IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 125

Criminal Case No 75 of 2017

Between

Public Prosecutor

And

Roger Yue Jr

GROUNDS OF DECISION

[Criminal law] — [Offences] — [Rape]
[Criminal law] — [Offences] — [Sexual penetration of minor]
[Criminal procedure and sentencing] — [Statements] — [Voluntariness]
[Evidence] — [Witnesses] — [Corroboration]
[Evidence] — [Witnesses] — [Juvenile victim]
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v
Yue Roger Jr

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Aedit Abdullah J:

Introduction

1 The accused, Roger Yue Jr ("the Accused") was charged with a total of 48 offences, of which seven charges of statutory rape and sexual penetration of a minor below the age of 14 were proceeded with at trial. It was alleged that the Accused had carried out a series of sexual offences against the victim ("the Victim") while he was her rope skipping coach. This included sexually penetrating her with his finger, a vibrator and a skipping rope handle, making her perform fellatio on him, and rape.

2 Following the trial, I convicted the Accused of all seven charges and sentenced him to a total of 25 years' imprisonment.[1] He has now appealed against both conviction and sentence.[2]

Background

3 The Victim first came to know the Accused when he was the coach of her primary school's rope skipping team, of which she was a member. Following the success of the school's rope skipping team in competitions, the Victim was invited by the Accused to join a private rope skipping team that the Accused had helped to start ("the private rope skipping team"). Training for the private rope skipping team took place at a studio run by the Accused. As a member of the private rope skipping team, the Victim took part in a number of competitions in 2007 to 2010. The association of the Victim and the Accused continued into the Victim's enrolment in secondary school in 2008.[3]

4 After July 2008, the Victim started to assist the Accused in coaching rope skipping teams at various schools.[4] The Victim left the private rope skipping team in late 2010.[5]

5 About four years later in April 2014, a police report was lodged by the Victim alleging that sexual offences had been committed by the Accused against her.[6]

6 During police investigations, two statements were recorded from the Accused under s 22 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed)

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1 Notes of Evidence ("NE") dated 19 March 2018 at p 12.

2 Notice of Appeal dated 20 March 2018.

3 Prosecution's closing submissions dated 12 January 2018 ("PCS") at paras 7–9; NE dated 21 November 2017 at pp 24–25; NE dated 1 December 2017 at pp 2, 5-9, 23.

4 PCS at para 10; NE dated 21 November 2017 at p 28; NE dated 1 December 2017 at p 3.

5 NE dated 21 November 2017 at p 61; NE dated 1 December 2017 at p 25.

6 PCS at para 11; Agreed Bundle ("AB") at p 30.

("the CPC").[7] The first statement was taken on 20 May 2014 at 3.24pm[8] and the second on 21 May 2014 at 11.47am.[9] At trial, the admissibility of the second statement recorded from the Accused on 21 May 2014 at 11.47am ("the Statement") was challenged by the Defence on the basis that it was not made voluntarily. The Accused alleged that he was threatened by the investigation officer, Deputy Superintendent (then Assistant Superintendent) Mohamed Razif s/o Abdul Majid ("DSP Razif"). The Accused also alleged that he was subjected to oppressive conditions which rendered the Statement involuntary because of the way he was treated at the lock-up after he was arrested.[10] After an ancillary hearing, I was satisfied that the Statement was given by the Accused voluntarily and therefore admitted it into evidence.

7 After the Accused was released on bail on 21 May 2014, he was interviewed by a psychiatrist, Dr Raja Sathy Velloo ("Dr Raja") from the Institute of Mental Health, on four separate occasions in August 2014 and September 2014, for the purpose of a psychiatric assessment. Prior to the interviews, Dr Raja explained to the Accused that the consultations were not protected by the usual doctor-patient confidentiality, and that the information that was conveyed during the interview could be accessed by the court and used in court proceedings.[11] The admissibility of Dr Raja's case notes of his interviews with the Accused[12] and his report[13] were not challenged, though the

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7 Prosecution's skeletal submissions for the ancillary hearing dated 30 November 2017 ('Pf ancillary hearing submissions") at paras 2, 5; Defence submissions for voir dire dated 29 November 2017 ("Df ancillary hearing submissions") at paras 99, 112.

8 Exhibit D2.

9 Exhibit P140.

10 NE dated 30 November 2017 at pp 2–29. Defence submissions for Voir Dire dated 29 November 2017 at paras 92–116.

11 NE dated 24 November 2017 at p 25; Exhibit P132, 18 August 2014 V2.0 at p 1 of 5.

Prosecution and Defence took different positions on the evidential weight that should be placed on these two documents, which contained information recounted by the Accused to Dr Raja on various incidents.

Charges

8 The Accused was charged with 48 offences, of which seven were proceeded with at trial. These were:[14]

7th Charge	You … are charged that you, sometime between October and December 2008, at "Aerobics World Studio" located at Blk 20lD Tampines Street 21 #02-1147, Singapore, did sexually penetrate [the Victim], a minor under 14 years of age, to wit, by inserting your finger into her vagina and you have thereby committed an offence punishable under section 376A(l)(b) of the Penal Code, Chapter 224 (2008 Revised Edition) read with section 376A(3) of the said Act.
11th Charge	You … are charged that you, sometime between October and December 2008, at "Aerobics World Studio" located at Blk 201D Tampines Street 21 #02-1147, Singapore, did sexually penetrate [the Victim], a minor under 14 years of age, to wit, by inserting the handle of a skipping rope into her vagina, and you have thereby committed an offence punishable under section 376A(l)(b) of the Penal Code, Chapter 224 (2008 Revised Edition) read with section 376A(3) of the said Act.
15th Charge	You … are charged that you, sometime between August 2008 and December 2008, at [a rope skipping school training venue], did sexually penetrate [the Victim], a minor under 14 years of age, to wit, by inserting a vibrator into her vagina, and you have thereby committed an offence punishable under section 376A(l)(b) of the Penal Code, Chapter 224 (2008 Revised

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12 Exhibit P132.

13 Exhibit P131.

14 Charges filed 17 November 2017.

Edition) read with section 376A(3) of the said Act.

21st Charge	You … are charged that you, sometime in March 2009, at Blk 886A Tampines Street 83 #03-55, Singapore, did sexually penetrate [the Victim], a minor under 14 years of age, to wit, by penetrating her mouth with your penis, and you have thereby committed an offence punishable under section 376A(1)(a) of the Penal Code, Chapter 224 (2008 Revised Edition) read with section 376A(3) of the said Act.
22nd Charge	You … are charged that you, sometime in March 2009, at Blk 886A Tampines Street 83 #03-55, Singapore, did commit rape on [the Victim], a minor under 14 years of age, to wit, by penetrating her vagina with your penis, and you have thereby committed an offence punishable under section 375(1)(b) of the Penal Code, Chapter 224 (2008 Revised Edition) read with section 375(2) of the said Act.
25th Charge	You … are charged that you, on a second occasion sometime in March 2009, at Blk 886A Tampines Street 83 #03-55, Singapore, did sexually penetrate [the Victim], a minor under 14 years of age, to wit, by penetrating her mouth with your penis, and you have thereby committed an offence punishable under section 376A(1)(a) of the Penal Code, Chapter 224 (2008 Revised Edition) read with section 376A(3) of the said Act.
26th Charge	You … are charged that you, on a second occasion sometime in March 2009, at Blk 886A Tampines Street 83 #03-55, Singapore, did commit rape on [the Victim], a minor under 14 years of age, to wit, by penetrating her vagina with your penis, and you have thereby committed an offence punishable under section 375(1)(b) of the Penal Code, Chapter 224 (2008 Revised Edition) read with section 375(2) of the said Act.

9 At the commencement of trial, the Prosecution applied for and I granted an extension of the gag order issued by the State Courts which prohibited the publication of the identity of the Victim.[15]

Prosecution's case

10 The Prosecution argued that the evidence of the Victim should be accepted. According to the Prosecution, the Victim's testimony about the various incidents was textured, internally consistent and withstood cross-examination.[16] The Victim was also able to recount the relevant offences committed by the Accused in great detail. Therefore, her testimony was unusually convincing and sufficed to warrant a conviction of the Accused on all the charges, though her testimony was in any event corroborated by other evidence.[17]

11 In addition, the Prosecution submitted that the Victim's account of the chronology of events was consistent with other evidence, and therefore should be accepted as accurate.[18] There were numerous factors that supported the Victim's account of the events, including the timing at which these events took place. These included travel records from the Immigration & Checkpoints Authority ("ICA"). Based on the Victim's date of birth and her testimony of the chronology of events, she was below the age of 14 at the material time of all seven charges.

12 In relation to the Victim's failure to resist the Accused's sexual advances and delay in making the police report, the Prosecution argued that these should not be held against her. Citing the case of *GBR v Public Prosecutor and another appeal* [2018] 3 SLR 1048 ("*GBR*") at [20], the Prosecution submitted that victims of sexual crimes should not be straightjacketed in the expectation that

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15 NE dated 21 November 2017 at pp 1–2.

16 PCS at paras 22–28.

17 PCS at paras 20–21.

18 PCS at paras 29–35.

they had to react in a particular manner. The Victim's behaviour had to be considered against her level of maturity and the position of the Accused. In addition, the Victim had given a credible explanation for her inaction in the face of the offences committed by the Accused; in particular, that she had been concerned over the possibility of getting kicked out of the private rope skipping team should she report or resist the Accused's sexual advances.[19]

13 According to the Prosecution, the circumstances that led to the Victim lodging the police report in 2014 in fact showed how she had been profoundly affected by the sexual offences. She had been troubled by the events and eventually confided in her teacher ("Mr T") when he had to counsel her about aspects of her performance in school. Mr T then referred her to the school counsellor ("Ms C"). Mr T and Ms C eventually accompanied the Victim to lodge a police report on 28 April 2014.[20]

14 In addition, the Victim was said to have had no motive to make fabrications against the Accused and in fact risked personal embarrassment in reporting the matter to the police. There was no evidence of any dispute between the Victim and the Accused which may have prompted her to fabricate the allegations made against him.[21]

15 The Prosecution also relied on the Accused's admissions to having carried out sexual acts against the Victim made in his Statement, which it said was given voluntarily by the Accused and which materially corroborated the Victim's testimony. It argued that the fact that the Accused could deny

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19 PCS at paras 36–39; Prosecution's skeletal reply submissions dated 9 February 2018 ("PRS") at paras 4–5.

