IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 134

Criminal Case No 92 of 2017

Between

Public Prosecutor

And

Bernard Tan Meng Soon

GROUNDS OF DECISION

[Criminal law] — [Offences] — [Sexual assault by penetration]

TABLE OF CONTENTS

Public Prosecutor
v
Tan Meng Soon Bernard

[2018] SGHC 134

High Court — Criminal Case No 92 of 2017
Valerie Thean J
19 March 2018

1 June 2018

Valerie Thean J:

Introduction

1 The accused pleaded guilty to, and was convicted of, five charges of sexual assault by penetration of a minor under 14 years of age under s 376(1)(*b*) of the Penal Code (Cap 224, 2008 Rev Ed) ("Penal Code"), an offence punishable under s 376(4)(*b*) of the Penal Code.

2 In addition, the accused consented to 20 other charges to be taken into consideration for the purposes of sentencing ("the TIC charges"). They are, in particular:

(a) 14 other charges of sexual assault by penetration of a minor under 14 years of age under s 376(1)(*b*) punishable under s 376(4)(*b*) of the Penal Code;

(b) three charges of sexual penetration of a minor under 14 years of age under s 376A(1)(*c*) punishable under s 376A(3) of the Penal Code;

(c) one charge of possession of obscene films under s 30(1) of the Films Act (Cap 107, 1998 Rev Ed) ("Films Act");

(d) one charge of fraudulent possession of property under s 35(1) Miscellaneous Offences (Public Order and Nuisance) Act (Cap 184, 1997 Rev Ed); and

(e) one charge of dishonest receipt of stolen property under s 411(1) of the Penal Code.

3 After considering the accused's mitigation plea, the aggravating factors, the sentencing precedents, the prosecution and defence submissions on sentence and the TIC charges, I imposed a sentence of 13 years' imprisonment and 12 strokes of the cane for each of the proceeded charges and ordered the sentence for two of those charges to run consecutively, with the other sentences to run concurrently. In total, a term of 26 years' imprisonment with effect from the date of first remand on 3 October 2015 and 24 strokes of the cane were imposed. The accused has since appealed against the sentences imposed and I now furnish my grounds of decision.

Facts

4 The accused, now 28 years of age, admitted to the statement of facts ("SOF") tendered by the Prosecution without qualification.

5 Sometime in 2012, the accused started assisting [X], a 36 year-old male, in coaching an amateur football team. [X] was a certified football coach whose team comprised boys aged 12–17. [X] left the team sometime in 2014 as a result

of various disagreements with the accused. The accused then took over as the team's coach and began recruiting boys below the age of 14. He changed the name of the club to mirror that of a registered football club. As part of the recruitment exercise, he designed his own pamphlets, which he distributed outside primary schools and in the neighbourhoods in the northwest of Singapore. He also created a Facebook page to promote the team. By 2015, most of the members of the team were primary school boys aged 12 or below.[1]

6 The accused organised training sessions for the boys every Friday afternoon, Saturday morning and Sunday morning. These training sessions were held at an open field beside [W] Community Club, where the accused and the boys usually changed and showered after training. On many occasions, the accused had meals with the boys, brought the boys from their homes to the training venue, and sent them home. He also visited some of the boys at their homes, and from time to time, invited some of them to his home to play.[2]

7 The charges brought concerned offences committed from May to September 2015. The accused performed fellatio on the boys at various locations. At times, the accused took photographs and videos of himself in the act, and uploaded them to his Facebook Messenger account.

8 The five proceeded charges concerned five victims on five separate incidents. Three were eight, one was ten and the last, eleven years of age at the material time.

9 The first incident occurred on 17 August 2015. The accused went to the home of [V1], who was aged ten at the time, to pick him up for training.[3] En

---

1 SOF at paras 4-6.

2 SOF at paras 8 and 10.

route, he brought [V1] to the nursing room of a nearby shopping centre and performed fellatio on him.[4] [V1] silently counted to about 250 before the accused stopped.[5]

10 The second incident happened in July 2015, when the accused was at the home of [V2], aged eight at the time, with two other members from the team. [V2]'s mother instructed [V2] to purchase some groceries at a nearby shopping centre and the accused accompanied him.[6] At some point [V2] told the accused that his stomach ached. Under the guise of checking [V2]'s stomach, the accused brought him to a toilet cubicle in a shopping centre. There, he performed fellatio on [V2] after applying ointment on [V2]'s stomach. [V2] could not see what the accused was doing, but knew that the accused was sucking his penis because the accused had done so on previous occasions.[7] Sometime in late July 2015, [V2]'s mother did not allow [V2] to attend training as he was sick. Undeterred, the accused sent [V2]'s mother text messages in an attempt to persuade the latter to allow [V2] to attend training. This led to [V2]'s mother pulling [V2] out of the team.

11 The third victim was [V3], also eight years of age at the time. On 10 July 2015, during [V3]'s first training session, the accused brought [V3] to a handicap toilet at [W] Community Club and there performed fellatio on him.[8] After a few minutes, the accused stopped. [V3], after dressing himself, told the

---

3 SOF at para 15.

4 SOF at para 19.

5 SOF at para 19.

6 SOF at para 28.

7 SOF at para 32.

8 SOF at para 40.

accused that he would inform his mother about this incident. The accused told him not to. They then returned to the field and resumed training.[9]

12 The fourth charge concerned another eight-year old, [V4]. The incident took place sometime between May and July 2015. After showering in a toilet at [W] Community Club, while [V4] was in a toilet cubicle wearing his clothes, the accused entered the cubicle and locked the door. He removed the towel wrapped around [V4] and instructed [V4] to sit on the toilet bowl. Thereafter, he covered [V4]'s face with his towel and held it in place so that [V4] could not see what he was doing. The accused then removed [V4]'s shorts and began performing fellatio on [V4].[10] After some time, the accused stopped and left the cubicle.

