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

[2022] SGHC 148

Criminal Case No 4 of 2022

Between

Public Prosecutor

And

BZT

JUDGMENT FOR SENTENCE

[Criminal Procedure and Sentencing — Sentencing — Principles]
[Criminal Procedure and Sentencing — Sentencing — Benchmark sentences]

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Public Prosecutor
v
BZT

[2022] SGHC 148

General Division of the High Court — Criminal Case No 4 of 2022
Tan Siong Thye J
27 June 2022

27 June 2022 Judgment reserved.

Tan Siong Thye J:

Introduction

1 The facts of the case and the reasons for my decision to convict and find the accused guilty are set out in *Public Prosecutor v BZT* [2022] SGHC 91 ("the Main Judgment"). This judgment focuses on the appropriate sentences on the proceeded charges against the accused.

Background

2 The accused is [BZT], a 48-year-old male Singaporean. He claimed trial on eight charges of sexual assaults he committed against two very young victims when he was the boyfriend of the victims' mother ("PW1").[1] These sexual offences occurred when the first victim ("V1"), a female, was between 7 and

[1] Agreed Statement of Facts ("ASOF") at para 1.

13 years old and the second victim ("V2"), a male, was between 11 and 13 years old (collectively, the "Victims").[2] On 25 April 2022, I convicted the accused on the following eight charges:

That you, [BZT],

FIRST CHARGE	on an occasion sometime between 1 February 2000 and 5 October 2001 at [Property 1], did use criminal force to [V1], a female aged at least 7 years old and not older than 9 years old, *to wit*, by rubbing your penis against her buttocks (over her clothes), using your hand to rub her vagina (skin-on-skin) and rubbing your penis against her vaginal area (skin-on-skin), intending to outrage her modesty, and you have thereby committed an offence punishable under section 354 of the Penal Code (Cap 224, 1985 Rev Ed);
SECOND CHARGE	on an occasion sometime between 1 February 2000 and 5 October 2001 at [Property 1], did use criminal force to [V1], a female aged at least 7 years old and not older than 9 years old, *to wit*, by rubbing your penis near her vaginal area (skin-on-skin), intending to outrage her modesty, and you have thereby committed an offence punishable under section 354 of the Penal Code (Cap 224, 1985 Rev Ed);
THIRD CHARGE (AMENDED)	on an occasion sometime between 1 February 2000 and 5 October 2001 at [Property 1], did attempt to commit rape by attempting to have sexual intercourse with [V1], a woman under 14 years of age, without her consent, and you have thereby committed an offence punishable under section 376(2) read with section 511 of the Penal Code (Cap 224, 1985 Rev Ed);

[2] ASOF at para 2.

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FIFTH CHARGE	on an occasion sometime between the year 2003 and the year 2004 at [Property 2], did use criminal force to [V1], a female aged at least 10 years old and not older than 12 years old, *to wit*, by grinding your penis against her vagina (over her clothing), intending to outrage her modesty, and you have thereby committed an offence punishable under section 354 of the Penal Code (Cap 224, 1985 Rev Ed);
SIXTH CHARGE	on an occasion sometime in the year 2005 at [Property 2], did use criminal force to [V1], a female at least 12 years old and not older than 13 years old, *to wit*, by inserting a cotton bud into her anus, intending to outrage her modesty, and you have thereby committed an offence punishable under section 354 of the Penal Code (Cap 224, 1985 Rev Ed);
NINTH CHARGE	sometime between 19 November 2001 and 18 November 2002, at [Property 2], did voluntarily have carnal intercourse against the order of nature with [V2], a male aged 11 years old, *to wit*, by sucking the penis of [V2] and by causing his penis to penetrate your anus, and you have thereby committed an offence punishable under section 377 of the Penal Code (Cap 224, 1985 Rev Ed);
TENTH CHARGE	sometime between 19 November 2001 and 18 November 2002 at [Property 2], did attempt to voluntarily have carnal intercourse against the order of nature with [V2], a male aged 11 years old, *to wit*, by attempting to insert your penis into the anus of [V2], and you have thereby committed an offence punishable under section 377 read with section 511 of the Penal Code (Cap 224, 1985 Rev Ed);

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ELEVENTH CHARGE (AMENDED)	sometime between 19 November 2001 and 18 November 2002 at [Property 2], did use criminal force on [V2], a male aged 11 years old, by attempting to put your finger into his anus, intending to outrage his modesty, and you have thereby committed an offence punishable under section 354 read with section 511 of the Penal Code (Cap 224, 1985 Rev Ed);

3 The accused faces four additional charges which were stood down during the trial. After his conviction on 25 April 2022, the accused consented to have these four charges taken into consideration by the court for the purpose of sentencing ("the TIC Charges").[3] The TIC Charges are as follows:

That you, [BZT],

FOURTH CHARGE	on an occasion sometime between 1 February 2000 and 5 October 2001 at [Property 1], did commit an indecent act with [V1], a child under the age of 14 years, *to wit*, by viewing images of females in states of nudity on a laptop with her and asking her to perform the same acts as shown in the said images, and you have thereby committed an offence under section 6 of the Children and Young Persons Act (Cap 38, 1994 Rev Ed);
SEVENTH CHARGE	sometime between 19 November 2001 and 18 November 2002 at [Property 2], did use criminal force to [V2], a male aged 11 years old, *to wit*, by masturbating him with your hand (skin-on-skin), intending to outrage his modesty, and you have thereby committed an offence punishable under section 354 of the Penal Code (Cap 224, 1985 Rev Ed);

[3] Notes of Evidence ("NEs") 25 April 2022 at p 5 lines 1–2.

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EIGHTH CHARGE	on an occasion in 2003 at [Property 2], did use criminal force to [V2], a male aged at least 12 years old and not older than 13 years old, *to wit*, by masturbating him with your hand (skin-on-skin), intending to outrage his modesty, and you have thereby committed an offence punishable under section 354 of the Penal Code (Cap 224, 1985 Rev Ed);
TWELFTH CHARGE	between 1 January 2017 and 19 May 2019, in Singapore, being a person registered under the National Registration Act (Cap 201, 1992 Rev Ed) ("the Act") and having changed your place of residence from [Property 2] to [Property 3], did fail to report the change to a registration officer within 28 days thereof as required under section 8(1) of the Act, and you have thereby committed an offence punishable under section 13(1)(*b*) of the same.

The applicable law

Outrage of modesty

4 Section 354 of the Penal Code (Cap 224, 1985 Rev Ed) ("the Penal Code") reads as follows:

> Whoever assaults or uses criminal force to any person, intending to outrage or knowing it to be likely that he will thereby outrage the modesty of that person, shall be punished with imprisonment for a term which may extend to 2 years, or with fine, or with caning, or with any two of such punishments.

