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

[2024] SGHC 265

Criminal Case No 25 of 2023

Between

Public Prosecutor

… *Prosecution*

And

Raj Kumar s/o Bala

… *Defendant*

GROUNDS OF DECISION

[Criminal Law — Offences — Rape]

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Public Prosecutor
v
Raj Kumar s/o Bala

[2024] SGHC 265

General Division of the High Court — Criminal Case No 25 of 2023
Mavis Chionh Sze Chyi J
10–11 August, 12–15 September, 19 October, 14–17, 21–22 November 2023, 28 March, 8 July 2024

21 October 2024

Mavis Chionh Sze Chyi J:

Introduction

1 The accused faced a total of 25 charges. He was tried before me on two of these charges. The first was for one count of outrage of modesty under s 354(1) of the Penal Code (Cap 224, 2008 Rev Ed) ("the Penal Code") ("the First Charge"). The second was for one count of rape under s 375(1)(*a*) p/u s 375(2) of the Penal Code ("the Second Charge"). Both charges concerned the same alleged victim, whom I will refer to as the complainant. She was 17 years old at the time of the alleged offences in February 2020.

2 The First and the Second Charges read as follows:

> **First Charge**
>
> That you, … sometime between 11.52pm on 21 February 2020 to the early morning of 22 February 2020, at 883 North Bridge

> Road, Southbank Condominium… Singapore, did use criminal force to outrage the modesty of one [complainant], female, then-17 years of age… by licking her vagina, intending to outrage her modesty, and you have thereby committed an offence punishable under section 354(1) of the Penal Code (Cap 224, 2008 Rev Ed).
>
> **Second Charge**
>
> That you, … sometime between 11.52pm on 21 February 2020 to the early morning of 22 February 2020, at 883 North Bridge Road, Southbank Condominium… Singapore, did penetrate with your penis the vagina of one [complainant], female, then-17 years of age …, without her consent, and you have thereby committed an offence under section 375(1)(*a*) punishable under section 375(2) of the Penal Code (Cap 224, 2008 Rev Ed).

3 There was a third charge which the Prosecution proceeded on ("the Third Charge") and which concerned an offence under s 78(*c*) of the Children and Young Persons Act (Cap 38, 2001 Rev Ed) ("CYPA"). The Third Charge was stood down for the duration of the trial, as the Defence communicated that the accused would be pleading guilty to it.[1]

Background facts

4 The following facts were undisputed.

5 In February 2020, the accused was the owner of Don Bar & Bistro ("Don Bar"), which was located at 82 Dunlop Street.[2]

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1 Prosecution's Opening Address dated 4 August 2023 ("POA") at para 4.

2 POA at para 1; Defence's Closing Submissions dated 17 January 2024 ("DCS") at para 1.

6 The complainant and two other girls, whom I will refer to as A and B, were all abscondees from the Singapore Girls' Home.[3] A was then 20 years old,[4] while B was then 18 years old.[5] B was the first of the three girls to find work at Don Bar on 15 February 2021.[6] She subsequently introduced both the complainant and A to the accused. The accused hired the complainant to work at the bar. As for A, she alleged that she too was hired by the accused to work at the bar – although the accused denied that she worked for him there. What was not disputed was that all three girls – the complainant, A and B – were at some point permitted by the accused to stay at the bar. This arrangement came to an end when the police raided Don Bar.

7 The raid on Don Bar took place on 21 February 2020, after the police received a report that A and B had absconded from the Singapore Girls' Home and were working at the bar.[7] Following the raid and on that same night, the accused brought the three girls to his rental apartment in Southbank Condominium at North Bridge Road ("the Unit").

8 At the Unit, the accused and the three girls sat at the first level of the apartment, chatting and drinking alcohol.[8] The accused then had sexual intercourse with A and the complainant at the second level of the Unit.

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3 Prosecution's Closing Submissions dated 17 January 2024 ("PCS") at para 6; DCS at para 3.

4 Arraigned Charges at p 5.

5 NEs 14 November 2023 Page 2 Lines 26-27.

6 NEs 14 November Page 4 Lines 22-25.

7 Agreed Bundle ("AB") at p 74.

8 DCS at para 5.

9 On 14 August 2020, A lodged a police report stating that between February and March 2020, the complainant had been raped by her ex-employer (*ie* the accused).[9]

The Prosecution's case

10 The Prosecution's case was that the accused had forced the complainant to drink alcohol before having non-consensual penile-vaginal sex with her when she was in a drunk and weak state.[10] According to the Prosecution, the complainant's testimony was internally and externally consistent;[11] and her late reporting of the alleged rape did not tarnish her credibility.[12] Her testimony was also corroborated by other witnesses.[13] In respect of the material aspects of the Prosecution's narrative, the testimony of the complainant, A and B was consistent.[14] There was no motive for any of them to fabricate allegations against the accused[15] or to collude with each other to do so.[16] Conversely, the accused's evidence was riddled with numerous inconsistencies; and his version of events simply could not be believed.[17]

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9 AB at p 73.

10 PCS at para 8.

11 PCS at paras 53-66; Prosecution's Reply Submissions dated 31 January 2024 ("PRS") at para 10.

12 PRS at paras 2-4.

13 PCS at para 66

14 PCS at para 10.

15 PCS at paras 70-80.

16 PCS at paras 115-122.

17 PCS at paras 81-114.

The Defence's case

11 The accused, for his part, did not dispute having committed the sexual acts described in the two Charges, but claimed that they had taken place with the complainant's consent. The accused also alleged that the complainant had willingly consumed alcohol, and that far from having become drunk or weak as a result, she had been "normal". Further, the accused claimed that it was not only the complainant who could not be believed: according to him, A and B were also not credible witnesses.

The evidence led by the Prosecution

12 To prove its case, the Prosecution called ten witnesses to testify at trial, with an additional four witnesses providing evidence through conditioned statements to the court. I summarise below the evidence of the material witnesses.

The complainant's evidence

13 The complainant testified that between 2016 and 2020, she was residing at the Singapore Girls' Home,[18] and that she absconded from the home on 12 February 2020.[19] In an attempt to find work, she messaged "B" on Instagram, having been acquainted with B when the latter was also residing at the Singapore Girls' Home. B, who was then working at Don Bar[20], invited the complainant to come down to the bar to talk to the accused about getting a job there.[21]

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18 NEs 12 September 2023 Page 3 Line 16.

19 NEs 12 September 2023 Page 4 Lines 3-10.

20 NEs 12 September 2023 Page 5 Lines 5-30.

21 NEs 12 September 2023 Page 6 Lines 18-19.

14 When the complainant met the accused at Don Bar, he told her that B and another girl A (whom the complainant had been quite close to in the Singapore Girls' Home) were both staying at the bar.[22] The complainant agreed to work at the bar, and to stay there too.

15 Following the above meeting with the accused, the complainant stayed at Don Bar that night and started working there. On the third day of her employment at Don Bar, she spotted a police car outside the bar. After informing the other Don Bar staff about this, the complainant and B left the bar, because as abscondees from the Singapore Girls' Home, they were worried about being "wanted" by the police. B called the accused, who then arrived to pick both of them up in his car.[23] At this point, A was already with the accused in his car. The accused persuaded the complainant to follow him, A, and B to his "second house",[24] *ie*, the Unit.

16 Upon arrival at the Unit, the accused and the three girls sat inside the apartment and "chilled" before going to a nearby coffeeshop where they bought food to bring back to the Unit. The complainant recalled that on the way back to the apartment, she had mentioned wanting to drink alcohol, and the accused had said that he could get some alcohol.

17 At this juncture, the complainant did not intend to stay overnight at the Unit, and she mentioned that she was still messaging her friends to see if there was anyone she could stay with.[25] When the accused heard this, he brought the

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22 NEs 12 September 2023 Page 7 Lines 4-31.

23 NEs 12 September 2023 Page 12 Line 24 to Page 13 Line 17.

24 NEs 12 September 2023 Page 14 Line 15.

25 NEs 12 September 2023 Page 15 Line 27 to Page 16 Line 7.

complainant out of the Unit and spoke to her at the condominium carpark to persuade her to stay with him. He told the complainant that if she stayed with her friends, she would have to "fork out money" for rent and groceries, whereas if she stayed with him and the other two girls at the Unit, she would not need to pay rent and would moreover be given a job by him.[26] While telling the complainant this, the accused also showed her the money in his wallet as well as two cars in the car park which he claimed were his. Although the complainant initially told the accused she did not want to stay at the Unit, she eventually said that she would "see about it" because he "ke[pt] on persuading" her.[27]

18 At some point that night, the accused produced alcohol in the form of vodka, which he and the three girls consumed along with the food they had bought.[28] After finishing their dinner, they continued to chat at the first level of the Unit while drinking vodka mixed with Coca-Cola. The complainant drank three or four cups of alcohol before deciding that she should stop drinking. She was starting to feel tipsy, and she knew that she had very low alcohol tolerance.

19 At this juncture, A, B, and the accused were all drinking; and the conversation had turned to stories about lesbian activity in the Singapore Girls' Home. The accused asked the complainant to "just drink some more",[29] but she knew that if she did drink more, she would be "gone already".[30] When she replied that she did not want to drink more, the accused opened her mouth by holding her chin, and proceeded to pour alcohol into her mouth. It was "quite a

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26 NEs 12 September 2023 Page 16 Lines 20-28.

27 NEs 13 September 2023 Page 17 Lines 23-24.

28 NEs 12 September 2023 Page 19 Line 21.

29 NEs 12 September 2023 Page 21 Line 4.

30 NEs 12 September 2023 Page 21 Lines 4-5.

lot" of alcohol, which caused the complainant to vomit onto the floor and onto the accused's shirt. By this stage, the complainant could feel her eyes starting to close: although she was "still conscious", she was "very weak, worse than drunk".[31]

20 The accused reacted angrily to the complainant's vomit getting on his shirt. He brought the complainant to the toilet on the first level of the Unit and took off her shirt as well as his own, before showering her. The complainant recalled that she was "on the floor" of the toilet because she could not stand up, and he was "just showering the water on [her]".[32] After this, the accused brought her up to the second level of the Unit. He had to hold her by the shoulders in order to bring her up to the second level. There, she "tried to open" her eyes and saw that two mattresses had been moved onto the floor by A and B.

21 Next, the complainant remembered A lying down beside her, and both of them lying on their backs. The accused, who had removed all his clothes, started to kiss the complainant before moving on to kiss A. He then moved back to the complainant and licked her vagina.[33] The next thing the complainant remembered was the accused inserting his penis into her vagina.[34] At this point, she felt pain in her chest area as she was experiencing drug withdrawal symptoms from the drug "Ice". She cried out in Malay to A that her "dada" (meaning her chest) was hurting. She did not hear any reply from A.[35] At this time, she could feel the accused "below [her] waist area": she tried to push the

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31 NEs 12 September 2023 Page 21 Lines 11-19.

32 NEs 12 September 2023 Page 22 Lines 14-30.

33 NEs 12 September 2023 Page 30 Lines 22-25.

34 NEs 12 September 2023 Page 26 Lines 26-29.

35 NEs 12 September 2023 Page 27 Line 9 to Page 28 Line 31.

accused away by pushing against his shoulders,[36] while crying and telling the accused to "stop".[37] The accused did not "stop". Instead, he tried to turn her around to move her into a "doggy position", but she lacked the strength to stay in that position and fell back onto the floor. The accused then moved on to having sex with A, while the complainant fell asleep.[38]

22 The following morning, when the complainant woke up at the second level of the Unit, there was no one else on that floor. She went down to the toilet on the first level to shower. After showering and managing to get dressed, she went to the balcony of the first level of the Unit, where A and B were seated.[39]

23 At the balcony, the complainant asked B "Why you never help me?", referring to the events of the previous night. B's response was, "… you know, it's not that I don't want to help. I'm your friend. Of course I will help you. But then [the accused] told me to sit down here and listen to music, and you know I cannot fight [the accused]".[40] The complainant lay down, placing her head on B's lap, and cried. She also asked A sarcastically, "You, like, okay…yesterday?" A responded in the negative. The complainant then fell asleep.[41]

24 After the complainant woke up again, she learnt from A and B that the accused would be returning to the Unit around 7.00pm that day. The complainant reacted by telling A and B that she was going to leave the Unit

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36 NEs 12 September 2023 Page 29 Lines 1-4.

37 NEs 12 September 2023 Page 31 Lines 9-119.

38 NEs 12 September 2023 Page 30 Lines 14-20.

39 NEs 12 September 2023 Page 32 Lines 18-28.

40 NEs 12 September 2023 Page 33 Lines 1-6.

41 NEs 12 September 2023 Page 33 Lines 6-17.

before the accused came back, as she did not want to see him again. Subsequently, the three of them left the Unit, first to buy groceries, and then to go swimming at the condominium swimming pool. The complainant also spoke to B again, as she could not accept that B had failed to help her the previous night and wanted to know exactly what the accused had said to B. In response to the complainant's questions, B reiterated that she could not do anything because the accused was "big-sized" and a "guy".

25 After this, the complainant left to meet up with an acquaintance whom she was hoping would assist her with accommodation (and whom I will refer to as "R" – see [52(a)] and [136] below). Some time later, when R had become the complainant's boyfriend, the complainant told him what the accused had done to her.[42] This came about because on one occasion, R had started to lick the complainant's vagina in the middle of sexual intercourse, which had caused her to be "in shock" and to tear up. It was then that she explained to R what the accused had done to her.[43]

26 In her testimony, the complainant explained that she did not think of reporting the matter to the police because she felt "embarrassed", and also because she knew "it's going to take very long time".[44] After she surrendered to the Singapore Girls' Home in July 2020, she met A and B again, as they too had also surrendered to the home by then. A and B suggested to the complainant that they should make a report about her experience of rape – but at this juncture,

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42 NEs 12 September 2023 Page 37 Line 12.

43 NEs 12 September 2023 Page 37 Lines 7-24.

44 NEs 12 September 2023 Page 38 Lines 1-7.

she still felt that it would be "very troublesome" to do so, and she also knew that "rape case will take very long to process".[45]

27 Eventually, in August 2020, the complainant disclosed the rape to her case worker – "Ms Joe" – during an interview that the latter conducted with her.[46] Even after Ms Joe contacted the police and informed the complainant that the police would be coming to take her statement, she was reluctant to speak to them because she remained of the view that "rape case will very long to process".[47]

28 The complainant also testified that she had returned to Don Bar on two occasions after the incident of rape. Both visits took place prior to her surrender to the Singapore Girls' Home. On the second occasion, when she went back to the bar to collect her pay, she ended up in an argument with the accused, during which he claimed to have heard from B that she (the complainant) had brought drugs to the bar to sell. On hearing this, the complainant asked the accused to call B over, whereupon B claimed that she had never told the accused anything about the complainant selling drugs.[48]

A's evidence

29 Like the complainant, A too absconded from the Singapore Girls' Home. She did so in November 2019, when she was 20 years old. Post-abscondment, she stayed with her then-boyfriend for two months, during which period she became pregnant with their child. After those two months, she stayed with

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45 NEs 12 September 2023 Page 37 Line 30 to Page 41 Line 30.

46 NEs 12 September 2023 Page 41 Lines 11-31.

47 NEs 12 September 2023 Page 41 Lines 25-30.

48 NEs 12 September 2023 Page 46 Line 20 to Page 49 Line 20.

another friend[49] before coming into contact with B. She asked B for a job and a place to stay; and B said that she would talk to the accused. A had not previously met the accused,[50] but she knew him to be the "boss" of Don Bar,[51] and was aware that B was staying with him at that time.

