IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 14

Criminal Case No 26 of 2019

Between

Public Prosecutor

And

BRH

ORAL JUDGMENT

[Criminal Law] — [Offences] — [Rape]
[Criminal Law] — [Offences] — [Sexual penetration]
[Criminal procedure and sentencing] — [Sentencing] — [Benchmark sentences]

TABLE OF CONTENTS

Public Prosecutor
v
BRH

[2020] SGHC 14

High Court — Criminal Case No. 26 of 2019
Tan Siong Thye J
13 January 2020

13 January 2020

Tan Siong Thye J:

Introduction

1 This is a highly appalling case involving the sexual abuse of a very young and vulnerable victim by her step-father. The accused, BRH, repeatedly committed sexual offences against his very young step-daughter ("the Victim"). These offences occurred from the time the Victim was only six years of age, and continued until she was 12. At the relevant time of the offences, the accused was between 34 and 39 years of age. For his actions, the accused faces the following 15 charges in chronological sequence:

(a) sometime in 2012 he outraged the modesty of the Victim who was under 14 years of age, an offence punishable under s 354(2) of the Penal Code (Cap 224, 2008, Rev Ed) ("Penal Code"), namely, by

rubbing the Victim's vagina over her clothes without her consent when she was between six and seven years of age ("the 1st charge");

(b) sometime between January and June 2013 he sexually assaulted by penetration the Victim who was under 14 years of age, an offence under s 376(1)(*a*) and punishable under s 376(4)(*b*) of the Penal Code, namely, he penetrated his penis into the anus of the Victim without her consent when she was then 7 years of age ("the 2nd charge");

(c) sometime in 2014 he sexually assaulted by penetration the Victim who was under 14 years of age, an offence under s 376(1)(*a*) and punishable under s 376(4)(*b*) of the Penal Code, namely, he penetrated his penis into the mouth of the Victim without her consent when she was between eight and nine years of age ("the 3rd charge");

(d) sometime in 2014 he attempted to sexually assault the Victim who was under 14 years of age, an offence under s 376(1)(*a*) and punishable under s 376(4)(*b*) read with s 511 of the Penal Code, namely, by attempting to penetrate, with his penis, the anus of the Victim without her consent when she was between eight and nine years of age ("the 4th charge");

(e) sometime in 2014 he raped the Victim who was under 14 years of age, an offence under s 375(1)(*b*) and punishable under s 375(3)(*b*) of the Penal Code, namely, by penetrating, with his penis, the vagina of the Victim without her consent when she was between eight and nine years of age ("the 5th charge");

(f) sometime in January 2015 he sexually assaulted by penetration the Victim who was under 14 years of age, an offence under s 376(1)(*a*)

and punishable under s 376(4)(*b*) of the Penal Code, namely, by penetrating, with his penis, the anus of the Victim without her consent when she was then 9 years of age ("the 6th charge");

(g) sometime in 2015 he raped the Victim who was under 14 years of age, an offence under s 375(1)(*b*) and punishable under s 375(3)(*b*) of the Penal Code, namely, by penetrating, with his penis, the vagina of the Victim without her consent when she was between nine and ten years of age ("the 7th charge");

(h) sometime in 2015 he sexually assaulted the Victim who was under 14 years of age, an offence under s 376(1)(*a*) and punishable under s 376(4)(*b*) of the Penal Code, namely, by penetrating, with his penis, the mouth of the Victim without her consent when she was between nine and ten years of age ("the 8th charge");

(i) sometime in 2016 he outraged the modesty of the Victim who was under 14 years of age, an offence punishable under s 354(2) of the Penal Code, namely, by touching the Victim's vagina over her clothes without her consent when she was between ten and 11 years of age ("the 9th charge");

(j) sometime in 2016 he outraged the modesty of the Victim who was under 14 years of age, an offence punishable under s 354(2) of the Penal Code, namely, by touching the Victim's buttocks skin-on-skin without her consent when she was between ten and 11 years of age ("the 10th charge");

(k) sometime in December 2016 he sexually assaulted by penetration the Victim who was under 14 years of age, an offence under

s 376(1)(*a*) and punishable under s 376(4)(*b*) of the Penal Code, namely, by penetrating, with his penis, the mouth of the Victim without her consent when she was then 11 years of age ("the 11th charge");

(l) sometime in December 2016 he sexually assaulted by penetration the Victim who was under 14 years of age, an offence under s 376(1)(*a*) and punishable under s 376(4)(*b*) of the Penal Code, namely, by penetrating, with his penis, the anus of the Victim without her consent when she was then 11 years of age ("the 12th charge");

