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

[2024] SGHC 64

Criminal Case No 50 of 2023

Between

Public Prosecutor

And

CPS

GROUNDS OF DECISION

[Criminal Procedure and Sentencing — Sentencing — Young offender convicted of serious offence — Whether rehabilitation dominant consideration]

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Public Prosecutor
v
CPS

[2024] SGHC 64

General Division of the High Court — Criminal Case No 50 of 2023
Pang Khang Chau J
17 October 2023, 22 January 2024

8 March 2024

Pang Khang Chau J:

Introduction

1 The accused pleaded guilty to one charge of rape under s 375(1)(*a*), punishable under s 375(2) of the Penal Code (Cap 224, 2008 Rev Ed) (the "PC"). He was 16 years old at the time he committed the offence and 19 years old at time of conviction. I sentenced the accused to reformative training with a minimum detention period of 12 months. The Prosecution has appealed against my decision.

Facts

2 On 27 June 2020 at around 9.00 to 10.00pm, the victim, who was 14 years and 5 months old at the time, and her boyfriend ("CPT"), who was then 22 years old, were drinking a bottle of whisky together at a playground in Admiralty Park. The victim and CPT had been seeing each other romantically

for about eight months. Earlier that night, CPT had asked the victim to go out and drink with him. Although she had ceased consuming alcohol in 2019, CPT threatened that he would find another girl to drink with if she did not agree. The victim agreed to his request as she was afraid of "losing him" to other girls.[1]

3 On CPT's instructions, the victim set up an Instagram livestream of their drinking session. The accused, having chanced upon the livestream, messaged the victim to ask if he could join their drinking session. CPT indicated his agreement to the accused's request. The victim then informed the accused of their location and asked him to come over. The accused arrived at the playground at around 10.00pm to midnight. By then, the victim and CPT had consumed about half of the bottle of whisky, and the victim was feeling tipsy and lightheaded. Although she was reluctant to drink more alcohol, the victim accepted the drinks that CPT poured for her as she did not want to be castigated by CPT for rejecting him. She saw that the accused was only offered one drink. She drank the rest of the alcohol, as CPT kept pouring drinks for her.[2] According to the accused, he did not know that the victim was reluctant to consume alcohol and was coerced by CPT into doing so.[3]

4 After the victim consumed the last of the alcohol, she threw up and lay down on the ground. CPT asked her to go to the nearby public toilet to wash up, but she could not walk by herself to the toilet. The accused tried to use his electric scooter to bring her to the toilet, but she could not maintain her grip on it and fell off halfway. The accused and CPT carried her to the toilet, where she

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1 Statement of Facts ("SOF") at paras 7–9.

2 SOF at paras 9–11.

3 Defence's Sentencing Submissions and Mitigation Plea dated 10 October 2023 ("DSS") at para 7 and 10.

continued to vomit. At some point, she heard the locking of the toilet door and could hear the accused and CPT talking.[4]

5 CPT removed the victim's jacket and t-shirt. The victim, who was lying face-up, saw that the accused was seated on her right, and CPT was seated on her left. The accused then threw the victim's jacket over her face and held it there, while also holding her down by the shoulders. She shouted at the accused and told him to get away from her and not to touch her. CPT pulled down the victim's jeans and underwear and spread her legs apart to penetrate her vagina with his fingers. She did not object to this as he was her boyfriend.[5] According to the accused, CPT invited the accused to have sex with the victim, but the accused declined.[6]

6 The victim managed to partially dislodge the jacket from her face as she was struggling. When CPT realised that she could see, he signalled by hand motion to the accused to desist. (The Statement of Facts did not make clear what CPT was asking the accused to desist from. However, when read in context, it would appear that CPT was probably asking the accused to desist from holding the victim down by her shoulders.) The victim was upset and scolded CPT for letting the accused approach her. She crawled towards him and fellated him in the hope that this would prevent further assaults upon her person.[7]

7 According to the accused, CPT again invited the accused to have sex with the victim, but the accused declined once more. CPT then repeated that the

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4 SOF at para 11.

5 SOF at para 12.

6 DSS at para 13.

7 SOF at para 13.

accused should go ahead and have sex with the victim. The accused then agreed.[8]

8 CPT told the victim to lie down, to which the victim complied. The accused and CPT assumed their positions on either side of the victim. The accused again threw the victim's jacket over her face and secured it there to obscure her vision. CPT and the accused had done this so that the victim would not know who was having sex with her. She cried out, struggled, and tried to kick at CPT and the accused. CPT held her down and kept the jacket over her face. The accused took off his shorts and underwear and went on top of the victim to insert his penis into her vagina. He engaged in unprotected sexual intercourse with her without her consent. The accused was aware that the victim had not consented to sexual intercourse with him, as he had seen the victim crying and heard her asking CPT why the later had offered her to the accused. The accused ejaculated inside the victim after about five minutes. CPT then removed the jacket from the victim's face and told her to wash herself up. The victim complied, while continuing to cry as she did so. The accused then told CPT to console her while he went outside the toilet to wait, before eventually heading home.[9]

9 The victim revealed the assault during a self-study support group session with her secondary school teacher on 17 February 2021. The school authorities informed the victim's mother the next day, who made a police report on 23 February 2021.[10]

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8 DSS at para 15.

9 SOF at paras 14–15.

10 SOF at para 16.

Procedural history

The parties' initial submissions

10 At the first sentencing hearing, the Prosecution submitted that the accused should be sentenced to eight to ten years' imprisonment with six to eight strokes of the cane,[11] as rehabilitation had been displaced as the dominant sentencing consideration in favour of deterrence and retribution.[12] This was in view of the inherently odious nature of rape, being the gravest of all sexual offences and causing severe harm to the victim's body and mind,[13] which occasioned the need for general deterrence and retribution for the wrong done to the victim.[14] Furthermore, they submitted that specific deterrence was needed as the offence was committed while on court bail, and the accused's antecedents, although for unrelated offences, showed a grave escalation in his offending behaviour.[15]

11 The Defence submitted that the accused should not be sentenced to imprisonment, but to reformative training instead.[16] They relied on the fact that the accused did not know that the victim was reluctant to consume alcohol or that she was coerced by CPT to consume alcohol.[17] They also took the position that the accused threw the victim's jacket over her face and held it there as she was "rather loud", and that the accused did not initially have any intention to

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11 Prosecution's Submissions on Sentence dated 10 October 2023 ("PSS") at paras 34 and 45.

