

Public Prosecutor v Low Chuan Wee Anthony
[2011] SGHC 258

Case Number : Criminal Case No 18 of 2010
Decision Date : 01 December 2011
Tribunal/Court : High Court
Coram : Lee Seiu Kin J
Counsel Name(s) : Eugene Lee, Chua Ying Hong and Bagchi Anamika (Attorney-General's Chambers) for the public prosecutor; Martin De Cruz (Shenton Law Practice LLP) for the accused.
Parties : Public Prosecutor — Low Chuan Wee Anthony

Criminal Law

1 December 2011

Lee Seiu Kin J:

1 The Accused is a 46 year-old martial arts instructor. He faced trial on seven charges as follows:

1ST CHARGE on one night, in the month of March 2007, along Turnhouse Road in the vicinity of Changi, Singapore, did rape [the Complainant] [DOB], to wit, by having sexual intercourse with her in a car bearing registration number SFX 7387R, while she was under 14 years of age, and you have thereby committed an offence punishable under section 376(1) of the Penal Code (Chapter 224, 1985 Rev Ed).

2ND CHARGE on one night, in the month of April 2007, in the vicinity of Mandai Road, Singapore, did rape [the Complainant] [DOB], to wit, by having sexual intercourse with her in a car bearing registration number SFX 7387R, while she was under 14 years of age, and you have thereby committed an offence punishable under section 376(1) of the Penal Code (Chapter 224, 1985 Rev Ed).

3RD CHARGE on one night, in the month of April 2007, along Tampines Industrial Avenue 2, Singapore, did rape [the Complainant] [DOB], to wit, by having sexual intercourse with her in a car bearing registration number SFX 7387R, while she was under 14 years of age, and you have thereby committed an offence punishable under section 376(1) of the Penal Code (Chapter 224, 1985 Rev Ed).

4TH CHARGE on the 28th day of February 2007, at Sembawang Beach, Singapore, did commit an indecent act with a child, [the Complainant] [DOB], to wit, by hugging and kissing the said child, and you have thereby committed an offence punishable under section 7 of the Children and Young Persons Act (Chapter 38, 2001 Rev Ed).

5TH CHARGE on the 28th day of February 2007, at a multi-storey carpark in the vicinity of Towner Road, Singapore, did commit an indecent act with a child, [the Complainant] [DOB], to wit, by hugging, kissing and caressing the breasts of the said child, and you have thereby committed an

offence punishable under section 7 of the Children and Young Persons Act (Chapter 38, 2001 Rev Ed).

6TH CHARGE on a day in early May 2007, at a playground in the vicinity of Yishun estate, Singapore, did commit an indecent act with a child, [the Complainant] [DOB], to wit, by kissing her, touching her breasts and vulva, and you have thereby committed an offence punishable under section 7 of the Children and Young Persons Act (Chapter 38, 2001 Rev Ed).

7TH CHARGE on the 9th day of May 2007, at a carpark in Yishun, Singapore, did commit an indecent act with a child, [the Complainant] [DOB], to wit, by kissing her, touching her breasts and vulva, and you have thereby committed an offence punishable under section 7 of the Children and Young Persons Act (Chapter 38, 2001 Rev Ed).

2 At the end of the trial, I convicted the Accused of all seven charges. After hearing the mitigation plea and the submissions of the prosecution, I sentenced the Accused to 10 years' imprisonment with 4 strokes of the cane each for the first, second and third charges under s 376(1) of the Penal Code (Cap 224, 1985 Rev Ed). On the fourth, fifth, sixth and seventh charges under s 7 of the Children and Young Persons Act (Cap 38, 2001 Rev Ed) ("CYPA"), I sentenced the Accused to 6 months, 9 months, 1 year and 1 year respectively. I ordered the sentences for the first and sixth charges to run consecutively, with the remaining charges to run concurrently with the first charge. This meant that the Accused will serve a total imprisonment term of 11 years, and suffer 12 strokes of the cane. The Accused has appealed and I now give my grounds of decision.

Undisputed facts

3 The following facts and evidence were either undisputed or given by independent parties (with whom the Accused did not dispute). At the material time, the Accused was married and had two children, a daughter then aged six years and a son then aged five years. The Complainant was born in January 1994. She attended a secondary school located in central Singapore (the "School"). At the material time, she was a little over 13 years of age. At the trial, she was 17 years old. Her parents were divorced when she was a few years old and she lived with her mother.

4 Sometime in mid-2006, the Accused was appointed the instructor of the School's martial arts club (the "Martial Club"). The Complainant enrolled in the School in January 2007 at Secondary One. She joined the Martial Club shortly thereafter and attended martial arts training conducted by the Accused in the School twice weekly. The Complainant also attended extra training sessions conducted by the Accused at the void deck of his HDB block after school on weekdays and on Sundays. The Accused often gave some of his trainees a ride home in his car after martial arts training. The Complainant was one of them. On 14 February 2007, the Complainant attended an extra training session at the Accused's void deck. During this training session, the Accused and the Complainant took a photograph together, which the Complainant used as the wallpaper of her mobile phone. On 20 February 2007, the third day of Lunar New Year, the Complainant and a few other trainees visited the Accused at his home. They arrived there in the afternoon, and at around 3pm or 4pm, left for a nearby shopping centre. When they arrived at the shopping centre, the Complainant discovered that her subsequent appointment had been cancelled. She sent a text message to the Accused at his home to inform him of this. The Accused drove to the shopping centre and brought her to his home where she joined his family for dinner.

5 Between 20 February and 9 May 2007, the Accused sent the Complainant many text messages on her mobile phone. They also engaged in Microsoft Network ("MSN") chat messages over the internet. In many of the text messages and MSN chat messages, the Accused addressed the

Complainant as "lao po" (literally "wife" in Chinese), and referred to himself as "lao gong" (literally "husband" in Chinese). On 9 May 2007, the Accused brought the Complainant to a boxing association at Farrer Park and introduced the Complainant to a boxing instructor as his "lao po".

6 On 10 May 2007, the principal of the School (PW3, hereinafter the "Principal") received a call from a man claiming to be a relative of one of the pupils in the Martial Club. He told the Principal that the Complainant was having a relationship with the Accused. The Principal called the disciplinary mistress (PW4, hereinafter the "Disciplinary Mistress") and the teacher-in-charge of the Martial Club (PW7, hereinafter the "Teacher-in-charge") to her office, told them about this and asked the Teacher-in-charge to investigate the matter. The Teacher-in-charge checked the Complainant's "Friendster" (a social networking website) account and asked several students about the relationship between the Complainant and the Accused. She did not find anything untoward and reported to the Principal accordingly. However in early May 2007, a female member of the Martial Club, PW19, approached the Teacher-in-charge and informed her that the Accused had told her (*ie* PW19) that he and the Complainant were "going steady". The Teacher-in-charge spoke to two other members of the Martial Club and they corroborated PW19's story to some extent. On 7 May 2007 the Teacher-in-charge reported this to the Disciplinary Mistress.