13 Sometime in July 2015, [V4]'s mother decided not to allow [V4] to attend training any further, on account of [V4]'s poor academic performance. The accused attempted to persuade [V4]'s mother to allow [V4] to continue with the team, telling her that he would also help coach [V4] in [V4]'s studies. [V4]'s mother declined the offer.

14 The fifth charge concerned [V5], an eleven-year old who had been persuaded by the accused to attend a training session in the September school holidays without his father's knowledge. [V5]'s father had given him instructions not to join the team. During that training session, [V5] fell and hurt his right leg. When the session ended, the accused told [V5] to follow him back to his home, telling [V5] that he would help [V5] with his injury. In the accused's flat, he instructed [V5] to lie on the floor, and covered [V5]'s eyes with a piece of clothing. The accused then applied a spray onto [V5]'s leg, and

9 SOF at paras 41-43.

10 SOF at paras 50-51.

massaged it for a while. Thereafter, the accused removed [V5]'s shorts and underwear, and performed fellatio on him.

15 The accused was arrested on 1 October 2015, after a police report was lodged on 25 September 2015, arising from information given by [V1].[11]

Prosecution and Defence positions on sentence

16 At the hearing, the Prosecution pressed for a global sentence of at least 27 years' imprisonment with 24 strokes of the cane, and an indicative starting range of 14–15 years' imprisonment with 12 strokes of the cane for each offence.[12] Defence counsel, Mr Wee, initially sought a global sentence of 22–24 years' imprisonment and 24 strokes of the cane in his written submissions.[13] During the hearing, however, he submitted that the total term of imprisonment should be lower than 20 years.[14] The accused, addressing the court, asked for a sentence of 15 years' imprisonment. I explained to the accused that the minimum term of imprisonment per charge for the offence which the accused pleaded guilty to was eight years' imprisonment, and that the law mandated that the sentences for at least two charges to run consecutively, resulting in a cumulative minimum global sentence of 16 years' imprisonment. The accused confirmed that he understood the applicable minimum terms, and did not seek to retract his plea of guilt.[15] I therefore proceeded to sentence him after I examined the relevant circumstances and factors, which I explain below.

---

11 SOF at paras 63–65.

12 Prosecution's written submissions at paras 5 and 51.

13 Defence's written submissions at para 18

14 Certified Transcript at p 37.

15 Certified Transcript at pp. 38-41.

Applicable sentencing framework

17 There is no case setting out a sentencing framework for fellatio charged under s 376 of the Penal Code. In this connection, Mr Wee submitted that the sentencing framework introduced by the Court of Appeal in *Ng Kean Meng Terence v PP* [2017] 2 SLR 449 ("*Terence Ng*"), for the offence of rape under s 375 of the Penal Code, ought to be used. The Prosecution, on the other hand, was of the view that the framework devised by the Court of Appeal for the offence of digital penetration under s 376(2)(*a*) of the Penal Code in *Pram Nair v PP* [2017] 2 SLR 1015 ("*Pram Nair*") was "a useful reference point".

***The framework approach in* Terence Ng *and* Pram Nair**

18 In *Terence Ng*, the Court of Appeal introduced a two-step sentencing framework for rape. At the first stage, the court should "identify under which band the offence in question falls within, having regard to the factors which relate to the manner and mode by which the *offence* was committed as well as the harm caused to the victim [*ie*, offence-specific factors]". The court should then "determine precisely where within that range the present offence falls in order to derive an 'indicative starting point', which reflects the intrinsic seriousness of the *offending act*" [emphasis in original]: see *Terence Ng* at [39(a)]. Offence-specific factors include (a) group rape; (b) abuse of position and breach of trust; (c) premeditation; (d) violence; (e) rape of a vulnerable victim; (f) forcible rape of a victim below 14; (g) hate crime; (h) severe harm to the victim; and (g) deliberate infliction of special trauma: *Terence Ng* at [44]. The sentencing bands are as follows:

> (a) Band 1: cases with no or limited offence-specific aggravating factors (10–13 years' imprisonment, 6 strokes of the cane);

(b) Band 2: cases with two or more offence-specific aggravating factors (13–17 years' imprisonment, 12 strokes of the cane);

(c) Band 3: extremely serious cases of rape owing to the number and intensity of offence-specific aggravating factors (17–20 years' imprisonment, 18 strokes of the cane).

19 At the second stage, the court "should have regard to the aggravating and mitigating factors which are *personal to the offender* to calibrate the appropriate sentence for that offender" [emphasis in original]. These "relate to the offender's particular personal circumstances" and are distinct from the factors considered in the first step of the sentencing framework: *Terence Ng* at [39(b)]. Examples of offender-specific factors are: (a) offences taken into consideration for the purposes of sentencing; (b) the presence of relevant antecedents; (c) remorse or lack thereof; (d) plea of guilt; and (e) age of the offender: *Terence Ng* at [63]–[65].

