

Public Prosecutor v Iryan bin Abdul Karim and Others  
[2009] SGHC 272

**Case Number** : CC 27/2009  
**Decision Date** : 30 November 2009  
**Tribunal/Court** : High Court  
**Coram** : Tay Yong Kwang J  
**Counsel Name(s)** : David Khoo, Sellakumaran Sellamuthoo and Nicholas Khoo (Attorney- General's Chambers) for the prosecution; The first accused, the second accused and the third accused in person  
**Parties** : Public Prosecutor — Iryan bin Abdul Karim; Muhammad Hamdan bin Abdul Rahman; Mohammed Zameen bin Abdul Manoff

*Criminal Law*

*Criminal Procedure and Sentencing*

30 November 2009

**Tay Yong Kwang J:**

**Introduction**

***The accused persons and the victim***

1 The three accused persons (collectively, the “accused persons”), all male Singapore nationals, in this case are:

(a) the first accused, Iryan bin Abdul Karim (“Iryan”), then aged 20<sup>[\[note: 1\]](#)</sup>;

(b) the second accused, Muhammad Hamdan bin Abdul Rahman (“Hamdan”), then aged 19<sup>[\[note: 2\]](#)</sup>; and

(c) the third accused, Mohammed Zameen bin Abdul Manoff (“Zameen”), then aged 20<sup>[\[note: 3\]](#)</sup>.

2 The victim, aged 22, is also a male Singaporean (“the victim”). At the time of the offences in April – May 2008, the accused persons and the victim were all inmates sharing cell 5-55 in Changi Prison Cluster A.

***The charges faced by the accused persons***

3 Iryan, Hamdan and Zameen faced a total of 14, 12 and 15 charges respectively under the Penal Code (Cap 224, 2008 Rev Ed) (the “Penal Code”). The charges comprise a mixture of hurt and sexual

assault charges and are described in the following paragraphs (see [\[4\]](#) – [\[8\]](#) below).

### *The hurt charges*

4 The accused persons faced 10 charges *each*, for the following offences committed in furtherance of the common intention of them all:

- (a) voluntarily causing hurt to the victim on 28 April 2008, at about 6 p.m., by punching, jumping and stepping on his chest, an offence under s 323 read with s 34 of the Penal Code[\[note: 4\]](#);
- (b) voluntarily causing hurt to the victim on 29 April 2008, at about 12 noon and 6.30 p.m., by punching his chest on *each* occasion, offences under s 323 read with s 34 of the Penal Code[\[note: 5\]](#);
- (c) voluntarily causing hurt to the victim on 29 April 2008, at about 12.10 p.m. by means of a substance which is deleterious for the human body to swallow, namely, by forcing the victim to swallow human faeces, an offence under s 324 read with s 34 of the Penal Code (the “faeces incident”)[\[note: 6\]](#);
- (d) voluntarily causing hurt to the victim on 29 April 2008, sometime after dinner time, by kicking and punching his body, and jumping and stepping on his chest, an offence under s 323 read with s 34 of the Penal Code[\[note: 7\]](#);
- (e) voluntarily causing hurt to the victim on 29 April 2008, at about 9.45 p.m., by punching and kicking the whole of his body, an offence under s 323 read with s 34 of the Penal Code[\[note: 8\]](#);
- (f) voluntarily causing hurt to the victim on 30 April 2008, at about 6.30 p.m., by punching and kicking the whole of his body, an offence under s 323 read with s 34 of the Penal Code[\[note: 9\]](#);
- (g) voluntarily causing hurt to the victim on 1 May 2008, at about 5.45 p.m., by punching his chest, an offence under s 323 read with s 34 of the Penal Code[\[note: 10\]](#);
- (h) voluntarily causing hurt to the victim on 2 May 2008, at about 5.45 p.m., by punching his chest, an offence under s 323 read with s 34 of the Penal Code[\[note: 11\]](#); and
- (i) voluntarily causing grievous hurt to the victim on 3 May 2008, at about 5.45 p.m., by punching and kicking him on the chest and thereby causing the following injuries to the victim[\[note: 12\]](#):
  - (i) fracture of the lower sternum and manubrium (*ie*, the breastbone);
  - (ii) fracture of the fifth, sixth, seventh, ninth, 10th and 11th right ribs;
  - (iii) fracture of the fifth, sixth, seventh and eighth left ribs; and

- (iv) fracture of the L2, L3 and L4 lumbar vertebra

an offence under s 325 read with s 34 of the Penal Code.

5 In addition, Iryan and Zameen faced one additional charge each of voluntarily causing hurt to the victim, in the furtherance of their common intention, on 27 April 2008, at about 9.30 p.m., by punching the victim's chest, an offence under s 323 read with s 34 of the Penal Code<sup>[note: 13]</sup>.

6 Prior to the commencement of the trial proper, Iryan<sup>[note: 14]</sup>, Hamdan<sup>[note: 15]</sup> and Zameen<sup>[note: 16]</sup> admitted to the s 323, s 324 and s 325 Penal Code hurt charges against them and did not dispute the particulars of hurt caused in each case. During the trial however, Zameen disputed his involvement in the s 324 Penal Code charge against him and claimed that he had "dissociated" himself from the faeces incident<sup>[note: 17]</sup>. I will elaborate on this later. All the accused persons also contended that the faeces incident occurred on 3 May 2008 and not 29 April 2008<sup>[note: 18]</sup>.

#### *The fellatio and sodomy charges*

7 On top of the hurt charges stated above:

- (a) Iryan faced three charges of penetrating with his penis the mouth of the victim, without the victim's consent, on:

- (i) 27 April 2008, at about 9.50 p.m.<sup>[note: 19]</sup>;
- (ii) 28 April 2008, sometime in the evening<sup>[note: 20]</sup>; and
- (iii) 4 May 2008, sometime in the evening<sup>[note: 21]</sup>,

offences under s 376(1)(a), and punishable under s 376(3) of the Penal Code;

- (b) Hamdan faced two charges of penetrating with his penis the mouth of the victim, without the victim's consent, on:

- (i) 28 April 2008, sometime in the evening<sup>[note: 22]</sup>; and
- (ii) 4 May 2008, sometime in the evening<sup>[note: 23]</sup>,

offences under s 376(1)(a), and punishable under s 376(3) of the Penal Code; and

- (c) Zameen faced three charges of penetrating with his penis the mouth of the victim, without the victim's consent, on:

- (i) 27 April 2008, at about 9.50 p.m.<sup>[note: 24]</sup>;
- (ii) 28 April 2008, sometime in the evening<sup>[note: 25]</sup>; and

(iii) 4 May 2008, sometime in the evening<sup>[note: 26]</sup>,

and one charge of penetrating with his penis the anus of the victim, without his consent, on 28 April 2008, sometime in the evening (the "sodomy charge")<sup>[note: 27]</sup>. All four charges are offences under s 376(1)(a), and punishable under s 376(3) of the Penal Code.

8 While Iryan admitted to having penetrated the victim's mouth on 27 April 2008 and 4 May 2008, he denied that he had done so on 28 April 2008<sup>[note: 28]</sup>. Hamdan admitted to having penetrated the victim's mouth on 28 April 2008 and 4 May 2008<sup>[note: 29]</sup> and Zameen also admitted that he had done so on 27 April 2008, 28 April 2008 and 4 May 2008<sup>[note: 30]</sup>. Regardless of the date on which these events happened and the accused persons involved in each occasion, all the accused persons contended that the victim had consented to oral penetration. Zameen disputed the sodomy charge<sup>[note: 31]</sup>.

### ***Amendments to the charges and the issues for determination***

9 It would be convenient to crystallise the issues at the outset so as to place them in context within the facts that follow. As I noted above at <sup>[6]</sup>, the accused persons disputed the date on which the faeces incident took place. They did not dispute that the incident actually occurred. In these circumstances, I amended the respective charges relating to the s 324 Penal Code charge against the accused persons (*viz*, the fifth charge against Iryan, fourth charge against Hamdan and the sixth charge against Zameen) at the end of the trial so that, for example, *vis-à-vis* Iryan, it now read:

That you...**on or about** the 29th day of April 2008 at about 12.10 p.m. at cell 5-55 of Changi Prison Cluster A, 982 Upper Changi Road North, Singapore, together with one Muhammad Hamdan Bin Abdul Rahman and one Mohammed Zameen Bin Abdul Manoff, and in furtherance of the common intention of you all, did voluntarily cause hurt to [the victim] by means of a substance which is deleterious to the human body to swallow, to wit, by forcing him to eat human faeces, and you have thereby committed an offence punishable under section 324 read with section 34 of the Penal Code, Chapter 224.

[emphasis added]

The fourth charge against Hamdan and the sixth charge against Zameen were also similarly amended.

10 Given that the assault occurred over a number of days, it was unclear when exactly grievous hurt was inflicted on the victim. For this reason, I amended the s 325 Penal Code charge against all the accused persons (*viz*, the first charge against all the accused persons) at the end of the trial so that, for example, *vis-à-vis* Iryan, it now read:

That you...**on or about** the 3rd day of May 2008 at about 5.45 p.m. at cell 5-55 of Changi Prison Cluster A, 982 Upper Changi Road North, Singapore together with one Muhammad Hamdan Bin Abdul Rahman and one Mohammed Zameen Bin Abdul Manoff, and in furtherance of the common intention of you all, did voluntarily cause grievous hurt to [the victim] by punching and kicking him on the chest, causing him to suffer the following injuries

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- (a) fracture of the lower sternum and manubrium;
- (b) fracture of the right 5th, 6th, 7th, 9th, 10th and 11th ribs ;
- (c) fracture of the left 5th, 6th, 7th, and 8th ribs; and
- (d) fracture of the L2, L3 and L4 lumbar vertebra,

and you have thereby committed an offence punishable under s325 read with s34 of the Penal Code, Chapter 224.

[emphasis added]

The first charge against Hamdan and Zameen were also similarly amended.

11 The evidence did not support the allegation that the accused persons "jumped" on the victim's chest (as stated in the seventh and tenth charges against Iryan, the fifth and eighth charges against Hamdan, and the eighth and 11<sup>th</sup> charges against Zameen) on 28 April 2008 and 29 April 2008. I therefore amended these charges against the accused persons by deleting the reference to "jumping".

12 With the above amendments, the issues that arose for determination are, whether the prosecution has proved beyond a reasonable doubt:

- (a) that Iryan penetrated with his penis the victim's mouth on 28 April 2008 (see [7(a)(ii)] and [\[8\]](#) above);
- (b) the s 324 Penal Code common intention charge against Zameen in respect of the faeces incident (see [4(c)] and [\[6\]](#) above);
- (c) the sodomy charge against Zameen (see [7(c)] and [\[8\]](#) above); and
- (d) that on each occasion that it happened, the victim did not consent to the penetration of his mouth by Iryan's, Hamdan's or Zameen's penis (see [\[8\]](#) above).

13 Having considered the evidence and the submissions given by the prosecution and the accused persons, I was convinced beyond reasonable doubt that the s 324 Penal Code charge (*i.e.*, the faeces incident) and the sodomy charge against Zameen were made out and that the victim did not consent to the penetration of his mouth by Iryan's, Hamdan's or Zameen's penis, and convicted the accused persons accordingly. However, as I was not so persuaded concerning the issue whether Iryan penetrated with his penis the victim's mouth, on 28 April 2008, I decided to give him the benefit of the doubt and acquitted him of the relevant charge (*ie*, the third charge against Iryan). I now proceed to set out the reasons for my decision.

## **The case for the prosecution**

14 At trial, the prosecution relied on the evidence of the victim, various prison and police officers, various prison inmates, and the medical personnel who treated the victim. The prosecution also relied on the long and cautioned statements of Iryan and Hamdan. As the events in this case occurred over a number of days, the evidence will be set out chronologically for easy reference.

### **Events from 2005 to before 27 April 2008 (Friday)**

#### *The victim's account*

15 The victim first got to know Iryan, Hamdan and Zameen in 2005 at the reformative training centre ("RTC") in Changi prison, where they were incarcerated for separate offences. Then, his relationship with Iryan was "very casual"[\[note: 32\]](#). They only spoke when it related to the course they were both undergoing[\[note: 33\]](#). With regard to Hamdan, whom the victim knew as "Ray", although they knew each other, they seldom talked as they were from different secret societies[\[note: 34\]](#). The victim was not "that close" with Zameen but they used to have conversations and their relationship was "okay" and "reasonable"[\[note: 35\]](#). They were merely acquaintances and did not keep in touch after the victim was released from the RTC[\[note: 36\]](#) in June 2007[\[note: 37\]](#). However, sometime in November 2007, he met Zameen as he was walking out of the Paya Lebar Cisco Centre (where he had gone to report as he was under "tagging supervision")[\[note: 38\]](#). They started talking and decided to go to Geylang for a drink[\[note: 39\]](#). After the drink, as they were walking towards the Aljunied MRT station, they got into a dispute with a foreign worker. They assaulted him and committed snatch theft[\[note: 40\]](#) and were subsequently charged for snatch theft. They pleaded guilty and were sentenced in February 2008 to 18 months' imprisonment each. In Changi Prison, they were housed in cell 5-55 together with another Indonesia inmate named Lutfi Subagio ("Lutfi")[\[note: 41\]](#).

16 Sometime in April 2008, Lutfi was moved out from cell 5-55 and Iryan moved in[\[note: 42\]](#). The cell now housed Iryan, Zameen and the victim[\[note: 43\]](#). The victim testified that between Iryan and Zameen, he shared a "closer" relationship with Zameen as they shared "family things", "read each other's [personal] letters"[\[note: 44\]](#) and recounted "personal relationship stories [involving] family [and] friends"[\[note: 45\]](#). The victim's relationship with Iryan was still casual[\[note: 46\]](#). The three of them talked to one another about their personal life. The victim boasted to Iryan and Zameen during these conversations. During the conversations, Iryan would at times ask the victim to suck his penis and the victim would respond with vulgarities, whereupon Iryan would tell the victim it was a joke[\[note: 47\]](#). Although Iryan and Zameen claimed that the victim was bragging, they were never threatening to him at this time[\[note: 48\]](#).

### **Events on 26 April 2008 (Saturday)**

#### *The victim's account*

17 On 26 April 2008, Iryan approached the victim in the cell and asked him to "spar" with him. The victim agreed[\[note: 49\]](#). Inmates commonly engaged in "sparring" (a sport akin to boxing and illegal in prison[\[note: 50\]](#)) to kill time. During such "sparring" sessions, inmates would wrap their hands in towels to prevent bruising from punching and would also not hit the face and private parts of the sparring

partner. The degree of force used would also not be great [\[note: 51\]](#). In the evening of 26 April 2008, the victim "sparring" with Iryan first for three rounds. Each round lasted for about a minute. Most of Iryan's punches landed on the victim's chest. During the first round, the victim shouted at Iryan to stop as he was out of breath. Iryan stopped. The "sparring" then continued into the second and third rounds. It was just to "kill time" [\[note: 52\]](#) and the victim did not feel any pain [\[note: 53\]](#). After "sparring" with Iryan, the victim rested for about three minutes. Zameen then asked the victim to "spar" with him. Thinking it was just a practice, the victim agreed. After "sparring" with Zameen for a while, the victim asked Zameen to stop as the latter's punches were very heavy and the victim felt some pain in his chest. Zameen stopped and the victim went to the side of the cell to sit down and rest [\[note: 54\]](#). Iryan and Zameen took turns to act as a lookout during the other's "sparring" session with the victim. After the "sparring" session, they "continued to talk normally" and subsequently slept when the lights were switched off [\[note: 55\]](#).

#### *Iryan's first long statement dated 9 May 2008*

18 With regard to the events on 26 April 2008, Iryan's first long statement, dated 9 May 2008, read [\[note: 56\]](#):

1 On [26] April 2008, which was a Saturday, after the muster at 6.00 pm, [the victim] and Zameen told me about [the victim's] plan to bring an inmate into the cell so that they can bully the inmate. This plan was before I came into their cell and they did not manage to bring in any inmate. After knowing that, I was angry with [the victim] as I believed he had made [use] of Zameen. **I then used this as an excuse to spar with [the victim] and he agreed.** After [the victim] and I punched each other on the body for about 10 minutes, Zameen and [the victim] sparred. They also punched each other on the body for another 10 minutes. All of us did not punch on the head or kick each other. After the sparring session, I was less angry with [the victim] and everything was normal. That day, [the victim] appeared normal to me.

[emphasis added]

#### ***Events on 27 April 2008 (Sunday)***

##### *The victim's account*

19 Because 27 April 2008 was a Sunday, there was no "yard time" for the prison inmates who remained in their respective cells. Sometime around 3.00 p.m., while Iryan, Zameen and the victim were seated in cell 5-55 talking to each other, Iryan suddenly got up, called the victim a braggart and kicked the victim, who was still seated on the floor, in his face [\[note: 57\]](#). The victim asked Iryan why he was kicked whereupon he was told that he needed to be punished for bragging too much [\[note: 58\]](#). When cross examined by Iryan as to why he did not retaliate, the victim explained that he did not do so as he was afraid and because he knew, from the previous day's "sparring" session with Iryan, that Iryan was stronger and could overpower him if he did [\[note: 59\]](#). As the victim did not want any more trouble, he told Iryan to kick him again to "punish" him [\[note: 60\]](#). Iryan then went over to the victim and kicked him hard in his left ribs. [\[note: 61\]](#) Despite this second kick however, Iryan remarked that he was still not satisfied [\[note: 62\]](#).

20 At about 5.00 p.m, Iryan told the victim that he was still not happy with him and asked the

victim to "find a way to satisfy him".[\[note: 63\]](#) Iryan and Zameen then asked the victim to go to the toilet area, sit on the modesty wall (a low wall about 0.70m high to provide some privacy for inmates using the toilet) and press the toilet flush continuously so that he could not hear their discussion[\[note: 64\]](#). This, the victim did for an estimated 15 to 20 minutes[\[note: 65\]](#). While he was flushing the toilet, he saw one of them approach the "property box" (where they kept their belongings and which was directly behind the modesty wall) and take out a piece of paper[\[note: 66\]](#). After some time, they called the victim over. He saw ten pieces of folded paper on the floor of the cell. He was asked to choose five[\[note: 67\]](#), told that he had to complete the tasks written thereon and that he would be beaten up if he did not do so. Left with no choice, the victim chose five pieces and put them aside.

21 The victim then opened the five pieces of paper which he did *not* choose and was "shocked" to see that they contained tasks which included "suck cock, lick balls for 10 minutes"[\[note: 68\]](#), "fuck backside"[\[note: 69\]](#) and "eat shit"[\[note: 70\]](#). In all, the following things were written on *nine* of the ten pieces of paper[\[note: 71\]](#):

- (a) "eat shit";
- (b) "drink urine";
- (c) "suck cock and lick balls for 10 minutes";
- (d) "tie towel and act like a hostess";
- (e) "Sonic Blastman" (where, like a game in an arcade, the victim, who would be standing, would be punched on the chest and he would have to rate the strength of each individual's punch on a scale of 1 to 10 without retaliation[\[note: 72\]](#));
- (f) "sparring"
- (g) "fuck backside";
- (h) "split legs" (where the victim would be sat down against a wall and his legs pushed back until they were parallel with the wall[\[note: 73\]](#)) ; and
- (i) "blackout".

22 As the victim did not know what "blackout" entailed, he asked Iryan and Zameen and the latter then performed it on him. He was asked to stand against the wall and close his eyes. Zameen then pressed both of his thumbs against the victim's throat for a few seconds to stop the blood circulation to his head. The victim fell unconscious thereafter and when he woke up, he felt pain all over his body[\[note: 74\]](#). He then told Iryan and Zameen that he did not want to choose "blackout"[\[note: 75\]](#). The victim also told Iryan and Zameen that he did not want to "suck cock", "fuck backside", "drink urine" and "eat shit"[\[note: 76\]](#). He was then told to choose "Sonic Blastman", "tie towel and act like a hostess" and "sparring" instead. The victim agreed and he was told that "sparring" would start after closing muster at 5.45 p.m.[\[note: 77\]](#) Sometime after 6.00 p.m., after closing muster, the victim started "sparring" with Iryan[\[note: 78\]](#). They "sparring" for about 15 minutes over three rounds. During these three rounds of "sparring", towels were again wrapped around their fists. The victim was



punched by Iryan many times on his chest. He tried to fight back but “not that much” as Iryan was bigger and taller than him and he was “already in fear”[\[note: 79\]](#). Unlike the “sparring” session on 26 April 2008, Iryan did not control his strength[\[note: 80\]](#) and used full force on the victim who felt pain in his chest, ribs and hands[\[note: 81\]](#). While the victim “sparring” with Iryan, Zameen acted as a lookout[\[note: 82\]](#). After this “sparring” session with Iryan, the victim rested for about a minute. Zameen then said that he wanted to “spar” with the victim. The victim took Zameen on as he did not want to “lose face”. They then “sparring”, with towels wrapped around their fists, for about two minutes. The victim felt that Zameen was using full force on him and he could also feel that the force was greater than Iryan’s. The victim did not tell them to use less force as he knew they were doing it on purpose and wanted to punch him hard for bragging.[\[note: 83\]](#) Zameen punched the victim very hard[\[note: 84\]](#). The victim could not take it anymore and fell to the ground. Zameen stopped and the victim sat on the floor and rested[\[note: 85\]](#).

23 Later that evening, after they had washed up, Iryan asked the victim to “try Sonic Blastman”. The victim initially refused but eventually agreed out of fear[\[note: 86\]](#). He was asked to sit on the floor, with his back straight and chest out[\[note: 87\]](#). Iryan then punched him hard on the centre of his chest[\[note: 88\]](#). Zameen then followed with another punch to the victim’s chest. The pair took turns to throw heavy punches on the victim’s chest. They did not wrap towels around their fists.[\[note: 89\]](#) As the victim was in great pain, he begged them to stop. Iryan then asked the victim, again, to find a way to satisfy them[\[note: 90\]](#). As the pieces of paper contained a number of sexual acts, the victim offered to masturbate them. However, Iryan remarked that he wanted something more.[\[note: 91\]](#) The victim refused and the pair continued punching him[\[note: 92\]](#). Unable to take the pain, the victim agreed to “suck cock” for them. After hearing this, Iryan and Zameen stopped punching the victim[\[note: 93\]](#). Zameen then told the victim to follow him to the toilet area. He sat on the modesty wall, facing the shower and asked the victim to kneel down, face him and suck his penis until it became erect[\[note: 94\]](#). He also told the victim that if he “ma[d]e it [a] good one”, he would not beat the victim[\[note: 95\]](#). Out of fear, the victim complied[\[note: 96\]](#). Iryan stood on the “property box” to look out of the utility window and act as a lookout[\[note: 97\]](#). While the victim performed the sexual act, Zameen read a magazine in which female models were featured[\[note: 98\]](#). After the victim had sucked Zameen’s penis for about five to ten minutes[\[note: 99\]](#), Zameen pushed his head away and ejaculated into the toilet bowl[\[note: 100\]](#).

24 After Zameen washed up, Iryan sat on the modesty wall[\[note: 101\]](#) and told the victim that he would punch him if he did not suck his penis properly[\[note: 102\]](#). Again, the victim complied as Iryan looked through the same magazine that Zameen had earlier (see [\[23\]](#) above)[\[note: 103\]](#). After the victim sucked Iryan’s penis for about five to ten minutes[\[note: 104\]](#), Iryan pushed the victim’s head away and ejaculated into the toilet bowl. He then washed up and the victim did likewise subsequently[\[note: 105\]](#). Iryan and Zameen told the victim to forget the episode and to act as if nothing had happened. They also warned him not to tell anyone, that they could “spoil [his] name” if he did[\[note: 106\]](#) and that their “secret society brothers” in the prison would create trouble for him if he did[\[note: 107\]](#). They then went to sleep[\[note: 108\]](#).

*Iryan’s first long statement dated 9 May 2008*

25 With regard to the events of 27 April 2008, the material portions of Iryan's first long statement, dated 9 May 2008, read [\[note: 109\]](#)

...

