

Public Prosecutor v Toh Lam Seng
[2007] SGHC 95

Case Number : CC 31/2006
Decision Date : 20 June 2007
Tribunal/Court : High Court
Coram : Kan Ting Chiu J
Counsel Name(s) : Winston Cheng Ming Howe and Stella Tan (Deputy Public Prosecutors) for the Prosecution; Sidambaram Uthayasurian (Surian & Partners) for the accused
Parties : Public Prosecutor — Toh Lam Seng

Criminal Procedure and Sentencing – Sentencing – Principles – Accused having numerous previous criminal convictions – No extenuating circumstances to show that accused had changed his ways – Appropriate sentence

[EDITORIAL NOTE: The details of this judgment have been changed to comply with the Children and Young Persons Act and/or the Women's Charter]

20 June 2007

Kan Ting Chiu J

1 The accused Toh Lam Seng was charged with an offence of rape under s 376(1) of the Penal Code (Cap 224) that he:

On 18 March 2006, at or about 2.00 am, at Woodlands Town Park East near to Block 143 Marsiling Road, Singapore, did commit rape on [the complainant], female, then 14 years old ..., and [he had] thereby committed an offence punishable under section 376(1) of the Penal Code, Chapter 224.

2 He claimed trial to the charge, and after a trial of 17 days, I convicted him on the charge and imposed a sentence of 16 years imprisonment and ten strokes of the cane on him.

The prosecution case

3 The evidence presented by the prosecution essentially fell into three parts: first, the events of 17 and 18 March 2006 leading to the commission of the alleged offence; second, the events on 23 March 2006 when the complainant (who shall be identified as C to protect her identity) encountered the accused at the Causeway Point Shopping Centre ("Causeway Point"); and third, the events of 26 and 27 March 2006 when C met the accused at a coffee shop in Marsiling Crescent, followed by C informing her sister and mother of her having been raped, and ending with the making of a police report against the accused.

4 The accused was at the material time 35 years old. He ran a pet shop at Block 131 Marsiling Road with his wife, and had befriended a group of school children. C, who was 14 years old and was a secondary three student, was one of them. She and her friends would meet in and outside the pet shop to chit-chat and while away their time. The accused assumed the role of a leader to them. He helped them resolve their disputes, and he would also give them treats. They were aware that he had secret society connections.

C's evidence

5 C first came to know the accused whom she knew by his nickname Zhui Gu on 14 February 2006, which was Valentine's Day. She would go to the accused's pet shop to meet and chit-chat with her friends. One of her friends, B, told her that the accused liked her. The accused himself also told her that he liked her and that he could offer her money and status if she became his girlfriend. However, C did not reciprocate his affection and rejected his overture and told him that they can only be good friends.

6 On the evening of 17 March 2006, C was with her friend D at friend's flat. Sometime after midnight, C received a call from B, who told her to go to the pet shop. C and D set out for the pet shop, but while they were on their way C received another call from B instructing her to proceed to Block 15, Marsiling instead. Consequently, she and D proceeded to Block 15 instead. They arrived there at about 1.00am, and met the accused and B.

7 The accused took out his T-shirt and hit her with it and he also scolded her for not informing him when she went out. He then told B and D to go back, and pulled her by her hair and brought her to Block 11. They went up a flight of steps and when they came to a bench[[note: 1](#)] where he instructed her to sit there and wait for him as he wanted to buy a drink. He warned her that if she were to run away, he would deal with her.

8 C was frightened and did as she was told. However, she telephoned D and asked for her advice. D told her to press the shift button on the cell phone so that she can talk to her straightaway if anything happened.

9 When the accused returned about ten minutes later, he pulled her by her blouse and the two of them carried on walking. They walked quite a distance, and eventually walked to a hillock or hill where the offence was alleged to have taken place. At this place there was a large rock. C sat on the rock because she did not want to walk further. While she was seated, the accused walked to the side and urinated. C remembered speaking to D, or to her mother, at that time and that she sent a SMS to D informing her where she was.