30 A next met with the accused and was shown around Don Bar. Later that same day, the accused drove her to Southbank Condominium, where they went to the Unit (which the accused referred to as "his office").[52]

31 According to A, the accused knew by this time about her pregnancy because B had told him about it. At the Unit, he spoke to A about her pregnancy and suggested that she undergo an abortion. A rejected this suggestion. They then proceeded to have sexual intercourse, which A described as being non-consensual on her part. Following this first sexual encounter, the accused drove A back to Don Bar after telling her, "Whatever happened, don't tell others. It's just between us." A did not report this incident of non-consensual sexual intercourse because she feared that she would be forced to return to the Singapore Girls' Home if she made a police report.[53]

32 A stayed at the second level of Don Bar after the above incident.[54] The day after, the complainant – who was at that point a good friend of A's – arrived at Don Bar, also intending to work and to stay there. It was shortly after the complainant's arrival that the accused brought A back to the Unit, where he had

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49 NEs 10 August 2023 Page 6 Line 1 to Page 7 Line 2.

50 NEs 10 August 2023 Page 9 Line 3.

51 NEs 10 August 2023 Page 8 Lines 1-4.

52 NEs 10 August 2023 Page 12 Lines 10-24.

53 NEs 10 August 2023 Page 15 Line 12 to Page 16 Line 4.

54 NEs 10 August 2023 Page 17 Lines 14-17.

sex with her again. According to A, she had not expected this second sexual encounter, but she proceeded to engage in sexual intercourse with the accused because she "[did] not want anything to happen" to her unborn child and was afraid that the accused might injure her if she pushed him away.[55] The accused drove A back to Don Bar after this second sexual encounter.[56]

33 Upon returning to Don Bar, A was told by B that the three girls would not be able to stay at the bar any longer because there were police officers around, and all three girls – being abscondees from the girls' home – were "wanted" by the police.[57] The accused then drove all three girls to the Unit.

34 A recalled that while they were at the Unit, B and the complainant expressed a wish to drink alcohol, which led to the accused arranging for one of the Don Bar staff to deliver alcohol to the Unit.[58] The complainant and B started drinking. The accused himself did not drink. As for A, she did not want to drink because of her pregnancy, but she was forced to drink by the accused who pulled her and tried to pour a cup of alcohol into her mouth.[59]

35 A also recalled that at one point, while they were all chatting, B and the complainant started talking about "threesomes" or "lesbian sex in girls' home". This led the accused to ask the complainant whether she would "love to have a threesome" with him and A. The complainant replied that she did not want to.[60]

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55 NEs 10 August 2023 Page 51 Lines 7-28.

56 NEs 10 August 2023 Page 19 Line 6 to Pager 20 Line 13.

57 NEs 10 August 2023 Page 20 Lines 21-26.

58 NEs 10 August 2023 Page 20 Line 28 to Page 21 Line 15.

59 NEs 10 August 2023 Page 21 Line 19 to Page 222 Line 3.

60 NEs 10 August 2023 Page 22 Lines 17-29.

36 The next thing A recalled was the accused and the complainant going up to the second level of the Unit. She did not see how the two of them made their way up to the second level because she was "busy taking [her] phone" at that point in time. She could recall that B was then at the balcony (which was located on the first floor of the Unit). The accused subsequently called out to A to go up to the second level.

37 When she went up to the second level, A saw that the accused was having sex with the complainant in a missionary position on a mattress.[61] Both of them were naked.[62] A could see that the complainant was "in pain", "struggling",[63] and "didn't wanted [*sic*] to have…sex".[64] It appeared to A that the complainant was struggling to push the accused away but that she was too weak or drunk to do so.[65] The accused told A to "get naked", and A complied.[66] A then had sex with the accused.

38 At this point, according to A, the complainant was "still out", and A heard her asking in Malay, "What is going on?". A replied, "I don't know". A also heard the complainant saying that her stomach hurt. She wanted to help the complainant but could not do so, as she was "scared" that the accused would "put force on [her]".[67]

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61 NEs 10 August 2023 Page 23 Line 1 to Page 24 Line 3, Page 24 Line 19.

62 NEs 10 August 2023 Page 23 Line 20.

63 NEs 10 August 2023 Page 24 Line 9.

64 NEs 10 August 2023 Page 24 Line 8 to page 26 ln 12.

65 NEs 10 August 2023 Page 24 Lines 8-19.

66 NEs 10 August 2023 Page 23 Line 30.

67 NEs 10 August 2023 Page 24 Line 26 to page 25 ln 13 page 27 ln 22-27.

39 A next recalled the complainant going down to the first level of the Unit while A was still having sex with the accused. A herself went down to the first floor after she had finished having sex with the accused, whereupon she heard the complainant vomiting in the toilet.[68] The complainant, who appeared very weak, asked A to help bring her clothes to her. After washing up and getting dressed, the complainant went to the balcony where B was sitting.[69] When A went to join them at the balcony, she noticed that the complainant was lying down on B's lap with an "expression of pain" on her face.[70] Soon thereafter, the accused left the Unit, leaving A with the condominium access card and some money for food.[71] A and B then helped the complainant up to the second level of the Unit so that they could rest there. The complainant was "on her feet walking" by then, but A and B had to support her by placing her hands on their shoulders.[72]

40 The next morning, the complainant asked A and B "What actually happened last night?" Upon being reminded by A about having had sex with the accused, the complainant asked angrily why B had not helped them. B replied that she had been sitting at the balcony the entire time and had not known what was happening at the second level. Later that day, the three of them went for a swim at the condominium pool, after which the complainant left the Unit. As for A, she too left the Unit the following day to surrender to the Singapore Girls' Home. A's evidence was that she did so because of her disagreement with the

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68 NEs 10 August 2023 Page 28 Lines 6-31.

69 NEs 10 August 2023 Page 29 Lines 1-15.

70 NEs 10 August 2023 Page 29 Lines 14-31.

71 NEs 10 August 2023 Page 30 Lines 3-17.

72 NEs 10 August 2023 Page 30 Line 19 to Page 31 Line 20.

accused, who had been insisting that she should abort her baby and who had even made an appointment for her to see a doctor for this purpose.[73]

41 At trial, A testified that she felt the accused had done something wrong that night when he engaged in sex with the complainant, but that she had not made a police report because she did not want anyone to know about a matter which concerned the complainant's dignity.[74] Subsequently, on 14 August 2020, A did lodge a police report stating that the complainant had been raped by her ex-employer (referring to the accused).[75] A explained that she did not go to a police station to lodge the report: instead, the report came about because a police officer came to the girls' home to look for her.[76]

B's evidence

42 In respect of B, she absconded from the Singapore Girls' Home on 13 February 2020. In need of a job and a place to stay, she obtained the accused's phone number from a friend. B started work at Don Bar on 15 February 2020. Initially tasked with ushering people into the bar,[77] her role subsequently evolved beyond waitressing to include helping the accused to hire girls to work in the bar.[78] While working at Don Bar, she also lived on the premises of the bar.[79]

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73 NEs 10 August 2023 Page 31 Line 23 to Page 33 Line 24.

74 NEs 10 August 2023 Page 34 Lines 1-15.

75 Agreed Bundle at p 73.

76 NEs 10 August 2023 Page 36 Line 26 to Page 37 Line 1.

77 NEs 14 November 2023 Page 3 Line 10 to Page 4 Line 31.

78 NEs 14 November 2023 Page 4 Line 31 to Page 5 Line 2.

79 NEs 14 November 2023 Page 5 Lines 6-7.

43 B recalled that some time after starting work at Don Bar, she was contacted by A, whom she knew as an acquaintance from the girls' home.[80] As A wanted to find a job and accommodation, B gave A the accused's phone number. Soon, A too was working at Don Bar and staying at the bar.[81] Around this time, the complainant and another girl from the girls' home ("C") started working at Don Bar as well,[82] although C quit the job after her first day.[83]

44 On a day sometime later, B became suspicious that there were undercover police outside the bar. As she and the complainant were on the run from the girls' home, they needed to leave the bar.[84] B contacted the accused, who arrived in his car – together with A – to pick B and the complainant up from Sim Lim Tower.[85] All four of them proceeded to the Unit before going out to have supper. Upon their return to the Unit, the accused left for a while and returned with some vodka.[86]

45 At first, the group was drinking "for fun". However, things became "tense" when A and the complainant refused to drink, the former on account of her pregnancy and the latter on account of her "low tolerance of alcohol".[87] According to B, the accused forced both A and the complainant to drink by gripping their jaws and forcing them to drink from a cup.[88] The complainant

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80 NEs 14 November 2023 Page 6 Lines 12-24.

81 NEs 14 November 2023 Page 9 Line 22.

82 NEs 14 November 2023 Page 9 Line 31.

83 NEs 14 November 2023 Page 13 Lines 15-16.

84 NEs 14 November 2023 Page 15 Lines 3-10, Lines 28-31.

85 NEs 14 November 2023 Page 17 Line 11.

86 NEs 14 November 2023 Page 20 Lines 11-21.

87 NEs 14 November 2023 Page 20 Lines 25-29.

88 NEs 14 November 2023 Page 21 Lines 23-29.

"became weak" and vomited into a plastic bag, before going to the toilet: B could not remember if anyone helped the complainant to the toilet.[89] After this, the accused told B to bring the complainant up to the second level of the Unit "because she was not in a good state".[90] The complainant was drunk, weak and walking unsteadily by this point: she had to be supported by having her arm placed over B's shoulder.[91] When they reached the second floor, B placed the complainant on a mattress before proceeding to the balcony at the first level, where she then sat listening to music and playing with her phone.[92]

46 At some point, B noticed the accused heading up to the second level,[93] after which she saw him coming downstairs again to bring A up with him to the second level.[94] At this juncture, the accused was not wearing any clothes.[95] B became worried for the complainant after noticing that the accused was naked. However, she did not ask the accused any question because he was "the boss", and she was "normally…not allowed to ask" about what he was doing.[96]

47 B next recalled the accused and the other two girls coming back downstairs, and the complainant going to take a shower.[97] After her shower, the complainant came to the balcony to join B. B's evidence was that at this point,

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89 NEs 14 November 2023 Page 22 Lines 16-30.

90 NEs 14 November 2023 Page 22 Line 32 to Page 23 Line 3.

91 NEs 14 November 2023 Page 23 Lines 19-27.

92 NEs 14 November 2023 Page 24 Line 20 to Page 26 Line 8.

93 NEs 14 November 2023 Page 28 Lines 18-21.

94 NEs 14 November 2023 Page 29 Lines 19-31.

95 NEs 14 November 2023 Page 30 Line 9.

96 NEs 14 November 2023 Page 32 Lines 21-26.

97 NEs 14 November 2023 Page 33 Lines 6-22.

the complainant was lying on B's lap, shivering, crying and muttering something incomprehensible.[98]

48 B also remembered a conversation with the accused and A sometime between midnight and 1.00am that night, during which the accused tried to get A and B to persuade the complainant to continue staying at the Unit.[99] The accused left the Unit after this conversation and after giving A and B some money for their "allowance".[100] The three girls then went to sleep on the second level of the Unit.

49 The following morning, the complainant told B that she had been raped by the accused. B was "stunned" to hear this: according to her, this was because she knew that the complainant and A had "slept with a lot of men".[101] B asked the complainant if she was telling the truth. In response, the complainant reiterated that she "didn't give her consent to [the accused]" and asked why B had not helped her. B could not recall the rest of the conversation. After going for a swim, the three girls went out for lunch;[102] and in the course of lunch, B asked the complainant again whether what she had alleged was true, because "rape is a big allegation". The complainant affirmed that she was telling the truth. When they returned to the Unit, the complainant packed her belongings and left as she did not want to stay at the Unit anymore.[103]

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98 NEs 14 November 2023 Page 34 Lines 4-31.

99 NEs 14 November 2023 Page 26 Lines 11-31.

100 NEs 14 November 2023 Page 35 Lines 8-30.

101 NEs 14 November 2023 Page 36 Line 20.

102 NEs 14 November 2023 Page 36 Line 16 to Page 37 Line 2.

103 NEs 14 November 2023 Page 37 Line 6 to Page 39 Line 8.

50 B recalled that at some point after the complainant had left the Unit, she had a conversation with A in which A stated that she was the accused's mistress and that she too had been raped by the accused. B replied that she did not believe A. Soon thereafter A also left the Unit, telling B that she had been "chased out" by the accused as a result of rejecting his demand that she have an abortion.

51 B continued to work at Don Bar, stopping work only in March 2020 because of continued police raids. Sometime in May 2020, she did some pest control work for the accused for one day. She ceased contact with the accused when he was arrested in June 2020.[104]

Other witnesses

52 In addition to the three girls whose evidence has been summarised above, the Prosecution called a number of other witnesses. These included the following:

(a) R met with the complainant the day following the alleged rape as she was hoping to stay in a room in his family's flat. At that point in time, R and the complainant were acquaintances, having met at Don Bar the previous day through a mutual friend. According to R, when he met with the complainant the following day to assist her with her request for accommodation, she appeared "very tired", "weak", "lethargic" and "very quiet". This was the "complete opposite" of the "cheerful" demeanour she had presented when he saw her at the bar the previous day. R also testified that after he entered into a relationship with the complainant, she told him about her non-consensual sexual encounter

104 NEs 14 November 2023 Page 39 Line 14 to Page 47 Line 11.

with the accused.[105] R also testified that on an occasion between February and July 2020, the complainant had become angry when he attempted to lick her vagina while they were having sex, and she had told him that she did not want him to do it.[106]

(b) "Ms Joe", the case worker from the Ministry of Social and Family Development assigned to the complainant, gave evidence about a "case recording" she had made of an interview with the complainant on 5 August 2020.[107] It was during this interview that the complainant told Ms Joe about having been raped by the accused. Ms Joe recalled that before the complainant started speaking about the rape, she had been cautioned that the police would have to be involved if it was a "crime-related" matter, and this had made her initially "a bit hesitant" to recount the rape. According to Ms Joe, this was because the complainant "generally doesn't like authority to be involved, especially the police". Ms Joe also recalled that the complainant was quite "matter-of-fact" when she began recounting the rape, but that she later became "more emotional" and "a bit teary in her eyes".

(c) C, a close friend of the complainant at the material time, testified that at some point in time after 22 February 2020 (the night of the alleged rape), the complainant told C that she had been raped by the accused.[108]

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105 NEs 14 September 2023 Page 11 Line 4 to Page 12 Line 20.

106 NEs 14 September 2023 Page 15 Line 13 to Page 16 Line 14.

107 Exhibit D3.

108 NEs 19 October 2023 Page 18 Lines 22-31.

The evidence led by the Defence

53 I next summarise the evidence led by the Defence, In respect of the Defence's case, the accused was the sole witness.

The accused's evidence

54 By way of background, the accused testified that he ran the pub known as Don Bar, then located at Dunlop Street. He also rented (through other persons) the Unit at Southbank Condominium. The accused confirmed that A and the complainant were introduced to him by B. The complainant was hired by him as a waitress at Don Bar, while A became his "sex partner".[109] According to the accused, A had told him that she was pregnant; and he had offered to let her stay at Don Bar for free, without needing to work, so long as she became his sex partner.[110]

55 On the day of the alleged rape, the accused was in his car with A when he received a call from B, saying that she had seen the police at Don Bar. The accused proceeded to pick B and the complainant up in his car. B informed the accused that because she and the complainant were "wanted" for absconding from the girls' home, the police presence at the bar made it unsafe for them to continue staying there. The accused – who knew by this time that B and the complainant were abscondees[111] – replied that they could stay at the Unit.

56 After the accused and the three girls arrived at the Unit, they went out to buy food to eat back at the Unit. One of the workers from Don Bar also brought

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109 NEs 16 November 2023 Page 3 Line 18 to Page 5 Line 16.

