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

[2021] SGHC 295

Criminal Case No 14 of 2021

Between

Public Prosecutor

And

Ng Yi Yao

GROUNDS OF DECISION

[Criminal Law] — [Offences] — [Rape]
[Criminal Law] — [General exceptions] — [Consent]
[Criminal Law] — [General exceptions] — [Mistake of fact]

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Public Prosecutor
v
Ng Yi Yao

[2021] SGHC 295

General Division of the High Court — Criminal Case No 14 of 2021
Mavis Chionh Sze Chyi J
16–19, 23–26 March, 28 June, 23 August 2021

31 December 2021

Mavis Chionh Sze Chyi J:

Introduction

1 The accused, Ng Yi Yao, faced a total of five charges. The first charge was one of impersonating a public servant – namely, a police officer – under Section 170 of the Penal Code (Cap 224, 2008 Rev Ed) (the "Penal Code"). The second and fourth charges were charges of aggravated rape under Section 375(1)(*a*) of the Penal Code, punishable under Section 375(3)(*a*)(ii). The third and fifth charges were charges of aggravated sexual assault by penetration under Section 376(1)(*a*) of the Penal Code, punishable under Section 376(4)(*a*)(ii). The first charge was stood down pending the trial of the second to fifth charges.

2 At the end of the trial of these four charges, I found that the Prosecution had proven its case against the accused beyond a reasonable doubt. I convicted the accused of the two charges of aggravated rape and the two charges of

aggravated sexual assault by penetration. He was sentenced to an aggregate imprisonment term of 18 years (backdated to 22 February 2019) and 24 strokes of the cane. The accused has appealed against his conviction and sentence and I now set out the reasons for my decision.

3 The four charges on which the accused was tried read as follows:

> Second charge
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> That you, … on 21 February 2019, on a first occasion, sometime between 8.37pm and 11.40pm in Room 305 of Harbour Ville Hotel, located at 512 Kampong Bahru Road, Singapore, did penetrate with your penis, the vagina of one [V], without her consent, while you were on top of her, and in order to facilitate the commission of the offence, did put [V] in fear of hurt, to wit, by holding a Swiss Army knife, and you have thereby committed an offence under s 375(1)(*a*) punishable under s 375(3)(*a*)(ii) of the Penal Code (Cap 224, 2008 Rev Ed).
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> Third charge
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> That you, … on 21 February 2019, on a first occasion, sometime between 8.37pm and 11.40pm, in Room 305 of Harbour Ville Hotel, located at 512 Kampong Bahru Road, Singapore, did penetrate with your penis, the mouth of one [V], without her consent, and in order to facilitate the commission of the offence, did put [V] in fear of hurt, to wit, by holding a Swiss Army knife, and you have thereby committed an offence under s 376(1)(*a*) punishable under s 376(4)(*a*)(ii) of the Penal Code (Cap 224, 2008 Rev Ed).
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> Fourth charge
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> That you, … on 21 February 2019, on a second occasion, sometime between 8.37pm and 11.40pm, in Room 305 of Harbour Ville Hotel, located at 512 Kampong Bahru Road, Singapore, did penetrate with your penis, the vagina of one [V], without her consent, while she was on top of you, and in order to facilitate the commission of the offence, did put [V] in fear of hurt, to wit, by holding a Swiss Army knife, and you have thereby committed an offence under s 375(1)(*a*) punishable under s 375(3)(*a*)(ii) of the Penal Code (Cap 224, 2008 Rev Ed).
>
> Fifth charge
>
> That you, … on 21 February 2019, on a second occasion, sometime between 8.37pm and 11.40pm, in Room 305 of Harbour Ville Hotel, located at 512 Kampong Bahru Road,

> Singapore, did penetrate with your penis, the mouth of one [V], without her consent, and in order to facilitate the commission of the offence, did put [V] in fear of hurt, to wit, by holding a Swiss Army knife, and you have thereby committed an offence under s 376(1)(*a*) punishable under s 376(4)(*a*)(ii) of the Penal Code (Cap 224, 2008 Rev Ed).

Facts

4 The accused is a 32-year-old Singaporean man.[1] The victim ("V") is a 25-year-old woman.[2] The accused and V did not know each other prior to the night of 21 February 2019 when the alleged offences were committed.[3] As at 21 February 2019, V held two jobs while studying part-time for a degree: one job was that of assistant to a private banker, the other was that of a part-time social escort who provided sexual services in return for monetary payment.[4] V's agent ("A") would arrange appointments with clients for her.[5]

Background

5 The agreed facts were as follows. V was working as a social escort on the night of 21 February 2019. Sometime after 8pm, V checked in to the Harbour Ville Hotel (the "Hotel") alone. She booked a room for two hours and was assigned Room 301 to wait for a client who was scheduled to arrive at 8.15pm.[6] At about 8.14pm, the accused, who was the client V was supposed to meet, arrived at the Hotel and went to Room 301. The accused identified himself as "Ivan". While the accused and V were in Room 301, the accused identified

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1 Statement of Agreed Facts dated 22 January 2021 ("SOAF") at para 1.

2 SOAF at para 2.

3 Exhibit P58 at p 6, lines 11–29; p 27, lines 18–24; Exhibit P62 at p 22, lines 14–17.

4 Transcript, 16 March 2021 at p 18, lines 11–26.

5 SOAF at para 4; Transcript, 16 March 2021 at p 20, lines 4–11.

6 SOAF at para 5.

himself to V as a police officer. In fact, V was not – and had never been – a police officer. While they were in Room 301, the accused used his phone to do a voice recording of the conversation between him and V.[7]

6 At about 8.37pm, the accused and V went to the reception counter to request for a change of rooms. They were assigned Room 305. At some point after the accused and V had shifted to Room 305, the accused continued the voice recording.[8] While the accused and V were in Room 305, they engaged in sexual intercourse, including penile-vaginal and penile-oral sex. Subsequently, the accused and V left the Hotel. The accused paid $20 for Room 305 at the reception counter while V stood outside the entrance of the Hotel. The accused then joined V outside the entrance of the Hotel and gave her $40.[9]

7 At about 11.44pm, the accused and V boarded a taxi. They took the taxi to V's residence. The accused gave the taxi driver $50 to wait for him while he walked up to V's flat with her. After going up the stairs with V to the door of her flat and then coming back down, he travelled in the same taxi to Vintage Inn.[10]

8 At about 11.59pm on 21 February 2019, V called her friend ("B").[11] On 22 February 2019, at about 12.46am, the police received a report of a case of

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7 SOAF at para 6.

8 SOAF at para 7.

9 SOAF at para 8.

10 SOAF at para 9.

11 SOAF at para 10.

rape. A First Information Report was lodged at Bedok Police Division.[12] On the same day, at about 8.05am, the accused was placed under arrest at Vintage Inn.[13]

The Prosecution's case

9 The Prosecution's case was that the accused had arranged to receive sexual services from V when he knew he did not have the money to pay her the agreed fee, and he intended to coerce V into having sex with him.

10 According to the Prosecution, V had asked the accused for payment of her $450 fee while they were in Room 301. Instead of paying her, the accused flashed what appeared to be a card holder or wallet at her, and asked her to hand over her phone and her identification card ("NRIC"). As the accused identified himself as a police officer and told her that working as a social escort was wrong, V complied with his directions out of fear.[14] They remained in Room 301 from approximately 8.14pm to about 8.37pm.[15]

11 After the accused and V changed rooms to Room 305,[16] the accused continued his impersonation of a police officer. He told V that he had caught seven other girls and that they had offered him "something" in return for their freedom – which V understood to mean providing sexual services.[17] Suspecting that the accused might not be a police officer, V asked to see his police

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12 SOAF at para 11.

13 SOAF at para 12.

14 Prosecution's End-of-Trial Submissions dated 12 May 2021 ("PES") PES at para 8.

15 PES at para 10.

16 PES at para 11.

17 PES at para 12; Transcript, 16 March 2021 at p 44, lines 15–20; p 45, lines 18–21.

identification, but the accused refused to produce it.[18] The accused gave V the opportunity to offer him "something" in exchange for her freedom a few more times, but she refused.

12 After V had again requested unsuccessfully to see his police identification, the accused asked her if she was afraid. When V said she was afraid he would hurt her, the accused lost patience and told her to switch off the lights or he would hurt her.[19] It was at this juncture that V saw the accused holding a red Swiss Army knife, with the blade extended towards her direction while he was facing her. He also stepped forward towards her. Seeing this, V complied with his instructions by turning off the lights, removing her clothes and lying down on the bed. The accused removed his clothes and climbed on top of her.[20]

13 Knowing that the accused was going to have sex with her, V told him "no" and tried to move her body backwards as she did not want to have sex with him. However, the accused was too heavy for her to fight off. To try to get him off her body, V told him that she had a condom in her bag, hoping he would get off her. However, the accused said there was no need for the condom.[21] They then had penile-vaginal intercourse with the accused on top of V. This was followed by V fellating the accused, and then by a second instance of penile-vaginal intercourse, this time with V on top of the accused. While V was on top

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18 Transcript, 16 March 2021 at p 45, line 28–p 46, line 12.

19 Transcript, 16 March 2021 at p 53, line 22–p 54, line 2.

20 PES at para 14.

21 PES at para 15.

of the accused, the accused asked her why she looked like she was not enjoying it and V replied that "[o]f course [she] wasn't".[22]

14 After this, the accused got V to fellate him again and to use her hands to masturbate him.[23] He also asked her to lie on his shoulder while he masturbated himself and ejaculated on her chest.[24]

15 V did not consent to any of these sexual acts. She complied with the accused's instructions only because he had a knife and she was afraid.[25]

16 The accused then told V to shower, after which he too took a shower. V wanted to leave the room at this point, but the accused came out of the shower before she could finish putting on her clothes. He then had another conversation with her, in which *inter alia* he admitted he was not a police officer.[26]

17 In the course of this conversation, the accused also proposed that he should move into V's flat to stay with her and help her pay the rent. He even insisted that he would send her home and move in with her that same night. V pretended to agree to his proposals as she was afraid that he would not let her leave the Hotel otherwise. However, to forestall his moving in that very night, she lied that her brother was staying with her and would only go home on the weekend. When the accused asked for the "PIN" (apparently the passcode) for the entrance to her flat, she also lied that she had forgotten the PIN. The accused

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22 Transcript, 16 March 2021 at p 64, lines 22–25.

23 PES at para 16.

24 PES at para 17.

25 PES at para 18.

26 PES at paras 19–20.g

then insisted that they exchange mobile phone numbers, and he also took a photo of the front and back of her NRIC.[27]

18 After the accused and V left Room 305, the accused paid the receptionist for the excess room charges. He also gave V $40, which she initially refused, but eventually accepted upon his insistence. He then sent her back to her flat in a taxi and went back to Vintage Inn in the same taxi.[28]

19 When V reached home, she called her friend B and told him she had been raped. When B came to her flat, she reiterated that she had been raped but gave him a different account of how she had met the accused, as she was embarrassed to tell B her about her job as a social escort.[29] Subsequently she called the police as well to report the rape.[30]

20 Before calling the police (and before B came to her flat), V also called her agent A to inform him about the rape. A advised her against calling the police as she was a sex worker. While V was initially hesitant about making a police report, she concluded that it was necessary to do so because she had not consented to the sexual assault and to the accused's use of the weapon (the knife).[31]

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27 PES at para 21.

28 PES at para 22.

29 PES at para 22; Transcript, 16 March 2021 at p 82, line 10–p 83, line 2.

30 Agreed Bundle dated 22 January 2021 ("AB") at p 188, s/n 3.

31 PES at para 23.

The Defence's case

21 Not surprisingly, the version of events put forward by the accused at trial was quite different. The accused testified that while still impersonating a police officer in Room 305, he told V that the police operation had not yet started and that his role was only to carry out reconnaissance.[32] V asked him if she would be able to get back the $40 she had paid for the room, and he said that he would help her put in a request but that there was no guarantee of reimbursement.[33] The accused also hinted to V that she could walk free if she gave him "something special" – by which he meant, if she performed sexual acts on him.[34] V refused to do so and questioned whether he was a genuine police officer, whereupon the accused confessed that he was not.[35]

22 Upon hearing this, V "got angry": she scolded the accused for wasting her time and asked him what he wanted out of all this.[36] The accused said that she should "know what [he] want[s]" and that if she gave him what he wanted, they could both leave.[37] According to the accused, V then told him: "If you can at least pay me the $40 that I paid for the hotel room and let me use my mobile phone to send a text message to my friends to inform them that I cannot pass them my assignments in time, then okay."[38] The accused agreed to V's two conditions. He gave V her mobile phone, and she sent B the text message "Bro

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32 Defence's Closing Submissions dated 12 May 2021 ("DCS") at para 40(a).

33 DCS at para 40(b).

34 DCS at para 40(c); Transcript, 24 March 2021 at p 21, lines 7–9.

35 DCS at para 40(d); Transcript, 24 March 2021 at p 22, line 26–p 23, line 1.

36 Transcript, 24 March 2021 at p 23, lines 1–3.

37 Transcript, 24 March 2021 at p 23, lines 21–28.

38 Transcript, 24 March 2021 at p 24, lines 14–17.

I can't make it tonight, have smth on."[39] Following this, the accused and V engaged in consensual sexual intercourse.[40]

23 According to the accused, in the course of a conversation subsequent to the sexual intercourse, V told him about her struggle to pay for her rent.[41] The accused proposed that he should move in with her and help her pay the rent. His proposal was accepted by V.[42] He wanted to move in that same night, but as V's brother was staying with her, they agreed that he would move in that Saturday instead.[43] It was also V herself who suggested that the accused should take a photo of her NRIC so that he could be sure she was not "lying" to him.[44]

24 After leaving Room 305, the accused paid for the excess room charges at the reception and also gave V $40 as promised.[45] He then sent her home in a taxi, before returning to his dormitory at Vintage Inn, where he was later arrested.

25 Apart from maintaining that the sexual encounter was consensual, the other features of the accused's defence were as follows. First, his position at trial was that there had only been *one* instance of penile-vaginal intercourse, where he was on top of V, and that this had occurred in between two instances of penile-oral intercourse.[46] It was contended on his behalf that there was a

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39 DCS at para 40(g).

40 DCS at para 40(h).

41 Transcript, 24 March 2021 at p 35, lines 17–20.

42 Transcript, 24 March 2021 at p 35, line 27–p 36, line 12.

43 Transcript, 24 March 2021 at p 36, lines 12–21.

44 Transcript, 24 March 2021 at p 36, lines 23–28.

45 Transcript, 24 March 2021 at p 41, line 25–p 42, line 1.

46 DCS at para 42; Transcript, 24 March 2021 at p 30, line 3–p 32, line 32.

reasonable doubt as to whether the second act of penile-vaginal penetration – where V was on top of him – had in fact occurred.[47]

26 Second, the Defence contended that there was also a reasonable doubt as to whether the accused had shown a Swiss Army knife to V and threatened to hurt her.[48] Reliance was placed on the fact that no Swiss Army knife had been found during the accused's arrest,[49] and on alleged inconsistences in V's evidence.[50]

27 Lastly, the Defence contended that in telling B about the incident, V had "manufactured a fictitious account" of the alleged sexual assaults, which seriously undermined her evidence as a whole.[51]

28 Because of these alleged flaws in V's evidence, the Defence argued that there existed a reasonable doubt as to the veracity of her claims of non-consensual sex.[52] According to the Defence, V had in reality consented to sexual intercourse with the accused so long as he "at least" paid her $40 for the hotel room and also let her use her mobile phone to send her friends a text message.[53]

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47 DCS at paras 8, 23, 99–107.

48 DCS at paras 26, 47–98.

49 DCS at para 48.

50 DCS at para 65.

51 DCS at paras 11, 43–44, 108–113.

52 DCS at paras 114–125.

53 DCS at para 115.

29 In the alternative, the Defence also sought to rely on the general defence of mistake under s 79 of the Penal Code, on the basis that the accused had mistakenly believed that V consented to sexual intercourse.[54]

The issues to be determined

30 Having outlined the Prosecution's case and the Defence case, I now set out the issues to be determined.

31 It was not disputed that the accused had booked V's services when he did not have the money to pay for those services. It was also not disputed that at some point during the night, he had impersonated a police officer, and that whilst impersonating a police officer, he had tried unsuccessfully to get V to have sex with him in exchange for his letting her "walk free".[55] Nor was it disputed that the accused and V had engaged in penile-vaginal and penile-oral intercourse.

32 Where the two sides differed was primarily on the issue of consent. V asserted that the entire sexual encounter had been non-consensual and that she had engaged in the sexual acts only after the accused put her in fear of hurt by showing her a Swiss Army knife. The accused, on the other hand, claimed that the sexual encounter was consensual and denied having shown a knife to V at any stage during the night. The accused also denied there having been a second instance of penile-vaginal intercourse with V on top of him.

