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

[2022] SGHC 198

Criminal Case No 33 of 2022

Between

Public Prosecutor

And

BVR

GROUNDS OF DECISION

[Criminal Procedure and Sentencing — Sentencing]

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v
BVR

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Ang Cheng Hock J:

Introduction

1 Over the course of 16 years, the accused, BVR, committed a horrific and depraved campaign of sexual abuse against eight victims, several of whom were as young as five years of age at the time of the offences.

2 On 27 June 2022, the accused pleaded guilty to, and was convicted of, six charges of aggravated rape. These charges comprised:[1]

(a) two charges of aggravated rape perpetrated against the first victim ("V1") under s 375(1)(*a*) punishable under s 375(3)(*b*) of

[1] Minute Sheet for HC/CC 33/2022, 27 June 2022 ("Minute Sheet for CC 33") at page 2; Schedule of Offences at pages 13–16 and 20.

the Penal Code (Cap 224, 2008 Rev Ed) (the "2008 PC") (the "46th Charge" and the "47th Charge" respectively);

(b) two charges of aggravated rape perpetrated against the fourth victim ("V4") under s 376(2) of the Penal Code (Cap 224, 1985 Rev Ed) (the "1985 PC") (the "52nd Charge" and the "54th Charge" respectively); and

(c) two charges of aggravated rape perpetrated against the fifth victim ("V5") under s 376(2) of the 1985 PC (the "57th Charge" and the "69th Charge" respectively).

3 Having pleaded guilty to the said six charges, the accused also consented to have 80 other charges taken into consideration ("TIC") for the purposes of sentencing (collectively, the "TIC Charges"). These TIC Charges involved all eight victims and included, among others:[2]

(a) one charge of aggravated rape under s 375(1)(*a*) punishable under s 375(3)(*b*) of the 2008 PC;

(b) 12 charges of aggravated rape under s 376(2) of the 1985 PC;

(c) two charges of attempted aggravated rape under s 375(1)(*a*) punishable under s 375(3)(*b*) read with s 511(1) of the 2008 PC;

(d) four charges of attempted aggravated rape under s 376(2) read with s 511 of the 1985 PC;

(e) five charges of committing an unnatural offence under s 377 of the 1985 PC;

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[2] Minute Sheet for CC 33 at pages 3 and 7–8.

(f) 14 charges of using criminal force with intent to outrage modesty under s 354(2) of the 2008 PC;

(g) eight charges of using criminal force with intent to outrage modesty under s 354 of the 1985 PC; and

(h) 31 charges of committing an indecent act with a child under s 7(*a*) of the Children and Young Persons Act (Cap 38, 2001 Rev Ed).

4 After hearing the Prosecution's submissions on sentence and the accused's mitigation plea, I sentenced the accused to an aggregate of 45 years' imprisonment. I now set out the detailed grounds of my decision.

Background

5 The accused was a male Singaporean who was 54 years of age at the time of sentencing.

6 From 1998 to 2004, the accused volunteered at two community centres.[3] From 2005 to 2018, he also worked as a part-time tutor for children, including those with special needs.[4] The accused represented to the parents of several of the victims, and on his social media account, that he was a qualified educational therapist with a graduate diploma in Psychology and a diploma in Learning Disorders Management and Child Psychology. The accused provided tuition and made those representations in order to gain access to a ready pool of children, including children with learning or physical disabilities. However, in truth, the accused never possessed a graduate diploma in Psychology.

[3] Statement of Facts ("SOF") at paras 1 and 6.

[4] SOF at para 8.

Moreover, he only obtained a diploma in Learning Disorders Management and Child Psychology on 15 October 2012, a course in which he had enrolled on 29 March 2007.[5] The accused was not, at all material times, a qualified educational therapist nor was he ever employed in the education or childcare sectors.[6]

Facts pertaining to the offences against V1

7 The accused became acquainted with V1's mother sometime in 2015 when V1 was six years old. The accused introduced himself as an educational therapist and gave V1's mother a name card bearing his name and supposed qualifications.[7] Following the accused's representations, V1's mother engaged the accused to tutor and conduct speech therapy lessons for V1, who had learning difficulties and had previously had to undergo speech therapy. The accused developed a close relationship with V1 and her family, who often invited him to have meals with them.[8]

8 During the purported tuition and speech therapy sessions which took place at the accused's residence, the accused sexually abused V1 on multiple occasions by taking obscene and naked photographs of V1, applying cream to V1's vaginal area, attempting to rape V1, and eventually raping V1.[9] On five occasions from 2016 to 2017, the accused video recorded himself attempting to penetrate, and penetrating V1's vagina with his penis.[10]

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5 SOF at paras 9 and 67.

6 SOF at para 9.

7 SOF at para 11.

8 SOF at paras 10–11.

9 SOF at para 12.

10 SOF at para 13.

The 46th Charge

9 On 5 October 2017 at about 7.07pm, V1 was at the accused's residence for a tuition session. The accused instructed V1 to undress and lie on her stomach on a bed. V1 complied as the accused had, by then, established a pattern of asking her to undress and lie on the bed under various pretexts. The accused then used his fingers to pry open V1's vagina (as the opening was otherwise too small) and intentionally penetrated V1's vagina with his penis without her consent.[11] In the course of the incident, the accused also rubbed his penis between V1's legs when his penis became limp, and against V1's vagina.[12] At some point during the incident, V1 turned her body to her side in an attempt to prevent the accused from continuing to rape her. After V1 turned her body to face upwards, a struggle ensued as the accused grabbed her legs and tried to forcibly turn her around, which V1 resisted. The accused then rubbed the shaft of his penis against V1's vagina for a few seconds before he got up from the bed and turned off the device recording the incident.[13] The accused video recorded the incident with his mobile phone and the video clip lasted 7 minutes and 53 seconds.[14] This incident was the subject of the 46th Charge. V1 was eight years old at the time of the offence, and the accused did not wear a condom when committing the offence.[15]

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11 SOF at paras 14 and 17.

