IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2025] SGCA 18

Criminal Appeal No 3 of 2024

Between

CEO

… *Appellant*

And

Public Prosecutor

… *Respondent*

Criminal Motion No 44 of 2024

Between

CEO

… *Applicant*

And

Public Prosecutor

… *Respondent*

Criminal Motion No 1 of 2025

Between

CEO

… *Applicant*

And

Public Prosecutor

… *Respondent*

In the matter of Criminal Case No 26 of 2023

Between

Public Prosecutor

… *Prosecution*

And

CEO

… *Defendant*

GROUNDS OF DECISION

[Abuse of Process — Collateral purpose]
[Criminal Law — Offences — Rape]
[Criminal Procedure and Sentencing — Appeal — Adducing fresh evidence]
[Criminal Procedure and Sentencing — Trials — Whether accused person received inadequate legal assistance from trial counsel]

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CEO
v
Public Prosecutor and other matters

[2025] SGCA 18

Court of Appeal — Criminal Appeal No 3 of 2024, Criminal Motion No 44 of 2024 and Criminal Motion No 1 of 2025
Sundaresh Menon CJ, Belinda Ang Saw Ean JCA and See Kee Oon JAD
27 February 2025

25 April 2025

See Kee Oon JAD (delivering the grounds of decision of the court):

Introduction

1 There has been a disturbing tendency in appellate criminal proceedings for counsel to contend that an appeal should be allowed because of alleged missteps by trial counsel. The present appeal was one such case. We have said before, and we say again, that counsel would be well-advised to exercise great circumspection and care before treading this path. Without demonstrating a real possibility that a miscarriage of justice had been occasioned, an appellate court will not entertain attempts to revisit the way trial counsel dealt with the matter.

2 The appellant is a 46-year-old male Singaporean. He was convicted by a judge of the High Court (the "Judge") of one charge of abetment by conspiracy with his co-offender (whom we refer to as "T") to commit rape under s 375(1)(*a*) punishable under s 375(2) read with s 109 of the Penal Code

(Cap 224, 2008 Rev Ed), and sentenced to 13 years' imprisonment and 12 strokes of the cane. The victim of the rape in question was T's wife (whom we refer to as "V"), who was allegedly drugged and blindfolded by T before she was raped by the appellant.

3 CA/CCA 3/2024 ("CCA 3") was the appellant's appeal against his conviction and sentence. On appeal, the appellant argued that the Judge ought not to have relied on three critical pieces of evidence, namely the appellant's video-recorded interviews ("VRIs"), the post-incident communications between the appellant and T, as well as the testimony of T. In respect of T's evidence, the appellant filed a criminal motion, CA/CM 1/2025 ("CM 1"), seeking leave from this Court to adduce further evidence on appeal which purportedly demonstrated the various inconsistencies in T's account. The appellant also levelled several complaints against his former defence counsel from the law firm of Luo Ling Ling LLC ("LLL"), alleging that they had failed to properly cross-examine the Prosecution's witnesses and to raise various clarifications in respect of the appellant's defence that he had wished to make at an early juncture. These complaints formed the subject of a separate criminal motion to adduce further evidence on appeal, namely CA/CM 44/2024 ("CM 44").

4 On 27 February 2025, we dismissed the criminal motions and the appeal. We now provide the full grounds for our decision.

Background facts

5 The facts and the evidence have been comprehensively set out in considerable detail in the Judge's grounds of decision in *Public Prosecutor v*

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CEO [2024] SGHC 109 (the "GD") at [10]–[78]. We outline the salient undisputed facts in brief.

6 The appellant got to know T in 2010 through a public Internet forum (the "Forum"). The appellant had previously created an online public message thread titled "Wife Fantasy" on the Forum, where he invited like-minded individuals to privately message him if they shared sexual "fantasies" about the wives of other people. In the course of their communications, T had asked the appellant to approach his wife, V, and to ask her out. The appellant agreed and got acquainted with V thereafter. On or about 2 September 2010, the appellant and V had a consensual sexual encounter, which the appellant and V did not inform T about.

7 After that encounter, on an occasion between 2010 and 2011, T messaged the appellant informing him that V was drugged. T also invited the appellant over to his apartment. Within five minutes of receiving T's invitation and without asking T any further questions, the appellant left his home for T's apartment. Upon reaching T's apartment, the appellant was greeted by T who then led the appellant into the master bedroom. V had been drugged and was unconscious, blindfolded and lying naked in bed when the appellant turned up at T's apartment.

The parties' cases below

8 The Prosecution's case was set out in the GD at [18]–[58]. In gist, the Prosecution contended that: (a) there was an agreement between the appellant and T for the former to rape V; and (b) pursuant to this agreement, the appellant had engaged in non-consensual penile-vaginal sex with an unconscious V in T's

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presence at T's apartment on a date between 2010 and 2011. The Prosecution called nine witnesses to testify in support of its case.