10 After the accused urinated, he went to C and took away her cell phone. He pulled her towards him, and slipped his hands into her skirt. She was frightened, and she closed her legs and covered her private part with her hands, but he pulled away her hands and forced her legs apart, and inserted his finger into her vagina. She was crying, but he told her to keep quiet, and he then took off his pants and briefs as well as her panties and pulled her down. He tried to insert his penis into her vagina but was unable to do it. He then licked her vagina, and inserted his penis into her vagina, which caused her a bit of pain. After that he put on his pants, handed her some toilet paper and told her to wipe her vagina, which was wet.

11 She told him that her mother was coming to fetch her. He brought her down the steps and told her that if anyone asked her what had happened, she was to say that he had dealt with her by assaulting her. He also gave her \$50 which she refused to accept, but when he insisted that she kept it, she took it.

12 They walked down, and as they came near a coffee shop she told him to leave, and he left. She did not look for her mother as she was still crying, and was afraid to let her mother know what had happened, and she went to look for her friends instead.

13 She eventually met three friends, namely E, F and G, who were riding their bicycles, and were

looking for her.

14 They saw her crying and asked her what had happened. Initially, she told them that the accused had assaulted her, as she was afraid to tell them that the accused had raped her. The four of them then went to a petrol station with her riding pillion on E's bicycle.

15 At the petrol station she went to the toilet and washed her vagina. E asked her what actually happened. She told him the accused assaulted her and showed him the \$50 note the accused had given her. E did not believe her and said he realised what had happened, and F also asked her what had happened. E told her that she can tell them what happened as they were friends, and they can solve the problem together. He also assured her that he and F would not tell the others. She then told them that the accused had taken her up the hill and raped her.

16 Subsequently, the four of them met up with D, and two others, H and J. C showed H the \$50 note and H advised her not to keep it as it would remind her of the incident. The whole group of them then went to a playground at Block 6 Marsiling, from where they went to another petrol station. At this second petrol station, C bought some biscuits and drinks with the \$50 note and they returned to the playground where they remained till the morning.

17 On 23 March 2006, she was at Causeway Point with her school mates after school, and they ran into B, the accused, and his wife. She, her friends and B went to the carpark to chit chat but the accused and his wife did not join them. They remained at the carpark for about an hour when the accused came and asked C to go to the side with him as he had something to say to her. She did not go with him. Instead she and her friends went to the food court. The accused came to the food court and pulled her by her hand, telling her that he had something to tell her. He brought her to the lift, and they went down to the basement three carpark. C asked a friend K who was with her to come along. K had accompanied them to the lift, but she was persuaded by the accused to leave them when they reached the carpark, and K left the carpark. He brought her into the carpark, and then he went to a side and urinated. She remembered that the accused urinated before he raped her on the previous occasion. She took the opportunity to send a SMS to her friend L whom she had seen on the way down to the carpark.

18 When the accused returned after urinating, he cornered C physically and pushed her against a wall. He placed his hands on her thighs but she pushed him away, but he was not deterred and he told her that as it was not the first time, it was all right to have another time. She started to cry, and when he put his hands into her skirt, she screamed. He told her not to cry and hugged her, and at that time L arrived. The accused released her and she walked over to L. The accused hit L's hands and asked him why he was looking at her.

19 She called another friend, M, and asked her to bring her bag down. When M brought her bag down, they walked to the lift. The accused went to her and told her (ie, C) that he would deal with her afterwards.

20 On 26 March 2006 at about 10.00 pm, she was at a coffee shop at Block 211 Marsiling with D and one N, for a meal. The accused came up from behind and pulled her hair and dragged her to a bus stop near the coffee shop.

21 Earlier that day, a friend of the accused by the name O had called her to go to the pet shop, but she was afraid to go, and lied that she was going for tuition. The accused accused her of lying about going for tuition and told her that he would not allow her to go home, and that he would deal with her. She and the accused went back to the coffee shop and joined D and N. The accused sat

down and knocked N on the head with his hand and told him that people who are with her will have bad luck. Having said that, he left them and went off to join his friends at the coffee shop.

