# Public Prosecutor *v* Lee Chee Soon Peter
# [2010] SGHC 311

| | |
|---|---|
| **Case Number** | : Criminal Case No 12 of 2010 |
| **Decision Date** | : 25 October 2010 |
| **Tribunal/Court** | : High Court |
| **Coram** | : Kan Ting Chiu J |
| **Counsel Name(s)** | : Shahla Iqbal, Isaac Tan, Cassandra Cheong and Christine Liu (Attorney-General's Chambers) for the Prosecution; Wee Pan Lee (Wee Tay & Lim LLP) for the accused. |
| **Parties** | : Public Prosecutor — Lee Chee Soon Peter |

*Criminal Law*

25 October 2010

**Kan Ting Chiu J:**

1 The accused person ("the Accused"), faced six charges when he came before me, but only the first five charges are relevant to the matters before me. The first charge was for an offence of carnal intercourse against the order of nature with a boy ("the Boy") then below the age of five by performing fellatio on him ("the Offence"). The second to fifth charges pertained to offences of outrage of modesty against two girls ("Girl 1" and "Girl 2") who were below 6 years old.

2 The five charges read:

> That you, Peter Lee Chee Soon,
>
> 1st charge
>
> on a day sometime between the year 2005 and March 2006, at Block 131 Yishun Street 11 #06-235, Singapore, did have carnal intercourse against the order of nature with [the Boy], a male person then below the age of 5 years old, to wit, by performing an act of fellatio to [the Boy], and you have thereby committed an offence punishable under section 377 of the Penal Code, Chapter 224, 1985 Rev Ed.
>
> 2nd charge
>
> on a day sometime between the year 1994 and 1995, at Block 92 Henderson Road #13-188, Singapore, did use criminal force on one [Girl 1], a female person then below the age of 6 years old, intending to outrage the modesty of the said [Girl 1] by placing your penis at her vulva, and you have thereby committed an offence punishable under section 354 of the Penal Code, Chapter 224, 1985 Rev Ed.
>
> 3rd charge
>
> on a day sometime between the year 1997 and 1998, at Block 131 Yishun Street 11 #06-235, Singapore, did use criminal force on [Girl 2], a female person then between the age of 5 to 6

years old, intending to outrage the modesty of [Girl 2] by placing your penis against her vulva, and you have thereby committed an offence punishable under section 354 of the Penal Code, Chapter 224, 1985 Rev Ed.

4th charge

sometime between the year 1997 and 1998, on a second occasion, at Block 131 Yishun Street 11 #06-235, Singapore, did use criminal force on [Girl 2], a female person then between the age of 5 to 6 years old, intending to outrage the modesty of [Girl 2] by placing your penis against her vulva, and you have thereby committed an offence punishable under section 354 of the Penal Code, Chapter 224, 1985 Rev Ed.

5th charge

sometime between the year 1997 and 1998, on a third occasion, at Block 131 Yishun Street 11 #06-235, Singapore, did use criminal force on [Girl 2], a female person then between the age of 5 to 6 years old, intending to outrage the modesty of [Girl 2] by placing your penis against her vulva, and you have thereby committed an offence punishable under section 354 of the Penal Code, Chapter 224, 1985 Rev Ed.

**Application for joint trial**

3 On the first day of trial, the Prosecution applied for a joinder of the five charges under s 169 of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) ("CPC") which provides that:

**Joinder of similar offences**.

**169**. When a person is accused of more offences than one he may be charged with and tried at one trial for any number of those offences if they form or are a part of a series of offences of the same or a similar character.

4 The Prosecution contended that all the five charges should be jointly tried as the charges were of similar character and the Accused would not be prejudiced or embarrassed in his defence. The Prosecution also argued that joinder of the charges would promote the fair administration of justice since the whole series of events could be seen and examined together, and save time and expense as the same witnesses would be testifying in relation to the five charges against the Accused. In particular, the Prosecution was of the view that this was an appropriate case for the introduction of similar fact evidence.

