

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 89

Criminal Case No 50 of 2017

Between

Public Prosecutor

And

BMR

FOUNDATIONS OF DECISION

[Criminal Procedure and Sentencing] — [Sentencing] — [Rape]

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Public Prosecutor

v

BMR

[2018] SGHC 89

High Court — Criminal Case No 50 of 2017
Woo Bih Li J
13 February 2018

17 April 2018

Woo Bih Li J:

1 The accused, BMR, committed multiple sexual offences against his stepdaughter (“the Victim”) over a span of at least four years. These abuses started from the time the Victim was eight years old, and continued until she was 12. BMR was between the age of 32 and 36 when he committed these offences. He faced the following six charges:

- (a) one charge of outrage of modesty against a person under 14 years of age pursuant to s 354(2) of the Penal Code (Cap 224, 2008 Rev Ed) (“PC”) for stroking and patting the Victim’s breasts and touching her vagina sometime between January and November 2011 (“the 1st charge”);
- (b) one charge of sexual assault by penetration against a person under 14 years of age pursuant to s 376(2)(a) and punishable under

s 376(4)(b) of the PC for digitally penetrating the Victim sometime between January and November 2011 (“the 2nd charge”);

(c) one charge of sexual assault by penetration against a person under 14 years of age pursuant to s 376(1)(a) and punishable under s 376(4)(b) of the PC for making the Victim fellate him sometime between January and November 2011 (“the 3rd charge”);

(d) one charge of aggravated statutory rape against a person under 14 years of age pursuant to s 375(1)(b) and punishable under s 375(3)(b) of the PC for penetrating, with his penis, the vagina of the Victim when she was between eight and nine years of age, sometime between November 2011 and July 2012 (“the 4th charge”);

(e) one charge of aggravated statutory rape against a person under 14 years of age pursuant to s 375(1)(b) and punishable under s 375(3)(b) of the PC for penetrating, with his penis, the vagina of the Victim when she was ten years of age, sometime between February and March 2013 (“the 5th charge”); and

(f) one charge of aggravated statutory rape against a person under 14 years of age pursuant to s 375(1)(b) and punishable under s 375(3)(b) of the PC for penetrating, with his penis, the vagina of the Victim when she was 12 years of age, on 1 March 2015 (“the 6th charge”).

2 The Prosecution proceeded with the 4th, 5th and 6th charges, and BMR pleaded guilty to them. He admitted to the Statement of Facts (“SOF”) without qualification. I accepted his plea of guilt and convicted him on each of the 4th, 5th, and 6th charges. He also consented to having the first three charges (*ie*, the

1st, 2nd, and 3rd charges, hereafter “the TIC charges”) being taken into consideration for the purposes of sentencing.

3 The punishment for an offence under s 375(1)(b) of the PC is set out in s 375(3)(b) of the PC, which states that:

(3) Whoever —

...

(b) commits an offence under subsection (1) with a woman under 14 years of age without her consent,

shall be punished with imprisonment for a term of not less than 8 years and not more than 20 years and shall also be punished with caning with not less than 12 strokes.

4 After hearing the Prosecution’s submissions on sentence and BMR’s mitigation plea, I sentenced BMR to 14 years of imprisonment and 12 strokes of the cane for each of the 4th, 5th, and 6th charges. Pursuant to s 307(1) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) (“CPC”), I ordered the sentences of imprisonment for the 4th and 5th charges to run consecutively. I also ordered the sentence of imprisonment for the 6th charge to run concurrently with the 4th charge. The sentence of imprisonment for the 4th charge was to commence from 2 November 2016, the date on which BMR went into remand.¹ This brought BMR’s aggregate sentence of imprisonment to 28 years. Under s 328(6) of the CPC, the maximum limit for caning is 24 strokes. Hence, that was the total number of strokes to be inflicted on BMR.

5 BMR has filed an appeal against my decision on sentence.

¹ Prosecution’s Submissions on Sentence at para 5.