110 NEs 16 November 2023 Page 25 Line 3 to Page 26 Line 7.

111 NEs 16 November 2023 Page 6 Line 24 to Page 8 Line 17.

the girls' belongings over to the Unit. At some point, either B or the complainant said that they wanted to drink, so the accused had vodka brought over to the Unit. He was able to remember that there were two bottles of vodka, one of which was less than half full.[112] All four of them drank the vodka.[113] The accused recalled that he himself drank one to two cups; B drank about four to five cups; A drank half a cup or one cup; and the complainant drank one to two cups. As they drank, they talked about the girls' relationships with other girls in the Singapore Girls' Home, and the accused talked about life in prison.[114] The discussion then moved to sex, and the accused brought up the topic of threesomes. A and the complainant both said that they had never had sex in a threesome. The complainant said that she had not had sex "for some time", and teasingly added that she should have sex with the accused.[115] In response, the accused suggested that they have sex – whereupon A and the complainant, turning shy, laughed. The accused then said "Come on, let's go up", following which he, A and the complainant went up to the second level of the Unit together. As for B, she decided to sit at the balcony at the first level.[116]

57 According to the accused, the complainant was able to walk up to the second level "as per normal", without anyone assisting her. She also appeared "normal" despite having drunk alcohol.[117] At the second level, A and the complainant undressed and lay down on the mattress, while the accused removed his jewellery and undressed himself. He then started kissing both A

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112 NEs 16 November 2023 Page 9 Line 1 to Page 10 Line 21.

113 NEs 16 November 2023 Page 30 Lines 25-31.

114 NEs 16 November 2023 Page 10 Line 23 to Page 12 Line 17.

115 NEs 16 November 2023 Page 12 Line 29 to Page 13 Line 12.

116 NEs 16 November 2023 Page 13 Lines 12-22.

117 NEs 16 November 2023 Page 14 Line 1 to Page 15 Line 14.

and the complainant, both of whom kissed him back. He also touched and sucked their breasts. After sucking A's breast, he licked A's vagina, and A moaned loudly in response. While the accused was licking A's vagina, the complainant and A were touching and kissing each other.[118] At some point, the accused heard the complainant utter the words "*apa itu*" (meaning "what's this" in Malay); and both she and A started laughing. After licking A's vagina, the accused had penile-vaginal sex with A in the missionary position, while continuing to touch the complainant.[119]

58 At this point, the complainant – who was lying next to the accused – stated that it was her "turn". The accused responded by kissing the complainant, touching and sucking her breasts, and licking her vagina. As he started to insert his penis into the complainant's vagina, she remarked that his penis was "big", which caused all three of them to laugh. The accused assured the complainant that he would "put in slowly". He then proceeded to have sexual intercourse with the complainant[120]. According to the accused, at no time during the sexual intercourse did the complainant push him away or tell him to stop. While he was having sex with the complainant, he was also touching A, but after A remarked that her stomach was "painful", he stopped touching her, and she sat down at his side to watch him having sex with the complainant.[121] At some point, the complainant said "Enough lah, free show", after which A left the second level while the accused continued to have sex with the complainant.[122]

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118 NEs 16 November 2023 Page 16 Lines 5-30.

119 NEs 16 November 2023 Page 17 Line 1 to Page 18 Line 12.

120 NEs 16 November 2023 Page 18 Line 17 to Page 19 Line 8.

121 NEs 16 November 2023 Page 19 Lines 13-18.

122 NEs 16 November 2023 Page 19 Lines 19-23.

59 When they had finished having sex, the accused and the complainant lay down side by side, talking with each other. They subsequently went down to the first level of the Unit to shower, taking turns to do so.[123] The accused then spoke to A, B, and the complainant and gave them some money before leaving the Unit.[124]

60 The next day, the accused returned to the Unit in the late afternoon or evening. While outside the door of the Unit, he noticed the complainant dressed as if to leave the Unit and asked her where she was going. The complainant replied that she was delivering something to a friend; and in answer to his further query, she explained that she was delivering "Ice". On hearing this, the accused – who knew "Ice" to be a drug – informed the complainant that she could not continue staying at the Unit if she was involved with drugs, and asked her to leave.[125] According to the accused, he later received a message from either A or B, stating that the complainant had left the Unit.

61 The accused claimed that subsequent to this incident, he met the complainant again on at least two occasions . The first occasion was one or two days after the night of their sexual encounter, when the complainant came to Don Bar to ask him if she could stay at the Unit "with the girls". He refused her request. On the second occasion, he saw the complainant outside Don Bar about a month or two later, looking "high". After asking whether she was "okay" and advising her to "be careful", he told B to ask the complainant to leave the bar.[126]

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123 NEs 16 November 2023 Page 19 Line 9 to Page 20 Line 4.

124 NEs 16 November 2023 Page 20 Lines 6-20.

125 NEs 16 November 2023 Page 21 Line 1 to Page 22 Line 8.

126 NEs 16 November 2023 Page 22 Line 26 to Page 23 Line 21.

The ancillary hearing

62 In the course of his testimony, the accused disputed the voluntariness of various portions of his Video Recorded Interview ("VRI") statements. As such, an ancillary hearing became necessary, in which the Prosecution bore the burden of proving beyond a reasonable doubt that the disputed portions of these VRI statements were in fact provided voluntarily by the accused (*Muhammad bin Kadar and another v Public Prosecutor* [2011] 3 SLR 1205 at [177]). This meant that the Prosecution had to prove that there was no threat, inducement or promise made to the accused which operated on his mind through hope of escape or fear of punishment connected with the charge (*Chai Chien Wei Kelvin v Public Prosecutor* [1998] 3 SLR(R) 619 at [53]).

The accused

63 For the purposes of the ancillary hearing, the Defence clarified that it was challenging only certain portions of the VRI statement of 3 September 2020 (specifically, the portions which it highlighted at pages 55–56, 139–141 and 169).

64 The accused claimed that the voluntariness of the disputed portions of his 3 September 2020 VRI statement was adversely affected by two statements made to him by police officers. First, according to the accused, on one occasion in June or July 2020 while he was in remand,[127] he was told by the Investigation Officer ("IO") ASP Joyce, in the presence of Superintendent of Police Burhanudeen Haji Hussainar ("Supt Burhan")[128]: "If you will cooperate, you

[127] NEs 17 November 2023 Page 34 Line 4.

[128] NEs 21 November 2023 Page 23 Line 9.

will be given bail".[129] This happened before the accused's bail hearing in the State Courts. The accused's evidence was that at the material time, he believed that ASP Joyce was in charge of his bail,[130] and that since she was the IO, her "recommendation" was necessary in order for him to be placed on bail. [131] Because he wanted to "go out [on] bail" and to "go back to [his] family", he was "willing to do anything for that".[132]

65 Second, according to the accused, at his VRI on 3 September 2020, he was told by either ASP Joyce Lau ("ASP Joyce") or ASP Gan Mei Huey ("ASP Gan"):[133] "If you do not tell the truth, you'll be put behind bars for 20 years".[134] This happened at some point in time either before the commencement of the VRI or during a toilet break in the middle of the VRI. The accused's evidence was that the threat to put him "behind bars for 20 years" caused him to become "worried" and "scared" that if he gave answers that offended the police or failed to show cooperation, his bail would be revoked and he would "be charged for something which [he] never do".[135] The accused's position was that he had this understanding of what the police were telling him in part because of ASP Joyce's remark in June 2020 that he would be given bail if he cooperated. Further, the accused clarified that only certain portions of the VRI

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129 NEs 17 November 2023 Page 33 Lines 17-27; NEs 21 November 2023 Page 23 Line 5.

130 NEs 21 November 2023 Page 31 Lines 19-23.

131 NEs 21 November 2023 Page 32 Lines 6-7.

132 NEs 21 November 2023 Page 31 Lines 10-11.

133 NEs 17 November 2023 Page 17 Line 28 to Page 18 Line 24.

134 NEs 17 November 2023 Page 16 Lines 11-19.

135 NEs 17 November 2023 Page 19 Lines 11-19; NEs 21 November 2023 Page 24 Lines 21-22.

statement he gave that day were affected by what was told to him.[136] He claimed that in respect of these portions of his statement, the IO would keep repeating "the same questions", which led him to become "worried" about whether the answers he was giving were answers which she "[did] not want to hear", or whether she "want[ed] to hear something from [him], differently".[137]

ASP Joyce Lau

66 ASP Joyce testified that she recalled the police having conducted six or seven VRIs sessions with the accused during the period of his remand at Police Cantonment Complex ("PCC") in June and July 2020. She was present at all these VRIs bar one. During these VRIs, she acted as the assistant to the officer conducting the interviews, whom she recalled would have been either Supt Burhan or Deputy Superintendent Liao Chengyu ("Supt Liao"). She did not tell the accused during the interview sessions at which she was present that he would be given bail if he cooperated.[138] She also did not witness Supt Burhan telling the accused that he would be given bail if he cooperated.[139]

67 ASP Joyce subsequently conducted a VRI with the accused on 3 September 2020 at PCC. ASP Gan was her assistant on that occasion;[140] and the interview lasted for 114 minutes. According to ASP Joyce, neither she nor ASP Gan told the accused that he must tell the truth or he would be "put behind bars for 20 years". Nor did they tell him that he must tell the truth or that he would be charged with something he had not done. In fact, neither ASP Joyce

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136 NEs 17 November 2023 Page 23 Line 6 to Page 28 Line 8.

137 NEs 21 November 2023 Page 26 Line 10 to Page 28 Line 30.

138 NEs 17 November 2023 Page 47 Line 31 to Page 48 Line 2.

139 NEs 17 November 2023 Page 48 Lines 3-9.

140 NEs 17 November 2023 Page 38 Line 32 to Page 39 Line 13.

nor ASP Gan made any mention of imprisonment during the interview.[141] During the accused's toilet break, it was ASP Joyce who escorted him to the toilet and then back to the interview room; and there was no conversation between them during this short interlude.

68 In cross-examination, ASP Joyce agreed that during the 3 September 2020 VRI, she did ask some questions more than once. She explained that when she was interviewing accused persons, she would "sometimes… repeat some of [her] questions" in order to "make clarifications".

69 ASP Joyce also testified that after 3 September 2020, she conducted three further VRIs with the accused after 3 September 2020, and that at these further interviews, no issues were raised by the accused in respect of the 3 September 2020 VRI.

ASP Gan Mei Huey

70 ASP Gan testified that she acted as ASP Joyce's assistant for the VRI on 3 September 2020. She affirmed that neither she nor ASP Joyce told the accused he would be "put behind bars for 20 years" if he did not tell the truth. The two of them also did not make any mention of imprisonment to the accused either before the VRI[142] or during the toilet break.[143]

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141 NEs 17 November 2023 Page 41 Line 31 to Page 46 Line 2; NEs 17 November 2023 Page 54 Line 6.

142 NEs 21 November 2023 Page 15 Line 26 to Page 16 Line 11.

143 NEs 21 November 2023 Page 17 Lines 19-29.

Supt Burhanudeen

71 Supt Burhan testified that he was involved in the recording of four long statements from the accused between 22 June and 30 June 2020. During these interviews, he was assisted by ASP Joyce. Supt Burhan denied that either he or ASP Joyce had told the accused that he would be given bail if he cooperated.[144] Towards the end of the VRI on 23 June 2020, the accused had asked, "What about bail?"[145] – to which Supt Burhan had replied, "We will talk about it later", and the accused had asked, "…after this, ah, Sir?". Supt Burhan testified that he did not in fact discuss the issue of bail with the accused after the VRI was concluded. [146] In cross-examination, Supt Burhan agreed that at that point in time, the police had decided not to offer the accused bail. However, he explained that this decision had not been firmed up at that point because bail matters had to be discussed with the Attorney-General's Chambers ("AGC") and their confirmation sought.[147] In any event, it was not his practice to discuss bail matters with any accused person.[148]

My decision

72 At the conclusion of the ancillary hearing, having considered the evidence given by the accused and the various police officers, I rejected the accused's allegations about having been subjected to threats, inducements

144 NEs 21 November 2023 Page 3 Line 24 to Page 4 Line 23.

145 P11 at p 96 line 9.

146 NEs 21 November 2023 Page 10 Line 7.

147 NEs 21 November 2023 Page 9 Lines 12–25.

148 NEs 21 November 2023 Page 9 Lines 28–30.

and / or promises by the police.[149] I accepted the police officers' evidence that they did not make any of the remarks alleged by the accused.

73 In respect of the accused's allegations about ASP Joyce's remark (in Supt Burhan's presence) that he would be given bail if he cooperated, I found that no such remark could have been made. It was not disputed that the decision as to whether to offer an accused bail was one which – as Supt Burhan pointed out – would have to be discussed with the AGC: any position taken by the police on the subject of bail was subject to confirmation by the AGC. It was also not disputed that at the point when the accused brought up the subject of bail at the VRI on 23 June 2020, the police had yet to discuss the subject of bail with the AGC. In the circumstances, neither ASP Joyce nor Supt Burhan would have had any basis to make any representations to the accused about bail. Further, the accused himself conceded that when he was brought before the magistrate in Court No. 4 on 17 June 2020 (two days after his arrest), it was the magistrate who made the eventual pronouncement on the issue of bail and who ordered him remanded for further investigations.[150] Subsequently, when he was produced in court again on 1 July 2020, it was also a magistrate who granted him bail. In other words, it would have been clear to the accused from the outset that the final decision as to whether he would be placed on bail or not lay with the court. There was thus no reason at all for ASP Joyce or Supt Burhan to make the accused promises about giving him bail if he cooperated.

74 For the reasons stated above, contrary to the accused's allegation, there would have been no reason for him to harbour the belief on 3 September 2020 that the IO was "in charge" of his bail. Further and in any event, I found that

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149 NEs 21 November 2023 Page 61 Line 3 to Page 63 Line 17.

150 NEs 21 November 2023 Page 30 Line 23 to Page 34 Line 25.

neither ASP Joyce nor ASP Gan could have made any remark to him about his being "put behind bars for 20 years" if he failed to cooperate. In the first place, I found it quite unbelievable that the accused could claim to remember clearly such a remark having been made – but could not remember which of the two police officers present had made it.

75 Second, and more importantly, even if such a remark had been made by ASP Joyce or ASP Gan, I found that it would not have operated on the accused's mind. This was because the accused himself affirmed in cross-examination that despite repeated questioning by the IO, he persisted in telling the truth: he made sure that he only spoke about things which he had in fact done, and if he had not in fact done anything, he also made sure to say so.[151]

76 Finally, the accused himself testified in re-examination that when he went to PCC on 3 September 2020, ASP Joyce had told him about another report being made against him; and this had led him to become "worried that this charge now come up that [his] bail will be revoked".[152] In short, therefore, the reason why the accused became worried about his bail being revoked on 3 September 2020 was not because of any remark made by ASP Joyce or ASP Lau: on his own evidence, it was because he realised there could be further charges brought against him, which might in turn affect his bail status.

77 For the reasons given above, I found that the disputed portions of the 3 September 2020 VRI statement were in fact given voluntarily by the accused.

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151 NEs 21 November 2023 Page 42 Line 26 to Page 43 Line 31.

152 NEs 21 November 2023 Page 52 Line 22 to Page 53 Line 8.

Issues to be determined

78 As I noted earlier, the accused did not dispute the commission of the sexual acts described in the First and the Second Charges (*ie* licking the complainant's vagina and penetrating her vagina with his penis) but alleged that these were carried out with the complainant's consent.

79 For the record, it should be noted that although the Prosecution did in its closing submissions allude to the complainant having been "extremely inebriated" and "too weak to resist",[153] it did not take the position that the complainant had – *per* s 90(b) of the Penal Code – lacked the capacity to give consent to sexual activity at the material time. Nor did the complainant's evidence indicate that she had lacked the capacity to give consent: *eg,* the complainant stated in her testimony that up until the point when the accused inserted his penis into her vagina, she "know what's happening", although "everything was just not so clear", and she "already know he going to have, like, have sex" with her and A.[154]

80 The only issue in contention between the Prosecution and the Defence thus concerned whether the complainant had consented to the sexual acts described in the two charges. The Prosecution had the burden of establishing, beyond a reasonable doubt, the lack of consent from the complainant.

