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

[2026] SGHC 98

Criminal Case No 41 of 2025

Between

Public Prosecutor

And

Hossain Mohammad Azim

GROUNDS OF DECISION

[Criminal Procedure and Sentencing — Sentencing — Sexual offences — Criminal intimidation — Perverting the course of justice]

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Public Prosecutor
v
Hossain Mohammad Azim

[2026] SGHC 98

General Division of the High Court — Criminal Case No 41 of 2025
Audrey Lim J
6 May 2026

8 May 2026

Audrey Lim J:

Introduction

1 On 6 March 2026, I convicted Mr Hossain Mohammad Azim ("D") on a count of aggravated sexual assault by penetration, an offence under s 376(2)(*a*) and punishable under s 376(4)(*a*)(i) of the Penal Code (Cap 224, 2008 Rev Ed) ("Penal Code") ("1st Charge"), and a count of criminal intimidation punishable under the first limb of s 506 of the Penal Code ("2nd Charge"). D then pleaded guilty to the remaining charge of perverting the course of justice under s 204A(*b*) of the Penal Code 1871 (2020 Rev Ed) ("3rd Charge").

2 On 6 May 2026, I sentenced D on the three charges. These are my written grounds of decision for the sentences imposed.

Facts

3 The detailed facts may be found in *Public Prosecutor v Hossain Mohammad Azim* [2026] SGHC 51 ("GD"). In brief, D was in a romantic relationship with the complainant ("C"), a foreign domestic worker, beginning in 2018. In 2021, C began a separate relationship with a man named Chew, with whom she had sex. On 14 December 2021, D went to the Housing and Development Block at which C resided ("Block"), having discovered she was still seeing Chew despite her assurances to the contrary. He confronted C at a staircase landing on the 31st floor, where I had found that he had slapped and kicked her repeatedly, causing numerous injuries to her (GD at [106]). He then sexually penetrated her vagina with his fingers without her consent and threatened to throw her out of the staircase window. These formed the bases of the 1st and 2nd Charges. D was arrested the next day. While in remand, he sent letters to persuade C to withdraw or change her account of events of the sexual assault, forming the basis of the 3rd Charge.[1]

The parties' cases

4 The 1st Charge carries a mandatory minimum sentence of eight years' imprisonment and a maximum sentence of 20 years' imprisonment, with a mandatory minimum of 12 strokes of the cane. The 2nd Charge carries a sentence of up to two years' imprisonment and/or a fine. The 3rd Charge carries a sentence of up to seven years' imprisonment and/or a fine.

5 The Prosecution submitted that the appropriate sentence should be as follows: (a) 14 to 15 years' imprisonment and 12 strokes of the cane for the 1st

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[1] Statement of Facts for 3rd Charge (Amendment No. 1) dated 5 March 2026 ("3rd Charge SOF") at [9].

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Charge; (b) eight to ten months' imprisonment for the 2nd Charge; and (c) one year's imprisonment for the 3rd Charge. The Prosecution further submitted that the 1st and 3rd Charges should run consecutively, and the aggregate sentence should thus be 15 to 16 years' imprisonment and 12 strokes of the cane.[2]

6 The Defence submitted that the appropriate sentence should be as follows: (a) ten years' imprisonment with 12 strokes of the cane for the 1st Charge; (b) two months' imprisonment for the 2nd Charge; and (c) six months' imprisonment for the 3rd Charge. The Defence agreed that the 1st and 3rd Charges should run consecutively.[3] The aggregate sentence should thus be ten years and six months' imprisonment with 12 strokes of the cane.

Sentence for the 1st Charge

7 The parties accepted that the applicable framework for sexual assault by penetration ("SAP") is set out by the Court of Appeal in *Pram Nair v Public Prosecutor* [2017] 2 SLR 1015 ("*Pram Nair*").[4] The *Pram Nair* framework was adapted from the framework for rape cases set out in *Ng Kean Meng Terence v Public Prosecutor* [2017] 2 SLR 449 ("*Terence Ng*").