Background to the offences

6 The Victim's biological mother ("M") and father separated when the Victim was an infant.² Thereafter, M had relationships with two other partners before marrying BMR.³ One of these partners was P, whose sister, Q, and mother ("Nanny") took care of the victim when she was between two and eight years old.⁴ Another was the father of one of the Victim's step-sister, S. Immediately after M married BMR in 2011, the Victim lived with S, M, and BMR in a one-room rental flat ("the first flat") somewhere in the southern part of Singapore.⁵ The living room of this flat was divided by a curtain. BMR and M would sleep in one half of the living room, the Victim and S in the other.⁶

7 BMR started sexually abusing the Victim sometime between January and November 2011. The Victim was just eight years old then. While the Victim was fast asleep, BMR had pat and stroked her breasts underneath her bra, as well as touched her vagina under her panties. The Victim woke up in shock to find BMR touching her, but did not make any noise out of fear. BMR threatened to divorce her mother if the Victim told anyone about what he had done.⁷ This forms the subject of the 1st charge.

8 Sometime later in 2011, BMR escalated his abuse of the Victim. He penetrated her vagina with one of his fingers, moving it in and out, before penetrating her vagina with two fingers. The Victim made known to BMR that she was in pain, but he had threatened to slap her if she made any noise. The

² Statement of Facts ("SOF") at para 3.

³ SOF at paras 3–4.

⁴ SOF at para 3.

⁵ SOF at para 5.

⁶ SOF at para 6.

⁷ SOF at para 6.

Victim stayed silent out of fear. She believed that BMR would make good on his threat as he had slapped her in the past for misbehaving.⁸ This forms the subject of the 2nd charge.

9 Subsequently, BMR again escalated his abuse of the Victim. This time, he started by touching the Victim's breasts and penetrating her vagina with his fingers. Thereafter he asked the Victim to fellate him. Against her refusal to do so, he proceeded to insert his penis into the Victim's mouth, held on to her head, and thrust his penis in and out of her mouth before ejaculating in it.⁹ This forms the subject of the 3rd charge.

Facts pertaining to the 4th charge

10 BMR raped the Victim for the first time sometime between November 2011 and July 2012. The Victim was between eight and nine years old then. She was sleeping on her bed in the first flat when BMR woke her up and made her perform oral sex on him before instructing her to undress and lie naked on the bed. The Victim complied out of fear. BMR then climbed over the Victim, and penetrated the Victim's vagina with the tip of his penis. This caused the Victim great pain, and she responded by clamping her legs tightly together. BMR then pulled out his penis. He told the Victim not to tell anyone about what he had done, and promised to buy her anything she wanted. He also said that from that day onwards, he would no longer hit her if she did anything wrong but he would have sex with her instead.¹⁰

Facts pertaining to the 5th charge

⁸ SOF at para 7.

⁹ SOF at para 8.

¹⁰ SOF at paras 10–11.

11 The Victim, her step-siblings (by this point in time there were three altogether), M and BMR had moved into another flat (“the second flat”) in July 2012. The second flat had one bedroom and a living room. The bedroom was divided into two by two cupboards. BMR and M slept in one half of the room, while the Victim slept in the other half. The Victim’s step-siblings slept in the living room.¹¹

12 The second instance of rape took place between February and March 2013 in the second flat. At that time, the Victim was 10 years old. Again, BMR made her perform oral sex on him before asking her to undress and lie naked on the bed. Again, he climbed on top of her and penetrated her vagina with his penis. Just like the first time, the penetration caused the Victim great pain. This time, however, he used his knees to force her legs apart to prevent her from clamping them together. He then proceeded to have sexual intercourse with her over the next two to three minutes before ejaculating into the condom that he had put on.¹²

Facts pertaining to the 6th charge

13 The final instance of rape took place on 1 March 2015, when the Victim was 12 years old. On that day, the Victim and her step-siblings attended religious school at the mosque near the second flat. The Victim had stayed at Nanny’s house for the previous two nights after an altercation with M on 27 February 2015. BMR appeared at the mosque after the Victim’s religious class and offered to walk her home alone so that he could speak with her about her altercation with M. The Victim followed him back to the second flat. This was the first and only time he had walked the Victim home from the mosque.¹³

¹¹ SOF at para 12.