12 PSS at para 18.

13 PSS at paras 7, 15–16.

14 PSS at paras 12–14.

15 PSS at paras 10–11.

16 DSS at para 2.

17 DSS at para 7 and 10.

have sexual intercourse with the victim.[18] They argued that the accused had declined to have sex with the victim twice, but only agreed when CPT asked him a third time to do so.[19] According to the Defence, this demonstrated that there was no premeditation on the part of the accused.[20]

12 Based on these facts, the Defence submitted that rehabilitation was not displaced as the dominant sentencing consideration for four reasons. First, the manner of commission of the offence was not serious enough to displace rehabilitation as the dominant sentencing consideration. In support of this, they highlighted how there was no premeditation or excessive force used in the offence, which took place over a short period of time.[21] In this regard, the Defence drew analogies between the facts of the present case and the facts of *Public Prosecutor v Ong Jack Hong* [2016] 5 SLR 166 ("*Ong Jack Hong*") and *Public Prosecutor v Loew Zi Xiang* [2016] SGDC 251 ("*Loew Zi Xiang*") where sentences of reformative training were meted out for the offence of sexual penetration of a minor and the offence of rape respectively.[22] Second, the Statement of Facts disclosed no evidence of actual physical harm suffered by the victim, and the Prosecution did not tender any victim impact statement regarding any emotional or psychological trauma.[23] The Defence therefore submitted that, while the court is entitled to assume that the victim had suffered such harm as would normally be expected from rape, there is no evidence of her

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18 DSS at para 12.

19 DSS at paras 13–15.

20 Notes of Evidence ("NE"), 17 October 2023 at p 31, lines 3–14.

21 DSS at para 36.

22 DSS at paras 33–35.

23 DSS at paras 39–40.

sustaining any harm beyond that.[24] Third, the accused could not be said to be hardened and recalcitrant, as he was not traced for related offences.[25] Fourth, the cases in which rehabilitation was displaced as the dominant sentencing consideration concerned facts which were far more egregious than the present case.[26]

13 In the alternative, the Defence submitted that a global sentence of 7.5 years' imprisonment with no more than four strokes of the cane would have been appropriate if rehabilitation was displaced as the dominant sentencing consideration.[27]

Personal apology by the accused

14 At the end of the Defence's submission, the accused sought and obtained permission to address the court directly. He said that he was truly remorseful for his wrongdoings towards the victim and truly regretful of his actions. He also apologised to the victim and her family for his wrongdoings.[28]

Reformative training suitability report

15 As the accused met the technical requirements for reformative training (in that he was between 16 and 21 years of age at the time of conviction), and having regard to the parties' submissions, I called for a reformative training suitability report ("RT Suitability Report") to be prepared. The RT Suitability Report indicated that the accused was physically and mentally fit and therefore

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24 DSS at para 40.

25 DSS at paras 43–44.

26 DSS at paras 45–46.

27 DSS at para 52.

28 NE, 17 October 2023 at p 22, lines 5–14.

suitable for reformative training.[29] The RT Suitability Report also recommended that, if the accused is sentenced to reformative training, he should undergo a Level 2 intensity programme to be delivered over 12 months.[30]

The parties' submissions after receiving the reformative training suitability report

16 At the second hearing, the Prosecution maintained that rehabilitation had been displaced as the dominant sentencing consideration. They submitted that the RT Suitability Report evidenced self-justifying behaviour on the part of the accused, who resorted to blaming CPT and the victim for his own commission of the offence.[31] The Prosecution further submitted that the accused's characterisation of the victim's supposed "enjoyment" of the sexual act,[32] and the statement that he was "forced" by CPT to commit the said act,[33] highlighted the accused's failure to recognise the atrociousness of his offence.[34]

17 In reply, the Defence submitted that the remarks attributed to the accused in the RT Suitability Report, which appeared to be minimising responsibility and victim-blaming, did not express the accused's current views, but were uttered by the accused during the interview for the RT Suitability Report to explain the views he held at the time of the offence and what influenced him to commit the offence.[35] The Defence further submitted that the

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29 RT Suitability Report at p 2.

30 RT Suitability Report at p 9.

31 NE, 22 January 2024 at p 2, lines 21–30.

32 NE, 22 January 2024 at p 3, lines 10–12.

33 NE, 22 January 2024 at p 2, lines 28–30.

34 NE, 22 January 2024 at p 3, lines 23–26.

35 NE, 22 January 2024 at p 6. lines 4–10; NE, 22 January 2024 at p 6, lines 15–22; NE, 22 January 2024 at p 12, lines 8–19.

accused knew what he did was wrong, and does not blame the victim for his own actions.[36]

18 The Defence also submitted that under the reformative training regime, the accused could be held in detention for up to 36 months, and would benefit from a statutory supervision period, thus possibly bringing the entire reformative training period to up to 54 months, depending on the accused's progress.[37] They submitted that reformative training would provide greater benefits to the accused, as it would allow for a greater chance that he would be successfully rehabilitated,[38] and prevent him from being exposed to the general prison community, which would be less conducive to rehabilitation.[39]

The law on sentencing of young offenders

19 The parties did not dispute that the applicable sentencing framework was that laid down in *Mohammad Al-Ansari bin Basri* [2008] 1 SLR(R) 449 ("*Al-Ansari*"). This framework, which I shall refer to in these grounds as the "*Al-Ansari* framework", involves two stages. At the first stage, the court identifies and prioritises the primary sentencing considerations appropriate to the young offender in question having regard to all the circumstances including those of the offence. This will then set the parameters for the second stage, which is to select the appropriate sentence that would best meet those sentencing considerations. Although *Al-Ansari* was a decision of the High Court, the *Al-Ansari* framework has been endorsed by the Court of Appeal in *Public Prosecutor v ASR* [2019] 1 SLR 941 ("*ASR (CA)*") at [94]–[102] and in *See Li*

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36 NE, 22 January 2024 at p 6, lines 22–26.

37 NE, 22 January 2024 at p 8, lines 9–18.

38 NE, 22 January 2024 at p 8, lines 22–31.

39 NE, 22 January 2024 at p 9, lines 8–11.

Quan Mendel v Public Prosecutor [2020] 2 SLR 630 ("*Mendel See (CA)*") at [12].

20 In relation to the first stage, rehabilitation will generally be the primary sentencing consideration. As explained by Yong Pung How CJ in *Public Prosecutor v Mok Ping Wuen Maurice* [1998] 3 SLR(R) 439 ("*Maurice Mok*") (at [21]):

> Rehabilitation is the dominant consideration where the offender is 21 years and below. Young offenders are in their formative years and chances of reforming them into law-abiding adults are better. The corrupt influence of a prison environment and the bad effects of labelling and stigmatisation may not be desirable for young offenders. Compassion is often shown to young offenders on the assumption that the young "don't know any better" and they may not have had enough experience to realise the full consequences of their actions on themselves and on others. Teens may also be slightly less responsible than older offenders, being more impressionable, more easily led and less controlled in their behaviour. However, there is no doubt that some young people can be calculating in their offences. Hence the court will need to assess the facts in every case.

