IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 198

Criminal Case No 85 of 2017

Between

Public Prosecutor

And

Wee Teong Boo

GROUNDS OF DECISION

[Criminal Law] — [Offences] — [Rape]
[Criminal Law] — [Offences] — [Sexual assault by penetration]
[Criminal Law] — [Elements of crime] — [Actus reus]
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v
Wee Teong Boo

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High Court — Criminal Case No 85 of 2017
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30 August 2019

Chua Lee Ming J:

Introduction

1 The accused, Dr Wee Teong Boo, claimed trial to two charges. The first charge was for the offence of rape (the "rape charge") under s 375(1)(*a*), punishable under s 375(2) of the Penal Code (Cap 224, 2008 Rev Ed) (the "Penal Code"). The charge alleged that the rape occurred in the course of a purported medical examination at the accused's clinic, sometime between 11.30pm on 30 December 2015 and 12.30am on 31 December 2015. The accused was alleged to have penetrated the victim's vagina with his penis, without her consent.

2 The second charge was for the offence of outrage of modesty (the "OM charge"), punishable under s 354(1) of the Penal Code. The outrage of modesty

was alleged to have occurred on 25 November 2015, also in the course of a purported medical examination at the accused's clinic. The accused was alleged to have used criminal force on the victim by stroking her vulva with his hand, with the intention of outraging her modesty.

3 The victim in both charges was a 23-year-old female student ("V") who was a patient of the accused at the material time. At the time of the alleged offences, the accused was 65 years old and a general practitioner at his own clinic, Wee's Clinic and Surgery located in a Housing Development Board ("HDB") estate in Singapore.

4 At the close of the trial, I found that the Prosecution had failed to prove the rape charge against the accused beyond a reasonable doubt. Accordingly, I acquitted the accused of the rape charge.

5 However, the evidence had established beyond a reasonable doubt that the accused had penetrated the victim's vagina with his fingers, without her consent. Exercising the court's powers under s 139 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("the CPC"), I convicted the accused of the offence of sexual assault by penetration under s 376(2)(*a*) of the Penal Code (the "s 376(2)(*a*) offence") and sentenced him to a term of nine years' imprisonment.

6 I also found that the Prosecution had proven the OM charge against the accused beyond a reasonable doubt. I convicted the accused accordingly and sentenced him to a term of one year's imprisonment.

7 I ordered both sentences to run consecutively. I also ordered the accused to pay compensation of $1,200 being the consultation costs incurred by V for psychotherapy.

8 The Prosecution has appealed against the accused's acquittal on the rape charge and against both the sentences. The accused has appealed against both the convictions and both the sentences as well as the compensation order. The accused is currently on bail of $200,000 pending appeal.

Gag order

9 In light of the sexual nature of the alleged offences, I granted the Prosecution's application for a gag order prohibiting the publication of any information that could lead to the identification of the victim, under s 8(3) of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed). Where necessary, references to certain facts have been redacted.

The Prosecution's case

10 At the time of the offences, V was pursuing a course at a local tertiary institution. V lived in an HDB estate. In her spare time, she worked as a service assistant at a clinic. This was not the accused's clinic. V usually worked about two to five hours a week at this other clinic and her duties involved registering patients, packing medication, and cashiering.

11 V frequently experienced gastric issues and dermatitis.[1] Before November 2014, she had sought treatment at the clinic where she had worked, but her condition persisted despite taking the prescribed medication, and she did not like the fact that the doctor there did not conduct follow-up checks.[2] From November 2014, V went to seek treatment at the accused's clinic because she wanted to consult another doctor about her symptoms.[3] In addition, the accused's clinic was under the Community Health Assist Scheme ("CHAS") and this meant that V's consultations and treatments were subsidised.[4] V may have previously visited the accused's clinic as a child some ten years ago,[5] but

the accused could not confirm this as records of these visits were too old and would have been disposed of.[6]

12 Prior to 25 November 2015 (the date of the alleged OM offence), V was treated by the accused 22 times between 28 November 2014 and 5 November 2015.[7] V had no complaints against the accused during these 22 prior visits. In fact, she felt he was a good doctor as he listened carefully to her complaints, wrote them down, and performed detailed checks.[8]

13 Annex A is a copy of the sketch plan of the accused's clinic that was admitted in evidence as exhibit P49.

14 The accused's clinic assistants occupied the area behind the reception counter ("the reception area"). Next to the accused's desk in the consultation room was a pigeon hole which led to the reception area. The only access to the examination room was from the consultation room. A sliding door separated the examination room from the consultation room. The examination room had a bed for patients to lie on during the examination ("the examination bed"). In Annex A, the examination bed is marked "A" to show where swabs were taken.

Events on 25 November 2015

15 V testified that on 25 November 2015, she was experiencing gastric discomfort. She went to the accused's clinic in the late afternoon.[9] V had a brief consultation with the accused in the consultation room.[10]

16 Following the consultation, the accused directed V to the examination room. V lay flat on the examination bed, as instructed by the accused.[11] The accused closed the sliding door to the examination room.[12] There was no chaperone present.[13] V testified that she had not been offered one on any of her

prior consultations and examinations, and that she had not requested for one as she had not known she could ask for a chaperone.[14] The accused instructed her to unbuckle and unzip the jeans she was wearing so that he could check her pelvic area and V did as instructed.[15] V did not question the need to unbuckle and unzip her jeans as she trusted the accused as her doctor.[16]

17 The accused began to press V's lower abdominal area[17] before pressing on the "joint area" near her groin and remarking that there were lumps there.[18] The accused then started pressing V's vagina with the fingers of his right hand.[19] V marked this area on a drawing.[20] This area was subsequently identified as the vulva.[21] The accused said "okay, okay" as he was pressing her vulva, but V was not sure if he meant that as a statement or a question.[22] She replied "okay" because there was no pain.[23]

18 V testified that the accused then slid his right hand under her panties and began stroking her at the vaginal area.[24] This vaginal area was subsequently also identified on a marked drawing as her vulva.[25] The accused then asked her to sit up and she complied as she thought it was part of the medical examination.[26] When V sat up, the accused's right hand continued to stroke her vulva under her panties,[27] while his left hand rubbed V's lower back in a circular motion.[28] She was not sure how long the accused stroked her vulva for, but it felt like a long time to her.[29] After some time, V thought she heard the accused say "okay" before withdrawing his hand.[30]

19 V claimed she felt the accused's actions were "weird", as this was the first time someone of the opposite gender had touched her at her vaginal area.[31] She also felt "uneasy" because the accused was standing very close to her.[32] The accused did not explain why he was stroking her vaginal area.[33] V did not voice her discomfort to the accused because she trusted him and his judgment.[34] V felt

that the accused was a good doctor because he was thorough.[35] V had assumed that it was part of the medical examination as the accused had palpated her upper abdominal area in a similar manner on prior visits.[36] In particular, she felt that his actions were similar to how he had asked if it was "okay" when he pressed her upper abdomen on previous examinations.

V's visit to the polyclinic on 5 December 2015

20 V scheduled an appointment at a polyclinic to have the lumps checked. She visited the polyclinic on 5 December 2015,[37] and requested for a female doctor. She told the polyclinic doctor, later identified as Dr Sheena K Gendeh Jekinder Singh ("Dr Sheena"), that a lump was suspected near her groin. Dr Sheena pressed the same "joint area" and told V that there was indeed a lump. This reassured V that what the accused had done to her on 25 November 2015 was just a medical examination.[38] Dr Sheena told her it was a swollen lymph node, and prescribed antibiotics for her.[39] A tax invoice confirmed that V had paid a visit to the polyclinic on 5 December 2015.[40]

Events on 30–31 December 2015

At the accused's clinic

21 V testified that on the morning of 30 December 2015, she felt an itch at her genital area and was experiencing frequent urination.[41] She first went to the polyclinic in the afternoon, but it was crowded.[42] She decided to go to the accused's clinic. Her last visit to the accused's clinic was on 25 November 2015. She made a call to the accused's clinic and was told to go at around 11pm.[43] V turned up at the accused's clinic at about 11.30pm. When it was her turn, V entered the accused's consultation room, and she told him about the frequent urination and the itch at her genital area.[44] She also asked for a repeat

prescription for her usual gastric medication.[45]

22 In the consultation room, the accused used a stethoscope to listen to V's lungs and took her temperature.[46] The accused then instructed V to proceed to the examination room.[47] The accused closed the sliding door after they entered the examination room. Again, no chaperone was present.[48]

23 On that day, V was wearing a t-shirt and shorts. V lay down on the examination bed.[49] She lifted up her t-shirt as instructed by the accused. The accused stood on V's right near her waist and hips,[50] and he began tapping on her upper abdomen.[51] As the accused examined her lower abdomen, he pushed her shorts lower.[52] The accused then began examining V's pelvic area. V saw the accused's left hand going under the waistband of her shorts, while she felt his right hand entering through the opening of her shorts from the legs.[53]

24 V felt the accused's fingers pressing on the same "joint area" that V described on 25 November 2015. Once again, he told her that there was a lump.[54] She then felt the accused's right hand rubbing on her vaginal area. The accused's hand was under her shorts, but above her panties and panty liner.[55] V felt the accused's hand moving up and down.[56] The accused asked if this was the part where V felt the itch.[57] V replied that it was.[58]

25 The accused then instructed V to pull down her shorts and panties. She complied and pulled her shorts and panties down to her thigh level.[59] V thought that it was low enough for the accused to examine her genital area.[60] However, the accused asked V to remove them completely.[61] When V hesitated, the accused removed her shorts and panties for her.[62] As he did so, he moved further down towards the end of the examination bed, but still on V's right.[63] He placed V's shorts and panties next to her left leg,[64] and told her that he would be leaving

her shorts there.[65] During this time, V thought that the accused was performing a medical examination.[66]

26 V testified that the accused then repositioned her on the examination bed, such that her legs were apart and he was standing between them.[67] She claimed the accused was holding on to her legs, above her ankles.[68] As the accused moved her body, her head moved off the pillow and rested on the bed.[69] Her buttocks and left thigh were still on the examination bed, but her lower legs were hanging off the examination bed, supported by the accused's hands.[70] To the best of her recollection, V weighed about 48 kilograms at the material time, and she was 1.64 metres tall.[71]

27 V testified that while in this position, she heard the sound of a zipper.[72] The accused released his hold on one of her legs. From the corner of her eye, V saw the accused's hand move toward his zipper.[73] V thought that the accused had forgotten to zip his pants.[74] After that, the accused moved his hand back to supporting V's leg again.[75]

28 The accused repositioned V for a second time, moving her further to his right.[76] From her position, V could only see the accused's upper chest and his head.[77] V's right buttock was off the examination bed, but her left buttock remained resting on it. She could feel that her legs were supported at the accused's waist level.[78] The accused then repositioned V a third time – V testified that she could feel the accused's hands moving from her ankles to below her knees, and she felt herself being pulled toward the accused.[79] In this position, V's left buttock rested on the edge of the bed, with part of it off the bed.[80]

29 While in this position, V stated that she felt "something horizontal" poke

into her vagina. However, she could not see what it was as she could only see the accused's head and chest.[81] V felt pain and she saw the accused's body moving forward and backward with each poking sensation.[82] During the "continuous poking", V felt pain and after "a few times", she complained to the accused about the pain because it got more and more painful.[83] While V felt the poking sensation in her vagina, the accused's hands were supporting her legs at all times.[84]

30 The accused then let go of V's legs, and his hands moved to support her lower back, pulling her closer to him.[85] V was brought to a "half-sit" position where she was no longer lying on her back. V described her buttocks as being on the very edge of the bed. Her bodyweight was supported by her right hand (which was on the examination bed) and the accused's hands.[86] V stated that it was at this moment that she saw the accused's pants were unzipped and that his penis was partially inside her vagina.[87] V was shocked.[88] She put up her left hand as a gesture to the accused to stop.[89]

31 V testified that she did not call for help as she was in a state of shock. She simply froze.[90] The accused withdrew his penis and let go of V. He then turned his back toward her. V was not sure if the accused had ejaculated.[91] She heard the sound of a zipper. V put on her shorts and panties and got off the examination bed.[92]

32 The accused and V returned to the consultation room and the accused spoke to her about the medication he was prescribing. V could not remember what the accused was saying as she was in a state of shock and her mind was bothered by what she had just seen.[93] She described herself as being in an "auto-pilot situation" where she was "going through the motions".[94]

33 Just as she was about to leave the consultation room, V remembered to ask the accused for medication to delay the onset of her period as she was about to go on a school trip to China.[95] V testified that asking for the medication was part of the "motion of things" and her being in an "auto-pilot mode".[96] She then left the accused's consultation room.