9 The Prosecution's case was primarily based on T's testimony. According to T, he and the appellant had previously engaged in discussions online about their shared interest in perverse sexual practices including wife sharing or "hot-wifing", which referred to a wife getting romantically and/or sexually involved with another person with the husband's knowledge. They had also specifically discussed the possibility of a husband "drugging" a wife with sedatives beforehand (thereby rendering the wife unconscious) so that another man could have sex with her.

10 T testified that the rape had taken place on his third wedding anniversary with V, on 14 March 2011. T recalled administering Dormicum (a type of sedative) to V by crushing the pills containing the drug and putting them in V's wine. He remembered taking a photograph, which he later deleted, of V lying naked on the bed, blindfolded and unconscious. While he could not recall the specifics of the communications between him and the appellant prior to the latter coming to the apartment, he affirmed that the two of them had spoken online, and that he had likely told the appellant that V was "out" (by which T meant that she was drugged unconscious) and that she was "ready" (by which T meant that the appellant could start having sex with her). He had invited the appellant to the apartment for the purpose of having the appellant rape his unconscious wife in retaliation for her having dishonoured him with her suspected infidelity.

11 When the appellant arrived at T's apartment, they both went to the master bedroom, where V was lying naked, unconscious and blindfolded on the bed. T testified that he saw the appellant on top of V in a "missionary position",

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which led him to believe that they were having sex. The appellant subsequently asked him where to dispose of a condom. After the appellant left T's apartment, T recalled holding the unconscious V and cleaning her up so as to remove any trace of lubricant on her. T and the appellant continued to discuss the rape after 14 March 2011, with the appellant continuing to ask T to show him pictures of V.

12 The Prosecution relied on T's evidence that he had invited the appellant to the apartment for the purpose of raping an unconscious V to establish its case that there was an agreement between T and the appellant to rape V. This was corroborated by the appellant's VRI statements, where the appellant admitted to knowing that the purpose of T's invitation to the apartment was for the appellant to have sex with a drugged V. The appellant's posts about having a "Wife Fantasy" on the Forum, as well as V's evidence that the appellant had wanted to engage in a "threesome" involving V and T, further lent credence to T's account.

13 As for the rape itself, the Prosecution relied on T's testimony that he had seen the appellant on top of V in a "missionary" position and that the appellant had asked him where to dispose of a condom. Crucially, T's testimony was consistent with the objective evidence, namely the post-incident communications between T and the appellant, where the parties had referred to the events of the rape in some explicit detail.

14 The appellant was the only witness who gave evidence for the defence. His evidence was set out at length in the GD at [60]–[78]. The gist of his case was that there was no conspiracy or agreement for him to rape V, and no sexual intercourse occurred when he went to T's apartment. Rather, on the night in question, he had gone over to T's apartment out of curiosity and concern for V,

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after being told by T that V had been drugged. He had also thought that T wanted to confront both him and V about their affair. Upon seeing V lying unconscious in T's apartment and having been asked by T to "touch" V, the appellant was "freaked out". In an attempt to "get out" of the situation, he pretended to stroke his penis over his clothes before signalling to T that he was unable to have an erection. Subsequently, the appellant and T had a conversation in the toilet of the master bedroom before the appellant went home.

15 According to the appellant, he had no motive to rape V because he was already in a consensual sexual relationship with her at the material time. In support of this argument, he contended that there was a second consensual sexual encounter between him and V which took place around the end of 2011 to early 2012.

16 The appellant submitted that T's evidence was unreliable. There were inconsistencies between T's evidence in court and T's VRI statements on various issues such as the identity of the person who had undressed V and the manner in which sedatives were administered to V. Furthermore, many of the answers in T's VRI statements were based on leading questions from the police. T also allegedly had a motive to fabricate evidence against the appellant because T was angry at him and jealous of his affair with V.

17 As for the admissions contained in his VRI statements, the appellant proffered two explanations. First, he sought to explain that he had conflated the events of the alleged incident with subsequent conversations that he had with T about T's "drug fantasy". According to the appellant, the topic of "drugging" had only taken place in the subsequent conversations and not when he was invited to T's apartment. His knowledge of the nature of the drugs used by T was a "belated realisation" which only occurred to him after the night of the

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alleged rape. Second, he claimed that the police officers investigating his case had made various remarks to him which led him to believe that T's "drug fantasy … might have really come true for him" and that T "might have really done it [*ie*, arranged for V to be raped]".

18 Finally, the appellant explained that the post-incident communications between him and T were merely "nonsense" or "fantasy" talk. In these messages, the appellant and T had simply verbalised their perverse sexual fantasies by pretending to discuss plans to rape an unconscious V, and these messages did not contain a reference to factual events.