12 SOF at para 15.

13 SOF at para 16.

14 SOF at para 18.

15 SOF at paras 14 and 17.

The 47th Charge

10 On 15 October 2017 at about 11.18am, V1 was at the accused's residence for a tuition session. The accused instructed V1 to undress and lie face down on a bed. Without V1's consent, the accused penetrated her vagina with his penis after prying open her vagina with his fingers, and pushed himself against V1's body in a humping motion. In the course of this incident, the accused withdrew his penis and penetrated V1 twice more.[16] Towards the end of the accused's sexual assault, V1 was audibly distressed.[17] The accused video recorded the incident with his mobile phone and the video clip lasted 8 minutes and 52 seconds.[18] This incident was the subject of the 47th Charge. The accused did not wear a condom when committing the offence.[19]

Facts pertaining to the offences against V4

11 The accused first became acquainted with V4's mother sometime before 2001.[20] During a chance encounter in 2005, he falsely represented to her that he had studied psychology and offered to tutor her son, the eighth victim ("V8"), who was V4's brother.[21] V4's mother accepted the accused's offer following his representation. In 2006, V4's mother told the accused about V4's history of learning and hearing difficulties. The accused then offered to tutor V4 at no cost at V4's residence, which V4's mother accepted.[22]

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16 SOF at paras 20–22.

17 SOF at para 23.

18 SOF at para 24.

19 SOF at paras 20 and 22.

20 SOF at para 26.

21 SOF at para 27.

22 SOF at para 28.

12 The accused gradually built up a close-knit relationship with V4, V8 and their mother. The accused financially provided for their family, and helped to care for V4 and V8 whenever they were sick or their mother was busy. In 2007, the accused entered into a relationship with V4's mother and moved into their residence. Subsequently in 2010, V4, V8 and their mother moved to reside with the accused at his residence.[23] Until 2015 when the accused's relationship with V4's mother ended, the accused treated V4 and V8 as if they were his biological children – he looked after them and brought them for meals, movies and outings. According to V4's mother, V4 was closer to the accused than she was to her biological father.[24] The accused committed various sexual offences against V4 from 2006 to 2007, including taking obscene photographs of V4, outraging V4's modesty by rubbing his penis against V4's exposed vagina, and raping V4 on four occasions.[25]

The 52nd Charge

13 On 12 February 2007 at about 2.44pm, when the accused was alone with V4 in the children's room at V4's residence,[26] he had sexual intercourse with V4 without her consent.[27] The accused undressed V4, instructed her to lie on the bed face up, pried open her vagina with his fingers and intentionally penetrated V4's vagina with his penis while pushing his body against her in a humping motion.[28] When V4 protested, the accused warned her to behave. Thereafter, the accused climbed on top of V4 and rubbed his penis against the

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23 SOF at para 29.

24 SOF at paras 29–30.

25 SOF at para 31.

26 SOF at para 33.

27 SOF at para 37.

28 SOF at paras 33–34.

exterior of V4's vagina violently. In the course of this incident, the accused penetrated V4's vagina a total of six times. The accused also rubbed his penis against V4's vagina, licked V4's vagina, and kissed V4 on her face, chest and lips.[29] When V4 started crying, the accused scolded her for acting up.[30] The accused recorded the entire incident with a video camera. The video clip lasted 22 minutes and 4 seconds, and the accused's offence took up about 15 minutes and 45 seconds of the video.[31] This incident formed the subject of the 52nd Charge. At the time of the offence, V4 was only five years old.[32] The accused did not use a condom during the commission of the offence.[33]

The 54th Charge

14 On 30 March 2007 at about 11.30am, at V4's residence, the accused again had sexual intercourse with V4 without her consent. The accused stripped V4 of her shorts and panties, and pushed her onto a bed. He then proceeded to penetrate V4's vagina with his penis.[34] When the accused turned V4's body such that she was face down on the mattress, V4 cried and struggled, twitching her body from side to side. In response, the accused admonished her, and forcefully pinned her down as she tried to escape his grasp. He then lay on top of her and penetrated her vagina with his penis again.[35] The accused subsequently moved into a kneeling position and penetrated her vagina for a third time. At one juncture, when V4 tried to resist the accused, the accused

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29 SOF at paras 34–36.

30 SOF at para 36.

31 SOF at para 38.

32 SOF at para 33.

33 SOF at para 37.

34 SOF at paras 40–41.

35 SOF at paras 41–42.

forcibly pinned her down on the mattress and pushed himself against her even more violently. When V4 kicked her legs in the air, the accused turned himself and V4 to the left and penetrated her vagina with his penis once more while using both his legs to restrain V4 from kicking.[36]

15 The accused then positioned V4 on top of himself and penetrated her vagina with his penis a fifth time, before pushing her back onto the bed facing downwards and penetrating her vagina from behind a sixth time.[37] Finally, the accused turned V4's body around, spread her legs, and penetrated her for the seventh time. He also told V4 to keep quiet as she continued to cry.[38]

16 The accused once again used a video camera to record a video clip of his sexual transgressions, which lasted about 17 minutes and 49 seconds.[39] This incident formed the subject of the 54th Charge. The accused did not wear a condom while committing the offence.[40]

Facts pertaining to the offences against V5

17 The accused got to know V5 sometime in 2002 or 2003 when she participated in dance activities at the community centre where the accused was an instructor.[41] The accused knew V5's mother and shared a close relationship with V5's family. Eventually, the accused approached V5's mother and offered to tutor V5, which V5's mother accepted. Outside of activities at the community

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36 SOF at para 43.

37 SOF at para 44.

38 SOF at para 45.

39 SOF at para 47.

40 SOF at para 46.

41 SOF at para 49.

centre, the accused frequently brought V5 to watch movies or play at the arcade. During these outings, the accused would often take V5 to a toilet to sexually abuse her, for instance, by forcing her to fellate him and ultimately raping her. The accused also sexually abused V5 at the dance studio of the community centre.[42]

18 Significantly, the accused placated V5 by buying her many gifts, including a computer. He instructed her after each occasion of sexual assault not to tell anyone about those incidents. V5 complied with the accused's instructions as she was worried that her parents would need to pay the accused for the gifts if she did not obey him.[43]

The 57th Charge

19 On 9 June 2002 at about 4.36pm, the accused had sexual intercourse with V5 without her consent. The accused brought V5 to a toilet cubicle in a shopping mall and instructed her to lie naked on the floor before blindfolding her with a towel. He proceeded to force V5's vagina open and intentionally penetrated V5's vagina with his penis.[44] The accused then penetrated V5's mouth with his penis (which was the subject of one of the TIC Charges), before attempting to penetrate her vagina again. Thereafter, the accused manoeuvred V5's body into a kneeling position before rubbing the shaft of his penis against the opening of V5's anus.[45] The incident was recorded by the accused with a video camera, and based on the video recording, the offence lasted about

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42 SOF at para 50.