¹² SOF at para 13.

14 Upon entering the second flat, BMR locked the gate and slapped the Victim as punishment for running away from home. He then instructed her to go into the bedroom. Based on BMR's prior conduct, the Victim understood this to be a signal that he wanted to have sex with her. She complied with his instructions out of fear that he would punish her if she did not do so. Once in the room, BMR instructed the Victim to undress and lie on the mattress. He put on a condom, penetrated her vagina with his penis, and proceeded to have sexual intercourse with her for the next two to three minutes before ejaculating into the condom.¹⁴

15 This was the final straw for the Victim. When BMR left the second flat to dispose the used condom at the rubbish chute outside, she took the opportunity to flee. She went to a library nearby and informed Q that she was going to travel to her flat and would need money for the taxi ride over. She arrived at the vicinity of Q's flat at around 8pm that same day, and told Q what BMR had done to her and why she wanted to leave her home.¹⁵

16 M subsequently found out about BMR's sexual abuse of the Victim on 3 March 2015. She was devastated. The matter was reported to the police on that same day.¹⁶ M also arranged for the Victim to undergo a medical examination, which took place at 2.26am at Kandang Kerbau Women's and Children's Hospital ("KK Hospital") on 4 March 2015. The doctor who examined the Victim noted that her hymen was not intact and that there was an old tear at the eight o'clock position.¹⁷

¹³ SOF at paras 15–18.

¹⁴ SOF at paras 15–18.

¹⁵ SOF at paras 25–26.

¹⁶ SOF at para 27.

¹⁷ SOF, Annex A.

17 In the Victim’s Impact Statement, she said that after disclosing BMR’s abuse, she no longer shared the close bond that she had with M and found it difficult to even make eye contact with M.¹⁸ The Victim has been living at her maternal grandmother’s residence since the police report was made and it was uncertain if she would move back to live with M and her stepsisters.¹⁹

Additional facts mentioned in the SOF

18 The SOF mentioned other instances of sexual abuse and rape committed by BMR against the Victim of which the Victim could not give many details due to the passage of time and her young age. For convenience, I shall refer to these as the “Additional Facts”. These Additional Facts did not relate to the charges that the Prosecution proceeded with or the TIC charges.

19 It is well-established that a court cannot impose a sentence that is aimed at punishing an offender for an offence he has not been charged with, even if such an offence is disclosed in the statement of facts (*Vasentha d/o Joseph v Public Prosecutor* [2015] 5 SLR 122 at [57]–[62]; *Public Prosecutor v Tan Thian Earn* [2016] 3 SLR 269 at [61]–[65]; *Chong Yee Ka v Public Prosecutor* [2017] 4 SLR 309 at [45]–[47]; *Chua Siew Peng v Public Prosecutor and another appeal* [2017] 4 SLR 1247 (“*Chua Siew Peng*”) at [74]–[86]; and *Cheang Geok Lin v Public Prosecutor* [2018] SGHC 5 (“*Cheang Geok Lin*”) at [27]–[29]). A fact not pertaining to a proceeded charge cannot be taken as an aggravating factor to increase an offender’s sentence unless it bears a sufficient nexus to the charge that the Prosecution has proceeded with (*Chua Siew Peng* at [84]–[85] and *Cheang Geok Lin* at [27]–[30]).

¹⁸ SOF, Annex C, at p 4.

¹⁹ SOF, Annex C, at p 4.