5 Mr Wee counsel for the Accused opposed the application. He countered that the requirement for joinder of offences under s 169 of the CPC was not that the charges were similar, but that the offences formed or were a part of a *series* of offences of the same or similar character. He contended that the alleged similarities of the acts underpinning the charges did not by themselves make the offences the Accused has been charged with a "series" of offences of the same or similar character; in order to form such a series of offences, there must be some commonality in place, time, victim and *modus operandi*.

6 I did not agree with the Prosecution that the five charges for two offences at two locations, covering a period of almost 12 years, and involving three different persons can be properly considered as a series of offences of a similar character.

7 Furthermore, I was concerned over the period between the earliest offence allegedly committed against Girl 1 in 1994 and the Offence allegedly committed against the Boy around 2005 to 2006, the vague descriptions of the times of the offences, as well as the long period between the alleged commission of the offences and the bringing of the charge. The Accused would have had difficulty in preparing and presenting his defence to any of those charges, let alone all five charges at the same time.

8 I found that a joint trial of the five charges would cause prejudice to the Accused and ruled that there should be no joinder of the charges involving all three complainants, but there could be joinder of the third to fifth charges if the Prosecution opted to proceed on the charges involving Girl 2. However, the Prosecution elected to proceed with the first charge which related to the Boy.

**Amendment to the charge**

9 Mr Wee raised objection to that charge. He submitted that it did not conform to s 159 of the CPC, which requires that:

> **159**. – (1) The charge shall contain such particulars as to the time ... of the alleged offence ... as are reasonably sufficient to give the accused notice of the matter with which he is charged.

He argued that the length of the period "between year 2005 and March 2006" coupled with the lack of details such as the day of the week, or whether it was on a weekday or weekend and the time of the day of the commission of the offence prejudiced the Accused because it made it extremely difficult for him to prepare his defence to the charge.

10 The Prosecution's response was that the first charge contained particulars reasonably sufficient to give the Accused notice of the matter with which he has been charged, highlighting that similar time-periods have been accepted in other cases. Mr Wee stated that the statements of the Boy's parents disclosed that the Boy complained to his father in late 2005 and to his mother in early 2006. The Prosecution took time to confirm that with the father, and amended the charge to:

> That you, Peter Lee Chee Soon,
>
> on *a day sometime in late 2005*, at Block 131 Yishun Street 11 #06-235, Singapore, did have carnal intercourse against the order of nature with [the Boy], a male person then below the age of 5 years old, to wit, by performing an act of fellatio to [the Boy], and you have thereby committed an offence punishable under section 377 of the Penal Code, Chapter 224, 1985 Rev Ed.
>
> [Emphasis added]

11 The Prosecution was right to amend the charge. If there was information it believed in which narrowed the time period, it was wrong for the Prosecution to frame a charge that covered a longer period.

***Difficulties with the charge***

12 The Prosecution must have been aware of the difficulties in proving the offence –

(a) at the time of the trial the Boy was eight years old, about to turn nine and at the time of the alleged offence, he was four years old. Yong Pung How CJ has stated in *Lee Kwang Peng v*

*Public Prosecutor and another appeal* [1997] 2 SLR(R) 569 ("*Lee Kwang Peng*") at [62] that –

> [I]t is a well-established rule of practice in our law that where evidence is given by a child witness, that evidence is *not to be accepted at face value without some measure of corroboration*.
>
> [Emphasis added]

because, as Thomson CJ explained in *Chao Chong v Public Prosecutor* [1960] MLJ 238:

> It is a matter of common knowledge that children at times find it difficult to distinguish between reality and fantasy. They find it difficult after a lapse of time to distinguish between the results of observation and the results of imagination.

