

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

[2024] SGHC 131

Criminal Case No 1 of 2024

Between

Public Prosecutor

And

CGA

GROUND OF DECISION

[Criminal Law — Offences — Sexual offences]

[Criminal Procedure and Sentencing — Sentencing — Principles]

TABLE OF CONTENTS

INTRODUCTION.....	1
FACTS.....	2
THE AGGRAVATED OM CHARGE	3
THE AGGRAVATED SAP CHARGES.....	4
THE OTHER CHARGES	5
SUBSEQUENT EVENTS.....	7
DECISION ON CONVICTION.....	7
SENTENCING	7
THE AGGRAVATED SAP CHARGES.....	8
<i>The parties' submissions</i>	8
<i>My decision</i>	11
THE AGGRAVATED OM CHARGE	15
THE GLOBAL SENTENCE	18
<i>The parties' submissions</i>	19
<i>My decision</i>	21
CONCLUSION.....	23

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Public Prosecutor

**v
CGA**

[2024] SGHC 131

General Division of the High Court — Criminal Case No 1 of 2024

Hoo Sheau Peng J

11–12, 16, 18 January, 25, 28 March, 18 April 2024

17 May 2024

Hoo Sheau Peng J:

Introduction

1 In the middle of the trial against him for a series of sexual offences committed against the Victim, the Accused pleaded guilty to three charges, which involved offences committed sometime in 2010 before the Victim turned 14 years old. The first and third charges concerned instances of sexual assault by penetration (“SAP”) by the Accused inserting his penis into the Victim’s mouth, which were offences under s 376(1)(a) of the Penal Code (Cap 224, 2008 Rev Ed) (the “Penal Code”), and punishable under s 376(4)(b) of the Penal Code (the “aggravated SAP charges”). The second charge concerned the use of criminal force on the Victim with the intention to outrage her modesty, by the

Accused rubbing her vagina (skin-on-skin) with his fingers, which was an offence under s 354(2) of the Penal Code (the “aggravated OM charge”).¹

2 After the incident in the third charge, the Accused continued to penetrate the Victim’s mouth with his penis. He also began to rub his penis against the Victim’s vagina as well as penetrate the Victim’s vagina with his finger. Finally, he progressed to penetrating the Victim’s vagina with his penis.² The Accused’s course of conduct, from sometime in 2010 to 2012, formed the subject matter of the eight remaining charges against him which were taken into consideration for the purpose of sentencing (the “TIC charges”).

3 I imposed a sentence of nine years’ imprisonment and 12 strokes of the cane in respect of each of the aggravated SAP charges and two years’ imprisonment and three strokes of the cane for the aggravated OM charge. I also ordered the imprisonment terms for the two aggravated SAP charges to run consecutively and the imprisonment term for the aggravated OM charge to run concurrently, for an aggregate sentence of 18 years’ imprisonment. The total number of strokes of caning is statutorily limited to 24 by the operation of s 328(6) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) (the “CPC”). The Accused has appealed against his sentence, and I now give my reasons for my decision.

Facts

4 I reproduce the material aspects of the Statement of Facts (“SOF”) below.

¹ Schedule of Offences dated 27 March 2024 (“SOO”) at S/N 1–3.

² Statement of Facts dated 27 March 2024 (“SOF”) at para 15.

5 At the time of the hearing, the Accused was 39 years old, and the Victim was 27 years old. The Victim was the Accused's step-niece, and he was the younger brother of the Victim's stepmother.³

6 Sometime in 2010, the Accused and Victim moved, together with their families, to a maisonette. Whilst residing in that maisonette, the Victim and her sister shared one of three bedrooms on the second level (the "Victim's room") while the Accused's room was at the first level.⁴ Sometime before 12 September 2010, while the Victim and her younger sister were sleeping, the Accused began entering the Victim's room at night.⁵

The aggravated OM charge

7 On the first occasion, the Accused entered the Victim's room and laid on the bed next to her. As she was sleeping, he laid his hand across her chest and then reached under the hem of her pants and panties and touched the Victim's vagina before rubbing it with his fingers in an up and down motion (skin-on-skin). At the time, the Victim was less than 14 years old. This formed the basis of the aggravated OM charge.⁶

8 After this occasion, the Accused entered the Victim's room regularly to rub the Victim's vagina with his fingers in an up and down motion (skin-on-skin). The Accused committed these acts while the Victim was asleep.⁷

³ SOF at paras 1–3.