20 It was unclear why the Prosecution included the Additional Facts in the SOF. On the one hand, the Prosecution appeared to place some reliance on these facts at various points in their submissions to argue that this case should be placed in the upper range of Band 2 of the framework laid down by the Court of Appeal (“CA”) in *Ng Kean Meng Terence v Public Prosecutor* [2017] 2 SLR 449 (“*Terence Ng*”). On the other hand, the Prosecution did not specifically address the question of how these Additional Facts bore a sufficient nexus to the 4th, the 5th, or the 6th charge. Further, the SOF did not specify whether the acts or events forming the Additional Facts took place before or after the offences disclosed in the charges (save for the 6th charge, since it appeared to be the very last instance of BMR’s sexual abuse). For these reasons, I gave no weight to the Additional Facts even though BMR had admitted to them without qualification.

21 I would add that if the Additional Facts were meant to give a general background to the offences for which BMR was charged, they were unnecessary. There were already sufficient facts under the 1st to 6th charges to do so.

Submissions on sentence

22 With regard to Stage 1 of the *Terence Ng* framework, the Prosecution submitted that the circumstances of this case brought it within the upper levels of Band 2. Consequently, the “indicative starting point” for each charge should be 16–17 years of imprisonment with 12 strokes of the cane.²⁰ As for Stage 2 of the *Terence Ng* framework, the Prosecution submitted that the only mitigating factor was that the accused pleaded guilty, thus sparing the Victim from having to go through the pain of testifying in court. However, they also submitted that

²⁰ Prosecution’s Submissions on Sentence at para 45.

any discount attributable to this mitigating factor was cancelled out by the fact that BMR showed no remorse, and the uplift warranted on account of the TIC charges.²¹ Thus, the Prosecution urged this court to impose an aggregate sentence of at least 32 years of imprisonment and 24 strokes of the cane notwithstanding that such a sentence was “significantly above the normal sentences imposed for the individual charges”.²²

23 BMR submitted a handwritten mitigation plea asking for the minimum sentence. He cited various reasons in support of this plea, including: (i) the need for him to support his elderly and ill mother financially and physically, (ii) his intention to motivate and support his four daughters who are still attending school, as well as shower them with “fatherly love”, (iii) his lack of knowledge of the consequences of his actions in that they would lead to his incarceration, and (iv) his regret for his mistakes.

The law

24 The sentencing framework for rape offences was summarised by the CA in *Terence Ng* at [73] as follows:

(a) At the first step, the court should have regard to the *offence-specific* factors in deciding which band the offence in question falls under. Once the sentencing band, which defines the range of sentences which may *usually* be imposed for an offence with those features, is identified, the court has to go on to identify precisely where within that range the present offence falls in order to derive an “indicative starting point”. In exceptional cases, the court may decide on an indicative starting point which falls outside the prescribed range, although cogent reasons should be given for such a decision.

(b) The sentencing bands prescribe ranges of sentences which would be appropriate for contested cases and are as follows:

²¹ Prosecution’s Submissions on Sentence at paras 48–58.

²² Prosecution’s Submissions on Sentence at paras 62 and 65.

(i) Band 1 comprises cases at the lower end of the spectrum of seriousness which attract sentences of 10–13 years’ imprisonment and 6 strokes of the cane. Such cases feature no offence-specific aggravating factors or are cases where these factors are only present to a very limited extent and therefore have a limited impact on sentence.

(ii) Band 2 comprises cases of rape of a higher level of seriousness which attract sentences of 13–17 years’ imprisonment and 12 strokes of the cane. Such cases would usually contain two or more offence-specific aggravating factors (such as those listed at [44] above).

(iii) Band 3 comprises cases which, by reason of the number and intensity of the aggravating factors, present themselves as extremely serious cases of rape. They should attract sentences of between 17–20 years’ imprisonment and 18 strokes of the cane.