33 Both sides were agreed that in respect of the charges of aggravated rape and aggravated sexual assault by penetration, the Prosecution must prove,

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54 DCS at paras 128–134.

55 DCS at para 40(c).

firstly, that the alleged sexual acts did take place between the accused and V; secondly, that V did not consent; and, thirdly, that in order to facilitate the commission of the offence, the accused put V in fear of hurt to herself (*Public Prosecutor v Mohammed Liton Mohammed Syeed Mallik* [2008] 1 SLR(R) 601 at [45]).[56]

34 Both sides were further agreed that in cases such as the present where the only witness to the alleged offences is the victim herself, the existing authorities require that the victim's evidence must be found to be "unusually convincing" before a conviction may be based solely on that evidence. If the victim's evidence is not unusually convincing, a conviction is unsafe unless there is some corroboration of the victim's account (*Haliffie bin Mamat v Public Prosecutor and other appeals* [2016] 5 SLR 636 ("*Haliffie*") at [28]–[30]).[57]

35 With the above in mind, I considered that the following issues arose for my determination:

(a) Whether V's evidence was unusually convincing; and

(b) Whether the alleged inconsistencies in V's evidence raised a reasonable doubt as to the accused's commission of the offences charged.

36 I address each of these issues in turn.

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56 Prosecution's Reply Submissions dated 1 June 2021 ("PRS") at para 26; DCS at para 20.

57 PES at para 33; DCS at para 16.

Whether V's evidence was unusually convincing

Prosecution's arguments

37 The Prosecution took the position that V's evidence was unusually convincing. First, V had no motive to lie about what happened; she did not know the accused before the incident and had nothing to gain from making a police report.[58]

38 Second, V's evidence was internally consistent. She was able to give a consistent account of events in her police statements and in her testimony at trial. She gave clear and cogent evidence of the sexual assaults and could recount material aspects of what happened prior to, during and after the sexual assaults.[59] Her credibility was further buttressed by the fair and measured nature of her evidence: she did not exaggerate or embellish her evidence to portray the accused in the worst possible light, and she was upfront about possible deficiencies in her own account.[60] Her evidence was also corroborated by other pieces of evidence.[61]

39 In particular, on the key issues of the accused's impersonation of a police officer, his use of a red Swiss Army knife, and the fact that she had been raped and sexually assaulted by the accused, V remained consistent in her evidence.[62] This was shown from the accounts taken from V by the police and V's account

58 PES at paras 30–31.

59 PES at para 34.

60 PES at paras 35–37.

61 PES at para 32.

62 PES at para 46.

to B.[63] V's account was also corroborated by objective evidence in the form of phone records from hers and the accused's mobile phones.[64] Her actions after the assault lent credence to her evidence that she had been raped and sexually assaulted.[65]

40 The Prosecution submitted that in contrast, the accused was clearly making up his evidence as he went along.[66] His account in court of consensual sex was unbelievable even at face value.[67] It was apparent that he had booked an appointment for V's sexual services when he had no funds to pay for such services and must have come up with the idea of using force to obtain sex from V without having to pay her.[68] He had no credibility at all as a witness, as shown by his many lies.[69]

Defence's arguments

41 The Defence, on the other hand, argued that there were numerous inconsistences in V's evidence; in particular, in relation to the accused's use of a Swiss Army knife and the number and sequence of sexual acts, as well as the account of the incident she gave B. There were also other discrepancies and anomalies. For example, despite her evidence that she had tried to resist the accused's advances, there was no physical evidence of a struggle nor of any

63 PES at paras 47–48.

64 PES at paras 49–52.

65 PES at paras 53–54.

66 PES at para 58.

67 PES at paras 59–67.

68 PES at paras 68–69.

69 PES at paras 70–94.

injuries sustained by her.[70] These inconsistencies and discrepancies, according to the Defence, raised a reasonable doubt as to V's evidence of rape and sexual assault.[71] The truth, according to the Defence, was that she had consented to sexual intercourse with the accused on condition that he "at least" pay her $40 for the hotel room and that he let her use her mobile phone to send a text message to her friends.[72]

My findings

V's evidence

42 Having carefully considered the evidence before me, I was satisfied that V's account of the alleged offences was to be believed. I found V to be an honest and credible witness. From the outset, V maintained that the sexual encounter with the accused was non-consensual and that she was put in fear of hurt to herself because he had a Swiss Army knife. The alleged inconsistencies in her evidence, which the accused sought to focus on, were not in my view genuine inconsistencies as such and/or were sufficiently explained by V, and/or were minor and not material.

(1) V's evidence was internally consistent

43 I agreed with the Prosecution's submission that V's evidence was internally consistent. First, she was able to maintain a consistent account of the rape and sexual assault throughout the statements she gave the police prior to the trial.

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70 DCS at para 114(a).

71 DCS at para 114.

72 DCS at paras 115, 117.

(A) V'S STATEMENTS TO THE POLICE

44 V's first statement was recorded by ASP Calina Campbell on 22 February 2019 around 1.14pm.[73] The key points of this first statement were as follows:

(a) On 21 February 2019 at around 8.05pm, V arrived at the Hotel and paid $40 to book Room 301. Around 8.17pm, the accused arrived and took a shower. V requested payment of $450 from him after he got out of the shower. The accused went back into the toilet and put on his clothes.[74]

(b) When the accused came out of the toilet, he told V he was a police officer and "briefly flashed a flipped holder at [V]". V was not wearing her spectacles at the time: she "saw that there was a yellowish card", but as "it happened too fast" and her "eyesight [was] quite poor", she could not see clearly what card it was. She obeyed the accused's instructions to hand him her phone and NRIC as she "was afraid".[75]

(c) The accused then took out his phone and started a voice recording, telling V that there was a "police operation going on" and that what V was doing was an offence. He used V's phone to text A to cancel the job. A called both V and the accused, but the accused rejected A's calls.[76]

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73 Exhibit D2.

74 Exhibit D2 at para 4.

75 Exhibit D2 at para 4.

76 Exhibit D2 at para 5.

(d) The accused then instructed V to go to the Hotel reception with him to request a change of rooms.[77] When they arrived at the new room (Room 305), the accused continued to record himself speaking to and questioning V. The accused told V that "he arrested 7 other girls but they got away because they offered him something". He also told V he was waiting for his colleagues to arrive, but then paused the recording and said she could "walk out of the room free" and would not be brought to the police station. V "refused to accept his offer to perform sexual acts with him", and asked to see his police identification, which the accused refused to produce. The accused also made two phone calls, supposedly to his police colleagues.[78]

(e) V asked the accused again for his police identification and again he refused to produce it. Instead, he told her to switch off the light or he would hurt her. When V looked up, she "saw [the accused] showing [V] a knife". According to V, he did not actually point the knife at her. The knife was a Swiss Army knife, "red colour", and "has many tools". As she was fearful of the knife, V quickly switched off the lights and removed her clothes as instructed by the accused. The accused then climbed on top of her and tried to kiss her. After a while, he moved to the side of the bed, guided her head towards his penis and asked her to perform a "blow job" for him, which she did. As she was doing so, she "tasted some form of discharge in [her] mouth" and "[knew] it was not semen but some form of infection".[79]

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77 Exhibit D2 at para 6.

78 Exhibit D2 at para 7.

79 Exhibit D2 at para 8.

(f) The accused next climbed back on top of V. V tried to get him off her by making excuses like "I have a condom", but he proceeded anyway to penetrate her vagina with his penis. Following this instance of penile-vaginal intercourse, the accused asked V to do a "hand job" for him. She "was not willing" but "just briefly did [it]". He also instructed her to do another "blowjob for him" and again "guided [her] head to his penis". After she had complied with his instructions, the accused asked V to lie on his shoulder while he masturbated himself. He asked V if he could ejaculate in her mouth and she refused. He then asked if he could ejaculate on her chest, to which she agreed.[80]

(g) Following this, the accused told V to take a shower and then took a shower himself. V rushed to put on her clothes as she wanted to leave, but the accused came out of the shower before she could finish dressing.[81] The accused then carried on another conversation with V in which he asked if she was still afraid that he would bring her back to the police station. V responded that she was not, as he was "not a police". The accused then told V that she was "his fuck toy". He had also used this term on V during the non-consensual sexual intercourse.[82]

(h) The accused next changed his tone and became apologetic. He admitted to V that he was not a police officer and asked if she wanted to bring him to a police station. V said "no". At this point, she did not want to go anywhere with him. The accused then suggested that he should move in with her and help her to pay her rent. As she "kept in mind the

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80 Exhibit D2 at para 9.

81 Exhibit D2 at para 10.

82 Exhibit D2 at para 11.

knife he had", she listened without protest to his suggestion.[83] She did, however, make excuses to leave by telling him she needed to go home to submit some assignments by 11.59pm.

(i) Before they left Room 305, the accused made V exchange mobile numbers with him. He also took a photograph of the front and back of her NRIC before returning it to her, and insisted that he would send her home so as to see the "PIN" that she keyed in for the entrance to her flat. When V told him that she could not "remember the pin" and used her fingerprint instead to gain access, he told her to text her property agent so that he could get the "PIN" to access her flat. V then made the excuse that her brother was staying with her and would only go home on the weekend, whereupon the accused said he would move in on Saturday at 4pm.[84]

(j) Before they left the Hotel, the accused paid the balance room charges. He also handed V $40, which she initially refused, but had to accept at his insistence. They took a taxi to V's residence, where the accused walked with V up to her flat before leaving.

(k) Once she got home, V locked her door and called her friend B, who came over to her flat. The accused texted V multiple times while B was at her home. He also called her, but she did not answer. V replied to the accused's text messages by claiming that she was in the shower, "so as to reduce suspicious". After discussing the matter with B, she decided to lodge a report.[85]

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83 Exhibit D2 at para 12.

84 Exhibit D2 at para 13.

85 Exhibit D2 at para 14.

(l) V explained that during the penile-oral intercourse, she "kept thinking about the knife so [she] just let [the accused] do it".[86] This was also what she had in mind during the penile-vaginal intercourse: "knowing that [the accused] had a weapon on him", she "just complied".[87] She decided to file a police report also because she was worried that the accused would find her as he knew "a lot of [h]er particulars and where [she] stayed".[88]

45 V gave a second statement on 26 February 2019 at 1.45pm. This was recorded by Investigating Officer Mohamad Fauzi Junid ("Fauzi").[89] In this second statement, *inter alia*, V affirmed her earlier statement about the accused having shown her a knife. She was "very certain that [the accused] showed a red colour knife", and while she could not tell the length of the blade, she saw the handle was red in colour.[90] She "saw the knife once only".[91]

46 In this second statement, V was also asked if she had been on top of the accused while they were having sex. She said "[n]ot that [she] can recall", and that "[e]verything happened as what [she] mentioned" in her first statement.[92] It will be seen (below) that V subsequently recalled in her third statement a *second* instance of penile-vaginal sexual intercourse on 21 February 2019, during which

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86 Exhibit D2 at para 15, A3.

87 Exhibit D2 at para 15, A4.

88 Exhibit D2 at para 15, A6.

89 Exhibit D3.

90 Exhibit D3 at A4.

91 Exhibit D3 at A5.

92 Exhibit D3 at A6.

she had been on top of the accused. I address this portion of her evidence later at [117] to [134].

47 In her second statement, V also repeated that once she got home, she had called B to tell him about being raped. However, she had not told him about the circumstances in which she had encountered the accused: *ie,* while working as a social escort. Instead, she had told him that she was "on the way home" when "someone flashed [her] a police pass" and "said that he was from the police".[93]

48 V also reiterated that the sexual encounter with the accused was non-consensual: she did not "decide" to have sex with him, but "was in fear after he showed [her] the knife".[94] In this second statement, V also provided the police with a drawing of the Swiss Army knife.[95]

49 Lastly, V gave a third statement in the form of a conditioned statement dated 27 September 2020 in which *inter alia*:[96]

(a) V repeated what she had said in her previous two statements about arriving at the Hotel, seeing the accused flash a "flip-card holder" at her in Room 301, and the accused telling her "he arrested seven other girls but they got away because they offered him something".[97]

(b) In her first two statements, V had recalled the sexual encounter with the accused as involving one instance of penile-oral intercourse,

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93 Exhibit D3 at A7.

94 Exhibit D3 at A11.

95 Exhibit D3 at p 5.

96 AB at pp 1–5.

97 AB at pp 1–2, paras 4–8.

followed by penile-vaginal intercourse with the accused on top, followed by a second instance of penile-oral intercourse. In this third statement, V stated that there had actually been a second instance of penile-vaginal intercourse. According to V, the sequence had been as follows: a first instance of penile-vaginal intercourse with the accused on top of her; followed by a first instance of penile-oral intercourse; followed by a second instance of penile-vaginal intercourse with her on top of the accused; and followed by a second instance of penile-oral intercourse, before she gave him a "hand job" at his instruction and he also masturbated himself.[98]

(c) In this third statement, V also gave evidence that sometime during her interaction with the accused and prior to the sexual intercourse, she had messaged B to say: "Bro I can't make it tonight", to "try and signal to [B] that something was amiss and with the hope that [B] might realise that [V] was in trouble".[99]

50 In all three statements to the police prior to the trial, therefore, V maintained that the sexual intercourse with the accused was non-consensual; that the accused had first pretended to be a police officer and flipped some sort of card holder at her; that he had suggested she offer him sex in return for her "freedom"; and that after she refused to do so, he had put her in fear of hurt to herself by showing her a red Swiss Army knife. In my view, V's evidence about the key aspects of the rape and sexual assault on 21 February 2019 was consistent throughout her three statements. I did not find that the delay in her recollection of the second instance of penile-vaginal intercourse in any way

98 AB at pp 2–3, paras 9–12.

99 AB at p 2, para 8.

detracted from the consistency and credibility of her pre-trial statements about the rape and sexual assault. I explain in more detail at [121] to [134] my findings on this issue of delayed reporting.

(B) V'S TESTIMONY AT TRIAL

51 Having found that V was consistent in her account of the rape and sexual assault throughout her statements to the police, I also found that her testimony at trial about the rape and sexual assault was consistent with the account related in her statements, in respect of the material events before, during and after the various sexual assaults.

(I) EVENTS BEFORE THE RAPE AND SEXUAL ASSAULT

52 I address first V's testimony concerning the events *before* the rape and sexual assault.

53 V testified that on coming out of the toilet, the accused had flashed what appeared to be a card holder at her and told her he was a police officer.[100] This was consistent with her evidence in her first statement, where she had said the accused "came out of the toilet…said that he was a police officer and briefly flashed a flipped holder at me", with a "yellowish card that he flashed".[101] It was also consistent with her second statement, in which she had said that "[the accused] flipped the thing in one movement, open and close…When he flipped it open, I am quite sure that I saw a flash of yellow inside it.";[102] as well as with her third statement, where she had said "[the accused] then came out of the

100 Transcript, 16 March 2021 at p g31, lines 21–27.

101 Exhibit D2 at para 4.

102 Exhibit D3 at A1.

toilet…proceeded to identify himself as a police officer and briefly flashed what appeared to be a flip-card holder at me."[103] Throughout her three statements, V had also consistently stated that she could not see clearly what object the accused was holding as it happened too fast and she was not wearing her spectacles.[104] She maintained this position at trial, where she testified that she was not able to "see words" on the card holder.[105]

54 As for what happened after V and the accused shifted to Room 305, V's testimony at trial was as follows:[106]

> …But before he recorded, [the accused] also mentioned that there were seven other girls that he already caught. And he shared with me that they had offered him something in return for their freedom.
>
> …
>
> At this point, he just mentioned he wants, so I suspected that what he meant was sexual services. But at this point, I---I wasn't fully sure yet.
>
> …
>
> …[A]t this point in time [after the accused paused the recording], [the accused] had asked me a few--- a few times already that if I gave him something in return, I could walk out of the room freely. And by this point, I understood that he meant to---to offer him sexual favours for freedom.

The above testimony was consistent with V's first statement in which she had said:[107]

> …[The accused] also said that he arrested 7 other girls but they got away because they offered him something…He paused the

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103 AB at p 1, para 5.