8 There are two stages under the *Pram Nair* framework. At the first stage, the court identifies the relevant offence-specific aggravating factors and determines, based on the number and intensity of those factors, which of the three sentencing bands the case falls under, and where precisely within the band the case falls (at [119] and [158]–[159]). The sentencing bands are as follows:

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2 Prosecution's Submissions on Sentence ("PS") at [3], [34] and [51]; 6/5/26 NE 20–21.

3 Defence's Submissions on Sentence ("DS") at [68].

4 PS at [6]; DS at [8].

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(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; and

(c) Band 3: 15 to 20 years' imprisonment and 12 strokes of the cane.

9 Where the SAP is aggravated (*eg*, where there is use of actual or threatened violence under s 376(4)(*a*) of the Penal Code), the appropriate starting point would be Band 2 (or even Band 3 if there are additional aggravating factors) given the prescribed minimum sentence of eight years' imprisonment and 12 strokes of the cane (*Pram Nair* at [160]).

10 At the second stage, the court identifies the relevant offender-specific factors and adjusts the indicative sentence from the first stage (*Pram Nair* at [119]; *Terence Ng* at [73]).

11 At the outset, I agreed with the Prosecution that, in this case, the paramount sentencing considerations were deterrence and retribution.[5] Whilst rape is generally regarded as "the most grave of all the sexual offences" (*Pram Nair* at [151], citing *Chia Kim Heng Frederick v Public Prosecutor* [1992] 1 SLR(R) 63 at [9]), aggravated SAP is nevertheless very serious as it also involves a gross violation of the victim's body and dignity.

12 The Prosecution and Defence both accepted that the present case fell within Band 2 of the *Pram Nair* framework, with 12 strokes of the cane being appropriate. However, the Prosecution submitted that this case fell within the

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5 PS at [4]–[5].

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highest end of Band 2, whereas the Defence submitted that the case fell within the lower end of Band 2.[6]

13 Having considered the offence-specific factors under the first stage of the *Pram Nair* framework, I was of the view that this case fell in the middle range of Band 2, with an indicative starting sentence of 12 years' imprisonment and 12 strokes of the cane. I found three offence-specific aggravating factors present, namely the use of violence which was serious and sustained, the presence of premeditation, and that the offence was committed in a residential neighbourhood. At the second stage, I found no significant offender-specific aggravating or mitigating factors. I elaborate.

The use of violence was serious and sustained

14 First, the actual use of violence to facilitate the commission of sexual assault is a statutory aggravating factor (s 376(4) of the Penal Code and *Terence Ng* at [44(d)]). As the Court of Appeal stated in *Pram Nair* (at [160]):

> … we considered these statutory aggravating factors to be part of the list of offence-specific aggravating factors to consider in determining which sentencing band a particular offence falls under … and that where any of the statutory aggravating factors are present, the case would almost invariably fall within Band 2 (*Terence Ng* at [53]).

Thus, the presence of a statutory aggravating factor (as in the present case) is nevertheless considered an offence-specific factor which would place the case within Band 2 of the *Pram Nair* framework.

15 I agreed with the Prosecution that the sustained manner and extent to which D inflicted violence on C to subdue her and facilitate the commission of

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6 PS at [11]; DS at [45].

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the offence was a material consideration in determining where the case should be placed within Band 2.[7] On the facts, I found that D had also used significant force and the physical assault was severe. D had slapped and kicked/stomped on C's face, and he also kicked her left wrist and body repeatedly (GD at [108] and [178]). C had sustained injuries all over her body, including bruise marks above the left breast, the left upper arm, wrist, thigh and knee; bruising around the left eye; and scratches over the left buttock and the neck (GD at [106]–[107]). Some of the injuries showed significant force would have been used by D (GD at [108]). In fact, C could not recall where all the kicks had landed as there were "a lot of kicks" directed "all over" her body (GD at [59(c)]). D was wearing his work safety boots at the time (GD at [16]), which would have exacerbated the force conveyed to C.