5 The prescribed punishment is the same as that under s 354(1) of the Penal Code (Cap 224, 2008 Rev Ed). Accordingly, the sentencing framework for offences under s 354(1) of the Penal Code (Cap 224, 2008 Rev Ed) which was set out in *Kunasekaran s/o Kaimuthu Somasundara v Public Prosecutor* [2018] 4 SLR 580 ("*Kunasekaran*") at [45]–[49] is instructive:

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45 In *GBR v PP* [2017] SGHC 296 ("*GBR*"), See Kee Oon J laid down the following sentencing framework regarding offences under s 354(2) of the Penal Code for aggravated outrage of modesty committed against a child under 14 years of age:

> (a) The court should first consider the following offence-specific factors (at [27]–[30]):
>
> > (i) The degree of sexual exploitation. This includes considerations of the part of the victim's body the accused touched, how the accused touched the victim, and the duration of the outrage of modesty.
> >
> > (ii) The circumstances of the offence. These include considerations of: (A) the presence of premeditation; (B) the use of force or violence; (C) the abuse of a position of trust; (D) the use of deception; (E) the presence of other aggravating acts accompanying the outrage of modesty; and (F) the exploitation of a vulnerable victim.
> >
> > (iii) The harm caused to the victim, whether physical or psychological, which would usually be set out in a victim impact statement.
>
> (b) Based on the consideration of the foregoing offence-specific factors, the court should ascertain the gravity of the offence and then place the offence within any of the following three bands of imprisonment (at [31]–[38]):
>
> > (i) ***Band 1***: This includes cases that do not present any, or at most one, of the offence-specific factors, and typically involves cases that involve a fleeting touch or no skin-to-skin contact, and no intrusion into the victim's private parts. Less than one year's imprisonment should be imposed and ***caning is generally not imposed***, although this depends on the precise facts and circumstances of each case.
> >
> > (ii) ***Band 2***: This includes cases where two or more of the offence-specific factors present themselves. The lower end of the band involves cases where the private parts of the victim are intruded, but there is no skin-to-skin contact. The ***higher end*** of the band involves cases where there is ***skin-to-skin contact with the victim's private parts***. It would also involve cases where there was the use of ***deception***. One to three years' imprisonment, and ***at least three strokes of the cane, should be imposed***.

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> (iii) ***Band 3***: This includes cases where ***numerous offence-specific factors*** present themselves, especially factors such as the ***exploitation of a particularly vulnerable victim, a serious abuse of a position of trust***, and/or the use of violence or force on the victim. Three to five years' imprisonment, and ***at least six strokes of the cane***, should be imposed.
>
> (c) Finally, the court should also consider the aggravating and mitigating factors that relate to the offender generally but which are not offence-specific (*ie*, offender-specific factors). Aggravating factors include the number of charges taken into consideration, the lack of remorse, and relevant antecedents demonstrating recalcitrance. Mitigating factors include a timeous plea of guilt or the presence of a mental disorder or intellectual disability on the part of the accused that relates to the offence (at [39]). The court should also consider whether there are grounds to enhance the sentence by way of the imposition of imprisonment in lieu of caning if the accused is certified to be unfit for caning because he is above 50 years of age at the time of caning (s 325(1)(*b*) of the CPC), or is certified to be medically unfit for caning (s 331 of the CPC) (at [40]).

…

48 Accordingly, while the framework in *GBR* was proposed by See J in the context of offences of aggravated outrage of modesty under s 354(2) of the Penal Code, I take the view that it should similarly be applicable to offences of outrage of modesty *simpliciter* under s 354(1). …

49 … the sentencing bands that would take into account the full spectrum of sentences that may be imposed for s 354(1) offences should be as follows:

> (a) ***Band 1: less than five months' imprisonment***;
>
> (b) ***Band 2: five to 15 months' imprisonment***; and
>
> (c) ***Band 3: 15 to 24 months' imprisonment***.

[emphasis in original in italics; emphasis added in bold italics]

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Attempted rape

6 Section 376(2) of the Penal Code reads as follows:

> (2) Whoever, in order to commit or to facilitate the commission of an offence of rape against any woman —
>
> > (*a*) voluntarily causes hurt to her or to any other person; or
> >
> > (*b*) puts her in fear of death or hurt to herself or any other person,
>
> and whoever commits rape by having sexual intercourse with a woman under 14 years of age without her consent, shall be punished with imprisonment for a term of not less than 8 years and not more than 20 years and shall also be punished with caning with not less than 12 strokes.

7 Section 511 of the Penal Code reads as follows:

> Whoever attempts to commit an offence punishable by this Code or by any other written law with imprisonment or fine or with a combination of such punishments, or attempts to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code or by such other written law, as the case may be, for the punishment of such attempt, be punished with such punishment as is provided for the offence:
>
> Provided that any term of imprisonment imposed shall not exceed one-half of the longest term provided for the offence.

8 Notwithstanding that the third charge is an *attempted* rape offence, the mandatory minimum of eight years' imprisonment and 12 strokes of the cane applies. The prescribed punishment for this offence is, therefore, imprisonment for a term of between eight and ten years with caning of not less than 12 strokes (see *Public Prosecutor v Shamsul bin Sa'at* [2010] 3 SLR 900 at [1(a)]).

9 The prescribed punishment for rape under s 375(3) of the Penal Code (Cap 224, 2008 Rev Ed) is the same as that under s 376(2) of the Penal Code at [6] above. Thus, the sentencing framework for rape offences laid down by the

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Court of Appeal in *Ng Kean Meng Terence v Public Prosecutor* [2017] 2 SLR 449 ("*Terence Ng*") at [39]–[74] is instructive. Briefly, the framework requires the sentencing court to first consider the *offence-specific* aggravating factors, including the accused's abuse of position of authority and breach of trust, premeditation and vulnerability of the victim, in order to identify the appropriate sentencing band the offence falls within:

> (a) Band 1 (ten to 13 years' imprisonment and six strokes of the cane): These are for cases of rape which are at the lower end of the spectrum of seriousness and feature no offence-specific aggravating factors or where the factor(s) are only present to a very limited extent and therefore have a limited impact on sentence.
>
> (b) Band 2 (13 to 17 years' imprisonment and 12 strokes of the cane): These are for cases of rape which are properly described as being of a higher level of seriousness. Such cases would usually contain two or more offence-specific aggravating factors. A paradigmatic example of a Band 2 case would be the rape of a particularly vulnerable victim coupled with evidence of an abuse of position of authority (such as where the rape took place in a familial context).
>
> (c) Band 3 (17 to 20 years' imprisonment and 18 strokes of the cane): These are for cases which, by reason of the number and intensity of the aggravating factors, present themselves as extremely serious cases of rape. They often feature victims with particularly high degrees of vulnerability and/or serious levels of violence attended with perversities.

10 After identifying the relevant sentencing band, the court should then have regard to the *offender-specific* aggravating and mitigating factors, such as

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offences taken into consideration for the purposes of sentencing, the offender's remorse or his relevant antecedents (*Terence Ng* at [64]).

