

**IN THE GENERAL DIVISION OF THE HIGH COURT OF THE REPUBLIC  
OF SINGAPORE**

**[2021] SGHC 183**

Criminal Case No 56 of 2019

Between

Public Prosecutor

And

BQD

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**FOUNDATIONS OF DECISION**

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[Criminal Law] — [Offences] — [Sexual offences]

[Criminal Procedure and Sentencing] — [Sentencing] — [Sexual offences]

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**Public Prosecutor**

**v**

**BQD**

**[2021] SGHC 183**

General Division of the High Court — Criminal Case No 56 of 2019

Audrey Lim J

17–20, 23–27 November 2020; 9–11, 16–19 February, 4 May, 1 June, 21 July 2021

27 July 2021

**Audrey Lim J:**

**Background**

1 The Accused (“D”) claimed trial to 15 charges of sexual offences relating to his biological daughter (“V”) which occurred between 2010 to 2014 when V was between 10 and 14 years old. V was born in 2000.

2 D and his ex-wife (“N”) have three children, namely V, V’s elder brother (“B”) and V’s younger sister (“S”). Around 2010, they and their domestic helper lived in one room in a flat at Yishun (“Yishun Flat”). The Yishun Flat belonged to D’s brother (“K”) who lived there with his wife and son.<sup>1</sup>

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<sup>1</sup> 9/2/21 NE 24–25; 19/2/21 NE 3.

3 Around end of 2010 or early 2011, D and his family moved to Woodlands (“Woodlands Flat”).<sup>2</sup> He and N occupied the master bedroom; B had a room of his own; and V, S and the domestic helper shared a room. Subsequently, D’s relationship with N deteriorated and they eventually divorced in February or March 2012. N then stayed in a separate room, whilst D and B slept in another room. V also frequently slept in D’s room.<sup>3</sup> When N re-married (one “Z”) in September 2012, they stayed in N’s room at the Woodlands Flat and subsequently moved to Z’s home (“Bk Batok Flat”) with S.<sup>4</sup> Around end 2012 or early 2013, D, V and B returned to the Yishun Flat and stayed in the same room that they previously occupied.<sup>5</sup>

4 Around end of 2013, V ran away from the Yishun Flat to stay with N and Z at the Bk Batok Flat but eventually returned to live with D. At end 2014, V ran away again to stay with N and Z.<sup>6</sup> She never returned to live with D and subsequently ceased contact with him.

5 Then on 19 November 2017, V made a police report stating essentially that she had been sexually abused by D (“First Information Report”). D was arrested on 21 November 2017.

### **The Charges**

6 The first four charges pertained to incidents at the Yishun Flat between

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<sup>2</sup> 10/2/21 NE 5; 11/2/21 NE 22; 17/2/21 NE 20; 19/2/21 NE 13.

<sup>3</sup> 25/11/20 NE 62; 26/11/20 NE 32–33, 60–61; 27/11/20 NE 2, 6–7; 9/2/21 NE 29–30; 11/2/21 NE 24, 30; 17/2/21 NE 21.

<sup>4</sup> Prosecution’s Bundle of Documents (“PB”) at p 39 (Z’s Conditioned Statement dated 24 October 2019) at [3]; 25/11/20 NE 55.

<sup>5</sup> 9/2/21 NE 25, 47; 17/2/21 NE 40; 19/2/21 NE 4, 13–14.

<sup>6</sup> 9/2/21 NE 51–52, 56; 17/2/21 NE 46, 70.

2010 and 2011 (“Yishun Flat 1st Occasion”):

(1st Charge)

That you [D] sometime in 2010, at [the Yishun Flat], did use criminal force on a woman then under 14 years of age, *namely*, [V] (... then 10 years’ old), *to wit*, by touching her breasts over her clothes with your hand and rubbing her vulva with your finger (skin-on-skin), intending to outrage her modesty, and you have thereby committed an offence punishable under Section 354(2) of the Penal Code (Cap 224, 2008 Rev Ed) (“Penal Code”).

(2nd Charge)

That you [D] sometime in 2010, at [the Yishun Flat], did penetrate with your finger the vagina of a person then under 14 years of age, *namely*, [V] (... then 10 years’ old), without her consent, and you have thereby committed an offence under Section 376(2)(a) punishable under Section 376(4)(b) of the Penal Code.

(3rd Charge)

That you [D] on a second occasion in 2010, at [the Yishun Flat], did penetrate with your finger the vagina of a person then under 14 years of age, *namely*, [V] (... then 10 years’ old), without her consent, and you have thereby committed an offence under Section 376(2)(a) punishable under Section 376(4)(b) of the Penal Code.

(4th Charge)

That you [D] sometime between 2010 and early 2011, at [the Yishun Flat], did penetrate with your penis the mouth of a person then under 14 years of age, *namely*, [V] (... then 10 years’ old), without her consent, and you have thereby committed an offence under Section 376(1)(a) punishable under Section 376(4)(b) of the Penal Code.

7 The next three charges pertained to incidents at the Woodlands Flat between 2011 and 2012, as follows:

(5th Charge)

That you [D] sometime between 2011 and early 2012, at [the Woodlands Flat], did penetrate with your finger the vagina of a person then under 14 years of age, *namely*, [V] (... then 11 years’ old), without her consent, and you have thereby

committed an offence under Section 376(2)(a) punishable under Section 376(4)(b) of the Penal Code.

(6th Charge)

That you [D] sometime between 2011 and early 2012, at [the Woodlands Flat], did penetrate with your penis the mouth of a person then under 14 years of age, *namely*, [V] (... then 11 years' old), without her consent, and you have thereby committed an offence under Section 376(1)(a) punishable under Section 376(4)(b) of the Penal Code.

(7th Charge)

That you [D] sometime between 2011 and early 2012, at [the Woodlands Flat], did penetrate with your penis the anus of a person then under 14 years of age, *namely*, [V] (... then 11 years' old), without her consent, and you have thereby committed an offence under Section 376(1)(a) punishable under Section 376(4)(b) of the Penal Code.

8 The last eight charges pertained to incidents at the Yishun Flat between 2013 and 2014 (“Yishun Flat 2nd Occasion”), as follows:

(8th Charge)

That you [D] sometime in December 2013, at [the Yishun Flat], did penetrate with your finger the vagina of a person then under 14 years of age, *namely*, [V] (... then 13 years' old), without her consent, and you have thereby committed an offence under Section 376(2)(a) punishable under Section 376(4)(b) of the Penal Code.

(9th Charge)

That you [D] sometime in December 2013, at [the Yishun Flat], did penetrate with your penis the mouth of a person then under 14 years of age, *namely*, [V] (... then 13 years' old), without her consent, and you have thereby committed an offence under Section 376(1)(a) punishable under Section 376(4)(b) of the Penal Code.

(10th Charge)

That you [D] sometime in December 2013, at [the Yishun Flat], did penetrate with your penis the anus of a person then under 14 years of age, *namely*, [V] (... then 13 years' old), without her consent, and you have thereby committed an offence under Section 376(1)(a) punishable under Section 376(4)(b) of the Penal Code.

(11th Charge)

That you [D] sometime in 2014, at [the Yishun Flat], did penetrate with your finger the vagina of [V] (... then 14 years' old), without her consent, and you have thereby committed an offence under Section 376(2)(a) punishable under Section 376(3) of the Penal Code.

(12th Charge)

That you [D] sometime in 2014, at [the Yishun Flat], did penetrate with your penis the mouth of [V] (... then 14 years' old), without her consent, and you have thereby committed an offence under Section 376(1)(a) punishable under Section 376(3) of the Penal Code.

(13th Charge)

That you [D] sometime in 2014, at [the Yishun Flat], did penetrate with your penis the anus of [V] (... then 14 years' old), without her consent, and you have thereby committed an offence under Section 376(1)(a) punishable under Section 376(3) of the Penal Code.

(14th Charge)

That you [D] on a second occasion in 2014, at [the Yishun Flat], did penetrate with your finger the vagina of [V] (... then 14 years' old), without her consent, and you have thereby committed an offence under Section 376(2)(a) punishable under Section 376(3) of the Penal Code.

(15th Charge)

That you [D] on a second occasion in 2014, at [the Yishun Flat], did penetrate with your penis the anus of [V] (... then 14 years' old), without her consent, and you have thereby committed an offence under Section 376(1)(a) punishable under Section 376(3) of the Penal Code.

9 At the conclusion of the trial, I found that the Prosecution had proved beyond a reasonable doubt the 2nd to 15th charges and I convicted D on them. In relation to the 1st charge, I found on the evidence before me, that D had touched V's breast (rather than both breasts) in addition to rubbing V's vulva, and I amended that charge accordingly. D claimed trial to the amended 1st charge, and I convicted him on the amended charge. I sentenced D to a total of 29 years' imprisonment and 24 strokes of the cane.

### **Admissibility of statements**

10 In the course of investigations, the following four statements were recorded from D (“the Statements”) and which were challenged by him:<sup>7</sup>

- (a) A contemporaneous statement recorded on 21 November 2017 at 10.39 am by IO Jereld Xu (“IO Xu”) (“P28”);
- (b) A cautioned statement recorded on 21 November 2017 at 3.30pm pursuant to s 23 of the Criminal Procedure Code (Cap 68, 2102 Rev Ed) (“CPC”) by ASP Razali Razak (“ASP Razak”) (“P31”);
- (c) A statement recorded on 23 November 2017 by IO Xu pursuant to s 22 of the CPC (“P29”);
- (d) Another statement recorded on 24 November 2017 by IO Xu pursuant to s 22 of the CPC (“P30”).

An ancillary hearing (“AH”) was thus conducted to determine their admissibility.

### ***Defence’s case***

11 D claimed that he was offered an inducement or promise by Superintendent Burhanudeen (“Supt Burhan”), IO Xu and/or ASP Razak if he signed the Statements. He claimed that the Statements were “pre-prepared” and fabricated and the contents were all untrue. Essentially, he was informed that if he signed the Statements, he would be granted station bail to take care of B and his mother (“Mdm An”) who suffered from health issues.<sup>8</sup>

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<sup>7</sup> PB at pp 9, 10–15, 16–20, and 28–32.

<sup>8</sup> 18/11/20 NE 12, 15–16, 23, 37–39, 43–44, 48.

12 D attested that when he was arrested on 21 November 2017, he was first interviewed by Supt Burhan in Malay in an interview room. Supt Burhan told D that he knew what D had done, and told D not to lie and to repent. Supt Burhan also told D that if he were to confess, he would be given station bail and be allowed to see his mother. During this time, IO Xu was present. As D was worried about Mdm An and he wanted to be released on station bail, he agreed to admit to various acts that V had purportedly alleged against him.<sup>9</sup>

13 Supt Burhan and IO Xu then left the interview room, and IO Xu returned shortly with a pre-prepared statement (P28), held it in front of D, asked him a few questions and told him to sign the statement. D did not know the contents of, and did not read, P28 but he signed it as IO Xu told him that if he did so he would be released on station bail.<sup>10</sup>

14 To show that P28 was pre-prepared, Mr Shafiq submitted as follows. First, P28 could not have been recorded within a mere 12 minutes. Second, a word “A-N” on P28 was crossed out, because IO Xu had intended to write “anal” or “anus” but cancelled it as he realised that D would not have used such a word as he does not speak fluent English. IO Xu’s explanation as to how the amendment came to be made also called into question his credibility. Third, P28 was recorded in English when IO Xu knew that D preferred to speak in Malay. Fourth, the contents in P28 (and in P29 and P30) could have been obtained by IO Xu from Supt Burhan or V whom IO Xu had interviewed the day before.<sup>11</sup>

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<sup>9</sup> 19/11/20 NE 31–35.

<sup>10</sup> 19/11/20 NE 35–36, 39–42; 20/11/20 NE 25–26, 46, 51–52, 55.

<sup>11</sup> 18/11/20 NE 12, 19, 21–23; 24/11/20 NE 9–10, 19–20, 23, 28.

15 In the afternoon of 21 November 2017, ASP Razak met D in the interview room with a pre-prepared cautioned statement (P31) which he told D to sign. D said he did not agree with the charge of sexual assault by digital penetration (which ASP Razak had read out to him) contained in P31, whereupon ASP Razak informed him that P31 was merely “for acknowledgment in court” and that if he wanted to obtain station bail he should sign it. ASP Razak spoke to him in Malay. Mr Shafiq alleged that 20 minutes was too short for ASP Razak to read the charges to D, make sure that he understood the nature of the charges and record his statement.<sup>12</sup>

16 As for P29, Mr Shafiq alleged that D disagreed with its contents when it was interpreted to him by the interpreter (“Sapiahtun”), but IO Xu promised him that if he signed P29 he would be allowed to go on bail and take care of his mother and B. D alleged that P29 was pre-prepared. He did not provide IO Xu with, or agree to, the contents of P29. He signed on P29 because IO Xu told him that he would be released on station bail and go home.<sup>13</sup>

17 After a site visit to the Yishun Flat on 24 November 2017 (“the Site Visit”), D was brought into an interview room at the Police Cantonment Complex, where he claimed that IO Xu asked him to sign P30 which had been pre-prepared. D told IO Xu that he did not agree with its contents but IO Xu told him that if he wanted to obtain bail he had to sign the statement, whereupon he did so. Mr Shafiq submitted that 70 minutes was insufficient for IO Xu to pose questions to D, for D to reply in Malay and for Sapiahtun to do the interpretation.<sup>14</sup>

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<sup>12</sup> 18/11/20 NE 130; 19/11/20 NE 42–45; 20/11/20 NE 67

<sup>13</sup> 18/11/20 NE 44, 47; 20/11/20 NE 2–4, 21, 76–77, 107.

