

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

[2025] SGHC 140

Criminal Case No 45 of 2024

Between

Public Prosecutor

And

- (1) DGH
- (2) DGI

JUDGMENT

[Criminal Law — Offences — Sexual offences]
[Criminal Law — Offences — Rape]
[Criminal Law — Offences — Outrage of modesty]
[Criminal Law — Offences — Sexual assault by penetration]
[Criminal Law — Offences — Obstructing the course of justice]
[Criminal Law — Offences — Possession of an intimate image]

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Public Prosecutor

v

DGH and another

[2025] SGHC 140

General Division of the High Court — Criminal Case No 45 of 2024

Hoo Sheau Peng J

2–6, 9–11, 13, 17 September, 24–25 October, 15, 25, 28–29 November, 3–4
December 2024, 21 May 2025

22 July 2025

Judgment reserved.

Hoo Sheau Peng J:

Introduction

1 In HC/CC 45/2024, the two accused persons (“DGH” and “DGI” respectively) claimed trial to various charges, including serious charges involving sexual offences under the Penal Code 1871 (2020 Rev Ed) (the “PC”), which were allegedly committed against the complainant (the “Complainant”) in a hotel room which DGI was staying in (“DGI’s hotel room”).

2 Specifically, the first accused, DGH, claimed trial to the following three charges:

1st Charge

on 26 February 2023 between about 6.06 p.m. and about 8.20 p.m., at [DGI’s hotel room], Singapore, did use criminal force to

[the Complainant], a female then aged 34 years, intending to outrage the modesty of the said [Complainant], to wit, by licking her breast and touching her pubic hair, and you have thereby committed an offence punishable under section 354(1) of the Penal Code 1871.

2nd Charge

on 26 February 2023 between about 6.06 p.m. and about 8.20 p.m., at [DGI's hotel room], did sexually penetrate with your finger, the vagina of [the Complainant], a female then aged 34 years, without her consent, and you have thereby committed an offence under section 376(2)(a) and punishable under section 376(3) of the Penal Code 1871.

3rd Charge

between 26 February 2023 at about 6.06 p.m. and 27 February 2023 at about 4.30 p.m., in Singapore, did do an act which has a tendency to obstruct the course of justice with the intention to obstruct the course of justice, to wit, by deleting communications between you and one [DGI], knowing that they may constitute evidence related to illegal acts committed by you against the said [Complainant], and you have thereby committed an offence under section 204A(b) of the Penal Code 1871.

3 I shall refer to these charges as the “Outrage of Modesty (“OM”) Charge against DGH”, the “Sexual Assault by Penetration (“SAP”) Charge” and the “Obstructing the Course of Justice (“OJ”) Charge against DGH”, respectively.

4 As for the second accused, DGI, he claimed trial to the following six charges:

1st Charge

on 26 February 2023, between about 6.06 p.m. and about 8.20 p.m., at [DGI's hotel room], Singapore, did use criminal force to [the Complainant], a female then aged 34 years, intending to outrage the modesty of the said [Complainant], to wit, by licking her breast, kissing her breast and licking her vagina, and you

have thereby committed an offence punishable under section 354(1) of the Penal Code 1871.

2nd Charge

between 26 February 2023 at about 6.06 p.m. and 27 February 2023 at about 3.43 a.m., at [DGI's hotel room], Singapore, did penetrate with your penis, the vagina of [the Complainant], a female then aged 34 years, without her consent, and you have thereby committed an offence under section 375(1)(a) and punishable under section 375(2) of the Penal Code 1871.

3rd Charge

between 26 February 2023 at about 6.06 p.m. and 27 February 2023 at about 3.43 a.m., at [DGI's hotel room], Singapore, did penetrate with your penis, the anus of [the Complainant], a female then aged 34 years, without her consent, and you have thereby committed an offence under section 375(1A)(a) and punishable under section 375(2) of the Penal Code 1871.

4th Charge

between 26 February 2023 at about 6.06 p.m. and 27 February 2023 at about 3.43 a.m., at [DGI's hotel room], Singapore, did use criminal force to [the Complainant], a female then aged 34 years, intending to outrage the modesty of the said [Complainant], to wit, by using a shaver to shave her pubic hair, and you have thereby committed an offence punishable under section 354(1) of the Penal Code 1871.

5th Charge

between 26 February 2023 at about 6.06 p.m. and 27 February 2023 at about 4.30 p.m., in Singapore, did have in your possession an intimate image of one female, [the Complainant], knowing that the said intimate image was of the said [Complainant] fully naked and lying unconscious in a state of undress and your possession of the said intimate image was without the consent of the said [Complainant], and that your possession would be likely to cause her humiliation, and you have thereby committed an offence under section 377BD(1)(b) and punishable under section 377BD(2) of the Penal Code 1871.

6th Charge

between 26 February 2023 at about 6.06 p.m. and 27 February 2023 at about 4.30 p.m., in Singapore, did do an act which has

the tendency to obstruct the course of justice with the intention to obstruct the course of justice, to wit, by deleting the communications between you and one [DGH] and one image taken of [the Complainant] fully naked and lying unconscious in a state of undress, knowing that they may constitute evidence related to illegal acts committed by you against the said [Complainant], and you have thereby committed an offence punishable under section 204A(b) of the Penal Code 1871.

5 I shall refer to these charges as the “1st OM Charge against DGI”, the “Penile-vaginal Rape Charge”, the “Penile-anal Rape Charge”, the “2nd OM Charge against DGI”, the “Possessing Intimate Image Charge” and the “OJ Charge against DGI”, respectively.

6 To prove its case, the Prosecution called a total of 58 witnesses. Having established a *prima facie* case, the defence was called. The accused persons each gave testimony but did not call any other witnesses. Broadly, DGH argues that the Complainant consented to the sexual activities, or that he mistakenly and in good faith believed that she had so consented.¹ DGI, on the other hand, argues that in relation to the sexual offences, the Prosecution has not proven that the material acts occurred, and/or that the Complainant lacked the capacity to consent, and/or that the Complainant did not give consent. He also argues that the Prosecution has failed to prove the *actus reus* and *mens rea* of the Possessing Intimate Image Charge, and the *mens rea* of the OJ Charge against DGI.²

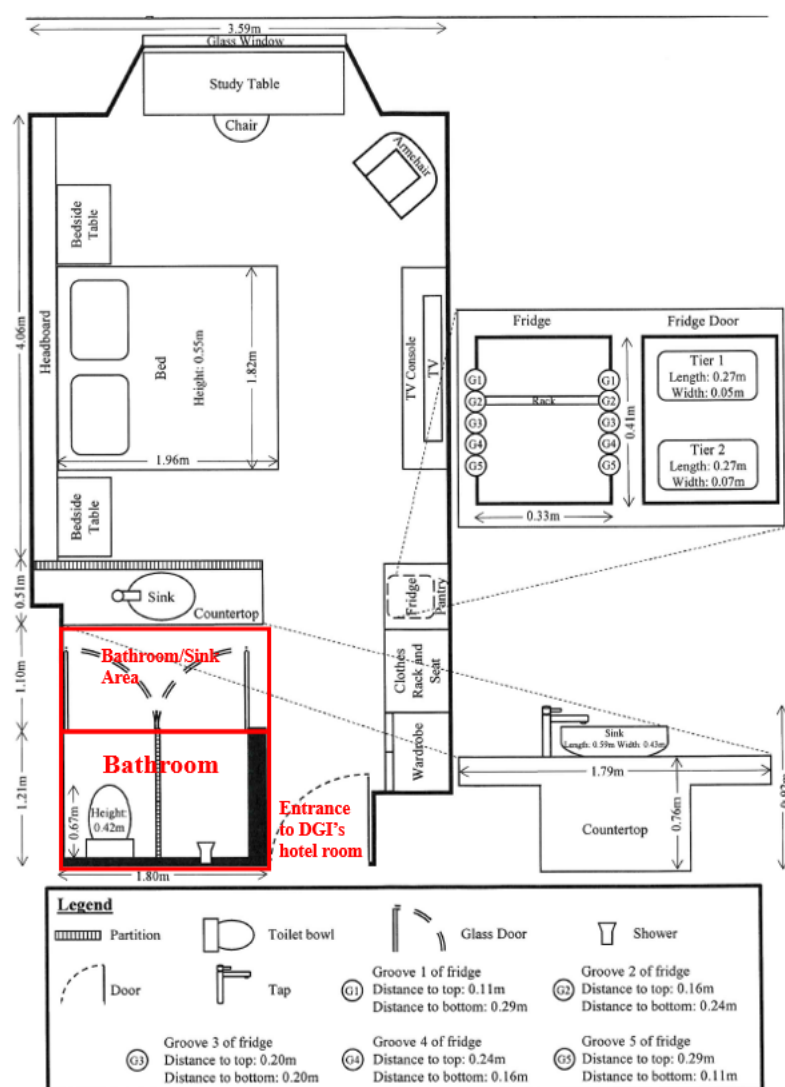
7 Having considered the evidence, I find that the Prosecution has proven all charges against the accused persons beyond reasonable doubt. These are my reasons.

¹ DGH’s Closing Submissions dated 17 February 2025 (“D1CS”) at para 5.

² DGI’s Closing Submissions dated 17 February 2025 (“D2CS”) at para 8.

The agreed facts

8 I begin by setting out the undisputed facts. Broadly, these facts were agreed by the parties by way of a Statement of Agreed Facts.³ To facilitate visualisation, I reproduce a sketch plan of DGI's hotel room,⁴ where the material events were centred, with some further explanatory annotations in red:



³ Statement of Agreed Facts dated 26 August 2024 (“SOAF”).

⁴ Agreed Bundle of Facts (Volume 1) (“1AB”) at 485.

Background facts

9 DGH, DGI and the Complainant are professionals in the same field based overseas. DGH and DGI have been friends for approximately 20 years.⁵ A few years prior to the incident, the Complainant worked under DGH for more than a year. She continued to stay in touch occasionally with him thereafter. She was also aware of DGI's professional reputation.⁶

10 On 23 February 2023, the Complainant and DGH realised that they would both be in Singapore during the same period for the same professional engagement. DGH suggested meeting the Complainant for dinner when they were both in Singapore.⁷ On 24 February 2023, DGH checked into a room at [Hotel A] in Singapore.⁸

11 On 25 February, DGI, who was in Singapore for the same professional engagement, checked into DGI's hotel room which was also in [Hotel A].⁹

12 Also on 25 February 2023, the Complainant and DGH agreed to meet on 26 February 2023 for dinner at [Restaurant X]. Following that, the Complainant asked her assistant for the trip, [A], to make a reservation for two at 6.00pm at [Restaurant X] under the Complainant's surname. [A] did so.¹⁰

⁵ SOAF at para 1.

⁶ SOAF at para 4.

⁷ SOAF at para 7.

⁸ SOAF at para 9.

⁹ SOAF at para 9.

¹⁰ SOAF at paras 10–11.

Events on 26 February 2023

13 On 26 February 2023, between 2.44pm and 3.05pm, through WeChat, the Complainant confirmed with DGH that she had made a 6.00pm booking at [Restaurant X].¹¹ Since the Complainant would be near [Hotel A] later in the day, where DGH would be departing from, DGH proposed meeting up with the Complainant first before travelling to [Restaurant X]. The Complainant agreed. She told DGH that her professional commitments “will end around [5.30pm]” and that she “will give a shout when [she] depart[s]”.¹²

14 Meanwhile, in the afternoon of 26 February 2023, DGH and DGI decided to drink gin and tonic and chat in DGI’s hotel room. At 4.37pm, DGI sent his female friend, whom he had previously shared an intimate relationship with (“PW3”), a text message over Telegram, inviting her to join them. He also sent PW3 a photograph of a bottle of “Tanqueray” gin that was slightly less than half full.¹³ PW3 agreed to go over for “one quick drink”, but stated in her text message reply that she had another appointment at 6.00pm.¹⁴ DGI told DGH that PW3 would be coming over. At 4.50pm, DGI also told DGH to “[b]ring a glass down” from his room as there were only two glasses in each room. DGH did so.¹⁵

15 At around 5.11pm, DGI met PW3 at the lobby of [Hotel A] and brought her up to his room. In DGI’s hotel room, DGI introduced PW3 to DGH and the three of them started chatting. DGI gave PW3 a glass of gin to drink as they had

¹¹ SOAF at para 12; 1AB at 320.

¹² SOAF at para 12; 1AB at 321.

¹³ SOAF at para 14; 1AB at 453.

¹⁴ SOAF at para 15; 1AB at 454.

¹⁵ SOAF at para 16; 1AB at 481.

run out of mixers. He also sat on the bed with PW3, and they kissed. DGH, on the other hand, remained seated at the corner of the room.¹⁶ During the conversation, DGH photographed DGI and PW3 and sent the photograph to his girlfriend, [B], via WeChat.¹⁷

16 At 5.12pm, DGH sent the Complainant a text message over WeChat, stating “One issue... I’ve been drinking gin all afternoon”. The Complainant did not respond until 5.30pm, when she told him that she was leaving her present location and was about ten minutes away from [Hotel A].¹⁸ The following exchange ensued:¹⁹

DGH: Can you come up to [DGI’s hotel room]

DGH: My mates room

DGH: Can you get some tonic?

DGH: 711...

Complainant: Sure sure

DGH: 3 cans?

DGH: Or4

17 At 5.55pm, the Complainant bought four bottles of sparkling water at another location as she did not pass by a 7-Eleven convenience store on her way to [Hotel A]. She informed DGH of the same at 5.56pm. At 5.59pm, she called DGH via WeChat.²⁰ At the same time, [A] sent the Complainant a WeChat text

¹⁶ SOAF at paras 17–18.

¹⁷ Notes of Evidence for 25 November 2024 (“25 Nov 24 NE”) at p 89 line 22 to p 90 line 6.

¹⁸ SOAF at para 19; 1AB at 311.

¹⁹ 1AB at 311.

²⁰ SOAF at paras 21–22; 1AB at 323.

message asking what time she would be arriving at [Restaurant X]. The Complainant replied to say that she would reach in ten minutes.²¹

18 Meanwhile, in DGI's hotel room, DGH said that he had a dinner appointment with the Complainant.²² Then, at around 6.00pm, PW3 said that she needed to leave for her appointment, and DGI walked her to the lobby.²³

19 At 6.03pm, DGH sent the Complainant a text message to ask her if she had arrived. After she called him, he went to the lobby of [Hotel A] to meet her and bring her up into DGI's hotel room.

20 The Complainant arrived at DGI's hotel room at around 6.06pm.²⁴ There, DGH introduced DGI to the Complainant. While she did not know DGI personally and had not met him before, she recognised him due to his professional reputation.²⁵ The Complainant was also offered alcohol. She was first offered half a glass of gin mixed with sparkling water. After she was done, she was offered a second half glass of gin mixed with sparkling water. After the bottle of gin was finished, glasses of white wine were poured. The gin was poured from the 1000ml-bottle of Tanqueray London Dry Gin (which contained 47.3% alcohol), and the white wine was poured from a 750ml-bottle of Cape Mentelle SV Blanc Semillon (which contained 13% alcohol).²⁶

²¹ SOAF at para 22; Agreed Bundle of Documents (Volume 3) ("3AB") at 57.

²² SOAF at para 20.

²³ SOAF at para 23.

²⁴ SOAF at para 25.

²⁵ SOAF at para 24.

²⁶ SOAF at paras 25, 26, 28 and 29.

21 While drinking, DGH and DGI initially had a casual conversation with the Complainant. The Complainant was seated on the edge of the bed near the television, and the accused persons were seated on two chairs in the room. During the conversation, the accused persons moved to sit on the bed with the Complainant. The conversation also turned sexual.²⁷

22 Between 6.20pm and 6.26pm, the Complainant sent certain Mandarin text messages to [A] via WeChat, which are translated as follows:²⁸

6.20pm

Complainant: You make another call

Complainant: Say we're reaching right away

...

[A]: All right

6.26pm

[A]: [Restaurant X] side said a little too much overtime [breaking tears into smile] When all of you reach, will arrange immediately if there's space/vacancy, but may also have to wait for a while

Complainant: They said go over after finishing the alcohol

23 In the last message reproduced above, the Complainant made a typographical error, whereby she used a wrong character when typing out the Mandarin term for "they" which comprises two characters. Specifically, for the first character, she used the character which is used to refer to females (ie, “她

²⁷ SOAF at paras 26–27.

²⁸ 3AB at 16 and 57.

们” instead of that used to refer to males (ie, “他们”), even though she meant to refer to the two male accused persons.²⁹

24 DGH left DGI’s hotel room at 8.20pm.³⁰

Events on 27 February 2023

25 On 27 February 2023, at 3.43am, the Complainant left DGI’s hotel room.³¹ DGI walked the Complainant back to her hotel, [Hotel B], and the Complainant entered [Hotel B] at around 4.07am.³² [Hotel B] was located within walking distance from [Hotel A].

26 DGI then returned to [Hotel A] at about 4.15am. At 4.19am and 4.30am, DGI called the operator/concierge from his room to request fresh linen and towels. Between 4.30am and 4.45am, housekeeping brought fresh linen to DGI’s hotel room and removed some linen and trash.³³ At around 8.15am, the accused persons met at the lobby of [Hotel A].

27 Between 12.43pm and 1.04pm, DGI and the Complainant exchanged the following text messages over WeChat:³⁴

²⁹ 3AB at 57.

³⁰ SOAF at para 31.

³¹ SOAF at para 32.

³² SOAF at para 32.

³³ SOAF at para 33.

³⁴ 1AB at 466.

DGH: Hey, how are you feeling this morning? Not going to be drinking for awhile now?

Complainant: [DGH], can you explain to me what happened last night?

DGH: Yes, definitely. Do you want to meet for coffee later?

DGH: I'm finished with my [professional commitment] and available

Complainant: Later this afternoon. I am still weak.

DGH: Ok take care and get some rest. Let me know when

28 At around 1.00pm, the accused persons met and had lunch together. At 4.10pm and 4.30pm, DGH and DGI were respectively arrested. With those broad background facts in mind, I turn to set out the detailed accounts of the events by the Complainant, DGH and DGI.

The Complainant's account

Events prior to losing consciousness

29 I begin with the Complainant. Building on the undisputed facts, the Complainant testified that she agreed to go up to DGH's "mate's" (*ie*, DGI) room (see [16] above), even though her dinner appointment at [Restaurant X] was at 6.00pm and she was already running late, to drop off the sparkling water which DGH had gotten her to purchase, and to say hi to DGI, as DGH had requested her to do. She also saw this as a networking opportunity.³⁵ Her mind had, however, been "occupied by the timing issue of the booking", even as she was proceeding up to DGI's hotel room. This explains why she failed to notice a person in a wheelchair while entering the lift at [Hotel A's] lobby.³⁶

³⁵ Notes of Evidence for 2 September 2024 ("2 Sep 24 NE") at p 41 lines 7–13.

³⁶ 2 Sep 24 NE at p 46 lines 12–16.

30 Upon entering DGI's hotel room, DGH introduced the Complainant to DGI. DGH and the Complainant were standing, while DGI stood up from the chair near the study table.³⁷ The trio then started talking, and the Complainant remained standing as she thought that she would be leaving in a few minutes.³⁸ She also did not remove her shoes.³⁹ DGH then passed her the first glass of gin-sparkling water mix, and invited her to sit down and have a drink together.⁴⁰ At this point, the bottle of gin (see [20] above) was around one-quarter full,⁴¹ and the Complainant recalled that the first glass of gin prepared by DGI and offered to her was half-full, and contained approximately a quarter glass of gin mixed with a quarter glass of sparkling water.⁴² The Complainant then sat down at the edge of the bed (nearer the study table), facing the television,⁴³ while DGH sat on the armchair.⁴⁴ The trio engaged in a casual conversation, spanning topics like how the Complainant loved the hawker places in Singapore.⁴⁵ Meanwhile, the Complainant sipped on the gin mix.⁴⁶

31 Sometime during the conversation, DGI told the Complainant to remove her shoes.⁴⁷ DGH and DGI also moved to the bed.⁴⁸ Around this time, DGI asked

³⁷ 2 Sep 24 NE at p 52 line 18–21.

³⁸ 2 Sep 24 NE at p 48 lines 21–29.

³⁹ 2 Sep 24 NE at p 65 lines 17–22.

⁴⁰ 2 Sep 24 NE at p 48 lines 21–29.

⁴¹ 2 Sep 24 NE at p 49 lines 13–14.

⁴² 2 Sep 24 NE at p 50 lines 13–21.

⁴³ 2 Sep 24 NE at p 53 lines 7, 9 and 18.

⁴⁴ 2 Sep 24 NE at p 54 lines 29–30.

⁴⁵ 2 Sep 24 NE at p 47 lines 14–30.

⁴⁶ 2 Sep 24 NE at p 57 lines 23–24.

⁴⁷ 2 Sep 24 NE at p 65 lines 28–29.

⁴⁸ 2 Sep 24 NE at p 55 lines 4–7.

the Complainant to finish the glass of gin mix in a “bottoms up” fashion, explaining that she had to catch up since the accused persons had already been drinking all afternoon.⁴⁹ The Complainant did so, but without looking DGI in the eye. DGI then told the Complainant that “When you bottom up, if you don’t look the person into the eye, you’ll have 7 years’ bad sex”.⁵⁰

32 The Complainant felt surprised at DGI’s remark as it was her first time hearing such a proposition.⁵¹ She was then also offered a second glass of similarly mixed alcohol, and asked to offer another toast as well as to finish it in a “bottoms up” fashion.⁵² She then raised the question of whose eyes she should look into if she was offering a toast to two persons, and DGH replied that “[s]he cares for this curse”.⁵³

33 The conversation turned sexual thereafter, with the accused persons asking the Complainant about whether her former or current boyfriend was better in bed, and to compare the size of their penises. As she felt uncomfortable doing so, she answered that it did not matter as her relationship with her former boyfriend was a long-distance one.⁵⁴ The Complainant then attempted to change the topic by talking about her friend who was a world champion sportsman, but the accused persons continued making sexual jokes.⁵⁵ While she felt uncomfortable, the Complainant did not leave the room as she thought it would

⁴⁹ 2 Sep 24 NE at p 57 lines 23–29 and p 58 lines 8–9.

⁵⁰ 2 Sep 24 NE at p 58 lines 3–5.

⁵¹ 2 Sep 24 NE at p 58 lines 5–7.

⁵² 2 Sep 24 NE at p 60 lines 8–11 and lines 17–18.

⁵³ 2 Sep 24 NE at p 60 lines 18–21 and p 61 line 5.

⁵⁴ 2 Sep 24 NE at p 61 lines 8–28.

⁵⁵ 2 Sep 24 NE at p 62 lines 1–15.

be impolite. She also did not see any risk of harm, given her prior professional and amicable relationship with DGH.⁵⁶

34 At this point, the Complainant's understanding was that her dinner plan with DGH remained unchanged. She had an early lunch of chicken rice at 11.00am.⁵⁷ Lunch was also the only meal she had that day.⁵⁸ According to her, DGH told her to tell [Restaurant X] that they were on the way. This explains her messages to [A] at 6.20pm (see [22] above).⁵⁹

35 At around 6.26pm, DGH said that [Restaurant X] had probably given the reserved table away.⁶⁰ The Complainant replied that in the worst case, they could go to another outlet (which was located nearby) instead. However, her preference was to go to the outlet with which she had made the booking. It is the original outlet which won an award.⁶¹

36 At around the same time, DGI asked DGH and the Complainant, "White wine or red wine?". The Complainant initially declined and said that she was heading for dinner. However, DGI said that the wine he wanted to serve was very expensive white wine he got from [Country Z]. DGH then said that he would like the white wine, and the Complainant agreed.⁶² The Complainant also commented that wine from [Country Z] was very expensive in her home country

⁵⁶ 2 Sep 24 NE at p 68 lines 13–22.

