IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2017] SGCA 22

Criminal Appeal No 15 of 2015

Between

CHANG KAR MENG

… *Appellant*

And

PUBLIC PROSECUTOR

… *Respondent*

In the matter of Criminal Case No 28 of 2015

Between

PUBLIC PROSECUTOR

And

CHANG KAR MENG

JUDGMENT

[Criminal Law] — [Offences] — [Rape]
[Courts and Jurisdiction] — [Court judgments] — [Prospective overruling of court judgments]

Chang Kar Meng
v
Public Prosecutor

[2017] SGCA 22

Court of Appeal — Criminal Appeal No 15 of 2015
Sundaresh Menon CJ, Andrew Phang Boon Leong JA and Judith Prakash JA
16 August 2016

30 March 2017 Judgment reserved.

Sundaresh Menon CJ (delivering the judgment of the court):

Introduction

1 Chang Kar Meng ("the Appellant") pleaded guilty to and was convicted of one charge of rape under s 375(1)(*a*) of the Penal Code (Cap 224, 2008 Rev Ed) ("the Penal Code") and one charge of robbery with hurt under s 394 of the Penal Code. The High Court judge ("the Judge") sentenced him to 12 years' imprisonment and 12 strokes of the cane for the rape charge, and five years' imprisonment and 12 strokes of the cane for the robbery with hurt charge. The sentences were ordered to run consecutively, and the Appellant accordingly received an aggregate sentence of 17 years' imprisonment with effect from 21 August 2013 (the date of his arrest) and 24 strokes of the cane.

2 The appeal before us is solely against sentence. The Appellant submits, among other things, that the sentence meted out by the Judge is manifestly

excessive, having regard, in particular, to: (a) the mitigating factors; and (b) the range of sentences meted out in previous cases involving rape and robbery.

3 Having considered the circumstances of the Appellant's offences, we are satisfied, on the one hand, that the sentence which he received befits the heinous nature of his crimes and cannot be said to be manifestly excessive. However, we accept the Appellant's submission that his sentence is out of line with the relevant precedents and the sentences previously imposed in broadly similar circumstances. Although we are of the view that the sentences meted out in several of these precedents were inadequate and/or premised on errors of law, nonetheless, in fairness to the Appellant, the sentencing approach which we set out in this judgment for cases of rape and robbery will only take effect *prospectively* and will not apply to him. At the time of his sentencing, the Appellant would have harboured the expectation that a term of between 11 and 15 years' imprisonment would fall within the normal range of sentences for cases of rape and robbery. Hence, we hold that his aggregate sentence should be reduced to 15 years' imprisonment with 24 strokes of the cane.

Background facts

4 The Appellant is a 29-year-old Malaysian male. The victim ("the Victim") is a 37-year-old Vietnamese female. The two offences which are the subject of the present appeal took place in the early morning of 8 March 2013, at or about 1.30am, near the Victim's flat.

5 At about 1.00am on that day, the Appellant was on his way to meet his girlfriend when she called him to say that she was not going to wait for him any longer and would be going home. The Appellant then headed home. At

about 1.30am, he was crossing an overhead bridge when he saw the Victim, who was returning home from work, at the lift lobby of her HDB block, and noticed that she had a sling bag and a mobile phone in her hand.

6 The Appellant observed that there was no one else around and decided to rob the Victim as he was short of money. After descending from the overhead bridge, he removed his slippers, placed them in the bushes near the bridge, and walked quietly towards the ground floor lift lobby. Approaching the Victim from behind, the Appellant covered her mouth with his left hand to prevent her from shouting and used his right hand to hit the back of her neck near her right shoulder so as to knock her unconscious. The Victim became dizzy after the first blow and felt the Appellant hit her a few more times at the same spot. She then fainted and collapsed to the ground.

7 At this point, the Appellant noticed that the lift was approaching the ground floor and wanted to drag the Victim to the right of the lift entrance so as to avoid being captured on the closed-circuit television ("CCTV") installed inside the lift. However, the lift door opened just as the Appellant was about to drag the Victim away and he lowered his head to prevent his face from being captured by the CCTV. The footage that was later retrieved from the CCTV showed the Victim lying on the ground outside the lift, with the Appellant kneeling beside her and pinning her down. It was only after the lift doors closed that the Appellant half-carried and half-dragged the Victim to the right of the lift entrance. He then took the Victim's sling bag and her mobile phone from her hand.

8 As the Appellant lifted the Victim, he came into contact with her body and became aroused. Observing that the Victim was unconscious, and after looking around to confirm that no one was in the vicinity, the Appellant half-

carried and half-dragged the Victim to a grass patch about 13m away. He placed her under a small tree at the grass patch, and lifted up her shirt and bra. He took photographs of the Victim's exposed breasts and starting fondling them.

9 At this point, the Victim regained consciousness. She felt the Appellant touching her breasts, but was too afraid to shout for help and thus pretended to remain unconscious. She opened her eyes slightly at various times during the incident and was aware of what the Appellant was doing to her.

10 The Appellant pulled the Victim's jeans and panties down to her knees and raped her. He was not wearing a condom when he did so. Throughout this, the Victim was too afraid to resist or fight back; she feared that the Appellant would hurt or kill her if he realised that she was conscious or if she tried to resist him. The Appellant eventually ejaculated outside the Victim.

11 After raping the Victim, the Appellant used his T-shirt to clean himself and the Victim. He took more photographs of the Victim's bare breasts before dressing her and rummaging through her sling bag. He placed her work permit, prayer card and house key into her jeans pocket, and walked away with her sling bag and her mobile phone. (The Appellant later threw away the SIM card in the mobile phone and gave the mobile phone to his girlfriend.)

12 At that point, the Victim wanted to flee, but she heard the Appellant walking back towards her. She therefore continued to pretend to be unconscious. The Appellant came back and carried the Victim to the staircase landing between the first and second floors of her HDB block. There, he laid her on a discarded mattress and took a photograph of her clothed body. He then left the scene with the Victim's sling bag and her mobile phone after

retrieving his slippers. The Victim thereafter returned home crying. Shortly after, her husband reported the incident to the police.

13 The Appellant was apprehended some five and a half months later and charged. He eventually decided not to contest the charges and, admitting to the Statement of Facts, pleaded guilty. The only issue before us is therefore that of sentence.