104 Exhibit D2 at para 4; Exhibit D3 at A1; AB at p 1, para 5.

105 Transcript, 16 March 2021 at p 31, line 21.

106 Transcript, 16 March 2021 at p 44, line 15–p 46 line 21.

107 Exhibit D2 at para 7.

> recording and told me that I could walk out of the room free…I refused to accept his offer to perform sexual acts with him. He asked me about two to three times but I rejected. …

V's testimony was also consistent with her second statement, where she had said:[108]

> …After [the accused] started telling me that he arrested 7 girls leading to the agent. He also said that all of the 7 girls had offered him something in return for him to let them go. …

Finally, V's testimony was consistent with her third statement where she had said:[109]

> …[The accused] also said that he arrested seven other girls but they got away because they offered him something. I understood this to mean offering him sexual favours…I recall that he recorded some part of the conversation that took place in Room 305. Subsequently, [the accused] paused the recording and told me that I could walk out of the room freely…I refused to accept his offer to perform sexual acts with him. [The accused] continued to ask me a few more times but I rejected him. …

Throughout her statements and her testimony, therefore, V was unwavering in her evidence that (i) the accused had told her he had arrested seven other girls who got away because they "offered him something", (ii) she had understood this to refer to the girls offering him sexual services, (iii) after the accused paused the recording, he told her she could walk out of the room freely, which remark she understood as an offer for her to perform sexual acts with him, and which she refused.

55 Next, V testified that the accused had asked her if she was afraid, and that when she said yes, he had asked her for the reason. When she replied that

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108 Exhibit D3 at A10.

109 AB at p 2, para 8.

she was afraid he would hurt her, his voice changed, and he said: "Turn off the lights. I'm going to have to hurt you."[110] At this point, V looked up and saw him holding a red Swiss Army knife, "mainly in [her] direction and then also [he] stepped forward…a little bit".[111] Under cross-examination, she repeated that she had seen the accused holding a red Swiss Army knife.[112] Leaving aside for now the issue of whether the knife had been pointed at her, I noted that V's testimony was consistent with her first statement, in which she had said the accused was "showing [her] a knife" that was a "Swiss Army knife, red colour and has many tools".[113] Her testimony was also consistent with her second statement, in which she had provided a drawing of the knife and indicated in the drawing the "blade", the colour ("red"), and the "multi tools".[114] Finally, her testimony was consistent with her third statement, where she had repeated that she looked up and saw the accused "holding a red Swiss Army Knife".[115]

(II) EVENTS DURING THE RAPE AND SEXUAL ASSAULT

56 I address next V's testimony concerning the events *during* the rape and sexual assault.

57 At trial, when V described the first instance of penile-oral intercourse, she explained:[116]

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110 Transcript, 16 March 2021 at p 53, lines 22–25; Transcript, 18 March 2021 at p 62, lines 11–14.

111 Transcript, 16 March 2021 at p 54, lines 19–23.

112 Transcript, 18 March 2021 at p 57, lines 14–17.

113 Exhibit D2 at para 8.

114 Exhibit D3 at p 5.

115 AB at p 2, para 9.

116 Transcript, 16 March 2021 at p 62, lines 8–14.

> …[The accused] touched my head with his hands and he guided me towards his penis.

This testimony was consistent with her first statement, in which she had said:[117]

> …[The accused] then guided my head to his penis and asked me to perform a blow job for him. Throughout the entire time, he was still guiding my head.

It was also consistent with her third statement where she had said:[118]

> "Ivan" then wanted me to perform a blowjob on him. I was hesitant but "Ivan" held onto the back of my head and guided my head to his penis. He held on to my head as he inserted his penis into my mouth. …

V also testified that she did not want to give the accused a "blowjob" (*ie* to engage in penile-oral intercourse) "because there were very strange substances…[o]n top of his penis".[119] These details were consistent with the details given in her first statement, where she had said that as she was "doing the blowjob, [V] tasted some form of discharge in [her] mouth and [V] [knew] it was not semen but some form of infection".[120] It was plausible that the "strange substances" V saw were due to, as she hypothesised, "some form of infection" on the accused's penis.

(III) EVENTS AFTER THE RAPE AND SEXUAL ASSAULT

58 I address next V's testimony at trial concerning the events *after* the rape and sexual assault.

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117 Exhibit D2 at para 8.

118 AB at p 3, para 10.

119 Transcript, 16 March 2021 at p 62, lines 20–26.

120 Exhibit D2 at para 8.

(a) At trial, V testified that the accused had admitted he was not a police officer, and he had asked her if she wanted to bring him to the police station – to which she had said "no".[121] This testimony was consistent with her evidence in her first statement[122] and her third statement.[123]

(b) V testified that she had lied to the accused about needing to go home to submit an assignment before 11.59pm, so that she could "get out…of there".[124] This, again, was consistent with the evidence in her first statement[125] and her third statement.[126]

(c) V testified that the accused had – "[o]ut of the blue" – proposed moving in to stay with her and helping her to pay the rent. To discourage him from moving in immediately, she had lied that her brother was staying with her; and the accused had then said he would move in on the weekend instead.[127] This testimony was consistent with V's first statement, in which she had stated that when faced with the accused's proposal to move in with her, she had "delayed and told [the accused] that [her] brother was staying with [her]", whereupon the accused had

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121 Transcript, 16 March 2021 at p 70, lines 8–16.

122 Exhibit D2 at para 12.

123 AB at p 4, para 15.

124 Transcript, 16 March 2021 at p 72, lines 18–21.

125 Exhibit D2 at para 13.

126 AB at p 5, para 16.

127 Transcript, 16 March 2021 at p 72, line 18–p 73 line 4.

said he would come on Saturday instead at 4pm.[128] V's testimony at trial in this respect was likewise consistent with her third statement.[129]

(d) V testified that she had lied to the accused about having forgotten the "PIN" for the entrance to her flat when the accused asked her for it, because she did not want to tell him.[130] This testimony was consistent with what she had said in her first statement[131] and her third statement.[132]

(e) V testified that the accused had insisted on paying her $40 while they were waiting for the taxi, which payment she had initially been reluctant to accept. She took the $40 only after he insisted.[133] Again, this testimony was consistent with her first statement[134] and her third statement.[135]

59 In addition to the evidence mentioned above, V was also able at trial to provide certain specific details of her ordeal which she had brought up in her police statements. For example, she testified at trial:[136]

> …If there was any consent, it's false consent … He even said that, pardon my language again, that he---I'm---I'm going to be his fuck toy and there's nothing I can do about it, yah.

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128 Exhibit D2 at para 13.

129 AB at p 4, para 16.

130 Transcript, 16 March 2021 at p 74, lines 25–30.

131 Exhibit D2 at para 13.

132 AB at p 4, para 16.

133 Transcript, 16 March 2021 at p 77, lines 18–24; Transcript, 17 March 2021 at p 81 line 26–p 82 line 4.

134 Exhibit D2 at para 14.

135 AB at p 4, para 17.

136 Transcript, 18 March 2021 at p 71, lines 17–22.

This detail corresponded with what V had said in her first statement, where she had stated that "…[the accused] said I was his fuck toy. He also called me his fuck toy when I was having sex with him."[137]

60 V further testified that she had wanted to leave while the accused was showering, but "he came out of the shower really quickly" and she only could "put [her] undergarments and [her] skirt on".[138] This was consistent with her evidence in her first statement and her third statement, where she had said that the accused came out of the toilet before she could finish putting on her top.[139]

61 The fact that V was able to remain consistent – from her first statement to her testimony at trial – in her evidence on both the material aspects and smaller details of the rape and sexual assault, showed that she was an honest and credible witness. I should also add that there was no evidence at all to suggest she had any motive to make up lies against the accused – and indeed, even the accused himself was unable to come up with any motive for her to incriminate him falsely.

(2) V's account of the offences was corroborated by other evidence

62 At the same time, as the High Court has cautioned in *Public Prosecutor v Yue Roger Jr* [2019] 3 SLR 749 ("*Yue Roger Jr (HC)*"), the fact that there was no evidence of any motive or reason for the victim to mount fabrications against the accused is not sufficient on its own to render the victim's testimony unusually convincing and correspondingly sufficient to prove the case against the accused beyond reasonable doubt (at [50]). As the High Court in *Yue Roger*

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137 Exhibit D2 at para 11.

138 Transcript, 16 March 2021 at p 69, lines 6–12.

139 Exhibit D2 at para 10; AB at p 3, para 13.

Jr (HC) also noted, the word "unusually" in the unusually convincing standard implies that it is not sufficient for the victim's testimony to be merely convincing, and there must be something more in the testimony to bring it over the threshold (at [37]).

63 In the present case, as I have explained, I found that V maintained her account of events throughout cross-examination, and that her evidence was on the whole believable – indeed, convincing. However, bearing in mind the "unusually convincing" standard which had to be met, and given the differing accounts in V's first and third statements of the number and sequence of sexual acts as well as the delayed reporting of the second act of non-consensual penile-vaginal intercourse (which I return to at [117] to [134] below), I did not think it safe to proceed on the basis that V's evidence was unusually convincing and sufficient *on its own* to convict the accused.

64 This was not fatal to the Prosecution's case, however, as I was satisfied that there was other evidence in this which corroborated V's account of the offences. First, it must be pointed out that V consistently denied the accused's claims of a consensual (even pleasant) sexual encounter: she consistently told numerous third parties that she had been raped and that just prior to the rape, the accused had shown her a Swiss Army knife. These third parties included B, who was the first person to see her soon after she managed to get home, as well as the various police officers who spoke to her after responding to her call to the police.

65 In this connection, I accepted the Prosecution's submission that the account of the rape and sexual assault related by V to B *was* materially consistent with her testimony at trial. In gist, she told B that the accused had

used a knife in order to threaten and subsequently to sexually assault her.[140] In B's conditioned statement, he said:[141]

> On 21 February 2019 at 11.59pm, I received a call from [V]. [V] told me over the phone that she was raped. [V] said that a man approached her, showed her a pass, and told her that someone suspected that she had drugs in her bag. She believed the man and followed him into a taxi. Inside the taxi, the man took out a knife and brought her to a hotel. After alighting the taxi, she wanted to get help from someone but no one was around. At that time, the man was pointing a knife at her back. The receptionist ignored her during the check in. She told me that before they entered the hotel room, the man told her that she should know why she is here or he will stab her. I then told her she should call the police.

66 B testified at trial that about two weeks before the trial, V had told him the sexual assaults had taken place when she was working as a social escort. B said his "reaction is very shock".[142] V herself said she had only told B a month or several months before the trial that she was a social escort and that what she had previously related of the circumstances in which she came to meet the accused was not the truth.[143]

67 Although V did not tell B the truth on 22 February 2019 about having met the accused while working as a social escort, I did not think this was fatal to her credibility. First, if V had really been determined to make a false complaint of rape against the accused, it would have made no sense for her to give one account to B and then another account to the police within a short span of time.[144] Second, I accepted V's explanation that she was embarrassed about

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140 PES at para 48.

141 AB at p 6, para 2.

142 Transcript, 18 March 2021 at p 107, line 25–p 108, line 6.

143 Transcript, 18 March 2021 at p 43, line 29–p 44, line 17.

144 PRS at para 40.

being a social escort and did not want to tell her friend B about it.[145] This apprehension on V's part about how others might perceive her occupation did not appear to be to unreasonable. Indeed, when she told her agent (A) about being raped, A had advised her against making a police report in view of her occupation as a social escort. It should further be noted that when Senior Staff Sergeant Faridah binte Abu Bakar ("SSSgt Faridah") interviewed V shortly after the police were called and after B left the room, V was forthright in immediately admitting to SSSgt Faridah that she had lied to B because she did not want him to know she was working as a social escort.[146]

68 Next, I found that V's account to the police officers who responded to her call corroborated her testimony about the rape and sexual assault. I refer to the Police Message Form prepared by SSSgt Faridah,[147] who was the first responder to V's call to the police (which V made at about 12.38am on 22 February 2019),[148] and had escorted V to the Police Cantonment Complex ("PCC") slightly before 4.30am on 22 February 2019.[149] SSSgt Faridah prepared the Police Message Form shortly after 4.30am, after she had arrived at the PCC and handed V over to another police officer.[150] She filled up this form together with her team leader SI Ho Kah Poh Simon ("SI Ho"), based on their recollection of what V had told them.[151] In the Police Message Form, SSSgt Faridah recorded, *inter alia*, that the accused had shown V a card and claimed

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145 AB at p 4, para 18; Transcript, 16 March 2021 at p 81, line 20–p 83, line 2; Transcript, 17 March 2021 at p 86, lines 1–21.

146 Transcript, 23 March 2021 at p 8, lines 9–23.

147 Exhibit P56.

148 AB at p 16, para 2 and p 188, s/n 3.

149 AB at p 16, para 4; Transcript, 23 March 2021 at p 4, lines 4–11.

150 Transcript, 23 March 2021 at p 12, lines 1–11.

151 Transcript, 23 March 2021 at p 8, lines 17–19; p 18, lines 2–11.

to be a police officer, had taken out a Swiss Army knife and revealed its blade,[152] and had instructed V to switch off the lights or he would have to harm her. After V switched off the lights and undressed herself as instructed by the accused, the accused directed V to "perform fellatio and thereafter, sexual intercourse", before ejaculating on her chest.

69 Additionally, I refer to the Investigation Diary of SI Ong Kah Thiam Andrew ("SI Ong").[153] SI Ong received a call about V's police report from SSSgt Faridah on 22 February 2019 at about 1.50am.[154] He arrived at V's house at about 2.40am.[155] From about 2.40am to 3.18am, he interviewed V[156] before directing SSSgt Faridah and SSSgt Mazlan bin Miat ("SSSgt Mazlan") to escort V to the PCC around 3.18am.[157] SI Ong made the relevant entries in his Investigation Diary after 9am on 22 February 2019,[158] based on notes he had "jot[ted]…down" during his interview with V and his recollection of what V had told him.[159] In his Investigation Diary, SI Ong recorded, *inter alia*:

> …When the victim asked for money first, the defendant took out a pass holder and flashed it quickly to the victim and claimed that he is a police officer. After that, he told victim to change to another room. Victim then proceed to change room and was given room 305.
>
> While at the room, defendant told victim to offer him sex so that he would not bring her back to police station. Victim asked defendant for his pass to confirm his identity, but he took out

152 Transcript, 23 March 2021 at p 22, lines 9–15.

153 Exhibit P57.

154 AB at p 16, para 3 and p 18, para 3; Transcript, 23 March 2021 at p 4, lines 4–7 and p 53, lines 12–14.

155 AB at p 18, para 4.

156 Transcript, 23 March 2021 at p 54, lines 25–31.

157 AB at p 18, paras 5–6.

158 Transcript, 23 March 2021 at p 57, lines 7–10.

159 Transcript, 23 March 2021 at p 57, lines 19–23.

> a Swiss army knife (not pointing at her) and told her to switch off the light or else he would hurt her. Out of fear, victim complied. The defendant put away the knife, climbed on top of her and kissed her. Victim tried to break free but he was too big size. Subject then told the victim to do blow job on him. After that, subject wanted to penetrate her, and the victim kept moving backwards to refuse him. However the subject kept advancing, and eventually managed to penetrate into her. Subject did not wear any condom. After that, the subject ejaculated onto her front body and she went to bath.
>
> After finished, defendant became apologetic and wanted to make friend with the victim, gave her his contact number [redacted], and sent her back home by taxi. Subject also told her that he would pay her house rental and wanted to move in stay with her. He told her that he would go to her house on 23 Feb at 4pm. Upon reaching home, victim told her friend about this matter, and he advised her to report to the police.

As the Prosecution pointed out in their closing submissions, the account given by V to SSSgt Faridah and SI Ho and documented in the Police Message Form contained "the crucial facts" pertaining to the rape and sexual assault: namely, that the accused had impersonated a police officer, that he had shown V a Swiss Army knife with the blade revealed, and that he had told her he would have to harm her if she did not switch off the lights as instructed.[160] Similarly, SI Ong too recorded in his Investigation Diary that the accused had impersonated a police officer, shown V a Swiss Army knife, and threatened to hurt her if she did not comply with his instructions.[161]

70 In both her first and second statements, V also maintained that she had been raped and that a knife had been shown to her, and in her second statement, she had also provided the police with a drawing of the knife in which she had indicated the red handle, the multi-tool kit and the blade.[162]

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160 PES at para 47; Exhibit P56.

161 PES at para 47; Exhibit P57.

162 Exhibit D3 at p 5.

71 It is clear that the evidence of witnesses who saw and spoke to the victim soon after the incident constitutes corroborative evidence; see, *eg*, the Court of Appeal's judgment in *Haliffie* at [66]. The accounts of the sexual assaults given by V to B and the various police officers thus constituted corroboration of her testimony.

72 I found, moreover, that the accused's own evidence in his statement to the police on 25 February 2019 corroborated V's evidence that there were two acts of penile-vaginal intercourse, not one. I return to this at [124] below.

73 To sum up: I was satisfied at the close of the trial that V's own evidence and the corroborative evidence – taken together – were sufficient to make out the two charges of aggravated rape and the two charges of aggravated sexual assault by penetration.

