Haliffie bin Mamat
v
Public Prosecutor and other appeals

[2016] SGCA 58

Court of Appeal — Criminal Appeals Nos 13, 17 and 18 of 2015
Sundaresh Menon CJ, Chao Hick Tin JA and Andrew Phang Boon Leong JA
20 April; 6 September; 14 October 2016

Criminal Law *— Offences — Rape — Victim waiting for taxi early morning after drinking — Victim accepted lift from stranger — Victim tipsy — Victim and driver had sexual intercourse — Victim pushed out of car and robbed — Whether sexual intercourse was consensual*

Criminal Procedure and Sentencing *— Sentencing — Victim accepted lift from stranger — Victim tipsy — Driver raped and robbed victim — Whether sentence manifestly excessive*

Facts

In the early morning of 4 May 2013, the victim ("the Victim") was waiting for a taxi after leaving a club at Clarke Quay, slightly tipsy. Haliffie bin Mamat ("Haliffie") was driving in the vicinity and happened to see her. He stopped his car to offer her a lift. After driving for a while, Haliffie stopped the car and had sexual intercourse with the Victim. Haliffie claimed that the intercourse was consensual, while the Victim claimed that she had been raped. After the sexual intercourse, Haliffie pushed the Victim out of the car and drove off with her bag, intending to rob her.

Haliffie was convicted of one count of rape under s 375(1) of the Penal Code (Cap 224, 2008 Rev Ed) ("Penal Code"), and one count of robbery under s 390 of the Penal Code. The High Court judge ("the Judge") sentenced Haliffie to ten years' imprisonment and six strokes of the cane for the rape, and three years' imprisonment and 12 strokes of the cane for the robbery. The sentences were ordered to run consecutively. Haliffie appealed against his rape conviction and the overall sentence. The Prosecution appealed against the sentence.

Held, dismissing the appeals:

(1) In an appeal against conviction, the appellate court was restricted to considering (a) whether the judge's assessment of witness credibility was plainly wrong or against the weight of evidence, (b) whether the judge's verdict was wrong in law and therefore unreasonable, or (c) whether the judge's decision was inconsistent with the material objective evidence on record, bearing in mind that an appellate court was in as good a position to assess the internal and external consistency of the witnesses' evidence, and to draw the necessary inferences of fact from the circumstances of the case: at [32].

(2) There were some shortfalls and inconsistencies in the Victim's evidence. Consequently, her evidence was not "unusually convincing" and was not sufficient, without further corroborative evidence, to ground a conviction.

Nevertheless, the shortfalls or inconsistencies did not give rise to any inference that the Victim was necessarily lying, nor did it lead to the conclusion that the Judge erred in finding her to be a credible witness, bearing in mind that due deference should be given to the trial judge's assessment of demeanour: at [40].

(3) The injuries suffered by the Victim and Haliffie were inconclusive. The DNA evidence was of limited probative value: at [46], [47] and [50].

(4) The cautioned statement Haliffie had given on 7 May 2013 was strong evidence of Haliffie's guilt and was strongly corroborative of the Victim's account that she was raped. The evidence of the witnesses who saw the Victim right after the incident was corroborative evidence as well: at [59], [63] and [66].

(5) While the Victim's evidence was not unusually convincing, there was no basis to disturb the Judge's finding that she was a credible witness. Additionally, the Victim's allegation of rape was well corroborated. Haliffie's appeal against conviction was thus dismissed: at [67].

(6) Category 1 rape, as identified in *PP v NF* [2006] 4 SLR(R) 849, was a residual category that covered all rape offences that did not fall within Category 2, 3 or 4. Aggravating or mitigating factors which did not affect which category the rape fell in could affect whether the starting benchmark sentence should be departed from: at [75].

(7) The "totality principle", as articulated in *Mohamed Shouffee bin Adam v PP* [2014] 2 SLR 998, consisted of two limbs. The first limb of the totality principle contemplated comparing the aggregate sentence with the range of sentences normally imposed for the most serious offence, rather than with a specific sentencing benchmark or starting point. However, the court should not focus only on the upper limit of the sentencing range. Instead, the court should give due regard to the whole sentencing range and the relevant aggravating or mitigating factors present in the particular case to assess whether, on the whole, the sentence was proportionate to the gravity of the offence: at [76] and [79].

(8) It could not be assumed that the "normal level of sentences" for Category 1 rapes consisted of the entire range of sentences below the benchmark imposed for Category 2 rapes. Instead, the sentencing range for Category 1 rapes should be determined by looking at the relevant sentencing precedents. The range of sentences that had been meted out for Category 1 rape varied from nine to 13 years' imprisonment: at [80].

(9) The aggregate sentence of 13 years' imprisonment and 18 strokes of the cane was in line with existing sentencing precedents. The global sentence imposed by the Judge was not out of sync with the normal level of sentences imposed for the rape charge, nor was it crushing. The appeals against sentence were thus dismissed: at [90].

Case(s) referred to

ADF v PP [2010] 1 SLR 874 (folld)

AOF v PP [2012] 3 SLR 34 (folld)

Mohamed Shouffee bin Adam v PP [2014] 2 SLR 998 (refd)

Muhammad bin Kadar v PP [2011] 3 SLR 1205 (refd)

PP v Goh Lee Yin [2008] 1 SLR(R) 824; [2008] 1 SLR 824 (refd)

PP v Mardai [1950] MLJ 33 (refd)
PP v Mohammed Liton Mohammed Syeed Mallik [2008] 1 SLR(R) 601; [2008] 1 SLR 601 (folld)
PP v Neo Wei Siong Criminal Case No 16 of 2013 (refd)
PP v NF [2006] 4 SLR(R) 849; [2006] 4 SLR 849 (refd)
PP v Siew Boon Loong [2005] 1 SLR(R) 611; [2005] 1 SLR 611 (refd)
PP v Sivakumar s/o Magendran Criminal Case No 23 of 2012 (refd)
PP v Tan Jun Hui [2013] SGHC 94 (refd)
Sivakumar s/o Selvarajah v PP [2014] 2 SLR 1142 (refd)
XP v PP [2008] 4 SLR(R) 686; [2008] 4 SLR 686 (refd)

Legislation referred to

Penal Code (Cap 224, 2008 Rev Ed) ss 375(1), 390

Lionel Leo Zhen Wei, Chng Zi Zhao Joel and Yu Kanghao (Wong Partnership LLP) for the appellant in CCA 13/2015 and CCA 18/2015 and the respondent in CCA 17/2015;
Sellakumaran s/o Sellamuthoo, Tan Yan Shi Crystal and Torsten Cheong (Attorney-General's Chambers) for the respondent in CCA 13/2015 and CCA 18/2015 and the appellant in CCA 17/2015.

[Editorial note: This was an appeal from the decision of the High Court in [2015] SGHC 224.]

14 October 2016 Judgment reserved.

Chao Hick Tin JA (delivering the judgment of the court):

Introduction

1 Haliffie bin Mamat ("Haliffie") was convicted of one count of rape under s 375(1) of the Penal Code (Cap 224, 2008 Rev Ed), and one count of robbery under s 390 of the Penal Code. At trial, Haliffie admitted to the robbery charge (save that he disputed some of the items listed in the charge), but denied the rape charge, claiming that the victim ("the Victim") had consented to sexual intercourse. Following the conviction, the High Court judge ("the Judge") sentenced Haliffie to 13 years' imprisonment and 18 strokes of the cane (ten years and six strokes for the rape, and three years and 12 strokes for the robbery) (*PP v Haliffie bin Mamat* [2015] SGHC 224 at [50]).

2 From that decision of the Judge, three appeals have been filed. On 3 June 2015, by way of Criminal Appeal No 13 of 2015, Haliffie appealed the global sentence imposed on him. A week later, on 10 June 2015, he filed a second appeal, Criminal Appeal No 18 of 2015 ("CCA 18/2015"), against his conviction on the rape charge. In the meantime, the Prosecution also filed an appeal, Criminal Appeal No 17 of 2015, against the sentence

imposed by the Judge on the rape charge. At the hearing of the appeals before us, Haliffie maintains his defence that the Victim had consented to the sexual intercourse. Therefore, the only issue that arises for our determination in relation to the appeal against conviction is whether the sexual intercourse was consensual.

The charges

3 The rape charge, as amended during trial, reads as follows:

> You, Haliffie Bin Mamat, are charged that you, on 4th May 2013, at between about 6.30am and 6.45am, in motor vehicle S[xxx] at the bridge along Kallang Bahru Road, Singapore, did commit rape of one [the Victim] … by penetrating the vagina of [the Victim] with your penis without her consent, and you have thereby committed an offence under section 375(1) of the Penal Code (Cap 224, 2008 Rev Ed) punishable under section 375(2) of the said Code.

