lines 8–23; NE dated 6 September 2017 at p 29 lines 17–29.

133 NE dated 2 July 2018 at p 59 lines 24–32.

The complainant's medical report

66 The prosecution submitted that the complainant's medical report, which disclosed an old tear in the complainant's hymen was another piece of corroborative evidence against the accused.[134] The medical report arose from a medical examination of the complainant conducted by Dr Shivamalar Vijayagiri ("Dr Vijayagiri") at KK Women's and Children's Hospital after the police report was lodged.

67 In my judgment, the report was of limited usefulness. This was because the possibility that the old tears were caused by other acts and not the offences allegedly committed by the accused could not be eliminated. Dr Vijayagiri had testified that hymenal tears could be caused by other activities such as vigorous exercise or medical procedures involving instruments.[135] Further, in *AOF*, the Court of Appeal held that a medical report of a complainant confirming a tear in her hymen would, absent exceptional circumstances, generally only be relevant in establishing the fact that the complainant had sustained injuries to her vagina, and would not be corroborative of the complainant's allegation that the injuries had been caused by the accused in that case (*AOF* at [197] citing *B v Public Prosecutor* [2003] 1 SLR(R) 400).

68 Therefore, I did not rely on the medical report as corroborative evidence against the accused.

Motive to fabricate

69 The prosecution has a burden to prove beyond reasonable doubt that there was an absence of motive to fabricate the allegations against the accused

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134 AB pp 90–92; PCS at paras 52–55.

135 NE dated 8 September 2017 at p 3 lines 26–31.

on the part of the complainant. In *Goh Han Heng v Public Prosecutor* [2003] 4 SLR(R) 374[136] ("*Goh Han Heng*"), Yong Pung How CJ held that such burden on the prosecution arises only where the accused was able to show that the complainant had a motive to falsely implicate him. Yong CJ stated at [33] of the decision:

> … [W]here the accused can show that the complainant has a motive to falsely implicate him, then the burden must fall on the Prosecution to disprove that motive. This does not mean that the accused merely needs to allege that the complainant has a motive to falsely implicate him. Instead, the accused must adduce sufficient evidence of this motive so as to raise a reasonable doubt in the Prosecution's case. Only then would the burden of proof shift to the Prosecution to prove that there was no such motive. To hold otherwise would mean that the Prosecution would have the burden of proving a lack of motive to falsely implicate the accused in literally every case, thereby practically instilling a lack of such a motive as a constituent element of every offence.

70 In *AOF,* the Court of Appeal clarified that the above statements from *Goh Han Heng* should not be interpreted as "suggesting that the Prosecution bears the legal burden to disprove the allegation of collusion *only after* the accused has discharged his evidential burden by proving a motive for collusion to a standard that is sufficient to create a *reasonable doubt* in the Prosecution's case" [emphasis in the original]. Instead, the accused has an evidential burden to show that the complainant had a "plausible motive" to fabricate the allegations against the accused (*AOF* at [216]). The burden then shifts to the prosecution to disprove this beyond a reasonable doubt (*AOF* at [217]).

71 The defence's case was that the complainant had fabricated the allegations against the accused in order to gain freedom from her parents who were strict with her. To this end, the accused and the complainant's mother testified that the complainant had a tendency to lie and was rebellious, and also

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136 Prosecution's bundle of authorities dated 13 August 2018 at Tab A.

raised other disciplinary issues they faced with the complainant, such as the fact that there were instances where the complainant had run away from home.[137]

72 I found that a desire to obtain freedom from her parents was not a plausible motive for fabrication as it went against the weight of the evidence. First, the complainant was reluctant to disclose the offences and to make a police report because, amongst others, she was worried that it would cause her relationship with her family to "turn sour" (see [53] above). The matter started with her being concerned that the fact that she was not a virgin would affect her relationship with her boyfriend. This led to her eventual disclosure to her boyfriend of the rapes by the accused. And it was only after much pressuring from him and B that she decided to tell her school counsellor about the sexual abuse, which in turn led to the police report being lodged.[138] The allegation that the complainant had a motive to fabricate was in stark contradiction with her reluctance to disclose and report the sexual abuse. When this inconsistency was pointed out to the accused, no reasonable explanation was provided.[139]

