IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 94

Criminal Case No 47 of 2016

Between

Public Prosecutor

And

ASR

GROUNDS OF DECISION

[Criminal Procedure and Sentencing] — [Sentencing] — [Rape] — [Young offenders] — [Intellectual disability]
[Criminal Procedure and Sentencing] — [Sentencing] — [Sexual assault by penetration] — [Young offenders] — [Intellectual disability]

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Public Prosecutor
v
ASR

[2018] SGHC 94

High Court — Criminal Case No 47 of 2016
Woo Bih Li J
6 February; 6 March; 30 October; 6, 13 November; 1 December 2017;
12 March 2018

20 April 2018

Woo Bih Li J:

Introduction

1 The Accused was convicted of three offences of severe gravity against a female victim. One was for aggravated rape and two were for sexual assault by penetration. He was 14 years of age at the time these offences were committed on 21 November 2014. By the time he was convicted on 6 February 2017, he was past the age of 16.

2 An important question arose as to whether he should be sent for reformative training ("RT"). The Prosecution submitted that he should not. One of the reasons the Prosecution relied on was that the Accused would not benefit from RT because of his intellectual disability. Instead, the Prosecution pressed for a long term of imprisonment of between 15 and 18 years in aggregate and at least 15 strokes of the cane. The Defence urged the court to sentence the

Accused to RT, although there was an alternative submission for an aggregate term of 11 years' imprisonment and 12 strokes of the cane if RT was not imposed. I sentenced the Accused to RT and the Prosecution has appealed against my decision.

3 I set out my reasons below, from which it will become apparent that the current regime does not provide adequate sentencing options to deal with young offenders with intellectual disabilities.

Facts

The parties

4 The accused is a Singaporean male named [ASR] ("the Accused"). He was born on 15 July 2000, and he lived with his mother, grandmother, and six siblings in a 1-bedroom flat. At the time of the offences, he was 14 years of age and a Year 2 student at the Assumption Pathway School. According to an intellectual assessment done by the Child Guidance Clinic ("CGH") of the Institute of Mental Health ("IMH") in February 2015, the Accused functions in the "extremely low" range of intelligence with a Full Scale Intelligence Quotient ("IQ") of 61.[1] His "mental age" was assessed by one expert to be 8 years old and by another to be 8 to 10 years old.[2]

5 The victim was a female who was 16 years old at the time of the offences ("the Victim"). An intellectual assessment revealed that she had an IQ of 50.[3] At the time of the offence, the Victim was also a student at the Assumption Pathway School, but she and the Accused did not know each other.[4]

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1 Exhibit N-D, Tab 1.

2 Exhibit N-D, Tab 6; NE Day 6 (1 December 2017), pp 3-4.

3 SOF at para 2.

The charges

6 In total, ten charges were brought against the Accused:

(a) The 1st charge was withdrawn by the Prosecution with leave of court on 6 February 2017.[5]

(b) The Prosecution then proceeded with the 2nd charge for aggravated rape under s 375(1)(*a*) of the Penal Code (Cap 224, 2008 Rev Ed) ("PC") punishable under s 375(3)(*a*)(ii) of the same Code, and the 3rd and 4th charges both for sexual assault by penetration under s 376(2)(*a*) punishable under s 376(3) of the PC. The Accused pleaded guilty to them without qualification, and I convicted him accordingly.[6] These proceeded charges will be referred to as the "present offences".

(c) The Accused consented to the 5th to 10th charges being taken into consideration for the purpose of sentencing under s 148 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC").[7] These charges will be referred to as the "TIC charges".

7 A schedule of the nine charges (excluding the 1st charge that was withdrawn) is shown at Annex A.[8]

8 Even though the present proceedings centred around the appropriate sentence for the present offences, the timing and details of the TIC charges were

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4 SOF at para 2.

5 NE Day 1 (6 February 2017), p 1.

6 NE Day 1 (6 February 2017), pp 5 and 16.

7 NE Day 1 (6 February 2017), p 18.

8 Exhibit N-PBD, Tab AA.

also relevant in view of the parties' submissions on sentencing. It is with that in mind that I turn to the chronology of the facts.

Chronology

Events before the offences

9 Prior to the present set of charges, the Accused was untraced for other offences.

10 On 20 June 2013, he, together with three others, stole an electric shaver, a bottle of perfume, and a box of manicure tools, with a total value of $41, from a flat. This gave rise to the 7th charge for theft in dwelling with common intention under s 380 read with s 34 of the PC. I note that the Prosecution appeared mistaken in its Schedule of Offences to have referred to the commission of this offence as being on 20 June *2014*,[9] when the charge itself stated 20 June *2013*.

11 On 12 July 2014, the Accused received a student Ez-link card of unknown value belonging to an unknown girl which he had reason to believe was stolen property. This gave rise to the 8th charge for dishonest retention of stolen property under s 411(1) of the PC.

12 On 14 July 2014, the Accused together with two others was said to have committed housebreaking by night in order to commit theft with common intention by climbing into a flat through the bedroom window and stole $300 and seven packets of cigarettes. This gave rise to the 6th charge under s 457 read with s 34 of the PC.

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9 Exhibit N-PBD, Tab AA.

13 On 15 July 2014, the Accused together with three others was said to have committed snatch theft with common intention of (a) a Nokia phone, (b) six packets of cigarettes, (c) a wallet, and (d) cash amounting to $1,500. This gave rise to the 5th charge under s 356 read with s 34 of the PC.

14 The Accused was thereafter arrested. On 18 July 2014, he was charged in the Youth Court and thereupon remanded at the Singapore Boys' Home ("SBH") pending investigations for the offences under the 5th to 8th charges.[10]

15 On 24 July 2014, the Accused was released on bail.

16 Whilst on bail, the Accused committed the offences constituting the 9th and 10th charges.

17 On 18 September 2014, the Accused converted a skateboard worth $160 to his use. This gave rise to the 9th charge for criminal breach of trust under s 406 of the PC.

18 On 3 October 2014, the Accused used both hands to grab the left and right buttocks of a female aged 21 years old. This gave rise to the 10th charge for outrage of modesty under s 354(1) of the PC.

19 He was arrested on 8 October 2014 and released on bail pending investigations into the 10th charge.[11]

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10 SOF at para 4.

11 NE Day 1 (6 February 2017), pp 8-9.

The present offences

20 The present offences were also committed whilst the Accused was on bail.

21 On 21 November 2014, the Accused, together with his brother and a friend, was tasked by his mother to distribute flyers to flats in the vicinity of Bukit Panjang. They split up and did so individually. At about 5.00pm that afternoon, the Accused took a break at a nearby 7-Eleven outlet.[12]

22 Shortly thereafter, the Accused spotted the Victim waiting at a traffic light junction at Bukit Panjang Road. The Accused decided then to follow her as he "felt horny" upon seeing her. He trailed the Victim across two pedestrian crossings from Bukit Panjang Road to a block of flats where the Victim resided.[13] On arrival at the block approximately 15 minutes later, the Accused hid behind a wall while the Victim waited for the lift. When the lift doors opened, the Victim entered into the lift and the Accused hurried into it after her. He pressed the button for the highest floor in the block so that she would not suspect that he was following her, whereas the Victim pressed the button for a lower floor.[14] At about 5.37pm, when the lift door opened at the lower floor, the Victim walked out of the lift into the lift lobby. The Accused followed the Victim and said to her "baby, I love you". The Victim did not reply and continued walking towards her unit.[15]

23 Suddenly, the Accused pushed the Victim against the parapet. She was scared and stood frozen on the spot.[16]

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12 SOF at para 11.

13 SOF at paras 12-13.

14 SOF at para 14.

15 SOF at para 15.

24 The Accused then hugged the Victim at her waist and kissed her on her lips and neck. The Accused heard the Victim say "go away" but he ignored her and continued kissing her. He unzipped his knee-length shorts and took out his penis. He then squatted down, lifted the Victim's dress until it was below her breasts, and pulled the Victim's panties to her ankle. Thereafter, he put his hand inside her bra and touched both the Victim's breasts.[17]

25 The Accused then inserted his finger into the Victim's vagina, without her consent, causing the Victim to feel pain in her vagina.[18] This gave rise to the 3rd charge for sexual assault by penetration under s 376(2)(*a*) of the PC, punishable under s 376(3) of the same Code.

26 Thereafter, the Accused told the Victim to lie down. The Victim refused[19] and tried to flee to her flat. However, the Accused held her back and told her "if you never lie down now, I take out my knife".[20] He then pushed her, causing her to fall backwards onto the floor. The Accused climbed on top of her, pulled down her panties, and inserted his penis into her vagina, causing her to feel pain. He did not use a condom and the Victim did not consent to the penetration. The Accused then ejaculated outside the Victim's vagina and onto her underwear.[21] The Victim was petrified. This gave rise to the 2nd charge for aggravated rape under s 375(1)(*a*) of the PC, punishable under s 375(3)(*a*)(ii) of the same Code.

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16 SOF at para 17.

17 SOF at paras 17-18.

18 SOF at para 19.

19 SOF at para 21.

20 SOF at para 22.

21 SOF at para 22.

27 The Accused rummaged through the Victim's bag and found an orange comb that was approximately 15cm in length. He inserted the comb into the Victim's vagina without her consent, then pulled it out and put it into her mouth. She was shocked, disgusted, and scared, and pulled out the comb.[22] This gave rise to the 4th charge for sexual assault by penetration under s 376(2)(*a*) of the PC, punishable under s 376(3) of the same Code.

28 The Accused then told the Victim "bye bye" and left the scene.[23] The Victim quickly returned to her flat and started crying. Subsequently, the Victim's family members accompanied her to make a police report.[24]

29 During the incident, the Victim told the Accused a few times that she did not want to have sex with him. The Accused admitted that he continued to have sex with her in spite of her refusal as he "felt horny".[25]

Events after the offences

30 On 23 November 2014, the Accused was arrested. His bail was revoked and he has been remanded in SBH since.[26]

31 On 20 April 2015, the 1st to 10th charges were tendered against the Accused in the Youth Court.[27] By the Public Prosecutor's fiat under s 210 of the CPC dated 17 April 2015, the 1st to 4th charges were transmitted to the High Court.

