

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 241

Criminal Case No 26 of 2014

Between

Public Prosecutor

And

Muhammad Firman bin Jumali
Chew

FOUNDATIONS OF DECISION

[Criminal Law] — [Offences] — [Rape]

[Criminal Law] — [Offences] — [Sexual assault by penetration]

[Criminal Law] — [Offences] — [Personating a public servant]

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Public Prosecutor
v
Muhammad Firman bin Jumali Chew

[2016] SGHC 241

High Court — Criminal Case No 26 of 2014
Hoo Sheau Peng JC
24 – 27 and 31 May; 1 June; 13 July 2016

28 October 2016

Hoo Sheau Peng JC:

Introduction

1 The accused, Muhammad Firman bin Jumali Chew, a 30-year-old Singaporean, claimed trial to the following three charges:

1st Charge

That you, MUHAMMAD FIRMAN BIN JUMALI CHEW, on 9 October 2013, sometime between 4.50 p.m. and 6.00 p.m. at the staircase landing between level 5 and level 6 of Block 359 Woodlands Avenue 5, Singapore, did commit rape on [the first complainant], a female / then 16 years old [(DOB redacted)], to wit, by penetrating her vagina with your penis without her consent, and you have thereby committed an offence under Section 375(1)(a) of the Penal Code (Cap 224, 2008 Rev Ed), punishable under Section 375(2) of the same Code.

2nd Charge

That you, MUHAMMAD FIRMAN BIN JUMALI CHEW, on 9 October 2013, sometime between 4.50 p.m. and 6.00 p.m. at the staircase landing between level 5 and level 6 of Block 359 Woodlands Avenue 5, Singapore, did commit sexual assault by

penetration of [the first complainant], a female / then 16 years old [(DOB redacted)], to wit, by penetrating her mouth with your penis without her consent, and you have thereby committed an offence under Section 376(1)(a) of the Penal Code (Cap 224, 2008 Rev Ed), punishable under Section 376(3) of the same Code.

3rd Charge

That you, MUHAMMAD FIRMAN BIN JUMALI CHEW, on 9 October 2013, sometime between 4.50 p.m. and 6.00 p.m. at the 11th floor lift lobby of Block 362 Woodlands Avenue 5, Singapore, did pretend to hold the office of a public servant, to wit, a Police Officer of the Singapore Police Force, knowing that you did not hold such office, and in such assumed character did do an act under colour of such office, to wit, by compelling [the first complainant] and [the second complainant] to hand over their respective identity cards to you, and you have thereby committed an offence punishable under Section 170 of the Penal Code (Cap 224, 2008 Rev Ed).

2 At the conclusion of the trial, I found that the Prosecution had proved its case beyond a reasonable doubt against the accused on the three charges. I found the accused guilty and convicted him of the three charges. Thereafter, these sentences were imposed:

- (a) For the first charge, 12 years of imprisonment and six strokes of the cane;
- (b) For the second charge, 11 years of imprisonment and five strokes of the cane; and
- (c) For the third charge, six months of imprisonment.

I ordered the imprisonment term for the third charge to run consecutively with that for the first charge, and the imprisonment term for the second charge to run concurrently with that for the first charge. The global sentence is 12½ years of imprisonment and 11 strokes of the cane. The accused has appealed against the convictions and sentences. I now provide my reasons.

The Prosecution's case

3 In support of the Prosecution's case, the following four witnesses testified as to the key events on 9 October 2013. The first and second complainants are both 19 years old. At the material time, they were 16-year-old students in different secondary schools. They were dating. Mr Tung Shue Kiong ("Mr Tung") is a lift technician who had worked in the Woodlands area for over 20 years. Prior to 9 October 2013, he had not met the complainants before, but had seen the accused in the Woodlands area. Then, there is a close friend of the first complainant's family whom I refer to as "Auntie M". After school, the first complainant frequently travelled with Auntie M from Singapore back to Johor Bahru, Malaysia, where they were residing with their respective families. I now set out their evidence.

At Block 362 Woodlands Avenue 5

4 On 9 October 2013, between 4.50pm and 5.00pm, the complainants were at a staircase landing on the 11th floor of Block 362 Woodlands Avenue 5 ("Block 362"). This staircase was enclosed within a stairwell ("the enclosed staircase"). It was accessible from the lift lobbies on various floors via access doors. Two lifts serviced the various floors, being "Lift A" and "Lift B". For completeness, Block 362 has a second staircase which was not enclosed within a stairwell. I shall refer to this as the "open staircase".

5 The complainants were in their school uniforms, and the first complainant had removed and placed her panties in her bag. They engaged in sexual intercourse. In the midst of this, the first complainant noticed someone at the landing on the 12th floor. Immediately, she asked the second complainant to check who it was. The second complainant found the accused hiding beside the access door within the stairwell. The second complainant was scared and

nervous. He returned to the first complainant, and told her they had to leave. The first complainant was also nervous and shocked. They exited the stairwell via the access door on the 11th floor.

6 While the complainants waited at the lift lobby, the accused approached them. The complainants had not met him before. The accused identified himself as a police officer who had just finished his night duty. He asked them for their identity cards. The complainants were frightened. Believing that he was a police officer, they handed their identity cards to him. They were worried that if they did not comply with his instruction, the accused would report them for having sex. They would not have handed their identity cards to the accused if they had known that he was not a police officer.

7 After asking for their ages, the accused walked to an opening in the wall, looked down the block and informed the complainants that there were other officers making their rounds around the block. The first complainant said that the accused called someone on his mobile phone saying that there was a couple having sex at the block. The first complainant felt “very, very scared” as she believed the accused was talking “[t]o the other officers”.

8 The complainants apologised to the accused several times. The first complainant hoped that by apologising, the accused would let them go without reporting the matter to anyone. Subsequently, the accused returned the second complainant’s identity card but kept the first complainant’s identity card in his pocket. He instructed the second complainant to leave as he wished to speak to the first complainant. The second complainant complied because he still believed the accused to be a police officer. After telling the first complainant that he would wait for her downstairs, he took the lift to the ground floor. He remained at the lift lobby, waiting for her to come down.

9 Once alone, the accused asked the first complainant to show him where she had engaged in sexual intercourse with the second complainant. The first complainant brought him to the landing on the 11th floor of the enclosed staircase. Then, the accused told the first complainant to “hurry up before the other officers came”. He led her out of the stairwell, down the corridor towards the open staircase. Then, he led the way down from the 11th floor to the ground floor. The first complainant followed, believing that he was helping her to get “to a safer place” away from the other police officers. Eventually, the accused brought her to Block 359 Woodlands Avenue 5 (“Block 359”). From [15] onwards, I shall set out the first complainant’s account of the events at Block 359. For now, I continue with the evidence of Mr Tung and the second complainant as to what else transpired at Block 362.

10 According to Mr Tung, at around 5pm, he took Lift B to the 12th floor intending to rest and have a cigarette. As he entered the stairwell of the enclosed staircase, Mr Tung heard a man saying he was an “officer”. Thinking there might be a Town Council officer around, Mr Tung peered down and saw the accused standing at the 11th floor staircase landing. When the accused saw Mr Tung, he walked out of the stairwell immediately. He was followed by a female in a blue school uniform.

