

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

[2025] SGHC 249

Criminal Case No 14 of 2023

Between

Public Prosecutor

And

Lev Panfilov

GROUND OF DECISION

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

[Criminal procedure and sentencing] — [Sentencing] — [Sexual offences]

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Public Prosecutor

v

Panfilov, Lev

[2025] SGHC 249

General Division of the High Court — Criminal Case No 14 of 2023

Pang Khang Chau J

16-19, 23-26 May, 11-14, 27 July, 4, 18, 25 August, 4-5, 14-15 September, 23 October 2023, 30 April, 2-3, 14-16 May, 17 July, 24 September 2024, 21 March, 19 May 2025

8 December 2025

Pang Khang Chau J:

Introduction

1 The accused, Mr Lev Panfilov (the “Accused”), claimed trial to the following four charges:

- (a) one charge of outrage of modesty under s 354(1) of the Penal Code (Cap 224, 2008 Rev Ed) (“PC”) (the “First Charge”);
- (b) one charge of sexual assault by penetration under s 376(2)(a) punishable under s 376(3) PC (the “Second Charge”);
- (c) one charge of rape (penile-oral) under s 375(1A)(a) punishable under s 375(2) PC (the “Third Charge”); and

(d) one charge of rape (penile-vaginal) under s 375(1)(a) punishable under s 375(2) PC (the “Fourth Charge”).

2 The Accused met the complainant (the “Complainant”) through an online dating application called “Tinder”. The Complainant alleged that the Accused had raped and sexually assaulted her at his residence (the “Flat”) on 12 January 2021. The Accused did not deny that he had sex with the Complainant, but claimed that the sex was consensual.

3 After hearing evidence from the Prosecution and the Accused, I convicted the Accused on all four charges and sentenced him to 11 years’ and six months’ imprisonment and 12 strokes of the cane. The Accused has filed an appeal against conviction and sentence while the Prosecution has filed an appeal against the sentences of imprisonment imposed on the Second Charge, Third Charge and Fourth Charge.

Facts

The parties

4 According to the Complainant, after having worked as a model and actress for some time, she developed a medical condition which affected her facial muscles such that it limited her prospects of continuing with an acting career.¹ Encouraged by her mother (PW 12), the Complainant tried branching into comedy and began learning comedic scriptwriting on her own.²

¹ NE, 16 May 2023, at p 54:1–14; NE, 2 May 2024, at p 7:9–13.

² NE, 16 May 2023, at p 54:15–21; NE, 2 May 2024, at p 7:13–16.

5 At the material time, the Accused was working as an actor in a comedic YouTube channel and, in this role, he was also involved in comedic scriptwriting.

Undisputed facts

6 The Complainant and the Accused “matched” on Tinder in early January 2021, and proceeded to chat with each other on Tinder, and later by WhatsApp.³ After chatting for a few days, the Accused and the Complainant agreed to meet at Wine Connection at Robertson Quay on 12 January 2021.⁴

7 The Complainant arrived at the Robertson Quay area in the late afternoon towards early evening. The Accused texted her that he would be late, and that they should meet at 8:00 pm instead. The Complainant went to a nearby café where she worked on her script and had her dinner.⁵

8 The Complainant went to Wine Connection at around 8:00 pm. By then, the Accused had already arrived and was seated. They exchanged small talk before working on the Complainant’s script together. She shared her ideas for jokes with the Accused and sought his opinions on them.⁶ When the restaurant was closing, the Accused and the Complainant agreed to go back to his Flat.⁷ They made their own separate ways to the Flat, with the Complainant taking a Grab car while the Accused rode home on his motorcycle.⁸

³ NE, 16 May 2023, at pp 58:17–59:16;

⁴ NE, 16 May 2023, at p 60:11–12.

⁵ NE, 16 May 2023, at p 61:4–16.

⁶ NE, 16 May 2023, at pp 61:28–65:21.

⁷ NE, 16 May 2023, at p 65:24–30;

⁸ NE, 16 May 2023, at pp 66:23–67:8.

9 The Accused shared the Flat with two other tenants. Upon the Complainant arriving at the Flat, the Accused immediately ushered the Complainant to the Accused's bedroom.⁹ As there was nowhere else to sit in the Accused's bedroom, they sat on the Accused's bed to work on her script.¹⁰ They talked about writing characters and watched YouTube videos of comedians that each of them found funny.¹¹

10 At some point, the Accused started kissing the Complainant. As parties gave completely different accounts of the nature of the kiss and the events that occurred after the kiss, I summarise separately the cases put forth by the Prosecution and the Defence.

The Prosecution's Case

The facts forming the basis of the four charges

11 The Prosecution's case was that the Complainant had not consented to the sexual acts that followed at the Flat. The Complainant's account was that while they were watching comedians on YouTube, the Accused suddenly leaned in and kissed her on the lips. According to her, she was shocked and told him "no", but he continued to kiss her again on the lips, used both of his hands to touch her breasts, and put her hand over his erection.¹²

12 When she tried to gather her belongings from the Accused's table, so that she could leave his room, the Accused came up behind her and hugged her from behind. He rubbed his body against the Complainant's, such that she could

⁹ NE, 16 May 2023, at pp 67:27–68:17.

¹⁰ NE, 17 May 2023, at p 5:26–31.

¹¹ NE, 17 May 2023, at p 8:9–23.

¹² NE, 17 May 2023, at pp 9:13–10:27.

feel his erection against her buttocks. At this time, the Complainant recounted that she was in total shock, in that she tried to move her body but could not break free.¹³ While the Accused was hugging the Complainant, she alleged that he slipped his hands underneath her dress and grabbed her breasts, which caused her pain, and she told him “no” again.¹⁴ These facts – kissing the Complainant on her lips, hugging her, and grabbing her breasts – formed the basis of the First Charge.

13 The Accused continued to grab the Complainant’s breasts, before removing one hand and inserting that hand underneath her dress and into her panties. He allegedly inserted his fingers into the Complainant’s vagina, moving it in and out, causing her severe pain.¹⁵ The Complainant described feeling frozen, as if her mind was in a mess.¹⁶ These facts formed the basis of the Second Charge.

14 After some time, the Accused withdrew his hands from the Complainant’s body, so that he could grab her arm and turn her to face him. He pulled down his shorts to expose his genitalia, and pushed the Complainant’s head down, forcing her to assume a kneeling position and to perform fellatio on him. The Complainant tried to close her mouth to prevent this, albeit unsuccessfully as the Accused “kept pushing” his penis in.¹⁷ The Complainant was gagging and choking.¹⁸ These facts formed the basis for the Third Charge.

¹³ NE, 17 May 2023, at pp 11:9–12:13.

¹⁴ NE, 17 May 2023, at pp 12:18–13:25.

¹⁵ NE, 17 May 2023, at pp 13:27–15:7.

¹⁶ NE, 17 May 2023, at pp 15:8–15:15.

¹⁷ NE, 17 May 2023, at pp 15:20–20:10.

¹⁸ NE, 17 May 2023, at p 20:11–14.

15 At some point after, the Accused withdrew his penis, pulled her up by her arm, pulled her to the side of the bed, and then pushed her face down onto the bed. She then felt the Accused pull down her underwear and flip up her dress to expose her vagina and her buttocks. The Accused then inserted his penis into her vagina from the back, which caused her so much pain, that she wanted to scream and kept flinching. During the penetration, she felt the Accused put a hand on the back of her neck, and put a pillow over the back of her head due to her flinching. The Complainant felt suffocated and wanted to scream, but could not. The Accused flipped her over and continued the penetration from the front.¹⁹ These facts formed the basis of the Fourth Charge.

16 After some time, the Accused withdrew his penis and released his grip on the Complainant's neck and waist. The Complainant saw "white stuff" at the tip of the condom that the Accused wore. The Complainant, still in total shock and her body feeling limp, gathered up her strength to put on her underwear and get her bag. The Accused told the Complainant that she could go. The Accused asked for her address and booked her a Gojek car to go home.²⁰

The Complainant's account of what she thought and felt during the attack

17 The Complainant testified that throughout the alleged attack, she was in a state of shock, fear, and extreme pain. She provided a detailed account of how she felt and reacted during each of the attacks mentioned in the four charges against the Accused:

- (a) For the First Charge, she described that after she tried to leave the Accused's room and he hugged her very tightly with both his arms,

¹⁹ NE, 17 May 2023, at pp 20:16–24:28.

²⁰ NE, 17 May 2023, at pp 24:28–28:14.

she was “in total shock at the time ... [and] tried to move [her] body, but [she] couldn’t break free”.²¹

(b) For the Second Charge, when the Accused had sexually penetrated her vagina with his fingers, she was “just frozen ... [as she] was afraid that he would escalate the violence if [she screamed or did anything else]”.²²

(c) For the Third Charge, when the Accused forced her to perform fellatio on him, she described that she “really wanted to vomit” and was “gagging” and “choking” when the Accused inserted his penis into her mouth, as “it didn’t taste like he took a shower” and “tasted like urine”.²³

(d) For the Fourth Charge, when the Accused penetrated her vagina, she was “very scared, so [she] held everything in [and] didn’t manage to scream”.²⁴ She added that she could not scream as she was in “total shock at the time ... [and] in a lot of pain”. Furthermore, her “eyes were closed” as she “was terrified”.²⁵ Her “body was limp, and [she] was just too overwhelmed at what was happening and [she] was scared that if [she] screamed, [she was afraid] of what [the Accused] would do to [her]”.²⁶ She recalled being in total shock and her body feeling limp even after he stopped penetrating her.²⁷

²¹ NE, 17 May 2023, at pp 11:12–12:9.

²² NE, 17 May 2023 at p 18:20–24 and p 19:9.

²³ NE, 17 May 2023, at p

²⁴ NE, 17 May 2023, at p 22:26–27.

²⁵ NE, 17 May 2023, at p 23:26.

²⁶ NE, 17 May 2023, at p 25:18–21.

²⁷ NE, 17 May 2023, at p 24:28–31.

(e) Right after the attack, the Complainant was afraid to walk past the Accused, so she attempted to book a Grab car while standing at one corner of the bedroom. She was unsuccessful in booking a Grab. The Accused then asked for her address so that he could book a ride home for her. She complied as she “just wanted to go home and [she] was terrified of him, [and she] would have given him anything he wanted ... [as] long as he [let her] go”.²⁸

The aftermath

The blood-stained underwear

18 The Complainant testified that she was still experiencing moderate pain in her vaginal area and abdominal area after returning home. She went back to her room, and when she took off her underwear in the toilet, she noticed that there was blood on her underwear. This caused her to break down in tears, and she placed her underwear and dress in her laundry basket.²⁹

The events on 13–15 January 2021

19 The Complainant testified that in the days following the attack, she was tired, in pain, and very depressed. She said that she was unable to sleep as she kept having flashbacks about what happened to her. At some point on 13 January 2021, she “unmatched” the Accused on Tinder and deleted the messages with the Accused on WhatsApp, as she “felt disgusted about what happened, and ... [did not] want anything to do with him anymore”.³⁰

²⁸ NE, 17 May 2023, at p 27:1–2.

²⁹ NE, 17 May 2023, at p 29:14–26.