The charges against the Appellant

14 As mentioned at [1] above, the Appellant was convicted of one charge of rape under s 375(1)(*a*) of the Penal Code and one charge of robbery with hurt under s 394 of the Penal Code. The charges are reproduced below:

> That you, **CHANG KAR MENG**,
>
> 1ST CHARGE
>
> on the 8th day of March 2013, at or about 1.30a.m., at the grass patch in the vicinity of [address redacted], Singapore, did penetrate with your penis, the vagina of one [V], female / 33 years old (D.O.B: [xxx]), without her consent, and you have thereby committed an offence under s 375(1)(a) of the Penal Code (Cap 224, 2008 Rev Ed), punishable under s 375(2) of the Penal Code (Cap 224, 2008 Rev Ed).
>
> 2ND CHARGE
>
> on the 8th day of March 2013, at or about 1.30a.m., at the ground floor lift landing of [address redacted], Singapore, did commit robbery of the following items:
>
> 1) one gold necklace with a jade pendant valued at approximately S$760;
>
> 2) one Samsung Galaxy S3 mobile phone valued at approximately S$500;
>
> 3) cash amounting to approximately S$300;
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> 4) one silver ring valued at approximately S$250;
>
> 5) one brown sling bag valued at approximately S$100;

> 6) one red Casio watch valued at approximately S$90;
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> 7) one pair of gold earrings valued at approximately S$70;
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> 8) one brown 'Toscano' purse valued at approximately S$60;
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> 9) one pair of spectacles valued at approximately S$60;
>
> 10) one EZ-link card with a stored value of approximately S$10; and
>
> 11) cosmetics valued at approximately S$10
>
> with a total approximate value of S$2,210 from the possession of one [V], and in committing the said robbery, did voluntarily cause hurt to the said [V], *to wit*, by hitting her a few times on the back of her neck near her right shoulder with your hand, and you have thereby committed an offence punishable under s 394 of the Penal Code (Cap 224, 2008 Rev Ed).

The High Court's sentencing decision

15 Before the Judge, the Prosecution submitted that the court should impose an aggregate sentence of 18 years' imprisonment and the maximum 24 strokes of the cane (see *Public Prosecutor v Chang Kar Meng* [2015] SGHC 165 ("the GD") at [6]). The Defence, on the other hand, submitted that the appropriate sentence would be a global sentence of around ten years' imprisonment together with caning.

16 In sentencing the Appellant to a total of 17 years' imprisonment and 24 strokes of the cane, the Judge held as follows:

(a) The facts of the case warranted a deterrent sentence (see the GD at [23]).

(b) The Appellant's audacity was amply demonstrated by the acts which he committed against a helpless female within metres of her home (see the GD at [23]).

(c) The Appellant's actions, both before and after the offences were committed, spoke of "a clear and determined mind" that suggested premeditation, notwithstanding any depressive disorder that he might have been suffering from at or around the time of the incidents (see the GD at [24]).

17 Specifically, the Judge highlighted the following factors (see the GD at [24]):

(a) the Appellant knew he had to remove his slippers and move quietly if he wished to attack the Victim by surprise;

(b) the Appellant knew how to render the Victim unconscious;

(c) the Appellant was mindful of the danger of being captured on the CCTV inside the lift;

(d) the Appellant toyed with the Victim's body and took photographs of her with his mobile phone;

(e) the Appellant was "clear minded" in cleaning up after the rape;

(f) the Appellant could decide which of the Victim's belongings he wanted to take;

(g) the Appellant remembered to retrieve his slippers before leaving the scene; and

(h) the Appellant knew he had to dispose of the SIM card in the Victim's mobile phone.

18 Throughout the episode, there was no sign of panic or impulse on the Appellant's part. While the Judge observed that he would have sentenced the Appellant to 14 years' imprisonment for the rape charge had it stood alone, he reduced the sentence for that charge to 12 years' imprisonment in view of the Appellant's youth and the consecutive imprisonment terms which he would be receiving (see the GD at [27]).

The appeal

19 In his petition of appeal, the Appellant submits that the sentence which he received for the rape charge is manifestly excessive because:

(a) it is not in keeping with the sentencing precedents;

(b) the Judge erred in placing weight on the Prosecution's table of rape statistics;

(c) the Judge erred in the way he applied the relevant sentencing principles;

(d) the Judge erred in failing to appreciate the significance of the Appellant's psychiatric condition in relation to his offending behaviour; and

(e) the Judge failed to place sufficient weight on the mitigating factors in the Appellant's favour.

20 By the time of the appeal, the focus of attention was principally on the contention that the sentence imposed in this case was out of line with the sentencing precedents in comparable cases, and the weight that the Judge ought to have placed on certain mitigating factors. In explaining our decision on the appropriate sentence for the rape charge, we shall first analyse the significance of the aggravating and mitigating factors present in this case. We shall then consider how the sentence of 12 years' imprisonment and 12 strokes of the cane which the Judge imposed for the rape charge and the resulting aggregate sentence compares with the precedents in cases involving both rape and robbery.

The aggravating and mitigating factors

21 It is undisputed that the following factors aggravate the offences committed by the Appellant:

(a) the fact that the offences were committed against a helpless victim within metres of her home in a residential neighbourhood, because this undermines our collective sense of safety and tranquillity, and also unsettles the wider public;

(b) the fact that the Appellant penetrated the Victim without protection, because this exposed her to the risk of sexually transmitted diseases as well as the risk of pregnancy;

(c) the fact that the rape caused the Victim lasting trauma, because this demonstrates the severe impact of that offence on her; and

(d) the fact that the Appellant took photographs of the Victim's naked as well as clothed body and fondled her breasts, because this

heightened the affront to the Victim's dignity and, in truth, constituted a number of other wrongs against her.

22 It is also undisputed that the mitigating factors in the Appellant's favour are his lack of antecedents and his youth.

23 The parties are in dispute, however, over the extent to which the following factors are either aggravating or mitigating:

(a) the significant force inflicted on the Victim, which was intended to render her unconscious;

(b) the Appellant's depression at or around the time of the offences;

(c) the Appellant's conduct after committing the offences; and

(d) the Appellant's plea of guilt.

We consider each of these in turn below.

Infliction of significant force on the Victim

24 It is undisputed that the Appellant hit the back of the Victim's neck near her right shoulder a few times, inflicting sufficient force to render her temporarily unconscious. The Appellant, however, submits that the circumstances of his offences call for special consideration because his assault on the Victim would already have been taken into account for the purposes of the charge under s 394 of the Penal Code of voluntarily *causing hurt* in the course of committing robbery. It is contended that to treat the same assault as

a factor that aggravates the rape offence would amount to doubly punishing the Appellant.