21 However, as noted in *Al-Ansari* at [34], it does not follow that rehabilitation must always be the dominant sentencing consideration in cases involving young offenders. The court in *Al-Ansari* went on to give the example of *Public Prosecutor v Mohamed Noh Hafiz bin Osman* [2003] 4 SLR(R) 281 ("*Mohamed Noh Hafiz*") where the 17-year-old offender had on separate occasions followed *pre-pubescent girls* into the lifts of public housing estates as they were returning home alone. When the girls emerged from the lifts, he approached them from behind, covered their mouths and dragged them to a staircase landing. He then *attacked and molested them violently*. The offender faced two charges of rape, four of aggravated outrage of modesty, three of unnatural sex and one of robbery. The offender pleaded guilty to the *ten charges* and consented to *19 other charges* being taken into consideration for the

purpose of sentencing ("TIC"). Victim impact statements were filed to evidence the psychological impact on the victims. Two of the girls stated that they were fearful of male strangers and did not dare go out anymore. Tay Yong Kwang J (as he then was) sentenced the offender to 20 years' imprisonment and 24 strokes of the cane. Tay J held that reformative training was inappropriate in the light of *the number and seriousness of the offences*. The accused had been shockingly audacious in committing most of the attacks in the day, near the homes of his victims. *Eleven young girls* had been subject to intense emotional trauma and indelible hurt by his despicable acts. In the circumstances, the court in *Al-Ansari* remarked (at [35]) that *Mohamed Noh Hafiz* was "a clear example of a case where the offence was so serious and the actions of the offender so outrageous that rehabilitation had to be subordinated to some more serious form of corrective punishment".

22 Thus, at the first stage of the *Al-Ansari* framework (*Al-Ansari* at [77]):

> …the court must ask itself whether rehabilitation can remain a predominant consideration. If the offence was particularly heinous or the offender has a long history of offending, then reform and rehabilitation may not even be possible or relevant, notwithstanding the youth of the offender.

In *Public Prosecutor v Koh Wen Jie Boaz* [2016] 1 SLR 334 ("*Boaz Koh*") at [30], the High Court set out the circumstances that would tend to displace the presumptive emphasis on rehabilitation at the first stage of the *Al-Ansari* framework. These include where (a) the offence is serious, (b) the harm caused is severe, (c) the offender is hardened and recalcitrant, or (d) the conditions do not exist to make rehabilitative sentencing options viable. I shall refer to these factors as the "*Boaz Koh* factors". In *ASR (CA)* at [101]–[102], the Court of Appeal adopted the *Boaz Koh* factors while clarifying that factor (d) properly falls under the second stage of the *Al-Ansari* framework except in cases of

foreign offenders who are not locally resident, where factor (d) would instead feature at the first stage.

23 Going on to the second stage of the *Al-Ansari* framework, the task of the court was described in *Al-Ansari* as follows (at [78]):

> However, if the principle of rehabilitation is considered to be relevant as a dominant sentencing consideration, the next question is how to give effect to this. In this respect, with young offenders, the courts may generally choose between probation and reformative training. The courts have to realise that each represents a different fulcrum in the balance between rehabilitation and deterrence. In seeking to achieve the proper balance, the courts could consider the factors I enumerated above, but must, above all, pay heed to the conceptual basis for rehabilitation and deterrence.

The factors described in the foregoing passage as factors "enumerated above" are (a) the seriousness of the offence; (b) the culpability of the offender; (c) the existence of antecedents; (d) the nature of the rehabilitation best suited for the offender; (e) the availability of familial support in the rehabilitative efforts; and (f) any other special reasons or need for rehabilitation (*Al-Ansari* at [67]).

24 It would not go unnoticed that there is some overlap between these factors and the *Boaz Koh* factors. This should come as no surprise as it is entirely logical that the same factor may need to be considered for different purposes at different stages of the sentencing process. For example, in a case where the seriousness of an offence may not be sufficient to displace rehabilitation as the dominant sentencing consideration under the first stage of the *Al-Ansari* framework, that same offence may nevertheless be considered sufficiently serious at the second stage of the *Al-Ansari* framework to displace probation as an appropriate sentencing option. In such a case, reformative training would be the preferred option. As noted in *Boaz Koh* at [38], reformative training also incorporates a significant element of deterrence because there is a minimum

incarceration period that is not a feature of probation. It offers the court a middle ground between sending the offender to prison and the desire to rehabilitate a young offender, by allowing the court to sentence the offender to a rehabilitative programme under a structured environment while avoiding the danger of exposing the young offender to the potentially unsettling influence of an adult prison environment.

25 The proposition that reformative training is the preferred sentencing option in cases where a degree of deterrence is desired may be illustrated by reference to the facts of *Al-Ansari* itself, where a 16-year-old offender, together with two accomplices, picked up a foreign sex worker in a car. The accomplices then raped, robbed and assaulted her in the car. The offender participated in the offence by maintaining the car engine, pushing the victim out of the car, throwing one of her shoes out of the car to avoid detection and assisting to count the stolen money. The offender pleaded guilty to *one charge of robbery*, with a TIC charge of intentionally using criminal force on the victim. In arriving at the decision to sentence the offender to reformative training, the court reasoned that, even though the offender had no antecedents and was young, there was a need to incorporate an element of deterrence within the interest of securing his rehabilitation because of the seriousness of the offence and the degree of premeditation with which it was carried out.

Application of the *Al-Ansari* framework to the present case

26 Having set out the applicable sentencing framework, I turn now to explain how I applied the framework to the facts of the present case.

First Stage: Whether rehabilitation was displaced as the dominant sentencing consideration

27 As the accused is Singaporean and locally resident, only the first three *Boaz Koh* factors are relevant at the first stage of the *Al-Ansari* framework. These are: (a) the seriousness of the offence, (b) the severity of the harm caused, and (c) whether the accused is hardened and recalcitrant.

Seriousness of the offence and severity of harm caused

28 As the Prosecution rightly pointed out, rape is generally regarded as the gravest of all sexual offences, as it invariably involves significant harm to the victim, both in terms of bodily and psychological trauma. However, it does not necessarily follow that rehabilitation can never be the dominant sentencing consideration when the offence of rape is committed by a young offender.

29 The Prosecution relied on the following passage from *Al-Ansari* at [85] to argue that rehabilitation should be displaced as the dominant sentencing consideration:[40]

> [T]here are certain categories of offences in respect of which even young offenders must expect to be visited, almost as a matter of course (though, it must be stressed, not invariably), with a period of incarceration. Rehabilitative efforts, in such cases, can then be conducted in a more structured environment. This will have a beneficial effect on the particular offender and be also concurrently interpreted as an unequivocal sign that society and the courts will take an uncompromising view in relation to the commission of certain types of offending conduct. Almost invariably included in these categories of offences must be those inherently involving gratuitous violence and/or the preying upon of vulnerable victims. All who participate in such offences must be firmly dealt with, in conjunction with any rehabilitative efforts that have been found to be appropriate.

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40 PSS at para 15.

With respect, this passage was quoted out of context by the Prosecution. The passage is actually in the part of the judgment dealing with the second stage of the *Al-Ansari* framework (and not the first stage). The court had already decided, in *Al-Ansari* at [81], that rehabilitation remained the dominant consideration. The discussion in *Al-Ansari* at [82]–[86] was directed at whether probation was an appropriate sentence. Therefore, the "period of incarceration" referred to in the passage quoted above refers to incarceration pursuant to a sentence of reformative training. In this passage, the point made by the court is that, for offences "inherently involving gratuitous violence and/or the preying upon of vulnerable victims", reformative training should be preferred to probation (and not that rehabilitation should invariably be displaced as the dominant sentencing consideration).

