

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

[2025] SGHC 36

Criminal Case No 56 of 2023

Between

Public Prosecutor

... Prosecution

And

CIC

... Accused

GROUND S OF DECISION

[Criminal Law — Offences — Sexual offences]
[Evidence — Witnesses — Corroboration]

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Public Prosecutor

**v
CIC**

[2025] SGHC 36

General Division of the High Court — Criminal Case No 56 of 2023

Aidan Xu @ Aedit Abdullah J

14–17, 22–24 November 2023, 27 February, 5, 7, 8 March, 16 May, 14 June,
12, 26 August 2024

5 March 2025

Aidan Xu @ Aedit Abdullah J:

Introduction

1 The accused claimed trial to one charge of sexual assault involving penetration under s 376(2)(a) of the Penal Code (Cap 224, 2008 Rev Ed) (the “Penal Code”). As he had committed the offence on a person below 14 years of age without that person’s consent, he was liable to be punished under s 376(4)(b) of the Penal Code. I found him guilty of the charge and sentenced him to 13.5 years’ imprisonment, with an additional six months’ imprisonment in lieu of caning.

Facts

2 At the time of the commission of the offence, the victim was 12 years old. A statement of agreed facts was concluded between the parties, the material parts of which are summarised.¹

3 The accused is the granduncle of the victim by marriage. They are not biologically related.

4 On 31 July 2020, it was the Hari Raya Haji public holiday. The accused and some relatives, including the victim, paid their respects at a cemetery in Lim Chu Kang. After the visit to the cemetery, they had lunch together at a restaurant located near Mustafa Centre, 145 Syed Alwi Road, Singapore. After lunch, the victim's grandfather drove the group to the vicinity of Maude Road, where the accused's company lorry (the "Lorry") was parked. The accused then drove his wife, the victim, and the victim's grandmother ("PW13") in the Lorry to their relatives' house at Bedok (the "Bedok Unit"). The other relatives, including the victim's mother ("PW12"), went home separately.

5 Upon reaching the Bedok Unit, PW13 and the accused's wife disembarked the Lorry and went upstairs to their relative's house. The accused drove the Lorry away to top up fuel and the victim went with him. Thereafter, the accused parked the Lorry at a petrol kiosk operated by Gold Plus Fuels Pte Ltd, located at 43 Changi South Avenue 2, Singapore.

6 The accused then drove the Lorry back to the Bedok Unit and parked there. The accused and the victim got out of the Lorry and joined the family gathering at their relative's home.

¹ Statement of Agreed Facts dated 10 November 2023.

7 On 3 August 2020 at 8.26pm, the victim filed a police report stating that she had been sexually assaulted on 31 July 2020. The accused was arrested, and the victim was placed at an Interim Placement and Assessment Centre (“IPAC”), where she stayed until 25 September 2020. She was then moved to a children’s home (the “children’s home”) where she stayed until 16 October 2021.

The Prosecution’s case

8 The crux of the Prosecution’s case was the victim’s testimony that the accused had sexually assaulted her during a 12-minute stop they had taken while on the way back to the Bedok Unit from the petrol kiosk.

Victim’s testimony

9 According to the victim, the accused started talking to her about sexual matters when they drove to the petrol kiosk. She asked her friend, PW7, to call her as she felt that “something was not right”. PW7 did not speak Malay and could not understand what was being said, although she heard and saw a male beside the victim speaking to her.²

10 The accused then drove them to “some place like a warehouse” where the petrol kiosk was located. After pumping fuel, and when the Lorry was leaving the petrol kiosk, the victim messaged PW7 “Mute urself / Just listen”. The victim “already [had] a feeling that something wrong” was going to happen, so she wanted PW7 to listen in on her conversation with the accused. However, PW7 did not realise anything amiss and texted the victim “I’m gonna go watch

² Prosecution’s Closing Submissions dated 26 April 2024 (“PCS”) at para 10.

[something] or read”. PW7 watched Korean pop video(s) on her phone, thus she no longer saw or heard what was going on in the call.³

11 The accused however turned left onto Changi South Avenue 2 and drove straight to a roundabout, which he circled. He drove back in the direction of the petrol kiosk and stopped somewhere near its entrance. He told the victim that he was going to do something at the back of the Lorry and that they would be stopping for five minutes. The victim felt “a bit creeped out and a bit scared” and set a phone timer for five minutes.⁴

12 When the Accused returned, he told the victim to take off her spectacles and follow him to the back of the Lorry.⁵ At the rear container, the accused asked her to lie down on the cardboard on the floor. The victim complied and rested her head on a cushion. The accused then closed the sliding door but left a small gap. He got on top of her, rested his arm on the other cushion beside her, and hovered over her. He kissed her, inserted his tongue into her mouth, touched her breasts and vagina over her clothes, inserted his finger(s) into her vagina, and sucked her breasts. During the sexual acts, the accused asked the victim, in Malay, if his actions were pleasurable. The accused then took out his finger(s) from her vagina and kissed her again, before the five-minute timer rang. The victim silenced the timer by pressing on one of the side buttons on her iPhone, which terminated her call with PW7. The accused asked her, in Malay, what that was. The victim played it off as someone calling her. She then got up and

³ PCS at para 11.

⁴ PCS at paras 12–13.

⁵ PCS at para 14.

went back to the front passenger seat. The accused returned to the driver's seat and drove them back to the Bedok Unit.⁶

Other evidence by the Prosecution

13 The Prosecution also relied on the victim's testimony of an earlier incident where the accused had sexually assaulted her. Sometime in June 2020, the victim's testimony was out shopping at Ikea and had left her in the accused's care (the "Ikea incident"). The accused rubbed her thigh, talked to her about sexual things, showed her pornography and kissed her on the lips.⁷ On subsequent visits, the victim claimed that the accused would talk to her privately and tell her, in Malay, "if we could do more, we do more", which she understood to mean more than kissing and touching, *ie*, having sex. He also spoke to her about sexual matters.⁸

14 Furthermore, the Prosecution adduced other evidence to corroborate the victim's testimony of the Hari Raya Haji incident, such as (a) the Global Positioning System ("GPS") logs of the Lorry and video footage from passing Singapore Bus Service buses (the "video footage"); (b) the accused's *Lucas* lie told to the Police (that he did not stop the Lorry); (c) the victim's consistent recollection of the Hari Raya Haji incident to several of the Prosecution's witnesses; (d) forensic evidence of redness to her hymen; (e) results of the fibre transfer analysis; and (f) changes to her personality and mood, and her post-traumatic symptoms.

⁶ PCS at paras 15–17.

⁷ PCS at para 7.

⁸ PCS at para 9.

The Defence's case

15 The Defence's case was that the accused had stopped to secure the photocopiers and to arrange the boxes in the rear container of the Lorry.⁹ The Defence argued that the "unusually convincing" standard should apply to scrutinise the victim's testimony as it was uncorroborated,¹⁰ and pointed to internal and external consistencies with the victim's testimony. The Defence also argued that the accused's statements to the police (about not having stopped the Lorry) could not be construed as a *Lucas* lie because there were multiple objective facts consistent with the victim's lying. At the most, the accused's statements would have only diminished his credibility, but did not have the effect of corroborating his guilt.¹¹

Issues to be determined

16 The offence of sexual assault involving penetration, as defined in s 376(2)(a) of the Penal Code, is made out if there is sexual penetration of a part of the body, in this case, the vagina, with a part of the accused's body (other than his penis). "Sexual penetration" is not defined in the Penal Code. In any case, there was no dispute over whether the penetration (if it had occurred), was sexual, as the accused's defence was a denial of any penetrative act by him. As the victim was below 14 years of age during the offence, her consent was irrelevant to the establishment of the charge.

⁹ Defence's Closing Submissions dated 26 April 2024 ("DCS") at para 83.