20 PCS at paras 40–44.

21 PCS at paras 12–19. NE dated 20 February 2018 at p 2.

culpability in response to some of the questions posed by DSP Razif during the taking of the Statement showed that DSP Razif did not force him to make a confession and that the Accused was in full possession of his faculties when the Statement was recorded.[22] The Accused also had the presence of mind to read through the Statement and to request amendments where there were errors, which DSP Razif duly amended and got the Accused to countersign.[23] Given that the Statement was given voluntarily, significant weight should be placed on the admissions made by the Accused in the Statement which constituted material corroboration of the Victim's evidence.[24]

16 The Prosecution also relied on what the Accused had recounted to Dr Raja during the psychiatric interviews in August 2014 and September 2014, which was recorded in Dr Raja's case notes and report. According to the Prosecution, in his account to Dr Raja, the Accused (though having ample opportunity to do so) did not recant his earlier confession to DSP Razif and had instead elaborated on some aspects of his earlier account to DSP Razif. The Accused also had not alleged any mistreatment by DSP Razif during his interviews with Dr Raja. It was submitted that the admissions to Dr Raja, like the confessions to DSP Razif, corroborated the Victim's testimony.[25]

Defence's case

17 The Defence submitted that the Victim's allegations were incredulous and that her testimony was not unusually convincing.[26] According to the

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22 PCS at paras 48–54.

23 PCS at para 55.

24 PCS at paras 57–58.

25 PCS at paras 59–67.

26 Defence reply submissions dated 9 February 2018 ("DRS") at paras 11–12.

Defence, it was unbelievable that the Victim would continue to participate in the private rope skipping team as she did though she had been allegedly abused on numerous occasions. In fact, subsequent to the alleged abuse, she continued to be alone with the Accused by staying back after training sessions.[27] According to the Defence, specific aspects of the Victim's claims against the Accused were also unbelievable, including the following:

(a) It was unbelievable that the Victim did not, as she had testified, show any emotion when the Accused inserted his finger into her vagina (in relation to the 7th charge) and when the Accused inserted a skipping rope handle into her vagina (in relation to the 11th charge) and after both incidents failed to inform anyone about it.[28]

(b) As regards the 15th charge, the Victim was allegedly abused at a stairway of a school hall during a break in training; in particular, it was alleged that the Accused had inserted a vibrator into the Victim's vagina and told the Victim to leave it there. The Victim testified that after the break, she continued to assist with the training with the vibrator still inside her and did not think of removing it by going to the toilet. She testified that the vibrator was only removed after she and the Accused had travelled to an MRT station. This was said to be incredulous.[29]

(c) In respect of the 21st and 22nd charges, it was unbelievable that the Victim willingly went to the Accused's home when asked by the Accused, although she expected that the Accused would sexually abuse her by taking nude photos of her and making her perform oral sex.[30] The

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27 Submissions of the defence dated 12 January 2018 ("DCS") at paras 38–39.

28 DCS at paras 32–41.

29 DCS at paras 44–63.

Victim also went to the Accused's home and had sexual intercourse with him despite knowing that two of his children who were in Singapore at that time could return home at any time. She also had not informed anyone about the incident at the time, despite it being her first time having sexual intercourse. She also testified that she did not bleed.[31]

(d) As for the 25th and 26th charges, these related to an incident that supposedly took place on a couch at the balcony of the Accused's flat. The Victim had willingly gone to the Accused's flat, without any threat being made, and left for training as per normal after having had sex. All of these were said to be wholly incongruous. In addition, no couch or evidence that there had been a couch in the balcony of the Accused's flat were recovered in the course of investigations.[32]

18 The Defence also submitted that the Victim's account of the events in the first information report, in particular, the timeline of the events, was not consistent with the charges proceeded with. The first information report stated that she was penetrated by the Accused in early 2008. However, the 48 charges against the Accused were based on events allegedly occurring between October 2008 and December 2008, and between September 2009 and July 2010.[33]

19 The Defence also submitted that there was no corroboration of the Victim's testimony.[34] The Victim had not confided in her family, including her older sister whom she was close to, or her secondary school teachers about the

30 DCS at paras 66, 74–76.

31 DCS at paras 64–82.

32 DCS at paras 84–93.

33 DCS at paras 20–21.

34 DCS at paras 1–3, 23. DRS at paras 13–15.

alleged abuse.[35] A boyfriend that she had allegedly confided in when she was 14 years and 11 months old was not called.[36] A relative from the United States ("US") to whom the Victim apparently confided was also not called.[37] The Defence also took issue with the Victim's failure to report the offences in a timely fashion. It was argued that the case of *GBR* relied on by the Prosecution was distinguishable from the present case as the time lapse between the alleged incident and the lodging of a police report was only four days in *GBR*, unlike in the present case where the delay was of five years. The victim in *GBR* had also confided in a teacher and her friends who corroborated the victim's account.[38]

20 In addition, the Defence highlighted that various items which constituted vital evidence were not found, including the skipping rope handle and vibrator allegedly used to penetrate the Victim. While it was claimed that the Accused had taken nude photographs of the Victim, no incriminating photographs were recovered either.[39] Similarly, no couch was seized, though the Victim claimed that the Accused had sexual intercourse with her on such a couch at the balcony of the Accused's flat.[40] In addition, while the Victim claimed to have been raped by the Accused on another occasion in a room with two single beds, none of the police officers gave evidence that there were two single beds in a bedroom in the Accused's flat and the photographic evidence of the Accused's flat did not show any evidence of a bedroom with two single beds.[41]

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35 DCS at paras 10–12.

36 DCS at para 17.

37 DCS at para 9.

38 NE dated 20 February 2018 at pp 7–8.

39 DCS at para 13.

40 DCS at para 14.

41 DCS at para 15.

21 Further, according to the Defence, little weight should be placed on the Statement as it was given by the Accused under a threat made by DSP Razif to the effect that the Accused would have to stay in the lock-up overnight, that he would be kept locked up and that his children would be sent to a foster home.[42] The Accused was also subject to oppressive conditions when he was in the lock-up. The failure of DSP Razif to inform the Accused of his right not to say anything that would expose him to a criminal charge should also lead to the Statement being given little weight. The Defence argued that the Court of Appeal decisions in *Public Prosecutor v Mazlan bin Maidun and another* [1992] 3 SLR(R) 968 ("*Mazlan*") and *Lim Thian Lai v Public Prosecutor* [2006] 1 SLR(R) 319 ("*Lim Thian Lai*") which held that the recording officer need not inform a suspect or an accused of his or her legal right to remain silent should be re-examined.[43]

22 As for Dr Raja's psychiatric report and case notes, the Defence argued that little weight should be given since the Accused was anxious and aimed to give an account to Dr Raja which was consistent with the Statement. This was because the Accused feared that the psychiatric report would get back to DSP Razif, and he would be arrested and mistreated if there were inconsistencies.[44] Given the mental circumstances that the Accused was in having suffered oppressive conditions and having been subjected to a threat from DSP Razif, no weight should be given to the account of events recorded in Dr Raja's case notes and report.[45] In any event, according to the Defence, Dr Raja's report and case notes did not contain details.[46] Dr Raja also did not find out from the Accused

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42 DCS at para 102.

43 DCS at paras 114–116.

44 DCS at para 118; DRS at para 20.

45 DCS at para 119.

how he was treated by the police when he had been arrested.[47] He had also recorded that the Accused was anxious but did not seek to find out why.[48]

23 In addition, the Defence submitted that adverse inferences should be drawn against the Prosecution under s 116, illustration (*g*) of the Evidence Act (Cap 97, 1997 Rev Ed) ("Evidence Act") for its failure to adduce certain documents. The Victim was seen by a psychiatrist at the Child Guidance Clinic. However, the Prosecution did not adduce the psychiatric report from the Child Guidance Clinic about the condition of the Victim ("the Victim's psychiatric report").[49] The Victim's psychiatric report was said to be material evidence which should have been disclosed.[50] An adverse inference should also be drawn for the Prosecution's failure to adduce a typed word document containing an account of the alleged sexual offences committed by the Accused which was written by the Victim before she had confided in Mr T and Ms C and subsequently made the police report ("the Victim's document").[51]

Decision

24 The focus of the proceedings was on the evidence, in particular, whether the case against the Accused was established beyond a reasonable doubt on the evidence. This turned on the testimony of the Victim, the Statement given by the Accused to the police, as well as information recounted by the Accused as recorded in the psychiatric report and case notes of Dr Raja.

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46 DCS at para 120.

47 DCS at para 121.

48 DCS at paras 122–123.

49 DCS at paras 94–100.

50 NE dated 20 February 2018 at pp 9–11.

51 DCS at para 100.

25 Having considered the evidence, I found that the Victim's testimony was corroborated by the Accused's admissions in his Statement and in his account to Dr Raja as recorded in Dr Raja's psychiatric report and case notes. Accordingly, I convicted the Accused of the seven charges and sentenced him to a total of 25 years' imprisonment.

Analysis

Elements of the offences

26 The elements of the offences proceeded with are:

(a) That the Victim was below the age of 14; and

(b) That a sexual, physical act took place:

(i) in relation to the 7th, 11th and 15th charges under s 376A(1)(*b*) of the Penal Code (Cap 224, 2008 Rev Ed) ("the Penal Code"), read with s 376A(3), that there was sexual penetration of the Victim's vagina with an object by the Accused;

(ii) in relation to the 21st and 25th charges under s 376A(1)(*a*) read with s 376A(3), that there was penetration of the Victim's mouth by the Accused's penis; and

(iii) in relation to the 22nd and 26th charges under s 375(1)(*b*) read with s 375(2), that there was penetration of the Victim's vagina by the Accused's penis.

