

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

**[2023] SGHC 11**

Criminal Case No 32 of 2022

Between

Public Prosecutor

And

Yap Pow Foo

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**JUDGMENT**

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[Criminal Law — Offences — Sexual offences]

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**Public Prosecutor**

**v**

**Yap Pow Foo**

**[2023] SGHC 11**

General Division of the High Court — Criminal Case No 32 of 2022

Tan Siong Thye J

28–30 June, 1, 5–8, 12–13 July, 3–5, 8 August, 19–20, 22–23, 26–27

September 2022, 12 January 2023

16 January 2023

Judgment reserved.

**Tan Siong Thye J:**

**Introduction**

1 The accused is Yap Pow Foo, a 47-year-old male Singapore citizen (“the Accused”).<sup>1</sup> The victim is a 39-year-old female Chinese national (“the Victim”).<sup>2</sup> On the first day of the trial, the Prosecution made an application for the Court to prohibit the publication of anything that might lead to the identification of the Victim. I granted this application.<sup>3</sup>

2 The Prosecution alleges that the Accused had entered the Victim’s house without her permission in the early hours of 30 January 2017 and raped the

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<sup>1</sup> Agreed Statement of Facts dated 21 June 2022 (“ASOF”) at para 2.

<sup>2</sup> ASOF at paras 3(a) and 3(b).

<sup>3</sup> 28 June 2022 at p 1 (lines 18–24).

Victim. These offences were allegedly committed shortly after the Accused met the Victim for the first time at a KTV lounge located at Bugis Cube (“the KTV Lounge”) on 29 January 2017.

3 Two charges were preferred against the Accused under the Penal Code (Cap 224, 2008 Rev Ed) (“the Penal Code”):<sup>4</sup>

That you, YAP POW FOO,

FIRST CHARGE

between 3:05am and 3:44am on 30 January 2017, at [Address Redacted], did commit rape, *to wit*, you penetrated with your penis the vagina of [the Victim], without her consent, and you have thereby committed an offence under section 375(1)(a) punishable under section 375(2) of the Penal Code (Cap 224, 2008 Rev Ed).

SECOND CHARGE

sometime around 3:05am to 3:44am on 30 January 2017, at [Address Redacted], which is a building used as a human dwelling, did commit housebreaking by night in order to commit an offence punishable with imprisonment, *to wit*, you extracted [the Victim’s] door key from under her door and used it to unlock her door and entered the said unit to commit rape of [the Victim], and you have thereby committed an offence punishable under section 457 of the Penal Code (Cap 224, 2008 Rev Ed); and further, that you were on 9 March 2007 convicted in District Court 8 (*vide* DAC/18174/04) of housebreaking and theft by night under section 457 read with section 458A of the Penal Code (Cap 224, 1985 Rev Ed) and sentenced to three years’ imprisonment and two strokes of the cane, which conviction and sentence has not been set aside to date, and you are thereby liable for additional punishment of caning under section 458A of the Penal Code (Cap 224, 2008 Rev Ed).

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<sup>4</sup>

Arraigned Charges dated 18 April 2022.

4 The above two charges were read to the Accused at the beginning of these proceedings, and he elected to plead not guilty.<sup>5</sup> The Accused thus claims trial to these two charges.

5 The Accused also faces another charge in relation to the harassment of another woman in a separate incident under s 3(1)(b) read with s 3(2) of the Protection from Harassment Act 2014 (Cap 256A, 2015 Rev Ed). For the purposes of the trial, however, the Prosecution applied for the third charge to be stood down.<sup>6</sup>

### **Background facts**

6 The Victim is currently residing in Singapore on a monthly special pass issued by the Immigration and Checkpoints Authority (“ICA”). She is currently unemployed.<sup>7</sup> At the time of the alleged offences, the Victim was residing at a private apartment (“the Apartment”), unit #05-09 (“the Unit”).<sup>8</sup> The Victim also worked as a beautician at that time.<sup>9</sup>

7 The Accused was 42 years old at the time of the offence. He was unemployed.<sup>10</sup>

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<sup>5</sup> Prosecution’s Opening Address dated 21 June 2022 (“POA”) at para 3(c).

<sup>6</sup> POA at para 4.

<sup>7</sup> Agreed Bundle of Documents (“AB”) at p 1.

<sup>8</sup> AB at p 1.

<sup>9</sup> AB at p 4.

<sup>10</sup> AB at p 132.



***Facts leading up to the Accused's commission of the alleged offences***

8 The offences were committed in the early hours of 30 January 2017. The Accused had met the Victim for the first time, a few hours before the incident, on the night of 29 January 2017, at the KTV Lounge.

9 On the afternoon of 29 January 2017, the Victim celebrated Chinese New Year with her friends, namely, Ma Jinzhe (“Ma”), Henry Tan Jun Yuan (“Henry”), Wang Xu Jing (“Wang”), Chen Shuwen (“Angela”) and Heng Kwok Hun (“Heng”) at her Unit. The Victim and her friends drank alcohol and played mahjong and card games while they were at the Unit.<sup>11</sup>

10 Sometime around 10.00pm on 29 January 2017, the Victim and her friends decided to go for a karaoke session at the KTV Lounge.<sup>12</sup> By then, the Victim was “a little intoxicated”.<sup>13</sup> While at the KTV Lounge, the Victim and her friends ordered more alcohol.<sup>14</sup> At about 11.23pm, whilst the group was at the KTV Lounge, Heng received a call from the Accused. The Victim then interrupted this call by snatching Heng’s handphone away. She then spoke to the Accused over the phone and asked him to join them for a drinking session at the KTV Lounge.<sup>15</sup> The Victim did not know the Accused at that time. The Accused was initially hesitant, but the Victim eventually persuaded him to join them. After receiving the exact location from Heng, the Accused drove to the KTV Lounge.

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<sup>11</sup> ASOF at para 6.

<sup>12</sup> ASOF at para 6.

<sup>13</sup> AB at p 1.

<sup>14</sup> AB at pp 1, 4, 11 and 15.

<sup>15</sup> 29 June 2022 Transcript at p 27 (lines 3–11 and 19–28).

11 The Accused arrived at the KTV Lounge at about 12.07am.<sup>16</sup> He met the Victim in person for the first time. While the Victim could not remember her interactions with the Accused, the evidence shows that the Accused and the Victim had chatted for a short while at the KTV Lounge.<sup>17</sup>

12 Shortly after, the Victim had collapsed from heavy intoxication.<sup>18</sup> The Victim lay asleep on the couch at the KTV Lounge, and her friends could not wake her up. Given her incapacitated state, the Accused and Henry carried her out of the KTV Lounge to the ground floor.<sup>19</sup> While Wang took a cab home herself,<sup>20</sup> the Accused offered to drive the rest of the group home.<sup>21</sup> All of them accepted the Accused's offer and the Accused proceeded to drive them to their respective residences at around 12.45am on 30 January 2017.

13 The Accused drove first to the Apartment. As the Victim was completely intoxicated and unconscious, Henry and Ma had to carry her to the Unit.<sup>22</sup> The Accused initially remained in the car to clean up the Victim's vomit. However, as Henry and Ma had not returned for some time, the Accused went up to the Unit to check on them. When the Accused reached the Unit, he helped Henry and Ma put the Victim on the bed.<sup>23</sup> The Accused, Henry and Ma then left the Unit. Henry locked the main door behind them and slipped the key underneath

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<sup>16</sup> 4 August 2022 Transcript at p 42 (lines 19–20 and 26–29).

<sup>17</sup> AB at p 15; 29 June Transcript 2022 at p 32 (lines 9–12).

<sup>18</sup> ASOF at para 7.

<sup>19</sup> AB at p 5.

<sup>20</sup> AB at p 5.

<sup>21</sup> ASOF at para 7.

<sup>22</sup> ASOF at para 8.

<sup>23</sup> ASOF at para 9; AB at pp 6 and 12.

the door.<sup>24</sup> The Accused proceeded to send the rest of the Victim's friends back home.

***The commission of the alleged offences and the arrest of the Accused***

14 Sometime around 3.04am on the same day, the Accused returned to the Unit by himself and entered the Unit.<sup>25</sup> Prior to that, the Accused had called the Victim on her handphone numerous times. There was, however, no response from the Victim. The Accused then entered the Unit and raped the Victim. In the course of the rape, the Victim was awakened. The Accused left the Unit shortly after at around 3.44am.<sup>26</sup> Shortly after the Accused left, he called the Victim's handphone numerous times. The evidence shows that the Victim answered the handphone a few times, but it was unclear what was said between the both of them. The Victim then called Ma to inform Ma of the alleged rape. The Victim also called the police to lodge a report that the Accused had raped her.<sup>27</sup>

15 Subsequently, the police and Ma came to the Unit. After the police had questioned the Victim, she was brought to KK Women's and Children's Hospital ("KKH") for a medical examination. She was attended to by Dr Karuna Lional ("Dr Lional") from the Department of Obstetrics and Gynaecology. After the medical examination, the Victim returned to the Unit in the afternoon. Shortly after the Victim returned, the Accused called Ma, who was in the Unit, to ask if he could speak to the Victim. There was a short conversation between the Accused and the Victim before the Victim hung up the call. There was also

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<sup>24</sup> ASOF at para 9; AB at p 12.

<sup>25</sup> ASOF at para 10.

<sup>26</sup> ASOF at para 12.

<sup>27</sup> 28 June 2022 Transcript at p 46 (lines 14–15).

a discussion on monetary compensation. Ma and Angela sought to persuade the Victim to accept the Accused's compensation. While the Victim had initially considered the Accused's offer, she ultimately rejected it. Instead, she returned to the police station to provide a statement on the incident.<sup>28</sup>

16 Shortly after, the Accused was arrested by the investigation officer, SIO Mohamad Noor Aboe Bakar ("SIO Noor").<sup>29</sup> On the same day of the Accused's arrest, the police retrieved the denim shorts that the Victim was wearing at the material time. During the Victim's medical examination by Dr Lionel at KKH, samples of the Victim's blood and urine, as well as swabs from her high vaginal area and urethra were obtained. The Victim's denim shorts, her blood and urine samples, and the swabs were sent to the Health Sciences Authority ("HSA") for analysis.<sup>30</sup>

17 On 4 July 2017, the Accused was examined by Dr Darren Goh Wee Yian ("Dr Goh") at the Department of Urology at Changi General Hospital. Dr Goh concluded that the Accused was not suffering from erectile dysfunction.<sup>31</sup>

18 On 25 and 29 September and 2 October 2020, the Accused was examined by Dr Stephen Phang Boon Chye ("Dr Phang") from the Institute of Mental Health ("IMH").<sup>32</sup> The Accused was assessed not to be of unsound mind at the time of the alleged offences. However, the Accused was characterised by Dr Phang as having had a past history of fetishistic sexual interest, although

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<sup>28</sup> AB at p 2; 28 June 2022 Transcript at p 49 (lines 18–19).

<sup>29</sup> ASOF at para 14.

<sup>30</sup> ASOF at paras 14 and 20–21.

<sup>31</sup> ASOF at para 23.

<sup>32</sup> AB at p 34.

Dr Phang acknowledged that nothing turned on this observation on the present offence against the Accused.<sup>33</sup>

## **The parties' cases**

### ***The Prosecution's case***

19 The Prosecution's case is that the Accused committed the following two offences against the Victim at the Unit on the same day:<sup>34</sup>

- (a) one charge of house-breaking by night to commit an offence punishable with imprisonment (s 457 read with s 458A of the Penal Code) ("the House-breaking Charge"); and
- (b) one charge of rape (s 375(1)(a) of the Penal Code) ("the Rape Charge").

20 The Prosecution relies on the evidence of 38 witnesses<sup>35</sup> and more than 80 exhibits<sup>36</sup> to prove, beyond a reasonable doubt, that the Accused committed the offences as charged. The evidence-in-chief of the witnesses are adduced by way of conditioned statements admissible under s 264(1) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC"), and supplemented, where necessary, with their oral testimonies.<sup>37</sup> Thirteen witnesses testified in court for the Prosecution's case:

- (a) The Victim.

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<sup>33</sup> AB at p 43.

<sup>34</sup> POA at paras 3(a) and 3(b).

<sup>35</sup> List of Witnesses filed on 12 October 2022.

<sup>36</sup> List of Exhibits filed on 12 October 2022.

<sup>37</sup> POA at para 6.

- (b) Ma.
- (c) Henry.
- (d) Angela.
- (e) Dr Edmund Lee Jon Deoon (“Dr Lee”), a consultant from the HSA. He is based at the Pharmacology Department of the National University of Singapore.
- (f) Dr Guo Song (“Dr Guo”), a psychiatrist from the IMH. He examined the Victim.
- (g) Dr Goh, the doctor from the Department of Urology at Changi General Hospital. He examined the Accused.
- (h) Dr Phang, the psychiatrist from the IMH. He examined the Accused.
- (i) Ms Tang An Ting Nicole (“Ms Tang”), an analyst from the HSA’s DNA Profiling Laboratory. She examined the evidence seized by the police for traces of semen and produced a report detailing her analysis of the evidence.
- (j) IO Noor, the investigation officer from the Serious Sexual Crime Branch at the Criminal Investigation Department (“CID”). He was the initial investigation officer tasked with handling the Victim’s police report.
- (k) Dr Lionel, the doctor from the Department of Obstetrics and Gynaecology at KKH. She examined the Victim on the same day of the alleged rape.

- (l) SIO Foo Fang Chee (“SIO Foo”), an investigation officer from the Serious Sexual Crime Branch at the CID. He took over the investigation of the present case from SIO Noor.
- (m) Mdm Tan See Hua (“Mdm Tan”), the Mandarin interpreter for the Accused during the recording of the Accused’s two long statements by SIO Noor.<sup>38</sup> The Prosecution called Mdm Tan as a rebuttal witness on the last day of the trial.

21 The Prosecution also sought to rely on the evidence of Wang. She was abroad and could not be located to secure her attendance in Court, whether to testify physically in Court or by way of video-link evidence. Wang’s conditioned statement was admitted under s 32(1)(j)(iii) of the Evidence Act 1893 (2020 Rev Ed) (“EA”).

22 In respect of the House-breaking Charge, the Prosecution submits that the Accused had committed house-breaking by night when, in the early hours of 30 January 2017, he retrieved the key to the Unit from under the main door and used it to enter the Unit without the Victim’s permission.<sup>39</sup> The purpose of the unlawful entry was to rape the Victim. Thus, the Accused had committed house-breaking by night. The Prosecution relies on the Accused’s statements voluntarily recorded under s 22 of the CPC dated 31 January 2017 (“the 31 January Statement”) and 27 October 2017 (“the 27 October Statement”), and the Accused’s pre-polygraph interview which was recorded by SSI Chea Wai Choong (“SSI Chea”) dated 27 July 2021 (“the Pre-Polygraph Interview”) to support the House-breaking Charge. The Prosecution also relies on the Accused’s antecedent conviction of house-breaking and theft by night to

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<sup>38</sup> AB at pp 145–146.

<sup>39</sup> POA at paras 11 and 12.

support the additional element of the House-breaking Charge under s 458A of the Penal Code

23 In respect of the Rape Charge, the Prosecution submits that the Accused penetrated the Victim's vagina with his penis while she was heavily intoxicated and was unable to give her consent.<sup>40</sup> The crux of the Prosecution's case was two-fold. First, the Accused had in fact penetrated the Victim's vagina with his penis. Second, the Accused knew that the Victim was intoxicated and was unable to give her consent. In support, the Prosecution relies on two reports produced by the HSA's DNA Profiling Laboratory and the expert testimony of Ms Tang. Further, the Prosecution relies on the Victim's testimony, the Close Circuit Television ("CCTV") footage recorded at the lift lobby of the Apartment showing the Victim's unconscious state, the expert testimonies of Dr Lee and Dr Guo, the outgoing and incoming calls from the Victim's handphone at the material time of the rape, and the testimonies of the Prosecution's witnesses. The Prosecution submits that the Victim could not have given consent to the sexual intercourse given that she was heavily intoxicated. Thus, the Accused had penetrated the Victim's vagina with his penis without her consent.

#### *The Victim's evidence*

24 The Prosecution relies on the Victim's evidence that she had not consented to have sexual intercourse with the Accused. The Victim said that she has poor alcohol tolerance. On the day the offence was committed, the Victim had consumed large quantities of alcoholic drinks, both at the Unit and then at the KTV Lounge. The Prosecution submits that, given the Victim's level of intoxication, she would have been unconscious throughout the night up until the

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<sup>40</sup> POA at para 12.



point she was raped. Indeed, the Victim’s next immediate recollection after her time at the KTV Lounge was waking up to find the Accused on top of her, with his penis in her vagina.<sup>41</sup> As such, the Victim was not in a state to give consent to the Accused’s act of penetrating her vagina with his penis. According to the Prosecution, therefore, the elements of the Rape Charge are made out.<sup>42</sup>

### *Psychiatric reports*

25 The Prosecution relies on the evidence of Dr Guo and Dr Phang, both of whom are psychiatrists at the IMH.

26 Dr Guo had interviewed the Victim on 30 May 2019 and 24 July 2019. Following those interviews, Dr Guo prepared a medical report dated 29 October 2019. Dr Guo opined that the Victim had low alcohol tolerance. He was of the view that she was in a state of high alcohol intoxication at the time of the rape. Thus, she would not have had sufficient cognitive abilities or mental capacity to consent or reject the Accused’s request for sexual intercourse given her state of alcohol intoxication.<sup>43</sup>

27 Dr Phang, on the other hand, had interviewed the Accused on three separate occasions in September and October 2020 (see [18] above). Dr Phang’s assessment was in the medical report dated 8 October 2020. The report states that the Accused was not suffering from any psychiatric disorder at the time of the offences on 30 January 2017. However, Dr Phang opined that the Accused’s increasingly severe sexual conducts, *ie*, from pilfering lingerie to facilitate masturbation to committing an actual sexual offence, warranted future

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<sup>41</sup> POA at para 12.

<sup>42</sup> Prosecution’s Closing Submissions dated 11 October 2022 (“PCS”) at paras 40–41.

<sup>43</sup> PCS at para 38.

psychiatric monitoring as they demonstrated an augmented degree of risk of serious sexual offending.

*HSA reports and Dr Lee's expert reports*

28 The Prosecution relies on two sets of evidence from the HSA. The first set of evidence relates to the DNA reports produced by Ms Tang from the HSA's DNA Profiling Laboratory. The first report was dated 21 June 2017. It indicated a positive finding of semenogelin and prostate-specific antigen located on both the crotch area and the interior of the Victim's denim shorts which she wore at the time of the offence. Further, a deoxyribonucleic ("DNA") profile (spermic fraction) corresponding to the Accused's DNA was also found in the interior of the Victim's shorts.<sup>44</sup> The second report, also dated 21 June 2017, indicated a positive finding of semenogelin in respect of swabs taken from the Victim's high vaginal area. Further, the semenogelin contained a DNA profile (spermic fraction) corresponding to the Accused's DNA.<sup>45</sup>

29 The second set of evidence relates to the Victim's blood and urine samples which were sent to the HSA for analysis, the results of which were contained in two reports. The first report dated 13 February 2017 was produced by Ms Fu Baohui, an analyst with the HSA's Analytical Toxicology Laboratory. That report states that less than 20 mg/100 ml of ethanol was found in the Victim's blood sample and 99 mg/100 ml of ethanol was found in the Victim's urine sample.<sup>46</sup> The Victim's blood and urine samples were obtained from her during her medical examination at KKH on 30 January 2017 after the rape. Those findings, together with the additional information provided by the police,

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<sup>44</sup> ASOF at para 22; POA at para 16.

<sup>45</sup> POA at para 17

<sup>46</sup> POA at para 18.

were submitted for analysis by Dr Lee. Dr Lee's findings were in the second report dated 12 April 2017.<sup>47</sup> That report states that the average blood alcohol content ("BAC") in the Victim's body at the material time of the rape was 144 mg/100ml. According to Dr Lee, that amount would be consistent with significant mental and physical impairment.<sup>48</sup> The parties do not dispute the accuracy of Dr Lee's report.<sup>49</sup>

*Text messages and call logs retrieved from the Accused's handphone and the Victim's handphone*

30 The Prosecution relies on three reports provided by forensic examiners from the Technology Crime Forensic Branch ("TCFB") of the CID.

31 The first two reports contain the findings of the TCFB forensic examiners following a forensic examination conducted on the Victim's handphone. The outgoing and incoming calls on the Victim's handphone at the material time of the rape ("the Call Logs") were retrieved. They also retrieved various messages sent between the Victim and her contacts *via* WeChat and WhatsApp. The Call Logs showed that on 30 January 2017, between 2.44am and 6.44am, various calls were exchanged between the Victim and the Accused, although not all of the calls went through.

32 The third report contains the findings of the TCFB forensic examiners on the Accused's handphone. The call records and various messages sent between the Accused and his contacts *via* WeChat and WhatsApp were retrieved. Three image files were also retrieved from the Accused's handphone.

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<sup>47</sup> AB at p 22.

<sup>48</sup> POA at para 19; PCS at para 38(a); AB at p 23.

<sup>49</sup> ASOF at para 25.

The WeChat calls and messages sent between the Accused and Ma revealed that the Accused offered to pay the Victim monetary compensation following the rape.

33 Based on the totality of the evidence, the Prosecution argues that the Accused had committed the offences for which he stands charged.

*The Defence's case*

34 The Accused denies having entered the Unit without the Victim's permission. He also denies that he had penetrated the Victim's vagina with his penis without the Victim's consent.<sup>50</sup> Apart from the Accused who chose to testify in his defence, the Defence also called his long-time childhood friend, Heng, to be his witness.

*The House-breaking Charge*

35 The Accused's defence in relation to the House-breaking Charge is that he did not use either a satay stick or his Genting membership card to retrieve the key from under the main door of the Unit to gain entry. Instead, he claims that he knocked on the door and rang the doorbell. The Victim then opened the door and invited him into the Unit.<sup>51</sup> Accordingly, the offence of house-breaking by night under s 457 of the Penal Code is not made out.

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<sup>50</sup> Defence's Case ("DC") at para 26.

<sup>51</sup> DC at para 14; Defence's Closing Submissions dated 11 October 2022 ("DCS") at para 130.

*The Rape Charge*

36 The Accused testified that his penis did not fully penetrate the Victim's vagina.<sup>52</sup> He said that his penis only penetrated her vagina a little bit,<sup>53</sup> *ie*, only the head of his penis entered her vagina.

37 The Accused also vehemently maintained that the sexual intercourse with the Victim was consensual. The Defence submits that the Victim was not so intoxicated that she was unable to consent to the sexual intercourse. Rather, she appeared to be awake and conscious, although slightly intoxicated. Further, the Defence submits that the Victim had, by her words and conduct, implicitly consented to the Accused's act of penetrating her vagina with his penis. Accordingly, the Defence alleges that the offence of rape under s 375(1)(a) of the Penal Code is not made out as the Victim gave her consent.

*The Victim's ulterior motives in reporting the Accused*

38 The Defence also suggests that the Victim had fabricated the allegations of rape against the Accused as she had two ulterior motives.<sup>54</sup>

39 The first was for the Victim's stay in Singapore to be extended by way of a special pass granted by the ICA. Thus, the Victim falsely alleged that the Accused had raped her so that she could continue to stay in Singapore. Prior to the present case, the Victim was a prosecution's witness involving a sham marriage ("the Sham Marriage Proceedings"). As a result of that case, the Victim's stay in Singapore was extended by way of a special pass to facilitate investigations and prosecution of the offender involved in the Sham Marriage

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<sup>52</sup> DC at paras 18 and 25.

<sup>53</sup> DCS at para 304.

<sup>54</sup> DCS at pp 213–214 (para 54).

Proceedings. At the material time when the Accused committed the alleged offences, the Sham Marriage Proceedings she was involved in was about to conclude. Hence, the Victim would have to return to China. The Defence thus argues that the Victim had fabricated the rape allegation, so that her special pass would be extended and she could continue to stay in Singapore.

40 The Defence further alleges that the Victim has a second and related ulterior motive, which was to obtain monetary compensation from the Accused in order to alleviate her financial difficulties. The Defence submits that the Victim's father had met with a road accident and was hospitalised in China. Thus, the Victim required money for her father's medical treatment. In order to pay for her father's medical bills, the Victim resorted to making a false report against the Accused and claimed monetary compensation from the Accused before the Victim would withdraw the police report. When the Accused failed to pay the Victim compensation on her terms, she lodged a police report against the Accused for raping her.<sup>55</sup>

## **My decision**

### ***The applicable law***

#### *House-breaking by night*

41 For the Accused to be guilty under s 457 of the Penal Code, the Prosecution must establish, beyond a reasonable doubt, that he had committed "house-breaking by night". "House-breaking by night" is defined under s 457 of the Penal Code, and it reads as follows:

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<sup>55</sup> DCS at pp 213–214 (para 54).

**Lurking house-trespass by night or house-breaking by night in order to commit an offence punishable with imprisonment**

*457. Whoever commits lurking house-trespass by night or house-breaking by night, in order to commit any offence punishable with imprisonment, shall be punished with imprisonment for a term which may extend to 5 years, and shall also be liable to fine; and if the offence intended to be committed is theft, the term of the imprisonment shall be not less than 2 years and not more than 14 years.*

[emphasis added]

42 Section 446 of the Penal Code defines “house-breaking by night” as the commission of house-breaking “after 7 p.m. and before 7 a.m.”. Section 445(d) of the Penal Code lists the following situation in which a person has committed “house-breaking”:

**House-breaking**

*445. A person is said to commit “house-breaking”, who commits house-trespass if he effects his entrance into the house or any part of it in any of the 6 ways hereinafter described; or if, being in the house or any part of it for the purpose of committing an offence, or having committed an offence therein, he quits the house or any part of it in any of such 6 ways:*

...

- (d) *if he enters or quits by opening any lock in order to the committing of the house-trespass, or in order to the quitting of the house after a house-trespass; ...*

[emphasis added]

43 Section 445 of the Penal Code refers to “house-trespass”, which is defined in s 442 of the Penal Code as follows:

**Lurking house-trespass.**

**442.** Whoever commits criminal trespass by entering into, or remaining in, any building, tent or vessel used as a human dwelling, or any building used as a place for worship or as a place for the custody of property, is said to commit “house-trespass”.

44 Section 442 of the Penal Code in turn refers to “criminal trespass” which is defined in s 441 of the Penal Code as follows:

**Criminal trespass**

**441.** Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit “criminal trespass”.

45 To establish the offence of house-breaking by night, the Prosecution must prove, beyond a reasonable doubt, that (a) the Accused had committed the act of house-breaking “after 7 p.m. and before 7 a.m.”; (b) the Accused had unlawfully entered the Unit without the Victim’s permission; (c) the Accused entered the Unit with the intent to commit an offence, namely the rape of the Victim.

46 I note that the Accused has an antecedent conviction for house-breaking and theft by night (see [3] above). Accordingly, it is necessary to consider s 458A of the Penal Code, which reads as follows:

**Punishment for subsequent offence under section 454 or 457**

**458A.** Whoever, having been convicted of an offence under section 454, 455, 457 or 458, commits an offence under section 454 or 457 shall be punished with caning in addition to the punishment prescribed for that offence.

47 Finally, I note that s 457 of the Penal Code was repealed in 2019 and several types of house-breaking offences, namely s 448 to s 451 were enacted in its place on 1 January 2020 and remain in the present 2020 revised edition of the Penal Code (“the Penal Code (2020 Rev Ed)”). Section 451 of the Penal



Code (2020 Rev Ed) is the relevant type of house-breaking offence in this case and it reads as follows:

**House-breaking in order to commit an offence punishable with imprisonment**

**451.** Whoever commits house-breaking in order to commit any offence punishable with imprisonment, shall be punished with imprisonment for a term which may extend to 10 years, and shall also be liable to fine.