11 After observing the hurried departure of the accused, Mr Tung began looking for them. He explained that he “felt there was something wrong”, and “there had to be something going on”. To search for them, Mr Tung walked down the enclosed staircase to the 9th floor. Then, he took Lift B down to the 7th floor, and up again to the 10th floor. Eventually, Mr Tung returned to the ground floor. There, he saw the second complainant standing at the lift lobby.

12 The second complainant looked very nervous. He kept looking around. When they spoke, the second complainant told Mr Tung that a police officer had asked his girlfriend and him for their identity cards before directing him to leave. When the second complainant described the man as someone who had a fair complexion and who looked “Chinese”, Mr Tung told him the man was not a police officer. As Mr Tung explained, he had seen the accused before but did not think that the accused looked like a police officer. When the second complainant heard this, he appeared very nervous. The second complainant said that he had tried to call the first complainant but had not been able to reach her. Mr Tung told the second complainant to remain at the lift lobby while he would “help him find her”.

13 To look for the first complainant, Mr Tung took Lift B up. He exited on the 12th floor, and walked to the access door where he peeped through the glass panel. He proceeded to the open staircase and started climbing down. When he reached the 6th floor, he took Lift B to return to the ground floor. Meanwhile, the second complainant tried to call the first complainant. This time she answered his call, but said that she would call him back.

14 Back on the ground floor, Mr Tung told the second complainant that he could not find the first complainant. They exchanged mobile phone numbers. After searching for a while more, they decided to stop. As the second complainant was walking away from Mr Tung, he received a call from the first complainant. She was crying and asked him to meet her at the Woodlands Bus Interchange (“the Interchange”). He told her that the accused was not a police officer. After the call, the second complainant ran back to Mr Tung to tell him where the first complainant was. To meet her, they proceeded to the Interchange.

At Block 359 Woodlands Avenue 5

15 At this juncture, I return to the first complainant's evidence. After they arrived at Block 359, the accused led the first complainant up a flight of stairs. At that time, the first complainant's mobile phone was in her pocket. She recalled that there was a call from the second complainant but she was not sure if she managed to answer the call. As instructed by the accused, she put the mobile phone on silent mode.

16 When they arrived at the landing between the 5th and 6th floors, the accused stopped and directed the first complainant to sit on the steps. She complied. He looked out of an opening in the wall and said yet again that he was checking if other police officers were coming. The first complainant became more nervous and scared. She believed that he had brought her there as he knew that the other police officers would not be there.

17 The accused questioned the first complainant. He asked her how many times she had engaged in sexual intercourse with the second complainant and whether she wanted her parents and school to find out what she had done. The first complainant begged him not to tell anyone. The accused asked what he would get in return for helping her. The first complainant apologised again. She offered the accused money as she thought that was the only thing she could offer him. She had no idea what he wanted.

18 Instead, the accused instructed the first complainant to unbutton her uniform top. She complied, following whatever the accused said as she was really afraid. She was scared that if she did not comply, he would get angry and call the other officers to come and arrest her. At that point, she could not think at all. Besides, the accused had her identity card and she was worried that he would use it to report her. After four buttons were unbuttoned, the accused bent

forward towards the first complainant, pulled open her right bra cup and proceeded to suck and lick her breast. Then, he kissed her mouth, and then licked and sucked her breast again.

19 Next, the accused stood up, unzipped his pants and took out his erect penis. He then pushed the first complainant's head towards his penis before inserting it into her mouth. She felt she had no choice but to open her mouth. With his penis in her mouth, the accused controlled her head by moving it "back and forth". The first complainant felt disgusted by the act, and did not consent to it.

20 About two to three minutes later, the accused let go of her head, and asked her to turn around and bend her upper body forward. She followed what he said. He pulled up her uniform skirt, and inserted his penis into her vagina. He moved his penis in and out of her vagina. It was quite painful. At that time, the first complainant was facing the steps with her hands on the steps. They stayed in the position for about five minutes. Then, she realised that he had already pulled his penis from her vagina. She turned around, and saw him putting his sperm onto his left hand. Although the first complainant did not consent to the act, she did not resist or scream. She believed that he wanted to have sex with her in return for his silence. She still thought that he was a police officer, and that he would let her go after raping her.

21 Immediately, the first complainant put on her panties which she retrieved from her bag and buttoned her blouse. The accused looked down the block again and told her that they had to leave as the other police officers would arrive anytime. Believing the accused, she followed him as he led her down the staircase. She did so as he still had her identity card.

22 Upon reaching the ground floor, the accused brought the first complainant to a bench at the void deck of another block, where they sat down for a while. The accused started questioning her again, asking her various personal questions. Then, he asked if she was thirsty. Although she said she was not, the accused brought her to a nearby shop where he bought two drinks. They then returned to the same bench where he asked her more personal questions. After he finished, the first complainant told him that she wanted to go back. He followed her to the Interchange. At that time, she did not ask for help because she still thought that he would report what she had done with the second complainant.

At the Woodlands Bus Interchange

23 Upon reaching the Interchange, the first complainant walked towards the queue for bus service number 950 (“service 950”). Just before reaching the queue, she asked the accused for her identity card. The accused took it out from his front pocket, returned it to her and then walked away. The first complainant explained that she felt “very relieved”. She took out her mobile phone and saw that there were 22 missed calls from the second complainant and Auntie M. Thus, she called the second complainant.

24 The second complainant told her that he was still at Block 362. He said that the accused was not a police officer, and that he had been looking for her with Mr Tung. Hearing this, the first complainant felt shocked and scared. She also felt “mad” about the accused “lying” to her, and about “believing him”. The first complainant started crying, and asked the second complainant to meet her at the Interchange.

25 After she finished talking to the second complainant over the mobile phone, she met Auntie M. Auntie M testified that when she arrived at the

Interchange at about 6.30pm, the first complainant was in the queue for service 950. The first complainant was sobbing as she spoke on her mobile phone. Auntie M approached the first complainant and asked her why she did not pick up her calls earlier.

26 Around this time, Mr Tung and the second complainant arrived at the Interchange. They saw the first complainant. They also saw the accused standing nearby. The second complainant approached the first complainant, and tapped her on the shoulder as she was talking to Auntie M. He asked her what had happened, but she kept crying.

27 Mr Tung testified that the first complainant “ran out, hugged the [second complainant] and cried”. Meanwhile, Mr Tung approached the accused and questioned him in English:

A: I asked him where did he bring the girl, he did not answer me. I asked him for his warrant card since he said that he was a police officer. I asked him once, twice and at the third time he told me that the warrant card was at home.

Instead of responding, the accused kept staring at the first complainant.

28 Then, the second complainant brought the first complainant to where Mr Tung and the accused were. Mr Tung asked her if the accused had done anything to her. The first complainant did not know how to answer. She explained that she was still scared of the accused. She was also uncomfortable revealing the incident to Mr Tung who was a stranger. According to Auntie M who observed the first complainant from a distance, she was sobbing, and appeared scared.

29 As the first complainant was afraid that the second complainant would leave her if she were to tell him what had happened to her, she cried and

pushed him away. When the bus for service 950 arrived, she boarded it and told him that she would tell him what had happened later. Auntie M observed that she was still sobbing when she boarded the bus. After the first complainant left, Mr Tung asked the second complainant if he would want to make a police report. The second complainant replied that he did not know what had happened. Thus, Mr Tung let the accused go.