7 On 10 May 2007, the Disciplinary Mistress confiscated the Complainant's mobile phone. She discovered many romantic messages from the Accused in the mobile phone and questioned the Complainant about her relationship with the Accused. The Complainant told the Disciplinary Mistress that she had gone out with the Accused alone on several occasions. That very day, the Principal summoned the Accused to her office and told him that his appointment as the School's martial arts instructor was terminated with immediate effect. On 11 May 2007, the school counsellor (PW8, hereinafter the "Counsellor") spoke with the Complainant to find out more about her relationship with the Accused. The Counsellor related that the Complainant initially told her that the Accused's wife had found out that she was "dating" the Accused and had called to confront her about it. The Complainant told the Counsellor that the Accused had kissed her and put his arms around her waist. The Counsellor asked if they "had sex". The Complainant at first said they did not. It was only after the Counsellor asked her several times that the Complainant admitted she had sexual intercourse with the Accused a few times in his car. She said that she could not recall the dates concerned. The Counsellor immediately prepared and submitted a counselling report to the Principal. The Principal in turn informed the Complainant's mother of this and advised her to lodge a police report. The Complainant, her mother, the Disciplinary Mistress and the Counsellor proceeded to the police station that day and lodged a report.

Evidence of the Complainant

8 The evidence of the Complainant was as follows. After she saw the martial arts demonstration conducted by the Accused at the school assembly in January 2007, she joined the Martial Club. She attended training sessions conducted by the Accused twice weekly in the school premises. The Complainant gave the Accused her "Friendster" account name and they began to exchange text messages on their mobile phones. On 14 February 2007, the Accused suggested to the Complainant to take a photograph together in order to fend off the unwelcome attentions of an older boy in the Martial Club. The Complainant agreed, they took the photograph and she loaded it on her mobile phone as wallpaper.

9 On the afternoon of 20 February 2007 (the third day of Lunar New Year), the Complainant and a few of her fellow martial art trainees visited the Accused and his family at his home. After spending a few hours there, the group left for a nearby shopping centre. Upon arrival, the Complainant discovered that her appointment in the evening had been cancelled and she informed the Accused of

this by a text message. The Accused offered to keep the Complainant company and he drove his car to pick the Complainant from the shopping centre. The Accused drove her to a nearby reservoir where they chatted. The Accused invited the Complainant to join his family for dinner and she accepted. They proceeded to the Accused's home and the Complainant joined his family for dinner. After dinner she caught a bus home. That night the Complainant and the Accused chatted by exchange of text messages. The Accused asked the Complainant to be his girlfriend and she agreed. The Complainant said that she liked the Accused and her understanding of "girlfriend" at the time was that it involved holding hands, kissing and hugging.

10 On 28 February 2007 at around 3pm, the Accused picked the Complainant in his car at Khatib MRT Station and they went to Sembawang Beach. There, they talked for about an hour, in the course of which the Accused hugged and kissed the Complainant. This is the subject of the fourth charge.

11 They then went to a nearby MacDonald's restaurant for a meal. After that, the Accused drove the Complainant to a multi-storey carpark at Towner Road and parked at the second highest level. At the carpark, the Accused and Complainant got out of the car to smoke. After smoking, the Accused hugged the Complainant from behind for a while before he suggested that they return to the car. In the car, they chatted for a while before the Accused bent over to hug and kiss the Complainant. The Accused also slipped his hand under the Complainant's T-shirt to caress her breasts and vulva. The Complainant said that she allowed the Accused to do this because she was afraid that if she rejected him he would be unhappy. After some time, the Accused sent the Complainant home. This is the subject of the fifth charge.

12 On a night in March 2007, the Accused drove the Complainant to Changi Village where they had dinner at a coffee shop. After they had eaten, the Accused drove to the nearby Turnhouse Road and parked it along the road. In the car, the Accused kissed the Complainant and fondled her breasts. He took the Complainant's hand and put it on his crotch, and asked her to have sex with him. The Complainant agreed. The Accused told her to remove her panties. After the Complainant removed her panties, the Accused came over to the front passenger seat where the Complainant was lying. The Accused pulled down his pants and put on a condom. The Accused then laid on top of the Complainant and inserted his penis into her vagina. He moved his penis inside her vagina until he ejaculated. He then withdrew his penis, removed the condom and wrapped it with tissue paper before throwing it out of the car window. They got dressed and the Accused sent the Complainant home. This is the subject of the first charge. The Complainant said that after this incident, they started to address each other as "lao gong" and "lao po" when chatting through text messages and MSN.

13 One night in early April 2007, at about 8 pm, the Accused drove the Complainant to an open air carpark in Mandai, near the Singapore Zoological Gardens. There, they had sexual intercourse in the car. The Complainant was seated in the front passenger seat. The Accused pulled down his pants but did not remove them completely. The Complainant also did not fully undress. Again the Accused wore a condom and inserted his penis in the Complainant's vagina. This is the subject of the second charge.

14 After the intercourse, they sat in the car and talked. Then they went for supper at a McDonald's restaurant. After eating, the Accused drove to a road at Tampines Industrial Avenue 2. There, the Accused kissed and fondled the Complainant. They then had sexual intercourse again, with the Accused inserting his penis into the Complainant's vagina. After that, the Accused sent the Complainant home, by which time it was around 11pm. This is the subject of the third charge.

15 Sometime in early May 2007, the Accused brought the Complainant to Yishun Northpoint where they watched a movie, "Spiderman 3". The movie ended around 11pm and they walked to Yishun

playground. There, the Accused hugged and kissed the Complainant. He also touched her breasts and vulva. This is the subject of the sixth charge.

16 On 4 May 2007, the Accused brought the Complainant to a Chinese temple somewhere in Yishun. At the temple, the Accused and the Complainant lit some joss sticks and prayed. The Accused told her that they had become husband and wife.

17 On 9 May 2007, the Complainant finished school early. The Accused picked her in his car around noon and drove to a multi-storey carpark somewhere in Yishun. He parked the car and started to kiss the Complainant and caress her breasts and vulva. They were there for about half an hour. This is the subject of the seventh charge. The Accused then drove to a sport association at Farrer Park, arriving there at about 3 or 4pm. The Accused introduced the Complainant to his friends there as his "lao po".

Other prosecution evidence

18 Dr Khoo Chong Kiat of the KK Women's and Children's Hospital examined the Complainant on 14 May 2007. He found old hymenal tears which was consistent with her having engaged in sexual intercourse 2 weeks earlier.

