Public Prosecutor *v* Azuar Bin Ahamad
[2014] SGHC 149

Case Number	: Criminal Case No 29 of 2011
Decision Date	: 25 July 2014
Tribunal/Court	: High Court
Coram	: Chan Seng Onn J
Counsel Name(s)	: David Khoo, Andrew Tan and Krystle Chiang (Attorney-General's Chambers) for the prosecution; Suresh Damodara and Leonard Manoj Kumar Hazra (Damodara Hazra LLP) for the accused.
Parties	: Public Prosecutor — Azuar Bin Ahamad

Criminal Law – Rape

Criminal Procedure and Sentencing – Newton hearings

Criminal Procedure and Sentencing – Sentencing

25 July 2014

Chan Seng Onn J:

1 The accused, Azuar bin Ahamad, faced a total of 33 charges pertaining to rape, outrage of modesty, causing hurt by stupefying thing, and theft, amongst others. On 6 August 2012, he pleaded guilty to four charges, namely the 19th, 20th, 21st and 22nd charges ("the Proceeded Charges"), and consented to the 29 other charges to be taken into consideration for sentencing. He was accordingly convicted of the Proceeded Charges. [note: 1]

2 Sentencing was deferred as the accused contested the Prosecution's position that he had surreptitiously administered stupefying drugs to the four victims of the Proceeded Charges by spiking their alcoholic beverages in order to render them unconscious (or incognisant) before sexually violating them. The accused admitted that he sexually violated the women while they were insensible, without their consent, but denied that he had drugged the victims, claiming that the victims had drunk themselves into a stupor instead. A Newton hearing was convened to determine this issue.

3 On 27 May 2014, after a protracted Newton hearing, I found that the accused had covertly spiked the drinks of his victims. I sentenced him to 12 years and 6 months' imprisonment and 12 strokes of the cane for each of the Proceeded Charges. I ordered the sentences for the 19th, 20th and 21st charges to run consecutively, with the sentence for the 22nd charge to run concurrently. The total sentence was therefore 37 years and 6 months' imprisonment with caning of 24 strokes.

4 As the accused has appealed, I now set out my reasons.

The arrests and charges

5 Before I turn to the central issue of the Newton hearing (essentially, the accused's *modus operandi*), I first set out the Proceeded Charges:

(a) 3 charges of rape punishable under s 375(2) of the Penal Code (Cap 224, 2008 Rev Ed) ("the Penal Code") in respect of the 19th, 20th and 21st charges; and

(b) 1 charge of sexual assault by penetration punishable under s 376(3) of the Penal Code in respect of the 22nd charge.

6 The accused consented to the following 29 charges to be taken into consideration for sentencing:

(a) 2 charges of rape punishable under s 375(2) of the Penal Code;

(b) 2 charges of sexual assault by penetration under s 376(2)(*a*) punishable under s 376(3) of the Penal Code;

(c) 14 charges of outrage of modesty under s 354(1) of the Penal Code;

(d) 4 charges of causing hurt by means of a stupefying thing under s 328 of the Penal Code;

(e) 4 charges of theft punishable under s 379 of the Penal Code;

(f) 1 charge of possession of films without a valid certificate under s 21(1)(*a*) of the Films Act (Cap 107) ("the Films Act");

(g) 1 charge of possession of obscene films under s 30(1) of the Films Act; and

(h) 1 charge of possession of obscene films knowing the same to be obscene under s 30(2) of the Films Act.

7 An interesting feature of this case is that the majority of the charges (including all the Proceeded Charges) were for offences committed *after* his first arrest on 9 February 2009 in relation to the 1st charge of voluntary hurt by means of a stupefying thing. He was released on court bail of $30,000 on 10 February 2009. [note: 2]

8 While on bail, he was arrested again on 31 July 2009 for the 11th charge of outraging the modesty of a woman under s 354(1) of the Penal Code. He was subsequently released on court bail of $40,000 on 1 August 2009. [note: 3]

9 Finally, he was arrested once more on 16 August 2009 in relation to the 12th charge of outraging the modesty of a woman under s 354(1) of the Penal Code, again while on court bail. His bail was revoked on 18 August 2009. [note: 4]

10 After his last arrest, the police seized his handphones for forensic examination. They found numerous video recordings depicting women who were unconscious and in various states of undress, as well as recordings of the accused sexually violating these women. It was only then that the true scale of the accused's misdeeds came to light. [note: 5]

Did the accused spike his victims' drinks?

11 The Prosecution's case was that the accused had spiked the drinks of the victims of the Proceeded Charges using a drug called Dormicum. Dormicum is the brand name of a substance called

midazolam. It is a prescription drug frequently used to induce sleep. They sought to show that the experience of each of the four victims was "strikingly consistent" with having being drugged with Dormicum. [note: 6]

12 The accused, on the other hand, sought to raise a reasonable doubt by demonstrating that the victims consumed large amounts of alcohol and what the victims experienced was simply alcohol intoxication. It is therefore critical to examine the pharmacological effects of Dormicum and alcohol, and to highlight the crucial similarities and differences between them.

Differences between the effects of Dormicum and alcohol

13 Both the Prosecution and the accused adduced expert evidence on the effects of Dormicum and alcohol. However, the opinions of the experts did not differ materially in this regard. [note: 7]

14 For present purposes, we are concerned only with two of the numerous pharmacological effects which can be caused by the consumption of Dormicum, namely: (a) anterograde amnesia; and (b) the anxiolytic effect.

15 Anterograde amnesia is a state in which a person is unable to form new memories. Events are not recorded to memory, and a person in this state will have no recollection of anything that happens to her. She may even engage in activity and have no idea afterwards that she had done anything at all. In other words, there will be a gap in her memory between the time Dormicum takes effect and the time it wears off. However, memories that have *already* been recorded prior to the Dormicum taking effect will not be erased.

16 Dormicum is also an anxiolytic. It means that it reduces anxiety. A person under this effect is more cooperative and less anxious. She will also be more suggestible, which means that she is more likely to follow instructions from a person who she would not ordinarily have obeyed. It is sometimes given to agitated patients in hospitals to calm them down and make them more amenable to following instructions thereafter.

17 It must be highlighted that a person under these effects is not necessarily unconscious. [note: 8] There is a spectrum of sedation that stretches from minimal sedation to general anaesthesia. Anterograde amnesia can be induced at the stage of conscious sedation (or moderate sedation). In that stage, the person retains a purposeful response to verbal or tactile simulation, and yet has no recollection of those conscious responses made. [note: 9]

18 The main difference between Dormicum and alcohol for the present purposes is the *amount* and *time* needed for their effects to manifest. Dormicum takes effect swiftly. Taken as a tablet, a person experiences conscious sedation approximately 30 to 60 minutes after consumption. [note: 10] When dissolved in water, these effects can take place in 15 minutes. [note: 11] Dormicum's effect is even more rapid if it is consumed with alcohol. [note: 12]

19 Alcohol can also induce anterograde amnesia, but it will require significantly larger quantities. Generally, it takes about six to eight standard drinks (each containing about 10g of alcohol) consumed *within an hour* to cause a social drinker to experience anterograde amnesia and about ten standard drinks to render the same person unconscious. It will take more to knock out a habitual drinker, and less for someone who does not drink. [note: 13]

20 Another key difference is that alcoholic intoxication takes effect gradually and in stages. [note: 14] It is very uncommon with alcohol alone to have the kind of "knock out" effect, [note: 15] which is characteristic of mixing Dormicum and alcohol.