⁵⁷ 2 Sep 24 NE at p 58 lines 15–22 and p 62 lines 18–19.

⁵⁸ 2 Sep 24 NE at p 65 lines 10–11.

⁵⁹ 2 Sep 24 NE at p 58 lines 26–29 and p 59 lines 24–30, p 60 lines 4–10 and p 69 lines 17–18.

⁶⁰ 2 Sep 24 Ne at p 63 lines 18–26.

⁶¹ 2 Sep 24 NE at p 59 lines 1–3 and p 62 lines 23–24.

⁶² 2 Sep 24 NE at p 63 lines 22–26 and p 70 line 25 to p 71 line 1.

only because of the tariffs, and DGH remarked that the Complainant could still talk about trade.⁶³ DGI served the Complainant almost half a glass of white wine,⁶⁴ and the Complainant took a few sips of it.⁶⁵ During this period, DGH also pointed to the bar and said that that was their dinner. The Complainant understood this to be a joke.⁶⁶

37 At 6.26pm, the Complainant exchanged the text messages set out at [22] above with [A]. The Complainant explained that she made the typographical error as her hands had started shaking from the amount of alcohol consumed.⁶⁷ That said, she was still able to think at that point in time.⁶⁸

38 Sometime after sending these text messages, the Complainant vomited on the bed, lying face down to the bed and supporting her body with her left arm.⁶⁹ She was still fully clothed at this time.⁷⁰ She was also feeling very uncomfortable, and recalled feeling some vomitus in her nose.⁷¹ She then lost consciousness and started drifting in and out of consciousness. This was her last clear memory.⁷²

⁶³ 2 Sep 24 NE at p 71 lines 16–18.

⁶⁴ 2 Sep 24 NE at p 71 line 4.

⁶⁵ Notes of Evidence for 3 September 2024 (“3 Sep 24 NE”) at p 3 line 28.

⁶⁶ 2 Sep 24 NE at p 63 lines 22–26.

⁶⁷ 2 Sep 24 NE at p 64 lines 4–6 and p 71 lines 29–31.

⁶⁸ 2 Sep 24 NE at p 72 lines 3–6.

⁶⁹ 2 Sep 24 NE at p 73 lines 8–17.

⁷⁰ 2 Sep 24 NE at p 73 lines 22–23.

⁷¹ 2 Sep 24 NE at p 73 lines 25–26.

⁷² 2 Sep 24 NE at p 73 lines 26–28.

Events after initially losing consciousness

39 The Complainant's next memory was of her vomiting into the sink. There was/were one or two person(s) holding her from behind, and she did not remember if she was clothed.⁷³

40 The Complainant next remembered feeling a "very strong pain in [her] anus".⁷⁴ She was facing down unclothed, and thought that something had intruded her anus.⁷⁵ This strong pain made her feel conscious as she had never experienced such pain before.⁷⁶

41 The Complainant also recounted remembering facing up,⁷⁷ with someone sucking her vagina and kissing her mouth. She also recalled both her nipples being sucked concurrently. These memories were patchy, and the Complainant could not recall the sequence in which they happened.⁷⁸ She also could not recall if her vagina was penetrated.⁷⁹

42 Throughout all these sexual acts, which occurred on the bed, the Complainant recalled saying "no, no, no" many times. She could not however move or open her eyes.⁸⁰

⁷³ 2 Sep 24 NE at p 75 line 29 to p 76 line 2.

⁷⁴ 2 Sep 24 NE at p 14–16.

⁷⁵ 2 Sep 24 NE at p 76 lines 22–25.

⁷⁶ 2 Sep 24 NE at p 76 lines 14–16.

⁷⁷ 2 Sep 24 NE at p 77 lines 18–25.

⁷⁸ 2 Sep 24 NE at p 76 line 28 to p 77 line 7.

⁷⁹ 2 Sep 24 NE at p 77 lines 27–28.

⁸⁰ 2 Sep 24 NE at p 77 lines 8–17.

43 The Complainant's next memory was of her lying in the bathroom. She recalled someone rubbing her pubic area and showering her. She regained consciousness due to the water splashing on her body. She called for DGH at that time, saying "save me, I'm dying". However, she could not fully control her muscles, and she was slurring. The Complainant also recalled someone passing her some mouthwash or water, and saying that she felt extremely cold, following which someone turned up the heat of the water.⁸¹

44 After this, someone took the Complainant to the bed. She was still unclothed at this point, but could not recall if she had been dried.⁸² She then fell asleep.⁸³

45 Next, the Complainant recalled waking up unclothed with someone hugging her from the back.⁸⁴ She was lying on the side closer to the sink, and she was facing the window. She recalled the other side of the bed being very wet. As she wanted to squeeze the person behind her off the bed, she tried to turn around. She did so with difficulty, but managed to do so. The person behind her, whom she later realised was DGI after asking, also got off the bed for a while as he had insufficient space. DGI also mentioned that it was 1.00am.⁸⁵ The Complainant asked where DGH was,⁸⁶ to which DGI informed her that DGH had returned to DGH's room.⁸⁷ The Complainant also said that she had a

⁸¹ 2 Sep 24 NE at p 78 lines 12–24 and p 81 lines 10–11.

⁸² 2 Sep 24 NE at p 81 lines 13–14 and 20–21.

⁸³ 2 Sep 24 NE at p 81 lines 23–24.

⁸⁴ 2 Sep 24 NE at p 81 lines 27–29.

⁸⁵ 2 Sep 24 NE at p 82 line 29 to p 83 line 6.

⁸⁶ 2 Sep 24 NE at p 83 lines 5–7.

⁸⁷ 2 Sep 24 NE at p 84 lines 11–21.

headache and felt like she was dying. DGI patted her head and said, “It’s okay, baby”.⁸⁸ The Complainant then fell asleep again.⁸⁹

Events after regaining consciousness

46 After a while, the Complainant woke up again. She was lying in the middle of the bed, and facing the sink. As she was able to open her eyes at this point, the Complainant saw DGI lying in front of her, similarly facing the sink. He was wearing something white, and there was the letter “A” on the back of whatever he was wearing.⁹⁰

47 It was at this moment that the Complainant realised that her pubic hair had been shaved. She then crawled to the other side of the bed, and then onto the floor, where she found her clothes in two piles: her “tops” in one pile, and her panties and pants in another. She also saw two pairs of boxers on the floor.⁹¹ After getting dressed herself,⁹² she found her glasses near the sink, and checked the bin for condoms to find proof of sexual activity.⁹³ While moving from the bed to the floor, the Complainant found her phone, and saw that it was around 3.00am.⁹⁴

48 After searching the bin, the Complainant moved back and sat on the floor, facing the television and with her back against the bed. She asked DGI

⁸⁸ 2 Sep 24 NE at p 84 line 19

⁸⁹ 2 Sep 24 NE at p 83 line 6.

⁹⁰ 2 Sep 24 NE at p 85 lines 20–25.

⁹¹ 2 Sep 24 NE at p 86 lines 6–12.

⁹² 2 Sep 24 NE at p 90 lines 11 and 22–24.

⁹³ 2 Sep 24 NE at p 86 lines 17–24.

⁹⁴ 2 Sep 24 NE at p 86 lines 13–16.

what happened, why she was naked, why he showered her, why her pubic hair was removed, and where DGH was. She repeated some of these questions several times. DGI replied that, “You vomited. We cleaned you. We helped you.” When the Complainant further asked why she was cleaned, and said she thought she was raped, DGI explained that, “Because you vomited so we helped you. We cleaned you.”⁹⁵

49 DGI asked the Complainant if she wanted to stay in his room, or whether she wanted to go back to her own hotel. She said she wanted to leave. DGI also offered the Complainant some multivitamins and some chocolates. She rejected the multivitamins but accepted the chocolate. He also offered her some sparkling water, which she accepted.⁹⁶ She explained that she did not accept the multivitamins as it came in the form of a pill and she was unsure what it contained.⁹⁷

50 Thereafter, the Complainant accepted DGI’s help to walk her back to her hotel. She explained that despite thinking that she had been raped, she accepted DGI’s help because she did not have the strength to walk back by herself. Also, she felt that she would be safe given that there would be cameras and “open space” once she left DGI’s hotel room.⁹⁸ With some difficulty, the Complainant managed to arrive back at her hotel.⁹⁹

⁹⁵ 2 Sep 24 NE at p 91 lines 20–28, p 92 lines 21–24 and p 93 lines 2–5.

⁹⁶ 2 Sep 24 NE at p 93 lines 10–17.

⁹⁷ 2 Sep 24 NE at p 18–22.

⁹⁸ 2 Sep 24 NE at p 95 lines 16–22.

⁹⁹ See, *eg*, 2 Sep 24 NE at p 101 lines 24–27 and p 106 lines 5–7.

51 On the way back, the Complainant asked DGI similar questions as she had earlier asked him. She also told him that she had a cardiovascular issue. DGI did not directly respond to her questions, but merely said that they had helped her.¹⁰⁰ Outside [Hotel B], the Complainant repeated her questions again. Before she walked into the hotel, she also told DGI that, “Whatever happened earlier, thank you for walking me back to the hotel”. She explained that she had deliberately added in the phrase “Whatever happened earlier” as a caveat, as she was still figuring out the earlier events.¹⁰¹

52 As she was walking back to her room by herself, the Complainant could not walk steadily and almost hit the wall twice.¹⁰² Upon returning to her room, the Complainant searched on her phone what she needed to do if she had been raped, as well as the legal consequences of rape in Singapore. She also searched up the police’s number.¹⁰³ The Complainant explained that she wanted to know the legal consequences of raping someone in Singapore as she thought that DGH had been involved, and wanted to find out what consequences he might face. When she found out the severity of the consequences, she was hesitant to make a police report as she did not want DGH to suffer these consequences. This was on account of how DGH had been her mentor previously, and the Chinese philosophy that mentors should be treated like senior members of the family. She also knew that DGH has two children and that they were living with him.¹⁰⁴

¹⁰⁰ 2 Sep 24 NE at p 103 line 26 to p 104 line 6.

¹⁰¹ 2 Sep 24 NE at p 106 lines 8–15.

¹⁰² 2 Sep 24 NE at p 107 lines 9–10.

¹⁰³ 2 Sep 24 NE at p 108 lines 8–13.

¹⁰⁴ 2 Sep 24 NE at p 108 line 18 to p 109 line 21.

53 While doing her searches, the Complainant fell asleep as she was feeling dizzy and had a headache.¹⁰⁵

Events the next day

54 The Complainant woke up again at around 7.45am on 27 February 2023.¹⁰⁶ Sometime after that, as she went to use the washroom, she found some blood stains on her panties, even though she was not menstruating.¹⁰⁷ She also felt a weird sensation in her anus.¹⁰⁸ She thus wanted to get herself medically examined to “make sure [her] body [was] okay”; that was her first priority. As she wanted to preserve all potential pieces of evidence in case she wanted to “pursue the case”, she did not brush her teeth or wash her face. Neither did she change her clothes. She then travelled to Raffles Hospital (the only hospital she knew of in Singapore) via Grab’s private hire services to get her body examined.¹⁰⁹

55 At Raffles Hospital, the Complainant told the staff very briefly that she thought she had been raped, but that she was not sure.¹¹⁰ She was handed a memorandum, and told to go to KK Women’s and Children’s Hospital (“KKH”) instead as Raffles Hospital was a private hospital. She did so.¹¹¹

¹⁰⁵ 2 Sep 24 NE at p 110 lines 9–10.

¹⁰⁶ 2 Sep 24 NE at p 110 lines 10–11 and 3 Sep 24 NE at p 3 line 22.

¹⁰⁷ 3 Sep 24 NE at p 8 lines 1–3.

¹⁰⁸ 3 Sep 24 NE at p 9 line 1–2.

¹⁰⁹ 3 Sep 24 NE at p 8 lines 3–15.

¹¹⁰ 3 Sep 24 NE at p 10 lines 22–25.

¹¹¹ 3 Sep 24 NE at p 10 lines 14–17.

56 At KKH, the Complainant recounted telling the staff that she wished to have her body examined because she thought she had been raped. She was told that a body examination would require the police’s authorisation.¹¹² KKH then made a police report, and the Complainant was told to rest on a bed in a private curtained area within the consultation room.¹¹³

57 While lying down to rest, the Complainant contacted a former superior, PW25, to seek help.¹¹⁴ She explained that PW25 was a “mummy type of person”, and that PW25 also knew the accused persons.¹¹⁵ Specifically, the Complainant sent PW25 a WhatsApp text message at 10.58am, informing her that she “had a situation in singapore last night”, and asking if she could talk to her “like talking to mum”.¹¹⁶ PW25 was busy at that time, and sent a holding text message. She called the Complainant at around 12.21pm,¹¹⁷ and the Complainant recounted what she could recall about the previous night’s events to PW25.¹¹⁸ PW25 then “helped [the Complainant] to figure out, to process what happened”.¹¹⁹

58 While PW25 was speaking to the Complainant, DGH sent the Complainant a text message over WeChat, saying “Hey how are you feeling this morning? Not going to be drinking for awhile now?”.¹²⁰ The Complainant

¹¹² 3 Sep 24 NE at p 10 line 28 to p 11 line 5.

¹¹³ 3 Sep 24 NE at p 11 lines 4–12.

¹¹⁴ 3 Sep 24 NE at p 11 line 31 to p 12 line 1.

¹¹⁵ 3 Sep 24 NE at p 13 lines 14–16.

¹¹⁶ 1AB at 300.

¹¹⁷ 1AB at 300.

¹¹⁸ 3 Sep 24 NE at p 16 line 24 to p 17 line 5.

¹¹⁹ 2 Sep 24 NE at p 17 lines 26–27.

¹²⁰ 1AB at 312; 3 Sep 24 NE at p 18 lines 18–19.

relayed this to PW25, who told her to ask DGH to explain.¹²¹ The Complainant thus sent a text message to DGH at 12.58pm, asking him if he could “explain to [her] what happened last night”, following which the other text messages were exchanged as set out at [27] above.¹²²

59 According to the Complainant, she wanted to hear an explanation from DGH in person, which was why she told DGH that she would meet him later in the afternoon. While she did not eventually meet DGH as investigations commenced thereafter, she maintained this desire to meet DGH the following few days, before she left Singapore.¹²³ Subsequently, the Complainant was interviewed by the police and by doctors.

60 On 28 February 2023, the Complainant also sent an email to [C], whom she saw as her “life mentor”. As [C] was “very old-school”, the Complainant had to arrange for a Zoom meeting with him through an initial email message.¹²⁴ Specifically, the Complainant’s initial email to [C] read as follows:¹²⁵

Urgent – Please call ASAP!

Dear [C],

I have a urgent private situation in sg. I need your help and advice. Can you give me a call on WhatsApp ... please call me as soon as you see this

61 As the Complainant had never sent him an email worded that way before, [C] did not initially reply to her email message, as he thought that it was

¹²¹ 2 Sep 24 NE at p 18 lines 18–20.

¹²² 1AB at 313.

¹²³ 3 Sep 24 NE at p 19 lines 22–27.

¹²⁴ 3 Sep 24 NE at p 22 line 20 and p 22 line 31 to p 23 line 6.

¹²⁵ Prosecution’s Bundle of Exhibits (Volume 2) dated 30 August 2024 (“2PBE”) at 1220.

a scam.¹²⁶ The Complainant sent a follow up email message to [C] on 2 March 2023 using the same email chain stating:¹²⁷

I am ... still traumatized by the issue happened in SG. If you see this email please call me on WhatsApp ... I would like to talk to you as if talking to my father.

62 Sometime in March, [C] managed to verify that the Complainant's email messages were not a scam. Sometime in the same month, they talked about the matter over Zoom.¹²⁸ Following their conversation, the Complainant felt "determined to pursue the case".¹²⁹

63 She also testified that what traumatised her the most was not the incident *per se*, but the fact that DGH had been involved.¹³⁰ DGH was her mentor, and she did not want to see him face the legal consequences of criminal proceedings.¹³¹ She felt very uneasy, had difficulty sleeping, and also had frequent dreams where she was asking people "Where is [DGH]?"¹³² She also started seeking help from various psychotherapists.¹³³

¹²⁶ 3 Sep 24 NE at p 25 lines 8–9.

¹²⁷ 2PBE at 1222.

¹²⁸ 3 Sep 24 NE at p 25 lines 15–26 and p 26 lines 25–26.

¹²⁹ 3 Sep 24 NE at p 28 lines 15–16.

¹³⁰ 3 Sep 24 NE at p 27 lines 11–12.

¹³¹ 3 Sep 24 NE at p 29 lines 1–29.

¹³² 3 Sep 24 NE at p 27 line 28 to p 28 line 4.

¹³³ 3 Sep 24 NE at p 27 lines 18–24.

DGH's account***Events prior to the sexual activities***

64 I turn to DGH's account of the material events. According to DGH, he started consuming gin and catching up with DGI in DGI's hotel room at around 2.00pm on 26 February 2023.¹³⁴ This was after they had gone to the hotel gym and swimming pool, and then had lunch together.¹³⁵

65 Throughout this time, DGH was also exchanging text messages with [B] via WeChat. At 4.26pm, [B] asked DGH why he had not changed and showered yet.¹³⁶ Around the same time, DGI informed him that a friend of his (*ie*, PW3) would be stopping by at around 5.00pm, but she had to leave for a dinner at 6.00pm. DGH thus suggested that it was a good time for them to take a shower and change out.¹³⁷

66 Before DGH left DGI's hotel room to return to his own room to shower, DGI asked him to bring down a pill of sildenafil (also known as "Viagra"), if he had any.¹³⁸ While in his room, DGH also received a text message from DGI asking him to bring an extra glass down (since PW3 was going to go over for a quick drink).¹³⁹ When he returned to DGI's hotel room, DGH brought down a sildenafil pill and a glass tumbler.¹⁴⁰ This was shortly after 5.00pm.¹⁴¹ In DGI's

¹³⁴ 25 Nov 24 NE at p 85 line 32 to p 86 line 9.

¹³⁵ 25 Nov 24 NE at p 85 lines 16–19.

¹³⁶ TCFB/2024/1185 at Annex C p 18 (S/N 91).

¹³⁷ 25 Nov 24 NE at p 92 line 28 to p 93 line 6.

¹³⁸ 25 Nov 24 NE at p 94 lines 26–30.

¹³⁹ 25 Nov 24 NE at p 94 lines 3–7; 1AB at 470.

¹⁴⁰ 25 Nov 24 NE at p 96 line 25 to p 97 line 2.

¹⁴¹ 25 Nov 24 NE at p 96 line 15.

hotel room, DGH passed DGI the glass tumbler and the sildenafil pill. He did not see DGI consume the sildenafil pill.¹⁴² Shortly after, DGI went to the lobby to pick PW3 up.¹⁴³

67 By the time DGI brought PW3 into his hotel room, DGH testified that he was starting to feel inebriated.¹⁴⁴ Almost immediately after PW3 entered DGI's hotel room, DGH sent the Complainant a text message over WeChat informing her that he had been drinking alcohol the whole afternoon (see [16] above).¹⁴⁵ While PW3 was in the room, DGH exchanged several text messages with [B].¹⁴⁶ At 5.35pm, DGH also told [B] that he was "supposed to have dinner with [the Complainant]".¹⁴⁷

68 PW3 left DGI's hotel room a few minutes before 6.00pm.¹⁴⁸ From DGH's recollection, PW3 was leaving the room at the time when the Complainant called him at 5.59pm (see [17] above).¹⁴⁹ At 6.02pm, DGH again sent [B] a message telling her that he was "going for dinner with [the Complainant] tonight".¹⁵⁰ At 6.03pm, [B] replied to ask DGH where they would be going to. DGH did not, however, reply until 6.46pm (see [74] below).

¹⁴² 25 Nov 24 NE at p 98 lines 2 and 17.

¹⁴³ 25 Nov 24 NE at p 98 lines 21–24.

¹⁴⁴ Notes of Evidence for 28 November 2024 ("28 Nov 24 NE") at p 2 lines 31–32.

¹⁴⁵ 28 Nov 24 NE at p 3 lines 8–18.

¹⁴⁶ 28 Nov 24 NE at p 4 lines 4–9.

¹⁴⁷ TCFB/2024/1185 at Annex C p 24 (S/N 129).

¹⁴⁸ 28 Nov 24 NE at p 4 lines 20–21.

¹⁴⁹ 28 Nov 24 NE at p 7 lines 16–18.

¹⁵⁰ TCFB/2024/1185 at Annex C p 28 (S/N 152).

69 Also at 6.03pm, DGH received a WeChat call from the Complainant, and she told him that she had arrived at the lobby of [Hotel A].¹⁵¹ He went to pick her up, and the two had a casual conversation on their way up to DGI's hotel room.¹⁵² Upon entering DGI's hotel room, DGI stood up from the chair near the study table. The Complainant immediately started to slip her shoes off and leave them at the door.¹⁵³ DGH did the same, although he testified that he remembered not taking off his shoes earlier in the day when he was in the room.¹⁵⁴

70 After an initial introduction, while they were all still standing, DGI asked the Complainant if she would like a drink.¹⁵⁵ The Complainant accepted DGI's offer. DGI also offered DGH a drink, which DGH accepted. DGI started preparing the drinks. While this was happening, DGH sat on the armchair, and the Complainant sat on the bed.¹⁵⁶ According to DGH, DGI asked the Complainant where she and DGH were going for dinner, and she started talking about [Restaurant X]. She also mentioned that the main outlet was better than the other outlet located nearby.¹⁵⁷ At this point however, "there was no discussion or even mention that [DGH and the Complainant] had to get to dinner, that [they] were late, that [they] had a booking".¹⁵⁸

¹⁵¹ 28 Nov 24 NE at p 8 lines 6–7.

¹⁵² 28 Nov 24 NE at p 9 lines 1–20.

¹⁵³ 28 Nov 24 NE at p 9 lines 29–32.

¹⁵⁴ 28 Nov 24 NE at p 10 lines 1–3.

¹⁵⁵ 28 Nov 24 NE at p 13 lines 6 and 14–15.

¹⁵⁶ 28 Nov 24 NE at p 13 lines 19–23.

¹⁵⁷ 28 Nov 24 NE at p 13 line 24 to p 14 line 4.

¹⁵⁸ 28 Nov 24 NE at p 17 lines 1–8.

71 Then, DGI handed the Complainant and DGH each a glass of alcohol, and offered them a toast. They did not clink glasses, but instead simply lifted their glasses and said a brief “Cheers”.¹⁵⁹ At this time, DGI also made the joke that not looking into the other person’s eyes when offering a toast would result in seven years of bad sex.¹⁶⁰ DGH and the Complainant “giggled and laughed a bit”.¹⁶¹ DGI then sat back down on the chair near the study table.¹⁶² According to DGH, he did not find the alcohol mix out of the ordinary. Neither did the Complainant remark that the alcohol mix was too weak or too strong.¹⁶³

72 At this time, DGH, DGI and the Complainant were engaged in a casual conversation.¹⁶⁴ Only at around 6.20 to 6.25pm, when the Complainant had “some interactions with [A]” (see [22] above), did the issue of the restaurant booking first arise.¹⁶⁵ Specifically, DGH testified that:¹⁶⁶

... we said, okay, we’ll finish our drink and then we’ll go to the restaurant. So I think at that stage, the plan was still to go to the restaurant...