(c) At the second step, the court should have regard to the aggravating and mitigating factors which are *personal to the offender* to calibrate the sentence. These are factors which relate to the offender’s particular personal circumstances and, by definition, *cannot* be the same factors which have already been taken into account in determining the categorisation of the offence. One of the factors which the court should consider at this stage is the value of a plea of guilt (if any). The mitigating value of a plea of guilt should be assessed in terms of (i) the extent to which it is a signal of remorse; (ii) the savings in judicial resources; and (iii) the extent to which it spared the victim the ordeal of testifying. Thus under our proposed framework, while for the first step an uncontested case will proceed in the same way as a contested case, it is at the second step that the appropriate discount will be accorded by the court for the plea of guilt by the offender.

(d) The court should clearly articulate the factors it has taken into consideration as well as the weight which it is placing on them. This applies *both* at the second step of the analysis, when the court is calibrating the sentence from the indicative starting point *and* at the end of the sentencing process, when the court adjusts the sentence on account of the totality principle. In this regard, we would add one further caveat. In a case where the offender faces two or more charges, and the court is required to order one or more sentences to run consecutively, the court can, if it thinks it necessary, further calibrate the individual sentence to ensure that the global sentence is appropriate and not excessive. When it does so, the court should explain itself so that the individual sentence imposed will not be misunderstood.

[emphasis in original]

My decision

Factors relating to the first stage of the Terence Ng framework

The offence-specific aggravating factors

25 I found that various aggravating factors identified by the CA in *Terence Ng* were present in this case, and these factors brought it within Band 2 of the *Terence Ng* framework.

26 First, BMR had abused his position of trust vis-à-vis the victim. As the stepfather of a child her age, he was clearly in a position of trust. The Victim and her family were also financially dependent on his income stream. Yet, he blatantly abused that position to compel the Victim to satisfy his sexual desires, and to remain silent about his wicked acts. On the pretext of being a concerned stepfather who wanted to speak to his stepdaughter about a family dispute, he brought the Victim home alone to isolate her from the rest of her family on 3 March 2015 (in relation to the 6th charge).²³ BMR did so in order to be able to violate her with impunity and to escape detection. Consequently, the Victim found herself in no position to adequately resist or even expose BMR's violations. As the CA observed in *Terence Ng* at [44(b)]: “[w]hen such an offender commits rape, there is a dual wrong: not only has he committed a serious crime, he has also violated the trust placed in him by society and by the victim”.

27 Second, the Victim in this case was especially vulnerable due to her age. BMR had started sexually abusing her when she was only eight years old, and first raped her when she was between eight and nine years old.

²³ SOF at para 15.

28 Third, the Victim did not *factually* consent to having sex with BMR. Section 375(1)(b) of the PC stipulates that it is an offence for a man to penetrate the vagina of a woman under 14 years of age with *or* without her consent (“statutory rape”). The punishment for statutory rape is imprisonment for a term which may extend to 20 years and the offender shall also be liable to fine or to caning: s 375(2) of the PC. However, where the rape was committed on a victim below the age of 14 years without her consent, s 375(3)(b) stipulates a minimum of 8 years and a maximum of 20 years of imprisonment, and at least 12 strokes of the cane. The absence of consent by a victim below the age of 14 is an aggravating factor for the purpose of deciding the appropriate sentence under the *Terence Ng* framework, and the CA has clarified at [51] of the judgment that while “statutory rape falls within the upper end of Band 1”, “aggravated statutory rape (*ie*, without consent) is different and clearly falls within Band 2”.

29 Fourth, BMR had acted with deliberation and premeditation. BMR had taken steps to isolate the Victim from the rest of the family or wait for an opportune timing before sexually violating her. Further, his threat to divorce M was also another instance of deliberation as he knowingly exploited the Victim’s fear that the family could not cope financially without his income stream.²⁴ These deliberate and premeditated acts were meant to, and did in fact, deny the Victim of her will to resist, allowing BMR to sexually violate the Victim multiple times and successfully escape detection for more than five years.