The Accused's ability to obtain Dormicum

21 It was not disputed that the accused was addicted to Dormicum and that the Accused was able to obtain a large amount of Dormicum. [note: 16] In Singapore, Dormicum is prescribed by general practitioners in tablet form, at dosages of 7.5mg and 15mg per tablet. Between 31 May 2008 and 7 August 2009, the accused obtained some 390 tablets of Dormicum, all at dosages of 15mg per tablet, *via* prescription. [note: 17] Moreover, the accused admitted that he always had three or more tablets of Dormicum at home at any time. [note: 18] This indicated that he had the Dormicum to spike the drinks of his victims.

22 The Defence argued that it was possible that the Accused could have consumed all the pills by himself to feed his addiction. [note: 19] However, there was incontrovertible evidence that he had in fact used Dormicum for more sinister purposes.

The victim who escaped

23 PW15 is the victim of the 1st charge under s 328 of the Penal Code for causing hurt by means of a stupefying thing. This is not one of the proceeded charges, but one which the accused had admitted to and consented to be taken into consideration for the purpose of sentencing. [note: 20]

24 The accused met PW15 at a roadshow on 26 October 2008 where the latter was prospecting clients for the sale of insurance products. Pretending to be an interested buyer, the accused convinced PW15 to meet the next morning at a café located at Junction 8 Shopping Centre.

25 At the meeting, the accused insisted on buying drinks for PW15. Out of sight at the counter, he spiked the drinks that he intended PW15 to consume with Dormicum, before returning to the table. He claimed he did this because he wanted to steal PW15's handphone. [note: 21] After about 10 to 15 minutes and having consumed about half the beverage, PW15 felt light-headed and said she had to go to the washroom.

26 PW15 only managed to avoid becoming another victim because of a stroke of luck. Unbeknownst to the accused, she had not gone to the meeting alone. Her boyfriend at the time, [X], was sitting at a table some distance away where he had full view of his girlfriend and the accused. After she had excused herself, PW15 called [X] and said that she was feeling light-headed and jokingly mentioned that she thought that the accused might have spiked her drink. [note: 22] When she returned to the table with the accused, she heard the accused say that she had returned from the restroom very quickly.

27 That was the last thing she was able to recall until she regained cognisance in the hospital. [note: 23]

28 [X], fortunately, was looking out for PW15. He observed his girlfriend occasionally staring into space. He saw her hand over her handphone and handbag to the accused at the latter's instigation. [note: 24] Even more strangely, PW15 took the accused's hand when he stretched it out to her. Hand

in hand, the accused led PW15, who was walking unsteadily, to the exit. [note: 25]

29 [X] went to confront the accused, who fled the scene after a brief exchange of words. However, the accused did briefly reappear to return PW15's handphone and handbag. [note: 26]

30 Soon after, [X] decided to drive PW15 to Changi Hospital as she was clearly out of sorts. She was incoherent, [note: 27] unable to walk properly without support, [note: 28] and staring intermittently into space. [note: 29] She fell asleep in the car. [note: 30] When they arrived at the hospital, he slapped and shook her to get her to open her eyes. [note: 31]

31 After being informed that it might take some time before her blood test, [note: 32] [X] decided to fetch PW15's parents to the hospital. He brought PW15 along. Throughout the car journey to fetch her parents and back to the hospital she never went back to sleep. [note: 33] However, she had no recollection of how her parents got to the hospital. [note: 34]

32 I recount these facts in some detail for two purposes. The first is to show that the accused is a person who knows the effects of Dormicum on others, and has experience in using Dormicum to spike the drinks of his target in order to accomplish his ends. The second is to demonstrate the rather startling effects that Dormicum can have on an individual. While she was under anterograde amnesia, PW15 appeared functional, although dazed. But nothing was recorded to memory. To use the analogy of a video camera, the lenses were open, but the recording switch was off.

33 Further, because of the anxiolytic effect of Dormicum, the accused was able to get PW15 to give her valuables willingly to him, someone she had just met. Any observer would have thought she had done so out of her own free will. It was only because of the intervention of a loved one that allowed her to avoid having her property stolen, and possibly something worse.

34 I now turn to the accounts of the four victims of the Proceeded Charges.

The Proceeded Charges

PW 9

(1) PW9's version of events

35 PW9 was the victim referred to in the 22nd Charge against the accused for sexual assault by penetration punishable under s 376(3) of the Penal Code. The charge reads:

> That you, AZUAR BIN AHAMAD,
>
> on or about the 20th day of March 2009 at [PW9's home address redacted], did sexually penetrate the vagina of one [PW9] (female/40 years old) with your finger, without her consent, and you have thereby committed an offence under section 376(2)(a) and punishable under section 376(3) of the Penal Code, Chapter 224 (2008 Rev. Ed.).

36 According to PW9, she got acquainted with the accused through an online application known as "Speed Date" in 2008. They would chat over the internet and through phone messages. In the course of their interaction, the accused (who called himself "Denny") lied to PW9 about a number of things, such as his religion and his father's nationality. Eventually, he managed to convince PW9 to meet him

in person by telling her that he was leaving for the USA to study for a Masters of Business Administration, another untruth. [note: 35]

37 She met the accused on 20 March 2009 at St James Power Station ("St James"), at the latter's suggestion. The accused brought the PW9 to the Boiler Room, which is one of the pubs in St James. They sat at the bar counter where the accused ordered a beer for himself and a glass of margarita for PW9. She took about 15 to 20 minutes to finish the margarita. [note: 36]

38 After she finished the margarita, the accused spilled some beer on her. She went to the restroom to clean up. When she returned, she found that the accused had ordered two "tequila pops" from the bartender. The accused took the tequila shots from the bartender. He then put a coaster to cover the mouth of the shot glass and "popped" the drink by lifting the glass up and down on the table swiftly. [note: 37]

39 PW9 initially only took a sip of the shot, but the accused told her to finish it. She then finished the shot. A while later, the accused told PW9 he wished to go outside the pub as it was too noisy. PW9 then walked out of the pub, before experiencing what she called a "black out". [note: 38] This was the first time this had ever happened to her. [note: 39]

40 PW9 has no recollection of what happened next.

41 The next thing she knew, she was at home, in her home clothes and her hair was damp. She then called the accused to ask him what had happened. The accused told her that she had gotten drunk and was screaming at the pub. He claimed he got a taxi, and helped to send her home. [note: 40]

42 She called the accused again the next day and asked "if he had done anything to [her] the night before" and whether he had spiked her drink. [note: 41] The accused denied both allegations, and told her that if she did not believe him, she could take a blood test. PW9 then called a friend for advice. After considering the matter, she decided not to report the matter to the police as she was unsure as to what had happened the previous night. [note: 42]

43 Unbeknownst to her, the accused had in fact sexually assaulted her at her home on 20 March 2009, after she had lost cognisance. The accused had filmed the sexual assault. She only found out when the police showed her the video clips on 6 June 2012. [note: 43]

(2) The accused's contention

44 The accused claimed that PW9 had six to eight glasses of liquor at St James. After drinking, they went to PW9's home using a taxi. It was PW9 who told the taxi driver her address as he did not know where she stayed. It was PW9 who opened the door to her home. When she went in, she checked to see if her father was asleep. He also claimed that they talked and kissed for a while before she said she was tired and wanted to rest, which was when he sexually assaulted her without her consent. He also alleged that they had a bath together afterwards. [note: 44]

45 Counsel submitted that there was a possibility that PW9 had under-reported the number of drinks she had on the night she met the accused because there was a credit card bill on PW9's credit card for $224.70 at Peppermint pub (also located in St James), which meant the two of them must

have proceeded to Peppermint pub after drinking at Boiler Room. However, I noted that there were a number of plausible reasons for this. One possibility was that the accused himself had racked up the tab prior to PW9's arrival, since he was already at St James, [note: 45] before later using PW9's card to pay for the bill. Another possibility was that the accused, after having tranquilised PW9 with the Dormicum, proceeded to Peppermint, where they both had additional alcohol, on her account.