Yong CJ went on to state in [67] that:

> [T]here is no special rule requiring a trial judge to direct himself as to the dangers of convicting without corroboration where the only evidence is that of a child witness, although he or she must remain sensitive to the *requirement of corroborative evidence* or alternatively consider that corroboration is not required because of the *maturity* and *reliability* of the witness.
>
> [Emphasis added]

(b) in the present case, the Boy was also giving evidence of matters four years previously, entirely by memory. When a witness gives evidence of long-past events without the assistance of records, his or her powers of recall would be a matter of concern, even if the witness was an adult and not a young child. An insight into the Boy's power of recall was given right at the commencement of his evidence, when he had difficulty in stating his current address.

(c) there was no scientific evidence, *eg* medical examination, DNA analysis, crime scene investigation and no meaningful corroborative evidence. The Court of Appeal had stated that in cases involving sexual offences where the evidence is uncorroborated,

> [I]t is dangerous to convict on the words of the complainant alone unless her evidence is *unusually compelling*. ...
>
> [Emphasis added]

*Tang Kin Seng v PP* [1996] 3 SLR(R) 444 at [43], and that really is well-settled law, and

(d) the Accused had not made any admissions or confessions throughout the police investigations and had maintained his innocence.

**Evidence adduced in court in relation to the Offence**

***Background facts***

13 The Boy and Girl 2 are siblings, and they have a brother ("Brother"). Girl 1 is their aunt. The Boy, Girl 2 and the Brother lived with their father ("Father") and their mother ("Mother").

14 Girl 1 is the aunt of the Boy and Girl 2, although Girl 1 is only about two years older than Girl 2,

and the Accused would babysit Girl 1. The Accused was a close friend of their families and had brought the three of them to his house to look after them at times when their parents were unable to do so.

***The events leading to the police reports***

15 In July 2007, Girl 1 gave birth to a daughter. On 18 August 2007, there was a full-month party at Girl 1's home ("the baby party"). The Accused was at the party with his wife. There was a suggestion that he and his wife could look after the baby when Girl 1 returned to work. Girl 1 and Girl 2 were against the idea. Girl 2 expressed misgivings to her Mother about letting the Accused and his wife look after the baby but she did not elaborate. On a day sometime after the baby party when the Mother was at Sun Plaza with her three children, Girl 2 told the Mother not to let the Accused and his wife take care of the baby, because she had been sexually assaulted by the Accused when she was in kindergarten. Girl 2 and Girl 1's families met to discuss what to do with the revelation. At the meeting, Girl 1 revealed to her Mother that she had also been similarly assaulted by the Accused. After some deliberations a decision was made to report the assaults to the police. On 2 September 2007, Girl 1 and Girl 2 made police reports at Changi Neighbourhood Police Centre. The following day, the Boy's Mother lodged a police report at Sembawang Neighbourhood Police Centre stating that the Boy had been molested by the Accused.

***Descriptions of the Offence***

16 The Boy's evidence in court was that the assault took place on the bed in the Accused's room. While he was playing with a toy camera on the bed, his pants and underwear were removed, but he could not remember who removed them. After that, he said the Accused bit his penis, and also that the Accused suck his penis.

17 One troubling aspect of the Prosecution's case was the lack of consistency in the witnesses' descriptions of the Offence. The difficulties start with the time the alleged offence occurred. According to the Father, the Boy first complained of the Offence in *late 2005*. It happened while he was undressing the Boy in preparation for his bath. The Boy told him that the Accused "bite his below" and pointed to his penis. [note: 1] The Boy told him that it was painful and looked like he was about to cry.

18 The Boy's Mother learnt of the incident later. She testified that on one afternoon in *early 2006*, while she was getting the Boy ready to bring him to the Accused's house, he cried and told her and his father that the Accused bit his penis. [note: 2]

19 The Boy's evidence was that he did not tell his parents of the incident in late 2005 or in early 2006 in his house, as his parents recalled. He said that he did that one Sunday at Girl 1's house during the baby party. (The party actually took place on Saturday 18 August 2007.) Mr Wee went through this in cross-examination: [note: 3]

> Q [O]n the Sunday when you told your mummy that [the Accused] bit your cuckoo bird, it was in Simei and it was in [Girl 1's mother's] house, is that correct?
>
> A Yes.
>
> Q Now, ... do you remember that day, that Sunday, your small aunt, [Girl 1], had a baby?
>
> A Yes.

