

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 170

Criminal Case No 6 of 2016

Between

Public Prosecutor

And

BAU

JUDGMENT

[Criminal Law] — [Statutory Offences] — [Children and Young
Persons Act]

[Criminal Law] — [Offences] — [Sexual Penetration of Minor]

TABLE OF CONTENTS

THE CHARGES.....	1
EVIDENCE OF V (PW1)	2
EVIDENCE OF STATION INSPECTOR IRWAN SUMARTO (PW3)..	14
EVIDENCE OF STAFF SERGEANT NORAZMIN YAP (PW5)	15
EVIDENCE OF DR BHATIA (PW2)	15
EVIDENCE OF DR PATHY (PW4)	15
EVIDENCE OF T (PW6)	16
EVIDENCE OF AN AUNT (PW7).....	17
EVIDENCE OF F (PW8).....	18
EVIDENCE OF THE MOTHER (PW9)	19
EVIDENCE OF C (PW 10)	23
EVIDENCE OF STAFF SERGEANT NURFANIN BIN NORDIN (PW11)	25
EVIDENCE OF BAU, THE ACCUSED (DW1)	25
THE ARGUMENTS AND THE COURT’S CONCLUSION	27
CONCLUSION.....	33

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Public Prosecutor

v

BAU

[2016] SGHC 170

High Court — Criminal Case No 6 of 2016

Woo Bih Li J

16–19, 23–26 February; 31 March; 10–11 May; 1 June 2016

25 August 2016

Judgment reserved.

Woo Bih Li J:

The charges

1 The accused (“BAU”) faced the following charges:

1ST CHARGE

on 27 July 2012, at or about 2.15 p.m., at [address redacted], did commit an indecent act with a child, one xxx, female/then 13 years of age ..., *to wit*, by kissing her on the mouth, and you have thereby committed an offence punishable under section 7(a) of the Children and Young Persons Act (Cap. 38, 2001 Rev. Ed.).

2ND CHARGE

on 27 July 2012, at or about 2.15 p.m., at [address redacted], did commit an indecent act with a child, one xxx, female/then 13 years of age ..., *to wit*, by licking her vagina, and you have thereby committed an offence punishable under section 7(a) of the Children and Young Persons Act (Cap. 38, 2001 Rev. Ed.).

3RD CHARGE

on 27 July 2012, at or about 2.15 p.m., at [address redacted], did sexually penetrate with your finger, the vagina of one xxx, female/then 13 years of age ..., who was a person under 16 years of age, with her consent, and you have thereby committed an offence under section 376A(l)(b) and punishable under section 376A(3) of the Penal Code (Cap. 224, 2008 Rev. Ed.).

4TH CHARGE

on 27 July 2012, at or about 2.15 p.m., at [address redacted], did commit an indecent act with a child, one xxx, female/then 13 years of age ..., *to wit*, by brushing your penis against her groin area until you ejaculated, and you have thereby committed an offence under section 7(a) of the Children and Young Persons Act (Cap 38, 2001 Rev. Ed.).

Evidence of V (PW1)

2 The first and main witness for the prosecution was the alleged victim “V” (PW1).

3 V admitted that she had made a police report dated 2 August 2012 (Exhibit “P1”) about being molested by her stepfather, *ie*, BAU. However, she said she could not remember whether the substance of that report was true or not. V also said she could not remember any material events on two dates, *ie*, 26 and 27 July 2012, even though the subject matters of the charges had allegedly occurred on 27 July 2012.

4 Consequently, the prosecution applied under s 161 of the Evidence Act (Cap 97, 1997 Rev Ed) (the “EA”) to adduce two statements which V had given to the police to refresh her memory. The two statements were:

- (a) a statement recorded on 2 August 2012 at 5.30am by Station Inspector Irwan Sumarto; and

- (b) a statement recorded on 13 September 2012 at 4.33pm by Staff Sergeant Norazmin Yap.

5 Section 161(1) and (2) of the EA states:

161. —(1) A witness may while under examination refresh his memory by referring to any writing made by himself at the time of the transaction concerning which he is questioned, or so soon afterwards that the court considers it likely that the transaction was at that time fresh in his memory.

(2) The witness may also refer to any such writing made by any other person and read by the witness within the time mentioned in subsection (1), if, when he read it, he knew it to be correct.

6 As can be seen, the first statement was made on 2 August 2012, about six days after the alleged transactions on 27 July 2012.

7 V was 13 years of age when she gave her first statement. While she was reluctant to testify in court in 2016, she struck me as an intelligent person who was not confused about the proceedings. There was no dispute about the contemporaneity of this statement. I was of the view that she was likely to and did remember the alleged transactions, if they had occurred, bearing in mind their gravity. She gave a detailed account of the transactions in the first statement. It was not disputed and I accepted that the first statement was sufficiently contemporaneous to satisfy s 161(1).

8 The second statement was made about 48 days after the alleged transactions and 42 days after the first statement was made. However, the lapse of time before the second statement was made was not the only factor I considered. I took into account the following factors as well:

- (a) the age of the victim;

- (b) the nature of the transactions;
- (c) the fact that the victim had already given a detailed account of the transactions in her first statement;
- (d) the victim was asked to read her first statement and whether she wanted to amend her first statement when she gave her second statement; and
- (e) the victim's demeanour in court.

