

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 187

Criminal Case No 27 of 2016

Between

Public Prosecutor

... Public Prosecutor

And

Chin Swee Chung

... Accused

JUDGMENT

[Criminal law] – [Offences] – [Rape]

TABLE OF CONTENTS

THE CHARGES.....	2
THE ACCUSED AND MS KHIN.....	3
UNDISPUTED FACTS.....	4
THE PROSECUTION’S CASE.....	8
THE FIRST SEXUAL INTERCOURSE.....	8
ATTEMPTED TELEPHONE CALL TO MR ZAW	11
THE SECOND SEXUAL INTERCOURSE.....	12
THE ACCUSED’S DEPARTURE FROM THE UNIT	14
THE ARRIVAL OF THE POLICE.....	15
THE ACCUSED’S CASE.....	17
THE FIRST SEXUAL INTERCOURSE.....	17
THE SECOND SEXUAL INTERCOURSE.....	19
THE ACCUSED’S RETURN TO THE UNIT.....	20
MY DECISION	21
MR ZAW’S EVIDENCE CORROBORATES THE PROSECUTION’S CASE.....	21
THE ACCUSED’S BEHAVIOUR AT THE VOID DECK REVEALS HIS KNOWLEDGE OF HIS CULPABILITY	25
<i>The Accused’s delay in approaching the police officers.....</i>	<i>25</i>
<i>The Accused did not seek to ascertain the allegations against him.....</i>	<i>26</i>
<i>The Accused’s plea to Ms Khin.....</i>	<i>28</i>
THE ACCUSED FAILED TO ASCRIBE A REASONABLE MOTIVE TO MS KHIN FOR MAKING THE POLICE REPORT	30

THE ACCUSED FAILED TO PROVIDE A PLAUSIBLE EXPLANATION OF WHY MS KHIN WOULD HAVE CONSENTED TO THE FIRST AND SECOND SEXUAL INTERCOURSE.....	32
MS KHIN WAS A CREDIBLE WITNESS.....	35
THE ACCUSED’S REMAINING SUBMISSIONS	39
SUMMARY OF FINDINGS.....	40
CONCLUSION.....	42

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Public Prosecutor

v

Chin Swee Chung

[2016] SGHC 187

High Court — Criminal Case No 27 of 2016
Chan Seng Onn J
10-12 March, 17-20 May 2016; 8 July 2016

8 September 2016

Judgment reserved.

Chan Seng Onn J:

1 The accused faces two charges for rape and claimed trial to both charges. The Prosecution alleges that after a night of drinking with friends, the accused returned home in the early hours of 20 December 2013. He called out to the household's domestic maid who then emerged from her room. The accused gripped the domestic maid's hands and proceeded to pull her from the living room to his bedroom. There, he pushed her onto his bed and had penile-vaginal intercourse with her against her will. Later that morning, after having slept for some hours, the accused again approached the domestic maid, who was washing clothes. He pulled her from the kitchen into his bedroom and once again forced her into having sexual intercourse. The two occasions of intercourse form the subject of the two charges against the accused.

2 The Accused’s defence is that the domestic maid consented to both incidents of intercourse. She was a willing and active participant in the sexual activity. She not only agreed to the sexual intercourse but also kissed the accused on both occasions and gripped and sucked his penis prior to the second intercourse.

3 The trial lasted for seven days, during which I had full opportunity to hear from the parties’ witnesses. After having considered the parties’ evidence and submissions, I find that the domestic maid did not consent to the sexual intercourse under either charge. I also find that the Prosecution has proved beyond a reasonable doubt that the accused committed the offence of rape in respect of both charges against him, and I convict him of both charges accordingly. I will now explain my reasons.

The charges

4 There are two charges against the accused, both under s 375(1)(a) and punishable under s 375(2) of the Penal Code (Cap 224, 2008 Rev Ed) (“Penal Code”). The first charge (“the First Charge”) reads as follows:

That you, CHIN SWEE CHUNG,

On or about the 20th day of December 2013, at about 2.40 am, at Blk [xx] Pasir Ris Street 72 #[xx]-[xx], Singapore, did commit rape on one [Khin], a female Myanmar national aged 35 years old, to wit, by penetrating the vagina of the said [Khin] with your penis without her consent, and you have thereby committed an offence under section 375(1)(a), punishable under section 375(2) of the Penal Code, Chapter 224 (2008 Revised Edition).

5 The second charge (“the Second Charge”) states:

That you, CHIN SWEE CHUNG,

On or about the 20th day of December 2013, at about 7.00 am, at Blk [xx] Pasir Ris Street 72 #[xx]-[xx], Singapore, did

commit rape on one [Khin], a female Myanmar national aged 35 years old, to wit, by penetrating the vagina of the said [Khin] with your penis without her consent, and you have thereby committed an offence under section 375(1)(a), punishable under section 375(2) of the Penal Code, Chapter 224, (2008 Revised Edition).

The accused and Ms Khin

6 The accused is Chin Swee Chung (“the Accused”). He is a 45-year-old Singapore Permanent Resident. At the material time, he was married to Ms Yik. They divorced in the first quarter of 2014.¹ The accused and Ms Yik have two children and they resided at the material time as a family together with the accused’s mother at Blk [xx] Pasir Ris Street 72 #[xx]-[xx], Singapore (“the Unit”).² The accused worked in an alcohol distribution company. He gave evidence that he went drinking almost every weekday night because he needed to entertain his clients.³

7 Ms Khin is a Myanmar national. In July 2013, she commenced work as a domestic maid at the Unit for Ms Yik and her family. This was her second employment in Singapore as a domestic maid. Prior to this, she worked for another employer from September 2012 to June 2013.⁴ Thereafter, Ms Khin returned to Myanmar for about a month before returning to Singapore in July 2013 to commence her employment with Ms Yik.⁵ Ms Yik paid Ms Khin \$420 per month for her services.⁶ Her duties consisted of general chores around the Unit,⁷ and she would receive her instructions almost exclusively from Ms Yik

¹ NE 18 May 2016 p 26 lines 25 to 28.

² AB17 at para 1.

³ NE 18 May 2016 p 31 lines 20 to 31.

⁴ NE 11 May 2016 p 2 line 32 to p 4 line 8.

⁵ NE 11 May 2016 p 4 lines 3 to 8.

⁶ NE 11 May 2016 p 5 lines 15 to 17.

alone.⁸ Ms Khin was given a room within the Unit to sleep in. The room had no door and was separated from the living room only by a pair of curtains.⁹

8 Mr Zaw, also a Myanmar national, is an acquaintance of Ms Khin. He is a friend of Ms Khin's husband's niece.¹⁰ He has been working in Singapore since 2007.¹¹ Ms Khin and Mr Zaw would talk on the phone every three to four days.¹²

Undisputed facts

9 On 17 December 2013, Ms Yik left Singapore together with her two children for a holiday in Hong Kong. The holiday was scheduled to last from 17 to 23 December 2013,¹³ although Ms Yik later returned to Singapore prematurely on 21 December 2013.¹⁴ The Accused's mother was also abroad at the material time, having returned to Malaysia.¹⁵ Thus in the period from 17 to 19 December 2013, the Accused and Ms Khin were the only occupants of the Unit.¹⁶

10 In the evening of 19 December 2013, the Accused went out drinking with his friends. He consumed four to five glasses of beer, a cocktail and two

⁷ NE 11 May 2016 p 4 lines 18 to 21.

⁸ NE 11 May 2016 p 4 lines 24 to 31; 17 May 2016 p 52 lines 9 to 28.

⁹ NE 11 May 2016 p 12 line 27 to p 13 line 10.

¹⁰ NE 11 May 2016 p 59 lines 10 to 11.

¹¹ AB14 at para 1.

¹² AB14 at para 2; NE 10 May 2016 p 70 lines 16 to 19.

¹³ NE 17 May 2016 p 59 lines 4 to 6.

¹⁴ NE 17 May 2016 p 59 lines 7 to 11.

¹⁵ NE 18 May 2016 p 31 lines 4 to 6.

¹⁶ NE 18 May 2016 p 31 lines 7 to 9.

glasses of vodka.¹⁷ Following his alcohol intake, the Accused was “tipsy”¹⁸ and “high”¹⁹ but he knew what he was doing.²⁰ At about 10 pm that evening, Ms Khin went to sleep in her room.²¹ When she went to sleep, the Accused had not yet returned to the Unit.

11 At about 2.30 am on 20 December 2013, the Accused returned.²² The Accused stood in the living room outside Ms Khin’s room and called out to Ms Khin, saying “Chaw Chaw” (which was a variation on her name).²³ After hearing the Accused call out to her, Ms Khin came out from her room. What the Accused and Ms Khin then said and did to each other is a matter of significant controversy, but it is undisputed that both of them eventually entered the Accused’s bedroom where they had sexual intercourse on the Accused’s bed. I will refer to this first sexual intercourse, involving the Accused’s penile penetration of Ms Khin’s vagina, as “the First Sexual Intercourse”. The First Sexual Intercourse forms the subject matter of the First Charge against the Accused.