Q That day, your family had gone to [that] house to celebrate one month of the baby's birth, do you remember that?

A Yes.

...

Q ... Now ... think carefully. On the Sunday when you told your mummy about [the Accused] biting your cuckoo bird, *was that the first time you have told anybody about it*?

A Yes.

Q [B]efore that Sunday, you didn't tell your daddy, did you?

A No.

[Emphasis added]

20 In the course of the investigations, the Boy was seen by a child psychiatrist. On 27 September 2007, Dr Cai Yiming ("Dr Cai"), Senior Consultant Psychiatrist of the Child Guidance Clinic, Institute of Mental Health, interviewed the Boy and his Father separately. Dr Cai kept notes and prepared reports of the interviews, as was his practice. In his notes of the Father's interview, Dr Cai recorded that the Boy had told the Father that the Accused had "licked his penis about a year ago". [note: 4] (By this account, the Boy would have complained to his Father in about September 2006 and not in late 2005.)

21 In his notes, Dr Cai also recorded that the Boy told him that the Accused had used his "mouth to put over his penis, 'open + close' many times". [note: 5] Dr Cai repeated his report dated 28 September 2007 where he wrote that the "accused used his mouth to put over the Boy's penis and then "'opened and closed' the mouth many times." [note: 6] Dr Cai confirmed under examination in court that the description "open and close" were the exact words used by the Boy at the interview. [note: 7]

***When the Offence took place***

22 According to the Father, in late 2005 the Boy complained to him about the Accused's biting his penis on the day it happened. In 2005, the Boy was in nursery, and he was in kindergarten in the years 2006 to 2007.

23 However, the Boy stated several times in his oral testimony that the Offence had taken place when he was in *kindergarten*. On cross-examination, he gave the following evidence: [note: 8]

Q ... Now ... I want you to think back all those things you described to [the Deputy Public Prosecutor], just now ... were you in nursery, K1, K2 or Primary 1, 2 or 3, which year --- that means what school and what level were you studying when you were describing that incident?

A It should be in K2 when I was 6 years old.

...

Q How many times ... can you remember your mummy bringing you to Uncle Peter's house?

A Six times.

...

Q Now ... remember the six times you just mentioned, were they when you were in primary school or in kindergarten?

A Kindergarten.

Q You are very, very sure of that, are you ...?

A Yes.

Indeed, the Boy confirmed on the following day of his evidence that all six occasions were when he was attending kindergarten, not nursery. [note: 9]

***The Boy's complaints to his parents***

24 The Boy's evidence was that he told his Mother of the Offence during the baby party on 18 August 2007. His Father's evidence was that he first told him in 2005, and his Mother heard that for the first time in 2006. (Neither the Prosecution nor the Defence put the parents' versions to the Boy or sought clarification from him.)

25 The Father's evidence was that although he had heard the complaints by the Boy in late 2005 and again in early 2006, he dismissed it out of hand and promptly forgot about it as the possibility of sexual assault did not "come to [his] mind". [note: 10] That was difficult to understand. The Boy had complained that the Accused had bit his penis and caused such pain that the Boy was near tears when he recounted that. He was a Station Inspector with the police force performing "front line duties". His failure to question the Boy or the Accused, or confer with his wife in the face of the worrisome complaint raised questions in my mind.

26 The Mother said that she was shocked when she heard the Boy complain about the Accused's biting his penis but as she was in a hurry at that time, she did not pursue the matter. She and her husband thought that the Accused and the Boy might have been playing with each other. [note: 11] She subsequently "totally forgot about this matter" [note: 12] until 2 September 2007, when she was at Bedok Police Station with Girl 2. There, she "suddenly recalled" that the Boy had told her that the Accused bit his penis and she told the attending officer about the Offence, [note: 13] and it was recorded that she complained that the Accused had performed fellatio on the Boy. [note: 14]