43 SOF at para 62.

44 SOF at paras 52–53.

45 SOF at paras 53–54.

10 minutes and 30 seconds.[46] This incident formed the subject of the 57th Charge. V5 was only five years old at the material time, and the accused did not use a condom throughout the commission of the offence.[47]

The 69th Charge

20 On 16 March 2003 at about 4.08pm, the accused had sexual intercourse with V5 without her consent. The accused instructed V5 to lie naked over a stack of blue foam padding in the dance studio of the community centre where he volunteered. He approached V5 from behind, pried open her vagina with his fingers and penetrated V5's vagina with his penis. Shortly after, the accused blindfolded V5 with a cloth and proceeded to rub his penis against V5's buttocks.[48] The accused then rubbed his penis against V5's vagina before inserting his penis into her mouth, and stopping to kiss her lips.[49] Finally, the accused spread V5's legs apart, and rubbed his penis against her vagina until he ejaculated on her vaginal region.[50] The accused recorded the incident with a video camera, and the offence lasted about 10 minutes.[51] This incident formed the subject of the 69th Charge. The accused did not wear a condom when committing the offence.[52]

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46 SOF at para 55.

47 SOF at paras 52 and 55.

48 SOF at paras 57–58.

49 SOF at para 59.

50 SOF at para 60.

51 SOF at para 61.

52 SOF at paras 57 and 61.

The accused's arrest

21 On 3 June 2018, the complainant purchased a used laptop from the accused. On 7 June 2018 at about 9.00pm, when attempting to transfer some personal photographs onto the laptop, the complainant clicked on a red notification icon which resulted in a number of obscene photographs and videos being imported from a cloud drive into the laptop's internal memory. Those photographs and videos depicted the accused sexually assaulting various children. The complainant lodged a police report on 10 June 2018.[53] In a sense, the discovery of the accused's offences was highly fortuitous. The accused might never have been apprehended but for the complainant purchasing the laptop from him, seeing the obscene photographs and videos, and informing the authorities.

22 On 11 June 2018 at about 8.50pm, the accused was arrested by a party of police officers.[54] Obscene photographs and videos capturing the accused's sexual assault on the eight victims were subsequently found at the accused's residence. The accused admitted that, after recording the various video clips with his mobile phone or video camera, he would connect the mobile phone or video camera to his laptop and transfer the said video clips into external hard discs.[55]

23 Two pairs of children's underwear (belonging to V4) were also found in the accused's bedside drawer.[56] Following the accused's arrest, a report prepared by the Health Sciences Authority dated 17 December 2018 (the "HSA

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53 SOF at para 5.

54 SOF at para 64.

55 SOF at para 65.

56 SOF at para 66.

Report") revealed that semen and DNA matching that of the accused was found on several soft toys and underwear belonging to V1.[57]

The applicable sentencing framework

24 In *Ng Kean Meng Terence v Public Prosecutor* [2017] 2 SLR 449 ("*Terence Ng*"), the Court of Appeal laid down a two-step sentencing approach for rape (at [39] and [73]):

> (a) First, the court should identify which band the offence falls within, having regard to the factors which relate to the manner and mode by which the offence was committed as well as the harm caused to the victim (*ie*, the offence-specific factors). Having identified a sentencing band, which defines the range of sentences which may usually be imposed for a case with those offence-specific factors, the court should then derive an "indicative starting point" which reflects the intrinsic seriousness of the offending act, by determining precisely where within the sentencing band the particular offence falls.
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> (b) Second, the court should have regard to the aggravating and mitigating factors which are personal to the offender to calibrate the appropriate sentence for that offender (*ie*, the offender-specific factors). These factors relate to the offender's particular personal circumstances. In exceptional cases, the court may depart from the prescribed range for that band if, in its view, the particular case warrants such a departure.

25 The range of sentences prescribed for each sentencing band was also set out in *Terence Ng*:

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57 SOF at para 85 and Annex N.

(a) Band 1 comprises cases of rape at the lower end of the spectrum of seriousness with no offence-specific aggravating factors or where those factor(s) are only present to a very limited extent and therefore should have a limited impact on sentence. Such cases attract sentences of ten to 13 years of imprisonment and six strokes of the cane (at [50] and [73(b)(i)]).

(b) Band 2 comprises cases of rape of a higher level of seriousness usually with two or more offence-specific aggravating factors. Such cases attract sentences of 13 to 17 years of imprisonment and 12 strokes of the cane (at [53] and [73(b)(ii)]).

(c) Band 3 comprises extremely serious cases of rape by reason of the number and intensity of offence-specific aggravating factors. Such cases attract sentences of 17 to 20 years of imprisonment and 18 strokes of the cane (at [57] and [73(b)(iii)]).

26 I noted that the sentencing ranges prescribed for the offence of aggravated rape under s 375(1)(*a*) read with of s 375(3)(*b*) the 2008 PC and s 376(2) of the 1985 PC are the same – imprisonment for a term of not less than eight years and not more than 20 years and not less than 12 strokes of the cane. Thus, the framework in *Terence Ng* (which was decided in the context of the 2008 PC) was applicable to the six proceeded charges in the present case, notwithstanding that the six proceeded charges comprised a combination of charges under both the 2008 PC and the 1985 PC.

27 As the accused was over 50 years old at the time of sentencing, he could not be punished with caning pursuant to s 325(1)(*b*) of the Criminal Procedure

Code 2010 (2020 Rev Ed) (the "CPC"). The Prosecution did not submit that the court should impose a period of imprisonment in lieu of caning.[58]

Submissions on sentence

28 In applying the first step of the *Terence Ng* framework, the Prosecution submitted that all six of the proceeded charges listed above at [2] fall within the low to middle range of Band 3 of the *Terence Ng* framework due to the number and intensity of offence-specific aggravating factors present in this case. In particular, the Prosecution submitted that the following six aggravating factors in the present case gave rise to an indicative starting point of 17 to 18 years' imprisonment:[59]

(a) there was forcible penetration of victims below 14 years of age;

(b) there was egregious abuse of the accused's position and breach of trust;

(c) there was exploitation and rape of vulnerable victims;

(d) the accused had video recorded the sexual offences and used threats on the victims;

(e) there was a significant degree of premeditation and deception of the victims and their family members; and

(f) the victims were exposed to the risk of contracting sexually transmitted diseases.

