IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 107

Criminal Case No 56 of 2015

Between

Public Prosecutor

And

Lee Seow Peng

GROUNDS OF DECISION

[Criminal Law] — [Offences] — [Rape]

[Criminal Law] — [Offences] — [Sexual Grooming]

[Criminal Law] — [Statutory Offences] — [Children and Young Persons Act]

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Public Prosecutor
v
Lee Seow Peng

[2016] SGHC 107

High Court — Criminal Case No 56 of 2015
Hoo Sheau Peng JC
16–18, 22–23, 28–30 December 2015; 8, 29 January; 23 February; 13 April 2016

26 May 2016

Hoo Sheau Peng JC:

Introduction

1 The accused, Lee Seow Peng ("the Accused"), claimed trial to the following charges:

> First Charge
>
> That you, sometime on 29 May 2012, in a Toyota multi-purpose vehicle bearing registration number [vehicle number redacted], at a public car park located at Chinese Gardens, Singapore, did penetrate, with your penis, the vagina of [the Complainant] [DOB redacted], without her consent, and [the Complainant] was below 14 years old at that time, and you have thereby committed an offence under section 375(1)*(b)* and punishable under section 375(3)*(b)* of the Penal Code [Cap 224, 2008 Rev Ed].
>
> Second Charge
>
> That you, on or about 29 May 2012, in Singapore, having communicated with [the Complainant] [DOB redacted] on at least 2 previous occasions, did intentionally meet [the

> Complainant], and at the time of such meeting, intended to have sexual intercourse with [the Complainant], which act is a relevant offence under section 375 of the [Penal Code], and at the time of such meeting [the Complainant] was under 16 years of age, to wit, 12 years of age and you did not reasonably believe that [the Complainant] was of or above the age of 16 years, and you have thereby committed an offence of sexual grooming under section 376E(1) and punishable under section 376E(4) of the [Penal Code].
>
> Third Charge
>
> That you, on the 3 June 2012 between 9.56 am [and] 4.04 pm, in Singapore, did attempt to procure the commission of an indecent act by a female child, [the Complainant] ([DOB redacted], who was then 12 years old, to wit, by sending to [the Complainant]'s mobile phone, SMS and WhatsApp messages asking her to meet up with you for the purposes of sexual intercourse, and you have thereby committed an offence punishable under Section 7*(b)* of the Children and Young Persons Act (Cap 38, 2001 Rev Ed) ["CYPA"].

2 The Accused was unrepresented at the trial. At the conclusion of the hearing, I found that in respect of the first charge, there was a reasonable doubt that the sexual intercourse took place without consent. Nonetheless, I concluded that the facts proved were sufficient to justify a conviction for the offence of rape within the meaning of s 375(1)(*b*), but punishable under s 375(2) of the Penal Code. Therefore, I exercised the power granted to me under s 141(2) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) to convict the Accused of the following amended charge:

> Amended First Charge
>
> That you, sometime on 29 May 2012, in a Toyota multi-purpose vehicle bearing registration number [redacted], at a public car park located at Chinese Garden, Singapore, did penetrate, with your penis, the vagina of [the Complainant] [DOB redacted], who was below 14 years old at that time, and you have thereby committed an offence under section 375(1)(*b*) and punishable under section 375(2) of the [Penal Code].

As for the second and third charges, I found that these have been proved beyond a reasonable doubt by the Prosecution, and convicted the Accused on both charges.

3 For sentencing purposes, the Accused engaged Defence Counsel. After hearing the Prosecution's sentencing submissions and the mitigation plea by Defence Counsel, I imposed the following sentences on the Accused:

(a) For the amended first charge, 11 years of imprisonment and nine strokes of the cane;

(b) For the second charge, one year of imprisonment; and

(c) For the third charge, one year of imprisonment.

I ordered the imprisonment term for the second charge to run concurrently with that for the amended first charge. The imprisonment term for the third charge was to run consecutively with that for the amended first charge. The total sentence is 12 years of imprisonment and nine strokes of the cane.

4 The Accused has appealed against the convictions and sentences, and I now give my detailed reasons.

Undisputed facts

5 I begin with the undisputed facts. At the material time, on 29 May 2012 and 3 June 2012, the Accused was 36 years old and the Complainant was slightly under 13 years old.

6 On 27 May 2012, the Accused and the Complainant became acquainted with each other through a mobile phone application (or more

commonly referred to as an "app"). From 27 May 2012 to 3 June 2012, they exchanged numerous SMS and Whatsapp messages.

7 At 8.40 am on 27 May 2012, the Complainant sent a Whatsapp message to the Accused stating that she was 13. This message, which the Accused received, was in response to the Accused's question about her age. At 8.58 am on the same day, the Accused sent a message to the Complainant asking her to be his girlfriend, to which the Complainant agreed. At 9.03 am, the Complainant sent messages to the Accused stating the name of her secondary school, and its location. The parties also exchanged photographs of themselves.

8 Between 27 and 29 May 2012, the Complainant and the Accused exchanged messages on sexual matters. In particular, the Accused sent the Complainant messages relating to having sex in his car. There were also discussions between them to meet up on the evening of 29 May 2012.

9 On 29 May 2012, sometime in the evening, the Accused picked the Complainant up in his car, a Toyota multi-purpose vehicle. The Accused drove the Complainant to a public car park located at the Chinese Garden and parked his car there. Subsequently, the Accused drove the Complainant to a MacDonald's drive-through, bought some food for both of them, and then sent her home.

10 On 3 June 2012, the Accused sent the Complainant various SMS and Whatsapp messages, in particular suggesting meeting up for the purpose of having sex.

The Prosecution's case

11 In support of its case, the Prosecution called 16 witnesses, and adduced 22 exhibits.

The Complainant

12 The Complainant was the main witness for the Prosecution. She testified that she became acquainted with the Accused, who called himself "Lucifer", after he added her on an app known as "GO SMS".

13 In the evening of 29 May 2012, pursuant to prior arrangements made, the Accused picked the Complainant up in his car from the bus stop opposite her school after her choir practice. When she boarded the car, she was wearing her school white T-shirt and black shorts. She sat in the front passenger seat. The Accused drove her to an open-air car park in the Chinese Garden. After he parked his car, he asked her to go to the back seat of the car. She did so, and sat nearer to the window behind the front passenger seat. The Accused also went to the back seat and asked the Complainant to move nearer to him. The Complainant moved slightly towards him. The Accused moved quite near to her and hugged her. She tried to push him away as she felt uncomfortable.

14 The Accused then kissed her and hugged her tight. Again, she tried to push him away as she felt "disgusted and uncomfortable", but the Accused held on to one of her wrists and came in front of her. The Accused tried to remove her shorts and panties. She tried very hard to push him away, but he leaned forward. Eventually, he managed to remove her shorts and panties, and to pull down his pants and underwear with his free hand.