22 She borrowed N's cell phone and called her elder sister, who went to the coffee shop together with her boyfriend, and a male friend of her mother who was referred to as "Uncle". She told her sister that the accused did not allow her to go home, and she also told her sister that the accused had raped her.

23 Her sister cried on hearing that and then they, ie, C, D, N, her sister, the sister's boyfriend and "Uncle" went off in "Uncle's" lorry to the mother's workplace.

24 Her sister told the mother what had happened, and the mother also became very sad and cried. The mother went to Block 211 Marsiling to look for the accused, but did not find him there. In the meantime, B sent her a SMS that the accused wanted her to go to Block 211 and that if she did not go, she was not to step into Woodlands again. When her mother could not find the accused at Block 211, she decided to report the matter to the police.

25 She was cross-examined at length by counsel for the accused. Further information was disclosed about the relationship between her and the accused. She disclosed that the accused had treated her and her friends including B to food and drinks and helped to effect a reconciliation between her and a friend P when they had a falling out, and the accused also helped her when she had other problems. She also clarified that on the night of 17 March 2006, B had told P that the accused had wanted to deal with a girl named Q and her boyfriend, R, for scolding B.

26 She also clarified that when she and D arrived at Block 15, they were the first to be there, and B and the accused joined them later. It was only after the accused had hit her with his T-shirt that H arrived, and Q and R came subsequently. When Q and R came, the accused scolded them for having scolded B, and after that he went on to pull her hair and dragged her away. When the accused left her and went to buy the drink, she spoke to D, B and H on the phone, and they warned her to be careful.

27 She had also called her mother. She told her mother she could not go home because she did not have the taxi fare, and asked her mother to fetch her. Her mother arranged to meet her at a coffee shop. She did not tell her mother about the accused because he was beside her when she made the call.

28 Counsel got her to recount the details of the rape. She amplified that after the accused had urinated he walked to her and took away her cell phone. He then asked her to hug him. When she desisted, he pulled her to him into a hugging position. He then put his hand into her shirt, but she closed her legs and covered her private part with her hands. She told him not to play, but he told her to keep quiet. She admitted to counsel that in her conditioned statement tendered at the preliminary inquiry, she had stated that she had remained quiet.

29 He used his hands to pull her hands away and used his legs to push her legs apart. He then held her hands with one hand and inserted a finger of the other hand into her vagina and caused a bit of pain. At that time, he was standing and she was in a sitting position. He then pushed her down on the rock. She was sitting and the accused pressed her down with his body. He then used a hand to remove her panties, and then he tried to insert his penis into her vagina. When he failed to do that, he licked her vagina, and after that he inserted his penis into her vagina which she described as painful but not very painful. In the course of all these actions, the back of her left thigh chafed against the rock she was on, and there were scratch marks, but no bleeding.

30 She also explained that she did not tell her mother and her sister of the rape after the event because she was frightened to talk about it with them, and had only told her sister that on 26 March 2006 after the accused forbade her from leaving the coffee shop.

31 After the rape and before she met her friends, she spoke to D again on the telephone. She was crying at that time, and when D asked her what had happened, she told her that the accused had assaulted her.

32 The prosecution called as witnesses almost everyone who was involved in the three events described by C. For that reason, some of the evidence covers the same grounds. I will not refer to the evidence of each of these witnesses. Instead, I will refer to the evidence of the main witnesses, namely B, D, E, F, H, L, N and C's sister, and mother.

B

33 She befriended the accused at the same time as C. The accused talked to her about "sexual things" like "how much one night?". She came to know that the accused was attracted to C. When she told C that, C was shocked and frightened.

34 She confirmed that on the night of 17 March 2006, the accused had instructed her to call C and H to go to his pet shop at Block 131. The venue was changed at H's request to Block 15 Marsiling Lane.

35 She went to Block 15 with the accused. When they arrived, C and D were already there. After they sat down, the accused suddenly took off his T-shirt and hit C's head with it. The accused told C in a harsh tone that she must report to him whenever she went out of her flat, and he was going to deal with her as she had not done that. C replied meekly that she had agreed only to call him if she intended to go to the pet shop. The accused stood up, went to C, pulled her by the hair and dragged her away and told the rest of them to go home.