73 According to DGH, they only finished the first drink at around 6.40 to 6.45pm.¹⁶⁷ At this point, the trio were still having a casual conversation when DGI noticed that DGH and the Complainant had finished their glasses of gin

¹⁵⁹ 28 Nov 24 NE at p 14 lines 11–18.

¹⁶⁰ 28 Nov 24 NE at p 15 lines 6–8.

¹⁶¹ 28 Nov 24 NE at p 15 line 23.

¹⁶² 28 Nov 24 NE at p 14 lines 27–31.

¹⁶³ 28 Nov 24 NE at p 16 lines 27–28.

¹⁶⁴ 28 Nov 24 NE at p 17 lines 8–16.

¹⁶⁵ 28 Nov 24 NE at p 17 lines 17–19 and p 18 lines 14–27.

¹⁶⁶ 28 Nov 24 NE at p 17 lines 29–31.

¹⁶⁷ 28 Nov 24 NE at p 15 line 28.

mix. He asked them if they would like another glass. The casual question of “Should we go for dinner now or should we have another?” thus arose, to which both DGH and the Complainant adopted a “very noncommittal” position on.¹⁶⁸ At this time, the Complainant still appeared “[p]erfectly normal”.¹⁶⁹ At around 6.45pm or sometime after, DGH recalled stating that it was already very late and that the restaurant had probably given away their table.¹⁷⁰

74 DGH explains that this was why, at 6.46pm, he had replied to [B]’s question of where he and the Complainant were going for dinner by saying:¹⁷¹

DGH: I’m not sure

DGH: Maybe too drunk

75 Ultimately, it was decided that everyone would have another round of gin mixed with sparkling water, to finish up the bottle of gin.¹⁷² The second round of gin-sparkling water mix was thus served at around 6.50pm. DGI again offered a toast, and the Complainant made the joke about whose eyes she should look into if she was toasting with two people, to which DGH said something to the effect that “you’re taking this custom very seriously”.¹⁷³ DGH, DGI and the Complainant continued what DGH described as a “relaxed conversation”.¹⁷⁴

¹⁶⁸ 28 Nov 24 NE at p 19 lines 5–9.

¹⁶⁹ 28 Nov 24 NE at p 19 lines 17–18.

¹⁷⁰ 28 Nov 24 NE at p 21 line 31 to p 22 line 3.

¹⁷¹ 28 Nov 24 NE at p 15 line 31 to p 16 line 10; TCFB/2024/1185 at Annex C p 29 (S/N 154 and 155).

¹⁷² 28 Nov 24 NE at p 19 lines 11–13.

¹⁷³ 28 Nov 24 NE at p 20 lines 12–28.

¹⁷⁴ 28 Nov 24 NE at p 21 line 9.

76 At some point, the conversation turned sexual in nature.¹⁷⁵ According to DGH, he “unwittingly may have opened that door”, by asking the Complainant if she was still with her previous boyfriend. He could not recall how the “sexual talk” began,¹⁷⁶ although he recalled feeling “a little surprised” and “slightly uncomfortable” with the turn of topics.¹⁷⁷ He recalled that at this time, the curtains at the glass window in DGI’s hotel room were open, and he went to the restroom as the sun was going down. Having done a search of the time the sun set on 26 February 2023, DGH estimated that this was at around 7.15pm. When he returned from the restroom, DGH moved to sit on the bed.¹⁷⁸ The Complainant also shifted her position to continue the conversation.¹⁷⁹

77 According to DGH, shortly after he moved to the bed,¹⁸⁰ the Complainant compared the sizes of her current boyfriend’s and her former boyfriend’s penises.¹⁸¹ The sexual conversation continued for a while, until the room became very dark. DGI stood up to switch on the bedside lamp. Thereafter, he asked DGH and the Complainant if they wanted some wine. The Complainant accepted the offer.¹⁸² According to DGH, the Complainant and DGI finished the second glass of alcohol before DGH. This was after 7.15pm, sometime between 7.20pm and 7.30pm.¹⁸³ DGH declined any wine as he had

¹⁷⁵ 28 Nov 24 NE at p 25 lines 11–12.

¹⁷⁶ 28 Nov 24 NE at p 25 lines 15–23.

¹⁷⁷ 28 Nov 24 NE at p 33 lines 11–15.

¹⁷⁸ 28 Nov 24 NE at p 22 lines 7–20 and p 25 lines 16–17.

¹⁷⁹ 28 Nov 24 NE at p 24 lines 12–14.

¹⁸⁰ 28 Nov 24 NE at p 26 lines 7–10.

¹⁸¹ 28 Nov 24 NE at p 25 line 32 to p 26 line 1.

¹⁸² 28 Nov 24 NE at p 26 lines 14–25.

¹⁸³ 28 Nov 24 NE at p 21 lines 25–26.

not finished his second glass of gin-sparkling water mix.¹⁸⁴ At this time, the Complainant's behaviour was still normal.¹⁸⁵

78 DGI moved to sit on the bed after he poured the wine.¹⁸⁶ Earlier in the evening, he moved his chair so that it was pressed closely against the bed such that he was seated much closer to the Complainant.¹⁸⁷ Both DGI and the Complainant had a few sips of the wine at most.¹⁸⁸ The sexual conversation also continued, as the Complainant had "brought it back to that subject":¹⁸⁹

Immediately prior to the wine being poured, after the penis size discussion, the complainant made a comment that sometimes size does not matter. What matter is his presence. And the---I think that she com---explained what she meant by that is that, one, it was present in the same city as her, and the other was a long-distance relationship. So what matter is his presence made perfect sense.

This was sometime between 7.30pm and 7.40pm.¹⁹⁰

79 According to DGH, just before the wine was poured, the Complainant was sharing that her former boyfriend was very good in bed.¹⁹¹ When the wine was poured, the Complainant said that her home country had instituted very high duties against similarly produced wines due to some trade friction.¹⁹² After

¹⁸⁴ 28 Nov 24 NE at p 26 lines 14–25.

¹⁸⁵ 28 Nov 24 NE at p 25 lines 1–5.

¹⁸⁶ 28 Nov 24 NE at p 27 line 9.

¹⁸⁷ 28 Nov 24 NE at p 27 lines 5–9.

¹⁸⁸ 28 Nov 24 NE at p 26 line 31 to p 27 line 1.

¹⁸⁹ 28 Nov 24 NE at p 31 lines 22–27.

¹⁹⁰ 28 Nov 24 NE at p 32 line 3.

¹⁹¹ 28 Nov 24 NE at p 32 lines 1–9.

¹⁹² 28 Nov 24 NE at p 32 lines 23–31.

the wine was poured, the Complainant shared that she had a friend who was a sportsman, whom DGH understood to be the Complainant's former fiancé, who was "also" good. DGH took that to mean that he was also very good in bed. The Complainant then stated that he was however not as good in bed as her former boyfriend.¹⁹³ DGI then followed up by asking the Complainant what her favourite sexual position was, to which she replied, without appearing to be offended or taken aback, "From behind".¹⁹⁴ At this point, the Complainant still appeared "perfectly fine".¹⁹⁵

80 Also between 7.30pm and 7.40pm, DGH and [B] exchanged the following text messages via WeChat:

¹⁹³ 28 Nov 24 NE at p 32 lines 11–20.

¹⁹⁴ 28 Nov 24 NE at p 35 lines 1–9.

¹⁹⁵ 28 Nov 24 NE at p 32 lines 23.

7.30pm

DGH: Cancelled on her [*ie*, the Complainant]

DGH: Still drinking

DGH: Bottle gone

DGH: Liquid dinner

7.40pm

[B]: With [DGI] and his cunt???

DGH: No she has a dinner to go to

DGH: Just with [DGI]

81 DGH explained that he did not let [B] know that the Complainant was in the room at this point for fear that this would cause [B] to feel uncomfortable.¹⁹⁶

Normally(?) is extremely cautious by nature. And I think that my feeling at the time was that she would not be comfortable if I were in a room unless if it were with---with---with person from the opposite sex in that regard, with [DGI], unless if it were someone that she trusted. So I---I don't remember exactly anything beyond---beyond that. So that is why I said, "No, just--just with him."

...

[B] knows the complainant and she didn't know [PW3]. And I think probably also in the tone of my messages around [PW3] as well, it's---it was---the---the---the tone was such that I don't

¹⁹⁶ 28 Nov 24 NE at p 34 lines 12–25.

believe she would have any---any concern with her cautiousness.

The sexual activities

82 Shortly after the sexual conversation, DGH testified that DGI and the Complainant went to the bathroom area. That was when the sexual activities began.¹⁹⁷ According to DGH, he was sitting on the bed by himself for some time when this happened. He could not recall what he was doing.¹⁹⁸ The Complainant and DGI did not return and approximately five to ten minutes later, DGH started hearing the Complainant make “sexual moaning-like noises” from the bathroom area.

83 DGH thus went to the bathroom area to check what was happening, and he saw the Complainant and DGI having sexual intercourse at the countertop to the right of the sink area.¹⁹⁹ Specifically, DGI was standing behind the Complainant, and was completely naked. The Complainant, on the other hand, was also standing at a slight angle with both her hands almost straightened on the countertop. She appeared to have full control of her body, to be enjoying herself, and was “clearly just bracing herself with her hands on the countertop during the sexual activity” while being naked bottom-down.²⁰⁰

84 Upon witnessing the sexual activity, DGH put up his hands and said “Whoa”, before walking back to sit on the bed for close to a minute. He did so out of surprise.²⁰¹ DGH then got back up from the bed and moved to a position

¹⁹⁷ 28 Nov 24 NE at p 35 lines 10–13.

¹⁹⁸ 28 Nov 24 NE at p 35 lines 16–23.

¹⁹⁹ 28 Nov 24 NE at p 37 lines 13–29.

²⁰⁰ 28 Nov 24 NE at p 40 line 29 to p 41 line 13.

²⁰¹ 28 Nov 24 NE at p 41 lines 18–32.

where he could see the Complainant and DGI. By this time, the Complainant was fully naked, and she was still engaging in sexual intercourse with DGI. She was still in the same position, and she was still making similar moans. Upon making eye contact with them, DGH recalled DGI:²⁰²

... smiling and kind of opening his hand and maybe even stepping---ceasing intercourse which seemed to be kind of a--- [DGH] took that as a---a---a sign that he was willing or---or wanting [DGH] to participate as well.

85 DGH, while still fully clothed, then walked behind the Complainant and put his hand on her right buttock cheek for a few seconds.²⁰³ She again made “sexual-like ... mm noises”, although it was not as intense as her previous moans when DGI was having sexual intercourse with her. At this point, DGI also walked out of the bathroom area.²⁰⁴ While DGH was still alone with the Complainant in the sink area, he removed his hand from the Complainant’s buttock and undid the button on his trousers. He then placed his hand back on her buttocks and rubbed his front against her back. As he was pressing against her, the zip on his pants naturally fell down a little, and his pants might have fallen down a few centimetres, although they were generally still up.²⁰⁵ The Complainant again made soft moans.²⁰⁶

86 According to DGH, he was feeling “a little bit awkward” at that point, and he did not have an erection. A few seconds later, DGI returned to the sink

²⁰² 28 Nov 24 NE at p 42 lines 2–4 and 14–22.

²⁰³ 28 Nov 24 NE at p 43 lines 20–28.

²⁰⁴ 28 Nov 24 NE at p 43 line 29 to p 44 line 5.

²⁰⁵ 28 Nov 24 NE at p 44 lines 11–27 and p 45 lines 1–3.

²⁰⁶ 28 Nov 24 NE at p 45 line 11.

area. DGH then left the Complainant and DGI alone, and returned to the bedroom area, where he sat on the bed.²⁰⁷

87 Around a minute later, the Complainant and DGI returned to the bedroom area. The Complainant climbed onto the bed in a “crawling” manner and laid on her back.²⁰⁸ DGI went to the foot of the bed and knelt or squatted down. The Complainant then pushed herself towards the edge of the bed, and DGI started performing oral sex on her.²⁰⁹ The Complainant again made “slight moan sounds” and appeared to be enjoying the activity.²¹⁰

88 As DGI performed oral sex on the Complainant, DGH began to touch, kiss and lick her breasts. The Complainant made “pleasurable sounds” in response.²¹¹ At some point, she reached over with her hand towards DGH’s groin area and touched his undergarments. This gave DGH the impression that she wanted to “hold or do something to [his] penis”. He thus put the front of his undergarments down, and she grabbed his penis and began stroking it.²¹²

89 Fifteen to 30 seconds later, DGH reached down with his left hand and touched the Complainant’s vagina.²¹³ As DGH slid his hand down, DGI stopped performing oral sex on the Complainant and pulled his head back slightly.²¹⁴

²⁰⁷ 28 Nov 24 NE at p 45 lines 14–15 and p 45 line 27 to p 46 line 4.

²⁰⁸ 28 Nov 24 NE at p 46 lines 13–18.

²⁰⁹ 28 Nov 24 NE at p 48 lines 24–28.

²¹⁰ 28 Nov 24 NE at p 48 lines 30–31.

²¹¹ 28 Nov 24 NE at p 49 lines 11–12.

²¹² 28 Nov 24 NE at p 49 lines 14–19.

²¹³ 28 Nov 24 NE at p 50 lines 8–11.

²¹⁴ 28 Nov 24 NE at p 50 lines 22–25.

DGH then inserted two fingers into the Complainant's vagina.²¹⁵ At this, the Complainant's moans grew louder.²¹⁶ Her hand also "did come off" DGH's penis.²¹⁷

90 As DGH was not in a comfortable position, he stopped "a matter of---of seconds" later, and pulled his hand away. He went back to kissing and licking the Complainant's left breast. The Complainant grabbed his penis again and began stroking it again. DGI also resumed performing oral sex on the Complainant.²¹⁸

91 Around 30 seconds later, the Complainant said "No, no, no" thrice. DGH, who had been kissing her breast, put his head up and told DGI "That's it. She said no". DGI then asked the Complainant if she really wanted him to stop. She said "Yes, no more" and that was the end of the sexual activity.²¹⁹ Prior to this, she did not say a single word in DGH's presence. Neither did DGH nor DGI utter a word.²²⁰

Events after the sexual activities

92 The Complainant then sat up rather quickly, turned to her left, put her hand up to her mouth, and started to vomit. However, very little vomit came out. She thereafter got up and walked quickly to the bathroom area.²²¹ DGH

²¹⁵ 28 Nov 24 NE at p 50 lines 8–11.

²¹⁶ 28 Nov 24 NE at p 50 lines 26–28.

²¹⁷ 28 Nov 24 NE at p 51 line 3.

²¹⁸ 28 Nov 24 NE at p 51 lines 5–10.

²¹⁹ 28 Nov 24 NE at p 51 lines 11–22.

²²⁰ 28 Nov 24 NE at p 53 lines 23–28.

²²¹ 28 Nov 24 NE at p 52 lines 7–15.

continued sitting on the bed, while DGI immediately took a washcloth and put it over the small amount of vomit which was on the bed, before following the Complainant to the bathroom area.²²²

93 “A very short period of time” later, the Complainant returned to the bed. She appeared embarrassed at first, and apologised. DGH and DGI told her there was nothing to apologise for. The Complainant then climbed back onto the bed and sat resting against two pillows on the headboard.²²³ Thereafter, the Complainant continued sitting on the bed. While she closed her eyes several times, she was generally alert with her eyes open. She did not appear to be feeling very well.²²⁴

94 Apart from DGH and DGI asking the Complainant if she was feeling okay, and from DGI asking the Complainant if she wanted some water, there was no real conversation amongst them.²²⁵ As DGH felt awkward and assessed that the Complainant was not in any harm or need of assistance, he decided to go back to his room. He informed DGI and the Complainant of the same, and they said okay. The Complainant also waved goodbye to him. As he was putting on his shoes, he also told DGI to “make sure [DGI] take care of [the Complainant]”. Thereafter, DGH went back to his own hotel room.²²⁶

95 DGH arrived back at his hotel room at around 8.15pm to 8.20pm. He knew this as he had sent text messages to [B] and DGI after arriving in his

²²² 28 Nov 24 NE at p 52 lines 17–21.

²²³ 28 Nov 24 NE at p 53 lines 4–16.

²²⁴ 28 Nov 24 NE at p 53 lines 26–28.

²²⁵ 28 Nov 24 NE at p 54 lines 10–15.

²²⁶ 28 Nov 24 NE at p 53 lines 28–29, p 54 lines 6–9 and p 54 lines 19–23.

room.²²⁷ Specifically, DGH sent the following text messages to [B] between 8.23pm and 8.24pm, continuing from [B]’s reply to DGH’s last text message sent at 7.40pm (see [80] above):²²⁸

7.52pm

[B]: So no sex?

8.23pm

DGH: Haha

DGH: No

DGH: She left

8.24pm

DGH: I to I they will have sex later

DGH: I’m back in my room

There was no further mention of the Complainant in DGH’s text message exchanges with [B] that night.

96 After his text messages to [B], DGH also sent DGI a few text messages over WhatsApp, as the thought occurred to him while he was leaving DGI’s hotel room that he should also tell DGI not to have further sexual contact with the Complainant that night even if she later initiated any.²²⁹ In his first message, DGH effectively told DGI that there should be no more action that night as the Complainant had said no. In his second message, DGH told DGI that he did not want to get into trouble.²³⁰ DGH did not receive a reply from DGI. Thus, at

²²⁷ 28 Nov 24 NE at p 55 lines 2–6.

²²⁸ TCFB/2024/1185 at Annex C pp 30–31.

²²⁹ 28 Nov 24 NE at p 55 lines 8–10 and p 57 lines 9–17.

²³⁰ 28 Nov 24 NE at p 57 lines 9–17.

around 11.00pm to 11.30pm, he sent DGI two further messages. The first said “You’re f***ing her, aren’t you?”, and the second said “I hope you guys are just asleep”.²³¹ DGH went to bed shortly after.²³²

Events the next day

97 At 7.32am on 27 February 2023, DGI called DGH using the hotel room phone.²³³ DGH asked DGI if he ended up “hooking up later” the previous night with the Complainant. DGI said he did not, and told DGH that the Complainant “ended up getting really sick”. Specifically, DGI told DGH that:²³⁴

... there was, you know, vomit everywhere. [DGI] slept at the foot of the bed and on the floor. And that she kept complaining about sometimes being hot, sometimes being cold and that he had taken her to and from the shower ... many times throughout the night. At that stage---and then he said he ended up walking her home around 4.00am.

98 DGI also requested to meet DGH at the hotel lobby before DGH went out that day.²³⁵ Following the call, DGH noticed that DGI had attempted to call him on his mobile phone while he was asleep.²³⁶ DGI, however, never replied to the four WhatsApp text messages which DGH sent him the night before (see [96] above).²³⁷

²³¹ 28 Nov 24 NE at p 57 line 27 to p 58 line 3.

²³² 28 Nov 24 NE at p 58 line 31.

²³³ 28 Nov 24 NE at p 59 lines 1–2 and 11.

²³⁴ 28 Nov 24 NE at p 59 line 26 to p 60 line 4.

²³⁵ 28 Nov 24 NE at p 60 lines 8–9.

²³⁶ 28 Nov 24 NE at p 59 lines 17–18.

²³⁷ 28 Nov 24 NE at p 61 lines 18–19.

99 When they met, DGI confirmed that no more sexual activity took place after DGH left his hotel room and recounted the remaining events of the previous night, which was in line with what he had mentioned over the phone earlier that morning.²³⁸ DGI also asked DGH to delete the photographs he had taken of DGI and PW3 (see [15] above), as well as the messages DGH had sent DGI later the previous day (see [96] above),²³⁹ saying that he “did not need that shit on [DGI’s] phone” as he had a new fiancée and did not want her to see these contents.²⁴⁰ DGH agreed and said that he would delete these contents. However, DGI asked DGH to “do it now”. DGH thus proceeded to delete the messages, but he did not recall if he had also deleted the photographs.²⁴¹

100 Later that afternoon, DGH sent DGI a text message to arrange for coffee with him. He also sent a text message to the Complainant to check on her and to let her know that there should not be any awkwardness or embarrassment between them. This led to the above-narrated exchange of text messages between DGH and the Complainant (see [27] above).²⁴² According to DGH, he felt “surprised and had really no idea what to think” when the Complainant asked him to explain to her what had happened the previous night.²⁴³ He later told DGI about the Complainant’s text messages when he met DGI. DGI’s initial response was to say that “Maybe [the Complainant] doesn’t remember

²³⁸ 28 Nov 24 NE at p 61 lines 5–12.

²³⁹ 28 Nov 24 NE at p 61 lines 16–18.

²⁴⁰ 28 Nov 24 NE at p 61 line 31 to p 62 line 4.

²⁴¹ 28 Nov 24 NE at p 62 lines 6–9.

²⁴² 28 Nov 24 NE at p 63 lines 1–13.

²⁴³ 28 Nov 24 NE at p 63 lines 25–31.

what happened”. He did not add much to that and got very quiet. Their conversation moved to other topics.²⁴⁴

101 At 3.48pm, DGH sent the Complainant a text message over WeChat asking her if she wanted him to bring her some food.²⁴⁵ He did so as it had not crossed his mind that she would think that the previous night’s sexual activities were not consensual.²⁴⁶ DGH was arrested around 45 minutes later.²⁴⁷

DGI’s account

Events prior to sexual activities

102 I turn finally to DGI’s account of the events. According to DGI, prior to DGH returning to his room to take a shower, they were chitchatting over gin and tonic in DGI’s hotel room.²⁴⁸ Among other things, they talked about their plans for that evening. DGI told DGH that he had an appointment at 10.00pm. DGH, on the other hand, mentioned that he had plans to catch up with the Complainant.²⁴⁹

103 When DGH returned to DGI’s hotel room after showering in his own room, he brought along an additional glass as DGI had requested for it (see [66] above).²⁵⁰ DGH also brought two portions of a blue pill, and offered one portion to him, saying “Here’s some Viagra”. According to DGI, he felt surprised when

²⁴⁴ 28 Nov 24 NE at p 66 lines 3–24.

²⁴⁵ TCFB/2024/1186 at Annex C p 11 (S/N 54).

²⁴⁶ 28 Nov 24 at p 67 lines 16–17.

²⁴⁷ 28 Nov 24 NE at p 67 lines 29–32.

²⁴⁸ Notes of Evidence for 3 December 2024 (“3 Dec 24 NE”) at p 12 lines 8–11.

²⁴⁹ 3 Dec 24 NE at p 12 lines 13–17.

²⁵⁰ 3 Dec 24 NE at p 14 lines 1–6.