11 The Court of Appeal in *Terence Ng* explained further at [53] that offences of rape disclosing any of the statutory aggravating factors in s 375(3) of the Penal Code will almost invariably fall within Band 2.

12 In *Public Prosecutor v Ridhaudin Ridhwan bin Bakri and others* [2020] 4 SLR 790, the High Court held at [102] that the sentencing framework for rape in *Terence Ng* could be adapted to attempted rape by halving the sentences in each band.

Unnatural carnal intercourse

13 Section 377 of the Penal Code reads as follows:

> Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animals, shall be punished with imprisonment for life, or with imprisonment for a term which may extend to 10 years, and shall also be liable to fine.

The parties' submissions

The Prosecution's submissions

14 The Prosecution proposes the following sentences for each of the eight proceeded charges as well as the global sentences:[4]

Offence	Victim	Individual Sentence
First charge S 354 of the Penal Code	V1 Age: Between 7 and 9 years old	1.5 to 2 years' imprisonment and 6 strokes of the cane

[4] Prosecution's Sentencing Submissions ("PSS") at para 5; Prosecution's Sentencing Submissions (Addendum) ("PSSA") at para 3.

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		(***consecutive***)
Second charge S 354 of the Penal Code	V1 Age: Between 7 and 9 years old	1.5 to 2 years' imprisonment and 6 strokes of the cane
Third charge S 376(2) r/w s 511 of the Penal Code	V1 Age: Between 7 and 9 years old	8 to 9.5 years' imprisonment and 12 strokes of the cane (***consecutive***)
Fifth charge S 354 of the Penal Code	V1 Age: Between 10 and 12 years old	1.5 to 2 years' imprisonment and 3 strokes of the cane
Sixth charge S 354 of the Penal Code	V1 Age: Between 12 and 13 years old	15 to 18 months' imprisonment and 1 stroke of the cane
Ninth charge S 377 of the Penal Code	V2 Age: 11 years old	6.5 to 8.5 years' imprisonment (***consecutive***)
Tenth charge S 377 r/w s 511 of the Penal Code	V2 Age: 11 years old	5 years' imprisonment
Eleventh charge S 354 r/w s 511 of the Penal Code	V2 Age: 11 years old	0.5 to 1 year's imprisonment

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Global sentence range	**16 to 20 years'** imprisonment and **24 strokes** of the cane with no additional term of imprisonment in lieu of caning even if the accused is subsequently found medically unfit for caning.

Sentencing principles

15 The Prosecution submits that deterrence and retribution are the main applicable sentencing principles. The Prosecution argues that the accused's actions were "the ultimate betrayal of trust and authority" as the accused was a father figure to the Victims.[5] Specific deterrence is also warranted given the premeditation present in the offences.[6]

Aggravating factors

16 The Prosecution submits that the following offence-specific aggravating factors are engaged on the present facts:

(a) There was a serious abuse of trust and position of authority by a "father" against his children.[7]

(b) There was a significant degree of premeditation in the commission of the offences.[8]

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5 PSS at paras 7–8.

6 PSS at para 9.

7 PSS at paras 13–15.

8 PSS at para 16.

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(c) The Victims were particularly young and especially vulnerable at the time of the offences, with their vulnerability being due to their age and unstable circumstances.[9]

17 The Prosecution submits that the following offender-specific aggravating factors are engaged on the present facts:

(a) The TIC Charges ought to result in an enhancement of the sentence as three out of four of the TIC Charges are sexual in nature.[10]

(b) The accused was diagnosed to be a pedophile by Dr Ong Jun Yan ("Dr Ong"), a Senior Resident at the Department of Forensic Psychiatry of the Institute of Mental Health ("IMH"). The accused was able to appreciate the consequences of his actions and is fully culpable for them.[11]

Mitigating factors

18 The Prosecution further submits that there are no mitigating factors in the present case. First, the accused claimed trial and did not spare the Victims the trauma of testifying in court.[12] Second, the absence of similar sexual offences in the accused's criminal history is a neutral factor and no weight should be given to this.[13] In any case, the accused "had been flouting the law

9 PSS at para 17.

10 PSS at para 18.

11 PSS at paras 19–22.

12 PSS at para 23.

13 PSS at para 24.

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with impunity for years" and "can only be described to be a seasoned criminal skilled at avoiding detection".[14]

Proposed sentences for charges involving V1

(1) Outrage of modesty (the first, second, fifth and sixth charges)

19 On the first charge and the second charge, the Prosecution argues that the degree of sexual exploitation involved is the highest. These charges should, therefore, fall within the high end of Band 3 of the *Kunasekaran* framework with an indicative sentence in the range of one and a half to two years' imprisonment and six strokes of the cane.[15]

20 On the fifth charge, the Prosecution submits that the degree of sexual exploitation is moderate as it involved contact of the accused's penis with V1's vagina over clothes. The fifth charge, therefore, falls within the middle of Band 3 with an indicative sentence in the range of one and a half to two years' imprisonment and three strokes of the cane.[16]

21 On the sixth charge, the degree of sexual exploitation is lower as it involved contact of V1's private part with a foreign object, *ie*, a cotton bud. The sixth charge falls within the lower end of Band 3 with an indicative sentence in the range of 15 to 18 months' imprisonment and one stroke of the cane.[17]

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14 PSS at para 24.

15 PSS at para 27.

16 PSS at para 28.

17 PSS at para 29.

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(2) Attempted rape (the third charge)

22 The Prosecution argues that an additional aggravating factor is present for the third charge as the accused had tried to rape V1 while she was asleep and defenceless.[18] Accordingly, an uplift from the mandatory minimum of eight years' imprisonment and 12 strokes of the cane is appropriate, giving rise to a sentence in the range of eight to nine and a half years' imprisonment and the mandatory 12 strokes of the cane.[19]

Proposed sentences for charges involving V2

(1) Unnatural carnal intercourse (the ninth and tenth charges)

23 The ninth charge is a composite charge involving penile-oral and penile-anal penetration. The Prosecution submits for a sentence in the range of six and a half to eight and a half years' imprisonment, on account of the following additional aggravating factors:[20]

(a) V2 was exposed to the risk of sexually transmitted diseases when the accused penetrated V2's mouth with his penis and caused V2's penis to penetrate his anus.

(b) The accused sexually assaulted V2 when he thought that V2 was asleep and defenceless.

24 For the tenth charge involving attempted anal penetration, the Prosecution submits for five years' imprisonment.[21]

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18 PSS at para 33.

