IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 188

Magistrate's Appeals No 9148 of 2016/01 and 9171 of 2016/02

Between

Public Prosecutor

… *Appellant*

And

Tan Kok Leong

… *Respondent*

Magistrate's Appeal No 9171 of 2016/01

Between

Tan Kok Leong

… *Appellant*

And

Public Prosecutor

… *Respondent*

GROUNDS OF DECISION

[Criminal Procedure and Sentencing] — [Appeal]

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Introduction

1 This case presented rather unusual factual circumstances for the court's consideration. The Accused was the victim's aesthetic doctor and also his erstwhile "mentor" and business partner. The victim was also a doctor. By themselves, these would not have been particularly unusual facts. What made this case quite unprecedented was the circumstances in which the alleged offences were committed. They took place in two rather unexpected settings – first, in an operating room in Novena Medical Centre, where an offence of outrage of modesty was allegedly committed in the presence of other persons, and, second, in a hotel room at the Oasia Hotel ("the hotel") (which is close to Novena Medical Centre), where the remaining four offences (including two of outrage of modesty) were allegedly committed with only the Accused and the victim present. At all material times when the various acts of outrage of modesty

were alleged to have occurred, the victim remained unconscious as he was under sedation.

2 The alleged offences were committed over three separate dates, namely, 6 June, 5 July and 6 July 2013. The victim of course remained completely unaware of them for some time. They only came to light after a partner of the Accused in his medical practice chanced upon photographs of the victim. The victim was informed about a month after the last incident on 6 July 2013 that the Accused had taken photographs of him in a state of undress. Some of these photographs depicted the Accused holding the victim's penis in various positions. A selection of 21 photographs of the victim was found stored in a folder on the Accused's mobile phone labelled with the victim's name. The Accused had not informed the victim that he had taken these photographs or that he would be doing so beforehand. He did not seek the victim's consent to take the photographs.

3 The charges involved three counts of outrage of modesty, an offence under s 354(1) of the Penal Code (Cap 224, 2008 Rev Ed) ("PC"), and two counts of causing hurt by means of administering stupefying drugs with intent to commit outrage of modesty, an offence under s 328 of the PC. The Accused claimed trial and denied having any unlawful intent. He maintained that all that he had done was for professional clinical purposes and suggested that the victim had consented to what had taken place. The District Judge found him guilty of four counts and convicted him after a fairly lengthy trial spanning 19 days. The Accused was acquitted on the first charge under s 354(1) of the PC (DAC 919812/2014 ("the first charge")).

4 The Accused appealed against his convictions and sentences. The Prosecution cross-appealed against his acquittal and sought enhanced sentences.

I allowed the Prosecution's appeal against acquittal on the first charge and also increased the sentences for all the charges, individually and cumulatively. I rendered brief oral grounds for my decision on 25 May 2017. In doing so, I avoided traversing the detailed evidence, but in these grounds of decision I shall set the evidence out insofar as necessary to provide the proper context for an understanding of the reasons for my decision.

The agreed facts

5 At the commencement of the trial, the Prosecution obtained a gag order to prohibit the publication of any information which might lead to identification of the victim. The parties tendered a brief Statement of Agreed Facts ("ASOF"), which I reproduce below:

> 1. The accused is Tan Kok Leong, male/49 years old, bearing NRIC No. [xxx], Singapore citizen.
>
> **Background Facts**
>
> 2. The complainant is [the victim], bearing Malaysian Passport No: [xxx]. He is currently employed as a medical doctor.
>
> **First Information Report**
>
> 3. On the 13th of August 2013, the complainant made a police report at Ang Mo Kio Police Division, informing the police that he had been molested by the accused.
>
> **AGREED FACTS IN RELATION TO DAC 919037–38/2014 AND DAC 919812–14/2014**
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> 4. The accused is a medical doctor and was a partner at the medical practice known as Life Source Medical Practice ("Life Source"), located at No 10 Sinaran Drive #11-16, Singapore. He is a doctor specializing in aesthetic medicine.
>
> 5. The accused performed liposuction procedures on the complainant on the 6th of June 2013 and the 5th of July 2013. Both procedures were performed at Life Source's premises.

6. Sometime before the liposuction procedure on 5th July 2013, the complainant sent a Whatsapp message to the accused, stating that "*then I have no choice but to surrender my little curved brother for injection*."

7. After the liposuction procedure on the 5th of July 2013, the accused told the complainant that he had booked a hotel room for the complainant to recuperate from his procedure. Thereafter they proceeded to Oasia Hotel, located at 8 Sinaran Drive.

8. At about 11 pm that evening, while in the hotel room, the accused told the complainant that he would be administering Dormicum, a stupefying drug and Rosiden, a painkiller. The accused thereafter administered Dormicum and Rosiden intravenously.

9. The accused, sometime that evening after administering Dormicum and Rosiden, pulled down the complainant's shorts and thereafter took photographs of the complainant's penis and genital area. Photographs were taken of the accused holding and pressing down the complainant's penis. Photographs were also taken of the complainant in a half naked state.

10. The accused and the complainant continued to stay at Oasia Hotel on the 6th of July 2013.

11. That evening, the accused administered Dormicum and Rosiden to the complainant intravenously. Sometime that evening after administering Dormicum and Rosiden, the accused pulled down the complainant's shorts and took photographs of the complainant's penis and genital area. Photographs were taken of the accused holding and pressing down the complainant's penis. Photographs were also taken of the complainant in a half naked state.

12. On the 7th of July 2013, the complainant and the accused left Singapore for Johor Bahru. They returned to Singapore on the morning of the 8th of July 2013 and checked out of the hotel later that morning. During their stay at Oasia Hotel on the 5th and 6th of July 2013, the accused did not show the complainant any of the photographs he had taken of the complainant's penis, genital area or photographs of the accused holding and pressing the complainant's penis and the complainant in a half naked state."

The Prosecution's case

DAC 919812/2014 (the first charge)

6 As set out in the ASOF, it was not disputed that the Accused performed two liposuction procedures on the victim at Life Source Medical Practice ("Life Source"), located at Novena Medical Centre. The first charge stemmed from the first such procedure, which took place on 6 June 2013. The Prosecution's case was that the Accused placed his hand under the blue surgical drape that was used to cover the victim's lower torso during the liposuction procedure and touched his genital area with intent to outrage his modesty.

7 When the Accused performed the procedure, the victim's then fiancée, [S], was in attendance. [S], who was also a doctor, was not called as a witness at the trial. It was not disputed that she had not witnessed the Accused touching the victim as alleged in the first charge.