12 After the First Sexual Intercourse, the Accused went to the toilet attached to his bedroom.²⁴ Ms Khin picked up her clothes, left the bedroom and headed to the toilet near the kitchen.²⁵ The Accused then went to sleep in his bedroom.

¹⁷ Accused’s statement recorded on 20 Dec 2013 at 7.33 pm at paras 11 and 12.

¹⁸ Accused’s statement recorded on 20 Dec 2013 at 7.33 pm at para 12.

¹⁹ NE 18 May 2016 p 33 line26.

²⁰ NE 18 May 2016 p 33 lines 28 to 31.

²¹ ABD10 at para 3.

²² Accused’s statement recorded on 20 Dec 2013 at 7.33 pm at para 12.

²³ NE 11 May 2016 p16 lines 27 to 28.

²⁴ NE 11 May 2016 p 52 lines 13 to 14, 25 to 26.

13 At about 7 am on 20 December 2013, the Accused awoke and went to the kitchen, where he noticed Ms Khin washing clothes.²⁶ What the Accused and Ms Khin then said and did to each other is contested. But it is common ground that the Accused and Ms Khin eventually entered the Accused's bedroom again where they had sexual intercourse on the Accused's bed. I will refer to the penile penetration of Ms Khin's vagina on this occasion as "the Second Sexual Intercourse".

14 The next time the Accused and Ms Khin saw each other on 20 December 2013 was sometime between 9 and 10 am. The Accused came out from his bedroom and was getting ready to leave the Unit and head to work.²⁷ The Accused and Ms Khin then had a conversation, the contents of which are disputed. The Accused handed Ms Khin \$30 and left the Unit.²⁸ Thereafter, Ms Khin also left the Unit. While she was outdoors, she used the \$30 from the Accused to purchase bread.²⁹ She subsequently returned to the Unit where she used her mobile phone to call the police.³⁰

15 SGT Wee Xue Ting and SGT Mohamad Adha Bin Mohamad Adam arrived at the Unit at about 11.30 am and met Ms Khin.³¹ Ms Khin, SGT Wee and SGT Adha then went down to the void deck at the ground floor of Blk [xx] in order to wait for the arrival of another officer.³² While they were

²⁵ NE 11 May 2016 p 52 lines 22 to 23, p 53 lines 26 to 32.

²⁶ NE 11 May 2016 p 67 lines 16 to 25; 19 May 2016 p 35 lines 27 to 29.

²⁷ NE 11 May 2016 p 11 to 15; 19 May 2016 p 38 lines 23 to 26.

²⁸ NE 11 May 2016 p 87 lines 20 to 21; 19 May 2016 p 40 line 20.

²⁹ NE 11 May 2016 p 90 lines 10 to 14.

³⁰ NE 11 May 2016 p 91 lines 18 to 22.

³¹ ABD21 at para 4.

³² ABD22 at para 7.

waiting, they saw the Accused approach them. At this point, Ms Khin was seated on a round stone stool at the void deck.³³ The Accused identified himself to SGT Wee and SGT Adha as Ms Khin's employer³⁴ and thereafter spoke to Ms Khin with SGT Wee and SGT Adha beside her. The contents of what the Accused said to Ms Khin are disputed, but it is agreed that Ms Khin kept silent and did not respond.

16 Thereafter, SGT Wee asked Ms Khin if she wanted to speak to the Accused. Ms Khin then moved to another part of the void deck near a staircase landing, which was located beside a wall in which there was a circular hole.³⁵ Ms Khin sat within the circular hole. The Accused then spoke further to Ms Khin. SGT Wee and SGT Adha remained close to Ms Khin.³⁶ What the Accused said to Ms Khin at that point is disputed. The Accused was then taken to the police station for further investigations. On the same day, Ms Khin was examined by Dr Smita Lakhotia of KK Women's and Children's Hospital and Dr Lakhotia thereafter produced a medical report.

The Prosecution's case

17 The Prosecution led evidence from thirteen witnesses. In short, it is the Prosecution's case that the Accused penetrated Ms Khin's vagina on two separate occasions without her consent on 20 December 2013, at about 2.40 am and at about 7 am, in the Unit.³⁷

³³ NE 10 May 2016 p 14 lines 20 to 24.

³⁴ NE 19 May 2016 p 44 lines 28 to 32.

³⁵ NE 17 May 2016 p 22 lines 4 to 7; 19 May 2016 p 46 lines 1 to 4.

³⁶ NE 10 May 2016 p 19 lines 20 to 21.

³⁷ Prosecution's closing submissions at para 8.

The First Sexual Intercourse

18 When the Accused returned home in the early hours of 20 December 2013, the Accused called out to Ms Khin and shook the curtain separating her room from the living room. When Ms Khin emerged, the Accused began speaking to her in English but Ms Khin did not understand what he was saying. The Accused then proceeded to hold her right wrist or forearm using his left hand. This was the first time the Accused had held Ms Khin's hand.³⁸ Ms Khin immediately sought to pull her hand away but was unsuccessful.³⁹

19 The Accused continued to speak to Ms Khin in English while still holding on to Ms Khin. Ms Khin was largely unable to understand what the Accused was saying, but was able to make out the words "I need you".⁴⁰ Ms Khin took this to mean that the Accused wanted to sleep with her.⁴¹ The Accused then gripped both of Ms Khin's hands, utilising a very tight grip.⁴² Ms Khin similarly sought to pull her hands away immediately but was unable to do so.⁴³ The Accused then proceeded to lead Ms Khin towards his bedroom by pulling both her hands. Ms Khin struggled and tried to pull her hands away whilst saying to the Accused "I don't want, I don't want."⁴⁴ She testified that she said "I don't want" because she was scared of the Accused and was worried that he would rape her.⁴⁵ The Accused spoke to her in reply, but Ms

³⁸ Prosecution's closing submissions at para 13.

³⁹ NE 11 May 2016 p 20 line 29 to p 21 line 15.

⁴⁰ NE 11 May 2016 p 18 lines 6 to 9.

⁴¹ NE 11 May 2016 p 18 lines 13 to 16.

⁴² NE 11 May 2016 p 21 lines 25 to 26.

⁴³ NE 11 May 2016 p 21 lines 22 to 24.

⁴⁴ NE 11 May 2016 p 20 lines 5 to 9.

⁴⁵ NE 11 May 2016 p 22 lines 26 to 27, p 24 lines 3 to 6.

Khin was only able to understand the words “Don’t worry. Don’t scared. Ma’am and children not around.”⁴⁶

20 Ms Khin continued struggling throughout this period. When they were in front of the Accused’s bedroom, Ms Khin attempted to resist the Accused by bending her knees and stooping down.⁴⁷ At this point, Ms Khin started crying.⁴⁸ The Accused eventually managed to pull Ms Khin into his bedroom. Throughout this period, she also repeatedly said to the Accused, “I scared of you.”⁴⁹ The Accused first pushed her into a gap between the bed and a cupboard, and then pushed her down onto the bed.⁵⁰

21 Once Ms Khin was on the bed, the Accused got on top of her, entering a kneeling position with his buttocks on top of Ms Khin’s thighs.⁵¹ The Accused also held Ms Khin down by grasping her arms and wrists.⁵² Ms Khin could tell that the Accused was speaking to her in English but she could not make out what he said. She repeated the words “I scare[d], I worry, I don’t like” to the Accused⁵³ and continued to cry.⁵⁴ While leaning over her, the Accused then kissed her face and sucked her lips.⁵⁵ Ms Khin attempted to push him away by placing her hands against his torso but to no avail.⁵⁶ Ms Khin did

⁴⁶ NE 11 May 2016 p 24 lines 7 to 10.

⁴⁷ NE 11 May 2016 p 26 lines 9 to 12.

⁴⁸ NE 11 May 2016 p 35 lines 2 to 11.

⁴⁹ NE 11 May 2016 p 34 lines 25 to 30.

⁵⁰ NE 11 May 2016 p 30 lines 12 to 20.

⁵¹ NE 11 May 2016 p 38 lines 13 to 20.

⁵² NE 11 May 2016 p 38 lines 22 to 27.

⁵³ NE 11 May 2016 p 39 lines 23 to 24.

⁵⁴ NE 11 May 2016 p 39 line 31 to p 40 line 4.

⁵⁵ NE 11 May 2016 p 40 line 11.

not kiss the Accused back but instead shook her head in order to try to avoid his kissing, and continued to cry.⁵⁷

22 The Accused then forcibly removed Ms Khin's clothes. Although Ms Khin struggled and attempted to resist the Accused, she was ultimately unsuccessful. The Accused first removed Ms Khin's T-shirt, then her bra and shorts, and finally her panties. The Accused also pulled down his shorts. The Accused then sought to kiss Ms Khin again⁵⁸ and then proceeded to pin both her wrists down.⁵⁹ He then inserted his penis into her vagina, penetrating her by moving his penis in and out of her vagina.⁶⁰ This continued for about five to ten minutes.⁶¹ Ms Khin did not know whether the Accused ejaculated inside her vagina.⁶² After the Accused stopped his penetration of Ms Khin, he went to the toilet adjacent to the bedroom.⁶³ Ms Khin gathered her clothes and ran to the toilet near the kitchen.⁶⁴ There, she washed her vagina and put on her bra and T-shirt.⁶⁵ She then ran to her room where she put on new panties and shorts.⁶⁶ Ms Khin then sat on the floor and cried for a prolonged period.⁶⁷

⁵⁶ NE 11 May 2016 p 40 lines 16 to 27.