19 PSS at para 34.

20 PSS at paras 36–38.

21 PSS at para 42.

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(2) Attempted outrage of modesty (the eleventh charge)

25 The Prosecution argues that had the eleventh charge been a complete offence, it would have fallen within the higher end of Band 3 due to the high degree of sexual exploitation arising from the skin-to-skin penetration of V2's anus. Falling within the higher end of Band 3 would have given rise to an indicative starting sentence of one and a half to two years' imprisonment and six strokes of the cane. Since the eleventh charge is an attempted offence and the maximum imprisonment term is capped at one year, the Prosecution submits for a sentence in the range of half a year to one year's imprisonment.[22]

The aggregate sentence

26 The Prosecution submits that the sentences for the first, third and ninth charges ought to run consecutively as set out at [14] above.[23] The offences in these charges occurred on different occasions and the one-transaction rule is, therefore, not violated by having these charges run consecutively. Further, the offence in the ninth charge was committed in respect of a different victim, *ie*, V2, when compared against the first charge and the third charge which were committed against V1.[24] Thus, the Prosecution contends that the aggregate punishment for the accused should be 16 to 20 years' imprisonment and 24 strokes of the cane.[25] This global sentence cannot be said to be crushing or not in keeping with the accused's past record and future prospects.[26] The Prosecution does not seek an additional term of imprisonment in lieu of caning

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22 PSS at para 43.

23 PSS at para 52.

24 PSS at para 57.

25 PSS at para 58; PSSA at para 3.

26 PSS at para 59.

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under s 332(5) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC") even if the accused is found medically unfit for caning.[27]

The Defence's submissions

27 At the outset, the Defence suggests that the sentence in respect of the third charge of attempted sexual assault involving penetration under s 376(2) read with s 511 of the Penal Code ought to be not more than four and a half years' imprisonment.[28] I have brought to the Defence's attention to the statutorily prescribed sentence for the third charge, which is a mandatory minimum of eight years' imprisonment and 12 strokes of the cane. The Defence accepts that the statutorily prescribed punishment applies. Therefore, the Defence proposes eight years' imprisonment and 12 strokes of the cane as the appropriate sentence in respect of the third charge.

28 Bearing the above in mind, the Defence proposes the following sentences for each of the eight proceeded charges and the global sentences:[29]

Offence	**Victim**	**Individual Sentence**
First charge S 354 of the Penal Code	V1 Age: Between 7 and 9 years old	Not more than 15 months' imprisonment (***consecutive***)
Second charge S 354 of the Penal Code	V1 Age: Between 7 and 9 years old	Not more than 15 months' imprisonment

[27] PSSA at paras 2–3.

[28] Defence's Sentencing Submissions ("DSS") at para 20.

[29] DSS at paras 16–28.

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Third charge S 376(2) r/w s 511 of the Penal Code	V1 Age: Between 7 and 9 years old	8 years' imprisonment and 12 strokes of the cane (***consecutive***)
Fifth charge S 354 of the Penal Code	V1 Age: Between 10 and 12 years old	Not more than 15 months' imprisonment
Sixth charge S 354 of the Penal Code	V1 Age: Between 12 and 13 years old	Not more than 15 months' imprisonment
Ninth charge S 377 of the Penal Code	V2 Age: 11 years old	Not more than 56 months' (4 years and 8 months') imprisonment
Tenth charge S 377 r/w s 511 of the Penal Code	V2 Age: 11 years old	Not more than 28 months' (2 years and 4 months') imprisonment (***either one of the s 377 offences to run consecutive)***
Eleventh charge S 354 r/w s 511 of the Penal Code	V2 Age: 11 years old	Not more than 15 months' imprisonment
Global sentence range		**145–173 months'** imprisonment (about **12 to 14.5 years'** imprisonment) and 12 strokes of the cane

29 The Defence accepts that the sentences for the sexual offences should be on the high end as the Victims were children at the material time.[30] However,

[30] DSS at para 10.

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the Defence argues that this aggravating factor should be balanced against the following mitigating factors:

(a) Save for the ninth charge where the accused was penetrated by V2, there was no actual penetration of the Victims.[31]

(b) The accused did not use violence or threats to coerce the Victims into performing the sexual acts.[32]

(c) The accused had not committed any other offences of the same nature after he left the Victims and PW1. There is no propensity to reoffend and, therefore, deterrence is not a material factor.[33]

30 The Defence disagrees that the accused was in a position of trust and authority *vis-à-vis* the Victims as he "was not *in loco parentis*" to the Victims despite being in a relationship with PW1.[34]

31 The Defence reserves its submissions on imprisonment in lieu of caning for after the accused's medical report is issued.[35]

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31 DSS at para 11.

32 DSS at para 12.

33 DSS at para 13.

34 DSS at para 15.

35 DSS at para 35.

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My decision

Sentencing principles

32 The accused's sexual abuse of the young Victims over more than five years is morally reprehensible. This clearly warrants the imposition of sentences that incorporate the sentencing principles of deterrence and retribution.

33 First, on the principle of general deterrence, the Court of Appeal in *Lim Hock Hin Kelvin v Public Prosecutor* [1998] 1 SLR(R) 37 ("*Kelvin Lim*") stated the following at [25(a)]:

> *Abuse of trust and authority*: Where an offender is placed in a position of trust by the parents or by the victims, the breach of trust justifies a substantial sentence on the ground of general deterrence. All those who have charge of children cannot abuse their positions for the sake of gratifying their sexual urges.
>
> [emphasis in original]

34 This is consistent with the findings of V K Rajah J (as he then was) in *Public Prosecutor v NF* [2006] 4 SLR(R) 849 ("*NF*") at [40] and [42]:

> 40 *Crimes of sexual assault are notoriously difficult to prosecute.* For every victim that comes forward, unfortunately, so many others remain silent for a multitude of reasons. Not least of these are the fear of confronting the offender, the humiliation and the destabilising emotional conflict and turmoil that keep relentlessly swirling in a victim's mind. Others, as Judith Lewis Herman in *Trauma and Recovery* (Basic Books, 1997) points out, simply cope with the trauma by "walling off" the incident and choosing to ignore that it happened, or preferring to view the incident as their fault: see [49] and [50] below. In cases of incest, the victim may face additional pressure from other family members not to expose the rapist out of an instinctive albeit misguided reaction to preserve the unity of the family and to avoid the publicity and shame that inevitably ensues from such a conviction. A victim of incest may herself wish to avoid these consequences and therefore choose not to report the matter. That such pressures are real and palpable are more than amply borne out in many of the cases examined earlier where the perpetrators have repeatedly, remorselessly and brazenly satisfied their perverse and

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> predatory sexual inclinations and lust: see, for example, *PP v MU* ([29] *supra*) where the perpetrator tragically raped his daughter over a period of ten years.
>
> …
>
> 42 That instances of rape should justly cause judicial disquiet is borne out by the fact that while current statistics show that crime has broadly fallen, the number of reported rapes for the months of January to June 2006 has not abated. More significantly, 95% of the reported rape cases involved rapists who were known to their victims. In my view, our courts would be grievously remiss if they did not send an unequivocal and uncompromising message to all would-be sex offenders that *abusing a relationship or a position of authority in order to gratify sexual impulse will inevitably be met with the harshest penal consequences*. In such cases, the *sentencing principle of general deterrence must figure prominently* and be unmistakably reflected in the sentencing equation.
>
> [emphasis in original omitted; emphasis added in italics]

35 It is well-known that it is difficult to prosecute sexual abuse in the family and often the offence is not exposed till after a long period. In this case the dark secret of the accused's sexual assault remained dormant for more than 10 years. Even when the offences came to light on 12 December 2016, the Victims remained hesitant and reluctant to report the accused to the police. If it were not for PW1's persistence, it is likely that the accused's offences would never have been reported. I agree with the Prosecution that the accused's abuse of trust in this particular case is especially grave. The accused capitalised on PW1's and the Victims' trust in him as the Victims' father figure to sexually exploit the Victims while they were left in his sole care.[36] Therefore, general deterrence must feature prominently in the imposed sentences to deter would-be offenders from committing sexual acts against vulnerable victims in the seclusion of the home, as the accused had done in this case.