DGH offered him the pill because he had not requested for it. To avoid awkwardness, DGI pretended to consume the pill but he did not actually do so.²⁵¹ There was also no prior conversation about any planned sexual activities.²⁵² DGI saw DGH drinking some water, and “thought that he was taking the pill when he was doing so”.²⁵³

104 Slightly before 5.15pm, PW3 arrived at [Hotel A].²⁵⁴ While PW3 was in DGI’s hotel room, DGI thought that DGH was taking photographs of PW3 and him on the bed. He asked DGH to stop, and DGH said that he was not taking any photos. According to DGI, he did so as he had kissed PW3 a few times and was not sure what photographs DGH had taken of PW3 and him, as well as DGH’s intentions. He did not want his fiancée to find out about the matter.²⁵⁵

105 PW3 left the room a few minutes before 6.00pm and DGI walked her down to the lobby. A few minutes after he returned to his hotel room, DGH received a message from the Complainant saying that she was at the lobby.²⁵⁶

106 When the Complainant arrived in DGI’s hotel room, DGH introduced DGI to the Complainant, and the parties exchanged pleasantries. DGH and DGI invited her to have a drink of gin with sparkling water (using the sparkling water the Complainant had brought to the room).²⁵⁷ DGI offered the Complainant around half a glass of gin-sparkling water mix, with “a ratio of, maybe, one part

²⁵¹ 3 Dec 24 NE at p 14 lines 6–19.

²⁵² 3 Dec 24 NE at p 14 lines 26–27.

²⁵³ 3 Dec 24 NE at p 14 lines 22–23.

²⁵⁴ 3 Dec 24 NE at p 15 line 1.

²⁵⁵ 3 Dec 24 NE at p 15 lines 13–24.

²⁵⁶ 3 Dec 24 NE at p 16 lines 7–11.

²⁵⁷ 3 Dec 24 NE at p 16 line 31 to p 17 line 4.

gin to two parts of sparkling water or something---something like that”, and the trio said “Cheers”.²⁵⁸

107 They also started talking casually about topics such as food.²⁵⁹ Most of the discussion was between the Complainant and DGH, with DGI joining in occasionally.²⁶⁰ The conversation went on for around 1 hour and 20 minutes. During this time, the trio finished the bottle of gin and three bottles of sparkling water. Everyone was drinking at roughly the same slow pace. After everyone finished their drinks, they would say “Shall we have another round?” and everyone would agree that they wanted another round of drinks.²⁶¹ According to DGI, everyone consumed two to three rounds of drinks. He had prepared most of them, but DGH might have prepared one round of drinks.²⁶² DGI also testified that he did not recall much conversation about the dinner that the Complainant and DGH were planning to go to, and that no one seemed particularly anxious about it.²⁶³

108 After the bottle of gin was finished, DGI offered the Complainant and DGH some white wine. They indicated that they wanted some. He poured around half a glass of white wine for each of them.²⁶⁴ After the white wine was

²⁵⁸ 3 Dec 24 NE at p 17 lines 14–20.

²⁵⁹ 3 Dec 24 NE at p 17 lines 20–32.

²⁶⁰ 3 Dec 24 NE at p 17 lines 30–32.

²⁶¹ 3 Dec 24 NE at p 18 lines 4–13.

²⁶² 3 Dec 24 NE at p 18 lines 16–18.

²⁶³ 3 Dec 24 NE at p 18 lines 21–23.

²⁶⁴ 3 Dec 24 NE at p 19 lines 23–27.

poured, the Complainant took a few sips of it.²⁶⁵ She also started talking about her current and former boyfriends, as well as her preferred sexual position.²⁶⁶

The sexual activities

109 Around 20 minutes later, the Complainant invited the accused persons to sit closer to her. She then initiated a kiss with DGH, initiated a kiss with DGI, and went back to kissing DGH.²⁶⁷ The Complainant suggested that they move to the bathroom area. Everyone did, and proceeded to undress themselves there. The Complainant left her clothes on the ground where she was standing, close to the sink.²⁶⁸

110 There was then some kissing between DGI and the Complainant, as well as DGH and the Complainant. Following that, the accused persons kissed both of the Complainant's breasts simultaneously. DGI then asked the Complainant if she would "like to be a little bit cleaner down there". The Complainant nodded. DGI thus proceeded to shave off the top portion of her pubic hair. DGI then performed oral sex on the Complainant. DGH later did the same.²⁶⁹ According to DGI, DGH also "appeared to be" digitally penetrating the Complainant.²⁷⁰ Following that, DGI also digitally penetrated the Complainant. At this point, the Complainant was facing the mirror and placed her hands on the sink.²⁷¹

²⁶⁵ 3 Dec 24 NE at p 20 line 25.

²⁶⁶ 3 Dec 24 NE at p 20 line 1 to p 21 line 1.

²⁶⁷ 3 Dec 24 NE at p 21 lines 5–11.

²⁶⁸ 3 Dec 24 NE at p 21 lines 17–21 and p 22 lines 3–12.

²⁶⁹ 3 Dec 24 NE at p 23 lines 1–20.

²⁷⁰ 3 Dec 24 NE at p 23 line 23.

²⁷¹ 3 Dec 24 NE at p 24 lines 3–10.

111 Thereafter, DGH walked behind the Complainant, and started making thrusting motions behind her. DGI assumed that DGH was penetrating the Complainant with his penis. While doing so, DGH made two comments to the Complainant, which DGI described as “Like in her---in her pussy and in her arse”.²⁷² Thereafter, DGI also penetrated the Complainant’s vagina with his penis.²⁷³ The sexual activities happened after the Complainant was shaved with either DGI or DGH standing behind her.²⁷⁴ The Complainant stood “slightly leaning forward with her hands on the---the sink”.²⁷⁵

112 As he had not engaged in intimate acts with the Complainant before, DGI testified that he would ask her “Do you want this?” or “Do you like this?”, and would only proceed with the sexual activities after the Complainant said “Yes” or “more” or nod her head. She also moaned in pleasure and looked like she was enjoying the activity. At some point, she also said “Yes [DGH]”, “Yes [DGI]”.²⁷⁶

113 Less than a minute later, the Complainant:²⁷⁷

... said something like ‘stop’ or ‘no’ and immediately stopped all sexual activity and there was no other sexual activity that occurred. And looking at her face, she appeared to be getting

²⁷² 3 Dec 24 NE at p 24 lines 12–21.

²⁷³ 3 Dec 24 NE at p 26 line 6.

²⁷⁴ 3 Dec 24 NE at p 25 lines 12–13.

²⁷⁵ 3 Dec 24 NE at p 25 lines 15–16.

²⁷⁶ 3 Dec 24 NE at p 24 line 31 to p 25 line 9.

²⁷⁷ 3 Dec 24 NE at p 26 lines 8–24.

more unwell and fairly soon after that, vomited into the basin, the---sorry, the sink that she was standing in front of.

114 According to DGI, some vomit got onto the Complainant's clothes as she vomited into the sink while her clothes were underneath the sink.²⁷⁸

Events after the sexual activities

115 After the Complainant vomited, the accused persons tried to help her rinse her mouth. There was a lot of subsequent "movements between different areas", and DGI recalled that DGH and he laid the Complainant on the left side of the bed. They did so in case she was going to vomit again. She did.²⁷⁹ At this point, everyone was still undressed.²⁸⁰

116 According to DGI, the Complainant was responsive at all times. She could respond to questions and could express what she needed help with. She also managed to walk back to the bed, although the accused persons walked by both her sides as she appeared unsteady and they did not want her to fall.²⁸¹ Around 15 minutes later, DGH left DGI's hotel room and returned to his own room.²⁸²

117 After DGH left, DGI changed into his "Qantas" pyjamas.²⁸³ Throughout the night, the Complainant made several requests to be moved between the bed,

²⁷⁸ 3 Dec 24 NE at p 44 lines 5–7.

²⁷⁹ 3 Dec 24 NE at p 27 line 32 to p 28 line 8.

²⁸⁰ 3 Dec 24 NE at p 30 lines 10–12.

²⁸¹ 3 Dec 24 NE at p 30 lines 1–7.

²⁸² 3 Dec 24 NE at p 30 lines 19–21.

²⁸³ 3 Dec 24 NE at p 31 lines 8–9.

the shower and the toilet.²⁸⁴ She would call out “Help me, [DGI]” or “Help me, [DGH]”, and DGI would attend to her. He would also tell her that “[DGH had] left and gone back to his ... room”.²⁸⁵ As he did not want to leave the Complainant by herself, DGI skipped his 10.00pm appointment.²⁸⁶

118 The Complainant could walk (albeit slightly unsteadily), and did not need to be carried. She vomited a few more times that night.²⁸⁷ When she was covered up on the bed, the Complainant would toss aside whatever was covering her. She also made frequent complaints of being cold, which DGI understood to be what might have prompted the Complainant’s requests for a hot shower.²⁸⁸

119 In the shower, the Complainant would sit down or lie down, and DGI would pass her the shower head. He would also adjust the temperature and volume of the water in accordance with the Complainant’s requests.²⁸⁹ He did not shower the Complainant.²⁹⁰ DGI also recalled putting some water beside the Complainant in the shower and encouraging her to drink it. She knocked it over.²⁹¹

120 At around 1.00am, the Complainant called out to DGI saying that she wanted to return to her hotel. DGI told her that she needed more rest first, and

²⁸⁴ 3 Dec 24 NE at p 31 lines 15–21.

²⁸⁵ 3 Dec 24 NE at p 32 lines 24–27.

²⁸⁶ 3 Dec 24 NE at p 33 lines 6–7.

²⁸⁷ 3 Dec 24 NE at p 31 lines 15–21.

²⁸⁸ 3 Dec 24 NE at p 31 line 30 to p 32 line 11.

²⁸⁹ 3 Dec 24 NE at p 33 lines 18–23.

²⁹⁰ 3 Dec 24 NE at p 33 line 33 line 32 to p 34 line 1.

²⁹¹ 3 Dec 24 NE at p 33 lines 29–30.

the Complainant agreed to continue resting a little longer in DGI's hotel room.²⁹² At this point, DGI had been sleeping on the floor as the bed was full of vomit.²⁹³ More specifically, DGI's account was that at no point was he on the bed with the Complainant.²⁹⁴

121 Sometime during the night, DGI took a photograph of the Complainant in the shower cubicle without her permission. He explained that he had done so to "document her condition so that she would understand it better the following day".²⁹⁵

122 At around 3.15am, DGI woke up to find that the Complainant was already up. She then picked up her clothes and dressed herself in the bathroom area.²⁹⁶ She also told DGI that she was feeling well enough to return to her hotel.²⁹⁷ DGI told her that she would feel better if she ate or drank something. He offered her some water and she drank more than she had previously during the night when he similarly offered water to her. He also offered her some chocolates, which she consumed. However, she declined his offer of a Berocca multivitamin effervescent tablet.²⁹⁸ After she collected her belongings, the Complainant looked at the vomit on the bed and seemed embarrassed. She said

²⁹² 3 Dec 24 NE at p 35 lines 8–13.

²⁹³ 3 Dec 24 NE at p 35 lines 19–24.

²⁹⁴ 3 Dec 24 NE at p 103 lines 16–17.

²⁹⁵ 3 Dec 24 NE at p 43 lines 23–28.

²⁹⁶ 3 Dec 24 NE at p 36 lines 4–7.

²⁹⁷ 3 Dec 24 NE at p 36 lines 7–9.

²⁹⁸ 3 Dec 24 NE at p 37 lines 7–14.

“Look, I don’t know what happened”.²⁹⁹ DGI told her that “It’s okay”, and that she was sick and DGH and DGI looked after her.³⁰⁰

123 DGI then offered to walk the Complainant back to her hotel, and she accepted his offer. He thus carried her handbag for her and walked her back to her hotel. As they did so slowly, DGI also offered the Complainant his arm, which she held on to.³⁰¹ They did not talk very much on the way back.³⁰²

124 When they arrived at [Hotel B], they stopped for a while outside the hotel. DGI offered to walk the Complainant up to her room, but she declined. DGI also told the Complainant that she should contact DGH after resting and recovering, as well as to rest more. The Complainant told him “Thanks very much for looking after me”, and walked into the hotel lobby by herself. According to DGI, she seemed to be walking at a regular pace by that time.³⁰³

125 Following that, DGI walked back to [Hotel A].³⁰⁴ When he arrived back in his room, he requested for room service using the hotel phone. As it was around 4.15am at that time, the hotel told him that they could not service his room. They could, however, remove the soiled items and bring him some fresh basic items.³⁰⁵

²⁹⁹ 3 Dec 24 NE at p 37 lines 15–17.

³⁰⁰ 3 Dec 24 NE at p 37 lines 26–30.

³⁰¹ 3 Dec 24 NE at p 38 lines 1–4.

³⁰² 3 Dec 24 NE at p 38 line 15.

³⁰³ 3 Dec 24 NE at p 38 lines 17–24.

³⁰⁴ 3 Dec 24 NE at p 38 lines 25–26.

³⁰⁵ 3 Dec 24 NE at p 38 line 30 to p 39 line 4.

126 While waiting for the hotel staff, DGI collected all the vomit-stained items and put them in a pile by the door inside his room. He threw away all the empty bottles and the remaining bottle of wine, which was at least half full at that point.³⁰⁶ He explained that he did not feel like drinking for the next few days, and that the bottle of wine was not particularly expensive.³⁰⁷ He also threw away the razor blade he had earlier used in his intimate activities with the Complainant, explaining that he did not want to shave his face with it as it had already been used.³⁰⁸ The hotel staff then arrived and exchanged the soiled items for clean ones.³⁰⁹

127 Thereafter, at around 5.00am, DGI checked his phone and saw a series of WhatsApp text messages which DGH sent him:³¹⁰

... there were sort of three series of messages. So the first one was something like “How is she?” Referring to [the Complainant]. The second one is “Don’t do anything. She said no.” Or something similar. And the third one was “I bet you’re having sex with her, aren’t you?”

128 DGI testified that he felt annoyed at DGH’s messages, having just returned to [Hotel A] after looking after the Complainant for seven and a half hours. He was also offended by DGH’s second and third messages as it was clear that there was going to be no more sexual activity.³¹¹ DGI recalled that he might have replied to DGH’s first message to say that the Complainant was fine.

³⁰⁶ 3 Dec 24 NE at p 39 lines 4–6 and p 39 lines 8–11.

³⁰⁷ 3 Dec 24 NE at p 39 lines 12–14.

³⁰⁸ 3 Dec 24 NE at p 39 lines 14 and 30–32.

³⁰⁹ 3 Dec 24 NE at p 39 lines 15–18.

³¹⁰ 3 Dec 24 NE at p 40 lines 7–10.

³¹¹ 3 Dec 24 NE at p 40 lines 11–15.

He was also tempted to send an angry response to DGH's other messages, but decided to wait until he spoke to DGH the next day.³¹²

129 DGI also remembered discovering the photo he had earlier taken of the Complainant in the shower (see [121] above) shortly after looking at DGH's messages. He deleted it as the Complainant had already left, and he did not think the image was going to be helpful. More specifically, the Complainant saw the vomit in the room and would have understood that she had been unwell.³¹³

Events the next day

130 At 7.00am, DGI called DGH on his mobile phone, but DGH did not pick up. At 8.30am, DGI called DGH using the hotel phone, and DGH picked up. Over the short telephone conversation, DGI explained to DGH that the Complainant had been unwell, that it was "quite a process", and that he took her back to her hotel.³¹⁴ DGI also asked to catch up with DGH over coffee soon after.³¹⁵

131 When DGH met up with DGI, DGI explained "what was involved in looking after" the Complainant, and that he took her back to her hotel safely. He also asked DGH about the messages which DGH had sent him, saying "Why did you send them to me? That was, you know, inappropriate". DGH apologised, but did not explain why he sent the text messages.³¹⁶ DGI did not

³¹² 3 Dec 24 NE at p 40 lines 20–25.

³¹³ 3 Dec 24 NE at p 43 lines 25–32.

³¹⁴ 3 Dec 24 NE at p 40 line 27 to p 41 line 2.

³¹⁵ 3 Dec 24 NE at p 41 lines 1–2.

³¹⁶ 3 Dec 24 NE at p 41 lines 10–16.

ask DGH to delete the messages.³¹⁷ DGI did however ask DGH to delete the photograph he had taken of DGH and PW3,³¹⁸ explaining that he had a fiancée and the photograph “didn’t look good”.³¹⁹ DGI also told DGH that DGH should check in with the Complainant.³²⁰ The catch-up session lasted around ten minutes.³²¹ Sometime after speaking to DGH, DGI deleted his entire WhatsApp chat history with DGH. He explained that he had done so out of frustration with DGH’s text messages:³²²

A: So when I found them in the morning, I’ve been---I spoke to [DGH] about them. But then I was still frustrated with his responses to why he sent them and I deleted them after.

Q: In fact, [DGI], you deleted the entire chat that you have with [DGH]. Right?

A: Correct.

132 DGI then went back to his room. There, he picked up some sheets he had previously placed outside his room, and brought them back into his room. He explained that housekeeping had not picked them up yet, and he brought them back into his room as he thought they would be dealt with when hotel staff from the regular room service team subsequently made his room.³²³

³¹⁷ 3 Dec 24 NE at p 41 lines 30–31.

³¹⁸ 3 Dec 24 NE at p 41 lines 16–18.

³¹⁹ 3 Dec 24 NE at p 41 lines 26–29.

³²⁰ 3 Dec 24 NE at p 42 lines 31–32.

³²¹ 3 Dec 24 NE at p 42 line 4.

³²² 3 Dec 24 NE at p 66 lines 1–3.

³²³ 3 Dec 24 NE at p 42 lines 7–18.

133 Later in the morning, DGH and DGI made plans to catch up over lunch. They subsequently did so.³²⁴ At lunch, DGI asked DGH if he had already checked in with the Complainant. DGH said that he had, and highlighted his WeChat text message exchanges with the Complainant (see [27] above). DGI offered to join DGH when DGH would later meet with the Complainant, but DGH declined.³²⁵ There was not much more talk about the Complainant.³²⁶

The parties' cases

The Prosecution's case

134 The Prosecution argues that the accused persons had sexually assaulted the Complainant knowing full well that she did not consent to the sexual acts. DGH licked, touched and kissed her breasts. He also inserted two fingers into her vagina. As for DGI, he licked and kissed the Complainant's breast, licked her vagina, shaved her pubic hair, as well as penetrated her vagina and anus with his penis. DGI also took a photograph of the Complainant using his phone, while she was naked and without her knowledge, for the purposes of possessing an intimate image of her. Both accused persons also conspired to obstruct the course of justice by deleting incriminating WhatsApp messages.³²⁷

135 The Prosecution relies on four planks to prove its case. First, it relies on the Complainant's clear, consistent and textured account of the events, which they argue discloses that she did not consent to any of the sexual activities.³²⁸

³²⁴ 3 Dec 24 NE at p 42 lines 20–28.

³²⁵ 3 Dec 24 NE at p 43 lines 2–9.

³²⁶ 3 Dec 24 NE at p 43 lines 10–13.

³²⁷ Prosecution's Closing Submissions dated 17 February 2025 ("PCS") at para 37.

³²⁸ PCS at paras 38–40.

Second, they argue that in the video-recorded interview (“VRI”) statements to the police, the accused persons admitted to the sexual acts performed on the Complainant. DGH also admitted to deleting the WhatsApp messages he had sent to DGI.³²⁹ Third, they highlight that the forensic evidence also supports the Complainant’s account.³³⁰ Fourth, they argue that the accused persons have offered no explanation why the Complainant would otherwise have accused them of rape.³³¹

136 The Prosecution also argues that the accused persons’ cases should be rejected, highlighting three broad issues with them:

- (a) First, the accused persons’ accounts materially contradict each other.³³²
- (b) Second, each of the accused persons’ evidence at trial materially contradicts each of their respective pre-trial accounts.³³³
- (c) Third, the accused persons’ accounts are “fanciful and ludicrous”.³³⁴

DGH’s case

137 In relation to the OM Charge against DGH and the SAP Charge, broadly, DGH does not appear to be disputing that the sexual acts which form the subject

³²⁹ PCS at para 41.

³³⁰ PCS at para 42.

³³¹ PCS at para 43.

³³² PCS at para 76.

³³³ PCS at para 79.

³³⁴ PCS at para 92.

matter of the charges against him occurred. He argues, however, that these acts occurred with the Complainant's consent. Alternatively, he was mistaken as to the Complainant's consent.³³⁵

138 To this end, lead counsel for DGH, Mr Chenthil Kumarasingam ("Mr Kumarasingam"), argues preliminarily that due to the Prosecution and investigating officers' failure to conduct a thorough investigation of the matter, DGH's Defence has been prejudiced.³³⁶ This will be elaborated upon below (at [270]). Substantively, Mr Kumarasingam highlights three main issues with the Prosecution's case:

(a) First, he argues that the Prosecution has not presented a cogent account of events, and is in fact running inconsistent cases against DGH and DGI respectively.³³⁷

(b) Second, he argues that based on the evidence of the Prosecution's expert witness, PW2, a psychiatrist with the Institute of Mental Health who examined the Complainant, there is a strong likelihood that the Complainant was never in a state of unconsciousness, but was instead experiencing an "alcoholic blackout" or "alcoholic greyout" during the sexual activities.³³⁸

(c) Third and relatedly, he argues that the Complainant was not an unusually convincing witness as she was probably in an alcoholic blackout or greyout at the material time, and her evidence is based on

³³⁵ 1st Accused's Closing Submissions dated 17 February 2025 ("1DCS") at para 8.

³³⁶ 1DCS at para 153.

³³⁷ 1DCS at para 13.

³³⁸ 1DCS at para 45.

reconstructed (as opposed to recollected) memories.³³⁹ Specifically, Mr Kumarasingam argues that:

- (i) The Complainant's account of events expanded and evolved between her original police report and her evidence in court.³⁴⁰
- (ii) The Complainant's account of patchy memories reveals that she reconstructed the events, instead of recalling them.³⁴¹
- (iii) The Complainant's testimony in court was contradictory, unreliable and incredible, which suggests that she had sought to fill in the gaps in her memories.³⁴²

139 Mr Kumarasingam then argues that DGH's account of the events is consistent and credible.³⁴³ His defence of consent or mistaken consent is made out.³⁴⁴ To this end, he makes five points:

- (a) First, DGH's account of events has been consistent across his police statements, Case for the Defence, and evidence in court.³⁴⁵
- (b) Second, DGH's account of the timeline of events is consistent with the other evidence and is logical.³⁴⁶

³³⁹ 1DCS at paras 55 and 67.

³⁴⁰ 1DCS at para 68.

³⁴¹ 1DCS at paras 67 and 80.

³⁴² 1DCS at paras 85 and 87.

³⁴³ 1DCS at para 106.

³⁴⁴ See 1DCS at paras 142–143.

³⁴⁵ 1DCS at para 108.

³⁴⁶ 1DCS at paras 110–113.

(c) Third, the Prosecution’s attempts at discrediting DGH were unsuccessful.³⁴⁷

(d) Fourth, DGH was cooperative and consistent throughout the course of investigations and proceedings.³⁴⁸

(e) Fifth, DGI’s account of the events should not be believed as it is, *inter alia*, vague, inconsistent and logically flawed.³⁴⁹

140 In relation to the OJ Charge against DGH, Mr Kumarasingam argues that it also cannot be made out. This will be elaborated upon below (at [255]).

DGI’s case

141 In relation to the 1st OM Charge against DGI, the Penile-vaginal Rape Charge, and the 2nd OM Charge against DGI, DGI’s broad case, like DGH’s, is also that the sexual activities were consensual. All sexual activity stopped when the Complainant said “stop” and vomited into the sink.³⁵⁰ However, he denies that he committed the Penile-anal Rape Charge.³⁵¹

142 To this end, lead counsel for DGI, Mr Eugene Thuraisingam (“Mr Thuraisingam”), first makes four overarching arguments:

³⁴⁷ 1DCS at paras 114–123.