³⁰ NE, 17 May 2023, at pp 30:28–32:18; NE, 17 May 2023, at pp 33:11–33:15.

20 The Complainant explained that, on 13 and 14 January 2021, she did not want to tell her mother and sister what had happened to her as she did not want to aggravate her mother’s heart condition – supraventricular tachycardia (“SVT”) – and did not want to worry her sister, who was overseas.³¹ It was also over these two days that the Complainant read articles on sexual assault, as she wanted to know what to do, and whether she would be believed. She explained that she doubted that she would be believed as the assault happened behind closed doors, and was discouraged by the low conviction rates she had read about. She was still experiencing pain on 14 and 15 January 2021, albeit at a lower scale.³²

The visit to PW3 Dr Foo’s clinic and Clementi NPC

21 On 16 January 2021, the Complainant continued to feel pain in her lower abdominal and vaginal area, and was worried about whether she had gotten a sexually transmitted infection or become pregnant due to the attack. She “gathered up some energy” and went to the Clementi Family and Aesthetic Clinic. The Complainant was wondering why she was still feeling pain in the vaginal and abdominal areas after a few days and wanted to get herself checked by a doctor to “make sure if everything is okay”. At the clinic, the Complainant informed PW3 Dr Foo Minli Joanna (“PW3 Dr Foo”) that she was raped. Upon hearing this, PW3 Dr Foo explained that she could not examine the Complainant or otherwise help her until a police report was lodged. The Complainant also recalled hearing PW3 Dr Foo say something about the need for a rape kit and that there was no rape kit in the clinic. Accordingly, the Complainant proceeded to the Clementi Neighbourhood Police Centre (“Clementi NPC”).³³

³¹ NE, 17 May 2023, at pp 33:14–34:26.

³² NE, 17 May 2023, at pp 34:30–36:28.

³³ NE, 17 May 2023, at pp 37:17–39:23.

22 At Clementi NPC, the Complainant spoke to several police officers, including PW9 Station Inspector Lim Chew Boon (“PW9 SI Lim”). She explained that she chose not to file a police report on that day as:³⁴

- (a) She felt she had no evidence, as the attack happened behind closed doors;
- (b) She was worried about causing more stress to her mother, if she were to find out about the incident through the police, as it would aggravate her SVT;
- (c) She was worried about her students finding out about the incident, as she did not know how to explain the fact that she had been raped to her students or their parents;
- (d) She was worried that the Accused may sue her if she lodged a police report, and the police investigations affected the Accused, and;
- (e) She felt traumatised at having to explain what happened to her to a few different officers. She also felt triggered by one of the police officers, who asked her if she had given consent to the rape, as it felt to her as though the police officers did not believe her. Her evidence was that she was still traumatised on 16 January 2021, and “felt that when they asked [her] that question, they didn’t believe [her]”.³⁵

³⁴ NE, 17 May 2023, at pp 40:1–45:30.

³⁵ NE, 17 May 2023 at p 41:1–5.

The visit to KK Women's and Children's Hospital

23 On 17 January 2021, the Complainant rested at home the whole day, as she was still very tired, depressed, and in pain. Around midnight on 18 January 2021, she told her mother (PW12) what happened to her. PW12 brought her to KK Women's and Children's Hospital ("KKH"), and a police report was lodged. On PW 12's instructions, the Complainant brought the underwear and dress that she wore on 12 January 2021. At KKH, the Complainant was examined by PW8 Dr Geetha Visvalingam ("PW8 Dr Geetha").³⁶

The Defence's Case*The Complainant consented to the sexual acts*

24 The Accused's defence was one of consent. He admitted that he had kissed the Complainant, touched her breasts, and penetrated her mouth and vagina with his penis, although he denies inserting his fingers into the Complainant's vagina.

25 The Accused testified that, at the Flat, it was the Complainant who first made advances on him, by laughing at the Accused's jokes and tapping on the Accused's leg, which progressed to stroking the Accused's thigh. It was then that the Accused moved in to kiss the Complainant, which she reciprocated.³⁷ He then described how he undressed the Complainant, and how the Complainant fellated the Accused.³⁸ He also described how he proceeded to remove the Complainant's underwear, which was "lacy", "pinkish red" and "didn't have any white padding", before engaging in "passionate" sexual

³⁶ NE, 17 May 2023, at pp 45:31–47:23; NE, 17 May 2023, at p 51:11–13.

³⁷ NE, 14 May 2024, at pp 31:5–32:19.

³⁸ NE, 14 May 2024, at pp 32:19–38:4.

intercourse with the Complainant on his bed. He conceded to penetrating the Complainant from both the front and from the rear, before eventually withdrawing his penis from her vagina and ejaculating into the condom.³⁹

26 The Accused said that, after the sexual encounter, the Complainant dressed herself and used the toilet in his room. He also described how he and the Complainant shared some jokes. The Complainant then repeated a joke which the Accused found morbid and off-putting. At that point, the Accused asked if he could call her a cab, which the Complainant accepted. The Accused and the Complainant talked about his experiences performing stand up comedy while waiting for the Gojek car to arrive.⁴⁰

The aftermath

27 The Accused was not sure if the Complainant had messaged him after 12 January 2021, but said that he did not feel like chatting with the Complainant anymore, as he found her jokes and personality to be off-putting.⁴¹

28 On 18 January 2021, after receiving a call from PW1 ASP Dan Dunstan Cheang (“PW1 ASP Cheang”), the Accused met PW1, along with PW13 ASP Ho Baoxin (“PW13 ASP Ho”) and PW14 DSP Muhammad Jamil Bin Agus Rizal (“PW14 DSP Jamil”) at his workplace. The officers asked the Accused to bring them to his flat, before he was escorted to Police Cantonment Complex (“PCC”), where a video recorded interview (the “VRI”) was conducted.

³⁹ NE, 14 May 2024, at pp 36:32–45:2.

⁴⁰ NE, 14 May 2024, at pp 45:26–47:31; NE, 14 May 2024, at pp 49:19–50:2.

⁴¹ NE, 14 May 2024, at pp 50:11–51:6.

Issues to be determined

29 Although the accounts of the Accused and the Complainant differ slightly in respect of the events prior to 12 January 2021 (as to, among other details, who swiped right first on Tinder, who messaged first, and how parties were seated at Wine Connection), the key factual dispute is whether the sexual encounter on the evening of 12 January 2021 at the Flat was consensual. Therefore, the only issue to be determined is whether the Complainant had consented to the sexual acts described above.

Applicable legal principles

30 Both sides agreed that, as the only witnesses to the alleged offences were the Complainant and the Accused themselves, the “unusually convincing” standard applied to the Complainant’s testimony.⁴²

The law on the “unusually convincing” standard

31 It is well-established that in a case where no other evidence is available, a complainant’s testimony can constitute proof beyond reasonable doubt, but only when it is so “unusually convincing” as to overcome any doubts that might arise from the lack of corroboration: *AOF v Public Prosecutor* [2012] 3 SLR 34 (“*AOF*”) at [111]. The need for the heightened level of scrutiny which the “unusually convincing” standard entails is particularly acute in cases involving sexual offences due to the ease with which allegations of sexual assault may be fabricate and the difficulty of rebutting such allegations: *AOF* at [112].

⁴² Prosecution’s Closing Submissions dated 2 September 2024 (“PCS”) at para 66; Defence’s Closing Submissions dated 2 September 2024 (“DCS”) at para 9.

32 The "unusually convincing" standard does not change the ultimate rule that the Prosecution must prove its case beyond a reasonable doubt: *XP v PP* [2008] 4 SLR(R) 686 at [31]. Thus it has been held that the "unusually convincing" standard is not a "test" but a heuristic tool which serves as a cautionary reminder to the court of the high threshold that the Prosecution must meet in order to secure a conviction, and of the anxious scrutiny that is required because of the severe consequences that will follow from a conviction: *Public Prosecutor v GCK and anor* [2020] 1 SLR 486 ("*GCK*") at [91].

33 In determining whether a complainant's testimony is unusually convincing, the test is whether her testimony, when weighed against the overall backdrop of the available facts and circumstance, contains that ring of truth which leaves the court satisfied that no reasonable doubt exists in favour of the accused: *Haliffie bin Mamat v Public Prosecutor and other appeals* [2016] 5 SLR 636 ("*Haliffie*") at [28]. The relevant considerations in this regard include (a) the internal consistency of the complainant's account, (b) the external consistency of her account, and (c) her demeanour: *GCK* at [88].

34 If the complainant's evidence is not unusually convincing, a conviction would be unsafe unless there is some corroboration of the victim's account: *Haliffie* at [28]–[30]. Furthermore, an "unusually convincing" testimony does not automatically entail a guilty verdict and cannot dispense with the need to consider the other evidence and factual circumstances peculiar to each case. Nor does it dispense with having to weigh the complainant's testimony against that of the accused, where the case turns on one person's word against the other's: *AOF* at [114].

35 In the following analysis, I will first consider whether the Complainant's testimony is "unusually convincing" with reference to the considerations of

internal consistency, external consistency and demeanour. Thereafter, I will proceed to weigh the Complainant's testimony against the Accused's testimony as well as against other evidence and factual circumstances that may not be neatly categorised as evidence of internal consistency, external consistency or demeanour.

Whether the Complainant's evidence was unusually convincing

Internal consistency

36 The Complainant provided a textured, vivid and consistent testimony of the assault.⁴³ The Complainant's testimony remained unchanged despite having undergone a long and difficult cross-examination which lasted over 13 non-consecutive trial days spanning a period of six months.⁴⁴

37 Significantly, the Defence did not point the court to any internal inconsistencies in the Complainant's testimony. To be fair to the Defence, they had included a section entitled "The Complainant's evidence is internally and externally inconsistent" in their written closing submissions in which they listed down six items, namely: (a) the Complainant "screamed in my head", (b) the Complainant deleted her WhatsApp messages, (c) why the Complainant used the dating application Tinder, (d) the Complainant has no explanation of when the condom was worn, (e) the Complainant did not see any blood on the condom, and (f) the Complainant does not recall the "memo" from Dr Joanna. However, the Defence did not tell the court which of these items, in their view, concern internal consistency and which concern external consistency. Having examined the Defence submission carefully, it is my view that none of these

⁴³ PCS at para 67.

⁴⁴ PCS at para 69.

items concern internal consistency. Instead, they either concern matters of external consistency or concern the “other evidence and factual circumstances” against which the Complainant’s testimony should be weighed (as explained at [34] above).

38 For the foregoing reasons, I concluded that the Complainant’s testimony is internally inconsistent.

External consistency

39 I will first evaluate the external inconsistency of the Complainant’s testimony against the Complainant’s out of court statements to other witnesses. This will be followed by examining the Complainant’s testimony against the evidence surrounding the Complainant’s blood-stained underwear. I will then examine the Complainant’s testimony against the remaining issues raised by the Defence which may arguably have a bearing on the external inconsistency of the Complainant’s testimony.

The Complainant’s out-of-Court statements

40 As explained below, I considered the Complainant’s testimony to be generally consistent with the statements that she made outside of Court to various other witnesses. These witnesses are considered chronologically below, *ie*, in the order in which the Complainant had seen them after the attack.