<sup>14</sup> 18/11/20 NE 39, 79, 88; 20/11/20 NE 20–21, 94, 97.

18 Finally, Mr Shafiq submitted that various indulgences given by IO Xu throughout the investigative process, such as allowing D to make phone calls to Mdm An and his girlfriend on 22 November 2017, allowing him to speak to Mdm An on 23 November 2017 after P29 was recorded, and allowing him to speak to Mdm An and drink coffee and smoke during the Site Visit, further induced D to believe that by cooperating with the authorities and signing the Statements, he would be released on station bail.<sup>15</sup>

### ***Prosecution's case***

19 The Prosecution submitted that the Statements were voluntarily made by D. IO Xu, ASP Razak and Supt Burhan had denied having made any inducement or promise of releasing D on bail if he signed the Statements.

20 Supt Burhan was the officer in charge of the team. He had, on 21 November 2017, first interviewed D to assess the case and when D revealed that he had penetrated V's vagina with his finger, Supt Burhan then left it to IO Xu to record a statement and lock down D's admission. During the interview, Supt Burhan observed D to be remorseful and appeared forthcoming in his version of events.<sup>16</sup> IO Xu stated that although he was present, he did not understand the conversation between Supt Burhan and D as they were conversing in Malay.<sup>17</sup>

21 IO Xu attested that after Supt Burhan spoke to D, Supt Burhan told him that D had made an admission and to record D's statement. He then tried to obtain a Malay interpreter but none was available that day. Upon ascertaining from D that he was comfortable speaking in English, IO Xu proceeded to record

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<sup>15</sup> 24/11/20 NE 30–31, 48.

<sup>16</sup> 18/11/20 NE 99, 101–103, 110, 112, 116.

<sup>17</sup> 17/11/20 NE 13.

P28. IO Xu also observed that D was able to understand him fairly well in English. IO Xu conducted the interview by asking D questions and recorded his answers concurrently. He then read P28 back to D and invited him to sign on it. D gave his statement voluntarily and IO Xu did not tell him that if he signed P28 he would be let out on bail or to see his family.<sup>18</sup>

22 After P28 was recorded, IO Xu sought ASP Razak's assistance to record the cautioned statement (P31). ASP Razak testified that he read the charge to D in Malay and asked him if he wanted to say anything, whereupon D requested ASP Razak to write his response for him ("D's Response"). D spoke in Malay and ASP Razak recorded D's Response in P31 in English, and thereafter interpreted it in Malay to D and invited D to make any amendments. D did not do so and ASP Razak then invited him to sign on P31 which he did. The typewritten portions of P31 (*ie*, the charge, notice of warning and acknowledgement) were pre-typed, but D's Response was added only after D had asked ASP Razak to write it for him. ASP Razak denied that he had fabricated D's Response, that IO Xu had given him information to pre-prepare D's Response, or that he had told D to sign P31 as it was purely administrative or so that D could obtain bail.<sup>19</sup>

23 As for P29 and P30, IO Xu stated that the contents were provided by D. D chose to speak mainly in English, and he would turn to Sapiahtun for assistance if he did not understand the questions or was unable to explain himself in English. After the statements were recorded, Sapiahtun read them to

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<sup>18</sup> 17/11/20 NE 13–14; 18/11/20 NE 6–11, 15–16, 23; IO Xu's Conditioned Statement (24 Oct 2019) at [7].

<sup>19</sup> PB at pp 25–26 (ASP Razak's Conditioned Statement at [2]–[7]); 18/11/20 NE 125–126, 132–134.

D and invited him to sign the statements.<sup>20</sup> IO Xu denied that the statements were pre-prepared, or that he merely asked D to sign with the promise that D would be released on bail and see his family.

### ***Applicable principles***

24 An accused's statement is admissible under s 258(1) of the CPC. However, s 258(3) of the CPC renders the statement inadmissible if it was made involuntarily. In *Sulaiman bin Jumari v PP* [2021] 1 SLR 557 ("*Sulaiman*") at [39]), the Court of Appeal reaffirmed the two-stage test, namely:

- (a) whether objectively there was a threat, inducement or promise ("TIP") made to the accused, and having reference to the charge against him; and
- (b) whether subjectively, the TIP was such that it would be reasonable for the accused to think that by making the statement he would gain some advantage or avoid some adverse consequences in relation to the proceedings against him.

A trivial or vague TIP is not likely to pass the objective standard of the first stage. Further, the Prosecution bears the burden of proving beyond reasonable doubt that the statement was made voluntarily (*Sulaiman* at [36] and [40]).

25 However, even if an accused's statement is voluntary, the court can exclude it if its prejudicial value outweighs its probative value, *eg*, where there is lack of language interpretation or procedural flaws in the recording which cast serious doubts on the accuracy of the statement recorded (*Muhammad bin Kadar and another v PP* [2011] 3 SLR 1205 at [53]–[56]).

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<sup>20</sup> 17/11/20 NE 18–19, 21–25; 18/11/20 NE 40.

***D's ability to understand and speak English***

26 I first set out my observations of D's ability to understand and speak English, as this pertained to his ability to give the statement in P28 in English or an interview for P29 and P30 mainly in English.

27 I found that D was able to speak and understand English. His highest level of education was in a vocational institute in which the medium of instruction was English. During the ancillary hearing, D often responded directly in English and without waiting for the questions to be interpreted to him.<sup>21</sup> Indeed, D stated that throughout the course of investigations he spoke to IO Xu in English, and also on 21 November 2017 when IO Xu spoke to him and before he signed P28. D also communicates with his girlfriend (of six to seven years), who is from the Philippines, in English.<sup>22</sup>

28 D's ability to understand and speak English was corroborated by other witnesses. Apart from IO Xu who observed that D was able to understand him in ordinary conversation,<sup>23</sup> Sapiahtun stated that D spoke mainly in English during the recording of P29 and P30. Dr Lin Hanjie who conducted a medical examination of D on two occasions on 21 November 2017 attested that they conversed in English and that D's proficiency in English was sufficient for Dr Lin to gather the information that he needed.<sup>24</sup> I saw no reason to doubt Sapiahtun's and Dr Lin's testimony.

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<sup>21</sup> 19/11/20 NE 23–24, 30; 20/11/20 NE 5, 27–28.

<sup>22</sup> 19/11/20 NE 35–36, 49; 20/11/20 NE 29.

<sup>23</sup> 18/11/20 NE 22.

<sup>24</sup> 18/11/20 NE 66, 69, 73; 19/11/20 NE 3–4, 6.

***Decision on admissibility of statements***

29 Next, I found that the Prosecution had proved beyond a reasonable doubt that the Statements were given voluntarily and not pre-prepared or fabricated as D claimed. I also found that there was no inducement or promise as claimed by D, or that any such inducement or promise operated on D's mind.

***D's version of events***

30 I found D's version of how the Statements came to be was inherently inconsistent. This is even based on Mr Shafiq's version put to the Prosecution witnesses.

31 In cross-examination of IO Xu and ASP Razak, Mr Shafiq first claimed that the Statements were all pre-prepared and no interviews or conversations took place with D. In particular, P28 could not have been recorded within 12 minutes; P29 was a lengthy statement that could not have been recorded within the time mentioned therein; and D's Response in P31 was pre-prepared before ASP Razak met with D on 21 November 2017.<sup>25</sup> In cross-examination of Sapiahtun (after IO Xu had testified), Mr Shafiq reiterated that P29 and P30 were "prepared beforehand". But at the end of Sapiahtun's testimony, Mr Shafiq then stated that "pre-prepared" meant that P28 was written, and P29 and P30 were typed, *by IO Xu in D's presence* in the interview room.<sup>26</sup>

32 For P28, D initially claimed in examination-in-chief ("EIC") that in the interview room, IO Xu asked him some questions about his family and work, IO Xu was *writing in his presence* and when he finished writing he told D to

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<sup>25</sup> 18/11/20 NE 15, 22–23, 38–39, 79, 130–131, 134.

<sup>26</sup> 18/11/20 NE 88–89; 93–96.

sign on P28. D claimed that did not know the contents of P28 because *IO Xu did not read it back to him*, he also did not read it and he signed it because he wanted to get out on bail. Subsequently, D stated that IO Xu did not write P28 in his presence but that it was *pre-prepared* and IO Xu held it up *and read some parts of it to him* and then asked him to sign it.<sup>27</sup> However in cross-examination, D then stated that IO Xu *did not read* P28 to him before he signed it.<sup>28</sup>

33 Next, D claimed that P29 was pre-prepared, *ie*, IO Xu and Sapiahtun were in the interview room before he arrived, he saw P29 on the table and it had been typed out, that IO Xu did not ask him any questions or take any instructions from him for the contents of P29, that Sapiahtun merely read P29 to him in Malay, and that IO Xu then asked him to sign it. Likewise, D initially claimed that P30 was already typed out when he entered the interview room, which Sapiahtun straightaway interpreted to him and then IO Xu asked him to sign.<sup>29</sup> This was different from Mr Shafiq’s assertion at the end of Sapiahtun’s EIC, *ie*, “pre-prepared” meant that IO Xu had typed P29 and P30 in D’s presence. It was also different from D’s subsequent testimony that he could not recall if Sapiahtun had read P30 to him.<sup>30</sup>

34 As for P31, D claimed in EIC that ASP Razak had pre-prepared it and just told him to sign, and that ASP Razak *read the charge* to him in Malay and *he understood what he was alleged to have done*. In cross-examination, D then claimed that ASP Razak *did not read the charge* to him but merely told him to

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<sup>27</sup> 19/11/20 NE 38–42; 20/11/20 NE 24–26.

<sup>28</sup> 20/11/20 NE 50, 53

<sup>29</sup> 20/11/20 NE 2–5, 20–21, 76–77.

<sup>30</sup> 20/11/20 NE 110–111.

sign and he did so without knowing what he was signing to. D then prevaricated between claiming that he had read the charge in P31 and denying that he did.<sup>31</sup>

35 When asked to explain the inherent inconsistency in his evidence, D claimed that it had been a very long time and he could not recall the events.<sup>32</sup> I disbelieved D and found that he took inconsistent positions because he was making things up.

*Supt Burhan's interview with D*

36 Next, I turn to Supt Burhan's conversation with D shortly after his arrest. I disbelieved D that Supt Burhan told him that if he confessed to the wrongdoing, he would be given station bail and be able to see his mother. I found Supt Burhan to be an honest and a credible witness and accepted his explanation that he would not have promised D any bail given the circumstances of the case. He had also not sought to paint D in a bad light, merely observing that D appeared remorseful when he spoke to D and that whilst he sympathised with D at the material time, he had to discharge his duty. Supt Burhan gave a matter-of-fact account of what transpired, which I had no reason to disbelieve.<sup>33</sup>

37 I further found D's allegation, that IO Xu had pre-prepared P28 based on what Supt Burhan had told him, to be without basis. Also, Mr Shafiq's case put to IO Xu was not that P28 was pre-prepared based on information provided by Supt Burhan but on information taken from V's statement made to IO Xu.<sup>34</sup>

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<sup>31</sup> 19/11/20 NE 43–44; 20/11/20 NE 57–60, 104.

<sup>32</sup> 20/11/20 NE 53, 58, 61–62.

<sup>33</sup> 18/11/20 NE 101, 122.

<sup>34</sup> 18/11/20 NE 122; 24/11/20 NE 10, 103–104.

*ASP Razak's conduct in recording P31*

38 I similarly accepted ASP Razak's testimony that he did not provide any TIP as D alleged or tell D to just sign P31 as it was purely administrative. I rejected D's allegation that ASP Razak had made up D's Response in P31, based on what IO Xu had told ASP Razak about the case.<sup>35</sup> I found that ASP Razak had no reason to fabricate or pre-prepare P31. He explained that he was not directly involved in the investigations and did not know the details of the case, and that his role was merely to record a cautioned statement from D.<sup>36</sup> Mr Shafiq's claim that the recording of P31 could not have taken a mere 20 minutes was not supported by any independent evidence, and it should be noted that other than D's Response, the rest of P31 was pre-typed.

*IO Xu's recording of P28*

39 Next, I accepted IO Xu's account of how P28 came to be recorded, that the statement was based on D's account to him and that he did not make any TIP as D alleged. Mr Shafiq's claim that P28 could not have been recorded within 12 minutes was unsubstantiated. In court, IO Xu replicated in less than four minutes what he wrote on P28. He explained that he had written the contents of P28 concurrently when D was talking to him.<sup>37</sup> D's statement in P28 was also a short paragraph. Hence the recording of P28 could have concluded in 12 minutes, including IO Xu's questions to D and D's reply to him.

40 Mr Shafiq then claimed that the cancelled word in P28 was "A-N" which Xu had meant to write as "anus" or "anal" but he cancelled it because he realised

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<sup>35</sup> 18/11/20 NE 133.

<sup>36</sup> 18/11/20 NE 129, 136.

<sup>37</sup> 18/11/20 NE 15.

that D would not know such a specific term. This showed that IO Xu had fabricated P28. Mr Shafiq's assertion in this regard is pure conjecture. It is unclear what the cancelled word was. Even though IO Xu initially stated that D had asked him to make the amendment but in court stated that he made the amendment,<sup>38</sup> this did not lead to the conclusion that IO Xu had fabricated P28.