On the bus

30 While on the bus, the first complainant kept receiving messages from the second complainant begging her to tell him what had happened. After he assured her that he would not leave her, she told him what had transpired. According to the second complainant, the first complainant said that although she had been unwilling, she let the accused have sexual intercourse with her because she was scared that he would tell her mother and her school about their relationship. He advised her to report the matter to the police.

31 While on the bus, the first complainant also told Auntie M that she had been “raped” by the accused. The first complainant told Auntie M that she had been smoking with the second complainant when the accused approached them. As she considered Auntie M to be part of the family, she did not want Auntie M to know that she had been engaging in sex with the second complainant. According to Auntie M, the first complainant said that the accused had claimed to be a police officer. The first complainant said that when he raped her, she did not put up a struggle as she was in a state of fear.

Lodging of the police report

32 Later that night, accompanied by her family members and Auntie M, the first complainant proceeded to the Woodlands East Neighbourhood Police Centre to lodge a police report.

Medical and scientific evidence

33 On 10 October 2013, at about 11.20pm, the first complainant was examined by Dr Ong Xiaohui (“Dr Ong”) at KK Women’s and Children’s Hospital. At paragraph 2 of Dr Ong’s medical report dated 4 November 2013, Dr Ong set out the first complainant’s account of what had happened to her. The account was consistent with the first complainant’s version in court.

34 On 10 October 2013, at about 2.30pm, the panties, sports bra and blouse worn by the first complainant were handed over to Inspector Jocelyn Loh Sok Fong (“Insp Loh”). When Insp Loh received the items of clothing, they were all placed in the same bag. Insp Loh repacked these separately. A day later, the skirt worn by the first complainant was handed over to Insp Loh.

35 Subsequently, these items of clothing were analysed by Ms Lim Xin Li (“Ms Lim”), an analyst with the Health Sciences Authority. Ms Lim testified that through analysis, the accused’s semen was found on the *interior* front and *interior* back of the first complainant’s panties. His semen was also detected on the exterior front area of the bra, the exterior and interior front areas of the blouse and the exterior and interior back areas of the skirt.

CCTV footages

36 In the course of investigations, the investigating officer, Assistant Superintendent David Ang (“ASP Ang”), retrieved CCTV footages from Lift B

of Block 362 (“the CCTV footages”). The CCTV camera in Lift A was faulty. The CCTV footages captured Mr Tung’s movements as described above at [10], [11] and [13]. As for the accused’s movements, the CCTV footages showed the accused walking backwards into the lift at around 4.46pm on the ground floor. After that, the accused stood extremely close to the lift door although there was only one other person in the lift. At around 4.50pm, the accused re-entered the lift on the 9th floor. He entered sideways, and again, stood extremely close to the lift door. He was alone in the lift. The accused’s face was not fully captured in any of the CCTV footages.

Screenshots on the accused’s mobile phone

37 On 11 October 2013, at around 9.25pm, the accused was arrested at Woodlands Checkpoint, and then handed over to the Criminal Investigation Department (“CID”). Upon his arrest, the accused’s mobile phone was seized. It was sent to the Technology Crime Forensic Branch of the CID for forensic examination. In total, 46 images were extracted from the mobile phone. Images 34 to 46 are screenshots of internet webpages concerning the subject of rape. Images 34 to 46 were created in the accused’s mobile phone between 10.29am to 1.11pm on 10 October 2013.

The Defence

38 At the close of the Prosecution’s case, I found that there was sufficient evidence to call for the defence. The accused elected to give evidence. His wife, Marivic Advincula Manlapaz (“Marivic”), also testified.

The accused’s evidence

39 At the material time, the accused was a pizza delivery rider. He lived in Johor Bahru, Malaysia, with Marivic. Marivic was pregnant. On 9 October

2013, at about 9am, the accused went with Marivic to the Registry of Marriage to register their marriage. He sent her to work, and then went to work himself.

40 At around 4pm, the accused finished work. He was on his way to his mother's flat at Block 102, Woodlands Street 13 when he passed the traffic lights along Woodlands Avenue 5. There, he saw Mr Tung behaving suspiciously at the walkway between Block 361 and Block 362. The accused was wary of Mr Tung. On at least five to six occasions over the past six years, the accused had tailed Mr Tung, and had seen him crouching on the 12th floor landing of the enclosed staircase peeping at couples and touching himself. Although the accused had reported Mr Tung to the police previously, the latter had always managed to disappear before the police could arrive. The accused decided to stop and investigate.

41 The accused parked his motorcycle at a multi-storey carpark, and proceeded on foot to Block 362. He was intent on following Mr Tung and calling for the police. Also, he wanted to call Marivic from a public phone as the battery of his mobile phone had drained. At the same time, he wanted to buy a drink.

42 When he reached Block 362, he saw Mr Tung enter the stairwell leading to the enclosed staircase. As he wanted to follow Mr Tung, the accused entered Lift B backwards so as to maintain sight of Mr Tung who was climbing up the staircase. The accused exited Lift B on the 12th floor and approached the stairwell. Upon peering through the glass panel of the access door, he saw Mr Tung crouching at the staircase landing, touching his "private parts". The accused hid behind a wall when Mr Tung turned and noticed that he was being observed. When the accused returned to the access door later, Mr Tung was no longer there.

43 When the accused entered the stairwell to look for Mr Tung, he heard “intimate sound[s]” from a couple. As he descended to the 11th floor landing, he bumped into the complainants who were on top of each other, engaging in sexual intercourse. The accused apologised, and was about to exit the stairwell when he heard loud footsteps from above. He went to investigate and saw Mr Tung at the 12th floor staircase landing. In shock, the accused exclaimed loudly that “there’s a police officer around”.

44 Thereafter, the accused exited the stairwell on the 11th floor, pressed the lift button and waited at the lift lobby. The complainants also exited and stood in front of him. Though the lift came, the couple did not enter. The accused waited at the lift lobby. He wanted the couple to leave before continuing his search for Mr Tung. When the lift opened a second time, the couple did not enter and instead stood there looking at him.

45 When the door to Lift A closed, the accused noticed Mr Tung staring at him through the glass panel of the access door. Although the accused wanted to approach him, he decided to ask the second complainant how old he was. Unprompted, the complainants immediately showed him their identity cards. The accused did not take either of the identity cards. There was no further conversation. When the lift came a third time, the second complainant entered and left, leaving the first complainant with the accused on the 11th floor.

46 When the accused walked off to search for Mr Tung, he bumped into the first complainant accidentally, causing his cards to fall to the ground. As he bent to pick them up, the first complainant passed him a card. Without checking to see what she had given him, he kept it with his other belongings.

47 Then, the accused walked to the open staircase, and began to descend 11 storeys. The first complainant followed him. As they walked, she began confiding in him about her relationship and her life. When they reached the ground floor, the accused decided to give up searching for Mr Tung. This was because he had to pick Marivic up from work. However, as he walked to his motorcycle, the first complainant asked him to accompany her home because she was afraid of “a Chinese man”. The accused agreed to do so as a favour, and out of the goodness of his heart. He followed her as she led the way.

48 At Block 359, the first complainant climbed up the staircase and asked the accused to follow her. To ensure her safety, the accused continued to accompany her. As they walked up the stairs, the first complainant suddenly stopped at one of the floors. She put down her bag and asked the accused if he wanted money. Then, she started to complain to him about her family, her life and her school. She also told him that she used to “go around these blocks ... doing sexual activities”. The accused just listened to her.