(1) The Complainant’s account before PW3 Dr Foo

(A) WHETHER THE COMPLAINANT ASKED FOR A MEMO FROM PW3 DR FOO

41 According to PW3 Dr Foo, the Complainant began by saying she wanted to inquire about a sexual assault. PW3 Dr Foo then clarified with the Complainant that she was the victim. After relating the facts concerning the

sexual assault, the Complainant then said she “was unsure what to do now and did not want to identify the attacker, citing fears about ramification towards herself, her job as well as her family”. The Complainant then asked PW3 Dr Foo for a memo stating her injuries and what the probable cause might have been. PW3 Dr Foo then advised the Complainant that she could not examine the Complainant until a police report was made. When asked in court whether the Complainant explained why she wanted the memo, PW3 Dr Foo responded that the Complainant wanted to potentially approach the Accused’s family with the memo and tell them what happened.⁴⁵

42 PW3 Dr Foo’s account of what the Complainant told her was largely consistent with the Complainant’s testimony, except for the part about the Complainant asking for a memo, which was missing from the Complainant’s testimony. When cross-examined on this, the Complainant said that she did not remember asking for the memo.⁴⁶

43 The Defence described this as “the Complainant’s convenient lapse of memory” which is a “salient inconsistency”.⁴⁷ The Defence also submitted that, assuming PW3 Dr Foo’s evidence is accurate, then the Complainant’s intention to approach the Accused’s family with the memo would be inconsistent with her explanation for deleting her WhatsApp messages (*ie*, that she did not want anything to do with the Accused anymore).

44 On the first point made by the Defence, I think the Complainant’s inability to remember that she had asked PW3 Dr Foo for the memo is merely

⁴⁵ NE, 18 May 2023, at p 68:13–23; NE, 18 May 2023, at p 73:1–11.

⁴⁶ NE, 18 May 2023, at p 62:14–28; NE, 12 July 2023, at p 68:4–22.

⁴⁷ DCS at para 147.

an omission which should not be treated as an inconsistency unless the court believes that the Complainant was being evasive and was trying to hide an unfavourable fact. In this regard, given what I have to say about the second point in the next paragraph, I did not regard the request for the memo to be a fact unfavourable to the Complainant.

45 On the second point made by the Defence, I did not think it was necessarily inconsistent for the Complainant to have wanted nothing to do with the Accused after the attack, and yet want a memo to bring to the Accused's family.⁴⁸ I agreed with the Prosecution that there was nothing nefarious in this request, as the Complainant was fearful of formal reporting and the effects of the same at the time, and that she was acting in a haphazard manner at the time.⁴⁹ In my view, a victim may very well feel disgust and shame at the attack, such that they delete their conversations or messages with the attacker in the aftermath of the attack, but still want a formal document that confirms what had happened to them, especially where they are afraid of reporting the matter formally to the police.

(B) WHETHER THE COMPLAINANT WAS BLEEDING AFTER THE ATTACK

46 Briefly, for completeness, I address the Complainant's omission to tell PW3 Dr Foo that she had bled as a result of the attack. As mentioned earlier, the Complainant only mentioned that she was experiencing per vaginal pain while she was sitting, standing and walking as the attack had been so rough.⁵⁰ In my view, the Complainant's omission to mention that she had bled as a result of the attack was not a significant one, as the consultation was rather short, she

⁴⁸ DCS at para 33.

⁴⁹ NE, 24 September 2024, at pp 26:22–27:17.

⁵⁰ NE, 18 May 2023, at p 68:20–21.

was still traumatised, stressed, and confused, and the consultation itself was not focused on her injuries, as PW3 Dr Foo had declined to examine her without a police report having been lodged.

47 Taking these reasons together, I concluded that Complainant's failure to remember that she had asked for the memo, or to mention to PW3 Dr Foo that she had bled after the attack were not material inconsistencies that should affect the Complainant's credibility negatively.

(2) The Complainant's account before PW9 SI Lim

48 The Complainant had told PW9 SI Lim that she had seen a doctor (*ie*, PW3 Dr Foo) to check her pelvic area after the forced sexual intercourse, but was not able to do so without a police report. PW9 SI Lim recalled that the Complainant "looked very stressed and anxious".⁵¹ Part of PW9 SI Lim's evidence in chief was given in the form of conditioned statement. In the conditioned statement, he said the Complainant informed him that:⁵²

- (a) She became acquainted with the Accused via Tinder about a week before they met up in person on *13 January 2021*.
- (b) They met up at a restaurant for dinner. After dinner, they went to the accused's house to discuss script writing.
- (c) While at the Accused's house, she sat on the accused's bed while discussing the script. The accused then proceeded to kiss her face, and she pushed him away.
- (d) The accused then touched her body, and she resisted initially. However, as the accused was big in size, she did not dare to resist further as she feared that he would turn violent towards her.
- (e) The accused used a condom during sex with her. She was an unwilling participant throughout.

⁵¹ NE, 30 April 2024, at p 91:1–2.

⁵² ABOD at pp 1–2, PW9 SI Lim's Statement at para 4.

(f) After the sex, the [Complainant] left the accused's house.

[emphasis added]

These facts were consistent with the case advanced by the Complainant at trial (see above at [11]–[16]).

49 Although there was a discrepancy as to the date of the incident (13 January 2021 instead of 12 January 2021), I did not consider this to be material. First, this error was not caught by either party.⁵³ Second, the details of the attack remained the same, notwithstanding the difference in date.

50 PW9 SI Lim also noted that the Complainant insisted that she did not want to lodge a report because she feared that the police might not be able to find evidence against the Accused, and that her family would be angry with her.⁵⁴ The Complainant explained in court that, among other reasons, she was worried about having no evidence, and about the stress she would cause to her mother (see above at [22]).

51 I therefore considered that the Complainant's testimony was externally consistent with the statements she made to PW9 SI Lim.

(3) The Complainant's account before PW8 Dr Geetha

52 In contrast, the Complainant's story before PW8 Dr Geetha was not entirely consistent with the evidence that she gave on the stand. However, as explain below, I did not think this inconsistency was material.

⁵³ NE, 30 April 2024 at pp 81–93.

⁵⁴ ABOD at p 2, PW9 SI Lim's Statement at para 5.

53 In her medical report, PW8 Dr Geetha’s recorded the following account from the Complainant:⁵⁵

- (a) The Complainant had met the alleged assailant on Tinder before the meeting on 12 January 2021.
- (b) When the Complainant and the Accused had met in person, they were discussing scriptwriting for a comedy before going back to the Accused’s apartment.
- (c) The Accused had suddenly kissed the Complainant unexpectedly, rubbed his erect penis behind her, grabbed her breasts, forced her to perform fellatio on him, and forcibly penetrated her vagina.
- (d) The Complainant screamed and the Accused tried to choke the Complainant and put a pillow over her head to silence her.
- (e) The Complainant notice bleeding from her vagina after the incident.

54 The Defence submits that the reference to screaming in the medical report is a material inconsistency from the Complainant’s testimony.⁵⁶

55 While on the stand, the Complainant’s evidence was that she wanted to scream at various points, but did not do so.

- (a) She explained that after the Accused had used his fingers to penetrate her vagina, she did not scream as she was “just frozen”, her

⁵⁵ ABOD at pp 5–6, PW8 Dr Geetha’s Medical Report.

⁵⁶ DCS at paras 124–129.

mind “in a mess”, and she was afraid that the Accused would escalate the violence if she did anything.⁵⁷

(b) When the Accused had penetrated her vagina with his penis, she testified that it caused her so much pain that she wanted to scream,⁵⁸ but explained that she did not do so as she was very scared,⁵⁹ and was “in total shock at the time”, was “too overwhelmed at what was happening”, and was afraid of what the Accused would do to her if she screamed.⁶⁰

56 When confronted with this inconsistency, the Complainant gave the following explanation:⁶¹

I think there’s a misunderstanding because, you know, I always said I wanted to scream but she may have misunderstood me because, you know, I was very tired. I haven’t been sleeping well and I was still in pain when I met her.

I found this explanation to be credible. The evidence surrounding the Complainant’s state of mind at this time suggested that she was confused, unsure, and still traumatised:

(a) PW8 Dr Geetha noted that the Complainant was a “unique” patient, as she was not sure of her answers and PW8 Dr Geetha would give her more time to recollect.⁶²

⁵⁷ PCS at para 29; NE, 17 May 2023, at p 15:8–15.

⁵⁸ PCS at para 33; NE, 17 May 2023, at pp 21:23–22:7.

⁵⁹ PCS at para 35; NE, 17 May 2023, at pp 22:22–23:2.

⁶⁰ PCS at para 37 ; NE, 17 May 2023 at p 25:8–21.

⁶¹ NE, 4 September 2023, at pp 48:18–21.

⁶² NE, 30 April 2024 at p 47:22–48:2.

(b) In PW8 Dr Geetha’s medical report also indicated that the Complainant “was calm but became agitated at certain points when taking the history of the sexual assault... [and that h]er mood appeared low and she appeared a bit confused at some points”.⁶³

(c) In the First Information Report, which is the police report that would have been lodged shortly before the Complainant had seen PW8 Dr Geetha, it was noted that the Complainant was “currently traumatised and unable to provide any facts”.⁶⁴

57 It therefore seems that the Complainant was still traumatised when PW8 Dr Geetha was taking her history. In view of that, it was not surprising that there might have been some miscommunication on matters of detail. As noted in *GCK* at [112], the stress of the attack, and having to recount it at the hospital, could have affected the Complainant’s ability to recall specific episodic information during subsequent recall attempts.

58 Overall, I concluded that the Complainant’s testimony was externally consistent with the statements she made to PW3 Dr Foo, PW9 SI Lim, and PW8 Dr Geetha.

The blood-stained underwear

59 The Complainant testified that when she returned home after the sexual assaults, she took off her underwear and noticed that there was blood on it. She placed the underwear in her laundry basket. When the Complainant’s mother brought the Complainant to KKH on 18 January 2021, the Complainant’s

⁶³ ABOD at p 6.

⁶⁴ ABOD at p 24.

mother reminded the Complainant to bring along the clothes she was wearing on the night of the incident (12 January 2021). The Complainant retrieved the blood-stained underwear from her laundry basket and brought it along to KKH.

60 The underwear which the Complainant brought to KKH was admitted into evidence as Exhibit P7 while photographs of the underwear were admitted as Exhibits P1-3, P1-4 and P1-5. P1-3 shows the exterior front of the underwear, P1-4 shows the exterior back of the underwear while P1-5 shows the interior of the underwear.

61 The Defence submits that the foregoing account from the Complainant is externally inconsistent with:

- (a) the evidence of an expert witness, DW3 Dr Harvard Lin Zhenjia (“DW3 Dr Lin”), who gave the opinion that the injuries recorded in PW8 Dr Geetha’s medical report was unlikely to have caused the amount of bleeding seen in photograph P1-5;
- (b) the fact that no blood was seen on the condom used by the Accused (By way of background, the Complainant testified that she could see some “white stuff” at the tip of the condom but did not mention seeing any blood); and
- (c) the fact that no blood was seen on the Accused’s bedsheet.

62 To evaluate the foregoing submission, I will begin by considering PW8 Dr Geetha’s observations of the Complainant’s injuries as contained in her medical report before examining the differences of opinion between PW8 Dr Geetha and DW3 Dr Lin.