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22 SOF at para 24.

23 SOF at para 26.

24 SOF at paras 28-29.

25 SOF at para 27.

26 Exhibit N-PBD, Tab Z.

27 Exhibit N-PBD, Tab Z.

32 According to the Prosecution, investigations were completed on 20 April 2015, but the "pre-trial process, obtainment of the various psychiatric reports, and the court and parties' availabilities" resulted in the matter eventually being heard close to two years later, on 6 February 2017.[28] By then, the Accused was more than 16 years old.

33 On 6 February 2017, the Accused pleaded guilty to the proceeded charges (*ie*, the 2nd to 4th Charges) without qualification and I convicted him accordingly. He consented to the TIC charges being taken into consideration for the purpose of sentencing.

34 In oral submissions at the conviction hearing, the Prosecution submitted that the Accused should be sentenced to between 15 and 18 years' imprisonment in aggregate and at least 15 strokes of the cane. The Defence argued that the Court should ask for both a probation report and an RT suitability report. Even though the Defence was not urging the Court to impose probation, it submitted that a probation report was more comprehensive and would thus be helpful in considering whether RT should be ordered. The Prosecution submitted that neither probation nor RT should be considered as the principles of prevention and retribution should take centre stage. It stressed that the Accused had acted in a depraved manner by inserting a comb into the vagina of the Victim and then into her mouth. After hearing the parties' submissions, I called for an RT suitability report for the Accused to be submitted.[29]

35 Subsequently, Dr Jacob Rajesh ("Dr Rajesh"), a senior consultant psychiatrist for the Singapore Prisons Service issued the following documents:

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28 Prosecution's AH and Sentencing Submissions at para 198.

29 NE Day 1 (6 February 2017), p 79.

(a) A medical memorandum dated 24 February 2017 which stated that the Accused was not suitable for RT in view of his mild mental retardation.[30]

(b) A letter dated 27 February 2017 which stated that due to the Accused's mild mental retardation, he "may be" unsuitable for RT as he might find it difficult to cope with the conditions of the RT regime.[31]

(c) A medical memorandum dated 7 March 2017 again stating that the Accused was unsuitable for RT and making reference to a medical report which gave the reasons.[32]

(d) A medical report dated 8 March 2017 in which he stated his reasons for his views.[33]

36 By a letter dated 24 April 2017, the parties jointly applied for additional hearing dates to determine the following two issues by way of a Newton hearing:[34]

(a) the Accused's prospects of rehabilitation; and

(b) the Accused's risk of reoffending.

37 The Newton hearing was heard before this Court over four days on 30 October, 6 November, 13 November, and 1 December 2017. Thereafter, written submissions were tendered.

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30 Exhibit N-D, Tab 9.

31 Exhibit N-D, Tab 11.

32 Exhibit N-D, Tab 14.

33 Exhibit N-D, Tab 16.

34 See Prosecution's letter to court on both parties' behalves dated 24 April 2017.

38 On 12 March 2018, I heard the parties' oral replies. Thereafter, I delivered oral judgment and sentenced the Accused to RT.

The arguments on sentence

The Prosecution's case

39 The Prosecution characterised the Accused's offences as "serious and heinous offences which threaten the safety of the community at large" and which had caused "unspeakable emotional and psychological trauma" to the Victim.[35] Accordingly, they submitted that the sentencing considerations of prevention and retribution should eclipse that of rehabilitation.[36]

40 On that basis, they applied the Court of Appeal's decisions in *Ng Kean Meng Terence v Public Prosecutor* [2017] 2 SLR 449 ("*Terence Ng*") and *Pram Nair v Public Prosecutor* [2017] 2 SLR 1015 ("*Pram Nair*") which respectively laid down the sentencing frameworks in relation to the offences of rape and sexual assault by penetration. The present case fell within Band 2 of each of the sentencing frameworks on the basis of three offence-specific factors, namely (a) the vulnerability of the victim, (b) the presence of premeditation, and (c) the use of violence over and above what was necessary to commit the offences. In terms of offender-specific factors, the Prosecution conceded the Accused's youth and his having pleaded guilty at the earliest instance as mitigating factors,[37] but argued that these were "substantially dilute[d]" by the three aggravating factors of (i) high risk of reoffending and low prospects of rehabilitation, (ii) re-offence with escalating severity and whilst on bail, and (iii) the TIC charges.[38]

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35 Prosecution's AH and Sentence Submissions at para 16.

36 Prosecution's AH and Sentence Submissions at para 16.

37 Prosecution's AH and Sentence Submissions at para 183.

41 In the circumstances, the Prosecution urged 15 to 16 years' imprisonment and at least 12 strokes of the cane for the charge for aggravated rape, and 13 to 14 years' imprisonment and at least 8 strokes of the cane for each of the sexual assault by penetration charges. Having regard to the overall culpability of the Accused and the totality principle, the Prosecution submitted that the appropriate aggregate sentence was 15 to 18 years' imprisonment and at least 15 strokes of the cane.[39]

42 Furthermore, the Prosecution argued that there was little rehabilitative value[40] in sentencing the Accused to RT because (a) his intellectual disability rendered him unlikely to benefit from the RT programmes,[41] and (b) the confluence of his intellectual disability and conduct disorder rendered his prospects of rehabilitation "bleak" and his risk of reoffending "high".[42]

43 Finally, the Prosecution argued that there had been no undue delay in the prosecution of this matter.[43] In any event, there was no prejudice to the Accused in having his matter concluded after he turned 16 as the Court would in any event have declined to exercise its discretion under s 323 of the CPC to sentence the Accused under the regime in the Children and Young Persons Act (Cap 38, 2001 Rev Ed) ("CYPA").

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38 Prosecution's AH and Sentence Submissions at para 181.

39 Prosecution's AH and Sentence Submissions at para 188.

40 Prosecution's AH and Sentence Submissions at para 76.

41 Prosecution's AH and Sentence Submissions at para 138.

42 Prosecution's AH and Sentence Submissions at para 148.

43 Prosecution's AH and Sentence Submissions at para 198.

The Defence's case

44 The Defence argued that rehabilitation ought to be the paramount sentencing consideration for the Accused. Under s 37(2) of the CYPA, a person who is between 14 and 16 years of age shall not be imprisoned for any offence, unless the Court certifies that he is of "so unruly a character that he cannot be detained in a place of detention or a juvenile rehabilitation centre". Even though s 37(2) did not strictly apply because the Accused was more than 16 years old as at the date of conviction, the same concern for rehabilitation ought to apply given that he was only 14 years old at the time of the present offences.[44]

45 The Defence argued that the seriousness of the present offences should not preclude the Accused from being sentenced to RT.[45] For the TIC charges, the Accused's role was either minimal or the acts committed were relatively minor.[46] Further, the Defence urged the Court not to endorse a general position that persons with intellectual disabilities should not have a chance at the RT regime.[47] Such a position was not supported by the CPC nor consistent with precedents.[48] Operational constraints within the RT regime also should not prejudice the Accused.[49]

46 In the event that the Court was not minded to impose RT, the Defence submitted that the statutory minimum imprisonment term of eight years should be imposed for the aggravated rape charge, while three years' imprisonment ought to be imposed for each of the sexual assault by penetration charges. As

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44 Defence's Sentencing Submissions at para 25.

45 Defence's Sentencing Submissions at paras 18-22.

46 Defence's Sentencing Submissions at para 22.

47 Defence's Sentencing Submissions at para 93.

48 Defence's Sentencing Submissions at paras 72 and 95.

49 Defence's Sentencing Submissions at para 62.

two of the three sentences must run consecutively under s 307(1) of the CPC, this would give an aggregate 11 years' imprisonment.[50] The Defence also submitted that only the mandatory minimum of 12 strokes of the cane for the aggravated rape charge should be imposed.[51]

The analysis

47 The main issue before this Court was whether the Accused should be sentenced to RT. Section 305(1) of the CPC provides for the Court's power to sentence an offender to RT in the following terms:

> **Reformative training**
>
> 305.—(1) Where a person is convicted by a court of an offence punishable with imprisonment and that person is, on the day of his conviction —
>
> > (*a*) of or above the age of 16 years but below the age of 21 years; or
> >
> > (*b*) of or above the age of 14 years but below the age of 16 years and has, before that conviction, been dealt with by a court in connection with another offence and had, for that offence, been ordered to be sent to a juvenile rehabilitation centre established under section 64 of the Children and Young Persons Act (Cap. 38),
>
> the court may impose a sentence of reformative training in lieu of any other sentence if it is satisfied, having regard to his character, previous conduct and the circumstances of the offence, that to reform him and to prevent crime he should undergo a period of training in a reformative training centre.

Preliminary issues

48 At the start of the proceedings, the Prosecution applied under s 8(3) of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) ("SCJA") for the redaction of any evidence or thing that would likely lead to the identification of

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50 Defence's Sentencing Submissions at para 108.

51 Defence's Sentencing Submissions at para 110.

the Victim. The Defence did not object. I agreed that such an order was expedient, if not necessary, in the interests of justice given the nature of the offences, and accordingly granted the application.[52]

49 Separately, the Defence applied under s 35(1)(*a*) of the CYPA for an order prohibiting the publication of the Accused's name and other identifying particulars. Sections 35(1)(*a*) and (2) of the CYPA provides, broadly speaking, that no person shall publish the identifying particulars of a "child or young person" concerned in any court proceedings, unless the court or the Minister is satisfied that it is in the interests of justice to order otherwise. Section 2(1) of the CYPA defined a "young person" to mean "a person who is 14 years of age or above and below the age of 16 years". In this case, the Defence argued that the protective policy of the CYPA applied as the Accused had committed the present offences when he was 14 years of age. The Prosecution quite fairly pointed out that the Accused was 14 years of age when he was first produced in the Youth Court. Thus, their position was that unless this Court lifted it, the gag order would "still exist".[53] In any event, the Prosecution made no submissions on whether the gag order should be lifted or not. In the circumstances, I was of the view that s 35(1)(*a*) of the CYPA still applied.