9 I was of the view that the second statement was also sufficiently contemporaneous to satisfy s 161(1). Indeed the defence did not challenge the application of s 161(1) to the second statement on the ground of lack of contemporaneity.

10 Although there are cases in which an application made by the prosecution under s 161(1) has been allowed, these cases did not consider two other specific points which came to my mind:

- (a) whether s 161(1) is confined to an instance when the witness himself has requested to refresh his memory from the document because s 161(1) states, "A witness may ... refresh his memory ..."; and
- (b) whether the document must be in the witness' own handwriting because s 161(1) refers to "any writing made by himself".

11 In the present case, it was the prosecution, not V herself, that requested to refresh V's memory using her two statements. Further, the two statements were not in V's own handwriting. They were recorded by a police officer,

printed out and then signed by V. Unsurprisingly, the defence submitted that I should rule against the prosecution in respect of these two specific points and the prosecution submitted otherwise.

12 It was not in dispute that the court should take a purposive approach in interpreting the provision. It is obvious that the purpose of s 161(1) is to allow a witness to refresh his memory of a particular transaction from a document so that the best evidence may be given in the interest of justice, subject to the safeguards in the provision. If, however, a witness says he cannot remember what had transpired in respect of the transaction, then it may be that he also cannot remember whether the document exists or its contents.

13 It seemed to me to be unrealistic and not in accordance with the purpose of the provision to confine its application only to an instance where the witness himself requests to refresh his memory from the document. Indeed, the defence did not address the possibility that the witness may not even remember the existence of the document or its contents and had simply submitted that the witness should be the one to decide whether to avail himself of the document.

14 Therefore, I was of the view that s 161(1) is not confined to an instance when the witness himself has requested to refresh his memory from the document and either side could apply under s 161(1) to be permitted to refresh the witness' memory from a document. As a trial may commence sometime after a transaction has occurred, it is not surprising if a witness' memory has lapsed to one extent or the other.

15 This brings us to the next point, that is, the reference to "any writing made by himself". What did this mean?

16 The defence submitted that the literal meaning should be given to the phrase and therefore a witness' statement recorded by a police officer would not come within s 161(1), even though s 161(2) allows the witness to refer to a statement made by another person, provided the requirements in s 161(2) are satisfied.

17 The prosecution relied on Tan Yock Lin, *Criminal Procedure* (LexisNexis, Looseleaf Ed, 2010) where the author states at para 1901:

If the document was made at his request or made on the dictation of the witness, it may be used for purposes of refreshing his memory. This follows either because such a statement is still one made by the witness or by virtue of subsection (2). So in the case of a police statement, that statement will have been made by a witness though taken down by a police officer and the witness may refresh his memory from the document.

18 It seemed to me that s 161(1) was enacted at a time when statements made by a person would often be in his own handwriting. However, with technology, this is no longer the case. Adopting the purposive approach, I saw no reason to confine s 161(1) to statements in a witness' own handwriting. A statement recorded by someone else but signed by the witness should be and is equally caught under s 161(1). The voluntariness or accuracy of such a statement is another matter. If, however, I was wrong, V's statement could still be referred to under s 161(2).

19 My view therefore was that the document in s 161(1) need not be in the witness' own handwriting and a statement of the witness recorded by someone else does come under s 161(1).

20 I should however mention that it was still for the prosecution to prove that the statements in question were indeed statements recorded by someone

else in accordance with the Criminal Procedure Code (Cap 68, 2012 Rev Ed) (“CPC”) and that allowing the prosecution’s application under s 161(1) of the EA was on the premise that there would be evidence to establish that the statements were indeed statements of V recorded by someone else in accordance with the CPC.

21 After I had allowed the prosecution’s application, the prosecution produced the originals of the statements and certified true copies were also made available. However, V declined to read the contents of the statements. She said it was a long time ago and she did not wish to refresh her memory from either statement.

22 The prosecution then applied under s 156 of the EA to cross-examine V. Section 156 states:

156. The court may, in its discretion, permit the person who calls a witness to put any questions to him which might be put in cross-examination by the adverse party.

23 The prosecution submitted that it was quite clear from V’s evidence that she was being hostile while the defence submitted that V was not being hostile just because she did not wish to refer to the documents.

24 Sarkar, *Law of Evidence in India, Pakistan, Bangladesh, Burma, Ceylon, Malaysia and Singapore* (Lexis Nexis, 16th Ed, 2007) (“Sakar”) observes at p 2417, that the discretion of the court under the equivalent of s 156 is absolute and is independent of any question of hostility or adverseness. I agree. There is no such requirement in the provision. The court has a wide discretion although such a discretion must be exercised carefully, otherwise it will be used liberally to circumvent the general rule that a party

may not cross-examine his own witness. In any event, *Sarkar* also suggests, at p 2420, that a witness may be considered hostile if he prevaricates or is suppressing the truth.

25 It was quite clear to me that V had chosen not to give any substantive evidence during examination-in-chief for reasons best known to herself and not because she could not truly remember. If she truly could not remember, she would have considered the contents of the statements to refresh her memory. Furthermore, one could say that she was suppressing the truth when she decided not to give any substantive evidence. Therefore, whether V could be described as being hostile to the prosecution or not, I was of the view that the circumstances warranted an exercise of the court's discretion in favour of allowing the prosecution's application under s 156 of the EA and I so ruled.