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58 Prosecution's Sentencing Submissions ("PSS") at para 60.

59 PSS at para 26.

29 As to the second step of the *Terence Ng* framework, the Prosecution identified two relevant offender-specific factors. First, the accused had consented to 80 charges being TIC for the purpose of sentencing, which was an aggravating factor.[60] Second, the accused's plea of guilt should carry some mitigating weight.[61] However, the Prosecution contended that any mitigatory effect of the accused's plea of guilt was ultimately nullified, if not outweighed by the aggravating weight attached to the accused's TIC Charges.[62] Accordingly, it was submitted that each charge should attract a sentence of at least 17 to 18 years' imprisonment.[63]

30 Finally, the Prosecution contended that three out of the six proceeded charges should be ordered to run consecutively.[64] However, the Prosecution submitted that an aggregate sentence of 51 to 54 years' imprisonment (based on a sentence of 17 to 18 years' imprisonment per charge) would offend the totality principle espoused in *Mohamed Shouffee bin Adam v Public Prosecutor* [2014] 2 SLR 998 ("*Mohamed Shouffee*"). Thus, the Prosecution submitted that the sentence for each charge should be calibrated downward to 15 years' imprisonment, thereby resulting in an aggregate sentence of 45 years' imprisonment.[65]

31 The Defence did not make any specific submissions in relation to either step of the *Terence Ng* framework. However, the Defence submitted that an

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60 PSS at para 47.

61 PSS at para 52.

62 PSS at paras 53–59.

63 PSS at para 59.

64 PSS at para 61–62.

65 PSS at paras 65–67.

aggregate sentence of 45 years' imprisonment would be crushing,[66] and sought instead an aggregate sentence of 36 to 40 years' imprisonment by virtue of the following mitigating factors:

(a) the accused had pleaded guilty early, readily admitted to the offences and fully co-operated with the authorities, thereby saving them much time and effort;[67]

(b) the accused was genuinely remorseful;[68]

(c) the accused was a first-time offender with a clean criminal record;[69] and

(d) a sentence of 45 years' imprisonment would be crushing and excessive as the accused was already 54 years of age.[70]

Decision

General sentencing considerations

32 I begin by outlining the general sentencing principles applicable to the offence of rape. Rape is an inherently odious and reprehensible act which almost invariably inflicts immeasurable and irreparable harm on a victim: *Public Prosecutor v NF* [2006] 4 SLR(R) 849 ("*NF*") at [46]. In light of the grave and heinous nature of rape, the primary sentencing considerations should be the need for retribution, the protection of the public and general deterrence: *Lim Ghim Peow v Public Prosecutor* [2014] 4 SLR 1287 at [39] and [52], cited

66 Plea in Mitigation ("Mitigation Plea") at paras 8–9.

67 Mitigation Plea at para 5.

68 Mitigation Plea at para 7.

69 Mitigation Plea at para 6.

70 Mitigation Plea at para 9.

in *Chang Kar Meng v Public Prosecutor* [2017] 2 SLR 68 ("*Chang Kar Meng*") at [35]. In the psychiatric report prepared by the Institute of Mental Health dated 24 August 2018 (the "IMH Report"), the accused was diagnosed with paedophilic disorder and was identified to be at "very high risk of repeated sexual offending against young female victims".[71] The sentence meted out must therefore not only adequately punish the accused for what he has done, but also prevent him from further sexual offending.

33 General deterrence is a highly relevant sentencing consideration when sentencing offenders who have committed rape, especially where such offenders have exploited a relationship of trust or position of authority in order to gratify their sexual impulses: *Lim Hock Hin Kelvin v Public Prosecutor* [1998] 1 SLR(R) 37 ("*Kelvin Lim*") at [25(a)] and *NF* at [42]. As the Prosecution rightly pointed out,[72] although the accused was not the biological father of any of the victims, he had methodically cultivated a relationship of trust and authority between himself and the victims and their family members.

34 Specific deterrence similarly features as an important sentencing consideration in this case in light of the long period of time over which the accused's offences were committed: *Public Prosecutor v Fernando Payagala Waduge Malitha Kumar* [2007] 2 SLR(R) 334 at [43]. Indeed, the fact that the accused's sexual abuse persisted over a period of 16 years was indicative of the fact that the accused was a recalcitrant and habitual offender. Moreover, as elaborated on below at [41]–[44], the offences were conducted in a highly premeditated manner. Such premeditation made it apparent that the accused had made a conscious choice to commit the various offences, which necessitated

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71 SOF at para 83 and Annex M at paras 17(a) and 17(e).

72 PSS at paras 11–12.

the consideration of specific deterrence in the eventual sentence imposed: *Public Prosecutor v Law Aik Meng* [2007] 2 SLR(R) 814 at [22].

35 With these general sentencing considerations in mind, I applied the two-step sentencing framework set out in *Terence Ng* (see above at [24]).

The first step of the Terence Ng framework

36 As the offence-specific aggravating factors applicable to the offences committed against V1, V4 and V5 overlap substantially, I will discuss them collectively.

37 I found that there were five offence-specific aggravating factors in the present case, which I explain in turn:

(a) the accused abused a position of authority and the trust reposed in him by the victims and their families;

(b) the offences involved a significant degree of premeditation;

(c) the accused raped vulnerable victims who were well below the age of 14;

(d) the accused video recorded his sexual offences; and

(e) the accused exposed the victims to the risk of contracting sexually transmitted diseases.

Abuse of authority and trust

38 First, the accused grossly abused his position of authority over the victims, and violated the trust reposed in him by the victims and their families. As stated in *Terence Ng* at [44(b)], where the offender stands in a position of

responsibility towards the victim (for instance where the offender and victim are in a teacher-pupil relationship), or where the victim has placed his/her trust in the offender, a dual wrong is occasioned when the offender rapes the victim: he has not only committed a serious crime, but has also violated the trust placed in him by society and the victim. In the present case, the accused provided tuition to V1, V4 and V5, and also purported to conduct speech therapy lessons for V1.[73] The accused thereby placed himself in a position of trust and authority over the victims by virtue of their tutor-student relationship, the abuse of which has been accepted as an aggravating factor: see *Public Prosecutor v Lim Beng Cheok* [2003] SGHC 54 at [64].