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[36] PSS at paras 7–8.

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36 Second, I agree with the Prosecution that the accused's premeditation warrants a sentence that incorporates the principle of specific deterrence.[37] This serves as a warning to the accused that his repeated sexual violation of the Victims will be met with stiff penal consequences. In *Public Prosecutor v Law Aik Meng* [2007] 2 SLR(R) 814 ("*Law Aik Meng*"), the High Court stated as follows:

> 21 Specific deterrence operates through the discouraging effects felt when an offender experiences and endures the punishment of a particular offence. Drawing from the maxim "once bitten twice shy", it seeks to instil in a particular offender the fear of re-offending through the potential threat of re-experiencing the same sanction previously imposed.
>
> 22 Specific deterrence is usually appropriate in instances where the crime is premeditated … This is because deterrence probably works best where there is a *conscious* choice to commit crimes.
>
> [emphasis in original]

37 Third, according to the sentencing principle of retribution, the sentence imposed must reflect and befit the seriousness of the crime. Where the victims are young and vulnerable, "the offence becomes much more serious and the punishment meted on such offenders has to reflect the gravity of the offence" (*Kelvin Lim* at [20]). The sentence imposed must reflect the public condemnation for sexual assault committed against young and vulnerable individuals.[38] This is consistent with the Court of Appeal's pronouncement in *Public Prosecutor v Kwong Kok Hing* [2008] 2 SLR(R) 684 at [17]:

> Our criminal law is, in the final analysis, the public's expression of communitarian values to be promoted, defended and preserved. These communitarian values include the preservation of morality, the protection of the person, the preservation of public peace and order, respect for institutions and the preservation of the state's wider interests... Sentences

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37 PSS at para 9.

38 PSS at para 11.

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> must protect the fabric of society through the defence of these values. Community respect is reinforced by dint of the prescription of appropriate sanctions to proscribe wrongful conduct. *A sentence must therefore appropriately encapsulate, in any given context, the proper degree of public aversion arising from the particular harmful behaviour as well as incorporate the impact of the relevant circumstances engendering each offence.*
> …
>
> [emphasis added]

38 Since the attempted rape charge (the third charge) and the outrage of modesty charges (the first, second, fifth, sixth and eleventh charges) involve the consideration of similar sentencing frameworks, I shall consider the offence-specific and offender-specific factors that are common to all these charges. I shall then consider the offence-specific factors that are specific to each individual charge.

Offence-specific factors

39 In my view, there are a number of offence-specific aggravating factors that warrant the imposition of a deterrent sentence.

Abuse of trust and position of authority

40 The Defence argues that the accused was not in a position of trust and authority as the accused was not *in loco parentis* to the Victims on two grounds:[39]

(a) The total period of cohabitation between the accused and PW1 was only about three years, as the accused and PW1 started cohabiting in 2000 and ended their relationship in 2003.

(b) PW1 was the main disciplinarian of the Victims, not the accused.

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[39] DSS at para 15.

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41 The Defence's submission on sentence is completely at odds with its position taken during trial, which was that the accused was a father figure to the Victims (see the Main Judgment at [275]). In his third long statement recorded under s 22(1) of the CPC on 22 May 2019 at 3.15pm, the accused had also admitted that both he and PW1 were "the main person[s] to discipline V2 and V1".[40]

42 It is also incorrect for the Defence to submit that the accused cohabitated with PW1 for three years. Their period of cohabitation was six years from 2000 to 2006.[41]

43 I find that the accused was clearly in a position of trust and authority *vis-à-vis* the Victims. At the conclusion of the trial, it became clear that the accused was a father figure to the Victims even though he was not their biological father. The Victims called the accused "Papa".[42] According to V2, the accused was "a good person and a good father" when "no one was there for [the Victims]", but "the sexual abuse part, it wasn't right".[43] As the Victims' biological mother was mostly at work, the accused became the Victims' primary caregiver for the period of six years when he and their biological mother cohabited. PW1 testified during the trial that she had assumed that the Victims were in good and safe hands when they were placed under the accused's care.[44] The accused boldly exploited the trust reposed in him and sexually assaulted the Victims within the sanctity of their home over a number of years.

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40 Exhibit P15.3 at Q11 and A11.

41 ASOF at paras 5 and 14.

42 ASOF at para 3.

43 NEs 21 January 2022 at p 103 line 29 to p 104 line 22.

44 NEs 13 January 2022 at p 70 lines 1–3.

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44 I have already highlighted the need for deterrent sentences in cases of familial sexual assault at [33]–[35] above. The case authorities are also clear that the abuse of a position of authority and breach of trust are aggravating factors that warrant a deterrent sentence and pushes the offence in question to a higher band (*NF* at [39]–[40]; *GBR v Public Prosecutor and another appeal* [2018] 3 SLR 1048 at [29(c)]; *Terence Ng* at [44(b)]). As the Court of Appeal stated in *Kelvin Lim* at [25], "those who have charge of children cannot abuse their positions for the sake of gratifying their sexual urges". Thus, the accused's abuse of trust justifies a deterrent punishment.

45 Therefore, the accused had gravely abused the trust and authority reposed in him as the Victims' "father figure" when he committed the sexual offences against the Victims in the safe sanctuary of their home. This is an aggravating factor.

The Victims were young and vulnerable

46 The Victims were very young and vulnerable when the offences were committed. When the victims are especially vulnerable because of their age, as is the case here, "[c]oncerns of general deterrence weigh heavily in favour of the imposition of a more severe sentence to deter would-be offenders from preying on such victims" (*Terence Ng* at [44(e)] citing *Law Aik Meng* at [24(b)]). Both the Victims were in primary school when the accused committed the most egregious sexual assaults against them. V1 was between seven and nine years old when the accused attempted to rape her, while V2 was 11 years old when the accused committed unnatural carnal intercourse in respect of V2. The accused started sexually abusing V1 when she was seven to nine years old and persisted in his assaults until she was 13 years old. Similarly, V2 was 11

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years old when the accused started sexually assaulting him, and the abuse continued until V2 was 13 years old.[45]

47 I agree with the Prosecution that the Victims were rendered especially vulnerable by the circumstances.[46] When the accused was living with PW1 and the Victims, PW1 frequently worked the night shift, leaving the accused at home alone with the Victims for extended periods of time. In the day, PW1 would be sleeping most of the time. In these circumstances, the accused brazenly took advantage of the Victims' vulnerability, committing a majority of the sexual offences while the Victims were asleep. This was the accused's *modus operandi* for almost all the eight proceeded charges, except for the second charge and the sixth charge.[47] The accused's brash sexual exploitation of the young and vulnerable Victims clearly warrants a sentence based on the principles of deterrence and retribution.

