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

[2024] SGHC 307

Magistrate's Appeal No 9223 of 2023

Between

Ler Chun Poh (Lu Junbao)

… *Appellant*

And

Public Prosecutor

… *Respondent*

JUDGMENT

[Criminal Procedure and Sentencing — Appeal]
[Courts and Jurisdiction — Court judgments]
[Criminal Law — Offences — Outrage of modesty]

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v
Public Prosecutor

[2024] SGHC 307

General Division of the High Court — Magistrate's Appeal No 9223 of 2023
Aidan Xu @ Aedit Abdullah J
26 April, 8 July 2024

3 December 2024 Judgment reserved.

Aidan Xu @ Aedit Abdullah J:

1 This is an appeal against the district judge's decision in *Public Prosecutor v Ler Chun Poh* [2023] SGMC 94 (the "Grounds of Decision"), convicting the appellant of three charges of outrage of modesty under s 354(1) of the Penal Code (Cap 224, 2008 Rev Ed) (the "Penal Code") and sentencing him to a global sentence of eight months' imprisonment.

2 This judgment is published mainly because of the serious concerns that the trial judge (the "Judge") had substantially adopted the Prosecution's submissions at the trial below without providing analysis, and therefore failed to fully apply his mind to the material before him and/or exhibited apparent bias. The appellant has also raised several substantive points challenging the substance of the Judge's decision on both conviction and sentence.

Procedural history

3 The Judge had convicted the appellant on three counts of outrage of modesty under s 354(1) of the Penal Code and imposed a global sentence of eight months' imprisonment (see, Grounds of Decision at [28(c)]).

4 The appellant appealed against both his conviction and sentence.[1] He submitted that the Judge had erred in law and/or in fact in relation to various findings and that the sentence imposed was manifestly excessive.[2]

5 At the first hearing of the appeal on 26 April 2024, I raised to counsel concerns that the Judge's Grounds of Decision bore a number of similarities to the Prosecution's closing and reply submissions at the trial below (collectively, the "Prosecution's Trial Submissions"). I adjourned the hearing for an additional two weeks for counsel to consider this issue. On 9 May 2024, the appellant's counsel indicated that the appellant would put in further submissions on this point.

6 Consequently, both counsel put in further submissions on the similarities between the Grounds of Decision and the Prosecution's Trial Submissions. Counsel were also instructed to address the court on the available powers of the appellate court if it were to find that the Judge had failed to apply his mind to the material before him and/or exhibited apparent bias. I now set out my decision in full.

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1 Appellant's Written Submissions dated 16 April 2024 ("Appellant's Written Submissions") at para 6.

2 Appellant's Written Submissions at paras 7 and 23.

Issues to be determined

7 The issues before me are as follows:

(a) First, whether the Judge failed to apply his mind to the material before him and/or exhibited apparent bias.

(b) Second, if the first question is answered in the affirmative, what the appropriate course of action is. This requires a determination of:

(i) the scope of the appellate court's powers and, in particular, whether the appellate court can hear and determine the appellant's conviction and sentence *de novo*; and

(ii) what the most appropriate recourse in the present case is.

(c) Third, if the appellate court has the power to convict and sentence the appellant afresh:

(i) whether the appellant should be convicted; and

(ii) if so, what the appropriate sentence should be.

Whether the Judge failed to apply his mind to the material before him and/or exhibited apparent bias

8 Judges are entrusted with the task of deciding cases. This requires that they weigh the parties' arguments, scrutinise the evidence and interpret and apply the law in coming to a decision. As judges, we recognise the heavy responsibility, and the public's trust, placed upon us to judge fairly and according to the law. Independence and impartiality in decision-making are cardinal principles for the judiciary. Where litigation has often been described

as an adversarial process, the judge's task of decision-making and adjudication is a neutral and objective one. As noted in *Newton, David Christopher v Public Prosecutor* [2024] 3 SLR 1370 ("*Newton*") (at [40(d)(ii)]), for whilst a party's submissions "reflect its advocacy for a particular viewpoint", a judgment is meant to be "an expression of a considered resolution of the controversy at hand".

9 The function and importance of a legal decision has been thoroughly canvassed in previous cases (see, *eg*, *Lim Chee Huat v Public Prosecutor* [2019] 5 SLR 433 ("*Lim Chee Huat*") at [19], citing the decision of the Court of Appeal in *Thong Ah Fat v Public Prosecutor* [2012] 1 SLR 676 at [20]–[25]). A judgment or grounds of decision serves the primary purpose of conveying the reasons for the outcome in a particular case, not just to the parties, but also to practitioners, legislators and members of the public (*Lim Chee Huat* at [19]–[21]). It thus captures the judicial reasoning behind the judge's decision. Such a decision should also address the parties' arguments, although it need not address all the points raised in an all-encompassing fashion (*Lim Chee Huat* at [21]).

10 The appellant submits that the Judge had failed to apply his mind to the evidence before him and, accordingly, exhibited apparent bias.[3] The appellant's case is threefold: (a) the Grounds of Decision comprised a "wholesale adoption of the prosecution's submissions" at certain parts;[4] (b) the Judge had blindly copied the decision of *Public Prosecutor v Heng Swee Weng* [2010] 1 SLR 954 ("*Heng Swee Weng*") without considering its applicability in his sentencing

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3 Appellant's Further Submissions dated 30 May 2024 ("Appellant's Further Submissions") at para 2.

4 Appellant's Further Submissions at paras 9–10.

decision;[5] and (c) the Grounds of Decision only referred to the Prosecution's Trial Submissions and made no attempt to deal with or explain the lack of regard for the appellant's defence.[6]

11 The Prosecution instead asserts that the Judge applied his mind to the material before him and that there was no apparent bias.[7] The Prosecution raises three justifications for this.

(a) First, although there are similarities between the Grounds of Decision and the Prosecution's Trial Submissions, it was "far from a case of wholesale copying" as the Judge had paraphrased, reorganised and supplemented the submissions where appropriate.[8] The Judge had considered both the Prosecution's and Defence's submissions.[9] The Judge had also attributed similar portions of the Grounds of Decision to the Prosecution's submissions.[10]

(b) Second, the Judge had judiciously considered the parties' submissions in his sentencing decision.[11]

(c) Third, the Notes of Evidence from the trial prove that the Judge had not closed his mind to the appellant's defences.[12]

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5 Appellant's Further Submissions at paras 23–27.

6 Appellant's Further Submissions at paras 5–6, 9 and 20–21.

7 Respondent's Further Submissions dated 20 June 2024 ("Respondent's Further Submissions") at para 4.

8 Respondent's Further Submissions at para 4(a).

9 Respondent's Further Submissions at para 8.

10 Respondent's Further Submissions at para 7.

11 Respondent's Further Submissions at para 4(c).

12 Respondent's Further Submissions at para 4(b).

12 As stated in the decision of *Lim Chee Huat*, where there are allegations that a judge has substantially copied one side's submissions in the grounds of decision, two separate concerns come to the fore. First, there is substantial doubt as to the judge's independent exercise of judgment and discernment; and second, the judge is, or appears to be, biased in favour of the party whose submissions are adopted (at [49]).

13 Similarly, in the decision of *Newton*, Sundaresh Menon CJ explained that the reproduction of substantial portions of one party's submissions in the court's decision opens the court "to the charge that it has failed to apply a judicious mind" and that this "in turn open[s] the court to a complaint of actual and/or apparent bias" (at [40]).

14 The aforementioned passages (see, above at [12]–[13]) show that a judge's failure to apply a judicious mind to his decision and a finding of bias are related, but separate, grounds for setting aside a trial judge's decision. This conclusion is also supported by the decisions in previous cases. On the facts of *Lim Chee Huat*, the court set aside the district judge's decision and decided the matter afresh on the basis that the district judge had failed to fully appreciate the material that was before him (*Lim Chee Huat* at [55]). The court made no finding on bias. Similarly, in the decision of *Yap Ah Lai v Public Prosecutor* [2014] 3 SLR 180 ("*Yap Ah Lai*"), the court concluded that the district judge had failed to fully appreciate the material that was before him in coming to his decision, and therefore the judge's sentencing decision could be set aside (at [73]–[74]). The court made no conclusion as to the existence of apparent or actual bias flowing from the judge's failure to apply a judicious mind to his decision.

15 Where the judgment or grounds of decision appear to adopt wholesale the words of only one party as the judge's reasoning, there will be a ready and clear inference that the judge has not weighed, considered and decided the issue on his or her own. Sometimes the adoption may be inadvertent; sometimes there may be no other way of expressing the point succinctly. But where the scale of the adoption is large or almost complete, and there is little or no indication that the judge weighed the matter, such as by introducing his or her own lines of reasoning or addressing the counter-arguments of the other side in a different way, the conclusion will be that the judge gave no consideration to what the other side has put forward. It is an abandonment and abrogation of the judicial function.

16 I turn to consider the argument that the Judge failed to appreciate the material before him and of apparent bias.

Whether the Judge failed to apply his mind to the material before him

17 The question before the appellate court is "whether the trial judge exercised his mind on the facts and circumstances of the case before him, such that it could be said that he exercised the discretion and judgment required by his judicial office" (*Lim Chee Huat* at [48]). If there is evidence that the trial judge had independently weighed the arguments and evidence before him, the fact that the grounds of decision are substantially similar to one party's submissions is not, in itself, a sufficient reason to set aside the lower court's decision (*Lim Chee Huat* at [48]).

18 I find that the Judge had not judiciously applied his mind to the evidence before him in coming to his decision.

Whether the Grounds of Decision bear substantial similarities to the Prosecution's Trial Submissions

19 Although the Prosecution accepts that there are some similarities between the Grounds of Decision and the Prosecution's Trial Submissions, the Prosecution continues to assert that this does not amount to a degree of seriousness that warrants the setting aside of the Grounds of Decision.[13]

20 A side-by-side comparison of the Judge's decision on conviction and the Prosecution's Trial Submissions clearly shows that the decision is replete with similarities. Significant parts of the Grounds of Decision replicate the substantive reasoning, mirror the structure, and adopt similar word and stylistic choices as in the Prosecution's Trial Submissions. I summarise the more concerning portions below.

21 In the Judge's analysis of the credibility of the victim's testimony, the Judge wholly adopted the Prosecution's Trial Submissions in finding that the victim's testimony was unusually convincing.[14] For illustration, a comparison of an extract of the Judge's reasoning in the Grounds of Decision on the external consistency of the victim's evidence and the Prosecution's Trial Submissions are set out in the following table:

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13 Respondent's Further Submissions at para 6.

14 Record of Appeal dated 10 January 2024 ("ROA") at p 614 (Grounds of Decision dated 1 December 2023 ("Grounds of Decision") at para 9(c)).

Grounds of Decision[15]	**Prosecution's Trial Submissions**[16]
In terms of corroborative evidence, caselaw had established *a subsequent complaint made by the complainant as corroboration provided that the statement implicating the offender was made at the first reasonable opportunity after the commission of the offence, which is to ensure that the trial judge has the necessary flexibility to treat relevant evidence as corroborative.* Applying these legal principles to the present case, ***the victim's evidence was materially consistent with the extrinsic evidence and corroborated by the victim's FIR call and account to [PW1] and [PW2] that the AP had molested her***. [emphasis added in italics and bold italics]	*In terms of corroborative evidence*, the liberal approach, which is the local approach, treats *a subsequent complaint made by the complainant as corroboration provided that the statement implicating the offender was made at the first reasonable opportunity after the commission of the offence*: *AOF* at [173] citing *PP v Mardai* [1950] MLJ 33. The liberal approach *ensures that the trial judge has the necessary flexibility to treat relevant evidence as corroborative*: *PP v Mohammed Liton Mohammed Syeed Mallik* [2008] 1 SLR(R) 601 at [43]. To this end, the Prosecution submits that ***the victim's FIR call, and account to [PW1] and [PW2] are corroborative of the victim's evidence that the accused had molested her.*** [emphasis added in italics and bold italics]

22 This extends to the detailed analysis of the external consistency of the victim's evidence, considering the corroborative value of the First Information Report dated 30 October 2021 (the "First Information Report") and the evidence of PW1 and PW2. The Judge adopted the substance and structure of the

15 ROA at p 614 (Grounds of Decision at para 9(c)).

16 ROA at p 683 (Prosecution's Close of Trial Submissions dated 31 August 2023 ("Prosecution's Closing Submissions") at paras 45–46).

Prosecution's reasoning, and his choice of added emphasis was also almost identical to the Prosecution's Trial Submissions:

Grounds of Decision[17]	**Prosecution's Trial Submissions**[18]
In the FIR, *the victim had called the Police for assistance at about 12.46 am on 30 October 2021.* Based on *the timeframe of the three charges spanning from sometime at or around 11.40 pm to sometime after 11.46 pm, the victim's testimony is substantially corroborated by her detailed account in her FIR to the Police, made around* ***one hour*** *after alighting from the AP's taxi wherein it was stated that: '****around half an hour ago … I am with two friends now****'. (emphasis in bold added).* *The victim's evidence is also substantially corroborated by the independent testimony of [PW1] and [PW2], who were not acquainted.* Despite *some minor discrepancies in the accounts between [PW1], [PW2] and the victim, I agreed with the prosecution that these are not material as they pertained to the minute details of the victim's interactions with them and not the facts in issue,* i.e.*, whether the AP had molested the victim. In this regard, the recollection of [PW1] and*	*The victim had called the Police for assistance at about 12.46am on 30 October 2021.* In this case, *the timeframe of the three charges span from sometime at or around 11.40pm to sometime after 11.46pm.* The implication is that *the victim's evidence in court is substantially corroborated by her detailed account in her FIR to the Police, made around* ***one hour*** *after alighting from the accused's taxi – '****around half an hour ago … I am with two friends now****' (emphasis in bold added).* *…* *The victim's evidence is also substantially corroborated by the independent testimony of [PW1] and [PW2], who were not acquainted.* *While there were some difficulties in the accounts between [PW1], [PW2] and the victim, these are not material as they pertain to the minute details of the victim's interactions with them and not the facts in*

17 ROA at pp 614–615 (Grounds of Decision at paras 9(d)–9(e)).

18 ROA at pp 683–684 (Prosecution's Closing Submissions at paras 47–49).

[PW2] on what the victim shared with them is consistent, i.e. earlier that night, the victim had been molested by a taxi driver. [emphasis added in italics; emphasis in original in bold italics]	*issue, i.e., whether the accused molested the victim. In this regard, their recollection of what the victim shared with them is consistent.* Namely, *earlier that night, the victim had been molested by a taxi driver …* [emphasis added in italics; emphasis in original in bold italics]

23 This substantial reproduction of the Prosecution's Trial Submissions also extends to the Judge's analysis of the appellant's testimony and credibility.[19]

24 Even in the section titled the "Court's Findings of Facts for the Trial", which one would presume would include the Judge's independent findings, there are numerous replications of the Prosecution's Trial Submissions.[20] The only exception is the Grounds of Decision at [12], which evinces some attempt to piece together certain portions of the Prosecution's Trial Submissions instead of adopting a wholesale reproduction. However, the reasoning in this paragraph also bears material resemblances to the Prosecution's Trial Submissions.[21]

25 To my mind, the numerous similarities between the Grounds of Decision and the Prosecution's Trial Submissions are undeniable. Throughout the portions of the Grounds of Decision referenced above, the Judge could be said

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19 ROA at pp 621–625 (Grounds of Decision at paras (a)–(a)(vi); ROA at pp 692–699 Prosecution's Closing Submissions at paras 60–68.