Whether there was consent on the part of the Victim is irrelevant to the establishment of culpability of the Accused for the charges proceeded with. In any event, it is also problematic to speak of consent in the context of juvenile or

child victims of sexual offences, as such victims may not appreciate the full repercussions of sexual acts and are also likely to be more susceptible to pressures exerted by others due to their young age.

27 As I alluded to at [24] above, there were three main sources of evidence against the Accused. These were (a) the Victim's testimony; (b) the Statement of the Accused; and (c) the psychiatric report and case notes of Dr Raja. I will examine each in turn in the following sections.

The Victim's testimony

The Victim's conduct after the offences

28 The Defence argued that the Victim's account of the events should not be accepted as it was unbelievable that she had been subject to such sexual abuse yet had not resisted or reported the acts, but in fact continued to train with the Accused's private rope skipping team until 2010.[52]

29 The fact that the Victim did not report the incidents to anyone in authority till about five years later,[53] and only confided in two of her former boyfriends and a US relative along the way,[54] gave me some pause. I did not find however that the Victim's testimony was to be rejected because of any inherent improbabilities.

30 I accepted that victims of sexual offences may not behave in a stereotypical way. Many victims report their sexual abuse early to a family member, friend, the police, or other person in authority. However, there is no

52 DCS at paras 10–12, 19, 32, 40, 57, 60, 81(i)–81(v).

53 AB at p 30.

54 NE dated 21 November 2017 at pp 62–63; NE dated 22 November 2017 at pp 20–22.

general rule requiring victims of sexual offences to report the offences immediately or in a timely fashion. Instead, the explanation for any such delay in reporting is to be considered and assessed by the court on a case-by-case basis (see *DT v Public Prosecutor* [2001] 2 SLR(R) 583 at [62]; *Tang Kin Seng v Public Prosecutor* [1996] 3 SLR(R) 444 at [79]). While I accept that an omission to report the offence in a timely fashion, in the absence of other evidence, may in certain circumstances make it difficult to establish a case against the accused beyond reasonable doubt, I emphasise that the effect of any delay in reporting always falls to be assessed on the specific facts of each individual case.

31 The Victim's behaviour in the present case in continuing with her rope skipping training with the Accused until 2010 may at first blush seem odd given that she was the victim of repeated sexual abuse. So was the fact that after one instance of sexual intercourse, she went on to go for training as per normal.[55] However, all this must be seen in the light of the fact that the Victim was at the material time a child of just 13 years, for whom training and competing with the Accused's private rope skipping team was the centrepiece of her life and, indeed, her aspirations for the future.[56] While the average adult may be expected to react in a particular way – for example, to resist, report or complain about an assault as soon as possible – a child or juvenile cannot be expected to always react similarly. The thinking process, assumptions and viewpoint of a child or juvenile victim may lead to a course of action that may on its face appear unreasonable or improbable to an adult. However, the court must always be mindful of the reasons behind what may seem like unexpected conduct on the

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55 NE dated 22 November 2017 at p 16.

56 NE dated 22 November 2017 at p 9.

part of a child or juvenile victim, and should not measure a child or juvenile by adult standards.

32 What the court should do is to assess, given the evidence in respect of the specific complainant and the allegations made, whether what is put forward is consonant with the likely probabilities. A child or juvenile complainant may not be expected to complain if he or she feels vulnerable, or is otherwise focussed on matters other than protecting his or her modesty. A child or juvenile is by definition immature, and should not, in the absence of evidence showing otherwise, be held to the measure of an adult. The thought processes and concerns of a child or juvenile may also continue to evolve and permutate as he or she matures, such that it may be some time before he or she is in a position to complain.

33 Thus, in the present case, the fact that the Victim did not complain in a timely manner and remained in contact with the Accused over the extended duration of the abuse did not rob her of credibility; I accepted that the Victim was focussed on her continued participation in the private rope skipping team, and did not know what to do about the Accused's sexual advances. I accepted her explanation that she did not resist or report the offences to a teacher or family member as rope skipping was her priority at that time and she feared that her place on the private rope skipping team would be jeopardised were she to do so. I also accepted that she had not reported the offences to her family or the police as she felt ashamed.[57]

34 Similarly, the fact that the Victim was not driven into despair or helplessness was not by itself a ground for disbelief of her evidence. People

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[57] NE dated 22 November 2017 at pp 35–38, 41.

react in different ways to sexual abuse and may compartmentalise or rationalise their reactions. A calm, undisturbed disposition may generally incline the court to conclude that no wrong was committed, but it is not necessary for a complainant to be distraught for her to be believed.

Whether evidence is unusually convincing

35 If the complainant's evidence is accepted, the next question is then whether the complainant's evidence in itself is sufficient to convict the accused person of the charges. The complainant's evidence must be unusually convincing to overcome any doubts that might arise from the lack of corroboration, in order for the accused to be convicted of the offence based on the complainant's testimony alone (see *AOF v Public Prosecutor* [2012] 3 SLR 34 ("*AOF*") at [111]; *Haliffie bin Mamat v Public Prosecutor and other appeals* [2016] 5 SLR 636 at [27]–[30]; *XP v Public Prosecutor* [2008] 4 SLR(R) 686 at [31]). In some cases, the complainant's evidence is unusually convincing. In other instances, the complainant's evidence is insufficient on its own to bring the case over the threshold. As the Court of Appeal stated in *AOF* at [115], in determining if a complainant's testimony is unusually convincing, the demeanour of the witness is to be weighed alongside both the internal and external consistencies found in the witness's testimony. Ultimately, the sufficiency of the complainant's testimony to prove the case against the accused beyond reasonable doubt is to be considered, which is an inquiry that is both factual and one which is a question of judgment on the part of the trial judge (see *Public Prosecutor v Mohammed Liton Mohammed Syeed Mallik* [2008] 1 SLR(R) 601 at [39]).

36 Here, the Victim's testimony was, on the whole, believable and credible; she maintained her version of events in cross-examination, and I did not find

that her evidence was to be doubted in the circumstances, particularly considering the passage of time. Any inconsistency between the Victim's testimony at trial and the first information report concerning the timeline of events was minor and not material.

37 However, the word "unusually" in the "unusually convincing" standard implies that it is not sufficient for the complainant's testimony to be merely convincing and there must be something more in the testimony to bring it over the threshold. In this case, the credibility which could be given to the Victim's testimony was not sufficient on its own to lead to the conclusion that the case was proven against the Accused beyond a reasonable doubt. The gap of time was significant and this raised the possibility of fabrication or at least incorrect recollection. The Victim's evidence alone was not to my mind unusually convincing and sufficient on its own to convict the Accused.

38 While the Victim's testimony was not *unusually* convincing such that it was sufficient on its own to prove the case against the Accused beyond a reasonable doubt, I did not find that the Victim was being untruthful or that she was not a credible witness. The Victim's testimony was not to my mind wholly unconvincing as submitted by the Defence.

39 The Defence argued that there were significant shortfalls in the evidence of the Victim which made her evidence unconvincing, including:

(a) In relation to the 15th charge, it was unbelievable that the Victim would have dared to insert a vibrator into the Victim's vagina in an all-girls school during an afternoon training session.[58]

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[58] DCS at para 62.

(b) There was no evidence that there were indeed two single beds in one of the bedrooms in the Accused's flat, where the sexual penetration and sexual intercourse in the 21st and 22nd charges respectively allegedly took place.[59]

(c) No couch was found at the balcony of the Accused's flat, where the sexual penetration and sexual intercourse in the 25th and 26th charges respectively were supposed to have occurred.[60] The Accused testified that there was no such couch on the balcony, and the photographs taken by the police showed a wooden bench where the couch was supposed to have been.[61]

(d) In relation to the 26th charge, it was unbelievable that the Accused would have had sex with the Victim on a couch at the balcony facing the front door, knowing that any one of his family members may return home.[62] In a similar vein, in respect of the 21st and 22nd charges, it was highly improbable that the Accused would have committed the sexual offences against the Victim in one of the bedrooms of the Accused's flat when two of the Accused's children were in Singapore at that time.[63]

(e) No photographs were found in any of the storage devices or memory cards seized from the Accused in the course of investigations. No cameras were seized.[64]

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59 DCS at paras 15 and 81(vii).

60 DCS at paras 14 and 92(iii).

61 DCS at paras 14.

62 DCS at para 92(ii).

63 DCS at para 81(viii).

(f) There were no skipping rope handles, vibrators or dresses bought for the Victim by the Accused that were seized in the course of investigations.[65]

40 The absence of the items stated above at [39(b)], [39(c)], [39(e)] and [39(f)], or failure to seize, obtain or confirm their existence in the course of investigations, were relevant. The confirmation of existence or seizure of such types of evidence would give support to the allegations of a victim; conversely their absence would generally point against the allegations. In the present case however, the passage of time since the occurrence of the alleged offences provided sufficient explanation for the non-recovery of or absence of confirmation of the existence of the items: furniture might have been moved, or discarded, and items including the dress(es), vibrator(s) and skipping rope handle(s) might have been lost. The non-seizure of any skipping rope handle for instance was understandable in the circumstances. Given the passage of time it was unlikely that anything useful forensically would have been obtained. The absence of any photographs or other media files was for the same reasons also not fatal to the Prosecution's case.

41 In addition, as highlighted by the Prosecution, the daughter of the Accused had not, unlike as stated in the Defence submissions,[66] testified that there was never any couch on the balcony of the Accused's flat, as she was not questioned about this by the Prosecution or Defence. This error in the Defence submissions was subsequently acknowledged by Defence counsel.[67] While the

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64 DCS at para 13.

65 DCS at para 13.

66 DCS at paras 14 and 92(iii).

67 NE dated 20 February 2018 at p 8.

Accused had testified that there was never such a couch in the balcony,[68] he had every reason to testify as such in order to exculpate himself.