4 After the closing muster at 6.00 pm, [the victim] and I agreed to spar again. At that time, I was angry with [the victim] and actually wanted to inflict more serious pain but I restricted myself only to sparring. Sparring to me mean punching...the body only and we do not punch the head and other parts of the body. This time, we punched each other's body longer, for about 20 to 30 minutes. I punched [the victim's]...ribs and chest. [The victim] punched at my chest, my hands and stomach. **During the sparring, [the victim] fell to the ground...4 times after I punched him. For the first 3 times, each time, I would ask him to stand up and he will stand up and continue sparring with me. The 4<sup>th</sup> time he fell to the ground after I punched him, he stood up with his hands by the side of his body. On seeing that, I knew that he could not continue sparring and I stopped punching him.**

5 After I stopped sparring with [the victim], it was Zameen's turn to spar with [the victim]. I stood at one side and watched both of them [spar]. During the sparring, Zameen and [the victim] exchanged punches on each other's body. Zameen punched [the victim] and he fell to the ground, Zameen was angry that [the victim] was not getting up and he scolded [the victim] for behaving like a sissy. **[The victim] got up and Zameen continued to punch him on his body. For the second time that [the victim] fell to the ground after Zameen punched him on his body, [the victim] could not get up. [The victim lay] on the ground and I saw that he could not breathe properly and looked very tired. His eyes were still [open]. There was no bleeding and [the victim] said that he [could not] carry on with the sparring and his body was painful.** The sparring between [the victim] and Zameen lasted for less than 10 minutes.

6 **After 5 minutes later, [the victim] stood up by himself but he could not stand properly.** After [the victim] stood up, Zameen and I criticised him by telling him that he always wanted to bully others but now, he himself getting bullied. **When we were criticising him, I threw a few punches on his chest while he was standing. After I punched [the victim], Zameen also threw a few punches on [the victim's] chest. He did not retaliate to our punches. During our punches, [the victim] fell down a few times and he stood up each time after we told him to. I cannot remember how many times he fell to the ground.**

7 **At one point in time, [the victim] could no take it anymore and he suggested to us that he will do whatever we wanted him to do as long as we do not beat him anymore. At that time, from [the victim's] look, I knew that he cannot take anymore punch[es].**[The victim] first suggested that he will masturbate for Zameen and I. Zameen and I did not agree with the suggestion as he was boastful when he agreed to sparring but now he offered to masturbate for us. **We continued to punch him. He cannot take it anymore that he kneeled and asked for mercy. He even suggested that he would 'suck cock' for us.** When [the victim] said that he would 'suck cock' for us, he meant that he would suck penis for us. **Zameen and I agreed with [the victim's] suggestion and we stopped punching him.**

8 **After about 9.30 pm, when lights were switched off, [the victim] 'suck-cock' for**

**Zameen at the toilet area first.** They took about 10 minutes. I was sitting at one corner. **After that, I went to the toilet area and [the victim] 'suck-cock' for me. We took about 5 minutes. I did not ejaculate.** Before we went to sleep, the victim told us not to relate this matter to others. **Zameen also told me he ejaculated earlier when [the victim] 'suck cock' for him.** Nothing happened after that and we went to sleep.

[emphasis added]

*Iryan's second long statement dated 15 May 2008*

26 With regard to the events of 27 April 2008, the material portions of Iryan's second long statement, dated 15 May 2008, read [\[note: 110\]](#):

3 On that same day after the closing muster at 1800hrs, [the victim] and I decided to spar again. I was still angry with him and I wanted to inflict more serious pain on him but I restricted myself to sparring only. I had then punched him a couple of times on his ribcage and chest. [The victim] had also punched me on my stomach and forearm a number of times. The spar[ring] lasted for about 20 minutes. **After I stopped sparring with [the victim], it was Zameen's turn to spar. It lasted for about 10 minutes and subsequently, [the victim] fell to the floor but he still managed to pick himself up. While he was standing , I punched him about 2 or 3 times on his chest. Zameen joined in and punched [the victim] again on his chest about 2 or 3 times again. [The victim] apologised to us a few times when we were punching him during the said period of time. Finally, we stopped and started to criticize him for being boastful and causing a nuisance to the other inmates. [The victim] pleaded to us not to beat him any longer and he suggested to 'suck cock' for me and Zameen.**

4 On the same night after about 2130hrs when the lights were switched off, **[the victim] sucked cock for Zameen** at the toilet area first while I [lay] down at the other end of the cell near to the doorway, minding my own business. **After Zameen is done, I went over to the toilet area and [the victim] sucked my penis for less than 5 minutes. I did not ejaculate...**We did not inflicted too much injury on [the victim] as we will be going to the yard the next day and afraid that the prison officers might notice his injury...

[emphasis added]

*Iryan's third long statement dated 26 May 2008*

27 With regard to the events of 27 April 2008, the material portions of Iryan's third long statement, dated 26 May 2008, read [\[note: 111\]](#):

3 The following day on a Sunday (recorder's note: 27<sup>th</sup> April 2008), we woke up in the morning at or about 7am for the muster. Afterwhich, we were still inside the cell as there is no going out to the yard on a weekend. We chatted and ...one of the topics was about [the victim's] plan who suggested to Zameen and I to bring one of the inmate from the next cell (recorder's note: Cell 5-56) into ours. His name was [Sathish], a male Indian around my age. [The victim] told us that his plan was to being [Sathish] into our cell so that we could bully and also force him to suck our cocks. I disagreed with this. At the same time, I was also angry with [the victim] as he was planning to make use of Zameen to persuade [Sathish] to join our cell. Zameen also disagreed with [the victim's] idea.

4 I found [the victim] to be boastful and told him off. I **did tell him to find a way to satisfy me**. He replied to me that I may kick him if I wished to punish him. Thus., I went over, told him to stand up while placing his arms straight up. He complied and I kicked his once on his left ribcage. He squatted down as I believed that he could felt some pain. Zameen then went to [the victim] and talked to him in Tamil. I do not understand what they were talking about. I did not kick [the victim] thereafter and told him not to ask me to punish him further if he could not take the pain. He replied to me by coming up with suggestions such as giving his food to Zameen and myself, wash the cell for us, massaged our body or fan us. I told him that I do not want all those as my intention was not to bully him but to teach him a lesson once and for all.

5 Zameen continued to speak to [the victim] in Tamil. Zameen then turned to me and told me to write down ten different things inside torn pieces of paper. **The things Zameen meant are the types of punishment for [the victim]**. I agreed and took a piece of white paper and a blue pen from our cell, which belongs to either Zameen or [the victim]. **From what I could remember, I wrote down the ten lists as follows: (1) sparring (2) Sonic blastman (3) dance as a girl (4) eat shit (5) drink urine (6) massage our bodies at night (7) split legs (8) fan us at night (9) blackout. I could not remember what I had written for the last punishment. [The victim] asked me what they were. I replied to him that I will give him 5 'heavy' and 5 'light' punishments. He also asked me if anyone of them contains sexual acts. I told him that there is none. I wished to state that none of the punishment acts which I wrote down contains any sexual acts such as lick and suck penis or fuck [the victim's] backside. Zameen and I came out with the acts.** 'Blackout' and 'Massage our bodies at night' were suggested by [the victim].

6...[The victim] picked up 5 of the 10 folded papers randomly. **I remembered that they are to eat shit, drink urine, Sonic blastman, blackout and lastly to dance like a girl**

7 **[The victim] told us that he does not want to eat shit and drink urine.** Thus we told him to choose from the remaining five papers. This time, the papers had already been unfolded and [the victim] is able to read from all of them. He selected sparring and massag[ing] our bodies at night. Zameen and I planned that for the night after the last muster ended at or about 6.15pm, we would first start the sparring session, followed by the Sonic blastman, blackout, dance like a girl and lastly to massage our bodies at night. **I started the sparring session first with [the victim] while Zameen continued his role to lookout for any incoming prison officers. This time. I did not hold back my punches and gave it my full strength.** However, the rules are still the same; both of us still continued to wrap our fists with bathing towels and avoid hitting the face and penis region.

8 We sparred longer this time for about 20 minutes or so. I suffered bruises on both of my forearms while I was covering myself from [the victim's] punches. My collarbone also had some scratches as when [the victim] punched me, his towel rubbed against my skin. **However, [the victim] suffered more that I do. I knew that he could not take anymore punches from me as he kept falling down on his own after being punched by me a few times...**After I completed my session with [the victim], it was Zameen's turn. I then took up his role to lookout for any incoming prison officers. I am unsure whether Zameen did use any bathing towels to wrap his fist during their sparring session. However, I do remembered Zameen telling [the victim] that he do not like to use bathing towels to wrap around his fists as he prefers to punch with his knuckles.

9 **Their session did not last as long as mine. I believed that it was only for about**

less than 10 minutes as [the victim] seems that he could not take anymore punches. [The victim] kept falling and squatting down after receiving one or two punches from Zameen. Both of us criticised him while he was standing against the wall and appears to be in pain. We then told him to continue to stand against the wall and face us as we wanted to give him a 'Sonic blastman'. He reluctantly complied with us. I gave a full force punch on his chest area between his breasts. He squatted down in pain. He stood up again on his own and this time Zameen gave [the victim] also a full force punch to the same area. [The victim] squatted down again in pain and he stood up slowly after that. We stopped for a while to rest.

10 Afterwhich, Zameen and I gave [the victim] another 'Sonic blastman' punch. This went on for about ten rounds each till night time. Subsequently, [the victim] said that he gave up as he could not take anymore punches. We told him that he still needed to complete the remaining acts which he chose earlier. We also told him that we are going to perform the 'blackout' on him. However, [the victim] informed that he could not do it as earlier in the day we had also done the 'blackout' on him, as he had suggested. I could not remember which part of the day we had done it on him. We continued to criticize [the victim] as he could not complete the acts and in between, we would gave him a 'Sonic blastman' each. Subsequently, [the victim] kneeled down to us and suggested to masturbate our penises. I scolded him as earlier he was the one who informed that he does not wished for the sexual acts to be written inside but only now then he started to suggest it again. Thus, we gave him another few rounds of 'Sonic blastman'. Finally, [the victim] suggested sucking our penises. By this time, I could see that [the victim] was in pain from the punches we gave to him. We thought about his suggestion first. Afterwhich, we agreed since our main intention was to teach him a lesson and by him sucking our penises would make him ashamed of himself. Thus, we told [the victim] and he agreed to it...

11 On the same night after lights off, Zameen went over to the toilet area and sat at the small stone wall next to it, while browsing through his 'Hotstuff' magazine. **At the same time, [the victim] squatted down in front of [Zameen] while sucking his penis.** I [lay] next to the doorway minding my own business. The act lasted for about 10 minutes. After Zameen is done, I then went over to the small stone wall and browsed through the 'Hotstuff' magazine which Zameen was browsing earlier, **which [the victim] suck on my penis. The act lasted for less than 5 minutes. I did not manage to ejaculate.**

[emphasis added]

*Iryan's cautioned statement dated 15 July 2008*

28 With regard to the s 376(1)(a) charge of non consensual penetration of the victim's mouth with his penis<sup>[note: 112]</sup>, when asked if he had anything to say to the charge, Iryan stated:

I am remorseful for my act. I have no intention to do it. [The victim's] idea was to do this. I just did. I am sorry for my action. I plead for leniency.

### ***Events on 28 April 2008 (Monday) and Hamdan's arrival***

#### *The victim's account*

29 On 28 April 2008, the inmates had their morning muster at about 7.00 a.m. followed by

breakfast inside the cell. A strip search was then conducted by the prison officer. In a strip search or "body check"[\[note: 113\]](#), an inmate has to strip naked, stretch out his hands (showing both palms and the top of his hands), show his back and then squat down. The prison officers would look at the inmates' bodies for tattoos and bruises. However, all this is done in "a few seconds"[\[note: 114\]](#). In the present instance however, before the "body check", the victim was told by either Iryan or Zameen to "keep quiet", not to talk to the officer and to forget everything. He was told that if he made more trouble, they would beat him up after the officer left[\[note: 115\]](#). Hence, when the prison officer came in, the victim did not report the events that had transpired the previous night as he was scared[\[note: 116\]](#). The prison officer, who stood over one metre away from him and checked him did not detect any bruises on his body because of his dark complexion[\[note: 117\]](#). After the strip search, the inmates proceeded for their outdoor yard (held in a multi purpose hall within the building)[\[note: 118\]](#).

30 During the outdoor yard, the victim spoke to his friend, "Edgar" and told him that he wanted to move to another cell as he could not "endure" inside cell 5-55. He did not tell Edgar the reason why he could not endure anymore[\[note: 119\]](#). Edgar told him to approach the prison officer in charge, OC Thomas Ngai ("OC Ngai")[\[note: 120\]](#), to request a change of cells. However, the request was denied as no valid reason was given by the victim and he remained in cell 5-55[\[note: 121\]](#). There was a dispute as to whether the victim had in fact spoken to Thomas Ngai. After the end of the outdoor yard, the victim went for "Christian counselling". He did not complain to the pastor in charge as he "was still in fear"[\[note: 122\]](#), especially after Zameen told him that morning that he had the victim's address and the victim's sister's address and they could "do a lot of things".[\[note: 123\]](#) After "Christian counselling", the victim went back to cell 5-55 and "everything was normal"[\[note: 124\]](#) until Hamdan moved into the cell after dinner[\[note: 125\]](#). This was when Iryan or Zameen, referring to the fellatio incident the night before[\[note: 126\]](#), told Hamdan that "yesterday power"[\[note: 127\]](#).

31 All four of them then sat down and talked. While they were talking, Hamdan got angry and hit the victim on his face. However, Iryan or Zameen asked Hamdan to "wait until [closing] muster finish[ed]"[\[note: 128\]](#). After closing muster, Iryan, Hamdan and Zameen started to talk about the victim's boastful nature. They got angry and either Iryan or Zameen told the victim to stand up. They started to punch the victim's chest (*ie*, "Sonic Blastman"). Because Hamdan had injuries on both of his hands, he could not use his hands to punch the victim hard[\[note: 129\]](#). Instead, he jumped on the victim's chest "for about 2 to 3 times"[\[note: 130\]](#) while the victim was lying down with his hands and legs held by Iryan and Zameen[\[note: 131\]](#). To stop them from further assaulting him and not knowing what else to say to stop them, the victim offered to "suck cock" for all three of them[\[note: 132\]](#). Iryan, Hamdan and Zameen agreed and the beating stopped[\[note: 133\]](#).

32 Zameen told the victim to follow him to the toilet. At the toilet area, he told the victim, in Tamil, "I want your ass"[\[note: 134\]](#). The victim was stunned, shocked and disagreed. Zameen then said "Never mind...you don't want, then we [can] continue with "sonic blastman"[\[note: 135\]](#). Out of fear, the victim obliged[\[note: 136\]](#). Zameen then sat on the modesty wall totally naked[\[note: 137\]](#) and asked the victim to fellate him until he got an erection[\[note: 138\]](#). After Zameen had achieved an erection, he then asked the victim to go on all fours, in a "doggy position", with his head resting on a pail in the toilet[\[note: 139\]](#). The victim then related what subsequently happened in his examination in chief[\[note: 140\]](#).

Q: ...So yes, describe to the court what happened to you.

A: So I was resting my head on the pail when [Zameen] tried to penetrate, but...at first he cannot penetrate. Tried quite hard, but he cannot. Then later part, all of a sudden, I don't know how he managed to penetrate. Then when he penetrated, I move forward out of pain When I move forward, he put both his hand[s] on my hip[s] and pull me back towards him. Both his hands were on my hip[s] when he was thrusting in and out.

Q: ...How long did he thrust in and out?

A: 5 to 10 minutes, Sir. I cannot remember the exact time. It's my estimation.

Q: How d[id] you feel?

A: Only pain, Sir.

Q: ...[D]id you scream?

A: No, Sir...[Zameen] told me "no sound", so I had no other choice, just to bite on the towel.

Q: You bite the towel?

A: Yes, Sir.

33 The victim could not ascertain whether Zameen had ejaculated into his anus "as it was too painful to feel anything"[\[note: 141\]](#). While Zameen was engaged in the sexual acts (*ie*, fellatio and sodomy), Iryan and Hamdan took turns acting as a lookout. When Iryan was acting as a lookout, Hamdan would come and peep at them. Iryan behaved similarly when Hamdan was acting as a lookout[\[note: 142\]](#). Zameen eventually stopped thrusting and then washed up, followed by the victim[\[note: 143\]](#). After the victim had washed up, Iryan told him to suck his penis[\[note: 144\]](#). As with the night before, Iryan held the same magazine while the victim fellated him for "5 to 10 minutes"[\[note: 145\]](#). Iryan ejaculated into the victim's mouth and told the victim that he would punch him unless he swallowed[\[note: 146\]](#). This time, Hamdan and Zameen took turns acting as a lookout[\[note: 147\]](#). Hamdan then came over and asked the victim to suck his penis. However, although the victim fellated him for a few minutes[\[note: 148\]](#), he was unable to get an erection[\[note: 149\]](#) as the victim was "a guy"[\[note: 150\]](#). He told the victim to get lost and went to wash up. The victim then washed up. Later, he was told to "fan" Iryan, Hamdan and Zameen to sleep[\[note: 151\]](#). After the victim had done that, he went to sleep.

*Iryan's first long statement dated 9 May 2008*

34 With regard to the events of 28 April 2008, the material portions of Iryan's first long statement, dated 9 May 2008, read[\[note: 152\]](#):

11 On that day, after muster at 6.00 pm, Zameen and I were still angry with [the victim] as we caught him lying to us earlier. **Zameen and I punched him on his chest several times in the presence of Hamdan. Hamdan just watched what was going on. As [the victim] could not take our punches anymore, [the victim] suggested that would 'suck cock' for the 3 of us. The 3 of us agreed to [the victim's] suggestion.**

1 2 **After about 9.30 pm, when lights were switched off, [the victim] sucked Zameen's penis at the toilet area, after that, Zameen sodomized [the victim]. After that, [the victim] continued to suck Hamdan's penis at the toilet area.** All the while I was sitting at one corner. After day, we talked for a while and went to sleep. **That night, [the victim] did not suck my penis.**

[emphasis added]

*Iryan's second long statement dated 15 May 2008*

35 With regard to the events of 28 April 2008, the material portions of Iryan's second long statement, dated 15 May 2008, read [\[note: 153\]](#):



5 I also wished to stated that on the incident which happened on Monday, after I found out that [the victim] was lying to us (Recorder's note: Hamdan, Zameen and Iryan), I became angry again. Thus Zameen and I decided to beat [the victim]. **We did not use hand towels to wrap it around our hands. We punched and kicked [the victim] a number of times at the same time, we tried to avoid hitting his face...**

6 **Subsequently, [the victim] told us that he gave up and that he could not take anymore of our punches. He suggested that he would 'suck cock' for the 3 of us** (Recorder's note: Hamdan, Zameen and Iryan). All of us agreed. On the same day after the lights were switched off at about 2130hrs, Hamdan and I sat at the corner of the cell next to the doorway to chit chat while **Zameen and [the victim] went to the toilet area. I saw [the victim] was sucking Zameen's penis. Afterwhich, I saw [the victim] turned his body around and allowed Zameen to penetrate his penis into his asshole back and forth. The sodomize act went on for about 10 minutes. I did not look at their faces. They also did not make too much noise.**

7 **After Zameen finished, Hamdan went over to the toilet area and I saw [the victim] started to suck Hamdan's penis, which lasted for about less than 5 minutes. I wished to state that [the victim] did not suck my penis that night.**

...

12 The following questions were posed to me by the recorder [on 15 May 2008]:-

...

**Question 5: Did you, Zameen and Hamdan [threaten the victim] not to inform the prison officer?**

**Answer 5:Yes, we did. I remember telling him to walk properly and not to inform the prison officer, or else the 3 of us would give him another round of beating. I even told him that he may change to another cell if he wishes to but [the victim] refuse as he was afraid that the story about him sucking our penises and been sodomize will spread to other inmates.** Furthermore, [the victim] informed that he is comfortable with Zameen as they were accuseds from the same case.

...

**Question 7: Do you have anything else to say?**

**Answer 7: I am really sorry for my actions in this case. I did not expect that it will turn out as bad as this. I have no intention to bully or assault [the victim]. I had done so as I was angry with his actions such as lying and boasting. I pleaded for leniency.**

[emphasis added]

*Iryan's third long statement dated 26 May 2008*

36 With regard to the events of 28 April 2008, the material portions of Iryan's third long statement,

dated 26 May 2008[\[note: 154\]](#), read:

12 On the following day which is a Monday (recorder's note: 28<sup>th</sup> April 2008), Hamdan was sent to our cell 5-55...**I also wish to add that on the same night, [the victim] did not suck on my penis. He only did it on Zameen and Hamdan. Zameen had also sodomized [the victim] on the said night. However, I do admit that on the said night, all 3 of us did perform 'Sonic blastman' before [the victim] was sodomized...I could not remember how many times we had punched him that night but it was for quite a number of times....**

[emphasis added]

*Hamdan's second long statement dated 15 May 2008*

37 With regard to the events of 28 April 2008, the material portions of Hamdan's second long statement, dated 15 May 2008[\[note: 155\]](#), read:

5 Much later in the evening, whilst I was talking to Iryan, **I noticed both Zameen and [the victim] at the toilet area. I then realised that Zameen was apparently sodomising [the victim]**. I did not take a further look and continued talking to Iryan. After Zameen bathe, it was then my turn. As I was bathing, [the victim] knocked onto our belongings. I thus became furious and hurled vulgarities at him. **I then threatened to punch him again and he appealed to me not to do so. I then called him over to my location and asked him to suc[k][\[note: 156\]](#) my penis, which he did. Whilst he was sucking, I punched his face several times until I was satisfied.** I then slept and did not know what happened after that.

6 **The attack on [the victim] by the 3 of us went on daily from 29 April 2008 till 3 May 2008; mostly occurring after the afternoon and evening muster. We assaulted him whenever we spotted that he was telling a lie or whenever he made mistakes...**

[emphasis added]

*Hamdan's third long statement dated 26 May 2008*

38 In respect of the events on 28 April 2008, the material portions of Hamdan's third long statement, dated 26 May 2008[\[note: 157\]](#), read:

...After [muster], Zameen and Iryan told me 'Dia nie...boleh rembat punyer' in translation it means [the victim] can be bullied. I asked them why and they told [the victim] to tell me. [The victim] then told me that all those stories that he told me before are lies and he was just boasting about things which never happened. I got angry and asked why he want to lie to me. He told me that he see my face is the type who easily believes what other people say. So I asked him back if he means that I'm, a clown and he said no. **I got even angrier and that night, I beat him up. I can't remember how I beat him up but I did kick and punch him. [M]ost of the target was his body however some missed and hit his face. Zameen and Iryan did witness it and they also took some cheap shots at [the victim]. After we had enough, we stopped. Zameen and Iryan then told me that last night they also had beaten him up and also made him suck both their cocks.** I didn't know how true it was as I did not see it. **Later, I was talking to Iryan while Zameen and [the victim] were having their shower before lights out**[\[note: 158\]](#). **I turned to look at them and saw that Zameen was performing a standing 'doggy' style on [the victim]**[\[note: 159\]](#). I got a slight shock and thought what they told me about [the victim] sucking cocks was true...**Later Zameen came out from his shower and I went in. [The victim] was still in the showers, [The victim] then accidentally hit onto the soap but it did not drop. I then scolded him for hitting on the soap and [the victim] said sorry and begged me not to beat him. I did not beat him up because [the victim] pleaded [with] me not to and as I had already beaten him up before. I would like to state that since I found out he was lying to me, I kept finding fault with him He then offered to suck my cock as a trade for not beating him and I agreed. He then suck my cock for while like a few seconds and then I felt uneasy and as such I beat him up again. I then told him to go one side as I want to shower. After my shower, I went to sleep. I don't think [the victim] sucked Iryan's cock on that night.**

[emphasis added]

*Hamdan's cautioned statement dated 15 July 2008*

39 With regard to the s 376(1)(a) charge of non consensual penetration of the victim's mouth with his penis[\[note: 160\]](#), when asked if he had anything to say to the charge, Hamdan wrote the following[\[note: 161\]](#):

I just want to say the fact that I did not force [the victim]. He [did] it willingly as he [said] that he don't want to be beaten again. I swear.

[underlining in original]

### **Events on 29 April 2008 (Tuesday)**

*The victim's account*

40 On the morning of 29 April 2008, there was an indoor yard where the inmates got to watch television. Before this, there was a strip search. The prison officer did not detect any injury on the victim's body because of his dark complexion[\[note: 162\]](#). The victim did not tell the prison officer anything as he was afraid[\[note: 163\]](#). Furthermore, the accused persons were standing beside him[\[note: 164\]](#).