27 While the Mother maintained in court she had forgotten all about the Boy's shocking revelation until she recalled it on 2 September 2007, Girl 1 and Girl 2 testified that she had mentioned the Offence to them not long before 2 September 2007. Girl 2 stated that one to two weeks after the baby party of 18 August 2007, she told her Mother while they were at Sun Plaza that she had been sexually assaulted by the Accused, and her Mother told her that the Accused had bitten the Boy's penis. [note: 15] Girl 1's evidence was that in one of the family meetings between her family and

Girl 2's family after the baby party, but before any police report was made, the Mother mentioned that the Boy had been touched by the Accused. [note: 16]

28 How did the Mother forget about the complaint? Why was the Father so indifferent over the serous complaint? There may be an explanation, and it is that they had reservations about the Boy's complaint when they heard it. That may in turn be the reason why the Prosecution did not use their evidence to set the time of the Offence in the original charge.

29 The testimonies of the prosecution witnesses raised real doubts. I noted that the Boy's descriptions of the Offence varied over time. The first accounts of the Offence to his parents were that the Accused bit his penis. Indeed, that was how he described it in court at the initial stages of his testimony. However, when describing the Offence to Dr Cai in September 2007, he said that the Accused had put his mouth over his penis and "opened and closed". Dr Cai also recorded the Father as telling him then that the Accused had *licked* the Boy's penis. (The Father denied using that word to Dr Cai, but I accepted that Dr Cai had recorded that accurately.) Subsequently, the Boy testified in court that the Accused had *sucked* his penis like a straw and that the Accused's head had moved up and down. Up to that time, the Boy had not told anyone that his penis had been *sucked*, or that the Accused's head had moved up and down. All these inconsistencies in the various witnesses' description of the Offence created an uncertainty on the alleged act. Did the Accused lick, bite, or suck the penis?

30 Problems with the Boy's evidence were not confined to his descriptions of the act. His evidence of his complaint was also troubling. While he was certain that the first time he had told anybody about the Offence was on 18 August 2007 at the baby party, his parents contradicted him, and they had no reason to do that. The first complaint to his Father should have stood out because it was made on the day of the alleged Offence, and the second complaint was significant because according to his Mother he refused to go to the Accused's house alone any more after that. As he had forgotten both these two events, his powers of recollection must be treated with caution.

**Similar fact evidence**

31 The Prosecution applied for the admission of Girl 1 and Girl 2's evidence as:

> The prosecution contends that the *striking similarities in the facts surrounding each victim's case* are not only relevant by virtue of section 11(b) of the Evidence Act ("the Act") but of sufficient probative value to outweigh any prejudicial effect against the accused. [note: 17]
>
> [Emphasis added]

32 There is no specific provision which refers to similar fact evidence in the Evidence Act (Cap 97, 1997 Rev Ed). However, there are provisions, *eg* ss 11, 14, 15 which allowed for the admission of similar fact evidence in proper cases. The law on the admissibility of similar fact evidence was comprehensively discussed by the Court of Appeal in *Tan Meng Jee v PP* [1996] 2 SLR(R) 178 ("*Tan Meng Jee*"). In *Tan Meng Jee*, the Court of Appeal referred to *Director of Public Prosecutions v Boardman* [1975] AC 421 ("*Boardman*") where the House of Lords ruled that evidence of criminal acts on the part of an accused other than those with which he was charged became admissible because of their striking similarity to other acts being investigated and because of their resulting probative force. *Boardman* was understood and applied for a period as authority for the proposition that evidence must have a striking similarity to the facts in issue to be regarded as similar fact evidence.