26 However, even on cross-examination by the prosecution, V declined to give any meaningful evidence. She did agree that she had given a detailed statement to the police on 2 August 2012 which she had signed (after the police report P1 had been made). This was Exhibit "P2". The detailed statement contained the allegations of sexual misconduct which formed the charges. The alleged misconduct was stated to have taken place at a rented flat where V, BAU and V's mother ("the Mother") were residing in at the material time. By the time of the trial, V was staying with her biological father. However, V frequently said during cross-examination by the prosecution that she could not remember any alleged sexual misconduct by BAU on 26 or 27 July 2012 or what she did in respect of any such sexual misconduct.¹ Alternatively, she denied that any such sexual misconduct had occurred.² As

¹ Notes of Evidence ("NE") 18/2/16 pp 36, 38-40.

for the second statement made on 13 September 2012, marked initially as Exhibit “P3I”, V said she did sign it but could not remember if she made that statement.

27 V also said that she could not remember telling two other persons, a discipline mistress and a teacher (“T”), about any sexual misconduct by BAU. Neither could she remember telling an aunt of hers about any such sexual misconduct.³

28 She also did not remember being examined by a doctor on 8 August 2012 at KK Hospital, or seeing another doctor at the Child Guidance Clinic on 3 September 2012 or 11 October 2012. Neither could she remember being counselled by a school counsellor.⁴

29 In cross-examination by the Defence Counsel, V’s evidence about any sexual misconduct by BAU on her vacillated. For example, when she was asked whether BAU had kissed or hugged her on 26 July 2012, she at times said that she could not remember and at other times she stated that no such thing happened.⁵

30 When asked about the events on 27 July 2012, V agreed that this was her brother’s birthday and that BAU and herself were present at the birthday function held at her grandmother’s place. After the birthday function, she

² NE 18/2/16 pp 38, 40

³ NE 18/2/16 pp 42-43

⁴ NE 18/2/16 pp 42 and 44

⁵ NE 19/2/16 pp 61-66.

returned home with the Mother and BAU. However, she maintained that BAU did not hug her or kiss her on her lips after they reached home that night.⁶

31 She said that she told T on 27 July 2012 about the sexual misconduct by BAU against her that same day. When asked for details of what she mentioned to T, she said that she told him whatever she had stated in her first detailed statement to the police dated 2 August 2012 (P2). However, at other points she said that she could not remember the details of what she had told T that day.⁷ All she told T was “[w]e did things that we’re not supposed to do”.⁸

32 She did not tell T that BAU had forced himself on her or that he had used his finger to penetrate her vagina.⁹

33 She told T on 27 July 2012 that BAU had kissed her (on the lips) on 26 July 2012.¹⁰

34 However, when V was reminded during the Defence Counsel’s cross-examination that the kissing incident of 26 July 2012 was not mentioned in her first statement to the police (P2), she then said that it did not happen.¹¹ She had told T that it did happen because she was confused.¹² She was not sure why

⁶ NE 19/2/16 pp 78-85, 95-96.

⁷ NE 19/2/16 pp 143-144, 23/2/16 pp 2, 4-5.

⁸ NE 23/2/16 pp 4-5.

⁹ NE 23/2/16 p 5.

¹⁰ NE 23/2/16 pp 19, 21.

¹¹ NE 23/2/16 p 21.

¹² NE 23/2/16 p 22.

she told him that, but later said that she might have done it to get the Mother's attention.¹³

35 V also said she told her best friend ("F") on 27 July 2012 that BAU had kissed her that morning.¹⁴ However, she explained that this was not true. She had told F this because F had asked her what she had been talking about with T and V felt that she had to be consistent.¹⁵

36 V agreed that she had sent a text message on her mobile phone to F on the night of 27 July 2012 to say that something had happened between her and BAU that night but V said that there was no truth in the message.¹⁶

37 V agreed that she had spoken to and was examined by a doctor at KK Women's and Children's Hospital on 8 August 2012. The doctor was Dr Anju Bhatia ("Dr Bhatia") who gave a report dated 22 August 2012, which was Exhibit "P4".

38 V was not asked to comment on the details in Dr Bhatia's report. However, in cross-examination by the Defence Counsel, V denied that any incident had in fact occurred.¹⁷

39 V was also sent to the Child Guidance Clinic where she was interviewed by Dr Parvathy Pathy ("Dr Pathy"), a senior consultant, on

¹³ NE 23/2/16 pp 28 and 31.

¹⁴ NE 23/2/16 p 33.

¹⁵ NE 23/2/16 p 34.

¹⁶ NE 23/2/16 p 38.

¹⁷ NE 23/2/16 pp 39-40.

3 September 2012 and 11 October 2012. Dr Pathy issued a report dated 18 October 2012 where she recounted in detail what V had told her.