48 Despite this amendment, it is correct that the Prosecution proceeds under s 457 of the Penal Code. This is because the applicable law at the time of the house-breaking was s 457 of the Penal Code and not s 451 of the Penal Code (2020 Rev Ed), which was not in the Penal Code in force at that time (see also *Public Prosecutor v Lam Leng Hung and other appeals* [2017] 4 SLR 474 at [14]). For the avoidance of doubt, however, the Accused's act of house-breaking, if committed on or after 1 January 2020, would still be an offence today, albeit under s 451 of the Penal Code (2020 Rev Ed).

*Rape and the element of consent*

49 For the Accused to be guilty of rape, the Prosecution must establish, beyond a reasonable doubt, the elements of rape under s 375(1)(a) of the Penal Code:

**Rape**

**375.**—(1) Any man who penetrates the vagina of a woman with his penis —

(a) without her consent ...

...

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.

...

50 To support a charge of rape under s 375(1)(a) of the Penal Code, the Prosecution must establish, beyond a reasonable doubt, that the Accused had: (a) penetrated the Victim’s vagina with his penis; and (b) the said act of penetration was done without the Victim’s consent.

51 In respect of the element of consent, s 90(b) of the Penal Code is relevant, and reads as follows:

**Consent given under fear or misconception, by person of unsound mind, etc., and by child**

**90.** A consent is not such a consent as is intended by any section of this Code —

...

- (b) if the consent is given by a person who, from ... intoxication ... is unable to understand the nature and consequence of that to which he gives his consent ...

52 Thus, s 90(b) of the Penal Code invalidates any consent if the Victim was so intoxicated that the law deems such consent to be invalid or vitiated (see *Public Prosecutor v Pram Nair* [2017] 2 SLR 1015 (“*Pram Nair*”) at [62]). In *Pram Nair*, the Court of Appeal at [93] endorsed the following passage from *Ratanlal & Dhirajlal’s Law of Crimes: A Commentary on the Indian Penal Code 1860 vol 2* (CK Thakker & M C Thakker eds) (Bharat Law House, 26<sup>th</sup> Ed, 2007) which elaborated on the concept of consent:

... Consent on the part of a woman, as a defence to an allegation of rape, 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 ... A woman is said to consent only when she freely agrees to submit herself, while in free and unconstrained possession of her

physical and moral power to act in a power she wanted. Consent implies the exercise of free and untrammelled right to forbid or withhold what is being consented to; it is always a voluntary and conscious acceptance of what is proposed to be done by another and concurred in by the former.

53 In other words, to demonstrate that an individual had voluntarily consented to sexual intercourse with another person, that individual must have voluntarily and consciously agreed to have sex with the other person.

54 The Court of Appeal in *Pram Nair* also prescribed some guiding principles at [96] when dealing with the issue of whether an intoxicated person has the capacity to consent to sexual intercourse:

96 We would identify the following as the relevant general principles:

(a) Under s 90(b), a person who is unable to understand the nature and consequence of that to which the person has allegedly given his consent has no capacity to consent.

(b) The fact that a complainant has drunk a substantial amount of alcohol, appears disinhibited, or behaves differently than usual, does not indicate lack of capacity to consent. Consent to sexual activity, even when made while intoxicated, is still consent as long as there is a voluntary and conscious acceptance of what is being done.

(c) *A complainant who is unconscious obviously has no capacity to consent.* But a complainant may have crossed the line into incapacity well before becoming unconscious, and whether that is the case is evidently a fact-sensitive inquiry.

(d) Capacity to consent requires the capacity to make decisions or choices. *A person, though having limited awareness of what is happening, may have such impaired understanding or knowledge as to lack the ability to make any decisions, much less the particular decision whether to have sexual intercourse or engage in any sexual act.*

(e) *In our view, expert evidence – such as that showing the complainant’s blood alcohol level – may*

*assist the court in determining whether the complainant had the capacity to consent.*

[emphasis added]

55 Where a complainant is so heavily intoxicated that she is unconscious, therefore, she cannot be said to have the capacity to consent to sexual intercourse. That much is self-explanatory. On the other hand, where a complainant is intoxicated, but not unconscious, whether that complainant has the capacity to consent to sexual intercourse is a more fact-sensitive inquiry. The issue of the complainant's capacity to consent turns on the degree of impairment in the complainant's understanding or knowledge. The degree of impairment must be such that the court is satisfied that the complainant lacked the ability to make any decisions. Accordingly, where a complainant is so heavily intoxicated to the extent that she suffers from alcohol-induced delirium, that complainant will be incapable to consent to sexual intercourse. To ascertain whether the Victim was capable of consenting to sexual intercourse with the Accused, the Court may have recourse to evidence such as the Victim's BAC level.

*The threshold of proof in the context of mutually exclusive testimonies*

56 I am mindful that no one had witnessed the Accused's commission of the sexual acts on the Victim in her bedroom at the material time. However, the Prosecution's case does not rest solely on the Victim's testimony of the alleged rape, as there is ample corroborative evidence to buttress the Victim's account of the events and her state of intoxication both before and after the rape. This includes the corroborative scientific evidence in the form of Dr Guo's and Dr Lee's reports and testimonies, the testimonies of the other Prosecution's witnesses present at the festive celebration at the Apartment and the KTV Lounge, and the Accused's statements to the police. This is, therefore, not a case

where there is no other evidence, and the Court must simply weigh the Victim's word against the Accused's. Thus, the "unusually convincing" burden of proof may not be necessary in this case (see *Public Prosecutor v Ridhaudin Ridhwan bin Bakri and others* [2019] SGHC 105 at [114]–[116], affirmed by the Court of Appeal in *Asep Ardiansyah v Public Prosecutor* [2020] SGCA 74 at [28]). This test was explained by the Court of Appeal in *AOF v Public Prosecutor* [2012] 3 SLR 34 ("*AOF*") at [111]:

It is well-established that in a case where no other evidence is available, a complainant's testimony can constitute proof beyond reasonable doubt... but only when it is so 'unusually convincing' as to overcome any doubts that might arise from the lack of corroboration ...

57 I also note the Court of Appeal's explanation in *Haliffie bin Mamat v Public Prosecutor and other appeals* [2016] 5 SLR 636 that the "unusually convincing" standard "does not introduce a new burden of proof [and] ... 'does nothing ... to change the ultimate rule that the Prosecution must prove its case beyond a reasonable doubt, but it does suggest how the evidential Gordian knot may be untied if proof is to be found solely from the complainant's testimony against the accused'" (at [29], citing *XP v PP* [2008] 4 SLR(R) 686 at [31]).

58 Whether or not this standard applies, the burden of proof remains indisputably on the Prosecution to establish each element of the charge beyond a reasonable doubt. The Court must therefore carefully examine all the evidence placed before it to determine if that burden has been satisfactorily discharged. As I shall explain below, I am satisfied that the Victim's account that the sexual intercourse was without her consent can withstand the close scrutiny akin to the high standard of the "unusually convincing" test. Her evidence is credible, reliable, internally consistent and externally consistent with the other evidence before the Court.

59 With these legal principles in mind, I shall set out the issues in the present case.

***The issues***

60 The issues that arise for my consideration in respect of the two charges are primarily factual and are as follows:

(a) In respect of the Rape Charge, the key factual issue is whether the Victim had consented to the Accused's act of performing sexual intercourse, and in particular whether she had consented to the Accused's penetration of her vagina with his penis. The Accused did not deny that his penis penetrated the Victim's vagina, albeit a little bit using the head of his penis. This requires the Court to consider:

(i) Whether the Accused's penetration of the Victim's vagina with the head of his penis is a viable defence.

(ii) The extent of the Victim's intoxication, and whether she was so intoxicated that she would not have been able to give consent.

(iii) Whether the Victim had personal motives to fabricate the Rape Charge against the Accused.

(b) As for the House-breaking Charge, the issue is whether the Victim did in fact invite the Accused into the Unit, or had the Accused entered the Unit unlawfully by retrieving the key from underneath the Unit's main door.

61 I shall deal with the facts pertaining to the Rape Charge first.

***The Rape Charge****The Accused penetrated the Victim with his penis*

62 For there to be rape of the Victim, the Accused's penis must penetrate her vagina. This is not an issue as the Accused admits that his penis did penetrate the Victim's vagina. The Accused admitted in his first statement to the police, *ie*, the 31 January Statement, which was given a day after the rape, that he might have penetrated the Victim's vagina "a few times".<sup>56</sup> However, the Accused attempted to mitigate his conduct by testifying in Court that he had penetrated the Victim's vagina once and it was "[j]ust a bit",<sup>57</sup> in that only the head of his penis went into her vagina.<sup>58</sup>

63 I cannot accept the Accused's explanation. It is not a defence to an offence of rape if the Accused had penetrated the Victim's vagina "a bit" using the head of his penis. Section 375(1)(a) of the Penal Code does not distinguish between full and partial penetration. An offence of rape would have been made out even if the Accused had penetrated the Victim's vagina a little bit if the Victim did not consent to the sexual intercourse.

64 Further, I find that the Accused was not truthful in his testimony when he said he only penetrated "a bit" into the Victim's vagina. Ms Tang explained to the Court that an analysis of the high vaginal swab which Dr Lionel had obtained from the Victim during her medical check-up at KKH tested positive for the Accused's DNA:<sup>59</sup>

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<sup>56</sup> AB at p 137.

<sup>57</sup> 3 August 2022 Transcript at p 47 (lines 24–25); DCS at paras 304 and 306.

<sup>58</sup> 23 September 2022 Transcript at p 45 (lines 16–22).

<sup>59</sup> 7 July 2022 Transcript at p 102 (lines 10–25).

Court: Now, before you do that, can I ask you? This is in relation to the high vaginal swab where you could not conclusively come to a finding that semen was found on that region.

Witness: Yes, that's correct.

Court: Right? However, you found that [A]ccused's DNA present there.

Witness: Yes, Your Honour.

Court: So it could pos---in other words, could I postulate this scenario to you? Can it, therefore, mean that the [A]ccused's penis has gone into the region of the high vagina area?

...

Court: However---

...

Court: ---he had no[t] deposited the semen in that region.

Witness: Your Honour, it's possible.

65 Therefore, even if the Accused did not ejaculate into the Victim's vagina, Ms Tang accepted the possibility that the Accused's penis had entered the Victim's high vaginal area. Dr Lional explained in her oral testimony that the high vaginal swab was "taken from deep into [the Victim's] vagina at the fornix area".<sup>60</sup> This is "8 to 12 centimetres deep" from the surface of the vagina.<sup>61</sup> Thus, the DNA evidence shows that the Accused's penis had in fact penetrated deep into the Victim's vagina.

66 The Accused did not dispute the accuracy and reliability of the scientific evidence indicating the presence of his DNA deep in the Victim's vagina.<sup>62</sup> The irrefutable scientific evidence is inconsistent with his repeated accounts that

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<sup>60</sup> 7 July 2022 Transcript at p 41 (lines 10–12).

<sup>61</sup> 7 July 2022 Transcript at p 45 (lines 21–26).

<sup>62</sup> 26 September 2022 Transcript at p 23 (lines 25–29).



only a little bit of his penis entered the Victim's vagina. If the Accused's version were the truth, his DNA would not have been present deep in the Victim's vagina.

67 When confronted with this forensic evidence on the second last day of the trial, the Accused realised the serious inconsistency in his evidence, and that he had to explain the presence of his DNA deep in the Victim's vagina. He, therefore, claimed, for the first time, to the surprise of everyone in Court, that he had used his finger to penetrate the Victim's vagina.<sup>63</sup> This, he thought, would have been able to explain satisfactorily the presence of his DNA deep in the Victim's vagina. I cannot accept the Accused's very belated explanation. Nowhere in his evidence or throughout the course of his testimony at the trial did the Accused ever claim to have penetrated the Victim's vagina with his finger. Both the Prosecution and the Defence agreed that it was the first time that the Accused mentioned that he also used his finger to penetrate the Victim's vagina.<sup>64</sup> These are the unsatisfactory answers of the Accused in Court:<sup>65</sup>

Court: [Questioning the Accused] ... you have been in this Court for so many days, this is the first time we are hearing that you have used---that you used your finger to penetrate deep into [the Victim's] vagina.

Witness: I think I told [Dr Phang] that I touched---that *I used my hand to touch before I penetrated using my penis.*

Court: Did you tell Dr Phang that you used your finger to penetrate deep into her vagina?

Witness: I don't think I did.

Court: Did you tell anyone that you used your finger to penetrate deep into her vagina?

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<sup>63</sup> 26 September 2022 Transcript at p 24 (lines 6–8).

<sup>64</sup> 26 September 2022 Transcript at p 24 (lines 24–29).

<sup>65</sup> 26 September 2022 Transcript at pp 24 (lines 10–21) and 26 (line 25) to 27 (line 1).

Witness: I don't think I did because I thought this was natural.

Court: So this is the first time we are hearing it, that you have used your finger to penetrate deep into her vagina.

...

Court: ... I'm not very clear in relation to this aspect. Did you penetrate [the Victim's] vagina once or a few times? With your penis. Because now we know that---we know that you also used your finger to penetrate her vagina. So I'm not interested in the---in your finger. Okay, I'm only interested in your penis. How many times you penetrated her vagina?

Witness: *From what I remember, Your Honour, it's probably once, that was when she pushed me away. I probably penetrate her a little bit with my penis because if my penis had penetrated her a few times, she would have pushed me away already.*

[emphasis added]

68 This is one of the many clear examples of the Accused changing and fabricating his evidence on the go when he was on the witness stand. The Accused vacillated in his evidence when he denied that it was not the first time that he had mentioned about using his finger to penetrate the Victim's vagina. It is clear that the Accused lied about informing Dr Phang that he had used his finger to penetrate the Victim's vagina. When he was asked to explain, in the same breath, he retracted that claim and admitted he did not tell Dr Phang that he used his finger to penetrate the Victim's vagina. The Accused also did not deny that he did not inform anyone that he had used his finger to penetrate the Victim's vagina. When he was beleaguered by the evidence that was against him, he finally admitted that this was the first time he had made such a claim.

69 Therefore, I am unable to accept the Accused's explanation that his DNA was found in the Victim's vagina because he had used his finger to

penetrate her vagina. I also disbelieve the Accused's claim that he penetrated a little bit into the Victim's vagina. The presence of the Accused's DNA deep in the Victim's vagina shows that the Accused had fully and completely inserted his penis into the Victim's vagina.

*The Victim could not have consented to sexual intercourse with the Accused*

70 I shall now consider whether, at the material time of the rape, the Victim had consented to have sexual intercourse with the Accused. This is the central plank of the Accused's defence on the Rape Charge.

71 The Accused alleged that the issue of the Victim's consent to the sexual intercourse started when she allegedly became physically intimate with the Accused at the KTV Lounge. The Victim also allegedly gave the Accused her address to the Unit ("the Address"), the access code to her apartment's side gate ("the Access Code"), and her handphone number ("the Phone Number"). The Accused claimed that these actions from the Victim suggested to him that she was inviting the Accused to engage in further acts of physical intimacy and sexual acts at her home.

72 When the Accused returned to the Unit in the early morning of 30 January 2017, he claimed that he rang the doorbell to the Unit numerous times and knocked on the Unit's main door. After some time, the Victim allegedly opened the door and invited the Accused into the Unit.<sup>66</sup> The Accused described the Victim as appearing slightly intoxicated but was otherwise conscious. The Accused further alleged that the Victim spoke to him before she

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<sup>66</sup> 30 June 2022 Transcript at p 18 (lines 1–2).

went to her bedroom. Thereafter, the Accused followed the Victim into her bedroom.<sup>67</sup>

73 When the Accused entered the Victim's bedroom, he claimed that the Victim continued to behave intimately towards him in her bedroom. The Accused undressed the Victim and asked the Victim what clothes she wanted to wear. According to the Accused, the Victim just shook her head and stayed silent. The Accused then used a blanket to cover the Victim and lay beside her. The Accused claimed that they kissed and had intimate physical contact with each other. When the Accused observed that the Victim had groaned in pleasure, he removed his pants and rubbed his penis against her vagina.<sup>68</sup> The Victim supposedly did not protest. The Accused thus perceived that the Victim had implicitly consented, and therefore inserted his penis into the Victim's vagina.<sup>69</sup> When the Victim told him to stop, he immediately withdrew his penis from her vagina.<sup>70</sup> The Defence thus argues that the Victim implicitly consented to all of the intimate physical acts in which both the Accused and the Victim partook, including the Accused's sexual penetration of the Victim's vagina with his penis.

74 In response to the Accused's version of the events, the Victim said that she had no recollection whatsoever of any of the events. She said that "she had no recollection at all that she went to the [main] door to open the door and ... spoken to the [A]ccused".<sup>71</sup> Responding to the Victim's claim that she could not

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<sup>67</sup> 29 June 2022 Transcript at p 54 (lines 4–24).

<sup>68</sup> DC at para 17.

<sup>69</sup> DCS at para 323.

<sup>70</sup> 29 June Transcript at pp 61 (lines 9–29), 62 (lines 7–11), 64 (lines 6–29), 68 (lines 19–30) and 69.

<sup>71</sup> 30 June 2022 Transcript at p 8 (lines 8–10).

recall any of the events as alleged by the Accused, the Defence suggests that it is possible for the Victim to have given her consent to initiate sexual intercourse with the Accused, either by her words or by her conduct, despite her being unable to recall doing so.

75 The Defence relies on the Victim's testimony regarding her prior experience of being unable to recall having consumed noodles when she was intoxicated. While she did in fact consume noodles, the Victim could only remember this after someone had reminded her about that event. According to the Defence, this indicated that the Victim suffered from selective recollection whenever she is intoxicated.<sup>72</sup> It is, therefore, possible that the Victim had indulged in consensual sexual activities in her bedroom, but she could not recall as she was intoxicated.<sup>73</sup> Accordingly, the Defence suggests that the Victim's inability to recall the events that happened at the time surrounding the rape is not a bar to establishing that she did consent to have sexual intercourse with the Accused.<sup>74</sup>

76 The Defence further submits, in the alternative, that the Victim could have given consent to the Accused because she was under the impression that the Accused was her ex-boyfriend, whom she missed very much. The Defence says that this is a possibility because, prior to the alleged rape, the Victim was reminiscing about her ex-boyfriend and was yearning for his return while at the KTV Lounge.<sup>75</sup> The Defence thus suggests that, given the Victim's state of

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<sup>72</sup> DCS at paras 78, 86 and 92; 29 June 2022 Transcript at pp 18 (lines 18–23), 29 (lines 7–9), 30 (lines 5–16), 31 (lines 5–8 and 27–31), 32 (lines 1–8 and 25–29), 34 (lines 8–21) and 68 (lines 8–13).

<sup>73</sup> Defence Closing Submissions dated 11 October 2022 (“DCS”) at para 85.

<sup>74</sup> DCS at p 223 (para 81).

<sup>75</sup> 29 June Transcript at p 76 (lines 4–26).

intoxication, the Victim could have been operating under the mistaken assumption that the Accused was her ex-boyfriend and, therefore, gave her consent to the Accused while operating under this mistaken assumption.<sup>76</sup> In response, the Victim clarified during her re-examination that she did not have any recollection of having sex with her ex-boyfriend before waking up on the morning of 30 January 2017; neither could she have mistaken the Accused as her ex-boyfriend.<sup>77</sup>

77 I do not accept the Defence’s arguments nor the Accused’s version of the events. The Accused’s version of the events is not supported by the objective evidence, rather it is contradicted by such evidence. They include the objective evidence such as the CCTV footage obtained from the basement carpark lift lobby of the Apartment dated 30 January 2017 (“the CCTV Footage”) and the medical evidence adduced before the Court. Further, the Accused’s evidence is also internally and externally inconsistent when compared with the evidence proffered by the other Prosecution’s witnesses. Thus, I find that the Accused presented a false narrative of the events leading up to the rape in order to establish his defence that the Victim had consented to have sexual intercourse with him during their sexual encounter in the early morning of 30 January 2017.

78 I accept the Victim’s evidence as the true account of what had happened at the time of the sexual encounter, *ie*, that she was heavily intoxicated and could not have woken up to open the Unit’s main door to invite the Accused into the Unit and to have consensual sex with the Accused. I find that the Victim’s evidence is supported by the objective evidence and the testimonies of the

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<sup>76</sup> 30 June 2022 Transcript at pp 4 (lines 9–15 and 22–27), 5 (lines 6–9 and 23–30), 6 (lines 1–2), 7 (lines 1–6), 8 (lines 12–22).

<sup>77</sup> 1 July 2022 Transcript at p 40 (lines 15–21).

various Prosecution's witnesses. The evidence points towards the Victim being heavily intoxicated and unconscious at the time of the sexual encounter. Accordingly, I am satisfied that the Prosecution has established the Rape Charge beyond a reasonable doubt.

79 I shall now deal with each of the pieces of evidence in turn.

(1) The CCTV Footage

80 The Prosecution relies on the CCTV Footage, which shows the ground floor lift lobby of the Apartment leading up to the Unit.<sup>78</sup> The CCTV Footage shows Henry carrying the Victim to the lift lobby and appearing exhausted. He was seen placing her on the ground waiting for the lift together with Ma. Ma pressed the lift button to call for the lift. Even though Henry had propped the Victim up against a wall, she could not lean against the wall and tipped over onto the floor. When the lift arrived, Ma held the lift door open while Henry tried to carry the Victim into the lift. He could not carry her fully into the lift but instead carried and dragged her into the lift. When she was brought into the lift, her body was unresponsive, and her limbs were lifeless. This shows that the Victim was impervious to external stimuli and was not even able to exert minimum force to support herself. Indeed, Henry described the Victim as a "dead weight".<sup>79</sup> It is thus clear, from the CCTV Footage, that the Victim was completely unconscious and helpless.

81 Given the Victim's state as depicted in the CCTV Footage, it is highly unlikely that the Victim would have been conscious when the Accused returned to the Unit on the morning of 30 January 2017, after sending the rest of the

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<sup>78</sup> PCS at para 18; Exhibit P12, CCTV footage CH01-20170130-034312-034504.

<sup>79</sup> 8 July 2022 Transcript at p 15 (lines 27–28).

Victim's friends back home. The Defence did not dispute the accuracy and reliability of the CCTV Footage. Indeed, the Defence recognised that the Victim was so intoxicated to the extent that she "couldn't even walk" and had to be carried by Ma and Henry up to the Unit.<sup>80</sup>

82 The CCTV Footage is thus very strong evidence that the Victim was heavily intoxicated and would have been in deep sleep at the material time of the rape which was about two hours later. That explains why the Victim did not respond to any of the Accused's numerous calls which were made during his journey to the Unit the second time (see [31] above). Further, the Accused's claim that the Victim had woken up to his ringing of the Unit's doorbell and knocking on the main door could not have been possible. Indeed, it was inconceivable that the Victim could have brought herself to the main door, opened it, and responded meaningfully and relevantly to the Accused before inviting him in. Instead, it appears that the Victim was and remained completely incapacitated by the heavy intoxication when the Accused returned to the Unit. The CCTV Footage thus supports the Prosecution's case that the Victim could not have given her consent to have sexual intercourse with the Accused.

83 I turn next to analyse the medical evidence adduced by the Prosecution to show that the Victim could not have been conscious right up to the time the Accused penetrated her vagina with his penis.

## (2) The Medical Evidence

84 There are two sets of expert evidence that the Prosecution relies on to support its case that the Victim was so intoxicated that she could not have either been conscious or in the right state of mind to give her consent.

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<sup>80</sup> 29 June 2022 Transcript at p 40 (lines 30 to 31).



## (A) DR LEE'S EXPERT REPORT

85 Dr Lee opined in his expert report that the Victim's BAC level, at the time of the rape, ranged from 79mg/100ml to 232mg/100ml, with the average reading of 144mg/100ml.

86 Dr Lee explained that his findings were based on the report prepared by the HSA's Analytical Toxicology Laboratory which measured the Victim's BAC level during her medical examination at KKH on the morning of 30 January 2017. Using those results, Dr Lee explained that he applied a "non-linear mathematical model" and extrapolated the Victim's BAC level backwards to arrive at the estimated range of BAC at the time of the alleged rape. Dr Lee explained that there were three possible BAC levels which could reflect the approximate BAC level in the Victim's body at the time of the rape. These results were reached by considering three possible metabolic rates: individuals with very rapid metabolic rates; the average metabolic rate of the population; and individuals with slow metabolic rates.<sup>81</sup> Depending on the Victim's metabolic rate, *ie* whether she has a fast, slow or average metabolic rate, her BAC level would also vary, from 232mg/100ml representing the BAC level in the Victim's body at the time of the rape if she had a slow metabolic rate to 79mg/100ml if she had a fast metabolic rate. This range of BAC levels, according to Dr Lee, "may be associated with effects extending from mild to severe intoxication".<sup>82</sup>

87 The Defence submits that Dr Lee's report alone is insufficient to determine the actual effects of intoxication on the Victim at the time of the

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<sup>81</sup> 12 July 2022 Transcript at p 52 (lines 23–32).

<sup>82</sup> AB at p 23.

rape.<sup>83</sup> Dr Lee acknowledged that the effect of intoxication would still vary between individuals:<sup>84</sup>

Q: Yes. But what I mean is that for some individuals, a 50...BAC level can have more impairment to consciousness as compared to another person, that's possible, right?

A: Yes, there's a lot of inter-individual variability in terms of the intoxication that the alcohol produces.

...

Q: And am I also correct to say that one way to get more information as to the actual effect of intoxication on a specific individual is that aside from the BAC level, when one looks at objective evidence such as CCTV footage of how they were behaving at that point in time, that would lead to a more accurate assessment of the level of intoxication, correct?

A: Yes, if you can get the person and you can actually do an experiment on the actual person, then you would be able to get that information. But otherwise, you were dependent on just population information. And so we know that for this concentration, there's a broad range of---of cognitive impairments. The higher the alcohol concentrations, the greater the intoxication and greater cognitive impairment.

Q: Yes.

...

Q: ---okay, if in---in addition to the blood alcohol concentration level and I was interested to know the effects of sedation on that particular patient, that's what we're interested to know, in addition to the BAC level, I also had footage of the patient's psychomotor functions at that point in time. Having this information will lead me to a more accurate clinical assessment, correct? Than---

A: Yes, the more information you have, the better your---your ability to estimate that would be---

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<sup>83</sup> DCS at p 206 (paras 21–22).

<sup>84</sup> 12 July 2022 Transcript at pp 59 (line 9) to 60 (line 12).

Q: Okay, and another source of more information could also be the subjective account given by the patient as to how they were feeling, what they were---their perceptions at that point in time?

A: Yes.

88 Dr Lee’s expert report on the Victim’s BAC level must, therefore, be considered together with the other corroborative evidence available before the Court to ascertain the Victim’s physical and mental state at the time of the rape. The Prosecution thus relies also on Dr Guo’s expert report and testimony to support its case on the extent of the Victim’s intoxication at the time of the rape. Dr Guo opined that the Victim’s physical and mental state at the time of the rape was that she was not capable of giving her consent to have sexual intercourse with the Accused. I shall now consider Dr Guo’s evidence.

(B) DR GUO’S EXPERT REPORT

89 Dr Guo’s evidence is that the Victim was in a state of high alcohol intoxication at the time of the rape. Her mental state would have been “fluctuating between deep sleep and partial awake state”, such that “it is unlikely that she would have fully become alert or recovered from the effects of alcohol intoxication”.<sup>85</sup> Accordingly, she “would not have the cognitive abilities or sufficient mental capacity that is required for either consenting or rejecting the request for sexual intercourse”.<sup>86</sup>

90 In reaching his findings, Dr Guo relied on the HSA toxicology report which indicates the Victim’s estimated BAC level, Dr Lee’s expert report, the CCTV Footage, and the Victim’s recollection of the night’s events which was described to Dr Guo during his interview with the Victim on 30 May 2019 and

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<sup>85</sup> AB at p 28.

<sup>86</sup> AB at pp 28–29.