16 I agreed with the Prosecution also that the penetrative acts were particularly intrusive and vicious. D had used all five fingers up to his knuckles to penetrate C's vagina, and he performed a twisting motion with his fingers inside her vagina. After he took his fingers out, he slapped her face before reinserting his fingers into her vagina in the same manner (GD at [17] and [125]).

Premeditation

17 Second, I accepted there was premeditation that aggravated the offence. The presence of planning and premeditation evinces a considered commitment towards law-breaking and thus reflects greater criminality (*Terence Ng* at [44(c)]). I had previously found that D's sexual assault on C was not done in the spur of the moment. D was "boiling inside" after seeing C with Chew. Rather

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7 PS at [12].

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than leaving, he waited at the Block for about an hour specifically to confront C. In particular, D hid in the staircase landing directly opposite the unit at which C resided ("Unit"). As D attested, whilst hiding, he sent a WhatsApp message to C to ask her to inform him when she was leaving the Unit to buy lunch. At that time, C did not know D was at the Block as he pretended to be at work and she thought that he merely wanted to communicate with her on the phone. When C came out of the Unit to buy lunch, he grabbed her with both hands and deliberately led her to another staircase landing of the Block ("Stairwell 1") (GD at [12], [41], [42] and [178]).[8]

18 The Defence argued that D's actions of sexually assaulting C could not be considered as planned or premeditated to the extent that they constituted an aggravating factor. The Defence submitted that to constitute an aggravating factor, there must be a "high degree of deliberation and planning", referring to the Court of Appeal's decision in *Pram Nair* (at [133]–[134]).[9]

19 I disagreed with the Defence. In *Pram Nair*, the court found (at [133]–[136]) that there was *no* premeditation because the offender did not target the victim specifically with the intention of getting her drunk, and the circumstances of the case showed an offender who was "seizing an opportunity rather than having acted in a calculated manner". The court then contrasted that situation with some examples where there was a high degree of deliberation and planning. There is nothing to suggest that the Court of Appeal in *Pram Nair* or *Terence Ng* accepted premeditation or the presence of planning as an aggravating factor *only if* the degree of it was "high". In the present case, unlike in *Pram Nair*, D's conduct showed that he was targeting C as he intended to confront her. D's

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8 28/10/25 NE 69–70.

9 DS at [18].

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conduct also showed he had acted in a calculated manner, including "the taking of deliberate steps towards the isolation of the victim" (*Terence Ng* at [44(c)]). He had pretended to be at work, surprised her with his presence when she left the Unit to buy lunch, grabbed her and then led her to Stairwell 1 where he subsequently assaulted her. I had also found that D's physical assault (see GD at [15]) was carried out "to reduce the victim's resistance" (*Terence Ng* at [44(c)]), *ie*, to subdue and put C in a vulnerable position to enable D to carry out the sexual assault (GD at [178]). I thus also disagreed with the Defence that D's acts of assault were "spontaneous".[10]

20 The Defence also argued that Stairwell 1 was not a secluded area, given its proximity to the lift lobby and that D had brought C there because it was their regular meeting place for having sex.[11] This argument is untenable. The very fact that they regularly chose this location to have sex demonstrated that it was secluded enough to provide the privacy they sought. Clearly, that Stairwell 1 was secluded enough is also borne out by the fact that D could commit the physical and sexual assaults (forming the basis of the 1st Charge), and acts of intimidation (forming the basis of the 2nd Charge) without being detected or interrupted.

The offence was committed in a residential neighbourhood

21 Third, the offence was committed in a residential neighbourhood. In *Chang Kar Meng v Public Prosecutor* [2017] 2 SLR 68 ("*Chang Kar Meng*"), the Court of Appeal considered this an aggravating factor. The offence was committed at Stairwell 1, on the floor of the Unit at which C resided, and very close to the Unit. The commission of the offence in a residential neighbourhood

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10 DS at [23].