The accused's evidence

74 I come now to the accused's evidence. In gist, the accused's defence was that the sexual intercourse with V on 21 February 2019 was consensual and that he did not show her any knife.

75 I rejected the accused's defence. Having seen and heard the accused's testimony and having also reviewed his statements to the police, I found him to be a glib and disingenuous witness, who – on his own admission – lied to the police from the outset, who continued to spin lie after lie in court, and who could not manage any coherent explanation for the multiple differing versions of events he put forward.

76 I explain below my reasons for coming to these conclusions.

(1) The accused gave multiple differing versions of events in his statements

77 I begin with the multiple versions of events that the accused provided in his statements to the police.

(A) ACCUSED'S FIRST VERSION OF EVENTS

78 In his first statement to the police on 22 February 2019 at 10.53am, the accused told the police he had paid V $450 (in 50-dollar denominations) for sex[163], that he did not understand why allegations were being made against him, and that he knew "rape is a very serious offence".[164] In this first statement, he also denied impersonating a police officer.[165]

79 The accused's second statement was recorded about 7 to 8 hours after the Accused's First Statement, from 7.10 to 7.27pm on 22 February 2019.[166] This was a cautioned statement in relation to the charge of impersonating a police officer ("Accused's Second Statement"). In response to this charge, the accused said:[167]

> To be honest, I really do not know what going on. All I know is that when I was woken up by police officer this morning, I was shocked to hear the allegation against me. I do not know why the girl put such allegation against me but I treated her with respect even though it was a monetary sex transaction. From what I call [*sic*] recall, there was really nothing that I did to make her feel uncomfortable, let alone, impersonating as police officer. I hope that investigation can be carried out in a proper manner and my name can be cleared. That's all.

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163 Exhibit P58 at p 12.

164 Exhibit P58 at p 32, lines 12–23.

165 Exhibit P58 at p 51, lines 7–21.

166 Exhibit P59 at p 6; Exhibit P60.

167 Exhibit P59 at p 4.

80 To reiterate, therefore, based on his first and second statements, the accused's position was that he had paid V $450 for consensual sex and had never impersonated a police officer.

81 At trial, the accused accepted that what he had said in both his first statement[168] and his second statement[169] were lies. When asked why he had lied, he said he was "trying to cover up for the impersonation charge", and he "lied about paying $450" because he believed that "not paying $450 is equivalent to a rape charge".[170]

(B) ACCUSED'S SECOND VERSION OF EVENTS

82 In the accused's third statement, which was recorded at 7.40pm on 22 February 2019,[171] a few minutes after his second statement, the accused admitted to having impersonated a police officer. This was because by then, he knew that the police had retrieved from his mobile phone the voice recording of his conversation with V.[172] In his third statement, the accused claimed that he had gone to meet V at the Hotel to "play a prank" on her by rejecting her service so as to waste her time: he said that at that point he had only about $150 on hand and had "no intention of having sex with [V]". When V asked him for payment, he did not want to pay her the $50 rejection fee, so he decided to impersonate a police officer and to use his mobile phone to record their conversation. After he stopped the recording, he was about to leave the room, but V started crying and so he comforted her. He asked her how long she had booked the room for, and

168 Transcript, 25 March 2021 at p 37, line 30–p 38 line 5.

169 Transcript, 25 March 2021 at p 47, lines 7–19.

170 Transcript, 25 March 2021 at p 42, lines 10–17.

171 Exhibit P61.

172 Transcript, 25 March 2021 at p 48, lines 16–23; p 49, lines 14–17.

she said she had booked it for two hours as she had another client at 9.15pm. The accused said he wanted to change rooms so that V's next client would not be able to find her, and so he went with her to change rooms.[173]

83 In the accused's fourth statement (recorded on 25 February 2019 in two tranches, one at 5.44pm and the other at 6.37pm[174]), the accused expanded on this second version of events. He claimed that he had lied in his first statement about not impersonating a police officer because he was "in a shock and daze" at the time of his arrest. However, he "started telling the truth" when he realised that if he "[did] not come clean and try to help [himself], [he] might get into bigger problems" like "getting involved with allegation of rape".[175]

84 The accused repeated the account given in his third statement about his having comforted V after she started crying[176] and their having shifted from Room 301 to Room 305.[177] In Room 305, the accused told V he was not actually a police officer. This made V "angry", "shocked" and "not happy".[178] V "scold[ed]" the accused, telling him "that's damn fucked up" and he had "wasted [her] time".[179] It was at this juncture that the accused offered to move in with V and to help her to pay the rent, so that she would not need to work as a social escort anymore.[180] According to the accused, V looked "shocked"[181] at

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173 Exhibit P61.

174 Exhibit P62 and Exhibit P63.

175 Exhibit P62 at p 8, line 12–p 10, line 2.

176 Exhibit P62 at p 30, line 4.

177 Exhibit P62 at p 34, lines 25–29.

178 Exhibit P62 at p 34, lines 9–14.

179 Exhibit P63 at p 3, line 26–p 4, line 24.

180 Exhibit P63 at p 7, lines 1–8.

181 Exhibit P63 at p 7, line 30.

his proposal and replied: "If you promise to pay off my rent for me and everything, of course I am agreeable. Who would want to work in this job and sleep with different men every night?"[182]

85 Thereafter, the accused kissed V,[183] who reciprocated with "zero resistance".[184] This was followed by multiple rounds of sexual intercourse, during which they also engaged in "cheesy talk"[185] and the accused allegedly gave V multiple orgasms.[186] According to the accused, it was V who engaged on her own volition in penile-oral intercourse with the accused,[187] and who even suggested to the accused he should take a picture of her NRIC and send her home so that he would know where she stayed.[188]

86 As V's brother was staying with her until the weekend, the accused agreed with V that he would move in with her that Saturday at 4pm.[189] In this fourth statement, the accused also claimed that before they left Room 305, he told V he would pay her back the $40 room charge.[190] After he accompanied V back to her flat, she reminded him to text her when he got home.[191]

87 In summary, based on his third and fourth statements, the accused's position was that he had admitted to impersonating a police officer, but that he

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182 Exhibit P63 at p 8, lines 14–17.

183 Exhibit P63 at p 10, line 8.

184 Exhibit P63 at p 10, line 12–p 12, line 6.

185 Exhibit P63 at p 17, line 23; p 24, line 11.

186 Exhibit P63 at p 19, line 8; p 25, lines 1–3.

187 Exhibit P63 at p 20, line 6.

188 Exhibit P63 at p 29, lines 26–30.

189 Exhibit P63 at p 34, lines 11–17.

190 Exhibit P63 at p 32, lines 16–28.

191 Exhibit P63 at p 38, lines 22–23.

had not harboured any intention of having sex with V at the start. It was only after he had proposed to V that he should move in with her and help her pay the rent that she responded enthusiastically and proceeded to have sex with him.

88 At trial, the accused admitted that the contents of his third statement were lies as well.[192] He sought to explain his behaviour by claiming that "the idea that [he] was getting" during the police interviews was that if he had not paid V $450, then it was "a rape".[193] He claimed that he got this idea because an Indian police officer had come into the room before the recording of his first statement and said to him: "Hey, you never pay the girl $450, right? … I put people in the prison before for 20-plus years for aggravated rape."[194]

89 In his fourth statement, the accused had said that the issue of the $40 room charge only came up when he and V were leaving Room 305, *after* they had had sex. The accused conceded that this contradicted his testimony at trial that V had agreed to have sex with him *if* he paid the $40 room charge.[195] He also conceded that this agreement for him to pay V $40 was an important factor in his view why V had agreed to have sex with him – and that despite the importance of this factor, he had given an inconsistent account in his fourth statement.[196] Again, he sought to explain his behaviour by claiming that he had been pre-occupied with the idea that failure to pay V $450 amounted to rape. According to him: "…at all points of time during the investigation, my idea of

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192 Transcript, 25 March 2021 at p 52, lines 5–6; p 53, lines 14–27.

193 Transcript, 25 March 2021 at p 53, lines 31–32.

194 Transcript, 25 March 2021 at p 54, lines 13–24.

195 Transcript, 25 March 2021 at p 63, lines 23–31; p 64, lines 19–23.

196 Transcript, 25 March 2012 at p 65, lines 1–7.

the rape charge is correlated to the payment of $450…I really, like, don't know what additional charges will come upon me when I mention I only pay $40."[197]

90 At trial, the accused also accepted that he was making up lies about how much V was enjoying sex with him to make the sex seem consensual:[198]

> Q: So you were painting lies about … how much the victim was enjoying the session in order to make it seem consensual, isn't it?
>
> A: In order to try to seems consensual, did you just say that?
>
> Q: Yes.
>
> A: Ah, yes.
>
> Q: And all of this, therefore, the points that I just highlighted never actually happened, correct?
>
> Ct: Sorry, which part? When you say "all of this never actually happened"?
>
> DPP: The oral sex.
>
> Ct: You mean the oral sex and the victim having three orgasms – all of this you are saying never actually happened, is it?
>
> DPP: That is so, Your Honour. I apologise.
>
> Ct: Agree or disagree?
>
> A: Yes, I agree.

91 For completeness, I note that the accused refused to sign his conditioned statement on 28 February 2019 in respect of one of the aggravated rape charges. This was his fifth Statement,[199] in which he said:

> Nothing to say. I never did the following offence to the girl. Whatever evidence that you think you have can use it against me but I don't think there is any valid evidence can be used.

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197 Transcript, 25 March 2021 at p 65, lines 12–18.

198 Transcript, 25 March 2021 at p 110, lines 2–16.

199 Exhibit P65.

(C) ACCUSED'S THIRD VERSION OF EVENTS

92 A third version of events emerged in the Case for the Defence dated 26 November 2020.[200] In that document, the accused's stated position was that he had impersonated a police officer and suggested that if V were to provide him with "special services", he would allow her to leave and not bring her to the police station.[201] V refused. When the accused admitted he was not a police officer, V nonetheless consented to have sex with him if he agreed to "at least, cover the room charges".[202] V then performed fellatio on the accused, followed by "sexual intercourse in a single position", and followed by fellatio again. This ended with the accused masturbating himself and ejaculating on his own body.[203] After they left Room 305, the accused paid for the excess room charges, "gave [V] $40 for her initial payment of the room, as agreed", and "also informed [V] that he would pass her more money when they meet in the coming few days".[204]

(D) ACCUSED'S FOURTH VERSION OF EVENTS

93 Even from the above abbreviated outline of the accused's police statements, it was plain that he could not keep his story straight; and on his own admission, the multiple versions of events he gave in his statements were replete with lies. None of the versions given in his statements corresponded to the version he put forward in his Case for the Defence. Even more damningly, none of these multiple, conflicting versions of events actually contained the narrative he came up with at trial. Not even the version in his Case for the Defence

200 Exhibit P64.

201 Exhibit P64 at paras 7–8.

202 Exhibit P64 at paras 8–9.

203 Exhibit P64 at para 9.

204 Exhibit P64 at para 11.

corresponded to the narrative presented at trial. At trial, the accused's version of events (his fourth) was that V had consented to having sex with him in return for his giving her $40 to cover the room charge and his allowing her to send a text message to her friends.[205]

(2) The accused's explanations for his lies were not believable

94 Given that this fourth version of events was the version which the accused eventually embraced as the truth, it was startling – to say the least – that it had never emerged prior to trial. The accused's various explanations as to why he had previously omitted to tell the truth – or had lied outright – were bizarre and redolent of further invention on the fly.

95 First, the accused stated that he lied in his first statement because he wanted to "cover up for the impersonation charge" (see [81] above). This was not believable. The accused himself accepted that based on his statement, he was clearly concerned about the punishment for the rape charge and not about the impersonation charge.[206] The accused himself said in his first statement that "rape is, in fact, [one] of the most serious offence in Singapore".[207] Indeed, he even took pains to explain to the police that it made no sense for him to risk being accused of this "serious offence", when he could either pay someone for sexual services or watch pornography online and masturbate.[208] It beggared belief, therefore, that while the accused was facing a potential rape charge, he should simultaneously have been so fearful about the far less serious impersonation charge that he resorted to telling lies to the police. Further, even

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205 Transcript, 26 March 2021 at p 46, lines 6–15.

206 Transcript, 25 March 2021 at p 44, line 26–p 45, line 6; Exhibit P58 at pp 32–33.

207 Exhibit P58 at p 32, line 23.

208 Exhibit P58 at p 33, lines 15–28.

assuming he had lied in his first statement and again in his second statement out of a timorous desire to "cover up" the impersonation charge, it made no sense for him to lie about paying V $450 for sex. This lie about paying V $450 for sex had nothing at all to do with the impersonation charge – and everything to do with the rape charge.

96 Second, although in his fourth statement the accused claimed that his conversation with V about the $40 only occurred *after* they had completed sexual intercourse, his position as stated in the Case for the Defence and at trial was that *before* sexual intercourse occurred, he had already come to an agreement with V to pay her $40. Even the accused himself recognised that the account given in his fourth statement contradicted the account given at trial;[209] and since his position was that the account given at trial represented the truth, this meant he must have lied in his fourth statement about when he agreed to pay V $40 for sex. Yet there appeared to be no sensible reason why he should have lied about this issue. Certainly, it could not have been a lie told to "cover up" for the impersonation charge, since he had already confessed to the impersonation charge in his third statement. Nor could it have been a simple error on his part, because he was very clear in his testimony at trial that V had stipulated two conditions for having sex with him: that he agree to paying her $40 and that he allow her to send a text message to her friends. It appeared to me that the idea of framing the $40 as pre-agreed payment to V for sex only came to the accused when he had to put on record his position in the Case for the Defence – and he then sought to embellish this narrative by adding at trial the second condition that he allow V to text her friends.

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[209] Transcript, 25 March 2021 at p 63, lines 23–31; p 64, lines 19–23.

97 Third, the accused claimed to have been labouring under the misapprehension that if he told the police he had paid V $40 for consensual sex instead of $450, he would expose himself to *both* the rape charge *and* potential "additional charges".[210] Again, this was not believable. On the accused's own admission, he had often engaged social escorts, even prior to 21 February 2019.[211] He would therefore have been well aware that having sex for an agreed sum was not an offence. In fact, he himself told the police in his first statement:[212]

> Why would I want to risk this by doing something whereby I can just pay?...if...I just want, and my main goal is to have sex with a girl, and I can pay to have sex with a girl, then just pay because I want to have sex with the girl...
>
> ...I think it's, this girl whom, from my thinking is pay and get it, then just pay, which more, why would I rape her?

I should add that the accused had no coherent explanation as to why $450 would have been an acceptable payment sum for the purpose of deflecting a rape charge, but $40 would not have been acceptable. When he was questioned further, the accused's prevarication became even more obvious, and he claimed at one point not even to know whether consensual sex with a social escort for $450 would constitute rape:[213]

> Ct: ---if you go to a social escort and she tells you her services cost $100, you tell her, "I will pay you $50", and she says, "Okay, it's a deal", and you have sex, in your mind at that point in time, would that have been rape?
>
> A: At that point of time...I don't even know what is the real definition of rape anymore...I don't know even know whether if I paid $450 and the---and *even if I paid $450*

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210 Transcript, 25 March 2021 at p 65, lines 12–18.

211 Transcript, 25 March 2021 at p 9, line 13–p 10, line 1; p 18, lines 2–8.

212 Exhibit P58 at p 34, line 27–p 37, line 4.

213 Transcript, 25 March 2021 at p 106, lines 19–30.

> *and if the girl says that it's rape after that, I don't even know whether it is rape anymore. …*
>
> [emphasis added]

98 I noted that at one point in his testimony, the accused appeared to be claiming that based on what the "Indian police officer" had told him, he believed that if he had not paid V $450 for sex, it would be considered rape.[214] As with his various other claims, this one made no sense at all. If the accused had *genuinely* believed that not paying V $450 for sex was tantamount to rape and if he had been trying to deflect a rape charge, then his story to the police *all along* should have been that he paid V $450, rather than just $40 – and yet, curiously, he resiled from this position after his first and second statements.[215] Even more confoundingly, when pressed further on this issue, the accused appeared to abandon his story about having believed that failure to pay $450 for sex would amount to rape: instead, according to him, while he had not offered V payment for sex, he had nevertheless "mentioned…the rental issue to her earlier" and this was "*something like payment*" [emphasis added].[216] According to the accused, in other words, this offer to help V pay her rent *after* he moved in was equivalent to payment and V must have consented to sex in return for this "*something like payment*". The problem with this new story, however, was that it ran contrary to his avowed position at trial that he had believed nothing less than a $450 payment to V would have absolved him of the rape allegation.[217]

99 I should add that in any event, I rejected the accused's story about the "Indian police officer" (Supt Burhanudeen) having told him "Hey, you never

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214 Transcript, 25 March 2021 at p 72, lines 7–12; p 103, lines 19–22.