⁵⁷ NE 11 May 2016 p 41 lines 11 to 18.

⁵⁸ NE 11 May 2016 p 49 lines 19 to 22.

⁵⁹ NE 11 May 2016 p 51 lines 26 to 28.

⁶⁰ NE 11 May 2016 p 49 lines 23 to 26, p 51 lines 28 to 32.

⁶¹ NE 11 May 2016 p 52 lines 1 to 2.

⁶² NE 11 May 2016 p 54 lines 11 to 12; 12 May 2016 p 54 lines 15 to 20.

⁶³ NE 11 May 2016 p 52 lines 13 to 26.

⁶⁴ NE 11 May 2016 p 53 lines 26 to 32.

⁶⁵ NE 11 May 2016 p 56 line 7.

⁶⁶ NE 11 May 2016 p 56 lines 11 to 14.

⁶⁷ NE 11 May 2016 p 56 lines 26 to 29.

Attempted telephone call to Mr Zaw

23 After crying for a while, Ms Khin considered that she should call her husband's niece.⁶⁸ Unfortunately, her husband's niece had switched off her mobile phone.⁶⁹ Ms Khin then decided to call Mr Zaw instead. Mr Zaw's phone was on but he did not pick up.⁷⁰ Ms Khin then sent him a text message stating "Call me back."⁷¹

24 Thereafter, Ms Khin spent more time crying in her room.⁷² She testified that she felt very sad⁷³ and was in an unstable state of mind.⁷⁴ Unsure of what to do, she decided to do some laundry in the service balcony adjacent to the kitchen at about 6 am.⁷⁵ She washed some of the Accused's clothing but did so very angrily.⁷⁶

The Second Sexual Intercourse

25 Sometime between 7 and 8 am, the Accused entered the kitchen while Ms Khin was still washing clothes.⁷⁷ The Accused said to Ms Khin, "Chaw Chaw, I'm sorry" and other words in English which Ms Khin did not understand.⁷⁸ He spoke in an apologetic tone.⁷⁹ Ms Khin was crying at this

⁶⁸ NE 11 May 2016 p 57 lines 19 to 22.

⁶⁹ NE 11 May 2016 p 57 lines 26 to 27.

⁷⁰ NE 10 May 2016 p 72 lines 1 to 8; 11 May 2016 p 60 lines 11 to 14.

⁷¹ NE 10 May 2016 p 72 lines 28 to 30; 11 May 2016 p 60 lines 21 to 22.

⁷² NE 11 May 2016 p 68 lines 26 to 32.

⁷³ NE 11 May 2016 p 64 lines 1 to 3.

⁷⁴ NE 11 May 2016 p 64 lines 11 to 13, p 65 lines 2 to 6, 21 to 23.

⁷⁵ NE 11 May 2016 p 68 lines 5 to 17.

⁷⁶ NE 11 May 2016 p 64 lines 4 to 7.

⁷⁷ NE 11 May 2016 p 67 lines 16 to 17, 23 to 25.

time and did not say anything in response.⁸⁰ The Accused then pulled at her left wrist with his right hand using a tight grip, trying to lift her up.⁸¹ Ms Khin tried to pull her hand back and struggled.⁸² She told him “I don’t like” and “I scared”,⁸³ as she was worried that “he [might] do it to [her] again”.⁸⁴ But the Accused did not release her. He used both his hands to grip Ms Khin’s hands and proceeded to pull her towards his bedroom.⁸⁵ Ms Khin struggled and continued crying. She repeated that she did not like what the Accused was doing and that she was scared.⁸⁶ The Accused did not say anything but simply pulled her into his bedroom and pushed her down onto the bed.⁸⁷

26 The Accused then sat on Ms Khin’s legs in a manner similar to what he did just before the First Sexual Intercourse.⁸⁸ The Accused proceeded to kiss her face and suck her lips.⁸⁹ He pulled off her t-shirt and removed her bra.⁹⁰ The Accused kissed Ms Khin’s face and breast, and removed her shorts and panties⁹¹ before removing his own shorts.⁹² The Accused then inserted his

⁷⁸ NE 11 May 2016 p 72 lines 26 to 31.

⁷⁹ NE 11 May 2016 p 72 line 32 to p 73 line 1.

⁸⁰ NE 11 May 2016 p 73 lines 2 to 3.

⁸¹ NE 11 May 2016 p 73 line 24 to p 74 line 12.

⁸² NE 11 May 2016 p 74 lines 1 and 2.

⁸³ NE 11 May 2016 p 74 lines 29 to 32.

⁸⁴ NE 11 May 2016 p 75 line 6.

⁸⁵ NE 11 May 2016 p 75 lines 10 to 23.

⁸⁶ NE 11 May 2016 p 75 lines 24 to 27, p 76 lines 2 to 5.

⁸⁷ NE 11 May 2016 p 76 lines 6 to 10.

⁸⁸ NE 11 May 2016 p 78 line 22.

⁸⁹ NE 11 May 2016 p 81 line 19.

⁹⁰ NE 11 May 2016 p 82 lines 1 to 4.

⁹¹ NE 11 May 2016 p 82 line 6.

penis into Ms Khin's vagina.⁹³ While Ms Khin could not see him insert his penis into her vagina, she felt him do so.⁹⁴

27 The Accused moved his penis in and out of Ms Khin's vagina for about four to five minutes.⁹⁵ Ms Khin did not know if the Accused ejaculated.⁹⁶ Thereafter, the Accused went into his bedroom toilet, as he had following the First Sexual Intercourse. Ms Khin took her clothes and went into the toilet next to the kitchen.⁹⁷ In the toilet, Ms Khin washed her vagina and put on her bra and t-shirt, leaving her panties and shorts there.⁹⁸ She then ran to her room and put on fresh panties and shorts.⁹⁹

The Accused's departure from the Unit

28 Ms Khin testified that she was crying and that her mind was still "unstable". She then made preparations to cook rice and iron clothes, but she did not know how many cups of rice she cooked because of her unstable state of mind. She did not even know why she was cooking rice.¹⁰⁰ Ms Khin testified that she normally would not cook rice at that time of day, which was between 8 to 9 am,¹⁰¹ nor had she ever ironed clothes at that time of day.¹⁰²

⁹² NE 11 May 2016 p 83 lines 2 to 4.

⁹³ NE 11 May 2016 p 83 lines 5 to 6.

⁹⁴ NE 11 May 2016 p 83 lines 7 to 10.

⁹⁵ NE 11 May 2016 p 83 lines 11 to 14.

⁹⁶ NE 11 May 2016 p 83 lines 17 to 18.

⁹⁷ NE 11 May 2016 p 83 lines 19 to 22.

⁹⁸ NE 11 May 2016 p 84 lines 3 to 4.

⁹⁹ NE 11 May 2016 p 84 lines 8 to 12.

¹⁰⁰ NE 11 May 2016 p 84 lines 17 to 25.

¹⁰¹ NE 11 May 2016 p 85 lines 2 to 13.

¹⁰² NE 11 May 2016 p 85 lines 19 to 29.

29 She next saw the Accused at about 10 am, when he came out from his bedroom to go to work. She told the Accused that she needed to buy bread and other groceries, intending to take the opportunity while she was outdoors to contact the police. The Accused gave her \$30 before leaving the Unit.¹⁰³ After the Accused left, Ms Khin called Mr Zaw on her mobile phone. She was crying when she called him, and kept crying so hard throughout the conversation that she was barely able to relate what had happened to her.¹⁰⁴ Mr Zaw testified that Ms Khin told him “I spoil my life already. My [...] life have been destroyed.”¹⁰⁵ She also said, “Please help me.”¹⁰⁶ Mr Zaw testified that in Myanmar culture, if a woman or girl said something like what Ms Khin said to him, it would be understood to mean that she had been raped.¹⁰⁷

30 Mr Zaw next asked her, “What happened? Whether your employer or anything happen with you?” In response Ms Khin said, “I spoil my life. Please help me.” When Mr Zaw reiterated his query, Ms Khin responded, “My male employer” and then continued crying.¹⁰⁸ Mr Zaw told her to wait a while and ended the call. He then contacted a Myanmar interpreter who worked at the Ministry of Manpower to ask for advice.¹⁰⁹ The interpreter advised him to call the police.¹¹⁰ Mr Zaw called Ms Khin and told her to contact the police at “999”.¹¹¹

¹⁰³ NE 11 May 2016 p 86 line 11 to p 87 line 12.