24 July 2019.<sup>87</sup> Dr Guo also elaborated on several medical concepts related to intoxication during his testimony, which he then used to explain the Victim's physical and mental state at the time of the rape.

91 The first concept is the correlation between the BAC level in an individual's blood and his or her physical and mental state. Dr Guo explained that as an individual consumes alcohol, the BAC level in his or her bloodstream rises. Even when the individual stops consuming alcohol, the BAC level will continue rising until it reaches a peak, before decreasing again.<sup>88</sup>

92 As an individual's BAC level rises, this would lead to the individual first entering a state of disinhibition. Disinhibition refers to an individual's motivation to do an act or behave in a certain manner that would otherwise not have been the case if they were sober. Persons who have consumed alcohol might experience an elevation in mood and make imprudent or careless decisions as a result of being disinhibited.<sup>89</sup> Disinhibition thus affects a person's decision-making process.

93 Once the individual consumes sufficient alcohol, he or she then enters a state of sedation. Dr Guo explained that sedation is the degree of the person's responsiveness to external stimuli.<sup>90</sup> Sedation occurs in a range.<sup>91</sup> Minimal sedation on the one hand would lead to an individual feeling drowsiness or sleepiness.<sup>92</sup> Heavy sedation, on the other hand, may result in a person

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<sup>87</sup> AB at p 26.

<sup>88</sup> 6 July 2022 Transcript at pp 5 (line 13) to 6 (line 3).

<sup>89</sup> 6 July 2022 Transcript at pp 3 (line 21) to 7 (line 12).

<sup>90</sup> 6 July 2022 Transcript at p 7 (lines 17–20).

<sup>91</sup> 6 July 2022 Transcript at p 7 (lines 21–22).

<sup>92</sup> 6 July 2022 Transcript at p 7 (line 27).

experiencing a blackout. Extreme sedation may also result in the person entering a condition of stupor or even coma and may eventually lead to death.<sup>93</sup>

94 Dr Guo further explained that sedation affects a person's psychomotor functions. The greater the extent of an individual's intoxication, the more likely the individual's psychomotor functions would be impaired.<sup>94</sup> Dr Guo drew a distinction between an individual's psychomotor function and consciousness. Consciousness relates to the individual's awareness of his or her surroundings and the ability to respond to his or her surroundings relevantly.<sup>95</sup> It is theoretically possible for an individual to be sedated and for his or her psychomotor functions to be compromised, but yet for him or her to remain conscious.<sup>96</sup> However, the higher the level of intoxication, the less likely that individual will be conscious.<sup>97</sup>

95 Dr Guo also explained that an individual who is heavily sedated due to alcohol intoxication would enter a state of stupor. In this mental state, the person will have no psychomotor functions,<sup>98</sup> and may also be unconscious.<sup>99</sup> Dr Guo further explained that there is a difference between an individual who is in a state of stupor versus an individual who is asleep. When an individual is asleep, it is possible to wake him or her up by applying external stimuli such as slapping or shaking that individual.<sup>100</sup> An individual who is in a state of stupor, on the

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<sup>93</sup> 6 July 2022 Transcript at p 8 (lines 1–3).

<sup>94</sup> 6 July 2022 Transcript at p 9 (lines 3–6).

<sup>95</sup> 6 July 2022 Transcript at p 9 (lines 23–32).

<sup>96</sup> 6 July 2022 Transcript at p 8 (lines 29–32).

<sup>97</sup> 6 July 2022 Transcript at p 10 (lines 5–6).

<sup>98</sup> 6 July 2022 Transcript at p 8 (lines 4–6).

<sup>99</sup> 6 July 2022 Transcript at p 10 (lines 10–14).

<sup>100</sup> 6 July 2022 Transcript at p 10 (lines 21–30).

other hand, would unlikely be awakened despite the application of these external stimuli.<sup>101</sup>

96 Finally, Dr Guo also explained the concept of amnesia. According to him, amnesia is a person's incapability to recollect a certain event, despite being conscious at the time of that event.<sup>102</sup> Amnesia occurs when the part of the brain that is involved in memory coding is impaired by alcohol.<sup>103</sup> Accordingly, the higher the level of intoxication, the greater the likelihood of amnesia.<sup>104</sup> Dr Guo then elaborated on two states of amnesia. In the first state, an individual can suffer from complete amnesia and he or she is unable to recall the events that had occurred. Dr Guo described this as "complete anterograde amnesia". However, Dr Guo clarified that it is possible for that individual to be able to recall the events that occurred despite suffering from complete anterograde amnesia. This can be done either by his or her own efforts, or that individual is reminded of the incident by someone else. In the second state, the individual may be able to remember fragments of the events that occurred. This may occur where another individual had assisted the person in recollecting the events that occurred, such as by showing images or videos to that person. Dr Guo termed this "partial anterograde amnesia".<sup>105</sup>

97 Dr Guo explained that the occurrence of these symptoms is highly specific to each individual's body. However, generally speaking, a person may experience a blackout when he or she suffers from severe alcohol intoxication.

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<sup>101</sup> 6 July 2022 Transcript at pp 10 (line 18) to 11 (line 13).

<sup>102</sup> 6 July 2022 Transcript at p 12 (lines 3–5).

<sup>103</sup> 6 July 2022 Transcript at p 12 (line 26).

<sup>104</sup> 6 July 2022 Transcript at p 12 (lines 27–29).

<sup>105</sup> 6 July 2022 Transcript at pp 14 (line 24) to 16 (line 2).

Further, there will be associated symptoms such as stupor, impairment of psychomotor skills, unconsciousness and amnesia. This will happen at around a BAC level range of between 100mg/100ml and 160mg/100ml.<sup>106</sup> It is also possible for a person with a low alcohol tolerance to experience these symptoms.<sup>107</sup>

98 Dr Guo opined that the Victim would likely have been suffering from amnesia when she was at the KTV Lounge. This is so despite the Victim appearing conscious, as seen from the videos captured on the handphone at the KTV Lounge.<sup>108</sup> Dr Guo noted that the Victim began consuming alcohol in the afternoon on 29 January 2017 while she was celebrating Chinese New Year with her friends at the Unit. The build-up of BAC in her body would thus already have begun by then. Accordingly, the Victim would have experienced the effect of disinhibition caused by the gradual build-up of BAC in her body.<sup>109</sup> When the Victim continued to consume alcohol at the KTV Lounge, there would be a continuous build-up of alcohol in her body. At a certain stage, the BAC level in the Victim would be sufficient to inhibit the memory coding portion of her brain, thereby leading her to suffer from amnesia.

99 Dr Guo further opined that, based on the Victim's rate of consumption of alcohol and assuming that her last alcohol intake was at around 12.45am shortly before she left the KTV Lounge, the highest amount of BAC in the Victim's body would have been around one to two hours after that.<sup>110</sup> Given that

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<sup>106</sup> 6 July 2022 Transcript at pp 12 (line 31) to 13 (line 28).

<sup>107</sup> 6 July 2022 Transcript at p 16 (lines 22–25).

<sup>108</sup> 6 July 2022 Transcript at pp 20 (line 22) to 21 (line 6).

<sup>109</sup> 6 July 2022 Transcript at p 20 (lines 12–21).

<sup>110</sup> 6 July 2022 Transcript at p 18 (lines 28–31).

the Victim was constantly consuming alcohol at the material time, this would lead to a steady increase in the concentration of BAC in her body. This in turn would lead to her becoming increasingly sedated, and her psychomotor functions would gradually become impaired.<sup>111</sup>

100 At the point where the Victim was “knocked out and lying prone on the sofa in the KTV lounge” and was unable to wake up,<sup>112</sup> Dr Guo opined that the Victim was already heavily sedated. Accordingly, the Victim would by then have entered a state of stupor, such that she would have been unconscious. In Dr Guo’s view, this explains why she remained unresponsive to external stimuli and was unable to wake up when she left the KTV Lounge.

101 Dr Guo was then shown the CCTV Footage of Henry and Ma carrying the Victim up to the Unit (see [80] above). The Victim’s unresponsiveness to external stimuli further supports Dr Guo’s finding that she was in a state of stupor. Accordingly, the Victim would have been unconscious and unaware of her surroundings.<sup>113</sup> Dr Guo opined that the Victim’s inability to respond to the numerous calls which the Accused made to her handphone prior to his return to the Unit is consistent with her heavy state of sedation and her being unconscious.<sup>114</sup>

102 It is important to note that Dr Guo explained that the Victim’s average BAC level was about 144mg/100ml at the time of the rape. Hence, her psychomotor functions would have been impaired as she was likely to be in a

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<sup>111</sup> 6 July 2022 Transcript at pp 21 (lines 12–19) and 23 (line 29) to 24 (line 20).

<sup>112</sup> 6 July 2022 Transcript at p 23 (line 29) to 24 (lines 4 and 14).

<sup>113</sup> 6 July 2022 Transcript at p 26 (lines 2–20).

<sup>114</sup> 6 July 2022 Transcript at p 27 (lines 1–7).



state of sedation.<sup>115</sup> Thus, Dr Guo explained that it would not be possible for the Victim to have done all the actions which the Accused had alleged, including responding to the Accused's knocking on the main door of the Unit or the ringing of the doorbell, waking up from her bed, walking to the door, unlocking the door and also pulling it to open the door.<sup>116</sup>

103 Further, given the Victim's state of intoxication and the estimated BAC level in her body, Dr Guo testified that it would have been "almost impossible" for her to have recognised and spoken to the Accused after opening the main door.<sup>117</sup> What the Accused had narrated in respect of the Victim's actions, in Dr Guo's view, involved "complex ... [and] [v]oluntary" actions and was in essence the Victim responding relevantly to her environment.<sup>118</sup> If indeed these had happened, Dr Guo suggested that the Victim would have been able to form a memory of it, such that she would have been able to recall that series of events.<sup>119</sup> Dr Guo also confirmed that, if the Victim was already experiencing amnesia while she was at the KTV Lounge, it would not have been possible for her to have recognised the Accused when she saw him after opening the main door, as the Accused alleged.<sup>120</sup>

104 Even on the Accused's alternate case that the Victim might have mistaken the Accused for her ex-boyfriend (see [76] above), Dr Guo's evidence is that this would not have been possible. On the Accused's version, if the Victim could perform various complex actions, such as walking from her bedroom to the main

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<sup>115</sup> 6 July 2022 Transcript at p 27 (lines 8–23).

<sup>116</sup> 6 July 2022 Transcript at pp 28 (line 22) to 29 (line 11).

<sup>117</sup> 6 July 2022 Transcript at p 44 (lines 13–29).

<sup>118</sup> 6 July 2022 Transcript at p 29 (lines 20–21).

<sup>119</sup> 6 July 2022 Transcript at pp 29 (line 12) to 30 (line 8).

<sup>120</sup> 6 July 2022 Transcript at pp 30 (line 27) to 31 (line 5).

door, unlocking the door, responding and talking to the Accused and walking back to the bedroom to have consensual sex with the Accused, Dr Guo opined that the Victim's cognitive functions and state would have been functioning at full capacity. Accordingly, it would not have been possible for her, at any point in time, to have mistaken the Accused for her ex-boyfriend.<sup>121</sup>

105 Dr Guo opined that the Victim's physical state at the time of the rape was likely to be in a state of sedation, such that her psychomotor functions (and therefore her reaction to external stimuli) would have been impaired. As for her mental state at the time the Accused raped her, Dr Guo explained that the Victim "would have been still fluctuating between deep sleep and partial awake state". This was likely the case, according to Dr Guo, because of the Victim's high average BAC level of 144 mg/100m.<sup>122</sup> In other words, at the time the Accused penetrated the Victim, she was likely in a state of "deep sleep" or in a state of "partial awake". Dr Guo further testified that when the Victim was in a state of "deep sleep", this meant that she would be unconscious, and would definitely not have the capacity to consent. If the Victim was in the "partial awake" state, she would only have a "little bit of awareness" and would not have been conscious enough to appreciate her surroundings and consent to sex.<sup>123</sup> Under these circumstances, Dr Guo concluded that the Victim would not have the cognitive abilities or sufficient mental capacity to consent to the sexual intercourse.

106 In an attempt to discredit Dr Guo's evidence and to cast doubt on the Prosecution's case, the Defence submits that Dr Guo's evidence does not negate

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<sup>121</sup> 6 July 2022 Transcript at pp 42 (line 4) to 43 (line 5).

<sup>122</sup> AB at p 28.

<sup>123</sup> 6 July 2022 Transcript at pp 45 (line 24) to 46 (line 16).

the possibility that the Victim was operating on a level of consciousness that demonstrates her ability to appreciate and know what she was doing. Thus, the Defence submits that it remains possible for the Victim to be capable of giving the Accused her consent to have sexual intercourse. The Defence relies on the following points.

107 First, Dr Guo would not have been able to ascertain how long the Victim had taken to recover from the effects of alcohol intoxication.<sup>124</sup> Accordingly, Dr Guo could not rule out the possibility that the Victim would have already been conscious and awake, although slightly intoxicated, when the Accused arrived at the Unit the second time at approximately 3.04am on 30 January 2017.<sup>125</sup>

108 Second, the Defence relies on Dr Guo's concession that he would not have been able to conclusively say, simply based on the estimated reading of the Victim's BAC level at 144 mg/100ml, that she was so intoxicated as to be in a state of unconsciousness and was, therefore, unable to give consent.<sup>126</sup> The Defence submits that Dr Guo acknowledged that he did not have the benefit of any objective evidence at the time of the rape to ascertain whether the Victim had the capacity to consent to the sexual intercourse.<sup>127</sup> The Defence further points out Dr Guo's concession that it was not possible to know the exact BAC level in the Victim's body from 3.04am to 3.44am, *ie*, the time the Accused

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<sup>124</sup> DCS at para 174 and p 208 (para 33); 6 July 2022 Transcript at p 76 (lines 19–22).

<sup>125</sup> DCS at pp 208 (para 34) and 225 (para 86); 6 July 2022 Transcript at p 77 (lines 9–18).

<sup>126</sup> DCS at para 170, pp 208 (para 37) and 225 (para 86); 6 July 2022 Transcript at p 93 (lines 6–11).

<sup>127</sup> DCS at para 168 and p 207 (para 30).

gained entry to the Unit on the second occasion until the Accused raped the Victim and left the Unit.<sup>128</sup>

109 Finally, the mere fact of the Victim being unable to recall that she had given consent to the Accused does not necessarily negate this possibility. Instead, this could be attributed simply to the Victim suffering from amnesia. In making this point, the Defence relies on Dr Guo's evidence that, while she was at the KTV Lounge, the Victim appeared to be conscious and aware of what she was doing, but she was in fact in a state of blackout and could not remember what she was doing at that time.<sup>129</sup> The Defence, therefore, suggests that the Victim could have been in a similar state at the time the Accused reached the Unit at 3.04am.<sup>130</sup> That would explain why the Victim was unable to recall the fact of her opening the main door, inviting the Accused into the Unit, and having consensual sex with him. Accordingly, the Defence submits that the Victim knew what she was doing; she had consensual sexual intercourse with the Accused, albeit she was unable to remember that she had in fact given her consent.

110 I am unable to accept the Defence's submission. I am aware that Dr Guo did mention in his cross-examination that, based solely on her estimated BAC level, the Victim could possibly be conscious at the material time of the rape. It is important to note, however, that Dr Guo gave his views following the Defence's suggestion to rely only on the Victim's estimated BAC level at the time of the rape, to the exclusion of other relevant evidence before him that he would have to consider in order to arrive at a proper clinical assessment of the

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<sup>128</sup> DCS at p 207 (para 31).

<sup>129</sup> 6 July 2022 Transcript at p 78 (lines 7–18).

<sup>130</sup> DCS at para 176.

Victim's physical and mental state at the time of the rape.<sup>131</sup> Dr Guo correctly and appropriately relied on three pieces of evidence, namely the HSA report with the estimated calculation of the Victim's BAC level at the material time of the rape, the CCTV Footage which offered a visual depiction of the Victim's unconscious state when she was carried to the Unit at 1.19am, and the Victim's own account of the rape. I am satisfied that Dr Guo's approach, which was based on the best available evidence to him, demonstrated a sound, logical and holistic clinical assessment of the Victim's physical and mental state following alcohol intoxication. Further, the evidence that Dr Guo relied on in reaching his conclusions is objective. I find the Defence's suggestion for Dr Guo to ignore these other crucial pieces of evidence to be highly artificial and would not have been reliable as it ignored the presence of other relevant evidence.

111 Finally, I do not accept the Defence's suggestion that the Victim was suffering from amnesia and hence was unable to recall whether she did in fact consent to have sexual intercourse with the Accused and that this does not negate the possibility that she did indeed give consent. This simply goes against the weight of the undisputed scientific medical evidence before the Court. As Dr Guo explained, the Victim was extremely intoxicated at the time of the rape, such that she was fluctuating between a state of "deep sleep" (and was thus unconscious) and "partial awake" (that she had limited awareness of her surroundings). It could simply not have been the case that the Victim was merely suffering from amnesia. Further, Dr Guo also explained that it was not possible for the Victim to be suffering from amnesia at that time, given that her BAC level was descending at the time of the rape.<sup>132</sup>

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<sup>131</sup> 6 July 2022 Transcript at pp 93 (line 15) to 100 (line 3).

<sup>132</sup> 6 July 2022 Transcript at pp 14 (line 13) to 16 (line 29).

112 I accept Dr Guo's evidence as supporting the Prosecution's case that the Victim lacked the capacity to consent to have sexual intercourse with the Accused due to her state of heavy intoxication.<sup>133</sup>

(3) Call Logs

113 I shall now deal with the parties' submissions on the Call Logs.

114 When the Accused was on his way to the Apartment after dropping Heng off and prior to the Accused entering the Unit the second time, he made numerous calls to the Victim's handphone. In this respect, the Call Logs showed that the Accused made the first call on 30 January 2017 at 2.44am, and the last call at 3.04am on the same day.<sup>134</sup> A total of 12 calls were made by the Accused to the Victim's handphone. The Victim did not answer any of the Accused's phone calls.<sup>135</sup>

115 Shortly after the Accused left the Unit after the rape, the Call Logs showed numerous incoming and outgoing calls between the Victim and several numbers. According to the Victim, some of these calls were erroneous calls that she made while she was still intoxicated.<sup>136</sup> The Victim testified that she had received calls from a number which she did not recognise at first as it was not in her handphone's contact list, but she later recognised that it was the Accused's handphone number.<sup>137</sup> The Call Logs also showed that some of these calls between the Victim and the Accused went through, and that the Victim had

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<sup>133</sup> DCS at p 209 (para 41).

<sup>134</sup> AB at p 98.

<sup>135</sup> 29 June Transcript at p 48 (lines 15–17).

<sup>136</sup> 28 June 2022 Transcript at pp 66 (lines 29 to 31), 67 (lines 1–3), 68 (lines 27–31) and 69 (lines 4–11).

<sup>137</sup> 28 June 2022 Transcript at p 67 (lines 8 to 10).

purportedly engaged in conversations with the respective caller at the other end of the line.

116 Despite this, the Victim explained that she could not recall any conversations which took place between herself and the Accused.<sup>138</sup> She also could not recall a phone call between her and the Accused that lasted three minutes and two seconds long.<sup>139</sup> Instead, all that the Victim could recall from “pieces of [her] recollection” was receiving “a call from an unknown person not in [her] contact list” and hanging up the phone.<sup>140</sup>

(A) THE VICTIM’S PHYSICAL AND MENTAL STATE

117 The Defence’s case in respect of the Call Logs after the Accused had left the Unit, is that they constitute evidence that the Victim was sufficiently conscious at or around the material time of the rape.<sup>141</sup> The Defence argues as follows. The Victim was sober enough to call Ma and her ex-boyfriend,<sup>142</sup> that she was sober enough to return her missed calls,<sup>143</sup> and finally, that she was sufficiently sober to remember the sequence of calls which she made.<sup>144</sup> Accordingly, the Defence suggests that the Victim’s mental capacity to make numerous calls from her handphone is indicative of her state of consciousness.<sup>145</sup>

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<sup>138</sup> 28 June 2022 Transcript at p 67 (lines 29 to 31) and 30 June 2022 Transcript at p 35 (lines 4–31).

<sup>139</sup> 30 June 2022 Transcript at p 44 (lines 22–25).

<sup>140</sup> 30 June 2022 Transcript at p 36 (lines 8–17).

<sup>141</sup> DCS at pp 211 (paras 46–48) and 213 (paras 51–53).

<sup>142</sup> 30 June 2022 Transcript at p 11 (lines 17–18).

<sup>143</sup> 30 June 2022 Transcript at p 34 (lines 14–15).

<sup>144</sup> 30 June 2022 Transcript at p 23 (lines 17–22).

<sup>145</sup> 6 July 2022 Transcript at pp 80 (lines 24–29), 81 (lines 4–5) and 86 (lines 8–11).

118 Further, the Call Logs showed that there were several calls which lasted for durations ranging from half a minute to three minutes.<sup>146</sup> This supports the finding that the Victim was conscious enough to communicate with other callers. The Defence thus submits that the Call Logs show that the Victim was in fact conscious shortly after the alleged rape. It follows she would have been sufficiently conscious at the time leading up to the rape, to have performed all the actions which the Accused described at [73] above.<sup>147</sup>

119 It is true that the Call Logs showed several calls made to and from the Victim's handphone after the rape. However, I do not accept that this shows that the Victim was sufficiently conscious following the rape, such that she must also have been conscious at the time of the rape. Thus, in her state of confusion and intoxication, I find it entirely probable that the Victim might have unconsciously pressed some buttons on her smartphone and thus made calls to several phone numbers or pressed the wrong numbers in her attempt to call the police or her friends to seek assistance. Moreover, the Victim's mental state was not only affected by her intoxication but was further aggravated by the traumatic and shocking experience of being raped by the Accused in her own bedroom.

120 A few of the calls went through with durations ranging from half a minute to three minutes. However, it does not follow from these calls that the Victim necessarily talked to the person on the other end of the line, nor does it suggest that the Victim was fully conscious shortly after the rape.<sup>148</sup> Since the Victim was still recovering from the effects of heavy alcohol intoxication at that time, I find that the Victim would not have been entirely conscious or alert, and

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<sup>146</sup> 6 July 2022 Transcript at pp 82 (line 25) to 83 (line 22).

<sup>147</sup> DCS at pp 213 (para 53) and 223 (para 81).

<sup>148</sup> 6 July 2022 Transcript at p 81 (lines 24–28).



might, therefore, not have known that the calls were connected such as to converse with the person on the line.

121 Indeed, as Dr Guo explained both in his expert report and at the trial, the Victim was recovering from a stupor and was thus fluctuating between a state of deep sleep and being partially awake, *ie*, between a state of consciousness and unconsciousness. While the Victim might have been able to move around and respond to her environment, she would not yet be sufficiently conscious enough to recall the events that occurred after the rape or to respond meaningfully or relevantly to her surroundings.<sup>149</sup> Thus, I am unable to accept the Defence's case that the Call Logs support the finding that the Victim was conscious and was able to give her consent to have sexual intercourse with the Accused.

122 The Defence's reliance on the Call Logs as evidence that the Victim was sufficiently conscious and hence possessed the capacity to consent to sexual intercourse is also speculative and inconclusive. As Dr Guo pointed out, it is important to ascertain whether there was any dialogue or conversation in these Log Calls. In the absence of any dialogues, the sole fact that the Victim had made or picked up calls for a certain duration is equivocal to the issue of whether she was conscious. This further supports the Prosecution's case. Even if the Victim was conscious as alleged by the Accused, the evidence does not suggest that she consented to have sex with the Accused.

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<sup>149</sup> 6 July 2022 Transcript at pp 45 (line 24) to 47 (line 13), 84 (line 21) to p 85 (line 2), 87 (lines 22–30) and 88 (lines 20–23); ABOD at pp 28–29.

## (B) THE ACCUSED'S MOTIVE

123 The Defence also relies on the Accused's calls to the Victim, which were recorded in the Call Logs while he was on the way to the Unit for the second time, to show that the Accused could not have had the motive to rape the Victim. The Defence submits that the only reason why the Accused had returned to the Unit was because he "was concerned for [the Victim] and because [she] didn't pick up his calls".<sup>150</sup> The Defence submits that the fact that the Accused called the Victim multiple times showed that "he was very open and candid about it ... [and] had nothing to hide".<sup>151</sup> The Defence argues that "generally if a person has an ulterior motive ... he wouldn't leave call records behind to have himself identified".<sup>152</sup> Accordingly, the Defence submits that "this is not a case whereby after dropping [the Victim's] friends, the [A]ccused quietly and discreetly came up to [the Unit] without making any calls, without asking anyone".<sup>153</sup> The Accused would not have left trails of incriminating evidence if he, at that time, had known that the calls would be used as evidence against him. Further, the Accused thought that he could get away with the rape as the Victim was completely unconscious when he last saw her, and he never expected the Victim to suddenly wake up in the midst of the rape.

124 I reject the Defence's arguments. The Accused testified that after he sent Heng home, he proceeded to drive back to the Apartment as he wanted to check on the Victim. The Accused made the first call to the Victim at 2.44am, after he

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<sup>150</sup> 29 June 2022 Transcript at p 48 (lines 18–20); 30 June 2022 Transcript at p 15 (lines 20–23).

<sup>151</sup> 29 June 2022 Transcript at p 48 (lines 22–24).

<sup>152</sup> 30 June 2022 Transcript at p 17 (lines 3–4).

<sup>153</sup> 29 June 2022 Transcript at p 50 (lines 1–3).

decided to return to the Apartment.<sup>154</sup> Thus, the Accused had already decided to return to the Apartment even before he made the first call. The Accused's intention to return to the Unit to have sex with the Victim is evident from the Pre-Polygraph Interview, where the Accused informed SSI Chea that he "went back to look for the Victim to see if there was an opportunity to have sex with her".<sup>155</sup>

125 Therefore, the Accused made multiple phone calls to the Victim's Phone Number, not because the Accused showed concern for her safety, but to satisfy himself that she was still unconscious due to her intoxication.<sup>156</sup> Indeed, when the Accused left the Victim's Unit together with Henry and Ma, he knew that the Victim was completely intoxicated and was in a stupor. The 12 calls which the Accused made was, therefore, to confirm that the Victim remained intoxicated and unconscious. This would enable him to take advantage of the Victim's unconsciousness to outrage her modesty with a view to rape her. The Accused's reliance on the Call Logs does not necessarily indicate that he was "concerned" for the Victim.

126 Even on the Accused's account, if the Accused truly showed concern for the Victim, he would have displayed his relief when the Victim opened the main door and spoke to him upon his arrival at the Unit the second time. This showed that she would have been sober and conscious and more importantly, that she was safe. Indeed, the Accused admitted this in Court:<sup>157</sup>

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<sup>154</sup> 22 September 2022 Transcript at pp 55 (lines 19–22) and 63 (line 31) to 64 (line 1).

<sup>155</sup> AB at p 72.

<sup>156</sup> PCS at para 21.

<sup>157</sup> 26 September 2022 Transcript at p 21 (lines 10–17).

- Court: Your return to the unit the second time, you told us that because you were concerned of the condition of [the Victim].
- Witness: Yes, Your Honour.
- Court: Correct? And you say that you knocked on her door, and she opened the door.
- Witness: Yes, Your Honour.
- Court: And were you relieved to see her sober, opening the door?
- Witness: Yes, I was happy. I was very happy.

127 When the Accused was purportedly happy that the Victim was alright, he should have left the Unit thereafter as his supposed “concern” for the Victim’s safety would have been addressed. The whole purpose of his return to the Unit, *ie*, to ensure the Victim was alright, would have been fulfilled. On his own account, he was “very happy” that the Victim was sober and in good condition. He could have left the Unit after that.<sup>158</sup> There was, therefore, no reason for him to have remained in the Unit for such a long time. In this context, it would have been entirely unnecessary and inappropriate for him to have entered the Victim’s Unit and followed her into her bedroom in the early hours of the morning, let alone to remain in the Unit for about 40 minutes, *ie*, from 3.04am to 3.44am.