46 Another issue was how the accused spiked the tequila shot since he had popped the drink in front of PW9 and she did not mention anything unusual. [note: 46]

47 Counsel also raised the point that PW9 was by her own admission an occasional social drinker. While she had never fallen unconscious after drinking before, counsel argued that the difference was that she had mixed drinks on this occasion (a practice she usually avoided). Therefore, it was possible that she drank herself into a state of memory loss. [note: 47]

PW10

(1) PW10's version of events

48 PW10 was the victim in the 19th charge against the accused for rape punishable under s 375(2) of the Penal Code. The charge reads:

> That you, AZUAR BIN AHAMAD,
>
> on the 24th day of April 2009 between 12.00 a.m. to about 7.00 a.m., at Room 308 Fragrance Hotel Lavender, located at No. 51 Lavender Street, Singapore, did commit rape on one [PW10] (female/38 years old), by penetrating the vagina of the said [PW10] with your penis, without her consent, and you have thereby committed an offence under section 375(2) of the Penal Code, Chapter 224 (2008 Rev. Ed.).

49 PW10's description of how the accused got her to meet him was remarkably similar to how he enticed PW9. First, he contacted her over Speed Date using the moniker "Denny" sometime in February or March 2009. Second, he managed to get her handphone number and exchanged text messages with her. Third, he made up facts about himself so to impress PW10. Similarly, he used the excuse that he was leaving Singapore to pursue business overseas to get her to meet him in person, and succeeded. [note: 48]

50 On 23 April 2009, the accused picked up PW10 by taxi at around 10.20 pm. They went to St James. PW10 suggested going to the "Movida" pub. However, they could not find a seat when they arrived. The accused convinced her to go to the Boiler Room instead by saying he had an unfinished bottle of alcohol there. She said she drank about three glasses of the liquor (which was diluted with water). Subsequently, her handphone rang and she went to the restroom to answer the phone call. She recalled that this was around midnight.

51 When she returned to the table, she noticed that there were two shots of alcohol at the bar counter where they were seated. The accused told her to drink up and down the shot in one go, which she did. They spent a bit more time drinking the unfinished liquor. Her last recollection was hearing Denny suggest going back to Movida. She then blanked out.

52 The next thing she knew, she was lying on a bed in a room of a budget hotel wearing only her panties. The accused was lying beside her, only in boxers. Although she was feeling giddy and unwell,

the accused hurried her into leaving the room before sending her home on a taxi.

53 PW10 called the accused the next day and asked what had happened the night before. The accused told PW10 that she was drunk and had vomited on him, which was why he brought her to the hotel to wash up. When PW10 asked him if he did anything to her, he denied doing anything.

54 Unbeknownst to PW10, the accused had raped her during the period when she lost cognisance, and he had made a video recording of his act on his handphone. She only found out when the police showed her the video on 8 June 2012.

(2) The accused's contention

55 The main thrust of the accused's argument with regard to PW10's evidence was that, by her own account, she had consumed quite a lot of alcohol in a relatively short time, and might well have drunk more than she recalled when giving her statement to the police. [note: 49] The accused claimed that she had drunk more than eight to ten glasses of alcohol. [note: 50]

56 Counsel also invited the court to treat her evidence with a measure of caution because she had a tendency to "anticipate Counsel's line of questioning and tailor her evidence according to what she thought Counsel was getting at or make it up to suit her purpose", [note: 51] pointing to two instances of her testimony as being inconsistent. The first was in respect of whether the accused had indicated to her that he could get her a job, where she had prevaricated before agreeing that he did. [note: 52] The second related to the fact that even *after* what had happened, the accused had asked her to meet up again, and she actually purported to *agree* to that meeting, which was to take place on 29 May 2009 at 11 pm. She had claimed that she never intended to meet him and actually called him to cancel the meeting. [note: 53]

57 Counsel also highlighted that there were a number of inconsistencies for which she could not give a good reason. [note: 54] Counsel suggested that this showed that PW10 was still willing to be friendly with the accused despite her suspicions. It was also in her interest to downplay the number of drinks she consumed on that night to deflect any suggestion that she was enjoying the company of the accused. [note: 55]

PW8

(1) PW8's version of events

58 PW8 was the victim in the 20th charge against the accused for rape punishable under s 375(2) of the Penal Code. The charge reads:

> That you, AZUAR BIN AHAMAD,
>
> sometime between the night of the 9th day of May 2009 and the morning of the 10th day of May 2009, at Room 304 Fragrance Hotel Viva, located at No. 75 Wishart Road, Singapore, did commit rape on one [PW8] (female/34 years old), by penetrating the vagina of the said [PW8] with your penis, without her consent, and you have thereby committed an offence under section 375(2) of the Penal Code, Chapter 224 (2008 Rev. Ed.).

59 According to PW8, she first met the accused on Facebook. She met the accused in person (in

his guise as "Denny") for the first time at the outdoor area of St James on 9 May 2009. She had a glass of beer in the outdoor area, and after she had nearly finished it, they proceeded into one of the pubs. [note: 56]

60 After going into the pub, PW8 consumed two or three glasses of alcohol, which she remembered was either wine or vodka. While she was watching the performance in the pub, the accused gave an "alcoholic shot" to her, which she downed in one go. [note: 57] She did not see how the accused got the shot, and assumed he got it from the bartender.

61 About 10 minutes later, she began feeling dizzy. They walked out with the accused supporting her. PW8 then sat on a bench while holding her handphone. She recalled the accused taking the handphone from her hand – and this was her last memory before she blacked out.

62 She regained her lucidity several hours later. She found herself at the home of a friend who lived near St James. The friend told her that "Denny" had sent a text message to him to find out his address and then dropped her off at his home at around 7 am.

63 PW8 messaged the accused to find out what actually happened. The accused called back in the evening and told her she had gotten drunk and he sent her home in a taxi. However, the taxi driver threw the duo out of the taxi after she vomited in the taxi. The accused told her that he then checked the two of them into a budget hotel to clean up. To her disbelief, the accused also claimed that he had not done anything to her.

64 A few days after the incident, she discovered that a payment had been made on her Visa credit card on 10 May 2009 to "Fragrance Hotel – Viva".

65 As it turned out, the accused and PW8 had checked in shortly after midnight at Fragrance Hotel Viva, and they had checked out the next morning. There, the accused sexually violated PW8 and video recorded his act. It was not until the police showed her the video recording on 5 June 2012 that she discovered what had been done to her.