34 After leaving the consultation room, V went to the clinic's toilet immediately because she felt an urgent need to urinate.[97] There was no toilet paper available, so she wiped herself using her panty liner. She saw streaks of blood on the panty liner.[98] Her vagina was feeling very sore.[99] V could not find a bin to dispose of the panty liner, and she held it in her hand.[100]

35 V returned to the clinic's waiting area. She did not tell anyone what had just happened as she was still in a state of shock.[101] She went to the reception counter and collected the medication. She did not pay attention to what the clinic assistant was saying. One of the medications that she had collected was ciprofloxacin. V had discovered sometime in August 2015 that she was allergic to ciprofloxacin, [102] but on that night she had not been paying attention while she collected her medication.[103]

At home

36 As she was walking home, V threw her stained panty liner into a bin outside a coffee shop.[104] She reached home at about 1.00am on 31 December 2015. Her family members were asleep.[105] V took a shower even though she had showered about four hours before. She described feeling dirty from what the accused had done to her.[106] As she showered, she felt pain in the area around her vagina as it was being washed.[107] V's panties had bloodstains on them, so she threw them into a pail of water.[108] V put on the same shorts and t-shirt she

had worn earlier.

37 V could not sleep that night; she described herself "trying to register what happened at the clinic", being in a state of confusion, as well as being "kind of numb".[109] Although she had seen the accused's penis in her vagina, it was hard for her to acknowledge and accept what she had seen.[110]

V's conversation with her mother

38 V's mother testified that she woke up at around 4.30am and went into V's room to retrieve some clothes. She saw V tossing around in her bed.[111] It seemed as if something was bothering V and V's mother asked V why she was unable to sleep.[112] V told her mother she had visited the accused's clinic and asked her mother under what circumstances a doctor could check a patient's private parts. V told her that the accused put something into her vagina, and she felt "violated" by the accused.[113] V did not have the chance to tell her mother what the "something" that the accused had put into her vagina was, because her mother was not really listening and in a rush to go to work.[114] V's mother worked as a cashier at a supermarket and had to report for work by 6.30am.[115]

39 V told her mother she would be lodging a police report.[116] Her mother testified that when V spoke to her, she was about to leave for work and that she intended to apply for urgent leave after reaching her work place.[117] Subsequently, a police officer called her to tell her that V was at the police station and she applied for urgent leave.

V's police report

40 V left the house at around 5.30am; her mother left for work and did not accompany her to the police station.[118] V reached the police station at around

6.00am, and spoke to two police officers.[119]

41 A First Information Report ("FIR") was filed at 9.24am.[120] Two police officers brought V back to her home. V changed her clothes and the police officers seized the t-shirt, bra and shorts that she had been wearing,[121] as well as her panties which she had thrown into a pail of water earlier (see [36] above).

At the KK Women's and Children's Hospital

42 V was then brought to the KK Women's and Children's Hospital ("KKH") where she underwent a medical examination for alleged sexual assault. V was examined by Dr Janice Tung Su Zhen ("Dr Tung") at 4.35pm. Dr Tung found:

(a) a clear viscous discharge over V's vulva;

(b) two small superficial midline split-skin wounds in the posterior fourchette area; and

(c) a very shallow fresh tear of the hymen at "7 to 8 o'clock position", which was tender when touched with a swab.

Dr Tung also took swabs from the inside of the vagina and the urethra meatus for investigations which subsequently confirmed that V was positive for bacterial vaginosis and candida infections.

43 Dr Tung set out the above findings in her report dated 26 January 2016.[122] Dr Tung explained that bacterial vaginosis and candida were lower genital tract infections ("LGTI") which were very common and could also occur in women who were not sexually active.[123] Dr Tung also testified that V's

symptoms, such as frequent urination and an itch at the urethra, were consistent with bacterial vaginosis and candida.[124]

44 Dr Tung's evidence was that the injuries found on V's fourchette and hymen were about one to two millimetres deep.[125] She stated that the injuries were consistent with V's account, *ie*, penile penetration,[126] but they were also equally consistent with digital penetration.[127]

Investigations at the accused's clinic

45 At about 1.41pm on 31 December 2015, three officers from the Serious Sexual Crimes Branch arrived at the accused's clinic. Assistant Superintendents ("ASP") Ong Bee Choo Carol ("ASP Carol"), Razali bin Razak ("ASP Razali") and Xu Jinwei Jereld ("ASP Jereld") entered the consultation room. ASP Carol's evidence was that she informed the accused that a police report had been lodged against him.

46 ASP Carol informed the accused that she would need the accused's case notes on V. The accused retrieved the case notes from a box in the examination room. ASP Carol checked the case notes in his presence.[128] As there were patients waiting outside, the police officers gave the accused some time to tend to his patients. The accused told them to return at 3.15pm.[129]

47 When the officers returned, ASP Carol informed the accused that a complaint of rape had been lodged against him.[130] She informed him that photographs of the clinic would be taken and requested that he give a blood sample for subsequent deoxyribonucleic acid ("DNA") profiling.[131] According to ASP Carol, the accused stated, "Why should I give you my blood? You should only take my DNA if you can find sperm in her vagina, which I do not

think you can."[132] The accused eventually agreed to give a blood sample after ASP Carol told him that if he continued to refuse she would obtain a court order.[133]

48 Several swabs of the examination bed were taken.

Arrest, seizure and custody

49 At about 4.05pm, the officers and the accused left the clinic and proceeded to the accused's house. There, the officers placed the accused under arrest for an offence of rape.[134] ASP Carol told the accused that she needed to retrieve the clothes that he wore on 30 December 2015, and asked ASP Razali to assist.[135] The accused told ASP Razali that he was wearing the same shirt and pants from the night before, and as such ASP Razali escorted him into the house while he changed out of his clothes.[136] ASP Razali seized the shirt and pants. He also seized a pair of grey boxer shorts ("the first pair of boxer shorts") from a basket next to the washing machine as the accused said he had been wearing those at the material time.[137] Thereafter, the accused was brought to the Police Cantonment Complex. Custody of the accused was handed to the Central Police Division lock-up later that evening.

Seizure of boxer shorts on 2 January 2016

50 ASP Carol testified that the accused told her that he was wearing the same shirt that he wore on the night of 30 December 2015. ASP Carol then asked the accused's wife to bring a pair of underwear for the accused to change into. The accused's wife did so and on 2 January 2016, at the Central Police Division lock-up, the accused changed his underwear and ASP Carol seized the boxer shorts that the accused had been wearing ("the second pair of boxer shorts").[138] Swabs were also taken from each of the accused's fingers.[139]

51 A statement was recorded from the accused by ASP Jereld at 5.00pm on 31 December 2015. Another statement was recorded by ASP Carol at around 10.00am, on 1 January 2016.

Results of tests by HSA

52 The items seized from V and the accused, and the swabs that had been taken, were sent to the Health Sciences Authority ("HSA") for testing. No incriminating evidence was found. In summary, the results were as follows:[140]

(a) Brown stains on V's panties and t-shirt tested negative for the presumptive Kastle-Meyer ("KM") test for blood.

(b) V's panties, t-shirt, shorts and vaginal swabs tested negative for sperm.

(c) The DNA profiles obtained from swabs of V's shorts, t-shirt and from her vaginal swabs matched V's DNA profile. No interpretable DNA profile was obtained from the swabs of V's panties.

(d) The swabs of the accused's fingers and a brown stain on the accused's shirt tested negative for the presumptive KM test for blood.

(e) The DNA profile obtained from the swab of one of the accused's fingers matched the accused's DNA profile. Mixed DNA profiles were obtained from the accused's first pair of boxer shorts and from the swabs of his other nine fingers. The accused was included as a major contributor to the mixed DNA profiles; the additional DNA was uninterpretable. No interpretable DNA profile was obtained from swabs of the accused's shirt, pants and the second pair of boxer shorts.

(f) The swabs of the examination bed tested negative for the presumptive KM test for blood. No interpretable DNA profile was obtained from these swabs.

53 The Prosecution's expert explained that:

(a) a negative result for a presumptive KM test for blood could mean that there was no blood or that the blood was below the detection limit of 1 in 1,000 times dilution;[141]

(b) the fact that V washed her vaginal area with soap and water and soaked her panties in water could have led to a loss of semen;[142] and

(c) no interpretable DNA profile could mean that insufficient DNA was obtained or that DNA from multiple persons with no single contributor was obtained.[143]

The Defence's case

54 At the close of the Prosecution's case, I was of the view that there was some evidence which was not inherently incredible and which satisfied each and every element of the charges as framed by the Prosecution. I therefore called on the accused to give his defence. The accused elected to give evidence in his own defence.

The accused's defence to the OM charge

55 The accused's defence to the OM charge was a bare denial. The accused testified that in the consultation room, V had complained of gastric pain and phlegm.[144] The accused performed a routine check of V's blood pressure and her heart and lungs.[145] He then asked her to proceed to the examination room.[146]

V lifted up her shirt and he told her that he would be performing an abdominal examination. The accused proceeded to palpate her upper, middle, and lower abdominal areas.[147] The accused maintained that he checked V's lower abdomen "above the pants line".

56 The accused claimed the examination lasted for a couple of minutes.[148] He denied having asked V to remove her jeans, and claimed that he had never done so before.[149] The accused denied checking V's pelvic area or touching V's vaginal area.[150]

The accused's defence to the rape charge

57 The accused denied raping V. He claimed that he had suspected that V had pelvic inflammation disease ("PID") and that he carried out an internal (*ie*, intravaginal) pelvic examination, with V's consent, in order to exclude PID.[151] The examination involved inserting two of his fingers into V's vagina.[152]

58 The accused also claimed that he was suffering from erectile dysfunction ("ED") and that he could not have penetrated V in the manner described by her.

The accused's version of events at the clinic

59 The accused testified that on 30 December 2015, consistent with his usual routine, he went home in the evening, showered, had dinner, went back to the clinic at around 9.00pm and continued working. At around 11.30pm, he pressed the queue numbers "18" and "19" on the controls, but no one came in. He then pressed queue number "20", which was V's queue number.[153] V entered the consultation room and sat down. The accused said he overheard (through

the pigeon hole) the patients with queue numbers "18" and "19" complaining at the reception counter that V had jumped queue.[154]

60 During the consultation, V complained of gastric reflux, frequent urination, and a cough.[155] The accused listened to her heart and lungs and told V that he would examine her abdomen.[156] They proceeded to the examination room and V lay down on the examination bed. V pulled up her t-shirt to expose her abdomen.[157] The accused was standing on V's right.

