

**IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

[2023] SGHC 272

Criminal Case No 29 of 2023

Between

Public Prosecutor

And

CPH

GROUND OF DECISION

[Criminal Law] — [Offences] — [Rape]

[Criminal Law] — [Offences] — [Sexual offences]

[Criminal Procedure and Sentencing] — [Sentencing] — [Principles]

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Public Prosecutor

v

CPH

[2023] SGHC 272

General Division of the High Court — Criminal Case No 29 of 2023
Hoo Sheau Peng J
21 August 2023

29 September 2023

Hoo Sheau Peng J:

Introduction

1 Between 2003 and 2008, while the Victim was between 11 to 17 years of age, the Accused had sexual relations with her on numerous occasions. This course of conduct formed the basis for nine charges brought against him. The Prosecution proceeded with three (“the proceeded charges”), to which the Accused pleaded guilty. These were the fifth charge – of rape of a female under 14 years of age under s 375(e) of the Penal Code (Cap 224, 1985 Rev Ed) (“the Penal Code” and “the rape charge” respectively), and the seventh and eighth charges – of having carnal connection with a female under 16 years of age, except by way of marriage, under s 140(1)(i) of the Women’s Charter (Cap 353, 1997 Rev Ed) (“the Women’s Charter”, and collectively “the carnal connection

charges” respectively). The remaining six charges were taken into consideration for the purposes of sentencing.

2 I imposed 15 years’ imprisonment in respect of the rape charge and two and a half years’ imprisonment for each of the carnal connection charges. I also ordered that these sentences run consecutively for a total of 20 years’ imprisonment. The Accused has appealed against sentence, and I now give my reasons for the decision.

Statement of facts

3 The material portions of the Statement of Facts are as follows.

4 At the time of the hearing, the Accused was 50 years old, the Victim was 31 years old, and the Victim’s mother was 56 years old. The Victim’s mother had four children from her previous marriage, including the Victim. Shortly after meeting the Accused in 2002, the Victim’s mother entered into a relationship with him.

5 In early 2003, the Victim’s mother introduced the Accused to her children as her boyfriend, after which the Accused began visiting the children at their home (“the first flat”) on a frequent basis. The Accused paid special attention to the Victim. He advised her on school matters, took her out for meals, and bought various items for her including a handphone. He communicated with the Victim frequently via text messages or phone calls. After some time, he began talking to the Victim about sex, telling her that he was “horny” and that he was touching his private parts. Sometime in 2003, he messaged the Victim, asking her if he could come over to the first flat to spend the night with her, to which she agreed. When the Accused came over to the flat, the Victim’s mother was not present as she was working. The Accused then performed cunnilingus

on the Victim, after which he told her that he would be her boyfriend, and to keep what they had done a secret. The Victim agreed, as she was fond of the Accused. At the time, the Victim was between 11 to 12 years old.

6 Sometime in the first half of 2004, the Victim's mother and the children moved out of the first flat, and into another flat ("the second flat") with the Accused. Shortly after, the Victim's mother and the Accused got married in June 2004. Without the Victim's mother's knowledge, the Accused continued to engage in sexual acts with the Victim.

The rape charge

7 Sometime at night in July 2004, after the Victim's mother had left for work and the other children had fallen asleep, the Victim entered the master bedroom and lay down on the bed with the Accused. The Accused and the Victim began hugging and kissing one another. After the Victim took off her T-shirt, the Accused proceeded to fondle the Victim's breasts and continued to kiss her (this was the subject matter of the sixth charge which was taken into consideration for the purposes of sentencing). Then, the Accused pulled off the Victim's pants and his boxers and told the Victim to mount him. He then penetrated the Victim's vagina with his penis, without using a condom. After a few minutes, he withdrew his penis from the Victim's vagina, and ejaculated on the bed. The Victim was 12 years old at the material time. This formed the basis of the rape charge.

The first carnal connection charge

8 Sometime in 2005, after the Victim's mother had left for work and the other children had fallen asleep, the Accused engaged in sexual intercourse with the Victim in the second flat by penetrating her vagina with his penis without

using a condom. At this time, the Victim was between 13 and 14 years old. This episode formed the basis of the first carnal connection charge.

The second carnal connection charge

9 Sometime in 2006, after the Victim's mother had left for work and the other children had fallen asleep, the Accused engaged in sexual intercourse with the Victim in the second flat by penetrating her vagina with his penis without using a condom. At this time, the Victim was between 14 and 15 years old. This episode formed the basis of the second carnal connection charge.

