



1<sup>ST</sup> CHARGE on or about 29<sup>th</sup> October 2013, at Block 30 Tanglin Halt Road #06-170, Singapore, committed Rape on [V], then a female of age 13 years old (Date of Birth: [X] August 2000), to wit by penetrating the vagina of the said [V] with your penis, with her consent, and you have thereby committed an offence under Section 375(1)(b), and punishable under section 375(2) of the Penal Code, Chapter 224 (2008 Rev. Ed.).

3RD CHARGE on or about the 1<sup>st</sup> December 2013 in the morning, at Ancestral Temple of Ying Fo Fui Kun located at No. 9 Commonwealth Lane, Singapore, committed Rape on [V], then a female of age 13 years old (Date of Birth: [X] August 2000), to wit by penetrating the vagina of the said [V] with your penis, with her consent, and you have thereby committed an offence under Section 375(1)(b) of the Penal Code Chapter 224, and punishable under Section 375(2) of the Penal Code Chapter 224.

3 All the offences are punishable with imprisonment of up to 20 years. In addition, the offender shall be liable to fine or to caning.

### **The Statement of Facts**

4 The accused admitted all the facts set out in the following Statement of Facts (with the female victim's name and particulars redacted):

#### **A) Introduction**

1. The accused is Terence Ng Kean Meng, a 43-year-old male Singaporean, bearing NRIC No. [X]. His date of birth is 20 May 1971 and he is a divorcee. At the time of the offences, he was working as a cobbler and had a makeshift stall near Commonwealth MRT station. His home address is Block 30 Tanglin Halt, #06-170 ("the accused's flat").

2. The victim is [V], a 14-year-old female Singaporean bearing NRIC No. [X]. Her date of birth is [X] August 2000. At the time of the offences, she was 13 years old and was a Secondary 1 student.

#### **B) First Information Report**

3. On 7 February 2014, at about 4.54 p.m., the victim lodged a Police report at Bukit Merah West NPC, stating that she had had sexual intercourse thrice with a Chinese male.

#### **C) Background**

4. Sometime in October 2013, the accused began to notice the victim loitering at the area around his makeshift cobbler stall. On 17 October 2013, the accused approached the victim and asked if she wanted to go home. The victim informed him that she was afraid to do so as she had run away from her home. The accused then offered to bring her home and the victim agreed.

5. On that day, when the accused brought the victim home, he spoke to the victim's mother. The victim's mother was ill at that time. The accused also became aware that the victim had run away from home for long periods of time. The accused then informed the victim's mother that he

would help to take care of her and bring her for various activities. He even offered to be the victim's godfather. The victim's mother agreed to these and subsequently, so did the victim's father. A few days after they first met, the accused asked the victim to be his goddaughter, and the latter agreed.

6. The victim then began meeting the accused almost daily at his makeshift cobbler stall. She would stay and speak with him till late at night. The accused would then send her back home thereafter. The accused also started bringing the victim over to his flat.

7. At all material times, the accused was aware that the victim was just 13 years old. Despite this, through their interactions, he began to develop an attraction for her. He also began to entertain thoughts of having sexual intercourse with her.

**D) Facts pertaining to the 4<sup>th</sup> Charge – Sexual penetration of minor under 16 (TRC 900049-2014)**

8. On 29 October 2013, the accused brought the victim to his flat at about 6.30 p.m. They were alone in the flat at that time.

9. Whilst in the living room, the victim informed the accused that she was feeling unwell and that her stomach was giving her some problems. The accused then applied some ointment on the victim's stomach. When the victim informed that she felt better, the accused asked her if she wanted to have sexual intercourse. When the victim agreed, the accused asked her to proceed to the toilet.

10. In the toilet, the accused removed the victim's shorts and panties. The accused then removed his underwear. Thereafter, the accused inserted his finger into the victim's vagina. He moved his finger in and out of the victim's vagina for about 15 minutes.

11. By penetrating the victim's vagina with his finger, when the victim was under 14 years of age, the accused has committed an offence of sexual penetration of a minor, punishable under Section 376A(3) of the Penal Code, Chapter 224.