4 The robbery charge reads as follows:

> You, Haliffie Bin Mamat, are charged that you, on 4th May 2013, at between about 6.30am and 6.45am, in the motor vehicle S[xxx] at the bridge along Kallang Bahru Road, Singapore, did commit robbery of the following items:
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> - Louis Vuitton 'Palermo' handbag valued at $1630;
> - Louis Vuitton purse valued at about $700;
> - Samsung Galaxy Ace 2 phone valued at $290;
> - Samsung Galaxy S3 phone valued at about $1000;
> - Cash of about $300;
> - Chanel makeup set valued at about $240;
> - Bvlgari perfume valued at about $130;
> - One EZlink card;
> - One UOB-Amex credit card;
> - One Standard Chartered credit card;
> - One POSB ATM card;
> - One UOB ATM card;
> - One Identity Card (bearing NRIC No: S[xxx])
>
> in the possession of [the Victim] … by voluntarily causing hurt to the said [the Victim] in order to commit theft, and you have thereby committed an offence punishable under section 392 of the Penal Code (Cap 224, 2008 Rev Ed).

The facts

5 Given that Haliffie and the Victim have given inconsistent accounts of what happened on the fateful morning in the motor vehicle, we shall first

set out the undisputed facts, and then proceed to outline the areas where their accounts differ.

The undisputed facts

6 In the early morning of 4 May 2013, at around 6.00am, the Victim was waiting for a taxi along River Valley Road after drinking and dancing at a club nearby. A small car stopped in front of her and the driver offered her a lift. The car was driven by Haliffie. The Victim accepted Haliffie's offer and got into the car.

7 After driving for a while, Haliffie eventually stopped his car at a bridge in Kallang Bahru. Haliffie went over to the passenger seat and placed himself on top of the Victim. He then sexually penetrated her. As stated, there is dispute as to whether the sex was consensual. Thereafter, Haliffie returned to the driver's seat and continued driving for a few hundred metres. Haliffie then stopped the car again, opened the front seat passenger door, and pushed the Victim out of the car without her bag, which was then on the back seat.

Haliffie's account

8 Earlier on 3 May 2013, between 8.00pm and 9.00pm, Haliffie left his Bukit Batok flat and drove off in his car after quarrelling with his wife about finances. He first went to the skate park near Somerset MRT, and then at about 11.00pm, he went to look for his best friend Hafiz at Lorong 25 Geylang. At about 1.00am or 2.00am in the morning on 4 May 2013, Haliffie then went to look for another friend, Siddarth, who was working as a bartender at Clarke Quay. He spent some time with Siddarth at the bar, and left at about 4.45am.

9 A short while after driving off, Haliffie was on River Valley road where he saw the Victim walking alone at a bus stop. Given his money woes, he decided to rob her. He claimed that he stopped to offer the Victim a lift home, hoping that she would put her hand bag in the car first so that he could drive off with it. The Victim however came into the car with her bag and so Haliffie drove off with her.

10 The parties exchanged names and had a conversation about their backgrounds. Haliffie alleged that he asked the Victim "Do you like sex?", to which the Victim replied, "Who doesn't?". Following that exchange, Haliffie touched the Victim's right thigh using his left hand and the Victim held his left hand while he touched her. In the meantime, Haliffie drove around looking for a quiet place to rob the Victim. He ended up along Kallang Bahru, where he stopped his car on the bridge because it was quiet and no one was around. Haliffie claimed that while he originally intended to push the Victim out and drive off with her bag, he instead jumped over to her in the passenger's seat. At that point, the Victim swung her bag toward

the rear seat. Haliffie described in his statement what happened thereafter in the following words:

> … But then, I don't know why I just jumped over to her and position myself in between her legs. Her dress was very short and I simply put my right [hand] under her dress and I used my right hand to brush away her panties and I put my right hand under panties and rubbed her vagina. She wasn't wearing seatbelt and while I was rubbing her vagina, she put both her hands behind my neck and she grabbed my neck and because of that, I had to move my head forward and I kissed her lips. We started kissing and while kissing, I pulled down ¾ pants together boxer till below my knees level. I then put my penis into her vagina and had sex with her. I felt her vagina was wet and very fast, I ejaculated inside her. I then pulled out my penis and she used her right hand to stroke my penis for [a] while before I jumped over to the driver seat. I then pulled up my ¾ pants and I asked her 'You like it?' and she replied 'Ya' and I drove off.

11 Haliffie drove off for a distance of about 100m to 200m only, and then stopped the car, opened the front passenger door, and used his left hand to push the Victim out of the car. Thereafter, he drove off, reaching home at about 7.15am. Haliffie looked through the Victim's handbag, and took out from it a $10 note, four $2 notes, her EZlink card, her Bvlgari perfume, as well as a Samsung Ace 2 Black handphone. He then dumped the bag with everything else in it next to the dustbin. On the same morning, Haliffie sold the Samsung Ace 2 handphone. He then returned to his flat to sleep.

The Victim's account

12 On the night of 3 May 2013, because the Victim had difficulty sleeping, she went to a club at Clarke Quay at about 1.30am on 4 May 2013. The Victim drank alcohol and danced until the club closed at 5.00am. After leaving the club, she had some difficulty getting a taxi; she spent about an hour in vain trying to flag one. While she was waiting for a taxi along River Valley Road, a small car stopped in front of her. The window of the front passenger door was wound down, and the driver, who we now know is Haliffie, offered the Victim a lift further up the road where she could get a taxi more easily. The Victim accepted the lift and got into the car.

13 The Victim gave inconsistent evidence as to whether, during the journey in the car, she spoke to Haliffie, but she was sure that the conversation did not involve anything sexual in nature. At some point, when the Victim saw some taxis with "green lights" along the road, she asked Haliffie to stop, but he offered to take her all the way home. The Victim claims that she then dozed off for a while.

14 Five to ten minutes later, the Victim woke up and noticed that the car was stationary. The Victim told Haliffie that she would like to alight. At that point, Haliffie took her handbag, threw it to the back seat and went over to

the front passenger seat, on top of the Victim. This is the Victim's account of the rape that then took place:

> I shouted for help. The driver became violent and came over from his seat. His body came on top of me. I struggled as he held on to my right hand. I managed to free my right hand from his grip at one point and used it to attract the attention of the drivers of the passing cars. He then grabbed my right hand and hit it against something hard in the car, thus causing me pain.
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> At that time, it was dark and raining. The driver then tried to kiss me. While restraining my right hand with his hand, he removed his t-shirt with his other hand. I tried to use my left hand to reach for my handbag as I wanted to get my handphone to call the police.
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> The driver lowered his 'three quarter pants' and I knew that he wanted to rape me. I struggled but his knees were pressing against my right thigh area. He tried to kiss me on my lips but I turned my head away.
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> I then used my left hand and tried to reach for my left shoe as I wanted to use it to hit him. He used both his knees to restrain both my thighs and I could not move freely. I eventually managed to grab my left shoe and used it to hit him. He was on top of me and I only managed to hit the back of his right waist. The man then grabbed my left hand. By then, he had already completely removed his three quarter pants by 'shaking his body'. I could not see his penis at that point, but I felt his erected penis coming into contact with my right thigh.
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> I continued to put up a struggle. The man then pulled my hair and it was very painful. As I struggled, he lifted up my dress, used his hand to push my panties from my left to the right and inserted his penis into my vagina. I spat on him several times. He then used his body to pin me down and I could not move. He moved his body and his penis moved back and forth inside my vagina. He also moaned and used both his hands to hold my hands as his body pinned me down. I struggled but in vain.
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> At one point, my right hand managed to break free. He again grabbed my right hand and hit it against something hard in the car, thus causing me pain. He told me 'you can't do anything and just enjoy'. He was smiling and I saw his teeth. He seemed to be mocking me.
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> The man said he was 'coming' and he then ejaculated inside my vagina. I felt something sticky and wet at my groin area. He then asked me whether I enjoyed it and I spat at him. The man returned to his seat. The man's penis was inside my vagina for about one to two minutes.

15 At this juncture, we should observe that when testifying in court, the Victim's evidence was that she was not sure whether Haliffie had ejaculated into her. Thereafter, Haliffie returned to the driver's seat and the Victim told him that she wanted to call the police. Haliffie then drove forward for a short distance, stopped the car, opened the front passenger door, and kicked the Victim out of the car. The Victim fell onto the road with one shoe in her hand.