33 That position was subsequently refined by the House of Lords in *R v P* [1991] 3 All ER 337,

where Lord Mackay of Clashfern LC noted at 346 that:

> From all that was said by the House in *Boardman v DPP* I would deduce the essential feature of evidence which is to be admitted is that its probative force in support of the allegation that an accused person committed a crime is sufficiently great to make it just to admit the evidence, notwithstanding that it is prejudicial to the accused in tending to show that he was guilty of another crime. Such probative force may be derived from striking similarities in the evidence about the manner in which the crime was committed and the authorities provide illustrations of that, ... But restricting the circumstances in which there is sufficient probative force to overcome prejudice of evidence relating to another crime to cases in which there is some striking similarity between them is to restrict the operation of the principle in a way which gives too much effect to a particular manner of stating it, and is not justified in principle.
>
> Once the principle is recognised, that what has to be assessed is the probative force of the evidence in question, the infinite variety of circumstances in which the question arises demonstrates that there is no single manner in which this can be achieved. Whether the evidence has sufficient probative value to outweigh its prejudicial effect must in each case be a question of degree.

and this was cited with approval in *Tan Meng Jee*.

34 Hence evidence may be regarded as similar fact evidence where its probative value outweighs its prejudicial effect. The striking similarity of the evidence can do that, but it is not an essential requirement. Nevertheless, the Prosecution's position was that the probative value of the evidence of Girl 1 and Girl 2 outweighed their prejudicial effect because of the striking similarities of the Accused's alleged acts against them and the alleged act against the Boy, and not for other reasons.

35 The striking similarities the Prosecution relied on were:

(a) the Accused had engaged in acts of a sexual nature with each of them, *ie* fellatio on the Boy and rubbing his penis against Girl 1's and Girl 2's vulvae;

(b) the three victims were children of the Accused's close friends and were entrusted to the care of the Accused when he assaulted them;

(c) they were young children between four and six years of age; and

(d) the Accused had assaulted each of them on a bed in his bedroom.

36 Mr Wee contended that the girls' evidence should not be admitted as the purported similarities were not striking enough to imbue the evidence with sufficient probative value to outweigh the prejudicial effect it had on the Accused. Mr Wee also submitted that there was collusion between Girl 1 and Girl 2 to create the appearance that there was similar fact evidence against the Accused.

37 After hearing the submissions of both parties, I allowed the Prosecution's application. I made my decision with two considerations in mind. First, I had not heard the evidence of Girl 1 and Girl 2, and did not have a full picture of the similarities that the Prosecution was referring to. Second, after similar fact evidence is admitted, the weight and effect of the evidence has to be determined after all the facts have been put forward and weighed.

***Girl 1 and Girl 2's evidence***

38 Their evidence bore other similarities to the Boy's evidence. First, they related to long past events, 1994/5 in the case of Girl 1, and 1997/8 for Girl 2. Second, the complaints were not reported to the police for years. Third, their evidence was not corroborated by medical evidence or admissions. Finally, they were vigorously denied by the Accused.

39 Girl 1's evidence was that one day at the time when she was attending nursery or first year of kindergarten, in 1994 – 1995, the Accused brought her to his bedroom in his flat. He made her lie down on the bed and proceeded to remove her shorts and T-shirt. He was only clad in a towel wrapped around his waist. [note: 18] She said that her upper torso was on the bed with her legs dangling over the bed. The Accused then placed himself between her legs and placed his penis on the outside of her vagina. [note: 19] She clarified on cross-examination that the Accused was standing while holding his penis and placing it outside her vagina, not kneeling or squatting. [note: 20] (When the Prosecution arranged for an re-enactment of the action Girl 1 described, the assailant had to place his lower limbs sideways and end up in an awkward and unnatural position for his groin to be near the victim's groin.) Girl 1 stated that she did not tell anyone of the assault until the baby party because she was afraid that her father would beat the Accused and end up in jail for that.

40 Girl 2's evidence was that when she was five to six years old (in 1997 and 1998), the Accused often looked after her and the Boy in his flat. On three of those occasions, while the Boy was in the living room of the flat, the Accused led her to his bedroom and undressed her completely. [note: 21] He told her to lie on the bed while he went to the bathroom and came out with only a towel wrapped around his waist. [note: 22] The Accused then used a cushion to cover her eyes while he knelt before her with her legs resting on his upper thighs. [note: 23] He then rubbed his penis against her vagina. [note: 24] This same sequence of events happened without variation all three times. [note: 25] She stated that she did not inform anyone at that time because she was afraid that the friendship between her parents and the Accused would be damaged if she did that. [note: 26]

41 By their descriptions, the alleged assaults on Girl 1 and Girl 2 were committed differently. Girl 1 had her legs dangling from the end of the bed, but Girl 2 had her whole body on the bed when they were assaulted. In the case of Girl 1, the Accused assaulted her in her full view, but he covered Girl 2's eyes before he assaulted her.