40 In cross-examination by the Defence Counsel, V was not asked to comment on the details in Dr Pathy's report.

41 At the end of her cross-examination by the Defence Counsel, V again said that nothing had happened on 27 July 2012 whether in the morning, afternoon or night. She said that whatever she had said in her first detailed statement to the police (P2) was not true. She also said, "[i]n fact, it is a lie".¹⁸

42 When V was asked during cross-examination by the Defence Counsel why she had not told the truth to various persons like the police, T, F, Dr Bhatia and Dr Pathy, she said that she was angry and jealous. She said that the Mother had been spending more time with BAU than with her and she blamed the Mother for bringing her back from a foreign country where they had been residing. She believed that the Mother came back to Singapore because BAU was in Singapore.¹⁹ She did not retract her allegations about BAU's sexual misconduct later because, for example, when she spoke to Dr Bhatia, she thought she had to be consistent with her statements to the police.²⁰ When she spoke to Dr Pathy, she felt she had to be consistent with the lies she had previously told.²¹ She was afraid that if people knew she had lied, she would be like the boy who cried "wolf".²²

¹⁸ NE 23/2/16 p 55.

¹⁹ NE 19/2/16 pp 118-121, 135-136, 140; NE 23/2/16 pp 28, 31.

²⁰ NE 23/2/16 p 41.

²¹ NE 23/2/16 p 47.

²² NE 23/2/16 p 51.

43 V said that a week before she appeared on the witness stand, she had been asked by the police whether what she had said in her detailed statement of 2 August 2012 (P2) was correct. Her anger and jealousy had subsided. She was hesitant but agreed that the statement was true because she was scared.²³

44 However, she said that by the time she came to court she decided that the lying had to stop even though she was still scared. She elaborated that it was unfair for BAU to be punished for something that he did not do.²⁴

45 In re-examination, V could not say what triggered her intention to lie about BAU. She did not mention the sexual misconduct to the Mother as she was not close to the Mother and BAU was very close to the Mother. V said she told T as she knew that T would tell her school and the school would inform the Mother about the incidents.²⁵

46 V said that she did not know why she made certain comments in her first detailed statement to the police (P2) which appeared to assist BAU even though she was allegedly jealous about and angry at BAU. These were comments that she did not mind or had consented to the sexual acts committed by BAU and she was not angry or outraged.²⁶

47 V said that it was not she but the Mother who wanted her to lodge a report with the police after the Mother had heard about the alleged incidents from V's school.²⁷ However, she did not tell the police that nothing had

²³ NE 23/2/16 pp 52-54.

²⁴ NE 23/2/16 p 55.

²⁵ NE 23/2/16 p 61.

²⁶ NE 23/2/16 pp 64-67.

happened because, “[t]he thing about lying is you don’t know when to stop. Until you are trapped”.²⁸

48 She maintained in re-examination that the incidents in her two detailed police statements (P2 and P3I) were made up.²⁹

Evidence of Station Inspector Irwan Sumarto (PW3)

49 Station Inspector Irwan Sumarto (PW3) confirmed that V had given the detailed statement that was recorded on 2 August 2012 (P2). He said that he had cautioned V that there would be consequences if her statement were found out to be untrue.³⁰

Evidence of Staff Sergeant Norazmin Yap (PW5)

50 Staff Sergeant Norazmin Yap (PW5) confirmed that V had given the statement that was recorded on 13 September 2012. That statement was then admitted and marked as Exhibit “P3”.

Evidence of Dr Bhatia (PW2)

51 Dr Bhatia (PW2) had examined V on 8 August 2012. As mentioned above, the doctor issued a report dated 22 August 2012. In that report, Dr Bhatia recounted what V had told her, that is, that BAU had touched and licked her private parts. BAU had also put one finger into her vagina and later tried penetration with his penis but could not. BAU then ejaculated on V’s

²⁷ NE 23/2/16 p 70.

²⁸ NE 23/2/16 p 72.

²⁹ NE 23/2/16 p 86.

³⁰ NE 24/2/16 p 6.

private parts. He told her not to tell the Mother. On examination, V was noted to have old hymenal tears. Dr Bhatia also issued a supplementary report dated 25 September 2012 but that report is not material for present purposes.

Evidence of Dr Pathy (PW4)

52 Dr Pathy (PW4) confirmed issuing her report dated 18 October 2012 which contained many details of what V had told her about the incidents. The report had also stated that V was able to give an account of the incidents and was fit to give evidence in court. She elaborated that V was able to give an account of what had happened and knew the seriousness of the matter and that she must tell the truth, otherwise there would be consequences. She knew it was wrong to lie.³¹ V was aware that BAU might go to jail if the court believed her and that it was unfair to punish the innocent and fair to punish the guilty.³²

53 Dr Pathy saw V again on 19 November 2012 after she had issued the report dated 18 October 2012. The doctor wanted to find out how V was. V informed her that the Mother did not wish her on her birthday. V felt that the Mother blamed her for BAU's plight. V said she felt "betrayed" but Dr Pathy did not ask V to elaborate on what V had meant by the betrayal.³³ Dr Pathy noted that this was different from what V had said before about feeling that she had "betrayed" BAU's trust (as stated in Dr Pathy's report).

³¹ NE 24/2/16 pp 23, 36 and 48-49.

³² NE 24/2/16 p 36.

³³ NE 24/2/16 pp 39-40, 43-44.