16 The Victim sustained some injuries from the fall, but managed to get up and walk to seek help. She approached a taxi that had stopped along the road. She told the driver, one Onn bin Mokri ("Mr Onn"), that she had been raped and asked the driver to bring her to the police station. The driver agreed, but stopped at an apartment block on the way to pick up a lady, one Normah bte Salim ("Ms Normah"). The lady asked the Victim what happened, and the Victim told her that she had been raped. At the police station, the Victim told the police officers what had happened. The Victim was then conveyed to the hospital.

The decision in the court below

17 The trial took place in the High Court from 18 to 22 May 2015 and 25 to 27 May 2015. As mentioned, the Judge convicted Haliffie of rape under s 375(1) of the Penal Code and sentenced him to ten years' imprisonment and six strokes of the cane. The Judge also convicted him of robbery and sentenced him to three years' imprisonment and 12 strokes of the cane for the robbery. The total sentence was therefore 13 years' imprisonment and 18 strokes of the cane. The High Court's decision is reported as *PP v Haliffie bin Mamat* [2015] SGHC 224 ("the GD").

Conviction

18 Haliffie generally admitted to the robbery charge, but disputed only some items listed therein. Preferring the evidence of the Victim to Haliffie's, the Judge accepted that the items listed in the charge were in the Victim's handbag, which was taken by Haliffie. There is no appeal against the robbery conviction and therefore, this finding need not be discussed any further.

19 On the rape charge, the Judge found that the Prosecution had proven beyond a reasonable doubt that Haliffie had raped the Victim (the GD at [31]). The Judge arrived at his finding on the following grounds:

> (a) First, the Judge found that the shortcomings, omissions and slight inconsistencies in the Victim's evidence were "unexceptional in the recalling and retelling of an unexpected and physiologically and psychologically traumatic event that happened without warning and was over in a few minutes" (the GD at [31]).
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> (b) Second, the persons who came into contact with the Victim soon after the incident gave evidence that the Victim was distraught, dishevelled, and had complained that she was raped. These persons include Mr Onn, Ms Normah, the two officers at Geylang Neighbourhood Police Centre and the two medical officers who attended to the Victim right after the incident (the GD at [32]).

(c) Third, Haliffie's DNA was found in the Victim's fingernail clippings, supporting the Victim's account of their struggle in the car and the scratches to Haliffie's left arm and elbow (the GD at [32]).

(d) Fourth, Haliffie provided strong evidence of his guilt in his caution statement dated 7 May 2013 by failing to deny the allegation in the charge put to him that the sex was without consent (the GD at [33]).

(e) Fifth, as mentioned, the Judge found that the Victim was a more reliable witness than Haliffie (the GD at [35]).

Sentence

20 Before the High Court, both the Prosecution and the Defence submitted that the appropriate sentence for the robbery charge was three years' imprisonment and 12 strokes of the cane. That was the sentence given for the robbery charge. For the rape charge, the Judge sentenced Haliffie to the benchmark sentence of ten years' imprisonment and six strokes of the cane for Category 1 rape (see *PP v NF* [2006] 4 SLR(R) 849 at [17] and [24]). In arriving at this sentence, the Judge took into account the following (the GD at [40], [41] and [49]):

(a) The aggravating factors: Haliffie was in full control when he raped the Victim; Haliffie lured the Victim into his car on a false pretence, subjected her to unprotected sex, and threw her out of the car.

(b) The mitigating factors: Haliffie's lack of antecedents and his relative youth.

(c) The offence was a Category 1 rape.

(d) The benchmark imprisonment sentence and the minimum strokes under the benchmark sentence were given because there were no significant mitigating or aggravating factors.

21 In deciding that the sentences should run consecutively, the Judge held that the rape and robbery "formed a single invasion in terms of time, but the interests affected were distinct interests" (the GD at [45]). The offences therefore did not come within the one-transaction rule and were ordered to run consecutively.

The appeals

Haliffie's petition of appeal

22 In brief, Haliffie relies upon the following grounds in his appeal against the rape conviction:

(a) The medical and photographic evidence of the injuries suffered by the Victim and Haliffie are inconsistent with the Victim's account, but are consistent with Haliffie's account.

(b) The court gave excessive weight to the presence of Haliffie's DNA in the Victim's fingernail clippings.

(c) The court accorded excessive weight to the Victim's evidence and wrongly accepted her evidence as credible and compelling.

(d) The court accorded excessive weight to the evidence of the witnesses who saw the Victim after the incident.

(e) The court erred in failing to adequately consider the possibility that the Victim lied and conjured up the rape allegation because she felt cheated and betrayed.

(f) The court gave excessive weight to the cautioned statement given by Haliffie on 7 May 2013 and erred in finding that the cautioned statement amounted to a confession.

23 On sentence, the Defence submits that the global imprisonment term of 13 years' imprisonment and 18 strokes of the cane is manifestly excessive in light of the fact that Haliffie's culpability is much lower than the offender in *PP v Tan Jun Hui* [2013] SGHC 94, who was sentenced to 14 years' imprisonment and 24 strokes of the cane.

The Prosecution's appeal

24 The Prosecution appeals on the basis that the individual and total sentences imposed by the Judge were manifestly inadequate and were based on errors of both law and fact.

The issues

25 In gist, the present appeals raise two main issues. First, should the rape conviction be overturned? Second, assuming the rape conviction is upheld, is the global sentence of 13 years' imprisonment and 18 strokes of the cane manifestly excessive or manifestly inadequate?

Conviction

26 The Judge found that based on the evidence before him, the rape charge was proven beyond a reasonable doubt. The grounds on which Haliffie challenges his conviction are set out in [22] above. We shall analyse the evidence relating to the rape conviction in the following order:

(a) First, we shall consider the inconsistencies and weaknesses in the Victim's evidence.

(b) Second, we shall weigh the two accounts against the medical and DNA evidence available.

(c) Third, we shall consider the statements given by Haliffie to the police.

(d) Finally, we shall consider the weight that should be accorded to the evidence of the witnesses who saw the Victim after the alleged rape.

Applicable legal principles

27 We first consider how the courts have determined the question of burden of proof where a conviction is based solely on the bare words of the complainant. In *AOF v PP* [2012] 3 SLR 34 ("*AOF*") at [111], this court held:

> It is well-established that in a case where no other evidence is available, a complainant's testimony can constitute proof beyond reasonable doubt (see s 136 of the Evidence Act (Cap 97, 1997 Rev Ed) ('EA')) – but only when it is so 'unusually convincing' as to overcome any doubts that might arise from the lack of corroboration …

28 In *PP v Mohammed Liton Mohammed Syeed Mallik* [2008] 1 SLR(R) 601 ("*Liton*") at [38], this court held that to be "unusually convincing", the witness's testimony must be "so convincing that the Prosecution's case was proven beyond reasonable doubt, solely on the basis of the evidence". Elaborating further at [39], the court held that a complainant's testimony would be unusually convincing if the testimony, "when weighed against the overall backdrop of the available facts and circumstances, contains that ring of truth which leaves the court satisfied that no reasonable doubt exists in favour of the accused". As this court held in *AOF* at [115], the relevant considerations in determining whether a witness is unusually convincing are his or her demeanour, as well as the internal and external consistencies found in the witness' testimony.

29 It should be noted that the "unusually convincing" standard does not introduce a new burden of proof. It "does nothing … to change the ultimate rule that the Prosecution must prove its case beyond a reasonable doubt, but it does suggest how the evidential Gordian knot may be untied if proof is to be found solely from the complainant's testimony against the accused" (*XP v PP* [2008] 4 SLR(R) 686 at [31], cited in *AOF* at [113]).

30 Where the complainant's evidence is not unusually convincing, "an accused's conviction is unsafe unless there is some corroboration of the complainant's story" (*AOF* at [173]). In *Liton* at [42] and [43], this court discussed the meaning of "corroborative evidence":

> 42 As to what can amount to corroborative evidence, the Evidence Act (Cap 97, 1997 Rev Ed) did not, at its inception, provide a definition of corroboration and still does not do so. However, by virtue of s 2(2), the common law is imported into the Evidence Act unless it is inconsistent with the Act's tenor and provisions. There is thus legal justification for the judicial

> adoption of the common law definition of corroboration laid down in the oft-cited English decision of *R v Baskerville* [1916] 2 KB 658 at 667, *ie*, independent evidence implicating the accused in a material particular.
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> 43 However, it is clear that the *Baskerville* standard (as set out in the preceding paragraph) does not apply in its strict form in Singapore since Yong CJ, in *Tang Kin Seng* [*v Public Prosecutor* [1996] 3 SLR(R) 444], advocated a liberal approach in determining whether a particular piece of evidence can amount to corroboration. …

This more "liberal approach" to corroboration treats subsequent complaints made by the complainant herself as corroboration provided that "the statement [implicating] the [accused] was made at the first reasonable opportunity after the commission of the offence" (*Public Prosecutor v Mardai* [1950] MLJ 33 at 33, cited in *AOF* at [173]).