19 PW19 was a pupil in Secondary 3 of the School at the material time. She gave evidence in court that she had joined the Martial Club when it was formed in mid-2006. She attended training twice a week and sometimes she and other trainees went for meals with the Accused after training. After some time, the Accused told PW19 that he wanted her to be his goddaughter. She agreed and thereafter she addressed him as "Papa". PW19 got to know the Complainant when the latter joined the Martial Club in January 2007. PW19 said that the Complainant would sometimes join them for meals with the Accused after training. Shortly after the Complainant joined the Martial Club, the Accused told PW19 that he wanted to "acknowledge" the Complainant as his second goddaughter. Sometime in 2007, the Accused called PW19 and told her that he was "in a relationship" with the Complainant. He asked her not to tell anybody about this. But PW19 immediately called PW18, a male Martial Club member, to tell him about this.

20 PW18 confirmed that he received the call from PW19. He testified that he called PW16, another female Martial Club member, and told her about this. PW18 was in the same level as PW19 in the School and had also joined the Martial Club in mid-2006. PW18 said that he got to know the Complainant when she joined the club in early 2007. He lived in the block of flats next to the Complainant's block, separated by a driveway and they sometimes got a ride home from the Accused after training. PW18 testified that the Accused would invariably drop him first at the rear of his block before driving off with the Complainant. He said that the Accused could have dropped them at the common driveway, but did not do so. PW18 related an occasion sometime in early 2007 when the Accused asked him to tell his wife (DW3, hereinafter the "Accused's wife"), that there was nothing going on between the Accused and the Complainant. The Accused told him to tell the Accused's wife that he always dropped off the Complainant and him (PW18) together when he gave them a lift home. PW18 said he phoned the Accused's wife and told her what the Accused wanted him to say.

21 PW16 had also joined the Martial Club in mid-2006. She got to know PW18 and PW19 from the Martial Club. PW16 also got to know the Complainant when she joined the Martial Club in early 2007. PW16 said that sometime in March 2007, PW18 called her and told her that the Accused had admitted to PW19 that he was dating the Complainant. PW16 then called the Complainant and asked if this was true. The Complainant at first denied it, but when pressed, eventually admitted that she was in a relationship with the Accused. The Complainant told PW16 that she had held hands with the Accused. PW16 asked why she wanted to be with the Accused as he was married and so much older. The

Complainant replied that the Accused said he was very happy being with her. About half an hour after this phone conversation, PW16 received a call from the Accused. He told her that he was not in a relationship with the Complainant and had only held her hand to pull her across the road. The Accused told PW16 that he regarded the Complainant as his goddaughter and that she had lied to PW16 earlier.

Defence evidence

22 The Accused denied committing any of the acts the subject of the seven charges. He had not taken the Complainant out on all those occasions stated in the first to sixth charges and, apart from the occasion stated in the seventh charge, had not gone out alone with the Complainant at all. I was cognisant of the fact that his defence was made difficult by the fact that the first three charges, the most serious rape charges, did not specify any date. It was therefore not possible for him to provide any alibi evidence for those charges. I had taken this into account in considering his defence and the evidence against him.

23 The Accused gave evidence that he was a person who only went out on account of work. His wife had a domineering personality and frequently checked his whereabouts. The Accused did not have a full-time job and taught martial arts for a living while his wife worked full-time. The Accused's time was more flexible and he was the parent who looked after their two children who were attending kindergarten at the time. The Accused testified that his daily routine then was to bring his son to the kindergarten which was near their home and then fetch him home. He arranged his training sessions around his training commitments. It was impossible for him to be out alone on those occasions stated in the first to sixth charges.

24 The Accused agreed that on 20 February 2007, some Martial Club members paid him a Lunar New Year visit at his home sometime in the early afternoon. The Complainant was one of them. After they left, the Accused watched TV with his wife for a while before he took his family to a nearby shopping centre for some shopping. While he was driving there, the Complainant called him on his mobile phone. Over the speaker phone, the Complainant said that her grandmother was not home and asked if she could tag along with the Accused and his family. The Accused's wife agreed to it and they met the Complainant at the shopping centre. They invited her to join them for dinner at their home. When it was time for the Complainant to leave, the Accused and his son walked her down the stairs. The Accused denied exchanging text messages with the Complainant that night. He denied that he had asked her to be his girlfriend that night or at all.

25 The Accused said that after training at the School he often went for supper with the trainees. After that he gave a lift to those of his trainees who lived along his route home. But he said that he had never dropped off the Complainant and PW18 last. Whenever he gave a lift to them, he always had another trainee, DW9, whom he would drop off last.

26 The first allegations, in chronological order, were in the fourth and fifth charges, under which the Accused was alleged to have hugged, kissed and caressed the Complainant's breasts on 28 February 2007, first at Sembawang Beach and afterwards at a multi-storey carpark at Towner Road. The Accused denied those events ever occurred. He said that on that day his training session at the School was recorded on his camcorder by DW8, one of his senior trainees from outside the School. He went home and showed the video to his wife. The Accused's wife confirmed viewing the video and that the Accused was home that night. DW8 edited it that very night and loaded it on "YouTube" (a video-sharing website). The copy shown in court was marked Exhibit D2. The date stamp on "YouTube" for this video was 28 February 2007. This was the Accused's alibi in relation to the fourth and fifth charges.

27 The next charges, chronologically, were the first, second and third charges. As there was no specific date, the Accused was unable to offer any alibi evidence and had to rely on his evidence that he hardly went out at night and could not have done so on those two nights in question.

28 In relation to the seventh charge, the Accused said that he did go to Farrer Park with the Complainant on 9 May 2007. He explained that he had, the previous day, arranged with the coach of the sport association to meet him there on that day. The Complainant had called him and asked where he was going. When he told her his plans, she asked to join him. The Accused agreed, and he then called a male member of the Martial Club, DW9, to go along as he did not like to be alone in the car with a girl. But DW9 told him that he was busy. The Accused said that he had no choice but to go alone with the Complainant. At Farrer Park, the Accused talked with the coach while the Complainant waited outside to watch the training that was going on. After that the Accused dropped the Complainant somewhere near her home. The Accused denied that they had gone to a park before going to Farrer Park and that he had done anything to the Complainant.

29 The Accused denied that he had told PW19, his "goddaughter", that he was in a relationship with the Complainant. He said that he had only told her that the Complainant was also his goddaughter. The Accused denied PW18's allegation that he had asked PW18 to call the Accused's wife to tell her that there was nothing going on between him and the Complainant.

30 The Accused's wife gave evidence that the Accused conducted martial arts training at the School twice a week in the late afternoon and on Fridays, he helped out at a temple. Apart from these activities, the Accused would be home, training at the void deck of their flat or taking their son to and from the nearby kindergarten. He would walk there with their son at 12.30pm on Mondays to Fridays and fetched him home at 3.30pm. After that he would go to the School on training days. On other days the Accused would be home. The Accused's wife explained that their daughter, who attended kindergarten in the morning, had a problem about being left alone and so their maid remained at the kindergarten until it finished. The Accused's would call home after their daughter returned, and normally the Accused would be home to take the call. The Accused's wife said that the Accused did not go out at night and she only recalled one occasion when he did so. This was in March 2007, when the Accused had to meet some contacts who had arrived from overseas. The Accused left home around 10pm and when he met his contacts, he called his wife and passed the mobile to one of the persons in the group to speak to her.