63 At KKH, PW8 Dr Geetha took the history of the Complainant (as discussed above) and conducted a pelvic examination on the Complainant, which included looking at the genitalia, checking the hymen for tears, doing a speculum exam to check the inside of the vagina and a finger-vaginal exam to check the uterus.⁶⁵ PW8 Dr Geetha's findings "were all essentially normal", except for an old hymen tear at 2 o'clock and 9 o'clock, and a very small 1 cm x 1cm abrasion just to the left of the Complainant's vaginal fourchette, which was tender to the touch and caused her pain when pressure was exerted on it.⁶⁶ PW8 Dr Geetha confirmed that the old tears were not of any significance as they were likely to have been sustained from previous sexual experience.⁶⁷

(1) The experts' evidence regarding the injury sustained by the Complainant

(A) PW8 DR GEETHA'S EVIDENCE

64 PW8 Dr Geetha's evidence was that the abrasion was painful on touch, and that it was in a location where patients would not know it exists unless they put a mirror in front of them and check their perinium in the mirror.⁶⁸ Her impression was that the abrasion was possibly sustained from the sexual assault. She considered other differentials, such as scratching from an itch, trauma from bicycle riding, or infections, and compared the likelihood for the abrasion being caused by these differentials rather than from rough penetration:⁶⁹

⁶⁵ NE, 30 April 2024, at p 24:27–31.

⁶⁶ NE, 30 April 2024, at p 25:1–6.

⁶⁷ NE, 30 April 2024, at p 25:11–16.

⁶⁸ NE, 30 April 2024, at p 25:22–26.

⁶⁹ NE, 30 April 2024, at pp 26:18–28:24; NE, 30 April 2024, at pp 28:32–29:14

- (a) the abrasion was not likely to be caused by scratching, as that would not result in a focal lesion;
- (b) the Complainant tested negative for all sexually transmitted infections and fungal infections; and,
- (c) the Complainant's internal anatomy was such that the differential of infection cervical pathology causing post-coital bleeding could be ruled out.

65 PW8 Dr Geetha noted that the abrasion she observed was so small (at 1cm x 1cm in size) that it was unlikely to produce the amount of bleeding seen on photograph P1-5. However, as PW8 Dr Geetha was examining the Complainant six days after the sexual assault, she opined that it was possible that this might have been a bigger abrasion that had healed. She said this was possible as this area was anatomically very vascular and heals very fast, although it was “hard for [her] to conclude”.⁷⁰

(B) DW3 DR LIN'S EVIDENCE

66 The Defence called DW3 Dr Lin, who is a urogynaecology specialist (*ie*, specialising in female pelvic floor reconstruction) as their expert witness. Like PW8 Dr Geetha, DW3 Dr Lin also opined that the 1cm x 1cm abrasion observed by PW8 Dr Geetha was so small that it was unlikely to have caused the amount of bleeding seen in photograph P1-5. DW3 Dr Lin also shared PW8 Dr Geetha's view that another possible cause of the bleeding could be a tear or laceration inside the vagina. However, if it were the case that the bleeding was caused by this deeper laceration, it was unlikely to have fully healed within six

⁷⁰ NE, 30 April 2024, at p 26:25–32.

days and PW8 Dr Geetha should have observed a scar or granulation tissue around the where the laceration happened.⁷¹ Instead, PW8 Dr Geetha did not observe any such scar or granulation tissue from the speculum examination she conducted.

67 DW3 Dr Lin also opined that, given the amount of bleeding he observed in photograph P1-5, there would have been blood on the condom or on the bed.⁷² However, neither the Victim nor the Accused observed any blood on the condom and no blood was observed on the Accused's bedsheet.

(C) EVALUATION OF THE EVIDENCE OF THE EXPERTS

68 It was common ground between the two experts that the amount of bleeding seen on the underwear could not have been caused by the 1cm x 1cm abrasion observed by PW8 Dr Geetha but could have been caused by a laceration of the mucosal tissue within the vagina. The key difference between the two experts was how long it would have taken such a laceration to heal. According to PW8 Dr Geetha, the laceration could have healed completely within six days such that it was no longer observable on 18 January 2021. DW3 Dr Lin's view was that the laceration would have taken about two weeks to heal completely, such that some scar or granulation tissue should still have been observable on 18 January 2021.

69 In my view, the root cause of this difference of opinion between the two experts' lies in their differing factual observations concerning the amount of blood on the underwear, which led to differing views concerning the size of the laceration in the mucosal tissue of the vagina needed to produce the assumed

⁷¹ NE, 17 July 2024, at p 11:6–14.

⁷² NE, 17 July 2024, at p 32:5–21.

amount of blood, and consequently the differing opinions concerning the length of time needed for the laceration to heal.

70 According to PW8 Dr Geetha, the blood loss, as observed from the staining on the underwear “was very small for a laceration”⁷³ and therefore a “very small mucosal laceration is possible”.⁷⁴ In contrast, DW3 Dr Lin said during examination-in-chief that, from looking at photograph P1-5, “almost three-quarters of the pad was blood-soaked”.⁷⁵ (By “pad” DW3 Dr Lin was referring to the gusset of the underwear.⁷⁶) During cross-examination, DW3 Dr Lin conceded that he “might have given the proportions a bit mistakenly” and that “it may not have been three-quarters, but it was significant bleeding because it did soak through ... to the other side.”⁷⁷

71 In my view, DW3 Dr Lin had overstated the amount of blood that was seen on the underwear. First, from my own visual examination of photograph P1-5, the blood stain covered no more than 20% of the gusset, which was a far cry from DW3 Dr Lin’s estimation of “three-quarters”. Second, although some blood stain was visible on the other side of the underwear, as demonstrated by photograph P1-3, these are only faint traces. It would be an exaggeration to use the term “soak through”, as DW3 Dr Lin had done, to describe what could be seen on photograph P1-3. In my view, DW3 Dr Lin appeared to have a tendency to exaggerate his factual description of the blood stain on the underwear in order

⁷³ NE, 30 April 2024, at p 75:2–7.

⁷⁴ NE, 30 April 2024, at p 76:14–18.

⁷⁵ NE, 17 July 2024, at p 11:27–29.

⁷⁶ NE 17 July 2024, at p 27:1–11.

⁷⁷ NE, 17 July 2024, at p27:12–14.

to support an opinion which could not otherwise be supported by an objective and accurate factual observation of the physical evidence.

72 As the finder of fact, I held that DW3 Dr Lin’s opinion was based on wrong factual observations concerning the amount of blood found on the underwear and thus could not be relied on by the court. Consequently, I found PW8 Dr Geetha’s opinion more persuasive and would adopt her views.

(2) Conclusion concerning the blood-stained underwear

73 In the light of my decision to prefer PW8 Dr Geetha’s opinion over DW3 Dr Lin’s, it follows that there is no external inconsistency between the Complainant’s testimony concerning the blood-stained underwear and the expert medical evidence.

Defence’s other submissions on internal and external inconsistency

74 This would be a convenient juncture for me to deal with the remaining arguments contained in the section of the Defence written closing submissions entitled “The Complainant’s evidence is internally and externally inconsistent”, even though it may be arguable that some of these argument did not directly concern internal or external consistency.

The Complainant deleting her messages with the Accused

75 The Defence contended that the Complainant had deleted her WhatsApp messages with the Accused and unmatched him on Tinder to “support her contrived allegations against [the Accused]”, and that she would not have kept

the blood-stained underwear if she was so disgusted to the point of deleting all her messages with the Accused.⁷⁸

76 I did not accept this submission. First, I accept that the Complainant was traumatised and scared after the attack, based on her evidence and on observations of her demeanour by the other witnesses. There was therefore nothing surprising or suspicious about the Complainant’s decision to delete her WhatsApp conversation with the Accused. Second, I did not think that the Complainant’s retention of the blood-stained underwear was inconsistent with her decision to delete her WhatsApp conversation with the Accused. The evidence suggests that she dropped the clothes she was wearing on the night of the incident in her laundry basket and thought no further about them until her mother reminded her on 18 January 2021 to bring those clothes along to KKH.

Why the Complainant used the dating application Tinder

77 The Complainant explained in court that she was using Tinder to “meet people”, “broaden [her] social circle” and “share knowledge with each other”.⁷⁹ The Complainant also explained that she “matched” with the Accused on Tinder as his profile indicated that he was either a writer or a scriptwriter, and she was hoping to get some advice on scriptwriting from him.⁸⁰

78 The Defence submitted that, as Tinder was a dating application, the Complainant’s explanation was “rife with inconsistencies and ought not be believed”.⁸¹ The Defence pointed to the Complainant’s admission that she had

⁷⁸ DCS at paras 132–133.

⁷⁹ NE, 23 May 2023, p 67:3–8.

⁸⁰ NE, 16 May 2023, p 57:22–58:24.

⁸¹ DCS at para 138.

met exclusively with men on Tinder and also to evidence that the Complainant had told DW3 Dr Foo that she was on a date with the Accused on the night in question.⁸²

79 In my view, although Tinder was designed as a dating application, there is no reason why a person could not use it for the more general purpose of meeting people or broadening one's social circle. In this regard, I find the fact that the Complainant had matched exclusively with male persons on Tinder to be neither here nor there. Since Tinder was originally intended to be a dating application, it is not surprising that the application would match the Complainant only with persons of the opposite sex even if the Complainant's subjective intention was to use the application for a wider purpose than finding a romantic partner.

80 As for DW3 Dr Foo's evidence, I did not think the Defence had summarised DW3 Dr Foo's evidence correctly. This is because DW3 Dr Foo did not actually say that the Complainant had told DW3 Dr Foo that she was on a date with the Accused. In the beginning of her examination in chief, DW3 Dr Foo said the Complainant and the Accused "had gone on a date prior".⁸³ However, in a later part of her examination in chief, when she was asked what gave her the impression that they had been on a date, DW3 Dr Foo responded that: "I do not recall the exact conversation, but I know---all I know is that she had met up with the perpetrator prior to the assault happening".⁸⁴

⁸² DCS at para 69.

⁸³ NE, 23 May 2023, p 68:15.

⁸⁴ NE, 18 May 2023, at p 69:15–21.

The Complainant's lack of explanation for when the condom was worn

81 Finally, the Defence argues that the Complainant's lack of explanation for when the condom was worn was a glaring omission. The Defence submitted that, as the Accused kept his unused condom in the bathroom, he would have needed time to go to the bathroom to retrieve the condom. This was inconsistent with the Complainant's account which seem to give the impression that the Accused penetrated her vagina from behind almost immediately after he had pushed her onto the mattress, thus giving him no time to go to the bathroom to retrieve a condom.

82 In my view, this omission ought to be understood in the context of the Complainant's overall testimony. The Complainant testified that, when she was pushed onto the mattress face down, her eyes were still closed, and she was trying to fight back the vomit.⁸⁵ The Complainant also explained that when she was penetrated from the back, she was flinching and focusing on breathing as she felt suffocated by the Accused grabbing her neck and putting a pillow over her head.⁸⁶ Given these facts, and that she said she was scared and in a lot of pain, with her eyes closed, I do not think she would have registered or been able to know when exactly the Accused put on the condom.