[164\]](#). The victim then went to the indoor yard where a Tamil movie was being screened. After watching the movie, the accused persons and the victim went back into cell 5-55[\[note: 165\]](#). Although lunch was served, the victim did not eat his as Iryan took it away and asked him to "eat shit"[\[note: 166\]](#). The victim refused and the accused persons took turns punching him on his chest. They stopped only when the victim agreed to eat faeces[\[note: 167\]](#). Hamdan then went to the toilet and defecated beside it[\[note: 168\]](#). One of the accused persons then asked the victim to eat Hamdan's faeces. Using his hand, the victim took the faeces and put it in his mouth. One of the accused persons then asked the victim to chew. As he was chewing, the victim felt like vomiting. He was told by one of the accused persons that if he vomited, he would be beaten up more[\[note: 169\]](#). The victim swallowed three to four times[\[note: 170\]](#). All three accused persons looked at him and make "eee" sounds as they were having their lunch[\[note: 171\]](#). The accused persons then asked the victim to rub the faeces around his face and the victim did this[\[note: 172\]](#). Later, as the victim was brushing his teeth, one of the accused persons came to the toilet area, handed him a plastic mug filled with urine, and instructed him to drink it. The victim drank this out of fear[\[note: 173\]](#). After this incident, the victim went to a corner of the cell and sat down to rest as he was in pain; he did not eat that day[\[note: 174\]](#).

41 The first time the victim was deprived of food was on 29 April 2008. After this, all food was taken away from him by the accused persons[\[note: 175\]](#). On subsequent days, the accused persons gave him only one slice of bread per day. The victim started drinking a lot of water, but even that was later controlled by the accused persons[\[note: 176\]](#).

42 On the evening of 29 April 2009, the accused persons played poker using "self made poker cards"[\[note: 177\]](#). Iryan had made these "cards" using white paper[\[note: 178\]](#). The victim recounted what he had to do in his evidence in chief[\[note: 179\]](#):

Q: Who were playing?

A: Zameen, [I]ryan and Hamdan.

Q: And what were you doing when they were playing the cards?

A: They told me that...I'm supposed to cheer for the winner. I'm supposed to act like a cheerleader.

...

Q: ...male, female cheerleader?

A: ...female cheerleader.

...

Q: So what did you do?

A: When they win I have to go towards...scream for them, scream their name out, do something that will make them laugh or be happy. But I cannot repeat the same thing to the same person...I must keep on doing different roles...different things, Sir. So they say...the game was going on, they say I'm not cheering properly. So they change the game...where they'll tell me a movie name or a character, I have to act it out.

Q: For example?

A: Example...they will say "shrek", then I have to act like "shrek".

...

Q: So did you act it out?

A: Yes, Sir.

**Q: Why...did you just follow their instructions?**

**A: Because I was very afraid of being whacked, and then I don't want more trouble, Sir. I thought maybe by this way I won't get sexually assaulted also.**

**Q: So were they satisfied with your acting?**

**A: No, Sir.**

**Q: So did they do anything?**

**A: Yes, Sir, they beat me, they "sonic blastman" me.**

**Q: "They", meaning?**

**A: Zameen, Iryan and Hamdan.**

[emphasis added]

43 The accused persons stopped only when they were tired<sup>[note: 180]</sup>. Later that evening, the accused persons asked the victim to wash their dinner plates<sup>[note: 181]</sup>. The victim's dinner had been taken away by the accused persons<sup>[note: 182]</sup>. As he was washing the plates, the victim accidentally dropped one. When this happened, the accused persons came over and started kicking and punching the victim<sup>[note: 183]</sup>. He was also dragged to the centre of the cell and punched and kicked there. As Hamdan could not punch the victim because of his injured hand, Iryan and Zameen each held onto the victim's legs and hands and Hamdan jumped on the victim's chest<sup>[note: 184]</sup> "for about 2 to 3 times"<sup>[note: 185]</sup>. Hamdan also kicked the victim on his "chest, rib cage and whole body"<sup>[note: 186]</sup>. At some point in time, Iryan also used a piece of rolled up paper - this was made from magazine paper, rolled into a very thin, light and hard rod and was used as a support for the food ledge at the foot of

the cell door<sup>[note: 187]</sup> - as "a knife to stab around [the victim's] body causing the victim a "[v]ery sharp pain".<sup>[note: 188]</sup> The accused persons stopped when they were tired<sup>[note: 189]</sup>.

44 Later in the evening, as the accused persons were lying down, they asked the victim to "fan" them to sleep. This, the victim did, using the cover of the "property box" which was made from hard plastic<sup>[note: 190]</sup>. After "fanning" the accused persons for some time, the accused persons claimed that the victim did not "fan" them properly and started punching and kicking the victim in the "rib area...chest area, [and] legs"<sup>[note: 191]</sup>. The victim did not retaliate because "[his] body was already in a lot of pain"<sup>[note: 192]</sup>. He begged them to stop but they ignored his plea<sup>[note: 193]</sup>. Again, they stopped only when they got tired<sup>[note: 194]</sup>. After the beating, the accused persons washed up and then went to sleep<sup>[note: 195]</sup>.

*Iryan's first long statement dated 9 May 2008*

45 With regard to the events on 29 April 2008, the material portions of Iryan's first long statement, dated 9 May 2008, read<sup>[note: 196]</sup>:

On the following day which is on Tuesday, Zameen and I wanted [the victim] to tell us the truth about what he had lied to us. [The victim] told us but we found out that he was still not telling the truth. **Zameen, Hamdan and I punched and kicked [the victim] on his body. I cannot remember how long we punched and kicked him. [The victim] did not retaliate. The same thing was repeated on Wednesday, Thursday and Friday.** I cannot remember if the same thing happened on Saturday, but we did not punch and kick [the victim] on the following Sunday and Monday.

[emphasis added]

*Iryan's second long statement dated 15 May 2008*

46 With regard to the events on 29 April 2008, the material portions of Iryan's second long statement, dated 15 May 2008<sup>[note: 197]</sup>, read:

8 On Tuesday, Hamdan, Zameen and I decided to teach [the victim] a lesson again as he kept lying to us about the conversations we had together. **We punched and kicked him a few times on his body. I cannot remember how long we did it. We repeated the same thing again on Wednesday...**

[emphasis added]

*Iryan's third long statement dated 26 May 2008*

47 With regard to the events on 29 April 2008, the material portions of Iryan's third long statement, dated 26 May 2008<sup>[note: 198]</sup>, read:

14    **The next day which is a Tuesday (recorder's note: 29<sup>th</sup> April 2008), we had also performed the 'Sonic blastman' acts on [the victim]** after we found out that he was still lying to us even after much had happened. **We were agitated by this thus we decided to perform the 'Sonic blastman' acts. We did it before the muster call at 6pm, but did not give him much. We continued to repeat it again after the muster call ended.** We did not give him much either as the next day, he is supposed to go out to the yard.

[emphasis added]

*Hamdan's third long statement dated 26 May 2008*

48    With regard to the events on 29 April 2008, the material portions of Hamdan's third long statement, dated 26 May 2008[\[note: 199\]](#), read:

...After mid day [muster] about 12pm, I kept questioning [the victim] what else he lied to me and I managed to uncover more lies from him. **I used that as a reason to beat him and I beat him up again. This went on until the night. There was no eating of shit or urine or sucking cocks or sodomising on that day.**

[emphasis added]

### ***Events on 30 April 2008 (Wednesday)***

*The victim's account*

49    On the evening of 30 April 2009, after closing muster, the victim was again punched on the chest (*ie*, "Sonic Blastman") by the accused persons[\[note: 200\]](#) who accused him of "boasting again"[\[note: 201\]](#). He begged them to stop but they ignored him, and stopped only when they were tired[\[note: 202\]](#). After the lights were switched off, the victim had to again "fan" the accused persons to sleep before he slept[\[note: 203\]](#). In his conditioned statement[\[note: 204\]](#), the victim stated that he had gone for "Christian counselling on 30 April 2008, as opposed to 28 April 2008 (see [\[30\]](#) above). While this was a discrepancy, it was immaterial and no more need be said of it.

*Iryan's third long statement dated 26 May 2008*

50    With regard to the events on 30 April 2008, the material portions of Iryan's third long statement, dated 26 May 2008[\[note: 205\]](#), read:

15    The following day which is a Wednesday (recorder's note: 30<sup>th</sup> April 2008), the same thing happened again as the day before. **We performed the 'Sonic blastman' acts on [the victim] on that day during the afternoon and also in the evening time after the last muster.** I noticed that [the victim]...still had some bruises on him but he is able to continue to speak to us and walked as normal.

[emphasis added]

*Hamdan's third long statement dated 26 May 2008*

51 With regard to the events on 30 April 2008, the material portions of Hamdan's third long statement, dated 26 May 2008[\[note: 206\]](#), read:

...It was the same as on 29/04/2008 and **we beat [the victim] after mid day [muster]. During the night, we got tired of beating him...hence we decided to play Sonic Blastman on [the victim]. We asked him to stand up and close his eyes and each of us take turns to give a punch on his chest and [the victim] would say how many points we get based on the amount of strength we use on him. We told him to give a score between 1-10. At one time, he gave a score of 15 which was not within 1-10 hence we beat him up...**

[emphasis added]

### **Events on 1 May 2008 (Thursday)**

#### *The victim's account*

52 Because 1 May 2008 was a public holiday (Labour Day), there was no "yard time" for the prison inmates who remained in their respective cells. After closing muster, the victim was again punched on his chest (*ie*, "Sonic Blastman") who accused him of "boasting again"[\[note: 207\]](#).

#### *Iryan's second long statement dated 15 May 2008*

53 With regard to the events on 1 May 2008, the material portions of Iryan's second long statement, dated 15 May 2008[\[note: 208\]](#), read:

9 On Thursday, we did not go to the yard as it was a public holiday. When all of us were inside the cell, **we decided to teach [the victim] another lesson. We punched and kicked him a number of times on his body. I could not remember how long it lasted. As [the victim] kept falling down and could not stand up after a punch, we placed his back against the wall and spread his legs wide apart. We did it to teach him a lesson.**

[emphasis added]

#### *Iryan's third long statement dated 26 May 2008*

54 With regard to the events on 1 May 2008, the material portions of Iryan's third long statement, dated 26 May 2008[\[note: 209\]](#), read:

16 The following day on a Thursday which is also a public holiday (recorder's note: 1<sup>st</sup> May 2008), I remembered that **we still performed the "Sonic blastman" acts on [the victim] on the night after the last muster call had ended. I noticed that he was... suffering badly from his injuries as he could not even stand or walk properly. On the same night also, I wished to add that we had split his legs purposely and let him stretch until he could not take it anymore.** [The victim] had also shitted in his shorts and his towel. We scolded him for it as he could not control his bowel[s] and as **he could not move around on his own**, we had to clean up his mess for him.

[emphasis added]



*Hamdan's third long statement dated 26 May 2008*

55 With regard to the events on 1 May 2008, the material portions of Hamdan's third long statement, dated 26 May 2008[\[note: 210\]](#), read:

**...We beat [the victim] up and also did Sonic Blastman on him throughout the day and night...**

[emphasis added]

***Events on 2 May 2008 (Friday)***

*The victim's account*

56 On 2 May 2008, the inmates were strip searched after the morning muster. A prison officer, Staff Sergeant Pang Hee Teng[\[note: 211\]](#) ("SSgt Pang") did the check for cell 5-55. SSgt Pang did not notice the swelling and bruises on the victim's body because of his dark complexion. The victim also tried to hide from SSgt Pang as Zameen was looking at him fiercely and he was scared that the accused persons would beat him up later[\[note: 212\]](#). When it was time for the inmates' "yard time", the victim did not go as he was feeling unwell and his whole body was in pain. When SSgt Pang came to check on him, the victim lied to him that he had diarrhoea. SSgt Pang told the victim to report sick. The victim did not do so as he had lied about his diarrhoea and continued resting in the cell[\[note: 213\]](#). Again, after closing muster, the victim was punched on his chest (*ie*, "Sonic Blastman") by the accused persons who accused him of "boasting again". When the accused persons asked him to suck their penises and he refused, he was beaten up again. After the lights were switched off, the victim had to "fan" the accused persons to sleep[\[note: 214\]](#).

*Iryan's second long statement dated 15 May 2008*

57 With regard to the events on 2 May 2008, the material portions of Iryan's second long statement, dated 15 May 2008[\[note: 215\]](#), read:

10 On Friday, then **we realized that [the victim] could not walk properly. I saw that he tried to stand up but could not balance on his left leg.**

[emphasis added]

*Iryan's third long statement dated 26 May 2008*

58 With regard to the events on 2 May 2008, the material portions of Iryan's third long statement, dated 26 May 2008[\[note: 216\]](#), read:

17 [On 2 May 2008, we] continued to perform the 'Sonic blastman' acts on [the victim] during the evening time after the last muster call for the day. I could not remember if we did it also in the afternoon time as I noticed that by then [the victim's] legs were suffering badly from the beatings. I remembered at night when we were beating him, I did tell him to eat his shit as I was then frustrated as [the victim] kept shitting in his shorts and dirtying his towel and blanket. I then had to wash his blanket with Zameen. He had also shitted when we were beating him up.

[emphasis added]

### **Events on 3 May 2008 (Saturday)**

#### *The victim's account*

59 Because 3 May 2008 was a Saturday, there was no "yard time" for the prison inmates and they remained in their respective cells. After closing muster, the victim was assaulted again by the accused persons who took turns to punch him on his chest (*ie*, "Sonic Blastman")[\[note: 217\]](#). One of Zameen's punches on the victim's chest was so hard that he *felt* his chest bone break. Iryan then followed with another punch on the victim's chest and the victim *heard* his chest bone break[\[note: 218\]](#). The accused persons then started to punch and kick the victim all over his body. During the kicking, the victim heard his rib cage crack. He begged them to stop, but they stopped only when they saw the victim in extreme pain and rolling on the floor[\[note: 219\]](#).

60 Although the victim was crying in pain, Iryan and Hamdan held onto his shoulders and pushed him against the wall while the victim was in a "sitting position". Zameen placed both of his feet on the victim's knees and used his hands to pull both of the victim's hands towards him[\[note: 220\]](#). In this position, the victim's legs were "fully stretched against the wall". Iryan stood behind the victim and pushed his body forward while Hamdan stepped on the victim's leg to ensure that he did not lift it up[\[note: 221\]](#). The victim felt great pain in his thighs and legs and could not stand up. The accused persons held on to the victim for "about 10 to 15 minutes"[\[note: 222\]](#). Hamdan also jumped on the victim's left leg, injuring the nerve in the leg. When the victim told the accused persons that he could not move his leg, the accused persons, thinking he was lying, forced him to stand up and squat[\[note: 223\]](#). Eventually, they let him go and chatted amongst themselves before going to bed after the lights were switched off[\[note: 224\]](#). After these events of 3 May 2008, the victim had breathing problems and could not sit up straight[\[note: 225\]](#).

#### *Iryan's first long statement dated 9 May 2008*

61 The material portions of Iryan's first long statement, dated 9 May 2008, read[\[note: 226\]](#):

14 On the last day where we kicked and punched [the victim], which I cannot remember whether It was on Friday or Saturday, **Zameen, Hamdan and I spread [the victim's] legs wide apart with his back against the wall. We did this as [the victim] cannot take anymore punching and kicking. The idea to spread [the victim's] legs came spontaneously from the 3 of us.** Hamdan pulled [the victim's] right leg towards the wall, I pulled [the victim's] left leg also towards the wall and Zameen pulled both [the victim's] hands forward. We managed to spread his legs against the wall in less [than] 10 seconds and **[the victim] said he was in pain during the 10 seconds.** After the 10 seconds, [the victim] was silent and we maintained [the victim's] position for about 10 minutes. After that, we helped him to stand up. It was only then that **we found out that he could not walk properly.** Zameen, Hamdan and I told [the victim] not to go to the yard. Since that day, [the victim] did not go to the yard.

[emphasis added]

*Iryan's third long statement dated 26 May 2008*

62 With regard to the events on 3 May 2008, the material portions of Iryan's third long statement, dated 26 May 2008[\[note: 227\]](#), read:

18 The next day on a Saturday (recorder's note: 3<sup>rd</sup> May 2008), in the morning after the 1<sup>st</sup> muster call...we were frustrated with [the victim] for shitting in his shorts the night before. **Thus I suggested to [the victim] to eat his shit. He agreed with my suggestion. I knew that he had agreed as he was afraid to be beaten up again by us. Hamdan was then shitting at the toilet and afterwhich, I told [the victim] to go and eat Hamdan's shit. He went over and ate it. I did not look at him while he was eating it. Zameen was then watching [the victim] eating the shit and during which he called me over to look. I glanced a bit and saw the shit on [the victim's] teeth.** Afterwhich, I looked away as I was disgusted by it.

19 **After he finished eating it, I told him to urine into his plastic cup and drink it. [The victim] urinated into his own plastic cup and drank all of it. I saw him gagging and tried to vomit out but I did not take much notice thereafter. I then shitted at the toilet bowl and told [the victim] to eat my shit. I saw him using his own hands and placed the shit onto an unused magazine page. He then ate it. I only glanced at him a bit....I did remember we perform the "Sonic blastman' acts on [the victim] in the evening time after the last muster call for the day. We did not inflict many blows to him as we noticed that he could not take anymore hard punches.** We did not split his legs that said night.

[emphasis added]

*Hamdan's second long statement dated 15 May 2008*

63 With regard to the events on 3 May 2008, the material portions of Hamdan's second long statement, dated 15 May 2008[\[note: 228\]](#), read:

7 There was an occasion on 3 May 2008, whereby **we forced [the victim] to spread his legs to do a 'spread eagle'. We pulled and pressed both his hands and legs to force him down.** He complied and thereafter **was limping badly when he walked.**

[emphasis added]

*Hamdan's third long statement dated 26 May 2008*

64 With regard to the events on 3 May 2008, the material portions of Hamdan's third long statement, dated 26 May 2008[\[note: 229\]](#), read:

I think it was 03/05/2008, Saturday in the morning, there was no yard and [the victim] spilled some coffee on the floor. **The three of us then wanted to beat him up however he pleaded [with us] not to and he offered to eat shit.** As coincidentally I wanted to go to the toilet to shit, I agreed. I then shit however as my shit was little, I asked Iryan to shit also. **After Iryan had done his business, I told [the victim] since he want to eat shit, I told him to do so.** I did see [the victim] take some and eat and as I saw that it was gross, I did not look anymore. **[The victim] then asked for our permission whether he can drink some water. We were then making fun of him eating shit and jokingly asked him if he wants to drink urine. He said okay he will drink and we told him to urine into his own cup and drink his own urine which he did.** Sometime in the evening or night, we decided to make [the victim] split his legs. We told him to sit with his back on the wall and to spread his legs apart. I then sat down on the floor facing him and both my feet were on both his thighs. I then hold his hand and at the same time pushed his thighs using my feet. It was until he did a full split, ie, his legs are in one horizontal line, then I released him. When doing the split, Zameen and Iryan did help hold on to[the victim]. I think I also did hold onto [the victim] and Zameen did the split and pulled [the victim's] hands and pushed his thighs. **[The victim] complained of pain. I told him the pain will go normally go away in about 2-3 hours however he kept limping and saying it was still painful. I then said that he is making it up and told him to walk again. I told him if he did not walk properly I would beat him up. [The victim] then told me that it's not that he doesn't want to walk properly, he is unable to due to the pain so I believed him. I then told Zameen and Iryan and we decided not to beat him up.**

[emphasis added]

***Events on 4 May 2008 (Sunday)***

*The victim's account*

65 As 4 May 2008 was a Sunday, there was no "yard time" for the prison inmates. After closing muster[\[note: 230\]](#), the accused persons again punched and kicked the victim on his chest. As the victim was unable to take the beating and felt breathless, he offered to fellate the accused persons if they let him off. As with the previous two occasions, the victim fellated Zameen first at the modesty wall while the latter read the same magazine[\[note: 231\]](#). Zameen ejaculated into the victim's mouth and asked the victim to swallow his semen. The victim complied[\[note: 232\]](#). The same thing happened with Iryan who went next[\[note: 233\]](#).

66 Hamdan then followed. Although the victim managed to fellate Hamdan until the latter obtained

an erection, the act was interrupted when a prison officer knocked on the door of the cell. The prison officer had done so because Hamdan was a "special watch inmate" and the prison officers were required to regularly check on him [\[note: 234\]](#). For this reason, the accused persons had put a piece of "magazine paper" into the spy hole of the cell door to prevent visual access [\[note: 235\]](#). When the prison officer knocked on the cell door, Hamdan pushed the victim's head away, stood up, used a towel to cover himself and acted as if he had just washed up. Hamdan also asked the victim to go to the toilet and pretend as if he was using it [\[note: 236\]](#). The prison officer opened the spy hole, knocked for a while more and then left when no one responded without looking inside the cell [\[note: 237\]](#) or opening the cell door [\[note: 238\]](#). After the prison officer left, Hamdan asked the victim to finish what he had been doing. He sat on the modesty wall; Iryan and Zameen took turns to act as look outs. As with Zameen and Iryan, Hamdan also ejaculated into the victim's mouth and asked him to swallow his semen. The victim complied again [\[note: 239\]](#).

*Iryan's third long statement dated 26 May 2008*

67 With regard to the events on 4 May 2008, the material portions of Iryan's third long statement, dated 26 May 2008 [\[note: 240\]](#), read:

20 The following day which is a Sunday (recorder's note: 4<sup>th</sup> May 2008), I wished to state there is no movement to the yard or outside the cell...**I remembered that we again did punch and kicked [the victim] because while we were exercising and minding our own business inside the cell, [the victim] would be trying to walk around the cell to exercise his legs.** However, he kept getting off balance and at times, stepped onto our soap box, blanket and knocked against our towels which were hung at the toilet area. **I only stopped beating him only when I am finally satisfied teaching him a lesson for his clumsiness.**

21 ...I could not remember whether it was a Monday or the day before that **[the victim] sucked all three of our penises. He had then offered to suck our penises after telling us not to continue beating him up...**

[emphasis added]

*Iryan's cautioned statement dated 15 July 2008*

68 With regard to the s 376(1)(a) charge of non consensual penetration of the victim's mouth with his penis [\[note: 241\]](#), when asked if he had anything to say to the charge, Iryan stated:

I admit to this charge. I regret doing this. I plead for leniency.

*Hamdan's second long statement dated 15 May 2008*

69 With regard to the events on 4 May 2008, the material portions of Hamdan's second long statement, dated 15 May 2008 [\[note: 242\]](#), read:

8 On 4 May 2008, throughout the whole day, we resisted assaulting [the victim], as we were afraid that the marks on his body would become too visible and it may be spotted by the officers. After the evening muster, we discovered that he had passed motion in his shorts and the faeces had scattered onto the floor. **We then got angry and threatened to assault him again.** Despite this, Zameen and I cleaned the floor as it was our sleeping area. **As [the victim] knew he was in the wrong, he offered to suck our penises**[\[note: 243\]](#). **[The victim] then sucked on Iryan's penis at the toilet area first, followed by Zameen and me. As [the victim] was sucking my penis, I also punched him several times in the face, until I was satisfied.**

[emphasis added]

*Hamdan's third long statement dated 26 May 2008*

70 With regard to the events on 4 May 2008, the material portions of Hamdan's third long statement, dated 26 May 2008[\[note: 244\]](#), read:

**On that night, we found that [the victim] was still lying to us and I wanted to beat him up. [The victim] pleaded for me not to until he shit in his pants. I then got angrier and wanted to beat him but [the victim] pleaded for me not to and asked if he can suck our cocks as a trade...We then took turns to clean his shit as [the victim] was limping and unable to do it himself. After cleaning up, we took turns to let [the victim] suck our cocks. Iryan went first then Zameen then me. [The victim] was sucking my cock when I heard an officer walking. We then stopped and when the officer had left, [the victim] asked me if I want some more but I told him I don't want and I went to sleep.**

[emphasis added]

*Hamdan's cautioned statement dated 15 July 2008*

71 With regard to the s 376(1)(a) charge of non consensual penetration of the victim's mouth with his penis[\[note: 245\]](#), when asked if he had anything to say to the charge, Hamdan wrote the following[\[note: 246\]](#):

Again, he [did] it willingly and I did not force him as he trade it for beating.

### ***Events on 5 May 2008 (Monday)***

*The victim's account*

72 On 5 May 2008, the inmates were strip searched as usual and the prison officer did not notice the bruises on the victim. The victim was having difficulty standing and was supporting himself against the cell wall. He did not go for "yard time". While resting in the cell, an unidentified prison officer came to him and told him to report sick if he was not feeling well. The victim did not do so as he was scared. The accused persons again assaulted the victim after closing muster but he could not remember the details of the assault as he was in too much pain[\[note: 247\]](#).

