Public Prosecutor *v* Chow Yee Sze
[2010] SGHC 259

Case Number : Magistrate's Appeals Nos 149 and 178 of 2010

Decision Date : 30 August 2010

Tribunal/Court : High Court

Coram : Steven Chong J

Counsel Name(s) : Kan Shuk Weng and Adrian Loo (Attorney-General's Chambers) for the Appellant; Respondent in person.

Parties : Public Prosecutor — Chow Yee Sze

Criminal Procedure and Sentencing

30 August 2010

Steven Chong J:

Introduction

1 It has frequently been emphasised that for offences where there are established sentencing precedents, "it would not be proper for a trial judge to depart from such precedents without, at the very least, giving cogent reasons as to why they should not be applied in the case before him" (*Public Prosecutor v UI* [2008] 4 SLR(R) 500, CA at [17] ("*PP v UI*"); *Public Prosecutor v Hirris anak Martin* [2010] 2 SLR 976, CA at [13]–[15]). These two appeals, MA149 and MA178 of 2010, were brought by the Prosecution against the sentences imposed by the District Judge ("the DJ") on the Respondent, Chow Yee Sze, on the principal ground that the DJ had departed from established sentencing benchmarks without sufficient justification. After considering the evidence, I agreed with the Prosecution that the departures by the DJ were indeed unwarranted. I delivered my oral decision on 20 August 2010 in which I increased the sentences handed down by the DJ as follows:

(a) for MA 149 of 2010, I replaced the fine of $6,000 for DAC 36095/2008 to nine months imprisonment; and

(b) for MA 178 of 2010, I increased the imprisonment term for DAC 36097/2008 from four months to nine months.

I now give my reasons for increasing the sentences.

MA 149 OF 2010

2 The first appeal, MA149, relates to a single proceeded charge, DAC 36095/2008, under s 354 of the Penal Code (Cap 224, 1985 Rev Ed), for the use of criminal force knowing it likely that it would outrage the modesty of his victim ("V1"). The prescribed punishment for an offence committed under s 354 of the Penal Code is a term of imprisonment which may extend to two years, or with fine, or with caning, or with any two of such punishments.

The brief facts

3 V1, who was 25 years old at the time when the offence took place, worked as an operations manager at a pub. On 9 January 2007, she went to work although she was unwell. She had taken some medication before reporting for work. V1 met the Respondent, whom she had met before, at the pub. She had a drink or two with the Respondent together with his friends. As V1 was not feeling well, she went up to the pub's office on the third floor to rest. Shortly thereafter, the Respondent went into the office ("the first incident"). V1 was resting on the sofa. Unbeknown to the Respondent, the office was being monitored by a closed circuit camera ("CCTV"). From the CCTV recording which I viewed, it was clear that V1 was unaware of the Respondent's presence. He stroked her head and appeared to have planted two kisses on her cheek but V1 did not react. The owner of the pub then entered the office and told the Respondent to leave the office. The first incident lasted for about 90 seconds. About fifteen minutes later, the Respondent entered the office a second time ("the second incident"). On this occasion, the CCTV recorded him tickling V1's right palm, patting her head, stroking her left cheek, grabbing her hands, stroking her lower body at various places including her left thigh and her buttocks. It is however important to note that after each touch, the Respondent would pause to observe V1's reaction. When she did not react, he continued touching her through her clothes. Finally, because she did not react *at all*, the Respondent's hand then reached into her shirt to directly touch part of her breast. V1 then woke up and pushed him away. She looked visibly annoyed and told the Respondent to leave the office. All in, the second incident lasted about two and a half minutes. V1 complained to the pub owner and after reviewing the CCTV recording, she then lodged a police complaint against the Respondent within the hour after the two incidents.