128 The Accused said that the Victim had opened the Unit’s main door and gone back into her bedroom while leaving the door open. Accordingly, he thought that the Victim meant for him to enter the Unit and close the door.<sup>159</sup> I find the Accused’s explanation entirely unbelievable. At that point, the Accused had only interacted with the Victim for no more than 20 minutes at the KTV

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<sup>158</sup> 26 September 2022 Transcript at p 22 (lines 4–7).

<sup>159</sup> 26 September 2022 Transcript at p 22 (lines 1–3).

Lounge.<sup>160</sup> By his own admission, they were, prior to this brief encounter, *complete strangers*.<sup>161</sup> Taking his account at its highest, it remained highly inappropriate for the Accused to have interpreted this as permission to enter the Victim's bedroom to undress her and lie beside her.

129 The Accused explained that he undressed the Victim because the dress she was wearing was soiled with vomitus.<sup>162</sup> Even if that was the case, the Accused should have asked a female friend of the Victim, such as Ma, to change it for her when they first arrived at the Unit. It is clearly inappropriate for the Accused, a male and a stranger to the Victim, to change her dress in her bedroom. Even on the Accused's account that the Victim was conscious, there was no valid reason that she could not change her dress on her own. It was inappropriate for the Accused to have done all that he did. The only logical explanation why the Accused had undressed the Victim was to advance his sinister motive of molesting and eventually raping the Victim.

130 Thus, the Call Logs, together with the other evidence presented by the Prosecution, support the case that the Accused took full advantage of the Victim's complete helplessness to rape her. The overwhelming objective evidence shows that the Victim did not consent to the sexual acts. The Accused had full control of the Victim and he outraged her modesty and raped her for about 40 minutes.

131 I shall now consider the inconsistencies of the Accused's evidence in detail.

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<sup>160</sup> 22 September 2022 Transcript at p 57 (lines 25–27).

<sup>161</sup> 22 September 2022 Transcript at p 57 (lines 20–21).

<sup>162</sup> 3 August 2022 Transcript at p 40 (lines 10–17).

(4) The Accused’s evidence is fraught with internal and external inconsistencies

(A) THE ACCUSED’S EVIDENCE IS INTERNALLY INCONSISTENT

132 The Accused’s evidence is fraught with numerous internal contradictions.<sup>163</sup>

133 The Accused gave multiple versions of the important events leading to the rape. His case as set out in the 31 January Statement was remarkably different from his defence in Court as his defence has constantly evolved in the course of five years. This is evident when I compared the Accused’s account in the 31 January Statement with the Accused’s Pre-Polygraph Interview, the 27 October Statement, his subsequent interview with Dr Phang at the Changi Remand Prison on 25 and 29 September and 2 October 2020 (“the IMH Interview”), his account as reflected in the case for the defence (“the CFD”), and his oral testimony in the trial. It is pertinent to note that the Accused admitted that all his statements given by him before the trial were voluntary without any threat, inducement or promise.

134 There are four critical events leading up to the rape which the Accused had given, and these contain internally inconsistent versions. The first is the Accused’s narration of what happened when he arrived at the KTV Lounge. The second is the Accused’s account of how he came to obtain the Address, the Access Code and the Phone Number. The third is the Accused’s explanation of how he managed to gain entry to the Unit for the second time. And the last is the Accused’s account of his interactions with the Victim following his entry into the Unit and until the sexual encounter.

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<sup>163</sup> DCS at p 200 (para 2).

135 Having considered the evidence, I am satisfied that the Accused’s evidence is in total shambles. There were numerous material contradictions and inconsistencies in the Defence. Hence, the Accused’s defence is unreliable, and he was clearly not truthful in his various accounts of the events. This severely undermined the reliability of the various statements which he gave and the credibility of his testimony in Court.

136 I shall now analyse each portion of the Accused’s evidence in turn.

*(I) THE ACCUSED’S ACCOUNT OF THE EVENTS AT THE KTV LOUNGE*

137 In the 31 January Statement, the Accused claimed that it was Heng who had introduced him to the rest of the group, including the Victim.<sup>164</sup> Further, the Accused claimed that the Victim had sat next to him, and she offered the Accused a drink as they chatted. However, the Accused did not mention in the 31 January Statement that the Victim was physically intimate towards him and sat on his lap, hugged him and kissed him.

138 In the Pre-Polygraph Interview, which occurred on 22 September 2017, some eight months after the Accused gave the 31 January Statement, he raised for the first time that he and the Victim had allegedly engaged in “intimate behaviour” at the KTV Lounge. Specifically, the Accused claimed that the Victim “was hugging him and telling him that she was lonely and inviting him to look for her at her house”.<sup>165</sup> He did not mention to SSI Chea that the Victim sat on his lap and kissed his cheeks and lips. When the Accused was questioned on this omission during his cross-examination, he alleged that he did say it to

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<sup>164</sup> AB at p 199.

<sup>165</sup> AB at p 72.

SSI Chea.<sup>166</sup> The Accused further admitted to SSI Chea that “he went back to look for the Victim to see if there was an opportunity to have sex with her”.<sup>167</sup>

139 The Accused stated in the 27 October Statement, which was recorded approximately one month after the Pre-Polygraph Interview, that the Victim “did hug [him]”.<sup>168</sup> The Accused mentioned in the 27 October Statement that he and the Victim had only hugged. There was no mention of the Victim sitting on the Accused’s lap and kissing him in the 27 October Statement.

140 Some three years and eight months later, after the Accused was charged in Court for rape and other offences, a psychiatric assessment was conducted on him. When he was interviewed by Dr Phang, the Accused raised for the first time further acts of physical intimacy which he engaged in with the Victim at the KTV Lounge. Indeed, the Accused agreed during his cross-examination that this was indeed the first time he gave such an account, but he had not informed Dr Phang of this discrepancy.<sup>169</sup> The Accused told Dr Phang that the Victim had “sat on [his] thigh” and that she “had also been hugging and kissing him”.<sup>170</sup>

141 The Accused maintained this version of what had occurred in the KTV Lounge in the CFD for the purpose of his defence at the trial. He claimed that the Victim “sat on [the Accused’s] lap, kissed and hugged him, and embraced him with her hands” and that the Accused was thus “led to believe by [the Victim’s] actions she wanted sex.”<sup>171</sup> The Accused also claimed in the CFD that

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<sup>166</sup> 5 August 2022 Transcript at pp 29 (lines 25–32) and 30 (lines 1–4).

<sup>167</sup> AB at p 72.

<sup>168</sup> AB at p 210.

<sup>169</sup> 22 September 2022 Transcript at p 3 (lines 5–32).

<sup>170</sup> AB at p 38.

<sup>171</sup> AB at pp 370 and 374.



it was the Victim who had introduced him to the rest of the group while at the KTV Lounge.<sup>172</sup>

142 At the trial, the Accused described, in even greater detail, the acts of physical intimacy which he engaged in with the Victim:<sup>173</sup>

Q: Now witness, you earlier testified that the --- that [the Victim] sat on your lap. How did that happen, witness?

A: When we drinking and pouring alcohol, [the Victim] got up to pour the alcohol and then she sat on my lap.

...

A: When he poured---when [the Victim] poured the alcohol, she suddenly sat on my lap.

Q: Have you invited her to sit on your lap?

A: I did not.

Q: Were you caught by surprise when she sat on your laps?

A: Yes, I was. I was wondering why she suddenly sat on my lap.

Q: Right. Now you also testified that she kissed you, right?

A: Yes.

Q: Where did she kiss you?

A: Initially she kissed my cheek and then after a while she kissed me on the mouth.

Q: When she kissed you on your cheek initially, how did you react?

A: I was shocked and wondered why she kissed me but I also reacted by wrapping my arm around her waist.

Q: Now you testified that short while later she kissed your mouth. How did you react to that?

A: When she suddenly kissed me, I was thinking she had feelings for me and that she liked me. And so I let her

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<sup>172</sup> AB at p 370.

<sup>173</sup> 3 August 2022 Transcript at pp 8 (line 20) to 10 (line 22).

kiss me and I reacted by wrapping my arm around her waist.

Q: What about when she kissed your mouth? How did you react to that?

A: She suddenly kissed me, so I could not react in time. I just held her and when she kissed me another time I kissed her back. I thought that she liked me and that she had feelings for me. So I reacted in a way to see if we could develop this relationship.

Q: So how did you react in a way so that you go on with this relationship? What did you do?

A: I held her when she kissed me; I kissed her back. We kept chatting. She asked me what I was working as. She told me she was a beautician and that she carried out her business at home. We were just chatting and drinking alcohol.

143 The Accused's version of the Victim's intimacy towards him at the KTV Lounge was developed in a piecemeal fashion. This incident of physical intimacy by the Victim at the KTV Lounge is critically important to the Accused's defence that he perceived the Victim's acts as an invitation to the Accused to have sexual intercourse with her.<sup>174</sup> Yet, the Accused failed to mention this in his contemporaneous statement, *ie*, the 31 January Statement, which was recorded a day after the incident.<sup>175</sup> These facts were only brought up for the first time close to four years after the rape had occurred.

144 The Accused developed and exaggerated his account of the interactions with the Victim at the KTV Lounge. The acts of physical intimacy became more extensive and detailed with each account. The purported intimacy allegedly initiated by the Victim was not supported and not witnessed by those present at the KTV Lounge, which was a small karaoke room, other than Heng, who is his

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<sup>174</sup> DCS at para 329.

<sup>175</sup> PCS at para 62.

long-time childhood friend. But Heng, like the Accused, is not a reliable witness and his evidence is not credible. I shall deal with Heng's evidence at [215]–[237] below. Accordingly, I find that the Accused had falsified and embellished this aspect of his evidence.

(II) *THE ACCUSED'S EVIDENCE OF HOW HE OBTAINED THE ADDRESS, THE UNIT NUMBER, THE ACCESS CODE AND THE PHONE NUMBER*

145 The Accused said that the Victim gave him the Address together with the Unit number ("the Unit Number"), the Access Code, and the Phone Number at the KTV Lounge. This version was inconsistent throughout the Accused's testimony. The narrative and explanation of how the Accused came to have these information appear to evolve over time in his various accounts given to the police, to Dr Phang during the IMH Interview, in the CFD, and before this Court.

146 The Accused claimed in the 31 January Statement that he knew the Access Code as the Victim had told him the code earlier at the KTV Lounge.<sup>176</sup> Further, the Accused claimed that he had asked Heng for the Phone Number.<sup>177</sup> I note that the Accused had volunteered this information, *ie*, that he obtained the Phone Number from Heng, after the 31 January Statement was read over to him. This is because this additional information was handwritten into the 31 January Statement and signed by the Accused. Indeed, the Accused confirmed in cross-examination that SIO Noor never asked him how he managed to obtain the Phone Number:<sup>178</sup>

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<sup>176</sup> AB at p 201.

<sup>177</sup> AB at p 200.

<sup>178</sup> 22 September 2022 Transcript at p 54 (lines 4–9).

Q: Question 6 is: “Tell me in detail after you reached [the Victim's] place?” It’s not a question about how you got [the Victim's] number, agree?

A: Correct.

Q: So it’s even easier ... you don’t even need to say anything about the [Phone Number] because you’re not even being asked about it.

A: I don’t know why I brought this up. I don’t remember.

147 In the 31 January Statement, the only thing which the Accused alleged the Victim to have given him was the Access Code. Finally, the Accused also did not state that the Victim had given him the Address. Rather, the Accused claimed that he only “[knew] how to go there as the other people in the car guide me to the location”.<sup>179</sup> The Accused further stated that he knew the Unit Number, although he did not explain how he came to acquire this knowledge.

148 In the Pre-Polygraph Interview, the Accused modified his evidence by claiming that it was the Victim who gave him the Phone Number.<sup>180</sup> However, the Accused did not state that the Victim had given him the Address.

149 In the 27 October Statement, the Accused stated that he knew the Unit Number because one of the Victim’s friends had told him about it before he went up to check on Henry, Ma and the Victim the first time he was at the Apartment to find out why they took so long.<sup>181</sup> This information was volunteered by the Accused. He offered this information when SIO Noor asked him before he recorded the 27 October Statement whether he wished to make any changes to his 31 January Statement.<sup>182</sup> In other words, SIO Noor did not

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<sup>179</sup> AB at p 200.

<sup>180</sup> AB at p 72.

<sup>181</sup> AB at p 208.

<sup>182</sup> AB at pp 207–208.

specifically ask the Accused to explain how he came to know of the Unit Number.

150 When cross-examined on this point, however, the Accused claimed that what he had told SIO Noor in the 27 October Statement was not the truth. Instead, his explanation was that he had wanted to tell SIO Noor the truth, which was that the Victim had given him the Unit Number at the KTV Lounge. However, his alleged “phobia” of the police and police stations (“the Alleged Phobia”) “held [him] back on telling the truth”.<sup>183</sup> For the reasons that I set out at [171]–[188] below, I find that the Alleged Phobia is a falsehood, untenable and unsupported by the evidence before the Court. This Alleged Phobia is nothing but a mere excuse to distance himself from the incriminating evidence that he had voluntarily given to the police.

151 In the Psychiatric Assessment Interview, the Accused again changed the narrative that he had earlier told the police. He informed Dr Phang that it was the Victim who had provided him with the Unit Number.<sup>184</sup> This conflicted with his earlier account to the police, where he stated that he had obtained the Unit Number from one of her friends. The Accused’s testimony in Court was that the Victim had given him the Access Code, the Address, the Unit Number and the Phone Number.<sup>185</sup> This is to show that the Victim was interested in him when they were in the KTV Lounge.

152 In view of the serious contradictions, the Accused’s testimony that the Victim had given the Accused the Address cannot be believed. If indeed that

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<sup>183</sup> 22 September 2022 Transcript at p 34 (lines 12–15).

<sup>184</sup> AB at p 38.

<sup>185</sup> 22 September 2022 Transcript at p 13 (lines 6–15).

was the truth, the Accused would have told the police of this in the 31 January Statement. Instead, in the 31 January Statement, the Accused claimed to have been unable to recall the Address. This was despite the Accused saying at the trial that the Apartment's address was simple and easy to remember.<sup>186</sup>

153 Similarly, I am unable to accept the Accused's testimony that the Victim had given him the Phone Number while they were at the KTV Lounge. As I have stated above, the Accused volunteered this information to SIO Noor in the 31 January Statement that he had obtained the Phone Number from Heng, after the 31 January Statement was read over to him and he chose to include this fact in his first statement to the police. This is further supported by Heng's evidence that he did in fact provide the Accused with the Phone Number. I shall consider this in greater detail at [235]–[237] below.

154 As to how the Accused came to know the Unit Number, I likewise am unable to accept the Accused's version that the Victim had provided this to the Accused. Instead, I accept that the Accused had obtained the Unit Number from her friends. This was the account which the Accused had voluntarily given to SIO Noor in his 27 October Statement. I have no reason to doubt the voluntariness of the Accused's evidence in this regard.

155 Finally, I do not accept the Accused's evidence that the Victim had provided him with the Access Code. Instead, the Accused came to know the Access Code when he was helping Henry and Ma carry the Victim to the Apartment from the car the first time he went to the Apartment. I shall consider this at [202]–[205] below.

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<sup>186</sup> 22 September 2022 Transcript at p 21 (lines 21–24).

*(III) THE ACCUSED'S VERSION OF HOW HE GAINED ENTRY TO THE UNIT*

156 The third aspect of the Accused's evidence, which is significantly important, relates to his narrative on how he entered the Unit the second time he went to the Apartment. There are also serious and critical inconsistencies. In total, the Accused gave four different accounts of how he had re-entered the Unit.

157 In the 31 January Statement, the Accused informed SIO Noor that he was able to access the Unit by "using [the] key that was slid underneath [the Unit's main] door". The Accused claimed to have found a satay stick on the floor where there were rubbish bins, before he entered the Apartment's side gate. He decided to use the satay stick to retrieve the key as he "was worried of the key was too inside and ... cannot took [*sic*] it out".<sup>187</sup> In other words, the Accused's account in his first statement to the police one day after the rape was that he had used a satay stick to retrieve the Unit's main door key from underneath the door. The key had earlier been slid underneath the door when the Accused, Henry and Ma left the Unit after carrying the Victim home. The Accused maintained this account in the Pre-Polygraph Interview six months after the rape, *ie*, that he "managed to gain access into [the Unit] by retrieving [the Victim's] key that was earlier slipped underneath [the main door of the Unit]".<sup>188</sup>

158 About nine months after the 31 January Statement was given, the Accused modified his account of how he managed to enter the Unit in the 27 October Statement. In particular, the Accused retracted his earlier account of using a satay stick to retrieve the main door's key to enter the Unit. Instead, he

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<sup>187</sup> AB at p 201.

<sup>188</sup> AB at p 72.

claimed that he “had actually used [his] ‘Genting’ membership card to hook out the key from under the door” as the satay stick which he had originally used “broke when [the Accused] try to hook the key out”.<sup>189</sup> The Accused explained that the reason for this change was because he “was confused and scared”<sup>190</sup> and that “I cannot remember what I used to hook up the key in my previous statement”.<sup>191</sup> If indeed the Accused could not remember how he retrieved the key, he could have simply told the police that he could not remember how he retrieved the key when the 31 January Statement was recorded. This would mean that he did retrieve the key to enter the Unit but could not remember how he did it. This would have been completely different from his account in Court which he said he rang the doorbell numerous times, knocked on the main door and the Victim opened the door and invited him into the Unit.

159 The Accused again changed his account of how he gained entry to the Unit during the IMH Interview. The Accused informed Dr Phang during the interview that the Unit’s main door was locked by Henry and that the key was then slipped underneath the door after the Accused and the Victim’s friends left the Unit.<sup>192</sup> The Accused then proceeded to give Dr Phang two contrasting accounts as to how he gained access to the Unit for the second time at 3.04am on 30 January 2017. The first account was provided in the first interview with Dr Phang on 25 September 2020. Dr Phang said that the Accused had spent “nearly the first 1½ hours of ... [the] first interview informing [Dr Phang] ... that [the Accused] had ... used what he described as a satay stick which he had found to hook the key out from under the door, so that he could then use the key

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<sup>189</sup> AB at p 208.

<sup>190</sup> AB at p 208.

<sup>191</sup> AB at p 208.

<sup>192</sup> AB at p 39.



to gain entry into the alleged [V]ictim's [U]nit."<sup>193</sup> However, "about 1½ hours into the interview and his narrative, he suddenly told [Dr Phang] that ... what he was about to tell [Dr Phang] is different from what he had previously stated to the police".<sup>194</sup> He explained to Dr Phang that his account differed "[b]ecause I was luan [which means "confused" in Mandarin]. I was panic".<sup>195</sup> The Accused then modified his account by stating that he had used the satay stick in trying to retrieve the key, to no avail, and "resorted to pressing the doorbell and knocking" on the Unit's main door until the Victim came to open the door.<sup>196</sup>

160 The Accused's final version of how he entered the Unit for the purpose of his defence was provided in the CFD. There, the Accused explained that he had "pressed the doorbell and knocked on the door" until the Victim opened the main door.<sup>197</sup> This remained the Accused's defence at the trial, where he explained as follows:<sup>198</sup>

Q: Right. Continue from the time you arrived at [the Victim's] main door. What happened?

A: I rang the doorbell and knocked on the door. About 5 to 10 minutes later, she opened the door. When she saw me, she said, "You're here."

Q: Yes, your evidence is that she opened the door on her own accord?

A: Yes.

Q: Did you use any other way to gain entry into [the Victim's] unit?

A: I did not at all.

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<sup>193</sup> 5 July 2022 Transcript at pp 21 (lines 18-22).

<sup>194</sup> 5 July 2022 Transcript at pp 21 (lines 22-25).

<sup>195</sup> 5 July 2022 Transcript at pp 21 (line 26)

<sup>196</sup> AB at p 41.

<sup>197</sup> AB at p 372.

<sup>198</sup> 3 August 2022 Transcript at p 38 (lines 9–16).

161 The Accused elaborated on this version at trial when questioned by the Prosecution on how he gained entry to the Unit:<sup>199</sup>

Q: Okay, I put to you that you picked up this satay stick, because you had already formed the intention to break into [the Victim's] unit by hooking out the key.

A: Disagree because I knew it was impossible to retrieve the key.

...

Q: Okay. Now you are outside [the Victim's] unit for the second time. I put to you that you hooked up the key from under the door.

A: That's not possible.

...

Q: Then you used your Genting membership card to hook up the key from under the door.

A: That is impossible, because when the key was slipped in, it went very far into the unit and the satay stick is only so long, there was no way the satay stick could be used to hook up the key.

Q: What do you mean the satay stick is only so long, I thought you said you didn't pick up a satay stick?

A: Okay, because Mr Chong, you asked---you said that the first time I used the satay stick to hook out the key, so I am telling you that the satay stick is only so long and there was no way it could hook up the key. And besides, I never even pick up any satay stick, and I knew that there was no way the key could be hooked out, so I didn't pick up anything to hook out the key.

In his final version, therefore, the Accused modified his account entirely by claiming that he did not use any other way to gain entry to the Unit, including using a satay stick or his Genting membership card. Instead, it was the Victim who opened the main door and invited the Accused into the Unit.

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<sup>199</sup> 23 September 2022 Transcript at pp 7 (lines 2–4) and 9 (lines 2–19)

162 This final narrative cuts at the core of both the defence to the House-breaking Charge and the Rape Charge. The Accused's defence for the House-breaking Charge is that he entered the Unit lawfully as the Victim opened the main door and invited him to enter. As for the Rape Charge, the Accused alleges that the Victim had opened the main door and invited the Accused to enter the Unit as well as into her bedroom. According to the Defence, this showed that the Victim was sober and conscious. Thus, the sexual intercourse with the Victim would have been consensual as well.

163 It is significant to note that only the Accused, Ma and Henry knew that the key to the main door of the Unit was slid under the door. Further, nobody knew how the Accused entered the Unit the second time. Only the Accused knew of this fact. Indeed, in the 31 January Statement, SIO Noor did not know how the Accused had entered the Unit. SIO Noor wanted to know how the Accused entered the Unit.<sup>200</sup> Thus, when the Accused informed the police one day after the rape as to how he entered the Unit, the details of that revelation could only come from the Accused and nobody else. In other words, the Accused volunteered this information to the police. This speaks volumes as to the contemporaneity and the accuracy of the Accused's account. Indeed, when the Accused realised that the revelation was significantly damaging to his defence to both the House-breaking Charge and the Rape Charge, he began to modify his evidence on how he entered the Unit.

164 The Accused was not truthful when he testified in Court that he neither used the satay stick nor his Genting membership card to retrieve the key, but that he rang the doorbell and knocked on the main door. It is also not true that the Victim opened the door and invited the Accused into the Unit. I accept

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<sup>200</sup> AB at p 201.

Dr Guo's evidence that the Victim would in all likelihood be in deep sleep due to heavy intoxication (see [105] above). Instead, I find that the Accused's version to the police that he had used the satay stick to retrieve the key to enter the unit was the most likely explanation for how he gained entry to the Unit.

*(IV) THE ACCUSED'S ACCOUNT OF HIS INTERACTIONS WITH THE VICTIM IN THE UNIT WHICH LED TO THE SEXUAL ENCOUNTER*

165 The Accused's evidence about his interactions with the Victim after he entered the Unit and in the Victim's bedroom was also internally inconsistent.

166 In the Accused's accounts before the trial, he claimed that the Victim either remained silent, nodded or shook her head in response to the Accused's supposed questions, or gave basic responses or incoherent responses. This is evident from the 31 January Statement, the Pre-Polygraph Interview, the IMH Interview and the CFD.

167 In the 31 January Statement, the Accused claimed that when he told the Victim that he would be changing her clothes, she "just replied 'ah'", and that when he "asked her if she is ok", the Victim "never answer".<sup>201</sup> During the Pre-Polygraph Interview, the Accused informed SSI Chea that when he tried to wake the Victim up and asked her why she did not answer his calls, the Victim "opened her eyes and mumbled to him". Further, the Victim continued mumbling to the Accused when he asked her if she wanted to change her clothes.<sup>202</sup> The Accused did not indicate that the Victim had ever spoken coherently to him. Similarly, in the IMH Interview, the Accused informed Dr Phang that when he asked the Victim how she felt, the Victim "didn't seem

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<sup>201</sup> AB at p 202.

<sup>202</sup> AB at p 71.

to want to talk much”, and that when he asked the Victim “if she wished to change clothes because she was smelly after vomiting so much ... she nodded”, and that when he “asked [the Victim] what she wanted to wear ... she didn’t answer”.<sup>203</sup> And in the CFD, the Accused repeated his version of his interactions with the Victim as he had described in the 31 January Statement.<sup>204</sup> In all the Accused’s accounts given prior to the trial, therefore, the Accused claimed that the Victim was not able to give any verbal answers.

168 During the Accused’s examination-in-chief, however, the Accused altered his account and testified that the Victim gave verbal responses:<sup>205</sup>

Q: Now, you have testified that [the Victim] walked to her bedroom, you closed the main door, and you followed her to the bedroom, right? Describe in detail what happened next.

A: When I entered the bedroom, she was lying on the bed. I asked her whether she was okay and did she feel like vomiting again, she said no. So I asked her again whether she was okay, she said yes. ...

...

Q: Right. So you have described she was lying, you were standing. What happened next, witness?

A: After that, I asked her she was okay and whether she felt like vomiting again. I told her that when she vomited, she vomited on her clothes and then I asked her whether she wanted to change out of her clothes. *She said yes.* I then asked her whether she wanted me to help her change out of her clothes, *she nodded and said yes.* ...

[emphasis added]

169 Despite all these critical inconsistencies, the Accused was unable to offer any satisfactory explanation as to why his account in Court of his verbal

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<sup>203</sup> AB at p 39.

<sup>204</sup> AB at p 372.

<sup>205</sup> 3 August 2022 Transcript at pp 39 (lines 3–10) and 40 (lines 8–14).

interaction with the Victim differed materially from his own accounts before the trial. The Accused's only explanation was that he had the Alleged Phobia, and this caused him to provide inconsistent accounts to the police.

170 I shall now deal with the Accused's explanation for these inconsistencies in his various accounts throughout the Court proceedings.

(B) THE ACCUSED'S EXPLANATION FOR THE MATERIAL CONTRADICTIONS IN HIS EVIDENCE

171 The Accused explained that the inconsistencies contained in his account of the events as described above, and in particular the inconsistencies between his evidence as provided to the police, in the IMH Interview, in the CFD and in his testimony in Court, was attributed to the Alleged Phobia.<sup>206</sup> The Accused explained that the Alleged Phobia had caused him to be scared, worried and confused, such that he gave many wrong answers which were recorded in the 31 January Statement, the 27 October Statement and his account to SSI Chea.<sup>207</sup> The Accused further testified at the trial that the Alleged Phobia manifested in physical symptoms. His hands would shake, and he would cry.<sup>208</sup> Whenever the Accused was confronted with the inconsistencies in his version given to the police and his testimony in Court, he would always use the Alleged Phobia as a convenient escape strategy to explain the inconsistencies which he used *ad nauseam*.

172 In my view, the Accused's excuse for the various critical inconsistencies in his statements to the police, *ie*, that he has the Alleged Phobia, is a mere

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<sup>206</sup> DCS at p 200 (para 5).

<sup>207</sup> DCS at para 316.

<sup>208</sup> 8 August 2022 Transcript at p 14.

afterthought and incredulous. He did not inform anyone about the Alleged Phobia before the trial. He also did not mention the Alleged Phobia in his CFD.

173 The Prosecution called rebuttal witnesses, namely SIO Noor, SSI Chea and Mdm Tan regarding the Accused's supposed physical symptoms of the Alleged Phobia. None of these witnesses observed any such physical symptoms described by the Accused, *ie*, that the Accused was crying or that his hands were shaking.