20 See for example, ROA at p 627 Grounds of Decision at para 14.

21 ROA at p 626 (Grounds of Decision at para 12; ROA at pp 700–701 (Prosecution's Closing Submissions at para 73).

to have exhibited an almost unwavering adherence to both the substance and form of the Prosecution's Trial Submissions.

(1) Paraphrasing

26 The Prosecution contends that there is evidence of a "significant amount of paraphrasing" by the Judge.[22] However, the Prosecution has not seriously raised any example of such paraphrasing; the Prosecution only alludes to an instance of paraphrasing in the Judge's analysis of the appellant's testimony and credibility.[23] I find that any paraphrasing by the Judge is, at best, minimal.

27 In any case, the heart of the concern here is whether the Judge failed to apply his mind to the material before him in coming to his decision. While this depends on the circumstances of each case, the mere paraphrasing of some parts of one party's submissions, without more, is unlikely to amount to an independent exercise of meaningful judgment by a judge. This is supported by the decision of *Lim Chee Huat*. In *Lim Chee Huat*, the district judge had also substantially reproduced the Prosecution's submissions in his grounds of decision. The appellate court held that his attempt to rearrange the sequence of the paragraphs and make minor paraphrases was insufficient to rebut the conclusion that he had not applied his mind to the matter before him (*Newton* at [36]; *Lim Chee Huat* at [10] and [17]). In the present case, given the abundant replication of the Prosecution's Trial Submissions in the Grounds of Decision, even including the minute details such as the choice of stylistic emphasis, and the minimal amount of paraphrasing, I do not think that there is sufficient evidence that the Judge had applied his mind to the matter before him.

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22 Respondent's Further Submissions at para 7.

23 Respondent's Further Submissions at para 19.

(2) Reorganisation

28 The Prosecution also submits that the Judge's reorganisation of the Prosecution's Trial Submissions weighs in favour of a finding that he had judiciously considered the matter.[24] The Prosecution only raises two examples of this. First, the Grounds of Decision at [9(b)], where the Judge had allegedly compiled different points of the Prosecution's closing submissions at paragraphs 24, 25, 44 and 61.[25] Second, the Grounds of Decision at [9(k)].[26]

29 I note that in the decision of *Newton*, although the district judge reproduced almost the entirety of the Prosecution's written submissions in his grounds of decision, the High Court had placed some weight on the district judge's reorganisation of the Prosecution's written submissions in finding that he had applied his mind to his decision. The High Court considered such reorganisation amounted to a synthesis of the parties' arguments which suggested that the district judge had exercised his mind to the material before him (*Newton* at [48]).

30 As stated in *Lim Chee Huat*, "judicial copying occurs as a matter of degree" (at [53]). The amount of reorganisation in the present case is, however, minimal. In relation to the first example of the Grounds of Decision at [9(b)], this paragraph draws from two main portions of the Prosecution's closing submissions – paragraphs 24 to 25, and paragraphs 40 to 44. The Judge's reasoning generally mirrors the sequence and structure of the Prosecution's reasoning in these paragraphs. In fact, the Judge's analysis also retains even the minor errors or inconsistencies in the Prosecution's closing submissions such as

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[24] Respondent's Further Submissions at para 4(a).

[25] Respondent's Further Submissions at para 12.

[26] Respondent's Further Submissions at para 16.

the inconsistent usage of "carpark at Blk 429A CCK", "carpark at Blk 429A Choa Chu Kang Avenue" and "carpark at Blk 429 Choa Chu Kang" to refer to the same location.[27] Similarly, the Grounds of Decision at [9(k)] also largely takes from the Prosecution's reply submissions at paragraphs 2 to 8 and 9(b).[28] The Grounds of Decision retains the structure, reasoning and word choice of the Prosecution's reply submissions. As any reorganisation, if at all, was minimal, I do not think that this materially aids the Prosecution's case that the Judge had exercised independent judgment in coming to his decision.

(3) Supplementation of analysis

31 The Prosecution further argues that the Judge had supplemented the Prosecution's Trial Submissions with his own observations.[29] The Prosecution raises four examples in support of this.

32 First, the Prosecution points to the Grounds of Decision at [9(a)(ii)], where the Judge noted that the victim "successfully found [PW2's] phone number and then called him".[30] As there was no express mention of this in their submissions, the Prosecution says that this constitutes an independent finding by the Judge.[31] I disagree. This sentence by the Judge is more accurately described as a paraphrasing of the Prosecution's Trial Submissions. This is because, as the Prosecution itself admits, the fact that the victim had found

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27 ROA at pp 613 (Grounds of Decision at para 9(b)(i)) and 681 (Prosecution's Closing Submissions at para 41).

28 ROA at pp 618 (Grounds of Decision at para 9(k)) and 704–708 (Prosecution's Reply Submissions dated 18 September 2023 at paras 2–9(b)).

29 Respondent's Further Submissions at para 9.

30 Respondent's Further Submissions at para 9.

31 Respondent's Further Submissions at para 9.

PW2's phone number is clearly implicit in their closing submissions, which writes:[32]

> She then borrowed a phone from people around the car park at the time to find [PW2's] phone number and then call him. *Her call to him was successful* and she told him that she lost her phone. …
>
> [emphasis added]

Quite obviously, if the victim had successfully called PW2, she must have found his number. I do not think this sentence amounts to substantial evidence of the Judge's application of his mind to the material before him.

33 Second, the Prosecution states that the Judge's reference to the victim's demeanour at trial (in the Grounds of Decision at [9(l)]) suggests that he had applied his mind to the evidence before him. This is because the Prosecution had made no such reference to the victim's demeanour in the Prosecution's Trial Submissions.[33] The relevant passage from the Grounds of Decision is set out below:[34]

> Based on the victim's testimony *and demeanour* when testifying at the trial with no contrary submissions from the AP in this regard, I accepted the prosecution's submissions that it is clear from the victim's evidence that she had given a measured account of the incidents …
>
> [emphasis added]

34 This does not take the Prosecution very far. An examination of the Grounds of Decision at [9(l)] shows that apart from the brief allusion to the victim's demeanour, the rest of the Judge's subsequent assessment of the

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32 ROA at p 673 (Prosecution's Closing Submissions at para 27).

33 Respondent's Further Submissions at para 9.

34 ROA at pp 620–621 (Grounds of Decision at para 9(l)).

victim's evidence simply adopted the Prosecution's Trial Submissions. There is no evidence of the Judge's analysis of the victim's demeanour in court. A cursory reference to having considered the demeanour of a witness, without evidence of such analysis, is not sufficient to show that the trial judge had independently applied his mind to the evidence before him.

35 As stated by the learned authors of *Criminal Procedure in Singapore and Malaysia* (Tan Yock Lin & S Chandra Mohan gen eds) (LexisNexis, Looseleaf Ed, 2023) at paras 1105–1150, a judge has a duty to give his reasons with sufficient clarity and comprehensiveness. Where the trial judge has merely referred to the witness's demeanour without any particularisation, this invites a suspicion that he is attempting to "bolster up a verdict":

> Where the magistrate does not also give reasons for his belief that a witness is a witness of truth, the appellate court will be readier to disregard his findings. … *If he merely refers generally to [the] demeanour of the witnesses, without condescending to particulars, he may invite suspicion that an attempt is being made to bolster up a verdict which is contrary not only to the weight of evidence but to the probabilities and which could not be supported on a detailed examination of the evidence.* To avoid appellate intervention of such nature, the trial judge should show very clearly his reasons 'with sufficient clarity and comprehensiveness'.
>
> [emphasis added]

36 Third, the Prosecution also makes the same argument in relation to the Judge's analysis of the appellant's credibility – as the Judge had stated that the appellant lacked credibility based on his testimony, demeanour and conduct during his examination-in-chief and cross-examination of the victim, the Prosecution submits that this proves the Judge's exercise of independent thought in his decision.[35] For similar reasons above (at [34]–[35]), I disagree

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[35] Respondent's Further Submissions at para 19; ROA at pp 621–622 (Grounds of Decision at para (a)).

with the Prosecution. After the Judge's passing reference to having considered the appellant's demeanour and conduct at trial, he proceeded to reproduce the Prosecution's Trial Submissions in his decision.[36] There was no additional particularisation of the appellant's demeanour and conduct independently observed by the Judge.

37 Fourth, the Prosecution contends that even if the Judge had adopted the Prosecution's Trial Submissions in his decision, the fact that the Judge had stated that the Prosecution's example "clearly" shows that the appellant was an untruthful witness discloses the Judge's application of his mind to the matter before him.[37] The Prosecution's argument extends a great deal of generosity. It would be quite difficult to imagine that the mere addition of the word "clearly", to what is otherwise an almost wholesale adoption of the Prosecution's Trial Submissions,[38] would adequately show that the Judge had applied his mind to the matter before him.

38 For the reasons above, the examples raised by the Prosecution do not disclose evidence of the Judge supplementing the Prosecution's Trial Submissions with his own analysis.

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36 ROA at pp 621–625 (Grounds of Decision at para (a)) and pp 692–699 (Prosecution's Closing Submissions at paras 60–68).

37 Respondent's Further Submissions at para 19.

38 ROA at pp 622 (Grounds of Decision at para (a)(i)) and 693 (Prosecution's Closing Submissions at para 62).

(4) Attribution

39 The Prosecution's assertion that the "trial judge had prefaced most of the similar points with an acknowledgement that he was agreeing with the Prosecution's submissions" does not take the Prosecution's case very far.[39]

40 The general disapprobation for the lack of attribution in what is commonly known as "plagiarism" cases is not the crux of the concern here. The focus of the inquiry is whether the judge had failed to apply a judicious mind to the material before him in coming to his decision. As stated by McLachlin CJ in the decision of the Supreme Court of Canada in *Cojocaru and another v British Columbia Women's Hospital and Health Centre and another* [2013] 5 LRC 680 (at [65]–[66]), "[t]he considerations that require attribution in academic, artistic and scientific spheres do not apply to reasons for judgment", and "it is difficult to understand how attributed copying is more likely to reflect the judge's thinking – or lack of thinking – than unattributed copying. In both cases, the judge has adopted the copied material as his own by putting it in his reasons". Thus, the fact that the Judge had "credited" the Prosecution's submissions for parts of the reasoning in the Grounds of Decision does not, by itself, refute the finding that the Judge's failed to apply his mind to the matter before him. If the Judge had not only indicated that he had agreed with the Prosecution's submissions (*ie,* attribution), but also explained why he agreed and evidenced some independent analysis in doing so, this would have given more validity to the Prosecution's point here. There is no evidence of this on the facts before me.

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[39] Respondent's Further Submissions at para 7.

(5) Whether the reproductions of the Prosecution's Trial Submissions are immaterial

41 According to the Prosecution, large portions of the Grounds of Decision at [9(a)(vi)] (which were flagged out by the appellant in his further written submissions in yellow) pertained to a summary of the evidence at trial. As this would only be a "neutral summary of an objective record, i.e., the [Notes of Evidence]", this would not amount to a lack of adequate consideration of the material by the Judge even if he had completely copied the Prosecution's Trial Submissions.[40]

42 This argument fails for the simple reason that while there are parts of the impugned portions of the Grounds of Decision which can, with the benefit of doubt, be construed as a summary of the Notes of Evidence, there are other parts which are clearly intended to read as the Judge's findings based on the evidence before him, which surely cannot be neutral. Having summarised the victim's testimony, the Judge goes further to decide on the internal and external consistency of the victim's evidence, provides reasons for rejecting the appellant's allegations regarding the victim's credibility, and adjudicates that the victim gave a measured account of the incidents.[41] The Judge also makes findings on the appellant's lack of credibility.[42]

43 The Prosecution argues that any reproduction of the Prosecution's Trial Submissions in the highlighted paragraphs is immaterial because it simply comprises a neutral summary of an objective record. This argument ran up against the cold, hard text of the Grounds of Decision. The heading of the

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40 Respondent's Further Submissions at para 10.

41 ROA at pp 614–620 (Grounds of Decision at paras 9(c)–9(l)).

42 ROA at pp 621–625 (Grounds of Decision at para (a)).

section itself, "Testimony and Credibility of Witnesses",[43] betrays the nature of its content – apart from a summary of the witnesses' testimonies, the section is meant to include the Judge's judicial reasoning and decision on the credibility of witnesses. Such judicial decision-making must surely involve independent reasoning and findings of fact by the Judge. This is especially since the case turned on whether the victim's testimony was "unusually convincing". Where no such independent analysis is evinced, it is certainly open to a finding that the Judge had failed to apply his mind to the evidence before him. I reject the Prosecution's misguided attempt to frame these portions of the Grounds of Decision innocuously.