4 The Respondent claimed trial to the charge. The trial lasted nine days and was conducted over several tranches between 12 October 2009 and 18 March 2010. Over this period, the Respondent changed his mind three times after indicating to the Prosecution of his intention to plead guilty. On 18 March 2010, the DJ found the Respondent guilty and convicted him of the above charge. The DJ found that a heavy fine would be sufficient punishment and fined the Respondent $6,000 (in default, 6 weeks' imprisonment). The Respondent paid $2,000 of the fine and has served the default sentence of 4 weeks' imprisonment for the unpaid balance.

The DJ's decision

5 In *Public Prosecutor v Chow Yee Sze* [2010] SGDC 223 ("*GD*"), the DJ observed that the following factors are relevant for sentencing:

(a) the part of the body molested;

(b) the manner in which the victim was molested;

(c) the period of time over which the act took place;

(d) the frame of mind of the offender; and

(e) the relationship between the offender and the victim.

6 Further, the DJ also observed that the factors laid down in *Public Prosecutor v Heng Swee Weng* [2010] 1 SLR 954 ("*PP v Heng Swee Weng*") are equally relevant in deciding the appropriate sentence for a conviction under s 354 of the Penal Code, *ie*:

(f) was the offence premeditated or committed on the spur of the moment;

(g) were the circumstances in which the offence was committed inherently reprehensible;

(h) was the offender recalcitrant; and

(i) was the offender suffering from any mental disorder or intellectual disability.

As a matter of principle, these factors are not controversial. The question, as in all cases, lies in their proper application to the facts of the present case.

7 In arriving at his decision to impose a fine of $6,000, the DJ then took into account the following facts:

(a) no force or violence was used and V1 did not have to struggle to free herself;

(b) he touched V1 over her clothes and did not attempt to undress her;

(c) he did not touch V1's sexual organs;

(d) his touches were quick and brief and were not committed over a prolonged period of time;

(e) his contact on V1's breast was a fleeting one;

(f) he was a first offender; and

(g) the IMH report dated 10 December 2009 prepared by Dr Tomita.

8 After reviewing the evidence, in my judgment, the sentence imposed by the DJ for DAC

36095/2008 was manifestly inadequate and my reasons are set out below.

The sentencing benchmark

9 The well-established sentencing benchmark is *nine months' imprisonment with caning as a starting point* for molest or outrage of modesty under s 354 of the Penal Code where "a victim's private parts or sexual organs [were] intruded" (*Chandresh Patel v Public Prosecutor* [1995] 1 CLAS News 323; MA 357/1993 ("*Chandresh Patel*"), per Yong Pung How CJ). The DJ specifically referred to this sentencing benchmark at [7] of his *GD*. Since *Chandresh Patel*, the nine months' imprisonment plus caning benchmark has consistently been considered by the courts to be the *correct benchmark* for s 354 offences over the past 15 years: referred to recently in *PP v Heng Swee Weng* where a taxi-driver who pleaded guilty to hugging his 15-year old passenger was sentenced to eight weeks' imprisonment; also *Yu Eng Chin v Public Prosecutor* [2009] SGHC 57 where Choo J referred to the benchmark in *Chandresh Patel* and did not find the sentences of 12 months and 18 months manifestly excessive.

10 A helpful survey of the sentencing precedents for a conviction under s 354 of the Penal Code can be found in the decision of *Public Prosecutor v Ho Ah Hoo Steven* [2007] SGDC 162 wherein it affirms the general benchmark set by *Chandresh Patel* (at [86]):