31 The Accused's wife agreed with the Accused's description of her as a domineering wife. She knew he liked to chat on MSN; this was because he did not go out at night. The Accused's wife said that she chided the Accused for wasting time on MSN but he ignored her. She said that she knew the Accused was exchanging text messages with his trainees but did not read his text messages. She was not aware that the Accused was sending text messages to the Complainant. Concerning the events of 20 February 2007 when the Martial Club members paid a Lunar New Year visit, the Accused's wife confirmed the Accused's version of events. She confirmed that the Accused had shown her the video, Exhibit D2, when the Accused brought it home on the day it was recorded.

32 DW5 was the domestic maid employed by the Accused and his wife. She testified that in 2007 she would send the Accused's daughter to school at 8.30am, wait outside the school until 11.30am, and thereafter bring her home. The Accused would be home with his son in the mornings and the latter attended school from 12.30pm to 3.30pm. The Accused brought him to and from school, although sometimes his wife did it. DW5 was shown the video, Exhibit D2. She said she watched it on 28 February 2007. She could recall that date as it was the first time the Accused had shown her a video. But she was unable to recall the time she watched it, nor if it was morning, afternoon or night.

33 DW6 was a teacher at the kindergarten attended by the Accused's children. She testified that the Accused brought his son to school daily. She noticed this because he was the only father who did it. She said that in 2007, there were one or two occasions when the Accused did not pick him up from school and his wife or the domestic maid would do it.

34 The Accused's neighbours, DW2 and DW4, gave evidence that at the material time they saw the Accused's car at the carpark when they got home after work every night. DW10 had trained under the Accused since 2000. He had assisted the Accused in training the Martial Club trainees at the School. He testified that ever since he first got to know the Accused, he had found that it was difficult to get him to go out for a drink at night. This was because the Accused's wife would call the Accused at times and ask him what time he would be returning home.

35 DW8 was the Accused's martial arts student and had trained under him since 2005. He mostly trained at the void deck of the Accused's block of flats but had joined the Accused's classes at the School on six to eight occasions. In his examination-in-chief, DW8 said that he shot a large part of the video Exhibit D2, edited it and uploaded it on "YouTube" on 28 February 2007. He said that he was able to tell the date because that was given in the "YouTube" page for that video. He said that the video was recorded on the same day it was uploaded on "YouTube". However in cross-examination, his version of what happened after the shooting differed from the Accused's version. DW8 said that the video was shot using the Accused's camcorder and he had brought it home after the training session where he carried out the editing. He phoned the Accused to obtain his instructions relating to the editing, completed it within a few hours and uploaded it on "YouTube" that same night. However the Accused's version was that he had brought the camcorder home after training and showed the video to the Accused's wife. It was later, at 8pm, that DW8 came to his home to collect the camcorder with the tape to bring home to carry out the editing. The Accused's wife confirmed this version. However DW8 was quite sure he did not go to the Accused's home on the night of the recording and had taken the camcorder home from the School after training ended.

36 DW7 was training to be an instructor in the Accused's martial art form. He occasionally assisted the Accused in conducting training at the material time. He was shown the video, Exhibit D2. He said that he did not know when it was shot as he was not present. However he said that it was not likely that it was shot in December 2006 because he was actively involved in the Martial Club then and he would have been in the video. He thought it was more likely to have been shot in 2007. The involvement of DW7 was in the two logos used in the opening of the video; he was the one who created them and had passed the computer file of the logos to DW8.

Evaluation of the evidence

37 The evidence in support of the prosecution rests mainly on the testimony of the Complainant. It is in the nature of allegations of this nature that there are only two witnesses, the person charged and the alleged victim. The prosecution adduced evidence concerning the activities or behaviour of the Accused and the Complainant which it submitted corroborated the evidence of the Complainant.

38 The case for the defence rested firstly on making out a case that the evidence of the Complainant was unreliable in that there were too many inconsistencies and impossibilities in her narrative. In relation to the fourth and fifth charges which were alleged to have taken place on 28 February 2007, the Accused adduced evidence that he was home that night and could not have gone out with the Complainant.

Complainant's evidence

39 Although there is no requirement for corroborative evidence in sexual offences, nevertheless, it is unsafe to convict solely on the testimony of a complainant unless such evidence is unusually convincing: *Khoo Kwoon Hain v Public Prosecutor* [1995] 2 SLR(R) 591 at [51]. The “unusually convincing” test requires the trial judge to be aware of the dangers of convicting solely on the complainant’s testimony, as well as of the importance of convicting only on testimony that, when weighed against the overall backdrop of the available facts and circumstances, contains that ring of truth which leaves the court satisfied that no reasonable doubt exists in favour of the accused: *Public Prosecutor v Mohammed Liton Mohammed Syeed Mallik* [2008] 1 SLR(R) 601 (“*Mohammed Liton*”) at [39].

40 The Complainant gave a compelling and consistent account of the offences, both in her conditioned statement as well as on the stand. I found that her evidence withstood cross-examination, and her demeanour was that of an objective and neutral witness. She did not appear angry or upset with the Accused. She appeared to give her answers based on her recollection of the events. The Complainant did not, at any point, seek to buttress or embellish the allegations against the Accused and gave direct answers to the questions posed to her. She did not evade or skirt around difficult issues. The Complainant had provided an account of the offences in her conditioned statement, which she elaborated on in her oral testimony at trial. The Complainant’s testimony remained unshaken despite rigorous cross-examination by Defence Counsel, and contained that ring of truth.

41 I found the Complainant’s reluctance to disclose her sexual relations with the Accused to her Disciplinary Mistress and Principal when confronted by them to be entirely consistent with that of a 13 year-old girl who entertained romantic feelings towards the Accused. It would be natural for her to want to protect him and so she tried to suppress information about their relationship.

42 The defence submitted that there were numerous inconsistencies in the Complainant’s evidence. I did not agree with this. The Complainant had related events taking place over a period of more than four months. She was 13 years old at the time and she had to recount them in court four years later. There are bound to be contradictions in little details due to imperfect recall. Indeed, it would be suspicious if every little detail had matched perfectly in this case. What is important is the picture is consistent in the essential particulars, combined with the manner in which the Complainant recalled the events and gave her answers. Having observed her for two days in the witness box, I had no doubt that she was answering the questions truthfully.

Admissions by the Accused

43 PW19 gave evidence that the Accused admitted to her that he was “in a relationship” with the Complainant: see [\[19\]](#) above. PW18 confirmed the evidence of PW19 because she immediately called the former and told him about it. PW18 went on and told PW16 about this and the latter confronted the Complainant with the information. The Complainant at first denied it but confessed when pressed. These teenagers gave their evidence in a forthright manner. There was nothing in the circumstances to suggest that they would invent such a story against their martial arts instructor. There was also little likelihood that they had misunderstood the information conveyed to them because it originated from the Accused and connected all the way to the Complainant, and the versions from both ends were the same.