49 As they were standing in front of the steps, the first complainant tried to kiss the accused on his lips. Shocked, the accused jerked his head backwards. Then, she moved closer, reached into his pants and stroked his penis. She did so continuously until he ejaculated. After ejaculating, the accused sat down on the stairs. When the first complainant attempted to sit on him, he pushed her away gently to tie his shoelaces. The first complainant then lit a cigarette. The accused started climbing down the staircase. The first complainant followed him and continued chatting with him happily.

50 The accused told the first complainant that he wanted to pick up Marivic. However, the first complainant asked him if he could walk with her and he agreed. They also sat on a bench and chatted. Subsequently, the accused

bought two drinks from a shop and they continued chatting. Thereafter, the first complainant asked the accused to accompany her to the Interchange. Again, the accused agreed. On the way there, the first complainant told the accused to “please keep ... confidential of whatever happened earlier or else I’ll get killed”.

51 While walking, the first complainant was also speaking on her mobile phone. When they arrived at the Interchange, the first complainant asked for her identity card. The accused checked his pocket. It was only then that he realised that her identity card was with him. He returned it to her and apologised. Then, they parted ways. The first complainant went to queue for service 950 while the accused stood there thinking about what had happened.

52 While standing there, Mr Tung and the second complainant approached him. Mr Tung kept urging the second complainant to call the first complainant over to them, but she refused to join them. Mr Tung then asked to see the accused’s warrant card. The accused told Mr Tung, “I don’t get what you mean”. Before leaving, the accused warned the second complainant to “[b]eware of this pervert Chinese old man”.

53 Then, the accused went off to fetch Marivic from her workplace. He did not tell her what had happened because she was pregnant, and he did not want her to get upset. He simply said that something had happened to him. Then, they went back home to Johor Bahru. On 11 October 2013, they came to Singapore to get married. As they were trying to go back to Johor Bahru, he was arrested.

54 Turning to the screenshots on his mobile phone, he claimed that in May 2013, Marivic had been raped by his friend. After that, Marivic used his mobile

phone to do some research on the internet. Although images 34 to 46 related to searches done by Marivic in July 2013, the screenshots were only taken on 10 October 2013. That day, she had called him from work and asked him to help her take the screenshots of the research that she had done. The accused said that it was pure coincidence that images 34 to 46 were taken the morning after the alleged offences.

Marivic's evidence

55 Marivic married the accused on 11 October 2013, two days after the alleged offences. Sometime in May 2013, she was raped by the accused's friend. When the accused found out about it, he kept persuading her to make a police report. While he was very persistent, she was reluctant to do so. She testified that images 34 to 46 related to research done by her in July 2013 and also on the night of 9 October 2013. She did so to show the accused that she was doing something about the matter. On 10 October 2013, she asked the accused to take the screenshots. In September 2014, Marivic finally lodged a police report about the rape in May 2013. However, she withdrew the police report hours later. With that, the defence case was closed.

The Prosecution's submissions

56 I now summarise the closing submissions. The Prosecution submitted that the first complainant's evidence was unusually convincing. Coherent, logical and consistent, her detailed evidence remained unshaken in cross-examination. If the first complainant did not resist the accused, it was because she feared that he would expose the complainants for having sex at Block 362. She was labouring under the misapprehension that the accused was a police officer. The first complainant did not consent to the accused's acts.

57 Further, the first complainant’s evidence was amply corroborated on many aspects by the other witnesses, especially the second complainant, Mr Tung and Auntie M. In particular, the second complainant provided direct evidence to establish the third charge. Corroboration also came in the form of the objective evidence. The presence of semen on the first complainant’s items of clothing, especially on the interior of her panties, supported the first complainant’s account.

58 On the credibility of the four key witnesses, the Prosecution submitted that the complainants and Auntie M did not know the accused prior to that day, and had absolutely no reason at all to frame the accused. While the accused made allegations against Mr Tung, these were bare and unsubstantiated.

59 In contrast, the Prosecution argued that the accused’s account defied logic, and was inherently incredible. In addition, the accused’s account was inconsistent with the objective evidence, including the accused’s suspicious conduct captured in the CCTV footages and the incriminating screenshots on his mobile phone. His explanations in relation to the objective evidence were unconvincing. As for Marivic, her testimony was clearly motivated by “her misplaced desire to shield him”. Accordingly, the Prosecution urged the court to convict the accused of the three charges.

The Defence’s submissions

60 Defence Counsel submitted that the first complainant’s evidence was not unusually convincing. There were questionable aspects in her testimony. Specifically, Defence Counsel queried why the first complainant would believe the accused was a police officer, why she did not resist, escape or ask for help, and why she could completely forget about the second complainant until she

arrived at the Interchange while remembering the minute details of the alleged offences.

61 Further, Defence Counsel contended that there were inconsistencies between the first complainant's evidence and those of the other Prosecution witnesses. In addition, Defence Counsel argued that the first complainant should not be believed as she had no qualms about lying to her family to keep her sexual relations with the second complainant a secret, and that she had tried to "worm her way out of trouble by offering money" to the accused.

62 Also, it was argued that that the complainants might have mistakenly understood that the accused was a police officer because of the way he spoke to them. Thereafter, the first complainant might have felt "mad" because she found out that she had tried to appease the accused by masturbating him. In other words, Defence Counsel suggested a reason for the first complainant to malign the accused.

63 As for the other witnesses, Defence Counsel contended that the second complainant's evidence that he believed that the accused was a police officer should not be accepted. There was no reason for him to do so. Mr Tung was an unreliable witness with an inexplicable bias against the accused.

64 Finally, the presence of sperm on the first complainant's items of clothing was more consistent with the accused's account that she had masturbated him, with his semen being deposited on her hand after he had ejaculated and then being transferred by her onto her items of clothing. Accordingly, Defence Counsel submitted that the accused should be acquitted.

The law

65 I now outline the applicable law. For the first charge, rape under s 375(1)(a) of the Penal Code (Cap 224, 2008 Rev Ed) (“Penal Code”) is made out if the accused penetrated the first complainant’s vagina without her consent. As for the second charge, sexual assault by penetration under s 376(1) of the Penal Code is made out by the penetration of the mouth of the first complainant with the accused’s penis without her consent.

66 Consent is a common element of both charges, and s 90 of the Penal Code provides as follows:

A consent is not such a consent as is intended by any section of this Code —

(a) if the consent is given by a person —

(i) *under fear of injury* or wrongful restraint to the person or to some other person; or

(ii) under a misconception of fact,

and the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception[.]

[emphasis added]

67 Section 44 of the Penal Code states that “[t]he word “injury” denotes any harm whatever illegally caused to any person, in body, mind, *reputation* or property” [emphasis added]. Therefore, for the purposes of the first and second charges, “consent” would not be valid if given under fear of injury to the first complainant’s reputation, and the accused knew or had reason to believe that the consent was given in consequence of such fear.

68 The third charge of personating a public servant is brought under s 170 of the Penal Code. The three constituent parts to be proved are that the accused

pretended to be a police officer, with knowledge that he was not a police officer and that he compelled the complainants to hand over their identity cards under colour of such office.

69 From the parties' submissions, there was no disagreement over the elements of the offences. Instead, the disputes were factual in nature, and centred on the proper evaluation of the evidence. In this regard, the applicable principles are as follows. In *Farida Begam d/o Mohd Artham v Public Prosecutor* [2001] 3 SLR(R) 592 at [9], Yong Pung How CJ stated that a court can make a finding on the credibility of a witness based on some or all of the following, being his demeanour, internal consistency (or lack thereof) in the content of his evidence, as well as the external consistency (or lack thereof) between the content of his evidence and the other extrinsic evidence (for example, the evidence of other witnesses, documentary evidence or exhibits).