20 The *Terence Ng* framework was adapted to suit the offence of digital penetration under s 376 of the Penal Code in *Pram Nair*. In doing so, the two-step approach was retained but the sentencing bands were adjusted. The Court of Appeal was of the view that "there is an intelligible and defensible difference to be drawn, in terms of offence severity, between rape and digital penetration" (at [157]). Accordingly, the three sentencing bands laid down in *Terence Ng* were revised downwards for the offence of digital penetration:

(a) Band 1: 7–10 years' imprisonment and four strokes of the cane;

(b) Band 2: 10–15 years' imprisonment and eight strokes of the cane;

(c) Band 3: 15–20 years' imprisonment and 12 strokes of the cane.

21 The Court of Appeal further held that where either of the two statutory aggravating factors under s 376(4)(*a*) or (*b*) are present, the case should fall within Band 2 or even Band 3: *Pram Nair* (at [160]). The Court of Appeal, however, expressly declined to hold whether the three revised bands should similarly apply where the penetrating device is anything but a finger: *Pram Nair* at [159].

22 The offence and offender specific stages and matrix were used in both cases, and this approach is equally useful in this case. The Court of Appeal made clear in *Terence Ng* its preference for the use of sentencing bands in the interests of clarity, transparency, coherence and consistency (at [37]).

23 The issue in this case was whether the sentencing bands as set out in *Terence Ng* or *Pram Nair* would be more appropriate. I disagreed with Mr Wee that the *Terence Ng* bands were the better option, which in any event carried longer terms of imprisonment. In *Pram Nair*, at [150], the Court of Appeal drew a distinction between rape and digital penetration because the latter carries no risk of pregnancy and is a relatively less intimate act. The same logic applies to cases of fellatio, which, when compared with rape, carries the same "intelligible and defensible difference in offence severity" that the Court of Appeal was concerned with at [157]. In this vein, our local legislative approach is different from that of several other jurisdictions, where legislation has expressly defined rape to include fellatio. For instance, in the United Kingdom, s 1 of the Sexual Offences Act 2003 (c 42) (UK) ("Sexual Offences Act 2003") defines rape as the penetration of the vagina, anus or *mouth* of another person with a penis. The same also applies to some Australian states: see ss 38 read with 35A of the Crimes Act 1958 (No 6231 of 1958) (Vic), s 349 of the Criminal Code 1899

(No 9 of 1899) (Qld), s 48 of the Criminal Law Consolidation Act 1935 (No 2252 of 1935) (SA), and ss 185 read with 2B(1) of the Criminal Code Act 1924 (No 69 of 1924) (Tas). In contrast, Parliament did not define rape in s 375 of the Penal Code to include fellatio. Hence, there was force in the Prosecution's suggestion that the *Pram Nair* framework could be a useful reference point, although the Court of Appeal specifically declined to decide whether the sentencing bands should apply outside of digital penetration by finger. I would agree that, *broadly speaking,* the *Pram Nair* framework is a useful point of reference, *so long as one is aware of the context in which the sentencing bands were set*. Let me elaborate.

Using Pram Nair as a point of reference

24 The Court of Appeal in *Pram Nair* (at [159]) was clear in restricting the stated sentencing bands to the offence of digital sexual penetration. The Prosecution was, in effect, seeking to extend the framework. The question, therefore, is whether it is appropriate to extend the *Pram Nair* framework beyond its intended scope. And if so, how the *Pram Nair* framework ought to be applied.

25 The present offence of sexual assault by penetration under s 376 of the Penal Code was introduced by Parliament in 2008. Prior to its introduction, s 376 of the Penal Code (Cap 224, 1985 Rev Ed) ("the pre-2008 Penal Code") dealt with the punishment for rape. Section 377 criminalised "unnatural offences". Because of the limited scope of sexual offences under the pre-2008 Penal Code, many serious sexual offences, including fellatio, were prosecuted under s 377: see Stanley Yeo, Neil Morgan and Chan Wing Cheong, *Criminal Law in Malaysia and Singapore* (LexisNexis, 2nd Rev Ed, 2015) at para 12.73. Such offences were committed when one "voluntarily has carnal intercourse

against the order of nature with any man, woman or animals". Section 377 was repealed by the Penal Code (Amendment) Act 2007 (No 51 of 2007). The Amendment also introduced the offences of sexual assault by penetration under s 376 as presently enacted, and that of sexual penetration of a minor under 16 under s 376A. Various other provisions relating to sexual exploitation of minors were also enacted: ss 376B–G.

26 These amendments sought to achieve several objectives. First, the offences from ss 376A–G were meant to protect minors from sexual abuse. A conscious decision was also made to ensure that the provisions were gender neutral, so that male minors could be protected from female abusers. Second, s 377, which criminalised consensual oral and anal sex between a male and a female, was deleted because most Singaporeans did not find this offensive or unacceptable. In its place, s 376 was enacted to cover non-consensual oral and anal sex. Third, these new provisions widened the spectrum of offences, thereby giving the Prosecution greater choice in deciding the appropriate charge to prefer, *based on the circumstances of the case*: *Singapore Parliamentary Debates, Official Report* (22 October 2007) vol 83 at cols 2187–2199 (Ho Peng Kee, Senior Minister of State for Home Affairs).

27 As a result of the above amendments, the Penal Code sets one sentencing range for, and groups together, many forms of sexual penetration under s 376 and s 376A; including penile penetration of the mouth or anus, and penetration of the vagina or anus with any object. Hence, while each provision in the Penal Code reflects some difference in the type of sexual act, the Penal Code, in terms of sentencing, does not draw bright lines separating one form of sexual penetration, not amounting to rape, from another.