Text messages and MSN chat messages

44 A crucial element in the prosecution’s case is the electronic communication trail left behind by the Accused and the Complainant. The Accused’s mobile phone was seized but the police only found

two text messages stored in it. However the Complainant's mobile, which was confiscated by the Disciplinary Mistress on 10 May 2007, proved to be much more fertile. The police managed to recover many text messages from the Complainant's mobile phone, a lot of which were exchanges between the Accused and the Complainant. The text messages in the Complainant's mobile were stored as inbox messages (*ie* messages received), or sent messages (*ie* messages sent). There were two other folders: the saved folder and the drafts folders. Messages from the Accused's mobile to the Complainant were found in the inbox alongside messages from other mobile numbers. Messages from the Complainant to the Accused were in the sent folder, along with messages she sent to other people. The date and time when those messages were received or sent was listed against each message; however the accuracy of those times is suspect because the context of some of the messages is not in accordance with the time stamp. This is pointed out below. Because they were retrieved from different folders, the messages sent and responses received could not be pieced together. Also, as the folders filled up the oldest messages got automatically purged, or some messages were deleted by the Complainant. So the messages retrieved did not constitute a full list of all messages within the period. But they still painted a picture of the nature of the communications between the Accused and the Complainant at the material time. The text messages showed that the Accused was courting the Complainant with romantic and poetic assurances of love. They were laced with endearments as well as the Accused's angst with regard to his situation. I set out below some of the noteworthy ones.

45 The Complainant had given evidence that the Accused asked her, and she agreed, to be his girlfriend on 20 February 2007. The earliest messages that were retrieved after that date were dated 21 and 22 February 2007, as follows:

I've been looking at people. And how they've changed with the time. Lately all that I've seen our people; throwing love away and loosing their mind. Maybe its me thats crazy. Cause I can't figure out why. All there lovers keep hurting each other. When good love is so hard to come by. So what the glory in living? Doesn't anybody ever stays together anymore? If love never last forever tell, whats forever for?

All your life's been waiting, for love to come and stay. And now that I had found you, and you must not slip away. I know its hard to believe in those words you've heard before. But darling you must trust them just once more. So remember Goodbye, it doesn't mean forever. Let me you goodbye doesn't mean we will never be together again. if you wake up and I an not there i won't be long away. Cause those things you do my goodbye girl will bring me back to you. I know you've taken and afraid to be hurt again. You've fight the love you've filled for me instead me giving in. And I can wait forever, just helping you to see. That i was meant for you and you for me. So its baby goodbye it doesn't mean forever. Let me tell you goodbye doesn't mean we willload together again. Though we maybe so far apart but you'll still have my heart. So forget those past my goodbye girl for now you are home at last ...

46 The Accused said these were innocent messages, they were the lyrics of popular songs which he had sent to her.

47 But on 23 February 2007, the Accused sent this text messages to the Complainant:

Wrote this poem for you: everytime i looked at you, i just didn't know what to do; and didn't know what to say. Your smile that'll light my day. You have stole my heart away. Well baby, this irwiat I wanted to say. I love those eyes that shines, In this heart my mine. It's what I want to say. Oh I just can't that in this heart of mine. Baby, I just really want you to stay. [The Complainant], you're the kind of girl that would put any man to sleep for a thousand years. [The

Complainant] you've just make my day. Oh I just can't resist to see you once again.

The Complainant's name in the text message reproduced above has been substituted to protect her identity. The Accused said that these were from a song he composed called Stella and he had changed it to the Complainant's name at the Complainant's request.

48 On 5 May 2007, after the allegations in the first five charges had taken place, these text messages were sent by the Accused to the Complainant over the course of an hour at night. It should be noted that the Complainant obviously replied to some or all of these text messages, but those replies were not recovered. Even then, reading this chain, it is not difficult to divine what some of the Complainant's responses might have been:

I message you better he he he

Ok carry on our asking

When we accepted each other already, then what is the first thing you tell yourself to do? For example like me, i tell myself to keep and stay away from gals.

Good. So far has they stopping improved or still not yet?

Me too. After we started, I totally stop and even now, gals come i back off

Ok now you ask

Cause I know you will walk with me. but the risk is am always constant facing guys that either woo you or break us up.

Hope will be none.

I can guarantee that and in fact has none already

Think should not be a problem. will find a way ya

Use to it le. Then my gals totally no more. Your le?

I constant remind myself i got lao po already, so no matter how tempting or what. my heart will not be shaken or taken.

love you

Ok sweet dream. we tomorrow carry on ask ok.

49 The following day, 6 May 2007, the Accused sent the following text messages to the Complainant over the course of the day:

Sorry ya. M and L lots

Oh sorry lao po. If your mom slap you then next time let you slap me ok. Wo hai ni

No. you also cannot bear to miss Hapkido also right? most of all your lao gong.

Think you call her in a nice manner tell her you bought her food already and reaching home.

Fuck man when miss the timing. Fuck la me

Damn chee bye of your lao gong to let you slapped by your mom. KNN. Go and die better. Fuck man your lao gong.

Next time your lao gong will not let this sort of thing happen again. Will be more cautious about the time. Sorry

What you doing now?

Call you never answer and hang up my line also. Diao...

You sleeping? So tired ar. So think you not coming out le.

No not me. See you so tired ma. Its ok with me. If you never come out, then MSN lor.

I don't know cause anything also can. very most I just say go running. Or you want to stay home as got slapped today, am afraid you mom knows you go outagain, don't know what will do again. Hai ya, your mom ar...

What use to it. i dislike my lao po getting hit, abused or others think or treat her as a bitch or Slut etc. Bastard, hate my lao po often gets Shit.

Cannot, nobody can touch my lao po cause she my princess and queen. I also will not hit or anything. Will only pamper, love or let my lao po bully laogong instead. Love ya so much. be Damn miss you.

Ok lets start question again he he he. Ok you ask first.

Well, why not save it for tomorrow? After school, then meet and etc. More time, don't need to rush right. How? anyway up to you. You want also can la

You prefer which one then?

Ok wait tell you. See the tiger got say anything or not. She always KPKB whenever I go out. You know also, last night tiger keep on fuck me.

Ok meanwhile lets question and answer. Hege he, you start first.

Ok. Hmm.. Ok how come you message Hui Ling that : you don't want me to control you bla bla bla? Is someone asking her to ask you questions.

Fuck her la. What control you. Tell her fuck off. Ok you turn

You say le? Everytime find fault with me etc and make noise about my mother. You saw the message right? So what you think? or what you have in mind speak out then.

I don't know about her la. She everything also cannot want la. Stay at home she will be fuck happy la. Last time do business got entertainment she alsomake noise. Say she work also no entertainment. Of course la she work government work where got. What is wrong? you regret or

what? speak up lor. Our relationship you know right? we should be married long time bedford tiger. But anyway, we at least married already. Next one will wait for it to be official only ma right?