11 DS at [19].

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"shakes the public's collective sense of safety and tranquillity" and also "unsettles the wider public" (*Chang Kar Meng* at [21(a)] and [52(a)]). Whilst the court in *Terence Ng* did not expressly mention this as an aggravating factor for the purposes of determining the sentencing band into which the offence would fall, the court made clear (at [43]) that the factors enumerated were not exhaustive.

Whether there was deliberate infliction of special trauma

22 Further, the Prosecution submitted there was deliberate infliction of special trauma. This factor relates to the intention of the offender as manifested in the manner of the offending, and not the effect which it had on the victim (*Terence Ng* at [44(i)]). In *Terence Ng*, the court set out examples of cases in which it can be said that there has been deliberate infliction of special trauma, such as repeated rape in the course of one attack, the further degradation of the victim or where the offender knows he was suffering from a life-threatening sexually transmissible disease.

23 In the present case, the Prosecution submitted that the penetrative acts of sexual assault were particularly intrusive and vicious, and this showed that D intended to deliberately inflict special trauma to C.[12] D's conduct is undoubtedly serious. He had penetrated C's vagina twice, essentially in quick succession, with all five fingers up to his knuckles. That said, I found insufficient evidence to support a finding that D intended to deliberately inflict special trauma. This is unlike, for instance, in *Public Prosecutor v Muhammad Alif bin Ab Rahim* [2021] SGHC 115. In that case, the accused had committed repeated rape and penetrations of the victim's anus and mouth, and subjected her to a "full panoply

12 PS at [16].

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of penetrative activities". The accused had also used hair gel as a lubricant when raping the victim, forced his lubricated penis into her mouth and subjected her to further degradation by ejaculating on her chest (at [17]).

Whether there was lack of remorse

24 The Prosecution also submitted that D's conduct at trial indicated an evident lack of remorse. I disagreed with the Prosecution that D's conduct at trial was of such a nature as to be regarded as an aggravating factor. I was not satisfied that D had "conducted his defence in an extravagant and unnecessary manner, and particularly where scandalous allegations [were] made in respect of the victim" (*Terence Ng* at [64(c)]). Although an offender "does not … have license to make all sorts of scandalous allegations against the victim", he should "not be unduly penalised at the sentencing stage for putting uncomfortable questions and suggestions to the victim, so long as this is done in a reasonable manner and the questions or suggestions are necessary for the proper ventilation of the defence" (*Public Prosecutor v Jeffrey Pe* [2023] SGHC 313 at [273]). In the present case, I did not find the manner in which the Defence was conducted to have crossed the threshold of being extravagant or unnecessary. This is considering D's defence was that he had digitally penetrated C's vagina with her consent, and that some of the injuries found on C were not caused by him. I elaborate with some examples.

25 D claimed, in one of his police statements, that C had touched her own vagina. But the Defence did not pursue this line of cross-examination with C (and hence embarrass her). C was also cross-examined on her tendency to bruise easily. However, this could not be said to be immaterial to D's defence, particularly when he claimed he did not assault her (other than to slap her face a few times). It was undisputed that C had the tendency to bruise and that blue-

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black marks would appear on her body before her period (GD at [115]). As for the cross-examination of the doctors to show that the bleeding from C's vagina could have been caused by C's condition of chlamydia,[13] the cross-examination (not directed at C) was necessary for the proper ventilation of D's defence and whether C's version of events (that D had put all five fingers up to his knuckles into her vagina) could be believed.

26 Next, the Defence sought to cast aspersions on C and Chew by alleging that they had sex on the same day and just before the incident of assault (by D) and that they had colluded to falsely implicate D. However, the manner of cross-examination on this issue did not, in my view, cross the line. The Defence was entitled to explore this issue, within reasonable bounds, given that Chew had sexual contact with C just before the sexual assault by D, and this might have cast doubts on whether any of the injuries in C's vagina could have been caused by that sexual contact. It was undisputed that C and Chew had sex a day prior to the assault and, on the day of the sexual assault, Chew had inserted his finger into her vagina (as he attested to) (GD at [8] and [88]).

