IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 169

Criminal Case No 19 of 2014

Between

Public Prosecutor

And

Lim Choon Beng

GROUNDS OF DECISION

[Criminal Procedure and Sentencing]

Public Prosecutor
v
Lim Choon Beng

[2016] SGHC 169

High Court — Criminal Case No 19 of 2014
Foo Chee Hock JC
3, 4, 6; 10 May 2016

22 September 2016

Foo Chee Hock JC:

Introduction

1 In the wee hours of the morning on 9 February 2013, the accused, Lim Choon Beng, raped and sexually assaulted the victim successively at three locations (first to third locations) along public roads. There were a total of eight charges before the court (marked as "C1" – "C8"). Of these, the accused pleaded guilty to and was convicted on C2, C3, C6 and C7. He admitted to the

offences in, and consented to having, C1, C4, C5 and C8 taken into consideration for the purpose of sentencing.

2 The four charges proceeded with comprised:

(a) one count of aggravated outrage of modesty (at the first location) under s 354A(1) of the Penal Code (Cap 224, 2008 Rev Ed) ("PC") (**C2**);

(b) two counts of rape (at the second and third locations) under s 375(1)(*a*) and punishable under s 375(2) of the PC (**C3** and **C6** respectively); and

(c) one count of penile-oral penetration without the victim's consent (at the third location) under s 376(1)(*a*) and punishable under s 376(3) of the PC (**C7**).

3 For convenience of reference, the eight detailed charges were as follows:

That you, **LIM CHOON BENG**,

[At the first location]

[C1] on 9 February 2013, sometime around 3.15 a.m., along Martin Road, in front of the 'Watermark' condominium located at No. 1 Rodyk Street, did commit rape of one [xxx] (Date of Birth: [xxx]), to wit, you penetrated the vagina of the said [xxx] with your penis without

her consent, and you have thereby committed an offence under Section 375(1)(a) and punishable under Section 375(2) of the Penal Code, Chapter 224 (2008 Rev. Ed.).

[At the first location]

[C2] on 9 February 2013, sometime around 3.15 a.m., along Martin Road, in front of the 'Watermark' condominium located at No. 1 Rodyk Street, did use criminal force to one [xxx] (Date of Birth: [xxx]), intending to outrage her modesty, to wit, by grabbing and kissing her left breast, and in order to facilitate the commission of this offence, you voluntarily caused wrongful restraint to the said [xxx] by sitting on her body, and you have thereby committed an offence punishable under Section 354A(1) of the Penal Code, Chapter 224 (2008 Rev. Ed.).

[At the second location]

[C3] on 9 February 2013, sometime around 3.25 a.m., along Martin Road, in front of No. 100 Robertson Quay, did commit rape of one [xxx] (Date of Birth: [xxx]), to wit, you penetrated the vagina of the said [xxx] with your penis without her consent, and you have thereby committed an offence under Section 375(1)(a) and punishable under Section 375(2) of the Penal Code, Chapter 224 (2008 Rev. Ed.).

[At the second location]

[C4] on 9 February 2013, sometime around 3.25 a.m., along Martin Road, in front of No. 100 Robertson Quay, did sexually penetrate the vagina of one [xxx] (Date of Birth: [xxx]) 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.).

[At the second location]

[C5] on 9 February 2013, sometime around 3.25 a.m., along Martin Road, in front of No. 100 Robertson Quay, did penetrate the mouth of one [xxx] (Date of Birth: [xxx]) with your penis without her consent, and you have thereby committed an offence under Section 376(1)(a) and punishable under Section 376(3) of the Penal Code, Chapter 224 (2008 Rev. Ed.).

[At the third location]

[C6] on 9 February 2013, sometime around 3.35 a.m., along River Valley Close, near lamp post no. 16, did commit rape of one [xxx] (Date of Birth: [xxx]), to wit, you penetrated the vagina of the said [xxx] with your penis without her consent, and you have thereby committed an offence under Section 375(1)(a) and punishable under Section 375(2) of the Penal Code, Chapter 224 (2008 Rev. Ed.).

[At the third location]

[C7] on 9 February 2013, sometime around 3.35 a.m., along River Valley Close, near lamp post no. 16, did penetrate the mouth of one [xxx] (Date of Birth: [xxx]) with your penis without her consent, and you have thereby committed an offence under Section 376(1)(a) and punishable under Section 376(3) of the Penal Code, Chapter 224 (2008 Rev. Ed.).

> **[C8]** on 13 February 2013, at or about 3.10 p.m., at Blk 664 Jurong West Street 64 #15-260, Singapore, did have in your possession one 'Acer Aspire' laptop containing thirteen (13) films which are obscene, and you have thereby committed an offence punishable under Section 30(1) of the Films Act, Chapter 107 (1998 Rev. Ed).

Facts

4 The victim is a Chinese national. At the time of the offence, she was approaching 25 years of age, and she had been working in Singapore for about five months[1] as a performing artiste. Her place of residence was a rented unit in an apartment block along River Valley Close.

5 At about 3.00am on 9 February 2013, the victim was walking home from Havelock Road by herself. To get home, she would have to cross a bridge at Saiboo Street, walk along Martin Road and turn onto River Valley Close.[2] Around this time, the accused was also near Saiboo Street. He had been drinking at a bar at the (now-defunct) Gallery Hotel, 76 Robertson Quay.[3]

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1 Statement of Facts, Tab F, p 1, last para; Victim Impact Statement, para 2.

2 Statement of Facts, para 6.

3 Statement of Facts, para 7.

Facts pertaining to C2

6 When the victim was walking along Martin Road (having crossed the bridge at Saiboo Street), she noticed the accused crossing the road. The accused had been part of a group walking along the opposite side of Martin Road. The victim, perceiving that the accused was approaching her, slowed her pace so that he could walk ahead of her.[4] It was after this that the accused engaged the victim.

7 The facts relating to C2 (the aggravated outrage of modesty charge) as set out in the Statement of Facts read:

> 9. After walking in front of the victim for a short distance, the accused suddenly turned around and spoke to the victim in English. The victim replied that she did not understand English. The accused then asked the victim in Mandarin if she was a Chinese National and whether she liked American men. The victim did not reply and quickened her pace.
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> 10. As she was walking away, the victim suddenly felt the accused grab her buttocks. In response, she pushed him away and asked what he was doing. At this point, the accused grabbed her hand and shouted at the victim. The victim flung off his hand and continued walking at a faster pace.

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4 Statement of Facts, para 8.

> 11. The accused lifted the victim's skirt and the victim turned around. The victim became frightened and shouted again.
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> 12. Shortly after this, the accused grabbed her shoulders and pushed her backward. As a result, the victim fell backwards. This was at a grass patch near some plants in front of the 'Watermark' condominium located at No. 1 Rodyk Street at around 3.15 a.m.
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> 13. The accused quickly sat on her lower body and pulled at the collar of her dress. The victim struggled to break free, at the same time shouting for help. As the accused continued pulling at her dress, the zipper at the back of the dress gave way. The collar of her dress fell and her bra became exposed to the accused.
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> 14. As the victim was still struggling, the accused fiercely told her not to force him to hit her. The accused then pulled down her bra and grabbed her left breast. He kissed her left breast as he restrained her by sitting on top of her.
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> 15. As the victim begged the accused to let her go and shouted for help, the accused covered the victim's mouth. He then pulled up the victim's dress, revealing her panties. The accused pulled the victim's panties downwards whilst the victim resisted by pulling it upwards, tearing the panties. The victim told the accused that she was having her menses and begged him to let her off. The accused paid no heed and pulled off her panties.