Decision below

19 The Judge first found that the appellant's purpose in going to T's apartment was pursuant to an agreement with T for the appellant to have sex with an unconscious V. The appellant and T had on previous occasions discussed wife sharing and the use of sleeping pills for such purposes. The appellant also had an interest in wife sharing which involved T and V specifically. These shed light on the appellant's state of mind when T invited the appellant to the apartment on the understanding that V had been "drugged". The Judge thus accepted T's evidence that the purpose of the invitation immediately prior to the alleged incident was for the appellant to have sex with V while she was unconscious. This was corroborated by the appellant's VRI statements where he expressly admitted that he had understood T's invitation to be for the purpose of wanting the appellant to "have a sexual relationship with [V]". Indeed, the appellant's own evidence was that he felt a thrill and curiosity at the prospect of going over to T's apartment. The Judge found that the most likely reason why he felt that way was because he was aware of the prospect of having sex with V while she was in a drugged state.

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20 Next, the Judge accepted T's evidence that the appellant did in fact engage in penile-vaginal intercourse with V without her consent, and that this had taken place on 14 March 2011. T's evidence was internally consistent in all material respects. T's evidence was corroborated by the post-incident communications between the appellant and T after the night of the incident, which showed the appellant acknowledging without demur when T made various references to the appellant having engaged in sexual intercourse with V on the night of 14 March 2011. The Judge found the appellant's explanation about the messages being "fantasy talk" to be completely unbelievable. Some of the messages contained clear references to the incident alleged in the charge. Other messages revealed that the appellant was conscious of the risk of getting "caught" and the need for a "backup plan", which demonstrated his knowledge that his conduct could get him in trouble with the law.

21 The Judge generally took a dim view of the appellant's defence. First, the Judge found that the appellant was a disingenuous and evasive witness. The Judge highlighted several examples of the appellant's explanations which appeared to be glib afterthoughts that were at odds with the available evidence, including his explanation on his understanding of the phrase "wife sharing", the reasons he provided for the admissions in his VRI statements, his explanation for why he felt a thrill and curiosity at the prospect of going to T's apartment, and his explanation that the post-incident communications between him and T were just "fantasy" talk. Apart from being inconsistent with his VRI statements, the appellant ran a case at trial which was not included in the case for the defence ("CFD") he had earlier filed. The Judge therefore drew an adverse inference against the appellant and ruled that his credit had been impeached under s 157(*c*) of the Evidence Act 1893 (2020 Rev Ed).

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22 Second, the Judge found that the appellant's credibility was also fatally undermined by the many internal inconsistencies as well as the inherent incredibility of his account. The appellant's claim that he had gone to T's apartment out of concern for V's welfare, as well as in anticipation of a possible confrontation with T over the affair with V, was inconsistent with the appellant's behaviour. It was unbelievable that his response to T's confrontation about the affair would be to pretend to masturbate in the presence of T, next to the motionless body of T's wife. Further, if the appellant's narrative that he had been "freaked out" by the incident were to be believed, it made no sense that he continued to engage in sexually explicit "fantasy talk" with T after the event.

23 Third, the Judge rejected the appellant's submissions which centred on the prior relationship between him and V. It did not follow as a matter of logic that the appellant could not have raped V even if his evidence that they were in a consensual sexual relationship were to be believed. The appellant's arguments about the alleged implausibility of T's personal motives for inviting the appellant to rape V (*ie*, that it was "illogical" that T would have sought to punish V for her affair by inviting the appellant to rape her while she was unconscious) were similarly of little assistance. Finally, the Judge rejected the appellant's argument that T had a motive to frame the appellant. This argument was undercut by the objective evidence of the friendly communications between the appellant and T which stretched a good number of years after the alleged incident.

24 On sentence, the Judge considered that there were three aggravating factors in the present case: (a) the present offence involved a group element; (b) V was a vulnerable victim; and (c) the rape involved a violation of the sanctity of the victim's home. The Judge also concluded that the appellant's overall behaviour warranted an inference that the appellant lacked any genuine

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remorse. Nonetheless, the appellant's cooperation with the police carried substantial mitigating value as it enabled the police to save on time and resources for investigations. The Judge thus sentenced the appellant to 13 years' imprisonment and 12 strokes of the cane.

The arguments on appeal

CCA 3

25 On appeal, the appellant maintained the same narrative that he had presented at trial. His main contention was that the Judge should not have preferred T's evidence over his own. He focused his arguments on T's alleged motive to fabricate evidence against him,[1] the unreliability of T's VRI statements,[2] as well as the purported inconsistencies between T's testimony in-court and VRI statements.[3] Among other reasons, T's evidence should not have been accepted because it was derived either from leading questions posed to T by the police officers who recorded his VRI statements, or from inferences that T had drawn upon after being shown the "chat logs" between T and the appellant.

26 The appellant also maintained his explanations for the post-incident communications with T as well as the admissions in his VRI statements. In essence, the appellant emphasised that the post-incident communications were merely the idle fantasies of the appellant and T rather than descriptions of fact. These conversations with T, as well as suggestions made by the police officers

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1 Appellant's written submissions dated 3 February 2025 ("AWS") at paras 53–57.