³⁴⁸ 1DCS at para 124.

³⁴⁹ 1DCS at paras 126–133.

³⁵⁰ 2nd Accused’s Closing Submissions dated 17 February 2025 (“2DCS”) at para 2.1.

³⁵¹ 2DCS at para 82.

(a) First, he argues that the Complainant was not unconscious at the time of the alleged offences.³⁵² Instead, she was conscious but could not remember much of the material events due to partial alcohol-induced memory loss, *ie*, an alcoholic greyout.³⁵³

(b) Second, Mr Thuraisingam argues that the Complainant's evidence was not contemporaneous (but "recollected afterwards"), not independent, uncorroborated, and internally inconsistent.³⁵⁴

(c) Third, Mr Thuraisingam argues that the Complainant was suffering from partial alcohol-induced memory loss when she vomited on the bed, and that the Prosecution has neither proven that the Complainant was clothed when she vomited on the bed, nor that she had vomited on the bed before any sexual activity occurred.³⁵⁵

(d) Fourth, Mr Thuraisingam argues that the Prosecution has not taken a clear position on what happened between DGI and the Complainant at the material time.³⁵⁶

143 Mr Thuraisingam next argues that there is insufficient evidence to prove that DGI performed the material acts in accordance with the Complainant's account. In fact, there is strong evidence suggesting that the Complainant was

³⁵² 2DCS at para 26.1.

³⁵³ 2DCS at para 26.2.

³⁵⁴ 2DCS at para 49.

³⁵⁵ 2DCS at para 58.

³⁵⁶ 2DCS at para 59.

conscious and consented to these acts, but could not remember doing so due to alcohol-induced memory loss.³⁵⁷

144 As for the Possessing Intimate Image Charge and the OJ Charge against DGI, Mr Thuraisingam also argues that they are not made out. This will be elaborated upon below (at [265] and [269]).

The Sexual Offences Charges

145 I now turn to address the OM Charge against DGH, the SAP Charge, the 1st OM Charge against DGI, the Penile-vaginal Rape Charge, the Penile-anal Rape Charge, and the 2nd OM Charge against DGI (collectively, the “Sexual Offences Charges”).

The applicable legal principles

146 For the uncorroborated evidence of a complainant to be the sole basis for a conviction, such evidence must be “unusually convincing”: see *Public Prosecutor v GCK* [2020] 1 SLR 486 (“GCK”) at [87]; and *AOF v Public Prosecutor* [2012] 3 SLR 34 (“AOF”) at [111].

147 In *AOF*, the Court of Appeal held that “in a case where no other evidence is available, a complainant’s testimony can constitute proof beyond reasonable doubt ... only when it is so ‘unusually convincing’ as to overcome any doubts that might arise from the lack of corroboration” (at [111]). In determining whether a testimony is “unusually convincing”, the court will “weig[h] the *demeanour* of the witness alongside both the *internal and external consistencies* found in the witness’ testimony” [emphasis in original] (*AOF* at [115]). If,

³⁵⁷ 2DCS at paras 76–87.

however, the evidence of the complainant is not “unusually convincing”, the “accused’s conviction is unsafe unless there is some corroboration of the complainant’s story” (*AOF* at [173]).

148 At [92] of *GCK*, the Court of Appeal stressed that the “unusually convincing” standard serves as a cautionary reminder at the last stage of the evaluation of the evidence by a trial judge, just before a conviction is found. It is to ensure that the trial judge has an awareness of the dangers of convicting the offender on uncorroborated evidence, and that he or she undertakes a rigorous and holistic assessment of the evidence.

149 Given that the Prosecution primarily relies on the Complainant’s evidence to make out its case, especially on the key issue of consent, after my evaluation of the evidence, I will apply the cautionary reminder as to whether the Complainant is an unusually convincing witness (see [249] below).

The Complainant’s account is clear, coherent and cogent

150 Having set out the Complainant’s evidence in considerable detail above, I first make two broad points. First, I give no weight to the Prosecution’s submission that the lack of a possible motive on the Complainant’s part would enhance her credibility or strengthen its case.³⁵⁸ As Mr Kumarasingam and Mr Thuraisingam argue,³⁵⁹ this factor is immaterial in this case, especially since the accused persons’ cases are not that the Complainant is trying to deliberately

³⁵⁸ See PCS at paras 72–74.

³⁵⁹ See generally 1st Accused’s Reply Submissions dated 24 March 2025 (“1DRS”) at paras 18–24 and 2nd Accused’s Reply Submissions dated 24 March 2025 (“2DRS”) at paras 4–7.

implicate them, but that she *genuinely forgot* about the consent she had given for the sexual activities.

151 That said and second, I observe that the Complainant has provided a clear, coherent and cogent account of the events. Her account of the events (see [29]–[63] above) is reliable, save for one clarificatory detail pertaining to when she first lost consciousness, which I will elaborate upon below (at [168]).

152 As the Prosecution highlights, which I accept, the Complainant’s narration of the events prior to her loss of consciousness is “textured” – *rich* and *compelling* in the details provided. More importantly, for the events thereafter, the Complainant did not attempt to embellish her evidence and testified purely to the best of her recollection.³⁶⁰ Yet, she was also firm in her evidence.

153 For instance, in relation to the issue of when her clothes were removed, the Complainant candidly admitted that she had no memory of how and when her clothes were removed.³⁶¹

Q: Okay. My question is: Do you have any memory of how and when your clothes were removed?

A: No.

She also admitted candidly that her memory of the events after she vomited the first time was “patchy”.³⁶²

³⁶⁰ PCS at para 51; see also Prosecution’s Reply Submissions dated 24 March 2025 (“PRS”) at para 16.

³⁶¹ 3 Sep 24 NE at p 5 lines 11–13.

³⁶² Notes of Evidence for 4 September 2024 (“4 Sep 24 NE”) at p 88 lines 16–27.

154 She was, however, firm in testifying that she was clothed when she first vomited on the bed:³⁶³

Q: My instructions are that you---when you vomited, you were already undressed at the time that you first vomited.

A: No, I was dressed when I first vomited.

Q: Again, we are talking about a series and---a series of occasions where your memory is not absolutely clear. And I'm going to ask you, is it possible that you misremember being dressed---

A: No.

Q: ---at the time that you first vomited?

A: No. I remember I fell down as of---I---I fell on with my left elbow with my body weight on my left elbow and then facing the bed. That's my first vomit memory. At that point of time I was dressed.

155 Indeed, in my assessment, the Complainant presented as a credible witness. In this regard, highlighting various aspects of the Complainant's evidence, Mr Kumarasingam submits that the Complainant's evidence at trial is incredible.³⁶⁴ I reject this position, and give four examples why I disagree with it.

156 First, Mr Kumarasingam argues that contrary to her evidence (see [33] above), if the Complainant felt uncomfortable when the conversation turned sexual, she would have said so or left the room.³⁶⁵ This argument ignores the seniority of DGH and DGI in the profession *in relation to* the Complainant. It

³⁶³ See, eg, 3 Sep 24 NE at p 70 lines 2–12. See also 4 Sep 24 NE at p 88 lines 11–15 and p 89 lines 2–5.

³⁶⁴ 1DCS at paras 85–105.

³⁶⁵ 1DCS at para 91.

also ignores the fact that DGH was the Complainant's former superior, and that the Complainant respected him and treated him as an elder member in a family.

157 Second, Mr Kumarasingam argues that it would not make sense for the Complainant to describe the session with the accused persons as a "proper drinking session" if she was pressured to drink (see [31] and [32] above).³⁶⁶ This argument ignores the Complainant's friendly relationship with DGH, and that she could genuinely have viewed the session with the accused persons as a "proper drinking" session even if she was being asked to consume the drinks in a "bottoms up" fashion.

158 Third, Mr Kumarasingam argues that it would not have made sense, contrary to the Complainant's testimony (see [36] above), for DGI to have asked her and DGH if they preferred red or white wine, given that there was no evidence that there was any red wine available.³⁶⁷ This argument fails to properly appreciate the Complainant's testimony, which was, in effect, that DGI asked them a leading question intending to serve the white wine that he had bought from the outset. This is why he said that he had very expensive white wine from [Country Z] *before* the Complainant or DGH expressed their respective preferences.³⁶⁸

159 Fourth, Mr Kumarasingam argues that it would have been implausible, if not impossible, for the Complainant to have talked about 16 topics in the short span of around 25 minutes from 6.05pm to 6.30pm.³⁶⁹ This argument ignores

³⁶⁶ 1DCS at para 94.

³⁶⁷ 1DCS at para 95.

³⁶⁸ See 2 Sep 24 NE at p 70 line 24 to p 71 line 1.

³⁶⁹ 1DCS at para 101.

the fact that as described by the Complainant, the conversation on each topic seemed fleeting.³⁷⁰ Indeed, the accused persons do not dispute that these topics were discussed (albeit purportedly over a longer period of time).³⁷¹

160 There is therefore nothing incredible with the Complainant’s evidence. Further, as I shall now elaborate, the Complainant’s evidence is *both* internally and externally consistent.

The Complainant’s account is internally consistent

161 In my view, the Complainant’s account of the events (see [29]–[63] above) remained internally consistent over time.

Consistency with prior accounts

162 Indeed, the Complainant’s testimony at trial is broadly consistent with her earlier accounts to two nurse clinicians at KKH (“PW27” and “PW6”, respectively), a police officer who briefly spoke to the Complainant at KKH (“PW7”), PW25, a police officer who interviewed the Complainant at the Police Cantonment Complex (“PCC”) (“PW8”), the gynaecologist who subsequently examined the Complainant at PCC (“PW9”) and PW2. It is also broadly consistent with her account in her conditioned statement:

- (a) Account to PW27: From the outset, when PW27 saw the Complainant at KKH’s Triage and Registration counter, the

³⁷⁰ See 2 Sep 24 NE at p 47 lines 14–30, p 50 line 29 to p 51 line 5, p 58 lines 6–7, p 59 lines 1–3 and p 71 lines 14–18.

³⁷¹ See, *eg*, 28 Nov 24 NE at p 13 lines 8–14 and lines 24–29, p 15 lines 6–8, p 17 lines 12–16, p 18 line 14 to p 19 line 11, p 20 line 25 to p 21 line 14, p 25 line 12 to p 26 line 2, p 31 line 22 to p 32 line 31 and p 34 line 30 to p 35 line 4. See, *eg*, 3 Dec 24 NE at p 16 lines 31–32, p 17 lines 20–32, p 19 line 31 to p 20 line 4 and p 86 line 32 to p 87 line 11.

Complainant had told PW27 that “she might have been raped or ... was raped”.³⁷²

(b) Account to PW6: After PW27 referred the Complainant to PW6, the Complainant elaborated to PW6 that “she wanted to check for any infection as she believed she may have either been raped or sexually assaulted”. She “might have been unconscious when it happened ... the incident happened ... after drinks she fell unconscious. She shared that when she woke up, she felt wet and believed they had showered her. She also discovered that her pubic hair had been shaved”. The Complainant also “gestured with her hand towards her bottom and told [PW6] that she was feeling sore there”.³⁷³

(c) Account to PW25: While resting in the private curtained area, the Complainant told PW25 over the phone that “she doesn’t remember what happened and she recalled was that she had drinks with her colleagues from the same community last night ... The last thing she recalled was that several hours later, only [DGI] was in the room with her and that she was naked and slightly wet while on the bed. [DGI] told her that she was very drunk and unconscious, so they attempted to wake her up by showering her or something. [The Complainant] then returned to her own hotel but realized something was wrong and suspected that something might have happened to her sexually”.³⁷⁴

(d) Accounts to PW7 and PW8: Subsequently, while still in the private curtained area, PW7 spoke to the Complainant to verify her

³⁷² 1AB at 53, paras 2 and 4.

³⁷³ 1AB at 49–50, paras 2 and 4.

³⁷⁴ 1AB at 46, para 3.

report. PW7 “established that there was potentially a case of sexual assault involving penetrative offences”.³⁷⁵ PW7 then referred the Complainant to PW8, who interviewed the Complainant “to gather some preliminary information to verify the report”.³⁷⁶

(e) Account to PW9: Following that, the Complainant was medically examined by PW9, during which she maintained her account, *inter alia*: (i) that she lost consciousness after consuming the wine; (ii) that she started vomiting on the bed; (iii) that her clothes were removed subsequently; (iv) that she was touched and kissed on her breasts; (v) that there was a sharp pain in her anus; (vi) that someone performed oral sex on her; (vii) that someone touched her vagina while showering her; (viii) that she later realised that her pubic hair had been shaved; and (ix) that she woke up naked at around 1.00am with DGI hugging her in bed. This was recorded by PW9 in the medical report:³⁷⁷

... [The Complainant] was supposed to have dinner with [DGH] and planned to depart from [Hotel A]. [DGH] met her at the lift lobby around 7pm, and brought her to [DGI’s hotel room]. When she entered the room, she was told by [DGI] that they ([DGI and DGH]) have finished three-quarter bottle of Gin. She was offered a glass of gin (glass was less than half filled), which she “bottom up” while chatting with them. They finished the remaining one-quarter bottle of gin among the three of them. [DGI] took out a bottle of white wine from the fridge and poured half a glass of wine for her.

She was unsure how much both [DGI] and [DGH] drank. *She lost consciousness after finishing the half a glass of wine for uncertain duration. She recalled she started vomiting on the bed and the two men were cleaning the bed with towel. She recalled them removing her clothes (both top and bottom) but not clearly. She remembered feeling pain at her anus region and said “No”*

³⁷⁵ 1AB at 489, para 3.

³⁷⁶ 1AB at 491, paras 2–3.

³⁷⁷ 1AB at 117–118, para 3.

to them, but unable to recall anything else. She also recalled being *touched and ?kissed [sic] at her chest and breasts area*, but unable to recall who performed the act. She was being brought to the shower when she began to regain her consciousness. She recalled being weak, unable to stand and lying on the shower floor. She remembered *someone touching her vagina during shower*. (Subsequently, when she regained consciousness, *she realised that her pubic hair was shaved*.) [DGI] took her back to the bed after shower. She *woke up at 1am, naked and found [DGI] hugging her in bed ...* She recalled *the assailant oral to her vaginal assault*, but unable to recall if there was any digital to vaginal/anal, oral to anal, penile to vaginal/anal/inter-crural assault. She did not recall there was penile to oral assault.

[emphasis added]

(f) Account to PW2: Subsequently, on 13 April 2023, when the Complainant was assessed by PW2, the Complainant maintained her account, *inter alia*: (i) that she lost consciousness after consuming the wine; (ii) that she started vomiting on the bed; (iii) that her clothes were removed subsequently; (iv) that someone sucked her nipples and breasts; (v) that there was a sharp pain in her anus; (vi) that someone sucked her vagina; (vii) that someone touched her vagina while showering her; and (viii) that she woke up at around 1.00am naked in DGI's bed. This was PW2's record in his medical report:³⁷⁸

... On the day of the alleged incident, [the Complainant] did not consume any medications; she had taken lunch at around 11.30am but she did not eat dinner. She met [DGH] at [Hotel A] at around 5.55pm and went to [DGI's hotel room]. Between 6pm and 6.30pm, she drank 2 gin mixed and between quarter to half glass of white wine. Each mix of drink consisted of quarter glass of gin mixed with quarter glass of sparkling water. She did not know if she drank more than this. She said she did not remember anything after 6.30pm till some time later. The next few memories were patchy. She had *memory of vomiting on the bed* and someone cleaned the bed with a towel. She did not know the time. *She felt someone removing her clothes and she was lying on the bed facing up*. She *felt pain in her anus*

³⁷⁸

1AB at 123, para 10.

suddenly which woke her up. She said she said “no” many times. She felt *someone sucked her nipples, her vagina and kissed her on her mouth and body*. She suspected there were 2 persons present as she felt 2 persons sucking at her breast area concurrently. She remembered being in the shower and someone was showering her. The water woke her up. She felt weak and she could not stand up. She said *someone touched her vagina when she was being showered*. She *woke up at around 1am in [DGI’s] bed*. She *was naked* and fell back asleep. [DGI] had told her the time. She woke up again at 3am. She knew the time as [DGI] had told her the time. She left the hotel room at 4am. [emphasis added]

(g) Account in conditioned statement: Even around one year later, on 17 May 2024, the Complainant maintained her account, *inter alia*: (i) that she could not remember anything after consuming the wine; (ii) that she vomited on the bed; (iii) that her clothes were later removed; (iv) that someone sucked on her nipples concurrently; (v) that she felt an extreme pain in her anus; (vi) that someone sucked her vagina; (vii) that someone touched her vagina while showering her; (viii) that she later realised that her pubic hair had been shaved; and (ix) that she woke up naked at around 1.00am with DGI hugging her in bed.³⁷⁹ In addition, the Complainant provided further details of the subsequent events when she later regained consciousness fully at around 3.00am.³⁸⁰ These details are consistent with her account at trial (see [46]–[59] above and [184] below).

Purported inconsistencies raised by accused persons

163 Mr Kumarasingam and Mr Thuraisingam seek to cast doubt on the internal consistency of the Complainant’s testimony by arguing that her account

³⁷⁹ Conditioned Statement of Complainant dated 17 May 2024 at paras 21–27.

³⁸⁰ Conditioned Statement of Complainant dated 17 May 2024 at paras 27–38.

has shifted and evolved over time.³⁸¹ They provide numerous purported examples,³⁸² such as the timing of the drinks, the manner of drinking (*ie*, whether it was in a “bottoms up” fashion), whether her hand was shaking when she sent the text message to [A] at 6.26pm (see [22]–[23] above), how long she lost memory for, her first memory, feeling pain in her anus and saying “no”, being kissed in her breasts, being kissed on the mouth, oral sex, vomiting at the sink, being showered and touched in her vagina, symptoms when she woke up at around 1.00am and 3.00am respectively, how she came to realise that her pubic hair was shaved, the sequence of events, and when her suspicions arose.

(1) Impeachment application

164 In particular, they argue that there are inconsistencies in relation to the Complainant’s accounts of her clothes being removed (the “First Alleged Inconsistency”),³⁸³ and of when she lost consciousness and when she vomited on the bed (the “Second Alleged Inconsistency”).³⁸⁴ Based on these two broad points, Mr Thuraisingam formally applied to impeach the Complainant’s credit, and I allowed the application to proceed.

165 Specifically, as regards the First Alleged Inconsistency, Mr Thuraisingam highlighted that unlike her account at trial that she had no memory of how and when her clothes were removed, the Complainant stated in her conditioned statement that she “felt someone removing [her] blue shirt, bra,

³⁸¹ See, *eg*, 1DCS at paras 68, 76 and 79 and 84; 2DCS at paras 36–38.

³⁸² See generally 1DCS at paras 68–84 and 2DCS at Table C.

³⁸³ 1DCS at para 84(c); 2DCS at Table C, p 3.

³⁸⁴ 1DCS at para 79; 2DCS at paras 39–41 and Table C pp 1 and 2.

black pants and panties while [she] was lying on the bed”.³⁸⁵ As for the Second Alleged Inconsistency, Mr Thuraisingam highlighted that unlike her account at trial that she could remember the events between her glass of wine and the time she started vomiting, the Complainant had previously stated in her conditioned statement that her “last clear memory [was] having the glass of white wine”, that she “[could not] remember exactly what happened next”, and that she was “not sure if [she] started vomiting before or after [she] lost consciousness”.³⁸⁶

166 In my view, neither of these alleged inconsistencies assist the accused persons. In relation to the First Alleged Inconsistency, the Complainant effectively explained that she had forgotten the details regarding how and when her clothes were removed by the time she was testifying at trial.³⁸⁷ I accept the Complainant’s explanation. In any event, having considered the matter further, the purported inconsistency is immaterial, since the material point about the Complainant’s evidence in either account is consistent: that someone had removed her clothes *after* she first vomited on the bed (see [154] above). As emphasised by the High Court in *Jagatheesan s/o Krishnasamy v Public Prosecutor* [2006] 4 SLR(R) 45 (“*Jagatheesan*”) (at [82], citing *Chean Siong Guat v PP* [1969] 2 MLJ 63 (“*Chean Siong Guat*”) at 63–64 and *Ng Kwee Leong v PP* [1998] 3 SLR(R) 281 at [17]), minor discrepancies in a witness’s testimony should not be held against the witness in assessing her credibility, because human fallibility in observation, retention and recollection is both common and understandable.

³⁸⁵ Notes of Evidence for 5 September 2024 (“5 Sep 24 NE”) at p 14 line 31 to p 15 line 15; Conditioned Statement of Complainant dated 17 May 2024 at para 23.

³⁸⁶ 5 Sep 24 NE at p 12 lines 18–22 and p 13 line 29 to p 14 line 6; Conditioned Statement of Complainant dated 17 May 2024 at paras 21 and 22.

³⁸⁷ 5 Sep 24 NE at p 16 lines 7–23.

167 As for the Second Alleged Inconsistency, the Complainant admitted that she did not have an explanation. However, she clarified that “to the best of [her] memory [on the day of the trial] ... [she] started feeling not a full conscious after the third wine, but for completely loss of conscious, that was after vomiting”.³⁸⁸ More specifically, the Complainant explained that her last “very clear memory was having the last glass of wine”. She then fell down for “a few minutes”, during which she was only focusing on controlling her body and not on the external circumstances. She thus could not clearly recall details such as “whether [DGH] and [DGI] were talking or what’s the talks” during this period.³⁸⁹ However, she explained that she was not in a “blackout” during this brief “gap”.³⁹⁰

168 While I agree that her evidence on the issue (of when she first lost consciousness and when she vomited on the bed) could have been clearer, having reviewed the evidence further, I find that there is no actual inconsistency in the Complainant’s accounts. Instead, as the Complainant explains, I find that she *started* losing consciousness (albeit not fully) while consuming the white wine. A brief period of time passed, during which the Complainant could not fully recall the details of. She then remembered vomiting on the bed, before *fully losing consciousness and drifting in and out of consciousness* (see [38] above). While the Complainant stated in her conditioned statement that she was “not sure if [she] started vomiting before or after [she] lost consciousness, she also stated in the same paragraph that her “first memory [after having the half glass of white wine] was that [she] was bolting, meaning vomiting, on the bed”

³⁸⁸ 5 Sep 24 NE at p 14 lines 22–25. See also 5 Sep 24 at p 12 line 26 to p 13 line 27.

³⁸⁹ 5 Sep 24 NE at p 13 lines 10–25.

³⁹⁰ 5 Sep 24 NE at p 13 lines 11–12.

and that she was “still seated in the same position on the bed”.³⁹¹ This coheres with the rest of her evidence.

169 To sum up, I find that carefully appreciated, there are no material inconsistencies in the Complainant’s evidence. The impeachment application, therefore, fails.

170 As for the remaining alleged inconsistencies highlighted by Mr Kumarasingam and Mr Thuraisingam, they also do not assist their cases. These alleged inconsistencies can broadly be categorised into two categories: (a) additional details in the Complainant’s later accounts; and (b) other differences in the Complainant’s various accounts.

(2) Additional details in the Complainant’s later accounts

171 While the Complainant might have recalled further details subsequently, this is insufficient to cast any reasonable doubt on her account of the events. These additional details are minor, and do not add anything material to her testimony. In this regard, the cases of *Public Prosecutor v Tan Yew Sin* [2023] SGHC 136 (“*Tan Yew Sin*”) (which parties rely on³⁹²) and *Public Prosecutor v Ng Yi Yao* [2021] SGHC 295 (“*Ng Yi Yao*”) are illustrative.