31 It should be emphasised, however, that the above principles are intended to guide *trial judges* in their determination of an accused's guilt. The role of the *appellate court* is not to re-assess the evidence in the same way a trial judge would. Instead, the principles governing appellate intervention are as follows (see *ADF v PP* [2010] 1 SLR 874 ("*ADF*") at [16]):

> (a) Where the finding of fact hinges on the trial judge's assessment of the credibility and veracity of witnesses based on the demeanour of the witness, the appellate court will interfere only if the finding of fact can be shown to be plainly wrong or against the weight of evidence: see *PP v Mohammed Liton Mohammed Syeed Mallik* [2008] 1 SLR(R) 601 at [32] and *Yap Giau Beng Terence v PP* [1998] 2 SLR(R) 855 ('*Yap Giau Beng Terrence*') at [24]. An appellate court may also intervene, if, after taking into account all the advantages available to the trial judge, it concludes that the verdict is wrong in law and therefore unreasonable: *Jagatheesan s/o Krishnasamy v PP* [2006] 4 SLR(R) 45 ('*Jagatheesan*') at [43].
>
> (b) Where the finding of fact by the trial judge is based on the inferences drawn from the internal consistency (or lack thereof) in the content of witnesses' testimony or the external consistency between the content of their testimony and the extrinsic evidence, an appellate court is in as good a position as the trial court to assess the veracity of the witness's evidence. The real tests are how consistent the story is within itself, how it stands the test of cross-examination, and how it fits in with the rest of the evidence and the circumstances of the case: see *Jagatheesan* at [40]. If a decision is inconsistent with the material objective evidence on record, appellate intervention will usually be warranted.
>
> (c) An appellate court is as competent as any trial judge to draw any necessary inferences of fact from the circumstances of the case: see *Yap Giau Beng Terence* at [24].

32 In short, the appellate court is restricted to considering:

(a) whether the Judge's assessment of witness credibility is "plainly wrong or against the weight of evidence";

(b) whether the Judge's "verdict is wrong in law and therefore unreasonable"; and

(c) whether the Judge's "decision is inconsistent with the material objective evidence on record", bearing in mind that an appellate court is in as good a position to assess the internal and external consistency of the witnesses' evidence, and to draw the necessary inferences of fact from the circumstances of the case.

Inconsistencies in the Victim's evidence

33 We begin by summarising the main weaknesses which the Defence has identified in the Victim's evidence:

(a) It is incredible that the Victim waited so long without calling a taxi, and would enter a stranger's car and then doze off.

(b) The Victim's account that the parties did not exchange conversation cannot explain how Haliffie knew so much about her when first interviewed by the police.

(c) The Victim gave evidence that the back of her hand was hit against something hard in the car, but no hard surfaces in the car were identified with her DNA, nor could the Victim identify any hard surface that her hand could have hit.

(d) The Victim has admitted that her account of how she grabbed her shoe to hit Haliffie could not have happened given the position she claimed to be in.

(e) The Victim's evidence on how and when Haliffie removed his t-shirt and pants was inconsistent.

(f) The Victim's evidence on whether Haliffie had ejaculated into her was inconsistent.

(g) Under cross-examination, the Victim claimed to have forgotten many details of the encounter, but she was not upfront about this in her conditioned statement, which was detailed and unequivocal. In fact, her memory was selectively good and she showed a willingness to speculate.

(h) It is contrary to common sense that the Victim did not immediately attempt to escape from the car after Haliffie returned to his seat, and instead allow him to drive off.

34 In considering the shortfalls and inconsistencies in the Victim's evidence, it is vitally important to bear in mind that throughout the entire encounter, the Victim was at least tipsy. This was the Victim's own evidence and the Defence does not dispute this. It was also the evidence of Mr Onn, the taxi driver who sent the Victim to the police station, that she "smelt of liquor". In our view, this is an important contextual factor that may explain the gaps in the Victim's memory, as well as her inaccurate recollections.

35 We also observe that many of the inaccuracies in the Victim's recollections relate to small details such as how she reached for her shoe, and how and when Haliffie took off his clothes. Bearing in mind that the Victim was at least tipsy, and that the encounter, if it did happen as the Victim says, must have been traumatic, we agree with the Judge that it is unexceptional for the Victim not to have precise memories as to when and how each event happened. Indeed, while it may be argued that whether Haliffie ejaculated into her vagina is not a "small detail", and here we must emphasise that there is no dispute that he did so ejaculate, the fact that she was not even able to recall that fact at the trial with absolute certainty only goes to show that in those traumatic circumstances, where her physical self and dignity were so savagely outraged, it was wholly understandable, and equally unexceptional, that she could not clearly recollect many of the details about what happened. In our view, the fact that the Victim was tipsy at the time she was ravaged, made it all the more unexceptional that there would be gaps in her memory of the events.

36 Mr Leo, however, emphasises that the Victim's memory appears to be selective and that she was able to give a detailed and coherent account of the incident in her conditioned statement. In our view, while the Victim might have tried to piece her memories together in her written statement, it is unexceptional that parts of her narrative could not hold under the intense scrutiny of cross-examination. We do not find it unusual or strange that while she might not have been able to remember all the details of the encounter, she nevertheless made an effort to weave all that she could recall into a coherent narrative when probed by the police. None of this necessarily undermines her credibility.

37 We note that the Victim took the position under cross-examination that the parties did not have a conversation in the car. This is inconsistent with her evidence in her conditioned statement that the driver had asked her some questions, to which she gave replies. This also raises the question as to how Haliffie knew about the Victim's marital status, number of children and country of origin when giving his statement to the police on 11 May 2013. The Prosecution suggested that Haliffie could have found out about these details by looking through the Victim's phone. We have doubts about this explanation. It seems unlikely that Haliffie would have found out about the Victim from her handphone and then weaved the results of his findings into his fabricated defence. Instead, it seems to us more probable

that Haliffie would have tried to make some small talk and the Victim in her tipsy state might very well have responded. Nevertheless, we are of the view that whether the parties did engage in some conversation prior to the purported rape incident is an insignificant detail that has little bearing on *whether the Victim consented to the sexual intercourse*. Further, we do not think that our rejection of the Victim's evidence in this instance necessarily leads to the conclusion that the Victim was intentionally lying about whether she had conversed with Haliffie. The Victim's inconsistent evidence could be due to a lapse of memory or confusion, having regard to her tipsy state at the time of the offence.

38 As to the fact that no hard surface in the car was identified with the Victim's DNA on it, we note that the car was not swabbed for DNA *immediately* after the incident. In our judgment, the fact that a hard surface could not be clearly identified does not really undermine the Victim's account. For one, we note that she did suffer an injury to the back of her hand (see below at [41(f)]). Further, there is no clear evidence as to the extent to which the car was interfered with after the encounter, but before the police seized it.

39 Finally, contrary to Mr Leo's submission, we do not find the Victim's account "incredible" or "contrary to common sense". First, even if is unusual for a normal person to wait for a long time without calling a taxi on the phone, and to then board a stranger's car, none of these facts have a bearing on whether the Victim consented to sexual intercourse. We do not see how taking issue with these facts would assist the Defence. Second, while Mr Leo submits that the normal human reaction is to escape from the car at the earliest opportunity, we note that the Victim was at least tipsy and would, on her account, have also just suffered from a traumatic experience. In the circumstances, we do not find it surprising that the Victim did not react as a sharp and vigilant person would have.

40 On the whole, we acknowledge that there are some shortfalls and inconsistencies in the Victim's evidence. Consequently, in our judgment, her evidence is not "unusually convincing" and is not sufficient, *without further corroborative evidence*, to ground a conviction. Nevertheless, we do not find that these shortfalls or inconsistencies should give rise to any inference that the Victim was necessarily lying, or lead to the conclusion that the Judge erred in finding her to be a credible witness, bearing in mind that due deference should be given to the trial judge's assessment of demeanour. We would reiterate that, given the state in which the Victim was in, the gaps in her memory, or her inaccurate recollections, are largely unexceptional.