> A survey of the sentencing precedents reveals that where the molest involves an interference with the victim's breasts and moderate force was used, sentences of between 6 to 12 months' jail have been imposed:
>
> a. *Chandresh Patel*: 6 months for indirect and non-immediate touching the vaginal area of a sleeping flight passenger; [and 3 strokes of the cane]
>
> b. *Ong Bock Chuan v PP* (MA 323/96): 6 months for using three fingers to touch the side of the victim's left breast while sitting next to her in a bus;
>
> c. *Koh Siew Huat v PP* (MA 241/98): 6 months each of two charges of indirect and non-immediate grabbing and pressing an employee-maid's breast, and placing hand on her breast;
>
> d. *Tok Kok How v PP* [1995] 1 SLR 735: 9 months for pressing the knuckles onto the victim's breast, while at the same time repeatedly holding her shoulders tightly, despite protestation, and asking if she was afraid of being raped; [and 3 strokes of the cane]
>
> e. *PP v Chee Huck Chuan* (MA 262/96): 9 months for grabbing the victim from behind and then indirect and non-immediate touching her right breast;
>
> f. *PP v George Edward Nathan* (MA 144/2001): 9 months for indirect and non-immediate touching and caressing the breasts of two women at a bus stop, when offering to help them get up from the floor – both sentences to run consecutively;
>
> g. *Zeng Guoyuan v PP* [1997] 3 SLR 321: 9 months for each of the three charges of massaging the breasts and groin of the victim in the course of an acupressure and acupuncture session; [3 strokes for each charge involving touching of breasts and groin]
>
> h. *Ng Chiew Kiat* [2000] 1 SLR 370: 9 months for each of two charges of caressing the victim-maid's breasts, vagina, right leg and right hand while she was sleeping, and caressing the victim's breasts and kissed her lips when she was also sleeping [3 strokes of cane for each

charge]

11 It is apparent from the above survey that most of the cases did not involve use of force or coercion and were typically fleeting in nature. Yet each of them was sentenced between six to nine months. The law is clear that the touching of a private part of the body by itself would typically attract a *custodial sentence*, even if it was a fleeting touch and where no force was used (see *Kwan Peng Hong v Public Prosecutor* [2000] 2 SLR(R) 824 at [64]):

> Here, it was amply justified for the trial judge to impose a sentence of imprisonment. *The appellant had touched the underarm that included a small part at the side of the complainant's right breast. It was a soft touch. It lasted only a few seconds. Although the act of molest was minor and neither force nor coercion was used, the touch was on a private body part of the complainant. In such cases, there must be a sentence of imprisonment*. The court must convey the disapprobation with which the court views such offences. The message must be unequivocal. The court will step in to maintain law and order, when individuals feel inclined to give in to certain impulses. And the court will maintain this with robust sanction. A fine will send a wrong signal to the public, at least in terms of deterrence.
>
> [emphasis added]

12 A fine would only suffice if the act of molest was a relatively minor one: see *Teo Keng Pong v Public Prosecutor* [1996] 2 SLR(R) 890 where a tuition teacher with no antecedents was fined $500 on each charge for four charges for caressing a student's thigh and a fifth charge of caressing her thigh and squeezing her back; and *Soh Yang Tick v Public Prosecutor* [1998] 1 SLR(R) 209 where an employer was fined $2,000 for slapping his secretary's buttock lightly on the spur of the moment.

This Court's decision

13 As the DJ imposed only a fine on the Respondent in the present case, this amounted to a clear and marked departure from the established benchmark set by the sentencing precedents. It is therefore imperative to examine the reasons provided by the DJ for doing so. Before examining his reasons, I should add that I do not disagree with the DJ's observation at [16] of his *GD* that every sentence must fit the crime and that the lower courts must not place sentencing precedents "on an altar and obsessively worship them". However, these precedents are there for good reasons, *ie* to provide consistency and rationality in sentencing, and it is for the trial judge to provide cogent and proper reasons when departing from them.

14 Reading the *GD* on the whole, it seems to me that the DJ's approach in determining the appropriate sentence was to evaluate whether any of the facts amounted to aggravating factors and in arriving at his finding that none was present, he thereby concluded that a heavy fine would suffice. With respect, such an approach is flawed. The lack of aggravating factors in itself would not be sufficient to justify a fine instead of a custodial sentence where the molestation involved touching the private parts of the victim. In other words, the lack of aggravating factors cannot be construed as a mitigating factor. In any event, for the reasons as explained in [22]–[24] below, there were in fact aggravating factors in this case.