⁴ SOF at para 4.

⁵ SOF at para 5.

⁶ SOF at paras 6–7.

⁷ SOF at para 8.

The aggravated SAP charges

9 Subsequently, the Accused's sexual abuse of the Victim escalated. On one occasion, the Accused entered the Victim's room while she and her younger sister were sleeping and laid down next to her, with his feet facing the Victim's face and *vice versa*. The Accused then slid his hand under the hem of the Victim's pants and rubbed her vagina with his fingers (skin-on-skin). He then proceeded to use the fingers of his other hand to open the Victim's mouth and placed his penis inside her mouth. As the Victim gagged at the insertion of his penis, the Accused removed his penis from the Victim's mouth and let her go back to sleep. The Victim was less than 14 years old at the material time. This episode formed the basis of the first aggravated SAP charge.⁸

10 Not long after this incident, the Accused entered the Victim's room at night once more. This time, he laid next to the Victim with their faces level with each other. Like the previous occasion, the Accused first slid his hand under the Victim's pants and panties and rubbed her vagina with his fingers in an up and down motion (skin-on-skin). He then moved the Victim to sit on his lap before kissing her on the lips and inserting his tongue into her mouth. Finally, he proceeded to push the Victim's head downwards, to his groin, and opened the Victim's mouth with his hand to insert his penis into her mouth. The Victim felt the Accused's penis in her mouth for a few seconds before she gagged and began to cough. The Accused then removed his penis from the Victim's mouth and moved away, allowing her to fall back asleep. The Victim was less than 14 years old at the time of this incident.

⁸ SOF at paras 9–11.

11 This episode formed the basis of the second aggravated SAP charge, as well as subject matter of the fourth charge (which was one of the TIC charges).⁹

The other charges

12 From 2010 to September 2012, the Accused continued to engage in sexual acts with the Victim by penetrating her mouth with his penis. He also began to rub his penis against the Victim's vagina and to digitally penetrate her vagina. Finally, he progressed to penetrating the Victim's vagina with his penis. These sexual acts occurred around three times a week while the Accused and Victim resided together at the maisonette.¹⁰ They formed the subject matter of the seven remaining TIC charges brought against the Accused.

13 For ease of reference, I reproduce the eight TIC charges below:¹¹

(a) the fourth charge: Use of criminal force to outrage the modesty of the Victim by touching her chest, rubbing her vagina and kissing and inserting his tongue into her mouth sometime around 2010, before 12 September 2010, while she was under 14 years of age, an offence punishable under s 354(2) of the Penal Code;

(b) the fifth charge: Committing an indecent act with the Victim by rubbing his penis against her vagina sometime in 2010, while she was 13 to 14 years old, an offence under s 7(a) of the Children and Young Persons Act (Cap 38, 2001 Rev Ed);

⁹ SOF at paras 12–14.

¹⁰ SOF at paras 15–16.

¹¹ SOO at S/N 4–11.

- (c) the sixth charge: Sexual penetration of a minor by penetrating the Victim's vagina with his finger sometime between August 2010 and 31 December 2011, while she was 13 to 15 years old, an offence under s 376A(1)(b) and punishable under s 376A(2) of the Penal Code;
- (d) the seventh charge: Sexual penetration of a minor by penetrating the Victim's mouth with his penis sometime between August 2010 and 31 December 2011, while she was 13 to 15 years old, an offence under s 376A(1)(a) and punishable under s 376A(2) of the Penal Code;
- (e) the eight charge: Sexual penetration of a minor by penetrating the Victim's vagina with his finger sometime between August 2010 and 31 December 2011, while she was 13 to 15 years old, an offence under s 376A(1)(b) and punishable under s 376A(2) of the Penal Code;
- (f) the ninth charge: Sexual penetration of a minor by penetrating the Victim's mouth with his penis sometime between August 2010 and 31 December 2011, while she was 13 to 15 years old, an offence under s 376A(1)(a) and punishable under s 376A(2) of the Penal Code;
- (g) the tenth charge: Sexual penetration of a minor by penetrating the Victim's vagina with his penis sometime in 2011, while she was 14 to 15 years old, an offence under s 376A(1)(a) and punishable under s 376A(2) of the Penal Code; and
- (h) the eleventh charge: Sexual penetration of a minor by penetrating the Victim's vagina with his penis sometime between 1 January 2012 and 11 September 2012, while she was 15 years old, an offence under s 376A(1)(a) and punishable under s 376A(2) of the Penal Code.