15 Having done so, the Accused came forward and knelt over the Complainant in a sitting position. She felt his penis enter her vagina, and felt pain. Yet again, she tried to push him away and told him to stop, but the Accused continued. The Complainant felt his penis moving in and out of her vagina, and continued to try to push him away, to no avail. The Accused only stopped after a few minutes. The Accused then put on his underwear and pants. The Complainant moved to the back seat near the window and also got dressed. The Complainant also testified that she saw some white liquid on the back seat which was not there when she entered the Accused's car earlier.

16 Subsequently, the Accused took two pieces of cloths from the passenger seat pocket. He passed one to the Complainant and wiped the seat with the other. The Complainant left her piece of cloth on the seat without using it. After keeping both pieces of cloths in the seat pocket, the Accused asked the Complainant to return to the front passenger seat and she did so. He then drove off and did not say anything to her until they reached a McDonald's drive-through which was nearby, where he asked her what she wanted to eat. He bought food for both of them, and then drove her home.

17 After the Complainant reached home, she threw away the burger that he bought for her. She went to bathe immediately because she felt "disgusted and dirty". The Complainant testified that she had never had sex with anyone prior to the Accused. She also did not think that the Accused would actually have sex with her when she agreed to meet him on 29 May 2012, nor did she want to have sex with the Accused.

18 After 29 May 2012, the parties continued to exchange messages, including certain messages on 3 June 2012. In particular, the Complainant gave evidence that the Accused asked her whether she had ever been to a

hotel. To this message, she responded that she had, but that she had never had sex there. On 3 June 2012, the communication stopped when the Complainant's mother found out about the Accused.

The Complainant's mother

19 In the evening of 3 June 2012, the Complainant's mother checked the Complainant's mobile phone and discovered the messages exchanged between the Accused and the Complainant. When questioned, the Complainant disclosed to her mother that the Accused had brought her to a car park in the Chinese Garden where they "had sex" in the Accused's car. The Complainant's mother informed the Complainant's father. Together, they brought the Complainant to lodge a police report.

The police report

20 A police report was lodged at about 10.22 pm on 3 June 2012 at Choa Chu Kang Neighbourhood Police Centre. The police report stated that on 29 May 2012, between 7.30 pm and 9 pm, at the Chinese Garden, the Complainant "had sex with a male friend known to [her] as Lucifer".

Medical evidence

21 After the police report was lodged, an appointment was made for the Complainant to undergo medical examination on 12 June 2012. The original police officer in charge of the case, Investigating Officer ("IO") Colin Ng, explained on the stand that because the police report was only lodged on 3 June 2012, *ie* more than 72 hours after the time of alleged sexual intercourse, it was the usual practice for the police to arrange for a medical appointment at a later time, rather than to send the Complainant to hospital for a medical examination within the very next day.

22 On 12 June 2012, Dr Manisha Mathur ("Dr Manisha"), a consultant obstetrician and gynaecologist at the KK Women's and Children's Hospital, examined the Complainant. In Dr Manisha's medical report, she first briefly set out the Complainant's account of the circumstances surrounding the alleged sexual intercourse on 29 May 2012. This account was largely consistent with the Complainant's evidence in court. Dr Manisha then noted in her report that the Complainant's hymen was "not intact" and that an "old tear" was noted at the "5 & 7 o'clock" positions.

23 At trial, Dr Manisha opined that it was difficult to tell with certainty the exact age of the hymeneal injury, as the Complainant was examined more than 72 hours after the alleged sexual intercourse had taken place. However, Dr Manisha opined that the tear, which was at the lower part of the hymen, was consistent with "some form of vaginal penetration usually a sexual intercourse which may be penile most often". The Accused questioned Dr Manisha whether, given the Complainant's account that he was sitting on her when his penis penetrated her vagina, any tear should occur at the top part of the hymen, rather than at the lower part of the hymen. Dr Manisha explained that any tear at the top part of the hymen would not be considered indicative of vaginal penetration because it "can be a natural phenomenon". Instead, any tear on the lower part of the hymen would be considered significant.

24 The second medical expert who testified for the Prosecution was Dr Parvathy Pathy ("Dr Parvathy"), a Senior Consultant at the Child Guidance Clinic. The Complainant was referred to her clinic on 14 January 2013 for psychiatric assessment to determine whether she was fit to give evidence in court. Dr Parvathy also set out in her report the Complainant's account of the circumstances surrounding the alleged offence. Again, the account was consistent with the Complainant's testimony.

25 In response to "general queries" posed by the Prosecution at trial, Dr Parvarthy made two points. First, she said that it was possible for a 12-year-old child to speak in a sexually provocative manner but not have any intention to have sexual intercourse. According to Dr Parvathy, children of this age might have heard about sex from the media or from their friends. Further, they might be curious and/or like the attention they received from other persons when they speak with the other persons in a sexually provocative manner. Second, she opined that it was also possible for a child who had been raped to continue to have interactions with the alleged rapist even after the rape, because the child could have ambivalent feelings towards the perpetrator, on the one hand disliking the perpetrator and the sexual act but on the other hand liking the perpetrator or the attention she received from him.

The messages

26 A crucial part of the Prosecution's case was the communication trail between the Accused and the Complainant. More than 1,100 messages exchanged via Whatsapp and SMS between the parties from 27 May 2012 to 3 June 2012 were placed before this court. These messages were retrieved from the Complainant's mobile phone and reproduced in a report prepared by Mr Stanley Choe from the Technology Crime Division, Criminal Investigation Department ("the TCD report"). Many of these messages contained sexual content. I set out some of these messages below.

27 First, the Prosecution pointed to a series of messages exchanged between the parties before 29 May 2012, in which the Accused suggested having sex with the Complainant in his car:

S/N in	**From**	**Whatsapp Message**	**Date &**

Annex A of TCD Report			**Time**
972	Accused	Dear I do thing like to do that two ppl also got good feel and happy. but I can say that I long time never have gf I only scare that I never more hot lo. I know what I say? Hope u OK for that lo lol	27-05-2012 9:58 AM
971	Complainant	U mean the thing is SEX?	27-05-2012 9:59 AM
968	Complainant	im ok if u wan sex u wan to kiss or hug	27-05-2012 10:02 AM
651	Accused	talk to u feel that going to have with u now. u try sxx at where.	28-05-2012 12:13 PM
649	Accused	Let time we try at my car.	28-05-2012 12:14 PM
644	Accused	I never try befor and I hope try that with u.	28-05-2012 12:17 PM

28 On the morning of the alleged offence, the Accused suggested going to a deserted location where lovers frequent when the parties met up later in the day:

S/N in Annex A of TCD Report	**From**	**Whatsapp Message**	**Date & Time**
526	Accused	…we go where later we meet. Or we look for some plc that no ppl plc than we talk talk ins car lo.	29-05-2012 9:21 AM
519	Accused	Some where that all there lover will go plc lo.	29-05-2012 9:29 AM