¹⁰⁴ NE 11 May 2016 p 88 lines 13 to 20; 10 May 2016 p 83 lines 2 to 8.

¹⁰⁵ NE 10 May 2016 p 74 lines 8 to 10.

¹⁰⁶ NE 10 May 2016 p 74 line 12.

¹⁰⁷ NE 10 May 2016 p 78 line 27 to p 79 line 5.

¹⁰⁸ NE 10 May 2016 p 75 lines 5 to 8.

¹⁰⁹ NE 10 May 2016 p 81 lines 3 to 9.

¹¹⁰ NE 10 May 2016 p 82 lines 1 to 2.

¹¹¹ NE 10 May 2016 p 82 lines 4 to 18.

The arrival of the police

31 After the phone conversation with Mr Zaw, Ms Khin went out to look for a public phone. She took with her the \$30 handed to her by the Accused and used the money to buy some bread.¹¹² Ms Khin was unable to find a public phone and therefore returned to the Unit, where she called the police on her mobile phone at about 11.25 am.¹¹³ SGT Wee and SGT Adha were deployed to the Unit in response to the call. They arrived at the Unit at about 11.38 am.¹¹⁴ Thereafter, SGT Wee, SGT Adha and Ms Khin went downstairs to the void deck of Blk [xx] to wait for the arrival of Senior Investigation Officer (SIO) Candice Goh.

32 While waiting at the void deck, SGT Wee and SGT Adha noticed the Accused walking down the service road, which was a straight road leading towards the void deck where they were located. SGT Wee testified that she had a very clear view of the area. The Accused initially walked towards them, but subsequently made a turn to another void deck next to Blk [xx].¹¹⁵ Eventually, the Accused approached the group.

33 After identifying himself to SGT Wee and SGT Adha as the husband of Ms Khin's employer, the Accused sought permission to speak to Ms Khin.¹¹⁶ Both SGT Wee and SGT Adha were next to Ms Khin and thus able to hear what the Accused said to Ms Khin, who was sitting on a stone stool. The Accused said "Please, I'm sorry"¹¹⁷ and also "Chaw, Chaw, please don't do

¹¹² NE 11 May 2016 p 90 lines 7 to 14.

¹¹³ NE 11 May 2016 p 91 lines 18 to 22.

¹¹⁴ AB21 at para 4.

¹¹⁵ NE 10 May 2016 p 11 lines 8 to 22.

¹¹⁶ AB25 at para 6; NE 10 May 2016 p 28 lines 13 to 16.

this to me”.¹¹⁸ SGT testified that the Accused’s manner was “like seeking for forgiveness” and that he spoke in a soft tone.¹¹⁹ Ms Khin kept silent.

34 Seeing that Ms Khin did not respond, SGT Wee asked her if she wanted to speak to the Accused. Ms Khin nodded and walked over to sit on the lower curvature of the circular hole within the wall described at [16] above.¹²⁰ The Accused went over as well, while SGT Wee stood beside Ms Khin.¹²¹ The Accused said to Ms Khin, “Please, I’m sorry. Please don’t do this to me.”¹²² Ms Khin did not respond and simply turned her body away from the Accused.¹²³ Thereafter, SGT Wee and SGT Adha separated the Accused and Ms Khin until the arrival of other officers. The Accused was then arrested.

The Accused’s case

35 The Accused was the sole witness for the Defence. The Accused’s defence is a straightforward one: the two instances of sexual intercourse with Ms Khin were consensual.¹²⁴

The First Sexual Intercourse

36 According to the Accused, when he returned home in the early hours of 20 December 2013 and called out to Ms Khin, he held Ms Khin’s hand and

¹¹⁷ NE 10 May 2016 p 12 line 31 to p13 line 7.

¹¹⁸ NE 10 May 2016 p 28 lines 21 to 23.

¹¹⁹ NE 10 May 2016 p 12 lines 11 to 15.

¹²⁰ NE 10 May 2016 p 16 lines 1 to 3.

¹²¹ NE 10 May 2016 p 19 lines 20 to 21.

¹²² NE 10 May 2016 p 16 lines 3 to 5.

¹²³ NE 10 May 2016 p 16 lines 5 to 8.

¹²⁴ Defence’s closing submissions at para 12.

asked her to follow him to his room. Ms Khin said something along the lines of “scared Ma’am know”. According to the Accused, she also “appeared to be shy”.¹²⁵ The Accused testified that he took Ms Khin’s response to mean “she’s scared if Ma’am found out we had consensual sex”.¹²⁶ The Accused replied that “Ma’am won’t know” and then kissed Ms Khin’s cheeks. He then brought her into his bedroom. He denied that Ms Khin cried or showed any signs of resistance.¹²⁷

37 The Accused then laid down on his back on the bed and took off his clothes. He also unbuttoned Ms Khin’s shorts, which Ms Khin then removed. The Accused then pulled Ms Khin’s panties down and also removed her bra. He then hugged Ms Khin and supported her to a position where she was sitting on top of the Accused. When supporting her to sit on top of him, the Accused felt that Ms Khin’s vagina was already “wet”, and then he immediately penetrated her vagina with his penis. He also kissed her breasts. The Accused penetrated Ms Khin for about ten minutes while she was on top of him. During the process, the Accused asked Ms Khin “whether she liked it” and Ms Khin smiled but did not say anything.¹²⁸ The Accused then sat up and while both were in a sitting position, he continued to penetrate her vagina with his penis. Ms Khin also kissed the Accused’s neck while he was doing this. Shortly after, Ms Khin laid down on her back and the Accused penetrated her. He then withdrew his penis from her vagina and ejaculated onto her stomach area. The Accused then went to wash up and subsequently fell asleep on his bed.¹²⁹

¹²⁵ Accused’s statement recorded on 20 Dec 2013 at 7.33 pm at para 14.

¹²⁶ NE 18 May 2016 p 34 lines 26 to 29.

¹²⁷ NE 18 May 2016 p 36 lines 6 to 9.

¹²⁸ Accused’s statement recorded on 20 Dec 2013 at 7.33 pm at para 14.

¹²⁹ Accused’s statement recorded on 20 Dec 2013 at 7.33 pm at para 15.

The Second Sexual Intercourse

38 The Accused woke up at about 6 am and vomited in the toilet as he was feeling uncomfortable. He then went to the kitchen where he saw Ms Khin washing clothes. He asked Ms Khin again “if she liked it” but she did not say anything. The Accused then asked Ms Khin “if she wanted to touch it”, as she was staring at his erect penis. He removed his shorts and Ms Khin approached him and gripped his penis with her hands. The Accused then asked her “whether she wanted to do it again”. He took a few steps back and Ms Khin continued to hold on to his penis. They walked towards the living room, with Ms Khin still holding on to his penis.¹³⁰

39 When they were back in the Accused’s bedroom, the Accused removed Ms Khin’s T-shirt and his own shorts. While Ms Khin kissed his chest, he also pulled down Ms Khin’s shorts. The Accused then guided her head down to his penis and she sucked his penis for about five minutes.¹³¹ She then climbed on top of the Accused and he penetrated her “for quite long”. The Accused also kissed her breasts and lips.¹³² Both of them then entered the sitting position that they were in during the First Sexual Intercourse and the Accused continued to penetrate her. Following this, the Accused guided Ms Khin to lie on her back while he penetrated her. Thereafter he ejaculated on her stomach. Ms Khin went into the bedroom toilet to wash up and she left the room afterwards. The Accused then washed up as well and went back to sleep.¹³³

¹³⁰ Accused’s statement recorded on 20 Dec 2013 at 7.33 pm at para 16.

¹³¹ Accused’s statement recorded on 20 Dec 2013 at 7.33 pm at para 17.

¹³² Accused’s statement recorded on 20 Dec 2013 at 7.33 pm at para 18.

¹³³ Accused’s statement recorded on 20 Dec 2013 at 7.33 pm at para 19.

40 He woke at about 9 am and got ready to go to work. When he exited his room, he saw Ms Khin ironing clothes. Ms Khin smiled at him and said that she wanted to see her sister in Boon Lay. She asked him if she could come back late and also sought money to buy medicine. The Accused gave her \$10 but she said that this was not enough. He gave her another \$10 but she repeated that the amount was insufficient. The Accused then gave her a further \$10, making the sum \$30 in total. Ms Khin showed the Accused an “unhappy face”. The Accused then left the house.¹³⁴

The Accused’s return to the Unit

41 At about 11.55 am, the Accused received a call from Ms Yik, telling him that the police were at the Unit and that Ms Khin had informed the police that the Accused had abused her.¹³⁵ He testified that while driving back to the Unit, he was concerned that Ms Yik would “find out that [he] had consensual sex with the maid” and that he was also thinking that “it’s illegal to have sex with a maid”.¹³⁶

42 When the Accused returned to Blk [xx], he saw police officers at the void deck of the block. He asked permission from the officers to speak to Ms Khin, but did not ask the officers what Ms Khin had alleged against him.¹³⁷ The Accused spoke to Ms Khin who was seated at the circular hole in the wall. The Accused said to her, “What’s wrong”, “What have I done wrong” and “Why are you doing this to me?”¹³⁸ Ms Khin did not respond. Thereafter, the police officers brought the Accused away for further investigations.