¹⁰ DCS at paras 9–10.

¹¹ Defence's Reply Submissions dated 16 May 2024 at para 33.

17 As summarised above, the Prosecution and the Defence were in dispute about whether the act of sexual penetration had occurred. This gave rise to the following issues:

- (a) the Lorry's movement, and whether the accused had committed a *Lucas* lie;
- (b) the credibility of the victim;
- (c) the issues with the Prosecution's evidence;
- (d) whether there was corroboration of the victim's testimony; and
- (e) the issues with the accused's credibility.

The Lorry's movement

18 The first issue centred on the Lorry's movement, namely, whether the accused had parked the Lorry during the drive from the petrol kiosk to the Bedok Unit. Although the accused's case was that he had stopped to secure the photocopiers in the rear container, the accused had vehemently denied stopping the Lorry in the long statements that he had previously given to the Police. If it is found that he did stop the Lorry, then the next question was whether the accused's statements to the Police amounted to a *Lucas* lie.

19 I found that the accused had indeed parked the Lorry as described by the victim. This was because the GPS logs showed that between 5.11pm and 5.25pm, the Lorry was stationary for 12 minutes and 24 seconds at 41 Changi South Avenue 2, Singapore.¹² The video footage showed that the Lorry was

¹² Agreed bundle of documents dated 18 September 2023 ("Agreed Bundle") at page 26.

indeed parked by the side of the road and the accused got off the Lorry.¹³ The evidence was thus absolutely clear where the Lorry was, and that it had indeed been parked along Changi South Avenue 2. The accused could not say anything to the contrary.

20 The significance of this finding was that the accused lied in his long statements to the Police, where he had told them that he did not stop the Lorry. I found that this was a *Lucas* lie – its elements, as summarised in *Regina v Lucas (Ruth)* [1981] QB 720 (at 724F) and endorsed by the Court of Appeal in *Public Prosecutor v Yeo Choon Poh* [1993] 3 SLR(R) 302 (“*Yeo Choon Poh*”) (at [33]), are as follows:

- (a) the lie told out of court is deliberate;
- (b) the lie relates to a material issue;
- (c) the motive for the lie is a realisation of guilt and a fear of the truth; and
- (d) the statement is shown clearly to be a lie by independent evidence.

21 First, the accused told the lie to the Police and the lie was thus made out of court. It was deliberate as he repeated the lie throughout his long statements.¹⁴ In a long statement recorded on 11 August 2020, he maintained the lie

¹³ Exhibit P48 at slides 6–23.

¹⁴ Exhibit P97A (transcript of long statement given on 4 August 2020) at page 108 lines 17–30; Exhibit 98A (transcript of long statement given on 6 August 2020) at page 53 line 14–page 55 line 18; Exhibit 100A (transcript of long statement given on 11 August 2020) at page 126 line 12–page 130 line 8.

repeatedly although the Police had told him multiple times that their investigations found that he had indeed stopped the Lorry.¹⁵

22 As for materiality, the lie was indeed related to a material issue, *ie*, whether the Lorry had stopped and whether the events alleged by the victim to have taken place during that stop occurred. This issue went to the location and circumstances around the sexual assault on the victim. It was not a minor point.

23 The accused's motive for the lie was, I found, borne out of a realisation of guilt and a fear of the truth. Given the circumstances, namely that it went to a material fact, and that he had given a contradictory version of events, *ie*, that he had stopped to secure the photocopiers, it must be inferred that he had given his version deliberately to deflect his guilt and avoid the truth. As the accused had admitted during cross-examination, at the time of recording the statements, he did not know that the Police would have been able to recover the video footage or that the GPS logs of the Lorry would show that he had stopped for about 12 minutes.¹⁶ In the circumstances, the accused's behaviour evinced his realisation of guilt and fear of the truth.

24 Finally, as I had found, the GPS logs and the video footage, which were objective and independent evidence, clearly showed that the Lorry had stopped for 12 minutes.

25 Accordingly, I found that the accused had parked the Lorry during the drive from the petrol kiosk to the Bedok Unit, and this was a *Lucas* lie. Further, the *Lucas* lie constituted corroboration of his guilt (*Yeo Choon Poh* at [33]). I

¹⁵ Exhibit 100A (transcript of long statement given on 11 August 2020) at page 126 line 12–page 130 line 8.

¹⁶ Notes of Evidence (“NEs”) dated 5 March 2024 page 50 lines 26–32.

did not agree with the Defence's argument on the significance of a *Lucas* lie. A *Lucas* lie, once established, would corroborate an accused person's guilt irrespective of the weight of the evidence for or against him or the victim. Likewise, I did not need to weigh the totality of the evidence before deciding if a lie constituted a *Lucas* lie.

26 I do note that the accused did say in court that he did stop the Lorry, but did not think of mentioning it earlier as it was just to stabilise the cargo in the Lorry and he did not remember it.¹⁷ That was not a sufficient explanation, and did not affect the finding of the *Lucas* lie.

Credibility of the victim

27 Turning to the issue on the victim's credibility, the following sub-issues arose:

- (a) whether the victim's testimony of the incidents of sexual assault was credible given her tendency to lie;
- (b) whether the victim's testimony was credible given potential inconsistencies in the testimony;
- (c) whether the victim's testimony was credible given the concerns with her behaviour on the day of the Hari Raya Haji incident; and
- (d) whether the victim's credit was impeached.

¹⁷ NEs dated 5 March 2024 at page 62 lines 12–23.

Whether the victim's testimony was credible given her tendency to lie

28 Turning first to the credibility of the victim's testimony, the Prosecution submitted that it was consistent and textured. She could recall the sequence of the sexual acts at different parts of her body, consistently with what she had described to the Police three years earlier. Further, she gave specific details that lent colour to her description.¹⁸ As for the victim's testimony about the Ikea incident, the Prosecution adduced as evidence the corroborative testimonies of the individuals to whom she disclosed the Ikea incident.

29 She honestly admitted, to the court, facts which were adverse to her, including having lied to her friends that the accused molested her on a previous occasion (the "Dream incident"), and to the Police that she had confessed to her friends that it was a dream.¹⁹ The Prosecution also argued that the victim had no motive to lie about the Hari Raya Haji incident. If she had lied about the Hari Raya Haji incident, she would have disavowed the lie about the Dream incident and would not have reacted with relief and gratitude when her friends (PW5 and PW6) told their form teacher, PW2, about the Hari Raya Haji incident (see below at [57]). Before the Ikea incident, the victim shared a positive relationship with the accused, who was close to the victim's family.²⁰

30 Conversely, the Defence argued that the victim was not a credible witness as she had a propensity to lie. The Defence also raised issues with the reliability of the victim's testimony. Specifically, the Defence argued that the victim had possibly fabricated the Hari Raya Haji incident and the Ikea incident,

¹⁸ PCS at paras 24–25.

¹⁹ PCS at paras 27–30.

²⁰ PCS at paras 35–37.

as she had previously lied about the Dream incident and to the Police that she had confessed to her friends about the lie.²¹

31 The Defence submitted that she had a habit of lying to her mother, such as by telling her that she had engagements, when she was actually going out with friends.²² She also admitted that she did not intend for her friends to report the Hari Raya Haji incident to anybody, such as PW2. She did not think that the repercussions that followed with the reporting would occur.²³

32 The Defence also alleged that the victim often made comments without thinking about the possible repercussions. The victim agreed that for the Dream incident, “a fake scene just came into [her] mind and then [she] said it”.²⁴ Moreover, the victim had fabricated these stories so as to gain the love and care from her friends, as she was feeling very upset during that period – her uncle had passed away, she had a poor relationship with her mother and she was suffering from low self-esteem.²⁵ For example, she lied to PW5, in Malay, that the accused was “busy looking at her” although she agreed at the trial that the accused had never looked at her inappropriately. As another example, she lied that the accused had asked her to fellate him.²⁶

²¹ DCS at paras 11–17.