174 SIO Noor testified that throughout the recording of the Accused's long statements and cautioned statement, he did not see the Accused crying or that the Accused's hands were shaking. Neither did the Accused inform SIO Noor that he had the Alleged Phobia.<sup>209</sup> SIO Noor's evidence was corroborated by Mdm Tan's testimony. Mdm Tan gave evidence that she did not notice the Accused crying or that his hands were shaking when giving the 31 January Statement and the 27 October Statement.<sup>210</sup> Finally, SSI Chea testified that he did not notice the Accused displaying any such physical symptoms or emotion during the Pre-Polygraph Interview.<sup>211</sup> SSI Chea further confirmed that he would have recorded it down if there were such signs.<sup>212</sup>

175 Be that as it may, the Accused admitted that it was his duty to tell the truth to the police.<sup>213</sup> However, the Accused claimed that he was scared of the police and police stations. Yet he had the courage to purportedly lie to the police

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<sup>209</sup> 27 September 2022 Transcript at p 10 (lines 5–15).

<sup>210</sup> 27 September 2022 Transcript at p 14 (lines 2–12).

<sup>211</sup> 27 September 2022 Transcript at p 4 (lines 6–13).

<sup>212</sup> 27 September 2022 Transcript at p 7 (lines 27–28).

<sup>213</sup> 26 September 2022 Transcript at pp 19 (line 13) to 20 (line 1).

about the events relating to the serious crime of rape.<sup>214</sup> This is a ridiculous explanation that defies logic. If the Accused was truly afraid of the police, he would have told the truth as he knew that to lie to the police would have been an offence. The Accused also accepted that SIO Noor had not threatened, assaulted, induced or promised him, or employed any means to coerce the Accused to obtain his statements.<sup>215</sup> Thus, the Accused had no reason to be scared or afraid.

176 Further, if the Accused genuinely could not recall his account of the events that transpired as a result of the Alleged Phobia, he could have simply informed the police that he could not remember, instead of making up a story as he had alleged. The Accused admitted when questioned on whether it would have been simpler for him to have informed SIO Noor that he could not recall certain details of the events that unfolded leading up to the rape:<sup>216</sup>

Q: ... you earlier told the Court that there are some things that you cannot remember, you cannot recall when you were giving your statement to [S]IO Noor during your first statement, correct?

A: Yes, I said that.

Q: It would be easy for you to say “I don’t remember” or “I don’t recall” to [S]IO Noor, correct?

A: He asked me at that time---

Q: It’s a yes or no question: It’s easy for you to tell [S]IO Noor, “I cannot remember” or “I cannot recall”.

A: Yes.

Q: Much easier than making up an untruthful story about ... how you asked [Heng] for the [Phone Number].

A: Yes.

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<sup>214</sup> 26 September 2022 Transcript at p 20 (lines 2–5).

<sup>215</sup> 26 September 2022 at p 21 (lines 1–9).

<sup>216</sup> 22 September 2022 Transcript at p 53 (lines 20–32).



177 Yet the Accused proceeded to give SIO Noor elaborate and supposedly untruthful answers. It simply beggars belief that, within a short period of time leading up to the giving of the statements, the Alleged Phobia could have enabled him to conjure up elaborate purported falsehoods to the police.

178 The Accused then claimed that even if he had told the truth, the police would not believe him.<sup>217</sup> The issue here is not whether or not the police would have believed the Accused. The Accused was duty-bound to tell the truth to the police. There is, therefore, no explicable basis to justify the Alleged Phobia. The Alleged Phobia is merely an excuse to convince the Court to disregard his incriminating statements which he voluntarily gave to the police.

179 The Accused's allegation that he had the Alleged Phobia is also further contradicted by the objective facts. In the text messages sent between the Accused and Ma, which were retrieved by the TCFB following a forensic examination of the Accused's handphone after its seizure by the police, the Accused informed Ma to "help [the Accused] tell [the Victim] I m [*sic*] really very very sorry" and that the Accused "will go police station to surrender". In a follow up message to Ma, the Accused texted "[p]ls forgive me for what I did, I will face the consequence [*sic*"]".<sup>218</sup> It is inexplicable why the Accused volunteered to surrender himself to the police, if the Accused truly had the Alleged Phobia.

180 The Accused explained that he had said all these things to placate the Victim and that should the Victim go to the police, he "would face severe

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<sup>217</sup> 26 September 2022 Transcript at p 20 (lines 31–32).

<sup>218</sup> AB at p 133.

consequences”.<sup>219</sup> The Accused’s willingness to voluntarily surrender himself to the police does not support his claim that he had the Alleged Phobia. Instead, this conversation with Ma, that he was very sorry and willing to surrender to the police, shows the Accused’s guilt and he knew that he had raped the Victim. He knew it was a serious offence and sought forgiveness from the Victim through Ma, hoping that the Victim would not report him to the police. At that time, the Accused did not know that the Victim had already reported the Accused to the police.

181 Further, I find that the Alleged Phobia, which the Accused asserts to have led him to be “confused”, to not remember things correctly, to “say the wrong things” and to “make it worse” when attempting to “rectify things”,<sup>220</sup> is contradicted by the Accused’s conduct when giving his cautioned statement on 16 September 2020 in relation to the House-breaking Charge. The Accused gave his cautioned statement at an interview room located in the Police Cantonment Complex.<sup>221</sup> Yet, the Accused was capable of denying that he had committed the House-breaking Charge when giving his cautioned statement.<sup>222</sup> Further, the Accused was capable of informing SIO Noor that he wished to amend his cautioned statement, as can be seen from the amendment made to the Accused’s cautioned statement in respect of the House-breaking Charge. These aspects of the Accused’s response to the House-breaking Charge and his capacity to deny the charge are at odds with his assertion that the Alleged Phobia would lead him to be confused and to say the wrong things.

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<sup>219</sup> 23 September 2023 Transcript at p 65 (lines 13 and 28).

<sup>220</sup> 23 September 2022 Transcript at p 14 (lines 11–25).

<sup>221</sup> AB at p 220.

<sup>222</sup> AB at p 222.

182 In any case, the Alleged Phobia was only raised for the first time at the trial, five years after the rape. Indeed, nowhere in the 31 January Statement, Pre-Polygraph Interview, the 27 October Statement, or the IMH Interview did the Accused mention that he had the Alleged Phobia.

183 In the 27 October Statement, the Accused was asked why he did not mention in the 31 January Statement that he could not remember what he used to retrieve the key. The Accused replied that he was “confused and scared because [he] was in the police station”.<sup>223</sup> However, when the Accused was asked by SIO Noor to describe the Genting membership card which the Accused allegedly used to retrieve the key from underneath the Unit’s main door, the Accused was able to describe the features of the card and how he obtained it. The Accused could even inform SIO Noor that while he understood that he “[has] to pass this card to [SIO Noor]”, he “want [his] card back” when the case concludes.<sup>224</sup> I accept the Prosecution’s submission that the Accused’s response is indicative of his courage to request from SIO Noor to have the very tool that he claimed to have used to break into someone’s house to be returned to him.<sup>225</sup>

184 In the IMH Interview, which was not conducted in a police station, the Accused acknowledged that he was comfortable with Dr Phang.<sup>226</sup> Yet he did not tell him that he had the Alleged Phobia. As the Prosecution points out, Dr Phang would have been the perfect person for the Accused to inform about the Alleged Phobia. It baffles the mind that the Accused was comfortable enough to reveal to Dr Phang topics ranging from illicit drug use that he had

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<sup>223</sup> AB at p 208.

<sup>224</sup> AB at p 208.

<sup>225</sup> PCS at para 108(c).

<sup>226</sup> 5 August 2022 Transcript at p 49 (lines 4–5).

never been arrested for, to his sexual preferences of masturbating, to stolen female undergarments, but not the Alleged Phobia.<sup>227</sup>

185 The Accused explained to Dr Phang that his evidence given to him differed from those given to the police because he “*was luan* [which means “confused” in Mandarin], *panic, so [he] missed out a lot of things*” (emphasis in original). However, the Accused did not attribute it to the Alleged Phobia.<sup>228</sup> Dr Phang also testified that the Accused told him that, during the recording of the statement to the police, the Accused was not confused, and he understood what he was saying and what he was replying to the questions which were put to him in the course of the statement recording.<sup>229</sup>

186 Finally, the Accused had, in a last-ditched attempt, sought to persuade the Court that his testimony in Court is the truth. Further, in so far as the statements given to the police are incriminatory, those are not the truth, while those that are exculpatory are the truth:<sup>230</sup>

Court:	Basically, what you are telling this Court is that whatever you say and from the witness stand is the truth.
Witness:	Yes, Your Honour, definitely.
Court:	Now as far as the statements that you have given to the police are concerned, your position is that anything that is incriminating against you, they are not the truth. Have I got it right?
Witness:	Yes. I said the wrong things, yes.
Court:	Now everything that you told the police that are exculpatory in the police statements are the truth.

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<sup>227</sup> PCS at para 106(e).

<sup>228</sup> AB at pp 40 and 41.

<sup>229</sup> 5 July 2022 Transcript at pp 23 (line 11) to 24 (line 27).

<sup>230</sup> 26 September 2022 Transcript at p 19 (lines 3–12).

Witness: Yes, Your Honour.

187 I find it difficult to accept the Accused's testimony urging the Court to accept his evidence given in the trial and to ignore all the incriminating aspects in his statements to the police and Dr Phang. It is simply too convenient for the Accused to claim that every incriminating aspect of his statements to the police ought to be disregarded.<sup>231</sup> The Accused has provided no justifications for why the Court should cherry-pick the Accused's evidence and accept those that are beneficial to his defence. Indeed, the Accused's feeble attempt to ask the Court to selectively adopt his evidence in Court is evidently self-serving. According to the Accused, the incriminating aspects of his police statements are not true as he had the Alleged Phobia. If indeed he had the Alleged Phobia, one would have expected both the incriminating and exculpatory portions to be affected. But the Accused said that the exculpatory portions are true and anything incriminating him in the police statements is false. This made his explanation that he had the Alleged Phobia incredible and unbelievable.

188 Ultimately, the protean-like nature of the Accused's evidence is not favourable to his defence. On the contrary, the constant changes in crucial aspects of the evidence to conveniently adapt to his defence in Court have irretrievably tarnished his credibility and reliability as a witness. That being said, I acknowledge that the 31 January Statement is the first long statement given voluntarily by the Accused one day after the rape. This statement is the contemporaneous evidence available before the Court. The incidents in the KTV Lounge and the subsequent events leading to the rape of the Victim would thus have been fresh in the Accused's mind. However, it does not necessarily follow that all its contents are the truth. In view of the numerous inconsistencies across

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<sup>231</sup> PCS at para 109.

the Accused's evidence, the Court has to evaluate the Accused's evidence carefully and cautiously to sieve out the grains of truth from the mass of falsehoods instead of rejecting the entire defence of the Accused.

(C) THE ACCUSED'S EVIDENCE IS EXTERNALLY INCONSISTENT

189 The Accused's evidence is also externally inconsistent with the evidence before the Court.

190 First, the Accused's allegation of the Victim's intimacy towards him at the KTV Lounge is contradicted and not supported by the testimonies of the Prosecution's witnesses at the KTV Lounge. In so far as the Accused sought to rely on Heng's testimony to buttress his account, I find that Heng's testimony is unreliable and should not be accepted (see [237] below). Second, the Accused's account as to how he obtained the Access Code, *ie*, that it was the Victim who gave it to him, is also contradicted by the objective evidence. Finally, regarding the Accused's claim that the Victim was conscious at the time of the rape and was thus able to give her consent, the Accused's evidence is contradicted by both the CCTV Footage and the medical and forensic evidence presented by the Prosecution to the Court.

(I) *THE ACCUSED'S ALLEGATION THAT THE VICTIM WAS INTIMATE WITH HIM AT THE KTV LOUNGE IS CONTRADICTED BY EVIDENCE FROM THE PROSECUTION'S WITNESSES*

191 The Prosecution relies on the testimonies of its witnesses to support its case that the Accused's allegation that the Victim sat on his lap, hugged and kissed him at the KTV Lounge was fabricated. The following are the testimonies of Henry, Ma, Angela and Wang.<sup>232</sup>

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<sup>232</sup> PCS at para 64.

192 Henry testified that the Victim started to consume alcohol in the afternoon of 29 January 2017 at the Unit when they were celebrating Chinese New Year. The Victim was not heavily intoxicated at the time the group left the Unit for the KTV Lounge as she was still able to walk on her own.<sup>233</sup> Henry further testified that, when the Accused joined them at the KTV Lounge, he did not witness the Victim behaving intimately towards the Accused.<sup>234</sup> Henry disagreed with the suggestion from the Defence that the Accused and the Victim were behaving intimately. Henry explained that if it were true that the Victim was intimate with the Accused, he “would have just left [the Victim] ... and go straight home instead of bringing [the Victim] back to her house”, as his house was “quite near” to the KTV Lounge.<sup>235</sup> Henry’s explanation was as follows:<sup>236</sup>

- Q: Now, witness, don’t you agree that by that time you left the KTV, [the Victim] was so drunk? She had to be carried, right? That is one of the reasons why all of you---not only you, all of you sent her back home. It’s nothing to do with intimacy.
- ...
- A: No, I don’t agree. As in, knowing myself, if they were really intimate, I wouldn’t be there to - for lack of better word - cock-block [the Accused]. Yah.
- Court: Sorry. I don’t understand.
- Witness: I wouldn’t put myself in a way that I would impeach his advancement if I know that they were already very intimate to begin with.

193 In other words, if the Victim and the Accused were intimate, Henry would simply let the Accused take care of the Victim for the night. Indeed,

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<sup>233</sup> 8 July 2022 Transcript at pp 5 (lines 28–30) and 6 (line 25) to 7 (line 4).

<sup>234</sup> 8 July 2022 Transcript at p 11 (lines 27–30).

<sup>235</sup> 8 July 2022 Transcript at p 31 (lines 8–16).

<sup>236</sup> 8 July 2022 Transcript at p 32 (lines 1–12).

Henry confirmed in re-examination that his purpose of accompanying the Victim home was to ensure that she got home safely. As Henry is the Victim's friend, he would not have allowed the Accused to drive the Victim home alone as she was already unconscious.<sup>237</sup> Thus, Henry categorically rejected the Accused's assertion that the Victim was intimate towards the Accused.

194 I find the evidence of Henry to be reasonable and convincing, and that he was telling the truth. I, therefore, accept his testimony that the Victim and the Accused were not intimate at the KTV Lounge.

195 Ma's and Angela's testimonies also rebutted the Accused's assertion that the Victim was intimate towards him. Their testimonies are consistent with Henry's account of the events at the KTV Lounge.

196 After the Victim and her group of friends arrived at the KTV Lounge, Ma confirmed that the Victim became visibly intoxicated as she was "not speaking coherently" after having consumed more alcohol.<sup>238</sup> Ma testified also that from the time the Accused arrived at the KTV Lounge until the group left the KTV Lounge shortly thereafter, the Victim was "already very drunk". Hence, the Victim did not interact with the Accused or talked to him at all, let alone sit on the Accused's lap, kiss him and hug him.<sup>239</sup> This remained Ma's position even when the Court asked her whether she had observed the Victim to be hugging and kissing the Accused.<sup>240</sup>

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<sup>237</sup> 8 July 2022 Transcript at pp 58 (line 26) to 59 (line 1).

<sup>238</sup> 8 July 2022 Transcript at p 70 (line 30).

<sup>239</sup> 8 July 2022 Transcript at pp 71 (lines 4–11), 90 (lines 10–12) and 93 (lines 3–9); 12 July 2022 Transcript at pp 2 (line 22) to 3 (lines 3 and 16–17).

<sup>240</sup> 12 July 2022 Transcript at p 37 (lines 10–14).



197 Angela described the Victim as being “high” when they left the Unit for the KTV Lounge. The Victim was talking and laughing louder than usual. However, Angela confirmed that the Victim was still able to walk.<sup>241</sup> Angela testified that, from the time the Accused arrived at the KTV Lounge until the time the group left, she did not see the Victim sitting on the Accused’s lap and behaving intimately with the Accused.<sup>242</sup>

198 Wang’s evidence was also largely consistent with Henry’s, Ma’s and Angela’s evidence. Wang indicated in her statement that, at the time the group left the Unit, the Victim “appeared tipsy ... but she was still managing well and could walk by herself”.<sup>243</sup> Crucially, Wang indicated that she “did not notice [the Victim] behaving intimately with [the Accused]”.<sup>244</sup>

199 When confronted with the Prosecution’s witnesses’ evidence, the Accused asserted that they might be lying. He also claimed that they might not have seen this supposed intimate behaviour.<sup>245</sup> However, a video of the KTV Lounge showed that the room was fairly small. As the Accused admitted, there was also nothing in the room to obstruct the view of its occupants from each other,<sup>246</sup> and therefore nothing to stop the Victim’s friends from witnessing this supposed intimacy if it did in fact happen. Thus, if the Accused and the Victim had, as alleged by the Accused, engaged in physical intimacy, it would have been seen by at least a few of the Prosecution’s witnesses.

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<sup>241</sup> 13 July 2022 Transcript at p 7 (lines 1–9).

<sup>242</sup> 13 July 2022 Transcript at pp 7 (lines 9–15) and 26 (lines 26–28).

<sup>243</sup> PS36 at para 6.

<sup>244</sup> PS36 at para 8.

<sup>245</sup> 4 August 2022 Transcript at pp 56 (line 25) to 57 (line 21).

<sup>246</sup> 4 August 2022 Transcript at p 51 (lines 1–20)

200 The Defence submits that the mere fact that the Prosecution's witnesses did not see the Accused and the Victim behaving intimately did not mean that there was never any physical intimacy between the Accused and the Victim.<sup>247</sup> This was speculative at best. The fact that the witnesses did not see the Accused and the Victim behaving in a physically intimate manner at the KTV Lounge means that there was no physical intimacy. The KTV Lounge was a small karaoke room and if the Victim had been physically intimate towards the Accused, the witnesses there would have seen it, or at least a few of the witnesses would have noticed it.

201 Accordingly, the Accused's allegation that the Victim was intimate towards him at the KTV Lounge cannot be believed. The Accused and the Victim first met at the KTV Lounge. It is difficult to believe that the Victim would have been openly intimate with the Accused, whom she met for the first time, in the presence of her friends. Indeed, the Victim testified that this could not have been the case, especially since it was her first time meeting the Accused at the KTV Lounge.<sup>248</sup>

(II) *THE ACCUSED'S EVIDENCE THAT THE VICTIM HAD GIVEN THE ACCUSED THE APARTMENT'S SIDE GATE ACCESS CODE IS CONTRADICTED BY THE OBJECTIVE EVIDENCE*

202 The Accused's claim that the Victim had given him the Access Code is contrary to the Prosecution's witnesses' testimonies and the objective evidence.

203 The Accused in fact knew about the Access Code as he saw Ma entering the Access Code. This occurred when the Accused was sending the Victim back to the Unit after leaving the KTV Lounge with the Victim's friends. In this

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<sup>247</sup> DCS at paras 199 and 261.

<sup>248</sup> 29 June 2022 Transcript at p 49 (lines 15–17).

regard, both Ma's and Henry's evidence is that the Accused was standing close behind Ma when Ma was keying in the Access Code on the lighted keyboard of the access panel to the Apartment's side gate.<sup>249</sup> Ma's and Henry's evidence is also supported by the objective evidence in the form of a video taken on a handphone by Angela outside the Apartment's side gate. The video showed the Accused walking away from the side gate while Henry was carrying the Victim through the side gate and into the Apartment. This occurred after Ma had keyed in the Access Code on the access panel and opened the side gate. The Accused also confirmed in his evidence during cross-examination that he was standing at the grass patch near the side gate entrance:<sup>250</sup>

Q: ... your last answer to me is that, "As you can see in the video, I was already walking back." Walking back from where...?

A: Walking back to the car.

Q: So what were you doing before that? Just standing at the grass patch?

A: I was walking back.

Q: From where?

A: From the grass patch.

Q: So were you just standing at the grass patch?

A: Yes. I was on the way of walking back. In the midst of walking back.

204 As the Access Code was "1111", Ma's finger would have pressed the same button on the keyboard of the access panel when entering the Access Code. This would have made it easy for the Accused to remember the Access Code. Moreover, the screen that displayed the pin number would illuminate and this enabled the Accused to see.

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<sup>249</sup> 8 July 2022 Transcript at pp 15 (lines 1–5) and 74 (lines 15–17).

<sup>250</sup> 22 September 2022 Transcript at pp 30 (line 31) to 32 (line 7).

205 Thus, the Accused would have seen Ma entering the Access Code on the keyboard and would have known the Access Code that would unlock the side gate to the Apartment. Accordingly, I accept the Prosecution's case that the Prosecution's witnesses' evidence and the objective evidence point towards the Accused obtaining the Access Code in this manner, as opposed to being told by the Victim.<sup>251</sup>

(III) *THE ACCUSED'S EVIDENCE THAT THE VICTIM WAS CONSCIOUS AROUND THE TIME OF THE SEXUAL ENCOUNTER IS CONTRADICTED BY THE OBJECTIVE EVIDENCE*

206 The Accused's assertion that the Victim was conscious around the time of the sexual encounter is contrary to both the Prosecution's witnesses' testimonies and the objective evidence.

207 The Prosecution's witnesses, namely Ma, Henry, Angela and Wang, said that the Victim was heavily intoxicated when the Victim left the KTV Lounge. The Victim had to be carried home by Henry and Ma when the Accused's car arrived at the Apartment.

208 Henry gave evidence that when the group left the KTV Lounge, the Victim was unable to stand by herself. Instead, she had to be carried by the other girls and the Accused when they left the KTV Lounge as the Victim was unresponsive.<sup>252</sup> Upon arrival at the Apartment Henry and Ma had to carry the Victim to her Unit.<sup>253</sup> Indeed, Henry confirmed that the Victim was completely unconscious and that he had to carry her to her bedroom in the Unit.<sup>254</sup>

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<sup>251</sup> PCS at paras 75–76.

<sup>252</sup> 8 July 2022 Transcript at p 61 (lines 4–9).

<sup>253</sup> AB at p 12.

<sup>254</sup> 8 July 2022 Transcript at p 62 (lines 4–6).

209 Henry’s account of the Victim’s unconscious state was corroborated by Ma’s evidence. Ma stated in her statement that, shortly before the group left the KTV Lounge, the Victim “was very drunk and she was unable to walk on her own” and that they were unable to wake the Victim up.<sup>255</sup> This indicates that the Victim was already unconscious when the group left the KTV Lounge. Ma also stated that the Victim was unconscious when they reached the Apartment. Ma described the Victim as “completely drunk to the point that she has passed out” and that the Victim “needed [Henry] and [Ma] to carry her”.<sup>256</sup> The fact that Ma “carried [the Victim] by her arms while Henry carried her by her legs”<sup>257</sup> showed that the Victim was so intoxicated that she had completely lost both her consciousness and her psychomotor functions. This further reinforces the fact that when the Accused drove the car to the Apartment the Victim had already lost all consciousness and was in a state of stupor.

210 Angela also confirmed in her statement that before they left the KTV Lounge, the Victim was quite “high” and was “dozing on a sofa”.<sup>258</sup> This again corroborates the fact that the Victim was already in a state of stupor when the group left the KTV Lounge.

211 Finally, Wang’s evidence was that by the time the Accused came to join the group at the KTV Lounge, the Victim “was already very drunk” and that “[s]he fell asleep on the sofa afterwards”.<sup>259</sup> Further, at the time the group left the KTV Lounge, the Victim “was already knocked out”.<sup>260</sup>

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<sup>255</sup> AB at p 5.

<sup>256</sup> 8 July 2022 Transcript at p 75 (lines 9–10).

<sup>257</sup> AB at p 6.

<sup>258</sup> AB at p 15.

<sup>259</sup> PS36 at para 7.

<sup>260</sup> PS36 at para 9.

212 The Prosecution’s witnesses’ description of the Victim’s unconscious state is further corroborated by the CCTV Footage. The CCTV Footage is an independent and objective evidence. As I have described above at [80], the CCTV Footage shows Henry carrying the Victim to the lift lobby. The Victim appeared to be completely unresponsive, and her limbs were lifeless as Henry dragged her into the lift. To my mind, this further indicates that the Victim was in a state of stupor and was unconscious when she reached the Unit. It is impossible that, within a short span of two hours, the Victim would have fully recovered from alcohol intoxication and would have regained substantially her consciousness, her psychomotor skills, and had the presence of mind to react to her surroundings. I have accepted Dr Guo’s evidence (see [112] above) that the Victim would still be heavily intoxicated and unconscious when the Accused raped her.

213 The Accused’s narrative that the Victim was not intoxicated but was in fact sober when she opened the main door for him to enter the Unit is also contradicted by the medical evidence. Dr Guo’s evidence is that the Victim would have been in the process of recovering from the effects of alcohol intoxication. Thus, she would have been fluctuating between deep sleep and being partially awake, such that she was unlikely to have been alert. The Victim would not have had sufficient cognitive abilities or sufficient mental capacity to either consent to or to reject the Accused’s request for sexual intercourse, neither would she have had sufficient physical capacity or cognitive abilities to perform the acts that the Accused claimed she had done (see [105] above).<sup>261</sup>

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<sup>261</sup> Prosecution’s Reply Submissions filed on 18 October 2022 (“PRS”) at p 7.

214 Further, I find that the Accused’s description of the Victim’s conduct following the sexual encounter, which I describe at [248] below, is also not corroborated by the medical evidence.

(5) Heng’s evidence does not support the Accused’s accounts

215 In support of his defence, the Accused called Heng to testify as his witness. The Accused sought to rely on Heng’s evidence to support his account in respect of three factual areas of his defence: (a) that he saw the Accused and the Victim behaving intimately in the KTV Lounge; (b) the Victim’s state of intoxication at the KTV Lounge; and (c) the conversation between the Accused and Heng while the Accused was sending Heng back home and how the Accused obtained the Phone Number.

216 The Prosecution cross-examined Heng on his previous contemporaneous police statement given on 31 January 2017 (“Heng’s Police Statement” or “Police Statement”) pursuant to s 147(1) of the EA. Section 147 of the EA states as follows:

**Cross-examination as to previous statements in writing**

**147.**—(1) A witness may be cross-examined as to previous statements made by him or her in writing or reduced into writing, and relevant to matters in question in the suit or proceeding in which he or she is cross-examined, without such writing being shown to him or her or being proved; but if it is intended to contradict him or her by the writing, his or her attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him or her.

217 Section 147(1) of the EA thus provides for a witness to be cross-examined as to his previous statements in writing for the purpose of impeaching his credit. In *Kwang Boon Keong Peter v Public Prosecutor* [1998] 2 SLR(R) 211, Yong Pung How CJ observed at [22] (citing *Public Prosecutor v Sng Siew*

*Ngoh* [1995] 3 SLR(R) 755 at [20]) that s 147 of the EA “applies to cross-examination of previous statements *in any proceeding*, be it for the impeachment of a witness’s credit, refreshment of memory or otherwise” [emphasis added]. Section 147(1) of the EA is, therefore, not limited to situations involving the cross-examination of a witness for the purpose of impeaching that witness’s credibility. In the present case, the Prosecution wanted to show that there were material discrepancies between Heng’s oral testimony and Heng’s Police Statement. That was why the Prosecution sought to cross-examine Heng in respect of Heng’s Police Statement.

218 There were material inconsistencies between Heng’s testimony in Court and what Heng had said in the Police Statement. I shall now consider the various aspects of Heng’s evidence upon which the Accused relies.