83 Therefore, I did not think that the Complainant's lack of explanation for when exactly the condom was worn constituted an inconsistency that affected her credibility.

⁸⁵ NE, 17 May 2023, at p 21:16–18.

⁸⁶ NE, 17 May 2023, at p 22:1–29.

Demeanour

84 As explained below, I found that the Complainant’s demeanour supported a finding that she was a credible witness. During her evidence-in-chief, while recounting the facts relating to the Third Charge (see above at [14]), the Complainant was recorded as “physically gagging in response to recalling [the fellatio]” and required a short break to collect herself.⁸⁷ When she was giving her evidence, the Complainant was also suffering from nausea and headaches due to the stress of the Court proceedings and the effect of the same on her mother, which required her to take three days of medical leave.⁸⁸ In my view, her instinctual reactions suggested that she was indeed attacked on the night of 12 January 2021.

85 However, it is worth mentioning that the Complainant did appear to be cagey at some points during cross-examination due to her unusual way of engaging with former counsel for the Defence. On around 70 occasions across the 13 days of cross-examination, she had asked counsel for the Defence to clarify his questions by defining what he meant by certain words.⁸⁹ At times, her

⁸⁷ NE, 17 May 2023 at pp 19:17–20:4.

⁸⁸ NE, 25 May 2023, at pp 1:5–2:30.

⁸⁹ NE, 18 May 2023, at p 63:19; NE, 23 May 2023, at p 22:29; NE, 23 May 2023 at p 23:27; NE, 23 May 2023, at p 58:13; NE, 12 July 2023, at p 32:26; NE, 23 May 2023 at p 60:31; NE, 23 May 2023, at p 66:8; NE, 23 May 2023, at p 70:20; NE, 23 May 2023, at p 75:16; NE, 23 May 2023, at p 81:12; NE, 26 May 2023, at p 29:29; NE, 23 May 2023, at p 83:1; NE, 23 May 2023, at p 86:31; NE, 23 May 2023, at p 91:2; NE, 26 May 2023, at p 8:7; NE, 26 May 2023, at p 33:16; NE, 26 May 2023, at p 53:24; NE, 11 July 2023, at p 4:10; NE, 11 July 2023, at p 6:4; NE, 11 July 2023, at p 27:10; NE, 11 July 2023, at p 34:7; NE, 11 July 2023, at p 36:22; NE, 11 July 2023, at p 47:20; NE, 11 July 2023, at p 53:22; NE, 11 July 2023 at p 53:26; NE, 11 July 2023, at p 60:20; NE, 11 July 2023, at p 78:15; NE, 11 July 2023, at p 82:27; NE, 12 July 2023, at p 27:7; NE, 12 July 2023, at p 28:22; NE, 12 July 2023, at p 29:22; NE, 12 July 2023, at p 57:30; NE, 12 July 2023, at p 70:19; NE, 12 July 2023, at p 71:29; NE, 12 July 2023, at p 73:9; NE, 12 July 2023, at p 75:15; NE, 12 July 2023, at p 76:23; NE, 12 July 2023, at p 78:24; NE, 12 July 2023, at p 78:31; NE, 12 July 2023, at p

requests to define mundane words – such as “force”, “messy”, “comedy” – made her appear unwilling to answer questions and disrupted the flow of her evidence and impeded the understanding of her explanations in cross-examination.

86 In fairness to the Complainant, her reticence to answer questions directly in cross-examination should be seen in light of the circumstances. I point out that it was not the case that the Complainant avoided answering the questions entirely. After having counsel define the word that he used, she would answer the question readily, except only on two occasions out of the 70.⁹⁰ Some of her questions were also understandable, such as to whether her hair was messy, which she explained she could have interpreted it in two different ways.⁹¹

87 She had also repeatedly mentioned her worries about not being believed and about the quality of the evidence she was giving. She testified that after the alleged attack, she had looked up some articles on sexual assault and rape, and

92:21; NE, 12 July 2023, at p 98:12; NE, 13 July 2023, at p 17:28; NE, 13 July 2023, at p 31:20; NE, 13 July 2023, at p 49:18; NE, 27 July 2023, at p 4:16; NE, 27 July 2023, at p 11:14; NE, 27 July 2023, at pp 34:29–31 and 37:13–20; NE, 27 July 2023, at p 37:31; NE, 27 July 2023, at p 64:21; NE, 27 July 2023, at p 68:28; NE, 27 July 2023, at p 72:19; NE, 27 July 2023, at p 79:23; NE, 27 July 2023, at p 82:7; NE, 27 July 2023, at p 84:27; NE, 4 August 2023, at p 3:8; NE, 4 August 2023, at p 16:27; NE, 4 August 2023, at p 18:28; NE, 4 August 2023, at p 29:6; NE, 4 August 2023, at p 37:19; NE, 4 August 2023, at p 45:29; NE, 4 August 2023, at p 52:25; NE, 4 August 2023, at p 66:19; NE, 4 August 2023, at p 66:29; NE, 4 August 2023, at p 77:1; NE, 25 August 2023, at p 33:28; NE, 25 August 2023, at p 60:19; NE, 25 August 2023, at p 72:21; NE, 5 September 2023, at p 26:9; NE, 5 September 2023, at p 41:29; NE, 23 October 2023, at pp 4:16 and 11:21; NE, 23 October 2023, at p 17:14–15; NE, 23 October 2023, at p 21:17.

⁹⁰ NE, 23 May 2023, at pp 23:23–24:11; NE, 23 May 2023, at p 81:12–31.

⁹¹ NE, 23 May 2023, at p 58:11–29.

was worried about “[her] chances of being believed as these attacks happened behind closed doors”.⁹²

88 Some of the requests to define certain words were made when former Defence counsel directly accused the Complainant of fabricating her evidence before the Court.⁹³ Therefore, to my mind, it was a natural corollary of these worries that the Complainant was careful – even hypervigilant – of the answers that she was giving to the Court in cross-examination.

89 Furthermore, the Complainant was also forthcoming where doubts in the evidence could be resolved in the Accused’s favour. When questioned if the bruising on her waist area was caused by the Accused putting his hand on her waist and putting his weight on it, causing the bruises recorded by PW8 Dr Geetha,⁹⁴ she said that it could have been from the ice pack that she used to ice her waist area for weight loss.⁹⁵ This easily could have been twisted by her as evidence to support her case that the Accused had pinned her down, but she did not do so.

Conclusion on whether the Complainant’s evidence was unusually convincing

90 For the reasons given above, having regard to the Complainant’s demeanour and the internal consistency and external consistency of her testimony, I concluded that the Complainant’s testimony had met the “unusually convincing” standard.

⁹² NE, 17 May 2023, at pp 35:7–36:28.

⁹³ NE, 23 October 2023, at pp 20:25–21:17.

⁹⁴ Agreed Bundle of Documents (“ABOD”) at p 6, PW8 Dr Geetha’s Medical Report.

⁹⁵ NE, 4 August 2023, at pp 62:21–64:3.

The Accused's testimony

91 I turn to consider whether the Accused's testimony raises any reasonable doubt in the Complainant's evidence.

92 Before delving into the inconsistencies, I first observed that his account of the actual sexual encounter was consistent both at trial and in his video-recorded interview (the "VRI"). In both instances, he mentioned that (a) he and the Complainant had kissed, (b) she performed fellatio on him, and (c) they engaged in penile-vaginal intercourse where he penetrated her from behind, and then from the front (see [25] above).⁹⁶ There were, however, significant inconsistencies between the VRI and the Accused's evidence-in-chief at trial concerning events leading up to the sexual acts. There were also some points where the position the Accused took initially in the VRI supported the Complainant's case, and not his own at trial. Therefore, for the reasons elaborated below, I concluded that the Accused's testimony did not raise reasonable doubts on the Complainant's evidence.

The Accused initially lied about whether he had sex with the Complainant

93 First, the Accused admitted that on 18 January 2021, he had lied to escorting officers PW1 ASP Cheang, PW13 ASP Ho, and PW14 DSP Jamil that he had not engaged in sexual intercourse with the Complainant. He admitted that he only told the truth when he was brought to PCC, and lied initially because he was nervous and scared, and thought he was being framed.⁹⁷ It was only shortly before the VRI at PCC that he confessed that he did have sex with the Complainant, but that it was consensual.

⁹⁶ Exhibit 26A at pp 27:6–33:25.

⁹⁷ NE, 15 May 2024, at p 28:8–13.

94 The Defence accepts that the Accused had lied to the police when he was first approached by them, and attempted to deny that he knew the Complainant. However, it submitted that the quality of the Accused's evidence, having started by denying and later coming off clean, was more probative than in a situation where there Accused would have been artificially consistent. Therefore, the Defence submitted that this inconsistency was immaterial.⁹⁸

The Accused told the Complainant he was a scriptwriter

95 Second, I agreed with the Prosecution that there was an inconsistency in the Accused's account of how he introduced himself to the Complainant, and whether he discussed scriptwriting with the Complainant prior to meeting her. The Defence did not provide an explanation for this inconsistency.

96 The Accused's case at trial, as found in the cross-examination of the Complainant, his evidence-in-chief, and in his own answers during cross-examination, was that:

(a) He would only have indicated that he was a creative specialist and not a writer or scriptwriter on Tinder,⁹⁹ and would have introduced himself to the Complainant as an aspiring actor;¹⁰⁰

(b) The Complainant had never mentioned anything about working on a script prior to meeting the Accused,¹⁰¹ and he did not tell the Complainant that he did scriptwriting; and,

⁹⁸ NE, 24 September 2024, at p 18:8–25.

⁹⁹ NE, 23 May 2023, at pp 68:10–69:11; NE, 15 May 2024, at p 6:16–28.

¹⁰⁰ NE, 15 May 2024, at pp 6:11–15.

¹⁰¹ NE, 23 May 2023, at pp 76:24–77:13; NE, 14 May 2024, at p 21:20–30; NE, 15 May 2024, at p 7:9–21.

(c) When the parties met in person, the Accused informed her that he worked as an actor for a YouTube video making company, Wah!Banana.¹⁰²

97 However, in his video-recorded statement (the “VRI”), the Accused introduced himself to the police as being employed by Wah!Banana as a scriptwriter,¹⁰³ not a “creative specialist” or “aspiring actor”. I agree with the Prosecution that this was inconsistent with his position at trial that he would “most likely not” introduce himself to anyone as a scriptwriter during that period of time.¹⁰⁴ He was quick to call himself a scriptwriter who wrote scripts and acted in them when asked to explain what his job entailed.

98 Furthermore, the Accused equivocated when he attempted to explain this inconsistency in Court, by stating that (a) he did not mention the other roles that constituted being a “creative specialist”, and (b) he would not have answered this way when he asked to state his profession.¹⁰⁵

99 In fact, the admissions in the Accused’s VRI supported the Complainant’s case that the Accused had told the Complainant that he was a scriptwriter prior to the meeting at Wine Connection. In the VRI, when asked whether he thought it was strange that he and the Complaint were working on the Complainant’s scripts together during the date, the Accused became defensive, and state that there was nothing strange about that, as they were both

¹⁰² NE, 11 July 2023, at pp 24:24–25:8; NE, 11 July 2023, at pp 24:24–25:8; NE, 14 May 2024, at p 12:21–25; NE, 14 May 2024, at pp 19:31–20:3.