Subsequent events

14 The Accused and Victim continued engaging in sexual intercourse from November 2013 to 2017. The Victim initiated some of these sexual acts, as she struggled between being increasingly aware that what they were doing was wrong, and thinking that they shared mutual feelings for each other. After the Victim moved out of the maisonette in 2018, she no longer kept in contact with the Accused. She met her current husband sometime in 2016 and subsequently, she married him in November 2018.¹²

15 On 31 December 2019, the Victim and her husband were at a restaurant for a meal with her in-laws. At the restaurant, the Victim spotted the Accused. This caused her to be in a low mood, prompting her to end her meal early and return home with her husband. Back home, the Victim broke down. After a discussion with her husband, she proceeded to make an online police report.¹³

Decision on Conviction

16 The Accused admitted to the facts as set out in the SOF without qualification. The elements of the three proceeded charges were established beyond a reasonable doubt, and I convicted the Accused of each of them.

Sentencing

17 The Prosecution sought a global sentence of 18 to 20 years' imprisonment and 24 strokes of the cane. In particular, the Prosecution submitted that a sentence of nine to ten years' imprisonment with 12 strokes of

¹² SOF at paras 16–18.

¹³ SOF at para 19.

the cane should be imposed for each of the aggravated SAP charges, and a sentence of two and a half years' imprisonment with two strokes of the cane should be imposed for the aggravated OM charge. It was also argued that the sentences for the aggravated SAP charges should run consecutively to properly reflect the Accused's criminality.¹⁴

18 In reply, the Accused sought a global sentence of ten and a half years' imprisonment and 24 strokes of the cane. Specifically, he argued that a sentence of eight and a half years' imprisonment with 12 strokes of the cane for each of the aggravated SAP charges, and two years' imprisonment with three strokes of the cane for the aggravated OM charge, would be just and appropriate. He further submitted that in light of the one-transaction rule and the totality principle, the sentences for one of the aggravated SAP charges and the aggravated OM charge should run consecutively, with the sentence for the other aggravated SAP charge to run concurrently.¹⁵

The aggravated SAP charges

19 By s 376(4)(b) of the Penal Code, the punishment prescribed for each of the aggravated SAP charges is imprisonment for a term of not less than eight years and not more than 20 years, and mandatory caning of not less than 12 strokes.

The parties' submissions

20 In applying the framework set out in *Pram Nair v Public Prosecutor* [2017] 2 SLR 1015 ("*Pram Nair*"), the Prosecution argued that the present case

¹⁴ Prosecution's Written Submissions at paras 4–6.

¹⁵ Accused's Written Submissions at para 9.

fell within the middle of Band 2. Thus, the starting point should be 11 to 12 years' imprisonment and 12 strokes of the cane for each aggravated SAP charge.