15 In my view, the correct approach for sentencing should generally be as follows:

(a) Ascertain whether there is any established sentencing benchmark for the type of offence in question and the range of such benchmark.

(b) If the punishment prescribed for the offence provides the court with the option of imposing a custodial sentence or a fine, to determine whether the starting benchmark ought to be a custodial sentence given the nature of the offence. For example, under s 354 of the Penal Code where the molestation involved a private part of the victim; or under s 323 of the Penal Code where the victim of assault is a public transport worker (*Wong Hoi Len v Public Prosecutor* [2009] 1 SLR(R) 115).

(c) Determine whether there are *recognised* mitigating factors to justify a departure from the established sentencing precedent or to impose the lower end of the range. If none exists or none of any significance, generally the benchmark should be followed.

(d) Examine whether there are *recognised* aggravating factors of sufficient gravity to either impose the higher end of the range or to warrant an increase from the sentencing precedent.

(e) If there are both mitigating and aggravating factors present in the case, which is not uncommon, both of them should be properly balanced so as to ensure that the overall punishment fits the crime.

Such an approach will seek to ensure that when a trial judge decides to depart from the relevant sentencing precedents, he directly addresses his mind to the facts of the particular case to provide good and cogent reasons for doing so. Needless to say, such an approach is only intended to be a guideline as the DJ rightly observed (*GD* at [16]), since "no two cases can ever be completely identical or symmetrical". The difference in every case lies in the details. That is precisely the reason why the evidence before the trial judge must be carefully analysed and considered before deciding on the appropriate sentence. To quote Chan Sek Keong CJ in *Luong Thi Trang Hoang Kathleen v Public Prosecutor* [2010] 1 SLR 707 (at [25]):

> Judges should not blindly apply any sentencing principle without considering all the circumstances of the case at hand, especially the culpability of the accused in that particular case. *It cannot be over emphasised that the court must apply its mind to the facts of each case before it and determine the appropriate sentence accordingly*.
>
> [emphasis added]

I should add that for this case, the task of the DJ was made easier by the fact that the entire incident was actually captured by CCTV recording.

16 In arriving at the sentence, the DJ took into account the following facts (see [7] above):

(a) no force or violence was used and V1 did not have to struggle to free herself;

(b) he touched V1 over her clothes and did not attempt to undress her;

(c) he did not touch V1's sexual organs;

(d) his touches were quick and brief and were not committed over a prolonged period of time;

(e) his contact on V1's breast was a fleeting one;

(f) he was a first offender; and

(g) the IMH report dated 10 December 2009 prepared by Dr Tomita.

17 Did the above facts justify the DJ's departure from the sentencing benchmark? In my view, there was no justification to do so. First, there was no need for the Respondent to resort to force or violence given that V1 was semi-conscious due to a combination of factors, *viz* she was under the weather, the effects of her medication and the alcohol that she had consumed earlier. Furthermore, although the presence of force or violence would be an aggravating factor, the lack thereof is not in itself a mitigating factor. In the present case, the lack of force, violence or a struggle was due to V1's condition which the Respondent was well aware of at the material time. It pointed to the fact that the Respondent had taken advantage of V1 while she was unwell and vulnerable. In my view, this was in fact *an aggravating factor*.

18 Secondly, while the Respondent touched V1 over her clothes for the most part, he did finally touch the bare skin of her breast by placing his hand under her shirt. Furthermore, the Respondent had touched V1 *numerous* times all over her body: on her hands, face, thigh, calf, and buttocks in addition to her breast. It was obvious that the Respondent had become more emboldened after he realised that given V1's condition, she was either not going to put up a struggle or was oblivious to his groping and this led him to reach under her shirt to touch her breast. Although the Respondent did not touch V1's sexual organs, the deliberate and calculated manner in which he touched V1's breast was sufficient to attract a custodial sentence (see [11] above). The Respondent only stopped the molestation after V1 woke up and told him to leave the office.