8 The key witnesses were Bong Chai Pin ("Chai Pin") and Peggy Giam ("Peggy"), who were the Accused's staff. Chai Pin was a clinic assistant. Her role in assisting during the procedure was to process fat that was extracted into stem cells. After the Accused had administered anaesthetic to the victim and while waiting for the anaesthetic to take effect, Chai Pin saw the Accused place his hand under the drape covering the victim's penile region. She saw the Accused touching the victim's private part, and said that his hand was moving up and down. Chai Pin added that at that time, [S] was in the operating room administering nose fillers into the victim's nose and had not noticed what the Accused had done. Chai Pin also testified that when the Accused's hand was under the drape, he was looking towards another room which was adjacent to the operating room.

9 Peggy was the Accused's scrub nurse during the procedure. She corroborated Chai Pin's testimony. She saw the Accused's hand below the blue drape touching the victim's sexual organ and saw his hand moving. She claimed that the drape was a very light sheet and the Accused's actions could be seen clearly. She added that the drape was moving up and down. Peggy also testified that [S], who was the only other person in the operating room at the time, was focused on the victim's nose and was not paying attention to what the Accused was doing.

10 Peggy had an exchange with Chai Pin after the procedure, expressing her shock and disbelief at what she had witnessed the Accused doing. They subsequently told Dr Gerald Tan ("Gerald"), one of the Accused's partners at Life Source, about what they saw. To protect the victim from a possible recurrence, Gerald told him not to be sedated when he was about to undergo a second liposuction procedure one month later.

DAC 919813–14/2014 and DAC 919037–38/2014

11 The remaining four charges involving s 354(1) of the PC (DAC 919813–14/2014) and s 328 of the PC (DAC 919037–38/2014) allegedly took place on 5 and 6 July 2013, after the victim had undergone the second liposuction during the day at Life Source on 5 July 2013. The Accused had booked a room at the hotel for the victim to recuperate in after the second liposuction. He stayed in the room together with the victim for two nights. The Prosecution's case was that the Accused had sedated the victim with the intent of outraging his modesty. The victim testified that he did not want to be sedated and had asked the Accused to go home. He indicated that he would be fine by himself at the hotel. The Accused however insisted on staying the night and persisted in sedating the victim.

12 The victim was sedated and asleep in the hotel room on both occasions when the photographs[1] were taken by the Accused using his mobile phone. The Accused had removed the victim's shorts and underwear in order to take these pictures. In some of the photographs, he had touched and handled the victim's penis while the victim was unconscious and sedated.

13 The Prosecution's case was that even in the photographs where the Accused's hands were not captured, the Accused would have had to manipulate the victim's penis physically in order to take these photographs which showed the victim's penis in various different positions. It was submitted that the photographs could not have been taken for clinical purposes to prepare for possible surgery to correct the victim's curved penis ("penile curvature correction"). The majority of the photographs did not show any penis curvature and would not serve a clinical purpose because of the position the victim was in when the photographs were taken.

14 The Prosecution's expert witness was Assoc Prof Lim Thiam Chye ("Prof Lim"), who testified that in order to properly document a curved penis, the patient would have to be standing up and not lying down. Prof Lim testified that the photographs would not inform how a curvature could be treated. The Defence's expert witness, Dr Chew Khek Kah ("Dr Chew") agreed with Prof Lim. Dr Chew also stated that only two photographs[2] showed some evidence of the penis being curved.

15 It was also submitted that the photographs were not taken for clinical purposes as they were taken without the victim's knowledge and when he was

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[1] Exhibit P9.

[2] Exhibit P9-11 and P9-16

sedated. In order to take the photographs, the Accused had to physically remove the victim's shorts and underwear first and then clothe the victim again. The Accused did not disclose the fact that he had photographed the victim or show the victim the photographs taken. The Accused also did not use any gloves when handling the victim's genitals on both dates.

16 The Prosecution also refuted the Defence's claim that the victim had consented to a penile augmentation that was to be performed by the Accused by sending him the WhatsApp message.[3] It was submitted that the WhatsApp message lacked context and could not amount to "informed consent" for a penis augmentation or to justify the taking of the photographs as "before" or "pre-procedure" pictures.

17 Prof Lim rendered an expert report[4] stating that the sedation of patients should be done judiciously and that the patient should be monitored closely. In his report, Prof Lim also stated that performing sedation in a non-hospital environment was not proper or usual practice. Prof Lim testified that it was unsafe to sedate a patient without proper resuscitation equipment. Furthermore, he thought that oral analgesics would suffice to deal with any complaint of pain.

18 Gerald had similarly testified that the usual practice of treating pain after a liposuction was to prescribe painkillers in tablet form. It was submitted that since sedation was unnecessary and medically improper, the conduct of the Accused gave rise to an irresistible inference that he had intended to molest the victim after he sedated him on both dates.

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[3] Exhibit P34.

[4] Exhibit P25.

The Defence's case

19 The Accused denied all the charges and maintained that he had never touched the victim inappropriately. In relation to the first charge, it was submitted that it would not have been possible for the Accused to have outraged the victim's modesty while concurrently instructing [S] on how to administer filler injections into the victim's nose. It was also highlighted that [S] who was present throughout did not witness such an incident.

20 The Defence's case was that the victim had consented to a penile augmentation that was to be performed by the Accused, as evidenced by the WhatsApp message the victim sent, which read: "Then I have No choice But to surrender my little curved brother for injection".

21 The Accused testified that in early 2013, the victim indicated his interest in using fat extracted from liposuction to be injected into his penis in order to augment it. However, the Accused claimed that he could not perform the penis augmentation after the first liposuction because the victim did not want [S] to know about it. The Accused testified that there were further discussions about the victim's interest in augmenting his penis and the victim thereafter sent the WhatsApp message to him on 23 June 2013 at about 7.03am. The Accused stated that he had considered the message as "informed consent" for a penis augmentation and had taken the photographs for clinical purposes before conducting the penis augmentation procedure.

The District Judge's findings

22 The District Judge's findings are set out in his grounds of decision in *Public Prosecutor v Tan Kok Leong* [2016] SGDC 327 ("the GD"). It is

unnecessary to recite his reasons in full. Only his key findings are outlined below.

DAC 919812/2014 (the first charge)

23 In respect of the first charge, the District Judge opined that the Prosecution's case rested on the evidence of Peggy and Chai Pin. He noted that Chai Pin conceded in cross-examination that the drape was not transparent and that she could not see the Accused's hand underneath the drape at the material time and did not know if his hand was gloved. As for Peggy, she conceded that she did not see the Accused's hand touching the victim's sexual organ and agreed that she only saw the Accused's hand near the victim's penile area. She also conceded that she could not see what the Accused's hand was doing. The District Judge therefore formed the view that the evidence "clearly showed that it would not have been possible for Peggy and Chai Pin to see the Accused's hand under the drape let alone touching the victim inappropriately".