21 The Prosecution pointed out that in *Pram Nair*, the court opined that in cases “where any of the statutory aggravating factors are present, the case would almost invariably fall within Band 2” (at [160]). In addition to the statutory aggravating factor of the Victim’s age, there were four additional aggravating factors present, namely: (a) an abuse of trust; (b) the period and frequency of offending; (c) severe harm to the Victim; and (d) a risk of the Victim contracting a sexually transmitted disease (“STD”).¹⁶

22 To elaborate, the Prosecution submitted that there was a clear abuse of trust since the Accused had used his position as the Victim’s step-uncle to manipulate her into willingly participating in sexual acts with him. There was also a long period and high frequency of offending, with clear signs of grooming. The Accused had begun his sexual assault of the Victim in 2010, whilst she was 14 years old, and continued engaging in sexual acts with her up until 2017, sometimes as frequently as three times a week. As a result of the prolonged abuse, the Victim suffered serious harm to her mental state, and she had been diagnosed with Post-Traumatic Stress Disorder (“PTSD”). Finally, the Accused introduced the risk of contracting STDs by engaging in penile-oral penetration.

23 In light of the foregoing aggravating factors and the Accused’s late plea of guilt midway through trial, the Prosecution argued that no discount should be

¹⁶ Prosecution’s Written Submissions at paras 22–24.

applied from the starting sentence of 11 to 12 years' imprisonment and 12 strokes of the cane for each charge.

24 In response, the Accused, in similarly applying the framework in *Pram Nair*, submitted that the present offence fell within the midpoint of Band 1 of the framework.¹⁷ While he accepted that there were several aggravating factors, the Accused argued that the intensity of these factors was attenuated in the present case, and thus, a period of eight and a half years' imprisonment would be just and appropriate. He also stressed that despite the court's observation in *Pram Nair*, that cases involving statutory aggravating factors would "almost invariably fall" in Band 2, such a statement was equivocal.¹⁸

25 Turning to the specific aggravating factors, the Accused argued that the Victim was on the cusp of turning 14 at the time of the offences, which is close to the age ceiling within s 376(4)(b) of the Penal Code, and this reduced the severity of the aggravating factor of her vulnerability.¹⁹ As for the abuse of trust, the Accused submitted that he was merely the step-uncle of the Victim which was a step removed from direct relations (such as a father-daughter relationship). Hence, the aggravating nature of any abuse of trust is reduced.²⁰ Finally, the Accused stressed that the periods of insertion were "fleetingly brief" and not prolonged,²¹ and that the risk of the Victim contracting STDs was also low as he did not ejaculate in her mouth.²²

¹⁷ Accused's Written Submissions at para 17.

¹⁸ Accused's Written Submissions at para 18.

¹⁹ Accused's Written Submissions at paras 20–22.

²⁰ Accused's Written Submissions at paras 23–27.

²¹ Accused's Written Submissions at paras 14 and 32–33.

²² Accused's Written Submissions at paras 28–29.

26 Taking these limited aggravating factors into consideration, and the fact that the Accused had pleaded guilty and spared the Victim the trauma of testifying at trial,²³ the Accused argued that a sentence of eight and a half years of imprisonment would be appropriate for each of the aggravated SAP charges. Such a sentence was further justified by the fact that the Accused is untraced and had voluntarily stopped the offending acts.²⁴

My decision

27 It was common ground that the appropriate sentencing framework for the aggravated SAP charges is the framework set out in *Pram Nair*. The framework sets out the following approach: (a) identify the number of offence-specific aggravating factors in a case; (b) determine, based on the number and intensity of the aggravating factors, which of the three sentencing bands the case falls under; (c) identify where precisely within the sentencing band the case falls in order to derive an indicative starting sentence; and (d) adjust that indicative sentence to reflect the presence of any offender-specific aggravating and mitigating factors. For completeness, the sentencing bands are as follows (*Pram Nair* at [159]):

- (a) Band 1: seven to ten years' imprisonment and four strokes of the cane;
- (b) Band 2: ten to 15 years' imprisonment and eight strokes of the cane;
- (c) Band 3: 15 to 20 years' imprisonment and 12 strokes of the cane.

²³ Accused's Written Submissions at paras 38–41.

²⁴ Accused's Written Submissions at paras 42–46.

28 I broadly agreed with the four offence-specific aggravating factors identified by the Prosecution. It was clear that the Victim suffered significant harm as evidenced by the diagnosis of PTSD by Dr Tina Tan of the Institute of Mental Health, and the corresponding symptoms that the Victim suffered, such as nightmares, disturbed sleep and occasions where she would suddenly break down and cry for no reason.²⁵ The Accused rightfully did not appear to contest this factor.