Sentencing considerations

50 In *Public Prosecutor v Mohammad Al-Ansari bin Basri* [2008] 1 SLR(R) 449 ("*Al-Ansari*") at [77]–[78], an analytical framework was laid down to guide the court's sentencing of a young offender. This framework can be distilled into two distinct but related stages as follows (see *Public Prosecutor v Koh Wen Jie Boaz* [2016] 1 SLR 334 ("*Boaz Koh*") at [28]):

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52 NE Day 1 (6 February 2017), p 5.

53 NE Day 1 (6 February 2017), p 2.

(a) first, the Court had to identify and prioritise the primary sentencing considerations appropriate to the youth in question having regard to all the circumstances including those of the offences, and

(b) second, the Court had to select the appropriate sentence that would best meet those sentencing considerations and the priority that had been placed on them.

51 The Prosecution argued that the paramount sentencing principles in the present case were prevention and retribution, but not rehabilitation, because of the Accused's heinous crimes and his scant prospects of reform.[54] Hence, RT should not be imposed.

52 The Defence argued that rehabilitation was the predominant sentencing consideration for young offenders and, in that context, RT should be imposed instead of a term of imprisonment and caning.

53 For reasons which I will elaborate on later, I considered that the rehabilitation of the Accused was a predominant consideration to be balanced against the concern for public protection. Indeed, in a sense, rehabilitation and public protection are mutually reinforcing. Retribution, while important, carried less weight.

Whether the circumstances of the offences precluded RT

54 I turn now to the specific reasons which the Prosecution relied on to argue that rehabilitation should not be a predominant consideration and which hence rendered RT unsuitable.

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[54] Prosecution's AH and Sentencing Submissions at paras 6-7.

55 The Prosecution relied heavily on *Boaz Koh*. This case concerned the Public Prosecutor's appeal against a district judge's decision to sentence a young offender who had committed a fresh offence whilst on probation to a second stint of probation. Sundaresh Menon CJ discussed the sentencing approach that courts ought to take in relation to young offenders, affirming the analytical framework laid out in *Al-Ansari*, and explained at [30] that there were exceptions to the general rule that the primary sentencing consideration for young offenders was rehabilitation:

> … rehabilitation is neither singular nor unyielding. The focus on rehabilitation can be diminished or even eclipsed by such considerations as deterrence or retribution where the circumstances warrant. Broadly speaking, this happens in cases where (a) the offence is serious, (b) the harm caused is severe, (c) the offender is hardened and recalcitrant, or (d) the conditions do not exist to make rehabilitative sentencing options such as probation or reformative training viable.

56 In the present case, the Prosecution argued that all four factors were engaged.[55]

57 In *Boaz Koh*, the sentencing options being considered by the Court were probation and RT. I accepted that the observations of Menon CJ also apply generally, such as in the present case where the options being considered were RT, as well as imprisonment and caning. However, I did not think that Menon CJ meant that any one or two factors would be decisive. All the factors had to be considered holistically. Hence, even where the offence was serious and the harm caused was severe, these factors did not necessarily preclude rehabilitation from being the predominant or an important consideration.

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[55] Prosecution's AH and Sentencing Submissions at para 21.

Gravity of the present offences

(1) The genus of the offences

58 The Prosecution's first argument in reliance on *Boaz Koh* was that because of the genus of the present offences, *ie*, aggravated rape and sexual assault by penetration, RT should not be considered.

59 With respect, this argument appeared to take too simplistic a view of the nuances involved in balancing sentencing considerations. If it were the case that a charge for a grave offence would necessarily preclude rehabilitative sentencing options, there would have been no room for RT or probation in cases involving serious offences especially of a violent nature, such as robbery with common intention (*Public Prosecutor v Mohammad Fareez Bin Rahmat* [2010] SGDC 99 (based on the court's records, the appeal from this case in MA 99/2010 was dismissed without written grounds)), or voluntarily causing grievous hurt with a dangerous weapon (*Muhammad Zuhairie Adely bin Zulkifli v Public Prosecutor* [2016] SGHC 134 ("*Zuhairie*")).

60 In *Zuhairie*, the offender used a bread knife with a 35-cm long blade to attack the victim at their school as a result of a long simmering dispute between them. He slashed the victim with the knife, pursued the victim while the victim was trying to escape, and continued to swing the knife repeatedly at the victim's face after the victim had fallen to the ground. The victim suffered fractures on his forearm and fingers and multiple lacerations. On the facts of that case, Chan Seng Onn J allowed the Defence's appeal against sentence and ordered that the accused's sentence of 18 months' imprisonment and six strokes of the cane be substituted with RT.

61 Indeed, in exceptional situations, rehabilitative sentencing options are not precluded even in cases involving violent and serious offences that lead to someone's death. For instance, in *Public Prosecutor v Foo Shik Jin and others* [1996] SGHC 186, four young offenders each pleaded guilty to charges of culpable homicide not amounting to murder punishable under s 304(a) read with s 149 of the PC. These young offenders, who were between the ages of 14 and 16, were members of a secret society. Pursuant to a gang-related dispute, they deliberately sought out members of a rival secret society for a retaliatory attack, chanced upon the victim whom they assumed was a member of the rival gang, and then kicked, punched, and attacked the victim with rattan poles, leading eventually to the victim's death. T S Sinnathuray J considered the relevant reports and granted probation to a young offender and was prepared to impose RT on another young offender if that offender had agreed to it.

62 Further, I noted that rehabilitative sentencing options have also been considered and imposed in relation to other non-violent serious offences, for instance, drug trafficking and other drug-related offences (see, *eg*, *Public Prosecutor v Adith s/o Sarvotham* [2014] 3 SLR 649 ("*Adith*"); *Leon Russel Francis v Public Prosecutor* [2014] 4 SLR 651; *Praveen s/o Krishnan v Public Prosecutor* [2017] SGHC 324).

63 In other words, the fact that an offence could be characterised as "serious" did not *ipso facto* preclude rehabilitative sentencing options. This has been stressed by the Courts. As the High Court in *Lim Pei Ni Charissa v Public Prosecutor* [2006] 4 SLR(R) 31 observed in the context where the suitability of a probation order was in question (at [17]):

> … while it may be the case that the more egregious the offence or the more recalcitrant the offender, the less likely the offender will be able to convince the court that he or she will reform and respond to rehabilitation, there is nothing in the cases or in the

> statutes that indicate that the courts must view such circumstances as always ruling out the possibility of probation. In all such cases, the guiding principle is the likely responsiveness of the young offender to rehabilitation. The court must apply its mind to the facts of each case…

64 The Prosecution also relied on *Mohd Noran v Public Prosecutor* [1991] 2 SLR(R) 867, where the Court of Criminal Appeal said (at [3]) that, "[a]s a general rule, neither probation nor reformative training is suitable in cases of rape".[56] However, even in this quotation, the Court was not saying that rape was too grave an offence in all instances to merit a consideration of RT. The qualification was that this was only a general rule.

65 Indeed, at [2] of the same case, the Court also stated "As a matter of sentencing principle, where the appellant is of mature age and understanding, he should be given a custodial sentence". This qualification was all the more important in the present case as the Accused was not only young at the time of the commission of the present offences, he was also intellectually disabled.

66 Furthermore, while it was true that not every young offender would be sentenced to RT, it was also true that young offenders who had committed offences relating to sexual assault have been sent for RT.

67 As an example of the latter, the Defence relied heavily on an unreported case of a young offender whom I shall refer to as "X" (see DAC 16513-2011 and others). There, the offender was 14 years of age when he first raped his classmate and 18 years old at the time of sentencing. In fact, there were two female victims each of whom were below the age of 16 at the time of the offences. Apparently, X and his three accomplices had pretended to be possessed by deities in order to trick the two victims into performing sexual acts

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[56] Prosecution's AH and Sentencing Submissions at para 37; Exhibit N-PBH, Tab E.

on them. X was the mastermind, and one of the Prosecution's submission was that he had abused his position of trust and preyed on the vulnerability of the victims. X pleaded guilty to two charges of rape and two charges of sexual assault by penetration. Eight other charges were taken into consideration for sentencing of which six were for various sexual offences including rape. Although the Prosecution pressed for a jail term and caning, the offender was sentenced by the district judge to RT. The district judge appeared to have had concerns with the delay in the prosecution and investigation of the case, and had opined that the offences must be viewed from the perspective of a 14-year-old offender. Apparently, there was no appeal by the Prosecution to the High Court. In this case, the offender had also been diagnosed with mild mental retardation, and I will say more later about this feature. No written grounds of decision was produced and the facts above were gleaned from a newspaper report tendered by the Defence,[57] to which the Prosecution did not object.

68 For the above-stated reasons, I did not agree with the Prosecution that RT should be ruled out simply because of the fact that the Accused had pleaded guilty to serious sexual offences.

(2) The offence-specific factors

69 This brings us to the Prosecution's second argument: that the offences committed were egregious given three offence-specific aggravating factors that featured, namely, the vulnerability of the Victim, premeditation, and the use of violence over and above what was necessary to commit the offences.[58]

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57 Exhibit N-DBD, Tab 1.

58 Prosecution's AH and Sentencing Submissions at para 171.

70 With respect, the Prosecution had proceeded on the premise that the Accused was more culpable than he actually was on the facts.

71 In the present case, I accepted that the Victim was vulnerable. Indeed, she was young, and she also suffered from an intellectual disability. However, it was important to distinguish between a situation where the victim was vulnerable as a matter of fact, and a situation where the offender had targeted the victim because of his or her peculiar vulnerability or had deliberately exploited that vulnerability in the commission of the offence. Both situations would be aggravating, but the latter involving exploitative dynamics would reflect a far more culpable state of mind on the part of the offender.

72 In the present case, there was no evidence from the amended Statement of Facts ("SOF") that the Accused had deliberately targeted or preyed on the Victim because of her vulnerability or that the Accused had exploited her vulnerability in the commission of the offences.

73 As for the second offence-specific factor, I was doubtful whether it could be said that the Accused had premeditated the present offences. The SOF highlighted certain suggestive facts, including that the Accused stalked the Victim for some distance, hid behind a pillar, and had pressed the lift button for the highest floor so that the Victim would not suspect anything amiss. However, in my view, even if these facts suggested some degree of awareness on the part of the Accused, they did *not* amount to premeditation in an aggravating sense. For instance, the Accused did not plan the encounter with the Victim on the day of the offence. Rather, that appeared to be the first day on which the Accused had seen or met the Victim; he was taking a break from distributing flyers when he happened to see the Victim and thought that the Victim was attractive.