Whether there were any mitigating factors

27 I then considered if there were any mitigating factors. I found there were none.

28 First, contrary to the submissions of the Defence,[14] D's lack of antecedents is not a mitigating factor (*BPH v Public Prosecutor* [2019] 2 SLR 764 at [85]).

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13 PS at [28(c)].

14 DS at [37] and [41].

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29 Second, the Defence submitted that D surrendered to the police when asked to do so, co-operated by giving his police statements without hesitation, and readily admitted to having physically assaulted and digitally penetrated C. D also returned C's purse and the handphone (that was with C when she was assaulted) to C's employer immediately after the incident of assault. The Defence submitted these should be accorded mitigatory weight and that D's acts reflected his sense of guilt and remorse.[15]

30 I disagreed with the Defence's characterisation of D's actions as reflecting remorse or that they amounted to mitigating factors. As I had elaborated in the GD (at [170]), it could equally be said that D attempted to cover his tracks and minimise his acts of assault. In particular, I pointed out that when C was in the neighbour's flat (where she ran to after the assault), D had gone there and told C not to call the police. Indeed, whilst D claimed to have readily admitted to having physically assaulted C and digitally penetrated her, the statements he made to the police showed he attempted to minimise his actions. In the police statements, D stated he only slapped C on her face (and no more), and in fact claimed that he had put two fingers into C's vagina with C's consent. He then sought to change his evidence in a later statement and claimed instead that C inserted her own fingers into her vagina, thereby denying the act of digital penetration altogether (GD at [154]). It was clear from the police statements that D did not show any remorse.

31 Third, the Defence claimed that C's betrayal of D led the latter to "act out of character", as D had never assaulted C in the past even when he first discovered she was having a relationship with Chew. D's actions had to be seen in light of the fact that they had committed themselves to each other although

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15 DS at [42]–[44].

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they were not legally married. The Defence thus submitted that D's overall culpability should be adjusted downwards on account of this, relying on *Public Prosecutor v CHJ* [2024] SGHC 240 ("*PP v CHJ*").[16]

32 In *PP v CHJ*, the court found that the accused's offences arose "at a difficult point of a complex and tumultuous marital relationship". The parties' marriage had been kept in limbo for nearly a year. Despite living apart, the parties continued to engage in sexual acts, and it was one means of resolving their marital conflicts. Around the material time of the offences, the complainant was bent on getting a divorce whilst the accused was keen to salvage the marriage. It was in that context that the accused had acted out of character and sexually assaulted the complainant. Pertinently, the court noted that the accused knew he had inflicted pain on the family (especially his children) and that he had suffered by being separated from them. As such, the court reduced the sentences for each of the two SAP charges from eight years' imprisonment and four strokes of the cane to seven years' imprisonment and three strokes of the cane (at [144] and [159]–[160]).

33 First and foremost, the current facts are distinguishable from *PP v CHJ*, which led me to not place much weight on the Defence's argument that D had acted out of character. The existence of a prior relationship between the parties is not to be treated automatically as a mitigating factor, but rather a neutral factor as a starting point. Its effect and the weight to be accorded to it would depend on the circumstances of the case (*Terence Ng* at [46]; *Public Prosecutor v Mohammed Liton Mohammed Syeed Mallik* [2008] 1 SLR(R) 601 ("*Mohammed Liton*") at [116]). Therefore, even if I had accepted that D had acted out of

16 DS at [38]–[40].

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character in the context of his existing prior relationship with C, this was not automatically a mitigating factor.