19 Thirdly, I disagree with the DJ's finding that the Respondent's touches were not conducted over a prolonged period of time. The Respondent had touched V1 repeatedly over a period of about two and a half minutes even without taking into account the first incident which lasted some 90 seconds. As observed earlier from the CCTV recording, the Respondent would pause after each touch to see the reaction or lack thereof from V1. He wanted to see how far he could get away with.

20 Although the Respondent's touch of V1's breast was fleeting, this was simply because V1 had reacted immediately to his invasion of her modesty. From the CCTV recording, it was clear to me that if V1 had not woken up in reaction to his touch of her breast, he would have continued. V1's evidence at the trial was that she woke up because she felt something near her heart area. In any event, offences committed under s 354 of the Penal Code typically involve acts that are brief and fleeting because the victim would often react by struggling or escaping. Acts of molest for periods longer than a fleeting moment would usually involve the use of coercion such as force or violence which would be an aggravating factor. Accordingly, the fact that the touch on V1's breast was fleeting in circumstances peculiar to this case did not justify the imposition of a fine instead of a custodial sentence.

21 Finally, the fact that he was a first offender is in itself a neutral factor as it is not necessarily positive evidence of good character: *Public Prosecutor v Tan Fook Sum* [1999] 1 SLR(R) 1022. On the other hand, the presence of antecedents would often lead to an enhanced sentence: *Md Anverdeen*

Basheer Ahmed and Others v Public Prosecutor [2004] SGHC 233.

Aggravating factors

22 Once each of the factors that the DJ took into account is closely examined, it is clear that none of them, either singly or collectively, justified the departure from the sentencing benchmark. The absence of mitigating factors must, however, be contrasted with the presence of aggravating factors in this case. First, the Respondent's acts of molest were clearly deliberate. By returning to the office the second time to continue to molest V1 after having been told by the pub owner to leave some 15 minutes earlier, it was obvious that he was intent on criminal conduct. This, I found, was particularly aggravating. The Respondent admitted that he was not intoxicated and therefore his judgment was not in any way impaired when he committed the offence.

23 Secondly, the Respondent showed no remorse and denied any wrongdoing even when confronted with incontrovertible evidence. He claimed to be uninterested in women in a desperate attempt to escape liability. Subsequently, he claimed trial even though the CCTV recording clearly showed that he had committed the offence. By putting V1 through the agony of the trial and in the process forcing her to re-live the unpleasant and embarrassing experience in watching the CCTV footage of the molestation, the Respondent has shown himself to be completely unremorseful of his behaviour. Finally, the Respondent made three about turns after indicating to the Prosecution of his intention to plead guilty. The Respondent's conduct spoke of his blatant refusal to take responsibility for his reprehensible behaviour.

24 Thirdly, as explained at [17] above, the Respondent molested V1 when he knew she was unwell and as such took advantage of her condition to violate her modesty.

25 After noting the absence of mitigating circumstances and the presence of some aggravating factors, I found no justifiable reason to depart from the established benchmark. The present case bears no similarity whatsoever with the cases in which only a fine was imposed. Accordingly, I replaced the Respondent's original sentence of a fine of $6,000 (in default, 6 weeks' imprisonment) for DAC 36095/2008 with a sentence of nine months' imprisonment.

MA 178 OF 2010

26 This appeal relates to DAC 36097/2008 which was one of seven charges brought against the Respondent. Four of them were for outrage of modesty against a different victim ("V2") under s 354 of the Penal Code. The remaining three were for criminal intimidation under s 506 of the Penal Code and were unrelated to the charges under s 354. The Prosecution proceeded on one charge under s 354, DAC 36097/2008, against the Respondent with the remaining three charges taken into account for the purpose of sentencing.