The unusually convincing standard did not apply to the complainant's testimony

81 At the outset, the Prosecution submitted that the "unusually convincing" standard did not apply to the complainant's evidence in the present case.

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153 PCS at paras 3 and 5.

154 NEs 12 September 2023 Page 26 Lines 14-30.

82 The relevant general principles were clearly established by the Court of Appeal in *Public Prosecutor v GCK and another matter* [2020] 1 SLR 486 ("*GCK*"), at [104]). In *GCK*, the accused was a male employee at a nursing home who was charged with an offence of outrage of modesty under s 354(1) of the Penal Code. The victim was an elderly female resident of the nursing home who was found unfit to testify due to severe physical and cognitive disabilities. The accused denied the charge. At trial, the prosecution's case rested substantially on the testimony of a female nurse who had seen the accused straddling the victim with his trousers pulled down and his groin on the victim's groin. The trial judge in the district court found the female nurse's evidence "unusually convincing" and convicted the accused. On appeal, the accused was acquitted by the High Court; and in its judgment, the High Court appeared to suggest *inter alia* that the "unusually convincing" standard applied to an alleged victim's testimony but that a different standard applied to an eyewitness' testimony. In the criminal reference subsequently filed by the prosecution, the Court of Appeal reframed the questions referred. One of the reframed questions related to the standard to be applied when evaluating the evidence of an eyewitness to a crime, where such evidence was uncorroborated and formed the sole evidence for a conviction. On this question, the Court of Appeal held (at [104]) that the "unusually convincing" standard would apply to the uncorroborated evidence of a witness in any offences, where such evidence formed the sole basis for a conviction; and that in principle, this standard would apply regardless of whether the witness was an alleged victim or an eyewitness. Delivering the judgment of the Court of Appeal, Sundaresh Menon CJ explained the court's reasoning as follows (at [89]-[90]):

> 89 …(T)he basis for the "unusually convincing" standard has nothing to do with the *status* of the witness concerned (namely, whether he or she is an alleged victim or an eyewitness), and instead has everything to do with "the ultimate rule that the

> Prosecution must prove its case beyond a reasonable doubt"… In the absence of any other corroborative evidence, the testimony of a witness, whether an eyewitness or an alleged victim, becomes the keystone upon which the Prosecution's entire case will rest. Such evidence can sustain a conviction only if it is "unusually convincing" and thereby capable of overcoming any concerns arising from the lack of corroboration and the fact that such evidence will typically be controverted by that of the accused person: see the decision of this court in *AOF v Public Prosecutor* [2012] 3 SLR 34 ("*AOF*") at [111].
>
> 90 Put simply, the "unusually convincing" standard entails that the witness's testimony *alone* is sufficient to prove the Prosecution's case beyond a reasonable doubt: see *Teo Keng Pong v Public Prosecutor* [1996] 2 SLR(R) 890 at [73]. The overwhelming consideration that triggers the application of the standard is the *amount* and *availability* of evidence…

83 In the present case, the complainant's evidence did not form the sole basis for convicting the accused: in the course of the trial, the Prosecution pointed to other evidence which it relied on for corroboration; in particular, the testimony of A (who was an eyewitness to the alleged rape) and of B (who observed the complainant's demeanour and conduct shortly before and after the alleged rape). In the circumstances, I accepted the Prosecution's submission that the "unusually convincing" standard did not apply to the complainant's testimony.

84 That said, I also bore in mind the observation of the Court of Appeal in *GCK* (at [91]) that the "unusually convincing" standard "is not a 'test' at all, but rather, a heuristic tool… a cautionary reminder to the court of the high threshold that the Prosecution must meet in order to secure a conviction, and of the anxious scrutiny that is required because of the severe consequences that will follow from a conviction". The credibility of the complainant's evidence thus remained an important issue in my assessment of the entire body of evidence relied on by the Prosecution. In the next section of these written grounds, I set out my evaluation of the credibility of the complainant's evidence.

The credibility of the complainant's evidence

85 In evaluating the complainant's credibility, I weighed her demeanour in testifying and being cross-examined on the stand alongside the internal and external consistencies in her testimony (see *AOF v Public Prosecutor* [2012] 3 SLR 34 at [115]).

86 I address first the issue of internal consistency.

Internal consistency

87 The Prosecution submitted that the complainant's account was one "characterised by clarity and coherence", and that there was an "internal logic" to the behaviours she described.[155] The Prosecution highlighted that she was a candid witness whose testimony showed that she had retained sufficient presence of mind to deduce what was happening despite having been physically affected by the alcohol consumed that night.

88 The Defence, on the other hand, argued that there were multiple areas of inconsistency between the account of events given by the complainant at trial and the account given in her previous statements. The previous statements relied on by the Defence for this argument consisted of a statement given by the complainant to the police on 20 July 2022,[156] and notes recorded by Ms Joe of an interview she conducted with the complainant on 5 August 2020 (which

155 PCS at para 53.

156 Exhibit D2.

notes Ms Joe referred to as a "case recording").[157] According to the Defence, the areas of inconsistency were as follows: [158]

(a) In court, the complainant testified that she was the one who had suggested the idea of drinking alcohol on the night of the alleged rape. However, in her statement to the police, she stated that it had been the accused's idea to drink.[159] When cross-examined about this discrepancy, the complainant affirmed the version of events given in court. The complainant asserted that the version given in court was what she had told the IO during the statement-recording but that the IO had not recorded it.[160]

(b) In court, the complainant testified that after she vomited, the accused took off his "shirt" and "showered her". However, in her statement to the police, she said that the accused took off his "clothes" and showered in the toilet.[161] When asked about this, the complainant stated that the accused had showered both himself and her, that she could only remember him removing his shirt, and that she could not remember whether he removed the bottom half of his clothing as well.[162]

(c) In court, the complainant testified that it was the accused who had brought her up to the second level of the Unit. However, in her statement to the police, she stated that the accused and "possibly one

157 Exhibit D3.

158 DCS at paras 31-69.

159 Exhibit D2 at para 7.

160 NEs 13 September 2023 Page 8 Lines 24-31.

161 Exhibit D2 at para 9.

162 NEs 13 September 2023 Page 9 Lines 17-29.

other person" had brought her up to the second level.[163] When asked about this, the complainant affirmed that it was only the accused who had brought her up to the second level.[164]

(d) In court, the complainant did not mention that prior to licking her vagina, the accused had "tried to insert his penis into [her] vagina" but that it had been "too tight". This particular detail was, however, mentioned in her previous statement to the police.[165] When asked about this, the complainant stated that that she had not mentioned it in court because she felt "shy" and "hesitant" about saying it in court.[166]

(e) In her evidence in court, the complainant testified that the sequence of events which took place after she woke up was as follows: she went to shower, saw A and B at the balcony, went to look for her clothes at the second level, and then went back to the balcony to talk to A and B. This account was inconsistent with the sequence provided in her statement to police, where she had said that after waking up and showering, she had gone back to sleep before waking up again and joining A and B at the balcony.[167] When asked about this, the complainant affirmed the account given in court.[168] She also asserted that it was the IO who had wrongly recorded what she said.

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163 Exhibit D2 at para 9.

164 NEs 13 September 2023 Page 11 Line 9.

165 Exhibit D2 at para 10.

166 NEs 13 September 2023 Page 11 Line 27 – Page 12 Line 20.

167 Exhibit D2 at paras 11-12.

168 NEs 13 September 2023 Page 13 Line 3 to Page 15 Line 26.

(f) In court, the complainant's evidence was that the accused was able to rape her because at the time, she was weak from intoxication and drug withdrawal. However, in Ms Joe's case recording, Ms Joe had recorded the complainant saying that she was "scared" to disobey the accused because he was very "big-sized".[169] When asked about this, the complainant explained that in her interview with Ms Joe, she had been referring to *B* being scared to disobey the accused because of his big size.

(g) In her case recording, Ms Joe had recorded the complainant as saying that after she told the accused she did not know how a threesome worked, the accused told her that she did not need to do anything and just had to lie there. In court, however, this piece of information was not mentioned by the complainant; and when asked about it, the complainant denied giving this information to Ms Joe.[170]

(h) In her case recording, Ms Joe had recorded the complainant as saying that she "screamed and cried" when she was raped, whereas in court the complainant did not at any point say that she had screamed when she was raped. When asked about this, the complainant stated that she had told Ms Joe about crying when the accused raped her, but that she had not mentioned screaming.[171]

(i) In her case recording, Ms Joe had recorded the complainant as saying that after the rape, she "could not take it"; that she had run to the toilet and turned on the shower; and that she had sat there naked and

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169 Exhibit D3 at p 2.

170 NEs 15 September 2023 Page 8 Line 28.

171 NEs 15 September 2023 Page 9 Lines 1-5.

> half-awake the entire night. These details were missing from the account she gave in court. When asked about this, the complainant denied having recounted the series of events recorded by Ms Joe.[172]

89 The Defence's position was that these alleged discrepancies related to the credibility of the account given by the complainant of events preceding, during and after the alleged rape. *Per* the Defence's case, whilst the complainant had tried to come across as a victim whom the accused had gotten drunk and then taken advantage of when she was physically incapacitated, the discrepancies in her evidence showed that her story could not be believed.

90 I address in turn the alleged areas of inconsistency highlighted by the Defence.

Who suggested the idea of drinking alcohol

91 As to (a), while the complainant's evidence as to who initiated the idea of drinking was inconsistent as between her testimony and her 22 July 2022 statement, I noted that the version of events provided in court was in fact *more unfavourable* to her position than the version given in her statement: in the version given in court, the complainant admitted to having asked for the alcohol which subsequently led to her inebriated state – as opposed to the accused having offered her alcohol from the outset. As such, while the inconsistency in her evidence suggested that her recollection of the details of events leading up to the alleged rape was not entirely faultless, I found that she was scrupulous about telling the truth in court, even if the truth did not cast her in the best light. I agreed with the Prosecution, therefore, that this was not a case of the

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172 NEs 15 September 2023 Page 9 Line 22.

complainant intentionally changing her evidence to gain some sort of benefit or advantage.[173] Rather, it appeared to me that this was an innocuous discrepancy stemming from inaccurate recall. The impact on the complainant's credibility was, in my view, minimal.

Whether the accused showered himself after the complainant vomited

92 As to (b), I did not consider the complainant's evidence to be materially inconsistent. While the complainant did testify during her examination-in-chief to the accused showering *her*, she never actually denied that the accused had *also* showered *himself*.[174] Further, when shown her 22 July 2022 statement, she was able to give a cogent explanation: according to the complainant, while showering her, the accused had also "put the water on him[self]… (l)ike he was showering himself also" because "there was vomit on him too".[175] In the circumstances, even if it could be said that there was some sort of inconsistency between the complainant's testimony on this point and her previous statement, I did not find her credibility to be adversely affected by the alleged discrepancy.

Who brought the complainant to the second level of the Unit

93 As to (c), I did not find any inconsistency between the complainant's testimony and her 20 July 2022 statement. In her previous statement, the complainant had simply stated the *possibility* of there having been one other person who helped the accused to bring her up to the second level of the Unit. In court, the complainant stated that at the point in time when she was brought up to the second level, her eyes were closed because when she attempted to open

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173 PRS at para 10(b).

174 NEs 12 September 2023 Page 22 Lines 1-31.

175 NEs 13 September 2023 Page 9 Lines 11-22.

her eyes, "everything [was] very blurry". Her testimony that it was the accused who brought her up and who was "holding on to [her]" was not inconsistent with her previous statement.

Whether the accused initially tried to insert his penis into the complainant's vagina but "it was too tight"

94 As to (d), I noted firstly that in respect of the sexual acts which were the subject of the First and Second Charges, the sequence of events recounted by the complainant was consistent as between her 20 July 2022 statement and her testimony: both in her previous statement and in court, the complainant stated that the accused had licked her vagina before engaging in penile-vaginal intercourse with her while she was lying down.[176] It should also be noted that the accused essentially accepted this sequence of events. Further, the accused himself testified that the complainant had alluded to his penis being "big" and that she had "said it's pain" when he initially "want to insert" his penis into her vagina.[177] In the circumstances, the complainant's evidence in her 20 July 2022 statement that the accused had initially "tried to insert [his] penis into [her] vagina" but that "it was too tight" did not appear to be a detail which she had made up in order to embellish her story. The question, then, was why she failed to mention this particular detail in court. In this connection, I accepted the explanation provided by the complainant in cross-examination.[178] Given the complainant's young age and the trauma and humiliation associated with rape, I found it believable and reasonable that she should have felt hesitant and embarrassed ("shy") about bringing up such a detail in court.

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176 Exhibit D2 at para 10; NEs 12 September 2023 Page 29 Line 18 to Page 30 Line 20.

177 NEs 16 November 2023 Page 18 Line 32 to Page 19 Line 5.

178 NEs 13 September 2023 Page 11 Line 27 to Page 12 Line 20.

95 Having regard to the above reasons, while I accepted that there was a discrepancy between the complainant's evidence in court and in her previous statement, I found that the existence of this discrepancy was not fatal to her credibility: she had a cogent explanation for the discrepancy; and it did not suggest any mendacity on her part.

The sequence of events after the complainant woke up

96 As to (e), the only potential discrepancy between the complainant's account in court and in her previous statement lay in whether she went back to sleep in between taking a shower and talking to A and B. I did not consider this discrepancy to be material. Both the accused's and B's accounts of events also alluded to the complainant showering after sex;[179] and both A and B attested to the complainant joining them at the balcony after showering.[180] Whether the complainant slept at some point between having a shower and talking to A and B at the balcony was a minor detail which did not go towards the credibility of her evidence of the sexual assaults.

The other alleged discrepancies highlighted by the defence at (f) to (i)

97 In respect of the remaining items at (f) to (i), I found that these did reveal discrepancies between the complainant's testimony and her previous statement to Ms Joe (as documented by the latter in the "case recording"). To recap, these were as follows.

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179 NEs 16 November 2023 Page 19 Line 9 to Page 20 Line 4; NEs 14 November Page 33 Lines 21-22.

180 NEs 14 November 2023 Page 33 Line 21 to Page 34 Line 31; NEs 10 August 2023 Page 29 Lines 12-28.

98 In respect of (f), the complainant's evidence was that the accused was able to rape her because intoxication and drug withdrawal had rendered her too weak to put up effective physical resistance. In the case recording, however, she was recorded as having told Ms Joe that she had been too scared to disobey the accused due to his big size. When shown the discrepancy, the complainant's evidence was that in her interview with Ms Joe, she had been talking about B being scared of the accused due to his big size – and not about her own response during the rape.

99 In respect of (g), the complainant was recorded by Ms Joe to have said that after she told the accused she did not know how a threesome worked, the accused told her she did not need to do anything and just had to lie there. Conversely, the complainant did not mention any such exchange with the accused in her testimony. When shown the discrepancy, the complainant's evidence was that she had never provided Ms Joe with details of any such exchange.

100 In respect of (h), the complainant was recorded by Ms Joe to have said that she "*screamed* and cried" when she was raped, but in her testimony, the complainant said nothing about screaming when raped. When shown the discrepancy, the complainant's evidence was that she had never told Ms Joe about screaming when raped.

101 In respect of (i), the complainant was recorded by Ms Joe to have said that after being raped, she "could not take it and ran" to the toilet, where she turned on the shower and sat there naked and half-awake the entire night. Conversely, the complainant did not mention these details in her testimony. When shown the discrepancy, the complainant's evidence was that she had never given such details to Ms Joe.

My evaluation of the weight to be given to the above discrepancies

102 After careful consideration, I decided to give only very limited weight to the above discrepancies. To put it another way, I found that these discrepancies did not ultimately have a material bearing on the complainant's credibility. My reasons were as follows.