28 The sentencing approaches taken by other jurisdictions also do not show any sharp distinction between the various types of penetration not amounting to rape: see *Pram Nair* at [143]–[145]. In *Doe v Regina* [2013] NSWCCA 248, the Supreme Court of New South Wales held at [54] that it is "erroneous to attempt to rank forms of forced sexual intercourse in some hierarchy so as to determine their objective seriousness". Furthermore, the UK Sentencing Council placed both penile and digital penetration in the same category of culpability (*ie*, Category 2 of Harm) in its sentencing guidelines for the offence of causing or inciting a child under 13 to engage in sexual activity under s 8 of the Sexual Offences Act 2003 (the most serious which the accused could have been prosecuted if he had committed these offences in the UK): see the UK Sexual Offences Definite Guideline at pp 42–44. Turning to Canada, where the present offending acts would fall under the offences of sexual interference (under s 151 of the Canadian Criminal Code, RSC 1985, c 46 (Can) ("Canadian Criminal Code"), which applies when the victim is under 16, and where consent is irrelevant) and sexual assault (under s 273 of the Canadian Criminal Code, where lack of consent is an element of the offence), the Alberta Court of Appeal confirmed in *R v Hajar* [2016] ABCA 222 ("*Hajar*") at [2] and [81] that the starting point for "major sexual interference" and "major sexual assault" is three years' imprisonment. Pertinently, conduct which fall into these categories include vaginal intercourse, anal intercourse, fellatio and cunnilingus: *Hajar* at [10]. By using the same starting point for a wide range of sexual offences, it appears that the Court did not draw a sharp distinction between them.

29 I note that some of the previous local authorities draw a distinction, in terms of severity, between different sexual acts. The Court of Appeal, in *Adam bin Darsin v PP* [2001] 1 SLR(R) 709 at [21]–[22], and Woo Bih Li J in *Yap Weng Wah* at [61]–[64] (following *Adam bin Darsin v PP*) considered that anal intercourse was more serious than fellatio. In *PP v BMD* [2013] SGHC 235

("*BMD*"), Tay Yong Kwang J (as he then was) put fellatio and penile-anal penetration on the same footing, one level above digital-anal penetration (at [73]). Consideration of different sexual acts within a specific case is a different issue, however, from that of applicable sentencing bands. These cases concerned *multiple offending acts which were carried out in the same factual setting*. When imposing sentence in an individual case, it is pertinent to impose different sentences for each type of sexual activity. This is for two reasons: first, to indicate the relative gravity of each offending act; and second, to ensure a correct overall sentence that reflects the totality of the criminal conduct. Thus the differing gradations used in *BMD* and *Adam bin Darsin* are best explained in the light of the factual context and overall criminality of the specific cases.

30 *Across cases,* however, which is the comparison that sentencing frameworks seek to draw, a gradation of sexual acts, while still technically relevant, could play a much smaller role, *because the facts and circumstances of each case are unique, and the precise nature of the sexual act itself is part of a wider context and factual setting*. This is what the *Pram Nair* framework seeks to acknowledge. A specific act of fellatio in a particular setting could cause much greater harm than another specific act of digital penetration in another setting. Therefore, it would be better to weigh the aggravating and mitigating factors in each case, using *Pram Nair*, very broadly speaking, as a conceptual frame. To put the point another way, the gravamen of the complaint in each case must be the serious psychological trauma caused to victims by a grave intrusion into their bodily integrity and sexual autonomy: the harm, and therefore the sentence, in each case, must depend upon the full context, of which the specific sexual act is only one aspect. Thus, any framework to be used across cases should be one that is broad in nature, having regard to all the facts and circumstances, including, in its context, the specific sexual act.

31 Moreover, if multiple frameworks were created for each different sexual act within s 376, the applicable bands might any event overlap to such an extent that it may not be useful to have separate ones for each of the disparate acts. It is important to note that even the delineation between digital penetration and rape is a somewhat fluid one, although the Court of Appeal was of the view that there was an intelligible difference between rape (a s 375 offence) and digital penetration (see *Pram Nair* at [157]). The sentencing bands for both offences overlap. Band 2 in *Terence Ng* is 13–17 years, while the same band in *Pram Nair* is 10–15 years. In a particular case, the specific aggravating factors such as the abuse of trust, age of the victims and circumstances of the offences could be of greater importance than the precise nature of the sexual act. Thus, an offender sentenced for digital penetration could receive sentences in totality higher than an offender sentenced for rape, *depending upon the accumulation of all the factors within the stages of sentencing.* For this reason, it may be less practical to have multiple frameworks for the different sexual acts within s 376, and more useful to recognise the *Pram Nair* bands as broadly applicable.

32 Two decisions reflect this broad approach in the context of the range of sexual acts encompassed by s 376A of the Penal Code. The Court of Appeal in *PP v BAB* [2017] 1 SLR 292 ("*BAB*") did not draw a distinction between the different types of sexual penetration when laying down starting points for ss 376A(2) and (3); indeed in relation to s 376A(2), the court's starting point was stated specifically to apply to "each of the offences under this section in this case" (at [65(a)]). Again, in setting the starting point for fellatio under s 376A(2), where the minor above 14 was not coerced and there was no abuse of trust, Sundaresh Menon CJ did not draw any distinction between an accused who performs and an accused who receives fellatio: see *AQW v PP* [2015] 4 SLR 150 at [41]. In my view, this is apt *because the starting points in question were simply indicative guides, which may be used for a range of sexual*

misconduct. The same logic applies with greater force when one considers the use of sentencing *bands*, as these ranges are framed, as a matter of definition, to accommodate a width of factual circumstances in coming to a sentence.