36 Sometime between 26 and 27 March 2006, the accused called and told her that he saw C at a coffee shop at Block 211. He sounded very furious and instructed her to tell D, N and H to go to the coffee shop immediately, or they could not step into Woodlands again. She relayed the message to these three persons.

37 On 31 March or 1 April 2006, she met the accused at the pet shop. He told her that he was involved in a rape case involving C, and he admitted that he had (in her words) "done it with" C and had given C money. She understood that "done it with" to mean having sex with.

38 In cross-examination, she stated that she, C, and H were members of a gang of which the accused was the headman, although she herself had left the gang prior to 17 March 2006.

39 On the night of 17 to 18 March 2006, she remembered that C had called D on the phone and communicated by SMS with D, but she was not aware of the communications.

40 However, she remembered she and D called E, D and J and told them about C's plight. Eventually, H told her that E had found C, and that C had gone home.

D

41 She confirmed that on 18 March 2006, sometime past midnight, while she was with C in her

friend's home, B telephoned and told her that the accused wanted to talk to C at Block 131 Marsiling Road. When she and C were on the way there, B called again and instructed them to proceed to Block 15 Marsiling Lane instead. They arrived at Block 15 at about 1.00am and then B and the accused joined them, and later H arrived. The accused walked behind C, pulled her hair and told her to follow him, and told the rest of them to go home.

42 After C and the accused went off, C called her and told her that she was at "913 bus stop" and that the accused had gone to buy something and ordered her to wait for him. She advised C to key in her phone number onto the speed dial format so that it would be easier for C to call or message her. She remembered that C sent her many SMS during that period, and the SMS updated the locations that C was at. Subsequently, she received a SMS from C that she was at "Block 130 plus".

43 On learning of this, H telephoned E and they met E, F, J and G who were cycling at Block 15. H told E that the accused had dragged C away by her hair to "Block 130 plus".

44 The boys went to look for C, leaving J to accompany the three girls, but they could not find C. She then received another call from C, who was crying. C said that she was in the vicinity of Block 137 and was going to look for her mother. E, F and G cycled to look for her, while the three girls and J walked towards Marsiling Secondary School, which was near Block 137 and B parted from them.

45 The rest of them (ie, D, H and J) subsequently met E and C in the vicinity of Block 1 Marsiling Drive. C was crying, and she told her and H that the accused had forced her to have sex with him, and that she had gone to a toilet to wash her vagina.

46 The whole group then went to a SPC petrol station. C went to the toilet there to wash her vagina again. They then bought titbits and drinks from the petrol station with a \$50 note (which she added in cross-examination that C had said the accused had shoved onto her) and went to a playground near Block 6 Marsiling Rise, where they consoled C, who was still crying, till they dispersed in the early morning.

47 On 26 March at about 10.00pm, she was at a coffee shop at Block 211 Marsiling Lane with C and N for supper. The accused suddenly appeared, pulled C's hair, and dragged her away. Subsequently C rejoined them. The accused also returned, and he hit N's head with his knuckles and warned him that whoever hung out with C would have bad luck. N kept quiet, and the accused walked off. C telephoned her sister. Subsequently C's sister came with two other persons and they left the coffee shop together. After that she received a call from B telling her the accused wanted her to return to the coffee shop, and warning her that if she did not, she would not be able to step into Woodlands again.

E

48 On 18 March 2006 at about 1.00am, he was with F, J and G. He received a call from H, who asked him to go to the vicinity of Block 15 Marsiling Rise immediately to meet her.

49 The four of them went to Block 15 and met H, D and B. H told him that the accused pulled C's hair and brought her to "Block 130 plus". He, F and G then cycled to the void decks of Block 133, 134 and 135 Marsiling Road, but they could not find C or the accused.

50 A while later, H called again and tell them to return. When they had regrouped with H, D, B and J, C called again and he, F and G cycled off to look for her once more.