61 The accused told V he was going to examine her abdomen. As he pressed the upper and middle areas of V's abdomen, the accused asked if there was any pain or discomfort. She replied there was none.[158] When he pressed her middle lower abdomen, V said there was slight discomfort. The accused then pressed V's left lower abdomen above her shorts: V said there was discomfort.[159] The accused then told V that the examination was over.[160] The accused claimed that his initial diagnosis was that V's symptoms could possibly be due to a urinary tract infection ("UTI").[161]

62 The accused claimed that at that moment, "out of the blue", V told him that her "private part was itchy" and that the itch had occurred recently.[162] The accused claimed that the complaint of genital itchiness, together with the lower abdominal discomfort and frequent urination, caused him to be concerned that V might be suffering from PID which could lead to infertility in young women if it was not treated early.[163] The accused then asked V whether she wanted him to do an examination and she agreed.[164]

63 The accused asked V to pull down her shorts. When V pulled her shorts to her thigh level, she had to bend her knees. The accused shifted himself further to the right to conduct a visual examination. He claimed that as V's shorts and

panties obstructed the view, he asked V to pull her shorts all the way down. V then took off her shorts and panties by herself; the accused never touched them.[165]

64 The accused claimed that V's knees were bent and her legs were apart.[166] He observed slight redness around the vulva and a slight clear discharge on the right side of the lower vulva area.[167] In light of these symptoms, he claimed that PID became a "much more likely" possibility. He then asked V if he could perform an internal pelvic examination to exclude PID and V agreed.[168]

65 The accused placed his left hand on top of V's lower abdomen, his left forearm pressed against V's right thigh, and using his right hand, inserted first, one finger, then a second finger into V's vagina.[169] The accused claimed that he told V what he was going to do before he inserted his fingers (index and middle fingers) and that V was calm and had no complaints.[170]

66 According to the accused, he inserted his fingers deep into V's vagina towards the right pelvic area and pressed his left hand fingers downwards as he lifted his right hand fingers upwards. V said there was no pain or discomfort. He then told her he was going to move to the middle of her lower abdomen and he pulled out his fingers "a little bit" and pushed them deep towards the middle. When he pushed his left hand fingers downwards and lifted his right hand fingers upwards, V said there was slight discomfort. Next, the accused pulled out his fingers and moved towards the left pelvic area and repeated the test. V said there was slight discomfort.[171] The accused told V that if the discomfort continued she should go to the hospital for a check-up. He then told her the examination was over, and V got up while he was withdrawing his fingers.[172]

67 The accused claimed that after he performed the internal examination, he concluded that UTI and PID were both possibilities or "question marks" but that lower genital infection was "definite".[173]

68 The accused turned back to the consultation room and washed his hands with antibacterial soap. He sat down at the consultation table and began to write down the medication that he was prescribing for V, but before he could finish, V came back to the consultation room and asked for medication to delay her menstruation because she was making a trip to China.[174] The accused claimed that V was calm and relaxed when she returned to the consultation room, and when she left.[175] The accused tended to another three patients or so and left his clinic at around 12.40am on 31 December 2015.[176]

69 The accused admitted that he did not wear gloves or use any lubricant when he was carrying out the internal pelvic examination.[177] He also admitted that he did not offer V the option of having a chaperone present when he carried out the examination. The accused conceded that using gloves and lubricant, and giving a female patient the option of a chaperone, were all basic requirements when a doctor performed an internal examination of a female patient.[178] The accused claimed that it did not cross his mind to use gloves or lubricant because he was "fully concentrating" on the task of trying to exclude PID and his mind was in "pure examination mode". It was also very late, and there were two angry patients outside, so "there was tension". He was trying to get a diagnosis and provide treatment as soon as possible, and it did not cross his mind to put on gloves or use a lubricant.[179]

Evidence of the accused's clinic assistants

70 The accused's clinic assistants testified that V appeared calm and left the clinic after collecting her medication.

Evidence of ED

71 On 5 January 2016, three days after the accused was released on bail, he consulted his urologist, Dr Peter Lim Huat Chye ("Dr Peter Lim") with complaints of ED for the past three years. The accused informed Dr Peter Lim that he was suffering from diabetes and hypertension and was on Diamicron and Atenolol/Atacand respectively for these conditions. Dr Peter Lim performed a transrectal ultrasound examination and an uroflowmetry examination. In addition, Dr Peter Lim ordered a bioavailable testosterone test and a colour Doppler ultrasonography for the accused.

72 The transrectal ultrasound examination confirmed that the accused had an enlarged prostate gland. The uroflowmetry examination suggested a bladder outlet obstruction.

73 The clinical laboratory report dated 5 January 2016 from Parkway Laboratory Services Limited showed that the accused's testosterone levels were in the low range of normality.[180]

74 On 13 January 2016, Dr Gan Yu Unn ("Dr Gan"), a consultant radiologist at the Andrology, Urology & Continence Centre, carried out a Doppler ultrasonography after administering 10 micrograms of Caverject. In his report dated 13 January 2016 ("the first Doppler report"),[181] Dr Gan concluded that the Doppler ultrasonography showed no vasculogenic causes for the accused's ED but there were bilateral varicoceles present.

75 In his report dated 8 March 2016 ("Dr Peter Lim's report"),[182] Dr Peter Lim gave a summary of the results of the transrectal ultrasound, the uroflowmetry examination, the Doppler ultrasonography and the testosterone test. Dr Lim prescribed Duodart for the accused's prostate problem and bladder obstruction, and clomiphene citrate to treat the accused's low testosterone (*ie*, hypogonadism). Dr Peter Lim's report contained some typographical errors relating to the accused's testosterone levels and he corrected these errors in a subsequent report dated 14 June 2018.[183] Nothing in this case turned on these errors.

76 The Doppler ultrasonography analyses penile blood flow. In simple terms, an erection is achieved when the corpora cavernosa (chambers of spongy tissue in the shaft of the penis) dilate and blood rushes in and fills the spaces. The pressure of blood flow causes the sheath of tissue around the chambers to press on veins that normally drain blood out of the penis. This traps blood in the penis, maintaining the erection. When the excitement ends, the corpora cavernosa contracts, taking pressure off the veins and allowing blood to flow back out of the penis which then returns to a flaccid state.[184] The Caverject injection artificially induces an erection by causing the corpora cavernosa to dilate so that blood can rush in to fill the chambers.

77 Arteriogenic ED describes the condition where not enough blood flows into the corpora cavernosa. Venogenic ED (or venous leak) describes the condition where the blood that flows into the chambers flows back out instead of staying trapped in the chambers. Both arteriogenic and venogenic causes are collectively described as vasculogenic causes. Where the ED is due to low testosterone levels, the cause is described as endocrine (*ie*, hormonal).

78 On 22 March 2016, as requested by the police, the accused saw Dr Teo Jin Kiat ("Dr Teo") in the urology outpatient clinic at the Changi General Hospital ("CGH"). Dr Teo was given Dr Peter Lim's report together with the reports of the various tests done. Dr Teo did a physical examination of the accused but did not order any further tests. In his report dated 13 April 2016 ("Dr Teo's first report"),[185] Dr Teo relied on Dr Peter Lim's report and the reports of the various tests done.

79 Subsequently, the police told Dr Teo that a second Doppler ultrasonography was needed, and Dr Teo ordered one for the accused.[186] On 22 April 2016, the accused underwent a second penile Doppler ultrasonography which was administered by Dr Wong Kai Min ("Dr Wong"), a Consultant at CGH. Similarly, a Caverject injection was administered.[187] Dr Wong's report ("the second Doppler report") stated that:[188]

> (a) a full erection was not achieved and the accused's penile shaft was "flexible at best achieved erection"; and
>
> (b) there was "adequate arterial inflow on the right side" but "decreased arterial inflow on the left side", and that the findings were "suggestive of arterial insufficiency on the left side" which could be a "contributory cause of vasculogenic erectile dysfunction".

The second Doppler report by Dr Wong was finalised by Dr Gervais Kin-Lin Wansaicheong, a Visiting Consultant.

80 Dr Teo issued a second report dated 4 May 2016 ("Dr Teo's second report").[189] The contents of this report were similar to those in Dr Teo's first report except that it now reflected the results in the second Doppler report.

81 On 7 June 2018, after his cross-examination had concluded, the accused underwent a more advanced haemodynamic test for erectile function administered by Dr Sriram Narayanan ("Dr Sriram"). Dr Sriram was a Senior Consultant Vascular and Endovascular Surgeon at the Harley Street Heart and Vascular Centre at Gleneagles Hospital and Mount Elizabeth Novena Hospital. His specialty was in vascular and endovascular surgery. He was also the former Head of Vascular Surgery at Tan Tock Seng Hospital.

82 Dr Sriram explained that haemodynamics is the testing of blood flow velocities and pressures in arteries and veins, and is more accurate than Doppler ultrasonography. In Doppler ultrasonography, the doctor holds the observing probe which sits transversely on the penis when measuring the penile blood flow. It is difficult to keep the probe stable and observer variation is intrinsic in this procedure. Even if the same person performs the same test on the same patient a second time, the results may vary. In contrast, with haemodynamics, there are no moving parts. The cuff (with sensors) is placed around the root of the penis and is connected to a machine which takes the readings.

83 Dr Sriram's report stated that:[190]

(a) the accused had significant *bilateral* venous leak, leading to venogenic impotence and mild arteriogenic impotence; and

(b) the accused only achieved an erectile hardness score ("EHS") of Grade 1 tumescence 10 minutes after an injection of 20 micrograms of Caverject. There was no improvement at 20 minutes.

Dr Sriram explained that the standard dose is 10 micrograms of Caverject but he used 20 micrograms for patients with a history of diabetes because 10 micrograms would not produce very good results.[191]

84 The EHS[192] was developed to help describe the hardness of the penis while attempting sexual activity. It comprised the following four grades:

(a) Grade 1: Penis is larger but not hard.

(b) Grade 2: Penis is hard but not hard enough for penetration.

(c) Grade 3: Penis is hard enough for penetration but not completely hard.

(d) Grade 4: Penis is completely hard and fully rigid.

85 Dr Sriram described the results in the first Doppler report as "strange" for the following reasons:

(a) In his view, the results were that of a normal 16-year-old who has varicoceles.[193] Varicoceles refers to the enlargement of the veins within the scrotum. Dr Sriram testified that venogenic impotence and varicoceles have a high association with each other, but he accepted that he was not aware of any published evidence of any direct association.[194]

(b) The accused, being in his sixties at the material time, would be expected to have some degree of ED even if he had no other disease.

(c) The accused's diabetic condition was an "extremely major influence" on his ED; even diabetics who controlled their diabetes will have some degree of ED.[195] Based on the accused's diabetic screen results dated 18 December 2013,[196] the accused's diabetes was "pretty badly controlled" and any subsequent improvement in controlling his diabetes would not improve his ED.[197]

(d) The accused was suffering from hypertension. Persistent hypertension causes hardening of the arteries and that prevents the arteries from dilating the way they are supposed to.[198] As a result, not enough blood flows into the penis to achieve an erection.

(e) The accused was also taking a beta-blocker called Bisoprolol for his hypertension. Most beta-blockers, including Bisoprolol, cause ED. According to Dr Peter Lim's report, the accused was already on Atenolol (another beta-blocker) when he consulted Dr Peter Lim in January 2016. The effects of Atenolol on ED were worse than those of Bisoprolol.[199]

(f) The accused was also shown to have testosterone levels in the low-normal range, which would have added to his ED.[200]

86 Dr Sriram was of the view that the second Doppler report was "far more in tune" with the accused's actual condition.[201] Dr Sriram was also of the view that the second Doppler report was consistent with his findings based on the haemodynamic test in June 2018, and that the results in June 2018 showed a "progression of the disease".[202] Dr Sriram's view was that, given the accused's history of poorly controlled diabetes in 2013 and the fact that he had been on medication for hypertension, the accused's condition as shown in the second Doppler report would have existed well before April 2016.[203]

87 Dr Teo agreed that there was an association between varicoceles and ED but there was no evidence of any causation.[204] Dr Teo also agreed that diabetes and hypertension contributed to vasculogenic ED, and that beta-blockers could (but did not always) lead to ED.[205] Dr Teo further agreed that diabetes alone can be a serious factor for ED.[206] However, unlike Dr Sriram, Dr Teo did not find the first Doppler report strange despite the accused's medical history. Dr Teo

testified that it was possible that someone of the accused's age and with his conditions could have a "perfect score" with the Doppler ultrasonography.[207]

88 According to Dr Teo, one possible reason for the discrepancies between the first and second Doppler ultrasonography results was inter-observer variation in performing Doppler ultrasonography.[208] However, Dr Teo was of the view that the insufficiency in the blood flow (which was detected in the second Doppler ultrasonography in April 2016) was quite unlikely to have happened in the short span of four months since the first Doppler ultrasonography in January 2016, and that blockage of the vessels takes place over a long period.[209]

89 Ultimately, Dr Teo confirmed that he had doubts over *both* the first and second Doppler reports, and that both were possible. Dr Teo could not be sure which was more accurate.[210]

90 The accused testified that he suffered from ED for more than a year before his arrest and had low sex drive, but that he was able to have sex with his wife "once or twice a month" and was able to have penetrative sexual intercourse "most of the time".[211] The accused informed Dr Teo in March 2016 that he had difficulty initiating and sustaining penile erections and that his last penetrative sexual intercourse was in January 2016.[212]

91 However, the accused did not mention that he was suffering from ED when his statement was recorded on 31 December 2015.[213] In his statement recorded on 1 January 2016, the accused answered "no" when he was asked whether he was suffering from ED.[214] On the stand, the accused claimed that ED did not cross his mind during the statement recording because it did not bother him then.[215]

92 The accused's wife testified that in 2014, she noticed a decrease in the hardness of the accused's erection and that in 2015, his penis was "soft like a noodle" and he would need to use his hand to guide his penis into the vagina.[216] Further, the accused was not able to achieve an erection on every occasion.[217]

Findings on rape charge

93 I deal first with the rape charge as it was the first charge.

94 The Prosecution submitted that the accused had deliberately skipped the patients with queue numbers "18" and "19" because he had seen V's patient card and knew that her queue number was "20". According to the Prosecution, this showed premeditation. I rejected the Prosecution's submission. In my view, it was highly unlikely the accused would have done this and risked upsetting two other patients. It was more logical and likely that if there was premeditation, the accused would have called V last, after all the other patients had been attended to.