Facts pertaining to C3

8 The facts relating to C3 (the first rape charge proceeded with) read:

17. The accused only got off the victim when he saw some cars passing by. The victim tried to retrieve her panties which the accused had removed, in order to put them back on. However, the accused snatched her panties and flung them even further away, towards a patch of vegetation in front of "Watermark" condominium. He then stood up, pulled the victim by her arm and asked her to follow him home.

18. The accused then pulled the victim across Rodyk Street, to the raised platform area in front of 'Robertson 100' condominium located at No. 100 Robertson Quay. This was at about 3.25 a.m. The accused then grabbed the victim's neck with one hand and hit her head against the wall. Following this, the accused then pinned the victim onto the ground. As a result of this, the victim felt dizzy.

19. The victim begged the accused to let her go. However, the accused threatened her by warning her not to shout and not to do things which would force him to beat her. The victim was frightened. The accused removed his pants and tried to penetrate her vagina with his penis. The victim touched her vagina with her finger and showed her bloodied finger to the accused, telling him that she was having her menses and to let her go. However, the accused replied that "this was how he liked it".

20. The accused penetrated the victim's vagina with his penis. The victim shouted for help and continued to beg him to let her go. The accused thrust his penis in and out of the victim's vagina and she felt pain.

21. After some time, the accused withdrew his penis, stood up and put on his trousers. The victim quickly sat up and removed both her high heels in order to allow her to run away with ease. Having removed her heels, she jumped from the platform over a plot of plants onto Martin Road. She was prepared to run,

> however the accused appeared behind her, pulled her hand and said he wanted to bring her home.
>
> 22. The victim felt afraid that the accused would bring her to a dark location. The victim then grabbed the accused's wrist and lied to him that they could go to her home instead. The victim's intention was to lead the accused to her apartment where she could seek help from her security guard.

Facts pertaining to C6 and C7

9 The facts relating to C6 (the second rape charge) and C7 (the penile-oral penetration charge) read:

> 25. After the accused and victim left No. 100 Robertson Quay, they walked along Martin Road. When they reached a grass patch along River Valley Close, near lamp post 16 at around 3.35 a.m., the accused suddenly pinned the victim to the ground and asked her to perform oral sex on him. He then proceeded to forcefully insert his penis into her mouth.
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> 26. The victim felt the accused's penis become erect as he thrust his penis a few times in her mouth. After some time, the accused inserted his penis into her vagina. The victim continued crying loudly, in the hope that someone would come and rescue her. She begged him to let her go to no avail.
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> 27. As the accused continued the forced intercourse with her, a taxi stopped near them, and the accused quickly stopped what he was doing.

The aftermath

10 As the accused stood up to wear his pants, the victim escaped. After running some distance, she stopped a car and asked the female driver to send her to the police. As the driver could not locate the police station, the victim phoned a friend and informed that friend that she had been raped. Her friend called the police and advised the victim to return to the area of River Valley Close.[5] As the driver was unable to find her way back, the victim alighted from the car and took a taxi back to the area, with the driver's car following behind. Upon reaching River Valley Close, the victim found police officers together with the accused. There, the victim identified the accused to the police as the person who had raped her.[6]

11 An analysis of the damage and the soil on the apparel worn by the accused and victim revealed the following findings:[7]

> a. The victim's pair of panties was found strewn amongst vegetation at the first location. There was a zig-zag shaped tear measuring 23.5 cm at the back central region of the panties, spanning across the width of the panties;

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5 Statement of Facts, para 30.

6 Statement of Facts, para 31.

7 Statement of Facts, para 32(a)–32(e), Tab B–Tab D.

> b. The slider of the zipper at the back of the victim's dress was found to be dislodged from the right side, with two teeth missing from the right side at 14 mm from the top;
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> c. Soil was found on several areas of the Victim's dress and a few areas on her shawl;
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> d. Soil-like stains were found on the lower half of the Accused's sleeves and front right region of his shirt; and
>
> e. Soil-like stains were found on the front right and left knee regions of the Accused's jeans.

12 The DNA analysis on the apparel worn by the accused and victim revealed the following findings:[8]

> a. The Accused's DNA was found on the inside of the victim's left bra cup;
>
> b. The victim's blood was found on the interior of the Accused's underwear, the interior of his pants and the interior bottom front of his shirt; and
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> c. The Accused's DNA was found on the victim's high heel shoe.

13 The accused admitted to the Statement of Facts without qualification. I found him guilty and convicted him of the proceeded charges (*ie*, C2, C3, C6 and C7) accordingly. I now turn to the issue of sentence.

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8 Statement of Facts, para 33(a)–33(c), Tab E.

The submissions on sentence

Prosecution's submissions on sentence

14 The Prosecution submitted that a global sentence of 17 years' imprisonment and 24 strokes of the cane was appropriate in this case.[9] In particular:

(a) C2 (the aggravated outrage of modesty charge) should carry two to three years' imprisonment and five strokes of the cane;

(b) each of the two rape charges (C3 and C6) should carry 12–13 years' imprisonment and 12 strokes of the cane (although it should carry at least 14 years' imprisonment and 12 strokes of the cane had it stood alone);[10] and

(c) C7 (the penile-oral penetration charge) should carry five to six years' imprisonment and five strokes of the cane (although it should carry at least seven to 11 years' imprisonment and five to six strokes of the cane had it stood alone).[11]

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9 PP's WS, paras 6, 36 and 40; Transcript, Day 3, p 7:21–7:23.

10 PP's WS, paras 31 and 39; Transcript, Day 3, p 6:18–6:21.

11 PP's WS, paras 32, 35 and 39; Transcript, Day 3, p 4:24–4:28.

15 In particular, the Prosecution submitted that the rapes were aggravated by four factors. There had been repeated rapes and sexual assaults[12] along public roads[13] by a total stranger,[14] leaving a prolonged impact on the victim.[15] In addition, it was submitted that the guilty plea,[16] the lack of serious physical injuries,[17] and the intoxicated state of the accused had no mitigating value.[18]

16 While the Prosecution accepted that the total sentence would "have to be tempered by the totality principle",[19] it was submitted that the imprisonment terms for either one of the rape charges and the penile-oral penetration charge should run consecutively, to reflect the "enhanced culpability of the Accused".[20]

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12 PP's WS, paras 7(b) and 11–13; Transcript, Day 3, pp 5:18–5:23 and 19:10–19:11.