(6) The Judge's decision on sentence

44 As regards the portion on sentencing, while there was some assessment by the Judge, as seen in his rejection of the Prosecution's submission for the imposition of 12 months' imprisonment, there was a disconcerting insertion of a passage from the case of *Heng Swee Weng*,[44] in a manner that gave the impression that there was no thought given to the facts of the present case. I set out a comparison of the impugned part of the Grounds of Decision and the relevant paragraph in *Heng Swee Weng* below:

Grounds of Decision[45]	***Heng Swee Weng* at [11]**
… As a taxi driver working in the public transport service sector, the AP through his behaviour took advantage of a helpless commuter utilising his transport service as the present case involved	… The Victim here did not know the Respondent. *Lost, distressed and penniless, she had placed her trust in the Respondent, a member of the public transport workforce whom she was*

43 ROA at p 607 (Grounds of Decision at p 9).

44 Appellant's Further Submissions at paras 4(c) and 23–27.

45 ROA at p 638 (Grounds of Decision at para 28).

a young 17 year old female victim *who did not know the taxi driver and was lost, distressed and penniless, and had placed her trust in the taxi driver as a member of the public transport workforce whom she was entitled to expect would unhesitatingly act with rectitude and common decency*. The AP as a taxi driver and the male perpetrator appeared to be *in complete control throughout in respect of the vehicle, the route chosen and indeed, the entire situation while the victim was with him and in his taxi. …* [emphasis added]	*entitled to expect would unhesitatingly act with rectitude and common decency*. As the Victim was unfamiliar with the area, the Respondent had complete control of the situation, both in terms of the vehicle and the route. In these perturbing circumstances, he hugged the Victim against her will, and the Victim even had to struggle to free herself. The Victim's situation can be properly described as a textbook case of vulnerability and haplessness. *In contrast, the Respondent was in a position of complete control, in respect of the vehicle, the route chosen, and, indeed, the entire situation.* [emphasis added]

45 The appellant contends that the Judge had failed to consider the appropriateness of the copied paragraph of *Heng Swee Weng* to the facts of the case before him.[46] The Prosecution does not dispute the similarities of this part of the Grounds of Decision to *Heng Swee Weng*, and that the statement that the appellant "appeared to be in complete control throughout in respect of the vehicle, the route chosen and indeed, the entire situation" was not an accurate restatement of the facts in the present case.[47] However, the Prosecution submits that the Judge did not rely materially on the sentence imposed in *Heng Swee Weng*, but was instead simply emphasising the public interest in imposing a

46 Appellant's Further Submissions at para 26.

47 Respondent's Further Submissions at para 26.

deterrent sentence for outrage of modesty offences committed against passengers travelling in taxis at night.[48]

46 While the Judge dealt with the offender-specific mitigation factors (or the lack thereof) and aggravating factors borne out by the facts of the case before him in the rest of his decision on the appropriate sentence, this use of *Heng Swee Weng* robbed that part of his Grounds of Decision of any characteristic of proper analysis.

47 Nonetheless, regardless of my findings on the Judge's sentencing decision, if I find that the decision on conviction discloses a lack of an independent exercise of judgment and set aside the Grounds of Decision, then the entire matter will need to stand and fall as a composite whole.

Whether the other circumstances evidence a lack of judicious consideration by the Judge

48 Notwithstanding the material similarities between the Grounds of Decision and the Prosecution's Trial Submissions, regard must be had to the totality of the circumstances in determining whether the Judge had failed to apply his mind to the matter before him (see, *Newton* at [43]). I deal with the two issues of: (a) whether the Judge failed to consider the Defence's submissions (see, above at [10]); and (b) whether the Notes of Evidence prove the Judge's consideration of the material before him (see, above at [11(c)]).

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[48] Respondent's Further Submissions at para 26.

(1) Whether the Judge failed to consider the Defence's submissions

49 The appellant alleges that the Grounds of Decision did not engage with the appellant's defence.[49] In turn, the Prosecution submits that the Judge had weighed the appellant's defence in his decision.[50] As evidence of the Judge's exercise of independent thought, the Prosecution points to:

(a) the Judge's summary of the appellant's version of events in the Grounds of Decision at [7];[51]

(b) the Grounds of Decision at [9(k)] as evidence of the Judge's "point by point" consideration and dismissal of the appellant's claims;[52]

(c) the Grounds of Decision at [9(h)(i)] and [9(j)] where the Judge had recounted the procedural history of the case;[53]

(d) the Judge's statement that he had considered the appellant's testimony, demeanour and conduct during trial;[54]

(e) the Judge's acknowledgement that the Prosecution's Trial Submissions "clearly" showed the appellant's lack of credibility;[55] and

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49 Appellant's Further Submissions at paras 9–11.

50 Respondent's Further Submissions at para 13.

51 Respondent's Further Submissions at para 14.

52 Respondent's Further Submissions at para 15.

53 Respondent's Further Submissions at para 17.

54 Respondent's Further Submissions at para 19.

55 Respondent's Further Submissions at para 19.

(f) the Judge's allegedly longer and more comprehensive summary of facts in the Grounds of Decision at [13].[56]

50 None of these satisfactorily prove that the Judge had judiciously applied his mind in coming to his decision.

(a) I accept that the Judge had independently summarised the appellant's version of events in the Grounds of Decision at [7]. This shows that the Judge was apprised of the Defence's case. While this may refute a finding of apparent bias (*ie,* the Judge had not shut his mind to the Defence's case), this does not sufficiently prove that the Judge had applied his mind to these arguments in coming to a reasoned decision. This is especially since the rest of the Judge's decision on conviction is replete with passages from the Prosecution's Trial Submissions and does not disclose any independent consideration of the Defence's case.

(b) The Grounds of Decision at [9(k)] substantially replicates the Prosecution's reply submissions. It does not show any independent analysis by the Judge.

(c) The Judge's reference to the procedural history in the Grounds of Decision at [9(h)(i)] and [9(j)] reads:[57]

> The AP's previous counsel had referred to the Instagram messages (P1) on the relationship between the victim and [PW2], but after raising the aforesaid case theory in Court and being asked to put in submissions on whether and how the relationship between the victim and [PW2] were relevant to the charges, the AP's previous counsel did not follow up *despite many time extensions been* [*sic*] *granted to him and he then applied*

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56 Respondent's Further Submissions at para 20.

57 ROA at p 617 (Grounds of Decision at para 9(h)(i)).

> *to discharge himself with the AP's consent on 20 June 2023 just before the second tranche of trial commenced.*
>
> [emphasis added]

The only part of the paragraph which does not mirror the Prosecution's Trial Submissions is the statement indicated in italics above. In my view, it cannot be said that the mere inclusion of one line detailing the case's procedural history lends itself to the conclusion that the Judge had applied his mind to the matter before him, in the face of the rest of the evidence showing otherwise.

(d) The argument regarding the Judge's reference to the appellant's demeanour can be dismissed for the same reasons as at [36] above.

(e) I also reject the argument regarding the Judge's usage of the word "clearly" for the same reasons at [37] above.

(f) Finally, a close examination of the Grounds of Decision at [13] reveals a substantial replication of the Prosecution's analysis, with an additional statement which reads:[58]

> On each of the 3 occasions as stated in the 3 charges, based on the victim's testimony, the AP had reached over to the victim and touched the seatbelt with contact between the AP's hand and the victim's breasts, and his hand had touched the victim's breasts with the intention or knowledge that it was likely he would thereby outrage the victim's modesty. There was no evidence that the victim and PW2 … had conspired to falsely accuse the AP of molest.

This additional statement is simply a restatement of the charges against the appellant and the Judge's earlier finding that there was no conspiracy by the victim and PW2.

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58 ROA at pp 626–627 (Grounds of Decision at para 13).

51 In sum, I do not find any evidence of the Judge's judicious weighing of the appellant's defence in his Grounds of Decision.

(2) Whether the Notes of Evidence prove the Judge's consideration of the material before him

52 The Prosecution argues that the Judge's reproduction of large chunks of the Prosecution's Trial Submissions is not in and of itself a basis for setting aside the Grounds of Decision.[59] Referring to *Newton* (at [3]), the Prosecution submits that other considerations, such as the oral exchange between the judge and parties, are relevant to determining whether the judge was "involved in the proceedings".[60] The Prosecution points to the Notes of Evidence as evidence of the Judge's involvement.

53 The Prosecution's submissions on this point take substantially from the decision of *Newton*. The offender in *Newton* had pleaded guilty to the charges before him, and parties had tendered written submissions prior to the hearing. Defence counsel had expected to make oral submissions at the hearing, but after convicting the offender of the charges, the district judge immediately stated that he had prepared his grounds of decision in relation to sentence. Defence counsel indicated that he wished to make some oral submissions, which the district judge allowed. During the defence counsel's oral submissions, the district judge engaged in an "oral exchange" with the defence counsel but ultimately held that the oral submissions had not caused him to change his mind. In his grounds of decision, the district judge had reproduced almost the entirety of the Prosecution's written submissions with minimal amendments. On appeal, the offender submitted that there was apparent bias by the district judge (see,

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59 Respondent's Further Submissions at para 21.

60 Respondent's Further Submissions at paras 21–22.

Newton at [2]). Although the offender withdrew his allegation of apparent bias, the court emphasised that it declined to set aside the district judge's decision on this ground (see, *Newton* at [3] and [49]). The court held that the substantial reproduction of the Prosecution's submissions in the grounds of decision was insufficient to give rise to a reasonable apprehension of bias (see, *Newton* at [3] and [44]). One of the reasons was that the oral exchange between the district judge and the defence counsel showed that the district judge had "read and digested the case materials, had considered the merits of the parties' respective submissions, and had come to a view" on them (*Newton* at [45]). As the district judge was willing to allow defence counsel to make oral submissions and had engaged with those submissions in a manner that disclosed why he was unpersuaded by the defence's submissions, this negated a finding of apparent bias. In particular, the district judge's "questions and observations [to the defence counsel during his oral submissions made it evident] that he had read, understood and considered those points and had come to the view that they were not persuasive" (*Newton* at [47(b)]).

54 The district judge's oral refutation of a party's submissions in *Newton* can be distinguished from his alleged engagement in the trial proceedings during examination-in-chief, cross-examination and re-examination of the witnesses (as evidenced in the Notes of Evidence). The former oral exchange requires the judge to challenge and grapple with the veracity of the parties' submissions and all the evidence before him. It is therefore clear evidence of the application of the judge's mind to all the material before him. In contrast, the latter generally only shows that the Judge was engaged in the evidence-gathering process and, at best, did not demonstrate bias to either party. It does not adequately show that the Judge had considered and analysed all the material before him in coming to his decision. This is especially since the points raised by the Prosecution in the

present case relates to the Judge permitting or clarifying certain lines of questioning.[61] Unlike *Newton*, the present case is not as clear that the Judge had "read and digested all the materials before he came to a view" (see, *Newton* at [3]).

55 For all the foregoing reasons, I am satisfied that the Judge failed to apply his mind to the material before him in coming to his decision.

Whether the Judge had exhibited apparent bias

56 The next question is whether, in light of the Judge's failure to judiciously consider the material before him, this in turns opens the Judge to a complaint of apparent bias. In a claim of apparent bias, the court is "concerned with whether there are circumstances that would give rise to a reasonable suspicion or apprehension of bias in a fair-minded and informed observer" (*Newton* at [31], citing *BOI v BOJ* [2018] 2 SLR 1156 ("*BOI*") at [103(a)]). This involves an objective assessment from the "perspective of an observer who is apprised of all relevant facts that are capable of being known by members of the public generally" (*Newton* at [33]). This might include "interactions between the court and counsel, and such facts of the case as could be gleaned from those interactions and/or known to the general public" (*BOI* at [103(e)]).

57 The allegation of apparent bias is not made out. This is for two reasons. First, the Judge's summary of the appellant's version of events in the Grounds of Decision at [7] is evidence that the Judge did not shut his mind to the appellant's testimony (see, above at [50(a)]). Second, a detailed analysis of the Notes of Evidence shows that throughout the proceedings, gave leeway to the

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[61] Respondent's Further Submissions at para 22.

appellant in his questioning of the victim and the prosecution's witnesses (provided that it was within the boundaries of reasonable and relevant questioning).[62] This goes at least to lack of bias.

Conclusion

58 I therefore set aside the Judge's decision on the basis of the Judge's failure to apply his mind to the material before him.

59 I am aware that the appellant's defence, at the trial below, was arguably rambling and tautological. It could have been difficult to decipher what he was trying to convey or his case theory. On a closer analysis, and as I will explain below (at [106]–[112]), most of it was meritless or irrelevant. Nonetheless, the lack of merit or cogency in a party's submissions is not a sufficient justification to replicate the other party's submissions in full. As Sir Stephen Sedley stressed in the English Court of Appeal decision of *IG Markets Ltd v Declan Crinion* [2013] EWCA Civ 587 (at [38]), "[t]o simply adopt [one] party's submissions, however cogent they are, is to overlook what is arguably the principal function of a reasoned judgment, which is to explain to the unsuccessful party why they have lost".

60 It bears emphasis that the Judge who was responsible for the impugned Grounds of Decision in the present case was also the trial judge referred to in *Newton*. This is not a one-off incident of substantially lifting submissions from one party. In *Newton* (at [41]), Menon CJ emphasised that such wholesale

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62 ROA at pp 342–343 (Notes of Evidence ("NE") (22 June 2023) Day 5 at page 57 line 14 to page 58 line 14); ROA at pp 362–363 (NE (22 June 2023) Day 5 at page 77 line 31 to page 78 line 19); ROA at pp 382–383 (NE (22 June 2023) Day 5 at page 97 line 15 to page 98 line 29); ROA at pp 393–394 (NE (22 June 2023) Day 5 at page 108 line 8 to page 109 line 11); ROA at p 395 (NE (22 June 2023) Day 5 at page 110 lines 3 to 17).

adoption of one party's submissions in a judgment was extremely unsatisfactory conduct as a matter of judicial practice. This is indeed so. A judge has the duty to adjudicate and must consider all the material before him in deciding on the merits of each party's case. But beyond just a matter of judicial practice and the propriety of such conduct, the wholesale adoption of one party's submissions in a judgment, in excess, may lead to the conclusion that the trial judge failed to apply his mind to the material before him and/or a finding of bias. In the present case, the Judge's conduct warrants the finding that he had failed to judiciously consider the material before him.

61 I hasten to add that allegations of apparent bias and a failure of the trial judge to apply his mind to the material before him are serious. The severity of allegations of judicial bias was well emphasised in *BOI* (at [141]). Such claims should not be invoked heedlessly, as a means to draw out proceedings, or to bring unmeritorious backdoor challenges to the substantive merits of the trial judge's decision. Where such allegations are unmeritorious, this may warrant serious consequences (*BOI* at [141]). On the other hand, where such allegations are supported by substantial evidence of the trial judge's conduct of the proceedings and/or the grounds of decision, it would be wholly insufficient for parties to masquerade evidence of such failing or bias innocuously. Such submissions will be met with the court's disapprobation.

