IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2025] SGCA 38

Court of Appeal / Criminal Appeal No 14 of 2024

Between

CHJ

… *Appellant*

And

Public Prosecutor

… *Respondent*

Court of Appeal / Criminal Motion No 10 of 2025

Between

CHJ

… *Applicant*

And

Public Prosecutor

… *Respondent*

In the matter of Criminal Case No 44 of 2023

Between

Public Prosecutor

… *Prosecution*

And

CHJ

… *Defendant*

EX TEMPORE JUDGMENT

[Criminal Law — Offences — Sexual offences — Sexual assault involving penetration under s 376(2)(*a*) of the Penal Code (Cap 224, 2008 Rev Ed)]
[Criminal Law — Offences — Obstructing the course of justice under s 204A(*b*) of the Penal Code (Cap 224, 2008 Rev Ed)]
[Criminal Procedure and Sentencing — Appeal — Adducing fresh evidence]

CHJ
v
Public Prosecutor

[2025] SGCA 38

Court of Appeal — Criminal Appeal No 14 of 2024
Tay Yong Kwang JCA, Belinda Ang Saw Ean JCA and Woo Bih Li JAD
8 August 2025

8 August 2025

Tay Yong Kwang JCA (delivering the judgment of the court *ex tempore*):

1 The Appellant was convicted on two charges of sexually assaulting his wife ("the Complainant") by digital penetration, offences under s 376(2)(a) of the Penal Code (Cap 224, 2008 Rev Ed) (the "Penal Code"), punishable under s 376(3) of the Penal Code (the "Penetration Charges") and one amalgamated charge for obstructing the course of justice, an offence under s 204A(b) of the Penal Code (the "Obstruction Charge").

2 A Judge of the General Division of the High Court (the "Judge") convicted the Appellant on all three charges after trial. The Appellant was sentenced to seven years' imprisonment and three strokes of the cane for each of the two Penetration Charges and to 12 months' imprisonment for the Obstruction Charge. The imprisonment terms for one of the Penetration Charges and for the Obstruction Charge were ordered to run consecutively, making a global imprisonment term of eight years, together with six strokes of the cane.

The Appellant appealed against both conviction and sentence in CA/CCA 14/2024 ("CCA 14").

3 On 1 April 2025, three days before the original date of the hearing of the appeal, the Appellant filed an application in CA/CM 10/2025 ("CM 10"), seeking leave to adduce further evidence at the hearing of CCA 14 pursuant to s 392 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC"). As the Appellant's counsel wanted time to file written submissions for CM 10, the hearing date for the appeal was vacated so that both CM 10 and CCA 14 could be heard together.

CM 10: Admission of fresh evidence

4 The Appellant seeks leave to admit two sets of documents as fresh evidence. As stated in his affidavit dated 1 April 2025, the fresh evidence comprises:

(a) a copy of the Divorce Originating Application filed by the Complainant against the Appellant on 7 March 2025 (the "Divorce Application") and served on him on 22 March 2025 in prison; and

(b) the exchange of correspondence between the Appellant's counsel and the Complainant's counsel in the Divorce Application between 20 December 2024 and 7 March 2025 (the "Correspondence"). This related to the two children of the marriage.

5 The Appellant alleges that the above fresh evidence shows that the Complainant embellished her evidence and changed her narrative given at the criminal trial. This shows that the Complainant's evidence cannot be regarded as "unusually convincing". It also shows that the Complainant always intended

to have sole custody, care and control of the two children and to restrict the Appellant's access to them. She therefore had a motive for making the false allegations against the Appellant in the criminal matter.

6 Having read the written submissions and heard the parties on CM 10 for admission of the fresh evidence, we hold the view that the fresh evidence should not be admitted at the appeal. This is because it will not have an important influence on the result of the appeal against conviction and sentence.

7 The Appellant's contentions are premised largely on the assumption that the "unusually convincing" standard of proof applied to this case. As we will elaborate subsequently when we deal with the appeal, such a standard does not apply here as the Complainant's evidence was not the sole basis for the conviction.

8 Although there are some inconsistencies between the Complainant's evidence at the criminal trial and what she has set out in the Divorce Application, we note that the Appellant did not dispute that the sexual penetration occurred. His defence was that it was consensual or, at least, he honestly believed that it was consensual. The apparent inconsistencies pertain to minute details about the events in relation to the Penetration Charges and do not detract in any way from the Complainant's assertion that the sexual penetration took place without her consent.

9 Further, the correspondence between the counsel for the parties in the Divorce Application merely shows that the Complainant was not amenable to the Appellant's proposals on access to the children. We do not see how such correspondence, which took place from December 2024 to March 2025, has any

bearing on the Complainant's state of mind in July 2020 when the sexual penetration took place.