29 The Accused further expressed his anticipation to have sex with the Complainant later that day:

S/N in Annex A of TCD Report	**From**	**Whatsapp Message**	**Date & Time**
500	Accused	feel very that time come soon lo. I also wen to see that my	29-05-2012 9:41 AM

		dear become hot is look like what lo.	
499	Accused	Going to see dear dear know how many and sxx that u know and ur feel how. Why I feel that is only that hope let u have good feel on me…	29-05-2012 9:45 AM
484	Accused	I think that where to go! And how u art! We will talk what! How to go to hug u and kiss u! And with we have sxx what I have to do! Do long time or what! Or I still can do so long time or not for so long never have be4! If that dear wen some more I still can! How my dear will thinking of me if I do that! She OK for that or she like or nit lo…	29-05-2012 9:59 AM

30 Messages exchanged between the parties after 29 May 2012 also alluded to the parties having had sexual intercourse:

S/N in Annex A of	**From**	**SMS Message**	**Date & Time**

TCD Report			
106	Complainant	Yester when I reach home my whole body hv ur smell lucky my mum can't smell anything if not can't even talk to.u liao	30-05-2012 10:10 AM
99	Accused	… How yesterday How u feel. Feel that u haven get full like that.	30-05-2012 10:24 AM
53	Accused	Bec I think that I not see u go top hot. Sometime I will think that day u top or u feel hot or not. Are u feel good or what…	03-06-2012 12:03 PM

31 Finally, in several messages exchanged on 3 June 2012, the Accused suggested meeting up with the Complainant to have sex with her in a hotel and to use a vibrator or sex toy on her:

S/N in Annex A of TCD Report	**From**	**Whatsapp Message**	**Date & Time**

89	Accused	Dear u [go] befor hotel	03-06-2012 2:56 PM
84	Complainant	I hv but nvr go thr do tat la	03-06-2012 2:58 PM
83	Accused	let time when u free to go out n we go. Like that in bed better. I can see u more.	03-06-2012 2:59 PM
81	Accused	Like that u can sew me what u know n I can take my time to have u	03-06-2012 3:02 PM
79	Accused	That day I see that 7-11 got sell that sex thing. Feel that not bad lo. Let time I buy that and try on u. Lol	03-06-2012 3:04 PM
77	Accused	Vibrate wan lo I think that u will like that become u got say that u like to have two thing, one is my that in u and the same time is hand at there too. I think that vibrate can give u go top hot lo	03-06-2012 3:07 PM

The Defence

32 I turn next to the Defence. The Accused was the only witness for the Defence, and elected to give evidence in his defence.

33 In relation to the first and second charges, the Accused raised three points. First, he denied that he had sexual intercourse with the Complainant on 29 May 2012. The Accused claimed that he met up with the Complainant solely for the purposes of chatting and having coffee with her. The Accused finished work at about 7.15 pm to 7.20 pm. He then drove for "at least 36 minutes" from his workplace in Hougang to a bus stop in Bukit Batok, where he picked the Complainant up. According to him, the Complainant was wearing a white T-shirt and black bermudas. The Accused suggested having tea at a nearby coffee shop, but the Complainant told him that she did not want to go to a place which was nearby. The Accused thus drove to the Chinese Garden, where he suggested that they go for a walk or find a place to talk. They took a walk. Later, however, they returned to his car because the Complainant said that she felt pain in her leg. At that time, the Complainant was sending messages or chatting on her mobile phone. The Accused's mobile phone was also ringing repeatedly as his wife was calling to ask him to go home for dinner. Thus, "in a rush", he suggested that they leave the Chinese Garden. The Accused claimed that, in total, they spent only about five to ten minutes at the location. After leaving the Chinese Garden, the Accused drove the Complainant to a McDonald's drive-through, and bought food for both of them. He then sent the Complainant to her home at Choa Chu Kang, before driving to Telok Blangah to meet his wife for dinner.

34 Second, the Accused also denied that he intended to have sex with the Complainant. When confronted in the course of cross-examination with the

many messages that were exchanged between the parties from 27 to 29 May 2012, the Accused admitted that he sent those messages and at one point even agreed that he messaged the Complainant about having sex in his car. However, he claimed that he was merely "saying nonsense", that he was just "patronising in [the] Internet world" which was quite different from real life. Further, he said that he "did not quite understand" some of the messages that he had himself typed. In relation to the messages where he suggested going to a "no ppl plc (*sic*)" or "[s]ome where that all there lover will go plc (*sic*)", the Accused's explanation was that he only wanted to go to a quieter location with the Complainant so as to allow them to sit down and talk.

35 Third, the Accused claimed that he did not believe that the Complainant was only 13 years old. He thought that she was "an adult", as he claimed that they became acquainted through an adult mobile app known as "Tagged", and because of the sexual content in her messages. In relation to those messages sent by the Complainant to the Accused on 27 May 2012 pertaining to her age and school (see [7] above), the Accused explained as follows. Although the Complainant informed him that she was 13 years old, he thought she was joking because the information was given online. He claimed that the words said were purely based on "imagination" and one "[could not] totally believe them". When the Complainant informed him of her secondary school, the Accused said that he did not understand some English words in the message. With respect to the photograph of the Complainant in her school uniform which was also sent to him on 27 May 2012, the Accused said he could not be sure if the photograph was taken around that time or whether it was taken some time back. In relation to the messages in which he asked the Complainant about her school schedule in order that he could take leave from work to spend time with her, the Accused explained that if the Complainant "wanted to think that she was a student, then let her pretend to be".

36 In relation to the third charge, the Accused admitted that he sent the messages to the Complainant, but again insisted that although the messages appeared to indicate that he wanted to meet the Complainant, they were merely "talking about this in the [I]nternet world". When referred to his messages about going to a hotel with the Complainant and using a vibrator on her, the Accused admitted that he was talking about sex in those messages, but explained that he was "merely saying things".

The Prosecution's submissions

37 I turn now to the parties' submissions. In relation to the first charge, the Prosecution submitted that the Accused had sexual intercourse with the Complainant in his car on 29 May 2012. In addition to the undisputed facts set out above, the Prosecution relied on the Complainant's evidence at [12] – [17] above.

38 In addition, the Prosecution's position was that the Complainant *did not consent* to the sexual intercourse. Although messages with sexual content were exchanged between the Accused and the Complainant before their first meeting on 29 May 2012, these messages did not indicate that the Complainant wanted to have sex with the Accused, but instead, "reveal[ed] [the Complainant's] confused mental state". This was because the Complainant came from a "complicated family background". At the time of the alleged offences, the Complainant's parents had been separated and her father had lived separately from her for some time. In these circumstances, it was "unsurprising" that the Complainant sought attention from male adults, even if she did not have any intention to have sex with the Accused.

39 This position was also buttressed by the Complainant's own testimony that she believed that the Accused was only interested in messaging her about

sexual matters, and might not respond to her if she did not talk to him about them. More importantly, the Complainant had at one point communicated her apprehension at the possibility of having sex with the Accused, as well as her physical boundaries *ie*, that she was only prepared to hug and kiss the Accused. The Accused instead "mocked her modesty" as evident from certain messages sent by the Accused to the Complainant on the morning of the alleged offence, mocking her for feeling "scared".