103 First, it should be noted that the complainant was called as a witness prior to Ms Joe taking the witness stand. Although on the points raised at (f) to (i), defence counsel did ask the complainant in general terms if she had ever related to Ms Joe the details documented in the case recording, the case recording itself was never shown to the complainant during this cross-examination,[181] nor was she brought through the relevant passages in the case recording. The complainant was not even told that defence counsel was referring specifically to details recorded in Ms Joe's case recording of the interview on 5 August 2020. Further, when Ms Joe took the witness stand, the complainant's evidence that she had not said such things to Ms Joe was never put to the latter by defence counsel, even when he applied to admit the case recording (exhibit D3) on the basis that it contained various details inconsistent with the complainant's testimony. Indeed, it was only during Ms Joe's cross-examination that counsel disclosed his intention to rely on the contents of the case recording to "show that [the complainant] had given a different version from what she gave in Court".[182] When queried by me, defence counsel said that during his cross-examination of the complainant, he had been under the impression that he "had to back off" when she "said she didn't say those things", and that was why he had not shown her the case recording or taken her through

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181 NEs 12 September 2023 Page 86 Line 15 to Page 89 Line 24.

182 NEs 14 September 2023 Page 44 Lines 1-12.

the relevant passages in that document.[183] I did not think this was a satisfactory explanation, since s 147(1) of the Evidence Act 1893 (2020 Rev Ed) makes it clear that while a witness may be cross-examined as to relevant previous statements made by her which have been reduced into writing, "if it is intended to contradict [her] by the writing, [*her*] *attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting* [*her*]". While the Prosecution subsequently consented to counsel's application to recall the complainant in order for the relevant portions of the case recording to be put to her and for her to explain each of these portions, this was also a sub-optimal solution because by then, Ms Joe had left the witness stand without any of the complainant's explanations having been put to her.

104 The circuitous manner in which the Defence chose to go about using the case recording to discredit the complainant's testimony meant that at the end of the day, her explanations that she had not said certain things to Ms Joe, and/or that she had meant something else, could not be tested and verified with Ms Joe. This was unfortunate, all the more because Ms Joe's testimony revealed, firstly, that she had paraphrased or summarised certain things said by the complainant (*eg* paraphrasing the complainant's statement about feeling "weird" when the accused touched her as a statement that the accused had "touched her inappropriately"); and secondly, that she had not shown her notes to the complainant prior to typing them up and destroying the original document.[184] In other words, the manner and sequence in which the complainant's explanations as to specific passages in the case recording were elicited meant that I could not discount the possibility of some degree of misunderstanding and/or inaccurate

183 NEs 14 September 2023 Page 46 Lines 18-19.

184 NEs 14 September 2023 Page 59 Line 3 to Page 61 Line 27.

paraphrasing on Ms Joe's part. In my view, this regrettable situation made it less than fair to rely on the discrepancies at (f) to (i) to discredit the complainant.

105 Second, and in any event, given the nature of the discrepancies at (f) to (i), they did not suggest to me that the complainant was changing her evidence at trial in an effort to cast herself in a better light – or to cast the accused in a worse light. To put it another way, this was not a case where the complainant appeared to be deliberately embellishing or exaggerating her evidence at trial so as to frame the accused. After all, if she had wanted to do so, there would have been no reason for her to omit details such as their exchange about what a sexual threesome involved or her screaming when he raped her. The highest at which the Defence's case could be pitched was that the complainant's recollection of certain details was imperfect and potentially unreliable. The question, then, would be whether the defects in her recollection of these details were such as to undermine or damage in some consequential way the internal consistency of her evidence about the rape. I was of the view that they did not. My reasons were as follows.

106 The only issue in contention throughout the trial was whether the complainant had consented to the sexual acts described in the First and Second Charges. On this issue, the complainant's account at trial remained firmly the same as the accounts given to Ms Joe on 5 August 2020 and to the police on 20 July 2022. In gist, in both her previous statements and in her testimony at trial, the complainant's evidence was that the accused had poured or forced alcohol down her throat until she vomited; that she had needed to be brought up to the second level of the Unit by the accused; that she had not consented to sexual intercourse with the accused but had not been able to resist; and that she had cried when he carried out the sexual acts. On the central issue of consent, therefore, I concluded that the defects in the complainant's recollection of the

details highlighted by the Defence at (f) to (i) did not damage in any material way the internal consistency of her evidence and / or her overall credibility as a witness.

107 Not only did the complainant maintain a consistent account of her lack of consent in both her previous statements and in her testimony, her evidence on this central issue was corroborated by evidence from other witnesses – notably, from A and B. In the next section of these written grounds, I address the issue of the external consistency of the complainant's account of events.

External consistency

The Defence's arguments

108 In respect of the issue of external consistency, the Defence argued that there were numerous areas of inconsistency between the complainant's evidence and that of A and B. According to the Defence, these were as follows:

(a) The complainant testified that it was the accused who brought her up to the second level of the Unit, and that when she was brought to the second level, she heard him telling B to "go and move the bedframe". However, B testified that she (B) was the one who brought the complainant up to the second level after being instructed by the accused to do so.[185]

(b) The complainant testified that in the course of the sexual encounter with the accused, she had told A that her chest, or "dada",

185 DCS at pars 88-89.

hurt. However, A's recollection was that the complainant had said her stomach hurt.[186]

(c) The complainant claimed to have been suffering drug withdrawal symptoms on the night of the alleged rape, but neither A nor B gave evidence as to having noticed any drug withdrawal symptoms.[187]

(d) The complainant testified that when she went up to the second level of the Unit, A was already there at the second level; and when the complainant was placed by the accused on a mattress, she felt and saw A lying down next to her.[188] According to the complainant, after the accused went on top of her and kissed her, he also started kissing A[189] before turning his attention back to the complainant and then inserting his penis into her vagina.[190] However, A's evidence was that when she went up to the second level of the Unit, both the accused and the complainant were already naked on the mattress, with the accused on top of the complainant and having sex with her.[191]

(e) The complainant's evidence was that after the accused raped her, she went to sleep at the second level of the Unit and only went to shower in the first-floor toilet after waking up the next day. A, on the other hand, testified that while A was still having sex with the accused the

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.[186] DCS at para 30.

[187] DCS at paras 26-29.

[188] NEs 12 September 2023 Page 23 Line 11 to Page 24 Line 26.

[189] NEs 12 September 2023 Page 25 Line 11 to Page 26 Line 29.

[190] NEs 12 September 2023 Page 26 Line 14 to Page 27 Line 2.

[191] DCS at paras 71-72; NEs 10 August 2023 Page 23 Lines 13-30.

complainant had already made her way down to the first level.[192] Further, according to A, after she herself finished having sex with the accused, she went down to the first level and saw the complainant in the toilet vomiting.[193] A also recalled being asked by the complainant for help with her clothes and asking B to help the complainant.[194]

(f) The complainant, A and B all provided different accounts of the conversation which took place between them on the balcony after the alleged rape.[195]

109 The Defence argued that in light of the above alleged discrepancies between the complainant's evidence and that of A and B, the complainant's account of events lacked external consistency, and her credibility as a witness should be impugned.

110 I address the Defence's arguments as follows. First, as the Prosecution pointed out,[196] some allowance had to be made for the complainant's state of inebriation: by her own account, she was at the material time very drunk, physically weak, and barely able to open her eyes. When she did manage to open her eyes, "everything [was] very blurry".[197] The complainant's evidence as to her state of inebriation was corroborated by A and B, both of whom described her as having been "drunk" and "weak".[198] I accepted that the

192 DCS at paras 75-77.

193 DCS at para 78.

194 DCS at paras 80-81.

195 DCS at paras 82-87.

196 PRS at para 10(a).

197 NEs 12 September 2023 Page 23 Lines 4-16.

198 NEs 10 August 2023 Page 24 Line 15; NEs 14 November 2023 Page 23 Lines 4-8.

complainant's inebriated condition could have impacted her ability to register clearly certain specific details and/or the specific sequence of certain events: in this case, whether it was the accused or B who brought her up to the second level; whether A was already at the second level when she was brought up there; and when exactly she made her way down to the toilet (at (a), (d) and (e) above). In other words, in respect of these specific details, it was possible that the complainant's recollection was imperfect, and that A's and/or B's recollection was to be preferred.

111 Second, even if I were to accept that the complainant's recollection of the specific details at (a), (d) and (e) was imperfect, none of the discrepancies highlighted by the Defence related to her evidence about the core events of the sexual assault, and in particular, the issue of consent. In this connection, her testimony as to the following matters remained unshaken and unaffected by the above discrepancies: namely, that the accused had poured or forced alcohol down her throat until she vomited and became very drunk; she was physically unable to get up to the second level by herself and needed assistance to go up; the accused had sex with her and with A at the second level; she did not consent to having sex with him and she was crying, but was unable to push him away; she had a shower in the toilet at some point after the rape; and after showering, she had a conversation with A and B at the balcony, during which she asked B why the latter had not helped her on the night of the rape.

112 Third, as to the discrepancy highlighted by the Defence at (b), I did not consider this to be a material inconsistency. It should be remembered that at the material time, both the complainant and A were in a state of distress: the former because the accused was on top of her and having sex with her while she was crying and trying to push him away; the latter because she "wanted to help" but

felt "scared" of the accused "put[ting] force on [her]".[199] It would not be at all surprising if some degree of miscommunication had occurred between them in respect of the specific part of the body in which the complainant said she was feeling pain. What was material, however, was that both the complainant and A testified that the complainant was "in pain" while the accused was having sex with her and that the pain was in some part of her torso.

113 Fourth, as to the point highlighted by the Defence at (c), the complainant's evidence was that her drug withdrawal symptoms manifested in the form of pain in her chest, and that she had called out to A that her chest was hurting.[200] As I noted above (at [37]), this evidence was corroborated to some extent by A's evidence that the complainant had stated she was in pain. For completeness, it should also be noted that the Defence suggested in its closing submissions that the complainant could not possibly have experienced drug withdrawal symptoms if she had in fact stopped consuming "Ice" some days prior to the night of the incident. I did not give any weight to this suggestion as no evidence was proffered by the Defence to support its suggestion.

114 Fifth, as to the point highlighted by the Defence at (f), while there were some discrepancies in respect of what exactly each party said during the conversation at the balcony, these were minor discrepancies. What was significant was that both A and B testified that the complainant appeared distressed during the conversation: A recalled that the complainant was lying with her head in B's lap and an expression of pain on her face; B too recalled the complainant lying with her head in B's lap, while "shivering", "crying", and

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199 NEs 10 August 2023 Page 25 Lines 3-9.

200 NEs 12 September 2023 Page 27 Lines 4-9; Page 28 Lines 13-29.

"mumbling".[201] Both A and B also testified that during this conversation, the complainant had asked B why B did nothing to help her during the sexual encounter with the accused.[202] In short, therefore, A's and B's accounts of the key aspects of the conversation at the balcony were consistent with the complainant's testimony.

115 It is apposite at this juncture for me to deal with the challenges raised by the Defence to A's and B's credibility, since the Defence took the position that A's and B's evidence should not be accepted in any event. In the course of cross-examining A and B, the Defence applied under s 157(*c*) of the Evidence Act to impeach their credit on the basis that various portions of their testimony at trial were inconsistent with the contents of their previous statements.

A's credibility

116 The Defence sought to impeach A's credit on the basis of the following areas of alleged inconsistency between her testimony and her conditioned statement[203] of 19 July 2022:[204]

(a) In court, A testified that she had stayed overnight on the *second* level of Don Bar prior to moving to the Unit, whereas in her conditioned statement, it was stated that when she first arrived at the bar, she "was asked to bring [her] belongings to level *three* of the Bar".[205]

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201 NEs 10 August 2023 Page 29 Lines 16-31; NEs 14 November 2023 Page 34 Lines 14-31.

202 NEs 10 August 2023 Page 32 Lines 9-11; NEs 14 November 2023 Page 36 Lines 22-25.

203 Exhibit D1 at p 5.

204 NEs 11 August 2023 Page 20 Line 4 to Page 22 Line 29.

205 NEs 10 August 2023 Page 17 Lines 14-17; D1 at para 5.

(b) In court, A described her first sexual encounter with the accused as having been non-consensual but testified that she had decided not to make a police report about it because she was "wanted" at that point in time and would have been sent back had to the Singapore Girls' Home if she made a police report.[206] In her conditioned statement, on the other hand, she claimed that she had decided not to make a report because she "wanted to protect [her] dignity, [she] was also on the run, and [she] was pregnant and did not want to return to the [Girls'] Home".[207]

(c) In court, A testified that during her second sexual encounter with the accused, she had given in to his demand for sex because she "didn't want anything happen to [her] baby,[208] whereas in her conditioned statement, she said that she had "just allowed it to happen".[209]

(d) In court, A testified that she could not recall how much alcohol the complainant had consumed on the night of the alleged rape.[210] In her conditioned statement, however, she said that the complainant "drank a lot of alcohol" before saying she was not able to continue drinking any more.[211]

(e) In court, A testified that she did not know how the complainant made her way up to the second level of the Unit because at the time she

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206 NEs 10 August 2023 Page 41 Lines 2-15.

207 Exhibit D1 at para 9.

208 NEs 10 August 2023 Page 19 Line 31.

209 Exhibit D1 at para 12.

210 NEs 10 August 2023 Page 22 Lines 10-14.

211 Exhibit D1 at para 14.

herself was "busy taking [her] phone".[212] In her conditioned statement, however, A stated that either she (A) or someone else might have brought the complainant up to the second level.[213]

(f) In court, A testified to having removed her clothes herself prior having sex with the accused on the night of the alleged rape;[214] whereas in her conditioned statement, she said the accused had "helped [her] to remove [her] clothes".[215]

117 In respect of the points raised by the Defence at (a), (b) and (c), I did not find that these disclosed inconsistencies between A's testimony and her conditioned statement. As to (a), the fact that A was asked to bring her belongings to the third level of the bar on her first day there was not inconsistent with her having stayed overnight at the second level. As to (b), A did state in both her conditioned statement and her testimony that she did not make a police report about her non-consensual sexual encounter with the accused because she did not want to return to the Girls' Home. The fact that she provided an *additional* reason in her conditioned statement (wanting to protect her dignity) which she did not mention in court did not render her evidence in court inconsistent vis-à-vis the earlier statement. As to (c), when asked in her evidence-in-chief whether she would describe her second sexual encounter with the accused as "non-consensual, willing or unwilling", A had actually stated that she "didn't want anything happen to [her] baby" *and that was why she "just*

212 NEs 10 August 2023 Page 23 Lines 4-6.

213 Exhibit D1 at para 15.

214 NEs 10 August 2023 Page 23 Line 30.

215 Exhibit D1 at para 17.

willingly, like, let it be… just follow the flow".[216] A's evidence in court was thus not inconsistent with her earlier statement that during the second sexual encounter with the accused, she had "just allowed it to happen".

118 As there was no inconsistency between A's testimony and her conditioned statement in respect of the points raised at (a) to (c), I permitted the Defence to cross-examine A only on the points raised at (d) to (f). A's response, when cross-examined on these differences between her testimony and her conditioned statement, was that as at the time of the trial, she could not "exactly remember what actually happened", and that in her evidence in court, she "already tell out what [she] remember".[217]

119 Despite the Defence having applied to impeach A's credit during cross-examination, neither the Defence nor the Prosecution addressed the issue of the above areas of purported inconsistency between her testimony and her earlier statement. Having observed A in the witness stand and having considered her evidence, I accepted her explanation for these apparent inconsistencies. The conditioned statement was dated 19 July 2022, more than a year before she testified at the trial in August 2023: in other words, it would have been recorded at a time when her memory of the events of 22 February 2020 was fresher relative to her memory at the time of the trial. It would therefore make sense that she should have been able, in giving her earlier statement, to recall a number of specific details which she was subsequently unable to recall by the time of the trial. Her ready admission at trial of the details which she could no longer recall showed that she was being open and forthright: this was not a witness who had come to court with a carefully scripted narrative.