Other acts

10 During the period of these three charges, *ie*, 2004 to 2006, the Accused engaged in sexual intercourse with the Victim about three times a week. They would wait for the Victim's mother to leave for work and for the other children to fall asleep before doing so. On occasions in 2005 to 2006, the Accused penetrated the Victim's mouth with his penis, before engaging in sexual intercourse with her.

Subsequent events

11 The Accused and the Victim continued engaging in sexual intercourse until 2008, when the Accused was convicted and imprisoned for various other criminal offences, and the Victim left Singapore to study overseas. During this time, they continued to correspond via letters.

12 The Accused finished serving his sentence in 2011 and was released from prison. When the Victim was notified of this, she took a six-month leave of absence from her studies and returned to Singapore to visit the Accused, during which time they continued to engage in sexual intercourse on multiple

occasions until the Victim left to continue her studies towards the end of 2011. After this, the Victim cut off contact with the Accused, as she felt guilty about the sexual relationship with her mother's husband. She wanted to move on with her life.

13 Sometime in 2013, the Victim's mother was looking through the Accused's laptop when she discovered a video of the Accused and the Victim engaging in sexual intercourse. This had been recorded sometime in 2011. The Victim's mother confronted the Victim about this over email. The Victim admitted to having engaged in sexual intercourse with the Accused. She begged her mother for forgiveness, but the Victim's mother ceased communicating with her.

14 The Victim returned to Singapore again in February 2017, during which time she visited her mother and explained that the Accused had started engaging in sexual acts with her in 2003. The Victim lodged a police report against the Accused on 7 February 2017.

Decision on conviction

15 The Accused admitted to the facts as set out in the Statement of Facts without qualification. As the elements of the proceeded charges had been established beyond a reasonable doubt, I convicted him of each of the proceeded charges.

Sentencing

Charges taken into consideration

16 As stated above at [1], in addition to pleading guilty to the proceeded charges, the Prosecution applied for, and the Accused consented to having the

remaining six charges be taken into consideration for the purposes of sentencing (“the TIC charges”). These were as follows:

- (a) The first charge: Committing an indecent act with the Victim by touching, kissing, and licking her vagina sometime in 2003 while she was between 11 and 12 years old, an offence under s 7 of the Children and Young Persons Act (Cap 38, 2001 Rev Ed) (“the CYPA”);
- (b) The second charge: Rape committed by penetrating the Victim’s vagina with his penis sometime in August 2003 while she was 11 years old, an offence under s 375(e) and punishable under s 376(1) of the Penal Code;
- (c) The third charge: Committing an indecent act with the Victim by kissing her on her mouth and caressing her breasts under her clothes sometime in August 2003 while she was 11 years old, an offence under s 7 CYPA;
- (d) The fourth charge: Rape committed by penetrating the Victim’s vagina with his penis sometime in December 2003 while she was 12 years old, an offence under s 375(e) and punishable under s 376(1) of the Penal Code;
- (e) The sixth charge: Committing an indecent act with the Victim by kissing and fondling her breasts while she was naked sometime in or about July 2004 while she was 12 years old, an offence under s 7 CYPA;
- (f) The ninth charge: Having carnal connection with a girl below 16 years of age whom he was not married to sometime before 10 October while she was 15 years old, an offence punishable under s 140(1)(i) of the Women’s Charter.

Antecedents

17 The Accused had a long list of antecedents. These included a large number of drug offences, as well as offences of house breaking, theft, robbery, criminal breach of trust, and identity card forgery. The last of these offences was a drug consumption offence committed in 2012, when he was sentenced for a substantial term of seven years' imprisonment and six strokes of the cane. None of them involved sexual offences. The Accused admitted to these antecedents.

The Prosecution's submissions

18 Applying the two-stage sentencing framework for rape offences set out in *Ng Kean Meng Terence v Public Prosecutor* [2017] 2 SLR 449 ("*Terence Ng*") in respect of the rape charge, the Prosecution identified the relevant offence-specific aggravating factors relevant to the first stage of the analysis as being the abuse of position and breach of trust, the premeditation as evidenced by sexual grooming, the vulnerability of the Victim, the exposure of the Victim to the risk of pregnancy and sexually transmitted diseases, and the severe harm done to the Victim. At the second stage, the Prosecution argued that the relevant offender-specific aggravating factor was the persistent nature of the Accused's offending, as evinced by the numerous TIC charges, and the relevant mitigating factors were his cooperation with the authorities and his timely plea of guilt. The Prosecution's position was that the rape charge fell in the middle of Band 2 of the *Terence Ng* framework of 13 to 17 years' imprisonment, attracting an indicative starting point of 17 years' imprisonment. After making the necessary adjustments, the appropriate sentence would be one between 14 to 16 years' imprisonment.