40 The Complainant was also consistent in her testimony about how she repeatedly tried to push the Accused away before and at the time of the alleged sexual intercourse on 29 May 2012. In these circumstances, the Prosecution argued that the Complainant could not be said to have voluntarily participated or freely consented to the act.

41 Although the Complainant continued to exchange messages with the Accused after 29 May 2012, the frequency of the messaging decreased. Further, the Prosecution submitted that none of the parties' messages after 29 May 2012 contained any references to sex, and instead the conversations were limited to how she was feeling and what was happening at school or in her life in general. The Prosecution also relied on Dr Parvathy's medical evidence that it was possible for young children such as the Complainant to continue interaction with a rapist because she may have ambivalent feelings towards the perpetrator of the sexual offence: see [25] above.

42 The Prosecution argued that the fact that the Complainant did not make an immediate complaint to her parents on 29 May 2012 (the day of the alleged sexual intercourse) should not be construed as evidence that the sexual intercourse was consensual. As the Complainant had a distant relationship with her family, it was not unexpected that she did not confide in them earlier.

43 Turning to the Accused's defence that he was mistaken about the Complainant's age, the Prosecution submitted that this was unsustainable. From the outset, the Complainant had been upfront with the Accused about her age (13), and her background (that she was in secondary school). The Accused had also inquired about her school schedule. Further, the Accused admitted that when he picked the Complainant up from the bus stop, she looked the same as in her photographs. Finally, the Accused's claim that all the messages were exchanged over the Internet and should not be believed "holds no water", especially because the Accused had himself given the Complainant true information about himself, such as his age and his job.

44 In relation to the second charge, the Prosecution submitted that the Accused's intention to have sex with the Complainant was evident from the messages that he sent to her prior to their meeting on the evening of 29 May 2012 (summarised at [27] – [29] above), as well as his driving her to a secluded car park at the Chinese Garden. Further, the Accused also had actual knowledge of the Complainant's age at the material time: see [43] above.

45 Finally, with respect to the third charge, the Prosecution argued that the messages sent by the Accused to the Complainant on 3 June 2012, proposing to have sex with her at a hotel and to use a vibrator or a sex toy on her, clearly showed his intention to procure the commission of an indecent act by the Complainant. These messages are summarised at [31] above.

46 Overall, the Prosecution submitted that full weight should be accorded to the Complainant's evidence, as she was a reliable witness who displayed maturity, and her evidence was internally and externally consistent. In contrast, the Accused's account was "implausible, inconsistent and self-contradictory". His version of the events on 29 May 2012, his purported lack

of knowledge of the Complainant's age at the time of their meeting and his explanations for the messages he sent to the Complainant were unbelievable.

The Defence's submissions

47 In his oral submissions, the Accused repeated many of the points he made during the trial. Essentially, in relation to the first and second charges, he stated that he did not have sexual intercourse with the Complainant, and did not even touch her or kiss her. He reiterated that the parties only took a walk at the Chinese Garden. Further, he claimed that he also did not have the intention to have sexual intercourse with her. Such an intention could not, he contended, be drawn from the messages he had sent to the Complainant, as he was just "patronising her in this [I]nternet world" which was "actually a world full of fantasy". In relation to the Complainant's age, he said that although the Complainant mentioned her age to him "in the [I]nternet world", he could not confirm her age, nor could he ask for any proof of it. He also could not verify the age of the person in the photographs sent to him. He said that he thought she was "merely saying things" and he simply went along with her. While not specifically raised by the Accused, it appeared that he was alluding to the defence of a mistake of fact under s 79 of the Penal Code. It was unclear during his oral submissions what his position in relation to the third charge was, but gathering from the conduct of his defence at trial, the Accused's most probable position was that he was not attempting to procure the commission of an indecent act from the Complainant, as he was merely saying things "in the [I]nternet world".

Verdict

48 At this juncture, I set out the applicable principles for assessing the evidence and credibility of a witness. As stated in *Farida Begam d/o Mohd*

Artham v Public Prosecutor [2001] 3 SLR(R) 592 at [9], a court should look at the internal consistency in the content of the witness' evidence, as well as the external consistency between the content of the witness' evidence and the other extrinsic evidence (for example, the evidence of other witnesses, documentary evidence or exhibits). However, the testimony of a witness need not be believed either in its entirety, or not at all. A court is competent, for good and cogent reasons, to accept one part of the testimony of a witness and reject the other: *Yeo Kwan Wee Kenneth v Public Prosecutor* [2004] 2 SLR(R) 45 at [26]. Further, there is no legal requirement for corroboration of a witness' evidence. Where a witness is unusually convincing, a conviction can be sustained on the witness's evidence alone, without independent corroboration: *XP v Public Prosecutor* [2008] 4 SLR(R) 686 at [27]. In evaluating the evidence before me, and the credibility of the witnesses, I adopted these principles. On this footing, in relation to each charge, I now set out the law, my analysis of the evidence and my decision.

The first charge

The law

49 In relation to the first charge, the relevant provision of the Penal Code reads:

> **Rape**
>
> **375**.—(1) Any man who penetrates the vagina of a woman with his penis —
>
> …
>
> (*b*) with or without her consent, when she is under 14 years of age,
>
> shall be guilty of an offence.
>
> (2) 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.
>
> (3) Whoever —
>
> …
>
> (*b*) commits an offence under subsection (1) with a woman under 14 years of age without her consent,
>
> shall be punished with imprisonment for a term of not less than 8 years and not more than 20 years and shall also be punished with caning with not less than 12 strokes.

50 There were three parts to the first charge as framed by the Prosecution. First, the Accused must have had sexual intercourse with the Complainant. Second, the Complainant must have been under 14 years of age at the time of the offence. Third, the Complainant must not have consented to the sexual intercourse.

51 I should add that under s 375(1)(*b*) of the Penal Code, the penile penetration of any woman below the age of 14 is rape, *regardless of whether there was consent.* However, if the act took place without the woman's consent, s 375(3)(*b*) provides for a mandatory minimum punishment of eight years of imprisonment and 12 strokes of the cane. "Consent" in this context requires "voluntary participation, not only after the exercise of intelligence, based on the knowledge of the significance and the moral quality of the act, but after having freely exercised a choice between resistance and assent": *Public Prosecutor v Iryan bin Abdul Karim & Ors* [2010] 2 SLR 15 at [123].

Decision

Whether the parties engaged in sexual intercourse

52 On the issue of whether the parties engaged in sexual intercourse, I accepted the Complainant's evidence, and disbelieved the Accused's denial.

53 First, on this aspect, the Complainant's evidence was clear, coherent, and consistent. She provided a detailed and consistent account of all material particulars of the incident on 29 May 2012 to Dr Manisha and Dr Parvathy, as well as at trial. She did not waver in her testimony even under cross-examination. Her evidence was also consistent with the accounts she gave to her mother and to the police officer when she made a police report on 3 June 2012, which was that she "had sex" with the Accused.