(m) sometime in 2017 he sexually assaulted by penetration the Victim who was under 14 years of age, an offence under s 376(1)(*a*) and punishable under s 376(4)(*b*) of the Penal Code, namely, by penetrating, with his penis, the mouth of the Victim without her consent when she was between 11 and 12 years of age ("the 13th charge");

(n) sometime in 2017 he sexually assaulted by penetration the Victim who was under 14 years of age, an offence under s 376(1)(*a*) and punishable under s 376(4)(*b*) of the Penal Code, namely, by penetrating, with his penis, the anus of the Victim when she was between 11 and 12 years of age ("the 14th charge"); and

(o) sometime in 2018 he attempted to sexually assault by penetration the Victim who was under 14 years of age, an offence under s 376(1)(*a*) and punishable under s 376(4)(*b*) read with s 511 of the Penal Code, namely, by attempting to penetrate, with his penis, the anus of the Victim without her consent when she was then 12 years of age ("the 15th charge").

2 At the hearing before me, the Prosecution proceeded on the 5th, 11th and 12th charges. The accused pleaded guilty to all the proceeded charges and admitted to the statement of facts ("SOF") without qualification. I accepted his unequivocal plea of guilt and, accordingly, convicted him on the 5th, 11th and 12th charges. The accused also consented to having the remaining charges (hereafter "the TIC charges") being taken into consideration for the purposes of sentencing.

3 After hearing the accused's mitigation plea, and the Prosecution's and Defence's submissions on sentence, I now give reasons for the sentences which I shall pronounce shortly.

Relevant facts

Background to the offences

4 The Victim's biological parents were separated when she was an infant. The Victim's mother then re-married the accused in 2008, when the Victim was about two years of age. The accused and the Victim's mother have four children arising out of their marriage. Together with the Victim, all seven members of the family resided in a one-room Housing and Development Board flat somewhere in the central region of Singapore ("the flat"). The entire family usually slept together in the living room of the flat.

5 The Victim and the accused had a good relationship prior to the offences. She treated him as her real father and was closer to the accused than to her own biological father. This changed abruptly when the accused started to sexually abuse the Victim in 2012.

6 The Victim was only six years of age at the time of the first incident, which occurred sometime in 2012, when she had just started her Primary School education. She was sleeping on a mattress in the living room of the flat when, at about 5 a.m., the accused woke her up and rubbed her vagina over her clothes. The accused then told the Victim to keep silent about the incident. This forms the subject of the 1st charge.

7 The accused did not stop after the first incident and instead his sexual abuse of the Victim started escalating the following year. Sometime between January and July 2013, while the Victim was asleep, the accused turned her over and removed her pants and panties. He then removed his shorts before penetrating the Victim's anus with his penis. This caused the Victim to cry as she felt a tearing pain at her anus, but the accused covered her mouth and slapped her. He then put his finger to his lips, telling the Victim to be quiet. This forms the subject of the 2nd charge.

8 The accused subsequently performed or attempted to perform these acts of penile-anal penetration on five other occasions from 2014 to 2018, one time each year. These acts form the subject of the 4th, 6th, 12th, 14th and 15th charges.

9 The sexual abuse of the Victim also extended to acts of fellatio, beginning sometime in 2014. On the first instance, the accused summoned the Victim to his bedroom, closed the door and began groping the Victim's body. She protested and told the accused to stop, to which he retorted that her body was his and he could touch her anywhere he wanted. The accused then stood in front of the Victim and removed his underwear, exposing his penis to her. He then pulled her head towards his penis, instructing her to open her mouth and told her to "suck". Despite the Victim's unwillingness, the accused proceeded to insert his penis into her mouth, held on to her head and thrusted his penis in

and out of her mouth before ejaculating in it. This forms the subject of the 3rd charge.

10 Following the acts forming the 3rd charge, the accused warned the Victim to keep it a secret, at the same time promising that he would cease all such acts. Despite this, the accused persisted in his abuse of the Victim, performing these acts of penile-oral penetration on three other occasions from 2015 to 2017, one time each year. These acts form the subject of the 8th, 11th and 13th charges.

11 The accused also raped the Victim on two occasions (forming the subject of the 5th and 7th charges) in 2014 and 2015. He also outraged her modesty by touching the Victim's vagina over her clothes in 2016 (9th charge). In the same year he again outraged her modesty by touching her buttocks skin-on-skin (10th charge).

12 The accused did not use a condom when he raped the Victim and also when he used his penis to penetrate the Victim's anus. For fellatio, the accused would ejaculate into the Victim's mouth and on other instances, he would ejaculate onto her stomach or her back.