(2) The accused's contention

66 The accused claimed that PW8 had 15 to 16 glasses of alcohol while playing a drinking game, before he brought her to the hotel. [note: 58]

67 According to the timings given by PW8 in oral evidence (which must be regarded as highly approximate at best), she would possibly have taken the shot sometime between 9.10 pm and about 10.10 pm. [note: 59] Counsel submitted that since PW8 only checked in after midnight, she must have been physically conscious for the whole two to three hour period in between. Given the pharmacological effects of Dormicum, she would have been physically unconscious in less than 20 minutes from the time she consumed the alcoholic shot. [note: 60]

68 Counsel also argued that her evidence with regard to how much she drank was unreliable as it was lacking in detail and specificity, such as the type of alcohol she drank, whether she had dinner before meeting the accused, whether the accused had used his handphone or hers to contact her friend. [note: 61]

PW11

(1) PW11's version of events

69 PW11 was the victim in the 21st charge against the accused for rape punishable under s 375(2) of the Penal Code. The charge reads:

> That you, AZUAR BIN AHAMAD,
>
> sometime between the 4th day of July 2009 at about 11.43 p.m. to 5th day of July 2009 at about 2.06 a.m., at Room 402 Fragrance Hotel Lavender, located at No.51 Lavender Street, Singapore, did commit rape on one [PW11] (female/29 years old), by penetrating the vagina of the said [PW11] with your penis, without her consent, and you have thereby committed an offence under section 375(2) of the Penal Code, Chapter 224 (2008 Rev. Ed.).

70 According to PW11, she got to know the accused via Speed Date. The accused identified himself as "Shawn Tan". He misrepresented himself as a dentist and a Catholic, among other things. Like with the others, they chatted online and through text messages. [note: 62]

71 The two of them met for the first time on 4 July 2009 at around 7 pm at City Hall MRT station. They went to the pub known as Timbre, but as it was crowded, they went to the Loof at Odeon Towers instead. She believed they arrived there sometime after 8 pm. [note: 63] Upon their arrival, the accused ordered a glass of chocolate martini for PW10, which she finished in approximately 15 to 20 minutes. [note: 64]

72 Less than 5 minutes after finishing her chocolate martini, the accused ordered two alcoholic shots for them. [note: 65] It stayed on the table for a few minutes. PW11 took about 10 minutes to finish the shot of alcohol. [note: 66] She then started to feel sleepy. She was looking out "at some other building on the other side" when she lost her all recollection of what was happening around her. [note: 67]

73 She awoke at home, not knowing how she got home. In shock, she sent a text message the accused to ask him what had happened. He told her she was drunk and he had to send her home. He also said she made sexual advances and that she wanted to "drag him" into her house. [note: 68] While she thought he was not telling the truth, she gave him the benefit of the doubt because she had no recollection of what had happened. [note: 69] However, it appeared that *some* of what the accused said was true, because he was able to accurately describe her unusual way of opening her gate, [note: 70] which was to slip her hand between the grooves of the grille and open it from the back. [note: 71]

74 Unbeknownst to PW11, the accused had sexually violated her at Fragrance Hotel Lavender on 4 July 2009. He also made video recordings of his act. She only found out when the police showed her the video recordings on 5 June 2012.

(2) The accused's contention

75 The accused's evidence, on the other hand, was that PW11 had six martinis and at least two alcohol shots that night and they had been drinking for about one to one and a half hours. [note: 72]

76 Counsel also noted the gap of time between when PW11 said she lost her memory (which was

around 9.30pm) and the time that she and the accused checked in at the hotel (which was recorded as 11.43pm). It was submitted that this difference in time made the Prosecution's case that her drink had been spiked with Dormicum untenable. [note: 73]

77 Counsel also questioned how the accused spiked the shot consumed by PW11 if the alcohol shots had remained on the table for just a few minutes. Since the shot glass was filled almost to the brim, the accused could not have spiked the drink with a pre-dissolved Dormicum solution, and he could not have slipped in a tablet or a pulverised tablet without PW11 noticing. [note: 74]

78 Finally, counsel also submitted that PW11 was not forthcoming with her evidence in court because she had considered the possibility of an intimate relationship with the accused, but felt embarrassed to admit her true feelings for the accused prior to her discovery that the accused had raped her. This submission was premised on her behaviour after the incident, including the fact that she subsequently met up with the accused for supper and her willingness to send him off to the airport when he was purportedly leaving for the USA. [note: 75]

Analysis

The accounts of the victims are to be preferred

79 I have set out above the evidence of the four victims regarding their respective encounters with the accused, as well as the arguments raised by counsel to undermine their credibility, suggesting that *all* the victims under-reported the amount of drinks they had. After considering the submissions from both Prosecution and counsel, I found that there was no reason to doubt the veracity of the victims at all.

(1) The victims could have remembered how much they drank

80 The first point is that if the victims had consumed six to eight standard drinks of alcohol, *they would have the capacity to remember it.* This is because alcohol does not have the effect of erasing memories they already had. As stated by the accused's expert witness, Dr Munidasa Winslow: [note: 76]

> Q: However, the person would be able to remember consuming those six to eight drinks prior to the onset of anterograde amnesia? ...
>
> A: You---you usually remember that you---you usually remember the first five or six or seven.
>
> [...]
>
> Court: By six to eight, you are a bit blur, is it?
>
> Witness: Yah, by---by six to eight, you're already started to be getting---
>
> Court: Having difficulty recalling?
>
> Witness: ---lubricated---ah, yes.
>
> Q: Yes.

Witness: Er, you should have difficulty recalling.

81 Therefore, as the Prosecution rightly submitted, unless *all* the victims were lying (or had somehow forgotten) about the amounts they had drunk, alcohol could not have caused their sudden memory loss. [note: 77]

82 Indeed, since alcohol intoxication occurs in stages (as noted at [20] above), the victims would also have to be lying about the rapid and unexpected onset of anterograde amnesia.

(2) The victims had no reason to lie

83 Counsel noted that PW10 and PW11 had continued to be friendly, or at least displayed certain outward manifestations of affability, to the accused even after they suspected him of date rape. This was presented as a possible motive to downplay the amount of drinks they had with the accused in order to hide their real feelings for the accused.

84 With respect to PW10, the suggestion that she was still willing to "explore a relationship" [note: 78] with the accused struck me as fanciful, and even if that was the case, it would hardly lead to the conclusion that she would lie to the police or in court about the number of drinks she had with him that night.

85 As for PW11, it seemed that she had *some* intention of carrying on a romantic relationship with the accused. She candidly admitted that she was still willing to "give it a shot". [note: 79] Even so, that would not provide the basis to suspect that she might not have been entirely honest about the number of drinks she had before she blanked out.

86 Moreover, it was perfectly understandable that the accounts of the victims lacked a certain level of detail, simply because the incidents took place some three years ago. Gaps in their memory in certain respects did not necessarily mean that they would have misremembered suddenly blacking out after having an alcoholic shot that was taken from the accused. This was not the sort of occurrence that one would easily forget.