2 AWS at paras 56, 59–61.

3 AWS at paras 60–61.

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and/or their choice of phrasing during the questioning, in turn clouded the appellant's mind when his VRI statements were recorded.[4]

27 On sentence, the appellant submitted that the sentence imposed by the Judge was manifestly excessive. He disagreed with the Judge's assessment of the offence-specific aggravating factors and also contended that the Judge failed to place sufficient weight on his cooperation with the police. He sought a sentence of between 11 to 12 years' imprisonment and three strokes of the cane.[5]

CM 1

28 A key plank of the appellant's arguments was that his visit to T's apartment took place "sometime in late 2010" as opposed to on 14 March 2011. The precise date when the incident occurred was important because, according to the appellant, it had a bearing on the corroborative value of the post-incident messages exchanged between him and T, wherein T had alluded to the appellant having had sexual intercourse with V on their wedding anniversary. T's evidence was therefore inconsistent with evidence that had been led in related proceedings involving T and another co-offender (whom we refer to as "U") and therefore should not have been accepted by the Judge.[6] The appellant filed CM 1 in this connection, to adduce evidence relating to those related proceedings and for orders compelling the Prosecution to disclose further materials relating to the same.[7]

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4 AWS at paras 18–22, 27–30, 36.

5 AWS at paras 165–175.

6 AWS at paras 38–43.

7 AWS at paras 148–163.

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CM 44

29 Aside from attacking the merits of the Judge's decision, the appellant also mounted a collateral attack in CM 44 against his former defence counsel who represented him at trial. He argued that there was a real possibility of a miscarriage of justice because he was afforded inadequate legal assistance from LLL at trial. The appellant raised nine separate instances of alleged incompetence which generally pertained to: (a) LLL's failure to state clarifications to his VRI statements at an early juncture (*eg*, in the CFD or in his examination-in-chief), which led the Judge to conclude that such clarifications were an afterthought; or (b) LLL's failure to put crucial aspects of his case to the Prosecution's witnesses.[8]

Our decision

The appeal against conviction was without merit

30 The appellant's appeal against his conviction turned largely on the Judge's factual findings. We began by considering the nature of the defence that the appellant ran at trial and on appeal. This was broadly aligned with the appellant's sequential approach in his written and oral submissions before us, where he raised arguments as to the merits of the appeal against conviction first.

31 To recapitulate, the appellant's defence according to his VRI statements was that he had gone to T's apartment feeling a "thrill" and "curiosity" at the prospect of seeing V high on drugs. He affirmed this in his oral testimony. He claimed that he was also "concern[ed]" for V's safety because he thought that T could have wanted to confront the both of them about their affair, and he

[8] AWS at paras 94–145.

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thought that T, being "from the Commandos [*ie*, the military]", could "inflict damage" on V if T "really were [to] go crazy" and was not controlled. At the apartment, the appellant was "freaked out" by the situation and when asked by T to "touch" V, he tried to get out of the situation by pretending to stroke his penis before indicating to T that he could not get an erection. He did not have sexual intercourse with V but left the apartment without further incident.

32 The Prosecution rightly criticised the defence for its lack of credibility. We agreed and found that the appellant's defence was implausible. It did not make sense and hence it did not withstand scrutiny. We also agreed with the Judge's finding that the appellant's credit had been impeached, as material aspects of his oral testimony were inconsistent with his VRI statements which he later sought to disavow. His defence was also inconsistent with the post-incident messages he exchanged with T. We explain.

33 First, if the appellant was genuinely concerned that T could cause either V or himself physical harm, it defied logic for him to go to T's apartment to see him face-to-face and risk being confronted about his affair with V, instead of speaking to T at a neutral location. Instead of feeling fear or anxiety for his own safety, he felt a "thrill" and "curiosity" when he was invited to go over to T's apartment. On his own account, he had proceeded to T's apartment within *five minutes* of receiving the invitation and without asking T any further questions. He also made no attempts to contact V to check on her before going to the apartment, or to ask if V knew anything about the supposed confrontation that he had anticipated might take place. As the Judge rightly noted (GD at [220]), based on the appellant's own narrative, it made no sense for T to render V unconscious if T had intended to confront both the appellant and V. The appellant plainly had no explanation for this inherent inconsistency. Viewed in this context, the appellant's explanations were completely unbelievable. His

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behaviour leading up to his arrival at T's apartment was wholly inconsistent with his so-called concern for V and alleged apprehension of T.

34 Second, the appellant admitted in his VRI statements that, prior to his arrival at T's apartment, T had informed him that he had used sleeping pills to drug V. The appellant further admitted that he understood that T had invited him that night to have sex with V in T's presence. This was inconsistent with his claim that he was curious about the prospect of seeing V high on drugs. Although he later sought to distance himself from these admissions in his VRI statements by suggesting that he was "confused" at the time he gave his statement and/or that his statements were based on suggestions made by the police, these were bare assertions that the appellant could not back with any evidence. We agreed with the Judge that these arguments were unbelievable (GD at [128] and [131]). In our judgment, the relevant portions of the VRI statements, which we reproduce below, clearly and unequivocally attested to the appellant's state of mind prior to arriving at T's apartment. They could not have been made in any other context:

Interviewer:	**Tell me about the context of the text or the call.**
Appellant:	'*Uh*'… it's just **[T] invite me go there '*la*', then saying probably wants to have a sexual relationship with [V].**
…	
Interviewer:	OK. OK, so… so **you are telling me that '*uh*' when [T] invited you to his house, 'uh' … the context of the invitation is to have sexual relationship with [V]?**
Appellant:	'***Ya*'.** '*Ya*'.
…	
Interviewer:	So… you mention that [T] said that he drugged [V]. **Do you know what, what kind of drug he used?**

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Appellant:	**Some sleeping pill.**
Interviewer:	Sleeping pills. Do you know the name of the sleeping pills?
Appellant:	Offhand… I can't recall '*ah*'. '*Ya*'.
Interviewer:	Ok. And you know this… **at which point of time did you know this?**
Appellant:	Sorry?
Interviewer:	**At which point of time did you know that he used sleeping pills?**
Appellant:	[T], **I, he, during conversation, I say, "What, what are you using" Then he say…**
Interviewer:	**That was before you going over?**
Appellant:	**'*Ya*'.**
…	
Interviewer:	OK. So **what you're saying now is [T] invited you to [V] house and based on what you remember, it's in the context of having sex with [V] and you mentioned that [T] had told that he use, drug, sleeping pill but you, offhand you cannot remember what drug is it?**
Appellant:	**That's right.**

[emphasis added in bold]

35 Third, the appellant's own version of the events that transpired upon his arrival at T's apartment was yet again inconsistent with his supposed concern for V. On his own account, the appellant did not do anything once he arrived at the apartment to check on V's well-being. He also did not react to the fact that V was blindfolded and unconscious. His claim that he had pretended to stroke his penis in an effort to "get out" of the situation was even more inconsistent with his alleged concern for V.

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36 Finally, the post-incident messages between T and the appellant were particularly telling of the appellant's guilt. These messages palpably showed that the appellant had sexual intercourse with V on the night of 14 March 2011, which T recalled was his third wedding anniversary. We highlight two such exchanges. On 22 March 2014, in a series of messages, T appears to have shown the appellant a photograph of V, naked and blindfolded. The following exchange ensued (GD at [140]–[141]):

Appellant:	i wanna spray cum on [V] man
	can i?
	…
	u got share screen?
T:	can?
	…
	can see this?
Appellant:	Ya
	Blindfold for who?
T:	**this was when u came over and fuck [V]**
	that time
Appellant:	Nice when she still slim ya haha
T:	now also still ok

[emphasis added in bold]

37 On 30 March 2015, the following conversation took place between the appellant and T, where T made an express reference to the appellant having had sex with V on T's wedding anniversary (GD at [146]–[147]):

Appellant:	So when yr anniversary?
T:	14/3
Appellant:	Oh finish already loh
	So no action tat day?

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T:	**After that time u fuck her on my anniversary**
	I had been missing the feeling
Appellant:	Lol
	U crazy haha
	Tat was hw long
T:	4 yr back?
Appellant:	Nt sure man
	So no action tat day?
T:	No
Appellant:	Boring man

[emphasis added in bold]

38 We also noted that, in a separate exchange of messages between the appellant and T on 9 July 2014 in which they discussed the possibility of the appellant raping a drugged V again, the appellant expressed fear that they may "get caught" if V were to "pretend" to be unconscious during her rape. The appellant was clearly cognisant of the fact that it would be difficult to "deny" committing any offence in such circumstances as he would be caught in the act. He also told T that if V were to make a police report, he (and presumably any other co-offenders who were involved in the rape of V) would "all die" and T should "make sure [that] all records [were] deleted" (GD at [145]). We reproduce a portion of these messages below:

Appellant:	have u tot wat u will do if get caught?
	…
	must have backup plan
	maybe she suspect and she pretend she gone
	u know things like tat
	if caught then wats yr gameplan
	…

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> the guy is there how to deny bro
> haha

We agreed with the Judge that these messages were useful in demonstrating the inherent improbability of the appellant's narrative that his conversations with T only comprised "fantasy talk" (GD at [155]). We found it extremely unlikely that such fantasies would have included concrete discussions of how the appellant's conduct could potentially get him in trouble with the law.

39 At the hearing before us, counsel for the appellant, Mr Chenthil Kumarasingam ("Mr Kumarasingam"), sought to persuade us that the messages revolved around a "fantasy" shared by the appellant and T concerning the rape of V, as opposed to being recollections of actual historical events. According to Mr Kumarasingam, there was at least a reasonable doubt that the messages could be interpreted in this manner given that the appellant and T were individuals of "unconventional sexual taste".