13 This state of affairs continued till 17 January 2018. On that day when the Victim was getting ready for school, the accused summoned her to the bedroom of the flat. He made her lie on the mattress with her legs on the floor. He removed her skirt and panties and attempted to penetrate her anus with his penis. The Victim prevented any penetration by moving her body. The accused gave up after a while and masturbated, eventually ejaculating on her back.

14 This was the final straw for the Victim. On her way to school, the Victim sent her maternal aunt a text message stating: "I need your help,.. my daddy went crazy today morning he forced me to have 'sex' with him…he then opened my skirt and touched my butt". The aunt then called the Victim, who confided in her. The Victim was also observed by a teacher to be crying in despair and she was brought to a school counsellor. The matter was reported to the Police on the same day.

15 Subsequently, the Victim underwent a medical examination at the KK Women's and Children's Hospital. The doctor who examined the Victim noted that there were old hymenal tears at 3 o'clock, 9 o'clock and 12 o'clock positions.

16 The Victim also underwent a psychiatric assessment at the Child Guidance Clinic on 26 April 2018. Dr Parvathy Pathy's report disclosed that the Victim was "very scared" of the accused, and she "feels angry, ashamed and embarrassed that she has lost her virginity at a young age".

17 In her Victim Impact Statement, the Victim said that the abuse by the accused caused her to suffer from insecurity and a constant worry of judgment from others for the acts that had been done to her. She also disclosed that she still suffers flashbacks of the incidents. She is also afraid of the accused's reprisal and she finds it difficult to trust male individuals.

Facts pertaining to the 5th charge

18 In 2014 the accused raped the Victim for the first time. At that time she was very young, between eight and nine years of age. She was sleeping in the living room of the flat when the accused woke her up and told her that he wanted to "do the front hole". The Victim complied as she did not want to anger him.

He then proceeded to remove her pants and panties and penetrated her vagina with his penis. This caused exceptional pain to the Victim, far beyond the previous instances of penile-anal penetration. Yet, out of fear of the accused, the Victim did not dare to respond by pushing him away. When she responded to the pain by shouting softly, the accused scolded her and told her to shut up. The accused continued penetrating the Victim's vagina for about a minute, while she continued crying silently.

Facts pertaining to the 11th charge

19 This was the third instance of penile-oral penetration, which occurred sometime in the morning of December 2016, when the Victim was 11 years old. The accused called the Victim to the bedroom and instructed her to remove her clothes, which she reluctantly complied with. The accused then instructed her to suck his penis, but this time, she refused to do so. Despite the refusal, the accused proceeded to force the Victim's head towards his penis and penetrated it into her mouth for about 15 seconds, before ejaculating in it.

Facts pertaining to the 12th charge

20 Immediately after committing the act of fellatio that forms the 11th charge, the accused informed the Victim that he wanted to penetrate her anus. She resisted and made known to the accused that it would be painful for her. However, he informed her that it would only be for a short while and instructed the Victim to lie with her hands lifting her upper body and knees propped on the mattress. He then used his penis to penetrate her anus and he only stopped when his penis went flaccid.

Submissions on sentence

Prosecution's case

21 The Prosecution submits that the applicable framework for the offence of statutory rape as laid down by the Court of Appeal ("CA") in *Ng Kean Meng Terence v PP* [2017] 2 SLR 449 ("*Terence Ng*") was transposed to the offence of sexual assault by penetration by the CA in *Pram Nair v Public Prosecutor* [2017] 2 SLR 1015 ("*Pram Nair*"). As the sentencing frameworks in the above cases consider the offence-specific and offender-specific factors in arriving at an appropriate sentence, the Prosecution also adopts the similar approach in their submissions.

22 With regard to Stage 1 of both the *Terence Ng* and *Pram Nair* frameworks, the Prosecution submits that the current case falls within the upper levels of Band 2. This was on the basis of an abuse of parental trust and authority, the victim being young and vulnerable, and there being premeditation and sexual grooming of the child. Further, the Prosecution relies on *Terence Ng* (at [53]) and *Pram Nair* (at [160]) for the proposition that aggravated offences will almost invariably fall within Band 2. Consequently, the indicative starting points should, in their submissions, be 17 years' imprisonment and 12 strokes of the cane for the aggravated statutory rape offence, and 15 years' imprisonment and 12 strokes of the cane for the aggravated sexual assault by penetration offence.