19 As for the carnal connection charges, the Prosecution relied on the benchmark of one year's imprisonment set out in *Tay Kim Kuan v Public Prosecutor* [2001] 2 SLR(R) 876 at [18], and its *dicta* that such a sentence should be considered as being at the lower end of the spectrum. The Prosecution also relied on the District Court's observations in *Public Prosecutor v ADK* [2009] SGDC 472 at [57] that where there is abuse of position, trust or familial relationship, this would ordinarily call for a sentence of between two to four years' imprisonment for the offence. The Prosecution's position was that the abuse of trust and the persistence of the Accused's offending were relevant aggravating factors in the present case, and warranted a sentence of between two to four years' imprisonment for each of these charges.

20 Finally, the Prosecution argued that all three sentences should be made to run consecutively, as the offences did not form part of a single transaction, and in order to reflect the Accused's criminality, as well as the period and frequency of his offending. This would yield a global sentence of between 18 to 24 years' imprisonment. Such a global sentence, argued the Prosecution, was broadly consistent with the 24 years' imprisonment imposed in *Public Prosecutor v UI* [2008] 4 SLR(R) 500, a case involving multiple sexual assaults committed by a father against his biological daughter.

The mitigation plea

21 The Defence's position in respect of the rape charge was that a sentence of no more than 11.5 years was appropriate. Its divergence from the Prosecution's position of 14 to 16 years was largely due to the disagreement over how much aggravating weight ought to be accorded to the factors of premeditation, severe harm, and the TIC charges. The Defence argued that the acts of grooming perpetrated by the Accused were not as egregious as in the

cases of *Public Prosecutor v Yue Roger Jr* [2019] 3 SLR 749, *Public Prosecutor v BSY* [2020] SGHC 170 and *Public Prosecutor v BVJ* [2022] SGHC 59, which had involved photographing the victim nude or showing them pornographic material respectively. The Defence also submitted that the harm caused in the present case did not go beyond that which was inherent to the nature of the offence, and pointed out that some of the TIC charges related to the same underlying conduct. For these reasons, the Defence submitted that the factors of premeditation, severe harm, and the TIC charges ought to be attributed minimal aggravating weight.

22 In relation to the carnal connection charges, the Defence sought to distinguish the present case from that of *Public Prosecutor v Kunasekaran a/l Ponniah* [1993] SGHC 253, where the victim became pregnant as a result of the offence and had to undergo an abortion. There, the offender received a sentence of four years' imprisonment. The Defence argued that because there was no pregnancy in the present case, a lower sentence of two years' imprisonment would be appropriate.

23 Finally, as to the question of how the sentences should run, the Defence emphasised the fact that the Accused had "turned his life around" after serving his imprisonment term for his previous set of offences, which were committed after the offences with which the present proceedings were concerned. In this regard, the Defence pointed to Accused's steady employment, enrolment in various educational courses, and volunteer work since his release in 2016, and argued that a lengthy sentence will undo all the rehabilitative progress that he has achieved since. On that basis, the Defence submitted that the sentence for either of the carnal connection charges ought to run concurrently with the sentences for the other charges, for a global sentence of 13.5 years' imprisonment.

My decision***The rape charge***

24 Under s 376 of the Penal Code, the penalty for rape is imprisonment for a term which may extend to 20 years, and liability to fine and caning. The Accused was not liable for caning as he was above 50 years old, and the Prosecution did not seek an additional term of imprisonment in lieu of caning.

25 It was common ground that the appropriate sentencing framework applicable to the rape charge was that set out in *Terence Ng*. This framework proceeds in two stages. First, the court identifies the band under which the offence falls, having regard to factors relating to the “manner and mode by which the offence was committed as well as the harm caused to the victim” (*Terence Ng* at [39(a)]), otherwise known as “offence-specific factors”. It will also determine an “indicative starting point” within the identified band, which would reflect the intrinsic seriousness of the offending act. Second, the court considers the aggravating and mitigating factors which are personal to the offender, or “offender-specific factors”, to calibrate the appropriate sentence (*Terence Ng* at [39(b)]).

(1) Step 1: Offence-specific factors

26 I agreed with the Prosecution that the relevant offence-specific factors in the present case were the Accused’s abuse of position and breach of trust, the vulnerability of the Victim, the failure to use a condom, premeditation, and the severe harm caused to the Victim. As the Defence did not dispute the first three of these factors, I set out my reasons in respect of each briefly.