54 Second, the Complainant's evidence was also consistent with other evidence. It was corroborated by the numerous SMS and Whatsapp messages exchanged between the parties, especially the messages emanating from the Accused: see [26] – [30] above. The messages sent before the incident (from 27 – 29 May 2012) showed clearly that the Accused was planning to have sex with the Complainant when they met. The messages sent after the incident (from 29 May – 3 June 2012) also indicated that the parties did have sexual intercourse on 29 May 2012.

55 By contrast, the Accused's account that he merely went for a short walk with the Complainant in the Chinese Garden and chatted with her in his car was simply unbelievable. It did not make sense for the Accused to drive all the way from Hougang to Bukit Batok to meet the Complainant, and then drive her to a secluded car park at the Chinese Garden, just to take a walk and chat with her for five to ten minutes, before sending her back to her home in Choa Chu Kang, when he was pressed for time and was expected to have dinner in Telok Blangah with his wife.

56 More importantly, the Accused's account was inconsistent with the other evidence, as it plainly contradicted the messages he sent to the Complainant, in which the references to having sex were both explicit and

numerous. In this regard, I rejected the Accused's explanations, reiterated many times during the trial, that he did not mean what he said in those messages as they were "just words" in "the [I]nternet world", that he was merely "patronising" the Complainant, and that he did not quite understand what he was typing. These were preposterous excuses. In my view, the messages were clear, their meaning simple and their intent plain. The Accused could not so easily disassociate himself from the messages. I therefore found that it has been proved beyond a reasonable doubt that the parties had sexual intercourse.

The age of the Complainant and the Accused's defence of mistake of fact

57 Moving on, I turn to the age of the Complainant, and whether the Accused was mistaken about the Complainant's age. I was unable to accept the Accused's defence for the following reasons. First, as highlighted by the Prosecution, the Accused clearly had information relating to the Complainant's age. The Complainant expressly told the Accused that she was 13 years old, the name of her school, and even sent to him a photograph of herself dressed in her school uniform. Further, when the Accused picked the Complainant up on 29 May 2012, she was in her school T-shirt and shorts.

58 Second, I rejected the Accused's attempts to explain away the information that the Complainant conveyed to him. It could not be the case that he remained unsure of whether the Complainant's photographs had been taken at the material time or some time back, as he conceded during cross examination that when he picked the Complainant up on 29 May 2012, she looked the same as in the photographs she sent to him. I also found it impossible to believe that he did not understand some of the English words that the Complainant used when she told him which secondary school she

attended. Quite evidently, the Accused had an adequate enough grasp of the English language to understand the contents of that message. If he had any doubt, he did not ask the Complainant to clarify what she meant. As for his explanation that he did not mean what he said "in the [I]nternet world", I have already found that this was a convenient but unbelievable excuse. Thus, the Accused's defence that he did not believe that the Complainant was only 13 years old was completely unsustainable.

Whether the sexual intercourse took place without consent

59 With this, I turn to the more problematic issue of whether the sex intercourse took place "without consent". Following a review of all the evidence, I found that there was a reasonable doubt that the sexual intercourse took place "without consent".

60 First, I found the Complainant's evidence on this issue to be contrary to the messages sent before the meeting on 29 May 2012. Admittedly, there were a few messages which could be read as suggesting that she was slightly hesitant about having sex with the Accused (see [39] above). However, when I examined the messages exchanged between the parties in the period leading up to their meeting as a whole, it was quite clear that the Complainant was not opposed to the idea of meeting up to have sex. That being said, I was fully conscious that the fact that she was open to having sex did not mean that she *consented* to having sex at the relevant time. However, the next two points address this concern squarely.

61 The second reason was the content of the messages sent *after* the alleged sexual intercourse on 29 May 2012. I was seriously troubled by them. Just after their meeting, on 30 May 2012 at 1.16 am, the Complainant send a message to the Accused in an endearing manner, wishing him "Good nite

honey". Over the next few days till 3 June 2012, messages sent by the Complainant to the Accused again showed that she continued to be in a positive frame of mind, and to behave in an affectionate manner towards the Accused, calling him "dear", telling him on multiple occasions that she missed him, and once even saying that she missed his hugs and kisses. She also referred to the sexual intercourse during the meeting without any indication that she was not a willing party (for example, she spoke about how his smell was still on her, without any expression of disdain). On 3 June 2012, there was a series of sexually charged SMS messages from about 12 pm onwards. Following that, when the Accused proposed having sex in the hotel with her, and then proposed using a vibrator or sex toy on her, the Complainant said "ok" to both suggestions.

62 In evaluating these messages, I was mindful that the Complainant was less than 13 years old at the relevant time, that she was a somewhat confused child who grew up in difficult circumstances, and might have been seeking attention and affection from the Accused. In this regard, the Prosecution relied on Dr Parvathy's professional opinion that, in general, it was possible that a child might continue to interact with a perpetrator of rape because she harboured ambivalent feelings towards the person – on the one hand disliking the perpetrator and the sexual act, but on the other hand, still having some affection for the perpetrator and craving his attention (see [25] above). However, Dr Parvathy's opinion was sought on a general basis, and not in relation to the Complainant's interactions with the Accused. In my view, it was important to consider the actual content of all the messages, as well as the nature of the interaction between the Accused and the Complainant.

63 Contrary to the Prosecution's submission that none of the messages after the alleged sexual intercourse on 29 May 2012 contained any references

to sex, there was clearly sexual banter between the parties after 29 May 2012, particularly on 3 June 2012. These, and the other messages, showed that the Complainant had a fairly positive frame of mind and a degree of affection towards the Accused. Thus, the Complainant's evidence that she felt "disgusted, unwilling [and] pain" during the act, and that she felt "disgusted and dirty" when she reached home, was considerably undermined. On the contrary, the sexually charged nature of the messages sent on 3 June 2012 suggested some continued openness on the Complainant's part to continue with a sexual relationship with the Accused.

64 The Complainant was unable to offer any explanation for the sexual messages that she continued to send to the Accused after the incident on 29 May 2012. The Prosecution submitted that this indicated that she did not wish to make up evidence. That might be so, but it still left the content of the messages unexplained. In the absence of any other plausible explanation, due weight should be accorded to these messages as they formed a contemporaneous record of what happened at the relevant time and provided some indication of the intentions, emotions and state of mind of the parties. I found that the content of the messages detracted from the Complainant's testimony that the act took place without consent.

65 The third reason was that on 3 June 2012, when the Complainant was confronted by her mother about what happened, she only said that she "had sex" with the Accused. Later, when she made the police report, she only said that she "had sex with a male friend". Her complaint that the act was non-consensual appeared to have surfaced sometime after that. I accepted the Prosecution's submission that in this case, the delay in lodging a police report should not be held against her. However, it was not so much the lateness of the police report, but the fact that there was no mention of the non-consensual

nature of the act when the police report was made that troubled me. The Complainant was, as the Prosecution submitted, rather mature for her age, and I was of the view that she should have appreciated the difference between consensual and non-consensual sexual intercourse. Yet, she did not mention the non-consensual nature of the act at the outset.