34 Here, the existence of a prior relationship between C and D would, at best, be neutral. Unlike in *PP v CHJ*, where the parties were husband and wife going through a tumultuous marital relationship, C and D were not a married couple. Moreover, any mitigatory value was attenuated by the fact that the sexual assault did not occur in the spur of the moment (*ie*, there was premeditation), and that D had inflicted violence on C before sexually assaulting her. This is in comparison to the facts in *PP v CHJ*, where the court found that the accused's assault was not premeditated but likely the result of his desperation to mend his marriage (at [133]), and where the use of violence was not identified as an aggravating factor.

35 Second and more fundamentally, the court in *PP v CHJ* did not regard the fact that the accused had acted out of character as a specific mitigating factor and saw no need to adjust the indicative sentence (of eight years and four strokes of the cane) for each of the SAP charges (at [133] and [144]). Rather, the court adjusted the sentence when applying the totality principle, to reflect the accused's overall culpability given that he was also convicted on a charge for obstructing the course of justice, with the sentence on this charge ordered to run consecutively with one SAP charge. In this regard, whether the global sentence should be calibrated is to be assessed at a later stage.

Conclusion on the 1st Charge

36 As I found no significant offender-specific aggravating or mitigating factors, I saw no reason to depart from the indicative starting sentence. Accordingly, I concluded that the appropriate sentence for the 1st Charge was 12 years' imprisonment with 12 strokes of the cane.

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37 In the above regard, both parties drew my attention to *Public Prosecutor v Ng Yi Yao* [2021] SGHC 295 ("*Ng Yi Yao*") as a useful comparator. In that case, the accused had impersonated a police officer and had used a knife to put the victim in fear of hurt, to commit both rape and SAP. In relation to the two SAP charges, the court found that the case fell within the mid-point of Band 2 of the *Pram Nair* framework, and sentenced the accused to 12 years' imprisonment and 12 strokes of the cane for each of the charges (at [194] and [197]). The court found the following relevant offence-specific factors, namely the accused had put the victim in fear of hurt, there was premeditation, the victim was a vulnerable victim, and the commission of other acts which could have constituted separate offences (at [188]–[193]). I was cognisant that the court ultimately adjusted the sentence for the SAP charges to eight years' imprisonment, but that was on account of the totality principle and the global sentence to be imposed on the accused as he was also convicted and sentenced to two counts of aggravated rape (at [205]).

38 The present case is comparable to *Ng Yi Yao*. While the nature of the aggravating factors differed between the cases, their cumulative effect was comparable in terms of culpability and harm. In the present case, D had inflicted actual hurt (which was rather extensive) on C. However, *Ng Yi Yao* involved additional degrading acts and post-assault conduct that heightened the victim's sense of intrusion and violation (at [193]).

Sentence for the 2nd Charge

39 The Prosecution proceeded on the first limb of s 506 of the Penal Code, which carries a maximum sentence of two years' imprisonment and/or a fine. In determining the appropriate sentence, the court should assess the extent to which it can be said that a serious threat was made, considering both the

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intention of the person making the threat and the fear experienced by the victim as a result of the threat (*Tan Yao Min v Public Prosecutor* [2018] 3 SLR 1134 ("*Tan Yao Min*") at [52], citing *Woon Salvacion Dalayon v Public Prosecutor* [2003] 1 SLR(R) 129 at [43]).

40 Having physically and sexually assaulted C, D pulled her leg and told her that he would throw her "outside the staircase" (or out of the window of the staircase landing which was on level 31 of the Block) before jumping himself (GD at [19] and [180]). In the context of C having just been assaulted, this could not be considered as an empty threat. I had previously found that, as a result of the threat or intimidation, C was scared for her life (GD at [56] and [180]). The fact that C was not only alarmed by the threat but had feared for her safety is an aggravating factor that goes towards the seriousness of the offence (*Tan Yao Min* at [53]). C's fear was demonstrated by her response to the threat. She held on to the staircase railing tightly to prevent D from pulling her away and she shouted for help (GD at [19] and [180]). Given the context of the prior assault, C's fear for her safety would have been amplified.