¹³⁴ Accused’s statement recorded on 20 Dec 2013 at 7.33 pm at para 20.

¹³⁵ Accused’s statement recorded on 20 Dec 2013 at 7.33 pm at para 21.

¹³⁶ NE 19 May 2016 p 41 line 26 to p 42 line 4.

¹³⁷ NE 19 May 2016 p 45 lines 15 to 21.

My decision

43 Sections 375(1)(a) and 375(2) of the Penal Code read as follows:

Rape

375.—(1) Any man who penetrates the vagina of a woman with his penis —

(a) without her consent...

...

shall be guilty of an offence.

(2) Subject to subsection (3), a man who is guilty of an offence under this section shall be punished with imprisonment for a term which may extend to 20 years, and shall also be liable to fine or to caning.

44 As aforementioned, the Accused’s defence is that Ms Khin consented to both the First and the Second Sexual Intercourse, and therefore the offence of rape under s 375(1)(a) of the Penal Code is not made out. The Accused does not suggest that he was labouring under a mistake of fact as to Ms Khin’s consent at the material time. Nor is there any dispute between the Accused and the Prosecution that penile-vaginal penetration occurred. Therefore, the only question is whether Ms Khin consented to the intercourse on both occasions.

Mr Zaw’s evidence corroborates the Prosecution’s case

45 At trial, Mr Zaw gave evidence that when he spoke to Ms Khin on the phone in the morning of 20 December 2013, she was crying continuously and was initially unable to speak. Mr Zaw told Ms Khin not to cry, but had to wait for about two to three minutes before she was able to compose herself and speak to him.¹³⁹ When she did speak, she told him, “I spoil my life already. My

¹³⁸ Accused’s statement recorded on 4 Dec 2014 at 2.55 pm at para A1; NE 19 May 2016 p 46 lines 5 to 8.

[...] life have been destroyed.”¹⁴⁰ She also told Mr Zaw, “Please help me.”¹⁴¹ When Mr Zaw asked her what had happened, she said, “My male employer” and then continued crying before repeating the words, “Please help me”.¹⁴²

46 In my judgment, the contents of Ms Khin’s telephone conversation with Mr Zaw lend support to the Prosecution’s case that sexual intercourse without consent had occurred. The conversation as related by Mr Zaw paints a very clear picture of Ms Khin’s mental and emotional state. First, the fact that Ms Khin continued crying throughout the conversation demonstrates that she was in a state of extreme distress. Mr Zaw testified that she was crying “very hard”¹⁴³ and sounded “very sad”.¹⁴⁴ Such distress would reasonably be felt by a person who had been victimised in the manner alleged by Ms Khin. Second, Ms Khin remarked over the phone that her life had been “spoil[ed]” and “destroyed”. At trial, Mr Zaw explained his understanding based on Myanmar culture that this meant that she had been raped.¹⁴⁵ Even leaving aside Mr Zaw’s interpretation of what Ms Khin said, it is in my view evident that Ms Khin displayed considerable anguish and suffering following what had happened to her, consistent with the Prosecution’s case.

47 I will make three further observations. To begin, I note that Mr Zaw’s conversation with Ms Khin on the morning of 20 December 2013 was Ms Khin’s first interaction with a person other than the Accused since the First

¹³⁹ NE 10 May 2016 p 74 lines 2 to 6.

¹⁴⁰ NE 10 May 2016 p 74 lines 8 to 10.

¹⁴¹ NE 10 May 2016 p 74 lines 11 to 12.

¹⁴² NE 10 May 2016 p 75 lines 5 to 19.

¹⁴³ NE 10 May 2016 p 82 lines 27 to 31.

¹⁴⁴ NE 10 May 2016 p 83 lines 4 to 5.

¹⁴⁵ NE 10 May 2016 p 78 lines 20 to 32.

and Second Sexual Intercourse. It was also relatively proximate to those incidents, having taken place only two to three hours after the Second Sexual Intercourse. I therefore find that the obvious distress displayed by Ms Khin in the telephone conversation was an indication of how she felt in the aftermath, and likely as a consequence, of the First and Second Sexual Intercourse.

48 Next, I highlight Mr Zaw's evidence that before his telephone conversation with Ms Khin, he saw that he had missed a telephone call from Ms Khin that she had made in the early hours of 20 December 2013,¹⁴⁶ and that Ms Khin had also sent him a text message stating "Call me back".¹⁴⁷ Mr Zaw further testified that Ms Khin had never sought to call him at such an early hour before.¹⁴⁸ These were therefore unusual circumstances. I find that Ms Khin's unprecedented attempt at contacting Mr Zaw at such an hour, coupled with her text message requesting Mr Zaw to contact her when he could, strongly suggests that something out of the ordinary had occurred and that Ms Khin needed to speak to Mr Zaw quite urgently. This lends support to the Prosecution's case that Ms Khin had found herself in circumstances that required Mr Zaw's timely assistance.

49 I further discern that prior to 20 December 2013, Ms Khin had already displayed a willingness to confide in Mr Zaw. As mentioned at [8] above, Mr Zaw and Ms Khin talked on the phone every three to four days. They were therefore in regular contact and Mr Zaw was kept up-to-date on Ms Khin's well-being. At trial, in response to questions about how Ms Khin felt about working in Singapore, Mr Zaw replied that (i) Ms Khin was happy working

¹⁴⁶ NE 10 May 2016 p 72 lines 1 to 8.

¹⁴⁷ NE 10 May 2016 p 72 lines 28 to 30; p 90 lines 17 to 18.

¹⁴⁸ NE 10 May 2016 p 72 lines 10 to 19.

for Ms Yik; (ii) both Ms Yik and her children were very polite to her;¹⁴⁹ (iii) Ms Yik provided her enough food; and (iv) she loved the children.¹⁵⁰ This was in contrast to her first employer, whom she felt did not treat her as well.¹⁵¹ Given the closeness of the relationship between Ms Khin and Mr Zaw, I do not find that Ms Khin would have any reason to give a false impression to Mr Zaw about what had happened to her on 20 December 2013.

50 As a final matter, I note that the Accused has taken issue with alleged inconsistencies between Mr Zaw's and Ms Khin's evidence on the number of times Ms Khin sought to call Mr Zaw after the First Sexual Intercourse.¹⁵² This was part of the Accused's attempt to persuade the court that Ms Khin was not a compelling witness.¹⁵³ Mr Zaw stated that that he had only received one missed call from Ms Khin,¹⁵⁴ while Ms Khin stated that she called Mr Zaw "5 to 10 times".¹⁵⁵ In my view, this inconsistency is immaterial and does not detract from the overall credibility of either Mr Zaw or Ms Khin. I find that their accounts of their interaction on the morning of 20 December 2013 are substantially similar. They agree on the exact wording of Ms Khin's text message "Call me back" and the nature and contents of their conversation, *ie*, that (i) Ms Khin was crying so hard that she found it difficult to speak; (ii) Mr Zaw and Ms Khin both referred to her employer during the conversation; and (iii) Mr Zaw subsequently advised Ms Khin to call the police.

¹⁴⁹ NE 10 May 2016 p 70 lines 22 to 26.

¹⁵⁰ NE 10 May 2016 p 86 lines 13 to 16.

¹⁵¹ NE 10 May 2016 p 86 lines 6 to 11.

¹⁵² Defence's closing submissions at para 41(a).

¹⁵³ Defence's closing submissions at para 43.

¹⁵⁴ NE 10 May 2016 p 72 lines 3 to 4; p 90 lines 9 to 16.

¹⁵⁵ NE 11 May 2016 p 60 lines 15 to 16.

51 I emphasise also that Ms Khin appeared to be in a state of significant emotional distress at the material time. I took this into account when considering her evidence and in determining her overall credibility as a witness.

The Accused's behaviour at the void deck reveals his knowledge of his culpability

The Accused's delay in approaching the police officers

52 The relevant witnesses in this respect are SGT Wee, SGT Adha and Ms Khin. They were waiting for the arrival of SIO Goh at the void deck of Blk [xx] when they saw the Accused make his way back to the block. SGT Wee testified that they were sitting with Ms Khin at the void deck, facing a multi-storey car park. There was a service road between the void deck and the multi-storey car park. SGT Wee stated that they had a “very clear view” of the car park and the staircase leading down from the car park towards the service road.¹⁵⁶ According to SGT Wee, she saw the Accused walking down the service road, which was a straight road from the car park to the void deck. The Accused initially walked towards them, but subsequently made a turn to another void deck next to Blk [xx].¹⁵⁷ SGT Adha provided evidence that the Accused walked around for about two minutes before he finally approached the group.¹⁵⁸ I note that counsel for the Accused did not challenge this aspect of SGT Wee's and SGT Adha's evidence.