40 With respect, we found these arguments untenable given the terms in which the messages were framed. There was nothing in the language of the messages which suggested that the appellant and T were merely discussing a "fantasy" rather than reminiscing about an incident that had occurred in reality. It did not follow that an individual's unconventional sexual desires would also mean that an unconventional logic had to apply to the interpretation of messages which, on their face, appeared to recount and describe purely factual events with a considerable degree of lucidity and detail. It was equally unbelievable that such a "fantasy" would also have included discussions about potentially getting "caught" and the consequences of V making a police report. Furthermore, the explanations did not cohere with the surrounding facts, particularly the appellant's shared interest with T in such unconventional sexual practices, and

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his prior knowledge that V was drugged. The messages were *only* consistent with the fact that matters had occurred as the Judge had found, and they clearly demonstrate that the rape had happened. Adopting the words of the Judge, the appellant's claims that they were mere "fantasy talk" which were not actualised were "completely unbelievable" and could not raise a reasonable doubt in the Prosecution's case (GD at [153]).

41 As to the defence that the appellant and V were already in a consensual sexual relationship at the time of the rape, the Judge correctly rejected this. It was undisputed that V had blocked the appellant on social media. V's evidence was that she had done so in 2010 after the appellant repeatedly asked her to join a "threesome" with T. There was therefore no second consensual sexual encounter between them. In a bid to challenge the consistency of V's evidence, the appellant argued that there was indeed a second consensual sexual encounter between him and V in 2012. However, the Judge had already considered and rejected these claims by the appellant, and accepted V's evidence (GD at [114]–[117]). We saw no reason to differ from this finding. We agreed with the Judge that V's evidence undermined any suggestion that there would be no need to resort to rape since the appellant and V were in a consensual sexual relationship in 2011 (GD at [230(b)]).

42 In any case, the appellant's focus on whether or not there was a consensual relationship with V at the time of the rape was neither here nor there. Even if they did continue to have a consensual relationship, this did not mean that the alleged rape could not have taken place. It also overlooked the fact that the particular point of this encounter was to have sex with V in the presence of T while V was drugged, which would explain the "thrill" and "curiosity" that the appellant felt. In this regard, we also found that it was implausible that, as the appellant claimed, the "thrill" that he felt was only in relation to potentially

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seeing V high on drugs. As the Judge noted (GD at [136]), such an explanation only surfaced under cross-examination and appeared to be an afterthought.

43 On appeal, the appellant also focused on T's alleged lack of credibility and the inconsistencies in T's evidence to support his argument that the Judge had erred in her findings of fact. In our assessment, the Judge had carefully evaluated T's evidence as to what had transpired. She explained in detail why she accepted T's evidence in so far as the material aspects implicating the appellant were concerned. The Judge was justified in finding that T was a credible witness notwithstanding certain inconsistencies in his evidence. Importantly, we agreed with the Judge that, contrary to the appellant's claims, T had no motive to fabricate evidence to frame the appellant (GD at [233]). As the Judge explained, any allegation that T harboured a grudge against the appellant for his affair with V was completely undercut by the friendly tenor of their communications which stretched a good number of years after the alleged incident (GD at [234]).

44 We reiterate that the threshold for appellate intervention on findings of fact is a high one, especially where the findings hinge on the trial judge's assessment of the credibility and veracity of witnesses: *Public Prosecutor v Muhammad Farid bin Mohd Yusop* [2015] 3 SLR 16 at [52]–[54]. We agreed with the Judge that T's evidence was internally and externally consistent in all material respects, and therefore saw no reason to depart from the Judge's assessment of his credibility. In particular:

(a) None of the inconsistencies raised by the appellant impinged on T's evidence that he had invited the appellant to the apartment on the understanding that V had been drugged. While the precise wording used by T in the invitation was a matter of dispute, T was consistent across

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his testimony in court as well as his VRI statements that he had told the appellant in his invitation that V was drugged. This fact was not even challenged by the appellant, whose only point of contention was that there was ambiguity as to what was meant by the word "drugged". In this regard, T's explanation that V had been drugged with Dormicum cohered entirely with the appellant's VRI statements, where he voluntarily proffered information to the police about T drugging V with sleeping pills. Any alleged inconsistency between T's in-court and VRI statements concerning the precise manner in which the Dormicum was administered was wholly immaterial because the key point, namely that T had drugged V with sleeping pills prior to the appellant's arrival, remained unimpeached.

(b) T was similarly consistent in his evidence that he had invited the appellant to his apartment for the purpose of raping V. Again, while it was disputed whether T had said that V was "out" and that it is "ready" in his invitation to the appellant, T consistently testified that there would be no other reason why the appellant would have shown up at his apartment that night. This cohered with the appellant's testimony that he felt a thrill and curiosity at the prospect of going to T's apartment as well as the appellant's VRI statement where he admitted to knowing that the context of the invitation was "to have [a] sexual relationship with [V]".

(c) Finally, T testified that he had a "mental memory" of seeing the appellant on top of V in a "missionary" position on the night in question which led him to believe that they were having penile-vaginal sexual intercourse. He also testified that the appellant had asked him where to dispose of a condom after the incident. Crucially, the fact that the appellant had sexual intercourse with V cohered entirely with the

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objective evidence, namely the post-incident communications between T and the appellant which we have highlighted at [36]–[37] above.