23 At Stage 2 of both the *Terence Ng* and *Pram Nair* frameworks, the Prosecution submits that the mitigating factor was that the accused has pleaded guilty. However, this is somewhat negated by the number of TIC charges present in the circumstances. The Prosecution thus urges this court to impose an aggregate sentence of at least 28 years' imprisonment and 24 strokes of the cane.

The Prosecution argues that this "appropriately reflects" the "unrelenting and absolute" abuse that was inflicted on the Victim.

Mitigation plea

24 In the mitigation plea, the Defence Counsel urges the court to impose an aggregate sentence of 25 years' imprisonment and 24 strokes of the cane. He accepts the *Terence Ng* framework.

25 The Defence Counsel *agrees with the Prosecution*, at least in relation to the 5th charge which is statutory rape, that the circumstances of the case fall on the higher end of a Band 2 sentence. In support of a lower sentence, he submits that the accused has pleaded guilty at the earliest instance.

My decision

The law

The statutorily prescribed sentences during the period when the accused committed the offences

26 The offence of rape of a victim under 14 years of age when the accused committed the offences was punishable under s 375(3)(*b*) of the Penal Code, which provides as follows:

> (3) Whoever —
>
> …
>
> (b) commits an offence under subsection (1) with a woman under 14 years of age without her consent,
>
> shall be punished with imprisonment for a term of not less than 8 years and not more than 20 years and shall also be punished with caning with not less than 12 strokes.

27 The offence of sexual penetration of a victim under 14 years when the accused committed the offences was punishable under s 376(4)(*b*) of the Penal Code, which provides as follows:

> (4) Whoever —
>
> …
>
> (b) commits an offence under subsection (1) or (2) against a person who is under 14 years of age,
>
> shall be punished with imprisonment for a term of not less than 8 years and not more than 20 years and shall also be punished with caning with not less than 12 strokes.

28 As mentioned at [2], the Prosecution proceeded on three charges against the accused. The fact that each of the proceeded charges carries a term of imprisonment invokes s 307 of the Criminal Procedure Code ("CPC"), which states:

> 307.—(1) Subject to subsection (2), if at one trial a person is convicted and sentenced to imprisonment for at least 3 distinct offences, the court before which he is convicted must order the sentences for at least 2 of those offences to run consecutively.

29 Consequently, in this case, the minimum statutorily prescribed punishment is 16 years' imprisonment. As for caning, in accordance with s 328 of the CPC, it is limited to 24 strokes of the cane.

The applicable sentencing frameworks

(1) The *Terence Ng* sentencing framework

30 In *Terence Ng*, the CA set out a two-step sentencing framework for rape offences, utilising sentencing bands. This framework is summarised by the CA in *Terence Ng* at [73] as follows:

> (a) At the first step, the court should have regard to the *offence-specific* factors in deciding which band the offence in

question falls under. Once the sentencing band, which defines the range of sentences which may *usually* be imposed for an offence with those features, is identified, the court has to go on to identify precisely where within that range the present offence falls in order to derive an 'indicative starting point'. In exceptional cases, the court may decide on an indicative starting point which falls outside the prescribed range, although cogent reasons should be given for such a decision.

(b) The sentencing bands prescribe ranges of sentences which would be appropriate for contested cases and are as follows:

(i) Band 1 comprises cases at the lower end of the spectrum of seriousness which attract sentences of 10–13 years' imprisonment and six strokes of the cane. Such cases feature no offence-specific aggravating factors or are cases where these factors are only present to a very limited extent and therefore have a limited impact on sentence.

(ii) Band 2 comprises cases of rape of a higher level of seriousness which attract sentences of 13–17 years' imprisonment and 12 strokes of the cane. Such cases would usually contain two or more offence-specific aggravating factors (such as those listed at [44] above).

(iii) Band 3 comprises cases which, by reason of the number and intensity of the aggravating factors, present themselves as extremely serious cases of rape. They should attract sentences of between 17–20 years' imprisonment and 18 strokes of the cane.

(c) At the second step, the court should have regard to the aggravating and mitigating factors which are *personal to the offender* to calibrate the sentence. These are factors which relate to the offender's particular personal circumstances and, by definition, *cannot* be the same factors which have already been taken into account in determining the categorisation of the offence. One of the factors which the court should consider at this stage is the value of a plea of guilt (if any). The mitigating value of a plea of guilt should be assessed in terms of (i) the extent to which it is a signal of remorse; (ii) the savings in judicial resources; and (iii) the extent to which it spared the victim the ordeal of testifying. Thus under our proposed framework, while for the first step an uncontested case will proceed in the same way as a contested case, it is at the second step that the appropriate discount will be accorded by the court for the plea of guilt by the offender.