*Iryan's third long statement dated 26 May 2008*

73 With regard to the events on 5 May 2008, the material portions of Iryan's third long statement, dated 26 May 2008[\[note: 248\]](#), read:

2 1 **I also remembered that we also punched and kicked him on the following day during the evening time after the last muster call for the day...**(recorder's note: 5<sup>th</sup> May 2008)

[emphasis added]

### **Events on 6 May 2008 (Tuesday)**

74 On 6 May 2008, although the inmates were strip searched, the prison officer did not notice anything wrong with the victim. The accused persons went for their "yard time"[\[note: 249\]](#) but the victim did not do so as he was sick. While inside the cell, he pressed the intercom in the cell as he felt very sick and breathless[\[note: 250\]](#). A prison officer, Staff Sergeant Mohamad Muhayaddin bin Sapari ("SSgt Muhayaddin") came. As the victim could not stand, SSgt Muhayaddin enlisted the help of some inmates to carry the victim from the cell to the triage area where he was attended to by a staff nurse[\[note: 251\]](#). The victim explained why he did not tell the staff nurse the truth about what had happened in the cell[\[note: 252\]](#):

**...because I was already in a lot of fear.** I was afraid what might happen because in prison I have seen, when you have committed a case, after that the...inmates are sentenced as there's a prison court itself within the prison. They will be punished...**Once they [finish their punishment] they will be put back with...the same inmate but not in the same cell but with the other inmates...so I was in a lot of fear. So I did not dare open my mouth and tell the staff nurse.**

[emphasis added]

75 The victim was subsequently sent to Changi General Hospital ("CGH")[\[note: 253\]](#) where he was attended to by a doctor. He explained why he did not tell the truth to the doctor[\[note: 254\]](#):

**...I was still in so much of fear that what will happen if I were to tell the doctors.** After everything come back they are still going to put me back together [with the accused persons]. I'm going to see them...one way or another, so I'm going to have a lot of problem. **So I was in fear.** So I did not tell the doctor also.

[emphasis added]

76 He was given medication and referred back to the Changi Medical Centre ("CMC"). While resting in the CMC, the victim was in great pain and coughed out a dark red and yellow liquid. A staff nurse was called in and the victim was sent to CGH again where he was then warded in the Intensive Care Unit ("ICU")[\[note: 255\]](#). On the morning of the next day (*ie*, 7 May 2008), the victim finally told Staff Sergeant Raymond Yin Wei Chiang and another prison officer, Zulkifli bin Osman about the physical and the sexual assault[\[note: 256\]](#).

### ***Evidence from the prison inmates in the adjacent cell***

77 The prosecution also called the following four inmates who had occupied the cell next to cell 5-55 as witnesses:

- (a) Lufti;
- (b) Muhamad Solikin ("Solikin");
- (c) Panineer Sathisvaran ("Sathis"); and
- (d) Muruganantham ("Muruganantham")

78 Sathis testified that when he saw the victim at the end of April 2008 at the yard, the victim had a swollen, "blue-black"[\[note: 257\]](#) left eye. The victim also had problems talking because his throat was in pain. When asked by him and other inmates what had happened to his eye, the victim replied that "it was normal" and that it was due to "sparring"[\[note: 258\]](#). Sathis also testified that from the time he saw the victim in the yard with the swollen eye, he had, mostly at night after lights off[\[note: 259\]](#) and sometimes in the afternoon, heard noises coming from the victim's cell. He also heard Hamdan and Zameen scolding the victim, punching sounds[\[note: 260\]](#) and the victim groaning in pain[\[note: 261\]](#). When he asked Zameen why the cell was so noisy, Zameen told him that the accused persons had beaten the victim[\[note: 262\]](#). Muruganantham also testified that he heard "thud sound[s]"[\[note: 263\]](#) coming from the victim's cell "almost every night" and that there were occasions where these sounds lasted until 2.00am.[\[note: 264\]](#) Sometimes, he would also hear the victim "shouting out in pain" and that whenever he heard this, there would also be the sound of running water from the shower[\[note: 265\]](#).

79 Solikin and Lufti are brothers. Solikin testified that like Sathis, he had also seen the victim with a swollen "blue-black" left eye at the material time[\[note: 266\]](#). He also testified that he heard a lot of frequent[\[note: 267\]](#) punching and beating noises from the victim's cell at night[\[note: 268\]](#), the victim shouting out in pain and Hamdan shouting vulgarities[\[note: 269\]](#). Lutfi testified that he also heard "noises of someone being beaten up on his body" coming from the victim's cell[\[note: 270\]](#). When cross examined by Iryan and Zameen, Lutfi testified that in the one week that he was housed in the same cell as the victim and Zameen[\[note: 271\]](#), he was forced by the victim and Zameen to masturbate them[\[note: 272\]](#) twice[\[note: 273\]](#). According to Lutfi, although he had initially refused to masturbate the victim[\[note: 274\]](#), he eventually relented when Zameen threatened to "put shit on [his] rice"[\[note: 275\]](#).

### ***Evidence from the prison officers***



80 SSgt Muhayaddin, who had conducted the "body check" for the victim and the accused persons on 30 April 2008<sup>[note: 276]</sup> gave evidence that he did not spot anything unusual in the cell<sup>[note: 277]</sup> and that the victim appeared "normal" when he did the "body check" and that he did not exhibit any difficulties in "squatting, turning or carrying his leg"<sup>[note: 278]</sup>. In court, DSP Shahril Abdul Ghani<sup>[note: 279]</sup>, who until 14 April 2008 was the commanding officer in the housing unit where the victim and the accused persons were housed, explained that the purpose of such a "body check", which was "more of a visual check" and did not "scrutinise everything", was to look for contrabands and injuries<sup>[note: 280]</sup>. However, he also agreed that given the number of inmates who have to be checked and the number of officers involved in the "body check", a "body check" for any one inmate would take only about 8-9 seconds<sup>[note: 281]</sup>. Officer Muhayaddin also testified that the total time taken for a "body check" in one cell was at most a "few seconds"<sup>[note: 282]</sup>.

81 When cross examined by Iryan, another prison officer, Seek Hock Meng Kevin<sup>[note: 283]</sup> ("Officer Kevin"), who conducted the "body check" on 6 May 2008, testified that he did not initially observe any visible injuries on the victim's body. However, in court he clarified that this observation was made when the victim was still wearing his T-shirt and shorts and that the victim had not been strip searched on 6 May 2008 because the victim had told him that he was not feeling well. Hence, only the accused persons underwent the "body check"<sup>[note: 284]</sup>. Officer Kevin however confirmed that he saw abrasions on the victim's buttocks, bruises on his left upper chest area and redness on his knuckles, after the victim had been examined by the staff nurse in the triage<sup>[note: 285]</sup>.

### ***The medical evidence***

82 When the victim was first admitted to the Accident & Emergency Department of the CGH on 6 May 2008, Dr Tan Ching Chin Elaine<sup>[note: 286]</sup> ("Dr Elaine Tan") who examined him noted that he looked "like he was in pain", "was not comfortable", and was running a fever<sup>[note: 287]</sup>. Given the victim's complaints of multiple episodes of vomiting blood, a digital rectal examination was performed to check whether there was any passage of altered blood in his stools. This examination did not reveal anything significant. Dr Elaine Tan noted that the victim did not complain of having been sodomised or sexually abused<sup>[note: 288]</sup> and "mainly complained of pain because he was beaten up"<sup>[note: 289]</sup>.

83 An *urgent* radiological scan <sup>[note: 290]</sup> was then performed and the following injuries and problems were observed<sup>[note: 291]</sup>:

- (a) fractured lower sternum (the breastbone<sup>[note: 292]</sup>) and manubrium (which is the upper part of the sternum<sup>[note: 293]</sup>);
- (b) fractures to the right 5<sup>th</sup> to 7<sup>th</sup> anterior ribs and 9<sup>th</sup> to 11<sup>th</sup> posterior ribs<sup>[note: 294]</sup>;
- (c) fractures to the left anterior 5<sup>th</sup> to 8<sup>th</sup> ribs<sup>[note: 295]</sup>;
- (d) liver laceration (*i.e.*, a small tear to the liver)<sup>[note: 296]</sup>;

- (e) bilateral transverse process fractures to the L2 to L4 vertebrae (the transverse processes of a vertebra are the two bones which project from the spine vertebral body and are located at the lower part of the spine<sup>[note: 297]</sup>);
- (f) acute renal failure;
- (g) rhabdomyolysis (*ie*, a breaking down of the muscle tissue due to trauma which releases materials toxic to the kidney<sup>[note: 298]</sup>); and
- (h) left elbow abscess (*ie*, a collection of pus).

84 Given the fractures suffered by the victim, his breastbone was separated from the rest of his ribcage<sup>[note: 299]</sup> and he was unable to breathe well. This caused fluid to accumulate in both of his lungs<sup>[note: 300]</sup>. Taking everything on the scan together, it was explained by the prosecution witness, Dr Andrew Tan<sup>[note: 301]</sup> ("Dr Andrew Tan"), a radiologist with the department of radiology at the CGH, that the liver laceration was consistent with the victim having been punched<sup>[note: 302]</sup>. Dr Andrew Tan also stated that the bilateral transverse process fractures to the L2 to L4 vertebrae could have been caused in one of two ways – either *via* direct blunt trauma or severe muscular contraction when a person was forcefully flexed<sup>[note: 303]</sup>. According to Dr Andrew Tan, fractures to the sternum were not common and were usually associated with a significant force consistent with a road traffic accident where the steering wheel hits the driver's chest<sup>[note: 304]</sup>. He noted that the victim's fractures to his sternum, manubrium and ribs were consistent with the victim having been punched and kicked "quite heavily" and repeatedly over a period of eight days<sup>[note: 305]</sup>. With regard to the vertebrae fractures, Dr Tan observed that these were consistent with the victim having been kicked and jumped upon in that area<sup>[note: 306]</sup>. All in all, Dr Andrew Tan concluded that the victim's bone fractures could only have been self inflicted if he had jumped from height<sup>[note: 307]</sup>. Dr June Lee<sup>[note: 308]</sup>, a Registrar with the department of surgery at the CGH, noted similarly that given the extensive nature of the victim's injuries, it was "unlikely" that they were self inflicted<sup>[note: 309]</sup>. These findings were not disputed by the accused persons.

85 Given the results of the scan, the victim was immediately transferred to the high dependency ward<sup>[note: 310]</sup>. The next day (*ie*, on 7 May 2008), he was admitted to the ICU for intensive medical care<sup>[note: 311]</sup> as he had become unconscious, was not breathing properly and his kidneys had failed<sup>[note: 312]</sup>. Dr Lim Tiek Wai<sup>[note: 313]</sup>, a senior consultant with the department of anaesthesia, who had treated the victim in the ICU, noted that the victim was in a "very poor state" with life threatening conditions<sup>[note: 314]</sup>. An endotracheal tube (which was connected to a breathing machine) had to be inserted into the victim's throat to assist his breathing which was hindered by the victim's multiple rib fractures<sup>[note: 315]</sup>. Owing to rhabdomyolysis and bacterial septicaemia (*ie*, bacteria in the bloodstream<sup>[note: 316]</sup>), the victim's kidneys failed and he has to be put on continuous renal replacement therapy<sup>[note: 317]</sup>. Pleural drainage was done to remove the collection of fluid in the victim's chest cavity<sup>[note: 318]</sup>. The victim was unconscious for approximately two days<sup>[note: 319]</sup>. These findings were also not disputed by the accused persons.

86 Given the victim's allegations of sodomy, Dr Lim Swee Ho<sup>[note: 320]</sup> ("Dr Lim"), an associate consultant attached to the department of surgery at the CGH, conducted a rectal examination on

him. In his report dated 16 May 2008 he noted[\[note: 321\]](#):

In view of the allegation of sexual assault subsequently raised by the [victim], a per rectal examination was performed by myself on 15/5/2008. **Proctoscopy revealed superficial anal fissures [i.e, small tears along the lining of the anus[\[note: 322\]](#)] at the 12 and 5 o'clock positions**, as well as piles. Digital rectal examination showed good anal tone and no bleeding was seen.

[emphasis added]

In a further report dated 12 January 2009, Dr Lim clarified that:

**...anal fissures can be the result of a number of different causes**, including the passage of hard stools, trauma, infections, neoplasm and inflammatory bowel disease. It is **not possible to tell from his physical examination the exact cause of [the victim's] fissures**.

[emphasis added]

In court, Dr Lim further clarified that while he could not rule out sodomy, he could also not say for certain that the victim had been sodomised[\[note: 323\]](#). The victim remained in the ICU until 22 May 2008 when he was transferred back to the high dependency ward[\[note: 324\]](#). He was finally discharged from the hospital on 1 July 2008. Undisputed medical evidence was also adduced by the prosecution confirming that the accused persons did not suffer from any erectile dysfunction[\[note: 325\]](#).

### ***The psychiatric evidence***

87 Dr Tang Hui Kheng [\[note: 326\]](#) ("Dr Tang") was the psychiatrist who was part of the medical team which cared for the victim. She first saw him on 11 June 2008, and further reviewed him on 13, 18, 20, 25 and 26 June 2008. In her medical report dated 26 November 2008[\[note: 327\]](#), she made the following observations:

## History of chief complaint

[The victim] could only give a vague account of being assaulted in his prison cell by three cell mates on several occasions over a period of nine days. **He was uncomfortable in providing details of the alleged assault in an open ward setting...and in the presence of other people.**

He could, however, give an account of the symptoms that he was suffering from as a result of the alleged assault. **He complained of being fearful** and having recurrent thoughts of the incident. In addition, **he was fearful** that the other patients [in the ward] might assault him as they reminded him of his cell mates, even though he knew these patients were sick and confined to bed. **He would experience body pain and breathlessness when reminded of the alleged assault. He also complained of having nightmares and being woken up from his sleep feeling scared. He reported that he was more easily startled and irritable.** His sleep was interrupted as a result of his symptoms. **He was fearful of going back to the prison and as the day of his transfer back to prison approached, he reported being increasingly anxious.** He tried to avoid thinking of the incident but the thoughts kept coming into his mind despite his efforts.

## Mental State Examination

**[The victim]...appeared very anxious and hyperventilated more when giving his account during the first interview, especially when asked regarding the alleged assault.** He was coherent in his speech and spontaneous in his replies. While he was forthcoming about the symptoms he had, he was more guarded regarding details of the incident. **He had [been] re-experiencing symptoms in the form of flashbacks, nightmares and having physical sensations of body pain and breathlessness when being reminded of [the] incident. He also had avoidance symptoms in the form of trying to avoid thinking of the incident. There were also hyperarousal symptoms of being easily startled, irritable as well as interrupted sleep..**

[emphasis added]

88 In court, Dr Tang explained the difficulties faced by the victim in telling her about the incidents [\[note: 328\]](#):

A: ...he was having all those feelings of feeling fearful and anxious...that was already something that...affected him quite a lot, because...each time when he's being asked... the memories will be triggered, so when that happens, it's not uncommon for patients who have undergone a significant trauma to start having symptoms, such as psychological symptoms and the physiological symptoms that come with the...stress. So when that happens, usually it's very difficult for patients to be able to...give details actually of...the incident...what has exactly happened to them...[U]sually it's not uncommon also in my practice...even in my own clinic setting that it takes the person several visits, and also when the symptoms get better before they [are] even able to talk in detail about what has happened to them. So that's they difficulty they [have]...

89 When cross examined by Iryan, Dr Tang revealed that the victim had, on his last review session (ie, on 26 June 2008) mentioned that he was still having intrusive thoughts of being sodomised,

although he did not elaborate because “usually people have difficulty talking about this incident out in the open, and bearing in mind that when [the victim] was in the ward, there were a few other patients around and there were always some police officers around. [\[note: 329\]](#)

## **The issues raised by the accused persons**

### ***The faeces incident (ie, the s 324 Penal Code charge)***

90 As noted above at [\[6\]](#), at trial, while Iryan and Hamdan *admitted* to the s 324 Penal Code charge, Zameen disputed this.

#### *Zameen’s version*

91 According to Zameen, he had “dissociated” himself from the faeces incident. He testified that [\[note: 330\]](#):

And on 3rd of May, I also remember Iryan asking him to eat faeces but I dissociated myself from that incident. I didn’t get myself involved. And I also remember Hamdan went to toilet to defecate but I don’t know whether it was on the ground or the toilet bowl, but I believe he has some sense to...defecate inside the toilet bowl. Similarly, I remember Iryan defecating and I remember [the victim] eating the faeces. **But...I didn’t look at the whole happening process because I really...as I already told, I dissociated myself from the incident, but I did look at one part. At one point of time, I did look and [the victim] was eating and I was disgusted and asked Iryan to see, and I turned away making a[n] “ee” sound.** That was all I did...But I did not assault him when he refused to eat faeces because from what I can remember, there was no refusal and I did not assault him. I did not use threat, force, or threaten him in any way.

[emphasis added]

When cross examined by the prosecution as to why he had “dissociated” himself, he testified that he chose not to get involved because it was against his principles [\[note: 331\]](#).

#### *Iryan’s version*

92 In court, Iryan testified that [\[note: 332\]](#):

...the next day on the 3rd May, Saturday, after our breakfast...then because of yesterday night, I was angry with [the victim], then our cell was still smelling of his shit, and I told [the victim] to eat the shit, ah. Then, I told Hamdan...because that time Hamdan also want to...pass motion at the toilet area. I told Hamdan not to flush it and I asked [the victim] to eat. He didn't refuse. He didn't say no. He didn't say anything. We also didn't assault him on that morning. He say "okay", because...yesterday he know...he shit at the cell, and we had to wash for him, that's why he agreed. So he went to the toilet area. And after he eat Hamdan's shit, then I went to the toilet area, I shit...inside the toilet bowl...and I asked him to eat. Then, at that point of time, I wasn't really looking at him. And after he eat, he did ask **us** whether he could drink some water or not. Then **we** jokingly asked him, "You can eat shit, might as well you drink urine"...[N] one of **us** went to him, give him any mug filled with urine. **We** didn't. He himself urinated inside his mug and he drink it.

[emphasis added]

93 When cross examined by Zameen as to his involvement in the incident, Iryan testified:

Q: So what was my involvement in the eating faeces part?

A I can only remember **you did ask me to look at [the victim's] face because from where you were standing, you could see [the victim] and then I could remember you...did laugh, you did make the "ee" sound**, just that lah, yah.

[emphasis added]

*Hamdan's version*

94 In court, Hamdan testified that [\[note: 333\]](#):

So on the 3rd May morning, we had our breakfast and I don't know how I get angry with [the victim]...So at that time I and Iryan were again angry with [the victim]. I don't know because of what and I shitted in the toilet area. So when we angry with him, Iryan asked him to eat and I passed...motion...inside the toilet bowl...[a]nd when [the victim] was eating his faeces, after I passed motion, I come out of the toilet. I did not flush and Iryan go to the toilet and he also passed motion like that. Then after Iryan passed motion **we** all come out of the toilet and sit near to the door there and [the victim] was the only one in the toilet. Since **we** asked him to eat shit, he did not say anything. He just go to the toilet and I...said, "Eat, ah, [the victim's name]. Then he eat. **When he was eating, I did not see but I got heard people say like, "Ee," like that...I take a quick look at [the victim]** when he was putting in his mouth and I turned away. When after he eat, he called **us**, then we turned back to him....

[emphasis added]

***The fellatio charges (ie, the s 376(1)(a) charges)***

*Iryan's involvement on 28 April 2008*

95 As noted above at [\[8\]](#), while Iryan admitted to penetrating the victim's mouth on 27 April 2008 and 4 May 2008, he denied that he had similarly done so on 28 April 2008[\[note: 334\]](#). Hamdan admitted to penetrating the victim's mouth on 28 April 2008 and 4 May 2008[\[note: 335\]](#) and Zameen also admitted that he had similarly done so on 27 April 2008, 28 April 2008 and 4 May 2008[\[note: 336\]](#).

#### *Iryan's version*

96 In court, Iryan stated the following with regard to the fellatio incident on the evening of 28 April 2008[\[note: 337\]](#):

So that night...[the victim] sucked for Zameen. **After that Zameen sodomised [the victim]**. And after that, after [Zameen] went out, Hamdan went in. I also know what they were doing ah. So after Hamdan went out, [the victim] also went out, after they bathe everything, then I went in. When they finished bathing everything, I went in, I took my shower. **[The victim] didn't perform anything on me on that night. So that night...after I took my shower everything, I sleep. Normal.**

[emphasis added]

According to Iryan, by the time he went into the toilet to shower, the victim, Hamdan and Zameen had all come out of the toilet area and were "at the sleeping area"[\[note: 338\]](#).

97 When cross examined by the prosecution as to why he had been fellated on 27 April 2008 and 4 May 2008 but *not* 28 April 2008, Iryan testified that he did not want the victim to perform fellatio on him in 28 April 2008[\[note: 339\]](#) as the victim had already fellated him on 27 April 2008[\[note: 340\]](#). He later said that he had agreed to the victim fellating him on 4 May 2008 because he had not ejaculated on 27 April 2008[\[note: 341\]](#). When cross examined by the prosecution as to why he had not wanted the fellatio earlier on 28 April 2008, the following exchange took place[\[note: 342\]](#):

Q: But you could have easily done it on the 28th, right? Logically, that you make sense, you...did not ejaculate the night before and therefore it would have made sense for you to ejaculate on the 28th, right?

A: **Because it also doesn't ma[k]e sense. If I admitted on the 27th and on the 4th, then what's the point of...saying on the 28th I didn't do it?**

[emphasis added]

#### *Hamdan's version*

98 In court, Hamdan testified that on 28 April 2008 Zameen had gone to the toilet with the victim first. He did not know whether Zameen sodomised the victim. When Zameen came out of the toilet, he then went in and sat at the modesty wall. The victim squatted down in front of him and started fellating him. However because he was uneasy as it was his first fellatio experience with a male, he pushed the victim's head away. He also slapped and kicked the victim and told the victim to "get lost". He then took his shower and told the victim to shower. After the victim had showered, he asked the victim to sit on his left side and "fan for [him]" while he was lying down. According to Hamdan, it was only while the victim was "fanning" him that Iryan went to the toilet[\[note: 343\]](#).

99 When cross examined by Iryan as to why he was so sure that the victim had not fellated Iryan on 28 April 2008, Hamdan testified that it was because Iryan would have to pass his "sleeping area" (which was near the toilet entrance) before proceeding to the toilet and although he did see Iryan go to the toilet, Iryan was alone and the victim was still "fanning" Hamdan [\[note: 344\]](#).

#### *Zameen's version*

100 Zameen testified that on 28 April 2008 he had first put up a straw mat against the modesty wall to shield the toilet area from view. Although the lights were already off, he did so because he wanted to be "more comfortable" and "concentrate" on getting an erection [\[note: 345\]](#). According to Zameen, the straw mat was needed because he would not have been able to concentrate with Iryan and Hamdan looking at his back while the victim fellated him. While the victim fellated him, it took him "quite long" to achieve an erection because it was "a bit hard" to "fantasise" and "imagine" as he could hear both Iryan and Hamdan talking and Hamdan's voice, especially, was a bit loud" and "a bit irritating". In the end however, he fail to get an erection or ejaculate as "emotionally the urge [had] already died down" and because he had already been fellated the day before (*ie*, 27 April 2008). [\[note: 346\]](#) He subsequently washed himself, came out of the toilet, wiped himself, wore his shorts and lay down on the cell floor on his "sleeping place". He contended that he did not sodomise the victim by saying the following [\[note: 347\]](#):

...There was no on knees, doggy style, there was no standing doggy style, there was no taking steps, moving forward and backward on that day...

101 When he lay down on the cell floor on his "sleeping place", Iryan was "still lying down there". Hamdan then went to the toilet. The victim was still in the toilet. Although he could not see Hamdan being fellated by the victim, he "knew" that that was what was happening as the victim had "offered" it earlier to the accused persons. According to Zameen, while the victim fellated Hamdan, Iryan and he were still lying down in their "sleeping place[s]" and "just chit-chatting" [\[note: 348\]](#). Hamdan then came out of the toilet. The victim followed, "wiping his body and wearing his shorts". The "toilet area ha[d] been cleaned up" and the victim was fanning for all the accused persons. Zameen testified that before he slept, Hamdan was already sleeping and Iryan had covered his eyes with his shirt to sleep [\[note: 349\]](#).

#### *The victim had consented to fellatio*

102 As noted above at [\[8\]](#), all the accused persons contend that the victim had consented to the penetration of his mouth by their penises as on each occasion the victim had done so "willingly", or had "offered" and "agreed" to fellate them [\[note: 350\]](#).