Evidence of T (PW6)

54 T (PW6) gave evidence. He had taught V when she was in primary 5 but not in primary 6. He could not remember the dates when V spoke to him during recess time at the school canteen about her stepfather.

55 On the first occasion, V had asked him whether it was acceptable if an elder were to kiss the younger on the cheek when exchanging greetings called “salam”. V had told him that her stepfather had kissed her on the cheeks.

56 On the second occasion, one or two days after the first occasion, V had told him that while she was in her room, the stepfather tried to forcibly kiss her on the lips.

57 On the third occasion, which was another one or two days later, V had asked him how one would know if one was pregnant.

58 T had told V, after the second or third occasion, that he would have to report to the Head of Pupil Development and Discipline (“the Head”) about the stepfather trying to forcibly kiss V on the lips.³⁴ He did eventually inform the Head about what he had learned from V.

Evidence of an aunt (PW7)

59 An aunt of V also gave evidence. This was PW7 and she was the sister of the Mother. I will refer to her as “the Aunt”.

³⁴ NE 24/2/16 pp 70 and 86.

60 The Aunt said that on 27 July 2012, V had spoken to her at the flat of V's grandmother. The Aunt and her daughter were in one of the rooms at the flat then. V told her that she had fallen in love with BAU, and that BAU had licked her private part. This took place in the master bedroom where V stayed with the Mother and BAU. V told the Aunt that V was a little shy and that BAU had told her to cover her face with a pillow if she was shy.

61 When the Aunt was asked during cross-examination whether she believed what V had told her, she said, "20% only".³⁵ This was because V was known to have told tales before. An example was when V was in Kindergarten One. Her nose was bleeding from the heat but V had told her biological father that the Aunt had hit her with boots used in National Service.³⁶

62 The Aunt said that although the Mother came to the grandmother's flat later on 27 July 2012 (with BAU), the Aunt did not tell the Mother yet about the licking incident because V had trusted the Aunt as a friend and the Aunt did not want to betray her trust.³⁷

63 Eventually the Aunt told the Mother about the licking incident on or about 1 August 2012. They were in Malaysia then. Upon learning about the incident, the Mother insisted on being brought back to Singapore. The Aunt and her family then brought the Mother back to Singapore by car. They went to the vicinity where the Mother and BAU were staying very early the next morning. As BAU's car was not at the car park, they then went to the grandmother's flat where V was staying and the Mother woke V up. V was

³⁵ NE 24/2/16 p 115.

³⁶ NE 24/2/16 pp 117-118.

³⁷ NE 24/2/16 p 98.

then brought to the police to lodge a report. V's police report (P1) was dated 2 August 2012 at 4.46am.

Evidence of F (PW8)

64 V's friend, F (PW8) gave evidence. F and V were in primary six in 2012 in the same school. They were very close to each other.³⁸ They were already classmates since primary five.

65 F said that a few months before their primary school leaving examination ("PSLE") which was around October 2012, V had told her in class that V and her stepfather had mutual feelings of intimate love for each other. It was love as between a man and a woman and not the kind of love between a daughter and a father.³⁹

66 Thereafter, one night, after 8pm, V had sent her a text message to ask F if she was free. When F said she was, V called her. V said that her stepfather had touched her private part and he had tried to insert his penis into her. F told V that she should inform their form teacher or discipline mistress. V said she was scared as to what would happen to her family.⁴⁰

67 After that occasion when V told F about the incidents at night, F said V began to change, *ie*, to be more rebellious. V cut her hair short, became a tomboy and talked back to teachers.⁴¹

³⁸ NE 25/2/16 pp 2-3

³⁹ NE 25/2/16 p 5

⁴⁰ NE 25/2/16 p 6, 8

⁴¹ NE 25/2/16 p 17.

Evidence of the Mother (PW9)

68 The Mother (PW9) gave evidence. The Mother had been living in a foreign country before 2008. She decided to bring V to live with her in the foreign country in 2008 because V had been caught stealing in school and thereafter V felt that the school kept checking on her every day. However, in the foreign country, V was caught stealing again. The Mother then sent her to a psychiatrist. However, the Mother decided to bring V back to Singapore in 2010 because V was lonely and the Mother could not afford to keep on paying the charges of the psychiatrist. She clarified that this was a psychiatrist outside the school. The principal and school psychiatrist had suggested that V consult a private psychiatrist as V had an issue of lying over and over again, *ie*, in telling the same lie to various persons. The Mother said that the main reason for returning to Singapore was to get help for V and not because she wanted to be with BAU, although that was also a reason.⁴²

69 The Mother elaborated that when V was living in Singapore, before and after she was living in a foreign country, V did not stay at a fixed place. She was at various times staying with her maternal grandmother, biological father, paternal grandmother, the Mother or the Aunt. After the return from the foreign country, V stayed with the maternal grandmother while the Mother (who was divorced) stayed with BAU. After the Mother and BAU got married in 2012, they stayed in a rented flat and V came to stay with them. The Mother said that she wanted V to stay with them to keep an eye on her. This was because of an incident in March 2012, where V's school had informed the Mother that V had said that the biological father's godson had touched her

⁴² NE 25/2/16 p 71.

vagina in December 2011. V had said that she might be pregnant and the school suggested to the Mother to bring V to a hospital to check if V was pregnant. The Mother then brought V to a hospital but was informed that a police report was required before they would check whether V was pregnant. The Mother then brought V to a police station to make a report. However, after V spoke to a police officer, no report was made.