74 In this regard, I also agreed with the expert for the Defence, Dr Lee John Bosco ("Dr Bosco Lee") that the present facts did not ineluctably support the Prosecution's submission that the Accused had committed a complex rape offence.[59] For instance, Dr Bosco Lee's report dated 20 October 2015 recorded the Accused as saying:[60]

> 57 On direct questioning on why he said "I love you baby", he replied:
>
> "I watched video movie".
>
> 58 On direct questioning on the possible result of having sex with the alleged victim, he said
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> "Make baby. Become family".

75 Having regard to the Accused's age and intellectual disability, I saw force in Dr Bosco Lee's opinion that the purported complexity of the present offences must also be seen in light of the possibility that the Accused might have been mirroring conduct that he had observed in pornographic movies where words such as "I love you, baby" may have been said, and where acts of a similar nature (*eg*, the insertion of foreign bodies into the female genitalia) may have been depicted.[61] The Prosecution did not challenge this aspect of Dr Bosco Lee's evidence.

76 As the Court of Appeal noted in *Terence Ng* (at [44(c)]), premeditation in the true aggravating sense required a "considered commitment towards law-breaking", and would usually be evidenced by some outward conduct such as the use of drugs or soporifics to reduce the victim's resistance, grooming of the victim, or the taking of deliberate steps towards the isolation of the victim. None of those were present in our case. In that light, I considered it a fairer

59 NE Day 6 (1 December 2017), pp 21-22, 48-49.

60 Exhibit N-D, Tab 4 at paras 57-58.

61 See NE Day 6 (1 December 2017), pp 48-49, 57-58; Exhibit N-D, Tab 4 at paras 52-61.

characterisation of the Accused's conduct as unthinking, callous and wholly misguided, rather than premeditated or predatory. Indeed, I noted that one of the Prosecution's experts, Dr Cai Yiming ("Dr Cai"), who was an emeritus consultant of the Department of Child and Adolescent Psychiatry at the IMH, had recorded in his report dated 1 December 2015 that the Accused told him that he had committed the offence because he "felt horny and that's why [he] did it".[62] This was more consistent with the Defence's case that the Accused had committed the present offences on his sexual urges unthinkingly, than the Prosecution's submission that the offences had been considered and premeditated.

77 Taken in that light, the brief statement in the RT suitability report dated 24 February 2017 prepared by the Correctional Rehabilitation Specialist, Mr Aston Tan ("Mr Tan"), that the Accused had "recurrent thoughts of sexual images as well as a planful approach [*sic*] of stalking and using intimidation to gain sexual penetration"[63] could not be taken at face value and did not support the Prosecution's argument that the Accused had premeditated the present offences.

78 I come now to the third aggravating factor submitted by the Prosecution, *ie*, the Accused had used violence over and above what was necessary for the commission of the present offences.

79 First, it was notable that the fact that the Accused had threatened to take out a knife was already accounted for as an element of the charge involving *aggravated* rape. Indeed, it was precisely because of this fact that the Accused faced a *mandatory* minimum period of 8 years' imprisonment and not less than

62 Exhibit N-D, Tab 5 at para 15.

63 Exhibit N-D, Tab 12 at p 4.

12 strokes of the cane. Further, while a threat of violence with weapon was an aggravating factor, it could not be given the same weight as an instance where a weapon had in fact been taken out to threaten the victim or used to injure the victim in the course of an offence.

80 As for the insertion of the comb into the Victim's vagina and then into her mouth, I agreed with the Prosecution that such conduct was repulsive. However, as mentioned above (at [75]), the probative value of such conduct in reflecting the aggravated *culpability* of the Accused should be tempered in light of the possibility that the Accused, by reason of his youth and intellectual disability, was mirroring conduct that he had observed elsewhere. Thus, notwithstanding the threat of the use of a knife and the use of the comb in fact, both of which could be said to be relatively egregious, I was of the view that the circumstances relating to the commission of the present offences taken as a whole did not mean that rehabilitation or RT was out of the question.

(3) The statistics

81 In the course of the Newton hearing, I directed that the Prosecution provide the following information:

(a) For accused persons who were eligible to be considered for RT and who were convicted of a sexual offence, for example, aggravated rape, rape, sexual assault by penetration, and outrage of modesty, how many in the past were sent for RT and how many were not?

(b) For those who were not sent for RT, what were the reasons?

(c) How many of those sent or not sent for RT were persons with sub-normal IQ?

(d) For those with sub-normal IQ, what was the recommendation in the RT suitability report?

82 By affidavit affirmed on 21 December 2017, Mr Ng Kheng Hong, who was the Assistant Director of Operations Management Branch in the Singapore Prisons Service ("AD Ng"), provided a response. He indicated that the search parameters for the statistics provided in his affidavit were:

(a) In terms of time, all RT suitability reports prepared by the Singapore Prisons Service between 1 January 2015 and 20 November 2017.

(b) In terms of the type of sexual offences covered, only:

(i) Rape under s 375 of the PC;

(ii) Sexual assault by penetration under s 376 of the PC; and

(iii) Outrage of modesty under ss 354 and 354A of the PC.

(c) As to the meaning of "sub-normal IQ", the statistics only covered RT suitability reports for offenders with (i) borderline IQ of between 70 and 79, and (ii) low IQ of below 69 or mild mental retardation or mild intellectual disability, regardless of whether there was an IQ score reflected in the RT suitability report concerned.

83 A diagram of the statistics provided by AD Ng is reproduced in Annex B for ease of reference.

84 While the numbers alone did not allow this Court to critically compare and assess the cases, AD Ng's affidavit supported the Defence's case in two respects:

(a) First, it showed that the mere fact that a sexual offence was involved did not preclude RT from being imposed. Out of 830 RT suitability reports surveyed, 11 offenders (including the Accused) were convicted of sexual offences as defined above (see [82(b)]). Of these, nine were sentenced to RT, one was not, and the remaining accused (who was the Accused) had not been sentenced as at the time of the affidavit.[64]

(b) Second, it showed that the mere fact that an offender had an intellectual disability or a low IQ score did not preclude the sentence of RT. Of the 830 RT suitability reports surveyed, 19 offenders had sub-normal IQ (see [82(c)] above). Of these, 11 offenders (including the Accused) were assessed to be unlikely to benefit from RT while eight were assessed to be likely to benefit from RT.[65] Of the 19 offenders with sub-normal IQ, three had been sentenced to RT.

85 I will come back to another aspect of AD Ng's affidavit later (see [126] below).

Gravity of the TIC charges

86 Apart from the gravity of the present offences, the Prosecution also stressed the circumstances of the TIC charges which the Accused consented to be taken into consideration for sentencing, some of which were committed while the Accused was on bail. In its submission, the Prosecution highlighted that the Accused had reoffended thrice whilst on bail and had committed a "sheer number of varied offences, which escalated in seriousness over time".[66]

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64 AD Ng's Affidavit at para 15.

65 AD Ng's Affidavit at para 16.

66 Prosecution's AH and Sentencing Submissions at para 27(a).

87 In my view, it was not sufficient in this case to consider generally the genus of the offences constituting the TIC charges. To properly contextualise the Accused's culpability and alleged recalcitrance, his involvement and the facts constituting the TIC charges should also be examined. Once that was done, it became clear that the Accused's culpability in relation to both the individual and group offences constituting the TIC charges was not as serious as the Prosecution was suggesting.

88 I turn first to the individual offences. Dr Bosco Lee took detailed and largely verbatim notes of what the Accused had told him in relation to the TIC charges. In relation to the 10th charge for outrage of modesty, for instance, the Accused said as follows:[67]

> I played skateboard. I just come back from East Coast Park. She got wear pants until butt. I followed girl. Until staircase, I grabbed her butt cheek.

89 While outrage of modesty was no doubt a serious offence, it was nevertheless trite that the law drew a distinction between an offender who touched the victim on the genitalia or breasts, as opposed to the butt cheeks. More importantly, there was no sophistication in the manner in which the Accused had committed this offence. Indeed, the Accused apparently wore his soccer shirt which had his name and his player number "20+" printed on it during the offence, which the victim saw.[68] The next day, he also returned to the same place to play,[69] whereupon he was arrested by the authorities.

90 As another illustration, in relation to the 9th charge for criminal breach of trust, what had apparently happened was that the Accused did not return a

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67 Exhibit N-D, Tab 4 at para 21.

68 Exhibit N-D, Tab 4 at para 21.

69 Exhibit N-D, Tab 4 at para 22.

skateboard which his friend had lent to him.[70] Therefore, while the term "criminal breach of trust" conjured the image of a serious offence, that image was in my view a false and misleading one in the present case.

91 Similarly, the TIC charges which involved group-related offences also revealed non-substantial involvement on the part of the Accused. For example, in relation to the 5th charge for snatch theft with common intention, the Accused was recorded as saying the following:[71]

> I stayed at friend's place, no money. Me, my friends […] we slept talked, old uncle sell illegal cigarettes.

Thereafter on direct questioning by Dr Bosco Lee, the Accused said that one "Andre" had suggested that they commit the offence and added:

> We went to uncle, got 1 cigarette. We took one packet, tell uncle to chase us. My friend put (his) leg out, uncle fell, we chicken-winged him. Took his money, gave him 1 packet of cigarette.

92 In oral submissions before me on 12 March 2018, the Defence stressed that the Accused had played only a minimal role in relation to the TIC charges, serving as a lookout rather than the mastermind of the group-related offences.[72] The Prosecution did not object to this characterisation.

93 Further, the Prosecution also did not object to Dr Bosco Lee's evidence or adduce any evidence contrary to what the Accused had informed Dr Bosco Lee in respect of the commission of the TIC charges, even though his report had been before the Court from the outset of the Newton hearing and had also been the basis of the Defence's submissions on the same point.[73] Also, the

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70 Exhibit N-D, Tab 4 at para 27.

71 Exhibit N-D, Tab 4 at para 25.

72 NE (12 March 2018), p 2.

accuracy of what the Accused had told Dr Bosco Lee was not seriously challenged during the cross-examination of Dr Bosco Lee.