**E) Facts pertaining to the 2<sup>nd</sup> Charge – Statutory Rape (TRC 900047-2014)**

12. Sometime in November 2013 in the evening, a few days after the incident in respect of the 4<sup>th</sup> charge, the accused brought the victim to his flat once again. Similarly, they were alone in the accused's flat at the material time. The accused asked the victim to go to his bedroom. She agreed and complied.

13. Whilst in the bedroom, the accused decided to determine if the victim wanted to have sexual intercourse with him. To that end, the accused began to touch the victim's right thigh. He also unbuttoned her shorts. Thereafter, the victim removed her shorts. She lowered her panties to her thighs and the accused removed it as well. The accused then began to touch the victim all over her body, including her vulva.

14. Thereafter, whilst the victim was lying on his bed, the accused inserted his penis inside her vagina. He was not wearing a condom at that time. The accused then had penile-vaginal intercourse with the victim for about 10 minutes.

15. By penetrating the victim's vagina with his penis, when the victim was then under 14 years

of age, the accused has committed an offence of rape, punishable under Section 375(2) of the Penal Code, Chapter 224.

**F) THE ACCUSED'S PSYCHIATRIC REPORT**

16. The psychiatric report prepared by Dr. Jason Lee Kim Huat dated 26 March 2014 relating to the assessment of the accused is attached at Annex A for reference.

17. The accused was found not to be suffering from any mental illness at the material time, or from any intellectual disability. He was also not of unsound mind and fit to plead.

**G) CONCLUSION**

18. After the victim's mother passed away on 9 December 2013, the victim's father directed her to cease all contact with the accused. The victim complied.

19. The accused admits that he has, by the above-mentioned actions, committed the following offences:

a. Second charge (TRC 900047-2014) – rape, which is an offence punishable under section 375(2) of the Penal Code, Chapter 224; and

b. Fourth charge (TRC 90049-2014) – sexual penetration of a minor under 14, which is an offence punishable under section 376A(3) of the Penal Code, Chapter 224.

20. The accused stands charged accordingly.

[Annex A is omitted.]

**The Prosecution's submissions on sentence**

5 The Prosecution submitted that the court should impose on the accused a global sentence of at least 13 to 14 years' imprisonment in addition to caning. It referred to a number of case authorities which set out the sentencing considerations and benchmarks for rape offences, in particular, *Public Prosecutor v NF* [2006] 4 SLR(R) 849 ("*PP v NF*") where V K Rajah J (as he then was) discussed four broad categories of rape offences and suggested a benchmark sentence for each of them. The Prosecution submitted that the present case fell between Category 1 and Category 2 rape cases as formulated in *PP v NF*. Category 1 cases were those that featured no aggravating or mitigating circumstances. The suggested benchmark was 10 years' imprisonment and not less than 6 strokes of the cane. Category 2 cases involved particularly vulnerable victims or where there were threats, where the offender was in a position of trust, where the victim was deprived of her liberty for a period of time and/or where the rape was carried out by a group. The suggested benchmark was 15 years' imprisonment and 12 strokes of the cane.

6 The Prosecution argued that the then 42-year old accused had exploited a young and vulnerable girl for his sexual pleasure. He was in a position of trust as he had informed the victim's mother that he would take care of the victim who was exhibiting some wayward behaviour. He had also offered to be the victim's godfather.

7 The accused was a mature adult who had been married. He did not have any intellectual disability. He was the one who initiated sexual contact, the first of which took place less than two weeks after he informed the victim's parents that he would watch over her. In this case, he has

admitted three separate occasions of rape. The offences were therefore not committed on the spur of the moment.

8 The Prosecution also referred to *Public Prosecutor v AOM* [2011] 2 SLR 1057 (“*PP v AOM*”) where it was held that consent of the victim was not a relevant mitigating factor for the offence of statutory rape and sexual penetration of a minor. Although the case suggested that consent might be relevant in exceptional cases, especially where the offender and the victim were of the same or similar age, this was inapplicable here as the age difference was 29 years between the accused and the victim.

9 The accused was also irresponsible in not putting on a condom before sexual intercourse, thereby exposing the victim to the risk of an unwanted pregnancy. Fortunately, no pregnancy resulted from the three occasions.