70 The Mother also detailed previous occasions where V had made false accusations against others:

(a) While they were in the foreign country, V had told the Mother that V's elder brother had done a blowjob on her before V left to stay in the foreign country. The Mother did not believe her but called the biological father who then questioned V's elder brother. The elder brother denied the accusation.

(b) V had lied to her biological father that the Aunt had thrown a pair of boots at her face.

(c) V had falsely accused her paternal grandfather of hitting her with a bamboo stick and the maternal grandmother of throwing a wooden stool at her.⁴³ The lies had damaged family ties. For example, the biological father then accused the maternal grandmother and the Aunt of hitting V.

(d) On another occasion after V had come to live with the Mother and BAU, V informed the school that some girls had beaten her up in a

⁴³ NE 25/2/16 p 69.

school toilet. However, after inquiries were made, the school informed the Mother that there had been no assault.⁴⁴

71 In June 2012, BAU informed the Mother that he had a job in a country near Singapore and they might have to leave Singapore. The Mother informed V about this and said V would stay behind to complete her PSLE. They would thereafter come back for her. V was angry and said that the Mother had made plans without involving her. Subsequently, V did not talk much to the Mother.⁴⁵

72 In the meantime, V had stopped seeing the private counsellor which the school had referred her to because V was having an identity crisis.

73 The Mother said she noticed that after V had stopped seeing the private counsellor, V became closer to BAU.⁴⁶

74 On 30 July 2012, the Mother received a call from the school to say that they had been informed by V that she had been sexually abused by BAU.⁴⁷ The Mother then called BAU and shouted at him about what she had learned from the school. BAU was shocked and denied doing anything wrong.⁴⁸ As V was out with the Mother, the Mother asked V what had happened. V said nothing had happened, and later said that they had kissed and lied down.⁴⁹ The Mother was shocked. She called her best friend and met with her and V at a

⁴⁴ NE 25/2/16 p 86.

⁴⁵ NE 25/2/16 pp 88-90.

⁴⁶ NE 25/2/16 p 96.

⁴⁷ NE 25/2/16 pp 97-98.

⁴⁸ NE 25/2/16 p 52.

⁴⁹ NE 25/2/16 pp 50 and 101.

mall. V informed both of them nothing had happened. She also said she was in love with BAU.⁵⁰ The Mother then brought V to the counselling centre which V had stopped going to for a while. There, the Mother told V's counsellor about what the school had informed her.

75 Thereafter, the Mother sent V to stay with her maternal grandmother while the Mother went to stay with her best friend.

76 On 1 August 2012, the Mother visited the Aunt (outside Singapore). After dinner, the Aunt told her what V had told the Aunt about "the licking part and the kissing part".⁵¹ The Mother said she did not want the details. The Mother said she was then brought back to the maternal grandmother's flat where she questioned V. She did not ask V whether BAU had licked her but only asked, "[d]id it happen?" V answered in the positive.⁵² The Mother then brought V to a neighbourhood police centre where a police report (P1) was lodged. Thereafter, V and the Mother were referred to a police division headquarters where V's first detailed statement (P2) was recorded.

77 About two or three weeks later, the Mother returned to stay with BAU at their rented flat. The Mother is financially dependent on BAU.⁵³

78 The Mother said she did see V at times between 2 August 2012 and the trial. They would go for meals. She denied telling V to change her evidence in court or putting any pressure on V to do so.

⁵⁰ NE 25/2/16 p 102.

⁵¹ NE 25/2/16 p 46.

⁵² NE 25/2/16 pp 107-108.

⁵³ NE 25/2/16 pp 118-119

Evidence of C (PW 10)

79 A counsellor (“C”) at the school which V had been attending in 2012 gave evidence. She had learned from T about V’s discussions with T on BAU. C’s notes stated that V had told her that BAU had kissed V on her lips. V also mentioned to C briefly what she had told T on 27 July 2012 and on another date, 30 July 2012.

80 C’s notes also stated that C had learned (from a third party) that:

- (a) the Mother was not aware of any incident until the school had informed her on 31 July 2012; and
- (b) over the telephone, the Mother sounded calm and claimed that she did not believe the daughter’s allegation. However, she did not object to the Ministry of Community Development, Youth and Sports getting involved.

81 C made a note that while V had made an allegation against BAU to T, she refused to provide more details. V was also noted to be reserved with the Mother, the private counsellor at Whispering Hearts, with C and other teachers.

82 C also made a note of an earlier incident. In March 2012, V’s English teacher had approached C about a matter involving V. The English teacher, the Disciplinary Mistress and C then spoke to V. They gathered that V was suggesting that she might have been raped by a boy at the flat of V’s biological father. V had been given some pills. After she woke up, she felt pain in her genital area and was worried that she might be pregnant.⁵⁴

83 C then saw V again on 27 March 2012. V was very reserved and guarded during the sessions. She did not disclose much. C then referred V to a private counsellor at Whispering Hearts.