The appropriate approach on appeal

62 As I have found that the Judge failed to apply his mind to the matter before him, I turn to consider the appropriate recourse in the circumstances.

Scope of the appellate court's powers

63 The powers which this court may exercise on appeal are set out in s 390(1) of the Criminal Procedure Code 2010 (2020 Rev Ed) ("CPC") (see, *AOF v Public Prosecutor* [2012] 3 SLR 34 ("*AOF*") at [272]–[273]), which states that:

> **Decision on appeal**
>
> **390.**—(1) At the hearing of the appeal, the appellate court may, if it considers there is no sufficient ground for interfering *dismiss the appeal*, or may —
>
> …
>
> (*b*) in an appeal from a conviction —
>
> (i) *reverse the finding and sentence and acquit or discharge the accused or order the accused to be retried by a court of competent jurisdiction, or remit the matter, with the opinion of the appellate court, to the trial court*;
>
> (ii) alter the finding, maintaining the sentence or, with or without altering the finding, reduce or enhance the sentence; or
>
> (iii) with or without reducing or enhancing the sentence, and with or without altering the finding, alter the nature of the sentence …
>
> [emphasis added]

64 In sum, the stipulated powers of the appellate court are: (a) dismissing the appeal; (b) acquitting or discharging the accused; (c) ordering the accused to be retried by a court of competent jurisdiction; or (d) remitting the matter to the trial court with the opinion of the appellate court.

65 On its face, the CPC does not expressly provide for the power of the appellate court to set aside the trial court's decision and decide on conviction and sentence *de novo* on the evidence recorded. When asked to submit on this issue, the Prosecution and Defence both agreed that if the appellate court found

that the trial judge had failed to apply his mind in his decision and/or exhibited apparent bias, it was within the scope of the appellate court's powers to decide on conviction and sentence afresh.

66 In so far as s 390(1) of the CPC uses the word "may" in setting out the powers of the appellate court in deciding the appeal, this suggests that the list of actions in s 390(1) is not exhaustive. This interpretation is supported by s 390(2) of the CPC which sets out that "[n]othing in subsection (1) is to be taken to prevent the appellate court from making such other order in the matter as it may think just, and by such order exercise any power which the trial court might have exercised". I also note that s 6 of the CPC allows for the court to adopt such procedure as the justice of the case may require in matters of criminal procedure for which no special provision has been made by the CPC or by any other law, so long as such procedure is not inconsistent with the CPC or any other law:

> **Where no procedure is provided**
>
> **6.** As regards matters of criminal procedure for which no special provision has been made by this Code or by any other law for the time being in force, such procedure as the justice of the case may require, and which is not inconsistent with this Code or such other law, may be adopted.

Consequently, I find that there is nothing in the CPC which precludes the possibility of an appellate court deciding conviction and/or sentence *de novo*. The parties agree that this court has the power to determine the conviction and/or sentence of the appellant *de novo*.

67 Indeed, in *Yap Ah Lai*, Menon CJ found that the district judge had erred in failing to fully appreciate the material that was before him in his determination on sentencing, and found that the appellate court was entitled to consider the sentencing anew (*Yap Ah Lai* at [73]–[74]). While *Yap Ah Lai* only

pertained to sentencing, in *Lim Chee Huat*, the appellate court went further to find that it was in a position to weigh the evidence recorded and determine the outcome of both conviction and sentence afresh in the circumstances (*Lim Chee Huat* at [59]).

68 There is nonetheless a need to ensure that a *de novo* ruling by the appellate court will not run contrary to the general principles of appellate intervention.

69 It is worth reiterating these principles, as set out by the Court of Appeal in *Public Prosecutor v BWJ* [2023] 1 SLR 477 at [73]–[74]. Deference is generally accorded to a trial judge's findings of fact, but not to the inferences drawn from such established, objective facts:

> … Two principles are typically at play. First, appellate review is of a limited nature and appellate courts will be slow to overturn a trial judge's findings of fact unless they are shown to be plainly wrong or against the weight of the evidence (see also s 394 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed)). This is particularly so where the findings rest on the trial judge's assessment of the credibility and veracity of witnesses. Second, a trial judge's findings of fact are distinct from the inferences he draws from such findings. An appellate court is justified in differing from the inferences drawn by a trial judge if they are not supported by the primary or objective evidence on record. As the learned Chief Justice stated recently in *Loh Der Ming Andrew v Koh Tien Hua* [2022] 3 SLR 1417 at [98], a trial judge "has no advantage over, and therefore commands no deference from [an appellate court] when it comes to drawing inferences from established, objective facts". These two general principles apply equally to appeals against acquittal and to appeals against conviction.

70 However, in limited circumstances, intervention by an appellate court in respect of findings of fact and the exercise of discretion can occur (*Lim Chee Huat* at [59], citing *Yap Ah Lai* at [58] and *Public Prosecutor v UI* [2008] 4 SLR(R) 500 at [12]).

71 Deference accorded to a trial judge's findings of fact is premised on the notion that the trial judge is better placed than the appellate court, having had the benefit of hearing the evidence of the witnesses in full and observing their demeanour, to make such findings of fact (see, *Yap Giau Beng Terence v Public Prosecutor* [1998] 2 SLR(R) 855 at [24]). Thus, where the assessment of a witness's credibility is based on the internal or external consistency of the witness's testimony as opposed to the witness's demeanour, the supposed advantage of the trial judge in having observed the witnesses is not critical, because the appellate court has access to the same material as the trial judge, and is in as good a position as the trial court in assessing the veracity of the witness's evidence (see, *Public Prosecutor v Wang Ziyi Able* [2008] 2 SLR(R) 61 ("*Wang Ziyi Able*") at [94], citing *Jagatheesan s/o Krishnasamy v Public Prosecutor* [2006] 4 SLR(R) 45 ("*Jagatheesan*") at [40]). This is compounded by the advent of technology and the corresponding availability of verbatim transcripts (as observed in *Goh Sin Huat Electrical Pte Ltd v Ho See Jui (trading as Xuanhua Art Gallery) and another* [2012] 3 SLR 1038 at [55] and *Tan Meow Hiang (trading as Chip Huat) v Ong Kay Yong (trading as Wee Wee Laundry Service)* [2023] SGHC 218 ("*Tan Meow Hiang*") at [26]).

72 Most pertinently, where the trial judge had failed to appreciate the material that is before him, his decision cannot be said to be the product of his exercise of judgment (see *Lim Chee Huat* at [56] and [59]). Any benefit of having observed the witnesses first hand would be rendered null; there is no justification for the usual deference to be accorded.

Appropriate recourse in the present case

73 In deciding the appropriate recourse in the present case, I refer to the summary of the Court of Appeal's decision in *AOF* (at [277(c)]–[277(d)]) in

Lim Chee Huat (at [56]), which sets out the relevant considerations for whether an acquittal, retrial or remittance to the trial judge is appropriate:

> (a) At one extreme, where the evidence adduced at the original trial was insufficient to justify a conviction, an acquittal and not a retrial should be granted save in exceptional circumstances.
>
> (b) At the other end of the extreme, where the evidence against the appellant at the original trial was so strong that a conviction would have resulted, the *prima facie* appropriate course is to dismiss the appeal and affirm the conviction.
>
> (c) Cases that fall between the two extremes include the following non-exhaustive situations: where critical evidence is no longer available; where the fairness of the trial below is compromised by the trial judge's conduct; or where the length of time before the putative retrial is disproportionate to the appellant's sentence or ongoing period of incarceration. The appellate court is to weigh the following non-exhaustive factors to determine if a retrial should be ordered: the seriousness and prevalence of the offence; the expense and length of time required for a fresh hearing; the extent to which a fresh trial will be an ordeal for the defendant; and whether the evidence that would have supported the appellant at the original trial would still be available.

74 The present case falls in between the two extremes justifying either an acquittal or conviction because the trial judge's conduct has compromised the fairness of the first instance trial.

75 Considering the relevant factors, a retrial is not appropriate on the present facts. The predominant consideration against a retrial is the expense and length of time required for a fresh hearing and the consequent ordeal for the victim. The charges against the appellant were for offences committed in 2021, some three years ago. The first instance trial spanned across nine days. This is not negligible and any retrial would likely require around the same amount of time. The charges also pertained to allegations of outrage of modesty, and a retrial would undeniably put the victim through the additional ordeal of having to go through the entire trial process again, through absolutely no fault of her

own (see, *eg*, *Public Prosecutor v Chua Siew Wei Kathleen* [2016] 2 SLR 713 ("*Kathleen Chua*") at [57]).

76 A remittal is also not appropriate in the circumstances. The trial judge had failed to apply his mind to the material before him and it would, therefore, not be viable to remit the matter back for his further inquiry or consideration (see, *eg*, *Kathleen Chua* at [57]). The present situation is also not one where there is new material for the trial court to consider or where there is a need for a fresh plea to be taken due to a procedural irregularity (see, *Lim Chee Huat* at [57]).

77 In my view, there is sufficient evidence and good reason for the appellate court to decide on the matter *de novo*. Although the trial judge made some cursory references to the witnesses' demeanour,[63] the trial judge failed to particularise or detail the specific demeanour he observed. As the trial judge's references to the witnesses' demeanour are only cursory, it cannot be seriously said that the trial judge had taken such demeanour into account in his analysis (see, above at [35]). Furthermore, demeanour should rarely, if at all, be the deciding factor in assessing credibility. The case, as other cases, turns on the internal and external consistencies of the witnesses' testimonies and the objective evidence before the court. In these circumstances, the appellate court is in as good a position to determine the veracity and credibility of the witnesses' evidence and make the appropriate findings of fact (see, above at [71]).

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[63] ROA at pp 607, 620–622 and 625–626 (Grounds of Decision at paras 9, 9(l), (a), 11 and 12).

The substantive appeal

78 Having found that the trial judge failed to apply his mind to his decision on conviction, I proceed to decide the entire matter (*ie*, both conviction and sentencing) afresh.

Conviction

79 The appellant was charged with three charges under s 354(1) of the Penal Code for using his hand to brush against both of the alleged victim's breasts at three distinct points in time. In respect of all three charges, the alleged victim was "V", a 17-year-old girl.

80 The first charge (MAC-900959-2022) occurred on 29 October 2021, sometime at or around 11.40pm, inside a taxi bearing vehicle plate number SHB 7605D, travelling along Choa Chu Kang Avenue 5 towards Blk 429A Choa Chu Kang Avenue 4.[64] It reads as follows:[65]

> You, … are charged that you, on 29 October 2021 sometime at or around 11.40pm, inside a taxi bearing vehicle plate number SHB 7605D, travelling along Choa Chu Kang Avenue 5 towards Blk 429A Choa Chu Kang Avenue 4, Singapore, did use criminal force against the said [V] (female / 17 years old), intending to outrage her modesty, to wit, by using your hand to brush against both the victim's breasts, and you have thereby committed an offence punishable under Section 354(1) of the Penal Code (Cap 224, 2008 Rev Ed).

81 The second and third charges are worded similarly, save for the different times and locations at which the offences occurred. The second charge (MAC-900960-2022) occurred on 29 October 2021 at or about 11.42pm, inside

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64 ROA at p 5.

65 ROA at p 5.

a taxi bearing vehicle plate number SHB 7605D, travelling along Blk 429A Choa Chu Kang Avenue 4 towards Blk 290 Choa Chu Kang Avenue 3.[66]

82 The third charge (MAC-900961-2022) occurred on 29 October 2021, sometime after 11.46pm, inside a taxi bearing vehicle plate number SHB 7605D, travelling along Blk 290 Choa Chu Kang Avenue 3.[67]

83 Section 354 of the Penal Code reads:

> **Assault or use of criminal force to a person with intent to outrage modesty**
>
> **354.**—(1) Whoever assaults or uses criminal force to any person, intending to outrage or knowing it to be likely that he will thereby outrage the modesty of that person, shall be punished with imprisonment for a term which may extend to 2 years, or with fine, or with caning, or with any combination of such punishments.
>
> (2) Whoever commits an offence under subsection (1) against any person under 14 years of age shall be punished with imprisonment for a term which may extend to 5 years, or with fine, or with caning, or with any combination of such punishments.

Undisputed facts

84 The parties had tendered an agreed statement of facts at the trial below.[68] These facts mostly relate to the locations of the appellant and the victim throughout the incident. The material parts of these undisputed facts are summarised as follows.

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66 ROA at p 6.

67 ROA at p 7.

68 ROA at pp 8–10.

85 At the time of the offences on 29 October 2021, the appellant worked as a taxi driver. He drove a red car bearing licence plate number SHB 7605D.[69]

86 On 29 October 2021, sometime before 11.40pm, the victim was waiting at a bus stop in front of the carpark near Blk 486 Choa Chu Kang Avenue 5.[70] She intended to travel to Blk 429A Choa Chu Kang Avenue 4.[71] The appellant was driving along Choa Chu Kang Avenue 5 and spotted the victim.[72] After a brief conversation, the victim boarded the appellant's taxi and sat in the front passenger seat.[73] The appellant drove her towards the carpark at Blk 429A Choa Chu Kang Avenue 4.[74]

87 The appellant and the victim arrived at the carpark at Blk 429A Choa Chu Kang Avenue 4 at around 11.42pm.[75] The victim alighted from the appellant's taxi and searched for a BlueSG car, but did not find it.[76] The appellant offered the victim a lift out of the carpark, and she boarded the appellant's taxi again, sitting in the front passenger seat.[77] The appellant, with the victim in his taxi, left the carpark at around 11.46pm and drove towards Blk 290 Choa Chu Kang Avenue 3, where the victim alighted.[78]

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69 ROA at p 8 para 1.

70 ROA at p 8 para 2.

71 ROA at p 8 para 2.

72 ROA at p 8 para 2.

73 ROA at p 8 para 2.

74 ROA at p 8 para 2.

75 ROA at p 9 para 3.

76 ROA at p 9 para 3.

77 ROA at p 9 para 3.

78 ROA at p 9 para 4.

88 On 30 October 2021, at or around 12.46am, the victim made a police report (the "First Information Report"), stating that she had been sexually harassed:[79]

> Around half an hour ago, someone sexually harassed me. This happened very quickly. I took the taxi from a bus stop at Choa Chu Kang to go to a carpark to search for my phone. The driver said the ride was free. His taxi is red in colour, I did not notice his plate number. He kept on touching my breast area in the taxi. I also do not have a taxi receipt. I alighted at Blk 290 Choa Chu Kang just now. I am with two friends now.