95 V and the accused were the only persons who knew what really happened in the examination room on the night in question. It was her word against his. It is well-established that a complainant's testimony alone 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. The need for "fine-tooth comb" scrutiny is particularly acute where allegations of sexual abuse are concerned. A witness' testimony may only be found to be "unusually convincing" by weighing the demeanour of the witness alongside both the internal and external consistencies found in the witness' testimony. See *AOF v Public Prosecutor* [2012] 3 SLR 34 ("*AOF*") at [111]–[115].

96 It also bears noting that the requirement of "unusually convincing" evidence does not impose a higher standard of proof. The standard of proof remains that of proof beyond a reasonable doubt: *AOF* at [113].

97 V impressed me as an honest although somewhat simple girl. She gave her evidence simply, clearly and without embellishment. Her testimony as to the events on 30/31 December 2015 was consistent with the fact that her mother found her tossing around in her bed at around 4.30am on 31 December 2015, and with what she told her mother. It was also consistent with her report to the police and the medical examination by Dr Tung, both of which took place later that morning.

98 The accused submitted that V's behaviour immediately after the alleged rape "clearly confounds the rational mind". However, it is well established that victims of sexual assault should not be expected to react in a stereotypical way or to conform to a standard behavioural template: *Public Prosecutor v Yue Roger Jr* [2019] 3 SLR 749 at [30]; *Public Prosecutor v BDA* [2018] SGHC 72 at [39]. I accepted V's evidence that she was in shock and on "auto-pilot" mode. Her evidence in this regard found support in the fact that she did not even notice that one of the medicines prescribed to her was ciprofloxacin, an antibiotic that V was allergic to.

Whether the accused was suffering from ED

99 The Prosecution relied on (a) the first Doppler report, (b) the accused's testimony in court that he was able to have penetrative sexual intercourse with his wife, (c) the accused's account to Dr Teo that his last penetrative sexual intercourse was in January 2016, and (d) the fact that the accused said he was not suffering from ED in his 1 January 2016 statement.

100 The results of the first Doppler ultrasonography were significantly different from those of the second, although both were carried out within a period of less than four months. The second Doppler ultrasonography in April 2016 confirmed that the accused was suffering from ED and could not achieve full erection despite the administration of Caverject. The accused's penile shaft was found to be flexible at *best-achieved* erection. Dr Wong, who performed the second Doppler ultrasonography, did not testify. Dr Teo testified that he spoke to Dr Wong and Dr Wong told him that the accused's erection was "at best" Grade 3 on the EHS.[218] That was hearsay evidence. In any event, the assessment of Grade 3 was not helpful as it simply reflected the best case.

101 There was simply no clear explanation for the discrepancies between the results of the first and second Doppler ultrasonography procedures. The doctors who carried out the procedures did not testify at the trial. However, the accused's expert witness, Dr Sriram, was clear in his opinion that the second Doppler report was more in tune with the accused's medical condition than the first Doppler report, and that the accused's condition as shown in the second Doppler report would have existed well before April 2016. The second Doppler report was also consistent with Dr Sriram's findings based on the haemodynamic test in that the latter showed a progression of the disease. I found Dr Sriram's testimony to be objective and persuasive.

102 The Prosecution's expert, Dr Teo, also agreed that the accused's condition as shown in the second Doppler report was unlikely to have happened in the short span of four months since the first Doppler report. Although he did not find the results of the first Doppler report to be strange, ultimately, he accepted that the results in the first and second Doppler reports were both possible. Dr Teo could not say which was more accurate.

103 As for the accused's evidence, although he said he had penetrative sexual intercourse with his wife, he also said that he had difficulty initiating and sustaining penile erections. Suffering from ED did not necessarily mean that he was incapable of penetrative sexual intercourse. However, as his wife testified, he needed to use his hand to guide his penis into the vagina.

104 In the final analysis, in my view, the evidence (in particular, the objective medical evidence) clearly established, on a balance of probabilities, that the accused was suffering from ED in December 2015.

Whether there was penile penetration

105 As stated earlier, the fact that the accused was suffering from ED did not necessarily mean that he could not have penetrative sexual intercourse. The next question therefore was whether the Prosecution had proved penile penetration beyond a reasonable doubt.

106 The allegation against the accused was that his hands were holding V's legs when V felt something "poking into her vagina".[219] In other words, penile penetration was achieved without any external aid, such as using his hand to guide his penis into the vagina. In light of the evidence as to the accused's ED, I was satisfied that there was a reasonable doubt as to whether penile penetration could have taken place as alleged in this case.

107 In addition, at the material time, the accused's clinic assistants were present in the clinic and there were other patients waiting in the clinic. These facts threw further doubt as to whether the accused would have attempted penile penetration. Further, Dr Tung agreed that the injuries on V's fourchette and hymen were equally consistent with digital penetration (see [44] above).

108 In my judgment, the Prosecution had not proved, beyond a reasonable doubt, that penile penetration took place in the manner described by V. Accordingly, I acquitted the accused on the rape charge.

Offence of sexual assault by penetration

109 Section 376(2)(*a*) of the Penal Code provides as follows:

> **376.**—
>
> …
>
> (2) Any person (A) who —
>
> (*a*) sexually penetrates, with a part of A's body (other than A's penis) or anything else, the vagina or anus, as the case may be of another person (B);
>
> …
>
> shall be guilty of an offence if B did not consent to the penetration.

110 In the present case, by the accused's own admission, he had penetrated V's vagina with his fingers. This constituted an offence under s 376(2)(*a*) if:

(a) the digital penetration was sexual; and

(b) V did not consent to the penetration.

Whether the digital penetration was sexual

111 Section 377C(*d*) provides as follows:

> **Interpretation of sections 375 to 377B (sexual offences)**
>
> **377C.** In sections 375 to 377B —
>
> …
>
> (*d*) penetration, touching or other activity is "sexual" if —

> (i) because of its nature it is sexual, whatever its circumstances or any person's purpose in relation to it may be; or
>
> (ii) because of its nature it may be sexual and because of its circumstances or the purpose of any person in relation to it (or both) it is sexual;
>
> …

112 The relevant provision in the present case was s 377C(*d*)(ii). This was clear from the Explanatory Statement to the Penal Code (Amendment) Bill (No 38 of 2007) which introduced s 377C. As explained in the Explanatory Statement:

> The second limb (section 377C(*d*)(ii)) deals with the case where objectively the nature of an activity is simply capable of being (i.e. may or may not be) sexual. Examples of such a case would be inserting a finger into a woman's vagina or a person's anus or where someone removes another person's clothes, or where someone touches the genital organs of himself or another person, or kisses another person, or strokes another person's thigh (whether clad or not). The second limb states that the question is whether a reasonable person would consider that because of its nature the act may be sexual and because of the circumstances of the activity or any person's purpose in relation to it (not just the person who does the act, but also, for example, someone who encourages the act to be done), or both, the activity is sexual.
>
> For example, a reasonable person would consider that touching of a woman's genitals may, because of its nature, be sexual, and would consider that such touching for sexual gratification is sexual in the light of the purpose with which the touching is done. On the other hand, a reasonable person would not consider that touching a woman's genitals is sexual if it is performed by a gynaecologist who is conducting a bona fide medical examination.

113 It was clear that the accused's digital penetration of V's vagina would be considered sexual in nature unless there was a legitimate reason for the penetration. The accused claimed that he inserted his fingers into V's vagina because he was conducting an internal pelvic examination.

Whether the accused was conducting an internal pelvic examination

114 The accused claimed that he conducted an internal pelvic examination in order to exclude the possibility that V was suffering from PID.[220] I rejected the accused's claim.

115 First, the accused agreed that a patient's case note was important because it contained information about the patient's complaints, the examinations conducted, the significant findings and the treatment.[221] The accused also agreed that his diagnosis of possible PID was a significant finding.[222] However, there was no mention of either PID or the internal pelvic examination in V's case note for the consultation on 30 December 2015.[223]

116 The accused claimed that the case note was "obviously incomplete"[224] and that he did not complete the case note because he was distracted by V when she suddenly asked for medication for her upcoming trip to China, it was quite late and he had two impatient patients outside.[225] He claimed that he intended to complete the case note the next day.[226]

117 I rejected the accused's claims.

(a) It was easy for him to write down the examinations that he had carried out and his findings. Doing so would not have taken him any significant amount of time.

(b) His actions contradicted his claim that he intended to complete the case note the next day. The accused had simply handed the case note to his clinic assistants; he did not tell them that the case note was incomplete and that he intended to complete it the next day. In fact, the case note was stored away in a box in the examination room. The

> accused retrieved the case note from the box when the police went to the clinic the next day (31 December 2015).[227] Despite having personally retrieved it, the accused did not inform the police that the case note was incomplete when he handed it to the police on the morning of 31 December 2015 or when the police returned to the clinic in the afternoon that day.[228]

118 There was no reason why the case note had no reference to PID or the internal pelvic examination if the accused's claims (that he suspected PID and conducted such an examination to exclude the possibility of PID) were true.

119 Second, there was also absolutely no mention of PID in the accused's statements to the police recorded on 31 December 2015 and 1 January 2016.[229] The accused's only explanation was that it did not cross his mind to do so and that the allegation of rape was the only thing on his mind.[230] I rejected the accused's explanation. As the Prosecution had pointed out, the accused was not simply denying the allegation of rape in his statement, he was explaining his version of the events in the course of making his denial. It was unbelievable that he would not have mentioned PID if it were true that he had suspected PID.

120 Third, the accused admitted that he did not wear gloves or use a lubricant when conducting the alleged internal pelvic examination. It was not disputed that these were basic requirements when conducting an internal pelvic examination. Neither did he ask if V wanted a chaperone present. Again, it was not disputed that this was a basic requirement in the case of a female patient. The accused claimed that normally, the question of a pelvic examination would have arisen in the consultation room and if he thought he needed to do one, he would have gotten his gloves, used antibacterial soap as a lubricant and asked the female patient whether she wanted a chaperone.[231] However, V's complaint

that her private part was itchy came "out of the blue" in the examination room and it had caught him "off guard"; his mind was in "pure examination mode" and he just wanted to "finish his examination as soon as possible because there were still patients outside".[232]

121 I rejected the accused's claim.

(a) The accused was a very experienced doctor with 37 years' experience under his belt at the material time. By his own admission, he ran a busy clinic and his usual hours were late into the night.[233] I did not believe that he could have been so easily flustered as to forget the three basic requirements. I noted as well that his composure under cross-examination also showed that he was not easily flustered.

(b) The accused gave three different answers about whether he used a lubricant. In his statement to the police recorded on 31 December 2015, he said that he used his saliva as lubricant and that he put two fingers near his mouth and let the saliva drip onto his fingers.[234] When asked during examination-in-chief whether he used a lubricant, he first said that V's bodily discharge around her vulva "will be a lubricant in a way" but then went on to say that he did not use a lubricant because it had not crossed his mind to do so.[235] Under cross-examination, the accused claimed that his statement to the police was the correct version.[236] In my view, the three inconsistent answers showed that the accused's explanations as to why he did not use a lubricant were fabrications.