215 PES at para 82.

216 Transcript, 25 March 2021 at p 105, lines 8–11.

217 Transcript, 25 March 2021 at p 103, lines 19–20.

pay the girl $450, right? … I put people in the prison before for 20-plus years for aggravated rape."[218] In my view, the accused's story was exactly that – a piece of fiction concocted at trial in a desperate attempt to excuse the multiple lies in his statements.

100 First, I accepted Supt Burhanudeen's evidence that he had only spoken to the accused for less than five minutes on the morning of 22 February 2019,[219] and that during this brief conversation, he had merely asked whether the accused made any payment to V, whether he had impersonated a police officer, and whether he had used any identification details to identify himself as a police officer.[220] Supt Burhanudeen explained that he had asked these questions so that he could "make a better assessment" as to which investigation officer should conduct the interview with the accused.[221] There was nothing in this brief conversation that could have given the accused the idea that his not paying V $450 meant he had raped her.[222]

101 Second, throughout the recording of his multiple statements, it was clear that the accused never once mentioned to any police officer the representations allegedly made to him by Supt Burhanudeen. The accused himself admitted that he never brought this up to the police officers conducting his interviews. This was odd, to say the least: in view of the gravity of an allegation of rape, one would have expected the accused to seek more information or clarification of what Supt Burhanudeen had said – but he did no such thing. His explanation

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218 Transcript, 25 March 2021 at p 54, lines 13–24.

219 Transcript, 26 March 2021 at p 50, line 18.

220 Transcript, 26 March 2021 at p 51, lines 8–13.

221 Transcript, 26 March 2021 at p 51, lines 6–7.

222 PES at para 84.

was that he had wanted to ask but was not given a chance.[223] This was patently false since the accused himself admitted in cross-examination that the interviewer had asked him if he wished to add anything else and he had been given the opportunity to clarify.[224] The accused had also displayed no qualms about referring to Supt Burhanudeen in his interviews with the police: for example, he had told the statement recorders that their "boss" (*ie* Supt Burhanudeen) had told him there was a "weapon being used to threaten [V]".[225] In the circumstances, it was anomalous that he should have kept quiet throughout all the interviews about the most worrisome thing Supt Burhanudeen had said to him.

102 To sum up: in his police statements, the accused gave differing accounts of his sexual encounter with V. None of these accounts was the account he chose to put forward at trial: indeed, on his own admission, none of them were true. Even the account stated in the Case for the Defence did not correspond to the version of events he put forward at trial. The accused was unable to give any coherent explanation for the many lies he had told the police. If anything, the various explanations he did proffer only reinforced the view I had formed of his propensity to lie in order to get himself out of a "fix".

(3) The accused's testimony at trial was not believable

103 Even based on the accused's testimony at trial *in isolation*, I did not believe that V had consented to sexual intercourse with him.

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223 Transcript, 26 March 2021 at p 23, lines 3–5.

224 Transcript, 26 March 2021 at p 26, line 23–p 27, line 4; Exhibit P58 at p 63, line 28–p 75.

225 PES at para 85; Exhibit P58 at p 51, lines 23–26.

104 To recap: the accused's position at trial was that V agreed she would have sex with him if he paid her $40 to cover the room charge and if he also allowed her to send a text message to her friends on not being able to pass them her assignments on time.[226] This agreement was concluded between the accused and V prior to any sexual activity taking place.

105 I did not find the accused's story at trial to be at all believable. First, although the Case for the Defence did refer to the accused having agreed to V's request to "cover the room charges" before they had sex, it was conspicuously silent on the alleged additional condition that he allow her to send a text message to her friends.[227] Furthermore, this fourth version of events was never put to V while she was on the witness stand: instead, what was put to V was that prior to her having sex with the accused, he had already *told* her he would pay for the $40 room charge.[228] Obviously, this was a wholly different version of events from one in which she *consented* to having sex with him in return for being paid the $40 room charge *and* for being allowed to send a text message.[229]

106 Second, the accused admitted he knew at the time – based on his three years of experience in visiting social escorts – that he would have to pay a cancellation charge of $50 if he did not take up V's sexual services.[230] Since V was entitled to $50 *as of right* in the absence of sexual intercourse, there was no reason for her to consent to sexual intercourse with the accused for $40. When pressed on this point, the accused's responses became downright incoherent.

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226 Transcript, 26 March 2021 at p 46, lines 6–12.

227 Exhibit P64 at paras 7, 11.

228 Transcript, 18 March 2021 at p 61, lines 27–29.

229 PES at para 64; Transcript, 18 March 2021 at p 61, lines 27–31.

230 Transcript, 25 March 2021 at p 32, lines 11–20; p 36, lines 21–24.

According to the accused, it was V who had chosen not to ask for the $50 "rejection fee" as it was "relation to sex instead of rejection":[231]

> …And in relation, I am not trying to reject her. So she's not asking for the rejection fee in this point of time because I'm not rejecting her. I'm asking for something else. That is why I feel that there is no relation to like asking for $50 rejection fee at this point of time. Yah.

On the accused's telling (above), V apparently thought that the accused was not rejecting her sexual services but was asking for "something else". This made no sense. The accused was not asking V for "something else" other than sex: clearly, he wanted nothing other than sex. It made no sense as well that V would agree to provide her sexual services in return for $40 and permission to text her friends, when her usual practice would have been to charge $400 to $450 for such sexual services[232] – or $50 for cancellation – and when she would have needed no one's permission to send a text message.[233] It should be added that on the accused's telling, V even consented to sex without a condom – something for which she would usually have charged an additional amount.[234]

107 Third, the accused's narrative at trial was not even internally coherent. He accepted that V had rebuffed him repeatedly when – in the guise of a police officer – he suggested that she have sex with him in exchange for her freedom.[235] On his evidence, she had also become angry with him when he subsequently revealed that he was not a police officer (see [84] above). Yet, having given him such a bleak reception, she was suddenly open to having sex with him for a

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231 Transcript, 25 March 2021 at p 33, lines 6–20.

232 Transcript, 16 March 2021 at p 20, lines 23–29.

233 PES at para 61.

234 Transcript, 25 March 2021 at p 33, lines 26–32.

235 Transcript, 25 March 2021 at p 30, lines 14–25.

minute fraction of her usual fee – and without a condom. If V had not been willing to offer the accused sex in exchange for her "freedom" when she still believed he was a police officer, I found it beyond belief that she should have changed her mind with such alacrity upon discovering he was not in fact a police officer and she was in no danger of arrest.

108 Lastly, the accused's story about his plans to help V pay her rent was in any event also rather incongruous when one considered his evidence elsewhere about his parlous financial state. In cross-examination, he admitted that he was homeless, had no job, owed money to third parties, and had "near to zero money" at the end of each month.[236] When pressed about this in cross-examination, the accused made unsubstantiated claims about his income from odd-jobbing as a dealer at illicit poker games, despite the fact that such odd-jobbing had not apparently been lucrative enough to keep him regularly in funds in the past.[237] In my view, this incongruity was simply another example of the accused making up his evidence as he went along.

109 Taking a step back, it should further be noted that according to the accused's testimony at trial, he already knew when booking V's services that he did not have money to pay her fee.[238] His plan was to "try" to find a social escort who would only collect payment after sex, and after sex he would "run away" so that she would not be able to stop him.[239] *However*, he also admitted being aware that there was a "high chance" of V collecting payment *before* sex[240] –

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236 Transcript, 25 March 2021 at p 92, lines 9–29.

237 Transcript, 25 March 2021 at p 6, lines 9–12 and p 7, line 6–p 8, line 5.

238 Transcript, 25 March 2021 at p 17, line 7–p 18, line 1.

239 Transcript, 25 March 2021 at p 18, lines 2–23.

240 Transcript, 25 March 2021 at p 19, lines 18–32.

which would mean he needed another plan to get sex from V without paying her. As the Prosecution pointed out, the knife must have featured in this plan.[241] In other words, seen in the context of the accused's avowed intention to obtain sex without paying for it, his story about V's sudden sexual capitulation was simply another strained attempt to find some explanation for V's compliance other than his use of a knife to put her in fear of hurt.

(4) The accused's evidence was inconsistent with other evidence

110 Finally, it must be pointed out that all the versions of events presented by the accused, including the version put forward under cross-examination, ran contrary to evidence which was either objectively verifiable or undisputed by the accused. In particular, his portrayal of V as a willing – even enthusiastic – participant in the sexual acts, who was grateful for his offers of financial assistance, simply could not be reconciled with the undisputed evidence of her conduct both before and after the sexual acts.

111 First, as I said earlier at [107], based on the accused's *own* evidence, it was clear that V had rejected his multiple attempts at seeking sex from her, even when she was faced with the alleged prospect of arrest. V had also become angry at the accused for wasting her time when he subsequently revealed that he was not a police officer. I did not find it at all believable that moments later, V would have executed a complete *volte-face* and suddenly become willing to have sex with the accused.

112 Second, the accused claimed at trial that he and V had behaved affectionately towards each other after they left the Hotel: V had fed him "a

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241 PES at paras 68–69.

sweet",[242] he had hugged her when she said she felt cold,[243] they had discussed his moving into her home,[244] and she had even reminded him to text her when he reached home.[245] Yet, having purportedly displayed such affection, the first thing V did upon getting home was to call B to tell him she had been raped – and to lodge a police report to similar effect. Her undisputed behaviour after getting away from the accused was simply irreconcilable with his story of a consensual – even pleasant – sexual encounter.

113 The accused's story about V having been pleased for him to move in with her was also inconsistent with the numerous excuses she made to forestall his moving in – *eg* lying that she needed to go home to submit an assignment, pretending that her brother was staying with her, and claiming that she had forgotten the "PIN" for the entrance to her flat (see [58] above).[246] If V had really been pleased about the accused moving in and helping to pay her rent, there was no reason for her to make up such excuses to put him off. *A fortiori*, there was no reason for her make a false report of rape against him, and thereby deprive herself of a much-needed source of financial assistance.[247]

114 Lastly, the records of text messages retrieved from the accused's and V's mobile phones told a very different story from the rosy picture the accused attempted to paint of his interactions with V. Starting with V's message to B at

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242 Transcript, 24 March 2021 at p 42, lines 3–12.

243 Transcript, 24 March 2021 at p 42, lines 19–22.

244 Transcript, 24 March 2021 at p 43, lines 17–24.

245 Transcript, 24 March 2021 at p 44, lines 6–7.

246 PES at para 66.

247 PES at para 67.

10.01pm ("Bro I can't make it tonight I have smth on."),[248] as submitted by the Prosecution, there was no reason for V to send him such a "cryptic and pointless" message if she were in no danger, had agreed to a consensual transaction of money for sex,[249] and had no plans to meet B that night.[250] The accused himself accepted that sending such a message would be "odd" if the circumstances had indeed been as he described.[251] Next, V's text messages to the accused after returning to her flat were brief and terse to the point of being curt.[252] While these messages by themselves did not conclusively prove that V must not have consented to the sexual intercourse, they were much more consistent with V's account of her attempts to "minimise engagement" with her rapist,[253] than with the accused's account that V had been a willing sexual partner.

115 In sum, the accused's various descriptions of a consensual sexual encounter contradicted each other on numerous material aspects, but they did have one thing in common: they were irreconcilable with objectively verifiable and/or undisputed evidence of V's behaviour before, during and after the sexual assaults – which, as I noted earlier (at [110]), was far from being the behaviour of someone who had willingly participated in sexual activity.

116 Realising perhaps the many inconsistencies in his own evidence, the accused sought to focus on other alleged inconsistencies in V's evidence,

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248 Exhibit P54.

249 PES at para 51.

250 AB at p 6, para 4; Transcript, 18 March 2021 at p 86, lines 10–12.

251 Transcript, 25 March 2021 at p 60, lines 1–10.

252 Exhibit D6; Transcript, 26 March 2021 at p 6, lines 12–18.

253 AB at p 4, para 19.

regarding the number and nature of acts of sexual intercourse, and whether the accused had shown V the Swiss Army knife. I now address each of these alleged inconsistencies in turn.

Whether the alleged inconsistencies in V's evidence raised a reasonable doubt as to the commission of the offences

The sexual acts between the accused and V

117 As I noted earlier (at [25]), the accused denied that there was a second instance of penile-vaginal penetration during which V was on top of him (as described in the second aggravated rape charge).[254]

Defence's arguments

118 The Defence argued that as V had informed the police about the second act of non-consensual penile-vaginal intercourse nine months after 22 February 2019, her evidence about this second instance of penile-vaginal intercourse was "unreliable and difficult to believe".[255] More broadly, according to the Defence, V's evidence featured multiple versions of the number and sequence of sexual acts.[256] In this connection, the Defence referred to the Police Message Form prepared by SSSgt Faridah[257] and SI Ong's Investigation Diary,[258] as well as V's first statement. In that first statement, she had recounted the following sequence of sexual acts: penile-oral penetration, then penile-vaginal penetration with the

254 DCS at para 23.

255 DCS at para 107.

256 DCS at para 99.

257 Transcript, 23 March 2021 at p 24, lines 29–32.

258 Exhibit P57 at s/n 4; Transcript, 23 March 2021 at p 71, line 23–p 72 line 21.

accused on top of V, then penile-oral penetration again.[259] In her second statement, she had confirmed the accuracy of this sequence of events.[260] Her third statement then contained a different sequence of sexual acts from that provided in her previous two statements. As she herself acknowledged, in her first statement, she "did not mention the part where he was on top of [her]".[261] For clarity, I add that while V said at trial that she had not mentioned the instance of penile-vaginal intercourse where "[the accused] was on top of [her]" in her first statement, in the light of her earlier evidence, I understood V to be saying that she had not mentioned the instance of penile-vaginal intercourse where *she* was on top of the accused in her first statement.[262]

Prosecution's arguments

119 The Prosecution did not dispute that V had initially omitted to mention the second instance of penile-vaginal penetration (where she was on top of the accused) in her first and second statements. However, the Prosecution submitted that this did not detract from V's overall credibility. As it was not disputed that sexual intercourse had taken place, it would have been entirely unnecessary and counter-intuitive for V falsely – and belatedly – to conjure up a further count of sexual intercourse that had never happened.[263] V's account in her third statement was moreover consistent with the *accused's* own narrative in his police

259 Exhibit D2 at paras 8–9.

260 Exhibit D3 at A6.

261 Transcript, 17 March 2021 at p 60, lines 7–14.

262 Transcript, 16 March 2021 at p 64, lines 21–25; Transcript, 17 March 2021 at p 60, lines 7–14; Exhibit D2 at paras 8–9.

263 PES at para 42.

statement, in which he had recounted a second incident of penile-vaginal intercourse with V on top of him.[264]

My findings

120 I first recap V's evidence on this point.

(a) In her first statement, V said that she and the accused first had penile-oral intercourse. The accused then climbed on top of her, and she made the excuse that she had a condom hoping he would get off her, but he proceeded to engage in penile-vaginal intercourse. This was followed by another instance of penile-oral intercourse.[265]

(b) At trial, V testified that the accused *first* climbed on top of her, and V told him she had a condom in her bag in the hopes that "it would stall time" and she could "hopefully get out of the room".[266] However, the accused replied that there was no need to get the condom and then proceeded with penile-vaginal intercourse.[267] This was followed by the first instance of penile-oral intercourse.[268] Next, the accused told V to get on top of him[269] and he then engaged in penile-vaginal intercourse with V on top of him. At some point while V was on top of the accused, V said the accused asked her why she looked like she was not enjoying

264 Exhibit P63 at p 22, line 1–p 25, line 30.

265 Exhibit D2 at paras 7–8.

266 Transcript, 16 March 2021 at p 59, lines 22–27.

267 Transcript, 16 March 2021 at p 59, lines 28–29.

268 Transcript, 16 March 2021 at p 63, line 6.

269 Transcript, 16 March 2021 at p 65, line 22.

it and she replied "[o]f course [she] wasn't".[270] This was followed by the second instance of penile-oral intercourse.[271]

121 I address first the issue of the delayed reporting of this second instance of penile-oral intercourse. In considering this issue, I bore in mind the reminder by the High Court in *Yue Roger Jr (HC)* and the Court of Appeal in *Yue Roger Jr v Public Prosecutor* [2019] 1 SLR 829 ("*Yue Roger Jr (CA)*") that people "react in different ways to sexual abuse" (*Yue Roger Jr (HC)* at [34], *Yue Roger Jr (CA)* at [3]): there is "no general rule requiring victims of sexual offences to report the offences immediately or in a timely fashion", and the explanation for any such delay in reporting is to be considered and assessed by the court on a case-by-case basis (*Yue Roger Jr (HC)* at [30]). In the present case, while there was indisputably a fairly lengthy delay by V in reporting the second act of penile-vaginal penetration, V was able to provide an explanation for the delay. V testified that the memory of the second act of non-consensual penile-vagina intercourse had come as "a flashback" upon her hearing a colleague utter the same words that the accused had spoken during the second act of penile-vaginal intercourse, when he asked why she looked like she was "not enjoying it".[272]

122 I accepted V's explanation as being sincere and honest. It was clear that following the incident of 21 February 2019, V had sought stoically to move on with her life. She did not initially go for counselling and had rejected the IO's offer to link her up with social workers, despite the events of 21 February 2019 having apparently left the marks of trauma on her: *eg*, she described herself as

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270 Transcript, 16 March 2021 at p 64, lines 22–25.