Relevance of previous sentencing norms set for fellatio

33 A final point to consider is the previous sentencing norms set for fellatio. There is no sentencing norm set for fellatio under s 376. There have been, however, cases involving sentences for fellatio under s 376A(3). In this regard, *Pram Nair* expressed the view that ss 376(4)(*b*) and 376A(3) have a lot in common and overlap in scope in some situations. Hence, guidance may be sought from cases that have decided sentencing norms under s 376A(3) for the purposes of sentencing under s 376(4)(*b*).

34 The cases under s 376A(3) have evolved significantly over time. The previous norms set out in *Yap Weng Wah* is a starting point of 6–7 years (I should caveat that in the light of the minimum sentence of eight years applicable under s 376(4)(*b*), *Yap Weng Wah* may be less relevant). In *BAB*, the Court of Appeal held that in cases involving an abuse of trust, a starting point of 10–12 years would be appropriate. The Court of Appeal in *Pram Nair* then remarked that the framework it set out in *BAB* could require review (at [164]). At the same time, again after the case of *BAB*, in *Terence Ng*, the Court of Appeal stated a preference for sentencing bands over the use of a starting point, because the Court was of the opinion that the use of sentencing bands would better serve the interests of clarity, transparency, coherence and consistency (at [37]), and further held that the starting point approach should be restricted to offences which almost invariably manifest in a particular way. In other words, the starting point approach is better suited for offences which can be committed in

circumscribed situations; as opposed to offences which may be committed in an expansive number of ways.

35 Pulling these strands together, the sentencing norm set out in *BAB* and the framework approach in *Pram Nair* can be reconciled when modified in the light of the Court of Appeal's concerns expressed in the latter case. The *BAB* sentencing norm should not be taken as a starting point but merely as guidance in the Band 2 analysis. While Band 2 requires at least two aggravating factors to be engaged, this requirement is common in breach of trust cases. This is because victim vulnerability and planning are typical of such cases.

36 Having regard, thus, to the applicability of the *Pram Nair* sentencing bands as broad norms and the previous norms set for fellatio, I was of the view that the *Pram Nair* Bands of 7–10, 10–15, 15–20 years were useful in deciding the individual sentences. I now turn to deal with the two stages of analysis below.

Offence specific factors

37 At the first stage, the court identifies the relevant offence-specific factors.

Young age of victims

38 The victims' youth is a statutory aggravating factor under s 376(4)(*b*) of the Penal Code. This factor places the offences committed in this case in, at least, Band 2 of the *Pram Nair* framework. As for Defence submission that no force was used on the victims and that they did not object to the accused's acts, these considerations were wholly irrelevant because the statutory aggravating

factor deems the age of the victims to be such that they were too young to know how to object or resist.

Abuse of trust

39 As a football coach to the victims, the accused had undoubtedly held a position of authority which he misused. Furthermore, the parents of [V1]–[V4] entrusted their children to the accused by allowing him to send them to and from training. As regards [V5], the abuse of the accused's position of responsibility was particularly egregious, because he encouraged [V5] to attend training sessions and to conceal the matter from his father.

40 Mr Wee submitted that the accused was not vested with "inherent familial or institutional trust".[16] In my judgment, this misses the point. The degree of trust reposed in any accused turns on the facts and circumstances of each case – the use of "institutional" or "familial" labels should not obscure this inquiry. The actions of the accused, such as the distribution of printed pamphlets to advertise his lessons, and his active engagement with the boys' parents, who entrusted their children to his care, showed that he had sought a position of responsibility. The law would operate unjustly if an accused who actively sought and obtained a position of trust in his victims' lives by plan and premeditation could later contend that he need not take responsibility for such authority simply because it was not vested in him by an institution of some sort, but through his own cunning and connivance. A parallel may be drawn with *Terence Ng*, where the accused met the victim at the stall where he was carrying out his trade and invited her to his flat. After discovering that she had run away from home, he called her parents and offered to act as her godfather. This offer was accepted by her parents. Two weeks later, they engaged in sexual

16 Defence's written submissions at para 23.

intercourse, for which Ng was charged with statutory rape under s 375(1)(*b*) of the Penal Code. It was submitted on behalf of Ng that there was no abuse of trust, because Ng and the minor had only known each other for two weeks prior to their first sexual encounter. The Court of Appeal rejected this submission, because Ng "had been allowed unrestricted access to the [victim] with the express consent of her parents only because he undertook to act as her 'godfather' and promised to 'take care' of her": see *Terence Ng* at [88].

Premeditation and planning

41 "The presence of planning and premeditation evinces a considered commitment towards law-breaking and therefore reflects greater criminality", and an example would be the "taking of deliberate steps towards the isolation of the victim": *Terence Ng* at [44(c)]. The accused actively recruited young boys to his team by distributing pamphlets around primary schools and neighbourhood spaces. He purposefully changed the age profile of the team, from 12–17 years old to 12 and under, in order to target the younger and more vulnerable. This provided him with easy access to potential victims. Mr Wee did not dispute that premeditation was a relevant aggravating factor here.