²² DCS at para 41.

²³ DCS at para 42.

²⁴ DCS at paras 26–34.

²⁵ DCS at para 36.

²⁶ DCS at paras 39–40.

33 I did not accept that the victim's lies to her mother could be used to cast doubt on her credit. As the Prosecution had pointed out, these lies were of a completely different nature.²⁷

34 Further, that the victim did not intend for her friends to report the Hari Raya Haji incident to PW2 and the consequences that followed, did not necessarily mean that she had lied about the Hari Raya Haji incident. As the Prosecution had submitted, the victim tended to keep things from her family members as she was afraid that they would disbelieve her.²⁸ Thus, she would not have intended for her friends to report the Hari Raya Haji incident to PW2, as this meant that she could not keep things under the radar anymore. Moreover, the consequences that followed the reporting – going through an intrusive medical check-up, moving to the IPAC and the children's home, being prohibited from contacting her relatives and mother – were all consequences that a 12-year-old girl would not have ordinarily expected to happen. In fact, the victim told her friends that she felt "relieved" right after they reported the Hari Raya Haji incident to PW2. Thus, that the victim did not intend for her friends to report the Hari Raya Haji incident and the consequences that followed the reporting, was inconclusive as regards her credit.

35 However, I had concerns with the reliability of the victim's evidence on its own as the victim had, on her own account, made up allegations about the accused previously. I accepted that the victim was candid about what she had lied about to her friends such as the Dream incident and that the accused had asked her to fellate him. Yet, as the Defence had also pointed out, the victim did lie to the Police – she said she had told her friends face-to-face about having

²⁷ Prosecution's Aide-Memoire to Oral Reply Submissions dated 16 May 2024 at para 5.

²⁸ PCS at para 18.

lied about the Dream incident, when this was untrue. I did not, however, find that the victim was to be denied all credit and belief, but that I would have to be particularly cautious in weighing her evidence.

36 As regards the previous incidents of sexual assault that the victim alleged, I agreed with the Defence that there was insufficient evidence to infer that the Ikea incident had taken place. While the testimonies of the victim's friends are consistent with the victim's account, I was of the view that the evidence was insufficient to ground a finding that the Ikea incident had taken place as all the evidence originated from the victim herself. Nevertheless, as will be discussed below, I did not think that this was fatal to my analysis of whether the Hari Raya Haji incident had happened.

Whether the victim's testimony was credible given potential inconsistencies in the testimony

37 The Defence also raised concerns with the internal consistency of the victim's account of the Hari Raya Haji incident. For instance, she described to the Police that the Lorry door was closed by the accused, but also took the position that there was a small gap through which light came in.²⁹ The Defence argued that these were mutually inconsistent positions, while the Prosecution argued that the victim's statements to the Police by no means suggested that she said that the Lorry door was fully closed.³⁰ Furthermore, the parties were also in dispute over the ease at which the sliding door could be closed. The accused testified that the door was "well-oiled" such that it was not difficult for the door to close and there would not have been a small gap as alleged by the victim.³¹

²⁹ DCS at para 44.

³⁰ PCS at para 58.

³¹ NEs dated 16 November 2023 at page 85 lines 10–16.

However, the Prosecution highlighted that the accused himself had testified that the door was heavy and could only be opened with strength.³²

38 I preferred the Prosecution’s arguments. I found, on the evidence, that it was possible for there to be a small gap after the accused had closed the Lorry door, as the victim had described. Further, I did not agree with the Defence that it was easy to shut the Lorry door completely – on the contrary, from the Police Camera (“POLCAM”) footage at the Bedok Unit carpark, the accused used considerable force to open and shut the door, after PW13 was not able to do it.³³ Thus, it was entirely possible that the accused had not closed the Lorry door completely, leaving a small gap.

Whether the victim’s testimony was credible given the concerns with her behaviour on the day of the Hari Raya Haji incident

39 The Defence raised external inconsistencies with the victim’s testimony. These pertained to the victim’s behaviour on the day of the Hari Raya Haji incident. These were that:

- (a) the victim had volunteered to follow the accused to refuel the Lorry;
- (b) the victim did not ask for help during and right after the sexual assault; and
- (c) the victim appeared happy after the sexual assault, when she continued visiting her relatives.

³² PCS at paras 141–144.

³³ Exhibit P48 at slide 3.

Reason for following the accused to top up fuel

40 Discussing them in turn, first, the accused alleged that the victim had volunteered to follow him to refuel the Lorry. This was supported by PW13's testimony that in the journey to the Bedok Unit, the victim wanted to be with the accused at the front of the Lorry. Before they went to refuel the Lorry, the victim asked PW13 if she could follow him and when she allowed her to, she looked happy.³⁴ The victim denied voluntarily following the accused and testified that it was the accused's idea for her to follow him in the Lorry. As it was nearing her prelim examinations and the Primary School Leaving Examinations ("PSLE"), she assumed that he wanted to talk to her about her examinations.³⁵ Furthermore, prior to the Hari Raya Haji incident, she had never followed him for this purpose, and she loved visiting her relatives and playing with her cousins during Hari Raya Haji.³⁶

41 The Defence argued that the victim's explanation was inconsistent with her apparent knowledge that the accused might repeat his alleged inappropriate behaviour.³⁷ The Prosecution's case was that she went with the accused in the Lorry despite previous occasions of his inappropriate behaviour as she was only a 12-year-old girl at the time, who had been repeatedly told to respect her elders and had little faith that her family would take her side against the accused's. Additionally, the previous occasions took place in the victim's home when nobody else was nearby, and the victim agreed to go with the accused in the Lorry under very different circumstances.³⁸ The Defence, however, submitted

³⁴ PCS at para 46.

³⁵ PCS at para 10.

³⁶ PCS at 130.

³⁷ DCS at paras 60–63.

³⁸ PCS at para 48.

that her explanation was contradicted by the fact that she did not generally show respect for authority or elders.³⁹

42 I found that there was no basis to doubt the victim's denial, and preferred the victim's testimony because the victim's explanation, that she went along because she was respectful of her elders, was more plausible in the circumstances. Her family members testified that she was respectful of the older members of the family,⁴⁰ even if there were a few standalone incidents of disobedience towards her family members which the Defence alleged. For reasons that will be explained below at [51], I did not accord weight to PW13's testimony as PW13 was an unreliable witness.

The victim did not ask for help during and right after the sexual assault

43 Next, the Defence also took issue with the victim not having asked for help from her friends and communicated to them about the Hari Raya Haji incident immediately after it happened. The fact that she did not share her feelings of fear with her friends as they arose was inconsistent with her past behaviour. The victim messaged her friends shortly after the alleged Dream incident and the Ikea incident, but did not notify them about the Hari Raya Haji incident on 31 July 2020, or after, in their WhatsApp chat group. The first time that she told anybody about the Hari Raya Haji incident was on 2 August 2020 when she informed PW5.⁴¹

³⁹ DCS at paras 64–65.

⁴⁰ NEs dated 23 November 2023 at page 56 lines 29–32, NEs dated 24 November 2023 at page 22 line 24–page 23 line 2 and NEs dated 5 March 2024 at page 8 lines 9–12.

⁴¹ DCS at paras 66–68.