66 To sum up, on the main grounds of the lack of external consistency with the messages, and the Complainant's behaviour before and after 29 May 2012, I found that there was a reasonable doubt that the sexual intercourse took place without consent.

67 Nonetheless, as I mentioned at the outset, under s 375(1)(*b*) of the Penal Code, sexual intercourse with any woman below the age of 14 is rape, *whether or not there was consent.* Given my findings that the Accused had sex with the Complainant who was below 14 years of age, I found that the Accused has committed an offence of rape within the meaning of s 375(1)(*b*), but punishable under s 375(2) of the Penal Code. Accordingly, I convicted him of the amended first charge set out at [2] above.

The second charge

The law

68 Turning to the second charge, the relevant Penal Code provision provides:

> **Sexual grooming of minor under 16**
>
> **376E**.—(1) Any person of or above the age of 21 years (A) shall be guilty of an offence if having met or communicated with another person (B) on 2 or more previous occasions —
>
> (*a*) A intentionally meets B or travels with the intention of meeting B; and

> (*b*) at the time of the acts referred to in paragraph (*a*) —
>
> (i) A intends to do anything to or in respect of B, during or after the meeting, which if done will involve the commission by A of a relevant offence;
>
> (ii) B is under 16 years of age; and
>
> (iii) A does not reasonably believe that B is of or above the age of 16 years.
>
> (2) In subsection (1), "relevant offence" means an offence under —
>
> (*a*) section 354, 354A, 375, 376, 376A, 376B, 376F, 376G or 377A;
>
> (*b*) section 7 of the Children and Young Persons Act (Cap. 38); or
>
> (*c*) section 140(1) of the Women's Charter (Cap. 353).

69 In my view, in relation to the second charge as framed by the Prosecution, there were five elements. First, the Accused who was above 21 years old must have communicated with the Complainant on two or more previous occasions. Second, the Accused must then have intentionally met the Complainant. Third, at the time of meeting the Complainant ("the relevant time"), the Complainant must be under 16 years of age. Fourth, at the relevant time, the Accused must have intended to do something to the Complainant, during or after the meeting, which if done would amount to the commission of any of the relevant offences defined in s 376E(2) of the Penal Code. Finally, at the relevant time, the Accused must not reasonably believe that the Complainant was of or above the age of 16 years.

Decision

70 Before me, there were no disputes as to the first, second and third elements of the charge. As evident from the message trail, the Accused had communicated with the Complainant numerous times over SMS and

Whatsapp from 27 to 29 May 2012. The Accused also admitted that he intentionally met up with the Complainant on 29 May 2012. It was further clearly established that the Complainant was under the age of 16, and in fact only about 13 years old, at the time of the alleged offence.

71 On the fourth element of the charge, the issue was whether, at the time of the meeting on 29 May 2012, the Accused intended to do anything which, if done, would result in the commission of the relevant offence defined under s 376E(2) of the Penal Code. Sexual intercourse with the Complainant, which formed the subject of the amended first charge faced by the Accused, was one such relevant offence. The Accused's position was that he did not intend to have sex with the Complainant at all, but only intended to have coffee with and to chat with her (see [33], [34] and [47] above). I rejected the Accused's arguments. I found that in communicating with the Complainant through the sexually explicit messages, it was clear that he plainly intended to have sex with her at the time of the meeting on 29 May 2012. I also rejected the defence that he was merely sprouting "nonsense" in "the Internet world" and/or did not mean what he said.

72 Turning to the fifth aspect of the charge, the Accused argued that he did not believe that the Complainant was only 13. However, as stated earlier at [57] – [58], his defence of mistake of age was indefensible. Similarly, I found that in the circumstances, he could not have reasonably believed that the Complainant was of or above the age of 16 years. Accordingly, I convicted the Accused of the second charge which I found had been proved beyond a reasonable doubt by the Prosecution.

The third charge

The law

73 I move on to the third charge, which concerned an offence under s 7(*b*) of the CYPA. The provision reads:

> **Sexual exploitation of child or young person**
>
> **7.** Any person who, in public or private —
>
> **…**
>
> (*b*) procures or attempts to procure the commission of any obscene or indecent act by any child or young person,
>
> shall be guilty of an offence…

74 To make out the third charge as framed by the Prosecution, the Accused must have attempted to procure an obscene or indecent act. An "obscene and indecent act" is not statutorily defined, although it would include acts like sexual intercourse (see *Public Prosecutor v Loh Kuat Fung* (DAC 6939/2010, unreported) ("*Loh Kuat Fung*")) and other explicit sexual acts (see *Public Prosecutor v Poong Foo Yun* [2010] SGDC 423 ("*Poong Foo Yun*"), where the accused asked the victim to expose her breasts for his viewing). In addition, at the time of the offence, the Complainant must be a child or young person. A "child" is defined under s 2(1) of the CYPA as a person who is below the age of 14 years, and a "young person" as someone who is 14 years of age or above and below the age of 16 years.

Decision

75 It was undisputed that the act in question (sexual intercourse) was an obscene or indecent act. Further, the Complainant, being about 13 years old at that time, was a "child" within the meaning of s 2(1) of the CYPA. However, the Accused argued that he did not attempt to procure the sexual intercourse

from the Complainant, as he was merely saying things in the Internet world and did not intend to have sex with the Complainant. As stated above, I found that the meanings in the messages were clear and their intent plain. In particular, the messages he sent suggesting a future meeting in a hotel, with reference to the use of a vibrator or a sex toy, was an unambiguous request for sex. I thus rejected the Accused's explanation that he did not intend what he said, and did not attempt to procure sexual intercourse with the Complainant. Accordingly, I convicted the Accused of the third charge which has been proved beyond a reasonable doubt.

Observations

76 I have a few more observations to make in relation to allegations made by the Accused that the investigations in the case had not been professionally conducted. First, he protested there was no DNA evidence produced at trial, in spite of swabs being taken from his car during the investigations. Secondly, he queried why the Complainant was not sent for a medical examination as soon as she lodged her police report so as to establish if sexual intercourse took place as alleged through the age of any hymen tear, instead of being sent to the doctor only several days later, on 12 June 2012. Third, he argued that if the sexual intercourse took place, his DNA would still be inside the Complainant's vagina many days after the act, and alluded to the fact that vaginal swabs should have been taken and produced at trial. He stated that the unprofessional investigations had caused him prejudice, as the case against him was based wholly on the Complainant's words.