51 This time they found her at the vicinity of Block 137. C was crying, and she said that the accused would look for her again, and she asked them to take her away. He took her on his bicycle and brought her to a Shell petrol station to keep her from the accused, and C went to the toilet at the petrol station. When she came out, he asked her what had happened, and she showed him a \$50 note and told him that the accused had raped her at a hill at Woodlands Town Park and had given her the \$50 note.

52 Subsequently, the four of them left the Shell petrol station. They met H, D and J at Block 1 Marsiling Drive, where C told H that the accused had raped her and given her \$50. They consoled C who was very upset and advised her to report the matter to the police, but she told them she was afraid that the accused would take revenge on her if she did. They then went to a SPC petrol station where C bought titbits and drinks with the \$50 and they then went to a playground where they kept C company till early morning.

F

53 His evidence corroborated E's evidence. E, G and he saw C in the vicinity of Block 137 Marsiling Road, crying and they took her to a Shell petrol station. At the petrol station, C took out a \$50 note and told him that the accused had raped her.

H

54 On 17 March 2006 at about 11.00pm, B called her and asked her to go to the accused's pet shop. As the pet shop was some distance from her home, she was reluctant to go there, and they arranged to meet at Block 15 Marsiling Lane instead.

55 Subsequently, she made her way to Block 15 as arranged. She saw B, D and C. The accused was also there. He was bare bodied, and he used his T-shirt to hit C on her head. The accused then told them they could go off, and he dragged C away by her hair.

56 After the accused and C left, D received a call from C that she was near "913 bus stop", and later, a SMS that she was at "Block 130 plus". She told E of C's plight, and E, F and G went to look for C on their bicycles, but they were not able to find her. C called D again and said that she was in the vicinity of Block 137 Marsiling Road and she was going to look for her mother.

57 Subsequently, she met C and E at the vicinity of Block 1 Marsiling Drive and she asked C what had happened. C cried and told her that the accused had pushed and raped her at the hill and had forced \$50 onto her. She complained that the backs of her thighs were painful.

58 She told C that the \$50 note was "dirty money", and they used it to buy titbits and drinks at a SPC petrol station. They then went to a playground near Block 6 Marsiling Drive where they consoled C till they went home in the early morning.

L

59 Sometime between 18 and 27 March 2006, he saw C at Causeway Point at about 2.00pm. C was with K and some other people. They parted company after a while. A short time later, he received a SMS from C to look for her at the basement three carpark and he went down to the carpark with two friends. When they arrived at the carpark, they saw C standing against a wall, with the accused standing in front of her with his body pressing against her, and he noticed that she was crying. As they were afraid of the accused they walked back to the lift lobby.

60 The accused and C also walked towards them. At that time, K and some other girls also arrived and they all left the accused and took the lift up to basement one.

N

61 He was at an all night coffee shop at Block 211 Marsiling Drive with C and D on 26 March 2006 between 10.00pm and 11.00pm. The accused suddenly appeared, pulled C's hair and led her out of the coffee shop.

62 A while later, C returned to the coffee shop alone, and told them that the accused wanted her to be with him. After she had said that, the accused appeared again, told him that whoever kept company with C would have bad luck, and knocked him on the head with his knuckles and went to another part of the coffee shop. C told them that she did not want to stay out overnight. She had called her sister, telling her sister to fetch her home as the accused wanted her to stay out overnight.

63 About 15 minutes later, C's sister came to the coffee shop with her boyfriend and an older man, and they left the coffee shop together. After he had reached home, he received a call from B. B told him that the accused wanted him and D to return to Block 211, or else they should not let him see them in Woodlands.

C's sister

64 On 26 March 2006 at about 10 pm, while she was in the company of her boyfriend, she received a call from C. C told her she was at a coffee shop at Block 211 Marsiling, and asked her to take her home as someone had pulled her hair and also forbidden her to go home, and wanted her to stay with him overnight.

65 She promised C that she would fetch her. She related this to her mother, who asked her male friend who she referred to as "Uncle", to take her and her boyfriend to C. Her mother did not go because she was working at that time.