94 The Prosecution submitted that the offence of housebreaking by night in order to commit theft with common intention (*ie*, the 6th charge), and the offence of snatch theft with common intention (*ie*, the 5th charge), were committed one day apart and in relation to both, the victim was an elderly man of around 80 years of age. However, there was no evidence that the Accused himself had targeted the victim because the latter was of that age and hence vulnerable.

95 Thus, the Prosecution's submission that the Accused had "showed a disturbing propensity to target the vulnerable" was not supported by the evidence.[74] As mentioned, the fact that a victim was vulnerable did not in all situations give rise to an inference that the offender had specifically preyed on or targeted a victim because of the vulnerability (see [71] above).

96 For the foregoing reasons, I agreed with the Defence that it was inaccurate to characterise the TIC charges as evidencing a remorseless escalation of criminal conduct on the part of the Accused. The culpability of the Accused in respect of the TIC charges was not as serious as it appeared at first glance and did not show that the Accused was irredeemable.

Recidivism, remorse, and recalcitrance

97 Another main plank of the Prosecution's submissions was that the Accused had a high risk of reoffending.[75] It was argued that given the Accused's

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73 Defence's Sentencing Submissions at para 22.

74 Prosecution's AH and Sentencing Submissions at para 27(b).

75 Prosecution's AH and Sentencing Submissions at para 181.

"scant prospects for reform, it cannot be sufficiently stressed that the [A]ccused is a danger to the community, and should be incarcerated to protect the public from further harm".[76]

98 I accepted that the Accused's risk of reoffending was high unless he is rehabilitated. Indeed, this point was not in serious dispute between the parties' experts.

99 The Prosecution relied on the evidence of Dr Cai, whose second written report dated 19 September 2016 stated that the Accused's risk of reoffending was high and was "due to a large extent to his conduct disorder as characterised by his persistent and multiple anti-social acts starting around the age of 12 years old". Dr Cai noted that other factors included "his criminogenic attitude, lack of remorse, and easy influence by his undesirable peers". Further, the Accused's low IQ was "an added factor as this might compromise his social judgment and impulse control in committing offence".[77]

100 In the same vein, Dr Bosco Lee's report dated 20 October 2015 also recorded that the Accused's risk of recidivism was "significant" as he was easily influenced by peers and had limited intellectual capacity for abstract thinking to make decisions.[78] In his oral testimony, Dr Bosco Lee candidly maintained his opinion as to the Accused's significant risk of recidivism.[79] There were parts of Dr Cai's reasons that Dr Bosco Lee disagreed with. For instance, Dr Bosco Lee disagreed that the Accused's *conduct disorder* gave rise to a "huge recidivism risk",[80] and was further of the view that the Accused had demonstrated genuine

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76 Prosecution's AH and Sentencing Submissions at para 29.

77 Exhibit N-D, Tab 6 at paras 8-10.

78 Exhibit N-D, Tab 4 at paras 91-92.

79 NE Day 6 (1 December 2017), p 69.

remorse. Nevertheless, the point remained that, regardless of what the causative factors were, Dr Bosco Lee agreed with Dr Cai that in the absence of proper rehabilitation, the Accused had a significant risk of reoffending.

101 However, the pivotal question that remained unanswered was what conclusion should be drawn from the premise that the Accused's risk of recidivism was significant? In this regard, I did not agree with the Prosecution that a long period of incarceration would necessarily be the panacea to the risk of recidivism. Indeed, with respect, the submission that incarceration would protect the public appeared to me to be short-sighted on the facts of this case. At the time of sentencing, the Accused was 17 years of age. Even discounting remission and backdating, and even if the Accused was sentenced to 18 years' imprisonment which was the highest end of the Prosecution's sentencing position, what would become of the Accused and of those around him when he is subsequently released in his early thirties? Would society be better protected when the Accused is released from incarceration, stronger and bigger, but lacking insight into the consequences that his choices and conduct carry?

102 It was for this reason that I considered rehabilitation important, not as an extravagant ideal but rather a practical longer-term solution to the issues that would inevitably confront the Accused and implicate the broader society. In my view, the sentencing considerations of rehabilitation and protection of the public are mutually reinforcing in the sense that if the Accused is rehabilitated, protection of the public will be enhanced.

103 I add a point regarding the Prosecution's submission that the Accused's commission of multiple offences over a period of time which escalated in severity was an offender-specific aggravating factor.[81] In my view, the Court

[80] NE Day 6 (1 December 2017), p 42.

should not place too much weight on this factor. While I agreed that the commission of offences while on bail could be an aggravating factor, a distinction should be drawn between re-offence on bail and re-offence despite antecedents. In the former case, while the offender's remorse and recalcitrance may nevertheless be put into question, he has not had the benefit of the deterrent and/or rehabilitative force of the law. Secondly and importantly, I was persuaded by Dr Bosco Lee's evidence, when he was told under cross-examination that the Accused had reoffended whilst on bail, that that fact was equivocal as it could either evidence disregard for the law, or an inability and/or failure to fully comprehend the seriousness of the bail.[82]

104 Given the Accused's age, his mild intellectual disability, and the trend of simple-mindedness across his offending conduct, I did not conclude that his commission of offences whilst on bail demonstrated that he was so recalcitrant that RT was not appropriate.

Vindication of the Victim

105 In the present case, the harm and impact caused to the Victim by the offences must also be considered. The Victim did not testify before me, but based on the SOF, after the commission of the present offences, the Victim quickly returned to her flat and started crying. Subsequently, the Victim's family members witnessed her in distress and accompanied her to make a police report.[83] She was also taken to the KK Women's and Children's Hospital at where a medical report was prepared.[84] On 1 December 2014, the Victim was

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81 Prosecution's AH and Sentencing Submissions at para 181.

82 NE Day 6 (1 December 2017), pp 42-43.

83 SOF at paras 28-29.

84 SOF at paras 30-31 and Tab B.

assessed by Dr Bernadine Woo of the Child Guidance Clinic at IMH, who prepared a report dated 13 January 2015 which stated as follows:[85]

> (a) The Victim had an IQ of 50, which suggested that she was functioning "within the mild intellectually disabled range of intelligence".
>
> (b) The Victim had been "sad and fearful" since the incident and had been having recurrent thoughts about the alleged abuse. Further, she was fearful of males and did not dare to take lift with strangers.

106 I had deep sympathies for the Victim. Courts have consistently recognised that rape and other serious sexual offences severely violate the victim's dignity and bodily integrity, and they often leave deep-seated trauma which cannot easily be mended.

107 Having said that, this was one of the difficult cases where the Court's concern for the Victim and the retributive theory of justice needed to be taken into account together with other considerations including the longer-term protection of the public and rehabilitation of the Accused. Indeed, if the Accused had been an adult with full maturity and appreciation of the wrongfulness and consequences of his conduct, I would not have hesitated to impose the full weight of the law on him. But he was not.

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85 SOF at paras 32-34 and Tab C.

108 For reasons which I have explained above, neither the offence- nor offender-specific factors raised by the Prosecution precluded rehabilitation from being a predominant sentencing consideration. Nor did they preclude RT from being a viable sentencing option. On the other hand, the youth and the intellectual disability of the Accused were significant factors which affected the complexion of the entire case. As Menon CJ observed in his recent speech at the Sentencing Conference 2017, "[t]he jurisprudence of our courts suggests that rehabilitation is particularly important when dealing with young offenders and those with mental disorders". In relation to young offenders in particular, four reasons were proffered as to why rehabilitation was usually the paramount sentencing consideration:

(a) Young offenders lack developed powers of reasoning and may therefore be unable to fully appreciate the consequences of their action. In that regard, they should be viewed as less culpable than offenders who are able to reason with the full capacity and maturity that comes with adulthood.

(b) The prospects of effective rehabilitation are likely to be enhanced when dealing with young offenders.

(c) Placing young offenders in a prison environment is likely to have the opposite effect, as custodial institutions can prove to be fertile sources of contamination, exposing young offenders to the adverse moral influence and expertise of older offenders who are likely to be more recalcitrant and refractory than themselves.

(d) Society has a tremendous interest in rehabilitating young offenders. Their youth imparts not only the capacity for change but also the immense potential benefit of many subsequent years of worthwhile

> contributions to society. It is the hallmark of a progressive and caring society that it does not abandon those who have fallen behind but actively nurtures them into morally responsible individuals.

109 In my view, all four of the reasons were operative in the present case.

110 After considering all the circumstances, I was of the view that the rehabilitation of the Accused was still a predominant consideration to be balanced against the concern for the protection of the public. As I mentioned above (at [53] and [102]), if the Accused is rehabilitated, the public's protection will also be enhanced. Retribution, while important, carried less weight in light of the unique circumstances of the present case.

Whether the Accused's intellectual disability precluded RT

111 I turn now to the final and perhaps most troubling issue – the Accused's intellectual disability and how that ought to affect the sentence imposed.

The Accused's condition

112 It was not disputed that the Accused suffered mild intellectual disability. In a reported prepared by Ms Desiree Choo, who was a clinical psychologist at the Child Guidance Clinic at IMH, it was stated that the Accused functioned in the "extremely low range of intelligence" and had an IQ of 61.[86] His IQ score was equal to or better than merely 0.5% of his same-aged peers. In particular, of the four composite index scores which comprise the IQ score, the Accused was assessed to be "extremely low" for "verbal comprehension" and "borderline" for "perceptual reasoning", "working memory", and "processing speed".[87] Similarly, on the Defence's part, Dr Bosco Lee diagnosed the Accused

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86 Exhibit N-D, Tab 1 at p 4.

with intellectual disability in his report dated 20 October 2015.[88] There appeared to have been no substantive difference between the terms "mild intellectual disability", "intellectual disability" and "mental retardation" used in the various reports.