44 As the victim had testified, she was right beside the accused in the Lorry and the accused would have suspected something if she had told her friends.⁴² In any event, the victim did ask for help as the events in the Lorry unfolded. She asked PW7 to call her, and there was a WhatsApp call which lasted 19 minutes and 32 seconds.⁴³ Again, when the Lorry was leaving the petrol kiosk, the victim messaged PW7 to ask her to mute herself and just listen on the call, as she felt that something was wrong.⁴⁴

45 Further, I declined to find that any such absence of communication after the sexual assault put her evidence into any doubt. Again, the reaction of a victim to an incident of abuse or attack cannot be readily slotted into specific patterns. The court must weigh, bearing in mind the variety of responses that may be made by a victim to a sexual assault, whether the explanation given by the victim for why he or she acted in a particular way is acceptable bearing in mind the characteristics of the victim, such as his or her age, maturity and general behaviour. The victim was 12 years old: there are many reasons why a person of that age may be reticent or withdrawn after an assault occurred. She had initially followed the accused because she thought that the accused was going to talk to her about examinations. However, he started talking about sexual things and drove her to a secluded spot. Out of fear, she called PW7, but PW7 was not able to offer much help, as she did not understand Malay. Worse still, she was not able to defend herself against the accused throughout the series of sexual acts.

⁴² NEs dated 17 November 2023 at page 58 lines 1–12.

⁴³ Exhibit P48 at slide 94.

⁴⁴ PCS at para 11.

46 Additionally, the victim testified that she had might have sent a message to PW7 after the Hari Raya Haji incident but this was deleted.⁴⁵ There was no record of the deleted message when the forensic examination was carried out, but as the Prosecution has submitted, the absence of any trace of the message did not mean that the message was not in fact sent – the forensic examination would not be able to capture all such deletions.⁴⁶ Furthermore, the victim had a habit of deleting her messages so that her mother would not see them.⁴⁷ Her deletion of the message was consistent with her testimony that she was afraid of her family believing the accused over her.⁴⁸ The Closed Circuit Television footage of the Bedok Unit lift lobby at 5.25pm showed that the victim deleted a message, although the contents of the message were not clear.⁴⁹ I therefore did not find that there was any reasonable doubt raised that the victim did not in fact send any such message, and I accepted the victim’s account of what she did. In any event, whether or not such a message was sent did not put her credibility into doubt.

The victim’s behaviour after the sexual assault

47 The Defence also took issue with the victim’s behaviour after the sexual assault. PW13 testified that after returning to the Bedok Unit, the victim looked happy and cheerful. Throughout the night, when she went with her relatives to another flat in Yishun (the “Yishun flat”), she played with PW13’s other grandchildren.⁵⁰ Similarly, the accused’s son, DW2, observed that the victim

⁴⁵ NEs dated 15 November 2023 at page 76 lines 4–23.

⁴⁶ NEs dated 24 November 2023 at page 14 line 31–page 15 line 4.

⁴⁷ NEs dated 15 November 2023 at page 76 lines 25–27.

⁴⁸ NEs dated 16 November 2023 at page 6 line 29–page 7 line 16.

⁴⁹ Exhibit P48 at slide 56.

⁵⁰ DCS at para 46.

made TikTok videos and danced with DW2's sons.⁵¹ When PW7 video-called the victim around 5.30pm, the victim showed PW7 the accused holding the victim's cousin.⁵²

48 However, the Prosecution argued that the victim tended to keep her emotions to herself, and thus it was immaterial that she was not visibly distressed after returning to the Bedok Unit. As regards her lack of reporting of the Hari Raya Haji incident to her family, she thought that her family would disbelieve her – a fact corroborated by PW5 and PW9, and thus it was entirely understandable that she had only reported the sexual assault to her friends (rather than her family) within a few days after the assault.⁵³

49 As will be discussed below, I was not inclined to accept PW13 and DW2's testimonies. Even if their accounts of the victim's behaviour in the Bedok Unit were true, I found that these did not necessarily show that the Hari Raya Haji incident did not take place. As the Court of Appeal in *Yue Roger Jr v Public Prosecutor* [2019] 1 SLR 829 explained (at [3]), "people react in different ways to sexual abuse, including compartmentalising or rationalising their reactions". Further, the court highlighted that one must be "sensitive to the fact that a child may react very differently from an adult". Such behaviour by the victim would not to my mind be indicative that no sexual assault had occurred. Further, the evidence given by PW7 of her videocall with the victim where the latter showed the accused holding the victim's cousin, would also not be indicative that no sexual assault had occurred.

⁵¹ DCS at para 47.

⁵² DCS at para 70.

⁵³ PCS at paras 53–56.

50 The Defence also alleged that the victim had wanted to follow the accused after the family group had gone together to the Yishun flat. DW2 testified that the victim was “sulking” when PW13 did not allow her to follow the accused with DW2 later at night when everyone was heading home.⁵⁴ I could not accept this version of events suggested by the Defence. Such behaviour would have been incongruous following the sexual assault on the victim. Furthermore, I could not accept DW2’s evidence as he had an interest in supporting the acquittal of the accused, and I could not accept that he would have remembered the facts in the way described by him. As the Prosecution had pointed out, he agreed to testify because he did not want his father, the accused, to go to jail.⁵⁵ Moreover, DW2 could not remember details such as the address of the Yishun Unit because it had been more than 3.5 years since the gathering on 31 July 2020.⁵⁶ He further testified that what the victim might or might not have said was not significant to him as his focus at that time would have been on his immediate family.⁵⁷

51 Finally, the Defence submitted that the victim had made up the Hari Raya Haji incident, as she had confessed the same to PW13 shortly after 3 August 2020.⁵⁸ I was also unable to rely on PW13’s evidence at all, as I found that she was an untrustworthy witness. As was argued by the Prosecution, PW13’s testimony ran up against the stark fact that there was no occasion that she could have spoken to her after she was taken away from her family members by the authorities. PW13’s subsequent testimony that the victim had asked, on

⁵⁴ DCS at para 50.

⁵⁵ NEs dated 7 March 2024 at page 7 lines 16–24.

⁵⁶ NEs dated 7 March 2024 at page 9 lines 20–28.

⁵⁷ NEs dated 7 March 2024 at page 9 line 29–page 10 line 2.

⁵⁸ DCS at para 6.

31 July 2020, to be allowed to miss school the next day, was nonsensical since the next day was a Saturday.⁵⁹ There was clearly tailoring of a false testimony. While the Defence argued that PW13 was only inconsistent on a small point, I found that she was unreliable and untruthful on a material issue, namely, whether the victim had indeed told her that she made up the incident. Accordingly, I rejected her evidence entirely.

Whether the victim's credit was impeached

52 The Defence also sought to impeach the victim's credit via s 157 of the Evidence Act 1893 (2020 Rev Ed) (the "Evidence Act") or in the alternative, cross-examine the victim via s 147(1) of the Evidence Act. The Defence firstly pointed out that her statement to the Police contradicted her position at the trial, as regards whether the Lorry door was closed during the sexual assault. Secondly, the Defence pointed out that the victim also lied to the Police in another statement, namely that she had told her friends "face to face" about having lied to them about the Dream incident.⁶⁰ The Prosecution argued that the victim's testimony about the small gap in the Lorry and her statement to the Police were consistent with each other. Further, the victim had already admitted that she lied to the Police in her Affidavit of Evidence-in-Chief.⁶¹

53 The Prosecution argued that neither s 147(1) nor s 157 of the Evidence Act could apply. The Prosecution cited the cases of *Public Prosecutor v Kwang Boon Keong Peter* [1998] 2 SLR(R) 211, *Muthusamy v Public Prosecutor* [1948] MLJ 57 and *Public Prosecutor v Heah Lian Khin* [2000] 2 SLR(R) 745 as authorities supporting their argument that there must be serious discrepancies

⁵⁹ PCS at para 38.

⁶⁰ NEs dated 17 November 2023 at page 21 line 7–page 23 line 27.