30 The Prosecution's written submissions next cited the following *dicta* of the High Court in *Public Prosecutor v See Li Quan Mendel* [2019] SGHC 255 ("*Mendel See (HC)*") at [41]:

> In my judgment, it follows that where Parliament and the common law are consistent that certain offences are serious and carry severe harm, a finding that rehabilitation is the dominant sentencing consideration where those offences are committed would be reserved to cases where exceptional circumstances are strong. This would explain the Court of Criminal Appeal's observation in *Mohd Noran v Public Prosecutor* [1991] 2 SLR(R) 867 at [3] that as a general rule, neither probation nor reformative training is suitable in cases of rape.

When I was reading the Prosecution's written submissions before the hearing, it was unclear to me whether the Prosecution was seeking to rely on (a) the phrase "exceptional circumstances are strong" in the first part of the *dicta* to argue that rehabilitation is automatically precluded as a dominant sentencing consideration in the present case because there are no "exceptional circumstances", or (b) the citation of *Mohd Noran v Public Prosecutor* [1991]

2 SLR(R) 867 ("*Mohd Noran*") in the second part of the *dicta*. During oral submissions, it became clear that the Prosecution was citing this passage for the second purpose – *ie*, to demonstrate that the statement in *Mohd Noran* that "as a general rule, neither probation nor reformative training is suitable in cases of rape" continues to retain currency and relevance because of its recent citation by the High Court in *Mendel See (HC)*, and that this should displace the authority of *Loew Zi Xiang* which the Defence had relied on.[41]

31 Before proceeding to address the submission based on *Mohd Noran*, I should express agreement with the Prosecution's decision not to mount a submission based on the phrase "exceptional circumstances are strong" in the first part of the *dicta* from *Mendel See (HC)* cited by the Prosecution. It is clear, from reading the *Mendel See (HC)* judgment as a whole, that the High Court in *Mendel See (HC)* did not intend to lay down a strict rule that rehabilitation is automatically precluded as a dominant sentencing consideration unless the Defence can demonstrate strong exceptional circumstances. In any event, it is clear from the overall context of the judgment that the High Court in *Mendel See (HC)* did not use the phrase "exceptional circumstances" at [41] in the strict sense that one would normally associate with that phrase when it is used in a statute. I say this for two reasons. First, it is clear from the reasoning at [44]–[56] of the judgment that the High Court in *Mendel See (HC)* reached its conclusion after having regard to all the circumstances of the offence, instead of starting off with the presumption that rehabilitation would be displaced and then asking whether there were exceptional circumstances to rebut such a presumption. Second, the High Court referred without disapproval to a number of cases where reformative training was imposed for rape offences even though the facts of those cases did not present exceptional circumstances (at [52]–[53]).

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41 NE, 17 October 2023 at p 29, lines 18–32.

32 As for the statement in *Mohd Noran* referred to above, Woo Bih Li J (as he then was) had commented, in *Public Prosecutor v ASR* [2019] 3 SLR 709 ("*ASR (HC)*") at [64], that the court in *Mohd Noran* was not saying that rape was too grave an offence in all instances to merit a consideration of reformative training. I would add that the said statement in *Mohd Noran* should, in any event, be understood in the context of the judgment as a whole as well as in the context of the facts of the case. As Goh Yihan J recently remarked in *V V Technology Pte Ltd v Twitter, Inc* [2023] 5 SLR 513 at [108]:

> Judgments are not meant to be read like statutory instruments. There will be points of inflexion within judgments that are not as present in statutes (which are necessarily drafted more technically). Accordingly, in reading judgments, it is always important to bear in mind the overall picture.

33 As the judgment in *Mohd Noran* is very brief, I reproduce it in full here to facilitate appreciation of the overall picture:

> 1 Rape with hurt is one of the more serious offences in the Penal Code (Cap 224). It is for that reason that Parliament provided for a minimum mandatory sentence of imprisonment with caning.
>
> 2 As a matter of sentencing principle, where the appellant is of mature age and understanding, he should be given a custodial sentence. Therefore exceptional circumstances are necessary in order that a custodial sentence be not imposed.
>
> 3 As a general rule, neither probation nor reformative training is suitable in cases of rape. In this case, the learned judge had taken into consideration all the mitigating factors. Before us there is not much scope to mitigate since the minimum mandatory sentence provided by law was given.
>
> 4 The appeal is concerned with a question of principle, *ie* whether reformative training is an appropriate sentence for the appellant. There are no reasons why the appellant should be sent for reformative training as there were no circumstances to justify that course. The appeal is accordingly dismissed.

34 My first observation is that *Mohd Noran* concerned the offence of "rape with hurt", punishable with the mandatory minimum of eight years'

imprisonment and 12 strokes of the cane. My second observation is that the court in *Mohd Noran* considered the offender to be "of mature age and understanding". In this regard, an inspection of the case file revealed that the offender was 19 years and 7 months old at the time of the offence, and just two days shy of his 21st birthday at the time of his conviction.[42] The case file also revealed that, in order to commit the rape, the offender used the metal tip of an umbrella to threaten the victim, punched her in the face and strangled her into submission, while also threatening to kill her.[43]

35 In the light of the foregoing, I would accept Woo J's assessment of *Mohd Noran*, and also agree with Woo J's remark that "the fact that an offence could be characterised as 'serious' did not *ipso facto* preclude rehabilitative sentencing options" (*ASR (HC)* at [63]). In addition, I agree with Woo J's conclusion that reformative training should not be ruled out simply because an offender had pleaded guilty to serious sexual offences (at [68]). In this regard, I found helpful the following remarks of the learned District Judge Jasbendar Kaur in *Loew Zi Xiang* at [94], and would endorse them as setting out the correct principles and approach:

> It is without doubt that the offence of rape is a serious offence and in fact, I would agree with the Prosecution's description that it is gravely serious. The inherent nature of the offence and the prescribed punishment as provided in the Penal Code make this clear. *This, however, did not mean that a sentence that involves the principle of rehabilitation cannot be considered in all cases involving young offenders who are convicted of rape. This is mainly because not all rape cases are the same and depending on the circumstances in which they are committed and the nature of relationship between the victim and offender, some types of rape are more severe than others.* What I had to decide was whether the conduct of the Accused in committing the offence was so heinous and that his potential for reform was so poor

42 NE of CC 32/1991, 9 September 1991 at p 8.

43 NE of CC 32/1991, 9 September 1991 at pp 4–5.

> that the prescribed sentence would be the appropriate sentence.
>
> [emphasis added]

36 At this point, it would be helpful to consider the facts of some cases where rehabilitation was held to have been displaced as the dominant sentencing consideration as well as the facts of some cases which held otherwise, before I proceed to situate the facts of the present case among the decided cases.

37 Besides the cases of *Mohamed Noh Hafiz* and *Mohd Noran*, the facts of which are summarised at [21] and [34] above, the next case to consider is *Mendel See (HC),* where a 17-year-old offender, together with two accomplices, devised a scheme to steal money from sex workers. The offender pleaded guilty to *one charge of rape, one charge of robbery by night and one charge of theft in dwelling*, with *eight* TIC charges. In deciding that rehabilitation had been displaced as the dominant sentencing consideration, the court noted that the offences involved the use of a chopper, which was a *dangerous weapon*, to *threaten violence* and also involved a *high degree of planning and premeditation*. The court also took into account the vulnerability of the victim as a sex worker.