Medical and DNA evidence

Victim's injuries

41 Based on the medical reports and notes of the doctors who examined the Victim immediately after the incident, the following injuries were documented:

(a) abrasion on left and right elbows;

(b) superficial bruising and scratches on the front and back of her right upper arm;

(c) superficial bruising over right breast;

(d) superficial abrasion on left and right knee;

(e) abrasion over left and right medial malleolus (her feet);

(f) haematoma on the dorsal aspect of her right hand;

(g) limited range of motion of the right elbow due to pain with tenderness;

(h) tenderness over the right side of the head, and towards the back; and

(i) tenderness over the right foot.

42 Additionally, the Victim testified that bruise marks to her right shin, her right jaw and the top of her thighs appeared a day after the rape, although these injuries were not observed by any third party.

43 Given the lack of independent evidence supporting the bruise marks listed at [42] above as well as the fact that the Defence disputes them, we find it appropriate to disregard them in assessing the evidence. Leaving aside those injuries, the Defence argues that all of the Victim's documented injuries can be explained by the fall, and do not necessarily point towards a struggle or a rape.

44 We agree that most of the Victim's documented injuries can be explained by her fall. However, the Prosecution specifically identifies the hematoma on the back of the Victim's right hand and the tenderness on the back of the right side of the Victim's head as being injuries which are unlikely to have been caused by the fall. The Prosecution submits that these injuries are consistent with the Victim's account that Haliffie had hit her hand against something hard during the struggle and pulled her hair. While it is possible, as the Defence submits, that the Victim hit her head on the road when she fell out of the car resulting in tenderness to the back of her head, it appears less plausible that the hematoma on the *back* of her right hand can be explained by the fall. Even if the Victim did break her fall with her hands as the Defence suggests, she would have suffered injury to her

palms rather than the back of her hand. In our judgment, the hematoma on the back of the Victim's hand supports her account of the struggle. Having said that, the hematoma, *on its own*, is inconclusive. As the Defence points out, the hard object which the Victim's right hand purportedly hit during the rape was not identified.

45 The Defence also submits that if the Victim's account of the struggle is indeed true, further injuries would have been found on her. The injuries which the Defence argues that the Victim should have suffered if her account of the rape were true include injuries to her thighs, right hip, forearms, and vagina. In our judgment, the absence of these injuries does not *conclusively* point against the Victim's story. The absence of injury or bruising does not necessarily mean the absence of an infliction of force or a struggle. In this regard, the Defence has provided no evidence to support its assertion that the Victim must have, or was very likely to have, suffered the injuries mentioned above if her account of the struggle were true. The extent of the Victim's injuries may merely indicate the extent to which the Victim struggled. If the Victim was completely overpowered by the Accused, which is not implausible given her small size and the fact that she was tipsy, she might not have been able to put up much of a struggle. This could explain the absence of more extensive injuries.

46 On the whole, we find that the documented and undocumented injuries suffered by the Victim are inconclusive. This is especially because it is difficult to identify which injuries were caused by the fall out of the car, and which were caused during the alleged rape. While the hematoma on the back of the Victim's right hand supports her narrative, this is, as we have stated, insufficient on its own.

Haliffie's injuries

47 Haliffie was examined by two doctors approximately three days after the incident. The doctors noted that the only observable injuries suffered by Haliffie were a scratch over the posterior aspect of his left arm region, and three small scratches over his left elbow region. The Defence submits that the absence of injury to Haliffie's waist, where the Victim claims to have hit him with her shoe, points against the Victim's account of the rape. In our view, this argument does not take the Defence very far because the absence of bruising does not necessarily undermine the Victim's account that she had hit Haliffie on his waist with her shoe. Whether such a hit would cause a bruise would necessarily depend on the degree of force used. Bearing in mind that the parties were then in an enclosed space and that she was held down by Haliffie, it is not clear to us that the Victim could have used sufficient force to create a bruise.

48 The Prosecution submits that the scratches on Haliffie's arm are consistent with the Victim's account that she had scratched Haliffie. According to the Prosecution, this is further corroborated by the fact that

Haliffie's DNA was found in the Victim's fingernail clippings. Haliffie's evidence, however, was that the scratches came from the fight which he had with his wife just before he left his flat on 3 May 2013. At this juncture, there is a need for us to examine the DNA evidence.

DNA evidence

49 There were two pieces of DNA evidence relied upon by the Prosecution – first, the evidence of Haliffie's DNA in the Victim's fingernail clippings, and second, the evidence of Haliffie's DNA on her shoe. Reverting to the significance of the DNA found in the Victim's fingernail clippings, we accept the Defence's argument that the DNA evidence does not *ineluctably* suggest that Haliffie was scratched by the Victim. In this regard, no evidence was adduced by either the Defence or the Prosecution as to whether Haliffie's DNA could *only* have gotten into the Victim's fingernails if she had scratched him. It is possible that mere contact between the parties could explain the DNA in the Victim's fingernails. That said, we note that Haliffie's evidence that the scratches came from his wife was *not corroborated* by her. On balance, while the scratches and the DNA in the Victim's fingernails do suggest that there could have been a struggle between the parties, given that there is no further way of *verifying beyond a reasonable doubt* the origin of the scratches on Haliffie, we find that the scratches and the DNA evidence in the fingernail clippings are of limited probative value.

50 We are also of the view that the DNA found on the Victim's shoe does not necessarily lead to the conclusion that she used her shoe to hit his waist. As the Defence points out, Haliffie's DNA could have ended up on the Victim's shoe if he had stepped on it with his bare foot. Without further evidence, we find that the DNA evidence is of limited probative value.

Haliffie's statements and evidence

51 We now come to Haliffie's evidence. The Judge did not find him to be credible on the stand. Nevertheless, the most critical evidence, in our view, are the statements he gave to the police right after he was arrested. Haliffie was arrested in the evening on 6 May 2013, and the earliest documented evidence from Haliffie is found in the notes of an interview conducted by the investigating officer on 7 May 2013 at 1.45am. We note that this evidence was not adduced before the Judge, and only came to light when we asked the Prosecution if there were any records of the said interview. Counsel for Haliffie even complained that the Prosecution should have produced the notes at the trial. This is what was recorded in the investigating officer's diary:

> 0145
>
> I interviewed the accd Haliffie Bin Mamat, M/22 yrs (DOB1 18.22.1990), IC:S[xxx] of [address redacted]. The accd speak in English in the course of

> the interview. I asked the accd to tell me what happened on 3.5.13 after he quarrelled with his wife and he answered as follows.
>
> On Friday night I had a fight with my wife over money matters. I hit her and after that, I took the car key and I left home. I drove to Geylang Lorong 25 to meet my friend we spent time together near to a coffeeshop. I stayed there till about 1am. I don't feel like going home and I continued to drive around the town areas. I then ended up at Clarke Quay at about 2 am. I parked the car at the road near to Liang Court. I walked to the Indian club 'drupree' and talked to my friend who was there. I stayed at the club till about 4 a.m. I then went back to my car. My car is a black Proton Savy and the number plate: S[xxx]. I smoke just outside my car. I was still upset with the quarrel with my wife and thinking of how to pay my traffic summons. I owed about $400 in traffic fine. I was stress and somehow, I felt like having sex. I then went into my car and moved off. It was then 5 plus or 6am. I drove on and when I exit to the main road I made an u-turn toward Parliament area. At the junction of the Old Police Station or something like that, I made an u-turn as I noticed a lady at the opposite side. After the u-turn, I stopped my car in front of her. I wind down the window and shouted at her 'Can I give you a lift?' The lady was high in alcohol and she did not respond but she stood there and started to look at me. I opened the door and asked her where she stay. She said Seng kang and I asked her to come in she asked me whether she need to pay or not and I told her no need and it's on me. She then entered the car and I drove off and made an u-turn. I then turn left toward the direction of Bugis. I then drove to Lavender street and turned into Kallang Industrial area. In the end, I stopped my car on a bridge as it was quiet there. I then jumped over to the lady and started kissing her. I told her to relax and just enjoy. I had sex with her and put my penis into her vagina. After the sex, I drove off as I wanted to send her home. However, after a short distance, I think why not I rob her. I had earlier put her bag in the back seat and somewhere near to the traffic light, I opened the door and pushed her out of the car. I then drove off.

52 The next recorded statement was Haliffie's cautioned statement, which was given on 7 May 2013 after the charge of rape (but *not robbery*) was put to him. This evidence was before the Judge and was critical to the conviction. The following charge was read to Haliffie twice:

> You, Haliffie bin Mamat … are charged that you, on 4th May 2013 at about 6:30am and 6:45am, at the bridge along Kallang Bahru Road, Singapore, did commit rape on [the Victim] … by penetrating the vagina of the said [Victim] with your penis without her consent, and you have thereby committed an offence under Sec 375(1)(a) of the Penal Code punishable under Section 375(2) of the same Act.