70 Where a case turns on the evidence of a complainant against that of an accused, the court should only convict the accused if the complainant's evidence is "unusually convincing": *XP v Public Prosecutor* [2008] 4 SLR(R) 686 ("*XP*") at [27] and [31]; *Sivakumar s/o Selvarajah v Public Prosecutor* [2014] 2 SLR 1142 ("*Sivakumar*") at [40]. In *Public Prosecutor v Mohammed Liton Mohammed Syeed Mallik* [2008] 1 SLR(R) 601 ("*Mohammed Liton*") at [39], "unusually convincing" evidence has been described as "testimony that, when weighed against the overall backdrop of the available facts and circumstances, contains that ring of truth which leaves the court satisfied that no reasonable doubt exists in favour of the accused".

71 Indeed, there is no legal requirement for corroboration of a complainant's evidence to secure a conviction: *XP* at [34]. Should corroborative evidence be required, it is observed that the approach to

corroborative evidence “is a liberal one”. To determine if a particular piece of evidence can amount to corroboration, the court looks at “the substance as well as the relevance of the evidence, and whether it is supportive or confirmative of the weak evidence which it is meant to corroborate: see *Sivakumar* at [42] citing *Mohammed Liton* at [43]. In analysing the evidence, I was guided by this framework.

Evaluation of the evidence

The first complainant

72 Having deliberated on the first complainant’s evidence, I found that she had been clear, coherent and consistent. With clarity, she described the details of the material events. Her account was internally cogent and logical, and accorded with the surrounding facts and circumstances. Despite extensive cross-examination, she did not waiver. Her evidence was consistent with what she previously informed the second complainant, Auntie M and Dr Ong.

73 In the main, Defence Counsel contended that three aspects of the first complainant’s evidence were troubling: see [60] above. I address each of these points. First, Defence Counsel argued that it was unbelievable that the first complainant could have believed the accused was a police officer. The accused was wearing a grey top and beige pants. He was not wearing police colours, or any police badge or insignia. He did not show the first complainant any identity or warrant card. The first complainant would have had to be very naïve and simple to have believed the accused. This is especially so considering that the first complainant admitted that she had been investigated for underage smoking previously, and had encountered police officers before.

74 In my view, this line of argument completely ignored the first complainant's clear evidence that the accused represented himself to be a police officer who had finished his night duty. This would account for him being in casual clothes. More importantly, the accused went on to act like a police officer, asking the complainants to produce their identity cards, questioning them, surveying the surroundings and speaking on his mobile phone purportedly to other officers: see [6]–[7] above. As the first complainant explained in cross-examination, she thought the accused behaved like other police officers because he “was very formal, the way he talks”. I appreciated that the first complainant must have been nervous and shocked after being caught in a compromising situation. Further, I pause to observe that in re-examination, the accused disclosed that in May 2013, he was working with CISCO, and was assigned as a senior security concierge. To my mind, it was perfectly conceivable that the first complainant fell for the accused's ploy.

75 Secondly, Defence Counsel questioned why the first complainant did not resist, escape or seek help much earlier. Throughout the commission of the alleged offences, the accused did not threaten or use force on the first complainant. After the commission of the offences, there was no longer a risk that the accused would report her because should he do so, the accused would also get into trouble. Yet, the first complainant continued to stay with the accused for a significant period until they parted at the Interchange.

76 In this connection, I noted that the first complainant had explained her conduct. As I set out at [18]–[20], the first complainant said that at Block 359, she was in such fear that she complied with the accused's demands. Indeed, no threat or force was necessary. Then, as described at [21]–[22], when they were walking away from Block 359, the accused kept up the charade, telling the first complainant that they had to leave as the other police officers might come

around soon. Also, he kept questioning her. Therefore, she continued to be compliant until they reached the Interchange. All this while, she was under the impression that the accused was a police officer, and was concerned as her identity card remained with him.

77 Upon careful reflection, I found the first complainant's explanations to be convincing. Immediately after the ordeal, I would not have expected the first complainant to have the presence of mind to appreciate that the accused had also compromised his position. Also, it was not surprising that the first complainant might not have wished for the offences to come to light by alerting others to her plight. In fact, later that day, the first complainant remained reluctant to reveal what had happened to her. It was the second complainant who advised her to lodge a police report, as did Auntie M and her family members. There was nothing troubling about this part of her evidence.

78 Third, Defence Counsel questioned why the first complainant could simply forget about the presence of the second complainant, only to remember him after she arrived at the Interchange. In contrast, she could supposedly remember minute details of the alleged offences. To put matters in context, while the accused was present with the first complainant, he hurried her from Block 362 to Block 359, subjected her to the ordeal, and then continued to question her as they left Block 359. It was only after the accused left her at the Interchange that the first complainant felt relieved, and was able to react by checking her mobile phone. Upon realising that she had missed many incoming calls, she thought about the second complainant: see [23] above. Her behaviour and emotions were completely in accord with the circumstances she described. This aspect did not detract from the reliability of her evidence with regards the events at Block 359.

79 Next, I turn to assess the first complainant's credibility in light of the points made by Defence Counsel that she had no qualms about lying to her family members so that they would not know about her sexual relations with the second complainant, and that she offered the accused money to get out of her predicament. In other words, Defence Counsel argued that she was not a trustworthy witness. In my view, the frank admission by the first complainant that she lied that she was caught smoking by the accused was consistent with why she complied with the accused's demands in the first place. Given her family circumstances, she did not want her school or family to learn about her relationship with the second complainant. As for offering the accused money, again, the first complainant candidly admitted to this, explaining that she was responding to the accused's pointed query as to what she would do in return for his silence: see [17] above. She thought this was what the accused wanted. To my mind, the credibility of the first complainant was not diminished in any way by these two admissions.

80 Moving on, Defence Counsel also contended that there were inconsistencies between what the first complainant said and the evidence of the other key witnesses. However, Defence Counsel only highlighted one aspect concerning what transpired at the Interchange — that the first complainant said that she cried only when the bus for service 950 arrived, whereas the other witnesses said that she was crying throughout the time. In my view, it was not completely correct for Defence Counsel to submit that the first complainant claimed that she only cried when the bus for service 950 arrived. In fact, she testified that she cried upon learning from the second complainant that the accused was not a police officer through their phone conversation: at [24] above. Further, in cross-examination, the first complainant said that she was trying hard to hide her crying. Before speaking with Auntie M, she wiped her tears, and tried her best to look normal. She was not sure if Auntie M noticed

that she looked upset. In my assessment, the first complainant has been absolutely forthcoming. She merely explained the situation from her perspective — that she was trying her best to hide her emotions. It would seem that those around her saw her distress. She had no reason to lie about this. In any case, this was a minor inconsistency. On the whole, there were no significant inconsistencies between her evidence and the testimonies of the other key witnesses. There was nothing noteworthy to detract from the reliability of her evidence.