(A) HENG’S ACCOUNT OF THE EVENTS IN THE KTV LOUNGE

219 Heng stated in his evidence-in-chief that he clearly saw the Accused and the Victim “hugging, drinking, and kissing in the [KTV Lounge]”.<sup>262</sup> According to Heng, this allegedly occurred around 20 to 30 minutes after the Accused arrived at the KTV Lounge.<sup>263</sup>

220 Heng also claimed that the other individuals present in the KTV Lounge would have seen the Accused and the Victim behaving intimately as the KTV Lounge is very small. According to Heng, the only reason why the group decided to leave the KTV Lounge soon after the Accused arrived was because all of them had seen the Accused and the Victim behaving intimately.<sup>264</sup>

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<sup>262</sup> 26 September 2022 Transcript at p 43 (line 14).

<sup>263</sup> 26 September 2022 Transcript at p 68 (lines 18–21).

<sup>264</sup> 26 September 2022 Transcript at pp 69 (line 31) to 70 (line 19).



221 However, Heng’s testimony in Court on this matter is inconsistent with the account in Heng’s Police Statement. This was clear from the Prosecution’s cross-examination of Heng on his account as to what he had witnessed while at the KTV Lounge:<sup>265</sup>

Q: ... So, ... I’ll just read to you again another portion of your statement to the police, alright? So same paragraph, paragraph 6:

“By the time [the Accused] arrived ... “I was already in my tipsy state. I cannot really remember what happened subsequently.”

So do you agree this is your statement to the police the day after the incident?

A: Yes.

...

Q: So, ... do you agree with me that in this statement, there is---you did not mention at all that you saw [the Accused] and [the Victim] hugging, drinking, and kissing at the KTV room? Do you agree or disagree?

A: I never indicate, yes. I never indicate.

Q: Alright, so you agree.

A: Yes.

...

Q: So, [Heng], if you could just turn with me to your statement, question 6, answer 6. This is on the fifth page of the statement.

A: Question 6?

Q: Answer 6, yes. So the question:

“While you were at the karaoke, did you see how [the Victim] and [the Accused] were behaving towards each other?”

Your answer:

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<sup>265</sup> 26 September 2022 Transcript at pp 72 (line 23–28), 74 (lines 15–20), 75 (lines 18–26).

“They were talking like good friends. [Angela] also told me that [the Victim] was sitting on my laps [sic], but I cannot remember.”

...

...

Q: So, ... you agree with me that even though you were specifically asked by the police how [the Victim] and [the Accused] were behaving towards each other at the KTV [Lounge], you did not mention that they were kissing, hugging, and drinking, correct?

A: Yes.

222 Heng did not dispute that he had given a statement to the police.<sup>266</sup> In that statement, Heng claimed that he was so intoxicated that he could not remember what had happened after the Accused arrived. There was also no mention of any physical intimacy between the Accused and the Victim in Heng’s Police Statement. It was thus clear that Heng’s contemporaneous evidence to the police was that he had not seen the Accused and the Victim engaging in physical intimacy. But this is completely different from Heng’s conditioned statement and his testimony in Court, where he claimed to have a clear recollection of the Victim seated on the Accused’s lap, kissing and hugging the Accused. Heng is not a truthful and reliable witness.

223 If Heng could not remember the events that occurred at the KTV Lounge the day after the Victim was raped by the Accused which was what he said in his Police Statement, it would be impossible for him to testify, after more than five years, that he remembered the Accused and the Victim were behaving intimately at the KTV Lounge.<sup>267</sup> Indeed, Heng agreed that his memory would have been fresher at the time he gave the Police Statement one day after the

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<sup>266</sup> 26 September 2022 Transcript at p 78 (lines 5–7).

<sup>267</sup> 26 September 2022 Transcript at p 79 (lines 12–14).

alleged incident as compared to more than five years later today.<sup>268</sup> But he could not explain why he said in Court, more than five years later, that he saw the Victim and the Accused behaving intimately at the KTV Lounge when he told the police one day after the rape of the Victim that he could not remember the purported intimacy of the Victim and the Accused at the KTV Lounge.

224 There is thus a material contradiction between Heng's contemporaneous account as recorded in Heng's Police Statement and his testimony in Court. When confronted with this contradiction, Heng conceded that he did not mention this fact in the Police Statement.<sup>269</sup>

225 Further, Heng's testimony in Court is contradicted by Henry's, Ma's and Angela's testimonies. As mentioned above, none of these witnesses saw the Accused and the Victim behaving intimately. Indeed, even on Heng's own account, he conceded that he would not know whether the Victim's friends had seen the Accused and the Victim behaving intimately. Rather, Heng simply assumed that they might have seen the intimacy between the Victim and the Accused.<sup>270</sup>

226 Accordingly, Heng's testimony in Court does not support the Accused's allegation that the Victim was intimate towards him. On the contrary, the material and pertinent discrepancies in Heng's evidence severely undermine his credibility.

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<sup>268</sup> 26 September 2022 Transcript at p 82 (lines 20–26).

<sup>269</sup> 26 September 2022 Transcript at pp 83 (line 11) to 84 (line 7) and 85 (lines 14–17).

<sup>270</sup> 26 September 2022 Transcript at p 70 (lines 23–27).

(B) HENG’S ACCOUNT OF THE VICTIM’S STATE OF INTOXICATION

227 The Accused similarly hopes to rely on Heng’s testimony on the Victim’s state of intoxication when the group left the KTV Lounge. Heng’s testimony was that the Victim was still conscious and awake.<sup>271</sup> However, this was contrary to the account stated in Heng’s Police Statement. Heng testified as follows in Court:<sup>272</sup>

Q: So at this point in time, when you say that [the Victim] is not in her senses, what is her state? Is she conscious?

A: She’s conscious.

Q: Is she awake?

A: I can’t see that---she---definitely she is awake. She’s conscious. Definitely she is awake.

Q: Alright. So has she been knocked out at that point in time?

A: Not yet.

...

Q: Right. So, [Heng], I’m reading from the statement you gave the police on 31st January. Alright, so it says here--

...

Q: So it says:

“I only remember that when we were leaving the karaoke, [the Victim] was already totally knocked out, and [the Accused] had to carry her to his car.”

So this is the statement that you gave to the police. So, okay, do you agree that this is the statement you gave to the police?

A: It’s in the paper, yes.

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<sup>271</sup> 26 September 2022 Transcript at p 71 (lines 5–10).

<sup>272</sup> 26 September 2022 Transcript at p 71 (lines 5–12 and 20–28).

228 Heng admitted that his statement was made by him voluntarily to the police. There were serious discrepancies between Heng's testimony in Court and Heng's Police Statement, regarding his account of the Victim's state of intoxication. Heng offered no explanation as to why the material discrepancies existed. He merely said he could not recall why he gave such an account in the Police Statement.<sup>273</sup>

229 Ultimately, Heng accepted in cross-examination that the Victim remained drunk and unconscious when she was sent back to the Unit, after being shown a video showing that the Victim was unconscious:<sup>274</sup>

Q: Okay. So at that time, when [the Victim] was being brought out of the car, and into her unit, that would have been the last time you saw her that night on 29th January 2017, correct?

A: Yes.

Q: And so the condition that she was in when you last saw her was that she was being carried by Henry into the unit---sorry, into the condo, correct?

A: From the video, yah.

Q: Because she is completely drunk, unable to take care of herself, correct?

A: From the video, yes.

230 Therefore, Heng's evidence does not support the Accused's account regarding the Victim's state of intoxication, *ie*, that the Victim was not heavily intoxicated, but was still conscious and sober. On the contrary, Heng's evidence corroborates the evidence given by Henry, Ma and Angela, *ie*, that the Victim was already heavily intoxicated when the group sent her back to the Unit.

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<sup>273</sup> 26 September 2022 Transcript at p 72 (lines 1–7).

<sup>274</sup> 26 September 2022 Transcript at pp 86 (line 30) to 88 (line 6).

(C) HENG’S ACCOUNT OF THE CONVERSATION BETWEEN HIMSELF AND THE ACCUSED WHEN THE ACCUSED SENT HENG HOME

231 The Accused also hopes to rely on Heng’s evidence on the purported conversation which Heng and the Accused had, while the Accused was sending Heng home in the early morning of 30 January 2017. The substance of the purported conversation was whether the Victim was interested in the Accused.

232 Heng’s evidence on the purported conversation he had with the Accused was internally contradictory. Heng vacillated between different accounts of what had transpired. In his conditioned statement, Heng claimed that the Accused had asked him whether the Victim was interested in the Accused.<sup>275</sup> This was similar to his evidence-in-chief in Court.<sup>276</sup> But in his cross-examination, Heng said that he could not recall what he had talked to the Accused about.<sup>277</sup> When confronted with this inconsistency, Heng changed his position, and instead claimed he recalled that there was a conversation between him and the Accused, albeit a “simple conversation”,<sup>278</sup> where the Accused asked Heng whether the Victim was interested in the Accused. Heng replied that since she hugged and kissed the Accused in the KTV Lounge, it was obvious that the Victim was interested in the Accused.<sup>279</sup>

233 I have stated above that Heng had materially contradicted himself regarding his testimony that he saw the Victim behaving intimately towards the Accused at the KTV Lounge. Hence, the alleged incident of the purported

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<sup>275</sup> PS 36 at para 17.

<sup>276</sup> 26 September 2022 Transcript at p 45 (lines 21–24).

<sup>277</sup> 26 September 2022 Transcript at p 89 (lines 3–10).

<sup>278</sup> 26 September 2022 Transcript at p 90 (lines 6–18).

<sup>279</sup> 26 September 2022 Transcript at pp 90 (line 28) to 91 (line 2).

intimacy between the Victim and the Accused did not exist but was fabricated by the Accused and supported by Heng. It is, therefore, simply impossible for Heng to have informed the Accused that he had seen the Accused and the Victim behaving intimately. Thus, it is not possible for Heng to have told the Accused that the Victim was interested in the Accused as he saw the Victim behaving intimately towards the Accused. Accordingly, the purported conversation between Heng and the Accused could not have happened when the Accused was sending Heng home.

234 On another matter, Heng, in his evidence-in-chief, said he had suggested to the Accused to call the Victim.<sup>280</sup> However, Heng conceded in cross-examination that he had not in fact made such a suggestion to the Accused.<sup>281</sup> This inconsistency also undermined Heng’s credibility as the Defence’s witness.

(D) HENG’S ACCOUNT ON HOW THE ACCUSED OBTAINED THE PHONE NUMBER

235 Finally, the Accused’s account in his 31 January Statement that he had obtained the Phone Number from Heng was also corroborated by Heng’s testimony in Court. Heng had initially stated in his conditioned statement that he “had never provided [the Accused] with [the Phone Number]”.<sup>282</sup> However, this was contradicted by Heng’s testimony in Court, where he claimed that he could not remember “whether it is [he] ... who gave ... [the Accused the Phone Number]”.<sup>283</sup> The Prosecution also referred to Heng’s evidence stated in Heng’s

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<sup>280</sup> 26 September 2022 Transcript at p 47 (lines 1–9).

<sup>281</sup> 26 September 2022 Transcript at pp 91 (line 16) to 92 (line 1).

<sup>282</sup> PS36 at para 17.

<sup>283</sup> 26 September 2022 Transcript at p 93 (lines 26–27).

Police Statement where he admitted that he gave the Accused the Phone Number:<sup>284</sup>

Q: Yes. So ... if I can just refer you to your police statement dated 31st January. If you look at the fifth page, Question 3, Answer 3. So the question posed to you:

“Did you give [the Accused the Phone Number] or any contact number?”

Your answer, your answer:

“Yes, I did. I gave him [the Phone Number] before I got down from his car.”

You agree this is the statement you gave---the answer you gave to the police?

A: Yes.

Q: Please answer into the mic.

A: Yes.

Q: Alright. And this is the statement you gave on 31st January, which is the day after the incident, correct?

A: Yes.

Q: And your memory would have been fresher on 31<sup>st</sup> January 2017 as compared to when you gave your conditioned statement on 5th July 2022, correct?

A: Yes.

Q: Alright. So you were the one who gave [the Accused the Phone Number], correct?

A: Yes.

236 When confronted with these inconsistencies in his various accounts, Heng’s final evidence in Court is that he had in fact provided the Accused with the Phone Number. Heng’s concession puts the lie in the Accused’s mouth as regards the Accused’s account that it was the Victim who had given the Accused

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<sup>284</sup> 26 September 2022 Transcript at pp 94 (lines 14) to 95 (line 1).



the Phone Number. Accordingly, I am satisfied that the Accused had obtained the Phone Number from Heng, and not from the Victim herself.

(E) SUMMARY OF HENG'S CREDIBILITY

237 It is clear that Heng is not an impartial and credible witness. He is not truthful and reliable. His testimony in Court varies significantly from the account given in Heng's Police Statement. Further, Heng has embellished his evidence in order to support the Accused's defence. As I have considered above, there are numerous serious and material contradictions in Heng's various evidence, both internally and externally. This severely undermines Heng's credibility as a witness. Further, Heng made several concessions that are detrimental to the Accused's defence, including that he did not actually see the Accused and the Victim behaving intimately at the KTV Lounge, that the Victim was heavily intoxicated when she was sent by the group back to the Unit, and that Heng had actually given the Accused the Phone Number. These concessions inflict multiple critical dents in the Defence's case. The Accused thus cannot rely on Heng's evidence to support his changing narratives.

238 I shall now consider the Victim's evidence and her testimony in Court.

(6) The Victim's evidence

239 For the reasons I shall give below, I accept the Prosecution's submission that the Victim's evidence was compelling, clear, coherent, internally consistent, and was corroborated by all of the other evidence presented at the trial.<sup>285</sup>

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<sup>285</sup> PCS at para 56.

## (A) THE EVENTS AT THE UNIT PRIOR TO LEAVING FOR THE KTV LOUNGE

240 The Victim stated that she and her friends were drinking at the Unit prior to leaving for the KTV Lounge. This was corroborated by the photographs taken at the Unit that showed the alcoholic drinks that the Victim and her friends had consumed.<sup>286</sup> However, the Victim could not recall how many alcoholic drinks she consumed at the Unit. She merely described it as “[c]oloured alcoholic drink”, that “the percentage [of alcohol] was not high” and that it was “around 5%”.<sup>287</sup> The Victim stated that her “alcohol tolerance is poor”.<sup>288</sup> She said she was easily intoxicated after having consumed some hard liquor.<sup>289</sup> The Victim said she was intoxicated when she left the Unit for the KTV Lounge, and she could not recall how she got there.<sup>290</sup> Despite this, however, the Victim said she could remember what had happened at the Unit.<sup>291</sup>

241 The Victim’s account of what had occurred at the Unit prior to leaving for the KTV Lounge is largely consistent with the accounts of Ma, Henry, Angela and Wang. Ma, Henry and Angela confirmed that the group had played mahjong and consumed alcohol at the Unit prior to leaving for the KTV Lounge.<sup>292</sup> They said that the Victim was not heavily intoxicated when the group left for the KTV Lounge. In their opinion, the Victim was able to walk unaided,

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<sup>286</sup> 28 June 2022 Transcript at pp 50 (lines 28–31) and 51 (line 6).

<sup>287</sup> 28 June 2022 Transcript at pp 48 (lines 28–29) and 51 (line 6).

<sup>288</sup> AB at p 1.

<sup>289</sup> 28 June 2022 Transcript at p 51 (lines 24–28).

<sup>290</sup> 28 June 2022 Transcript at pp 51 (lines 29–31), 52 (lines 1–3) and 62 (lines 1–2).

<sup>291</sup> 29 June 2022 Transcript at p 20 (line 27).

<sup>292</sup> AB at pp 4, 10 and 14; 8 July 2022 Transcript at pp 5 (line 1) to 6 (line 24), 66 (line 12) to 67 (line 2); 13 July 2022 Transcript at pp 4 (line 3) to 6 (line 18).

and she spoke coherently.<sup>293</sup> I, therefore, cannot accept the Defence's contention that the Victim's evidence in this respect was inconsistent.<sup>294</sup> In any case, the fact that there are minor inconsistencies is immaterial, as they do not affect the issue of whether the Victim was so intoxicated at the time of the rape that she could not have given her consent.

(B) THE EVENTS AT THE KTV LOUNGE

242 The Victim testified that she could not recall all the events that had happened when she was at the KTV Lounge. She could not recall what she and her friends drank,<sup>295</sup> nor could she recall with whom she interacted.<sup>296</sup> The Victim further testified that she could only recall the events that had taken place at the KTV Lounge when her friend Angela showed her the video.<sup>297</sup>

243 The Victim also testified that she initially could not recall inviting the Accused to the KTV Lounge, nor could she recall interacting with the Accused after he had arrived at the KTV Lounge.<sup>298</sup> It was only after Angela had refreshed the Victim's memory about the events that occurred at the KTV Lounge that the Victim could vaguely remember having spoken to the Accused using Heng's handphone.<sup>299</sup> The Victim also admitted that it was possible that she had invited the Accused to the KTV Lounge in the phone conversation she had with the Accused. She could have introduced the Accused to the rest of her

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<sup>293</sup> AB 11; 8 July 2022 Transcript at p 6 (line 28) to 7 (line 4), 67 (line 31) to 68 (line 1); 13 July 2022 Transcript at pp 6 (lines 27–31) and 7 (line 9).

<sup>294</sup> DCS at pp 218–219 (paras 68–70).

<sup>295</sup> 28 June 2022 Transcript at pp 52 (lines 9–10) and 54 (lines 15–16).

<sup>296</sup> 28 June 2022 Transcript at p 55 (lines 5–7).

<sup>297</sup> 28 June 2022 Transcript at p 54 (lines 30–31).

<sup>298</sup> 29 June 2022 Transcript at pp 27 (lines 19–22), 28 (lines 21–23) and 32 (lines 9–12).

<sup>299</sup> 29 June 2022 Transcript at pp 27 (lines 23–28), 28 (lines 1–5) and 32 (lines 9–12).

friends at the KTV Lounge. She could also have offered the Accused alcohol. However, the Victim was very clear and certain that even if she had invited the Accused to the KTV Lounge, she would not have invited the Accused to the Unit.<sup>300</sup>

244 The Defence relies on the video exhibits depicting the Victim and her friends at the KTV Lounge<sup>301</sup> to show that the Victim was behaving normally and appearing to be in control of her psychomotor functions at the KTV Lounge. The Defence, therefore, submits that the Victim was not truthful about her state of intoxication and her recollection. The Defence submits that the Victim was conscious and aware of her surroundings, and she was sufficiently sober at the KTV Lounge.

245 The Victim does appear sober in the video taken at the KTV Lounge. However, this was because the video was taken soon after the Victim and her friends reached the KTV Lounge. This was also confirmed by the Prosecution's witnesses, all of whom stated that the Victim was not heavily intoxicated and was largely sober at the time the group left the Unit for the KTV Lounge. However, the Prosecution's witnesses also testified that the Victim had consumed more quantities of alcohol at the KTV Lounge.<sup>302</sup> As the Victim consumed more alcohol, she became increasingly intoxicated. This was evident when the Prosecution's witnesses testified that the Victim had knocked over a jug of beer.<sup>303</sup> Ma also testified that she saw the Victim swaying, behaving uncharacteristically and emotionally, such as giving a waitress a large tip and

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<sup>300</sup> 29 June 2022 Transcript at p 28 (lines 30–31).

<sup>301</sup> 29 June 2022 Transcript at p 28 (lines 25–26).

<sup>302</sup> AB at pp 4 and 11.

<sup>303</sup> 8 July 2022 Transcript at pp 29 (lines 27–31) and 68 (lines 27–31); PS 36 at para 7.

crying to Henry as she was pining over her ex-boyfriend.<sup>304</sup> And when the group was about to leave the KTV Lounge, it is not disputed that the Victim was completely intoxicated and unconscious. All the evidence, therefore, rebuts the Defence’s case that the Victim remained sober and conscious *throughout* the events at the KTV Lounge.

(C) THE EVENTS FOLLOWING THE RAPE

246 The Victim said that although she was semi-conscious after the rape, she was not able to precisely recall the sequence of all the events. This was because she was still intoxicated and was thus not aware of her surroundings or in full control of her actions. In her words, she was “not completely sober but [she] could differentiate things”.<sup>305</sup>

247 The Victim testified that when the Accused left the Unit, she called the police at 3.59 am, *ie*, about 15 minutes after the Accused left the Unit at 3.44am, to make a police report that the Accused had raped her. This call to the police was made almost immediately after the rape. In fact, when the police did not arrive at her Unit immediately, she made six calls to the police at 4.07am, 4.16am, 4.24am, 4.34am, 4.35am, 4.40am. The Victim’s repeated calls to the police is very significant as it shows that she was in distress after finding out that the Accused had unlawfully entered her Unit and raped her in her bedroom while she was heavily intoxicated.

248 The Defence points to several of the Victim’s alleged actions following the sexual encounter in support of its case that the Victim was in fact conscious. First, the Victim had allegedly “took the [Accused’s] handphone, looked at it

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<sup>304</sup> 8 July 2022 Transcript at p 68 (lines 7–26).

<sup>305</sup> 29 June 2022 Transcript at p 55 (lines 9–10).

and ... opened some of the apps in the handphone”.<sup>306</sup> She then returned the Accused his handphone, before “mov[ing] to a corner where [the Victim’s] safe was kept and [she] keyed in the password to the safe” and then “opened up the safe and checked the contents”.<sup>307</sup> The Accused then asked the Victim what she was looking for, to which she replied “nothing”, before closing the safe and asking the Accused to leave.<sup>308</sup> Further, as the Accused was leaving the Unit, the Victim suddenly came out of the bedroom. She then walked to a sofa glass table in the living room, picked up a can of beer, “shouted to [the Accused], ‘Why do you want to treat me in this way?’” and “ran to the balcony ... and threw the beer ... out of the balcony”.<sup>309</sup> When the Accused asked the Victim what she was doing, she simply replied with the word “nothing”, and told him to leave, upon which he did so and left the Unit.<sup>310</sup>

249 All of these actions, according to the Defence, show that the Victim was conscious and aware of her surroundings. Given the short duration between the sexual encounter and these events, the Defence says that the Victim would likely have been in a similar state of consciousness at the time of the sexual encounter. Accordingly, the Defence submits that the Victim would have been in the right physical and mental state to have given her consent to have sexual intercourse with the Accused.

250 I am unable to accept the Defence’s narrative of what the Victim did immediately after the sexual intercourse as stated above to illustrate that she

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<sup>306</sup> 30 June 2022 Transcript at p 9 (lines 17–19).

<sup>307</sup> 30 June 2022 Transcript at p 10 (lines 13–15 and 17–18).

<sup>308</sup> 30 June 2022 Transcript at p 11 (lines 1–4).

<sup>309</sup> 30 June 2022 Transcript at p 14 (lines 24–26).

<sup>310</sup> 30 June 2022 Transcript at p 16 (lines 1–2).

was capable of giving consent. I am aware that the Accused mentioned this narrative about what the Victim did immediately after the sexual intercourse to the police in his first contemporaneous statement, *ie*, the 31 January Statement, a day after the rape. But as I have found above, the Accused's lack of credibility meant that there is a grave doubt as to the truth of his alleged account regarding the Victim's intimacy towards him, and that she was conscious and sober when he returned to the Unit.

(D) THE VICTIM'S DISTRESSED STATE

251 The Victim's evidence was that shortly after the Accused had left the Unit and before the police arrived, she was still intoxicated. She was also emotional, angry and was crying as the Accused had raped her in her own bedroom.<sup>311</sup>

252 The Victim's emotional and confused state was supported by both Ma's evidence and the evidence of Staff Sergeant Kamisah Bte Hanafi ("SSG Kamisah"), who was one of the first police officers to arrive at the Unit following the Victim's calls to the police that she was raped.

253 Ma confirmed in both her statement and her testimony in Court that when she arrived at the Unit, the Victim was "agitated and crying"<sup>312</sup> and that she was "not in the best of her condition".<sup>313</sup> Ma also testified that when she answered the Victim's call prior to arriving at the Unit, the Victim sounded "very agitated", "was very angry" and "was very frantic ... [and] upset".<sup>314</sup>

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<sup>311</sup> 29 June 2022 Transcript at pp 55 (lines 23–25) and 59 (lines 23–26).

<sup>312</sup> AB at p 7.

<sup>313</sup> 12 July 2022 Transcript at p 14 (lines 20–21).

<sup>314</sup> 8 July 2022 Transcript at p 78 (lines 17–18); 12 July 2022 Transcript at p 12 (line 22).

Further, Ma also testified that the Victim “sounded confused”.<sup>315</sup> Ma’s account of the Victim’s emotional state was supported by SSG Kamisah’s account of the Victim when she arrived at the Unit. According to SSG Kamisah’s evidence in her conditioned statement, she and the other police officers who arrived the scene had approached the Victim to communicate with her.<sup>316</sup> That was why SSG Kamisah could describe in her conditioned statement that the Victim “appeared disturbed, agitated, angry and sad”.<sup>317</sup>

254 The Defence, however, refers the Court to Corporal Adam Bin Zamrot (“Cpl Adam”)’s account provided in his conditioned statement, where Cpl Adam stated that the Victim was “look[ing] normal and perfectly fine ... [s]he was not crying. She appeared calm”.<sup>318</sup> This is completely different from SSG Kamisah’s observation of the Victim.

255 On the weight of the evidence, I prefer SSG Kamisah’s evidence. I would like to mention that Cpl Adam confirmed in his conditioned statement that his role was to “standby near the doorway and secure the scene”.<sup>319</sup> Thus, Cpl Adam may not have interacted with the Victim or observed closely the demeanour, emotional and physical signs of the Victim when he was at the Unit, unlike SSG Kamisah who had approached the Victim to attempt to communicate with her. Further, as I have mentioned above, SSG Kamisah’s account was corroborated by Ma’s account. Finally, when SSG Kamisah responded to the Victim’s calls to the police, she had been in the Singapore

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<sup>315</sup> 12 July 2022 Transcript at p 12 (line 22).

<sup>316</sup> AB at p 65.

<sup>317</sup> AB at p 66.

<sup>318</sup> AB at p 67.

<sup>319</sup> AB at p 67.



Police Force for at least eight years.<sup>320</sup> She would thus have more experience and would have been more observant of the demeanour and distressed conditions of victims of sexual crimes, namely the Victim's condition. Cpl Adam, on the other hand, was serving his National Service with the Singapore Police Force and was not a career police officer. At that time, Cpl Adam was only slightly more than a year into serving his National Service.<sup>321</sup> I, therefore, accept that SSG Kamisah had more experience in dealing with such matters when she led the initial police response. Cpl Adam, on the other hand, was inexperienced in dealing with such matters relative to SSG Kamisah.

(7) The credibility of the Victim's testimony and the Accused's defence

(A) THE CREDIBILITY AND RELIABILITY OF THE VICTIM'S EVIDENCE

256 I am of the view that the Victim's account has been corroborated by many important events in this case. Although the "unusually convincing" standard may not apply to her testimony, there is nothing in the evidence to suggest that the Victim's evidence is not credible. Further, I find that she is honest, truthful and reliable. Nevertheless, the Court has to be vigilant and must exercise great caution in analysing the evidence of both the Victim and the Accused. I observe the Victim to have testified in a straightforward manner. She did not appear evasive, nor did she appear to be hiding anything. Indeed, she even voluntarily disclosed matters that may not be in her favour. For instance, she admitted to IO Foo that she had lied in the Sham Marriage Proceedings (see [39] above).

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<sup>320</sup> AB at p 65.

<sup>321</sup> AB at p 67.

257 The Victim's testimony in Court was also coherent and largely free from internal and external inconsistencies when she was thoroughly cross-examined in Court. She was unshaken and unwavering when she was cross-examined on the events leading up to, during, and after the rape incident. She was able to proffer cogent and reasonable explanations when confronted with contrary evidence by the Defence during cross-examination. When she was asked about events that she clearly could not recall, she candidly stated so. I am satisfied that the Victim is a truthful witness and she did not embellish her evidence.

258 The Victim's evidence is also corroborated by objective forensic evidence. For instance, when she was awakened, she found the Accused's penis in her vagina. This is supported by the evidence of Ms Tang, who found the Accused's DNA in the high region of her vagina (see [64] above).<sup>322</sup> This indicates that the Accused's penis had indeed penetrated deep into the Victim's vagina and this woke her up.