(c) If the accused used his saliva as lubricant, that meant that he was conscious of the need to use a lubricant. Yet he did not do so and could not explain why he used his saliva instead.[237]

(d) If the accused placed his fingers near his mouth and let his saliva drip onto his fingers, there was no reason why he would not have noticed that he was not wearing gloves.

122 In my view, there was no credible reason why the accused did not wear gloves, use a lubricant or ask if V wanted to have a chaperone present. The only inference left to be drawn was that he did not intend to and was not in fact conducting an internal pelvic examination.

123 Fourth, Dr Tung's evidence was as follows:

(a) The possible causes for V's complaints of frequent urination and itch at her private parts, were UTI or LGTI.[238] Bacterial vaginosis and candida were both causes of LGTI.[239]

(b) A sexual history from the patient would be crucial. In the case of a non-sexually active woman, her priority would be to rule out UTI or LGTI.[240] In the case of a sexually active woman, she would consider an ascending genital tract infection that includes PID.[241]

(c) PID was rare in non-sexually active women and literature suggested a less than one per cent possibility.[242] She would not have proceeded to investigate PID as a cause without bothering to ascertain the patient's sexual history.[243] In the rare case that PID was suspected in the case of a non-sexually active woman, there was usually an underlying abnormality such as an ovarian tumour, which would show up on ultrasound.[244]

124 The accused agreed that V's symptoms were equally consistent with UTI and LGTI.[245] He also agreed that PID in non-sexually active women was

rare.[246] Yet, according to him, he proceeded to investigate PID as a cause without asking V for her sexual history . The accused's explanation for not having done so was that it was his practice to ask his patient for her sexual history when she was seated in the consultation room and not while she was lying on the examination bed with her abdomen exposed.[247] I found his explanation too incredulous to believe. There was no reason why the accused could not have asked for V's sexual history just because V was lying on the examination bed. Both of them were still in the medical clinic and the setting was still that of a patient who was consulting her doctor.

125 The invasive internal pelvic examination was not necessary in the case of UTI and LGTI. It was therefore all the more important that the accused asked V for her sexual history before proceeding to investigate PID using a very invasive procedure. In my view, the accused did not ask V for her sexual history because he did not in fact suspect PID.

126 Fifth, Dr Tung testified that an investigation for PID would not start with an internal pelvic examination. In the case of a non-sexually active woman, the investigation first would involve taking swabs without using a speculum and performing a trans-abdominal ultrasound.[248] If ultrasound facilities were not available, she would refer the patient to a specialist who had one.[249]

127 The accused agreed with Dr Tung.[250] His explanations for proceeding with the internal pelvic examination were that:

(a) his clinic did not have the facilities for the trans-abdominal ultrasound;[251]

(b) he had not done a vaginal swab before;[252]

(c) the steps mentioned by Dr Tung would be carried out in a hospital but not by a general practitioner in the HDB heartlands;[253] and

(d) his training from 40 years ago was still relevant for a general practitioner in the HDB heartlands.[254]

128 I did not accept the accused's explanations. I found it incredible that as an experienced doctor, he would have proceeded with an internal pelvic examination under these circumstances. Under cross-examination, the accused said that "HDB patients … are very reluctant to go to hospital because of expenses".[255] However, what was important was that he did not give V the option of going for less invasive tests in a hospital. In my view, the accused did not ask V whether she would prefer to go for less invasive tests in a hospital because he did not in fact suspect PID and was not carrying out an internal pelvic examination.

129 Sixth, the accused's own testimony as to why he carried out the internal pelvic examination, was inconsistent. He first claimed that the examination was to exclude PID.[256] However, he subsequently agreed that the examination could not confirm whether it was or was not PID.[257] The accused then claimed that the internal pelvic examination was to exclude more serious PID.[258] Yet, earlier in his testimony, he had only diagnosed "early pelvic inflammation" as a possibility.[259] The accused also agreed that the examination could not exclude PID altogether.[260] The accused took no further steps to confirm whether V was or was not suffering from PID, which was odd in the light of the accused's purported concern that PID could lead to infertility in young women if it was not treated early (see [62] above).

130 In my view, the inconsistencies showed that the accused's claim that he conducted an internal pelvic examination was an after-thought. He did not in fact have any reason to conduct the examination.

131 Seventh, the accused had prescribed ciprofloxacin for V. He claimed that this was for UTI and PID.[261] This was strange since on his own evidence, he had not confirmed that V had PID. Further, Dr Tung agreed that ciprofloxacin could be used to treat UTI.[262] However, she testified that she would not prescribe ciprofloxacin for PID because the infections that are commonly associated with PID are notoriously resistant to ciprofloxacin.[263] The accused's response in court was that he could not comment on that.[264] The accused accepted that ciprofloxacin may not be fully effective and claimed that he did not know how effective it was compared to other drugs "because [he was] not [an] expert in those areas".[265] Under further cross-examination, the accused agreed that he was not even sure that ciprofloxacin was the right medication for PID.[266]

132 In my view, the evidence showed that the accused prescribed ciprofloxacin for UTI but not PID. In turn, this showed that he did not suspect that V was suffering from PID.

133 Eighth, the accused claimed that he noticed slight redness and discharge around V's vulva and that this was significant because, in his view, PID became "much more likely".[267] However, Dr Tung was clear that there was no redness when she examined V on the afternoon of 31 December 2015.[268]

134 For all of the above reasons, I was left in no doubt that, on the night in question, the accused did not in fact suspect that V might be suffering from PID

and he did not in fact conduct an internal pelvic examination on V. In my judgment, the accused was not a credible witness.

The digital penetration was sexual

135 Accordingly, I concluded that the accused had sexually penetrated V's vagina with his fingers on the night in question.

Whether there was consent

136 V denied that the accused told her that he was going to conduct an internal pelvic examination to exclude pelvic inflammation or that she consented to his insertion of his fingers into her vagina.[269] I believed her.

137 I rejected the accused's claim that he asked for and obtained V's consent to insert his fingers into her vagina. The accused's claims that he suspected PID, and that he conducted an internal pelvic examination, were afterthoughts. There was no reason for me to believe that he asked V for her consent to an internal pelvic examination. I also noted that the accused's statements to the police were inconsistent on the matter of consent. In his 31 December 2015 statement, he claimed to have checked with V if she "was okay" during the entire alleged internal pelvic examination.[270] However, in his 1 January 2016 statement, the accused said that he did not specifically tell V that he was inserting his fingers into her vagina as part of the alleged internal pelvic examination.[271]

138 In my judgment, the accused did not ask V for her consent to conduct an internal pelvic examination.

139 In any event, even *if* the accused did ask V for her consent to conduct an internal pelvic examination, and even *if* V did consent, her consent would have been given under a misconception that the accused was truly conducting an

internal pelvic examination, and the accused clearly knew that the consent was given in consequence of such misconception. Such a consent would not have been valid: s 90(*a*)(ii) of the Penal Code.

Conviction on the offence of sexual assault by penetration

140 I concluded that sometime between 11.30pm on 30 December 2015 and 12.30am on 31 December 2015, at his clinic, the accused did sexually penetrate V's vagina with his fingers, without V's consent. The accused had therefore committed the offence of sexual assault by penetration under s 376(2)(*a*) and punishable under s 376(3) of the Penal Code.

141 I had acquitted the accused on the rape charge. The Prosecution had not proceeded with an alternative charge under s 376(2)(*a*) of the Penal Code.

142 As stated at [5] above, I exercised my powers under s 139 of the CPC and convicted the accused of the offence of sexual assault by penetration under s 376(2)(*a*) of the Penal Code.

143 Section 139 of the CPC gives the court the power to convict an accused person of an offence that he is shown to have committed although he was not charged with it. Section 139 provides as follows:

> **When person charged with one offence can be convicted of another**
>
> **139.** If in the case mentioned in section 138 the accused is charged with one offence and it appears in evidence that he committed a different offence for which he might have been charged under that section, he may be convicted of the offence that he is shown to have committed although he was not charged with it.
>
> *Illustration*
>
> *A* is charged with theft. In evidence it appears that he committed the offence of criminal breach of trust or receiving

> stolen goods. He may be convicted of criminal breach of trust or of receiving stolen goods, as the case may be, although he was not charged with that offence.

144 The power under s 139 of the CPC may not be exercised unless:

(a) the accused could have been charged with the offence that he is to be convicted on, under s 138. This is an express requirement under s 138; and

(b) the accused must not be prejudiced or embarrassed in his defence in any way: *The Criminal Procedure Code of Singapore: Annotations and Commentary* (Academy Publishing, 2012) ("*CPC Commentary*") at para 07.128.

Whether the case fell within the scope of s 138 of the CPC

145 Sections 138 of the CPC provides as follows:

> **If it is doubtful what offence has been committed**
>
> **138.** If a single act or series of acts is such that it is doubtful which of several offences the provable facts will constitute, the accused may be charged with all or any of those offences and any number of the charges may be tried at once, or he may be charged in the alternative with any one of those offences.
>
> *Illustrations*
>
> (*a*) *A* is accused of an act that may amount to theft or receiving stolen property or criminal breach of trust or cheating. He may be charged with theft, receiving stolen property, criminal breach of trust and cheating, or he may be charged with having committed theft or receiving stolen property or criminal breach of trust or cheating.
>
> (*b*) *A* states on oath before the committing Magistrate that he saw *B* hit *C* with a club. Before the High Court, *A* states on oath that *B* never hit *C*. *A* may be charged in the alternative and convicted of intentionally giving false evidence although it cannot be proved which of these contradictory statements was false.

146 Section 138 applies to cases in which "it is doubtful which of several offences the provable facts will constitute". The commentary at para 07.121 of the *CPC Commentary* cites *R v Tay Thye Joo* [1933] MLJ 35 ("*Tay Thye Joo*") as authority for the proposition that s 138 only applies when it is doubtful what offences the facts prove, not when it is doubtful as to what facts can be proved. However, *Tay Thye Joo* does not support this proposition.

147 *Tay Thye Joo* concerned s 172 of the Criminal Procedure Code that was then in force. For all intents and purposes, that section is identical to the present s 138. The proposition stated in the *CPC Commentary* in fact reflects the argument that was made by counsel for the appellant/accused. The court in *Tay Thye Joo* expressly rejected that argument. Terrell J held that "… s 172 means what it says, namely that it is doubtful what facts can be proved. Until they can be proved it is difficult to say what offence has been committed …". This must be correct. Section 138 provides for the framing of alternative charges. There is no reason why it should not apply where it is doubtful what facts can be proved and the offence that has been committed depends on what facts can be proved. In the present case, there is no reason why the accused could not have been charged for rape, and in the alternative, sexual assault by penetration.

148 In my view, the present case fell within the scope of s 138 and accordingly, s 139 was engaged.

Whether the accused was prejudiced

149 Section 139 permits the court to convict an accused of an offence that he was not charged with, if the evidence shows that he had committed the offence. Justice dictates that the accused should have had the same opportunity to defend himself as he would have had if he had been charged with that offence. In other words, before exercising its power under s 139, the court must be

satisfied that the evidence for the defence in respect of the offence (for which he is to be convicted on) would have been the same as that which was adduced during the trial.

150 In the instant case, the accused had admitted that he had penetrated V's vagina with his fingers. His case was that he had done so because he was conducting an internal pelvic examination to exclude PID. The accused gave a full explanation as to why he suspected that V was suffering from PID, how the issue came up, why he decided to conduct an internal pelvic examination, how he obtained V's consent, how he conducted the examination, why he did not use gloves, or lubricant and why he did not offer V the option of having a chaperone present. He was also cross-examined extensively on these matters.

151 During oral closing submissions, I also asked the Prosecution and counsel for the accused, what the position would be if I came to the conclusion that the rape charge was not made out and I rejected the accused's claims that he was conducting an internal pelvic examination. Both of them made submissions; no new issue was raised.[272] Counsel for the accused did not ask to call any further witnesses or to recall any witnesses.

152 It was clear that the accused's defence would not have been conducted any differently had he been charged with sexual assault by penetration under s 376(2)(*a*) of the Penal Code. I was therefore satisfied that convicting him under s 376(2)(*a*) in this case would not prejudice him in any way. Accordingly, I convicted the accused on the offence of sexual assault by penetration under s 376(2)(*a*).