113 Furthermore, in a report dated 13 July 2015 by Dr Amita Sarkar ("Dr Sarkar") and Dr Munidasa Winslow ("Dr Winslow") of the Winslow Clinic, the Vineland Adaptive Behaviour Scale II Edition was administered on the Accused to assess his practical daily living skills. His adaptive behaviour scores indicated that his adaptive behaviour skills were in the bottom 1% of young people of his age.[89]

114 On the basis of both the IQ test and the Accused's adaptive behaviour scores, Dr Cai agreed that the Accused had mild intellectual disability.[90]

The suitability of RT

115 The Prosecution submitted that because of the Accused's intellectual disability, he was unlikely to benefit from RT and was therefore unsuitable for RT. In this regard, the Prosecution relied on the evidence of Dr Rajesh.[91]

116 I have mentioned at [35] above that Dr Rajesh issued four documents in respect of the Accused.

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87 Exhibit N-D, Tab 1 at p 4.

88 Exhibit N-D, Tab 4 at para 85.

89 Exhibit N-D, Tab 3 at paras 15-16.

90 NE Day 5 (13 November 2017), p 51.

91 NE Day 3 (30 October 2017), p 6.

117 Dr Rajesh's hand-written comment on a medical memorandum dated 24 February 2017 stated that the Accused was not suitable for RT in view of his mild mental retardation.[92] However, in a type-written report three days later dated 27 February 2017, he said that the Accused "may be" unsuitable for RT due to his mild mental retardation.[93]

118 On 6 March 2017, Dr Rajesh was asked to prepare a clarificatory report explaining the reasons why he had found the Accused unsuitable for RT. This time, Dr Rajesh was given the reports of other witnesses including those of Dr Cai, Dr Winslow, and Dr Bosco Lee.[94] Dr Rajesh also conducted another interview with the Accused.

119 On 7 March 2017, Dr Rajesh issued another medical memorandum[95] followed by a clarificatory report dated 8 March 2017.[96] In the latter, he explained that the Accused was unsuitable for RT from a "psychiatric perspective" as the RT programmes were group-based and were tailored for inmates with "normal levels of intelligence". Further, the programmes were structured such that they required "a certain level of cognitive functioning as it involves attending group sessions, social interaction, homework assignments as well as being able to understand and retain the information provided in these courses."[97]

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92 Exhibit N-D, Tab 9, p 2; NE Day 3 (30 October 2017), p 14.

93 Exhibit N-D, Tab 11.

94 NE Day 3 (30 October 2017), p 16.

95 Exhibit N-D, Tab 14.

96 Exhibit N-D, Tab 16.

97 NE Day 3 (30 October 2017), pp 51 and 75.

120 Dr Rajesh further elaborated that the programmes in RT followed a cognitive behaviour approach, which identifies the trigger factors behind one's offending, helps the offenders understand those factors, and formulates the appropriate reoffending prevention strategies.[98] Because the Accused was of low IQ, "it is going to be very, very difficult for him to comprehend all this".[99]

121 However, Dr Rajesh's opinion did not state that the Accused's conduct disorder (which Dr Cai diagnosed the Accused with, but with which Dr Bosco Lee disagreed) was a reason for the Accused's unsuitability for RT, even though he had considered a report from the IMH which stated that the Accused was diagnosed to have intellectual disability *and* conduct disorder.

122 When pressed under cross-examination to particularise the certainty with which he had assessed the Accused to be unable to benefit from RT, Dr Rajesh said that it was not impossible but that the chances of the Accused benefiting are "very, very low", which he equated to a 75% to 80% chance that the Accused would not benefit.[100]

123 The evidence of Dr Bosco Lee was that the Accused should ideally be warded in a mental institution such as the IMH which had special treatment programmes and facilities for persons in the position of the Accused. However, as I elaborate later (at [138]–[148]), that did not appear to have been an available option under the present circumstances.

124 Dr Cai's evidence was that it was important to keep the Accused safely in a structured environment, and then focus on helping him overcome disability

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98 NE Day 3 (30 October 2017), p 57.

99 NE Day 3 (30 October 2017), p 58.

100 NE Day 3 (30 October 2017), p 82.

in a way that he can follow and understand.[101] Dr Cai mentioned a programme called "BEST" under the Ministry of Social and Family Development which helped with basic education and sexuality treatment for adolescents and adults with intellectual disabilities. He further suggested simple vocational training and psychological counselling to help the Accused change his criminal attitudes and learn to reject negative peer influence.[102] In this regard, Dr Cai expressed doubt whether the RT regime would be able to rehabilitate the Accused within the "very strict regime of 18 to 36 months" which he understood RT to entail.[103] However, when he was informed that imprisonment would come with caning, Dr Cai asked if the caning could be modified.[104] Dr Cai also raised the following suggestion:[105]

> Witness: I'm not sure whether I should raise this thinking of a RTC plus. RTC plus.
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> Court: RTC plus?
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> Witness: That means 3 years in RTC plus a few more years in term of more to continue the counselling to---and learning and vocational training. Because they need to prepare him to get a job outside, you know. We need to help him to re---how to resist peer influence, things like that. And knowing he's a---intellectual disability, he's learning a---he's---of necessity a bit slow and prolonged. I'm not sure whether it would help to resolve the problems or not.

125 Insofar as Dr Cai mentioned the possibility of "RTC plus", I noted that under r 4 of the Criminal Procedure Code (Reformative Training) Regulations 2010 (No S 802 of 2010), the Accused may still be supervised until the

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101 NE Day 5 (13 November 2017), p 74.

102 NE Day 5 (13 November 2017), pp 73-74.

103 NE Day 5 (13 November 2017), p 74.

104 NE Day 5 (13 November 2017), p 76.

105 NE Day 5 (13 November 2017), p 78.

expiration of four years from the date of the sentence. Under r 5 of the same Regulations, the relevant authorities may recall the Accused to a reformative training centre if they are satisfied that he had failed to comply with any requirement imposed during his supervision period. As the maximum period of detention for RT was three years from the date of sentence, this meant a possible period of supervision for a maximum of another year but no more (assuming that the maximum period of detention applied to the Accused). While there was no assurance that this additional one year would be enough time if the Accused had not already benefited during his stay in the reformative training centre, it at least meant that there could be some follow up after the period of detention.

126 Further, I also noted one further aspect of AD Ng's affidavit which I had earlier referred to (see [85] above) and considered probative. AD Ng's affidavit referred to the case of *Public Prosecutor v Mohammad Fadlee Bin Mohammad Faizal* [2016] SGDC 274 where the offender pleaded guilty to, amongst other things, a charge under s 509 read with s 511 of the PC for attempting to insult the modesty of a woman by peeping into the cubicle of a female toilet. The other charges were not sexual in nature. The offender was sentenced to RT. According to AD Ng, administrators and instructors at the RT regime suitably modified the programmes offered to cater to the offender's unique circumstances even though he had borderline intelligence:[106]

> The offender has completed two group-based correctional programmes for general risks which are classified as moderate and high intensity composite programmes. While the two programme structures were not modified for the offender, due to the offender's borderline intelligence, his teachers had to significantly modify their method of instruction to him – they had to communicate in very simple English to him and at times had to resort to giving him instructions in Malay. His teachers had to frequently repeat concepts when teaching the offender as he was unable to intuitively understand and apply the

106 AD Ng's Affidavit at para 19.

> concepts taught. Due to this, SPS [*ie*, the RTC branch thereof] will be modifying further courses taught and adjust[ing] the method of instruction accordingly to facilitate the offender's learning and retention.
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> The offender has also been given an opportunity to pursue his education under the General Education programme since December 2016, and will be furthering his education as a Normal (Technical) student in 2018. While he appeared keen to learn, his teachers observed that he is highly dependent on others for instruction.

127 In my view, AD Ng's evidence showed that suitable modifications to the programmes offered by the RT regime to cater to individuals with intellectual disabilities could be done and indeed had been done.

128 In the present case, Soh Tee Peng William, a Senior Assistant Director of the Correctional Rehabilitation Service Branch ("SAD Soh"), also gave evidence that if the Accused was sentenced to RT, the RT officers would try to help the Accused such as by seeing him on a one-to-one basis.[107]

129 However, SAD Soh did raise operational concerns including resource and time constraints. The general thrust of the evidence for the Prosecution was that even if individual attention is given to the Accused, this would not suffice. His cognitive deficiency rendered it unlikely that he would fully benefit from the RT regime. This was all the more so as various programmes for RT were group-based, involving interaction between members in a group.

130 On this point, Dr Cai gave an explanation as to why, perhaps, "X" (see [67] above) was suitable for RT and the Accused was not. Dr Cai drew a distinction between these two cases and said that X was more intelligent than the Accused. X had managed to pass the Primary School Leaving Examinations ("PSLE") on his second attempt whereas the Accused had not passed PSLE.

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107 NE Day 4 (6 November 2017), p 86.

Apparently, according to the Accused and as recorded in Dr Bosco Lee's report dated 20 October 2015, his score for PSLE was 43 which he himself said was the lowest in Singapore.[108] Secondly, the Accused was diagnosed (by IMH and Dr Cai) as having a conduct disorder. Thirdly, X did not threaten to use any weapon in his offences.[109]

131 Under s 305(3) of the CPC, before imposing any sentence of RT, the Court must call for and consider any report as to the offender's suitability for RT submitted by any person authorised by the Commissioner of Prisons to do so on his behalf. I understood that Dr Rajesh was submitting his medical memoranda, letter and report between 24 February 2017 and 8 March 2017 on behalf of the Commissioner.

132 It was tempting to simply rely on Dr Rajesh's opinion and deny the Accused RT. However, I paused to also consider the alternative sentencing options available to the Court. In that regard, it seemed to this Court over-simplistic to say that because the Accused was unlikely to benefit from RT, RT should not be ordered. What was the alternative? According to the Prosecution, that would be to send the Accused for a long term of imprisonment and caning of which 12 strokes appeared to be mandatory. I did not think that was the appropriate sentence.

133 Importantly, there was no suggestion that sending the Accused to prison for a long term and caning would offer a better prospect of rehabilitation. Even the experts for the Prosecution did not suggest that prison and caning was the better alternative to RT from the point of view of rehabilitation.

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108 Exhibit N-D, Tab 4 at para 15.