73 Second, the accused conceded that there was no specific trigger such as a quarrel which took place near the time of the reporting of the incidents that might have prompted the complainant to fabricate allegations against him.[140] In fact, the evidence showed that the complainant's relationship with the accused was not acrimonious. The complainant's evidence was that she was closer to the accused than to her mother.[141] The accused also testified that he was "quite

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137 See for instance NE dated 29 June 2018 at p 30 lines 29–32; NE dated 2 July 2018 at p 36 lines 1–2, p 51.

138 AB p 10 paras 4–5; AB p 23 para 4.

139 NE dated 2 July 2018 at pp 31–32.

140 NE dated 2 July 2018 at p 8 lines 23–26.

141 AB p 19 paras 26–27.

close" with the complainant, and that he would bring the complainant and the rest of the family swimming, shopping, to amusement parks and so on.[142]

74 Third, the weight of the other evidence, including the DNA evidence, eliminated the possibility that the allegations were fabricated by the complainant. I agreed with the prosecution[143] that there was no evidence that the complainant was capable of devising a sophisticated plot in fabricating the allegations against the accused. Such a plot would involve the complainant (a) informing her boyfriend about the rapes indirectly by first asking him if he would still like her if she was no longer a virgin; (b) feigning unwillingness to report the offences to the police in front of her boyfriend, B, and the school counsellor; (c) manipulating her boyfriend and B into encouraging her to disclose the offences to their school counsellor or to file a police report; (d) prior to reporting the matter, procuring the accused's semen and applying it on the interior crotch area of her shorts in anticipation that the police would seize the garment. This was extremely implausible.

75 For the foregoing reasons, I found that there was no motive on the part of the complainant to fabricate the allegations against the accused.

Conclusion on guilt

76 In the light of the unusually convincing testimony of the complainant, as well as the strong corroborative DNA evidence, I found both charges to be proved against the accused beyond reasonable doubt. The evidence of the defence witnesses, *ie*, the accused and the complainant's mother, did not in any

142 NE dated 29 June 2018 p 30 lines 20–25.

143 PCS at para 6.

manner affect the quality of evidence of the prosecution. I accordingly convicted the accused of both charges.

Sentencing

77 The charges were punishable under s 375(2) of the Penal Code, which states:

> Subject to subsection (3), a man who is guilty of an offence under this section shall be punished with imprisonment for a term which may extend to 20 years, and shall also be liable to fine or to caning.

78 In *Ng Kean Meng Terence v Public Prosecutor* [2017] 2 SLR 449[144] ("*Terence Ng*"), the Court of Appeal established a sentencing framework for offences of rape. The Court of Appeal summarised the sentencing framework as follows at [73] of *Terence Ng*:

> (a) At the first step, the court should have regard to the *offence-specific* factors in deciding which band the offence in question falls under. Once the sentencing band, which defines the range of sentences which may *usually* be imposed for an offence with those features, is identified, the court has to go on to identify precisely where within that range the present offence falls in order to derive an "indicative starting point". In exceptional cases, the court may decide on an indicative starting point which falls outside the prescribed range, although cogent reasons should be given for such a decision.
>
> (b) The sentencing bands prescribe ranges of sentences which would be appropriate for contested cases and are as follows:
>
> > (i) Band 1 comprises cases at the lower end of the spectrum of seriousness which attract sentences of ten to 13 years' imprisonment and six strokes of the cane. Such cases feature no offence-specific aggravating factors or are cases where these factors are only present to a very limited extent and therefore have a limited impact on sentence.
> >
> > (ii) Band 2 comprises cases of rape of a higher level of seriousness which attract sentences of 13–17 years' imprisonment and 12 strokes of the cane. Such cases