42 I wish to highlight a further point. As noted in *Terence Ng* the rationale behind premeditation and planning being an aggravating factor is an accused's commitment towards law-breaking. In the present case, apart from his aggressive and targeted recruitment campaign, the accused was also persistent and committed in his pursuit of his desires. Despite having been told by [V3] that he intended to inform his father of the accused's actions, the accused was steadfast and went on to commit further offences. Furthermore, on more than one occasion, the accused attempted to persuade the parent of the relevant victim to allow the victim to attend training when the victim was disallowed

from doing so. These circumstances show a considered commitment to a criminal cause and ought to be taken as aggravating.

Conclusion on Stage 1

43 The youth of the victims, the abuse of trust and extent of pre-meditation place the offences squarely within Band 2 of the *Pram Nair* framework. In addition, as mentioned in *Pram Nair*, the presence of the statutory aggravating factor under s 376(4)(*b*) was relevant.

Offender-specific factors

44 I turn now to the offender-specific analysis of the second stage.

Plea of guilt

45 The fact that an accused had pleaded guilty is a relevant mitigating factor in sexual offences, because it spares young victims the trauma of cross-examination and trial: *Chang Kar Meng v PP* [2017] 2 SLR 68 at [47].

The accused's psychiatric condition

46 There were three different aspects of the accused's psychiatric condition which was of concern in this case. The first is the evidence of paedophilia, which creates a risk of re-offending. This was the basis of the Prosecution's submission that prevention and the protection of the public necessitate a higher sentence. The second and third aspects were relied upon by the Defence in mitigation: these were a possible history of sexual abuse and a previous low IQ diagnosis.

(1) Previous low IQ diagnosis

47 The accused was referred to the Child Guidance Clinic by a neurologist sometime in 1998. The referral form included the results of an IQ assessment performed in 1996, when he was six years of age, which showed that his Wechsler Preschool and Primary Scale of Intelligence profile to be mainly in the retarded range. He was offered treatment, but dropped out in early 1999.[17] The accused also asserted that in 2006 he was diagnosed to have a mental age of a seven-year-old, which enabled him to obtain a complete exemption from National Service. His submission was that his "psychiatric history could have diminished his *mens rea* culpability".[18]

48 In contrast, in his report dated 28 October 2015, Dr Lee Kim Huat, Jason ("Dr Lee") of the Institute of Mental Health found that the accused did not suffer from an intellectual ability or any major mental illness. He further found that the accused was "fully aware of his actions at the time of the alleged offence and demonstrated clear understanding of the wrongfulness of the alleged offence".[19]

49 Viewing the evidence in its totality, there was insufficient evidence that the accused was of a low IQ. When I highlighted to Mr Wee Dr Lee's report, which stated that the accused was fully aware of his actions at all material times, Mr Wee made clear that he was not disputing that finding in the report.[20] The Notice of Exemption issued by the Ministry of Defence does not state the reason for which the accused was exempted from National Service.[21] Furthermore, the

17 Defence's written submissions at p 26, para 7.

18 Defence's written submissions at paras 42-43.

19 Defence's written submissions at p 24.

20 Certified transcript at p 32.

21 Defence's written submissions at p 14.

only proof of the accused's 2006 diagnosis was a handwritten note issued by Dr Yao Wan Haw of Mary Medical Clinic & Surgery,[22] who appears to be a general practitioner rather than a mental health specialist. It did not appear to be an extremely credible note as it did not contain any analysis or justification on Dr Yao's part for the diagnosis. It may have simply been the case that Dr Yao relied on a school placement request in APSN (Association for Persons with Special Needs) in 2003 and also information from the accused that he had been abused by a homosexual. Lastly—and I make this comment acknowledging that the court is not an expert in this regard—his admission to offences which clearly required planning, his personally written letters tendered to the court and his aural ability while addressing the court, were observed to be age and circumstance appropriate.

(2) Past incident of sexual abuse

50 The accused contended he had suffered a previous sexual abuse of which involved anal penetration by a bus driver when he was 15.[23] Mr Wee drew my attention to Dr Lee's report dated 23 October 2017, where he had stated that "various literatures [*sic*] have found an association between childhood sexual abuse and paedophilic disorder". The Defence submitted that the accused, being himself a victim who developed a paedophilic disorder through no volition of his own, had diminished "*mens rea* culpability".[24]

51 I rejected this submission for several reasons. First, there was no evidence of the extent of the trauma which the accused suffered. Mr Wee contended that the accused had sought treatment at Tan Tock Seng Hospital

---

22 Defence's written submissions at pp 15–16.

23 Defence's written submissions at para 4.

24 Defence's written submissions at paras 28–31.

("TTSH") for mental trauma and mental disability arising from the sexual abuse. In a reply to Mr Wee's enquiry, however, TTSH said that it was unable to furnish a medical report because of the lapse in time, as the accused was last seen at TTSH in *1998*. *The accused would have been only nine years old in 1998*, even though the accused claimed to have been sexually abused when he was around 15 years old. This contradicts the Defence's submission that the accused had sought treatment at TTSH for mental trauma resulting from his abuse.[25] This submission is further contradicted by the accused's own account to Dr Lee. In his report dated 28 October 2015, Dr Lee reproduced the accused's account that after being sexually abused, he returned to his normal daily routine the following day, and that he did not have recurrent nightmares, random flashbacks or experience significant distress when reminded of it.[26] Secondly, Dr Lee, in the report dated 23 October 2017, upon which Mr Wee sought to rely, did not state that there was a *causal* link between the accused's unfortunate history of sexual abuse and his diagnosis of paedophilia. Quite the contrary, he recognised that the link between the two has "not been firmly established", and that there are various other factors which can result in the development of paedophilic disorder.[27] The accused's submissions in this respect were therefore speculative. Third, arguments which seek to render unlawful conduct excusable in this way must, as a matter of principle, be treated with caution, as they undermine acceptable societal standards and appropriate responses to trauma. In any event, insofar as it is accepted that such trauma could create a tendency for replication, there could arguably then be an issue of specific deterrence where such accused persons are concerned. But to be clear, this point had no