25 It is well established that the court cannot treat a constituent ingredient of an offence as an aggravating factor in sentencing: see *Soong Hee Sin v Public Prosecutor* [2001] 1 SLR(R) 475 at [16]. Hence, in determining the sentence for a charge of robbery with hurt, the fact of the accused person's assault on the victim cannot be separately regarded, in and of itself, as an aggravating factor; although, for the avoidance of doubt, it should be noted that the *severity* of the assault may well be treated as such a factor. The court must also be vigilant to ensure that aggravating factors are not doubly counted against an accused person. In *ADF v Public Prosecutor and another appeal* [2010] 1 SLR 874 ("*ADF*"), we considered the treatment of aggravating factors in cases involving more than one distinct offence. We distinguished between "sentence specific aggravating factors", which can enhance the sentence for each individual offence at the first stage of the sentencing process, and "cumulative aggravating features", which affect "whether the global sentence should be enhanced" at the second stage of the sentencing process (at [92]). However, we also specifically cautioned that care must be taken not to factor in an aggravating consideration at the second stage if it has already been duly taken into account at the first stage (at [92]). The Appellant relies on these propositions from *ADF* (as cited in *Mohamed Shouffee bin Adam v Public Prosecutor* [2014] 2 SLR 998 ("*Shouffee*") at [78]) in support of his submission that his assault on the Victim cannot be counted against him twice.

26 In our judgment, the propositions that were put to us based on *ADF* relate to the danger of double-counting particular aggravating factors in cases involving multiple offences by taking the aggravating factors into account

both when determining the sentence to be imposed for an individual offence *and* then again when calibrating the appropriate aggregate sentence to be imposed for all the offences concerned. These propositions do not specifically relate to whether a particular aggravating factor, such as the infliction of significant force on the Victim in this case, can be counted as a sentence-specific aggravating factor for an offence (in this case, rape) when it is also an inherent element of a separate and distinct offence (*viz*, robbery with hurt).

27 In our judgment, in cases of rape and robbery with hurt, where the hurt inflicted by the offender is sufficiently and separately linked to *both* offences, it may be treated as a relevant sentencing consideration for both. We emphasise that we are concerned in this context with a situation where the hurt caused is closely connected to *both* the offence of rape *and* that of robbery with hurt. If the infliction of force on the victim was a *critical part* of the commission of both of these offences, we think it would be artificial to treat the assault as being connected only to the offence of robbery with hurt and to ignore it when it comes to sentencing for the offence of rape. While there is the possibility that such an approach might, in some cases, lead to an aggregate sentence that is overly harsh, this concern can be dealt with at the end of the sentencing process when consideration must be given to the totality principle (see *Shouffee* at [58]).

28 In the present case, it is arguable that because the Appellant initially intended only to rob the Victim, the force that was inflicted on the back of her neck was for the sole purpose of robbing her. It was only after the Appellant came into contact with the Victim's body in the course of robbing her that he became aroused and formed the intention to rape her. But, in our judgment, to ignore the fact of the assault in the context of the rape would be unprincipled and artificial given that the Appellant's infliction of force on the Victim was

critical to the commission of the rape. It is evident that the Appellant was able to rape the Victim because the initial assault had: (a) rendered her unconscious; and (b) put her in such fear that she did not dare to resist the Appellant as he raped her even though she had regained consciousness by then. Instead, in a state of utter degradation, she had to pretend to still be unconscious while she was being raped. We also note in this connection that because the Appellant had rendered the Victim unconscious, he was able to drag her away from the spot where he assaulted her, and then take photographs of her exposed breasts and fondle them before raping her whilst she was completely defenceless. In all the circumstances, we consider that the Appellant's infliction of force on the Victim should be treated as an integral part of the factual matrix of the rape and should be taken into account as an aggravating factor in determining the sentence for that offence.

29 In any event, quite aside from this, the severity of the assault on the Victim in this case (which was such that it was sufficient to render her unconscious) unquestionably aggravates the rape committed by the Appellant.

The Appellant's depression

30 We turn now to the relevance of the Appellant's depression at or around the time of his offences. It is well established that "the existence of a serious mental disorder in an offender can affect a sentencing decision in myriad ways": see *Public Prosecutor v Goh Lee Yin and another appeal* [2008] 1 SLR(R) 824 ("*PP v Goh Lee Yin*") at [155]. It has an impact on the court's assessment of the offender's culpability and need for rehabilitation, as well as the likely efficacy of deterrence and the need to protect the public. In this context, it is important to first establish the nature of the offender's

psychiatric condition and the offender's state of mind at the time of the offence (see *PP v Goh Lee Yin* at [57]).

31 In the present case, the only expert evidence on the Appellant's psychiatric condition is a report dated 24 October 2013 by Dr Tan Zhongqiang ("Dr Tan"), a registrar in the Department of General and Forensic Psychiatry, Institute of Mental Health and Woodbridge Hospital. Dr Tan concluded as follows:

> 1. [The Appellant] was suffering from Major Depression in [*sic*] and around the time of the alleged offences … *Whilst there was no direct causal link between his Major Depression and the alleged offences, it was clear that [he] was experiencing tremendous psychological distress and his hitherto fragile self-esteem had been fractured after repeated real and imagined onslaughts. This may have resulted in him exercising poor judgement and terrific impulsivity at the time of the alleged offences.*
>
> 2. [The Appellant] also suffers from Fetishistic Transvestism. He experiences recurrent sexual arousal from cross-dressing and also from thoughts of himself as a member of the female gender … There is no direct causal link between his Fetishistic Transvestism and the first two alleged offences. However, it may have driven him to procure lingerie illegally as it was embarrassing for him to do so in a more legitimate fashion.
>
> 3. [The Appellant] was depressed during [his] remand and suffered from panic attacks intermittently … In future he will benefit from followup with a psychiatrist for treatment of his affective symptomatology. He will also benefit from psychotherapy to address his Transvestic Disorder and problems related to his sexual identity.
>
> 4. [The Appellant] was not of unsound mind at the time of the alleged offences. He was aware of what he was doing at the time of the alleged offences and he knew what he was doing was wrong.
>
> …
>
> [emphasis added]

32 The Appellant does not rely on his "Fetishistic Transvestism" in mitigation, but he does seek to rely on that part of Dr Tan's report which states that he was suffering from "Major Depression", which "may have resulted in him exercising poor judgement and terrific impulsivity at the time of the alleged offences".

33 As observed by the High Court in the recent decision of *Ang Zhu Ci Joshua v Public Prosecutor* [2016] 4 SLR 1059, in determining the mitigating value to be attributed to an offender's mental condition, the "key question" is whether the nature of the mental condition was such that the offender retained substantially the mental ability or capacity to control or restrain himself at the time of his criminal acts. If the answer to that question is "yes" and the offender instead chose not to exercise self-control, then his mental condition would be of "little or no mitigating value" (at [3]).