144 Prosecution's bundle of authorities for sentencing at Tab E.

> would usually contain two or more offence-specific aggravating factors …
>
> (iii) Band 3 comprises cases which, by reason of the number and intensity of the aggravating factors, present themselves as extremely serious cases of rape. They should attract sentences of between 17–20 years' imprisonment and 18 strokes of the cane.
>
> (c) At the second step, the court should have regard to the aggravating and mitigating factors which are *personal to the offender* to calibrate the sentence. These are factors which relate to the offender's particular personal circumstances and, by definition, *cannot* be the same factors which have already been taken into account in determining the categorisation of the offence. …
>
> (d) The court should clearly articulate the factors it has taken into consideration as well as the weight which it is placing on them. This applies *both* at the second step of the analysis, when the court is calibrating the sentence from the indicative starting point *and* at the end of the sentencing process, when the court adjusts the sentence on account of the totality principle. In this regard, we would add one further caveat. In a case where the offender faces two or more charges, and the court is required to order one or more sentences to run consecutively, the court can, if it thinks it necessary, further calibrate the individual sentence to ensure that the global sentence is appropriate and not excessive. When it does so, the court should explain itself so that the individual sentence imposed will not be misunderstood.
>
> [emphasis in original]

Parties' submissions

79 The prosecution submitted that a global sentence of at least 28 years' imprisonment and 24 strokes of the cane was an appropriate sentence in this case. This comprised 14 years' imprisonment and 12 strokes of the cane for each charge of rape, with the sentence for each charge to run consecutively.[145]

80 The prosecution submitted that the main sentencing principles applicable in the present case were general and specific deterrence.[146] It argued

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145 Prosecution's sentencing submissions at para 2.

that the present case fell within Band 2 of the sentencing framework established by the Court of Appeal in *Terence Ng* for offences of rape. The following factors were cited as offence-specific aggravating factors applicable in this case:[147]

(a) Abuse of trust: this was in the light of the familial relationship between the accused and the complainant, in particular, the fact that the accused was the complainant's biological father.

(b) Abuse of a particularly vulnerable victim: this was given the complainant's young age of 14 years old at the time of offences.

(c) Ejaculation into the complainant's vagina which exposed the complainant to the risk of pregnancy.

The prosecution further explained that to give effect to the totality principle, the prosecution's proposed global punishment was based on individual sentences that had been calibrated to fall at the lower end of Band 2, even though the imposition of more severe individual custodial terms was supported by authorities.[148]

81 In relation to the offender-specific factors, the prosecution submitted that there were no mitigating factors since the accused did not demonstrate remorse and claimed trial. This compelled the complainant to relive her ordeal by having to testify against him. The prosecution also provided a list of the accused's antecedents, which it submitted disclosed the accused's malevolent streak.[149]

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146 Prosecution's sentencing submissions at paras 4–9.

147 Prosecution's sentencing submissions at para 13.

148 Prosecution's sentencing submissions at para 24.

149 Prosecution's sentencing submissions at paras 14–16.

82 With respect to the running of the sentences, the prosecution submitted that the sentences for the two charges should run consecutively given the need for general deterrence, to send a signal that further offending after an initial transgression, especially in the context of familial sexual abuse, will be met with severe penal consequences.[150] In addition, a consecutive sentence was appropriate given that the two charges of rape were committed on separate and distinct occasions.[151]

83 The defence agreed with the prosecution that the present case fell within Band 2 of the *Terence Ng* sentencing framework since there were more than two offence-specific aggravating factors.[152] It accepted that the following were offence-specific aggravating factors:[153]

(a) the fact that the accused was the biological father of the complainant;

(b) the vulnerability of the complainant given her young age at the material time of the offences; and

(c) the harm caused to the complainant.

84 The defence submitted that an offence-specific mitigating factor was that the offences were not premeditated.[154]

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150 Prosecution's sentencing submissions at para 19.

151 Prosecution's sentencing submissions at para 22.

152 Defence's mitigation and submissions on sentence at paras 6–7.

153 Defence's mitigation and submissions on sentence at para 6.

154 Defence's mitigation and submissions on sentence at paras 8–10.

85 In relation to the offender-specific factors, the defence submitted that the accused was the main breadwinner of the family and was a responsible father and husband.[155]

86 In the circumstances, the defence submitted that an imprisonment term of 15 years' and 12 strokes of the cane for each charge was an appropriate sentence.[156] However, the defence submitted that the sentences for both charges should run concurrently and not consecutively as submitted by the prosecution, as the sentence would otherwise be crushing.[157]

Finding

87 I agreed with the prosecution and the defence that the present case fell within Band 2 of the *Terence Ng* sentencing framework.