38 In *Ng Jun Xian v Public Prosecutor* [2017] 3 SLR 933 ("*Ng Jun Xian*"), the offender pleaded guilty to *one charge of sexual assault by penetration, one charge of attempted rape, and one charge of riotous behaviour*. He consented to TIC one charge of outrage of modesty and one charge of voluntarily causing hurt. All the charges except for the riotous behaviour charge concerned the same victim. The offender was *20 years old* at the time of the offence, and just one day shy of his 21st birthday at the time of his conviction. The offender and the victim first met while they were drinking with their respective friends at a club. A few weeks later, the offender asked the victim to meet at the club and the

victim agreed. After some drinks, the victim wanted to return to the hostel she was staying at, but the offender offered to send her to a hotel instead. She initially hesitated but eventually agreed when the offender assured her that she would be left alone in the hotel room to sleep. When they reached the hotel room, the victim lay on the bed and asked the offender to leave because she wanted to rest. The offender did not leave but proceeded to sexually assault the victim. The victim put up a hard struggle and eventually managed to push the offender off and ran towards the door to escape. The offender caught up with her, slapped her hard on her left cheek and pushed her back on the bed. They continued struggling until the victim managed to grab hold of a coffee cup and threw it at him. The injuries sustained by the victim as a result of struggling with the offender included *(a) a chipped front tooth, (b) a 4cm cut on the left arm, (c) bruising on her left cheek, left knee and both shins, and (d) chafing of the skin on one of her fingers*.

39 In deciding that rehabilitation had been displaced as the dominant sentencing consideration, the court noted that the sexual assault was *serious, violent and prolonged* (at [38]). Throughout the attack, the victim was struggling and shouting for help. She even resorted to biting the offender to break free, and yet he did not relent. The court also found *premeditation and planning* on the part of the offender, in that he sought to set the stage by insisting on sending the victim to the hotel despite her initial reluctance. As for the harm caused to the victim, the court noted that the *physical injuries she suffered were serious by any objective standard*. As for psychological trauma, despite the absence of a victim impact statement, the court was prepared to infer from the manner the victim struggled and fought back (including the fact that she was seen crying as she left the hotel and that her shouts for help were so loud that she could be heard by the offender's friend who was outside the room) that the victim must have been in fear and shock (at [47]). Finally, the court noted that

the offender had made submissions which sought to blame the victim and cast aspersions and insinuations about her character. The court found that this demonstrated a startling lack of remorse and insight by the offender into his own behaviour (at [52]).

40 In *Public Prosecutor v CJH* [2022] SGHC 303 ("*CJH*"), the offender pleaded guilty to *three charges* of sexual penetration of a minor and consented to TIC *three charges* of rape and *two other charges* of sexual penetration of a minor. The victim was the offender's *biological sister*. The offences took place over a period of *three and a half years*, at a time when the offender was 15 to 18 years of age while the victim was 9 to 12 years of age. In deciding that rehabilitation had been displaced as the dominant sentencing consideration, the court took into account the *abuse of trust* and *considerable physical harm* suffered by the victim as evidenced in the statement of facts.

41 More recently, in *Public Prosecutor v GHW* [2023] SGDC 155 ("*GHW*"), where the District Court held that rehabilitation was displaced as the dominant sentencing consideration, the offender pleaded guilty to *one charge of rape, two charges of sexual penetration of a minor and four drug-related charges* (at [1]–[5]). A further charge of sexual penetration of a minor and two other drug related charges were taken into consideration for sentencing. The rape offence was committed when the offender was 19 years old. The sexual penetration offences were committed when the accused was between 15 and 16 years old against two different girls who were both below 14 years of age at the material time.

42 As for cases where rehabilitation was held not to have been displaced as the dominant sentencing consideration, as noted at [12] above, Defence cited the cases of *Ong Jack Hong* and *Loew Zi Xiang*.

43 In *Ong Jack Hong*, the 17-year-old offender pleaded guilty to a single charge of penile-vaginal penetration of a minor who was 14 years old at the material time. The district judge sentenced the offender to 24 months' probation. The Prosecution appealed. Sundaresh Menon CJ allowed the appeal by imposing a sentence of reformative training, reasoning that a degree of deterrence was necessary given the seriousness of the offence, the vulnerability of the victim on account of her age and state of drunkenness and the fact that the offender was in effective control throughout the entire episode.

44 In *Loew Zi Xiang*, the offender was found guilty of one charge of rape and one charge of outrage of modesty against two different 17-year-old females. Both offences occurred on the same occasion – they took place on the same evening and at the same location, within minutes of each other. The offender was 18 years old at the time of these offences. An unrelated charge of rioting was also taken into consideration for sentencing. The district judge found that rehabilitation was not displaced as the dominant sentencing consideration because (a) the offender did not threaten or place the rape victim in fear or cause any bodily harm to her, (b) he did not take advantage of the rape victim by administering any drugs or alcohol to her, and (c) there was no evidence of the offender's propensity to commit sexual offences, since this was the first occasion on which he had committed such offences (at [95]). Furthermore, the offender had acted opportunistically, and had not caused physical harm to the rape victim, although there was evidence that she suffered from psychological and emotional trauma (at [99]). Even though the offender was placed on probation previously for snatch theft and had committed the offence of rioting about six months after completing his probation, the district judge held that the offender could not be said to be exhibiting a disturbing trend of criminality that would evidence recalcitrance on his part (at [100]). The Prosecution's appeal against the district judge's sentence of reformative training was dismissed by

Tay Yong Kwang JA in MA 9215/2016/01 with brief oral grounds, the main points of which were that in the circumstances of the case (a) the offender could not be considered a hardened criminal, (b) he did not deserve the sentence of imprisonment, and (c) the court was prepared to take a chance with the offender.[44]

45 In addition to the foregoing two cases cited by the Defence, it is also useful to include in the present survey the following two cases where reformative training was ordered, which were referred to in *Mendel See (HC)* at [52]:

(a) In District Arrest Case No 16513-21 of 2011 and others ("DAC 16513-21 of 2011"), the offender was 14 years old at the time he committed the offences. He pleaded guilty to two charges of rape and two charges of sexual assault by penetration. The first victim was the offender's girlfriend while the second victim was her best friend. They were 15 and 14 years old respectively. In three separate incidents, the offender pretended to be possessed and demanded the victims to fellate and/or have sex with him in order to avoid "divine punishment".

(b) In District Arrest Case No 923356 of 2016 and others ("DAC 923356 of 2016"), the offender was 15 years old at the time of the offence. He pleaded guilty to one charge of rape and two charges of rioting. The victim of the rape charge was 13 years old at the material time. While in his bedroom, the offender and the co-offenders removed the victim's clothes, and the offender proceeded to rape her as the co-offenders held her down.

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44 NE of HC/MA 9125/2016/01, 3 November 2016 at p 27.

46 Turning to the facts of the present case, I agreed with the Prosecution that, apart from the fact that rape is an inherently serious offence, there were a number of aggravating factors which had to be factored into the court's decision. These include the vulnerability of the victim (both on account of her young age and of her state of intoxication), the failure to use a condom thus exposing the victim to the risk of pregnancy and sexually transmitted diseases and the existence of some group element in the offence (as CPT had held the victim down during the rape).