She message you ar.

Have you regretted or anything like that? i will not neglect you and will always try my best to give the best to my lao po. Only want my lao po to stay, walk and lead her life with lao gong till lao gong die. Anything is always compromise right?

You should know how tiger treat me. and also how she treat my mother etc. Don't you know how your lao gong treat and always give priority to lao po?

No she kanena always want to control me and if can keep me 24 hours at home. She fuck up my career and life.

What how?

You speak very strange today and your questions is very strange. and am sad that you have no faith in me.

Bees no more le. If have I fuck care. tiger it's a matter of time i will tell her what is what and that she is too much etc. and then have to discuss about everything and resolve the matter cause i am tulan. Ok now go online.

Think we go out tomorrow after school. Now you come out, then have to rush back. How?

Wei

What wrong? ok ok come out ok

Go online please.

You angry right?

Then online a while la ok.

Why? anything tell me ya. will compromise de

Tomorrow after school come straight ok?

As usual like last week. How? Is anyone trying to tell you to not to be with me?

You never talk to of like that before and am not use to it. you will never say not online with me before cause we always miss each other.

Me miss lao po lots too. and always feels like crying these few days. love you. ok la message then

Ok la. If you want go out then go out. Know you not in good mood. maybe later you rest already i message again ok?

Only want you to know how much i love my lao po and that will never do anything to sadden her.

Will also let her know she is always the one I love and adore. Will always walk my life with her and protect her.

I want to cry. ar! tiger making my life sucks! Want to live with you and get out of the country.

I promise will work hard find the money and get you out de. Trust me ya?

You go rest la. I wait call you. PLEASE trust that your lao gong love only you. Even Tiger is no where near you ya.

What you doing now? miss you so much. want you here with me. feels like crying. love ya my lao po

Me too. Am too use to be with you but the time already. ok go do maths then watch a bit of television. Wish you were here with me chatting till next day.

Lao Gong yong yen ai ni. Miss you and not use to it when you not around.

What you doing now?

Good. Practise more ya. pray for you and hope you will pass too. really miss you and don't like the feeling of you not by my side. anyone call or message you?

Miss you and hate the feeling of you not by my side. Love you lots and lots lao po

Never mind. Take it easy. don't stress and love you

Doing what ar. lao po, your mom got call? I also very sad and stress same like you. like those bees and also you abused at home. How I wish we could stay together now. i got no more bees. So hope you also too. Me and you same de. Will be sad cause really

Lao po. Next time i wear more like yesterday ok. you like ma. Why you worry lao gong got bees? on bees la. My heart already lao po de. afterall we married le ma. lao gong should be more worried about your bees instead. so many keep and still hoovering aro

Lao po i will protect ni de. my officers will watch over you de. the will give report to me weekly on everything including calls. impen ok la. Lao gongwill love you de. Promise. miss you.

I am going down to the park and take a walk or sit down. Just want to ask myself to wake up and tell myself to stay away from controlling you and stopping your freedom and privacy.

I know now you have me control you and stopping you from mixing with guys or know them. I will stop it.

50 On 8 May 2007, the Accused sent the following text messages to the Complainant in the span of an hour. Although the time stamp indicated this was around 3pm, from the context of the fourth text message in which the Accused bade her goodnight, and from the context of subsequent text messages from other persons, it would seem that there was an error in the clock and they were sent late at night.

Lao gong love you more than myself and only want to live withou as soon as possible. I want you and me lived in a place where nobody will find us and have our own peace. I just want to cherish

my time and days with my Lao Po.

Wow! that is the best thing i have ever heard since i know you. I Love You! wow!

Ha ha ok la anything la. Lao Po we will work hard for our martial art and make it famous like Bruce Lee. Only you know how I train and my techniques. hope you will train hard and be the best too.

Lao po you sleeping le right? he he he. GOODNIGHT LOVE YOU! lao gong writing my blog now. He he he.

Ya boys! ha ha ha.

Ya boys! ha ha ha.

51 On 9 May 2007, the Accused sent the following text messages over the span of five hours:

Why call you never pick up?

Call me

Please call or pick up. I get angry and sad and its dangerous to message while driving

M lots ya. And truly you know, what priority will always be given to you first whenever possible.

Wei, ok la. Don't be sad le ok. I dislike being treated coldly ok can?

What you doing now? So long then reply ar?

You go read my blog now different le.

Wei wei wei

Tomorrow after school you want to meet or not? or you have other event with friends?

Them after that?

Maybe we go shop around yishun area lor. After you finish everything.

You still online?

Your MSN got problem.

You always just hang up on me.

I keep on hello and no reply.

Feel like crying and am feeling very hurt. Goodnight

52 10 May 2007 was the day that the Disciplinary Mistress confiscated the Complainant's mobile phone and discovered the text messages from the Accused in it. This was sometime in the morning. See [\[7\]](#) above. On that day, the Accused sent the following text messages to the Complainant over a span of four hours:

End class you never even call me. Where are you now?

Heard you got caught in school. Have to be careful of what you are doing. Don't screw up in school.

Is everything ok? Hope your discipline mistress won't be nasty to you. Call of once you ok alpsece ya

Cannot train this afternoon with you already cause have to go to your school for meeting. Anyway, hope you do well for today final paper ya.

Today we cannot train in afternoon already cause am going down to your school for meeting. Hope you do well in your last paper today ya. And all are worried for you as you got caught by your disciplinary mistress this morning. Hope all well.

You want to train may do so this evening.

53 There was a time gap in the text messages from the Accused to the Complainant; there were comparatively few text messages in the inbox for March and April 2007 and no text message from the Accused was retrieved. However in the sent folder, text messages sent by the Complainant to the Accused from 15 April 2007 to 10 May 2007 were retrieved. The Complainant's text messages were considerably shorter than the Accused's and much less sophisticated; they were what would be expected from a normal 13 year-old. For example over the span of half an hour on 15 April 2007, the Complainant sent the following text messages to the Accused:

Alone

Oh. Y lik dat. Poor thing.

Hhmm. Muz c wad is de situation first ..

Dunno lor. Dat time den c lor ..

No la. Not bad until lik ur tiger ..

C la .. Not everyday wad.

No..

Lyin on de bed ..

Hee . Lao po oso de same.

M n L lots too ..

Ok . Good night . Sweet dreams . Okay..

54 The following spate of text messages sent by the Complainant to the Accused over an hour on 22 April 2007 showed that the level of intimacy seen in the Accused's messages was reciprocated by the Complainant as follows:

Ya .. Think should b she la.. .got one unknown num msg on dat night say u got bring mi buy com

not ..

Diao .. How she check ..Tiger dat fucker. Knn . tulan Sia..n jux now i jux light de cigg .. One puff
.Heard my mum open door .. I push everything under my bed.

U should lor ..

Ya la .. I wil de la ..

Hees .. Den lao po hand only lau gong can hold to walk til de end lor.