Premeditation

48 The accused displayed a significant degree of premeditation in his commission of the offences. As the Prosecution points out, the accused "was familiar with the day-to-day routine of the [V]ictims' mother and was careful to commit the offences only when she was at work".[48] The accused also attempted to hypnotise the Victims and spiked a glass of water before he gave it to V1. These were done before he sexually assaulted them. I shall elaborate further on these specific instances of premeditation below (at [61] and [63]).

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45 PSS at para 17.

46 PSS at para 17.

47 PSS at para 17.

48 PSS at para 16.

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Offender-specific factors

49 The accused has consented to the TIC Charges being taken into consideration for the purpose of sentencing (see [3] above). It is trite that the presence of TIC charges may result in an uplift in sentence, especially where the TIC charges and the charges proceeded with are similar in nature (see *Public Prosecutor v UI* [2008] 4 SLR(R) 500 at [38]). In the present case, three out of four of the TIC Charges are sexual offences committed against the Victims – the seventh and eighth charges relate to the accused's masturbation of V2, and the fourth charge relates to the incident when the accused showed nude images of females to V1 and asked her to perform the same acts as those females in the images. Thus, they are similar to the charges proceeded with by the Prosecution against the accused. This reinforces the need for specific deterrence.

50 The accused was diagnosed with Pedophilic Disorder by Dr Ong. During the trial, I saw no reason to doubt Dr Ong's diagnosis. In *Kelvin Lim* at [31], the Court of Appeal dismissed the notion that pedophilia ought to be a mitigating factor:

> There were no significant mitigating factors in this case. The learned judge had found, rightly in our opinion, that paedophilia is not a disease or a physical illness but is a disorder. … *Even if paedophilia is an illness, we reject any suggestion that the sufferer cannot help it and therefore carries only a diminished responsibility for his actions. There is no evidence that paedophiles cannot exercise a high degree of responsibility and self-control.* The learned judge found that the appellant had a choice of whether to commit paedophilic offences against the victims, and chose to do so.
>
> [emphasis added]

51 I completely agree with the Court of Appeal's reasoning that pedophilia is not a mitigating factor. To suggest that the court should show leniency to an accused person who has pedophilia is profoundly incorrect and morally wrong.

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If pedophilia were a mitigating factor, it would have been an unfortunate misplaced sympathy which unduly condones such conduct and encourages pedophilic sexual offenders to commit sexual assaults in future.

52 I am unable to find any relevant offender-specific mitigating factors in the present case. The accused claimed trial and did not spare the Victims the ordeal of testifying in court. Thus, the sentencing discount which would otherwise be accorded to an accused person on account of his plea of guilt is inapplicable in the present case.

53 I shall turn to consider the appropriate sentence for each charge.

Sentences for charges involving V1

Outrage of modesty

(1) The first and second charges

54 The first and second charges involve the accused rubbing his penis against V1's vaginal area skin-to-skin. This act involves a high degree of sexual exploitation. Having regard to the offence-specific aggravating factors set out at [43]–[48] above, I agree with the Prosecution that the first and second charges fall within the high end of Band 3 of the *Kunasekaran* framework, with an indicative sentence of one year and six months' imprisonment and six strokes of the cane each.

(2) The fifth charge

55 The degree of sexual exploitation in the fifth charge is moderate as the fifth charge involves the accused grinding his penis against V1's vagina over her clothes. According to V1, the accused smelled of alcohol at the time. Given

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the offence-specific aggravating factors set out at [43]–[48] above, I find that the fifth charge falls within the lower end of Band 3, with an indicative sentence of one year's imprisonment and three strokes of the cane.

(3) The sixth charge

56 The sixth charge involves the accused inserting a cotton bud into V1's anus, informing her that it was because he wanted to see if her anus was dirty. This was a form of deception, an aggravating factor on top of those set out at [43]–[48] above. There was also penetration of V1's anus with the cotton bud. I find that the sixth charge falls within the lower to middle end of Band 3, with an indicative sentence of one year's imprisonment.

(4) Sentencing precedents

57 The above sentences are consistent with sentencing precedents. In *Ng Chiew Kiat v Public Prosecutor* [1999] 3 SLR(R) 927 ("*Ng Chiew Kiat*"), the offender was convicted after trial of three charges under s 354 of the Penal Code. The offender was the employer of the victim, a 19-year-old domestic helper. For the first charge, the offender used his right hand to grab the victim's buttocks over her clothes. For the second charge, the offender first caressed the victim's right leg and right hand, before he then caressed the victim's breasts and vagina over her clothes. For the third charge, the offender caressed the victim's breasts under her shirt and kissed her lips. The offences occurred over a period of three months. The offender was sentenced to a fine of $4000 for the first charge, and nine months' imprisonment and three strokes of the cane for each of the second and third charges.

58 The outrage of modesty in the present case is more egregious, given the following:

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(a) The accused's assaults, some of which were skin-to-skin, involve a higher degree of bodily intrusion than in *Ng Chiew Kiat*. The sexual contact was also more prolonged than the fleeting touches in *Ng Chiew Kiat.*

(b) At the time of the assaults, V1, who was only seven to 13 years old, was significantly younger than the victim in *Ng Chiew Kiat.*

(c) The degree of trust reposed in the accused in the present case is greater than that in *Ng Chiew Kiat*. Importantly, the accused was often left at home alone with V1 when PW1 was out of the home working for long hours. The accused's outrage of V1's modesty in the sanctity of the home is a grave abuse of the trust and authority reposed in him.

(d) The period of abuse in the present case is around four to five years (*ie*, from 2000 or 2001 in the first charge to 2005 in the sixth charge). This period is materially longer than that in *Ng Chiew Kiat*, where the offences occurred over a period of three months.

(5) Summary on outrage of modesty charges

59 To summarise, I find the following sentences appropriate for the outrage of modesty charges:

(a) The first charge: One year and six months' imprisonment and six strokes of the cane.

(b) The second charge: One year and six months' imprisonment and six strokes of the cane.

(c) The fifth charge: One year's imprisonment and three strokes of the cane.

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(d) The sixth charge: One year's imprisonment.

Attempted rape (the third charge)

60 The prescribed punishment for attempted aggravated rape under s 376(2) read with s 511 of the Penal Code is eight to ten years' imprisonment and 12 strokes of the cane (see [8] above).