271 Transcript, 16 March 2021 at p 66, lines 1–4.

272 Transcript, 17 March 2021 at p 60, lines 7–14; Transcript, 18 March 2021 at p 46, lines 3–8.

having been in "very like depressive state" following the rape and sexual assault; and she recounted how she had suffered from "bad dreams at night" and how her mother had commented on her weight loss and inability to eat at a family gathering shortly after the incident.[273] I found it unsurprising and entirely believable that in her traumatised state, the complete memory of the harrowing events of 21 February 2019 should have been jolted only months later by her hearing the words spoken by the accused during the second act of penile-vaginal penetration uttered aloud again by a colleague (albeit in a different context). I also agreed with the Prosecution that there was simply no reason for V to make up a story about a second act of penile-vaginal penetration months after her initial police report. Indeed, if her police report was false (as the accused claimed), she had every reason not to trigger suspicion from the police by appearing to change her evidence months later.

123 While I accepted V's explanation and I did not find that the delayed reported detracted from her overall credibility, this delay was one factor which led me to conclude it was not safe to proceed on the basis that V's evidence was not just "convincing" but "unusually convincing" (at [62]). However, as I also said earlier (at [64], this was not fatal to the Prosecution's case because I found that there was other evidence which corroborated V's account of the offences. I have alluded to the various pieces of evidence which corroborated V's account of the rape and sexual assault (see [65] to [72] above). I examine in greater detail below the evidence which corroborated V's account of the second instance of penile-vaginal intercourse.

124 In this case, corroboration was provided by the accused's own evidence in his fourth statement of 25 February 2019. In this fourth statement, in

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273 Transcript, 16 March 2021 at p 86, line 9–p 87, line 4.

providing details of the alleged sexual encounter with V, the accused clearly described two acts of penile-vaginal intercourse, as well as two acts of penile-oral intercourse. He also clearly described himself as having been on top of V during the first act of penile-vaginal intercourse and V as having been on top of him during the second act of penile-vaginal intercourse:[274]

> Ng: …And then, I mean I can sense what she wanted to do. So I lean back like this. *And then proceeded on to giving me a blowjob.*
>
> …
>
> Ng: So… when we were having sex, *I was on top of her for the first period of time.* Then we were fucking and, like I say, I cannot ejaculate. Then shortly when we were making love, then she orgasm again, so we have to stop again. … *Then she continue sucking my dick.*
>
> …
>
> Ng: So I just….stay there and enjoy the blowjob 'ah'. *Then after the blowjob was done, then move on top of me, to change position 'ah'. So now the third round is she was on top. And I'm below.*
>
> Fauzi: So you change to sex again with a different position?
>
> Ng: Correct. After the blowjob.
>
> [emphasis added]

125 At trial, the accused also confirmed that in his interviews with the police, he had taken the position that there were *two* instances of penile-vaginal intercourse, including one where V was on top of him.[275]

126 In short, therefore, *the accused's own statement to the police about the number and sequence of sexual acts corresponded with V's description*. That

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274 Exhibit P63 at p 22, line 1–p, 25 line 30.

275 Transcript, 25 March 2021 at p 77, lines 25–31.

the accused's own statements may amount to corroboration of the victim's testimony is seen in cases such as *Yue Roger Jr (HC)* at [70]–[78].

127 It was only belatedly at trial that the accused sought to resile from the description given in his statement to the police, claiming instead that there had only been one act of penile-vaginal intercourse. *Per* the accused's testimony at trial, he and V first had penile-oral sex[276], after which he proceeded to "move [himself] on top of her" and to "have sexual intercourse with [him] on top of [V] for probably about 2 to 3 minutes",[277] and, finally, he "told her to give [him] another blowjob which is---yah, penile oral sex".[278]

128 Having changed his evidence at trial, the accused was unable to give any coherent explanation for his about-face. When confronted with the inconsistences between his evidence-in-chief and his police statement, the accused's initial response was a baffling *non-sequitur*: he said he had given a "false account" to the police because he did not know that "any sort of chain of events would actually lead…to…so many charges".[279] Second, he said he had tried to give an account to the police that showed the "whole chain of sexual events is *like a consensual one*" [emphasis added], and this was (apparently) why he had told the police about V being on top of him – because it showed that "she's having control" and it was "more believable to be consensual".[280] When pressed further, the accused said he had given the police an account of his sexual

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276 Transcript, 24 March 2021 at p 30, line 22.

277 Transcript, 24 March 2021 at p 30, lines 30–31 and p 32, lines 13–14.

278 Transcript, 24 March 2021 at p 32, lines 18–20.

279 Transcript, 25 March 2021 at p 78, lines 28–31; p 79, line 17.

280 Transcript, 25 March 2021 at p 78, line 28–p 79 line 7.

encounter with V which was based on his usual encounters with social escorts or prostitutes or "what [he] actually see of like the internet".[281]

129 I found the accused's attempts to disavow the incriminating portions of his fourth statement to be frankly unbelievable.

130 First, if the sexual encounter with V had in fact been a consensual one, there was no reason why the accused should have needed to make it "more believable to be consensual" by inventing an additional episode of penile-vaginal intercourse. Further, if the sexual encounter with V had in fact been consensual, there was equally no reason for the accused to give the police an account which was based – not on the truth – but on his "usual encounters" with prostitutes and/or Internet content he had seen. After all, in the accused's fourth statement, he himself had said he "realised that if [he] [did] not come clean and try to help [himself], [he] might get into bigger problems like being, 'uh', getting involved with allegation of rape".[282] Having allegedly realised the importance of telling the police the truth, it made no sense at all that he should have decided to give them a fictitious account in his fourth statement.

131 I next address the Defence's argument about the alleged inconsistencies between V's testimony at trial as to the number and sequence of sexual acts and the notes recorded by SSSgt Faridah in the Police Message Form and by SI Ong in his Investigation Diary.[283] As noted earlier, SSSgt Faridah had recorded in the Police Message Form that there was one incident of "fellatio" followed by "sexual intercourse" (at [68]). In his Investigation Diary, SI Ong had recorded

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281 Transcript, 25 March 2021 at p 79, lines 26–32.

282 Exhibit P62 at p 8, line 21–p 10, line 2.

283 DCS at paras 100–103.

that there was one instance of penile-oral penetration followed by penile-vaginal penetration (at [69]). The Defence claimed that these notes showed that V had given evidence to the police which was inconsistent with her testimony. I disagreed.

132 First, it should be noted that the contents of the Police Message Form and SI Ong's Investigation Diary were never read back to V: she was never asked to verify the accuracy of what SSSgt Faridah and SI Ong had recorded. Second, SSSgt Faridah's and SI Ong's records of what they recalled V telling them were not meant to be a comprehensive account of the incident at the Hotel. As SI Ong explained, he did not "go much detail" on issues like whether the accused had been on top of V or whether V had been on top of him because "at that point of time, this is not a division case": his role was only to "establish that this is a rape case" and let the matter be handled by the Serious Sexual Crimes Branch. As such, his notes were "in just a brief form, instead of a very detailed form".[284] Further, as SI Ong explained, V would "be better interviewed when she was at the police station", rather than at her home.[285] As for SSSgt Faridah, she "briefly asked" V what had happened. At this point, B was still inside V's flat, and V had only told SSSgt Faridah that she "was being approached" by the accused and that they had "a sexual intercourse that was not consensual".[286] After B left the flat, V explained to SSSgt Faridah that she had not wanted B to know she was working as a social escort.[287] SI Ho then asked V some questions to clarify the "very, very brief facts" gathered by SSSgt Faridah, but as noted

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284 Transcript, 23 March 2021 at p 78, line 15–p 79, line 7.

285 Transcript, 23 March 2021 at p 78, lines 21–22.

286 Transcript, 23 March 2021 at p 5, lines 19-20 and p 8, lines 12–14.

287 Transcript, 23 March 2021 at p 8, lines 17–19.

earlier, neither of them took any notes.[288] In short, it was expected that V would undergo a much more detailed interview at the police station; and neither the Police Message Form nor SI Ong's Investigation Diary entry was recorded with a view to capturing a comprehensive record of V's evidence.

133 Lastly, and most importantly, as I noted earlier at [122], V was able to provide a cogent and believable explanation for why she had only given an account of the second instance of penile-vaginal penetration in her third statement.

134 For the reasons set out above, I rejected the Defence's argument that V's evidence on the number and sequence of sexual acts was so unreliable as to raise a reasonable doubt as regards the accused's commission of the rape and sexual assault.

The Swiss Army knife

Defence's arguments

135 Next, the Defence contended that leaving aside V's testimony, the Prosecution had no other evidence that the accused had shown V the Swiss Army knife to put her in fear of hurt to herself. No Swiss Army knife was ever found on the accused, nor recovered from his dormitory at the Vintage Inn.[289] As for V's testimony on the Swiss Army knife, it was not unusually convincing:[290] *inter alia*, she had merely assumed it was a red Swiss Army knife

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288 Transcript, 23 March 2021 at p 93, lines 3–16.]

289 DCS at para 48.

290 DCS at para 56.

which she had seen.[291] Moreover, her testimony on the direction in which the Swiss Army knife was pointed was inconsistent:[292] at trial she had referred to the knife being "pointed in [her] direction",[293] whereas in her first statement she had said that the knife was not *pointed at her*.[294]

Prosecution's arguments

136 The Prosecution submitted that the non-recovery of the knife had no bearing on the credibility of V's evidence regarding the knife. After all, the accused had multiple opportunities to hide or dispose of the knife at various stages of the night.[295] As for the seizure of items in the accused's dormitory (in which he estimated there were ten beds), this had focused only on items on and around the accused's bed *and which he declared to be his*. Given that the accused was apprised of the reason for his arrest prior to the search,[296] he would obviously have not declared anything containing the knife to be his.

137 As for V's alleged lack of consistency on the question of the direction which the knife had been pointed, the Prosecution submitted that an examination of V's evidence showed that there was no real inconsistency, and it was really a matter of semantics which the Defence had latched on to.

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291 DCS at para 57.

292 DCS at para 65.

293 Transcript, 17 March 2021 at p 44, lines 18–28.

294 Exhibit D2 at para 8.

295 PES at paras 55–56.

296 Transcript, 19 March 2021 at p 35, lines 20–28; Transcript, 25 March 2021 at p 23, lines 17–21.

My findings

(1) On the non-recovery of the Swiss Army knife

138 First, while the police did not find the Swiss Army knife when they arrested the accused on 22 February 2019, I did not find this to be fatal to the Prosecution's case. In *Yue Roger Jr (HC)*, certain items related to the offences alleged against the accused, such as a skipping rope handle, vibrator, photographs and other media files, were not recovered by the police. However, in that case, the High Court did not find it to be fatal to the Prosecution's case as it found that there was sufficient explanation for the non-recovery or absence of confirmation of the existence of those items – namely, the passage of time (at [40]).

139 In the present case, I was satisfied that there was sufficient explanation for the non-recovery – or absence of confirmation of the existence – of the knife. Having seen the photographs of the scene at the Vintage Inn dormitory where the accused was arrested and where a search was conducted by the police, and having considered the testimonies of the relevant police officers, it was clear that not only was the area searched rather messy (to quote one of the police witnesses), but the police officers present at the scene only searched the items which the accused himself pointed out as belonging to him and did not search other items.[297]

140 It was also pertinent that the accused pointed out the items allegedly belonging to him after having been briefly interviewed by the police officers at the staircase outside the dormitory, and after then being asked by them to

[297] Transcript, 19 March 2021 at p 37, lines 12–25.

identify his personal belongings.[298] By this time, the accused would have known that he was being arrested for the encounters with V. Even if the accused had stored the Swiss Army knife somewhere in Vintage Inn, it stood to reason that he would not have pointed out the whereabouts of the knife to the police officers, for fear of incriminating himself.[299]

141 I also agreed with the Prosecution that the accused had several opportunities to discard or hide the knife: *eg* while he was walking around near V's residence looking for the taxi,[300] or after the taxi dropped him off outside Vintage Inn and as he walked back to his dormitory.[301]

(2) Whether V's evidence on the knife was unusually convincing

142 Next, the Defence raised a number of arguments as to why V's evidence on the Swiss Army knife was not "unusually convincing".

(A) ON WHETHER V MERELY ASSUMED SHE SAW THE KNIFE

143 First, the Defence argued that V was short-sighted and that she had not seen the red Swiss Army knife clearly but had merely assumed that she saw it. It was doubtful whether V could even have seen the "jagged silver" edge of the knife when – according to her – the accused had been holding most of the body of the knife.[302]

144 I rejected the Defence's arguments.

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298 Transcript, 19 March 2021 at p 35, line 23–p 36, line 5.

299 PES at para 56.

300 Transcript, 25 March 2021 at p 112, line 29–p 113, line 5.

301 Transcript, 25 March 2021 at p 115, lines 12–30.

302 DCS at paras 57–64.

145 First, V's evidence at trial was that she could still "make out" objects even when she was not wearing her spectacles.[303] For example, she had seen the accused "flash[]" a "card holder" or a "flip holder"[304] at her when he came out from the toilet – and this was borne out by the accused's own admission that he had shown her his "wallet". [305]

146 Second, V was able to explain cogently and in detail why she was certain that she had seen the accused holding a red Swiss Army knife. She was able to explain that red was a striking colour; and furthermore, the accused's hands had not been "fully closed":[306] she described it as "half the handle being covered and some parts of the handle being seen".[307] She had also seen Swiss Army knives before and would recognise them.[308] In cross-examination, she maintained that she was "fairly certain" of what she had seen.[309] Critically as well, she was able to provide the police with a drawing of the Swiss Army knife in her second statement.[310]

147 In my view, V's evidence about having seen the red Swiss Army knife had the unmistakable ring of truth about it. I did not think she was merely making assumptions when she gave evidence about having seen the knife. For the reasons set out above, I did not find any merit in the Defence's arguments on this issue.

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303 Transcript, 16 March 2021 at p 31, lines 15–27.

304 Transcript, 16 March 2021 at p 31, lines 21–23.

305 Transcript, 24 March 2021 at p 8, lines 13–16.

306 PRS at para 19(d); Transcript, 17 March 2021 at p 37, lines 24–29.

307 Transcript, 18 March 2021 at p 68, lines 2–3.

308 Transcript, 16 March 2021 at p 55, lines 18–21.

309 Transcript, 17 March 2021 at p 40, lines 3–7.

310 Exhibit D3 at p 5.

(B) ON WHETHER V'S EVIDENCE WAS INCONSISTENT ON THE ISSUE OF THE DIRECTION IN WHICH THE KNIFE WAS POINTED

148 As I noted earlier, the Defence also argued that V's evidence was inconsistent on the issue of the direction in which the knife was pointed.[311] In this connection, V's evidence was as follows.

(a) In her first statement, V said: "All of a sudden, [the accused's] tone changed and he said to switch off the light or he will hurt me. So I looked up and saw him showing me a knife. He did not point the knife at me."[312]

(b) In her third statement, V said: "Suddenly, [the accused's] tone changed and told me to switch off the light or he will hurt me. When I looked up, I saw "Ivan" holding a red Swiss Army Knife."[313]

(c) In her evidence-in-chief, V said that she saw the accused holding a red Swiss Army knife and that he held the knife "mainly in [her] direction and then also he stepped forward…a little bit".[314] She explained that the knife was "[o]pened up" and "facing [her]", and "what [V] saw was silver" so she "would think it's the blade".[315]

(d) Under cross-examination, V said the accused was holding the red Swiss Army knife in his right hand.[316] She did not see the accused

311 DCS at para 65.

312 Exhibit D2 at para 8.

313 AB at p 2, para 9.

314 Transcript, 16 March 2021 at p 54, lines 5–23.

315 Transcript, 16 March 2021 at p 56, lines 10–14.

316 Transcript, 17 March 2021 at p 35, lines 17–20.

opening up the blade, but she had seen "something silver".[317] V said the knife was "pointed in [her] direction": although it was "not directly in front of [her]", the accused was "showing it to [her]".[318] When asked if the end point of the blade was pointing towards her, V reiterated that "[the knife] was pointed in [her] direction" and what she could see "was the blade and a slight slant of silver".[319]

149 V was pressed further on this issue in cross-examination:[320]

> Q Is it correct that when you gave [V's first statement] to the police, you were very clear in your mind that the knife was not pointed at you?
>
> A Nope. Like I said yesterday, *it was not pointed at me. It was in my direction. Because he was kind of far away---*
>
> Q I see.
>
> A ---so it's also kind of *unfair to say that it's at me, because he wasn't close enough.*
>
> [emphasis added]

150 In describing how the accused had held the knife, V said that "it's not like his whole palm was around the knife…[he held it] casually".[321] She further explained:[322]

> …that's why I---I mentioned in my statement and also earlier that it was more like showing, because I also cannot say he pointed it at me.