30 Fifth, BMR had repeatedly violated the Victim over a relatively long duration of time. In this case, the total duration of his offences (including the TIC charges) spanned at least four years, though the actual frequency of BMR’s sexual violations was not clear due to shortcomings in the Victim’s memory.

²⁴ SOF at para 6.

31 Sixth, I also took into account the fact that BMR's sexual violations of the Victim was not limited to rape, but also included digital penetration of her vagina, penile penetration of her mouth, and outraging her modesty. These acts were committed immediately before BMR raped the Victim in respect of the 4th and 5th charges, and were also the subject of the TIC charges.

32 However, I disagreed with the Prosecution's submission that the harm caused to the Victim by the rapes was an aggravating factor.²⁵ In my view, the Prosecution had misapplied the factor referred to by the CA in *Terence Ng* at [44(h)]. There, the CA had acknowledged that every act of rape invariably inflicts immeasurable harm on a victim. However, the point that the CA was making was that where there are especially serious physical or mental effects on the victim such as pregnancy, the transmission of a serious disease or psychiatric illness, that is a serious aggravating factor. The physical and emotional harm caused to a victim of rape is what already causes the offence to be a very serious one. However, that harm should not then be used as an aggravating factor as that would be giving that harm double weight. Thus, in *Public Prosecutor v Ong Soon Heng* [2018] SGHC 58, Aedit Abdullah J said, at [154], that there needs to be a relatively severe state of psychological or physical harm for the court to find that there is an additional offence-specific aggravating factor.

33 The Prosecution cited *Public Prosecutor v Murugesan* [2005] SGHC 160, *R v Stuckless* (1998) 127 CCC (3d) 225 and *AQW v Public Prosecutor* [2015] 4 SLR 150 in support of their submission that the harm caused in this case was an aggravating factor. Essentially, these cases reiterate the grave impact, whether physical or emotional, that invariably result from rape. However, they are not authorities for the proposition that the grave impact is an

²⁵ Prosecution's Submissions on Sentence at paras 11 and 28–35.

aggravating factor for the already very serious charge of rape. Although I recognised that the present offences had grave effects on the Victim's well-being, it did not cause the type of harm that the CA had in mind for the purposes of this factor. Tests by KK Hospital for sexually transmitted diseases and pregnancy were, fortunately, negative.²⁶ Further, there was no evidence that the offences caused the Victim to suffer from any psychiatric illness over and above her emotional trauma.²⁷ The Victim's insecurity, flashbacks and difficulty in making eye contact with M did not, in my view, amount to an aggravating factor. This by no means downplayed the gravity of the harm caused to the Victim as a consequence of the rapes.

The appropriate sentencing range within Band 2

34 The Prosecution submitted that this case fell within the upper reaches of Band 2, thus attracting a sentence from 16 to 17 years of imprisonment and 12 strokes of the cane for each offence. They cited the case of *Public Prosecutor v BNN* [2014] SGHC 7 ("*BNN*"), *Public Prosecutor v AOM* [2011] 2 SLR 1057 ("*AOM*") and *Public Prosecutor v AHB* [2010] SGHC 138 ("*AHB*") in support of their submission.

35 In *BNN*, the offender was sentenced to 17 years of imprisonment with 17 strokes of the cane and 15 years of imprisonment with 15 strokes of the cane respectively for two of the rape charges to which he had pleaded guilty. The aggregate sentence was thus 32 years of imprisonment with 24 strokes of the cane. In that case, the offender, who was the victim's stepfather, had started to sexually abuse her when she was 11 years old, and first raped her forcibly when she was 14. This was accompanied by a sustained pattern of serious physical

²⁶ SOF, Annex A.