41 Next Mr Shafiq claimed that there was no rush to record P28 as IO Xu could have waited for a Malay interpreter to be available; as a result D did not understand what he was signing as P28 was not read back to him. D's account was inherently contradictory because in cross-examination he stated that IO Xu had read parts of P28 to him (see [32] above). I accepted that IO Xu had tried to obtain a Malay interpreter but to no avail, and he then ascertained that D could understand and was comfortable speaking in English before he took a contemporaneous statement from D. Further, the purpose of the contemporaneous statement was to capture the gist of D's version of events contemporaneously and to secure his story before he changed his mind.<sup>39</sup>

#### *IO Xu's recording of P29 and P30*

42 Likewise I accepted that IO Xu had not made any TIP to D, namely that if he were to sign P29 and P30 he would be allowed to go on bail and take care of his mother and his son, or that P29 and P30 were pre-prepared or fabricated. I accepted IO Xu's testimony that their contents were provided by D. This was corroborated by Sapiahtun who testified that IO Xu did not pre-prepare any statements, but had elicited the information for the statements by asking D questions to which D responded and IO Xu then typed them out. Sapiahtun

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<sup>38</sup> PB at p 2 (IO Xu's Conditioned Statement) at [7]; 18/11/20 NE 18–19, 21–22.

<sup>39</sup> 18/11/20 NE 8, 58–60.

attested that D spoke mainly in English during the recording, and that she and IO Xu did not make any TIP to D.<sup>40</sup> I saw no reason to disbelieve Sapiahtun. D also agreed that Sapiahtun did not make any promises or inducements to him.<sup>41</sup>

43 Next, the contents of P29 show that they came from D and were not fabricated or pre-prepared. If IO Xu had wanted to incriminate D for the offences which V alleged, it was unlikely that he would have recorded denials, allowed D to qualify his previous statement (P28) or recorded equivocal answers. For instance, D claimed that Supt Burhan and IO Xu told him to admit to putting his finger in V's vagina, yet D denied this in P29 and further qualified P28.<sup>42</sup> Whilst IO Xu had recorded a statement from V on 20 November 2017 ("V's 1st Statement") which stated that D had also put his finger and penis into her anus, P29 recorded a denial by D of such acts. Further, P29 recorded at various instances that D could not remember how often certain sexual acts occurred.<sup>43</sup> Pertinently, P29 mentioned that halfway through the statement recording, D broke down in tears as it was painful to talk about the incidents as he had wronged his family. In court, D admitted that he had cried because IO Xu kept accusing him of offences which he did not commit. If P29 was pre-prepared, this meant that IO Xu was able to predict in advance that D would break down and cry, which was highly unlikely.<sup>44</sup>

44 I also rejected Mr Shafiq's suggestion, that the first three and a half pages of P29 could not have been recorded in 70 minutes, as a pure conjecture.

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<sup>40</sup> 18/11/20 NE 66–70, 73, 80, 91–92.

<sup>41</sup> 20/11/20 NE 75–76.

<sup>42</sup> 19/11/20 NE 34–35; 20/11/20 NE 79; P29 at p 5 (Answers 8, 9 and 10).

<sup>43</sup> P29 at p 4 (Answers 1, 2 and 3) and p 6 (Answers 12 and 15).

<sup>44</sup> 20/11/20 NE 4, 81–82.

Both IO Xu and Sapiahtun had testified that D spoke mainly in English during the recording of P29, hence P29 would have been recorded much quicker as interpretation was not required for those portions.<sup>45</sup>

45 Likewise, the contents of P30 showed that it was unlikely that IO Xu would have fabricated it. D reiterated his denial that he had put his finger into V's vagina, which would have been inconsistent with IO Xu wanting him to admit to this act. D also gave a lengthy explanation as to his marital problems including details on N's purported misdeeds. This information could not have been gleaned from V's statements and was also not necessary for IO Xu to record if he had wanted to incriminate D of the offences.<sup>46</sup> At several points, it was recorded that D could not recall how often certain acts were committed, and D denied forcing V to suck his penis. Again, such contents would have been inconsistent with IO Xu's purported conduct of attempting to incriminate D.

#### *Miscellaneous matters*

46 Mr Shafiq then asserted that the information contained in the Statements could have been obtained by IO Xu from V, whom IO Xu had interviewed before recording P28. Again, I rejected this assertion. Although IO Xu could have obtained some information in P28 from V's 1st Statement, I was satisfied that he did not. V's 1st Statement contained other acts not mentioned in P28, and if IO Xu had wanted to implicate D by fabricating P28, he would not have merely mentioned cursorily that D had molested V, put his finger inside her vagina and rubbed his penis on her vagina and backside without mentioning the other acts in V's 1st Statement. Mr Shafiq's attempt to show that IO Xu was not

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<sup>45</sup> 18/11/20 NE 78.

<sup>46</sup> P30 at Answer 1.

a credible witness, as he had failed to mention in his conditioned statement that he had recorded a statement from V, is not borne out by the evidence.<sup>47</sup> IO Xu had in his conditioned statement mentioned that he had interviewed V after she lodged the First Information Report.<sup>48</sup> Unlike D's own inconsistent testimony as to how the Statements came to be (see [32]–[33] above), I found IO Xu to be a credible witness who was generally consistent in his testimony. I accepted that IO Xu had no motive to set D up, and if he wanted to frame D in the Statements he would not have included denials and qualifiers in P29 or P30 or omitted other allegations which V had made (see [43] and [45] above).

47 I turn to another aspect of D's testimony to show that his claim that he had signed the Statements based on an inducement or a promise could not be believed. D claimed that Supt Burhan, IO Xu and ASP Razak promised him "station bail". Hence, D informed Mdm An in two separate phone calls that he would be able to go home soon as he would be given bail, and again informed her during the Site Visit that he would be given station bail.<sup>49</sup> However, this was not corroborated by Mdm An, who testified that D told her on all three occasions that he would be "released", but did not mention bail or station bail.<sup>50</sup> Even if D had informed Mdm An that he would be released, this did not support D's claim of the inducement or promise that he would be released on station bail. He could have told Mdm An on his own volition to assuage her as he claimed to have been very concerned about her. As Mdm An attested, D had informed her even

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<sup>47</sup> 24/11/20 NE 4–5.

<sup>48</sup> PB at p 1 (IO Xu's Conditioned Statement) at [4]; 24/11/20 NE 5–6.

<sup>49</sup> 19/11/20 NE 33–34, 44–49; 20/11/20 NE 9–11; 20/11/20 NE 107.

<sup>50</sup> 23/11/20 NE 18–20, 22.

at the time of his arrest (and before the Statements were recorded) that “It’s okay, Mum. Later [D] will come out.”<sup>51</sup>

48 Next, it is unclear how the “indulgences” raised by Mr Shafiq (see [18] above) had operated on D’s mind to strengthen any inducement or promise by the officers (which I had found there were none) or D’s perception that any inducement or promise was a genuine one. D agreed that IO Xu did not make it a condition for the phone calls that D had to agree to admit to or sign any of the Statements.<sup>52</sup> I also disbelieved D’s claim that IO Xu had promised to let him meet his mother at the Site Visit.<sup>53</sup> D’s claim only arose in his cross-examination; it was never put to IO Xu that this was part of any inducement or promise by him to cause D to sign the Statements; and D agreed that this did not have anything to do with him signing the Statements. Then D claimed that IO Xu told him that he was allowed to make phone calls because he had admitted to P29.<sup>54</sup> Again, this assertion arose in D’s cross-examination and was never put to IO Xu as an inducement or promise that led D to sign the Statements. It was clear that D was making up his evidence as he went along.

49 Even if the officers had made such inducement or promise that D would be released on bail to take care of his mother, I was not satisfied that the subjective limb of *Sulaiman* (see [24(b)] above) was fulfilled. I disbelieve that D was so worried about Mdm An that he would have signed any statement even if it were untrue so that he could go home and take care of her. D was not Mdm An’s main caregiver and he knew this. For 16 years (until 2016 before D’s father

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<sup>51</sup> 23/11/20 NE 6.

<sup>52</sup> 20/11/20 NE 73, 90.

<sup>53</sup> 20/11/20 NE 86–88.

<sup>54</sup> 20/11/20 NE 89.

passed away), Mdm An was living with D's brother ("SM"). Thereafter, she stayed with D as she pitied D who was then without a wife and to care for his children. After D's arrest, Mdm An went to live with SM again, and D was informed by her of this when he called her on 23 November 2017 and hence he felt relieved.<sup>55</sup>

#### *Conclusion on the Statements*

50 In conclusion, I was satisfied that the Prosecution had proven beyond a reasonable doubt that D had made the Statements voluntarily. Pertinently, the recording of P29 and P30 was corroborated by Sapiahtun. As such, I allowed the Statements to be admitted into evidence.

#### **Prosecution's case for the main trial**

51 I set out V's testimony pertaining to the incidents that formed the 15 charges and what transpired after the last incident, and I will refer to the other witnesses' testimony where necessary.

#### ***Incidents at Yishun Flat 1st Occasion***

##### *Amended 1st charge – touching V's breast over her clothes and rubbing her vulva*

52 According to V, the first incident occurred in 2010, when she was a student in Primary 4. The room which V's family shared had a bed (which D and N slept on) and mattresses on the floor which V, B, S and the domestic helper slept on.<sup>56</sup>

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<sup>55</sup> 20/11/20 NE 90–91; 23/11/20 NE 14–15, 19, 23, 25.

<sup>56</sup> 9/2/21 NE 27, 33, 113.

53 D was not at home when V went to sleep. Whilst asleep, she felt someone lie down beside her and hug her from her back. A hand touched her breast and chest area (over her clothes) and another hand slid into her pants and rubbed her vagina area. She then felt the tip of a finger trying to enter her vagina, she felt a sharp pain, and when she turned around she saw D. D then told her “shh” and continued sleeping on the same mattress as V. V was then very confused and shocked and did not know how to react. She returned to sleep.

54 The next night after D returned from work, V asked him about that incident. D told her that it was “all sex” and “this is what mummy and daddy do”. He told her not to tell anyone about this and that he would teach her more along the way. V felt “weird and confused” but as D was her father, she listened to him and followed his instructions.<sup>57</sup>

*2nd charge – first incident of digital-vaginal penetration*

55 A few days thereafter, whilst V and her family were sleeping in the room with V on the mattress, she awoke to D touching her breast area, rubbing her vagina and inserting his finger in and out of her vagina. D also touched himself and his penis and he stopped inserting his finger into V’s vagina after he had ejaculated on his body. V felt pain but bore with it because D told her that she would get used to it after a while.<sup>58</sup>

*3rd charge – digital-vaginal penetration*

56 V stated that D would violate her sexually about three to four times a week. She could not recall specifically when the next incident occurred, but it

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<sup>57</sup> 9/2/21 NE 33–36, 101.

<sup>58</sup> 9/2/21 NE 37–38.

was when her family members were sleeping. While she was lying on the mattress, D touched her breast area, rubbed her vagina and inserted his finger into her vagina. Again, D would touch himself whilst inserting his finger in and out of V's vagina, and thereafter ejaculated on his own body.<sup>59</sup>

*4th charge – first incident of fellatio*

57 V stated that thereafter D taught her to suck and lick his penis. This was when she was a student in Primary 4 in 2010. D instructed V to hold his penis with her hand and put it in her mouth, and to lick it and move it in and out of her mouth. She felt weird and disgusted and when she told D as such, D told her that she would get used to it. D would then ejaculate.<sup>60</sup>

58 After this incident, D would routinely ask V to suck his penis, about three to four times a week. On some occasions, V would attempt to resist but D held her head and moved it towards his penis. D would then ejaculate either on his body or in her mouth – in the latter, he would tell V to either spit out or swallow his semen which she complied with despite feeling disgusted.<sup>61</sup>

***Incidents at Woodlands Flat***

59 V stated that when her family first moved to the Woodlands Flat, the sexual abuse stopped for a few months as V and D occupied separate rooms (see [3] above). The abuse resumed after D and N's relationship broke down. B's room was rented out; V and B moved into the master bedroom with D; and N,

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<sup>59</sup> 9/2/21 NE 38–39.

<sup>60</sup> 9/2/21 NE 39–40.

<sup>61</sup> 9/2/21 NE 40–41.

S and the domestic helper moved to a separate room. D and V would sleep on the same bed, whilst B would sleep on the mattress on the floor next to the bed.<sup>62</sup>

*5th, 6th and 7th charges – digital-vaginal penetration, fellatio and penile-anal penetration*

60 V stated that the first incident of anal penetration occurred in around 2011 when she and D were alone at the Woodlands Flat. While she was playing with the “PlayStation” in the master bedroom, D told her to lie down on the bed and she complied. D then touched her breasts, removed her clothes, inserted his finger into her vagina and she complied with his instructions to fellate him. D placed V in a “doggy” position (with her knees on the bed) before inserting his penis into her anus. D inserted his penis in and out of V’s anus until he ejaculated on her back. V recalled this incident clearly as it was the first time D had penetrated her anus and it was the “most painful experience”. When D was doing this, V told him to stop as it was painful, but D told her to bear with it. V also told D subsequently that she had difficulty defecating but D told her that it would be all right after a few days and that she would get used to it.<sup>63</sup>

61 Thereafter, the sexual activities continued around three to four times a week when the rest of the family was asleep. On these occasions, D would penetrate V’s anus with his penis and ejaculate on himself or in V’s mouth or anus.<sup>64</sup>

62 Around the same time, V attended sexual education class in school (in Primary 5) and realised that what D had been doing to her was wrong. She told

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<sup>62</sup> 9/2/21 NE 30, 41–42.

<sup>63</sup> 9/2/21 NE 43; 10/2/21 NE 11.

<sup>64</sup> 9/2/21 NE 44–45.