13 PP's WS, paras 7(c) and 14–16; Transcript, Day 3, pp 5:23–5:30 and 19:11–19:12.

14 PP's WS, paras 7(a) and 9–10; Transcript, Day 3, pp 5:12–5:18 and 19:12.

15 PP's WS, paras 17–19; Transcript, Day 3, pp 5:30–6:9.

16 PP's WS, paras 21–24.

17 PP's WS, paras 25–28.

18 PP's WS, paras 29–30; Transcript, Day 3, pp 15:9–16:15.

19 PP's WS, para 6.

20 PP's WS, paras 37–38; Transcript, Day 3, pp 6:23–7:2.

The mitigation plea

17 The Defence submitted that a total sentence of 13–15 years' imprisonment with caning was appropriate in this case.[21] In particular:

(a) C2 (the aggravated outrage of modesty charge) should carry two to three years' imprisonment and less than six strokes of the cane;[22]

(b) each of the two rape charges (C3 and C6) should carry 11–12 years' imprisonment and less than 12 strokes of the cane;[23] and

(c) C7 (the penile-oral penetration charge) should carry five to six years' imprisonment and less than six strokes of the cane.[24]

18 The Defence highlighted the accused's personal circumstances and submitted that several considerations were mitigating or at least neutral.[25] The accused had been intoxicated

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21 Mitigation, paras 4 and 53–55.

22 Mitigation, para 49; Transcript, Day 4, p 3:21–3:23.

23 Mitigation, para 42; Transcript, Day 4, p 3:18–3:19.

24 Mitigation, para 44; Transcript, Day 4, p 3:19–3:21.

25 Mitigation, paras 14 and 30.

and could not recall the offences,[26] and he had shown true contrition and saved resources by pleading guilty before the victim was cross-examined.[27] There was also no evidence of injury, sexually transmitted disease, pregnancy, sexual perversity, stupefying drugs or weapons,[28] no attempt to evade arrest or fabricate alternative versions of events,[29] and no premeditation.[30]

19 The Defence argued that only the imprisonment terms for one rape charge (in particular C3) and the aggravated outrage of modesty charge should run consecutively as that would "satisfy the need for deterrence and retribution" and "reflect the severity" of the accused's conduct.[31] This was because the offences arose from a single incident lasting 20 minutes and involved only one victim.

Relevant sentencing factors

20 I will examine the relevant sentencing factors before discussing my decision on the sentences for the individual offences and the global sentence. While the arguments and findings on these

26 Mitigation, paras 15–20. See also Report of Dr Lim Yun Chin dated 28 October 2015, at Mitigation, Tab 3, p 3, "Opinion".

27 Mitigation, paras 21–24.

28 Mitigation, paras 25–26 and 30.

29 Mitigation, paras 27–28.

30 Mitigation, para 29.

31 Mitigation, paras 4 and 50-53; Transcript, Day 3, p 13:3-13:29.

factors were mostly made in the context of the rape offences, they applied where relevant to the other offences as well.

Repeated rapes and sexual assaults

21 The Prosecution submitted that the rapes were aggravated by virtue of the fact that there were repeated rapes in the course of a single attack or incident. This engaged the issue of the applicable category of benchmark sentences.

22 V K Rajah J in *Public Prosecutor v NF* [2006] 4 SLR(R) 849 ("*PP v NF*") established four categories of rape and their corresponding sentencing benchmarks as follows:

(a) Category 1 rapes involved rapes "without mitigating or aggravating factors", and the starting point was ten years' imprisonment and not less than six strokes of the cane (*PP v NF* at [24]).

(b) Category 2 rapes involved at least one of the factors enunciated in *R v William Christopher Millberry* [2003] 2 Cr App R (S) 31 ("*Millberry*") (*PP v NF* at [20] and [36]), namely where:

(i) there were multiple offenders acting together;

(ii) the offender was in a "position of responsibility" towards the victim or was someone

whom the victim trusted "by virtue of his office of employment";

(iii) the offender abducted the victim or held the victim captive;

(iv) the offender knowingly suffered from a life-threatening sexually transmissible disease (whether or not he had informed the victim, and whether the disease was actually transmitted);

(v) the victim was a child or a vulnerable person by virtue of "physical frailty, mental impairment or disorder or learning disability";

(vi) the victim was targeted because of race or "membership of a vulnerable minority"; or

(vii) *there was "[r]epeated rape in the course of one attack"* [emphasis added].

In such cases, the starting point would be 15 years' imprisonment and 12 strokes of the cane.

(c) Category 3 rapes involved "repeated rape of the same victim or of multiple victims". In most cases, the Prosecution

would have proceeded with multiple charges and the sentencing judge may discretionarily "order more than one sentence to run consecutively in order to reflect the magnitude of the offender's culpability. As such, there is no overriding need for judges to commence sentencing at a higher benchmark than that applied to category 2 rapes" (*PP v NF* at [37]).

(d) Category 4 rapes involved "offenders who have demonstrated that they will remain a threat to society for an indefinite period of time". In sentencing such offenders, "it would not be inappropriate" to pass the maximum sentence of 20 years' imprisonment and 24 strokes of the cane, if the circumstances so dictated (*PP v NF* at [38]).

23 The Prosecution submitted that the rapes in this case should be characterised as Category 2 rapes on the basis that there were repeated rapes in the course of one attack, in the sense that the accused had "committed a series of repeated rapes and sexual assaults on the Victim at three different locations over a period of time" and each time "shattered her hopes" that "the traumatising experience had ended" by "bringing her to a different location and repeating the sexual violence" and, in so doing, had "vicious and relentless trauma inflicted upon the Victim".[32] The Defence

[32] PP's WS, paras 11–13; Transcript, Day 3, pp 5:18–5:23 and 19:10–

submitted that the rapes fell between Category 1 and Category 2 and was closer to the former, on the basis that Category 2 rapes usually involved vulnerable victims and that the present situation was less serious than that in *Public Prosecutor v Haliffie Bin Mamat* [2015] SGHC 224 ("*Haliffie*") where the accused was sentenced on the basis of a Category 1 rape despite having premeditated the offence, being "in full control over himself" and having subjected the victim to cross-examination and a full trial.[33] Also, the Defence highlighted that each of the rapes corresponded to its own charge.[34]

24 I took the view that the starting point for the rape in each charge was closer to the benchmark for Category 1 rapes than Category 2 rapes.

25 First, the four categories of rape were judicially created and their boundaries were therefore porous rather than rigid. The exercise in categorising each rape offence was simply an attempt to characterise the rape in order to arrive at a starting point which should then be adjusted to reflect the individual circumstances of a case. As Rajah J observed in *PP v NF* at [43], benchmark sentences

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19:11.

33 Mitigation, paras 31–42 (especially at paras 32–35 and 40–41); Transcript, Day 3, p 12:10–12:11, Day 4, p 3:16–3:18.

34 Transcript, Day 3, p 12:2–12:9.

were meant to provide stability and predictability in sentencing, but "should never be applied mechanically, without a proper and assiduous examination and understanding of the factual matrix of the case".

26 Second, the factual matrix here was delicate in the sense that this was a case having the flavour of both a single transaction and multiple distinct transactions. On one hand, the entire ordeal lasted about 20 minutes and at all times the victim not only never left the accused's physical proximity but was also physically at the accused's mercy when moving from the first location to the second.[35] On the other hand, based on the charges proceeded with, there were two rapes in two different locations at two different times (or speaking more generally, four distinct sexual offences in three different locations at four different times), and the accused forced himself on the victim again despite having had a clear opportunity to desist when he moved from one location to the next.