77 To begin, I point out that as stated above at [48], there is no legal requirement for corroboration of the Complainant's evidence. Nonetheless, in convicting the Accused of the amended first charge, and the second and third

charges, I had relied not only on the Complainant's evidence, but also on the strong corroborative evidence in the form of the numerous messages, especially those emanating from the Accused, the most significant of which were set out earlier. Further, where these messages and the Complainant's own behaviour detracted from her evidence in court, such as in relation to the issue of whether she consented to the sexual intercourse, I had been careful not to accept her evidence (see [60] – [66] above).

78 Turning to the Accused's allegations about the lack of DNA evidence from his car, I was of the view that IO Colin Ng's handling of this aspect of the initial investigations was somewhat unsatisfactory. At the beginning of the trial, the Prosecution had proceeded on the basis that there was no DNA evidence available at all in this case. IO Colin Ng also confirmed during cross examination that no swabs were taken from the Accused's car. In light of the Accused's insistence that swabs were in fact taken from his car, the Prosecution reviewed the matter. The IO who was in charge of the case at the time of the trial, IO Dunstan Cheang, subsequently made inquiries with the Forensic Management Branch ("FMB") of the Criminal Investigation Department, and testified that FMB's records indicate that swabs were in fact taken from the front passenger seat of the Accused's car. When recalled to the stand, IO Colin Ng gave evidence that he genuinely could not remember whether the swabs were taken from the Accused's car, and had thus earlier testified that no swabs were taken. It was only when he saw the FMB records that he remembered that swabs were in fact taken. He also disclosed that while the sexual intercourse allegedly took place in the back seat of the Accused's car, he had directed that the swabs be taken from the front seat of the car. Upon discovering this, he did not think it would be relevant to send the swabs taken from the front seat of the car for analysis. IO Colin Ng eventually recovered the swabs from his personal cupboard, and produced them in court.

No swabs, however, were ever taken from the back seat of the car where the Complainant alleged that the sexual intercourse took place.

79 Despite the above, I was satisfied that no prejudice whatsoever was caused to the Accused. Any DNA evidence would not have made a difference to my verdict. If the Accused's or the Complainant's or both their DNA were found in the car (especially the back seat), it would only have strengthened the Prosecution's case. If neither his nor her DNA were found (either in the front seat or back seat), it would only be neutral to the Accused's defence, which was that the parties did enter his car to have a chat, but they did not have sex. It would also be neutral to the Prosecution's case. This is because the matter was reported only days after the meeting. Thus, the absence of DNA in the car would not have been significant.

80 As for the Accused's allegation about the late medical examination of the Complainant, I accepted the explanation of Dr Manisha as follows. She testified that because the police report itself was only lodged on 3 June 2012, more than 72 hours after the incident, even if a medical examination were performed immediately upon the lodging of the report, it would not have helped to establish the exact time that the hymeneal tear occurred (see [23]). Again, there could not be any prejudice caused to the Accused as a result of the timing of the medical examination of the Complainant.

81 Finally, at the close of the Prosecution's case, the Accused brought up a new argument that even after 72 hours had elapsed from the time of the alleged sexual intercourse, the sperm or DNA of a suspected rapist should still be present in the Complainant's vagina. In fact, he said that his sperm and/or DNA could remain in her vagina for ten or 17 days. Yet, no swab was taken from the Complainant's vagina during her medical examination. I agreed with

the Prosecution that the Accused had ample opportunity to cross-examine Dr Manisha on this issue, but did not do so. This claim was not only brought up late, but it was also not supported by any medical evidence which the Accused could have produced in his defence. Accordingly, I did not place any weight on the unsubstantiated assertion. In any event, even taking the Accused's case at its highest, I was of the view that it would not have made any difference to the verdict. Again, if the Accused's DNA had been found, this would only have strengthened the Prosecution's case. It did not appear to me that the absence of his DNA would have been determinative, given the passage of time and events between the sexual intercourse and the lodging of the police report.

82 At the end of the day, as found above, the Prosecution has adduced credible and reliable evidence to establish the guilt of the Accused. In contrast, the Accused's evidence has been unbelievable, and contradicted by the other extrinsic evidence. In taking the indefensible positions on the issues as set out above, the Accused has shown himself not to be a credible witness.

Sentencing

83 I turn now to the sentences for the three charges. In relation to the amended first charge, s 375(2) of the Penal Code provides that a man who is guilty of an offence of rape shall be punished with imprisonment for a term which may extend to 20 years, and shall also be liable to a fine or to caning.

84 In relation to the second charge, s 376E(4) of the Penal Code states that a person who is guilty of an offence of sexual grooming shall be punished with imprisonment for a term which may extend to 3 years, or with a fine, or with both.

85 With respect to the third charge, a person who is found guilty of an offence under s 7(*b*) of CYPA shall be liable on first conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 5 years or to both.

The Prosecution's submissions

86 The Prosecution pressed for a global sentence of at least 11 years' imprisonment and six strokes of the cane. For the amended first charge, the Prosecution sought a sentence of not less than ten years' imprisonment with six strokes of the cane. For the second charge, the Prosecution asked for a sentence of 12 months' imprisonment. In relation to the third charge, the Prosecution called for a sentence of 12 to 15 months' imprisonment. The Prosecution also submitted that the sentences for the amended first charge and the second charge should run concurrently, and that of the third charge should run consecutively to the amended first charge.

87 In particular, in relation to the amended first charge, the Prosecution highlighted that in *Public Prosecutor v NF* [2006] 4 SLR(R) 849 ("*NF*") at [19] – [38], the High Court adopted the four broad categories of rape set out in the English Court of Appeal decision of *R v William Christopher Millberry* [2003] 2 Cr App R (S) 31 ("*Millberry*"), and further laid down the benchmark sentences in Singapore for each category as follows:

> (a) Category 1 rape lies at the lowest end of the spectrum and features no aggravating and mitigating circumstances. The benchmark sentence for such an offence is ten years' imprisonment and not less than six strokes of the cane.

(b) Category 2 rape involves the exploitation of particularly vulnerable victims (such as children) or the presence of any of the other aggravating factors listed in *Millberry* (such as where the offender abducted the victim and held her captive or where the offender was knowingly suffering from a life-threatening sexually transmissible disease). The starting point for a sentence for Category 2 rape is 15 years' imprisonment and 12 strokes of the cane.

(c) Category 3 rape involves cases in which there is repeated rape of the same victim or of multiple victims. The same benchmark sentence as Category 2 rape applies, *ie* 15 years' imprisonment and 12 strokes of the cane.

(d) Category 4 rape deals with cases where the offender has demonstrated that he will remain a threat to society for an indefinite period of time. The benchmark sentence is the maximum 20 years' imprisonment and 24 strokes of the cane.

88 The Prosecution argued that the present case fell in between the first and second categories of rape. Even though the Accused did not use violence or threats against the Complainant, he nevertheless raped her with full knowledge that she was a minor. There was also the presence of several other aggravating factors such as the Complainant's age and the corresponding wide age gap between the parties, the Accused's intention and premeditation to commit the offences, his use of mobile technology and the internet to prey on the Complainant, and the harm and psychological effect he inflicted on the Complainant.