---

25 Defence's written submissions at paras 4–6.

26 Defence's written submissions at p 23.

27 Defence's written submissions at p 28.

relevance to the sentence, because, as mentioned, there was insufficient evidence of trauma suffered by the accused.

(3) Paedophilia

52 The accused was remanded in Changi Prison Complex Medical Centre from 3 to 30 October 2015, and from 7 to 27 October 2016, where he was assessed by Dr Lee.[28] In his first report dated 28 October 2015, Dr Lee found that there was no evidence to suggest that the accused was suffering from a paraphilic disorder, in particular paedophilia.[29] Dr Lee issued a second report on 26 October 2016 where he pointed out new facts not raised previously, and made a finding there that the accused was suffering from a paedophilic disorder.[30]

53 Dr Lee's assessment that the risk of him reoffending was at least moderate to high. This was a relevant aggravating factor. In *Lim Hock Hin Kelvin v PP* [1998] 1 SLR(R) 37, the Court of Appeal held at [21(b)], in discussing paedophilic offences, that "[t]he presumption is that the safety of the child must be paramount and chronic paedophiles who have a propensity to reoffend, because they are either totally unable or unwilling to control themselves, have to be put away for long periods".

54 Mr Wee did not dispute Dr Lee's assessment but emphasised that treatments for paedophilic disorders exist. In other words, the accused did not suffer from an incurable disorder.[31] Presumably, the point sought to be made was that the accused's likelihood of reoffending could be lowered with

28 SOF at para 66.

29 Defence's submissions on sentence at p 24.

30 Defence's submissions on sentence at p 27.

31 Defence's written submission at paras 33–36.

treatment, and hence should not be accorded full weight as an aggravating factor. I note, however, that Dr Lee stated in his report that evidence on the efficacy of such treatments is "weak due to the paucity of well controlled and randomized studies with adequate follow up duration and sample size". He was therefore "guarded" on the prospect of a cure.[32] In any event, there was a better chance of his obtaining treatment within prison. I note his childhood psychiatric diagnosis was not followed up with treatment at all.

Lack of antecedents

55 A court may decline to consider an offender a first-time offender if that person had been charged with multiple offences, even if he had no prior convictions: see *Chen Weixiong Jerriek v PP* [2003] 2 SLR(R) 334 at [15]. In the light of the multiple offences committed, I gave little weight to the accused's lack of antecedents.

Hardship to the accused's family

56 The accused also tendered several letters to this court, explaining that his grandmother was very ill with stomach cancer, and that his mother was struggling to support the family.[33] On this basis, he sought a lenient sentence. As observed by the High Court in *Lai Oei Mui Jenny v PP* [1993] 2 SLR(R) 406 ("*Jenny Lai*") at [11], "imprisoning the main or sole breadwinner of a family unavoidably causes hardship to his family". Thus, this is not an argument which should normally be considered for the purposes of sentence, unless the circumstances were "quite exceptional": *Jenny Lai* at [12]. Having considered the accused's letters, I did not consider his circumstances exceptional.

---

32 Defence's written submissions at pp 28–29.

33 NE, p 5.

Multiple offences and TIC charges

57 The accused committed offences multiple times against multiple victims. Aside from the charges proceeded with, there were 20 TIC charges. They comprised 14 charges brought under s 376(1)(*b*) of the Penal Code, three brought under s 376A(1)(*c*) of the Penal Code, one brought under s 30(1) of the Films Act and two minor property offences. Three of the victims for the proceeded charges were the subject of multiple TIC charges,[34] while three of the TIC charges concerned another two victims, aged eleven and nine.[35] 17 of the TIC offences were of a similar nature to the charges proceeded with, which justified an increase in sentence: see *Terence Ng* at [64(a)]. In *PP v Goh Jun Guan* [2017] SGHC 2 ("*Goh Jun Guan*") at [94] Woo J emphasised the gravity where multiple crimes were committed against multiple victims: the higher the number of victims, the greater the need for deterrence, retribution and protection.

General deterrence aspects of offender's conduct

58 Of relevance here was a need for general deterrence. The High Court held in *PP v Law Aik Meng* [2007] 2 SLR(R) 814 ("*Law Aik Meng*") at [24]–[25] that need for general deterrence arises where offences have been committed against several vulnerable victims, and where the crime is of such a nature as to cause public disquiet and offend the sensibilities of the general public. The goal of specific deterrence was also engaged on these facts as the offences were premeditated: see *Law Aik Meng* at [22] and the discussion above at [41]–[42]. These various criteria were met in the case at hand.

---

34 A1–A9; A13–A16; A17–A20: see Prosecution's submissions at Annex A.

35 A10–12: see Prosecution's submissions at Annex A.

Conclusion on stage 2

59 The only relevant mitigating factor was the accused's plea of guilt. On the other side of the scale were the multiplicity of charges and the need for deterrence.