89 At or around 2.28am, the victim provided a police statement recorded pursuant to s 22 of the CPC (the "police statement").[80]

90 On the same day at 3.05am, Inspector Nalinee Chua seized the victim's t-shirt, which was worn during the time when the alleged offences had occurred.[81] The t-shirt was subsequently submitted to the DNA Profiling Laboratory of the Health Sciences Authority Singapore ("HSA") on 18 November 2021 at 10.55am by one Muhammad Rudy Firdaus Bin Masban.[82]

91 On 30 October 2021 at 3.25pm, the appellant was arrested.[83] On 31 October 2021 at 10.10am, the appellant's blood sample was obtained, and marked as "S184034".[84] This sample was submitted to the HSA for DNA comparison.[85]

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79 ROA at p 653.

80 ROA at p 908.

81 ROA at p 9 para 5.

82 ROA at p 9 para 5.

83 ROA at p 9 para 6.

84 ROA at p 9 para 6.

85 ROA at p 9 para 6.

92 On 31 October 2021 at 10.13am, the appellant's statement was recorded pursuant to s 22 of the CPC (the "investigation statement").[86]

The parties' cases

93 The Prosecution's case was that the appellant had used his hand to touch both of the victim's breasts, over her clothes, on the pretext of helping her put on or remove her seat belt.[87] In support of its case, the Prosecution submits that the victim was unusually convincing,[88] and the appellant's testimony should be rejected as he was evasive, inconsistent and failed to challenge the victim's evidence that he had touched her breasts.[89]

94 The main plank of the appellant's defence was that he did not touch the victim on all three counts.[90] The appellant challenged the truthfulness and credibility of the victim's account and submitted that she had fabricated or embellished her testimony.[91] As the appellant had made a slew of disparate allegations against the victim's account, I summarise the main tenets of his defence, and deal with them below (at [106]–[112]).

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86 ROA at pp 914–920.

87 ROA at p 667 (Prosecution's Closing Submissions at para 15).

88 ROA at p 671 (Prosecution's Closing Submissions at para 24).

89 ROA at p 692 (Prosecution's Closing Submissions at para 60).

90 ROA at p 935 (Response to DPP submissions at para 3); ROA at p 941 (Defence submissions at para (a)).

91 ROA at p 935 (Response to DPP submissions at para 3).

The victim's testimony

95 The victim testified that on 29 October 2021, her then-boyfriend PW2 had driven her home in a BlueSG rental car.[92] After she had washed up at home, she searched for her handphone but did not manage to find it.[93] After realising that she could not find her phone, she used her brother's school laptop to contact PW2 through Instagram, informing him that she had lost her phone, but received no response.[94] At around 11pm, she left her house wearing a football jersey and school shorts and headed to Blk 429A in the Choa Chu Kang area ("Blk 429A") to search for her phone.[95] She brought along her keys and wallet, which contained only her EZ-Link card.[96] She had no cash with her.[97]

96 The victim was unable to find her phone at the carpark of Blk 429A.[98] She managed to borrow a phone from other people in that carpark to make a phone call to PW2.[99] She informed PW2 that she had lost her phone, and PW2 told her to meet him at the carpark of Blk 486A in Choa Chu Kang ("Blk 486A") as he had parked the BlueSG car he had rented there instead.[100] The victim made her way to the carpark at Blk 486A by bus, but was unable to find her phone there as well.[101] The victim subsequently proceeded to the nearby bus stop to

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92 ROA at p 249 (NE (21 June 2023) Day 4 at page 16 lines 14 to 20).

93 ROA at p 249 (NE (21 June 2023) Day 4 at page 16 lines 23 to 29).

94 ROA at p 250 (NE (21 June 2023) Day 4 at page 17 line 25 to page 18 line 2).

95 ROA at p 251 (NE (21 June 2023) Day 4 at page 18 lines 5 to 15).

96 ROA at p 251 (NE (21 June 2023) Day 4 at page 18 lines 16 to 20).

97 ROA at p 251 (NE (21 June 2023) Day 4 at page 18 lines 21 to 22).

98 ROA at p 252 (NE (21 June 2023) Day 4 at page 19 lines 12 to 16).

99 ROA at pp 251–253 (NE (21 June 2023) Day 4 at page 19 line 29 to page 20 line 11).

100 ROA at p 253 (NE (21 June 2023) Day 4 at page 20 lines 14 to 20).

101 ROA at p 254 (NE (21 June 2023) Day 4 at page 21 lines 1 to 17).

take bus number 932, so as to return to the carpark at Blk 429A and search for her phone there again.[102]

97 As the victim was waiting at the bus stop, the appellant's taxi slowed down and came to a stop at the bus stop.[103] The victim had not made any gestures to cause or indicate for the appellant to slow down.[104] The appellant asked the victim where she was headed towards.[105] Although the victim could not recall her exact response, she testified that she recalled telling the appellant that she was going to the Blk 429A carpark.[106] The appellant offered to drive her to Blk 429A for free.[107] She informed him that she did not have any cash with her, but he still insisted to offer her a ride.[108] The victim boarded the appellant's taxi and sat in the front passenger seat.[109]

98 When the appellant was driving from Choa Chu Kang Avenue 5 towards Blk 429A Choa Chu Kang Avenue 4, a sound in the taxi rang (*ie,* the seatbelt indication alarm), signalling that a seatbelt was not fastened.[110] The victim admits that her seatbelt (located above her left shoulder) was not fastened when the seatbelt indication alarm sounded.[111] The appellant did not say anything

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102 ROA at p 254 (NE (21 June 2023) Day 4 at page 21 lines 18 to 27).

103 ROA at p 255 (NE (21 June 2023) Day 4 at page 22 lines 1 to 13).

104 ROA at p 255 (NE (21 June 2023) Day 4 at page 22 lines 21 to 23).

105 ROA at p 255 (NE (21 June 2023) Day 4 at page 22 lines 6 to 7).

106 ROA at p 256 (NE (21 June 2023) Day 4 at page 23 lines 14 to 20).

107 ROA at p 256 (NE (21 June 2023) Day 4 at page 23 lines 21 to 28).

108 ROA at p 257 (NE (21 June 2023) Day 4 at page 24 lines 3 to 6).

109 ROA at pp 257–258 (NE (21 June 2023) Day 4 at page 24 line 11 to page 25 line 6).

110 ROA at p 258 (NE (21 June 2023) Day 4 at page 25 lines 28 to 32).

111 ROA at p 259 (NE (21 June 2023) Day 4 at page 26 lines 1 to 3 and 16 to 20).

when the alarm sounded.[112] When the victim tried to put on her seatbelt, the appellant reached his hand out to his left, did not tell the victim that he was going to reach out and,[113] in the process, brushed the victim's breasts for a few seconds.[114] The victim testified that the amount of pressure in the contact between the appellant's hand and her breasts was "not light".[115] She also testified that she had no difficulty in putting on her own seatbelt.[116] These form the factual backdrop to the first charge.

99 While on the way to Blk 429A, the victim asked the appellant for his mobile number as she wanted to ask her mother to pay him for the ride, but he declined.[117] When they reached the carpark of Blk 429A, the victim got out of the taxi and searched for her phone at the parking lots where the BlueSG cars were parked.[118] After searching for five to ten minutes,[119] she returned to the appellant's taxi parked within the vicinity. When he asked her if she could find her phone, she replied that she could not.[120] The appellant offered to send her home, but she declined his offer.[121] The appellant insisted on dropping her off

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112 ROA at p 259 (NE (21 June 2023) Day 4 at page 26 lines 6 to 8).

113 ROA at pp 260–261 (NE (21 June 2023) Day 4 at page 27 line 29 to page 28 line 3).

114 ROA at pp 259–260 (NE (21 June 2023) Day 4 at page 26 line 30 to page 27 line 14)).

115 ROA at p 260 (NE (21 June 2023) Day 4 at page 27 lines 15 to 17).

116 ROA at p 261 (NE (21 June 2023) Day 4 at page 28 lines 4 to 6).

117 ROA at p 261 (NE (21 June 2023) Day 4 at page 28 lines 12 to 17).

118 ROA at p 261 (NE (21 June 2023) Day 4 at page 28 lines 26 to 29).

119 ROA at p 263 (NE (21 June 2023) Day 4 at page 30 lines 3 to 5).

120 ROA at p 263 (NE (21 June 2023) Day 4 at page 30 lines 12 to 23).

121 ROA at p 263 (NE (21 June 2023) Day 4 at page 30 lines 24 to 28).

somewhere nearby.[122] The victim did not feel good, but eventually got into the appellant's taxi and sat in the front passenger seat.[123]

100 The victim could not recall informing the appellant where to drive her to.[124] All she could remember was that the appellant drove her to Blk 290 in the Choa Chu Kang area.[125] As the appellant drove out from the carpark of Blk 429A to Blk 290 Choa Chu Kang Avenue 3 ("Blk 290"), the victim attempted to put on her seatbelt.[126] There had been no reminders to put on her seatbelt prior to this.[127] The appellant again reached his hand out to help put the victim's seatbelt on for her and, in the process, brushed his hand against the victim's breasts for a few seconds.[128] The victim had not asked for assistance to put on her seatbelt, and there was no warning given by the appellant that he was going to help the victim put on her seatbelt.[129] Similarly, the victim testified that the appellant's touch was not "very light".[130] These facts go towards the second charge.

101 Lastly, when they arrived at the gantry in front of Blk 290, the victim tried to unbuckle her seatbelt.[131] The victim did not struggle with releasing her seatbelt on her own.[132] However, the appellant reached out to help her with

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122 ROA at pp 263–264 (NE (21 June 2023) Day 4 at page 30 line 29 to page 31 line 1).

123 ROA at p 264 (NE (21 June 2023) Day 4 at page 31 lines 8 to 16).

124 ROA at p 264 (NE (21 June 2023) Day 4 at page 31 lines 20 to 22).

125 ROA at p 264 (NE (21 June 2023) Day 4 at page 31 lines 23 to 26).

126 ROA at pp 264–265 (NE (21 June 2023) Day 4 at page 31 line 27 to page 32 line 1).

127 ROA at p 264 (NE (21 June 2023) Day 4 at page 31 lines 29 to 30).

128 ROA at pp 265–266 (NE (21 June 2023) Day 4 at page 32 line 3 to page 33 line 3).

129 ROA at p 266 (NE (21 June 2023) Day 4 at page 33 lines 18 to 24).

130 ROA at p 266 (NE (21 June 2023) Day 4 at page 33 lines 4 to 5).

131 ROA at p 267 (NE (21 June 2023) Day 4 at page 34 lines 8 to 24).

132 ROA at p 269 (NE (21 June 2023) Day 4 at page 36 lines 7 to 9).

unbuckling the seatbelt,[133] without warning,[134] and his hands brushed the victim's breasts for a few seconds when doing so.[135] Again, it was not a light touch.[136]

102 After her seatbelt was released, the victim quickly got out of the appellant's taxi and thanked him for the ride.[137] She does not remember if there was any other conversation between her and the appellant thereafter.[138] She then walked to Blk 291 in the Choa Chu Kang area, and asked a group of strangers if she could borrow a phone.[139] She called PW2 and asked him where he was, to which he replied that he was on his way.[140] After this call, the victim proceeded to Blk 486A and waited for PW2 to arrive at the carpark with the BlueSG cars.[141]

103 After waiting at the Blk 486A carpark for about ten to 15 minutes, PW2 had yet to arrive, so the victim went to the void deck of Blk 485D and approached two individuals to ask if she could borrow one of their phones to contact PW2.[142] She successfully called PW2, and he informed her that he was "almost reaching" and that he was at the carpark at Blk 486.[143] After returning the phone back to the two individuals, one of them, a girl, invited the victim to

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133 ROA at p 267 (NE (21 June 2023) Day 4 at page 34 lines 25 to 27).

134 ROA at p 269 (NE (21 June 2023) Day 4 at page 36 lines 1 to 6).

135 ROA at p 268 (NE (21 June 2023) Day 4 at page 35 lines 18 to 27).

136 ROA at p 268 (NE (21 June 2023) Day 4 at page 35 lines 28 to 29).

137 ROA at p 269 (NE (21 June 2023) Day 4 at page 36 lines 13 to 17).

138 ROA at p 269 (NE (21 June 2023) Day 4 at page 36 lines 18 to 22).

139 ROA at pp 269–270 (NE (21 June 2023) Day 4 at page 36 line 28 to page 37 line 10).

140 ROA at p 270 (NE (21 June 2023) Day 4 at page 37 lines 15 to 21).

141 ROA at p 270 (NE (21 June 2023) Day 4 at page 37 lines 24 to 31).

142 ROA at pp 271–272 (NE (21 June 2023) Day 4 at page 38 line 5 to page 39 line 3).

143 ROA at p 272 (NE (21 June 2023) Day 4 at page 39 lines 10 to 16).

sit with them.[144] The victim agreed and informed PW2 that she would be waiting for him in front of the carpark at Blk 485D, with the two individuals.[145] After the call, the victim conversed with the two individuals and told them about what had happened to her from the time she first returned home with PW2 until the time she met them.[146] The two individuals told the victim that she had been molested and told her to call the police.[147] The victim subsequently called the police, as recorded in the First Information Report.[148]

Whether the victim was unusually convincing

104 Where the testimony of the complainant or witness in question is uncorroborated, the testimony would need to be "unusually convincing" to find that the Prosecution has proven its case beyond a reasonable doubt (see, *AOF* at [111]; *Public Prosecutor v GCK and another matter* [2020] 1 SLR 486 ("*GCK*") at [89]–[91]). The analysis involves scrutinising and "weighing the demeanour of the witness alongside both the internal and external consistencies found in the witness' testimony" [emphasis in original omitted] (*AOF* at [115]).

(1) Internal consistency

105 I find that the victim's account is internally consistent. The victim gave detailed particulars about what had happened and how the incidents occurred. She was candid and truthful about the details she could not remember and did not appear to embellish her evidence.