(3) The accused's testimony was not credible

87 In contrast, the accused had every reason to lie, and was quite willing to distort to the truth to suit his own ends in court. One particularly egregious example was when he denied that he had ever drugged a victim by using a concoction of pills created in his own home. He only admitted the truth when he was confronted by his own statement to the police that he had spiked the tea of that victim using dissolved flu tablets in a small sweet container containing cough syrup in order to outrage her modesty. [note: 80]

88 His accounts in court of how much alcohol the victims consumed were inherently self-serving. It must be noted that the accused had never clearly stated how many drinks each of the victims had consumed prior to giving evidence in court, although he had multiple opportunities to do so (such as during the interviews with the Prosecution's experts as well as the accused's expert, Dr Winslow).

89 I therefore agreed with Prosecution's submission that he had tailored his testimony after hearing what the experts had said: that the average person had to consume at least six standard drinks in order to experience anterograde amnesia. [note: 81]

The victims' experiences were consistent with being drugged by Dormicum

90 All the victims experienced the rapid onset of anterograde amnesia. None of them had any memory of how they were transported away from the club or bar where they met the accused, his acts of sexual violation on them or the fact he recorded them in their vulnerable state. They all remembered blacking out suddenly, which would be consistent with the effects of Dormicum, and most unlike the normal gradual effect of alcohol intoxication.

91 However, with respect to PW8 and PW11, there was a relatively long period of time between the time they blacked out and the time they were recorded to have checked into a hotel with the accused (see [67] and [76] above). It was possible that they misremembered the time – but this could not be assumed. I therefore considered whether this time difference of about two to three hours raised a reasonable doubt.

92 In my view, the passage of time was not determinative. The reaction of a person to a sedative can be based on many factors, such as the *dosage* as well as the ratio of the Dormicum to alcohol. [note: 82] A person under the effects of Dormicum can be walking and talking and apparently behaving normally, while retaining no memory whatsoever. This would also explain why, for example, PW11 had no recollection of opening her gate even though the accused had observed her doing so (see [73] above). So to third parties, for instance taxi drivers and hotel receptionists, they might not suspect that the victims brought to the hotel (or even to the victim's own home) by the accused in a taxi had been drugged. With the increased suggestibility caused by the anxiolytic effect of Dormicum, it might seem to everyone else that the victims were following the accused out of their own free will.

Each of the victims' experience was inconsistent with alcohol intoxication

93 The expert evidence was clear. If the victims had consumed the amounts of alcohol they said they did, the alcohol they remembered drinking could *not* have resulted in the onset of anterograde amnesia. [note: 83] Even if the victims had drunk *much* more than what they remembered before losing cognisance, Dr Winslow testified that all the victims were tolerant toward alcohol and were not "alcohol naïve" at the time they met the accused. [note: 84] All the victims had on previous occasions drank large amounts of alcohol without losing cognisance. As victims who were quite capable of holding their drink, their experience of a sudden black out after only a few drinks could not be explained by the consumption of alcohol alone.

The accused had the opportunity to spike their drinks

94 The final question is *how* the accused spiked the drinks of his victims. Obviously, the victims could not give any direct evidence regarding this. Had the victims seen the accused spike their drinks, he would be caught red-handed, and they would not have become victims in the first place.

95 Since all the four victims lost cognisance shortly after taking the shots, the accused must have spiked the shots, and not the other drinks they took prior to taking the shots. The reason is straightforward – if *all* the drinks had been spiked, the victims would have experienced the onset of Dormicum's effects much earlier. The Prosecution's theory was that the accused spiked the alcoholic shots because these drinks are designed to be consumed at one go, which ensured that the victims imbibe all the Dormicum he had put into that shot. As shots come in small glasses, this could mean that the accused had brought along the Dormicum in a pulverised form [note: 85] or it might even have been pre-dissolved in some alcohol in a small bottle that he had with him.

96 Counsel argued that the accused had absolutely *no* opportunity to spike the shots drunk by PW9 and PW11, mainly because they were present when the shots arrived (see [46] and [77] above).

97 I would not agree. With respect to PW9, the accused had an opportunity when he took the shot from the bartender and then "popped" the tequila shot. As for PW11, it must be noted that the shot had been left on the table for a few minutes. This was not a short time for a drink to be left on the table. One distraction would have been enough. It was far from an "impossible scenario" as counsel submitted. [note: 86]

Conclusion on the spiking issue

98 It was not disputed that that even in a Newton hearing the Prosecution had to prove beyond a reasonable doubt that the accused had spiked the victims' drinks in order to sexually violate them [note: 87] as this was a material fact in dispute which the Prosecution was relying on for the purpose of sentencing. In this case, there was no direct forensic evidence that Dormicum was present in the blood of each of the four victims. By the time the offences in the Proceeded Charges came to light, it was too late to test the victims' blood. [note: 88]

99 The way the court should approach circumstantial evidence is set out by V K Rajah J (as he then was) in *Public Prosecutor v Chee Cheong Hin Constance* [2006] 2 SLR(R) 24 at [85] (cited with approval by the Court of Appeal in *Tan Chor Jin v Public Prosecutor* [2008] 4 SLR(R) 306 at [34]):

> … The various links in the interlocking chain of evidence must establish a complete chain that rules out any reasonable likelihood of an accused's innocence. Guilt must be the only rational inference and conclusion to be drawn from the complete chain of evidence. In assessing the circumstances, the court should discount fanciful or speculative possibilities. …

100 The Prosecution's summary of the evidence at trial is apt and I gratefully reproduce it below: [note: 89]

> (a) The accused obtained large amounts (390 tablets) of a sedative drug known as [D]ormicum between 31 May 2008 and 7 August 2009;
>
> (b) The accused had [D]ormicum available to spike the four victims;
>
> (c) On the respective occasions on which the victims met the accused, they each consumed an alcoholic shot purchased by the accused;
>
> (d) The victims had no recollection of events (or lost cognisance) shortly after consuming the alcoholic shot purchased by the accused, until they regained consciousness hours later;
>
> (e) Between the time the victims lost cognisance and the time they regained consciousness, they were sexually violated and the accused video recorded the events;
>
> (f) The victims were completely unaware that they were sexually violated by the accused, and that they were videoed by the accused, until informed by the police several years later;
>
> (g) The victims' experiences of losing cognisance after consuming an alcoholic shot provided by the accused were consistent with the known pharmacological effects of [D]ormicum, in particular the *rapid onset* (emphasis) of anterograde amnesia - which is a state in which a person loses the

ability to formulate memories; and

(h) Consumption of alcohol alone could not have resulted in the victims' experiences.

[footnotes omitted]

101 After considering the totality of the evidence, I found that there was only one rational inference and conclusion to be drawn from the above: the accused had drugged the victims with Dormicum. The accused knew fully well the effects of these stupefying drugs and he used them multiple times to commit date rape on a regular basis.

The Sentence

102 For the offence of rape under s 375(2) of the Penal Code and the offence of sexual assault by penetration under s 376(3) of the Penal Code, the offender is punishable with imprisonment for a term which may extend to 20 years, and the offender is also liable to fine or caning.

103 The Prosecution submitted that the overarching sentencing consideration in this case would be the prevention of harm to the public. The Prosecution urged the court to impose in respect of each of the Proceeded Charges a sentence that was close to the maximum imprisonment term for each charge. The Prosecution pressed for an aggregate sentence of a minimum of 45 years' imprisonment and 24 strokes of the cane [note: 90] with at least three sentences to run consecutively.