53 When asked if he wanted to say anything in response to the charge read to him, Haliffie stated:

> Actually my intention was just to rob, to get money. But I don't know why I cross over, my mind, to have sex with the girl. Since this is my first time, I hope to get lighter sentence. I want to see my son growth. He is 1 year and 8 months now. And my wife can't be the one to take care of him all by herself.

> As my wife need support from husband. I admit this is my mistake. I wish to apologise to this girl in person. I am really sorry. The reason I did this was because I am under depression.

54 Four days later, on 11 May 2013, Haliffie's long statement was recorded. That was the first time he clearly suggested to the police that the sexual intercourse was consensual and gave the account described at [8]–[11] above.

55 We start by considering Haliffie's account in the interview in the early morning on 7 May 2013. The statement more or less consists of a factual narration of the events that took place. The Defence submits that the interview notes create reasonable doubt as to whether the cautioned statement given on the same day is a confession, and also that the Prosecution was in breach of its disclosure obligations pursuant to *Muhammad bin Kadar v PP* [2011] 3 SLR 1205 ("*Kadar*") by failing to disclose the said notes. Specifically, the Defence submits that:

> (a) Haliffie admits to robbery but not rape in the interview, lending supporting to the Defence's theory that the "mistake" he admitted to in the cautioned statement was the robbery, rather than the rape.
>
> (b) Haliffie's account of the sexual encounter suggests that it was consensual.
>
> (c) Haliffie's account in the first interview is consistent with his long statement.
>
> (d) Haliffie never stated that he invited the lady into his car *because* he wanted to have sex.

56 In this regard, several observations may be made:

> (a) Contrary to Haliffie's story that he initially only intended to rob the Victim (see [9] above), this earlier statement clearly states that he "felt like having sex" and suggests that this desire motivated him to offer the Victim a lift. While Haliffie never *expressly* said that he invited the lady into the car to have sex with her, this is a reasonable inference from his account taken as a whole especially since there was no mention of an intention to rob the Victim when he stopped his car to offer her a lift. Based on Haliffie's account in the interview, the robbery appears to have, instead, been an afterthought ("However, after a short distance, I think why not I rob her").
>
> (b) While Haliffie admitted to the sexual intercourse, there was no mention that the sexual intercourse with the "lady" was consensual. On the contrary, the tenor of the narrative suggests that Haliffie was simply doing things to the Victim (*eg*, "I started kissing her", "I told her to relax and enjoy", "put my penis into her vagina"), without any reciprocity from her. While we agree with the Defence that Haliffie

never expressly admitted to rape, we are unable to accept that his account suggests that the sexual encounter with the Victim was consensual. Conspicuously, in our view, he never denied that he raped her.

(c) The fact that the account Haliffie gave in the interview notes was largely consistent with his long statement is unexceptional because he has no reason to lie about the peripheral events which took place before and after the alleged rape. However, we note that the *key difference* in the two accounts lies at the most critical part of the narrative in his long statement – his detailed account of the events leading up to his alleged consensual sexual encounter with the Victim. These are the details which strongly suggest that the sexual encounter was consensual, but they are *conspicuously missing* from Haliffie's first account.

(d) Finally, *Kadar* does not require that the Prosecution must disclose all unused material or all evidence inconsistent with the Prosecution's case. However, what is clear is that this duty of disclosure does not include "material which is neutral or adverse to the accused" (*Kadar* at [113]).

57 In our view, the interview notes do not really assist the Defence. It is, at best, equivocal as to Haliffie's guilt. We agree that it does not clearly amount to a confession that he had raped the Victim. But unlike his subsequent long statement, it certainly does not suggest that the sexual intercourse was consensual, which was the crux of his defence at the trial and also before us. In the circumstances, we find that there was no breach of the Prosecution's *Kadar* obligations in this case.

58 We next consider Haliffie's cautioned statement, given later in the day on 7 May 2013. The Judge concluded that the cautioned statement was "strong evidence of [Haliffie's] guilt" and that it "severely damaged the credibility of [the defence of consent]" (the GD ([17] *supra*) at [33]). The Defence submits that Haliffie was only admitting to the robbery, and not the rape, in the cautioned statement.

59 In our judgment, the Judge was correct in treating the cautioned statement as strong evidence of Haliffie's guilt. Haliffie clearly admitted that he made a "mistake", and that he "wish[ed] to apologise". In this regard, we do not find the Defence's claim that Haliffie was only admitting to the robbery plausible. We agree with the Judge that "regard must be given to the process of recording [the cautioned statement]" (the GD at [33]). As mentioned at [52] above, Haliffie gave his cautioned statement after the rape charge was read to him twice. At that time, the charge of robbery was *not* put to Haliffie. In the circumstances, we do not see how it could be suggested that Haliffie was confused by the situation and thought it was appropriate to state his position *only* in relation to the robbery rather than

the rape. We would emphasise that at that point the only charge he faced was the rape charge. As the Judge pertinently observed, it is implausible that Haliffie would not have at least denied the rape charge and mentioned the Victim's consent when he was charged with rape *if* that defence was indeed genuine.

60 Under cross-examination, Haliffie admitted that he "understood that rape charge was being read back to [him]". When the Judge asked him why he did not deny raping the Victim, Haliffie testified as follows:

Q:	So why didn't you tell your---why didn't you say that, that you didn't rape her?
A:	I said that at that point of time my own thinking was that it was consensual but I---I say because of the robbery. That's what I said.
Court:	But why didn't you say it was consensual? If you think that it was---if you actually you even thought that now we---now that we have one more element, it's not that you didn't think about it but you said you had thought it was consensual. Then why didn't you---just say, 'Hey, it's consensual' in your statement?
Witness:	I don't know about that, er, Your Honour.

61 Evidently, Haliffie could give no satisfactory explanation for his failure to deny the rape. We therefore agree with the Judge that Haliffie's cautioned statement strongly corroborates the Victim's account that she was raped. We do not think that the account Haliffie gave in the earlier interview detracts from this conclusion in any way. If anything, Haliffie's earlier account strengthens this conclusion given that any mention of the Victim's consent is also conspicuously absent there. One would have thought that any reasonable person would have vehemently denied the allegation of rape if the sexual intercourse was indeed consensual. Yet, this did not happen.

62 The Defence argues that weight must be given to the fact that the first time Haliffie was asked to tell his version of what occurred (*ie*, during the recording of the long statement given on 11 May 2013), his story was that he only intended to rob the Victim, and that the sexual intercourse was consensual. We do not see how the Defence can assert that 11 May 2013 was the first time Haliffie was given the opportunity to give his version of the events. First, the interview that took place in the early morning of 7 May 2013 provided Haliffie with the opportunity to give his version of what happened. It is clear that there was no mention of consent in that first version. Second, we do not find it inconceivable that Haliffie could have decided to change his story after giving his cautioned statement, and claim that the Victim consented to the sexual intercourse. Perhaps he got smart and realised that it would be clearly in his interest to change his story.

63 To sum up, we agree with the Judge that Haliffie's initial confession to the rape charge in his 7 May 2013 cautioned statement, though subsequently retracted, is *strongly corroborative* of the Victim's account that she was raped. He even said he "wish[es] to apologise to [the] girl in person". Haliffie has given no reasonable explanation as to why he did not deny the rape charge outright, and has not claimed either that he did not understand the charge put to him, or that he was subject to any form of duress or coercion when giving his cautioned statement.

Corroborating witnesses

64 Right after the alleged rape, the Victim consistently told several third parties that she had been raped – these third parties include Mr Onn, the taxi driver she approached, his friend Ms Normah, the police officers at the station, as well as the doctors who examined her. She was observed by Mr Onn and Ms Normah to have been very emotional, "crying and mumbling" throughout. Based on the witnesses' testimony, the Victim did not mention the robbery at all, suggesting that what was dominant in her mind at that time was the fact that she was raped. This would be natural if the rape had indeed taken place given that being robbed certainly fades in significance in comparison to being raped.

65 Further, based on the evidence of the abovementioned witnesses, we find no basis to conclude that the Victim's distress was not genuine. Indeed, the Defence does not attempt to argue that the Victim was not genuinely distressed. However, Mr Leo submits that the Victim's distress can be explained by the fact she was robbed, and that her cry of rape was a reaction to the fact that she felt cheated and betrayed. While this is theoretically possible, it is significant to note that she did not mention the robbery to the witnesses who saw her immediately after, but rather, focused on the fact that she was raped. Any suggestion that the Victim may have intentionally tried to frame Haliffie for a rape he did not commit given that he had robbed her and kicked her out of the car also seems implausible given that her emotional distress after the incident appears genuine and she was unlikely to have been in a state to devise such a devious charge.