⁶¹ NEs dated 17 November 2023 at page 24 line 3–page 25 line 10.

or material contradictions before s 147(1) of the Evidence Act, let alone s 157 of the Evidence Act, could be invoked.⁶²

54 I took the view that these cases were primarily looking at the context of the Prosecution cross-examining or applying to cross-examine its own witness, which would have necessitated safeguards against the improper use of the investigation materials by the prosecution. The considerations that apply to the Defence cross-examining a witness on his / her statement would be less pertinent. In relation to the level of contradiction that is required before s 147(1) of the Evidence Act could be invoked, I found that the matters argued by the Defence raised a sufficient level of difference as to warrant the Defence being allowed to confront the witness with her previous statements. However, I did not find that the level of contradiction or difference was so great as to warrant a finding of impeachment under s 157 of the Evidence Act. The contradiction was not such as to put into any doubt her evidence: the line between a fully closed door and one with light passing through was not all that great. Accordingly, the victim's credit was not impeached.

Issues with the Prosecution's evidence

55 Apart from the victim's testimony, the Prosecution adduced other pieces of evidence to corroborate the victim's testimony. These were:

- (a) the victim's disclosure of the incident to the Prosecution's witnesses;
- (b) the forensic evidence about the redness to her hymen;
- (c) results of the fibre transfer analysis; and

⁶² NEs dated 17 November 2023 at page 28 line 1–page 32 line 13.

- (d) observations of changes to her personality and mood, and her post-traumatic symptoms.

56 The Defence raised several concerns with the Prosecution’s evidence. I will analyse each strand of evidence as well as the parties’ submissions on them.

The victim’s disclosure of the Hari Raya Haji incident

57 The victim disclosed the Hari Raya Haji incident to a few of the Prosecution’s witnesses. On 2 August 2020, she confided in her friend, PW5, over text message that the accused had told her to go to the back of the Lorry and lie down, then French-kissed her and “finger[ed] her”. The next day, the victim told her friends, PW5, PW6 and PW7 about what had happened. After school, PW5 and PW6 told their form teacher, PW2, that the victim’s grandfather had been sexually touching her. PW2 took the victim aside and spoke to her privately with the school counsellor, PW8, when the victim told them about the Ikea incident and the Hari Raya Haji incident. The school reported the matter to the Ministry of Social and Family Development, and a Child Protection Officer, PW9, came to the school to speak with the victim and brought her to lodge a police report later that evening.⁶³

58 The Prosecution argued that the victim maintained her account of the Hari Raya Haji incident despite the passage of time and with consistency. Her timely and consistent accounts to her friends (PW5, PW6 and PW7) and the adults who saw her, namely, a psychiatrist who saw her at the Child Guidance Clinic of the Institute of Mental Health (“PW1”), her examining medical doctor (“PW10”), PW2, PW8 and PW9 would amount to “liberal” corroboration of her

⁶³ PCS at paras 18–19.

testimony, following *Public Prosecutor v GCK and another matter* [2020] 1 SLR 486 (“GCK”) (at [96]).⁶⁴ The Defence argued that these accounts constituted the victim’s self-reporting and should be given minimal weight given the victim’s propensity to lie.⁶⁵

59 As I had noted above, the issues with the reliability of the victim’s account did not mean that I had to reject all evidence that came from her, but that I had to treat such evidence with caution.

60 The court adopts a liberal approach to corroboration (*GCK* at [96]) and a subsequent complaint by the complainant herself can amount to corroborative evidence if the statement implicates the accused and was made at the first reasonable opportunity after the commission of the offence (*AOF v Public Prosecutor* [2012] 3 SLR 34 at [173], citing *Public Prosecutor v Mardai* [1950] MLJ 33 at 33). I agreed with the Prosecution that the victim’s disclosure of the incident constituted liberal corroboration, insofar as the victim did not deviate from her account when describing the Hari Raya Haji incident to the following third parties, in the following manner.

61 The victim testified that she had sent a message to PW7 after the Hari Raya Haji incident but this was deleted. PW7 was the first person she told about the Hari Raya Haji incident.⁶⁶ In her message, she said that she had been “raped” – understanding being “raped” to include being inappropriately touched and as referring to being fingered.⁶⁷

⁶⁴ PCS at paras 70–92.

⁶⁵ DCS at para 72.

⁶⁶ NEs dated 15 November 2023 at page 76 lines 4–12.

⁶⁷ NEs dated 15 November 2023 at page 76 lines 13–19.

62 She sent PW5 eight text messages on 2 August 2020 between 5.03pm and 5.07pm, reproduced as follows: (a) “So my grandfather RLY RAPED ME”; (b) “I was in the lory”; (c) “Then he told me to go to the back of the lory and lie down”; (d) “He went on top of me”; (e) “And started kissing me and he toungeed me”; (f) “And the the thing is rite when was do that he did fingering to me sia and then kept asking if it felt pleasuring or painful”; (g) “And i almost cummed sial”; and (h) “And good thing i didnt moan bc i was abt to but i bit my lips”.⁶⁸

63 She also sent PW5, PW6 and PW7 five messages in their Whatsapp group chat on 3 August 2020 between 6.03am and 6.05am, reproduced as follows: (a) “Soo”; (b) “Idk how to feel of going yo sch”; (c) “To*”; (d) “Idk”; and (e) “I feel like aftr wat happened on Hari Raya i feel weird”.⁶⁹

64 PW6 testified that the victim had told them that while she and her “grandfather” were in a van and alone, he told her to lie down. He touched her somewhere but she never said where she was touched.⁷⁰ PW7 testified that the victim told her that he had fingered her, which she said meant that he inserted a finger inside her vagina.⁷¹

65 The victim also told PW2 and PW8 about what had happened, after her friends reported the Hari Raya Haji incident to PW2. PW2’s testimony at the trial about what the victim had shared with her and PW8, was as follows:⁷²

For the second incident, she mentioned specifically that it happened on Hari Raya Haji. And on that day, her granduncle

⁶⁸ Exhibit P48 at slide 101.

⁶⁹ Exhibit P48 at slide 105.

⁷⁰ NEs dated 22 November 2023 at page 37 lines 1–6.

⁷¹ NEs dated 22 November 2023 at page 61 lines 12–30.

⁷² NEs dated 14 November 2023 at page 49 lines 17–21.

drove her to somewhere quiet and he stopped the vehicle. And after stopping the vehicle, he went to the back and got her to follow him. And he asked her to lie down and later on he touched her---touched her on---on her breast and also her lower private part area.

PW2 clarified that she recalled the vehicle “being a van or a lorry ... a vehicle with like a ... place where they could ... go to the back and where she had to lie down at the back of the vehicle”,⁷³ and that by “lower private part area”, PW2 was referring to “the vagina area”.⁷⁴

66 PW8 made handwritten notes during her meeting with the victim and PW2, which she explained at the trial:⁷⁵

[The victim] share that during Hari Raya Haji, the family and some relative went to the cemetery. And granduncle was there also. So after lunch, grandma and her mother and mother's sister went somewhere. And grand---grandmother and her sister went to older sister house. Second uncle plus auntie, I'm not very sure---not very sure where they go. And later on, [the victim] asked grandmother whether she can follow granduncle and granduncle allowed her to follow granduncle---grandma allowed her to follow granduncle. So granduncle drive the lorry and parked at one place for a while. And granduncle approached [the victim] in the lorry. And [the victim] fear to say “no”. Then granduncle lay a cardboard - it's a cardboard, it's not cupboard - cardboard at the back of the lorry and granduncle start to touch her, her chest, her breast and her lower pubic area. [The victim] try to stop him - and not “her” which was stated in the statement.

⁷³ NEs dated 14 November 2023 at page 49 lines 22–26.

⁷⁴ NEs dated 14 November 2023 at page 50 lines 5–7.

⁷⁵ NEs dated 23 November 2023 at page 38 lines 11–22.