81 To round off, I considered Defence Counsel’s suggestion that the first complainant misunderstood that the accused was a police officer, and then became upset because she had masturbated him to appease him. For that reason, she made false accusations against the accused. In my view, while the first complainant candidly conceded that she was “mad” at the accused for lying to her and at herself for believing him (see [24]), it was far-fetched to suggest that she proceeded to concoct such lies against the accused. In any event, this suggestion rested on the premise that the accused did not represent himself to be a police officer. I rejected this. On this aspect, the first complainant’s evidence was clear. Her version was also strongly corroborated by the second complainant: see [84] below.

82 Evaluated in its entirety, the first complainant’s evidence had a ring of truth. She was an unusually convincing witness, who provided compelling evidence. I was mindful that the first complainant was only 16 years old at the time. The words and actions of the accused were calculated to make her believe that he was a police officer, and she believed him. Having been caught having sex with her boyfriend in a public place purportedly by a police officer, understandably, she was in a state of fear. As she explained, she had a slightly complicated family situation. Having lived apart from her mother for some

time, they had just been reunited. It was very important to her that her mother not find out about what she had done with the second complainant as she did not want her mother to be disappointed with her. In that vulnerable frame of mind, and out of fear, she succumbed to the accused's demands. I had no doubt that what transpired that day was as described by her.

The other Prosecution witnesses

83 While there was no need for corroboration of the first complainant's evidence, I agreed with the Prosecution that on many important aspects, the first complainant's evidence was amply corroborated by the other three key witnesses.

84 I start with the second complainant. His evidence on the encounter with the accused, how he represented himself to be an off-duty police officer, how he alluded to the other police officers being around the vicinity, and how he sent the second complainant away completely corroborated the first complainant's narrative. In relation to the third charge, the second complainant specifically explained how the accused tricked them into handing over their identity cards on the pretext that he was a police officer.

85 Defence Counsel sought to challenge the second complainant's evidence by repeating the argument that he would have had to be extremely naïve and simple to believe the accused. Once again, I did not accept the argument. I noted that the second complainant spoke of how nervous and scared he was. He was only 16 years old, and had been confronted after being caught in a most embarrassing situation by someone who was purportedly a police officer. I found that he was a credible witness and that his evidence was reliable.

86 Turning to Mr Tung's evidence, he testified that he heard the accused say he was an "officer", and that the accused left the enclosed staircase hurriedly with the first complainant following behind. This supported the first complainant's evidence that after sending the second complainant away, the accused asked her to bring him back to where they were having sex, and then quickly led her away telling her to hurry up before the other "officers" came: see [9]. There appeared to be a discrepancy between Mr Tung hearing the accused say that he was an "officer" compared to the first complainant's version that at that point, the accused merely mentioned the presence of "other officers". However, at the end of the day, it was more critical to me that the two witnesses both stated that the accused referred to "officer" or "officers". It seemed clear that the accused was continuing to give the impression that he was a police officer, and there were other officers around.

87 In giving evidence, the accused made certain specific allegations against Mr Tung for being a pervert. In my view, Mr Tung was an independent witness who went out of his way to assist the complainants. The CCTV footages showed him going up and down Block 362 in the course of searching for the first complainant and the accused. While the accused claimed that he had made a police report against Mr Tung previously, after a review of the many police reports lodged by the accused, ASP Ang did not find any police report that fitted the accused's allegations against Mr Tung. Even without the evidence of ASP Ang, I found the accused's allegation that Mr Tung was a pervert to be unsubstantiated, and to be a vain attempt to undermine Mr Tung's credibility. I wholly accepted Mr Tung's evidence.

88 I now go to the evidence of the second complainant, Mr Tung and Auntie M as to what happened at the Interchange. Mr Tung testified that when he confronted the accused twice to ask for his warrant card, the accused kept

quiet. The third time round, the accused said it was at home. I accepted Mr Tung's evidence, which revealed that the accused tried to keep up with his pretence of being a police officer. As for the condition of the first complainant at the Interchange, all three witnesses testified that the first complainant was sobbing throughout. Her state of distress was consistent with that to be expected of a person one who had suffered the ordeal as she had described.

89 It was also clear to me that at the earliest point in time possible, the first complainant told both the second complainant and Auntie M what had happened to her. It was not surprising to me that at the Interchange, the first complainant did not wish to confront the accused, and was uncomfortable to speak up in the presence of Mr Tung. As I observed at [72] above, her complaints to the second complainant and Auntie M, as well as her account to Dr Ong, were consistent with her evidence in court.

The accused

90 With that, I turn to the accused's evidence. In sharp contrast to the evidence of the first complainant, I found each and every aspect of what the accused said to be utterly unbelievable and incredible. I shall only highlight the main aspects.

91 First, while on the way to his mother's home, the accused purportedly spotted Mr Tung from afar, and made a detour to stop at Block 362 so as to tail Mr Tung and report him to the police. Surprisingly, although he had at least three opportunities thereafter to confront Mr Tung, he did not do so. The first time was when he spied on Mr Tung allegedly crouching on the 12th floor landing. He kept watch on him for some time but did not approach him. The second time was when he had already chanced upon the complainants, and then heard loud footsteps from the 12th floor. Strangely, all he did was to say that

“there’s a police officer around”. The third time was when he was at the lift lobby with the complainants, and saw Mr Tung at the stairwell. Out of the blue, he decided to ask the second complainant for his age, instead of pursuing Mr Tung. The accused could not provide any sensible reason for his actions.

92 Second, the accused’s account of what else happened at the lift lobby was equally ludicrous. Apparently, the complainants remained with him as the lifts came and went. Upon being asked their ages, they offered him their identity cards. Inexplicably, the second complainant abruptly left. Although the accused last saw Mr Tung in the stairwell, he proceeded towards the open staircase, and walked down 11 flights of stairs. For no rhyme or reason, the first complainant followed him down. Based on his version, not only was the accused’s own behaviour extremely puzzling, he also portrayed the complainants as being completely irrational.

93 Third, the accused’s actions thereafter were completely incongruent with his claim that he was in a rush to fetch Marivic from her workplace. Apparently, he obliged the first complainant’s request to accompany her home by following her to Block 359. He did not ask any questions as to where she lived, or who or what exactly she was afraid of. Even after the alleged masturbation, he continued to accompany her. His explanation that he acted in this manner out of the goodness of his heart was unbelievable.

94 Fourth, when the first complainant purportedly cornered him to masturbate him against his will, the accused said he did not react at all. In cross-examination, the accused said that the first complainant kissed him a second time. This time, the accused “just let it be”. The accused testified that though he did not want the first complainant to kiss him, he was unable to move as she was “big-sized” and he was too weak. While the first complainant

moved her hand back and forth on his penis for about two to three minutes, he said that he looked at the ceiling and placed his hands beside his pockets. The accused asserted that he had been deceived by the first complainant who was too mature. Considering that the accused was a 27-year-old working adult, this was an incredibly tall tale for him to spin.

95 Besides, the accused's evidence was wholly inconsistent with the objective evidence. As pointed out by the Prosecution, the CCTV footages did not show that the accused was in pursuit of Mr Tung. On the contrary, they showed the accused acting suspiciously to avoid detection by the CCTV camera. His explanation that he was standing close to the lift door in order to spot Mr Tung as the lift travelled up was unconvincing.

96 As for his evidence on the screenshots on his mobile phone, I did not believe for a moment that those were created on Marivic's instructions after she had researched the subject of rape. Even assuming that Marivic had unfortunately been raped by the accused's friend, there was hardly any reason why Marivic would need to do any research on the topic before making a police report. Even if there was a need to do so, I could hardly imagine that it would be something Marivic would be concerned about the day before their marriage on 11 October 2013. I rejected the contention that it was a mere coincidence that these images were created on 10 October 2013. In my view, these images were created by the accused after he committed the offences.