D of this but he told her not to listen to her teacher but to obey his instructions instead. He also warned her not to tell anyone about the sexual activities and that she would lose her father if anyone found out about them. The sexual acts continued and although V at times tried to resist by moving away from D, he would pull her closer to him. Eventually she gave up resisting as it was futile to do so and she was not strong enough to overpower him.<sup>65</sup>

### ***Incidents at Yishun Flat 2nd Occasion***

63 Despite the sexual abuse, V decided to live with D at the Yishun Flat, after D and N divorced and the family moved out of the Woodlands Flat. At that time, V did not share a close relationship with N and Z (V's stepfather). D had also told her that he would give her and B a better life and she believed that he would stop abusing her as he had said so. Hence D, V and B moved back to the Yishun Flat, whilst N, S and Z resided at the Bk Batok Flat.<sup>66</sup>

64 For the first few weeks, D and V slept on the bed, whilst B slept on a mattress on the floor. D then purchased a bunk bed at V's insistence because she wanted to sleep separately from D and to prevent D from abusing her again. V would sleep on the upper deck and D on the lower deck of the bed, whilst B would sleep on the sliding bed. D then asked V to sleep with him on the lower deck, and V agreed as she trusted that D would not sexually abuse her anymore as he had previously promised her as such. However, the sexual activities continued to take place when B was asleep, around three to four times a week.<sup>67</sup>

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<sup>65</sup> 9/2/21 NE 45–47; 17/2/21 NE 30.

<sup>66</sup> 9/2/21 NE 48; 10/2/21 NE 13–14.

<sup>67</sup> 9/2/21 NE 30–31, 48–50.

*8th, 9th and 10th charges – digital-vaginal penetration, fellatio and penile-anal penetration*

65 The 8th, 9th and 10th charges pertain to an incident which occurred around December 2013, before V followed N, Z and her siblings on a trip to Malaysia (“the KL Trip”). On this occasion D had touched V’s breast area, rubbed her vagina, inserted his finger in and out of her vagina, asked her to suck his penis, and also inserted his penis into her anus.<sup>68</sup>

*V ran away for the first time (end-2013)*

66 After the KL Trip, V took the opportunity to continue staying with N to escape from D. V did not disclose to N the sexual abuse. She merely told N that D was not responsible and did not take care of her properly and asked to stay with N, which N agreed to. V saw that S was well looked after by N and Z, and she felt that N could take care of her better; although her main reason for staying with N was to escape from the sexual abuse.<sup>69</sup>

67 A few days later, D went to look for V at the Bk Batok Flat. She told him that she did not want to return to live with him because of what he had done to her. D promised that he would change for the better, and hence V decided to give him another chance and returned to the Yishun Flat.<sup>70</sup>

*11th, 12th and 13th charges – digital-vaginal penetration, fellatio and penile-anal penetration*

68 When V moved back to the Yishun Flat, D did not sexually abuse her at first. V initially slept on the upper deck of the bed but D asked her to sleep with

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<sup>68</sup> 9/2/21 NE 51–52.

<sup>69</sup> 9/2/21 NE 52–53; 10/2/21 NE 27–28.

<sup>70</sup> 9/2/21 NE 54.

him on the lower deck and she agreed because at that time D had not committed anymore sexual acts against her. Hence, she believed that D had changed and would not harm her anymore.

69 However, the sexual abuse resumed in 2014 around three to four times a week. Whilst V was sleeping on the lower deck, D would touch her breasts, rub her vaginal area, insert his finger in and out of her vagina, made V fellate him, and D inserted his penis into her anus. V felt betrayed. Although she tried resisting his advances, she could not and, after a while, she gave up.<sup>71</sup>

*14th and 15th charges – digital-vaginal penetration and penile-anal penetration*

70 The last incident of sexual abuse occurred around end-2014, a few days before V ran away for the second time. She recalled this incident as she had just finished her end-of-year exams in Secondary 2. Whilst at the Yishun Flat, D had touched her breasts, rubbed the outside of her vagina, inserted his finger into her vagina, made her fellate him and then inserted his penis into her anus. V felt that she needed to put a complete stop to his abuse, and that if she did not run away, D would never stop what he was doing.<sup>72</sup>

*V ran away the second time around end-2014*

71 A few days after the last incident of sexual abuse, V asked N if she could visit her to bake cakes and spend time with S, as an opportunity to leave the Yishun Flat and never return. When V visited N, she told N that she was not comfortable staying with D as he was not a responsible father and did not take

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<sup>71</sup> 9/2/21 NE 55–56.

<sup>72</sup> 9/2/21 NE 56.

care of her well. However, she did not inform N the real reason for not wanting to live with him.<sup>73</sup>

72 A few days later, D went to look for V and asked her to return to live with him, but V refused. D said that he would agree to leave her alone and that she could stay with N on condition that she did not reveal the sexual abuse to anyone. V agreed and hence kept silent. From that time on, V minimised contact with D, and only met him whenever she accompanied S to see him or if she wanted to meet B. V then ceased contact completely with D in early 2017.<sup>74</sup>

#### ***Meetings at Yishun SAFRA and Marsiling in 2017***

73 In late 2017, N arranged for V to meet D on two occasions.

74 The first was around October 2017 at Yishun SAFRA (“SAFRA Meeting”). N had discovered that V had a boyfriend without informing her and she was angry. She arranged for a meeting with D for D to discipline V and scold her. N also packed a bag of V’s clothes – V stated that N wanted V to return and stay with D. At the SAFRA Meeting, D told V not to repeat her actions and make her mother angry. V listened to D and apologised to N. Thereafter V returned to the Bk Batok Flat and continued living with N and Z.<sup>75</sup>

75 The second time when N arranged for V to meet D was after she discovered that V had brought her boyfriend to the Bk Batok Flat and had switched off the CCTV camera. N was angry and brought V to meet D at her grandparents’ place at Marsiling (“Marsiling Meeting”). D and V had a private

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<sup>73</sup> 9/2/21 NE 57.

<sup>74</sup> 9/2/21 NE 58–59; 10/2/21 NE 44.

<sup>75</sup> 9/2/21 NE 61–62; 10/2/21 NE 46, 49–53.

conversation where D asked V to forgive him and to forget what he had done to her and again informed her not to tell anyone about what he had done. V felt that D was not remorseful about his sexual abuse of her. Thereafter V apologised to N and went home with N.<sup>76</sup>

***Events that led to making police report on 19 November 2017***

76 After the Marsiling Meeting, and during supper one evening, Z asked V why she hated D so much as he noticed that she did not want to meet up with D. At that time, V felt that she could trust Z and told him briefly that D had sexually abused her when she was 10 until 14 years old. Z asked V if she wanted to tell her mother, but V was reluctant to do so as she did not want things to get “very big and messy”. She also thought about what would happen to B who was then living with D.<sup>77</sup>

77 According to Z, when he asked V why she hated her father so much, she was initially reluctant to explain but then told him that D had done some “sexual” acts to her but did not elaborate. Z was very disturbed but did not probe further as they were in a public place. Z told V to inform N, but V was reluctant to do so. Z then told N to get closer to V to find out why V hated her father.<sup>78</sup>

78 N stated that after Z hinted to her to get closer to V, she asked V if there was anything V wanted to share with her. V then revealed to N the sexual abuse by D. Although V initially did not want to report the matter to the police, she subsequently did upon N’s persuasion. Hence V lodged the First Information

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<sup>76</sup> 9/2/21 NE 62–63; 10/2/21 NE 54, 57.

<sup>77</sup> 9/2/21 NE 65–66.

<sup>78</sup> 25/11/20 NE 59–60, 73, 76, 78–79.

Report on 19 November 2017 and made two statements to IO Xu on 20 November (V's 1st Statement) and 24 November 2017 ("V's 2nd Statement").<sup>79</sup>

***D's arrest on 21 November 2017***

79 At this juncture, I set out B's testimony on what transpired shortly before D was arrested. On 18 November 2017, N called B to say that D had sexually abused V. B was in disbelief as he did not expect this to have happened.<sup>80</sup>

80 On 20 November 2017, D asked B whether he knew why the police was looking for D. B then informed D that N had made a police report pertaining to V being sexually abused. That evening, D denied the allegations to B and asked B to call N to drop the charges which N refused. B was confused as he felt that D should not have been afraid about the police report made if he was not guilty.<sup>81</sup>

81 D and B then returned to their home in Sembawang ("Sembawang Flat") where they were residing with Mdm An. At the dining table, in Mdm An's presence, D broke down and admitted (in Malay) that he had inserted his finger into V's private part and ejaculated on her body. Mdm An was shocked and thought of a solution and suggested to D to go to his brother's home first. That night, around 11.30 pm, D, B and Mdm An went to the Bk Batok Flat in order to persuade V to drop the charges and to apologise to her. However, N had called the police who arrived shortly after and arrested D.<sup>82</sup>

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<sup>79</sup> 27/11/20 NE 14–16; Agreed Bundle 38; PB 53–62; PB 63–71.

<sup>80</sup> 26/11/20 NE 41.

<sup>81</sup> 26/11/20 NE 42–44.

<sup>82</sup> 26/11/20 NE 44–46, 101.

82 After D’s arrest, B returned to the Sembawang Flat to pack his belongings as N had asked him to stay with her. Whilst at the Sembawang Flat, Mdm An informed B not to reveal much to the police and if any family members were to probe that he should just say it was a “molest case”.<sup>83</sup>

### **Defence case for the main trial**

83 I set out D’s defence briefly and deal with his assertions in more detail in my findings. D essentially denied sexually abusing V in any way.

84 At the Yishun Flat 1st Occasion, D claimed that he never slept with any of the children including V, on the bed or on a mattress on the floor. At the Woodlands Flat, V slept on the bed with D (when B and V slept in his room). Although he had hugged V whilst they were sleeping, this was accidental as he was unaware of what he was doing when he was asleep. He only discovered this incident after N had reported it to the police in September 2012. I will return to this incident later (see [110] below). After that incident, D continued to share the bed with V and he only “bumped” into her accidentally when they were sleeping but he did not hug her. At the Yishun Flat 2nd Occasion, D claimed that V would sometimes choose to sleep on the lower deck of the bunk bed. He would try to wake her and get her to sleep on the upper deck but to no avail. Hence, he just slept on the lower deck with her. Whilst they slept together, he would have hugged her, but he did not consider it to be inappropriate.<sup>84</sup>

85 D claimed that he could not have sexually abused V at the Yishun Flat as the bedroom door was always open and K (his brother) and sister-in-law (“F”)

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<sup>83</sup> 26/11/20 NE 46.

<sup>84</sup> 11/2/21 NE 13, 18–19; 16/2/21 NE 1–2, 5–10; 17/2/21 NE 10–11, 21, 23, 35, 37; 18/2/21 NE 80.

had a habit of entering his room to talk to him when he and his family were asleep. Further, if V's allegations of sexual abuse were true, someone in the room would have been awoken by the sounds that V and D would have made while engaging in the sexual acts. D alleged that V had fabricated the allegations as she feared that N would force her to return to live with him.<sup>85</sup>

### **My decision**

86 Where no other evidence is available, a complainant's testimony can constitute proof beyond reasonable doubt when it is so unusually convincing as to overcome any doubts that might arise from the lack of corroboration (*AOF v PP* [2012] 3 SLR 34 ("*AOF*") at [111]). A witness's testimony may be found to be unusually convincing by weighing the witness's demeanour alongside the internal and external consistencies found in the witness's testimony (*AOF* at [115]). Where the complainant's evidence is not unusually convincing, an accused's conviction is unsafe unless there is some corroboration of the complainant's story. As to whether evidence can amount to corroboration, the court looks at "the substance as well as the relevance of the evidence, and whether it is supportive or confirmative of the weak evidence which it is meant to corroborate" (*AOF* at [173]).

### **General observations**

87 I found V's testimony to be unusually convincing. She was coherent and consistent in the material aspects of her testimony. Despite the passage of time with the offences taking place some six to 10 years prior to her testimony in court, V was able to recall in some detail the incidents and maintained a consistent account during trial and in cross-examination. This is in contrast to

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<sup>85</sup> 9/2/21 NE 114 – 115, 123; 10/2/21 NE 59; 16/2/21 NE 11–12; 17/2/21 NE 64–65.

D who often contradicted himself on the stand and changed his position. Further, V's account that D had on multiple occasions sexually abused her was supported by D's own admissions to various persons.

88 At this stage, I make some general observations. First, I reiterate that D can understand and speak English. Apart from my findings at [27] to [28] above, I observed at the trial that D could understand the questions put to him, he would often answer them even before they were interpreted to him, and he would frequently answer questions partly in English. When shown in court a report by a Dr Sarkar who had conducted a psychiatric assessment of D in 2017 ("Dr Sarkar's Report"), D could read it to himself without the aid of translation.<sup>86</sup>

89 Second, it is clear that at the material time, B and V were closer to D than to N. B and V attested that N was always busy at work. D stated that between 2008 to 2012, he (rather than N) spent more time with the children and even after D's divorce B and V chose to live with D because they were not close to N or their new stepfather.<sup>87</sup>

90 Third, D admitted that he would discipline the children, and if V or B did something wrong he would scold them and sometimes beat them. V also attested that D could be violent and beat the children when he was angry, and B stated that D could be aggressive. Indeed, D agreed that when N was upset with V on the occasions which led to the SAFRA and Marsiling Meetings, N had arranged for V to meet D in order for him to discipline V as V was more afraid of D than of N and he had been disciplining them from young.<sup>88</sup>

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<sup>86</sup> 11/2/21 NE 2; 16/2/21 NE 22–23.

<sup>87</sup> 26/11/20 NE 35; 9/2/21 NE 46, 48, 53; 17/2/21 NE 4–5, 17, 31.

<sup>88</sup> 26/11/20 NE 115; 9/2/11 NE 64, 119–120, 17/2/21 NE 5–6, 81.