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317 Transcript, 17 March 2021 at p 36, lines 1–17.

318 Transcript, 17 March 2021 at p 44, lines 18–28.

319 Transcript, 17 March 2021 at p 47, lines 16–19.

320 Transcript, 18 March 2021 at p 50, line 30 – p 51, line 5.

321 Transcript, 18 March 2021 at p 52, lines 21–23.

322 Transcript, 18 March 2021 at p 54, lines 1–2.

151 V's position, therefore, was that the accused had pointed the knife *in her direction* but that she did not think it would be fair to say he had *pointed it at her* because he was not standing "close enough" to her when he had the knife and also because he was holding the knife "casually". On the whole, I agreed with the Prosecution that there was no real inconsistency in V's evidence, and that it was really a matter of semantics which the Defence had latched on to. I would add that V's evidence actually reinforced my impression of her as an honest and conscientious witness. Had she indeed been trying to falsely implicate the accused, one would have expected her to insist from the outset that the accused was pointing his knife directly at her. That she took pains to explain why she felt it would be unfair to describe the accused as having pointed the knife at her showed that she was not willing to embellish or exaggerate her evidence for the sake of incriminating the accused.[323]

152 For the reasons set out above, I did not find any merit in the Defence's arguments on this issue.

(C) ON V ONLY SEEING THE KNIFE ONCE

153 Next, the Defence argued that V only saw the knife once before switching off the lights, and never saw it again for the rest of the night.[324] The Defence argued that if V had really been in fear of hurt from the knife, she would surely have been actively looking out for it so as to avoid injury.[325]

154 Again, I did not find any merit in the Defence's arguments. First, insofar as the Defence seemed to be suggesting that a victim who could not see the

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323 PES at para 43.

324 DCS at para 69.

325 DCS at para 70.

accused's knife would be less frightened of being hurt than a victim who could see the knife at all times, this suggestion made no sense. As V herself noted, she would have been in *even more fear of hurt* to herself if she had only seen the knife once and did not know where it was kept thereafter, than if she were aware at all times exactly where it was.[326] After all, if she knew where the knife was, she would be able to take measures to avoid it – something she could not do if she did not even know the whereabouts of the knife. Second, as the Prosecution pointed out, if she had appeared to be "looking out" for the knife, it might have signalled to the accused that she was thinking of wrestling possession of it, and this might have put her in even more danger from the accused.[327]

(D) ACCUSED IS LEFT-HANDED

155 Another argument raised by the Defence centred on V's evidence that the accused was holding the Swiss Army knife in his right hand. According to the Defence, this was not believable because the accused was left-handed.[328]

156 I did not find any merit in this argument. As the Prosecution pointed out, the accused himself had given evidence that he was using his right hand to hold several items on the night of 21 February 2019.[329] It was amply possible, therefore, for him to have held a Swiss Army knife in his right hand.

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326 Transcript, 16 March 2021 at p 60, lines 4–8.

327 PRS at para 23.

328 DCS at para 72; Transcript, 17 March 2021, at p 35, lines 17–20; Transcript, 24 March 2021 at p 2, line 26.

329 Transcript, 24 March 2021 at p 8, lines 10–22.

(E) WHETHER V'S EVIDENCE INCONSISTENT WITH NOTES OF POLICE OFFICERS

157 The Defence also submitted that V's evidence on the knife was inconsistent with the notes of the police officers who responded to her call to the police, *ie* SSSgt Faridah and SI Ong.[330] I have already dealt with this point above at [131] to [132].

(F) WHETHER V'S BEHAVIOUR INCONSISTENT WITH SOMEONE IN FEAR OF HURT TO HERSELF

158 Next, the Defence submitted that V's behaviour was inconsistent with someone who was in fear of hurt to herself after being threatened by a knife. The Defence picked out several aspects of V's behaviour as being illogical, implausible or strange. According to the Defence, V's act of wiggling her body backwards and saying "no" when the accused was on top of her was not consistent with someone who was fearful of being hurt by a knife. In respect of V's evidence that she had also told the accused she had a condom in her bag because she wanted to flee from the room when he went to retrieve the condom, the Defence argued that this evidence could not be believed: according to the Defence, if she had genuinely been afraid of being hurt by the knife, she would surely not have tried to escape even if the accused got off her to retrieve the condom. Other areas of V's evidence which the Defence found fault with included her evidence that she had hesitated when first told by the accused to give him a "blowjob" and that she had refused his request to ejaculate in her mouth. According to the Defence, if she had genuinely been afraid of being hurt by the knife, she would surely not have hesitated in complying with the

330 DCS at para 74.

accused's instructions that she give him a "blowjob", and she would surely also not have dared to refuse to let him ejaculate in her mouth.[331]

159 I did not find any merit in these arguments.

160 As I noted earlier, different people react in different ways to sexual abuse or assault (*Yue Roger Jr (HC)* at [34]). There is no "gold standard" of behaviour to which a victim of sexual assault is expected to conform. In the present case, there was certainly no basis for suggesting that V's behaviour was somehow inconsistent with some accepted general notion of how a victim should react to the assault. In any event, V was able to provide cogent explanations for her behaviour.[332]

161 First, I did not consider it illogical or implausible that V should be afraid of the knife but still try to resist the accused's physical advances where possible. As V pointed out, while there was a "slight possibility" the accused would hurt her if she wiggled her body backwards, she wanted to "fight as much as [she] could".[333] As for her initial hesitation in giving the accused a blowjob, I accepted V's explanation that this was because there were "very strange substances" on the accused's penis (which she had suggested in her first statement was "not semen" but "some form of infection").[334] However, she had given in out of fear for her own safety when the accused guided her head towards his penis.[335] I also accepted V's explanation that she had felt she was able to say "no" to the

331 DCS at paras 82–91.

332 PRS at para 10.

333 Transcript, 17 March 2021 at p 62, lines 4–10.

334 Transcript, 16 March 2021 at p 62, lines 20–26; Exhibit D2 at para 8.

335 Transcript, 16 March 2021 at p 62, lines 8–28.

accused ejaculating in her mouth because he had framed it as a request (*ie* not as a demand or an order), which she felt was not "threatening of any sort".[336]

162 As to the Defence's argument that V's behaviour *after* the sexual assaults was inconsistent with someone in fear of hurt from a knife, the Defence elaborated on this by suggesting that V should have considered running out of Room 305 while putting on her clothes, and/or that she should have sought help from others or run away by herself while the accused was paying the excess room charge at the reception. The Defence also picked on the fact that in her Whatsapp exchange with B, V had recounted the "IO" (apparently SI Ong) asking her why she had not fought back, and in recounting this, she had failed to bring up the knife to B again but had merely said that "that dude [*ie* the accused] so heavy".[337] According to the Defence, this remark to B showed that fear of the knife was not at the forefront of her mind during the sexual encounter with the accused.[338]

163 Again, I found no merit in these arguments. I reiterate what I said at [160] earlier about different people reacting in different ways to sexual abuse. In addition, V was able to provide cogent explanations for her reactions. First, while she had considered running out of Room 305 while putting on her clothes, she did not in fact do so because quite apart from having been effectively half-naked, she had also realised she still needed to get her NRIC and mobile phone back from the accused. Moreover, she had not seen any stairs near Room 305 and did not know if she could get out of the Hotel in time.[339] In other words,

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336 Transcript, 17 March 2021 at p 63, lines 18–23.

337 Exhibit P54 at p 7.

338 DCS at paras 86–89.

339 Transcript, 17 March 2021 at p 68, line 23–p 69, line 4.

from her perspective, running out of the room while half-naked might have put her in even greater more danger: *eg* if she could not find the stairs and had to wait for the lift, it might have given the accused time to catch up and to hurt her with the knife. As for seeking help from persons at the Hotel reception area, she had not done so because she was "flustered", "not sure what to do yet",[340] and wanted to call her agent (A) for advice.[341] Nor had V sought help from the taxi driver (Chan), as she had not wanted to put him in danger from the accused who might still have had the knife with him at that juncture. I note as an aside that Chan came to give evidence in court, and I could see for myself that he was a rather frail and elderly gentleman (who also appeared somewhat hard of hearing, not to mention a tad confused). In any event, according to V, she had wanted to get home as soon as possible so as to decide her next steps.[342] She had in fact tried to make excuses to prevent the accused from sending her home, but he had insisted[343] and she had given in because she "just wanted to get out of there" and was afraid if she did not comply with his wishes, he would never "let [her] leave".[344]

164 I found V's explanations to be entirely reasonable, believable, and in no way illogical or strange.

165 Lastly, I did not agree that V's remark to B in their Whatsapp exchange ("that dude so heavy") showed that fear of the knife was not at the forefront of

340 Transcript, 17 March 2021 at p 84, lines 10–18.

341 Transcript, 16 March 2021 at p 79, lines 14–31.

342 Transcript, 16 March 2021 at p 78, lines 14–16.

343 Transcript, 17 March 2021 at p 75, lines 11–18.

344 Transcript, 16 March 2021 at p 72, lines 23–25.

her mind during the sexual encounter with the accused.[345] This remark was only one of many in a string of messages exchanged between V and B on 22 February 2019: read in context, it was plainly not representative of V's state of mind during the sexual encounter with the accused. In any event, when V first called B upon returning from the Hotel, she had in fact mentioned the use of a knife by the accused in committing the rape – which must show, surely, that the knife was very much at the forefront of her mind in the aftermath of the sexual assaults.[346]

(G) ON WHETHER V'S DESCRIPTION OF THE ACCUSED'S BEHAVIOUR WAS INCONSISTENT WITH SOMEONE WHO HAD JUST THREATENED ANOTHER WITH A KNIFE

166 Lastly, the Defence argued that the accused's behaviour – as described by V – was inconsistent with someone who had just threatened another with a knife.[347] *Per* V's testimony, the accused did not forcefully guide her head towards his penis when he wanted her to give him a "blowjob"; he did not insist on ejaculating in her mouth, but simply asked her if he could; he sent her back to her residence despite knowing her brother was staying there and might confront him; and he even told her he hoped to meet her parents one day.

167 Again, I found no merit in these arguments. Certainly, I did not see why it should have been "inconsistent" for the accused to have done any of these things. The Defence appeared to be suggesting that the accused should have had to apply physical force on V to make her carry out every sexual act – but there was really no reason why this should have been so. If anything, it could equally

345 DCS at para 89.

346 PRS at para 14(d).

347 DCS at para 92.

be said that the accused saw no need to apply physical force on V in order to make her perform each sexual act *because* he had the knife – and thus the upper hand. First, if the accused did *not* forcefully guide V's head towards his penis, this was actually consistent with the fact that he had used a knife to put V in fear of hurt and thus did not need to guide her head on his own to force her to engage in penile-oral intercourse. As for his insisting on sending her home and his remarking that he hoped to meet her parents one day, I did not see why it was implausible that he would have done or said such things. It should be remembered that the accused already knew where V lived as he had taken a photo of the front and back of her NRIC, and he also had her mobile number. He was also well aware that V had met him while hiring out her sexual services as a social escort. It appeared to me that given these circumstances, he must have felt sufficiently emboldened to insist on accompanying V home despite the possibility of running into her brother and even to make remarks about hoping to meet her parents.

168 For the reasons set out above, I accepted V's evidence that the accused did show her a Swiss Army knife in order to put her in fear of hurt to herself, before raping and sexually assaulting her in the manner described in the four charges.

The accused's general defence of mistake under s 79 of the Penal Code

169 The accused also sought to rely on the general defence of mistake under section 79 of the Penal Code. It was argued that even if V did not in fact consent to sexual intercourse, the accused nevertheless mistakenly believed that she had consented.[348]

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348 DCS at para 128.

170 I rejected the accused's attempt to rely on section 79. I reiterate my finding (above) that the accused did show V a Swiss Army knife in order to put her in fear of hurt to herself. The accused having used the knife to put V in fear of hurt in order to facilitate his raping and sexually assaulting her, it was simply not possible for him simultaneously to insist that he did in good faith believe she had consented to the sexual intercourse.

My decision

171 To sum up, I was satisfied on the evidence before me that the Prosecution had proved the two charges of aggravated rape and the two charges of aggravated sexual assault by penetration beyond reasonable doubt, and I convicted the accused of these charges accordingly.

Sentence

Prosecution's arguments

172 The Prosecution argued for an aggregate sentence of at least 19 years' imprisonment and 24 strokes of the cane.[349]

173 In respect of the aggravated rape charges, the Prosecution argued that this case should fall within the mid-point to the upper-end of Band 2 of the sentencing framework set out by the Court of Appeal in *Ng Kean Meng Terence v Public Prosecutor* [2017] 2 SLR 449 ("*Terence Ng*"), and that the starting point for each aggravated rape charge should be 15 years' imprisonment and 12 strokes of the cane.[350]

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349 Prosecution's Sentencing Submissions dated 26 July 2021 ("PSS") at para 3.

350 PSS at para 18.

174 The Prosecution submitted that the following offence-specific factors were present: the accused had put V in fear of hurt, the offence was clearly premeditated, the accused did not use a condom, V was vulnerable by virtue of her occupation as a social escort, and, in the course of committing the offences, the accused had committed other acts that could constitute separate offences.[351]

175 As for the offender-specific factors, these were as follows: the accused was traced for the offence of criminal intimidation, which was relevant to this case as the accused had in essence used criminal intimidation with a weapon to facilitate his raping and sexually assaulting V. The accused faced another charge under s 170 of the Penal Code, which he admitted and which was taken into consideration for sentencing.[352] The Prosecution submitted that the appropriate sentence for each aggravated rape was 16 years' imprisonment and the mandatory minimum 12 strokes of the cane.[353]

176 As for the charges of aggravated sexual assault by penetration, the Court of Appeal has adapted the *Terence Ng* sentencing framework for the offence of sexual assault by penetration (*Pram Nair v Public Prosecutor* [2017] 2 SLR 1015 ("*Pram Nair*")).[354] The Prosecution submitted that the framework would apply equally to the charges of aggravated sexual assault by penetration. As the present case fell within the mid-point to the upper-end of Band 2 of the *Pram Nair* sentencing framework, the appropriate sentence for each charge of

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351 PSS at paras 19–22 and 24.

352 PSS at paras 26–27.

353 PSS at para 29.

354 PSS at para 30.

aggravated sexual assault by penetration should be 13 years' imprisonment and the mandatory minimum 12 strokes of the cane.[355]

177 It was not disputed that at least two of the imprisonment sentences had to be ordered to run consecutively (s 307(1) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed ("CPC")), and the Prosecution submitted that I should order the sentences for one aggravated rape charge and one aggravated sexual assault by penetration charge to run consecutively.[356]

178 In view of the totality principle (*Mohamed Shouffee bin Adam v Public Prosecutor* [2014] 2 SLR 998 ("*Shouffee*")), the Prosecution further submitted that the sentence for each of the aggravated rape charges should be adjusted to at least 11 years' imprisonment and 12 strokes of the cane, while the sentence for each of the aggravated sexual assault by penetration charges should be adjusted to at least 8 years' imprisonment and 12 strokes of the cane (which was the mandatory minimum).[357] The aggregate sentence, in the Prosecution's view, was not substantially above the normal level of sentences for the most serious of the individual offences committed, and was not higher than the maximum punishment for any of the proceeded charges.[358] It was also consistent with the case law.[359]

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355 PSS at para 33.