24 In addition, the District Judge found that both Peggy and Chai Pin were merely speculating as to the whereabouts of the Accused's hand and had made certain assumptions as to what they had perceived. The fact that they had discussed their observations would likely have reinforced their perception of the events that transpired. Significantly, no one else in the room had witnessed this episode. He opined that it would be unsafe to rely on the observations of Peggy and Chan Pin in the absence of any other evidence pointing to the Accused's guilt. He concluded that the Prosecution had failed to prove its case on the first charge and accordingly granted a discharge amounting to acquittal.

DAC 919813–14/2014 and DAC 919037–38/2014

25 Turning to the remaining charges, the District Judge first highlighted two key issues for consideration. First, was there informed consent? Next, did the photographs serve a clinical purpose?

26 With respect to the first issue, the District Judge noted that the WhatsApp message was not documented in any case file and the photographs were also not kept in any case file or clinic record. Taking the cue from both expert witnesses for the Prosecution and the Defence, the District Judge accepted that the WhatsApp message could not amount to informed consent for a medical procedure. Being an experienced medical practitioner, the Accused would have known that "informed consent" is a fairly detailed process which could not, by any stretch of imagination, be reduced to a single WhatsApp message.

27 As for the second issue, the District Judge found that the Accused's evidence in this regard was "severely undermined by the objective evidence and the evidence of the other medical witnesses who testified". It was not disputed that the bulk of the photographs did not show any penis curvature. The Accused had also used his bare hands to hold the victim's penis whilst taking the photographs on both days. He claimed that he had forgotten to bring along his surgical gloves.

28 It was also noted that the photographs were taken surreptitiously without the victim's knowledge. The Accused had gone through an extraordinary amount of trouble to take the photographs as he would have had to remove the victim's shorts and underwear, take the photographs, and then put the victim's clothing back on, all without any help from his assistants or the victim. If indeed the photographs were taken for clinical purposes, the Accused should have at

least disclosed this to the victim soon after taking them and discussed treatment options with him. It was not disputed that no such discussion took place.

29 The District Judge further found the Accused's evidence as to when he had disclosed the taking of the photographs to the victim to be internally inconsistent with several different versions offered to the court. In contrast, the victim's evidence in this regard was consistent. The victim stated he was never shown the photographs by the Accused, or even told that the photographs had been taken until Gerald showed them to him in Penang. He was prompt in his reaction to file a police report thereafter.

30 The District Judge saw no reason to disbelieve the evidence of the victim. He had no cause to lie or fabricate evidence against the Accused, whose evidence in court was at variance with his earlier statements. Quite apart from the inconsistencies relating to his disclosure of the photographs to the victim, the Accused had claimed in court that the victim had expressed his interest in penis augmentation as early as April or May 2013. However, in his police statements,[5] the Accused had stated that the topic of the victim's curved penis only arose after the first liposuction in June 2013.

31 On the totality of the evidence adduced, the District Judge found that the Accused was not a credible witness. He was satisfied that the Prosecution had proved the charges against the Accused beyond reasonable doubt. Accordingly, he found the Accused guilty and convicted him on DAC 919813/2014 and DAC 919814/2014.

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[5] Exhibit P1, para 6 and Exhibit P3, Q4 and A4.

32 On the evidence adduced, the District Judge was satisfied that there was absolutely no need for the Accused to sedate the victim at the hotel on 5 and 6 July 2013 if his concern was indeed to alleviate the pain suffered by the victim. The objective medical evidence from Prof Lim suggested that it was grossly inappropriate for the Accused to sedate the victim in a hotel room. In his expert report,[6] Prof Lim stated that the sedation of patients in any form should be done judiciously and that the patient should be monitored closely. He maintained that it was improper to sedate a patient in a non-clinical environment such as a hotel room as the patient would need to be properly monitored failing which the patient might become apnoeic. Prof Lim added that it was unsafe to sedate a patient without proper resuscitation equipment. The victim had testified that he woke up to find the Accused sleeping next to him in the early hours of 6 July 2013. This clearly indicated that the Accused could not have been monitoring the victim. In contrast, in respect of the first liposuction on 6 June 2013, there was a clinical record[7] which showed proper documentation and close monitoring of the victim's vital signs.

33 The District Judge concluded that the evidence adduced clearly showed that sedation was both unwarranted and improper in the circumstances. He was drawn to infer that the Accused had sedated the victim on both occasions with the intention of molesting the victim. The Accused was accordingly found guilty and convicted on both DAC 919037/2014 and DAC 919038/2014.

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[6] Exhibit P25, pp 2-3.

[7] Exhibit P21.

The District Judge's decision on sentence

34 The Prosecution urged the District Judge to impose a sentence of 20 months' imprisonment for each of the offences under s 354(1) of the PC and four years' imprisonment for each of the offences under s 328 of the PC on account of the aggravating circumstances. The District Judge was urged to impose a deterrent global sentence of at least five years and eight months' imprisonment.

35 In mitigation, it was submitted that the Accused was a first offender. He had been a medical practitioner for more than 25 years and had not received any complaints from any of his patients or the Singapore Medical Council ("SMC"). His contributions to the field of aesthetic medicine, his good character and his charity work were highlighted in his favour. It was further submitted that the photographs taken of the victim were not meant for circulation and were not in fact circulated.

36 The District Judge agreed with the Prosecution that general deterrence would be the predominant sentencing consideration for both sets of offences. In respect of the offences under s 354(1) of the PC, he found that the offences were premeditated. The Accused booked the hotel room even before the liposuction was carried out, deliberately leaving an intravenous plug in the victim's arm in order to administer Dormicum to him later in the hotel room, notwithstanding that the victim had declined sedation and would not need to be sedated. The Accused and the victim were in a doctor-patient relationship. The Accused was also regarded as a mentor by the victim. He had abused his position by exploiting the victim's trust in him. At the time of the offences, the victim was vulnerable as a result of being sedated. The Accused took advantage of the victim while he was in this unconscious state.

37 It was apparent from the evidence adduced that the Accused had touched the victim's penis on multiple occasions over two consecutive nights. The Accused had physically manipulated the victim's penis and proceeded to take photographs of the victim without his knowledge or consent. Some of these photographs showed the Accused touching or holding the victim's penis with his bare hands. The victim was left none the wiser and would have remained oblivious to what was done to him if the offences had not come to light. The Accused showed no remorse for committing the offences. In the course of the trial, he had subjected the victim to a series of scandalous allegations ranging from being untruthful about his university degree to having sexual liaisons outside of his relationship with his then fiancée, resulting in the victim possibly contracting urethral ulcers. The victim said that he had suffered financially and psychologically as a result of the incident. The victim also stated that the stress arising from the ensuing proceedings took a toll on his relationship with his then fiancée.