34 In our judgment, at the time the Appellant committed the criminal acts in this case, his mental ability or capacity to control himself was not substantially impaired by his depression. Critically, Dr Tan expressly noted that there was "no direct causal link" between the Appellant's depression and his crimes, and that the Appellant "was aware of what he was doing at the time of the alleged offences". According to Dr Tan, the Appellant also "knew [that] what he was doing was wrong". Yet, he went ahead and committed his criminal acts. Further, as the Judge observed in the GD at [24], the Appellant's conduct evidently "spoke of a clear and determined mind despite whatever depression he was in around the time of the incidents":

> … [The Appellant] knew he had to remove his slippers and move silently if he wanted to attack the [V]ictim by surprise. He knew how to render her unconscious. He was mindful of being caught by the CCTV installed in the lift when he saw the lift descending to the ground floor. He toyed with [the Victim's]

> body and took pictures of her with his mobile phone. He even told the psychiatrist that the flash on the mobile phone was turned off. He was clear minded in cleaning up after the rape. He could decide what he wanted to take of [the Victim's] belongings. He had the presence of mind to take more photographs of her after he had moved her to the staircase landing. He remembered to retrieve his slippers before leaving the scene. He knew he had to dispose of the SIM card in the [V]ictim's mobile phone.

35 Finally, it cannot be gainsaid that in raping the Victim, the Appellant committed a grave and heinous offence. In such cases, it is well established that the primary operative sentencing considerations should be retribution and the protection of the public (see *Public Prosecutor v Lim Ghim Peow* [2014] 2 SLR 522 at [49], affirmed on appeal in *Lim Ghim Peow v Public Prosecutor* [2014] 4 SLR 1287 at [39] and [52]; see also *PP v Goh Lee Yin* at [108]). These considerations, to which we would add general deterrence in the context of such cases, will only be displaced, if at all, where there is clear evidence that the offender's culpability was materially diminished because of a mental disorder. In the present case, there is no evidence that this was the case at the time of the Appellant's offences, and thus, having considered all the relevant circumstances, we are satisfied that the Appellant's depression should not be given weight as a mitigating factor.

The Appellant's conduct after the offences

36 After raping the Victim, the Appellant (among other things) used his T-shirt to clean her and then dressed her. Following this, he placed her work permit, prayer card and house key into her jeans pocket, and carried her to the staircase landing between the first and second floors of her HDB block, where he laid her on a discarded mattress (see [11]–[12] above). This much is undisputed. However, the parties contest the inferences that may appropriately be drawn from these facts.

37 The Prosecution contends that the Appellant took the above steps so as to leave no trace of the rape. The point, presumably, is that because, as far as the Appellant was concerned, the Victim was unconscious throughout the incident, he might have harboured the hope that by cleaning her and putting her clothes back on, she would not even have been aware of the rape. Obviously, the Victim would have realised that something untoward had occurred if the Appellant had left her in a state of undress at the grass patch where the rape took place. The Defence, on the other hand, submits that it is unfair for the Prosecution to characterise the Appellant's actions after the rape as an attempt to methodically cover up his tracks. Rather, it is submitted that the Appellant cleaned and dressed the Victim because he was sorry for what he had done.

38 The court may draw inferences from undisputed facts in determining the relevant factual matrix for sentencing purposes. In *Public Prosecutor v Ng Tai Tee Janet and another* [2000] 3 SLR(R) 735 at [25], for instance, based on the fact that the respondents had recruited persons who were willing to allow their names to be used to purchase air tickets so that foreign nationals could fly into Singapore using boarding passes that had not been issued in their names, the High Court inferred that the respondents had colluded with an organised crime syndicate.

39 That said, there must be sufficient factual basis to support the inference that the court is asked to draw, whether by the Prosecution or the Defence. An example where such factual basis was found to be lacking is *Rupchand Bhojwani Sunil v Public Prosecutor* [2004] 1 SLR(R) 596 ("*Rupchand*"), a decision of the High Court. There, the appellant was convicted of a cheating offence under s 417 of the Penal Code (Cap 224, 1985 Rev Ed) ("the Penal Code (1985 Rev Ed)") and sentenced to 12 months' imprisonment. The

appellant had downloaded the website of another company, Power & Motion Control Pte Ltd ("PMC"), to his own website. This was not known to either PMC or the victim, who placed an order for Vickers Cartridge Kits through PMC's website. The appellant was able to access the victim's contact details because of what he had done. Using those details, he corresponded with the victim, falsely representing that his company was an agent of the sole distributor of Vickers products in Singapore. The victim transferred US$42,000 to the appellant, thinking that he was purchasing Vickers Cartridge Kits from the appellant, but failed to obtain delivery of the products ordered. The appellant was later apprehended and charged with cheating. In hearing the appellant's appeal against the 12-month imprisonment sentence imposed by the district judge, the High Court considered that the district judge had placed undue weight on the fact that the case involved the misuse of the Internet (see *Rupchand* at [17]). The High Court further held that while it was "probable" that the appellant "had performed the initial download with an intention to commit some form of offence at some later point", the Prosecution had not proved that fact in relation to the offence before the court, and hence, could not rely on it as an aggravating factor (see *Rupchand* at [18]).

40 More recently, in *K Saravanan Kuppusamy v Public Prosecutor* [2016] 5 SLR 88, the High Court observed as follows (at [27]):

> It is true that some flexibility in respect of standard of proof and evidentiary sources is typically accorded to both the Prosecution and the [D]efence in the sentencing process: *PP v Aniza bte Essa* [2009] 3 SLR(R) 327 at [60]–[62]. However, the degree of flexibility that is to be accorded must ultimately depend on the materiality of the fact in question and the possible prejudice that could be caused to the position either of the Prosecution or the Defence by taking a particular fact into account. It is apposite to refer once again to the extract from my speech which has been referred to above at [7]. I would underscore, in particular, the point made at para 39 of the speech, which is that it may be unfairly prejudicial to the

> offender if the Prosecution were to raise a fact undisclosed in the [Statement of Facts] or ask the court to draw an inference from the facts at the stage of sentencing, which the accused was not aware of when he entered his plea. Where a material factor that either aggravates or mitigates the offence is to be put forward by either the Prosecution or the Defence, then it is incumbent on them to either have it agreed, or to prove it. Such proof can be by way of evidence adduced at a *Newton* hearing (see *Ng Chun Hian v PP* [2014] 2 SLR 783 at [24]); or on the basis of submissions without adducing further evidence for this purpose (see *R v Robert John Newton* (1982) 4 Cr App R (S) 388, cited in *PP v Soh Song Soon* [2010] 1 SLR 857 at [3]). But where the latter course is taken, the burden will be on the Prosecution to persuade the court that the aggravating facts it wishes to rely on are supported by the [Statement of Facts]. In this regard, the court would have to be satisfied beyond a reasonable doubt that the relevant inferences should be drawn: see, for example, *PP v Liew Kim Choo* [1997] 2 SLR(R) 716 at [64]. And where the inference sought by the Prosecution is not an irresistible one, the doubt will be resolved in favour of the accused.