I waiting mum sleep den i smoke den sleep .. If mum wan watch tv den i no need smoke .. Faint
to sleep ..

Hees .. I know lau gong won let de ..

Diao .. Smoke revenge . Cannot la .. Not used before sleep Nv smoke de ..

My mum closes her door .. Wa .. Hees .. Which spy Sia .. Got spy will Oso kana hammer by u lor
..

Oh .. Got time Tml or mon Oso can wad .. Ok .. Ya la.. U hammer he or she half dead .. Den my
turn to hammer til he or she totally Nv move .

Ya la .. Oh .. Kind of . Hee ..

Don rem liao..

Smoke finish le ..

K .. Good night .. C ya Tml ..

55 On 26 April 2007, the following text messages from the Complainant to the Accused were
retrieved:

I wil not loose any trust between us . N u muz oso trust mi .. M n L lots .. Nitez.

Only for my laogong de ..no one else can ..

56 On 29 April 2007, there was this series of text messages:

Okay .. I understand .. I m all right . I won be angry n whatever sort .. K? ..

Ya .. Try not to mak lao gong sad or jealous le ..if not de lao po oso same lor ..

Wa . Ya .. I m already happy wif u le ..

57 In May 2007, the Complainant's text messages to the Accused grew more passionate. The
following are some examples:

I wil treasure u.

I muz stop knowin more guys outside .

What makes u take this risk to walk with mi?

Oh. Love ya n miss u lots .

58 On 6 and 7 May 2007, the following series of text messages sent by the Complainant to the Accused indicated that there was some problem with the Accused's wife. The Complainant explained that in the messages, the Accused's wife was referred to as "tiger". The reference to "bees" was to other girls who were attracted to the Accused:

No . She my godsis .. Den once she don want to be . Den i ask her . She say i cannot lik last time control u l. Dat's i be ur sis Oso no use.

What's ur relation now wif tiger?

When she find fault with u . She wan u to give in n all those stuff la. I dunno whether she stil love u anot. If she does not love u she won't all those things.n Ytd u told about u n ur wife dat time. I feelin bit sad.

I did not regret or wad. It's jux dat the way u n tiger makes mi have a feelin i don know to say. Right ..

I know . Understand. But It's seems lik that tiger is tryin attract attention from u or wad la..

Ya wad. Dat's .. Nvm. So ur tiger how?

Tonight not going out la?

It's not that i have no faith in u.It's only about tiger n all those bee la.

Go out? No time le .. I not in bad mood la.. Jux dunno why a sudden sadness overcome mi..

I know .. I would oso do dat to my lao gong..

Ya .. Mi too .. Love ya.

I guess i didn't learn anythin at all only for hcf n lcm ,algebra.. Others are .. Hai..

How to pass lik dat. Hai.. Love u too .

Drawin lor. Mum never cal la. Ya.. Almost every night i had ur accompany. Not used when u r not by my side.

Wa. Yeah. Those bees wil go away de la. The whole world oso not only have 1flower. Den de flower is alredy got owner le. I wil sleep at 11 30 hor. Den Tml i go ur there i wear wad? Lao gong oso don worry de bees la. K? Lao gong..

Ya la. No la .. I going sleep le.

I want lao gong be with mi every night ..

Hees . Lao gong .. I go sleep le . K?

Okay.i love u too .. Lao gong.

Can .. But de calls?. Wa.. I wil even miss u more when say lik dat .. I really need to sleep le .

59 The Accused and Complainant also engaged in MSN chat sessions. The following are some fragments of those chats that were recovered from the computer:

(a) From the Complainant to the Accused:

wanna runaway anywher jus run. hhees. i lub my laogong. wahh.. I train lik siao den kannna muscle strain.. suan le lorr.

(b) From the Accused to the Complainant:

Hope you know how much your lao gong treasure my lao po

Next time [*] reach 16, I get a supplement[*]y credit c[*]d for [*] so [*] [*]you can do some shopping also

how much I adore my lao po?

over 100%

I [*] only say is that my [*] for my lao po is never fake and is 100% true

Realtionship needs [*], understanding, compromise and trsut. Most of all speak out and make one a[*]ther understand

sorry lao po for [*]t holding [*]ur hands when [*] leave

but [*] happy that I address [*] as my lao po to the boxing coach?

lao [*]ng already promise that sure bring [*] [*] out and attend most events or anything, thus will i introduce [*] as lao po ma

Now must also bring [*] [*] shopping lo[*] for nice clothes for future events or important dinner etc

60 The Accused was questioned on the text messages and MSN chat messages. He did not give a consistent explanation for them. It would be more accurate to say that his explanations evolved as his testimony progressed. In his examination-in-chief, he was asked to explain the circumstances under which these messages were exchanged. He said that some were lyrics of popular songs (see [\[45\]](#) above). For the more romantic subsequent text messages, he said that the Complainant had confided in him her problems about her relationship with her boyfriend, her mother, in school and the trouble she had with the Disciplinary Mistress. The Accused said that he then told her of his problems to let her know that she was not the only person with problems. He also said that the familiarity in the messages was a form of innocent fun he indulged with his trainees; he used the expression "prank" and "play play" to describe the attitude they took towards such messages. But when pressed under cross-examination, the Accused said that at one point, the Complainant told him that she was interested in him. She said that she liked him more than just that of goddaughter and godfather and

she wanted "one step ahead". The Accused said he told her that it was not possible. However, the Accused said that the Complainant then told him about a suicide attempt she had made in the past. At this, the Accused thought that he should be careful about rejecting her outright in case she made another suicide attempt.

61 The Accused's explanation that he went along with the Complainant because he was worried about her suicidal tendencies had three problems with it. If it were true, this would have been foremost in the mind of the Accused: here was a young girl with suicidal tendencies who was infatuated with him. This point would have been a consistent theme at the outset; yet he did not inform the Principal of this when he was sacked on 11 May 2007. It also did not occupy his mind sufficiently to give this reason when he was giving evidence-in-chief. It only came out in cross-examination when he was confronted with some of the more sordid text messages he had sent to the Complainant. The second problem is that the Accused was a mature adult with the responsibility of dealing with impressionable teenagers. It is difficult to think that a person in his position would send such endearing, even passionate messages to a girl whom he thought was a suicide risk and was trying to keep at arm's length. The third is that it was the Accused who was sending amorous messages to the Complainant whereas the Complainant's messages were much simpler and certainly did not have the same sophisticated romantic edge. Comparing the messages, one could only conclude that the Accused was the pursuer and the Complainant the ingénue quarry.

62 The Accused's explanation for the text messages and MSN chat messages changed yet again further into his cross-examination. On the first day of his cross-examination, he was asked about the following text messages that he had sent to the Complainant on 6 May 2007:

I don't know about her la. She everything also cannot want la. Stay at home she will be fuck happy la. Last time do business got entertainment she alsomake noise. Say she work also no entertainment. Of course la she work government work where got. What is wrong? you regret or what? speak up lor. Our relationship you know right? We should be married long time bedford tiger. But anyway, we at least married already. Next one will wait for it to be official only ma right?