38 Turning to the offences under s 328 of the PC, the District Judge noted that an offence under s 328 of the PC was a serious one carrying a mandatory imprisonment sentence which may extend to ten years. Such offences have generally attracted lengthy custodial sentences. The District Judge was conscious once again of the aggravating factors. The Accused had abused the victim's trust in him by opting to sedate the victim intravenously in the hotel room. Prof Lim had testified that it was improper and dangerous to sedate a patient in a hotel room as it was impossible to properly monitor him. Prof Lim had affirmed that the patient undergoing sedation would need to be monitored very closely as there is always a danger of apnoea and that all sedation procedures ideally should be performed in an adequately-equipped medical facility with proper monitoring equipment and trained personnel available for any emergency related to the sedation.

39 With his considerable experience, the Accused would have known that sedating a patient outside of the hospital environment without proper monitoring or resuscitation equipment was both inappropriate and extremely dangerous. Post-sedation, the Accused had proceeded to single-handedly undress the victim, take photographs of his penis and thereafter dress the victim up again before repeating the same procedure on the following night. The Accused appeared to have had scant regard for the victim's safety and well-being.

40 In the result, the Accused was sentenced to 12 months' imprisonment per charge for the offences under s 354(1) of the PC, and 30 months' imprisonment per charge for the offences under s 328 of the PC. Having regard to the one-transaction rule and the totality principle, and drawing guidance from *Mohamed Shouffee Bin Adam v Public Prosecutor* [2014] 2 SLR 998, the District Judge ordered two of the sentences (one from each type of offence) to run consecutively in order to appropriately address the Accused's offending conduct and overall culpability. The result was an aggregate sentence of 42 months' imprisonment.

The appeal

The Prosecution's arguments

41 In relation to the first charge, the Prosecution highlighted on appeal that the Accused had merely put forward a bare denial that his hand was beneath the drape. As the District Judge had accepted the evidence of Peggy and Chai Pin that he did place his hand beneath the drape, it would follow that he did not accept the Accused's bare denial. The District Judge's decision to acquit on this charge was premised on his reasoning that Peggy and Chai Pin could not have

seen where the Accused had placed his hand when it was under the drape, or what his hand was actually doing under the drape.

42 It was submitted that the District Judge had erred in failing to consider that there was no legitimate purpose whatsoever for the Accused's hand to be under the drape in the first place, given that the liposuction was being performed on the victim's exposed abdomen. Further, the Accused had claimed in his statement to the police that he had told the victim about the latter's curved penis after the first liposuction. The only way he could have known about the victim's curved penis was if he had touched it during the first liposuction. There were also good reasons why the other persons present then, namely [S], Dr Kavin Tan ("Kavin") and his clinic assistant Jodie Wah ("Jodie"), did not witness what Peggy and Chai Pin said they saw the Accused doing. The Prosecution submitted that a sentence of at least 12 months' imprisonment would be appropriate in respect of the first charge should the acquittal be overturned.

43 As for the Accused's appeal against conviction on the remaining charges, the Prosecution maintained that the District Judge had correctly rejected the Accused's claim that the victim had consented to the acts which formed the subject matter of the charges under s 354(1) of the PC (DAC 919813/2014 and DAC 919814/2014) purportedly as preparation for a "secret" penile curvature correction. Expert evidence confirmed that the photographs of the victim's exposed penis taken by the Accused served no clinical purpose. The photographs provided clear and objective proof of the *actus reus* of these charges as well as the charges under s 328 of the PC (DAC 919037/2014 and DAC 919038/2014). The Accused never informed the victim about them until they were shown to the latter by Gerald, who fortuitously came upon the photographs in the Accused's phone.

44 The Prosecution submitted that the District Judge was also correct in rejecting the Accused's claim that he had administered the sedative for pain relief after the second liposuction upon the victim's request. The Accused had sedated the victim with the intention of molesting him while he was unconscious. Expert evidence again confirmed that sedation was unnecessary for pain relief.

45 Finally, and as for sentence, the Prosecution submitted that the sentences were all manifestly inadequate as the District Judge had accorded insufficient weight to the numerous aggravating factors. Thus, for the charges under s 354(1) of the PC, the sentence ought to be pegged at 20 months' imprisonment, and for the charges under s 328 of the PC, the suggested sentence was 48 months' imprisonment. Globally, with two sentences running consecutively, this would call for a sentence of 68 months' imprisonment.

The Accused's arguments

46 The Accused contended, in relation to the first charge, that the District Judge had not erred in failing to find that he had touched the victim's genitals. Kavin and Jodie were present during the first liposuction but testified that they did not see the Accused touch the victim's genital area under the drape. The District Judge was entitled to conclude that it was unsafe to rely on the evidence of Peggy and Chai Pin as they could not see what his hand was doing under the drape, let alone whether he was touching the victim inappropriately without gloves on. It was also submitted that Prof Lim's assessment was wrongly influenced by what the Investigation Officer, SI Mohammad Fareed ("SI Fareed"), had included in his letter requesting for an independent expert

opinion, wherein he mentioned the "squeezing and fondling and jerking" of the victim's penis.[8]

47 As for the appeal against conviction, it was submitted that the District Judge had failed to give due consideration to the evidence of the Defence witnesses (including Kavin) and had instead erroneously found the victim's evidence to be unusually convincing and credible. Further, the District Judge had also erred in failing to consider the fact that the two medical experts did not conclusively state that the photographs taken by the Accused were definitely not for clinical purposes. The District Judge wrongly accorded substantial weight to the inconsistencies in the Accused's long statements to the police. He maintained that the evidence did not show that he had the *mens rea* to commit the offences.

48 Although the Accused had also appealed against his sentences, the submissions on appeal centred mainly on a plea for the sentences to remain undisturbed if the court was not minded to allow the appeal against conviction. It was submitted that the Accused, being a well-known doctor, would stand to lose a lot from a conviction and any sentence would have severely damning effects.

My decision

49 The appeals against the acquittal on the first charge and the respective convictions essentially sought to challenge the District Judge's findings of fact. The approach that an appellate court should adopt in evaluating a trial judge's

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[8] Exhibit P23, para 2.

findings of fact is well-settled. The court will not readily reverse findings of fact, unless the findings are plainly wrong or against the weight of the evidence.