Sections 128–131 of the CPC

153 After I had convicted the accused, but before I heard oral submissions on sentence, the Prosecution drew my attention to ss 128–131 of the CPC, and expressed the view that these sections "would have applied to the amendment of the charge" against the accused.[273] However, the Prosecution had misunderstood the basis upon which I had convicted the accused of the s 376(2)(*a*) offence. Sections 128–131 of the CPC were irrelevant as I had not amended the rape charge against the accused. I had acquitted the accused on the rape charge and exercised my powers under s 139 of the CPC to convict him on the offence of sexual assault by penetration under s 376(2)(*a*) of the Penal Code. Section 139 of the CPC permits the court to convict an accused on an offence that he had not been charged with. Section 139 does not involve or require any amendment to the existing charge.

Findings on the OM charge

154 The accused argued that if the accused had outraged her modesty on 25 November 2015, then it was "highly incongruous" that V would return to consult the accused at his clinic on 30 December 2015. As stated earlier, V explained that while she found the accused's actions "weird" and she felt "uneasy", she had assumed that these actions were part of the medical examination because she trusted the accused as her doctor.[274] Further, the accused had told her that there was a lump.[275]

155 The accused's statement that there was a lump was confirmed by Dr Sheena who examined V at the polyclinic in Bedok on 5 December 2015.[276] By the time of trial, Dr Sheena was no longer working for the polyclinic, and had left Singapore on 13 March 2018. The police were unable to contact her[277]

for the purposes of testifying. A computer printout of Dr Sheena's clinical notes was produced in court.[278] These notes showed that V had complained of "left groin area pain for 3 days" and that Dr Sheena's examination confirmed that V had a "left enlarged inguinal lymph node". Dr Sheena's finding reassured V that what had happened to her on 25 November 2015 was part of a medical examination.[279] I believed V's testimony that she had thought that the accused's actions on 25 November 2015 were part of a medical examination.

156 I accepted V's testimony that she only realised on 31 December 2015 that what had happened on 25 November 2015 was not a medical examination, after she thought about the events on 25 November 2015 and 30 December 2015.[280] V related the 25 November 2015 incident to the police officer who interviewed her 1 January 2016.[281]

157 I found V's testimony to be compelling and believable. As mentioned earlier, V impressed me as an honest although somewhat simple girl. She gave her evidence simply, clearly and without embellishment.

158 As I was satisfied that the Prosecution had proven its case beyond a reasonable doubt, I convicted the accused on the OM charge.

Sentence

159 In this case, the offence under s 376(2)(*a*) was punishable with imprisonment for a term which may extend to 20 years, and was also liable to fine or to caning: s 376(3) of the Penal Code.

160 In *Pram Nair v Public Prosecutor* [2017] 2 SLR 1015 ("*Pram Nair*"), the Court of Appeal laid down the following sentencing framework for the offence of sexual penetration of the vagina using a finger (at [159]):

(a) Band 1: seven to ten years' imprisonment and four strokes of the cane;

(b) Band 2: ten to 15 years' imprisonment and eight strokes of the cane; and

(c) Band 3: 15 to 20 years' imprisonment and 12 strokes of the cane.

161 The court in *Pram Nair* also held at [158] that the framework for determining the offence-specific and offender-specific aggravating factors in offences of statutory rape in *Ng Kean Meng Terence v Public Prosecutor* [2017] 2 SLR 449 ("*Terence Ng*") at [44] could similarly be transposed to offences of digital penetration.

162 The OM offence was punishable with imprisonment for a term of up to two years, or with fine, or with caning, or with any combination of such punishments: s 354(1) of the Penal Code.

163 In *Kunasekaran s/o Kalimuthu Somasundara v Public Prosecutor* [2018] 4 SLR 580 ("*Kunasekaran*") at [49], the High Court laid out the following sentencing framework for OM offences:

(a) Band 1: less than five months' imprisonment;

(b) Band 2: five to 15 months' imprisonment; and

(c) Band 3: 15 to 24 months' imprisonment.

The Prosecution's submissions

164 With respect to the s 376(2)(*a*) offence, the Prosecution relied on the following offence-specific factors:

(a) The accused had abused his position and breached the trust placed in him. He was V's doctor and V had placed her trust in him.

(b) Psychological and emotional harm was inflicted on V. She felt "dead inside" was in a state of shock for a long time.[282] The assault had affected V's studies negatively.[283] She never consulted male doctors for a long time and also found it difficult to talk to, much less experience intimacy with, males.[284] V also said that the trial made her feel like she was raped again.[285]

165 Based on these factors, the Prosecution submitted that the indicative sentence for the s 376(2)(*a*) offence was at the highest end of Band 1 and the low end of Band 2 of the framework in *Pram Nair*, *ie*, ten years' imprisonment and four strokes of the cane.

166 The Prosecution submitted that there were no mitigating factors in this case and that the indicative sentence should be adjusted to 11 years' imprisonment and four strokes of the cane, after taking into account the following offender-specific factors:

(a) The accused had shown a lack of remorse and did not consider V to be a victim.[286]

(b) The accused had (through his counsel) accused Dr Tung of embellishing her evidence[287] and also maligned the police during cross-examination, calling them "stupid".[288]

167 As for the OM offence, the Prosecution referred to the following offence-specific factors: (a) the offence involved an egregious intrusion into V's private parts with skin-on-skin contact, (b) the accused abused his position of trust, (c) deception by the accused, and (d) harm to V. Taking these factors into account, the Prosecution submitted that the starting point should be at the highest end of Band 2 of the framework in *Kunasekaran*, *ie*, 15 months' imprisonment.

168 Next, the Prosecution submitted that the indicative sentence should be adjusted to 16 months' imprisonment and three strokes of the cane, after taking into account the accused's lack of remorse and deception.

169 The Prosecution submitted that the sentences for both offences should run consecutively since the two offences were separate and unrelated: *Public Prosecutor v Raveen Balakrishnan* [2018] 5 SLR 799 ("*Raveen Balakrishnan*") at [102]. That brought the total sentence to an imprisonment term of 12 years and four months and seven strokes of the cane.

170 At the time of sentencing, the accused was 68 years old. Under s 325(1)(*b*) of the CPC, the accused could not be caned. The Prosecution urged me to impose a sentence of three months' imprisonment in lieu of caning under s 325(2) of the CPC.

171 Based on the Prosecution's submissions, the final global sentence would be a term of imprisonment of 12 years and seven months.

The accused's submissions

172 With respect to the s 376(2)(*a*) offence, counsel for the accused submitted that this was not a case falling within the high end of Band 1 or the

low end of Band 2 in the framework in *Pram Nair*. He urged me to consider (a) the accused's lack of antecedents, (b) the fact that the accused had been in medical practice for nearly 40 years, and (c) the fact that the accused was a doctor of some standing in his community, having seen generations of patients.

173 As for the OM offence, counsel for the accused accepted that the appropriate sentence should be within Band 2 of the framework in *Kunasekaran* but submitted that it should not be at the higher end. Counsel for the accused said he was not in the position to submit on what the sentence should be for the OM offence.

174 Counsel for the accused submitted that the sentences for the two offences should not run consecutively but did not give me any sound reasons.

175 As for imprisonment in lieu of caning, counsel for the accused referred to *Amin bin Abdullah v Public Prosecutor* [2017] 5 SLR 904 at [53] and submitted that there were no grounds to justify enhancing the sentence of imprisonment in the present case. Counsel also submitted that there was no need to enhance the imprisonment term in view of the accused's advanced age and medical conditions.

My decision on the sentences to be imposed

176 With respect to the s 376(2)(*a*) offence, I agreed with the Prosecution that the accused had abused his position and breached the trust placed in him as a doctor. Clearly, this was an aggravating factor. I also agreed that V had suffered psychological and emotional harm. This was a factor to be considered. However, drawing guidance from the Court of Appeal in *Terence Ng*, at [44(h)], it would not be considered as a serious aggravating factor unless the assault

resulted in "especially serious physical or mental effects on the victim such as … the transmission of a serious disease, or a psychiatric illness…".

177 In my view, the appropriate indicative sentence in this case fell within Band 1 of the *Pram Nair* framework. I started with an indicative sentence of eight years' imprisonment and four strokes of the cane.

178 I did not consider the accused's standing as a doctor to be a mitigating factor, given that he had abused that very standing. Taking in consideration the offender-specific aggravating factors referred to by the Prosecution, I adjusted the sentence to nine years' imprisonment and four strokes of the cane.

179 As for the OM offence, in my view, taking into consideration the offence-specific factors relied on by the Prosecution, the appropriate indicative sentence would fall within Band 2 of the *Kunasekaran* framework. I started with an indicative sentence of 10 months' imprisonment and two strokes of the cane. Taking into account the accused's lack of remorse, I adjusted the sentence to 12 months' imprisonment and two strokes of the cane.

180 I agreed with the Prosecution that the two offences were separate and unrelated. Accordingly, I ordered that the sentences run consecutively.

181 I agreed with counsel for the accused that, taking into consideration the accused's advanced age and medical conditions, there was no need to enhance the sentence in lieu of caning.

182 The advanced age of an offender is not generally a factor that warrants a sentencing discount; however, it is a relevant consideration when deciding on the overall proportionality of the punishment: *Terence Ng* at [65(c)]. I also

considered the accused's medical condition to be a relevant factor in deciding the overall proportionality of the punishment.

183 The final global sentence was therefore 10 years' imprisonment. In my view, this was an appropriate balance between satisfying the needs of deterrence and retribution, and the totality principle (*Raveen Balakrishnan* at [73]).

Compensation order

184 The Prosecution requested the court to make a compensation order under s 359(1)(*a*) of the CPC. The Prosecution adduced several receipts for payments made by V to a private psychotherapist from November 2017 to January 2019.[289] V had been referred to the psychotherapist by her school's student counsellor.[290] As V had been reimbursed by her school's insurance for these consultations up until February 2018, the Prosecution sought a compensation order in respect of the consultations from March 2018 to January 2019, which amounted to $1,200.

185 Counsel for the accused objected and submitted that there was no evidence that V had been undergoing psychological treatment in respect of the sexual assaults perpetrated by the accused.

186 Under s 359(2) of the CPC, a court must make a compensation order if it is satisfied that it is appropriate to do so. Indeed, it is a positive obligation upon the court to consider whether to do so: *Soh Meiyun v Public Prosecutor* [2014] 3 SLR 299 ("*Soh Meiyun*") at [55]. This "should not require the court to embark on complicated investigations of fact or law": *Soh Meiyun* at [58]. In this instance, there was ample evidence that V's psychotherapy treatment had occurred prior to November 2017. She was referred by her school's student

counsellor. Moreover, the letter from her therapist indicated that the consultations were to help V "cope with the psychological and emotional effects of a post-sexual assault". I therefore ordered the accused to pay V the sum of $1,200 in compensation.

Observations on the Prosecution's duty of disclosure

187 As stated earlier, at the request of the police, the accused underwent a second Doppler ultrasonography on 22 April 2016. The second Doppler report was inconsistent with the first Doppler report, and showed that the accused was suffering from ED. The Prosecution gave a copy of Dr Teo's second report (together with the second Doppler report) to counsel for the accused only on 21 September 2018, in the midst of the trial, after the accused raised the defence of ED.[291]

188 In *Muhammad bin Kadar and another v Public Prosecutor* [2011] 3 SLR 1205 ("*Kadar*"), the Court of Appeal held (at [113]) that the Prosecution must disclose to the defence

> (a) any unused material that is likely to be admissible and that might reasonably be regarded as credible and relevant to the guilt or innocence of the accused; and
>
> (b) any unused material that is likely to be inadmissible, but would provide a real (not fanciful) chance of pursuing a line of inquiry that leads to material that is likely to be admissible and that might reasonably be credible and relevant to the guilt or innocence of the accused.

189 The second Doppler report was, without doubt, material that was likely to be admissible and that was credible and relevant to the innocence of the accused.

190 The disclosure obligation under *Kadar* relates to "unused material". The Prosecution submitted that it could not know whether the material would be "unused" until it knew what the accused's defence was, and in the present case, the defence of ED was only raised during the trial. According to the Prosecution, therefore, it was not obliged to disclose the second Doppler report to the accused before he raised ED as a defence.