88 There were at least two offence-specific aggravating factors, *viz*, abuse of trust given that the accused was the complainant's biological father, and the vulnerability of the complainant who was 14 years old at the material time of the rapes. The accused, as the biological father of the complainant, was someone in whom the complainant ought to have been able to repose her trust. The accused however betrayed the relationship and committed the heinous act of rape against the complainant, who was at the time, still at the tender age of 14 years old. The accused raped his own daughter in the sanctity of her home, including in her bedroom, and had effectively driven her out of her home.

89 I also rejected the defence's submission that there was a lack of premeditation in the offences, and that this was an offence-specific mitigating

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155 NE dated 14 November 2018 at p 7.

156 Defence's mitigation and submissions on sentence at para 11.

157 NE dated 14 November 2018 at p 8 line 12.

factor. Premeditation or the lack thereof was not a relevant aggravating or mitigating factor in this case.

90 In relation to the offender-specific factors, there were no mitigating factors. I rejected the defence's submission that the accused was a responsible breadwinner and family man and that this should be taken into account in sentencing as a mitigating factor. The submission flew in the face of the very nature of the offences that the accused had committed *against his daughter* in the present case. The accused also displayed a lack of remorse and made the complainant go through the trauma of having to give evidence against him in relation to the rapes, in his presence. As V K Rajah J stated in *Public Prosecutor v NF* [2006] 4 SLR(R) 849[158] ("*PP v NF*") at [60]–[62]:

> It is almost inevitable that whenever the breadwinner of the family has committed an offence and is sentenced to a lengthy term of imprisonment, his family is made to bear and suffer the brunt of his folly. However, the cases are both clear and consistent on one point. Little if any weight can be attached to the fact that the family will suffer if the accused is imprisoned for a substantial period of time …
>
> … [P]articularly, in a case where an accused has committed an offence against a family member, it does not lie in his mouth to exploit the sympathy that naturally arises for his family for his own personal benefit in seeking a reduction of his sentence. The essence of the offence is the emotional and psychological trauma the offender has inflicted on his family. The offender's culpability cannot be simply brushed aside lightly or dusted off purely because of economic considerations. Lamentably, there are no easy or right answers in cases of this nature. It can be said, however, that if the accused had any genuine care and concern for his family, he could and would have resisted his unnatural impulse in the first place.

91 At the same time, I did not treat the accused's antecedents as an offender-specific aggravating factor in the present case since the prior offences

158 Prosecution's bundle of authorities for sentencing at Tab A.

took place many years ago from 1999 to 2000.[159] As V K Rajah J stated in *PP v NF*:

> 66 … One's criminal record is relevant to the extent that a sentencing judge may draw certain inferences about the accused's character, attitude and likelihood of rehabilitation …
>
> …
>
> 70 Apart from examining the similarity or dissimilarity of the offender's criminal antecedents *vis-à-vis* the present conviction, it may also be relevant to take into account the interval between the most recent conviction and the current conviction. …
>
> …
>
> 72 The rationale for according weight to the length of time that an offender has stayed clean is two-fold. First, "isolated convictions in the long distant past" should not, as a matter of logic, be considered evidence of irretrievably bad character. They might simply be indicative of an occasional lapse in judgment. Secondly, the nature of the lapse being scrutinised is crucial. A substantial gap between one conviction and another may be testament to a genuine effort to amend wanton ways which may even lead a court to consider the possibility of rehabilitation …

Given the length of time that had elapsed between the accused's antecedents and the present offences, I was of the view that the antecedents did not reflect a pattern of offending on the part of the accused which should be taken into account as an aggravating factor. The accused's antecedents therefore did not affect my determination of the appropriate sentence.