97 Further, I noted that the accused did not inform Marivic that the first complainant had masturbated him. Upon cross-examination, the accused admitted that when he picked Marivic up later that evening, he told her that he had been at a McDonald's when a couple took his mobile phone in the toilet and refused to return it to him. He also told her that Mr Tung had intervened

and told the couple that he would teach them “how to fix [the accused]”. The accused gave several reasons for lying to Marivic. Amongst other things, he said that she was pregnant at the time, and that he pitied her. However, these were not convincing reasons. The accused had obviously spun lies to cover up his misdeeds. I had no doubt at all that his testimony in court was a pure fabrication. To end off, I found the accused to be absolutely unworthy of credit, and rejected his evidence.

Scientific evidence

98 At this juncture, I turn to the presence of the accused’s semen on the first complainant’s items of clothing. As stated above, the panties, bra and blouse had been placed in one bag before these were handed over to the police. Also, it was not clear what the first complainant had done with the items of clothing before she handed them over to the police. Therefore, I was very mindful that there was a possibility of cross-contamination in that semen from one area on one item of clothing might have been transferred to another area on the same item of clothing or to another piece of clothing. However, in my view, the presence of semen on only the *interior* front and back surfaces of the panties was more consistent with the first complainant’s version that after the rape during which the accused ejaculated, she put on her panties and then buttoned her blouse. In contrast, for the accused’s version of masturbation, it would seem that the semen on her hand should be transferred onto the exterior surfaces rather than the interior surfaces of her panties. Nonetheless, given that there was the possibility of cross-contamination, I placed little weight on this as supportive evidence. In any case, it was not necessary to do so given the weight of evidence against the accused.

Convictions

99 Based on all of the above, I accepted the evidence of the Prosecution, especially that of the first complainant. I considered the defence by the accused to be completely devoid of any merit. I would add that I did not accept Marivic's evidence. She was clearly motivated to assist the accused in his defence.

100 On the third charge, I found that the accused represented to the complainants that he was a police officer, and that under the guise, he asked for their identity cards which they handed over to him. On the second charge, I found that the accused penetrated the first complainant's mouth with his penis without her consent. Thereafter, as stated in the first charge, I found that the accused penetrated the first complainant's vagina without her consent. During the commission of the offences which form the subject of the first and second charges, the first complainant did not resist, struggle or attempt to escape from the accused. However, it was evident that the first complainant was under the fear of injury to her reputation, as she believed that the accused was a police officer who might report her for having sex with the second complainant, and the accused knew or had reason to believe that her consent was given in consequence of such fear. There was no consent by the first complainant to these acts. Accordingly, I found the accused guilty and convicted him of all three charges.

101 For completeness, I deal with one other issue. In the course of giving evidence, the accused made allegations against the officers from the CID concerning their ill treatment of him after his arrest. At that stage, it was not clear whether the Prosecution would be using any of the statements made by the accused to the police, and to his credit, Defence Counsel sought to limit the

ambit of such evidence from the accused. As it transpired, the Prosecution did not seek to use any of the statements made by the accused. Strictly speaking, such allegations against the CID officers were not relevant to the issues at hand. Nonetheless, given the nature of the allegations, I allowed the Prosecution to call the relevant CID officers who arrested and handled the accused as rebuttal witnesses. Upon hearing the evidence of the CID officers concerned, I found that the allegations against them were totally unfounded. However, given that the evidence was ultimately not relevant to the issues at hand, in all fairness to the accused, I did not take these matters into account in assessing his credibility and his defence. As such, I shall not set out these matters in detail here.

Sentences

102 I now deal with the sentences imposed for the three charges. In relation to the first charge of rape, s 375(2) of the Penal Code provides that the offender shall be punished with imprisonment for a term which may extend to 20 years, and that he shall be liable to fine or to caning. Similarly, for the second charge of sexual assault by penetration, s 376(3) of the Penal Code provides that the offender shall be punished with imprisonment for a term which may extend to 20 years, and that he shall also be liable to fine or to caning. With respect to the third charge, s 170 of the Penal Code provides that a person who is guilty of personating a public servant shall be punished with imprisonment for a term which may extend to two years, or with fine, or with both.

The Prosecution's submissions

103 The Prosecution submitted that “the sentencing principles of deterrence and retribution ought to feature prominently and unmistakably in the sentencing equation in order to appropriately reflect the gravity of the offences

perpetrated”. As rape is the most grave of all sexual offences, general deterrence is called for: *Public Prosecutor v Murugesan* [2005] SGHC 160 at [54]–[55]. Further, specific deterrence should also be applicable, in light of the calculated and deliberate manner in which the accused perpetrated the offences: *Public Prosecutor v Tan Fook Sum* [1999] 1 SLR(R) 1022 at [18] (“*Tan Fook Sum*”). Considering the gravity of the offences perpetrated, the retributive principle demands a significant sentence, so as to reflect and befit the seriousness of the crime: *Tan Fook Sum* at [16].

104 In calibrating the appropriate sentence, the following aggravating factors should be considered, such as the abuse of a quasi-position of trust, the calculated and deliberate nature of the offence, the young age of the first complainant, the egregious nature of these offences and the lack of remorse on the part of the accused.

105 In contrast, there were no mitigating factors. While there was no physical violence or threat of violence inflicted on the first complainant, this was not a mitigating factor as the accused had placed her in so much fear that she was unable to resist his demands.

106 Turning to the sentencing precedents, the Prosecution highlighted *Sivakumar*, a case which bears facts very similar to the present one. There, the victim was a 16-year-old school girl who was behaving intimately with her boyfriend in a car at a carpark when the offender (“*Sivakumar*”) confronted them. He offered to drive her home. Along the way, he represented to her that he was a police officer and threatened to bring her to the police station unless she agreed to have sex with him. After the trial, *Sivakumar* was convicted and sentenced as follows: one count of rape (for which a sentence of 11 years’ imprisonment and five strokes of the cane was imposed); one count of sexual

assault by penetration of her mouth with his penis (for which a sentence of 11 years' imprisonment and five strokes of the cane was imposed); and one count of outrage of modesty (for which a sentence of one year's imprisonment and two strokes of the cane was imposed). The imprisonment terms for the rape and outrage of modesty charges were ordered to run consecutively. Therefore, the global sentence was 12 years' imprisonment and 12 strokes of the cane. On appeal, Sivakumar was also convicted of a charge of personating a police officer under s 170 of the Penal Code for which an imprisonment term of six months was imposed. Although Sivakumar appealed against the global sentence as being excessive, the sentence was upheld on appeal.

107 In relation to the first charge, the Prosecution highlighted the case of *Public Prosecutor v NF* [2006] 4 SLR(R) 849 (“*NF*”) at [19]–[38], where the High Court adopted a framework setting out four categories of rape. The High Court also laid down the benchmark sentences for each of the four categories. In particular, a Category 1 rape lies at the lowest end of the spectrum, and features no aggravating or mitigating circumstances. The benchmark sentence for such an offence is ten years' imprisonment and not less than six strokes of the cane. A Category 2 rape involves the exploitation of particularly vulnerable victims or the presence of any aggravating factors (such as where the offender is in a position of responsibility towards the victim or the offender is one in whom the victim has placed her trust by virtue of his office of employment). The starting point for a sentence for Category 2 rape is 15 years' imprisonment and 12 strokes of the cane.