259 The CCTV Footage also showed that she was completely unconscious due to heavy intoxication and had to be carried by her friends to her bedroom. The expert opinion of Dr Lee also indicated that the Victim's average BAC level was 144mg/100ml. And as I have found above, Dr Guo's evidence was, with that BAC level, the Victim would have been in a state of stupor and would have been unconscious and unresponsive to external stimuli. This corroborates the CCTV Footage which shows that she was in a state of stupor and was completely unconscious.

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<sup>322</sup> 7 July 2022 Transcript at p 102 (lines 14–15).

(I) *THE VICTIM'S PERJURY IN THE SHAM MARRIAGE PROCEEDINGS*

260 The Defence submits that the Victim is an unreliable witness given her past history of having committed perjury in the Sham Marriage Proceedings. According to the Defence, the fact that the Victim lied in prior court proceedings means that she would have “the capacity of making false allegations/reports ... to further her personal interests”.<sup>323</sup>

261 The Victim had voluntarily admitted that she had lied in the Sham Marriage Proceedings. The fundamental issue is whether the Victim was lying in the present case. In *Lewis Christine v Public Prosecutor* [2001] 2 SLR(R) 131 at [19], the High Court stated that “a flawed witness does not equate to an untruthful witness”. The Victim’s conduct of having perjured herself in the Sham Marriage Proceedings, which occurred some five years ago, ought not to have had any bearing on the Victim’s credibility and reliability in the present proceedings. None of that background, coloured as it may be, affects my finding that the Victim was a candid and reliable witness in the present case. She did not embellish her evidence and she spoke the truth which is corroborated by other evidence. Her evidence was not in any way tarnished.

262 More importantly, the Victim was forthcoming, and she admitted in her interview with SIO Foo that she had committed perjury in the Sham Marriage Proceedings. SIO Foo acknowledged that this was a matter which the police were not aware of at that time, if the Victim had not volunteered this information on her own accord:<sup>324</sup>

Q: So moving on, in paragraph 5 of your statement you mentioned that there was a further statement for

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<sup>323</sup> DCS at p 214 (para 54).

<sup>324</sup> 5 July 2022 Transcript at pp 43 (line 30) to 45 (line 13).

investigations, so what was the outcome of investigations?

A: [The Victim] was given a stern warning for an offence of providing false evidence under Section 191 of the Penal Code, punishable under Section 193 of the Penal Code.

Court: Sorry, given a stern warning for what? Given stern--

Witness: For an offence of providing false info---false evidence.

Court: Yes.

Witness: Under Section 191 of the Penal Code, punishable under Section 193 of the Penal Code, Your Honour.

...

Court: ---when was this stern warning given?

Witness: Sometime in June, Your Honour, I do not recall the exact date.

...

Court: June which year?

Witness: This year, Your Honour.

Court: Yes?

Witness: 2022, yah, this year.

...

Court: And the offence, when was it committed?

Witness: The offence was committed when he---when she took stand for the case, the ICA had---that was in twenty---oh, I can't recall. Let me check.

...

A: 21st of November 2017. 21st, correct.

Q: And, [S]IO Foo, can you recall when this information that the [V]ictim provided false---a false statement was informed to the police?

A: It was on the date that I took her further statement, which will be in page 365, so the date there is on the 11th of April.

Court: Which year?

Witness: 2022, Your Honour.

Q: And, [S]IO Foo, before she had revealed this information to you, were the police aware of this offence?

A: No, the police was not previously aware of this offence.

263 In this case, the Victim is an honest, truthful and forthcoming witness. I therefore have no reason to doubt that the Victim was a genuinely aggrieved victim of rape.

(II) *THE DEFENCE’S ARGUMENTS ON THE INCONSISTENCIES IN THE VICTIM’S EVIDENCE*

264 The Defence seeks to cast aspersions on the Victim’s evidence by referring to the various contradictions and inconsistencies in her evidence as stated in her conditioned statement, her testimony, and the evidence given by the Prosecution’s witnesses.<sup>325</sup> In particular, the Defence relies on the inconsistencies in the evidence surrounding the Victim’s state of intoxication at the time she left the Unit for the KTV Lounge, and the inconsistencies in the evidence relating to the Victim’s recollection of the events that occurred at the KTV Lounge.<sup>326</sup> According to the Defence, this shows that the Victim was “exaggerating her level of intoxication”.<sup>327</sup>

265 The law recognises that discrepancies in the evidence of a witness does not *ipso facto* mean that the witness should not be believed.

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<sup>325</sup> DCS at p 218 (para 67).

<sup>326</sup> DCS at pp 220–222 (paras 71–79).

<sup>327</sup> DCS at pp 218–219 (paras 68–70).

266 In *Osman bin Din v Public Prosecutor* [1995] 1 SLR(R) 419, the Court of Appeal at [39] cited with approval the following observation of Abdul Hamid J in *Chean Siong Guat Guan v Public Prosecutor* [1969] 2 MLJ 63 at 63 and 64:

Discrepancies may, in my view, be found in any case for the simple reason that no two persons can describe the same thing in exactly the same way. Sometimes what may appear to be discrepancies are in reality different ways of describing the same thing, or it may happen that the witnesses who are describing the same thing might have seen it in different ways and at different times and that is how discrepancies are likely to arise. These discrepancies may either be minor or serious discrepancies. Absolute truth is I think beyond human perception and conflicting versions of an incident, even by honest and disinterested witnesses, is a common experience. *In weighing the testimony of witnesses, human fallibility in observation, retention and recollection are often recognized by the court. ...*

[emphasis added]

267 Similarly, in *Jagatheesan s/o Krishnasamy v Public Prosecutor* [2006] 4 SLR(R) 45 at [82], V K Rajah J (as he then was) stated as follows:

It is trite law that *minor discrepancies in a witness's testimony should not be held against the witness in assessing his credibility. This is because human fallibility in observation, retention and recollection is both common and understandable...* Inconsistencies in a witness's statement may also be the result of different interpretations of the same event... But *a court is perfectly entitled, notwithstanding minor inconsistencies, to hold that a particular witness is in fact a witness of truth and to accept the other aspects of his testimony which are untainted by discrepancies.*

[emphasis added]

268 In my view, the alleged inconsistencies in the Victim's evidence are trivial and do not undermine her credibility and reliability as a witness.

269 The Victim did not appear to be heavily intoxicated when she left the Unit for the KTV Lounge. But the effects of alcohol intoxication are not

instantaneous. Further, the fact that the Victim did not appear intoxicated prior to arriving at the KTV Lounge did not mean that her state of intoxication would not worsen. The Victim continued to consume alcohol at the KTV Lounge. As Dr Guo opined, the Victim's BAC level would be at its highest after she had left the KTV Lounge and returned to the Unit (see [99] above).

270 As for the Victim's evidence that she had difficulties recollecting the events at the KTV Lounge, the differences between her evidence and the evidence provided by the Prosecution's witnesses were not material to affect her credibility. As Dr Guo testified, the Victim was likely suffering from amnesia due to her alcohol intoxication at the time she was at the KTV Lounge (see [98] above). The Victim thus cannot be expected to recall all the details of what had happened at the KTV Lounge with specificity.<sup>328</sup> The fact that the Prosecution's witnesses could recall more details than the Victim, and that their accounts differ from the Victim's account in some instances, does not mean that the Victim is an untruthful witness.<sup>329</sup>

271 The Victim's evidence is consistent with Dr Guo's evidence that she was likely to have experienced amnesia throughout the night, and was, therefore, unable to form her own memories of what had happened while she was at the KTV Lounge. For instance, the Victim generally could not recall the events at the KTV Lounge and had no recollection of the Accused being at the KTV Lounge. This is consistent with Dr Guo's evidence that the Victim's level of intoxication at that time would have caused her to suffer from amnesia.<sup>330</sup>

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<sup>328</sup> Prosecution's Reply Submissions filed on 19 October 2022 ("PRS") at para 5.

<sup>329</sup> PRS at para 8.

<sup>330</sup> PRS at para 7.

272 The factual inconsistencies which the Defence rely on to demonstrate that the Victim’s evidence is not “unusually convincing” are not germane. What is relevant is whether there is any material inconsistency in the Victim’s evidence pertaining to her state of intoxication at the time of the rape, and whether she was able to consent to have sexual intercourse with the Accused. The Defence does not raise any such evidence. Accordingly, the Victim’s reliability and credibility are not tarnished. Her evidence that she was raped by the Accused remains “unusually convincing”.

(B) THE CREDIBILITY AND RELIABILITY OF THE ACCUSED’S TESTIMONY

273 The Accused, on the other hand, was parsimonious with the truth. Further, the Accused kept changing his evidence on significant events that I have mentioned above.

274 The Accused sought to explain why the incriminating aspects of his evidence in his police statements were not true as compared to his testimony in Court. He attributed it to the Alleged Phobia. This reason is unbelievable. When the Accused was asked by the police to give the 31 January Statement, it was certainly not the first time that he was in a police station. Yet he did not tell SIO Noor that he had the Alleged Phobia. Neither did he inform Dr Phang, the psychiatrist whom he said he was comfortable talking to, that he had the Alleged Phobia. But regardless of whether he had the Alleged Phobia, the Accused was expected to tell the whole truth to the police. Telling the truth to the police in the investigation of the offence of rape is the crux of the matter, and not whether the Accused had the Alleged Phobia. What is more damning is that, despite the Alleged Phobia, he was able to provide the police the other aspects of the case that are not incriminating or less incriminating to his defence of consensual sex. This selective rejection of incriminating aspects of his police statements because



of the Alleged Phobia is difficult to believe. This is especially so when he admitted that he had voluntarily given all his statements to the police without threat, inducement or promise.

275 Beyond the internal contradictions in his evidence, the Accused has also lied numerous times in the face of objective forensic and scientific evidence before the Court. The forensic evidence in the form of the DNA analysis of the high vaginal swab conducted by Ms Tang showed that the Accused's DNA was found in the high region of the Victim's vagina. This indicates that his penis had penetrated deep into her vagina. Against this independent forensic evidence, the Accused claimed that his penis only entered "[j]ust a bit" into the Victim's vagina. To counter the forensic evidence, the Accused suddenly alleged that he used his finger to penetrate deep into the Victim's vagina. But as I have found at [67]–[69] above, this evidence was raised for the first time on the second last day of the trial, and appears to be an embellishment on the Accused's part.

276 The Accused alleges that the Victim was sober to consent to the sexual intercourse. The Accused's evidence that he had obtained the Victim's consent prior to having sexual intercourse with her is simply unacceptable in light of the evidence, especially the medical and forensic evidence. Dr Lee's and Dr Guo's expert opinions support the finding that the Victim's BAC level at the time of the rape would have been very high, with an average of 144mg/100ml, and that she could not have had the capacity to give her consent for the sexual intercourse. The Accused has not challenged the expert evidence. He did not adduce his own expert evidence to support his narrative or to contradict those that were adduced by the Prosecution.

277 In totality, therefore, I find that the Accused is not a truthful witness and his evidence is highly unreliable.

(8) The Defence's allegations regarding the Victim's motives for reporting the rape

(A) THE ACCUSED ALLEGED THAT THE VICTIM REPORTED HIM TO THE POLICE FOR RAPE AS SHE WANTED TO REMAIN IN SINGAPORE

278 The Defence argues that the Victim had fabricated the allegation of rape against the Accused in order to remain in Singapore for a longer period to assist in the police investigations. In support, the Defence relies on the various WeChat messages which Angela sent to Heng sometime around 14 February 2019. In those messages, Angela alleged that the Victim might have made the false report against the Accused to obtain a special pass from the ICA to remain in Singapore. Angela also suggested that the Victim might have forced her friends to give false statements or evidence and threatened the others.<sup>331</sup> Heng further claimed that Angela told him that the Victim had advised some customers to lodge false police reports to obtain a special pass from the ICA that would enable them to extend their stay.<sup>332</sup> Therefore, the Defence submits that the Victim had made a false report of rape against the Accused.<sup>333</sup>

279 In Court, Angela was asked to explain her WeChat messages: <sup>334</sup>

Witness: I was guessing that [the Victim] may be making use of the case in order---

Court: What case?

Witness: The case that is happening right now.

Court: The rape case.

Witness: That was my guess back then. Because I was in China back then, I could not use WhatsApp and I

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<sup>331</sup> AB at p 245.

<sup>332</sup> 1 July 2022 Transcript at pp 34 (line 28) to 35 (line 20).

<sup>333</sup> DCS at para 92.

<sup>334</sup> 13 July 2022 Transcript at pp 17 (lines 18–26), 21 (line 19) to 22 (line 2), 22 (line 19) to 23 (line 5).

was not able to contact the police, neither did I know the IO in charge of the case, so I wanted---

Court: No, no, before you go into that, earlier on she said that she was guessing that [the Victim] may be using the rape case to what?

Witness: To get a white card. In order to stay in Singapore to do business, to make money.

Court: Then she mentioned that she was in China and?

Witness: Yes, I was in China then, I was not able to use WhatsApp. I was not able to contact the police; neither did I know the IO in charge of the case. *So I wanted [Heng] to tell the police what I thought about the case.* So that the police would get to the bottom of things. So that an innocent man would not get involved. I wanted the police to investigate and find out the truth. *As for the other things [Heng] and I had talked about, those were just my conjectures.*

...

Q: Do you have any proof that the [A]ccused is innocent of the rape?

A: At that time when I said these, it was---I didn't mean that I wanted to prove whether [the Accused] raped [the Victim] or not---

...

Witness: ---I didn't mean I wanted to prove whether or not [the Accused] raped [the Victim]. *What I meant, when I said this, was that I wanted the police to investigate whether [the Victim] was making use of this case to stay in Singapore.* It is not for me to investigate, that is the job of the police. And I was just telling the police what I saw and what I knew, and it is for them to investigate.

...

Q: Okay. Now I'm going to go back again, okay, to page 245. Okay. At page 245, okay, we earlier discussed the message:

"Want delay and you shall – your friends stay in Singapore."

Okay. You send another two messages around 14 February 2019. One you said:

...

“[The Victim] maybe want [to] force the other people [to] give false statements/evidence.”

And then below that, you said:

“[The Victim] threatened others, crazy already.”  
Okay. Do you know for a fact whether [the Victim] had forced other people to give false statement on evidence?

A: When I said this, my intention was to have [Heng] ask the police and ask them to check to see if what [Ma] and the rest said were the truth. When I said this is---*it was not that I was certain [the Victim] was forcing other people to give false statement.*

...

Q: To your knowledge, has [the Victim] ever told anyone else to lie to the police?

A: I don't know.

Q: Okay. Then below you said:

“[The Victim] threatened others.”

Has [the Victim] ever threatened you?

...

A: So when I say “threatened”, I did not mean that I was certain [the Victim] was making others lie. But it was merely to have [Heng] tell the police to find out the truth and whether the witnesses were telling the truth without any influence by her.

...

[emphasis added]

280 Angela's explanation was not that the Victim had made a false police report of rape against the Accused in order to obtain an ICA special pass to remain working in Singapore; instead, Angela was saying that she was not certain that the Victim was doing this, but that she merely *suspected* this to be the Victim's motive, and that she wanted Heng to inform the police of this

possibility. Indeed, Angela's explanation was further confirmed during cross-examination.<sup>335</sup>

Q: Right, you see, you sent these messages, right, the three messages I refer to you that, "[the Victim] wanted to delay and use the [A]ccused to stay in Singapore. She maybe want to force other people, she threatened others, crazy already." Am I correct to say that even after 2 years, right, you had doubts that the [A]ccused had raped [the Victim] and hence these messages?

A: At that time I could not contact the police directly, neither did I know who to contact. I was in China, I did not know if I were coming back to Singapore or when I would be coming back to Singapore. So, I said all these with the intention of having [Heng]---sorry, *I said---sent all these messages with the intention of relaying what I had seen and heard and then have [Heng] relayed all these to the police so that they would investigate and find out the truth.*

Q: Yes, thank you, witness. In other words, in other words, right, you had still doubts whether the [A]ccused had raped [the Victim], am I correct? You wanted the police to investigate.

A: *It was not that I doubted or I did not doubt whether the [A]ccused had raped [the Victim]. I just wanted to let the police know what I know, and we trust the judgment of the police. I wasn't trying to pass any judgment on this matter.*

[emphasis added]

281 Angela clarified that she wanted to assist the police investigation by giving her own opinion on the case and asking Heng to relay her opinion to the police for them to investigate. She did not have any proof that the Victim made a false police report of rape against the Accused so that she could obtain an ICA special pass to remain in Singapore. Indeed, Angela accepted that what she told Heng was mere speculation without any evidence to support it:<sup>336</sup>

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<sup>335</sup> 13 July 2022 Transcript at p 36 (lines 13–30).

<sup>336</sup> 13 July 2022 Transcript at p 43 (lines 6–15).

Witness: ... I'm not saying that [the Victim] was doing all this for certain---

...

Witness: ... I'm not sure that she was really doing all these things. I'm not saying that [the Victim] did---made use of this incident to stay in Singapore but that is for the police to investigate and for the police to judge. And I'm not saying she's such a person, I'm saying all this based on my own perspective which is not representative of the eventual legal outcome of this case. ...

282 Angela was asked why she made such a serious allegation against the Victim without any evidence. Angela explained that it was because she heard from Ma that the Victim had been “badmouthing [Angela] behind [her] back”.<sup>337</sup> Thus, it appears that Angela was motivated to inform Heng of the unverified suspicions about the Victim because she wanted to take revenge against the Victim for badmouthing her.

283 Angela's account, *ie*, that her allegation against the Victim was speculative, is supported by Heng's testimony in cross-examination. Heng conceded that he did not have any first-hand knowledge about Angela's claim that the Victim had fabricated the allegation of rape against the Accused.<sup>338</sup> In other words, Heng conceded that he did not know whether Angela's accusations against the Victim was well-founded.<sup>339</sup> This further strengthens my finding that Angela's accusation against the Victim is without merit. I, therefore, agree with the Prosecution's submission that this aspect of the Defence's case is a speculative conjecture.<sup>340</sup>

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<sup>337</sup> 13 July 2022 Transcript at p 42 (lines 28–29).

<sup>338</sup> 26 September 2022 Transcript at p 98 (lines 22–32).

<sup>339</sup> 26 September 2022 Transcript at p 99 (lines 11–21).

<sup>340</sup> PCS at para 54.

284 In any case, the Defence's suggestion that the Victim had falsely alleged rape against the Accused meant that she had fabricated evidence to frame the Accused is completely absurd.

285 It was the Accused who chose to return to the Unit. It was not the Victim who had invited the Accused to go to the Unit. The Victim could not have known that the Accused would be returning to the Unit.<sup>341</sup> It was also the Accused who chose to unlawfully enter the Unit and go into the Victim's bedroom. Thus, the allegation that the Victim fabricated the evidence of rape does not hold water.

286 The allegation that the Victim had sought to entrap the Accused required a great deal of elaborate and careful planning and execution. It would require the Victim to tempt the Accused at the KTV Lounge, lure and invite him into the Unit, physically caressed him, allowing herself to be raped by the Accused, disengage in the midst of penetration, and to then call the police.<sup>342</sup> Indeed, if the Victim had intended to fabricate an allegation of rape against the Accused, why did she not simply engage in sexual intercourse with the Accused and then threatened the Accused to make a police report in order to blackmail him thereafter? Why go through all these elaborate and unnecessary steps, such as getting drunk at the KTV Lounge, having her friends and the Accused carry her back, and taking a chance that the Accused would return to the Unit to have sexual intercourse with her? Further, the Victim's state of intoxication, which worsened as the night progressed, meant that she could not have had the presence of mind to conjure up such an elaborate plan to ensnare the Accused.

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<sup>341</sup> PCS at para 52(a).

<sup>342</sup> PCS at paras 52(b) and 52(c).

287 When the Victim called the police immediately after the Accused left the Unit, she risked disclosing evidence of the illegal beauty treatments that she conducted at the Unit. Despite this risk, the Victim was prepared to jeopardise her livelihood, in order to seek justice for the wrong that the Accused had clearly done to her.<sup>343</sup>

288 The evidence thus does not suggest that the Victim fabricated false evidence against the Accused to obtain an ICA special pass to remain in Singapore for a longer period. The Defence's suggestion that the rape charge was a fabrication by the Victim defies belief and is wholly contradictory to plain common sense.

(B) THE ALLEGATION THAT THE VICTIM WANTED MONETARY COMPENSATION

289 After the Victim had made a police report of rape against the Accused at 3.59am, the police subsequently sent her for a medical examination at KKH. When the Victim returned to her Unit, Ma informed her that the Accused offered monetary compensation to the Victim.<sup>344</sup> The Accused did not deny that he had offered monetary compensation to the Victim.<sup>345</sup> This was done with the hope that the Victim would not report him to the police.<sup>346</sup> The Accused testified in Court that, at the time when the monetary compensation was discussed, he did not know that the Victim had already called the police at 3.59am the same day.<sup>347</sup>

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<sup>343</sup> PCS at para 52(d).

<sup>344</sup> 28 June 2022 Transcript at p 72 (lines 26–27).

<sup>345</sup> 23 September 2022 Transcript at p 64 (lines 20–23).

<sup>346</sup> 28 June Transcript at pp 72 (lines 26–31) and 73 (lines 1–3).

<sup>347</sup> 23 September 2022 Transcript at p 61 (lines 19–26); 26 September 2022 Transcript at p 16 (lines 23–26).



290 The Victim candidly admitted that she had initially considered the Accused's offer of compensation as she was facing "financial problem[s]" at that time. Her father was involved in an accident in China and was ill. She needed money to pay for his medical bills.<sup>348</sup> However, the Victim clarified that compensation was not a key factor in her consideration. She did consider "let[ting] [the Accused] go" without "accept[ing] compensation" if not for the fact that the Accused "had done something very terrible".<sup>349</sup> The Victim explained that the Accused's conduct of entering her house without her permission and raping her is a serious matter.<sup>350</sup> Ma also told the Victim that "[she] should not let [the Accused] go" and that the Accused should receive his just desserts for committing rape.<sup>351</sup> Thus, the Victim went to the police station to give a statement.

291 When asked as to who raised the issue of compensation, the Victim says that it was not she who raised the issue.<sup>352</sup> Indeed, the Accused testified that it was not the Victim, but rather Ma, who first broached the topic of monetary compensation:<sup>353</sup>

4 August 2022 Transcript

A: ---I did not know and asked [Ma] whether she could tell me what kind of help for compensation [the Victim] needed. [Ma] eventually suggested that I make monetary compensation. So when [Ma] and I were discussing this matter, [the Victim] was beside [Ma]. When [Ma] brought up

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<sup>348</sup> 28 June Transcript at p 73 (lines 6 to 21).

<sup>349</sup> 28 June Transcript at p 74 (lines 19 to 20).

<sup>350</sup> 28 June Transcript at p 74 (lines 21 to 22).

<sup>351</sup> 28 June Transcript at p 72 (line 14).

<sup>352</sup> 30 June 2022 Transcript at p 76 (lines 17–19).

<sup>353</sup> 4 August 2022 Transcript at pp 30 (line 23) to 31 (line 5); 23 September 2022 Transcript at p 64 (lines 11–23).

the issue of monetary compensation, I told [Ma] I was not working. My parents were also not working. They were old and also retired. I said I was only working part-time and I'm not earning much. I told her I could offer a few thousand dollars but I would need time to raise the money. [Ma] then told me that a few thousand dollars would definitely not be enough. Then I asked her to "let me know what is the figure that you are looking at." She told me to think it through myself. Eventually I proposed \$20,000. When I made suggestion, I heard [Ma] asking [the Victim] whether \$20,000 would be okay. I presume she was asking [the Victim] because there was only [the Victim] in the house. I did not hear [the Victim] respond, but [Ma] told me later on that \$20,000 was not enough. After that, Your Honour, we communicated via WeChat messaging.

23 September 2022 Transcript

[A]: I did not know how to make it up to her and [Ma] said she did not need me to make it up to her in this way. So I asked [Ma], how should I make it up to [the Victim] then? And [Ma] suggested I could make monetary compensation. [The Victim] was with [Ma] then.

...

A: I asked [Ma], would a few thousand dollars suffice? Because I wasn't working and my parents are aged, they are not working as well. But [Ma] told me a few thousand dollars would not be enough. And then I suggested \$10,000. And [Ma] still say it was not enough. And then, it became 20,000.

292 Ma, on the other hand, gave evidence that she was not certain who raised the issue of compensation.<sup>354</sup> In Ma's re-examination, she clarified that Angela was also involved in the discussion regarding the compensation issue:<sup>355</sup>

<sup>354</sup> 12 July 2022 Transcript at p 22 (lines 12–14).

<sup>355</sup> 12 July 2022 Transcript at p 34 (lines 18–29).

[Angela] could have possibly suggested to [the Victim] to have [the Accused] make monetary compensation to [the Victim]. But I don't know what transpired between [Angela] and [the Victim] over the phone. When [the Victim] hung up the call with [Angela], she said [Angela] had told her that [the Accused] had taken care of her, that he was pitiful and so on. So [the Victim] mentioned perhaps they can get---she can get [the Accused] to make monetary compensation. But it also could have been [Angela] who had suggested that to [the Victim] and then after that [the Victim] found [the Accused] very pitiful. [Angela] kept persuading [the Victim] not to pursue the matter.

293 Ma felt that it was Angela and not the Victim or Ma herself, who had brought up the issue of compensation. Ma thought that Angela considered monetary compensation as a fair balance between looking out for the Victim's interest on the one hand and being fair to the Accused on the other. Ma testified that, ultimately, the Victim had a change of heart and decided not to seek any compensation from the Accused, but to proceed with the police report.<sup>356</sup>

294 Angela, on the other hand, said that it was the Accused who had brought up the issue of compensating the Victim.<sup>357</sup> Angela also mentioned that the Victim was angry with both Angela and Ma for pitying the Accused.<sup>358</sup> Angela's account was as such:<sup>359</sup>

Q: Now, moving on to the issue of compensation, witness. Now, is it your evidence that you are not the initiator of the issue of compensation?

A: Definitely not me. Because at that time I was in bed with my then boyfriend and he heard my conversation with [the Victim].

Q: Now, witness, your---you testified earlier that [the Victim] changed her mind, right, and did not want to accept any compensation. Now, do you know why, is it

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<sup>356</sup> 12 July 2022 Transcript at p 28 (lines 6–10).

<sup>357</sup> 13 July 2022 Transcript at p 13 (lines 29–31).

<sup>358</sup> 13 July 2022 Transcript at p 14 (lines 9–10).

<sup>359</sup> 13 July 2022 Transcript at p 35 (lines 1–13).

because they were not agreement with the amount, the terms, do you know?

A: I don't know specifically, but I remember when [the Victim] first called me, we had discussed about this. *She told me that a---that person had offered compensation.* But, subsequently, after that when [the Victim] called me, she appeared very un---she sounded very unhappy. I don't know what she went through for her to change her mind completely. And she was very angry with us.

[emphasis added]

295 The evidence is unclear as to how and who first initiated the subject of monetary compensation. However, what is clear is that the discussion on monetary compensation was very quickly dropped by the Victim within a few hours. The Accused did not deny that he wanted to compensate the Victim, and he was prepared to marry her if she so desired.<sup>360</sup> The Accused even offered and was prepared to pay the Victim \$50,000 albeit by instalments.<sup>361</sup>

296 The Accused's conduct is baffling. If the Accused truly believed that he had consensual sex with the Victim, why did the Accused agree to compensate her for the sum of \$50,000 on the same day of the rape? This is a huge sum which the Accused could ill afford to pay even by instalments. Further, as the Prosecution argues, if the entire matter was truly a misunderstanding, and if the Accused truly had consensual sex with the Victim, there was no reason why the Accused would have to seek the Victim's forgiveness, much less for him to agree to "face the consequences".