10 We therefore dismiss CM 10 and reject the fresh evidence for the appeal.

CCA 14: Appeal against conviction and sentence

11 This appeal challenges a multitude of factual findings made by the Judge. The Judge has given a comprehensive judgment setting out the evidence and her findings (see *Public Prosecutor v CHJ* [2024] SGHC 240). We agree with the Judge on her findings on the material issues. There could be no reasonable doubt that the defences of consent and mistake of fact could not be made out in the factual situation in this case.

12 The points of law canvassed include the issue of whether the "unusually convincing" standard of proof should apply because the Prosecution's case rested essentially on the Complainant's evidence, as the Appellant alleged. However, the evidence of the sexual penetration and the absence of consent by the Complainant did not come from her only. There was corroborating evidence in the communications between the Appellant and his sister on 14 July 2020, in the first Video Recorded Interview done on 14 July 2020 and in the first cautioned statement given by the Appellant on 15 July 2020.

13 The "unusually convincing" standard of proof is therefore not applicable here.

14 The other point of law is whether there should be two charges of sexual penetration when the two incidents of sexual penetration took place one after the other within a very short interval and in the same place as though they were part of one transaction.

15 We agree with the Judge that the son's interruption during the entire episode in the bedroom on the night of 13 July 2020 caused a break in the sexual penetration even though the interruption was brief. It was therefore correct that there were two incidents of sexual penetration justifying the two Penetration Charges.

16 That created the situation of three distinct charges involving imprisonment, thereby necessitating two imprisonment terms to run consecutively, as mandated by s 307(1) of the CPC. However, the Judge ordered correctly that the imprisonment terms for the Penetration Charges run concurrently since they involved the same parties and were closely related in time and place and involved the same legal interest. The concurrent sentences were ordered to run consecutively with the imprisonment term for the Obstruction Charge. That is again entirely correct because the Obstruction Charge involved events that took place about three months after the sexual penetration, involved a different party (the Complainant's mother) and a very different legal interest.

17 Even if there were only one Penetration Charge instead of two, the Judge would, in all likelihood, have ordered the same consecutive sentences because, as stated above, the Penetration Charge and the Obstruction Charge obviously target different legal interests and are separated by several months although the latter charge arose as a result of the predicate Penetration Charge.

18 The final legal point relates to whether the four phone calls to the Complainant's mother between 11 and 17 October 2020 fall within Explanation 1 in s 204A of the Penal Code relating to obstruction of justice. The said Explanation 1 provides that "A mere warning to a witness that he may be

prosecuted for perjury if he gives false evidence is insufficient to constitute an offence".

19 We do not see how the seven matters said by the Appellant to the Complainant's mother in the phone calls as listed in the Obstruction Charge could amount to a mere warning to the Complainant that she may be prosecuted for perjury. For instance, in the phone calls, the Appellant told the Complainant's mother to tell the Complainant that the children could end up in foster care and that the Complainant, the children and this criminal case would be published in the newspapers if the Complainant did not withdraw her sexual assault allegation. The phone calls considered collectively were clearly for the purpose of persuading and pressurising the Complainant to withdraw her police report against the Appellant.

20 There is also the ancillary point about whether the four phone calls could be amalgamated in one charge. In our judgment, they fell plainly within the wording in ss 124(4) and 124(5) of the CPC as they amounted to a course of conduct. They were therefore amalgamated lawfully in the Obstruction Charge.

21 On sentence, there is no good reason why a sexual assault by a husband against his wife in a troubled relationship and in the circumstances of this case should not be punished with caning. The Judge has considered the case law and also ameliorated the sentences of imprisonment and caning under the totality principle. The aggregate sentence of 8 years' imprisonment and 6 strokes of the cane does not appear to us to be wrong in principle or manifestly excessive on the facts of this case.

22 We therefore dismiss the appeal against conviction and sentence.

23 The Appellant was arrested on 14 July 2020. On 16 July 2020, he was released on bail. On 31 March 2023, his bail was revoked for alleged breaches of the bail conditions (the appellant was charged for driving offences) and he was remanded. He remained in remand until the conclusion of his trial on 22 July 2024. Pending his appeal to the Court of Appeal, at the request of counsel for the Appellant, the Judge stayed execution of the sentence pronounced by her. The Appellant therefore remained in remand and the caning was stayed pending this appeal.

24 We now order the imprisonment of eight years to take effect from 31 March 2023 and we lift the stay on the caning with immediate effect.

Tay Yong Kwang
Justice of the Court of Appeal

Belinda Ang Saw Ean
Justice of the Court of Appeal

Woo Bih Li
Judge of the Appellate Division

Vinit Chhabra (Vinit Chhabra Law Corporation) and N K Anitha (Anitha & Asoka LLC) for the appellant;
Jane Lim and Jonathan Tan (Attorney-General's Chambers) for the respondent.