41 This passage refers to an extract from a speech delivered at a Sentencing Conference held in Singapore in October 2014, where it was said (at para 39):

> These broad guidelines [on the Prosecution's duty to the court in relation to sentencing] can be supplemented with another very practical point. All the relevant facts must be proven beyond a reasonable doubt; and in guilty pleas, the accused must know all the facts on the basis of which he pleaded guilty. For the Prosecution to raise a fact undisclosed in the statement of facts or ask the court to draw an inference from the facts at the stage of sentencing may be unfairly prejudicial to the offender, who cannot be punished for something that is not proven. Hence, the statement of facts must be prepared with this in mind.

42 This is also consistent with the position taken by Australian courts (see *R v Storey* [1998] 1 VR 359 at 371).

43 On the facts that are before us, we consider that there is insufficient evidence to allow us to determine beyond a reasonable doubt whether the

Appellant's actions after the rape were motivated by guilt and remorse, or by a desire to cover up his crimes in order to evade detection.

44 In this regard, we note that in the Appellant's interview with Dr Tan, he said that he cleaned and dressed the Victim after the rape because he felt "tremendously guilty". Of course, the Appellant could have been lying in his interview with Dr Tan. But, as neither Dr Tan nor the Appellant (who pleaded guilty) was cross-examined, this aspect of the evidence was not tested. Hence, we prefer to draw no inference either way from the Appellant's conduct after the rape and to treat it as a neutral factor instead.

The Appellant's plea of guilt

45 The Appellant submits that the Judge did not fully consider the mitigating effect of his plea of guilt. The Prosecution, in contrast, submits that the Appellant's guilty plea has no mitigating value in the present circumstances because:

(a) the Appellant evaded arrest for five and a half months, which suggests that he was not in fact remorseful;

(b) the Appellant downplayed the seriousness of the rape offence during his interview with Dr Tan by telling the latter that "he could not remember if he actually inserted his penis into [the Victim's] vagina …"; and

(c) the objective physical evidence against the Appellant was overwhelming and the Prosecution would have had no difficulty proving his guilt even without an admission from him.

46 It is well established that "[a] plea of guilt can be taken into consideration in mitigation when it is motivated by genuine remorse, contriteness or regret and/or a desire to facilitate the administration of justice" (see *Angliss Singapore Pte Ltd v Public Prosecutor* [2006] 4 SLR(R) 653 at [77]). However, where the evidence against the accused person is overwhelming, a guilty plea may have no mitigating value (see *Fu Foo Tong and others v Public Prosecutor* [1995] 1 SLR(R) 1 at [12]). Thus, the mitigating value of a guilty plea will depend on both the accused person's intentions in pleading guilty as well as the positive consequences that the guilty plea would have in relation to the administration of justice and also the victim. This too will often turn on the inferences that may properly be drawn from the surrounding circumstances. For example, the principle that the guilty plea of an offender who has been caught red-handed should not be given credit may be explained on the ground that such an offender, in choosing not to contest the charges, has likely been motivated by reality rather than by remorse.

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

48 In the present case, the Appellant's plea of guilt undoubtedly spared the Victim the trauma of testifying in court. However, this must be viewed in the context of other facts including these: (a) the Appellant did not surrender himself to the police, but instead evaded apprehension for a substantial period

of time, which strongly suggests that there was, on his part, no genuine remorse or willingness to bear the consequences of his actions; and (b) the Appellant knew that the evidence against him was overwhelming. In particular, the Appellant knew that: (a) he had been captured on the CCTV inside the lift at the Victim's HDB block (see [7] above); (b) his DNA had been found all over the Victim's body and clothes; (c) some of the Victim's belongings had been recovered from his possession; and (d) the Victim's mobile phone had been recovered from his girlfriend. In the circumstances, while a modicum of consideration could be given to the fact that the Victim was spared from having to testify in court, on the whole, we are satisfied that the Judge was not wrong to give little mitigating weight to the Appellant's guilty plea.

49 In sum, we think that neither the Appellant's depression nor his plea of guilt has significant mitigating value. The Appellant's conduct after the rape should be treated as a neutral factor. The Appellant's infliction of significant force on the Victim is an aggravating factor that should be taken into account in sentencing the Appellant for the rape, but this is subject to a final review of the Appellant's aggregate sentence for that offence as well as the offence of robbery with hurt in the light of the totality principle.

***PP v NF* and the sentence imposed by the Judge**

50 With the foregoing considerations in mind, we now consider the sentence imposed by the Judge in the court below. Sentencing for rape offences has, for some time, been influenced by the framework that was laid down by the High Court in *Public Prosecutor v NF* [2006] 4 SLR(R) 849 ("*PP v NF*"). That framework is currently under review in another matter that is pending before this court, but we nonetheless apply it in this appeal since it

has yet to be refined or revised. In *PP v NF*, the High Court identified four categories of rape, three of which (referred to in *PP v NF* as, respectively, "Category 2", "Category 3" and "Category 4" rapes) feature particular types of aggravating circumstances, namely:

(a) where there has been exploitation of a particularly vulnerable victim;

(b) where there has been a series of rapes involving either the same victim or multiple victims; and

(c) where the offender has displayed perverted or psychopathic tendencies and poses a continuing danger to women.

51 These are plainly not the only situations where rape may be regarded as aggravated, but under the *PP v NF* framework, all instances of rape other than the above are placed in Category 1, which is "a *residual category* that covers all rape offences that do not fall within Category 2, 3 or 4" [emphasis in original] (see *Haliffie bin Mamat v Public Prosecutor and other appeals* [2016] 5 SLR 636 ("*Haliffie*") at [75]). In *PP v NF*, it was held that Category 1 rapes "ought to attract an imprisonment term of ten years and not less than six strokes of the cane *as a starting point*" [emphasis added] (at [17]). Although this is obvious, it bears emphasis that the benchmark sentence set out in *PP v NF* for Category 1 rapes (and likewise, the benchmark sentences stated for the other three categories of rape) can only serve as *a starting point* because of the multitude of factual circumstances that may affect the gravity of a rape offence.

52 In our judgment, given the aggravating factors present in this case, the Judge was entirely justified in departing from the starting point of ten years'

imprisonment and six strokes of the cane and sentencing the Appellant instead to 12 years' imprisonment and 12 strokes of the cane for the rape. In particular, we accept the Prosecution's submission that the following factors significantly aggravate this offence:

(a) the offence was committed within a residential neighbourhood, which shakes the public's collective sense of safety and tranquillity;

(b) the Appellant penetrated the Victim without protection;

(c) the rape caused the Victim lasting trauma;

(d) the Appellant took photographs of the Victim's naked as well as clothed body and fondled her breasts; and

(e) very significant force was inflicted on the Victim, such that she was rendered unconscious for a period of time and, subsequently, after regaining consciousness, was put in such fear of her life that she pretended to remain unconscious while enduring the degradation of being raped and violated by the Appellant.