29 Turning to the factors that the Accused contested, I did not accept the Accused’s argument that the severity of his abuse of trust was lessened by the fact that he shared a “comparatively removed relationship” with the Victim as he was her step-uncle. As held in *BWM v Public Prosecutor* [2021] SGCA 83 (“*BWM*”) (at [20]), the court will focus on the “substance of the relationship between the [accused] and the victim in determining whether a position of trust existed”.

30 It was evident that the Accused and Victim shared a closer relationship than is typically present between an uncle and niece since they resided in the same flat together, *ie*, the maisonette, and were part of the same household. At the hearing, the Prosecution also pointed out that the abuse of trust was augmented by the fact that the Accused is “significantly older” than the Victim.²⁶ Indeed, the Accused abused the trust that the Victim reposed in him by the escalation in his sexual acts, so much so that eventually, the Victim was convinced into thinking they might have mutual feelings for each other. In fact, much like how the victim in *BWM* feared being ostracised by the rest of his

²⁵ SOF at para 24.

²⁶ Notes of Evidence dated 18 April 2024 at p 5 lines 16–23.

family if he revealed that the offender had assaulted him, the Victim “resisted confiding in anyone for fear of being blamed” by her family.²⁷

31 This fact that the Victim feared being blamed by her family, and was *in fact* blamed by her parents,²⁸ further highlighted the position of trust that the Accused enjoyed as an adult member of the family, and his abuse of that trust. More importantly, it also highlighted the Victim’s vulnerability and her difficulty in finding support at the time of the offences. That said, I was mindful of the Accused’s argument that the factor of the Victim’s vulnerability was attenuated as she was on the cusp of turning 14 years old. Certainly, had the Victim been younger than she was, the gravity of the Accused’s assault would have been much more severe.

32 Moving on, I was unable to accept the Accused’s claim that the length of the assault should be given less weight as an aggravating factor. Although it was undisputed that the periods of penetration for the proceeded charges were quite short and did not appear to last beyond a few seconds, the overall length of the Accused’s sexual abuse of the Victim was not short. As evidenced by the TIC charges, the Accused’s abuse spanned from sometime in 2010 to September 2012.²⁹ Moreover, it was accepted by the Accused that he assaulted the Victim around three times a week whilst they resided at the maisonette.³⁰ Hence, the prolonged length and high frequency of the offending behaviour was an

²⁷ SOF, Annex A at para 25.

²⁸ SOF, Annex A at para 15.

²⁹ SOO at S/N 4–11.

³⁰ SOF at para 16.

aggravating factor which outweighed the brevity of the intrusions on the occasions within the proceeded charges.

33 Turning finally to the risk of STDs, as held in *Public Prosecutor v CDL* [2022] SGHC 122 (at [29]), the risk of STDs arose when the offender inserted his penis into the victim's mouth. The mere fact that the offender did not ejaculate does not diminish the aggravating effect of this factor. Hence, I disagreed with the Accused's argument that less weight should be given to this aggravating factor because he had not ejaculated in the Victim's mouth.

34 Given that I agreed with the Prosecution that the four offence-specific aggravating factors were clearly made out, I determined that the present case fell in the middle of Band 2 of the *Pram Nair* framework. This placed the indicative starting sentence at around 12 years' imprisonment, at the top end of the Prosecution's suggested range of 11 to 12 years' imprisonment.

35 I next considered whether the indicative sentence should be adjusted to reflect the presence of any offender-specific aggravating or mitigating factors. I rejected the Accused's claim that he had voluntarily ceased his abuse, since he had sexually assaulted the Victim repeatedly until she turned 16, following which he continued to engage in sexual acts with her up until 2017. In fact, it was clear that the Accused did not only fail to cease his abuse of the Victim, but rather, escalated the severity of his assaults. This was evidenced by the fact that following from the incidents forming the proceeded charges, the Accused went on to engage in increasingly invasive sexual acts, progressing to digital-vaginal and finally penile-vaginal penetration of the Victim.³¹

³¹ SOF at para 15.