¹⁰³ NE, 15 May 2024, at p 6:16–20; NE, 15 May 2024, at p 35:18–31; Exhibit P26A at p 3:22–24.

¹⁰⁴ PCS at para 101.

¹⁰⁵ NE, 15 May 2024, at p 35:24–31.

interested in writing, and he wanted to help her write.¹⁰⁶ He then explained that he had told her before meeting up that he was working for Wah!Banana as a scriptwriter, and that they had talked about a couple of her scripts on WhatsApp.¹⁰⁷

100 I did not find convincing the Accused's explanation that the Complainant only found out later that he did stand-up, and that the Complainant had learned about his scriptwriting from her own research on the Accused.¹⁰⁸ In any case, he later conceded that it was possible that he spoke to the Complainant about her script on WhatsApp, but that the "essence" of how she found out that he could assist with scriptwriting was at Wine Connection.¹⁰⁹

101 However, reading the transcript of the VRI at Exhibit P26A, it was clear that he was defending why he and the Complainant had spent most of the date working on the Complainant's script, with reference to his earlier interactions with the Complainant prior to the date.¹¹⁰ I would therefore place greater weight on the VRI evidence than the Accused's explanations on the stand. Furthermore, the Accused himself conceded that it was difficult to remember what he had spoken to the Complainant about on WhatsApp as those messages have since been deleted.¹¹¹ In my view, this part of the Accused's VRI evidence supported and corroborated the Complainant's account.

¹⁰⁶ Exhibit P36A at p 11:14–15:7.

¹⁰⁷ Exhibit P26A at p 16:31–32.

¹⁰⁸ NE, 15 May 2024, at p 42:13–18.

¹⁰⁹ NE, 15 May 2024, at pp 43:31–44:5 and 46:1–19.

¹¹⁰ Exhibit P26A at pp 15:5–16:19.

¹¹¹ NE, 15 May 2024, at p 46:9–19.

The Accused gave inconsistent versions of the events before the sexual encounter between him and the Complainant

102 Third, the Accused had presented inconsistent versions of the sequence of events leading up to the sexual encounter with the Complainant. The Defence had provided no explanation for this inconsistency.

103 During his evidence-in-chief, the Accused testified that he and the Complainant were flirting with each other at Wine Connection, and that the date was going well; it was good and light-hearted, both of them were engaged in conversation, and the Complainant was giggling at his jokes.¹¹² As the restaurant was closing, he was the one that proposed that they could go back to the Flat, to which the Complainant agreed and smiled, which suggested to him that some form of intimacy would be possible.¹¹³

104 The Accused testified that when they were in his bedroom the atmosphere became more romantic, the Complainant was physically flirting with him, and he became more interested in the Complainant due to her physical appearance. He then said it was him that moved in for a kiss, which was reciprocated by the Complainant.¹¹⁴

105 This was quite different from the account he gave in the VRI. During the VRI, he painted himself as being disinterested and somewhat disturbed by the Complainant. In the VRI, he said that he felt “weird” about the Complainant,

¹¹² NE, 14 May 2024, at p 23:7–28.

¹¹³ NE, 14 May 2024, at pp 24:30–25:14.

¹¹⁴ NE, 14 May 2024, at pp 31:5–32:14.

as he did not like her humour, her behaviour, and thought something was wrong with her as she shared how no one would date her because she was “psycho”.¹¹⁵

106 He then gave two answers for how they ended up at his Flat after Wine Connection was closing. The first was that the Complainant proposed that they go somewhere else to work on the scripts, and he told her he lived nearby. The second was that she had asked if he stayed nearby, and proposed that they go back to his place to work on the script. Despite being turned off by some of her behaviours, the Accused explained that he was open to this as he was still physically attracted to the Complainant and enjoyed working on the script.¹¹⁶

107 Furthermore, he said during the VRI that it was the Complainant who kissed him first, which he felt put off by. He also told the Complainant that he did not really engage in intimacy on the first date, but the Complainant continued rubbing his thigh, which caused him to develop an erection.¹¹⁷

108 Clearly, two inconsistent accounts were given during the Accused’s evidence-in-chief and in the VRI. The Accused attempted to rationalise the differences between his accounts. He explained that he felt weird about her, because there was a “weird balance” between her flirting and the off-putting jokes that she was making.¹¹⁸ He also explained that he didn’t think he said that he “[doesn’t] do this on the first date”, but could not remember exactly what he said.¹¹⁹ He also tried to explain that he was not “put off” after the Complainant

¹¹⁵ Exhibit P26A, at p 19:8–22.

¹¹⁶ Exhibit P26A, at pp 20:4–23:6.

¹¹⁷ Exhibit P26A, at pp 25:19–26:19.

¹¹⁸ NE, 15 May 2024, at pp 46:31–49:5.

¹¹⁹ NE, 15 May 2024, at p 50:12–22.

kissed him, but that he meant “put off” as in there was a pause after they kissed for the first time.¹²⁰

109 While I could accept his explanations that he felt weird about the Complainant due to the jokes that she was making, I found it significant that he did not mention this during his evidence-in-chief. Indeed, the two accounts painted two different impressions of the date. The account from the evidence-in-chief suggested that the Accused and the Complainant were mutually interested in each other, while the account from the VRI suggested that he was a more disinterested, reluctant participant in the date. Although he did mention the Complainant’s morbid jokes in his evidence-in-chief, he focused more on the positive aspects of the date, compared to in the VRI.

110 Furthermore, the Accused’s explanation as to what he meant when he said he was “put off” does not make sense. It was quite clear from the way he said it that he meant that he was not entirely pleased with the Complainant making the first move. The Accused’s explanation does not cohere with how he described the Complainant becoming intimate with him as “a little weird”.¹²¹ The Accused’s explanation here therefore did not help to rationalise the differences between his two accounts. I also agreed with the Prosecution’s submission that the Accused had suddenly changed positions after being confronted by his evidence during the VRI. Prior to that, he did not paint himself as being hesitant to engage in sexual activities with the Complainant.¹²²

¹²⁰ NE, 15 May 2024, at p 52:7–15.

¹²¹ Exhibit P26A at p 26:11.

¹²² PCS at 118.

Conclusion on the Accused's testimony

111 In sum, the inconsistencies discussed above rendered the Accused's account less reliable. These inconsistencies, at times, even supported the Complainant's case. It was therefore my view that there was nothing in his account that had the effect of raising reasonable doubts in the Complainant's evidence.

Other matters raised by the Defence

112 It remains for me to deal with a number of remaining issues which may potentially give rise to concerns.

The Complainant giving the Accused her address

113 The Defence highlighted that, notwithstanding the Complainant's allegation of the various violent, non-consensual sexual acts committed by the Accused, the Complainant voluntarily gave the Accused her home address for him to book a Gojek car for her to go home.

114 I did not think giving the Accused her home address was inconsistent with the Complainant's allegation of sexual assault. The Complainant's evidence during both her evidence-in-chief and cross-examination was that she was not successful in getting a Grab ride, and was scared, shaken, and wanted to vomit, when the Accused asked for her address to get a cab for her.

115 She stated that she was scared of him and was scared to go past him to leave his room, and would have given him anything at that point as long as he let her go.¹²³ I understood this sentence as meaning that she was still afraid of

¹²³ NE, 17 May 2023, at pp 26:11–27:22; NE, 18 May 2023, at pp 38:7–39:11.

what he could do to her, since he had just raped her and was still physically positioned near the exit after the intercourse had occurred.¹²⁴ She was still afraid of him and in shock at this point, and based on how she had essentially frozen during the rape itself, it was not surprising that she had waited for the Accused to let her go, rather than running away herself.

116 At this juncture, I note that case law has recognised that victims of sexual crimes cannot be straitjacketed in the expectation that they must act or react in a certain manner: *GBR* at [20]. While perhaps the intuitive reaction is to run out of the bedroom once the attack had stopped, instead of waiting for him to book her a ride and allow her to leave, I find some force in the Complainant’s explanation that what happened to her then was not normal.¹²⁵ The evidence also showed that the Complainant was likely suffering from some form of tonic immobility, as she testified her body went limp during the attack (see above at [17(d)]), and was gagging, scared, and traumatised. In the circumstance, I found her decision to give the Accused her home address so that she could get a ride home to be explicable.

The Complainant replying to the Accused’s messages after the incident

117 According to the Defence, the Accused had messaged the Complainant later that evening to check if she had got home safely, and she replied “Yes, all good”. The Complainant testified that she recalled replying to the Accused’s message although she could not remember the exact words she used. When asked whether she replied at least “yes”, she confirmed that her reply would have been something along those lines. The Defence submitted that the Complainant’s act of messaging the Accused to inform that she had arrived

¹²⁴ NE, 24 September 2024, at p 24:1–8.

¹²⁵ NE, 18 May 2023, at p 41.

home undermines her allegations that she had been violently raped by the Accused.

118 The Complainant's explanation was that she as too scared not to respond to the Accused's message asking if she had got home, as the Accused had her address, and she was afraid of what the Accused would do if she did not respond.¹²⁶ She also denied further messaging the Accused after that. I found the Complainant's explanation of her behaviour to be adequate, and therefore did not agree with the Defence that this was behaviour which undermined her credibility.

Late reporting of the sexual assault

119 One feature of this case which calls for some examination concerns the late filing of the police report. As noted above, the Complainant waited three days before visiting a clinic. When she was advised by DW3 Dr Foo to make a police report, she initially went to the police but decided against making a police report after speaking to a few police officers. It was only on the sixth day after the incident that a police report was finally made.

120 The Complainant explained that she was initially hesitant to go to the authorities as she did not want to aggravate her mother's heart condition and she was also concerned that she may not be believed as the incident happened behind closed doors and there were no other witnesses. On 16 January 2021, she went to the clinic not with the intention of making a police report but because of the lingering pain in her vaginal and abdominal area. When she was advised by DW3 Dr Foo to make a police report, she initially complied and

¹²⁶ NE, 25 August 2023, at p 45:9–14; Prosecution's Further Submissions dated 9 October 2024 at para 3.c.

approached Clemment NPC and even spoke to a number of police officers. However, she decided against making a police report on that day. Her explanation was that (a) she was worried that she had no evidence, (b) she was worried about causing stress to her mother, (c) she was worried about her students finding out, (d) she was worried of being sued by the Accused, and (e) she felt traumatised by the questions posed to her by the police officers. The police report was finally made on 18 January 2021 because the Complainant could no longer hold everything in and decided to confide in her mother, who then brought her to KKH.

121 In my view, the Complainant had given reasonable and cogent explanations for her delay in making the police report having regard to the circumstances surround the offence (no witnesses), the family situation (her mother's heart condition) and her own worries and concerns. I therefore did not regard the late reporting as having the effect of casting reasonable doubts on the Prosecution's case.