27 Third, the Prosecution proceeded with two rape charges in respect of this incident. In the case of multiple rapes, the Prosecution could *either* bring a single charge for the entire transaction and say that it was aggravated by virtue of multiple rapes, *or* bring multiple charges with one charge for each rape.

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35 Mitigation, para 3.

This was their prerogative. However, when multiple charges were brought, it did not automatically follow that each charge (for which sentence was to be passed) was elevated to Category 2 rape. My conclusion that the benchmark sentence for Category 2 rapes was more applicable to "single charge" situations embraced the following underlying observations:

(a) In dealing with Category 3 rapes which addressed situations of "repeated rape of the same victim or of multiple victims" (*PP v NF* at [37]), Rajah J did not lay down a numerical sentencing benchmark but stated that the Prosecution would in most instances "proceed with multiple charges against the accused" and the Judge could discretionarily order at least two sentences to run consecutively to reflect the offender's culpability. This suggested that the reference to "repeated rape" in Category 2 rapes was to multiple rapes which formed *the subject of a single charge* for which the sentence had to be enhanced.

(b) The present case may be contrasted with *Public Prosecutor v Shamsul bin Sa'at* [2010] 3 SLR 900, where Chan Seng Onn J held that the accused had "clearly" committed a Category 2 rape on the basis of "the repeated

> sexual assaults". The accused had been charged for only *one* count of aggravated rape under s 375(3)(*a*)(i) of the PC, but this was "not for want of trying"; crucially, the evidence showed that the accused "had repeatedly tried to rape the Victim, but had failed only because he was unable to sustain an erection" (at [19]). In contrast, the Prosecution here proceeded with two distinct charges of rape against the present accused, arising out of the entire incident.

28 Ultimately, I thought that the fact of repeated rapes (and other sexual assaults) here did not compel the conclusion that each rape offence in C3 and C6 should be treated as Category 2 rape. In any event, I did not consider the categorisation to be the final word as to the sentence to be imposed. Instead, it was necessary to have regard to the nuances in the factual matrix in deciding the individual sentence for the rape charges while also being mindful of the total sentence for the entire transaction.

Offences committed in public

29 The Prosecution, relying on *Public Prosecutor v Mohammed Liton Mohammed Syeed Mallik* [2008] 1 SLR(R) 601 ("*Liton*"), submitted that it was an aggravating factor that the rapes occurred in a public place, and that the "audacity of the Accused in the present case outweighs that of" the accused in *Public Prosecutor v*

Chang Kar Meng [2015] SGHC 165 ("*Chang Kar Meng*") considering that the rapes (and sexual assaults) occurred across different locations.[36]

30 In my view, the occurrence of the rapes in a public place was clearly an aggravating factor on the present facts. The idea that one could walk safely on the public roads of Singapore at any time was shattered by the impulsive and shocking acts of the accused. The accused raped the victim in an "outrageous manner" by attacking her not only "in open areas along public roads, where there were passing cars",[37] but also in the vicinity of her residence. An eyewitness saw the accused on top of the victim and called the police.[38] When the accused realised that there were cars passing by the first location, he proceeded to a different (but still public) location to continue his sexual attacks. This case was similar to *Chang Kar Meng*, where the accused attacked the victim at the void deck of the block of flats in which she was living.[39] I agreed with the Prosecution that the accused "rattled the sense of security which residents in Singapore have always enjoyed", and triggered "wider unease among the majority of residents in Singapore, and

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36 PP's WS, para 14–16; Transcript, Day 3, pp 5:23–5:30 and 19:11–19:27.

37 PP's WS, para 15.

38 Statement of Facts, para 23.

39 See paras 3 and 8 of Statement of Facts in *Chang Kar Meng* at [5].

leave them unsure as to whether they can walk home safely at night".[40]

31 Hence, as I stated in open Court, the predominant sentencing consideration here must be deterrence, both general and specific deterrence.[41]

Rape (or sexual assault) by stranger

32 The Prosecution, relying on *Chang Kar Meng*, submitted that the fact that this was a "stranger rape" case justified a high sentence.[42] However, this factor was not expressly referred to either in the Prosecution's submissions or the reasons of the Court in *Chang Kar Meng* as an aggravating factor. *Chang Kar Meng* was therefore unhelpful to the Prosecution.

33 Regarding the factor of stranger rape *per se*, I was of the view that on the facts of this case, after evaluating the Prosecution's submissions, this factor was neutral, in the sense that

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40 PP's WS, para 16.

41 Transcript, Day 4, pg 6:7 – pg 6:9.

42 PP's WS, para 9–10; Transcript, Day 3, pp 5:12–5:18 and 19:12.

it was not aggravating or mitigating but should be assessed as part of the factual matrix for the purpose of sentencing.

34 I am not saying that the fact of stranger rape can never be aggravating. In *Liton* at [99]–[116], the Court of Appeal set out the approach taken by case law, which was to examine the prior relationship between the offender and victim and what effect this should have on the sentence. In short, "the effect of any prior relationship between the parties will depend on all the circumstances of the case" (*Liton* at [116]).

35 On one view, it may be argued that the Category 1 rape benchmark sentence had already taken the fact of "stranger rape" into account, with the next step being to consider any offender-victim relationship to decide if another category was more applicable. Hence, and as an example, one of the *Millberry* factors (which would situate the rape in Category 2) was the fact that the offender was in a "position of responsibility" towards the victim or was someone whom the victim trusted "by virtue of his office of employment".

36 In the absence of full arguments on this issue, I would venture to suggest, following the logic in *Liton*, that there was similarly no default rule to be applied to "stranger rape" but that its effect would also be dependent on the particular facts of the case.

Impact on victim

37 The Prosecution submitted that the psychological impact of the sexual offences on the victim was an aggravating factor (*PP v NF* at [46]–[54]);[43] similarly, that the financial harm suffered by the victim was also an aggravating factor.[44] While the Defence submitted that there was no evidence of physical injury, pregnancy, sexually transmitted disease, sexual perversity, stupefying drugs or weapons,[45] the Prosecution's response was that these facts were not mitigating.[46] In my view, the overall impact of the offences on the victim was to be treated as an aggravating factor.

38 The victim was seen at the Institute of Mental Health on 19 March 2013 for a psychiatric assessment[47]; she also recorded a

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43 PP's WS, paras 17 and 19.

44 PP's WS, para 19; Transcript, Day 3, pp 5:30–6:9.

45 Mitigation, paras 25–26 and 30; Transcript, Day 3, p 11:27–11:28.

46 PP's WS, paras 25–28.

47 Statement of Facts, Tab F, p 1.

Victim Impact Statement with the police in the course of the present proceedings.[48] The contents of the psychiatric report and the statement were not challenged by the Defence. When considering these documents, I bore in mind that the psychiatric report was an almost contemporaneous professional opinion while the Victim Impact Statement had the advantage of being a more recent reflection of the victim's condition. In sum, I gathered that the victim suffered a wide spectrum of harm, but had been able to revert to a life with some elements of normalcy. The pertinent facts and my views were as follows:

> (a) I rejected the Defence's submission regarding the absence of signs of physical violence or injuries for the following reasons given by the Prosecution. First, the very act of rape embodied extreme violence and the lack of other physical injuries was merely a neutral factor (*Public Prosecutor v AOM* [2011] 2 SLR 1057 at [37]).[49] Second, in the Statement of Facts the accused admitted to having caused the victim dizziness by grabbing her neck with one hand, hitting her head against the wall, and thereafter pinning her to the ground. Her torn panties and damaged dress zipper[50]

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48 The Victim Impact Statement was concluded on 4 May 2016 at 4.03pm. The afternoon hearing in open court (on 4 May 2016) took place from 3.42pm to 4.12pm (Transcript, Day 2, pp 1 and 13).