Evidence of Staff Sergeant Nurfanin Bin Nordin (PW11)

84 On the other hand, Staff Sergeant Nurfanin Bin Nordin (PW11), who was an investigating officer in the case, said that he had spoken to V about her statements to the police. He did not find her reserved or guarded.

Evidence of BAU, the accused (DW1)

85 BAU was the only witness for the defence. He said he was on medical leave on 26 and 27 July 2012 and was at home on those days when V came back from school. He denied he had committed any of the alleged acts of sexual misconduct against V.

86 BAU said that V had told him that he liked him because he looked like her ex-boyfriend. This was both before 27 July 2012 and also on 27 July 2012.⁵⁵

87 BAU also said in a statement he gave to the police on 14 August 2012 that on 26 July 2012, V had sent him a message via SMS telling him that she liked him as his face resembled that of her ex-boyfriend. He replied to say that she could only like him as a father.

88 BAU was then referred to V's first detailed statement to the police (P2). At para 4 of that statement, V said she had sent a message via SMS on

⁵⁴ NE 26/2/16 p 16.

⁵⁵ NE 10/5/16 p 43.

26 July 2012 to BAU to say that she knew it was wrong but she started to have feelings for him more than as a step-father and BAU had replied to say that it was “okay”, and that the important thing was that he loved her and she loved him. He further stated that he loved V as a “special person” as well. BAU denied these messages.⁵⁶

89 BAU surmised that V had falsely accused him of sexual misconduct because he had rejected her and perhaps to get attention from the Mother. Another possible reason was that V was upset that BAU was not taking her to Brunei where BAU was supposed to work. However, BAU accepted that he did not know the exact reason why V would make such false accusations against him.⁵⁷

90 BAU mentioned that V had made false accusations before:⁵⁸

- (a) In March 2012, V had accused the godson of her biological father of raping her. This was the incident which the Mother had referred to in her evidence at [69] above.
- (b) V had accused other girls of assaulting her in a school toilet.
- (c) V had accused her grandmother of using a chair to assault her.

⁵⁶ NE 10/5/16 pp 63-64.

⁵⁷ NE 10/5/16 pp 44-45.

⁵⁸ NE 10/5/16 pp 46, 47 and 72.

The arguments and the court's conclusion

91 V had made a police report (P1) and given two statements to the police (P2 and P3). The two statements contained details of BAU's sexual misconduct which in turn supported the charges which were made against BAU.

92 The prosecution argued that V's evidence in the two statements was internally and externally consistent and corroborated by independent evidence. I will first address the argument about corroboration by independent evidence. By this, the prosecution meant that the two statements were corroborated by other witnesses in the trial.

93 However, it is obvious that every one of these witnesses had no personal knowledge of the truth of V's accusations. They were merely repeating what V had told them. Such evidence was clearly not independent evidence. In *Khoo Kwoon Hain v Public Prosecutor* [1995] 2 SLR(R) 591, Yong Pung How CJ stressed at [49] that corroboration by virtue of s 159 (corroboration of the testimony of a witness by using a former statement made by the witness) was not corroboration by independent evidence.

94 Furthermore, the evidence of the other witnesses was hearsay evidence and was not admissible as evidence of the truth of the accusations.

95 On the other hand, I understand that the prosecution also relied on the fact that V had consistently repeated the accusations, in varying degrees of detail, to various persons to submit that V was consistent about such accusations. In *Goh Han Heng v Public Prosecutor* [2003] 4 SLR(R) 374 ("*Goh Han Heng*"), Yong CJ said at [28] that the retelling of the victim's story

by different persons was of little evidential value. Like Yong CJ, I am of the view that the retelling of details of V's accusations by V herself carries little weight. The re-telling of details could also show that V was a good liar.

96 It is true that it was the Mother who insisted that V make a report to the police and that V did not even report the matter to the Mother as she said she thought the Mother would not believe her. V also did not want to break up the relationship between BAU and the Mother and she had promised BAU not to tell anyone.

97 One argument would be that if V had really wanted to get BAU into trouble by making false accusations, she would have complained to the Mother initially.

98 However, V said she knew that if she told T (the teacher), T would tell the school and the school would inform the Mother(see [45] above).

99 I do note that while V was explaining in her oral testimony that she had falsely accused BAU because she was jealous of or angry with him, her statements to the police showed that she was also protective of BAU. Thus, in her answer to Question 1 in her first police statement (P2), she said that she did not feel angry or outraged at him and she suggested that there was no lack of consent on her part (see [46] above). The fact that she was still protective of BAU suggested that she would not have falsely accused him in P2.

100 I also note that it is true that V was mature enough to understand the gravity of her accusations and that such accusations would get BAU into serious trouble. Yet she continued to repeat her accusations to various persons although not in the same detail. While her repetition to others may arguably

suggest that she was telling the truth, this has to be considered with her oral testimony during the trial that she repeated her accusations to different people because she felt that she had to be consistent with her lies (see [42] above).

101 There was also the evidence of F that V became more rebellious after V had told F about BAU's sexual misconduct (see [66] and [67] above). However, this evidence was too non-specific to be of much assistance to the prosecution.