Conclusion

122 I found the Complainant's testimony to be "usually convincing" having regard to internal consistency, external consistency and demeanour. Overall, she struck me as a truthful witness. Throughout her testimony, she was careful to speak to only matters which she was certain about. On matters on which she was unsure of or could not remember, she was candid in admitting it to the court, and did not seek to embellish or fill in the gaps. As noted above, she did not seek to take advantage of the bruising on her neck and waist found by PW8 Dr Geetha, and attribute them to the Accused. Instead, she candidly explained that these bruises could have resulted from undergoing icing weight loss treatment. In contrast, I did not find the Accused's testimony reliable. Overall, I concluded

that the Defence did not succeed in raising any reasonable doubts on the Prosecution's case.

123 Consequently, I accepted the Complainant's account and held that the Prosecution had proven all four charges beyond reasonable doubt. I therefore found the Accused guilty on all four charges.

Sentence

124 The Prosecution submitted that the Accused should be sentenced to at least 12 months' imprisonment and three strokes of the cane for the First Charge, at least 10 years' imprisonment and four strokes of the cane for the Second Charge, at least 12 years' imprisonment and six strokes of the cane for the Third Charge and at least 13 years' imprisonment and six strokes of the cane for the Fourth Charge. The Prosecution further submitted that the imprisonment terms for the First Charge and Fourth Charge should run consecutively (with the sentences for the remaining charges running concurrently), to arrive at the global sentence of 14 years' imprisonment and 16 strokes of the cane (moderated down from 19 strokes).

125 The Defence submitted that the appropriate sentences are five months' imprisonment without caning for the First Charge, 10 years' imprisonment and six strokes of the cane each for the Second Charge, Third Charge and Fourth Charge. The Defence further submitted that the imprisonment term for First Charge and Fourth Charge should run consecutively (with the sentences for the remaining charges running concurrently) to arrive at the global sentence of 10

years’ and five months’ imprisonment and 6 strokes of the cane (moderated down from 18 strokes).

126 For convenience and ease of analysis, I will deal with the sentences for the two rape charges (Third Charge and Fourth Charge) first, followed by the sexual assault by penetration charge (Second Charge) and ending with the outrage of modesty charge (First Charge).

Third Charge and Fourth Charge

127 The applicable sentencing framework for the offence of rape is laid down in the Court of Appeal case of *Ng Kean Meng Terence v PP* [2017] 2 SLR 449 (“*Terence Ng*”). The *Terence Ng* framework is a two-step framework with three sentencing bands which may be summarised 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 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”. Examples of offence-specific factors include:

- (i) Group assault;
- (ii) Vulnerability of victim;
- (iii) Rape of a victim below 14 years of age;
- (iv) Premeditation;
- (v) Abuse of position and breach of trust;
- (vi) Long period of offending conduct;

- (vii) Violence;
- (viii) Severe harm to the victim; and
- (ix) Hate crime.

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:

Band	Type of cases	Sentence
1	Cases at the lower end of the spectrum of seriousness. These cases feature no offence-specific aggravating factors or are cases where these factors are only present to a very limited extent and have a limited impact on sentence.	10 to 13 years' imprisonment and six strokes of the cane
2	Cases of a higher level of seriousness which usually contain two or more offence-specific aggravating factors.	13 to 17 years' imprisonment and 12 strokes of the cane
3	Extremely serious cases by reason of the number and intensity of the aggravating factors.	17 to 20 years' imprisonment and 18 strokes 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”.

- (i) Offender-specific aggravating factors include TIC offences, relevant antecedents and a lack of remorse;
 - (ii) Offender-specific mitigating factors include evident remorse and the age of the offender.
- (d) 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.

Prosecution’s submissions

128 At the first step, the Prosecution submits that both the Third Charge and the Fourth Charge fall within Band 1 of the *Terence Ng* framework.

129 According to the Prosecution, the sole offence specific factor in the present case is the harm caused to the Complainant, both physical and mental.¹²⁷ In this regard, the Prosecution highlights how the Complainant testified at trial about the disgust and discomfort that she felt during the assault.¹²⁸ Further, the Prosecution referred to the victim impact statement (“VIS”) which states that, following the incident, the Complainant continued having “invasive thoughts”, trouble sleeping well, and deteriorating relationships with those around her.¹²⁹ This is corroborated by her mother’s VIS which highlights the change in the

¹²⁷ PSS at para 15

¹²⁸ PSS at paras 16-17

¹²⁹ PSS at para 20

Complainant's demeanour following the incident, including her increased anxious and reclusive nature.¹³⁰

130 In relation to the Fourth Charge, the Prosecution also highlighted that the Complainant suffered physical pain at her vaginal and lower abdominal area which persisted for several days after the assault, up until 18 January 2021, when the victim visited KKH.¹³¹

131 The Prosecution therefore proposed an indicative starting point of 11 years' imprisonment and 6 strokes of the cane for the Third Charge given the physical discomfort experienced by the Complainant and the mental anguished case to her and a higher starting point of 12 years' imprisonment and six strokes of the cane for the Fourth Charge given the significant degree of pain caused to the Complainant.

132 At the second step of the *Terence Ng* framework, the Prosecution submits that an upward calibration of one year's imprisonment is warranted given the Accused's conduct at trial which evinces his lack of remorse.¹³² In this regard, the Prosecution highlights that the Complainant was subjected to 13 days of cross-examination which involved repeated questioning on irrelevant and inappropriate areas.¹³³ Further, the accused attempted to leave Singapore midway through trial without any permission being granted by the court.¹³⁴

¹³⁰ PSS at para 22

¹³¹ PSS at para 18

¹³² PSS at para 27

¹³³ PSS at para 29

¹³⁴ PSS at para 34

Defence's submission

133 The Defence submits that, at first step of the *Terence Ng* framework, the appropriate sentence falls at the lower end of Band 1 of the framework – 10 years' imprisonment and 6 strokes of the cane – due to the lack of aggravating factors. At second step, the Defence contends that neither an uplift nor a reduction in the sentence is warranted.¹³⁵

Decision

134 I agreed with both the Prosecution and the Defence that this case falls within Band 1 of the *Terence Ng* framework. However, I did not agree that what the Prosecution described as “harm caused to the Complainant, both physical and mental” constituted a relevant aggravating factor under the *Terence Ng* framework which merits an indicative starting point in the middle to upper ranges of Band 1, as the Prosecution had proposed.

135 To appreciate this point, it is useful to refer back to the actual words used by the Court of Appeal in the *Terence Ng* framework to discern how the framework was intended to be applied. In *Terence Ng* at [50], the Court of Appeal explained:

50 Band 1 comprises cases at the lower end of the spectrum of seriousness. These are cases which feature no offence-specific aggravating factors or where the factor(s) are only present to a very limited extent and therefore should have a limited impact on the sentence. Cases falling in the middle to upper ranges of Band 1 would include those where the offence was committed with only one of the aggravating factors listed at [44] above.

¹³⁵ DSS at para 51 and 55

136 Therefore, to justify adopting an indicative starting point in the middle to upper ranges of Band 1, the Court should identify one of the aggravating factors listed in *Terence Ng* at [44]. This list has been reproduced at [129(a)] above. As can be seen, one of the aggravating factors in the list is “severe harm to victim” (emphasis added). This particular aggravating factor is explained by the Court of Appeal in *Terence Ng* at [44(h)] in the following terms:

As Rajah J stressed in *PP v NF*, every act of rape invariably inflicts immeasurable harm on a victim (at [46] and [47]). It seriously violates the dignity of the victim by depriving the victim’s right to sexual autonomy and it leaves irretrievable physical, emotional, and psychological scars. Where the rape results in *especially serious physical or mental effects on the victim* such as pregnancy, the transmission of a serious disease, or a psychiatric illness, this is a serious aggravating factor. In many cases, the harm suffered by the victim will be set out in a victim impact statement. [emphasis added]

137 The implication of the foregoing passage was clearly explained by Woo Bih Li J (as he then was) in *Public Prosecutor v BMR* [2019] 3 SLR 270 at [32] in the following way:

32 However, I disagreed with the Prosecution’s submission that the harm caused to the Complainant by the rapes was an aggravating factor. 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. [emphasis added]

138 In my view, the foregoing explanation given by Woo J makes eminent sense. It is important that the sentencing court does not lose sight of the fact that, in calibrating the range of sentences for each of the three sentencing bands in the *Terence Ng* framework, the Court of Appeal had already factored in the undeniable fact that “every act of rape invariably inflicts immeasurable harm on a victim” by imposing the rather high starting sentence of 10 years’ imprisonment and six strokes of the cane even for cases at the lowest end of Band 1. Therefore, if the harm to the victim were to be factored in again as an additional aggravating factor without the court falling into the error of double-counting, the harm must be sufficiently severe or serious to merit being treated as a separate aggravating factor.

139 In the present case, without meaning to diminish or downplay in any way the admittedly serious harm suffered by the Complainant, I do not consider that the harm had risen to the level of the “severe harm to the victim” contemplated by the Court of Appeal in *Terence Ng* at [44(h)]. In this regard, I would also note in passing that the Prosecution has (quite rightly, in my view) avoided the use of phrases such as “severe harm” or “especially serious” in its sentencing submissions to describe the harm suffered by the Complainant. I therefore adopted the indicative starting sentence of 10 years and six strokes of the cane for both the Third Charge and the Fourth Charge at the end of the first step.

140 At the second step, I agreed with the Prosecution that some uplift in the sentence is called for having regard to (a) the manner in which the Complainant was cross-examined by the Defence and (b) the Accused’s attempt to leave the country without permission while on bail. However, I have decided to impose a 6-month uplift instead of the one year proposed by the Prosecution. While I found the cross-examination of the Complainant to be prolonged and plodding,

such that it would result in some level of re-traumatising of the Complainant, I also note that the Defence was careful not to stray into cross-examining the Complainant in a scandalous manner, taking the precaution of seeking the Court permission or views before asking questions which could risk being perceived as crossing the line.

141 Consequently, I arrived at the final sentence of 10 years and six months' imprisonment and six strokes of the cane each for the Third Charge and the Fourth Charge.

Second Charge

142 The applicable sentencing framework for the Second Charge (sexual assault by penetration) is set out in *Pram Nair v PP* [2017] 2 SLR 1015 ("*Pram Nair*"), which adapts the two-step *Terence Ng* framework to provide for the following three sentencing bands:

- (a) Band 1: 7 to 10 years' imprisonment and four strokes of the cane;
- (b) Band 2: 10 to 15 years' imprisonment and eight strokes of the cane; and
- (c) Band 3: 15 to 20 years' imprisonment and 12 strokes of the cane.

The Prosecution's Submissions

143 At the first step of the *Pram Nair* framework, the Prosecution submits that the present case falls at the higher end of Band 1 of the sentencing range. For the same reason as that given for the Third Charge and the Fourth Charge, the Prosecution submitted that the sole-offence aggravating factor present is the harm caused to the Complainant, both physical and mental. Thus, the

Prosecution submits that a starting point of 9 years' imprisonment and 4 strokes of the cane is warranted.¹³⁶

144 At the second step, for the same reasons as those given for the Third Charge and the Fourth Charge, the Prosecution submitted that that an upward calibration of one year's imprisonment is warranted, to arrive at the final sentence of 10 years' imprisonment and 4 strokes of the cane.