36 I also ascribed limited weight to the fact the Accused is untraced. Given the sheer number and timespan of the charges brought against him, it was clear to me that the Accused was a persistent offender who perpetuated his assault against the Victim for a prolonged period. As held in *Chen Weixiong Jerriek v Public Prosecutor* [2003] 2 SLR(R) 334 (at [14]–[17]), the court will be reluctant to regard an accused person as a “first offender” where they are charged with a large number of offences, as the only reason for the offender’s lack of prior convictions is because the law had not yet caught up with them for their past misdeeds.

37 That said, while I found that although the Accused’s plea of guilt was entered somewhat late in the day, it nonetheless warranted some credit (see *Ng Kean Meng Terence v Public Prosecutor* [2017] 2 SLR 449 at [66] and [71]). In particular, by pleading guilty before the Victim took the stand, the Accused spared her the trauma of having to relive the events of her assault in court. It also saved some judicial resources. This plea of guilt was sufficient to justify a downward calibration of the sentences for each of the aggravated SAP charges to ten years’ imprisonment. There should also be the mandatory minimum of 12 strokes of the cane.

The aggravated OM charge

38 By s 354(2) of the Penal Code, the prescribed punishment for the aggravated OM charge is imprisonment for a term which may extend to five years, or with fine, or with caning, or with any combination of such punishments.

39 It was undisputed between parties that the sentencing framework in *GBR v Public Prosecutor and another appeal* [2018] 3 SLR 1048 (“GBR”) was

applicable. In *GBR*, the court set out a four-stage approach for sentencing (at [26]–[39]). First, the court would identify the offence-specific aggravating factors which includes, *inter alia*, the abuse of a position of trust, the exploitation of a vulnerable victim and the harm caused to the victim, whether physical or psychological. Second, based on the number and intensity of the aggravating factors, the court would determine which sentencing band the case falls under. Third, the court would determine whether caning should be imposed as an additional deterrent. Fourth, and finally, the court would adjust the sentence to take into account offender-specific aggravating and mitigating factors, such as the number of charges taken into consideration, a timeous plea of guilt and any other relevant factors.

40 Additionally, the sentencing bands for outrage of modesty are as follows (*GBR* at [31]):

- (a) Band 1: less than one year’s imprisonment;
- (b) Band 2: one to three years’ imprisonment; and
- (c) Band 3: three to five years’ imprisonment.

41 In applying the framework set out in *GBR*, the Prosecution submitted that as the Accused had rubbed the Victim’s vagina (skin-on-skin) while she was sleeping, this placed the Accused’s actions squarely within the middle of Band 2 of the framework. The Prosecution also stressed the mental harm suffered by the Victim and the fact that she suffered from PTSD and continues to experience the impact of the Accused’s assault until the present day.³²

³² Prosecution’s Written Submissions at paras 27–30.

Additionally, there were two further TIC charges which similarly involved the Accused touching the Victim's vagina.³³ As such, the Prosecution sought a sentence of two and half years' imprisonment and two strokes of the cane for the aggravated OM charge. The Prosecution also reiterated that no credit should be given for the Accused's belated plea of guilt.³⁴

42 The Accused similarly applied the *GBR* framework, and agreed with the Prosecution that the present offence fell within Band 2 of the framework.³⁵ However, he sought to distinguish the present facts from the case of *Public Prosecutor v BVJ* [2022] SGHC 59 ("*BVJ*") (at [117]–[119]) where the court found that the offender's actions fell in the upper end of Band 2 and the lower end of Band 3 as he had licked the victim's vagina (skin-to-skin) and used deception to mask his wrongdoing to the victim. There, the offender received three years' imprisonment and six strokes of the cane as punishment. In contrast, the Accused argued that as there was a greater degree of intrusion and a higher level of abuse of authority in *BVJ*, this would warrant a lower sentence of two years' imprisonment for him.³⁶

43 I found that several of the offence-specific aggravating factors in the *GBR* framework were established. As I found earlier (at [28]–[32] above), the abuse of a position of trust by the Accused, the length and frequency of sexual offending and the resultant psychological harm to the Victim had clearly been made out on the facts of this case. The presence of three aggravating factors and

³³ SOO at S/N 4 and 5.