49 PP's WS, para 25.

were also indications of physical violence. Third, the victim did not suffer from external injuries because she stopped struggling after the accused threatened her with bodily harm. At the first location, when the accused tried to pull down the victim's bra to grab and kiss her left breast, the victim resisted and struggled but the accused then "fiercely told her not to force him to hit her".[51] At the second location, before raping the victim, the accused warned her again "not to shout and not to do things which would force him to beat her".[52] Fourth, the accused, by having unprotected sex with the victim, also exposed her to at least the *risk* of sexually transmitted diseases.[53] In this regard, I was not minded to hold the victim's refusal of HIV prophylaxis[54] against her.

At this juncture, I should mention that I could not agree with the Defence's submission that there was a lack of sexual perversity; the accused not only raped her but forcefully inserted his penis into her mouth (see C7).

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50 PP's WS, para 26.

51 Statement of Facts, para 14. See also PP's WS, para 26(d); Transcript, Day 3, p 18:13–18:20 and 18:23–18:26.

52 Statement of Facts, para 19. See also PP's WS, para 26(e) ; Transcript, Day 3, p 18:13–18:16 and 18:20–18:26.

53 PP's WS, para 27.

54 Mitigation, para 30.

(b) In terms of psychological harm, the victim's mood remained low for at least a year[55] and she had recurring nightmares and had not been sleeping well.[56] She constantly thought about the incident,[57] became afraid to face or share confined spaces with male strangers alone,[58] felt anxious when travelling through the scene of the crime,[59] and felt paranoid when walking alone on the street, especially at night.[60] She would feel down when others talked about sexual attacks, as she would think that they were talking about her.[61] Essentially, she had "some adjustment reaction to the unpleasant experience".[62] However, she was assessed to be "spontaneous, relevant and rational in her speech",[63] and showed no "psychotic manifestations", "cognitive impairment" or definite signs of post-traumatic stress

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55 Victim Impact Statement, paras 4 and 6.

56 Statement of Facts, Tab F, "Her Account of the Incident"; Victim Impact Statement, para 3. See also PP's WS, para 18.

57 Statement of Facts, Tab F, "Her Account of the Incident".

58 Victim Impact Statement, paras 3 and 5.

59 Statement of Facts, Tab F, "Her Account of the Incident".

60 Victim Impact Statement, para 9. See also PP's WS, para 19(b).

61 Victim Impact Statement, para 5. See also PP's WS, para 19(c).

62 Statement of Facts, Tab F, "Opinion".

63 Statement of Facts, Tab F, "Medical State Examination".

disorder.[64] She could resume a more normal life with the support of her peers.[65]

(c) In terms of harm in the financial and temporal sense, the victim was unable to carry on work as a club singer as she became afraid to face male strangers.[66] She was compelled to return to China, but not before spending an additional two years in Singapore on a Special Pass, during which she was not allowed to work.[67] To sustain herself in Singapore, she had used up her savings of about RMB500,000 and had to ask her parents for more money.[68]

(d) In terms of harm to the victim impacting her social life, she was no longer able to enjoy Chinese New Year because it was around this time that the attacks happened and she would be reminded of the incident.[69] She felt that she had remained single because of this case, whereas most of her friends had already married.[70]

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64 Statement of Facts, Tab F, "Opinion".

65 Statement of Facts, Tab F, "Her Account of the Incident".

66 Statement of Facts, Tab F, "Background History"; Victim Impact Statement, para 3. See also PP's WS, para 19(a).

67 Victim Impact Statement, para 7. See also PP's WS, paras 19(a) and (d).

68 Victim Impact Statement, para 7. See also PP's WS, para 19(d).

69 Victim Impact Statement, para 6. See also PP's WS, para 19(c).

Intoxication and alcohol-induced amnesia

39 I turn to the issue of intoxication. The Defence submitted that the accused was "clearly intoxicated & inebriated at the material time" and could not recall having committed the offences.[71] The accused, in fact, had been suffering from alcohol abuse and there had been many times where he could not remember how he got to where he was after drinking.[72] This was the result of alcoholic amnesia, a condition which caused the brain to be unable to create memories for what transpired despite the fact that the person voluntarily engaged in his conduct.[73]

40 There were two aspects to this issue: first, its general effect as a sentencing factor; and second, its effect in proving the accused's remorse even though he had initially claimed trial.

41 In *Wong Hoi Len v Public Prosecutor* [2009] 1 SLR(R) 115, the Court held at [44] and [49] that self-induced intoxication was in fact an aggravating factor since it could "cause a victim to experience increased fear and alarm".[74]

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70 Victim Impact Statement, para 7.

71 Mitigation, paras 13 and 15–20; Transcript, Day 3, p 9:25–9:32.

72 Mitigation, paras 11–13.

73 Mitigation, para 16; Transcript, Day 3, pp 9:14-10:25. See also Report of Dr Lim Yun Chin dated 28 October 2015, at Mitigation, Tab 3, p 3, "Opinion".

> 44 … No intoxicated individual must be given the licence to roam public streets at night spoiling for trouble and/or behave in a disorderly and loutish manner. Such behaviour must be emphatically discouraged. I am therefore of the unwavering opinion that **a sentencing judge should *ordinarily* take into account an offender's intoxication as an aggravating consideration. Those who voluntarily imbibe alcohol must, in the usual course of events, take full responsibility for their subsequent offending.**
>
> …
>
> 49 ***A fortiori*, if the facts show that the offender's intoxicated state during the encounter had, by itself, caused the victim to experience an increased state of terror or alarm, then that might be properly regarded as a further aggravating factor.** …
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> [emphasis in original in italics; emphasis added in bold]

42 In this case, I agreed with the Prosecution that the accused's intoxication was self-induced. He was described as an "inveterate alcohol abuser" who was "killing himself by instalment from the abuse of alcohol".[75] In this episode, he had spent over two hours drinking on a nearly empty stomach[76] and it was not the first time he had experienced memory lapses while drunk.[77] While the Prosecution submitted that this factor "can only be viewed as an

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74 PP's WS, para 29; Transcript, Day 3, pp 15:9–16:15.

75 Report of Dr Lim Yun Chin, Mitigation, Tab 3. See also Mitigation, para 17; Transcript, Day 3, p 10:12–10:14.

76 Mitigation, paras 11–12.

77 Transcript, Day 3, p 9:31–9:32.

aggravating factor in the present case, and should not be given any mitigating weight",[78] they clarified in oral submissions that they were merely seeking to treat this as a neutral factor[79]. In my judgment, it was only correct in principle and on the authorities to regard the accused's intoxication as an aggravating factor on the facts here.