104 Counsel submitted on the other hand that the appropriate sentence ought to be between 8 to 10 years per charge, with the appropriate number of strokes of the cane. [note: 91] He also invited the court to consider making only two sentences run consecutively and the rest to run concurrently. [note: 92]

Sentencing principles for rape

105 In Public Prosecutor v NF [2006] 4 SLR(R) 849 ("PP v NF"), V K Rajah J demarcated four categories of rape (at [20] and [21]) as follows:

(a) at the lowest end of the spectrum, rape that feature no aggravating or mitigating circumstances ("Category 1 Rape");

(b) rape where there has been specific aggravating factors, such as where the victim is a child or especially vulnerable, or by a person in a position of responsibility towards the victim ("Category 2 Rape");

(c) cases where the accused raped multiple victims or raped the same victim repeatedly ("Category 3 Rape"); and

(d) cases where the offender has manifested perverted or psychopathic tendencies or gross personality disorder, and where he is likely, if at large, to remain a danger to women for an indefinite time ("Category 4 rape").

106 The benchmark sentences for various categories of rape are set out below (see *PP v NF* at [24]–[38]):

(a) Category 1 Rape: 10 years' imprisonment and not less than 6 strokes of the cane.

(b) Category 2 Rape: 15 years' imprisonment and 12 strokes of the cane.

(c) Category 3 Rape: The same benchmark as Category 2 Rape as the Prosecution would in most cases proceed with multiple charges against the accused, and the sentencing judge would have to order more than at least two sentences, with the discretion to order more than two, to run consecutively in order to reflect the magnitude of the offender's culpability. V K Rajah J noted that to commence sentencing at a higher benchmark may in many cases result in double accounting and excessive sentences.

(d) Category 4 Rape: It is not inappropriate to sentence the offender to the maximum sentence of 20 years' imprisonment and 24 strokes of the cane allowed under s 376 of the Penal Code.

107 The Court of Appeal in Public Prosecutor v UI [2008] 4 SLR(R) 500 at [27] also endorsed the following list of aggravating factors laid down by Lord Woolf CJ in R v Millberry [2003] 1 WLR 546 at [32] ("the Millberry List"):

> (i) the use of violence over and above the force necessary to commit the rape; (ii) use of a weapon to frighten or injure the victim; (iii) the offence was planned; (iv) an especially serious physical or mental effect on the victim ... [including], for example, a rape resulting in pregnancy, or in the transmission of a life-threatening or serious disease; (v) further degradation of the victim ... (vi) the offender has broken into or otherwise gained access to the place where the victim is living ... (vii) the presence of children when the offence is committed ... (viii) the covert use of a drug to overcome the victim's resistance and/or [to] obliterate his or her memory of the offence; (ix) a history of sexual assaults or violence by the offender against the victim.

108 In Public Prosecutor v Mohammed Liton Mohammed Syeed Mallik [2008] 1 SLR(R) 601 ("Mohammed Liton") at [95], the Court of Appeal held that, apart from considering the aggravating and mitigating factors in each case, the court should be guided by three broad principles:

(a) the degree of harm to the victim;

(b) the level of culpability of the offender; and

(c) the level of risk posed by the offender to society.

Aggravating factors

109 I now turn to the numerous aggravating features in this case.

110 I begin with the accused's covert use of Dormicum to overcome his victims' resistance and erase their memory of the offence (*ie*, factor (viii) on the *Millberry* List). He had taken advantage of the effects of Dormicum on his victims to avoid detection and escape the consequences of his offence. To satisfy his own depravity, he ignored the risk of giving his victims an overdose of Dormicum and the possible deleterious effects that such drugs might have on his victims' health.

111 From the consistency of his methods, the offences were clearly premeditated (*ie*, factor (iii) on the *Millberry* List). He lured his victims into meeting him by creating a false online persona, and using further lies to get them to meet up with him at a location of his preference. Invariably, he would then spike the drinks of his victims before bringing them to a hotel or even to the victim's home. He would also make use of the gap in their memory to create plausible deniability and confusion in the victims

to reduce the likelihood of them reporting to the police.

112 The fact that he recorded the violation of his unsuspecting victims was another aggravating factor. It was held in the context of "Peeping Tom" offences that the use of modern technology to record a victim in her private moments would warrant a custodial sentence on the basis that such recordings allowed repeated viewings for the offender's perverted pleasure, as well as the attendant risk that the recordings might be circulated or shown to other persons (see *Public Prosecutor v Tay Beng Guan Albert* [2000] 2 SLR(R) 778 at [21]–[23]). These policy reasons should apply equally, if not more, in the context of rape.

113 A review of the accused's antecedents also showed that he had previously committed similar offences. In particular, the Prosecution highlighted that in 2003 he was convicted for, *inter alia*, outraging the modesty of a woman after he spiked her coffee with a sedative called zolpidem. He was given an aggregate sentence of 6 years' imprisonment. However, he resumed his unlawful ways just 21 months after his release from prison. [note: 93]

114 Appropriate weight should also be given to the 29 charges taken into consideration for the purpose of sentencing (or "TIC charges", for short). The majority of the offences relating to the TIC charges were similar to the Proceeded Charges. This more than aptly demonstrated a "pattern of criminal activity which suggests careful planning or deliberate rather than casual involvement in a crime", to borrow the words of Sir Igor Judge P (as he then was) in *R v Gary Dean Miles* [2006] EWCA Crim 256 at [11].

115 I also took into account the fact that the accused had re-offended while he was on bail. In fact, 27 of the charges against him, including all the Proceeded Charges, related to offences he committed while he was on bail. [note: 94]

Were there any mitigating factors?

No remorse

116 The accused had pleaded guilty, and counsel submitted that due weight must be accorded to his remorse following his plea of guilt and the fact that the accused had volunteered for counselling services. [note: 95]

117 However, a plea of guilt is only a mitigating factor if it is indicative of genuine contriteness. As succinctly stated by the court in *PP v NF* at [57]:

> ... a plea of guilt does not ipso facto entitle an offender to a discount in his sentence. Whether an early plea of guilt is given any mitigating value depends on whether it is indicative of genuine remorse and a holistic overview of the continuum of relevant circumstances: *Angliss Singapore Pte Ltd v PP* [2006] 4 SLR(R) 653 at [77]. A court should also carefully examine the conduct of the offender after the commission of the offence in order to determine whether the offender is genuinely contrite.