47 However, I could not agree with the Prosecution that betrayal of trust constituted another aggravating factor in the present case. The Statement of Facts simply noted that the victim was *acquainted* with the accused as they had been in the same secondary school for a few years and as the victim's best friend was dating the accused. No further details were given regarding the closeness (or otherwise) of the relationship between the victim and the accused such as to allow the court to determine whether the accused could be said to have occupied a position of trust in relation to the victim.

48 Against these aggravating factors, I agreed with the Defence that there was no premeditation involved. The Statement of Facts showed that the accused did not meet up with the victim and CPT with the intention of raping the victim, but rather to just hang out with them as friends.[45] In this regard, I accepted the Defence submission that the accused did not form the intention to rape the victim until after he had been *asked for the third time* by CPT to have sex with the victim.[46]

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45 SOF at para 9.

46 DSS at para 15.

49 As for the existence of a group element, I noted that the accused was not acting as the mastermind, and that he committed the offence only after repeated instigation by CPT. At the material time, CPT was 22 years old and therefore six years older than the accused, allowing him to exert a certain level of influence and authority on the accused. In this regard, I also noted the accused's comments in the interview for the RT Suitability Report that he was afraid of rejecting CPT's repeated requests as CPT was substantially older and physically bigger than him, and the accused was afraid that CPT may hurt him if he did not comply with CPT's requests.[47] In my view, these comments reflected the degree of influence that CPT had over the accused's actions. As recognised in the passage from *Maurice Mok* quoted at [20] above, one of the reasons rehabilitation is prioritised in the case of young offenders is that they are "more easily led and less controlled in their behaviour".

50 I also agreed with the Defence that the offence was of short duration and that no violence or excessive force was used. I accepted the Defence's submission that the force used in restraining the victim and obstructing her vision such that she could not see who was having sex with her did not amount to excessive or gratuitous use of force.[48]

51 On the question of harm caused to the victim, as noted at [46] above, I accepted that every offence of rape invariably involves significant harm to the victim. However, it is also relevant to note that, in terms of physical harm, the accused did not threaten the victim with bodily harm or caused any bodily harm to her. Consequently, the Statement of Facts does not refer to any specific physical harm suffered by the victim, aside from the rape itself. As for

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47 RT Suitability Report at p 8.

48 DSS at paras 71–72.

psychological harm, a point made by the Defence was that no victim impact statement was tendered. As noted in *Ng Jun Xian* at [46]–[48], the Prosecution is not obliged in all cases to tender a victim impact statement before it could submit that harm – of any extent or form – was occasioned. It certainly need not do so where the harm in question is a natural consequence of the offence. Further, the court is entitled to draw suitable and reasonable inferences concerning the harm suffered by the victim from the objective and admitted facts set out in the Statement of Facts. In the present case, it is clear that the victim was emotionally distraught at the material time, as the Statement of Facts recorded that she cried during the rape and continued crying when she was washing up thereafter.[49] She also quarrelled with CPT over the matter.[50] Apart from the foregoing, the Prosecution did not submit that the court should infer that the victim had suffered any additional or any lasting psychological harm. I therefore accepted the Defence's submission that there was no evidence of the victim sustaining any significant harm beyond that which would normally be sustained by a rape victim.

52 For the avoidance of doubt, I should clarify that nothing in the preceding paragraph was meant to trivialise the very real harm suffered by the victim. Instead, the point being made in the preceding paragraph is that if we were to accept that reformative training should not be ruled out simply because the offence of rape is involved, it necessarily follows that where the harm suffered is not more severe than that normally expected to be sustained by a rape victim, it should not be treated as harm which, taken on its own (as opposed to being considered together with the seriousness of the offence and the offender's rehabilitative prospects), is sufficient to displace rehabilitation as the dominant

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49 SOF at para 15.

50 SOF at para 15.

sentencing consideration. To hold otherwise would be tantamount to laying down an invariable rule that rehabilitative sentencing options must be precluded in every case of rape which, as already noted at [35] above, does not represent the correct approach.

53 Taking all of the foregoing factors together, I found that the overall seriousness of the accused's offending was not at the extreme high end, such as to require that rehabilitation be displaced as the dominant sentencing consideration.

54 Furthermore, when the present case is compared with the decided cases, it became clear that the present case was not as serious as those cases where rehabilitation was held to have been displaced as the dominant sentence consideration. First, the accused faced a single charge, unlike the cases of *Mohamed Noh Hafiz* (ten proceeded charges; 19 TIC charges), *Mendel See (HC)* (three proceeded charges; eight TIC charges), *Ng Jun Xian* (three proceeded charges, two TIC charges), *CJH* (three proceeded charges, five TIC charges) and *GHW* (seven proceeded charges, three TIC charges). Second, the accused was 16 years old at the time of the offence which means he was younger in age than the offenders in *Mohamed Noh Hafiz* (17 years old), *Mohd Noran* (19 years old), *Mendel See (HC)* (17 years old), *Ng Jun Xian* (20 years old), *CJH* (18 years old at the time of the last offence) and *GHW* (19 years old). Third, as the victim was already 14 years and 5 months old at the time of the offence, the charge faced by the accused was rape *simpliciter* (as opposed to aggravated rape), which did not carry any mandatory minimum sentences. In contrast, offences carrying mandatory minimum prison terms were involved in *Mohd Noran* (rape with hurt), *Mendel See* (robbery by night) and *GHW* (drug consumption). As noted in *Al-Ansari* at [85] "the punishment prescribed for the offence would play an essential role in determining the seriousness of the offence concerned".

Fourth, the offence in the present case was not premeditated, in contrast to the premeditation and planning seen in *Mohamed Noh Hafiz*, *Mendel See* and *Ng Jun Xian*. Fifth, no violence or excessive force was used in the present case, unlike cases such as *Mohamed Noh Hafiz, Mohd Noran*, *Mendel See* and *Ng Jun Xian*. Sixth, unlike cases such as *Mohamed Noh Hafiz, CJH* and *Ng Jun Xian*, the Statement of Facts in the present case did not disclose that the victim had suffered harm at a level more severe than the (admittedly serious) harm inherently arising from the offence of rape.

55 As for the cases where rehabilitation was not displaced as the dominant sentencing consideration, I noted, firstly, that reformative training was imposed in *Al-Ansari* despite the existence of some level of premeditation. In comparison, there was no premeditation in the present case. Secondly, even though the charge brought in *Ong Jack Hong* is less serious than the charge in the present case, it is nevertheless worth noting that the offender in *Ong Jack Hong* appeared to have more control over the circumstances under which the offence was committed than the accused in the present case, who was essentially acting at the instigation of a much older accomplice. (For the avoidance of doubt, I am not saying that the accused should not be held personally accountable and punished appropriately for his conduct. I am merely saying that the accused had less control of the circumstances when compared to the offender in *Ong Jack Hong*.) Thirdly, in DAC 923356 of 2016, reformative training was imposed despite the existence of some group element similar to that found in the present case.