³⁴ Prosecution's Written Submissions at para 32.

³⁵ Accused's Written Submissions at paras 48–49.

³⁶ Accused's Written Submissions at paras 52–55 and 57.

the fact that the Accused *had* engaged in skin-on-skin touching of the Victim's vagina clearly placed this case on the higher end of the spectrum of Band 2 cases (see *GBR* at [33]–[34]). Hence, the indicative starting sentence would be around two and a half years' imprisonment.

44 Much like the aggravated SAP charges (see above at [37]), while I acknowledged that the Accused's plea of guilt was somewhat belated, credit should still be given to the fact that the Accused's plea spared the Victim the trauma of having to give evidence in court. Hence, I decided that a downward adjustment of the Accused's starting sentence to two years' imprisonment would be fair.

45 With regard to the Accused's reliance on *BVJ* where the sentence imposed on the offender was three years' imprisonment, I accepted his argument that the facts of *BVJ* were more egregious. That case involved a higher degree of intrusion, and the offender was the father of the victim. Thus, a lower sentence of two years' imprisonment here would be appropriate. Given the skin-to-skin nature of the contact, three strokes of the cane would be warranted.

The global sentence

46 Having determined the appropriate sentences for each of the proceeded charges, the final step in sentencing was to determine how the three proceeded charges should be made to run. Indeed, at the hearing, I remarked that the parties were not that far apart in terms of their sentencing positions for the individual charges. Where the parties chiefly diverged was which two of the three sentences for the proceeded charges should be made to run consecutively pursuant to s 306(1) of the CPC. While the Prosecution argued that the two

imprisonment terms for the aggravated SAP charges should be made to run consecutively, the Accused argued that they should run concurrently instead.

The parties' submissions

47 The Prosecution sought for the imprisonment terms for the two aggravated SAP charges to run consecutively to appropriately reflect the Accused's criminality. This was because the incidents forming the aggravated SAP charges were committed on two entirely separate occasions, and the duration of offending was protracted and repeated since the Accused continued to assault the Victim until she turned 16, following which he continued to engage in sexual relations with her. This was further supported by the number of TIC charges against the Accused. Thus, the protracted nature of the Appellant's offending behaviour evidenced a degree of grooming, which resulted in severe harm to the Victim as she continues to suffer from PTSD.³⁷

48 In contrast, the Accused submitted that as the two aggravated SAP charges were "temporally proximate and factually inseparable", ordering the sentences to run consecutively would breach the one-transaction rule.³⁸ In support of his position, the Accused outlined three cases where an aggregate sentence of 20 to 22 years was imposed, to illustrate how his case was comparatively less severe:

- (a) In *Public Prosecutor v BMU* [2020] SGHC 231 ("*BMU*"), the offender was convicted of three charges of aggravated sexual assault by digital-vaginal penetration with 21 other sexual assault charges being

³⁷ Prosecution's Written Submissions at paras 34–36.

³⁸ Accused's Written Submissions at paras 58–59.

taken into consideration for sentencing. The victim was nine to ten years old at the material time and the daughter of the offender's girlfriend. The offender was sentenced to 11 years' imprisonment and 12 strokes of the cane for each charge, with two sentences to run consecutively, resulting in a final sentence of 22 years' imprisonment and 24 strokes of the cane.

(b) In *Public Prosecutor v BQW* [2018] SGHC 136 ("*BQW*"), the offender committed multiple sexual offences against the granddaughter of his employer, who was seven years old at the time. He pleaded guilty to three charges of aggravated sexual assault by digital-vaginal penetration. He was sentenced to ten years' imprisonment for each SAP charge, with the two sentences running consecutively, amounting to an aggregate sentence of 20 years' imprisonment.

(c) In *BPH v Public Prosecutor and another appeal* [2019] 2 SLR 764 ("*BPH*"), one of the offenders ("*BVZ*") was convicted on four charges, namely two charges of sexual assault by penile-oral penetration, one charge of outrage of modesty and one charge of causing hurt by means of poison committed against three 14-year-old victims. He received an aggregate sentence of 20 years' imprisonment and 16 strokes of the cane.