¹⁵⁶ NE 10 May 2016 p 11 lines 8 to 14.

¹⁵⁷ NE 10 May 2016 p 11 lines 18 to 26.

¹⁵⁸ AB25 at para 6.

53 The Prosecution submits that given the Accused's behaviour, it was clear that he delayed or even avoided going up to the group when he first arrived.¹⁵⁹ I agree. When walking down the service road that led directly to the void deck of Blk [xx], the Accused must have seen Ms Khin and the two police officers and felt some apprehension, which compelled him to take a circuitous route back to Blk [x]. I cannot conceive of any other plausible reason why he might otherwise have embarked on a detour lasting two minutes, nor has counsel for the Accused furnished any other explanation.

The Accused did not seek to ascertain the allegations against him

54 More significantly, when the Accused finally approached the police officers, he did not even ask the officers what exactly it was that Ms Khin had alleged against him. SGT Adha testified that when the Accused came up to him, SGT Adha asked him who he was and he responded that he was the employer's husband. The Accused "did not ask anything else" and simply told SGT Adha that he wished to speak to Ms Khin.¹⁶⁰ In my view, this suggests that the Accused already knew what was alleged against him. If the Accused had no idea what was alleged, he would have asked the officers for more details about what Ms Khin had said. The Accused did nothing of the sort. Instead, he simply sought to speak to Ms Khin. During cross-examination, the Accused confirmed that when he asked SGT Adha for permission to speak to Ms Khin, he had not established from the officers what the allegation was.¹⁶¹ When further questioned about why he had not seen fit to ask the officers what

¹⁵⁹ Prosecution's closing submissions at para 57.

¹⁶⁰ NE 10 May 2016 p 28 lines 9 to 16.

¹⁶¹ NE 19 May 2016 p 45 lines 13 to 18.

was the allegation against him, the Accused's response was a perfunctory and opaque "I don't know".¹⁶²

55 The point is buttressed by the fact that when Ms Yik called the Accused earlier that morning, she told him only that "the maid brought home police and [the Accused had] *abused* the maid [emphasis added]".¹⁶³ When questioned about whether he had taken the word "abused" to mean physical or sexual abuse when Ms Yik called him, the Accused's initial response was that he "don't know [what] happened that's why [he] go home and see".¹⁶⁴ A moment later, the Accused revised his position, stating that he took "abused" to mean that he had "assault[ed]" Ms Khin in the sense that he had "hit" her, *ie*, subjected her to *physical* (as opposed to sexual) abuse.¹⁶⁵ But in my view, since he would have known that he had not "hit" Ms Khin and that there was no basis for such an allegation, and if he had really thought that Ms Khin had made an allegation of assault against him, then he would have immediately sought clarification about it from the officers, and thereafter vehemently denied having committed physical abuse. I find that it is more likely that the Accused had construed and understood the word "abused" to refer to *sexual* abuse. Thus he saw no need to seek further clarification from the officers because this was indeed the nature of what he had done to Ms Khin, and he logically and reasonably assumed that this was what Ms Khin had alleged against him.

¹⁶² NE 19 May 2016 p 45 lines 19 to 21.

¹⁶³ NE 19 May 2016 p 41 lines 15 to 17.

¹⁶⁴ NE 19 May 2016 p 41 line 20.

¹⁶⁵ NE 19 May 2016 p 41 lines 21 to 25.

The Accused's plea to Ms Khin

56 SGT Wee testified that after the Accused was given permission to speak to Ms Khin, the Accused spoke to Ms Khin in a soft tone, “like seeking for forgiveness”, and repeated “Please I’m sorry”.¹⁶⁶ Similarly, SGT Adha gave evidence that the Accused kept calling out Ms Khin’s name “Chaw Chaw”, and said “Please don’t do this”.¹⁶⁷ SGT Wee informed the court that when Ms Khin later moved to the circular hole in the wall near the staircase landing, the Accused went to her and said to her, “Please, I’m sorry. Please don’t do this to me.”¹⁶⁸ SGT Adha also indicated that he heard the Accused saying “I am sorry. Please don’t do this to me.”¹⁶⁹ He described the tone of the Accused’s voice as that of “pleading towards [Ms Khin]”.¹⁷⁰ Ms Khin herself repeatedly confirmed at trial that the Accused said “sorry” to her and other things that she did not understand.¹⁷¹

57 In my judgment, there is no plausible explanation of why the Accused would continually apologise to Ms Khin and implore her not to “do this” if he had not committed some sort of serious wrong against Ms Khin, for which he knew he could face severe criminal consequences. I draw the inference that the Accused said those things in a pleading manner to Ms Khin because he wanted Ms Khin to withdraw her allegations, so that he might be relieved from the consequences of his deeds.

¹⁶⁶ NE 10 May 2016 p 12 line 9 to p 13 line 7, p 13 line 29 to p 14 line 9.

¹⁶⁷ AB25 at para 7.

¹⁶⁸ NE 10 May 2016 p 16 lines 1 to 5.

¹⁶⁹ AB25 at para 7.

¹⁷⁰ NE 10 May 2016 p 28 lines 20 to 23.

¹⁷¹ NE 11 May 2016 p 99 line 29, p 100 line 16, p 101 lines 14 to 15.

58 In cross-examination, the Accused provided a different version of what he said to Ms Khin. According to the Accused, what he said was “What’s wrong? What have I done wrong? Why are you doing this to me?”¹⁷² He said that he could not remember whether he had said “sorry” to Ms Khin at any point.¹⁷³ I note that this account flies in the face of the consistent evidence presented by SGT Wee, SGT Adha and Ms Khin on this point. The Accused has not provided any reason why I should disbelieve the evidence of these three Prosecution witnesses on this issue. In fact, he confirmed during cross-examination that SGT Wee and SGT Adha had no reason to lie or make any false allegation against him or otherwise claim that he did something that he did not do.¹⁷⁴ I find the Prosecution’s evidence on how the Accused had pleaded with Ms Khin to be credible and I accept it. Thus I reject the Accused’s version of what he had said to Ms Khin.

59 The Accused claimed that after he received Ms Yik’s call, he was worried because he “thought it’s illegal to have sex with a maid”.¹⁷⁵ Moments later, however, he stated that he “don’t know what offence but I never do anything that is against the law”.¹⁷⁶ When clarification was sought, the Accused responded that he “only thought having sex with the maid is against the law” regardless of whether it was consensual or not,¹⁷⁷ and that he had thought that he had committed an offence.¹⁷⁸ I find that the speed at which the

¹⁷² NE 19 May 2016 p 46 lines 5 to 8.

¹⁷³ NE 19 May 2016 p 46 lines 9 to 14.

¹⁷⁴ NE 19 May 2016 p 46 lines 15 to 28.

¹⁷⁵ NE 19 May 2016 p 42 line 2.

¹⁷⁶ NE 19 May 2016 p 43 line 22.

¹⁷⁷ NE 19 May 2016 p 44 lines 3 to 14.

¹⁷⁸ NE 19 May 2016 p 44 lines 16 to 22.

Accused changed his position served to further mar his credibility. Moreover, his claim that he thought it was illegal to have sex with a maid simply does not square with his claim that he had said to Ms Khin, “What’s wrong? What have I done wrong? Why are you doing this to me?”, a series of questions which imply a belief that he had not done anything wrong. If he had really thought at the time he spoke to Ms Khin that he had committed an offence by having sex with a maid (whether or not this was in reality an offence), then he would *not* have asked her “[w]hat’s wrong” or “[w]hat [had he] done wrong”.

The Accused failed to ascribe a reasonable motive to Ms Khin for making the police report

60 The Prosecution submits that the Accused has failed to explain why Ms Khin would have any reason to make the police report if the First and Second Intercourse were consensual. The Accused suggested that after he handed \$30 to Ms Khin to buy medicine, she showed him an “unhappy face” (see [40] above). He also described this as a “weird look” and a “too long face”, and clarified that by “weird look” he meant that he had never seen this reaction from Ms Khin before.¹⁷⁹

61 The Prosecution argues that Ms Khin could not have made the police report out of unhappiness over the small sum given to her. The Prosecution emphasises the evidence of the Prosecution witnesses that Ms Khin was happy to work at Ms Yik’s household (as compared to her previous employer), and that as a result of her employment with Ms Yik, Ms Khin was able to alleviate the financial difficulties of her three children back in Myanmar.¹⁸⁰ Further, Ms Khin was due to receive another month’s salary on 27 December 2013, which

¹⁷⁹ NE 18 May 2016 p 41 lines 24 to 32.

¹⁸⁰ Prosecution’s closing submissions at para 67; NE 10 May 2016 p 87 lines 1 to 2.

was merely 7 days from the time she made the police report. The \$30 in respect of which she was alleged to have expressed unhappiness with the Accused clearly pales in comparison with her incoming monthly salary of \$420 and the absolute total value of her continued employment with Ms Yik. Given Ms Khin's interest in remaining employed with Ms Yik's household, there was absolutely no reason for her to have made the police report unless she had indeed been forced into sexual intercourse by the Accused against her will.