172 In *Tan Yew Sin*, the High Court highlighted (at [36]) the risk of using extrinsic evidence to jog a witness’ memory – that the witness’ evidence could become conditioned by the extrinsic evidence, such that it is no longer based on recollection based on memory, but rather, on retrospective reconstruction based on extrinsic evidence. There, the complainant had been experiencing an alcohol-

³⁹¹ Conditioned Statement of Complainant dated 17 May 2024 at paras 21–22.

³⁹² See 1DCS at para 65 and 2DCS at paras 32 and 48; *cf* PRS at para 33.

induced blackout and was substantially unable to recall what she did, said or heard during the period of the alleged sexual offences (*Tan Yew Sin* at [29]).

173 Based on how the parties ran their cases, the factual witnesses (including the complainant herself) were sometimes exposed to contemporaneous CCTV footage or in-car camera recordings *before* they were asked for their recollection (*Tan Yew Sin* at [31] and [35]). Witnesses were sometimes also asked to explain why they acted or reacted in a certain way. Yet their answers did not always specify whether these reflected the *contemporaneous* reasons that operated on their minds, or their *subsequent* rationalisations at trial (*Tan Yew Sin* at [35]). Given these, much of the complainant's evidence at trial was limited to confirming what she heard in the audio recordings that were played in court and providing, at the time of the trial, her best explanation and reconstruction of what had occurred (*Tan Yew Sin* at [29]). It was in this context that the High Court made the observation pertaining to the risk of using extrinsic evidence to jog a witness' memory.

174 The present case is clearly distinguishable from *Tan Yew Sin*. Here, the Complainant independently testified on the material events, without the need for extrinsic evidence, which was instead presented to corroborate her account. It certainly cannot be said that her evidence was limited to reconstructing events based on extrinsic evidence. The High Court's observations in *Tan Yew Sin* do not assist the accused persons' positions. To this, I shall also refer to my observations below at [184]–[185].

175 I turn to *Ng Yi Yao*, where the High Court helpfully reiterated that victims of sexual offences react in different ways to sexual abuse, and there is no general rule requiring such victims to report the offences immediately or in a timely fashion. Instead, the court must consider the victim's explanation for

any such delay in reporting and assess each case on its facts: *Ng Yi Yao* at [121], citing *Public Prosecutor v Yue Roger Jr* [2019] 3 SLR 749 at [30] and [34] and *Yue Roger Jr v Public Prosecutor* [2019] 1 SLR 829 at [3].

176 There, the victim recalled, for the first time in her third police statement, that there was a *second* instance of penile-vaginal sexual intercourse at the material time (*Ng Yi Yao* at [46] and [120]). The victim explained that there was a delay in her reporting of this second instance of intercourse because this only came as “a flashback” subsequently upon hearing a colleague utter the same words that the accused had spoken during that second instance of penile-vaginal intercourse (*Ng Yi Yao* at [121]). After setting out the legal principles, the High Court accepted the victim’s explanation, and did not find that the delayed reporting detracted from her overall credibility (*Ng Yi Yao* at [122]–[123] and [133]). While the delay led the High Court to find it was not safe to proceed on the basis that the victim’s evidence was not just “convincing” but “unusually convincing”, it eventually accepted the victim’s account after considering how it was supported by the other evidence (*Ng Yi Yao* at [123]–[134]).

177 The present case is distinguishable from *Ng Yi Yao*, because none of the additional details provided by the Complainant in her later accounts was anywhere near as material as those in *Ng Yi Yao*. At most, they amounted to minor details. There is no basis to doubt the Complainant’s evidence here. Moreover, like in *Ng Yi Yao*, the Complainant gave two cogent reasons for only providing further details in her later accounts of the events.

178 First, the Complainant repeatedly explained that her earlier accounts were not as detailed as she had understood them not to be for purposes of

investigations.³⁹³ Second, the Complainant explained that some of her memories were only recollected subsequently during investigations.³⁹⁴ I find these to be believable explanations.

179 In fact, in relation to the Complainant's first explanation, PW9 stated that she was tasked to "conduct a medical examination",³⁹⁵ while PW2 himself explained that he was tasked to "conduct as assessment for the victim and established [*sic*] her ability to provide consent to sexual activities".³⁹⁶ In other words, by the doctors' own understanding, their interviews with the Complainant were not for general investigative purposes to establish the full facts of the case. It would make sense for the Complainant to have treated these interviews the same way, and, in turn, for her to have described the material events in broader strokes.

180 In relation to the Complainant's second explanation, I would only highlight the High Court's caution in *Public Prosecutor v CJK* [2024] SGHC 175 against expecting victims of sexual offences to always be able to provide a perfect account of the material events:

29 It should also be emphasised that an individual's capacity for observation and memory recall may not always lie on a continuum even when the account in question concerns events occurring within the same episode. While a victim may remember some aspects of the experience in exquisitely painful detail, and indeed spend decades trying to forget them, the victim may remember other aspects not at all, or only in jumbled and confused fragments (*GCK* at [113], citing James Hopper & David Lisak, "Why Rape and Trauma Survivors Have

³⁹³ See, *eg*, 3 Sep 24 NE at p 78 line 29 to p 79 line 2; 4 Sep 24 at p 48 lines 1–2 and 21–23.

³⁹⁴ See, *eg*, 3 Sep 24 NE at p 75 line 27 to p 76 line 4; 3 Sep 24 NE at p 79 lines 27–31.

³⁹⁵ 1AB at 116, para 2; 1AB at 117, para 1.

³⁹⁶ 1AB at 120, para 2; 1AB at 121, para 1a.

Fragmented and Incomplete Memories” (*Time*, 9 December 2014)). It follows that the inability of a victim to remember every aspect of his or her traumatic experience does not in itself undermine the credibility of his or her testimony (*Loh Siang Piow (alias Loh Chan Pew) v Public Prosecutor* [2023] SGHC 74 at [79]). A related point is that *a victim of sexual assault cannot always be expected to provide a completely similar and full account every time he or she discloses the offence to another person*. This is bearing in mind that disclosures of abuse “are often tentative, may involve some telling and then retracting, may be partial or full, and may occur over time” (*Public Prosecutor v Mohd Ariffan bin Mohd Hassan* [2019] 2 SLR 490 (“*Ariffan*”) at [78]–[79]). [emphasis added]

(3) Other differences in the Complainant’s different accounts

181 Turning to the other differences in the Complainant’s accounts, I find that they do nothing to weaken her credibility, or to cast doubt on her evidence. This is because the crux of the Complainant’s account has been consistent throughout her various accounts (see [162] above). Again, it must be emphasised that minor inconsistencies do not generally affect a witness’ credibility (see [166] above).

182 Moreover, I note that the prior accounts before the Complainant’s conditioned statement (see [162] above) are narrated by other witnesses, who would have their own understanding of the Complainant’s account to each of them. Relatedly, the High Court in *Jagatheesan* held (at [82], citing *Chean Siong Guat*) that inconsistencies in a witness’s statement may also be the result of different interpretations of the same event.

183 For these reasons, the purported inconsistencies raised by Mr Kumarasingam and Mr Thuraisingam do not assist the accused persons’ cases.

The Complainant's contemporaneous conduct is consistent with her account

184 Further, I agree broadly with the Prosecution's submission that the Complainant's contemporaneous conduct is consistent with her account.³⁹⁷ In this regard, I would highlight four points:

- (a) First, from the moment she fully regained consciousness at around 3.00am, the Complainant formed the view that she had been raped. She checked the bin for condoms and repeatedly asked DGI what had happened, even telling him that she thought she had been raped (see [47]–[48] above).
- (b) Second, when she returned to her hotel room, the Complainant immediately conducted online searches on what to do if she had been raped, the legal consequences of rape in Singapore, as well as the police's number in Singapore (see [52] above).
- (c) Third, when she later woke up in the morning, she immediately visited the hospital as she wanted to get herself checked to make sure her body was alright. She also made a conscious effort to not wash up, to preserve any potential evidence of rape (see [54] above).
- (d) Fourth, the Complainant reached out to PW25 and to [C] to confide in them (see [57] and [60] above). She also tried arranging to meet DGH to hear his explanation of the previous night's events (see [59] above). In this latter regard, the evidence suggests that the Complainant did so not because she was uncertain if DGH had been

³⁹⁷ PCS at paras 67–71.

involved, but for compassionate and cultural reasons (see [52] and [63] above).

185 In sum, the Complainant's contemporaneous actions all cohere logically with her account of the events. This is also significant because it strikes at Mr Kumarasingam and Mr Thuraisingam's arguments (see [138(c)(ii)] and [142(b)] above) that the Complainant's account was reconstructed (based on subsequent rationalisation of her text messages, patchy memories, and conversations with third parties) and not based on her recollection. Indeed, the Complainant's contemporaneous actions and thought processes demonstrate that *from the outset after regaining consciousness*, she formed the view that she had been raped. In particular, the first three actions occurred before the Complainant spoke to anyone about the incident, and before she had much opportunity to process the incident.

The Complainant's account is externally consistent

186 Externally, the Complainant's evidence also coheres with other evidence, namely: (a) VRI statements of DGH and DGI; (b) the Complainant's contemporaneous WeChat text messages with [A]; (c) the CCTV footage obtained from [Hotel A]; (d) PW9's medical examination of the Complainant; (e) the Complainant's clothing; and (f) DGI's clothing. Further, contrary to Mr Kumarasingam and Mr Thuraisingam's submissions (see [138(b)] and [142(a)] above), I find that the Complainant's account is not contradicted by PW2's evidence on the Complainant's state of mind at the material time, which is instead neutral. I turn to explain these pieces of external evidence in turn.

VRI statements of DGH and DGI

187 According to the Complainant’s account (see [40], [41] and [47] above), *inter alia*, she felt someone suck her vagina and suck her nipples concurrently. She also recalled feeling a sharp pain in her anus (which felt like someone had penetrated it), as well as waking up to find that her pubic hair had been shaven. This account coheres strongly with the accused persons’ respective VRI statements (which were admitted without any challenge as to their admissibility). In fact, in their statements, the accused persons went even further, and effectively admitted to the *actus reus* of each of the Sexual Offences Charges brought against them respectively.

188 In his 1st VRI statement on 27 February 2023, DGH stated the following:

- (a) DGI had sexual intercourse with the Complainant from behind her.³⁹⁸
- (b) DGI performed oral sex on the Complainant.³⁹⁹
- (c) DGH placed his hands on the Complainant’s right butt cheek.⁴⁰⁰
- (d) DGH touched and licked the Complainant’s breasts.⁴⁰¹
- (e) DGH touched the Complainant’s pubic hair and vagina.⁴⁰²

³⁹⁸ Prosecution’s Bundle of Exhibits (Volume 1) dated 30 August 2024 (“1PBE”) at 49, lines 18–19.

³⁹⁹ 1PBE at 59, line 6.

⁴⁰⁰ 1PBE at 55, lines 23–26 and 1PBE at 89, lines 9 and 11.

⁴⁰¹ 1PBE at 60, lines 11 and 15.

⁴⁰² 1PBE at 60, line 27; 1PBE at 89, lines 26–27; 1PBE at 90, lines 25 and 27.

189 In his 2nd VRI statement on 16 March 2023, DGH again stated the following:

- (a) DGI had sexual intercourse with the Complainant from behind her.⁴⁰³
- (b) DGI performed oral sex on the Complainant.⁴⁰⁴
- (c) DGH placed his hands on the Complainant's right butt cheek.⁴⁰⁵
- (d) DGH kissed the Complainant's breast.⁴⁰⁶
- (e) DGH digitally penetrated the Complainant's vagina.⁴⁰⁷

190 In his 3rd VRI statement on 5 September 2023, DGH confirmed that he had no issues with his prior two VRI statements and had nothing to add to them.⁴⁰⁸ Indeed, DGH again confirmed that:

- (a) DGI inserted his penis into the Complainant's vagina.⁴⁰⁹
- (b) DGI performed oral sex on the Complainant.⁴¹⁰
- (c) DGH placed his hands on the Complainant's butt cheek.⁴¹¹

⁴⁰³ 1PBE at 131, lines 15 and 20.

⁴⁰⁴ 1PBE at 141, line 1.

⁴⁰⁵ 1PBE at 135, line 21.

⁴⁰⁶ 1PBE at 141, line 2.

⁴⁰⁷ 1PBE at 141, lines 5–9.

⁴⁰⁸ 1PBE at 230, lines 19–24.

⁴⁰⁹ 1PBE at 441, line 1.

⁴¹⁰ 1PBE at 476, line 20.

⁴¹¹ 1PBE at 455, lines 24 and 26.

- (d) DGH touched and kissed the Complainant's breast.⁴¹²
- (e) DGH digitally penetrated the Complainant's vagina with his index and middle fingers.⁴¹³

In addition, DGH added that he “gyrat[ed] a bit” while standing behind the Complainant.⁴¹⁴

191 In other words, across all three VRI statements, DGH consistently admitted that he licked the Complainant's breast and touched her pubic hair, as well as digitally penetrated the Complainant's vagina. These acts respectively form the *actus reus* of the OM Charge against DGH and the SAP Charge. Indeed, as confirmed in his closing submissions, DGH does not dispute the respective *actus reus* of the OM Charge against DGH and the SAP Charge.⁴¹⁵

192 I turn to DGI. In his first VRI statement on 27 February 2023, DGI stated that:

- (a) DGI and DGH respectively kissed the Complainant.⁴¹⁶
- (b) DGI and DGH both had sexual intercourse with the Complainant.⁴¹⁷

⁴¹² 1PBE at 480, lines 26 and 28.

⁴¹³ 1PBE at 482, lines 6–27; 1PBE at 484, lines 13 and 15.

⁴¹⁴ 1PBE at 457, lines 20–21.

⁴¹⁵ 1DCS at para 8.

⁴¹⁶ 2PBE at 654, line 27.

⁴¹⁷ 2PBE at 685, line 28.

- (c) DGI and DGH both performed oral sex on the Complainant.⁴¹⁸
- (d) DGI and DGH both kissed the Complainant's breasts.⁴¹⁹
- (e) DGI and DGH both digitally penetrated the Complainant.⁴²⁰
- (f) DGI penetrated the Complainant's anus with his penis.⁴²¹

193 In his second VRI statement dated 16 March 2023, DGI stated that:

- (a) DGI and DGH respectively kissed the Complainant.⁴²²
- (b) DGI and DGH both had sexual intercourse with the Complainant.⁴²³
- (c) DGI and DGH both kissed the Complainant's breasts.⁴²⁴
- (d) DGI and DGH both digitally penetrated the Complainant.⁴²⁵
- (e) DGI was not sure if he penetrated the Complainant's anus with his penis.⁴²⁶ He was also not sure if DGH did the same.⁴²⁷

⁴¹⁸ 2PBE at 721, line 22.
⁴¹⁹ 2PBE at 721, line 30.
⁴²⁰ 2PBE at 722, lines 2–3.
⁴²¹ 2PBE at 729, lines 31 and 1.
⁴²² 2PBE at 825, lines 1–3.
⁴²³ 2PBE at 829, lines 31–32.
⁴²⁴ 2PBE at 828, line 30.
⁴²⁵ 2PBE at 833, line 24.
⁴²⁶ 2PBE at 840, lines 8–10.
⁴²⁷ 2PBE at 841, lines 27–28.

In addition, DGI added that he shaved off the Complainant's pubic hair.⁴²⁸ DGI did not, however, appear to have confirmed that he and/or DGH performed oral sex on the Complainant.

194 In this third VRI statement on 5 September 2023, DGI confirmed that:

- (a) DGI and DGH respectively kissed the Complainant.⁴²⁹
- (b) DGI and DGH both had sexual intercourse with the Complainant.⁴³⁰
- (c) DGI performed oral sex on the Complainant.⁴³¹
- (d) DGI and DGH both kissed the Complainant's breasts.⁴³²
- (e) DGH digitally penetrated the Complainant's vagina.⁴³³
- (f) DGI shaved the Complainant's pubic hair.⁴³⁴

DGI did not, however, mention any penetration of the Complainant's anus.

195 In other words, across all three VRI statements, DGI admitted to the *actus reus* of each of the Sexual Offences Charges he faces (although he retracted one such admission in the second and third VRI statements):

⁴²⁸ 2PBE at 774, lines 2–3.

⁴²⁹ 2PBE at 1035, lines 6, 10 and 12.

⁴³⁰ 2PBE at 1050, lines 17–20.

⁴³¹ 2PBE at 1050, lines 32, 5 and 3.

⁴³² 2PBE at 1045, line 31.

⁴³³ 2PBE at 1050, lines 5 and 7.

⁴³⁴ 2PBE at 1035, lines 26 and 28.

- (a) the 1st OM Charge against DGI: DGI admitted to licking and kissing the Complainant's breast (in all three VRI statements), as well as to licking her vagina (in the first and third VRI statements);
- (b) the Penile-vaginal Rape Charge: DGI admitted to penetrating the Complainant's vagina with his penis (in all three VRI statements);
- (c) the Penile-anal Rape Charge: DGI admitted in the first VRI statement that he penetrated the Complainant's anus with his penis (but not in the other two VRI statements); and
- (d) the 2nd OM Charge against DGI: DGI admitted to shaving the Complainant's pubic hair (in the second and third VRI statements).

196 As I noted earlier at [141] above, in his closing submissions, DGH does not dispute the acts in these charges, save for penile-anal penetration. However, he challenges the Complainant's account of the circumstances, and disputes that the sexual acts occurred in bed.

The Complainant's contemporaneous WeChat text messages with [A]

197 Next, the Complainant's account of the events coheres with the contemporaneous WeChat text message exchanges with [A] (see [17] and [22] above), which show that the issue of the restaurant reservation was on the Complainant's mind. Even after [A] told the Complainant at 6.26pm that the restaurant had given their table away, the Complainant remained firm and told [A] that she was going to go to the restaurant after finishing the alcohol. However, the Complainant then, uncharacteristically, stopped sending further messages to [A] to follow up on the issue of the restaurant reservation, or any further messages to [A] for that matter. This coheres with the Complainant's

account that her dinner plan with DGH was never cancelled, and that she started losing consciousness shortly after sending her last text message to [A] at 6.26pm.

198 The Complainant's account that her hands started shaking from the amount of alcohol consumed by 6.26pm (see [37] above) is also corroborated by the typographical error she made in her text message to [A] (see [23] above). As a native Mandarin speaker, it is odd for the Complainant to have made such an error – to use the female version of the first character of the term, rather than the male version of the first character of the term. The Complainant's account is hence further strengthened by her contemporaneous WeChat text message exchanges with [A].

CCTV footage obtained from [Hotel A]

199 The Complainant's account of events also coheres with the CCTV footage obtained from [Hotel A]. Specifically, the Complainant testified that her mind was pre-occupied by the issue of the restaurant reservation when she arrived at [Hotel A]. Thus, she originally failed to notice a person in a wheelchair trying to exit the lift as she was trying to enter the lift. This is corroborated by the hotel's CCTV footage. The Complainant's general mannerism as captured by the CCTV footage while she was waiting at the hotel lobby is also consistent with her account that she was anxious about missing her restaurant reservation.

PW9's medical examination of the Complainant

200 Next, the Complainant's account that she felt a strong pain in her anus and thought that it had been penetrated (see [40] above) is corroborated by

PW9's medical report after examining the Complainant. Specifically, in the report, PW9 recorded the following injuries at her anus:

Anal examination revealed bluish tinge noted at the 6 o'clock region after parting. Tear noted at 6 o'clock region, superficial to bluish tinge. Small amount of bleeding noted from the tear, no active bleeding.

201 This suggests that the Complainant's anus was indeed penetrated. It also casts doubt on DGI's retraction in his second VRI statement that he was unsure whether he penetrated the Complainant's anus, to his silence on this in the third VRI statement.

202 Moreover, PW9's medical report confirmed that the Complainant's "pubic hair was shaved over mons pubis", which corroborates her account that she woke up to find her pubic hair missing.

The Complainant's clothing

203 Fifth, I find that the evidence left on the clothing the Complainant wore at the material time supports her version of the events. First, there were blood stains on the Complainant's panties,⁴³⁵ even though she was not menstruating at the material time.⁴³⁶ This again strengthens her account that she was penetrated anally.

204 Second, contrary to the Defence's arguments,⁴³⁷ I find that the vomit stains on the Complainant's shirt and bra corroborate her account that she first

⁴³⁵ 1AB at 305.

⁴³⁶ 1AB at 117, para 2.

⁴³⁷ See, *eg*, 1DRS at para 34; 2DCS at para 57.

vomited while still fully clothed on the bed (see [38] above). According to the Complainant, she vomited in the following manner:⁴³⁸

I recall I vomited on the bed and I was facing down to the bed and also with my left arm to support my body. So it's my body is also half lying down with the support like the---the left arm to carry the weight of the body.

...

I was facing down the bed and also towards the window. So it's not fully. It's like slightly because my weight is on my left hand--left arm.

205 In my view, if the Complainant vomited in this manner, it would not be inconsistent to find vomit stains on the inside and outside of the *left* side of her bra (with no stains found on the right side),⁴³⁹ as well as on the back of the *left* sleeve as one would wear the shirt.⁴⁴⁰ This is because the vomitus could have gotten onto these portions of the Complainant's blouse as she vomited with her left arm stretched out towards her left. It could also have gotten into her brasserie through her blouse. Interestingly, the vomit stains were, in general, consistently only found on the left side of the Complainant's clothing.

206 In contrast, if, as the accused persons claim, the Complainant was already undressed when she vomited, it would be odd for her clothing to have been stained with vomit in this manner, or, as the Prosecution argues,⁴⁴¹ to have been stained at all. In this regard, I reject DGI's purported explanation that the Complainant's clothing became stained with vomit as they were placed below the sink into which she vomited (see [114] above). Considering the

⁴³⁸ 2 Sep 24 NE at lines 11–21.

⁴³⁹ Notes of Evidence for 24 October 2024 ("24 Oct 24 NE") at p 33 lines 22–29.

⁴⁴⁰ 24 Oct 24 NE at p 38 line 31 to p 39 line 2 and p 39 lines 13–15.

⁴⁴¹ PCS at para 63.

extensiveness of the vomit stains on the Complainant's clothing, and the fact that the stains were concentrated on the left of her clothing, such an explanation is highly implausible. The position of the vomit stains on the Complainant's clothing therefore further supports her account that she vomited while still fully clothed on the bed.

DGI's clothing

207 Finally, the Complainant's account is corroborated by the clothing which DGI was wearing at the material time. According to the Complainant, she woke up and saw DGI lying in front of her, with his back turned towards her (see [46] above). While she could not recognise the exact clothing which DGI was wearing,⁴⁴² she recalled that DGI was wearing something white, with the letter "A" at the back (see [46] above). This coheres with the fact that DGI wore a pyjama shirt which had the word "QANTAS" (containing the letter "A" twice) spelled out on its back.⁴⁴³ While the shirt was not white but light grey in colour, given that she had just regained consciousness, it is not surprising that the Complainant could have perceived it to be white. Given this, DGI's account, that he was at no point on the bed with her (see [120] above), is weakened.

The Prosecution has not led inconsistent cases, and reliance on the admissions in the accused persons' statements is appropriate

208 At this juncture, I address the objection which Mr Kumarasingam and Mr Thuraisingam have both raised: that the Prosecution has led inconsistent and/or unclear cases against the accused persons.