42 The fact that one occasion of sexual intercourse and oral sex (in relation to the 25th and 26th charges) occurred facing the front door, on the balcony of the Accused's flat, did not render the evidence unbelievable. The balcony was situated within the Accused's flat and based on the photographic evidence it was unlikely that persons outside the flat could have had a clear view of the balcony or what was within the balcony.[69] The Victim also testified that the front door was closed at the material time.[70] In any event, even if the sexual intercourse and oral sex had taken place at a location that was within the potential sight of others, this was not on its own a reason to disbelieve the Victim's testimony. Sexual offences, including rape, have taken place at various places including at public locations. Similarly, in relation to the 15th charge, the removal at a secluded area of an MRT station of the vibrator placed in the Victim[71] was not unbelievable simply because the area was within a public place. That the Accused's family members were in Singapore on the two occasions when the Accused had sexual intercourse and oral sex with the Victim in his flat (in relation to the 21st, 22nd, 25th and 26th charges) also did not lead to doubts about the occurrence of the sexual acts either.

43 The Defence also raised the absence of bleeding and pain on the part of the Victim after the first occurrence of sexual intercourse with the Accused (in relation to the 22nd charge), which was also the first time the Victim had sexual

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68 NE dated 1 December 2017 at p 14.

69 Exhibit P71 and P72.

70 NE dated 22 November 2017 at p 31.

71 NE dated 22 November 2017 at p 37.

intercourse.[72] Such absence of bleeding and pain alone could not point to the Victim not having had sex; various reasons could explain this absence, and without any expert medical evidence at least being adduced, this absence could not raise any reasonable doubt.

Motive to fabricate

44 The Prosecution argued that there was no motive to fabricate allegations against the Accused on the part of the Victim. In any case, based on *Goh Han Heng v Public Prosecutor* [2003] 4 SLR(R) 374, there was no requirement for the Prosecution to prove that the Victim had no motive to falsely implicate the Accused since the Accused had not identified any motive for the Victim to do so.[73] The Defence on the other hand, citing *Khoo Kwoon Hain v Public Prosecutor* [1995] 2 SLR(R) 591 and *Loo See Mei v Public Prosecutor* [2004] 2 SLR(R) 27, argued that lack of motive on the part of a victim to fabricate allegations against the accused person is not sufficient to find the accused person guilty of the charges.[74] In addition, according to the Defence, in order for the Prosecution to make a negative assertion that there was a lack of motive on the part of the Victim to make fabrications of sexual assault against the Accused, the burden fell on the Prosecution to adduce credible evidence to this effect. The Defence thus argued that it did not bear the burden of proving that the Victim had some reason to make false allegations against the Accused.[75]

45 It is useful at this juncture to consider the case law cited by the parties. In *Khoo Kwoon Hain v Public Prosecutor* [1995] 2 SLR(R) 591, Yong Pung

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72 DCS at para 81(ix).

73 PCS at paras 12–19. NE dated 20 February 2018 at p 2.

74 DRS at paras 2–6.

75 DRS at paras 6–8.

How CJ held at [71] that the burden of proving a lack of motive to falsely implicate the accused is on the Prosecution, and that reliance on the complainant's word that he or she had no reason to falsely implicate the accused was not a ground to believe the complainant's testimony due to the circularity of such reasoning.

46 In *Goh Han Heng v Public Prosecutor* [2003] 4 SLR(R) 374, Yong Pung How CJ however clarified that while the burden to prove absence of motive laid on the Prosecution, such burden would only arise where the accused was able to show that the complainant had a motive to falsely implicate him. Yong Pung How CJ stated at [33] of the decision:

> … [W]here the accused can show that the complainant has a motive to falsely implicate him, then the burden must fall on the Prosecution to disprove that motive. This does not mean that the accused merely needs to allege that the complainant has a motive to falsely implicate him. Instead, the accused must adduce sufficient evidence of this motive so as to raise a reasonable doubt in the Prosecution's case. Only then would the burden of proof shift to the Prosecution to prove that there was no such motive. To hold otherwise would mean that the Prosecution would have the burden of proving a lack of motive to falsely implicate the accused in literally every case, thereby practically instilling a lack of such a motive as a constituent element of every offence.

47 Further, in *Loo See Mei v Public Prosecutor* [2004] 2 SLR(R) 27, Yong Pung How CJ reiterated at [41] that the Prosecution's burden in proving that there was a lack of motive to fabricate was one of "beyond reasonable doubt" not "beyond all doubt".

48 Thus in my judgment, the above line of cases establishes that:

(a) The burden of proving the absence of motive on the part of the complainant to concoct fabrications against the accused lies on the Prosecution.

(b) However, the burden on the Prosecution to prove absence of motive to fabricate does not arise in every instance. Such burden only arises where the defence raises sufficient evidence of a motive to fabricate so as to raise a reasonable doubt in the Prosecution's case.

(c) Where the defence raises sufficient evidence of a motive to fabricate, the Prosecution had to prove that that there was no such motive. The following principles should be borne in mind in assessing if the Prosecution has discharged its burden:

(i) Reliance on the complainant's word that he or she had no reason to falsely implicate the accused is insufficient to prove that there was no such motive due to the circularity of such reasoning.

(ii) The Prosecution has to prove that that there was no such motive beyond a reasonable doubt and not beyond all doubt. Thus, raising frivolous conjectures on the possible motives of the complainant would be insufficient to lead to a finding that the Prosecution has failed to discharge its burden.

49 Applying these principles to the facts in the present case, as the Defence did not raise evidence of any motive on the part of the Victim to make false allegations against the Accused, the burden on the Prosecution to disprove such motive did not arise. There was no evidence adduced to show that there was any such motive to fabricate on the part of the Victim.

50 However, while the presence of motive to fabricate may raise reasonable doubt as to the guilt of the accused person under the charges, that there is an absence of motive is not sufficient for the case against the accused to be proved

beyond reasonable doubt. In other words, the fact that there was no evidence of any motive or reason for the Victim to mount fabrications against the Accused in this case was not sufficient on its own to render the Victim's testimony unusually convincing and correspondingly sufficient to prove the case against the Accused beyond reasonable doubt.

51 Nevertheless, in the present case, the Victim's testimony was not the only evidence against the Accused and therefore my finding that the Victim's testimony was not unusually convincing was not fatal to the Prosecution's case.

The Statement of the Accused

The voluntariness of the Statement

52 The voluntariness of the Statement was challenged by the Accused. Having heard the parties at the ancillary hearing, I found against the Accused and admitted the Statement. I found that the Prosecution had proven beyond reasonable doubt that DSP Razif had not made a threat to the Accused in the manner alleged and that no threat operated on the mind of the Accused in giving the Statement. The conditions of the Accused's detention, while uncomfortable, also did not result in oppression, or in other words, the sapping of the Accused's will.[76] I remained of the view that the Statement was given voluntarily at the close of the case.

(1) Alleged threat and oppression

53 The Accused alleged that the Statement was not given voluntarily and was thus inadmissible on the following grounds:

[76] NE dated 30 November 2017 at pp 54–56.

(a) A threat made by DSP Razif to the Accused shortly after the Accused had given his first statement to the police on 20 May 2014: In this first statement, the Accused had not confessed to any of the offences. DSP Razif had then allegedly threatened the Accused by saying words to the effect of "I don't care about your children, I am going to lock you up and will send your children to a foster home".[77]

(b) Oppressive conditions that the Accused had been subject to when he gave the Statement: In particular, after the threat had been made by DSP Razif subsequent to the first statement being given, the Accused had his right hand handcuffed to a bench in an air-conditioned cell in the temporary holding area ("THA") where he was held overnight for over 17 hours between 20 May 2014 to 21 May 2014, clad only in a pair of shorts and a t-shirt.[78] He was thereafter, on the morning of 21 May 2014 brought to his house where his house was searched and he was re-handcuffed in the presence of two of his children. He was then brought back to the Police Cantonment Complex where the Statement was taken in two hours without a break between 11.47am and 1.45pm on 21 May 2014.[79]

54 The Prosecution on the other hand argued that the Statement was given voluntarily. The Accused did not avail himself of various opportunities to surface the allegations made by him. Therefore, these allegations should be treated as afterthoughts and should be found to be baseless.[80] The evidence also

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77 Df ancillary hearing submissions at paras 23–27; DCS at paras 101–102; DRS at para 17; NE dated 30 November 2017 at pp 4, 23–29.

78 DCS at para 103.

79 Df ancillary hearing submissions at paras 28–83; DCS at paras 103–108; DRS at paras 18–19; NE dated 30 November 2017 at pp 5-7,12–22.

showed that no threat had been made against him by DSP Razif or any other police officer.[81] The Statement was also not given under circumstances of oppression given that during the time the Accused was in police custody, he had reasonable access to meals, water, medical care and toilet breaks. The Accused was also held in the THA for about over 14 hours (between 4.50pm on 20 May 2014 and 7.08 am on 21 May 2014) and not over 17 hours (between 4.50pm on 20 May 2014 and 10.10am on 21 May 2014) as submitted by the Defence. This was since the Accused had been moved on the morning of 21 May 2014 from the THA to an individual cell ("Cell 1M"), which had more amenities readily available to him.[82] There was also no nexus between the time the Accused was in the THA and the eventual recording of the Statement as the Accused had been given breaks in between.[83]

55 The burden lies on the Prosecution to establish beyond reasonable doubt that a statement was given voluntarily and therefore that the statement is not inadmissible pursuant to s 258(3) of the CPC. In *Chai Chien Wei Kelvin v Public Prosecutor* [1998] 3 SLR(R) 619, the Court of Appeal held at [53] that the test of voluntariness is partly objective and partly subjective:

> … The test of voluntariness is applied in a manner which is partly objective and partly subjective. The objective limb is satisfied if there is a threat, inducement or promise, and the subjective limb when the threat, inducement or promise operates on the mind of the particular accused through hope of escape or fear of punishment connected with the charge …

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80 Prosecution's skeletal submissions for the ancillary hearing dated 30 November 2017 ('Pf ancillary hearing submissions") at paras 13–17; NE dated 30 November 2017 at p 34.