43 As for the fact that the accused could not remember anything about the events of 9 February 2013, it was clear that this, being the direct and immediate consequence of the intoxication, by itself was neither exculpatory nor mitigating.[80] However, this amnesia must be further discussed below in relation to his guilty plea.

Plea of guilt

44 The Defence submitted that the accused's plea of guilt was evidence of genuine contrition and that it saved state resources. Accordingly, it should be treated as a mitigating factor. The Prosecution submitted that the plea of guilt was not mitigating in this case because it was the result of a negative assessment of the merits of the case.[81]

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78 PP's WS, para 30.

79 Transcript, Day 3, p 16:6–16:15.

80 Transcript, Day 3, pp 16:13–17:3.

81 PP's WS, paras 21–24.

45 There were two commonly cited jurisprudential bases which justified a reduction in sentence for a timely plea of guilt; they were often referred to as the remorse-based approach (*ie*, a guilty plea evidenced remorse) and the utilitarian approach (*ie*, a guilty plea saved resources). Rajah J in *Angliss Singapore Pte Ltd v Public Prosecutor* [2006] 4 SLR(R) 653 ("*Angliss*") stated at [53]:

> … As noted, our courts have said that there are two jurisprudential bases upon which a reduction in sentence for timeously-effected guilty pleas may be justified. The first is pragmatic: it saves the criminal justice system resources that would have been expended with a full trial. In certain cases, it even spares vulnerable victims and witnesses from having to testify: see *Fu Foo Tong v PP* [1995] 1 SLR(R) 1 ("*Fu Foo Tong*"). This can be termed the *utilitarian* approach. The second is moral: it is not the *fact* that an offender pleads guilty but rather the essence of a guilty plea constituting genuine remorse that attracts the reduction in sentence. This can be termed as the *remorse-based* approach. In respect of the remorse-based approach, two reasons have generally been proffered for placing a premium on and encouraging contrition. The first is that an offender who demonstrates by his plea that he is ready and willing to admit his crime enters the correctional system in a frame of mind that affords hope for success in rehabilitation over a shorter period of time than might otherwise be necessary: see *United States v Henry* 883 F 2d 1010 (11th Cir, 1989) at 1012, citing *Brady v United States* 397 US 742 (1970) at 753. The second and broader rationale is that there are significant, meaningful and profound effects that a genuine, remorseful apology can engender. …

Rajah J, after examining in detail the principles regarding the reduction of sentences for a guilty plea (*Angliss* at [54]–[77]), concluded that a guilty plea could be considered in mitigation when motivated by "genuine remorse, contriteness or regret and/or a desire to facilitate the administration of justice" but generally preferred the remorse-based approach to the utilitarian approach.

(1) Remorse-based approach

46 I begin with the accused's argument that his plea of guilt saved the victim from being subject to the trauma of cross-examination, and was therefore evidence of genuine remorse.[82]

47 It was true that, *ceteris paribus*, an offender who did not put the victim of a sexual offence through cross-examination should be treated as better off than one who did. The earlier an offender pleaded guilty, the more substantial a discount he could expect. These propositions derived from the consideration of the remorse expressed by the accused as evidenced by his later conduct, but their effect would depend on the particular facts, including how the plea played out in the actual proceedings. On our facts, the victim was forced to relive the trauma caused by the offences by having to recount the events during examination-in-chief, during which she broke down.[83] She also had to travel for about 20 hours each way

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82 Mitigation, para 22; Transcript, Day 3, pp 10:27–10:30 and 11:4–11:6.

while not in the best of health. She had returned to China in August 2015 as she had some medical conditions and she underwent an operation about ten weeks before the trial was scheduled to start.[84]

48 The accused averred that he had to hear the victim's evidence first-hand because his defence was that he was drunk and could not remember anything that had happened. In particular, he was "concerned" about "the lack of DNA evidence proving penetration or ejaculation and had doubts about his ability to have an erection, given his level of intoxication", the lack of injuries on himself and on the victim, the fact that he "and his family found it inconceivable that he could commit such offences", and that his request to interview the victim to assess the veracity of her account had been denied.[85]

49 In my finding, I could not say that the accused's condition did not factually have this amnesic effect. Supported by Dr Lim Yun Chin's opinion (report dated 28 October 2015),[86] the accused deserved the benefit of the doubt.

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83 PP's WS, para 23; Transcript, Day 3, p 17:26–17:30.

84 Victim Impact Statement, para 8. See also PP's WS, para 19(e).

85 Mitigation, paras 19–20; Transcript, Day 3, p 10:18–10:29.

86 Mitigation, Tab 3.

50 These contentions however only gave the accused limited mileage. The accused had significant evidence of his wrongdoing before the trial, including the fact that (i) an independent witness saw the accused on top of the victim who was crying;[87] (ii) the victim's account of the sexual assaults was corroborated by evidence that the victim's blood was found on the interior of the accused's underwear, the interior of his pants and the interior bottom front of his shirt, while the accused's DNA was found on the inside of the victim's left bra cup;[88] and (iii) the accused was arrested by the police shortly after his sexual assaults on the victim ended.[89] In assessing the extent of the accused's remorse, the conduct of the accused was relevant. Consistently with what he claimed, he could have pleaded guilty to C2 (aggravated outrage of modesty) while claiming trial to the other charges. I would reject the suggestion that a plea of guilt as regards this one charge would prejudice the defence of the other charges because (i) as I said, the DNA and eyewitness evidence were overwhelmingly strong as regards this charge; and (ii) there was no coincidence in the elements of this charge and the rape charges.

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87 PP's WS, para 22(a); Transcript, Day 3, p 17:13–17:18.

88 PP's WS, para 22(c); Transcript, Day 3, p 17:20–17:24.

89 PP's WS, para 22(b); Transcript, Day 3, p 17:18–17:20.

51 The accused further argued that his statement made pursuant to s 22 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC") expressed remorse.[90] He had stated:

> I really cannot remember committing such a grave sin. I would not have done so in the sober state of mind. I really did not mean such thing to happen. I have no intention to throw my future like that. It was never intentional of me to commit such a crime. I really did not mean for this to happen. I am sorry for causing pain to the victim. …

52 As a preliminary point, I noted that this was simply a direct quotation of the accused's statement which had been made on 20 February 2013, and that the Defence's reference to this statement was *only* for the purpose of showing that there was contrition and that the offence was not premeditated; the accused confirmed that he was not qualifying and that he maintained his plea of guilt.[91] In my judgment, he may have expressed genuine remorse at that point, but that had to be judged by the consistency of his subsequent decisions.

53 Finally, I deal with the accused's argument that he made no attempt to fabricate evidence or another version of events, or to evade arrest, but merely maintained his inability to recall the

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90 Mitigation, para 23; Transcript, Day 3, pp 11:7–11:15 and 29:29–29:32.