⁴⁴² 2 Sep 24 NE at p 94 lines 3–4.

⁴⁴³ See 1AB at 424.

209 More specifically, Mr Kumarasingam argues that the Prosecution has not put forth a positive account of the sexual acts which took place.⁴⁴⁴ For example, it is unclear if the Prosecution is saying that the sexual acts took place in the bathroom area or on the bed, and if any further sexual activity took place between the Complainant and DGI after DGH left DGI's hotel room.⁴⁴⁵

210 In a similar vein, Mr Thuraisingam argues that it is unclear if the Prosecution's case is that the Complainant did not validly consent because she was incapable of consenting, or that the Complainant had the capacity to consent but did not in fact consent.⁴⁴⁶ It is also unclear if the Prosecution's case is that the sexual activities occurred in the bathroom area or on the bed.⁴⁴⁷ Relatedly, Mr Thuraisingam also takes issue with the Prosecution's approach of using DGH's account to prove the *actus rei* against him while rejecting his account of how and where the sexual acts took place (which he has termed the "Hybrid Approach").⁴⁴⁸

211 I am unable to accept these arguments. In my view, the Prosecution's case, which is based primarily on the Complainant's testimony, has always been that the Complainant vomited on the bed after her last sip of wine while she was still clothed, before *fully losing consciousness* and then drifting in and out of consciousness. The sexual acts occurred during this period *on the bed*, and the Complainant *did not consent* to them. Relatedly, the Sexual Offences Charges levied against DGI are also "reasonably sufficient to give [DGI] notice of what

⁴⁴⁴ 1DCS at paras 13–15.

⁴⁴⁵ 1DCS at para 22.

⁴⁴⁶ 2DCS at para 61.

⁴⁴⁷ 2DCS at para 63.

⁴⁴⁸ 2DCS at para 66. See also 2DRS at para 33.

[he] is charged with”, in accordance with s 124(1) of the Criminal Procedure Code 2010 (2020 Rev Ed),⁴⁴⁹ since they clearly stipulate the date, time, and location of the alleged offences. Contrary to Mr Thuraisingam’s argument, there is no necessity to specify in granular detail whether the offence took place on the bed or the bathroom area. Indeed, DGI has, throughout proceedings, perfectly understood what he has been charged with, and has even advanced a positive defence against his charges.

212 Even if I were to agree with Mr Thuraisingam that it is not entirely clear whether the Prosecution’s case is that: (a) the Complainant had the capacity to consent but did not consent; or (b) that she simply lacked the capacity to consent, *eg*, pursuant to s 90(b) of the PC whereby she was so intoxicated as to be unable to understand the nature and consequence of that to which she gave her consent (which are the two ways in which the absence of consent can be proven – see *Tan Yew Sin* at [45]–[46], citing *Pram Nair v Public Prosecutor* [2017] 2 SLR 1015 (“*Pram Nair*”) at [62]),⁴⁵⁰ given the circumstances here, this does not prejudice DGI’s (or DGH’s) case. I say so for three reasons.

213 First, regardless of whether the Complainant was incapable of consenting or simply did not consent, the crux of the Prosecution’s case is that she did not validly consent. The charges would be made out if it is shown that she did not validly consent. Second, the court will in any event assess all the evidence and make an independent finding on the precise circumstances under which the Complainant did not validly consent to the sexual activities (see [225] below). Indeed, in these two regards, the Court of Appeal has observed in *Pram Nair* (at [62]–[63]) that:

⁴⁴⁹ Cf 2DCS at para 64.

⁴⁵⁰ See PRS at para 5.

62 ... Where the absence of consent is an element of an offence, and it is shown that the alleged victim was incapable of giving consent, then it would not matter whether she ostensibly did since such a consent would not be valid. That is the effect of s 90(b) of the Penal Code. If, however, the victim was not intoxicated to such a degree as to negate any ostensible consent she gave, the PP can still make out the offence by proving that, although capable of giving consent (in that the victim was intoxicated but still able to understand the nature and consequence of her acts), the victim did not in fact do so.

63 This approach has been adopted in previous cases. For example, in *Ong Mingwee v PP* [2013] 1 SLR 1217 (“*Ong Mingwee*”), Quentin Loh J’s approach was to determine, first, whether the victim was capable of consenting to sexual intercourse before determining whether she did in fact consent. Loh J found that she was capable of consenting and did in fact consent. Also relevant, though perhaps less directly, is *PP v Iryan bin Abdul Karim* [2010] 2 SLR 15 (“*Iryan*”), where, in relation to s 90(a)(i) of the Penal Code (consent given under fear of injury) and the offence of sexual assault by penetration under s 376(1)(a), Tay Yong Kwang J found that the victim who had fellated the accused persons had done so only out of a fear of injury; this rendered any alleged “consent” of the victim nugatory (at [127]–[128]).

214 Third, and most importantly, the accused persons’ common position in relation to the issue of consent is a positive one – that the Complainant had validly consented to the sexual acts, but then forgot about the consent given (see [137] and [141] above). It is not a negative one which merely seeks to cast a reasonable doubt on the Prosecution’s case. The accused persons were not prejudiced in advancing their cases.

215 Further, there is also nothing inappropriate with the Prosecution’s Hybrid Approach. The fact of the matter is that in their VRI statements, the accused persons have both admitted to the *actus rei* of the Sexual Offences Charges, *ie*, the sexual acts they performed on the Complainant. The Prosecution is entitled to rely on these inculpatory admissions in their VRI statements, while contesting the exculpatory aspects of the same. Indeed, I accept that these admissions have been made, and I find that these admissions

establish beyond a reasonable doubt that the *acts* involved in the charges were committed. Notwithstanding DGI's retraction of the admission of the penile-anal penetration made in his first VRI statement, I find that this initial admission rings of the truth. I elaborate on this at [242] below. As for the remaining details surrounding the sexual activities (*ie*, how and where they took place), these are disputed, and it remains for me to make findings on them.

The Complainant did not validly consent to the sexual acts, and PW2's evidence does not undermine her position

216 I now turn to address an argument raised by Mr Kumarasingam and Mr Thuraisingam: that the Complainant's account is undermined by PW2's expert evidence on the Complainant's mental state during the sexual activities. Specifically, they argue that PW2's evidence suggests that the Complainant was not unconscious throughout the sexual activities, but that she had instead been in an "alcoholic greyout" or "alcoholic blackout". In that state, she consented to the sexual acts but forgot about them thereafter.⁴⁵¹

217 For example, PW2 stated in his expert report that between 6.00pm and 8.20pm, "the alcohol itself is unlikely to render [the Complainant] totally unconscious".⁴⁵² Instead, the Complainant was more likely to be in an "alcoholic greyout", where she would still have been conscious, but simply could not form new memories.⁴⁵³

So in my opinion, I think the subject was experiencing a grayout. So what I meant was that actually during the time when she said she cannot remember, yes, she had memory

⁴⁵¹ See, *eg*, 1DCS at paras 34–45; 2DCS at paras 16.4–25.

⁴⁵² 1AB 125 at para 19. See also 2DRS at para 13.

⁴⁵³ Notes of Evidence for 9 September 2024 ("9 Sep 24 NE") at p 47 line 24 to p 48 line 2.

impairment at that time whereby she could not form new memories, but there are other times when she could. So during the broad period of time - those few hours - we would call this a “grayout”. Because a blackout is a very dense sort of memory impairment---complete memory impairment. Yah. Of course, for those moments that she could not remember, yes, if you like to call that a “blackout” for that minute, hour or that period of time, whatever that period of time is, you can call it that. But, overall, *I think for the---roughly that, say, from 6.30 to maybe about midnight, it’s more likely the whole period is characterised by a grayout more than a blackout.*

218 I reject Mr Kumarasingam and Mr Thuraisingam’s argument that the Complainant consented to the sexual acts while in an “alcoholic greyout” or “alcoholic blackout” but later forgot about it. I also reject Mr Kumarasingam’s related argument premised on mistaken consent.⁴⁵⁴ In my view, there are several limitations with PW2’s evidence.

219 First, as Mr Kumarasingam himself highlights,⁴⁵⁵ “[i]n the present case, it was not possible to do a backward [Blood Alcohol Concentration (“BAC”)] calculation as the Complainant had no discernible BAC by the time she was examined at the hospital”. Put another way, it was not possible to calculate the Complainant’s BAC at the time of the sexual activities by working backwards based on any *actual* BAC value obtained from the Complainant’s blood sample.

220 Instead, as Mr Kumarasingam also alludes to, PW2’s calculations were done by applying the Widmark formula, which is used to “*estimate* the [BAC]” [emphasis added] based on the Complainant’s gender, *estimated* weight at the material time, and *estimated* amount of alcohol consumed.⁴⁵⁶ In relation to the

⁴⁵⁴ 1DCS at paras 134–143.

⁴⁵⁵ 1DCS at para 32.

⁴⁵⁶ 1AB at 124 para 15a; Notes of Evidence for 6 September 2024 (“6 Sep 24 NE”) at p 11 line 14 to p 13 line 22.

last factor, this is in turn based on what the Complainant *estimated* herself to have consumed *based on her memory*.⁴⁵⁷ Indeed, PW2 himself acknowledged, *inter alia*, the following limitations of his report:⁴⁵⁸

- (a) the amount of alcohol consumed was self-reported;
- (b) the Complainant did not know if she consumed more alcohol;
- (c) the self-reported amount of wine drunk was *between* a quarter to half a glass, which can affect calculations; and
- (d) the exact timing of the sexual acts and any purported consent, which is important, is not known.

221 PW2’s evidence is therefore only of *general academic* helpfulness, and did not particularly assist any party. In fact, I would observe that PW2 testified equally during examination-in-chief that it was possible for the Complainant to have lost consciousness and started to drift in and out of consciousness after vomiting (see [168] above).⁴⁵⁹

222 Second, as PW2 highlighted in his expert report, the “effect of alcohol on a person is dependent on the individual person”. Again, this is a concession by PW2 that his expert evidence is only accurate on a *general* level. Third, as PW2 highlighted at trial, in considering when someone passes out and one’s state after consuming alcohol, “alcohol is a factor, but it’s not the sole factor”.⁴⁶⁰

⁴⁵⁷ 1DCS at para 32.

⁴⁵⁸ 1AB at 125–126 para 20.

⁴⁵⁹ 6 Sep 24 NE at p 24 lines 25–28.

⁴⁶⁰ 1 AB at p 126 para 20(e). 6 Sep 24 NE at p 25 lines 6–9. See also 6 Sep 24 NE at p 34 line 23 to p 35 line 7.

Other material factors include one's drinking speed,⁴⁶¹ fatigue, not having dinner and being in an unfamiliar environment,⁴⁶² an individual's personal alcohol tolerance,⁴⁶³ as well as the timing of an individual's last meal.⁴⁶⁴ In other words, PW2 has conceded that his evidence is insufficient to determine the Complainant's state, especially her mental state, at the time of the sexual activities.

223 In fact, the additional material factors raised by PW2 are pertinent to the Complainant's situation that evening, and could well have exacerbated her vulnerability to losing consciousness after consuming alcohol:

- (a) By the Complainant's account, she consumed both glasses of gin-sparkling water mix in close proximity to each other and in a "bottoms up" fashion: see [31]–[32] above.
- (b) At the time of drinking, the Complainant would have just ended a day of professional engagements, and would have spent the past 30 minutes rushing to [Hotel A] after trying to find the tonic water which DGH had requested her to purchase: see [13], [16]–[20] and [29] above.
- (c) The Complainant was a foreigner in Singapore, and she did not live in [Hotel A].

⁴⁶¹ 6 Sep 24 NE at p 19 lines 25–26.

⁴⁶² See 6 Sep 24 NE at p 25 lines 3–6.

⁴⁶³ 6 Sep 24 NE at p 34 line 24.

⁴⁶⁴ 6 Sep 24 NE at p 21 line 30 to p 22 line 2.

(d) The Complainant was not a heavy or regular drinker. She consumed alcohol once a month or every two months, each time having a glass of wine or cocktail. Occasionally, she consumed Mao Tai.⁴⁶⁵

(e) The Complainant's last and only meal that day was at 11.00am, at least seven hours before she started consuming alcohol. It was also not a particularly heavy meal: see [34] above.

For these reasons, PW2's evidence does not assist the accused persons, and is neutral at best.

224 Indeed, as I have found the Complainant to have clarified (at [168] above), in relation to the issue of when she first lost consciousness, the facts are that she started losing consciousness (albeit not fully) while consuming the white wine. A brief period of time passed, during which the Complainant could not fully recall the details. She then vomited on the bed, before fully losing consciousness, and was then drifting in and out of consciousness.

225 Given the cogency of the Complainant's account, and its internal and external consistencies which I have explained above, I also find that the sexual acts happened *thereafter*. From this finding, three important implications arise:

(a) First, this finding would mean that the Complainant was already unconscious when the sexual activity began. She would thus "obviously" have had no capacity to consent: *Pram Nair* at [96(c)].

(b) Second, this finding would mean that even if the Complainant did not fully lose consciousness immediately after vomiting, she in any

⁴⁶⁵ 1AB at 122 paras 9 and 11.

event *did not* consent to any of the sexual activities. It would defy human experience and common sense for her to have consented to a series of intensive sexual activities after having just vomited. This implication also renders the question of whether the Complainant was in an “alcoholic greyout” during the material time (whereby she could have consented to the sexual activities but not formed memories of doing so), and, in turn, PW2’s evidence, somewhat moot.

(c) Third, this finding puts to rest DGH’s alternative argument that he had mistakenly believed in good faith that the Complainant consented to the sexual activities. DGH has not attempted to show that he exercised “due care and attention” in arriving at such a purported belief: *Pram Nair* at [111]. Indeed, as just stated, it would defy human experience and common sense for the Complainant to have consented to any sexual activity after having just vomited. While DGI does not specifically rely on a mistake as to the Complainant’s consent, I do not see any possibility he could have been so misled. I shall say more of the versions by the accused persons later.

Given these, it is clear that the Complainant did not validly consent to the sexual activities (or appeared to have so consented).

226 With that, I turn to consider the accused persons’ respective accounts, and whether they have thrown a reasonable doubt on the Prosecution’s case that the Complainant did not consent to the sexual activities.

Problems with accounts of DGH and DGI*Unsatisfactory aspects common to both the accused persons' accounts*

227 I begin with the problems common to both accused persons' accounts, of which there are at least three.

228 First and importantly, as alluded to earlier (see [206] above), the accused persons' accounts, that the sexual activities happened before the Complainant first vomited fully clothed on the bed, are contradicted by the fact that the Complainant's clothes were stained, and stained in a very specific manner. Flowing from this, it would be equally illogical and incredible that the Complainant could (or would) have validly consented (or appeared to have consented) to a series of intensive sexual activities after having just vomited (see [225] above). It would be even more incredible for the Complainant to have played such a proactive role throughout the sexual activities, as both accused persons seem to have suggested in their positive cases.

229 Second, as the Prosecution highlights, the accused persons' accounts of the sexual activities, whether at trial or in their VRI statements (see [82]–[91] *cf* [109]–[114] and [188]–[195] above) show that they are “pushing the blame on each other and incriminating each other in a bid to distance themselves from wrongdoing”.⁴⁶⁶ For instance, DGH's version is that the sexual activities started between DGI and the Complainant in his absence, while DGI's narration is that the Complainant initiated the sexual activities by first kissing DGH. Given that they materially contradict each other, both accounts are considerably weakened.

⁴⁶⁶ PCS at paras 75–76.

230 Third, both the accused persons performed incriminating online searches on their electronic devices between the time of their first and second VRI statements. On 11 March 2023, DGH performed online searches, including the following, on his laptop:⁴⁶⁷

Time	Type of activity	Search term
11 March 2023, 10.38pm	Google search	Do fingers in vagine leave dna
11 March 2023, 10.43pm	Google search	taking blood for dna test
11 March 2023, 10.45pm	Google search	dna testing for sexual activity
11 March 2023, 10.46pm	Google search	dna testing for sexual activity after showe
11 March 2023, 10.52pm	Google search	do fingers in vagina leave dna
11 March 2023, 10.54pm	Google search	do fingers inside vagina leave dna in test kit
11 March 2023, 10.55pm	Google search	what leaves dna in vagina after sexual activity
11 March 2023, 10.56pm	Google search	dna in vagina after sexual activity
11 March 2023, 10.57pm	Google search	does shower after sex reduce dna testing
11 March 2023, 10.58pm	Google search	dna testing for sexual assault shower
11 March 2023, 10.59pm	Google search	salivary DNA

⁴⁶⁷ TCFB_2024_1269.

231 As for DGI, investigations show that he performed the following online searches on his mobile phone between 2 March 2023 and 3 March 2023:⁴⁶⁸

Time	Type of activity	Search term/webpage title
2 March 2023, 5.49pm	Search	trick.questions.in rape cases
2 March 2023, 5.49pm	Webpage visit	Interview Strategies for Sexual Assault and Rape Investigations
2 March 2023, 5.51pm	Search	trick.questions.in rape cases
3 March 2023, 8.40am	Search	polygraph test tips
3 March 2023, 8.43am	Search	polygraph test tips

232 These online searches betray the accused persons' guilty minds. This is further evidenced by their incredible explanations for the searches. DGH explained that he was looking for evidence which would be helpful to him. According to him, he was hoping that DNA from his finger would continue to be present in the Complainant's vagina despite the fact that she showered, to disprove DGI's allegation that DGH penetrated the Complainant's vagina with his penis.⁴⁶⁹

233 I reject this explanation. As the Prosecution highlights, if DGH's explanation was to be true, it is curious for DGH not to have performed searches to directly find out whether there is a difference between DNA from his finger and his penis.⁴⁷⁰

⁴⁶⁸ TCFB_2024_1438 at Annex C.

⁴⁶⁹ 28 Nov 24 NE at p 75.

⁴⁷⁰ PCS at para 122(a).

234 As for DGI, he explained that he did the online searches so as to try to understand the investigative process, including that for undertaking a polygraph, better. He had not undertaken a polygraph test before, and was seeking general information on how to prepare for one.⁴⁷¹ Again, I reject this explanation. As the Prosecution highlights, DGI's explanation is inconsistent with his search terms.⁴⁷² These search terms suggest an underlying concern about his liability.

Unsatisfactory aspects of DGH's account

235 I turn to highlight the issues specific to DGH's account, of which there are at least three.

236 First, DGH's account of when it was decided that the dinner plan would be cancelled is both internally and externally inconsistent. At trial, DGH testified that the issue of the timing of the dinner reservation only arose at around 6.40pm (see [73] above), and that no mention of the same was made when the Complainant initially entered DGI's hotel room (see [70] above). However, as the Prosecution highlights, this account is vastly different from DGH's prior accounts:⁴⁷³

- (a) In his third VRI statement, DGH consistently confirmed that the decision to not proceed for dinner anymore was made very early on. For example, DGH claimed that the decision to not proceed for dinner as

⁴⁷¹ Notes of Evidence for 4 December 2024 ("4 Dec 24 NE") at p 52 line 24 to p 53 line 3.

⁴⁷² PCS at para 122(b).

⁴⁷³ PCS at paras 81–82.

planned was made “[w]ithin a minute or so” of the Complainant entering DGI’s hotel room.⁴⁷⁴

(b) In his Case for the Defence, DGH stated that “[b]y some time shortly after the Complainant arrived, it was clear that [DGH] and the Complainant would not be going out to dinner”.

237 This suggests that DGH shifted his evidence after having sight of the Complainant’s WeChat text messages to [A] sent at 6.20pm (see [22] above). Indeed, DGH testified at trial that “the discussion of the restaurant ... came when [the Complainant] has some interactions with [A], *which now I know* to be around 6.20 6.25pm” [emphasis added].⁴⁷⁵ In his initial account, DGH lied about the time when it was decided that the dinner plan was to be cancelled. He also sought to downplay the Complainant’s eagerness and consistent desire to proceed for dinner at [Restaurant X], so as to make the rest of his account of the consensual sexual activities more credible.

238 Second, I find that DGH’s account of the sexual activities is incredible. According to DGH, throughout all the sexual activities, not a single word was uttered by any of them (see [91] above). As the Prosecution argues, it is hard to conceive that the long series of sexual activities, which allegedly took place both in the bathroom area and the bed (see [82]–[90] above), could have occurred amongst the Complainant, DGH and DGI, with such precise coordination without a single word having been uttered by any of them.

⁴⁷⁴ 1PBE 322 at line 6.

⁴⁷⁵ 28 Nov 24 NE at p 17 lines 17–19.

Inexplicably, according to DGH, the parties had previously engaged in a hearty and long conversation.⁴⁷⁶

239 Third, and linked to the OJ Charge against DGH, I find that the deleted text messages which DGH sent DGI is indicative of his guilt. In this regard, I reject DGH's explanation that he deleted these messages on DGI's request, for fear that DGI's fiancée would see the messages (see [99] above). If DGI and/or DGH had wanted to prevent DGI's fiancée from seeing the messages, which would purportedly suggest that DGI was engaging in sexual activity with another woman, only DGI would have needed to delete the messages. Indeed, DGI had gone beyond that to delete his entire WhatsApp chat history with DGH.⁴⁷⁷ There was no need for DGH to have deleted these messages from DGH's WhatsApp chat history. Yet, DGH had not only done so, from the screenshots, it would appear that he had gone further to delete the "You deleted this message." notification that would typically appear after one deletes a message on WhatsApp on his own account.⁴⁷⁸ This suggests that his intention of deleting the messages was to prevent incriminating himself. This betrays his guilty conscience.

240 For completeness, I observe that the following factors which the parties have raised in relation to DGH's account are neutral:

- (a) First, it is disputed how DGH came to pass Viagra to DGI, and whether they each consumed some of it (see [66] *cf* [103] above). However, I find that this is a neutral factor *vis-à-vis* DGH. In this regard,

⁴⁷⁶ PCS at paras 95–96.

⁴⁷⁷ 3 Dec 24 NE at p 66 lines 4–6.

⁴⁷⁸ See 1AB 472.

I accept Mr Kumarasingam's argument that the Prosecution has not proven that DGH consumed any Viagra.⁴⁷⁹

(b) Second, the Prosecution has adduced CCTV footage which shows that DGH paced outside DGI's hotel room when he left at 8.20pm. I accept DGH's explanation that he did so due to his tendencies arising from Obsessive Compulsive Disorder.⁴⁸⁰

(c) Third, I reject Mr Kumarasingam's argument that DGH's cooperation throughout investigations suggests his innocence.⁴⁸¹ In this instance, cooperation during investigations does not logically suggest or prove innocence. It is neutral.

(d) Fourth, I reject Mr Kumarasingam's argument that DGH's account should be believed as it is consistent, both internally and with the Complainant's evidence, in aspects such as the topics discussed between the parties.⁴⁸² In my view, these consistencies pertain to immaterial aspects of DGH's case.

Unsatisfactory aspects of DGI's account

241 I turn to highlight the issues specific to DGI's account, of which there are at least four.

242 First, DGI's account on whether there was any penetration of the Complainant's anus is both internally and externally inconsistent. Internally, it

⁴⁷⁹ See 1DCS at para 118.

⁴⁸⁰ 1DCS at para 116.

⁴⁸¹ 1DCS at para 124.