356 PSS at para 36.

357 PSS at para 37.

358 PSS at para 42.

359 PSS at paras 46 and 50.

Defence's arguments

179 The Defence did not disagree that the mandatory minimum of 24 strokes of the cane should apply, but argued that the appropriate imprisonment term in this case should be 16 years.[360]

180 First, the Defence submitted that the starting sentences for the aggravated rape and the aggravated sexual assault by penetration charges should fall within the lowest end of Band 2 of the *Terence Ng* and *Pram Nair* frameworks, *ie* 13 years' imprisonment and 10 years' imprisonment respectively.[361] Although the accused had shown V a Swiss Army knife, he had not actually used it to injure V, nor had he otherwise caused her any injuries.[362]

181 As for the aggregate sentence, the Defence agreed that the sentences for one of the aggravated rape charges and one of the aggravated sexual assault by penetration charges should run consecutively.[363] However, the Defence submitted that in view of the totality principle, the aggregate imprisonment term should be adjusted downwards to 16 years (instead of 23 years). According to the Defence, an aggregate term of 16 years would be closer to the normal range of sentences for offences such as the present, whereas a total term of 23 years would have a crushing effect on the accused, who was relatively young and had not been convicted of a sexual offence before.[364]

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360 Defence's Sentencing Submissions dated 26 July 2021 ("DSS") at paras 3 and 15.

361 DSS at paras 15–16.

362 DSS at para 18.

363 DSS at para 29.

364 DSS at paras 35 and 37–38.

182 According to the Defence, therefore, the sentence for each aggravated rape charge and each aggravated sexual assault by penetration charge should be adjusted to 8 years' imprisonment and 12 strokes of the cane.[365]

183 The Defence also asked that the commencement of the accused's imprisonment sentence be backdated to the date of his arrest, *ie* 22 February 2019 (s 318(3) of the CPC).[366] The Prosecution did not object to this request.

My decision

184 For the offence of aggravated rape, s 375(3)(*a*)(ii) of the Penal Code prescribes a mandatory imprisonment term of not less than 8 years, subject to a maximum of 20, and a mandatory 12 strokes of the cane. The same applies for the offence of aggravated sexual assault by penetration (s 376(4)(*a*)(ii) of the Penal Code). There was no disagreement between the Prosecution and Defence that the sentences of imprisonment for one of the aggravated rape charges and one of the aggravated sexual assault by penetration charges should be ordered to run consecutively, and that the total number of strokes of the cane to be imposed in this case was the statutory maximum of 24 (s 328(6) of the CPC).

185 At the outset, I should make it clear I agreed with the Prosecution that in this case, the sentencing considerations which should be paramount were deterrence and retribution. Our courts have always said that rape is generally regarded as "the most grave of all the sexual offences" (*Chia Kim Heng Frederick v Public Prosecutor* [1992] 1 SLR(R) 63 ("*Frederick Chia*") at [9]). In *Public Prosecutor v BMD* [2013] SGHC 235, cited by the Court of Appeal in *Pram Nair* at [152], where the accused was convicted of multiple sexual

365 DSS at para 39.

366 DSS at para 49.

offences including rape and various instances of sexual assault by penetration, the High Court held that the rape charges warranted the heaviest punishments, as penile-vaginal penetration was considered "the most heinous among the four categories of offences listed in the six charges". This was followed by penile-oral penetration (fellatio), penile-anal penetration and finally digital-anal penetration, with the court noting the high degree of revulsion and disgust associated with offences involving forced fellatio (at [73]).

186 It was also not disputed that the relevant sentencing frameworks for rape offences and offences of sexual assault by penetration were set out in *Terence Ng* and *Pram Nair* respectively, and that the present case fell within Band 2 of each of the frameworks. However, the Prosecution and Defence differed on where along the range in Band 2 of each framework the present case should fall.

187 Having considered the evidence and parties' submissions, I was of the view that this case fell around the mid-point of Band 2 of both the *Terence Ng* and *Pram Nair* frameworks.

188 For stage 1 of each framework, *ie* the offence-specific factors, I found that the following offence-specific factors were present. First, the accused had used a knife to put V in fear of hurt.

189 Second, there was clearly premeditation on his part: as the Prosecution pointed out, the accused had booked V's sexual services, knowing full well that he had no money to pay for these services, and clearly intent nonetheless on getting sex from her one way or another. As I noted earlier, although the accused claimed that he had been hoping for a social escort who would only collect payment after sex (so that he could run away immediately after having sex), he also knew that there was a "high chance" that V would collect payment before

sex.[367] Accordingly, the accused must already have had a plan in mind for obtaining sex without payment – other than running away – when he went to the Hotel to meet V. This was borne out by his subsequent behaviour. When V sought payment of her usual fee right at the outset prior to any sexual activity, the accused did not inform her he had no money to pay her fee, nor did he flee from the room. Instead, he first pretended to be a police officer on an anti-vice operation and tried to get V to offer him sex in exchange for her "freedom". When this ruse failed to achieve the intended effect, he still did not run away. Instead, he seamlessly escalated his behaviour by showing her the Swiss Army knife and threatening to harm her with the knife if she did not comply with his instructions.

190 Third, I agreed with the Prosecution that V was a vulnerable victim by reason of her occupation as a social escort. In *Public Prosecutor v Mohammad Al-Ansari bin Basri* [2008] 1 SLR(R) 449 (at [84]), VK Rajah JA rejected as being "preposterous" the notion that offences against sex workers "should not be viewed as seriously" and noted that the courts would "often consider such persons to be vulnerable victims, given their reluctance to come forward when offences are committed against them". In the present case, I have alluded earlier (at [20]) to V's evidence about her agent A having advised her against making a police report about the rape, precisely because of her occupation as a social escort. Further, as the Prosecution has highlighted, the accused's own conduct demonstrated that he was conscious of the exposed position which V found herself in by virtue of her line of work and was willing to exploit it to his advantage – as seen, for example, in his taking possession of her mobile phone and NRIC while pretending to be a police officer on an anti-vice operation.

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367 Transcript, 25 March 2021 at p 19, lines 18–32.

191 As our courts have observed on many occasions, offences against vulnerable victims "often create deep judicial disquiet"; and general deterrence "must necessarily constitute an important consideration in the sentencing of perpetrators" who target vulnerable victims: *Public Prosecutor v Law Aik Meng* [2007] 2 SLR(R) 814 at [24(b)].

192 Fourth, the accused did not use a condom for the acts of penile-vaginal intercourse, which meant that V was put at risk of unwanted pregnancy and sexually transmitted diseases.

193 Fifth, the Prosecution also highlighted the commission of other acts by the accused in the course of committing the rapes and sexual assault by penetration, which could technically constitute separate offences and should be considered in sentencing. I refer to the accused's conduct in making V masturbate him by hand and in ejaculating on her chest. It should also be noted that the sense of intrusion and violation suffered by V was heightened by the accused's conduct post-assault in first taking a photo of her NRIC, then obtaining her mobile number, telling her he proposed to move into her flat, and finally, following her all the way back to her front door – and continuing to text her even after they had parted ways. All of this would have underscored to V the chilling fact that her rapist knew exactly where she lived and how to find her.

194 In the light of the above offence-specific factors, I put the present case around the mid-point of Band 2 of both the *Terence Ng* and the *Pram Nair* frameworks.

195 Moving to stage 2 of the *Terence Ng* framework and the *Pram Nair* framework in respect of the offender-specific factors, I could not see any

mitigating factors in this case. Since the accused chose to claim trial and V had to relive the horror of the sexual assaults in court, the accused was not entitled to the sentencing discount normally given to accused persons who plead guilty. The accused was also traced for the offence of criminal intimidation which was an offence of some relevance to the sentencing considerations in this case, given his use of a knife to put V in fear of hurt to herself.

196 In respect of the charge taken into consideration under s 170 of the Penal Code, I had already considered the facts pertaining to this charge in addressing the offence-specific factors under Stage 1 of the *Terence Ng* and the *Pram Nair* frameworks. As such, I did not add any uplift on account of this charge.

197 For the reasons outlined above, I concluded that the appropriate sentence for each charge of aggravated rape should be 15 years' imprisonment and 12 strokes of the cane, while the appropriate sentence for each charge of aggravated sexual assault by penetration should be 12 years' imprisonment and 12 strokes of the cane.

198 In considering the aggregate sentence to be imposed, I bore in mind the principle set out in the relevant authorities, including *Shouffee*. In *Shouffee*, Menon CJ held that the two limbs of the totality principle required the sentencing court to consider, first, whether the aggregate sentence is substantially above the normal level of sentences for the most serious of the individual offences involved, and second, whether its effect is to impose on the offender a crushing sentence, not in keeping with his record and prospects.

199 Importantly, it should also be remembered that although the totality principle "has generally been taken to possess a limiting function, in the sense that it operates to prevent a court from imposing an excessive overall sentence",

it is "as a matter of logic… equally capable of having a boosting effect on individual sentences where they would otherwise result in a manifestly inadequate overall sentence" (*per* Menon CJ in *Gan Chai Bee Anne v Public Prosecutor* [2019] 4 SLR 838 ("*Gan Chai Bee Anne*") at [20]). As Menon CJ noted in *Gan Chai Bee Anne*, the totality principle requires not only that the overall sentence not be excessive but also that it not be inadequate: in the ultimate analysis, "the court has to assess the totality of the aggregate sentence with the totality of the criminal behaviour" (*per* the Court of Appeal in *ADF v Public Prosecutor and another appeal* [2010] 1 SLR 874 at [146]).

200 In the present case, I agreed with the Prosecution that a relevant factor to be borne in mind in considering the appropriate aggregate sentence was the fact that the accused had committed four discrete acts of non-consensual sexual penetration against V (albeit within a relatively short span of time).[368] I agreed with the Prosecution that the aggregate sentence in such a case should be higher than the sentence in a case involving only one act of non-consensual sexual penetration, in order to reflect the fact that an accused who subjects his victim to multiple acts of non-consensual sexual penetration inflicts even greater harm than that inflicted in the case of a single act of penetration.

201 In considering the appropriate aggregate sentence to be imposed in this case, I also reviewed the cases cited to me by both sides as sentencing precedents. I should make it clear that in reviewing the cases cited, I considered that unreported decisions – such as the case of *Public Prosecutor v Paramjit Singh s/o Minder Singh* (CC 30/2018) ("*Paramjit*") on which the Defence placed substantial reliance[369] – should be approached with caution because of

368 PSS at para 43.

369 DSS at para 42.

potential lack of clarity as to the detailed facts and circumstances in such cases, and also because the absence of written grounds of decision makes it difficult to arrive at a proper appraisal of these facts and circumstances (see *Luong Thi Trang Hoang Kathleen v Public Prosecutor* [2010] 1 SLR 707 at [21]). Indeed, in respect of *Paramjit*, the only information made available to me consisted of the statement of facts and the photographs and medical reports annexed to it.[370] It was not possible for me to conclude, based on an examination of these few documents, that *Paramjit* should be treated as a "comparable precedent" or that the facts of *Paramjit* were "far more egregious than the present case". First, it should be noted that the accused in *Paramjit* pleaded guilty to the charge of aggravated rape and the two charges of aggravated sexual assault by penetration. All other things being equal, such a plea of guilt would have been a mitigating factor for the purposes of sentencing. In contrast, the accused in this case put his victim through the ordeal of a trial and was thus not entitled to the discount in sentence normally afforded to those accused who plead guilty. Second, the accused in *Paramjit* was convicted of three charges (one charge of aggravated rape and two charges of aggravated sexual assault by penetration), whereas the present accused has been convicted of a total of four charges (*two* charges of aggravated rape and two charges of aggravated sexual assault by penetration). Third, while there appear to have been some aggravating factors present in *Paramjit* which were not present in this case (*eg* the accused in *Paramjit* had pointed his knife at the victim's throat and hit her head with his hand), there were aggravating factors present in this case which did not feature in *Paramjit*: *eg*, in this case it was clear from the evidence that the accused's offences were premeditated, whereas from the statement of facts in *Paramjit*, it appeared that the accused in that case had formed the intention of committing

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370 Defendant's Bundle of Authorities for Sentencing Submissions ("DBOASS") at Tab 13.

sexual offences against the victim on the spur of the moment when he spotted her walking along the corridor of the building where he had gone to "*relax*".[371]

202 Further, I agreed with the Prosecution that sentencing decisions predating *Terence Ng* should be treated with caution as well, in light of the subsequent developments in the law. I therefore disagreed with the Defence that cases such as *Sivakumar s/o Selvarajah v Public Prosecutor* [2014] 2 SLR 1142 ("*Sivakumar*") should be considered "comparable precedents". In any event, cases such as *Sivakumar* and *Public Prosecutor v Muhammad Firman bin Jumali Chew* [2016] SGHC 241[372] were of limited direct relevance, since these cases did not even feature offences of *aggravated* rape and/or *aggravated* sexual assault by penetration. In *Sivakumar*, for example, the accused was convicted after trial of one charge of outrage of modesty, one charge of rape and one charge of sexual assault by penetration (and convicted additionally on appeal of a charge of impersonation of a public officer); and from the judgment in *Sivakumar*, it is clear that the court based its decision on the "benchmark sentence of ten years' imprisonment and six strokes of the cane" set in *Frederick Chia* "for a rape without aggravating or mitigating factors and where the offender claimed trial" (*Sivakumar* at [69] and [71]).

203 I noted, on the other hand, that although the case of *Public Prosecutor v Robiul Bhoreshuddin Mondal* [2010] SGHC 10 ("*Robiul*") predated *Terence Ng*, it was cited by the Court of Appeal in *Terence Ng* (at [54(a)]) as an example of a case which might fall within Band 2 of the *Terence Ng* sentencing framework. In *Robiul*, the accused broke into a house late at night and raped the victim, a domestic helper employed to work in that household. The accused was

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371 DBOASS at Tab 13, para 5.

372 DBOASS at Tab 12.

familiar with the premises because he had previously done gardening work for a neighbouring household, and had waited for an opportune moment to break in. He raped the victim four times in the course of the night. He threatened to kill the victim with a knife if she tried to shout (although the victim did not actually see any knife). He was convicted after trial of seven charges, namely: one charge under section 457 of the Penal Code, one charge under section 354A(1), four charges under section 375(3)(*a*)(ii) and one charge under section 376(4)(*a*)(ii). The four charges under section 375(3)(*a*)(ii) involved the accused raping the victim by penetrating her vagina with his penis without her consent, and putting her in fear of death in order to commit the rapes (by telling her he would kill her with a knife if she shouted). The charge under section 376(4)(*a*)(ii) involved the accused penetrating the victim's vagina with his finger without her consent, and similarly putting her in fear of death in order to commit the offence. In sentencing the accused to an aggregate sentence of 18 years' imprisonment and 24 strokes of the cane, the High Court noted that the accused had been "opportunistic" in thinking he could force himself on the victim and then buy his way out by offering her money and gifts. He had also committed housebreaking in order to violate the victim, and had "raped her in the sanctity of her locked room and on the bed on which she rested every night and which she had to continue to use after" the violent assaults (at [128]). The court also accepted that the victim was a virgin prior to the rapes, which "added to her physical and psychological pain" (at [129]).

204 *Robiul* appeared to me to be a comparable precedent. I did not agree with the Prosecution that the facts of the present case were "more aggravated" than the facts in *Robiul*. While the accused in *Robiul* did not actually show the victim a knife, he had threatened to *kill* her with one if she tried to shout; and the victim in that case was so terrified that she even closed her eyes at one point as she was

"afraid to look" (at [19]). The victim in *Robiul* was a virgin prior to the rape; and during the trial, she was subjected to the humiliation of being portrayed as a "loose woman" by the accused (at [126]). In addition, the accused "ha[d] shown during the trial that he would not hesitate to tar and mar the reputation of police officers and the interpreter by accusing them of lying and/or of incompetence" (at [130]).

205 Having considered the relevant sentencing principles and having also reviewed the cases cited by both sides, I concluded that in this case, an aggregate sentence of 18 years' imprisonment and 24 strokes of the cane was appropriate. I arrived at this aggregate sentence by adjusting the sentence of imprisonment for each of the charges of aggravated rape to 10 years, and by adjusting the sentence of imprisonment for each charge of aggravated sexual assault by penetration to 8 years. I then ordered that the sentences of imprisonment for the second charge (aggravated rape) and the third charge (aggravated sexual assault by penetration) run consecutively *ie* making a total of 18 years' imprisonment.

206 I also sentenced the accused to the mandatory 12 strokes of the cane per each of the four charges but, as I have noted earlier, this was subject to the statutory maximum of 24 strokes provided for under s 328(6) of the CPC.

207 The aggregate imprisonment term of 18 years was backdated to the date of the accused's arrest (22 February 2019).

Mavis Chionh Sze Chyi
Judge of the High Court

Mohamed Faizal Mohamed Abdul Kadir SC, Yap Wan Ting Selene and Tan Si Ying Tessa (Attorney-General's Chambers) for the Prosecution;
Leo Zhen Wei Lionel, Deya Shankar Dubey, Soh Kheng Yau Andre and Andrew Pflug (WongPartnership LLP) for the accused.