In the light of these aggravating factors, an upward shift of two years' imprisonment and an additional six strokes of the cane from the starting point of ten years' imprisonment and six strokes of the cane for the rape cannot be said to be manifestly excessive.

53 Indeed, as the Judge observed in the GD at [27] (see also [18] above), he would in all the circumstances have sentenced the Appellant to a term of 14 years' imprisonment for the rape charge had it stood alone, but he reduced this on account of the Appellant's youth and the principle of totality since the Appellant was facing imprisonment for robbery with hurt as well.

54 In respect of the latter offence, the minimum sentence prescribed by Parliament is five years' imprisonment and 12 strokes of the cane (see s 394 of the Penal Code). This reflects the severity with which Parliament views instances of robbery with hurt. The Judge sentenced the Appellant to the mandatory minimum punishment, and so no issue can be taken with the sentence for this offence.

55 This yields an *aggregate* sentence of 17 years' imprisonment and 24 strokes of the cane for the rape and the robbery with hurt charges, which is what the Appellant received in the court below. Before we turn to the precedents dealing specifically with cases involving both rape and robbery, which we consider in the next section of this judgment (at [56]–[71] below), taking into account only the circumstances of the present case, we do not consider this aggregate sentence to be either crushing or otherwise manifestly excessive. The Appellant committed a heinous act in knocking the Victim unconscious and placing her in such fear that she did not dare to resist his gross violation of her bodily integrity. He also robbed her of items worth more than $2,000 in total. As the two offences of rape and robbery with hurt infringed separate and distinct interests of the Victim, there is no reason in principle for the Appellant not to receive the full brunt of the law's opprobrium of both offences. The overall imprisonment of 17 years' imprisonment and 24 strokes of the cane, in our judgment, befits his culpability for his criminal acts.

Sentencing precedents in rape and robbery cases

56 Despite this, the Defence submits that due consideration of the sentencing precedents in cases involving both rape and robbery warrants a reduction of the Appellant's sentence. The Appellant contends that fairness

requires a measure of consistency between the sentence imposed on him and the sentences previously imposed in broadly similar circumstances.

57 Six key sentencing precedents concerning cases of rape and robbery were drawn to our attention in this context. In these cases, all of which involved offenders who both raped and robbed their victims, the imprisonment terms that were imposed ranged from 11 to 15 years.

58 At the outset, one factor which distinguishes the present case from these six cases should be noted – namely, the robbery charge against the Appellant was one under s 394 of the Penal Code, which carries a mandatory minimum sentence of five years' imprisonment and 12 strokes of the cane. In none of the other six key sentencing precedents cited to us did the accused face a mandatory minimum sentence of this length for the robbery charge. That said, in our judgment, what is material for the purposes of comparison is the overall criminality of the offender's actions. On this basis, we turn to these six cases.

59 In *Public Prosecutor v Leow Kim Chu* [1996] SGHC 288 ("*Leow Kim Chu*"), the accused was the victim's neighbour. The accused invited the victim into his flat on the pretext of offering to sell her a computer. After she entered his flat, he grabbed her right upper arm and threatened to kill her if she shouted. He blindfolded her, tied her hands, and then raped and performed cunnilingus on her. Thereafter, he removed various items of jewellery and cash from her while she was still blindfolded and tied up. Convicted of aggravated rape and robbery under, respectively, s 376(2)(*b*) and s 392 of the Penal Code (1985 Rev Ed) after a trial, the accused was sentenced to 11 years' imprisonment and 12 strokes of the cane for the aggravated rape, and three years' imprisonment and six strokes of the cane for the robbery. The judge

ordered the imprisonment terms to run concurrently on the basis that the accused's offences formed a single transaction. This resulted in an aggregate sentence of 11 years' imprisonment and 18 strokes of the cane.

60 The circumstances of the offences in the present case appear to be more serious than those of the offences in *Leow Kim Chu* because: (a) severe blows were inflicted on the Victim, rendering her unconscious, whereas the accused in *Leow Kim Chu* only threatened to harm his victim; and (b) the Appellant took photographs of the Victim. On the latter point, aside from the affront to her dignity and the violation of her body, the Victim was also placed in fear of these photographs being distributed during the five and a half months when the Appellant evaded arrest. We observe, on the other hand, that the Appellant's other acts of violating the Victim were less serious than those in *Leow Kim Chu*. Furthermore, the accused in *Leow Kim Chu* claimed trial, putting the victim through the pain of having to testify in court. While this cannot be treated as an aggravating factor because an offender is *entitled* to claim trial, the fact that the Appellant before us pleaded guilty, although of little mitigating value for the purposes of the present appeal (see [48]–[49] above), may arguably be regarded as a factor in his favour when comparing the two cases.

61 On the whole, we are satisfied that the Appellant should receive a harsher sentence than the accused in *Leow Kim Chu*. However, we also think that the total sentence of 11 years' imprisonment and 18 strokes of the cane that was meted out in *Leow Kim Chu* was manifestly inadequate. The most obvious error in the judgment was the judge's conclusion that the imprisonment terms for the aggravated rape and the robbery should run concurrently because the two offences were part of one transaction. As was observed by the High Court in *Shouffee* at [31]:

> … [T]he real basis of the one-transaction rule is unity of the violated interest that underlies the various offences. Where multiple offences are found to be proximate as a matter of fact but violate different legally protected interests, then they would not, at least as a general rule, be regarded as forming a single transaction. …

62 Rape and robbery clearly violate different legally protected interests. Hence, these separate offences, even if committed against one victim at about the same time, should not, as a general rule, be regarded as forming part of a single transaction. The accused person in *Leow Kim Chu* should therefore have received at least a 14-year imprisonment sentence.

63 We turn next to the unreported decision of *Public Prosecutor v Sivakumar s/o Magendran* (Criminal Case No 23 of 2012) ("*Magendran*"), the facts of which bear some similarities with those in the present case. The accused in *Magendran* spotted the victim walking to her HDB block looking tipsy. Before the victim could press the lift button when she reached the block, the accused approached her from behind and grabbed her neck. He dragged her into the lift with one arm around her neck, and exited with her at the fifth floor. He threatened to kill her if she did not comply with his demands. The accused took one of the victim's hands and placed it on his penis. Thereafter, he raped the victim at the staircase landing, but ejaculated onto her back. The victim did not struggle during the rape as she was afraid. After raping the victim, the accused robbed her of her mobile phone, cash amounting to $230 and a digital camera. The accused pleaded guilty to one charge of rape under s 375(1)(*a*) of the Penal Code and one charge of robbery under s 392 of the Penal Code. He was sentenced to 13 years' imprisonment and 12 strokes of the cane for the rape, and three years' imprisonment and 12 strokes of the cane for the robbery. The imprisonment terms were ordered to run concurrently.