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144 ROA at p 272 (NE (21 June 2023) Day 4 at page 39 lines 21 to 31).

145 ROA at pp 273–274 (NE (21 June 2023) Day 4 at page 40 line 1 to page 41 line 6).

146 ROA at p 274 (NE (21 June 2023) Day 4 at page 41 lines 12 to 22).

147 ROA at p 275 (NE (21 June 2023) Day 4 at page 42 lines 4 to 11).

148 ROA at p 275 (NE (21 June 2023) Day 4 at page 42 lines 16 to 26).

106 The appellant alleged the following inconsistencies in the victim's testimony that cast doubt on her credibility:

(a) The victim's inability to recall and/or identify which hand he had allegedly touched her with.[149]

(b) The victim's inability to recall the exact locations where the offences had occurred.[150]

(c) The fact that the victim had embellished her evidence on when she had put on her seatbelt in relation to the second charge, when the appellant drove her from the Blk 429A carpark.[151] Although the victim initially stated that she had worn her seatbelt, the victim had changed her stance once the appellant showed her the police statement in court.[152] The truth was that she did not fasten her seatbelt until the "multicarpark" at Blk 429A.[153]

(d) The fact that the victim did nothing to "prevent" the offences in the second and third charges from happening.[154]

(e) The fact that the victim had repeatedly re-entered his taxi and chosen to sit in the front seat by herself casts doubt on her allegations

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149 ROA at p 941 (Response to DPP submissions at para 1); ROA at p 424 (NE (18 July 2023) Day 6 at page 8 lines 11 to 12).

150 ROA at p 935 (Response to DPP submissions at paras 3 and 5).

151 ROA at p 936 (Response to DPP submissions at para 4).

152 ROA at p 936 (Response to DPP submissions at para 4).

153 ROA at p 941 (Defence submissions at para (a)).

154 ROA at p 342 (NE (22 June 2023) Day 5 at page 57 lines 14 to 24).

that he had outraged her modesty.[155] According to the appellant, this was further reinforced by the fact that, in his version of events, she did not want to get down from his taxi.[156] Although the victim testified that it was the appellant who had insisted on her remaining in the car when they had reached Blk 290 Choa Chu Kang Avenue 3, this could not be the case as she was able to get out of his car within two seconds,[157] which would be corroborated by the evidence of the camera located at the entrance of the Blk 290 carpark.[158]

(f) The victim's alleged statement that she was "confused" and did not know how to react,[159] which casts doubt on the veracity and accuracy of her account of events.

(g) The victim's testimony that she had lost her phone.[160] According to the appellant, the victim and PW2 could not show where they had purchased the phone; there was no receipt, no proof of transaction and even the phone casing box could not be found.[161]

(h) The victim's account that she had asked him for his handphone number in order to pay him for the ride as she did not have any money. The appellant argues that he was merely offering her a free ride, and that

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155 ROA at p 933 (Response to DPP submissions at para 1); ROA at p 422 (NE (18 July 2023) Day 6 at page 6 lines 11 to 12); ROA at pp 424–425 (NE (18 July 2023) Day 6 at page 8 line 32 to page 9 line 2).

156 ROA at pp 933–934 (Response to DPP submissions at para 1).

157 ROA at p 937 (Response to DPP submissions at para 5).

158 ROA at p 934 (Response to DPP submissions at paras 1 and 12).

159 ROA at p 940 (Response to DPP submissions at para 12).

160 ROA at p 423 (NE (18 July 2023) Day 6 at page 7 lines 18 to 22).

161 ROA at pp 934–935 (Response to DPP submissions at para 2).

> the victim in fact had an EZ-Link card but did not pay him via the EZ-Link card, choosing instead to ask repeatedly for his handphone number to get him into trouble.[162]

107 Although the victim was unable to recall or identify which hand the appellant had allegedly touched her with, she was consistent throughout that the appellant had touched her with his hand. This was sufficient; the charges never stipulated the specific hand that the appellant had used, and the victim had never asserted otherwise. In fact, her truthfulness as to her inability to recall the exact hand used by the appellant lent to her credibility and candour.

108 The victim's inability to pinpoint the specific locations where the offences had occurred is not material in the circumstances. The victim was able to consistently identify the specific journeys where the offences occurred (*ie,* where they were travelling from and travelling towards). To my mind, it is not necessary, in the circumstances of the offences occurring inside a moving car, for the victim to know the exact street or location where the alleged offences occurred. The offences also occurred some few years before the trial. It is well-accepted that "minor discrepancies in a witness's testimony should not be held against the witness in assessing his credibility" as "human fallibility in observation, retention and recollection is both common and understandable" (*Jagatheesan* at [82]).[163]

109 The allegation that the victim had embellished her evidence on when she had put on her seatbelt is not borne out by the evidence. During

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162 ROA at p 940 (Response to DPP submissions at para 11); ROA at p 941 (Defence submissions at para (a)).

163 ROA at pp 681–682 (Prosecution's Closing Submissions at para 42).

examination-in-chief, the victim said that she and the appellant were "just headed out from the car park" when she put on her seatbelt.[164] During cross-examination, when told to reference her police statement which stated that she put on the seat belt "while en-route to [her] block", she agreed that she did not put on the seat belt immediately upon entering the car.[165] While the specific timing of when she had put on her seatbelt is unclear, I find that she was consistent in both examination-in-chief and cross-examination that she had remembered to put on the seatbelt on her own accord and was in the process of putting the seatbelt on when the appellant had touched her.

110 I do not find that the victim's alleged failure to "prevent" the second and third offences from occurring and her repeated sitting in the taxi's front passenger seat detracts from her credibility. It is well established that there is "no prescribed way in which victims of sexual assault are expected to act" (*Public Prosecutor v Wee Teong Boo and other appeal and another matter* [2020] 2 SLR 533 at [55]; see also, *Public Prosecutor v Yue Roger Jr* [2019] 3 SLR 749 at [30]). When questioned on her response, the victim gave evidence that she "felt shocked … couldn't say anything" and "[did not] know what to do".[166] She had chosen to sit in the front passenger seat as that was the seat she usually sat in when she travelled with her family.[167] As "all [she] could think of was to … find [her] phone", she did not think much about where to sit.[168] These, to my mind, are conceivable explanations for her behaviour. I also do not find that there is any evidence as to the alleged inconsistency in the victim's

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164 ROA at pp 264–265 (NE (21 June 2023) Day 4 at page 31 line 31 to page 32 line 1).

165 ROA at pp 319–320 (NE (22 June 2023) Day 5 at page 34 line 19 to page 35 line 10).

166 ROA at p 343 (NE (22 June 2023) Day 5 at page 58 lines 4 to 13).

167 ROA at p 400 (NE (22 June 2023) Day 5 at page 115 lines 4 to 9).

168 ROA at p 400 (NE (22 June 2023) Day 5 at page 115 lines 11 to 26).

statement as to how quickly she exited the appellant's taxi. Although the appellant alleges there is CCTV footage of the duration during which his taxi was stationary at Blk 290, no such footage is before me.

111 The victim's alleged state of confusion is not evident from the record. The victim had never stated that she was confused. What she had stated was that she did not know how to respond to the appellant as she was "unstable".[169] However, when questioned further by the appellant as to whether she was clear about what had happened, she expressly stated that she was aware of what was going on:[170]

> Q: So, the---the---the word comes is clear. So, can I say that the whole episode, actually you don't---you are not clear about what is going on?
>
> A: Sir, I didn't say---I didn't---I didn't know what was going on. *I was aware of what was going on.*
>
> [emphasis added]

When pressed on this point again during cross-examination, the victim remained consistent that she was aware of what was going on and was not confused, but that she was shocked and needed some time to process, which was why she did not know what to say to the appellant when the alleged offences happened:[171]

> Q: "She don't know how to respond to the driver". Can you elaborate on this point? On the 2nd charge. [V]?
>
> …
>
> A: Yes. Yes, Your Honour. Sir, by I mean like "I do not know how to respond to the driver", *I do not mean that I was confused.* I just didn't---I just didn't have the---how do I---it's like, it's like what---because I---because, like, I

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169 ROA at p 264 NE (21 June 2023) Day 4 at page 31 lines 9 to 11; ROA at pp 314–315 (NE (22 June 2023) Day 5 at page 29 line 23 to page 30 line 2).

170 ROA at p 315 (NE (22 June 2023) Day 5 at page 30 lines 3 to 7).

171 ROA at pp 334–335 (NE (22 June 2023) Day 5 at page 49 line 27 to page 50 line 26).

> did---I did said before that I wasn't in the position to know how---know what to---to say anything. Because---because clearly, I felt shocked. But I---I---after the---I felt---so---and then, like, I'm still pros---I'm trying to process what's going---what's going---so that I---okay, I already---I already---I already stated that I was---I was clearly---I was feeling shocked when it---I felt shocked at that time. So, technically, I don't---it might took some time for me to, you know, process.
>
> Q: This is on the 2nd charge, which is somewhere happening at the multi car park. So, when is your shockness recover, so you can have the---
>
> A: It's right after---
>
> Q: ---response---
>
> A: ---its right---right after the incident, which is when after I alighted at Block 290.
>
> Q: So, were you shocked until you don't know what you are doing at this point of time?
>
> A: *I never said I don't know what I was doing at---at that point of time.*
>
> [emphasis added]

This explanation is reasonable. It may have been the case that the victim was shocked and found herself unable to respond in the moment, but that does not detract from the fact that she could have been equally cognisant and aware of the events that had taken place.

112 I do not see how the issues regarding the disputed existence of the victim's phone, the fact that the appellant had offered her a free ride, the fact that the victim had an EZ-Link card which she could have used to pay him for the ride, and/or the victim's request for the appellant's handphone number (regardless of the victim's intention behind this request), are of any relevance to the charges before me. Accordingly, I do not see how they impinge on the credibility of the victim's testimony. In any event, the victim was consistent and clear throughout her testimony regarding these issues. The victim had

consistently reiterated that she was searching for her lost phone. The victim had never contested the fact that the appellant had offered to drive her for free. She also had never disputed the fact that she was in possession of her EZ-Link card; her evidence was that she was not in possession of any cash to pay the appellant with. Although the victim was unable to give a clear explanation as to why she did not use her EZ-Link card to pay the appellant, she admitted that she was aware that it could be done, and that it could be because there were insufficient funds in her EZ-Link card at that time.[172] This was again another instance of the victim's frankness in her testimony. Finally, the victim also did not contest the fact that she had asked the appellant for his phone number. Her explanation was that she had done so to get her mother to transfer the appellant money for the rides.[173] The victim was consistent in her explanations on all counts.

(2) External consistency

113 The victim's testimony is also consistent with the First Information Report and her police statement taken on 30 October 2021.

114 The First Information Report corroborates the material aspects of the alleged offences – it details the victim taking the taxi "from a bus stop at Choa Chu Kang to go to a carpark to search for [her] phone" and that the driver had "kept on touching [her] breast area in the taxi".[174] Although the First Information Report does not state that there were three separate instances of touching, I do not find this materially inconsistent with her testimony as the First Information Report states that the appellant had "kept on" touching her, indicating that it had

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172 ROA at pp 303–304 (NE (22 June 2023) Day 5 at page 18 line 27 to page 29 line 16).

173 ROA at p 261 (NE (21 June 2023) Day 4 at page 28 lines 12 to 15); ROA at pp 337–338 (NE (22 June 2023) Day 5 at page 52 line 29 to page 53 line 6).

174 ROA at p 653.

occurred more than once. The victim's statement in the First Information Report that the sexual harassment had "happened very quickly" is also consistent with her testimony in court that the appellant's hand had brushed her breasts for only a few seconds in all three incidents.[175] The First Information Report is also consistent with the ancillary details of the victim's testimony that the offences had occurred when she was in search of her phone, that the appellant driver had said that the ride was free, and that she had alighted from the appellant's taxi at Blk 290 in Choa Chu Kang.[176]

115 The victim's police statement also accords with her testimony.[177] In her police statement, the victim had testified as to three incidents where the appellant had touched her breasts. The details of these three incidents correspond with her testimony in court in terms of what had happened and the location where each offence had taken place:

(a) For the first charge, she stated that she was offered a free ride by the appellant while waiting at the bus stop in front of Blk 486, even when she informed him that she had no money.[178] When they were travelling towards Blk 429A, there was a sound indicating that the seatbelt was not put on.[179] As she tried to put on her seatbelt, the appellant used his hand to put on the seatbelt for her, and his hand brushed both of her breasts

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175 ROA at pp 260, 265–266 and 268 (NE (21 June 2023) Day 4 at page 27 lines 6 to 14, page 32 line 28 to page 33 line 3, and page 35 lines 21 to 27).

176 ROA at pp 254–256 and 267 (NE (21 June 2023) Day 4 at page 21 line 12 to page 23 line 28 and page 34 line 18 to page 36 line 14).

177 ROA at pp 908–913.

178 ROA at p 910.

179 ROA at pp 910–911.

over her t-shirt when he pulled the seatbelt down.[180] This coheres with her testimony that for the first charge, there was a seatbelt indication alarm that had prompted her to wear the seatbelt, then as she was trying to do so, the appellant had reached out with his hand and brushed over her breasts in the process.

(b) For the second charge, the victim stated in her police statement that the appellant driver had offered to drive her home from the Blk 429A carpark and that while en route to her block, she realised that she had not put on her seatbelt.[181] As she stretched out her hands to put on her seatbelt, the appellant used one of his hands to put on the seatbelt for her, and his hand brushed against both her breasts over her top in the process.[182] Although the appellant takes issue with the fact that the victim was not driven to her house but to the Blk 290 carpark instead, I do not find this materially inconsistent. The victim has testified that the Blk 290 carpark is within walking distance from her house.[183] It is therefore not inconsistent for the victim to say that the appellant was driving her towards the vicinity of her house. More importantly, although the appellant had repeatedly put to the victim that the seatbelt indication alarm had sounded, she remained consistent both in her police statement and her testimony at trial that this had not occurred.[184]

(c) With regards to the third charge, the victim was also consistent in her police statement that the driver had alighted her at the carpark

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180 ROA at p 911.