#### ***The sodomy charge (ie, the s 376(1)(a) Penal Code charge)***

103 As noted above at [\[8\]](#), Zameen disputed the sodomy charge against him [\[note: 351\]](#). The respective versions of Iryan, Hamdan and Zameen on the events of 28 April 2008 as stated in court in their evidence in chief have already been set out above at [\[96\]](#), [\[98\]](#) and [\[100\]](#). The victim's account is at [\[32\]](#) – [\[33\]](#) above, and the versions of Iryan and Hamdan in their long statements are detailed above at [\[34\]](#) – [\[36\]](#) and [\[37\]](#) – [\[38\]](#), respectively.

#### *Iryan's version in cross examination*



104 When cross examined by Zameen however, Iryan testified that because Zameen had put up a straw mat on 28 April 2008<sup>[note: 352]</sup>, he did not see the victim, the lower part of Zameen's body including his penis<sup>[note: 353]</sup> and the actual act of sodomy. Instead, he had only seen Zameen's head "moving forward and backward"<sup>[note: 354]</sup> in a manner which required Zameen to "take steps"<sup>[note: 355]</sup>. He also testified that neither Zameen nor the victim had told him about the sodomy incident<sup>[note: 356]</sup>. When cross examined by Zameen as to why he stated in his statement that Zameen had sodomised the victim, Iryan testified that he had been told to say so. According to Iryan, the accused persons were all isolated on 6 May 2008 – he was in cell 5-46, Hamdan was in cell 5-57 and Zameen was in cell 5-55. On 7 May 2008, he saw "superior [prison] officers" take Zameen out from his cell. The prison officers then came to his cell, started punching and kicking him and also used their batons on him. After they assaulted him, the "first thing they asked [him] was about the sodomy" and whether he had sodomised the victim. When he replied that he had not, they then asked who had sodomised the victim and when he told them that he did not know, they brought him out of the cell, to a staircase where there were no cameras and "whacked" him. He was then asked again about the incident and when he told them that he did not know anything, they put him back into his cell and then went to Hamdan's cell<sup>[note: 357]</sup>. However on the night of 7 May 2008, as he recalled the events of the past days, he knew that something had happened on the night of 28 April 2008 because he had heard a continuous flushing of water for some time and no sound from the shower and because Zameen and the victim "were in the toilet for too long"<sup>[note: 358]</sup>. According to Iryan, on 9 May 2008, before he made his long statement a "Malay prison IO" had seen him first. The "Malay prison IO" first asked him if he had sodomised the victim to which he denied. He was then asked if the victim had fellated the accused persons and he admitted that all the accused persons had been fellated by the victim. The "Malay prison IO" then showed him a calendar, pointed to the date "28 April 2008" and told him that Zameen had sodomised the victim on that date and that he (Iryan) was aware of it. When he told the "Malay prison IO" that he did not remember anything, the "Malay prison IO" told him not to waste his time and that he was already talking to him "nicely". He was threatened with a beating and then told again that Zameen had sodomised the victim on 28 April 2008. When he finally said "Yes", ASP Cindy New<sup>[note: 359]</sup> ("ASP New") took over. In the presence of a Malay interpreter and following his statement that Zameen had sodomised the victim, ASP New then asked him "What does this mean to you?" When he told her that he did not know, the Malay interpreter then asked him "What do you mean you didn't know? But you know Zameen sodomised [the victim]...on that night, am I right?" When this happened, he then said "Yes, Sir". According to Iryan, he had only known that Zameen had sodomised the victim on 7 May 2008, and if the "superior officer" did not mention anything to him about the sodomy incident and he had not been "guide[d]" by the Malay interpreter, he would not have known that Zameen had sodomised the victim on 28 April 2008<sup>[note: 360]</sup>. When cross examined by Zameen about his second long statement dated 15 May 2008 (see <sup>[35]</sup> above), Iryan testified that he had not seen the sodomy act and Zameen's penis entering the victim's anus. According to Iryan, all that he had meant to say was that he had seen Zameen "bending down" and him "moving forward and backward"<sup>[note: 361]</sup>. When asked however whether he had concocted the sodomy incident, Iryan however disagreed and said that he would not have been shocked if it had in fact happened given that the victim had masturbated and fellated Zameen before when they were both in Queenstown Remand Prison<sup>[note: 362]</sup>.

105 When cross examined by the prosecution as to why he had testified in evidence in chief that Zameen sodomised the victim (see <sup>[96]</sup> above), Iryan gave evidence that he did this because he had already said the same in his long statements. It would be instructive to refer to the following from the notes of evidence<sup>[note: 363]</sup>:

Q: So therefore, am I correct to say that the reason why you told this Court that Zameen sodomised [the victim] is because you had already said that in your statement to the police? Is that correct?

A: Yes.

Q: So is what you told the police correct?

A: Yes.

Q: So what you said in Court is also correct?

A: Yes.

**Q: So Zameen did sodomise [the victim]?**

**A: Yes.**

[emphasis added]

When asked to explain his version during Zameen's cross examination (see [\[104\]](#) above), Iryan repeated this version [\[note: 364\]](#), but elaborated that after the victim had performed fellatio on Zameen (where he could not see the victim but could only see the back of Zameen's head as he sat on the modesty wall facing the shower), the victim and Zameen both stood up (where he then saw the victim's head and Zameen's head) [\[note: 365\]](#). However, they did not shower. Instead, the victim "suddenly" disappeared (again), he only saw "Zameen's head moving" thereafter [\[note: 366\]](#), and they took a longer time in the toilet than the previous day (ie, 27 April 2008). [\[note: 367\]](#) On further cross examination, he testified that ASP New did not force him to say that Zameen sodomised the victim and that he had said this willingly [\[note: 368\]](#), and that he had only told SSgt Mohammad Hidayat Mahapandi [\[note: 369\]](#) ("SSgt Hidayat"), the officer who recorded his second long statement (see [\[35\]](#) above), that he saw "[the victim] turning around" and "Zameen moving forward and backward" [\[note: 370\]](#) but not that he had seen Zameen penetrate the anus of the victim back and forth (as was recorded in this long statement: see [\[35\]](#) above) [\[note: 371\]](#). When asked whether he had been given a chance by SSgt Hidayat to amend the long statement on 15 May 2008, he admitted that he had [\[note: 372\]](#) and when asked why he had not clarified this alleged discrepancy in the long statement when SSgt Hidayat testified in court, he replied that he did not know what to ask [\[note: 373\]](#).

#### *Hamdan's version in cross examination*

106 When cross examined by Zameen on what he meant in his second long statement (see [\[37\]](#) above) where he stated that he had seen Zameen "apparently sodomising" the victim, Hamdan testified that he did not know whether Zameen had in fact sodomised the victim on 28 April 2008 [\[note: 374\]](#). When further cross examined on why he had not mentioned the sodomy incident in his first long statement dated 9 May 2008 but only in his second and third long statements dated 15 May 2008 and 26 May 2008, respectively, he testified that he had told the recording officer, SI Noorma'at

Sawab<sup>[note: 375]</sup> on 9 May 2008 that he had not seen any act of sodomy on 28 April 2008. He further testified that on 8 May 2008, when the accused persons had all already been isolated in separate cells, police officers went into his cell and punched and used their batons on him. When they asked him if he had sodomised the victim or if he knew who had and he replied that he did not know, he was brought to an office where there were no cameras and further assaulted. He was asked the same questions and he gave the same answers. After a few minutes, he was put back in his cell. He then saw Zameen being transferred to another housing unit and noted that he did not return to his cell thereafter. He wondered why only Zameen was transferred out but not Iryan and himself. A few days after 8 May 2008, "a prison IO" approached him and asked him whether he had seen Zameen sodomise the victim. When he answered that he did not, he was told that he was "not cooperating" and was put back in his cell<sup>[note: 376]</sup>. On or about 13 May 2008, he pressed the cell intercom and informed that he wanted to "confess some things" because he had not been entirely truthful in his first long statement dated 9 May 2008. Following this, on 14 May 2008, "some police IO" including SSgt Eddie Low<sup>[note: 377]</sup> ("SSgt Eddie") came to take his statement. When he told SSgt Eddie that he did not see Zameen sodomise the victim, SSgt Eddie told him that he did not want to take his statement because he was "not cooperating" and sent him back to his cell and asked him to "reflect back on what [had] happened on [28 April 2008]"<sup>[note: 378]</sup>. When he went back to his cell, he recounted that although he did not see Zameen sodomise the victim, he did remember that both of them were in the "the toilet longer than usual"<sup>[note: 379]</sup>. On 15 May 2008, SSgt Eddie and "some other officer" returned to take his statement. He was asked again whether he had seen Zameen sodomise the victim and when he replied that he had not, he was told that Iryan had already admitted to seeing Zameen sodomise the victim and that Hamdan had also seen the act. He was also told that Zameen had been transferred to a different housing unit because he had admitted to the sodomy charge. As he "did not want to get involved in this", he told SSgt Eddie what he wanted to hear, namely, that he had seen Zameen sodomise the victim, just to finish his statement<sup>[note: 380]</sup>. On further cross examination, he testified that he had lied to SSgt Eddie about the sodomy incident<sup>[note: 381]</sup>.

107 When cross examined by the prosecution, Hamdan testified that sometime between 7 to 8 May 2008, before 12 noon, four officers assaulted him<sup>[note: 382]</sup> by punching him in his ribs<sup>[note: 383]</sup> first in his cell 5-57 and then in the housing unit office where there were no cameras<sup>[note: 384]</sup>. He further testified that after he had pressed the cell intercom on or about 13 May 2008 to "confess", four officers, comprising SSgt Eddie, SSgt Stanley Chew Hui Gan<sup>[note: 385]</sup> ("SSgt Stanley") and two female officers met him from about 2.00p.m. to about 5.00p.m. on 14 May 2008<sup>[note: 386]</sup>. He had told SSgt Eddie that he wanted to tell him something about "karaoke" and that he did not want the two female officers to be in the interview room. He was then left alone with SSgt Eddie and SSgt Stanley<sup>[note: 387]</sup> whereupon he told SSgt Eddie that "karaoke" meant fellatio<sup>[note: 388]</sup>. He then repeated his version as set out above at [106] and stated that after he said that he had seen Zameen sodomise the victim on 15 May 2008, SSgt Stanley told him that he will "take note of his cooperation".<sup>[note: 389]</sup>

108 On further cross examination by the prosecution on his third long statement dated 26 May 2008 (see [38] above), Hamdan testified that he did turn around and saw Zameen standing on 28 April 2008 but that he had lied about seeing Zameen "performing a standing doggy style on [the victim]" as he did not want to get involved<sup>[note: 390]</sup>.

## **The prosecution's evidence in rebuttal**

109 To rebut Hamdan's version of the events of 14 May 2008 (see [\[106\]](#) above)[\[note: 391\]](#), the prosecution called SSgt Eddie, SSgt Stanley, ASP Huang Liyu[\[note: 392\]](#) ("ASP Liyu") and Inspector Amelia Lee Hui Yin[\[note: 393\]](#) ("Inspector Amelia").

110 SSgt Eddie was the investigation officer in the case who assisted ASP Liyu in the investigations in May 2008[\[note: 394\]](#). He testified that while he did go to the prison on the afternoon of 14 May 2008, he did so only for the purpose of coordinating the recording of the statements of the prison officers and the inmates who were witnesses to the case[\[note: 395\]](#). The prison inmates included Sathis, Solikin and Lutfi[\[note: 396\]](#). It was never his objective to speak to any of the accused persons[\[note: 397\]](#). However, when they finished recording the statements of the prison officers and the inmates who were witnesses to the case at about 5.00 p.m. to 5.15 p.m., he was informed by a prison officer that Hamdan wanted to give more facts to the case. In these circumstances, SSgt Stanley, ASP Liyu, Inspector Amelia and he agreed to meet with Hamdan[\[note: 398\]](#) and left the housing unit office (where they were) to the interview room at level 6 of the same housing unit. When Hamdan arrived in the interview room, he was asked what additional facts he wanted to give. Hamdan, who was squatting down, said that he wanted to talk about "karaoke" and that it was not convenient to do so with the female officers around. After ASP Liyu and Inspector Amelia left the interview room, he asked Hamdan what "karaoke" meant, to which Hamdan replied "suck cock". As they had been informed by the prison prior to meeting Hamdan that closing muster was at 5.30p.m. and that all inmates had to be in their cell "to account for their presence in their cell", he told Hamdan that he would go back the next day (*ie*, 15 May 2008) to record his statement. He did this because Hamdan had just given facts relating to a sexual offence (which had not appeared in his earlier statement dated 9 May 2008) and because he did not want Hamdan to "rush into his statement". Hence, after less than five minutes in the interview room, they handed Hamdan back to the prison officer[\[note: 399\]](#). According to SSgt Eddie, on 14 May 2008, Hamdan did not mention anything about the sodomy incident[\[note: 400\]](#), he was not asked to elaborate what he meant by "suck cock" and he was not at any time asked to go back to his cell to think about certain things[\[note: 401\]](#).

111 According to SSgt Eddie, on 15 May 2008, SSgt Stanley, Inspector Norman Malimar ("Inspector Norman")[\[note: 402\]](#), SSgt Hidayat, Inspector Azalin and himself went to the prison to record the accused persons' statements. Hamdan was brought into one of the interview rooms with him, SSgt Stanley and Inspector Norman. As he had to leave the prison in approximately 45 minutes to go to CGH to record the doctors' statements[\[note: 403\]](#), SSgt Stanley was to coordinate the interview[\[note: 404\]](#). After Hamdan told him that he wanted to speak about "karaoke", he told Hamdan to say whatever he wanted to Inspector Norman who was the recording officer. After this, he left Hamdan with Inspector Norman and SSgt Stanley to bring SSgt Hidayat to Iryan[\[note: 405\]](#). He did not see Hamdan again on 15 May 2008[\[note: 406\]](#) and denied telling Hamdan that[\[note: 407\]](#):

- (a) Iryan had already stated in his first long statement dated 9 May 2008 that he had seen Zameen sodomise the victim;
- (b) Iryan had said that he had also seen the victim being sodomised by Zameen; and
- (c) Zameen was transferred to another institution within the prison complex because he had already admitted to the sodomy charge.

112 ASP Liyu, Inspector Amelia and SSgt Stanley corroborated SSgt Eddie's evidence as to what had transpired on 14 May 2008 (see [\[111\]](#) above). ASP Liyu also testified that because she was not at the prison on 15 May 2008, she did not see Hamdan that day<sup>[\[note: 408\]](#)</sup>. SSgt Stanley also denied that he told Hamdan that Iryan had already admitted to seeing Zameen sodomising the victim in his first long statement dated 9 May 2008 and that Zameen was transferred to another institution within the prison complex because he had already admitted to the sodomy charge<sup>[\[note: 409\]](#)</sup>.

## **The decision of the court**

### ***Whether the victim fellated Iryan on 28 April 2008?***

113 In all three of his long statements (see [\[34\]](#) – [\[36\]](#) above), Iryan consistently denied the victim's allegation (see [\[33\]](#) above) that he fellated Iryan on the night of 28 April 2008. Iryan did not waver from this position in court (see [\[96\]](#) above) and in his cautioned statement dated 15 July 2008 he adopted a similar stance in response to the s 376(1)(a) Penal Code charge<sup>[\[note: 410\]](#)</sup>:

**I did not admit to this charge as I did not asked [the victim] to do it on 28<sup>th</sup> April 2008.** [The victim] did the act on Hamdan & Zameen but not me.

[emphasis added]

Neither was there a reference to this actually having happened in Hamdan's long statements (see [\[37\]](#) – [\[38\]](#) above). Hamdan also explained in court why he was so sure that the victim had not fellated Iryan on 28 April 2008 (see [\[98\]](#) – [\[99\]](#) above). Zameen's long statements were also silent on whether the victim had indeed fellated Iryan on 28 April 2008 and in court he testified that Iryan had already covered his eyes to sleep when Hamdan came out of the toilet with the victim (see [\[101\]](#) above)

114 Even more significantly, as Iryan himself contended in court (see [\[97\]](#) above) after rigorous cross examination by the prosecution, there was no logical reason why he would readily admit that the victim fellated him on 27 April 2008 (see [\[25\]](#) – [\[28\]](#) above) and 4 May 2008 (see [\[68\]](#) – [\[69\]](#) above) but fervently maintain that the victim had not done the same on 28 April 2008. For the above reasons, I was of the view that there was reasonable doubt concerning Iryan's guilt on this particular s 376(1)(a) Penal Code charge and I gave him the benefit of the doubt and acquitted him of this charge. In my opinion, given that the victim had been subjected to serious abuse almost on a daily basis between 27 April 2008 and 5 May 2008 (*ie*, over the course of nine days) at the hands of the accused persons and that he had been sodomised by Zameen on 28 April 2008 itself (see [\[132\]](#) – [\[138\]](#) below), he was in all likelihood traumatised and confused as to whether he had in fact fellated Iryan on 28 April 2008. I did not think he was lying about this incident.

### ***Whether the s 324 Penal Code common intention charge (ie, the faeces incident) was made out against Zameen?***

115 Section 324 of the Penal Code states:

## **Voluntarily causing hurt by dangerous weapons or means**

**324.** Whoever...voluntarily causes hurt...by means of any substance which it is deleterious to the human body...to swallow...shall be punished with imprisonment for a term which may extend to 7 years, or with fine, or with caning, or with any combination of such punishments.

116 While Iryan (see [27] above) and Zameen denied that the contents of the ten tasks (see [21] above) comprised sexual acts<sup>[note: 411]</sup>, they did not deny that "eat shit" was one of these tasks<sup>[note: 412]</sup>. In spite of having threatened Lutfi that they would "put shit on [his] rice"<sup>[note: 413]</sup> (see [79] above) and not objecting to Iryan putting "eat shit" as one of the task options on 27 April 2008, during the trial, Zameen conveniently sought to distance himself from the s 324 Penal Code offence on the basis that he had "dissociated" himself because he did not want to get involved in something that was against his "principles" (see [91] above). One wonders why Zameen could have not voiced his objections on 27 April 2008 but somehow appeared to have suddenly, and all too coincidentally, found his conscience and principles in the period between 27 April 2008 and 3 May 2008 (on the accused persons' own evidence that the faeces incident occurred on 3 May 2008: see [6] above).

117 It is also not entirely clear how Zameen dissociated himself from Iryan and Hamdan in this instance. In fact, the third long statements of Iryan (see [62] above) and of Hamdan (see [64] above) and the evidence in chief of Iryan (see [92] above) and Hamdan (see [94] above) consistently used the word "we" and "us" in describing the incident, without drawing any distinction between their involvement and Zameen's involvement in the faeces incident. Contrary to Zameen's claims, Iryan had clearly stated in his third long statement (see [62] above) and in his cross examination by Zameen (see [93] above) that during the faeces incident, Zameen had:

- (a) been watching the victim eating the faeces;
- (b) called him over to look at the victim eating the faeces;
- (c) laughed; and
- (d) made an "ee" sound (as an exclamation of disgust).

Taken together, these actions by Zameen could hardly be said to be those of a person who had "dissociated himself". While Zameen's role may not have been so clear cut as that of Iryan (who had asked the victim to eat shit and defecated for that purpose: see [40] and [92] above) and Hamdan (who had also defecated for that purpose: see [40] and [94] above), Zameen shared Iryan's (see [62] above) and Hamdan's motive<sup>[note: 414]</sup> to "punish" the victim for having soiled in his pants the previous night. There is no logical explanation why he would have suddenly held back and not participated in the incident at the very last moment, when the evidence was that he had done so in

all other instances.

118 It is trite that the mere presence of an accused at the scene, without more is insufficient to amount to participation required for liability under s 34 of the Penal Code. The presence must be such as to facilitate the execution of the common intention of the parties, and in each case, whether there is sufficient participation on the part of an accused for imposing joint liability under s 34 of the Penal Code must depend on the factual matrix. As stated by Yong Pung How CJ in *Quak Siew Hock David v PP* [1999] 1 SLR 533 ("*David Quak*") at [28] – [29]:

28 The acts committed by different confederates in the criminal action may be different but all must in one way or another participate and engage in the criminal enterprise. For instance, one may only stand guard to prevent any person coming to the relief of the victim or to otherwise facilitate the execution of the common design. Such a person also commits an 'act' as much as his co-participants actually committing the planned crime. The presence of those who in one way or another facilitate the execution of the common design is itself tantamount to actual participation in the 'criminal act': *Ramaswami v State of Tamil Nadu* AIR 1976 SC 2027. However, the mere presence of the accused at the scene, without more, will not amount to participation, as was the case in *Chew Cheng Lye v R* [1956] MLJ 240.

...

29 Ultimately, although the requirement of participation is not in doubt, the issue of whether the conduct of an accused is sufficient to constitute participation for the purposes of s 34 is a question dependent on the facts and circumstances of each particular case: *Barendra Kumar Ghosh* (supra), *Ibrahim bin Masod v PP* [1993] 3 SLR 873....I am satisfied that Quak's accompaniment amounted to sufficient participation in their common intention for the purposes of s 34, at the very least because, first, it indicated a readiness to play his part in the accomplishment of their common design. Secondly, it was reasonable to presume that his physical presence in the circumstances provided encouragement and support for Lee and was therefore in furtherance of their common intention. Accordingly, to borrow a phrase from *Ramaswami*, Quak's facilitative presence was tantamount to actual participation in their 'criminal act' and went beyond mere involvement in the preparation for or planning of their common design.

119 As the foregoing excerpt from *David Quak* illustrates, the readiness of one to play his part in the accomplishment of the common design and whether the presence of that person provides encouragement and support, in furtherance of the common intention, are relevant factors to be taken into account. In the present instance, given Iryan's testimony during cross examination of his unwillingness to look at the victim as he ate faeces as he was disgusted<sup>[note: 415]</sup>, Zameen's actions (see <sup>[117]</sup> above) clearly goaded Iryan on and supported him in ensuring that the victim ate the faeces. In these circumstances, I rejected Zameen's claim that he had "dissociated" himself from the faeces incident and I convicted him accordingly.

### ***Whether the victim consented to fellatio?***

120 The relevant portion of s 376(1)(a) of the Penal Code states as follows:



## **Sexual assault by penetration**

**376.** —(1) Any man (A) who —

(a) penetrates, with A's penis, the ...mouth of another person (B) ...

shall be guilty of an offence if B did not consent to the penetration.

Given that the accused persons did not dispute that that they had penetrated the victim's mouth with their penises (save for Iryan's denial that he had done so on 28 April 2008: see [\[113\]](#) – [\[114\]](#) above), the prosecution had only to prove that the victim did not consent to such penetration. Before embarking on this inquiry, it would be useful to examine the law on consent with the framework of the Penal Code.

### *The law on consent*

121 Section 376(1)(a) of the Penal Code, which was enacted on 1 February 2008, is a recent addition to the Penal Code which is somewhat modelled after (but is not in *pari materia* with) ss 2 and 4 of the UK Sexual Offences Act 2003 ("SOA 2003"). However, the recent amendments to the Penal Code neither adopted the definition of "consent" in s 74 of SOA 2003 nor the evidential and conclusive presumptions about consent set out in ss 75 and 76 of SOA 2003. Indeed, the only amendment relating to the element of "consent" in the Penal Code was to expand the circumstances under which consent is vitiated under s 90 of the Penal Code, which as Stanley Yeo, Neil Morgan & Chan Wing Cheong pointed out in *Criminal Law in Malaysia and Singapore* (LexisNexis, 2007) ("Yeo, Morgan & Chan") at [19.5] does not define consent in positive terms but:

in negative terms by stipulating circumstances when consent is not real...

122 Section 90 of the Penal Code states as follows (with the recent amendments in italics):



**Consent given under fear or misconception, by person of unsound mind, etc., and by child**

**90.** A consent is not such a consent as is intended by any section of this Code —

(a) if the consent is given by a person —

(i) under fear of injury *or wrongful restraint to the person or to some other person*; or

(ii) under a misconception of fact,

and the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception;

(b) if the consent is given by a person who, from unsoundness of mind, *mental incapacity, intoxication, or the influence of any drug or other substance*, is unable to understand the nature and consequence of that to which he gives his consent; or

(c) unless the contrary appears from the context, if the consent is given by a person who is under 12 years of age.