81 Pf ancillary hearing submissions at paras 21–22; NE dated 30 November 2017 at pp 36–39.

82 Pf ancillary hearing submissions at paras 13–22.

83 Pf ancillary hearing submissions at para 16.

56 A statement would be deemed involuntary if a threat, inducement or promise made by a person of authority operated on the mind of the accused in making the statement. Explanation 1 to s 258(3) of the CPC also establishes that a statement would be inadmissible if the accused had made the statement having been subject to oppression; in particular, conditions that have "sapped the free will" of the accused.

57 I accepted that it was shown beyond a reasonable doubt that no threat was made. I found the evidence given by DSP Razif at the ancillary hearing to be generally candid and convincing.[84] He did not give a completely one-sided testimony in support of the Prosecution's case. For instance, he admitted aspects that he could not recall rather than skewing his answers on those aspects in a manner favorable to the Prosecution.[85] He also admitted that the Accused looked stressed when he was brought out of the lock-up to be brought to his house,[86] when his house was searched,[87] on the journey back from his home to the Police Cantonment Complex,[88] and when the Statement was taken.[89]

58 As regards the allegation of oppression, I found that the police records were relevant, and nothing was adduced to show that these were unreliable. These records showed that the Accused was indeed moved to Cell 1M from the THA before he was brought to his house on 21 May 2014,[90] which would have relieved some of the discomfort experienced in the THA.

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84 NE dated 23 November 2017 at pp 31, 39, 41.

85 NE dated 23 November 2017 at pp 21, 25–26, 31–32.

86 NE dated 23 November 2017 at p 10.

87 NE dated 23 November 2017 at p 12.

88 NE dated 23 November 2017 at p 13.

89 NE dated 23 November 2017 at p 18.

90 Exhibit P133 at p 4, s/n 36; Exhibit P133 at p 5, s/n 41; NE dated 29 November 2017

59 In any event, while the THA and the circumstances and duration of detention there created an uncomfortable environment, such discomfort did not lead to the conclusion that there was oppression, or in other words a sapping of the will of the Accused. Some discomfort is to be expected and the question is whether such discomfort was such as to call into question the voluntariness of a statement (see *Yeo See How v Public Prosecutor* [1996] 2 SLR(R) 277 at [40]; *Tey Hsun Hang v Public Prosecutor* [2014] 2 SLR 1189 at [114]). From the photographs and other evidence, while the conditions in the THA were sparse, bordering perhaps on spartan, they were not to my mind such as to lead to oppression. There was some space to allow the Accused to rest in the THA, though handcuffed to a metal railing on a bench.[91] It may have been that the Accused was not warmly clothed, but exposure to the temperature in the THA (24 to 25 degrees Celsius)[92] was not sufficient to render his will sapped. I also accepted the Prosecution's evidence which was supported by prison records[93] that while he was held in the THA and Cell 1M, the Accused had reasonable access to food and water. While the Accused claimed that he was not allowed to go to the toilet from the time he was arrested until he was out on bail,[94] the Prosecution's evidence on this score[95] was preferred.

60 The fact that the Accused had appeared stressed at various points between 20 May 2014 and 21 May 2014 did not indicate sapping of the will. Persons being investigated would be expected to be stressed. Similarly, any

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at pp 7, 10, 14–16, 79.

91 Exhibit P134 at pp 4–5; NE dated 29 November 2017 at pp 9–10.

92 NE dated 29 November 2017 at p 11; Df ancillary hearing submissions at para 29.

93 Exhibit P133; NE dated 29 November 2017 at pp 11, 16, 20–22, 35–37.

94 NE dated 29 November 2017 at p 66, 77–78.

95 NE dated 29 November 2017 at pp 14, 16–17, 77–80; NE dated 23 November 2017 at pp 25, 53–54.

concern that the Accused had about his family and the impact of his arrest and the investigations on his family were not sufficient here to show that there was oppression.

61 I found also that if the allegations of threat and oppression had been true, it would have been raised by the Accused to Dr Raja, or at least some complaint would have been registered upon or soon after the Accused had been bailed out. Any fear on the part of the Accused of having his bail revoked or other consequences should not have prevented him from raising the issue of having been threatened and subject to oppressive conditions once he was on bail, particularly as the consequences of a confession being given would have been clearly apparent to anyone. I accepted that the Accused had various opportunities before trial to raise his allegations; his failure to do so undermined the credibility of his allegations. That the allegations of oppression and threat were only raised late in the day, close to or at trial[96] suggested that they were mere afterthoughts of the Accused who was seeking to avoid the consequences of the admissions he made in the Statement.

62 I also note that when it was put to the Accused by the Prosecution during the ancillary hearing that the Statement was recorded from him voluntarily, he had in fact answered in the affirmative by responding with "I agree, Your Honour", even though on re-examination, when asked if he had made the Statement voluntarily in the sense that there was no threat, inducement, promise or oppression, the Accused clarified that he had not.[97]

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96 Case for the Defence dated 31 March 2017; NE dated 30 November 2017 at p 19.

97 NE dated 29 November 2017 at pp 96–97.

63 For all of the foregoing reasons, I found that there was no threat which operated on the mind of the Accused, or oppression which caused the Accused's will to be so overborne that it led to the giving of the Statement and thus rendered the Statement involuntary.

(2) Evidence concerning home visit

64 There were a number of differences between the Prosecution and Defence as to what happened at the Accused's home, when the Accused was brought home on the morning of 21 May 2014 as part of the investigations for the police to search for and seize evidence, sometime in between the taking of the first statement on 20 May 2014 and the taking of the Statement at 11.47am on 21 May 2014. These related to:

(a) The type of restraint that was used on the Accused: The Accused and his daughter testified that handcuffs were used,[98] while the Prosecution witnesses said a grip restraint was used.[99]

(b) How the Accused entered the flat: The Accused said that they had to knock and call out to his children.[100] The police witnesses said that they entered using a key supplied by the Accused.[101]

(c) How the investigations were carried on inside the flat, including how the children reacted,[102] and whether the Accused asked to speak to his children first prior to entering the flat.[103]

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98 NE dated 29 November 2017 at pp 64, 113, 119.

99 NE dated 29 November 2017 at p 24.

100 NE dated 29 November 2017 at p 63.

101 NE dated 23 November 2017 at pp 11, 35.

102 NE dated 23 November 2017 at p 38.

65 I did have some concerns about aspects of the Prosecution's evidence on the above matters concerning the events on 21 May 2014 when the Accused was brought from the Police Cantonment Complex to his home for a search, though this did not affect my finding on the voluntariness of the Statement. Evidence was given of standard procedures and what would be done usually. While standard operating procedures and protocols could be relevant, the simple fact of the matter was that these may not have been complied with for various reasons. Where facts in issue occurred years before trial, evidence that such protocols or standard operating procedures were in place and must necessarily have been followed is usually not persuasive without records or other documentary evidence to substantiate compliance. The recollection of the individual officers that the standard operating procedures would have been complied with at that time would generally have little weight. The officers involved would have been involved in many cases and unless they are able to recollect specifically what happened and give some explanation of why that particular recollection stuck in their memory, little weight can be given to such recollection of compliance. In contrast, the events would be expected to leave a comparatively more striking memory in accused persons and their families, except perhaps in respect of jaded repeat offenders.

66 I did not find however that any of these differences affected the voluntariness of the Statement; they were not material to the issue. Their impact, if any, as conceded by Defence counsel[104] would have been on the credibility of the police witnesses and not directly on the issue of whether the Accused was subject to oppressive conditions or a threat. As it was, even if I found in favour of the Accused on the aspects highlighted above at [64], it would not have

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103 NE dated 23 November 2017 at p 34; NE dated 29 November 2017 at p 63.

104 NE dated 30 November 2017 at pp 10–12.

undermined the evidence of DSP Razif and the other police witnesses. The Defence's case was that a threat was made by DSP Razif at the Police Cantonment Complex shortly after the recording of the first statement on 20 May 2014, and not that there was a threat made at any point when the Accused was brought back to his home subsequently on 21 May 2014. Any shortcoming in the evidence of the police officers was not of such a scale as to affect their credibility generally. Any error would have been attributable to gaps in recollections that were understandable due to the passage of time.

(3) Failure to inform the Accused of right to remain silent

67 In its closing submissions, the Defence made arguments on DSP Razif's failure to inform the Accused of his right to remain silent prior to the taking of the Statement. The case law is clear that a person need not be expressly informed of his right under s 22(2) of the CPC to remain silent, and that the failure of the recording officer to administer a caution to the accused person in terms of s 22(2) before the statement was recorded does not render a statement inadmissible (see *Mazlan* at [37]; *Lim Thian Lai* at [17]–[18]). The Defence submitted that this position should be revisited.[105]

68 As the relevant case law concerning the effect of an omission to inform an accused person of his right under s 22(2) were precedents of the Court of Appeal, they were binding on me, and I could not depart from them. That these cases were concerned with the right to remain silent which was at the relevant time contained in s 121(2) of the Criminal Procedure Code (Cap 68, 1985 Rev Ed), and not strictly speaking what is now s 22(2) of the CPC, was not material. In any event, with respect, the position laid down in the Court of Appeal

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105 DCS at paras 113–117.

decisions comports with the language and purpose of s 258, *ie*, the admissibility provision of the CPC. Even if it were open to me to depart from the Court of Appeal decisions, I would not have done so.

69 For all of the foregoing reasons, the Statement was admitted. At the close of the case, I remained of the view that the Statement was given voluntarily, and saw no reason to revisit my earlier conclusions.

The weight to be given to the Statement

70 The Defence submitted that minimal, if any, weight should be accorded to the Statement, in view of the circumstances of the recording, *ie*, the Accused having been subject to a threat and to oppressive conditions. I was satisfied however that there was no reason to give it anything other than full weight. Weight could be reduced if there was something to show that the reliability of what was recounted was at risk. There was nothing here to show that. I was thus satisfied that full weight should be given.