50 Having reviewed the evidence and the submissions put forth on appeal, I was satisfied that the District Judge did not err in concluding that the Accused's guilt had been proved beyond reasonable doubt in respect of the four charges on which he convicted the Accused. Put simply, I saw no reason to doubt the veracity of the victim's evidence. Conversely, I was unable to see any credible arguments in support of the Accused's defence.

51 In this regard, there were four broad aspects of the evidence which had to be considered in totality: first, whether the victim had consented to the Accused performing the penile curvature correction; second, whether he had consented to "before" or "pre-procedure" photographs of his penis being taken while he was sedated; third, why the Accused had sedated the victim twice in a hotel room over two consecutive days after the second liposuction; and fourth, whether there was any clinical purpose in taking the photographs of the victim and manipulating the victim's penis in the manner depicted in the photographs.

52 In delivering my brief oral grounds, I observed that all that had taken place could not possibly be explained away as being part of a series of clinical procedures and that the victim had somehow consented to the acts in question. Where the District Judge had plainly erred, with respect, was in concluding that it would be unsafe to convict the Accused on the first charge. I shall elaborate on my reasons, beginning with the appeal against acquittal on the first charge.

The appeal against acquittal on the first charge

53 In concluding that there was reasonable doubt in relation to the first charge, the District Judge's main reason was that it would not have been

possible for Peggy and Chai Pin to see the Accused's hand under the drape, let alone touching the victim inappropriately. He felt that they were speculating as to the whereabouts of the Accused's hand and had made certain assumptions as to what they had perceived at the material time.

54 With respect, had the evidence been correctly evaluated, the District Judge ought to have concluded that the charge was proved beyond reasonable doubt. There was no plausible reason why the Accused's hand would have had to be underneath the drape around the victim's genitals while performing a liposuction at the abdominal area, and there was no basis to disbelieve the two eyewitnesses (Peggy and Chai Pin) who said they saw him place his hand underneath the drape. The inferences they arrived at were not based on what they actually *saw* the Accused doing under the drape, but these were plain and obvious inferences due to the brazen nature of the Accused's conduct. Moreover, the evidence of their shock and revulsion (particularly Peggy's) made it clear beyond doubt that they vehemently disapproved of what the Accused was obviously doing with such unbelievably blatant boldness within close proximity to both of them. It was almost as if he felt their presence was irrelevant to him and they were non-existent in his eyes.

55 In his defence, the Accused merely proffered a bare denial. He maintained that he had not placed his hand underneath the drape which covered the victim's genitals. Implicit in this was the suggestion that Peggy and Chai Pin must have conspired to fabricate the evidence against him. After all, no one else present then had witnessed him reaching underneath the drape. As a consequence, he made no effort to explain why he might have needed to place his hand underneath the drape and touch the victim's genitals.

56 The District Judge made no finding that Peggy and Chai Pin bore any ill will or grudge against the Accused. Similarly, he made no finding that they had conspired to fabricate evidence. Most crucially, it is evident from the GD that he believed them when they said that they saw the Accused place his hand underneath the drape. Yet, he found that they were speculating about where his hand was underneath the drape since the drape was not transparent. With great respect, the District Judge erred in this regard. There is a world of difference between unfair and unfounded speculation and irresistible inference, bearing in mind the context of the Accused's conduct.

57 To my mind, the context was clear: this was a liposuction procedure which involved removal of fat from the victim's abdomen. There was no reason why the procedure might conceivably even require the Accused to place his hand underneath the drape around the victim's genital region. At any rate, no evidence of any vaguely credible reason (*eg*, needing to adjust the drape or to shift part of the victim's lower torso on the operating table) was adduced. Moreover, the evidence of Peggy and Chai Pin as to what they saw was mutually corroborated: the Accused's hand was seen *moving up and down* underneath the drape, and not just for a fleeting moment. It was clearly not a case of inadvertent or accidental contact. Even if one of them might have influenced the other's recollection of what they had seen through subsequent discussion, this would still leave at least one of them who could give direct evidence of having witnessed this occurrence.

58 From their accounts, it was both painfully and dreadfully obvious what the Accused was doing. Recoiling with disgust and sheer disbelief, Peggy walked out of the room in anger. She "didn't want to see" more of what was going on. Peggy told Chai Pin that she walked away because she "couldn't take it". This immediate and spontaneous reaction on Peggy's part spoke volumes.

Inexplicably, the District Judge did not make any reference at all to these key aspects of the evidence in the GD, suggesting that perhaps he had deemed it insufficiently probative.

59 Peggy and Chai Pin's subsequent discussion with Gerald reflected their deep discomfort and distress. Peggy told him that she saw the Accused using his hands to touch the victim's private parts during the procedure. Both Peggy and Chai Pin said they saw "movements under the drape at the private part area". Even though he felt at the time that there was "not enough evidence or proof", Gerald saw no reason to disbelieve them. To protect the victim, he in fact advised the victim not to allow himself to be sedated during the second liposuction. Gerald also told the Accused not to sedate the victim this time round and subsequently refused to sedate the latter. As a result, a quarrel broke out between the Accused and Gerald. The Accused was described as having lost his temper and thrown things about in the room adjacent to the operating room. Curiously, the District Judge again appeared to have omitted to consider this aspect of the evidence or to have deemed it irrelevant.

60 To begin with, therefore, the Accused had no reason to need to reach underneath the drape. The evidence clearly showed that he had touched the victim's genitals. The irresistible inference to be drawn then was that since the Accused had not touched the victim's genitals as part of any clinical procedure, it could only have been done with a perverse intent to outrage the victim's modesty while the victim was lying helpless and sedated. It might seem incredible and almost bizarre at first blush that the Accused would have acted with such audacious nonchalance while others were present in the room, but it would appear that he was brash enough to treat the others (especially Peggy and Chai Pin) with complete disdain, presumably in the belief that they would not

have the temerity to question him. In this respect, he was proven right, since they decided not to confront him at all about this incident.

61 I was also in agreement with the Prosecution's submission as to why no one else present in the operating room actually saw what the Accused did. [S] was focusing on performing a delicate nose filler injection on the victim at the time and concentrating her attention on the task. The entire procedure would take 10 to 15 minutes and Kavin and Jodie were similarly concentrating on the procedure and assisting [S]. Not surprisingly then, all three of them said that they did not witness what Peggy and Chai Pin said they saw.

62 A strongly corroborative element was also to be found in the further statement given by the Accused to the police. He said that he had "communicated with [the victim] that he has a curved penis" after the first liposuction. He said this in order to explain what he intended to do with the photographs and why he did not inform the victim beforehand of his intention to take the photographs. I agreed with the Prosecution's submission that the irresistible inference from his voluntary admission (*ie*, of when he came to know of the victim's curved penis) was that he had touched the victim's penis during the first liposuction.