39 The accused also fostered intimate relationships with the victims and their families by caring for the victims and financially providing for them. The accused looked after V4 and V8 as if they were his own children, bringing them out for meals and movies and taking care of them when they fell sick, which led to V4 being closer to the accused than to her biological father.[74] The accused even developed a romantic relationship with V4's mother in 2007.[75] The accused also cultivated close relationships with the families of V1 and V5, with V1's family often inviting the accused to have meals with them.[76] In the same vein, the accused created a position of authority over V5 by bringing her to the movies and the arcade, and buying gifts (including a computer) for her.[77] The accused instructed V5 not to divulge his sexual transgressions against her,

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73 SOF at paras 11, 28 and 50.

74 SOF at para 30.

75 SOF at para 29.

76 SOF at paras 11 and 50.

77 SOF at paras 50 and 62.

which V5 complied with as she was worried that her parents would need to pay the accused for the gifts she had received from him.[78]

40 In cases where victims are sexually abused by figures in whom they repose significant trust, deterrence becomes a particular concern due to the "difficulty in the detection of the offences and the considerable barriers faced by the victim in reporting them": *GBR v Public Prosecutor and another appeal* [2018] 3 SLR 1048 ("*GBR*") at [29(c)]. While the observations in *GBR* were made in the context of sexual abuse in an intra-familial setting, they apply with equal force in this case given that the victims would have faced considerable difficulty in exposing the wrongdoings of the accused in whom the victims and their families trusted deeply.

Premeditation

41 Second, the extent of planning and premeditation involved in the accused's offences was an aggravating factor as it "evince[d] a considered commitment towards law-breaking and therefore reflect[ed] greater criminality": *Terence Ng* at [44(c)].

42 The accused engineered opportunities to be alone with his victims under the guise of providing tuition or speech therapy for them. To that end, the accused falsely represented to the parents of several of his victims that he was a qualified educational therapist in order to induce them into accepting his offers to tutor the victims,[79] even to the extent of giving V1's mother a name card

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78 SOF at para 62.

79 SOF at paras 9, 11 and 27.

bearing his name and supposed qualifications (see [7] above). He even offered to tutor V4 at no cost.[80]

43 The accused also carefully orchestrated his offences to prevent himself from being caught. For instance, he tutored V4 in the children's room behind closed doors and instructed V4's mother to sit outside on the pretext of preventing her from affecting V4's learning.[81] Similarly, the offences against V5 were committed in a toilet cubicle of a shopping mall and the dance studio of the community centre while he was alone with V5.[82] To my mind, the accused's conduct clearly demonstrated that he had not committed the various sexual offences in the spur of the moment. Instead, it appeared to me that the accused had planned the timing and location of his offences such that he would have excuses or opportunities to be alone with his victims, thereby preventing his sexual abuse from being discovered.

44 The premeditated nature of the accused's offending was also evident from the following:

(a) The accused placed himself in a position where he would have access to young children by volunteering at community centres and participating in activities involving children and youth.[83]

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80 SOF at para 28.

81 SOF at para 29.

82 SOF at paras 52 and 57.

83 SOF at paras 6, 26 and 49.

(b) The accused admitted to establishing a pattern of asking V1 to undress and lie on a bed under various pretexts to condition V1 into accepting such requests as normal, before eventually raping her.[84]

Rape of vulnerable victims well below the age of 14

45 Third, the rape of vulnerable victims, particularly those below 14 years of age, is an especially heinous offence which should attract harsher sentences to deter would-be offenders from preying on such victims: *Terence Ng* at [44(e)] and [44(f)]. I note that the provisions under which the proceeded offences are punishable (*ie*, s 375(3)(*b*) of the 2008 PC and s 376(2) of the 1985 PC) already provide for enhanced punishments for the rape of victims below the age of 14. However, the aggravating factor of young age would apply to enhanced offences if the victims concerned were materially younger than the stipulated age ceiling, and in a gradated manner depending on how much younger the victims were: *GBR* at [29(f)].

46 In the present case, V1 was eight years old at the time of the offences in the 46th Charge and 47th Charge, whilst V4 and V5 were only five years old at the time of the offences in the 52nd Charge and the 54th Charge, and the 57th Charge and the 69th Charge respectively. Given that the victims were much younger than the stipulated age ceiling of 14 years in s 375(3)(*b*) of the 2008 PC and s 376(2) of the 1985 PC, I accorded considerable aggravating weight to this factor. Indeed, one of the aggravating factors which the court in *Terence Ng* considered in classifying *Public Prosecutor v ABJ* [2010] 2 SLR 377 ("*ABJ*") as a Band 3 case was the "extreme youth" of the

[84] SOF at para 14.

victim in that case who was eight years old when the sexual abuses started (see *Terence Ng* at [59]).

47 The victims' vulnerability was also exemplified in their inability to resist the accused's sexual abuse. The victims' protestations of pain and unwillingness were to no avail. During the commission of the offences against V4 in the 52nd Charge and the 54th Charge, V4 cried and protested. In response, the accused either warned her to behave and keep quiet or admonished her for not obeying his instructions, before proceeding with his sexual abuse.[85] Similarly, V1 and V4 resisted and struggled in the course of the offences in the 46th Charge and the 54th Charge.[86] However, the accused forcibly subdued them, rendering them powerless to resist his sexual transgressions. It was also significant that the accused knew that V1 and V4 had learning difficulties.[87]

Video recording of the sexual offences

48 Fourth, the video recording of the sexual assault of one's victims is an aggravating factor as such conduct allows offenders to repeatedly rewatch their offences for their own perverted pleasure and creates the risk of the recordings being circulated: *Public Prosecutor v Azuar Bin Ahamad* [2014] SGHC 149 ("*Azuar*") at [112]. In the present case, the accused took numerous obscene photographs and videos of the victims and video recorded the offences in the proceeded charges. I also noted that V5 had stated in her Victim Impact Statement that her fear of the videos of her being circulated online exacerbated her anxiety caused by the accused's sexual offences.[88]

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85 SOF at paras 34, 42 and 45.