67 About three hours after the victim spoke to PW2 and PW8, PW9 talked to the victim. PW9's report about what the victim had shared is reproduced as follows:⁷⁶

[The victim] reported that on Hari Raya Haji (31 July 2020), maternal granduncle dropped maternal grandmother and maternal grandaunt at another maternal grandaunt's house, but maternal granduncle wanted to talk to [the victim]. [The victim] initially had thought he wanted to talk to her about her PSLE so she followed him to pump petrol. After pumping petrol, maternal granduncle parked the lorry and he laid out a cardboard at the back of the lorry. Maternal granduncle then asked [the victim] to go to the back. He reportedly then hovered over [the victim], kissed her lips, touched [the victim] at her breasts and genital area (under clothes), and put 1 finger inside her genital. [The victim] shared that it happened for about 5 minutes before maternal granduncle stopped. [The victim] reported that she and the maternal granduncle then left the lorry to go back to maternal grandaunt's house.

68 On the same day at 11.26pm, the victim was seen by PW10 for a sexual assault medical examination. Her account to PW10, as documented in PW10's report, was as follows:⁷⁷

The assault occurred on 31st July 2020 at the back of the lorry. There was one assailant, her Granduncle, ... The assailant took her to the back of the lorry. He said he wanted to show her 'what boys would do to her in the future'. He took her to lie down and started kissing her. The assailant touched under her shirt then reached under her pants, inserting his finger into her vagina. It occurred for '5 minutes'. After the assailant 'was done', the victim took her phone and immediately went to the front of the lorry.

⁷⁶ Exhibit P50.

⁷⁷ Agreed Bundle at p 28.

69 On 7 October 2020, the victim was seen by PW1. PW1's report documenting what the victim shared is reproduced as follows:⁷⁸

[The victim] stated that after the defendant dropped her grandmother and grandaunt off at a relative's home, she followed the defendant to top up the fuel for the lorry and then remained in the front seat of his lorry with him (as he told her that he wanted to chat with her).

[The victim] stated that after some time, the defendant asked her to go to the back of the covered lorry and subsequently joined her. [The victim] stated that after that, the defendant asked her to lie on the cardboard on the floor, lay down beside her, kissed her lips, touched her breasts and private part and then sucked her breasts.

[The victim] stated that during the incident, she felt scared.

70 I found that these accounts by the victim to the third parties ([61]–[69]) were consistent with one other and reflected the sequence of sexual acts as described by the victim, including the penetration of her vagina by the accused with his finger. These accounts would constitute liberal corroboration of the victim's testimony.

Forensic evidence

71 Turning next to the forensic evidence, on 3 August 2020, the victim's examining doctor, PW10, examined her and observed redness at two areas at the lateral edges of her hymen. PW10 stated that the redness could have been related to, for instance, "a finger penetration", and would have stemmed from an event probably occurring within the past week. The Prosecution admitted that the redness found on her hymen could be caused by other causes. Nevertheless, they argued that it was still consistent with their case that the

⁷⁸ Agreed Bundle at p 32.

accused had fingered the victim.⁷⁹ The Defence argued that the redness found on the victim's hymen could have been a result of the victim's insertion of her finger into her vagina within the week before 3 August 2020.⁸⁰

72 I did not find that there was any reasonable doubt raised because of any ambiguity about the cause of the redness. It may be that the redness was consistent with the Prosecution's case, but other causes could not be ruled out. The evidential door was left open for both sides. It did not assist the Prosecution in showing the commission of the offence by the accused, but neither did the possibility of other causes of the redness, including the victim's own actions, raise any doubt, given the strength of the other evidence against the accused.

Fibre transfer analysis

73 Further, a fibre transfer examination conducted by PW15, a Senior Forensic Scientist with the Health Sciences Authority, revealed that the two fibres recovered from a cushion in the rear container of the Lorry could have originated from the victim's tunic.⁸¹

74 But as argued by the Defence, this did not assist in any inference of the sexual assault taking place as charged. The Defence argued that the conclusion level was pitched at too low a level – namely, that the fibres on the cushion “could have originated” from the victim's tunic.⁸² However, the Prosecution did not need to rely on the fibre transfer, as the other evidence was sufficient to establish the accused's guilt.

⁷⁹ PCS at para 94.

⁸⁰ DCS at paras 79–81.

⁸¹ PCS at paras 95.

⁸² DCS at para 88.

Changes in mood and personality and post-traumatic symptoms

75 The Prosecution submitted that the victim's post-assault symptoms and changes in personality evidenced that she underwent a traumatic experience on 31 July 2020. Expert reports from PW1, and PW3 and PW11 (who were clinical psychologists from the Ministry of Social and Family Development) were consistent with her having been sexually assaulted on 31 July 2020. Amongst other symptoms, the victim exhibited significant distress and avoidance towards stimuli which reminded her of the sexual assault.⁸³

76 The Defence argued that the diagnosis given by PW11, *ie*, the allegations of the victim suffering from post-traumatic symptoms, should be discounted because the diagnosis was based on the victim's self-reporting and the victim had a tendency to lie.⁸⁴ The Prosecution countered by saying that its evidence was based on collateral information from others who had the opportunity to observe her in a range of contexts over a prolonged period. She did not merely describe distress but demonstrated more specific behavioural and cognitive traits that were directly related to her sexual assault. She also refrained from exaggerating her symptoms.⁸⁵

77 I could not accept the Defence's arguments. As the Prosecution pointed out, these were also observed by third parties. For instance, PW8 described an incident where the victim came close to her, beside her, trying to hide from a male stranger who walked past them. The victim shared that she was afraid of the male figure as she related him to the accused.⁸⁶ On another occasion, the

⁸³ PCS at paras 96–101.

⁸⁴ DCS at para 74.

⁸⁵ PCS at paras 102–105.

⁸⁶ NEs dated 23 November 2023 at page 43 lines 2–9.

victim's case worker described that the victim noticed a vehicle that reminded her of the Lorry, and she began shouting and cursing.⁸⁷ PW12 also recounted that one time, she and the victim drove past the location which the victim said was the place the accused brought her to. She felt sad and angry.⁸⁸

78 However, it was not a proper inference to my mind to draw from such observations that the victim had in fact suffered an attack by the accused. Any psychiatric harm suffered by the victim was immaterial to the question of conviction.

Corroboration of the victim's testimony

79 Having considered the evidence before me, the next issue is whether the "unusually convincing" standard should be applied. Where uncorroborated testimony which forms the sole basis for a conviction, the "unusually convincing" standard applies to such evidence (*GCK* at [104]).

80 As has been discussed thus far, I found that the other strands of evidence adduced by the Prosecution had corroborated the victim's testimony. Leaving aside the forensic evidence, results of the fibre transfer analysis and the victim's post-traumatic symptoms which I did not place weight on, I found that the *Lucas* lie and the victim's consistent accounts of the Hari Raya Haji incident sufficiently corroborated her testimony of the Hari Raya Haji incident.

81 Therefore, this was not a case in which I needed to consider whether the victim's own evidence was unusually convincing, as there was ample corroboration of her version of events.

⁸⁷ NEs dated 23 November 2023 at page 10 lines 9–20.

⁸⁸ NEs dated 23 November 2023 at page 63 lines 1–6.

Issues with the accused's credibility

82 Finally, I did not examine the issue of the accused's credibility in full, although the Prosecution sought to cast doubt on it extensively. As I had found, the Defence had failed to cast doubt on the reliability and veracity of the victim's testimony, and I was satisfied that the victim's corroborated testimony, including by the accused's *Lucas* lie which held significant corroborative weight, were sufficient to warrant a conviction. For completeness, I set out some points on the issue.