> (d) The court should clearly articulate the factors it has taken into consideration as well as the weight which it is placing on them. This applies *both* at the second step of the analysis, when the court is calibrating the sentence from the indicative starting point *and* at the end of the sentencing process, when the court adjusts the sentence on account of the totality principle. In this regard, we would add one further caveat. In a case where the offender faces two or more charges, and the court is required to order one or more sentences to run consecutively, the court can, if it thinks it necessary, further calibrate the individual sentence to ensure that the global sentence is appropriate and not excessive. When it does so, the court should explain itself so that the individual sentence imposed will not be misunderstood.
>
> [emphasis in original]

(2) The *Pram Nair* sentencing framework

31 The *Terence Ng* framework was subsequently transposed to the offence of sexual assault by penetration by the CA in *Pram Nair*. This is set out in *Pram Nair* at [158]–[159] as follows:

> 158 Having said that, we do recognise the logic of the PP's suggestion that the *Terence Ng* framework should be transposed to the offence of digital penetration. Many of the offence-specific aggravating factors listed in *Terence Ng* (such as premeditation, abuse of a position of trust, special infliction of trauma) may also be present and pertinent in offences involving digital penetration.
>
> 159 It follows that there should also be three sentencing bands for the offence of sexual penetration of the vagina using a finger, though the range of starting sentence for each band should be lower to reflect the lesser gravity of the offence. The sentencing bands should be as follows:
>
> > (a) Band 1: seven to ten years' imprisonment and four strokes of the cane;
> >
> > (b) Band 2: ten to 15 years' imprisonment and eightstrokes (*sic*) of the cane;
> >
> > (c) Band 3: 15 to 20 years' imprisonment and 12 strokes of the cane.
>
> …

32 I further note that the *Pram Nair* framework is applicable to all forms of sexual assault by penetration under s 376 of the Penal Code. This position was clarified by the CA in *BPH v Public Prosecutor and another appeal* [2019] 2 SLR 764 ("*BPH*") at [55], and is consistent with other decisions before the High Court (see *Public Prosecutor v BMF* [2019] SGHC 227 at [27]; *Public Prosecutor v Tan Meng Soon Bernard* [2019] 3 SLR 1146 at [23]; *Public Prosecutor v BVZ* [2019] SGHC 83 at [52]; *Public Prosecutor v Ridhaudin Ridhwan bin Bakri and others* [2019] SGHC 191 at [74]). This is the preferred approach as (i) it obviates the complexity that arises from making distinctions between the myriad permutations of sexual assault by penetration; (ii) the text of s 376 of the Penal Code does not indicate a ranking in terms of severity between the types of sexual assault; and (iii) the lack of unanimity of views as to whether one form of sexual penetration is more serious or detestable in comparison to others (*BPH* at [58]–[60]). The *Pram Nair* framework thus also applies to situations where an accused's penis penetrates the victim's anus or mouth, an offence under s 376(1)(*a*) of the Penal Code.

The offence-specific and offender-specific approach

33 I agree that the offence-specific and offender-specific factors apply equally to the offences of aggravated statutory rape and aggravated sexual assault by penetration. Therefore, notwithstanding the different ranges in the sentencing bands of the *Terence Ng* and *Pram Nair* frameworks, I shall proceed to analyse the factors collectively.

Stage 1

34 The first stage of analyses requires me to identify the offence-specific aggravating factors in this case. The number and intensity of these aggravating factors then allow me to determine which of the three sentencing bands the

instant case falls under and the indicative starting sentence (*Pram Nair* at [119]; *Terence Ng* at [39(a)]).

The offence-specific factors

(1) The Victim's vulnerability

35 The Victim in this case was especially vulnerable due to her age. The accused had started sexually abusing her when she was only six years old. He started sexually penetrating her when she was between seven and eight years old and he first raped her when she was between eight and nine years old.

36 This vulnerability is underscored by the fact that, given her young age, the Victim had initially failed to understand the depravity of the abuse against her. This unawareness was exacerbated as her parents had opted her out of sex education classes in school. She, thus, did not know the difference between a "good touch" and a "bad touch". It was only after speaking to her classmates, who had attended sex education classes, did she understand the nature and consequences of the abuse against her.

(2) Statutory aggravating factor

37 When the accused committed the offences, the Victim was, at all times, less than 14 years of age. This transforms the acts into aggravated offences, with legislatively-prescribed minimum punishments. Specifically, for both aggravated statutory rape and aggravated sexual assault by penetration, the relevant statutorily prescribed punishment is for an imprisonment term of eight to 20 years and not less than 12 strokes of the cane, as per ss 375(3) and 376(4) of the Penal Code respectively.