10 For the offence of sexual penetration of a minor, the sentencing precedents suggested a range of 10 to 12 months’ imprisonment. However, the present case was an aggravated offence under s 376A(3) of the Penal Code (Cap 224, 2008 Rev Ed) (“PC”) as the victim was below the age of 14 at the material time. The higher maximum sentence of 20 years’ imprisonment provided for this offence reflected Parliament’s view that sexual abuse against victims below the age of 14 should be viewed more seriously than those where the victims were 14 and above (*Public Prosecutor v Yap Weng Wah* [2015] 3 SLR 297). The Prosecution therefore suggested that the accused be sentenced to not less than 12 to 15 months’ imprisonment for this charge.

11 Insofar as the accused’s criminal record was concerned, he had convictions for forgery, criminal breach of trust, theft and theft in a dwelling house between 1991 and 1998.

### **The mitigation plea**

12 The accused had formal education up to Primary 6. He had been working as a cobbler for 17 years in the Tanglin Halt area, earning an average of \$1,000 a month. He was divorced in 2002 and has no children. He lived in a three-room Housing and Development Board flat with his 82-year-old mother and 78-year-old step father and was their primary source of support.

13 As the accused and the victim were both members of a lion dance troupe, she would occasionally sleep over in his flat whenever there were early performances the next morning so that both could go the venue together. She would sleep in the living room of the flat.

14 The sexual penetration offence arose from the victim’s complaint about her stomach ache. The accused rubbed some ointment on her stomach and then went to the toilet to wash his hands. When he returned to her, he succumbed to temptation and committed the sexual acts detailed in the first and the fourth charges. There was no premeditation or any violence used. Further, the victim was not a virgin and was familiar with sexual intercourse.

15 The rape offence occurred when the victim went to the accused’s flat. She was lying on his bed and playing with an I-pad when the accused decided to join her. Due to their proximity, he succumbed to temptation and asked her whether she wanted to have sexual intercourse. With her consent, they had sex in bed. Again, there was no premeditation on the accused’s part. Both of them “gave in to their baser instincts [and] indulged in sexual intercourse on the spur of the moment”.

[\[note: 1\]](#)

16 Counsel for the accused submitted that the dominant sentencing principles in this case were

general deterrence and retribution. There was no need for specific deterrence as no premeditation was involved and the accused was not likely to repeat the offences. Although the statutory rape offence was made out even without the victim's consent, the reported precedents concerned underage victims who had not given their consent and/or where there were aggravating circumstances present. The law did not provide for a mandatory minimum sentence for cases where there was consent from the victim. In such cases, the charges would be brought under s 140(1)(i) of the Women's Charter (Cap 353, 2009 Rev Ed) or under s 376A(1)(a) of the PC.

17 It was argued that the present case was a Category 1 rape within the classifications in *PP v NF*. For such cases, the Court of Appeal in *Chia Kim Heng Frederick v Public Prosecutor* [1992] 1 SLR(R) 63 set the starting point at 10 years' imprisonment and 6 strokes of the cane in contested cases without any mitigating or aggravating factors. A guilty plea would merit a reduction of one-quarter to one-third of the sentence. The absolute age of the offender as well as the age disparity between the offender and the victim may be relevant but would not be decisive and determinative (*GAJ v Public Prosecutor* [2015] SGHC 134).

18 In this case, there were no injuries, no violence, no threats and no coercion. There was no premeditation in that the accused had not intentionally sought out the victim. The victim was sexually experienced and she gave her consent. The accused had no sexual deviations. The absence of a victim impact statement, coupled with the victim's consent and sexual experience, suggested strongly that the victim did not suffer any psychological trauma as a result of the offences in question. The term "godfather" was just a name and did not change the fact that there was only a platonic relationship between the accused and the victim before the sexual acts. The victim did not depend on the accused for food, shelter or guidance. She merely liked hanging around the cobbler stall and came and went as she pleased.

19 The accused was truly repentant. He had confessed and cooperated in the investigations and he pleaded guilty as soon as possible. He worked to earn a living. His mother and his step sister in their testimonials described him as a filial son and a caring brother who worked hard and was well liked by his customers. He was generous, kind and helpful.