[emphasis added]

123 Although expanding the circumstances under which consent is deemed not real under the Penal Code, the amendments did not however change the boundaries of what constitutes a valid consent in law in the Penal Code. In these circumstances, the following commentary from *Ratanlal & Dhirajlal's Law of Crimes: A Commentary on the Indian Penal Code 1860* vol 2 (C K Thakker & M C Thakker eds) (Bharat Law House, 26th Ed, 2007) at p 2061[\[note: 416\]](#), in relation to the element of "consent" in the offence of rape under the Indian equivalent of the now amended s375 of the Penal Code (Cap 224, 1985 Rev Ed), is highly instructive:

A mere act of helpless resignation in the face of inevitable compulsion, quiescence, non-resistance or passive giving in, when volitional faculty is either clouded by fear or vitiated by duress, cannot be deemed to be "consent" as understood in law. Consent on the part of a woman, as a defence to an allegation of rape, requires voluntary participation, not only after the exercise of intelligence, based on the knowledge of the significance and the moral quality of the act, but after having freely exercised a choice between resistance and assent. Submission of her body under the influence of fear or terror is not consent. There is a difference between consent and submission. Every consent involves submission but the converse is not true. A woman is said to consent only when she freely agrees to submit herself, while in free and unconstrained possession of her physical and moral power to act in a manner she wanted. Consent implies the exercise of free and untrammelled right to forbid or withhold what is being consented to; it is always a voluntary and conscious acceptance of what is proposed to be done by another and concurred in by the former[\[note: 417\]](#).

There is no reason why this definition of "consent" should not be similarly applicable to s 376(1)(a) of the Penal Code.

124 The foregoing commentary recognises that "consent clouded by fear ...cannot be deemed to be "consent" as understood in law". This principle is in fact embodied in s 90(a)(i) of the Penal Code

(see [\[122\]](#) above).

125 In commenting on the scope of s 90(a)(i) of the Penal Code, Yeo, Morgan & Chan made the following observations at [\[19.18\]](#) – [\[19.19\]](#):

### **Fear of injury**

This ground for vitiating consent is expressly provided for in s90(a). The editors of *Ratanlal and Dhirajlal's Law of Crimes* suggest, without citing authority, that 'injury' seems to be limited to physical injury. In reality, such a form of injury will be the most likely type threatened. However, the editors appear to have overlooked s 44 of the Penal Code which states that the term 'injury' denotes any harm whatever illegally caused to any person, in body, mind, reputation or property. This broad definition of 'injury' is wide enough to enable threats of a non-physical nature to vitiate consent....

Section 90(a) requires the accused to know or have reason to believe that the consent was given under fear of injury. The part concerning 'reason to believe' invokes an objective imposition on the accused, such that he or she will be denied the defence if the court determines that he or she ought to have known that [the victim] had consented from fear of injury, even though he or she did not actually know of this. This objective measure may be explained by noting that the accused would have been at least partly to blame for creating the circumstances whereby [the victim] had consented under a fear of injury. Consequently, the law places a duty on the accused to find out if [the victim] was consenting only because of such a fear.

126 With these principles in mind, I now turn to their application to the facts of this case.

### *Whether the victim consented to fellatio under fear of injury?*

127 On each occasion that the victim fellated Iryan and/or Hamdan and/or Zameen on 27 April 2008 (see [\[23\]](#) above), 28 April 2008 (see [\[31\]](#) above) and 4 May 2008 (see [\[65\]](#) above), the victim's "offer" act was immediately preceded by a situation where the accused persons were assaulting him. On each occasion when he "offered" to fellate the accused persons, the victim did so because he could not take the pain of the accused persons' beating and wanted them to stop their assaults. These "offers" by the victim were made while the victim was being assaulted by the accused persons. The viciousness and the strength of the accused persons' assaults were evidenced clearly by the undisputed medical evidence (see [\[83\]](#) – [\[85\]](#)). Dr Andrew Tan himself observed that the fracture to the victim's sternum was usually associated with a significant force consistent with a road traffic accident where the steering wheel hits the driver's chest<sup>[\[note: 418\]](#)</sup> (see [\[84\]](#) above). In these circumstances, the victim could not be said to have freely and willingly offered to fellate any of the accused persons.

128 It is clear these "offers" were made only to stop the beatings. Iryan's long statements provide more than ample evidence on how the victim had made these offers of fellatio because "he could not take [the beatings] anymore", while "kneel[ing] and ask[ing] for mercy", while "plead[ing] [with the accused persons] not to beat him any longer" (see [\[25\]](#) – [\[27\]](#), [\[34\]](#) – [\[35\]](#) and [\[67\]](#) above). Hamdan's third long statement (see [\[38\]](#) above), cautioned statement (see [\[71\]](#) above) and evidence when cross examined by the prosecution<sup>[\[note: 419\]](#)</sup> all stated that the victim fellated the accused persons as a "trade" to avoid further beating. The victim was in a dilemma created by the accused persons – if he did not "offer" to fellate the accused persons, the accused persons would continue to

beat him up and if he wanted the assaults to stop, he would have to fellate the assailants. Such was the forced "trade" that the victim had to make. That this was also the case is patently clear from the events of 27 April 2008 where Iryan and Zameen stopped assaulting the victim only after the victim had "increased" his offer from one of masturbation to fellatio (see [\[25\]](#) above). In such circumstances, there can be no doubt that the victim never gave a valid consent in law when he fellated the accused persons on the respective dates. A person who has been effectively forced to choose by being presented with two alternatives not of his making and neither of which he is legally bound to do can hardly be said to have given his consent willingly.

*Whether the accused persons had reason to believe that the victim consented to fellatio out of fear?*

129 As noted by Yeo, Morgan & Chan (see [\[125\]](#) above), this limb of s 90 of the Penal Code invokes an objective imposition on the accused persons so that they will not be able to argue that the victim consented if they ought to have known that he did so from fear of injury, even though they might not actually know of this. On this point, the following excerpt from Hamdan's evidence when cross examined by the prosecution shows clearly that he knew that that the victim consented from fear of injury.

Q: ...let's say that you were the one...beaten up, you'll be angry with the person, right?

A: Me?

Q: Yes.

A: Angry.

Q: Especially [when it is] three against one, isn't it?

A: Yes.

Q: And do you think at that time you will have some...any sexual urges?

A: I?

Q: Yes.

A: I sexual urges?

Q: No, no. Let's...move back to [the victim]. Do you think after being whacked, he would have urges...to suck penis?

A: Don't know.

Q: Yes?

A: Don't know, Sir.

Q: Yes, you don't know...

**A: But to me, if *kena* beat, I won't have urges lah.**

[emphasis added]

130 In any event, on the same facts as stated above at [\[127\]](#), as the victim made offers of fellatio because "he could not take [the beatings] anymore", while "kneel[ing] and ask[ing] for mercy", while "plead[ing] [with the accused persons] not to beat him any longer", it is patently clear that when viewed objectively, the accused persons would have had clear reason to believe that the victim consented to fellatio out of fear and to avoid further assault on his body.

131 I was therefore of the view that the prosecution had proved beyond a reasonable doubt that the victim did not consent to such penetration and I convicted the accused persons accordingly.

***Whether the s 376(1)(a) sodomy charge was made out against Zameen?***

132 The relevant portion of s 376(1)(a) of the Penal Code states as follows:

**Sexual assault by penetration**

**376.** —(1) Any man (A) who —

(a) penetrates, with A's penis...the anus...another person (B)

...

shall be guilty of an offence if B did not consent to the penetration.

As can be seen, in this case, the prosecution has to establish the following two elements beyond a reasonable doubt:

(a) Zameen penetrated, with his penis, the victim's anus; and

(b) the victim did not consent to such penetration.

***Whether Zameen penetrated the victim's anus with his penis?***

133 Although the rectal examination on the victim (see [\[86\]](#) above) was inconclusive as to whether the victim had been sodomised, it must be appreciated that this medical examination was only done on 15 May 2008 (*ie*, more than two weeks after the alleged sodomy incident on 28 April 2008). In any event, I was convinced beyond reasonable doubt that Zameen sodomised the victim on the night of 28 April 2008 for several reasons. First, the victim testified that although he did not see Zameen penetrate his anus with his penis because he (the victim) was on all fours, he assumed this to be the case because Zameen had:

(a) immediately before told him in Tamil "I want your ass";

(b) some difficulty in inserting his penis into his anus;

(c) put both of his hands on the victim's hips to pull the victim back whenever the victim moved forward in pain.

It is difficult to understand why the victim would make such an allegation, which exposed him to humiliation and questions about his sexual preference during cross examination by the accused persons, if it was untrue. It must also be noted that the victim made a very specific allegation, with vivid details, in respect of the incident on 28 April 2008 (see [\[32\]](#) above). If there was any intention on his part to frame Zameen (or indeed Iryan and Hamdan), he could have simply coupled each act of fellatio performed on the accused persons with an act of sodomy. However, he did not do this.

134 Second, the victim's allegation was also corroborated by the long statements of Iryan (see [\[34\]](#) – [\[36\]](#) above) and Hamdan.(see [\[38\]](#) above). In both of their long statements, Iryan and Hamdan expressly stated that they saw Zameen sodomise the victim. Although Iryan (see [\[104\]](#) above) and Hamdan (see [\[106\]](#) above) subsequently changed their evidence when cross examined by Zameen and testified that they had been assaulted and "told" to say that Zameen sodomised the victim, these versions only emerged in cross examination and were not raised by Iryan and Hamdan during their evidence in chief (see [\[96\]](#) and [\[98\]](#) above). When cross examined by the prosecution, Iryan doggedly maintained that he did not lie in his long statements and that Zameen did sodomise the victim (see [\[105\]](#) above). Although he contended that he did not see Zameen penetrate the victim's anus in a back and forth fashion, he did however state when cross examined by the prosecution that:

(a) after the victim had performed fellatio on Zameen, both stood up;

(b) instead of showering, the victim turned around and "suddenly" disappeared again; and

(c) he then saw Zameen moving forwards and backwards.

135 In any event, I did not believe that Iryan did not see the victim penetrate the victim's anus. In court, Iryan contended that he did not state the words "allowed Zameen to penetrate his penis into the [victim's] asshole" in his second long statement dated 15 May 2008 which was recorded by SSgt Hidayat (see [\[35\]](#) above). If this was indeed the case, Iryan should have amended the statement, which he admitted he was given a chance to by SSgt Hidayat. However, for quite inexplicable reasons, he failed to do so, when, as his first long statement showed [\[note: 420\]](#), he was more than capable of understanding and amending his statements. Furthermore, when given the chance to clarify the position with SSgt Hidayat, who was called as a prosecution witness (PW40) on the sixth day of trial [\[note: 421\]](#), he again failed to do so and offered the half hearted explanation that he did not know what to ask. Furthermore, if Zameen did not sodomise the victim on 28 April 2008,

this begs the question why Iryan would refer again to the incident when answering the fifth question posed by SSgt Hidayat (see [\[35\]](#) above) in his second long statement on whether the accused persons had threatened the victim not to inform the prison officers.

136 Third, both Iryan<sup>[\[note: 422\]](#)</sup> and Hamdan (see [\[106\]](#) and [\[108\]](#) above) sought to explain that they eventually stated that Zameen sodomised the victim in their statements because they did not want to get involved. But, if this was indeed the case, they would have provided as little information as possible of the incident in their long statements. Yet however, both provided detailed accounts of what they had seen between the victim and Zameen (see [\[34\]](#) and [\[38\]](#) above), a move which would surely expose them to even more questions on what they had actually witnessed on 28 April 2008. To my mind, these details could not and would not have been provided unless Iryan and Hamdan actually witnessed the incident. Glaringly also, there was no mention of a straw mat having being placed on the modesty wall, on any day between 27 April 2008 and 5 May 2008, to shield the accused persons from each others' view, in the six long statements made by Iryan and Hamdan and even in Zameen's three long statements.

137 SSgt Eddie's evidence that he went to the prison in the afternoon of 14 May 2008 to coordinate the recording of the statements of the prison officers and the inmates who were witnesses to the case and that this only finished at about 5.00p.m. to 5.15p.m. (see [\[110\]](#) above) was also corroborated to some extent by these statements which were shown to Hamdan and which showed that the recording of the last statement only started at 4.55 p.m. on 14 May 2008<sup>[\[note: 423\]](#)</sup>.

138 For the above reasons, I was of the opinion that Zameen did penetrate the victim's anus with his penis on the night of 28 April 2008. With my holding that the victim did not consent to fellatio on 28 April 2008 with Hamdan and Zameen, there is no reason why the victim would have consented to Zameen sodomising him immediately after fellatio.

139 At the conclusion of the evidence and submissions, I made some amendments to the charges by adding "on or about" before the respective alleged dates of the offences so that the dates of the incidents were not specific (see also [\[9\]](#) to [\[11\]](#) above). This was to provide for the possibility that the victim (and even the accused persons) could have been mistaken as the exact sequence of events although there was no doubt that all the alleged incidents (save for Iryan's 28 April 2008 fellatio charge) did take place during those nine horrific days. As mentioned earlier, the errors in evidence of the victim were probably due to his confusion after the series of traumatic events in cell 5-55. I also amended the charges by deleting all references to "jumping" on the victim's chest as the evidence adduced showed only punching and stepping on the chest.

140 The prison officers were not able to detect the victim's injuries during the morning inspections for several reasons. The victim has dark complexion, making any external injuries less visible. Most of the injuries were internal in any event and were not immediately visible. The accused persons had taken the precaution of avoiding the infliction of external injuries, especially to the victim's face. The victim, out of fear instilled by the accused persons, obviously put on a very stoical and convincing front when the prison officers were conducting the inspections. He was also known to be a gang member and as someone who could stand up for himself, having been involved in a fight in prison with someone physically bigger than him. The intercom in cell 5-55 was within his reach at any time. He had ample opportunity to report the assaults at anytime, whether via the intercom or when out during yard time or when the prison officers were on their rounds, but chose to suffer in silence (because of his fear of retaliation from the accused persons or their associates). During the final days of the assault, he avoided going out of the cell for yard time, giving credible excuses. There was no doubt that he would have been taken care of and protected if he had chosen to let the prison officers know of his predicament, as shown by the events that happened after he finally decided to reach for the

intercom in the cell. There was no evidence that the prison officers would have disbelieved or ignored him if he had brought the assaults to their attention.

141 In the same manner, he avoided telling the medical staff the entire truth and thereby hampered and delayed the medical attention that would have been accorded to him. As stated earlier, most of his injuries were internal and were not immediately obvious on physical examination.

### **The sentences of the court**

142 All three accused persons had antecedents involving some degree of violence, ranging from robbery with hurt to rioting. Where the assault charges under s 323 and 325 of Penal Code were concerned, the accused persons readily admitted that they had beaten up the victim badly and cruelly although they tried to explain that it was the victim's incessant lies and bragging that had incensed them and, in the case of Iryan, that the victim had actually wanted to make use of Zameen to bring in another inmate into their cell so as to bully that inmate. In respect of the s 324 Penal Code charge, the accused persons did not dispute that it took place – their contention was as to the date and the preceding events. Zameen's defence to that charge, as noted above, was that he had totally "dissociated" himself from the incident. In respect of the fellatio charges, the dispute arose only because the accused persons, young and unschooled in law, had a simplistic but mistaken understanding of what constituted consent in law. The only real dispute of fact concerned the s 376(1)(a) fellatio charge against Iryan for 28 April 2008 and the sole sodomy charge against Zameen for the same date. Iryan was right to have contested the fellatio charge for 28 April 2008 as he has been acquitted of that charge. Zameen, however, has been convicted despite his strong denial and in spite of the prevarication shown by Iryan and Hamdan in their evidence on this point.

143 It would therefore be fair to say that the accused persons, by claiming trial to the charges, were not seeking to force the victim to recount in court every event that had taken place in the cell between 27 April and 6 May 2008 and thereby adding more pain to the physical and emotional trauma already experienced by the victim. The prosecution had to lead evidence in any case from the victim concerning the physical assaults in order to repel any allegation that the sexual assaults took place with the victim's consent. The questions posed by the accused persons were generally fair and relevant to what they perceived to be their defence to the charges.

144 I noted the sad criminal records of the accused persons. They are highly intelligent young men whose lives could have been a whole lot different from what they are now. I noted also their rather belated expressions of regret and remorse at having committed these anger-fuelled crimes. All of them should really do some serious soul-searching and begin to learn to control their emotions and curb their impulses before something much worse happens to them.

145 The atrocities committed by the accused persons in the cell speak for themselves. Their actions were inhumane and repulsive. It is shocking that they allowed themselves to be carried away by their numerical and physical superiority to the extent of bullying a fellow inmate using such sadistic and degrading acts. The execution of the assaults was both crude and cruel. Their relative youth at the time of the offences therefore had to be counterbalanced by the enormity and seriousness of their offences and the fact that they were already in prison and being given a chance at rehabilitation. For the foregoing reasons, I pronounced the following sentences on:

(a) Iryan

(i) one year imprisonment per charge for the nine s323 Penal Code charges;

- (ii) four years imprisonment and four strokes of the cane for the single s324 Penal Code charge;
- (iii) five years imprisonment and six strokes of the cane for the single s325 Penal Code charge; and
- (iv) seven years imprisonment and three strokes of the cane per charge for the two s 376(1)(a) Penal Code fellatio charges

The imprisonment terms for the s324, s325 and the first of the s376 Penal Code charges are to run consecutively with effect from 27 July 2009 as Iryan is currently serving sentence for an unrelated offence. The remaining imprisonment terms are to run concurrently with these three terms. The total sentence is 16 years imprisonment with effect from 27 July 2009 and 16 strokes of the cane.

(b) Hamdan

- (i) one year imprisonment per charge for the eight s323 Penal Code charges;
- (ii) four years imprisonment and four strokes of the cane for the single s324 Penal Code charge;
- (iii) five years imprisonment and six strokes of the cane for the single s325 Penal Code charge; and
- (iv) seven years imprisonment and three strokes of the cane per charge for the two s 376(1)(a) Penal Code fellatio charges.

The imprisonment terms for the s324, s325 and the first of the s376 Penal Code charges are to run consecutively with effect from 6 September 2008 (the date of completion of reformatory training). The remaining imprisonment terms are to run concurrently with these three terms. The total sentence is 16 years imprisonment with effect from 6 September 2008 and 16 strokes of the cane.

(c) Zameen

- (i) one year imprisonment per charge for the nine s323 Penal Code charges;
- (ii) four years imprisonment and four strokes of the cane for the single s324 Penal Code charge;
- (iii) five years imprisonment and six strokes of the cane for the single s325 Penal Code charge; and
- (iv) seven years imprisonment and three strokes of the cane per charge for the three s 376(1)(a) Penal Code fellatio charges; and



- (v) seven years imprisonment and three strokes of the cane for the single s 376(1)(a) Penal Code sodomy charge

The imprisonment terms for the s 325 Penal Code charge, the first of the s 376(1)(a) Penal Code fellatio charges and the s 376(1)(a) Penal Code sodomy charge are to run consecutively with effect from 27 February 2009 (the date of release from the sentence he was serving). The remaining imprisonment terms are to run concurrently with these three terms. The total sentence is 19 years imprisonment with effect from 27 February 2009 and 22 strokes of the cane.

## Conclusion

146 The prosecution submitted that Iryan and Hamdan should receive a global sentence of not less than 20 years' imprisonment coupled with 24 strokes of the cane and that Zameen should receive a total imprisonment term that was higher than that to be imposed on Iryan and on Hamdan, together with 24 strokes of the cane. I did not go as far as the prosecution had urged me to as I believed that the terms of imprisonment and the number of strokes of the cane imposed were already sufficiently severe and should be more than sufficient to punish the young accused persons for what they had done and to make an indelible mark on their consciousness on the need never to stray into violence or any other crime again. My sincere hope for the accused persons is that they will turn this very dark episode of their young lives into a brighter future upon their release. From my observation of them during the trial, they are extremely intelligent, determined and energetic young men who can achieve whatever they set their minds to do. I certainly do not see them as hopeless failures. They were able to grasp legal concepts and court procedures once these were explained to them. They have very agile minds.

147 My closing words for the accused persons are these: put these talents of yours to good use, discipline your minds and study something that interests you. I know you all can study because I have seen the way you memorised the contents of the documents in the Preliminary Inquiry bundle. You can overcome.

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[\[note: 1\]](#) Date of birth: 15 September 1987

[\[note: 2\]](#) Date of birth: 18 March 1989

[\[note: 3\]](#) Date of birth: 4 July 1987

[\[note: 4\]](#) Iryan (7<sup>th</sup> charge); Hamdan (5<sup>th</sup> charge); Zameen (8<sup>th</sup> charge)

[\[note: 5\]](#) Iryan (8<sup>th</sup> and 9<sup>th</sup> charges); Hamdan (6<sup>th</sup> and 7<sup>th</sup> charges); Zameen (9<sup>th</sup> and 10<sup>th</sup> charges)

[\[note: 6\]](#) Iryan (5<sup>th</sup> charge); Hamdan (4<sup>th</sup> charge); Zameen (6<sup>th</sup> charge)

[\[note: 7\]](#) Iryan (10<sup>th</sup> charge); Hamdan (8<sup>th</sup> charge); Zameen (11<sup>th</sup> charge)

[\[note: 8\]](#) Iryan (11<sup>th</sup> charge); Hamdan (9<sup>th</sup> charge); Zameen (12<sup>th</sup> charge)

[\[note: 9\]](#)Iryan (12<sup>th</sup> charge); Hamdan (10<sup>th</sup> charge); Zameen (13<sup>th</sup> charge)

[\[note: 10\]](#)Iryan (13<sup>th</sup> charge); Hamdan (11<sup>th</sup> charge); Zameen (14<sup>th</sup> charge)

[\[note: 11\]](#)Iryan (14<sup>th</sup> charge); Hamdan (12<sup>th</sup> charge); Zameen (15<sup>th</sup> charge)

[\[note: 12\]](#)Iryan (1<sup>st</sup> charge); Hamdan (1<sup>st</sup> charge); Zameen (1<sup>st</sup> charge)

[\[note: 13\]](#)Iryan (6<sup>th</sup> charge); Zameen (7<sup>th</sup> charge)

[\[note: 14\]](#)Day 1, Page 3, Lines 26-31

[\[note: 15\]](#)Day 1, Page 3, Lines 4-18

[\[note: 16\]](#)Day 1, Page 4, Lines 17-18

[\[note: 17\]](#)Day 10, Page 51, Lines 1-16, EIC by Zameen

[\[note: 18\]](#)Day 8, Page 59, Lines 3-22, Iryan EIC; Day 9, Page 74, Lines 8-22, Hamdan EIC; Day 10, Page 51, Lines 1-16; Zameen EIC

[\[note: 19\]](#)Iryan (2<sup>nd</sup> charge)

[\[note: 20\]](#)Iryan (3<sup>rd</sup> charge)

[\[note: 21\]](#)Iryan (4<sup>th</sup> charge)

[\[note: 22\]](#)Hamdan (2<sup>nd</sup> charge)

[\[note: 23\]](#)Hamdan (3<sup>rd</sup> charge)

[\[note: 24\]](#)Zameen (2<sup>nd</sup> charge)

[\[note: 25\]](#)Zameen (3<sup>rd</sup> charge)

[\[note: 26\]](#)Zameen (5<sup>th</sup> charge)

[\[note: 27\]](#)Zamen (4<sup>th</sup> charge)

[\[note: 28\]](#)Day 1, Page 3, Lines 26-31

[\[note: 29\]](#)Day 1, Page 3, Lines 4-8

[\[note: 30\]](#)Day 1, Page 4, Lines 5-16

[\[note: 31\]](#)Day 1, Page 4, Lines 5-16

[\[note: 32\]](#) Day 2, Page 12, Lines 17-26, XN by DKhoo (PW3 Victim)

[\[note: 33\]](#) Day 2, Page 12, Lines 27-32, XN by DKhoo (PW3 Victim); Day 2, Page 13, Lines 1-3, XN by DKhoo (PW3 Victim)

[\[note: 34\]](#) [3] of the victim's condition statement; Day 2, Page 13, Lines 15-18, XN by DKhoo (PW3 Victim)

[\[note: 35\]](#) Day 2, Page 14, Lines 3-9, XN by DKhoo (PW3 Victim)

[\[note: 36\]](#) See [2] – [3] of the victim's conditioned statement

[\[note: 37\]](#) Day 2, Page 12, Lines 13-14, XN by DKhoo (PW3 Victim)

[\[note: 38\]](#) [4] of the victim's conditioned statement; Day 2, Page 15, Lines 12-23, XN by DKhoo (PW3 Victim)

[\[note: 39\]](#) [4] of the victim's conditioned statement; Day 2, Page 15, Lines 24-27, XN by DKhoo (PW3 Victim)

[\[note: 40\]](#) [4] of the victim's conditioned statement; Day 2, Page 16, Lines 8-25, XN by DKhoo (PW3 Victim)