86 SOF at paras 16 and 42–43.

87 SOF at paras 10–11 and 28.

88 SOF at Annex A, Section C.

Risk of contracting sexually transmitted diseases

49 Finally, the failure to use a condom is a further aggravating factor for it exposes victims of rape to the risk of contracting sexually transmitted diseases and unwanted pregnancy: *Chang Kar Meng* at [21(b)]. Here, as mentioned above at [9], [10], [13], [16], [19] and [20], the accused did not use a condom in any of the offences in the proceeded charges.

The indicative starting point

50 Having considered the number and intensity of the offence-specific aggravating factors in this case, I agreed with the Prosecution that all six proceeded charges fell within Band 3 of the *Terence Ng* framework. To my mind, the accused's acts were utterly abhorrent and vicious, and presented themselves as extremely serious cases of rape. The various offences constituted a "campaign of rape" that involved victims with "particularly high degrees of vulnerability": *Terence Ng* at [57]. In the circumstances, there was a compelling public interest in meting out a lengthy sentence to protect the public, to specifically deter the accused, and to mark society's condemnation for the execrable nature of the offences (see *Terence Ng* at [57]). In particular, I found that all six proceeded charges fell within the middle of Band 3 of the *Terence Ng* framework. Accordingly, under the first step of the *Terence Ng* framework, I found that an indicative starting sentence of 18 years' imprisonment for each charge was appropriate.

The second step of the Terence Ng framework

51 The second step of the *Terence Ng* framework involves calibrating the indicative starting sentence based on the factors which are specific to the offender in question (see above at [24(b)]). Relevant offender-specific factors

include: (i) the offences TIC for the purposes of sentencing; (ii) the presence of relevant antecedents; (iii) whether there is an evident lack of remorse; and (iv) mitigating factors such as an early plea of guilt: *Terence Ng* at [64] and [65]. As the advanced age of an offender was a concern for the overall proportionality of punishment (*Terence Ng* at [65(c)]), I considered the accused's age in relation to whether the aggregate sentence would offend the totality principle (see [63]–[68] below).

Offences TIC for the purposes of sentencing

52 A court will normally increase a sentence where the TIC offences are of a similar nature: *Terence Ng* at [64(a)]. In the present case, the accused consented for 80 charges to be TIC for the purposes of sentencing. Out of those 80 TIC Charges, 24 of them involved penetrative and attempted penetrative sexual offences, whilst 22 of them involved outrage of modesty (see [3] above).[89] Another 31 charges pertained to committing indecent acts against children. In the premises, the sheer magnitude of the TIC Charges which are of a similar nature to the six proceeded charges justified an uplift of the indicative starting sentence of 18 years' imprisonment.

53 I noted that, where the court is dealing with multiple sentences, the sentencing judge must be vigilant to ensure that aggravating factors are not counted against the accused twice over. In this regard, it has been emphasised that the same TIC Charges should not be relied upon as a basis for increasing the sentences for more than one charge, as that might otherwise amount to double counting (see *Muhammad Sutarno bin Nasir v Public Prosecutor* [2018] 2 SLR 647 at [17]).

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89 PSS at para 50; Arraigned Charges.

54 However, it is well established that sentencing is not a scientific exercise requiring mathematical precision, and a mathematical approach to sentencing, which is impractical and unduly constrains the sentencing judge, should be eschewed: *Lee Shing Chan v Public Prosecutor and another appeal* [2020] 4 SLR 1174 at [34]. Instead, a holistic approach to sentencing should be adopted. In the present case, the staggering amount of TIC Charges is an aggravating factor for it showed that the accused was a habitual (as opposed to a one-time) sex offender and this could only be sensibly taken into account by considering the TIC Charges in the round. For that reason, it would have been artificial to mathematically divide the relevant TIC Charges and apportion a sixth of the TIC Charges to each of the six proceeded charges in determining the appropriate sentence. Indeed, I noted that this approach was not suggested by the Prosecution or the Defence.

55 Instead, I holistically considered the aggravating weight to be attached to all of the relevant TIC Charges, and applied a general uplift to the sentence for each of the six proceeded charges.

Relevant antecedents

56 Although the accused did not have any relevant antecedents,[90] he could not sensibly be regarded as a first-time offender. A distinction must be drawn between those who break the law for the first time and those who have flouted the law with impunity for years and are finally caught and charged for the first time: *Public Prosecutor v Koh Seah Wee and another* [2012] 1 SLR 292 at [56]. Moreover, it has been observed that the court should be extremely reluctant to regard offenders who have been charged with multiple offences as first-time

[90] Mitigation Plea at para 6.

offenders: *Chen Weixiong Jerriek v Public Prosecutor* [2003] 2 SLR(R) 334 at [17]. The accused here had committed a multitude of sexual offences against multiple victims over a span of 16 years – it would have been unjust to regard him as a first-time offender and accordingly award him a sentencing discount despite his deliberate efforts to avoid detection and escape the law for such a prolonged period of time. In any event, the absence of relevant antecedents was not a valid mitigating factor, but merely the absence of an additional aggravating factor: *Kunasekaran s/o Kalimuthu Somasundara v Public Prosecutor* [2018] 4 SLR 580 at [65]. Accordingly, I attached no weight to the absence of relevant antecedents on the accused's part.

The accused's plea of guilt

57 The Defence recognised that the only mitigating factor on the facts was the accused's plea of guilt and co-operation with the authorities.[91] The mitigating weight to be given to a timely plea of guilt would depend on whether it was indicative of genuine remorse as well as the positive consequences that the guilty plea would have in relation to the administration of justice and the victim: *NF* at [57]; *Chang Kar Meng* at [46]. Therefore, where an offender has no choice but to plead guilty due to the overwhelming strength of the evidence against him, that guilty plea should not be accorded significant mitigatory weight: *Public Prosecutor v Lee Ah Choy* [2016] 4 SLR 1300 at [44]; *Public Prosecutor v BDB* [2018] 1 SLR 127 at [74]. In the present case, there were video recordings of the accused committing the various sexual offences against V1, V4 and V5 in the proceeded charges. The HSA Report also indicated that semen and DNA belonging to the accused was found on various exhibits

[91] Mitigation Plea at paras 5 and 8.

belonging to V1 (see [23] above).[92] In the premises, I found that the accused had little choice but to plead guilty to the six charges of aggravated rape and I could not conclude, based on his plea of guilt, that he was genuinely remorseful.