20 In all the circumstances of this case, counsel for the accused submitted that the sentence for the statutory rape offence should be less than 7 years' imprisonment and if any caning was to be imposed, it should be not more than one or two strokes. Where the sexual penetration offence was concerned, the suggested sentence was two months' imprisonment to be ordered to run concurrently with the first imprisonment term.

### **The decision of the court**

21 After considering all the arguments made above, I sentenced the accused to 13 years' imprisonment and 12 strokes of the cane for the second charge (statutory rape) and one year's imprisonment and two strokes of the cane in respect of the fourth charge (sexual penetration). I also ordered both imprisonment terms to run consecutively with effect from the date of arrest, 11 February 2014. The total sentence was therefore 14 years' imprisonment and 14 strokes of the cane.

22 I accept that the accused was remorseful by pleading guilty. While his previous convictions did not entitle him to claim to have a clean record, I do not give much regard to them as they were not sexual offences and more importantly, they were committed many years ago when the accused was a much younger man.

23 I agree with the view expressed in *PP v AOM* (at [8] above) that consent is irrelevant for such offences. This is clearly spelt out in the PC. The victim's consent meant only that there was no aggravating factor of coercion or deception.

24 Any previous sexual experience of the victim does not mean that she should not merit the full protection of the law. The law does not treat rape against married or sexually experienced women as being less heinous than rape against virgins. In the same vein, the law does not countenance that men who have sex with sexually experienced minors have committed less serious offences.

25 I accept that the rape here could be considered as one between a Category 1 and a Category 2 rape in *PP v NF*. The benchmarks in *PP v NF* have been approved by the Court of Appeal in *Public Prosecutor v Mohammed Liton Mohammed Syeed Mallik* [2008] 1 SLR(R) 601 and in *Public Prosecutor v UI* [2008] 4 SLR(R) 500. Bearing in mind that there are two other rape offences taken into consideration, I think that 13 years' imprisonment and 12 strokes of the cane would be a reasonable sentence on the facts of this case.

26 As for the sexual penetration offence, the victim is within the age group singled out by Parliament for special protection by the enactment of a higher maximum imprisonment term. Although the same maximum sentence has been provided as for rape, the cases have consistently regarded rape as being much more serious an intrusion than digital penetration in the way that sentences have been meted out. Bearing in mind that the intrusion here took place for about 15 minutes, I am of the view that a sentence of one year's imprisonment and two strokes of the cane is reasonable.

27 The final point to consider is whether the imprisonment terms ought to run concurrently or consecutively. As the Prosecution did not proceed with three charges involving imprisonment, I am not compelled by law to order at least two of the imprisonment terms to run consecutively. In my view, the fact that the Prosecution has elected to proceed on only two out of four charges (while taking the other two into consideration for sentence) does not mean that imprisonment terms must be ordered to run concurrently. This applies even if the Prosecution has not submitted that the court should impose consecutive imprisonment terms (which is the case here). The court must still look at the facts and decide whether consecutive imprisonment terms would better reflect the overall gravity of the offences.

28 The offences in the second and the fourth charges are clearly not part of the same transaction in that they were committed on different occasions although they occurred in the same location and against the same victim. It has been held that the rationale for the one-transaction rule is that consecutive sentences are not appropriate if the various offences involve a single invasion of the same legally protected interest (*Mohamed Shouffee bin Adam v Public Prosecutor* [2014] 2 SLR 998). In my view, the law protects the victim here by providing that penetration of her vagina by the accused's penis is an offence. Additionally, the law protects her by the enactment of the new offence of sexual penetration of the vagina with a part of the body other than the penis. Although both offences involve the penetration of the vagina, I think it would be contrary to common sense to regard them as a single invasion of the same legally protected interest. In any case, as mentioned earlier, the two offences occurred on different days and were not part of a continuum of events.

29 The two offences that the accused has been convicted of justify consecutive imprisonment terms which do not appear to me to result in an overall crushing sentence. If it were otherwise, a person who commits the offence of sexual penetration on one occasion and rape on another would be no worse off than one who commits rape on only one occasion.

30 The accused has filed a notice of appeal to the Court of Appeal against the sentence imposed.

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[\[note: 1\]](#) Plea in mitigation at para 30.

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