38 This statutory aggravating factor is of particular importance in

determining the appropriate sentencing band. In *Terence Ng*, not only did the CA identify "forcible rape of a victim below 14" as an offence-specific aggravating factor, it helpfully stated at [53], in relation to Band 2:

> 53 … Cases which contain any of the statutory aggravating factors and prosecuted under s 375(3) of the Penal Code will almost invariably fall within this band. …

39 A similar position was taken by the CA in *Pram Nair*. Although *Pram Nair* dealt with a case of sexual assault by penetration punishable under s 376(3) of the Penal Code, in articulating the application of the framework to offences punishable under s 376(4) of the Penal Code, the CA stated at [160]:

> 160 In formulating these bands, we have been conscious that where the offence of sexual assault by penetration discloses any of the two statutory aggravating factors in s 376(4) of the Penal Code – *ie*, where there is use of actual or threatened violence (s 376(4)(a)) or where the offence is committed against a person under 14 years of age (s 376(4)(b)) – there is a prescribed minimum sentence of eight years' imprisonment and 12 strokes of the cane. These cases should fall within Band 2 (or even Band 3 if there are additional aggravating factors). We said the same in *Terence Ng* … in relation to the identical statutory aggravating factors for rape (under s 375(3) of the Penal Code): we considered these statutory aggravating factors to be part of the list of offence-specific aggravating factors to consider in determining which sentencing band a particular offence falls under (at [44(d)] and [44(f)]) and that where any of the statutory aggravating factors are present, the case would almost invariably fall within Band 2 (*Terence Ng* at [53]).

40 It is, thus, apparent that the default position when dealing with aggravated sexual offences is to start at Band 2 of the *Terence Ng* and *Pram Nair* frameworks.

41 At this juncture, I pause to note that this default position aligns with Band 2 of the *Terence Ng* framework that specifies a punishment of 12 strokes of the cane, in addition to a range of years' imprisonment. In contrast, Band 2

of the *Pram Nair* framework specifies a punishment of *eight strokes* of the cane, in addition to a range of years' imprisonment. This places the number of strokes of the cane in this band below the legislatively-prescribed minimum punishment of 12 strokes of the cane. Further, a punishment of 12 strokes of the cane would appear to fall within Band 3 of the *Pram Nair* framework.

42 Nevertheless, I am of the view that the default position for aggravated sexual assault should still remain at Band 2 of the *Pram Nair* framework. In my view, this band still accurately reflects the indicative starting point for such offences. However, as the *Pram Nair* framework was formulated generally for all offences under s 376 of the Penal Code, the number of strokes of the cane within Band 2 will necessarily have to be modified to 12 strokes of the cane when dealing with cases of aggravated sexual assault by penetration.

43 The reason why the sentencing bands in the *Pram Nair* framework have been calibrated downwards from the *Terence Ng* framework is to reflect the lesser gravity of sexual assault by penetration, as compared to rape (*Pram Nair* at [149]–[157] and [159]). In particular, one of the reasons provided by the CA at [156] was as follows:

> 156 … Short of similar Parliamentary intention in our context, we would be slow to upset a fairly well-established line of authority in our jurisprudence which establishes that rape is the gravest of all sexual offences and should generally attract a higher starting sentence.

44 However, in contradistinction to the general offences under ss 375 and 376 of the Penal Code, Parliament has clearly provided a similar mandatory statutorily prescribed minimum punishment for the aggravated form of both types of offences. It would thus be correct to equate the number of strokes of the cane in Band 2 of both the *Terence Ng* and *Pram Nair* frameworks. The presence of similar minimum statutorily prescribed punishments for the

aggravated form of rape as well as sexual assault by penetration play the role of setting an absolute threshold beyond which the sentence imposed should not fall (*Terence Ng* at [49]). This does not undermine the fact that the offence of rape represents the "gravest of all sexual offences" (*Pram Nair* at [156]). The modification for the number of strokes of the cane merely serves to bring the framework in line with s 376(4) of the Penal Code.

(3) Abuse of position of trust

45 The accused had clearly abused his position of trust with respect to the Victim. As the CA observed in *Terence Ng* at [44(b)], in such situations "there is a dual wrong: not only has he committed a serious crime, he has also violated the trust placed in him by society and by the victim". The accused became the Victim's step-father when she was extremely young and thus he was the father figure in her life. Yet, he violated this trust she had reposed in him, exerting an inordinate amount of pressure on her to keep silent and allowing him to continually satisfy his depraved desires. He had even gone as far as to obtain her silence by his deceptive false promise to stop his actions, only to turn around and break that very same promise.