58 On the contrary, there were indications that the accused was anything but remorseful. The IMH Report reflected that during the accused's psychiatric assessment, the accused: (i) was evasive about his commission of the sexual offences; (ii) denied having any intention to penetrate any of the victims with his penis; and (iii) provided inconsistent accounts of the offences and claimed to have selective memory loss.[93] The accused also appeared to have fabricated the production of psychotic symptoms with the intention of trying to minimise his criminal responsibility for his offences.[94] I was of the view that the accused's conduct during his psychiatric assessment belied any remorse that his plea of guilt might have conveyed.

59 Be that as it may, I accorded slight mitigatory weight to his plea of guilt out of recognition that it had spared the victims the emotional ordeal of having to testify against him in court, and had saved judicial time and resources (see *Chang Kar Meng* at [47] and *Terence Ng* at [68] and [73(c)]).

The appropriate sentence for each charge

60 Having considered the various offender-specific factors, I agreed with the Prosecution that any mitigatory weight accorded to the accused's plea of guilt was substantially outweighed by the aggravating factors. I therefore found

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92 SOF at para 85, Annex N.

93 SOF at para 81 and Annex M at para 12.

94 SOF at para 81 and Annex M at paras 12 and 17(f).

that the appropriate sentence to be imposed for each of the six proceeded charges was 19 years' imprisonment.

Determining the aggregate sentence

61 Finally, I had to determine how the six sentences for the proceeded charges should run and the global sentence to be imposed. This involved applying the one-transaction rule and the totality principle (see generally, *Public Prosecutor v Raveen Balakrishnan* [2018] 5 SLR 799 ("*Raveen Balakrishnan*") at [98]). The Prosecution submitted that the sentences for the 46th Charge (concerning V1), the 52nd Charge (concerning V4), and the 57th Charge (concerning V5) ought to run consecutively,[95] which the Defence did not challenge.[96]

62 As a general rule, sentences for unrelated offences should run consecutively while sentences for offences that form part of a single transaction should run concurrently: *Raveen Balakrishnan* at [41] and [98(b)]. This is subject to s 307(1) of the CPC, which provides that where a person is convicted and sentenced to imprisonment for at least three distinct offences, the sentences for at least two of those offences must be ordered to run consecutively. Whether the offences are distinct and unrelated is determined by considering whether they involved a single invasion of the same legally protected interest: *Raveen Balakrishnan* at [98(b)]. In the present case, the offences in the 46th Charge, the 52nd Charge and the 57th Charge did not constitute a *single* invasion of the same legally protected interest and were thus distinct and unrelated – each offence involved different victims and took place on a different date, and

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95 PSS at para 62; Minute Sheet for CC 33 at page 4.

96 Mitigation Plea at para 8.

therefore did not form part of the same transaction (see *Mohamed Shouffee* at [28]–[31]; *Raveen Balakrishnan* at [69]). Accordingly, it was not inconsistent with the one-transaction rule for the sentences for the 46th Charge, the 52nd Charge and the 57th Charge to run consecutively.

63 Next, the totality principle should be applied, where the court must take a "last look" at all the facts and circumstances to ensure that the aggregate sentence is sufficient and proportionate to the offender's overall criminality: *Raveen Balakrishnan* at [98(c)]. The totality principle comprises two limbs: (i) whether the aggregate sentence is substantially above the normal level of sentences for the most serious of the individual offences involved; and (ii) whether the effect of the aggregate sentence on the offender is crushing and not in keeping with the offender's past record and future prospects: *Mohamed Shouffee* at [54] and [57].

64 In this inquiry, it is not inconsistent with the totality principle for more than two sentences to run consecutively where the circumstances call for it, for instance: (i) where the court is dealing with persistent or habitual offenders; (ii) where there is a pressing public interest concern in discouraging the type of criminal conduct being punished; (iii) where there are multiple victims; and (iv) where other peculiar cumulative aggravating features are present: *Mohamed Shouffee* at [80] citing *ADF v Public Prosecutor* [2010] 1 SLR 874 at [146].

65 I agreed with the Prosecution's submission that the sentences for three of the six proceeded charges ought to run consecutively, with the remaining three sentences to run concurrently. The present case involved a persistent and habitual offender who had committed numerous sexual offences against multiple victims over a prolonged period of 16 years. There was also a pressing

public interest in deterring the sexual offences committed here, especially those committed by paedophiles against young and vulnerable children. I noted that running three sentences consecutively in the present case was consistent with the decision in *Azuar*. In that case, the offender was convicted of four charges (including three charges of rape under s 375(2) of the 2008 PC). Out of the 29 charges that were TIC for the purposes of sentencing, 18 were sexual in nature. Like the present case, a psychiatrist had concluded that the offender in *Azuar* posed a risk of serious sexual harm to the public (see *Azuar* at [126]). The court decided at [131] that based on the overall criminality of the offender's conduct, three of the four sentences (of 12 years and six months of imprisonment each) should run consecutively, which was upheld on appeal.[97]

66 Running three sentences consecutively would have resulted in an aggregate sentence of 57 years' imprisonment, based on a sentence of 19 years' imprisonment per proceeded charge. I agreed with the Prosecution that an aggregate sentence of 57 years' imprisonment was excessive. Even if the accused was granted remission for good behaviour and his sentence was backdated to his date of remand of 11 June 2018, he would only be released when he is around 88 years old. That would be a crushing sentence. While the advanced age of an offender is not generally a factor that warrants a sentencing discount, the imposition of a substantial custodial term which deprives an offender of a larger fraction of their expectation of life so as to effectively amount to a life sentence might offend the totality principle: *Public Prosecutor v UI* [2008] 4 SLR(R) 500 at [78] cited in *Terence Ng* at [65(c)]. Nevertheless, I was mindful that any leniency afforded by reason of the accused's advanced age must be balanced against the need to ensure that he would still be adequately

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97 Minute Sheet for CA/CCA 5/2014, 16 January 2015.

punished, in line with the gravity of his offences (see *Terence Ng* at [65(c)]). Indeed, in *ABJ*, the Court of Appeal recognised that, while the age of an offender may be a mitigating factor, the advanced age of the offender in that case "pale[d] into insignificance in the light of what was perpetrated by the [offender] on the victim" (at [18]).