191 I disagreed with the Prosecution's submissions. First, the expression "unused material" in *Kadar* refers to material in the possession of the Prosecution which will not be relied on at trial: *Kadar* at [76]. It is any material that does not form part of the Prosecution's case. As the Prosecution conceded during oral closing submissions, it would not have relied on the second Doppler report as part of its case.[292] This was unsurprising since that report would have tended to undermine the Prosecution's case. The Prosecution's reason for withholding disclosure of the second Doppler report in this case therefore could not be supported.

192 Second, in my view, the *Kadar* disclosure rule is not limited to material which is relevant to a defence *that has been made known to the Prosecution* by the accused. The Prosecution also conceded during oral closing submissions that *Kadar* imposed no such limitation.[293] The *Kadar* disclosure rule applies to all material that might reasonably be credible and relevant to the innocence of the accused. After all, the accused is also entitled to material that would provide a real chance of pursuing a line of inquiry.

193 I should add that the late disclosure of the second Doppler report to the accused in this case did not prejudice him. First, the accused managed to undergo the haemodynamic test on 7 June 2018. Dr Sriram testified as his expert witness and I had concluded that the accused was suffering from ED in December 2015. Second, it appeared that although he was not given a copy of the second Doppler report, the accused had been told that the results of the second Doppler ultrasonography were "bad" in that they were contrary to the results of the first Doppler ultrasonography. The reason why the haemodynamic test was not done earlier was that the accused did not inform Dr Peter Lim of this until June 2018, after which Dr Peter Lim decided to send the accused for the haemodynamic test which Dr Sriram conducted.[294]

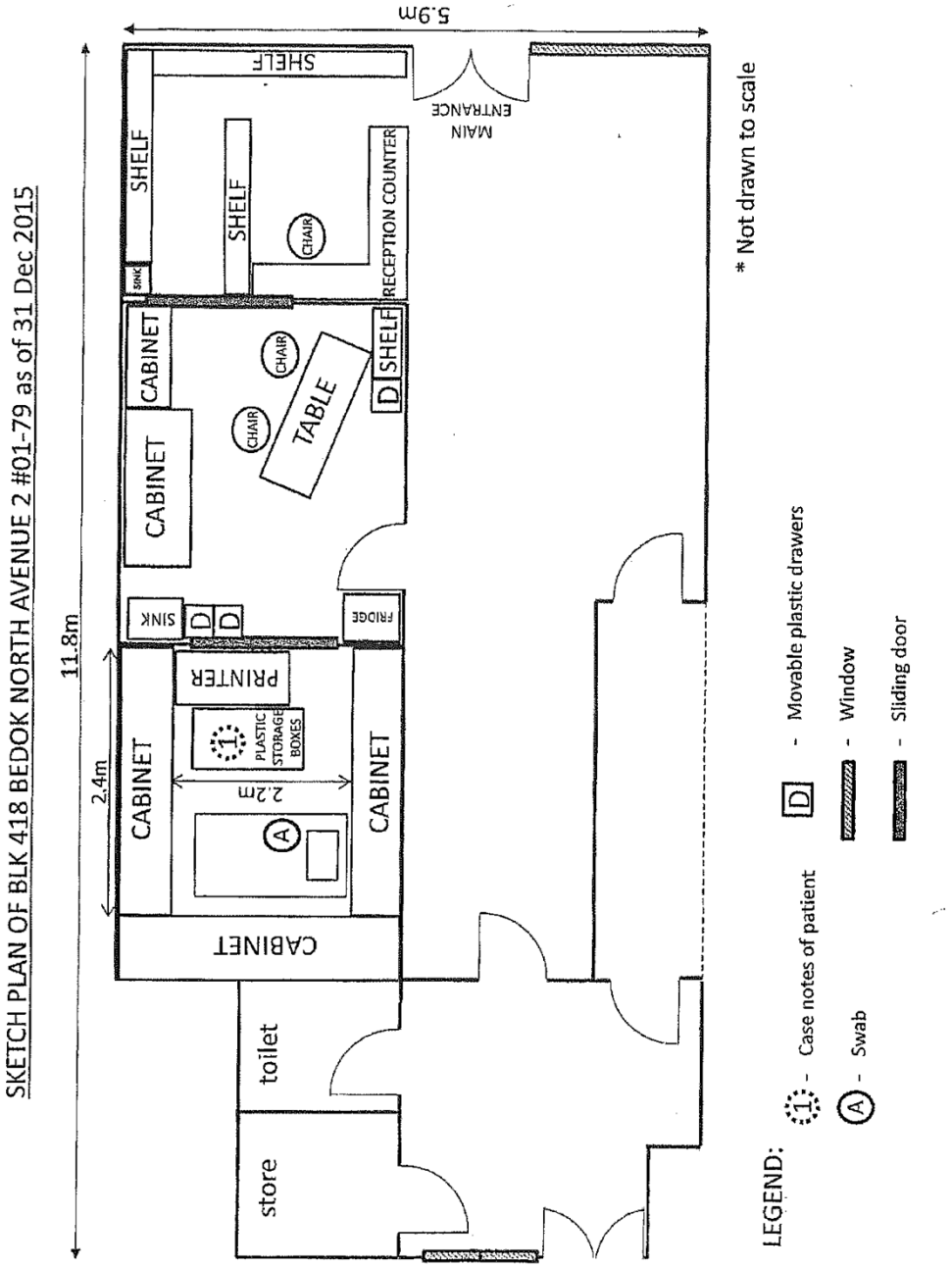
Conclusion

194 I found the accused guilty of sexual assault by penetration under s 376(2)(*a*) of the Penal Code and outrage of modesty under s 354(1) of the Penal Code, and I convicted him accordingly. I sentenced him to a total term of 10 years' imprisonment.

Chua Lee Ming
Judge

Sharmila Sripathy-Shanaz, Amanda Chong, Chew Xin Ying,
and Wong Kok Weng
(Attorney-General's Chambers) for the Prosecution;
Edmond Pereira, Vickie Tan, and Amardeep Singh
(Edmond Pereira Law Corporation) for the accused.

Annex A



[1] Notes of Evidence ("NE"), 30 April 2018, at 20:6–20; 22:7–13.
[2] NE, 30 April 2018, at 27:4–20.
[3] AB 5, at para 1; NE, 30 April 2018, at 27:14–16.
[4] NE, 30 April 2018, at 28:2–10.
[5] NE, 4 May 2018, at 7:9–14.
[6] NE, 24 May 2018, at 17:7–23.
[7] NE, 24 May 2018, at 18:12–15.
[8] NE, 30 April 2018, at 23:14–23.
[9] NE, 30 April 2018, at 41:16–18.
[10] NE, 30 April 2018, at 42:2–9.
[11] AB 5, at para 2.
[12] NE, 30 April 2018, at 44:13–17.
[13] NE, 2 May 2018, at 37:20–22; NE, 30 April 2018, at 44:9–12.
[14] NE, 2 May 2018, at 158:13–21.
[15] AB 5, at para 2; NE, 30 April 2018, at 41:21.
[16] NE, 30 April 2018, at 46:14–21.
[17] AB 5, at para 3.
[18] NE, 30 April 2018, at 47:2–11; Exhibit P51.
[19] NE, 30 April 2018, at 48:8; Exhibit P52.
[20] Exhibit P52.
[21] NE, 8 May 2018, at 25:15–25.
[22] NE, 30 April 2018, at 49:7–8; NE, 2 May 2017, at 73:1–2.
[23] NE, 30 April 2018, at 49:5–11.
[24] AB 5, at para 3; NE, 30 April 2018, at 49:14–25; NE, 2 May 2017, at 73:16.
[25] NE, 8 May 2015, at 25:14–25.
[26] AB 5, at para 3; NE, 30 April 2018, at 52:11–20.
[27] AB 5, at para 3.
[28] NE, 30 April 2018, at 53:2–6.
[29] NE, 30 April 2018, at 53:17–23; NE, 2 May 2018, at 76:16.
[30] NE, 30 April 2018, at 53:7–13.
[31] AB 5, at para 4; NE, 30 April 2018, at 54:6–9.
[32] NE, 30 April 2018, at 54:11–13.
[33] NE, 30 April 2018, at 54:17–21.
[34] NE, 30 April 2018, at 55:17–56:7.
[35] NE, 30 April 2018, at 55:13–16.
[36] NE, 30 April 2018, at 55:3–16; NE, 2 May 2018, at 47:2–19.
[37] NE, 30 April 2018, at 57:11–18; 58:22–25; NE, 2 May 2018, at 109:9–11.
[38] NE, 30 April 2018, at 57:20–58:5.
[39] NE, 2 May 2018, at 114:15–18.
[40] Exhibit P54.
[41] NE, 30 April 2018, at 61:21–62:4.
[42] NE, 2 May 2018, at 132:7–8; 137:20.
[43] NE, 2 May 2018, at 134:4–20; AB 5, at para 5.
[44] AB 5, at para 6; NE, 2 May 2018, at 166:2–7.
[45] NE, 2 May 2018, at 147:20–22; AB 5, at para 6.
[46] NE, 2 May 2018, at 152:5–9; 157:17–20.
[47] AB 5, at para 7.
[48] NE, 30 April 2018, at 63:12–20.

[49] NE, 2 May 2018, at 158:5–7.
[50] NE, 30 April 2018; at 71:16; NE, 2 May 2018, at 162:21–23.
[51] NE, 30 April 2018, at 65:3; NE, 2 May 2018, at 158:10–12.
[52] NE, 30 April 2018, at 66:2–3; NE, 2 May 2018, at 159:21–24.
[53] NE, 30 April 2018, at 68:5–25; NE, 2 May 2018, at 160:25–161:4; 163:24–165:15.
[54] NE, 2 May 2018, at 161:22–24.
[55] NE, 30 April 2018, at 71:10–11; NE, 2 May 2018, at 169:11–24.
[56] NE, 2 May 2018, at 170:22–171:21.
[57] NE, 2 May 2018, at 165:19–25.
[58] AB 6, at para 8.
[59] AB 6, at para 8.
[60] NE, 2 May 2018, at 175:15–17.
[61] AB 6, at para 9;
[62] NE, 30 April 2018, at 74:11–24; NE, 2 May 2018, at 177:1–2.
[63] NE, 30 April 2018, at 75:20–21; NE, 2 May 2018, at 181:13.
[64] AB 6, at para 9; NE, 2 May 2018, at 181:22–24.
[65] NE, 2 May 2018, at 191:21.
[66] NE, 2 May 2018, at 188:20–25.
[67] AB 6, at para 9.
[68] NE, 2 May 2018, at 193:14–22.
[69] NE, 2 May 2018, at 199:11–15.
[70] NE, 30 April 2018, at 78:17–79:2; NE, 2 May 2018, at 200:17–21.
[71] NE, 30 April 2018, at 79:25–80:3.
[72] AB 6, at para 10.
[73] NE, 2 May 2018, at 205:10–25.
[74] NE, 30 April 2018, at 80:22–23.
[75] NE, 2 May 2018, at 205:10–12.
[76] NE, 2 May 2018, at 209:1.
[77] NE, 2 May 2018, at 210:19.
[78] NE, 2 May 2018, at 210:22–211:13.
[79] NE, 2 May 2018, at 213:3–11; 219:2–7.
[80] NE, 30 April 2018, at 83:16–84:4; Exhibit P57.
[81] NE, 30 April 2018, at 87:21–23; NE, 2 May 2018, at 219:11–22; 220:20–22; 221:12–15; Exhibit P58.
[82] AB 6, at para 10.
[83] NE, 2 May 2018, at 221:21–222:21.
[84] NE, 30 April 2018, at 90:11–13.
[85] NE, 30 April 2018, at 92:14–17; NE, 2 May 2018, at 223:4–25.
[86] NE, 2 May 2018, at 233:5–8.
[87] AB 6, at para 11; NE, 2 May 2018, at 230:19–24.
[88] NE, 2 May 2018, at 232:5–9.
[89] AB 6, at para 11; NE, 2 May 2018, at 232:24–25.
[90] NE, 30 April 2018, at 98:21–22.
[91] NE, 30 April 2018, at 99:8–9.
[92] AB 6, at para 11.
[93] NE, 30 April 2018, at 101:3–11.
[94] NE, 30 April 2018, at 101:7–17.
[95] NE, 30 April 2018, at 101:21–22; 102:2–4; NE, 2 May 2018, at 1:19–24.