The brief facts

27 On 16 August 2006, the Respondent contacted V2 for an interview because she had indicated an interest to join his modelling agency. She met him at about 10.30pm at the Coco Latte, a bar located at the Gallery Hotel. The Respondent then told V2 that he planned to use her to model for two of his magazines, FHM and Maxim. To do so, he wanted to examine her body *as a matter of standard protocol*. The Respondent suggested that the examination take place in the toilet. V2 reluctantly agreed and accompanied the Respondent into the toilet. Once in the toilet, V2 removed her clothes down to her undergarments at the request of the Respondent. When he asked her to remove her undergarments, she refused. The Respondent then suddenly extended his left hand to

reach into V2's brassiere to caress her left breast. V2 reacted immediately and pushed the Respondent away. She then left the toilet after putting on her clothes. The other three charges under s 354 against the Respondent which were taken into account related to separate acts of molest, one of which occurred on the same day as DAC 36097/2008 while the other two incidents occurred on different days, *ie* 17 and 23 August 2006. These incidents of molest therefore predated the charge under MA 149 of 2010.

The DJ's decision

28 The Respondent pleaded guilty to DAC 36097/2008 and agreed for the remaining three charges to be taken into consideration for sentencing. The DJ sentenced the Respondent to four months' imprisonment for DAC 36097/2008.

29 The facts that the DJ took into account in arriving at the sentence were as follows:

(a) V2 was not forced to attend the interview and had expressed an interest to join the Respondent's modelling agency.

(b) Although V2 was reluctant, she agreed to follow the Respondent into the unisex toilet to allow him to examine her body.

(c) No force or violence was used by the Respondent.

(d) The Respondent did not use false pretences to lure V2; he was not pretending when he asked V2 to meet him at the bar, Coco Latte, for the interview or when she went to the toilet together with the Respondent to be examined.

(e) V2 could have refused.

(f) V2 did not have to struggle to free herself.

(g) There was no prolonged act of molestation.

This Court's decision

30 Before going into my decision, I pause here to take note of the incongruity between the sentences imposed by the DJ for DAC 36095/2008 (the subject matter of MA 149) and for DAC 36097/2008 (the subject matter of MA 178). In my view, the facts in DAC 36095/2008 involving V1 (at [3] above) are far more compelling than that in DAC 36097/2008 to warrant a custodial sentence. However, in the latter case, the DJ sentenced the Respondent to four months' imprisonment after he pleaded guilty to the charge. This is to be contrasted with DAC 36095/2008 where the same DJ inexplicably imposed only a fine even though the Respondent was completely unremorseful in claiming trial in circumstances when the CCTV recording clearly proved the various acts of molestation.

31 It was conceded that the Respondent did insert his hand into V2's brassiere to caress her left breast directly.

32 While V2 was a willing participant insofar as she had reluctantly agreed to allow the Respondent to view her body while in her undergarments to ascertain her suitability to pose for the Respondent's magazines, it was incorrect to suggest that she had in some way afforded the Respondent with the opportunity to reach out to molest her or that the Respondent was only acting on the spur of the moment. There was also no question of consent here given that the Respondent had pleaded guilty to

the charge. It is pertinent to mention that when the Respondent asked V2 to remove her undergarments, she flatly refused. In response to her refusal, the Respondent reached out to caress her breast under her brassiere. The DJ found that there was no evidence that he had lured V2 into the toilet in order to molest her because this point was not stated in the Agreed Statement of Facts. In my view, this was an entirely permissible inference to be drawn from the agreed facts. His conduct was clearly premeditated. His action showed that he had lured V2 into the toilet on the pretext of viewing her body with the ulterior motive to take advantage of her. The Respondent's *immediate* reaction in reaching out to caress her breast when V2 refused to remove her undergarments indicated that it was his intention all along to molest her. This must be distinguished from a situation where an employer had slapped his secretary's buttock on the spur of the moment. Here, the Respondent had deliberately placed her in a vulnerable position so as to afford himself with an opportunity to molest her. In short, he sought to take advantage of V2's aspirations to work as a model. His subsequent acts of molest against her in the other charges bear out his intention to do so.