63 As a further observation, I would add that the Defence's criticism of SI Fareed's request letter having improperly influenced Prof Lim's assessment was nothing more than a red herring. SI Fareed's request letter did mention the "squeezing and fondling and jerking" of the victim's penis, but Prof Lim himself said during cross-examination on 22 January 2016 that he was not influenced by SI Fareed's account in stating that there was no reason to touch or examine the penis during a liposuction procedure. He explained that his statement was "purely clinical". Prof Lim did subsequently explain that his conclusion that

there was "inappropriate manipulation" of the victim's penis was based on the information given to him in SI Fareed's request letter which mentioned "squeezing and fondling and jerking" of the victim's penis, but it was evident from his earlier clarification that his "purely clinical" opinion remained valid as these were two distinct matters.

64 Drawing together all the relevant strands of evidence, I could not but conclude that the Accused had absolutely no legitimate reason or any plausible explanation for his actions. The evidence plainly and cogently showed that he had committed the act of outrage of modesty in the course of the first liposuction. I therefore allowed the Prosecution's appeal and convicted him on the first charge.

The appeal against conviction

Did the victim consent to the penile curvature correction?

65 First, the victim's clear and unequivocal evidence was that he had never consented to the Accused performing a procedure to correct his curved penis. There was hardly anything to support the Accused's claims that consent (much less informed consent) had been given. Apart from his mere say-so, all he could point to was the WhatsApp message where the victim mentioned, in what would appear to be a flippant and facetious tone, that he had "[n]o choice [b]ut to surrender [his] little curved brother for injection". The victim said this was intended as a joke to get the Accused off his back as the Accused had been "very persistent" in persuading him to do something about his curved penis. This explanation was credible. The WhatsApp message could not possibly constitute valid consent. Regrettably, the Accused had not retained any of the earlier messages in this chain; for reasons best known to himself, he had decided to delete them.

66 The crucial requirement for informed consent is that the patient "shall be made aware of the benefits, risks and possible complications of the procedure and any alternatives available to him" (SMC Ethical Code and Ethics Guidelines at para 4.2.2). This was reflected in Life Source's own "Client Consent for Assisted Lipolysis/Liposculpture" form.[9] There was nothing whatsoever to show that anything had been investigated, examined, discussed, documented or explained. Nor was there anything to show what exactly the victim had allegedly been informed of and consented to.

67 Given the complete lack of context to the WhatsApp message, its relevance and meaning were hopelessly unclear. One thing which was clear, however, was that, contrary to the Accused's assertions, this could not possibly amount to informed consent. In this connection, the District Judge correctly found that there was unanimous agreement among the Prosecution and Defence expert witnesses that the WhatsApp message could not amount to informed consent for a medical procedure. In the words of the District Judge, informed consent could not, by any stretch of imagination, be reduced to a single WhatsApp message.

Did the victim consent to having photographs of his penis taken while he was sedated?

68 It was also pertinent to note that the victim had never consented to have photographs taken of his penis in anticipation of any penile curvature correction. The Accused claimed that the photographs were taken to document the "before" or "pre-procedure" state of the victim's penis. But it was not seriously disputed that the Accused did not inform the victim beforehand that he would be taking

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[9] Exhibit P21, pp 5-6.

any such photographs while he was under sedation, much less expressly seek his consent to do so. As the various photographs revealed, he did not use any gloves to handle the victim's penis.

69 Ultimately, after taking the photographs, the Accused did not tell the victim about them. In his oral testimony, the Accused claimed that the victim had learnt about the photographs prior to August 2013. The District Judge correctly noted the various differing accounts. In his statement to the police,[10] the Accused admitted that he did not recall having informed the victim at all or having shown him the photographs. He claimed instead that the victim somehow chanced upon them while scrolling through his phone during a trip to Taiwan in July 2013. In the Case for the Defence, a different explanation emerged. The Accused said that he had *shown* the victim the photographs during breakfast on 6 July 2013. A third version was put forward at trial, when the Accused said that the victim came across the photographs on his phone while they were in Penang on 23 July 2013. The Accused also appeared to suggest that the same might have happened in Ho Chi Minh City on 8 August 2013.

70 Evidently, the Accused was conveniently changing his explanations as he went along. Even in his further statement to the police,[11] he was internally inconsistent, maintaining initially that the victim was "fully aware" that he had taken the photographs before suggesting that he only "felt that he [was] aware", and eventually claiming that the victim was only "fully aware" on 23 July 2013 when they were in Penang.

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[10] Exhibit P1.

[11] Exhibit P3.

The charges under s 328 of the PC – why was the victim sedated twice in a hotel room?

71 The *actus reus* of the charges under s 328 of the PC was undisputed. The victim was sedated on two consecutive days after the second liposuction. This was ostensibly done on account of the Accused insisting that he needed to help relieve the victim's pain after the procedure. To a layperson, this might have seemed reasonable, reflecting devoted care and concern from an experienced medical practitioner. However, four critical considerations stood out to undermine this possibility. First, the uncontroverted medical expert evidence was that painkillers would have sufficed for pain relief. Second, the victim had initially declined sedation. Third, the intravenous sedation was not only done after the procedure on 5 July 2013, but also the day after on 6 July 2013. Fourth, the sedation was done in a hotel room.

72 These pieces of objective evidence taken together cried out for a credible and cogent explanation – why was the victim sedated over two consecutive days in a hotel room despite having declined sedation? There were absolutely no explanations worthy of credit offered by the Accused. The inescapable conclusion was that there was no need for him to sedate the victim if his concern was indeed to alleviate pain. As Prof Lim confirmed, ordinary oral analgesics would have sufficed for this purpose. This then begged the question why the Accused was so insistent on sedating the victim despite the victim's initial resistance, and why it was necessary at all to sedate the victim not just after the second liposuction itself (*ie*, on 5 July 2013) but also a second time the day after that (*ie*, on 6 July 2013). After all, the victim had not complained of experiencing further acute pain and had not asked to be sedated again. Indeed, according to the victim's testimony concerning the events at the hotel on 5 July

2013, the Accused had blithely ignored him and "grabbed [his] hand" before forcefully sedating him.