71 The Defence pointed also to the supposed lack of details in the Statement but what was significant was that the Accused had accepted that he committed various acts which corroborated material aspects of the Victim's testimony. The Accused had, amongst others, admitted the following in the Statement:

(a) that he and the Victim had been in a relationship;[106]

(b) that he had bought dresses for the Victim and that she had changed into them for him to take photographs of her;[107]

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106 Exhibit P140 at p 3.

107 Exhibit P140 at p 2.

(c) that he took photographs of her semi-nude and also in the nude;[108]

(d) that there were times where he and the Victim had sexual intercourse after taking photographs;[109]

(e) that the Victim had gone over to his house two or three times and that they had sexual intercourse in the house;[110]

(f) that he had also photographed the Victim in the nude at his house;[111]

(g) that he had penetrated the Victim with objects;[112] and

(h) that he had asked the Victim to perform oral sex on him.[113]

72 In addition, the Accused's recounting of the events in the Statement was not so cursory or sparse that it should on the face of it attract suspicion as not being truthful or made up. For instance, he gave very precise details on the locations at which he had taken photographs of the Victim[114] and recalled where he had sexual intercourse with the Victim and where he had not, [115] and so on. In the context of what he was describing, which was of a whole series of events, the lack of *full* details on specific incidents was understandable.

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108 Exhibit P140 at p 2–4.

109 Exhibit P140 at p 3.

110 Exhibit P140 at pp 4, 8.

111 Exhibit P140 at p 4.

112 Exhibit P140 at pp 6–7.

113 Exhibit P140 at p 8.

114 Exhibit P140 at pp 2–3.

115 Exhibit P140 at pp 5–6, 8.

73 That the Accused was not informed of his right to remain silent under s 22(2) of the CPC also did not affect the weight to be placed on the Statement as it did not attenuate the strength of the contents of the Statement.

74 I therefore found that the Statement was given voluntarily, that it was reliable, and that it corroborated the Victim's testimony of the offences.

Facts recounted by the Accused to Dr Raja

75 As for the facts recounted by the Accused to Dr Raja, as recorded in the psychiatric report and case notes of Dr Raja, I was again satisfied that full weight should be given to it.

76 The Defence argued that little weight should be placed on what the Accused had recounted to Dr Raja given that the Accused had been concerned over ensuring consistency between the facts recounted to Dr Raja and those in the Statement, due to his fear that he would otherwise be mistreated as before.[116] I rejected the Defence's submission on this aspect given that I found that the Accused had not been threatened or oppressed while he was held in police custody between 20 May 2014 and 21 May 2014, and in any event due to the lapse in time between the Accused being held in police custody and being interviewed by Dr Raja in August 2014 and September 2014. There was thus no reason to discount anything that was said – any concerns about the circumstances surrounding the recording of the police statement could not permeate through to what was subsequently said to Dr Raja.

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116 DCS at paras 118–119.

117 DCS at para 120.

77 While the Defence pointed out the supposed lack of precise details in the psychiatric report and case notes of Dr Raja,[117] given that the purpose of the psychiatric report and case notes was to allow the court to ascertain the ability of the Accused to plead, it was not surprising that full details on specific incidents were not included. As with the Statement, it was sufficient that the Accused had recounted and admitted to Dr Raja that he had committed key aspects of the charges brought against him. The following admissions to Dr Raja by the Accused, as recorded in Dr Raja's psychiatric report and case notes once again corroborated the Victim's testimony:

(a) that he had been in a romantic relationship with the Victim;[118]

(b) that he had had sexual intercourse with the Victim several times, including at his house;[119]

(c) that he took nude photographs of the Victim;[120] and

(d) that he and the Victim had oral sex.[121]

78 Contrary to the submissions of the Defence,[122] it was also not material that Dr Raja did not find out what had happened while the Accused was under arrest, or that Dr Raja did not elaborate further in describing the Accused's state during the interview as being, amongst others, anxious.[123]

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118 Exhibit P131 at p 2; Exhibit P132, 18 August 2014 V2.0 at p 1 of 5, 25 August 2014 V1.0 at pp 1–2.

119 Exhibit P131 at p 2; Exhibit P132, 18 August 2014 V2.0 at pp 2–3 of 5.

120 Exhibit P131 at p 2; Exhibit P132, 18 August 2014 V2.0 at p 2 of 5.

121 Exhibit P132, 18 August 2014 V2.0 at p 3 of 5.

122 DCS at paras 121–123.

123 Exhibit P132, 18 August 2014 V2.0 at p 4 of 5.

The age of the Victim

79 As for the Victim's age, the Prosecution's case was that the Victim was below the age of 14 at the time of the offences. Had she been older, other charges aside from those proceeded with would still be made out.

80 I accepted that the Victim was indeed below 14 years of age at the time of the offences. Her recollection of the incidents at trial established that they would have occurred before her 14th birthday. In addition, there were numerous factors that supported the Victim's testimony at trial of the timing in which these events took place. For instance, that the events giving rise to the 21st and 22nd charges took place sometime in March 2009 when the Accused's wife and two eldest daughters were overseas was supported by travel records from the ICA. These records showed that the Victim (save for a single day-trip to Malaysia on 15 March 2009) and Accused had been in Singapore throughout March 2009, while the Accused's wife and two eldest daughters were overseas from 20 March 2009 to 2 April 2009.[124] The 25th and 26th charges were recalled by the Victim as taking place about one or two weeks after the 21st and 22nd charges, by which time the Accused's wife and two eldest daughters had returned to Singapore.[125] This was again supported by ICA's travel records.[126] In relation to the 7th, 11th and 15th charges, the Victim's evidence was that these took place in the last quarter of 2008, using the rope skipping Junior Olympic Games held in July 2008 as a reference point.[127] The Victim also testified that she was "very sure" about the timeframe for all seven charges[128] and was able to give reasons

124 AB at pp 22–25, 27.

125 NE dated 21 November 2017 at p 50.

126 AB at pp 22–25, 27.

127 NE dated 21 November 2017 at p 32.

128 NE dated 22 November 2017 at pp 33–34.

for why she was so sure.[129] I saw no reason not to accept her testimony on the relevant timelines and accepted that based on her date of birth, she was indeed below 14 years of age at the time of the offences.

Adverse inferences

81 I found that no adverse inference was to be drawn against the Prosecution under s 116, illustration (*g*) of the Evidence Act because of the non-adducing of the Victim's psychiatric report to rule out any delusion on the part of the Victim. Similarly, no adverse inference was to be drawn from the Prosecution's non-adducing of the Victim's document containing an account of the events.

82 Section 116, illustration (*g*) of the Evidence Act reads,

> 116. The court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business, in their relation to the facts of the particular case.
>
> *Illustrations*
>
> The court may presume —
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> …
>
> (*g*) that evidence which could be and is not produced would if produced be unfavourable to the person who withholds it;
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> …

83 The court is generally slow to draw an adverse inference against the Prosecution for failing to call certain witness (see *Khua Kian Keong and another v Public Prosecutor* [2003] 4 SLR(R) 526 at [35]). As Yong Pung How

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[129] NE dated 22 November 2017 at pp 39–40.

CJ explained in *Chua Keem Long v Public Prosecutor* [1996] 1 SLR(R) 239 at [77]:

> The discretion conferred upon the Prosecution cannot be fettered by any obligation to call a particular witness. What the Prosecution has to do is to prove its case. It is not obliged to go out of its way to allow the Defence any opportunity to test its evidence. It is not obliged to act for the Defence. …

84 Thus, the court may only draw an adverse inference against the Prosecution for not calling a witness where certain conditions are met. In *Khua Kian Keong and another v Public Prosecutor* [2003] 4 SLR(R) 526, Yong Pung How CJ outlined the relevant conditions at [34] as follows:

(a) The witness not offered was a material one;

(b) The Prosecution was withholding evidence which it possessed and which was available; and

(c) This was done with an ulterior motive to hinder or hamper the Defence.

In my judgment, these conditions are equally applicable in determining if an adverse inference should be drawn against the Prosecution under s 116, illustration (*g*) of the Evidence Act for the non-adducing of documentary evidence.

85 For the reasons set out in the following paragraphs, I found that the Victim's psychiatric report and the Victim's document were not material and that the Prosecution's decision not to adduce these documents was not taken with an ulterior motive.

86 While the burden was on the Prosecution to prove its case beyond a reasonable doubt, and the Prosecution should call witnesses or adduce other evidence to make this out, an adverse inference should only be drawn against a party where some explanation is called for from that party for the omission, in the light of the materiality of the evidence. As the Court of Appeal explained in *Sudha Natrajan v The Bank of East Asia Ltd* [2017] 1 SLR 141 at [20] (in the context of a civil case), there must be some evidence, even if weak, adduced by the party seeking to draw the inference on the issue in question before the court is entitled to draw an adverse inference, *ie*, there must be a case to answer on that issue which is then strengthened by drawing the inference.

87 Here, in respect of the psychiatric disposition of the Victim, it was not actually put to the Victim by the Defence that she had made allegations against the Accused because of some delusion or other psychiatric illness. Neither was there anything in the Victim's evidence that would have attracted some suspicion that she was delusional. Given that it was not part of the Defence's case that the Victim was delusional, it would not be appropriate for an adverse inference to be drawn for the non-adducing of the Victim's psychiatric report. Furthermore, unless the subject matter underlying the drawing of the adverse inference (in this case, the Victim's state of mind) touches on an element of the charge itself, any adverse inference should be drawn only where at least the evidential burden of proving that subject matter falls on the party against whom that inference is to be drawn. In this case, the Defence did not run a case challenging the psychiatric state of the Victim and the psychiatric state of the Victim was therefore not in issue. Thus, the Prosecution did not have a burden to adduce evidence on the Victim's state of mind in order to prove beyond reasonable doubt that the Victim was not delusional. No adverse inference could be drawn from the fact that the Prosecution did not do so.