²⁷ SOF, Annex B.

abuse against the victim and her sister. On the first occasion of rape, the offender had pulled the victim out of the toilet while she was bathing, licked her vagina, and groped her breasts before proceeding to rape her without a condom and ejaculate in her. I was of the view that *BNN* could be distinguished from the facts of the present case. Firstly, the offender in *BNN* was convicted of seven charges with 11 charges taken into consideration for the purpose of sentencing. The charges included wantonly causing hurt to the victim and her sister. Secondly, the offender in *BNN*, who had kicked, punched and slammed the victim against hard surfaces such as the floor and a car door, was also more violent than BMR in this case. Secondly, there were two victims in *BNN* and both were the offender's stepdaughters, even though only one was the victim of sexual abuse. Furthermore, the CA in *Terence Ng* said that *BNN* fell within the middle to upper range of Band 2 (at [55]) rather than the upper range of Band 2.

36 In *AOM*, the court sentenced the offender to 13 years of imprisonment with 12 strokes of the cane for each of the three statutory rape charges that he had pleaded guilty to, with an aggregate sentence of 26 years of imprisonment with 24 strokes of the cane. The victim was 12 years old when the first rape took place. Although the victim had contracted chlamydia as a result, Steven Chong J (as he then was) nevertheless gave a sentencing discount (from the then-benchmark of 15 years' imprisonment per charge) on account of the victim being spared from having to relive the ordeal by testifying in court. Although the CA in *Terence Ng* cited *AOM* as a case which would fall within the upper end of Band 2, this was partly because the victim there had contracted a sexually transmitted disease.

37 In *AHB*, I sentenced the offender to 18 years of imprisonment with 15 strokes of the cane for three rapes to which he had pleaded guilty, with an

aggregate sentence of 36 years of imprisonment with 24 strokes of the cane. The offender had already been imprisoned for outraging the modesty of his biological daughter. Upon his release, he continued to outrage her modesty before raping her when she was 14 years old. The victim became pregnant as a result. She delivered the child, but had to give the child up for adoption. The offender showed no concern when told of the pregnancy by the victim, and instead forced her to perform oral sex on him. *AHB* can be distinguished from the facts of the present case because there the victim became pregnant as a result of the rape. This pregnancy was a feature mentioned by the CA in *Terence Ng* (at [56]) for placing *AHB* at the high end of Band 2.

38 For the reasons given above, I was of the view that the present case fell within the middle to upper reaches of Band 2, thus attracting a starting point of 15 to 16 years of imprisonment and 12 strokes of the cane for each offence at Stage 1.

Factors relating to the second stage of the Terence Ng framework

39 In contrast to the offence-specific factors accounted for under Stage 1 of the *Terence Ng* framework, Stage 2 deals with offender-specific factors.

40 The Prosecution urged me to treat the presence of the 1st to 3rd charges (*ie*, the TIC charges) as an aggravating factor in this case.²⁸ They cited the CA's pronouncement in *Terence Ng* (at [64(a)]) that a court will normally increase an offender's sentence where the TIC charges are of a similar nature. I rejected this submission. In *Terence Ng*, the CA recognised that "a court is not bound to increase a sentence merely because there are TIC offences". On the facts of that case, the CA took the view (at [91]) that the uplift resulting from the offender's

²⁸ Prosecution's Submissions on Sentence at para 47.

TIC charges cancelled out any sentencing discount attributable to his guilty plea. In my view, a court should not increase a rape offender's sentence merely because there are TIC charges if the factors pertaining to those charges have already been accounted for in Stage 1 of the *Terence Ng* framework. Otherwise those factors would be given double weight. Here, I took the view that the facts pertaining to the TIC charges showed that the sexual violations had taken place over a long duration and I took this into account as an aggravating factor at Stage 1. In *Terence Ng*, the CA did not take into account the facts surrounding the TIC charges at Stage 1. Instead, the CA took into account the TIC charges at Stage 2 in finding that they cancelled out any discount attributable to the offender's guilty plea.