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216 NEs 10 August 2023 Page 19 Line 24 to Page 20 Line 2.

217 NEs 11 August 2023 Page 25 Line 17 to Page 28 Line 21.

120 I did consider whether the deficits in A's memory in respect of the points raised at (d) to (f) meant that her evidence about the alleged rape of the complainant was unreliable. I did not find such a conclusion to be warranted. To reiterate, the accused in the present case did not deny carrying out the sexual acts described in the two charges: the sole issue in contention throughout the trial was whether he carried out these acts with the complainant's consent. In this connection, the point raised at (f) (whether A undressed herself or whether the accused helped her to undress) was a minor detail which did not relate to A's ability to recall the complainant's condition and actions before, during and after the sexual encounter with the accused. More importantly, although A did not recall at trial the details raised at (d) to (f), she was firm and consistent in maintaining that the complainant was already "drunk" and "so weak" at the time of the sexual encounter; that the complainant had tried unsuccessfully to "struggle"; and that the complainant had expressed pain and bewilderment ("[*the complainant*] *actually asked me like, 'What's going on?"… She was in pain*").[218] These crucial portions of her testimony were consistent with her earlier statement *and* with the complainant's account of events.

B's credibility

121 The Defence sought to impeach B's credit on the basis of alleged inconsistencies between her testimony and a previous statement given by her to the police on 14 August 2020.[219] According to the Defence, there were two areas of inconsistency.[220] The first alleged inconsistency concerned the events just prior to the alleged rape; specifically, when the accused and the three girls were

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218 NEs 10 August 2023 Page 24 Lines 8-31.

219 Statement of [B] dated 14 August 2020 at p 1.

220 NEs 15 November 2023 Page 3 Lines 2-6.

still drinking and talking at the first level of the Unit. B's evidence in court was that the accused had held the complainant by the jaw and poured alcohol down her mouth. However, in B's previous statement, she had only mentioned that the accused "continued to tell [the complainant] to drink".[221] The second alleged inconsistency concerned the specific point in time when A went up to the second level of the Unit. In her previous statement, B's account was that the complainant had first come down from the second level of the Unit to the toilet, and it was then that A had gone up to the second level with the accused. In court, when asked about this, B said she could not remember if A went up to the second level before or after the complainant came down to the toilet.[222]

122 In respect of the second issue, given that B's response in court was that she could not remember the exact sequence in which A went up to the second level and the complainant came down to the toilet, there was no actual inconsistency between B's testimony and her previous statement. In this connection, I rejected defence counsel's submission that B's response in court was an instance of her "deliberately changing her evidence" in order "to suit what [the complainant] said".[223] During her examination-in-chief, B had testified that her memory as at the time of the trial was affected by the fact that she had consumed drugs and also taken psychiatric medication for several years prior to her turn in the witness stand. This part of B's testimony was not challenged by defence counsel during cross-examination; and counsel even made it a point to get B to confirm these answers during cross-examination.[224] In the circumstances, there was no reason for me to think that B was lying in

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221 Statement of [B] dated 14 August 2020 at para 14.

222 NEs 14 November 2023 Page 76 Line 8 to Page 77 Line 6.

223 NEs 15 November 2023 Page 3 Line 18 to Page 4 Line 12.

224 NEs 14 November 2023 Page 82 Line 14 to Page 83 Line 3.

court when she said she could not remember the sequence in which A went up to the second level and the complainant came down to the toilet. I would add that if B were indeed trying to change her evidence in court "to suit what [the complainant] said" on this issue, it made no sense for B to claim to be unable to recall the sequence.

123 In respect of the first contention, the Prosecution accepted that there was an apparent inconsistency between the account given by B in court and the account provided in her earlier statement.[225] When asked, B maintained that the account given by her in court (*ie* about the accused holding the complainant by the jaw and pouring alcohol down her mouth) was true. She did not tell the police about this when her statement was recorded and could not recall the precise reason for her omission, but agreed that she could have forgotten to tell the police[226] because she had previously abused drugs, and she had also been on psychiatric medication even at the time when her statement was recorded.[227]

124 I accepted B's explanation for the apparent inconsistency. Having observed her demeanour during her testimony and having reviewed her evidence as a whole, I did not find her to be a witness who was "incapable of speaking the whole truth under oath" (*Kwang Boon Keong Peter v Public Prosecutor* [1998] 2 SLR(R) 211 at [19]). If anything, she came across as a forthright witness who did not seek to cover up any gaps in her recollection of events by means of exaggeration and/or invention.

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225 NEs 14 November 2023 Page 80 Line 23.

226 NEs 14 November 2023 Page 81 Lines 14-29.

227 NEs 14 November 2023 Page 82 Line 14 to Page 83 Line 3.

125 I did consider whether B's admission to having had her memory affected by her history of drugs and psychiatric medication made her an unreliable witness in respect of the events before and after the alleged rape. I concluded that while B was unable to recall some of the details from that night, she was very clear and firm in maintaining the key elements of her account of events: in particular, the fact that the complainant had been so drunk and weak after consuming alcohol that she had needed help to go up to the second level; the fact that shortly after the alleged rape, the complainant had shown considerable distress ("shivering…crying…mumbling something")[228] when talking to A and B at the balcony; and the fact that sometime the following morning, the complainant had confided in B about the rape and questioned B about her failure to help. Further, B's testimony on these key points was corroborated by A who also testified to the complainant's drunk and weak condition during the sexual encounter with the accused and her state of distress shortly after.[229]

Whether A and B had colluded with the complainant to falsely implicate the accused

126 I should point out that although in cross-examination defence counsel appeared to hint at times at the possibility of collusion between the three girls (*eg* by asking whether they had discussed the matter after surrendering to the Singapore Girls' Home and asking B if she had spoken to the complainant in prison about this case), ultimately the Defence elected not to put the issue of collusion to the girls during cross-examination; and the issue was also not pursued in closing submissions. As VK Rajah JA noted in *XP v Public Prosecutor* [2008] 4 SLR(R) 686 ("*XP*"), at [21]), it is "when the Defence alleges collusion amongst the complainants" that the burden falls on the

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228 NEs 14 November 2023 Page 34 Lines 14-31.

229 NEs 10 August 2023 Page 24 Lines 8-15; Page 29 Lines 14-31.

Prosecution "to prove beyond a reasonable doubt that there was indeed no collusion to make a false complaint". As the Defence in this case did not put forward any allegation of collusion, there was no necessity for the Prosecution to prove the absence of collusion.

127 In the interests of completeness, I should in any event point out that in any case where the defence intends to allege collusion among the complainant(s) and/or witnesses, they have first to establish that the complainant(s) and/or witnesses "have a motive to falsely implicate the accused" (*XP* at [21]). In respect of A and B in the present case, the accused did not suggest what motive either of them could have harboured to fabricate evidence against him.

128 In respect of A, while she was cross-examined on her allegations about an initial non-consensual sexual encounter with the accused and his subsequent attempts to persuade her to have an abortion, it was not put to her that these alleged actions by the accused gave her a motive to falsely implicate him in the trial before me. Indeed, on the accused's own evidence, he and A were last in contact in February 2020[230] – *ie*, some three and a half years before A testified at the trial. As the Prosecution pointed out in its closing submissions, there was simply no existing relationship between the accused and A such that A would have derived some sort of benefit – or at least satisfaction – from making up evidence to implicate him.

129 In respect of B, the accused admitted that his last communication with her was in June 2020.[231] In similar vein, therefore, there was no existing

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230 NEs 21 November 2023 Page 99 Line 28.

231 NEs 21 November 2023 Page 99 Lines 29-31.

relationship between the accused and B such that B would have derived some sort of benefit or satisfaction from making up evidence to implicate him. In fact, B testified that she felt gratitude towards the accused for the help he had given her after she absconded from the Singapore Girls' Home;[232] and the Defence did not dispute this portion of her testimony.

130 In respect of the complainant, the accused suggested in cross-examination that the complainant could have lied about the rape in order to "look like she's a victim" and to get "sympathy" and "counselling" at the Singapore Girls' Home, and/or to obtain an "early release".[233] However, this suggestion was firmly refuted by Ms Joe's evidence: in her examination-in-chief, Ms Joe testified that by making a report of rape, the complainant would *not* have obtained any advantage or privilege at the Singapore Girls' Home;[234] and this testimony was not challenged by the Defence during cross-examination. As for the accused's allegation that the complainant was unhappy with him for telling her to leave the Unit after he discovered her delivering drugs, it will be seen from [147] to [152] below that I found this allegation to be completely baseless. In any case, even assuming for the sake of argument that the complainant had wanted to retaliate against the accused by making up a story about his raping her, it made no sense that she should have waited nearly half a year to do so. Indeed, it made no sense that having found alternative accommodation with R and having eventually surrendered to the Girls' Home, the complainant would have decided nonetheless to get the accused in trouble by reporting him for rape. After all, given her fear and distrust of the police and her prior drug consumption, a false report of rape would have put her under a

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232 NEs 15 November 2023 Page 9 Line 28 to Page 10 Line 4.

233 NEs 21 November 2023 Page 103 Line 27 to Page 104 Line 2.

234 NEs 14 September 2023 Page 38 Lines 25-32.

spotlight and exposed her to the risk of sanctions by the authorities if her lies were found out.

131 For the reasons set out above, I was satisfied that there was no collusion between the complainant, A and B to falsely implicate the accused.

External consistency of the complainant's account of events: summary of findings in respect of A's and B's evidence

132 To recap: the complainant's evidence about the accused having forced or poured alcohol down her throat on the night of her sexual encounter with him was corroborated by B. Her evidence as to her drunk and weak condition on that night was corroborated by both A and B. A, who was an eyewitness to the sexual encounter, testified that the complainant "didn't want to have… sex" with the accused and "struggled to push [the accused] away" but was "drunk", "in pain", and "too weak" to do so successfully. Further, both A and B testified about the observable distress which the complainant was in following the sexual encounter. The Court of Appeal has held that the distress demonstrated by a victim of a sexual offence in the immediate aftermath of such offence constitutes corroborative evidence: see *Haliffie bin Mamat v Public Prosecutor and other appeals* [2016] 5 SLR 636 at [64]–[66].

133 In short, therefore, on the central issue of the complainant's lack of consent to the sexual encounter, A's and B's evidence corroborated the material aspects of the account given by the complainant at trial.

External consistency of the complainant's account of events: other corroborative evidence

134 Apart from the evidence adduced from A and B, the Prosecution submitted that the evidence from Ms Joe and the complainant's friend C

provided further corroboration of the complainant's allegation of rape,[235] since both these witnesses were able to testify as to having heard from the complainant her account of the alleged rape.

135 I did not accept the Prosecution's submission. Ms Joe interviewed the complainant in August 2020 – nearly half a year after the alleged rape in February 2020. As for C, she testified that sometime after visiting "a condo" together with the accused and B in June 2020,[236] she had spoken to the complainant over WhatsApp, and it was then that the complainant had told her about being raped by the accused.[237] C could not recall how long it was after her "condo" visit that she had spoken to the complainant over WhatsApp. Neither the interview with Ms Joe nor the WhatsApp conversation with C could be described as having taken place "at or about the time" the alleged rape occurred; and as such, the evidence from Ms Joe and C could not be said even to amount to technical corroboration of the complaint of rape under section 159 of the Evidence Act. At most, Ms Joe's and C's testimony demonstrated that the complainant was willing to repeat her allegation of rape to multiple people at some time after the alleged rape; and as Yong Pung How CJ noted in *Khoo Kwoon Hain v Public Prosecutor* [1995] 2 SLR(R) 591 (at [46]–[51]), repeated complaints originating from the same complainant have little additional evidential value.

136 On the other hand, I accepted the Prosecution's submission that R's testimony about the complainant's demeanour and conduct on the day after the alleged rape corroborated the complainant's account of events. To recap, R's

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235 PCS at para 8(d).

236 NEs 19 October 2023 Page 10 Line 29.

237 NEs 19 October 2023 Page 14 Lines 28-29.

evidence was that he had met the complainant for the first time on the night of the alleged rape, some time prior to the police raid. R testified that when he met the complainant the day after the alleged rape, she appeared "very weak" and she was also "very quiet" – the "complete opposite" of the "very cheerful" demeanour which she had presented the previous night.[238] This corroborated the complainant's evidence as to having been in a state of distress following the rape, and conversely, refuted the accused's assertion that the complainant had appeared entirely normal following their sexual encounter.

The complainant's delay in reporting the rape

137 Finally, in evaluating the complainant's account of events, I also considered whether her delay in reporting the rape had any impact on the credibility of her account. The Defence argued that her failure to make a police report and her delay in bring the matter up with her case worker should count against the credibility of her evidence.[239]

138 I did not accept the Defence's submission. In this connection, I found the observations by Aedit Abdullah J in *Public Prosecutor v Yue Roger Jr* [2019] 3 SLR 749 at [30]–[31] (which the Court of Appeal noted with approval in *Yue Roger Jr v Public Prosecutor* [2019] 1 SLR 829 at [3]) particularly apt. As Abdullah J pointed out:

> I accepted that victims of sexual offences may not behave in a stereotypical way. Many victims report their sexual abuse early to a family member, friend, the police, or other person in authority. However, there is no general rule requiring victims of sexual offences to report the offences immediately or in a timely fashion. Instead, the explanation for any such delay in reporting is to be considered and assessed by the court on a

238 NEs 14 September 23 Page 7 Lines 10-27.

239 DCS at para 94.

> case-by-case basis (see *DT v Public Prosecutor* [2001] 2 SLR(R) 583 at [62]; *Tang Kin Seng v Public Prosecutor* [1996] 3 SLR(R) 444 at [79]). While I accept that an omission to report the offence in a timely fashion, in the absence of other evidence, may in certain circumstances make it difficult to establish a case against the accused beyond reasonable doubt, I emphasise that the effect of any delay in reporting always falls to be assessed on the specific facts of each individual case.
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> … While the average adult may be expected to react in a particular way – for example, to resist, report or complain about an assault as soon as possible – a child or juvenile cannot be expected to always react similarly. The thinking process, assumptions and viewpoint of a child or juvenile victim may lead to a course of action that may on its face appear unreasonable or improbable to an adult. However, the court must always be mindful of the reasons behind what may seem like unexpected conduct on the part of a child or juvenile victim, and should not measure a child or juvenile by adult standards.

139 In the present case, the complainant was 17 years old at the time of the alleged rape. She had absconded from the Singapore Girls' Home and had – on her own admission – been abusing drugs shortly before the alleged rape. At trial, her testimony revealed that a key motivating factor in her decision-making at that point was the desire to minimise the likelihood of being caught by the police.[240] This was why she felt that it would be "troublesome" to make a police report about the rape, because as she explained:[241]

> …I was wanted at that point of time. So I cannot be going to the police station and making a report about something.

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240 NEs 12 September 2023 Page 17 Lines 26-29.

241 NEs 13 September 2023 Page 39 Lines 20-22.

140 The complainant also testified that not only did she feel "embarrassed"[242] about reporting the rape, she felt that a "rape case [would] take very long [to] process".[243]

141 I accepted the complainant's explanations for her delay in reporting the rape. Given the fact that she had absconded from the Girls' Home and dabbled in drugs, it was not surprising that she should have wanted as much as possible to avoid contact with the police. Further, given her limited life experience up to that point in her life, I did not find her beliefs about the "embarrassment" involved in making a police report and the "long time" it would take to "process" her complaint to be in any way anomalous or suspicious. As the Court of Appeal has held in *Public Prosecutor v Mohd Ariffan bin Mohd Hassan* [2019] 2 SLR 490 (at [65]), a victim of sexual assault "may not report the offence in a timely manner as there are empirically-supported psychological reasons for delayed reporting, including feelings of shame and fear". While the observation in that case was "especially" directed at youthful victims assaulted in a familial context, it was no less apposite in the present case, in light of the complainant's personal circumstances.