181 ROA at p 911.

182 ROA at p 911.

183 ROA at p 328 (NE (22 June 2023) Day 5 at page 43 lines 14 to 25).

184 ROA at p 320–321 (NE (22 June 2023) Day 5 at page 35 line 24 to page 36 line 5.

> gantry in front of Blk 290. As she removed her seatbelt, the driver stretched his hand out and removed the seatbelt for her and his hand had brushed over both her breasts over her top while doing so.[185]

116 Having surveyed the whole of the victim's testimony, I am satisfied that her testimony was both internally and externally consistent. She was consistent in what had happened, forthright in what she could not remember, and did not embellish her evidence.

(3) Corroborative evidence

117 I am also of the opinion that the victim's testimony was corroborated by her subsequent complaints to PW1 and PW2. The court adopts a liberal approach to corroboration (*GCK* at [96]) and a subsequent complaint by the complainant herself can amount to corroborative evidence if the statement implicates the accused and was made at the first reasonable opportunity after the commission of the offence (*AOF* at [173], citing *Public Prosecutor v Mardai* [1950] MLJ 33 at 33).

118 PW1 was one of the two individuals that the victim had approached at Blk 485D.[186] PW1 testified that the victim "looked as if she could not breathe and … her face was pale".[187] According to PW1, the victim wanted to borrow his handphone as she wanted to call her partner.[188] She then walked to the

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185 ROA at p 911.

186 ROA at p 271 (NE (21 June 2023) Day 4 at page 38 lines 14 to 21).

187 ROA at p 37 (NE (29 December 2022) Day 1 at page 11 lines 2 to 4).

188 ROA at p 37 (NE (29 December 2022) Day 1 at page 11 lines 18 to 29).

multistorey carpark, and returned after a while to borrow his phone again.[189] After the victim had called her partner, PW1 and his girlfriend spoke to the victim, asking her what had happened, as the victim "looked like she was in a state of disorder".[190] The victim had informed PW1 that:[191]

> … a taxi driver touched her at a bus stop. She was walking and the taxi driver asked her where she was going to. She said she was going home. The taxi driver told her to enter the taxi. She said she had no money, and then the driver said it's free. She told me that the taxi is red in colour and the driver in Chinese …

This is consistent with the victim's testimony as to the factual background of the occurrence of the offences. Although there is some apparent discrepancy in the statement that the taxi driver had "touched her at a bus stop", PW1 explained that in his mind, he thought that the victim had entered the taxi, and that was how she had been touched.[192]

119 PW1 was unable to furnish details as to the offence and admitted that he did not know what had really happened between the victim and the taxi driver.[193] He stated that the victim did not mention where she was headed to when she was at the bus stop, how many times she had been touched or when she had been touched.[194] However, PW1 stated that the victim had shown him where she had been touched, but that he could not remember exactly where because it was

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189 ROA at pp 38–39 (NE (29 December 2022) Day 1 at page 12 line 27 to page 13 line 10).

190 ROA at p 39 (NE (29 December 2022) Day 1 at page 13 lines 14 to 20).

191 ROA at p 39 (NE (29 December 2022) Day 1 at page 13 lines 23 to 28).

192 ROA at p 60 (NE (29 December 2022) Day 1 at page 34 at lines 3 to 24).

193 ROA at p 56 (NE (29 December 2022) Day 1 at page 30 lines 3 to 7).

194 ROA at pp 40 and 43 (NE (29 December 2022) Day 1 at page 14 lines 30 to 32 and page 17 lines 3 to 7).

a long time ago.[195] PW1 testified that he had told the victim to call the police as "there was a man who had touched her" in an area which "men cannot touch".[196] PW1 clarified that this meant either the thighs, waist or chest.[197]

120 PW2 also testified that the victim had called him. The victim "was crying, … spoke … in a very soft voice and asked for help to assist her".[198] When questioned further as to what help the victim had said she required, PW2 stated that "[t]he help was that she said she was touched. That was what she told me had happened. She did not know what to do after that".[199] PW2 testified that the exact words that the victim had used was "'molest', something like that", and that apart from the words "taxi driver", he could not hear the details of the incident relayed by the victim as she was "sobbing".[200] Although PW2 recounted that the victim did not say where the taxi was when she was molested,[201] there is a reasonable explanation for the lack of details furnished during the victim's call to PW2. As the victim was using another person's handphone and could not use the phone for a long period of time, the call was only around two minutes, and she had been crying for around more than one minute.[202] In those circumstances, it would have been reasonable for the victim to only relay her main concerns.

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195 ROA at pp 42–43 (NE (29 December 2022) Day 1 at page 16 line 31 to page 17 line 2).

196 ROA at p 42 (NE (29 December 2022) Day 1 at page 16 lines 5 to 16).

197 ROA at p 42 (NE (29 December 2022) Day 1 at page 16 lines 17 to 22).

198 ROA at pp 69–70 (NE (29 December 2022) Day 1 at page 43 line 32 to page 44 line 5).

199 ROA at p 70 (NE (29 December 2022) Day 1 at page 44 lines 15 to 18).

200 ROA at p 71 (NE (29 December 2022) Day 1 at page 45 lines 14 to 25).

201 ROA at p 71 (NE (29 December 2022) Day 1 at page 45 lines 31 to 32).

202 ROA at p 72 (NE (29 December 2022) Day 1 at page 46 lines 3 to 14).

121 The victim's testimony is also consistent with her Instagram messages (Exhibit P1) to PW2 after the incident that she had "report[ed] a case of outrage of modesty" and that she had been molested.[203]

122 The appellant's allegation, that the charges could be a scheme or ruse by the victim and PW2 to set the appellant up to draw the investigation officers' and the victim's parents' attention towards a case of alleged outrage of modesty instead of the details of the relationship between the victim and PW2 "which may contain illegal or unlawful acts",[204] has absolutely no ring of truth. The appellant referred to the Instagram messages between the victim and PW2 in support of this.[205] However, the Instagram messages do not reveal any intention to conspire against the appellant. PW2's message stating "so its [*sic*] me that's going to be arrested"[206] should be interpreted alongside the victim's response, "why would I literally [*sic*] report you to the police? [Y]ou didn't do anything wrong. I told you, I was molested".[207] On its face, PW2 had misunderstood that the victim had reported *him* (*ie*, PW2) to the police, but after the victim had clarified that she had reported a case of molestation, his doubts were clarified as he replied, saying, "ok sure.then how abt [*sic*] the phone?".[208] There was therefore no reason for PW2 to have fabricated allegations against the appellant. In fact, I found that the Instagram messages showed the victim to be forthcoming; she repeatedly told PW2 to "just tell [the police] the truth".[209] The

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203 ROA at pp 646 and 651 (Exhibit P1).

204 ROA at p 164 (NE (30 December 2022) Day 2 at page 64 lines 23 to 29).

205 ROA at pp 162–163 (NE (30 December 2022) Day 2 at page 62 line 18 to page 63 line 14.

206 ROA at p 649.

207 ROA at p 651.

208 ROA at p 652.

209 ROA at p 649.

appellant himself agreed during cross-examination that if the victim and PW2 had wanted to hide their relationship, it would have been easier for them to not notify the police at all.[210] The appellant's allegation is therefore inconsistent and baseless, reinforcing my finding that there is no evidence of a scheme by the victim or PW2 to implicate the appellant.

123 On the whole, I find that the general tenor of the victim's testimony is consistent with that of PW1 and PW2, as well as the Instagram messages exhibited. There is evidence of the victim's genuine distress after the alleged offences, which lends weight to the veracity of her testimony that the offences had occurred (see, *eg*, *Haliffie bin Mamat v Public Prosecutor and other appeals* [2016] 5 SLR 636 at [65], where the court concluded that any suggestion that the victim might have intentionally tried to frame the accused for rape seemed implausible given that her emotional distress appeared genuine and she was unlikely to have been in such a state as to devise such a devious charge against the accused). The victim here had conveyed to both PW1 and PW2 that she had been touched or molested by a taxi driver shortly after the alleged offences. I also find that there was no plausible motive or reason for the victim to have fabricated the charges against the appellant.

The appellant's testimony

124 In considering whether the victim's evidence is "unusually convincing", the court must "assess the complainant's testimony against that of the accused" (*XP v Public Prosecutor* [2008] 4 SLR(R) 686 at [34]). There are inconsistencies in the appellant's testimony which cast doubt on his credibility.

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210 ROA at p 517 (NE (19 July 2023) Day 7 at page 21 lines 22 to 28).

Accordingly, I find that the victim's account is to be preferred over the appellant's.

125 The appellant's version of events was that:

(a) For the first charge, he had reminded the victim to put on her seatbelt when she first entered his car and after the seat belt alarm indication had gone off.[211] The appellant admitted that as the victim had taken "quite a while", he had grabbed the seat belt for her to assist her.[212] However, the appellant stressed that he had not touched the victim in the process.[213] He had pulled the belt away from her and not close to her, because if he had done the latter, the belt would have retracted.[214]

(b) In relation to the second charge, the appellant's account was that he had only verbally instructed the victim to wear her seatbelt when the car's seatbelt alarm sound had gone off. He had never reached out to assist her in fastening the seatbelt and thus could not have touched her.[215]

(c) For the third charge, the appellant submitted that he did not touch her as well. The appellant contended that the victim had asked for his handphone number a few times and refused to alight upon reaching the destination.[216] He informed her that he had a passenger waiting for

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211 ROA at p 418 (NE (18 July 2023) Day 6 at page 2 lines 24 to 30).

212 ROA at p 419 (NE (18 July 2023) Day 6 at page 3 lines 1 to 4).

213 ROA at p 419 (NE (18 July 2023) Day 6 at page 3 line 5).

214 ROA at p 422 (NE (18 July 2023) Day 6 at page 6 lines 3 to 6).

215 ROA at p 420 (NE (18 July 2023) Day 6 at page 4 lines 12 to 20).

216 ROA at p 420 (NE (18 July 2023) Day 6 at page 4 line 26 to 30).

him.[217] When he reached out for her seatbelt buckle, the victim had already exited the taxi.[218]

126 The appellant proffered inconsistent versions of what he had done with the seatbelt with respect to the first charge.[219] In the appellant's examination-in-chief and parts of his cross-examination, he stated that he had "pull[ed]" the seatbelt. This was also what the appellant had stated in his investigation statement, namely, that he had "helped her by pulling the seat belt so that the seat belt do [*sic*] not retract back… My left hand was the one which pulled the seatbelt for her".[220] However, when questioned further during the trial to explain what he meant by "pull[ing] the seatbelt", the appellant stated that he meant that he had "h[e]ld the seatbelt for her".[221] In his demonstration of this movement to the court, the appellant kept his hand stationary.[222] The appellant agreed that "holding" had a different meaning from "pulling"; while the former suggested a stationary action, the normal meaning of "pulling" meant to "exert force to cause movement towards yourself".[223] Nonetheless, the appellant maintained that his two accounts were consistent. He explained that bearing in mind the traction mechanism of the seat belt, holding the seatbelt had the same meaning as pulling the seatbelt.[224] I am not convinced as to his explanation for this discrepancy, given that he had previously admitted that the two words

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217 ROA at pp 420–421 (NE (18 July 2023) Day 6 at page 4 line 30 to page 5 line 3).

218 ROA at p 421 (NE (18 July 2023) Day 6 at page 5 lines 3 to 7).

219 ROA at pp 693–694 (Prosecution's Closing Submissions at para 63(a)).

220 ROA at p 916 (Exhibit D3 at para 3).

221 ROA at p 466 (NE (18 July 2023) Day 6 at page 50 lines 10 to 17).

222 ROA at p 466 (NE (18 July 2023) Day 6 at page 50 lines 14 to 15).

223 ROA at p 522 (NE (19 July 2023) Day 7 at page 26 lines 15 to 19).

224 ROA at p 535 (NE (19 July 2023) Day 7 at page 39 lines 5 to 9).

meant different things, reflecting his understanding in the differences between the two actions described. In my view, his description of his action as stationary was an attempt to downplay his involvement or interference with the victim's seatbelt, and the likelihood of having touched the victim's breasts.

127 I do not agree with the Prosecution that the appellant was inconsistent as to how he had reminded the victim to put on the seatbelt for the first charge. The Prosecution submitted that the appellant testified in his examination-in-chief that he had verbally reminded the victim to put on her seat belt by shouting "[b]elt, belt, belt",[225] but was inconsistent in so far as the appellant had made no mention thus far of any verbal reminders by him to the victim.[226] The appellant's investigation statement however does state that for the first charge, when the seatbelt indication alarm sounded, the appellant told the victim "belt, belt".[227]

128 The appellant's account as to whether he had informed the victim to put on her seatbelt for the second charge was, however, inconsistent in a few aspects: (a) whether the appellant had verbally instructed the victim to wear the seatbelt; (b) whether the car's seatbelt indication alarm had sounded; and (c) whether the appellant had pointed to the seatbelt or gestured for the victim to wear the seatbelt.

129 During examination-in-chief, the appellant testified that he had verbally instructed the victim to wear her seatbelt upon hearing the seatbelt indication alarm. During cross-examination, the appellant stated that he had "point[ed] at

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225 ROA at p 694 (Prosecution's Closing Submissions at para 63(b)); ROA at p 418 (NE (18 July 2023) Day 6 at page 2 lines 24 to 28).

226 ROA at p 694 (Prosecution's Closing Submissions at para 63(b)).

227 ROA at p 915 (Exhibit D3 at para 3).

the seat belt and said '[b]elt, belt, belt'".[228] In the appellant's investigation statement, he instead stated that that the seatbelt indication alarm "buzzer sound[ed] out" and he had only "gestured [to the victim] to take the seat belt on her left and she took it and put the seat belt on".[229]

130 However, the appellant also admitted during cross-examination that there were no reminders either from himself or the taxi (*ie,* there was no seat belt indication alarm) to the victim to put on her seatbelt:[230]

> Q: And I put to you that there was no siren sound from the taxi for this 2nd charge. Agree or disagree?
>
> A: Disagree.
>
> Q: *Okay. And I put to you that there were no reminders from you or the taxi to [the victim] to put on the seat belt. Agree or disagree?*
>
> A: *Agree.*
>
> [emphasis added]

This admission runs contrary to his testimony that he had: (a) verbally or physically informed the victim to put on the seatbelt; (b) that the car seatbelt's indication alarm had sounded.

131 There are no convincing explanations for the inconsistencies in the appellant's examination-in-chief, cross-examination and investigation statement. The appellant raised an allegation during re-examination that he had informed the investigation officer that he had said "[b]elt, belt, belt", but it was not recorded down.[231] I find this to be belated and an afterthought – he had not

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228 ROA at 505 (NE (19 July 2023) Day 7 at page 9 lines 4 to 17).