66 When the three of them arrived at the coffee shop at Block 211 Marsiling Crescent, they met C, a male and a female (ie, N and D). C whispered to her that the person who pulled her hair had raped her the previous week.

67 "Uncle" brought them back to the coffee shop at Block 834 where they met their mother. She told their mother that C was raped the previous week, and C also told their mother the accused had raped her and gave their mother his name and telephone number. Their mother and "Uncle" then left the coffee shop to look for the accused. When their mother returned home subsequently, she took her and C to the Woodlands Neighbourhood Police Centre for C to make a police report.

C's mother

68 Sometime in March 2006, sometime in the night, C called her and they arranged to meet at Block 136 Marsiling. However when she went there, C was not there and C did not answer her calls. (The call-tracing records of the cell phone she was using that night confirmed that there were calls and a SMS message between that phone and C's cell phone on 18 March 2006 between 12.58am and 2.04am). She was worried because that was the first occasion C had failed to keep an appointment with her.

69 On 26 March 2006 while she was working at a coffee shop, her elder daughter called her and informed her that C told her that someone had pulled her hair and refused to let her go home. She told her elder daughter to go with her boyfriend and "Uncle" to fetch C.

70 Sometime later, her elder daughter and C met her at her place of work. Her elder daughter told her that C had been raped, and she questioned C about it. C told her that the accused had raped her, and gave her his phone number. She and "Uncle" then went to Block 211 to look for the accused, but he was not there. She called him on the phone, but he told her he was in the city, and he did not respond to subsequent telephone calls. She then decided to bring C to lodge a police report on the rape, and set the investigations in motion.

71 C was sent for an examination at the Singapore General Hospital on 29 March 2006, and was seen by Dr Roland Chieng. She told the doctor that she was raped on 18 March 2006 and that it was the first time she had sexual intercourse, and that there was ejaculation. On examination, she was found to have old tears of the hymen ring which are consistent with previous sexual intercourse. (Dr Chieng explained that there is no way of telling the age of such injuries which are more than 72 hours old.)

72 C had told Dr Chieng that in the course of the rape her skirt and underwear were removed, but she could not recall if there was digital penetration or oral interference with her vagina.

The defence

73 The accused gave evidence in his own defence. He denied that he was the leader of C's and B's gang and although he had been a member of a secret society, that had nothing to do with them.

74 He was not attracted to C and had not offered her money and status to be his girlfriend. When his counsel led him to the events of 17 to 18 March 2006, he admitted that he pulled C's hair. But when he was asked whether he hit her with his T-shirt, his answer was "I cannot remember. But since two or three people said that I did, then I believe I must have done it" and "I really cannot remember". It was only when counsel pressed him on it during re-examination that he said "I think I did", but even then he maintained that he cannot remember why he did it.

75 However, he remembered the other events of that night. He remembered telling R and the others to go back when he took C away. He confirmed that he had brought C to the bench. While they were there, he scolded her. He scolded her for causing trouble by what she said and he advised her not to be involved in glue sniffing, not to take sleeping tablets and not to stay overnight in boys' houses. They were there for 10 to 15 minutes. While he was scolding her, C was crying and operating the buttons of her cell phone. After he finished scolding her, he told her to go home. C told him that her mother was going to fetch her, and they parted company. He denied that he had gone to buy a drink at any time, or that he had brought C to a hillock and raped her, or that he had given her \$50.

76 With regard to the events at Causeway Point, his evidence was that he was in the company of his wife when he saw C and her friends there. He wanted to talk to C because he had heard complaints that C had been threatening to beat up another girl. He told his wife to go shopping herself, while he went to speak to C at the carpark, with her friends nearby. He accused her of threatening P. C denied that. He continued scolding her, and she leaned against his chest and cried and he placed his hands to hold her shoulders. When he had finished scolding her, he also scolded C's friends for causing trouble. He then went to rejoin his wife.