91 Transcript, Day 3, pp 2:4–3:3, Day 4, p 3:3–3:12.

offences.[92] In my judgment, it would be an *aggravating* factor if evidence was fabricated (*Ong Seng Hwee v Public Prosecutor* [1999] 3 SLR(R) 1) or if an offender attempted to escape from the crime scene (*Lewis Christine v Public Prosecutor* [2001] 2 SLR(R) 131). Moreover, the accused was apparently "dazed and confused" when he was found near the crime scene; he was therefore in less of a position to escape in the first place than someone who was alert. This was also not a case where the accused had voluntarily surrendered himself to the police after leaving the crime scene. The lack of fabricated evidence or any attempt to escape must therefore be merely neutral and not mitigating. However, it was true that the accused did not proffer an alternative version of the facts for the victim to contend with (*eg*, that there was consent). This factor was largely subsumed in his plea of guilt which was the subject of consideration here.

(2) Utilitarian approach

54 The Defence submitted that the accused had saved resources in that the other witnesses need not be called to the stand and both the Prosecution's and Court's resources were saved.[93] I found that the accused's plea led to a speedy resolution of the matter, the saving of trial days as well as an appeal on conviction. The victim

92 Mitigation, paras 27–28; Transcript, Day 3, p 11:15–11:23.

93 Mitigation, para 24; Transcript, Day 3, p 10:30–10:32.

was not cross-examined, which would have caused even more harm to her. A fair number of witnesses were not required to attend Court or put to further expense or effort and the Prosecution did not need to contend with an alternative version of events. On the other side of the scale, resources had already been expended in preparation for the trial, including working and liaising with the witnesses.

55 Finally, the shocking and heinous nature of the offences here trumped much of the mitigating value of the guilty plea. In the premises, the accused's plea of guilt on the facts of this case had a limited effect on the sentence.

Other matters

56 The Defence submitted that the accused had acted without premeditation. This factor was neutral in principle, but duly noted when considering precedents with an appreciable degree of planning and calculation.

57 The accused had no relevant antecedents.[94] Between the time he was arrested for and the time he was convicted of the charges in the present case, he had been convicted and sentenced on certain charges under the Moneylenders Act (Cap 188, 2010

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94 Mitigation, para 10.

Rev Ed) ("MA"). However, save for my comments at [77] below, I disregarded this fact.

58 In sentencing the accused, I also considered his personal circumstances[95] and the letter written in his mitigation.[96]

The individual and total sentences

59 Having analysed the relevant sentencing factors, I will now proceed to consider the individual sentences for each of the charges and the global sentence.

Individual charges

(1) The aggravated outrage of modesty charge

60 I shall discuss two precedents, which were cited by the Defence, for this charge.

61 First, in *Seow Fook Thiam v Public Prosecutor* [1997] 2 SLR(R) 887,[97] the accused was convicted after trial of one count of aggravated outrage of modesty for using his hand to squeeze the victim's breasts while wrongfully restraining the victim by holding her from behind. The High Court upheld the sentence of 30

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95 Mitigation, paras 5–10; Transcript, Day 3, p 9:14–9:23.

96 Mitigation, Tab 1.

97 See Mitigation, para 48.

months' imprisonment and six strokes of the cane. The accused tried to exculpate himself by casting baseless aspersions on the victim's character (*ie*, alleging that he had had an affair with the married victim). However, I noted that the molest and restraint were brief in that the accused let the victim go almost immediately after she shouted. In contrast, the accused in the present case forced the victim to the ground, sat on her, threatened her and subdued her. [98] This offence was also the prelude to further sexual violence on her at the second location.

62 Then in *Public Prosecutor v Robiul Bhoreshuddin Mondal* [2010] SGHC 10 ("*Mondal*"),[99] the accused faced four counts of rape, one count of digital-vaginal penetration, one count of aggravated outrage of modesty and one count of housebreaking by night to commit rape. The accused had broken into the victim's room at night while she was sleeping, and he raped and sexually assaulted her. In particular, for the aggravated outrage of modesty, the accused had kissed the victim's breasts and sucked her nipples. The accused was sentenced to two years' imprisonment and six strokes of the cane for this charge and to a total sentence of 18 years' imprisonment and 24 strokes of the cane.

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98 Statement of Facts, paras 12-15.

99 See Mitigation, paras 45–46.

63 The Defence argued that this precedent had "more aggravated facts".[100] The attack there lasted over 1.5 hours while the attack on our facts lasted only 20 minutes.[101] There, the accused had caused fear of instant death by threatening to use a knife to kill the victim if she made any noise while, in the present case, there was wrongful restraint and a threat of violence but no weapons or threats of instant death.[102] The accused there acted with premeditation while the accused here acted "on impulse with impaired judgment".[103] Finally, the accused there had fully claimed trial while the accused here pleaded guilty after the victim's examination-in-chief.[104] Admittedly, the facts in *Mondal* were more aggravating. In my view, the sentence imposed in *Mondal* for this specific charge was lenient but it should be seen in the context of an overall sentence of 18 years' imprisonment and the maximum of 24 strokes of the cane for all his offences; and the imprisonment of two years for the aggravated outrage of modesty being ordered to be served concurrently.

64 Having regard to the above analysis, the factors relevant to this charge and the totality principle, I sentenced the accused to 30

100 Mitigation, para 47.

101 Mitigation, para 47(2).

102 Mitigation, para 47(3).

103 Mitigation, para 47(4).

104 Mitigation, para 47(1).

months' imprisonment and four strokes of the cane for the aggravated outrage of modesty charge (*ie*, C2).

(2) Each of the rape charges

65 Of the precedents cited to me, I found that the gravity of the present case was comparable to that in *Chang Kar Meng*. He was convicted of one count of rape and one count of robbery. There, the accused knocked the victim out at the void deck of her block of flats as she was returning home. He wanted to rob her but, overcome by sexual desire, he also raped her on the grass patch near the block of flats. Tay Yong Kwang J would have sentenced him to 14 years' imprisonment and 12 strokes of the cane had the rape charge stood alone, but he received 12 years' imprisonment and 12 strokes of the cane in view of the five years' imprisonment for the robbery charge being ordered to run consecutively with the 12 years' imprisonment for the rape charge. I accepted that there were aggravating factors in *Chang Kar Meng*: the accused had committed the rape in a residential estate, had knocked the victim unconscious and injured her by dragging and rough handling, had degraded the victim further by taking photographs of her in an undressed state, had methodically tried to conceal his tracks and remained at large for about five and a half months (*Chang Kar Meng* at [5] (at para 20 of the Statement of Facts), [9] and [23]–[24]).[105]

66 There were similarities with our present case, including the commission of the offences in public, and near the victim's residence. The present accused literally pulled the victim along from the first location to the second location and hit her head against the wall. As discussed above, our present case had its own aggravating factors which made it comparable to *Chang Kar Meng*, including the variety of sexual offences in three locations, the repeated rapes and the appreciable harm caused to the victim. In determining the individual sentence for each rape offence, I also took into consideration the charges in C1 (rape), C4 (digital-vaginal penetration), C5 (penile-oral penetration) and C8 (possession of obscene films).