27 First, there was an abuse of position and breach of trust. The Victim's mother trusted the Accused enough to introduce him to her children as her boyfriend, and allowed him unrestricted access to their home and to the Victim. This was all the more so after the Victim's mother and the Accused were married, and the Accused became the Victim's stepfather. Rather than honouring the trust reposed in him by virtue of this relationship, he used it to continue to exploit her for many years, and to keep it a secret from the other members of her family.

28 Second, the Victim was clearly vulnerable, being only 12 years old when the Accused committed the rape charge. I agreed that this materially increased the severity of the offence.

29 Third, the Accused's failure to use a condom on multiple occasions exposed the Victim to the risk of pregnancy, and the risk of contracting sexually transmitted diseases. This was another aggravating factor relevant to the determination of an indicative starting point.

30 Turning to the remaining matters, the Defence sought to argue that minimal if any weight ought to be accorded to the factor of premeditation, and that there was no exceptionally severe harm beyond that inherent to the nature of the offence.

31 I disagreed with both of these contentions. On the issue of premeditation, this was evident from the considerable degree of sexual grooming in the present case. Shortly after being introduced by the Victim's mother as her boyfriend to the Victim and her siblings, the Accused began lavishing special treatment on the Victim. I have set this out above at [5]. Eventually, having built a

relationship with her, he proceeded to talk to her about sex, before finally initiating their first sexual encounter.

32 Additionally, the Defence’s attempt to distinguish the present case from the precedents mentioned at [21] on the basis of the relatively less egregious nature of the acts of grooming was misplaced. Premeditation goes to the question of whether an offender’s actions were deliberate or committed spontaneously on the spur of the moment, and ultimately towards the extent of their criminality and “commitment to the criminal enterprise” (*Mehra Radhika v Public Prosecutor* [2015] 1 SLR 96 at [41]; *Terence Ng* at [44(c)]). The Statement of Facts clearly showed that the Accused had targeted the Victim with special treatment in an attempt to make her more trusting of him and receptive towards his advances, almost from the moment he had been introduced to her and her siblings by her mother. While he may not have shown her pornographic images or photographed her naked, he nonetheless acted deliberately in conditioning the Victim to be more receptive to his advances. This being the crux of the inquiry where premeditation is concerned, the fact that the acts of sexual grooming might be considered less egregious than in other cases did not justify attributing this aggravating factor “minimal weight”.

33 As for severe harm, I was of the view that there was severe harm in the present case. I accepted that the inherently violent and intrusive nature of rape, and the significant physical and psychological harm to victims, were features which render rape charges to be very serious ones, and should *not* be then used as aggravating in such a way as to give such harm double weight (*Public Prosecutor v BMR* [2019] 3 SLR 270 (“*BMR*”) at [32]; *Public Prosecutor v Ong Soon Heng* [2018] SGHC 58 (“*Ong Soon Heng*”) at [153]–[156]). However, the court in *Ong Soon Heng* was concerned with the question of whether the harm caused was severe enough to bring the case to a higher sentencing *band* (at

[154]). While it found that it did not reach a level of severity which would bring the case within Band 3 of the *Terence Ng* sentencing framework, it did not stand to reason that *other* harm falling short of psychiatric illness, pregnancy, or transmission of serious disease could not be considered as being aggravating.

34 In any event, the harm in this case went beyond the insecurity, flashbacks, and difficulty in making eye contact with her biological mother experienced by the victim in *BMR*. In her Victim Impact Statement, the Victim recounted her continued struggles with stress, isolation, guilt, embarrassment, shame, and difficulties trusting people, which appeared to have persisted well into her adulthood. Furthermore, as a result of the Accused's actions, the Victim's mother "had a lot of anger" towards the Victim as she was unable to accept what had happened, and broke off communication with the Victim despite the Victim's pleas for forgiveness. The damage to her psychological health and her relationship with her mother eventually caused the Victim to leave Singapore. These consequences could not be said to have been inherent in the nature of the offence, and constituted another factor which warranted a more severe sentence.

35 This being the case, I found that all five aggravating offence-specific factors identified by the Prosecution were relevant in the present case, and carried more than minimal weight. Taking them together, I adopted an indicative starting point of 16 years' imprisonment (which fell at the high end of Band 2 of the *Terence Ng* framework of 13 to 17 years' imprisonment).