142 For the reasons set out above, I was satisfied that the delay by the complainant in reporting the rape to her case worker did not detract from the credibility of her account of events.

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242 NEs 12 September 2023 Page 38 Lines 2–3; NEs 12 September 2023 Page 38 Lines 2–7.

243 NEs 12 September 2023 Page 41 Lines 29–30.

The credibility of the complainant's evidence: Summary of findings

143 To sum up: the sole issue in contention throughout the trial was whether, on the night of 21 February 2020, the complainant had consented to the accused carrying out the sexual acts described in the First and the Second Charges. The complainant's position was that she had never consented to the sexual acts and that the accused had raped her. Having regard to the findings and reasoning set out at [85] to [142] above, I was satisfied that the complainant was an honest witness whose account of the events of that night was both internally and externally consistent. Importantly, her account of her ineffectual attempts to resist the accused's sexual advances and her distress in the wake of the rape was corroborated by the other two girls present in the Unit that night, neither of whom had any motive to falsely implicate the accused.

The accused's defence did not raise a reasonable doubt

144 I address next the evidence given by the accused in support of his defence. In my view, the accused's version of events was contrived and unbelievable, and failed to cast any reasonable doubt on the Prosecution's case. My reasons were as follows.

The accused's account was internally contradictory

145 First, even on the accused's own account, the complainant had known him for only a few days at best prior to the sexual encounter. There had never been any sexual liaison between him and the complainant prior to the night of 21 February 2020 – not even any flirtation. On his own account, the complainant had been drinking vodka with mixers prior to their alleged sexual tryst. Her purported remark that she "should have sex with [him]" was, on his own account, a "teasing" remark delivered after the consumption of alcohol and in

the presence of the other two girls.[244] Based on the circumstances described by the accused himself, it appeared to me quite unbelievable that the complainant would have been willing to engage in a sexual "threesome" on that night.

146 Even if one were to take the accused's version of events at face value, however, this was a version which depicted his sexual encounter with the complainant as a pleasant one, in which the complainant was a willing – even enthusiastic – participant: laughing, joking, and behaving in a completely "normal" manner. Indeed, according to the accused's narrative, after they had sexual intercourse, the complainant had even lain side by side with him, "chatting". There were no recriminations or protests from the complainant before the accused left the Unit that night; and on his own account, he left on an amicable note, having given all three girls money and told them that he would see them the next day. Based on the circumstances described by the accused, therefore, there was no reason at all for the complainant to have suddenly left the Unit the very next day, especially when her abrupt departure necessitated her having to find alternative accommodation rather hurriedly.

147 In this connection, the accused's explanation for the complainant's sudden departure the day after their sexual encounter hinged on his allegation that he had expelled her from the apartment after catching her in the act of going to deliver drugs. The accused asserted that as a general principle, he was "against drugs", he "totally hate[s] drugs", and he would not want people around him to be consuming drugs.[245]

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244 NEs 16 November 2023 Page 13 Lines 8-10.

245 NEs 16 November 2023 Page 82 Lines 15-25.

148 This supposedly staunch anti-drugs stance morphed, however, rather rapidly over the course of the accused's testimony. First, it was pointed out to the accused that the vehement objection he voiced against people around him consuming drugs was inconsistent with his own actions. *Inter alia,* despite being aware that A and B had a history of drug consumption,[246] he had allowed both girls to stay at the Unit and at his bar without even asking whether they were still taking drugs and/or keeping drugs on his premises and/or helping to store drugs for the complainant.[247]

149 After the disparity between his avowed hatred of drugs and his own behaviour was pointed out, the accused quickly shifted ground: from initially insisting that he did not want people around him to be consuming drugs, he shifted instead to insisting that drug *trafficking* was where he drew the line. He claimed that he could not stop others from taking drugs, and that what he had actually been worried about was the risk of being exposed to liability for *joint trafficking* on account of the complainant's activities.[248]

150 This new explanation did not make any more sense, because once again, the accused's stated position was starkly at odds with his undisputed actions. On his own evidence, even after learning from the complainant that she had been delivering drugs, the accused made no attempt to check the Unit for drugs.[249] This was despite his insisting that he had been worried about the complainant leaving drugs at the Unit or at Don Bar.[250]

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246 NEs 16 November 2023 Page 85 Lines 26-27.

247 NEs 15 November 2023 Page 12 Line 7.

248 NEs 16 November 2023 Page 84 Line 24 to Page 85 Line 12.

249 NEs 17 November 2023 Page 6 Lines 1-8.

250 NEs 16 November 2023 Page 83 Lines 11-16.

151 Further, the accused asserted in his statement to the police that B had been keeping drugs for the complainant;[251] and in court, he also stated that he had "a strong feeling" that B was keeping drugs for the complainant because the latter would "keep coming to the bar…to see [B]".[252] Despite knowing or at least having "a strong feeling" that B was keeping drugs for the complainant, the accused – on his own admission – made no attempts to check for drugs on his premises. When asked to explain the contradiction between his inaction and his purported fear of becoming jointly liable for drug trafficking, the accused could only offer the excuse that he had no "authority to go and check" and that B "can even keep the drug in her body".[253] In short, he had no coherent explanation.

152 For the reasons set out above, I found the accused's explanation for the complainant's abrupt departure from the Unit to be riddled with inconsistencies and wholly unbelievable. Instead, I accepted the complainant's explanation, which was that she had been in a state of distress after the rape and that she had left the Unit in order to avoid having to see the accused upon his return.

153 In their closing submissions, the Prosecution highlighted two other areas of alleged inconsistency between the accused's testimony and his previous statements. The first related to the accused's testimony that following sexual intercourse, he and the complainant had taken a shower together in the first-floor toilet. This detail was not mentioned in the statement provided by the accused during the video-recorded interview ("VRI") with the police.[254] The second concerned the accused's testimony that after the complainant had left

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251 Exhibit P9 at p 169.

252 NEs 21 November 2023 Page 67 Lines 14-30.

253 NEs 21 November 2023 Page 68 Line 1 to Page 69 Line 15.

254 PCS at paras 82-87; Exhibit P9 Page 101 Lines 17-29.

the Unit, she had asked him if she could return to stay *at the Unit*.[255] In his Case for the Defence ("CFD"), the accused had stated that the complainant "returned to the Bar and asked if she could stay *there*".[256]

154 I agreed with the Prosecution that both these points disclosed inconsistencies between the accused's testimony and his previous statements. I also agreed that both points were material to the accused's account of events. In my view, the details supplied by the accused in court – *ie*, that he had showered together with the complainant after sex and that she had asked to return to stay at his apartment after her sudden departure – were clearly intended to support his account of a consensual sexual encounter, by conveying the impression that the complainant remained comfortable with him after their sexual encounter, and even after her abrupt departure.

155 Further, I was satisfied that the accused had no coherent explanation for these inconsistencies between his evidence in court and his evidence in the earlier statements. In respect of the point about his having showered together with the complainant, the accused's VRI statement of 3 September 2020 showed that he had furnished details such as the complainant laughing during sex and her lying next to him to "chit chat" after they finished having sex, and that having furnished such details, he had omitted any mention of taking a shower with the complainant in the first-floor toilet. When asked to explain his failure to mention the shower, the accused claimed that this was because the IO (ASP Joyce) "didn't ask [him] the question".[257] I found this explanation wholly unbelievable and unacceptable. The transcript of the VRI showed that the IO

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255 NEs 16 November 2023 Page 23 Line 6.

256 Exhibit P10 at para 25.

257 NEs 21 November 2023 Page 97 Lines 1-3.

had asked the accused whether he and the complainant went downstairs after chit-chatting, and that he had responded by stating that he could not remember whether he or the complainant went down first – without mentioning that they had taken a shower together after going downstairs. The transcript of the VRI also showed that following the accused's response that he could not remember whether he or the complainant went down first, the IO had given him multiple opportunities to add to his narrative about the events of that night – and he had gone on to add various details without once mentioning the matter of the shower.[258] In the circumstances, it was absurd – and in my view, disingenuous – for the accused to say that he would have mentioned the matter of the shower if only the IO had asked him the specific question "When you came down, what you did?".[259]

156 In respect of the accused's testimony about the complainant having asked to stay at the Unit after her sudden departure from it, he claimed that in the Case for the Defence, his statement that the complainant had "returned to the Bar and asked if she could stay *there*" was intended to convey the same thing as his testimony. According to the accused, the word "*there*" was always intended to refer to *the Unit* and not to the Bar, because following the police raid on 21 February 2020, the girls no longer stayed at the Bar. Both linguistically and logically, however, this explanation was simply nonsensical. The Case for the Defence expressly mentioned two distinct physical locations – "the Bar" and "the unit". The Defence clearly had no difficulty referencing the relevant physical location for the various matters they brought up. Thus, for example, just before the statement in paragraph 25 of the Case for the Defence that the complainant had "returned to the Bar and asked if she could stay *there*",

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258 Exhibit P9 Page 101 Line 6 to Page 130 Line 12.

259 NEs 21 November 2023 Page 97 Lines 23-24.

references were made to "the unit" in paragraphs 22 and 23. In the circumstances, if the accused had meant to say that the complainant requested to stay at the *Unit* when she returned to the *Bar*, it made no sense that he should have chosen not to say so and to resort instead to the cryptic remark that she had asked to "stay *there*".

157 For the reasons explained at [145] to [156], therefore, I found the accused's account of events to be internally inconsistent. In my view, the details about the shower and the purported request to stay at the Unit were made up by the accused during his testimony, in an attempt to embellish his story about the complainant's willing participation in the sexual encounter on 21 February 2020.

The accused's account was inconsistent with the testimony of other witnesses

158 In addition to the above-mentioned internal contradictions, I found the accused's account of events to be inconsistent with the testimony of other witnesses who had no conceivable motive to fabricate evidence against him.

159 The accused's description of the complainant's condition and behaviour before, during and shortly after their sexual encounter was wholly inconsistent with the evidence given by *both* A and B. To recap: the accused's evidence was that he had not forced alcohol down the complainant's throat; that she had been "normal" before, during and after sex; that she had consented to the sexual acts described in the First and Second Charges; and that after sex, she had remained lying next to him to "chit chat" and had even taken a shower together with him. This version of events was refuted by A and B. Under rigorous cross-examination, A maintained that the complainant had been drunk, weak and in pain during the sexual encounter with the accused; that she had not wanted to

have sex with the accused but had not been able to push him away; and that at some point after the sexual encounter, she had lain down at the balcony with an expression of pain on her face and had questioned B about the latter's failure to help her. Similarly, B maintained that the accused had forced alcohol down the complainant's throat; that the complainant had vomited, become drunk and needed help getting up to the second level; that the complainant had subsequently exhibited signs of distress; and that she had informed B about being raped by the accused while questioning B's failure to help her.

160 The accused's assertion that the complainant had appeared normal after their sexual encounter was also refuted by the evidence of R, who saw the complainant on the following day. As noted earlier (at [52(a)] and [136]), R's evidence was that the complainant had appeared weak, tired and very quiet when he saw her; and that this was the direct opposite of the "very cheerful" demeanour she had presented at the Bar the night before.

The accused's defence: Summary of findings

161 The accused's defence was predicated on his assertion that the complainant had consented to sexual intercourse on the night in question. However, his account of events was internally contradictory and also inconsistent with the evidence of other witnesses. Overall, I assessed him to be a shifty and dishonest witness; and I was satisfied at the end of the trial that no reasonable doubt had been raised by the Defence in respect of the Prosecution's case.

Conviction: Summary

162 As the sole issue in contention in this case was that of the complainant's consent and as I was satisfied that the Prosecution had proven its case beyond

reasonable doubt, I convicted the accused of both the First and the Second Charges.

The accused's plea of guilt to the Third Charge

163 Having been convicted of the two charges which were proceeded with at trial, the accused elected to plead guilty to the Third Charge. This concerned the offence under s 78(*c*) of the CYPA, of harbouring the complainant between 18 February 2020 and 22 February 2022 charge, by permitting her to stay and to work at Don Bar when he knew that she had escaped from a place of safety as appointed under s 56(3) of the CYPA (*ie* the Singapore Girls' Home). In pleading guilty to this charge, the accused admitted the statement of facts tendered by the Prosecution, which set out the salient facts of the harbouring.

Decision on sentence

The applicable sentencing frameworks

164 Following the conclusion of the trial and his plea of guilt to the charge under s 78(*c*) of the CYPA, the accused had to be sentenced for all three charges. I next set out the reasons for the sentence imposed in respect of each charge.

165 As to the charge of penile-vaginal rape (the Second Charge), there was no dispute that the framework established in *Ng Kean Meng Terence v Public Prosecutor* [2017] 2 SLR 449 ("*Terence Ng*") should apply. There are two stages to this framework.

166 At the first stage, the court should identify the sentencing band which the offence in question falls under, having regard to offence-specific factors (factors which relate to the manner and mode by which the offence was

committed as well as the harm caused to the victim). These factors include, for example, premeditation, abuse of position and breach of trust, and the use of violence in the commission of the offence (*Terence Ng* at [44]). Once the sentencing band has been identified, the court should determine precisely where within the applicable range the offence at hand falls into, so as to derive an "indicative starting point" which reflects the intrinsic seriousness of the offending act (*Terence Ng* at [39(a)]).

167 At the second stage, the court should have regard to the aggravating and mitigating factors which relate to the offender's particular personal circumstances, in order to calibrate the appropriate sentence for that offender. In exceptional circumstances, the court is entitled to move outside of the prescribed range for that band if, in its view, the case warrants such a departure (*Terence Ng* at [39(b)]).

168 The sentencing bands applicable at the first stage of the *Terence Ng* framework are as follows:

(a) Band 1 (ten to 13 years' imprisonment and six strokes of the cane) applies to cases at the lowest end of the spectrum of seriousness, where no offence-specific aggravating factors are present, or are only present to a very limited extent. Cases falling in the middle to upper ranges of Band 1 include those where the offence was only committed with one of the recognised aggravating factors (*Terence Ng* at [50]).

(b) Band 2 (13–17 years' imprisonment and 12 strokes of the cane) applies to cases of a higher level of seriousness, where two or more offence-specific aggravating factors are usually present. 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. At the middle and upper reaches of this Band are offences marked by serious violence and those which take place over an extended period of time and which leave the victims with serious and long-lasting physical or psychological injuries (*Terence Ng* at [53]).

(c) Band 3 (17–20 years' imprisonment and 18 strokes of the cane) applies to extremely serious cases of rape, often featuring victims with particularly high degrees of vulnerability and/or serious levels of violence attended with perversities.

169 As to the charge of outraging the complainant's modesty by licking her vagina (the First Charge), the applicable sentencing framework would be that laid down in *Kunasekaran s/o Kalimuthu Somasundara v Public Prosecutor* [2018] 4 SLR 580 ("*Kunasekaran*").

170 At the first stage of the *Kunasekaran* framework, the court first considers offence-specific factors; specifically, the degree of sexual exploitation (such as the part of the victim's body which the accused touched, how the accused touched the victim, and the duration of the accused's act), the circumstances of the offence (*inter alia*, the presence of premeditation and/or the use of force or violence), and the harm caused to the victim (both physical and psychological).

171 After considering these factors, the court should then ascertain the gravity of the offence before placing it within the appropriate sentencing band. These are as follows:

(a) Band 1: This includes cases that do not present any, or that present at most one of the offence-specific factors; typically cases that

involve a fleeting touch or no skin-to-skin contact, and no intrusion into the victim's private parts. Cases falling within Band 1 would attract a sentence of less than five months' imprisonment.

(b) 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. Cases falling within Band 2 would attract a sentence of five to 15 months' imprisonment.

(c) 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. Cases within this band would attract a sentence of 15 to 24 months' imprisonment.