67 Accordingly, the sentence here should be higher than in *Haliffie* and *Sivakumar s/o Selvarajah v Public Prosecutor* [2014] 2 SLR 1142 ("*Sivakumar*"), both of which involved a single rape in a vehicle. In *Haliffie* (see [23] above), the accused, who raped and robbed a stranger who had accepted a lift in his car, received 10 years' imprisonment and six strokes of the cane for rape (which ran consecutively with three years' imprisonment and 12 strokes of the cane for a robbery charge). On an overall analysis, I was of the view that the present accused was more culpable on his rape offences.

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105 Transcript, Day 3, p 20:7-20:11.

68 In *Sivakumar*, the accused had – under the guise of being a police officer – raped and outraged the modesty of the victim, and forced her to fellate him. He was convicted after a full trial and received 11 years' imprisonment and five strokes of the cane for the rape charge. Even considering the accused's impersonation (in *Sivakumar*) as an aggravating factor (although its effect was not discussed in relation to the rape offence), I was of the view that the sentence on our facts should be higher.

69 In the premises, for the two rape charges proceeded on (*ie*, C3 and C6), taking into consideration C1, C4, C5 and C8, the totality principle and in the light of my analysis, I sentenced the accused to 13 years' imprisonment and seven strokes of the cane for each rape charge.

(3) The penile-oral penetration charge

70 The precedents cited generally involved sentences of seven to 11 years' imprisonment and five to six strokes of the cane.

71 In *Sivakumar* (introduced above at [67] – [68]), the offender was sentenced to 11 years' imprisonment and five strokes of the cane for the fellatio charge, which was punishable under s 376(3) of the PC. The effect of the offender's impersonation as a police

officer (usually aggravating) was not explained in relation to the fellatio charge. However, the imprisonment terms for the fellatio and rape charges (as well as an impersonation charge) ran *concurrently,* and the global sentence (which included a sentence for outrage of modesty) was 12 years' imprisonment and 12 strokes of the cane. As such, the imprisonment term for the specific fellatio charge – which was the same as that for the rape charge – did not appear to be adjusted downwards to conform to the totality principle.

72 In *BMD v Public Prosecutor* [2015] SGCA 70 ("*BMD*"), the accused was convicted after trial of six charges: two counts of rape, two counts of digital-anal penetration, one charge of penile-anal penetration and one charge of penile-oral penetration.[106] He received seven years' imprisonment and six strokes of the cane for the fellatio charge. This was part of a total sentence of 22 years' imprisonment and 24 strokes of the cane. The sentence was enhanced, *inter alia*, due to the fact that the victim was vulnerable (she was the accused's mildly retarded half-sister and was about 19 years old at the material time, and the accused stood *in loco parentis* to her), and "the lack of remorse and the conduct of the [accused] during the trial" (see *BMD* at [70]).

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106 Mitigation, para 43.

73 If the present penile-oral penetration charge (*ie*, C7) had been a stand-alone charge, I would have imposed a considerably higher sentence. In the premises, I was minded to impose an imprisonment term of four years with four strokes of the cane for C7, having regard to the totality principle. However, due to a situation which I explain below at [77], I sentenced the accused to three years, 10 months and two weeks' imprisonment and four strokes of the cane.

Global sentence

74 The Prosecution submitted that the aggregate sentence should be at least 17 years' imprisonment and 24 strokes of the cane, and that the imprisonment terms for C3 (the rape charge) and C7 (the penile-oral penetration charge) should run consecutively. The Defence submitted that an aggregate sentence of 13–15 years' imprisonment with caning would be appropriate and that the imprisonment terms for C2 (aggravated outrage of modesty) and C3 should run consecutively as the offences arose from a single incident lasting 20 minutes and involving one victim.

75 Under s 307(1) of the CPC, the Court was required here to order at least two imprisonment terms to run consecutively. In addition, the total sentence had to accord with both the one-transaction rule and the totality principle as enunciated in *Mohamed Shouffee bin Adam v Public Prosecutor* [2014] 2 SLR

998 ("*Shouffee*"). In particular, the totality principle was a rule of limitation and a manifestation of proportionality which required the Court to take a last look at the facts and circumstances to assess whether the sentence appeared wrong and, if so, to adjust the sentence by either reassessing which sentences ought to run consecutively, or by recalibrating the individual sentences to arrive at the appropriate aggregate sentence (*Shouffee* at [47], [53], [58]–[59] and [66]–[67] *per* Menon CJ).

76 Although the proceeded charges could be viewed as a single transaction, the totality principle could still apply. In my view, it was appropriate to order the imprisonment terms for C3 (*ie*, rape) and C7 (*ie*, fellatio) to run consecutively. In particular, those were the more serious charges and they involved the violation of different orifices of the body; and I agreed with the Prosecution that the imprisonment terms for these two charges should run consecutively, to "reflect the enhanced culpability" of the accused and to "sufficiently capture the gravity of" his conduct.[107] It was pertinent to consider that the imprisonment term for the other rape charge (C6) was ordered to run concurrently. On an overall assessment, with an eye on the global sentence, it would be appropriate for the imprisonment term in the relatively less serious charge in C2, which was the prelude to the graver offences, to run

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107 PP's WS, para 38; Transcript, Day 3, pp 6:23–7:2.

concurrently. As regards caning, I did not think that I should subject the accused to the maximum of 24 strokes of the cane; a total of 22 strokes of the cane was more considered and appropriate. In my view, a global sentence of 17 years' imprisonment and 22 strokes of the cane accorded with the totality principle.

77 The accused was remanded since 9 February 2013 for the present offences. On 25 March 2013 (*ie*, while on remand), he was convicted and sentenced on offences under the MA. I did not order the imprisonment terms for the present offences to take effect from 9 February 2013 (*ie*, the date of his remand), since that would allow the accused to serve the sentences for the moneylending offences and the present offences at the same time. I therefore ordered the imprisonment terms for the present offences to commence on 14 September 2013, the date on which the accused was deemed to have completed those sentences for the moneylending offences on the basis that the one-third remission was awarded.[108] However, to also account for the six weeks when the accused was on remand from 9 February 2013 to 25 March 2013, the Prosecution consented to reducing the total imprisonment term by six weeks.[109] Accordingly, I ordered that the imprisonment

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108 Transcript, Day 4, p 4:14–4:24.

109 Transcript, Day 4, pp 4:30–5:3.

term for C7 (*ie*, the penile-oral penetration charge) be three years, 10 months and two weeks rather than four years.

Conclusion

78 In conclusion, I imposed the following sentences:

(a) C2 — 30 months' imprisonment and four strokes of the cane;

(b) C3 — 13 years' imprisonment and seven strokes of the cane;

(c) C6 — 13 years' imprisonment and seven strokes of the cane; and

(d) C7 — imprisonment of three years, 10 months and two weeks, and four strokes of the cane.

79 I ordered the imprisonment terms for C3 and C7 to run consecutively from 14 September 2013, while the other imprisonment terms would run concurrently with these two terms. The total sentence was therefore 16 years, 10 months and two weeks' imprisonment, and 22 strokes of the cane.

Foo Chee Hock
Judicial Commissioner

Lin Yinbing, Zhuo Wenzhao and Christine Liu (Attorney-General's Chambers) for the Prosecution;
Anand Nalachandran (TSMP Law Corporation) and Cai Chengying (Allen & Gledhill LLP) for the accused.