60 The discussion thus far may be summarised as follows: (i) the conceptual frame and factors approach of *Pram Nair* is applicable; (ii) its sentencing bands could be used, broadly speaking, as a useful reference point. Coming then to (iii), the placement of these offences within these bands, with the accumulation of aggravating factors at hand and considering the interests of the public, it would be conservative to say that each individual offence sat squarely within Band 2 of *Pram Nair* of 10–15 years. With these points in mind, I turn then to (iv), the overall sentence. In this context, I consider totality and proportionality.

Totality and the overall sentence

61 Both the Prosecution and the Defence relied upon *Yap Weng Wah* as a relevant precedent. Yap was sentenced, in total, to 30 years' imprisonment and 24 strokes of the cane. The offender, Yap, befriended victims on Facebook under different personas and earned their trust by portraying himself as an elder brother or mentor. He then arranged to meet on various pretexts and brought the victims to various places to commit sexual offences against them. He cajoled and persuaded the victims to engage in sexual activities with him even though some of them had expressed reluctance. On some occasions, he filmed the sexual acts with his mobile phone, albeit with the victims' knowledge. Yap faced a total of 76 charges, for offences committed against 30 boys between the ages of 11 and 15, over a period of two-and-a-half years. He was diagnosed to

be suffering from hebephilia (sexual interest in pubescent individuals), and his risk of reoffending was assessed to be high.

62 Yap's charges were different from those the accused faced. Yap pleaded guilty to 12 charges, comprising 11 charges of sexual penetration of a minor under 14, an offence punishable under s 376A(3) of the Penal Code, and one charge of sexual penetration of a minor under 16, an offence punishable under s 376A(2) of the Penal Code. These charges related to various types of penetrative acts, including penile-anal penetration, performing and receiving fellatio, and digital anal penetration. In applying *Yap* to the case at hand, both the Prosecution and the Defence were, in effect, comparing the overall severity of the criminal conduct in both cases. In other words, they sought to ensure that ordinal proportionality was observed in sentencing the accused. This approach was consistent with the totality principle as elucidated in *Mohamed Shouffee bin Adam v PP* [2014] 2 SLR 998 ("*Shouffee*") at [47].

63 Looking at the overall criminality of both cases, the offending in *Yap Weng Wah* is more serious in some respects. In particular, Yap faced 76 charges in relation to 30 victims, while the accused faced 22 sexual offence related charges in relation to seven victims. Yap also offended over a longer period of time, two-and-a-half years. Further, ten of the charges Yap pleaded guilty to involved penetrating his victims' anus with his penis, which Woo J found to be more serious than fellatio: see *Yap Weng Wah* at [58]–[61]. On the other hand, the victims in this case are younger, the youngest being eight years old. And this age group was specifically engineered by the accused when he took over the club, changing the focus from players aged 12–17. Children in the former age-group are unable to fend for themselves, as shown starkly by the facts of the offences at hand. The abuse of trust in this case is also worse than that in *Yap Weng Wah*, because of the vulnerability of the victims and the accused's

engagement with the children's parents. Further, there was a higher level of planning and premeditation, in terms of the renaming the club to mirror a professional club's name, maintaining its Facebook presence and designing its brochures. Yap had hebephilia, while the accused has paedophilia. As was described in *Yap Weng Wah* at [84], paedophilia is the primary and exclusive attraction to prepubescent children generally aged 13 and below while hebephilia is a conscious preference for pubescent individuals generally aged 11 to 14. After weighing up the various issues and considering the objectives of parity, rank order and the spacing of penalties necessary in ensuring ordinal proportionality (as referred to by the Alberta Court of Appeal in *R v Arcand* [2010] AJ No 1383 at [50]) between *Yap Weng Wah* and the case at hand, I was of the view that the accused's sentence ought to take reference from, but be appreciably lower than Yap's.

64 In the present case the accused pleaded guilty to five charges. In the light of the multiplicity of victims and charges and the public interest considerations at hand, in line with *ADF v PP* [2010] 1 SLR 874 (at [146]), I considered whether more than two sentences ought to run consecutively. I decided against it, because—unless I adjusted the individual sentences very substantially—the overall sentence would have been crushing, having regard to the principles outlined in *Shouffee* at [47]. It was in my view more appropriate to order individual sentences within Band 2 and, in that light, it was sufficient to order two terms of imprisonment to be consecutive as required by s 307 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC").

65 In my judgment, it was accordingly sufficient and appropriate to impose 13 years' imprisonment on each proceeded charge, with two sentences to run consecutively, resulting in a total of 26 years' imprisonment. As for caning, the minimum prescribed punishment is 12 strokes of the cane per charge under s

376(4)(b) of the Penal Code. The accused was therefore ordered to receive a total of 24 strokes, the maximum permitted under s 328(6) of the CPC.

The sentence

66 For the foregoing reasons, I sentenced the accused to 13 years' imprisonment and 12 strokes of the cane on each of the five charges. Two sentences of imprisonment were to run consecutively, with the other sentences of imprisonment to run concurrently. In the result, a term of 26 years' imprisonment with effect from the date of first remand on 3 October 2015 and 24 strokes of the cane were imposed.

Valerie Thean
Judge

David Khoo and James Chew (Attorney-General's Chambers) for the Prosecution;
Wee Hong Shern (Ong & Co LLC) for the accused.