67 In light of the fact that the accused was 54 years old at the time of sentencing, I found that the individual sentence for each charge should be calibrated downwards to 15 years' imprisonment, resulting in an aggregate sentence of 45 years' imprisonment. I found such a sentence to be proportionate to the overall criminality of the accused's offending, without violating the totality principle. The accused would be released when he is around 80 years old if he successfully obtains remission for good behaviour and his sentence was backdated to the date of his remand. That would not be effectively imposing a life sentence on him. I was fortified in my conclusion by the decision in *ABJ*, which involved a 60-year-old offender who had pleaded guilty to nine charges of sexual assault (including five charges under s 376(2) of the 1985 PC and two charges under s 376A(1)(*a*) and s 376A(1)(*b*) respectively of the 2008 PC), with 35 charges TIC for the purposes of sentencing. There, the Court of Appeal increased the sentence meted out by the trial judge from 24 years' imprisonment to 32 years' imprisonment (at [21]), which meant that the offender in *ABJ* would only be released when he is around 79 to 80 years old (assuming he obtains remission for good behaviour).

68 Notably, in *Public Prosecutor v Ewe Pang Kooi* [2019] SGHC 166, the High Court sentenced the offender (who was 65 years old) to 310 months' imprisonment (25.8 years' imprisonment) for offences under s 409 of the 1985 PC, after expressly taking into account his advanced age and the principle that the court should not impose what would effectively be a life sentence (at

[39] and [40]). This was affirmed on appeal in *Ewe Pang Kooi v Public Prosecutor* [2020] 1 SLR 757, where the Court of Appeal noted that there are limits to the principle that a sentencing court should be mindful of the real effect of a sentence on an offender of advanced age, and that the sentence in that case was simply a consequence of the period of time during which the offender had managed to keep his criminal activities concealed (at [10]). Here, the accused had similarly evaded apprehension despite committing sexual offences over a lengthy period of 16 years.

69 Moreover, I found that an aggregate sentence of 45 years' imprisonment was not out of step with sentencing precedents involving similar factual matrixes:

(a) In *Azuar*, which was similarly classified as a Band 3 case in *Terence Ng* at [58(a)], the court had sentenced the offender to an aggregate sentence of 37 years' and six months' imprisonment for three counts of rape under s 375(2) and one count of sexual assault by penetration under s 376(2)(*a*) punishable under s 376(3) of the 2008 PC (which was upheld by the Court of Appeal).[98] The court considered, among other things, that: (i) the offender had video recorded his sexual offences; (ii) the offences were premeditated; and (iii) the offender had used drugs to overcome his victims' resistance and erase their memory of the offences (at [110]–[112]). Notably, the court had calibrated the initial sentence of 15 years' imprisonment per charge downwards to 12 years' and six months' imprisonment in view of the offender's age (at [132] and [133]), meaning that the sentence would ordinarily have been harsher but for the offender's age. Even though the accused here

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had not used drugs in the commission of his offences unlike the offender in *Azuar*, the overall criminality of the accused was higher. While the offender in *Azuar* had 29 charges TIC for the purposes of sentencing, the accused here had 80. Moreover, the offences in the proceeded charges in the present case (namely, aggravated rape under s 375(1)(*a*) read with of s 375(3)(*b*) the 2008 PC and s 376(2) of the 1985 PC) were of a more serious nature than those in *Azuar*, as reflected by the higher range of sentences statutorily prescribed for the former.

(b) In *Kelvin Lim*, the offender was convicted of four counts of carnal intercourse against the order of nature under s 377, one count of attempted carnal intercourse against the order of nature under s 377 read with s 511, and five counts of committing acts of gross indecency under s 377A of the 1985 PC. The High Court imposed a global sentence of 40 years' imprisonment (which was upheld on appeal by the Court of Appeal). The offender in *Kelvin Lim*, a diagnosed paedophile, had sexually abused five male victims who were between eight and 12 years old at the material time. In this case, the accused had abused eight victims, some of whom were much younger at five years old. Several of the victims, such as V1 and V4, were also especially vulnerable because of their learning difficulties. Further, the accused's period of offending spanned across 16 years, unlike in *Kelvin Lim* where the period of offending was slightly over a year.

The criminality of the accused's conduct exceeded those of the offenders in *Azuar* and *Kelvin Lim* due to the more serious nature of the offences committed, the longer period of sexual abuse as well as the number, youth and vulnerability of the victims involved in the present case.

70 For the above reasons, I sentenced the accused to 15 years' imprisonment for each of the six proceeded charges. I ordered the sentences for the 46th Charge, the 52nd Charge and the 57th Charge to run consecutively, with the sentences for the remaining charges to run concurrently. The accused was thus sentenced to an aggregate of 45 years' imprisonment. I backdated the accused's sentence to commence from his date of remand, 11 June 2018, which the Prosecution had no objection to.[99]

Conclusion

71 I conclude by reiterating that the exceptionally sickening sexual abuse perpetrated by the accused against multiple vulnerable children of extreme youth warranted the imposition of a particularly harsh sentence for several reasons. First, a strong message needed to be sent to deter potential like-minded offenders from committing similar offences. Second, the accused's deplorable conduct had to be denounced in the strongest possible terms to reflect society's condemnation for his depraved acts against children who had trusted him as a tutor and in some cases, a father figure. Third, the accused, a clinically diagnosed paedophile at high risk of continued sexual offending, had to be taken out of public circulation for an appropriately long time to protect the public from a serial child rapist.

72 I note that the lengthy period of imprisonment imposed was higher than those imposed in the majority of reported cases concerning rape offences. However, the campaign of rape committed by the accused called for an

[99] Minute Sheet for CC 33 at page 4.

unusually long sentence that was commensurate with the accused's abominable conduct.

Ang Cheng Hock
Judge of the High Court

Andre Ong and Yvonne Poon (Attorney-General's Chambers) for the Prosecution;
Fong Mun Yung Gregory John (Fong & Fong LLC) for the accused.