41 I come now to the points raised in BMR's mitigation plea (see [23] above). His allegation that he had to support his elderly and ill mother financially and physically carried little weight. First, there was no elaboration on whether there were others who could care for his mother. Secondly and more importantly, if such a reason were to be given much weight, it would be abused. The gravity of the 4th, 5th, and 6th charges and the TIC charges were too serious for such a reason to be given much weight.

42 As for BMR's allegation that he was not aware that the consequences of his action would lead to his incarceration, it suggested that his regret stemmed more from having been caught than from genuine remorse for his actions. In any event, I did not accept his suggestion that he was not aware of the consequences. Any adult must have an idea that committing such acts amounted to serious criminal offences and incarceration is the price to pay for such offences. There was no suggestion that BMR had any mental deficiency that prevented him from appreciating this.

43 As for BMR’s professed concern and love for his daughters, it was not clear whether he distinguished between his biological daughters and stepdaughters. If he did not, his professed love and concern would be ironic bearing in mind that the Victim was his stepdaughter. If he had only meant to refer to his biological daughters, that still did not help him much as the Victim was entitled, as his stepdaughter, to his love and protection but was instead victimised by him.

44 As for his regret for his mistakes, BMR clearly did not show any remorse for his actions. In his first police statement recorded on 17 March 2015, BMR claimed that the Victim had fabricated her allegations as an excuse to move out and stay with Nanny.²⁹ In his second police statement that was recorded on 31 March 2015, he sought to show that the Victim was “not a good girl” and provided photographs of her Facebook posts to prove his point.³⁰ In his third police statement recorded on 9 June 2015, he admitted to having sex with the Victim but claimed that she had not only consented to sex but had also “seduced” him by exposing herself or her undergarments to him.³¹ In his interviews with a psychiatrist from the Institute of Mental Health on 1 and 21 September 2015, he repeated the claim that the Victim had undressed in front of him, had exposed her undergarments or body when asleep, and had consented to having sex with him when he requested for it.³²

45 In the circumstances, BMR did not deserve full credit for his guilty plea. That said, I was of the view that a sentencing discount should nevertheless still be given to the offender for his guilty plea. This was because it spared the Victim

²⁹ SOF at para 31.

³⁰ SOF at para 31.

³¹ SOF at para 32.

³² SOF at paras 33–34.

the ordeal of having to testify at trial and relive the terrible events. As the CA recognised in *Terence Ng* (at [68], citing *Chan Kar Meng v PP* [2017] 2 SLR 68), offenders who plead guilty to sexual offences “ought ordinarily to be given at least *some* credit for having spared the victim additional suffering” [emphasis in original]. Despite the offender’s evident lack of remorse in *Terence Ng*, the CA nonetheless accepted (at [90]) that a sentencing discount should be given “in recognition of the fact that [his] decision to plead guilty had spared the minor the ordeal of having to testify”. Although that discount was cancelled out by the effect of the TIC charges in that case, the TIC charges in the present case did not factor into Stage 2 of the sentencing exercise for the reasons I have given above at [40].

46 In view of this mitigating factor, I was of the view that although this case fell within the middle to upper ranges of Band 2 of the *Terence Ng* framework (*ie*, sentences of 15 to 16 years of imprisonment with 12 strokes of the cane for each offence), a sentence of 14 years of imprisonment with 12 strokes of the cane was appropriate for each of the 4th, 5th and 6th charges. I have elaborated on the sentences at [4] above.

Conclusion

47 The wicked acts committed by BMR against his stepdaughter during her childhood were totally reprehensible and deserved the gravest condemnation lawfully available. Despite the tragic circumstances, the Victim had shown immense resilience; she did very well in her studies and was the “best student” in her Primary School.³³ While it will not be easy for her to recover from her traumatic experience, I hope that she will continue to do well, and I wish her all the very best in her future endeavours.

³³ SOF, Annex B.

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Woo Bih Li
Judge

Ng Yiwen and Raja Mohan (Attorney-General's Chambers) for the
prosecution;
The accused in person.