102 The prosecution further relied on s 147(6) of the EA which states:

In estimating the weight, if any, to be attached to a statement admissible in evidence by virtue of this section regard shall be had to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement and, in particular, to the question whether or not the statement was made contemporaneously with the occurrence or existence of the facts stated, and to the question whether or not the maker of the statement had any incentive to conceal or misrepresent the facts.

103 The prosecution submitted that as the two police statements were closer to the date of the alleged sexual misconduct than V's oral testimony, more weight should be given to these statements.

104 The difficulty for the prosecution was that even if V had not recanted her accusations, there was evidence from the Aunt and the Mother that V had made false accusations of misconduct against others before. I have mentioned such evidence above (see [61], [69]-[70]). While the prosecution did not accept the Mother's evidence of the other false accusations, the prosecution did not challenge the truth of the evidence as such. Neither did the prosecution call further evidence to rebut the Mother's evidence.

105 Furthermore, the prosecution did not dispute the Aunt's evidence as to how V had falsely accused the Aunt of hitting her with army boots. Indeed, while the prosecution relied on the Aunt's evidence that V had informed the Aunt about a licking incident, the Aunt herself had said that she was uncertain whether to believe V (see [61] above).

106 I accept the evidence of the Aunt and the Mother that V had falsely accused the Aunt of hitting her with army boots. I also accept that V had falsely accused her grandmother of throwing a stool at her and other girls of assaulting her in a school toilet. While the fact that V had made false accusations against others before does not necessarily mean that her accusations against BAU are false, it does mean that this court has to treat her accusations against BAU with more caution. Therefore, even if V had not recanted her accusations, this would not necessarily mean that this court would have found that the prosecution had discharged its burden of proof.

107 With V recanting her accusations, the prosecution's case must be considerably weakened and s 147(6) is not of much help to the prosecution in the circumstances.

108 The prosecution sought to bolster its case by submitting that BAU was not a credible witness. However, the instances of inconsistency in BAU's evidence which the prosecution raised were not about the sexual misconduct itself.

109 For example, the prosecution submitted that BAU had been inconsistent in his evidence as to whether anyone else was in the flat on 27 July 2012 when V came back home from school. BAU had said no one was there. Then he said his manager and supervisor had come to the flat and left

before V came back. In re-examination, he said that V had stepped into the flat while these guests were leaving. I note that BAU's oral testimony was given several years after the event. I do not find such an inconsistency material to the charges he faces and it does not assist the prosecution to discharge its burden. I maintain my view in relation to the other alleged inconsistencies which the prosecution tried to rely on in its submissions.

110 The prosecution also submitted that there was no motive for V to falsely accuse BAU but V herself supplied the motive (see [42]). In any event, it is not for BAU to prove his defence but for the prosecution to prove its case.

111 Finally, there was apparently some independent evidence that might have shed some light on the evidence of BAU and on the statements given by V to the police.

112 It will be recalled that BAU had referred to a message which V had sent to him via SMS and which BAU had responded to. BAU's version was that he had told V that V could only like him as a father. BAU said that he was unable to produce the message as he had replaced his mobile phone even before he had given his statement to the police on 14 August 2012. The prosecution sought to make something out of BAU's omission to preserve the message, arguing that BAU should have realised its importance.

113 However, the prosecution did not adduce any evidence of the police's attempts to retrieve the messages from BAU's mobile number from the relevant service provider.

114 Furthermore, it will be recalled that V had given a different version of the messages in P2. V said that the Mother had taken away her mobile phone

on 31 July 2012.⁵⁹ However, the prosecution also did not adduce any evidence of the police's attempts to retrieve the messages from V's mobile number from the relevant service provider.

115 I reiterate that the burden is not on BAU to prove his allegations. The burden is on the prosecution to prove its case beyond a reasonable doubt.

116 In *Goh Han Heng*, Yong CJ said at [25]:

25 I am aware that there is no class of offences in which fabrication is so easy and refutation so difficult as in the arena of sexual offences as all that the court has before it are very often the word of the victim against the denials of the accused. It was against this backdrop that I had previously stated that while there was no legal requirement for a judge to warn himself expressly of the danger of convicting on the uncorroborated evidence of a complainant in a sexual offence case, it would be dangerous for him to convict on the words of the complainant alone unless the testimony is unusually compelling or convincing; *Kwan Peng Hong v PP* [2000] 2 SLR(R) 824 at [33]; *Tang Kin Seng v PP* [1996] 3 SLR(R) 444 at [43], *Teo Keng Pong v PP* [1996] 2 SLR(R) 890 at [73] and *Soh Yang Tick v PP* [1998] 1 SLR(R) 209 at [33].

117 In the case before me, V's testimony has recanted the accusations against BAU. I do not find her statements to the police to be unusually compelling or convincing in the circumstances and I do have a reasonable doubt about the truth of the accusations in the statements against BAU. In the circumstances, I find that the prosecution has failed to prove its case beyond a reasonable doubt on each and every one of the charges.

⁵⁹ NE 19/2/16 p 70.

Conclusion

118 I order a discharge amounting to an acquittal of BAU for each of the charges he faces.

Woo Bih Li
Judge

Wong Kok Weng and Soh Weiqi (Attorney-General's Chambers) for
the prosecution;
S K Kumar (S K Kumar Law Practice LLP) for the accused.