⁴⁸² 1DCS at paras 108–109.

is clear from DGI's VRI statements that his account morphed over time (see [192]–[194] above). After initially admitting to the act in the first VRI statement, DGI stated in his second VRI statement that he was no longer sure if he had done the same. (I digress to observe that I fail to understand the logic of that position – and how DGI could have been unsure of what he did.) There was no mention of any penile-anal penetration in the third VRI statement. At trial, DGI's position was that he did not penetrate the Complainant's anus.⁴⁸³ In my view, the constantly shifting nature of DGI's account on such a material detail casts doubt on his credibility, and hence, his account. Indeed, PW9's medical examination of the Complainant revealed tears in her anus (see [200] above), which uncontrovertibly contradicts DGI's later positions.

243 Second, and more broadly, DGI has shown himself not to be a credible witness. In this regard, I highlight two other instances where his account of the events (albeit on relatively immaterial points) was simply beyond belief:

- (a) First, an issue arose as to whether DGI consumed any Viagra. Without more, this issue would have been immaterial, especially since DGI was expecting a visit from PW3, with whom DGI used to share a sexual relationship (see [14] above). It would have been conceivable for DGI to have consumed some Viagra in anticipation of potential sexual activity with PW3. However, when questioned on this issue, DGI explained that DGH offered him the Viagra on DGH's own accord, and that DGI then pretended to consume the pill to avoid awkwardness (see [103] above). As the Prosecution argues,⁴⁸⁴ this defies logic, especially since DGH and DGI are close friends, who had engaged in threesome

⁴⁸³ 3 Dec 24 NE at p 70 line 31 to p 71 line 2.

⁴⁸⁴ PCS at paras 103–105.

sexual activities with another lady before.⁴⁸⁵ In my view, DGI's incredible explanation on this otherwise immaterial issue casts doubt on his general credibility, and in turn, his account of the material events.

(b) Second, DGI was shown CCTV footage of him placing a piece of linen outside his room, before *turning back*, picking up the linen, and taking three steps down the corridor away from his room door and placing the linen there instead.⁴⁸⁶ Again, this incident would, without more, have been immaterial, if DGI were able to give a reasonable explanation for it. However, he gave an unimaginable explanation for it as follows:⁴⁸⁷

I---I was exhausted and I think that when I picked the linen up, I was going to take it to the service room, and then I just thought, "Look, I'm going to just go down, put it down and go and get my coffee".

244 This explanation is both illogical and not borne out by the CCTV footage, which instead suggests that DGI's actions were deliberate and decisive. This supports the Prosecution's suggestion that DGI was trying to distance himself from this piece of linen by placing it further away from his hotel room door, as it was one which he had used to clean up the Complainant's vomit with.⁴⁸⁸ More broadly, DGI's incredible explanation on this otherwise immaterial issue also casts doubt on his general credibility, and in turn, his account of the material events.

⁴⁸⁵ 2PBE 1147 at line 20 to 2PBE 1148 line 31.

⁴⁸⁶ 4 Dec 24 NE at p 8 line 24 to p 9 line 9.

⁴⁸⁷ 4 Dec 24 NE at p 9 lines 12–14.

⁴⁸⁸ 4 Dec 24 NE at p 9 lines 15–31.

245 I turn to the third issue with DGI’s account, which is linked to his Possessing Intimate Image Charge. According to DGI, he took a photograph of the Complainant in the shower, to “document her condition so that she would understand it better the following day”. Yet, he deleted the photograph without showing it to the Complainant, as he thought that she would have already understood this after seeing the vomit in the room (see [121] and [129] above). I note that Mr Thuraisingam also suggests, in DGI’s Reply Submissions, that he could have simply forgotten to show it to the Complainant.⁴⁸⁹ This argument must be rejected from the outset, as it never constituted DGI’s explanation.

246 As the Prosecution argues,⁴⁹⁰ there are two problems with DGI’s explanation. First, by DGI’s account (see [115]–[123] above), the Complainant was always lucid while in DGI’s hotel room. There would have been no need for him to document her condition. Had the Complainant been in a lucid state, a photograph would not have documented anything, or served to explain anything to the Complainant. DGI’s account is thus internally contradictory on two fronts. Second, at no point did DGI show the Complainant the photograph, even though by DGI’s own account, the Complainant told him that she did not know what had happened when she woke up at 3.15am (see [122] above).

247 The fourth issue with DGI’s account, which is linked to the OJ Charge against DGI, is that his explanation for why he deleted his entire chat history with DGH (see [131] above), strongly betrays his guilty conscience. According to DGI, he did so out of frustration. I reject this explanation for four reasons:

⁴⁸⁹ 2DRS at para 56.

⁴⁹⁰ PCS at paras 109–110.

(a) First, as the Prosecution argues,⁴⁹¹ there would have been no need to delete his *entire* chat history with DGH even if DGI was frustrated with DGH.

(b) Second, given the closeness of their relationship (to the extent that they even had a prior threesome sexual encounter with another lady – see [243(a)] above), it is not probable that DGI would have been frustrated with DGH to the extent that DGI would delete his entire chat history with DGH.

(c) Third, DGI's actions shortly after purportedly deleting the entire chat history do not suggest that he was frustrated with DGH to such a great extent that he would delete his entire chat history with DGH. By DGI's account, he deleted the text messages sometime after 8.30am (see [130]–[131] above). However, when DGH later sent him a WhatsApp text message at 12.34pm asking him if he “wanna grab a coffee”, DGI immediately and readily agreed, and in fact suggested going for lunch at a restaurant.⁴⁹² Over lunch, DGI also further broached the topic of the previous night's sexual events with the Complainant.⁴⁹³ Such behaviour is inconsistent with DGI's account that he was frustrated with DGH.

(d) Fourth, DGI's related testimony that he did not ask DGH to delete the text messages is inconsistent with his account that he asked DGH to delete the photograph which DGH had taken of DGI and PW3, for fear that DGI's fiancée would see it (see [131] above).⁴⁹⁴ Had DGI

⁴⁹¹ PCS at para 117(b).

⁴⁹² See 1AB 472.

⁴⁹³ See also 3 Dec 24 NE at p 41 lines 12–32.

⁴⁹⁴ 3 Dec 24 NE at p 41 lines 24–31.

genuinely been concerned that his fiancée would see material suggesting that he was being unfaithful, it makes no sense that DGI did not ask DGH to also delete the (by DGI's own account) unfavourable text messages which DGH sent him. Instead, it is more likely, for all the above reasons, that DGI deleted his entire chat history with DGH as it contained incriminating content against him, and he wanted to erase any such content.

248 For completeness, I note the Prosecution's argument that DGI's urgency in requesting for housekeeping service when he arrived back at his hotel room after walking the Complainant back (see [125]–[126] above) suggests that he was trying to dispose of potentially incriminating evidence.⁴⁹⁵ I do not accept this argument. Instead, I accept DGI's explanation that he did so due to hygiene and comfort reasons.⁴⁹⁶ This incident is therefore neutral.

My decision on the Sexual Offences Charges

249 To recapitulate, the Complainant's account of the events (see [29]–[63] and [168] above) is, in my view, accurate and reliable. It is also internally and externally consistent. In particular, the accused persons' respective admissions to the sexual acts within the VRI statements support her account (see [191] and [195] above). On a rigorous and holistic assessment of all the evidence, I find the Complainant to be an unusually convincing witness. Having accepted her account, there is clearly no valid consent on her part to any sexual activity with DGH and DGI that night (see [225] above).

⁴⁹⁵ PCS at paras 113–115.

⁴⁹⁶ 3 Dec 24 NE at p 104 lines 9–11.

250 Turning to the accused persons' respective accounts of the events surrounding the sexual activities, I reject them. As explained, these accounts are replete with issues. The accused persons fail to show that the Complainant validly consented to or appeared to have consented to the sexual acts. Certainly, no reasonable doubt is thrown on the Prosecution's case. Furthermore, DGH fails to establish that he was mistaken as to the Complainant's consent.

251 For these reasons, I find that sometime between 6.06pm and 8.20pm on 26 February 2023, in DGI's hotel room, after the Complainant vomited on the bed and lost consciousness:

- (a) DGH licked the Complainant's breast and touched her pubic hair;
- (b) DGH penetrated the Complainant's vagina with his finger;
- (c) DGI licked and kissed the Complainant's breast and licked her vagina;
- (d) DGI penetrated the Complainant's vagina with his penis;
- (e) DGI penetrated the Complainant's anus with his penis; and
- (f) DGI shaved the Complainant's pubic hair with a shaver.

252 There was no valid consent (or possible appearance of consent) to these sexual activities (see [225] above). The *actus reus* and *mens rea* of each of the Sexual Offences Charges are thus proven beyond reasonable doubt. I therefore find the accused persons guilty of the Sexual Offences Charges, and convict them of these charges accordingly.

The OJ Charge against DGH

253 I turn now to consider the remaining charges. I begin with the OJ Charge against DGH under s 204A(b) of the PC:

Obstructing, preventing, perverting or defeating course of justice

204A. Whoever does an act that has a tendency to obstruct, prevent, pervert or defeat the course of justice —

...

(b) intending to obstruct, prevent, pervert or defeat the course of justice,

shall be guilty of an offence and shall on conviction be punished with imprisonment for a term which may extend to 7 years, or with fine, or with both.

254 To prove the charge, the Prosecution needs to prove: (a) that DGH did an act that has a tendency to obstruct the course of justice (*ie*, the *actus reus*); and (b) that he had such an intention (*ie*, the *mens rea*).

255 Mr Kumarasingam argues that the “undisputed content of the messages sent by [DGH] do not contain evidence related to any illegal acts (which is denied) committed by [DGH] against the Complainant”. Instead, the messages simply told DGI to not engage in further sexual activity with the Complainant since she has already said no. That the messages do not contain evidence of illegal activities is also evidenced from DGH’s cooperation and candour during investigations, when he volunteered the information on the sending and deletion of the text messages.⁴⁹⁷

⁴⁹⁷ 1DCS at para 146(a) and 149–151.

256 I reject these arguments. As I found earlier (see [239] above), the evidence suggests that DGH deleted the messages with the intention of preventing himself from being incriminated. He would otherwise have had no reason to do so. While I acknowledge that he volunteered this fact during investigations, and that his account of the contents of the deleted messages coheres with DGI's, this is insufficient to cast a reasonable doubt on his intention to obstruct the course of justice. To be able to furnish information somewhat consistent with DGI's position, it only required DGH to reconstruct his account of the contents of the deleted messages, and to achieve some coordination with DGI prior to their arrest.

257 The implication of all this is twofold. First, that the text messages may incriminate DGH, and deleting them has a tendency to obstruct justice, and second, that DGH deleted these text messages to prevent incriminating himself. The *actus reus* and the *mens rea* of the offence are made out. Hence, I find that the OJ Charge against DGH is established beyond reasonable doubt, and I convict DGH of it.

Possessing Intimate Image Charge

258 I turn to the Possessing Intimate Image Charge under s 377BD(1)(b) read with s 377BD(2) of the PC. As there is a paucity of case law on the elements required to make out this offence, I begin by clarifying the same.

The applicable law

259 Section 377BD(1)(b) of the PC reads as follows:

Possession of or gaining access to voyeuristic or intimate image or recording

377BD.—(1) Any person shall be guilty of an offence who has in his possession or has gained access to an image or recording of another person and —

...

(b) knows or has reason to believe that —

(i) the image or recording is an intimate image or recording as defined in section 377BE(5);

(ii) the possession of or access to the image or recording was without the consent of the person depicted in the image or recording; and

(iii) the possession of or access to the image or recording will or is likely to cause humiliation, alarm or distress to the person depicted in the image or recording.

260 Section 377BE(5) of the PC defines “intimate image” as follows:

Distributing or threatening to distribute intimate image or recording

377BE. ...

(5) In this section, “intimate image or recording”, in relation to a person (B) —

(a) means an image or recording —

(i) of B’s genital or anal region, whether bare or covered by underwear;

(ii) of B’s breasts if B is female, whether bare or covered by underwear; or

(iii) of B doing a private act; and

(b) includes an image or recording, in any form, that has been altered to appear to show any of the things mentioned in paragraph (a) but excludes an image so

altered that no reasonable person would believe that it depicts B.

Illustrations

(a) A copies, crops, and pastes an image of B's face onto the image of a body of a person who is engaging in a sexual act. This image has been altered to appear to show that B actually engaged in a sexual act. This is an intimate image.

(b) A pastes an image of B's face on a cartoon depicting B performing a sexual act on C. No reasonable person would believe that B was performing the sexual act depicted on C. This is not an intimate image.

261 Further, s 377BD(4) clarifies that for the purposes of s 377BD(1) of the PC:

(a) a person has in his possession an image or recording of another person that is in electronic form if he controls access to the electronic image or recording, whether or not he has physical possession of the electronic image or recording; and

(b) the ways in which a person gains access to an image or recording may include —

(i) viewing or displaying it by an electronic medium or any other output of the image by an electronic medium; or

(ii) communicating, sending, supplying or transmitting the image to himself or herself.

262 Notwithstanding the above, s 377BD(1)(b) of the PC provides two statutory defences against a s 377BD(1)(b) read with s 377BD(2) of the PC offence:

Defences to offences relating to intimate image or recording and voyeurism

377BM.—(1) It is a defence to a charge for an offence under section 377BD of having possession of or gained access to an image or a recording obtained through the commission of an offence under section 377BB or an intimate image or recording

mentioned in section 377BD(1)(b) for the accused person to prove that the accused person —

(a) did not intentionally come into possession of or gain access to the image or recording; and

(b) on becoming aware of having come into possession of or gaining access to the image or recording, as soon as it was practicable to do so, took all reasonable steps in the circumstances to cease possession of or access to the image or recording.

(2) It is a defence to a charge for an offence under section 377BB, 377BC, 377BD or 377BE(1) if —

(a) the act that is alleged to constitute the offence was done for any of the following purposes without intent to cause injury to the person (B) mentioned in section 377BB(1), (2), (3), (4) or (5), 377BC(1) or (2) or 377BE(1) or the person depicted in the intimate image or recording mentioned in section 377BD(1)(b), and with reasonable cause:

(i) the prevention, detection, investigation or punishment of any offence;

(ii) the conduct of contemplated or pending proceedings in any court or tribunal or to obtain evidence for the purpose of contemplating such proceedings;

(iii) safety or national security; and

(b) the image or recording (if any) obtained through the commission of an offence under section 377BB or the intimate image or recording (if any) mentioned in section 377BD(1)(b) or 377BE(5) was not kept for a period longer than what was reasonably necessary or required for the purposes mentioned in paragraph (a).

Illustrations

(a) A, a caregiver is concerned that B, an elderly person has been in the toilet for an unusually long period of time. Despite A knocking several times, there is no response from B. As A is concerned for B's safety, A forcefully opens the toilet door to

find *B* in a state of undress. *A* has committed no offence as the act was done for the purpose of ensuring *B*'s safety.

(b) *A* notices that a stranger is using a mobile phone taking an upskirt photograph of a woman in the mall. *A* confronts the stranger who flees and drops his mobile phone. *A* keeps the mobile phone with the upskirt photograph with the intention of reporting the offence to the police. *A* hands over the phone to the police when he makes the police report. *A* has committed no offence as the act of possession of the upskirt photograph was done for the purpose of assisting the detection or investigation of the offence.

263 Given the above, I am of the view that when considering an offence under s 377BD(1)(b) read with s 377BD(2) of the PC, the Prosecution must prove, broadly, that:

- (a) the accused possesses or has gained access to an “intimate image or recording” of the victim;
- (b) being an image or recording depicting the victim doing a private act, or depicting the victim’s genital or anal region, or, if the victim is a female, her breasts, whether these private parts be bare or covered by underwear; and
- (c) the accused *knows* or *has reason to believe* that the image or recording is such an “intimate image or recording”, that his possession of or access to the same was without the victim’s consent, and that such possession or access will or is likely to cause humiliation, alarm or distress to the victim.

264 On the other hand, as a defence, the accused can, *inter alia*, cast a reasonable doubt on any of the elements, or prove any of the specific defences set out in s 377BM of the PC.

My decision

265 With this framework in mind, I turn to consider Mr Thuraisingam’s arguments. First, I note that DGI does not dispute that he took a photograph of the Complainant in the shower without her permission.⁴⁹⁸ However, Mr Thuraisingam argues: (a) that the Prosecution has failed to prove that the Complainant was lying unconscious in the shower; (b) that the photograph was not an “intimate image” as the Complainant did not have a reasonable expectation of privacy while she was in the shower; and (c) in any event that it did not depict the Complainant’s private parts.⁴⁹⁹ In terms of *mens rea*, Mr Thuraisingam argues that: (d) DGI did not know and had no reason to believe that the photograph was an “intimate image” and/or that his possession of the photograph will or is likely to cause the Complainant humiliation. Instead, he was trying to help her.⁵⁰⁰ Lastly, Mr Thuraisingam submits that: (e) DGI can avail himself of the specific defence to voyeurism set out in s 377BM(2) of the PC.⁵⁰¹

266 I reject these arguments. Given my acceptance of the Complainant’s account of the events, she would have been lying unconscious in the shower, fully naked, when the photograph was taken. Indeed, even by DGI’s account, the Complainant only dressed herself at around 3.15am (see [122] above), which was after the various showers she had taken. Arguments (a) and (c) must therefore fail.

⁴⁹⁸ 3 Dec 24 NE at p 43 lines 23–32.

⁴⁹⁹ 2DCS at paras 89–91.

⁵⁰⁰ 2DCS at paras 92–93.

⁵⁰¹ 2DCS at paras 94–96.

267 Arguments (b) and (e) must also fail. Even if the Complainant required help in the shower, there was no reason to take a photograph of her. In this regard, contrary to Mr Thuraisingam’s argument, I am unable to see how any of the defences set out in s 377BM(2) of the PC can be made out. I would also add that it is highly doubtful if the Complainant even required a shower. Indeed, she testified that in her view, it was “irrational” and “extremely dangerous and not a proper way to react” to have showered her when she had just consumed alcohol, since doing so would make the “alcohol blood” go into her head. According to her experience, she “almost fainted away” and “find difficult breathing” when she previously attempted to shower after consuming alcohol.⁵⁰²

268 Next, argument (d) also fails because, as earlier alluded to (see [245]–[246] above), DGI’s act of subsequently deleting the photograph he took of the Complainant and his explanation for doing so show that he must have known that his possession of the photograph would be likely to humiliate her. Given these, I find that the elements constituting a s 377BD(1)(b) read with s 377BD(2) PC offence are made out beyond a reasonable doubt, and I convict DGI of the charge.

OJ Charge against DGI

269 I turn to consider the OJ Charge against DGI. Mr Thuraisingam argues that the necessary *mens rea* has not been proven against DGI. For reasons alluded to above (at [245]–[247]), I disagree. Instead, I find that DGI’s act of deleting his entire chat history with DGH and the photograph he took of the Complainant in the shower, coupled with his incredible explanations for doing so, suggest that these deleted items contained material which may incriminate

⁵⁰² 4 Sep 24 NE at p 2 line 21 to p 3 line 9.

him. By deleting these items, there is a tendency to obstruct justice, and he deleted these items to prevent himself from being incriminated. The elements of the charge are proven beyond a reasonable doubt, and I convict DGI of the charge.

Alleged concerns with investigative process

270 Finally, I turn to address some concerns which Mr Kumarasingam has raised in relation to the investigative process:

(a) First, there was no contemporaneous forensic evidence collected from DGI's hotel room, or from the accused persons' clothing or blood. This prejudiced DGH as potential exculpatory or conclusive evidence could have been recovered.⁵⁰³

(b) Second, the Prosecution did not prove that DGH licked the Complainant's vagina. In this regard, the Prosecution made a mistake in its opening address when it stated that DGH "admitted that he ... licked her vagina and breasts".⁵⁰⁴

(c) Third, there is no basis for the Prosecution to put to DGH that the Complainant was traumatised by the incident. Instead, the Complainant's trauma stemmed from being channelled into pressing on with the prosecution of this matter, and being systematically prevented from speaking to DGH to understand what had happened.⁵⁰⁵

⁵⁰³ 1DCS at para 154–155.

⁵⁰⁴ 1DCS at paras 160–162.

⁵⁰⁵ 1DCS at paras 163–172.

271 I find that these concerns are overstated. First, the Prosecution has offered reasonable explanations for the decisions made by the police:⁵⁰⁶

(a) As the bedsheets had already been cleared out by the time the accused persons were arrested, there would have been no value in further forensic investigation to determine if there was vomit on the bed.

(b) Any DNA or fingerprints located in the bathroom or sink would have been inconclusive since all three persons had undisputedly been there at some point.

(c) It would be speculative to rely on any presence or absence of the Complainant's vomit on the accused persons' clothing to prove any material point.

(d) Similarly, it is immaterial what the accused persons' BAC was since it is undisputed that they both consumed alcohol. It is also immaterial if the accused persons consumed Viagra. I have, in any event, not made a finding that DGH consumed Viagra (see [240(a)] and [243(a)] above).

272 Second, as Mr Kumarasingam himself highlights, it is not the Prosecution's case that DGH licked the Complainant's vagina, and I do not give any weight to this.

273 Third, while I accept that the Complainant wanted to speak to DGH, but did not manage to do so, I do not accept that this *per se* caused her trauma, or that there is no basis to say that she was traumatised. Instead, I find that the

⁵⁰⁶ PRS at para 37.

Complainant was traumatised by the incident, and that such trauma stemmed primarily from the fact that one of the assailants was DGH, whom she had respected like a senior member of a family.

274 This is evident, *inter alia*, from how the Complainant told [C] that she was “still traumatized by the issue happened in SG” (see [61] above), and from how she felt very uneasy, had difficulty sleeping, and also had frequent nightmares following the incident. Indeed, she also started seeking help from various psychotherapists (see [63] above).

275 Further, the Complainant testified that “what traumatised [her] most is not what happened itself but, rather, the person there ... [She] would rather that happen in a [*sic*] alley by a stranger than [DGH]. So that actually traumatised [her] most of the time, and [she] was seeking [psychotherapy] for a long time”.⁵⁰⁷ While the Complainant did go on to testify, *inter alia*, that “most of the trauma” came from “not being able to hear [DGH]”, it must be noted that she had, in the same breath, also attributed most of the trauma to “[t]he feeling of betrayal”.⁵⁰⁸ Understood in context, I find that the Complainant’s testimony was that she was traumatised *not* because she was unable to hear DGH’s explanation of the events *per se*, but that she was traumatised because she felt betrayed by DGH, a mentor whom she had respected greatly. While she was distressed by being unable to hear DGH’s explanation of the events as this prevented her from finding personal closure from DGH’s acts of betrayal, this did not detract from the trauma flowing from the events.

⁵⁰⁷ 3 Sep 24 NE at p 27 lines 11–16

⁵⁰⁸ 4 Sep 24 NE at p 33 lines 8–9.

Conclusion

276 For all of the reasons above, I convict DGH and DGI of the charges they have respectively been charged with. I will hear the parties on sentencing.

Hoo Sheau Peng
Judge of the High Court

Han Ming Kuang, Tay Jia En, Emily Koh and June Ngian (Attorney-General's Chambers) for the Prosecution;
Chenthil Kumar Kumarasingam, Harjeet Kaur Dhaliwal and Maria Santhosh (Withers Khattar Wong LLP) for the first accused;
Eugene Singarajah Thuraisingam and Johannes Hadi (Eugene Thuraisingam LLP) for the second accused.