73 The singular most controversial aspect was why the Accused had to book a hotel room for the victim to rest after the second liposuction and then carry out the intravenous sedation two days in a row. The District Judge rightly rejected his attempted explanations. They were feeble afterthoughts which rang hollow when subjected to objective scrutiny. As the District Judge found, it was "grossly inappropriate" for the sedation to have taken place in the hotel room, without any proper monitoring equipment in case the patient became apnoeic and without trained personnel available to deal with any emergency situations or complications that might arise. It was suggested by the Defence that since the second liposuction had already been carried out and the subsequent sedation was only meant to provide pain relief, the sedation guidelines would not apply. This argument was fallacious. The risks remained the same. I fully concurred with the District Judge's unimpeachable conclusion that the evidence adduced clearly showed that sedation was both unwarranted and improper in the circumstances.

74 The only reason why all this had transpired was because the Accused had formed the intent to outrage the modesty of the victim and had planned to do so while the victim was sedated. He set up the opportunity for himself under the pretence of providing medical care in a hotel room. It was all no more than a charade since the Accused had wilfully disregarded the significant risks posed by sedation to the patient, and more so where the sedation had taken place in a non-hospital environment. It was not seriously disputed that such conduct was improper and hazardous, yet it hardly seemed to have mattered to the Accused. Unfortunately, his concerns were obviously not directed to the victim's well-

being. When the victim woke up on the morning of 6 July 2013, he found the Accused asleep beside him.

75 As for having allegedly brought along his "call bag" to the hotel room to deal with any emergency situation, this was a wholly self-serving claim which was unsubstantiated. In any event, I agreed with the Prosecution that he would not have brought such a well-stocked "call bag" but omitted to bring gloves.

Was there any clinical purpose for the photographs?

76 As with the point on the professed need for the victim to be sedated, the objective medical evidence was once again resoundingly clear. The photographs were incontrovertibly not taken for any professional clinical purpose. By the Accused's own admission in his further statement to the police,[12] the first set of photographs he took on 5 July 2013 did not even show any curvature of the penis. The District Judge properly took cognisance of the fact that the bulk of the photographs did not show any penile curvature. A few of them also needlessly showed the victim's face with his exposed penis, breaching para 4.2.1 of the SMC Ethical Code and Ethics Guidelines which states that patients shall "be offered the right to privacy and dignity".

77 As the District Judge rightly observed, the Accused, in order to take the photographs, expended a considerable amount of effort (apart from sedating the victim) to first remove the victim's clothing and subsequently put them back on while the victim remained unconscious and sedated. If indeed the victim had given his consent to the penile curvature correction, and photographs of his penis were genuinely needed for some legitimate clinical purpose, one would

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[12] Exhibit P3.

imagine that it would have been much easier to simply ask the victim to disrobe and have the necessary photographs taken while he was conscious and standing up. Moreover, although not entirely clear, the medical expert evidence from Prof Lim and Dr Chew seemed to be that penile curvature would be best observed with the penis in an erect position and when the patient was standing.

78 There was also no reasonable basis for the Accused's fanciful claim that by pulling back the victim's foreskin to expose the victim's glans using his bare hand in two of the photographs,[13] he was attempting to check and exclude the possibility of urethral ulcers. Prof Lim and Dr Chew both stated clearly that gloves would have been required for this purpose, but no such gloves were donned by the Accused. Prof Lim further opined that documenting such ulcers would involve a video endoscopy by passing a urethral scope into the penile shaft extending up into the bladder.

79 To my mind, and in line with the District Judge's findings, there were only two reasonable inferences. First, it was uncontroversial that the Accused went beyond merely looking at the victim's exposed penis. The photographs revealed that he had touched the victim's penis and manipulated it into various different positions. The medical experts appeared to have opined that the Accused's manipulation of the victim's penis as depicted in the photographs would not have enabled him to establish if the victim had a curved penis. Second, it was clear that the Accused had taken the photographs for his own continued viewing pleasure rather than as a means of professionally preserving a visual record in preparation for a planned penile curvature correction. If the victim had indeed consented to have the photographs taken for the purpose of

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[13] Exhibit P9-14 and P9-18.

such a record, it was inconceivable that the Accused did not immediately proceed to show them to the victim and then properly document them, when he could easily have done so, even keeping in mind the ostensible need for him to be discreet about the matter.

80 Beyond the photographs that were captured and retained in his mobile phone, it would stand to reason that the Accused must also have had other physical contact with the victim over the durations when the victim remained sedated on both days. It would be ill-advised of me to venture any further into the realm of conjecture to speculate what else might have possibly taken place when the victim was sedated and for how long. But even without the aid of a vivid imagination, the general inferences from the available objective evidence were irresistibly clear and irretrievably damning.

Conclusion on the appeal against conviction and additional observations

81 The respective *actus rei* for the charges under ss 354(1) and 328 of the PC were not in dispute. The victim was sedated when the offences were committed on him, and he had been misled about the true purpose of sedation. He could not be expected to have given any evidence, let alone "unusually convincing" evidence, about what had transpired while he was completely unconscious. The focus in this case therefore remained squarely on why the Accused did what he had done and whether the evidence in its totality had raised any reasonable doubt.

82 All the evidence pointed irresistibly towards the Accused having the requisite *mens rea* to commit the offences. The District Judge found that there was simply no reason why the victim would fabricate evidence to falsely incriminate the Accused. Equally, there were no reasons for the material Prosecution witnesses to harbour any ill will against the Accused and malign

him. In contrast, the District Judge found the Accused's evidence to be "inconsistent both internally and with the objective evidence". I was entirely in agreement with these findings. For the reasons set out above (at [65] to [80]), I had no hesitation affirming the District Judge's decision to convict the Accused on the charges.

83 I noted that the victim had testified that the Accused was the one who had initiated discussion over the topic of the former's curved penis. The Accused had sent him a message saying that he "couldn't stand" the victim's condition. The victim had also maintained that the Accused was "very persistent" about wanting the procedure done. Indeed, both from the victim's testimony and the way the Accused ran his defence, it would seem that the latter's obsessive (and excessive) curiosity and fascination with the victim's curved penis undergirded his reliance on the "clinical procedure" defence. However, like the District Judge, I failed to see how this brought his case any further. In any event, it would not have presented a very different scenario from *Zeng Guoyuan v Public Prosecutor* [1997] 2 SLR(R) 556 ("*Zeng Guoyuan*"), where the appellant's guise of playing doctor found no favour with the trial judge and the High Court on appeal.

84 Even assuming, *arguendo*, that the Accused was exhibiting a morbidly obsessive curiosity over the victim's curved penis and making it his personal quest to find some way to correct it, this did not mean that he could not also have simultaneously harboured a perverse urge and intent to outrage the victim's modesty under the pretext of checking and manipulating the victim's penis. As I had intimated above (at [74]), the Accused's motives in sedating the victim on two separate days in the hotel room obviously had nothing to do with professional care or genuine concern for the victim's well-being. He was merely keeping up a carefully-orchestrated charade.