118 Further, Yong Pung How CJ made these pertinent remarks in *Xia Qin Lai v Public Prosecutor* [1999] 3 SLR(R) 257 at [26]:

> … there is no mitigation value in a plea of guilt if the offender pleaded guilty in circumstances knowing that the Prosecution would have no difficulty in proving the charge against him, or if he had been caught red-handed. …

119 In the present case, evidence of his offences was overwhelming from the recordings uncovered after the police seized his handphones. I agreed with the Prosecution that the accused had little option but to admit to the offences. [note: 96]

120 Moreover, he fought tooth and nail in a Newton hearing that lasted some 20 days, which he ultimately lost. This required the victims of the Proceeded Charges, as well as PW15 (the victim of the 1st charge), to come to court to give evidence and undergo the rigours of cross examination. Any credit that he might otherwise have received for pleading guilty would be largely extinguished by his conduct during the protracted Newton hearing where several of his victims were made to relive the experience they had been through. The Prosecution referred me to the case of *R v David John Stevens* (1986) 8 Cr App R (S) 297, where Glidewell LJ stated at 300:

> … a defendant who pleads guilty is entitled to a discount from the sentence which would be passed upon him if he pleaded not guilty and were convicted for a variety of different reasons. One is that he is acknowledging his guilt, and this man did so. One is that he is *saving time*, and to that extent this man did so. *But in sexual cases far and away the most important reason is that a plea of guilty normally means that the victim does not have to go into the witness box and relive the experience that she had been through months before and perhaps has partially succeeded in getting over. That is why in sexual cases as a general rule a plea of guilty earns a very considerable discount from the sentence which would be passed on a conviction.* That aspect of the case is not present here, because as a result of maintaining that the girl had consented, it inevitably transpired that the judge had to try the issue as to whether she had consented or not, and that meant that she did have to go into the witness box. … [emphasis added]

121 Even more importantly, I did not sense any true remorse from the accused. His mitigation plea contained various expressions of regret and promises of reform. Yet, I remained doubtful that he truly understood the severity of his crimes when in the same letter he asked the court to punish him "with a minuscule sentence". [note: 97] Even when Dr Winslow interviewed the accused on 22 August 2012, which was after he had pleaded guilty, he still maintained that the sexual acts were *actually consensual* and he had taken the videos after the victims had fallen asleep. [note: 98]

Lower harm to victims

122 The accused's counsel also submitted that since the victims did not know that they had been raped until they were shown the footage of the rape, they did not suffer the same degree of trauma as a conscious victim.

123 A similar argument was made in the case of *Public Prosecutor v Yong Kou Lin and another* [1993] SGHC 278. There, the accused found the victim in an unconscious state and raped her. It was submitted that there was therefore no violence or trauma. Kan Ting Chiu JC (as he then was) categorically rejected that submission. The learned judge said that the "knowledge and anguish that she was raped should be no less real or painful for that". He then sentenced the accused to 10 years' imprisonment and 4 strokes of the cane.

124 On the other hand, I am guided by the Court of Appeal in Mohammed Liton that the degree of harm to the victim is something the court must consider. All rape is innately violent. Certainly the physical harm and risk of sexually-transmitted diseases in circumstances where the victim is incognisant is no less than that suffered by a conscious victim. However, it is difficult to deny that a

person who has no memory of the act is likely to be subject to psychological trauma of a less horrifying kind than that inflicted on a conscious victim who suffered through the experience. Nonetheless, the unconscious victims would still suffer the psychological trauma from subsequently viewing the video footages of what had happened to them when they were not cognisant and then realising that they had been raped. In my view, a significant reduction in the sentence from the usual benchmarks merely on account of the fact that the victim was unconscious during the actual rape would hardly be justifiable, as is clear from Kan JC's decision above.

Protection of society as a paramount sentencing consideration in this case

125 Having regard to the foregoing, it was clear to me that the protection of society is paramount and the accused will be a danger to society if he is not given a fairly long sentence. Between 31 May 2008 and 15 August 2009 (approximately 14.5 months), he committed 33 distinct offences, of which 22 offences were sexual in nature. [note: 99] Even more tellingly, he persisted in his ways despite several arrests by the police.

126 The Prosecution led evidence from two psychiatrists, Dr John Bosco Lee and Dr Tejpal Singh, demonstrating that the accused's chances of rehabilitation were low. After conducting the Risk for Sexual Violence Protocol ("RSVP") on the accused, Dr Singh concluded that the accused posed a risk of serious sexual harm to the public over an extended period of time and that psychiatric care or treatment would not do much to help him. [note: 100] The accused did not produce expert evidence to testify in this regard, but counsel attempted to demonstrate that the court should not rely on these expert findings, mainly on the grounds that Dr Singh was not trained to conduct the RSVP and that the RSVP was unreliable. [note: 101] However, I found that the findings of the experts were sound and based on solid grounds which were consistent with the evidence before me. Without psychiatric evidence to the contrary, I was not minded to reject their evidence.

127 In the present case, as the accused was convicted and sentenced to 4 distinct offences, I was bound to order at least two terms of imprisonment to run consecutively pursuant to s 18 of the Criminal Procedure Code (Cap 68, 1985 Rev Ed).

128 However, the decisions as to which sentences are to run consecutively and whether the court should order *more* than two sentences to run consecutively are matters of discretion for the sentencing court. As Sundaresh Menon CJ held in the recent case of *Mohamed Shouffee bin Adam v Public Prosecutor* [2014] SGHC 34 ("*Mohamed Shouffee*") at [25], this discretion "must be exercised judiciously and with regard to two principles in particular, namely, the one-transaction rule and the totality principle, as well as a number of ancillary principles".

129 The totality principle, in essence, requires the sentencing court to review the aggregate sentence and consider whether the aggregate is just and appropriate (see *Mohamed Shouffee* at [52]). If, after such a consideration, the court decides that the aggregate sentence should be reduced, it may either re-calibrate the individual sentences or re-assess which of the sentences should run consecutively (*Mohamed Shouffee* at [59]–[63]).

130 However, V K Rajah JA issued a salutary reminder in ADF v Public Prosecutor and another appeal [2010] 1 SLR 874 at [146] that while the decision to impose more than two consecutive sentences "ought not to be lightly made", the "the totality principle cannot be unthinkingly invoked to minimise punishment for those who maliciously pursue a deliberate course of criminal behaviour". He went on to elaborate that:

> … In my view, an order for *more than* two sentences to run consecutively ought to be given serious consideration in dealing with distinct offences when one or more of the following circumstances are present, *viz*:
>
> (a) dealing with persistent or habitual offenders…;
>
> (b) there is a pressing public interest concern in discouraging the type of criminal conduct being punished…;
>
> (c) there are multiple victims; and
>
> (d) other peculiar cumulative aggravating features are present…
>
> In particular, where the overall criminality of the offender's conduct cannot be encompassed in two consecutive sentences, further consecutive sentences ought to be considered. I reiterate that the above circumstances are non-exhaustive and should not be taken as rigid guidelines to constrain or shackle a sentencing court's powers. Beyond this, I do not think that it will be helpful to spell out how this discretion must be exercised. Myriad permutations of offending can take place and too dogmatic or structured an approach would constrain effective sentencing. In the ultimate analysis, the court has to assess the totality of the aggregate sentence with the totality of the criminal behaviour.

131 I therefore agreed with the Prosecution's submission that the overall criminality of the accused's conduct rendered this a compelling case for ordering at least three of the sentences to run consecutively. [note: 102]

Decision

132 For the above reasons, I sentenced the accused to 12 years and 6 months' imprisonment and 12 strokes of the cane for each of the Proceeded Charges. I ordered that three of the sentences were to run consecutively, with the 22nd charge to run concurrently, for an aggregate sentence of 37 years and 6 months' imprisonment with caning of 24 strokes. I backdated his sentence to the date of his remand (*ie*, 18 August 2009).