56 Finally, I turn to the case of *Loew Zi Xiang*. On the one hand, the existence of some group element in the present case – which is absent in *Loew Zi Xiang* – means that there is an additional aggravating factor in the present case not found in *Loew Zi Xiang*. However, as noted at [49] above, the

aggravating effect of this group element had to be assessed in the context that the accused was not the mastermind but was acting at the instigation of a much older accomplice. On the other hand, the fact that the rape victim in *Loew Zi Xiang* told the court that her trust in the offender had been betrayed and that she felt like committing suicide after the rape indicates that the harm caused in *Loew Zi Xiang* was more severe than in the present case. Taking both these factors into account, I considered that *Loew Zi Xiang* serves as a useful and relevant precedent because, in addition to the similarity between the facts of the two cases, the two cases are also comparable in terms of the overall seriousness of the offence and severity of harm, taken together. The fact that the decision in *Loew Zi Xiang* was appealed to the High Court and affirmed on appeal by Tay JA also adds to its precedential weight.

57 For the foregoing reasons, I concluded, that while the facts of the present case are serious, they did not rise to the level of seriousness which required rehabilitation to be displaced as the dominant sentencing consideration. To summarise, there was no premeditation or planning in the present case, the offence was of short duration and no violence or excessive force was used. The accused also did not threaten the victim with bodily harm or caused any bodily harm to her. There was also no evidence that the victim suffered a level of harm which was more severe than normally associated with cases of rape. Further, the accused committed the offence under the influence of CPT, who was six years older than the accused. (As to the relevance of this last point, see discussion at [49] above.)

Whether the accused was hardened and recalcitrant

58 On the question of whether the accused was hardened and recalcitrant, I noted that the accused was traced for multiple property offences. On 21 August

2020, he pleaded guilty to eight charges of theft and consented to TIC 17 other charges of theft as well as one charge of mischief and one charge of dishonest misappropriation. On 2 October 2020, the accused was sentenced to reformative training with a minimum period of detention of 12 months, commencing from 16 October 2020.

59 The present offence was committed on 27 June 2020, while the accused was out on bail for the property offences, but came to light only on 23 February 2021 when the victim's mother made the police report. The accused completed the reformative training imposed for his property offences on 15 October 2021 and had been kept in remand since.

60 The fact that the accused had been sentenced to reformative training previously should be understood in the light of the fact that the present rape offence was committed *before* the accused was convicted of and sentenced to reformative training for the property offences. This is therefore not a case of the accused re-offending after his release from reformative training. Consequently, the existence of a previous sentence of reformative training should not, in the present case, be taken as sign of recalcitrance.

61 The Prosecution submitted that the present rape offence represented an escalation from his previous "petty property offences" (to quote the words used by the Prosecution).[51] While I agreed with this observation, it is also relevant to note that the accused's antecedents were of a different nature from the present offence, and that he had no history of engaging in sexual or violent crimes. In both *Ong Jack Hong* and *Loew Zi Xiang*, the offenders re-offended after previously completing their probation, but the courts in both cases gave weight

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51 NE, 17 October 2023 at p 28, line 24–28.

to the fact that the offenders' antecedents were of a different nature, notwithstanding that both offenders had similarly escalated their offending to sexual crimes. This is to be contrasted with the case of *GHW*, where the offender had a history of sexual crimes.

62 The Prosecution also pointed out that the accused committed the present offence while he was on bail for the property offences, and sought to distinguish the present case from *Loew Zi Xiang* on that basis.[52] I agreed that the commission of an offence while on bail is an aggravating factor which the court had to give proper weight to. However, I did not agree with the Prosecution that, as a matter of gauging the accused's recalcitrance, there is a meaningful distinction between someone who commits an offence while on bail and someone who re-offends after having gone through probation (as in the case of *Loew Zi Xiang*).

63 Turning to the RT Suitability Report, it identified the "family" domain as an area of need for the accused and the "education/employment" domain, "companions" domain and "leisure/recreation" domain as areas of significant need.[53] The fact that the accused has these areas of need does not mean that he has no prospects for rehabilitation. In this regard, it is helpful to note that, in *Boaz Koh*, the offender also presented with similar needs (*Boaz Koh* at [14]) and the court there did not consider the offender to be beyond rehabilitation. The Prosecution therefore, quite rightly, did not submit that these areas of need, by themselves, rendered the accused unsuitable for reformative training.

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52 NE, 17 October 2023 at p 28, lines 2–5.

53 RT Suitability Report at pp 5–8.

64 Instead, the Prosecution's submission on these areas of need is that they demonstrate that the accused's first stint of reformative training "ha[s] not, in fact, done anything material to address his areas of need", thus "[t]here is no guarantee [that a further period of reformative training] will successfully rehabilitate the accused".[54] This submission raises two questions. First, whether it is true that the first stint of reformative training had little or no effect on the accused. Second, if the answer to the first question is in the affirmative, whether this means that it would be futile to put the accused through reformative training again. On the first question, since neither side had tendered in evidence the reformative training suitability report prepared four years ago prior to his first stint of reformative training, I was not able to compare the accused's areas of need prior to the accused's first stint of reformative training with his current areas of need. There is therefore no basis to conclude that the first stint of reformative training had little or no effect on the accused. Since the first question cannot be answered in the affirmative, it follows that the premise for the second question does not even arise. For this reason, I did not accept the Prosecution's submission on this point.

65 For completeness, I would add that even if we were to assume for the sake of argument that the earlier reformative suitability report had been produced and that it had supported an affirmative answer to the first question, it would still be difficult for the court to answer the second question in the affirmative with any degree of confidence. This is because the accused had a rape charge hanging over him for a significant part of his reformative training period. As Yong Pung How CJ noted in *Ng Kwok Fai v Public Prosecutor* [1996] 1 SLR(R) 193 at [7], the prospect of a lengthy prison term and caning after release from reformative training would hang heavily on an accused's

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54 NE, 22 January 2024 at p 11, lines 4–11.

mind during the period of reformative training and be detrimental to the reformative training. In the circumstances, it would not be fair or proper for the court to conclude that any perceived ineffectiveness of the accused's first stint of reformative training must be attributed solely to recalcitrance on the part of the accused.

66 On a more positive note, the RT Suitability Report stated that the accused did not present with problematic alcohol or drug use. The report noted the accused had a history of occasional drug use. The accused had tried laughing gas as a drug with his friends but stopped after he was caught by the police for stealing the laughing gas.[55] He also did not want to continue consuming laughing gas as he was worried about the implications to his health.[56] He had also tried "mushroom" once but stopped after that one occasion.[57] The fact that the accused was able to put a stop to his drug use provides some positive indication of his rehabilitative prospects.

67 Finally, the Prosecution submitted that the accused had, in the interview conducted for the purposes of the RT Suitability Report, sought to justify his actions, minimize his responsibility for the offence and even engaged in victim blaming.[58] The Prosecution submitted that this was in stark contrast to the remorse he expressed and the apology he conveyed at the earlier hearing (see [14] above). Defence counsel informed the court that, after reading the RT Suitability Report, he asked the accused about the context of those remarks. The accused explained that he was speaking from the "historical perspective", in the

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55 RT Suitability Report at p 7.