91 With the above in mind, I turn to the various incidents.

***Yishun Flat 1st Occasion (amended 1st charge, 2nd to 4th charges)***

92 On the whole, I was satisfied that the Prosecution had proved the amended 1st charge and the 2nd to 4th charges beyond a reasonable doubt.

93 I found V’s account of the incidents the subject of the charges to be consistent and clear. In particular, V recalled how after the first incident (the subject of the amended 1st charge) she then confronted D the next day and asked him about what had happened and recounted what he told her. V’s account in court was materially consistent with her account in V’s 1st Statement made on the day of D’s arrest and her account to one Dr Pathy who examined her in March 2018 to assess whether she was fit to testify in court.<sup>89</sup>

94 Crucially, D admitted in the Statements to the sexual abuse. In P28, he stated that he had done “sexual things” to V and had molested her since she was 10 years old. In P29, D stated that he first started doing sexual things to V when she was 10 years old at the Yishun Flat, that it started one night when he was sleeping on the same mattress as her, and he started to touch her all over including her breast and rubbing her vagina. D also stated that at first V did not know about sex as she was very young and did not know it was wrong and hence she allowed him to do the sexual acts – this cohered with V’s testimony. On subsequent occasions he also rubbed his penis outside V’s anus and vagina, masturbated himself and put his penis in V’s mouth and asked her to suck it. He would also ejaculate on her body or into her mouth.<sup>90</sup>

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<sup>89</sup> V’s 1<sup>st</sup> Statement at [6]–[10]; Supplementary Agreed Bundle (“2AB”) at pp 15–16.

<sup>90</sup> P29 at [9]–[13] and Answer 7.

95 On the other hand, D's testimony in court was inherently inconsistent. When first asked about the Yishun Flat 1st Occasion, D claimed that he never slept with any of his children on the same mattress. However, his evidence morphed along the way. Initially in EIC, D confirmed that sometimes he would sleep on the mattress together with his children. He subsequently changed his account by stating that he had never slept with any of his children, and that the mattresses would be placed quite a distance apart from each other. Then he stated that V slept with him on the same mattress although there was no physical contact.<sup>91</sup> In cross-examination D then said that he would never sleep on the same mattress with any child including V. When asked to explain his inconsistency, he claimed that he did not sleep on the same mattress as V, and that he had been confused about the question.<sup>92</sup>

96 I found D's explanation unconvincing and that he was unable to make up his mind as to his story. He attempted to show that he did not have any physical contact with V, which I disbelieved. D's testimony, even if it were true, showed at best that he was sleeping on a separate mattress from V. It did not mean that he was unable to sexually abuse V as he could have then encroached into her space. Pertinently his testimony in court contradicted what he had told Dr Sarkar. As noted in Dr Sarkar's Report, the first instance of abuse occurred when he found himself next to V whilst sleeping on a mattress on the floor.<sup>93</sup> Dr Sarkar is an independent witness, whom I found had no reason to lie about what D had recounted to him. I will return to Dr Sarkar's Report as D had sought to explain away its contents.

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<sup>91</sup> 11/2/21 NE 8–9, 18–19; 16/2/21 NE 5.

<sup>92</sup> 17/2/21 NE 10–12.

<sup>93</sup> PB at p 48 (Dr Sarkar's Report) at [12].

97 I turn to D’s claims that the bedroom door was always open and never closed when D and his family were sleeping, that K and F had a habit of entering the room to chat with D in the middle of the night, and that sometimes K or F would walk past the room and look in. D stated that this occurred at the Yishun Flat 1st and 2nd Occasions.<sup>94</sup> D’s point is that he would not have committed any sexual acts knowing that K or F could enter the bedroom suddenly, and if any of the incidents had occurred he would have been caught out.

98 I found D’s claim that the bedroom door was “always open” and “never closed” to be untrue and rejected his testimony that K or F would often walk into the room at night to chat with him when he and his family were sleeping. D’s own testimony, which he vacillated on, showed him to lack credibility.

99 The first time D claimed that the bedroom door was left open was in his EIC. This is despite V having attested that if K wanted to enter the room, he would knock on the door before *opening* it, and V’s testimony was not challenged.<sup>95</sup> Then in EIC, D initially claimed that the bedroom door was “normally” open, but in cross-examination stated that it was “always” open and “never closed”. When cross-examined on K and F’s habit of having conversations with D in his bedroom whilst the family was sleeping and the lights were off, which would seem rather unusual, D then said that K only came into the room to look for him if there was an “emergency” or “urgency”. He then claimed that this occurred about once a week, which I did not believe. D then attempted to explain that K would “talk about personal things”, and sometimes needed D to drive him to the hospital because of gastric pain. When pressed, D then claimed that K only needed to go to the hospital on less than

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<sup>94</sup> 17/2/21 NE 64–65.

<sup>95</sup> 9/2/21 NE 51.

five occasions in total throughout D's stay at the Yishun Flat 1st and 2nd Occasions. Finally, D admitted that K *did not enter D's room when D's family was sleeping, other than on those five or fewer occasions*.<sup>96</sup>

100 As for F, she attested that she would enter her room and sleep early because of her young son (which D agreed) and that she had to wake up early in the morning. Further F attested that she *never* entered D's room at night, contrary to D's claim.<sup>97</sup>

101 D then attempted to change his position by claiming that K and F would look into the room as they walked past it when D and his family were sleeping. When queried as to how he would know this if he were asleep, D stated that he would sometimes wake up to go to the toilet, whereupon he would see K or F "glance only" into the room. Even if I accepted D's evidence, D himself attested that this glancing into the room happened only sometimes.<sup>98</sup>

102 Whilst F attested that D's room door was "always" open at night, I found her evidence on this to be unconvincing and unreliable. It was inherently inconsistent and contradicted even by D in material aspects. F stated that she would be in her own room by about 8.00 pm, which was before D or D's children went to sleep, and that she would close her room door. As such, she did not know whether the door of D's room would usually be closed.<sup>99</sup> Although she claimed that she had seen D's room door open when she went to the kitchen

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<sup>96</sup> 16/2/21 NE 11; 17/2/21 NE 62–65.

<sup>97</sup> 17/2/21 NE 58–61; 19/2/21 NE 5, 6, 19, 21.

<sup>98</sup> 17/2/21 NE 64–67.

<sup>99</sup> 19/2/21 NE 5, 18–20, 23–25.

in the middle of the night to prepare milk for her son, she could not say with certainty whether the door would have been closed on other occasions.

103 Pertinently, F claimed that on *all* occasions when she glanced into D’s room at night (and that would be *every* night when she went to the kitchen to prepare milk for her young son) she saw that D and V *never* slept together, *ie*, at the Yishun Flat 1st Occasion D always slept on the bed and never on the floor, and at the Yishun Flat 2nd Occasion D and V never slept together on the lower deck of the bunk bed and V always slept on the upper deck.<sup>100</sup> This was contrary even to D’s testimony that at the Yishun Flat 1st Occasion he slept on the mattress on the floor if one of the children slept on his bed, and that at the Yishun Flat 2<sup>nd</sup> Occasion he and V had slept together on the lower deck of the bunk bed.

104 Hence, I rejected D’s portrayal that it was improbable for him to have committed any sexual acts against V without someone noticing because the room door was “always” open. Even if the door was open, D agreed that when the lights in the room were switched off, a person on the outside passing by and glancing into the room would not be able to see what was happening inside as it would be dark. D also admitted that if K or F wanted to enter his room, they would always knock first whether or not the room door was open or closed.<sup>101</sup> As such, D would have been forewarned.

105 On the whole, V’s testimony was more convincing. She stated that K would always knock on the door before he opened it and entered the room, to respect the privacy of D and his family when they were asleep.<sup>102</sup> When V

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<sup>100</sup> 19/2/21 NE 8, 27–29, 37–38.

<sup>101</sup> 17/2/21 NE 68–69.

<sup>102</sup> 17/2/21 NE 67; 19/2/21 NE 18.

attested to this, it was not put to her that the door was always open. D himself let slip in EIC that if the room door was closed, K would *open* the door whilst F would knock on the door first.<sup>103</sup> Hence, the sexual acts could have gone unnoticed.

106 In the final analysis, it was unclear from both V and D's testimony that D had touched V on both breasts. In V's 1st Statement, V stated that D had touched her "breast" and similarly testified as such in court. This was also what D admitted to in P29.<sup>104</sup> As such, I amended the 1st charge to reflect that D had touched V's breast (in the singular) and convicted him on the amended charge. The amended charge was read to D, who maintained his position to claim trial and did not wish to call for further evidence.

#### ***Woodlands Flat (5th to 7th charges)***

107 I was also satisfied that the Prosecution had proved beyond a reasonable doubt the 5th to 7th charges. I accepted V's account of what transpired at the Woodlands Flat, and particularly that the first incident of penile-anal penetration occurred when she was alone with D and while playing with the "PlayStation" in the master bedroom. V's account in court as to the family's sleeping arrangement in the Woodlands Flat, when the sexual abuse resumed thereat, and what occurred, was materially consistent with her account to IO Xu in 2017.<sup>105</sup>

108 Additionally, V's testimony was corroborated in the material aspects by D's admissions in P29. For instance, V's account that the sexual abuse stopped for a few months when the family first moved to the Woodlands Flat was

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<sup>103</sup> 16/2/21 NE 11.

<sup>104</sup> V's 1st Statement at [6]; 9/2/21 NE 33, 35; P29 at [9].

<sup>105</sup> V's 1st Statement at [12]–[16]; V's 2nd Statement at Answers 16–17.

corroborated by D where he stated that after they moved there the acts stopped for a few months as V was sleeping in a separate room and resumed when V slept in D's room. D also stated that he would rub his penis outside V's vagina and anus and asked her to suck his penis, and that he had committed the sexual acts with V before and after his divorce. He also informed IO Xu that when V was around 12 or 13 years old she learnt about sex and asked him to stop the abuse but he continued.<sup>106</sup> This cohered with V's testimony (see [62] above).

109 It was clear from D's testimony in court that he had many opportunities to sexually abuse V. By D's account, after he and N started to sleep in separate rooms, B and V would sleep in his room (the master bedroom) most of the time, with V sleeping on the bed with D.<sup>107</sup> Although D claimed initially that V never slept in the same room with him even when his divorce was in process, both B and N corroborated V's account that B and V started sleeping with D in the same room as D and N's relationship turned sour.<sup>108</sup> It was not disputed that the bed in the master bedroom was a queen-size bed. I accepted V's testimony that when S went to sleep in the master bedroom and on the bed (with V and D), V would sleep in between S and D. I rejected D's version that S would sleep in between D and V, in a bid to show that he could not have committed any sexual acts with V whilst S was sleeping on the bed.<sup>109</sup>

110 Pertinently, I found D's conduct on the sleeping arrangement with V rather inexplicable, in light of an incident in 2012 ("2012 Incident"). In September 2012, N lodged a police report against D after having witnessed D

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<sup>106</sup> P29 at [14] and Answer 7; P30 at Answer 10.

<sup>107</sup> 17/2/21 NE 21.

<sup>108</sup> 26/11/20 NE 32–33, 60–61; 27/11/20 NE 6–7; 11/2/21 NE 27.

<sup>109</sup> 10/2/21 NE 10–11; 17/2/21 NE 21.

hugging V from her back and around her chest whilst sleeping on the bed. N felt that D was holding V inappropriately and hence made the police report to protect V. When the police came to investigate, D told them that he was not aware of what he had done whilst asleep. However, D stated that after this incident he became aware that he had hugged and touched V inappropriately.<sup>110</sup>

111 That being the case, it was strange that D continued to sleep with V on the same bed, and also after V had already informed him (whilst they lived at the Woodlands Flat) that “daddy like to hug and touch” her when he was sleeping.<sup>111</sup> D also knew all along that it would be wrong to touch V’s breasts or private part. He also knew by the 2012 Incident that touching V inappropriately could amount to molest, and he should try to ensure that it would not recur. Indeed D admitted that after the 2012 Incident, would accidentally “bump” into V whilst sleeping with her. Yet, and despite all these, he made no effort to sleep apart from V such as on a mattress on the floor when he could have. He knew he had to be careful, yet he continued to allow V to sleep on his bed and even slept with her.<sup>112</sup> D’s claim that he did not think about the matter at that time was unbelievable. I could not but infer that D did not take any preventive action and continued to sleep with V because he wanted to continue the sexual abuse. Indeed, B attested that D had ever requested V to sleep in the master bedroom.<sup>113</sup>

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<sup>110</sup> Defence Bundle of Documents (“DB”) 6–7; 27/11/20 NE 28–31; 16/2/21 NE 2–6.

<sup>111</sup> 16/2/21 NE 8–10.

<sup>112</sup> 17/2/21 NE 32–36, 38–39.

<sup>113</sup> 26/11/20 NE 60–61.

***Yishun Flat 2nd Occasion (8th to 15th charges)***

112 Likewise, I was satisfied that the Prosecution had proved beyond a reasonable doubt the 8th to 15th charges which were incidents at the Yishun Flat 2nd Occasion.