133 Finally, while the individual sentence of 12 years and 6 months' imprisonment per charge was lower than the benchmark of 15 years for a Category 3 Rape, this should not be taken as an indication that the acts committed by the accused against the individual victims were not serious. Rather, it was the result of my regard to the totality principle to ensure that the overall aggregate sentence to the accused was not excessive. He was already 40 years old at the time of his remand. [note: 103] Should he be given the full one third remission of his sentence, he would be 65 years old by the time of his release from prison. In my view, the aggregate sentence of 37 years and 6 months imprisonment was proportionate and adequate for the protection of the public from the accused, a serial rapist with poor prospects of rehabilitation.

[note: 1] NE, 6 Aug 2012, p 21, lines 25-30.

[note: 2] SOF, para 4.

[note: 3] SOF, para 5.

[note: 4] SOF, para 6.

[note: 5] SOF, paras 8–10.

[note: 6] Prosecution's End of Hearing Submissions ("PEHS"), para 4.

[note: 7] Defence's Closing Submissions (Amended) ("DCS"), paras 36, 39; *cf* PEHS, paras 5-12.

[note: 8] NE, 5 Feb 2014, p 49 lines 15–28.

[note: 9] NE, 4 February 2014, p 42 line 11 to p 43 line 7; see also Exhibit P 70.

[note: 10] NE, 8 Apr 2013, p 27 lines 22–30.

[note: 11] NE, 8 Apr 2013, p 28 lines 1–13.

[note: 12] NE, 8 Apr 2013, p 29 lines 16–23.

[note: 13] NE, 5 Feb 2014, p 20–22.

[note: 14] NE, 4 Apr 2013, p 105, lines 26–28; see also NE, 5 Feb 2014, pp 28–30.

[note: 15] NE, 4 Apr 2013, p 105, lines 26–28; see also NE, 5 Feb 2014, p 31 lines 19–26.

[note: 16] DCS, para 25.

[note: 17] PEHS para 3(a) and Tab A.

[note: 18] NE, 13 Feb 2014, p 11, lines 15–17.

[note: 19] DCS, para 34.

[note: 20] See summary in PEHS, paras 13–22.

[note: 21] NE, 13 Feb 2014, p 3, lines 6–17.

[note: 22] Exhibit PS 15, conditioned statement of PW15, para 4; NE, 3 Apr 2013, p 70 lines 15–18; NE 3 Apr 2013, p 117 lines 1–13

[note: 23] NE, 3 Apr 2013, p 76.

[note: 24] NE, 3 Apr 2013, p 87.

[note: 25] NE, 3 Apr 2013, p 89.

[note: 26] NE, 3 Apr 2013, p 94.

[note: 27] NE, 3 Apr 2013, p 95, lines 7–15.

[note: 28] NE, 3 Apr 2013, p 95, lines 2–4.

[note: 29] Exhibit PS 16, conditioned statement of [X], para 6.

[note: 30] NE, 3 Apr 2013, p 97, lines 29–32.

[note: 31] NE, 3 Apr 2013, p 101, lines 11–31.

[note: 32] NE, 3 Apr 2013, p 105, lines 4–18.

[note: 33] NE, 3 Apr 2013, p 107, lines 12–15.

[note: 34] NE, 3 April 2013, p 80 lines 11–16.

[note: 35] See summaries at PEHS, paras 26–34; DCS, para 98.

[note: 36] NE, 10 Aug 2012, p 62, lines 16-20.

[note: 37] NE, 13 Aug 2012, pp 24, 26–27.

[note: 38] NE, 10 Aug 2012, p 61, at lines 2–10.

[note: 39] NE, 10 Aug 2012, p 75, lines 26–32.

[note: 40] NE, 10 Aug 2012, p 96, lines 20–22.

[note: 41] Exhibit PS9, PW9's conditioned statement, para 12.

[note: 42] Exhibit PS9, PW9's conditioned statement, para 13; NE, 10 Aug 2012, p 93 line 31 to p 94 line3.

[note: 43] Exhibit PS9, PW9's conditioned statement, paras 18–19.

[note: 44] DCS, para 99.

[note: 45] Exhibit PS 9, conditioned statement of PW9, para 8.

[note: 46] DCS, para 102.

[note: 47] DCS, para 100.

[note: 48] See summary at PEHS, paras 36–41; DCS, paras 43–46.

[note: 49] DCS, paras 45–47.

[note: 50] NE, 12 Feb 2014, p 101, lines 23–28.

[note: 51] DCS, para 57.

[note: 52] DCS, paras 58–60.

[note: 53] PS 10, conditioned statement of PW10, para 14.

[note: 54] DCS, para 63–64.

[note: 55] DCS, para 65.

[note: 56] See summaries at PEHS, paras 43–49; DCS, para 66.

[note: 57] NE, 8 Aug 2012, p 98.

[note: 58] NE, 12 Feb 2014, p101 line 29 to p 102 line 2.

[note: 59] DCS, para 67; NE, 10 Aug 2012, p 19 at lines 24–31.

[note: 60] DCS, para 68.

[note: 61] DCS, paras 70–77.

[note: 62] See summary at PEHS, paras 50–53; DCS, para 80.

[note: 63] NE, 14 Aug 2012, p 6 lines 6–10.

[note: 64] NE, 14 Aug 2012, pp 6 and 8.

[note: 65] NE, 14 Aug 2012, p 8 lines 14–21.

[note: 66] NE, 14 Aug 2012, p 9, lines 19–21.

[note: 67] NE, 14 Aug 2012, p 10, lines 1–6.

[note: 68] NE, 14 Aug 2012, p 22, lines 12–22.

[note: 69] NE, 14 Aug 2012, p 68 lines 8–21.

[note: 70] NE, 14 Aug 2012, p 68 lines 25–27.

[note: 71] NE, 14 Aug 2012, p 69 lines 25–29.

[note: 72] DCS, para 88.

[note: 73] DCS, para 84.

[note: 74] DCS, para 85.

[note: 75] DCS, paras 94–96.

[note: 76] NE, 5 Feb 2014, p 24, lines 1–11.

[note: 77] Prosecution's Reply Submissions ("PRS"), para 9.

[note: 78] DCS, para 65.

[note: 79] NE, 14 Aug 2012, p 88, lines 4–19.

[note: 80] NE, 12 Feb 2014, pp 128–130.

[note: 81] PRS, para 22.

[note: 82] NE, 8 April 2013, pp 32–34.

[note: 83] NE, 5 February 2014, p 24, lines 14–21.

[note: 84] See summary at PEHS, para 63.

[note: 85] PEHS, paras 72–74.

[note: 86] DCS, para 85.

[note: 87] NE, 3 Apr 2013, p 28, lines 8–18.

[note: 88] DCS, paras 12–13.

[note: 89] PEHS, para 3.

[note: 90] Prosecution' Submissions on Sentence ("PSS"), paras 3–4.

[note: 91] DCS, para 183.

[note: 92] NE, 27 May 2014, p 15.

[note: 93] PSS, paras 12–14 and Appendix 1.

[note: 94] PSS, Annex A.

[note: 95] DCS, para 175.

[note: 96] PSS, para 61.

[note: 97] NE, 27 May 2014, p 6, lines 17–20.

[note: 98] Exhibit D2, para 20.

[note: 99] PEHS, para 77.

[note: 100] Exhibit P66, at pp 2–3.

[note: 101] DCS, paras 115–116, 155 and 161.

[note: 102] PSS, para 113.

[note: 103] SOF, para 1 (see date of birth).

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