42 Doubts arose over Girl 1's evidence when the re-enactment showed that the Accused had to put himself into an awkward position to fit her account of the events. As for Girl 2, she was equivocal about the number of occasions that the Accused allegedly assaulted her, and when he did that. For instance, in her police report dated 2 September 2007 [note: 27], she stated that she was molested by the Accused "several times". In examination-in-chief, she stated that she could not recall the exact number of times, but there were at least three such occasions, [note: 28] and the time period between the first and last of those three times was two months. [note: 29] In cross-examination, she confirmed that she had told the investigation officer that the Accused had sexually assaulted her on six to seven occasions between January 1997 and June 1998. [note: 30]

43 I had doubts over the girls' reasons for not reporting the molest to their parents when the assaults occurred. The Accused did not plead with them or threaten them to keep silent. I found it unlikely that the two girls, four to five years old, had the maturity to decide to remain silent, in the case of Girl 1, lest her father would beat up the accused and be imprisoned, and in the case of Girl 2, to preserve the friendship between her parents and the Accused.

44 After hearing the girls' evidence, it was apparent that there were differences in their accounts, and difficulties with the reason for remaining silent for years.

45 What was more significant was that one would be hard pressed to say that the alleged acts against the girls were similar, not to say strikingly similar, to the act the Boy alleged. The very nature of the acts alleged, rubbing the penis against the girls' vagina, and performing fellatio on the Boy were fundamentally dissimilar acts.

46 After reviewing the evidence, I found that it was weak evidence. It was low in similarity and wanting in credibility. The evidence did not establish that the Accused had a history of performing fellatio.

47 Was there sufficient similarity? We do well to refer to *Boardman* and *Lee Kwang Peng*, where similar fact evidence was admitted. In *Boardman*, the similar fact evidence was that the accused, the headmaster of a boarding school had made sexual advances to his pupils, including asking them to perform buggery on him. The charges against him were for buggery and incitement of buggery. In *Lee Kwang Peng*, the similar fact evidence was that the accused, a taekwondo instructor, fondled the genitalia of his pupils. The charge against him was for fondling the genitalia of his pupils. The evidence in this case clearly did not have the striking similarity as the evidence in *Boardman* and *Lee Kwang Peng*.

**The defence**

48 The defence was simply that the Offence never happened. At the time of the alleged offence, the Accused was married, and had a young son. He also had his mother who was staying with him. He was working as a taxi driver. He drove his taxi on Mondays to Saturdays and he usually left his home after 3pm and drove from 4pm to 4am the next morning.

49 He agreed that he had looked after the Boy at his rented premises on occasions but they were never alone because his mother, wife and son and his landlady and her son would be at home.

50 He recounted that he had been in bodily contact with the Boy while they played together pretending to be Power Rangers characters, in the course of which he would pursue, catch the Boy and wrestle with him, but he denied that he undressed him or committed fellatio on him. (The Power Ranger play-acting was put to the Boy when he gave evidence. He confirmed that they had played, agreed that he was not molested while playing, but he maintained that the offence had taken place on a different occasion when they were not playing the game).

51 That lack of connection between the Prosecution case and the defence underscored a fundamental difficulty with this case, which was the lack of particularity in the time of the alleged offence. As I have already noted, the Prosecution had initially a long time-period which was longer than the evidence of the Boy and his parents, and the amendment of the period to "late 2005" barely satisfied the requirements of s 159 of the CPC. This is compounded by deficiencies in the content and quality of the evidence of the Boy and the Father. At the close of the case, I had to make my decision on the evidence presented, and I found that the doubts that were present when the Prosecution closed its case remained undiminished.