The appeals against sentence

85 The Prosecution's appeal against the sentences imposed was premised largely on the manifest inadequacy of the punishment, having regard to the range of aggravating factors. The Accused in turn appealed against sentence, but at the appeal, his submissions were aimed primarily at persuading the court not to enhance the sentences if the appeal against conviction were to be dismissed.

86 The conduct of the Accused's defence at trial showed that he was completely unremorseful. His behaviour was utterly disgraceful. I need only summarise the main aggravating factors. The Accused had gravely abused his position of trust and authority as a medical professional to take advantage of his own patient, who was ostensibly also his protégé and business partner. His actions were clearly planned and premeditated. He indulged in multiple instances of skin-to-skin contact with the victim's penis when the victim was completely unconscious, at his most vulnerable and defenceless.

87 The Accused gave himself full licence to basically do whatever he pleased when the victim was under sedation, without any regard to the immense indignities that the victim was being made to suffer at his hands. He not only took numerous photographs of the victim's penis, but also deliberately captured the victim's face in the photographs. He ignored the serious and real risks in sedating the victim. He was not even awake when the victim woke up to find him lying on the bed beside him on 6 July 2013. He also decided that attack was the best defence, and chose to instruct counsel to attack the victim's character and cast doubt on the credibility of the other witnesses.

88 I was unable to find any significant mitigating factor in favour of the Accused apart from the fact that he had no prior convictions. The fact that the photographs were not circulated was not mitigating. If anything, it would have been aggravating had they been circulated. All considered, the sentences imposed were certainly not manifestly excessive. Rather I found that they were in fact very much on the low side. I agreed with the Prosecution that the individual sentences ought to be enhanced to more appropriately reflect the gravity and egregiousness of the offending conduct. The sentences had to have a palpable deterrent effect.

89 The benchmark sentence for offences under s 354 of the PC involving intrusion of the victim's private parts or sexual organs is nine months' imprisonment and three strokes of the cane. This was clearly laid down in *Chandresh Patel v Public Prosecutor* [1995] 1 CLAS News 323 and affirmed in *Public Prosecutor v Chow Yee Sze* [2011] 1 SLR 481 (at [9]) as a "well-established sentencing benchmark". Where there are other aggravating circumstances, the courts have not hesitated to scale up the imprisonment terms beyond nine months. In a few recent cases cited by the Prosecution which I had dealt with on appeal (*AZP v Public Prosecutor and another appeal* Magistrate's Appeals Nos 38 and 39 of 2015; *Liew Hoo Ling v Public Prosecutor* Magistrate's Appeal No 9155 of 2016; and *Li Qingdong v Public Prosecutor* Magistrate's Appeal No 9274 of 2016) the sentences reflected the appropriate uplift, ranging from 11 to 18 months' imprisonment and two to three strokes of the cane on each charge.

90 In cases involving medical professionals, even where the facts did not reveal intrusion of the victim's sexual organs (*eg*, *Lee Siew Boon Winston v Public Prosecutor* [2015] 4 SLR 1184 (see the full judgment in *Winston Lee Siew Boon v Public Prosecutor* [2015] SGHC 186); *Public Prosecutor v Ho Ah*

Hoo Steven [2007] SGDC 162; and *Zeng Guoyuan*), a retributive element in sentencing has been taken into account alongside the need for adequate deterrence. This is largely to address the aggravating factor of abuse of trust by virtue of the offenders having taken advantage of their professional positions to commit the offences.

91 The Accused could not be caned as he was above 50 years of age. Each of the offences under s 354(1) of the PC would ordinarily have attracted caning in the exercise of the sentencing court's discretion. The need for a sufficiently deterrent and retributive sentence compelled me to impose two months' imprisonment in lieu of caning on each of the charges under s 354(1) of the PC, in the exercise of my discretion under s 325(2) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed). As outlined by Sundaresh Menon CJ in his oral grounds in *Amin bin Abdullah v Public Prosecutor* Magistrate's Appeal No 9308 of 2016, the starting point would not always be to consider a term of imprisonment in lieu of caning, but to ask if further imprisonment was warranted. There should be grounds to warrant enhancement of the existing imprisonment term having regard to the seriousness of the offence and the culpability of the offender. In the present case, I was fully satisfied that this was warranted in view of the substantial aggravating factors. I thus ordered 14 months' imprisonment for each of the three charges under s 354(1) of the PC for which he had been convicted (including the first charge).

92 In respect of the sentences for the two charges under s 328 of the PC, I was of the view that these should be calibrated at a substantially higher level of 40 months' imprisonment per charge. In arriving at this view, I drew guidance from *Teslim Khan bin Abdul Sheer v Public Prosecutor* Magistrate's Appeal No 4 of 1997, where a sentence of four years' imprisonment for a charge under s 328 of an earlier edition of the PC was ordered in respect of an offender who

had spiked the victim's juice drink with sleeping tablets and taken semi-nude photographs of her with the intention of using them to coerce her into marrying him. The offender pleaded guilty and subsequently appealed against his sentence but the appeal lapsed.

93 The original sentence of 30 months' imprisonment was, in my view, manifestly inadequate having regard to the various aggravating features highlighted by the Prosecution, which principally included the serious abuse of authority, betrayal of trust and premeditation and deliberation in administering the drugs in a non-clinical environment without any regard to the potential grave risks to the victim. The victim was completely defenceless and vulnerable.

94 Finally, with the same two imprisonment terms running consecutively, this would address the issue of the adequacy of the sentence in its totality.

Conclusion

95 For the foregoing reasons, the Accused's appeals against conviction and sentence were dismissed and the Prosecution's appeals were allowed. In the premises, I was satisfied that the District Judge had misdirected himself and plainly erred in concluding that the first charge (DAC 919812/2014) was not proved beyond reasonable doubt. I therefore reversed the order of acquittal and recorded a conviction in respect of the first charge.

96 This was a most unusual case. The Accused's conduct was highly egregious and the accumulated aggravating factors weighed heavily against him. I was of the view that the sentences imposed by the District Judge were manifestly inadequate. Accordingly, I allowed the Prosecution's appeal against sentence and enhanced the imprisonment terms, and ordered the Accused to

serve a total of 54 months' imprisonment, 12 months above what he had originally been sentenced to.

See Kee Oon
Judge

Alan Loh, Victoria Ting and Thiagesh Sukumaran (Attorney-General's Chambers) for the Public Prosecutor;
Edmond Pereira and Vickie Tan (Edmond Pereira Law Corporation) for the Accused.