297 Further, when the matter regarding compensation was discussed, Ma had not informed the Accused that the Victim had called the police. The

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<sup>360</sup> 4 August 2022 Transcript at p 30 (lines 4–13); 23 September 2022 Transcript at p 63 (lines 5–9).

<sup>361</sup> 4 August 2022 Transcript at p 35 (lines 5–7); 23 September 2022 Transcript at pp 66 (lines 18–21) and 70 (lines 17–20).

Accused's messages to Ma immediately after Ma had called him to confront him for raping the Victim were telling. The Accused messaged Ma that "I will go police station to surrender" and "[p]ls forgive me for what I did, I will face the consequence" [emphasis added].<sup>362</sup> I agree with the Prosecution that the Accused, by offering to surrender himself to the police, indicates that the Accused knew he had committed a crime against the Victim.<sup>363</sup>

298 The Accused's willingness to increase his offer of monetary compensation is even more telling of his guilt. The Accused was hoping that the huge monetary compensation would save him from the risk of being charged for rape. The Accused knew that he took advantage of the Victim in her state of deep sleep and had sexual intercourse with her without her consent. He wanted to pay off the Victim to secure her silence as he was afraid that she would go to the police to report him for rape. Since the Accused did not know that the Victim had already reported the incident to the police, the Accused thought that by offering the Victim monetary compensation, she might not report the Accused to the police for rape. Indeed, the Accused admitted that if he had known that the Victim had already reported to the police, he would not have offered compensation. His action of offering monetary compensation is not consistent with the behaviour of an innocent person.

299 The Accused's offer of compensation of a huge sum of money in order to purchase the Victim's silence is further evident from the text messages between the Accused and Heng, which was retrieved following the TCFB's forensic analysis of the Accused's handphone. The Accused had sent to Heng screenshots of his text messages between himself and Ma, and he told Heng

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<sup>362</sup> AB at p 133.

<sup>363</sup> PCS at paras 101 and 102.

“[w]ait, later, can reduce *bo* [which means “is it possible” in colloquial terms], after she drop the case”.<sup>364</sup> At trial, the Accused explained his intention underlying this message:<sup>365</sup>

- A: No. What I meant was I was asking [Heng] whether [the Victim] would be agreeable to reducing the compensation amount.
- Q: Yes, that’s what I’m saying.
- A: Okay.
- Q: After she had dropped the case, you would see whether you could reduce the compensation amount, correct?
- A: Yes, I wanted to see if [the Victim] would be agreeable to me paying her a reduced amount.
- Court: After she has dropped the case. Is that correct?
- Witness: Yes.

300 It is thus clear that the Accused offered the Victim the huge sum of compensation with the goal of persuading the Victim to drop the police report of rape against the Accused. Once the Victim dropped her case, the Accused would then reduce the amount that he agreed to pay the Victim.

301 The evidence does not show that the Victim had sought to utilise the police report of rape to blackmail the Accused into providing her with monetary compensation. Rather, the Accused had sought to capitalise on the issue of monetary compensation to persuade and entice the Victim to drop the police report of rape against the Accused.

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<sup>364</sup> Prosecution Exhibit 28A at p 8, serial number 130.

<sup>365</sup> 23 September 2022 Transcript at p 73 (lines 8–17).

(9) Summary of the Court's analysis on the Victim's capacity to give consent

302 Having considered the evidence, I am satisfied that the Prosecution has proven beyond a reasonable doubt that the Victim did not consent to have sexual intercourse with the Accused.

303 At the outset, I found at [201] above that the Accused and the Victim did not in fact engage in any physical intimacy at the KTV Lounge. But even if it had been otherwise, that alone does not mean that the Victim would have consented to have sexual intercourse with the Accused at the time the Accused went to the Unit the second time in the early morning of 30 January 2017. Indeed, the Accused acknowledged in his cross-examination that the Victim's behaviour at the KTV Lounge, even if it had occurred, would at best indicate the Victim's interest in the Accused.<sup>366</sup>

Q: Now, Mr Yap, on this defence, where you claimed that she invited you over to her house later, you are saying that ... you believe that because of this invitation, the [V]ictim consented to sex later that night, correct?

A: At that time, I felt that she was interested in me.

Q: So is it a yes or no?

A: But you were talking about having sexual relations. I'm just saying that I felt she was interested in me.

Q: *So even if she invited you over, that doesn't mean that she will consent to sex later that night, correct?*

A: *Correct.*

[emphasis added]

304 In my view, the interactions between the Accused and the Victim at the KTV Lounge were only tangentially relevant to the issue whether the Victim

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<sup>366</sup> 22 September 2022 at p 9 (lines 11–21).

engaged in consensual sex with the Accused, in spite of her being heavily intoxicated.

305 Turning to the evidence at the time of the rape, I also find that the evidence of the Victim's extent of intoxication meant that she would have been in deep sleep when the Accused entered the Unit the second time. In other words, the Victim was unconscious at the time of the alleged rape, right up to the point when the Accused inserted his penis into the Victim's vagina. As Dr Guo had explained, the BAC level in the Victim's body would have been at around 144mg/100ml. The Victim was thus in a state of deep sleep. It follows that it would have been impossible for her to have been awake, to be aware of her surroundings, to respond to the Accused's sexual advances, or sufficiently conscious to have provided her consent to the Accused to have sexual intercourse. Indeed, the Victim's state of intoxication obviously meant that she would not have had the capacity to make decisions or choices, including to consent to the Accused having sexual intercourse with her. Accordingly, I accept the Prosecution's case that the Victim was unconscious at the time of the rape.<sup>367</sup> It appears from the evidence that the Accused took advantage of the Victim's vulnerability, outraged her modesty, and eventually penetrated his penis deep into the Victim's vagina without her consent, and thereby committed rape.

306 My finding also puts to rest the Defence's suggestion that the Victim was conscious at the time of the rape. But for completeness, I turn to address that aspect of the Defence's case.

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<sup>367</sup> PCS at para 40.



307 In support of this, the Defence points out that the Victim could feel the Accused's penis penetrating her vagina and had pushed the Accused away, that she had the presence of mind to ask the Accused for his identity, and that she could remember what the Accused wore at the material time of the rape. Further, the Accused claimed that the Victim thereafter got out of her bed to check her safe and she also checked the Accused's handphone. The Accused also claimed that the Victim had gone out of her bedroom, picked up a beer can, and threw the beer can down from the balcony.<sup>368</sup> All of these actions, the Defence argues, show that the Victim was aware of what was happening, and had the cognitive ability to give or refuse consent.<sup>369</sup>

308 The Defence also refers to a newspaper report of a recent decision of the High Court rendered by Pang Khang Chau J in *Public Prosecutor v Tan Yew Sin* ("*Tan Yew Sin*"). That case involved charges of rape, sexual assault and outrage of modesty brought against the accused, Tan. The prosecution in that case argued that the victim did not consent to the sexual acts as the victim was so intoxicated that she would not have been able to consent. Tan, on the other hand, admitted to the sexual encounter but argued that it was consensual. At the conclusion of the trial, Pang J acquitted Tan on all three charges. The Defence submits that the present case can be analogised with the facts in *Tan Yew Sin*.<sup>370</sup>

309 At the outset, I note that Pang J's decision in *Tan Yew Sin* was delivered orally. Pang J has yet to issue his full grounds of decision. It is unwise to rely on the media report for the Judge's grounds of decision. I also note that the

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<sup>368</sup> 4 August 2022 Transcript at p 1 (lines 20–26).

<sup>369</sup> DCS at pp 200–201 (para 45), 227 (para 89) and 228 (para 91).

<sup>370</sup> DCS at paras 87–91.

Prosecution has informed the Court that the decision in *Tan Yew Sin* is subject to an appeal.<sup>371</sup>

310 In any case, from the brief facts as reported in the media, the facts in *Tan Yew Sin* are significantly different from this instant case. The victim in that case was found to have consumed five pints of beer prior to the sexual encounter. In the present case, it is undisputed that the Victim had consumed a large amount of alcohol of different varieties spread out across a significant duration (*ie*, from the time the Victim was celebrating the Chinese New Year in the Unit to the time she was at the KTV Lounge). It is, therefore, likely that the Victim's BAC level would have been higher than the victim's BAC level in *Tan Yew Sin*. The Victim was unconscious when she and her friends left the KTV Lounge and had to be carried to her Unit. The victim in *Tan Yew Sin* was not intoxicated to the point of unconsciousness.

311 I am satisfied that, given the Victim's BAC level at the material time of the rape, her understanding and awareness of her surrounding remained impaired, such that she lacked the ability to give her consent. This is consistent with Dr Guo's evidence that if the Victim were in a "partial awake" state, she would only have a "little bit of awareness" and would not have been conscious enough to appreciate her surroundings and consent to sex. Indeed, on the Accused's own evidence, the Victim was not even capable of responding verbally to him, much less capable of consenting to sex.<sup>372</sup>

312 On the other hand, Pang J found that the victim in *Tan Yew Sin* appeared to retain some level of cognitive capacity as glimpsed from her conduct

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<sup>371</sup> PRS at p 8.

<sup>372</sup> 23 September 2022 Transcript at p 35.

following her consumption of alcohol up to the point of the sexual encounter. This included the victim responding relevantly and meaningfully to Tan when asked questions, and that she supposedly said she was “not ready” to leave the car and was searching for her wallet to pay for the ride. Further, when the victim behaved emotionally in the car and banged her head on the window, she would stop each time Tan urged her to stop. Pang J found that this illustrated the victim’s awareness of what Tan was saying to her and her decision to accept his suggestion.

313 Accordingly, it is clear that the extent of and effect of intoxication between the victim in *Tan Yew Sin* and the Victim was clearly materially different. In the present case, the Victim was unconscious and was in deep sleep as a result of her earlier heavy intoxication. The Victim was awakened by the sexual assault of the Accused when he raped her. In this vein, the Court of Appeal in *Pram Nair* held at [96(d)] that a person who has limited awareness of what is happening cannot be taken as having the capacity to consent. That person, despite having limited awareness, may nevertheless have such an impaired understanding or knowledge as to lack the ability to make any decisions, much less the particular decision of whether to have sexual intercourse or engage in any sexual act. I am therefore satisfied that, even if the Victim was in the “partial awake” state, her mental faculties were sufficiently impaired at the time of the rape, such that she could not have had the capacity to consent to sexual intercourse with the Accused.

314 Further, in respect of the Accused’s account of the Victim’s behaviour after the rape, the Defence submits that the Victim had sufficient cognitive function.<sup>373</sup> On the contrary, I do not accept the Accused’s account of the

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<sup>373</sup> DCS at para 91.

Victim's actions in the Unit after the rape as described by him in Court and in the 31 January Statement. The Victim was rudely awakened by the Accused's sexual penetration and Dr Guo explained that the Victim was still heavily intoxicated.<sup>374</sup>

315 The Defence thus fails to raise a reasonable doubt in the present case. I, therefore, am satisfied that the Prosecution has proven all the elements necessary to establish the Rape Charge beyond a reasonable doubt.

### ***The House-breaking Charge***

316 For ease of reference, I reiterate the elements that are necessary to establish the House-breaking Charge. As I have stated at [45] above, the Prosecution must prove beyond a reasonable doubt that (a) the Accused had committed the act of house-breaking "after 7 p.m. and before 7 a.m."; (b) the Accused had entered the Unit by opening the locked main door without the Victim's permission; and (c) he entered the Unit with the intent to rape the Victim.

317 The Defence submits that it was not possible for the Accused to have entered the Unit by unlawfully retrieving the key from under the main door. The Defence relies on the following in support of its case. First, the alleged satay stick used by the Accused to retrieve the key could not be found at the crime scene. Second, the police had failed to obtain any fingerprints from the main door's key. Third, Henry's evidence was that, at the time he left the Unit with Ma and the Accused, he had slid the key underneath the main door. Henry further claimed that, from his perspective, the key was "far away" and could not

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<sup>374</sup> PRS at para 9 and pp 10–11.

be retrieved.<sup>375</sup> Thus, the Defence submits that the Accused could not have retrieved the key from under the main door of the Unit, whether it was with the satay stick or the Accused's Genting membership card.<sup>376</sup> The Defence further alleges that the police did not retrieve the satay stick or conduct fingerprinting or DNA retrieval on the key.

318 These arguments raised by the Defence do not undermine the Prosecution's case. The Accused had admitted in his statement that he used the satay stick to retrieve the key from underneath the main door of the Unit. As I have explained above, there is no reason to doubt that this account provided by the Accused is not the truth.<sup>377</sup> The use of the satay stick was revealed by the Accused to the police in the 31 January Statement. This was a day after the rape and by which time the satay stick could have been disposed of by the cleaners. Further, the fingerprint testing or DNA retrieval of the key may result in a negative outcome as the Accused may not have left his fingerprint on the key or may have left too little DNA behind to have provided a sufficient profile.<sup>378</sup> The hard facts are that only three people knew that the key was slid under the main door. The Accused was one of the three and he was the only one who returned to the Unit shortly after the key was slid under the main door. The Accused was the only one who knew that he could enter the Unit by using the satay stick to retrieve the key.

319 As for Henry's evidence, he said the key was pushed "far enough". This was a subjective assessment. Henry could not estimate the distance the key had

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<sup>375</sup> 8 July 2022 Transcript at p 56 (lines 10–12).

<sup>376</sup> DCS at paras 8 and 9.

<sup>377</sup> PRS at para 12.

<sup>378</sup> PRS at para 14.

slid under the main door. It is common sense that it is not easy to forcefully slide the key into the Unit when the gap under the door is very small.<sup>379</sup> In any case, had the Accused assessed that the key could not be retrieved from under the main door, he would not have returned to the Unit as he knew that the Victim was completely unconscious.

320 The Defence further argues that, given the purported gaps in the Prosecution’s case regarding how the Accused entered the Unit on the House-breaking Charge, the Prosecution fails to make out its case beyond a reasonable doubt. To this end, the Defence refers to the Court of Appeal’s observations in *Ramesh a/l Perumal v Public Prosecutor and another appeal* [2019] 1 SLR 1003 (“*Ramesh*”) at [2] and [87]:

2 ... *yet* it is precisely in such situations that the courts must also guard against the mind-set that once an unbelievable defence is rejected, everything is to be taken *against* the accused. This might lead a court, inadvertently, to fill certain gaps in the evidence in order to support a finding against the accused, when it is rightly the Prosecution which bears the burden of filling such evidential gaps, failing which a conviction cannot be sustained.

...

87 ... The court should not shut its mind to any defence which is reasonably available on the evidence, even where that defence is (in some respects) inconsistent with the accused’s own narrative ...

[emphasis in original]

321 In *Ramesh*, one of the issues was whether the appellant, R, had possessed the controlled drugs for the purpose of trafficking. The prosecution’s case was that R was to deliver bundles containing the controlled drugs to a recipient. The trial judge accepted the prosecution’s case and found that the element of

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<sup>379</sup> PRS at p 12.

possession for the purposes of trafficking was made out. On appeal, the Court of Appeal found that there was evidence to show that R was in possession of the controlled drugs, but the Court of Appeal was not satisfied that there was evidence to establish that R had the controlled drugs for the purpose of trafficking. This was despite the fact that there were many discrepancies in R's account.

322 The Court of Appeal also rejected the prosecution's argument urging the Court of Appeal to look at the totality of the facts and consider that R had agreed to take on the bundles from the co-accused. In the Court of Appeal's view, there were other possible reasons why R received the drugs from the co-accused, one of which was that R was holding on to the drugs with the intention to return them to the co-accused. It was in this respect that the Court of Appeal held that the trial judge should not have shut his mind to any defence which was reasonably available from the evidence, even where that defence was (in some respects) inconsistent with the accused's own narrative. Although R's earlier defence (that R believed the bag containing the drugs to be containing office documents instead of controlled drugs) was found to be untenable and was abandoned by R himself, the Court of Appeal held that this did not mean that all other aspects of his defence ought to be rejected by the trial judge (*Ramesh* at [87]).

323 The Court of Appeal in *Ramesh* was thus referring to a situation where the trial judge rejected an aspect of an accused's defence that he found to be unbelievable or untenable. In that situation, the Court of Appeal cautioned against rejecting any other aspect of the accused's defence that was separate and distinct from the accused's earlier defence, simply on the basis that the accused's earlier defence was untenable. The danger in this approach is that the trial judge may inadvertently accept a case advanced by the prosecution that

suffers from evidential gaps and inconsistencies, since the absence of any tenable defence does not mean that the prosecution has proved its positive case. Such an approach would be contrary to the well-established principle that the prosecution bears the burden of proving all the elements of the charge against the accused beyond a reasonable doubt. It is for the prosecution, and not the judge, to fill in any gaps in the prosecution's case. This was made clear in the Court of Appeal's holding in *Mui Jia Jun v Public Prosecutor* [2018] 2 SLR 1087 at [76]:

... The principle that the Prosecution must prove the guilt of the accused beyond reasonable doubt is a cornerstone of our criminal law. That principle implies that it is incumbent on the Prosecution, and not the court, to address any weakness in the evidence that the Prosecution adduces, failing which the Prosecution must accept the consequences that follow for its case against the accused.

324 In other words, it is not the role of the court to step in to assist the prosecution to patch up any evidential gaps in the prosecution's case.

325 It is clear that the present case is unlike the situation in *Ramesh*. In the present case, as the Prosecution points out in its oral closing submissions,<sup>380</sup> the Accused's statements were admitted as part of the Prosecution's evidential arsenal to support the Rape Charge and the House-breaking Charge. The Accused in his police statements admitted that he used a satay stick to retrieve the key from under the main door of the Unit. There are no evidential gaps in the Prosecution's case regarding the two proceeded charges. Thus, the Defence has mischaracterised *Ramesh*'s case. That case does not support the Defence's case. To reiterate, the Accused's evidence that the Victim opened the main door and invited him into the Unit was fraught with significant inconsistencies and contradictions. Despite these material differences in the Accused's evidence,

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<sup>380</sup> 12 January 2023 Transcript at pp 8 (line 21) to 10 (line 2).



the Court did not jettison the Accused's evidence and his defence wholesale. Instead, the Court sought to treat the Accused's evidence with caution and to determine which of the Accused's version of events was the truth. In particular, the Court had to ascertain whether the Accused:

- (a) used the satay stick to retrieve the key from under the Unit's main door to unlock the door and enter the Unit;
- (b) used the satay stick to attempt to retrieve the key from under the main door, and when that stick broke, resorted to using his Genting membership card to enter the Unit;
- (c) used the satay stick in trying to retrieve the key, to no avail, and then resorted to pressing the doorbell and knocking on the main door until the Victim came to open the door; or
- (d) rang the doorbell and knocked on the main door until the Victim opened the door to invite the Accused into the Unit.

326 Eventually, the Court was satisfied that the Accused's testimony in Court, *ie*, that the Victim had opened the main door and invited the Accused into the Unit, could not have been the truth. This is because the overwhelming evidence supports the finding that the Victim was in a state of deep sleep owing to her alcohol intoxication (see [164] and [305] above). It was, therefore, impossible for the Victim to be conscious at the time the Accused went to the Unit the second time. Further, the Accused's evidence contained in the 31 January Statement as to how he managed to gain entry to the Unit was a contemporaneous account. It was also an explanation that only the Accused could have given as only he knew how he gained entry to the Unit (see [163] above). Accordingly, the Court accepts the version given by the Accused in the 31 January Statement as the true account of how he gained entry into the Unit,

ie, that the Accused had unlawfully retrieved the key from under the main door of the Unit in order to gain access to the Unit at around 3.04am on 30 January 2017 (see [164] above). The Defence further submits that the Prosecution was not entitled to rely solely on the Accused's statement as evidence in establishing its case beyond a reasonable doubt on the House-breaking Charge.<sup>381</sup> The Defence, however, does not point to any authority in support of its contention that the Prosecution ought to have obtained additional proof of his guilt. There is also nothing to suggest that the Prosecution's failure to adduce further corroborative evidence was detrimental to its case. Indeed, the High Court in *Public Prosecutor v BNO* [2018] SGHC 243 at [89] held that the police investigators had provided reasonable explanations for why it did not obtain further corroborative evidence of the offender's guilt and should not be faulted for the same. In the present case, SIO Noor explained that he did not conduct any DNA or fingerprint analysis on the key because the Accused had informed SIO Noor during the recording of the 31 January Statement that the Accused had used the key to open the main door.<sup>382</sup> I find this to be a reasonable explanation.

327 Legally, an accused person's statement can be relied on in support of a conviction. For instance, it is well-established that a conviction may be grounded on an accused person's confession alone, even if that statement is subsequently retracted, so long as the court is satisfied that the confession was voluntary, true and reliable (see *Lim Thian Lai v Public Prosecutor* [2006] 1 SLR(R) 319 at [43]). There is no reason, therefore, why an accused person's statement, especially one that is not retracted and made voluntarily, cannot be relied upon to support the finding that an element of the offence in question has

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<sup>381</sup> DCS at para 15.

<sup>382</sup> 7 July 2022 Transcript at p 16 (lines 17–23).

been established to the requisite criminal standard of proof. In this case, the Accused had maintained his version of events in the 31 January Statement and the 27 October Statement that he used the satay stick to retrieve the key from under the main door to enter the Unit. He only sought to change his evidence that the Victim opened the main door and invited him into the Unit some three years after.<sup>383</sup>

328 I also accept that the Accused had gained entry to the Unit with the intention of committing rape on the Victim under s 375(1)(a) of the Penal Code. To reiterate, I found at [124] above that the Accused had already decided to return to the Unit, even before he called the Victim. The numerous calls that he made to the Victim's handphone were to confirm that the Victim remained unconscious. Further, the Accused's intention to return to the Unit was to rape the Victim is evident from the Pre-Polygraph Interview, where the Accused informed SSI Chea that he went back to look for the Victim to see if there was an opportunity to have sex with her.

329 Finally, the Accused has an antecedent conviction of house-breaking and theft by night under s 457 read with s 458A of the Penal Code, which is also stated in the House-breaking Charge read out to the Accused (see [3] above). The Accused does not dispute this aspect of his antecedent conviction. I therefore find that s 458A of the Penal Code is also made out.

330 I, therefore, find that the Prosecution has proven all the elements necessary to establish the House-breaking Charge beyond a reasonable doubt.

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<sup>383</sup> PRS at para 16.

### **Summary of my findings**

331 I shall summarise my findings in relation to both the Rape Charge and the House-breaking Charge.

332 In respect of the Rape Charge, I am satisfied that the Prosecution has established the elements of the offence of rape under s 375(1)(a) of the Penal Code:

(a) The Accused does not dispute that he had penetrated the Victim's vagina with his penis, even if it was just "a little bit" as he alleged. The fact of a partial penetration is not a recognised defence to a charge of rape. In the present case, the forensic evidence shows that the Accused's penis had fully penetrated the Victim's vagina. In particular, the scientific evidence of the HSA report found the Accused's DNA present in the high vaginal area in the Victim's vagina.

(b) The objective evidence in the form of the CCTV Footage, the Call Logs and the medical evidence of the Victim's intoxication, supports the finding that the Victim was heavily intoxicated. This was further supported by the testimonies of the Prosecution's witnesses. Thus, I find that the Victim was in a state of deep sleep at the time of the rape and was thus unconscious. It, therefore, follows that the Victim could not have consented to have sexual intercourse with the Accused.

(c) I find that the Victim's evidence is consistent with both the objective evidence and the Prosecution's witnesses' testimonies. I also accept that the Victim is an honest and forthcoming witness. It is true that the Victim has a chequered past, having previously committed perjury in respect of the Sham Marriage Proceedings. However, in this

case, the Victim's credibility is not affected. Evidently, the Victim having had voluntarily come clean with the police regarding her past case of perjury in the Sham Marriage Proceedings, is a credit to her reliability and willingness to tell the truth in this case. Accordingly, I am satisfied that the Victim's evidence is "unusually convincing" and can be relied upon.

(d) On the other hand, the Accused's evidence at the trial is fraught with both external inconsistencies and internal inconsistencies. His evidence is internally inconsistent as they are contradicted by his various accounts developed in a drip-feed fashion across the five years since his first contemporaneous evidence was given. The Accused seeks to explain that the internal inconsistencies in his police statements were due to the Alleged Phobia. This excuse is incredulous and unbelievable. Indeed, this belated excuse was only raised during his testimony in Court, and it defies logic and common sense. His evidence is also externally inconsistent as they are contradicted by the objective evidence and the testimonies of the Prosecution's witnesses. The Accused's evidence and the account given at trial are thus fabricated and specifically engineered to support his case that the Victim had consented to sexual intercourse with him.

(e) The evidence of the Defence's witness, Heng, does not corroborate the Accused's account. There are also numerous serious and material contradictions in Heng's various evidence, both internally and externally. Heng is not an impartial and credible witness, neither is he truthful and reliable. Heng has embellished his evidence in order to support the Defence. Ironically, Heng's concessions in Court on material parts of the Defence's case severely undermined the Accused's defence.

(f) I reject the Accused's assertions that the Victim had alleged rape against the Accused for ulterior purposes. The Accused asserted that the Victim fabricated the allegation of rape against him in order to remain in Singapore for a longer period by obtaining an ICA special pass to assist in police investigation. This defies belief and is wholly against the evidence. Further, the Accused's reliance on Angela's evidence is wholly misconceived. Angela's allegations that the Victim lodged a false report are unfounded and based on speculative conjectures.

(g) The Accused also alleges that the Victim had lodged a false police report in order to extort monetary compensation from the Accused. This allegation is also spurious and not supported by the evidence. On the contrary, the objective evidence shows that the Accused had offered monetary compensation to the Victim in order to purchase her silence and to sweep the entire criminal incident under the rug.

333 In respect of the House-breaking Charge, I am also satisfied that the Prosecution has established the requisite elements beyond a reasonable doubt:

(a) There are numerous material inconsistencies in the Accused's evidence on how he had gained entry to the Unit. The Accused's testimony in Court, *ie*, that the Victim had opened the main door and invited the Accused into the Unit, could not have been the truth. Rather, the Accused's account in the 31 January Statement, *ie*, that he had used a satay stick to retrieve the key from under the main door of the Unit, was the most likely and convincing explanation as to how he entered the Unit.

(b) It is also undisputed that the Accused had entered the Unit at around 3.04am in the early hours of 30 January 2017.

(c) The Accused had gained entry to the Unit with the intention of committing rape on the Victim under s 375(1)(a) of the Penal Code. The Accused intended to enter the Unit unlawfully to rape the Victim even before he made his first phone call to the Victim. The Accused had informed SSI Chea that he decided to head back to the Unit to see if he could have sex with the Victim. Thus, the Accused had lied that he decided to return to the Unit out of concern for the Victim.

(d) The Accused does not dispute that he has an antecedent conviction of house-breaking and theft by night under s 457 read with s 458A of the Penal Code. Accordingly, s 458A of the Penal Code is made out.

### **Conclusion**

334 In conclusion, I find that the Accused's account was inconsistent internally and externally. He also embellished his narrative. Thus, he is not truthful, and his testimony is unreliable.

335 Despite not believing the Accused's version, however, the Court must nevertheless be satisfied that there is no reasonable doubt in the Prosecution's case as the Accused is not required to prove his innocence. In this respect, the Victim's evidence, together with the evidence presented before the Court, constitute proof beyond a reasonable doubt that the Accused was a sexual predator who sought to take advantage of and exploited the Victim's vulnerability.

336 For all the foregoing reasons, I find that the Defence has failed to raise a reasonable doubt in the Prosecution's case. Accordingly, I find the Accused guilty beyond a reasonable doubt, and convict him on both the Rape Charge and the House-breaking Charge accordingly.

Tan Siong Thye  
Judge of the High Court

Chong Kee En and Susanna Yim (Attorney-General's Chambers) for  
the Prosecution;  
S S Dhillon and Suppiah Krishnamurthi (Dhillon & Panoo LLC) for  
the Defence.

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