56 RT Suitability Report at p 7.

57 RT Suitability Report at p 7.

58 RT Suitability Report at p 8.

sense that he was explaining the views he held at the time of the offence as well as what had influenced him to commit the offence.[59] The accused also made clear to Defence counsel that those were not the views he currently held.[60] The Defence further emphasised that the RT Suitability Report clearly recorded the accused as acknowledging that it was wrong of him to have engaged in sexual intercourse with the victim. The Prosecution responded that the plain reading of the relevant section of the RT Suitability Report showed that the views attributed to the accused there were phrased as views which were current as at the time of the interview.[61]

68 I agreed with the Prosecution that the manner in which the relevant section of the RT Suitability Report was drafted indeed gave the impression that the views recorded there were the accused's currently held views, as opposed to an explanation of previously held views. However, I also needed to remind myself that, when reading the RT Suitability Report, I was reading the words of the report's author as opposed to the accused's own words. In other words, what is written in the RT Suitability Report represents the report author's interpretation and understanding of what the accused said at the interview, which may or may not accurately reflect what the accused actually said or actually meant. In the light of the accused's explanation concerning what he meant to convey during the interview, and in the absence of verbatim records of the interview for the court to see for itself what the accused's actual words were and how the questions from the interviewer which elicited those words were phrased, I did not think it was fair or appropriate for me to resolve, to the accused's detriment, any lingering doubts over the interpretation of the remarks

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59 NE, 22 January 2024 at p 6, lines 15–19.

60 NE, 22 January 2024 at p 6, lines 22–25.

61 NE, 22 January 2024 at p 10, lines 6–9.

attributed to the accused in the RT Suitability Report. In the circumstances, I was prepared to give the accused the benefit of the doubt concerning the interpretation of those remarks.

69 For completeness, even if I were to accept the Prosecution's interpretation of those remarks, I did not think it was sufficient to tip the scales in favour of classifying the accused as hardened and recalcitrant. The remarks were made by the accused, in a closed setting, to the author of the RT Suitability Report for the purpose of preparing the report. This is to be contrasted with the facts of *Ng Jun Xian*. In that case, although the reformative training suitability report also contained similar remarks, what tipped the scales was the fact that the offender had instructed his counsel to openly make submissions which blamed the victim and cast aspersions and made insinuations about her, in the hope that those offensive submissions would influence the court's sentencing decision (*Ng Jun Xian* at [43], [49] and [52]). In any event, even if it were true that the accused continued to hold the views attributed to him in the RT Suitability Report, the attitudes and beliefs underlying those views would be matters which reformative training was designed precisely to address. For example, among the programmes which the accused will undergo during reformative training are the motivational primer and psychology-based correctional programmes, which aim to increase an offender's awareness of his offending behaviour, motivate commitment towards change and also address the offender's criminogenic needs.[62]

70 In the light of the foregoing, while I appreciated that the accused's path to rehabilitation will not be an easy one, given the number of areas of significant need identified in the RT Suitability Report, I also noted that the accused had

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62 RT Suitability Report at Annex B.

demonstrated, through his ability to put a stop to his drug use, that there are reasons to see his rehabilitative prospects in a more positive light. Taking all the factors discussed in totality, I did not consider the accused to be so hardened and recalcitrant as to require that rehabilitation be displaced as the dominant sentencing consideration.

Conclusion on the First Stage of the Al-Ansari framework

71 Given the seriousness of the present offence, I agreed with the Prosecution that deterrence, both general and specific, and retribution are clearly engaged. However, the inquiry does not stop there. The issue to be determined is whether the considerations of deterrence and retribution have assumed such prominence in the present case as to eclipse rehabilitation, notwithstanding the young age of the accused. Given my conclusion that the seriousness of the accused's offending was not at the extreme high end, especially when the facts of the present case were compared to those cases where rehabilitation was held to have been displaced as the dominant sentencing consideration, and given my assessment that the accused is not a hardened and recalcitrant criminal, I concluded that rehabilitation had not been displaced as the dominant sentencing consideration in the present case.

Second Stage: The most appropriate sentence for the accused

72 There were three sentencing options available in law for the accused: (a) a probation order, (b) reformative training, and (c) imprisonment with caning. As I had concluded that rehabilitation had not been displaced as the dominant sentencing consideration in this case, imprisonment with caning was precluded as a matter of principle because it was not an option which gave primary effect to rehabilitation as a sentencing consideration. As noted in *Al-Ansari* at [65], even though a term of imprisonment might not be said to completely ignore the

rehabilitation of the offender, "a term of standard imprisonment cannot be said to place the principle of rehabilitation as a dominant consideration".

73 Probation would not be appropriate as it would not sufficiently recognise the seriousness of the present offence. Given my finding at [71] above that deterrence is a relevant consideration in the present case (notwithstanding that rehabilitation remains the dominant sentencing consideration), the appropriate sentence to be imposed is reformative training. As noted at [24]–[25] above, reformative training also incorporates a significant element of deterrence because there is a minimum incarceration period that is not a feature of probation, which makes it the preferred sentencing option in cases where a degree of deterrence is desired. I therefore concluded that reformative training is the appropriate sentence to be imposed. Given the RT Suitability Report's recommendation that the accused undergo a Level 2 intensity rehabilitation programme to be delivered over 12 months, I considered that the minimum period of detention should similarly be 12 months.

Conclusion

74 As noted in *Al-Ansari* at [3], the imperatives of rehabilitation of young offenders on the one hand and the need to protect the community's interest in deterring crime on the other hand are but two sides of the same coin, intertwined as they are on the premise that the young offender should be rehabilitated to become a good citizen, such that he will not adversely affect the community at large at a later stage by engaging in even more serious crimes. In this regard, I would concur with the following remarks of the English Court of Appeal in *R v Smith* [1964] Crim LR 70 (which remarks were cited with approval in *Al-Ansari* at [3] and recently endorsed by Steven Chong JA in *Praveen s/o Krishnan v Public Prosecutor* [2018] 3 SLR 1300 at [68]):

> In the case of a young offender there can hardly ever be any conflict between the public interest and that of theoffender. The public have no greater interest than that he should become a good citizen. The difficult task of the court is to determine what treatment gives the best chance of realizing that object.

75 Given the nature of the accused's offending, the nature of his antecedents, and my assessment of his prospects for rehabilitation, I considered that reformative training offers the appropriate middle ground in the present case of allowing the accused to be sentenced to a rehabilitative programme under a structured environment while avoiding the danger of exposing him to the potentially unsettling influence of an adult prison environment. At the same time, it would carry a degree of deterrence that is consistent with what is required and appropriate in the circumstances of the present case.

76 For the reasons given above, I sentenced the accused to reformative training and specified 12 months as the minimum period of detention, with the sentence taking effect from the date of its pronouncement (*ie,* 22 January 2024).

Pang Khang Chau
Judge of the High Court

Yvonne Poon and Sheldon Lim (Attorney-General's Chambers) for the Prosecution;
Mato Kotwani, Daniel Ling, and Wong Min Hui (PDLegal LLC) for the accused.