52 When the Accused made his defence the Prosecution revealed some flaws and inconsistencies in his evidence. However, these flaws and inconsistencies did not make up for the deficiencies in the Prosecution's case. While the Accused did not have any problems in asserting that he had never assaulted the Boy, it was more difficult for him to establish that he did not commit the Offence

because of the absence of particulars. If there were more details available, *eg* the Boy's evidence that the Offence took place when he was attending kindergarten (which is in 2006 and 2007), he may be able to discredit that as well as the amended charge, but the opportunity to do that was limited by the scarcity of particulars. In any event, the onus was not on the Accused to prove his innocence.

**Conclusion**

53 I had alluded to the matters that have to be addressed in this case, including the Boy's young age, the long period between the alleged acts and the trial, the absence of scientific evidence or corroborative evidence, and the absence of any admission by the Accused.

54 I reviewed all the evidence and I found that the Prosecution had not overcome or resolved these matters. The Boy was a young child of no exceptional maturity or reliability, and his evidence was certainly not unusually compelling (see [12]). In addition to that, there were questions over the veracity of the evidence of the other principal witnesses. At the end, I was left with substantial doubts if the events alleged by the Boy actually happened, and it was very clear to me that the Prosecution had not proved its case against the Accused beyond a reasonable doubt. Consequently, I found him not guilty and I acquitted him.

---

[note: 1] Notes of Evidence, 31 March 2010, p 20 lines 5 – 9

[note: 2] Notes of Evidence, 29 March 2010, p 13 lines 1 – 8

[note: 3] Notes of Evidence, 23 March 2010, p 47 line 22 – p 48 line 14

[note: 4] P40

[note: 5] P40

[note: 6] P2

[note: 7] Notes of Evidence, 30 March 2010, p 86 lines 13 – 18

[note: 8] Notes of Evidence, 22 March 2010, p 114 lines 5 – 10, and 23 March 2010, p 10 lines 4 – 24

[note: 9] Notes of Evidence, 23 March 2010, p 13 lines 10 – 16

[note: 10] Notes of Evidence, 31 March 2010, p 70 lines 28 – 30, and p 72 lines 27 – 28

[note: 11] Notes of Evidence, 29 March 2010, p 13 lines 15 – 18

[note: 12] Notes of Evidence, 29 March 2010, p 15 line 10

[note: 13] Notes of Evidence, 29 March 2010, p 35 lines 1 – 9

[note: 14] P42

[note: 15] Notes of Evidence, 24 March 2010, p 108 line 23 – p 109 line 7

[note: 16] Notes of Evidence, 26 March 2010, p 7 line 25 – p 8 line 8

[note: 17] Prosecution's Submissions on Similar Fact Evidence para 3

[note: 18] Notes of Evidence, 25 March 2010, p 98 lines 1 – 4

[note: 19] Notes of Evidence, 25 March 2010, p 98 lines 5 – 26

[note: 20] Notes of Evidence, 26 March 2010, p 56 lines 16 – 23, p 57 lines 10 – 19

[note: 21] Notes of Evidence, 24 March 2010, p 91 lines 13 – 28

[note: 22] Notes of Evidence, 24 March 2010, p 91 line 30 – p 92 line 7

[note: 23] Notes of Evidence, 24 March 2010, p 92 lines 9 – 25

[note: 24] Notes of Evidence, 24 March 2010, p 95 lines 6 – 20

[note: 25] Notes of Evidence, 24 March 2010, p 98 lines 7 – 18

[note: 26] Notes of Evidence, 24 March 2010, p 97 lines 24 – 28

[note: 27] P13

[note: 28] Notes of Evidence, 24 March 2010, p 98 lines 4 – 9

[note: 29] Notes of Evidence, 24 March 2010, p 99 lines 7 – 22

[note: 30] Notes of Evidence, 25 March 2010, p 42 lines 4 – 10