(4) Long period of abuse

46 The accused's abuse of the Victim had occurred over an extended duration of time. At least six years had passed from the time when he first molested her to when she finally reported his actions to the police. This included a period of time when she came to understand the wrongfulness of his abuse that was being carried out against her. However, even then, the Victim continued to comply, both out of fear of the accused and that her family would not believe her even if she revealed the incidents to them.

(5) Lack of consent

47 In situations where the victim is under 14 years of age, the policy of the law is that she is taken to be unable to consent to sexual activity, as observed by the CA in *Terence Ng*. In this case, however, not only had the Victim not consented, she had *actively refused* assent as she found the sexual activity to be painful and uncomfortable. Despite this, the accused ensured the Victim's compliance by scolding or slapping her on the occasions that she resisted. The Victim thus submitted to the accused's penetrative acts as she was fearful of him.

(6) Premeditation

48 The accused's depraved sexual abuse of the Victim clearly was not one-off. He committed the offences with premeditation so that those acts were done without alerting his wife and others, and he also threatened the Victim to keep silent. This is why these offences continued for about six years.

(7) Need for general deterrence

49 A highly relevant offence-specific consideration here is the principle of general deterrence. The Prosecution relied on The Straits Times' article entitled "More Allegations of Children Sexually Abused by Family" dated 3 April 2017 to illustrate the point that there has been a spike in such cases. Further, the Prosecution argues that there is a strong public interest in sending a clear deterrent message to prevent such heinous acts.

50 I agree with the Prosecution on the need for general deterrence. Reference can be made to the recent case of *Public Prosecutor v BMR* [2019] 3 SLR 270 ("*BMR*"), where the facts of that case are similar to the facts here. In

BMR, the victim was abused by her step-father for a period of four years. It started when the victim in that case was eight years old. The sexual abuse started with the stroking and patting of the victim's breasts underneath her bra, and touching her vagina under her panties. This escalated with him penetrating her vagina digitally, forced fellatio and several counts of rape. He had also taken steps to isolate her and emotionally blackmailed her by threatening to divorce the victim's mother if the victim did not comply. BMR pleaded guilty to three charges of aggravated statutory rape. Consequently, Woo Bih Li J sentenced him to 14 years' imprisonment and 12 strokes of the cane for each charge, with an aggregate sentence of 28 years' imprisonment and 24 strokes of the cane.

The indicative starting points

51 Based on the various aggravating factors above, the current case falls squarely under Band 2 of both the *Terence Ng* and *Pram Nair* frameworks. Thus, this attracts a sentence of 13 to 17 years' imprisonment and 12 strokes of the cane for the rape charge, and 10 to 15 years' imprisonment and 12 strokes of the cane for each of the sexual assault by penetration charges.

52 Other instances of familial sexual abuse of children include *Public Prosecutor v BNN* [2014] SGHC 7 ("*BNN*"). In that case, the victim's step-father had begun sexually abusing her when she was 11 years old and routinely physically abused the victim and her sister. There were also multiple charges of rape, where on the first instance, the accused had pulled the victim out of the toilet where she had been showering, licked her vagina, groped her breasts before raping her without a condom, eventually ejaculating in her. The offender was sentenced to 17 years' imprisonment and 17 strokes of the cane and 15 years' imprisonment and 15 strokes of the cane for the two rape charges to

which he had pleaded guilty, with an aggregate of 32 years' imprisonment and 24 strokes of the cane.

53 In *Public Prosecutor v AHB* [2010] SGHC 138 ("*AHB*"), the offender outraged the modesty of his biological daughter and raped her when she was 14 years of age. The victim became pregnant as a result, and gave birth to a daughter who she had to give up for adoption. To make matters worse, when the offender was informed by the victim of her pregnancy, he instructed her to lie if questioned and forced her to fellate him. The offender was sentenced to 18 years' imprisonment and 15 strokes of the cane for each of the three charges of rape and 10 years' imprisonment and five strokes of the cane for one charge of aggravated sexual assault by penetration to which he had pleaded guilty, with the aggregate sentence being 36 years' imprisonment and 24 strokes of the cane.