83 The Prosecution highlighted that the accused had, under cross-examination, admitted that he lied to the Police about not having made stops on the way back from the petrol kiosk to the Bedok Unit.⁸⁹ He also took inconsistent positions on whether he asked the victim to seek PW13's permission to follow him that day.⁹⁰ Further, throughout his examination-in-chief ("EIC"), scene visit with a police officer, PW17, and at the trial, he took inconsistent positions on the route that he took, including whether he had taken the roundabout.⁹¹ He also claimed that he had no conversation at all with the victim during the drive, which ran up against PW7's unchallenged testimony.⁹² His testimony at the trial that the door was heavy and could only be opened by someone strong contradicted his evidence that the sliding door of the Lorry was well-oiled.⁹³

⁸⁹ PCS at para 115.

⁹⁰ PCS at para 131.

⁹¹ PCS at paras 115–126.

⁹² PCS at para 132.

⁹³ PCS at paras 141–144.

84 Once he admitted that he had stopped the Lorry, his defence was that he did so to secure the photocopiers in the rear container. However, this was never mentioned to the Police. Moreover, it was unbelievable, given that he had experience in delivering the photocopiers full-time. He often drove his family members in the Lorry's rear container even when the photocopiers were placed there. In fact, the photocopiers remained properly secured throughout the drive up to him stopping the Lorry. There were also other more straightforward and sensible options to stop the Lorry if he had wanted to secure the photocopiers, and he would not have stopped the Lorry so close to the trailer in front of it. Even if he had stopped to secure the photocopiers, it would have taken only about two to three minutes according to him, while the Lorry was stationary for 12 minutes in total.⁹⁴

85 In response, the Defence argued, at length, that PW17's evidence about the scene visit should be rejected. This was because PW17's evidence could be explained by the fact that the accused's words might not have been translated accurately from Malay to English. Further, the scene visit occurred long ago and was not recorded in a field diary, so PW17's recollection might not have been completely accurate. In the alternative, even if the accused had told the Police that he did not stop, it did not occur to his mind that he had stopped to adjust the photocopiers.⁹⁵

86 As I had found (above at [25]), the accused's lies to the Police constituted a *Lucas* lie, and I preferred the victim's explanation that it was the accused's idea for her to follow him in the Lorry (above at [41]). I had also found that the door was not as well-oiled as described by the accused (above at

⁹⁴ PCS at paras 133–140.

⁹⁵ DCS at paras 82–84.

[38]). As the Prosecution did not apply to impeach the accused's credit, I will not make other findings on the accused's credit based on the other inconsistencies in his evidence alleged by the Prosecution.

87 Furthermore, I am inclined to believe the victim's corroborated testimony that the accused had sexually assaulted her during the 12-minute stop. By contrast, the accused's explanation of what had happened during the 12-minute stop was unbelievable. Apart from the fact that this was only mentioned at the trial, the accused was experienced with transporting large photocopiers in his Lorry, and they were secured in the drive up to the point of stopping. It would have been strange that the photocopiers would suddenly come loose during their drive from the petrol kiosk. Further, I agreed with the Prosecution that the accused would not have chosen to park at that location and so close to the trailer if he had wanted to secure the photocopiers. In the circumstances, the defence seemed like a last-ditch attempt by the accused to escape punishment once it was established, as an immutable fact, that the Lorry had indeed been stopped for 12 minutes.

88 Lastly, as for the Defence's arguments for rejecting PW17's evidence, I found that these were bare assertions that went against the evidence. There was a Malay interpreter present during the scene visit, contrary to the Defence's argument that the accused's words in Malay could not have been translated properly to English.⁹⁶ It was difficult to see, without more, how PW17's evidence was unreliable. Even if I were to reject PW17's evidence, the Defence had not sought to explain the inconsistent positions that the accused took at the trial, including on the issue of whether he had taken the roundabout. In any case, whether the accused had taken the roundabout was not as material as an issue

⁹⁶ NEs dated 27 February 2024 at page 21 lines 1–2.

of whether he had stopped the Lorry. I found that there was enough evidence to prove that he did stop the Lorry, during which he committed the sexual assault on the victim.

Decision on conviction

89 Accordingly, I convicted the accused on the charge of sexual assault involving penetration under s 376(2)(a) of the Penal Code. As he had committed the offence on a person below 14 years of age without that person's consent, he was liable to be punished under s 376(4)(b) of the Penal Code.

Sentencing

90 Apart from his charge of sexual assault involving penetration, the accused consented to one charge of possessing 94 obscene films punishable under s 30(1) of the Films Act (Cap 107, 1998 Rev Ed) to be taken into consideration for the purpose of sentencing.⁹⁷

Prescribed punishment

91 Under s 376(4)(b) of the Penal Code, the prescribed punishment of an offence of sexual assault involving penetration of a person below 14 years of age, without that person's consent, is imprisonment for a term of not less than eight years and not more than 20 years and with not less than 12 strokes of the cane.

⁹⁷ Prosecution's Submissions on Sentence dated 12 July 2024 ("PSS") at para 28.

Sentencing framework

92 The Prosecution and the Defence agreed that the framework in *Pram Nair v Public Prosecutor* [2017] 2 SLR 1015 (“*Pram Nair*”) for the offence of digital penetration should be applied. The court has to “(a) identify the number of offence-specific aggravating factors in a case, (b) determine, based on the number and intensity of the aggravating factors, which of three sentencing bands the case falls under, (c) identify where precisely within the sentencing band the case falls in order to derive an indicative starting sentence, and (d) adjust that indicative sentence to reflect the presence of any offender-specific aggravating and mitigating factors” (at [119]). There are three sentencing bands for the offence of sexual penetration of the vagina using a finger, as follows (at [159]):

- (a) Band 1: seven to ten years’ imprisonment and four strokes of the cane;
- (b) Band 2: ten to 15 years’ imprisonment and eight strokes of the cane;
- (c) Band 3: 15 to 20 years’ imprisonment and 12 strokes of the cane.

93 A case “falls in Band 1 if there are no offence-specific aggravating factors or where the factor(s) are only present to a very limited extent and therefore should have a limited impact on the sentence; in Band 2 if there are two or more offence-specific aggravating factors; and in Band 3 where the number and intensity of the aggravating factors present an extremely serious case” (at [122]). In *Pram Nair*, it was observed that where the offence is committed against a person under 14 years of age, there is a prescribed minimum sentence of eight years’ imprisonment and 12 strokes of the cane and should fall within Band 2 (or even Band 3 if there are additional aggravating factors) (at [160]).

94 The parties were also in agreement that there should be no adjustment to the indicative sentence. However, the parties differed in their analysis as regards the offence-specific aggravating factors and the sentencing band that the case fell under.

95 The Prosecution argued that the starting point ought to be in the upper half of Band 2, and that the court should impose an imprisonment term of 13 to 15 years, with an additional six months' imprisonment in lieu of 12 strokes of cane.⁹⁸ This was because the accused is over 50 years of age and cannot be caned pursuant to s 325(1)(b) of the Criminal Procedure Code 2010 (2020 Rev Ed) (the "Criminal Procedure Code"). Thus, an additional imprisonment term ought to be imposed in lieu of caning, pursuant to s 325(2) of the Criminal Procedure Code. Six months' imprisonment in lieu of caning would be appropriate given the indicative guideline of three to six months' imprisonment for seven to 12 strokes of cane avoided (see *Amin bin Abdullah v Public Prosecutor* [2017] 5 SLR 904 at [90]).⁹⁹

96 The Defence argued for an imprisonment term not exceeding 12.5 years, and did not dispute the Prosecution's submissions for an additional six months' imprisonment to be imposed in lieu of caning. The Defence, however, disagreed that the case fell within the upper half of Band 2. The Defence submitted that the case fell within the middle range of Band 2.¹⁰⁰

⁹⁸ PSS at para 35.

⁹⁹ PSS at paras 32 and 34.

¹⁰⁰ Defence's Sentencing Submissions dated 2 August 2024 ("DSS") at para 3.