113 I accepted V's account of what transpired when D, B and she lived at the Yishun Flat 2nd Occasion (see [63]–[70] above). I found V's account in court of the incidents at the Yishun Flat 2nd Occasion and of her running away to live with N to be cogent and also materially consistent with V's 1st and 2nd Statements made in 2017.<sup>114</sup> Her account was also corroborated by D's statements. In P30, D stated that he resumed the sexual activities with V a few months after they moved back to the Yishun Flat and when they were sleeping on the bunk bed. D stated that the last incident occurred a few days before V ran away to stay with N for good, when he had molested and kissed her.<sup>115</sup> In P29, D explained that V ran away on two occasions because of what he had done to her; that she agreed to return to live with him after she ran away the first time because he promised not to repeat the sexual acts; that after V returned to stay with him, he tried to control himself but he started the acts again such as touching V and rubbing his penis at V's vagina and anus; that V ran away a second time for good; and thereafter D had apologised to her for his actions.<sup>116</sup>

114 Indeed, D's conduct in continuing to sleep with V on the lower deck of the bunk bed was inexplicable in light of the 2012 Incident and for the same reasons at [111] above. Particularly, V had already informed D (when they lived

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<sup>114</sup> V's 1<sup>st</sup> Statement at [17]–[22], Answers 1 and 2; V's 2<sup>nd</sup> Statement Answers 2, 5, 6, 25–27,

<sup>115</sup> P30 at Answers 17 to 19.

<sup>116</sup> P29 at [8], [14] and [15].

at the Woodlands Flat and also at the Yishun Flat) that he hugged and touched her when she was sleeping.<sup>117</sup>

115 Even if V had on occasions fallen asleep on the lower deck of the bed, D agreed that he could have simply slept on an extra mattress on the floor but he did not.<sup>118</sup> I also found his explanation – that he sleep on the lower deck whenever V fell asleep there because he was afraid that the bed would collapse if he climbed to the upper deck to sleep<sup>119</sup> – to be unconvincing. The bedframe and ladder of the bed were made of metal and D admitted that he had never even attempted to sleep on the upper deck. D’s explanation that if he were to sleep on the upper deck alone that the bed might collapse did not make sense (and given that he had never attempted to do so), since he was not afraid that if he slept on the lower deck with V that the bed would not collapse.

116 Contrary to D’s attempt to show that it was not he who wanted V to sleep on the lower deck of the bed, I found that he had asked V to sleep with him as V testified, and this was so that he could continue to take advantage of her. I accepted V’s account that when she was sleeping on the upper deck, D would on occasions pull her body to signal to her to move to the lower deck so that he could perform the sexual acts, and that she complied and stopped resisting him as she could not.<sup>120</sup> Pertinently, B testified that D had requested V to sleep with D on the lower deck, contrary to D’s claim that he had never asked V to do so.<sup>121</sup> I saw no reason to doubt B’s testimony in this regard.

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<sup>117</sup> 16/2/21 NE 8; 18/2/21 NE 74.

<sup>118</sup> 18/2/21 NE 76

<sup>119</sup> 16/2/21 NE 7; 18/2/21 NE 64–67.

<sup>120</sup> 9/2/21 NE 55–56; 10/2/21 NE 81.

<sup>121</sup> 26/11/20 NE 62; 17/2/21 NE 48.

117 Finally, as with the Yishun Flat 1st Occasion, I disbelieved D's claim that the bedroom door was always open and never closed, or that K and/or F had a habit of walking into D's room at night to chat with him, when he and his family were asleep. I reiterate my findings at [99] to [105] above.

***Other supporting evidence***

118 Apart from my findings above, there was other evidence to support the Prosecution's case, and which I elaborate below.

***D's admission to B***

119 First, B had attested that D had told B at the dining table in Mdm An's presence, on the night of 20 November 2017 prior to D's arrest, that he had inserted his finger into V's private part and ejaculated on her body (see [81] above) ("the Conversation").

120 That B and D had a discussion that night pertaining to V's allegations was supported by D's account. In this regard, I found D to be evasive and reluctant to admit to what transpired at the dining table when B asked him if V's allegations against him were true. D initially claimed that when he and B were discussing V's allegations, Mdm An was not present at the dining table, did not participate in the discussion and did not hear anything as she was far away at the kitchen. When pressed further, D admitted that Mdm An was not at the kitchen throughout but was nearby when B and D were having the discussion and that she was able to hear what they were discussing. Eventually D admitted that she sat down with them and participated in their discussion, and that B had asked D whether the sexual allegations were true in Mdm An's presence.<sup>122</sup>

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<sup>122</sup> 18/2/21 NE 12–14.

121 At this juncture I examine Mdm An's testimony. She claimed that she did not hear the discussion between D and B as they were whispering at the dining area in the living room, while she was at the other end of the living room. After B and D finished talking, they just told her that they were going to the Bk Batok Flat to settle the matter with V that night. Mdm An went along because D had asked if she wanted to do so and she did not want anything to happen to him. At that time, she did not know what the complaint against D was.<sup>123</sup>

122 I found Mdm An to be a partial witness who attempted to disown all knowledge that she had heard any part of the Conversation or participated in the discussion at the dining table. Her testimony was at odds with even D's testimony that whilst he and B were having the discussion at the dining table Mdm An was nearby and could hear their conversation; that when B asked D whether the sexual allegations were true, Mdm An was present; and that Mdm An had even sat with them and talked. Indeed, Mdm An admitted in cross-examination that she participated in the discussion, albeit to discuss going to the Bk Batok Flat.<sup>124</sup> Hence I disbelieved that Mdm An did not hear the discussion between D and B including D's admission to B as *per* the Conversation.

123 It was inconceivable that Mdm An would have followed D to the Bk Batok Flat in the middle of the night just because she was concerned about D, when she claimed not to know of what was happening then. Indeed, D attested that it was Mdm An who had suggested going to D's brother's home first.<sup>125</sup> This was consistent with B's testimony that, after D broke down and admitted to sexually abusing V, Mdm An was shocked and tried to think of a solution

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<sup>123</sup> 18/2/21 NE 86–89, 97.

<sup>124</sup> 18/2/21 NE 97.

<sup>125</sup> 18/2/21 NE 15.

and suggested to go to B's uncle's home first. Despite claiming to have found out about the sexual allegations only when she visited D in remand after his arrest,<sup>126</sup> it was clear that Mdm An knew about the allegations on 20 November 2017. Her denial that she had suggested going to D's brother's home and her claim that this was "all nonsense", flew in the face of D and B's testimony and showed that she was attempting to disavow knowledge of what transpired at the dining table that night.

124 Whilst B did not mention the Conversation when he gave his statement to IO Xu on 22 November 2017 and only told IO Xu in 2019 that D had admitted to penetrating V's vagina with his fingers<sup>127</sup>, I accepted that at that time (in 2017) he was influenced by Mdm An not to reveal the matter to the police. I did not find B's conduct at that time to be unusual as D was his father whom he was close to and Mdm An was his grandmother and adult figure in his life.<sup>128</sup>

125 I observed B to be an honest witness. He had explained that at that time he was confused when he first heard from N of V's allegation of sexual abuse by D, he did not know whom to believe (and this was mentioned in his 2017 statement to IO Xu), he was afraid and did not know what would happen if he told the truth, he was also afraid of D who could be hot-tempered and aggressive, and he was not mentally prepared then for what was happening. I accepted that B subsequently decided to tell the truth because he felt guilty and that he would not be protecting his sister if he did not do so; by then he was living with N and felt safe and did not have to fear if he then told the police the

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<sup>126</sup> 18/2/21 NE 97–100.

<sup>127</sup> DB 1–5; 27/11/20 NE 20–21.

<sup>128</sup> 26/11/20 NE 48–50, 79, 104.

truth.<sup>129</sup> N confirmed that B had subsequently approached her and told her that D had admitted to doing sexual acts to V, that Mdm An had told him not to reveal this and which was why he did not inform the police because he was confused and afraid that D would beat him up. N then told B not to be afraid and to tell the truth, and hence B made a further statement to IO Xu in 2019.

126 I did not see any reason why B, whom D stated he had a close relationship with even at the time of his arrest, would subsequently provide false testimony against him. D's assertion that N or V might have influenced B to give false testimony was unsubstantiated.<sup>130</sup>

#### *The Statements*

127 I reiterate that D had admitted in the Statements to sexually abusing V, and that I had found the Statements were made voluntarily by D. Additionally, D took inconsistent positions at the AH and the main trial on how the Statements came to be, which further cast doubt on his veracity and credibility.

128 In relation to P29, D stated in cross-examination during the main trial that he *could not recall* if he had informed IO Xu of various matters therein; then claimed that when he answered IO Xu's questions, IO Xu was "*maybe writing*" [sic] something down. When asked whether IO Xu had also questioned him about whether he had performed any sexual acts on V, D had answered IO Xu but he could not recall his answers.<sup>131</sup> This is contrary to his position in the

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<sup>129</sup> 26/11/20 NE 41–44, 101, 115–117; DB 5 (at Answer 8).

<sup>130</sup> 16/2/21 NE 21; 18/2/21 NE 16–18.

<sup>131</sup> 18/2/21 NE 51–56.

AH, that IO Xu *did not* ask him any questions but had just asked him to sign a *pre-prepared* statement after it was interpreted to him by Sapiahtun.<sup>132</sup>

129 As for P30, D claimed in cross-examination that he could not recall whether IO Xu had pre-prepared a statement for him to sign, which differed from his earlier evidence that the Statements were pre-prepared.<sup>133</sup> Contrary to D's assertion that he never gave IO Xu any information in P30, I find that such information emanated from him. There was no reason why IO Xu would include information such as that N had affairs with three men and how N had admitted to having an affair with other men or that D's children witnessed all these – all of which D claimed to be true in cross-examination.<sup>134</sup> It was inconceivable that someone else such as N or the children would have provided such information to IO Xu for him to pre-prepare P30.

130 Turning to P31, D's version in the AH was that it was pre-prepared. But at the main trial, D's version put to ASP Razak was that *D had given* D's Response in P31 but he did not appreciate what he was telling ASP Razak then as he was under stress.<sup>135</sup>

131 I add that whilst D did not admit to penetrating V's anus in the Statements (but only to rubbing her anus on the outside with his penis), this did not affect the Prosecution's case (especially in relation to the 7th, 10th, 13th and 15th charges), given that I had accepted V's testimony and found her overall to be a credible witness.

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<sup>132</sup> 18/11/20 NE 96; 20/11/20 NE 5, 77–79, 106.

<sup>133</sup> 18/2/21 NE 58–61.

<sup>134</sup> 18/2/21 NE 58–59.

<sup>135</sup> 26/11/20 NE 26–28.

*Admissions to Dr Sarkar*

132 Next, D had informed Dr Sarkar (when he was interviewed in December 2017) that he had committed sexual acts against V. Pertinently, in paragraphs 12 to 14 of Dr Sarkar’s Report (“the Paragraphs”), D stated the following: the sexual offences occurred between 2010 and 2013; he had no sexual outlet at the material time and that his “sex drive was very strong”; he would hold V (who was sleeping) from behind and touch her breasts and genital region and rub his exposed penis on her buttocks; he would masturbate; he had inserted his penis into V’s mouth; V tried to push him away; and he would always apologise to V the following day.

133 D did not challenge Dr Sarkar’s Report as having been made involuntarily or that there was any TIP. Instead, he claimed that Dr Sarkar’s Report could not be relied on, which I rejected as D took inconsistent positions as to how its contents came to be. D’s case put to Dr Sarkar was that the events were so long ago and that D was so intoxicated at the point in time that his memory of the specific events were marred, and hence D had “falsely remember[ed]” the events which he narrated to Dr Sarkar.<sup>136</sup> However, on the stand, D claimed that Dr Sarkar had “misunderstood” and “misinterpreted” him and that he did not mention the contents in the Paragraphs to Dr Sarkar – this version was also never put to Dr Sarkar.<sup>137</sup>

134 Either way, D’s explanations were unconvincing. If D’s memory was marred, he could have simply informed Dr Sarkar that he could not recall the events or given a bare denial, rather than incriminating himself. I also

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<sup>136</sup> 25/11/20 NE 22, 24, 27.

<sup>137</sup> 16/2/21 NE 25–31; 18/2/21 NE 43.

disbelieved D's claim that he did not inform Dr Sarkar of the contents in the Paragraphs or that Dr Sarkar had misunderstood or misinterpreted him, given that Dr Sarkar had accurately recorded other paragraphs pertaining to D's background and that D could communicate with Dr Sarkar in English. In court, D was reading Dr Sarkar's Report to himself without the aid of translation, and Dr Sarkar also testified that D spoke "good English".<sup>138</sup>

***V's conduct and lack of complaint***

135 I turn to deal with V's apparent lack of complaint until she told Z in 2017 (see [76]–[77] above) and her conduct despite the sexual abuse, such as by continuing to sleep with D and not reporting to the police after the 2012 Incident or to N or Z when she ran away to stay with them. D also claimed that V ran away as she was unhappy with doing household chores and his failure to provide her with financial support, and not because of the alleged sexual abuse.

136 I was satisfied that V's behaviour did not undermine her credibility and accepted her explanations. They were not implausible nor unusual for a young victim who initially did not know what was happening, and was afraid and conflicted because of her close relationship with the abuser, her father, who wielded considerable influence in her life and to whom she gave multiple chances to change. It is not unusual for victims of sexual abuse not to report such traumatic and humiliating experiences until much later or at all. Further, as will be seen later, it is not true that V did not disclose the sexual abuse at all.

137 I accept that V was initially shocked and confused when the abuse first occurred. But she confronted D the next day, who he told her not to tell anyone

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<sup>138</sup> 25/11/20 NE 4; 16/2/21 NE 23; 18/2/21 NE 37–38.

and she obeyed him. It was not unusual that V did not inform anyone about that occasion or other occasions in 2010, given her age and that she did not know the acts were wrong. V obeyed D as she was close to and respected and trusted him and he was the main disciplinarian in the family (see [89]–[90] above).<sup>139</sup>

138 When the family moved to the Woodlands Flat, I did not find it unusual for V to sleep with D, as he had told her that he would not continue the sexual acts. However, when the acts resumed, V had tried to sleep in a separate room but could not. The other rooms were occupied (see [59] above) and N told V to sleep with D. When V attended sex education class in school in 2011 and realised that D's acts were wrong, she continued to remain silent as she did not have the courage to speak up and did not know if anyone would believe her. She was not close to N and was afraid that D might get angry and turn violent if she revealed what D had done to her. She was also afraid to lose her father with whom she shared a close relationship – D agreed that V respected and trusted him.<sup>140</sup> Nevertheless V tried to resist his advances but could not.