[96] NE, 30 April 2018, at 102:6–10.
[97] NE, 30 April 2018, at 103:6–16.
[98] NE, 30 April 2018, at 104:11–15.
[99] NE, 30 April 2018, at 104:22.
[100] NE, 30 April 2018, at 105:7–8.
[101] NE, 30 April 2018, at 105:14–24.
[102] NE, 30 April 2018, at 107:24–110:6.
[103] NE, 30 April 2018, at 105:21–106:8.
[104] NE, 30 April 2018, at 117:2–4.
[105] NE, 30 April 2018, at 116:18; 117:5–14.
[106] NE, 30 April 2018, at 117:24–118:9.
[107] NE, 30 April 2018, at 118:22–25.
[108] NE, 30 April 2018, at 120:4–11.
[109] NE, 30 April 2018, at 121:9–14.
[110] NE, 30 April 2018, at 121:17–122:1.
[111] AB 9, at para 2; NE, 4 May 2018, at 8:6, 13–18.
[112] NE, 4 May 2018, at 9:2–5.
[113] AB 7, at para 14; NE, 30 April 2018, at 123:17–23; 124:17–19; NE, 4 May 2018, at 9:4–5.
[114] NE, 30 April 2018, at 124 20–125:3; 127:9–13.
[115] NE, 4 May 2018, at 4:18–23.
[116] NE, 30 April 2018, at 127:19–24.
[117] NE, 4 May 2018, at 9:21–25; 10:24–11:8.
[118] NE, 30 April 2018, at 128:6; 129:1–6.
[119] NE, 30 April 2018, at 129:11; 130:25–131:2.
[120] AB 8.
[121] NE, 30 April 2018, at 131:23–25; NE, 7 May 2018, at 35:18–19.
[122] AB 11–12.
[123] NE, 8 May 2018, at 23:3–4, 17–21; 29:13–17.
[124] NE, 8 May 2018, at 23:22–24–5; 114:14–20.
[125] NE, 8 May 2018, at 92:13–14.
[126] NE, 8 May 2018, at 99:9–16.
[127] NE, 8 May 2018, at 84:20–23.
[128] NE, 9 May 2018, at 15:18–16:7.
[129] NE, 9 May 2018, at 15:19–25.
[130] NE, 9 May 2018, at 16:18–20.
[131] NE, 9 May 2018, at 16:23–25.
[132] NE, 9 May 2018, at 17:4–8.
[133] NE, 9 May 2018, at 17:18–20.
[134] AB 13, at para 4.
[135] NE, 4 May 2018, at 42:1–5.
[136] NE, 4 May 2018, at 42:21–43:2.
[137] AB 13, at para 4; NE, 4 May 2018, at 42:10–14.
[138] NE, 9 May 2018 at 22:11–23:2.
[139] AB 45, at para 15.
[140] AB 26–40; P 66.
[141] NE, 7 May 2018, at 65:18–23.
[142] NE, 7 May 2018, at 65:7.

143 NE, 7 May 2018, at 59:20–24.
144 NE, 10 May 2018, at 57:19–20.
145 NE, 10 May 2018, at 58:12–13.
146 NE, 10 May 2018, at 59:1–2.
147 NE, 10 May 2018, at 59:9–20.
148 NE, 10 May 2018, at 62:25.
149 NE, 10 May 2018, at 63:8–17; 77:8–10.
150 NE, 10 May 2018, at 77:16–78:4.
151 NE, 10 May 2018, at 91:20–22; 92:1–4; 94:11–14; 95:23–24; 98:6–15.
152 NE, 10 May 2018, at 98:16–24; 100:25–101:3.
153 NE, 10 May 2018, at 83:12.
154 NE, 10 May 2018, at 84:3–22.
155 NE, 10 May 2018, at 85:4–7.
156 NE, 10 May 2018, at 85:9–12.
157 NE, 10 May 2018, at 85:12–13; 86:9–10.
158 NE, 10 May 2018, at 88:6–89:5.
159 NE, 10 May 2018, at 89:17–21.
160 NE, 10 May 2018, at 89:22.
161 NE, 10 May 2018, at 92:10–12.
162 NE, 10 May 2018, at 91:16–18.
163 NE, 10 May 2018, at 92:1–6.
164 NE, 10 May 2018, at 92:6–9.
165 NE, 10 May 2018, at 93:8–94:24.
166 NE, 10 May 2018, at 94:15–20.
167 NE, 10 May 2018, at 95:19–21; 97:8–9.
168 NE, 10 May 2018, at 95:23–96:5; 98:9–15.
169 NE, 10 May 2018, at 99:17–19; 99:25–100:17.
170 NE, 10 May 2018, at 98:19–24; 102:6–9.
171 NE, 10 May 2018, at 101:2–25.
172 NE, 10 May 2018, at 102:1–4.
173 NE, 10 May 2018, at 113:2–9.
174 NE, 10 May 2018, at 126:14–127:12.
175 NE, 10 May 2018, at 136:4; 138:7–8.
176 NE, 10 May 2018, at 139:2–6.
177 NE, 10 May 2018, at 118:2–11.
178 NE, 24 May 2018, at 67:3–7.
179 NE, 10 May 2018, at 104:4–16; 118:2–11.
180 Exhibit D21 (Defence Supplementary Bundle of Exhibits ("DSB"), at p 33).
181 Exhibit D24 (DSB, at p 38).
182 Exhibit D17.
183 Exhibit D27 (DSB, at p 54).
184 Exhibit D35 (DSB, at p 122); NE, 19 October 2018, at 13:20–14:12.
185 Exhibit P98.
186 NE, 19 October 2018, at 136:15–137:7.
187 NE, 23 October 2018, at 61:1–3.
188 Exhibit P102.
189 Exhibit P99.
190 Exhibit D32 (DSB, at pp 69–70).

191 NE, 19 October 2018, at 14:20–25.
192 Exhibit D23.
193 NE, 19 October 2018, at 40:21–25.
194 NE, 19 October 2018, at 50:7–18.
195 NE, 19 October 2018, at 69:19–70:3.
196 Exhibit D33 (DSB, at p 128).
197 NE, 19 October 2018, at 41:10–12; 69:3–11.
198 NE, 19 October 2018, at 29:20–30:8; Exhibit D35 (DSB, at pp 122–123).
199 NE, 19 October, 2018, at 32:9–17; 39:9–19.
200 NE, 19 October 2018, at 57:22–58:7.
201 NE, 19 October 2018, at 66:5–67:2.
202 NE, 19 October 2018, at 68:19–69:7.
203 NE, 19 October 2018, at 69:12–18.
204 NE, 19 October 2018, at 131:3–9.
205 NE, 19 October 2018, at 138:2–7; NE, 23 October 2018, at 5:12–16.
206 NE, 23 October 2018, at 44:8–12.
207 NE, 19 October 2018, at 133:25–134:17.
208 NE, 19 October 2018, at 149:8–22.
209 NE, 23 October 2018, at 15:21–16:23.
210 NE, 23 October 2018, at 18:23–19:16.
211 NE, 24 May 2018, at 219:9–20.
212 Exhibit P98.
213 Exhibit P96.
214 Exhibit P97, at Q8.
215 NE, 25 May 2018, at 101:6–103:3.
216 NE, 11 July 2018, at 24:21–25:1.
217 NE, 11 July 2018, at 25:4–5.
218 NE, 23 October 2018, at 76:18–24.
219 NE, 2 May 2018, at 219:2–24.
220 NE, 10 May 2018, at 92:1–9; 95:19–96:5; 98:6–24.
221 NE, 24 May 2018, at 8:20–9:17.
222 NE, 24 May 2018, at 147:6–8.
223 Exhibit D1, at pp 59 and 72.
224 NE, 24 May 2018, at 160:7–10.
225 NE, 10 May 2018, at 125:20–126:4; 127:22–128:18.
226 NE, 10 May 2018, at 128:13–21.
227 NE, 10 May 2018, at 144:8–145:3; 146:15–17.
228 NE, 24 May 2018, at 163:21–164:2; 165:6–18.
229 Exhibits P96 and P97.
230 NE, 25 May 2018, at 41:1–12, 42:9–13, 42:21–43:3, 89:19–23; 172:23–173:1; 185:17–186:23.
231 NE, 10 May 2018, at 118:15–25.
232 NE, 10 May 2018, at 91:16–17, 104:4–16 and 119:8–11.
233 NE, 24 May 2018, at 77:5–79:13.
234 Exhibit P96, at para 10.
235 NE, 10 May 2018, at 118:2–11.
236 NE, 25 May 2018, at 31:1–19.
237 NE, 25 May 2018, at 31:25–32:4.

238 NE, 8 May 2018, at 26:7–12.
239 NE, 8 May 2018, at 29:13–17.
240 NE, 8 May 2018, at 26:13–21.
241 NE, 8 May 2018, at 26:13–23.
242 NE, 8 May 2018, at 29:24–30:3; 30:14–19.
243 NE, 8 May 2018, at 30:11–13.
244 NE, 8 May 2018, at 33:10–14.
245 NE, 24 May 2018, at 35:17–35:7, 40:21–41:14.
246 NE, 24 May 2018, at 42:22–44:22.
247 NE, 24 May 2018, at 45:6–13.
248 NE, 8 May 2018, at 31:15–21.
249 NE, 8 May 2018, at 31:23– 32:3.
250 NE, 24 May 2018, at 60:13–19.
251 NE, 24 May 2108, at 60:23–25.
252 NE, 24 May 2018, at 62:18–25.
253 NE, 24 May 2018, at 60:13–22.
254 NE, 24 May 2018, at 52:24–53:4; 53:13–21.
255 NE, 24 May 2018, at 54:3–5.
256 NE, 10 May 2018, at 95:23–96:3, 98:11–12, 104:6–7.
257 NE, 24 May 2018, at 52:1–6.
258 NE, 24 May 2018, at 52:20–24, 55:19–23, 56:7–12.
259 NE, 10 May 2018, at 111:23–25.
260 NE, 24 May 2018, at 56:13–57:1.
261 NE, 10 May 2018, at 123:25–124:2; NE, 24 May 2018, at 120:3–5.
262 NE, 8 May 2018, at 35:8–11.
263 NE, 8 May 2018, at 34:24–35:7.
264 NE, 24 May 2018, at 121:8–12; 127:1–6.
265 NE, 24 May 2018, at 125:10–13.
266 NE, 24 May 2018, at 127:15–18.
267 NE, 10 May 2018, at 95:19–25.
268 NE, 8 May 2018, at 15:17–20; 86:25–87:2; 105:16–18.
269 NE, 3 May 2018, at 80:18–24.
270 Exhibit P96, at para 10.
271 Exhibit P97, at Q6.
272 NE, 28 January 2019, at 11:16–13:3; 19:8–23:3.
273 Letter dated 26 February 2019 from the Attorney-General's Chambers.
274 AB 5, at para 4.
275 NE, 30 April 2018, at 56:19–22; 57:3–5.
276 NE, 30 April 2018, at 57:11–15; 58:14–22.
277 NE, 9 May 2018, at 26:7–28:4.
278 Exhibit P61.
279 NE, 2 May 2018, at 122:13–20.
280 NE, 30 April 2018, at 136:12–24.
281 NE, 9 May 2018, at 24:2–3; NE, 24 October 2018, at 73:22–23.
282 NE, 30 April 2018, at 137:15–138:7.
283 NE, 30 April 2018, at 139:19–140:1.
284 NE, 30 April 2018, at 140:13–14 and 141:17–20.
285 NE, 30 April 2018, at 141:23–25.

[286] NE, 24 May 2018, at 16:23–24.
[287] NE, 8 May 2018, at 119:21–25.
[288] NE, 24 May 2018, at 201:12–15.
[289] Prosecution's Sentencing Bundle, dated 27 January 2019, at pp 192–197.
[290] Prosecution's Sentencing Bundle, at p 199.
[291] NE, 18 October 2018, at 78:18–79:8.
[292] NE, 28 January 2019, at 39:13–17.
[293] NE, 28 January 2019, at 39:18–21.
[294] NE, 18 October 2018, at 58:5–24.