The Defence's Submissions

145 In its written sentencing submission, the Defence submitted that a sentence of 10 years' imprisonment and 6 strokes of the cane should be imposed for the Second Charge. However, as clarified during the sentencing hearing, this submission was based on the mistaken premise that *Terence Ng* framework (as opposed to the *Pram Nair* framework) applied.¹³⁷ Given that both sides agree that the sentence for the Second Charge should run concurrently with the other sentences, I considered this to be an error without practical consequences and therefore decided not to invite the Defence to go through the effort of revising their submission on the Second Charge. Instead, it was clear to me that, if the reasoning underlying the Defence's submissions were applied to the *Prem Nair* framework, those reasoning would result in a proposal for seven years' imprisonment and four strokes of the cane at the first step and zero uplift at the second step.

¹³⁶ PSS at para 37

¹³⁷

Decision

146 For the same reasons as those I had given in respect of the Third Charge and the Fourth Charge, I placed the Second Charge at the lower end of Band 1 of the *Prem Nair* framework with an indicative starting sentence of seven years' imprisonment and four strokes of the cane. At the second step of the *Prem Nair* framework, for the same reasons as those I had given in respect of the Third Charge and the Fourth Charge, I would apply a six-month uplift to arrive at the final sentence of seven years and six months' imprisonment and four strokes of the cane.

First Charge

147 The applicable sentencing framework for the First Charge (outrage of modesty) is set out in the case of *Kunasekaran s/o Kalimuthu Somasundara v PP* ("*Kunasekaran*"), which provides for three sentencing bands according to the gravity of the offence.

The Prosecution's Submissions

148 At the first step of the *Kunasekaran* framework, the Prosecution argues that the present case falls at the higher end of Band 2. In this regard, the Prosecution highlights the following factors:

- (a) First, there was a high degree of sexual exploitation, given the number of sexual acts the accused forced upon the Complainant (kissing, hugging and grabbing the Complainant's breasts), and the high degree of sexual intrusion (the accused groped the Complainant's breasts skin-on-skin). Additionally, the fact that the Complainant felt the accused

rubbing his erection against her buttocks should also be taken into account;¹³⁸

(b) Second, the accused molested the Complainant in a forceful manner. The Complainant testified that she felt considerable pain when the accused groped her breasts, categorising the pain she experienced as being “around 7 to 8” out of 10.¹³⁹

149 Thus, the Prosecution submits that a starting point of at least 12 months’ imprisonment and 3 strokes of the cane is warranted.¹⁴⁰

150 At the second step of the *Kunasekaran* framework, the Prosecution submits that there are no offender-specific mitigating or aggravating factors that warrant a calibration of the sentence. Thus, the final sentence of 12 months’ imprisonment and 3 strokes of the cane would be appropriate.¹⁴¹

The Defence’s Submissions

151 The Defence submits that the present case falls in the lower end of Band 2. In support, the Defence raises the following 3 factors:

(a) First, while the accused had kissed the Complainant on the lips and grabbed the Complainant’s breasts, the duration of the accused grabbing the Complainant’s breasts was “fleeting” and the duration of

¹³⁸ PSS at para 41

¹³⁹ PSS at para 41

¹⁴⁰ PSS at para 41

¹⁴¹ PSS at para 42

the accused kissing the Complainant was “not longer than 5 to 10 seconds”;¹⁴²

(b) Second, there was (i) no premeditation; (ii) no violence, restraint or coercion; (iii) no abuse of trust; and (iv) no use of deception. Further, the Complainant is not vulnerable as she is four years older than the Accused;¹⁴³ and

(c) Third, the harm caused to the Complainant is low. In this regard, the Defence submits that the Complainant herself was unsure whether the brown patches of pigmented skin were a result of bruising sustained from the assault or due to the Complainant’s habit of icing for fat loss.¹⁴⁴

152 Thus, the Defence submits that a sentence of 5 months’ imprisonment without caning would mean the end of justice for the First Charge.

Decision

153 I agreed with the Prosecution that this case falls within the higher end of Band 2 of the *Kunasekaran* framework given the number of acts involved and given that there was skin-to-skin contact with the Complainant’s breast. I therefore imposed the sentence of 12 months’ imprisonment and three strokes of the cane for the First Charge.

¹⁴² DSS at paras 15 to 19

¹⁴³ DSS at paras 20 to 30

¹⁴⁴ DSS at para 31 to 34

Global sentence

154 Both the Prosecution and the Defence submitted that the imprisonment terms for the First Charge and Fourth Charge should run consecutively, with the imprisonment terms for the Second and Third Charges running concurrently. Accepting these submissions, I decided to run the imprisonment terms of the First Charge and Fourth Charge consecutively for an aggregate imprisonment term of 11 years and six months.

155 The Prosecution submitted that there was no need for any further adjustment of the aggregate imprisonment term on account of the totality principle and the Defence has also not asked for any such adjustment. I therefore concluded that the aggregate imprisonment term need not be adjusted on account of the totality principle.

156 As for the sentence of caning, since I have decided to impose three strokes of the cane for the First Charge, four strokes for the Second Charge and six strokes each for the Third Charge and Fourth Charge, the cumulative sentence of caning would come up to 19 strokes. The Prosecution submitted that 19 strokes of the cane would be disproportionate to the Accused’s overall criminal conduct, and a downward calibration to 16 strokes of the cane would be justified on account of the totality principle (citing *Ho Sheng Yu Garreth v Public Prosecutor* [2012] 2 SLR 37538 (“*Garreth Ho*”) at [133]). The Defence made a similar submission but proposed that the cumulative sentence of caning be calibrated down to six strokes.

157 To determine how the cumulative sentence of caning should be calibrated downwards, it would be useful to start by considering the case of *Garreth Ho* cited by the Prosecution. In that case, the offender was convicted of six charges for illegal money lending and sentenced by the district court in

aggregate to 60 months' imprisonment, \$480,000 in fines and six strokes of the cane (comprising one stroke for each of the six charges). On appeal to the High Court, V K Rajah JA held, firstly, that the totality principle may be applied to a cumulative sentence of caning imposed for several distinct offences and, secondly, that the total sentence of six strokes of the cane was disproportionate to the overall gravity of the criminal conduct in that case. Rajah JA therefore reduced the aggregate sentence to three strokes of the cane by setting aside the sentence of caning for three out of the six charges.

158 Therefore, the extent to which the cumulative sentence of caning should be calibrated downwards would depend on an assessment of what Rajah JA termed “the overall gravity of the criminal conduct” (*Garreth Ho* at [134]). In the present case, a consideration of the “overall gravity” of the Accused’s criminal conduct would involve an examination of the facts concerning the four offences he was charged with, including how these offences relate to each other.

159 As noted above, the First Charge occurred when the Accused kissed the Complainant, hugged her from behind and grabbed her breast. The Second Charge occurred when the Accused moved one hand to insert into the Complainant’s vagina while continuing to grab her breast with the other hand. The Third Charge occurred when the Accused released both his hands in order turn the Complainant around to face him so that he could force her to fellate him. The Fourth Charge occurred when the Accused withdrew his penis from the Complainant’s mouth, pulled her to the side of the bed, pushed her face down onto the bed, pulled down her underwear and inserted his penis into the Complainant’s vagina. What the foregoing narrative demonstrates is that the acts constituting the four offences form a single episode with no discernible breaks between them (except perhaps for the Accused to put on a condom during the time between the Third Charge and the Fourth Charge).

160 Before continuing with the analysis, it would be useful to consider the case of *Public Prosecutor v Wong Siu Fai* [2002] 1 SLR(R) 1161 (“*Wong Siu Fai*”) where a similar issue arose. In that case, the accused pleaded guilty to one charge of outrage of modesty of a five-year old boy by using his hands to touch and rub the victim’s penis and one charge of carnal intercourse against the order of nature by performing fellatio on the victim. Choo Han Teck JC (as he then was) described the two offences as having taken place “at the same place, same day, same time and on the same victim”. While acknowledging that there is nothing wrong with charging an accused on two different charges arising from the same incident if the facts indicated that distinct offences were committed in the course of a single transaction, Choo JC considered that the case posed important questions as to how an accused ought to be sentenced in such a situation. According to Choo JC (at [5]):

It is the specific facts of the case that determine whether an act is more a unitary offence or a multiple one for the purposes of sentencing. The unitary nature of the offence is apparent where the acts are so closely related in time, motion and space. On the facts before me, I am of the view that the two acts are sufficiently close as to constitute a unitary offence for the purpose of sentencing. The two acts complained of took place at virtually the same time (as can be seen from the charges). The part of the victim’s body violated by the accused is the same. In the circumstances, in view of what I have stated above, the two charges ought to be considered as part of a single offence for the purposes of sentencing.

161 To give effect to his finding that “the two charges ought to be considered as part of a single offence for the purposes of sentencing”, Choo JC sentenced the accused to six years’ imprisonment on the carnal intercourse charge but only one days’ imprisonment for the outrage of modesty charge, with the imprisonment term for both charges running concurrently.

162 Although the actual reasoning and solution devised in *Wong Siu Fai* may not be directly applicable to the present case because *Wong Siu Fai* dealt with

sentences of imprisonment while we are dealing with sentences of caning in the present case, the case of *Wong Siu Fai* is nevertheless helpful in highlighting the considerations of fairness and proportionality which a sentencing court needs to contend with in cases like this.

163 Having regard to the considerations discussed in *Wong Siu Fai*, I held that in assessing the overall gravity of the Accused's criminal conduct, it will be relevant for the court to also consider whether any two or more of the charges faced by the Accused may properly be regarded as a unitary offence for the purposes of sentencing. Thus, for example, if the court were to form the view that all four charges faced by the Accused constitute a unitary offence for the purposes of sentencing, that would afford a reason for the court to adopt the Defence's proposal to calibrate the cumulative sentence of caning down to only four strokes. Having considered the factual narrative summarise at [159] above carefully, I note that the facts of the First Charge and Second Charge are sufficiently close and intertwined to be considered a unitary offence for the purposes of sentencing. I further note that the part of the Complainant's body violated is the same for the Second Charge and the Fourth Charge. As for the Third Charge, although it formed part of the same incident as the other three charges, the nature of the Third Charge (penile-oral penetration) is sufficiently different to justify treating it separately from the other charges for the purposes of sentencing.

164 In the light of the matters discussed above, I concluded that it would be in line with the overall gravity of the Accused's criminal conduct to calibrate the cumulative sentence of caning down to 12 strokes. This calibration will be achieved by reducing the caning imposed for the First Charge to one stroke, for the Second Charge to three strokes and for the Third Charge and Fourth Charge to four strokes each.

Conclusion on sentence

165 For the reasons given above, I sentenced the Accused to:

- (a) One year's imprisonment and one stroke of the cane for the First Charge;
- (b) seven years and six months' imprisonment and three strokes of the cane for the Second Charge; and
- (c) 10 years and six months' imprisonment and four strokes of the cane each for the Third Charge and Fourth Charge.

The imprisonment terms for the First Charge and Fourth Charge are to run consecutively while the imprisonment term for the remaining charges are to run concurrently. The global sentence is 11 years and six months' imprisonment and 12 strokes of the cane.

Pang Khang Chau
Judge of the High Court

Sruthi Boppana, Sheldon Lim and David Khoo (Attorney-General's
Chambers) for the prosecution;
Nandwani Manoj Prakash and Sameer Bin Amir Melber (Gabriel
Law Corporation) for the accused.