62 I agree with the Prosecution and make two points in this regard. First, it is undeniable that Ms Khin appreciated her employment with Ms Yik not only because of the financial support this provided but also because Ms Yik and her children treated her well, in comparison to her previous employer. She testified to her concern that if she did not work in Singapore then she would not be able to support her family.¹⁸¹ I do not believe that she would jeopardise this arrangement merely out of spite or unhappiness at the Accused for not giving her a sum larger than \$30 to buy medicine. Second, even going by the Accused's account of events, there was never any arrangement between the Accused and Ms Khin for the Accused to pay Ms Khin for sex. I note that the Accused gave confirmation in his police statement that there was no promise to give Ms Khin any money in return for sex with her.¹⁸² Thus Ms Khin would have had no expectation, nor any basis for expectation, that the Accused should give her any money at all, much less a sum larger than \$30. The Accused's version of events simply does not add up.

¹⁸¹ NE 12 May 2016 p 14 lines 9 to 10.

¹⁸² Accused's statement recorded on 20 Dec 2013 at 7.33 pm at Q19 and A19.

The Accused failed to provide a plausible explanation of why Ms Khin would have consented to the First and Second Sexual Intercourse

63 Ms Khin testified and the Accused confirmed that they hardly spoke to each other in the months of Ms Khin's employment until the day of the First and Second Intercourse (*ie*, from 27 July 2013 until 20 December 2013).¹⁸³ Ms Khin indicated that she did not receive instructions from the Accused on household chores, not even for small requests such as breakfast or coffee.¹⁸⁴ The Accused would leave the Unit in the morning and return home in the early hours of the next day.¹⁸⁵ Their interaction was limited to simple greetings when they encountered each other in the Unit.¹⁸⁶ Ms Yik further informed the court that when the Accused wanted Ms Khin to do anything, he would approach Ms Yik who would then instruct Ms Khin accordingly.¹⁸⁷ Ms Yik had never seen the Accused and Ms Khin interact in any capacity.¹⁸⁸

64 The Accused confirmed that prior to 20 December 2013, Ms Khin had never made any sexual advances to the Accused, either through verbal communication or body language.¹⁸⁹ During his examination-in-chief, the Accused asserted that sometimes Ms Khin would smile at him and the Accused would smile back.¹⁹⁰ The Accused described this during cross-examination as smiling "on and off", but he could not remember how

¹⁸³ NE 11 May 2016 p 6 lines 20 to 22; 18 May 2016 p 30 lines 4 to 7.

¹⁸⁴ NE 11 May 2016 p 6 lines 23 to 30; p 8 line 30 to p 9 line 3.

¹⁸⁵ NE 11 May 2016 p 7 lines 25 to 30.

¹⁸⁶ NE 11 May 2016 p 7 lines 7 to 14.

¹⁸⁷ NE 17 May 2016 p 52 line 24 to p 53 line 6.

¹⁸⁸ NE 17 May 2016 p 53 lines 7 to 21.

¹⁸⁹ NE 19 May 2016 p 6 lines 10 to 14.

¹⁹⁰ NE 18 May 2016 p 30 lines 10 to 25.

frequently she would smile.¹⁹¹ He then suggested that she would smile when they passed by each other in the Unit,¹⁹² and that she would stop looking at the Accused in the eyes and look instead at the ground, and the Accused perceived this to be an act of shyness.¹⁹³ Ms Khin completely denied that she had ever smiled at the Accused.¹⁹⁴ Ms Yik testified that she had never seen Ms Khin smile at the Accused, but that Ms Khin “has always been quite smiley”.¹⁹⁵

65 I do not think that Ms Khin’s occasional smiles at the Accused, even if they did take place, are a matter from which any inferences can or ought to be drawn. Ms Yik testified that Ms Khin smiled often, and given that there was no suggestion from the Accused that such smiling was in any way sexually suggestive or indeed anything other than an act of politeness or congeniality, I do not place any weight on the matter.

66 In his statement, the Accused revealed an almost complete lack of knowledge about Ms Khin. He indicated that he did not know (i) her full name; (ii) which maid agency she came from; (iii) exactly how much her monthly salary was; or (iv) how she did the chores.¹⁹⁶ From the totality of the evidence before me, I form the view that the Accused and Ms Khin’s interactions prior to 20 December 2013 were negligible. They hardly if ever spoke to each other. The Accused was not in the Unit for long stretches of

¹⁹¹ NE 19 May 2016 p 7 lines 21 to 28.

¹⁹² NE 19 May 2016 p 8 lines 20 to 25.

¹⁹³ NE 19 May 2016 p 9 lines 8 to 10.

¹⁹⁴ NE 17 May 2016 p 43 lines 6 to 10.

¹⁹⁵ NE 17 May 2016 p 62 lines 5 to 10.

¹⁹⁶ Accused’s statement recorded on 20 Dec 2013 at 7.33 pm at paras 6 to 8.

time, and he had very little knowledge about Ms Khin or her personal situation.

67 Given the circumstances, I find that it is highly unlikely that Ms Khin would have consented to the First or Second Sexual Intercourse in the manner alleged by the Accused. Ms Khin was awoken in the middle of the night (at about 2 am on 20 December 2013), after she had gone to bed at 10 pm on 19 December 2013. The Accused had consumed substantial amounts of alcohol on the night of 19 December 2013, and when he came back to the Unit he was “tipsy” and “high”. Without further conversation he had then grasped Ms Khin’s hand. Given these circumstances, and the almost complete absence of any prior social contact between the two, I find it unbelievable that Ms Khin consented to the intercourse as the Accused claims.

68 In relation to the Second Sexual Intercourse, the Accused alleged that he had approached Ms Khin while she was washing clothes, and that when Ms Khin saw him, she stared at the Accused’s erect penis before gripping his penis. She then wrapped her palms around his penis. Thereafter, she walked with the Accused from the kitchen to the living room while still grasping his penis. Given the evidence before me, I cannot accept that Ms Khin would be willing to engage in this degree of intimacy with the Accused.

Ms Khin was a credible witness

69 In his submissions, the Accused seeks to persuade the court that Ms Khin was not a credible witness because of various alleged discrepancies in her evidence. I reject in its entirety the Accused’s submission in this regard. I will describe my findings only on the primary discrepancies alleged by the Accused.

70 First, the Accused claims that Ms Khin provided “shifting explanations” of how her T-shirt was removed by the Accused.¹⁹⁷ According to the Accused, Ms Khin first stated that her right hand was pinned down by the Accused’s left hand during the entire time that her T-shirt was being removed. She then added that her T-shirt was removed in two stages, and she finally described how the Accused took off her T-shirt by pulling it alternately on each side. I have no hesitation in rejecting the Accused’s submission as a misconstruction of Ms Khin’s account of events. I do not find that there is any inconsistency in Ms Khin’s evidence in this regard. Ms Khin explained that while she was lying on the bed, the Accused used his left hand to pin her right wrist down.¹⁹⁸ He then used his free hand to negotiate the removal of her T-shirt, pulling at each side of her T-shirt alternately in order to do so.¹⁹⁹ It stands to reason that the Accused would have to negotiate the removal of the T-shirt in this fashion, given that Ms Khin was struggling during the process.²⁰⁰ I find that Ms Khin’s narration was clear, consistent and logical.

71 Second, the Accused suggests that Ms Khin was inconsistent on the reason why she had asked the Accused for money before the Accused left the Unit for work. Ms Khin initially stated that the \$30 from the Accused was for the purchase of bread, but later added that she had also told the Accused that she needed to buy meat and fish. Subsequently, she testified that she told the Accused she needed to buy bread, meat and vegetables.²⁰¹ In my view, this does not undermine the fact that whatever Ms Khin said she needed to buy

¹⁹⁷ Defence’s closing submissions at para 29.

¹⁹⁸ NE 12 May 2016 p 27 lines 6 to 32.

¹⁹⁹ NE 12 May 2016 p 36 lines 31 to 32; p 37 lines 16 to 31.

²⁰⁰ NE 12 May 2016 p 28 lines 27 to 28.

²⁰¹ Defence’s closing submissions at para 36.

was simply a pretext for her to get out of the Unit in order to contact the police. The exact nature of what she said she needed to purchase – bread, meat, fish or vegetables – was certainly the least of her concerns at the time. In any case, it was clear that Ms Khin relied on her need to purchase groceries, of whatever kind, in seeking permission from the Accused to leave the Unit. Accordingly I do not find that such discrepancy was material or that it tarnished her credibility.