54 The Prosecution referred me to an additional case of *Public Prosecutor v BOF (unreported)* in their submissions. In that case, the accused sexually abused his daughter for a period of nine years, beginning when she was five to six years of age. The abuse was also progressive, starting with touching of her vagina, before progressing to penetrative acts. The accused pleaded guilty to two charges of statutory rape and one charge of aggravated sexual assault by penetration. Consequently, Audrey Lim JC (as she then was) sentenced him to 15 years' imprisonment for each of the statutory rape charges and 13 years' imprisonment for the remaining charge, with an aggregate sentence of 29 years' imprisonment (including 12 month's imprisonment in lieu of 24 strokes of the cane).

Stage 2

55 I next turn to consider the offender-specific aggravating and mitigating factors to consider if there should be any adjustment to the indicative sentence (*Pram Nair* at [119]; *Terence Ng* at [73]).

Plea of guilt

56 As observed above in [23] and [25], the Prosecution and the Defence Counsel both raised the fact that the accused had pleaded guilty as a mitigating factor. I agree that the plea of guilt goes some way towards reducing the sentence. As the CA stated in *Chang Kar Meng v Public Prosecutor* [2017] 2 SLR 68 at [47]:

> 47 At the same time, in the context of sexual offences, we think that there will often be a further benefit from a plea of guilt – namely, the victim will thereby be spared the trauma of having to relive the experience in court and being cross-examined on it. We therefore hold that offenders who plead guilty to sexual offences, even in cases where the evidence against them is compelling, ought ordinarily to be given at least *some* credit for having spared the victim additional suffering in this regard. [emphasis in original]

TIC charges

57 However, I considered the TIC charges in this case to be an aggravating factor. To recapitulate, the TIC charges against the accused were three charges of outrage of modesty, one charge of aggravated statutory rape, six charges of aggravated sexual assault by penetration, and two charges of attempted aggravated sexual assault by penetration. Not only were there a high number of TIC charges, many were as serious as the proceeded charges. The aggravating effect of these TIC charges has to be weighed against the mitigating effect arising from the accused's plea of guilt.

Presence of antecedents

58 The accused also has a long list of antecedents. His first brush with the law was when he was 16 years old, for the offence of theft, for which he was sentenced to a year of probation. However, he breached the probation order less than eight months later by committing theft again. This time, he served a week's imprisonment in default of the fine imposed. Less than four years later, he committed robbery with hurt and was sentenced to five years' imprisonment and 12 strokes of the cane.

59 Following this period of incarceration, the accused was again convicted of multiple offences comprising: (i) one count of theft; (ii) one count of criminal breach of trust by a servant; (iii) one count of fraudulent possession of property; (iv) one count of resistance to lawful apprehension; and (v) one count of theft in dwelling. The aggregate imprisonment sentence imposed for these offences was four years and seven months' imprisonment.

60 The total aggregate court sentences are close to 10 years' imprisonment and 12 strokes of the cane. In addition to the court sentences, in 1996, when the accused was 18 years old, he was incarcerated at the drug rehabilitation centre for about 13 months.

61 I note that the antecedents are not related to the type of offences that have been committed against the Victim here. However, this extended period of offending manifests a progressive proclivity towards criminal activity and a cavalier disregard for the law, making it relevant for consideration (see *Tan Kay Beng v Public Prosecutor* [2006] 4 SLR(R) 10 at [16]).

Conclusion

62 It truly boggles the mind to think of how such dastardly and reprehensible acts could have been performed against an innocent young child, particularly in her formative years. The accused had completely destroyed the Victim's life at a tender age. Instead of caring for and protecting his step-daughter, he exploited and leveraged this relationship, inflicting tremendous trauma upon her which will require a very long time to heal, if that is ever possible. For his actions, he deserves the most severe disapprobation that can be meted out according to the rule of law.

63 Having considered the various factors above, including the accused's mitigation plea, I am of the view that a sentence of 15 years' imprisonment and 12 strokes of the cane is appropriate for the 5th charge, and a sentence of 13 years' imprisonment and 12 strokes of the cane is appropriate for each of the 11th and 12th charges.

64 I further order that the sentences for the 5th charge and 11th charge are to run consecutively, with an aggregate of 28 years' imprisonment with effect from the date of the accused's remand, *ie* 19 January 2018. In accordance with s 328 of the CPC, the caning will be limited to 24 strokes. I am satisfied that the aggregate sentence is proportionate and in line with the totality principle as found in *Mohamed Shouffee bin Adam v Public Prosecutor* [2014] 2 SLR 998.

Tan Siong Thye
Judge

Chee Ee Ling and Ng Yiwen (Attorney-General's Chambers) for the Prosecution;
Lim Ghim Siew Henry (G S Lim & Partners) for the accused.