49 The Accused further argued that a global sentence of 18 years' imprisonment would breach the totality principle as it would lead to a crushing sentence that was not proportionate to his offending.³⁹ This was because the Accused also provides financially for his mother's medical expenses and his

³⁹ Accused's Written Submissions at paras 60–61.

sister, who has special needs, as well as his two young children.⁴⁰ Hence, the sentences for the two aggravated SAP charges should be made to run concurrently.

My decision

50 In my view, it is necessary to run the imprisonment terms for the two aggravated SAP charges consecutively to properly reflect the protracted and repeated nature of the Accused's assault and to give due regard to the overriding considerations of retribution and deterrence.

51 Even if I were to accept that the time between the two aggravated SAP charges is ambiguous, it could not be seriously argued that they were so temporally proximate as to form a single transaction. Moreover, in *Public Prosecutor v Law Aik Meng* [2007] 2 SLR(R) 814 (at [55]–[56]), the court observed that the one-transaction rule should not be construed as a hard and fast rule to be rigidly applied, and that consecutive sentences for offences forming a single transaction may be appropriate if so dictated by the gravity of the offences involved. Running the sentences for the two most severe charges consecutively would give due regard to the gravity of the Accused's offending behaviour. In particular, there were eight other TIC charges which concerned the Accused engaging in increasingly intrusive acts of sexual assault, such as digital penetration and penile-vaginal rape, across a span of over two years.⁴¹

52 Since I determined that each of the aggravated SAP charges warranted a sentence of ten years of imprisonment and 12 strokes of the cane (see [37]

⁴⁰ Accused's Written Submissions at paras 68–69.

⁴¹ SOF at paras 15–17; and SOO at S/N 4–11.

above), this would give rise to an aggregate sentence of 20 years of imprisonment.

53 I further found the Accused's reliance on prior precedents to be of limited assistance to him. It would be difficult to say that *BMU* and *BQW* were cases that clearly involved much more severe offences. The proceeded charges in those cases were for digital penetration offences. As for *BPH*, although *BVZ* preyed on more victims, the abuse of trust was less prominent given the absence of any familial relationship for the sexual offences. I was unpersuaded by the Accused's argument that the present case involved far less egregious acts deserving of a *substantially* lower sentence of a mere ten and a half years' imprisonment.

54 That said, I noted that the victims in *BMU* and *BQW* were far younger than the Victim. Taking a last look at the matter, I was minded to further reduce the individual sentences for the aggravated SAP charges to nine years of imprisonment with 12 strokes of the cane. This was in line with the Prosecution's submission that the global sentence should be between 18 to 20 years of imprisonment. Finally, I did not believe that an imprisonment of 18 years was crushing and out of proportion to the Accused's criminality. While I was cognisant of the fact that the Accused has two young children, and that he is the breadwinner for his family, it is well-established that any hardship caused to an offender's family as a result of his imprisonment has little mitigating value, unless there were exceptional or extreme circumstances (*Annis bin Abdullah v Public Prosecutor* [2004] 2 SLR(R) 93 at [62]). I was not convinced that such circumstances of exceptional hardships were present, and especially none that would justify a finding that an imprisonment of 18 years was crushing.

Conclusion

55 For the reasons stated above, I sentenced the Accused to nine years' imprisonment and 12 strokes of the cane for each of the aggravated SAP charge, and two years' imprisonment and three strokes of the cane for the aggravated OM charge. The imprisonment terms for the two aggravated SAP charges are to run consecutively and the imprisonment term for the aggravated OM charge is to run concurrently. The global sentence is 18 years' imprisonment and 24 strokes of the cane.

Hoo Sheau Peng
Judge of the High Court

Lee Zu Zhao, See Yup Queen Janice and Ngian Jia Xian June
(Attorney-General's Chambers) for the Prosecution;
Gino Hardial Singh (Abbots Chambers LLC) for the accused.