[\[note: 41\]](#) [5] of the victim's conditioned statement; Day 2, Page 17, Lines 1-32, XN by DKhoo (PW3 Victim)

[\[note: 42\]](#) [6] of the victim's conditioned statement

[\[note: 43\]](#) Day 2, Page 18, Lines 12-13, XN by DKhoo (PW3 Victim)

[\[note: 44\]](#) Day 2, Page 18, Lines 24-31, XN by DKhoo (PW3 Victim)

[\[note: 45\]](#) Day 2, Page 19, Lines 3-7, XN by DKhoo (PW3 Victim)

[\[note: 46\]](#) Day 2, Page 19, Lines 8-9, XN by DKhoo (PW3 Victim)

[\[note: 47\]](#) [7] of the victim's conditioned statement

[\[note: 48\]](#) Day 2, Page 19, Lines 22-26, XN by DKhoo (PW3 Victim)

[\[note: 49\]](#) Day 2, Page 99, Lines 10-14, XXN by Iryan (PW3 Victim)

[\[note: 50\]](#) Day 2, Page 36, Lines 14-18, XN by DKhoo (PW3 Victim)

[\[note: 51\]](#) Day 2, Page 36, Lines 19-32, XN by DKhoo (PW3 Victim)

[\[note: 52\]](#)Day 2, Page 38, Lines 19-22, XN by DKhoo (PW3 Victim)

[\[note: 53\]](#)[9] of the victim's conditioned statement

[\[note: 54\]](#)[9] of the victim's conditioned statement

[\[note: 55\]](#)[9] of the victim's conditioned statement

[\[note: 56\]](#)Page 195 of the PI Bundle

[\[note: 57\]](#)Day 2, Page 28, Lines 1-5, XN by DKhoo (PW3 Victim)

[\[note: 58\]](#)Day 2, Page 28, Lines 9-11, XN by DKhoo (PW3 Victim)

[\[note: 59\]](#)Day 2, Page 100, Lines 11-19, XXN by Iryan (PW3 Victim)

[\[note: 60\]](#)Day 2, Page 28, Lines 9-13, XN by DKhoo (PW3 Victim); Day 2, Page 29, Lines 24-26, XN by DKhoo (PW3 Victim)

[\[note: 61\]](#)See also [10] of the victim's conditioned statement

[\[note: 62\]](#)Day 2, Page 29, Lines 28-32, XN by DKhoo (PW3 Victim)

[\[note: 63\]](#)Day 2, Page 29, Lines 28-32, XN by DKhoo (PW3 Victim)

[\[note: 64\]](#)Day 2, Page 30, Lines 2-21, XN by DKhoo (PW3 Victim)

[\[note: 65\]](#)Day 2, Page 31, Lines 13-14, XN by DKhoo (PW3 Victim)

[\[note: 66\]](#)Day 2, Page 31, Lines 18-32, XN by DKhoo (PW3 Victim); Day 2, Page 32, Lines 1-12, XN by DKhoo (PW3 Victim)

[\[note: 67\]](#)Day 2, Page 32, Lines 12-15, XN by DKhoo (PW3 Victim)

[\[note: 68\]](#)Day 2, Page 33, Lines 4-20, XN by DKhoo (PW3 Victim)

[\[note: 69\]](#)Day 2, Page 33, Lines 21-22, XN by DKhoo (PW3 Victim)

[\[note: 70\]](#)Day 2, Page 102, Lines 2-9, XXN by Iryan (PW3 Victim)

[\[note: 71\]](#)[12] of the victim's conditioned statement; Day 2, Page 33, Lines 30-32, XN by DKhoo (PW3 Victim); Day 2, Page 34, Lines 1-28, XN by DKhoo (PW3 Victim)

[\[note: 72\]](#)Day 2, Page 35, Lines 2-27, XN by DKhoo (PW3 Victim)

[\[note: 73\]](#)Day 2, Page 37, Lines 6-11, XN by DKhoo (PW3 Victim)

[\[note: 74\]](#) Day 2, Page 37, Lines 17-26, XN by DKhoo (PW3 Victim)

[\[note: 75\]](#) [13] of the victim's conditioned statement; Day 2, Page 37, Lines 29-30, XN by DKhoo (PW3 Victim)

[\[note: 76\]](#) Day 2, Page 37, Lines 12-15, XN by DKhoo (PW3 Victim)

[\[note: 77\]](#) [14] of the victim's conditioned statement; Day 2, Page 37, Lines 30-31, XN by DKhoo (PW3 Victim)

[\[note: 78\]](#) Day 2, Page 38, Lines 5-6, XN by DKhoo (PW3 Victim)

[\[note: 79\]](#) Day 2, Page 38, Line 8, XN by DKhoo (PW3 Victim)

[\[note: 80\]](#) Day 2, Page 38, Lines 11-24, XN by DKhoo (PW3 Victim)

[\[note: 81\]](#) [15] of the victim's conditioned statement

[\[note: 82\]](#) Day 2, Page 38, Line 32, XN by DKhoo (PW3 Victim); Day 2, Page 39, Line 1, XN by DKhoo (PW3 Victim)

[\[note: 83\]](#) [16] of the victim's conditioned statement

[\[note: 84\]](#) [16] of the victim's conditioned statement

[\[note: 85\]](#) [17] of the victim's conditioned statement

[\[note: 86\]](#) Day 2, Page 39, Lines 25-38, XN by DKhoo (PW3 Victim)

[\[note: 87\]](#) Day 2, Page 39, Lines 28-30, XN by DKhoo (PW3 Victim)

[\[note: 88\]](#) Day 2, Page 39, Lines 31-32, XN by DKhoo (PW3 Victim)

[\[note: 89\]](#) [18] of the victim's conditioned statement

[\[note: 90\]](#) Day 2, Page 40, Lines 7-14, XN by DKhoo (PW3 Victim)

[\[note: 91\]](#) Day 2, Page 41, Lines 31-32, XN by DKhoo (PW3 Victim); Day 2, Page 42, Lines 1-5, XN by DKhoo (PW3 Victim)

[\[note: 92\]](#) Day 2, Page 42, Lines 9-13, XN by DKhoo (PW3 Victim)

[\[note: 93\]](#) [19] of the victim's conditioned statement; Day 2, Page 42, Lines 28-29, XN by DKhoo (PW3 Victim)

[\[note: 94\]](#) Day 2, Page 43, Lines 1-16, XN by DKhoo (PW3 Victim); Day 2, Page 44, Lines 18-19, XN by

DKhoo (PW3 Victim)

[\[note: 95\]](#) Day 2, Page 44, Lines 20-23, XN by DKhoo (PW3 Victim)

[\[note: 96\]](#) Day 2, Page 44, Line 25, XN by DKhoo (PW3 Victim)

[\[note: 97\]](#) Day 2, Page 43, Lines 17-26, XN by DKhoo (PW3 Victim)

[\[note: 98\]](#) Day 2, Page 45, Lines 2-32, XN by DKhoo (PW3 Victim); Day 2, Page 46, Lines 1-17, XN by DKhoo (PW3 Victim)

[\[note: 99\]](#) Day 2, Page 44, Lines 26-27, XN by DKhoo (PW3 Victim)

[\[note: 100\]](#) [20] of the victim's conditioned statement; Day 2, Page 44, Lines 28-32, XN by DKhoo (PW3 Victim); Day 2, Page 45, Line 1, XN by DKhoo (PW3 Victim)

[\[note: 101\]](#) Day 2, Page 46, Lines 31-32, XN by DKhoo (PW3 Victim)

[\[note: 102\]](#) Day 2, Page 47, Lines 12-15, XN by DKhoo (PW3 Victim)

[\[note: 103\]](#) Day 2, Page 47, Line 1, XN by DKhoo (PW3 Victim)

[\[note: 104\]](#) Day 2, Page 47, Lines 17-18, XN by DKhoo (PW3 Victim)

[\[note: 105\]](#) Day 2, Page 47, Line 22, XN by DKhoo (PW3 Victim)

[\[note: 106\]](#) Day 2, Page 47, Lines 28-31, XN by DKhoo (PW3 Victim)

[\[note: 107\]](#) Day 2, Page 48, Lines 1-5, XN by DKhoo (PW3 Victim)

[\[note: 108\]](#) [21] of the victim's conditioned statement; Day 2, Page 49, Line 24, XN by DKhoo (PW3 Victim)

[\[note: 109\]](#) Page 195-197 of the PI Bundle

[\[note: 110\]](#) Page 205 of the PI Bundle

[\[note: 111\]](#) Page 209-211 of the PI Bundle

[\[note: 112\]](#) Iryan (2<sup>nd</sup> charge)

[\[note: 113\]](#) Day 2, Page 23, Lines 26-32, XN by DKhoo (PW3 Victim)

[\[note: 114\]](#) Day 2, Page 24, Lines 1-12, XN by DKhoo (PW3 Victim)

[\[note: 115\]](#) Day 2, Page 51, Lines 3-8, XN by DKhoo (PW3 Victim)

[\[note: 116\]](#)[22] of the victim's conditioned statement

[\[note: 117\]](#)Day 2, Page 50, Lines 16-32, XN by DKhoo (PW3 Victim)

[\[note: 118\]](#)Day 2, Page 25, Lines 3-7, XN by DKhoo (PW3 Victim)

[\[note: 119\]](#)[22] of the victim's conditioned statement; Day 2, Page 51, Lines 13-21, XN by DKhoo (PW3 Victim)

[\[note: 120\]](#)Day 2, Page 51, Lines 23-29, XN by DKhoo (PW3 Victim)

[\[note: 121\]](#)Day 2, Page 52, Lines 1-19, XN by DKhoo (PW3 Victim)

[\[note: 122\]](#)Day 2, Page 52, Lines 21-29, XN by DKhoo (PW3 Victim)

[\[note: 123\]](#)Day 2, Page 52, Lines 31-32, XN by DKhoo (PW3 Victim)

[\[note: 124\]](#)Day 2, Page 53, Line 6, XN by DKhoo (PW3 Victim)

[\[note: 125\]](#)Day 2, Page 53, Line 7, XN by DKhoo (PW3 Victim)

[\[note: 126\]](#)Day 2, Page 53, Lines 15-18, XN by DKhoo (PW3 Victim)

[\[note: 127\]](#)Day 2, Page 53, Lines 8-9, XN by DKhoo; [23] of the victim's conditioned statement

[\[note: 128\]](#)Day 2, Page 53, Lines 24-28, XN by DKhoo

[\[note: 129\]](#)Day 2, Page 54, Lines 15-32, XN by DKhoo (PW3 Victim)

[\[note: 130\]](#)[24] of the victim's conditioned statement

[\[note: 131\]](#)Day 2, Page 55, Lines 1-30, XN by DKhoo (PW3 Victim)

[\[note: 132\]](#)[24] of the victim's conditioned statement; Day 2, Page 56, Lines 16-24, XN by DKhoo (PW3 Victim)

[\[note: 133\]](#)Day 2, Page 56, Lines 15-17, XN by DKhoo (PW3 Victim)

[\[note: 134\]](#)Day 2, Page 57, Lines 14-18, XN by DKhoo (PW3 Victim)

[\[note: 135\]](#)Day 2, Page 57, Lines 22-23, XN by DKhoo (PW3 Victim)

[\[note: 136\]](#)Day 2, Page 57, Line 24, XN by DKhoo (PW3 Victim)

[\[note: 137\]](#)Day 2, Page 58, Lines 5-8, XN by DKhoo (PW3 Victim)

[\[note: 138\]](#)Day 2, Page 58, Lines 12-15, XN by DKhoo (PW3 Victim)

[\[note: 139\]](#)Day 2, Page 58, Lines 24-30, XN by DKhoo (PW3 Victim); [25] of the victim's conditioned statement

[\[note: 140\]](#)Day 2, Page 59, Lines 16-31, XN by DKhoo (PW3 Victim); [25] of the victim's conditioned statement

[\[note: 141\]](#)[25] of the victim's conditioned statement; Day 2, Page 61, Lines 17-19, XN by DKhoo (PW3 Victim)

[\[note: 142\]](#)Day 2, Page 59, Line 32, XN by DKhoo (PW3 Victim); Day 2, Page 60, Lines 1-2, XN by DKhoo (PW3 Victim); Day 2, Page 61, Lines 5-13, XN by DKhoo (PW3 Victim)

[\[note: 143\]](#)Day 2, Page 61, Lines 17-23, XN by DKhoo (PW3 Victim)

[\[note: 144\]](#)Day 2, Page 61, Lines 25-32, XN by DKhoo (PW3 Victim)

[\[note: 145\]](#)[26] of the victim's conditioned statement ; Day 2, Page 62, Lines 1-7, XN by DKhoo (PW3 Victim)

[\[note: 146\]](#)[26] of the victim's conditioned statement ; Day 2, Page 62, Lines 8-21, XN by DKhoo (PW3 Victim)

[\[note: 147\]](#)Day 2, Page 62, Lines 23-25, XN by DKhoo (PW3 Victim)

[\[note: 148\]](#)Day 2, Page 63, Lines 6-9, XN by DKhoo (PW3 Victim)

[\[note: 149\]](#)Day 2, Page 62, Lines 29-32, XN by DKhoo (PW3 Victim)

[\[note: 150\]](#)Day 2, Page 63, Lines 4-5, XN by DKhoo (PW3 Victim)

[\[note: 151\]](#)Day 2, Page 63, Line 13, XN by DKhoo (PW3 Victim)

[\[note: 152\]](#)Page 197-198 of the PI Bundle

[\[note: 153\]](#)Page 205-206 of the PI Bundle

[\[note: 154\]](#)Page 211, PI Bundle

[\[note: 155\]](#)Page 318, PI Bundle

[\[note: 156\]](#)Day 8, Page 25, Lines 3-5, XN by Sellamuthoo (PW45 Norman Malimar)

[\[note: 157\]](#)Page 323, PI Bundle



[\[note: 158\]](#)Which Hamdan admitted in court was a lie as the lights were already out: Day 9, Page 123, Lines 16-32, XN by DKhoo (DW3 Muhammad Hamdan bin Abdul Rahman); Day 9, Page 124, Lines -4, XN by DKhoo (DW3 Muhammad Hamdan bin Abdul Rahman)

[\[note: 159\]](#)Which Hamdan admitted in court was a lie: Day 9, Page 124, Lines 24-28, XN by DKhoo (DW3 Muhammad Hamdan bin Abdul Rahman)

[\[note: 160\]](#)Hamdan (2<sup>nd</sup> charge)

[\[note: 161\]](#)Day 8, Page 29, Lines 29-32, XN by Sellamuthoo (PW47 Rizal bin Abdul Rahman); Day 8, Page 30, Lines 1-3, XN by Sellamuthoo (PW47 Rizal bin Abdul Rahman)

[\[note: 162\]](#)[\[27\]](#) of the victim's conditioned statement; Day 2, Page 64, Lines 18-25, XN by DKhoo (PW3 Victim)

[\[note: 163\]](#)Day 2, Page 64, Lines 24-29, XN by DKhoo (PW3 Victim)

[\[note: 164\]](#)Day 2, Page 64, Lines 30-31, XN by DKhoo (PW3 Victim)

[\[note: 165\]](#)Day 2, Page 66, Lines 27-31, XN by DKhoo (PW3 Victim)

[\[note: 166\]](#)Day 2, Page 72, Lines 26-30, XN by DKhoo (PW3 Victim)

[\[note: 167\]](#)Day 2, Page 67, Lines 16-32, XN by DKhoo (PW3 Victim); Day 2, Page 68, Lines 1-31, XN by DKhoo (PW3 Victim)

[\[note: 168\]](#)Day 2, Page 72, Lines 23-24, XN by DKhoo (PW3 Victim)

[\[note: 169\]](#)Day 2, Page 69, Lines 1-32, XN by DKhoo (PW3 Victim)

[\[note: 170\]](#)Day 2, Page 70, Lines 3-8, XN by DKhoo (PW3 Victim)

[\[note: 171\]](#)Day 2, Page 70, Lines 10-14, XN by DKhoo (PW3 Victim)

[\[note: 172\]](#)Day 2, Page 72, Lines 29-32, XN by DKhoo (PW3 Victim)

[\[note: 173\]](#)[\[30\]](#) of the victim's conditioned statement; Day 2, Page 70, Lines 26-32, XN by DKhoo; (PW3 Victim) Day 2, Page 71, Lines 1-14, XN by DKhoo (PW3 Victim)

[\[note: 174\]](#)Day 2, Page 71, Lines 17-22, XN by DKhoo (PW3 Victim)

[\[note: 175\]](#)Day 2, Page 71, Lines 23-30, XN by DKhoo (PW3 Victim)

[\[note: 176\]](#)Day 2, Page 72, Lines 1-12, XN by DKhoo (PW3 Victim)

[\[note: 177\]](#)Day 2, Page 73, Lines 18-29, XN by DKhoo (PW3 Victim)

[\[note: 178\]](#)[\[31\]](#) of the victim's conditioned statement

[\[note: 179\]](#)Day 2, Page 74, Lines 8-32, XN by DKhoo (PW3 Victim); Day 2, Page 75, Lines 1-15, XN by DKhoo (PW3 Victim); [\[31\]](#) of the victim's conditioned statement

[\[note: 180\]](#)Day 2, Page 75, Lines 20-29, XN by DKhoo (PW3 Victim)

[\[note: 181\]](#)Day 2, Page 75, Lines 31-32, XN by DKhoo (PW3 Victim)

[\[note: 182\]](#)Day 2, Page 76, Lines 10-12, XN by DKhoo (PW3 Victim)

[\[note: 183\]](#)Day 2, Page 77, Lines 6-7, XN by DKhoo (PW3 Victim)

[\[note: 184\]](#)Day 2, Page 77, Lines 12-14, XN by DKhoo (PW3 Victim)

[\[note: 185\]](#)[\[33\]](#) of the victim's conditioned statement

[\[note: 186\]](#)[\[33\]](#) of the victim's conditioned statement

[\[note: 187\]](#)Day 2, Page 77, Lines 27-32, XN by DKhoo (PW3 Victim)

[\[note: 188\]](#)Day 2, Page 77, Lines 16-26, XN by DKhoo (PW3 Victim)

[\[note: 189\]](#)Day 2, Page 77, Lines 16-17, XN by DKhoo (PW3 Victim)

[\[note: 190\]](#)Day 2, Page 78, Lines 10-30, XN by DKhoo (PW3 Victim)

[\[note: 191\]](#)Day 2, Page 79, Lines 1-30, XN by DKhoo (PW3 Victim)

[\[note: 192\]](#)Day 2, Page 80, Lines 1-2, XN by DKhoo (PW3 Victim)

[\[note: 193\]](#)[\[34\]](#) of the victim's conditioned statement

[\[note: 194\]](#)[\[34\]](#) of the victim's conditioned statement

[\[note: 195\]](#)Day 2, Page 80, Lines 3-6, XN by DKhoo (PW3 Victim)

[\[note: 196\]](#)Page 197-198 of the PI Bundle

[\[note: 197\]](#)Page 206, PI Bundle

[\[note: 198\]](#)Page 211, PI Bundle

[\[note: 199\]](#)Page 323, PI Bundle

[\[note: 200\]](#)Day 2, Page 80, Lines 7-18, XN by DKhoo (PW3 Victim)

[\[note: 201\]](#)[\[37\]](#) of the victim's conditioned statement

[\[note: 202\]](#)[\[37\]](#) of the victim's conditioned statement

[\[note: 203\]](#)[\[38\]](#) of the victim's conditioned statement

[\[note: 204\]](#)[\[36\]](#) of the victim's conditioned statement

[\[note: 205\]](#)Page 211, PI Bundle

[\[note: 206\]](#)Page 323-324, PI Bundle

[\[note: 207\]](#)Day 2, Page 80, Lines 27-32, XN by DKhoo (PW3 Victim); [\[39\]](#) of the victim's conditioned statement

[\[note: 208\]](#)Page 206, PI Bundle

[\[note: 209\]](#)Page 211, PI Bundle

[\[note: 210\]](#)Page 323-324, PI Bundle

[\[note: 211\]](#)PW13

[\[note: 212\]](#)[\[40\]](#) of the victim's conditioned statement

[\[note: 213\]](#)[\[41\]](#) of the victim's conditioned statement

[\[note: 214\]](#)[\[42\]](#) of the victim's conditioned statement

[\[note: 215\]](#)Page 206, PI Bundle

[\[note: 216\]](#)Page 211, PI Bundle

[\[note: 217\]](#)Day 2, Page 81, Lines 27, XN by DKhoo (PW3 Victim)

[\[note: 218\]](#)Day 2, Page 81, Lines 30-32, XN by DKhoo (PW3 Victim); Day 2, Page 82, Lines 1-16, XN by DKhoo (PW3 Victim)

[\[note: 219\]](#)[\[43\]](#) of the victim's conditioned statement

[\[note: 220\]](#)Day 2, Page 83, Lines 2-11, XN by DKhoo (PW3 Victim)

[\[note: 221\]](#)Day 2, Page 83, Lines 12-21, XN by DKhoo (PW3 Victim)

[\[note: 222\]](#)Day 2, Page 82, Lines 27-32, XN by DKhoo (PW3 Victim)

[\[note: 223\]](#)Day 2, Page 84, Lines 3-14, XN by DKhoo (PW3 Victim)

[\[note: 224\]](#)[44] of the victim's conditioned statement

[\[note: 225\]](#)Day 2, Page 82, Lines 18-22, XN by DKhoo (PW3 Victim)

[\[note: 226\]](#)Page 198-199 of the PI Bundle

[\[note: 227\]](#)Page 211-212, PI Bundle

[\[note: 228\]](#)Page 319, PI Bundle

[\[note: 229\]](#)Page 323-324, PI Bundle

[\[note: 230\]](#)Day 2, Page 84, Lines 28-32, XN by DKhoo (PW3 Victim)

[\[note: 231\]](#)Day 2, Page 85, Lines 7-21, XN by DKhoo (PW3 Victim)

[\[note: 232\]](#)Day 2, Page 85, Lines 24-27, XN by DKhoo (PW3 Victim)

[\[note: 233\]](#)Day 2, Page 85, Lines 28-32, XN by DKhoo (PW3 Victim); Day 2, Page 86, Lines 1-2, XN by DKhoo (PW3 Victim);

[\[note: 234\]](#)Day 2, Page 86, Lines 1-10, XN by DKhoo (PW3 Victim)

[\[note: 235\]](#)Day 2, Page 86, Lines 17-25, XN by DKhoo (PW3 Victim)

[\[note: 236\]](#)Day 2, Page 86, Lines 30-32, XN by DKhoo (PW3 Victim); Day 2, Page 87, Lines 1-3, XN by DKhoo (PW3 Victim)

[\[note: 237\]](#)Day 2, Page 87, Lines 13-31, XN by DKhoo (PW3 Victim)

[\[note: 238\]](#)Day 2, Page 89, Lines 1-6, XN by DKhoo (PW3 Victim)

[\[note: 239\]](#)Day 2, Page 87, Lines 5-12, XN by DKhoo (PW3 Victim)

[\[note: 240\]](#)Page 211, PI Bundle

[\[note: 241\]](#)Iryan (4<sup>th</sup> charge)

[\[note: 242\]](#)Page 319, PI Bundle

[\[note: 243\]](#)Which Hamdan admitted in court was a "mistake; Day 9, Page 132, Lines 21-32, XXN by DKhoo (DW3 Muhammad Hamdan bin Abdul Rahman); Day 9, Page 133, Lines 1-18, XXN by DKhoo (DW3 Muhammad Hamdan bin Abdul Rahman)

[\[note: 244\]](#)Page 323-324, PI Bundle

[\[note: 245\]](#)Hamdan (3<sup>rd</sup> charge)

[\[note: 246\]](#)Day 8, Page 30, Lines 14-18, XN by Sellamuthoo (PW47 Rizal bin Abdul Rahman)

[\[note: 247\]](#)[46] of the victim's conditioned statement

[\[note: 248\]](#)Page 211, PI Bundle

[\[note: 249\]](#)Day 2, Page 90, Lines 9-12, XN by DKhoo (PW3 Victim)

[\[note: 250\]](#)Day 2, Page 90, Lines 3-8, XN by DKhoo (PW3 Victim)

[\[note: 251\]](#)Day 2, Page 90, Lines 14-20, XN by DKhoo (PW3 Victim)

[\[note: 252\]](#)Day 2, Page 90, Lines 18-28, XN by DKhoo (PW3 Victim)

[\[note: 253\]](#)[47] of the victim's conditioned statement

[\[note: 254\]](#)Day 2, Page 91, Lines 12-16, XN by DKhoo (PW3 Victim)