139 I accepted that V did not inform the police when they were investigating the 2012 Incident because she was afraid of losing her father and she was fearful of him, and hence she obeyed his instructions to keep quiet. I accepted that after D's divorce, V chose to live with D at the Yishun Flat because she believed his promise that he would not repeat the sexual acts and (this was not disputed by D) he told her that he would give her a better life. V was then not close to N or Z.<sup>141</sup> Again, it was not unusual that V would initially sleep on the lower deck of the bunk bed because D had promised not to repeat the sexual abuse; and that

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<sup>139</sup> 9/2/21 NE 36; 17/2/21 NE 4–5, 7–9.

<sup>140</sup> 9/2/21 NE 45–46; 10/2/21 NE 76; 17/2/21 NE 4–9, 31.

<sup>141</sup> 25/11/20 NE 66; 10/2/21 NE 8, 77–78; 17/2/21 NE 31, 41.

even after D resumed the sexual abuse, V continued to comply with his advances because she felt helpless.<sup>142</sup> V did not complain to anyone because D had told her to keep quiet; and she was afraid of him and of what would happen to her and B, of losing her father and that no one would believe her.<sup>143</sup> Her fears and insecurities must be seen in the light that she was in a broken family and living in a place which her family did not own.

140 Indeed, V did run away (the first time at the end of 2013) as she could not tolerate the sexual abuse, although she did not tell N of this as she was afraid that N would not believe her and that D would get angry if he found out that she had complained to N.<sup>144</sup> I accepted that V returned to stay with D because he promised to turn over a new leaf and he told her he needed to apply for a Housing and Development Board (“HDB”) flat with B and V forming a family unit. She thought that D was genuinely remorseful as he had cried to her, and she gave him another chance. V’s conduct was not implausible nor unusual, as she still shared a close relationship with D.<sup>145</sup> That V decided to assist D to obtain an HDB flat was borne out by the testimonials that she and B made (“Testimonials”), shortly after in February 2014, to support D’s application to the Syariah Court to be their caregiver because, as D attested, he wanted to buy an HDB flat with V and B forming a family unit.<sup>146</sup>

141 Pertinently, it was D who went to look for V when she failed to return to the Yishun Flat and did not answer his phone calls. V attested that she did so

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<sup>142</sup> 9/2/21 NE 50.

<sup>143</sup> 10/2/21 NE 76.

<sup>144</sup> 9/2/21 NE 53.

<sup>145</sup> 9/2/21 NE 54; 10/2/21 NE 78–79; 17/2/21 NE 46–47.

<sup>146</sup> 2AB 40–47; 9/2/21 NE 73; 16/2/21 NE 12; 17/2/21 NE 48–49.

because of the sexual abuse.<sup>147</sup> It was unlikely and inconceivable that she avoided D *totally* just because she had a lot of housework at the Yishun Flat or was not given enough pocket money. More likely than not, D persuaded V to return to him because he was anxious that she did not tell anyone about the sexual abuse.

142 I turn to the Testimonials. V explained that when she prepared the Testimonial, D had not resumed the sexual abuse. Thus she did so to assist him to obtain an HDB flat believing also that he had changed for the better and signed to its contents as D had told her to, although they were not entirely true.<sup>148</sup> How the Testimonials came about was corroborated by B who said that D wanted to be his caregiver to purchase an HDB flat; hence he prepared a draft of the Testimonial which D then amended and he then signed it although the contents were not accurate because he loved D.<sup>149</sup> The Testimonials thus do not support that D could not have sexually abused V as otherwise she would not have mentioned positive things about him in the Testimonial.

143 When V ran away a second time and did not reveal to N the sexual abuse, I accepted that she did not then have the courage to tell anyone and D had told her to keep quiet.<sup>150</sup> However, when D went to persuade her to return promising that he would change, V did not believe him anymore, whereupon he promised not to disturb her again if she did not tell anyone about what he had done.

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<sup>147</sup> 9/2/21 NE 53; 17/2/21 NE 46.

<sup>148</sup> 9/2/21 NE 73, 76; 10/2/21 NE 35.

<sup>149</sup> 26/11/20 NE 50–51, 112–113.

<sup>150</sup> 9/2/21 NE 57.

144 It was not disputed that from then on, V minimised and subsequently ceased contact with D completely.<sup>151</sup> It was inconceivable that V would, even when living with N and Z, cease contact with D completely merely because he had previously made her do household chores and had not provided her financial support. After all, D claimed that V was still close to him.<sup>152</sup> D's claim, that V minimised contact with him because he had scolded her about some messages she exchanged with her boyfriend, was an afterthought. It was never put to V and he admitted that it was his speculation. Hence, I found that the main reason V had run away and ceased contact with D was because of the sexual abuse.

145 I further rejected D's assertion that V had fabricated the sexual allegations as she was afraid that N would send her back to live with D after the SAFRA and Marsiling Meetings. Whilst V believed that N wanted to send her back to live with D when N packed her clothes for the SAFRA Meeting, N did not pack her clothes for the Marsiling Meeting nor inform V that she wanted V to stay with D on that occasion. D agreed that the sole purpose of the Marsiling Meeting was for him to speak to V regarding her conduct. Further, after the SAFRA and Marsiling Meetings, V returned to live with N and Z and it was not disputed that V and D led their separate lives.<sup>153</sup> There was thus no reason why V would thereafter fabricate such serious allegations against D. Indeed, D claimed that he had told V, after she ran away the first time, that he would not accept her back if she ran away again; and told her after she ran away the second time that he would not accept her back anymore.<sup>154</sup> If so, it was unlikely that V would worry about being sent back to live with D.

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<sup>151</sup> 17/2/21 NE 76.

<sup>152</sup> 17/2/21 NE 77–80.

<sup>153</sup> 10/2/21 NE 58, 82; 16/2/21 NE 18; 17/2/21 NE 82–83; 18/2/21 NE 2.

<sup>154</sup> 16/2/21 NE 13–14.

146 To conclude, I had found V to be candid in her testimony, and her lack of prompt complaint did not undermine her credibility. V's conduct had been consistent throughout. She did not complain initially because she did not realise that the acts were wrong, until she attended a sex education class. She then tried to resist but could not overpower her father. She was then not close to her mother, much less her stepfather, as to confide in them. She was further concerned about the consequences on the family relationships (including the relationship between B and D, which was also what she had informed Dr Pathy in March 2018) if she revealed the sexual abuse.<sup>155</sup> She did not want to anger D or create trouble. Even when Z initiated a conversation on why she hated her father, she was reluctant to share with Z and did not want to tell N,<sup>156</sup> and she was still reluctant to make a police report until N's prompting.

*V's disclosure to her friend*

147 Pertinently, V had in around 2015 when she was in Secondary 3, disclosed to her close friend ("M") that D had sexually abused her. V explained that this was triggered when M was sharing her personal problems with V. This prompted V to share hers as she had been distressed for some time. M told V to tell her mother but V refused as she did not want the matter to become "very messy" or get D into trouble.<sup>157</sup>

148 M corroborated V's account. She testified that sometime in 2016 in Secondary 4, V informed M that D had touched her inappropriately since she was 10 years old and in Primary 4. D had put his finger into V's vagina, and tried to insert his penis into her vagina but could not and instead he inserted it

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<sup>155</sup> 2AB 17 (Dr Pathy's Report).

<sup>156</sup> 10/2/21 NE 87.

<sup>157</sup> 9/2/21 NE 64–65, 84; PB 71 (V's 2<sup>nd</sup> Statement at Answer 41).

into her anus. When M told V to inform her mother, V said that she was not sure if she could trust her family members, that she was afraid that no one would believe her, and that D had made her promise not to tell anyone about it.<sup>158</sup>

149 I found M to be a truthful witness who had no reason to falsely implicate D. Whilst there was a discrepancy as to whether V had informed M of this matter in 2015 or 2016 (given the passage of time that had elapsed), this did not detract from the fact that V had shared the matter with M whilst they were in secondary school, and that M's account of what V told her was consistent with V's account that D had sexually assaulted her since she was in Primary 4 until Secondary 2 and had performed digital-vaginal penetration and penile-anal penetration.

150 While I did not rely on M's testimony for the truth of its contents of the sexual abuse, M's and V's testimony support that V had complained about the sexual assaults before 2017. V's disclosure to M was also prior to the SAFRA and Marsiling Meetings, and thus could not have been prompted by any fear that V would be sent back to live with D.

*Conclusion on lack of complaint and V's conduct*

151 Victims of sexual assault do not and are not expected to all behave in the same way. In the final analysis, a lack of prompt complaint does not invariably lead to the conclusion that the victim cannot be believed, as much as a prompt complaint does not necessarily lead to the conclusion that the complaint must be true. Each case must turn on its own facts.

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<sup>158</sup> 25/11/20 NE 40–41, 51–52.

***D's other assertions***

152 I turn to deal with D's other assertions to support that the sexual acts could not have occurred.

153 First, Mr Shafiq asserted that if D had ejaculated on V, there would have been traces of semen on her clothes and the domestic helper would have noticed this. This is neutral. V stated that D ejaculated on her body and not her clothes and he would wipe her body or tell her to wash the semen off.<sup>159</sup> Mr Shafiq's assertion also presumes that the domestic helper would have noticed traces of semen and would have known what it was.

154 Next, Mr Shafiq asserted that any sexual activity would have alerted someone in the room, and that it was absurd that V did not shout in pain or call for help the first time D inserted his finger into her vagina.

155 However, V attested that D spoke to her and gave her instructions, on how to fellate him, very softly and he would perform the sexual activities quietly; that S was a heavy sleeper; and that when B occasionally stirred from his sleep, D would stop what he was doing and pretended to be asleep so as not to alert B.<sup>160</sup> Thus, it was not impossible nor improbable that the sleeping occupants in the room would not have stirred and even if there was some noise that they would not have suspected anything was amiss. B and S were then young and would not have reason to suspect that their father was abusing their sister. Pertinently, B recalled that one night at the Woodlands Flat he was awoken by the rustling of the bed and the sound of the bed frame hitting the

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<sup>159</sup> 10/2/21 NE 12, 14–15, 75.

<sup>160</sup> 9/2/21 NE 115; 10/2/21 NE 17, 73–75.

wall, and he heard V say “Stop. It’s painful.”<sup>161</sup> This supported V’s account that B would sometimes stir in his sleep whilst the sexual activities were going on. D himself suggested that at the Yishun Flat 1st Occasion, there was quite a distance between him and someone else whenever he slept on the mattress. Hence it was possible that any movement during the sexual activities would not have alerted the sleeping occupants. As for V not crying out when D inserted his finger into her vagina, I accepted that V was then in shock.<sup>162</sup> It bears emphasis that V was then very young, did not know that it was wrong, did not know how to react and thus obeyed her father upon his instructions.

### *Inconsistencies in V’s evidence*

156 Finally, I deal with some inconsistencies in V’s evidence. As the sexual acts started when V was very young and spanned over a long period of time, it was natural that V’s recollection of the events would be imperfect. Nevertheless, I found that any such inconsistencies did not undermine V’s credibility nor cast a reasonable doubt on the Prosecution’s case.

157 First, I deal with the timeline of the sexual assaults. V had told Dr Pathy that the acts began when she was about 9 years old; she told Dr Ho (in 2018) that they occurred from 2010 to 2013; and in her First Information Report, V mentioned the acts as occurring between 2009 to 2013.<sup>163</sup>

158 I accepted V’s explanation that when she lodged the First Information Report, she was certain that the acts started when she was in Primary 4 but she was unsure of the year and thought that it was 2009. However, V was consistent

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<sup>161</sup> 26/11/20 NE 40.

<sup>162</sup> 9/2/21 NE 112.

<sup>163</sup> 2AB at p 15; P21A; PB at p 38.

in maintaining that the sexual acts commenced when she was in Primary 4 until Secondary 2 (*ie*, between 2010 and 2014), and V would have been nine and turning 10 years old in Primary 4. V explained in court that when she saw Dr Ho, she was still unsure of the actual years and she thus gave a general timeframe; however she was very sure they occurred when she was in Primary 4 to Secondary 2.<sup>164</sup> Dr Pathy attested that V had informed her that V was in Primary 4 when the sexual acts began<sup>165</sup> and Dr Pathy's Report recorded that the acts ceased when V was in Secondary 2. Hence, the inconsistencies in the timeline were minor and immaterial. Further, D had admitted in P28, P29 and in Dr Sarkar's Report that he started sexually abusing V when she was 10 years old.<sup>166</sup> Crucially, V was consistent in her substantive account of the sexual abuse, which was supported by the Statements.

159 Second, Mr Shafiq pointed out that V's 1st Statement mentioned D licking V's vagina, but this did not appear in her conditioned statement in October 2019 or her EIC. I did not consider this to undermine V's credibility. The conditioned statement is not made to the investigating authorities at the time of investigation but prepared for the purpose of the trial and which would necessarily focus on the charges at hand. None of the 15 charges pertained to the act of licking the vagina. Likewise, V's 1st Statement stated that D had licked V's breasts and D also admitted to this in P29, although it was not stated in V's conditioned statement and did not form any of the 15 charges.<sup>167</sup>

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<sup>164</sup> 9/2/21 NE 68, 71.

<sup>165</sup> 26/11/20 NE 9.