61 The accused had attempted to rape V1 while she was asleep and defenceless. V1 testified during the trial that the accused had given her a glass of water to drink, which V1 described as tasting "off" and "more bitter than usual" (see the Main Judgment at [87]). This suggests that the accused had spiked the glass of water. V1 then fell asleep. When she woke up, she found herself naked and lying face-down on the bed with her legs tucked under her, like the Muslim prayer position, with her buttocks in the air. The accused then went on top of V1 and attempted to penetrate her (see the Main Judgment at [87]–[88]). It is clear from V1's testimony that the accused had specifically premeditated this offence and taken steps to render V1 defenceless and in an especially vulnerable position. This is an aggravating factor. Coupled with the aggravating factors identified at [43]–[48] above, I find that the third charge falls within the middle to high end of Band 2 of the *Terence Ng* framework. A sentence of eight years and six months' imprisonment and the mandatory 12 strokes of the cane is appropriate.

Sentences for charges involving V2

Unnatural carnal intercourse (the ninth charge)

62 The ninth charge is a composite charge encapsulating multiple penetrative offences committed against V2, *ie*, penile-oral and penile-anal penetration.

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63 The accused attempted to hypnotise V2 before sexually assaulting V2. In this way, the accused caused and capitalised on V2's defenceless state to "satiate his sexual desires", as the Prosecution describes.[49] Actual penetration was also involved, thereby disclosing a high degree of bodily intrusion. I note, however, that while the accused caused V2's penis to penetrate his anus, he was *not* successful in penetrating V2's mouth with his own penis, which would otherwise have exposed V2 to the risk of sexually transmitted diseases.

64 Having regard to the facts highlighted at [63] above together with the aggravating factors identified at [43]–[48] above, I find that a sentence of eight years' imprisonment appropriately reflects the gravity of the ninth charge.

65 The sentence of eight years' imprisonment is broadly consistent with sentencing precedents:

(a) In *Kelvin Lim* at [24], the Court of Appeal determined the sentence by "start[ing] from the position that a paedophile who commits unnatural carnal intercourse (in the form of anal intercourse) against young children below the age of 14 years, without any aggravating or mitigating factors, should be sentenced to ten years' imprisonment." I agree with the Prosecution that it is clear the Court of Appeal considered that ten years' imprisonment is the starting point where it is *the child's* anus being penetrated, causing the child pain, and not the accused's (see, *eg*, *Kelvin Lim* at [21(a)] and [26]).[50]

(b) In *Adam bin Darsin v Public Prosecutor* [2001] 1 SLR(R) 709 ("*Adam*"), the offender pleaded guilty to eight charges under s 377 of

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49 PSS at para 36.

50 PSS at para 39.

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the Penal Code and consented to 15 similar charges being taken into consideration. The offender had fellated eight victims aged between 12 and 15 years old over a period of 12 months. The Court of Appeal at [23] sentenced the offender to five years' imprisonment per charge, observing at [21] that an offender performing fellatio on his victims "stands at the bottom of the scale" of gravity as compared to anal intercourse or where the offender coerced a young victim to perform fellatio on him. The Court of Appeal ordered four sentences to run consecutively, resulting in a global sentence of 20 years' imprisonment.

66 The facts in the present case are more aggravated than those in *Adam*:

(a) The accused in the present case claimed trial as opposed to the offender in *Adam* who pleaded guilty. The sentencing discount accorded to the offender in *Adam* for his plea of guilt is, therefore, inapplicable to the accused in the present case.

(b) For the ninth charge in the present case, the accused fellated V2 *and* caused V2's penis to penetrate his own anus. This represents a greater degree of V2's bodily intrusion than that of the victims in *Adam*, who were fellated by the offender.

(c) V2 was only 11 years old at the time of the offence and was, therefore, younger and more vulnerable than all the victims in *Adam*.

67 I, therefore, find that the sentence for the ninth charge should be higher than that in *Adam*. A sentence of eight years' imprisonment adequately reflects the gravity of the ninth charge.

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Attempted unnatural carnal intercourse (the tenth charge)

68 The accused attempted to insert his penis into V2's anus but was unsuccessful. Given that this was an attempt at penetrating V2's anus, the sentence should be half of the starting point of ten years' imprisonment as stated in *Kelvin Lim* (see [65(a)] above). In *Kelvin Lim*, the offender was sentenced to five years' imprisonment for the charge of attempted anal penetration under s 377 read with s 511 of the Penal Code. However, it bears mentioning that the facts in *Kelvin Lim* were considerably more aggravated, with the offender in that case facing ten charges under s 377 of the Penal Code. I, therefore, find that the appropriate sentence for the tenth charge is four years' imprisonment.

Attempted outrage of modesty (the eleventh charge)

69 I agree with the Prosecution that if the eleventh charge were a complete offence, the degree of sexual exploitation would be high as the accused would have penetrated V2's anus with his finger.[51] Bearing in mind the aggravating factors identified at [43]–[48] above, the eleventh charge would then fall within the high end of Band 3 of the *Kunasekaran* framework, with an indicative starting sentence of one and a half to two years' imprisonment and six strokes of the cane.

70 Given that the eleventh charge is an attempted offence and the maximum imprisonment term is capped at one year's imprisonment under s 511 of the Penal Code (*ie*, half of two years), I find that a sentence of six months' imprisonment is appropriate.

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[51] PSS at para 43.

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Is the accused medically fit for caning?

71 In the course of the trial, the accused testified that he had sustained some serious injuries to his back sometime in 2014 or 2015, *ie*, more than a decade after the commission of the offences. It was because of his back injuries that out of prudence I ordered that the accused be medically examined to see if he is medically fit for caning before I proceed to impose caning on him. The case was adjourned for the accused to be medically examined on whether he is fit for caning. I was informed that the accused had refused to be medically examined. Accordingly, I shall proceed to impose caning as I know that the accused will have to be medically examined before caning is executed. If, by then, he is found to be medically unfit for caning, the case will be brought to my attention for further directions regarding the order of caning on the accused. Accordingly, I impose the statutory maximum of 24 strokes of the cane although the aggregate number of strokes of the cane for the eight proceeded charges is 27. This is in view of s 328(6) of the CPC which limits the maximum number of strokes of the cane to 24 in the same sitting.

72 I notice that the Prosecution originally submitted that 12 months' imprisonment in lieu of 24 strokes of the cane ought to be imposed to compensate for the deterrent and retributive effects of caning.[52] However, the Prosecution later sought to strike out its submissions on imprisonment in lieu of caning and clarified that it was no longer seeking an additional term of imprisonment in lieu of caning under s 332(5) of the CPC if the accused is subsequently found to be unfit for caning.[53] No reasons were given for the Prosecution's dramatic change in position.

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52 PSS at paras 44–50.