(2) Step 2: Offender-specific factors

36 At the second step of the *Terence Ng* framework, I agreed with the Prosecution that the TIC charges were another aggravating factor which

justified a significant uplift in the Accused's sentence. In particular, I took into account the fact that the second and fourth charges were similar rape offences. I was mindful that the sixth charge under the CYP A overlapped with the rape charge, as the acts happened prior to the commission of the rape charge, and there should not be double counting of this. The Defence accepted the general rule that the effect of TIC charges is to increase the sentence which the court would otherwise have imposed, save to point out that the court should be careful about giving undue weight to overlapping charges. Ultimately, the two other rape charges amply represented the persistence and regularity of rape offences which the Accused committed against the Victim. As stated in the Statement of Facts, sexual intercourse happened about three times a week. This warranted according these two other rape offences more than minimal weight.

37 The Defence also sought to argue that the Accused's rehabilitative progress was a mitigating factor warranting a significant reduction in the overall sentence, whether by reducing the length of individual sentences or having one of them run concurrently with the others. I disagreed. It is true that the court may consider rehabilitative progress between the time of an accused person's offences and the time of sentencing so as to determine whether it would be appropriate to maintain the focus on rehabilitation (*A Karthik v Public Prosecutor* [2018] 5 SLR 1289 ("*A Karthik*") at [55]). However, this issue typically arises in relation to young offenders. Moreover, even where young offenders are concerned, the principle of rehabilitation may be outweighed by the need for deterrence and retribution where serious sexual crimes are concerned (*Praveen s/o Krishnan v Public Prosecutor* [2018] 3 SLR 1300 at [28]). Given the seriousness of the Accused's offences and the fact that he was over 50 years old at time of sentencing, the predominant sentencing principles were clearly those of retribution and deterrence. While it is commendable that

the Accused has made good progress in his life since his release in 2016, this could do little to justify any significant downward calibration of his sentence.

38 That said, I accepted that the Accused's cooperation with the authorities and his plea of guilt were relevant mitigating factors. Taking these into account, and despite the TIC charges involving the rape offences, I found that a one-year downward calibration from the indicative starting point of 16 years was warranted, to a sentence of 15 years' imprisonment for the rape charge.

The carnal connection charges

39 The applicable punishment for offences under s 140(1)(i) of the Women's Charter is imprisonment for a term not exceeding five years, and liability to a fine not exceeding \$10,000. As held by the High Court in *Tay Kim Kuan* at [18], while the benchmark sentence for such offences should be one year's imprisonment, courts should have little hesitation in imposing enhanced sentences where aggravating factors are present. I was also of the view that the two-to-four-year range posited in *ADK* at [57] was an appropriate guide where cases involving abuse of position, trust or familial relationship were concerned.

40 In this case, a sentence of two and a half years' imprisonment for each of the carnal connection charges was appropriate. In *Kunasekaran*, the court identified *two* aggravating factors: that the offender was in a position of trust, *and* the fact that the victim became pregnant and subsequently aborted the pregnancy. It was on the basis of *both* aggravating factors that the court imposed an imprisonment term of four years. While the facts of the carnal connection charges were not as severe as that in *Kunasekaran* in that the Victim did not become pregnant, I also did not find it appropriate to impose a sentence at the very lowest extreme of the range posited in *ADK* of two years. As noted above,

the present case involved significant abuse of position, trust and familial relationship. There was also the ninth charge of carnal connection to be taken into consideration for sentencing purposes. These factors justified the sentence of two and a half years' imprisonment for each charge.

The global sentence

41 Having determined the appropriate sentences for each of the proceeded charges, the final step in the sentencing analysis was to determine how the sentences should be made to run. In this connection, the Defence took the position that only one of the carnal connection charges ought to run consecutively with the rape charge. Its justification for this position had largely to do with the Accused's rehabilitative progress and that it would be undone by a lengthy sentence. For reasons discussed above at [37], in as much as this was not a relevant consideration which justified a reduction of the individual sentences, I also did not find that they warranted a downward calibration of the overall sentence. On the contrary, it was necessary to run all three sentences consecutively, in view of the persistence, duration and frequency of the Accused's offending, and the overriding need for retribution and deterrence. The proceeded charges also did not relate to offences which formed part of the same transaction. Finally, while the Accused was 50 years old, I did not think a sentence of 20 years' imprisonment would be unduly crushing.

Conclusion

42 For the reasons above, the individual sentences are 15 years' imprisonment for the rape charge, and two and a half years' imprisonment for each of the carnal connection charges. With all the three sentences ordered to run consecutively, this led to a global sentence of 20 years' imprisonment.

43 The Accused commenced serving his sentence on 25 September 2023.

Hoo Sheau Peng
Judge of the High Court

Sruthi Boppana and Sheldon Lim (Attorney-General's Chambers) for
the Prosecution;
Ashwin Ganapathy and A Meenakshi for the accused.