33 From a perusal of the facts that the DJ took into account, it is apparent that none of them were mitigating factors in favour of the Respondent. Again, if there had been prolonged molestation, or if the Respondent had used force and violence, or had coerced or lured V2 using false pretences, they would have operated as *aggravating factors*. However, the lack of such factors in itself did not justify a departure from the established benchmark. At most, it was a relevant consideration in not enhancing the sentence beyond the benchmark. However, on the facts of this charge, I in fact found that the Respondent did lure V2 into the toilet to exploit her aspirations to work as a model so as to take advantage of her. In my view, this fact amounted to an aggravating factor.

Charges taken into consideration

34 Furthermore, three charges ("TIC charges") were to be taken into account for sentencing. Such TIC charges would generally result in an *enhanced* sentence particularly where the TIC offences and the offences proceeded with are similar in nature as they would show that the offender was recalcitrant (*eg* if both sets of offences consist of sexual offences against the same victim): *PP v UI* and *Public Prosecutor v Mok Ping Wuen Maurice* [1998] 3 SLR(R) 439 at [19].

35 Three of the TIC charges were for similar offences committed against V2 over the span of one week. For the second charge, on the same day that the Respondent had caressed V2's left breast, the Respondent had pinched V2's buttocks several times. The following day, the Respondent had brushed his hand across V2's cleavage, which formed the subject of the fourth charge. Six days later, the Respondent pinched V's buttocks again, which resulted in the fifth charge.

36 The above acts committed by the Respondent over the following week clearly betrayed a lack of remorse after having outraged the modesty of V2 in the toilet. Evidently, V2 finally decided that she could no longer tolerate the Respondent's continuing sexual harassment when she decided to file the police report against him. All this seems to have been overlooked by the DJ in sentencing the Respondent to an imprisonment term of only four months.

37 For MA 149, there was only one proceeded charge, *ie* DAC 36095/2008, while for MA 178, in addition to DAC 36097/2008, three further charges of a similar nature were to be taken into account for sentencing. If not for the Respondent's guilty plea, the sentence for DAC 36097/2008 should have been higher than DAC 36095/2008. Taking into account the guilty plea and the TIC charges, I decided to impose the same sentence and therefore replaced the DJ's sentence for DAC 36097/2008 of four months' imprisonment with a term of nine months' imprisonment instead.

Caning

38 As stated in [6] above, any mental disorder and/or intellectual disability of the offender are relevant considerations in deciding the appropriate sentence – see *PP v Heng Swee Weng*. For sentencing, various psychiatric assessment reports were submitted by the Respondent to show that he was suffering from stress and a personality disorder. The Respondent was treated with mood-stabilising, antidepressant, and sleep medications. The reports stated, *inter alia*, that the Respondent suffers from personality problems – "mainly anger management issues, impulsivity and emotional disability" and "extreme mood instability that often leads to impulsive and self-destructive behaviour". The reports also stated that the Respondent's ability to function has been compromised further by alcohol and benzodiazepine dependence, which have been escalating for the past two years.

39 Having gone through the sentencing precedents, I found that caning was not meted out in every case where there was touching of a victim's breast. In fact, in response to my question whether caning is the norm for cases where the offence involved touching of the victim's breast, the Prosecution, to its credit, drew my attention to several recent cases where caning was not ordered. While the Respondent's personality problems and substance dependence have no direct relevance to the commission of the offences, in that the Respondent knew the nature of his acts and understood that he was breaking the law, I took them into account in sparing him from caning. In my judgment, the longer custodial sentences that I have imposed are sufficient punishment for his offences.

Conclusion

40 By reason of my findings, I substituted the sentences imposed by the DJ as follows:

(a) For MA 149 of 2010 in respect of DAC 36095/2008, the Respondent is sentenced to nine months imprisonment instead of the $6,000 fine.

(b) For MA 178 of 2010 in respect of DAC 36097/2008, the Respondent is sentenced to nine months imprisonment instead of four months.

(c) The $2,000 fine paid by the Respondent in respect of DAC 36095/2008 is to be refunded to him.