109 NE Day 5 (13 November 2017), pp 104-105.

134 Furthermore, if the Accused was sentenced to imprisonment and caning, there would have been a higher risk that he might become a hardened criminal. This would not have been in his interest or in the interest of protecting society. In this regard, I accepted the evidence of Dr Bosco Lee who opined in examination-in-chief as follows:[110]

> Q … How do you think [the Accused] will fare in prison?
>
> A … prison is a stressful environment by all accounts. Adapting to a stressful environment does require a certain amount of intelligence, a certain amount of resilience and that is actually, part of, you know, problem-solving, planning, staying out of trouble. So it is also known that people with mental retardation sometimes they have problems adapting to prisons and it is known that there is a higher incident of psychiatric disorders, including mood disorders, psychosis, anxiety disorders in people with mental retardation. This is a fact. And if [the Accused] should be imprisoned and happen to be with prisoners, because sometimes the prison buddy that you sleep with, they change over time. So if he has got pri---got people, prison buddies that he sleeps with in his cell that who---interacts him---with him, who are not exactly of the kindest and purest of intention, who may even perhaps be psychopathic in their orientation, there is a good chance that [the Accused] could be manipulated by them and I think it is well accepted that people with mental retardation are vulnerable and I stand here to say that from what I have seen, Changi Prison is not the place for offenders with mental retardation.

135 The negative peer influence that an impressionable youth may be subject to in prison has been recognised by the Courts. As Chao Hick Tin JA observed in *Nur Azilah bte Ithnin v Public Prosecutor* [2010] 4 SLR 731, a case which concerned a 16-year-old offender who pleaded guilty to charges of harassment under the Moneylenders Act (Cap 188, 2010 Rev Ed) and mischief by fire with intention to cause damage to property under s 435 of the PC:

> 20 I would agree with the District Judge that, *prima facie*, the predominant sentencing consideration in all cases of loan shark harassment, *a fortiori* acts of harassment where there was mischief by fire, must be deterrence. The court must,

110 NE Day 6 (1 December 2017), pp 25-26.

> however, especially where young offenders were involved, carefully assess the facts in each case (see *Mok Ping Wuen Maurice* ([12] *supra*) at [21]) and not apply the general rule of deterrence as a matter of course. *There are many facets to public interest. It cannot be in the public interest that every such young offender be incarcerated and be exposed to the negative influences of hardened criminals in the prison environment. The rehabilitation of the young, who have gone astray, is a fundamental tenet of our society. If it is Parliament's intention to take away this option in relation to a particular offence or a category of offences, then, this intention must be made clear.*
>
> [emphasis added]

136 In response, the Prosecution submitted that the Accused would be adequately cared for in prison as the Singapore Prisons Service was committed to rehabilitating the Accused and would tailor the required programmes in prison to be taught to the Accused on a one-to-one basis.[111] I was not persuaded. First, if suitable modifications can be done in prison to better facilitate the Accused's rehabilitation, there was no reason why the same cannot be done in RT. Indeed, as I have mentioned, SAD Soh's evidence was that the RT officers could try to help the Accused such as by seeing him on a one-to-one basis.[112] Secondly, the fact that the prisons regime could take into consideration some element of rehabilitation did not mean that rehabilitation was therefore the paramount consideration there. However much the objective of rehabilitation may feature in prison, prison did *not* replace the role of RT particularly in relation to young offenders. This was recognised in *Al-Ansari*, where it was observed that (at [65]):

> Apart from probation orders, reformative training functions equally well to advance the dominant principle of rehabilitation and may even represent a better balance between the need for rehabilitation and deterrence. Even a term of imprisonment might not be said to completely ignore the rehabilitation of the offender, given that the prisons nowadays… have a comprehensive set of training and counselling programmes

111 Prosecution's AH and Sentencing Submission at para 200.

112 NE Day 4 (6 November 2017), p 86.

> designed to give the offender a second chance in life upon his release. *However, I readily acknowledge that a term of standard imprisonment cannot be said to place the principle of rehabilitation as a dominant consideration.*
>
> [emphasis added]

137 The Prosecution also argued that a long period of incarceration would better protect society and help the Accused rehabilitate. Insofar as short-term societal protection was concerned, that may be true. However, the *longer-term* safety of society was the true concern, and not merely for the limited period of incarceration.

Other sentencing options

138 While this Court was willing to consider alternative sentences that would better suit the degree of the Accused's culpability and his conditions, such as the options proposed by Dr Cai and Dr Bosco Lee, the sentencing options available to the Court were unfortunately severely limited.

139 First, there were limited sentencing options available to deal with the Accused's intellectual disability in the long term.

140 Nothing in the Mental Health (Care and Treatment) Act (Cap 178A, 2012 Rev Ed) was of assistance to this Court as a matter of sentencing.

141 Under s 339(3) of the CPC, the Court may make a mandatory treatment order if an appointed psychiatrist states the following:

> (a) the offender is suffering from a psychiatric condition which is susceptible to treatment;
>
> (b) the offender is suitable for the treatment; and

(c) the psychiatric condition of the offender is one of the contributing factors for his committing the offence.

142 In the present case, no one suggested that the Accused was suffering from a psychiatric condition which was susceptible to treatment as such. Furthermore, under s 339(1) of the CPC, the psychiatric treatment is for a maximum period of 24 months only, and no one had expressed a view as to whether that period would be enough for the Accused, even if his intellectual disability was considered suitable for treatment within the meaning of s 339 of the CPC.

143 Secondly, while the CPC has provisions for persons of unsound mind (see Division 5 of Part XIII of the CPC), there is no provision for persons who suffer from some intellectual disability but are not of unsound mind.

144 Thus, where a minimum period of incarceration is statutorily mandated, the Court has no discretion to reduce the period on account of the offender's intellectual disability.

145 In the context of caning, there is a prohibition against caning under s 325(1) of the CPC for the following categories of offenders:

(a) women;

(b) men who are more than 50 years of age at the time of infliction of the caning; and

(c) men sentenced to death whose sentences have not been commuted.

146 However, there is no exception for persons with some intellectual disability. Neither is the Court given any discretion to take into account such a disability where a minimum number of strokes of the cane is statutorily mandated.

147 Beyond the additional period of one year for supervision in the RT regime (see [125] above), there was no other option to add anything substantive over and above RT, or as an addendum to enhance the efficacy of a RT sentence.

148 In this regard, I noted that ss 309 to 311 of the CPC provide for the police supervision regime, under which the sentencing court may order that an offender be placed under a period of police supervision commencing immediately after the last sentence passed on him ends. However, such an order appeared neither available nor appropriate in the present case. First, s 309(1) of the CPC suggests that an order for police supervision can only be made if the offender had been previously convicted of an offence punishable with imprisonment for 2 years or more. Here, there was no prior conviction (see [9] above). Secondly, the requirements of police supervision *per se* under s 310(1) of the CPC were unlikely to aid much in the Accused's rehabilitation or the protection of the public, if the RT stint had not already been able to do so.

149 I turn back to address the alternative sentence of imprisonment and caning. While some view the regime of RT as a harsher sentence than a term of imprisonment because of the nature and minimum duration of RT, I was of the view that in the present case, a long term of imprisonment plus caning of at least 12 strokes was clearly the harsher punishment.

150 Dr Bosco Lee was of the view that the Accused's understanding and judgment was comparable to someone who was between 8 and 10 years old in view of his intellectual disability.[113] In the same vein, Dr Cai assessed the Accused's mental age to be 8 years old given his IQ score and physical age (see [4] above).[114] However, Dr Cai was also of the view that mental age was "archaic and not helpful and meaningful in clinical practice and forensic evaluation".[115]

151 Whether or not the use of the Accused's mental age was archaic, I was of the view that he was still a vulnerable person in view of his young (physical) age and his intellectual disability. Yet, the Prosecution submitted that a harsher sentence should be meted out than if he were not intellectually disabled. Such an approach appeared discriminatory and could not be right.

152 The Prosecution had taken into account the Accused's young age and his guilty plea as mitigating factors. It did not consider his intellectual disability as a mitigating factor.[116] As I have intimated above, I was of the view that his youth and intellectual disability should both be taken into account before deciding whether to impose the harsher sentence urged on this Court. In this regard, I should also refer to the observations of Menon CJ at the Sentencing Conference 2017 where he mentioned the continuing importance of rehabilitation, focusing in particular on two classes of persons – young offenders and offenders with mental disorders, which I understood was not necessarily confined to those who are of unsound mind (see [108] above).

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113 NE Day 6 (1 December 2017), pp 3-4.

114 Exhibit N-D, Tab 6 at para 5.

115 Exhibit N-D, Tab 6 at para 7.

116 Prosecution's AH and Sentencing Submissions at paras 182-183.

153 I should note that in the course of the Newton hearing, I invited the parties to consider the applicability of the general exception under s 83 of the PC in the present case given the Accused's intellectual disability. Section 83 provides that nothing is an offence when done by a child above 7 years of age and under 12, who has not attained sufficient maturity of understanding to judge the nature and consequence of his conduct on that occasion. However, neither party thought that this provision was applicable.[117]

154 I further add that it was not the intent of this Court to foist its view on the relevant authorities as to how RT is to be carried out. However, the issue here did not concern operational details only. It raised a more fundamental question: why are the sentencing options for a young person with intellectual disability so limited? As a subset of this issue, the question arises as to whether RT should remain available to young persons with intellectual disabilities. If not, why not, and what other options should then be put in place. In my view, it cannot be right that a young offender with intellectual disability is to be sentenced, by default, as if he was an adult because of his intellectual disability.

155 As mentioned above (see [84(b)]), there were offenders with intellectual disabilities who were sentenced to RT. It may be that in some of those cases, the report of the psychiatrist (and the medical officer) found the offender suitable for RT. However, that still leaves the question as to what the Court is to do with those who are not found to be suitable for RT primarily because of their intellectual disabilities. Hence, while the immediate issue in the present case was whether the Accused should be sent for RT or to prison and caning, there were larger issues at stake that went beyond the individual case.

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117 See Prosecution's letter to court on both parties' behalves dated 22 December 2017.

156 For the foregoing reasons, while I would have had less hesitation in sentencing the Accused to RT if he did not have any intellectual disability, I was satisfied that RT was the appropriate sentence in any event.

Prejudice to the Accused

157 I turn now to address the possible prejudice to the Accused arising from the fact that he was 14 years of age when he committed the present offences but more than 16 years of age by the time he was convicted on 6 February 2017.