88 Similarly, no adverse inference was drawn for the Prosecution's omission to adduce the Victim's document containing an account of the sexual offences committed by the Accused. This was a document created some time after the incidents, after the Victim had confided in her relative from the US in 2014 who had advised her to record down the incidents.[130] It was not a contemporaneous document and was thus not material.

89 I should add that the non-calling of two former boyfriends of the Victim and her relative to whom she eventually confided in regarding the events was again immaterial. The inference to be drawn from the non-calling of the witnesses would presumably be that they would contradict her, or undermine her evidence in some way. But there was no indication of this – the absence of their testimony only deprived her of the additional support that she could have perhaps obtained, and even then any such additional support would have been of a low level given that they had heard what she recounted sometime after the events.

90 I should also note that the fact that the first information report or any police report may not be detailed would not necessarily be a ground for disbelief of the Victim's testimony. As the court stated in *Tan Pin Seng v Public Prosecutor* [1997] 3 SLR(R) 494 at [27], the first information report or police report is not meant to contain the entire case for the Prosecution.

Findings on guilt

91 The Statement and the psychiatric report and case notes of Dr Raja disclosed that the Accused considered himself to be in a relationship with the Victim, and that he had committed various acts outlined in the charges, namely

130 NE dated 22 November 2017 at p 26.

sexual penetration of the Victim's vagina with his finger, a vibrator, and a skipping rope handle, oral sex as well as actual sexual intercourse.

92 Taken together with the Victim's testimony, there was sufficient evidence to make out the elements of each of the seven charges, and such evidence precluded any reasonable doubt. The Accused's evidence at trial, which was a denial, could not sufficiently explain away both the Victim's evidence as well as the Accused's own Statement, and the psychiatric report and case notes of Dr Raja, and could not overcome the cumulative weight of these three sources of evidence. I rejected the Accused's defence, *ie*, that of denial of the said acts, as being against the cumulative weight of all the evidence.

93 I also accepted the Victim's testimony of the timeline of the events which was corroborated by other evidence. I found therefore that the Victim was below 14 years of age at the material time of all seven charges.

94 I did not accept however the version of facts recounted by the Accused in his Statement and to Dr Raja that appeared to portray the behaviour of the Victim as being provocative. This was in my judgment against the probabilities of the situation. There was an absence of any other evidence that suggested that there was anything of the nature of an affectionate relationship between them, as would seem to be the tenor of the Statement and version of events recounted by the Accused to Dr Raja. I accepted the evidence of the Victim that the sexual acts were committed through what was at least cajoling, if not pressure, by the Accused. In any event, consent of the Victim is irrelevant to the establishment of culpability of the Accused for the offences proceeded with.

95 The evidence that I accepted established that the Accused did commit the offences contained in the charges, namely:

(a) The 7th charge: One count of penetrating the Victim's vagina with his finger, an offence punishable under s 376A(1)(*b*) read with s 376A(3) of the Penal Code.

(b) The 11th charge: One count of penetrating the Victim's vagina with the handle of a skipping rope, an offence punishable under s 376A(1)(*b*) read with s 376A(3) of the Penal Code.

(c) The 15th charge: One count of penetrating the Victim's vagina with a vibrator, an offence punishable under s 376A(1)(*b*) read with s 376A(3) of the Penal Code.

(d) The 21st and 25th charges: Two counts of penetrating the Victim's mouth with his penis, which are offences punishable under s 376A(1)(*a*) read with s 376A(3) of the Penal Code.

(e) The 22nd and 26th charges: Two counts of statutory rape, which are offences punishable under s 375(1)(*b*) read with s 375(2) of the Penal Code.

96 I was satisfied that the charges were established beyond a reasonable doubt. For the above reasons, I convicted the Accused of the charges proceeded with at trial, namely the 7th, 11th, 15th, 21st, 22nd, 25th, and 26th charges.

The appropriate sentence

Submissions

97 The Prosecution submitted that a global sentence of at least 23 years' imprisonment was appropriate. This was based on the following breakdown of sentences for each of the charges, with the sentences for one charge of rape and

one charge of sexual penetration to run consecutively and the sentences for the rest of the charges to run concurrently:[131]

(a) 14 years' imprisonment for each charge of statutory rape comprising the 22nd and 26th charges; and

(b) 9 years' imprisonment for each charge of sexual penetration of a minor under 14 years of age comprising the 7th, 11th, 15th, 21st and 25th charges.

98 For the 22nd and 26th charges of statutory rape for which 14 years' imprisonment for each charge was said to be appropriate, the Prosecution submitted that based on the sentencing guidelines for rape set by the Court of Appeal in *Ng Kean Meng Terence v Public Prosecutor* [2017] 2 SLR 449 ("*Terence Ng*"), the present case fell within Band 2 of the sentencing bands prescribed in *Terence Ng* (at [73]) due to the presence of the following aggravating factors:[132]

(a) Abuse of position by the Accused in his capacity as the Victim's rope skipping coach;

(b) Premeditation as evidenced from the fact that the Accused took steps to sexually groom the Victim; in relation to the 7th and 11th charges, he isolated the Victim by keeping her at his studio after everyone had left; in relation to the 15th charge, he had brought a vibrator to the training session before using it on the Victim; in respect of the 21st, 22nd, 25th, and 26th charges, he ensured that he

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131 Prosecution's submissions on sentence dated 15 March 2018 ("PSS") at para 2.

132 PSS at paras 9, 10–13.

would be alone with the Victim by inviting her to his flat when no one else was home;

(c) Sexual abuse over multiple occasions over an extended period of time; and

(d) Non-use of condom by the Accused which exposed the Victim to the risk of pregnancy and sexually transmitted diseases.

99 In relation to the 7th, 11th, 15th, 21st and 25th charges involving sexual penetration, the Prosecution submitted that 9 years' imprisonment for each charge would be commensurate with the abuse of trust and level of premeditation disclosed in the relevant offences.[133]

100 The Accused chose not to mitigate or make any submissions on sentence.[134]

Appropriate sentence for the rape charges

101 In *Terence Ng*, the Court of Appeal set out a revised sentencing framework for rape offences, which was summarised at [73] of the decision as follows:

> (a) At the first step, the court should have regard to the *offence-specific* factors in deciding which band the offence in question falls under. Once the sentencing band, which defines the range of sentences which may *usually* be imposed for an offence with those features, is identified, the court has to go on to identify precisely where within that range the present offence falls in order to derive an "indicative starting point". In exceptional cases, the court may decide on an indicative starting point

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133 PSS at paras 14–22.

134 Defence counsel's email to court dated 16 March 2018; NE dated 19 March 2018 at pp 1–2.

which falls outside the prescribed range, although cogent reasons should be given for such a decision.

(b) The sentencing bands prescribe ranges of sentences which would be appropriate for contested cases and are as follows:

> (i) Band 1 comprises cases at the lower end of the spectrum of seriousness which attract sentences of ten to 13 years' imprisonment and six strokes of the cane. Such cases feature no offence-specific aggravating factors or are cases where these factors are only present to a very limited extent and therefore have a limited impact on sentence.
>
> (ii) Band 2 comprises cases of rape of a higher level of seriousness which attract sentences of 13–17 years' imprisonment and 12 strokes of the cane. Such cases would usually contain two or more offence-specific aggravating factors (such as those listed at [44] above).
>
> (iii) Band 3 comprises cases which, by reason of the number and intensity of the aggravating factors, present themselves as extremely serious cases of rape. They should attract sentences of between 17–20 years' imprisonment and 18 strokes of the cane.

(c) At the second step, the court should have regard to the aggravating and mitigating factors which are *personal to the offender* to calibrate the sentence. These are factors which relate to the offender's particular personal circumstances and, by definition, *cannot* be the same factors which have already been taken into account in determining the categorisation of the offence. …

(d) The court should clearly articulate the factors it has taken into consideration as well as the weight which it is placing on them. This applies *both* at the second step of the analysis, when the court is calibrating the sentence from the indicative starting point *and* at the end of the sentencing process, when the court adjusts the sentence on account of the totality principle. In this regard, we would add one further caveat. In a case where the offender faces two or more charges, and the court is required to order one or more sentences to run consecutively, the court can, if it thinks it necessary, further calibrate the individual sentence to ensure that the global sentence is appropriate and not excessive. When it does so, the court should explain itself so that the individual sentence imposed will not be misunderstood.

[emphasis in original]

102 As the Accused was above the age of 50, pursuant to s 325(1)(*b*) of the CPC, he could not be sentenced to caning.

103 I accepted that the operating offence-specific aggravating factors in the present case were abuse of position, premeditation, rape of a vulnerable victim, and non-use of condom and brought the case within Band 2 of the sentencing framework.

104 There was abuse of position. The Accused in this case became acquainted with the Victim when she was in Primary 5, when he was the coach of the rope skipping team at her primary school, which she was a member of.[135] He continued to coach her when she was recruited into his private rope skipping team.[136] In the light of the nature of the relationship between the Accused and the Victim, the Accused having been a coach of the Victim, there was abuse of position. As a coach of the Victim, he was a teacher and mentor of the Victim whom the Victim looked to to improve her skills in rope skipping, a sport which she was very passionate about. The Accused had instead exploited his position of responsibility towards the Victim in carrying out the heinous act of statutory rape of the Victim.

105 The Victim, being a student of the Accused and below the age of 14 at the relevant time of the rape offences, was a vulnerable victim whom the Accused had preyed on and this was clearly another aggravating factor.

106 There was also premeditation on the part of the Accused. Predatory behaviour such as the grooming of a child or young person is an example of

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135 NE dated 21 November 2017 at p 24; NE dated 1 December 2017 at pp 2, 23.

136 NE dated 21 November 2017 at p 25; NE dated 1 December 2017 at pp 5–9, 23.

premeditation, as recognised by the Court of Appeal in *Terence Ng* (at [44(c)]). In this case, the offences were premeditated by the Accused as he had, amongst others, sexually groomed the Victim by taking nude photos of her and then escalated his acts to sexual penetration with objects, and then rape of the Victim.