72 The Accused also claims that there is an inconsistency between Ms Khin’s oral evidence at trial and what Ms Khin had told Dr Lakhotia on the issue of whether the Accused ejaculated.²⁰² Dr Lakhotia states in her report that Ms Khin had informed her that the Accused ejaculated “outside her” following the First Sexual Intercourse.²⁰³ In her examination-in-chief, Ms Khin indicated that she was “not sure” whether the Accused ejaculated inside her,²⁰⁴ and reiterated this during cross-examination.²⁰⁵ Indeed, Ms Khin informed that she did not even know whether the Accused ejaculated.²⁰⁶ But she disagreed that the Accused had (as the Accused claimed) ejaculated on her stomach,²⁰⁷ emphasising repeatedly that there was no ejaculate on her stomach following the First and Second Sexual Intercourse.²⁰⁸ In addition, the Accused points out²⁰⁹ that according to Dr Lakhotia’s report, Ms Khin stated that the Accused told

²⁰² Defence’s closing submissions at para 41(d).

²⁰³ AB6.

²⁰⁴ NE 11 May 2016 p 54 lines 11 and 12.

²⁰⁵ NE 12 May 2016 p 54 lines 18 to 20, p 80 lines 11 to 12.

²⁰⁶ NE 12 May 2016 p 65 lines 6 to 7, p 76 lines 20 to 21.

²⁰⁷ NE 12 May 2016 p 63 lines 10 to 15.

²⁰⁸ NE 12 May 2016 p 63 line 16 to p 64 line 5.

²⁰⁹ Defence’s closing submissions at para 41(e).

her that “he loves and needs her”,²¹⁰ but during cross-examination Ms Khin denied that the Accused told her that he loved her.²¹¹

73 I do not think the issue of whether, and if so where, the Accused ejaculated is ultimately of any consequence. When Ms Khin was first questioned about Dr Lakhotia’s medical report, Ms Khin informed the court that she could not remember what she had told Dr Lakhotia because of the passage of time.²¹² She was unable to recall if she had informed Dr Lakhotia about any sexual assault that had taken place.²¹³ In any case, Ms Khin never denied in clear terms that the Accused had ejaculated *outside* her vagina (as reflected in Dr Lakhotia’s report) – her explanation at trial was simply that she was *not sure* whether the Accused had ejaculated at all, whether inside or outside her. What she did know, however, was that the Accused had not ejaculated on her stomach (as alleged by the Accused) because she recalled that there was no ejaculate on her stomach following the sexual penetration. In my view, if the Accused had really ejaculated onto Ms Khin’s stomach, Ms Khin would have known about this, if not at the time of his ejaculation then at the very least when she was washing up thereafter.

74 I therefore reject the Accused’s submission that Ms Khin’s evidence contained “many material inconsistencies”²¹⁴ and that she was therefore not a compelling witness. On the contrary, I find that Ms Khin provided evidence that was clear, detailed and logical. In contrast, I find the Accused’s version of

²¹⁰ AB6.

²¹¹ NE 12 May 2016 p 8 lines 2 to 6.

²¹² NE 11 May 2016 p 102 line 32 to p 103 line 1; 12 May 2016 p 77 lines 14 to 15, p 80 lines 17 to 19.

²¹³ NE 11 May 2016 p103 lines 12 to 13.

²¹⁴ Defence’s closing submissions at para 43.

events thoroughly unpersuasive for the reasons I have described at [63] to [68] above. It beggars belief that the relationship between Ms Khin and the Accused – which until 20 December 2013 consisted of nothing more than perfunctory greetings on chance encounters without any indication of mutual attraction – would metamorphose without explanation into a consensual sexual association in the thick of the night, where one party had only just awoken and the other was in a state of alcoholic inebriation.

The Accused's remaining submissions

75 The Accused argues that the Prosecution adduced “virtually no cogent objective evidence” in support of its case. He suggests that the objective evidence in fact served to cast doubt on the Prosecution’s case.²¹⁵

76 The Accused highlighted that according to Dr Lakhotia’s report, there were no signs of physical injury on Ms Khin despite the “high degree of force being exerted upon her”.²¹⁶ In my view, this submission is unmeritorious. Although Ms Khin stated that the Accused’s grip was tight and that he had pushed her onto the bed, there is no indication that the Accused had struck Ms Khin or had otherwise applied violent force to her at any point. Given the nature of the events alleged by Ms Khin, I do not think it surprising or unusual that Ms Khin suffered no physical injury. I find that the Accused’s references to a “high degree of force” and “violent events”²¹⁷ badly misrepresent the Prosecution’s case. I note also Dr Lakhotia’s opinion that even if a patient had experienced pain during intercourse, there might not necessarily be signs of physical injury.²¹⁸

²¹⁵ Defence’s closing submissions at para 44.

²¹⁶ Defence’s closing submissions at para 44(a).

²¹⁷ Defence’s closing submissions at para 44(d).

77 Along similar lines, the Accused places weight on the fact that based on police photographs taken on 20 December 2013, the furniture in the living room appeared “completely undisturbed”. The Accused argues that this is inconsistent with the fact that the Accused “managed to drag Miss Khin across the living room”; some furniture must have been displaced during the process.²¹⁹ I agree with the Prosecution’s response that at no time had Ms Khin suggested that there was such a physical fracas that would have caused upturned tables and overturned chairs.²²⁰ The Accused over-dramatises the Prosecution’s case.

Summary of findings

78 Both the Prosecution and the Accused refer me to the Court of Appeal’s decision in *AOF v Public Prosecutor* [2012] 3 SLR 34 (“*AOF*”), in which Andrew Phang JA summarised the principles to be applied in determining whether a witness is “unusually convincing”. It suffices for me to set out the key principles:

(a) In a case where no other evidence is available, a complainant’s testimony can constitute proof beyond reasonable doubt, but only when it is so “unusually convincing” as to overcome any doubts that might arise from the lack of corroboration: *AOF* at [111].

(b) But an “unusually convincing” testimony does not overcome even materially and/or inherently contradictory evidence to prove guilt beyond a reasonable doubt: *AOF* at [114(d)].

²¹⁸ NE 12 May 2016 p 71 lines 14 to 19.

²¹⁹ Defence’s closing submissions at para 44(f).

²²⁰ Prosecution’s closing submissions at para 23.

(c) A witness's testimony may only be found to be "unusually convincing" by weighing the demeanour of the witness alongside both the internal and external consistencies found in the witness's testimony. But a witness's demeanour is not invariably determinative. If the witness fails to recall or satisfactorily explain material facts and assertions, his credible demeanour cannot overcome such deficiencies: *AOF* at [115]; *XP v PP* [2008] 4 SLR(R) 686 ("*XP*") at [72]–[73].

(d) Where the evidence of a complainant is not "unusually convincing", an accused's conviction is unsafe unless there is some corroboration of the complainant's story. What is important is the substance as well as the relevance of the corroborative evidence, and whether it is supportive or confirmative of the weak evidence which it is meant to corroborate: *AOF* at [173] and [177].

79 As emphasised by V K Rajah JA in *XP* (at [31]), the requirement that the complainant's evidence ought to be "unusually convincing" does not change the ultimate rule that the Prosecution must prove its case beyond a reasonable doubt. But it may provide the basis on which the Prosecution may prove its case if its sole source of proof is the complainant's testimony against the accused.

80 There is no dispute between the parties on the law. The Prosecution submits that the Prosecution witnesses have provided independent corroborative evidence, but that in any event Ms Khin was an "unusually convincing" witness.²²¹ The Accused argues that this is a case in which the

²²¹ Prosecution's closing submissions at para 47.

Prosecution's allegations are premised solely on a single material witness whose evidence was inconsistent.²²²

81 In my judgment, the Prosecution has produced independent corroborative evidence through its witnesses. In particular, the evidence of Mr Zaw, SGT Wee and SGT Adha provided support for Ms Khin's account of certain portions of her evidence and her demeanour and conduct not long after the events. I am also satisfied that Ms Khin was an unusually convincing witness, having regard to her demeanour and any internal and external inconsistencies in her narrative. I have had the opportunity to observe Ms Khin over three days of trial, where her account of the events was tested in various ways by counsel. I have also reviewed the evidence of other witnesses to ascertain their degree of consistency with that provided by Ms Khin. I find that Ms Khin proved to be a reliable, honest and diligent witness who tried her best to recall the events and readily admitted when she could not. The overwhelming majority of her evidence was internally and externally consistent, but where it was not, those inconsistencies were minor and immaterial. I therefore accept her evidence that she had not consented to both the First and Second Sexual Intercourse. The Accused had forced her into both occasions of intercourse against her will. Despite her efforts, she was unable to resist the Accused who simply physically overpowered her in his desire for sexual intercourse.

Conclusion

82 In the circumstances, I find that Ms Khin had not consented to either the First or the Second Sexual Intercourse. I find that the Prosecution has

²²² Defence's closing submissions at para 60.

proven beyond reasonable doubt that the Accused committed the offence of rape under s 375(1)(a) of the Penal Code in respect of both the First and

Second Charges and I accordingly convict the Accused of both charges.

Chan Seng Onn
Judge

Kumaresan Gohulaban and Yvonne Poon (Attorney-General's
Chambers) for the prosecution;
Sunil Sudheesan and Diana Ngiam (Quahe Woo & Palmer LLC) for
the accused.