53 PSS (Addendum) at para 3.

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The global sentence

The one-transaction principle

73 The Prosecution and the Defence agree that the sentences for the first, third and ninth charges should run consecutively. The Defence has expressed its assent for the sentences of *either* the ninth or the tenth charge to run consecutively.[54]

74 Section 307(1) of the CPC provides as follows:

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

75 I am aware that the general rule, as stated in *Public Prosecutor v Raveen Balakrishnan* [2018] 5 SLR 799 ("*Raveen*") at [54], is that "sentences for unrelated offences should run consecutively, while sentences for related offences forming part of a single transaction should run concurrently". The one-transaction rule, however, is "neither invariable nor mandatory" (*Raveen* at [66]). In *Tan Kheng Chun Ray v Public Prosecutor* [2012] 2 SLR 437, the Court of Appeal noted at [17] that "the application of the one-transaction rule is also an exercise in commonsense. It also bears repeating that the application of this rule depends very much on the precise facts and circumstances of the case at hand".

76 The offences in the first, third and ninth charges are more serious and they occurred on different occasions. Further, the offence in the ninth charge was committed against a different victim, *ie*, V2, while the offences in the first

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[54] DSS at paras 27–28.

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and third charges were committed against V1. Therefore, the sentences for the first, third and ninth charges are to run consecutively, with the sentences for the remaining five charges to run concurrently. This results in a total imprisonment term of 18 years.

The totality principle

77 The global sentence of 18 years and four months' imprisonment is consistent with the totality principle. The sentence is not crushing on the accused and is in keeping with his past record, given the gravity of the offences and the accused's current age of 48 years.

Summary of findings

78 In summary, I make the following findings:

(a) Sentencing principles: Deterrence and retribution are the governing sentencing principles given the nature of the heinous offences and the relationship between the accused and the Victims.

(b) Offence-specific factors: There were three key offence-specific aggravating factors. These are the accused's abuse of trust and position of authority, the fact that the Victims were very young and vulnerable, and the accused's premeditation of the offences.

(c) Offender-specific factors: There were no offender-specific mitigating factors. The accused claimed trial and did not spare the Victims the trauma of testifying in court. Further, the accused was diagnosed with Pedophilic Disorder.

(d) Outrage of modesty (the first, second, fifth and sixth charges): The majority of the outrage of modesty offences committed against V1

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involved a high degree of sexual exploitation. The presence of multiple aggravating factors placed all the offences within Band 3 of the *Kunasekaran* framework. For the first and second charges, I impose a term of one year and six months' imprisonment and six strokes of the cane each. As for the fifth charge, I impose a term of one year's imprisonment and three strokes of the cane. For the sixth charge, I impose a sentence of one year's imprisonment.

(e) Attempted rape (the third charge): Having regard to the aggravated nature of the offence, including the vulnerable and defenceless state of V1 during the offence, a sentence of eight years and six months' imprisonment and the mandatory 12 strokes of the cane is justified.

(f) Unnatural carnal intercourse (the ninth and tenth charges): Given that the ninth charge is a composite charge involving *multiple* sexual acts, including one where the accused caused V2's erected penis to penetrate *his own* anus, an eight-year imprisonment term for the ninth charge is appropriate. A four-year imprisonment term for the tenth charge of the accused's attempt to insert his penis into V2's anus is justified.

(g) Attempted outrage of modesty (the eleventh charge): A term of six months' imprisonment is imposed.

(h) The global sentence: Applying the one-transaction principle, the sentences of imprisonment for the first, third and ninth charges are to run consecutively, resulting in an aggregate sentence of 18 years' imprisonment and 24 strokes of the cane. The global sentence of

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18 years' imprisonment and 24 strokes of the cane is consistent with the totality principle.

79 In my deliberation I am conscious that the offences were committed more than 15 years ago and some of the statutory-prescribed punishments then were different from those of today. I am aware that I have to be mindful of the statutory-prescribed punishments at the time when the offences were committed as penal punishments cannot be applied *ex post facto*.

80 The following table shows a breakdown of the statutory-prescribed punishments for each of the proceeded charges, the Prosecution's and the Defence's sentencing positions, and the sentences I impose on the accused:

Charge	**Statutory-prescribed punishment**	**Prosecution's Proposed Sentence**	**Defence's Proposed Sentence**	**Sentence Imposed**
First S 354 of the Penal Code	Up to 2 years' imprisonment, or fine, or caning, or any two of such punishments	1.5 to 2 years' imprisonment and 6 strokes of the cane (*consecutive*)	Not more than 15 months' imprisonment (*consecutive*)	**1 year and 6 months'** imprisonment and **6 strokes** of the cane (***consecutive***)
Second S 354 of the Penal Code	Up to 2 years' imprisonment, or fine, or caning, or any two of such punishments	1.5 to 2 years' imprisonment and 6 strokes of the cane	Not more than 15 months' imprisonment	**1 year and 6 months'** imprisonment and **6 strokes** of the cane

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Third S 376(2) r/w s 511 of the Penal Code	Mandatory minimum of 8 years' imprisonment and 12 strokes of the cane	8 to 9.5 years' imprisonment and 12 strokes of the cane (*consecutive*)	8 years' imprisonment and 12 strokes of the cane (*consecutive*)	**8 years and 6 months'** imprisonment and **12 strokes** of the cane (***consecutive***)
Fifth S 354 of the Penal Code	Up to 2 years' imprisonment, or fine, or caning, or any two of such punishments	1.5 to 2 years' imprisonment and 3 strokes of the cane	Not more than 15 months' imprisonment	**1 year's** imprisonment and **3 strokes** of the cane
Sixth S 354 of the Penal Code	Up to 2 years' imprisonment, or fine, or caning, or any two of such punishments	15 to 18 months' imprisonment and 1 stroke of the cane	Not more than 15 months' imprisonment	**1 year's** imprisonment
Ninth S 377 of the Penal Code	Up to 10 years' imprisonment	6.5 to 8.5 years' imprisonment (*consecutive*)	Not more than 56 months' (4 years and 8 months') imprisonment (*consecutive*)	**8 years'** imprisonment (***consecutive***)
Tenth S 377 r/w s 511 of the Penal Code	Up to 5 years' imprisonment (half of 10 years)	5 years' imprisonment	Not more than 28 months' (2 years and 4 months') imprisonment	**4 years'** imprisonment
Eleventh S 354 r/w s 511 of the Penal Code	Up to 1 year's imprisonment	0.5 to 1 year's imprisonment	Not more than 15 months' imprisonment	**6 months'** imprisonment

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Total		16 to 20 years' imprisonment and 24 strokes of the cane with no additional term of imprisonment in lieu of caning even when the accused is found medically unfit for caning	145–173 months' imprisonment (about 12 to 14.5 years' imprisonment) and 12 strokes of the cane	**18 years'** imprisonment and **24 strokes** of the cane

Conclusion

81 For all the above reasons, I sentence the accused to 18 years' imprisonment and 24 strokes of the cane. I further order that his sentence of imprisonment be backdated to 21 May 2019, the date of his remand.

Tan Siong Thye
Judge of the High Court

Gail Wong and Lim Ying Min (Attorney-General's Chambers) for the Prosecution;
Wong Siew Hong (Eldan Law LLP) and Josephine Iezu Costan (David Nayar and Associates) for the Defence.

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