77 The accused also gave his account of the events at the Block 211 coffee shop. He was there

drinking beer with his male friends. He saw C, D and a boy (ie, N) and he went over and pulled C's hair. He explained that before he went to the coffee shop, whilst he was at his pet shop, B had told him that C was at tuition. So when he saw C at the coffee shop with her two companions, he was annoyed. He accused her of lying about going for tuition. When C replied that she was there for food, he told her that she should ask her family members to take her home as he did not trust her that she would go home on her own. He also scolded the boy who was with C and D, hit him on the head with his knuckles, and told him that he would have bad luck if he took C out when it was late, and then he rejoined his friends.

78 He denied that he had told C that he wanted her to spend the night with him. He also denied instructing B to tell C to return to the coffee shop, or tell C, D and N that if they did not return to Block 211, they were not to step into Woodlands again.

79 His evidence was that he told B to tell C, D and N to call him back, and if they did not do that, they should not look to him when they have any trouble. (This evidence was inconsistent with his own evidence that D and N had never sought his help before, and he barely knew N).

80 With reference to B's evidence that he had told her that he had sex with C and had given her money, the accused's evidence was that he told B that there was also a rumour that they (ie, he and B) also had sex, and since that was untrue, she should not listen to rumours.

81 The accused also called his wife Ngoi Kian as a witness, but her evidence did not have a material effect on the main issues because she was not present at the events of 17 to 18 March 2006, the Causeway Point carparks or the coffee shop at Block 211.

Evaluation of the evidence

82 The court heard C and ten other witnesses who were involved in the events on 17 to 18 March, 23 March and 26 March 2006.

83 Defence counsel cross-examined these witnesses at length, often to excessive length.

84 Almost everyone mentioned in the narrations of the events was called as a witness. Those who were not called were either really marginally involved or un-traceable. I was satisfied (and there is no suggestion by counsel for the defence to the contrary) that there was no suppression or withholding of evidence.

85 Nevertheless, I was mindful that ideally, there could have been more evidence. For example, because of the late police report, there was no prompt medical examination of C and the accused, and the clothing they wore on 17 to 18 March 2006 were not seized or examined.

86 I also took into account defence counsel's submissions on various areas of discrepancies and shortcomings in the evidence. Counsel had highlighted the discrepancies on C's attire on the morning of 18 March 2006. C's evidence was that she wore a skirt, whereas B, D and E remembered her to be wearing jeans or pants, and then retracted and said they were not very sure. F's evidence on the other hand, corroborated C's evidence, as did Dr Chieng's notes on his interview with C. I have looked at the police statements of C to check if C's evidence in court was consistent with her police statements so that defence counsel can be supplied with the statements, and can use them to impeach her credit and her evidence was inconsistent. When the statements were produced to me, I found that there was not only no inconsistency, but C had stated three times that she was wearing a skirt.

87 There was also the fact that although C alleged that there was digital penetration and cunnilingus preceding the rape, she was equivocal on that when she described the events to Dr Chieng. Similarly, there was variation in C's description of the level of pain she experienced when she was raped.

88 Counsel also took issue of the inconsistencies in the evidence of the communications between C and her friends and her mother after she was taken away by the accused.

89 There were inconsistencies in the evidence of the prosecution witnesses in describing some locations as "Road", "Lane", "Rise" and "Crescent". However, when I went through the evidence, I found the prosecution witnesses to be essentially honest witnesses and that they were not material inconsistencies. I found, in particular, that C was trying to recount in the face of prolonged cross-examination the traumatic events to the best of her ability.

90 In the event, C's evidence were supported in large measure by other evidence. There was the evidence of B, D and H on the accused hitting C with his T-shirt and pulling her away by her hair, and of their fear and apprehension as she was being led away. C's evidence that she was in communication with her mother and had arranged for her to go to fetch her was confirmed by the mother and the call-tracing record of the cell phone that the mother was using.

91 The physical and emotional state of C when she returned from the hillock was confirmed by her friends. They noticed that she was crying and distressed, and that she had confided that she was raped, and had gone to both petrol stations' washrooms to wash her vagina, and that she had used the \$50 that she said the accused had forced on her to buy titbits and drinks.