CM 1 was without merit

45 Much of the oral arguments at the hearing before us focused on the alleged inconsistency between T's evidence as to when the incident occurred and how that related to the date of the incidents involving some of the other accused persons who had been dealt with in other proceedings. One of T's co-offenders, U, had pleaded guilty in November 2022 to a similar charge of conspiring with T to rape V "on or before an occasion in 2010". The appellant contended that this was inconsistent with T's evidence that the incident of rape involving the appellant was the *first time* T arranged for someone to rape V and that this occurred on 14 March 2011.

46 In this connection, the appellant's application in CM 1 was filed to obtain discovery of – and adduce before this court – various documents pertaining to U's prosecution, including copies of his VRI statements and his "plead guilty" papers. The appellant argued that the requested documents fell within the scope of the Prosecution's disclosure obligations because the requested materials were credible and relevant to his conviction and U was a material witness.

47 In our judgment, the appellant's reliance on the alleged inconsistency in relation to the issue of when the incident involving V had occurred was wholly misplaced. CM 1 was without merit because it was unclear whether there was any operative inconsistency, much less one that was material, compelling or probative. We highlight that all the other related proceedings (*ie*, the proceedings involving other co-offenders who had conspired with T to rape V)

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were dealt with on guilty pleas. There was no real contest that those incidents had taken place, and any issue of the precise dates was not material to those convictions. The courts in those cases were not required to examine the evidence of the precise dates of the various incidents. Hence, any seeming inconsistency would not be probative as to the evidence that was led and tested in this case.

48 Moreover, as the Prosecution explained, the charges against the co-offenders were framed based on the available evidence at the time. When U pleaded guilty in November 2022, the Prosecution had framed his charge based on the admissions that U had provided in his VRI statements. Given that, as with all the co-offenders involved, the prosecution of U took place many years after the incidents in question occurred, it was entirely possible that U's recollection in his VRI statements (as to the precise date of his offence) was incorrect. We accepted that more evidence was bound to come to light further along in the investigative process and, in the present case, this included the messages exchanged between T and the appellant which expressly referenced the events of 14 March 2011. Thus, we did not think that the evidence pertaining to U's prosecution was in any way inconsistent with the evidence upon which the appellant's conviction was founded.

CM 44 was an abuse of process

49 Having addressed the merits of the appellant's defence, we found that CM 44 would not aid his defence. The application to introduce evidence to challenge the conduct of the appellant's trial counsel lacked any proper basis and was thus an abuse of process.

50 To begin with, the petition of appeal filed by the appellant on 26 August 2024 contained only a bare assertion that he had not been afforded adequate

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legal assistance at trial. This was contrary to the requirements set out in s 378(2) of the Criminal Procedure Code 2010 (2020 Rev Ed) (the "CPC"), which provides that the petition of appeal "must contain sufficient particulars of any points of law or of fact". It was not until 11 October 2024, when the appellant filed CM 44, that the allegation of inadequate legal assistance was properly particularised.

51 In any event, leaving aside this procedural irregularity, we were not satisfied that the evidence which the appellant sought to adduce in CM 44 would meet the test of materiality as required under s 392(1) of the CPC. In the present case, the materiality of the additional evidence hinged on whether the appellant could satisfy us that there was indeed inadequate legal assistance by LLL. It is well-established that the two requirements for proving inadequate legal assistance are as set out by the Court of Appeal in *Mohammad Farid bin Batra v Public Prosecutor and another appeal and other matters* [2020] 1 SLR 907 ("*Farid*") at [134]–[135] and [139]: the applicant must prove that the trial counsel's conduct of the case amounted to "flagrant or egregious incompetence or indifference" and that there was a real possibility that the inadequate assistance resulted in a miscarriage of justice. In our judgment, the appellant had failed to satisfy either of the two requirements.

52 First, LLL had made it clear that a number of positions taken at trial were in consultation and in line with the appellant's express instructions. These included the decision to file a brief CFD as well as the decision not to cross-examine V on an exhibit ("Exhibit D8") which would have allegedly supported the appellant's position that V had not blocked him on social media in 2010. In our view, there was no reason to doubt that LLL had indeed acted upon the appellant's instructions. In our recent decision in *Masri bin Hussain v Public Prosecutor* [2025] SGCA 9 ("*Masri*") (at [27]), we made the point that an

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applicant who makes allegations of inadequate legal assistance against trial counsel must substantiate their allegations with clear and compelling evidence. In the present case, LLL had adduced evidence of their chat logs with the appellant, where he had expressly said to LLL, "dont [*sic*] use the facebook messages" (referring to Exhibit D8) during V's cross-examination. The appellant's only response was that his correspondence with LLL should be interpreted as *suggestions*, rather than express instructions. Such an argument was contrived and defied a plain reading of the messages in question. In any event, it makes no difference even if his messages to LLL were interpreted as mere suggestions. That would simply show that LLL had agreed with the suggestions proffered by the appellant, which would hardly be sufficient to make out a case of inadequate legal assistance. In our view, it would have been obvious upon reviewing LLL's affidavit that the appellant's allegation in respect of LLL's failure to cross-examine V on Exhibit D8 was patently lacking in merit. CM 44 was therefore a blatant abuse of process.