66 In this regard, we find that the evidence of the witnesses who saw the Victim right after the incident is corroborative evidence under the more "liberal approach" to corroboration discussed at [30] above. The Victim's claims that she was raped were clearly made immediately after the incident upon seeing the taxi driven by Mr Onn. She was then in a state of great emotional distress. Putting these factors together, we find that the evidence of the witnesses who saw the Victim right after the incident unquestionably corroborates her account that she was raped by Haliffie.

Conclusion on conviction

67 In conclusion, taking into account the analysis of the evidence above, we dismiss Haliffie's appeal against his conviction in CCA 18/2015. While we do not find the Victim's evidence to be unusually convincing, we do not find any basis to conclude that she was lying or to otherwise disturb the Judge's finding that she was a credible witness. Additionally, we find that the Victim's allegation of rape is well corroborated. First, as the Judge found, Haliffie's cautioned statement dated 7 May 2013 independently corroborates the Victim's account that she was raped. Second, we find that the evidence of the witnesses who saw the Victim right after the incident also corroborates the Victim's account of the rape on the more liberal approach to corroboration (see [30] above).

Sentence

68 We now turn to consider the appeals against the Judge's sentencing decision. The only issue in the sentencing appeals is whether the sentence of ten years' imprisonment and six strokes of the cane for the *rape charge* is manifestly excessive or inadequate in the present circumstances, and/or whether it was arrived at on the basis of an error of fact or law.

69 The Defence does not challenge the Judge's decision that the one transaction rule would not apply and that the sentences should run consecutively. Mr Leo's submission is that the appropriate sentence for the rape charge is *seven years' imprisonment and six strokes of the cane*. According to the Defence, the aggregate sentence (presently, 13 years' imprisonment and 18 strokes of the cane) should be recalibrated in light of the totality principle so that it would not be substantially above the benchmark sentence of ten years' imprisonment for the most serious offence committed. Further, the Defence submits that Haliffie's culpability is lower than the offenders in *PP v Tan Jun Hui* ([23] *supra*), *Sivakumar s/o Selvarajah v PP* [2014] 2 SLR 1142 ("*Selvarajah*") and *PP v Neo Wei Siong* Criminal Case No 16 of 2013. Finally, the Defence also highlights the fact that Haliffie was under a great deal of distress over his family's financial position, he has no antecedents, he is unlikely to re-offend and he has suffered the break-up of his marriage and has to be separated from his young son.

70 The Prosecution submits to the contrary that the appropriate sentence for the rape should be *12 years' imprisonment and six strokes of the cane*. These are the grounds the Prosecution relies upon:

> (a) The Judge erred in requiring "significant" or "strong" aggravating factors to justify a departure from the ten-year starting point.
>
> (b) The Judge failed to appreciate that a sentencing range was established for Category 1 rape cases in *PP v NF* ([20] *supra*). In this

regard, in applying the totality principle, the relevant sentence to consider is the upper limit of sentences for Category 1 rapes (*ie*, 14 years' imprisonment), rather than the starting point of ten years' imprisonment.

(c) The Judge failed to give weight to the importance of general deterrence in this case.

(d) The Judge failed to adequately take into account the following aggravating factors, which justify a departure from the ten years' imprisonment term as the starting point: Haliffie had practised deception on the Victim; Haliffie took advantage of the Victim's vulnerability given that she was tired and tipsy; the rape was premeditated given that Haliffie was looking for a quiet place; the sex was unprotected and Haliffie callously ejaculated into the Victim's vagina; the Victim suffered from post-traumatic stress disorder; and Haliffie showed no remorse during the trial.

(e) The only mitigating factors are Haliffie's youth and lack of antecedents, but these are outweighed by the aggravating factors.

(f) The rape sentence is low when the relevant sentencing precedents are taken into account.

Appellate intervention in sentencing

71 The principles governing appellant intervention in a trial judge's sentencing decision are well-established. As this court held in *ADF* ([31] *supra*) at [17], the appellate court would not ordinarily disturb the sentence imposed by the trial judge except where it is satisfied that:

(a) the trial judge erred with respect to the proper factual basis for sentencing;

(b) the trial judge failed to appreciate the materials placed before him;

(c) the sentence was wrong in principle; or

(d) the sentence was manifestly excessive or manifestly inadequate, as the case may be.

72 In this regard, it has been held that a sentence is only manifestly excessive or inadequate if it "requires substantial alterations rather than minute corrections to remedy the injustice" (*PP v Siew Boon Loong* [2005] 1 SLR(R) 611 at [22], and *ADF* at [18]).

Clarifying the sentencing principles and benchmark sentences for rape

73 The appeal has raised several legal question regarding the sentencing framework for rape offences:

(a) First, under the sentencing framework laid down for rape offences in *PP v NF*, is a departure from the benchmark sentence for Category 1 rape only justified if there are "significant" or "strong" aggravating or mitigating factors?

(b) Second, in applying the totality principle to Category 1 rape cases, what is the relevant benchmark sentence? Is it the starting point of ten years' imprisonment or, as the Prosecution submits, the upper limit of 14 years' imprisonment for Category 1 rapes?

Departing from the benchmark

74 In *PP v NF* ([20] *supra*) at [17], Category 1 rape was described as "a rape committed without any aggravating or mitigating factors". The High Court held that such a rape "ought to attract an imprisonment term of ten years and not less than six strokes of the cane as a starting point" (at [17]). It is important to clarify what the court meant when it described Category 1 rapes as a rape committed "without any aggravating or mitigating factors". The Judge held that this "should be construed to cover cases with no strong aggravating or mitigating factors which have a significant impact on the sentence to be imposed" (the GD ([17] *supra*) at [49]). With respect, we find the reference to "*strong* aggravating or mitigating factors" somewhat vague, and hence, unhelpful. Under the sentencing framework laid down in *PP v NF*, four categories of rape were identified. Category 1 rape has already been discussed. The remaining three categories are as follows:

(a) Category 2 rape: where "there has been exploitation of a particularly vulnerable victim" (*PP v NF* at [25]).

(b) Category 3 rape: repeated rape of the same victim or of multiple victims (*PP v NF* at [37]).

(c) Category 4 rape: the offender "has manifested perverted or psychopathic tendencies or gross personality disorder, and where he is likely, if at large, to remain a danger to women for an indefinite time" (*PP v NF* at [21]).

75 Given the nature of the four categories of rape identified, we are of the view that Category 1 rape is in reality a *residual category* that covers all rape offences that do not fall within Category 2, 3 or 4. By describing it as a rape "without any aggravating or mitigating factors", the court must have meant the *absence of features that would make it a Category 2, 3 or 4 rape*. And, it follows from this that aggravating or mitigating factors which *do not* affect which *category* the rape falls in *may* affect whether the starting benchmark sentence should be *departed from*. Therefore, in so far as the Judge had held that a departure from the benchmark sentence can only be justified if there are "significant" or "strong" aggravating or mitigating factors, we respectfully disagree.

Totality principle

76 We now consider the application of the totality principle in this context. In *Mohamed Shouffee bin Adam v PP* [2014] 2 SLR 998 ("*Shouffee*") at [47], the High Court held that the totality principle "is a principle of limitation and is a manifestation of the requirement of proportionality". It consists of two limbs (*Shouffee* at [54] and [57]):

> 54 The first limb of the totality principle examines whether 'the aggregate sentence is substantially above the *normal* level of sentences for the most serious of the individual offences committed' …. This calls for a comparison between the total sentence on the one hand and a yardstick on the other hand (see *Law Aik Meng* at [57]) …
>
> …
>
> 57 The second limb considers whether the effect of the sentence on the offender is crushing and not in keeping with his past record and his future prospects.
>
> [High Court's emphasis in *Shouffee*]

77 In relation to the present case, the parties primarily disagree about how the *first limb* of the totality principle should be applied. The Prosecution submits that the "normal level" of sentences must refer to (a) a sentencing *range* rather than a specific sentence, and (b) the upper limit of the said range. The Prosecution submits that the normal level of sentences for Category 1 rape is ten to 14 years' imprisonment and six to 10 strokes of the cane.

78 The Defence submits that the sentencing benchmark for Category 1 rape is ten years' imprisonment and six strokes of the cane, which should hence be the relevant comparator for the purposes of the first limb of the totality principle.