92 In relation to the running of the sentences, I was satisfied that the sentences imposed for both charges should run consecutively. In *Public Prosecutor v Law Aik Meng* [2007] 2 SLR(R) 814, the court held that the one-transaction rule requires that where two or more offences are committed in the course of a single transaction, all sentences in respect of those offences should be concurrent rather than consecutive (at [52]).[160] Whether multiple offences are

159 Prosecution's sentencing submissions at para 15.

carried out in a single transaction requires a consideration of whether they entail a "single invasion of the same legally protected interest" which would depend on factors including proximity in time, place, continuity of action, and continuity in purpose or design (*Public Prosecutor v Raveen Balakrishnan* [2018] 5 SLR 799[161] ("*Raveen*") at [39]).

93 In addition, in *Raveen*, Sundaresh Menon CJ held that as a general rule, a multiple offender who has committed unrelated offences should be separately punished for each offence, through individual sentences that run consecutively (at [41]). The following reasons were provided for the general rule (*Raveen* at [42]–[46]):

> (a) First, a multiple offender bears greater culpability and will have caused greater harm than an offender who has committed only a single offence.
>
> (b) Second, concurrent sentences for unrelated offences would not adequately serve, and in fact may undermine the sentencing considerations that underlie the individual sentences comprising the aggregate term. In terms of the sentencing consideration of deterrence, the imposition of concurrent sentences for unrelated offences would afford an offender who has already committed an offence less or no real incentive to refrain from committing a further offence. In addition, from the retributivist perspective, imposing concurrent sentences for unrelated offences would mean that the second or later legally protected interest that was infringed would have no apparent vindication in law. Likewise, the duration of punishment would not adequately reflect the

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160 Prosecution's bundle of authorities for sentencing at Tab D.

161 Prosecution's bundle of authorities for sentencing at Tab F.

greater need for public protection against a multiple offender who cannot claim to have acted in an isolated instance of misjudgement.

(c) Third, allowing a multiple offender to be punished less seriously or even not at all for a second or further offending is contrary to any notion of justice. Public confidence in the administration of criminal justice requires the court to avoid the suggestion that a multiple offender may benefit from some sort of bulk discount in sentencing.

94 In this case, the offences under both charges were unrelated in that they were carried out on separate occasions, more than one and a half months apart from each other, rather than as a single continuous transaction. This was a point the defence itself accepted.[162] Having regard to the principles articulated in *Raveen* including the reasons for the general rule of consecutive sentences for unrelated offences, which were equally relevant and applicable in this case, I was satisfied that the sentences imposed on the accused for each charge should run consecutively.

95 Taking into account all the circumstances of this case, I was satisfied that a sentence of 13 years' imprisonment and 12 strokes of the cane for each charge of rape, to run consecutively, would be an appropriate sentence in this case.

96 While the operative offence-specific aggravating factors in this case would have placed it at the higher end of Band 2 of the *Terence Ng* sentencing framework, taking into account the totality principle, I was satisfied that a consecutive sentence at the lower end of Band 2 would be appropriate. I therefore sentenced the accused to a global sentence of 26 years' imprisonment

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162 NE dated 14 November 2018 at p 8 lines 19–27.

and 24 strokes of the cane, which was an appropriate sentence to give effect to the sentencing principles of retribution, as well as general and specific deterrence applicable in this case.

Conclusion

97 Having considered the evidence and the submissions of the parties, I found that both charges of rape had been proven against the accused beyond a reasonable doubt, particularly in the light of the DNA evidence and the unusually convincing testimony of the complainant in the present case.

98 The heinous offences committed by the accused in this case rendered the sentencing principles of retribution and deterrence paramount. There was a need to send out a clear message to the accused and would-be sex offenders that the abuse of a relationship with a vulnerable victim to satisfy sexual impulse will be met with severe penal consequences. Taking into account all the circumstances of the case, I was of the view that a global sentence of 26 years' imprisonment and 24 strokes of the cane was appropriate and sentenced the accused accordingly.

Lee Seiu Kin
Judge

Winston Man and Chee Ee Ling (Attorney-General's Chambers) for the prosecution;
A Revi Shanker s/o K Annamalai and Mathew Kurian (ARShanker Law Chambers, Regent Law LLC) for the accused.