41 In submitting for a sentence of two months' imprisonment, the Defence relied on *Mohammed Liton* where the accused received the same sentence (at [77]).[17] The Prosecution did not cite any cases for the court's consideration. In *Mohammed Liton*, the accused had pointed a knife at the victim to force her to be with him. The court found that there was no premeditation and the accused did not cause the victim any serious physical injuries. However, in the present case, D had formulated a plan to confront C without her prior knowledge when she went to buy lunch and to lead her to the stairwell (see [17]–[19] above). He had also, prior to intimidating C, assaulted C and caused extensive injuries to

[17] DS at [54]–[58].

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her (see [15]–[16] above), and his threats (to throw C outside the staircase) were accompanied by him pulling on her leg. These would have greatly contributed to C's fear as a result of the threat.

42 In this regard, I considered also the case of *Public Prosecutor v Koh Rong Guang* [2018] SGHC 117 ("*Koh Rong Guang*"). In that case, the accused was convicted of three charges of criminal intimidation (on the first limb) under s 506 of the Penal Code. In two of the charges, the accused had threatened to cause injury to the victim by hitting the wall with a spanner close to her face, and by holding a brick and threatening the victim with it respectively, essentially to put the victim in significant fear to compel her to perform sexual acts with the accused subsequent to the intimidation. In the third charge, the accused had threatened two other persons ("T" and "N") with a knife to warn them not to report the rape (against the victim) that they had witnessed. The court imposed a term of six months' imprisonment each on the first two charges, and four months' imprisonment on the third charge as no physical harm was caused to T and N (at [13], [15], [21] and [118]). In that case, the threats to the victim were accompanied by the use of a spanner and a brick, and they were with intent to put the victim in significant fear to compel her to perform sexual acts against her will. The facts in *Koh Rong Guang* were clearly more serious than in the present case.

43 In the circumstances, and having regard to the case precedents, I found the sentence of four months' imprisonment for the 2nd Charge to be appropriate.

Sentence for the 3rd Charge

44 I turn to the 3rd Charge pertaining to perverting the course of justice. In *Parthiban a/l Kanapathy v Public Prosecutor* [2021] 2 SLR 847 ("*Parthiban*"), the Court of Appeal set out various factors that could be considered in

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determining the relevant sentence. They include: (a) the seriousness of the predicate offence – the more serious the offence, the more serious the act of perverting the course of justice will be; (b) the effect of the attempt to pervert the course of justice, particularly where perversion of justice is to protect the accused's own perceived interests; and (c) the degree of persistence, premeditation and sophistication in the commission of the offences which may indicate the culpability of the accused (*Parthiban* at [27(c)]).

45 In the present case, D had persistently sent multiple e-letters to his brother, instructing him to contact C and convey D's messages to her. D's brother sent these messages to C through C's brother on three occasions.[18] Notably, the messages were sent pertaining to the predicate offence of SAP, aggravated by the use of violence, which was a very serious offence punishable with a mandatory minimum sentence of eight years' and up to 20 years' imprisonment. Moreover, the contents of the messages showed that D was motivated by self-interest. He wanted C to either change her account to support his defence or to withdraw her case entirely. In doing so, D was effectively persuading C to perjure herself.

46 In determining the appropriate sentence, I considered *Parthiban* (relied on by the Prosecution) and *PP v CHJ* (cited by the Defence). In *Parthiban*, the court imposed a sentence of one year and nine months' imprisonment for the offence under s 204A of the Penal Code (of which the accused had pleaded guilty to). I was of the view that *Parthiban* was a more serious case. The predicate offence that the accused's actions were aimed at subverting was a capital charge (for the importation of drugs), which was the "most serious conceivable". The accused had also attempted to pervert the course of justice

[18] 3rd Charge SOF at [6]–[7].

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by asking his co-accused to give false testimony to exonerate the both of them. Furthermore, the court found there to be extensive planning and premeditation (*Parthiban* at [10] and [28]).