Offence-specific aggravating factors

97 The Prosecution submitted that there were at least four offence-specific aggravating factors. First, the victim was only 12 years old; her young age is a statutory aggravating factor.¹⁰¹ Second, the accused abused his position and breached the trust reposed in him by the victim and her family. The accused was entrusted by the victim's relatives to take care of her. The accused's standing within the family emboldened him to offend without having to worry about the victim disclosing his offending to her relatives.¹⁰² Third, there was premeditation as he attempted to groom the victim, starting from the Ikea incident. He then took deliberate steps to isolate the victim by concocting a reason to bring her to a secluded area to conceal his offending.¹⁰³ Fourth, there was severe harm caused to the victim. The degree of sexual exploitation extended beyond just digital-vaginal penetration. The emotional and psychological harm she suffered extended well beyond the date of the offending. She was separated from her family and had to prepare for and take her PSLE without any family support, while dealing with the stress of police investigations and living in two completely new environments. She suffered from Post-Traumatic Stress Disorder, her personality changed dramatically after the sexual assault and her motivation in school and academic performance deteriorated. She developed feelings of worthlessness, guilt, self-blame and shame surrounding the sexual assault, which caused her to self-harm.¹⁰⁴

¹⁰¹ PSS at paras 12–13.

¹⁰² PSS at paras 14–19.

¹⁰³ PSS at paras 20–22.

¹⁰⁴ PSS at paras 23–25.

98 The Defence argued that the Ikea incident and the sexual matters allegedly committed before the Hari Raya Haji incident were not proven at the trial. The accused was also never put on trial for these allegations. Therefore, it was incorrect for the Prosecution to argue that the accused had attempted to groom her, and that there was an escalation in offending by reason of the victim's non-disclosure of the alleged previous incidents.¹⁰⁵

Precedents cited

99 The Prosecution and the Defence cited the case of *Public Prosecutor v BQD* [2021] SGHC 183 ("*BQD*") to support the sentence they respectively sought. The Prosecution submitted that in *BQD*, which was upheld by the Court of Appeal, the offender was convicted after trial on 15 charges for sexually abusing his biological daughter when she was between 10 and 14 years old. The four charges on penetrating the victim's vagina with his finger without her consent when she was between ten and 13 years old fell within the higher end of Band 2. The indicative starting point for each of the four charges was 14 years' imprisonment and 12 strokes of the cane. The present case was similar in some respects, as both victims were vulnerable by reason of age and there was an abuse of trust and premeditation. While the abuse in *BQD* took place over a period of time, this was reflected in the aggregate sentence imposed. Further, in the present case, the severe harm caused to the victim was an aggravating factor absent in *BQD*.¹⁰⁶

100 The Defence, however, distinguished *BQD* from the present case. The victim in *BQD* was younger than the victim. Further, the abuse of trust was

¹⁰⁵ DSS at paras 5–6.

¹⁰⁶ PSS at paras 29–31.

worse in *BQD* – the accused in *BQD* impressed upon the victim that she would lose her father if anyone found out about the sexual activities. The premeditation in *BQD* was also far more serious – the accused’s conduct escalated over a period of time, leading to more egregious forms of sexual penetration and he deliberately put himself in a position where he could continue to take advantage of her, such as by sleeping on the same bed as or next to her. The accused in *BQD* lacked remorse as he chose to raise matters to disparage the victim’s mother unnecessarily and accused her of influencing the victim to lie. While the accused in the present case had claimed trial, there was no lack of remorse in this manner.¹⁰⁷

101 Additionally, the Defence cited two additional authorities: *Public Prosecutor v BQW* [2018] SGHC 136 (“*BQW*”) and *Public Prosecutor v BVJ* [2022] SGHC 59 (“*BVJ*”).

102 The Defence distinguished *BQW* from the present case. In *BQW*, the victim was seven years’ old when the accused committed the first sexual offence against her. The court held that a starting point of 11 years and three months’ imprisonment was an appropriate starting point. The court noted that while there was no family relationship between *BQW* and the victim, there was still an element of trust, and *BQW* was treated like the grandfather or uncle of the victim and he was particularly close to the victim. The offences were committed over a period of about 15 months, and he also committed several other acts of sexual abuse against the victim. The accused in *BQW* was, like in the present case, treated as the grandfather by the victim. Further, the victim in *BQW* was significantly younger than the victim in the present case. However, the assaults in *BQW* took place over a period of 15 months, while the present case was a

¹⁰⁷ DSS at para 14.

one-off incident. That said, the Defence acknowledged that the element of severe harm was not present in *BQW* and some upward adjustment would be warranted.¹⁰⁸

103 Finally, the Defence distinguished *BVJ* from the present case. In *BVJ*, the court held that the indicative starting point for the sexual assault by penetration charge was 13 years' imprisonment. The victim was 13 years of age, and the accused abused his position of responsibility and trust reposed in him as the victim's biological father. The accused had deliberately taken advantage of the times where he had sole care of the victim to sexually assault her without detection. He had also taken deliberate steps to isolate the victim from the rest of the family before committing the sexual offences, showing premeditation. Moreover, the accused sexually groomed the victim and used threats against her. Unlike in the present case, the breach of trust in *BVJ* was more aggravating as the accused in *BVJ* was the biological father of the victim. Even taking into account the psychological harm suffered by the victim in the present case, a sentence of slightly less than 13 years' imprisonment (the indicative starting point of the sentence received by the accused in *BVJ*) would be appropriate.¹⁰⁹

Decision on sentence

104 There was no real distance between the parties as to the applicable framework. As noted by the parties, the framework in *Pram Nair* was to be applied. The difference lay in terms of the question whether there was planning and premeditation – offender-specific factors which would affect my analysis for the first step of the framework.

¹⁰⁸ DSS at paras 12 and 15.

¹⁰⁹ DSS at paras 13 and 16.

105 I disagreed that the previous incidents alleged by the Prosecution to have paved the way for the assault on the victim – the Ikea incident, showing her pornography and saying that they could do more together – could feature in my application of the *Pram Nair* framework. I did not find against the accused on these allegations. As argued for by the Defence, these events were not proven. The conviction was based on other evidence such as the movement of the Lorry and the accused's *Lucas* lie. I also could not find or infer that the accused was entirely without credit as to his other evidence, about the Ikea incident or otherwise. Furthermore, as noted, there were concerns about the victim's own evidence. I did not find therefore that it was established beyond a reasonable doubt that the accused had groomed the victim and escalated his exploitation of her. There was also no extended premeditation or planning before the incident itself.

106 What was made out against the accused was that he had abused his position of trust as an elder within the family, to whom the victim would have shown deference and who would have been expected to have her interests and safety in mind. The victim was young and vulnerable at the time of the offence. Furthermore, the victim suffered from psychological harm beyond the incident.

107 Some uplift would be applied for the charge taken into consideration, but it would not be particularly large or significant. Further, the accused did not have pertinent antecedents. Thus, the primary sentencing factors were those noted above.

108 I was of the view that *BQD* involved a far more serious abuse of trust and premeditation. However, the extent of harm suffered by the victim in the present case must still be considered and I did not agree that the indicative starting point should be as low as that of *BQW* and *BVJ*. Bearing in mind the

precedents as well as the factors present here, I was satisfied that a substantial term of imprisonment was called for. I was satisfied that a sentence of 13.5 years, with six months in lieu of caning, for a total of 14 years' imprisonment, adequately reflected the factors engaged in this case. His previous remand period was taken into account.

Aidan Xu
Judge of the High Court

Wong Woon Kwong SC, Sarah Siaw Ming Hui, Niranjan
Ranjakunalan, Tung Shou Pin and Chu Sin Ping Natalie (Attorney-
General's Chambers) for the Prosecution;
Suang Wijaya and Ng Clare Sophia (Eugene Thuraisingam LLP) for
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