108 In *Sivakumar*, the Court of Appeal found that Sivakumar abused a quasi-position of trust as he undertook to send the victim home after he represented himself to be a police officer (at [70]). Relying on this, the Prosecution submitted that this factor was also present in this case as the

accused informed the complainants that he was a police officer and managed to isolate the first complainant based on this representation. The present facts brought the case between Category 1 and Category 2. The Prosecution submitted that an appropriate sentence would be 13 years' imprisonment and six strokes of the cane. While this was two years and one stroke more than the sentence imposed for the rape charge in *Sivakumar*, the Prosecution highlighted that the Court of Appeal was only concerned with whether the sentence was manifestly excessive, given that it was Sivakumar who appealed against sentence. The Court of Appeal did not have to (and it appears that it did not) consider if the sentence sufficiently addressed the aggravating factors.

109 Turning to the second charge of sexual assault by penetration, the Prosecution relied predominantly on *Sivakumar*, and submitted for a sentence of 11 years' imprisonment and five strokes of the cane to be passed. In addition, the Prosecution highlighted three cases being *Public Prosecutor v AHB* [2010] SGHC 138, *Public Prosecutor v Roslan bin Maswan* (CC34/2014) and *BMD v Public Prosecutor* [2015] SGCA 70.

110 As for the charge of personating a police officer, the Prosecution only cited *Sivakumar*, and submitted that the same sentence of six months' imprisonment should be imposed. The Prosecution pressed for a global sentence of 13½ years' imprisonment and 11 strokes of the cane.

Mitigation plea

111 In the mitigation plea, Defence Counsel highlighted that the accused is married with a daughter. He left school at Secondary 3 because he had difficulty interacting with others and could not pay attention in class. His mother was 62 years old, and raised him single-handedly.

112 In a psychiatric report by Dr Tan Zhongqiang (“Dr Tan”) from the Institute of Mental Health dated 4 December 2013, Dr Tan noted that in terms of intelligence quotient (“IQ”), the accused was assessed to be in the extremely low to low average range. His adaptive functioning was also assessed to be within the extremely low to below average range. Furthermore, Dr Tan opined that the accused suffered from delusional disorder. He had delusional beliefs with themes of persecution and jealousy and had acted on these delusions on many occasions. However, Dr Tan concluded that the delusional disorder had no causal link to the commission of the offences.

113 For the first charge, Defence Counsel submitted that the present case fell more appropriately within Category 1 of *NF*. The starting point, in the absence of any mitigating or aggravating factors, should be ten years’ imprisonment and six strokes of the cane. Defence Counsel sought to distinguish *Sivakumar*. On the present facts, the accused did not force the first complainant into a car, and drive her to a secluded place where she would not be able to get help. Calibrating his conduct against that in *Sivakumar*, and taking into account his mental conditions of low IQ, low adaptive functioning and delusional disorder, Defence Counsel submitted for a total sentence of ten years’ imprisonment with the sentence for the second charge to run concurrently with the first. There was no submission on the individual sentences for the other two charges.

Decision

114 To begin, I agreed with the Prosecution that the key sentencing principles to be applied were that of deterrence and retribution. To discourage the commission of such offences by the accused, as well as other would-be

offenders, a deterrent sentence was called for. The punishment should also be one that appropriately punishes the accused for the gravity of the offences.

115 Turning to the mitigation plea, I did not consider the accused's family and personal circumstances to have any mitigating effect. Despite his low IQ and low adaptive functioning, the accused was able to cunningly manipulate the complainants. As for his delusional disorder, Dr Tan's opinion was that there was "no causal link" with the offences. It seemed to me that the accused fully understood what he was doing, and should be held fully accountable for his reprehensible actions.

116 Further, as highlighted by the Prosecution, there were aggravating factors to be considered. First, the accused deceived the complainants into thinking he was a police officer before isolating the first complainant, and thereafter abused the quasi-position of trust when he committed the offences: see *Sivakumar* at [70]. Second, the complainants were only 16 years old. They were wearing their school uniforms, and the accused preyed on their naivety.

117 Third, the accused carried out the offences in a calculated and deliberate manner. From the outset, the accused had some ill intent when he went to Block 362. He deliberately hid his face from the CCTV camera in Lift B. His deception of the complainants by words and conduct was elaborate. Shamelessly, he persisted with this pretension even though the complainants apologised. Deviously, he separated the complainants to get his way.

118 Fourth, the offences perpetrated were egregious in nature. Prior to the commission of the offences in the first and second charges, the accused kissed the first complainant, and sucked and licked her breasts. While there was no charge of outraging the modesty of the first complainant brought against the

accused, I considered these deplorable acts as adding to the gravity of the offences. After committing the offences, the accused prolonged the first complainant's agony by questioning her on personal matters. Her entire ordeal lasted about one hour.

119 Fifth, there was a complete lack of remorse on the part of the accused. The accused alleged that the first complainant took advantage of his kindness to accompany her home, and then kissed and masturbated him against his will. Further, he alleged that Mr Tung was a pervert. These lies, concocted to cast aspersions on the character of the two witnesses, were uncalled for.

120 In relation to the precedent cases, I found *Sivakumar* to be apposite. As a matter of approach, for the rape charge in *Sivakumar*, the Court of Appeal began with the benchmark of 10 years' imprisonment and six strokes of the cane for a Category 1 rape, and then considered the breach of a quasi-position of trust to be an aggravating factor. Ultimately, the sentence of 11 years' imprisonment and five strokes of the cane was found not to be manifestly excessive. Similarly, it seemed to me that the present facts fell within a Category 1 rape, and not one falling between Category 1 and Category 2 as contended by the Prosecution. Considering the aggravating factors and the lack of mitigating factors, I came to the view that a stiff sentence of 12 years' imprisonment and six strokes of the cane would be warranted.

121 It bears reiterating that Sivakumar was also sentenced to one year's imprisonment and two strokes of the cane for outraging the modesty of the victim by sucking her nipple, touching her buttock and rubbing his fingers on her vagina. This sentence was made to run consecutively with that for the rape charge. Given the acts described at [118] which did not form the subject matter of any of the charges, I considered the sentence I imposed to be in line with

that in *Sivakumar*. I had some difficulty with the Prosecution's contention that notwithstanding *Sivakumar*, 13 years' imprisonment would be justified. This seemed to be on the high side. I also did not accept Defence Counsel's contention that the accused should be punished more lightly than *Sivakumar*. To my mind, the accused's conduct was at least as grave as that of *Sivakumar*.

122 Guided by *Sivakumar*, for the second and third charges, I imposed 11 years' imprisonment and five strokes of the cane and six months' imprisonment respectively. For the third charge, I took into account the "heinous motive behind the impersonation, and the tarnish caused to the reputation of the Singapore Police Force": see *Sivakumar* at [75].

123 The imprisonment terms for the first and third charges were ordered to run consecutively, while the imprisonment term for the second charge was ordered to run concurrently with that for the first charge. The global sentence is 12½ years and 11 strokes of the cane with effect from the date of sentence. This was again in accord with that in *Sivakumar*. In my view, this was suitable and sufficient punishment for the accused.

Hoo Sheau Peng
Judicial Commissioner

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