89 The Prosecution contended that that there were no mitigating factors in the present case. In particular, the Prosecution cited *Public Prosecutor v Qiu*

Shuihua [2015] 3 SLR 949 at [15] – [16] for the proposition that any relationship between the Complainant and the Accused and any consent on the part of the Complainant was not a mitigating factor. This was because the very rationale for the statutory rape, sexual grooming and sexual exploitation provisions was to accord special protection to young girls under 14 and 16 years of age whom Parliament has identified to be "ill-equipped to deal with sexual matters and more vulnerable to abuse".

90 Finally, the Prosecution urged the court to take into account the sentencing principles of general and specific deterrence and retribution. The Prosecution highlighted that the present offences were committed on a "vulnerable victim" and general deterrence must "figure prominently and be unmistakably reflected in the sentencing equation". Further, there was a need for specific deterrence of the Accused because he had not demonstrated any remorse for his actions. A clear message must be sent to the Accused to discourage him from adopting the same attitude or behaviour upon release. Finally, retribution was required as the Accused deliberately exploited the Complainant who was much younger than he was, and a strong message should be sent to the Accused that the court did not condone behaviour which "upset[s] the moral fabric of society".

The mitigation plea

91 In the mitigation plea, Defence Counsel set out the Accused's personal background. The Accused was 40 years of age at the time of the sentencing, and is married to a national from the People's Republic of China who is in Singapore on a social visit pass.

92 The Accused had little formal education. He left school without completing his Primary School Leaving Examinations. After that, he ran

errands for his mother until he became 16 years old. After serving his national service, he worked in various jobs. At the time of his arrest, he was employed as a crane operator, and was the sole provider for his family. Since his arrest, he has lost his job, and is presently not gainfully employed.

93 Defence Counsel submitted that the Accused did not have any related antecedents. Further, the Accused should not be penalised for having claimed trial to the charges, especially when the first charge was amended and reduced to one which did not attract a mandatory minimum sentence. Finally, Defence Counsel submitted that the matter has been "a source of great distress to the [A]ccused and his family members." They have been "traumatised and suffered much anguish and embarrassment." An "indelible scar" has been left on their lives.

Decision

94 I did not consider any of the matters raised in the mitigation plea to be of mitigating value. I noted in particular the lack of remorse on the part of the Accused throughout the proceedings, as he continually maintained that everything he said to the Complainant was "in the Internet world", which was a "fantasy" not to be believed. Although I found that there was a reasonable doubt as to whether the Complainant consented to the sexual intercourse, I agreed with the Prosecution that even if there was in fact consent, this merely removed an aggravating factor but was not in itself a mitigating factor.

95 In contrast, there were clear aggravating factors in the present case. First, there was a wide age gap between the Accused and the Complainant of about 23 years. The Accused exploited the youthful naivety of the Complainant and manipulated her need for attention to satisfy his own sexual appetite.

96 Second, the pre-meditation and planning involved in the offences could not be ignored. As discussed earlier, the messaging trail left by the Accused especially in the two days before the parties' meeting showed that he systemically tested the Complainant's sexual boundaries, and even planned to bring the Complainant to a secluded "no ppl plc (*sic*)" where he ultimately had sexual intercourse with the Complainant.

97 Third, the Accused used mobile technology to facilitate the commission of the offences. The prevalence of mobile technology in the present day and age provides fertile ground for exploitation and abuse. There is a need to protect the young from such exploitation and abuse.

98 I should also add that the distressing impact of the offences on the Complainant was evident from the medical report of Dr Parvathy, as well as the Complainant's testimony at trial, where she stated that she still had flashbacks of the incident, sometimes had sudden breakdowns in school, and could not concentrate on her studies.

99 In light of the foregoing, I agreed with the Prosecution that the rape in the amended first charge fell between the first and second categories of rape as set out in *NF* above (see [87]). It did not fall squarely within the first category of rape as there were various aggravating factors in the present case, as explained above. The Prosecution's call for ten years' imprisonment and six strokes of the cane only reflected the benchmark sentence for Category 1 rape (cases in which there were no aggravating and mitigating circumstances at all).

100 Thus, I imposed a sentence of 11 years' imprisonment and nine strokes of the cane for the amended first charge, which was in between the benchmark sentences for the first and second categories of rape. I was of the view that this

sentence was broadly in line with case precedents, which generally provided for about ten to 13 years' imprisonment and ten to 15 strokes of the cane (see *Public Prosecutor v Wang Jian Bin* [2011] SGHC 212*, Public Prosecutor v Hang Tuah bin Jumaat* [2013] SGHC 28, *Public Prosecutor v Low Jin Long* (CC 33/2014, unreported) and *Public Prosecutor v Sim Wei Liang Benjamin* [2015] SGHC 240).

101 As for the second charge, I sentenced the Accused to 12 months' imprisonment. I was of the view that the case of *Loh Kuat Fung*, in which a sentence of 12 months' imprisonment was imposed, was instructive as that case was factually similar to the present case. In *Loh Kuat Fung*, the two victims were also young, at 13 and 15 years old respectively. The accused had similarly sent the victims lewd messages, persistently asking if they wanted to have sex with him. The parties did not actually have sex, as the hotel receptionist saw that the victims were in school uniforms and stopped them from going up to the hotel room. I thought that the sentence of eight months' imprisonment in *Poong Foo Yun* was too low for the present case, because the act that the accused attempted to do in *Poong Foo Yun* (asking the complainant to expose her breasts for the accused's viewing) was less serious than in the present case.

102 In relation to the third charge, I sentenced the Accused to 12 months' imprisonment. I was of the view that this was in line with the precedent cases, which provided for ten to 14 months' imprisonment: see *Public Prosecutor v Quek Jia Xiang* (DAC 911537/2014 & Ors, unreported) and *Public Prosecutor v Wong Choy Chuan Simon* (DAC 16799/2012 & Ors, unreported).

103 The imprisonment term for the second charge was to run concurrently, while the imprisonment term for the third charge was to run consecutively,

with the imprisonment term for the amended first charge. In the round, I was of the view that the global sentence of 12 years' imprisonment and nine strokes of the cane would be appropriate in the circumstances. In my assessment, the stiff sentence was warranted to reflect the culpability of the Accused, and to deter the commission of such offences by the Accused as well as other would-be offenders, especially where mobile technology was abused for the exploitation of the young.

Conclusion

104 The Accused applied for bail pending appeal. The Prosecution asked for an increase of the bail amount from $80,000 to $120,000. I granted the Accused's application, with an increase of the bail amount from $80,000 to $100,000. However, the additional bail amount was not raised. The Accused began serving sentence from 13 April 2016.

Hoo Sheau Peng
Judicial Commissioner

Jasmine Chin-Sabado and Star Chen Xinhui
(Attorney-General's Chambers) for the Prosecution;
Kertar Singh s/o Guljar Singh (Kertar Law LLC) for the Accused.