64 In our judgment, the offences committed in *Magendran* were somewhat less serious than those in the present case. Although both cases involved the use of significant force on a victim at a HDB lift landing late at night when the victim was returning home, in the present case, the Appellant evidently applied more force because the Victim was rendered unconscious. The type of photographs that were taken of the Victim also aggravates the rape in this case. In addition, although both the accused in *Magendran* and the Appellant in this case outraged the modesty of their respective victims in addition to raping them, the actions of the accused in *Magendran* were less serious than those of the Appellant. Here, we again observe that following the principle laid down in *Shouffee* at [31] (as set out at [61] above), the judge in *Magendran* should have ordered the two imprisonment sentences to run consecutively rather than concurrently. Had that been done, an imprisonment term of 16 years, which would have been more commensurate with the accused's culpability, would have been imposed. All things considered, we consider that a harsher sentence than that which ought to have been meted out in *Magendran* is justified in this case.

65 In *Public Prosecutor v Tan Jun Hui* [2013] SGHC 94 ("*Tan Jun Hui*"), the accused entered the lift of a HDB block with the victim, who was returning home. He threatened her with a knife with a 13cm blade. After dragging the victim out of the lift at the ninth floor, the accused robbed and raped her, and also attempted to penetrate her mouth with his penis. The offences were committed in the middle of the night, and took place within a span of about five minutes. The accused pleaded guilty to one charge of armed robbery by night under s 392 read with s 397 of the Penal Code, one charge of attempting to sexually penetrate the victim's mouth with his penis under s 376(1)(*a*) of the Penal Code and one charge of rape under s 375(1)(*a*) of the Penal Code.

He also consented to have one charge of aggravated outrage of modesty and one charge of possessing films without valid film certification taken into consideration for sentencing purposes. He was sentenced to four years' imprisonment and 12 strokes of the cane for the armed robbery by night, ten years' imprisonment and 12 strokes of the cane for the s 376(1)(*a*) offence, and ten years' imprisonment and 12 strokes of the cane for the rape. The court ordered that the imprisonment sentences for the two sexual offences were to run concurrently, while the imprisonment sentence for the armed robbery by night was to run consecutively. The accused was thus sentenced to a total of 14 years' imprisonment with 24 strokes of the cane (24 being the maximum number of strokes permitted under s 328 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("the CPC")).

66 In our judgment, the totality of the offences committed in *Tan Jun Hui* presented a degree of criminality which was more serious than that of the offences committed by the Appellant, and the offender in that case should have been sentenced more harshly than the Appellant. While the Appellant did inflict significant force on the Victim and take photographs of her naked body, the offender in *Tan Jun Hui* deserved a harsher sentence because: (a) he not only raped the victim, but also attempted to penetrate her mouth with his penis; (b) he used a knife with a 13cm blade to threaten the victim; and (c) two other charges of, respectively, aggravated outrage of modesty and illegal possession of films were taken into consideration for sentencing purposes. In our judgment, the total sentence of 14 years' imprisonment and 24 strokes of the cane meted out in *Tan Jun Hui* was too lenient in the circumstances. Given the aggravated nature of the offences (especially the use of the knife), the imposition of an imprisonment term of only ten years for the rape, which is the *starting point* for Category 1 rapes under the *PP v NF* framework, was wrong

in principle. In our judgment, the offender in *Tan Jun Hui* should have been sentenced to around 15 years' imprisonment for the rape, and this should then have been ordered to run consecutively with the imprisonment sentence imposed for the armed robbery by night.

67 We turn next to the unreported decision of *Public Prosecutor v Sinnathamby a/l Ramiah* (Criminal Case No 2 of 2015) ("*Sinnathamby*"), where the accused saw the victim at a park at about 9.00pm at night and decided to rape her. He observed her while he pretended to do some stretching exercises. As she ran past him, he grabbed her from behind, threw two cable ties over her body to restrain her, and dragged her to a secluded area. He threatened to kill her if she screamed. He kissed her face, licked and rubbed her vagina, and squeezed her right breast before raping her and ejaculating into her vagina without a condom. He then robbed her of her mobile phone valued at $378. Arrested one month later, the accused pleaded guilty to one charge of rape under s 375(1)(*a*) of the Penal Code, one charge of aggravated outrage of modesty under s 354(1) of the Penal Code, and one charge of robbery by night under s 392 of the Penal Code. He was sentenced to 11 years' imprisonment and 12 strokes of the cane for the rape, two years' imprisonment and two strokes of the cane for the aggravated outrage of modesty, and four years' imprisonment and 12 strokes of the cane for the robbery by night. The imprisonment sentences for the rape and the robbery by night were ordered to run consecutively, but the imprisonment sentence for the aggravated outrage of modesty was ordered to run concurrently, resulting in an aggregate sentence of 15 years' imprisonment and (pursuant to s 328 of the CPC) 24 strokes of the cane.

68 In our judgment, the offences committed in *Sinnathamby* are, on the whole, of about the same gravity as the offences committed in this case. In

both cases, a vulnerable victim was approached from behind and grabbed, although in the present case, more force was probably inflicted since the Victim was rendered unconscious. Further, while the rape in the present case is significantly aggravated by the fact that the Appellant took photographs of the Victim, the offender in *Sinnathamby* further outraged the victim's modesty by kissing her face, licking and rubbing her vagina, and squeezing her right breast. He also ejaculated into the victim in that case, thereby exposing her to a greater risk of pregnancy. All things considered, therefore, we regard the gravity of the criminal conduct in both cases as being approximately the same. In our judgment, the sentence for the rape in *Sinnathamby* should have been higher given the aggravating factors in that case (in particular, the accused's use of cable ties and his threats to kill the victim), and the total sentence should have been similar to what the Judge meted out in the present case. The same result would have been achieved if all three of the imprisonment sentences in *Sinnathamby* had been ordered to run consecutively.