172 Finally, the court should consider the offender-specific aggravating and mitigating factors, such as the number of charges taken into consideration, the accused's lack of remorse, relevant antecedents demonstrating recalcitrance, a timeous plea of guilt, and/or the presence of a mental disorder or intellectual disability on the accused's part which relates to the offence.

173 As to the charge of harbouring under s 78(c) of the CYPA (the Third Charge), the offence is punishable by a fine not exceeding $2,000 or imprisonment for a term not exceeding 12 months, or both.

The Prosecution's position

174 In respect of the rape charge (the Second Charge), the Prosecution submitted that two aggravating factors were present: the first was the complainant's vulnerability at the time of the offence, due to her intoxication, her youth, and the fact that she had absconded from the Singapore Girls' Home; the second was the accused's "opportunistic conduct" in taking advantage of the complainant's trust and state of intoxication.[260] According to the Prosecution, the offence fell within the middle to the upper end of Band 1 of the *Terence Ng* framework; and a sentence of 11 to 13 years' imprisonment and six strokes of the cane was called for.

175 In respect of the charge of outrage of modesty (the First Charge), the Prosecution submitted that the offence fell within the high end of Band 3 of the *Kunasekaran* framework, firstly because the act entailed a high degree of sexual exploitation, with skin-to-skin contact to the complainant's vagina, and the use of the complainant to fulfil the accused's "sexual fantasy" of having a "threesome", secondly because the act of molest was committed in a degrading manner, while the complainant was intoxicated and in pain from drug withdrawal symptoms; and thirdly because the complainant suffered profound personal harm which included feeling betrayed by her friends A and B, blaming herself for what had happened, and feeling traumatised during subsequent sexual activity with her boyfriend which revived bad memories of the accused's offence. The Prosecution argued for a sentence of 20 to 22 months' imprisonment. Given that there was intrusion upon the victim's private part,[261] the Prosecution also argued for caning of three strokes.

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260 Prosecution's Submissions on Sentence dated 14 June 2024 ("PSS") at paras 8-16.

261 PSS at paras 17-23

176 In respect of the harbouring charge under the CYPA (the Third Charge), the Prosecution submitted that a short custodial sentence would be appropriate. *Per* the Prosecution's submissions, having actually harboured the complainant (as opposed to assisting in harbouring, or inducing her not to return to the girls' home), and having committed further criminal acts on the complainant while harbouring her, the accused's culpability was high. The Prosecution also argued that the duration for which the accused had harboured the complainant would have exceeded the three days mentioned in the charge but for police intervention.[262]

177 As to the global sentence, the Prosecution argued that the sentences for the charges of outrage of modesty and of rape (the First and the Second Charges respectively) should run consecutively, for a total of between 12 years and eight months' imprisonment to 14 years and ten months' imprisonment, with nine strokes of the cane. *Per* the Prosecution's submissions, this proposed global sentence complied with the totality principle because both the duration of imprisonment and the number of strokes of the cane fell within the normal level of sentences for rape, the most serious charge faced by the accused.[263] Running the sentences for these two charges consecutively would also not violate the one-transaction rule because although both offences were sexual in nature, they constituted "distinct offences". In this connection, the Prosecution argued that the complainant had experienced "specific trauma" stemming from the accused's act of licking her vagina. Further, the Prosecution argued that even if the two offences were held to be part of the same transaction, consecutive sentences would still be appropriate to reflect the accused's culpability, because in committing the offence of rape (the Second Charge) in this case, the accused

262 PSS at paras 24 and 25.

263 PSS at paras 26-37.

had demonstrated continued disregard of the complainant's expression of pain during the rape.

The Defence's position

178 In respect of the rape charge, the Defence contended that the present case should fall under the upper end of Band 1 of the *Terence Ng* framework as there was only one applicable offence-specific factor: the victim's intoxicated state at the time of the offence.[264] As to offender-specific factors, the Defence submitted that there were no offender-specific aggravating factors and that the only significant mitigating factor was the hardship caused to the accused's young children as a result of his imprisonment.[265] The Defence suggested that a sentence of 13 years' imprisonment and 6 strokes of the cane would be appropriate for the rape charge.

179 In respect of the charge of outrage of modesty, the Defence took the position that the present offence fell under Band 2 of the *Kunasekaran* framework by virtue of the victim's intoxicated state and the presence of skin-on-skin contact. As there were no significant offender-specific aggravating or mitigating factors, a sentence of 10 months' imprisonment was said to be appropriate.[266]

180 In respect of the CYPA charge, the Defence suggested that a fine or short custodial sentence should suffice.[267]

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264 Mitigation Plea dated 14 June 2024 ("MP") at para 11.

265 MP at paras 3, 13 and 14.

266 MP at paras 16-19.

267 MP at para 20.

181 As to the global sentence, the Defence argued for the sentences in respect of the charges of rape and of outrage of modesty to run concurrently, on the basis that these two offences were similar in nature and had been committed against the same victim in the course of a single transaction.[268]

Evaluation

Sentence in respect of the rape offence (the Second Charge)

182 I address first my decision on the appropriate sentence for the rape offence (the Second Charge), since it was the most serious offence in this case. While both sides agreed that the complainant's intoxicated state at the time of the rape formed a relevant offence-specific aggravating factor, I found it important as well to have regard to the *manner* in which the complainant became intoxicated. As our courts have noted (see *eg Public Prosecutor v BSR* [2020] 4 SLR 335 at [16]), the essence of the aggravating factor of a victim's vulnerability lies in the exploitation of that vulnerability. Having regard to my findings of fact in this case, there could be no doubt that the accused was not just aware of the complainant's vulnerability as a result of intoxication; he deliberately took steps to render her intoxicated and thereby vulnerable, by pouring or forcing alcohol down her throat when she no longer wanted to drink.

183 In respect of this aggravating factor, I also agreed with the Prosecution that the complainant's personal circumstances should be taken into consideration. Not only was she under 18 years of age at the material time, the fact that she had absconded from a girls' home put her in a vulnerable position *vis-à-vis* the institutions of the state that were meant to protect her: she was afraid of getting caught by the authorities and consequently unwilling to

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268 MP at paras 21 and 22.

approach them for help in the event of any trouble. Indeed, at the time of the offences, the complainant was dependent on the accused for income and shelter. These facts were known to the accused.

184 In light of the above considerations, I found that significant weight ought to be accorded to the aggravating factor of the complainant's vulnerability.

185 The Prosecution also argued that a second offence-specific aggravating factor existed in this case by virtue of the accused's "opportunistic conduct in taking advantage of [the complainant's] trust and her state of intoxication".[269] I did not accept this argument. The factual matrix relied on by the Prosecution for this second aggravating factor related to the accused's actions in forcing alcohol down the complainant's throat and then seizing upon the opportunity to sexually assault her when she became intoxicated. These facts overlapped substantially with the facts relied on to establish the aggravating factor of the complainant's vulnerability. To find it aggravating that the accused exploited the complainant's vulnerability, and then to find it *separately* aggravating that he acted opportunistically in seizing upon that same vulnerability, would clearly amount to the sort of double counting which the courts have repeatedly warned against (see *eg* the judgment of Sundaresh Menon CJ in *Public Prosecutor v Raveen Balakrishnan* [2018] 5 SLR 799 ("*Raveen Balakrishnan*") at [88]), whereby "two or more nominally different sentencing factors share the same normative substance".

186 Overall, given the significant weight to be placed on the offence-specific aggravating factor of the complainant's vulnerability, I concluded that the rape offence disclosed in the Second Charge fell at the high end of Band 1 of the

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269 PSS at para 13.

Terence Ng framework, with an indicative starting point of 13 years' imprisonment and six strokes of the cane.

187 Both sides agreed that there were no offender-specific aggravating factors in this case.[270] Although the Defence argued that there was an offender-specific mitigating factor in the form of hardship to the accused's young children, no details were provided of the alleged hardship, nor was there any evidence available to substantiate the argument. As such, there was no basis for me to find that the accused's personal circumstances were so exceptional as to warrant mitigating weight being accorded to his family's circumstances (*Lai Oei Mui Jenny v Public Prosecutor* [1993] 2 SLR(R) 406 at [11]).

188 Given the reasons set out above, I found no reason to adjust the indicative sentence from the starting point of 13 years' imprisonment and six strokes of the cane.

Sentence in respect of the offence of outrage of modesty (the First Charge)

189 As to the offence of outrage of modesty disclosed in the Second Charge, I agreed with the Prosecution that the accused's act entailed a high degree of sexual exploitation given the skin-to-skin contact with the complainant's vagina.

190 In respect of the degree of sexual exploitation suffered by the complainant in this case, the Prosecution also argued that the fact that the accused had molested her whilst she was lying beside A meant that he had "exploited [her] as a tool to satiate his sexual fantasy of having a threesome"; and that this fact should exacerbate his culpability under this offence-specific

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270 PSS at para 16.

factor.[271] I did not accept this argument for the following reasons. First, as explained by the court in *Kunasekaran* (at [45], citing *GBR v Public Prosecutor and another appeal* [2018] 3 SLR 1048), the offence-specific factor relating to the degree of sexual exploitation within the *Kunarsekaran* framework includes considerations of which part of the victim's body the accused touched, how the accused touched the victim, and the duration of the outrage of modesty: these considerations go towards the physical elements of the offence. Other circumstances of the offence, such as the exploitation of a vulnerable victim, are considered separately from this factor. Second, the fact that the accused had molested the complainant while she was lying beside A did not appear to me in any event to aggravate the degree of sexual exploitation suffered by the complainant. The Prosecution pointed to the fact that the accused had been unsuccessful in requesting the complainant for a "threesome" and that he had forced himself on her despite having been made aware of her unwillingness to have sexual contact with him.[272] However, while this fact might be relevant to the circumstances in which the rape was committed, I did not see how it would have aggravated the degree of sexual exploitation suffered by the complainant in the offence of outrage of modesty.

191 I did, on the other hand, accept that there was considerable personal harm suffered by the complainant in this case.[273] The Victim Impact Statement tendered by the Prosecution showed that she experienced self-blame and self-loathing post the sexual assaults. More pertinently, specifically in respect of the act of molest committed by the accused, the complainant's evidence – as corroborated by her ex-boyfriend R – showed that even after the passage of

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271 PSS at para 19.

272 PSS at para 19.

273 PSS at para 21.

some months, specific sexual acts continued to revive traumatic memories of the sexual violence and humiliation suffered at the accused's hands; and these traumatic memories adversely affected her sexual functioning.

192 I should add that in evaluating the extent of the harm caused to the complainant, I disregarded the Prosecution's argument that this included her loss of trust in A and B, and the sense of betrayal she felt towards them. As these feelings of betrayal and loss of trust were caused by A's and B's conduct (or more accurately, the complainant's perception of their conduct), and not by the accused's actions, I did not think it would be fair to take them into consideration for the purposes of sentencing.

193 The Prosecution also sought to persuade me that the act of molest in this case was committed in a degrading manner, in that A was present to witness the complainant's anguish and humiliation.[274] While I agreed that A's presence during the act of molest would have increased the humiliation experienced by the complainant, I was of the view that this factor would be sufficiently accounted for in the aggravating factor of the harm suffered by the complainant.

194 As there were two offence-specific aggravating factors present vis-à-vis the charge of outrage of modesty in this case, I found that the First Charge fell within the lower end of Band 3 of the *Kunasekaran* framework. The indicative starting point would be a sentence of 18 months' imprisonment and three strokes of the cane. As with the rape offence in the Second Charge, I found that there were no offender-specific factors which warranted adjustments to this indicative starting point.

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274 PSS at para 20.

The Third Charge

195 As for the CYPA offence stated in the Third Charge, I agreed with the Prosecution that the accused's conduct – in knowingly harbouring the complainant and helping her to evade the police – was sufficiently culpable to justify a custodial sentence. I found a sentence of four weeks' imprisonment to be appropriate in this case.

The global sentence

196 Pursuant to s 307(1) of the Criminal Procedure Code 2010, I next considered which of the sentences should run consecutively.

197 I found that the offences of outrage of modesty and rape disclosed respectively in the First and Second Charges formed part of a single transaction. As Menon CJ made clear in *Mohamed Shouffee bin Adam v Public Prosecutor* [2014] 2 SLR 998 ("*Shouffee*") at [32], the one-transaction rule is an evaluative rule directed at the ultimate inquiry of whether an offender should be doubly punished for offences that have been committed simultaneously or close together in time. The fundamental principle underlying the one-transaction rule is that consecutive sentences are not appropriate if the various offences involve a single invasion of the same legally protected interest (at [30]). In the present case, the Prosecution did not in fact dispute the spatial and temporal proximity as between the offences of outrage of modesty and that of rape. Nor did the Prosecution dispute that both offences involved invasion of the same legally protected interest, *ie* the complainant's right to bodily integrity. Instead, the Prosecution's argument for treating the two offences as two distinct transactions

rested on the proposition that the complainant suffered distinct psychological harm arising from the offence of outrage of modesty.[275]

198 I found the Prosecution's approach to be unsupported by caselaw. Although the Prosecution submitted that the inquiry in *Shouffee* should be carried out from the perspective of the victim, what they did not acknowledge was that this inquiry would be with reference to the *legally recognised interests* of the victim, rather than to the subjective perception of the victim. Thus, in *Shouffee* for example (at [33]), a distinction was drawn between the right to bodily integrity and the right to property.

199 In the alternative, the Prosecution submitted that even if the offences of outrage of modesty and rape were held to form part of the same transaction, it would still be appropriate to run the sentences for these two offences consecutively in order to reflect the accused's culpability.[276]

200 In *Shouffee*, the court held (at [45]) that the instances when it would be appropriate for the sentencing court to deviate from the one-transaction rule included cases where it would be necessary to do so to give sufficient weight to the interest of deterrence so as to discourage behaviour of the sort in question, or where the imposition of consecutive sentences would be in keeping with the gravity of the offence. The Prosecution argued that in this case, the offence of outrage of modesty disclosed in the First Charge added to the accused's culpability in relation to the rape offence disclosed in the Second Charge, firstly because it showed his callous disregard of the complainant's repeated expression of pain throughout both offences; and secondly, because it put into

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275 PSS at para 27.

276 PSS at para 28.

sharper relief the degree of sexual exploitation. In this connection, the Prosecution relied on the case of *Public Prosecutor v Lim Choon Beng* [2016] SGHC 169 ("*Lim Choon Beng*"). In that case, the court ordered that the sentences for two charges of penile-vaginal rape and penile-vaginal oral penetration respectively should run consecutively, despite observing that both offences could be viewed as a single transaction.[277]

201 I did not accept the Prosecution's submission that in this case, running the sentences for the offences of outrage of modesty and rape consecutively was necessary to reflect the accused's culpability. In *Lim Choon Beng*, the accused had faced two charges of rape, one charge of non-consensual penile-oral penetration under s 376(1)(*a*) p/u s 376(3) of the Penal Code, and one charge of aggravated outrage of modesty. The court observed (at [76]) that in ordering the sentences for the s 376 charge and the rape charge to run consecutively, "it was pertinent to consider that the imprisonment term for the *other* rape charge… was ordered to run concurrently" [emphasis added]. In other words, the facts of *Lim Choon Beng* were very different from those in the present case. In this case, I was of the view that the caning of three strokes imposed in respect of the offence of outrage of modesty would sufficiently reflect the accused's additional culpability in committing this offence in the course of the rape.

202 In light of the reasons set out at [197] to [201], I ordered that the sentences for the rape offence in the Second Charge and the CYPA offence in the Third Charge should run consecutively, while the imprisonment term for the offence of outrage of modesty in the First Charge should be concurrent with these two sentences. This made for an eventual global sentence of 13 years and four weeks' imprisonment and nine strokes of the cane. In my view, this global

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277 PSS at paras 30-34.

sentence fell within the normal level of sentences for the offence of rape, and would not be crushing to the accused or inconsistent with his past record and future prospects.

Mavis Chionh Sze Chyi
Judge of the High Court

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