<sup>166</sup> P29 at para 9; Dr Sarkar's Report at [12].

<sup>167</sup> V's 1<sup>st</sup> Statement at [9]; P29 at Answer 16; 9/2/21 NE 116.

160 Third, V's 2nd Statement mentioned that V was unsure if D had put his finger into her anus but in court V had testified that he had done so. Mr Shafiq claimed this showed that her sexual allegations could not be believed. I accepted V's testimony in court that she recalled D having inserted his finger into her anus. It is not inconceivable for a victim of sexual abuse not to be able to recount each and every act of sexual assault. As Dr Pathy attested, a victim of sexual assault would even attempt to suppress or forget such incidents.<sup>168</sup>

161 Fourth, Mr Shafiq pointed out that V did not mention to Dr Ho that D had put her in a "doggy position" when he purportedly performed penile-anal penetration and hence such acts could not have happened.<sup>169</sup> This is neutral. Dr Ho was not conducting investigations into the offences but merely conducting a physical examination of V. In any event Dr Ho had recorded in her report of V's complaint to her that D had performed penile-oral penetration, and in court clarified that V had mentioned to her of being placed in a "doggy position".<sup>170</sup>

### ***Conclusion***

162 In conclusion, I was satisfied that the Prosecution had proved beyond a reasonable doubt all 15 charges. I found V to be a credible and honest witness who was consistent in her account of the incidents. Even if there were some gaps in V's evidence, it did not mean that there was a "systematic and widespread pattern of many inconsistencies coming together" to destroy V's credibility altogether (*ADF v PP* [2010] 1 SLR 874 at [23] and [25]). In contrast, I found D to be an untruthful witness who contradicted himself on material aspects, and there were internal and external inconsistencies in his testimony.

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<sup>168</sup> 10/2/21 NE 65–67, 80–81; V's 2<sup>nd</sup> Statement at Answer 33; 26/11/20 NE 9.

<sup>169</sup> 10/2/21 NE 60.

<sup>170</sup> 2AB at p 6 (Dr Ho's Report under "Exact Nature of Assault"); 9/2/21 NE 3, 12.

Additionally, V's testimony was supported by other evidence which included D's Statements and the Conversation between D and B as attested to by B.

### **Sentence**

163 The Prosecution submitted the following sentences:

- (a) Amended 1st charge (outrage of modesty of a person under 14 years old) – three years' imprisonment and three strokes of the cane;
- (b) 2nd to 10th charges (digital-vaginal penetration, fellatio and penile-anal penetration committed against a person under 14 years old without consent) – 14 years' imprisonment and 12 strokes of the cane for each charge; and
- (c) 11th to 15th charges (digital-vaginal penetration, fellatio and penile-anal penetration) – 13 years' imprisonment and 8 strokes of the cane for each charge.

164 The Prosecution submitted for a global sentence of at least 31 years' imprisonment and 24 strokes of the cane, with the sentences for the 1st, 4th and 7th charges to run consecutively. It submitted that the key sentencing principles of deterrence and retribution should apply. V was a minor and a vulnerable victim when the offences occurred. There was an abuse of trust in a familial context, with such offences being hard to detect as victims of intra-familial sexual abuse may be unwilling or hesitant to report the matter to the authorities. Crucially, the incidents only came to light because Z had initiated a conversation with V about her relationship with D. The sexual abuse also persisted for nearly five years and D exploited V's emotional vulnerability by impressing upon her

that she would lose a father if anyone learnt about the abuse. Additionally, V has suffered trauma as a result of the persistent sexual abuse.<sup>171</sup>

165 The Defence submitted that the sentence for the amended 1st charge should be two years' imprisonment and three strokes of the cane; for the 2nd to 10th charges should each be 11 years' imprisonment and eight strokes of the cane; and for the 11th to 15th charges should each be eight years' imprisonment and four strokes of the cane. The aggregate sentence should also not exceed 21 years' imprisonment and 15 strokes of the cane, with the sentences for the 1st, 2nd and 11th charges to run consecutively. Whilst D had abused his position of trust and committed the offences as V's biological father, there were no other aggravating factors.<sup>172</sup> He did not use force and there was no premeditation as he committed the acts at the spur of the moment.<sup>173</sup> D was also a first-time offender and had been a good father to V until he committed the offences and contributed to his daughters' maintenance even when they lived with N.

166 When sentencing an accused person with multiple charges, the court should first consider the appropriate sentence for each offence, and then consider how these individual sentences should run. The general rule is that sentences for unrelated offences should run consecutively and for offences that form part of the same transaction should run concurrently. The totality principle should be applied to ensure that the aggregate sentence is reflective of the overall criminality of the offender, is proportionate and not crushing on him. Moreover, the rule against double counting should not be offended (see *PP v Raveen Balakrishnan* [2018] 5 SLR 799 at [98]).

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<sup>171</sup> Prosecution's Submission on Sentence ("PS") at [8]–[9] and [12].

<sup>172</sup> Mitigation Plea at [2] and [18].

<sup>173</sup> Mitigation Plea at [18].

***Outrage of modesty under s 354(2) Penal Code (amended 1<sup>st</sup> charge)***

167 Both Prosecution and Mr Shafiq cited *GBR v PP* [2018] 3 SLR 1048 (“*GBR*”) in relation to the sentencing framework for the offence of outrage of modesty of a person under 14 years old, under s 354(2) of the Penal Code.<sup>174</sup> The court in *GBR* (at [26]–[37]) referred to the sentencing framework laid out in *Ng Kean Meng Terence v PP* [2017] 2 SLR 449 and set out three sentencing bands for cases under s 354(2). This approach was endorsed by the Court of Appeal in *BPH v PP* [2019] 2 SLR 764 (“*BPH*”) at [70]–[72].

168 The Prosecution submitted that the present case fell within the highest end of Band 2 with the indicative starting point of three years’ imprisonment as D had abused V’s trust, V was at that time only 10 years’ old, and the degree of sexual exploitation was egregious.<sup>175</sup> Mr Shafiq submitted that, whilst this case fell within Band 2, a two-year imprisonment term would be sufficient.<sup>176</sup>

169 A case under Band 2 would attract a sentence of between one to three years’ imprisonment, and at least three strokes of the cane as a starting point (*GBR* at [31] and [33]). I agreed with the Prosecution on the aggravating factors and that this case should fall within the higher end of Band 2. Accordingly, I imposed a sentence of two years’ imprisonment (which is not dissimilar to the imprisonment term in *GBR*) and three strokes of the cane.

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<sup>174</sup> PS at [25]; Mitigation Plea at [2].

<sup>175</sup> PS at [26].

<sup>176</sup> Mitigation Plea at [7]–[10].

***Sexual assault by penetration punishable under ss 376(3) and 376(4)(b)  
Penal Code (2nd to 15th charges)***

170 Both parties referred to the sentencing framework in *Pram Nair v PP* [2017] 2 SLR 1015 (“*Pram Nair*”), and which the court in *BPH* held (at [55]) applied to all forms of sexual assault by penetration under s 376 of the Penal Code. The *Pram Nair* sentencing bands are as follows:

- (a) Band 1: seven to 10 years’ imprisonment and four strokes of the cane;
- (b) Band 2: 10 to 15 years’ imprisonment and eight strokes of the cane;
- (c) Band 3: 15 to 20 years’ imprisonment and 12 strokes of the cane.

Further, where the statutory aggravating factor in s 376(4)(b) of the Penal Code (*ie*, a victim under 14 years old) is present, the case should fall within Band 2 (or Band 3 if there are other aggravating factors) (*BPH* at [42] and [68]).

171 For the offences committed when V was below 14 years old and punishable under s 376(4)(b) of the Penal Code (the 2nd to 10th charges), parties agreed that they fell within Band 2, bearing in mind the mandatory caning of not less than 12 strokes. The Prosecution submitted that it should be at the higher end, whilst Mr Shafiq submitted that it should be at the lower end, of Band 2.<sup>177</sup>

172 In relation to the 2nd to 10th charges, I found that the present case fell within the higher end of Band 2. This was a clear case of abuse of position of trust. D was the biological father of V and they shared a close relationship when

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<sup>177</sup> PS at [23]; Mitigation Plea at [23].

the abuse occurred. When the offences started in 2010, V did not know that they were wrong and hence allowed D to continue to abuse her. When she first confronted D, she was confused but she listened to D (who had told her that he would teach her more about sex). D also stated in P29 (see [94] above) that initially V did not know about sex as she was very young, did not know it was wrong, and hence allowed him to perform the sexual acts. When V realised that the acts were wrong, D then impressed upon her that she would lose her father if anyone found out about the sexual activities. This not only violated the trust placed in him by V but also by society. Further, the vulnerability of V by reason of her age constituted an aggravating factor in a case punishable under s 376(4)(b) of the Penal Code (see [170] above).

173 There was also some premeditation and the offences were not committed at the spur of the moment. For instance, after the incident forming the 1st charge, D told V that it was “sex” and that he would teach her more along the way. He then started to insert his finger into V’s vagina (the 2nd charge) which gradually led to more egregious forms of sexual penetration such as fellatio and penile-anal penetration. D would abuse V whilst everyone else in the room was asleep or when he was alone with V (eg, the 5th to 7th charges when V was playing with the “PlayStation”), all the while informing V that she would get used to the sexual activities and to keep quiet or she would risk losing her father. D had also deliberately put himself in a position where he could continue to take advantage of her, such as by sleeping on the same bed as or next to her.

174 Further, D had subjected V to sexual degradation. The abuse took place over a period of time, with D telling V that she would get used to it or to bear with the pain when he performed penile-anal penetration. He would also ejaculate in V’s mouth and told her to either swallow or spit out his semen.

175 Additionally, there was a lack of remorse on D’s part. During the trial, he chose to raise matters to disparage N’s character unnecessarily, accused N of influencing V to lie, and sought to discredit V by alleging that she had attempted to “cover herself up” because he discovered that she had had sex with her boyfriend which was wrong.<sup>178</sup>

176 That there was an absence of antecedents was a neutral factor; indeed, the presence of related antecedents would have been aggravating (*BPH* at [85]).

177 I disagreed with Mr Shafiq that the present case was less aggravating than in *BSR v PP* [2020] 2 SLR 758 (“*BSR*”).<sup>179</sup> In *BSR*, the sentence imposed for a fellatio offence punishable under s 376(4)(b) was 14 years’ imprisonment and 12 strokes of the cane. The aggravating factors there were largely similar. The victim was a vulnerable six-year-old and the accused was her biological father. Further, he had forcibly inserted his penis into the victim’s mouth and exposed her to the risk of a sexually transmitted disease. The Court of Appeal upheld the sentence of 14 years’ imprisonment. Although the victim in *BSR* was younger, it could not be said that the present case was less egregious. In particular, the accused had pleaded guilty, which was a mitigating factor.

178 As for the 11th to 15th charges (punishable under s 376(3) of the Penal Code) Mr Shafiq submitted that they should fall within Band 1 of *Pram Nair*, albeit at the higher end, as the only aggravating factor was the abuse of position of trust.<sup>180</sup> The Prosecution maintained that these offences fell within the higher end of Band 2 for essentially the same reasons as with the 2nd to 10th charges.

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<sup>178</sup> 18/2/21 NE 78–83.

<sup>179</sup> Mitigation Plea at [22]–[23].

<sup>180</sup> Mitigation Plea at [25]–[27].

179 I accepted the Prosecution's submission that the 11th to 15th charges fell within the higher end of Band 2 of *Pram Nair* for the reasons at [172] to [175] above, namely that there was an abuse of position of trust, premeditation on D's part, V's vulnerability as she was still relatively young at the material time, the sexual degradation V was subjected to and D's lack of remorse. As such, I imposed a sentence of 14 years' imprisonment and the mandatory minimum 12 strokes of the cane for each of the 2nd to 10th charges, and 13 years' imprisonment and eight strokes of the cane for each of the 11th to 15th charges.

### ***Conclusion on sentence***

180 I ordered the 1st, 4th and 13th charges (which pertained to three different occasions of sexual abuse) to run consecutively. D's total sentence was thus 29 years' imprisonment (to commence from the date of D's remand) and the maximum 24 strokes of the cane in accordance with s 328 of the CPC.

181 In *BSR*, the total sentence imposed (and upheld by the Court of Appeal) was 25.5 years of imprisonment for a plea of guilt on four charges (which included a charge of fellatio punishable under s 376(4)(b) of the Penal Code and a charge of aggravated outrage of modesty of a minor under s 354A(2)(b)) with four other charges taken into consideration; albeit relating to more than one victim. In *PP v BRH* [2020] SGHC 14, the accused pleaded guilty to a charge under s 375(1)(b) of the Penal Code by penetrating the victim's vagina with his penis (punishable under s 375(3)(b) as the victim was then eight to nine years old), and an offence each of penile-anal penetration and fellatio punishable under s 376(4)(b)). Twelve other charges were taken into consideration for sentencing, including, a charge of outrage of modesty by rubbing the victim's vagina over her clothes when she was between six and seven years old,

punishable under s 354(2) of the Penal Code. The court imposed a total of 28 years' imprisonment and the maximum 24 strokes of the cane.

182 Here, D had claimed trial to 15 charges altogether. In imposing a total of 29 years' imprisonment, the sentences were calibrated to take into account that there were several distinct occasions in which the offences occurred with different acts of penetration. However, some of the charges pertained to the same occasion, and I calibrated the overall sentence having regard to the totality principle and that it should not be excessive or crushing. Nevertheless, general deterrence and retribution were key considerations in the present case. Particularly, this was a case of an abuse of trust of the highest order by a father of his biological daughter, and there were no mitigating circumstances.

Audrey Lim  
Judge of the High Court

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