[\[note: 255\]](#)Day 2, Page 91, Lines 18-32, XN by DKhoo (PW3 Victim)

[\[note: 256\]](#)Day 2, Page 92, Lines 4-31, XN by DKhoo (PW3 Victim)

[\[note: 257\]](#)Day 5, Page 11, Lines 9-11, XN by DKhoo (PW4 Panineer Sathisvaran)

[\[note: 258\]](#)Day 5, Page 9, Lines 6-15, XN by DKhoo (PW4 Panineer Sathisvaran)

[\[note: 259\]](#)Day 5, Page 7, Lines 7-11, XN by DKhoo (PW4 Panineer Sathisvaran)

[\[note: 260\]](#)[4], Conditioned Statement, PW4 Panineer Sathisvaran (Page 99, PI Bundle)

[\[note: 261\]](#)[4], Conditioned Statement, PW4 Panineer Sathisvaran (Page 99, PI Bundle); Day 5, Page 7, Lines 1-4, XN by DKhoo (PW4 Panineer Sathisvaran)

[\[note: 262\]](#)[5], Conditioned Statement, PW4 Panineer Sathisvaran (Page 99, PI Bundle)

[\[note: 263\]](#)Day 5, Page 71, Lines 9-17, XN by Sellamuthoo (PW6 Muruganantham)

[\[note: 264\]](#)[3], Conditioned Statement, PW6 Muruganantham (Page 101, PI Bundle); Day 5, Page 71, Lines 26-29, XN by Sellamuthoo (PW6 Muruganantham)

[\[note: 265\]](#)[4], Conditioned Statement, PW6 Muruganantham (Page 101, PI Bundle); Day 5, Page 72, Lines 2-18, XN by Sellamuthoo (PW6 Muruganantham)

[\[note: 266\]](#)[6], Conditioned Statement, PW7 Muhamad Solikin (Page 95, PI Bundle); Day 5, Page 87, Lines 14-29, XN by Sellamuthoo (PW7 Muhamad Solikin)

[\[note: 267\]](#)Day 5, Page 87, Lines 1-5, XN by Sellamuthoo (PW7 Muhamad Solikin)

[\[note: 268\]](#)[3], Conditioned Statement, PW7 Muhamad Solikin (Page 94, PI Bundle); Day 5, Page 85, Lines 24-31, XN by Sellamuthoo (PW7 Muhamad Solikin)

[\[note: 269\]](#)[3], Conditioned Statement, PW7 Muhamad Solikin (Page 94, PI Bundle); Day 5, Page 86, Lines 1-11, XN by Sellamuthoo (PW7 Muhamad Solikin)

[\[note: 270\]](#)[3], Conditioned Statement, PW8 Lutfi Subagio (Page 94, PI Bundle)

[\[note: 271\]](#)Day 5, Page 106, Lines 7-10, XXN by Iryan (PW8 Lutfi Subagio)

[\[note: 272\]](#)Day 5, Page 106, Lines 19-32, XXN by Iryan (PW8 Lutfi Subagio); Day 5, Page 107, Lines 1-2, XXN by Iryan (PW8 Lutfi Subagio)

[\[note: 273\]](#)Day 5, Page 117, Lines 11-19, XXN by Zameen (PW8 Lutfi Subagio); Day 5, Page 120, Lines 23-32, RXN by DKhoo (PW8 Lutfi Subagio)

[\[note: 274\]](#)Day 5, Page 112, Lines 20-32, XXN by Zameen (PW8 Lutfi Subagio); Day 5, Page 113, Lines 1-29, XXN by Zameen (PW8 Lutfi Subagio)

[\[note: 275\]](#)Day 5, Page 114, Lines 1-24, XXN by Zameen (PW8 Lutfi Subagio)

[\[note: 276\]](#)Day 6, Page 50, Lines 25-32, XXN by Zameen (PW10 Mohamad Muhayaddin bin Sapari)

[\[note: 277\]](#)Day 6, Page 51, Lines 28-29, XXN by Zameen (PW10 Mohamad Muhayaddin bin Sapari)

[\[note: 278\]](#)Day 6, Page 51, Lines 2-7, XXN by Zameen (PW10 Mohamad Muhayaddin bin Sapari)

[\[note: 279\]](#)PW9

[\[note: 280\]](#)Day 6, Page 39, Lines 20-31, Questions by the Court (PW9 Shahril Abdul Ghani)

[\[note: 281\]](#)Day 6, Page 39, Lines 4-19, Questions by the Court (PW9 Shahril Abdul Ghani)

[\[note: 282\]](#)Day 6, Page 51, Lines 9-10, XXN by Zameen (PW10 Mohamad Muhayaddin bin Sapari)

[\[note: 283\]](#)PW11

[\[note: 284\]](#)Day 6, Page 56, Lines 7-13, XN by Sellamuthoo (PW11 Seek Hock Meng Kevin)

[\[note: 285\]](#)[6], Conditioned statement at pp115, PI Bundle; Day 6, Page 56, Lines 26-32, XN by Sellamuthoo (PW11 Seek Hock Meng Kevin)

[\[note: 286\]](#) PW26

[\[note: 287\]](#) Day 7, Page 36, Lines 12-16, XN by DKhoo (PW26 Dr Tan Ching Ching Elaine)

[\[note: 288\]](#) Day 7, Page 40, Lines 4-5, XXN by Zameen (PW26 Dr Tan Ching Ching Elaine)

[\[note: 289\]](#) Day 7, Page 37, Lines 5-22, XN by DKhoo (PW26 Dr Tan Ching Ching Elaine)

[\[note: 290\]](#) Page 153, PI Bundle

[\[note: 291\]](#) Page 150-153, PI Bundle

[\[note: 292\]](#) Day 7, Page 45, Lines 18-23, XN by DKhoo (PW27 Dr Andrew Tan Gee Seng)

[\[note: 293\]](#) Day 7, Page 45, Lines 24-26, XN by DKhoo (PW27 Dr Andrew Tan Gee Seng)

[\[note: 294\]](#) Day 7, Page 46, Lines 4-17, XN by DKhoo (PW27 Dr Andrew Tan Gee Seng)

[\[note: 295\]](#) Day 7, Page 46, Lines 18-26, XN by DKhoo (PW27 Dr Andrew Tan Gee Seng)

[\[note: 296\]](#) Day 7, Page 46, Lines 30-32, XN by DKhoo (PW27 Dr Andrew Tan Gee Seng); Day 7, Page 47, Lines 1-12, XN by DKhoo (PW27 Dr Andrew Tan Gee Seng)

[\[note: 297\]](#) Day 7, Page 48, Lines 7-21, XN by DKhoo (PW27 Dr Andrew Tan Gee Seng)

[\[note: 298\]](#) Day 7, Page 58, Lines 17-30, XN by DKhoo (PW28 Dr Lim Tiek Wai)

[\[note: 299\]](#) Day 7, Page 49, Lines 10-32, XN by DKhoo (PW27 Dr Andrew Tan Gee Seng)

[\[note: 300\]](#) Day 7, Page 44, Lines 20-31, XN by DKhoo (PW27 Dr Andrew Tan Gee Seng)

[\[note: 301\]](#) PW27

[\[note: 302\]](#) Day 7, Page 47, Lines 13-27, XN by DKhoo (PW27 Dr Andrew Tan Gee Seng)

[\[note: 303\]](#) Day 7, Page 48, Lines 22-29, XN by DKhoo (PW27 Dr Andrew Tan Gee Seng)

[\[note: 304\]](#) Day 7, Page 50, Lines 13-19, XN by DKhoo (PW27 Dr Andrew Tan Gee Seng)

[\[note: 305\]](#) Day 7, Page 50, Lines 21-32, XN by DKhoo (PW27 Dr Andrew Tan Gee Seng); Day 7, Page 51, Lines 1-17, XN by DKhoo (PW27 Andrew Tan Gee Seng)

[\[note: 306\]](#) Day 7, Page 51, Lines 27-31, XN by DKhoo (PW27 Dr Andrew Tan Gee Seng)

[\[note: 307\]](#) Day 7, Page 51, Line 32, XN by DKhoo (PW27 Dr Andrew Tan Gee Seng); Day 7, Page 52, Lines 1-2, XN by DKhoo (PW27 Dr Andrew Tan Gee Seng)

[\[note: 308\]](#)PW42

[\[note: 309\]](#)Day 8, Page 10, Lines 27-31, XN by DKhoo (PW42 Dr June Lee)

[\[note: 310\]](#)Page 154, PI Bundle

[\[note: 311\]](#)Page 159, PI Bundle

[\[note: 312\]](#)Day 7, Page 57, Lines 22-28, XN by DKhoo (PW28 Dr Lim Tiek Wai)

[\[note: 313\]](#)PW28

[\[note: 314\]](#)Day 7, Page 56, Lines 8-17, XN by DKhoo (PW28 Dr Lim Tiek Wai)

[\[note: 315\]](#)Day 7, Page 57, Lines 1-11, XN by DKhoo (PW28 Dr Lim Tiek Wai)

[\[note: 316\]](#)Day 7, Page 59, Lines 1-5, XN by DKhoo (PW28 Dr Lim Tiek Wai)

[\[note: 317\]](#)Day 7, Page 59, Lines 1-23, XN by DKhoo (PW28 Dr Lim Tiek Wai)

[\[note: 318\]](#)Day 7, Page 60, Lines 15-28, XN by DKhoo (PW28 Dr Lim Tiek Wai)

[\[note: 319\]](#)Day 7, Page 63, Lines 1-5, XN by DKhoo (PW28 Dr Lim Tiek Wai)

[\[note: 320\]](#)PW34

[\[note: 321\]](#)Page 179, PI Bundle

[\[note: 322\]](#)Day 7, Page 92, Lines 26-27, XN by DKhoo (PW34 Dr Lim Swee Ho)

[\[note: 323\]](#)Day 7, Page 93, Lines 14-18, XN by DKhoo (PW28 Dr Lim Tiek Wai)

[\[note: 324\]](#)Day 7, Page 62, Lines 14-15, XN by DKhoo (PW28 Dr Lim Tiek Wai)

[\[note: 325\]](#)Page 185, 183, 182, PI Bundle

[\[note: 326\]](#)PW31

[\[note: 327\]](#)Page 171-172, PI Bundle

[\[note: 328\]](#)Day 7, Page 76, Lines 27-32, XN by DKhoo (PW31 Dr Tan Hui Kheng); Day 7, Page 77, Lines 1-7, XN by DKhoo (PW31 Dr Tan Hui Kheng)

[\[note: 329\]](#)Day 7, Page 78, Lines 13-24, XN by DKhoo (PW31 Dr Tan Hui Kheng)

[\[note: 330\]](#)Day 10, Page 51, Lines 1-16, EIC by Zameen



[\[note: 331\]](#)Day 11, Page 85, Lines 21-27, XN by DKhoo (DW4 Zameen bin Abdul Manoff); Day 11, Page 86, Lines 21-23, XN by DKhoo (DW4 Zameen bin Abdul Manoff)

[\[note: 332\]](#)Day 8, Page 59, Lines 3-22, Iryan EIC

[\[note: 333\]](#)Day 9, Page 74, Lines 8-17, Hamdan EIC

[\[note: 334\]](#)Day 1, Page 3, Lines 26-31

[\[note: 335\]](#)Day 1, Page 3, Lines 4-8

[\[note: 336\]](#)Day 1, Page 4, Lines 5-16

[\[note: 337\]](#)Day 8, Page 54, Lines 18-24, Iryan EIC

[\[note: 338\]](#)Day 8, Page 54, Lines 25-31, Iryan EIC

[\[note: 339\]](#)Day 9, Page 31, Lines 6-7, XXN by Sellamuthoo (DW1 Iryan bin Abdul Karim)

[\[note: 340\]](#)Day 9, Page 29, Lines 29-31, XXN by Sellamuthoo (DW1 Iryan bin Abdul Karim)

[\[note: 341\]](#)Day 9, Page 30, Lines 10-11, XXN by Sellamuthoo (DW1 Iryan bin Abdul Karim)

[\[note: 342\]](#)Day 9, Page 30, Lines 21-26, XXN by Sellamuthoo (DW1 Iryan bin Abdul Karim)

[\[note: 343\]](#)Day 9, Page 70, Lines 5-32, Hamdan EIC; Day 9, Page 71, Lines 1-5, Hamdan EIC

[\[note: 344\]](#)Day 9, Page 79, Lines 7-14, XXN by Iryan (DW2 Muhammad Hamdan bin Abdul Rahman)

[\[note: 345\]](#)Day 10, Page 40, Lines 24-32, Zameen EIC

[\[note: 346\]](#)Day 10, Page 41, Lines 1-32, Zameen EIC; Day 10, Page 42, Lines 1-4, Zameen EIC

[\[note: 347\]](#)Day 10, Page 42, Lines 10-12, Zameen EIC

[\[note: 348\]](#)Day 10, Page 42, Lines 1-32, Zameen EIC

[\[note: 349\]](#)Day 10, Page 43, Lines 1-32, Zameen EIC

[\[note: 350\]](#)Day 8, Page 54, Line 2, Iryan EIC

[\[note: 351\]](#)Day 1, Page 4, Lines 5-16

[\[note: 352\]](#)Day 8, Page 65, Lines 17-18, XXN by Zameen (DW1 Iryan bin Abdul Karim)

[\[note: 353\]](#)Day 8, Page 66, Lines 28-30, XXN by Zameen (DW1 Iryan bin Abdul Karim)

[\[note: 354\]](#)Day 8, Page 66, Lines 5-6, XXN by Zameen (DW1 Iryan bin Abdul Karim)

[\[note: 355\]](#)Day 8, Page 66, Lines 19-25, XXN by Zameen (DW1 Iryan bin Abdul Karim)

[\[note: 356\]](#)Day 8, Page 66, Lines 31-32, XXN by Zameen (DW1 Iryan bin Abdul Karim); Day 8, Page 67, Lines 1-2, XXN by Zameen (DW1 Iryan bin Abdul Karim)

[\[note: 357\]](#)Day 8, Page 67, Lines 9-32, XXN by Zameen (DW1 Iryan bin Abdul Karim)

[\[note: 358\]](#)Day 8, Page 73, Lines 8-10, XXN by Zameen (DW1 Iryan bin Abdul Karim)

[\[note: 359\]](#)PW39

[\[note: 360\]](#)Day 8, Page 69, Lines 1-22, XXN by Zameen (DW1 Iryan bin Abdul Karim)

[\[note: 361\]](#)Day 8, Page 71, Lines 9-29, XXN by Zameen (DW1 Iryan bin Abdul Karim)

[\[note: 362\]](#)Day 8, Page 72, Lines 21-26, XXN by Zameen (DW1 Iryan bin Abdul Karim)

[\[note: 363\]](#)Day 9, Page 33, Lines 12-21, XXN by Sellamuthoo (DW1 Iryan bin Abdul Karim)

[\[note: 364\]](#)Day 9, Page 33, Lines 22-32, XXN by Sellamuthoo (DW1 Iryan bin Abdul Karim); Day 9, Page 34, Lines 1-32, XXN by Sellamuthoo (DW1 Iryan bin Abdul Karim)

[\[note: 365\]](#)Day 9, Page 36, Lines 15-32, XXN by Sellamuthoo (DW1 Iryan bin Abdul Karim)

[\[note: 366\]](#)Day 9, Page 37, Lines 1-24, XXN by Sellamuthoo (DW1 Iryan bin Abdul Karim); Day 9, Page 38, Lines 19-20, XXN by Sellamuthoo (DW1 Iryan bin Abdul Karim)

[\[note: 367\]](#)Day 9, Page 38, Lines 21-27, XXN by Sellamuthoo (DW1 Iryan bin Abdul Karim); Day 9, Page 45, Lines 19-23, XXN by Sellamuthoo (DW1 Iryan bin Abdul Karim)

[\[note: 368\]](#)Day 9, Page 40, Lines 20-24, XXN by Sellamuthoo (DW1 Iryan bin Abdul Karim)

[\[note: 369\]](#)PW40

[\[note: 370\]](#)Day 9, Page 45, Lines 11-17, XXN by Sellamuthoo (DW1 Iryan bin Abdul Karim)

[\[note: 371\]](#)Day 9, Page 41, Lines 14-31, XXN by Sellamuthoo (DW1 Iryan bin Abdul Karim)

[\[note: 372\]](#)Day 9, Page 43, Lines 17-19, XXN by Sellamuthoo (DW1 Iryan bin Abdul Karim)

[\[note: 373\]](#)Day 9, Page 43, Lines 1-2, XXN by Sellamuthoo (DW1 Iryan bin Abdul Karim); Day 9, Page 44, Lines 23-30, XXN by Sellamuthoo (DW1 Iryan bin Abdul Karim)

[\[note: 374\]](#)Day 9, Page 82, Lines 5-17, XXN by Zameen (DW3 Muhammad Hamdan bin Abdul Rahman);  
Day 9, Page 88, Lines 7-8, XXN by Zameen (DW3 Muhammad Hamdan bin Abdul Rahman)

[\[note: 375\]](#)PW44

[\[note: 376\]](#)Day 9, Page 82, Lines 6-32, XXN by Zameen (DW3 Muhammad Hamdan bin Abdul Rahman)

[\[note: 377\]](#)PW48

[\[note: 378\]](#)Day 9, Page 86, Lines 8-11, XXN by Zameen (DW3 Muhammad Hamdan bin Abdul Rahman)

[\[note: 379\]](#)Day 9, Page 84, Lines 16-32, XXN by Zameen (DW3 Muhammad Hamdan bin Abdul Rahman)

[\[note: 380\]](#)Day 9, Page 85, Lines 1-14, XXN by Zameen (DW3 Muhammad Hamdan bin Abdul Rahman);  
Day 9, Page 87, Lines 19-21, XXN by Zameen (DW3 Muhammad Hamdan bin Abdul Rahman)

[\[note: 381\]](#)Day 9, Page 88, Lines 21-23, XXN by Zameen (DW3 Muhammad Hamdan bin Abdul Rahman)

[\[note: 382\]](#)Day 9, Page 113, Lines 10-11, XXN by DKhoo (DW3 Muhammad Hamdan bin Abdul Rahman)

[\[note: 383\]](#)Day 9, Page 115, Lines 28-31, XXN by DKhoo (DW3 Muhammad Hamdan bin Abdul Rahman)

[\[note: 384\]](#)Day 9, Page 116, Lines 1-29, XXN by DKhoo (DW3 Muhammad Hamdan bin Abdul Rahman)

[\[note: 385\]](#)PW50

[\[note: 386\]](#)Day 9, Page 90, Lines 4-32, XXN by DKhoo (DW3 Muhammad Hamdan bin Abdul Rahman);  
Day 9, Page 91, Lines 1-10, XXN by DKhoo (DW3 Muhammad Hamdan bin Abdul Rahman)

[\[note: 387\]](#)Day 10, Page 5, Lines 1-22, XXN by DKhoo (DW3 Muhammad Hamdan bin Abdul Rahman)

[\[note: 388\]](#)Day 10, Page 5, Lines 23-25, XXN by DKhoo (DW3 Muhammad Hamdan bin Abdul Rahman)

[\[note: 389\]](#)Day 10, Page 10, Lines 4-26, XXN by DKhoo (DW3 Muhammad Hamdan bin Abdul Rahman)

[\[note: 390\]](#)Day 9, Page 124, Lines 5-23, XXN by DKhoo (DW3 Muhammad Hamdan bin Abdul Rahman)

[\[note: 391\]](#)Day 12, Page 16, Lines 2-12, Statement by DKhoo to the Court

[\[note: 392\]](#)PW38 who was recalled

[\[note: 393\]](#)PW49

[\[note: 394\]](#)Day 12, Page 17, Lines 11-15, XN by DKhoo (PW48 Eddie Low)

[\[note: 395\]](#)Day 12, Page 22, Lines 12-15, XXN by Hamdan (PW48 Eddie Low)

[\[note: 396\]](#)Day 12, Page 22, Lines 16-27, XXN by Hamdan (PW48 Eddie Low)

[\[note: 397\]](#)Day 12, Page 17, Lines 18-25, XN by DKhoo (PW48 Eddie Low)

[\[note: 398\]](#)Day 12, Page 18, Lines 14-32, XN by DKhoo (PW48 Eddie Low)

[\[note: 399\]](#)Day 12, Page 19, Lines 13-31, XN by DKhoo (PW48 Eddie Low)

[\[note: 400\]](#)Day 12, Page 11, Line 32, XN by DKhoo (PW48 Eddie Low); Day 12, Page 20, Line 1, XN by DKhoo (PW48 Eddie Low)

[\[note: 401\]](#)Day 12, Page 20, Lines 1-6, XN by DKhoo (PW48 Eddie Low)

[\[note: 402\]](#)PW45

[\[note: 403\]](#)Day 12, Page 21, Lines 14-19, XN by DKhoo (PW48 Eddie Low)

[\[note: 404\]](#)Day 12, Page 20, Lines 11-31, XN by DKhoo (PW48 Eddie Low)

[\[note: 405\]](#)Day 12, Page 21, Lines 10-13, XN by DKhoo (PW48 Eddie Low)

[\[note: 406\]](#)Day 12, Page 21, Lines 20-21, XN by DKhoo (PW48 Eddie Low)

[\[note: 407\]](#)Day 12, Page 25, Lines 5-15, XXN by Hamdan (PW48 Eddie Low)

[\[note: 408\]](#)Day 12, Page 34, Lines 14-24, XN by DKhoo (PW38 Huang Liyu)

[\[note: 409\]](#)Day 12, Page 58, Lines 21-31, XXN by Hamdan (PW50 Stanley Qiu Hui Guan)

[\[note: 410\]](#)Iryan (3<sup>rd</sup> charge)

[\[note: 411\]](#)Day 8, Page 48, Lines 22-30, EIC by Iryan; Day 10, Page 118, Lines 1-7, XXN by DKhoo (DW4 Mohammed Zameen bin Abdul Manoff)

[\[note: 412\]](#)Day 8, Page 49, Lines 23-28, EIC by Iryan ; Day 10, Page 115, Line 28, XXN by DKhoo (DW4 Mohammed Zameen bin Abdul Manoff); Day 11, Page 116, Lines,14-16 XXN by DKhoo (DW4 Mohammed Zameen bin Abdul Manoff)

[\[note: 413\]](#)Day 5, Page 114, Lines 1-24, XXN by Zameen (PW8 Lutfi Subagio); Day 10, Page 100, Lines 1-3, XXN by DKhoo (DW4 Mohammed Zameen bin Abdul Manoff)

[\[note: 414\]](#)Day 8, Page 59, Lines 3-6, Iryan EIC; Day 8, Page 84, Lines 3-31, XXN by Sellamuthoo (DW1 Iryan bin Abdul Karim); Day 9, Page 134, Lines 4-31, XXN by DKhoo (DW3 Muhammad Hamdan bin Abdul Rahman); Day 10, Page 51, Lines 17-32, Zameen EIC; Day 10, Page 52, Lines 1-2, Zameen EIC

[\[note: 415\]](#) Day 8, Page 87, Lines 22-32, XXN by Sellamuthoo (DW1 Iryan bin Abdul Karim)

[\[note: 416\]](#) See *Ratanlal & Dhirajlal's The Indian Penal Code (Act XLV of 1860)* (Y.V. Chandrachud & V.R. Manohar eds) (Wadhaw and Company Nagpur, 31st Ed, 2006) at p 1921 – 1922 and Dr. Sri Hari Singh Gour's *The Penal Law of India* (Law Publishers (India) Pvt Ltd, 11th Ed, 2000) vol 4 at p 3611 – 3614 for similar points.

[\[note: 417\]](#) See the Indian case of ***Harnarain Singh AIR 1958 Pun 133*** at [7] which was endorsed in the later case of ***Arjan Ram AIR 1960 Pun 303*** at [5]

[\[note: 418\]](#) Day 7, Page 50, Lines 13-19, XN by DKhoo (PW27 Dr Andrew Tan Gee Seng)

[\[note: 419\]](#) Day 9, Page 102, Lines 11-20, XXN by DKhoo (DW3 Muhammad Hamdan bin Abdul Rahman)

[\[note: 420\]](#) Page 194-199, PI Bundle

[\[note: 421\]](#) 13 July 2009

[\[note: 422\]](#) Day 9, Page 34, Lines 20-21, XXN by Sellamuthoo (DW1 Iryan bin Abdul Karim)

[\[note: 423\]](#) Day 12, Page 66, Lines 11-18, XXN by Hamdan (PW48 Eddie Low)

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