79 We agree with the Prosecution that limb 1 of the totality principle contemplates comparing the aggregate sentence with the *range* of sentences normally imposed for the most serious offence, rather than with a specific sentencing benchmark or starting point. It bears emphasis that the totality principle recommends a broad-brushed "last look" at all the facts and circumstances to ensure the overall proportionality of the aggregate sentence. As such, it would be more consonant with the purpose of and approach recommended by the totality principle to treat the relevant comparator as the range of sentences normally imposed, rather than as a specific benchmark sentence. However, in our judgment, the court should not focus only on the upper limit of the sentencing range. Instead, the court should give due regard to the whole sentencing range and the relevant aggravating or mitigating factors present in the particular case to assess whether, *on the whole*, the sentence is proportionate to the gravity of the offence.

80 As mentioned, the Prosecution submits that the upper limit of the "normal level of sentences" for Category 1 rape should be 14 years' imprisonment. It is not clear how this figure was arrived at, but it is possible that the Prosecution took guidance from the fact that the benchmark sentence for rapes falling within Categories 2 and 3 is 15 years' imprisonment. In our view, it cannot be assumed that the "normal level of sentences" for Category 1 rapes consists of the entire range of sentences below the benchmark imposed for Category 2 rapes. Instead, the sentencing range for Category 1 rapes should be determined by looking at the relevant sentencing precedents. In this regard, based on the sentencing precedents cited in Annex A of the Prosecution's submissions, the range of sentences that have been meted out for Category 1 rape vary from nine to 13 years' imprisonment. We shall hence treat this as the "normal level of sentences" under the first limb of the totality principle.

Aggravating and mitigating factors

81 In our judgment, the aggravating factors in this case include the following:

(a) Haliffie deceived the Victim and took advantage of her trust and her vulnerable state (given she was tipsy).

(b) Haliffie ejaculated into the Victim, exposing her to risks of pregnancy and sexually transmitted diseases.

(c) Haliffie caused the Victim to suffer psychological harm in the form of post-traumatic stress disorder.

(d) Haliffie not only showed no remorse for the rape during the trial, but also advanced the false defence of consent.

82 The mitigating factors in this case include the following:

(a) Haliffie is relatively young.

(b) Haliffie has no antecedents.

We would add that we do not consider the fact that Haliffie was distressed by his family's financial position at the time of the offence, nor the fact that he will be apart from his family given the long term of imprisonment, to be mitigating factors. As was observed in *PP v Goh Lee Yin* [2008] 1 SLR(R) 824 at [155] in the context of sentencing mentally-ill offenders, "[f]anciful claims that are related to the vicissitudes of life will be rejected". Further, it is also well-established that "[l]ittle if any weight can be attached to the fact that the family will suffer if the accused is imprisoned for a substantial period of time" (*PP v NF* ([20] *supra*) at [60]). It must follow from this that any concern over the accused's own suffering as a result of his separation from his family must be of little mitigating value.

Sentencing precedents

83 We now consider the relevant sentencing precedents. The Defence relies heavily on *PP v Tan Jun Hui* ([23] *supra*), submitting that Haliffie's culpability is significantly lower than the offender in that case. In *PP v Tan Jun Hui*, the offender robbed, raped and attempted to penetrate the victim's mouth with his penis. When committing the offences, he wielded a knife and thus put the victim in fear of hurt. The victim suffered from post-traumatic stress disorder thereafter. The offender was sentenced to four years' imprisonment and 12 strokes of the cane for armed robbery, ten years' imprisonment and 12 strokes of the cane for aggravated rape, and ten years' imprisonment and 12 strokes of the cane for aggravated attempt to sexually penetrate the complainant's mouth with his penis, with the sentence for the aggravated attempt to sexually penetrate the complainant's mouth running concurrently. The global sentence was therefore 14 years' imprisonment with 24 strokes of the cane.

84 The Defence submits that Haliffie's culpability is lower because (a) no weapon was used, (b) Haliffie only faced two charges, not three, and (c) the charges in *PP v Tan Jun Hui* were for *aggravated* rape and an *aggravated* attempt to sexually penetrate the victim's mouth. The Prosecution, however, points out that (a) the Victim had suffered more serious injuries than the victim in *PP v Tan Jun Hui*, (b) the offender in *PP v Tan Jun Hui* had pleaded guilty whereas Haliffie claimed trial, and (c) Haliffie had ejaculated into the Victim whereas the offender in *PP v Tan Jun Hui* did not. We largely agree with the factors identified by both sides and, on balance, find that the offence in *PP v Tan Jun Hui* was slightly more serious given the aggravated nature of the charges and the use of a weapon. However, taking into account the fact that Haliffie did not plead guilty, we do not think that Haliffie's sentence should be significantly lower than the sentence imposed in *PP v Tan Jun Hui*.

85 The Defence also relies on *Selvarajah* ([69] *supra*). In *Selvarajah*, the offender had seen the victim and her boyfriend having sex in a car parked in a carpark. He knocked on the car window, demanded they come out, and claimed to be a policeman doing rounds with his teams. He threatened to bring them to the police station and charge them. The offender then said he would give them a chance if the victim followed him and said that he would send her home. He then drove off with her, parked at a remote estate, and raped her. The offender was sentenced to six months' imprisonment for impersonating a police officer, one year's imprisonment and two strokes of the cane for outrage of modesty, 11 years' imprisonment and five strokes of the cane for sexual assault by penetration of the victim's mouth, and 11 years' imprisonment and five strokes of the cane for rape. The sentences for the rape, sexual assault and impersonating a police officer were ordered to run concurrently, bringing the global sentence to 12 years' imprisonment and 12 strokes of the cane.

86 The Defence submits that Haliffie's culpability is lower than the offender in *Selvarajah* given that the latter was convicted of multiple offences and there was the serious aggravating factor of impersonating a police officer. The Prosecution submits that the offence in *Selvarajah* was not as serious because there was no physical violence or threat of physical violence. In our view, both cases contained an element of deception and while the offender in *Selvarajah* had impersonated a police officer, which was an aggravating factor absent here, the use of violence on the Victim in this case renders the two offences of comparable gravity.

87 The Defence also cites the unreported case of *PP v Neo Wei Siong*, but that case does not assist us because the Defence only submitted newspaper reports of the case, and did not offer us any insight into the court's reasoning.

88 The final case we consider is *PP v Sivakumar s/o Magendran* Criminal Case No 23 of 2012 ("*Magendran*"). In that case, the 23-year-old offender spotted the victim walking to her HDB block, looking tipsy. Before the victim could press the lift button, the offender came up from behind her and grabbed her neck. He dragged the victim into the lift, and came out on the fifth floor. He then raped the victim on the staircase landing but did not ejaculate into her. She did not struggle during the rape as she was in fear of her physical safety. After raping the victim, the offender took her mobile phone, cash amounting to $230 and a digital camera from her handbag. The offender pleaded guilty. He was sentenced to 13 years' imprisonment and 12 strokes of the cane for the rape charge, and three years' imprisonment and 12 strokes of the cane for the robbery charge. Both sentences were ordered to run concurrently, bringing about a global sentence of 13 years' imprisonment and 24 strokes of the cane.

89 The Prosecution submits that the offence in *Magendran* is less serious because (a) the accused was of borderline intelligence, (b) the accused did not ejaculate inside the victim, (c) no injury was caused to the victim, and (d) he did not rape her within a confined space. In our view, the present offence is not significantly more serious than the offence in *Magendran*. In both cases, physical violence was used in raping the victim. Further, even if the victim in *Magendran* did not suffer any physical injuries, many of the physical injuries suffered by the Victim in the present case were not that serious and may not have been inflicted during the rape. Finally, while the Prosecution is correct to point out that the present offence took place in a confined space, we note that two other charges of aggravated outraging of modesty and theft were taken into consideration in *Magendran*. On balance, therefore, we do not think that Haliffie deserves a significantly higher sentence than the offender in *Magendran*.

The appropriate sentence in this case

90 Having considered the relevant legal principles, sentencing precedents, and circumstances of the case, we dismiss the appeals against sentence. The Judge's decision to sentence Haliffie to the benchmark of ten years' imprisonment and six strokes of the cane for rape cannot be said to be wrong in law or manifestly excessive or inadequate. In our view, the aggregate sentence of 13 years' imprisonment and 18 strokes of the cane is in line with existing sentencing precedents. Additionally, while there are several significant aggravating factors in this case (see [81] above), we take into account the mitigating value of Haliffie's youth and lack of antecedents, as well as the need for proportionality in the sentence as a whole. In this regard, applying the totality principle, we do not think that the global sentence imposed by the Judge was out of sync with the normal level of sentences imposed for the rape charge, nor was it crushing. On the whole, we see no ground for appellate intervention.

Conclusion

91 In the result, we dismiss the three appeals before us.

Reported by Pang Ru Xue Jamie.