63 The Accused explained that the line "we at least married already" referred to his marriage to his wife and not to the Complainant, but when he got into difficulty with that angle due to the next sentence ("Next one will wait for it to be official only ma right?"), he gave an incoherent answer. Now the Complainant had related how the Accused brought her to a temple and after lighting joss sticks and prayer, had told her that they were married (see [\[16\]](#) above). The Accused at this point denied ever taking the Complainant to the temple, much less getting into any marriage with the Complainant. But on the second day of cross-examination, he explained that they were engaged in an online game called "Maple" and had gotten into a wedding ceremony in the game. Further on, he was confronted with a text message on 8 May 2007 that read as follows:

Lao gong love you more than myself and only want to live withou as soon as possible. I want you and me lived in a place where nobody will find us and have our own peace. I just want to cherish my time and days with my Lao Po.

His explanation was that this was merely sweet talk and not anything real. She had been suicidal and he had told her a harmless white lie.

Consistency with evidence of peripheral witnesses

64 The evidence of the peripheral witnesses is consistent with the prosecution's case and

inconsistent with that of the Accused's evidence. I now set out the relevant evidence.

65 On 10 May 2007, the Principal summoned the Accused to her office and told him that the martial art classes were to be terminated immediately. According to the Principal, the Accused asked her for the reason for termination. The Principal told him that he ought to know why. The Accused then asked if it was because of the Complainant, to which she replied in the affirmative. The Principal then told the Accused not to speak with or contact any of the students of the School. There was no protestation of innocence from the Accused, which is what one would expect from a person who had not committed the acts alleged by the Complainant.

66 PW18 was one of the male Martial Club trainees in Secondary 2 of the School at the time. He lived in the HDB block was next to the Complainant's (see [\[20\]](#) above). PW18 testified that the Accused did not drop both him and the Complainant along the common driveway to their HDB blocks, but dropped him first before driving off with the Complainant. PW18 also said that there was an occasion when the Accused asked him to tell the Accused's wife that there was nothing going on between him and the Complainant. The Accused also asked PW18 to tell her that he always dropped him and the Complainant at the same time when he drove them home.

Evidence of other defence witnesses

67 I did not find the evidence of the defence witnesses called by the Accused to cause any substantial dent in the prosecution's case, nor to have raised any reasonable doubt. The evidence of the improbability of the Accused going out at night did not mean he did not go out on the occasions set out in the seven charges. The Accused placed much emphasis on the evidence of the video (Exhibit D2). This was understandable because this was the only item with a date stamp of 28 February 2007 on it, which coincided with the date on the fourth and fifth charges. He latched on to that date and claimed that he had shown the video to his wife and maid that night and was able to get them to support his evidence. However between the Accused and DW8, who uploaded the video, they could not agree on who had the camcorder that night. There was evidence from the prosecution witnesses who were in the video that it was taken in late 2006. This aspect of the defence evidence was not convincing in the least.

Contradictory evidence

68 There was one part of the evidence which appeared to contradict the version of the Complainant. This pertains to a series of text messages from the sent folder of the Complainant's mobile to a number that did not belong to the Accused. The text messages were sent over a one and a half hour period from 19 to 20 April 2007. There were some intimate messages with the words "lao gong", "kiss". The Complainant said that she had a friend who was in a relationship with a boy at the time. That friend had used her mobile to send messages to her boyfriend as her own line, which was a prepaid card, was low on available credit. While the messages looked similar to the ones she sent to the Accused, her explanation was plausible. More importantly, in view of the manner in which the Accused was sending text messages to the Complainant, it did not matter that she was carrying on with another boy for a period of time during her relationship with the Accused. In any event, the Complainant's explanation was given in a forthright manner and I believed her explanation.

Demeanour

69 The Complainant was just short of her seventeenth birthday when she gave evidence in court. Her conditioned statement was not used and her evidence-in-chief was given orally. The psychiatrist Dr Cai Yiming had examined her in June 2007 and found no evidence of any mental disorder or mental

retardation. Indeed, she had done sufficiently well in her Primary School Leaving Examinations to gain entry into the Express stream at the School. She was in the witness box for two days and throughout that time, she was a cooperative witness. She was able to recollect events with some effort, and gave answers that were generally consistent. She was quite an intelligent girl but in my view, it was impossible for her to have made up her story and undergone cross-examination with that degree of consistency. She had absolutely no reason to make up her evidence against the Accused. She did not report the matter and it was only because of the rumours that the School found out about her relationship with the Accused. It was only when her mobile phone was confiscated that the text messages were discovered. She in fact tried to protect the Accused by denying any relationship. It was a terrible moment for a 13 year-old girl. She seemed to have recovered from the trauma, and was sufficiently composed when she gave evidence. She came across as truthful with her evidence and appeared to try her best to recall the events in the witness box.

70 On the other hand the Accused's performance in the witness box was dismal. His explanations for the text messages were inconsistent and unconvincing. He came across as a person who was caught out and was doing his best to match his denial with a very incriminating electronic trail. If there was an innocent explanation to those messages, he certainly did not articulate it.

Conclusion

71 The Complainant gave cogent and consistent evidence of the facts in the seven charges. Her evidence was corroborated by the numerous text messages and some MSN chat messages which showed that the Accused was romantically involved with the Complainant. The Accused was not only unable to satisfactorily explain those messages, his explanations were inconsistent and evolved during the time he was in the witness box. The evidence of the Complainant's fellow trainees in the Martial Club supported her story that the Accused was in a relationship with her. They gave evidence that the Complainant had told them about it. Another fellow trainee (PW16) in fact gave evidence that the Accused had told her about it. The Accused denied the charges completely. But from the evidence, it was clear to me that he had taken advantage of the Complainant's infatuation with him and engaged in the acts which were the subject of the seven charges. I therefore convicted him of the seven charges.

72 In sentencing the Accused, I took into consideration the fact that the Complainant was a willing party to the events. However I also considered as relevant the fact that she was under the influence of a much older man, who was placed in a position of trust by virtue of his appointment as instructor in the School's martial arts programme. For the three charges under s 376(1) of the Penal Code, I was of the view that although there was no violence, the Accused had exploited the Complainant's interest in him and abused the position of trust that the School had placed in him. Taking into account the sentences imposed in the cases cited to me, I sentenced the Accused to 10 years' imprisonment with four strokes of the cane for each of the three charges. As for the fourth, fifth, sixth and seventh charges under s 7 of the CYPA, I sentenced the Accused to 6 months, 9 months, 1 year and 1 year respectively, which reflected the facts in those charges. I ordered the sentences of imprisonment for the first charge and sixth charge to run consecutively, with the remaining charges to run concurrently with the first charge. This meant that the Accused will serve a total imprisonment term of 11 years, and 12 strokes of the cane, which I considered appropriate when all the circumstances of the case were taken into account.