158 As mentioned at [32] above, the Prosecution informed the Court that investigations had been completed on 20 April 2015, but as a result of various processes, the matter was heard close to two years later on 6 February 2017. This raised the question of whether the passage of time led to any possible prejudice to the Accused.

159 The first point to note was s 323 of the CPC, which states as follows:

> **Juvenile may be dealt with under Children and Young Persons Act**
>
> 323. If a juvenile is convicted of an offence punishable by fine or imprisonment or both, and whether or not the law under which the juvenile is convicted provides that fine or imprisonment or both shall be imposed, the court may, instead of sentencing him to fine or imprisonment, deal with the juvenile in the manner provided by the Children and Young Persons Act (Cap. 38).

160 Section 2(1) of the CPC defines "juvenile" to mean one who, in the absence of legal proof to the contrary, is 7 years of age or above and below the age of 16 years in the opinion of the court. As at the time of commission of the present offences, the Accused was 14 years of age and therefore would have qualified under s 323 of the CPC. However, by the time of his conviction and sentence, he was past the age of 16 and this provision no longer applied.

161 Section 323 of the CPC refers to the CYPA. In this regard, s 37(2) of the CYPA states as follows:

> **Restrictions on punishment of children and young persons**
>
> 37.–
>
> …
>
> (2) A young person shall not be ordered to be imprisoned for any offence, or be committed to prison in default of a fine, damages or costs, unless the court certifies that he is of so unruly a character that he cannot be detained in a place of detention or a juvenile rehabilitation centre.
>
> (3) Notwithstanding the provisions of any other written law, no child or young person shall be sentenced by any court other than the High Court to corporal punishment.

162 Section 2(1) of the CYPA defines a "young person" to mean one who is 14 years of age or above and below the age of 16. Again, as at the time of commission of the present offences, the Accused qualified under ss 37(2) and (3) of the CYPA. However, it appeared that the applicable date for the above provision was the date of sentencing or conviction, but not the date of commission of the offence. Hence, the provision did not apply to the Accused.

163 The Prosecution submitted that it was unlikely that the Accused would be dealt with under the CYPA in any event because of the gravity of the present offences.

164 It was not necessary for me to decide what is meant by "so unruly a character" under s 37(2) of the CYPA since the Accused was more than 16 years of age at the time of conviction. However, even if the gravity of the present offences was a material factor and it was unlikely that a court would have dealt with the Accused under s 37(2) of the CYPA, the point remained that as a result of the passage of time between his arrest and his conviction, the Accused was

denied the opportunity of making the argument, if he so wished, to be dealt with under that provision.

165 Furthermore, there were other provisions in the CPC which caused this Court even greater concern:

(a) Under s 329(4) of the CPC, caning is to be inflicted with a light rattan in the case of a juvenile.

(b) Under s 328(6) of the CPC, the maximum number of strokes of the cane in the case of a juvenile is ten whereas it is 24 in the case of an adult.

I have mentioned the definition of "juvenile" in the CPC above (see [160]).

166 The provisions do not state what the applicable date for the assessment of the offender's age is. It could be, for instance, the date of commission of the offence, the date of conviction, the date of sentencing, or something else. The Prosecution appeared to take the view that it was *not* the date of commission of the offence but one of the later dates, and therefore the provisions would not apply in the present case. If this position was correct in law, then the Accused would have been prejudiced by the passage of time between his commission of the offences and his date of conviction.

167 That said, I did not take this possible prejudice into account as I was inclined to impose the same sentence of RT even if there was no prejudice.

168 Beyond the instant case, the CPC provisions also raise general concerns. The first is that the applicable date for these provisions should be clarified by legislation, one way or another, and not be left to be interpreted by the Court. It

is an important issue and may crop up time and again if not clarified by legislation.

169 Secondly, if indeed the applicable date is not the date of commission of the offence but a later date such as the date of conviction or sentence, there may be a short time frame between the time a young offender is arrested and the time he reaches the age of 16. There should be some process to alert all stakeholders of that short time frame for them to take the necessary steps to ensure the expeditious resolution of such cases before the offender reaches the age of 16.

170 Thirdly, and more importantly, if indeed the applicable date is not the date of commission of the offence but a later date, one might wonder why this should be so. It may arguably be applying a heavier punishment with retrospective effect which appears contrary to the basic notion of criminal law. That said, I appreciate that there are also arguments which support the view that the applicable date should be, for example, the date of the sentence. In any event, even if the applicable date is the date of commission of the offence such that there was no prejudice to the Accused in respect of those two provisions in the CPC relating to the caning of a juvenile (see [165] above), the law should still be clarified by legislation.

171 As an example, in the case of s 325(1) of the CPC which exempts certain categories of persons from caning, s 325(1)(*b*) specifies the time of infliction of caning as the applicable time to determine whether a male offender is more than 50 years of age and hence exempted from caning. As another example, s 305(1) of the CPC, which provides for the sentence of RT, also clarifies that the age requirement therein is to be assessed as at the date of conviction.

172 Having said that, I am heartened to note that the silver lining in the three-year period during which the Accused was remanded at the SBH was that the Accused appeared to have coped well during his stay. Mr Murugasvaran s/o Madasamy ("Mr Murugasvaran"), the manager of the Youth Guidance Management in the SBH, produced an undated Assessment Report and testified in Court that there was consistent positive feedback about the Accused from the youth guidance officers at the SBH. He described the Accused as one who "can be on his own and very well-behaved, can be trusted".[118] Apparently, the Accused was the dormitory-in-charge who ensured his dormitory's cleanliness and that his roommates were ready for inspection every morning.[119] He was also one of the boys who would take the lead to conduct physical training or other sports and games.[120] Feedback was also given that the Accused's family "ha[d] been supportive of his rehabilitation in the Home".[121] Mr Murugasvaran concluded, based on feedback from staff members at the SBH, that the Accused was "focus[ed] on his motivation to change" and "showed remorse towards his action and acknowledge[d] his lack of consequential thinking that led him to his admission to [the SBH]".[122]

173 While I accepted the Prosecution's submission that there were differences between the programmes at the SBH and the RT regime such that good performance at the SBH did not necessarily guarantee success with the RT regime, the Accused's performance was of some comfort to this Court insofar as it suggested that the Accused was not as irredeemable as one might have assumed. Further, I was concerned that the long period of incarceration and

118 NE Day 6 (1 December 2017), p 85.

119 NE Day 6 (1 December 2017), p 83.

120 NE Day 6 (1 December 2017), pp 83-84.

121 NE Day 6 (1 December 2017), p 84.

122 NE Day 6 (1 December 2017), pp 85-86.

caning which the Prosecution urged on this Court would undo the progress that the Accused had achieved. As VK Rajah JA observed in *Chan Kum Hong Randy v Public Prosecutor* [2008] 2 SLR(R) 1019 at [29]:

> In cases involving an inordinate delay between the commission of an offence and the ultimate disposition of that offence via the criminal justice process, the element of rehabilitation underway during the interim cannot be lightly dismissed or cursorily overlooked. If the rehabilitation of the offender has progressed positively since his commission of the offence and there appears to be a real prospect that he may, with time, be fully rehabilitated, this is a vital factor that must be given due weight and properly reflected in the sentence which is ultimately imposed on him. Indeed, in appropriate cases, this might warrant a sentence that might otherwise be viewed as 'a quite undue degree of leniency' (per Street CJ in *R v Todd* ([23] supra) at 520).

174 Similar views were expressed by Yong Pung How CJ in *Tan Kiang Kwang v Public Prosecutor* [1995] 3 SLR(R) 746 at [20] and by Chao Hick Tin JA in *Ang Zhu Ci Joshua v Public Prosecutor* [2016] 4 SLR 1059 at [7]–[8].

175 I should add that I was not persuaded by the suggestion that the Accused could have been putting up a front or manipulating the officers at the SBH to testify positively in his favour,[123] given the duration of his remand at the SBH and his intellectual disability.

Conclusion

176 For the foregoing reasons, I sentenced the Accused to RT.

177 After the delivery of my decision as to sentence, the Prosecution sought a stay of execution pending appeal under s 383 of the CPC. In *Adith*, Menon CJ noted that the court hearing a stay application should "primarily be concerned with ensuring that the Prosecution's appeal is not prejudiced while weighing

123 NE Day 6 (1 December 2017), pp 91-93.

this against the comparative prejudice, if any, that is suffered by the convicted person in having to await the outcome of the appeal before commencing his sentence" (at [31]). In the present case, while I was concerned about the duration of the Accused's remand and the fact that any stint of RT could not be backdated, I was of the view that the balance lay in favour of granting the stay given that the Accused's positive stint in the SBH appeared to have aided, and would likely continue to aid, his rehabilitation. In the circumstances, I granted a stay pending the outcome of any appeal by the Prosecution.

178 I note that the Prosecution had said that it would ask for the appeal to be expedited. I agree that it should do so.

Woo Bih Li
Judge

David Khoo and Carene Poh (Attorney-General's Chambers)
for the Prosecution;
Nadia Ui Mhuimhneachain (Kalco Law LLC) and
Muntaz binte Zainuddin (PY Legal LLC) for the Defence.

Annex A – Schedule of Offences

Charge No.	Date of Offence	Offence	Status
2nd Charge	21 Nov 2014	Rape (Aggravated) S 375(1)(*a*) p/u s 375(3)(*a*)(ii) PC	Proceeded
3rd Charge	21 Nov 2014	Sexual assault by penetration S 376(2)(*a*) p/u s 376(3) PC	Proceeded
4th Charge	21 Nov 2014	Sexual assault by penetration S 376(2)(*a*) p/u s 376(3) PC	Proceeded
5th Charge	15 Jul 2014	Snatch theft with common intention S 356 r/w s 34 PC	TIC
6th Charge	14 Jul 2014	Housebreaking and theft by night with common intention S 457 r/w s 34 PC	TIC
7th Charge	20 Jun 2013	Theft in dwelling with common intention S 380 r/w s 34 PC	TIC
8th Charge	12 Jul 2014	Dishonestly retaining stolen property S 411(1) PC	TIC
9th Charge	18 Sep 2014	Criminal breach of trust S 406 PC	TIC
10th Charge	3 Oct 2014	Outrage of modesty S 354(1) PC	TIC

Annex B – AD Ng's Statistics