47 The present case was more comparable to *PP v CHJ*. In *PP v CHJ*, the accused had called the victim's mother four times to attempt to convince the victim to withdraw her allegations of sexual assault (at [108] and [153]). The court found the accused's preparatory steps of buying a new phone and prepaid card were done with the intent of avoiding detection and indicated a degree of premeditation. Further, the accused committed the offence while on bail (at [150]). The offender in both *PP v CHJ* and in the present case had made multiple attempts to persuade the victim to drop the charges. Although the court in *PP v CHJ* found the offender had acted in a way to avoid detection, the predicate offence in the present case (being aggravated SAP) was more serious. However, in *PP v CHJ*, the court considered the accused's culpability was tempered because he had made the calls hoping to preserve his marriage with the victim, albeit by getting her to drop the charges (at [151]). No such mitigating circumstances exist here. The court in *PP v CHJ* thus sentenced the accused to 12 months' imprisonment for the offence of obstruction of justice (at [155]), and I considered this an appropriate benchmark for the present case.

48 D had intended to plead guilty to the 3rd Charge after directions were given for the filing of the case for the Prosecution but before the first day of trial. The Prosecution accepted that D would have been entitled to a 10% reduction in sentence pursuant to the *Guidelines on Reduction in Sentences for Guilty Pleas*.[19] I thus adjusted the sentence for the 3rd Charge downwards to ten months in the round.

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[19] PS at [46]–[47].

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49 Finally, it bears remembering that for an offence under s 204A of the Penal Code, general deterrence should be the primary sentencing consideration because such offences "contaminate the rule of law" and "strike at the very fundamental ability of the legal system to produce order and justice" (*Parthiban* at [27(a)]).

Global sentence

50 I accepted (as submitted by the parties) that the sentences for the 1st and 3rd Charges should run consecutively. As the 1st and 2nd Charges arose from the same incident and occurred in close temporal proximity, I considered them as forming a single transaction. The 3rd Charge, however, occurred on a separate occasion and infringed different legal interests (*PP v CHJ* at [157]; *Public Prosecutor v Raveen Balakrishnan* [2018] 5 SLR 799 at [52] and [54]). As such, the aggregate sentence for the 1st and 3rd Charges was 12 years and ten months' imprisonment with 12 strokes of the cane.

51 Next, the court should consider whether the aggregate sentence is substantially above the normal level of sentences for the most serious of the individual offences committed, and whether the effect of the sentence on the offender is crushing and not in keeping with his past record and his future prospects (*Mohamed Shouffee bin Adam v Public Prosecutor* [2014] 2 SLR 998 ("*Mohamed Shouffee*") at [54] and [57]). The totality principle is a consideration that is applied at the end of the sentencing process where the court takes a "last look" at all the facts and circumstances to determine if the sentence is appropriate. At this stage, the court is concerned about proportionality and can

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recalibrate the individual sentences to arrive at an appropriate aggregate sentence (*Mohamed Shouffee* at [58]–[59]; *Pram Nair* at [171]).

52 I was satisfied that no further downward adjustments were necessary on account of the totality principle. I agreed with the Prosecution's submissions and did not find the global sentence to be substantially above the normal level of sentences for the most serious of the individual offences committed or that it was crushing.[20]

Conclusion

53 In conclusion, I sentenced D to 12 years' imprisonment and 12 strokes of the cane for the 1st Charge, four months' imprisonment for the 2nd Charge, and ten months' imprisonment for the 3rd Charge. The sentences for the 1st and 3rd Charges were ordered to run consecutively, while the sentence for the 2nd Charge was ordered to run concurrently. The global sentence imposed was thus 12 years and ten months' imprisonment and 12 strokes of the cane.

Audrey Lim J
Judge of the High Court

Alexandria Shamini Joseph (Attorney-General's Chambers) for the Prosecution;
Asoka s/o Markandu (Anitha & Asoka LLC) and Lee Shen Han (Bonsai Law Corporation) for the accused.

[20] PS at [52].

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