229 ROA at p 917 (Exhibit D3 at para 5).

230 ROA at p 500–501 (NE (19 July 2023) Day 7 at page 5 line 31 to page 6 line 4).

231 ROA at pp 535–536 (NE (19 July 2023) Day 7 at page 39 line 18 to page 40 line 2).

alleged any discrepancy in his police statement during his examination-in-chief or cross-examination.

132 Crucially, the appellant had not put the material aspects of his defence to the victim. A key aspect of the trial is that contradictory facts should be put to the witness during cross-examination to give the witness an opportunity to respond. This is encapsulated in the rule in *Browne v Dunn* (1893) 6 R 67, which was pithily summarised by Professor Jeffrey Pinsler SC in *Evidence and the Litigation Process* (LexisNexis, 7th Ed, 2020) at para 20.096 (see also, *Parti Liyani v Public Prosecutor* [2020] SGHC 187 at [44]):

> If the cross-examiner has adduced, or intends to adduce, evidence, which in any respect contradicts the evidence of the witness being cross-examined, he should put the contradictory facts to the witness so that the evidence of the witness is put in contention (officially challenged), and the latter is given the opportunity to respond. If the cross-examiner fails to put his case to the witness, the court is free to regard the witness's evidence as undisputed regardless of the nature of the cross-examiner's case.

133 The failure to put contradictory facts to the witness during cross-examination may, itself, be held to imply acceptance of the witness' account of events (see, *Arts Niche Cyber Distribution Pte Ltd v Public Prosecutor* [1999] 2 SLR(R) 936 at [48]; *Yeo Kwan Wee Kenneth v Public Prosecutor* [2004] 2 SLR(R) 45 at [35]). I am cognisant of the fact that the appellant was self-represented during his conduct of the cross-examination of the victim and experienced some unfamiliarity with trial procedure. Nonetheless, one would have thought that if his account was true, he would have at least challenged the victim on the material aspects of his case. This is

reinforced by the fact that the Judge had reminded the appellant numerous times to put his version of events to the victim:[232]

> (a) Not once had the appellant challenged the victim's testimony that he had touched her. This, to my mind, is significant. One would have thought that, in the least, the appellant would have stated or questioned the victim on her allegations that he had touched her three times. Instead, the appellant challenged ancillary aspects of her testimony, including the existence of her handphone and her possession of the EZ-Link card. The appellant also repeatedly questioned the victim on why she had done nothing to "prevent" an outrage of modesty. The appellant's ability to challenge these other aspects of the victim's testimony but not the crux of the offences invite scepticism on his account:
>
> (i) Specific to the second charge, the appellant admitted that he did not challenge the victim's evidence that he had reached out to help her put on her seatbelt despite the court's reminders to put his version of events to her:[233]
>
> Q: I see, Mr Ler. So, you didn't challenge the victim's evidence on what you earlier said was a key part of your defence. That's cor---that's what I'm hearing, right?
>
> A: Yes.
>
> Q: Okay. And this is even though the Court had reminded you during the cross-examination that you are supposed to put your version of events to her, the victim, correct? He had reminded you.

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232 ROA at p 338 (NE (22 June 2023) Day 5 at page 53 lines 20 to 28); ROA at p 395 (NE (22 June 2023) Day 5 at page 110 lines 22 to 31).

233 ROA at p 509 (NE (19 July 2023) Day 7 at page 13 lines 23 to 31).

A: Correct.

(b) When the victim testified that the appellant had not said anything to her during the incident forming the first charge, the appellant did not challenge her evidence on this point. This is in spite of the fact that the appellant's account was that he had shouted "[b]elt, belt, belt" to the victim, asked her to wear her seatbelt and ushered or pointed to her belt before assisting her with the seatbelt.[234] Although the appellant justified this on the basis that he did not think it was a key point and he could not hear the victim's testimony,[235] I find this difficult to believe. As the Prosecution pointed out, the victim would have been speaking into the microphone and the appellant could have raised his inability to hear the victim's testimony to the court at the appropriate juncture. Further, the appellant had agreed at the start of cross-examination that he had paid attention to what the witnesses were saying.[236]

134 On the face of the record, the appellant was a difficult witness, often putting up bare allegations that were inconsistent with his earlier concessions of fact. For example, in relation to his allegation that the victim and PW2 were colluding to report him to the police to conceal their relationship, although he agreed that if the victim and PW2 wanted to truly hide their relationship they would not have lodged a police report as opposed to reporting him for outrage of modesty, he continued to assert that the victim and PW2 were scheming against him.[237] Another instance is in relation to the appellant's allegation that the victim was inconsistent in whether he had used one "hand" or both "hands"

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234 ROA at pp 462–463 (NE (18 July 2023) Day 6 at page 46 line 1 to page 47 line 28).

235 ROA at pp 455–456 (NE (18 July 2023) Day 6 at page 39 line 27 to page 40 line 9).

236 ROA at p 432 (NE (18 July 2023) Day 6 at page 16 lines 16 to 24).

237 ROA at p 517 (NE (19 July 2023) Day 7 at page 21 lines 22 to 32).

to touch her breasts. Although he admitted that the victim was consistent in her evidence at trial and in her police statement that he had used his hand (singular) to touch her, he still disagreed that there was no inconsistency in the victim's statement in this aspect.[238]

135 Most of the appellant's defence is also premised on tenuous and questionable lines of reasoning. The appellant had questioned the victim's lack of prevention of the alleged outrage of modesty,[239] insisted that she had created a "good chance" of molestation,[240] asserted that he was offering the victim a free ride and was assisting her,[241] and that although he was given "so many chance by her", he did not "concede to her advancing" and that he had escaped or "walk[ed] out of such allurement" because he was not interested her and therefore would not have wanted to touch her.[242]

The DNA analysis

136 I turn to deal with the DNA analysis by the HSA which failed to find traces of the appellant's DNA on the victim's t-shirt.[243] The analysis only reveals the DNA of an "UNKNOWN FEMALE 1" on the exterior chest portion of the t-shirt.[244]

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238 ROA at p 520 (NE (19 July 2023) Day 7 at page 24 lines 8 to 16).

239 ROA at p 341 (NE (22 June 2023) Day 5 at page 56 lines 9 to 28); ROA at p 343 (NE (22 June 2023) Day 5 at page 58 lines 20 to 29); ROA at pp 423–424 (NE (18 July 2023) Day 6 at page 7 line 32 to page 8 line 1).

240 ROA at p 358 (NE (22 June 2023) Day 5 at page 73 lines 24 to 25).

241 ROA at pp 330–331 (NE (22 June 2023) Day 5 at page 45 line 5 to page 46 line 6).

242 ROA at p 936 (Response to DPP submissions at para 4).

243 ROA at p 654 (Exhibit P3); ROA at p 934 (Response to DPP submissions at para 2).

244 ROA at p 654 (Exhibit P3).

137 I agree with the Prosecution's submissions that the non-occurrence of the appellant's DNA on the victim's shirt is neutral. Dr Thong Zhonghui (PW3) ("Dr Thong") testified during examination-in-chief that there were "a lot of factors that [could] affect the DNA transfer",[245] although he could not comment on the applicable factors in the present case.[246] These included the degree of contact, whether the person has washed his hand before touching the object, and environmental factors which could lead to the decay of the integrity of DNA.[247] When asked whether the DNA evidence could inform about whether the appellant had touched the exterior chest area of the t-shirt, Dr Thong stated that he was unable to comment on this based on the DNA result.[248] Dr Thong did not once state that the non-availability of one's DNA on the test result indicated that the appellant could not have touched the victim. In fact, part of his testimony was that a "person may have touched the object and may not leave much of his DNA behind" and that "there [were] a lot of factors that affec[t] the recovery of the DNA".[249]

138 On the evidence before me, it would not be possible to conclude that the non-existence of the appellant's DNA on the victim's t-shirt necessarily meant that he did not touch her.

139 In conclusion, I find the victim's evidence to be unusually convincing and well-corroborated. Contrary to the appellant's submissions, I did not find any reason for the victim to fabricate her version of events. In my judgment, the

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245 ROA at p 241 (NE (21 June 2023) Day 4 at page 8 lines 3 to 4); ROA at p 699 (Prosecution's Trial Submissions at para 70).

246 ROA at p 241 (NE (21 June 2023) Day 4 at page 8 lines 19 to 21).

247 ROA at p 241 (NE (21 June 2023) Day 4 at page 8 lines 3 to 21).

248 ROA at pp 241–242 (NE (21 June 2023) Day 4 at page 8 line 22 to page 9 line 2).

249 ROA at p 241 (NE (21 June 2023) Day 4 at page 8 lines 18 to 20).

appellant had therefore touched the victim's breasts on all three occasions. I did not believe the appellant's assertions that he could have touched her "accidentally".[250] The victim had not asked for any assistance with her seatbelt. The fact that the appellant had touched the victim's breasts three times during the span of two taxi rides and that the pressure for each of these touches was not light leads to the inference that the appellant did so intentionally. I conclude that all three charges are made out against the appellant.

Sentencing

140 I apply the sentencing framework for s 354(1) offences as set out in *Kunasekaran s/o Kalimuthu Somasundara v Public Prosecutor* [2018] 4 SLR 580 ("*Kunasekaran*").

141 The Prosecution submitted for a sentence of six to seven months' imprisonment for each charge, for the sentences for two charges to run consecutively, giving a global sentence of 12 to 14 months' imprisonment.[251]

142 The appellant's mitigation plea was mostly a rehash of his closing submissions and case at trial on conviction. The appellant made little reference to any relevant mitigating factors in his favour apart from his personal familial difficulties and an attempt to distinguish the present case from *Heng Swee Weng*. I deal with both these points in my analysis below.

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250 ROA at p 375 (NE (22 June 2023) Day 5 at page 90 lines 12 to 14).

251 ROA at p 714 (Prosecution's sentencing submissions dated 2 November 2023 ("Prosecution's sentencing submissions") at paras 8–10).

Offence-specific factors

143 A relevant offence-specific factor is the degree of sexual exploitation. This includes a consideration of the part of the victim's body the accused person had touched, how the accused person touched the victim and the duration of the outrage of modesty (*Kunasekaran* at [45(a)(i)] and [48]).

144 I find that the degree of sexual exploitation was not high in the present case. The appellant's touch was fleeting (*ie,* a few seconds) and he had not made any skin-to-skin contact with the victim (*ie,* he had touched her over her t-shirt). However, as the appellant had touched the victim's breasts, there was intrusion into the victim's private parts. I find that this places the case in the lower end of Band 2 of the *Kunasekaran* framework. I am guided by the decision in *Public Prosecutor v Thompson, Matthew* [2018] 5 SLR 1108 ("*Thompson*") where the offender had used his hand to touch the victim on her right hip, over her stomach, and until her lower breast in a single motion with a brief touch and with no skin-to-skin contact. The court considered that the fact that there was an intrusion into the victim's private parts (*ie,* touching of her breasts) necessarily meant that the act fell within the lower end of Band 2 (*Thompson* at [66]; *Kunasekaran* at [45(b)]).

145 I also agree that the circumstances of the offence would be a relevant offence-specific factor. There is indeed a strong need for deterrence to prevent sexual offences from being committed by those working in the public transport service sector. The appellant in this case was a taxi driver who had committed the offences against a 17-year-old girl while they were alone in his taxi.[252] There was some abuse of trust in the circumstances due to the nature of the appellant

252 ROA at p 713 (Prosecution's sentencing submissions at para 5(b)).

being a taxi driver and the victim being his passenger (see, *Heng Swee Weng* at [18]).

146 The appellant referred to the decision of *Heng Swee Weng*. He seemed to allude to the fact that the victim in *Heng Swee Weng* had "got down [from] the taxi quickly to get away from [being] molested", whereas the victim in the present case did not get down from his taxi and had in fact re-entered it.[253] This was to support his arguments to the effect that he did not care about the victim and was not interested in her. This argument goes towards the issue of conviction, which I have already decided upon. I do not find this to be a relevant consideration in sentencing.

147 I ultimately find that the offences fall within the lower end of Band 2. This is especially because there was no skin-to-skin contact between the appellant and the victim. This leads to a sentencing range of between five to 15 months' imprisonment (*Kunasekaran* at [49]).

Offender-specific factors

148 The appellant's lack of prior antecedents does not bear any mitigating weight. It is well-established that the absence of an aggravating factor is not a mitigating factor which the appellant should be given credit for (*Kunasekaran* at [65]).

149 Although the appellant raised his need to care for his family and other difficult familial circumstances, it is settled law that unless there are exceptional circumstances, hardship to the accused's family has very little mitigating value (see, *Public Prosecutor v Mahat bin Salim* [2005] 3 SLR(R) 104 at [36]). The

253 ROA at p 929 (Mitigation plea dated 7 November 2023 at para 6).

appellant has not raised any exceptional circumstances that justify a departure from this general principle.

Conclusion

150 Accordingly, I find that a sentence of six months' imprisonment should be imposed for each charge.

151 I order for two of the imposed charges, the first and second charges, to run consecutively, in accordance with s 307(1) of the CPC. Bearing in mind the totality principle and the fact that the sentencing precedents raised by the Prosecution concerned more egregious circumstances of offending, I would have found that a downward adjustment of two months to the global sentence would have been appropriate. I would therefore have been minded for a global sentence of ten months' imprisonment. But there was no appeal by the Prosecution against the sentence imposed below. Given that this was the appellant's appeal, and the fact that there was some justifiable concern about the Judge's grounds of decision, I do not think it would be appropriate in these circumstances for me to impose a marginally heavier sentence. I will leave the sentence of eight months' imprisonment as it is.

152 The appellant is thus convicted of the three charges proceeded with. I impose a sentence of six months' imprisonment per charge, with the sentences in the first and second charges to run consecutively, for a total of 12 months, reduced to a total of eight months' imprisonment on a global assessment. The

effect of this determination following the setting aside of the Judge's decision is thus for the appeal to be dismissed.

Aidan Xu
Judge of the High Court

Ang Sin Teck (Jing Quee & Chin Joo) for the appellant;
Goh Qi Shuen, Kumaresan Gohulabalan and Dillon Kok Yi-Min
(Attorney-General's Chambers) for the respondent.