107 I was also of the view that the fact that the Accused did not use a condom, thus exposing the Victim to the risk of pregnancy and sexually transmitted diseases, was also an aggravating factor.

108 The only offender-specific mitigating factors operating here were the advanced age of the Accused and the absence of any prior antecedents. The mitigating value of these factors was low. In relation to the absence of prior antecedents, it is well established that little mitigating weight can be given to the offender's previous good behaviour or lack of antecedents where serious offences are concerned (see *Public Prosecutor v UI* [2008] 4 SLR(R) 500 ("*UI*") at [69]). The advanced age of the Accused was also of little mitigating value as explained in a separate section below.

109 Having taken into account the offence-specific and offender-specific mitigating and aggravating factors, I was satisfied that a sentence of 14 years' imprisonment was appropriate for the 22nd and 26th charges which were the charges of rape under s 375(1)(*b*) read with s 375(2) of the Penal Code.

Appropriate sentence for the sexual penetration charges

110 In *Public Prosecutor v BAB* [2017] 1 SLR 292 ("*BAB*"), the Court of Appeal set out the following sentencing starting points for a s 376A offence of sexual penetration of a minor under 16 as follows (at [65]):

(a) For offences punishable under s 376A(2), where there is an element of abuse of trust, the starting point will be a term of imprisonment of three years.

(b) For offences punishable under s 376A(3) (*ie*, where the victim was below the age of 14), where there is an element of abuse of trust, the starting point will be a term of imprisonment of between ten and 12 years. It should also be borne in mind that s 376A(3), unlike s 376A(2) provides for caning as well.

111 In *Pram Nair v Public Prosecutor* [2017] 2 SLR 1015 ("*Pram Nair*"), the Court of Appeal set out the following sentencing bands for digital penetration, an offence punishable under s 376 of the Penal Code as follows (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;
>
> (c) Band 3: 15 to 20 years' imprisonment and 12 strokes of the cane.

112 The Court of Appeal explained further at [160] of *Pram Nair* that in formulating these sentencing bands, it had been conscious that where the offence of sexual penetration discloses any of the two statutory aggravating factors in s 376(4) of the Penal Code, there is a prescribed minimum sentence of eight years' imprisonment and 12 strokes of the cane, and that these cases should fall within Band 2.

113 The Court of Appeal in *Pram Nair* also considered that the sentencing bands it had prescribed for s 376 may have an impact on the appropriate

sentencing bands for s 376A offences. In particular, the Court of Appeal stated (at [161]–[164]):

> 161 We have also been conscious of the possible relevance of these proposed bands to s 376A of the Penal Code, which criminalises the sexual penetration of a minor under the age of 16, regardless of whether the minor consented. …
>
> 162 Sections 376 and 376A of the Penal Code have a lot in common and overlap in scope in some situations. The two main differences are that the latter section deals with sexual penetration offences against minors under 16 years of age, for which the consent of the minor is irrelevant. …
>
> 163 In the light of what we have set out at [159], the starting point of three years' imprisonment for a s 376A(2) offence in *BAB* may now look rather lenient when compared to the seven to ten years' imprisonment range in Band 1 for a s 376 offence. However, it must be remembered that s 376A(2) prescribes a maximum sentencing range of ten years or fine or both (with no caning) whereas s 376(3), the applicable provision in this appeal, provides for a maximum punishment of 20 years' imprisonment and a liability to fine or to caning. Bearing that in mind, the question of whether the starting point of [three] years' imprisonment for s 376A(2) cases proposed in *BAB* should be tweaked, and if so how, will have to be addressed on another occasion.
>
> 164 On the other hand, it is clear that the starting point of between ten and 12 years' imprisonment for s 376A(3) offences (involving victims below 14 years in age) may need to be reviewed in the light of what we have said at [159] and [160] above because this subsection has the same sentencing range as s 376(3), that is, a maximum imprisonment term of 20 years and liability to fine or to caning. In a future case involving digital penetration of the vagina which falls within s 376A(3), the court will have to decide on the appropriate sentence after considering what we have set out at [159] and [160] above. In addition, we must also note one other difference: unlike s 376(4)(*b*), there is no minimum imprisonment term and no mandatory caning in s 376A(3).

114 Thus, the Court of Appeal in *Pram Nair* noted that while the starting point of three years' imprisonment for a s 376A(2) offence as stated in *BAB* appeared lenient when compared to the seven to ten years' imprisonment range that it had set for Band 1 of a s 376 offence, it had to be borne in mind that

s 376A(2) prescribes a maximum sentencing range of ten years or fine or both (with no caning) while s 376(3) provides for a maximum punishment of 20 years' imprisonment and a liability to fine or to caning. In other words, the prescribed statutory sentencing ranges for s 376(3) and s 376A(2) were different. Therefore, there may not necessarily be a need to reconsider the starting points proposed in *BAB* for a s 376A(2) offence in the light of the sentencing ranges prescribed for s 376.

115 In comparison, in respect of s 376A(3), which is the applicable provision in the present case, the same sentencing range applies as under s 376(3), that is, a maximum imprisonment term of 20 years and liability to fine or to caning. Therefore, according to the Court of Appeal in *Pram Nair*, it was clear that the starting point set out in *BAB* of between ten and 12 years' imprisonment for a s 376A(3) offence may need to be reviewed in the light of the sentencing bands that it had prescribed for a s 376 offence (as reproduced at [111] above).

116 I thus read *Pram Nair* as not requiring a more lenient treatment *per se* under s 376A(3) as compared to s 376, and if anything indicating that a similar approach with regard to the sentencing bands, with some modification, would apply to offences under s 376A(3) as that under s 376. The sentencing bands for s 376A(3) though would need to take into account that unlike in s 376(4)(*b*), there is no minimum imprisonment term and no mandatory caning in s 376A(3). In this regard, the sentencing bands for s 376A(3) may vary slightly from the sentencing bands for s 376.

117 Thus, based on the sentencing bands prescribed in *Pram Nair* for an offence under s 376, including seven to ten years' imprisonment and four strokes of the cane for Band 1 (see above at [111]), the starting point of the sentence for a s 376A(3) offence should no longer be ten to 12 years as

prescribed in *BAB* and should instead be shorter than that. Due to the need for the sentencing bands for s 376A(3) to vary slightly from the sentencing bands for s 376 for the reason stated above at [116], I was satisfied that Band 2 for a s 376A(3) offence may start at lower than ten years, and may indeed be as low as eight or nine years.

118 The Prosecution submitted that an imprisonment term of nine years would be appropriate in respect of each of the s 376A(3) charges. I was of the view however that given the presence of the aggravating factors explained above, including the abuse of position, premeditation and vulnerability of the Victim which applied to the sexual penetration charges as well, the present case fell closer to the middle of Band 2.

119 Taking into account all the circumstances of the case, including both the offence-specific and offender-specific aggravating and mitigating factors, I was of the view that the appropriate sentence for each of the sexual penetration charges under s 376A(3) of the Penal Code was 11 years' imprisonment.

Age of the Accused

120 In determining that the appropriate sentences for each of the sexual penetration charges and rape charges were 11 years' and 14 years' imprisonment respectively, I had considered the advanced age of the Accused.

121 In *UI*, the Court of Appeal stated (at [78]) in relation to the relevance of the advanced age of the accused person in sentencing that:

> … [I]n general, the mature age of the offender does not warrant a moderation of the punishment to be meted out (see *Krishan Chand v PP* [1995] 1 SLR(R) 737 at [8]). But, where the sentence is a long term of imprisonment, the offender's age is a relevant factor as, unless the Legislature has prescribed a life sentence for the offence, the court should not impose a sentence that

> effectively amounts to a life sentence. Such a sentence would be regarded as crushing and would breach the totality principle of sentencing. …

122 In my judgment, while a court should generally avoid imposing a sentence that effectively operates as a life sentence, this is not to my mind an absolute rule, and must be measured against the criminal conduct of the accused in the case in question, and the presence or absence of other aggravating and mitigating factors. Where the offences committed are heinous, as they are here, it may be that a long sentence would need to be imposed even on a relatively older accused person, and that in the Accused's circumstances, it may possibly operate to leave him in prison for the remainder of his expected life (though taking into account remission for good behaviour this may not necessarily be the case). The sentencing principles of deterrence and retribution have to be given precedence in such cases.

123 I did not understand *UI* as precluding me from coming to this conclusion or as standing for the position that a departure from sentencing precedents and benchmarks is always warranted where the accused person is of an advanced age, in order to guarantee that the sentence will not leave the accused person in prison for the remainder of his or her life. The advanced age of the accused person does not automatically preclude the imposition of a long sentence which may leave the accused person in prison for the remainder of his or her life. Rather, this is only one relevant factor that has to be considered against all the circumstances of the case, including the operating sentencing principles and precedents, as well as the mitigating and aggravating factors in the case.

Running of sentences

124 As for the running of the sentences, I accepted that it was sufficient for one charge of statutory rape and one charge of sexual penetration to run

consecutively, taking into account the principles of proportionality and totality.

125 Therefore, the sentences imposed were:

(a) 22nd and 26th charges: 14 years' imprisonment each

(b) 7th, 11th, 15th, 21st and 25th charges: 11 years' imprisonment each

126 The sentences in the 22nd and 11th charges were to run consecutively, with the rest running concurrently, giving a global sentence of 25 years' imprisonment.

Conclusion

127 In conclusion, I convicted the Accused of the charges proceeded with at trial, namely the 7th, 11th, 15th, 21st, 22nd, 25th and 26th charges, as I was satisfied that the charges had been proven beyond a reasonable doubt. Based on the applicable sentencing principles, I sentenced the Accused to a global imprisonment term of 25 years' imprisonment.

Aedit Abdullah
Judge

Winston Man & Nicholas Lai
(Attorney-General's Chambers) for the Prosecution;
Peter Keith Fernando (Leo Fernando)
for the Accused.