53 Second, where the appellant contended that LLL did not take up certain points that would (or were meant to) qualify the admissions he had made in the VRI statements and/or did not include such points in the CFD, these could not have led to a miscarriage of justice. The Judge rightly rejected these later attempts by the appellant to qualify what he had said in the VRI statements about knowing, prior to arrival at T's apartment, that V was drugged with sleeping pills and that he was to have sex with her, or that he was thrilled by the prospect of going over to the apartment, for various reasons including the fact that they simply made no sense. We saw no reason why the Judge would have accepted the appellant's explanations even if he had included them in his CFD.

54 Third, the appellant raised various complaints about how the cross-examination of the Prosecution's witnesses (particularly of T) was conducted

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by LLL. We reiterate our observations in *Farid* at [135] that where trial counsel acts in accordance with their client's instructions and in compliance with their duty to the court and their professional obligations, they must be given the deference and the latitude in deciding how to conduct the case after studying all the evidence and the applicable law. Absent a clear and compelling case disclosing a miscarriage of justice, we would not consider this relevant or material to the outcome of the appeal.

55 It has been said before that the standard to be applied where inadequate legal assistance is alleged is not whether the advice was objectively correct, but whether the conduct fell so far short of what was expected that it could be described as flagrant or egregious incompetence or indifference: *Farid* at [135]; *Public Prosecutor v Mohd Noor bin Ismail* [2022] SGHC 66 at [81]. With this high standard in mind, counsel representing accused persons on appeal would be well-advised to exercise caution before making allegations of inadequate legal assistance, particularly if their client's allegations are based on bare assertions that run contrary to the objective evidence. The veracity of such allegations must be carefully weighed against the objective evidence available, such that applications that are doomed to fail or amount to an abuse of process are not brought before the court. As we highlighted in *Masri* at [28], counsel's failure to advise their clients properly before mounting wholly unmeritorious applications may trigger a personal costs order against the errant counsel, whether pursuant to s 357(1) of the CPC or the court's inherent powers.

56 We reiterate that counsel must walk a thin line and guard against the real danger of abusing the process of the court in seeking to raise allegations about trial counsel's conduct of the proceedings below without any proper basis. As this court had observed in *Thennarasu s/o Karupiah v Public Prosecutor* [2022] SGCA 4 at [15], such grave allegations attacking the reputation of

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counsel and the finality and integrity of the judicial process should not be lightly made. It is deeply regrettable and seriously disturbing that these admonitions appear to have gone unheeded. Our concerns were amplified in another recent judgment of the Court of Appeal in *Muhammad Salleh bin Hamid v Public Prosecutor* [2025] SGCA 15 ("*Salleh*") at [4], issued not long after we had dealt with the present appeal.

The sentence imposed by the Judge was not manifestly excessive

57 Finally, on sentencing, we did not think that the sentence of 13 years and 12 strokes was manifestly excessive. The Judge had correctly identified the three main offence-specific aggravating factors, namely that the present case involved a group element, that the offence violated the sanctity of the victim's home, and that the victim was a vulnerable victim. These are well-established aggravating factors that have long been recognised in case law (see *Ng Kean Meng Terence v Public Prosecutor* [2017] 2 SLR 449 ("*Terence Ng*") at [44] and *R v Millberry* [2003] 1 WLR 546 at [32]).

58 The sentence was therefore entirely within the range set out in *Terence Ng* for such offences. The Judge had given due weight to the relevant sentencing considerations and calibrated the sentence appropriately in line with the relevant precedents. We further noted that the Judge had already accorded due mitigating weight to the appellant's cooperation with the police during the investigations by sharing his online password and account information. Any mitigating weight that this afforded the appellant was clearly counterbalanced by the unwarranted aspersions he sought to cast at trial against the police officers (and on appeal against his former counsel) which demonstrated a patent lack of remorse.

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Conclusion

59 For the above reasons, we agreed with the Prosecution that the criminal motions were thinly veiled attempts to relitigate matters that were either of little relevance or had already been considered by the Judge. The appeal and the criminal motions were without any merit, and all three matters were therefore dismissed.

60 In the present case, notwithstanding our decision that CM 44 was an abuse of process, the Prosecution did not seek any personal costs order against the appellant's counsel. In the absence of submissions from the parties, we refrained from making such an order. Nevertheless, as we highlighted in *Masri* at [29] and again in *Salleh* at [4], subsequent cases involving similar irresponsible conduct may well attract such adverse costs orders.

Sundaresh Menon
Chief Justice

Belinda Ang Saw Ean
Justice of the Court of Appeal

See Kee Oon
Judge of the Appellate Division

Chenthil Kumar Kumarasingam, Zephan Chua Wei En and Tan Jia Yi (Withers KhattarWong LLP) for the appellant;
Eugene Lee, Sruthi Boppana and Ang Siok Chen (Attorney-General's Chambers) for the respondent.

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