92 The accused's dominance over C and her fear for him were demonstrated by the events of 23 and 26 March 2006. It was clear from the evidence that the accused was still trying to impose himself on C physically and sexually despite her aversion for him. In the end, his persistence put so much pressure on C that she had to seek the help of her sister to fetch her home from the coffee shop at Block 211, and to relate to her and their mother what the accused had done to her on 18 March 2006.

93 The accused did not deny that he exerted an influence over C and her friends. He had helped them when they were in trouble, resolved their disputes, lent or given them money, and counselled them.

94 His defence was that C and her friends had conspired to give false evidence against him despite his concern for and goodwill towards them. He did not put forward any credible or plausible reason for C and her friends to want to do this.

95 When he made his defence, the accused was an unsatisfactory witness. As indicated earlier he was reluctant to admit that he hit C on 18 March 2006 with his T-shirt, leaving that to re-examination, and even then he did not explain his action.

96 When he was confronted with the statements that he had given in the course of investigation which contradicted or were inconsistent with his evidence in court, he accused the investigating officer of being impatient and hostile towards him although that was not put to the investigating officer when she gave evidence.

97 On reviewing the evidence and the submissions made, I found that the prosecution had proved its case beyond a reasonable doubt against the accused and I find him guilty and convicted him of

the charge under s 376 of the Penal Code.

Sentence

98 The accused admitted to a disturbing record of criminal convictions:

- a. On 4 May 1988, he was convicted for robbery and was sent to the Reformative Training Centre.
- b. On 30 November 1989, he was convicted on two offences of theft and was dealt with concurrently with the previous conviction.
- c. On 12 June 1992, he was convicted for rioting and was imprisoned for six months.
- d. On 3 July 1992, he was convicted of three offences of possession of controlled drugs, for which fines were imposed and paid.
- e. On 24 May 1993, he was convicted of two offences of causing hurt with a dangerous weapon and was sentenced to two consecutive sentences of six months' imprisonment.
- f. On 21 September 1993, he was convicted of one offence of robbery and one offence of snatch theft and was sentenced to 42 months' imprisonment with 12 strokes.
- g. On 18 February 2003, he was convicted for an offence of causing hurt and was sentenced to imprisonment for one year.
- h. On 16 September 2004, he was convicted for an offence of affray and was sentenced to imprisonment for one year.

Between convictions (f) and (g), he was detained under the Criminal Law (Temporary Provisions) Act (Cap 67, 2000 Rev Ed) from 26 May 1997 and 2002.

99 Counsel was commendably brief in mitigation, highlighting that this was the accused's first conviction for a sexual offence, and that he pleaded for leniency.

100 The accused clearly did not deserve leniency. His record shows a sad history of criminality. The offences show that he had a propensity towards violence and the use of force. He also admitted to having secret society connections although he claimed to have severed them.

101 The facts showed that he has not changed his ways. He had asserted his dominance over C and her friends to the extent that he could pull C's hair, hit her with his T-shirt, and knock N's head without impunity.

102 The rape took place without any extenuating circumstances. There was nothing that could be said to have been encouraged or led on by C and there was no mistaking that C was an unwilling party. The accused's subsequent behaviour towards her at Causeway Point and the coffee shop showed that having had his way on 18 March 2006, he would continue to force himself on C when opportunities presented themselves.

103 I found that the accused should receive a substantial sentence. The offence on which he was convicted carries a sentence of imprisonment of up to 20 years, together with discretionary fine and canning. For rape cases, guidelines have long been established in *Chia Kim Heng Frederick v Public*

Prosecutor [1992] 1 SLR 361, which I will not set out here.

104 Taking into account particularly (but not exclusively) C's youth, the accused's position of dominance, his denial of any wrongdoing, the absence of any remorse, and his antecedents, I sentenced him to 16 years imprisonment, backdated to run from the date of his detention following his arrest, and 10 strokes of the cane.

105 The accused has filed appeals against the conviction and the sentence.

[\[note: 1\]](#) Shown in photograph P9

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