69 We turn now to our recent decision in *Haliffie*. The accused in that case was driving around Clarke Quay at about 6.00am in the morning when he saw the victim, who was alone, waiting for a taxi near River Valley Road. He stopped and offered the victim a lift, which she accepted. After driving for a while, the accused stopped his car and crossed over to the victim, who was in the front passenger seat. There was a struggle, but the accused managed to pin the victim down with his knees and hands. He then raped the victim. Thereafter, he returned to the driver's seat, drove for a few hundred metres, stopped the car again, and shoved the victim out of the car, driving off with her handbag. The accused claimed trial, but was convicted of one count of rape under s 375(1) of the Penal Code and one count of robbery under s 392 of the Penal Code. The High Court judge sentenced the accused to ten years'

imprisonment and six strokes of the cane for the rape, and three years' imprisonment and 12 strokes of the cane for the robbery. The sentences were ordered to run consecutively. The appeals by the accused against conviction and by the Prosecution against sentence were both dismissed.

70 In our judgment, the offences committed by the Appellant in the present case are more serious than those committed in *Haliffie* because: (a) the Appellant inflicted far greater force on the Victim, so much so that he rendered her unconscious; (b) the Appellant attacked the Victim near her home; and (c) the Appellant fondled the Victim's breasts and took photographs of her naked body. While some force was also inflicted on the victim in *Haliffie*, especially during the struggle before the rape and when the victim was shoved out of the accused's car, this does not bear comparison to the amount of force used by the Appellant in the present case. We are therefore satisfied that the Appellant ought to receive a significantly harsher aggregate sentence than the offender in *Haliffie*.

71 Finally, we turn to the decision of this court in *Chia Kim Heng Frederick v Public Prosecutor* [1992] 1 SLR(R) 63 ("*Frederick Chia*"), another case relied on by the Appellant. At [20], the court in *Frederick Chia* suggested that "for a rape committed without any aggravating or mitigating factors, a figure of ten years' imprisonment should be taken as the starting point in a contested case", but where the accused pleaded guilty, a reduction of "one-quarter to one-third of the sentence" would be merited. The first part of that statement is not inconsistent with the framework developed in *PP v NF*. But, the second part gives rise to concern. The Appellant placed great reliance on this observation to contend that by reason of his having pleaded guilty to the rape charge, the starting point for the rape offence should have been between six and eight years' imprisonment. We have no hesitation in rejecting

this argument. First, as we have already noted, whether, and if so, what discount should be accorded to an accused person who pleads guilty is a fact-sensitive matter that depends, among other things, on whether the guilty plea is motivated by sincere remorse. Second, in cases that are especially grave and heinous, the sentencing considerations of retribution, general deterrence and the protection of the public will inevitably assume great importance, and these cannot be significantly displaced merely because the accused has decided to plead guilty. Having regard to the grievous and pernicious nature of rape, even in the absence of other aggravating circumstances, we disagree with the suggestion that a sentence of six to eight years' imprisonment would be a sufficiently severe sanction where the accused pleads guilty. Of course, such a sentence might be sufficient in cases that feature exceptional mitigating factors, but the factors in question would have to be *demonstrably* exceptional. We therefore hold that *Frederick Chia*, to the extent that it suggests that a discount of a quarter to a third of the sentence should follow on a plea of guilt, is wrong and should not be relied on as a relevant sentencing precedent for rape.

The appropriate sentence in this case

72 As we have already observed, in our judgment, neither the 12-year imprisonment sentence that was meted out by the Judge for the rape, nor the aggregate imprisonment term of 17 years which the Appellant received for his offences is manifestly excessive. However, we accept the Appellant's submission that the total 17-year imprisonment sentence is out of line with the relevant precedents and the sentences meted out in previous cases featuring broadly similar circumstances. The precedents reveal that the offenders in those cases received aggregate imprisonment sentences of between 11 and 15 years even where the criminal conduct involved was, in our judgment, more

serious than the Appellant's conduct in the present case. We have also noted that the sentences imposed in several of these precedents were unduly lenient, and in some cases, this was the result of an error in applying established sentencing principles, such as the one-transaction rule.

73 In *Public Prosecutor v UI* [2008] 4 SLR(R) 500 at [17], in discussing the extent to which a court is entitled to disregard established sentencing precedents, we affirmed the principle that "like cases should be treated alike". The application of sentencing precedents affords consistency in sentencing (at [18]), and "[a] high level of consistency in sentencing is desirable as the presence of consistency reflects well on the fairness of a legal system" (at [19]). However, we also cautioned that this "does not … detract from the need for individualised justice, *viz*, the need to sentence an offender based on the facts of the particular case in question" (at [20]). In the final analysis, the court must balance the need to mete out a just sentence based on the facts of the particular case at hand with the desirability of achieving consistency.

74 Of course, these goals are usually not in conflict. It is only in cases such as the present, where the court has concluded that the relevant sentencing precedents are erroneous and should be departed from, that a balance between these competing tensions will need to be struck. In *Public Prosecutor v Hue An Li* [2014] 4 SLR 661, where the High Court had to consider whether to limit the retrospective effect of its decision to depart from the existing sentencing precedents for the offence of causing death by a negligent act, it was held that "judicial pronouncements are, by default, fully retroactive in nature", but an appellate court might "in exceptional circumstances … restrict the retroactive effect of [its] pronouncements" (at [124]). In particular, the court recognised that the extent of a party's reliance on existing law or legal

principle was "particularly compelling in the criminal law context, where a person's physical liberty is potentially at stake" (at [124(d)]).

75 In the present case, we accept that the Appellant should be entitled to rely on the existing sentencing range established by the relevant precedents. In our judgment, there are no clear factors that make the Appellant's offences significantly more egregious than the offences in the most serious of these precedents so as to justify a significantly harsher imprisonment term. We can see no basis for ignoring his legitimate expectations, having regard to the general range of sentences previously meted out in similar cases involving both rape and robbery. In the circumstances, we shall assess the sentence to be imposed on the Appellant having regard to the existing precedents. Our disapproval of several of these precedents on account of their being too lenient or wrong in principle will, as mentioned at [3] above, apply only *prospectively*, and not to the Appellant.

76 In the circumstances, we find it appropriate to reduce the Appellant's aggregate imprisonment sentence to 15 years, which falls at the higher end of the existing sentencing range established in the precedents. The sentence of caning will remain unchanged. We make it clear that moving forward, offenders who are convicted of rape and robbery should not expect to benefit from similar leniency, and a sentence such as the aggregate punishment of 17 years' imprisonment and 24 strokes of the cane that was meted out by the Judge in the court below will not, in similar circumstances, be treated as manifestly excessive.

Conclusion

77 In conclusion, we allow the appeal and sentence the Appellant instead to a total of 15 years' imprisonment with 24 strokes of the cane.

Sundaresh Menon Chief Justice	Andrew Phang Boon Leong Judge of Appeal	Judith Prakash Judge of Appeal

Sunil Sudheesan and Ngiam Hian Theng Diana (Quahe Woo & Palmer LLC) for the appellant;
Sellakumaran s/o Sellamuthoo and Nicholas Lai (Attorney-General's Chambers) for the respondent.